

27 September 2013

The Director General
NSW Department of Planning & Infrastructure
GPO Box 39
SYDNEY NSW 2001

Dear Mr Haddad,

Section 75W Modification Application – Modifications to Proposed Marina

*Trinity Point Marina & Mixed Use Development Concept Approval (MP 06_0309)
Lot 31 DP 1117408, Pt Lot 32 DP 1117408, Pt Lot 33 DP 1117408, and Pt Crown Land (the Lake)*

1.0 INTRODUCTION

This Section 75W modification application seeks to modify Concept Approval (MP06_0309) which was granted by the NSW Minister for Planning on 5 September 2009. The Trinity Point Marina and mixed use development concept approval includes the following:

- A 188 berth marina (to be constructed in two stages), associated maintenance and club facilities;
- 150 accommodation units comprised of 75 tourist units and 75 residential units;
- Restaurant, café, function centre, shops and office; and
- Parking, landscaping and boardwalk.

A summary of the proposed modifications to the Concept Approval include the following:

- Restaging of the marina from two stages, to six stages with a clear definition of Stage 1 works; and
- Delinking of a number of whole of site environmental assessment requirements from the now much smaller proposal for the first stage of the Marina.

The proposed modifications are considered essential to facilitate the development under the concept plan approval. Each of these proposed modifications are addressed in detail in **Section 3** of this Section 75W modification submission.

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2.0 ENVIRONMENTAL PLANNING & ASSESSMENT ACT 1979

On 1 October 2011, Part 3A of the EP&A Act 1979 was repealed by the *Environmental Planning & Assessment (Part 3A Repeal) Act 2011 No. 22*. Despite this, Part 3A continues to apply to the project based on the transitional provisions identified in Clause 2 and 3 of Schedule 6A of the EP&A Act 1979 as follows:

Schedule 6A

2 Transitional Part 3A projects

- (1) *The following are, subject to this Schedule, **transitional Part 3A projects**:*
- (b) *a project that is the subject of an approved concept plan (whether approved before or after the repeal of Part 3A),*
 - (5) *A transitional Part 3A project extends to the project as varied by changes to the Part 3A project or concept plan application, to the concept plan approval or to the project approval, whether made before or after the repeal of Part 3A."*

Clause 3 of Schedule 6A of the EP&A Act 1979 states that the provisions of any State Environmental Planning Policy (SEPP) implemented under Part 3A continue to apply in respect of a transitional Part 3A project:

3 Continuation of Part 3A—transitional Part 3A projects

- (1) *Part 3A of this Act (as in force immediately before the repeal of that Part and as modified under this Schedule after that repeal) continues to apply to and in respect of a transitional Part 3A project.*
- (2) *For that purpose:*
- (a) *any State environmental planning policy or other instrument made under or for the purposes of Part 3A, as in force on the repeal of that Part and as amended after that repeal, continues to apply to and in respect of a transitional Part 3A project,"*

Clause 3C of Schedule 6A of the EP&A Act 1979 confirms that Section 75W continues to apply for the purpose of the modification of an approved concept plan as follows:

3C Modification of concept plans

- (1) *Section 75W continues to apply for the purpose of the modification of a concept plan approved before or after the repeal of Part 3A, whether or not the project or any stage of the project is or was a transitional Part 3A project.*
- (2) *This clause applies despite anything to the contrary in this Schedule (other than provisions to approval for the carrying out of a project or stage of a project that is given in connection with an approval to modify a concept plan)."*

Based on the above legislation, it is established that the proposed modifications to the approved concept plan can be assessed as a Section 75W modification application. Section 75W of the EP&A Act states:

75W Modification of Minister's approval

- (1) *In this section:*
- Minister's approval*** *means an approval to carry out a project under this Part, and includes an approval of a concept plan.*

modification of approval means changing the terms of a Minister's approval, including:

- (a) revoking or varying a condition of the approval or imposing an additional condition of the approval, and*
- (b) changing the terms of any determination made by the Minister under Division 3 in connection with the approval.*
- (2) The proponent may request the Minister to modify the Minister's approval for a project. The Minister's approval for a modification is not required if the project as modified will be consistent with the existing approval under this Part.*
- (3) The request for the Minister's approval is to be lodged with the Director-General. The Director-General may notify the proponent of environmental assessment requirements with respect to the proposed modification that the proponent must comply with before the matter will be considered by the Minister.*
- (4) The Minister may modify the approval (with or without conditions) or disapprove of the modification.*
- (5) The proponent of a project to which section 75K applies who is dissatisfied with the determination of a request under this section with respect to the project (or with the failure of the Minister to determine the request within 40 days after it is made) may, within the time prescribed by the regulations, appeal to the Court. The Court may determine any such appeal.*
- (6) Subsection (5) does not apply to a request to modify:*
 - (a) an approval granted by or as directed by the Court on appeal, or*
 - (b) a determination made by the Minister under Division 3 in connection with the approval of a concept plan.*
- (7) This section does not limit the circumstances in which the Minister may modify a determination made by the Minister under Division 3 in connection with the approval of a concept plan."*

No provisions of Section 75W prohibit or restrict the proposed modifications to the concept plan approval. It is considered that the proposed modifications remain consistent with this section of the EP&A Act 1979.

3.0 PROPOSED MODIFICATIONS & ENVIRONMENTAL ASSESSMENT

This Section 75W application seeks the following modifications to the approved concept plan:

- Restaging of the marina from two stages, to six stages with a clear definition of Stage 1 works; and
- Modification of the conditions to allow a Stage 1 marina development application to address only such matters as are relevant to its potential environmental impacts.

Details of these proposed modifications are discussed below. An Environmental Assessment of each proposed modification is also provided.

3.1 Proposed Modification – Restaging of Marina from two Stages, to six Stages and a Definition of Stage 1 Works

Condition B2 of the concept approval requires the marina to be constructed in two stages, with each stage being a maximum of 94 berths (total 188 berths). The condition states:

“B2 Marina Staging

The marina must be constructed in two stages with each stage being a maximum of 94 berths and subject to separate future application which demonstrates that there will be negligible impact on water quality due to the introduction of the marina.”

To facilitate the construction of the Marina in a rationalised manner, it is proposed to amend the concept plan so that the Marina can be developed in six (stages), rather than two stages. Provided in **Appendix A** is a plan that shows the updated layout of the Marina (inclusive of all six stages). Provided in **Appendix B** is a plan that details the Stage 1 works.

Marina Staging

The design of the overall Marina will remain consistent with the approved concept plan. The proposed amendment essentially seeks to develop the Marina in six stages rather than two stages. The details of the proposed marina staging are as follows (also refer to **Appendix A** and **Appendix B**):

Stage 1

- 39 floating berths for craft ranging in length from 8m – 12m;
- Partial permanent floating breakwater structure and temporary breakwater (to suit Stages 1 and 2);
- Services to berths including water, power and lighting;
- Temporary carpark and access road; and
- Temporary cafe and marina manager/sales office.

Stage 2

- 27 floating berths for craft ranging in length from 8m – 12m; and
- Services to berths including water, power and lighting.

Stage 3

- 33 floating berths for craft ranging in length from 12m – 14m;
- Services to berths including water, power and lighting;
- Removal of Stage 1 temporary breakwater, partial extension to permanent floating breakwater structure; and
- A temporary floating breakwater (to suit Stages 1 – 4).

Stage 4

- 32 floating berths for craft ranging in length from 10m – 14m; and
- Services to berths including water, power and lighting.

Stage 5

- 22 floating berths for craft ranging in length from 14m – 20m;
- Services to berths including water, power and lighting; and
- Removal of temporary Stage 3 floating breakwater structure and extension to permanent breakwater structure.

Stage 6

- 35 floating berths for craft ranging in length from 14m – 20m;
- Services to berths including water, power and lighting; and
- Final extension of the permanent breakwater structure.

Overall, the final Marina will continue to contain the following key elements (as per the concept plan approval):

- 188 berths for craft ranging in length from 8m – 20m;
- A breakwater structure;
- Provision made for public day berthing on the inside edge of the breakwater (including progressive provision during staging) and provision made for occasional berthing of tourist boats on the outside eastern edge of the breakwater;
- Vessel exclusion zone to the south of the southern breakwater to protect sea grass areas (if required by authorities);
- Marina to include required fire fighting equipment plus public fuel, sewerage pump out and oily binge pump out facilities;
- No dredging required for the marina; and
- Associated land based facilities.

Environmental Assessment - Restaging of Marina from two Stages, to six Stages and a Definition of Stage 1 Works

It is considered that the restaging of the Marina from two stages to six stages will have no adverse environmental impacts. The proposed modification will result in concept approval for exactly the same marina concept; it will simply be constructed in six stages instead of two.

It is also noted that conditions B1, C11, C12, C13, C14 and C29 confirm a number of environmental performance assessments that need to be undertaken prior to finalising Marina design and during marina development. An assessment to address conditions B1 (Construction of Marina), C11 (Verification of Baseline Data for Marina and C29 (Recreational Boating Impacts) is already underway. Some of these conditions will be required to be updated to reflect the proposed staging (refer below).

It is noted that the existing concept plan approval does not clearly specify any stages of works, other than noting that the marina is to be constructed in two stages. It is considered that the detail provided above to confirm the extent of concept Stage 1 works is in accordance with the approved concept plan and it will provide a suitable starting point for a future development application to be made to commence progressing the development from a concept plan approval to a development approval and have physical works commence.

3.2 Proposed Modification - Modification of the conditions to allow a Stage 1 Marina development application to address only such matters as are relevant to its potential environmental impacts.

A number of approval conditions contain requirements for studies of the whole site as part of the Stage 1 Marina DA. The majority of these requirements relate to land based occupation of the site and the potential impacts of tourist, commercial and residential development and are of marginal relevance to the marina proposal.

The concept approval conditions requiring whole of site studies are listed below with comments.

"C3 Urban Design

A revised set of Urban Design guidelines is to be submitted with the first application for development of the site (Refer C3)."

COMMENT

The urban design guidelines do not relate to the Marina which has its own set of guidelines in Principle 14 of the concept plan. The land based components of the Marina will also be required to comply with the Concept Plan principles. Condition C2 applies a two storey building height limit and Condition C3 also requires design excellence. The controls over the marina are considered to be adequate without the requirement for a revised set of urban design guidelines to accompany the first application for development of the site.

"C7 Traffic and Parking

"a detailed traffic study is to be provided for the entire site before the first stage."

COMMENT

The roads, traffic and parking implications of a Stage 1 Marina DA will be minimal and can be dealt in accordance with Principle 10 of the concept plan and in accordance with LMCC DCP requirements. It will not be necessary to assess the whole of location traffic implications for a minor traffic generating component of the proposed overall works – particularly as the bulk of the land based development is yet to be designed.

"C9 Vegetation Management Plan

A Vegetation Management plan shall be provided for entire site and approved as part of the application for the first stage of development (refer to Principle 8.....) as part of first stage of development."

COMMENT

This condition covers specifically an effect of the marina which will result in the loss of an EEC and requires the reinstatement of 0.05ha of Swamp Oak Forest. This can be addressed without the need for a whole of site vegetation management plan.

"C19 Stormwater Management

The first stage of the development must provide details of the proposed stormwater management system for the entire site."

COMMENT

This condition includes marina management matters such as pump out details and emergency response to oil and fuel spills which are reasonable DA requirements. It is considered however that there is no need to provide stormwater details for the entirety of the land based development until it is designed. The stormwater and pollution control aspects of the marina can be adequately dealt with in a Development Application in the absence of a full stormwater plan for the site.

Environmental Assessment of Modification of conditions to allow the Stage 1 Marina Development Application to address only relevant matters in relation to its potential environmental impact.

The proposed changes only affect the timing of the abovementioned studies. All required assessment work will be completed at an appropriate time. It is considered that the majority of these studies relate to land based activity and are not relevant to the development application associated with Stage 1 of the Marina.

There are separate impact controls for the marina construction that are addressed by specific conditions of concept plan approval (which will be addressed in future Development Applications). The whole of site study impacts are largely separate matters linked to the Stage 1 DA by the wording of the concept plan approval conditions. The mitigation measures identified by the whole of site studies are unlikely to directly affect the marina works.

Delaying the whole of site studies will not delay any impact mitigation measures needed for the site. The marina can be built and its impacts adequately mitigated via specific development approval conditions incorporated into the consent for the Stage 1 Marina works.

3.3 Proposed Amendments to Concept Plan Approval (06_0309) Conditions to Facilitate Above Described Modifications

The proposed amendments to the concept plan approval conditions are as follows (where whole conditions are stated, refer to the underlined section for suggested amendment):

- Conditions A1, A2, A3 to be updated to reference the s75W modification letter dated 27 September 2013 prepared by Johnson Property Group (and any subsequent documentation).
- Conditions A2 and A3 to be updated to reference plans 'Trinity Point Marina Ultimate Layout (130711-Ultimate Layout SC-001) prepared by SMEC Australia and 'Trinity Point Marina Indicative Stage 1 Works & Temp Onshore Facilities' (130705-Stage1-SC-002) prepared by SMEC Australia.
- *"B2 Marina Staging*
The marina shall be constructed in six stages as shown on plan 'Trinity Point Marina Ultimate Layout' (130711-Ultimate Layout -SC-001) prepared by SMEC Australia. All future stages of the marina are subject to future applications.
- C3 Urban Design
Delete from the condition the words *"must be submitted with the first development application for the site"* and insert in their place the words *"must be submitted before any application for the village piazza or accommodation units"*.
- C7 Traffic and Parking
Delete from the condition the words *"with the application for the first stage of development"* and insert in their place the words *"before any application for the village piazza or accommodation units"*.
- C9 Vegetation Management Plan
Delete from the condition the words *"and approved as part of the application for the first stage of development"* and insert in their place the words *"and approved as part of the first application for the village piazza or accommodation units"*.
- *"C12 Final Marina Design*
Once the verified baseline data is accepted by the approval authority, the final design (Stage 1 – Stage 6) must demonstrate negligible impact on the environment and include:
 1. *3D numerical modelling of the current water flow and flushing characteristics in Bardens Bay. This modelling is also to be provided for the small inlet/unnamed bay at the southern end of Bardens Bay and Petite Lake.*
 2. *Particle tracking modelling for the final design from pollutant discharges within the proposed marina under a range of wind conditions.*
 3. *Seagrass wrack tracking modelling for the final design demonstrating negligible impact on the health and size of the seagrass bed to the south of the marina.*

4. *Identification of the syngnathid population (seahorses, pipe fish, etc) in Bardens Bay and measures to mitigate any impact.*
 5. *Best practice management measures that will be used to minimise impacts of the marina on the environment.*
- *"C14 Stages 4 – 6 Marina*
The expansion of the marina to include Stages 4 – 6 will only be permitted if it can be demonstrated that there is satisfactory environmental performance of Stages 1 – 3 and that the environment is able to satisfactorily co-exist with the introduction of Stages 4 – 6. In that regard Stages 4 – 6 must demonstrate:
 1. *At least 75% take up of berths in Stages 1 – 3;*
 2. *Compliance with Stages 1 - 3 construction and operational management and environmental licence conditions;*
 3. *Satisfactory environmental performance of Stages 1 – 3 for a period of one year after completion which shows a negligible impact on foreshore erosion, flushing characteristics pollutant levels, movement of seagrass wrack and water quality;*
 4. *Appropriate modelling and assessment of the environmental performance of the final design of Stages 4 – 6 and a negligible impact on foreshore erosion, flushing characteristics, pollutant levels, movement of seagrass wrack and water quality in Bardens Bay.*
 - *C 19 Stormwater Management*
 - i) *Delete from the condition the words "the first stage of the development must provide details of the proposed stormwater management for the entire site" and insert in their place the words "the first application for the village piazza or accommodation units must provide details of the proposed stormwater management for the entire site";*
 - ii) *Insert after the first sentence "Any separate applications for the marina must address the pollution control and monitoring measures identified by this condition."*

4. **LANDOWNER CONSENT**

The Department of Lands is the landowner of the lake. They have reviewed this Section 75W modification and, as landowner, have consented to it being lodged.

5. **CONCLUSION**

The proposed modifications under Section 75W of the EP&A Act 1979 include the following:

- Restaging of the Marina from two stages, to six stages with a clear definition of Stage 1 works; and
- Delinking of a number of whole of site environmental assessment requirements from the now much smaller proposal for the first stage of the Marina.

The proposed modifications remain consistent with the original concept approval. The proposed concept approval amendments will not result in any adverse impacts on the surrounding environment and it is considered that the Section 75W application can be supported.

The proposed modifications will result in the following:

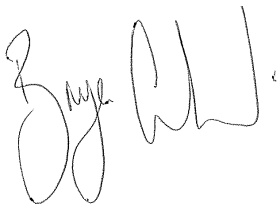
- Providing a clear definition of the concept Stage 1 works, which will provide a starting point for future development application(s) and subsequent works to commence; and
- Providing for a Stage 1 Marina development application to be made to LMCC consistent with relevant potential impacts and mitigation requirements.

The proposed modifications will contribute to the realisation of the overall Trinity Point development which can be supported for a number of reasons including:

- The Trinity Point development represents the development of a world class recreational and tourism development on appropriately zoned land on the western side of Lake Macquarie;
- The development remains consistent with all current key town planning legislation and principles;
- The proposal will provide significant public access to the lake. The proposal will also provide opportunity for the public to not only enjoy the natural aspects of the lake, but also the features of the development itself (ie. patronage at the cafe overlooking the lake);
- All key constraints and sensitive environmental aspects of the site are well understood and any potential impacts can be managed with best practice environmental controls; and
- The Trinity Point development will provide substantial initial and ongoing investment to the region, as well as construction employment opportunities and ongoing positions of employment in the future.

Should you wish to discuss the contents of this submission please do not hesitate to contact me on 0408 991 888 or email bryang@johnsonpropertygroup.com.au

Yours sincerely,



Bryan Garland

Development Director
Johnson Property Group

Encl:

Appendix A – Plan detailing proposed Concept Staging of Marina

Appendix B – Plan detailing Concept Stage Marina 1 works

Department of Lands Landowner Consent

Appendix A

Plan Detailing Proposed Concept Staging of Marina

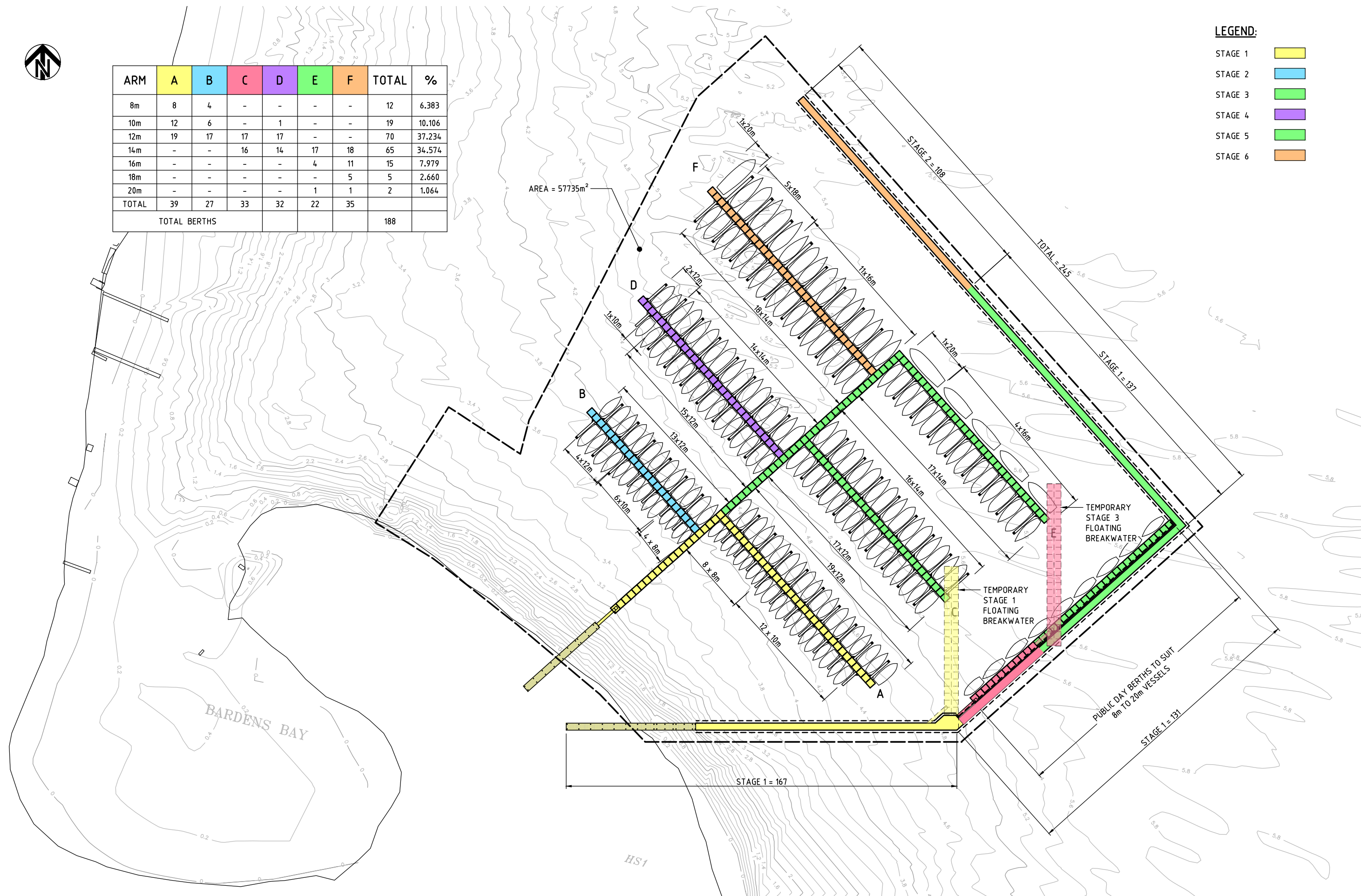


ARM	A	B	C	D	E	F	TOTAL	%
8m	8	4	-	-	-	-	12	6.383
10m	12	6	-	1	-	-	19	10.106
12m	19	17	17	17	-	-	70	37.234
14m	-	-	16	14	17	18	65	34.574
16m	-	-	-	-	4	11	15	7.979
18m	-	-	-	-	-	5	5	2.660
20m	-	-	-	-	1	1	2	1.064
TOTAL	39	27	33	32	22	35		
TOTAL BERTHS							188	

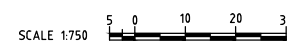
AREA = 57735m²

LEGEND:

- STAGE 1
- STAGE 2
- STAGE 3
- STAGE 4
- STAGE 5
- STAGE 6



NOT FOR CONSTRUCTION



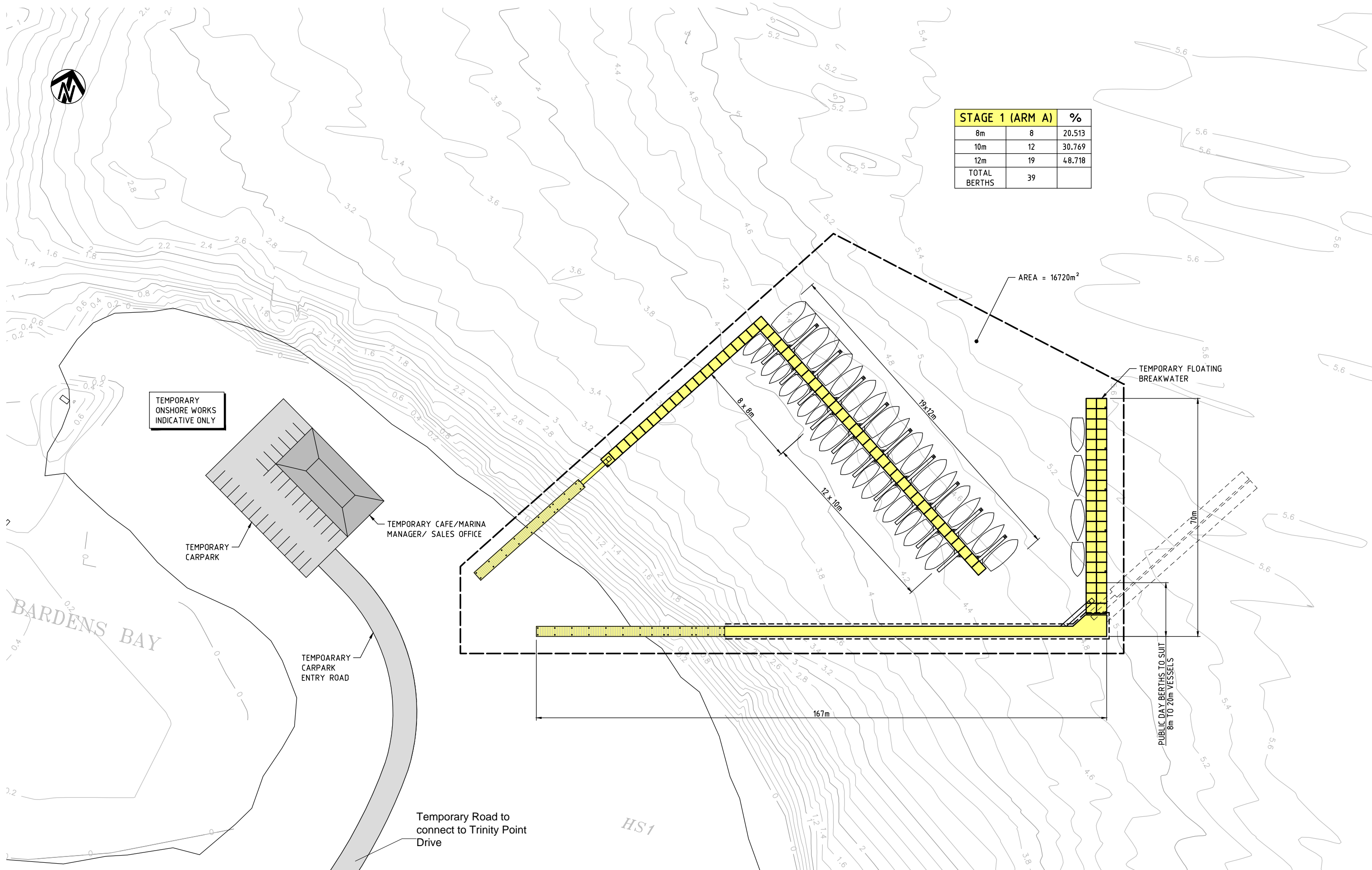
TRINITY POINT MARINA
ULTIMATE LAYOUT

INFORMATION DOCUMENT

130711-ULTIMATE LAYOUT-SC-001

Appendix B

Plan Detailing Concept Stage 1 Marina Works



NOT FOR CONSTRUCTION

SCALE 1:500

TRINITY POINT MARINA
INDICATIVE STAGE 1 WORKS & TEMP ONSHORE FACILITIES

INFORMATION DOCUMENT

130705-STAGE 1-SC-002