UPDATED MODIFICATION 2 TO MP 06_0309 TRINITY POINT MARINA AND MIXED USE DEVELOPMENT

SUMMARY RESPONSE TABLE TO LMCC COMMENTS INCLUDED IN CORRESPONDENCE DATED 9 SEPTEMBER 2014

SUMMARY OF LMCC COMMENTS	SUMMARY RESPONSE
No specific comment on minor shift (15m) in location of floating breakwater	Noted.
Clarification sought on whether modified marina design has been reflected in modelling and monitoring undertaken against various consent conditions.	For clarification, the various consent conditions listed are not specifically relevant to updated Mod 2 (other than Petite Lake addressed elsewhere) as they are matters identified as part of the DA process. Notwithstanding, specific clarification is provided: • *Condition B1* - Section 1.1 of updated Mod 2 (15/8/14) provides a summary relating to condition B1 and how the modified marina design at that time now forms part of MP 06_0309, and does not form part of Mod 2. The updated modification application outlines specific components, such as the 15m shift in the floating breakwater, internal marina concept layout, staging etc, that were not part of the B1 determination and are part of Mod 2 assessment. • *Condition C12* - The modified shift in the floating breakwater by 15m (and the concept marina design including internal layout) has been fully incorporated into the environmental impact assessment recently submitted to LMCC (DA 1503/2014). Specifically, it has been reflected in the hydrodynamic modelling (as required at DA stage, not at concept approval stage), under Condition C12, relating to current water flow and flushing characteristics, particle tracking and seagrass wrack tracking modelling. It has also been incorporated into all other related DA based impact assessments including visual, acoustic and aquatic ecology and other conditions such as C13 (monitoring program). • *Condition C11* - The nature of baseline data is that it is data that is somewhat independent of what the design is, being data collected prior to the design being implemented, constructed and operated. The baseline data is a DA matter and not

SUMMARY OF LMCC COMMENTS	SUMMARY RESPONSE
	related to the updated Modification 2 (other than Petite Lake addressed elsewhere). Notwithstanding: - The *current water flow and flushing characteristics*, as a baseline description, is not dependent on the marina design, and the 3D hydrodynamic model has been verified against baseline data as part of the Condition C11 process, to provide a verified starting point for impact assessment modelling; - The *water quality and sediment baseline data* is in the general location of the marina and will adequately provide a baseline of existing concentrations in the general marina location, for consideration during DA impact assessment and most importantly for comparison with data collected during construction and operational phases. - The same equally applies to *mapping and survey of the health and size of the seagrass bed to the south of the marina location and the salt marsh community in the unnamed inlet* and the *survey of foreshore*, being the data provides a baseline of features irrespective of marina concept design and forms part of the description of the existing environment for impact assessment and most importantly for comparison with data collected during construction and operational phases.
Requests that opportunity for public/casual berthing within Stage 1a so that it is available if the marina does not proceed beyond that stage	It is the full intent that the marina will proceed beyond Stage 1a, and that Stage 1b will follow Stage 1a. Notwithstanding that, and as a positive response to Council's request, the proponent is willing to incorporate a temporary casual public berthing length (approximately 2 casual berths) on the internal marina edge of the landward floating boardwalk as part of Stage 1a (which would be removed in Stage 1b, with casual public berthing in Stage 1b as outlined in updated Mod 2). This opportunity has been identified within DA 1503/2014 (pg 38 EIS), and is marked up on attached concept plans.
Identifies concerns that whilst boat lift	It is anticipated that negotiations with Council over time will include the eventual

SUMMARY OF LMCC COMMENTS	SUMMARY RESPONSE
removed, the removal of condition C26(8), without extinguishment of the easement, may result in development that otherwise restricts public access to the northern end of the site. Requests that condition C26(8) not be deleted, but only modified to remove 'boat lift'	extinguishment of easement (A) which was created for the purposes of the boat lift. Until that occurs, the terms of existing Easement (A) under the 88B Instrument that applies provide adequate legal protection against Council's concerns. A copy of the 88B instrument is attached with the relevant term highlighted, being "*but in such a manner as does not prevent persons passing and repassing by foot over or underneath the ramp and slipway*". It is not intended to include any other development within easement (A) and were it intended, that would be subject to the legal terms of the existing easement. In combination, whilst it could be argued to be appropriate to delete condition C26(8), it is not intended to impede public access in that location by the marina proposal, and as such, we agree to the modification sought by Councils comments. As such C26(8) would read: *"8. public access to the northern part of the site is not to be impeded by the marina access ~~or boat lift~~; and"*
Does not support deletion of oily bilge pump out facility and holding tank. Disagrees that provision of oily bilge absorbent pads is not 'best practice' and will not achieve water quality standards required for discharge to receiving waters	Council do not specifically provide any information or evidence to support their position that oily bilge management, other than that oily bilge pump out facility with holding tank is not acceptable. As outlined in the Mod 2 update, the removal of the boat lift and repair/maintenance facility, was a trigger to review oily bilge management. • NSW Maritime identify the use of absorbent pads in the bilge to clean up oily water (and appropriate disposal of those) in their educational material titled "Leave Only Water in your Wake". The direct extract is "Keep your bilges clean in order to prevent pollutants being discharged overboard. Use an absorbent pad in the bilge to clean up oily water and always dispose of the absorbents appropriately". • Oily bilge pump out facilities is not an environmental requirement through the MIA Clean Marina program and accreditation levels (a program that encourages best environmental practices within marina across Australia and is supported by NSW DPI

SUMMARY OF LMCC COMMENTS	SUMMARY RESPONSE
	and NSW DPE and NSW EPA). • No other public or private facilities on Lake Macquarie include an oily bilge pump out facility. It is notable that these are absent from facilities that have been subject to comprehensive environmental assessment and approvals in recent years (including Marmong Point, Lake Macquarie Yacht Club). At Marmong Point (which includes boat lift and repair and maintenance facilities) it accesses the services of a mobile vacuum pump out truck if a boat requires it. • Other projects through NSW that have been subject to comprehensive environmental assessment and approvals in recent years do not include oily bilge pump out systems. For example, Rose Bay marina in Sydney, approved through the Land and Environment Court, does not include an oily bilge pump out facility and is conditioned to rely on a mobile system. • It is understood that there are oily bilge pump out facilities typically associated with large scale purpose built facilities catering for large commercial operations such as Baileys at White Bay 6 on Sydney Harbour, a purpose built $7M fuel facility. In terms of oily bilge management at leisure marinas (particularly those they have no hardstand or servicing facilities), contact was made with all Certified Marina Managers and Certified Marina Operators in Australia. The general feedback received is that even the best practice and environmentally awarded marinas, do not include oily bilge pump out facilities of the nature implied (particularly when no on shore servicing forms part of the marina operation), and that requirements for bilge pads are the common response and are cost effective ways to manage oily bilge water. It is agreed that marina operators should offer boat owners options to manage oily bilge water in an environmentally responsible manner. This can be achieved without the need for an oily bilge pump out by encouraging/educating clients to practice “good housekeeping onboard”, recommending an approved and qualified trade waste contractor, referring any

SUMMARY OF LMCC COMMENTS	SUMMARY RESPONSE
	bilge issues to a qualified marine mechanic, issuing oil absorbent materials to clients and by informing clients that any discharge into open water is an offence. The Trinity Point Marina EIS (DA 1503/2014) outlines the intent to provide oily bilge absorption materials to marina clientele, and to provide information and education to clients on a range of maters including oily bilge management (a copy of the outline is attached). Additionally, it will be reinforced within a condition of the marina berthing contract that it is an offence to discharge or pollute the waters and that clientele are financially responsible for any such offence. As an additional responsible management practice, the marina (as proposed within DA 1503/2014) will have capacity to manage small quantities of oil and oily waste water to cater for any needs. The current DA (DA 1503/2014) incorporates a 1000L waste oil tank and a 1000L waste water tank (on prefabricated bunding system) within the marina operation, for disposal to appropriate waste recycling facilities.
Does not support change in building setback (or merits consideration for changes) and requests that setback be increased to 36m	The proponent strongly objects to an increase in building setback to 36m, and maintains that the request for variation to the building setback remains valid. Council's suggestion is on the sole premise of providing a buffer to adjoining sensitive environment (mangrove, saltmarsh, casuarinas). A change as requested by Council would preclude a marina building in this part of the site altogether. More critically however, the suggestion appears to disregard that the concept plan as approved includes an access driveway and vessel hardstand along the western boundary which provides an edge to the adjoining sensitive environment. In that sense, the physical location of the building on the inside of that driveway and hardstand (be it 10m, 15m, 20m, 28m or 30m) has very limited impact and influence on the adjoining sensitive environment, as the edge is created by the driveway and vessel hardstand. The modification does not alter the driveway and converts the vessel hardstand to a carpark (an improvement if the focus is on potential impacts to the adjoining sensitive environment). Additionally, the Concept Approval provides for the provision of vegetation management of that adjoining

SUMMARY OF LMCC COMMENTS	SUMMARY RESPONSE
	sensitive environment (Condition C9). Stage 1 marina DA (DA 1503/2014) includes a public shared pathway along the western edge of the Council reserve (creating an edge between development and the sensitive environment), and includes a Vegetation Management Plan over the native vegetation that sites between the site and the unnamed bay. The DA also includes terrestrial and aquatic ecology impact assessment relating to that environment. Additionally, it is noted that the newly gazetted Lake Macquarie Local Environmental Plan 2014 establishes foreshore building line (FBL) setbacks around the perimeter of Lake Macquarie, and whilst a 6m FBL was mapped in draft versions of that LEP around the Trinity Point MP 06_0309 site, the gazetted maps (which come into effect on 10 October) do not provide for any mapped FBL on the site (were it not subject to a concept approval, which it is). To suggest a 36m FBL, simply because a different edge with a different context (residential) nearby has one is contrary to the more recent EPI controls. It is acknowledged that setbacks are typically provided for a range of other purposes, not just environmental reasons. The current modification seeks a 2m variation (or flexibility to present a case for reduced setback via DA). A 2m variation as proposed under this modification, for a raised (for flood planning) single storey architecturally designed marina building will not result in a visual impact or other consequence that would support refusal to incorporate that modification.
Does not support the exclusion of public access from the outer breakwall as it results in a significant reduction in public access, is a significant change and substantially diminishes the public amenity of the proposal. Does not support modification to condition C26(7)	Nowhere else on Lake Macquarie is unrestricted public access provided over privately owned and constructed marine structures that are not owned, managed, insured and maintained by public authorities. Other recent marinas approved in Lake Macquarie do not include any public access out along marine structures. Noting recent expansions at Lake Macquarie Yacht Club, contact with the Club has confirmed that the marina has strictly no access to the public from the land (with arrangements in place for temporary/casual public boat visitation and access under club rules). Notwithstanding this, the modified design does not propose to fully exclude public access from the proposal.

SUMMARY OF LMCC COMMENTS	SUMMARY RESPONSE
	It provides for public access to, from and over the water on a lineal floating pontoon boardwalk (3m wide and 120m long), connected to the land via two connections (in ultimate marina concept) with fixed jetty and gangways of additional 27m length each, and land based boardwalks, connected into a lineal shared pathway system to be constructed as part of the marina project. **This delivers public access over some 174m of marine structure (linked into shore based public access as well),** which is a first for the lake on a fully privately funded, privately leased and privately managed marine structure**.** It is relevant to note that the original marina concept did not include the more accessible lineal floating pontoon boardwalk, and therefore public access to any part of the water was solely via the outer breakwall. The inclusion of the boardwalk component in the concept approval as it now stands (via the Condition B1 determination) and allocation of public access to and along it, represents a reasonable and balanced outcome for public access and public amenity. It is noted that presently the undeveloped site provides no formal public water or land access. Therefore this proposal still represents a significant improvement. JPG are not backing away from the commitment to provide public access, it is simply refining what can be practically and safely provided as public access as the project moves from concept phase into design, delivery and operational phase. Without wanting to sound negative, it is important to understand the potential consequences of not supporting the balanced outcome on pedestrian public access on marine structures put forward through Modification 2. It would likely require further review of the marina layout and expansion of the marina footprint again and discussion on options for contribution towards construction, leasing, management, responsibility and liability with Council on behalf of the wider general public for the structure to operate as an unrestricted public jetty or wharf. As a worse case, if no marina is built, the approx 170m of public access offered under the current proposal (in combination with the public access facilities proposed to be fully funded on the land for public access) won't exist.
Supports opportunity for part of pedestrian	This support is welcomed and noted. Appropriate agreements will be reached at each

SUMMARY OF LMCC COMMENTS	SUMMARY RESPONSE
public access within the Council foreshore reserve rather than fully contained within the site	development application stage, as evidenced most recently via the stage 1 marina DA (DA 1503/2014).
Does not support reduction in sewage pump out facilities without further justification	The concept approval as it currently stands requires the provision of a sewer pump out facility, and does not identify or require sewage services being provided to individual berths. No modification to the concept plan is sought relating to these arrangements (ie there is no proposed reduction). The confusion has arisen as a result of earlier details in modification 2 inadvertently listing sewage services to individual berths. The updated modification 2 was simply seeking to correct that past error, and keep sewage services consistent with the approved concept plan.
Advises that statements relating to Swansea Channel depths are incorrect and that boats larger than 20m are likely to have a draft in excess of 2.8m, the adopted trigger depth for dredging. **Identifies significant concerns by local boating community over impact that large vessels (including boats larger than 20m) have on local boating amenity.** **Requests that if approval is modified to allow boats over 20m, only after detailed analysis of social, environmental and economic impacts have been investigated.**	The concept approval currently includes the opportunity for occasional berthing of large tourist vessels on the outside of the outer breakwater, and this is to be maintained and not sought to be modified. Lake Macquarie as a waterway has no restrictions in place to limit the use by a >20m vessel if its owner accepts any limitations such as Swansea Channel. There are already yachts on Lake Macquarie of this size. Additionally, not all >20m length vessels are likely to have a draught of >2.8m as suggested. Whilst yachts may, longer cruisers (which are the potential market) do not have that sort of draught, and typically drafts for say a 25m power boat are1.8m. The Trinity Point Marina project itself is not reliant upon the details of dredging of Swansea Channel, and a debate over forward funding and details is not intended to be pursued. The observations relating to Swansea Channel were provided to indicate that situations do change, and what was the case five years ago, may not be the case in another five or another ten years time. The future operator believes it is appropriate to provide a robust and flexible marina concept that has the option and ability to cater for changes over time, and it is their view that the option to berth several vessels greater than 20m in length may arise over the course of the life of the marina, particularly given the co-location with the tourist and mixed

SUMMARY OF LMCC COMMENTS	SUMMARY RESPONSE
	use development within the overall Trinity Point project, and that an arbitrary limitation enforced now was questioned in that regard only. The proposal does not include a concept marina design that caters for a large or substantial number of vessels greater than 20m in length. Under staging and with a fully developed marina layout, at there may be the opportunity for berthing of a >20m vessel at possibly 2 locations (the location would change as staging progresses). Additionally, were more than that sought in the future, changes to length of marina arms (and reduction in total number of berths) could be investigated. The proponent would still like to see the blanket restriction on vessels >20m removed from the concept approval if that can be supported by DPE or the decision maker. If necessary and to provide a balanced outcome without the need for substantial additional analysis at this phase of the project, they would accept a restriction for say up to 2 vessels up to 30m in length at any one time (within the 188 berth allocation).
No comment on staging of marina	Noted
No comment on modification to conditions C3, C9 and C19	Noted
Whilst Council accepts the limitations of applying a hydro-dynamic model to assess potential impacts on Petite Lake, it outlines that it is potentially susceptible to impacts of altered flushing regime and modified wave climate, especially arising from impacts on the narrow opening to Bardens Bay and corresponding impacts to water quality within Petite Lake. **Council believe that alternative means exist to address the condition rather than deleting it. The example given is e-folding time**	Council's recognition on the limitations of applying a hydro-dynamic model to consider Petite Lake is welcome. For that reason alone it is appropriate to delete it from Condition C12(1) which directly links modelling to that area. It is also worthwhile noting that since the original assessment, the B1 determination has introduced the use of floating pontoons in the marina, reduced the extent to which the marina extends into the bay (sought to be modified by 15m in updated Mod 2) and changed the 'leading edge' shape of the outer breakwater, all of which act to reduce further potential impacts on Petite Lake. It is agreed that impact assessment of the marina on Petite Lake is still a relevant consideration at development application stage (albeit of reduced significance due to the improvements made in the marina design as outlined above). To that end, a qualitative

SUMMARY OF LMCC COMMENTS	SUMMARY RESPONSE
methodology to assess flushing and analysis on wave climate and foreshore processes to address potential changes to the Petite Lake entrance.	description of the current water flow and flushing for Petite Lake and a qualitative assessment of Petite Lake hydro-dynamics is included within the EIS (DA 1503/2014). Additionally, the entrance to Petite Lake forms part of the Bardens Bay model and assessment, which concludes that the proposed marina will have a localised impact on circulation (and hence flushing) and not near Petite Lake, and that 'e-folding time' methodology for Bardens Bay indicates that overall flushing time of the bay would be expected to be increased by 1% or less as a result of the marina, with negligible effect on water circulation (and associated water quality) of the Bay (and hence also Petite Lake). In terms of moving to a solution on this matter, the request to delete the inclusion of Petite Lake from C12(1) remains, however, the proponent would agree to a modification, if considered really necessary, such as the following (bold represents addition): *"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~~.* ***A qualitative assessment is to be included relating to Petite Lake****.* Similarly for Condition C11 (1), which does not specifically mention modelling, the proponent had previously sought Councils view to review the qualitative assessment provided for Petite Lake, and deem that to have been satisfied. Council were hesitant to do that, which led to the request for the deletion of that component. In light of the information now before Council, the applicant would request again that Council assess the information provided and advise whether Condition C11 can be taken to have been met without modification. Given the reduced likely impact on Petite Lake arising since concept approval as a result of the B1 changes, and with the inclusion of the need for qualitative assessment in Condition C12 (as above), the deletion of Petite Lake from Condition C11 is considered reasonable. Alternatively, the proponent would agree to a modification, if considered really necessary, such as the following (bold represents addition): *"…must provide verification of the following baseline data and where necessary provide new*

SUMMARY OF LMCC COMMENTS	SUMMARY RESPONSE
	data in light of the review of the design: 1. *Current water flow and flushing characteristics in Bardens Bay,* ***and*** *the small inlet/unnamed bay at the southern end of Bardens Bay~~ and Petite Lake~~.* ***A qualitative description is to be included relating to Petite Lake, without the need for verified or new data.***