

3.9 Consultation

3.9.1 Lake Macquarie City Council Mayor and Councillors

The first act of consultation concerning Marmong Point Marina's intention to expand its marina was with the Mayor of Lake Macquarie, Councillor Greg Piper. Councillor Piper and Ward Councillors were invited to Marmong Point Marina on 18 July 2007. The meeting was held before any exploration of the identity of the eventual consent authority.

Together with Ward Councillors, Cr Piper was appraised of the intention to effect an expansion of Marmong Point Marina and that the expansion would include storage of boats in both wet berths and covered dry stacks. Car parking was discussed with the Councillors. So too were early thoughts of a restaurant and of reconfiguring the land-based components of the marina.

Councillors suggested that Marmong Point Marina arrange a meeting with Council Officers to provide Officers with a comprehensive briefing of the plans as those plans were at that early stage. The meeting with Council Staff was arranged and occurred upon 2 August 2007.

When it became apparent that the expansion plans for Marmong Point Marina would trigger the requirement in the State Environmental Planning Policy (Major Projects) for the Minister for Planning to form an opinion as to whether or not the project was a Major Project, a letter was sent to the Mayor of Lake Macquarie providing courtesy advice.

Informal briefings of the Mayor have also occurred as Marmong Point Marina personnel and the Mayor have sighted each other during various visits by the Proponents to Council Offices.

A second formal briefing of the Mayor and two Ward Councillors occurred on 5 February 2009. The Mayor was accompanied by two Council Officers. A significant component of the discussion with the Mayor concerned the discovery by Council that it did not own Nanda Street, and the consequent advice by officers that as a result Council could not immediately proceed with consideration of the land based component of the marina expansion project.

The Mayor was appraised of Marmong Point Marina's decision to proceed as a consequence with the wet berth component, and of Marmong Point Marina's hope that Council would expedite matters under its control concerning Nanda Street so that the complete expansion project could be activated as soon as possible.

3.9.2 Lake Macquarie City Council Officers

While the project is proceeding under Part 3A of the Environmental Planning and Assessment Act, Marmong Point Marina has deliberately maintained a continuing dialogue with Lake Macquarie City Council Officers. The consultation was initiated before any exploration of the identity of the eventual consent authority, and as a result of the invitation by the Mayor of Lake Macquarie to contact Council's Senior Town Planner.

One significant reason for the dialogue to be ongoing has been the nature and identity of the Proponents. The Proponents for the expansion of Marmong Point Marina are the current locally based operators of the marina, who have historic associations with local boating and who intend to continue operating the expanded marina.

The first meeting with Lake Macquarie City Council Officers was on 2 August 2007 and included seven officers. The addressed a particularly broad array of issues (see meeting notes at Appendix 3.3). The meeting achieved the aim of introducing Officers of Lake Macquarie City Council to the project before identifying the consent authority.

The next meeting with Lake Macquarie City Council Officers on 22 February 2008 addressed the nature of the landscaping and land use treatments to the public domain.

On 10 June 2008, and in response to the 5 May 2008 resolution by Lake Macquarie City Council to place on exhibition an approach to climate change, another meeting was arranged with Lake Macquarie City Council Officers. The meeting was utilised by Marmong Point Marina to formulate a response to building levels that would reflect the principles underlying Council's suggested position on climate change.

On 11 August 2008 a meeting with Council Officers was held in an attempt to develop parking outcomes that would reflect the requirement Council included in its response to Department of Planning for inclusion in the Department of Planning's Director General's Requirements. This stated "The Proponent needs to adequately demonstrate the public benefits of the project and why it is acceptable to utilise public parking for commercial gain. In this regard it should be demonstrated how this parking can also be utilised by the general public eg in association with recreational use of the public land and the lake." The meeting was not able to progress the matter.

In early September 2008 Council advised Marmong Point Marina that it had discovered that Nanda Street had never been dedicated as a road. Council understood that the land called Nanda Street may be in the ownership of an entity that was not Council.

A letter from the Proponent to Council on 23 September 2008 requested a meeting with Council to address both the negotiations required to meet Council's car parking requirements and the new revelation of the status of Nanda Street. That meeting was held on 23 October 2008. The minutes of this meeting were attached to Council's letter of 19 November 2008 and indicate inter alia: -

- that there was "in principle" Officer Support for a Voluntary Planning Agreement (VPA) as a way of addressing the parking issues;
- that a VPA might take 6 to 18 months to prepare, but
- that this "should not happen until the road issue was resolved".

The meeting also discussed potential alternatives for progressing the wet berth component of the marina expansion.

3.9.3 Residents

A meeting with residents was convened for 24 July 2007 so as to provide those living near to the marina an opportunity to provide input to the project at a very early stage. This was to ensure that issues of concern to residents were understood before detailed concept design was undertaken.

The meeting was shown preliminary planning sketches of the marina expansion and the views of the meeting were recorded on butcher paper. These views are listed in Appendix 3.4.

The concerns of residents included a number of issues that pertain to the whole development originally proposed. The issues that relate to the subject wet berth proposal include the number of berths, any diminution of electrical power and the prospect of sewerage pump-out odours.

The residents were perhaps more interested in how car parking would be handled with the complete development because for the complete development, parking solutions would involve Nanda Street. While the subject proposal does not require Nanda Street for any parking, the impact of parking for another 85 berths will be of interest to residents.

A particularly useful outcome of the meeting with residents was the formation of a small reference group containing two or three residents and two swing mooring holders so that it could meet with Marmong Point Marina when needed and report back to interested members of their various communities.

Any concern by residents is significantly annulled by the limitation of the marina expansion to the wet berths, and by parking that meets Australian Standards.

A final meeting with both residents and swing mooring holders was held on 7 April 2009. The notes of this meeting are at Appendix 3.6. Most of the issues raised at this meeting concerned swing mooring holders. However one resident made an observation about the number of boats stored in berths and on swing moorings that rarely left their storage space.

3.9.4 Swing Mooring Holders

A meeting was held on 15 August 2007 with people with individual mooring licences from NSW Maritime to moor their boats on swing moorings in Marmong Point. The meeting was called in order that swing mooring boat owners could provide input to the project at a very early stage, before detailed planning commenced.

In assembling the mooring holders, their privacy was overtly and intentionally protected by provision of a copy of Marmong Point Marina's invitation letter to NSW Maritime for NSW Maritime to distribute by mail using its data base. This ensured that mooring holder details were not conveyed to Marmong Point Marina from a government department.

The meeting was constructive and covered an array of matters ranging from reasons for any need for swing moorings to be moved, to where swing moorings may be moved, to what offers were being made by the Marina operators to facilitate a move of swing moorings. Notes of the meeting are contained in Appendix 3.5.

As a consequence from the questions surrounding “why” and “to where” existing swing mooring holders might be moved, swing mooring licensees were invited to suggest marina design concepts alternate to that preferred by the Marina Expansion Proponent. As a result, two alternative propositions were suggested and sketched on the butcher paper provided at the meeting.

The first of the alternative suggestions locates all the marina extensions up the western side of Marmong Cove so as to leave existing recreational swing mooring holders where they now are, close to the south-eastern part of the Cove.

The second alternative proposes that the new marina extension utilise a configuration comparable to the Proponent’s Preference, but that this configuration be relocated in waters north-east of the northern end of the existing easterly pontoon arm where a second group of existing swing mooring licensees currently tether their boats. This would dislodge the outer swing moorings but would leave those in the south east of the bay without the requirement to move.

These two options have been drawn up by the Proponent’s surveyor to facilitate proper comparative analysis in Chapter 3.10.4.

The meeting with Swing Mooring Licensees raised other issues including dingy storage, how reallocations could be managed if relocation was the outcome, potential for the Wangi Queen to move out of the Cove, distance mooring holders would need to row to get to their boats, security for vehicles on shore, potential access by swing mooring licensees to facilities on the marina pontoons like tie up, boat wash, passenger let-down and sewer pump-out.

The holders of current swing mooring occupancy licenses have a number of understandable concerns about being moved from their existing positions. If they are moored further out it will increase the distance they have to paddle their dinghies to reach their boats. If further out it will mean that their boats will be more exposed to boisterous weather. Safety in using dinghies in rough weather will also be a negative factor for those whose boat is moored further out. Provisioning boats will be more difficult in rougher waters if moored further out.

To give some perspective to the dinghy rowing issue: -

- current dinghy rowing distances vary between 50 metres and around 450 metres,
- because of availability of new mooring spaces in current navigation channels, future rowing distances will cause roughly the same dinghy rowing range from 50 metres to around 450 metres.

However,

- the current distribution of rowing distances is relatively evenly distributed between maximum and minimum,
- The proposed distribution of rowing distances will reduce the number of moorings in the 100 to 150 metre range and increase the number of moorings in the 200 to 300 metre range.

As will be discussed in relation to the actions of the Boat Owner's Association, a set of negotiations has occurred that has reached agreement about a number of ways that the Marina Operator can make marina pontoons available to swing mooring licensees so as to resolve issues like safety, provisioning and access in unsavoury weather. The Proponent has made agreements that promote a sharing approach to enjoyment of the waters for both the boats berthed in the marina and those on swing moorings.

A second swing mooring holder meeting was independently called by some members of the public and was held at Marmong Point on Saturday 28 June 2008. The meeting was also attended by the Mayor of Lake Macquarie Cr Greg Piper and was foreshadowed in the Newcastle Herald the day before. A number of the issues concerned misunderstandings that were cleared up on the day by the Mayor, by other residents and by the Proponent. The unsatisfied concern related to matters of parking if the whole proposal was to proceed, and the extent to which Marmong Cove would increase in boat storage density.

At the initial meeting with swing mooring holders a commitment was made to hold a briefing on the outcomes of the marina expansion proposals before the Environmental Assessment was submitted for consideration by the Consent Authority. This was to include the comparisons between various alternatives. This promised briefing meeting was held on Tuesday 7 April 2009. Letters were again sent out through the NSW Maritime to ensure privacy requirements were respected.

The meeting on 7 April 2009 attracted over 30 people comprising both swing mooring holders and residents with some proximity to the marina. The people at the briefing were apprised of the array of comparative investigations and the outcomes. They were also apprised of the policy underlying the briefing.

The policy underlying the briefing overtly concerned openness and fairness. Fair consultation practices are better facilitated when persons who object to proposals are openly extended the courtesy of advice on contentious matters directly from the Proponent (and neighbour) rather than indirectly through government exhibition.

The owners of boats moored on swing moorings that would need to be resited to accommodate the Proponent's preferred Proposal have a right to have their views heard. The commitment to facilitate awareness by swing mooring holders and to answer their questions was intended to be overtly neighbourly. The promise to make submitted documentation available at the marina during Department of Planning Exhibition Period was also intended as a responsible neighbourly gesture to swing mooring holders.

The issues that arose at the meeting included:

- safety of rowing dinghies to moored craft,
- monetary compensation for having to move,
- upgrading of mooring blocks at no cost for relocated position,
- access to sewer pump-out and water on newly replaced eastern pontoon arm,
- car parking,
- dinghy storage on the public reserve (currently at no cost),
- provision of an "indicative" map showing those potentially affected,
- matters negotiated by BOA on behalf of relocated boat owners,
- availability of submitted documents at the marina following submission,
- expert marina analysis and the resulting lack of a conclusive outcome.

The participants at the meeting were forthright in their views, as were the Proponents. The meeting was constructive, and it concluded with participants having an enhanced understanding of the proposed project and of their rights and opportunities to express contrary views. Notes of the meeting are at Appendix 3.6.

3.9.5 Boat Owners Association (BOA)

At the request of the Lake Macquarie branch of the Boat Owner's Association (BOA) an alternative marina expansion design developed by members of the local BOA executive was incorporated into the testing of marina berth layout options.

This BOA option has been drawn up by the Proponent's surveyor to be representative when included in the comparative analysis in Chapter 3.10.4.

Also at the request of the Boat Owners Association a meeting was held with the Proponent to negotiate contingent conditions and offers – a Voluntary Community-based "Planning" Agreement - that would apply if the marina pontoons are to be sited in accordance with the Proponent's commercial design preference.

The meeting with the executive of the Boat Owners Association was held at Marmong Point Marina Office on 2 May 2008. After discussion and negotiation, a set of Proponent undertakings was agreed and documented. The documented undertakings are shown in Appendix 3.7 and address the following matters: -

- The manner in which the Proponent would fund relocation of moorings;
- The provision for swing mooring occupiers of access to a casual "public" berth for drop off on one end of the marina arms;
- Provision of a water tap at the casual "public" berth;
- Making provision for a second sewer pump-out point at the casual "public" berth;
- Assistance in improving dinghy storage on Council land.

The Proponent had, since the commencement of the project in 2006, made suggestions about an array of contributions that reflected empathy with long term occupiers to different mooring arrangements in Marmong Cove.

Consequently the initiative by the BOA was timely. It enabled the Proponent to convert neighbourly ideas into more concrete promises through negotiations with a "collective". This "collective" maintained an interest in the preferences of swing mooring occupiers who would be affected by the Proposal.

The Proponent also agreed to undertake a comprehensive analysis of four different berth layouts. This comprehensive analysis is documented in Chapter 3.10.4 below.

3.9.6 The Wangi Queen Showboat

Consultation between Marmong Point Marina, the operators of the Wangi Queen and NSW Maritime Authority reflected the need for specific and proactive attention to two principal navigation issues that were of concern to the operators of the Wangi Queen Showboat. Each of these navigation issues concerned continuing berthing of the Wangi Queen in Marmong Cove, and not relocation to a berth near major embarkation venues as has been suggested by a number of commentators.

The first navigation issue concerned the ability for the Wangi Queen to manoeuvre into and out of its berth in all weather conditions.

The second navigation issue concerned the location of a suggested altered “approach fairway” or navigation channel through the deeper waters north of Marmong Point itself. The suggested altered “fairway” would operate for all craft including the Wangi Queen to provide faster access to and from the open waters of Lake Macquarie.

In addressing the first navigation issue concerning manoeuvring of the Wangi Queen Showboat into and out of its service berth, the operators of the Showboat, Officers from the Lake Macquarie and Newcastle offices of NSW Maritime, and the Proponent were all present. This manoeuvring consultation went through three phases referred to herein as Phase A, Phase B and Phase C.

The consultation commenced (Phase A) with the Showboat operators describing in detail the way they must operate a majestic heritage craft into and out of its service berth on the southern shore of Marmong Cove in all the various weather conditions that occur on the Lake. This included the fact that the Wangi Queen has only one prop and so the prop’s rotation in one direction presents different navigation challenges to other craft with dual props. Additionally, without bow thrusters, Wangi Queen navigation requires experienced operation.

Phase B of the consultation addressed various potential manoeuvring operations, and how these could utilise both existing piling infrastructure and potential new piling infrastructure. The Phase 2 manoeuvring consultation was undertaken with the assistance of computer maps and GPS instrumentation in the NSW Maritime patrol craft. This utilised the NSW Maritime navigation data base for Lake Macquarie.

Phase C of the consultation was to undertake actual manoeuvring trials on the water. The trials by the Wangi Queen Showboat are shown on the Illustration 24 appearing over the page.



Illustration 24 - The Wangi Queen during its Manoeuvring Test

The on-water testing indicated to the Showboat operators and to NSW Maritime that the planned manoeuvring spaces were adequate and the various potential berthing practices were achievable. The on-water testing also indicated that the addition of some strategically placed piles to the east of the existing pontoon would increase the array of potential manoeuvring options for various weathers.

Moving the Wangi Queen pontoon 8 metres to the east, as approved by Lake Macquarie City Council on 10 October 2008, will increase the separation between the Showboat and the Marina fuel pontoon and will also improve Wangi Queen berthing opportunities.

The second navigation issue concerned the location of a potential altered "approach fairway" for all craft including the Wangi Queen. This would provide a passage into/out of the Cove from/to the open waters of Lake Macquarie. The suggested new approach fairway utilises deep waters on the eastern side of the Cove and just north of Marmong Point itself, rather than the present long northerly fairway.

The new fairway proved to be as favourable to the Operators of the Wangi Queen as it is to operators of many other craft that seek to get to the southern shore of the cove. This is because it reduces travel distance for most of the journeys by the Wangi Queen to pick-up wharves around Lake Macquarie where the Showboat clients embark.

However an altered "approach fairway" enables a factor of even more importance. An altered "approach fairway" delivers significant reductions in "boat wash" from visiting craft as they travel north westerly for the full length of the Cove before turning 140° and slowing to return south to the inner cove and fuel wharf. This wash affects both moored boats and the rowing craft at Booragul Rowing Club.

3.9.7 Aboriginal Communities

The Department of Environment and Climate Change emphasises on page 1 of its May 2009 Draft Community Consultation Requirements that “Consultation should be designed to allow internal Aboriginal community decision making processes to function effectively.”

On page 5, the Draft Guidelines indicate that the consultation is to be “an open and honest two-way communication process between the proponent and the Aboriginal people who have cultural heritage knowledge relevant to a proposed project area.” It goes on to indicate that consultation should be early, should inform decision making, should build shared understanding and should respect the various structural attributes of the community.

The fundamental principle underlying the various iterations in the Draft Guidelines concerns dedication to alerting as many potentially interested Aboriginal people as possible to the prospect of the project. The guidelines exist in cognizance that, just as with all other interested communities, the formal exhibition process undertaken by Department of Planning has the object of reaching all elements of all communities that active early consultation efforts did not unearth.

Page 5 of the Draft Guidelines also indicates that “When undertaking consultation, proponents should use the services of people who are skilled and experienced in consultation, and in particular, consultation with Aboriginal people. These skills and experience may be available in-house or sourced from specialist service.”

Consultation with the Aboriginal community commenced two years before the May 2009 Draft Guidelines and utilised in-house consultation experience gained, over nearly 20 years, with local Aboriginal communities including the Awabakal and Worrimi peoples, their Land Councils, office bearers and community organisations.

Utilising advice from discussions with Awabakal leaders, contact was initiated in September 2007 with the Koopahtoo Local Aboriginal Land Council (LALC) based at Toronto and its General Manager Mrs Lois Townley. These discussions were only general because they were part of the process of preparing the Preliminary Assessment for the Department of Planning. Mrs Townley was advised that when the Environmental Assessment proper commenced, a new contact would be made with the Land Council.

An important outcome of the discussions with Koopahtoo concerned clarification that Bahtabah LALC would need to make observations about the bed of Lake Macquarie because the bed was wholly within the Bahtabah LALC area of control. Consequently contact was also made with Mr Mike Green, General Manager of Bahtabah on 18 October 2007 to discuss preliminary concepts and to indicate that after issue of the Department of Planning’s DGRs, Bahtabah would be contacted again.

Following receipt of the DGRs, contact was again made with the two Land Councils about their views on the development. One of the outcomes of this April 2008 consultation was advice of the interest by Koopahtoo LALC in utilising their records and their skills to prepare a cultural heritage report for the subject Marmong Point Lands and to make recommendations that incorporated the evolving design work for the foreshore area. The Koopahtoo report is attached as Appendix 5.1. Periodic contact with the two Land Councils has been maintained.

3.9.8 Lake Macquarie High School

Lake Macquarie High School almost overlooks Marmong Point Marina and is consequently a neighbouring community of relevance to land usage in the marina's immediate vicinity. Lake Macquarie High School is populated by young citizens for whom the Lake Macquarie waters hold significant cultural and recreational opportunities.

The more obvious of these opportunities concern boats and the use of the waters of Lake Macquarie. As a consequence the extent to which the waters of Lake Macquarie are entwined into the culture of those who live around the shores of Lake Macquarie has been respected.

Therefore, the Principal of Lake Macquarie High School, Mrs Anne McGee was contacted in order to initiate a dialogue about potential interactions with the School and its community. Some potential joint programs have been discussed with the Principal including boat maintenance education and the prospect for joint sponsorship of ephemeral public art on the foreshore.

3.9.9 Government Authorities

Upon receipt of the DGRs for the original land and water based proposal, each of the Government Authorities that was represented in the DGRs was visited to ensure that attention to each authority's written requirements would be truly responsive. The Authorities visited were: -

- Department of Water and Energy in Newcastle,
- Department of Primary Industries at Taylors Beach (Port Stephens),
- Department of Lands at Maitland,
- Department of Environment and Climate Change in Newcastle,
- NSW Maritime in Newcastle and on Lake Macquarie, and
- Roads and Traffic Authority in Newcastle.

The visits were particularly useful, because departmental submissions are provided in a consistent manner for all projects. This means there are some elements that do not arise with some projects and others that require quite specific attention. An example would be the interest that the Department of Water and Energy has in licensing the extraction of ground water for irrigation. As there is no current or intended irrigation at Marmong Point Marina the existence of the requirement in the DGRs for a detailed response about irrigation is not required.

Because the use of the waters in and around the marina come within the wet land management responsibilities of the Department of Lands and NSW Maritime, specific ongoing dialogue was required with those authorities. This dialogue has been undertaken. The various outcomes of this more specific consultation are evident within the Environmental Assessment.

3.10 Assessment of Development Alternatives

3.10.1 Preamble

In Attachment 1 to the DGRs the Proponent is required to outline the scope of the project including development options. It is standard practice in Environmental Assessment to identify and discuss development options that are possible alternatives to the proposal.

In the subject Environmental Assessment this standard practice has a number of dimensions.

The first dimension is about demand and it asks the question “Do we need to expand marina boat storage in Lake Macquarie?”

The second dimension is at a macro spatial level and it asks the question “What are the alternatives to expanding an existing marina at Marmong Point?”

The third dimension is at a more micro spatial level and it asks the question “What are the alternatives for expanding an existing marina within the waters at Marmong Point?”

The first dimension, Demand, has been thoroughly analysed in Chapter 3.8 above. The clear outcome of a number of demand studies is that rising population, rising rates of boat ownership, higher growth in ownership of boats longer than 6 metres and growing hinterland size have combined to create significant demand growth for recreational boating on Lake Macquarie together with significant demand growth for boat storage on and around the Lake.

Reaction to a proposal to address identified demand growth can be harnessed by consultation, and the extensive consultation program documented in Chapter 3.8 above has provided substantial depth to a commentary on marina expansion options and alternatives.

In discussing possible alternatives to the Proposal, care has been taken to address alternatives both at the second dimension noted above – “macro spatial” – and also at the third dimension – “micro spatial”.

3.10.2 The “Macro Spatial” Level - “What are the alternatives to expanding an existing marina at Marmong Point?”

At this level of analysis, and in terms of a development seeking development consent, there are probably three types of development options: -

1. No expanded berthing opportunities in Lake Macquarie,
2. Expand berthing opportunities elsewhere in Lake Macquarie, and
3. Expanded berthing opportunities at Marmong Point.

With a clearly increasing demand for berthing on Lake Macquarie the environmental impacts of no expansion of marina berthing opportunities in Lake Macquarie would include: -

- increasing dry boat storage on land that has good forklift access to Lake Macquarie, or
- increasing the infrastructure (trailer parking and boat ramps) around the Lake that permit boats to be taken from the Lake on trailers, or
- limiting the use of the Lake by recreational boating.

The impacts of simply expanding berthing opportunities elsewhere in Lake Macquarie and not at Marmong Point would include: -

- increasing the number of swing moorings in other locations around the Lake, or
- permitting other marinas around the Lake to expand their marinas, or
- developing a new marina on a "Greenfield" site elsewhere on the shores of Lake Macquarie.

The impacts of expanding Marmong Point Marina are the subject of this Environmental Assessment.



Illustration 25 – Mooring areas in north Lake Macquarie.

From a "macro" perspective the first "no-expansion of berthing opportunities in Lake Macquarie" option will still need to address storage demands. This would require expanding berthing opportunities on land, on foreshores or elsewhere.

Berthing boats on land is a solution that is gaining considerable support around the world and in Australia. Good examples of dry boat storage are at Akuna Bay in Sydney and at several locations in the waterways north of the Gold Coast in Queensland. Dry boat storage will soon be a feature of Blackwattle Bay in Sydney Harbour. It is a new market that might take time to find its way into the general Australian boating public, but will be required in any logical response to increasing boat storage.

Dry boat storage is also market that has physical limitations – it suits motor boats but not masted boats. It is limited to the middle range of boat sizes that can be handled on negative-draft fork lifts. In this context it is of interest to note that the Proponent for the subject marina expansion retains an interest in providing a form of dry boat storage on its private lands adjacent to Lake Macquarie.

Increasing boat ramp infrastructure to enable more boats to be removed from the Lake and stored on trailers is another alternative; however installation of new boat ramps together with the associated trailer parking is likely to incite objections comparable to “Greenfield” marina sites.

The second alternative of increasing berths in Lake Macquarie but not at Marmong Point could involve increasing swing moorings. This would serve to fill up the less popular of the 42 berthing areas around the Lake. However while there are swing mooring berths in the 30 areas without waiting lists, they will not necessarily afford the quality or amenity of storage sought by other boat owners. Not all of the 42 berthing areas afford the level of protection that some other boat owners will be demanding. There are also a number of boat owners who will not utilise swing moorings. With this second alternative they would choose to fill marina places outside Lake Macquarie or to increase pressure on marinas other than Marmong Point Marina to increase berths. Not all the marinas that exist in Lake Macquarie are as free from sea-grasses as is Marmong Point Marina.

Increasing the number of swing moorings in areas other than at Marmong Point increases threats to sea grasses that are more prevalent elsewhere in the Lake. The issue of swing circles has been afforded increasing attention and concern in those authorities having to strike a balance between recreation boat storage and environmental damage. *Zostera capricorni* and *Posidonia australis* both occur elsewhere in Lake Macquarie. Increased efficiency of boat storage at Marmong Point would reduce threats to seagrasses where they occur in Lake Macquarie because there are no threatened sea-grasses in Marmong Cove.

Another option might be to find new locations for trot moorings or other mooring systems that are more space-efficient than swing moorings.

Developing a new marina on a “Greenfield” site would cause significant public consternation anywhere it might be suggested on Lake Macquarie. It is no surprise that significant marinas have long been classed as Designated Development – they are difficult developments to locate within any community. They are developments which when proposed as new developments entering any established community, raise understandable concern often characterised as NIMBY – “not in my backyard”.

The third alternative is the subject of this Environmental Assessment. However it is worth recording a comment expressed on a number of occasions during consultation with both authorities and authoritative persons.

The question generally took the rhetorical form of “why wouldn’t you expand marina facilities in probably the best marina location in Lake Macquarie and neighbouring waterways, where a marina culture has existed for a generation and boat storage and maintenance cultures have existed for more than two generations, and where Lake Macquarie City Council prizes the marina’s visual importance to the City?”.

3.10.3 The “Micro Spatial” Level

When there are multiple interests in the use of the same parcel of public land there will understandably be multiple beliefs about how that public land should be used. There will also be a significant belief by the public about what is “fair” when public land is being used.

The evaluation of what is “fair” is best determined by the test prescribed in Section 79C(1)(e) of the Environmental Planning and Assessment Act – “the public interest”.

NSW Maritime advises on its web site that one of its statutory duties concerns the issue of mooring licences and that “A mooring licence permits you to moor your vessel on navigable waters and is renewable annually. A mooring licence is not a lease of the seabed and there is no guarantee of tenure. The general position of the site is determined and may be varied at the discretion of NSW Maritime.” The legislation under which NSW Maritime operates requires that NSW Maritime exercises that discretion on the basis of what is in the public interest.

The existing mooring licence allocation patterns in Marmong Cove have been subject to significant change since the major reallocation required for building the original Marmong Point Marina in 1983. The allocation pattern reflects a historical convenience for mooring commercial boating on the western side of the Cove, and for mooring recreational boating on the eastern side of a central access channel. Marmong Cove used to be a substantial location for commercial mooring. However times have changed. Commercial moorings on Lake Macquarie now represent just 1.5% of all moorings whereas recreational moorings account for 98.5% of all boat storage. Like waterways near other large urban areas, Lake Macquarie is now predominantly a recreational waterway.

NSW Maritime statistics accessed by Buttigieg and Norbom⁷ show that in the 10 years to 2006 Commercial moorings on the whole of Lake Macquarie have increased by just 11 while recreational moorings have grown by over 6400.

Even without the current marina expansion plans it would not be unreasonable to request NSW Maritime review the waterway allocations in Marmong Cove between

- navigation and access areas,
- commercial mooring areas, and
- recreational mooring areas.

⁷ Buttigieg, Dennis and Norbom, Susan. Extracts from Discussion Paper on Vessel Storage Requirements for New South Wales. June 2006.

Such an exercise might produce the reallocating of vacant commercial moorings to recreational moorings and a different approach to a navigation channel that has historically separated commercial from recreational moorings. If that was to occur without there being a marina expansion proposal, some of those on the recreational berth waiting lists that now exist for 12 of the 42 berthing areas that NSW Waterways has prescribed around the Lake might be able to store their boats in Marmong Cove.

Efficient use and “fair” spatial allocation of the public waterways are not the only issues that arise from a review of the position of the central navigation channel. Another factor would be the impact of power boat wash on rowing shells from Booragul Rowing Club.

3.10.4 Comparisons of four different spatial allocations in Marmong Cove

Undertakings have been given not only to the different groupings of swing mooring holders, but to the Boat Owners Association (BOA), to local residents sharing in the consultation to date and to elected representatives in both Local and State Government that there would be a comprehensive and open analysis of options alternate to the Proponent’s preferred marina layout.

Consequently in addition to the reallocations of spaces within Marmong Cove suggested in by the Proponent’s preferred layout (see Illustration 26 below), early community consultation has provided the opportunity for three alternate layouts of Marmong Cove to be suggested and consequently analysed.

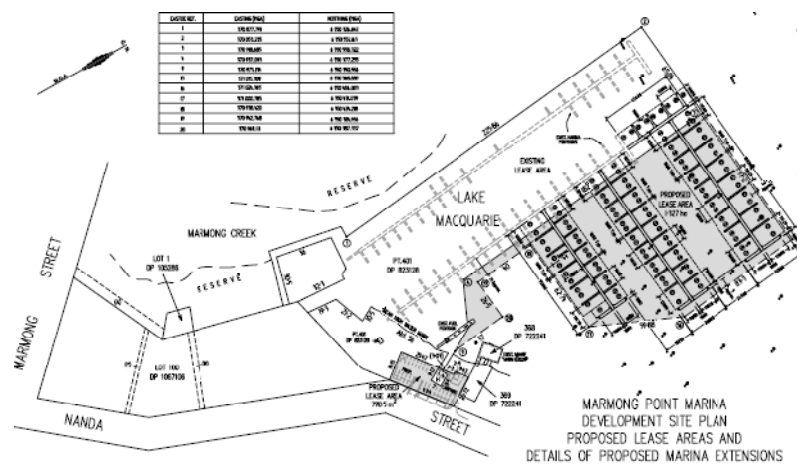


Illustration 26 – Layout Option 4 – The Proponent’s Preference

The alternative layout suggested by the BOA is shown below as Option 1 in Illustration 27. It recognises a reticence by existing swing mooring occupants in the south-east of the Cove to move. It suggests extending both arms of the existing marina northward, and then, to orient the entrance to the travel lift corridor towards where its demand will come from, to bend both extended marina arms to the north-east.

The bend in the extensions of both marina arms does require the more northerly recreational swing mooring licensees to be moved by NSW Maritime to new locations, however it positively responds to contemporary suggestions of a more efficient new navigation channel in the deep waters just north of Marmong Point itself.

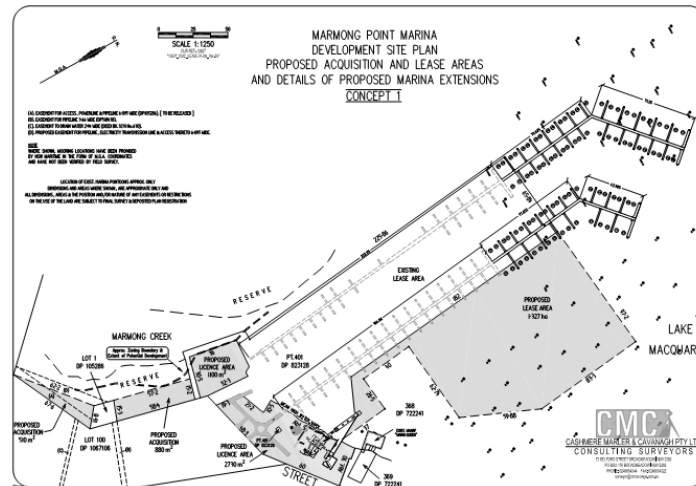


Illustration 27 - Option 1 – Boat Owner’s Association suggestion

Option 2 is shown in Illustration 28. Like the BOA proposal Option 2 seeks to protect those on swing moorings in the south east of the Cove from being relocated. It leaves all the recreational swing moorings on the eastern side of Marmong Cove unchanged. It is not dissimilar to the traditional “do nothing” option that is required in any comprehensive comparative analysis. It means that all the waters on the eastern side of Marmong Cove would continue to be utilised for recreational swing moorings and that both the existing Marina arms would need to be extended northwards along the western shore line of the Cove.

This is where commercial moorings are currently located. It assumes that the Wangi Queen, boat owners using the Nanda Street boat ramp, boats seeking refuelling, boats navigating to the travel lift and all other craft seeking to enter Marmong Cove, would continue to enter and exit Marmong Cove along the long existing north-south navigation channel, so that existing swing mooring occupiers would not be required to move.

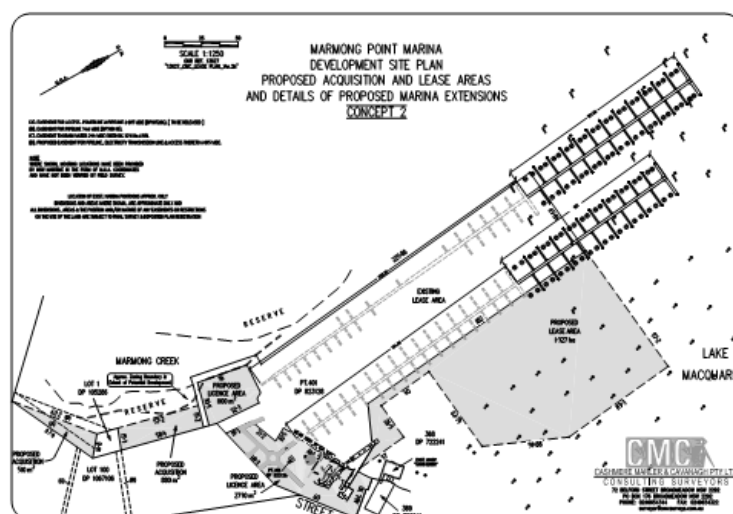


Illustration 28 – Option 2 – Swing Mooring Holder suggestion 1

Option 3 is shown in Illustration 29. It produces an allocation of moorings within Marmong Cove that cocoons about 20 or so swing mooring licensees in the south east of Marmong Cove and protects them from any need to move. However at the same time it requires a second larger group of swing mooring holders north east of the existing marina to be relocated north of the marina expansion.

Like the Proponent's preference, and the BOA Option 1, this suggestion requires berthing to be placed across the existing north-south navigation channel and creates the need for a reconfigured entry and exit channel for boats using Council's boat ramp, for the Wangi Queen, for boats accessing the fuel wharf and for the twenty or so swing mooring holders that remain cocooned in the south-east part of Marmong Cove.

It also requires a second navigation channel to be reserved to the west of the marina extension to enable larger boats seeking the travel lift, and smaller boats seeking fork-lift removal, to gain access to existing starting points of their respective corridors.

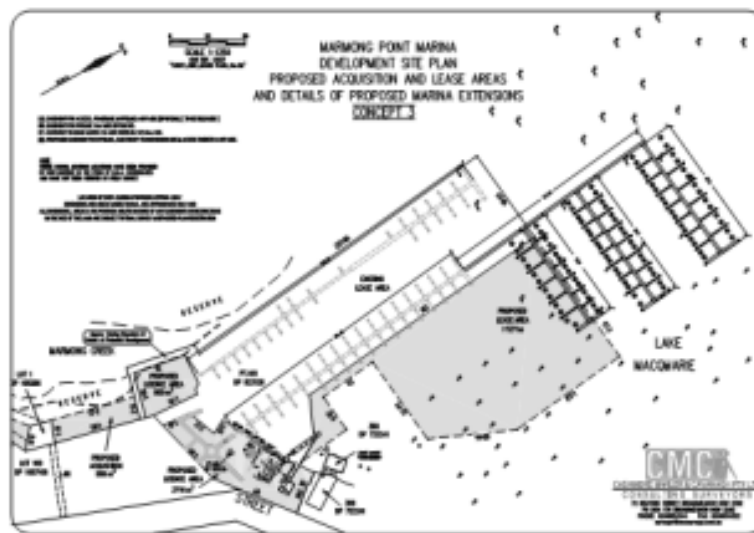


Illustration 29 – Option 3 – Swing Mooring Holder suggestion 2

The configurations in each of the above diagrams have been drafted by the Proponent's survey consultant to ensure dimensions are achievable.

To attempt a comprehensive professional review and comparison of the four alternative spatial allocations, a professional design engineer with significant mooring and marina experience, Mr Colin Henstock from Sydney was engaged.

Mr Henstock's review looks at the structure and efficiency of the four marina options in themselves. However Mr Henstock does not address navigation implications of the various options. These are more appropriately derived from consultation with NSW Maritime. The navigation consultation is described in 3.10.8 below.

3.10.5 Professional Review

All four optional marina design concepts were drawn to be comparable. The four concepts are shown in Illustrations 26, 27, 28 and 29 above.

The four concepts were provided to Mr Henstock with the request to provide a comparative analysis of the designs. Mr Henstock's report is at Appendix 5.10. His tabular comparisons are in Table 5 below.

Mr Henstock's Tabular Comparisons are as follows in Table 5.

Description	Concept 1	Rating	Concept 2	Rating	Concept 3	Rating	Proponent's Plan	Rating
<i>Number Of Berths</i>	88	2	89	1	88	2	87	4
<i>Distance To Furthest Berth</i>								
A ARM	375 M	4	364 M	3	310 M	2	238M	1
B ARM	304 M	2	310 M	3	368M	4	247	1
C ARM	NA		NA		421 M	2	303	1
<i>Area Of pontoons</i>								
A ARM	351 M ²		275 M ²		188 M ²		206 M ²	
B ARM	239 M ²		250 M ²		219 M ²		228 M ²	
C ARM	NA		NA		229 M ²		228 M ²	
Main pontoon	Na		Na		294 M ²		106 M ²	
TOTAL	590 M ²	2	525 M ²	1	931 M ²	4	768 M ²	3
<i>Area Of Fingers</i>								
A ARM	255 M ²		235 M ²		124 M ²		153 M ²	
B ARM	196 M ²		218 M ²		150 M ²		180 M ²	
C ARM	NA		NA		164.3M ²		198 M ²	
TOTAL	451M ²	2	453 M ²	3	439 M ²	1	531 M ²	4
<i>Number Of Piles</i>								
A ARM	31		31		18		18	
B ARM	24		28		22		21	
C ARM	NA		NA		20		20	
TOTAL	55	1	59	2	60	4	59	2
<i>Number Of Fire Hose Reels</i>								
A ARM	5		5		4		3	
B ARM	5		4		4		3	
C ARM	NA		NA		4		3	
TOTAL	10	3	9	1	12	4	9	1
<i>Number Of Services Pedestals</i>								
A ARM	25		24		13		14	
B ARM	20		21		16		16	
C ARM	NA		NA		15		16	
TOTAL	45	2	45	2	44	1	46	4
<i>Number of existing moorings affected</i>	12	1	13	2	17	3	22	4
<i>Additional Waterway Area Occupied</i>	19,061 m ²	3	17,293 m ²	2	16,681 m ²	1	12,550 m ²	1
<i>Protection to Berths</i>		3		4		2		1
<i>Ease of entry to fairways in adverse conditions.</i>		3		4		2		1
<i>Disruption During Construction</i>		3		4		1		1
<i>Interference with Wangi Queen Access</i>		2		1		3		4
TOTALS		34		34		37		34

In his report Mr Henstock describes the analysis he makes of the four concepts and formulates his comparative analysis into a ranking table. Mr Henstock's report Summary concludes that while there are clear differences in various aspects of the four concepts, there is little difference in the overall comparative outcomes.

Mr Henstock concludes: -

"Of all four marina extension layouts considered, the Proponent's Plan would appear to represent the marina configuration which:

2. Occupies the least additional waterway area.
3. Provides the best amenity to marina patrons by way of:
 - Berths closest to land based facilities.
 - Protection from weather.
4. Flexibility in available berth sizes to meet future demand.
5. Presents the least physical and visual intrusion into Lake Macquarie waterways beyond Marmong Point."

Because the purpose of this Environmental Assessment is "assessment", the raw findings of Mr Henstock have been subjected to more critical analysis and assessment.

The critical analysis above carefully discriminates between experienced professional observation and comparative analysis techniques. The critical analysis accepts without challenge the professional observations of Mr Henstock.

However, to be equitable, and to direct this Environmental Assessment towards considering the "public interest", the means by which Mr Henstock has compared his professional observations have been subjected to some sensitivity analysis.

3.10.6 Testing Sensitivities

To underpin an assessment of Mr Henstock's analysis it is considered that the selection of factors, and the way they are ranked, should be subjected to sensitivity testing in order to assess the robustness of the findings of the analysis.

To produce the First Sensitivity Test of the Henstock conclusions the following has occurred:

- Rankings have been given a "weighting" rather than simple ordering (i.e. largest ranking has been set to "1" and other rankings set to comparative proportions of "1",
- All increased berth numbers have been set to produce the same number of 85,
- "C" arm rankings have been removed because they are not attributed to all 4 options.

The First Sensitivity Test produces the following Table 6 below: -

Table 6 (low numbers indicate more advantageous result)

Description	Concept 1	Concept 2	Concept 3	Proponent's Concept
Number of Berths	1.00	1.00	1.00	1.00
Distance to furthest berth A Arm	1.00	0.97	0.83	0.63
Distance to furthest berth B Arm	0.72	0.74	1.00	0.72
Number of Piles	0.92	0.98	1.00	0.98
Number of Fire Hose Reels	0.83	0.75	1.00	0.75
Number of existing moorings affected	0.55	0.59	0.77	1.00
Additional waterway area Occupied	1.00	0.91	0.88	0.66
Protection to Berths	3.00	4.00	2.00	1.00
Ease of entry to fairways in adverse conditions	3.00	4.00	2.00	1.00
Disruption during construction	3.00	4.00	1.00	1.00
Interference with Wangi Queen Access	2.00	1.00	3.00	4.00
TOTALS	17.02	18.94	14.48	12.74

For the Second Sensitivity Test just six of the Henstock factors have been selected; three about issues that interest a Proponent and three that interest other communities.

The Second Sensitivity Test produces Table 7 below.

Table 7 (low numbers indicate more advantageous result)

Description	Concept 1	Concept 2	Concept 3	Proponent's Concept
Distance to furthest berth A Arm	1.00	0.97	0.83	0.63
Number of Fire Hose Reels	0.83	0.75	1.00	0.75
Number of existing moorings affected	0.55	0.59	0.77	1.00
Additional waterway area Occupied	1.00	0.91	0.88	0.66
Protection to Berths	0.75	1.00	0.50	0.25
Interference with Wangi Queen Access	0.50	0.25	0.75	1.00
TOTALS	4.63	4.47	4.73	4.29

The Third Sensitivity Test introduces a factor that recognises the main concern of swing moorings holders, being that the status quo would be disrupted. The introduction of a factor favouring swing mooring holders is to purposefully make a deliberate distortion to the factor analysis.

The Third Sensitivity Test produces Table 8 below.

Table 8 (low numbers indicate more advantageous result)

Description	Concept 1	Concept 2	Concept 3	Proponent's Concept
Distance to furthest berth	1.00	0.97	0.83	0.63
Number of Fire Hose Reels	0.83	0.75	1.00	0.75
Protection to Berths	0.75	1.00	0.50	0.25
Number of existing moorings affected	0.55	0.59	0.77	1.00
Additional waterway area occupied	1.00	0.91	0.88	0.66
Interference with Wangi Queen Access	0.50	0.25	0.75	1.00
Interference with Status Quo	0.50	0.25	0.75	1.00
TOTALS	5.13	4.72	5.48	5.29

Factor analysis like that produced by Mr Henstock is a very useful tool for comparing a variety of attributes of a proposal because it provides a degree of objectivity to any analysis. However factor analysis can also be properly criticised in its construction.

A proper assessment must therefore not simply rely upon the factor analysis without testing its sensitivities to use of the selected factors. The Sensitivity Analysis confirms that any implications that may be drawn from the Henstock Analysis are not unbalanced. They also confirm that there is no clear "best" option.

A significant outcome of seeking expert opinion about the various attributes of the four marina layout options is that the strengths and weaknesses of layouts as they relate to one group of persons (the Swing Mooring holders) compared to another group of people (the marina operators and those that berth at an expanded marina) has been undertaken as promised.

However it is evident that trying to derive a conclusion by pitting one group's beliefs against another group's beliefs is an "adversarial" approach and is not helpful to any resolution.

The appropriate way to decide on allocation of public land is not a competition between the private interests of two "claimants". The appropriate way is to evaluate the "Public Interest".

3.10.7 Government Recreation and Boat Storage Aspirations

As the bed of Lake Macquarie is owned by the Crown, the managers of Crown Land (Department of Lands and NSW Maritime) are required by the legislation they administer to advise government on land allocations that meet government policy objectives. And to do that they must act in the public interest.

Different Departments in Government have different roles in the application of Government public policy. Some Departments focus upon protecting the environment while others focus on orderly and well considered accommodation of infrastructure on public land. The Department of Lands administers public land and has a State-wide program of facilitating more efficient boat storage on and off public lands – both wet and dry. One of the tools that Government uses through Departments like Department of Lands is to encourage more efficient boat storage through offering leasehold security of tenure for appropriate lands. This enables those who are prepared to invest in boat storage infrastructure to have the confidence to invest in that infrastructure on public leasehold land.

In the subject case of Marmong Point Marina, the Department of Lands has indicated that, if the expansion of Marmong Point Marina can justify provision of planning consent, then use of lands under its control are available through leasehold tenure. The Department of Lands arrived at this position following consideration of a comprehensive Public Interest Test.

3.10.8 Staging Logistics

Marina design has changed significantly in the past 25 years. Whereas the floating pontoons installed at Marmong Point 25 years ago were appropriate and marketable when installed they are now showing their age. However they are also not built to the same standards that are now required by the “Australian Standard AS 3962-2001 – Guidelines for design of marinas”. The structures for the new 85 berths will be in accordance with the Australian Standards. They are shown in section and plan layout in Illustration 30 below.

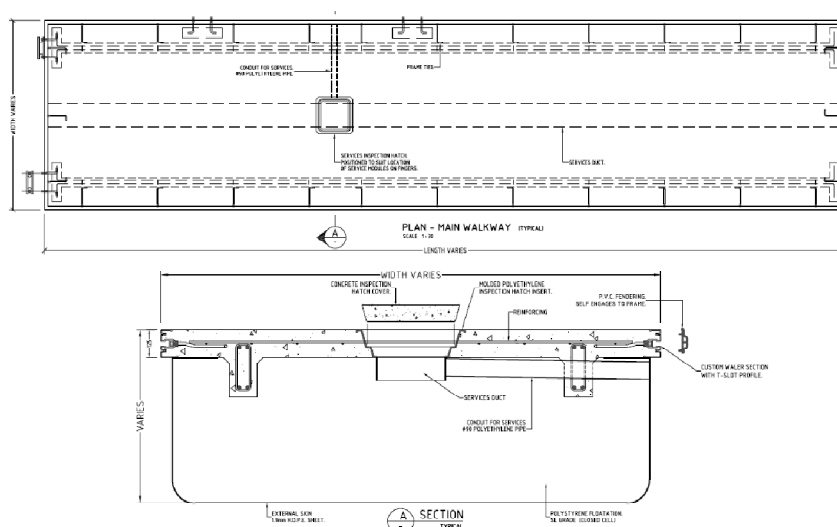


Illustration 30 – Modern Marina Pontoon Proprietary designs

Design logic suggests that it is less than functional to attempt to tie new concrete pontoons to the existing pontoon arms. The Proponent is therefore proposing to replace the eastern arm in conjunction with the installation of the new 85 berths. In this way one arm of the existing marina is replaced now while the other arm lies protected from north-east weather behind the new arm. In this context Option 3 and the Proponent's preferred layout (Option 4) can both work logistically because the western arm remains untouched and can continue operating until its replacement becomes feasible.

Option 1 and 2 each require replacement of both existing arms before new pontoons are added on. While those on licensed swing moorings would probably prefer that the marina expend those funds (and disrupt all current 145 marina occupants) it is not feasible to consider replacing the whole marina at the same time as adding 85 berths. Replacement of the western arm will happen – but it will happen some years hence.

Options 3 and 4 are the only two options that facilitate an economically feasible staging plan for integrating with the existing pontoons because they do not require the westerly pontoon to be removed or put out of operation. This, together with advice from marina manufacturers, emphasises the discomfort that accompanies thoughts of investing in other than Option 4.

3.10.9 Navigation Channels

Discussions with NSW Maritime Officers have indicated that there are different impacts on all water users and on the public in general when navigation channels for each of the four options are reviewed.

In the Australian Standard AS 3962 navigation channels can, if they are within a marina, be related to boat length or beam. However the Australian Standard recommends a "Preferred" entrance channel width of 30 metres. This Standard has been applied to mapping entrance channels in Marmong Cove for each of the alternative options below.

Option 1 (See Illustration 31 below) will require relocation of the navigation channel. If one maps a "reference area" for the whole of Marmong Cove then navigation channels that reflect the Australian Standard will utilise approximately 32,000 square metres. They will deliver boats at the preferred eastern navigation channel entry/exit. At this point just north of the Point at Marmong Point the waters are deep.

While the diagonal orientation of the marina entry arms is designed to make it readily available to boats entering the marina, it creates a difficult positioning of the navigation entrance from Lake Macquarie to each of the three points in the Cove to where navigation is required.



Illustration 31 – Navigating around Option 1

Option 2 (See Illustration 32 below) does not introduce any change in the navigation channel west of recreational swing moorings. This is because the main principle for this option is to leave existing individual swing moorings owners in the places they currently occupy and to have the new marina berths placed elsewhere. As a consequence, the navigation channel would continue to run north to the existing northerly navigation markers.

A layout that does not make any changes to the existing navigation channel has been labelled Option 2A. Based upon the Australian Standard, navigation channels in Option 2A would utilise approximately 30,000 square metres from to the “reference area”, while at the same time delivering boats to waters at the existing northern extreme of Marmong Cove.



Illustration 32 – Navigating around Option 2A

However, discussions with NSW Maritime indicate that it could be useful if the northern part of an Option 2 navigation channel was turned eastwards just north of the existing recreational moorings. This would mean that the entry channel would focus on where the majority of boats come from. Consequently Option 2B (See Illustration 33 below) is designed to permit swing mooring holders to continue to secure their existing mooring positions but have access to an improved exit/entry to the waters of Lake Macquarie.

This Option would produce a navigation channel that ran north until it reached a point where no there were no mooring spaces, whereupon it would curve around to the east. Based upon the Australian Standard, navigation channels into Option 2B would utilise approximately 29,000 square metres from to the “reference area”, while at the same time delivering boats to waters towards the north end of Marmong Cove.



Illustration 33 – Navigating around Option 2B

Option 3 (See Illustration 34 below) will require relocation of the navigation channel. From the "reference map" for the whole of Marmong Cove the navigation channels will utilise approximately 36,000 square metres and will deliver boats at the preferred eastern navigation channel entry and exit in deep waters just north of Marmong Point.

However the proximity of marina berths to the waters of Lake Macquarie proper means that there is a wide band of water that is only useable for navigation and so Option 3 is wasteful of navigation space and public mooring space.

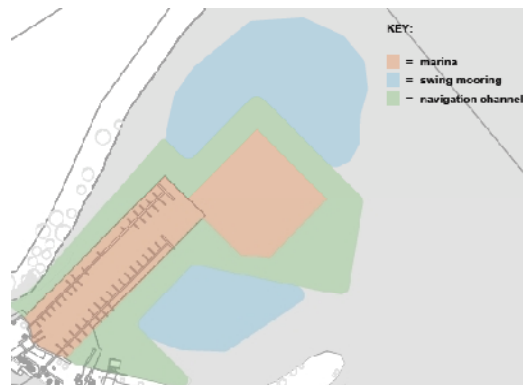


Illustration 34 – Navigating around Option 3

Option 4 (See Illustration 35 below) will require relocation of the navigation channel. From the "reference map" for the whole of Marmong Cove the navigation channels will utilise approximately 25,000 square metres and will deliver boats at the preferred eastern navigation channel entry and exit in deep waters just north of the Point at Marmong Point.

This Option is the most efficient user of navigation space because it leaves an extra one hectare or so of water for mooring of boats. It is also the most compact and logical navigation arrangement of all the options and it delivers boats to their destinations at the boat ramp, fuel wharf, Wangi Queen berth, travel lift etc after the shortest distances.



Illustration 35 – Navigating around Option 4 – Proponent's Preference

A summary of the navigation efficiency testing described above is tabulated below: -

Table 9 - Comparable Navigation Channel Areas

Option	Description	Source of Option	Navigation Channel Areas x10 ³ m ³
Option 1	Marina arms northwards with kink to North-East	Boat Owner's Association	32
Option 2	Marina Arms due northwards using existing North-South navigation channel	Swing Mooring Holders Meeting	30
Option 2A	Marina Arms due northwards and turning navigation channel to east when past existing swing moorings	Swing Mooring Holders Meeting with adaptation by NSW Maritime	29
Option 3	New marina Arms set to north-east of existing marina	Swing Mooring Holders Meeting	36
Option 4	Proponent's Preferred marina layout	Marmong Point Marina Proponent	25

3.10.10 A Public Interest Assessment

A conclusion in Chapter 3.10.6 above is that the key issue underpinning the use of the waters/wet lands forming Lake Macquarie is the Public Interest.

Researching the concept of "Public Interest" indicates that its many definitions are generally responsive to the various situations in which the question "What is the public interest?" is asked. Significant effort has occurred in Australia, for instance, in defining public interest as it relates to Freedom of Information (FOI) Legislation. Subsequent development of FOI legislation in the United Kingdom has recognised the leadership of Australia and Canada in this field.

In Australia, Public Interest has a general "merits" basis. This means that it is generally based upon the particular facts surrounding each case of its usage.

However "Butterworths"⁸ defines "Public Interest" as being "A concern common to the public at large or a significant portion of the public which may or may not involve the personal or proprietary rights of individual people."

Public Authorities and Public Interest

In the subject case of Marmong Cove an immediate identification of "personal or proprietary rights of individual people" would focus upon the status of the rights of individual mooring holders and of the marina operators. This highlights that a swing mooring licence is not a proprietary right issued under the Crown Lands Act by the land owner (Department of Lands). It is better characterised as a licence to obstruct navigation issued by NSW Maritime in accordance with nature of Marmong Cove and the applicable navigation legislation. By comparison the Crown specifies proprietary rights in the form of leasehold title for any marina infrastructure.

⁸ "Butterworths Concise Australian Legal Dictionary" Third Edition. LexisNexis Butterworths 2004.

On its web site NSW Maritime describes the Swing Mooring Licence as:-

“A mooring licence permits you to moor your vessel on navigable waters and is renewable annually. A mooring licence is not a lease of the seabed and there is no guarantee of tenure. The general position of the site is determined and may be varied at the discretion of NSW Maritime.”

A lease from the Crown of part of the bed of Lake Macquarie constitutes a more significant proprietary right than a mooring licence. Consequently the decision about the individuals who may occupy lands in Marmong Cove under lease requires the Crown to make a decision that holistically and comprehensively considers the Public Interest.

In the subject case, Public Interest requires consideration of a large number of issues including issues such as:-

- the distance of dinghy travel, the history of swing mooring tenure for around 22 swing mooring holders, etc. on the one hand, and
- soundness of investment climate, marina efficiency for 85 potential marina berth holders etc. on another hand, and
- navigation constraints for public boat ramp users, tourists and visitors seeking fuel etc. on yet another.

For its part, the Department of Lands specified to Marmong Point Marina that before it would give any permission for a potential marina expansion, it required the Proponent to undergo a rigorous “Public Interest Test”. This test addressed all the interests for which the Department was the responsible arm of government. It did not, however, cover nor fetter the responsibilities that the Department of Planning has concerning the consideration of development consent, nor did it fetter any advice that the Department of Lands may provide to Department of Planning as part of the consent process.

What the Public Interest Test does reflect, however, is that the Department of Lands considers that use of lands at Marmong Point to upgrade an old marina, to enlarge the size of the marina and to facilitate car parking, aligns with that part of the Public Interest for which the Department of Lands is responsible. It reflects that the Department of Lands has concluded that the Public Interest is served by submitting the Project to a consent process.

Public Interest and the waters of Lake Macquarie

The major factor driving any need to consider allocations of the waters Lake Macquarie is demand for boat storage.

Pressures of demand for boat storage are being spurred by

- population growth and
- increasing national wealth and
- increasing settlement preferences for coastal domiciles.

NSW Maritime and the Department of Lands are the Authorities that deal with the burgeoning demand for boat storage, and particularly for the large increase in ownership of boats over 6 metres in length.

Increasing pressures for access to public wet lands means that the Public Interest is an increasingly important factor in the difficult allocation decisions those Authorities have to make.

NSW Maritime and Department of Lands do not have the ability these days to be as generous to specific individuals using public land as they may have been in the past. NSW Maritime now has to manage waiting lists and has to conduct more regular swing circle reviews. For scarce resources that are not in the “welfare” category, the Department of Lands has to abide by an increasing prevalence for “user pays” pricing structures.

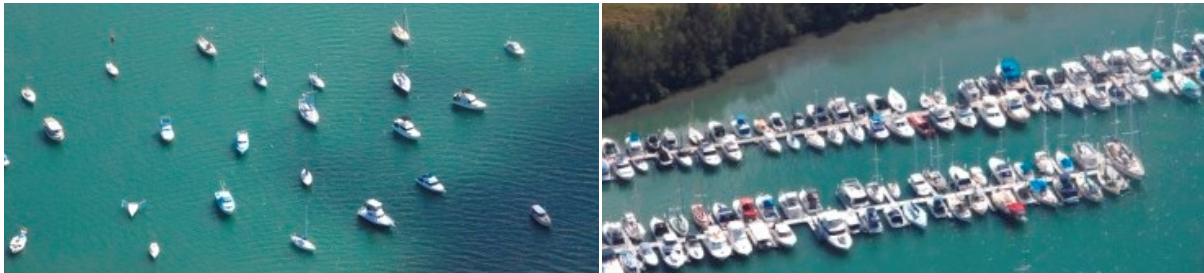


Illustration 36 – Comparative Boat Storage Densities – swing moorings and marina berths

Because storage of boats too large to be removed from the water is not at the “welfare” end of the public interest spectrum, the gradual move towards a charging system that reflects both market demand and market yield is a mantra that is being applied by State Government to its Authorities like NSW Maritime and Department of Lands.

If Governments are to have any chance of keeping up with the welfare demands like health and education and transport and community services, then they must take a responsible approach to revenue generation. This requires, in the subject case, allocation of storage spaces on the waters of Lake Macquarie

- in an efficient manner and
- in a manner that derives optimal security for the tenant’s capital investment and
- in a manner that derives optimal security for the Lessor’s varied public realm interests.

The Proponent and the Public Interest

An important factor underpinning siting of a marina along the lines of the Proponent’s preference concerns consummating risky capital commitments, especially in less buoyant economic times. This requires certainty and security for the Proponent, certainty and security for employed workers and certainty and security for the Lessor. The choice by the Proponent of Option 4 is significantly influenced by minimising capital risk on a project that is being built upon public land.

An offer (commitment) by the Proponent that reflects acting in the Public Interest concerns potential installation of a second more accessible sewer pump-out point and water tap at the northern end of the replaced eastern pontoon. This has been potentially secured through negotiations by the Boat Owners’ Association (BOA) on behalf of its members, and on behalf of boat owners in general.

The negotiated pontoon location will mean that the second sewer pump-out will be more secure than the pump-outs that are vandalised on public jetties, and more accessible than at the fuel wharf where other boats will be seeking fuel as well as sewer pump-out.

The installation of the second sewer pump-out is based on an offer by Marmong Point Marina to manage and maintain the pump-out on Marmong Point Marina's structure rather than on a public structure elsewhere on the Lake, and to accept the sewer waste through its sewer system to the Hunter Water system. But the offer is also based on a cooperative arrangement with say Lake Macquarie City Council, whereby Council would be a public sponsor seeking grant funding for the pump and the necessary components in addition to the piping installed by the Proponent at its cost.

If any of the other three suggested marina expansion layouts were to be utilised it would increase the length of servicing of the sewer pump-out and also increase its installation and maintenance costs. Consequently there is a public benefit in facilitating a sewer pump-out that would be the most feasible to fund, install, maintain and service.

Additionally, the "bay-like" enclosure that surrounds the fuel wharf, Wangi Queen Wharf and public boat ramp, and the solid buffer created by the new concrete pontoons, will significantly reduce wind and boat generated wave action at the south of the cove.

Public Interest Assessment

When one sets aside the personal interests of both the Proponent and the swing mooring holders, and simply addresses the general Public Interest, it is improbable that a public interest test would rank entrenchment of about 22 recreational boats on individual swing moorings in their current positions with no dedicated car parking, ahead of an investment and the jobs that will flow from 85 additional boats in recreational marina berths with formally constructed car parking, especially when the 22 or so swing moorings will still be accommodated within Marmong Cove.

In making the above assessment cognisance must be taken of the ability of the Proponent's Preferred layout to facilitate a compact marina expansion that

- provides a quadrupling (22 to 85) of boat storage on the waters east of the existing marina,
- improves navigation channel layout,
- retains all swing moorings in Marmong Cove for all displaced licensees, albeit with a further distance to row,
- maximises the space available for swing moorings within the cove and consequently relieves waiting list pressure for the Cove and the Lake,
- provides to relocated swing mooring holders a negotiated accessibility to, and use of, the marina pontoons,
- results in a 30 car increase in formalised car parking space infrastructure,
- has successfully addressed on-site the testing of berthing space available for the Wangi Queen,
- minimises public costs for installation of sewer pump-out on marina pontoons,
- maximises compactness and hence marketability of marina berths,
- does not require consideration of a "green field site" for new marina berths, and
- does not require any dredging, and

clearly maximises the Butterworths identification of "A concern common to the public at large or a significant portion of the public."