

Preliminary Environmental Assessment

FOR A 50 BERTH MARINA

LOT 519 DP 729020 Brisbane Water Drive, Koolewong

For Gemsted Pty Ltd

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1.0 introduction

ADW Johnson has been engaged by Gemsted Pty Ltd to assist in the development of a fifty (50) berth marina and reconfiguration of the existing car park at 19 Brisbane Water Drive, Koolewong. The proposal is submitted by ADW Johnson on behalf of Gemsted Pty Ltd who is the current lessee of the subject site from the Land and Property Management Authority.

ADW Johnson are of the opinion that the project satisfies the criteria for a 'Major Development' Under the *State Environmental Planning Policy (Major Development)* 2005. If this is the Minister's view, then the Minister will be the consent authority for the whole project under Part 3A of the Environmental Planning and Assessment Act 1979 (the Act).

We seek formal conformation (Clause 6 opinion) that the Minister agrees that the project is a 'Major Development', we also seek the Director-General's Requirements for the project.

2.0 description of the proposed development

The proposed Marina comprises the following components:

- The upgrade of the existing timber jetty from 1 metre to 1.5 metres in width;
- Construction of a fifty (50) berth marina extending approximately 100 metres into Brisbane Water (Murphy's Bay) from the end of the existing timber jetty;
- The main walkway of the proposed marina will be 2.4 metres wide, with two arms, in a "reverse F" formation
- The proposed marina will be in the form of a floating pontoon held in place by a number of pylons. The pontoon will have rollers surrounding the pylon to allow the marina to rise and fall with the tide;
- Fire hydrants are proposed to be located at strategic points along the marina for fire fighting purposes;
- The marina will be managed from an office located within the Gosford CBD;
- Upgrade and reconfiguration of the existing car park to provide eleven (11) additional car parking spaces to the thirty three (33) existing spaces.

Plans of the proposed marina have been provided in **Appendix 1**.

The proposal **does not** involve:

- The construction, repair, maintenance, sale or hire of Boats;
- Fuelling of boats;
- Sewage pump out services; or
- Launching or landing facilities.

3.0 the site

3.1 LOCATION

The site is located approximately 2km north of Woy Woy and is situated on the north eastern side of Brisbane Water Drive. The existing development on the site is known as The Boathouse Waterfront Restaurant. (See locality plan below).



Figure 1 – Locality Plan

The site is bordered by Brisbane Water Drive to the south west, with Brisbane Water (Murphy's Bay) surrounding the remainder of the subject site.

3.2 LAND TITLE

The subject site is described as Crown land above and below mean high water mark off Brisbane Water Drive Kooilewong, being Lot 519 DP 729020. The Department of Lands being the owner of the Crown Land have provided their consent to the submission of this application, and have duly signed the Application Form. A copy of the deposited plan and Certificate of Title for the property is provided in **Appendix 2**.

3.3 OWNERSHIP

Gemsted Pty Ltd is currently the lessee of this property. A copy of this lease is attached within **Appendix 2** of this report. The owner's consent to the lodgement of the application is provided under separate cover. Please note that the application form has also been signed by the Department of Lands, as works will be required to be carried out within the bed of Brisbane Water (Murphy's Bay) which is deemed as land under the control of that Department.

3.4 PHYSICAL DESCRIPTION

The subject site is irregular in shape with Brisbane Water Drive extending along the south western boundary. Brisbane Water bounds the remainder of the site. The front portion of the site contains a paved thirty three (33) space car park with a few trees located within the northern and southern corners of the site and along the road frontage.

The site currently supports the existing two (2) storey Boathouse Waterfront Restaurant located approximately 20m from Brisbane Water Drive. The ground floor of the building is used as a restaurant and function centre. The restaurant is open for lunch and dinner from Wednesday to Saturday and lunch on Sunday. The first floor contains a number of offices. In addition to this, an existing timber jetty extends approximately 25 metres out onto Brisbane Water (Murphy's Bay).

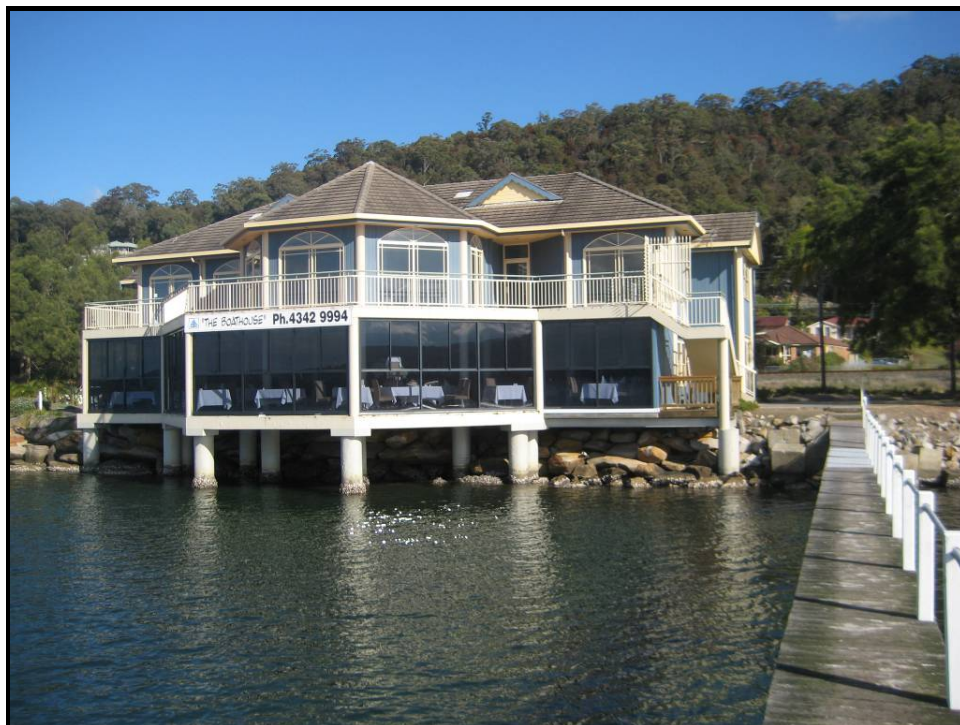


Photo 1 - Existing Restaurant as viewed from the jetty.



Photo 2 - Looking across the front of the restaurant toward the jetty, showing the area where the marina will extend to.



Photo 3 - Looking along the jetty from within the existing carpark. Restaurant to the right.

4.0 planning controls

4.1 INTRODUCTION

The purpose of this section is to outline the applicable planning controls and statutory requirements relating to the site and the proposed marina and car park reconfiguration and upgrade. This section explores the relevant Commonwealth and State Legislation and Local Planning Controls, provides a brief overview of the approvals required, and the likely approval process for the project.

4.2 COMMONWEALTH ENVIRONMENTAL PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

This Act (EPBC Act) was introduced in 1999, and replaces several dated Environmental Protection and Conservation Acts. The EPBC Act aims to protect seven matters of national environmental significance being:

- World Heritage Properties;
- National Heritage Places;
- Wetlands of International Importance (Ramsar Wetlands);
- Threatened Species and Ecological Communities;
- Migratory Species;
- Commonwealth Marine Areas; and
- Nuclear Actions (including uranium mining).

The proposed marina and car park upgrade and reconfiguration is unlikely to have negative impacts on any of the above. An initial survey of the sea grasses within the area of the proposed works has been undertaken by Cardno Ecology Lab, which has confirmed that there are no sea grasses within the immediate vicinity of the works; and that the mooring of vessels at the proposed marina will have no impacts on any sea grasses.

4.3 ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 PART 3A – MAJOR INFRASTRUCTURE AND OTHER PROJECTS

Part 3A of the Environmental Planning and Assessment Act 1979 (EP&A Act) covers those developments considered to be a Major Project. The proposed fifty (50) berth marina is considered to be a major project, therefore is subject to assessment and determination under Part 3A of the Environmental Planning and Assessment Act 1979.

The proposal is considered to be a Major Project pursuant to Part 3A of the EP&A Act. This is further discussed in Section 4.7 of this report.

4.4 STATE PLANNING CONTROLS

4.4.1 Threatened Species Conservation (TSC) Act 1995

The TSC Act 1995 provides a framework for the listing and declaration of threatened species, populations, endangered ecological communities, key threatening processes and critical habitat. It also provides a framework for the preparation and implementation of recovery plans and threat abatement plans and for licensing.

An initial assessment of the sea bed within the vicinity of the proposed works was undertaken by Cardno Ecology Lab. This assessment noted that there were no sea grasses within the area of proposed works, and that the sea grasses which were observed, would not be likely to be affected by shading associated with the boats moored at the facility.

Sea grasses observed within the survey area (but not within the area of proposed works) included *Posidonia australis*, *Zostera capricorni*, and *Halophila sp.* The weed species *C. taxifolia* was also noted within the survey area.

A copy of the Cardno Ecology Lab Report is provided within **Appendix 3**.

4.5 STATE ENVIRONMENTAL PLANNING POLICIES

Our review of State Environmental Planning Policies indicates that the following State Environmental Planning Policies would apply to the site and this proposal.

- State Environmental Planning Policy 71 – Coastal Protection.
- State Environmental Planning Policy (Major Development).

4.6 LOCAL PLANNING CONTROLS

4.6.1 Gosford Planning Scheme Ordinance 2008

The subject site is unzoned under Gosford Planning Ordinance Scheme 2008.

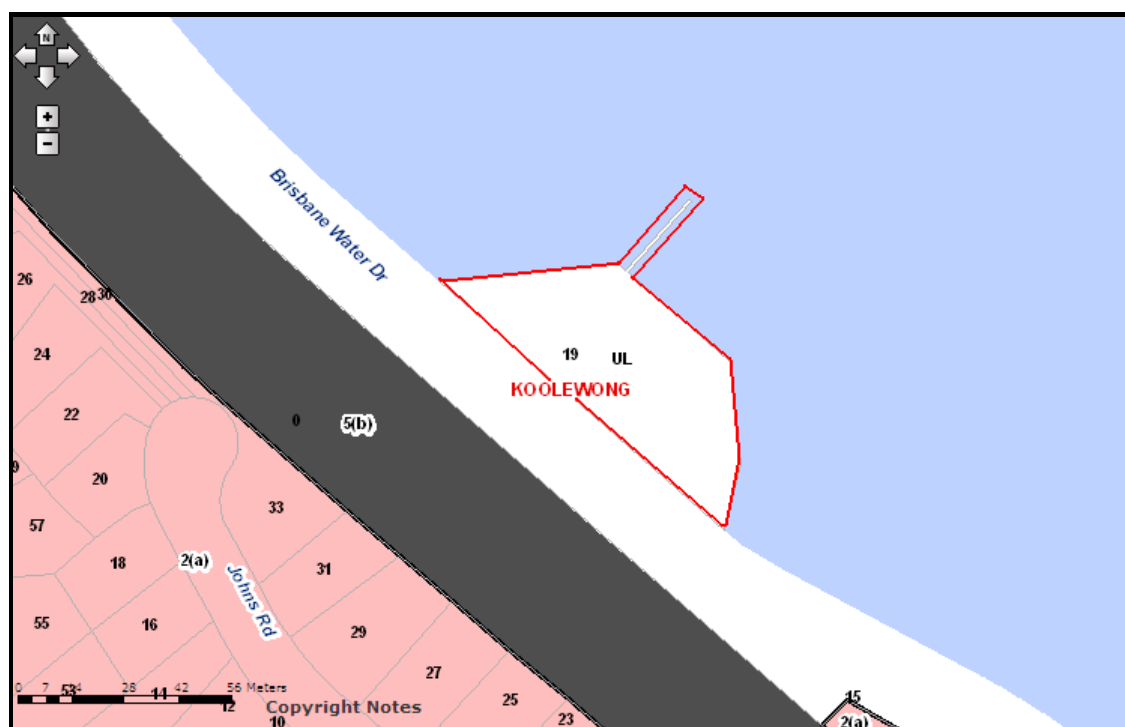


Figure 2 – Zoning Plan (source Gosford City Council)

Specific Gosford Planning Scheme Ordinance Clauses

Clause 49 – *Development on the bed of lakes and rivers*, applies to the subject site as Crown Land adjoins the subject site below the high water mark (HWM).

"(1) *Despite any other provision of this Ordinance, a person must not, without the consent of the Council:*

(a) carry out development on any land that is within the City of Gosford that was shown uncoloured on the Scheme map on the date this Ordinance commenced, being 24 May 1968, forming part of or adjacent to or adjoining the bed of harbour, bay, lake, river, lagoon, creek or any other natural watercourse which land, in the case of tidal waters, was shown on the Scheme map at that date as land below high water mark, or

(b) use the land described in paragraph (a) for any purpose other than for a purpose for which it could lawfully be used immediately before the commencement of Gosford Local Environmental Plan No 404.

(1A) In considering whether to grant consent under subclause (1), the Council must take into account the estuary management principles in the Estuary Management Manual (State Government), available for inspection at the office of the Council.

(1AA) Subclause (1) extends to the land shown uncoloured on the Scheme map, as at the commencement of Gosford Local Environmental Plan No 477, forming drainage reserves on St Huberts Island, whether or not any part of those drainage reserves is below the high water mark”.

Given that the subject land is unzoned, the proposed marina requires development consent under Clause 49 of the Gosford Planning Scheme Ordinance 2008 (GPSO).

4.6.2 Draft Gosford Local Environmental Plan 2009

The subject site is zoned *RE1* and *W2 Recreational Waterways* under the draft Gosford Local Environmental Plan 2009. The proposed works to the car park are within the *RE1* zone, with the marina being within the *W2* zoned area.

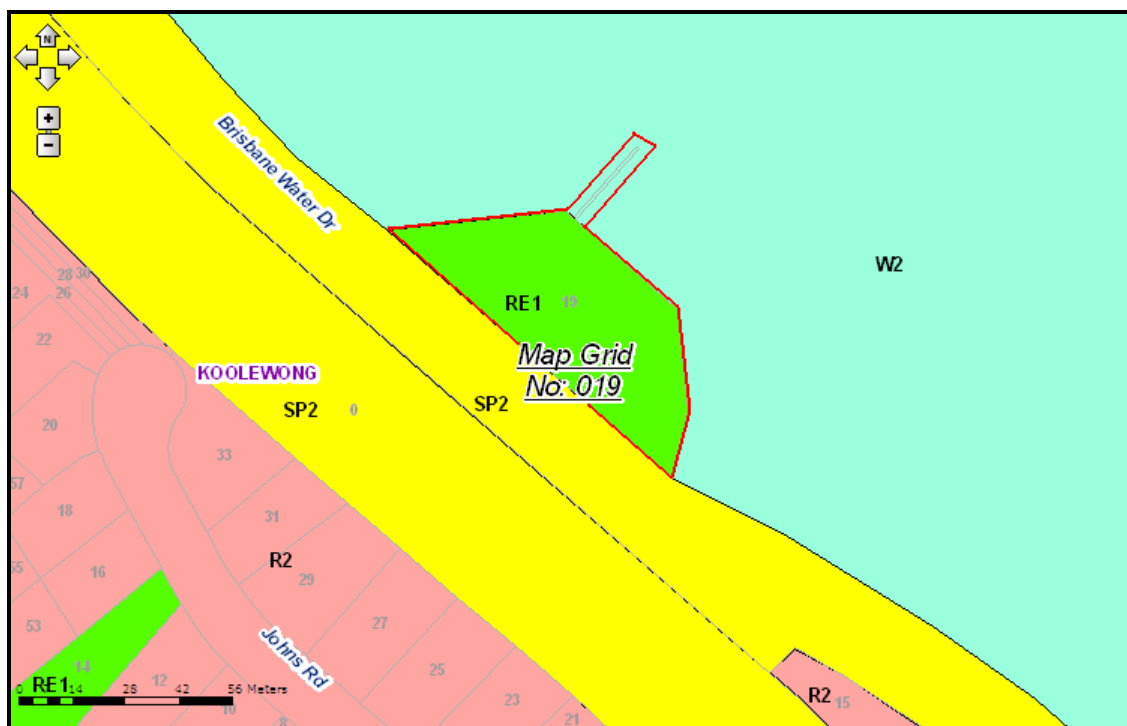


Figure 3 – Zoning Plan under Draft LEP 2009 (source Gosford City Council)

The proposed marina is consistent with the objectives of the Zone *W2 Recreational Waterways* which are to:

- *"To protect the ecological, scenic and recreation values of recreational Waterways".*
- *"To allow for water-based recreation and related uses".*
- *"To provide for sustainable fishing industries and recreational fishing".*

The proposed marina will have minimal impact on the ecological or scenic quality of Brisbane Water. The provision of the additional berths will also allow existing swing moorings to be removed. In relation to recreational values, a fifty (50) berth marina will further facilitate recreational use of the waterway.

The proposal is defined pursuant to the draft LEP as a “*marina*”, which is defined as follows:

“marina means a permanent boat storage facility (whether located wholly on land, wholly on the waterway or partly on land and partly on the waterway) together with any associated facilities, including:

(a) any facility for the construction, repair, maintenance, storage, sale or hire of boats, and

(b) any facility for providing fuelling, sewage pump-out or other services for boats, and

(c) any facility for launching or landing boats, such as slipways or hoists, and

(d) any associated car parking, commercial, tourist or recreational or club facility that is ancillary to a boat storage facility, and

(e) any associated single mooring”.

A “marina” is permissible with consent within the W2 Recreational Waterways zone.

Specific Draft Gosford Local Environmental Plan Clauses

(Clause 5.7 “Development Below Mean High Water Mark”) compulsory if land to which Plan applies contains tidal waters

“(1) The objective of this clause is to ensure appropriate environmental assessment for development carried out on land covered by tidal waters.

(2) Development consent is required to carry out development on any land below the mean high water mark of any body of water subject to tidal influence (including the bed of any such water)”.

Given that the proposal will be carried out on land covered by tidal waters it is considered that Clause 5.7 applies to this proposal. The proposal is consistent with all of the objectives of Council’s Draft Local Environmental Plan 2009 and is an appropriate development to be carried out within the tidal waters of Brisbane Water. In reaching this conclusion, the provisions of the “*Brisbane Water Estuary Processes Study*” prepared by Cardno, Lawson, Treloar for Gosford City Council have been considered.

4.6.3 Development Control Plans

Gosford City Council Development Control Plan is the only Development Control Plan (DCP) applicable to this site and proposal. In meetings with Gosford Council, the following Chapters were advised as being applicable to the proposed development and will be assessed further and addressed as part of the project application:

- Development Control Plan – 89 Scenic Quality
- Development Control Plan – 106 Waste Management Controls
- Development Control Plan – 111 Car Parking
- Development Control Plan – 119 Wharves and Jetties
- Development Control Plan – 159 Character

4.7 WHY IS THIS PROPOSAL A 'MAJOR DEVELOPMENT' TO WHICH PART 3A APPLIES?

The proposed development is considered to be a 'Major Development' to which the Major Development SEPP (and PART 3a of the Act) applies on the basis of it meeting the following legislative criteria:

"Schedule 1 – Classes of Development"

Group 14 Marina facilities

- "(1) Development for the purpose of marinas or other related land or water shoreline facilities that moor, berth or store vessels (excluding dinghies and other small craft) at fixed or floating berths, at freestanding moorings, alongside jetties or pontoons, within dry storage stacks or on cradles in hardstand areas and that:*
- (a) moor, berth or store more than 30 vessels in Sydney Harbour, Middle Harbour, North Harbour, Botany Bay, Port Hacking, Broken Bay or associated tidal waters, or*
 - (b) moor, berth or store more than 80 vessels in other waters, or*
 - (c) are located in environmentally sensitive areas of State significance, but excluding any development that, in the opinion of the Minister, is only of local environmental planning significance.*
- (2) A reference in this clause to the number of vessels moored, berthed or stored includes a reference (in the case of an existing facility) to the additional number of vessels moored, berthed or stored at the facility".*

The proposal triggers Part 3A given that it will berth more than 30 vessels within the tidal waters of Broken Bay.

5.0 environmental constraints for consideration

5.1 FLORA AND FAUNA

The proposal has been sited to ensure no impact on any area where there are seagrasses or other aquatic vegetation along the bed of Brisbane Water. Cardno Ecology Lab was commissioned by Gemsted Pty Ltd to provide a seagrass habitat survey of the subject site. The survey has identified the location of seagrasses within the area.

5.2 CAR PARKING

A specialist traffic engineer will be commissioned to prepare a report addressing the issue of car parking and access. Based on initial investigations in relation to the matter of car parking the following should be noted.

The existing consent (DC 21637/96) for the operation of the restaurant and offices on the site shows car parking for 33 vehicles. An initial review of this consent, and the Gosford Council carparking requirements, indicate that based on the respective floor areas, these uses only generate a requirement for 18 spaces. Accordingly, it is considered that a credit of 15 spaces currently exists on the site.

It is proposed to use this credit toward parking facilities for the marina; along with the additional 11 spaces being provided as a result of the works to the car park area.

Car parking for the marina berths is to be provided at the ratio of 0.5:1, as per AS 3962-2001 (*Guidelines for Design of Marinas*). Based on the 26 car spaces available for the marina, this allows for up to 52 berths. However, it has been decided to limit the number of berths to 50.

It is not anticipated that the proposal will trigger the requirements of SEPP *Infrastructure*, given the number of car parking spaces proposed.

Plans of the proposed car parking reconfiguration have been provided within Appendix 1.

5.3 EXISTING COUNCIL STORMWATER DISCHARGE POINT

It should be noted that a Council stormwater discharge point exists to the left of the site. This facility currently services the residential land uses on the opposite side of the railway line. The area of proposed works is clear of the point of discharge.

The discharge point is shown in the two following photographs.



Photo 4 - Looking back along the jetty to the stormwater outlet shown outlined in red.



Photo 5 - Closer view of the stormwater outlet.

5.4 PUBLIC DOMAIN

The only “public land” which will be affected by the proposal is Brisbane Water itself. In this regard, please note that the Department of Lands have signed the development application form as the owner of the public land, and NSW Maritime has been consulted in the preparation of the application. In their response, NSW Maritime confirmed that they are satisfied that the proposal will not have an impact on navigation, and accordingly, they have no objection.

6.0 consultation

It is anticipated that further consultation with relevant agencies will occur as part of the Project and to address the Director-Generals Environmental Assessment Requirements:

- Gosford City Council;
- NSW Department of Environment, Climate Change and Water;
- NSW Department of Primary Industries;
- NSW Maritime; and
- Department of Land and Property Management Authority.

7.0 conclusion

Having regard to the proposed marina and car park upgrade and reconfiguration, which will berth more than 30 vessels within the tidal waters of Broken Bay, it is our view that the proposal is a 'Major Development' to which Part 3A of the Act applies. We look forward to your confirmation in this regard.

We also look forward to receipt of the Director-General's Requirements that will confirm the scope of work for the project, and allow preparation of appropriate reports and studies to accompany the project submission to the Minister.



appendix 1

Plans of the Proposed Works



appendix 2

Deposited Plans/Certificate of Title

appendix 3

Cardno Ecology Lab Report

appendix 4

Department of Primary Industries Correspondence

appendix 5

NSW Maritime Correspondence



appendix 6

Department of Lands Correspondence