

REPORTS THROUGH THE ACTING GENERAL MANAGER

REPORTS FROM THE DIRECTOR COMMUNITY AND NATURAL RESOURCES

33 [CNR-CM] Chinderah Pontoon

SUBMITTED BY: Natural Resource Management

Valid



Caring for the Environment

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

4	Caring for the Environment
4.1	Protect the environment and natural beauty of the Tweed
4.1.3	Manage and regulate the natural and built environments

SUMMARY OF REPORT:

This report is in addition to the report on the Chinderah Pontoon that was considered at the Council meeting of 19 September. In that report it was recommended that the location of the proposed pontoon be amended to take account of concerns raised by commercial fisherman during the pontoon Development Application exhibition period.

From the September meeting a decision on the final location and size of the pontoon was deferred until a community meeting on the proposed pontoon be undertaken.

This report contains the same information on the pontoon as contained in the report put to 19 September Council meeting, as well as a summary of information presented by the community from the public meeting held 15 October 2013, on the proposed pontoon.

This report also contains additional options for Council to consider with respect to the size and location of the pontoon, based on the community feedback.

A large number of issues were raised by community members who attended the public meeting. These are summarised in notes of the meetings proceedings, and in the feedback forms that were completed by meeting attendees. The issues that were raised at the community meeting have been previously considered by Council staff in preparation of the recommendations on the proposed pontoon, including the recommendation to alter the pontoon's location and size as contained in the original version of the 19 September report.

RECOMMENDATION:

That Council:

1. Rescinds point 3 of the resolution at Minute No 455 of the meeting held 17 July 2012, being:
 3. *The project be developed on the basis of the pontoon being 40 metres in length.*
2. Modifies the location and size of the pontoon, moving it 45 metres downstream and reducing its length by 10 metres to 30 metres.
3. Prepares and lodges a new Part V development application for the structure.
4. ATTACHMENT 5-8 are CONFIDENTIAL in accordance with Section 10A(2) of the Local Government Act 1993, because it contains:-
 - (a) personnel matters concerning particular individuals (other than councillors).

REPORT:

At its meeting of 17 April 2012 Council resolved to support the establishment of a jetty structure at Chinderah to properly service the boating fraternity, and commence design and funding applications necessary for this project. The impetus for this resolution was a letter from the Chinderah District Residents Association received on 30 March 2012, requesting Council support for such a project. Council resolved the following:

RESOLVED that :

1. Council agrees to partner with Chinderah District Residents Association to fund and progress the establishment of a recreational boating pontoon at Chinderah.
2. Council accepts the offer of the Chinderah District Residents Association to prepare a development application for the proposed pontoon and proceed with this phase of the project.
3. The project be developed on the basis of the pontoon being 40 metres in length.
4. The Tweed River Committee's advice be sought with regard to the proposal.
5. An application for funding be submitted to NSW Roads and Maritime Services' Better Boating Program for the proposed pontoon.

The proposed location and configuration of the proposed pontoon is shown in the figure below.

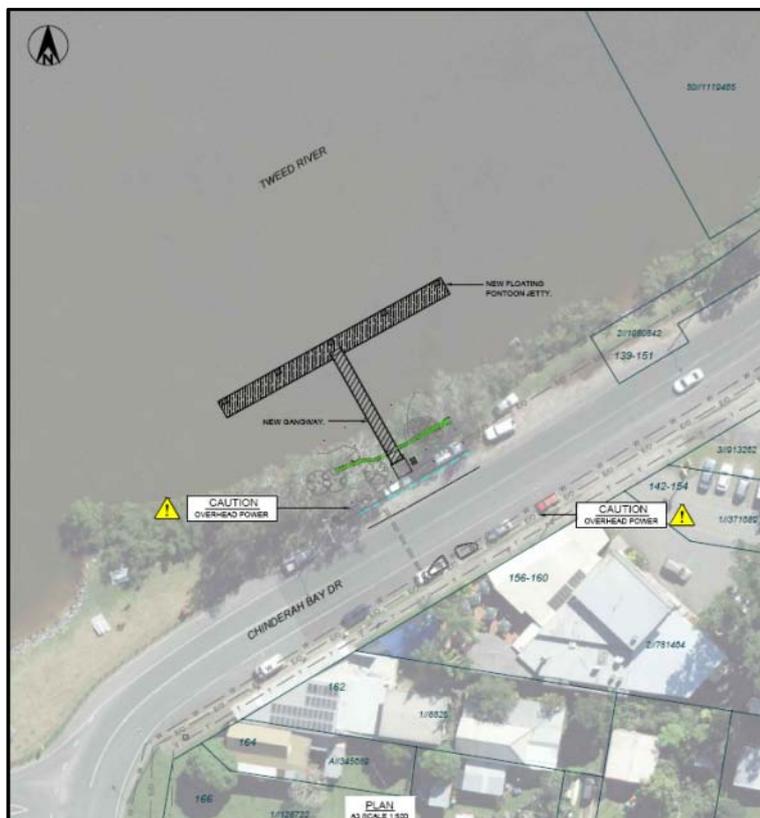


Figure 1. Proposed pontoon location

Council staff subsequently applied to the NSW Maritime Better Boating Program for funds to construct the pontoon. The grant application was for a sum of \$60,000 and was successful. The Better Boating Program grant matched funds available from Council and the community for a total estimated project cost of \$120,000. A report was considered at the meeting of 21 March 2013 where it was recommended that Council accept the NSW Government grant, as well as funds available from the community via the Chinderah Tavern owners, the Taphouse Group. The following resolution was carried:

RESOLVED that Council:

1. *Accepts the funds offered by the NSW Department of Transport, Roads and Maritime Services under the Better Boating Program.*
2. *Accepts the funds offered by the Chinderah Community.*
3. *Lodges an application to construct the proposed pontoon at Chinderah.*
4. *Votes the expenditure.*

A Part V application for the facility was prepared by Darryl Anderson Consulting. This application was funded by the Chinderah Tavern Fishing Club, in their role as project partners. The application was lodged by Council as applicants for, and owner/operators of the proposed pontoon. The Part V application was lodged in May 2013 and advertised in the Tweed Link for 14 days between 29 May and 13 June 2013.

One submission was received on the proposed pontoon (on 30 June 2013) from the Tweed Estuary General Commercial Fishers. This submission was signed by six individuals.

The submission is attached in full, but can be summarised in the following sentence taken from the document:

"The reason we need to make our objection to this proposal known is because the proposal is right in the middle of one of our net hauling grounds and will impact on our fishing operations."

The submission states that due to a loss of haul shots (net fishing areas) within the river over a number of years, there is a cumulative impact on the commercial fishermen's ability to fish successfully. The submission included a plan indicating the area used by the fishermen.

It is noted in the submission from the Tweed Estuary General Commercial Fishers that in the determination of the Court case related to construction of a 115 berth marina at Chinderah, close to the proposed location of the pontoon (*Milne v Minister for Planning & Anor* [No. 2] [\[2007\] NSWLEC 66](#)), that the judge found their claim of the value of the commercial fishing area to be valid, as per the following judgement point 53.

The area occupied by the new western pontoons is also a known haul shot fishing area. While the financial impacts on the 20 or so commercial fishers in the river cannot be quantified, I accept that their exclusion from other parts of the river makes retention of productive fishing grounds important to their continued capacity to make their living fishing the river. I accept that there will be real adverse impacts on those commercial operators. In circumstances where those commercial fishers supply the local market and, I infer, materially contribute to the local economy, those adverse impacts carry weight in the assessment. I do not find the position of the Department of Primary Industries persuasive (that is, that the retention of other more important haul shot areas and the opportunity for education of marina users makes the development acceptable), particularly when weighed with the overall social and economic effects of the proposed extension.

Council staff have met with both the Chinderah Districts Residents Association and representatives of the Tweed Estuary General Commercial Fishers to discuss this issue.

The Tweed Estuary General Commercial Fishers have advised that they would be willing to accept a compromise location for the pontoon, with a reduction in the proposed size. The concept diagram below shows a location and configuration of a pontoon that would be acceptable to the fishermen. The changes result in the proposal being moved 45 metres downstream (east) and being reduced in length from 40 metres to 30 metres.



Figure 2. Proposed alternative location of the pontoon, with length reduced to 30 metres.

The Chinderah Districts Residents Association has advised that they do not support the proposed changes to the location of the pontoon. In a letter received on 29 August 2013 from the Chinderah Districts Residents Association, reasons for objecting to a modification to the pontoon have been outlined. These are summarised as follows:

- Council and the community have been working since March 2012 to deliver the project.

- A 40 metre pontoon is expected to be required to accommodate anticipated levels of vessel use, particularly if one of the larger river cruise boats is moored on the facility.
- Moving the pontoon east will make it more exposed to high velocity flood flows.
- The importance of the area for local fishermen is disputed. It has been advised that long term local residents have never seen fishermen netting in the area.
- At a recent Chinderah Districts Residents Association meeting there was a unanimous decision to request Council to proceed with the pontoon in the originally proposed location.

The letter from the Chinderah Districts Residents Association described above is included as an attachment to this report.

Since this time, further meetings and discussions have been held with the Chinderah Districts Residents Association. Council has been advised that the Association will accept the proposed relocation of the pontoon to a site 45 metres downstream of the original location. The Association has however maintained that they believe the pontoon should be 40 metres in length in order to cater for existing demand.

Implications

The area and configuration of the pontoon which has been nominated as an alternative site has several minor disadvantages:

1. The first is that the location is directly opposite the driveway/entry of the Chinderah Tavern car park. It would not be appropriate for pedestrians to cross Chinderah Bay Drive in this location, so if the pontoon was to be constructed here, pedestrian barriers would need to be installed to ensure that the road crossing is made approximately 50 metres west, at the site of an existing pedestrian kerb refuge. The existing kerb refuge aligns with the originally proposed pontoon location.
2. The proposed alternative location corresponds more closely with an area of scattered seagrass. Field survey and recent aerial photography has shown that a narrow, scattered band of small seagrass patches corresponds with the alternative pontoon location. A gang plank leading to the pontoon would need to span across the seagrass. A gang plank that incorporates a mesh surface would significantly reduce the risk that seagrass would be shaded by this component of the structure. Both the original and proposed pontoon locations have on balance, a similar potential to impact on seagrass. pontoons would lie to the north of the seagrass patches, and potentially shade them at certain times of the day. The aerial photograph included below (taken 5 August 2013) shows seagrass growth in the locality. The photograph has been annotated to indicate the location of both the original and potential alternative pontoon locations, relative to seagrass patches in the vicinity.



Figure 3. Location of seagrass in relation to original and proposed locations

3. The final disadvantage of the alternative proposed location is the time lost and cost incurred to the project in resubmitting an application for approval. The original estimated project timeline included completion in October/November 2013. It is anticipated that changing the proposed location will result in the project being delayed by as much as six months. Council will prepare a new Part V application and REF for the project and advertise it again. Council staff have however been advised by both NSW Maritime and The Chinderah Tavern (Taphouse Group) that funding for the project would not be jeopardised by this delay, or a relocation. There will be cost implications in preparing a new Part V application, and it is possible that costs included in project estimations will have increased. It is estimated that the total project cost may increase by up to \$20,000. These costs can be partially adsorbed within the Waterways Infrastructure management budget, and NSW Maritime can also be approached for additional grants funds to defray the expense.

Public Information Session and Meeting - 15 October 2013

At the Council meeting on 15 August 2013 it was resolved that:

Council holds a public meeting in Chinderah on the proposed Chinderah pontoon to better inform the community and affected stakeholders.

This meeting was held from 4.00-6.00pm on 15 October and was attended by approximately 100 people. All Tweed Shire Councillors, Council's Acting General Manager and the Directors Community and Natural Resources and Engineering and Operations Divisions were in attendance.

The format of the meeting included an information session from 4.00pm where Council staff were available to discuss design plans, location and potential environmental impacts of the proposal. From 5.00pm Mayor Barry Longland chaired a public meeting where attendees were invited to ask questions relevant to the proposal, speak to its merits, and raise concerns relating to its potential impacts.

Summarised notes of the meeting proceedings are included as an attachment to this report.

A feedback form was provided for meeting attendees who wished to make a written statement about their view on the pontoon. The feedback form invited people to state their views on the proposed pontoon with respect to its possible social, economic and environmental effects. A summary of written statements in the 84 feedback forms collected is included as an attachment. Council staff have tabulated all comments received, and where appropriate, shown the frequency with which the same issue or comment has been made. A copy of the original feedback forms is included as a confidential attachment to this report.

OPTIONS:

Council may consider the following options:

1. Move the location of the proposed pontoon 45 metres downstream and reduce the size of the facility to 30 metres.
2. Maintain the existing proposed location of the facility and size at 40 metres.
3. Move the location of the proposed pontoon 45 metres downstream and maintain the size at 40 metres.
4. Move the pontoon 45 metres downstream and adopt an alternative size.
5. Maintain the existing proposed location of the facility and adopt an alternative size.
6. Do not proceed with the project.

CONCLUSION:

The information session component of the public meeting at Chinderah provided an opportunity for Council staff to *better inform the community and affected stakeholders* about the proposed pontoon. The public meeting also allowed a discussion of the full range of community views in relation to the potential benefits or impacts of the proposal.

The recommendation put at the September Council Meeting, to move the pontoon 45 metres downstream and reduce the length to 30 metres, is still considered by staff to be the most appropriate course of action.

As stated in the September report, it is considered that the proposed alternative location of the pontoon will deliver a result that meets the needs of both the Chinderah community, (as articulated by the Chinderah Districts Residents Association), and the Tweed Estuary General Commercial Fishers. Moving the pontoon 45 metres east will not reduce the ease and safety with which people can access shore based facilities. Modifications to the location and size will not diminish its long term usefulness to the community, but will protect an existing, long term commercial use of the river that is coming under increasing, cumulative pressure due to foreshore development.

It has been confirmed by the Chinderah and Districts Residents Association that it is satisfied with the pontoon being moved 45 metres downstream. The Association has highlighted its objection to any reduction in the size of the facility.

Moving the proposed pontoon location will result in the need to submit a new development application. In light of the high level of concern expressed by some members of the community, a resubmitted development application would include a more detailed assessment of matters relating to environmental impact, visual impact and cultural heritage impact. Concerns relating to pedestrian safety will be considered further during the detailed design and assessment of the facility.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

The recommended option will have the potential to increase the project estimate due to the additional environmental assessment that will be required. The reduction in length of the pontoon may reduce the project estimate, however there is a possibility that one of the funding partners may withdraw support for the project.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Consult-We will listen to you, consider your ideas and concerns and keep you informed.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1.	Submission from Tweed Estuary General Commercial Fishers (ECM 3161134)
Attachment 2.	Letter from Chinderah Districts Residents Association Inc. (ECM 3158574)
Attachment 3.	Summarised notes from public meeting (ECM 3195244)
Attachment 4.	Summary of feedback forms (ECM 3195249)
Confidential Attachment 5.	Scanned copy of feedback forms (ECM 3195239)
Confidential Attachment 6.	Late submission feedback form (ECM 3195542)
Confidential Attachment 7.	Late submission email (ECM 3195545)
Confidential Attachment 8.	Correspondence from D Skinner (ECM 3184160)

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