

4. Legislation and Planning Issues

4.1 Queensland Government Approvals

4.1.1 Fish Habitat Policies

Dredging works will be conducted in accordance with Department of Primary Industry’s Fish Habitat Management Operational Policy (FHMOP 004) – Dredging, Extraction and Spoil Disposal Activities.

4.1.2 Sand Extraction

Where sand is to be extracted from a non-tidal watercourse, the extraction site must hold a Quarry Allocation under the *Water Act 2000*. Where a new allocation is sought, a Riverine Protection Permit will be required, also under the *Water Act 2000*.

4.2 Whitsunday Shire Council Strategic Plan

4.2.1 Ecological and Scenic Value

The following development principle is included in the Whitsunday Shire Council Strategic Plan:

“Significant areas of ecological and scenic value are critical and sensitive features should be protected accordingly and taken into account in planning decisions”

The Strategic Plan goes on to identify following areas as having particular significance. These areas and the potential impacts of the project on each are discussed in **Table 4-1**.

■ **Table 4-1 Effects on Areas of Particular Significance from Whitsunday Shire Council Strategic Plan**

Areas of Particular Significance ⁽¹⁾	Response
<i>Fisheries Habitat Areas, seagrass and fringing coral reefs, estuaries and mangroves, wetlands, foreshore systems and major river and creek systems in the Shire;</i>	The proposed Port of Airlie is not located within or close to a declared Fish Habitat Area. It will have some minor impact on fisheries through the removal of a small area of fish habitat (see also Section 9.3.1.9 of the Supplementary EIS and Section 9.2 of this Addendum.
<i>Low altitude rainforests, wet/dry sclerophyll forests, remnant eucalypti and melaleuca woodlands and beach/riverine rainforest;</i>	The project has no impact on these areas.
<i>Major ridgelines and foothills of the Conway, Dryander, Quandong and Clarke Ranges;</i>	The project has no impact on these areas.
<i>National Parks, State Forests, Reserves, Environmental Parks, unallocated State lands, Lake Proserpine and the Marine Park;</i>	The project is not located within any of these areas. It is located close to the Great Barrier Reef Marine Park. This is discussed in more detail in Section 4.2.2 .
<i>Vegetation and landforms of high scenic quality</i>	While Boathaven Bay provides a pleasant aspect, it is not comparable to the high scenic quality that much of the Whitsunday coast and region are known for.

Areas of Particular Significance ⁽¹⁾	Response
Areas of known rare and threatened species	Section 9.2 of the Supplementary EIS discusses protected flora and fauna that has been observed in Boathaven Bay. A small number of vulnerable and rare species have been observed in Boathaven Bay and the bay might also provide habitat for some endangered turtle species. However, in the context of the Whitsunday region, Boathaven Bay cannot be considered to be particularly significant in terms of provision of habitat for rare and threatened species. This is discussed in more detail in Section 9.4 of Addendum

(1) Whitsunday Shire Council Strategic Plan Section 2.4.1 (a)

The proposed Port of Airlie does not compromise the overall ecological and scenic values of the Whitsunday region as identified in the Strategic Plan. Further, the Boathaven Bay site has been identified in the Strategic Plan as a focus for development of tourist facilities.

4.2.2 Values of GBRMP

The following development principle is included in the Whitsunday Shire Council Strategic Plan with respect to the Great Barrier Reef Marine Park (GBRMP) and other environmental values:

“Development whether individually or in conjunction with other activities, should not negatively impact on the water quality and ecological value of surface and groundwater resources, mangroves and estuarine areas and the Great Barrier Reef Marine Park.”

While Boathaven Bay is located outside the GBRMP, it is recognised that management measures for construction and operation of the proposed Port of Airlie must take into consideration the need to protect water quality and ecological values of the GBRMP.

Requirements of the Strategic Plan with respect to this development principle, and the response to these requirements are discussed in **Table 4-2**.

■ Table 4-2 Response to Protection of Environmental Values and GBRMP Values

Requirements of Strategic Plan	Response
Coastal urban development should remain concentrated in Town of Whitsunday with minor expansion at Conway Village and a policy of infill at Wilsons, Dingo Beach and Hydeaway Bay. Island development should reflect consolidation of existing island resorts.	The proposed Port of Airlie development is located within the Town of Whitsunday, outside the boundaries of the GBRMP.
Development should reflect principles of integrated catchment management, as follows:	
(i) protection of natural drainage patterns;	The proposal does not alter any natural drainage patterns. It should be noted that drainage from land adjacent to the proposed development area is already affected by urban development. Potential effects on hydrodynamic flows in Boathaven Bay are expected to be minimal. This is discussed further in Section 5 of this Addendum and Section 5 of the Supplementary EIS.

Requirements of Strategic Plan	Response
(ii) <i>construction of environmentally acceptable effluent and runoff management systems or techniques that prevent pollution of water sources. Where point or non-point source discharges or siltation may negatively affect the water quality of the Shire's watercourses and marine environs, Council will not support the proposal;</i>	Management of site stormwater will be such that discharges to Boathaven Bay do not adversely affect water quality in the bay or GBRMP (ANZECC guidelines will generally form the basis for identifying appropriate water quality criteria for Boathaven Bay, see also Section 7.3 of this Addendum). All stormwater systems will be designed in accordance with the Queensland Urban Drainage Manual, as required by Whitsunday Shire Council. Sewage and wastewater from the site will be transferred to the Cannonvale STP and headworks contributions will be made to support the costs of transferring and treating this effluent.
(iii) <i>development adjacent to marine, freshwater and tidal habitats should establish an appropriate buffer zone to provide for physical processes, including coastal erosion, an environmental filter, storm surge or flood inundation and, where appropriate, sustainable public use</i>	Management and mitigation measures set out in the Supplementary EIS are intended to protect the water quality and ecological values adjacent to and in the vicinity of the proposed Port of Airlie development (see also discussion on compatibility with the State Coastal Management Plan in Section 4.4 of this Addendum). The proposed Port of Airlie is not expected to impact on physical processes, coastal erosion, storm surge or flood inundation in areas adjacent to the project. Appropriate allowances will be made during detailed design to ensure that the project features are not compromised by physical coastal processes. The proposal provides for a high level of public use of the coastal zone in a manner that will not cause any unsustainable impacts apart from the initial loss of habitat to create the proposed Port of Airlie.
iv) <i>use of a watercourse in accordance with the Proserpine River Improvement Trust Strategic Plan or other catchment management plans</i>	Not applicable
<i>Development within critical catchments to mangroves, fisheries, estuarine areas and the Marine Park will be referred to the relevant authority for assessment.</i>	The conservation significance of Boathaven Bay is discussed in Section 9.4 of this Addendum. The Environmental Protection Agency, Department of Primary Industries (Fisheries) and Great Barrier Reef Marine Park Authority are all referral agencies for the EIS process. This Addendum sets out responses to issues raised by these agencies.

The management and mitigation measures proposed in the Supplementary EIS and EMPs are intended to protect water quality and ecological values of the GBRMP.

4.2.3 Tourism Development in Boathaven Bay

Section 2.5.14 of the Strategic Plan refers specifically to the proposed development of Boathaven Bay.

Requirements of Strategic Plan	Response
Nodes are intended to provide for a range of tourist accommodation and visitor and recreation experiences.	The proposed Port of Airlie provides a range of tourist accommodation and visitor/recreational experiences.
It is intended that these nodes be provided with full urban services and designed to be sympathetic to their waterfront and/or National Park setting and prominent positions at the main road and sea entries to the Town. Development is intended to be encouraged where it meets a demonstrated	The proposed Port of Airlie provides full urban services. It is designed to be sympathetic with the waterfront location and also to provide a natural extension of the town of Airlie Beach. Community support for the project is high: 26

Requirements of Strategic Plan	Response
community need.	letters of support were received for the project compared to 16 letters raising concerns about the project.
Development is intended to be in accordance with an approved Plan of Development that reflects the following design philosophies: <input type="checkbox"/> built forms which remain low rise and subordinate to the landscape of foreshores, hillslopes and knolls, as viewed from the ocean and major coastal vantage points,	Refer Section 17 of this Addendum.
<input type="checkbox"/> landscaping and built forms which integrate with and reflect the natural landform and reinforce the tropical, heavily treed nature inherent in the coastal village character, as reflected in forested hillslopes, mangroves and foreshores,	Refer Section 17 of this Addendum.
<input type="checkbox"/> layouts that maximise public access to the ocean front, open spaces and commercial facilities,	Refer Section 2.3 of this Addendum
<input type="checkbox"/> development themes, scales and character compatible with or complimentary to surrounding designations,	Refer Section 17 of this Addendum.
<input type="checkbox"/> direct property access to Shute Harbour Road is minimised through use of design measures such as service roads and property amalgamation.	Refer Section 13.2.4 of this Addendum.

4.2.4 Overall Consistency with Strategic Plan

The overall purpose of the Whitsunday Shire Council Strategic Plan is to outline:

“how Council will guide growth and change to meet the community’s objectives, to protect the region’s environment and to ensure logical and timely provision of services.”

As is clear from this purpose, a key function of strategic planning is to resolve conflicts between the impacts of development and protection of environmental values. The Whitsunday Shire Council Strategic Plan does this by identifying environmental and ecological values that should be maintained and also areas that are considered appropriate for further development.

The Boathaven Bay site proposed for the Port of Airlie is one of those sites identified for further development. Obviously, development of the site is subject to there being no significant impacts on environmental and ecological values held important in the Strategic Plan. As outlined in **Sections 4.2.1** and **4.2.2** of this Addendum and in Sections 7, 8, 9, and 19 of the Supplementary EIS, the proposed Port of Airlie development is not expected to have any significant adverse impacts on the ecological and environmental values identified in the Strategic Plan, provided that the range of mitigation measures identified in the Supplementary EIS are implemented. As discussed in **Section 9.4** of this Addendum, Boathaven Bay is of limited conservation significance compared to most other locations in the Whitsunday region and hence is considered the most suitable location for a development that has significant social and economic benefits.

On this basis it is asserted that the site has been selected to minimise loss of ecological values while maximising beneficial social and economic outcomes sought by the Strategic Plan.

4.3 Duplication of Services

While the proposed Port of Airlie will create some facilities that are already available in Airlie Beach (such as refuelling and boat repair facilities, ferry terminals), this duplication is entirely at the expense of the developer. It is the developer’s opinion that sufficient demand for these facilities exists within the region and that they can be developed and operated competitively.

Public funding directed towards the project is aimed at assistance with construction of the Maritime Training Academy, the like of which does not exist in the region, as well as facilities such as parks within the development and pedestrian zones adjacent to the development. While these latter facilities are available in Airlie Beach, demand for such facilities remains high and is an important contribution to the overall amenity of Airlie Beach for visitors and residents.

All infrastructure required for the project (roads, power, sewer, water) is already available at the site. The proponent will make “headworks” contributions to Whitsunday Shire Council to cover any costs related to increased demand for water or disposal of sewage. Similarly, the proponent will negotiate a pro-rata contribution to Whitsunday Shire Council and Department of Main Roads with regard to impacts on the local and state road network.

In addition, rates will be paid to Council for the land developed and revenue will flow to the State and Federal Governments in the form of tax payments.

On this basis, the project is not expected to introduce any cost burden on any party other than the proponent.

4.4 State Coastal Management Plan

4.4.1 Settlement Pattern and Design

The proposed Port of Airlie is located entirely within an existing urban area. The location was selected as one that allows economic and social benefits to be maximised while minimising impacts on the sensitive natural resources of the Whitsunday Region.

Alternatives to the project were discussed in Section 3.3 of the Supplementary EIS and are further discussed in **Section 3.2** of this Addendum. Some modifications have been made to the proposal presented in the Supplementary EIS, and are discussed in **Section 1.5**. The discussion provided in Section 3.2 demonstrates that the design configuration proposed is the most suitable from an environmental point of view as well as social and economic points of view.

Specific responses to this policy are provided in **Table 4-3**.

■ **Table 4-3 Settlement Pattern and Design**

SCMP Policy	Response
<i>To the extent practicable, the coast is conserved in its natural or non-urban state outside of existing urban areas. Land allocation for the development</i>	The proposed Port of Airlie is located within an urban area. The coastline of Boathaven Bay between the sports ground and Whitsunday

SCMP Policy	Response
<i>of new urban land uses is limited to existing urban areas and urban growth is managed to protect coastal resources and their values by minimising adverse impacts.</i>	<p>Sailing Club is not in a “natural or non urban state” but is highly modified by road construction, car parking and the presence of live aboard vessels.</p> <p>While it is acknowledged that a small area of coastal resources, namely seagrasses, mangroves and intertidal mudflats will be lost as a result of the proposed Port of Airlie, the project is to be designed, constructed and operated to contain these impacts in the immediate area of the development, an area that is already modified (see Section 9.4).</p>
<i>Existing urban settlements on the coast should remain compact and physically separated through the identification and maintenance of non-urban areas. The provision of new infrastructure should promote consolidation and separation of urban areas on the coast. New development within existing urban areas (for example infill and redevelopment) is preferred and should be undertaken so as to avoid or minimise adverse impacts on coastal resources and their values.</i>	As discussed above, the proposed Port of Airlie is located entirely within an urban area. A key criteria in selection of the Boathaven Bay site in preference to other sites such as Shute Harbour was its location immediately adjacent to the urban areas of Airlie Beach and Cannonvale. The Boathaven Bay location thus maximises the social and economic benefits to the local and regional community, while also minimising environmental impacts (see Section 9.4).
<i>Growth of urban settlements should not occur on or within erosion prone areas, significant coastal wetlands, riparian areas, sites containing important coastal resources of economic, social, cultural and ecological value, or areas identified as having or the potential to have unacceptable risk from coastal hazards (refer to policy 2.2.4).</i>	<p>Boathaven Bay coastline is declared an erosion prone area. The SCMP allows that “Redevelopment of [erosion prone] areas or an increase in intensity may only occur in circumstances where it can be clearly demonstrated that it would not compromise coastal management outcomes and principles.” (2.2.2).</p> <p>The proposed Port of Airlie will not exacerbate erosion but will in fact protect the adjacent coastline from erosion. Coastal processes within Boathaven Bay are not expected to be significantly altered by the proposal and thus the integrity of the coastline outside the immediate project footprint is not likely to be compromised by the development.</p>
<i>Any new urban land uses will seek to maintain public access to the coast to protect the public’s expectation of access (refer to section 2.3), and reflect water sensitive urban design principles to maintain natural water infiltration and flows and protect water quality (refer to section 2.4).</i>	The proposed Port of Airlie includes significant areas of public access to the waterfront and will allow existing coastal walking tracks to be extended. This is discussed in more detail in Section 2.3 of this Addendum. The project will be designed, constructed and operated to best practice environmental management standards to minimise impacts on water quality in Boathaven Bay and Pioneer Bay. It is not expected that the proposal will interfere with water flows in Boathaven Bay.

4.4.2 Dredging

Section 2.1.8 of the SCMP addresses dredging and disposal of dredge spoil. Specific aspects of this policy are discussed in **Table 4-4**.

■ **Table 4-4 Dredging**

SCMP Policy	Response
<i>Dredging activities within coastal waters will be undertaken so as to:</i>	The proposed Port of Airlie will not compromise the ability of the site or adjoining land to protect lands from coastal waters.
<i>(a) maintain the ability of the site or adjoining land to function as a barrier protecting lands from coastal waters;</i>	
<i>(b) maintain beach or foreshore stability;</i>	The proposed Port of Airlie will be designed to ensure that stable coastal structures are developed and maintained. Detailed design studies will include hydrological modelling of

SCMP Policy	Response
	Boathaven Bay.
(c) <i>maintain natural coastal processes that supply sand to beaches;</i>	The proposed Port of Airlie is not expected to interfere with any natural coastal processes that supply sand to beaches.
(d) <i>maintain the stability of the dredging area;</i>	The proposed Port of Airlie will be designed to ensure stability of the dredging area. Detailed design will include hydrological modelling and geotechnical investigations which will be input to design of structures and the access channel to ensure that these features are stable.
(e) <i>maintain:</i> (i) <i>water quality (in accordance with policy 2.4.1);</i> (ii) <i>groundwater levels of underlying aquifers and coastal wetlands; and</i> (iii) <i>the local drainage regime on the site and adjoining areas;</i>	<p>The proposed Port of Airlie is not expected to result in degradation of surface or groundwater quality. This is discussed in detail in Section 7 of this Addendum and Section 7 of the Supplementary Report.</p> <p>The development will maintain the existing local drainage regime along the boundaries of the development</p>
(f) <i>have no significant adverse impacts on fisheries (commercial, Indigenous Traditional Owner and recreational), fishing grounds, or spawning and nursery areas;</i>	Impact on fisheries is discussed in Section 9 of this Addendum and Section 9 of the Supplementary Report. Section 16.4 of this Addendum provides further discussion on possible economic impacts on fisheries. Commercial recreational fisheries organisations and indigenous stakeholders have not expressed any concerns in relation to impacts on fisheries.
(g) <i>maintain coastal habitats (including their protection from potential adverse impacts from the disturbance of acid sulfate soils)</i>	<p>As discussed in Sections 8 and 9 of the Supplementary EIS and this Addendum, some coastal habitat in Boathaven Bay will be lost as a result of this project. Modifications have been made to the proposal to ensure preservation of the more viable stands of mangroves at the site (see also Section 8.1 of this Addendum).</p> <p>Detailed acid sulphate soil investigation will be undertaken during the detailed design phase of the project and any ASS identified will be managed in accordance with appropriate state government policies. Sound management practices for ASS will prevent any adverse impacts from ASS on the surrounding coastal habitat.</p> <p>Management of impacts on water quality during construction and operation of the project is expected to prevent any significant degradation of water quality in Boathaven Bay.</p>
(h) <i>not cause unacceptable risk to existing land uses from coastal hazards (in accordance with policy 2.2.4); and</i>	The proposed Port of Airlie development will not impact on existing land used from coastal hazards This is discussed in Section 5 of the Supplementary EIS.
(j) <i>not adversely impact on any cultural resources of Indigenous Traditional Owners (in accordance with policy 2.5.1).</i>	Section 18 of the Supplementary EIS identifies that the proposed Port of Airlie will not adversely impact any cultural resources.
<i>When deciding where dredged material comprising muds, clays and silts will be placed, the choice of site is to provide the best coastal management outcome, having regard to the nature of the spoil, the cost of alternative sites, and potential impacts on coastal resources and their values. Disposal of dredge spoil should be located so as not to adversely affect 'areas of state significance (natural resources)' (refer to policy 2.8.1).</i>	<p>Refer to discussion in Section 3.2 of this Addendum.</p> <p>The proposed Port of Airlie will not impact on any areas of state significance.</p>
<i>If placed at sea, the ANZECC Interim Ocean Disposal Guidelines are to be followed.</i>	
<i>A dredge management plan should be prepared</i>	A detailed Dredge Management Plan will be

SCMP Policy	Response
<p><i>and implemented for maintenance dredging. Dredged material comprising clean sand will generally be kept within the active beach system. Dredging operations will, where appropriate, use fauna-excluding devices.</i></p>	<p>prepared for capital and maintenance dredging programs. This will include means to minimise risk to dugongs and turtles.</p> <p>Sand will be removed from the dredged material and used for construction of the beach breakwater.</p>
<p><i>For any dredging operations, consideration will be given to:</i></p> <p>(a) <i>whether the sediment contains toxicants (listed under the Australian Water Quality Guidelines for Fresh Water and Marine Waters);</i></p> <p>(b) <i>the level and nature of the toxicant; and</i></p> <p>(c) <i>whether disturbance of the contaminated sediment is likely to result in unacceptable impacts on coastal resources and their values.</i></p>	<p>While contamination of sediment in Boathaven Bay is believed to be minimal, further testing of sediment contamination will be undertaken. The process for managing any contaminated sediment identified is discussed in more detail in Sections 6.1 and 6.2 of this Addendum.</p>

4.4.3 Reclamation

Reclamation is addressed in Section 2.1.9 of the SCMP. Specific responses to the reclamation policy are provided in **Table 4-5**.

Alternative project configurations for the proposed Port of Airlie that reduce the footprint of the project are described in **Section 3.2** of this Addendum. None of these configurations significantly reduce the loss of intertidal lands, and they also have significantly reduced public benefit, in terms of revenue to the local and regional economies, employment, public/educational facilities and the opportunity to revitalise the Airlie Beach town centre.

An extensive review of locations for a development such as the proposed Port of Airlie where less land reclamation would be required was not undertaken. While some alternative locations where a lesser degree of reclamation is required are likely to exist in the Whitsunday Region, these locations are generally more environmentally sensitive than Boathaven Bay and also do not have the advantage of being located in close proximity to a population centre such as Airlie Beach.

A modification has been made to the project as described in Section 1.5 to reduce the area of land being reclaimed that is not directly used by the project; that is, to reduce the area of the spoil disposal area proposed in the Supplementary EIS.

■ **Table 4-5 Reclamation Policy**

SCMP Policy	Response
<p>Land below the highest astronomical tide is maintained in its natural state. It may only be reclaimed where:</p> <p>(a) it is necessary for erosion control or beach nourishment purposes;</p>	<p>Not applicable to the proposed Port of Airlie</p>
<p>(b) it is necessary for protecting the natural environment and its processes;</p>	<p>Not applicable to the proposed Port of Airlie</p>
<p>(c) it is for coastal-dependent land uses or other 'areas of state significance (social and economic)' and there is a demonstrated net benefit for the state or a region;</p>	<p>The proposed Port of Airlie is based on marina activities and therefore cannot take place anywhere else but in the coastal zone. The proposed Port of Airlie has been declared a Significance Project under Section 26 of the <i>State Development and Public Works Organisation Act</i></p>

SCMP Policy	Response
	1974. Sections 15 and 16 of the Supplementary EIS identify a range of economic and social benefits associated with the project including increased local and regional revenue, employment opportunities, provision of a maritime training academy and public open space. For (c), (d) and (e) above, it needs to be demonstrated that there are no alternative sites available that do not require reclamation.
(d) it is necessary for the operation of a port or harbour;	Not applicable to the proposed Port of Airlie
(e) it is necessary for the development of a public or private facility and there is public support and a demonstrated public benefit from the proposal;	Public benefits of the proposed Port of Airlie are discussed under item (c) above. The proponent believes that there is significant public support for the proposed Port of Airlie. Department of State Development received 26 properly made submissions in support of the project compared to 16 voicing concerns (not all of these were directly opposed to the project as long as their concerns could be met) Petitions for and against the project were also received. This is quite unusual for submissions on an EIS where those supporting the project typically remain silent during the public submission process.
(f) it is necessary to reinstate land that has been eroded; or	Not applicable to the proposed Port of Airlie.
(g) it is for reclamation within a canal or marina.	The dredged material from excavation of the entrance channel and marina basin will be used for reclamation of land around the marina for marina facilities, commercial, tourist and residential uses
Reclamation of tidal waters creates adverse impacts on coastal resources and their values and therefore requires clear justification and the avoidance or minimisation of such adverse impacts.	In addition to the justification provided above, it is noted that a modification has been made to the project as described in Section 1.5 to reduce the area of land being reclaimed that is not directly used by the project. This is done by reducing the area of the spoil disposal area proposed in the Supplementary EIS. Further information on project alternatives is provided in Section 3 of this Addendum.

4.4.4 Coastal Wetlands

Section 2.8.2 of the SCMP discusses policy in relation to coastal wetlands. This policy states that:

“Further loss or degradation of coastal wetlands is to be avoided and impacts on coastal wetlands prevented, minimised or mitigated (in order of preference).”

The proposed Port of Airlie impacts directly on about 1.2 ha of mangroves in a strip adjacent to Shute Harbour Road and Coconut Grove. The estuary of Campbells Creek is close to the project but not directly or indirectly impacted on by the proposed Port of Airlie.

The policy sets out a number of matters that are relevant to the conservation and management of Queensland’s coastal wetlands, including land within 100m of a coastal wetland. This is addressed in **Table 4-6**.

■ Table 4-6 Coastal Wetlands

SCMP Policy	Response
(a) maintenance of an area between the wetland and any adjacent use or activity, of a width and with characteristics that will safeguard the functions of the wetland and allow for natural fluctuations of location. (The size of the area will be determined from the size, values and vulnerability of the coastal wetland, likely natural fluctuations and the nature of potential threats to its integrity and functions from the specific activity or land use.);	<p>The proposed Port of Airlie proposal has been reconfigured to ensure that the more viable mangroves at the eastern end of the lease area are preserved (See Section 8.1 of this Addendum). Loss of the narrow strip of mangroves adjacent to Shute Harbour Road cannot be avoided in development of the proposed Port of Airlie.</p> <p>The proposed Port of Airlie does not impact directly or indirectly on the wetlands associated with Campbells Creek Estuary.</p>
(b) minimising any modification of the natural characteristics of the wetland, including the topography, groundwater hydrology, water quality, and plant and animal species;	The proposed Port of Airlie is not expected to alter any of these natural characteristics. Hydrological studies to date indicate that water circulation patterns in Boathaven Bay will not be significantly affected. Water quality is also not expected to be degraded (see Table 4-2).
(c) minimising any adverse impact on coastal wetland values from proposed access;	The proposed Port of Airlie will not increase uncontrolled access to coastal wetlands. The possibility of constructing an interpretive boardwalk in the mangrove system of Campbells Creek has been considered. This is likely to enhance understanding and appreciation of mangrove and coastal wetland systems and
(d) any adverse impact on the wetland as a result of proposed or potential pest insect control;	At this stage, there are no pest insect controls proposed. If pest insects become a problem, these will be addressed by controls within the marina rather than the Campbells Creek wetlands.
(e) the appropriate management of acid sulfate soils (see policy 2.4.6);	All requirements in relation to investigation and management of ASS will be complied with (see also Section 6.3 of this Addendum and Section 6 of the Supplementary Report).
(f) maintaining the role of wetlands in providing protection from coastal hazards, including any impacts from potential changes in sea level rise;	The proposed Port of Airlie will not exacerbate any coastal hazards in the Boathaven Bay area.
(g) minimising potential changes in fire regimes that may have adverse impacts on the coastal wetland;	The proposed Port of Airlie will not result in any changes in fire regimes in coastal wetlands.
(h) the need to retain the values and functionality of saltflats, to assist in the maintenance of estuarine system viability;	The proposed Port of Airlie will result in the loss of some small patches (20-50m ²) of saltmarsh plants on the landward side of some of the mangroves to be removed (Section 8.1.3 of the Supplementary EIS). The loss of these small areas of saltmarsh plants will not affect the viability of the Campbells Creek estuary.
(i) the need to maintain the coastal wetland functions to provide habitat for rare, threatened and migratory species;	Some seagrass habitat utilised by dugong and turtle species will be lost. The likely impact of this on these species is discussed in Section 9.1.3 of this Addendum. Otherwise, no significant effects on rare, threatened and migratory species are expected.
(j) the potential for a proposal to introduce plant or animal species non-native to the local area that may have or are likely to have adverse impacts on the coastal wetland ecosystem;	The proposed Port of Airlie is not expected to result in introduction of exotic species to coastal wetland ecosystems.
(k) minimising impacts on the sustainability of economic productivity, including critical inshore habitat for fisheries-related species;	While it is acknowledged that the small loss of fish habitat resulting from the project will translate into a proportional impact on fish catches, given the small area of mangrove to be lost, the already disturbed nature of this habitat, and the fact that it

SCMP Policy	Response
	is a long narrow strip adjacent to a major road rather than a more cohesive area, it is likely that the impact on commercial fisheries will be negligible. This is discussed in Section 16.1 of this Addendum.
(l) the need to restore and rehabilitate degraded coastal wetlands (in accordance with policy 2.8.4); and	No degraded coastal wetlands have been identified as appropriate for restoration.
(m) any long-term maintenance and management implications, particularly for government agencies.	The long term land tenure and maintenance arrangements of the proposed Port of Airlie are discussed in Section 2.9 of this Addendum and Section 2.4 of the Supplementary EIS.

4.4.5 Biodiversity

Section 2.8.3 of the SCMP discusses policy for maintenance of biodiversity.

The overriding policy in this regard is:

“Biodiversity on the coast is to be safeguarded through conserving and appropriately managing the diverse range of habitats including coral reefs, seagrass, soft bottom (benthic) communities, dune systems, saltflats, coastal wetlands and riparian vegetation.”

The range of matters to be addressed to achieve this policy are addressed in **Table 4-7**.

■ Table 4-7 Biodiversity

SCMP Policy	Response
(a) the maintenance and re-establishment of the connectivity of ecosystems, particularly remnant ecosystems;	The proposed Port of Airlie will not result in reduced connectivity of ecosystems.
(b) ensuring viable populations of protected native species continue to exist throughout their range, by maintaining opportunities for long-term survival, genetic diversity and the potential for continuing evolutionary adaptation. This includes the protection of significant wildlife habitats, such as:	
(i) protecting beaches providing significant wildlife habitats (including roosting, nesting and breeding habitat for turtles, birds or crocodiles) through suitable management measures including buffers for those habitats;	The proposed Port of Airlie will not affect any beaches. An additional beach will be created, although this is unlikely to provide any significant habitat value for species of conservation significance.
(ii) protecting the values and integrity of intertidal communities such as tidal flats, saltflats and rocky reefs, including natural fluctuations of location;	The proposed Port of Airlie will result in the loss of a small area of these habitats (about 8ha of intertidal mudflat).
(iii) retaining the current extent and quality of migratory and resident shorebird roosting and feeding habitat. If habitat is to be lost it should be replaced, where practicable, before loss, by an equivalent artificial habitat in a location that minimises any alteration of distribution and abundance of shorebirds;	Port of Airlie will not result in the loss of any significant areas of shorebird roosting and feeding habitat.

SCMP Policy	Response
(iv) maintaining the values and integrity of fish habitats and fish migratory pathways through suitable management measures including buffers for those habitats;	The proposed Port of Airlie will not have any significant effects on fish habitats and migratory pathways (see also Section 16.1 of this Addendum).
(v) protecting the values and integrity of soft bottom (benthic) communities; and	As discussed under item (ii), the proposed Port of Airlie will result in the loss of about 8ha of intertidal mud flats. About 7ha of intertidal/subtidal soft bottom communities will be disturbed as a result of channel dredging.
(vi) retaining and protecting the existing extent, quality and functionality of seagrass beds, particularly in dugong protection areas or known areas of turtle habitat;	While about 8ha of seagrass or potential seagrass areas will be lost, the impact on dugongs is assessed to be low (Helene Marsh 2003, see Appendix A). Similarly, the potential for significant impacts on turtles is considered negligible.
(c) the retention of native vegetation wherever practicable;	The proposed Port of Airlie has been reconfigured to maximise retention of viable stands of mangroves (see Section 8.1 of this Addendum).
(d) the retention of and appropriate management of riparian vegetation along waterways of sufficient width to provide for a self-sustainable linked network; and	Not relevant to the proposed Port of Airlie.
(e) the valuing of Indigenous Traditional Owner ways of managing biological diversity.	Indigenous traditional owners have not expressed any concerns regarding the proposed Port of Airlie. The potential exists to provide interpretive material on Indigenous management of resources and activities in the area within the proposed Port of Airlie.

4.5 Referral under EPBC Act

The proposed Port of Airlie is a controlled action under the Commonwealth EPBC Act. The Queensland State Government EIS process for this project has been accredited by Commonwealth Environment Minister and therefore satisfies requirements under the EPBC Act as well as the State Development and Public Works Organisation Act 1974.

4.6 EIS and Approvals Process

The *State Development and Public Works Organisation Act 1971* does not replace the development approval process under IPA, known as IDAS, but merely modifies it to ensure that the EIS process effectively replaces the Information & Referral and the Notification stages of IDAS. That is, the Council and other relevant agencies are consulted and are able to request additional information through the EIS process, and the notification of the EIS obviates the need for duplicatory notification under IDAS.

The effect of this is:

- ❑ A material change of use development approval will still be required for the proposed development once this land has been created and incorporated into the Planning Scheme.
- ❑ That application will not involve the Information and Referral or the Notification stages of IDAS, and Council will thus not be able to request further information beyond that submitted under the EIS process.

Because of the above, Council has therefore requested the additional information it considers it will need in order to issue the necessary MCU development approval.

However, the applicant is not yet in a position to provide the scope and detail of information requested by the Council, as more detailed planning and design will be necessary before this level of detail can be provided.

To clear up any misconceptions, we wish to make it clear that at the end of this process, Council is not expected to issue a Development Permit.

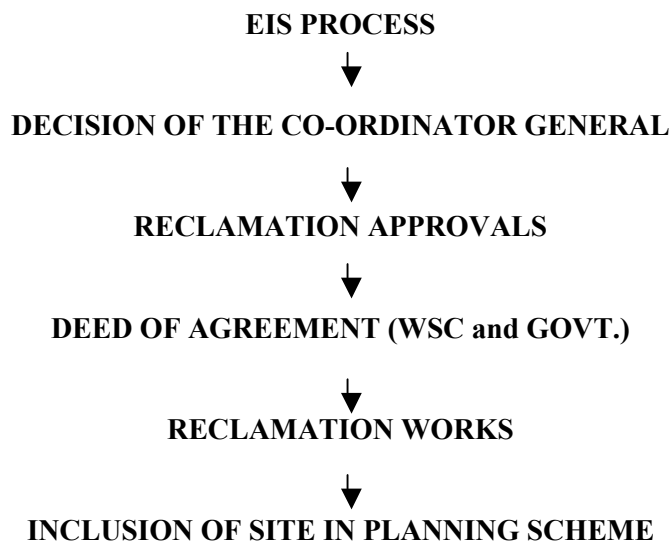
Even if the proponent were to seek a Development Permit (which is not the intention), and Council is of the view that the level of detail of information submitted during the EIS process is not sufficient to support the issue of a development permit, it is open to Council to issue only a preliminary approval (see Section 3.5.11(3)(b) of the *Integrated Planning Act 1997*).

Furthermore, it is open to the Coordinator General to state under Section 39(1) (c) of the *State Development and Public Works Organisation Act 1971* that this initial material change of use must be a preliminary approval.

Subsequent applications will in due course be made for the necessary material change of use Development Permit(s) and more detailed information will be supplied at that time. As such application(s) will be fresh applications, and will be made directly under the *Integrated Planning Act 1997*, the Information and Referral Stage of IDAS will apply, and it will thus be open to Council or any applicable concurrence agencies, to request further information.

Thus, at this stage in the development process, it is the intention of the proponent to submit town planning information to a level of detail consistent with a **Preliminary Approval**. In this regard, it is submitted that the information contained in the Supplementary EIS, and in this response to the Council's information request, is both sufficient and sufficiently detailed to enable Council, at the appropriate time, to issue the necessary material change of use preliminary approval.

The steps in this process are expected to be as follows:



(Particular Development Zone)**MCU (Preliminary Approval) APPLICATION
(based on information already provided)****MCU PRELIMINARY APPROVAL to
PLAN OF DEVELOPMENT (POD)
(No Information or Referral No Notification)****MCU DEVELOPMENT PERMIT(S)
(Information and Referral applies
Notification applies only if not in accordance with approved POD)**

A Plan of Development, to form the basis of the initial material change of use preliminary approval as referred above, accompanies this response to Council's information request.

It is further envisaged that:

- ❑ Immediately following the completion of reclamation works, the land thus established will be included in Council's planning scheme area, within the Particular Development Zone.
- ❑ A material change of use preliminary approval, based upon the attached Plan of Development, will then be issued by Council, subject to reasonable and relevant conditions, including conditions imposed under the Coordinator-General's Report on the Supplementary EIS. These will have already been agreed to as part of the Deed of Agreement prior to reclamation works commencing.
- ❑ Further application(s) will be made for the necessary material change of use development permit(s) at the appropriate time(s), and this application(s) will be code assessable if the subject development is in accordance with the Plan of Development approved under the initial preliminary approval, or impact assessable if not.
- ❑ As stated in 4.2.1 above, the information and referral stage of IDAS will apply to the application(s) for a material change of use "Development Permit(s)".

4.7 Local Planning Issues

4.7.1 IDAS

As explained in 4.2.1, the information and referral stage of IDAS will indeed apply to the material change of use (MCU) development permit application(s) to be made in relation to the proposed development. Accordingly the detailed information outlined in Council's information request will all be supplied, either as part of this EIS process, as part of the MCU preliminary approval application to follow initially, or as part of the MCU development permit application(s) to follow in due course.

The following specific comments are made in this regard:

- ❑ Details of the specific split and extent of commercial floor space and of retail floor space will be provided at the MCU development permit stage.

- The split between ‘permanent’ and tourist accommodation will remain flexible, to be able to respond naturally to market forces.
- A development sequence is provided as follows. The development of the site will be a continuous, sequential program (See **Section 4.7.2**)

4.7.2 Development Sequence

Stage One

- Reclamation of all lands
- Excavation of harbour
- Formation of the beach, park and lookout
- Construction of the boat ramp and carpark
- Construction of the transport interchange
- Installation of all berths
- Construction of the boardwalk
- Construction of all internal roads and services

Stage Two

- Construction of:
 - The transport terminal site C
 - The Hotel site A
 - The town square
 - The comm/ residential site G
 - The residences site N
 - The maritime academy site O

Stage Three

- Construction of:
 - The retail / residential site F
 - The retail / residential site H
 - The ocean apartments site M
 - The carpark area site Q

Stage Four

- Construction of:
 - The marina facilities site J
 - The residential area site B2
 - The seaview apartments site L

4.7.3 Other matters

- Maximum building heights, in storeys, have been provided in the Plan of Development submitted to Council, to a level of detail and finality consistent with an MCU preliminary approval. More concrete and detailed proposals (including RL’s) will accompany future development permit applications, on the basis that any proposals for greater building heights will trigger impact, as opposed to code, assessment.
- Council’s height requirements are noted, and appropriate variations are sought to accommodate the proposals as submitted.

- ❑ Setbacks are preliminarily to be as per the Plan of Development, but may vary when more detailed design is undertaken. Should this occur, this aspect will be dealt with at the MCU development permit stage.
- ❑ The status of particular internal roads have been flagged in Section 2.9 and will be finalised at the MCU development permit stage.
- ❑ Pedestrian and cycle linkages will be provided, as shown preliminarily on the Plan of Development, and their final location and configuration will be resolved at the MCU development permit stage.
- ❑ The final architectural treatment proposals can only be dealt with at the MCU development permit and the building approval stages.
- ❑ Site coverage and the provision of landscaping areas will be generally be as shown on the Plan of Development but, again, these aspects may well vary once more detailed design has been undertaken. Accordingly, these aspects will be fine-tuned at the MCU development permit stage.
- ❑ A landscaping concept plan has been provided (**Section 17.3.1**).

4.8 Canals Act 1958 and Harbours Act 1955

Following advice from the proponent's lawyers, Clayton Utz, it is considered appropriate to seek approvals under the *Harbours Act 1955*.

The proposed Port of Airlie Marina Development involves the excavation and reclamation of an area of tidal water to create a marina. The marina construction involves the cordoning off of an area of tidal water, pumping out the water, carrying out excavation and reclamation (using the excavated material) to construct a horse shoe shaped marina including a basin for the mooring of boats and the removal of the cordon to re-flood the marina.

The *Canals Act* will only apply if the project involves the construction of a canal. "Canal" is defined to mean:

"any artificial channel or lake for use or intended for use for navigational, ornamental and recreational purposes, or any of those purposes, and connected or intended to be connected with any tidal water so that the water of such artificial channel or lake becomes or, on such connection, will become tidal water, and includes any access channel, any addition or alteration of any canal, and any system of canals provided in any subdivision of land".

It is considered that the proposed marina is not a canal for the following reasons:

- (a) It is not an artificial channel or lake as required by the definition. The terms "channel" and "lake" are not defined in the Act. The Macquarie Dictionary defines lake as *"a body of water (fresh or salt) of considerable size, surrounded by land"*. The proposed marina is not surrounded by land and is therefore not a lake. This is confirmed by the unreported decision of *Telface Holdings v Redcliffe City Council* (2002) QSC 426 at paragraph 31. The Macquarie Dictionary provides 13 possible meanings in its definition of channel. The relevant definitions are as follows:
- ❑ "the bed and banks of a river, stream, creek or gully"
 - ❑ "the deeper part of a waterway"
 - ❑ "a wide strait, as between a continent and an island"

- "nautical, a navigable route between 2 bodies of water"

The marina does not appear to fall within any of the above definitions given it is in effect a basin for the mooring of boats.

In the *Telface Holdings* case, it was found that the Newport Waterways Marina in the city of Redcliffe was a channel for the purposes of the definition of "canal" in the *Canals Act*. The definitions quoted from various dictionaries to support this finding were:

- "an artificial waterway for boats" which is taken from the Oxford English Dictionary ("OED").

The OED in turn defines waterway as "a route for travel or transport by water; a river, canal or a portion of a sea or lake, viewed as a medium of transit; an opening for the passage of vessels, esp. entering and leaving a harbour, the fairway".

While part of the marina must necessarily be used for boats travelling between the sea and the actual marina berths, that is not the primary purpose of the marina. The primary purpose of the marina is for the berthing of boats and that small part of the marina used for access by boats is incidental to and necessarily associated with that primary purpose. This should be contrasted with Newport Waterways where the marina also provided access between a canal system, the sea and an area for the berthing of boats and was located within a canal estate.

Boats only enter the marina to access the berths or docking facilities and likewise must leave the marina after using such facilities. It is not itself a route for travel or medium of transit.

- "a means of access" which is taken from the Macquarie Dictionary.
It appears to us that this is not the intended meaning of the word "channel" when used in the context of defining "canal". Channel is clearly intended in the definition of canal to relate to a waterway of some description. This definition is one of many definitions of channel of general application and not specifically limited to a which are not related to waterway use and therefore have no application in the context of the definition of canal.
- "a navigable route between two bodies of water" which is taken from the Macquarie Dictionary.

The marina is a "dead-end" arrangement. There is no passage through the marina to any other body of water. This should be contrasted with Newport Waterways where the marina in that case provided access between a canal system, the sea and an area for berthing of boats and was located within a canal estate.

It is not constructed in non-tidal water as required by the definition.

Even if the marina is an artificial lake or channel, it is our view that the marina still does not fall within the balance of the definition for the reasons set out below.

The definition of canal requires the artificial channel or lake to be connected or intended to be connected with any tidal water so that the water of the channel or lake becomes or, on such connection, will become tidal water.

The Act defines "tidal water" in accordance with the definition of that term in the Harbours Act 1955 which is *"any part of the sea or of any harbour (including any tidal navigable river) ordinarily within the ebb and flow of the tide at spring tides"*.

The marina basin is ordinarily within the ebb and flow of the tide at spring tides and is therefore tidal water. It will not stop being tidal water during construction even though water will be pumped out of the area during construction to allow dry excavation to occur. The area will be re-flooded once the construction is completed and therefore the area, although temporarily dry, will still be "ordinarily" within the ebb and flow of the tide at spring tide. The use of the word "ordinarily" clearly allows for unseasonal or unusual events which prevent the ebb and flow of the tide at spring tides not otherwise affecting what amounts to tidal water. The fact there may be no or limited water within the marina basin during construction does not alter this given the definition of "tidal water" includes any part of the sea or any harbour which would include the bed as well as the water of the sea or harbour.

If this were not the case, the marina would be a canal if the dry excavation technique was used for its construction but would not be a canal if wet dredging was used. This can not have been the intention of the legislation.

Further, the definition of canal specifically provides that it *"includes any access channel"*.

"Access channel" is defined to mean:

"any artificial channel constructed in tidal water in association with the construction of a canal and connected or intended to be connected to such canal, and any training wall or other works associated with such artificial channel, and includes any addition to or alteration to any such artificial channel, training wall or other works".

The marina will be constructed in tidal water but is not an access channel because:-

- It is not a channel for the reasons set out in 2.2(a) above;
- It is not constructed in association with the construction of a canal; and
- It is not connected or intended to be connected to a canal.

The fact that the definition of "canal" specifically includes any "access channel" seems to confirm that the term "artificial channel or lake" in the definition of canal does not include a channel or lake constructed in tidal water. If the term "artificial channel or lake" did include an artificial channel or lake constructed in tidal water, then there would be no need to include the term "access channel" in the definition of "canal" as the term "artificial channel or lake" would already cover this. Put another way, to give some meaning to the term "access channel", the term "artificial channel or lake" must be interpreted to mean a channel or lake constructed in non-tidal water.

The Telface Holdings decision can also be distinguished on this basis as the Newport Waterways Marina was constructed on non-tidal land namely dry freehold lots which were subsequently flooded and connected to tidal water.

There are other provisions in the *Canals Act* which also support this approach which are set out below:

- ❑ Section 10 provides that when a canal is connected with any tidal water that canal shall become a harbour if the tidal water is within the limits of a harbour and shall become tidal water if that tidal water is not within the limits of a harbour. This presupposes that the canal is constructed on non-tidal land.
- ❑ Section 10A provides that when an access channel is connected with any canal it shall remain as part of a harbour if the tidal water within the access channel is within the limits of a harbour and shall remain as tidal water if that tidal water is not within the limits of the harbour. This again distinguishes between an access channel which is constructed in tidal water as opposed to a canal which is constructed in non-tidal water.

Also, this approach is supported by the fact that the approval of the Governor in Council is required for the construction of the marina by virtue of section 236 of the *Transport Infrastructure Act* which preserves section 86 of the *Harbours Act 1955* which requires approval for works on tidal lands or waters. There appears to be little utility in requiring a further approval of the Governor in Council for the same structure under the *Canals Act*. Again, this can not have been the intention of Parliament.

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