

### 12.3 SOUTH LAKE WATERWAY – WATER RIGHTS MANAGEMENT & COMMUNITY CONSULTATION

REPORT INFORMATION	
<b>Report Title</b>	South Lake Waterway – Water Rights Management & Community Consultation
<b>Records Reference</b>	9.24.1.2 REP2351
<b>Organisational Unit</b>	Corporate & Community
<b>Responsible Officer</b>	Manager Building & Property - Brad Tolley
<b>Report Attachment/s</b>	Yes Attachment 6 N23465 South Lake Waterway Consultation Summary Report (redacted version)
REPORT PURPOSE	
<p>The purpose of this report is to provide Council with a summary of the submissions received during the community consultation period pertaining to the potential ground leases over the South Lake Waterway.</p> <p>The report will detail the process undertaken, the key themes of submissions both for and against the proposal and inform Council on further information identified on the matter not previously reported on.</p> <p>It is intended that this report will provide sufficient detail on the risks and implications that may arise should Council resolve to grant, or not grant, leases over the waterway so that Council is fully informed in its decision-making.</p>	
REPORT DECISION MAKING CONSIDERATIONS	
<b>Council Role</b>	Owner / Custodian - Manage community assets including buildings, facilities, public space, reserves on behalf of current and future generations
<b>Strategic Alignment</b>	SDP GOAL: Not Applicable SDP ACTION: Not Applicable
<b>Annual Business Plan</b>	ABP INITIATIVE: Not Applicable ABP PROJECT: Choose an item.
<b>Legislation</b>	Local Government Act 1999 Planning, Development and Infrastructure Act 2016 AS 3962 – Guidelines for the design of marinas PIANIC Harbour Approach Channels Design Guidelines
<b>Policy</b>	Public Consultation & Community Engagement 2.63.1
<b>Budget Implications</b>	Moderate Variation > \$10,000 < \$50,000
<b>Risk Implications</b>	High Risk
<b>Resource Implications</b>	Moderate Variation > 5 hours < 20 hours

<b>Public Consultation</b>	Yes - Recommended
<b>IAP2 Commitment</b>	INFORM - We will keep you informed.
<b>OFFICER'S RECOMMENDATION</b>	
<p>That Council:</p> <ol style="list-style-type: none"> <li>1. Receive and note the submissions received during the South Lake Waterway Community Consultation process as presented as an Attachment to this report;</li> <li>2. Having regard to the process undertaken, is satisfied the community consultation has met the requirements of Council's Public Consultation &amp; Community Engagement Policy;</li> <li>3. With consideration of all submissions received, incorporating the advice provided in previous Council reports and incorporating the information provided in this report, do not grant landlord consent for the installation of a pontoon at 5 Southwater Drive, Port Lincoln; and</li> <li>4. Request a further report from Council Administration as to the options available to resolve the existing pontoon matter which has been installed without landlord consent, with proposed timelines for resolution.</li> </ol>	

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### REPORT DETAIL

Following a recent Development Application for a new pontoon at 5 Southwater Drive, and the identification of an unresolved matter pertaining to an existing pontoon, both within the Council-owned waterway commonly referred to as the South Lake Waterway, Council has been investigating its responsibilities and options to determine whether leases may be granted, or the land disposed of, and the implications of such a decision.

A report was presented to Council at the Ordinary Meeting held 16 January 2023 which advised Council on the navigational safety criteria relevant to the installations of pontoons in the South Lake Waterway. The report referred to the applicable Australian Standards as advised by the Department for Infrastructure and Transport, which have been developed to outline the agreed design principles and industry practices that ensure the safety of a waterway and its users. The report also included further correspondence from the Department for Infrastructure and Transport on the matter that suggested that pontoons installed where landowners did not have the required water rights may impact on the waterway safety.

Subsequent to the findings of the investigation into the safety impacts of pontoons being installed in the section of the South Lake Waterway where land titles do not extend into the waterway, Council Administration concluded that ground leases for this purpose were not suitable and as a result no further investigation into lease terms or other details were carried out. As part of the report, the Council Administration recommendation was for Council to not provide landowner consent, and on that basis, not pursue leasing options or the disposal of the land.

However, Council did not support this recommendation and resolved the following.

### MOTION

**CO 23/004      Moved: Councillor Broadfoot      Seconded: Councillor Rowsell**

- 1. That Council, as Landowner, does provide in-principle consent for the development of a suitable pontoon at 5 Southwater Drive, as the proposed development is on Council-owned area of the waterway;**
- 2. On the basis of Point 1, Council will pursue a lease option but not disposal of the land, subject to a community consultation process being carried out and reported to Council;**
- 3. That Council will revise the management plan with respect to the specific attributes of the waterway, which will be included as part of the Community Land Management Plan review; and**
- 4. That the owners of the existing pontoon which is currently located on Council land (waterway) without an underlying lease agreement, be included in the community consultation process with respect to a leasing arrangement being put in place.**

**The Motion was put to the vote and was CARRIED**

Councillor Staunton called for a Division.

The Presiding Member declared the vote be set aside.

Members Voting in the Affirmative: Councillors Ritchie, Rowsell, Cowley, Poynter, Linn and Broadfoot

Members Voting in the Negative: Councillors Richards, Staunton and Hollamby

**The Presiding Member declared the Motion CARRIED**

As per resolution CO 23/004:

“Council’s in-principle landowner consent for the proposed development and the potential for subsequent leases to be negotiated” was released for Community Consultation.

Submissions were able to be lodged via the City of Port Lincoln’s YourSay engagement hub or by direct written correspondence.

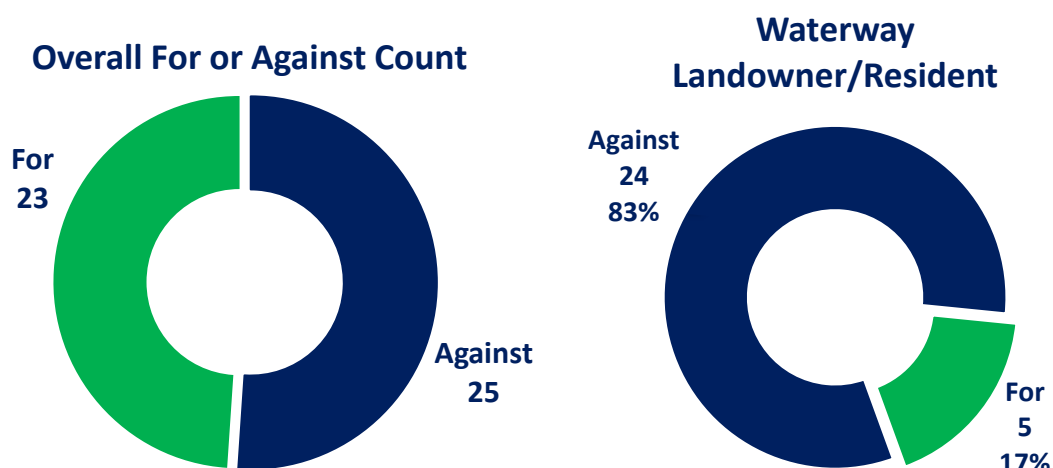
The consultation period ran from 17 February 2023 to 9 March 2023 and was promoted through local print media and the City of Port Lincoln’s social media page.

Additionally, letters were delivered to each premises along the waterway, and letters posted to all property owners whose listed postal address was not within Port Lincoln. This was to ensure, as much as reasonably practicable, that the stakeholders most affected by the proposal, being the residents and landowners along the waterway, were consulted with.

Upon close, 55 submissions in total were received. For the purposes of reporting the statistics of the consultation, submissions made by parties of the same household, where known, have been treated as one submission. Multiple submissions by the same individual have also been treated in this way. Conversely, where submissions have been made jointly, and signed off by more than one party, each party is being counted individually. 1 respondent is known as being either Council staff or an Elected Member, this response has been excluded from the consultation data. Additionally, a subsequent request was made by one respondent to have their submissions removed from any public reporting, which has resulted in the removal of a total of 4 submissions.

After applying the above, 48 total individual submissions were retained, of which 29 responses were identified to be from persons who are residents and or landowners of the waterway.

Some basic visual representations of the submissions are provided below.



As the charts show, out of the 47 submissions:

- 25 respondents (52%) were opposed to the approval of any new pontoons and the proposed leases; and
- 23 respondents (48%) supported the proposal. (It is worth noting that in multiple instances submissions were direct duplicates of one another posted by separate respondents.)

It should be noted that 29 out of 44 submissions were received from persons who stated that they reside or own property on the waterway and, of that 29, a majority 24 submissions (83%) were against the approval of any new pontoon or related lease.

The submissions received that supported the proposal may be summarised as having the following key concerns and sentiment:

- Support for landowners to pursue improvement for their property by installing pontoons;
- Support from infrequent users of the waterway who visit the area who have no objection to the construction of new pontoons in the waterway; and
- Support to retain the existing pontoon at 1/25 Jubilee Drive, Port Lincoln as there has been no reported incidents since its construction.

The submissions received that opposed the proposal may be summarised as having the following key concerns and sentiment:

- The design of the waterway was and is intentional to provide sufficient and safe passage for vessels navigating the water – this should not be compromised;
- Concern from existing landowners with water rights, and right of way over the Council owned section of waterway, that permitting this may impede on their safe access to their properties and be an encumbrance to this; and
- Concerns that, if approved, permitting pontoons in this area puts existing landowners at a financial disadvantage by:
  - excluding all persons along the section of Jubilee Drive and Southwater Drive the ability to equally install a pontoon due to clearance concerns (prior Development Applications by landowners were refused), and
  - potential impacts on property value.

**Additional Note**

Several submissions received were accompanied by historic documents and information from past consultation processes held on this same matter. These documents are included as attachments in the consultation summary report.

The historic information provided highlighted that an omission was made by the Council Administration when presenting this issue before the Councillors in past reports. A previous recommendation made by Council in 2011 regarding the same issue had been overlooked and omitted.

The resolution carried by Council in 2011 was as follows:

<b>CO 11/0321</b>	<b>Lease – South Lake Waterways – Residential Pontoon Systems</b>
<b>Moved:</b>	<b>Cr Papazoglov</b>
<b>Seconded:</b>	<b>Cr Bascombe</b>
<p><b>That Council having given consideration to the submissions received during the public consultation process do not support issuing a lease to the property owners, over the South Lake waterways adjacent to Lot 5 (House 5) and Lot 6 (House 7) Southwater Drive, Port Lincoln for the purpose of installing residential pontoon systems.</b></p>	

**CARRIED**

<b>CO 11/0322</b>	<b>Formal Motion – Motion Laid Upon the Table</b>
	<b>Lease – South Lake Waterways – Residential Pontoon Systems</b>
<b>Moved:</b>	<b>Cr Rogers</b>
<b>Seconded:</b>	<b>Cr Bartlett</b>
<p><b>That Motion CO 11/0321 ‘Lease – South Lake Waterways – Residential Pontoon Systems’ be laid upon the table pending additional information from Council staff.</b></p>	

**LOST**

The resolution carried in January 2023 (CO23/004) was considered without the knowledge of Resolution CO11/0321. It may also be noted that with regards to the current resolution CO23/004, “in-principle” consent pending community consultation does not bind Council to a predetermined outcome.

However, should Council still determine to proceed with the issuing of a lease for 5 Southwater Drive, Council will need to resolve to rescind this past resolution (CO11/0321).

Given the time since resolution CO11/0321 has passed, it may not be unreasonable for it to be reviewed, however it is worth noting that neither the physical form nor intended use of the waterway has changed during this time.

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**REPORT CONCLUSION**

It is now readily demonstrable that Council has explored fully the viability of supporting the construction of new pontoons through leasing portions of the South Lake Waterway to landowners who do not have water rights to install a pontoon, including receiving feedback from the impacted stakeholders and the broader community.

For the third time, consultation with the community on the matter has heard that the majority of the community is opposed to the presence of pontoons in this area, particularly where it relates to the submissions from residents and/or landowners of the waterway, with 83% of that demographic opposed. It should be noted, that this feedback is valuable, however not the determining factor in the recommendations or ultimate decision making of Council.

The relevance of the Australian Standards “3962 – Guidelines for the design of marinas” advises the minimum formula recommended to be used to maintain safe navigable passage and can be readily applied to this case. The implications of the approval of these leases and the subsequent construction of pontoons have previously been stated by legal counsel to have potential to be deemed an encumbrance over the right of way held by existing landowners with water rights. These two items present as a real risk of future legal litigation where Council would need to demonstrate how and why it did not adhere to industry best practice and past legal opinion.

Council was, in-principle, amenable in providing its consent subject to the development application process for the construction of new pontoons in this area following the community consultation process. However, consistent with the past resolution (CO 11/0321) of Council in 2011, and with due consideration of the raised perceived and real risks to both safety and legal dispute by community in respect of the recent consultation process, Council Administration considers the most prudent course of action is for Council to not grant landowner consent for the pontoons. It should be noted that granting development approval and granting landowner consent are two distinct and separate processes, however both must be granted in order for the installation to proceed.