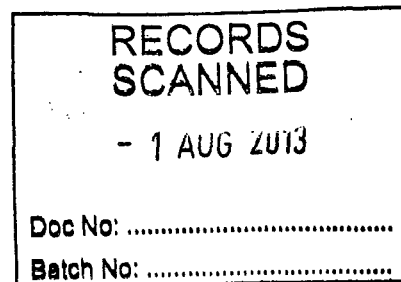




Department of Primary Industries

Our Ref: OUT13/19776 TRIM 13/530

The General Manager
Ballina Shire Council
PO Box 450
BALLINA NSW 2478



30 July 2013

Attention: Mr Robert Thornton

Dear Mr Thornton

**Re: Designated Integrated Development Application No. DA 2013/162
Extractive Industry 610,000 m³
Lot 32 DP1151612, Newrybar Swamp Road Tintenbar Ballina LGA**

Thank you for your letter of 10 May 2013 inviting Fisheries NSW, a division within the Department of Primary Industries to provide comment on the above mentioned Development Application. I apologise for the delay in my response to this request.

Fisheries NSW is responsible for ensuring that fish stocks are conserved and that there is "no net loss" of key fish habitats upon which they depend. To achieve this, the Aquatic Habitat Protection Unit assesses activities under Part 5 of the *Environmental Planning and Assessment Act 1979* in accordance with the objectives of the *Fisheries Management Act 1994*, the aquatic habitat protection and threatened species conservation provisions in Parts 7 and 7A of the Act, and the *Policy and Guidelines for Fish Habitat Conservation and Management (2013 Update)*. In addition Fisheries NSW is responsible for ensuring the sustainable management of commercial, quality recreational fishing and viable aquaculture within NSW.

Fisheries NSW assessment of the proposal is that the matter does not trigger an integrated referral under the *Fisheries Management Act 1994* as a consequence **Fisheries NSW has no role in issuing GTAs for this proposal.**

Division of Primary Industries, Fisheries NSW
1243 Bruxner HWY WOLLONGBAR NSW 2477
Tel: 02 6626 1397 Fax: 02 6626 1377 ABN 72 189 919 072 www.dpi.nsw.gov.au

Fisheries NSW has however, **chosen to provide comment** on this proposal for the following reasons:

- The site of the proposed development is located within 10km of Priority Oyster Aquaculture Areas within North Creek (Attached map). SEPP 62 has associated with it, a planning direction (copy attached) that requires consent authorities to: *“consider whether, because of its nature and location, a development may have an adverse effect on oyster aquaculture of POAAs.”*
- Furthermore, the Department’s new *Policy and guidelines for fish habitat conservation and management* 2013 specifically reiterates the need for: *“Comprehensive environmental assessment – Impacts (including direct, indirect, on and off-site, short and long term and cumulative impacts) of any works or activities on fish and key fish habitat are to be assessed in all development and planning procedures. Assessment of alternative options including sites, work methods, timing, etc, shall also be undertaken as part of the assessment to minimise or mitigate potential impact.”*

Fisheries NSW review of the development application identifies the following matter for close consideration prior to approval.

- *SEPP 62 Water quality guidelines*

SEPP 62 requires consent authorities considering whether a development may have an adverse effect on oyster aquaculture of priority oyster aquaculture areas. The table below outlines is provided as a guideline for water quality standards for oyster aquaculture areas. Particular note should be given to the lower limit of pH which is 6.75, as the plans in the assessment documentation have been focused on achieving pH levels between 6.5 and 8.5.

Parameter	Guideline	Source
Faecal (thermo-tolerant) coliforms	90 th percential of randomly collected Faecal coliform samples do not exceed 43MPN or 21 MF/100mL	ASQAP Operations Manual 2002 and the NSW Shellfish Program Operations Manual 2001
pH	6.75 – 8.75	Schumway (1996)
Salinity	20.0 – 35.0g/L	Australian and New Zealand Guidelines for Fresh and Marine Water Quality (2000)
Suspended solids	<75 mg/L	
Aluminium	<10µg/L	
Iron	<10µg/L	
Other parameters	For other parameters please refer to Section 4.4 and Section 9.4 of the Australian and New Zealand Guidelines for Fresh and Marine Water Quality (2000)	

Consideration may need to be given to requiring two additional water quality measures in an appropriately designed testing regime of the water (23ML/yr) being extracted from the site and discharged to surface waters. The first parameter is the concentration of sulfides within the water to be discharged. It is becoming more likely that oysters aquaculture can be severely effected by exposure to sulphides, even when pH is being recoded at acceptable levels. Preliminary investigations

were made into oyster kills in the Macleay as a consequence of exposure to sulfides.

The other parameter is the Oxygen Reduction Potential (ORP) of the water (measured in mV). The measure of chemical reactions in the release water serving as a measure of how much oxidation or reduction is taking place under given conditions.

Fisheries NSW notes that the proponent has made commitments in the assessment documentation to undertake monitoring of a range of parameters at the four groundwater bores during the operation of the facility. Should Council approval the proposal, Fisheries NSW would be encouraged if Council conditioned that such monitoring as proposed by the proponent be undertaken.

- Consideration of alternative extraction methods

The presence of groundwater from 1 metre below the surface and the presence of known acid sulfate soil layers at various depths from across the site from depths of 0.5 metres below ground level is documented in the Acid Sulfate Management Plan for the proposal.

The present proposal requires pumping out groundwater and winning of the sand. The proposal does not document sufficiently consideration of alternate extraction methods that limit or do not require drawing down of groundwater. These comments are made cognisant that the 'Ballina Airport Pit' owned and managed by Ballina Shire Council initially operated under a regime requiring the pumping down of groundwater but has now changed to wet dredge extraction in part, to satisfy water quality requirements and limit impacts on aquatic habitats. Fisheries NSW would be encouraged if the proponent reconsidered this aspect of the proposal.

If you have any further enquiries please contact me on (02) 6626 1397.

Yours sincerely



Patrick Dwyer
Fisheries Conservation Manager (North)



PLANNING SYSTEM

State environmental planning policies

Circular	PS 07-014
Issued	22 August 2007
Related	PS 07-013

Amendment no. 3 to SEPP 62 –implications for development that may affect oyster aquaculture

This circular is to advise coastal councils of the planning implications of State Environmental Planning Policy No. 62—Sustainable Aquaculture (Amendment No. 3), gazetted on 8 December 2006, and the NSW Oyster Industry Sustainable Aquaculture Strategy relating to developments that may affect oyster aquaculture.

Introduction

Oyster aquaculture is the commercial cultivation of any species of edible oyster, e.g. Sydney rock oyster, Pacific oyster and Angasi flat oyster.

Oyster aquaculture in NSW is threatened by declining estuarine water quality, increased use of waterways and development adjacent to estuaries. These affect both oyster productivity and the suitability of oysters for human consumption.

OISAS identifies priority oyster aquaculture areas (POAA) and provides for the protection of these areas from development that may adversely affect the environmental conditions required for viable oyster aquaculture. OISAS also establishes industry best practice based on the principals of ecological sustainable development.

Copies of OISAS and maps showing the location of POAAs have been sent to the relevant coastal councils and are available from the Department of Primary Industries website at <http://www.dpi.nsw.gov.au>.

Development that may affect oyster aquaculture

Consent authorities are required to consider whether, because of its nature and location, a development may have an adverse effect on oyster aquaculture or POAAs.

If such an effect is anticipated:

- the development application must be referred to the Department of Primary Industries for

comment (see Further Information below for address details for referral)

- the consent authority must consider these comments if received within 21 days.

A consent authority may refuse an application if it is satisfied that the development will have an adverse effect on, or impede or be incompatible with oyster aquaculture (or future oyster aquaculture in a POAA) despite any mitigation measures proposed.

In determining an application for any development the consent authority is to take OISAS into consideration.

Table 1. Water quality guidelines for oyster aquaculture areas

Parameter	Guideline	Source
Faecal (thermo-tolerant) coliforms	90th percentile of randomly collected Faecal coliform samples do not exceed 43MPN or 21 MF/100mL	ASQAP Operations Manual 2002 and the NSW Shellfish Program Operations Manual 2001
pH	6.75 – 8.75	Schumway (1996)
Salinity	20.0 – 35.0 g/L	Australian and New Zealand Guidelines for Fresh and Marine Water Quality (2000)
Suspended solids	<75 mg/l	
Aluminium	<10µg/L	
Iron	<10µg/L	
Other parameters	For other parameters please refer to Section 4.4 and Section 9.4 of the Australian and New Zealand Guidelines for Fresh and Marine Water Quality (2000)	

What development is likely to have an adverse effect on oyster aquaculture or POAAs?

Development may have adverse impacts on oyster aquaculture if, for example, the development will limit access to oyster leases or have an impact on water quality and, consequently, on the health of oysters or the consumers of those oysters. Such development, and any other development that by its nature is likely to adversely affect the environmental conditions required for oyster aquaculture, must be referred to the Department of Primary Industries.

As a guide, development that is likely to have an adverse effect will be located in the same estuary catchment, be within 10 kilometres of a POAA or other oyster aquaculture, be in close proximity to a waterway and be:

- subdivision of land where the future development created by the subdivision will rely on onsite disposal of sewage effluent
- subdivision of land adjacent to a river or estuary or adjacent to foreshore crown reserve
- development that will rely on onsite disposal of sewage effluent
- development that includes small or private sewage treatment plants where effluent might be discharged to or infiltrate to a receiving water
- reticulated sewers with overflow or designated discharge points
- biosolid, effluent or purified wastewater reuse schemes
- development where significant volumes of organic or mineral fertilizer will be stored or used such as golf courses, turf farms, soil supplies, landscape supplies, nurseries
- development that may limit marine access to POAA
- tourism and recreation-related development immediately adjacent to a POAA or other oyster aquaculture
- marine-related development, including marinas, jetties, wharves, boat-launching ramps, boat repair facilities, charter and tourist boat facilities, boatsheds, moorings for visiting vessels, pump out facilities and commercial port facilities
- intensive livestock industries, livestock processing facilities, animal boarding or training facilities, stock and saleyards, animal racetracks
- dredging or reclamation
- development involving earthworks on potential or actual acid sulphate soil.

OISAS to be considered in making local environmental plans

The Minister for Planning has issued a section 117 direction, which commenced on 19 July 2007 (see Direction No. 1.4 attached) requiring councils to show POAAs on local environmental plans and have regard for these areas in preparing a new local environmental plan. The Director-General of the Department of Primary Industries may object to the terms of a draft local environmental plan on the grounds of deleterious effects on an oyster aquaculture area.

Further information

For more information on OISAS please contact:

Senior Policy Officer - Aquaculture
Department of Primary Industries
Locked Bag 1, Nelson Bay NSW 2315
Phone: 02 4916 3823
Mobile: 0 429 424 306
Fax: 02 49819074

Referral of development applications to the Department of Primary Industries under clause 15B(1)(b) should be addressed, as relevant, to:

North Coast (Hastings River to Tweed River)
Senior Fisheries Conservation Manager
Department of Primary Industries
1243 Bruxner Highway Wollongbar NSW 2477
Phone: 02 6626 1200

Central Coast (Manning River to Brisbane Water)
Senior Fisheries Conservation Manager
Department of Primary Industries
Private Bag 1, Nelson Bay 2315
Phone: 02 4982 1232

Sydney Region (Botany Bay, Georges River and Hawkesbury River)
Senior Fisheries Conservation Manager
Department of Primary Industries
PO Box 21, Cronulla NSW 2230
Phone: 02 9527 8422

South Coast (Shoalhaven River to Wonboyn River)
Senior Fisheries Conservation Manager
Department of Primary Industries
PO Box 97, Huskisson NSW 2540
Phone: 02 4441 8969

Authorised by:
Sam Haddad
Director General

Important note: This circular does not constitute legal advice. Users are advised to seek professional advice and refer to the relevant legislation, as necessary, before taking action in relation to any matters covered by this circular.

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1.4 Oyster Aquaculture

Objectives

- (1) The objectives of this direction are:
 - (a) to ensure that Priority Oyster Aquaculture Areas and oyster aquaculture outside such an area are adequately considered when preparing a draft LEP,
 - (b) to protect Priority Oyster Aquaculture Areas and oyster aquaculture outside such an area from land uses that may result in adverse impacts on water quality and consequently, on the health of oysters and oyster consumers.

Where this direction applies

- (2) This direction applies to Priority Oyster Aquaculture Areas and oyster aquaculture outside such an area as identified in the *NSW Oyster Industry Sustainable Aquaculture Strategy* (2006) ("the Strategy").

When this direction applies

- (3) This direction applies when a council decides to prepare, or is directed by the Minister to prepare, any draft LEP that proposes a change in land use which could result in:
 - (a) adverse impacts on a Priority Oyster Aquaculture Area or a "current oyster aquaculture lease in the national parks estate"; or
 - (b) incompatible use of land between oyster aquaculture in a Priority Oyster Aquaculture Area or a "current oyster aquaculture lease in the national parks estate" and other land uses.

What a council must do if this direction applies

- (4) In the preparation of a draft LEP affected by this direction, the council shall:
 - (a) identify any Priority Oyster Aquaculture Areas and oyster aquaculture leases outside such an area, as shown the maps to the Strategy, to which the draft LEP would apply,
 - (b) identify any proposed land uses which could result in any adverse impact on a Priority Oyster Aquaculture Area or oyster aquaculture leases outside such an area,
 - (c) identify and take into consideration any issues likely to lead to an incompatible use of land between oyster aquaculture and other land uses and identify and evaluate measures to avoid or minimise such land use incompatibility,
 - (d) consult with the Director-General of the Department of Primary Industries (DPI) of the proposed changes in the preparation of the draft LEP, and
 - (e) ensure the draft LEP is consistent with the Strategy.
- (5) Where a draft LEP proposes land uses that may result in adverse impacts identified under (4)(b) and (c), council shall:
 - (d) provide the Director-General of DPI with a copy of the draft LEP and notification of the relevant provisions,
 - (e) allow the Director-General of DPI a period of 40 days from the date of notification to provide in writing any objections to the terms of the draft LEP, and
 - (f) include a copy of any objection and supporting information received from the Director-General of DPI with the statement to the Director-General of the Department of Planning under section 64 of the *Environmental Planning and Assessment Act 1979*.

Consistency

- (6) A draft LEP may be inconsistent with the terms of this direction only if council can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the provisions of the draft LEP that are inconsistent are of minor significance.

LOCAL PLANNING DIRECTIONS

Section 117(2) of the *Environmental Planning and Assessment Act 1979*

Note: In this direction:

- (a) "Priority Oyster Aquaculture Areas" has the same meaning as in the NSW Oyster Industry Sustainable Aquaculture Strategy; and
- (b) an "incompatible use of land" includes access to oyster leases being limited by the change in land use or the risk of adverse impacts as a result of that change in land use on water quality and, consequently, on the health of oysters and on the health of consumers of those oysters.