

**Attachment E – Request for additional information,  
DPI – Fisheries**

OUR REF: IDA23/24

14 July 2023

The General Manager  
Ballina Shire Council  
*Via Planning Portal (CNR-52934)*

Attention: Ms Jessica Hutley

Dear Ms Hutley

**Re: Clause 52 EPA (Reg) 2021 ADDITIONAL INFORMATION REQUEST**  
**Development Application No. 2022/721/1**  
**6 Burns Point Ferry Road, Lot 1 DP 522558 and 550-578 River Street, lot 1 DP 124173, West Ballina**

Thank you for your referral dated 27 March 2023 requesting that DPI Fisheries, a division within the Department of Primary Industries provide general terms of approval and advice on the subject development application.

DPI Fisheries 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, DPI Fisheries assesses activities under Part 4 and 5 of the *Environmental Planning and Assessment Act 1979* in accordance with the objectives of the *Fisheries Management Act 1994* (FM Act), the aquatic habitat protection and threatened species conservation provisions in Parts 7 and 7A of the FM Act, and the *Policy and Guidelines for Fish Habitat Conservation and Management (2013 Update)* (DPI Fisheries P&G). In addition, DPI Fisheries is responsible for assessing potential impacts on marine parks under s56 of the *Marine Estate Management Act 2014* (MEM Act), ensuring the sustainable management of commercial fishing and aquaculture, quality recreational fishing and the continuation of Aboriginal cultural fishing within NSW.

Key fish habitats include those habitats that are crucial to the survival of native fish stocks. The degradation of aquatic habitat is a major threat to the abundance and diversity of native fishes in NSW. As such, a primary objective for conserving fishes is to conserve the habitats that fish are dependent upon for survival.

It is understood that the subject proposal will include the erection of a Senior Housing Development in five stages including 148 independent living units (four x two bedroom and 144 x 3 bedroom units), community facilities, managers’ residence, earthworks (filling) and retaining walls, removal of vegetation, stormwater management and infrastructure works, landscaping and outdoor recreation areas.

As part of the proposed works will require dredging and reclamation works and harm to marine vegetation within key fish habitat, the proposal triggers sections 201 and 205 of the FM Act respectively. Therefore, DPI Fisheries is an integrated referral agency for this proposal.

### **Avoiding and offsetting unavoidable impacts to fisheries resources**

Key fish habitats are defined within the DPI Fisheries P&G and are graded by 'type' on the basis of their sensitivity, or their importance to the survival of fish (refer to section 3.2 of the DPI Fisheries P&G for further information). Proposals within or adjacent to key fish habitat should first aim to avoid impacts to key fish habitats and other fisheries resources. Where impacts to key fish habitats cannot be avoided, due to the need for placement of water based/tidally-dependant infrastructure or associated construction works, the preference is to impact less sensitive key fish habitats over more highly sensitive key fish habitats. According to the submitted Vegetation Management Plan and the Aquatic Ecology Technical Report, the subject development site and adjacent areas contain key fish habitat which includes tidally connected areas below highest astronomical tide (HAT), saltmarsh and mangroves. However, the exact areas of impacts to key fish habitat have not been specified within the application material, the need to undertake development within areas of key fish habitat have not been justified, and the proposal has not demonstrated how impacts to key fish habitats have been avoided and minimised.

Section 3.3.3.2 of the DPI Fisheries P&G notes that DPI Fisheries enforces a 'no net loss' habitat policy as a condition of consent requiring proponents to conduct habitat rehabilitation and/or provide environmental compensation for all unavoidable impacts to key fish habitat. The DPI Fisheries P&G states that disturbances to key fish habitat requires offsetting at an offset-to-impact ratio of 2:1. Further information on DPI Fisheries' offset and compensation requirements can be found within section 3.3.3.2 of the DPI Fisheries P&G. All impacts of the proposed development on marine vegetation (e.g. mangroves and saltmarsh), whether categorised as a threatened ecological community or not, will require offsetting in accordance with the DPI Fisheries P&G. It is noted that a Biodiversity Stewardship Agreement covers 46.84 ha of the site; however, this agreement does not meet the requirements for a marine vegetation-related offset as per the requirements of the DPI Fisheries P&G. Where there are impacts to marine vegetation within key fish habitat (i.e. to mangroves and saltmarsh not located within artificial drainage lines), then a suitable offset project will be required by DPI Fisheries.

### **Priority Oyster Aquaculture Areas**

It should be noted that the proposal is in close proximity to Priority Oyster Aquaculture Areas within the Richmond River estuary triggering the need for the proposal to satisfy provisions outlined in the NSW Oyster Industry Sustainable Aquaculture Strategy (OISAS). This would encompass the design, construction and operation of the facilities.

OISAS covers all oyster growing estuaries in NSW and identifies Priority Oyster Aquaculture Areas as areas where commercial oyster aquaculture is a priority intended outcome and outlines the agreed water quality needs of the oyster industry.

It is essential for oyster aquaculture that the development does not have a deleterious effect on the water quality of the estuary. The water quality guidelines for oyster

aquaculture areas are detailed in OISAS. The table below provides some of the key parameters.

Parameter	Guideline	Source
Faecal (thermotolerant) 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)	

These guidelines should be viewed cognisant that an intended outcome of Primary Production and Rural Development SEPP is to achieve no net deterioration of estuarine water quality and remediation of existing problems to achieve estuarine water quality improvements.

It is understood that the supporting information for the development application states that stormwater treatment at the completed site will comply with the OISAS water quality guidelines. However, the applicant should be made aware that these water quality guidelines also apply during construction. Confirmation that OISAS water quality guidelines will be met during construction should be provided within the supporting documentation.

### Request for additional information under clause 52 EPA (Reg.) 2021

In order to complete assessment of the development application, DPI Fisheries requests additional information from the applicant under Clause 52 of the *Environmental Planning and Assessment (Regulation) 2021*. The required information is summarised below:

The additional information should include:

1. A detailed plan indicating all key fish habitat within the proposed development footprint. Key fish habitat at the site includes Coastal Wetlands, all tidally connected areas to the elevation of highest astronomical tide, and mangroves and saltmarsh (regardless of TEC status) located outside of artificial constructed drains.
2. Specification of the area of direct and potential impacts to marine vegetation arising from the proposed development. The total marine vegetation impact area should be broken down into vegetation community types e.g. saltmarsh and mangroves, and include likely impacts within the proposed mosquito buffer area (note: changes to hydrology within the buffer area would likely negatively affect saltmarsh and mangroves).

3. Where relevant, provision of an offset project that will satisfactorily offset all unavoidable impacts to marine vegetation. In accordance with the DPI Fisheries P&G, the sum of all offset areas for impacts to marine vegetation must be at least twice the area of impact to meet the 2:1 offset area-to-impact area ratio. The offset proposal should be consistent with section 3.3.3.2 of the DPI Fisheries P&G and include the following principles:
  - Habitat rehabilitation and compensation should take place as close as possible to the impact site to achieve 'no net loss' of habitat within the area affected and the catchment as a whole;
  - Repair of degraded habitat is recommended over habitat creation and should be conducted as close to the site of proposed 'habitat loss' as possible;
  - Habitat rehabilitation efforts should be directed at achieving the maximum benefits for fish habitat and fisheries;
  - The offset should be long lasting;
  - The offset should be enacted prior to the commencement of the development.
4. Confirmation that OISAS water quality guidelines will be met during construction

If you or the applicant have any queries, please contact me on 02 6626 1375 or [jonathan.yantsch@dpi.nsw.gov.au](mailto:jonathan.yantsch@dpi.nsw.gov.au).

Yours sincerely



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