

CM10 REF: IDA25/10

24 February 2025

The General Manager  
Tweed Shire Council  
*Via Planning Portal (CNR-77811)*

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Re: Clause 52 EPA (Reg) 2021 ADDITIONAL INFORMATION REQUEST  
Development Application No. DA25/0011  
Lots 13 DP1264394 and 3 DP622318, 13 Henry Lawson Drive & 127-137 Mahers Lane,  
Terranora

Attention: Ms Hannah Van de Werff

Dear Ms Van de Werff

Thank you for your referral dated 22 January 2025 requesting that DPIRD Fisheries, a division within the Department of Primary Industries and Regional Development, provide general terms of approval on the subject development application.

DPIRD 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, DPIRD 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)* (DPIRD Fisheries P&G). In addition, DPIRD 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 and loss 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 subdivision, civil works and the use of land associated with the creation of a 216 lot residential subdivision including bulk earthworks, provision of services, construction of roads, a sewer pump station, a stormwater management system, an environmental facility, recreation areas and environmental protection works. The proposed development includes permanent impacts (i.e. complete loss) to 1,300m<sup>2</sup> of marine vegetation and will result in changes to surface water flows within the adjacent Coastal Wetland.

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

To complete assessment of the development application, DPIRD Fisheries requests additional information on the subject proposal under Clause 52 of the *Environmental Planning and Assessment (Regulation) 2021*. The required information is summarised below:

1. Fish habitats underpin the productivity of the State's fisheries resources. Primary objectives of the FM Act are to conserve key fish habitats and to promote ecologically sustainable development, including the conservation of biological diversity. Preservation of habitat is an essential component of conserving fish stocks as it ensures that environmental elements supporting their existence remain intact.

Marine vegetation communities are declining mainly due to impacts including development and poor water quality. Due to 'coastal squeeze' (i.e. coastal development adjacent to intertidal foreshores), they are also being prevented from necessary upslope migration to account for sea level rise. Consequently, to conserve remaining marine vegetation communities and other intertidal key fish habitat, it is imperative that any approved impacts to these habitats associated with development-related activities are limited to those that are adequately justified and unavoidable, for example, developments that have an over-arching functional requirement to be located within an intertidal area such as boat ramps and other water access infrastructure. Environmental compensation measures will only be considered where the proposed loss is justified and unavoidable.

The DPIRD Fisheries P&G outlines the importance of buffers to key fish habitat and how these should be maximised to achieve further protection of marine vegetation from proposed developments. The P&G recommends buffer widths of 50m and 100m from Type 1 and Type 2 marine vegetation (refer to Table 1 of the DPIRD Fisheries P&G) respectively and that, where there are land availability constraints, buffer widths should be maximised. Noting the land availability constraints at the proposed development site, the buffer widths proposed for parts of the subject development are inconsistent within the DPIRD Fisheries P&G, particularly where there are no proposed buffers and where impacts to marine vegetation are proposed.

The development application provides limited justification for why part of the development is required to be located on tidal land within key fish habitat, and includes minimal detail on how the proposal has avoided impacts to key fish habitat including the 1,300m<sup>2</sup> of marine vegetation that is proposed to be impacted. Furthermore, there is minimal detail on how buffers to marine vegetation and other key fish habitat have been maximised. Therefore, DPIRD Fisheries requests additional discussion:

- a) That provides justification for why part of the development is required to be located on tidal land within key fish habitat;
  - b) That outlines how impacts to marine vegetation and key fish habitat have or could be avoided; and
  - c) That outlines how buffers to key fish habitat have been maximised.
2. In addition to marine vegetation, key fish habitat includes all areas below highest astronomical tide. Specific details of the key fish habitat proposed to be impacted and how it will be impacted have not been provided. Further, the development application has only been referred to DPIRD Fisheries under the harm marine vegetation provisions of the FM Act (s205) and it is presumed that filling of tidal land is also proposed which would trigger the dredging and reclamation provisions of the FM Act (refer to s198A). Therefore, for DPIRD Fisheries to determine the full extent of impacts to key fish habitats and what these impacts consist of, we request an additional plan that indicates:
  - a) The elevation of highest astronomical tide in relation to the development footprint (noting all areas seaward of highest astronomical tide are considered key fish habitat – this includes the existing gravel access track which is located within key fish habitat); and
  - b) Details of the works and structures that will impact and be within the footprint of key fish habitat.
3. Other than stating that the EEC saltmarsh community proposed to be impacted is ‘degraded’, minimal details have been provided within the development application about the types and status of the key fish habitat that are proposed to be impacted. Therefore, DPIRD Fisheries requests:
  - a) Additional photographs of representative areas of the key fish habitat that are proposed to be impacted; and
  - b) A plan/s consisting of close-up overlayed aerial images showing marine vegetation and other key fish habitats types (e.g. bare substrate) that are proposed to be impacted and details of the permanent structures within their footprint e.g. roads, batters, etc.

4. The DPIRD Fisheries P&G indicates that environmental compensation measures will only be considered where the proposed loss is justified and unavoidable. The development application provides a rehabilitation plan to cover compensation activities for permanent impacts to both terrestrial and intertidal areas. For impacts to marine vegetation, it is understood that rehabilitation works will be mainly in the form of assisted natural regeneration to existing marine vegetation communities. After re-considering justification and avoidance measures requested in 1. above and where marine vegetation offsets are still required, it is recommended that a specific marine vegetation offset plan is developed. For DPIRD Fisheries to determine whether the rehabilitation plan is suitable and will appropriately offset justifiable, unavoidable residual impacts to marine vegetation, DPIRD Fisheries requires further information to be included in the rehabilitation plan (or specific marine vegetation offset plan), specifically:
- a) The distribution of marine vegetation within the proposed rehabilitation area;
  - b) Details of the status of marine vegetation communities (e.g. species, condition, coverage, health, etc);
  - c) Details of the current and previous impacts to marine vegetation communities that are currently impacting their status and distribution including extent of weed incursion, impacts from stock, impacts from hydrological changes (e.g. drainage), etc.;
  - d) Specific details of the rehabilitation measures that will be undertaken within the distribution of marine vegetation to offset the justifiable, unavoidable residual impacts to marine vegetation. It is recommended that rehabilitation measures consider hydrological impacts from legacy drainage infrastructure and the potential for rectification of legacy drainage infrastructure to reinstate natural hydrological regimes and improved connectivity; and
  - e) A discussion on the expected improvements to the distribution and status of marine vegetation communities following the rehabilitation works.
5. The development application states that the proposal will result in changes to the surface water flows to the adjacent Coastal Wetland. DPIRD Fisheries requires further information on whether these anticipated changes to surface water flows will impacts on the status of marine vegetation communities, particularly saltmarsh communities located towards the upper elevations of the intertidal zone adjacent to the proposed development footprint.

If you or the proponent wish to discuss these request for additional information, please contact me on 02 6626 1375 or [jonathan.yantsch@dpi.nsw.gov.au](mailto:jonathan.yantsch@dpi.nsw.gov.au).

Yours sincerely

A handwritten signature in black ink, appearing to read "Jonathan Yantsch".

Jonathan Yantsch  
Senior Fisheries Manager, Coastal Systems (North Coast)  
Marine Estate Management, Primary Industries NSW