

Our Ref: C22/671

21 October 2022

Daniel Simpkins  
Department of Planning and Environment  
c/o: daniel.simpkins@planning.nsw.gov.au

Dear Daniel,

**Re: Proposal for residential rezoning at Diamond Beach**

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 ensures that developments comply with the requirements of the *Fisheries Management Act 1994* (FM Act) (namely the aquatic habitat protection and threatened species conservation provisions in Parts 7 and 7A of the Act, respectively), and the associated *Policy and Guidelines for Fish Habitat Conservation and Management (2013)*. DPI Fisheries is also responsible for ensuring the sustainable management of commercial, recreational and Aboriginal cultural fishing, aquaculture, marine parks and aquatic reserves within NSW.

DPI Fisheries has received complaints from the local community in relation to the proposed rezoning of land behind Diamond Beach in the Mid Coast LGA. The activity reference number in the Planning Portal is RR-2022-15. The related planning proposal reference number is PP-2022-1144. The property of concern is 355 Diamond Beach Road, Diamond Beach (DP286523). A large portion of this property is mapped as 'Key Fish Habitat' (refer to Attachment 1). This mapping is publicly available via the Fisheries Spatial Data Portal on <https://www.dpi.nsw.gov.au/about-us/research-development/spatial-data-portal>

Section 198A of the FM Act defines 'water land' as any land that is permanently or intermittently submerged by water, including wetlands. Section 198A of the FM Act defines 'reclamation' as:

- using any material to fill or reclaim water land, or
- depositing any material on water land for the purpose of constructing anything over water land, or
- draining water from water land for the purpose of its reclamation.

DPI Fisheries considers residential development within water land to be reclamation under the FM Act. Reclamation results in the immediate and permanent loss of fish habitat. Residential development of water land at 355 Diamond Beach Road is unlikely to be supported by DPI Fisheries. This advice is consistent with the following *DPI Policies and Guidelines for Fish Habitat Conservation and Management*:

- Policy 5.2.2(1): NSW DPI will generally not support or approve reclamation of TYPE 1 and 2 or CLASS 1-3 fish habitat (see Tables 1 and 2 in Attachment 2) (including freshwater, estuarine and marine) for private development such as roads, walkways, housing or commercial development, foreshore or beach improvement.

Any proposal to undertake dredging or reclamation on water land must be referred to DPI Fisheries for approval under s200 or s201 of the FM Act.

Early observations indicate that a freshwater wetland exists at 355 Diamond Beach Road, which meets the definition of 'Highly sensitive key fish habitat' under the *DPI Policies and Guidelines for Fish Habitat Conservation and Management* (refer to Attachments 2 & 3 for classifications and indicative location of freshwater wetland). A detailed aquatic ecology assessment, prepared by an experienced aquatic ecologist, should accompany any development or rezoning application within highly sensitive key fish habitat.

If you or Mid Coast Council require any further information, please do not hesitate to contact me on [sarah.conacher@dpi.nsw.gov.au](mailto:sarah.conacher@dpi.nsw.gov.au)

Yours sincerely,

A handwritten signature in black ink, appearing to read "S. Conacher".

**Sarah Conacher**

Senior Fisheries Manager, Coastal Systems

**ATTACHMENT 1** – Key fish habitat (shown in blue) covering much of 355 Diamond Beach Road, Diamond Beach (DP286523) (circled in red)



**ATTACHMENT 2** – Tables 1 & 2 from the DPI Policies and Guidelines for Fish Habitat Conservation and Management (2013). Early observations indicate that 355 Diamond Beach Road, Diamond Beach (DP286523) supports a freshwater wetland that is Type 1, Class 2 key fish habitat, as per the tables below. An aquatic ecology assessment would be required for any dredging or reclamation proposal within this water land.

**Table 1 – Key fish habitat and associated sensitivity classification scheme  
(for assessing potential impacts of certain activities and developments on key fish habitat types)**

<p><b>TYPE 1 - Highly sensitive key fish habitat:</b></p> <ul style="list-style-type: none"> <li>▪ <i>Posidonia australis</i> (strapweed)</li> <li>▪ <i>Zostera</i>, <i>Heterozostera</i>, <i>Halophila</i> and <i>Ruppia</i> species of seagrass beds &gt;5m<sup>2</sup> in area</li> <li>▪ Coastal saltmarsh &gt;5m<sup>2</sup> in area</li> <li>▪ Coral communities</li> <li>▪ Coastal lakes and lagoons that have a natural opening and closing regime (i.e. are not permanently open or artificially opened or are subject to one off unauthorised openings)</li> <li>▪ Marine park, an aquatic reserve or intertidal protected area</li> <li>▪ SEPP 14 coastal wetlands, wetlands recognised under international agreements (e.g. Ramsar, JAMBA, CAMBA, ROKAMBA wetlands), wetlands listed in the Directory of Important Wetlands of Australia<sup>2</sup></li> <li>▪ Freshwater habitats that contain in-stream gravel beds, rocks greater than 500 mm in two dimensions, snags greater than 300 mm in diameter or 3 metres in length, or native aquatic plants</li> <li>▪ Any known or expected protected or threatened species habitat or area of declared 'critical habitat' under the FM Act</li> <li>▪ Mound springs</li> </ul>	<p><b>TYPE 2 – Moderately sensitive key fish habitat:</b></p> <ul style="list-style-type: none"> <li>▪ <i>Zostera</i>, <i>Heterozostera</i>, <i>Halophila</i> and <i>Ruppia</i> species of seagrass beds &lt;5m<sup>2</sup> in area</li> <li>▪ Mangroves</li> <li>▪ Coastal saltmarsh &lt;5m<sup>2</sup> in area</li> <li>▪ Marine macroalgae such as <i>Ecklonia</i> and <i>Sargassum</i> species</li> <li>▪ Estuarine and marine rocky reefs</li> <li>▪ Coastal lakes and lagoons that are permanently open or subject to artificial opening via agreed management arrangements (e.g. managed in line with an entrance management plan)</li> <li>▪ Aquatic habitat within 100 m of a marine park, an aquatic reserve or intertidal protected area</li> <li>▪ Stable intertidal sand/mud flats, coastal and estuarine sandy beaches with large populations of in-fauna</li> <li>▪ Freshwater habitats and brackish wetlands, lakes and lagoons other than those defined in TYPE 1</li> <li>▪ Weir pools and dams up to full supply level where the weir or dam is across a natural waterway</li> </ul>
<p><b>TYPE 3 – Minimally sensitive key fish habitat may include:</b></p> <ul style="list-style-type: none"> <li>▪ Unstable or unvegetated sand or mud substrate, coastal and estuarine sandy beaches with minimal or no in-fauna</li> <li>▪ Coastal and freshwater habitats not included in TYPES 1 or 2</li> <li>▪ Ephemeral aquatic habitat not supporting native aquatic or wetland vegetation</li> </ul>	

**Table 2 - Classification of waterways for fish passage**

Classification	Characteristics of waterway class
<b>CLASS 1 Major key fish habitat</b>	Marine or estuarine waterway or permanently flowing or flooded freshwater waterway (e.g. river or major creek), habitat of a threatened or protected fish species or 'critical habitat'.
<b>CLASS 2 Moderate key fish habitat</b>	Non-permanently flowing (intermittent) stream, creek or waterway (generally named) with clearly defined bed and banks with semi-permanent to permanent waters in pools or in connected wetland areas. Freshwater aquatic vegetation is present. TYPE 1 and 2 habitats present.
<b>CLASS 3 Minimal key fish habitat</b>	Named or unnamed waterway with intermittent flow and sporadic refuge, breeding or feeding areas for aquatic fauna (e.g. fish, yabbies). Semi-permanent pools form within the waterway or adjacent wetlands after a rain event. Otherwise, any minor waterway that interconnects with wetlands or other CLASS 1-3 fish habitats.
<b>CLASS 4 Unlikely key fish habitat</b>	Waterway (generally unnamed) with intermittent flow following rain events only, little or no defined drainage channel, little or no flow or free standing water or pools post rain events (e.g. dry gullies or shallow floodplain depressions with no aquatic flora present).



**ATTACHMENT 3** – Approximate location of freshwater wetlands (circled in red) overlaid on Mid Coast Council's Northern Diamond Beach development proposal.

