



22 June 2018

Dr Catherine Dale
The General Manager
Eurobodalla Shire Council
PO Box 99
Moruya NSW 2537

Dear Dr Dale,

Submission in response to the Rural Lands Planning Proposal

Please note the following comments from DPI Fisheries (Batemans Marine Park, Aquatic Ecosystems and Aquaculture) in relation to the Eurobodalla Rural Lands Strategy.

The responsibilities of DPI Fisheries include ensuring that;

- within marine parks marine biological diversity and marine habitats are conserved and ecological processes are maintained. With regard to land use planning and approvals the Department ensures that development activities comply with or are consistent with the requirements of the *Marine Estate Management Act 2014*, *Marine Estate Management Regulation 2017* and *Marine Estate Management (Management Rules) Regulation 1999*.
- 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 Update)*. In addition, DPI Fisheries is responsible for ensuring the sustainable management of commercial, recreational and Aboriginal cultural fishing.
- to encourage, support and protect sustainable aquaculture and to conserve and enhance the community's resources. To work with aquaculture industries, the community and other agencies to ensure aquaculture develops in a sustainable manner.

The estuaries, rivers and creeks of the Eurobodalla Shire are all an integral component of the Batemans Marine Park. The primary purpose of NSW marine parks is to “*conserve the biological diversity, and maintain ecosystem integrity and ecosystem function, of bioregions in the marine estate*”. The health of the waterways within the Eurobodalla Shire are critical to support a range of water-based recreational and commercial interests (e.g. houseboat hire, kayak tours), providing a range of social and economic benefits to the region.

Aquatic habitats within the Eurobodalla Shire have high environmental value contributing to healthy and diverse populations of fish, in turn supporting valuable recreational and commercial fisheries and aquaculture industries. Key Fish Habitats - those marine, estuarine and freshwater habitats important for the preservation of fish communities and the ongoing productivity of recreational and commercial fishing and aquaculture industries within the Eurobodalla Shire have been mapped by DPI Fisheries (see <http://www.dpi.nsw.gov.au/fisheries/habitat/publications/protection/key-fish-habitat-maps>).

The Eurobodalla Shire contains numerous Priority Oyster Aquaculture Areas in the Clyde, Moruya and Tuross estuaries and in Wagonga Inlet. There are 58 businesses operating 296 leases with a production area of over 370 hectares. The Eurobodalla oyster industry currently produces more than 900,000 dozen oysters annually, with a recorded turn over in



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excess of \$9 million during the 2016/17 financial year. The industry also makes a significant contribution to local employment and the tourism sector.

The water quality in the Clyde, Tuross and Wagonga production areas is currently of a high enough standard to allow oysters to be sold for human consumption directly from the water, without the need for depuration (holding the oysters in purified water for 36 hours). The NSW Government supports a strategy to increase the number of direct harvest estuaries. Downgrading of harvest area status will trigger a whole of Government review of the NSW Oyster Industry Sustainable Aquaculture Strategy.

Item 1 - Making more land uses permitted with consent

Additional uses for various rural zones

It is noted that the planning proposal includes a significant increase in allowable marine infrastructure in RU1 (marinas, mooring pens, moorings, water recreation structures, wharf or boating facilities) and RU4 zones (charter and tourism boating facilities, jetties, marinas, mooring pens, moorings, port facilities, water recreation structures and wharf or boating facilities).

It is recommended to clearly state within the planning documentation that all marine infrastructures within or adjacent to Eurobodalla waterways still requires appropriate approvals and licences from relevant State Government agencies including DPI Fisheries (Batemans Marine Park & Aquatic Ecosystems), Department of Industry (DoI) Lands, and Transport for NSW. All proposals for marine infrastructure are assessed on their individual merit to ensure that they meet mandated State Government policy, guidelines and legislation.

Furthermore, it is worth noting that DoI Lands has ownership, control and management of Crown land below the mean high water mark and manages this land for the benefit of the people of NSW. Crown lands are administered under the *Crown Lands Act 1989* and the *Crown Lands Regulation 2006*. The current Crown Lands Domestic Waterfront Facility Policy # 4 states:

“Waterfront structures that are not acceptable on Crown land include: structures where the adjoining foreshore land is a reserve for public recreation, a reserve for access, a foreshore reservation or other public land or Crown road.”

The impact of additional allowable boating infrastructure in the RU1 and RU4 zones has the potential to result in clearing of riparian and adjacent foreshore habitat. This has been identified as high risk in the *NSW Marine Estate Threat and Risk Assessment (TARA) - Southern Region*, and is also inconsistent with *Goal 1 Direction 7 Action 7.2* of the *South East & Tablelands Regional Plan*. The *TARA - Southern Region* also assigned a high risk to estuary water quality associated with the clearing of riparian vegetation and adjacent habitat.

A link to the TARA Report (Final Report) is provided below:

https://www.marine.nsw.gov.au/_data/assets/pdf_file/0010/736921/NSW-Marine-Estate-Threat-and-Risk-Assessment-Final-Report.pdf

Please note that DPI Fisheries will generally not support foreshore works that contribute to the further degradation of native riparian vegetation. It is important that Council does not set a community expectation that contradicts State Government requirements.



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Summary

DPI Fisheries recommends that:

- Eurobodalla Shire Council (ESC) clearly identifies the difference between commercial/tourist marine infrastructure developments and private/domestic marine infrastructure that may be allowable in the Eurobodalla Local Environment Plan (LEP);
- ESC includes that marine infrastructures within or adjacent to Eurobodalla Shire waterways still requires appropriate consents/approvals/licences from relevant State Government agencies;
- ESC notes that DPI Fisheries does not support foreshore works that contribute to the further degradation of native riparian vegetation.

Grazing of Stock as Exempt Development

The objective of E2 land is, among other things, to protect, manage and restore areas of high ecological value; to prevent development that could destroy, damage or otherwise have an adverse effect on those values; and to protect and improve water quality. E2 zones include areas of sensitive coastal lakes, estuaries, wetlands, overland flow paths and riparian zones.

Grazing of stock within environmentally sensitive areas frequently results in degradation of native riparian, wetland and aquatic vegetation, destabilisation of waterway banks, erosion and sedimentation and pollution of waterways with faecal matter. Degradation of native riparian vegetation has been identified as a 'Key Threatening Process' under the FM Act.

Stock grazing of riparian and marine vegetation has also been identified as one of the major environmental threats/activities in NSW and has been designated as a high risk to riparian and marine vegetation in the *TARA - Southern Region*.

The management of stock within the riparian zone is identified as an issue of particular importance in the Departments Guidelines for *Healthy Estuaries for Healthy Oysters*. A significant amount of work has been undertaken to assist landholders in protecting and restoring these habitats through fencing and revegetation. Faecal contamination from stock grazing adjacent to and upstream of oyster leases is an ongoing issue for DPI Fisheries, it results in prolonged harvest area closures and financial implications for the oyster aquaculture industry.

Goal 1, Direction 7 of the *South East & Tablelands Regional Plan: A connected and prosperous economy – Grow the South Coasts aquaculture industry* states “The South Coast’s oysters, mussels and scallops have an international reputation as being safe, sustainable and of high quality. The area known as Australia’s Oyster Coast attracts increasing numbers of visitors keen to taste premium oysters from estuaries stretching 300 kilometres along the coast. Live oysters now can be delivered to Asia within 30 hours of harvesting” Action 7.2 of the Plan is to “Minimise the impacts of development on aquatic habitats in aquaculture estuaries”.

Summary

DPI Fisheries objects to the proposal to allow grazing of stock as exempt development within the E2 Environmental Conservation Zone for the following reasons:

- It is not consistent with the objectives of the E2 zone;
- It is not consistent with the NSW Government’s *TARA - Southern Region*;
- It is not consistent with DPI Fisheries *Healthy estuaries for healthy oysters guidelines*;
- It is not consistent with *South East & Tablelands Regional Plan*;



- It contributes to a Key Threatening Process listed in Schedule 6 of the FM Act

Item 2 – Improving subdivision outcomes in the RU4 Primary Production zone

DPI Fisheries supports a neutral or beneficial effect on water quality assessment approach to development that has the potential to affect oyster growing areas identified as Priority Oyster Aquaculture Area (POAA) in the *NSW Oyster Industry Sustainable Aquaculture Strategy 2016* (OISAS) and *State Environmental Planning Policy No.62 - Sustainable Aquaculture*.

The proposed amendments to the *Eurobodalla LEP* should have due regard to the *Healthy Estuaries for Healthy Oysters Guidelines (2017)*. This document provides advice to local government about how to ensure development in close proximity to estuaries is compatible with the requirements of oyster aquaculture.

Wastewater infrastructure for any subdivision must be consistent with *AS/NZS 1547:2012 On-site domestic wastewater management*. Key criteria DPI Fisheries requires to be enforced are:-

- Appropriate setbacks from waterways;
- Avoidance of pump-out systems;
- Appropriate dispersal areas;
- Soil type is suitable to accommodate loading;
- Design components will result in mean pollutant loads meeting required levels; and
- Regular inspection program.

DPI Fisheries does not support the application of minimum averaging as proposed in the Eurobodalla LEP where it will result in increased residential stormwater runoff to oyster growing estuaries, or where it is not connected to a reticulated wastewater management system and has the potential to result in an increased On-site Sewage Management (OSM) load in areas that have the potential to impact oyster growing areas. Information regarding the appropriate risk based management of OSM is contained in the *Healthy Estuaries for Healthy Oysters Guidelines*.

Item 3 – Continuing dwelling entitlements

This proposal includes the removal of clause 4.2A, where consent for new dwellings must not be granted unless there will be appropriate vehicular access to the lot from a sealed road. Unsealed roads are a significant contributor of sediment to waterways. Research has detected sediment loads from unsealed roads of four to six orders of magnitude greater than that from undisturbed hillslopes. DPI Fisheries is concerned that removal of the sealed road clause as proposed will result in the construction of unsealed to access new developments, resulting in increased sediment loads to the aquatic environment.

Summary

DPI Fisheries does not support the removal of clause 4.2A of the *Eurobodalla LEP*.

Item 5: Zoning rural land for rural purposes and getting the minimum lot size right.

Deferred Land

There are parcels of land currently deferred from Eurobodalla LEP which are heavily forested, steeply sloped and situated adjacent to waterways (eg. land adjacent to the Clyde River and Currowan Creek in Area 4). Rezoning of this land to RU1, RU4 or E4 will not provide adequate protection for riparian areas. As has been detailed previously, undisturbed riparian waterways are vital to ensure the protection of water quality supporting aquaculture,



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aquatic habitats and water quality in the Batemans Marine Park. Where parcels of deferred land are adjacent to waterways, new zoning should reflect an objective to protect and improve water quality.

Summary

DPI Fisheries does not support the rezoning of deferred lands as RU1, RU4 or E4 where they are located adjacent to waterways with good condition native riparian habitat.

Subdivision of Rural Lands

Increased subdivision of rural lands in Eurobodalla to facilitate an additional 122 new lots and 255 new dwellings will result in additional dwellings being constructed in areas not connected to reticulated sewage systems. The DPI Fisheries guidelines *Healthy Estuaries for Healthy Oysters Guidelines (Section 1.4)* lists the subdivision of land where the future development created by the subdivision will rely on on-site sewage disposal as one of the greatest risks likely to have an adverse effect on estuarine water quality and oyster aquaculture

Summary

DPI Fisheries does not support the increased subdivision of rural land proposed in the Eurobodalla LEP, unless the areas subject to the proposed amendment are appropriately located to minimise water quality impact on downstream waters that support oyster aquaculture. Where an area subject to amendment is not connected to a reticulated sewage system and has the potential to impact on oyster growing area (where that land is within 10km of an oyster aquaculture lease, or 10km of a point where a stream enters an estuary that is within 10km of any oyster lease), the proposed amendment needs to consider the topography (slope), soil suitability and load for OSM. Proposed amendments to the *Eurobodalla LEP* also need to take into account potential cumulative water quality impacts that may occur as a result of the amendment

Item 6: Removing the 1000 ha minimum lot size from the ELEP 2012

Please see above comment relating to Item 5 - subdivision of Rural Lands

Item 7 - Removing the Biodiversity Map and associated clause from Eurobodalla LEP

The removal of the Terrestrial Biodiversity Map from the Eurobodalla LEP is not consistent with the directions of the *South East & Tablelands Regional Plan* Goal 2 “A diverse environment interconnected by biodiversity corridors – Criteria for mapping high environmental value lands”, or Direction 14 “Protect important environmental assets”

The current Terrestrial Biodiversity overlay identifies Endangered Ecological Communities (EECs) and it is envisaged that its removal will not allow appropriate assessment of development applications. The risks to EECs associated with the FM Act and the *Biodiversity Conservation Act 2016* have been identified as moderate to high in the *TARA - Southern Region* for all activities associated with clearing or disturbance of the riparian zone and its associated habitat.

The removal of the terrestrial biodiversity layer also appears inconsistent with the *South East & Tablelands Regional Plan* Direction 14: Protect Important Environmental Assets:

“The intensification of land uses through urban development and other activities must avoid impacts on important terrestrial and aquatic habitats and on water quality. Mapping areas of potential high environmental value will inform local planning strategies and local environmental plans”



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The removal of this map will not assist ESC in environmental assessments of catchment and riparian development proposals that will potentially impact on the Eurobodalla's waterways.

Summary

DPI Fisheries does not support the removal of the Biodiversity Map (and associated clause) from Eurobodalla LEP for the following reasons:

- The risk to species and communities protected under the FMA and the *Biodiversity Conservation Act 2016* have been identified as moderate/high in the *TARA - Southern Region*;
- The item is inconsistent with Goal 1 Direction 7 Action 7.2 of the *South East & Tablelands Regional Plan*.

Item 11: Updating the Wetlands, watercourses and Riparian Land Map

DPI Fisheries strongly supports updating the wetlands, watercourses and riparian land map, and in particular having regard to the newly proclaimed *State Environmental Planning Policy (Coastal Management) 2018*.

Item 12: Updating Acid Sulfate Soil Map

DPI Fisheries strongly supports the updating of the Acid Sulfate Soil map. Inappropriate developments within areas of Acid Sulfate Soil have had a significant impact on oyster aquaculture throughout NSW estuaries. Improved identification of areas subject to Acid Sulfate Soil will inform development best practice development to minimise impacts associated with disturbed acid sulfate soil run-off which can result in poor growth and significant mortality in affected oyster growing areas.

Item 22: Increasing the minimum lot size for certain lands in Narooma

DPI Fisheries strongly supports increasing the minimum lot size for land adjacent to the Old Highway in Narooma due to the potential of the area to impact on oyster growing at Wagonga Inlet. While DPI Fisheries supports the amendment, where an area subject to amendment is not connected to a reticulated sewage system and has the potential to impact on oyster growing area water quality the proposed amendment needs to consider the topography (slope), soil suitability and load for OSM. Proposed amendments to the Eurobodalla LEP also need to take into account potential cumulative water quality impacts that may occur as a result of the amendment. Information regarding the appropriate risk based management of OSM is contained in the *Healthy Estuaries for Healthy Oysters Guidelines*.

Additional Comments

1. The removal of Environmental Management zoning (E3)

This action is not consistent with the *South East & Tablelands Regional Plan* Direction 14: Protect Important Environmental Assets:

"The intensification of land uses through urban development and other activities must avoid impacts on important terrestrial and aquatic habitats and on water quality. Mapping areas of potential high environmental value will inform local planning strategies and local environmental plans".

This direction from the *South East & Tablelands Regional Plan* recommends the following actions:

- i. 14.2 Protect the validated high environmental value lands in local environmental plans.



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- ii. 14.3 Minimise potential impacts arising from development on areas of high environmental value, including groundwater-dependent ecosystems and aquatic habitats, and implement the 'avoid, minimise and offset' hierarchy.
- iii. 14.4 Improve the quality of and access to information relating to land with identified high environmental values.
- iv. 14.5 Support planning authorities to undertake strategic, landscape-scale assessments of biodiversity and areas of high environmental value. "

Summary

DPI Fisheries does not support the removal of the Environmental Management zoning (E3) from the Rural Land Strategy and associated Eurobodalla LEP because it is not consistent with the *South East & Tablelands Regional Plan* Direction 14: Protect Important Environmental Assets. As such, DPI Fisheries does not support this planning layer being removed.

2. Addition of Batemans Marine Park zones in the Rural Land Strategy and associated Eurobodalla LEP.

DPI Fisheries recommends that the zoning of the Batemans Marine Park is included as a map layer within the Rural Lands Strategy and Eurobodalla LEP. This is consistent with the requirements of the *South East & Tablelands Regional Plan*, which provides the following guidance for inclusion under the *Criteria for Mapping High Environmental Lands*: "Lands with high environmental value should be mapped, including existing conservation areas such as national parks and reserves, declared wilderness areas, marine estates, Crown reserves dedicated for environmental protection and conservation, and flora reserves; threatened ecological communities and key habitats, and important vegetation areas; and important wetlands, coastal lakes and estuaries."

The Batemans Marine Park zoning map layers are available on request from DPI Fisheries by calling the Batemans Marine Park office on 02 4476 0802, and can be viewed at the following link:

https://www.dpi.nsw.gov.au/_data/assets/pdf_file/0008/656288/Batemans_Marine_Park_Zoning_Map_OBH.pdf

3. Coastal Management Programs

Coastal Management Programs developed by local government across the state consistently identify water quality as one of the primary areas of concern for the community. The quality of water within estuaries is dependent on the catchment inputs. There is a clear correlation between the area of vegetated riparian land within the catchment and water quality. Where catchments are dominated by grazing, agriculture and development water quality issues impacting on aquatic habitats, fish stocks, aquaculture and tourism are commonplace. Significant investments in money and time are required for Councils to mitigate and reverse these impacts. Through this plan the ESC has an opportunity to avoid the historic mistakes of other Councils, and have an opportunity to protect and improve water quality, aquatic habitat, aquaculture and tourism within the Eurobodalla Shire and ensure consistent clear links between land use planning and the new Coastal Management Programs currently being developed for the Shire.



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To further discuss this response, DPI Fisheries would like to meet with relevant ESC staff to further explore our concerns. To organise a meeting, or to request further information in relation to the above, please contact Justin Gilligan, A/Manager Batemans Marine Park on (02) 4476 0801.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Justin Gilligan'.

Justin Gilligan
A/Manager -
Batemans Marine Park

A handwritten signature in black ink, appearing to read 'Jillian Reynolds'.

Jillian Reynolds
Fisheries Manager
Aquatic Ecosystems - South