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Your Ref: PP-2021-6786

27 June 2022

Sally Munk
Principal Planning Officer
Industry Assessments
Department of Planning and Environment
Locked Bag 5022,
Parramatta NSW
2124

Attention: Sally Munk

RE: Bega Valley Shire Council response to request for the Secretary's Environmental Assessment Requirements (SEARs) from Sea Health Products Proposed Kelp Farms - Merimbula Bay, Pambula & Haywards Beach, Bermagui - Request for SEARs

Thankyou for providing Council the opportunity to provide input to this exciting and innovative project. Council's comments acknowledge that the Aquaculture Lease area and proposed Seaweed Farm are outside of the Shire boundary and are located in an area for which Council has no planning or approval responsibilities.

Should further onshore processing facilities be proposed within the Bega Valley Shire, Council would appreciate engagement with the applicant to ensure an efficient planning and assessment process.

Council identifies the following issues as needing consideration through the Director General's SEAR's;

1) Bermagui River, Merimbula and Pambula Lake Entrances / Boat ramps

The entrances to Merimbula and Pambula Lakes, whilst permanently open can be quite variable in nature and can fluctuate from a wide deep entrance, to a shallow heavily shoaled channel. The Bermagui River entrance is trained and thus permanently open. Bega Valley Shire Council is supportive of the boat ramps at Bermagui, Pambula or Merimbula Lake being used by the applicant to access the proposed lease area.

2) Marine Mammal Entanglement Prevention

This issue will hopefully be addressed by DPIE. The nature of the development and use of long ropes / lines makes this an issue of concern given increasing whale numbers moving along our coastline during their spring and autumn migrations.

3) Marine Pest Monitoring and Management

The proposed seaweed farms will be in effect a large new habitat created in Merimbula Bay and on the southern edge of Batemans Marine Park near Haywards Beach, Bermagui. Council is aware of existing marine pest issues in Twofold Bay as a result of historic shipping movements and ballast water disposal

and would be concerned for the potential of any of these pests (or new infestations) to get a foot hold elsewhere. Again this issue should be referenced by DPI Fisheries. Council highlights this issue out of an abundance of caution given our pristine coastal environments.

4) Waste Management

Council would request the applicant identify how they propose to monitor Pambula and Hayward's beaches for waste / debris that may break free from the development. Should there be a major failure of any of the infrastructure during a storm event the applicant needs to demonstrate how they will collect the damaged or dislodged materials from the ocean, beach and estuary entrance environments.

5) Emergency Access to Pambula or Haywards Beach

Council requests that the applicant identify proposed emergency access points to Pambula or Haywards Beaches, that would be used in case of major failure to infrastructure associated with the leases.

6) Visual amenity

The Bega Valley Shire coastlines scenic beauty is a key attraction, highly valued by local residents and visitors alike. Council would suggest that a visual impact assessment be prepared by the applicant for both sites from the key vantage points – Pambula Beach village, Haycock Point, Merimbula, Bermagui Area (Horseshoe Bay, Bermagui Point, Haywards Beach and Camel Rock).

7) Recreational Boating and Fishing

Both proposed leases are within popular recreational boating and fishing areas. Noting that TfNSW will likely be commenting on this issue, we wish to flag the need for the applicant to demonstrate the levels of signage, markers etc required to ensure safety to recreational boaters and also to staff working in the leases.

NOTE: The project addresses key actions in Council's Climate Resilience Strategy 2050, that identifies Blue Carbon and Kelp farming activities as key actions to be supported as part of the implementation of the Resilience Strategy.

Thank you for taking the time to consider our response and we look forward to feedback on Council's planning proposal. Should you like to discuss this matter or have any questions, please don't hesitate to contact Derek van Bracht on 0428 265 995

Regards,

Derek van Bracht

Our Ref: C22/370

17 June 2022

Sally Munk
Department of Planning and Environment
Locked Bag 5022
PARRAMATTA NSW 2124
c/o: lodged via planning portal

Dear Ms Munk,

**Re: DPI Fisheries response to request for Secretary's Environmental Assessment
Requirements (SEARs) for Sea Health Products Kelp Farms – Merimbula Bay
and Haywards Beach (SSD-44249280)**

This letter is in response to your email dated 7 June 2022 seeking input into the Secretary's Environmental Assessment Requirements (SEARs) for a proposal by Sea Health Products to establish two 30-hectare commercial kelp aquaculture leases off Haywards Beach near Bermagui and off Merimbula Bay, near Pambula Beach.

DPI Fisheries advises that the requirements of the NSW Marine Waters Aquaculture Sustainable Strategy (MWSAS) established as an Aquaculture Industry Development Plan under the *Fisheries Management Act 1994* must be adequately addressed in the preparation of any EIS.

Chapter 3 of the MWSAS outlines constraint and assessment requirements of potential risk matters which must be considered. The constraints outlined in section 3.1 of the MWSAS must be addressed to demonstrate that the proposal is permissible in the subject location. It is noted that the existing land based processing facility within the scoping document at Tilba Tilba is not considered SSD and will not be assessed as part of this SEARs.

Section 3.2 of the MWSAS outlines environmental assessment requirements that must be addressed in an EIS for a proposed marine aquaculture development. The Department requires that the EIS addresses each of the 22 items listed in section 3.2 in order to be able to assess any potential environmental impact of the proposed development; how impacts would be mitigated and managed; and associated monitoring and reporting that would be undertaken. DPI Fisheries requests that the SEARs for this proposal includes assessment of all items listed under Section 3.2 of the MWSAS.

It is noted that Appendix A of the scoping study provides a report of the Protected Matters Search Tool for both lease areas, however there is no content in Appendix A. Appendix A should be reviewed with relevant information inserted. The assessment of impacts to threatened species under the *Fisheries Management Act 1994* also needs to include impacts to protected species under this Act e.g., syngnathids, including consideration of impacts from the deployment and operation of the proposed development.

Maps provided in the scoping study indicate that the proposed leases are located over sandy substrate, not reef, determined by information provided by NSW DPI. Nearshore subtidal marine reef systems and soft sediment mapping, and NSW coastal nearshore reef extent mapping, both available on the NSW SEED dataset should also be used to undertake substrate assessments. Furthermore, indicative maps provided in the scoping study illustrate reef adjacent to the proposed development site. The EIS should include an assessment of potential risks of the proposed development to adjacent reefs, including from the deployment and operation of the proposed development.

Section 5.8 of the MWSAS details additional assessments and approvals that must be considered in an EIS. In addition to the proposed development being classified as a SSD under the *Environmental Planning and Assessment Act 1979*, the proposal may also require a separate approval under the *Commonwealth Environment Protection Biodiversity Conservation Act 1999*.

Appendix 2 of the MWSAS lists templates of Environmental Management Plans which may aid the proponent develop plans for the project.

The EIS will need to include a clear description of the level of commercial and recreational fishing in the proposed lease areas of Merimbula Bay and Haywards Beach. While it is proposed to contact relevant industry bodies to understand the level of fishing effort in this area, DPI Fisheries recommends that local fishers or local fisheries managers are also contacted to understand both the level of fishing and fishing access rights in the area, so that impacts on fishing activities can be accurately assessed.

The scoping study has considered the location of the Pambula site in relation to the existing shoreline outfall for the Merimbula sewage outfall. Bega Valley Shire Council have lodged an application for an offshore deepwater sewage disposal site. The EIS should also consider the location of the Pambula site in relation to this offshore sewage disposal site.

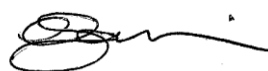
DPI Fisheries contact details within DPI Fisheries regarding this proposal follow:

- Ian Lyall, Program Leader Aquaculture: ian.lyall@dpi.nsw.gov.au
- Carla Ganassin, Senior Fisheries Manager Coastal Systems: carla.ganassin@dpi.nsw.gov.au
- Matthew Proctor, District Fisheries Officer Eden (Pambula site): matthew.proctor@dpi.nsw.gov.au
- Paul Frank, District Fisheries Officer Narooma (Bermagui site): paul.frank@dpi.nsw.gov.au
- Melinda Coleman, Principal Research Scientist: melinda.coleman@dpi.nsw.gov.au

Yours sincerely,



Raelene Treneman
A/Program Leader Aquaculture



Carla Ganassin
Senior Fisheries Manager, Coastal Systems



Sally Munk
Principal Planning Officer
Industry Assessments
sally.munk@planning.nsw.gov.au

Our ref: DOC22/455458-1
Your ref: SSD-44249280

17 June 2022

Dear Ms Munk,

Subject: Major Projects – New Request for Advice – Kelp Farming Aquaculture - Bermagui and Pambula (SSD-44249280)

I refer to your request for Secretary's Environmental Assessment Requirements (SEARs) for the proposed Kelp Farms at Bermagui and Pambula. Please find attached the following:

1. Comments on coastal processes and hazards matters
2. Comments on matters relating to marine wildlife species
3. Requirements for the Environmental Impact Statement (EA) for the project, and
4. List of guidance material that will assist in the preparation of the EA.

If you wish to discuss this matter further, please contact Nicola Hargraves, Senior Regional Biodiversity Conservation Officer on Nicola.hargraves@environment.nsw.gov.au

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Michael Saxon'.

MICHAEL SAXON
Director – South East
Biodiversity and Conservation Division
[Click here to enter text.](#)

Attachment 1 – Coastal Processes and Hazards

The proposed sites off the coast of Pambula Beach in Merimbula Bay and off Haywards Beach, north of Bermagui are located within the Coastal Environment Area mapped under Chapter 2 (Coastal Management) of the *State Environmental Planning Policy (Resilience and Hazards) 2021*.

Bega Valley Shire Council is preparing a Scoping Study for their coast and estuaries as part of the development of a Coastal Management Program for the Shire. Council should be consulted regarding the Coastal Management Program and whether it will have any implications to the project. They also commissioned a Coastal Processes and Hazards Definition Study (2015). The study contains information relevant to the Merimbula Bay and Bermagui area and should also be referred to.

The EA will need to demonstrate that the proposed development and associated infrastructure is adequately designed to withstand extreme wave fields, coincident tidal ranges, associated currents, and potential seabed changes expected within Merimbula Bay and north of Bermagui. If infrastructure is damaged or destroyed during an extreme ocean storm event, there will need to be provisions for appropriate clean-up and remediation of the site.

Note that seabed mapping is available for the study area and can be downloaded from here: <https://datasets.seed.nsw.gov.au/dataset/nsw-seabed-landforms-derived-from-marine-lidar-data-2022>.

Attachment 2 – Consideration of Marine Wildlife species

The impacts of the proposed project to marine wildlife must be considered according to the Initiatives of the *Marine Estate Management Strategy 2021-2028* (MEMS) and risks identified in the *NSW Marine Estate State-wide Threat and Risk Assessment 2017* (TARA).

Under MEMS, Initiatives 1-9, and their impacts on marine wildlife will need to be considered, including water quality, maintaining healthy marine habitats, climate change, Aboriginal cultural values, threatened and protected species, and ensuring sustainable aquaculture.

The TARA identifies aquaculture as a threat to seagrass beds in estuarine ecosystems and as a potential threat to marine wildlife through physical disturbance from people and/or vessels. Noise disturbance, marine debris and water pollution from small vessels are also identified as risks to marine wildlife. Underwater noise disturbance especially during construction phase is considered a key threat to marine species – particularly cetaceans. A Comprehensive analysis of potential noise sources and modelling of associated impacts is highly recommended, and mitigation measures including altering timing of construction, presence of marine mammal observers and operational measures during active phase are supported.

The TARA recognises there are knowledge gaps in the effects of aquaculture on threatened and protected marine mammals, seabirds and reptiles. It is important that a comprehensive benthic survey and assessment of marine wildlife present is completed as part of the EA, and an ongoing monitoring plan is developed to observe interactions with marine wildlife and identify any unforeseen threats that may emerge.

A key species of note is the Southern Right Whale which is listed as Endangered under the EPBC Act and NSW *Biodiversity Conservation Act* (BC Act). The South East Australian population of Southern Right Whales is estimated to be under 300 individuals with approximately 68 breeding females, and the population is considered to be genetically distinct, and the population is not showing signs of recovery seen in the South West Australian population. Southern Right Whales are highly vulnerable to disturbance from any source, so creating exclusion areas around visiting whales is important for their recovery. The entanglement of Southern Right Whales and Humpback Whales (listed as Vulnerable in the BC Act), amongst other protected and threatened marine wildlife, is considered a high risk of this project and needs to be managed accordingly. A detailed marine wildlife threat reduction plan needs to be developed which should consider all species identified in the SEARs (and include managing potential encounters and entanglements of Southern Right Whales). Considerations could include an observer program, emergency response plan for marine wildlife incidents, oil spill and adverse weather response plan and monitoring and reporting requirements.

The EA should also consider the impacts from light pollution on marine species, particularly seabirds in the area. Light pollution may arise from vessels during construction phase and farm operation. There is extensive research showing the effects of artificial lights on the behaviour, reproduction and survival of marine invertebrates, amphibians, fish and birds. These effects arise from changes in orientation, disorientation, or misorientation and attraction or repulsion from altered light environments. Consideration needs to be given to minimising the amount of light that is released into the environment during the progression of this project.

Attachment 3 - BCD Environmental Assessment Requirements for the proposed Kelp Farm for Bermagui and Pambula (SSD-44249280)

Biodiversity
1. The Proponent must assess terrestrial and aquatic biodiversity impacts in accordance with the current guidelines. The EA must address & provide information on the risks of entanglement and mitigation measures to reduce this risk for the species mentioned below. Impacts on movement and migration pathways will need to be investigated. 2. The proponent must identify whether the project as a whole, or any component of the project, would be classified as a Key Threatening Process (KTP) in accordance with the listings in the <i>Biodiversity Conservation Act 2016</i> (BC Act), <i>Fisheries Management Act 1994</i> (FM Act) and <i>Environmental Protection and Biodiversity Conservation Act 2000</i> (EPBC Act). 3. The EA must include consideration of light, noise and cumulative habitat sterilisation on Marine Wildlife, 4. The Proponent must assess construction and operational impacts on the following: a. Southern Right Whale; b. Humpback Whale; c. Blue Whale; d. Killer Whale; e. Bottlenose Dolphin; f. Common Dolphin; g. Australian Fur Seal; h. Fairy Penguins; i. Leatherback Turtles; j. Leopard Seal, k. Sperm Whale, l. New Zealand Fur Seal, and m. Phytoplankton. 5. The Proponent must assess any Terrestrial biodiversity impacts in accordance with the Biodiversity Assessment Method and documented in a Biodiversity Development Assessment Report (BDAR). The BDAR must include information in the form detailed in the <i>Biodiversity Conservation Act 2016</i> (s6.12), <i>Biodiversity Conservation Regulation 2017</i> (s6.8) and Biodiversity Assessment Method. 6. The BDAR must document the application of the avoid, minimise and offset framework including assessing all direct, indirect and prescribed impacts in accordance with the Biodiversity Assessment Method.

7. The BDAR must include details of the measures proposed to address the offset obligation as follows;
- The total number and classes of biodiversity credits required to be retired for the development/project;
 - The number and classes of like-for-like biodiversity credits proposed to be retired;
 - The number and classes of biodiversity credits proposed to be retired in accordance with the variation rules;
 - Any proposal to fund a [biodiversity conservation action](#);
 - Any proposal to conduct ecological rehabilitation (if a mining project);
 - Any proposal to make a payment to the Biodiversity Conservation Fund.
- If seeking approval to use the variation rules, the BDAR must contain details of the [reasonable steps](#) that have been taken to obtain requisite like-for-like biodiversity credits.
8. The BDAR must be prepared by a person accredited in accordance with the Accreditation Scheme for the Application of the Biodiversity Assessment Method Order 2020 under s6.10 of the *Biodiversity Conservation Act 2016*.

Water and soils

9. The EA must map the following features relevant to water and soils including:
- a. Rivers, streams, wetlands, estuaries (as described in s4.2 of the Biodiversity Assessment Method).
 - b. Wetlands as described in s4.2 of the Biodiversity Assessment Method. Coastal wetlands include all areas mapped as "Coastal Wetlands" under Chapter 2 (Coastal Management) of the State Environmental Planning Policy (Resilience and Hazards) 2021.
 - c. Groundwater.
 - d. Groundwater dependent ecosystems.
 - e. Proposed intake and discharge locations.
10. The EA must describe background conditions for any water resource likely to be affected by the Kelp Farm for Bermagui and Pambula, including:
- a. Existing surface and groundwater.
 - b. Hydrology, including volume, frequency and quality of discharges at proposed intake and discharge locations.
 - c. Water Quality Objectives (as endorsed by the NSW Government <http://www.environment.nsw.gov.au/ieo/index.htm>) including groundwater as appropriate that represent the community's uses and values for the receiving waters.
 - d. Indicators and trigger values/criteria for the environmental values identified at (c) in accordance with the [ANZECC \(2000\) Guidelines for Fresh and Marine Water Quality](#) and/or local objectives, criteria or targets endorsed by the NSW Government.

11. The EA must assess the impacts of the Kelp Farm on water quality, including: a. The nature and degree of impact on receiving waters for both surface and groundwater, demonstrating how the Seaweed Aquaculture Lease protects the Water Quality Objectives where they are currently being achieved, and contributes towards achievement of the Water Quality Objectives over time where they are currently not being achieved. This should include an assessment of the mitigating effects of proposed stormwater and wastewater management during and after construction. b. Identification of proposed monitoring of water quality or required changes to existing monitoring programs. c. How the development meets the objectives of the Coastal Management Act 2016 and management objectives of relevant Coastal Management Areas defined under this Act. d. Consistency with any relevant certified Coastal Management Program (or Coastal Zone Management Plan)
12. The EA must assess the impact of the Kelp Farm on hydrology, including: a. Water balance including quantity, quality and source. b. Effects to downstream rivers, wetlands, estuaries, marine waters and floodplain areas. c. Effects to downstream water-dependent fauna and flora including groundwater dependent ecosystems. d. Impacts to natural processes and functions within rivers, wetlands, estuaries and floodplains that affect river system and landscape health such as nutrient flow, aquatic connectivity and access to habitat for spawning and refuge (e.g. river benches). e. Changes to environmental water availability, both regulated/licensed and unregulated/rules-based sources of such water. f. Mitigating effects of proposed stormwater and wastewater management during and after construction on hydrological attributes such as volumes, flow rates, management methods and re-use options. g. Identification of proposed monitoring of hydrological attributes.
Flooding and Coastal Hazards
13. The EA must map the following features relevant to flooding as described in the Floodplain Development Manual 2005 (NSW Government 2005) including: a. Flood prone land. b. Flood planning area, the area below the flood planning level. c. Hydraulic categorisation (floodways and flood storage areas).
14. The EA must describe flood assessment and modelling undertaken in determining the design flood levels for events, including a minimum of the 1 in 10 year, 1 in 100 year flood levels and the probable maximum flood, or an equivalent extreme event.

15. The EA must model the effect of the proposed Kelp Farm (including fill) on the flood behaviour under the following scenarios: a. Current flood behaviour for a range of design events as identified in 11 above. This includes the 1 in 200 and 1 in 500 year flood events as proxies for assessing sensitivity to an increase in rainfall intensity of flood producing rainfall events due to climate change.
16. Modelling in the EA must consider and document: a. The impact on existing flood behaviour for a full range of flood events including up to the probable maximum flood. b. Impacts of the development on flood behaviour resulting in detrimental changes in potential flood affection of other developments or land. This may include redirection of flow, flow velocities, flood levels, hazards and hydraulic categories. c. Relevant provisions of the NSW Floodplain Development Manual 2005.
17. The EA must assess the impacts on the proposed Kelp Farm on flood behaviour, including: a. Whether there will be detrimental increases in the potential flood affection of other properties, assets and infrastructure. b. Consistency with Council floodplain risk management plans. c. Compatibility with the flood hazard of the land. d. Compatibility with the hydraulic functions of flow conveyance in floodways and storage in flood storage areas of the land. e. Whether there will be adverse effect to beneficial inundation of the floodplain environment, on, adjacent to or downstream of the site. f. Whether there will be direct or indirect increase in erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses. g. Any impacts the development may have upon existing community emergency management arrangements for flooding. These matters are to be discussed with the SES and Council. h. Whether the proposal incorporates specific measures to manage risk to life from flood. These matters are to be discussed with the SES and Council. i. Emergency management, evacuation and access, and contingency measures for the development considering the full range of flood risk (based upon the probable maximum flood or an equivalent extreme flood event). These matters are to be discussed with and have the support of Council and the SES. j. Any impacts the development may have on the social and economic costs to the community as consequence of flooding.
18. The EA must describe the potential effects of coastal processes and hazards (within the meaning of the <i>Coastal Management Act 2016</i>), including sea level rise and climate change: a. On the proposed development b. Arising from the proposed development.

19. The EA must consider the effects of coastal processes and hazards (within the meaning of the <i>Coastal Management Act 2016</i>), impacting the site under the following scenarios: a. Current sea level. b. Projected future climate change (including sea level rise) scenarios that have been peer-reviewed and widely accepted by scientific opinion.
20. The EA must have regard to and document: a. Consistency with any certified Coastal Management Program (or Coastal Zone Management Plan) and coastal zone emergency action subplans b. Consistency with management objectives of Coastal Management Areas described in the <i>Coastal Management Act 2016</i> and relevant development controls described in Chapter 2 (Coastal Management) of the State Environmental Planning Policy (Resilience and Hazards) 2021. c. Consistency with any existing entrance management policies or strategies for coastal lakes and lagoons

Attachment 4 - Guidance Material

Title	Web address
<u>Relevant Legislation</u>	
<i>Biodiversity Conservation Act 2016</i>	https://www.legislation.nsw.gov.au/#/view/act/2016/63/full
<i>Coastal Management Act 2016</i>	https://www.legislation.nsw.gov.au/#/view/act/2016/20/ful
<i>State Environmental Planning Policy (Resilience and Hazards) 2021</i>	State Environmental Planning Policy (Resilience and Hazards) 2021 No 730State Environmental Planning Policy (Resilience and Hazards) 2021 - NSW Legislation
<i>Commonwealth Environment Protection and Biodiversity Conservation Act 1999</i>	http://www.austlii.edu.au/au/legis/cth/consol_act/epabca1999588/
<i>Environmental Planning and Assessment Act 1979</i>	http://www.legislation.nsw.gov.au/maintop/view/inforce/act+203+1979+cd+0+N
<i>Fisheries Management Act 1994</i>	http://www.legislation.nsw.gov.au/maintop/view/inforce/act+38+1994+cd+0+N
<i>Marine Parks Act 1997</i>	http://www.legislation.nsw.gov.au/maintop/view/inforce/act+64+1997+cd+0+N
<i>National Parks and Wildlife Act 1974</i>	http://www.legislation.nsw.gov.au/maintop/view/inforce/act+80+1974+cd+0+N
<i>Protection of the Environment Operations Act 1997</i>	http://www.legislation.nsw.gov.au/maintop/view/inforce/act+156+1997+cd+0+N
<i>Water Management Act 2000</i>	http://www.legislation.nsw.gov.au/maintop/view/inforce/act+92+2000+cd+0+N
<i>Wilderness Act 1987</i>	http://www.legislation.nsw.gov.au/viewtop/inforce/act+196+1987+FIRST+0+N
<u>Biodiversity</u>	
Biodiversity Assessment Method (OEH, 2017)	http://www.environment.nsw.gov.au/resources/bcact/biodiversity-assessment-method-170206.pdf
Biodiversity Development Assessment Report	https://www.legislation.nsw.gov.au/#/view/act/2016/63/part6/div3/sec6.12
Guidance and Criteria to assist a decision maker to determine a serious and irreversible impact (OEH, 2017)	http://www.environment.nsw.gov.au/resources/bcact/guidance-decision-makers-determine-serious-irreversible-impact-170204.pdf
Accreditation Scheme for Application of the Biodiversity Assessment Metho Order 2017	https://www.legislation.nsw.gov.au/regulations/2017-471.pdf
Biodiversity conservation actions	www.environment.nsw.gov.au/resources/bcact/ancillary-rules-biodiversity-actions-170496.pdf

Title	Web address
Reasonable steps to seek like-for-like biodiversity credits for the purpose of applying the variation rules	www.environment.nsw.gov.au/resources/bcact/ancillary-rules-reasonable-steps-170498.pdf
OEH Threatened Species Website	www.environment.nsw.gov.au/threatenedspecies/
NSW BioNet (Atlas of NSW Wildlife)	www.bionet.nsw.gov.au/
NSW guide to surveying threatened plants (OEH 2016)	www.environment.nsw.gov.au/resources/threatenedspecies/160129-threatened-plants-survey-guide.pdf
OEH threatened species survey and assessment guideline information	www.environment.nsw.gov.au/threatenedspecies/surveyassessmentguidelines.htm
BioNet Vegetation Classification - NSW Plant Community Type (PCT) database	www.environment.nsw.gov.au/research/Vegetationinformationsystem.htm
OEH Data Portal (access to online spatial data)	http://data.environment.nsw.gov.au/
Fisheries NSW policies and guidelines	http://www.dpi.nsw.gov.au/fisheries/habitat/publications/policies,-guidelines-and-manuals/fish-habitat-conservation
Marine Estate Management Strategy (MEMS)	https://www.marine.nsw.gov.au/__data/assets/pdf_file/0005/1352831/Marine-Estate-Management-Strategy-2018-2028.pdf
NSW Marine Estate Statewide Threat and Risk Assessment (TARA)	https://www.marine.nsw.gov.au/__data/assets/pdf_file/0011/1352666/NSW-Marine-Estate-Threat-and-Risk-Assessment-Final-Report.pdf
List of national parks	http://www.environment.nsw.gov.au/NationalParks/parksearchatoz.aspx
Revocation, recategorisation and road adjustment policy (OEH, 2012)	http://www.environment.nsw.gov.au/policies/RevocationOfLandPolicy.htm
Guidelines for developments adjoining land managed by the Office of Environment and Heritage (OEH 2013)	http://www.environment.nsw.gov.au/resources/protectedareas/development-land-adjoining-130122.pdf
National Light Pollution Guidelines for Wildlife	https://www.awe.gov.au/sites/default/files/documents/national-light-pollution-guidelines-wildlife.pdf
<u>Water and Soils</u>	
Flooding and Coastal Erosion	
Floodplain development manual	http://www.environment.nsw.gov.au/floodplains/manual.htm
NSW Climate Impact Profile	http://climatechange.environment.nsw.gov.au/
Climate Change Impacts and Risk Management	Climate Change Impacts and Risk Management: A Guide for Business and Government, AGIC Guidelines for Climate Change Adaptation
Water	
Water Quality Objectives	http://www.environment.nsw.gov.au/ieo/index.htm

Title	Web address
ANZECC (2000) Guidelines for Fresh and Marine Water Quality	www.environment.gov.au/water/publications/quality/australian-and-new-zealand-guidelines-fresh-marine-water-quality-volume-1
Applying Goals for Ambient Water Quality Guidance for Operations Officers – Mixing Zones	http://deccnet/water/resources/AWQGuidance7.pdf
Approved Methods for the Sampling and Analysis of Water Pollutant in NSW (2004)	http://www.environment.nsw.gov.au/resources/legislation/approvedmethods-water.pdf

The Secretary
Department of Planning, Industry and Environment
GPO Box 39
Sydney NSW 2001

Attention: Sally Munk

Dear Sally,

State Significant Development (SSD-44249280) – Kelp Aquaculture Farms, Bermagui and Pambula Beach

Thank you for providing Port Authority of New South Wales (Port Authority) with the opportunity to provide input into the Secretary's Environmental Assessment Requirement (SEARs) for the State Significant Development application (SSD-44249280) for two 30 hectare Kelp Aquaculture Farms off the coast of Bermagui and Pambula Beach on the NSW South Coast.

Port Authority manages the navigation, security, and operational safety needs of commercial shipping in Sydney Harbour, Port Botany, Newcastle Harbour, Port Kembla, Eden and Yamba. This includes safe navigation of shipping movements within the ports, the role of Harbour Master, pilotage, emergency response including marine oil and chemical spill response, and dangerous goods.

Port Authority also owns land at Snug Cove, including the Eden Cruise Wharf and Breakwater Wharf.

Port Authority has reviewed the Scoping Report for SSD-44249280 and makes the following comments and matters to be included in the SEARs.

Navigation Impacts

The Scoping Report indicates that the proposal will utilise existing commercial marina facilities at Eden Wharf (253 Imlay St, Eden NSW 2551) and Bermagui Wharf to transfer equipment and staff required to construct, monitor and maintain the longlines in the lease areas, and also to receive harvested kelp for transfer into trucks.

Port Authority requests that the SEARs require the preparation of a navigation risk and impact assessment to assess potential impacts from the project on port operations and commercial and recreational shipping movements in Eden and detail how vessel movements associated with SSD-44249280 will be managed to minimise risk and avoid impacts on those movements. Port Authority requests that the scope of this assessment is discussed and agreed with the Harbour Master.

Consultation

Given Port Authority's ownership of land and wharf facilities at Snug Cove and Port Authority's role of Harbour Master for the Port of Eden, Port Authority requests that the SEARs require consultation with Port Authority and the Harbour Master during the preparation of the EIS on:

YAMBA

PO Box 143
Yamba NSW 2464
T: 61 2 6646 2002

NEWCASTLE

PO Box 663
Newcastle NSW 2300
T: 61 2 4985 8222

SYDNEY

PO Box 25
Millers Point NSW 2000
T: 61 2 9296 4999

PORT KEMBLA

PO Box 89
Port Kembla NSW 2505
T: 61 2 4275 0100

EDEN

PO Box 137
Eden NSW 2551
T: 61 2 66461596

- the proposed use of Port Authority land and wharf structures and the assessment of the impacts of that use;
- navigation impacts and vessel management (as noted above).

Please do not hesitate to contact Ricardo Prieto-Curiel, Senior Environmental Planner, at rprieto-curiel@portauthoritynsw.com.au or 0439 309 614 should you have any questions.

Yours sincerely,

A handwritten signature in blue ink, reading "R. Prieto-Curiel", with a stylized flourish at the end.

Ricardo Prieto-Curiel
Senior Environmental Planner
20 June 2022

20 June 2022

Our Ref: STH22/00166/01

Your Ref: SSD-44249280

Sally Munk

The Department of Planning and Environment

BY EMAIL: sally.munk@planning.nsw.gov.au

CC: information@planning.nsw.gov.au

SSD-44249280, KELP FARMING AQUACULTURE, BERMAGUI AND PAMBULA NSW

Transport for NSW (TfNSW) refers to the notification received on 7 June 2022 for the request for input into the Planning Secretary's Environmental Assessment Requirements (SEARs) for the abovementioned State Significant Development (SSD).

TfNSW has completed a review of the information provided, including the Scoping Report prepared by EcoFutures dated 25 May 2022, and focusing on the impact to the State Road network and waterways. This has included consultation with NSW Maritime.

TfNSW notes:

- The key state classified roads are the Princes Highway, Imlay Street and Albert Street in Eden. Wallaga Lake Road and Bermagui Road in Bermagui are regional classified roads managed by Council.
- The scoping report was referred to the TfNSW Maritime team who have provided comments in relation to waterway matters. These are included in Attachment 1.

Having regard for the above, TfNSW requests the matters outlined in Attachment 2 be included in any SEARS issued and as such should be addressed in the Environmental Impact Statement (EIS) prepared for the development.

Should you require further information please contact Timothy Mahoney, Development Case Officer on (02) 9549 9966 or by emailing development.south@transport.nsw.gov.au.

Yours sincerely



Timothy Mahoney

Development Case Officer, Development Services

OFFICIAL

1. Transport for NSW (Maritime): The following is required to be added to the Scoping Report Section 3 - Statutory Context;
 - a. 3.1 – Commonwealth Legislation - The Marine Safety (Domestic Commercial Vessel) National Law Act 2012.

Notes:

 - The use of domestic commercial vessels (trawlers, barges and any other commercial vessels) and suitably qualified crew will be required as part of all works.
 - b. 3.2 – State Legislation - The Marine Safety Act 1988.

Notes:

 - The Marine Safety Act 1988 allows Maritime to enact and enforce zones and other localised waterway restrictions, including the installation of navigation aids which will be necessary to provide for a safe project area and the safety of vessels navigating in the vicinity. Examples of relevant Sections are 17 Minister's approval required for aquaculture leases over navigable waters and 19 Regulations relating to safety of navigation.
2. Additionally the below comments are to be addressed:
 - a. The proponent has committed to preparing a navigation risk impact assessment in accordance with Maritime requirements, and recognition of this requirement is acknowledged, however; it is not clear at this stage whether there will be a need for all vessels to be excluded (prohibited) from entering the lease area. From the project infrastructure and design outlined, there is a strong likelihood that this will need to be the case.
 - b. TfNSW Maritime believes that, based on the information provided to date, the infrastructure will not allow for power-driven vessels to safely navigate within the lease area, without the risk of entanglement to vessels and subsequent damage to the infrastructure. If all vessels are to be excluded, or at least power-driven vessels, the buoyage and signage requirements on the proponent will be far greater. The perimeter of the lease area will need to be clearly delineated to ensure power-driven vessels do not inadvertently enter, including at times of restricted visibility. The potential for the lease area to be a vessel exclusion zone should be included in the community and stakeholder engagement to be undertaken.
 - c. The vessel monitoring data referenced within the Scoping Report may be understated due to the impacts of Covid 19 restrictions on the use of recreational and commercial vessels imposed since 2020. Due to the ongoing easing of restrictions, it is expected vessel numbers will begin to normalise and continue to increase over the coming months towards pre-covid levels.
 - d. Further investigations and due diligence are required to ensure that any of the following elements do not lead to the proposal becoming cost prohibitive:
 - i. The suitability of the existing commercial vessel fleet operating out of Eden and Bermagui in relation to their ability to undertake the work required, given vessel design, use and crew constraints imposed under the National Law Act 2012 and affiliated legislation.

- ii. Engaging commercial vessels and crew to undertake the work required. Access requirements for affiliated TfNSW Maritime wharves and infrastructure including relevant fees, permissions / permits/ berthing licences, for any new proposed DCV to service the kelp farm would require further investigations into feasibility of such a proposal, via the Maritime Infrastructure Delivery Office (MIDO@transport.nsw.gov.au). Currently there are no available permanent berthing sites on offer for new DCV within Bermagui or Eden Harbour.
- iii. Installation and maintenance of the required signage and navigation aids to provide for the safe delineation of the lease area, noting the ongoing monitoring and maintenance required to ensure that all navigation aids are on station and working appropriately at all times.
- e. Broad community and stakeholder consultation, including the NSW Boating Industry Association Ltd (BIA) and other relevant parties involved in the use of commercial and recreational vessels, will be required.
- f. It is important to note that the proponent, or any entity or contractor acting on their behalf, are not exempt from the provisions of the *Marine Safety Act 1998*, or any other relevant legislation, and all parties must comply with any direction given by NSW Maritime Authorised officers with regard to safe navigation or the prevention of pollution.

1. *Traffic Impact Study (TIS)*: A TIS is required to examine any potential transport related implications of the development. As a guide Table 2.1 of the RTA's Guide to Traffic Generating Developments outlines the key issues that should be considered in preparing a TIS. In addition, regard should be had for the Austroads publications, particularly the *Austroads Guide to Traffic Management Part 12: Integrated Transport Assessments for Developments* and *Part 3: Traffic Studies and Analysis Methods*.
- a) TfNSW considers that the traffic related issues relevant to the development should be considered and addressed in two distinct stages as follows:
 - i. *Construction phase* – The transport of materials and equipment/components for the establishment of the kelp farms, ancillary infrastructure and the movement and parking of construction related vehicles including workers vehicles;
 - ii. *Operational phase* – The ongoing traffic generation due to the operation, maintenance and servicing of the various elements of the project.
 - b) The following need to be addressed for each stage:
 - i. Details of all traffic types (both heavy and light vehicles) and volumes, for each, likely to be generated by the proposed development during operation, including a description of heavy vehicle types and haul route origins and destinations;
 - ii. For heavy vehicles, details are required on their size and their associated carrying capacity for the receipt of materials;
 - iii. Daily inbound and outbound traffic profile by time of day and day of week broken down per vehicle types. This includes a summary of the peak hour movements and maximum daily movements for both heavy and light vehicles, including how these numbers correlate to the daily and annual limits for which approval is being sought;
 - iv. Details on how maximum vehicle numbers will be monitored to ensure ongoing compliance.
 - c) An assessment of the cumulative impact of traffic from this development and nearby developments that use the same access to and from Imlay Street, Eden and Lamont Street, Bermagui;
 - d) An assessment of the suitability of the local road connections with the state road network at each access point being investigated as well as details on any works required. This is including a schedule/timeframe for their provision;
 - e) Traffic Management Plan (TMP) which includes how to manage the number of vehicles likely to be generated during operation and awaiting loading, unloading or servicing that can be accommodated on the sites (the existing land-based marina facilities and land-based processing facility) to avoid queuing in the surrounding road network. This is to demonstrate how internal and external traffic can be managed in conjunction with the operations on the sites;
 - f) Site layouts to demonstrate that the sites (the existing land-based marina facilities and land-based processing facility) will be able to accommodate the most productive vehicle types and parking on the sites is in accordance with the relevant Australian Standard and Council's Development Control Plan;

- g) Swept path diagrams to demonstrate the largest vehicles that will be using the classified road network where it connects with the local road network can undertake all required manoeuvres to enable access to and from the development site;
- h) A clearly illustrated site access and circulation plan for the existing land-based marina facilities and land based processing facility, including loading, storage and handling facilities and lines of sight for heavy vehicles;
- i) Details of options for emergency services vehicles.

Please note the above relates only to potential impacts on the state road network. Discussions should be had with Bega Valley Shire Council in relation to the information they may require to be included in the TIS concerning local road impacts.

2. Consultation: TfNSW encourages further consultation, if required, during the preparation of the EIS to discuss issues/impacts on state classified roads (development.south@transport.nsw.gov.au) and/or waterways (please see Attachment 1).

HERITAGE NSW – Aboriginal Cultural Heritage - SEARs

Project Name: Kelp Farming Aquaculture - Bermagui and Pambula NSW
SSD #: 44249280

1. The EIS must identify and describe the Aboriginal cultural heritage values that exist across the whole area that will be affected by the development and document these in an Aboriginal Cultural Heritage Assessment Report (ACHAR). This may include the need for surface survey and test excavation. The identification of cultural heritage values must be conducted in accordance with the [Code of Practice for Archaeological Investigation in NSW](#) (DECCW 2010), and be guided by the [Guide to Investigating, Assessing and Reporting on Aboriginal Cultural Heritage in New South Wales](#) (OEH 2011).
2. Consultation with Aboriginal people must be undertaken and documented in accordance with the [Aboriginal Cultural Heritage Consultation Requirements for Proponents](#) (DECCW 2010). The significance of cultural heritage values for Aboriginal people who have a cultural association with the land must be documented in the ACHAR.
3. Impacts on Aboriginal cultural heritage values are to be assessed and documented in the ACHAR. The ACHAR must demonstrate attempts to avoid impact upon cultural heritage values and identify any conservation outcomes. Where impacts are unavoidable, the EIS must outline measures proposed to mitigate impacts. Any objects recorded as part of the assessment must be documented and notified to Heritage NSW.
4. The assessment of Aboriginal cultural heritage values must include a surface survey undertaken by a qualified archaeologist. The result of the surface survey is to inform the need for targeted test excavation to better assess the integrity, extent, distribution, nature and overall significance of the archaeological record. The results of surface surveys and test excavations are to be documented in the ACHAR.
5. The ACHAR must outline procedures to be followed if Aboriginal objects are found at any stage of the life of the project to formulate appropriate measures to manage unforeseen impacts.
6. The ACHAR must outline procedures to be followed in the event Aboriginal burials or skeletal material is uncovered during construction to formulate appropriate measures to manage the impacts to this material.

NOTE: The process described in the *Due Diligence Code of Practice for the protection of Aboriginal objects in NSW* (DECCW 2010) is not sufficient to assess the impacts on Aboriginal cultural heritage of Major Projects.

Kelp Farming Aquaculture

The Department of Planning and Environment – Crown Lands has reviewed the Scoping Report - Kelp Farming Aquaculture at Bermagui and Pambula Beach, south coast of NSW.

The project footprint is within a Crown Waterway.

The *Environmental Planning and Assessment Act 1979* requires any person seeking to carry out specified development to obtain the consent of the landowner. The development application will require Landowners consent at the time the consent authority determines whether to grant development consent. Crown Lands has the authority to grant minister's consent as landowner under the *Crown Land Management Act 2016* to the lodging of:

- development applications, Complying Development Certificate applications, and major project applications under the *Environmental Planning and Assessment Act 1979*
- development applications under the *Native Vegetation Act 2003*
- applications required under other applicable legislation.

Landowner's consent will only be given if it is determined that the proposal is consistent with the management of Crown land under the *Crown Land Management Act 2016*. Crown land includes waterway areas. Landowners consent application form is at

https://www.industry.nsw.gov.au/data/assets/pdf_file/0003/144345/landowners-consent-application-form.pdf.

The proponent states in the Scoping Report (see section 1.2.1) that they have successfully tendered for two aquaculture leases, AL21/029 off Haywards Beach and AL21/031 in Merimbula Bay. The proponent will be required to obtain an aquaculture permit from DPI Fisheries to authorise the aquaculture activities across the two sites. Progression of the proponent's application for an aquaculture permit issued under Section 144(1) of the *Fisheries Management Act 1991* will occur if development consent is granted through the SSD assessment process. If the proponent is successful in obtaining an aquaculture permit, then no additional Crown Land tenure is required.

It is not clear from the Scoping Report if the proponent will require authority from either Crown Lands or NSW Transport (MIDO) to utilise the facilities at Eden Wharf and Bermagui Wharf. The proponent should investigate this further.

No other Crown lands, including roads are contained within the project footprint or adjacent to the project footprint.

Native Title

The project area is within the 'determined area' for the South Coast Peoples Native Title claim.

Dealings in land or water that affect (impair or extinguish) native title are referred to as 'future acts' and these acts must be done in compliance with the *Native Title Act 1994*. The *Native Title Act 1994* specifies procedures that must be followed before future acts can be undertaken legally. Information regarding Native Title can be found at the below link:

<https://www.industry.nsw.gov.au/lands/what-we-do/our-work/native-title>

Aboriginal Land Claims

There are no Aboriginal Land Claims over the project footprint. However, numerous claims have been lodged over coastal lands adjacent to the project footprint. The Scoping Report states (section 3.2.1) that the proponent will consult with the Native Title claimants. Crown Lands recommends consulting the NSW Aboriginal Land Council in relation the project and any potential impacts that may result of detachment of kelp plants or loss of rope infrastructure during storm events.

Biodiversity/Environmental

A key concern for Crown Lands is that any activity minimises changes to the long-term suitability of the site for future activities. The proposal notes the need for pre-installation surveys of benthos and on-going monitoring during, and after, operation. This monitoring program also needs to include multiple control sites as a reference. Shading and the addition of biomass to the area may be expected to have only short-term effects on the ecology of the sandy environment because such habitats are pre-adapted to frequent physical disturbance, but as this is a novel venture adequate monitoring is essential.

The proposal notes that kelp is harvested by cutting it from the culture ropes with a sharp knife. What happens to the holdfast material that remains on the rope? Would it be better in terms of minimising residual organic matter at the site to collect the whole culture rope and remove the kelp on land? An Environmental Assessment should weigh-up alternative harvest techniques to justify the optimal approach.

Some detachment of kelp plants is inevitable and possibly also loss of rope infrastructure during storm events. Whilst detached kelp stranded as 'wrack' is a natural phenomenon on beaches adjacent to rocky reefs, it is less common on beaches near sandy seafloors. An enhanced supply of kelp wrack might potentially alter the trophic structure of some beaches and impact on public amenity if dislodged in large amounts, especially once the farms reach full production. Detached culture ropes and long lines could also pose a danger to swimmers and boating as well as littering adjacent beaches. Environmental assessment should therefore include modelling of wave and current directions during storm events to provide a level of predictability as to where such material is most likely to be stranded. Labelling of ropes and buoys would assist in identification of lost material from the farms.

If the proponent requires further information, or has any questions, please contact Kirsti Sampson, in Crown Lands, kirsti.sampson@crowland.nsw.gov.au

Yours sincerely



Simon Williams

[Area Manager, South East Region](#)

Crown Lands | Department of Planning, Industry and Environment

E: simon.williams@crowland.nsw.gov.au

Our ref: HMS ID 1183

Sally Munk
Planner
Department of Planning and Environment
PO BOX 404, PARRAMATTA NSW 2124

By email: sally.munk@planning.nsw.gov.au

Dear Ms Munk

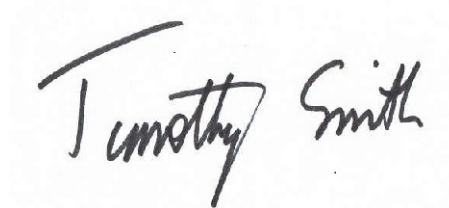
Request for Secretary's Environmental Assessment Requirements (SEARS) for Kelp Farming Aquaculture - Bermagui and Pambula NSW (SSD-44249280)

Thank you for your referral dated 09 June 2022 inviting SEARS input from the Heritage Council of NSW on the above State Significant Development (SSD) proposal.

The subject site is not listed on the State Heritage Register (SHR), nor is it in the immediate vicinity of any SHR items. Further, the site does not contain any known historical archaeological relics, including underwater cultural heritage sites. Therefore, no heritage comments are required. The Department does not need to refer subsequent stages of this proposal to the Heritage Council of NSW.

If you have any questions regarding the above advice, please contact Sirena Larsson, Manager Customer Concierge at Heritage NSW at sirena.larsson@environment.nsw.gov.au.

Yours sincerely



Tim Smith OAM
Director Assessments
Heritage NSW
Department of Planning & Environment
As Delegate of the Heritage Council of NSW
27/6/22

21 July 2022

NSW Department of Planning and Environment
Industry Assessments
Locked Bag 5022
Parramatta NSW 2124

Attention: Ms Sally Munk, Principal Planning Officer

Dear Ms Munk

SSD-44249280 – kelp farming aquaculture- Bermagui and Pambula

Thank you for your email of the 27 June 2022 requesting comment from Council in regard to the proposed kelp farming aquaculture.

Council has reviewed the scoping study and notes that the majority of the farming(aquaculture) activities occur in the waters adjacent to Bega Valley Shire. Council will not comment on this aspect as it would be assumed that Bega Valley Shire Council will do so.

It is noted that the proposed processing of the product is likely to occur at 265 Corkhill Drive Tilba Tilba and this is located within Eurobodalla Shire Council. Council has no record of any approval for this type of land use. The land is RU1 primary production pursuant to the Eurobodalla LEP 2012 and is also within a heritage conservation area.

The scoping report indicate that the transportation of the kelp to the processing facility at Tilba Tilba is a part of the SSD application however, it is not clear to Council how this can be when there is no approval for such a use. It is this Council's view that the processing facility should be either a part of the SSD application or that the process which is being considered with the SSD application ends at Eden Wharf.

Either way, it should be clearly communicated to the proponent that the processing of kelp at a land-based property would likely require development consent and there should be some discussion now as to whether that is likely to be obtained, i.e., is the activity even permissible??

All activities associated with transporting and processing of the kelp to 265 Corkhill Drive will need to be assessed and the associated environmental impacts considered. This would ideally be done with the SSD application or alternatively with a development application to

Eurobodalla Shire Council. The SSD application should be very clear which way the proponent is seeking to obtain approvals.

Should you require any further clarification, please do not hesitate to contact me on 4474 1000 or via email council@esc.nsw.gov.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'G Bruce', written in a cursive style.

Gary Bruce

Divisional Manager Development Services