

Our Ref: 405062_LEO_027

9 March 2007

Major Development Assessment
Department of Planning
GPO Box 30
SYDNEY NSW 2001

Attention: Paul Weiner

Dear Paul,

Re: Application # 05_0174 Proposed Dredging of Oyster Lease and Operation of Sand Stockpile – Oyster Lease # 80-178 and Lots 59, 101, 123, 124, 125 DP 753207, Lot 12 DP 816473, 2 – 6 Rodmay St, Tuncurry

We understand that the Department is currently assessing this application. Based on various discussions with the Department, it has become apparent that the issue relating to the proposed dredge depth of 2 m below mean low water mark may require clarification, in light of verbal advice received by the Department from officers of DPI. We have requested a copy of the verbal advice provided to the Department by the DPI in writing, though to date, this has not been received.

We would therefore like to take this opportunity to further reiterate the main points for consideration of the Department in relation to this issue, to assist in the Department's ongoing assessment of the application.

1. The application was for dredging to a depth of 2 m below mean low water mark. This depth was determined based on the operational needs of the applicant, as detailed in our letter to the Department of 12/12/06 (Ref 405062_LEO_023a).
2. The application for a dredge depth of 2 m below mean low water mark has been justified in terms of environmental impacts. The hydrodynamic assessment and aquatic ecology assessment indicated no adverse impacts as a result of dredging to this depth.
3. The DPI's advice relating to a 1 m maximum dredge depth as "best management practice for dredging" as outlined in the OISAS document is not relevant to the proposal, as noted in correspondence from the Department (email from Paul Weiner, 1/03/07). This is important for several reasons:

- a. Section 9.3 of the Oyster Industry Sustainable Aquaculture Strategy (OISAS) clearly outlines the regulatory process for dredging. It clearly acknowledges the Department of Lands as the authority responsible for issuing a licence to dredge, being the authority responsible for management of the bed of the estuary. Note that in their review of the EA, the Department of Lands did not raise any concerns in relation to the proposed depth of dredging. It is also worth noting that the DNR did not raise any concerns relating to the depth of dredging with respect to potential hydrodynamic impacts.
 - b. No reasons have been provided by the DPI to support their verbal advice to the Department regarding dredge depth, other than to quote their “best management practice”, which as stated, is only relevant as far as DPI are concerned if a licence under s201 of the *Fisheries Management Act 1994* is required. In their response to the EA, DPI did not raise any issues relating to the impacts of dredging to a depth of 2 m that were relevant to either aquatic ecology or hydrodynamics. Their only comments related to the depth being greater than that which is stipulated in the OISAS, which as discussed, has no legislative relevance to determination of the project.
 - c. The obvious conclusion is that the DPI does not have any concerns relating to the depth of dredging, other than that the proposed depth does not comply with a regulation which is not relevant to the project. There are therefore no grounds for the Department to accept or apply the verbal advice provided DPI officers.
4. It is not practical to dredge to a depth of 1 m, even with a small dredge (the type of dredge proposed to be used is a minimum dredge size). Operationally, the dredge cannot retain a fully submerged cutting head that will only draw water, at a limiting dredge depth of 1 m. This is because the dredge head draws a vacuum with a diameter of approximately 1.2 – 1.4 m. At a maximum dredge depth of 1 m, the dredge head would draw air into the line, creating a potentially dangerous situation with high pressure air in the dredge line which would greatly increase the risk of blow out due to high pressures. A maximum dredge depth of 1 m is therefore not practical, which can be verified through discussions with any contract dredge operator. It is obvious that the DPI is not conversant with the practical limitations of dredge operations.
 5. The NSW Oyster Growers Association are currently in negotiations with the DPI to amend the OISAS to remove reference to the “best practice” maximum dredge depth for reasons including those stated in 1 and 4 above.

Summary

The Environmental Assessment prepared for the project and subsequent correspondence providing clarification of issues raised during the exhibition period has provided ample justification for the dredge depth in terms of operational need, compliance with relevant legislation/regulation/policy and environmental impacts. We trust that this information will be carefully considered by the Department during the assessment process.

It is requested that we receive notification from the Department prior to determination of the EA should the Department decide to grant approval for a dredge depth other than that which was requested in the application. This is because the proponent has indicated to us the critical nature of the dredge depth to the operational viability of the oyster lease and the need for the proponent to consider any other options available should the requested depth not be approved. If you have any queries, please do not hesitate to contact the undersigned.

Yours faithfully
Orogen Pty Ltd



DR JUSTIN MELEO
Project Director