

Prevention Notice



CENTRAL COAST COUNCIL
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GOSFORD NSW 2250
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Attention: Matthew Barnett

Notice Number 1572222
File Number EF13/3879
Date 15-Nov-2018

NOTICE OF PREVENTIVE ACTION

BACKGROUND

- A. The New South Wales ("**NSW**") Environment Protection Authority ("**EPA**") has responsibility for the administration and enforcement of environment protection legislation in NSW, including the *Protection of the Environment Operations Act 1997* ("**POEO Act**"). CENTRAL COAST COUNCIL ("**the Licensee**") is the holder of Environment Protection Licence No. 3200 ("**the Licence**") issued under the POEO Act. The Licence authorises the carrying out of scheduled activities at TUGGERAH LAKES AND THE TRIBUTARIES OF THE TUGGERAH LAKES, WYONG SHIRE WYONG NSW 2259 ("**the Premises**").
- B. On 2 November 2018 the EPA received an incident report number I15574-2018 ("**the Incident Report**") from a member of the community raising concerns regarding dredging waste being discharged to waters at North Entrance Beach, The Entrance.
- C. The EPA has reviewed Near Map images, dated 2 October 2018 and 22 September 2018. Longitude/Latitude -33°20'28", 151°30'14". The images showed dredging being undertaken within The Entrance channel with what appeared to be a dredge discharge pipe discharging a black liquid to waters at the North Entrance Beach.
- D. On 2 November 2018 the EPA contacted an officer from Central Coast Council ("**the Council**") by phone. The EPA advised the Council officer of the Incident Report and the EPA concerns relating to alleged water pollution. During the phone conversation it was established that the Council was undertaking dredging of The Entrance channel, and held Environment Protection Licence 3200 for undertaking dredging of The Entrance channel. The full nature of the activities being undertaken could not be established during the phone

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conversation as the Council officer responsible for the works was not available until Monday 5 November 2018.

- E. On 5 November 2018 the EPA contacted a Council officer who was the Licensee representative. The EPA was advised by the Licensee representative that:
- dredging activities were being undertaken in accordance with the Licence and The Entrance Dredging Project Review of Environmental Factors ("REF");
 - Results of all monitoring undertaken in accordance with the Licence were available on the Licensee's website;
 - the Pollution Incident Response Plan ("PRIMP") required by the Licence was available on the Licensee's website; and
 - dredging activities commenced around April 2018 and are scheduled to be completed in early December 2018.
- F. On 6 November 2018 the EPA conducted an inspection of a dredge discharge point at North Entrance beach. During the inspection the EPA:
- observed a pipeline on North Entrance beach discharging grey/black water to the wet sand zone of North Entrance beach then flowing to the ocean;
 - observed a plume of grey/black water in the ocean heading south east of the discharge pipe;
 - took photos of the discharge pipe, beach and general area of the inspection,
 - spoke with the Council staff who confirmed that the pipe and discharge were from the dredging activities being undertaken by the Licensee; and
 - collected samples from the end of the discharge pipe, the surf zone to the east of the discharge pipe and the surf zone to the North of the discharge pipe.
- G. On 7 November 2018 the EPA contacted the Licensee and advised that the EPA believed that:
- the Licence did not include a discharge point as observed during the inspection conducted on 6 November 2018; and
 - the discharge of the dredge material to waters at the North Entrance Beach was alleged pollution of waters.
- The licensee was requested to cease discharge to waters via the pipe located at North Entrance beach while the EPA undertook further investigations.
- H. The EPA alleges the discharge of dredged material to waters at The North Entrance Beach is an offence under section 64 of the POEO Act for the contravention of condition, L1.1 and O1.1; and an alleged offence under section 120 of the POEO Act ("pollution of waters").
- I. Condition L1.1 of the Licence requires that "Except as may be expressly provided in any other condition of this licence, the licensee must comply with section 120 of the POEO Act." Discharge to the North Entrance beach and ocean is not permitted by the Licence.
- J. Condition O1.1 of the Licence requires that " Licensed activities must be carried out in competent manner. This includes:

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- (a) the processing, handling, movement and storage of materials and substances used to carry out the activity; and
- (b) the treatment, storage, processing, reprocessing, transport and disposal of waste generated by the activity."

It is alleged that the Licensee is not undertaking activities in a competent manner by allowing discharge direct to the North Entrance beach and ocean from dredging activities and as a result this activity is causing pollution of waters.

- K. Section 120 of the POEO Act makes it an offence to pollute waters. It is alleged that the Licensee has caused pollution of waters by pumping dredged materials directly to North Entrance Beach and the Pacific Ocean.
- L. The EPA reasonably suspects that the licensed activities have been carried out and may continue to be carried out in an environmentally unsatisfactory manner for the following reasons:
 - i. the licensed activity has or may have been carried on in contravention of the POEO Act, as detailed above in I,J and K above; and
 - i. the Licensee's activity is likely to have caused a pollution incident, as detailed in F above.

DIRECTION TO TAKE PREVENTIVE ACTION

The EPA directs Central Coast Council to take the following action:

1. Immediately cease all dredging activities and discharges that cause pollution of waters except as may be expressly allowed for in the Licence.
2. Immediately cease all discharges to the Entrance Beaches being conducted as a result of this activity.

FEE TO BE PAID

1. You are required by law to pay a fee of \$550 for the administrative costs of issuing this notice.
2. It is an offence not to pay this fee. However you can apply for an extension of time to pay the fee or for the fee to be waived. At the end of this notice there is information about how and when to pay the fee and how to apply for an extension or a waiver of the fee.

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Mark Hartwell

Unit Head

North - Hunter

(by Delegation)

INFORMATION ABOUT THIS PREVENTION NOTICE

- This notice is issued under section 96 of the Protection of the Environment Operations Act 1997.
- It is an offence against the Act not to comply with this notice.
- Details provided in this notice will be available on the Public Register in accordance with section 308 of the Protection of the Environment Operations Act 1997.

Penalty for not complying with this notice

- The maximum penalty for a corporation is \$1,000,000 and a further \$120,000 for each day the offence continues. The maximum penalty for an individual is \$250,000 and a further \$60,000 for each day the offence continues.

Appeals against this notice

- You can appeal to the Land and Environment Court against this notice. The deadline for lodging your appeal is 21 days after you were served with the notice.

When this notice begins to operate

- This notice operates from the day the notice is given, unless a later date is specified in the notice.
- If an appeal is made against the notice, and the Land and Environment Court directs that the notice is stayed, the notice does not operate until the stay ceases to have effect, or the Land and Environment confirms the notice, or the appeal is withdrawn (whichever occurs first).

Deadline for paying fee

- The fee must be paid by **no later than 30 days after the date of this notice unless you appeal** to a court against the notice, or unless the EPA extends the time for payment of the fee or waives the fee. If you do appeal this notice the fee does not have to be paid unless and until the court confirms the notice.



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How to pay fee

- Possible methods of payment are listed on the last page of the attached invoice/statement.
- Please include the payment slip from the attached invoice/statement with your payment.

How to apply for extension of time to pay/waiver of fee

- Any application for an extension of time to pay the fee, or for the fee to be waived, should be made in writing to the EPA. The application should set out clearly why you think your application should be granted.

Other costs

- The Protection of the Environment Operations Act allows the EPA to recover from you reasonable costs and expenses it incurs in monitoring action taken under this notice, ensuring the notice is complied with and associated matters. (If you are going to be required to pay these costs and expenses you will be sent a separate notice called a “Notice Requiring Payment of Reasonable Costs and Expenses”.)

Continuing obligation

- Under section 319A of the Act, your obligations to comply with the requirements of this notice continues until the notice is complied with, even if the due date for compliance is passed.

Variation of this notice

- This notice may only be varied by subsequent written notices issued by the EPA.