

## Case Note

### **The Pindimar Bundabah Community Association Incorporated v Great Lakes Council & Ors [2007]**

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#### **BACKGROUND**

The Pindimar Bundabah Community Association (PBCA) challenged a proposed aquaculture development to cultivate abalone in tanks at Pindamar, adjoining the Port Stephens estuary. It was feared that the development would impact on the wild abalone populations, the pipelines would damage seagrass beds and the discharge into the estuary would adversely affect water quality and the aquatic ecosystems. The proposal was approved by the Great Lakes Council and the Port Stephens Council.

A preliminary point of law was whether consent could be granted under the *State Environmental Planning Policy No 62 – Sustainable Aquaculture* (SEPP 62). SEPP 62 applies to pond-based and tank-based aquaculture, including tank culture of abalone. SEPP 62 also lists the types of zones in which the different types of aquaculture are permitted.

The main argument of the PBCA was that the influent and effluent pipes for the development were to be located in waters of the Port Stephens estuary that form part of 7(w) Environment Protection “W” (Waterways) Zone. This was not one of the zones listed as permissible for tank-based aquaculture under SEPP 62 and the PBCA argued these pipes ought to be properly characterized as being for the purpose of tank-based aquaculture. Clause 7(2) of SEPP 62 prevented anyone from carrying out relevant aquaculture unless, in the opinion of a consent authority, the proposal complied with the site location requirements set out in Schedule 1 of SEPP 62.<sup>1</sup> The PBCA submitted that the project should not be permitted because it did not comply with these requirements.

#### **DECISION**

Chief Justice Preston disagreed with the PBCA’s construction of the site location and operational requirements of Schedule 1 of SEPP 62 and upheld the respondents’ construction. It was found that the zoning requirements of (then) clause 7C of Schedule 1 of SEPP 62<sup>2</sup> only apply to the components of a development that answer the definition of “pond-based” or “tank-based” aquaculture. Tank-based aquaculture is defined in clause 4(1) of SEPP 62 as “intensive aquaculture undertaken exclusively in tanks”, so the influent and effluent pipes were not included in the definition. The respondents argued that the PBCA’s construction conflicted with the practical requirements of pond-based

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<sup>1</sup> Note that the relevant provisions of SEPP 62 were subsequently amended by the *State Environmental Planning Policy No 62—Sustainable Aquaculture (Amendment No 4)*. However, it is unlikely that those amendments would affect the findings of this judgment.

<sup>2</sup> The relevant table is now located in the Table to cl 7 of the SEPP.

aquaculture, which could reasonably be assumed to use pipes to pump water from and back into the estuary.

### **IMPLICATION**

The implications of this decision are limited to aquaculture under SEPP 62. It is only required that components of a proposal specified under the definitions of “pond-based” or “tank-based” aquaculture are within the permitted zones under the SEPP, in order for the proposed aquaculture to be permitted with consent.

Note: the PBCA was successful in the main proceedings on the merits. Consent orders were made, upholding the appeal against the grant of development consent.