

Notice of Modification

Section 75W of the *Environmental Planning and Assessment Act 1979*

As delegate for the Minister for Planning and Infrastructure, the Planning Assessment Commission modifies the project approval referred to in Schedule 1, subject to the conditions in Schedule 2.



Member of the Commission



Member of the Commission

Sydney,

30 September 2013

SCHEDULE 1

The project approval (08_0142) for the Mackas Sand Project, granted by the Minister for Planning on 20 September 2009.

SCHEDULE 2

- In the schedule 1 description of Land, add the following to "Access Roads":
 - Lot 4 DP 1121457
 - Lot 1 DP 177679
 - Lot 810 DP 1008279
 - Lot 58 DP 753192
 - Lot 122 DP 753192
- Under DEFINITIONS, delete the terms "AEMR", "DECCW", "EPL", "Department", "DII", "Director-General", "Heritage Branch", "Minister", "Night", "OOW", "Project" and "RTA", and their definitions, and insert in alphabetical order:

Alternate access road	Alternate access road to Lot 218, as described in EA (MOD 1), and depicted in the figure in Appendix 1
Annual Review	Annual Review of operations, as required under condition 4 of Schedule 5
Biodiversity Offset Area	The biodiversity conservation and enhancement area described in EA (MOD 1) and depicted in the figure in Appendix 6
Crown road	A public road that is declared to be a Crown road for the purposes of the <i>Roads Act 1993</i>
Department	Department of Planning and Infrastructure
Director-General	Director-General of the Department, or nominee
DRE	Division of Resources and Energy, within the Department of Trade and Investment, Regional Infrastructure and Services
EA (MOD 1)	Environmental Assessment titled <i>Environmental Assessment Modifications to Mackas Sand Extraction Operations on Lot 218 & Lot 220 Salt Ash NSW</i> , dated October 2012 and prepared by Umwelt Australia Pty Limited, including the Response to Submissions documents dated 4 December 2012, 6 December 2012, 10 December 2012, 16 January 2013, 8 February 2013, 19 March 2013 and 17 June 2013, prepared by Umwelt Australia Pty Limited
EPA	Environment Protection Authority
EPL	Environment Protection Licence
Heritage Branch	Heritage Branch of OEH
Lavis Lane access road	Access road to Lot 218 described in the EA
Minister	Minister for Planning and Infrastructure, or delegate
Night	The period between 10 pm to 7 am, Monday to Saturday and between 10 pm to 8 am on Sundays and Public Holidays, except

NOW	during the Shoulder period
OEH	NSW Office of Water, within the Department of Primary Industries
Project	Office of Environment and Heritage
Public road	The development described in the EA and EA (MOD 1) A road that is opened or dedicated as a public road under the <i>Roads Act 1993</i> or any other Act or law, or a road that is declared to be a public road under the <i>Roads Act 1993</i>
RMS	Roads and Maritime Service
Shoulder	The period from 5 am to 7 am on Monday to Friday, but only for the use of the Alternate access road (see condition 4A of schedule 3)

3. Delete all references to "DII", and replace with "DRE".
4. Delete all references to "AEMR", and replace with "Annual Review".
5. In conditions 10, 13, 17 and 18 of schedule 3, delete "DECCW", and replace with "EPA".
6. In conditions 25(a) and 29 of schedule 3, delete "DECCW", and replace with "OEH".
7. Delete all references to "OOW", and replace with "NOW".
8. In condition 2 of schedule 2, delete all words after "EA;" (except the notes), and replace with:
 - (b) EA (MOD 1);
 - (c) statement of commitments; and
 - (d) conditions of this approval.
9. Delete condition 3 of schedule 2, and replace with:
 3. If there is any inconsistency between the documents identified in condition 2, the more recent document shall prevail to the extent of the inconsistency. However, the conditions of this approval shall prevail to the extent of any inconsistency.
10. In condition 6 of schedule 2, after the word "transport", insert the words ", or permit to be transported,".
11. Delete condition 7 of schedule 2, and replace with:
 7. The Proponent shall not undertake any sand extraction:
 - (a) within 0.7 m of the maximum predicted groundwater level on Lot 220; and
 - (b) within 1.0 m of the maximum predicted groundwater level on Lot 218, unless the core sample testing program demonstrates that extraction to within 0.7 m of the maximum predicted groundwater level can be undertaken without disturbing acid sulphate soils.

Note: The core sample testing program is detailed in the Soil and Water Management Plan in condition 22 of Schedule 3.

 - 7A. The Proponent shall ensure that the final rehabilitated ground surface level on Lot 218 and Lot 220 is at least 1.0 m above the maximum predicted groundwater level.
12. In condition 1 of schedule 3:
 - (a) delete paragraph (c) and replace with:
 - (c) make provision for the accurate identification of these boundaries by operational staff during extraction operations using a Global Positioning System."; and
 - (b) delete the second and third notes.
13. In condition 4 of schedule 3, after the words "generated by the project", insert ", except for noise generated by the use of the Alternate access road,".
14. After condition 4 of schedule 3, insert:

Impact Assessment Criteria – Alternate Access Road to Lot 218

- 4A. The Proponent shall ensure that the noise generated by the use of the Alternate access road does not exceed the noise criteria in Table 1A.

Table 1A: Alternate access road noise impact assessment criteria dB(A) L_{Aeq} (15min)

Shoulder	Day	Evening	Location
38	40	40	2344 Nelson Bay Road
39	41	41	2353 Nelson Bay Road
36	38	38	2367 Nelson Bay Road
38	40	40	2368 Nelson Bay Road
35	35	35	All other residences

Notes:

- To interpret the locations referred to Table 1A, see the figure in Appendix 3.
- Noise generated by the project is to be measured in accordance with the relevant requirements, and exemptions (including certain meteorological conditions), of the NSW Industrial Noise Policy.
- The noise limits do not apply if the Proponent has an agreement with the relevant owner/s of these residences/land to generate higher noise levels, and the Proponent has advised the Department in writing of the terms of this agreement.

Operating Conditions

- 4B. The Proponent shall ensure, for the use of the Alternate access road that:
- a speed limit of 40 km/hour is applied and enforced for all vehicles;
 - trucks slowing to use the intersection of the access road and Nelson Bay Road do not use engine or compression braking systems;
 - truck movements (in plus out) do not exceed 10 per hour during the Shoulder period;
 - truck movements (in plus out) do not exceed 16 per hour between 7 am and 10 pm; and
 - combined truck movements (in plus out) from Lot 218 and Lot 220 do not exceed 10 per hour in total on Sundays and Public Holidays.
15. In condition 9(b) of schedule 3:
- delete all words following “transportation with” (except the notes), and replace with “the following:
 - all owners of privately-owned land with frontage to Lavis Lane (between the site and Nelson Bay Road), for transportation from Lot 218 using the Lavis Lane access road; and/or
 - all owners of 2344, 2353 and 2368 Nelson Bay Road, for transportation from Lot 218 using the Alternate access road; and/or
 - all owners of privately-owned land with frontage to Oakvale Road (between the site and Nelson Bay Road), for transportation from Lot 220;
 and the Proponent has advised the Department in writing of the terms of these agreements.”, and
 - in the second note, following “Lavis Lane”, insert “, the Alternate access road”.
16. Delete condition 22(c) of schedule 3, and replace with:
- a program to monitor groundwater levels and quality, including a groundwater core sample testing program to monitor changes in metallic species above the maximum predicted groundwater level at Lot 218, that:
 - is developed in consultation with EPA;
 - samples to a depth at least 2 m below the proposed extraction depth of 0.7 m above the maximum predicted groundwater level from at least two locations within the area proposed to be extracted within the first 3 years; and
 - includes testing for acid forming minerals at regular depth and time intervals;
17. After condition 28 of schedule 3, insert the following:

Biodiversity Offset Strategy

- 28A. The Proponent shall prepare and implement a Biodiversity Offset Strategy for the Biodiversity Offset Area, in consultation with OEH and to the satisfaction of the Director-General. The strategy must include:
- performance criteria for the offset area;
 - a description of the proposed short-term and long-term management measures for the offset area, including to:

- protect, conserve and enhance the vegetation within the offset area;
 - control access to the offset area;
 - control weeds and feral pests; and
- (c) a program to measure and monitor the effectiveness of the Strategy against the performance criteria.

Long Term Security of Biodiversity Offset

28B. Prior to the end of December 2014, or as otherwise agreed by the Director-General, the Proponent shall make suitable arrangements to provide appropriate long-term security for the Biodiversity Offset Area, to the satisfaction of the Director-General.

Note: Mechanisms to provide appropriate long term security to the land within the Biodiversity Offset Strategy include a Biobanking Agreement under Part 7A Division 2 of the Threatened Species Conservation Act 1995, a Voluntary Conservation Agreement under section 69B of the National Parks and Wildlife Act 1974, or any alternative mechanism that results in similar conservation outcomes. Any mechanism used to secure the land must remain in force in perpetuity.

18. In condition 31 of schedule 3, delete the words “within 6 months of the commencement of quarrying operations on Lot 218”, and replace with “prior to the commencement of transportation using the Lavis Lane access road”.
19. After condition 31 of schedule 3, insert the following:

Alternate Access Road to Lot 218

31A. If the Proponent intends to use the Alternate access road, the Proponent shall:

- (a) arrange for an independent Road Safety Audit to be undertaken based on the existing concept design plan for the intersection on Nelson Bay Road and the proposed alternate access road . The Road Safety audit should assess the impact of construction of the proposed acceleration lane and the safety of vehicles turning into the existing driveways of the properties located on the northern side of Nelson Bay Road and into Sansom Road/Nelson Bay Road. The Road Safety Audit should also identify appropriate safety measures to make right turn manoeuvres from Nelson Bay Road safer. The Road Safety Audit is to be conducted prior to construction and to the satisfaction of RMS.
- (b) construct the Alternate access road, in consultation with, and to the satisfaction of, Council;
- (c) tar seal and maintain the first 200 m of the Alternate access road south from Nelson Bay Road, to the satisfaction of Council;
- (d) construct a left-in, left-out intersection from Nelson Bay Road to the Alternate access road, with appropriate acceleration and deceleration lanes, advance “Trucks Entering” warning signage and road markings in accordance with relevant Austroads standards, in consultation with RMS and Council, and to the satisfaction of RMS;
- (e) upgrade the access point to 2344 Nelson Bay Road, in consultation with the landowner and to the satisfaction of RMS;
- (f) not use the Alternate access road to transport sand until all RMS requirements regarding the intersection have been fully met; and
- (g) use its best endeavours to obtain an agreement from local bus operators to not make unscheduled stops in, or immediately adjacent to, the proposed acceleration and deceleration lanes.

Note: The conceptual alignment of the Alternate access road is shown in Appendix 1.

31B. The Proponent shall not restrict public access to any Crown road or public road located along the alignment of the alternate access road, whenever the roads remain Crown roads or public roads.

20. Delete condition 4 of schedule 5, and replace with the following:

ANNUAL REVIEW

4. By the end of March each year, or other timing agreed by the Director-General, the Proponent shall review the environmental performance of the project to the satisfaction of the Director-General. This review must:
- (a) describe the development (including any rehabilitation) that was carried out in the past calendar year, and the development that is proposed to be carried out over the next year;

- (b) include a comprehensive review of the monitoring results and complaints records of the project over the past calendar year, which includes a comparison of these results against the:
 - (i) relevant statutory requirements, limits or performance measures/criteria;
 - (ii) requirements of any plan, program or strategy required under this approval;
 - (iii) monitoring results of previous years; and
 - (iv) relevant predictions in the EA and EA (MOD 1);
- (c) identify any non-compliance over the past calendar year, and describe what actions were (or are being) taken to ensure compliance;
- (d) identify any trends in the monitoring data over the life of the project;
- (e) identify any discrepancies between the predicted and actual impacts of the project, and analyse the potential cause of any significant discrepancies; and
- (f) describe what measures will be implemented over the current calendar year to improve the environmental performance of the project.

REVISION OF STRATEGIES, PLANS AND PROGRAMS

4A. Within 3 months of:

- (a) an Annual Review under condition 4 of schedule 5; or
- (b) an incident report under condition 2 of schedule 5; or
- (c) a modification to the conditions of this approval,

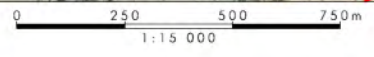
the Proponent shall review the strategies, plans, and programs required under this approval, to the satisfaction of the Director-General. Where this review leads to revisions in any such document, then within 4 weeks of the review the revised document must be submitted for the approval of the Director-General.

Note: The purpose of this condition is to ensure that strategies, plans and programs are regularly updated to incorporate any measures recommended to improve environmental performance of the project.

21. After all figures in Appendix 1, insert the figure on the following page:



Source: Google Earth (2009)



- Legend**
- Lot Boundary (218)
 - Approved Operational Area
 - - - Proposed Alternate Access Route
 - Approved Access Route
 - Proposed Intersection Location

FIGURE 1.2
Proposed Alternate Access Route to Nelson Bay Road

22. In Appendix 2:

(a) delete 1.1.1, 1.1.3 and 1.1.5, and replace with:

1.1.1 All activities will be undertaken in accordance with the EA and EA (MOD 1).

1.1.3 Transport of product from Lot 218 will be undertaken between 5.00 am and 10.00 pm, Monday to Saturday and 8.00 am to 12.00 pm on Sundays and Public Holidays. Transport of product from Lot 220 will be undertaken between 5.00 am and 10.00 pm, Monday to Saturday and 8.00 am to 12.00 pm on Sundays and Public Holidays.

1.1.5 The interim landform during extraction on Lot 218 and Lot 220 will be no lower than 0.7 metres above the maximum predicted groundwater level as shown on Figure 2.1 of EA (MOD 1). The final landform will be at least 1 metre above the maximum predicted groundwater level. The height of the final landform will be verified by topographic survey.

(b) after 1.5.2, insert:

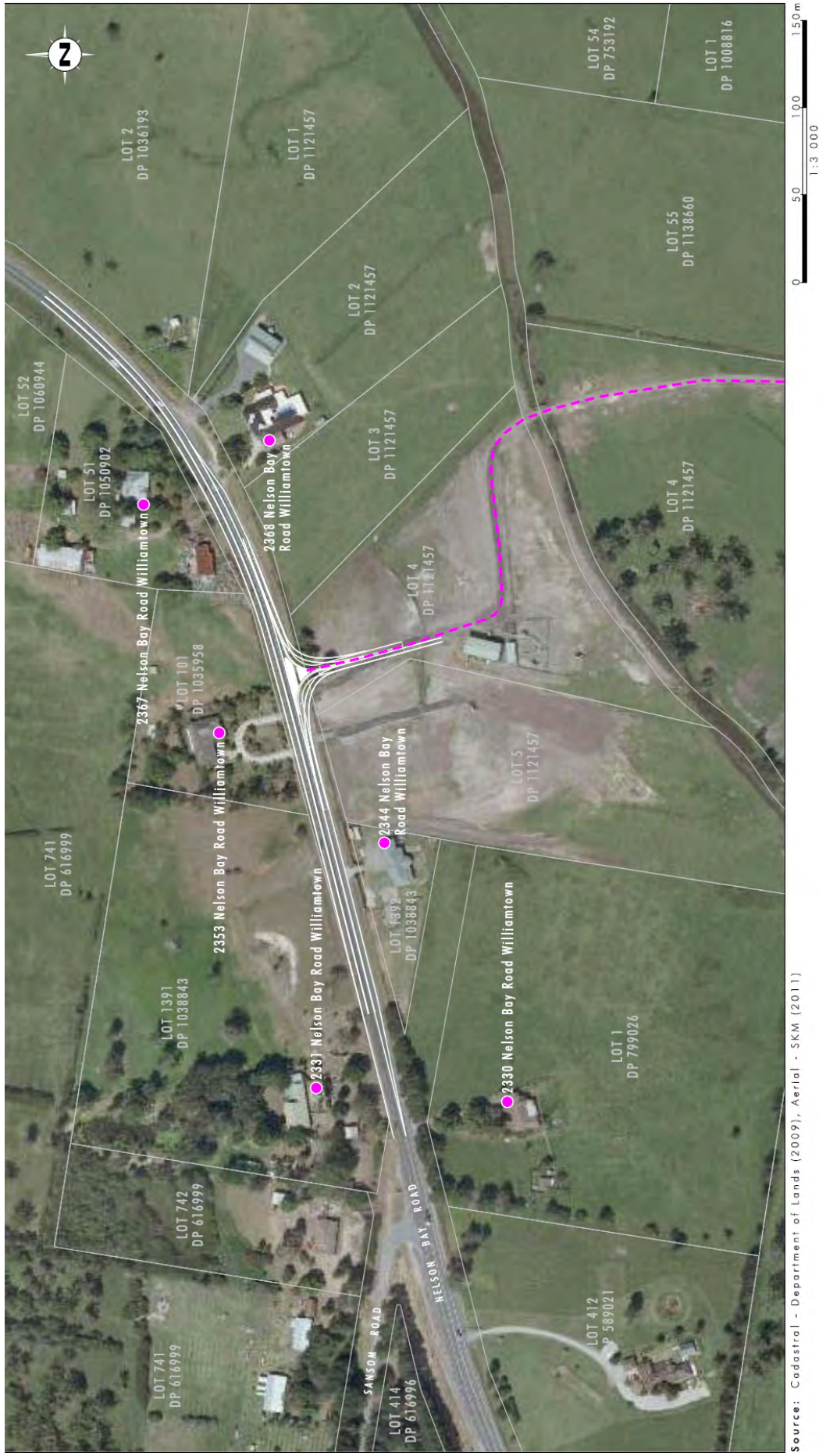
1.5.3 Mackas Sand will meet all costs of designing and constructing the proposed new intersection on Nelson Bay Road including any works required to provide safe access from driveways that access Nelson Bay Road within the construction zone for the proposed new intersection.

1.5.4 Mackas Sand undertakes to not restrict the public's right of access to the public roads that are located along the alignment of the proposed haul road between Lot 122 and Nelson Bay Road reserve whilever these roads are public roads.

(c) after 1.9.2, insert:

1.9.3 Access roads will be constructed so as to not impede flood flows on Tilligerry Creek floodplain. The alternate access road will be sealed between Nelson Bay Road and the southern edge of the Tilligerry Creek crossing to minimise sediment generation and transport adjacent to Tilligerry Creek.

23. After the figure in Appendix 3, insert the figure on the following page:



Source: Cadastral - Department of Lands (2009), Aerial - SKM (2011)

- Legend**
- Proposed Alternate Haul Route
 - Proposed Intersection Design
 - Noise Receiver Location

FIGURE 1

Noise Receiver Locations

24. After Appendix 5, insert:

**APPENDIX 6
BIODIVERSITY OFFSET AREA**



FIGURE 2
Proposed Biodiversity Offset Area and Targeted Orchid Survey Locations

25. Update the TABLE OF CONTENTS to reflect the above changes.