

30 September 2013

**DETERMINATION OF MODIFICATION APPLICATION MACKAS SAND PROJECT – ACCESS  
ROAD AND EXTRACTION DEPTH MODIFICATION 1  
(MP08\_0142 MOD 1)**

**1. DELEGATION TO THE COMMISSION**

The above modification application lodged by Mackas Sand Pty Ltd (the Proponent) has been referred to the Planning Assessment Commission (the Commission) for determination under Ministerial delegation dated 14 September 2011, as more than 25 submissions in the nature of objections were received.

The Commission constituted to determine the applications consists of Mr Garry Payne AM (chair) and Mr Joe Woodward PSM.

**2. BACKGROUND**

On 20 September 2009 project approval was granted by the then Minister for Planning. The current approval allows for the extraction of up to 1 million tonnes of sand per year from each of Lot 218 and Lot 220 for 20 years, processing of the sand on-site and transportation of the processed sand to the market via road. The approved access route to Lot 218 is along Lavis Lane and is currently not in operation. The approval also included a number of environmental requirements.

The modification was declared a controlled action on 23 November 2012 under the *Environment Protection and Biodiversity and Conservation Act 1999 (EPBC Act)*. The modification requires approval from the Commonwealth Minister for Sustainability, Environment, Water, Population and Communities.

**3. MODIFICATION APPLICATION**

The modification application seeks to modify the project approval by constructing and operating an alternate access road from Lot 218, increasing the approved hours of transportation from lot 218, increasing the depth of extraction from 1m to 0.7m above the maximum predicted groundwater for Lot 218 and Lot 220 and updating the surveying requirements. All other operating parameters would remain unchanged.

**4. THE ASSESSMENT REPORT**

The Department's Assessment Report identified the following key issues:

- Traffic and Transport;
- Noise;
- Biodiversity;
- Aboriginal Culture Heritage;
- Groundwater; and
- Need for alternate access road to Lot 218.

The Department concluded that operation of the alternate access road would not significantly impact existing traffic flows on Nelson Bay Road or Richardson Road roundabout, noise impacts would remain within acceptable limits, cultural heritage values of Worimi Conservation Lands would not be significantly impacted, the proposed increase in extraction depth would not have significant impact on groundwater and biodiversity impacts would be compensated through a biodiversity offset strategy. The Department is satisfied with the rationale for the alternate access route and that the modification should be approved subject to conditions.

## **5. MEETING WITH STAKEHOLDERS**

On 19 September 2013, the Commission visited the site with the Proponent and held a public meeting. A brief summary of the issues raised at these meetings are discussed below, further detail regarding these meetings can be found in attachment 1. During the site visit traffic was observed, including heavy vehicle traffic. Following the public meeting the Commission members visited the site at night time. Port Stephens Council declined the Commission's invitation to discuss the modification and stated that there were no additional merit issues relating to the modification that they wished to discuss.

### **5.1 Proponent**

The Commission met with the Proponent on site. Key issues discussed included the following:

- Sand movements;
- Impacts to sensitive receivers;
- Traffic, Transport and Safety;
- Worimi Aboriginal Land Council stated they were in agreement with the proposed alternate access route; and
- Aboriginal Heritage.

### **5.2 Public Meeting**

On Thursday 19 September 2013 the Commission held a public meeting at the Pacific Dunes Golf Club, Medowie to hear the community's comments on the assessment and recommended conditions. Fifteen people spoke at the meeting; including representatives of a number of special interest groups (see attachment 2).

Key issues raised at the public meeting included:

- Traffic and transport in particular safety was a major concern to the community;
- Safety of undesignated bus stops;
- Noise Impacts;
- Aboriginal Heritage; and
- Agreement issues regarding the approved access route along Lavis Lane.

## **6. COMMISSION'S CONSIDERATION**

The Commission has reviewed the Department's assessment report and associated documents, including submissions from Roads and Maritime Services (RMS), other agencies and the public. It has also considered the views expressed by the presenters who spoke at the Commission meeting and the written submissions received at the meeting. The key issues that emerged are discussed in further detail below. The Commission also considered other issues including groundwater, ecology, noise and dust impacts and believe these issues have been adequately addressed in the Department's Assessment Report. The Commission is satisfied that residual impacts and issues can be managed by the implementation of the recommended conditions.

### **6.1 Traffic**

The community raised concerns that the alternate access route will result in traffic and safety impacts including congestion, accidents and time delays along Nelson Bay Road and the Richardson Road roundabout. The Commission considers that the proposed acceleration lane has the potential to impact adversely on one additional residence on the western side of the road towards the end of the acceleration lane. Subsequently, the Commission sought further advice from RMS regarding the proposed acceleration lane and nearby residence, to ensure that traffic impacts would be minimised. Following further advice from the RMS, the Commission has included a condition which requires a independent road safety audit to be undertaken prior to construction and to the satisfaction of RMS to assist in determining the final design of the proposed intersection and acceleration lane to ensure safer access for the affected resident.

The Commission supports the construction of the intersection medium at the entry/exit point of the proposed alternate access road and Nelson Bay Road. The intersection medium would

reduce safety impacts by preventing quarry trucks heading west along Nelson Bay Road and turning right across oncoming traffic. The Commission notes that the final design of this intersection would require approval from RMS. The Commission also agrees with the Department's recommendation to install warning signage on approach to the intersection.

Whilst there are no designated bus stops in the vicinity of the proposed intersection the Commission notes that buses may make unspecified stops on Nelson Bay Road. The Commission concurs with the recommendations made by the Department regarding the safety of buses stopping at undesignated bus stops. Furthermore, the Commission suggests that RMS should monitor the proposed acceleration and deceleration lanes and if necessary 'no stopping' signs should be installed to prevent buses from stopping in and adjacent to these lanes.

The Commission has carefully considered all the traffic issues that were raised in the submissions and the public meeting and the proposed measures to address any impacts and accepts the advice from the RMS and the Department that these measures together with the proposed additional conditions will satisfactorily address these issues.

The Commission notes that proposed modification does not seek to increase the approved production or transportation limits for the project.

## **6.2 Increased Transportation Hours**

The modification seeks to increase its approved transportation hours for Lot 218 as detailed in the Department's Assessment Report. The Commission agrees with the Department that the extended hours of transportation may only be approved once Mackas Sand has reached agreement with the closest residents on Nelson Bay Road that are likely to be impacted by operational noise.

## **6.3 Other Issues**

The Commission noted submissions from the Towers site residents and the Proponent regarding an access agreement for the site. This is a commercial issue between those parties and not an issue for determination by the Commission.

The Commission agrees with the Environment Protection Authority (EPA) that a groundwater sampling program should be undertaken prior to the commencement of extraction at Lot 218.

## **7. Commission's Determination**

The Commission has carefully considered the information available including the assessment report, Council and public submissions, views expressed by residents at the public meeting, the Commission's visit to the site and surrounds. The Commission accepts the assessment report has adequately addressed the issues raised in public submissions, and where required, recommends conditions of consent to mitigate potential impacts.

Having regard to the relevant issues the Commission finds the proposed modification should be approved subject to the Department's recommended conditions of consent and the further inclusion of an independent road safety audit.



Garry Payne AM  
**Commission Member**



Joe Woodward PSM  
**Commission Member**

## **Attachment 1: Meetings with Stakeholders**

On 19 September 2013, the Commission visited the site with the Proponent and held a public meeting. The issues raised at these meetings are discussed below.

### **Proponent**

The Commission met with the Proponent on site on Thursday 19 September 2013. The Issues discussed included the following:

- Windblown sand movements;
- Land purchased by Mackas Sand along the alternate access road;
- The approved route along Lavis Lane is not currently in operation;
- Traffic impacts on Nelson Bay Road;
- Turning pad area at proposed alternate access road;
- Truck movements per hour;
- Adjacent landowner agreements;
- Safety of buses stopping along the proposed acceleration and deceleration lane along Nelson Bay Road;
- Safety issues associated with Lavis Lane and beach access;
- Aboriginal cultural heritage and sand dune use;
- Worimi Aboriginal Land Council are in agreement with the alternate access route;
- Protection of potential aboriginal heritage items - Mackas Sand modified the proposed alternate access route to avoid a Potential Archaeological Deposit (PADs). PADs will not be impacted by the proposed alternate route; and
- Mitigation measures for dust.

### **Public Meeting**

On Thursday 19 September 2013 the Commission held a public meeting at the Pacific Dunes Golf Club, Medowie to hear the community's comments on the assessment and recommended conditions. Fifteen people spoke at the meeting; including representatives of a number of special interest groups (see attachment 2). The Issues raised at the public meeting included:

### **Traffic and Transport**

- Additional traffic and risks to public safety in particular along Nelson Bay Road and Richardson Road roundabout;
- Concerned that traffic accidents and fatalities will increase;
- Traffic volume impacts including congestion and increase in traffic delays along Nelson Bay Road and Richardson Road roundabout;
- Cumulative impacts on road users;
- Limited consultation with emergency services;
- Impacts on residents as they enter/exit their driveways along the proposed acceleration and deceleration lane along Nelson Bay Road;
- Child safety including buses that stop at non designated bus stops and safety of children crossing the road;
- Safety of tourists who are inexperienced driving on roads with trucks;
- Concern regarding safety of service persons such as mail delivery and garbage drivers;
- The area experiences fog in winter, the additional trucks will be a safety hazard;
- Compliance of truck movements needs to be monitored;
- Traffic study is inadequate in particular traffic impacts during school holidays and on the weekend have not been adequately assessed;
- Lavis Lane already approved and should be used. The approved access route along Lavis Lane is a safer option;
- Street lighting should be considered;
- Safety issues associated with the approved access route along Lavis Lane and McDonalds; and
- Trucks currently exceeding the speed limit.

**Aboriginal Cultural Heritage and Ecology**

- The approved access route along Lavis Lane has no impact on aboriginal heritage items, will not disturb virgin lands and no further ecological or archaeological studies are required for this route;
- Concerned aboriginal heritage items will be lost along the proposed alternate access route;
- Proposed alternate access route will destroy aboriginal heritage and ecology; and
- Worimi Local Aboriginal Land Council has a responsibility to protect the Worimi Conservation Lands and provide safe access to the conservation lands. The alternate access road will be managed to protect aboriginal heritage, there is a cultural heritage management plan. The proposed alternate access route avoids PADs.

**Noise**

- Operational noise impacts to residents associated with truck movements; and
- Noise barriers should be constructed to minimise impacts to residents.

**Other Issues**

- Agreement issues with the approved access route – existing legal argument regarding the validity of the agreement for the approved access route.
- Towers site residents are willing to give access along the approved access route;
- Devaluation of properties;
- Less residents would be affected by the approved access route along Lavis Lane; and
- Impacts to the quality of life on the local community.

## **Attachment 2: List of Registered Speakers**

Mackas Sand Modification 1

Date & Time: Thursday 19 September 2013, 4pm

Place: Pacific Dunes Golf Club, Championship Drive, Medowie

1. Mr Nigel Waters - Tomaree Rate Payers and Residents Association Incorporated
2. Mr Rob Mallik - Mallik Rees Lawyers
3. Mr Andrew Smith - Worimi Aboriginal Land Council
4. Ms Patricia Ann
5. Mr Brian Crooks
6. Mr Leonard James Anderson OAM
7. Ms Sarah Buman
8. Mr Heath Buman
9. Ms Kate Washington
10. Mr William Stanton
11. Ms Dot Harland
12. Mr Tony Fidler
13. Mr Andrew Rankmore
14. Ms Julie Bailey
15. Ms Kim Mitchell