NSW GOVERNMENT | Planning & Environment

Mr David McNamara
Director
Independent Planning Commission
Level 3, 201 Elizabeth Street
Sydney NSW 2000

Dear Mr David McNamara

Dunloe Park Sand Quarry Modification 2 (MP 06_0030 Mod 2)

I refer to your letter dated 16 August 2018 in relation to the Independent Planning Commission's (IPC's) deliberations with Tweed Shire Council (Council) regarding Dunloe Park Sand Quarry Modification 2.

I note that Council has raised concerns that the Department's newspaper advertisement contained inaccurate information and that the Department has not fully understood the community's concerns on the proposed modification.

Council raised this matter with the Department during a meeting on 2 July 2018 and the Department acknowledges that incorrect information was included in the advertisement in respect of the proposed number of truck movements to and from the site. However, after careful consideration, Legal Professional Privilege the Department does not consider that this was a critical error that would mislead people or that renotification is either necessary or appropriate.

The project approval for this development was approved under the former Part 3A of the *Environmental Planning and Assessment Act 1979* (EP&A Act) and is a 'transitional Part 3A project' under Schedule 2 to the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017*. The modification application was made prior to the 'cut-off date' and the former section 75W of the EP&A Act continues to apply to it. There are no mandatory statutory exhibition or notification requirements for a modification application under section 75W.

Despite this, the Department exhibited the modification application from 27 July until 10 August 2017 and made the accompanying Environmental Assessment (EA) publicly available on its website, at NSW Service Centres, at Council's offices and at the office of the Nature Conservation Council.

Legal Professional Privilege It has been the practice of the Department to notify the public of such applications, as well as placing such applications and accompanying documentation on the Department's website.

However, in establishing whether substantial compliance with any notice has been achieved, including in the absence of any statutory requirement for notification, consideration must be given to whether any 'defect' detracts from the effectiveness of the notification for the purposes and objectives in the EP&A Act Legal Professional Privilege The Department has therefore given consideration to these purposes and objectives.

A key relevant object of the EP&A Act (section 1.3(j)) is to provide increased opportunity for community participation in environmental planning and assessment. In this case, the notice substantially satisfied this objective, noting again that there was no statutory requirement to notify.

The Department accepts that the notice was deficient in that it misrepresented the quantum of truck movements that would occur if the modification application were to be approved. Nonetheless, the notice made clear that the modification involved an increase in heavy vehicle movements and that the more detailed Environmental Assessment (EA) accompanying the application was available to the public. The notification resulted in a single public objection. No later public objections have been received, either before or after the completion of the Department's assessment report, which fully described the notification process and the deficiency in the notice.

The Department's view is that the notice of the application satisfied the common law rules of fairness and natural justice. The notice included a general description of the proposal, indicated that truck movements would increase and that further details were accessible in the EA. No person was deprived of the right to make a submission. Moreover, in order to make a fully informed submission, any person would need to consider the more detailed EA, which correctly stated the quantum of the proposed increase in truck movements. This material was easily accessible on-line Legal Professional Privilege

Following the notification, both Council and a member of the public raised concerns over the potential noise, dust and traffic safety impacts associated with the proposed increase in truck movements. The Department carefully considered each of these matters during its assessment of the proposed modification. The Department has recommended a number of conditions of approval to address these concerns including contemporary noise, air quality and traffic operating and management plan conditions, as well as the implementation of road safety audit recommendations to Council's satisfaction. On this basis, the Department is satisfied that its assessment of the modification appropriately understood and responded to both Council and community concerns.

Should you have any queries about these matters please contact me on 9274 6308.

Yours sincerely,

Howard Reed 23.8.18

Howard Reed
Director Resource Assessments