



20 August 2018

Dr Liz Develin  
(Acting Secretary)  
Department of Planning and Environment  
GPO Box 39  
Sydney NSW 2001

Dear Dr Develin,

### Determination of Tweed Sand Quarry Modification 1 (DA 152-6-2005)

1. Thank you for the Department of Planning and Environment's (**Department**) letter, received on 17 July 2018, referring the above modification application to the Independent Planning Commission NSW (the **Commission**) for determination. The Commission has determined the modification application in accordance with the Minister's delegation dated 14 September 2011 due to an objection made by Tweed Shire Council.
2. The project is a transitional Part 3A project under Schedule 2 of the *Environmental Planning and Assessment (Savings and Transitional and Other Provisions) Regulation 2017*. On 1 March 2018, the *Environmental Planning and Assessment Act 1979 (EP&A Act)* was amended, and the ability to modify transitional Part 3A projects under section 75W of the EP&A Act is being discontinued; however, as the modification application was lodged before 1 March 2018, the provisions of Schedule 2 continue to apply.
3. Professor Mary O'Kane, Chair of Commission, nominated Dr. Peter Williams (Chair) and Prof Richard Mackay, AM to constitute the Commission to determine the modification application.
4. According to the Department's Environmental Assessment Report (**Department's EAR**), in July 2006 the then Minister for Planning approved the expansion of the Tweed Sand Quarry (DA 152-6-2005) (the **development**) under Part 4 of the EP&A Act. This is the development's first modification.
5. Hanson Construction Materials Pty Ltd (the **proponent**) seeks approval to modify the development consent to:
  - increase the allowable extraction rate from 150,000m<sup>3</sup> to 265,000m<sup>3</sup> (or 500,000 tonnes) per annum; and
  - increase the number of allowable truck movements to and from the site per day, as shown in Table 1 below.

The proponent is not proposing to increase the total volume of sand extracted from the site nor to amend the operating hours of the quarry, including the load and dispatch periods.

**Table 1** Existing vs proposed heavy vehicle movements (combined in + out)

	Existing	Proposed
Max Per Hour	20	36
Max Per Day	200	354
Per Day (Rolling Quarterly Average)	80	142

Source: Tweed Sand Quarry Extraction Rate Increase (DA 152-6-2005 MOD1), Table 1, Environmental Assessment Report

6. The Department received the modification application from the proponent on 06 February 2017, and it was made publicly available on its website from 29 June 2017 to 31 July 2017 (the 'publicly available period'). The Department received comments from the NSW Department of Resources & Geoscience (**DRG**) and from the NSW Office of Environment & Heritage (**OEH**). The Department did not receive any public comments during the publicly available period.
7. After the publicly available period concluded, the Department received one public comment from Gales Kingscliff Pty Ltd (**Gales**), the land owner of the adjoining Cudgen Lakes Sand Quarry. The Department also received comments from the Department of Primary Industries (**DPI**), Transport Roads & Maritime Services (**RMS**), and Tweed Shire Council (**Council**). None of the Government agencies or Council objected in their comments; however, RMS advised that there were some outstanding issues in relation to the Bitzios Traffic Impact Assessment 2018. These issues were subsequently addressed by the proponent. Council made a subsequent submission objecting to the modification application dated 8 June 2018.
8. On 10 October 2017, the proponent provided a response to comments (**RtS**) in relation to the issues raised in comments from Gales, Council and government agencies. The proponent later provided a 'Response to Information Request' dated March 2018. All agencies were satisfied with the information except for Council.
9. The Department's EAR, dated July 2018, identified two key issues associated with this modification application to be:
  - traffic impacts; and
  - noise impacts.
10. As part of its determination, the Commission met with the Department on 3 August 2018, met with the proponent and the Council, and undertook a site inspection, on 9 August 2018. Notes from these meetings and site inspection are available on the Commission's website.
11. In determining this modification application, the Commission considered:
  - Original development consent DA 152-6-2005;
  - the proponent's Environmental Assessment (**EA**) and Annexures 1-5, dated June 2017;
  - the proponent's Response to Information Request dated March 2018, the Traffic Impact Assessment 2018, and its RtS dated October 2017 which included the Revised Traffic Impact Assessment undertaken in 2017;
  - the Department's Assessment Report, dated 17 July 2018, and the proposed Modification Instrument (DA 152-6-2005 MOD 1);
  - the Gales' comments, dated 17 November 2017;
  - Council's comments, dated 4 August 2017, 25 October 2017, 17 May 2018, and the final Council submission, incorporating Council's objection to the modification application, dated 8 June 2018;
  - DRG's comments, dated 27 July 2017;
  - OEH's comments, dated 27 July 2017;
  - DPI's comments, dated 03 August 2017;
  - RMS's comments, dated 24 August 2017 and 13 April 2018; and
  - section 75W of the EP&A Act, the likely impacts to the environment, social and economic impacts in the Cudgen locality, and the public interest.

### *Gales' Comments*

12. According to the Department's EAR, the comments from Gales raised concerns over the *"contradictory traffic modeling prediction for the Tweed Coast Road / Crescent Street intersection between the Traffic Impact Assessments (TIA's) in Hanson's EA and its own 2008 EA for its Cudgen Lakes Sand Quarry"* referring to the required upgrades to the intersection in the approval for the Cudgen Lakes Sand Quarry.
13. The Department's EAR also states, *"Gales comments considered that approval of the proposed modification would result in an inequitable arrangement for Gales to deliver the intersection upgrade, which would then be used by Hanson, despite Hanson's TIA saying the upgrade was not required."*

### *Council Comments*

14. In its comments to the Department, dated 8 June 2018, Council objected to:
  - the requirements in condition 23 of Schedule 3, owing to its enforceability and that it *"will apply a burden upon parties not directly involved with the application"*;
  - enforceability of the proposed condition 24 of Schedule 3, as it would burden Council and Cudgen Lakes Sand Quarry *"to enter into an agreement for the upgrade of the intersection of Crescent Street and Tweed Coast Road."*

Council recommended that the conditions be modified so that agreement between Tweed Sand Quarry and Cudgen Lakes Sand Quarry be reached or arranged *"prior to determination"* and for this to *"be referenced in the condition and that the timing of the upgrade to the intersection of Tweed Coast Road and Crescent Street (i.e. constructing a northbound acceleration lane on Tweed Coast Road to the appropriate Austroads requirements) be prior to any increase in truck movements associated with Mod 1."*

15. In relation to noise, Council stated *"No objections are raised with regard to the draft conditions associated with noise and air quality, with regard to potential amenity impacts."*
16. At the meeting with Council held on 9 August 2018, Council officers explained that, at officer level, they were satisfied with the outcome of discussions with the Department over the conditions. At the same meeting it was advised that the outstanding concerns of Council referred to in item 7 of Council's 8 June 2018 comments, reflected the Councilors' concerns about the *"...inappropriateness of allowing such intensive extractive industry in this National Iconic Landscape..."* Councilors reinstated their position and summarised that their objection to the modification was based on amenity and traffic impacts, and that regardless that conditions of consent may address these concerns, Council objected to *"additional trucks on roads"* resulting from the modification application.

### *Proponent's consideration*

17. In its EA, the proponent included a Traffic Impact Assessment (TIA) prepared by Bitzios Consulting (Bitzios) to *"assess the potential traffic and transport impacts associated with the proposed increase in extraction limit for the existing sand quarry on the external road network. This includes the impact of increased vehicle trips along Altona Road, as well as the Crescent Street / Altona Road and Tweed Coast Road / Crescent Street intersection."*
18. The TIA concluded that *"there are no significant traffic or transport impacts associated with the development's proposed increase in extraction to preclude its approval and relevant conditioning on transport planning grounds."*

19. Furthermore, the proponent's EA concluded that, *"the proposed increase in extraction rate is unlikely to result in impacts to the environment or local traffic / road network beyond those anticipated by the site's current approval. Where impacts have been identified (i.e. from the noise impact assessment), appropriate mitigation measures have been documented, including a timeframe for resolution"*.
20. In response to the Department's request, the proponent provided a revised TIA which compared the findings of the 2008 Cudgen Lakes Sand Quarry EA. The revised TIA concluded that *"the Tweed Coast Road / Crescent Street and Crescent Street / Altona Road priority controlled intersections do not require intersections improvements above those already proposed due to the proposed Cudgen Lakes Sand Quarry development traffic when considering cumulative road and safety impacts with the Cudgen Lakes Sand Quarry development."*
21. In addition to the information provided by the proponent, outlined in paragraphs 17-20, at its meeting with the Commission on 9 August 2018, the proponent stated that it was prepared to assume the full costs of the upgrades of the Tweed Coast Road / Crescent Street and Crescent Street / Altona road intersections, or to allow flexibility in cost sharing, in order to have control of its future operations.

#### *Department's considerations*

22. The Department's EAR concludes that *"is satisfied that the proposed modification would have limited environmental impacts. Moreover, the Department is satisfied that these impacts can be appropriately managed by existing, modified and/or updated conditions of consent."*
23. The Department's EAR also stated that *"Although the modification seeks substantial increase to the extraction rate and truck movements, it would not change the overall disturbance footprint or the total amount of resource to be extracted from the site. As such, the Department is satisfied that the modification would no significantly change the nature and scale of the approved development ... The Department is satisfied that the proposed modification is within the scope of section 75W and may be determined accordingly."*
24. In relation to noise, the Department's EAR concludes that *"the proposed modification would not result in exceedance of the NSW Road Noise Policy (RNP) local road noise criterion."* It also advised that *"EPA and Council raised no concerns over the potential road noise increase resulting from the proposal. The Department considers that any increase in road noise levels would be negligible and would be appropriately managed under the recommended Traffic Management Plan and Noise Management Plan."*
25. The Department's EAR states that *"On the basis that Altona Road and the Tweed Coast Road / Crescent Street intersection are both upgraded, the Department is satisfied that traffic impacts associated with the proposed modification are acceptable. To ensure traffic impacts continue to be managed appropriately, the Department has recommended contemporary transport management operating conditions, as well as a contemporary transport Management Plan with a Driver Code of Conduct."*
26. The Department's EAR has recommended *"a condition of consent for the upgrade of the intersection to be undertaken either solely by Hanson or following Hanson and Gales entering into an equitable road upgrade agreement, in consultation with Council. Additionally, the Department has recommended that these upgrades are completed prior to any additional trucking under this modification."*

27. In relation to the objects of the EP&A Act, the Department's EAR states *"The Department is satisfied that the proposed modification encourages the proper management and development of resources (object (a)) and the promotion of the orderly and economic use of land (object (c)), since the:*
- *modification involves permissible land use on the subject land;*
  - *modification can be carried out using existing site and transport infrastructure; and*
  - *modification would provide ongoing socio-economic benefits to the community of NSW.*
28. In relation to the principles of ecologically sustainable development (ESD, object (b)). The Department's EAR considered that *"the proposal is able to be carried out in a manner that is consistent with the principles of ESD. The Department's assessment has sought to integrate all significant environmental, social and economic considerations."*
29. The Assessment Report also stated that the *"The Department considers that the proposal has been designed to minimise potential environmental impacts"* making reference to Section 5.1 of its Assessment Report and in addressing the issues raised by Gales and Council.

#### *Commission's consideration*

30. The Commission finds that the discrepancies of the TIAs raised in Gale's comments have been addressed by the proponent, as discussed in paragraphs 20 and 21. It is satisfied with the Department's recommendation for the upgrades to be *"completed prior to any additional trucking under this modification"* solely by Hanson or through an equitable agreement with Gales for the Tweed Coast Road / Crescent Street intersection and Altona Road upgrades, as discussed in paragraph 26.
31. The Commission finds that the concerns from Council officers, discussed in paragraph 14, have been adequately addressed by the Department, as discussed in paragraph 26. The Commission notes that in relation to planning matters, Council had no further issues to raise, but that the Councilors present at the meeting on 9 August nevertheless objected to the modification, as discussed in paragraph 16.
32. The Commission accepts that the modification application is within the scope of section 75W and may be determined accordingly, as per the Department's conclusion in paragraph 23.
33. In reviewing Councilors' objections, discussed in paragraph 16, the Commission finds that the reasons for objections related to quarry use within the landscape are beyond the scope of the proposed modification because the modification application does not involve changes to the *"overall disturbance footprint or the total amount of resource to be extracted from the site."* The Commission further finds that the concerns related to amenity and traffic impacts and *"additional trucks on roads"* have been adequately addressed as discussed in paragraphs 26 and 31.
34. The Commission finds that the Department's recommended conditions, as discussed in paragraphs 25 and 26, have adequately addressed the recommendations from Council, in paragraph 14.
35. The Commission concurs with the Department's conclusion that the modification would have limited environmental impacts as discussed paragraph 22; and the proponent's conclusion that the modification is *"unlikely to result in impacts to the environment or local traffic/road network beyond those anticipated"*, as discussed in paragraph 19.

36. The Commission finds that the modification application is in the public interest because:
- it would intensify the proponent's operations to respond to the increasing demand for sand, as discussed in paragraph 5;
  - will be within the approved disturbance footprint, as discussed in paragraph 23;
  - would manage traffic impacts through the upgrades of the Tweed Coast Road / Crescent Street intersection and Altona Road, as discussed in paragraph 26; and
  - is in accordance with the objects of the EP&A Act, as listed under section 1.3 (a), (b), (c) and (e) because:
    - it encourages the proper management and development of resource, as discussed in paragraph 27;
    - it promotes the orderly and economic use of land, with the Commission accepting the Department's conclusion discussed in paragraph 27;
    - it facilitates an ecologically sustainable development, the Commission accepting the Department's conclusion discussed in paragraph 28; and
    - contributes to environmental protection, as discussed in paragraph 29.
37. Therefore, the Commission has determined to approve the modification application, subject to the attached modification instrument, for the following reasons:
- the modification would have limited environmental impacts and that these impacts can be managed by conditions of consent, as outlined in paragraph 22;
  - the modification would not significantly change the nature and scale of the approved development, and that it is within the scope of section 75W, as discussed in paragraph 23;
  - upgrades to the Tweed Coast Road / Crescent Street and Crescent Street / Altona Road intersections will be undertaken prior to commencement of the proposed modification, as recommended by the Department and discussed in paragraph 26;
  - the modification to the project would have minimal environmental effects, as outlined in paragraph 35; and
  - the project is in the public interest, as outlined in paragraph 36.

The reasons for the Decision are given in this Statement of Reasons for Decision dated 20 August 2018.



Dr. Peter Williams (Chair)  
**Member of the Commission**



Prof. Richard Mackay, AM  
**Member of the Commission**

cc. The Hon. Anthony Roberts, MP  
Minister for Planning  
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