

2 November 2020

The Commissioners
Office of Independent Planning Commission
New South Wales
Level 3
201 Elizabeth Street
SYDNEY NSW 2000

Dear Commissioners

**Department of Planning and Environment Exhibition of Modification Request
Dunmore Lakes Sand Extraction Project Application No. DA 195-8-2004 MOD 2**

I, the undersigned, am a part owner of 58 Charles Avenue Minnamurra and I am writing to you concerning the above modification request.

Reject the request.

In summary and as put eloquently by Ms. Rice¹, the proposal is not just a modification of the original approval and, as it is no longer on Boral's land, it has taken a substantial step eastwards towards the Minnamurra River and now impacts different ecosystems within the protected coastal management area.

The proposal should be seen as offering only very short-term economic gain at a significant cost to the ecologically of the Minnamurra River and to the people of this area.

At the very least, and as recommended by Shellharbour Council, a new development application is considered to be the appropriate determination pathway. Accordingly, the application should be withdrawn and resubmitted as a new development application.”

Background

In preparing this submission I have read the Executive Summary of the *Dunmore Lakes Project Modification 2 Development of Stage 5 Extraction Areas State Significant Development Modification Assessment Report (DA195-8-2004 Mod 2)* (the “Report”) prepared by the NSW Department of Planning, Industry and Environment.

¹ Extracted from the Transcript in confidence of the meeting with Kiama Council dated 9 October 2010 (“Transcript”)

From the Report I understand that:

- Current approvals allow an extraction of up to 800,000 tonnes of sand per annum. Historically, extraction rates have averaged 450,000 tonnes²
- The proposed modification comprising Stage 5A, which covers an area of 3.42 hectares (ha) and comprises a 12 metre (m) deep extraction pit that would be expected to yield around 234,000 tonnes of sand; and Stage 5B, which covers an area of 8.12 ha and comprises a 27 m deep extraction pit that would be expected to yield around 1.12 million tonnes of sand³; and
- Extraction in the two areas would take around 3 to 4 years to complete.

Based on this information, the increase in production during the 3-4 year period would be 451,000-601,000 per annum, more than doubling current historical production in that period.

The Report states that *the Department received 170 submissions on the proposal, which included advice from 11 Government agencies, 2 submissions from local government authorities, 7 submissions from special interest groups, 1 submission by an infrastructure provider and 149 submissions from the general public. None of the NSW Government agencies objected to the proposal, however both local Councils and almost all of the community submissions were in objection. The reasons for objection were primarily based on the potential impacts to water resources, including the Minnamurra River and its wetland features, amenity impacts including noise, air quality and traffic impacts, and cultural heritage impacts.*⁴

The Report concludes that *the Department has considered all issues raised in submissions and assessed the impacts of the proposed modifications in detail in accordance with all relevant NSW legislation, policies and guidelines. Based on this assessment, the Department has found that the proposed modifications offer several benefits, including that they would provide:*

- *for the continued development and recovery of a State significant sand resource;*
- *high quality construction sand products to the Illawarra and Greater Sydney regions; and*
- *continuity of operations and employment of 10 operational staff and additional truck drivers at an established quarrying operation.*⁵

Discussion

Given the resources of both the Shellharbour City and Kiama Councils and their objections to approval of the modification, I have reviewed the following documents in relation to the views of both councils:

- Shellharbour City Rts Attachment dated 23 October 2020 (“Submissions Matrix”); and
- The Transcript in confidence of the meeting with Kiama Council dated 9 October 2010 (“Transcript”).

In my opinion, in the Submissions Matrix and the Transcript the two councils have raised significant issues which have not been adequately addressed.

² Page iv of the Report

³ Page vi of the Report

⁴ Page vii of the Report

⁵ Page xiii of the Report

Firstly, I summarise my conclusions with respect to issues raised in the Submissions Matrix as follows:

Matter	Comments
Statutory Planning Considerations	<p>The Submissions Matrix states:</p> <p><i>“The Application has been lodged as a modification under Section 75W of the Environmental Planning & Assessment Act 1979. This Section has been repealed and as such cannot be relied upon to modify this State Significant Part 3A approval. It is also understood that there are no savings provisions to enable the use of this Section.</i></p> <p><i>Therefore, the proposal would be assessed under Section 4.55(2) – as a Modification, and considered under the ‘substantially the same’ test provisions within the Act.</i></p> <p><i>The proposal as a whole is considered substantially different to the original approval and would not, therefore, meet the test of being ‘substantially the same’ development for several reasons including:-</i></p> <ul style="list-style-type: none"> <i>• Substantial additional extraction;</i> <i>• Distance from the currently approved extraction sites; and</i> <i>• Sites that are not associated with currently approved allotments.</i> <p><i>A new development application is considered to be the appropriate determination pathway. It is considered the Application should be withdrawn and resubmitted as a new development application.”</i></p> <p>I agree with Council’s opinion and for the reasons stated, that the application should be withdrawn and resubmitted as a new development application.</p>
Environment-Biodiversity	<p>The Submission Matrix states:</p> <p><i>“Due to the significantly higher ecological value of Stage 5 areas and the level of direct impact compared with extraction areas under the current approval, this proposal in our opinion, triggers a full and comprehensive Environmental Impact Assessment. Accordingly, an Environmental Impact Statement (EIS) would form part of the expected reporting framework for this proposal. While a Biodiversity Development Assessment Report (BDAR) has been submitted, this specifically considers the assessment of and impacts from the proposal according to the NSW Government Biodiversity Assessment Methodology and does not include the broader scope of assessment required to adequately assess the risk of environmental impacts resulting from the proposed works and processes.”</i></p> <p>I agree with Council’s opinion. In support of this conclusion I note that later in the Submission Matrix, Council states:</p>

	<i>Coastal SEPP has not been adequately addressed. This is detail that would be covered comprehensively in a full Environmental Impact Assessment as is recommended by Council rather than in a briefer modification to the existing approval.</i>
Heritage	<p>The Submission Matrix states:</p> <p><i>“The acknowledgement of the proposed impact on the setting and rural landscape qualities of the item known as Dunmore House Complex, Dry Stone Walls and Trees has not been adequately justified in the RtS. Although these impacts may be temporary and it is proposed to restore the landform, it is difficult to justify the impacts for any given time (it is noted that no timeframe is given, so the impact may be for the life of the consent). The stated impact on the Minnamurra Vegetation Area is also considered to remain unjustified. The small percentage of the area affected is no less important or significant than the area as a whole and the size of the area affected in relation to the total area is not considered to be a suitable justification for the impact.”</i></p> <p>With regard to heritage, it is difficult to understand why the submission has not addressed Council’s concerns. For this reason, I agree with Council’s comments concerning the adequacy of the response.</p>

Secondly, the Transcript includes a statement by a Ms. Rice which seems to me to be cogent, helpful and summarises Kiama Council’s position with respect to the development overall. I have included the relevant section as an attachment and highlight the sections I consider most significant. I concur with the conclusions reached.

Conclusion

In summary and as put eloquently by Ms. Rice⁶, the proposal is not just a modification of the original approval and, as it is no longer on Boral’s land, it has taken a substantial step eastwards towards the Minnamurra River and now impacts different ecosystems within the protected coastal management area.

The proposal should be seen as offering only very short-term economic gain at a significant cost to the ecologically of the Minnamurra River and to the people of this area.

At the very least, and as recommended by Shellharbour Council, a new development application is considered to be the appropriate determination pathway. Accordingly, the application should be withdrawn and resubmitted as a new development application.”

Yours faithfully

Steve McClintock

⁶ Extracted from the Transcript in confidence of the meeting with Kiama Council dated 9 October 2010 (“Transcript”)

**MEETING WITH COUNCIL 9.10.20 P-4 Transcript in Confidence
Extract from Transcript**

MS RICE: So – so the Department of Planning, Industry and Environment’s Dunmore Lakes Modification 2 Assessment Report considers that this project’s acceptably regarded as a modification, because, in their eyes, it doesn’t create a radical transformation of the project. It’s a different part of the same sand resource. The process and procedures remain much the same and environmental impacts can generally be managed, rather than prevented.

However, there’s an overall community concerns that it’s not just a modification of the original approval and, as it is no longer on Boral’s land, it has taken a substantial step eastwards towards the Minnamurra River and now impacts different ecosystems within the protected coastal management area.

My concerns, and those of the community members who have spoken with me, relate mostly to the environmental and Aboriginal cultural heritage impacts of this proposal. Naturally, the assessment report is designed to be persuasive and, in doing so, it justifies itself by highlighting one of the four goals of the Illawarra Shoalhaven Regional Plan, a region that makes appropriate use of agricultural and resource lands.

And the report stresses one of its relevant actions:

Action 4.2.1: Sequence release areas, in the vicinity of mineral resources, to allow the continuation of working extraction activities.

But the report neglects to mention another equally important of those four regional plan goals; that of being a region that protects and enhances its natural environment. And it doesn’t go on to consider two of the relevant actions in relation to that: protect the region’s biodiversity corridors in local planning controls and create a consistent approach to protect important riparian areas in planning and development 45 controls. It’s mostly stage 5B that is inconsistent with the regional plan’s environmental goals and actions and also inconsistent with some of the objectives of the New South Wales’ Coastal Management Act that I will discuss later.

Whilst the department recognises the value of the E3 land in the southwestern portion of the 5B extraction area and recommends that Boral avoids any development in this area, it has stopped short of seeing the overall picture.

To the south, 5Bs E3 land gives way to larger extensive land zoned E3 and the significance of the corridor between 5B and these zones and towards the land further east has been missed. In considering the proposal under the EP&A Act, it is stated that the modification doesn’t significantly increase the approved environmental impacts. This is not true.

The environmental impacts have increased due to the stage 5 sites now abutting the different Minnamurra River ecosystems. These impacts are different to what has been approved, because they involved different species, corridors and ecosystems. The department’s stance places economic and social considerations, that is building industry and employing people, higher than environmental and Indigenous cultural considerations. The Dunmore operations may traditionally supply seven and a half per cent of the sand used in the Sydney construction industry, but that’s no reason to seek to approve it at all cost, rather than trying to find and exploit other less environmentally-sensitive areas.

In discussing impact on threatened species and ecological communities, the report falsely states that the final 5B landform will provide enhanced resources for water birds in the long term, whilst the reality is that the 5B pond will remain deep water and not include wading

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and foraging areas until and if long-term assessment ever shows that its water quality is suitable for overflow into the Minnamurra River.

In general, the environmental impact of stage 5B operations have been under considered throughout the assessment report. Two objectives of the New South Wales' Coastal Management Act 2016 are:

- to protect coastal wetlands and littoral rainforests in their natural state, including their biological diversity and ecosystem integrity; and
- to improve the resilience of coastal wetlands and littoral rainforests to the impacts of climate change, including opportunities for migration.

The impact that the 5B stage of this project will have on vegetation is considerable, as it further disrupts the fragile corridor connecting the riparian vegetation of the Minnamurra River.

With stage 5B 100 metres from the edge of the protected wetland area, it is blatantly misleading to say that no extraction would occur within the mapped wetland areas or the proximity area for the coastal wetlands buffer while ignoring to mention the indirect impact that vegetation removal and barrier creation will have on those areas.

Throughout the 5B zone, there's seven-and-a-half hectares of native vegetation to be cleared, including four-and-a-half hectares of the Bangalay Sand Forest, which is an endangered ecological community under the Biodiversity 45 Conservation Act.

The Bangalay trees are the only hollow-bearing variety of trees amongst the vegetation community. There are 38 of these hollow-bearing trees and four hollowbearing stags proposed for removal in stage 5B, which is pretty much of the entirety of vegetation that occupies the 5B area.

The report states that biodiversity impacts were designed to be minimised by focusing development on land that had previously been cleared for agricultural purposes. In considering the EP&A Act, the department notes that the proposed modification has been designed to limit vegetation clearing where practical and is not seeking to extract resources from areas of high-quality remnant vegetation. This statement totally misrepresents the fact that the mere existence of these 42 hollow-bearing trees attests to their high quality environmental significance and is the reason why they have been retained as paddock trees over time.

Removing them does not meet the EP&A objective of protecting the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats. The suggested mitigation for the removal of Bangalay vegetation is that Boral prepares – provides a biodiversity offset strategy, although approval for the project is being recommended in advance of any site being confirmed.

Boral plans to relocate the felled tree hollows and install nest boxes. However, it is well-established that these procedures, particularly nest boxes, do not adequately replace natural hollows for the breeding purposes of many native species.

The significance of the Dunmore Bangalay endangered ecological community is downplayed by referring to the 6300 hectares of Bangalay Sand Forest that remain between Sydney and the Victorian border. How will these remote communities help the survival of species dispossessed by the removal of the four-and-a-half hectares at Dunmore?

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Extract from Transcript**

Further, although the report states that the six threatened species recorded in field surveys did not appear to be breeding in the area, the rarity of and competition for tree hollows will confirm their use by other species that will become displaced, should the project go ahead.

No reference is made to the impact of sea level rise on the protected mangrove and saltmarsh communities of the Minnamurra.

This is a point that has been raised by both council and community members, using local, evidence-based data that mangroves and their peripheral saltmarsh are already retreating westwards in this area. A recommended action of the federal Department of Agricultural, Water and the Environment is to identify and detect areas where coastal habitats can retreat with sea level rise.

The low-lying land of the stage 5B area is one such zone where this can and should occur, rather than presenting a barrier to migration in the form of the bunded perimeter of 5Bs deep-water pond.

Now, turning briefly to an environmental consideration of stage 5A, I'm concerned that there's a reasonable probability that the stage 5A works will have an ongoing negative impact on the vegetation in this area.

This is due to an agreement made with the landowner to rehabilitate back to pasture after the year or so extraction work in this location. It is stated that trees will be removed within the curtilage of Dunmore House for the development of 5A and that trees won't be planted in the short – for the short-term screening of the works from Riverside Drive.

The return to pasture rehabilitation agreement is being used in opposition to screening and revegetation and this agreement should be modified to take the longer term environmental interest into account.

There has been local disquiet about the impact of sand mining on traditional Aboriginal land and in relation to the sustainable management of Aboriginal cultural heritage, this proposal falls far short.

Approval is being recommended by the department, whilst admitting that sufficient knowledge is still being developed and there is the assumption that digging out and handing over artefacts in a very significant historic site is a sustainable way of managing Aboriginal cultural heritage. I have had several representations from the local Aboriginal community on this matter. Heritage New South Wales encouraged Boral to further consider the heritage impacts of their proposal and requested that Boral confirm the outcomes of their consultation with the Illawarra Local Aboriginal Lands Council regarding the additional testing recommended by Heritage New South Wales.

Boral confirmed that the testing took place with Aboriginal representatives present and that the resultant report was distributed to them, but it appears the outcomes of such consultation was that no comments were received by Boral in response to the report. It is implied, however, that there was some commentary coming to the department from the local Aboriginal community and certainly many of their signatures were among the 5000 on the petition opposing the sand mines that was delivered to the state parliament by MLC Justin Field.

What I have heard is that the perspective of the Illawarra Local Aboriginal Land Council is that excavation is disrespectful on this piece of sacred land, and from this I can assume that

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Extract from Transcript**

the collecting and handing over of relics as proposed by Boral is not a favourable outcome in the eyes of the Land Council.

The Minnamurra River is of high significance to the local and Aboriginal community, with spiritual values associated with it as the burial place of King Woolongoolow, king of the tribes from Wollongong to Nowra. There are 27 Aboriginal cultural heritage sites within a one-kilometre search radius of the stage 35 5B excavation zone that are registered with the New South Wales Aboriginal Heritage Information Management System. Three of these sites are proposed to be disturbed by excavations for stage 5B of this project, with two of these considered of most importance.

The abundance of relics that have already been found in test pits here is indicative of the high usage of the area by Aboriginal people in the past. The stage 5B site is also highly proximal to the site of the 1818 Minnamurra Massacre, as determined by University of Newcastle Professor Lyndall Ryan and recognised by Kiama Council.

Both Boral and the department acknowledge that sufficient knowledge of this area is yet to be developed and, as so, its preservation should be upheld as a precautionary measure. It is a site of shared history that deserves respect. I'm sure that there will be a strong community response to the public hearing to be held on 28 October and to the further opportunity to make submissions on this matter. I hope that their local understanding will be carefully considered, so that this matter is seen more clearly as offering only very short-term economic gain at a significant cost to the ecologically of the Minnamurra River and to the people of this area.