

2 November 2020
Office of the Independent Planning Commission NSW
Level 3, 201 Elizabeth Street
SYDNEY NSW 2000
Chair of IPC Panel: Dianne Leeson
Other IPC Panel Members: Peter Cochrane



RE: Dunmore Lakes Project Modification 2

Dear Ms Leeson and Mr Cochrane,

The Illawarra Local Aboriginal Land Council is the legislated body to recognise the interests and aspirations and cultural heritage of Aboriginal people in the region in which this project is proposed. While we are given this mantle, it is important to recognise the voices of all Aboriginal people that wish to assert an interest in projects that impact cultural heritage.

The Illawarra Local Aboriginal Land Council has reviewed the reports in relation to the proposed Dunmore Lakes Sand Project – Stage 5. We would like to record our objection to this development proceeding due to the significant cultural and environmental damage that would occur. We would also like to draw attention to the fact that the Aboriginal community, and I am sure the wider community, generally does not believe that the destruction of this area through the expansion of the sand mining facility is in keeping with the expectations and values we hold for this area.

Furthermore, we would contest that the economic impact which may be attributed to this project and its State Significant Status does not align with the cost that will be borne by the community in the future. It is our recommendation that this development does not proceed and that all extractive industries are restricted from further development in this environmentally and culturally significant location.

To support our position on this matter we would like to draw attention to areas of concern which we believe support our recommendation.

- Impact to Aboriginal cultural heritage objects including the Potential to impact Aboriginal burials in the expansion area in particular 5B
- Impact to largely intact cultural landscape
- Impact on significant Endangered Ecological Communities (EEC), namely Bangalay Sand Forest and Salt Marsh
- Loss of habitat
- Lack of context or consideration relating to climate change impacts in particular sea level rise

While these areas of concern are discussed in the proponent's submission, they are largely downplayed and ignore the resulting impact to the local community that will remain long after the proposed activity is completed.

Aboriginal Cultural Heritage Impact

The Land Council was informed by Kelleher Nightingale Consulting Pty Ltd (KNC) that they had been engaged by Element Environment Pty Ltd, on behalf of Boral Resources (NSW) Pty Ltd (Boral) as the owner of Dunmore Sand and Soil Pty Ltd (DSS), to prepare an Aboriginal Cultural Heritage Assessment Report (CHAR) to inform the environmental assessment (EA) for the expansion project.

The Land Council was informed that DSS is seeking approval for a modification to their existing development consent (DA 195-8-2004) for Stages 2 to 4 of the Dunmore Lakes Sand Project at Dunmore on the NSW South Coast. The proposed modification is for a new extraction stage (Stage 5) on adjoining land and would be a S75W modification to the existing consent. The proposed pit expansion is required to enable the continuation of the current sand extraction operations.

The proposed activities associated with sand extraction expansion include:

- Vegetation clearance;
- Extraction of sand by excavator (Stage 5A with a total area of 3.42 ha, and Stage 5B with a total area of 8.12ha);
- Dredging and pumping the sand onto the existing processing area on Stage 2 for washing, stockpiling and dispatch;
- Installation of two pumping stations/boosters;
- Installation of sand pipeline connecting extraction and processing areas;
- Installation of two access roads, 240 metres and 970 metres in length, 3.5 metres in width; and
- Installation of a temporary portable site office and 10 light vehicle spaces

The objective of the Aboriginal cultural heritage assessment was to combine Aboriginal community consultation with archaeological investigation to identify if the proposed expansion would impact on Aboriginal cultural heritage and if so, what measures could be undertaken to manage or mitigate Aboriginal heritage impacts.

The Land Council recognises that the assessment was carried out in accordance with the:

- NSW Department of Planning and Environment requirements;
- Code of Practice for Archaeological Investigation of Aboriginal Objects in NSW (OEH 2010b);
- Guide to investigating, assessing and reporting on Aboriginal cultural heritage in NSW (OEH 2011); and
- Aboriginal cultural heritage consultation requirements for proponents 2010 (OEH 2010c).

The assessment included:

- Consultation with Aboriginal communities to
 - Identify Aboriginal heritage in the study area,
 - assess impacts of the proposed expansion activities and
 - develop appropriate mitigation measures;
- Detailed archaeological investigation of the study area, including archaeological test excavation;
- Aboriginal cultural heritage assessment, including both cultural and archaeological significance; and
- Preparation of impact mitigation and management measures

We would add to this final point that the mitigation measures determined do not necessarily recognise the value of this site and generally reflect the position of the consulting archaeologists and provide little to no benefit to the Aboriginal community.

Furthermore, we would challenge if the NSW Department of Planning and Environment requirements; relating to the use of the *Code of Practice for Archaeological Investigation of Aboriginal Objects in NSW (OEH 2010b)*; *Guide to investigating, assessing and reporting on Aboriginal cultural heritage in NSW (OEH 2011)*; and *Aboriginal cultural heritage consultation requirements for proponents 2010 (OEH 2010c)* were currently adequate in consideration of the listing of the Calga Aboriginal Cultural Landscape as State Significant Heritage item, as well as the 2015 Land and Environment Court decision in *Darkinjung Local Aboriginal Land Council v Minister for Planning and Infrastructure*¹. In this case several key considerations relevant to this project were discussed and in our view have not been addressed in the current assessment.

The Court reinforced the values of the Burra Charter (and other OEH policies) in highlighting the importance of the following principles when considering the nature and extent of cultural heritage:

- Aboriginal cultural heritage encompasses both tangible and intangible elements, and the principles of ecologically sustainable development (ESD), including the precautionary principle, apply to both of these values.²
- In accordance with OEH guidelines, Aboriginal witnesses are the determinants of Aboriginal culture.³
- Cultural values are dynamic, not static, and may not be captured at any one time.⁴
- “[F]or Aboriginal people the significance of individual features is derived from their interrelatedness within the cultural landscape. This means that features cannot be assessed in isolation and that assessments need to consider the feature and its associations in a holistic manner.”⁵

In highlighting and providing support for this view we acknowledge that the works undertaken by KNC in conjunction with the Aboriginal community identified three Aboriginal archaeological sites in the proposed pit expansion area: DLS Boral AFT 1, DLS Boral AFT 2 and DLS Boral AFT 3. All three sites would be impacted by the proposed works as per the table below which has been extracted directly from the report.

Site Name	Type of harm	Degree of harm	Consequence of harm	Significance of harm	Mitigation Required
DLS Boral AFT 1	Direct	Total loss	Total loss of value	High	Yes
DLS Boral AFT 2	Direct	Total loss	Total loss of value	High	Yes
DLS Boral AFT 3	Direct	Total loss	Total loss of value	Low	No

¹ [Darkinjung Local Aboriginal Land Council v Minister for Planning and Infrastructure \[2015\] NSWLEC 1465](#)

² *Darkinjung Local Aboriginal Land Council v Minister for Planning and Infrastructure* [2015] NSWLEC 1465, [465]

³ *Darkinjung Local Aboriginal Land Council v Minister for Planning and Infrastructure* [2015] NSWLEC 1465, [199]

⁴ *Darkinjung Local Aboriginal Land Council v Minister for Planning and Infrastructure* [2015] NSWLEC 1465, [329]

⁵ *Darkinjung Local Aboriginal Land Council v Minister for Planning and Infrastructure* [2015] NSWLEC 1465, [220] citing OEH guidelines: Department of Environment, Climate Change and Water (NSW), “What is an Aboriginal Cultural Landscape?” (April 2010)

The report validates the findings in the following way

The Aboriginal cultural values of the modification site were determined in consultation with 19 Aboriginal groups or individuals who registered their interest in the proposed modification.

The modification site was surveyed, which focussed on the areas predicted to contain evidence of previous Aboriginal occupation. Forty-five test pits were excavated in the modification site to characterise the sub-surface archaeology and test predictions and the survey results.

Three Aboriginal sites were identified within the modification site, in which a total of 1,292 artefacts were discovered. Most of the artefacts were flakes or broken flakes, with some stone tools also discovered.

All the Aboriginal sites in the modification site will be lost due to creation of the dredge ponds and associated sand extraction.

*While Aboriginal archaeological sites and associated objects within the disturbance footprint of the proposed modification will be lost, **impacts will be mitigated through collection and relocation of artefacts prior to the commencement of works.***

*All **artefacts identified** in the salvage effort will be collected by an archaeologist and members of the Aboriginal community and **will be subject to attribute analysis to understand manufacturing technology, site function and to compare the assemblage to studies completed in the wider region.***

To obtain some perspective into what has been suggested here the excavations for the test pits totalled a complete area that was approximately 23m x 23m in a total area of 11.5Ha or 339m x 339m or 6% of the site, in which identified almost 1300 artefacts. While these artefacts are important, the Darkinjung case highlights the importance of the intangible values, which also includes ecologically sustainable development in accordance with living values and traditions of Aboriginal people.

This raises a further flaw in the assessment process through the general application by consulting firms in referencing outdated guidelines. The use of these guidelines to validate their methodology fails to recognise the contemporary views of Aboriginal people. Following the Darkinjung case, it is the view of this Land Council that archaeologists should not only be searching for the historical connection and possibly the continuing link to the project area but also seek to understand the contemporary approach and value of the location to the Aboriginal community. The approach taken by KNC and their assertions pertaining to the codes they followed, fails to recognise that this process has been identified as a failure in the assessment process by the courts.

The Land Council would also like to identify what we believe is a failure in the approach that KNC have applied and the predetermined position in our view of consultants that are engaged to undertake what should be the protection of Aboriginal heritage but inevitably becomes a process to get the proponent through the planning process. This assessment failed to completely validate the historical evidence of the area and only makes a fleeting reference to evidence that a massacre occurred in the vicinity of the proposed project or indeed records that suggest that Aboriginal camps were scattered along the Minnamurra River. The Report of Board for the Protection of Aborigines,

For Year 1907⁶ indicated a population of Aboriginal people in the Minnamurra and Bombo areas which was not reflected in this report although this reference indicates that Aboriginal people had been occupying the area following their dispossession from the land. Furthermore, there is documented evidence of burials occurring along the river. Highlighting these recordings would validly support the protection of the site for its heritage value to Aboriginal people rather than seeking to progress their client through the planning process.

The contextual history of the area including the information provided by the Aboriginal community clearly displays that the site is culturally significant. The assessment process undertaken by KNC dismisses any consideration to avoid development on the site. This is reflective of the view held by the Land Council that the assessment is undertaken to enable the project to proceed rather than protect cultural heritage. Furthermore, the justification for the complete destruction of the area is due to the resource being available and required in the construction market. At no time does the assessment seek to validate a position of avoiding impact of what they have indicated is highly significant site. Instead they advocate for mitigation by destruction.

The configuration of the proposed extraction pits has been developed having regard to the constraints of the land, the desire to mitigate and avoid impacts where possible, whilst balancing the commercial viability of the proposal, and the extent of known resource. Reductions in the proposed extraction area would result in a loss of identified sand deposits, which are a fundamental resource for the construction market in not only NSW, and will result in an impact on the overall availability of sand in the state more generally.⁷

This situation highlights why the Government and Planning Authorities such as the Independent Planning Commission need to allocate funding and resources to the Aboriginal communities so that we can appropriately represent the views, expectations and current values of Aboriginal people for our heritage. Furthermore, we would assert that the lack of resources provided to Aboriginal communities is contrary to the various State and Commonwealth legislative frameworks that apply to these areas as well as the many charters and human rights principles that Australian Governments have committed to being part of.

A further failure in the current system, and this was in part eluded to by KNC in their reports, is the lack of investigation relating to sites and areas such as the one impacted by this proposal. The current practices relating to the treatment of Aboriginal Heritage, as has been pointed out here, is scientific in nature and requires the development of an historic profile through archaeological investigation.

The proposed salvage program would reduce the harm of the identified cumulative impact by increasing our understanding of how such sites may be better identified, investigated and managed within the complex environment of the lower Minnamurra River. Potential conservation outcomes for future projects would also be strengthened, particularly as the information gained would be directly applicable at the early concept stage to other identified sites within similar sand bodies in the local area and wider region.⁸

⁶ [Aborigines, Report of Board for the protection of, for year 1907](#)

⁷ Dunmore Lakes Sand Project – Stage 5 Modifications Dunmore, NSW, Kelleher Nightingale Consulting Pty Ltd; 2019 Pg 27

⁸ Dunmore Lakes Sand Project – Stage 5 Modifications Dunmore, NSW, Kelleher Nightingale Consulting Pty Ltd; 2019 Pg 26

This method fails to recognise that Aboriginal people are still part of this environment and their views in relation to the management of the landscape which is inextricably linked to their identity and values are still current. This approach assumes that the only valid assessment is through digging up the past. In the words of KNC from the report, all artefacts salvaged, “...will be subject to attribute analysis to understand manufacturing technology, site function and to compare the assemblage to studies completed in the wider region”. While this approach may be important from a scientific perspective, the Land Council seeks to remind the Independent Planning Commission that Aboriginal people should no longer be thought of simply in the context of science or adding to scientific understanding from an historical framework. We are still here and it is up to us as a community to interpret and assert our own views of place, culture and values, and not to have this dictated through the lens of a western paradigm.

The current approach also relies heavily on previous analysis of areas that heritage consultants can build upon. In many cases, due to what we view as the desire of heritage consultants to progress their client through the planning process, there is a failure to explore primary reference materials relating to a particular area or landscape. This results in the accrued reliance on heritage reports of others and the records that are contained in the Aboriginal Heritage Information Management System (AHIMS) database managed by Heritage NSW, as the definitive source of information, hence the reference to the AHIMS map by KNC and the statement relating to the limited information available in relation to sites such as this.



It is only through ongoing investigation of areas that a picture of occupation is developed. This process therefore fails to appropriately reflect the heritage context for many of the initial projects as the primary records are never truly explored due to time and cost constraints. This has been highlighted previously, in this response, with reference to the “Report of Board for the Protection of Aborigines, For Year 1907”, as an example. Additionally, resources such as “*Illawarra and South Coast Aborigines 1770-1850*”⁹ contain significant recording from diaries and newspapers reflecting original recordings of Aboriginal people. These resources however fail to be utilised in the assessment process.

⁹ [Illawarra and South Coast Aborigines 1770-1850](#), Michael Organ 1990

Mitigation

The scientific value of archaeological sites is linked to the physical information the sites contain. Site DLS Boral AFT 3 has low archaeological significance and does not warrant further archaeological investigation; however, measures for mitigating harm to Aboriginal objects (salvage excavation) are recommended for sites DLS Boral AFT 1 and DLS Boral AFT 2.

The loss of intrinsic Aboriginal cultural value of impacted sites cannot be offset; however the salvaged information will increase our understanding, strengthen our interpretations and improve ongoing and future management of Aboriginal heritage in the surrounding area. The presence of archaeological deposits and activities related to Aboriginal occupation within coastal barrier landform contexts in association with estuaries is little known due to limited large excavation data, and the levels of previous disturbance in these environmental conditions within the Illawarra Coastal Plain. In this light, the project offers a unique opportunity to significantly advance the interpretation and management of Aboriginal heritage of the surrounding area by providing a foundation for future heritage assessments.

Management measures should also be implemented for adjacent areas (outside of proposed impact zone). Aboriginal objects are known to occur in adjacent landforms and these must be avoided by all proposed extraction activities. Management measures to be implemented should include clear fencing of the boundary of the approved impact zone and the inclusion of Aboriginal heritage in the Environmental Management Plan (EMP). Documented toolbox talks will also be held to ensure all on-site staff and contractors are aware of obligations and requirements regarding the protection of Aboriginal heritage. The CHAR indicates that salvage is the mitigation measure as it adds to the knowledge of how Aboriginal people used the landscape¹⁰

The quote above taken from the CHAR report compiled by KNC reflects a significant failure in the system. If the only proposed mitigation measure for a project is to actually cause the destruction of the site through a salvage rather than seeking to avoid impact, a failure in the principles of risk management has obviously occurred. Furthermore, the destruction of the site is proposed as it adds to the scientific understanding and knowledge of the area. Obviously, the corollary of this is that the only input that Aboriginal can have, that is of value, is to add to the knowledge of the area through the destruction of our sites. This in some way would infer that our knowledge, values and culture are no longer valid or in existence. This position is factually wrong and insulting to all Aboriginal people living today.

Again, the Land Council would call on planning authorities to resource Aboriginal communities to compile their own information in the way we would like it to be recorded and undertake our extractive investigations if we determine that it is appropriate rather than continuing down this failed process of engaging in conversations with the Aboriginal people that ultimately are framed by

¹⁰ Dunmore Lakes Sand Project – Stage 5 Modifications Dunmore, NSW, Kelleher Nightingale Consulting Pty Ltd; 2019 Pg 57

a focus on placing Aboriginal people simply in an historic context and forgetting about the contemporary values of Aboriginal people.

The main winner out of this current approach are the archaeologists that are engaged to undertake and interpret the outcomes of the salvage. Meanwhile another historic site is destroyed simply to add to the science of history.

Environmental Cultural Impact

In reflecting the values of the Aboriginal community and our view of interconnectedness between all aspects of the environments in which we live, it is equally valid for the Land Council to provide comment on what we will refer to as the environmental cultural impact.

The environmental assessment reports for this project, as provided by Boral, again identify the legislative frameworks that justify their position and reasoning to validate why this project should proceed. These legislative frameworks include reference to the Office of Environment and Heritage's (OEH) (2017) Biodiversity Assessment Method (BAM). Through this process, Boral identified flora and fauna credits which would be a requirement for proceeding with this project. While the Land Council recognises that this assessment process is valid, it does not necessarily reflect the values of the Aboriginal community and the continuing connection to Country by the local community. It also fails to recognise that a significant aspect of our values relates to ensuring that biodiversity is retained in all locations and therefore offsets may not always be appropriate to ensure that environmentally sustainable development occurs.

Again, we would like to draw the Darkinjung determination to the attention of the IPC, specifically in relation to the consideration of the principles of Ecologically Sustainable Development (ESD), including the precautionary principle, which forms part of the "public interest" and should be considered by determining authorities. Application of the precautionary principle requires the satisfaction of two threshold tests: first, a threat of serious or irreversible environmental damage; and, second, scientific uncertainty as to the nature and scope of the environmental damage.¹¹

Furthermore, the Land Council would like to highlight that the significance of a landscape, is based on the way all aspects of the places in which we live are inextricable and intrinsically linked. Each aspect of the environment carries the same weight and value as each of us that hold the custodianship of this land. This was reflected again in the determination by the Land and Environment Court in the Darkinjung decision in this way; "[F]or Aboriginal people the significance of individual features is derived from their interrelatedness within the cultural landscape. This means that features cannot be assessed in isolation and that assessments need to consider the feature and its associations in a holistic manner."¹²

We would therefore assert that, while potentially a technically correct solution to the planning requirements relating to environmental impact, the use of the BAM calculator to assess the required offsets fails to recognise the Aboriginal cultural values that exist within this context and therefore we would argue that discussions in relation to the application of these offsets should be negotiated and agreed upon by the Aboriginal community.

¹¹ Telstra Corporation Ltd v Hornsby Shire Council (2006) [67 NSWLR 256](#); 146 LGERA 10; [\[2006\] NSWLEC 133](#), 273 (NSWLR).

¹² Darkinjung Local Aboriginal Land Council v Minister for Planning and Infrastructure [2015] NSWLEC 1465, [220] citing OEH guidelines: Department of Environment, Climate Change and Water (NSW), "What is an Aboriginal Cultural Landscape?" (April 2010)

Beyond the environmental impacts for which BAM offsets are proposed, it is our view that consideration needs to be provided to the real prospect of vegetation migration along our coast with sea level rise. As the sea levels continue to inundate coastal lands we will see a movement of current coastal species further up dune systems, foreshore and wetland areas as the environmental variables change. Developments along our coastline can potentially restrict this movement from occurring and will potentially lead to the complete extinction of Endangered Ecological Communities (EEC's) and other vegetation communities as they seek to adapt to the changing climate, but have nowhere to re-establish. If we look at the current predicted sea level rise (see: Image 2) and its impact on the area under consideration for extraction, the EEC's, such as the Bangalay Sand Forest will have no potential for re-establishing as the sand soil profile that they require will not be available for continued growth of the relevant species. This will result in the loss of complete ecosystems should this project proceed. While we recognise that this outcome will take many years to occur and that the sea levels referenced are from 2100, it should be equally recognised that the vegetation community can take just as long to re-establish itself. Responsible planning and management of our landscape would foresee these changes and ensure that spaces and places were retained as close as possible to sensitive eco-systems to ensure the health of the regions in which we live.

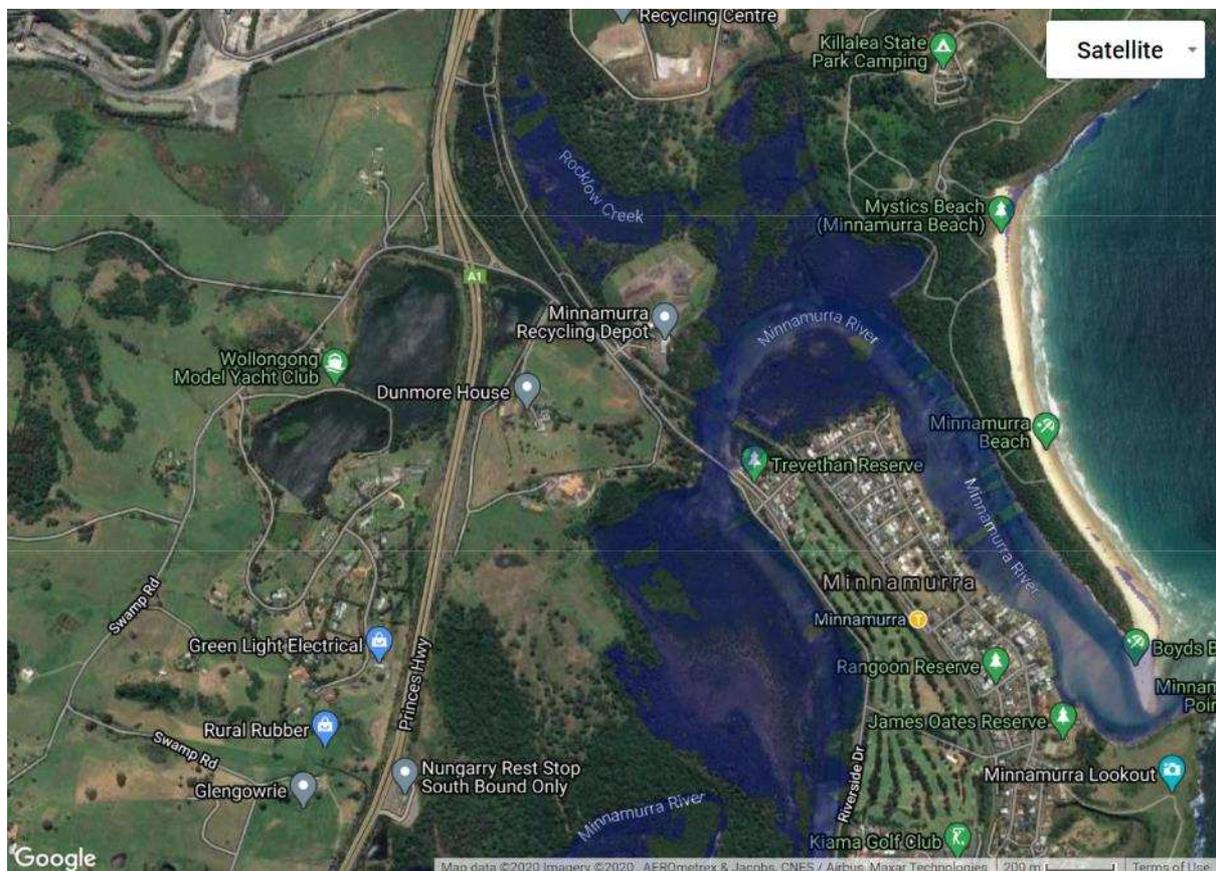


Image 1: Current highest tide



Image 2: The map above indicates current predicted impact of sea level rise and the average high tide level.

Boral indicate in the study that they would seek to remediate the landscape through the importation of fill materials. The Land Council recognises that this approach is used in the existing operational areas and that positive results have been reported. We would however seek reassurance that these same positive outcomes would be achieved in light of the potential for sea level rise and not just during the operational period of the extraction process. The impact created by the removal of this sand deposit in a highly sensitive and endangered ecosystem needs to be assessed over generations and not just over the operational period of the mine. The use of fill in the remediation of the landscape also raises questions for the Land Council in relation to the movement of ground water as well as the types of vegetation that would be able to establish themselves on this material as sea level rise occurs.

To highlight this concern we draw attention to the Stage 5A extraction area, which is located within the 'proximity area for coastal wetlands' defined under the Coastal Management SEPP and within approximately 150 m of mangrove areas within the Minnamurra River and 250 m of mangrove areas within Rocklow Creek. The Stage 5B extraction area is also located approximately 160 m from saltmarsh and mangrove areas on the tidal flats of the Minnamurra River. The above adjacent aquatic areas are considered 'Type 1 – Highly sensitive key fish habitat' due to their coastal wetland characterisation and the presence of mangrove, saltmarsh and seagrass communities. The Land Council believes that it is important for consideration of how sea level increases will be able to sustain these important habitats as they inundate the project area.

Further concerns in relation to this project proceeding rest in the incongruent nature of the zoning with the activity. The majority of the proposed modification site is zoned RU2 – Rural Landscape zone under the Shellharbour Local Environmental Plan (LEP) 2013. The southern portion of Stage 5B extraction area is zoned E3 – Environmental Management. Extractive industries are not permitted within these zones, however agricultural land uses are permitted with consent. We understand and appreciate that by virtue of Section 7, Clause 3 (a) of State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007, extractive industries are permitted with consent on land where development for the purposes of agriculture or industry is permitted.

Land to the east and south of the modification site is zoned E2 – Environmental Conservation and E3 – Environmental Management, and this land is associated with environmental conservation areas of Minnamurra River and associated Coastal SEPP wetland. The E2 zoning also runs along the northern fringe of Riverside Drive opposite the Stage 5A extraction area, generally within the road reserve area of Riverside Drive, whilst the balance of Riverside Drive and the Princes Highway are zoned as SP2 – Infrastructure.

The RU2 zone objectives are:

- to encourage sustainable primary industry production by maintaining and enhancing the natural resource base;
- to maintain the rural landscape character of the land; and
- to provide for a range of compatible land uses, including extensive agriculture.

The E2 Zone objectives are:

- to protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values.
- to prevent development that could destroy, damage or otherwise have an adverse effect on those values.

The E3 zone objectives are:

- to protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values;
- to provide for a limited range of development that does not have an adverse effect on those values; and
- to retain and enhance the visual and scenic qualities of the Illawarra Escarpment.

The Land Council questions the appropriateness of sand extraction in areas that have significant ecological value and in particular, E2 and E3 zoned land. Even though the State Environmental Planning Policy may allow this, it also indicates that it is with permission and we would assert that the sensitivity of this area does not warrant permission.

The Land Council also has concerns in relation to ground water movement from the dredging process resulting in salt water ingress towards the dredged areas.

Recent groundwater assessment in the northern corner the Stage 5A area (bore MW5A3) reports TDS levels around the current objective level at a depth of around 0.6m AHD and that the tidal effect on groundwater is typically between 5 and 50 m from a tidal creek, depending on soil permeability (EES, 2019). The proximity of the Stage 5A and 5B dredge ponds to tidally influenced and saline watercourses, and the groundwater salinity levels measured in the vicinity, creates the potential for saline groundwater intrusion into these ponds. The likelihood increases as pond excavation deepens as well as during periods of pond draw-down either through extraction or evaporation. Further, the transfer of water from Stage 5A and 5B to the processing facility (Stage 2) and return flows mean that salinity levels in the Stage 2 fines pond will be influenced by Stages 5A and 5B and vice versa.

Appendix J: Surface Water Assessment for Modification 2 of the Dunmore Lakes Sand Project. Pg 44

The Land Council recognises that the report has identified that this will require monitoring to ensure water quality is maintained. It does not recognise or comment on the potential and very high impact that salinity will have in the existing vegetation communities which include the adjacent EEC Bangalay Forest. We would like to see further information on the anticipated impact of saltwater movement into the site for surrounding vegetation types.

Economic Benefit to the Region

The project is expected to provide approximately four years of commercial return for Boral. They have indicated that the project will provide:

- supply of essential natural sand to major infrastructure and associated development projects;
- continued employment of 10 full time employees and truck/transportation drivers, with further jobs created through flow-on effects;
- optimal use of a regionally-significant resource; and
- economic benefits to the local community through the purchase of goods and services and local expenditure both directly and indirectly through employee wages.

As far as we can see there is no information to support the economic claims of Boral in relation to this project and in some cases they contradict themselves. Some examples of this are the indication that they will primarily transport materials by rail¹³ in their environmental management mitigation process and in the above excerpt they indicate that they have truck/transportation drivers employed. As part of the above they have not indicated if the 10 full time employees include or exclude the truck/transportation drivers nor is there any validation that the current employees reside in the local area. It is also suggested that the wages they pay these employees is an additional benefit to their employment. The lack of economic analysis of the project reflects what we believe is indifference to the Illawarra region.

Further validation of our position in relation to the lack of support for their claims or the contradicting claims are evident in the Environmental Assessment Report under the heading of Need, justification and alternatives¹⁴, Boral seeks to justify the economic benefits of this project simply on the premise of it providing value to their business.

For tens of thousands of years Aboriginal people have managed these lands as custodians, with the view of ensuring minimal impact on the landscape. We realise that our value in the ecosystem is no greater than that of the flora, fauna and general landscape around us and that we should be working *with* and not *on* the landscape and any modifications that we undertake should only cause minimal impact. This project does not align with any of these values and therefore impacts on our cultural heritage values. We also assert that Boral has not provided justification for the economic and social benefits that would warrant the potential for long term destruction of a sensitive ecological environment and therefore the proposal for expansion should be rejected.

¹³ Dunmore Lakes Sand Extraction Project Modification 2, Boral Limited ENVIRONMENTAL ASSESSMENT, p xv

¹⁴ Dunmore Lakes Sand Extraction Project Modification 2, Boral Limited ENVIRONMENTAL ASSESSMENT, p xiv

Conclusion

The Illawarra Local Aboriginal Land Council recommends that the project does not proceed for the following reason:

A lifetime of destruction for the potential 4 years of operations of this facility would be an injustice to the community and we believe a failure of the planning process.

Effectively the cultural assessment for this project has failed to demonstrate any attempt to protect and conserve the values of Aboriginal people. At each point in the process it would appear to seek destruction of the site even if this is through what it refers to as mitigation by salvaging materials that are in the project zone. Following the Darkinjung case, it is the view of this Land Council that archaeologists should not only be searching for the historical connection and possibly the continuing link to the project area but also seek to understand the contemporary approach and value of the location to the Aboriginal community. The approach taken by KNC and their assertions pertaining to the codes they followed, fails to recognise that the practice that was undertaken has been identified by the courts as insufficient. Furthermore, it definitely does not assert the contemporary expectations of the Aboriginal community for this place thus failing to recognise that culture is not static but dynamic. The report also fails to recognise in the recommendations that

- Aboriginal cultural heritage encompasses both tangible and intangible elements, and the principles of ecologically sustainable development (ESD), including the precautionary principle, apply to both of these values.¹⁵
- [F]or Aboriginal people the significance of individual features is derived from their interrelatedness within the cultural landscape. This means that features cannot be assessed in isolation and that assessments need to consider the feature and its associations in a holistic manner.

Salvage is not the most appropriate mitigation measure in this instance. The Land Council recommends complete avoidance and for the project not to proceed.

The Illawarra Local Aboriginal Land Council asserts that consideration of the environmental impact forms part of the context of Aboriginal values and practices. The environmental impacts therefore form part of the cultural impact only adding to the reason that this project should not proceed.

As a final point to support the project not proceeding we ask the IPC to reflect on the lack of economic modelling detail and validation for the statements made in the submission.

Recommendation

The Land Council has only one recommendation and that is that this project should not proceed.

Regards



Paul Knight
Chief Executive Officer

¹⁵ Darkinjung Local Aboriginal Land Council v Minister for Planning and Infrastructure [2015] NSWLEC 1465, [465]