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**TRANSCRIPT OF PROCEEDINGS**

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O/N H-1289876

**INDEPENDENT PLANNING COMMISSION**

**MEETING WITH DEPARTMENT OF PLANNING,  
INDUSTRY AND ENVIRONMENT**

**RE: DUNMORE LAKES SAND PROJECT MODIFICATION 2**

**PROJECT #: D608/20**

**PANEL:** **DIANE LEESON (CHAIR)**  
**PETER COCHRANE**

**OFFICE OF THE IPC:** **BRAD JAMES**  
**ALISON HILL**

**DEPARTMENT:** **MATT SPROTT**  
**MIKE YOUNG**

**LOCATION:** **SYDNEY**

**DATE:** **10.32 AM, THURSDAY, 1 OCTOBER 202**

**THIS PROCEEDING WAS CONDUCTED BY VIDEO CONFERENCE**

MS LEESON: Okay. So before we begin, I would like to acknowledge the traditional owners of the land on which we meet. I would also like to pay my respects to their elders past and present and to the elders from other communities  
5 who may be here today. Welcome to the meeting today. The Dunmore Lake Sand Project is an established dredge sand extraction operation at Dunmore in the Illawarra region of New South Wales. It is owned by Dunmore Sand and Soil Proprietary Limited, which is wholly owned subsidiary of Boral Resources (New South Wales) Proprietary Limited. Dunmore Sand and Soil is seeking approval to  
10 extract sand from two new extraction areas known as stages 5A to the north and 5B to the south within the existing approved life of the operations. The project is located within Shellharbour local government area.

My name is Diane Leeson. I am the chair of this IPC panel. Joining me is my fellow  
15 Commissioner Peter Cochrane, Brad James and Alison from the Office of the Commission who is also in attendance. In the interests of openness and transparency and to ensure the future – full capture of information, today’s meeting is being recorded, and a full transcript will be produced and made available on the Commission’s website. This meeting is one part of the Commission’s decision-  
20 making process. It is taking place at the preliminary stage of this process and will form one of several sources of information upon which the Commission will base its decision.

It is important for the Commissioners to ask questions of attendees and to clarify  
25 issues whenever we consider it appropriate. If you are asked a question and are not in a position to answer, please feel free to take that question on notice and provide any additional information in writing which we will then put up on our website. I request that all members here today introduce themselves before speaking for the first time, and for all members to ensure that they do not speak over the top of each  
30 other to ensure accuracy of the transcript. We will now begin.

So thanks Matt and Mike for attending this morning. We have a few questions. We have an hour set aside. We’re not sure that we’re going to need the full hour. You’ve been issued an agenda that covers the key topics that we would like to go  
35 through with you today. And I think the first question on our mind – and we’ve got the Department’s assessment report so we’ve got that and we will probably get to a few things there. It’s really around the statutory context and the notion of this. We appreciate that it’s been considered as a section 75W modification, because it was previously part 4. Of interest to us is then the notion of this being new land.  
40

So we note from the assessment report that the level of extraction, the needs of transport, the hours of operation, a whole lot of environment and management plans around rehabilitation and commitments like that are very – are very much consistent with the existing operation. So our question is essentially around the notion of

additional land being picked up in this application and being accepted in as a 75W modification. So we might start with that question first and, I think, which is really around the definition of the project boundary and how that's addressed in the assessment report and picked up in the recommended conditions of consent. Peter,  
5 would you like to add to that?

MR COCHRANE: I was just going to say, just for the record though, we should probably just say that we did a site visit on Monday.

10 MS LEESON: Sorry. We did too. So we've now familiarised ourselves with the site. It was a very good visit. Boral hosted it with a number of their personnel, and we had three community representatives, including the local land council, I think it was the friends of Minnamurra or the friends of Gerroa.

15 MR COCHRANE: Friends of Minnamurra and the Gerroa Environmental Association.

MS LEESON: And the – yes. I keep getting them mixed up. Yes, so we had three community reps there which was good. It was a fairly open and good site visit.  
20 Mike, you've frozen on the screen. Can you hear us?

MR SPROTT: I believe he has just fallen out of the meeting.

MS LEESON: Okay. Matt, can we – can we ask you to address that question?  
25

MR SPROTT: Certainly. I will just take one moment just to see if he – Mike calls back in, just to make sure that we're duplicating ourselves here when he does call back in. There he is. You're back, Mike?

30 MR YOUNG: Yes, apologies. I don't know what happened there. My internet crashed. So I don't know whether we started to answer that section 75W matter.

MR SPROTT: No. We – we were just waiting one moment until you were back online.  
35

MR YOUNG: Okay. I apologise for that. So thank you for the question. My name is Mike Young. I'm the executive director of Energy, Resources and Compliance at the Department of Planning, Industry and Environment. Thank you for the opportunity to present our findings and also answer the Commission's questions on  
40 the Dunmore Lakes modification today. In regard to the – the jurisdictional matter of section 75W, clearly that's, you know, a particular legal issue that the IPC, as the consent authority, would need to turn its mind to in terms of this modification being within scope and, therefore, having the power to determine the application under that provision or under that section of the former Act.

45 In terms of the – and there is – there is a range of case law that you may be aware of, where the issue of the scope of section 75W in regard to the nature and extent of

modifications to projects has been considered by the courts, and various principles have been set down in those judgments, including principles such as radical transformation, for example. And in our reports, we've set out some of the reasons why we consider that the section 75W in this case or the project fits within the scope  
5 of the section 75W provisions and those – those principles. In terms of the aerial extent and going outside the existing project boundary, there's nothing in any of those principles or in the legislation per se that prevents a section 75W including land that was otherwise not subject to the previous development application.

10 And there have been numerous examples of determinations both by the former Planning Assessment Commission and the Department under delegation from the Minister for Planning where there has been extensions to the aerial extent or new development outside the former boundary of a particular project. So, really, I mean, I'm happy to talk about some of those principles. We have set those out in our  
15 report. Essentially as you said, Diane, you know, no – no changes to the life of the project, no changes to – it's still a quarry. It's still a sand mining operation. The methodology of the extraction is – is the same. Transport is the same, essentially. And so, really, it is doing the same thing in a – in a – in a slightly different location outside the existing project boundaries.

20 And our view is that that is within the scope, and there's nothing that would prevent the IPC making a decision. But, clearly, that's a jurisdictional fact that the – that the IPC in making the decision would need to turn its mind to. I mean, certainly we're happy to provide examples of section 75Ws that have been determined that do  
25 include new land outside existing boundaries. And there have been many such examples since section 75W was introduced, I think, in around 2005.

MS LEESON: Mike, I think - - -

30 MR YOUNG: I'm not sure if that – that answers your question, Diane, or not.

MS LEESON: It does in large part. And I – I think I saw in the environmental assessment report – sorry, in the environmental assessment for in the response to submissions Boral referred – made reference to, I think, it was Linwood Quarry.  
35 And I – I don't know if you know, but is that perhaps one of these cases that was on land adjoining the originally approved area? And it referenced a – a sort of a 30 – a couple of principles of 30 per cent increase in activity, and also additional site area. They referenced Linwood.

40 MR YOUNG: Yes, I would have to - - -

MS LEESON: Is that - - -

45 MR YOUNG: I would have to turn my mind back to that quarry, Diane. I can't recall exact – the exact parameters. I don't know whether Matt can. But obviously in this case – I don't think there's any very specific – it's not like there's any legal principles that says a 20 per cent or a 30 per cent or a 50 per cent increase in aerial

extent is – is – is a particular trigger for either being acceptable or not being acceptable in terms of the scope of section 75W. I mean, in this case, my understanding is we're talking about a 20 per cent increase in aerial extent. I think we're talking about 11 and a half/12 hectares compared to a 63 hectare site currently.

5

MR SPROTT: That's .....

MR YOUNG: So I think that's - - -

10 MR SPROTT: That's right.

MR YOUNG: - - - that's in the order of 20 per cent. But whether we would – I mean, if the Commission would be interested, we would be certainly happy to put down a comparison table, if that would be of – of assistance.

15

MS LEESON: I think that would be of assistance. Thanks, Mike. And if you could do that and what – I think we've heard today is that the Department's view, if it was perhaps had the jurisdiction, would be that this does fall within the bounds of a 75W in terms of the – the expanded area.

20

MR YOUNG: Absolutely. And I would suggest that it's – that there would have been other projects determined in the past that arguably maybe involved a greater level of transformation than this particular application.

25 MS LEESON: Okay. Thanks, Mike. Well, if you can – if you can follow up with some sort of comparison table, that would – that would be really helpful.

MR YOUNG: Absolutely.

30 MS LEESON: Thank you. Now, I'm struggling a little because I've got several different advices here to manage notes and agendas, so – so bear with me. Peter, did you have any other questions on the statutory parts?

35 MR COCHRANE: No. I think it's partly because it has been raised by a number of the community groups and councils that we need to satisfy ourselves that that – that it does fall within 75W.

MS LEESON: Yes.

40 MR YOUNG: It's – it's – it's Mike Young here again. The – the only comment I would make, Peter, is absolutely we were very aware that that was a key issue of concern to the community. We certainly understand that – that the legislation has now changed and modifications under section 455 now under the new legislation, that these kind of modifications could potentially fall outside that and may have  
45 required a fresh development application. So we certainly understand the community is concerned that this is being considered under a now repealed part of the legislation. But, legally, you know, we're satisfied that the application was

lodged in the requisite timeframe and so can benefit from the transitional arrangements that – that are in place for section 75W. But – but I – I – I do want to put it on the record that we’re very, very aware of the community’s concern and calls for this to be a fresh development application.

5

MR COCHRANE: Okay. Okay.

MS LEESON: Thanks, Mike. We might then turn to groundwater and water quality. I – I would like to kick off, probably diving straight into a bit of detail, if I can. On stage 5B – which is intended to be rehabilitated as a pond, left as a pond – there is, in the documentation, a statement that says, “The dredge will be to 27 metres, a maximum of 27 metres in depth.” We’ve heard anecdotally from our site – our site visit that it’s more likely to be in the order of 12 to 13 metres because that’s, in fact, the – the physical limitations of the dredge. We will, one, like to understand the Department’s understanding of the likely depth of the lake when it’s – when it’s reinstated or when it’s completed ..... part of it regardless of whether it’s 12 metres or 27 metres. For my mind is the question around the water quality at depth. And I’m not sure that I’ve seen any assessment around quality at depth, including oxygen levels, biodiversity or – or aquatic - - -

20

MR COCHRANE: Chlorophyll.

MS LEESON: Sorry?

25 MR COCHRANE: Chlorophyll.

MS LEESON: Chlorophyll, yes.

MR COCHRANE: That’s the same algal measures.

30

MS LEESON: The algal blooms. So the assessment seems to be primarily around surface water and the quality of surface water. Could you take us through the Department’s assessment in terms of both the depth you expect the – the lake to be in its final form, and also what work might have been done around water quality at depth?

35

MR YOUNG: Can I – it’s Mike Young here. Matt, are you happy to respond to that?

40 MR SPROTT: Yes. So it’s Matthew Sprott, Director of Resource Assessments within the Department of Planning, Industry and Environment. Thank you, Commissioners. The department has paid attention to the – the proposed depths and the – the water quality issues that – that have just been identified by Diane. So we are aware that there are current limitations on the equipment that is used at site to extract at depth. Previous ponds have been extracted to shallower depths than the proposed stage 5B pond. The stage 5A pond is – is probably more consistent in – in its depth than – than former stages of the project.

45

Stage 5B has a greater level of resource. I believe it's in the realm of 1.12 million tonnes, so comprises the vast majority of the proposed modification resource. The resource at that site extends to – to a greater depth and – and, as such, Boral has sought to extract or the ability to extract at greater depth should its equipment be able  
5 to – to manage this. In practice, there is a – a realistic probability that with the equipment that they currently have on site, they may pull up at a shallower depth. However, this would still be a minimum 12 – 12 metres deep and – and likely to be slightly deeper than that.

10 Overall with the management of the site in its final rehabilitated state, previous stages 2 to 4 of the project, along with the previous project which was the Dunmore Lakes stage 1, have all been rehabilitated with wetland verges around the edges of the dredge ponds. So the – the current stage 2 pond is in the process of being  
15 rehabilitated and has variable depths around the edges of that pond which allows for ecosystem establishment on the verges of those ponds. I'm also aware that Boral has previously stocked some of its ponds with fish, and – and that this has actually been a successful outcome in the previous stage 1 pond, and I believe a – an area of stage 2.

20 The – the stage 5B pond, as the Department is – is proposing in its conditions, would need to be retained with flood bunds surrounding its – or protecting its interactions with the Minnamurra River flood plain for a substantial duration, until such time as groundwater quality within that pond or water quality within that pond is deemed to be of an appropriate level that it can be re-integrated with the flood plain. So we  
25 were conscious of the potential for oxidation issues and potential for algal issues in the pond. That is one of the key drivers why the Department has recommended that increased protection mechanisms be recommended by the Commission in – in determining the project, and maintain those higher bunds.

30 That way, we would protect any water quality issues within the pond from interacting with the broader flood plain and downstream wetlands ecosystems. We are confident that the – based on the water quality issues and water quality monitoring in previous stages of the project that these – these issues would – would be manageable and – and that we would, in the long term, be able to re-integrate the stage 5B area. However, to ensure that that protection is there in the interim, we  
35 have recommended that those bunds be maintained until such time as water quality objectives can be met.

MR YOUNG: Matt – Matt, it's Mike Young here again. Can – can I just add to that or seek your clarification there? In – in terms of the – the depth of the 5B pond, I'm  
40 just trying to recall the – do the conditions specify a particular depth? Or is that limited by the – the – the dredging equipment?

MR SPOTT: That is limited by the dredging equipment. So the proposal is for a dredge pond at 27 metres of depth, and the edges of that dredge pond will be – will  
45 be graded. But the – the maximum depth being sought and being recommended is 27 metres. I can clarify, based off the equipment, for the Commission what the probable

maximum depth will be based off the equipment. But the recommended maximum depth in the conditions is currently 27 metres.

MR YOUNG: And can I ask a further question for the benefit of the Commission?  
5 In terms of the – if – if the depth was to be up to 27 metres, which the approval potentially allows, even if that’s practically not realised in time, what is the – can you comment on the – the water quality issue at depth particularly at something that’s far deeper than the previous ponds and, I guess, water circulation, dissolved oxygen issues and obviously ecotoxicology and/or ecosystem – aquatic ecosystem issues,  
10 which is, I think, the thrust of Diane’s question?

MS LEESON: Yes. That’s exactly right. Thanks, Mike. You’ve put it far more eloquently.

15 MR SPROTT: So I – I will take that on notice and come back to the Commission with a – with a written response. I know that the issue has been – has been considered at length, but I will – I will make sure that we provide the Commission with a – a detailed and specific response to – to that matter.

20 MS LEESON: Thank you. Thanks, Matt. We are meeting with the applicant today as well, so we will – we will see if we can glean any information from them in the meantime. But if you could come back to us, that would be appreciated. I might see – ask Peter on the groundwater and surface water issues since we’re on it, what other questions he might have.

25 MR COCHRANE: Yes. I suppose I could ascertain the major issue with sulphate soils. Acid sulphate soils is the VENM, the introduction of VENM and the risk that that imposes. So I guess the question for you is: based on other experiences, are the proposed conditions for this lake or pond – are we confident that those conditions  
30 will minimise or eliminate the risk of acid sulphate soils issues, particularly given the proximity of 5B to the Minnamurra River?

MS LEESON: I think 5A is the primary site for acid sulphate soils.

35 MR COCHRANE: Yes. But there will be still drilling VENM in for - - -

MS LEESON: VENM. Sorry, yes. Yes.

40 MR COCHRANE: .....

MR SPROTT: Yes. So it’s Matthew here. So I believe this is – so this is specific to the VENM import and it is separate to the potential acid sulphate soil issues discussed in relation to .....

45 The existing stages 2 to 4 operation already has approval to import 120,000 tonnes a year of VENM to the site. And that is being implemented at the – at the stages 2 to 4 area as part of that rehabilitation process. As part of that existing requirement, Boral is required to ensure that it has applicable permits under

the POEO Act or POEO regulations, I should say, for the – the implementation and – and import of that material.

5 So that material would need to be managed in accordance with the requirements of the Environmental Protection Authority under the conditions of an EPL for the site. That is already the case and has been successfully managed at stages 2 to 4 for storage treatment and use of that material on site. As such, Boral would need to ensure that any material brought in for use in rehabilitation was verified VENM, that that meets the EPA's requirements. Based on - - -

10 MR COCHRANE: I think the biggest – the biggest risk is the bunds on 5B rather than 5 – 5A, because 5 – 5A rehabilitation seems to me to be a relatively straightforward process if they – if they worked within the proposed guidelines. But if you got VENM that has got some risk of acid sulphate soils developing and that's introduced to the bunds around 5B, then it's that land surface is then re-configured after the – at the close of the rehabilitation, then you might open up an acid sulphate soil risk.

20 MR YOUNG: So – so, Matt, I would – it's Mike Young here. It's a good question, Peter, and we – we take your point. It's not unusual for VENM to be imported on to sites as Matt has indicated.

MR COCHRANE: Mmm.

25 MR YOUNG: I think somebody is – I'm getting some feedback. I'm not sure, Matt, whether you wanted to mute yourself or something. Yes, that's better.

MS LEESON: It's fine .....

30 MR YOUNG: Okay. So the – the importation of VENM, there's clear protocols and requirements that need to be implemented. Obviously, those are being implemented without any issues on the site currently. Those things are – we would regulate those things under the approval, but also under the EPA processes and licensing. My understanding is that the material to be brought in would be brought in from projects such as some of the tunnelling in infrastructure projects that may be occurring in Sydney at the moment. But it could come in from a variety of sources.

40 But I – I – not only are those protocols for receipt and testing and then reporting and monitoring, but in addition to that, I think the risk of VENM, I think the – the plan in terms of the source of the VENM is from areas that are very, very unlikely to contain acid sulphate soils. And I – I – I – I guess, we – we consider it as a – as a very manageable and low risk in – in the scheme of things. Far more – a far greater risk that needs more careful management is the – the acid sulphate soils on the site itself, and managing those – those appropriately through the dredging process.

45 MR COCHRANE: Okay.

MR SPROTT: I would also just – it's Matthew here. I would also just add to Mike's comments there that the – the existing water management plan and – and water management plan that's recommended to be continued requires that procedures be put in place for VENM receipt and – and acceptance and use on site, as well as  
5 procedures for managing any potential acid sulphate soils across the entire project site. So that management plan would – would need to consider appropriate measures for managing any potential for acid sulphate soils within that VENM material as well.

10 MR COCHRANE: Okay. Can I return to the – the 27 metre depth of 5B issue? Because in the proposed conditions, there's a prohibition of extraction within three metres of the project boundary for 5B, as I understand it. Yes. Is three metres going to be enough? Presumably there would be an access road around the bund to create the bund. And my concern is that a 27-metre depth pond does risk – and this is  
15 raised by Shellharbour as well – of slumping? So is – does – is that stand-off area of three metres going to be adequate if they decide they can go to 27 metres, in an area that seems to be entirely sand?

MR SPROTT: So the – the three-metre stand-off area – I believe you're referring to  
20 condition 12A.

MR COCHRANE: Yes.

MR SPROTT: The three-metre stand-off area has been recommended for – for both  
25 stages 5A and one of the boundaries of stage 5B. That's an area that has been recommended for – as a – as a setback area to – to manage interactions with respect to stage 5B, to manage interactions with the adjoining land owner. Now, those – those interactions are primarily surface interactions that that recommended three-metre setback has been implemented for. The original proposal had the project  
30 boundary going all the way to that property boundary with 79 Fig Hill Lane.

And so the Department has recommended that – that a setback be provided there to ensure that there is sufficient room for Boral to undertake any remedial action that may be required, rehabilitation activities, ancillary management of surface  
35 infrastructure, the actual dredge pond itself, as I believe recognised in the Department's recommendations on final flood bund design. The actual flood bunds would be set behind that. And the actual dredge pond would need to be extracted in a manner that would maintain the stability of those dredge ponds and those bunds in the long term. So there is another requirement in the Department's conditions  
40 requiring ongoing monitoring of the stability of those bunds and – and the – the actual dredge pond bund surrounding the dredge pond. And Boral would need to extract in a manner that stages down the – the extraction to ensure that the stability is maintained.

45 MR COCHRANE: Okay. All right.

MR YOUNG: Matt, it's Mike Young here. Is there a – a – a diagram or a document either in our recommended conditions or in the assessment information that delineates the boundary of the final recommended approved extraction area for 5B in particular, that would be well – you know, it would provide far greater setbacks to the actual boundary of the site, so to speak, than three metres?

MS LEESON: Yes. Thanks, Mike. I was going to ask if you could point us to a diagram that shows the setbacks from the boundary, both the setoff for the – the access and circulation of the bunds and then the actual extraction area itself. So if you can point us in that direction, I think that would be very helpful.

MR SPROTT: We will – we will take that away and we will – we will come back to you with – with a figure to – to point you to there, Commissioner.

MS LEESON: Thank you.

MR COCHRANE: Actually, just – and, again, back on project boundaries for 5B. I just notice that the extraction area is a relatively small part of the proposed project – new project boundary which extends all the way down to the Minnamurra River. I'm just wondering why they've gone so far, given the obvious sensitivity of that site. So if we go to – I think it's figure – one of the area figures in the - - -

MS LEESON: Well, figure E2 is one I have in front of me.

MR COCHRANE: Well, figure – figure 3 on page 6 of the AR, so the new project boundary takes – it seems to take it all the way down to the Minnamurra River. And, clearly, that site is quite sensitive and of concern. What I'm not sure and haven't found yet is whether the – the prevention of any activity in the – what's called, I think, the E3 boundary – is it the E3 boundary of the Bangalay Sand Forest? I guess, the – the simplest part of my question is: why does the project boundary extend all the way down to the river and not end close to the edge of the proposed stage 5B? This presumably indicates the thinking of further mining which would reach into that more much sensitive area.

MR SPROTT: It's Matthew here. My understanding is the - - -

MR COCHRANE: .....

MR SPROTT: - - - project boundary provided or proposed by Boral in its application reflects property boundaries. And they have reflected the property boundaries that surrounds the particular subject area. The actual activities that are being proposed would be undertaken within the proposed disturbance boundaries for stage 5. The project boundary, more broadly, I understand, reflects the property boundaries. And I will confirm that for you, Peter. The other - - -

45

MR COCHRANE: But – but they’re leasing – they’re leasing that property, so there’s presumably a – a – they don’t have to necessarily lease the entire private property.

5 MR YOUNG: It’s Mike Young here, Peter. Look, it’s – it’s very – it would be very unusual for a project boundary not to align with cadastral boundaries.

MR COCHRANE: Okay. All right.

10 MR YOUNG: So, like, in – in a descriptor in the back of a – an approval, you have lots and DPs. And it’s very hard to do – well, it’s not - - -

MS LEESON: Part lot.

15 MR COCHRANE: Okay. It’s part of - - -

MR YOUNG: Part of a lot - - -

MR COCHRANE: - - - a lot. Okay.

20

MR YOUNG: - - - and so forth, yes.

MS LEESON: Yes.

25 MR YOUNG: Yes.

MR COCHRANE: All right.

MR SPROTT: I would also just - - -

30

MR COCHRANE: Yes.

MR SPROTT: - - - point out for you, Peter, as well. The department has recommended a – a condition that stipulates that the – that Boral is not permitted to undertake any vegetation clearance, construction or extraction activities within any lands that are mapped as E3 under the Shellharbour LEP.

35

MR COCHRANE: Okay. All right. It would be good to see a map of that E3. I am not sure if it’s ..... And I apologise if it is in the – in the environmental assessment.

40

MS LEESON: Yes, I think it is in the environmental assessment.

MR COCHRANE: .....

45 MS LEESON: I’ve seen them – I’ve seen the zoning maps.

MR COCHRANE: Okay, I will have a look at that. Thanks. Thank you.

MS LEESON: Just – just while we’re on that notion of that more sensitive land to the south. And I’m sorry it wasn’t in the agenda. It really came up as part of the site visit on – on Monday. It was around Aboriginal cultural heritage. And one of the questions – well, there was a number of questions, I think, for us is the level of  
5 archaeological assessment that was done for the – to support the environmental assessment. The second one is proposed methods of excavation and retrieval of any objects and relics which we understand will be carried out by Boral. They – they say in a very methodological and sensitive manner.

10 The question that was raised on site was really around – it stemmed from a conversation on a potential massacre site towards the south which I’ve not seen mapped. It – it might be in the cultural heritage assessment, but I haven’t – I haven’t delved into that in detail yet. The question around the potential massacre site, and also this notion of the use of the land rather than the objects that are found, and so the  
15 cultural use of it, can you – and I know we didn’t have it on the agenda and I apologise for raising it unannounced. But can you give us a quick overview of your assessment of the Aboriginal heritage?

MR SPROTT: Certainly there, Commissioner. So Aboriginal cultural heritage has  
20 been – has been a matter that has been assessed at – at a lot of length by the Department throughout the assessment process, and has been subject to input from the heritage division which was formerly within the Office of Environment and Heritage, and is now within the Department of Premier and Cabinet. The original EA for the project did undertake a – a range of test pitting and – and monitoring of  
25 Aboriginal heritage within the site. However, early on in the assessment process, it was identified that – that there were a number of Aboriginal objects and artefacts within the area, and that further test pitting was – or further assessment was required to understand the nature and extent of the Aboriginal culture and heritage within the proposed disturbance area of the site.

30 That – that was requested by the Department and was undertaken by Boral in consultation with registered Aboriginal parties in, I believe, late 2019. I think it was December 2019, if I’m – if I’m not mistaken. And that that test pitting program was undertaken primarily within stage 5B to ascertain the – the extent of – of objects in  
35 that area. There had previously been identified a few high concentration artefact scatters, and it was undertaken to determine the – the extent of those scatters. The heritage branch subsequently advised that it was happy with the surveys that had been undertaken within the stage 5B area, and – and that that had assisted in determining the – the nature of those – those artefact scatters.

40 The broader archaeological site that is associated with stage 5B does extend beyond the stage 5B boundaries, all the way down to the Minnamurra River. However, Boral did not seek to undertake extensive artefact test pitting and – and artefact recovery within the – the broader area. As that area was not proposed to be disturbed  
45 by the project in any way, it was seen as an unnecessary impact to existing archaeological sites closer to the Minnamother – pardon me, the Minnamurra River to undertake further surface disturbance in those areas closer to the river.

MS LEESON: That seems a very reasonable approach.

MR SPROTT: Yes. Yes.

5 MS LEESON: Yes.

MR SPROTT: So the – the test pitting really – or the – the – the test pitting and –  
and surface exploration focused on the actual disturbance area and the areas just  
outside the disturbance area on the site. So the Department was satisfied that – that  
10 the – that the exploration or the – the assessment of the cultural significance within  
that area was undertaken in consultation with a number of relevant registered  
Aboriginal parties for the project. With respect to the potential massacre site, you –  
you are correct in identifying that it is not mapped. The location of the massacre site  
is not – is not actually on any map. It is a massacre that is known to have occurred  
15 within the broader region, but the actual specific location of that massacre has not  
been able to ascertained within the – within the region.

So while there is potential for a massacre site to – to be within the broader area, the  
records and the information that has been provided to date indicates that that  
20 massacre site is not – not likely to be contained anywhere within the proposed  
disturbance area. And this is supported by the nature of the artefact scatters that have  
been recovered within that area. It's understood that the potential massacre site is  
most likely located closer to the Minnamurra River than the site itself.

25 MS LEESON: Okay. And is the Department satisfied with the proposed  
methodology for, I suppose, preliminary extraction and retrieval of the artefacts in  
the disturbance area?

MR SPROTT: So the Department is satisfied that – that a – the proposed retrieval  
30 of artefacts could be undertaken in an appropriate manner. Salvage programs of this  
– this nature are quite common across major projects throughout New South Wales,  
and projects of this – this nature and scale. The department has recommended  
conditions that require that procedures and management measures for the salvage  
works be prepared in consultation with registered Aboriginal parties and Heritage  
35 New South Wales. So Boral would need to develop a comprehensive heritage  
management plan which covers the methodology and management of those – those  
artefacts that would be recovered from the site.

MS LEESON: And – and so that would include retrieval of those artefacts before, I  
40 suppose, major excavations were done that would get you into the water table, at  
which point you would have no hope of finding them. They would just be sucked up  
into the dredge.

MR SPROTT: That is correct, yes.

45 MS LEESON: Yes. Okay.

MR SPROTT: So – so the – the requirement for that management plan is that that management plan is – is prepared prior to undertaking any development within the stage 5.

5 MS LEESON: Okay. Was there anything – was there a similar process or – or were there Aboriginal artefacts on any of the earlier stages where this has been successfully done?

10 MR SPROTT: I will have to take that on notice as to whether there was a – a similar management plan. I would have to look at the existing consent for the site. We've recommended a contemporary suite of conditions for the management of Aboriginal cultural heritage in this area, which brings the management measures for this area in line with best practice measures implemented at other large-scale mining and quarry projects throughout the state. So while there – while I can come back to you on the – the existing procedures on the site – the site, the procedures that have  
15 been recommended are – are the contemporary measures that would be expected of any proponent that would be undertaking heritage management now.

20 MS LEESON: Okay. No, I – I appreciate that. I guess one of the things that Boral is relying extensively on is their experience and success on their earlier stages. So it's – it's, in part, a confidence level around how they have managed that and the success of those, whether it's rehabilitation or whether it's archaeological assessment.

25 MR COCHRANE: Yes. The two issues that seem to be a little bit new to me, at least, that were raised with us before from the Illawarra Local Aboriginal Land Council were – paraphrasing – landscape scale values for – of the area, rather than just the – the mere facts of artefacts. And the second one was the potential for there to be burial sites there, because of the likelihood of there being campsites there and these burial in sand. And, again, they were new issues. And I, firstly, am not sure  
30 how one would deal with those in this particular context.

MR YOUNG: So it - - -

35 MR COCHRANE: But I would listen more to their – their concerns.

MR YOUNG: Yes. So it's Mike Young here, Peter. Any – any Aboriginal cultural heritage assessment needs to include not just physical items, but also needs to consider landscapes and cultural heritage values. I think I'm right in saying, Matt,  
40 that whilst there is a very – you know, it is an area of – of where there is a high density of artefacts in the landscape being so close to the Minnamurra River and, you know, the mangrove areas and so forth, and as evidenced by the nature and scale of that site that encompasses some of the disturbance footprint but goes well to the south of the stage 5B as well, that we are not aware of any particular sensitivities  
45 around the specific site there, other than at a broad scale. Clearly, it is a landscape of intensive occupation by Aboriginal peoples in the past, given its location near the

coast and near the Minnamurra River. But we're not aware of any particular sensitivities. The massacre site we've talked about - - -

MR COCHRANE: Yes.

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MR YOUNG: - - - as being a potential sensitivity in the region, but not specifically for the site itself. The other thing I would say is that the - the site there has been - adjacent to that has been significantly modified by - and you've now had the benefit of a site visit - the major freeway basically right adjacent to the site. And right on the edge of stage 5B, you've got major modifications of the landscape, the landform there, which has been rehabilitated on the edge of that - of the - the road there. So it's - it's not a - it's not a landscape that's unmodified by previous activities. And so, I guess, you know, we - we - we have not got any specific feedback about particular sensitivities from a cultural heritage perspective. I'm not saying there are none or that the region is not important. But the site itself, we're not aware of any particular sensitivities on that basis.

And, clearly, the - I guess, what Boral is arguing, I suppose, or putting forward is what they would see as very similar to what they've already done. You know, the - the lakes, one - one of those dredge ponds would be backfilled to reform the landscape. And then there's the area 5B would be a long-term pond within the - the - the landscape. And I guess they're saying that's not inconsistent, not just with their previous operations, but, indeed, there are a number of both natural and - and manmade water features within that low-lying landscape. And this would not be wholly inconsistent with - with - with that broader landscape.

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MR COCHRANE: Yes. Okay.

MS LEESON: Just - just - just to follow on from that, Mike, in talking about the long-term management of the pond area on 5B; well, for both 5A and 5B. Once the lease is terminated and land reverts to the owner, I'm assuming that the land owner will then be responsible for long-term care and management of both 5A and 5B. And 5B has this significant water body that we've talked about. Do the conditions go so far as the period of time that monitoring and testing needs to be done to give confidence of, I suppose, the success of that pond? So that Boral doesn't leave the site and there's still some question mark over the quality which then falls back to the owner?

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MR YOUNG: Yes. Thank you, Diane. Yes. So there's a couple of things there. One is, yes, the consent goes with the land, so there would be obligations - - -

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MS LEESON: Yes.

MR YOUNG: - - - on - on the - the land owner going forward. However, we would, in this situation, obviously expect Boral to - to - as the person or entity carrying out the development to comply with the conditions, and to ensure that, on departure, that the relevant performance objectives had been met. I'm just trying to

45

look at the consent in terms of a rehabilitation bond as to whether that has been recommended. Matt?

5 MR SPROTT: Yes. It – it – it has there – there, Mike. So the rehabilitation bond has – has been updated in the – the recommendations. And they would need – Boral would need to provide a rehabilitation bond for the – for the project as a whole, to ensure that the rehabilitation as proposed to be undertaken for the project is – is fully covered. So that’s the full costs of implementing the biodiversity offset and rehabilitation outcomes for the project.

10 MS LEESON: Thanks for that.

MR YOUNG: So – so - - -

15 MS LEESON: So just on – sorry.

MR YOUNG: Sorry. Just to add to that, Diane. It’s – it’s Mike Young here. Look, I think there’s – that’s a common concern that – that the community has in terms of the long-term management of these sites, etcetera. That’s one of the reasons why we do put in a rehabilitation bond. But it – it’s – it’s fair to say that the regulatory arrangements around quarries are different to, say, coal mining proposals that obviously have a whole different statutory regime under the mining legislation that allow the government to undertake further activities and/or require certain ongoing rehabilitation and monitoring activities well beyond the life of the mine through the mining lease process.

20 In this case obviously, it’s a development consent. And there whilst we would expect that these matters would be addressed prior to any departure of Boral from the site, and obviously having a financial incentive to do so through the rehabilitation bond process, there does come a point where the – the work of the consent, I guess, ceases to – to operate. And we would hope that the conditions and the details that would need to be in the management plans and need to be updated and monitored over time would mean that the regulators would have confidence in – in the final outcome before we would be willing to relinquish that bond - - -

35 MS LEESON: Yes.

MR YOUNG: - - - and for Boral to depart the site.

40 MS LEESON: Thanks, Mike. That’s good.

MR COCHRANE: In a – in a related question, so proposed condition 29C requires the applicant to maintain the flood bunds, etcetera, in perpetuity; but they may satisfy those obligations to be ..... from suitable funding agreement with an appropriate public authority. How – how would that work with a private land owner where – where the responsibility would revert to the private land owner?

MR YOUNG: Matt, did you want to answer that in the first instance?

MR SPROTT: So the – the design of the – the design of that condition is intended to allow funding to be provided should that – should that area be – be required to be  
5 maintained beyond the project life as – as it says “in perpetuity beyond the project life”. The intended outcome for the site as put forward by Boral is to remediate those flood bunds and – and establish the verging vegetation prior to its exit from the site. However, that condition was recommended to ensure that should Boral seek to exit  
10 the site, it could provide appropriate funding, so that could – could be provided to – to a local government or state government agency to – to undertake that works. Alternatively, the Department could provide – could provide alternative wording if the Commission wishes. That could allow for that to be managed under a commercial arrangement with the – with the land holder as well.

15 MR COCHRANE: Okay.

MS LEESON: Thanks, Matt.

MR COCHRANE: Yes.  
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MS LEESON: I – I’m mindful of time.

MR COCHRANE: Yes.

25 MS LEESON: It’s 11.25 now. On our agenda, we also had flood protection. I fell we’ve been through enough - - -

MR COCHRANE: I think so.

30 MS LEESON: - - - with the flood protection, so I think we’ve actually covered that off. The biodiversity offsets issue. There is – there are credits for the Bangalay Sand Forest and, I think, the barking owl and masked owl, a couple of species. The – are you or does the Department have a particular view around whether these should be created as land, or whether a payment is satisfactory? We gained the impression on  
35 site that it was probably heading towards a payment preference, rather than establishing physical offsite credits. Does the Department have a view?

MR SPROTT: So with the nature and scale of the impacts being – being proposed, the offsets are required for four and a half hectares of Bangalay Sand Forest. A – a  
40 large proportion of that – that area is dry native grassland and – and lower quality EEC. Nevertheless, they are required to retire 71 ecosystem credits for that – for that impact. Under the New South Wales Biodiversity Offset Scheme, payments into the fund are deemed to be an appropriate and acceptable measure for – for retiring the – the impacts to – to those communities. I note that the extent of that impact on the  
45 Bangalay Sand Forest is a – is a small proportion of the – of the EEC within the area and – and New South Wales. And the Department would be comfortable if an offset was provided via payment into the Biodiversity Conservation Trust. The

Biodiversity Conservation Trust would then, in accordance with its procedures, ensure that that – that offset is – is appropriately retired.

5 MR YOUNG: It's Mike Young here. I mean, I guess the bottom line, Diane, is that  
– that the scheme has obviously been set up under the Biodiversity Conservation Act  
2016. It provides a level of flexibility to proponents. And, in fact, if you were to  
talk with the Biodiversity Conservation division, they would typically argue that it's  
better – their first choice is for proponents to pay into the fund, because that allows  
10 the market conditions in the fund to start working properly in terms of the  
availability of credits. And that allows the BCT to properly identify and, you know,  
ratify and verify appropriate offsets through that program. But it doesn't preclude an  
area of land based offsets being identified. But the outcomes ought to be the same.

15 MS LEESON: Yes.

MR YOUNG: The only thing I would say, Matt, is I thought that Boral may have  
had an area in mind potentially, but - - -

20 MR SPROTT: So – so Boral has been investigating areas in the local – two  
potential biodiversity stewardship sites in the – in the local area. At this stage, those  
investigations are yet to be completed by Boral to – to ascertain whether that's the  
pathway they will proceed with. But they have been investigating potential  
biodiversity stewardship sites within the local area. But as – as Mike has said,  
whether they proceed down that pathway or – or proceed through the retirement of  
25 credits with the – with the fund, both outcomes would achieve the required offsets  
for – for those impacts on those species.

30 MS LEESON: Yes. Yes. Thank you. The last item on our agenda was the  
Department's recommended conditions. We have been through a few of those. I had  
no specific questions today. I've had a look at the conditions. I probably will have a  
few follow-up questions – possibly a few follow-up questions later on, but I just – I  
think we can deal with via circulation if we need to separate. Peter, did you have any  
particular questions you wanted to raise?

35 MR COCHRANE: My major one really still is the one we referred to earlier – and,  
Mike, thanks for suggesting a – a diagram would help – is – is just those – the off –  
the setback around 5B and – and the sort of consequences of going to the – the  
greater depth. Is the – I'm just concerned about the adequacy of those setbacks,  
given the nature of those land forms. If – if the objective - - -  
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MR YOUNG: No. I did - - -

MR COCHRANE: - - - was to - - -

45 MR YOUNG: Yes.

MR COCHRANE: - - - is to maintain the stability of the existing land form, that's fine. But I'm not quite sure it's – it would be achieved through a five metre set – three metre setback perhaps.

5 MR YOUNG: I hear – hear you loud and clear, Peter. And, yes, we will certainly look at the diagrams and the conditions. And, clearly, any – any conditions that – that if it is to be approved ought to make those setbacks and those boundaries of disturbance footprints abundantly clear so there's no confusion about protecting adjacent areas and/or slope stability. So I hear you loud and clear - - -

10 MR COCHRANE: Yes.

MR YOUNG: - - - on that, Peter.

15 MR COCHRANE: Okay.

MR SPROTT: I would also just - - -

20 MR COCHRANE: .....

MR SPROTT: If I could just point out as well for – for the benefit of the Commissioners. The three-metre setback is the surface disturbance setback. The actual dredge pond would then be setback by the further distance of the surface infrastructure and bunds from that boundary.

25 MR COCHRANE: Yes.

MR SPROTT: So the – the nett - - -

30 MR COCHRANE: Yes.

MR SPROTT: - - - setback from the – from the adjacent property boundary would be a – a substantially greater area.

35 MR COCHRANE: All right. Okay. Great. That – that clarification is very helpful.

40 MS LEESON: Thanks. Thanks, Matt. Brad and Alison from the Office of the Commission, are there any issues that you believe or that you think you would like to raise that the Commissioners themselves might – could have missed?

MR JAMES: No questions from me, Di.

45 MS LEESON: Okay. Thanks, Brad. Alison, is there anything from your perspective?

MS HILL: No, Diana.

MS LEESON: Okay. Terrific. All right. Mike, Matt, we would like to thank you very much for your time. It has been – it has been very helpful. Is there anything in particular that you did want to point out for the Commissioners while you've got the opportunity this morning?

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MR YOUNG: Thank you, Diane. And thank you for the opportunity to respond to questions. We've got a few things to take on notice there that I'm sure Matt has taken note off, and we will get back to the Commission as soon as possible. I am just appreciative of the – the Commission's time, but also appreciate that you've had the benefit of a site visit now which I was going to suggest would – would be very beneficial. But it sounds like - - -

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MS LEESON: No. It was – it was actually - - -

15 MR YOUNG: - - - you've already .....

MS LEESON: - - - invaluable.

MR COCHRANE: Mmm.

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MS LEESON: It was - - -

MR YOUNG: Yes.

25 MS LEESON: It was really invaluable.

MR YOUNG: And I would – I would like to add to the record that I felt the same in – prior to referring the matter to the Commission, that I went down to the site to ensure that I understood the issues that were being raised by the community, and the environmental issues and the existing operations as well. So I certainly – it's one of those projects where you really need to – to go to the site to understand what's happening on the ground.

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MS LEESON: Yes. Okay. Very good. Well, thank you for your time. And the – Brad and Alison will follow up in those few items that you're going to come back to us with. So thanks – thanks again for your time.

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MR YOUNG: Thank you.

40 MS LEESON: Okay. Bye.

MR SPROTT: Thank you.

MS LEESON: Bye.

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**MATTER ADJOURNED at 11.33 am INDEFINITELY**