

22 March, 2012

Mr Howard Reed
Acting Director of Mining and Industry Projects
NSW Department of Planning & Infrastructure
PO Box 39
SYDNEY NSW 2001

Dear Sir,

Re: **Modification to Mackas Sand Project (08_0142 MOD 1)**

I refer to your letter providing Council with the opportunity to comment on the above mentioned modification to Mackas Sand Project, which seeks to amend the approved access.

Following a review of the documentation, Council would like to provide the following comments for your consideration:

Environmental

It is considered that the modification has not adequately addressed the CKPoM and as such any approval would be in breach of SEPP 44.

The performance criteria of the CKPoM are as follows.

The proposed development must:

- a) Minimise the removal or degradation of native vegetation within Preferred Koala Habitat or Habitat Buffers
- b) Maximise retention and minimise degradation of native vegetation within Supplementary Koala Habitat and Habitat Linking Areas
- c) Minimise removal of any individuals of preferred Koala food trees onsite.
- d) Where appropriate restore and rehabilitate areas identified as Koala Habitat/Buffers and Linking areas (mainly cleared land). On the occasion that Council approves removal of Koala Habitat, and where circumstances permit the result of rehabilitation and restoration should be a net gain of koala habitat onsite and/or adjacent land
- e) Make provision for long term management and protection of koala habitat, both existing and restored.
- f) Not compromise the potential for safe movement of Koalas. This includes maximum tree retention and the creation of barriers to movement of koalas. See Appendix 4 (f) of the CKPoM for fencing and dog guidelines.
- g) Be restricted to defined envelopes containing all building, infrastructure and fire fuel reduction zone. In the case of subdivisions, envelopes will be registered as a restriction on title pursuant to the Conveyancing Act 1919.
- h) Minimise threat to koalas from dogs, motor vehicles, and swimming pools. See Appendix 4 (h) of the CKPoM for specific measures.

The 2000 CKPoM mapping shows the affected area as being supplementary habitat but given that the modification proposes to clear Swamp Mahogany Paper bark forest it is likely that this vegetation community, if remapped on a local scale, would be classified as Preferred Koala Habitat.

No approval should be given until the proposal has addressed the performance criteria, Port Stephens Council is particularly concerned regarding criteria a, b and c.

The report maintains the vegetation community found on site, described as Swamp Mahogany Paperbark Forest, is not the EEC Swamp Sclerophyll Forest on Coastal Floodplains, as it does not occur on a floodplain as described in the scientific determination.

- Port Stephens Council Natural Resources rejects this rationale as the Scientific Committee also presents another means of floristic description by reference to vegetation communities identified in vegetation surveys and mapping studies such as the LHCCREMS mapping. In fact the Swamp Sclerophyll Forest community is identified by the Scientific Committee in the description in the Final Determination as including, in the lower Hunter district, "Swamp Mahogany-Paperbark Swamp Forest (Map Unit 37), Riparian Melaleuca Swamp Woodland (Map Unit 42) and Melaleuca Scrub (Map Unit 42a)" in LHCCREMS (paragraph) 8 of the description of the Swamp Sclerophyll Forest community).
- The ecological report identifies the community as being equivalent to LHCCREMS Swamp Mahogany Paperbark Forest and as such is considered as being the Swamp Sclerophyll EEC.
- This approach has been supported in the past and in consultation with OEH. Internal reviews of previous such identification problems with this particular EEC (refer to Land and Environment Court matter Motorplex (Australia) Pty Ltd v Port Stephens Council [No 2] [2007] NSWLEC 770 (26 November 2007)) are of the view that this EEC occurs on the subject site.

The report has not addressed the loss of this EEC, as such no approval can be issued by the department until this has been considered.

I note that the Ecological Assessment has provided a section on proposed mitigation measures – section 6.0 of the Ecological Assessment (Appendix 3). Should the Department approve the modification I recommend that the actions within this section be included as conditions of consent.

Rehabilitation of the haul road is particularly important, as is effective reporting of the mitigative measures.

I note that several species of orchids are likely to be affected by the proposal, including *Diuris praecox* which is listed upon both the TSC Act and the EPBC Act. I could not find any assessment of the impact under the EPBC Act to this orchid and the department should satisfy itself that no significant impact exists under this act.

Engineering

The following comments have been previously provided to the proponent regarding requirements for works in the road reserve.

- A roads Act application form and the associated fees need to be submitted. The form can be downloaded from the following link
<http://www.portstephens.nsw.gov.au/planning/159623/158676.html>

The fees are \$21.40 per lineal metre of constructed public road.

- The following plans; Engineering construction plans to rural standard. i.e. including long section, cross sections, plan view including any drainage crossing/details as well as the location in proximity to the road reserve and property boundaries. Any other items that may be relevant such as trucks turning signage, etc
- Erosion and sediment control details
- Details of the Pavement design – it is noted that the level of construction for haulage activity will be in excess of council's rural standard.
- Geotech report on the suitability of the route
- REF (Review of Environmental Factors) prepared by a suitably qualified person/firm.
- A copy of the Major Project consent noting any conditions that may be applicable to the haulage road.
- From your previous letter it is noted that a batter slope of 3:1 was proposed however council advises that 4:1 is the minimum standard for safety and maintenance reasons
- The first 100 metres of the new road from Lavis Lane should be sealed to reduce dust and provide an adequate surface for braking.

Council hopes that this advice is helpful. If you have any questions regarding this advice, please don't hesitate to contact me on (02) 4980 0213.

Yours faithfully



Carlos Ferguson

**Development Planner
Development & Building**