

Our Ref: 1646A/PJ/AG/190312

19 March 2012

Mr Howard Reed
A/Director
Mining and Industry Projects
Department of Planning & Infrastructure
GPO Box 39
SYDNEY NSW 2001

Dear Mr Reed

Re: Mackas Sand Access Road Modification (08_0142 MOD 1)

Thank you for providing submissions in regard to Mackas Sand Access Road Modification (08_0142 MOD 1). Note that within this document 'the Modification EA' refers to the January 2012 EA document above, whilst 'the EA' refers to Umwelt 2009, *Environmental Assessment of Sand Extraction Operations from Lot 218 DP 1044608 and Lot 220 DP 1049608, Salt Ash*.

This response addresses matters raised in Department of Planning & Infrastructure (DP&I) emails of 24 February 2012 and 1 March 2012 and submissions received as a result of exhibition of the Modification EA.

A. DP&I Email of 24 February 2012

- 1. Clarification on the proposed extent of tar sealing of Lavis Lane and Stockton Bight Track, which is noted in the EA as the western most 100 m of Lavis Lane and 650 m of Stockton Bight Track, or 100 m of Lavis Lane and 550 m of Stockton Bight Track, or "upgrade Lavis Lane and the western 650 m of Stockton Bight Track..." (Statement of Commitments). Can the extent of proposed tar sealing can be shown on a figure, which would be useful for inclusion in the Department's assessment report.**

The extent of sealing is shown on the plan 4714 SR_V1 prepared by Le Mottee Group and dated 1 March 2012 which is provided as **Attachment 1**.

- 2. Has the company drawn up construction plans for the road? If so can the plans be provided to the Department? It is noted in certain submissions that parts of the road would be required to be built at a significant grade. Is this the case? Please provide further detail as to the final proposed alignment of the road and its engineering considerations. What are Council's requirements for the construction of the road?**

As stated in the Modification EA, the vertical alignment of the alternate haul route is relatively flat. The alignment and extent of pavement of the section of Stockton Bight Track to be constructed is provided in **Attachment 2**. Three typical cross-sections (A, B and C) which show the depth of road base, cut and fill material and extent of the road pavement along with sediment and erosion controls to be implemented are provided in **Attachment 3**. As shown in **Attachment 2**, part of the registered road easement towards the eastern end of the section of Stockton Bight Track that is to be constructed, includes a section of sand dune. This sand dune has an elevation of up to approximately 11 mAHD within the road easement. The existing formed section of Stockton Bight Track in this area is located along the northern toe of this sand dune. Widening of Stockton Bight Track in this area will require excavation of the northern toe of the sand dune along a length of approximately 300 metres. A retaining wall will be constructed along the edge of the excavation

to provide stability for the excavated sand dune. The retaining wall will range in height from approximately 0.5 metres to approximately 3.0 metres. In accordance with Council requirements, all sections of the retaining wall that are greater in height than 1 metre will be designed by a structural engineer.

Council advised by letter to Mackas Sand on 2 March 2012 that its requirements for the upgrade of Stockton Bight Track are:

1. A Roads Act application form and the associated fees need to be submitted.
2. The following plans:
 - Plan view including any drainage
 - Typical cross-sections showing typical depths of pavement
 - Proximity to the road reserve for road pavements and batters
 - Erosion and sediment control details.
3. Written details of proposed pavement – details may be contained in cross-sections.

Plans for the Stockton Bight Track section of the alternate haul route have been drawn up and provided to Port Stephens Council for comment.

These plans shown alignment of the road, pavement details and provide typical cross-sectional information. A copy of these plans is provided as **Attachments 2 and 3**. Port Stephens Council has verbally advised Mackas Sand and DP&I that the plans are acceptable however structural engineering details will be required for any retaining walls that are more than 1 metre high.

Mackas Sand plans to construct and seal the most western 650 metre section of Stockton Bight Track in accordance with the plans provided in **Attachments 2 and 3**. This section of Stockton Bight Track forms part of the haul road that was approved for use of haulage of sand from Lot 218 under Major Project approval 08_142.

Prior to commencement of construction along the new alignment of Stockton Bight Track, Mackas Sand will submit to Council and DP&I a Construction Management Plan setting out retaining walls details, drainage details, sediment and erosion controls, construction methods to be used to protect archaeological sites, proposed construction sequence and timing.

Prior to commencement of construction of the private haul road on Lot 2 DP 916061, Lot 122 DP 753192 and Lot 218, Mackas Sand will submit to DP&I a Construction Management Plan. This plan will detail road alignment, construction methods, pavement details, drainage details, sediment and erosion controls, methods to protect archaeological sites and ecologically sensitive areas, proposed construction sequence and timing.

3. *The (Modification) EA states that the company has an agreement with Council to use Stockton Bight Track. What does the agreement entail? Does the agreement prevent other parties from using the road? If so, how will this be enforced? If other parties are able to use the road, what does the company propose in terms of ensuring the safety of other users?*

Stockton Bight Track from the intersection with Lavis Lane to the commencement of the private haul road on Lot 2 DP 916061 is a public road easement and will be open to use by the public. Mackas Sand will not have exclusive access to this road easement or the upgraded public road once it has been constructed.

Port Stephens Council has agreed that Mackas Sand can utilise this section of public road for the transport of sand product from Lot 218, provided that Mackas Sand constructs the road in accordance with Council's requirements and maintains this section of Stockton Bight Track for the life of the quarry operation.

Mackas Sand proposes to protect the safety of other road users on Stockton Bight Track by firstly upgrading the road to an approved standard in accordance with Council requirements and by

ensuring that all quarry traffic is limited to speeds of no greater than 40 kilometres on the alternate haul route between Lot 218 and Lavis Lane. A gate will be erected at the intersection of Stockton Bight Track and the private section of the alternate haul route where it enters Lot 2 DP 916061. This gate will be sign-posted denoting that beyond that point is a private road on private property. The gate will be locked during periods when the quarry is not operational.

4. What is proposed to monitor/mitigate potential vibration impacts at residences?

There are no changes as part of the proposed modification to product haulage past existing residences adjacent to Lavis Lane or Stockton Bight Track. As a result there will be no change in potential vibration impacts with the same sections of public road adjacent to residences to be upgraded, sealed and utilised by quarry traffic as has been approved as part of Major Project 08_142. Potential for impacts due to vibration and proposed mitigation measures was assessed within Section 4.7 of the EA. In accordance with Council requirements, the most western 100 metres of Stockton Bight Track adjacent to the Towers residence will be sealed prior to the commencement of haulage of sand from Lot 218 and the adjoining 550 metres of Stockton Bight Track will be sealed prior to sand being hauled for more than six months (see **Attachment 1**).

As Lavis Lane and the first 650 metres of Stockton Bight Track will be sealed within six months of operations on Lot 218 commencing, it is anticipated that the project will reduce existing vibration impacts to residences through improvement in road conditions.

B. DP&I email 1 March 2012 – Change to Permitted Maximum Extraction Depth

Section 2.2 of the Modification EA states:

This minor change in extraction depth is sought to improve the efficiency of extraction operations particularly in dry periods when the water table is well below its maximum predicted level. Efficiency is improved through increased trafficability of the exposed sand surface due to the greater moisture content increasing the stability and bearing capacity of the sand. The greater bearing capacity means that travel times, the amount of energy required to operate front-end loaders and dump trucks on the sand, and wear and tear, are significantly reduced.

Simply, if there is some moisture in the sand at the surface, it is easier to drive on and requires less energy than if the sand was totally dry. Provided the extraction surface is close enough to groundwater level, sufficient moisture in the sand is maintained by capillary rise. Experience on Stockton dunes in other sand extraction operations shows that the sufficient moisture typically exists in the sand at approximately 0.7 metres above the highest predicted groundwater level which is why the proposed modification to maximum extraction depth is sought.

C. Submission from Department of Roads and Maritime Services:

- No objections or requirements.

Noted.

D. Submission from Hunter Water:

- No objections or requirements.

Noted.

E. Submission from Department of Resources and Energy:

- No objections or requirements.

Noted.

F. Submission from Primary Industries – Office of Water:

- No objections or requirements.

Noted.

G. Submission from NSW Environmental Protection Authority:

The Environmental Protection Authority (EPA) considers that all likely affected species have been appropriately assessed and general concurrence with the assessment conclusions is noted.

- **Recommends that the proponent provide adequate justification that the Worimi Conservation Lands represent suitable habitat for *D. arenaria* and *D. praecox*.**

In accordance with NSW Environment Protection Agency recommendation, an assessment against EPA's 'offset principles' as defined within the *Principles for the use of biodiversity offsets in NSW* (OEH 2011, <http://www.environment.nsw.gov.au/biocertification/offsets.htm>) has been undertaken specifically considering *D. arenaria* and *D. praecox* and is detailed below:

1. *Impacts must be avoided first by using prevention and mitigation measures.*

Potential impacts have been avoided using prevention and mitigation measures as described within Appendix 3 of the Modification EA. This includes the proposed use of alternate access Route A, in order to minimise impact to *D. arenaria* and *D. Praecox*.

2. *All regulatory requirements must be met.*

All regulatory requirements have been met as described within Section 3 of the Modification EA.

3. *Offsets must never reward ongoing poor performance.*

The Worimi Conservation Lands are managed externally to the proponent and consequently there is no encouragement for the landholder to deliberately degrade or mismanage offset areas in order to increase the value from the offset.

4. *Offsets will complement other government programs.*

It is considered that the Worimi Conservation Lands complement other government programs

5. *Offsets must be underpinned by sound ecological principles.*

It is considered that the Worimi Conservation Lands are underpinned by sound ecological principles

6. *Offsets should aim to result in a net improvement in biodiversity over time.*

In addition to improvement in biodiversity within the Worimi Conservation Lands through ongoing management, providing alternate access to the mobile dune for extractive operations will reduce the landward movement of mobile sand dune on Lot 218 which is currently encroaching on forest vegetation at an average rate of up to five metres per year.

7. *Offsets must be enduring – they must offset the impact of the development for the period that the impact occurs.*

The Worimi Conservation Lands are to be managed in perpetuity in partnership with the National Parks and Wildlife Service (NPWS).

8. *Offsets should be agreed prior to the impact occurring.*

The Worimi Conservation Lands are already agreed and established.

9. *Offsets must be quantifiable - the impacts and benefits must be reliably estimated.*

As discussed within Section 4.3.4.4 of the Modification EA, one aspect of the formation of the Worimi Conservation Lands was the agreement that it would form the biodiversity offsets for the development of some parts of the Stockton dune system, including the approved sand extraction operations on Lot 218 and Lot 220.

10. *Offsets must be targeted.*

Ecological survey work undertaken as part of alternate haul route surveys, demonstrates that *D. arenaria* and *D. Praecox* exist in the adjoining Worimi Conservation Lands which have been acknowledged as forming a biodiversity offset for sand extraction on Lots 218 and 220.

In giving particular regard to the targeted offsetting of *D. arenaria* and *D. praecox* that have potential to be impacted by the project, it is noted that the orchids were found to be located within the Coastal Sand - Apple Blackbutt ecological community (refer to Figure 3.1 and Figure 3.2 within Appendix 3 of the Modification EA). This ecological community extends throughout the Worimi Conservation Lands (refer to Figure 1.3 within Appendix 3 of the Modification EA). In addition twenty (20) *D. arenaria* and fifty-seven (57) *D. praecox* were found to be located within Lot 229 DP 1097995 during the targeted orchid surveys. Lot 229 DP 1097995 is part of the Worimi Conservation Lands. It is considered that the location of *D. arenaria* and *D. praecox* within Coastal Sand – Apple Blackbutt ecological communities within the project area and the identified location of the orchids within the Worimi Conservation Lands provide targeted offsets for these orchids. Likewise it is considered that the wider Worimi Conservation Lands represent suitable habitat for *D. arenaria* and *D. Praecox*, and consequently are appropriate to be used as a biodiversity offset for the identified potential impacts that may occur to these species as part of the modification project.

11. *Offsets must be located appropriately.*

The Worimi Conservation Lands are proximate to and contiguous with the project area and contain the same or similar ecological communities.

12. *Offsets must be supplementary.*

As discussed within Section 4.3.4.4 of the Modification EA, the Worimi Conservation Lands were dedicated as part of an agreement to allow some parts of the Stockton Dune System to be developed, including for sand extraction on Lot 218 and Lot 220.

13. *Offsets and their actions must be enforceable through development consent conditions, licence conditions, conservation agreements or a contract.*

The Worimi Conservation Lands are managed through NPWS regulations, and a Plan of Management is under development.

- **Advises proponent to complete and submit Aboriginal Site Recording Forms for each site.**

Site cards for Mackas 1-4 were resubmitted on 24 February 2012. No site card was submitted for the second area of PAD as it is understood from previous interactions with EPA that Potential Archaeological Deposits should not be registered on the AHIMS database

as these are areas that have not yet been demonstrated to contain Aboriginal objects. Should this policy/approach have changed, site cards will be compiled as necessary.

- **Recommends development of appropriate management strategies in consultation with the Registered Aboriginal Parties (RAPs)**

Management strategies proposed within Appendix 4 of the Modification EA were developed in consultation with the RAPs

- **Recommends that the Aboriginal Heritage Statement of Commitments is amended to include:**
 - **Continued consultation and involvement of all registered local Aboriginal representatives as appropriate**

Continued consultation and involvement of all registered local Aboriginal representatives is currently managed through the Aboriginal Cultural Heritage Management Plan Umwelt 2011, Aboriginal Cultural Heritage Management Plan for Sand Extraction Operations from Lot 218 DP 1044608 and Lot 220 DP 1049608, Salt Ash in consultation with the Aboriginal Heritage Management Group (AHMG) for the site.

- **Fair and reasonable opportunities for registered Aboriginal stakeholders to monitor any initial ground disturbance activities**

Continued consultation and involvement of all registered local Aboriginal representatives is currently managed through Umwelt 2011, Aboriginal Cultural Heritage Management Plan for Sand Extraction Operations from Lot 218 DP 1044608 and Lot 220 DP 1049608, Salt Ash in consultation with the Aboriginal Heritage Management Group (AHMG) for the site. This includes fair and reasonable opportunities for registered Aboriginal stakeholders to monitor any initial ground disturbance activities.

- **Halting works if surface disturbance identifies a new Aboriginal object**

Given the highly changeable nature of the environmental context in this area, levels of exposure and visibility change extremely frequently, thereby making it highly likely that Aboriginal objects will be concealed/revealed in very short timeframes. Whilst it is assessed that Mackas Access 2, 3 and 4 are not associated with areas of PAD, it is clearly stated in Section 6.2.3 of Appendix 4 of the Modification EA that additional sub-surface artefacts may be present. In addition, by their very definition, the area of PAD and the two sites associated with PAD are likely to contain additional sub-surface artefacts. Due to the ease of exposure and visibility change discussed above, it is likely that previous unrecorded Aboriginal objects may be present within the project area. Any such objects would be salvaged in accordance with the recommendations provided in Section 9 of Appendix 4 of the Modification EA. It is considered that halting works for the identification of a new Aboriginal object would restrict the project significantly and beyond the intent of the Aboriginal cultural heritage assessment. However, as noted in dot point 6 of Section 9.1 of Appendix 4 of the Modification EA, should any unexpected sub-surface deposits (defined in the current ACHMP as compact shell midden, animal bones with cultural significance or suspected hearth or heat treatment features) they will be managed in accordance with Section 5.8 of the ACHMP involving cessation of works in the vicinity of the deposit and inspection and management of the deposit by an archaeologist and the Aboriginal Heritage Management Committee. This approach incorporates our knowledge of both the archaeological and environmental context of the area and has been identified as appropriate by the Registered Aboriginal Parties and previously approved under the existing ACHMP.

- **Halting works if human remains are located**

As specified in Section 9.1 dot point 7 of Appendix 4 of the Modification EA, this will be done consistently with the ACHMP.

- **Making all reasonable efforts to avoid impacts to Aboriginal cultural heritage.**

All reasonable efforts have been made to avoid impacts to Aboriginal cultural heritage within the proposed Modification, as detailed within Appendix 4 of the Modification EA. This includes the minimisation of surface impacts where possible, the use of geotextile in road construction within areas of PAD.

H. Submission from Hunter Central Rivers Catchment Management Authority:

- **Biodiversity Offset**

As discussed with reference to the response to the EPA, it is considered that the location of *D. arenaria* and *D. praecox* within Coastal Sand – Apple Blackbutt ecological communities within the project area and the Worimi Conservation Lands provides sufficient evidence that appropriate biodiversity offsets are in place. Likewise it is considered that the Worimi Conservation Lands represent suitable habitat for *D. arenaria* and *D. Praecox*, and consequently are appropriate to be used as a biodiversity offset for any potential impacts that may occur to these species as part of the proposed modification.

As discussed within Section 1 of the EA and noted in Table 6.1 and Table 6.2 of the Modification EA, the mobile dune on Lot 218 currently moves landward, smothering approximately 2.6 hectares of native vegetation annually. The extraction of this mobile dune along the landward edge as approved will reduce the landward dunal movement, preventing the smothering of some areas of native vegetation and will consequently 'improve or maintain environmental outcomes' in the area. In order for this extraction to commence, alternate access is sought to the approved extraction area. It is considered that the project is consistent with the objects of the Native Vegetation Act, and the Catchment Action Plan.

- **Groundwater**

It is considered that due to the minimal potential for disturbance to the groundwater table arising from the current proposal or the approved operations, the undertaking of a specific terrestrial vegetation monitoring program is not warranted. Ecological monitoring of remnant vegetation on Lot 220 is currently undertaken as described within Umwelt 2011, *Mackas Sand Pty Limited Landscape Management Plan*, and there is no significant vegetation within the extraction area of Lot 218.

I. Submission from Christine Darcy:

- **Agreement between Mackas Sand and Towers family that does not preclude access through Towers' property**

The existence of a written agreement between Mackas Sand and the Towers family that does not preclude access to Lot 218 as per the EA is acknowledged. However the terms of that agreement have been questioned. Correspondence received by Mackas Sand from Hills Solicitors acting on behalf of Towers dated 29 May 2009, sought further detail in regard to the agreement and states:

We do not consider that any document we have viewed can be regarded as an Agreement or in any way binding.

Due to the uncertainty in regard to the nature and scope of the agreement, an alternate access has been identified, which is the subject of the Modification EA. The proposed modification does not preclude use of the existing approved haul route in the future.

- **Traffic vibration damage to residence**

No changes to haulage limits and consequently no changes to truck movements along Lavis Lane are proposed with the project. Potential for vibration impacts to residences along Lavis Lane are assessed within Section 4.7 of the EA as approved. As Lavis Lane and the first 650 metres of Stockton Bight Track will be sealed within six months of operations, it is anticipated that the project will reduce existing and potential vibration impacts to residences through improvement in

road conditions. In addition Mackas Sand commits to the upgrade and maintenance of the section of Stockton Bight Track that will be used by quarry traffic, upgrade of Lavis Lane and contributions to Port Stephen Council (PSC) for the maintenance of Lavis Lane and Oakvale Drive as discussed within Section 5.5 of the Modification EA.

- **Speed limits**

Lavis Lane and Stockton Bight Track are public roads and accordingly speed limits on these roads are set by PSC. Mackas Sand commits to a 40 kilometre per hour maximum speed limit on the alternate haul route for all quarry traffic, as discussed within Section 4.3.4.2 of the Modification EA.

- **Noisy brakes on trucks.**

No changes to haulage limits and consequently no changes to truck movements along Lavis Lane are proposed as part of the modification sought. Assessment of potential noise impacts to residences due to passing traffic along Lavis Lane is presented within Section 4.6 of the EA as approved.

- **Amendment to change transportation of product time to not before 7am**

No changes to haulage limits and consequently no changes to truck movements along Lavis Lane are proposed with the project. No change to Project Approval 08_0142, Schedule 3, and Condition 9 are requested as part of the project. Limiting the hours of product transport from those currently approved will significantly impact on the ability of the operation to provide product to markets at the times it is required.

- **Compensation for damage to property, should it occur**

No changes to haulage limits and consequently no changes to truck movements along Lavis Lane are proposed as part of the modification. As discussed within Section 4.7 of the EA as approved, no damage due to vibration impacts to residences along Lavis Lane is anticipated.

J. Submission from John Towers:

See response to Christine Darcy as matters raised are the same.

K. Submission from Julie Towers:

See response to Christine Darcy as matters raised are the same.

L. Submission from Leanne Towers:

- **Agreement between Mackas Sand and Towers family that does not preclude access through Towers' property**

The existence of a written agreement between Mackas Sand and the Towers family that does not preclude access to Lot 218 as per the EA is acknowledged. However the terms of that agreement have been questioned. Correspondence received by Mackas Sand from Hills Solicitors acting on behalf of Towers dated 29 May 2009, sought further detail in regard to the agreement and states:

We do not consider that any document we have viewed can be regarded as an Agreement or in any way binding.

Due to the uncertainty in regard to the nature and scope of the agreement, an alternate access has been identified, which is the subject of the Modification EA. The proposed modification does not preclude use of the existing approved haul route in the future.

- **Significance of area to Towers Family**

Significance of the Towers land in question (Lot 101 DP 753192 and Lot 13 DP 753192) is noted.

- **Significance to Aboriginal community**

Assessment of potential impacts to Aboriginal Cultural Heritage for the project was undertaken, and reported as Section 4.4 of the Modification EA. Also see Appendix 4 of the Modification EA.

- **Realignment of Stockton Bight Track and speed controls and safety measures**

Mackas Sand will comply with speed and safety measures along Stockton Bight Track as determined by PSC and in consultation with other road users. Mackas Sand commits to road safety and speed controls as discussed within Section 4.3.4.2 and Section 5.10 of the Modification EA.

- **Use of elevated knoll**

The use of the elevated knoll as described within Section 6.3 of the Modification EA was raised by Worimi Sand Adventure Tours as an important aspect of the tour that is provided. The existence of other knolls in the area is noted but it is understood that the knoll that is currently used is the preferred location.

- **Suggestion that 'not all Worimi people are in favour of the modification'**

Suggestion noted.

M. Submission from Patricia Ann:

- **Agreement between Mackas Sand and Towers family that does not preclude access through Towers' property**

The existence of a written agreement between Mackas Sand and the Towers family that does not preclude access to Lot 218 as per the EA is acknowledged. However the terms of that agreement have been questioned. Correspondence received by Mackas Sand from Hills Solicitors acting on behalf of Towers dated 29 May 2009, sought further detail in regard to the agreement and states:

We do not consider that any document we have viewed can be regarded as an Agreement or in any way binding.

Due to the uncertainty in regard to the nature and scope of the agreement, an alternate access has been identified, which is the subject of the Modification EA. The proposed modification does not preclude use of the existing approved haul route in the future.

- **Safety concerns**

No changes to haulage limits and consequently no changes to truck movements along Lavis Lane are proposed with the project. With regard to the maximum vehicle movements possible to remain within noise guidelines, Section 4.7 of the Modification EA states:

... truck noise levels at the Towers (R4 and Ford (R5) residences... will remain within acceptable levels provided truck movements do not exceed 7 laden trucks (i.e. 14 truck movements) per hour before 7:00 am (night time) and 19 laden trucks (i.e. 38 truck movements) per hour after 7:00 am (daytime and evening).

The maximum anticipated heavy vehicle movements for the project are calculated in Section 4.5.2 of the EA, which states up to 8 laden truck movements (i.e. 16 truck movements) per hour, assuming a maximum of 3137 tonnes extracted in day, with 33 tonne trucks used. In addition, Condition 32 of Schedule 3 in Project Approval 08_0142 states a maximum of 10 truck movements per hour during the night time period, on Sundays and public holidays unless otherwise approved by the Director-General which is less than the 14 movements that would be

permissible as set out in Section 4.7 of the Modification EA. It is considered that the number of trucks will not pose an Occupational Health and Safety issue for users of Lavis Lane

- **Speed concerns**

Lavis Lane and Stockton Bight Track are public roads and accordingly speed limits on these roads are set by PSC. Mackas Sand commits to a 40 kilometre per hour maximum speed limit on the alternate haul route for all quarry traffic, as discussed within Section 4.3.4.2 of the Modification EA.

- **Cultural issues**

Assessment of potential impacts to Aboriginal Cultural Heritage for the project was undertaken, and reported as Section 4.4 of the Modification EA. Also see Appendix 4 of the Modification EA.

- **Towers family history**

Significance of the Towers land in question (Lot 101 DP 753192 and Lot 13 DP 753192) is noted.

N. Submission from Councillor Geoff Dingle:

- **Agreement between Mackas Sand and Towers family that does not preclude access through Towers' property**

The existence of a written agreement between Mackas Sand and the Towers family that does not preclude access to Lot 218 as per the EA is acknowledged. However the terms of that agreement have been questioned. Correspondence received by Mackas Sand from Hills Solicitors acting on behalf of Towers dated 29 May 2009, sought further detail in regard to the agreement and states:

We do not consider that any document we have viewed can be regarded as an Agreement or in any way binding.

Due to the uncertainty in regard to the nature and scope of the agreement, an alternate access has been identified, which is the subject of the Modification EA. The proposed modification does not preclude use of the existing approved haul route in the future.

- **Realignment of Stockton Bight Track**

Access to beach via Lavis Lane extended is noted. The proposed upgrading and realignment of sections of Stockton Bight Track does not preclude the remainder of the existing easement that connects with Stockton Bight being constructed in the future.

- **Disadvantage to current property owners**

The construction and sealing of Stockton Bight Track will not preclude access for other landholders. The realignment of Stockton Bight Track will avoid impact to extractive operations and plant which currently is located within the previous Stockton Bight Track easement. The sealing of the remaining portion of Lavis Lane and 650 metres of Stockton Bight Track will increase amenity for current land owners.

- **Damage and removal of Aboriginal Artefacts**

Assessment of potential impacts to Aboriginal Cultural Heritage for the project was undertaken, and reported as Section 4.4 of the Modification EA. Also see Appendix 4 of the Modification EA.

- **Role of Worimi Local Area Land Council**

Environmental Assessment of the proposal was undertaken by Umwelt (Australia) Pty Limited on behalf of Mackas Sand. Under Section 75W of the *Environmental Planning and Assessment Act 1979* the Minister for Planning and Infrastructure is the determining authority for the modification project.

- **Road maintenance on Stockton Bight Track**

As per Section 5.5.1 of the Modification EA, Mackas Sand will pay for the construction and maintenance of the section of Stockton Bight Track between Lavis Lane and the private haul road on Lot 2 DP 91061 for the life of operations.

O. Submission from Anthony Anderson:

- **Cultural Heritage**

Assessment of potential impacts to Aboriginal Cultural Heritage for the project was undertaken, and reported as Section 4.4 of the Modification EA. Also see Appendix 4 of the Modification EA.

- **Access**

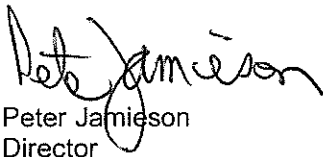
The existence of a written agreement between Mackas Sand and the Towers family that does not preclude access to Lot 218 as per the EA is acknowledged. However the terms of that agreement have been questioned. Correspondence received by Mackas Sand from Hills Solicitors acting on behalf of Towers dated 29 May 2009, sought further detail in regard to the agreement and states:

We do not consider that any document we have viewed can be regarded as an Agreement or in any way binding.

Due to the uncertainty in regard to the nature and scope of the agreement, an alternate access has been identified, which is the subject of the Modification EA. The proposed modification does not preclude use of the existing approved haul route in the future.

Should you require clarification or further detail in regards to the responses above do not hesitate to contact me on (02) 4950 5322 or at pjamieson@umwelt.com.au

Yours faithfully



Peter Jamieson
Director

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Attachment 1 - Extent of Sealing on Stockton Bight Track



Attachment 2 – Alternate Haul Route Alignment – Stockton Bight Track

