DETERMINATION OF A DEVELOPMENT APPLICATION UNDER SECTION 80 OF THE *ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979*

Under section 80 of the *Environmental Planning and Assessment Act* 1979, I, the Minister for Infrastructure and Planning, approve the Development Application referred to in Schedule 1, subject to the conditions in Schedule 2.

These conditions are required to:

(i) Prevent, minimise, and/or offset adverse environmental impacts;
(ii) Set standards and performance measures for acceptable environmental performance;
(iii) Require regular monitoring and reporting; and
(iv) Provide for the on-going environmental management of the development.

Craig Knowles, MP
Minister for Infrastructure and Planning

Sydney, 2nd August 2004 | File No: S02/01646

SCHEDULE 1

Development Application:	DA 312-7-2003
Applicant:	Great Lakes Council
Consent Authority:	The Minister for Infrastructure and Planning
Land:	See Appendix 1
Proposed Development:	Removal of sand and placement for the purpose of repairing damage to the foreshore at Jimmys Beach, Port Stephens, including: (i) Extraction of sand from the Yacaaba Isthmus nearshore sand shoal within Port Stephens; (ii) Transport of the sand along the beach to Jimmys Beach; and (iii) Placement and spreading of the transported sand at Jimmys Beach.

State Significant Development:	The proposal is classified as State significant development, under Section 76A(7)(a)(i) of the *Environmental Planning and Assessment Act* 1979 as it is extractive industry within land to which State Environmental Planning Policy (SEPP) No. 71 – Coastal Protection applies.
Integrated Development:	The proposal is classified as integrated development, under Section 91 of the *Environmental Planning and Assessment Act 1979*, because it requires additional approvals under the following legislation: (i) *Protection of the Environment Operations Act 1997, from* DEC; (ii) *Fisheries Management Act 1994,* from NSW Fisheries*;* and (iii) *Water Act 1912*, from DIPNR.
Designated Development:	The proposal is classified as designated development, under Section 77A of the *Environmental Planning & Assessment Act 1979*, because it would obtain or process for sale or reuse more than 30,000 cubic metres of extractive material per year, disturb a total area of more than 2 hectares of land, and is located within 40 metres of a natural waterbody. Therefore it meets one or more of the criteria for designated development in Schedule 3 of the *Environmental Planning & Assessment Regulation 2000.*
BCA Classification:	Class 5: Office Class 7: Car Park

Note:

1) *To find out when this consent becomes effective, see Section 83 of the Act;*
2) *To find out when this consent is liable to lapse, see Section 95 of the Act; and*
3) *To find out about appeal rights, see Section 97 of the Act.*

DEFINITIONS

Applicant – Great Lakes Council
DA – Development Application
DEC – Department of Environment and Conservation
DIPNR – Department of Infrastructure, Planning and Natural Resources
Director-General – Director-General of the Department of Infrastructure, Planning and Natural Resources or delegate
EIS – Environmental Impact Statement
EP&A Act – *Environmental Planning and Assessment Act 1979*
GTA – General Term of Approval
SES – State Emergency Service
Site – Development Application area, which includes all works described in the DA

SCHEDULE 2

DEVELOPMENT CONSENT CONDITIONS

GENERAL ADMINISTRATIVE CONDITIONS

Obligation to Minimise Harm to the Environment

1.1 [1]The Applicant shall ensure that all practicable measures are taken to prevent and minimise harm to the environment as a result of the construction, operation and, where relevant, the decommissioning of the development.

Adherence to terms of DA, EIS etc

1.2 Unless otherwise specified in these conditions of development consent, the development shall be carried out in accordance with:
   (a) [2]Development Application No. 312-7-2003; and
   (b) [3]EIS entitled: *Environmental Impact Statement. Jimmys Beach Sand Extraction and Beach Nourishment Scheme, Volumes 1 and 2,* dated 11 February 2003, and prepared by Jelliffe Environmental Pty Ltd.

Crown Lands Requirements

1.3 The Applicant shall ensure that:
   (a) Procedures and measures regarding public safety, signage, fencing and temporary restriction of access, as outlined in the development application and associated supporting documentation, are adhered to; and,
   (b) The Crown is indemnified and kept indemnified against all action, suits, clams and demands of whatsoever nature and costs, charges and expenses with respect to any accident or injury to any person which may arise out of use of the land for the activity.

Scope of Approval/ Project Commencement

1.4 This approval is for a period of three years from the date of commencement of the first works forming part of this development and permits the extraction and placement of 90,000 cubic metres (m^3) of sand in total, consisting of:
   (a) The initial extraction and placement of 40,000 m^3 of sand; and
   (b) Further five half-yearly extractions and placements, each of 10,000 m^3 of sand.

Compliance

1.5 The Applicant shall comply with, or ensure compliance with, all requirements of the Director-General with respect to the implementation of any measures arising from these Conditions.

1.6 Where emergency works are required, nothing in these Conditions limits the undertaking of these works.

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[1] DEC GTA
[2] DEC GTA
[3] DEC GTA

Dispute Resolution

1.7 The Applicant shall endeavour, as far as possible, to resolve any dispute with relevant public authorities or other parties arising out of the implementation of these Conditions. Should this not be possible, the matter shall be referred to the Director-General and, if the matter cannot be resolved by the Director-General, the Director-General will then refer the matter to the Minister, whose determination of the disagreement shall be final and binding on the parties.

1.8 The Director-General or the Minister may appoint an Independent Dispute Resolution Facilitator, who will seek to resolve the dispute and report on the outcome to the Director-General or the Minister as may be required.

1.9 The independent dispute resolution process undertaken by an Independent Dispute Resolution Facilitator will be subject to:

(a) A procedural process agreed with the Director-General to ensure that the process is transparent and consistent; and

(b) Prepared Terms of Reference, based on appropriate qualitative and quantitative criteria against which judgements can be made.

Contact Telephone Number

1.10 [4]The Applicant must make available, during its operating hours, a telephone complaints line and provide a postal and e-mail address for the purpose of receiving any complaints from members of the public in relation to activities it conducts as part of this development, unless otherwise specified in the environment protection licence issued by the DEC.

1.11 [5]The Applicant must notify the public of the complaints line telephone number and the postal and e-mail address, including by placing a notice providing the information in at least one local newspaper prior to commencing work on the development, so that members of the public know where to lodge a complaint.

Complaints Register

1.12 The Applicant shall record details of all complaints received that relate to the development and ensure that an initial response to a complaint is provided within 24 hours and a detailed response within 7 days. Information on all complaints received shall be made available on request to the Director-General and all relevant government agencies.

1.13 The Applicant shall nominate an appropriate person or persons to receive, record, track and respond to complaints within the specified timeframe. The name(s) and contact details of the contact person(s) shall be provided to the Director-General upon appointment, or upon any changes to that appointment.

1.14 The registration of complaints shall include, but need not be limited to:

(a) The date and time of the complaint being made;

(b) The means by which the complaint was made (eg telephone, mail or e-mail);

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[4] DEC GTA

[5] DEC GTA

(c) The name and any other personal details of the complainant that were provided, or if nor provided, a written statement to that effect;
(d) The nature and extent of the complaint;
(e) Any action taken by the Applicant in response to the complaint, including follow up contact with the complainant;
(f) If no action was taken by the Applicant in response to the complaint, the reason for no action being taken.

Project Commencement

1.15 The Applicant shall notify the Director-General and all relevant authorities in writing of the commencement of work forming part of the project.

Hours of Construction/Operation

1.16 [6]All activities related to the commencement and operation of the project must only be conducted between the hours specified below, unless otherwise agreed by the DIPNR in consultation with the DEC:
(a) Site operations: 6.00 am to 10.00 pm, Mondays to Fridays;
(b) Operation of dozers at the sand placement area: 7.00 am to 6.00 pm, Mondays to Fridays; and
(c) Use of the road system: 8.00 am to 4.00 pm, Mondays to Fridays.

Advertisement of Activities

1.17 Prior to the commencement of works, the Applicant shall advertise, in a relevant local newspaper, the nature of the works proposed, the areas in which these works are proposed to occur, the hours of the works and a contact telephone number.

1.18 The Applicant shall, where appropriate, advise the local community by way of local newsletters, leaflets, newspaper advertisements, or community noticeboards of the progress of the project, including advice on any traffic disruptions and controls, and any work required outside the nominated working hours, prior to such works being undertaken.

Decommissioning/Road Repairs

1.19 The Applicant shall undertake works to minimise the long term impact of vehicle/ plant access to the Yacaaba Isthmus nearshore sand shoal and Jimmys Beach in a timely manner.

1.20 Repairs to the road system will be undertaken in a timely manner to address wear associated with the proposal.

Protection of Public Infrastructure

1.21 The Applicant shall:
(a) Repair, or pay the full costs associated with repairing, any public infrastructure that is damaged by the development;

[6] DEC GTA

(b) Relocate, or pay the full costs associated with relocating, any public infrastructure that needs to be relocated as a result of the development.

SPECIFIC ENVIRONMENTAL CONDITIONS

Flora and Fauna Protection

Fisheries and Land Protection

2.1 [7]The development shall be scheduled to avoid interference with fishing operations. This timing shall be determined in consultation with commercial fishers.

2.2 Any non-weedy/non-noxious vegetation that is removed shall be reused or recycled to the greatest extent practicable. All reasonable measures to use any surplus vegetation shall be undertaken, including mulching and chipping vegetation for on-site use.

2.3 Dunes shall be protected from weeds and from informal pathways.

2.4 Widening of the vehicular access track to the beach shall be minimised.

2.5 Rehabilitation of the access track and other affected areas shall be undertaken progressively and finalised in a timely manner.

Seagrass Protection

2.6 [8]Prior to the commencement of any works, the Applicant shall consult NSW Fisheries regarding requirements for a survey of the seagrass beds from an area near to the “borrow” area at the Yacaaba Isthmus, west to seagrass beds adjacent to the length of the “nourishment” area at Jimmys Beach. The survey shall be completed prior to commencement of works and shall include, but need not be limited to:

(a) Mapping of the seagrass beds, including measures of species composition, distribution and density, based on transects from the beach to the outer extent of the seagrass beds at not more than 20 metre intervals;

(b) Transects for the survey to be set and surveyed and a longitudinal section provided. These transects shall be followed for each repeated survey;

(c) Surveys repeated at 3 monthly intervals to assess the movement of the sand from the beach depositional site and to determine the impacts on the seagrass beds; and

(d) Monitoring (with duration and frequency determined in consultation with NSW Fisheries) of wave behaviour and beach profiles to determine if there are particular wave climates that are associated with sand movement.

2.7 [9]The survey and associated reporting shall be carried out by qualified consultants agreed by the Applicant and NSW Fisheries. The monitoring data shall be reviewed in 12 months by the Applicant and NSW Fisheries to determine the validity of predictions and to determine whether monitoring should continue. The results of monitoring and the review shall be provided to the satisfaction of NSW Fisheries. A copy of the survey report and review shall be provided to the Director-General.

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7 NSW FISHERIES GTA

8 NSW FISHERIES GTA

9 NSW FISHERIES GTA

2.8 A minimum buffer of 10 metres shall be provided at all times between the sand extraction area and the seagrass beds.

2.9 The development shall be carried out in such a manner as to avoid impacts on seagrasses and the Environmental Management Strategy required in Condition 3.1 shall include appropriate provisions for this purpose.

Pied Oystercatcher and Little Tern Protection

2.10 Work shall not be undertaken during the Pied Oystercatcher breeding season.

2.11 The site shall be carefully inspected by a suitably experienced, qualified specialist prior to undertaking works to ensure that Little Terns (*Sterna albifrons*) are not attempting to nest in the vicinity of Yacaaba Isthmus inshore sand shoal (the "borrow" area). If nesting Little Terns are present in the vicinity of the area of disturbance, then works shall be delayed until breeding/nesting activity has ceased.

Noise Control

2.12 [10]Prior to activities commencing on the beach nourishment scheme, the Applicant must prepare, and subsequently implement, a Noise Management Protocol. The protocol must include, but need not be limited to, the following matters to mitigate and manage noise from the operation:

(a) Compliance standards;
(b) Community consultation provisions;
(c) Complaints based noise monitoring system;
(d) Complaints handling, and contingency measures where noise complaints are received;
(e) Noise mitigation measures, including design and orientation of the proposed noise mitigation methods, demonstrating best practice;
(g) Operation times (to comply with Condition 1.16); and
(i) Site contact person(s) to follow up on complaints.

2.13 In reference to managing haulage truck noise, the proposal must include, but need not be limited to the following matters:

(a) Education of drivers;
(b) Limiting usage of exhaust brakes;
(c) Speed limits on haulage trucks;
(d) Regular maintenance of road surfaces;
(e) Ongoing community liaison for monitoring complaints;
(f) Contingency measures where noise complaints are received; and
(g) Options for overnight parking of haulage trucks.

Air Quality

2.14 [11]Activities occurring at the site must be carried out in a manner that will minimise emissions of dust and sand from the operation.

[10] DEC GTA
[11] DEC GTA

2.15 No offensive odour, as defined under section 129 of the *Protection of the Environment Operations Act* 1997, may be emitted from the site.

Soil and Water

2.16 [12]Except as may be expressly provided in the Environment Protection Licence, the licensee must comply with section 120 of the *Protection of the Environment Operations Act* 1997 prohibiting the pollution of waters.

2.17 [13]Prior to the commencement of any works relating to this project, the Applicant shall obtain a licence under Part 5 of the *Water Act* from DIPNR and shall ensure that:

(a) Works are undertaken in accordance with the licence;

(b) A copy of the licence is kept on site at all times and made available to DIPNR officers upon request;

(c) The licence holder is responsible for compliance with all permit conditions;

(d) DIPNR has full and free access to the works during and after the development, for the purpose of carrying out any inspection or test of the quality and prevention from pollution or contamination of sub-surface water;

(e) If a work is abandoned at any time, the licence holder shall notify DIPNR that the work has been abandoned and shall seal off the aquifer;

(f) The beneficial value of ground water shall not be reduced;

(g) Any water extracted from the works shall not be discharged into any watercourse or source of groundwater unless it meets the requirements of the DEC licence conditions;

(h) Baseline groundwater data, to be collected prior to the commencement of works;

(i) A groundwater monitoring program shall be developed and shall include, but not be restricted to:

- Parameters to be measured and frequency of sampling;
- Establishment of baseline water quality parameters;
- Establishment of triggers, contingency procedures and rehabilitation; and
- Data interpretation and reporting and transfer of data.

2.18 All liquid chemicals, fuels and oils must be stored in containers inside suitable bunding.

2.19 The Applicant must ensure that the bunding is designed, constructed and maintained in accordance with the Technical Guideline "Bunding and Spill Management" issued by the Environment Protection Authority.

Traffic

2.20 The Applicant shall comply with a Traffic Management Sub Plan prepared as part of the Environmental Management Strategy. The Sub Plan shall include:

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12 DEC GTA

13 DIPNR GTA

(a) Proposed action to identify of locations for signage and for placement of the signage;
(b) Provision of alternative pedestrian and parking access where required as a result of the development;
(c) Measures to minimise road traffic impacts, including noise;
(d) Measures to exclude the public from the work zones;
(e) Installation of temporary warning and permanent buoys to control boating traffic;
(f) Routes to minimise traffic congestion and noise on local roads;
(g) Effective controls to ensure that vehicles carrying sand from the "borrow" area at Yacaaba Isthmus travel along the beach to the "nourishment" area at Jimmys Beach and that once empty, use the beach to return to the "borrow" area; and
(h) A program to monitor road traffic volumes and movements associated with the development.

Heritage

2.21 Prior to the commencement of works, the Applicant shall consult the Worimi Local Aboriginal Land Council regarding:
(a) Access within the sand dunes area and any other sensitive area; and
(b) Excavation works or clearing over the shoreline area.

2.22 Should items from a shipwreck be uncovered during works, the Applicant shall consult the NSW Heritage Office and undertake all reasonable and feasible protection of the items.

ENVIRONMENTAL MANAGEMENT, MONITORING, AUDITING AND REPORTING

Environmental Management Strategy

3.1 The Applicant shall prepare and implement an Environmental Management Strategy for the development, following consultation with the DEC, DIPNR, NSW Fisheries and Port Stephens Shire Council. This strategy must:
(a) Provide the overall strategic context for environmental management of the development;
(b) Identify the statutory requirements that apply to the development;
(c) Describe in general how environmental performance is to be managed and monitored during the period of the development;
(d) Describe the detailed procedures that would be implemented to:
- Keep the local community and relevant agencies informed about the operation and environmental performance of the development;
- Receive, record, handle, and respond to complaints;
- Resolve any disputes that may arise during the course of the development;
- Respond to any non-compliance;
- Manage cumulative impacts; and
- Respond to emergencies; and

(e) Describe the role, responsibility, authority, and accountability of all the key personnel involved in environmental management of the development.

3.2 In addressing the matters set out in Condition 3.1, the Environmental Management Strategy must consider, but need not be limited to:

(a) [14]Describing sampling strategies and monitoring protocols for both the sand borrow and placement operations (eg specific monitoring requirements; and sampling frequency and locations, including any requirements from DEC, NSW Fisheries, DIPNR and Port Stephens Shire Council) for testing environmental performance;

(b) Documenting the consultation/notification requirements/arrangements with relevant State government agencies, Port Stephens Shire Council and the local community, including complaints handling procedures;

(c) Identifying the monitoring program to assess beach stability and beach profiles to test the outcomes of predictive models;

(d) Specifically addressing issues relevant to the protection of the environment including:

- Requirements set out in the Conditions of this development consent;
- Induction training for all workers, so they are aware of and will have regard to the sensitivities of both the land and marine environments;
- Measures to restrict impact of sand removal on seagrass beds;
- Measures to minimise impacts of access on bushland; and
- Measures to minimise noise at sensitive receptors.

(e) Provide management strategies for the environmental system elements including but not limited to: aquatic, flora and fauna protection; noise; traffic; heritage; soil and water management; emergency; and recycling and reuse; and

(f) Be co-ordinated with the Emergency Management Plan required in accordance with Condition 3.9.

3.3 The Applicant shall not carry out any development before the Director-General has approved this Environmental Management Strategy.

3.4 Within 14 days of the Director-General's approval be given, the Applicant shall:

(a) Send copies of the approved strategy to the relevant agencies, including the DEC, NSW Fisheries and Port Stephens Shire Council; and

(b) Ensure the approved strategy is publicly available during the course of the development.

Environmental Monitoring Program

3.5 The Applicant shall prepare a detailed Environmental Monitoring Program for the development in consultation with the relevant agencies, including the DEC, DIPNR, NSW Fisheries and Port Stephens Shire Council. This program must consolidate the various monitoring requirements of this consent into a single document.

3.6 The environmental monitoring program shall include consideration of, but need not be limited to:

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[14] DIPNR GTA

(a) Monitoring of both the borrow and nourishment areas at least twice a year for: shoreline recession/accretion; and slope, grain size of emplaced sand bodies versus grain size of existing sand bodies;
(b) Assessment of proximal dune stability, volumes of sand removed/added during the period; and analysis of survey and photogrammetric data;
(c) Monitoring the rate of recovery of the extraction area; whether sand moves out of the nourishment area, and if so, the relocation of this sand from the nourishment area; and
(d) Any other matter relating to compliance by the Applicant with these Conditions or as requested by the Director-General.

3.7 The Applicant shall not carry out any development permitted by this development consent before the Director-General has given written approval for the Environmental Monitoring Program.

3.8 The Applicant shall regularly review, and if necessary update, the Environmental Monitoring Program, in consultation with the Director-General, and notify the relevant agencies and general public of any changes to the program.

Emergency Management Plan

3.9 Within six months of receiving development consent, the Applicant shall produce an Emergency Management Plan in consultation with the SES, the NSW Coastal Council, NSW Fisheries, DIPNR, DEC, and Port Stephens Shire Council. The Plan shall clearly define procedures, actions and materials to be used and shall:
(a) Define the types of hazard that could initiate an emergency. These may include the hazards of storm erosion and slope instability, and coastal or flood inundation;
(b) Identify procedures for action during an emergency, setting a clear chain of command, including immediate contacts, means of contact (telephone, pager, etc) status and role of persons nominated, notification procedures and contingency plans;
(c) Give approval and implementation procedures for initiating emergency works. These should be clearly defined to allow greatest flexibility during emergencies;
(d) Include relevant authority and approvals required for implementation of emergency measures;
(e) Assign priorities to measures to secure safety, and avoid loss of assets;
(f) Identify appropriate materials to be used, stockpiles of these etc; and
(g) Include monitoring and documentation of performance of the emergency measures and identify potential removal or incorporation of emergency works within existing coastal management planning following cessation of the emergency.

3.10 The Emergency Management Plan shall be formally adopted by the Applicant following its acceptance by the SES and DIPNR.

3.11 Once finalised, the Emergency Management Plan shall be made publicly available.

Independent Environmental Audit

3.12 At the end of years 1 and 3 of the development, unless the Director-General directs otherwise, the Applicant shall commission and pay the full cost of an Independent Environmental Audit of the development. This audit must:

(a) Be conducted by a suitably qualified, experienced, and independent person whose appointment has been endorsed by the Director-General;

(b) Be consistent with *ISO 14010 – Guidelines and General Principles for Environmental Auditing*, and *ISO 14011 – Procedures for Environmental Auditing*, or updated versions of these guidelines/manuals;

(c) Assess the environmental performance of the development, and its effects on the surrounding environment;

(d) Assess whether the development is complying with the relevant standards, performance measures, and statutory requirements;

(e) Review the adequacy of the Applicant's Environmental Management Strategy and Environmental Monitoring Program; and, if necessary,

(f) Recommend measures or actions to improve the environmental performance of the development, and/or the environmental management and monitoring systems, for ongoing administration of the development, or its decommissioning, as applicable.

3.13 Within 3 months of commissioning this audit, the Applicant shall submit a copy of the audit report to the Director-General, with a detailed response where applicable to any of the recommendations contained in the audit report.

Annual Reporting

3.14 The Applicant shall submit an Annual Environmental Management Report to the Director-General and the relevant agencies, including DEC, NSW Fisheries, and Port Stephens Shire Council. This report must:

(a) Identify the standards and performance measures that apply to the development;

(b) Include a detailed summary of the complaints received during the past year, and compare this to the complaints received in the previous years;

(c) Include a detailed summary of the annual monitoring results;

(d) Include a detailed analysis of these monitoring results against the relevant:

- Environmental impact assessment criteria;
- Monitoring results from previous years; and
- Predictions in the EIS on the performance of the development;

(e) Document any trends identified in the monitoring of the development;

(f) Identify any non-compliance during the previous year; and if applicable describe what actions were, or are being taken to ensure compliance.

3.15 The Annual Environmental Management Report shall be made publicly available and in accordance with the Environment Protection Licence issued by the DEC shall provide for:

(a) [15]The results of any required monitoring to be recorded and retained; and

(b) [16]Reporting on the environmental performance of the development.

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[15] DEC GTA
[16] DEC GTA

APPENDIX 1

Land the subject of the Development Application

Land within the locality of Hawkes Nest, Great Lakes and Port Stephens local government areas:

- **Sand extraction location:**

  Crown Land Reserves: Nos. 83292 and 77312 (as identified as Council Reserves 46 and 31 respectively) Crown Land Reserve No. 56146

- **Haulage route:**

  Along Jimmys Beach from the sand extraction location into Crown Reserve No. 77316, then west into Crown Reserve No. 86652

- **Placement of sand location:**

  Reserve No. 5102 (Lot 1, DP226312; Lot 65, DP211069; and Lot 73 DP 524621).