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 Assisting the Minister for Infrastructure and Planning (Planning Administration), 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.

Signed

Craig Knowles, MP
Minister for Infrastructure and Planning

Sydney, 2 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

Red type represents the September 2005 modification

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;

(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;

(c) *Jimmys Beach Sand Extraction and Beach Nourishment Scheme Statement of Environmental Effects Addendum,* dated June 2005, and prepared by Patterson Britton & Partners Pty Ltd; and

(d) Conditions of this consent.

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.

[1] DEC GTA
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[3] DEC GTA

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.

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

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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);
- (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.

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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;

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

Temporary Pipeline

1.22 In the event the temporary pipeline is damaged, the Applicant shall be responsible for the removal and disposal of all material and debris discharged from the pipeline into the water and beach area.

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] The recent Coastal Surveillance photography of September 2001 will be utilised as the baseline photogrammetrical data set for monitoring of the proposed sand extraction and placement activities by the Council.

The Department of Natural Resource's (DNR) Coastal Unit will provide full colour ortho-rectified aerial photo mosaic images of the Jimmys Beach portion of Port Stephens to the Department of Primary Industries (DPI) and Council as required. These images will map the extent of visible seagrass beds from coastal surveillance photography from the early 1990s to present. The following monitoring is proposed over the duration of the sand extraction and placement activities:

(a) The Council, DPI and DNR will monitor the movement of extracted and placed material through detailed assessment of Digital Terrain Models

[7] NSW FISHERIES GTA

[8] NSW FISHERIES GTA

(DTM) based upon DNR hydrographic survey and land based survey data throughout the duration of the proposed activities;

(b) Prepare baseline DTM of seabed, sub aerial beach and dunes covering the area from Barnes Rock (western extent) to east of the intended extraction zone on the Yacaaba Isthmus. This DTM will be based upon the DLWC September 2001 hydrographic survey and associated RTK land survey work;

(c) DNR will undertake a detailed hydrosurvey of the embayment (covering similar extent to the 2001 hydro work) and land survey prior to the initial extraction and placement exercise (40,000 m^3). Identical surveys will be undertaken prior to each of the subsequent 6-month (10,000 m^3) placement exercises. DNR will provide Council with DTM surfaces of each survey exercise for co-ordination of data assessment and analysis; and

(d) Council will co-ordinate the preparation and submission of an Annual Report (as required under Condition 3.14), covering the extraction and placement exercises and assessment of monitoring survey information, to the DPI, DEC and DNR.

2.7 [9] The Council shall establish an Expert Panel prior to work commencing.

(a) The membership of the Expert Panel shall include representatives of Council, DPI, DEC and DNR, and any other public authority as determined by the Expert Panel;

(b) The Panel shall meet annually or as required by the Director-General;

(c) The Panel shall monitor and report to Council and the Director General on the operation of the development, and consider the implications from the Annual Report prepared under Condition 3.14. The Panel shall make recommendations to Council on any corrective measures and improvements to the efficiency and environmental outcomes of the project (as may be deemed necessary) throughout the duration; and

(d) The Council shall implement the recommendations of the Expert Panel.

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.

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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.

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 1912* from DNR and shall ensure that:

(a) The approval holder must allow DNR or any duly authorised officer, unrestricted access to the works either during or after construction, for the purpose of carrying out any inspection or test of the works and its fittings;

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[13] DIPNR GTA

(b) The approval holder must carry out any work or make any alterations deemed necessary by DNR, for the protection or proper maintenance of the works, or for the control of the water extracted or prevention of pollution of groundwater;

(c) If a work is abandoned at any time the approval holder must notify DNR that the work has been abandoned and seal off the aquifer by:
    (i) casing (lining) to the satisfaction of DNR; or
    (ii) such other methods as agreed to or directed by DNR.

(d) The approval holder must ensure that water is not pumped from the bore(s) for any purpose other than the consent given by the Minister;

(e) The approval holder must notify DNR of any proposed changes or modification to operations (eg. Rate or duration of pumping);

(f) The approval holder must ensure that a record of all water extracted from the works is kept and supplied to DNR on request;

(g) The approval holder must maintain water quality records for the water extracted and provide reports to DNR on request; and

(h) The approval holder must undertake remedial action if monitoring results indicate that the agreed standards or performance indicators are not being achieved due to failure or ineffectiveness of the management strategies.

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.

Management of Dredge and Discharge Waters

2.19A In the event that a turbid plume develops in the water adjacent to the dredge, the dredging operation is to immediately shut down. Dredging activities may recommence once the source of the problem has been established and corrective action taken. Corrective action may include the deployment of a turbidity curtain.

2.19B In the event that a plume of turbid water develops in the water adjacent to the sand placement area, the dredging operations are to immediately shut down. Dredging activities may recommence once the source of the problem has been established and corrective action taken. Corrective action may include the deployment of silt fencing, turbidity curtain or the construction of sediment detention basins to treat the hydraulic slurry.

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:

(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

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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.

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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 -

3.13 -

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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[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).