

7 June 2022

Carl Dumpleton  
Team Leader Resource Assessments  
Department of Planning and Environment  
Submission via Planning Portal

**Re: Menangle Sand and Soil Quarry (DA85/2865) - rehabilitation and biodiversity offsets**

Dear Mr Dumpleton,

## 1 Introduction

The Menangle Sand and Soil Quarry Extension Project (DA85/2865) was approved in September 2020. Since this time, we have been preparing the documents required by the Consent Conditions for Menangle Sand and Soil Pty Ltd. This included responding to Department of Planning and Environment (DPE) and other agencies comments on the plans. The last required management plan, the Biodiversity and Rehabilitation Management Plan (BRMP), was approved by the Planning Secretary on 9 March 2022. With the BRMP approved, the conditions related to biodiversity and rehabilitation, can now be addressed.

As detailed below, this letter requests that the Planning Secretary:

- reviews, and if satisfied approves, the proposed rehabilitation bond for the Stage 8A and 8C areas; and
- grants an extension to the time allowed to place a positive covenant on title and to establish a Trust to provide for the ongoing management of the biodiversity offset areas.

## 2 Rehabilitation bond

It is proposed to lodge a rehabilitation bond with DPE in accordance with Condition B83. The bond could be drawn by the Planning Secretary if Menangle Sand and Soil defaulted on its rehabilitation obligations:

### Rehabilitation Bond

B83. Within 6 months of the approval of the Biodiversity and Rehabilitation Management Plan, the Applicant must lodge a Rehabilitation Bond with the Department to ensure that rehabilitation of the Stage 8 Area is implemented in accordance with the performance and completion criteria set out in the plan and the relevant conditions in Schedule 2 of this consent. The sum of the bond must be an amount agreed by the Planning Secretary and determined by:

(a) calculating the cost of rehabilitating all disturbed areas of the site at third party rates (other than land acquisition costs), taking into account the likely surface disturbance over the next 3 years of Quarrying Operations; and

(b) employing a suitably qualified, independent and experienced person to verify the calculated costs.

The rehabilitation bond value has been calculated based on the *Guideline: Rehabilitation Cost Estimator, Mining Act 1992 and Petroleum (Onshore) Act 1991* (NSW Resources Regulator, August 2021) by Michael Frankcombe. Michael is a rehabilitation and soil and water management specialist with 30 years' practical experience in the civil construction, mining, and pipeline industries and a DPE-approved rehabilitation auditor. He is a Certified Professional in Erosion and Sediment Control (CPESC1351). The calculated rehabilitation bond for substages 8A–8C is \$117,031. The calculation accompanies this letter.

It is proposed that the rehabilitation bond is lodged prior to the start of extraction in the Stage 8 area.

**It is requested that the Secretary approves the use of a rehabilitation bond and its value of \$117,031.**

### 3 Positive covenant and Trust

Consent Conditions B67 and B69 relate to the establishment of a positive covenant on the title of the area containing the biodiversity offsets (Lot 203 DP590247) and establishment of a Trust to fund the management of these areas:

#### **Biodiversity Offset Strategy**

B67. Prior to commencing Quarrying Operations in the Stage 8 Area, or other timeframe agreed by the Planning Secretary, the Applicant must make suitable arrangements for the long-term protection of the Restoration Area as described in the documents listed in condition A7(c) of Schedule 2, to the satisfaction of the Planning Secretary.

...

B69. The Applicant may satisfy condition B67 of Schedule 2 by establishing a positive covenant on title under section 88E of the *NSW Conveyancing Act 1919*. If the Applicant seeks to establish a positive covenant on title:

- (a) the positive covenant must stipulate that the Applicant will manage the Restoration Area and all rehabilitated Substages in accordance with the Biodiversity and Rehabilitation Management Plan required under condition B73 of Schedule 2; and
- (b) the Applicant must establish a trust with sufficient funds (calculated in accordance with the total fund deposit requirements for a biodiversity stewardship site in accordance with BC Act) to provide for the ongoing management of the Restoration Area and all rehabilitated Substages in accordance with the Biodiversity and Rehabilitation Management Plan,

to the satisfaction of the Planning Secretary.

Menangle Sand and Soil needed certainty regarding DPE's approval of the BRMP, before preparing a positive covenant to meet the requirements of Condition B69(a). With the BRMP approved, the positive covenant will now be prepared.

A Trust will also need to be established to meet the requirements of Condition B69(b). Setting up the Trust is complex, requiring documentation of the processes for the distribution of funds under a range of routine circumstances (eg distribution of funds to the landowner for routine ongoing vegetation management) and non-routine circumstances (eg distribution of funds to the Secretary if Menangle Sand and Soil do not meet some or all of the offset completion criteria). Payments into the Trust will need to be calculated in accordance with the

total fund deposit requirements for a biodiversity stewardship site as required by B69(b), although the offsets will not be a biodiversity stewardship site.

Preparing the positive covenant and establishing the Trust, including DPE review and the Secretary's agreement, is expected to take around six months.

As considered in detail during the assessment and approval of the Extension Project, the approval to extract Quarry Stage 3 (5.68 ha) was 'surrendered' as part of approval of extraction of the Stage 8 area. Therefore, a positive biodiversity benefit of the Extension Project is already in place (5.68 ha of vegetation previously approved for clearing, will not be cleared). Substage 8A (0.93 ha) will be extracted over approximately 1 year so the surrender of the Stage 3 area provides a biodiversity benefit well in excess of biodiversity impact of clearing over the six months it will take to establish the positive covenant and Trust.

**With the proposed implementation of the rehabilitation bond, it is requested that the Secretary allows operations in the Stage 8 Area to commence, with the positive covenant and Trust required to be established within six months from the start of extraction in the Stage 8 area.**

## 4 Closing

Extraction in the Stage 7 area stopped in December 2020, in accordance with the Consent, so the quarry has been without an extractable resource for approximately 17 months. We look forward to your consideration of the requests in this letter at the earliest possible opportunity.

Of course, please let me know if any further information is required at this stage.

Yours sincerely



**Philip Towler**  
Associate Director  
[ptowler@emmconsulting.com.au](mailto:ptowler@emmconsulting.com.au)