



## Department of Primary Industries

OUT12/31084

- 5 DEC 2012

Mr Paul Freeman  
Mining Projects  
NSW Department of Planning and Infrastructure  
GPO Box 39  
SYDNEY NSW 2001

Paul.Freeman@planning.nsw.gov.au

Dear Mr Freeman,

**Mackas Sand Project (MP08\_0142 Mod.1)  
Response to exhibition of Modification application**

I refer to your email of 5 November 2012 requesting advice from the Department of Primary Industries (DPI) in respect to the above matter.

Comment by NSW Office of Water

The NSW Office of Water advises:

- The primary water users in the area are Hunter Water Corporation and the environment. There is minimal water use by other existing licensed users.
- Based on the information provided in the Environmental Assessment, the Office of Water has no objection to the proposed modification.
- Lowering the maximum depth of sand extraction prescribed in the Project Approval has implications for the concurrent approval under clause 10(1) of the *Hunter Water Regulation 2010* for engaging in extractive industry in the North Stockton Catchment Area (Special Areas Approval). If the proposed modification is approved, the Office of Water requests that the effect of changing terms of the Project Approval on the Special Areas Approval is taken into account.
- The detailed comments, and recommended conditions of approval in Attachment A.

For further information please contact Elizabeth Cala, Planning and Assessment Coordinator (Newcastle office) on 4904 2533 or at: [elizabeth.cala@water.nsw.gov.au](mailto:elizabeth.cala@water.nsw.gov.au).

Comment by Fisheries NSW

Fisheries NSW advise that should the modification application be approved, it should be subject to the following condition:

***Surface Water Management***

*The sealed section of the access road should be extended in a southerly direction, terminating after crossing Tilligerry Creek. This will assist in ensuring that sand spillage or road runoff does not enter the creek line and interfere with flows.*

NSW Department of Primary Industries  
Level 6, 201 Elizabeth Street, Sydney NSW 2000  
PO Box K220, Haymarket NSW 1240

Tel: 02 8289 3999 Fax: 02 9286 3208 [www.dpi.nsw.gov.au](http://www.dpi.nsw.gov.au) ABN: 72 189 919 072

For further information please contact Scott Carter, Senior Conservation Manager (Nelson Bay office) on 4916 3931 or at: [scott.carter@dpi.nsw.gov.au](mailto:scott.carter@dpi.nsw.gov.au).

Comment by Crown Lands

It is noted that the proposed new access from Lot 218 DP1044608 to Nelson Bay Road will cross four (4) Crown roads and Tilligerry Creek, the bed of which is Crown land (refer diagram, Attachment B). No mention of this appears to be made in the Environmental Assessment. In this regard:

- (i) the proponent will need to obtain approval from Crown Lands to utilise the areas of Crown road. This may involve closure and purchase in accordance with current Departmental policy, and may require easements to be created in favour of freehold owners in the general precinct that use these Crown roads as access to their properties.
- (ii) approval from Crown Lands will also be required in respect to any works (including any temporary construction works) related to the crossing of Tilligerry Creek that affect that part of the Creek (bed) that is Crown land.
- (iii) the consent of Crown lands, as landowner, to the current application may therefore also be required.

For further information please contact Stewart Veitch, Senior Manager Hunter Area North Region (East Maitland office) on 4937 9366 or at: [stewart.veitch@lands.nsw.gov.au](mailto:stewart.veitch@lands.nsw.gov.au).

Yours sincerely



Phil Anquetil

**Executive Director Business Services**

## Attachment A

### Mackas Sand Project (MP08\_0142 Mod.1) Response to exhibition of Modification application

#### Comment by NSW Office of Water

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#### 1. Approval to engage in extractive industry in the North Stockton Catchment Area

The project is located within the North Stockton Catchment Area, which is a declared special area under section 53 of the *Hunter Water Act 1991*. The *Hunter Water Regulation 2010* (the Regulation) provides approval requirements for some activities in the special areas.

Relevantly, clause 10(1) of the Regulation provides:

“A person must not engage in any extractive industry in the Nelson Bay, North Stockton or Tomago Sandbeds Catchment Area other than in accordance with an approval given by the Director General [of NSW Trade and Investment].”

The purpose of this approval requirement is to protect the drinking water quality of the groundwater in the identified special areas from pollution or contamination caused by extractive industry.

As the project is located within the North Stockton Catchment Area and the extraction of sand under the project is extractive industry, the Proponent requires an approval under clause 10(1) of the Regulation to undertake the project (Special Areas Approval). The Proponent was granted a Special Areas Approval to undertake the project on 7 June 2012.

Lowering the maximum depth of sand extraction prescribed in the Project Approval has implications for related provisions in the Special Areas Approval. Specifically, clause 1(2) of the Schedule to the Special Areas Approval provides that extractive operations must not remove any material from within the Extraction Depth Limit for that point. Significantly, ‘Extraction Depth Limit’ is defined in the Special Areas Approval by reference to condition 7(b) of Schedule 2 of the Project Approval as follows

***Extraction Depth Limit*** means the limit on the depth of extraction from the highest predicted groundwater level provided in condition 7(b) of Schedule 2 of the Project Approval.

The Extraction Depth Limit is defined in this way to avoid any inconsistency between the Special Areas Approval and the Project Approval in the event that the Project Approval is modified. Accordingly, if the proposed modification is approved, it is advised that the maximum depth of sand extraction should be lowered by the variation of condition 7(b) of Schedule 2 of the Project Approval so that the Special Areas Approval remains consistent with the Project Approval.

#### 2. Water licences

The Environmental Assessment describes that “[t]here is currently an embargo on granting new licences to utilise the groundwater in the Stockton aquifer and as a result it is not possible to use this groundwater resource at this time as a source of water for dust suppression.”

It is noted that the Proponent may apply for an access licence with a zero share component under section 61(1)(b) of the *Water Management Act 2000*. The Proponent would then need to purchase the required amount of share component for the access licence on the water market. Alternatively, the Proponent may obtain access licences by transfer (i.e. purchase) on the water market.

### **3. Recommended conditions of approval**

If the proposed modification is approved, the Office of Water recommends changing the terms of the Project Approval as follows:

- Variation of condition 7(b) of Schedule 2 to provide that the Proponent shall not undertake any extraction within 0.7 metres above the highest predicted groundwater level.
- Imposition of an additional condition which provides that the final landform of the extraction area must be at least 1 metre above the highest predicted groundwater level for that point.

**End Attachment A**

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## Attachment B

### Mackas Sand Project (MP08\_0142 Mod.1) Response to exhibition of Modification application

#### Sketch diagram of affected Crown roads and waterway area

