

ASSESSMENT REPORT

Salt Ash Sand Quarry Acoustic Fence Modification (MP 07_0094 MOD 3)

1 BACKGROUND

ATB Morton Pty Limited (ATB Morton) has project approval to construct and operate the Salt Ash Sand Quarry at a site approximately 33 kilometres northeast of Newcastle in the Port Stephens LGA (see Figure 1).

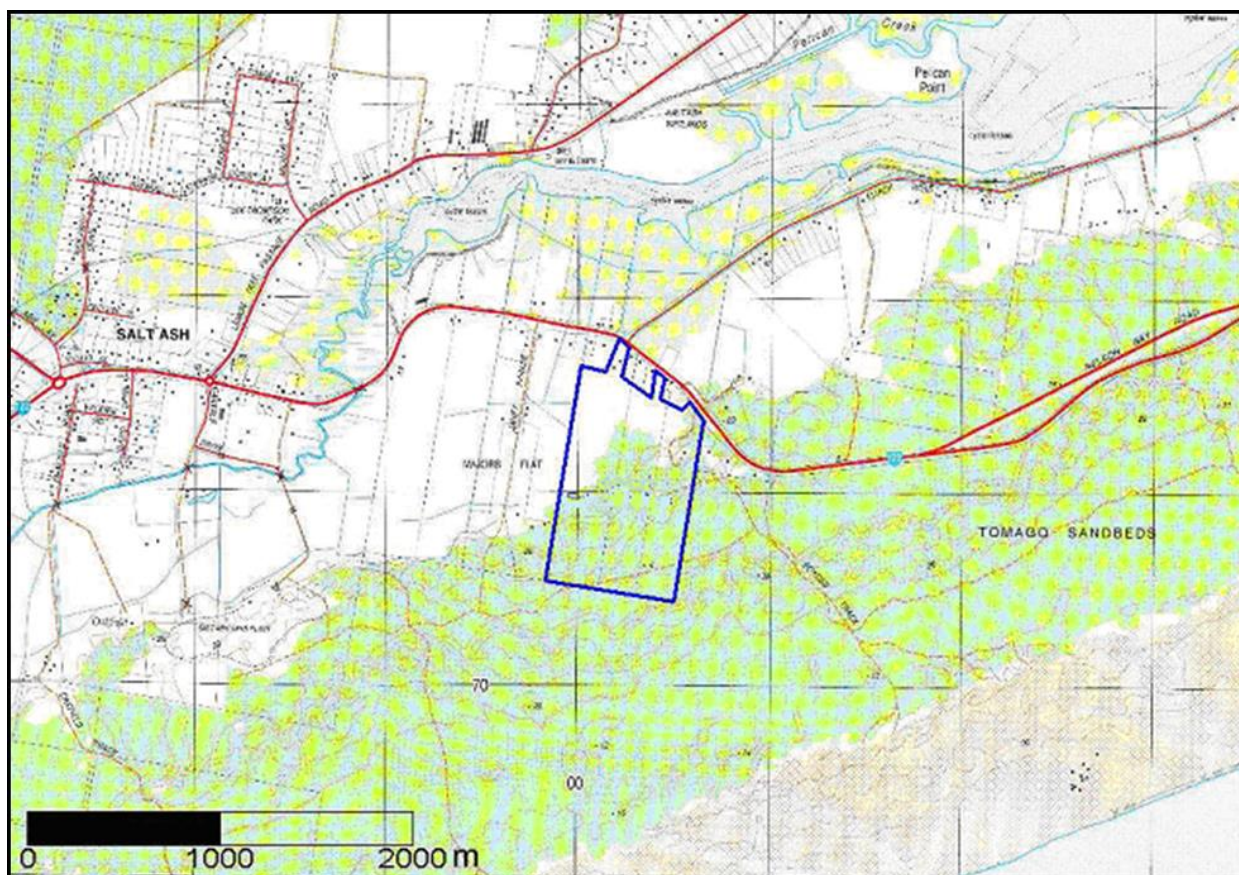


Figure 1: Location of the Salt Ash Sand Quarry Project.

In 2007, ATB Morton submitted a project application under Part 3A of the *Environmental Planning and Assessment Act 1979* (EP&A Act) which sought to establish and operate the Salt Ash Sand Quarry. The application was approved on 29 October 2010, under delegation from the then Minister for Planning. The approval allows ATB Morton to extract up to 200,000 tonnes of sand per year, process it on site, and transport it to local and regional markets via a new haul road to Janet Parade and thence via Nelson Bay Road (see Figure 2).

In March 2011, the project approval was modified under Section 75W of the EP&A Act to allow for an alternative upgrade at the intersection of Nelson Bay Road and Janet Parade. In August 2011, the approval was further modified to allow for an alternative biodiversity offset site in Tomalla, rather than in Markwell as originally proposed.

ATB Morton has yet to commence quarrying operations under its project approval. However, preliminary works have been undertaken to both prepare the site and meet pre-operational obligations required under the approval. This has included commencement of construction of a 3 metre (m) high acoustic bund along

the southern boundary of the approved quarry access road (shown as the haul road in **Figure 2**). The construction of the bund commenced in accordance with design specifications detailed in the original Environmental Assessment (EA), which consisted of a fence atop a vegetated earth mound (see **Figure 3**).

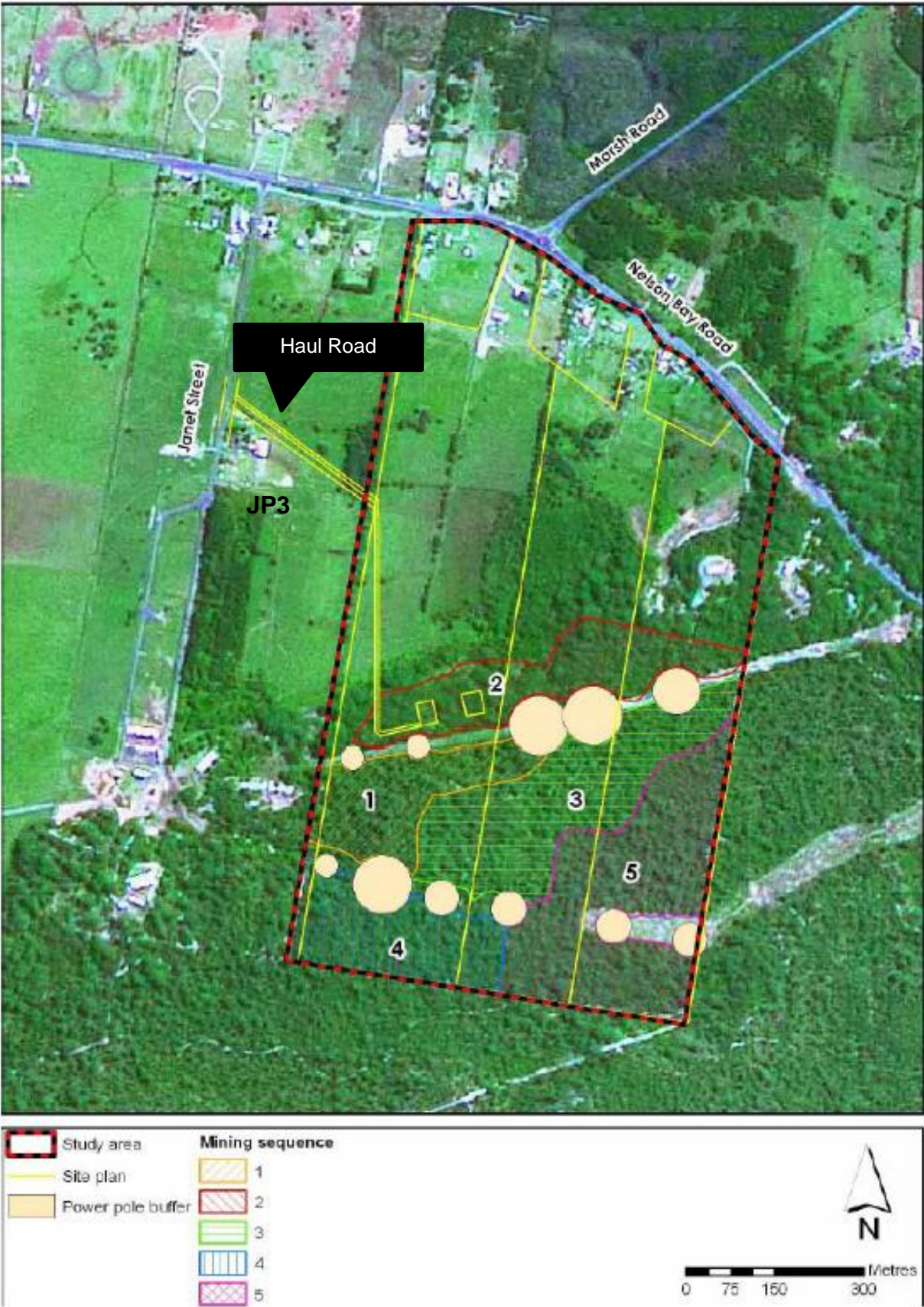


Figure 2: Salt Ash Sand Quarry Project Site



Figure 3: Detailed design of the approved acoustic bund

Prior to the completion of bund construction works, the preferred location of power supply infrastructure was identified by the quarry's energy service provider. The location of power supply infrastructure would run along the new haul road route, creating a 15 m wide easement corridor (see **Figure 4**). The design of the proposed bund would pose a potential safety risk to this corridor, which requires clear and unobstructed access. To accommodate this, ATB Morton has now removed all the components of the bund which it had commenced to construct.

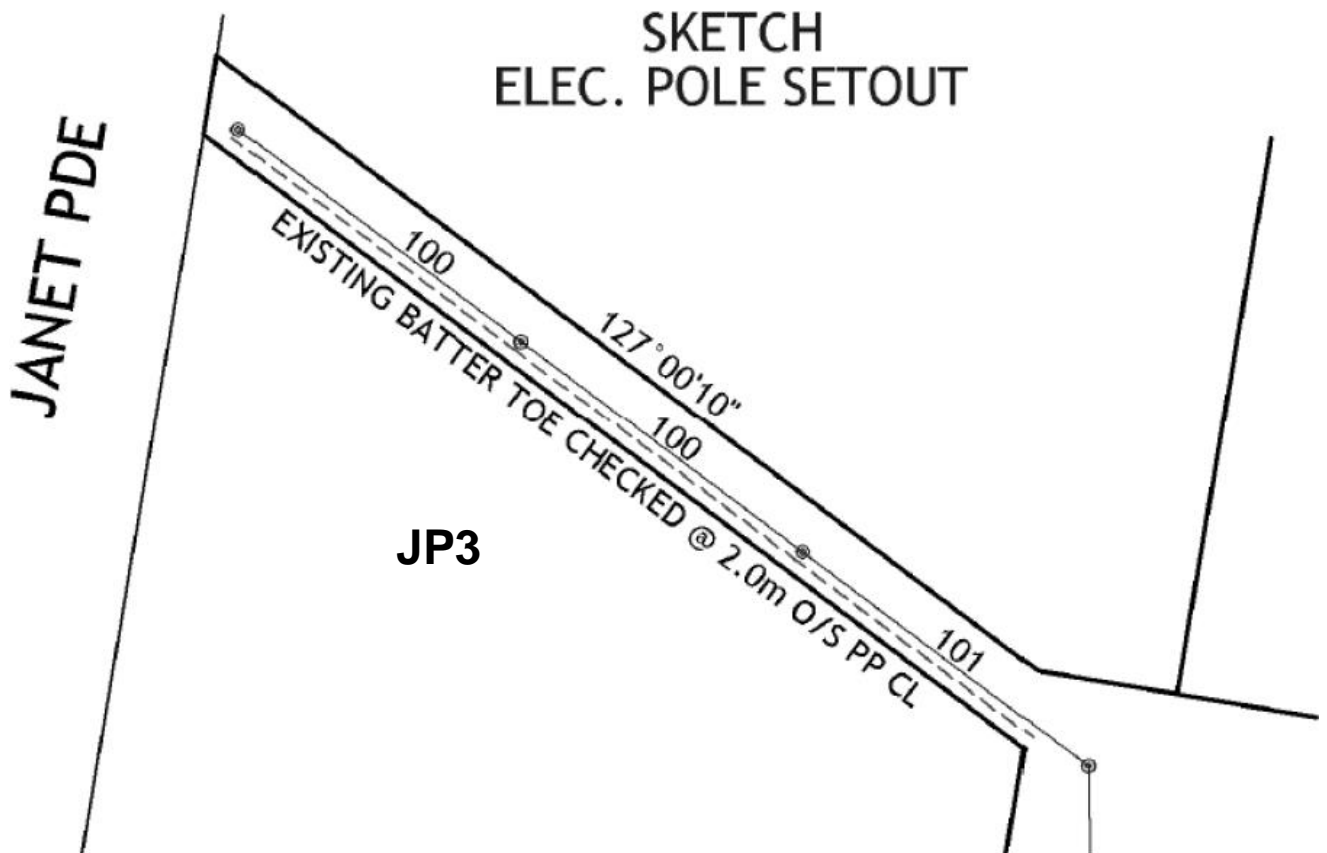


Figure 4: New haul road route and electrical easement

2 PROPOSED MODIFICATION

On 8 May 2015, ATB Morton lodged an application and supporting EA to modify the project approval under Section 75W of the EP&A Act. The application is seeking to redesign the acoustic bund in order to accommodate the requirements of the electrical easement. ATB Morton is also seeking to undertake some on-site plant and equipment maintenance and repairs.

In addition, the application seeks minor amendments to three existing conditions of the project approval, primarily to ensure the project approval remains consistent with the current status of the project. These amendments are:

- an extension of time to enter into a Biobanking Agreement;
- an extension of time to undertake Independent Environmental Audits and Annual Reviews of the project; and
- an alternative calculation to the rehabilitation bond.

ATB Morton has submitted a revised Statement of Commitments that reflects the modification application.

No other changes are proposed.

3 STATUTORY CONTEXT

3.1 Legislative Framework

Although Part 3A of the EP&A Act has now been repealed, the savings and transitional provisions in Schedule 6A of the Act require that any application to modify the Salt Ash Sand project approval are assessed under the former Section 75W of the Act.

The Department notes that the application is very minor in nature and would not change the nature or intensity of proposed operations. In this regard, the Department is satisfied that the proposed modification is within the scope of Section 75W.

3.2 Approval Authority

The Minister was the approval authority for the original project application, and is consequently the approval authority for this modification application. However, under the Minister's delegation of 14 September 2011, the Director Mining Projects may determine the application as:

- the relevant local council has not made an objection to the proposal;
- a political donations disclosure statement has not been made; and
- there are less than 10 public submissions in the nature of objections.

4 CONSULTATION

The Department:

- exhibited the EA between 22 May to 6 June 2014:
 - on the Department's website;
 - at the Department's Information Centre;
 - at the offices of Port Stephens Council Office (Council); and
 - at the offices of the Nature Conservation Council of NSW.
- referred the EA to the Environmental Protection Agency (EPA), Office of Environment and Heritage (OEH) and Council for comment; and
- advertised the public exhibition of the EA in The Port Stephens Examiner newspaper.

The Department did not receive any submissions from members of the public during the exhibition period. However, a submission in support of the modification was provided to the Department from the neighboring landowners of Lot 41, referred to as JP3 in the EA (the location of JP3 is shown in **Figures 2 and 4**), directly south of the haul road and easement.

None of the public agencies or Council raised any concerns or objected to the application. The EPA considered that the existing conditions of approval would continue to be adequate in managing the noise impacts of the proposed quarry with the proposed acoustic bund redesign.

5 ASSESSMENT

The Department considers the key assessment issues associated with the application are the potential noise and visual impacts for nearby residences associated with the bund redesign.

5.1 Acoustic Fence

ATB Morton is proposing to replace the original design and location of the acoustic bund with an acoustic fence (see **Figure 5**), to be installed along the northern property boundary of Lot 41 (ie 'JP3').

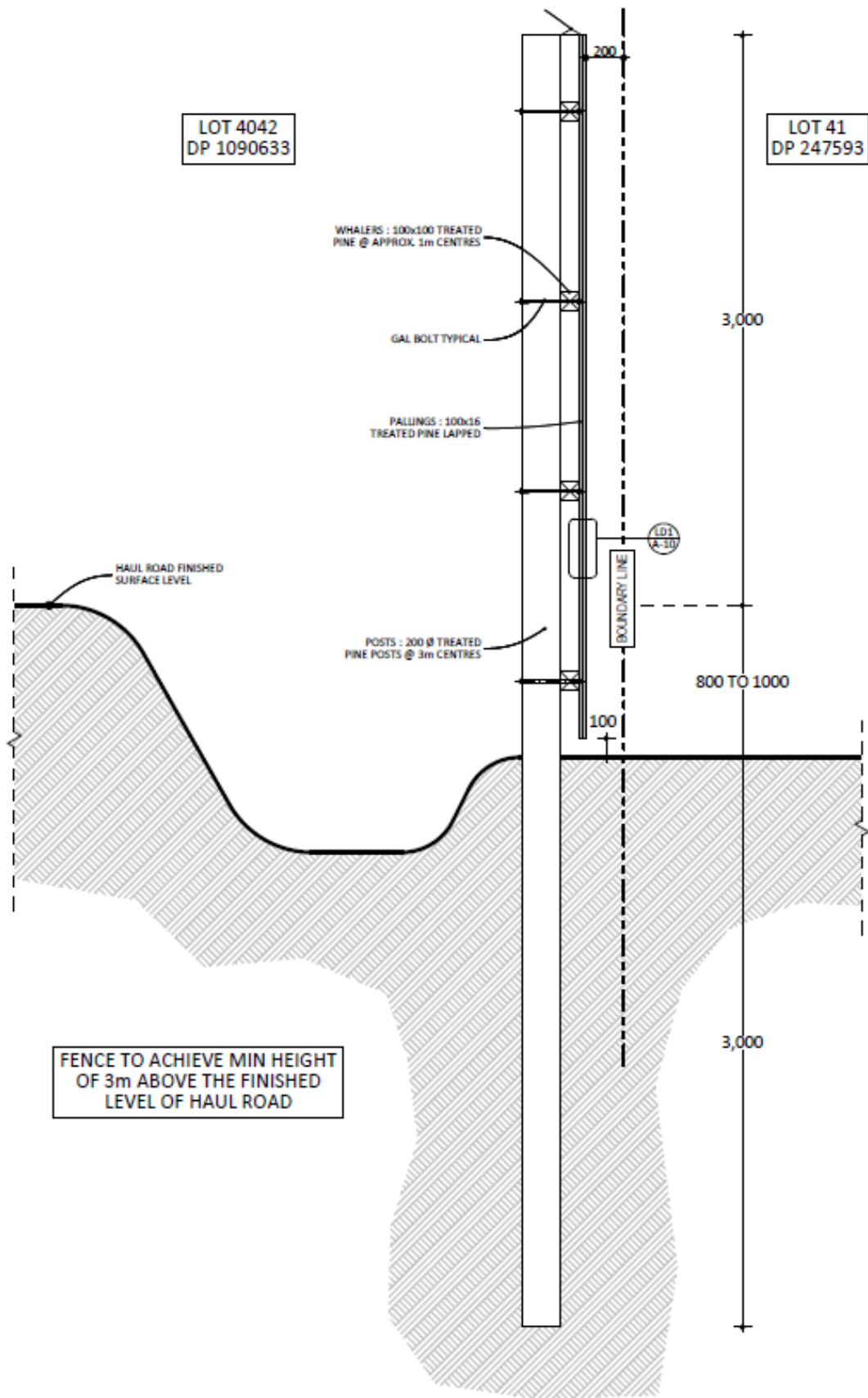


Figure 5: Proposed acoustic bund design

The proposed treatment is essentially a wooden fence, up to 4 m in height, and up to 3 m in height above the level of the haul road. The fence would be faced with overlapping palings and its posts would be set deep in the ground to limit the chance of wind damage (see **Figure 5**).

A noise assessment was undertaken by Spectrum Acoustics to support the redesign. Noise predictions were based on real noise levels of trucks measured at JP3, the most affected location, during periods of simulated operations. The assessment predicted that noise levels would be below the noise criteria specified in the existing project approval.

While the redesign of the acoustic bund offers a less desirable visual outcome than the original design due to the lack of landscaping and vegetation, the only residence impacted by this redesign is JP3. ATB Morton has a negotiated agreement with the owners of JP3 to mitigate this visual impact and provide some compensatory works on their land. Furthermore, the Department has received a letter from the owner of JP3 in support of the application.

The Department is therefore satisfied that the redesign of the acoustic bund would not result in unacceptable noise and visual impacts to nearby residences and has recommended minor amendments to the conditions of approval to allow for the redesign.

5.2 On-site Plant and Equipment Maintenance

In order to avoid removing plant and equipment from the site during every maintenance or repair period, ATB Morton is proposing to undertake some on-site maintenance and repairs. Any major works would continue to be undertaken offsite.

To mitigate any impacts, ATB Morton proposes to undertake on-site maintenance and repairs within the workshop building and store any associated products (eg oils and lubricants) in a bunded storage area within the shed or a storage cabinet. The associated products would be stored in low quantities, with a predicted maximum of 300 litres of product in total.

The Department is satisfied that the impacts and risks associated with carrying out minor on-site plant and equipment maintenance and repairs are negligible, subject to ATB Morton's proposed mitigation measures. The Department considers that the existing conditions of approval are adequate and has recommended that the revised Statement of Commitments is adopted in the project approval to reflect the proposal.

5.3 Other Issues

Under its project approval, ATB Morton is required to undertake a number of actions and prepare various reports by specified dates. ATB Morton has not yet undertaken all of these requirements, and is requesting that its project approval is modified to allow additional time to complete a number of requirements, including to:

- enter into a biobanking agreement with the Minister for the Environment to implement the project's biodiversity offset strategy;
- commission and undertake the project's first Independent Environmental Audit; and
- submit Annual Reviews of the project's environmental performance.

It has also sought a varied means of calculating the required rehabilitation bond. Each of these matters is considered below.

5.3.1 Biobanking Agreement

In accordance with the project approval's condition 19 of Schedule 3 (and its Statement of Commitments), ATB Morton is required by 1 February 2012 to:

- enter into a biobanking agreement with the Minister for the Environment to implement the project's biodiversity offset strategy;
- ensure that adequate resources are dedicated towards the offset strategy; and
- provide adequate long term security is provided for the offset.

ATB Morton has requested an extension of time to implement the requirements of this condition. The Department notes that the condition requires ATB Morton to have fulfilled these obligations more than two years ago and the lack of previous correspondence from the company on this matter. However, the Department acknowledges that there has been progress in developing and implementing the project's offset strategy, and that substantial impacts associated with the project, such as land clearing, have yet to commence. On this basis, the Department has recommended that condition 19 of Schedule 3 is amended to reflect the proposed extension of time until 1 February 2015.

5.3.2 Annual Reviews

In accordance with condition 3 of Schedule 5, ATB Morton is required to submit an Annual Review of the project's environmental performance by 1 November 2011, and thence annually thereafter.

ATB Morton has requested an extension of time before any Annual Review is required to be prepared and submitted, given that quarrying operations have yet to commence.

The Department accepts that limited information would be contained in an Annual Review for a quarry which has yet to commence extraction activities. However, Annual Reviews still provide important information reflecting the status and development of a project. It is notable that no Annual Reviews for the project have been carried out or submitted since the project was approved on 29 October 2010. Therefore, the Department does not recommend that an extension of time is given to provide the first Annual Review of the project. Instead, the Department has issued a Penalty Infringement Notice (PIN) for ATB Morton's failure to submit an Annual Review for the past three and a half years.

Notwithstanding, the Department proposes that condition 3 is amended to ensure that the Annual Review is due by the end of March annually, so that the review schedule coincides with calendar years, rather than the anniversary of the project's approval.

5.3.3 Independent Environmental Audits

In accordance with condition 9 of Schedule 5, ATB Morton is required to commission and pay for an Independent Environmental Audit for the project by 31 December 2013 and every 3 years thereafter.

ATB Morton has sought an extension of time to commission the required audit, based on the fact that it is yet to commence quarrying operations. The EA states that commissioning an audit at this stage of the project would not be resource effective and that it would be better to be undertaken 3 years after the commencement of extraction activities.

The Department accepts this reasoning. However, it does not require a modification to the approval to achieve this end. The extension of time may be given in writing by the Secretary's nominee under the present terms of condition 9. The Department has granted this extension. Therefore, the Department does not recommend that condition 9 of Schedule 5 is modified.

5.3.4 Rehabilitation Bond Calculation

In accordance with condition 26 of Schedule 3, ATB Morton is required to pay a rehabilitation bond calculated at a fixed rate of \$2.50/m² for the area to be disturbed by the project over the first 3 years of quarrying operations.

ATB Morton has requested that the calculation of the bond instead be determined in accordance with NSW Trade and Investment's *Rehabilitation Cost Estimate Guidelines 2010*. The Department does not object to updating condition 26 to provide ATB Morton with the option of using these Guidelines as an alternative basis of calculating an appropriate bond.

Consequently, the Department has recommended that condition 26 of Schedule 3 is amended so that the rehabilitation bond is calculated at either a rate of \$2.50/m² for the area to be disturbed for the first 3 years of quarrying operations or in accordance with these Guidelines, to the satisfaction of the Secretary.

6 RECOMMENDED CONDITIONS

The Department has recommended a number of modified conditions of approval for the Salt Ash Sand Project, consistent with its assessment of the modification application.

The Department has also taken the opportunity to update outdated terms contained in the project approval. It is satisfied that the recommended conditions will manage the project appropriately. ATB Morton has reviewed and accepted the proposed conditions.

7 CONCLUSION

The Department has assessed the merits of the proposal in accordance with the relevant requirements of the EP&A Act. This assessment has found that the proposed modification is minor in nature and would not result in any unacceptable environmental impacts.

The Department notes that the primary justification for the key component of the modification application is to meet easement requirements established for safety reasons. As such, the Department considers the application to be beneficial and that it should be approved.

8 RECOMMENDATION

It is RECOMMENDED that the Director, Mining Projects, as delegate of the Minister:

- **consider** the findings and recommendations of this report;
- **determine** that the proposed modification is within the scope of section 75W of the EP&A Act;
- **approve** the modification application subject to conditions, under section 75W of the EP&A Act; and
- **sign** the attached notice of modification (**Appendix A**).

Howard Reed

Howard Reed
Manager
Mining Projects

22-8-14

**APPENDIX A
NOTICE OF MODIFICATION**