

15 March 2016

## NSW Planning Assessment Commission Determination Report

### Mackas Sand Project Modification 2 Increased Truck Movements (MP 08\_0142 Mod 2)

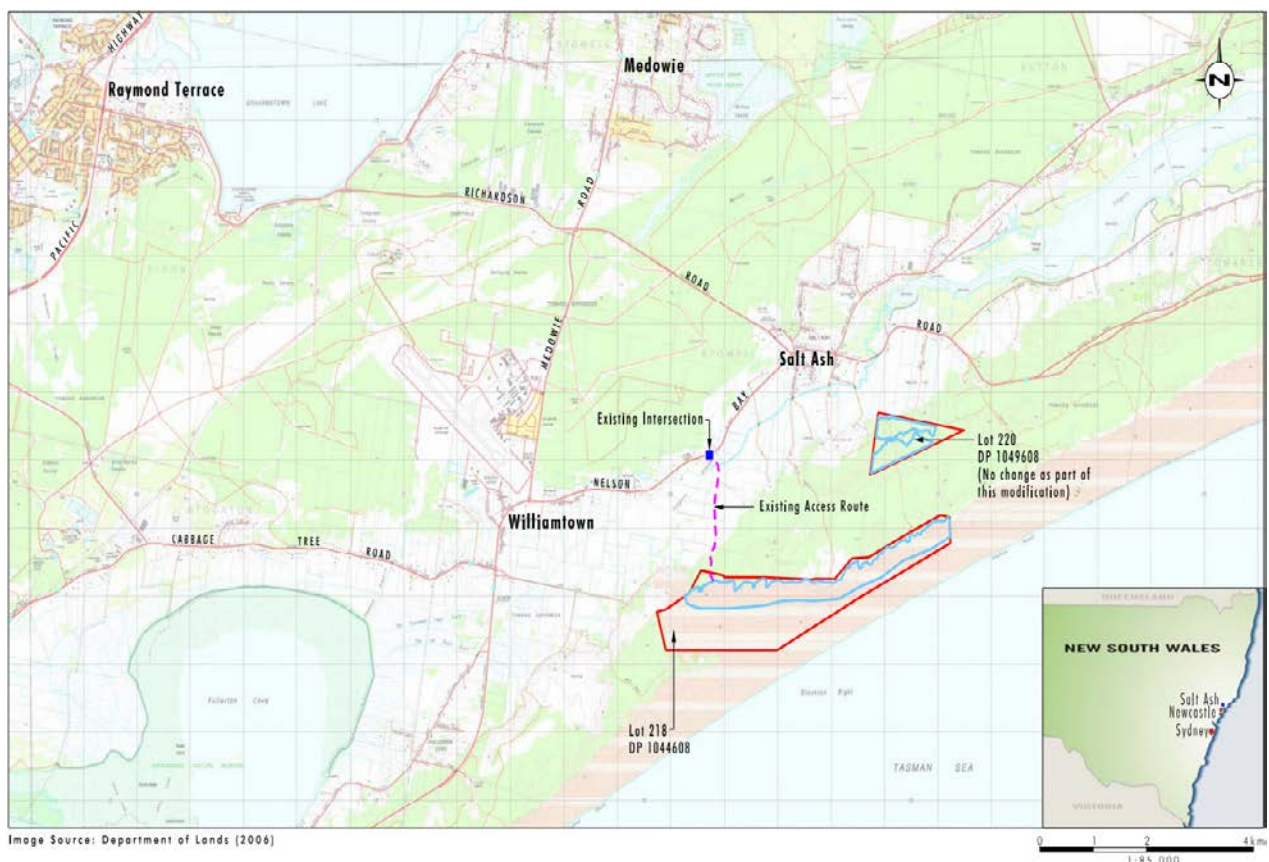
#### 1. INTRODUCTION

Mackas Sand Pty Ltd (the Proponent) has submitted an application under Section 75W of the *Environmental and Planning Assessment Act 1979* (EP&A Act) seeking to modify the Project Approval for a Sand Extraction Project. The current approval allows for the extraction of up to 1 million tonnes of sand per year from each of Lot 218 and Lot 220.

The modification proposal is seeking approval for an increase in truck movements from Lot 218 only.

The site is located 33 kilometres (km) north-east of Newcastle in the Port Stephens local government area (LGA). The project extracts from two vegetated sand dunes located on Lot 220 and from wind-blown sand dunes located on Lot 218.

Figure 1 – Project Location



## 2. PROPOSAL

### Background

On 20 September 2009, the Minister for Planning approved an application (MP 08\_0142) for the extraction of 1 million tonnes of sand annually from both Lot 218 and Lot 220, for up to 20 years; processing of the sand on-site and transportation of the processed sand to the market via road. The approved access to Lot 218 was by an internal private road to join to the existing Lavis Lane. This access is currently not in operation.

### **MP08\_0142 MOD 1**

On 30 September 2013, the Planning Assessment Commission (the Commission) granted approval for the modification of MP 08\_0142 for the construction of an alternate private access road from Lot 218 to join Nelson Bay Road, an increase in approved hours of transportation from Lot 218, an increase in the depth of extraction from 1m to 0.7m above the maximum predicted groundwater for Lot 218 and Lot 220 and an update of the surveying requirements.

### **MP08\_0142 MOD 2**

The current modification request is for greater flexibility in the timing of truck movements in the form of an increase in the maximum truck movements from Lot 218 during different periods of the day, as set out in **Table 1**.

**Table 1:** *Approved Truck Movements vs Proposed Truck Movements for Lot 218*

Transportation Period		Approved Truck Movements per hour (in plus out)	Proposed Truck Movements per hour (in plus out)
Monday to Friday	5am to 7am	10	28
	7am to 10pm	16	48
Saturdays	5am to 6am	10	No change
	6am to 7am	10	18
	7am to 4pm	16	48
Sundays and Public Holidays	8am to 12 noon	10	No change

Note: Approved truck movements on Sundays and Public Holidays are for Lot 218 and Lot 220 combined.

The proposed modification seeks increased flexibility for truck movements however, no increase in extraction has been proposed under this modification. The Department in its assessment has recommended clarification of the conditions relating to truck movements through the adoption of the term 'laden vehicles' rather than previous references to total trucks movements. This has the effect of simplifying compliance monitoring, minimising the need for trucks to park along public roads prior to entering the site and maximises the flexibility for trucks to be pre-loaded and safely parked on site awaiting despatch through the weighbridge.

## 3. DELEGATION TO THE COMMISSION

The modification application was referred to the Commission for determination under the terms of the Ministerial delegation dated 14 September 2011 as more than 25 public submissions by way of objection were received. The application was received by the Commission on 1 February 2016.

The Commission panel appointed to determine the application comprised Mr Brian Gilligan (Chair), Dr Marcus Lincoln-Smith and Mr Andrew Hutton.

#### **4. DEPARTMENT'S ASSESSMENT REPORT**

The Department's Assessment Report identified the following key issues:

- Traffic & Transport;
- Noise; and
- Other Issues.

The Department's Assessment Report recommends approval subject to conditions. The Department concluded that the merging of additional trucks onto Nelson Bay Road between 6am and 9am on weekdays would cause potentially unsafe interactions with the general traffic on Nelson Bay Road. In summary the Department recommended that no more than eight laden trucks should be dispatched from Lot 218 between 5 am and 9 am. Other proposed increases for truck movements outside of this period were considered acceptable and recommended for approval by the Department.

#### **5. MEETINGS & SITE VISIT**

The Commission received a briefing from the Department on 15 February 2016 (see **Appendix 1**).

The Commission attended the site to inspect the existing intersection on Nelson Bay Road at 6am on 29 February 2016. Representatives of the Department and RMS also attended this site visit.

The Commission met with the Proponent on site on 29 February 2016.

The Commission held a public meeting at Williamstown Public Hall which commenced at 1:30pm on 29 February 2016. Eight submissions were presented to the Commission. A list of the speakers is located in **Appendix 2**. All but one raised concerns or objections to the proposed modification of the project. Issues raised and the key points from both submitted written comments and the public meeting are summarised in **Appendix 3**.

After the public meeting, at the Commission's request, additional information was provided by the Department on 3 March 2016. Additional information included confirmation of the EPA's final recommendations and detail surrounding the intersection including safety audits.

#### **6. COMMISSION'S CONSIDERATION**

The following key areas were identified by the Commission for further consideration:

- Traffic & Safety;
- Noise; and
- Other

##### **6.1 Traffic & Safety**

Concerns were raised at the public meeting regarding the safety of Nelson Bay Road. The Proponent is proposing to increase truck movements from the approved alternate access road located at Lot 218. This access road utilises the existing merging lane onto Nelson Bay Road.

The community raised concerns specifically regarding the proposed increase of truck movements in the morning period. Afternoon peak was considered of less concern as the majority of afternoon traffic would be moving in the opposite direction (i.e. to the north) to merging trucks. In order to

examine the operation of the intersection during the early morning the Commission met on site with representatives from RMS at 6am on 29 February 2016. The Commission observed trucks both entering the site from the north, as well as merging from the approved alternate access road southwards onto Nelson Bay Road using the designated merging lane.

The Commission notes the safety of the proposed increase in frequency of truck movements has been assessed by RMS. RMS has maintained an objection on safety grounds to any increase of truck movements between 6am and 9am (peak morning period). However, RMS has stated that an increase in truck movements outside of the peak morning period could be supported, see **Table 2** below.

**Table 2: RMS recommended hourly truck movements and proposed hourly truck movements**

	RMS Supported Truck Movements		Proponent Proposed Truck Movements	
	Transportation Period	Truck Movements	Transportation Period	Truck Movements
Monday to Friday	5am to 6am	48 (24 in/ 24 out)	5am to 7am	28 (14 in/14 out)
	6am to 9am	16 (8 in/ 8 out)	7am to 10pm	48 (24 in/ 24 out)
	9am to 10pm	48 (24 in/24 out)		
Saturday	5am to 6am	No change requested	5am to 6am	No change
	6am to 7am	18 (9 in/ 9 out)	6am to 7am	18 (9 in/ 9 out)
	7am to 4pm	48 (24 in/ 24 out)	7am to 4pm	48 (24 in/24 out)

RMS is the NSW government authority on road safety. As such the Commission has accepted advice from RMS on the number of safe truck movements for Nelson Bay Road. The Commission has therefore not supported any increase in the frequency of truck movements greater than the RMS supported movements as detailed above in **Table 2**.

A number of suggestions for increasing road safety were raised at both the public meeting and within written submissions. Changes to the operation of an arterial road such as Nelson Bay Road involving specific speed limits and additional signage are periodically reviewed and resolved by RMS in consultation with other interested parties. The Commission is aware that a Corridor Strategy for Nelson Bay Road is proposed to be in final draft by mid-2016. The Commission recommends that the Proponent and the local community be actively involved in the drafting of this Strategy so that additional safety measures such as revision of speed limits and flashing signage responsive to exiting trucks can be considered and implemented if appropriate.

While generally acknowledging the RMS advice around the amount of truck movements, in relation to road safety (to a maximum of 24 laden trucks per hour between 5am and 6am), the Commission supports an increase in truck movements in the 5am to 6am period, but only to the level the Proponent has requested, specifically, a maximum of 14 laden trucks leaving the site between 5am to 6am Monday to Friday.

## 6.2 Noise

Concern was raised at the public meeting regarding potential noise generation from an increase in truck movements. During the site visit, the Commission noted the location of residences on Nelson Bay Road and noted the commencement of construction of an acoustic fence in front of a residential property which was being built by the Proponent subject to a private arrangement between the property owner and the Proponent.

Although RMS supported an increase in truck movements from 5am to 6am, the Department did not, due to the potential impact of noise on residential amenity for surrounding residents. The Commission notes the Proponent has provided evidence that the four residents directly adjacent to the intersection of the approved alternate access road with Nelson Bay Road have agreed to having unrestricted hourly truck movements within the applicable transportation hours.

Concern has been raised within submissions that an increase in truck movements would also impact on residents located further along Nelson Bay Road. The Commission recognises that periods of higher frequency of truck movements may occur on Nelson Bay Road as a result of the proposed modification. However, Nelson Bay Road is a major public arterial roadway currently used by many trucks and there is currently no restriction for any type of truck to use this road at any time.

The EPA had no outstanding concerns regarding the noise assessment and noted that traffic noise was beyond the requirements of the proponent's Environment Protection Licence, being a matter to be determined by the Department and RMS. The noise condition as proposed by the Department, detailing appropriate noise levels for Lavis Lane and Nelson Bay Road, has been adopted by the Commission.

The Proponent provided detail indicating the early morning delivery window was the most critical period for the operation. This is due to the demand for sand within Sydney and the desire of truck drivers to avoid the Sydney morning peak hour. The Proponent indicated that demand for sand is high in Sydney due to the number of major infrastructure projects currently taking place.

The Commission recognises that the Proponent has sound commercial reasoning for applying for greater flexibility in the form of additional truck movements in the early morning period of 5am to 6am. The Commission is satisfied that the residents that would be most impacted by the traffic movements have been consulted and the Commission notes evidence tendered that the residents most affected have no objection to the proposed increase. Furthermore, RMS is supportive of additional truck movements in the 5am to 6am period. As such, the Commission is satisfied that noise impact from an increase in truck movement in the 5am to 6am period is acceptable in the circumstances with the adoption of the Department's recommended noise condition and a limitation to the proposed 14 laden truck movements per hour during this period.

### **6.3 Other**

#### Fauna Strikes

A concern raised in the Port Stephens Council submission was the potential increase in incidence of fauna strikes along the access haul road, in particular during the dusk and dawn period. The Commission notes that the proposed modification has the potential to increase the number of truck movements during the dusk and dawn periods. As a result the Commission has adopted a condition within the Drivers Code of Conduct that all project related vehicles '*are provided with a detailed protocol that sets out what drivers are required to do to arrange for the care of any injured fauna and that drivers must immediately report all fauna strikes...*'. Furthermore, the following condition has been inserted to ensure that data is collated regarding fauna strikes and if required, mitigation measures are implemented.

- 33C. *The Proponent shall provide, in each Annual Review, a report on condition 33B above and which includes details of all fauna injured or killed by vehicle strikes, time and date of any such strike, species involved, action taken immediately following the strike and*

*any consequent measures put in place to prevent or minimise a recurrence of fauna strikes.*

### Compliance

Concern was raised during the public meeting regarding the compliance record of the subject site. The Commission sought further advice from the Department and in particular the Compliance branch of the Department on the inclusion of additional compliance conditions. Based on the advice received from the Department, the Commission has adopted the following two conditions to ensure that operations are stringently compliant and that clear measurable data is available for verification and audit purposes.

*33D. The Proponent shall install and operate video cameras adjacent to the Alternative access road approximately 100 metres from its intersection with Nelson Bay Road to monitor the time and direction of travel of vehicles as they enter and leave the Lot 218 sand quarry, to the satisfaction of the Secretary. These cameras must be located in a fixed position with a field of view that only incorporates lands owned by the Proponent. Recordings from these cameras must be securely stored for at least 30 days and made available to the Department on request.*

*33E. The Proponent shall, by the use of its weighbridge on the Alternate access road to Lot 218, make, and retain for 12 months, records of the time of arrival, time of dispatch, weight of load and vehicle identification for each laden truck dispatched via the Alternate access road. These records shall be made available to the Department on request.*

## **7 COMMISSION'S DETERMINATION**

After detailed consideration of the Department's assessment report and associated information relevant to the modification application, the Commission agrees with the Department that the proposed modification should be approved subject to conditions as amended. The following specific amendments have been made to the recommended conditions:

- The Commission has approved the proposed increase allowing for up to a maximum of 14 laden truck dispatches from the site between 5am and 6am.
- The Commission has adopted additional conditions to monitor fauna strikes. These ensure mitigation measures can be implemented if incidences are high with clear direction provided to drivers on procedures to follow if a strike does occur.
- The Commission has adopted two additional conditions that require further monitoring of the site including CCTV cameras and availability of weighbridge records to ensure reliable assessment for compliance purposes.



**Brian Gilligan**  
Commission Member (Chair)



**Andrew Hutton**  
Commission Member



**Marcus Lincoln-Smith**  
Commission Member

**Appendix 1  
Department Briefing**

<b>This meeting is part of the determination process</b>		
<b>Meeting note taken by</b> Johanna McGarry	<b>Date:</b> Wednesday, 3 February 2016	<b>Time:</b> 10:30am
<b>Project:</b> Mackas Sand Project Modification 2		
<b>Meeting place:</b> PAC Offices		
<b>Attendees:</b> PAC Members: Brian Gilligan, Marcus Lincoln-Smith and Andrew Hutton PAC Secretariat: Johanna McGarry Department: Howard Reed and Colin Philips		
<p>Department Site Visit</p> <ul style="list-style-type: none"> <li>During the Assessment period the Department officers undertook site visits. Officers also met with residents at site N3</li> </ul> <p>RMS</p> <ul style="list-style-type: none"> <li>Department carried out extensive consultation with RMS. In addition once draft conditions were produced RMS and the Proponent had a number of discussions</li> <li>RMS undertook site visits in order to observe the truck drivers behaviour</li> </ul> <p>Traffic</p> <ul style="list-style-type: none"> <li>Main concern has been the morning peak traffic</li> <li>Afternoon peak is not as much of a concern as majority of traffic is heading in the opposite direction to trucks. In addition less overall truck movements in the afternoon as majority of trucks make morning deliveries to service construction industry</li> <li>Investigated opportunity for trucks to park in laybys off public roads. Limited options</li> <li>Opportunity for trucks to park on site</li> <li>Additional modelling was provided by the Proponent</li> <li>Speed limit issues cannot be addressed in the assessment this is a matter for RMS and their review process</li> </ul> <p>Strategic Overview</p> <ul style="list-style-type: none"> <li>The addition of trucks in the 5am to 6am period was something that arose in a meeting between the Proponent and RMS. The Department would prefer that it was eight trucks per hour as easier for compliance and amenity issue of a truck convoy may disrupt residents</li> <li>There are a number of existing sand quarry's in the area and another currently on exhibition for a sand quarry on Cabbage Tree Road</li> <li>Port Stephens sand dunes are becoming a strategic source for fine sand supply and this would most likely increase in the next 5-10 years</li> </ul> <p>Other</p> <ul style="list-style-type: none"> <li>EPA commented that noise was able to satisfactory resolved</li> <li>This site is a dune blow out which is preferable to some other sites that are covered in native vegetation</li> <li>Complaint received last week by the Department regarding early morning trucks</li> </ul>		
<b>Documents : Nil</b>		
<b>Outcomes/Agreed Actions: Nil</b>		
<b>Meeting closed at 11:30am</b>		

## Proponent Meeting

<b>This meeting is part of the determination process</b>		
<b>Meeting note taken by</b> Johanna McGarry	<b>Date:</b> Wednesday, 3 February 2016	<b>Time</b> 10:45am
<b>Meeting place:</b> Mackas Sand		
<b>Attendees:</b> PAC Members: Brian Gilligan, Marcus Lincoln-Smith and Andrew Hutton PAC Secretariat: Johanna McGarry Proponent: Robert MacKenzie (Mackas Sand); Peter Jamieson (Umwelt); Scot Brown (Umwelt); Graham McCabe (GHD) and Damien and Chris (truck drivers)		
<b>The purpose of the meeting:</b> Meeting with the Proponent and site visit		
<u>Strategic Importance</u> <ul style="list-style-type: none"> <li>• Emu Plains has now closed</li> <li>• Mackas sand produces a high quality sand</li> <li>• Service both the local and Sydney region</li> </ul>		
<u>Transport</u> <ul style="list-style-type: none"> <li>• If truck drivers are able to leave at 5am they can fit in two loads to Sydney in a day</li> <li>• Current intersection was finished and operable in February 2014</li> <li>• Extension to intersection constrained by Sansom Lane</li> <li>• Truck drivers have a 100m of vision as approaching the intersection</li> <li>• Own transport studies demonstrate that proposed truck movements cause no problems</li> <li>• Believe RMS concern with the transport is a perception of the site</li> <li>• If a truck driver is held back 15 minutes within the site this can impact greatly on their day</li> <li>• Proponent is happy to put up additional signage or undertake a 6 month monitoring regime</li> <li>• Truck drivers operate to a code of conduct</li> </ul>		
<u>Noise</u> <ul style="list-style-type: none"> <li>• Four residences located at the end of the property none of which have put in a submission</li> <li>• Acoustic fence is currently being constructed for one resident via a private arrangement</li> </ul>		
<u>Lavis Lane</u> <ul style="list-style-type: none"> <li>• Proponent currently does not have an agreement to access Lavis Lane as need an agreement to cross through private landholders between Lot 218 and Lavis Lane</li> <li>• Logistical challenges in accessing the dunes in this area</li> </ul>		
Site visit was undertaken; Commissioners viewed the Sand Dunes as well as the parking bay areas within the site.		
<b>Documents:</b> Nil		
<b>Outcomes/Agreed Actions:</b>		
<b>Meeting closed at</b> 12:10pm		

## RMS Meeting

<b>This meeting is part of the determination process</b>		
<b>Meeting note taken by</b> Johanna McGarry	<b>Date:</b> Monday, 29 February 2016	<b>Time:</b> 6.00am
<b>Project:</b> Mackas Sand Project Modification 2		
<b>Meeting place:</b>		
<b>Attendees:</b> PAC Members: Brian Gilligan, Marcus Lincoln-Smith and Andrew Hutton PAC Secretariat: Johanna McGarry Department: Colin Phillips RMS: Kevin Webster and John Carey		
<b>The purpose of the meeting</b> to inspect the intersection		
Site Visit – The Commissioners arrived at site to inspect truck movements in to and out of the site. Representatives of the RMS were also on site to answer any questions and provide clarification. <ul style="list-style-type: none"><li>• The existing intersection further west from the site impacts on ability to make a longer merger lane</li><li>• RMS requested additional modelling from Proponent as they felt the originally submitted modelling was flawed</li><li>• RMS was not convinced that VIISM was picking up all movements or allowing for local driver behaviour</li></ul> While on site the Proponent came and addressed the Commissioners the following points were made <ul style="list-style-type: none"><li>• Currently starting at 5:30am</li><li>• Trucks do load of an evening if locally based</li><li>• There are other sand trucks using this road not servicing from the subject site</li></ul>		
<b>Documents:</b> Nil		
<b>Outcomes/Agreed Actions:</b>		
<b>Meeting closed at</b> 7:30am		

**Appendix 2**  
**List of Speakers at the Public Meeting**

Date & Time: Monday, 29th February 2016 at 1:30pm

Place: Williamtown Public Hall, 2 Sandeman Street Williamtown NSW 2318

Meeting Schedule	
1:30 pm	Opening Statement from the Chair – Mr Brian Gilligan
Registered Speakers:	1. Peter Jamieson (Umwelt)
	2. Graham McCabe (Proponent Transport Consultant GHD)
	3. Kate Washington (Local Member for Port Stephens)
	4. Brian Frost
	5. Nigel Waters (Tomaree Rates Payers & Residents Association)
	6. Rhianna Gorfine (Williamtown and Surrounds Action Group)
	7. Anita Bugges (absent on the day)
<b>END</b>	
Note: two additional speakers spoke on the day as the designated Speaker 7 withdrew prior to the commencement of the public meeting. The two additional speakers were Jenny Battrick and Des Maslen	

**Comments provided during the public meeting and in written submissions are synthesised and summarised below:**

Proponent

- Demand for sand in both Sydney and Newcastle is higher in the morning
- Intersection is designed to Ausroad design code
- Fully constructed intersection which has been through a road safety audit
- Proponent showed a video of the traffic modelling for the intersection

Transport

- Impact of additional trucks not just on direct area around intersection but further afield
- There are other applications for sand quarries in the area. Need to review the cumulative impact
- The Proponent can use the approved Lavis Lane access
- Agree with the Departments recommended condition on truck movements
- Trucks are causing damage to the roads
- No consideration has been given to the school buses using the road

Noise

- Should refuse any truck movements before 9am as residents deserve sleep
- Trucks use their brakes loudly

Safety

- Concerns for safety of residents on Nelson Bay Road
- Concerns for the safety of residents of Banksia Grove (a large residential park for over 50's) as well as Medowie Road residents
- Modelling did not include driveways. Risk for residents entering their properties
- Concern for safety of school children who have to cross the road at the round-about
- There are a number of near misses that are not recorded
- The current acceleration lane is not adequate
- Number of young people use the road

Dust and Vibrations

- Additional truck movements cause dust and vibrations

Compliance

- The site has a poor record of compliance as reported by the Newcastle Herald
- Drivers Code of Conduct is not enforceable
- Support addition of CCTV cameras to help inform the compliance officers

Economy

- Could impact on the tourism economy
- Local economy depends on tourists

### Consultation

- The timing of the public meeting has prevented a number of people from attending the meeting
- A number of submissions on the Planning website were noted as comments when in fact they were objections
- People do not understand the process

### Approvals

- There was support for the Departments assessment including the recommended conditions around the truck movements
- Concern that the applicant has come back for additional approval after MOD 1 when they should have been included then. Statement made that it was development by stealth