



# WORIMI LOCAL ABORIGINAL LAND COUNCIL

ABN: 51 352 201 603

Department of Planning Industry and Environment  
**Attention: Mr. Anthony Barnes**  
Senior Environmental Assessment Officer  
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**Phone: 02 4033 8800**  
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Dear Anthony,

**RE: Stockton Quarry - Modification - 3 Stockton Sand Quarry (DA140-6-2005-Mod-3)**

[info@worimi.org.au](mailto:info@worimi.org.au)

We refer to the above modification application (**the amended DA**) made by Boral Resources (NSW) Pty Ltd (**Boral**) and the letter dated 17 January 2019 from Boral to the Department of Planning and Environment (**the SEE**).

[www.worimi.org.au](http://www.worimi.org.au)

We also refer to the further amendment of the amended DA, as set out in the Boral letter dated 24 September 2019. The amended DA relates to Lot 1/1006399 (**the Boral Land**).

Boral currently conducts a sand extraction operation (**the Windblown Project**) on the Boral Land in accordance with development consent DA 140-6-2005 (**the existing DA**) with an existing DA that requires a 15m buffer between the footprint of the sand extraction activity with the north eastern, eastern (seaward) and south western boundaries of Boral Land.

The understand that the proposal is to amend the DA to remove or reduce the 15m buffer zone from the southern half of the footprint of the existing sand extraction operation (**the buffer**), which is the predominant direction of the windblown sand movement.

Worimi Local Aboriginal land Council (**Worimi LALC**) is the registered proprietor of the lands immediately to the east, north and south of the Boral Site which comprise the Worimi Conservation Lands (**WCL**). It is those lands which will be most directly impacted by the buffer zone, if amended. Those lands were vested in Worimi LALC as a result of claims lodged by us; pursuant to s 36 of the *Aboriginal Land Rights Act 1983* (NSW) (**ALRA**)<sup>1</sup> and were transferred pursuant to ss 36 and 36A, ALRA.

Worimi LALC leases the WCL<sup>2</sup> to the Minister administering the *National Parks and Wildlife Act 1974* (NSW) (**the NPWS Minister**) and pursuant to Part 4A of the *National Parks and Wildlife Act 1974* (NSW) (**NPWA**) the land has been declared a State Conservation Area and is managed by the Worimi Conservation Lands Board of Management (**WCLBoM**).

Worimi LALC was not consulted by Boral during its purported "*stakeholder engagement and consultation*" prior to the lodgement of the amended DA.

<sup>1</sup> The Aboriginal land claims were ALCs 5711, 5749, 5750, 6251, 6602, 6618, 6928 and 7283.

<sup>2</sup> The Worimi Conservation Lands Lease covers the following lands - Lot 20 in DP828848, Lot 4 in DP233358, Lot 7033 in DP1053720, Lot 2 in DP446235, Lot 592 in DP1097992, Lots 224,225,229 & 230 in DP1097995, Lot 1 in DP446235, Lot 585,587 590 in DP1108326, Lot 230 in DP1097995.



Worimi LALC strongly supports those submissions made by the National Parks and Wildlife Service (NPWS) dated 18 October 2019 (the NPWS Submission) and the WCLBoM dated 18 October 2019. In addition to the matters raised in the NPWS Submission, Worimi LALC objects to the amended DA, and **any** reduction in the buffer, for the following reasons:

#### *Removal of Buffer*

1. The Windblown Project and the buffer are located in an area where the dunes are highly unstable; and already pose environmental risks under the current operating conditions being imposed by Boral.
2. The maintenance of the buffer is **critical** to ensuring the stabilisation of the adjoining land and preventing the **accelerated and unnatural movement** of sand from the WCL to the Boral Land. Worimi LALC agrees with the observation in the NPWS submission that:  
*“The proposed sand extraction extension would have the top edge of the quarry batter slope positioned directly at the boundary of the WCL. This leaves no margin for error to avoid impacts on the WCL side of the boundary. It has been acknowledged in the SEE and RtS that the 15 metre buffer performs the function of ensuring that extraction activity does not directly destabilise and effect the neighbouring land within the WCL. Sand quarried from within the 15 metre buffer area will cause the immediately adjacent dune to actively collapse into the extraction pit, further exacerbating dune deflation on the WCL.”<sup>3</sup>*
3. Worimi LALC is entitled to have the support for its land retained, and is entitled to have a setback between Boral’s activities and its land. There is no basis for Boral’s “understanding” that such buffers are typical for only hard quarries.
4. Worimi LALC maintains that Boral has a duty of care to Worimi LALC to ensure that action is not taken which will remove, or reduce the support of Worimi LALC’s land.<sup>4</sup> Worimi LALC maintains that that Minister for Planning also has the duty to not approve a development application that would have the effect of removing or reducing the support of Worimi LALC’s land. The removal of the buffer and allowing for the excavation to occur closer to the boundary does just that.
5. Worimi LALC also agrees with the observation in the NPWS submission that:  
*The EIS (2005) for the current sand extraction operation inclusive of the existing 15 metre buffer zone notes there will be a lowering of the dune beyond the Boral property. The same document also notes that without stabilising the remaining hind dune, including the 15 metre buffer, the extent and rate of deflation of the dunes beyond the Boral property will increase, lowering the dune further on the WCL.*  
  
*If the buffer area is removed and only the landward batter slope in the quarry is re-vegetated, this will have no impact on stabilising the remaining dune that adjoins the WCL. In these circumstances, the proposed sand extraction extension would result in an increased extent and rate of deflation in the WCL, lowering the dune further.<sup>5</sup>*
6. Worimi LALC has already suffered the effects of this experience on other lands at Stockton where a sand extraction operation adjoining the land councils’ land occurred without an

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<sup>3</sup> NPWS Submission, p.2.

<sup>4</sup> Section 177, *Conveyancing Act 1919* (NSW).

<sup>5</sup> NPWS Submission, p.3.

adequate buffer.<sup>6</sup> The continued removal of sand from the base of the dune led to the rapid decline and collapse of our lands. This was also facilitated by the removal of vegetation. The person undertaking the sand extraction had in effect exhausted their own supply and adopted practices which would in effect hasten the movement of sand to provide more sand which could be removed. Worimi LALC is concerned that the removal of the buffer will have the same effect.

#### *Conservation Status of the Land*

7. Worimi LALC objects to the removal of the buffer. As the NPWS submission notes, the buffer was **(is)** an important feature of the original EIS for Boral's existing operation and its proposed revegetation.<sup>7</sup> The Worimi Conservation Lands Plan of Management (the WCL Plan of Management) notes:

*"There are sand extraction operations quarrying the dunes directly adjoining the WCL at Fern Bay and Anna Bay. Given the dynamic nature of the dunes and the constant movement of sand throughout the system, there is concern that the effect of these operations on sand movement and erosion is not adequately understood. The effect of these operations on the dune system requires investigation and action may need to be taken to minimise impacts".<sup>8</sup>*

Reducing the buffer is pays no regard to the concerns raised by the WCL Plan of Management.

8. Worimi LALC maintains that the buffer is essential to protecting the WCL. One of the essential conservation features of the WCL is the dune system and any reduction in a buffer between the existing operations cannot be justified in light of its conservation status. That is particularly so in the circumstances identified in the NPWS submission that there is a risk to the collapse of the dune and the acceleration of the movement of sand.
9. The conservation values of the WCL should not be subjugated to the short term commercial interest in supplying 475,000 tonnes of sand for construction projects.

#### *Cultural Heritage*

10. There are known Aboriginal objects and sites in the dunes on and adjacent to the boundary. The fact that these objects and sites may have been disturbed in the past is irrelevant to the requirement to avoid impact in the future. Worimi LALC supports the submission made in the NPWS Submission in relation to Aboriginal Cultural Heritage.

#### *Aboriginal Land Rights Act*

11. The concerns raised at points 1- 10 above also need to be understood in the context of the ALRA. The ALRA is remedial legislation designed to compensate Aboriginal people for the dispossession of our lands. The legislative policy expressed in the ALRA to return land to the Aboriginal people as "*a form of economic compensation*" was noted in *Minister Administering the Crown Lands Act v NSW Aboriginal Land Council* (1993) 31 NSWLR 106 per Sheller JA at 117C.

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<sup>6</sup> The extraction affected Lots 226 and 227 DP 1097995 Parish of Stowell, County of Gloucester (Lots 226 and 227).

<sup>7</sup> Environmental Impact Statement, Stockton Sandpit Windblown Sand Extraction, June 2005, pp. 11 (para 2.3.12), p.46 (para 6.2.4), p.101 (para 16.1.3).

<sup>8</sup> Worimi Conservation Lands – Plan of Management, p.33.



12. The resources on the WCL are owned by the Worimi LALC and used in accordance with the ALRA and the NPWA. The objects and purposes of the ALRA are undermined if an adjoining landowner can extract land on a neighbouring property in a way which either causes the land to collapse or artificially accelerates the movement of sand from the WCL onto their adjoining land.
13. Worimi LALC is particularly concerned about the potential impact of the proposal in the amended DA given the circumstances by which the WCL were transferred to Worimi LALC. All of the WCL are subject to claims under the ALRA. Unless the Minister administering the Crown Lands Act had a basis to refuse the claims, he was required to transfer them to Worimi LALC in fee simple. As it turned out the Minister did not enthusiastically grant the claims that are covered by the WCL but indicated a strong desire to negotiate the transfer under s 36A of the ALRA. Section 36A was only available if the land was considered to be needed for the essential public purpose of nature conservation.<sup>9</sup> This is what led to the WCL being established. In the circumstances the NSW Government effectively denied Worimi LALC unconditional ownership of the WCL on the basis of their **conservation value**. That being the case, the Government should act inconsistently with that position and continue to ensure that the conservation values of the WCL are not compromised by the reduction of the exiting buffer zones to sand extraction activities.

*The modification is not substantially the same as the existing DA*

14. Worimi LALC disputes the fundamental premise of the amended DA in that the proposed changes to the DA are *"of a minor nature allowing for a nominal extension of the approved extraction area located on the windblown dunes"*.
15. The amended DA notes that the Boral Land is approximately 246 hectares in area. The area of the number of hectares of land subject to extraction under the existing DA is not described in the amended DA.
16. The modification area is an area equal to 3.2 hectares and will allow for extraction of 475,000 tonnes of sand.<sup>10</sup>
17. This is a substantial increase in the land use, whilst significantly reducing an existing measure for the appropriate and ongoing management of the site.

We would be pleased to discuss this submission with you at your convenience. If you have any queries, please contact our office on (02) 4033 8800.

Yours sincerely,

**Worimi Local Aboriginal Land Council**



Mr. Andrew Smith  
Chief Executive Officer

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<sup>9</sup> Section 36A (2) (b), ALRA.

<sup>10</sup> Applicant's letter to the Secretary, Department of Planning, Industry & Environment dated 24 September 2019