

Notice of Modification

Section 75W of the *Environmental Planning and Assessment Act 1979*

As delegate of the Minister for Planning, I modify the development consent referred to in Schedule 1, as set out in Schedule 2.



Howard Reed
Director
Resource Assessments

Sydney 02 June

2016

SCHEDULE 1

The development consent (DA 195-8-2004) for Dunmore Lakes Sand Extraction Project, granted by the Minister for Infrastructure and Planning on 29 June 2005.

SCHEDULE 2

1. Delete the Table of Contents and replace with the following:

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2. Delete the following definitions: “AEMR”, “Applicant”, “DEC”, “Department”, “Director-General”, “DPI”, “EIS”, “Land”, “Minister” and “RTA”, and insert the following definitions in alphabetical order:

Annual Review	The review required by condition 9 of Schedule 5
Applicant	Dunmore Sand and Soil Pty Ltd or any other person or persons who rely on this consent to carry out the development that is subject to this consent
Department	Department of Planning and Environment
Development	The development described in the documents listed in condition 2(a) of Schedule 2
DPI Fisheries	Department of Primary Industries - Fisheries
DPI Water	Department of Primary Industries - Water
DRE	Division of Resources and Energy, within the NSW Department of Industry
EA (MOD 1)	Modification application DA 195-8-2004 MOD 1 and the accompanying Environmental Assessment titled <i>Dunmore Lakes Sand Project (DA 195-8-2004) – Modification 1</i> dated 26 April 2016
EIS	Environmental Impact Statement for the <i>Dunmore Lakes Sand Extraction Proposal, Stages 2, 3 and 4: Environmental Impact Statement, Volumes 1 & 2</i> , dated August 2004 and supplementary information titled <i>Dunmore Lakes Sand Extraction Proposal, Stages 2, 3 and 4: Responses to EIS Issues</i> , dated February 2005
EPA	Environment Protection Authority
Land	As defined in the EP&A Act, except where the term is used in the noise and air quality conditions in Schedules 3 and 4 of this consent, where it is defined as the whole of a lot, or contiguous lots owned by the same landowner, in a current plan registered at the Land Titles Office at the date of this consent
Minister	Minister for Planning, or delegate
OEH	Office of Environment and Heritage
RMS	Roads and Maritime Services
Secretary	Secretary of the Department, or nominee

3. Delete all references to “AEMR” and replace with “Annual Review”.
4. Delete all references to “Director-General” and replace with “Secretary”.
5. Delete all references to “RTA” and replace with “RMS”.
6. Delete all references to “the Applicant shall”, or “The Applicant shall”, and replace with “the Applicant must”, or “The Applicant must”, respectively.
7. Delete conditions 2, 3 and 4 of Schedule 2, and replace with:
 2. The Applicant must carry out the development:
 - a) generally in accordance with the EIS, EA (Mod 1) and the Development Layout Plan; and
 - b) in accordance with the conditions of this consent.

Note: The Development Layout Plan is included in Appendix 1.
 3. If there is any inconsistency between the documents identified in condition 2(a), the more recent document shall prevail to the extent of the inconsistency. The conditions of this consent shall prevail to the extent of any inconsistency with the documents identified in condition 2(a).
 4. The Applicant must comply with any reasonable requirement/s of the Secretary arising from the Department’s assessment of:
 - a) any strategies, plans, programs, reviews, audits, reports or correspondence that are submitted in accordance with this consent (including any stages of these documents);
 - b) any reviews, reports or audits commissioned by the Department regarding compliance with this consent; and
 - c) the implementation of any actions or measures contained in these documents.
8. In conditions 2, 4, 5, 6, 7, 9, 10, 11, 12, 13 (Note c), 26, 27, 28, 29, 31, 32, 33, 34, 39, 41, 45, 46, 48, 54, 57, 61, 63 and 68 of Schedule 3, delete the word “shall” and replace with “must”.

9. Delete all references to “DEC” and replace with:
 - (a) “EPA” in conditions 13, 15, 16, 17, 18, 20, 36, 65 and 68 of Schedule 3;
 - (b) “EPA” in footnotes 1 to 15 of Schedule 3;
 - (c) “DPI Water” in condition 30 of Schedule 3; and
 - (d) “OEHL” in conditions 41, 44 and 45 of Schedule 3.
10. Delete the note above condition 5 of Schedule 3 and replace with the following:

Note: The Applicant is required to obtain a Controlled Activity Approval from DPI Water under the Water Management Act 2000 prior to undertaking any works within 40 metres of Rocklow Creek or the Western, Northern and Eastern Tributaries, or any water feature connected to these protected waters.
11. In condition 10 of Schedule 3, delete the words “Stage 3” and replace with “Sub-Stage 3C1 (see Appendix 1),”.
12. In conditions 16 and 20 of Schedule 3:
 - (a) delete the words “,and subsequently implement,” after the words “shall prepare”; and
 - (b) at the end of each condition, insert the following:

“The Applicant must implement the approved monitoring program as approved from time to time by the Secretary.”
13. In conditions 30, 38, 43 and 68 of Schedule 3:
 - (a) delete the words “and subsequently implement” after the words “shall prepare”; and
 - (b) at the end of each condition, insert the following:

“The Applicant must implement the approved management plan as approved from time to time by the Secretary.”
14. Delete the note after the heading “SURFACE AND GROUND WATER” and replace with the following:

Note: Under the Water Act 1912 and/or the Water Management Act 2000, the Applicant is required to obtain the necessary water licences for the development.
15. In condition 44 of Schedule 3, delete the reference to “DPI”, and replace with “DRE”.
16. Delete Schedules 4 and 5 and replace with:

SCHEDULE 4 ADDITIONAL PROCEDURES

NOTIFICATION OF LANDOWNERS

1. As soon as practicable after obtaining monitoring results showing:
 - a) an exceedance of any relevant criteria in Schedule 3, the Applicant must notify the affected landowners in writing of the exceedance, and provide regular monitoring results to each affected landowner until the development is again complying with the relevant criteria; and
 - b) an exceedance of any relevant air quality criteria in Schedule 3, the Applicant must send a copy of the NSW Health fact sheet entitled "Mine Dust and You" (as may be updated from time to time) to the affected landowners and current tenants of the land (including the tenants of land which is not privately-owned).

INDEPENDENT REVIEW

2. If an owner of privately-owned land considers the development to be exceeding the relevant criteria in Schedule 3, then he/she may ask the Secretary in writing for an independent review of the impacts of the development on his/her land.
3. If the Secretary is satisfied that an independent review is warranted, then within 2 months of the Secretary's decision the Applicant must:
 - a) commission a suitably qualified, experienced and independent person, whose appointment has been approved by the Secretary, to:
 - consult with the landowner to determine his/her concerns;
 - conduct monitoring to determine whether the development is complying with the relevant criteria in Schedule 3; and
 - if the development is not complying with these criteria then identify measures that could be implemented to ensure compliance with the relevant criteria; and
 - b) give the Secretary and landowner a copy of the independent review.

SCHEDULE 5
ENVIRONMENTAL MANAGEMENT, REPORTING AND AUDITING

ENVIRONMENTAL MANAGEMENT

Environmental Management Strategy

1. If the Secretary requires, the Applicant must prepare an Environmental Management Strategy for the development to the satisfaction of the Secretary. This strategy must:
 - a) be submitted to the Secretary for approval within 6 months of the Secretary requiring preparation of the strategy by notice to the Applicant;
 - b) provide the strategic framework for the environmental management of the development;
 - c) identify the statutory approvals that apply to the development;
 - d) describe the role, responsibility, authority and accountability of all key personnel involved in the environmental management of the development;
 - e) describe the procedures that would be implemented to:
 - keep the local community and relevant agencies informed about the operation and environmental performance of the development;
 - receive, handle, respond to, and record complaints;
 - resolve any disputes that may arise during the course of the development;
 - respond to any non-compliance; and
 - respond to emergencies; and
 - f) include:
 - copies of any strategies, plans and programs approved under the conditions of this development consent; and
 - a clear plan depicting all the monitoring required to be carried out under the conditions of this consent.

The Applicant must implement any Environmental Management Strategy as approved from time to time by the Secretary.

Management Plan Requirements

2. The Applicant must ensure that the Management Plans required under this consent are prepared in accordance with any relevant guidelines, and include:
 - a) detailed baseline data;
 - b) a description of:
 - the relevant statutory requirements (including any relevant approval, licence or lease conditions);
 - any relevant limits or performance measures/criteria; and
 - the specific performance indicators that are proposed to be used to judge the performance of, or guide the implementation of, the development or any management measures;
 - c) a description of the measures that would be implemented to comply with the relevant statutory requirements, limits, or performance measures/criteria;
 - d) a program to monitor and report on the:
 - impacts and environmental performance of the development; and
 - effectiveness of any management measures (see (c) above);
 - e) a contingency plan to manage any unpredicted impacts and their consequences;
 - f) a program to investigate and implement ways to improve the environmental performance of the development over time;
 - g) a protocol for managing and reporting any:
 - incidents;
 - complaints;
 - non-compliances with statutory requirements; and
 - exceedances of the impact assessment criteria and/or performance criteria; and
 - h) a protocol for periodic review of the plan.

Note: The Secretary may waive some of these requirements if they are unnecessary or unwarranted for particular management plans.

Updating & Staging Submission of Strategies, Plans or Programs

3. To ensure the strategies, plans or programs under this consent are updated on a regular basis, and that they incorporate any appropriate mitigation measures to improve the environmental performance of the development, the Applicant may at any time submit revised strategies, plans or programs to the Secretary

for approval. With the agreement of the Secretary, the Applicant may also submit any strategy, plan or program required by this consent on a staged basis.

With the agreement of the Secretary, the Applicant may revise any strategy, plan or program approved under this consent without consulting with all the parties nominated under the applicable conditions of consent.

Notes:

- *While any strategy, plan or program may be submitted on a progressive basis, the Applicant will need to ensure that the existing operations on site are covered by suitable strategies, plans or programs at all times.*
- *If the submission of any strategy, plan or program is to be staged, then the relevant strategy, plan or program must clearly describe the specific stage to which the strategy, plan or program applies, the relationship of this stage to any future stages, and the trigger for updating the strategy, plan or program.*

Revision of Strategies, Plans & Programs

4. Within 3 months of the submission of an:
 - a) incident report under condition 7 below;
 - b) Annual Review under condition 9 below;
 - c) audit report under condition 10 below; and
 - d) any modifications to this consent,the Applicant must review, and if necessary revise, the strategies, plans, and programs required under this consent, to the satisfaction of the Secretary.

Note: This is to ensure the strategies, plans and programs are updated on a regular basis, and incorporate any recommended measures to improve the environmental performance of the development.

Adaptive Management

5. The Applicant must assess and manage development-related risks to ensure that there are no exceedances of the criteria and/or performance measures in Schedule 3. Any exceedance of these criteria and/or performance measures constitutes a breach of this consent and may be subject to penalty or offence provisions under the EP&A Act or EP&A Regulation.

Where any exceedance of these criteria and/or performance measures has occurred, the Applicant must, at the earliest opportunity:

- a) take all reasonable and feasible measures to ensure that the exceedance ceases and does not recur;
- b) consider all reasonable and feasible options for remediation (where relevant) and submit a report to the Department describing those options and any preferred remediation measures or other course of action; and
- c) implement remediation measures as directed by the Secretary, to the satisfaction of the Secretary.

COMMUNITY CONSULTATIVE COMMITTEE

6. The Applicant must operate a Community Consultative Committee (CCC) for the development, to the satisfaction of the Secretary. This CCC must be operated in general accordance with the *Guidelines for Establishing and Operating Community Consultative Committees for Mining Projects* (Department of Planning, 2007, or its latest version)

Notes:

- *The CCC is an advisory committee. The Department and other relevant agencies are responsible for ensuring that the Applicant complies with this consent.*
- *In accordance with the guideline, the committee should be comprised of an independent chair and appropriate representation from the Applicant, Council, and the local community.*
- *The requirement for this CCC may be fulfilled by a regional CCC for any two or more of Boral's quarrying operations in the South Coast area.*

REPORTING

Incident Reporting

7. The Applicant must notify, at the earliest opportunity, the Secretary and any other relevant agencies of any incident that has caused, or threatens to cause, material harm to the environment. For any other incident associated with the development, the Applicant must notify the Secretary and any other relevant agencies as soon as practicable after the Applicant becomes aware of the incident. Within 7 days of the date of the incident, the Applicant must provide the Secretary and any relevant agencies with a detailed report on the incident, and such further reports as may be requested.

Regular Reporting

8. The Applicant must provide regular reporting on the environmental performance of the development on its website, in accordance with the reporting arrangements in any plans or programs approved under the conditions of this consent.

ANNUAL REVIEW

9. By the end of September each year, or other timing as may be agreed by the Secretary, the Applicant must review the environmental performance of the development to the satisfaction of the Secretary. This review must:
 - a) describe the development (including rehabilitation) that was carried out in the previous financial year, and the development that is proposed to be carried out over the current financial year;
 - b) include a comprehensive review of the monitoring results and complaints records of the development over the previous financial year, which includes a comparison of these results against:
 - the relevant statutory requirements, limits or performance measures/criteria;
 - requirements of any plan or program required under this consent;
 - the monitoring results of previous years; and
 - the relevant predictions in the documents listed in condition 2(a) of Schedule 2;
 - c) identify any non-compliance over the last year, and describe what actions were (or are being) taken to ensure compliance;
 - d) identify any trends in the monitoring data over the life of the development;
 - e) identify any discrepancies between the predicted and actual impacts of the development, and analyse the potential cause of any significant discrepancies; and
 - f) describe what measures will be implemented over the current financial year to improve the environmental performance of the development.

The Applicant must ensure that copies of the Annual Review are submitted to Council and are available to the Community Consultative Committee (see condition 6 of Schedule 5) and any interested person upon request.

INDEPENDENT ENVIRONMENTAL AUDIT

10. By 30 September 2017, and every 3 years thereafter, unless the Secretary directs otherwise, the Applicant must commission and pay the full cost of an Independent Environmental Audit of the development. This audit must:
 - a) be conducted by suitably qualified, experienced and independent team of experts whose appointment has been endorsed by the Secretary;
 - b) include consultation with the relevant agencies and the CCC;
 - c) assess the environmental performance of the development and whether it is complying with the relevant requirements in this consent and any relevant EPL and/or Water Licence (including any assessment, plan or program required under these approvals);
 - d) review the adequacy of any approved strategy, plan or program required under these approvals; and
 - e) recommend measures or actions to improve the environmental performance of the development, and/or any assessment, plan or program required under these approvals.

Note: This audit team must be led by a suitably qualified auditor and include experts in any fields specified by the Secretary.

11. Within 6 weeks of commissioning this audit, or as otherwise agreed by the Secretary, the Applicant must submit a copy of the audit report to the Secretary, Council, EPA and any other NSW agency that requests it, together with its response to any recommendations contained in the audit report.

ACCESS TO INFORMATION

12. By 30 November 2016, unless otherwise agreed by the Secretary, the Applicant must:
 - a) make the following information publicly available on its website:
 - the documents listed in condition 2(a) of Schedule 2;
 - current statutory approvals for the development;
 - approved strategies, plans or programs;
 - a summary of the monitoring results of the development, which have been reported in accordance with the various plans and programs approved under the conditions of this consent;
 - a complaints register, which is to be updated on a quarterly basis;
 - the Annual Reviews (over the last 5 years);

- any independent environmental audit, and the Applicant's response to the recommendations in any audit;
 - any other matter required by the Secretary; and
- b) keep this information up-to-date,
to the satisfaction of the Secretary.

17. Delete the words "CONCEPT SITE LAYOUT" in the heading in Appendix 2 and replace with "DEVELOPMENT LAYOUT PLAN".
18. Delete Appendix 3.