

From: "Debbie Styles" <debbie@mallikrees.com.au>
To: <paul.freeman@planning.nsw.gov.au>
Date: 13/11/2012 9:33 am
Subject: Mackas Sand Quarry - Modification to Mackas Sand Project - Objection to Proposed Modification - Our client: Towers Family
Attachments: img-Y13082713-0001.pdf

Dear Mr Freeman

Find attached letter and enclosures from Rob Mallik for your attention.

Regards.

Debbie Hicks
Legal Secretary

MALLIK REES LAWYERS - A Good Deal Better!!

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LOCAL GOVERNMENT & PLANNING ■ BUILDING & PROPERTY DEVELOPMENT & CONVEYANCING
■ ENVIRONMENT & POLLUTION ■ BUSINESS & COMMERCIAL ■ GENERAL LAW

13 November 2012

Mr Paul Freeman
EMAIL: paul.freemam@planning.nsw.gov.au

Dear Sir

Re: MACKAS SAND QUARRY - MODIFICATION TO MACKAS SAND
PROJECT - OBJECTION TO PROPOSED MODIFICATION

We advise that we are instructed by the Towers family, who are the owners of Lots 76, 101 and 13 over which the original proposal for a haul road to the above development existed.

Our clients have requested us to write to you objecting to any modification of the haul route on the following basis:

1 On page 8 the applicant states:

"This alternate is not preferred due to the uncertainty about obtaining access to the private section of the approved haul road and the ongoing ability to maintain access through the 30 metre high mobile dunes over time".

Our clients deny that there is any uncertainty about obtaining access over our clients' land as originally proposed. We enclose copies of our letters to Corrs Chambers Westgarth, who were acting for the applicant Mackas Sand, dated 1 June 2012 and 19 June 2012 respectively, where on behalf of our clients we made it clear that our clients remain ready, willing and able to perform the agreement to provide access over their land.

We also enclose copy of our letter to the General Manager of Port Stephens Council dated 13 June 2012, which again reiterated that our clients were ready, willing and able to give Mackas Sand access through their land as agreed in return for payment of the royalty.

In those circumstances the suggestion by Mackas Sand that access to the private section of the proposed haul road was uncertain is clearly wrong and possibly amounts to a breach of Regulation 283 of the EPA Regulations 2000, in that it appears that the assertion (in view of the letters enclosed) is intended to mislead the Minister and your Department.

In relation to the suggestion on page 8 that there would be any difficulty in maintaining access through the 30 metre high mobile dunes over time, this again is rejected.



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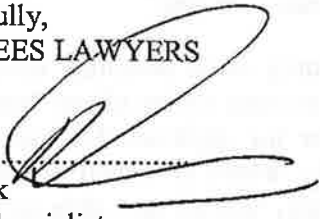
There is no evidence anywhere in the report to suggest that there will be problems with the migrating 30 metre high sand dunes. One of our clients' companies, Quality Sand and Ceramics Pty Ltd, have kept these dunes at bay for the preceding 30 years without any difficulty and there is no reason why Mackas Sand could not do likewise.

Further in relation to the suggestion at paragraph 3 that Worimi Sand Dunes Adventures use the elevated knoll at the western end of Lot 218, our clients accept that this is within the sand extraction site and that this knoll has only been used for last three years. There are higher dunes within the dune system that do not impact the sand extraction area and can easily be used for Worimi Sand Dunes Adventures if required.

Our clients ask that the Department refuse the modification for the alternate haul route. There is an existing haul route which is available and accords with the original Development Consent as originally advanced by Mackas Sand as being an appropriate haul route. Mackas Sand should not be allowed to avoid paying the royalty under the original agreement by seeking to modify the Development Consent which would never have been granted but for the fact our clients agreed to the proposed haul route.

In the circumstances our clients ask that you refuse the modification and require the Mackas Sand negotiate directly with our clients to take up the haul route originally agreed to.

Yours faithfully,
MALLIK REES LAWYERS



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Robin Mallik
Accredited Specialist
Local Government & Planning Law

Our Ref: RM:311314

Encs

1 June 2012

Corrs Chambers Westgarth
Solicitors
GPO Box 9925
SYDNEY 2001

EMAIL: Louise.Camenzuli@corrs.com.au

Dear Sirs YOUR REF: CLC/LC/PL02-PL02

Re: TOWERS FAMILY V PORT STEPHENS COUNCIL - LAND &
ENVIRONMENT COURT CLASS 3 PROCEEDINGS NO. 30230 OF 2012
YOUR CLIENT: BRUCE MACKENZIE & RELATED PARTIES

We refer to your letter of 31 May 2012.

Paragraph 4

We note your continuing refusal to even identify the parties for whom you act. Given that our client is under no obligation to correspond with you this is most surprising. We again request you do this and note this is the third request we have made in this regard.

Paragraph 6

We are bemused that your clients continue to seek particulars of an agreement that they have repeatedly acknowledged exists in the Major Project application documentation copies of which we have provided.

Paragraph 7

All and any rights.

Paragraph 10

Your clients have no interest in the proceedings in the Land and Environment Court.

Paragraph 11

As for constructive response and to make our clients position clear, our clients remain willing, ready and able to provide access over their land for the purpose of enabling the transporting of sand from Lot 218 in return for the agreed royalty payment.



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Should your clients wish to take advantage of such access, please do not hesitate to contact us. Otherwise, we agree with paragraph 11 of your letter that there is little point to further correspondence.

Yours faithfully,
MALLIK REES LAWYERS

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Robin Mallik
Accredited Specialist
Local Government & Planning Law

Our Ref: RM:311314

19 June 2012

Corrs Chambers Westgarth
Solicitors
GPO Box 9925
SYDNEY 2001

EMAIL: Louise.Camenzuli@corrs.com.au

Dear Sirs YOUR REF: CLC/LC/PL02-PL02

Re: TOWERS FAMILY V PORT STEPHENS COUNCIL - LAND &
ENVIRONMENT COURT CLASS 3 PROCEEDINGS NO. 30230 OF
2012
YOUR CLIENT: BRUCE MACKENZIE & RELATED PARTIES

In reference to your letter of 14 June 2012 we are instructed to advise that our clients remain ready willing and able to perform the agreement your clients advised the Director General and the Minister existed in order to seek Project Approval.

Yours faithfully,
MALLIK REES LAWYERS

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13 June 2012

The General Manager
Port Stephens Council
PO Box 42
RAYMOND TERRACE NSW 2324

Dear Sir

Re: **Proposed rescission of Compulsory Acquisition of Land at Stockton
Bight Track – Lots 3 & 5 DP1160092
Section 31 of the Land Acquisition (Just Terms Compensation) Act
1991 (“the Act”)**

Section 31 of the Act relevantly provides:

31 Rescission of acquisition notice

- (1) The Governor may, by notice published in the Gazette, rescind in whole or in part any acquisition notice.*
- (2) An acquisition notice may not be rescinded unless a Minister has certified that it is necessary to do so for the purpose of correcting a clerical error or obvious mistake or for other good cause or that the former owners of the land have agreed to the rescission.*

We are instructed to inform council that the Towers family, the former owners of the land acquired by compulsory acquisition, ***agree to the rescission.***

Project Approval 08-0142 was sought by Mackas Sands and granted by the Minister for Planning, on the basis that:

1. Access would be over land owned by the Towers family; and that
2. An agreement had been reached with them giving that access.

Mackas Sands maintained this position right through until after the Project Approval issued.

It was not until early November 2009, that Mackas Sands began to represent that access would not be given by the Towers family to the sand extraction site at the end of Lavis Lane.

The Towers Family remain ready, willing and able to give Mackas Sands the access through their land as agreed in return for the payment of a royalty.



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The acquisition of the land by the Council has placed the Council in a position where it will be required to pay significant compensation under the Act. The acquisition will impose on the Council the net present day value of the royalty payment stream which the acquisition has had the effect of enabling Mackas Sands to avoid. This is a cost which should be borne by Mackas Sands and not the ratepayers in Port Stephens Shire.

Our clients are content with their entitlement to the royalty stream as agreed and see no legitimate public purpose being served by the acquisition.

Yours faithfully,
MALLIK REES LAWYERS

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Robin Mallik
Accredited Specialist
Local Government & Planning Law

Our Ref: RM:311314

