

# Notice of Modification

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

As delegate of the Minister for Planning, the Independent Planning Commission of NSW modifies the project approval referred to in Schedule 1, as set out in Schedule 2.



Dr Peter Williams (Chair)  
**Member of the Commission**



Prof Richard Mackay, AM  
**Member of the Commission**

Sydney 6 November 2018

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### SCHEDULE 1

The project approval (MP 06\_0030) for the Dunloe Park Sand Project, granted by the Minister for Planning on 24 November 2008

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### SCHEDULE 2

In the list of Definitions, delete the following definitions for “AEMR”, “DECCW”, “Department”, “DII”, “Director-General”, “Land” and “OoW”, and insert the following in alphabetical order:

Annual Review	The review required by condition 5 of Schedule 5
AHD	Australian Height Datum
Conditions of approval	Conditions contained in Schedules 2 to 5 inclusive
Department	Department of Planning and Environment
Dol	Department of Industry – Lands and Water
DPI Fisheries	Fisheries Division of the Department of Primary Industries
DRG	Division of Resources and Geoscience of the Department
EA (MOD 1)	Environmental Assessment of the project titled ‘Environmental Assessment - Proposed Machinery Shed Minor Modification to Project Approval 06_0030, August 2009’
EA (MOD 2)	Environmental Assessment of the project titled ‘Dunloe Sands Quarry Modification to Project Approval 06/-0030 Environmental Assessment’, dated July 2017 and the Proponent’s response to submissions document dated November 2017
EPA	Environment Protection Authority
Feasible	Feasible relates to engineering considerations and what is practical to build
Heavy Vehicle	A vehicle that has a Gross Vehicle Mass or Aggregate Trailer Mass of more than 4.5 tonnes
Incident	A set of circumstances that: <ul style="list-style-type: none"><li>causes or threatens to cause material harm to the environment; and/or</li><li>breaches or exceeds the limits or performance measures/criteria in this approval</li></ul>
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 approval, where it

Material harm to the environment	<p>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 approval</p> <p>Is harm that:</p> <ul style="list-style-type: none"> <li>• involves actual or potential harm to the health or safety of human beings or to the environment that is not trivial, or</li> <li>• results in actual or potential loss or property damage of an amount, or amounts in aggregate, exceeding \$10,000, (such loss includes the reasonable costs and expenses that would be incurred in taking all reasonable and practicable measures to prevent, mitigate or make good harm to the environment)</li> </ul> <p>This definition excludes “harm” that is authorised under either this approval or any other statutory approval</p>
Mitigation Modification 2 POEO Act Quarrying operations	<p>Activities associated with reducing the impacts of the project</p> <p>The modification to the project as described in EA (MOD 2) <i>Protection of the Environment Operations Act 1997</i></p> <p>The extraction, processing, stockpiling and transportation of extractive materials carried out on the site and the associated removal of vegetation, topsoil and overburden</p>
Quarry products	Includes all saleable quarry products, but excludes tailings, other wastes and rehabilitation material
Reasonable	Reasonable relates to the application of judgement in arriving at a decision, taking into account: mitigation benefits, cost of mitigation versus benefits provided, community views and the nature and extent of potential improvements
Rehabilitation	The restoration of land disturbed by the development to a good condition and for the purpose of establishing a safe, stable and non-polluting environment
RMS Secretary	Roads and Maritime Services Planning Secretary under the EP&A Act, or nominee

2. Delete all references to “shall” and replace with “must” except in condition 3 of Schedule 2.
3. Delete all references to “Director-General” and replace with “Secretary”.
4. Delete all references to “OoW” and replace with “DoI”.
5. Delete all references to “DII–Fisheries” and replace with “DPI Fisheries”.
6. Delete all references to “DECCW” and replace with “EPA”, except in conditions 27 and 32 of Schedule 3, where replace with “OEH”.
7. Delete all references to “AEMR” and replace with “Annual Review”.
8. Delete condition 1 of Schedule 2 and insert the following:
  1. In addition to meeting the specific performance measures and criteria established under this approval, the Proponent must implement all reasonable and feasible measures to prevent, and if prevention is not reasonable and feasible, minimise any material harm to the environment that may result from the construction and operation of the project, and any rehabilitation required under this approval.
9. Delete condition 2 of Schedule 2 and insert the following:
  2. The Proponent must carry out the project generally in accordance with the:
    - (a) EA, EA (MOD 1) and EA (MOD 2); and
    - (b) Statement of Commitments.

*Notes:*

    - *The general layout of the project is shown in Appendix 1; and*
    - *The Statement of Commitments is reproduced in Appendix 3.*
  - 2A. The Proponent must carry out the project in accordance with the conditions of this approval.
10. In condition 4 of Schedule 2, delete paragraphs (a) and (b) and insert the following:
  - (a) any reports, strategies, plans, programs, reviews, audits or correspondence that are

- submitted in accordance with the conditions of this approval;
  - (b) any reviews, reports or audits undertaken or commissioned by the Department regarding compliance with the conditions of this approval; and
  - (c) the implementation of any actions or measures contained in these documents.
- 11. In condition 6 of Schedule 2, delete the “s” from the word “Notes”.
- 12. In condition 7 of Schedule 2:
  - a) delete the words “sand material” and insert the words “quarry products”; and
  - b) delete the words “a year” insert the words “in any financial year”.
- 13. In condition 8 of Schedule 2, delete the number “8” and insert the number “24”,
- 14. Delete condition 9 of Schedule 2, including the heading and insert the following:

**Staging, Combining and Updating Strategies, Plans or Programs**

- 9. With the approval of the Secretary, the Proponent may:
  - (a) prepare and submit any strategy, plan or program required by this approval on a staged basis (if a clear description is provided as to the specific stage and scope of the project to which the strategy, plan or program applies, the relationship of the stage to any future stages and the trigger for updating the strategy, plan or program);
  - (b) combine any strategy, plan or program required by this approval (if a clear relationship is demonstrated between the strategies, plans or programs that are proposed to be combined); and
  - (c) update any strategy, plan or program required by this approval (to ensure the strategies, plans and programs required under this approval are updated on a regular basis and incorporate additional measures or amendments to improve the environmental performance of the project).
- 9A. If the Secretary agrees, a strategy, plan or program may be staged or updated without consultation being undertaken with all parties required to be consulted in the relevant condition in this approval.

**Application of Existing Strategies, Plans or Programs**

- 9B. The Proponent must continue to apply existing management strategies, plans or monitoring programs approved prior to the approval of Modification 2, until the approval of a similar plan, strategy or program following the approval of Modification 2.

- 15. Delete condition 13 of Schedule 2, including the heading, and replace with the following:

**Road Maintenance Contributions**

- 13. Prior to increasing heavy vehicle movements (in and out) above eight per hour, the Proponent must pay Council \$182,280 in accordance with Council’s Tweed Road Contribution Plan, unless a deferred payment agreement is executed under Council’s Business Investment Policy, in which case contributions are to be paid in accordance with that agreement.

**Compliance**

- 14. The Proponent must ensure that all employees, contractors and sub-contractors are made aware of, and instructed to comply with, the conditions of this approval relevant to their respective activities.

**Evidence of Consultation**

- 15. Where consultation with any public authority is required by the conditions of this approval, the Proponent must:
  - (a) consult with the relevant public authority prior to submitting the required document to the Secretary for approval;
  - (b) submit evidence of this consultation as part of the relevant document; and
  - (c) describe how matters raised by the authority have been addressed and any matters not resolved.

- 16. Delete condition 2 of Schedule 3 and insert the following:

2. The Proponent must ensure that the noise generated by the project does not exceed the criteria in Table 1 at any residence on privately-owned land.

**Table 1: Noise Impact Assessment Criteria**

<b>Receiver Location</b>	<b>Day <math>L_{Aeq}</math> (15 min) dB(A)</b>
R6 and R7	42
R8	48
All other residences	41

Noise generated by the project must be monitored and measured in accordance with the relevant procedures and exemptions (including certain meteorological conditions) of the *NSW Noise Policy for Industry* (EPA, 2017).

The noise criteria in Table 1 do not apply if the Proponent has an agreement with the owner/s of the relevant residence or land to exceed the noise criteria, and the Proponent has advised the Department in writing of the terms of this agreement.

17. Delete conditions 4 to 7 of Schedule 3, including the headings and insert the following:

**Noise Operating Conditions**

4. The Proponent must:
- (a) implement best practice management to minimise the construction, operational and road transportation noise of the development;
  - (b) minimise the noise impacts of the project during meteorological conditions when the noise criteria in this approval do not apply;
  - (c) carry out attended noise monitoring (at least every 3 months or as otherwise agreed by the Secretary) to determine whether the project is complying with the relevant conditions of this approval; and
  - (d) regularly assess noise monitoring data and modify and/or stop operations on site to ensure compliance with the relevant conditions of this approval to the satisfaction of the Secretary.

*Note: Monitoring under this approval is not required at all residences and the use of representative monitoring locations can be used to demonstrate compliance with criteria, if agreed to by the Secretary.*

**Noise Management Plan**

5. Within three months of the approval of Modification 2, the Proponent must prepare a Noise Management Plan for the project to the satisfaction of the Secretary. This plan must:
- (a) be prepared by a suitably qualified and experienced person/s whose appointment has been endorsed by the Secretary;
  - (b) be prepared in consultation with the EPA;
  - (c) describe the measures to be implemented to ensure:
    - (i) compliance with the noise criteria and operating conditions in this approval;
    - (ii) best practice management is being employed;
    - (iii) noise impacts of the project are minimised during noise-enhancing meteorological conditions;
  - (d) describe the noise management system; and
  - (e) include a monitoring program to be implemented to measure noise from the project against the noise criteria in Table 1, and which evaluates and reports on the effectiveness of the noise management system on site.

The Proponent must implement the Noise Management Plan as approved by the Secretary.

**AIR QUALITY**

**Impact Assessment Criteria**

6. The Proponent must ensure that particulate matter emissions generated by the project do not cause exceedances of the criteria in Table 3 at any residence on privately-owned land.

**Table 3: Air Quality Criteria**

<b>Pollutant</b>	<b>Averaging Period</b>	<b>Criterion</b>	
Particulate matter < 10 µm (PM <sub>10</sub> )	Annual	a,c 30 µg/m <sup>3</sup>	
	24 hour	b 50 µg/m <sup>3</sup>	
Total suspended particulates (TSP)	Annual	a,c 90 µg/m <sup>3</sup>	
<sup>d</sup> Deposited dust	Annual	b 2 g/m <sup>2</sup> /month	a 4 g/m <sup>2</sup> /month

**Notes:**

<sup>a</sup> Total impact (i.e. incremental increase in concentrations due to the development plus background concentrations due to all other sources).

<sup>b</sup> Incremental impact (i.e. incremental increase in concentrations due to the project on its own).

<sup>c</sup> Excludes extraordinary events such as bushfires, prescribed burning, dust storms, fire incidents or any other activity agreed by the Secretary.

<sup>d</sup> Deposited dust is to be assessed as insoluble solids as defined by Standards Australia, AS/NZS 3580.10.1:2003: Methods for Sampling and Analysis of Ambient Air - Determination of Particulate Matter - Deposited Matter - Gravimetric Method.

**Air Quality Operating Conditions**

7. The Proponent must:
- (a) implement best management practice to minimise the dust emissions of the project, including routinely watering haul roads being used by heavy vehicles and equipment;
  - (b) regularly assess meteorological and air quality monitoring data to guide the day-to-day planning of operations and implementation of air quality mitigation measures to ensure compliance with the relevant conditions of this approval;
  - (c) minimise the air quality impacts of the project during adverse meteorological conditions and extraordinary events (see Note c to Table 3 above);
  - (d) monitor and report on compliance with the relevant air quality conditions in this approval; and
  - (e) minimise surface disturbance of the site, other than as permitted under this approval, to the satisfaction of the Secretary.

**Air Quality Management Plan**

- 7A. Within three months of the approval of Modification 2, the Proponent must prepare an Air Quality Management Plan for the project to the satisfaction of the Secretary. This plan must:
- (a) be prepared by a suitably qualified and experienced person/s whose appointment has been endorsed by the Secretary;
  - (b) be prepared in consultation with the EPA;
  - (c) describe the measures to be implemented to ensure:
    - (i) compliance with the air quality criteria and operating conditions in this approval;
    - (ii) best practice management is being employed; and
    - (iii) air quality impacts of the project are minimised during adverse meteorological conditions and extraordinary events;
  - (d) describe the air quality management system; and
  - (e) include an air quality monitoring program that:
    - (i) is capable of evaluating the performance of the project against the air quality criteria;
    - (ii) adequately supports the air quality management system; and
    - (iii) includes a protocol for identifying any air quality-related exceedance, incident or non-compliance and for notifying the Department and relevant stakeholders of these events.

The Proponent must implement the Air Quality Management Plan as approved by the Secretary.

19. In condition 9 of Schedule 3, delete the words "Table 6" and insert the words "Table 4".
20. In conditions 18, 27 and 32 of Schedule 3:
- a) after the word "prepare" delete the words "and implement"; and
  - b) after the last paragraph, insert the words "The Proponent must implement the plan as approved by the Secretary".
21. Delete condition 25 of Schedule 3 and replace with the following:

25. The Proponent must rehabilitate the site to the satisfaction of the Secretary. This rehabilitation must be generally consistent with the proposed rehabilitation activities described in the documents listed in condition 2 of Schedule 2 and comply with the objectives in Table 5.

**Table 5: Rehabilitation Objectives**

Feature	Objective
All areas of the site affected by the project	<ul style="list-style-type: none"> <li>• Safe</li> <li>• Hydraulically and geotechnically stable</li> <li>• Non-polluting</li> <li>• Fit for the intended post-quarrying land use/s</li> <li>• Final landform integrated with surrounding natural landforms as far as is reasonable and feasible, and minimising visual impacts when viewed from surrounding land</li> </ul>
Surface infrastructure	<ul style="list-style-type: none"> <li>• Decommissioned and removed, unless otherwise agreed by the Planning Secretary</li> </ul>
Void lake	<ul style="list-style-type: none"> <li>• Water retained on the site maintains long-term water quality objectives fit for the intended post-mining purpose</li> <li>• Water discharged from the site is suitable for receiving waters, aquatic ecology and riparian vegetation</li> </ul>

22. In condition 28 of Schedule 3:
- a) delete the word “and” at the end of paragraph (f);
  - b) delete the full stop at the end of paragraph (g) and insert the following:
    - i) ; and
    - h) a monitoring and reporting program of the project’s impacts on Koalas, including road strike to the satisfaction of the Secretary; and
    - i) adaptive management options for managing impacts on Koalas, including specific impact triggers, developed in consultation with Council.
24. After condition 35 of Schedule 3, insert the following:

**Road Maintenance**

- 35A. Within 12 months of approval of Modification 2, unless otherwise agreed by the Secretary, the Proponent must implement and pay the full cost of implementing the recommended treatments listed in Table 3 of the *Independent Road Safety Audit* prepared by Bitzios Consulting and dated 16 October 2017, and outlined in the Proponent’s *Response to Road Safety Audit* dated March 2018, to the satisfaction of Council, including any additional line marking and signage requested by Council.

*Note: The Proponent must obtain all necessary approvals under section 138 of the Roads Act 1993 from Council before implementing the recommended treatments.*

**Traffic Management Plan**

- 35B. The Proponent must prepare a Traffic Management Plan for the project to the satisfaction of the Secretary. This plan must:
- (a) be prepared in consultation with RMS and Council;
  - (b) be submitted to the Secretary for approval prior to the commencement of operations under Modification 2, unless otherwise agreed by the Secretary;
  - (c) describe the processes in place for the management of trucks entering and exiting the site;
  - (d) include a Drivers’ Code of Conduct that details:
    - safe and quiet driving practices that must be used by drivers travelling to and from the quarry;
    - a map of the primary haulage routes highlighting critical locations for application of safe and quiet driving practices, including residential areas and school bus routes;
    - an induction process for drivers and regular toolbox meetings;
    - complaint resolution procedures;
    - any community consultation measures in respect of peak haulage periods; and
    - consideration of seasonal traffic and events;

- (e) describe the measures to be put in place to ensure compliance with the Drivers' Code of Conduct; and
- (f) propose measures to minimise the transmission of dust and tracking of material onto public roads from vehicles leaving the site.

The Proponent must implement the plan as approved by the Secretary.

25. In condition 45 of Schedule 3:
- a) delete "DII" and replace with "DRG"; and
  - b) in paragraph (a) delete "date" and replace with "data".
26. In condition 5 of Schedule 4, delete the paragraph beginning with "If the matter cannot".
27. In condition 1 of Schedule 5:
- a) in the main heading delete "STRATEGY";
  - b) below the main heading, insert the subheading "**Environmental Management Strategy**";
  - c) delete the words "and implement" after the word "prepare";
  - d) at the end of the last dot point in paragraph (f) delete the word "and";
  - e) re-letter paragraph "(e)" as "(g)"; and
  - f) delete the full stop at the end of paragraph (g) and insert the following:

; and

(h) include:

- reference to any strategies, plans and programs approved under the conditions of this approval; and
- a clear plan depicting all the monitoring to be carried out under the conditions of this approval.

The Proponent must implement the strategy as approved by the Secretary.

28. After condition 1 of Schedule 5, insert the following:

#### **Management Plan Requirements**

- 1A. The Proponent must ensure that the management plans required under this approval are prepared in accordance with any relevant guidelines, and include:
- (a) a summary relevant background or 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 project or any management measures;
  - (c) a description of the measures that to 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 project; and
    - effectiveness of any management measures (see (c) above);
  - (e) a contingency plan to manage any unpredicted impacts and their consequences and to ensure that ongoing impacts reduce to levels below relevant impact assessment criteria as quickly as possible;
  - (f) a program to investigate and implement ways to improve the environmental performance of the project 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.*

#### **Revision of Strategies, Plans & Programs**

- 1B. Within 3 months of the submission of:

- (a) an incident report under condition 4 below;
- (b) an Annual Review under condition 5 below;
- (c) an audit report under condition 6 below; and
- (d) any modifications to this approval,

the Proponent must review the strategies, plans and programs required under this approval, to the satisfaction of the Secretary. The Proponent must notify the Department in writing of any such review being undertaken. Where this review leads to revisions in any such document, then within 6 weeks of the review the revised document must be submitted for the approval of the Secretary.

**Note:** *The purpose of this condition is to ensure that strategies, plans and programs are regularly updated to incorporate any measures recommended to improve environmental performance of the project.*

29. After condition 4 of Schedule 5, insert the following:

**REGULAR REPORTING**

- 4A. The Proponent must provide regular reporting on the environmental performance of the project on its website, in accordance with the reporting arrangements in any plans or programs approved under the conditions of this approval.

30. In condition 5 of Schedule 5:

- a) in the heading, delete “REPORTING” and replace with “REVIEW”; and
- b) delete “EA” and insert the words “documents listed in condition 2 of Schedule 2”.

31. In condition 6 of Schedule 5

- a) after the word “commission” insert the word “, commence”;
- b) in paragraph (e), delete the words “and, if necessary,”; and
- c) at the end of paragraph (f) delete the full stop insert the following:

;and

- (g) be conducted and reported to the satisfaction of the Secretary.

32. Delete conditions 7 and 8 of Schedule 5 and insert the following:

7. Within three months of commencing an Independent Environmental Audit, or within another timeframe agreed by the Secretary, the Proponent must submit a copy of the audit report to the Secretary, and any other NSW agency that requests it, together with its response to any recommendations contained in the audit report, and a timetable for the implementation of the recommendations. The recommendations must be implemented to the satisfaction of the Secretary.

**Monitoring and Environmental Audits**

8. Any condition of this approval that requires the carrying out of monitoring or an environmental audit, whether directly or by way of a plan, strategy or program, is taken to be a condition requiring monitoring or an environmental audit under Division 9.4 of Part 9 of the EP&A Act. This includes conditions in respect of incident notification, reporting and response, non-compliance notification, compliance report and independent audit.

**Note:** *For the purposes of this condition, as set out in the EP&A Act, “monitoring” is monitoring of the project to provide data on compliance with the approval or on the environmental impact of the project, and an “environmental audit” is a periodic or particular documented evaluation of the project to provide information on compliance with the approval or the environmental management or impact of the project.*

33. In condition 9 of Schedule 5:

- a) delete the words “Guidelines for Establishing and Operating Community Consultative Committees for Mining Projects (Department of Planning, 2007, or its latest version)” and replace with “Department’s Community Consultative Committee Guidelines: State Significant Projects (2016)”;
- and
- b) after the paragraph, insert the following notes:

**Notes:**

- *The CCC is an advisory committee only.*
- *In accordance with the guidelines, the committee should comprise an independent chair and appropriate representation from the Proponent, Council and the local community.*

34. Delete condition 11 of Schedule 5 and replace with the following:
11. For the life of the project, the Proponent 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;
    - all approved strategies, plans and programs required under the conditions of this consent;
    - a comprehensive summary of the monitoring results of the development, reported in accordance with the specifications in any conditions of this consent, or any approved plans and programs;
    - a complaints register, updated monthly;
    - the Annual Reviews of the project;
    - any independent environmental audit as described in condition 6 above, and the Proponent's response to the recommendations in any audit; and
  - (b) any other matter required by the Secretary; and
  - (c) keep this information up-to-date, to the satisfaction of the Secretary.
35. Delete Appendix 4.
36. Update the Table of Contents to reflect the above changes.