



6 November 2018

Ms Carolyn McNally  
Secretary  
Department of Planning and Environment  
GPO Box 39  
Sydney NSW 2001

Dear Carolyn

**Determination of Dunloe Park Sand Quarry Modification 2 (MP 06\_0030)**

1. Thank you for the Department of Planning and Environment's (the **Department**) letter, received on 8 August 2018, referring the above modification application to the Independent Planning Commission NSW (the **Commission**) for determination. The Commission has determined the modification application (the **application**) in accordance with the Minister's delegation dated 14 September 2011 owing to a written comment objecting to the modification application made by Tweed Shire Council (the **Council**) on 8 June 2018.
2. The project is a transitional Part 3A project under Schedule 2 of the *Environmental Planning and Assessment (Savings and Transitional and Other Provisions) Regulation 2017*. On 1 March 2018, the *Environmental Planning and Assessment Act 1979 (EP&A Act)* was amended, and the ability to modify transitional Part 3A projects under section 75W of the EP&A Act is being discontinued; however, as the modification application was lodged before 1 March 2018, the provisions of Schedule 2 continue to apply.
3. Professor Mary O'Kane, AC, Chair of Commission, nominated Dr. Peter Williams (Chair) and Prof. Richard Mackay, AM to constitute the Commission to determine the modification application.
4. According to the Department's Environmental Assessment Report dated 8 August 2018 (**Department's EAR**), the Dunloe Park Sand Quarry (**the development**) was granted project approval MP 06\_0030 on 24 November 2008 to undertake sand extraction operations until 1 January 2035. The current conditions of approval restrict transportation of sand from the site to 300,000 tonnes per annum (**tpa**) at a maximum rate of eight heavy vehicle movements per hour.
5. Holcim Australia Pty Ltd (the **proponent**) seeks approval to modify the development, to increase the maximum number of truck movements to and from the site, from 8 to 24 movements per hour (modification **application**). The proponent is not proposing to increase the total volume of sand transported from the site, nor the operating hours of the quarry.
6. The Department's EAR states that the modification application was received from the proponent on 4 April 2017 and it was made publicly available on its website from 27 June 2017 to 10 August 2017. The Department received submissions from the Department of Resources & Geoscience (**DRG**), the Office of Environment & Heritage (**OEH**), and Council. The Department also received one public submission during the exhibition period objecting to the modification application.

7. After the public exhibition period concluded, the Department received submissions from the Department of Primary Industries (**DPI**) and Roads and Maritimes Services (**RMS**). None of the Government agencies or the Council objected in their comments; however, RMS advised that there were some outstanding issues in relation to the proponent's Traffic Impact Assessment dated July 2017, and also recommended that Holcim prepare a Road Safety Audit (**RSA**). These issues were subsequently addressed by the proponent.
8. On November 2017, the proponent provided a Response to Submissions (**RtS**) in relation to the issues raised in submissions from agencies, including RMS, Council and DRG. The RtS also sought to address the matter raised in the public submission.
9. The proponent later provided a response to Road Safety Audit (**rRSA**) dated March 2018. On 30 April 2018, the Council lodged a comment in response to the rRSA. All agencies were satisfied with the information except for Council. In June 2018, the proponent provided to the Department a further response to Council's concerns. Subsequently, the Department received on 8 June 2018, an additional written communication from Council, in which Council objected to the modification application.
10. The Department's EAR identified the key issues associated with this modification application to be:
  - traffic and safety;
  - noise;
  - koala habitat; and
  - air quality.
11. As part of its determination the Commission met with the Department, and the proponent on 3 August 2018, and met with Council on 9 August 2018. The Commission also undertook a site inspection on 9 August 2018, during which the Commission had regard to areas of koala habitat as identified in the proponent's Koala habitat map. Notes from these meetings and site inspection are available on the Commission's website.
12. On 9 August 2018, the Commission met with Council and its Councillors who raised issues on the modification application and explained that one reason for its objection was concern over an error in the Department's advertisement of the modification application during the notification period. The Councillors recommended that the modification application be re-notified as the Department had not accurately described the modification application.
13. The Commission wrote to the Department on 16 August 2018 to comment on Council's objection. The Department responded on 23 August 2018. The Commission considered this response but decided that the modification application should be re-notified. On 5 September 2018 the Commission requested the Department to re-notify the modification application. On 13 September 2018, the Department contacted the Commission informing that the modification application would be re-notified from 27 September 2018 to 11 October 2018.
14. The Department re-notified the modification application from 27 September 2018 to 10 October 2018 (the **re-notification period**) and received eight submissions from the community including one special interest group objecting to the proposed modification. The Department also received a submission from Tweed Shire Council maintaining its objection to the proposed modification. None of the Government agencies provided comments.

15. After the re-notification period concluded, the Department received an additional sixteen submissions from the community.
  
16. On 30 October 2018, the Department provided a Re-exhibition and Assessment Addendum report (**Department's addendum**) to its original Department's EAR. The Department's addendum included, at Attachment C, a letter from the proponent dated 15 October 2018, expressing concerns about some of the proposed consent conditions. The Department's addendum stated that the original assessment report had addressed the majority of the matters raised in submission during the renotification period, and maintained its position that *"the increased truck numbers do not result in exceedances of the noise or air quality criteria currently applicable to Dunloe Park Sand Quarry and that the existing road network can absorb the increased heavy vehicle movements without compromising the safety of other road users or causing significant impact on Koalas."*
  
17. The information provided to the Commission, to carry out this determination is listed below:
  - project approval for the original determination of MP 06\_0030;
  - the modification application;
  - the proponent's Environmental Assessment (**EA**) and Appendices A-F, dated July 2017
  - the Traffic Impact Assessment (**TIA**) dated July 2017; the addendum to the Traffic Impact Assessment (**aTIA**) dated November 2017;
  - the Dunloe Sands Quarry Pottsville Road Safety Audit (**RSA**) dated October 2017; the Response to Road Safety Audit (**rRSA**) dated March 2018;
  - the proponent's RtS dated November 2017;
  - the proponent's Koala habitat map named Koala Habitat Mapping – 22\_18823\_Z004Koala;
  - the Department's EAR, dated 8 August 2018, and the Department's addendum to its EAR, dated 30 October 2018;
  - the letter from the proponent dated 15 October 2018,
  - the proposed Modification Instrument (MP 06\_0030 MOD 2), the Department's letter dated, 23 August 2018, and subsequent email dated 13 September 2018 to arrange a re exhibition of the proposal,
  - the initial public submission, dated 30 July 2017,
  - eight public submissions received during the re-notification period and sixteen public submissions received subsequent to the re-notification period;
  - Council's submission, dated 9 August 2017, and subsequent comments dated February 2018, 30 April 2018, 6 July 2018, and 17 October 2018;
  - DRG's submission, dated 04 August 2017;
  - OEH's submission, dated 07 August 2017;
  - DPI's submission, dated 14 August 2017;
  - RMS's submission, dated 15 August 2017 and December 2017; and
  - section 75W of the EP&A Act and the public interest.

#### *Public Comments*

18. According to the Department's EAR and addendum, and as noted by the Commission's own review, public comments raised concerns in relation to traffic impacts, impacts on Koalas, noise and air quality impacts, and the use of section 75W of the EPA Act to assess the proposed modification. These concerns included:
  - increased truck movements would further deteriorate the condition of Pottsville Road;
  - Pottsville Road has poor sightline because of overgrown vegetation;
  - additional dust and road noise would further impact the amenity of nearby residents;
  - the proposed modification would increase impact on Koalas, including potential road strike mortality and stress from noise and dust;

- the proponent’s traffic impact assessment and justification are inadequate;
- inadequate consideration of other traffic issues such as potential future residential development and music festivals;
- inconsistency with land use mapping;
- lack of consideration of the *Commonwealth Environmental Protection Biodiversity Conservation Act 1999*;
- the use of section 75W of the *Environmental Planning and Assessment Act 1979*; and
- concerns over the behaviour of truck drivers.

#### *Council’s Comments*

19. Council commented on various aspects of the modification application, including the recommendations resulting from the RSA and the rRSA. In its written comment to the Department, dated 30 April 2018, Council advised the Department that *“Council does not support the recommendations of the RSA (which include significant tree clearing). Rather, it is considered appropriate that the Clear Zone provisions in GHD’s draft Response to the RSA, dated March 2018 (as noted above) be adopted for the proposed development, with additional signage warning motorists that trucks may be entering the priority road.”* In its written comment to the Department, dated 6 July 2018, Council stated that *“no further traffic issues are raised by Council, subject to the imposition of ... Condition 35”* which related to road maintenance.
20. In item 5 of its comments of 6 July 2018, Council stated that it objected on the grounds of *“Significant concerns with traffic intensity on these local roads, including impacts on the residential amenity of existing residents and the future Dunloe Park development, and impacts on koalas including koalas crossing the road during the day;”* and recommended:
- *“That another Exhibition Notice be advertised, allowing for a further 14 day submission period, so that the misleading information contained in the original Exhibition Notice can be rectified and the general public be given an opportunity to respond.*
  - *That the proposal to triple the number of truck movements be considered a ‘radical transformation’ and that section 75W cannot be relied upon because the proposed changes cannot be considered a ‘modification’.”*
21. At the Commission’s meeting with Council held on 9 August 2018, Council officers indicated to the Commission that, at officer level, they were satisfied with the outcome of discussions with the Department over the modification and the proposed conditions.
22. During the meeting on 9 August 2018, the Council conveyed to the Commission that the remaining outstanding concerns of Council related to item 5, which reflected the Councillors’ concerns about the traffic and amenity impacts, and potential Koala habitat impact and road strike. The Councillors also recommended that the modification application be re-exhibited owing to inaccurate information contained in the Department’s notification advertisement. During the meeting, the Councillors stated their position that, regardless of any conditions of consent that may address their concerns, the Council objected to *“additional trucks on roads”* resulting from the modification application.

### *Proponent's Considerations*

23. The proponent's TIA, prepared by GHD, assessed the potential traffic impacts resulting from the modification application. The TIA concluded that *"the traffic impacts associated with the proposed modification would be minimal and can be accommodated within the surrounding network. The current access arrangement for the site (via a basic left turn lane on Pottsville Road) is considered appropriate to accommodate the additional heavy vehicle activity associated with the modification."*
24. The proponent's EA for the modification application concluded that *"The proposed modification is considered to be substantially the same development as that approved under Project Approval 06/-0030 as it would not alter the operation or intensify activities beyond the current approved development."* It also concluded that:
- *"Based upon the current peak hour traffic volumes on Pottsville Road, there is adequate capacity to absorb the additional heavy vehicle movements without additional traffic control. The current road access arrangement is considered appropriate to accommodate additional heavy vehicle activity.*
  - *Increasing the number of trucks at the quarry from four trucks per hour to a maximum of twelve trucks per hour would result in compliance with relevant noise criteria. The results from noise modelling demonstrate that the modified proposal is expected to comply with both the Project Approval criteria and RNP criteria at all nearby sensitive receivers.*
  - *Increases in dust from twelve trucks inbound and twelve trucks outbound per hour are minimal and no significant additional impacts are expected."*
25. The proponent's RtS, dated November 2017, included an RSA, prepared by Bitzios Consulting and an addendum to the TIA (aTIA), seeking to address RMS and Council comments and requirements, in relation to the TIA. The RSA identified a number of safety concerns and proposed a range of recommendations, which included vegetation clearing to improve sightlines at the Pottsville Road intersection for safety reasons.
26. Subsequent to the RSA, the proponent provided an rRSA, seeking to address the recommendations in the RSA and the December 2017 RMS comments. The rRSA included a second option, as part of the improvement of sightlines, where no vegetation removal and tree clearing would be undertaken in the Pottsville Road reserve, and so avoid Koala habitat impacts as raised by Council.
27. Following discussions with the Department, the proponent provided a letter dated 15 October 2018, setting out its concerns with proposed consent conditions relating to noise criteria, air quality monitoring and a proposed change to the rehabilitation bond.
28. In relation to noise criteria the proponent submitted that the proposed conditions *"set the compliance threshold much lower than the current consent"*, and that the proposed criteria would be *"well below current condition criteria and standard industry limits and seem unrelated to managing the environmental impacts associated with the modification."*
29. With respect to air quality, the proponent submitted that *"Given the modification does not propose an increase to the approved extraction limit for the site and that the existing access road to the site is fully sealed thereby minimising dust generated by truck movements, there is no more dust generated in the proposed modification than previously approved for the operation."*
30. With respect to the rehabilitation bond the proponent submitted that *". . . the modification to alter the schedule of truck movements has no bearing on rehabilitation of the site, and the rehabilitation bond currently held by the government is considered to be sufficient."*

## Department's Considerations

31. The Department's EAR stated that *"the proposal would not change any of the core elements of the project, including the approved extraction limits, quarrying methods, operational hours, or annual extraction volumes and processing rates. Consequently, the Department is satisfied that the proposed modification is within the scope of section 75W, and may be determined accordingly."*
32. The Department's EAR stated that *"there would be no increase in the maximum allowable number of trucks on the haulage route over the course of a year. Rather, the modification seeks to allow flexibility in the number of trucks that can be dispatched in any hour."*
33. The Department's EAR noted Council's concerns over the RSA recommendation for vegetation removal, including tree clearing to improve sight distances, and accepted that *"option two is generally appropriate as it avoids vegetation clearing that could potentially impact Koala habitat and improves motorist's awareness of the Pottsville Road / access road intersection."*
34. To address Council's concern in paragraph 19, the Department's EAR recommended that *"road safety treatments are implemented within 12 months of the date of approval of the proposed modification;"* which is represented in proposed condition 35A within the modification instrument, and would include the recommended treatments listed in the RSA and in the proponent's rRSA.
35. The Department's EAR also recommended that the proponent *"prepare and implement a contemporary Traffic Management Plan in consultation with Council and RMS;"* that must include among various requirements, a Drivers' Code of Conduct.
36. The Department's EAR concluded that *"the proposed additional truck movements could be accommodated on the existing road network, and that any potential road safety impacts would be mitigated by implementing the road treatments identified in the RSA and Holcim's additional report."* The Department's EAR also stated, *"The Department is satisfied that, subject to the recommended conditions of approval, the proposed modification would not adversely impact road traffic and safety."* In addition, the Department's addendum reiterated that it was *"satisfied that Pottsville Road can accommodate the additional truck movement while maintaining an acceptable level of service for all road users."*
37. In relation to koala habitat, the Department's EAR stated that *"there is a need to balance protection of Koala habitat with ensuring the safety of the road for all users"* and recommended that *"Holcim implement the recommendations of the RSA ... to the satisfaction of Council."*
38. In relation to road strike and impact on koalas, the Department's EAR stated *"OEH did not raise concerns about Koala mortality, as Dunloe's daytime-only operations pose a low possibility of road strike against animals which generally only move nocturnally. OEH recommended conditions requiring a monitoring program for Koala strike as well as adaptive management options. The Department has recommended a condition to this effect."* In addition, the Department's addendum stated *"The increased trucking provides only 8% increase in heavy vehicles and 3.6% increase in total vehicles using Pottsville Road. Therefore, the Department considers that the proposed modification is unlikely to cause significant stress to Koalas due to noise and dust generation."*
39. The Department's EAR has recommended:
  - *"requirements for monitoring Koalas and recording of road strike incidences and taken the opportunity to update existing conditions to reflect current drafting standards, including providing further clarity on compliance and consultation requirements;"*
  - *"that Holcim prepare and implement a contemporary Traffic Management Plan that details*

*all management measures that Holcim would implement to reduce road noise emissions;”*

- *“that the approval be amended to include contemporary air quality operating conditions and a requirement for Holcim to prepare a contemporary Air Quality Management Plan.”*

40. In relation to the concerns raised that there was no assessment or reference to the *Environmental Protection Biodiversity Conservation Act 1999 (EPBC Act)* as Koalas are listed as vulnerable species under this Act, the Department’s addendum stated that:

*“The Commonwealth Significant Impact Guideline 1.1 states that an action is likely to have a significant impact on a vulnerable species if there is a real chance or possibility that it will:*

- *lead to a long-term decrease in the size of an important population of a species;*
- *reduce the area of occupancy of an important population;*
- *fragment an existing important population into two or more populations;*
- *adversely affect habitat critical to the survival of a species;*
- *disrupt the breeding cycle of an important population;*
- *modify, destroy, remove or isolate or decrease the availability or quality of habitat to the extent that the species is likely to decline;*
- *result in invasive species that are harmful to a vulnerable species becoming established in the vulnerable species’ habitat;*
- *introduce disease that may cause the species to decline; or*
- *interfere substantially with the recovery of the species.*

*Based on the above definitions and the Department’s assessment of the proposal, it is considered unlikely that the proposed increase in trucking levels would result in increased mortality to Koalas to the extent that it could be considered a significant impact. In determining whether a proposal is a controlled action or not, the onus is on the Proponent to refer to the Commonwealth. The Department notes that Holcim has not referred this proposal to the Commonwealth.”*

41. In its addendum report, the Department further reiterated the argument in paragraph 38 above and the recommendations in paragraph 39, also above. In addition, the addendum report stated that *“Noise generated by quarry operations must comply with the criteria in the approval”*. Further, the cover letter to the addendum report specifically advised that the Department does not agree to the request to retain the existing noise criteria, as noted in paragraph 28 above, noting that *“the site can achieve the proposed noise criteria and that the previous criterion of 48dB(a) was based on background noise levels that were not reflective of the noise environment at sensitive receivers”*. To strengthen noise management, The Department’s addendum report recommended:

- *“current standard operating conditions requiring Holcim to implement best practice management to minimise the construction, operational and road transportation noise of the development;”* and
- *“contemporary operating and management plan conditions, as well as reduced noise criteria for some receivers based on contemporary background monitoring”*

42. In relation to the objects of the EP&A Act, the Department’s EAR stated *“The Department is satisfied that the proposed modification encourages the proper management and development of resources (object 1.3(a)) and the promotion of the orderly and economic use of land (object 1.3(c)), since the modification:*

- *involves permissible land use on the subject land;*
- *does not alter the existing quarry site or transport infrastructure; and*
- *maintains socio-economic benefits to the community of NSW.”*

43. In relation to the principles of ecologically sustainable development (ESD, object 1.3(b)), the Department’s EAR stated that *“quarrying operations would remain consistent with the principles of ESD under the proposed modification. The Department’s assessment has sought to integrate all*

*significant environmental, social and economic considerations.”*

44. The Department’s EAR also stated that *“Consideration of the protection of the environment and heritage (Objects 1.3 (e) and (f))”* was provided in Section 5.1 of its EAR and considered that *“the modification as proposed would not introduce additional impacts on items of Aboriginal cultural heritage significance. The Department also considers that there will be little (if any) additional direct disturbance to threatened biodiversity.”*

*Commission’s consideration*

45. The Commission is satisfied with the Department’s consideration and assessment of the application of section 75W to the modification and accepts the Department’s conclusions outlined in paragraph 31 above, because the modification application does not change the core components of the development.
46. The Commission notes that Council did not raise further traffic impacts in its comments following review of the RSA and rRSA for the modification application, as discussed in paragraph 19. It is satisfied that Council’s recommendation in relation to road maintenance conditions from its submission dated 30 April 2018, has been included in the conditions, as discussed in paragraph 34. For these reasons, the Commission accepts the Department’s conclusion that the proposed modification would not adversely impact road traffic and safety, as discussed in paragraph 36.
47. The Commission notes that Council did not support the recommendations of vegetation removal, which includes tree clearing, recommended in the RSA, and preferred the second option presented by the proponent in its rRSA, as discussed in paragraphs 19 and 26. The Commission also notes that the Department supported this second option as discussed in paragraph 33.
48. The Commission notes that at the meeting with Council, the concerns of Council officers had been adequately addressed by the Department, as discussed in paragraph 21. The Commission also notes that Councillors still objected to the modification, as discussed in paragraph 22. The Commission finds that Department has adequately addressed Council’s concerns as discussed in paragraphs 32-39.
49. The Commission accepts the proponent’s conclusion, as discussed in paragraph 24, and the Department’s conclusion, as discussed paragraph 36, that the proposal will not change any of the core elements of the project, as discussed in paragraph 31, and that the modification seeks to allow flexibility in the number of trucks that can be dispatched in any a hour, rather than an increase in the total allowable number of trucks, as discussed in paragraph 32.
50. The Commission also accepts the proponent’s position, as discussed in paragraphs 29 and 30 , that the modification does not propose an increase to the approved extraction limit for the site and therefore concludes that no changes to existing conditions relating to air quality or any adjustment to the rehabilitation bond are required.
51. The Commission is satisfied and accepts the Department’s recommendation for the proponent to implement the recommendations of the RSA on koala habitat, because the Department’s proposed condition required that these be implemented to the satisfaction of Council, as discussed in paragraph 37, ensuring koala habitat is protected along with the safety of the road for all users.
52. The Commission is satisfied that the Department has included OEH’s recommendation on a monitoring program for koala strike as well as adaptive management options, and accepts the Department’s recommendations in paragraph 38-39 because the proponent’s daytime-only

operations pose a low possibility of road strike against koalas, which generally only move nocturnally.

53. The Commission is satisfied and accepts that the Department has included conditions to require the proponent to prepare and implement a contemporary Traffic Management Plan to reduce road noise emissions; as well as a requirement to prepare a contemporary Air Quality Management Plan and contemporise the air quality operating conditions, as discussed in paragraph 39.
54. The Commission is satisfied and accepts that the Department has included contemporary operating and management plan conditions, as well as reduced noise criteria for some receivers based on contemporary background monitoring, as discussed in paragraphs 35, 39 and 41.
55. In determining the public interest merits of the proposed modification, the Commission has had regard to the objects of the EP&A Act.
56. The Commission accepts that the modification application:
  - is in the public interest because the concerns raised by the public submission in paragraph 18, have been adequately addressed through conditions of consent; as discussed in paragraphs 32, 33, 35, and 39; and
  - is in accordance with the objects of the EP&A Act, as listed under section 1.3 (a), (b), (c) and (e) because:
    - it encourages the proper management and development of resource, as per the Department's assessment and reasons as discussed in paragraph 42;
    - it promotes the orderly and economic use of land, as per the Department's assessment and reasons as discussed in paragraph 42;
    - it would remain consistent with the principles of an ecologically sustainable development, as per the Department's assessment and reasons as discussed in paragraph 43; and
    - contributes to the protection of the environmental and heritage protection, as it would not introduce additional impacts on items of Aboriginal cultural heritage significance and little, if any, additional direct disturbance to threatened biodiversity as discussed in paragraph 44.
57. Therefore, the Commission has determined to approve the modification application, subject to the attached modification instrument, for the following reasons:
  - the modification application would not significantly change the core elements of the project, and that it is within the scope of section 75W, as discussed in paragraphs 31, 45 and 49;
  - the modification would have limited environmental impacts, and that these impacts can be managed by conditions of consent, as outlined in paragraphs 33 to 35;
  - would not adversely impact road traffic and safety, as outlined in paragraphs 34-36;
  - koala habitat will not be cleared, as discussed in paragraph 37 and 52;
  - koala road strike will be monitored and managed through a monitoring program, as discussed in paragraph 38 and 52;
  - noise and air quality impacts will be managed through the Department's recommendations, as discussed in paragraph 39 and 53;
  - the project is consistent with ESD principles and is in the public interest, as outlined in paragraph 56.

58. As noted above at paragraph 57, setting out its decision, the Commission has determined that the consent should be approved subject to conditions. These conditions are designed to:
- prevent, minimise, and/or offset adverse environmental impacts including economic and social impacts;
  - set standards and performance measures for acceptable environmental performance;
  - require regular monitoring and reporting; and
  - provide for the ongoing environmental management of the development.

The reasons for the Decision are given in this Statement of Reasons for Decision dated 6 November 2018.



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



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

cc.           The Hon. Anthony Roberts, MP  
              Minister for Planning  
              GPO Box 5341  
              Sydney NSW 2001