

GALES-KINGSCLIFF PTY LTD

ACN 093540080

20 Ginahgulla Rd Bellevue Hill NSW 2023

9 March 2018

The Director
Resource Assessments
Department of Planning & Environment
GPO Box 39
SYDNEY NSW 2001

Re: Request for Section 4.55(1) Modification Due to Miscalculation

Cudgen Lakes Sand Quarry – Project Approval 05_0103

Dear Sir,

We refer to the attached Request for Section 4.55(1) Modification Due to Miscalculation and this letter providing details for requesting expeditious consideration.

The reason for the request has arisen because Bitzios (2018) has identified that the existing intersections perform adequately under the predicted traffic levels for 2028, inclusive of the approved traffic levels associated with both the Hanson Tweed Sand Quarry and the Cudgen Lakes Sand Quarry, and the requirement for Gales to upgrade the intersections before export of any sand was applied because of a minor error and miscalculation.

It seems virtually beyond any possibility that Bitzios could be in error in this finding since Bitzios also finds that the existing intersections will perform adequately with the addition of the significant extra traffic sought by Hanson MOD1, being from 285,000tpa to 503,500tpa.

In examining the Veitch Lister Consulting (VLC) findings used in Gales Project Approval (2007) it is now apparent that VLC used an excessively conservative approach, and erred in allowing the 7.5% rate to continue compounding. There is always a balance in using projections, and VLC appears to have been excessively conservative, which can be contrasted with the approach taken by Bitzios, which has not taken into calculation in Hanson MOD1 the approved developments at Cudgen now in development.

In light of the above, the **Request for Section 4.55(1) Modification Due to Miscalculation** from RW Corkery, and the information now available to the Department, we ask that this requested modification to Project Approval 05_0103 be urgently processed so as to allow Gales to commence seeking markets and exporting sand products by road.

This has been prevented as a result of the prohibitive cost of the conditions applied (upgrading the intersections prior to despatch of sand by road), which had to be carried out without Gales yet having any established market, or any prior or ongoing income from the Quarry. In contrast Hanson benefits from its existing approval of 285,000tpa, sold into its established market with prior and ongoing income.

Gales Project Approval 05_0103 was determined on 16 June 2009 and due to the minor error and miscalculation, Gales was required to upgrade the intersections, this now being known to be unnecessary.

In the interests of reasonableness, equitableness and conscionability, this S4.55(1) Modification should be determined expeditiously, prior to and independent of Hanson's MOD1 (2016/2017) for reasons including:

1. Because of Bitzios findings there can be no reasonable doubt that upgrade of the intersections is not necessary for the approved level of sand export from Gales Cudgen Lakes Sand Quarry and Hanson Tweed Sand Quarry i.e. excluding the as yet unapproved increase from 285,000tpa to 503,500tpa that Hanson MOD1 seeks through the same un-upgraded intersections.
2. Gales has suffered significant commercial detriment through not being able to export sand due to the requirements now known to be unnecessary.
3. From the Bitzios reports there is a level of uncertainty about the need for upgrade of the intersections for Hanson MOD1, including whether the impact of the Cudgen residential developments now under construction should be included in the traffic assessment.
4. There is uncertainty and inconsistency between and within the various Bitzios reports, including between Bitzios (2018) and the Bitzios report for DA 18/0037, which concerned heavy trucks accessing Tweed Coast Road from a private driveway a short distance north of Crescent Street.
5. It might be concluded that a further review of traffic modelling is required for Hanson MOD1.
6. Any extra traffic not already approved, including Hanson MOD1, must require careful consideration of the impact of the extra traffic and possible long term consequences on the future use of the area, which has been identified in Gales AJC Master plan (2007) for sportsfields and lakeside recreation, similarly in Gales RobertsDay Masterplan (2015) for similar uses and also residential development, and in Council's current Kingscliff Locality Plan for similar uses.
7. There is the possibility that Hanson MOD1 was not validly exhibited, and the Bitzios report is now significantly different.
8. There can be no certainty that Hanson MOD1 will be approved, or if so with what conditions, or how long that might take.

In contrast to this (Gales) request for modification, Hanson MOD1 has many serious issues that require consideration in order to be properly assessed, those above and others which are detailed in Gales response to Hanson MOD1 which is expected to be forwarded to the Department and stakeholders on Monday 12 March, the next business day after this communication.

The Hanson modification (MOD1) application that seeks additional traffic movements (related to an increase in their production from 285,000tpa to 503,500tpa) remains before the Department with serious questions and uncertainties, while Gales modification relates to an approval in 2009 but never commenced for the reasons above.

Gales has suffered very great commercial disadvantage and wishes to commence testing the market with a view to exporting sand products without delay.

It is requested that the Gales modification be considered expeditiously.

As the Department will appreciate, the modification that Gales seeks simply puts the parties in the position they would have been but for the minor errors and miscalculation, and thus does not in any way affect the natural rights and expectations of the parties with respect to further requests for traffic increases.

Yours faithfully

[sgn] S D Segal

Stephen Segal
Managing Director
Gales-Kingscliff Pty Ltd
0414 322455

Following:

Request for Section 4.55(1) Modification Due to Miscalculation from RW Corkery



9 March 2018

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**Request for Section 4.55(1) Modification Due to Miscalculation
Cudgen Lakes Sand Quarry – Project Approval 05_0103
S4.55(1) Modification Application – Update of Approval Conditions**

A. Introduction

This **Request for S4.55(1) Modification Due to Miscalculation** has been prepared for Gales-Kingscliff Pty Limited (Gales) for a modification of Project Approval 05_0103 in accordance with Section 4.55(1) of the *Environmental Planning & Assessment Act 1979*. The request has arisen following the identification of a minor error and miscalculation in the Cudgen Lakes 2007 assessment of traffic impacts by Veitch Lister Consulting (VLC), resulting in the inclusion within Project Approval 05_0103 of requirements to upgrade road intersections prior to despatch of sand by road, which can now be seen to be unnecessary.

This minor error and miscalculation have been identified in light of reporting by Bitzios Consulting (dated 15 February 2018) responding to concerns raised by Gales specifically in relation to the Bitzios assessment of the adequacy of the Altona Drive / Crescent Street and Crescent Street / Tweed Coast Road intersections (“the intersections”). These concerns were outlined in Gales submissions to the proposed production increase at the Hanson Tweed Sand Quarry.

Gales Project Approval 05_0103 included requirements for intersection upgrades, however, Bitzios (2018) identified that the performance of the existing Altona Drive / Crescent Street and Crescent Street / Tweed Coast Road intersections perform adequately under the predicted traffic levels for 2028, inclusive of the approved traffic levels associated with both the Hanson Tweed Sand Quarry and the Cudgen Lakes Sand Quarry. Furthermore, the report identifies that the intersections would also continue perform adequately with the additional traffic associated with the proposed Hanson production increase.

B. Conditions requested be removed from Cudgen Lakes approval

- PA 05_0103 *Schedule 3 Condition 34* (Road Works)

Prior to despatch of sand by road, the Proponent shall:

- Upgrade the intersection of Tweed Coast Road and Crescent Street for right turning vehicles to AUSTROAD CHR treatment; and*
- Upgrade the intersection of Tweed Coast Road and Crescent Street for left turning vehicles to AUSTROADS Figure 6.24 left turn treatment,*

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To the satisfaction of Council.

Note: In the event that the Tweed Coast Road is upgraded prior to the commencement of the despatch of sand by road, the Proponent shall pay \$105,000 (indexed annually by CCPI) to Tweed Shire Council as a contribution to intersection works on Tweed Coast Road and Crescent Street for trucks entering onto Tweed Coast Road from Crescent Street.

- Statement of Commitments Clause 12.9

Construct the upgraded intersection of Altona Drive and Crescent Street together with a short section of road to link with the existing Altona Drive and an additional two passing bays along the existing alignment of Altona Drive. Timing: Prior to despatch of products from the processing area or the receipt of VENM.

C. Reasons for S4.55(1) Modification

As noted, Bitzios (2018) has identified that the performance of the existing Altona Drive / Crescent Street and Crescent Street / Tweed Coast Road intersections perform adequately under the predicted traffic levels for 2028, inclusive of the approved traffic levels associated with both the Hanson Tweed Sand Quarry and the Cudgen Lakes Sand Quarry.

In light of this, we have reviewed the approach adopted by the VLC (2007) assessment for Cudgen Lakes which formed the basis for the intersection upgrades as conditioned. As a result of this review, we have identified a minor error and miscalculation in the VLC (2007) assessment relating to the following.

- VLC (2007) utilised a forecast growth rate of 7.5% per annum which has been established by Bitzios to be highly conservative over the time period applied. The actual traffic growth recorded from 2006 to 2016 was between 1.6% and 3.0% per annum for the morning and afternoon peaks respectively (as determined by Bitzios). It appears that VLC was in error in applying the 7.5% growth rate compounding annually, while it is now clear the growth should have been calculated with a reduced rate after a period. As a consequence, VLC (2007) miscalculated the projected traffic levels influencing the performance of the intersections.
- In addition, it is noted that the 'platooning' effect of the signalised intersection of Cudgen Road/Tweed Coast Road to the south of the Crescent Street/Tweed Coast Road was not considered in the VLC (2007) assessment. We note that this was also not considered in the Bitzios' reports prior to Bitzios (2018), in which it was first assessed. The platooning effect, with a cycle time of 95 seconds, was found to provide sufficient gaps in traffic for vehicles turning left from Crescent Street onto Tweed Coast Road.

Therefore, as the requirements relating to the upgrade of the intersections arose due to a minor error and consequent miscalculation, and Bitzios has found that the intersections do not need to be upgraded to support the approved traffic levels, we request that those requirements are removed from Project Approval 05_0103, specifically Schedule 3 Condition 34 and Statement of Commitment 12.9, as outlined above.

If you have any questions or would like to discuss the above, please do not hesitate to contact me.

Yours Sincerely



Scott Hollamby
Senior Environmental Consultant