

DATE OF DETERMINATION	6 May 2020
PANEL MEMBERS	Alison McCabe (Chair), Sandra Hutton, Juliet Grant and Paul LeMottee
APOLOGIES	Ryan Palmer
DECLARATIONS OF INTEREST	None

Public meeting held via teleconference on 6 May 2020, opened at 3:05pm and closed at 4:20 pm.

MATTER DETERMINED

PPSHCC-11 – Port Stephens Council – DA 16-2019-636-1 at 4226 Nelson Bay Road, Anna Bay – sand extraction (as described in Schedule 1)

PANEL CONSIDERATION AND DECISION

The panel considered: the matters listed at item 6, the material listed at item 7 and the material presented at meetings and briefings and the matters observed at site inspections listed at item 8 in Schedule 1.

The panel adjourned during the meeting to deliberate on the matter and formulate a resolution.

Development application

The panel determined to approve the development application pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979*, subject to the conditions in the Council report, amended as follows:

1. Under **2.0 – Prior to Issue of a Construction Certificate** Condition 11 to be deleted and replaced with the following:

(11) Biodiversity Management Plan – A Biodiversity Management Plan must be prepared for the approval of Council. The Biodiversity Management Plan may form part of a Construction Environmental Management Plan but will remain in force for the life of the project.

The Biodiversity Management Plan must identify the development site as per the Biodiversity Development Assessment Report (BDAR) and approved plans.

The Biodiversity Management Plan must identify all measures proposed in the BDAR to mitigate and manage impacts on biodiversity as outlined in Tables 9.1, 9.2 and 9.3 of BDAR (BIODIVERSITY DEVELOPMENT ASSESSMENT REPORT for a Proposed Sand Extraction Facility and Site Office/Manager's Residence at Lot 591 DP 1191380 Nelson Bay Road ANNA BAY NSW, prepared by WILDTHING Environmental Consultants, Job No. 12462, 9 March 2020).

The plan is to include but not limited to:

- Speed limits on access road;
- Induction of employees;
- Pest Management; and
- Exclusion fencing - suitable for koalas to climb over.

2. Under **4.0 – During Works** Condition 4 be deleted and replaced with the following:

(4) Placement of Fill – Filling must not be placed in such a manner that natural drainage from adjoining land will be obstructed or in such a manner that surface water will be diverted.

Any alterations to the natural surface contours must not impede or divert natural surface water runoff so as to cause a nuisance to adjoining property owners.

Fill placement must not occur on retained natural vegetation.

3. Under **6.0 – Ongoing Use** Conditions 2, 6 and 8 be deleted and replaced with the following:

(2) Hours of Operation – The property is only to be open for business and used for the purpose approved within the following hours:

Day	Hours of Operation
Monday	7:00am to 6:00pm
Tuesday	7:00am to 6:00pm
Wednesday	7:00am to 6:00pm
Thursday	7:00am to 6:00pm
Friday	7:00am to 6:00pm
Saturday	7:00am to 6:00pm
Sunday and Public Holidays	No works or activities to occur

Vegetation mulching, when conducted simultaneously with quarry operations, is restricted to the following periods:

- 8am to 9am and 4pm to 6pm weekdays; and
- 10am to 1pm on Saturdays.

Other internal operations such as cleaning, preparation, and office administration may be undertaken outside of the above hours provided no disturbance to the amenity of the neighbourhood occurs.

(6) Maximum Vehicle Movements – During quarrying operations, vehicle movements are restricted to a maximum of 5 heavy vehicles in and 5 heavy vehicles out per hour; and maximum of 40 heavy vehicles in and 40 heavy vehicles out per day.

(8) Extraction Limits – No more than 50,000 cubic metres a year shall be extracted and transported from the site. The proponent shall provide details to Council on an annual basis of actual quantities of materials that have been extracted and transported.

No resource extraction is to occur below natural ground level.

4. Under 5.0 Prior to Issue of Occupation Certificate, Condition 10 Operational Plan of Management be amended to include:

(j) The ongoing requirements of the Biodiversity Management Plan

5. Addition of the following condition under **6.0 Ongoing Use**:

No flood lighting is permitted to be erected on site. External lighting is to be for domestic purposes only.

6. Replace Consent Authority with Council in Condition 2.0 (9), 2.0 (10), 2.0 (11)

The decision was unanimous.

REASONS FOR THE DECISION

- The proposal is an appropriate use for the site
- The impacts of the proposal are able to be mitigated such that the development does not result in unreasonable impact
- The proposed development protects much needed electricity infrastructure

CONDITIONS

The development application was approved subject to the conditions in the council assessment report and amended as above.

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the panel considered written submissions made during public exhibition and heard from all those wishing to address the panel. The panel notes that issues of concern included:

- Increased heavy vehicle traffic
- Impact on tourism in locality
- Impact on Tilligerry Creek Bridge
- Ecological impact – particularly in respect to impact on koala habitat and movement
- Acoustic impact
- Air pollution
- Additional sand mines not required in area
- Appropriateness of extraction rate
- Potential adverse impact on stability of land dunes
- Potential encroachment into adjoining lands

The panel considers that concerns raised by the community have been adequately addressed in the assessment report and that no new issues requiring further assessment were raised during the public meeting.





The panel noted the detailed ecological studies that had been undertaken. Surveys of the site were taken over a number of years.

The nature of the proposal (extracting wind blown sand to natural ground level only and to a limited face) and the limit imposed on the amount of sand to be extracted over a 12 month

period, means that the intensity of traffic movements will occur over a specific period, or number of periods, depending on the availability of the resource. Once the 50,000 cubic metres cap is reached - there would be no extractive functions occurring for the remainder of the year. Accordingly, the activity at the site is not a continuous one undertaken on 5.5 days each week of the year. This has a different implication regarding the impact of activity on fauna at dawn and dusk, and traffic operation, when compared to a site that operates continuously.

Specific conditions have been amended to identify requirements for speed limits, fencing and induction of workers in the Biodiversity Management Plan.

Specific conditions to ensure works do not encroach outside the boundary and that suitable buffers are maintained have also been included.

PANEL MEMBERS	
 Alison McCabe (Chair)	 Sandra Hutton
 Juliet Grant	 Paul LeMottee

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSHCC-11 – Port Stephens Council – DA 16-2019-636-1
2	PROPOSED DEVELOPMENT	Extractive Industry – sand extraction of up to 50,000 cubic metres (maximum) of sand per year over a 30-year period and construction of an ancillary site office and manager’s residence
3	STREET ADDRESS	4226 Nelson Bay Road, Anna Bay
4	APPLICANT OWNER	Tattersall Lander Pty Ltd Ragusa Pty Ltd
5	TYPE OF REGIONAL DEVELOPMENT	Designated development - extractive industry
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> • Environmental planning instruments: <ul style="list-style-type: none"> ○ State Environmental Planning Policy No. 33 – Hazardous and Offensive Development; ○ State Environmental Planning Policy No 44—Koala Habitat Protection; ○ State Environmental Planning Policy No.55 – Remediation of Land; ○ State Environmental Planning Policy (State and Regional Development) 2011; ○ State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007; ○ State Environmental Planning Policy (Infrastructure) 2007; ○ State Environmental Planning Policy (Coastal Management) 2018; ○ Port Stephens Local Environmental Plan 2013 (PSLEP2013). • Draft environmental planning instruments • Development control plans: <ul style="list-style-type: none"> ○ Port Stephens Development Control Plan 2014 (DCP2014) • Planning agreements: Nil • Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i> • Coastal zone management plan: Nil • The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality • The suitability of the site for the development • Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations • The public interest, including the principles of ecologically sustainable development
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> • Council assessment report: 22 April 2020 • Written submissions during public exhibition: 15 • Late written submission: one (1) • Addendum to Council assessment report: 5 May 2020 • Verbal submissions at the public meeting: <ul style="list-style-type: none"> ○ Ben van der Wijngaart ○ On behalf of the applicant – Bob Lander and Kylie Bridges

8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • Briefing on site: 18 March 2020 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Alison McCabe (Chair), Juliet Grant and Sandra Hutton ○ <u>Council assessment staff</u>: Rean Lourens • Final briefing to discuss council's recommendation, 6 May 2020, 1:45pm. Attendees: <ul style="list-style-type: none"> ○ <u>Panel members</u>: Alison McCabe (Chair), Juliet Grant, Sandra Hutton and Paul LeMottee ○ <u>Council assessment staff</u>: Ryan Falkenmire and Rean Lourens
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the council assessment report