

## **ATTACHMENT 2: OEH CORRESPONDENCE**



Office of  
Environment  
& Heritage

Your ref.: DA No: 16-20140353-1  
Our reference: DOC14/291677- 08  
Contact: Steve Lewer, 4908 6814

Ms Cindy Dickson  
Planning and Developer Relations Coordinator  
Port Stephens Council  
PO Box 42  
RAYMOND TERRACE NSW 2324

Dear Ms Dickson

**RE: CONCURRENCE REQUEST NOT GRANTED AT THIS STAGE - PROPOSED TWELVE LOT SUBDIVISION – INDUSTRIAL, TOMAGO ALLUMINIUM COMPANY LANDS, OLD PUNT ROAD, TOMAGO.**

I refer to your letter dated 25 November 2014 and subsequent communication between Office of Environment and Heritage (OEH) and Port Stephens Council (PSC) officers (dated 10 March, 2 April and 7 April 2015) seeking concurrence from the Minister administering the *Threatened Species Conservation Act 1995* (TSC Act) with regards to a proposed twelve lot subdivision for industrial development (DA No.: 16-2-14-353-1). This land is collectively known as Tomago Aluminium Company (TAC) lands, located at Old Punt Road, Tomago, in the Port Stephens local government area. OEH understands that this development is a Part 4 proposal (under the *Environmental Planning and Assessment Act 1979* [EP&A Act]) being considered by PSC and the Joint Regional Planning Panel (JRPP), the latter who are the 'consent authority' in this instance. PSC assessed the proposal as likely having a significant impact under Section 5A of the EPA&A Act on a number of threatened species and ecological communities, including their habitat (as listed under the TSC Act), and as such triggered concurrence by OEH under the Act.

OEH issued Director General's Requirements (DGRs) for a Species Impact Statement (SIS) to Kleinfelder (environmental consultants) on behalf of the TAC on 14 June 2013. The SIS was submitted by PSC to OEH for concurrence on the 25 November 2014, with public submissions provided on 19 February 2015. Following a review of the SIS and supporting information, OEH was of the opinion that additional information was required to complete the assessment of the SIS and enable the overall concurrence determination. As such, under clause 60(1) of the Environmental Planning and Assessment Regulation 2000 and in conjunction with section 79B(5) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) OEH requested on 5 December 2014 that PSC request the proponent to provide additional information to enable the concurrence authority to determine whether or not concurrence for the above development proposal should be granted or refused. OEH is of the opinion this essentially 'turns off the clock' with respect to concurrence, and OEH is unable to assess the application (including SIS) until this additional information is provided.

To date the proponent has not provided OEH with the appropriate additional information. This was confirmed to TAC and their consultants in an email from OEH (dated 11 March 2015) following a meeting with the proponent, PSC and OEH on 10 March 2015. The main issue that OEH have with respect to the proposal is its overall impact on the local Koala population and the lack of an appropriate biodiversity offset that targets suitable compensatory and known (i.e. occupied) habitat within the Tomago 'Koala



management unit' (KMU, as defined under the *PSC Comprehensive Koala Plan of Management* [2002]). OEH have advised TAC that the proposed biodiversity offset at Medowie is unsuitable, due to it being predominantly mapped as 'marginal habitat' under the PSC CKPoM and that it is poorly located (i.e. not within the Tomago locale). Following the above meeting, TAC suggested that a way forward to meet the JRPP and PSC deadlines as well as OEH's concerns was to have a deferred commencement condition on Stage 1 of the proposal (similar to Stages 2-4), where development would not be permitted until an appropriately sized Koala habitat offset (based on the quantum of Koala species credits generated on the development site utilising the BioBanking Assessment Methodology [BBAM]) had been secured under a suitable conservation mechanism within the Tomago area. Subsequently, PSC (who advise the JRPP) have indicated they would not support a deferred commencement condition (at this point) as it does not provide certainty that a suitable offset can be located within the Tomago area.

In light of the above, OEH is unable to provide concurrence at this stage for the proposed developed, known as 'Hunter Corporate Park' due to significant impacts on the Koala and its habitat, namely:

- PSC (who advise the JRPP) have indicated (at this point) they would not lend their support to the proposed deferred commencement condition for Stage 1 (as discussed with PSC on 7 April 2015) due to a lack of certainty with respect to finding an appropriate biodiversity offset that compensates the loss of significant Koala habitat on site. OEH concurs with this view point in that we cannot guarantee the proponent will locate a suitable offset within the Tomago KMU. OEH recommends that the proponent conduct appropriate offset studies within the Tomago area utilising the BBAM to ascertain whether a suitable offset can be located. OEH is of the opinion that this offset is to be based on Koala species credits generated from the development site (i.e. Hunter Corporate Park), and should include all suitable Koala habitat, notably 'preferred' and 'supplementary' (including habitat that contains feed trees and that which is considered movement habitat or habitat which provides important connectivity [i.e. all mapped supplementary habitat]), as well as all suitable habitat within the proposed 'Tomago offset area' which will become isolated and unviable in the long-term due to its connectivity being severed by the development of Lots 1 and 2 within the Stage 1 component of the proposal. OEH recommends that it should be consulted during the determination of the Koala species credits and the development of an offset strategy. Please note OEH would require any new BBAM calculations and assessments to be submitted via the OEH BioBanking portal.

All assessments utilising the BBAM for determination of the 'species credits' for both the development footprint and any proposed offset areas must use the current credit calculator tool (i.e. the BioBanking Assessment Methodology 2014 as outlined OEH's website).

OEH notes that a BioBanking agreement was the preferred mechanism to secure any biodiversity offsets (as stated in the SIS). OEH supports this.

Please note if the above is met then OEH would have no grounds to refuse concurrence.

- the proposed Medowie offset does not provide suitable compensatory habitat for the loss of known / occupied Koala habitat on the development site. OEH's Koala specialist has concurred with the Hunter Region's assessment of the proposal noting that the development site offers high quality (both preferred and supplementary, including significant stands of feed trees and important connective / movement habitat) across the majority of the site and that any offset should be located / secured within the general locale to compensate the impact on the 'local population' of the species. The OEH specialist has also supported the incorporation of all mapped (as per the SIS) preferred and supplementary Koala habitat, including that which will become isolated and unviable as an indirect impact of the development.

If you require any further information regarding this matter, please contact me on 4908 6814.



Yours sincerely

9 APR 2015



**STEVE LEWER**  
**Acting Senior Team Leader Planning, Hunter Central Coast Region**  
**Regional Operations**

cc: Amy Stone – Port Stephens Council  
Scott Robinson / Mat Radnidge / Craig Marler, ADW Johnson Pty Limited, 7/335 Hillsborough Road, WARNERS BAY NSW 2282.  
Adam Blundell, Kleinfelder Australia Pty Ltd, 64 Medcalf Street, WARNERS BAY NSW 2282.

**References**

OEH (2014) BioBanking Assessment Methodology. Office of Environment and Heritage, detailed at:  
[www.environment.nsw.gov.au/biobanking/bbreview.htm](http://www.environment.nsw.gov.au/biobanking/bbreview.htm).

### **ATTACHMENT 3: HWC CORRESPONDENCE**



Hunter Water Corporation  
ABN 46 228 513 446

PO Box 5171  
HRMC NSW 2310  
36 Honeysuckle Drive  
NEWCASTLE NSW 2300  
1300 657 657 (T)  
(02) 4979 9468 (F)  
enquiries@hunterwater.com.au  
hunterwater.com.au

9 April 2015

Our Ref: HW2009-457/20/60.032

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

Attention: Amy Stone

Dear Amy

## **HUNTER CORPORATE PARK – STORMWATER MANAGEMENT PLANS**

Hunter Water has reviewed the revised Stormwater design plans and accompanying documentation for the subject development prepared by ADW Johnson on 23 March 2015, and the stormwater design peer review subsequently carried out by Northrop.

Hunter Water advises that the groundwater divide shown in the plans, which indicates that the northern part of the site overlies the Tomago Sandbeds Catchment Area, is realistic. The groundwater to the North of this divide moves in the direction of Tomago Pump Station 20 which supplies on average around 500 megalitres/year of drinking water to Newcastle and the Lower Hunter region.

Considerable effort has been made by the proponent to segregate the two discrete groundwater catchments at the site in response to Hunter Water's concerns regarding potential impact on the drinking water source. However, we are of the opinion that there is insufficient detail to support the claim that the proposed design will operate as it is intended, or is adequately robust for successful long term operation. There are a number of areas where verification of the design (and potentially redesign) are required, as discussed below.

### **1. Hydraulic design and performance of proposed stormwater conveyance system**

Hunter Water would require additional information including all design assumptions and third-party verification of the hydraulic modelling before making comment on the adequacy of the proposed design in terms of its performance under design scenarios, and whether it achieves the outcomes specified.

The engineering drawings appear to be lacking critical detail in some instances, such as bed slopes and the size and position of outlets for some of the proposed basins. The primary purpose of the network of swales (referred to in plans as 'basins') appears to be stormwater collection and detention, rather than conveyance, as there are pipes connecting each of them to a central drainage network. This observation is supported by the fact that sections of the swales have 0% longitudinal grade.

The proposal to "prevent localised mounding of the groundwater table post development" by providing "low flow subsoil drainage at a level approximately equivalent to the groundwater conditions" (p.43) requires further explanation as water will not drain anywhere if the pipes are inundated with groundwater.

## **2. Use of clay for lining of swales**

### Flotation in high groundwater

Based on desktop investigations, the proposed minimum freeboard of 400mm between the base of the basins and the groundwater table may not be sufficient. This is exacerbated by the possibility that the maximum groundwater levels post-development will be different from predictions based on historic observed levels due to the proposed changes in topography brought about by the near-levelling of the site. Under these conditions there is a risk of flotation or dislodgement of sections of liner by rising water tables. Further consideration should be given to this potential outcome; how it can be mitigated, and how it can be appropriately managed should it occur.

### Stability of batter slopes

The report raises the potential problems of constructing the 1:4 slope basin edges on sand, which presents challenges for adequate compaction of the sand beneath. Furthermore, there are ongoing issues for maintenance, with heavy machinery traversing the side slopes and potentially causing movement of the clay liner on the sand layers beneath, or altering the shape of the channel by potentially compressing the clay liner into the sand. In effect, there is a risk that the clay liner could in effect act as a thin, flexible 'slab' of material that could shift, warp or slump over non-compacted sand behind and beneath it. The alternative proposal of mixing bentonite clay and cement within the existing sand subgrade to provide an impervious liner requires more detailed supporting information before it can be assessed.

### Suitability of the on-site clay resource

The on-site clay resource should be tested for its fitness for purpose by a geotechnical engineer prior to approval of the concept designs as there is potential for the clay to be unsuitable. For instance, some clays may be unsuitable due to their chemical and or physical structure, and could lead to cracking of the clay liner under dry conditions, with subsequent leakage of stormwater into the aquifer (e.g. shrink-swell). Alternative supplies of clay have not been discussed, should the endemic clay prove unsuitable (or insufficient in volume) for the intended use.

### Design life and maintenance

The realistic design life of the proposed 300mm clay liner has not been adequately addressed. There are numerous ways in which the integrity of the clay liner could be compromised over time. The most likely of these is penetration through the clay liner by vegetation (potentially including grass and other ground-covers), disturbance by maintenance works carried out in the swale, or other unintended disturbances. We note that Douglas Partners describe the clay layer as 'thin.'

There is the potential for difficulty in distinguishing between sediment that has accumulated in the basins over time, and the topsoil proposed above the clay liner to support the growth of vegetation. The 100mm sacrificial depth presumably is intended for losses incurred during accidental removal during sediment removal. However there are no provisions made for replacement or augmentation of the clay liner over time, and therefore there is a longer-term risk of the clay liner being depleted or damaged over multiple maintenance events.

Because this is an unusual design, maintenance workers in the future may not be aware of the presence or the significance of the clay liner and the importance of not damaging it. This is particularly true in the longer-term, as knowledge and procedures tend to be passed by word of mouth rather than reading an operational manual. There is a real risk that over the proposed design life of the industrial development (i.e. many decades), knowledge of the

clay liner and the purpose it serves would disappear from lot owners, operators and maintenance staff alike. It follows that the risk of damage to the liner would increase as a result.

Pages 45-47 of the report outlines inspection and maintenance procedures. It is stated that the liners "should be inspected regularly for erosion, dispersion, shrinkage cracks, and damage as part of routine inspections" (p47). However, it is proposed to cover the clay liner with adequate soil material to sustain vegetation and to provide protection to the clay liner. Therefore, direct inspection of the clay material would not be possible without first removing the vegetation and topsoil layer. This is not discussed. In practice, it presents problems for either outcome, i.e. the clay liner is not inspected at all, or if the overlying soil is removed to allow inspection then there is risk of damaging the clay liner.

Please do not hesitate to contact me on (02) 4979 9545 should you require any additional information or clarification of the above.

Yours Sincerely

A handwritten signature in dark ink, appearing to read 'M. Withers', is written over a light blue rectangular background.

**Malcolm Withers**  
**Senior Developer Services Engineer**



## **ATTACHMENT 4: RMS CORRESPONDENCE**

3 December 2014

CR2014/003156  
SF2014/037032  
KM

General Manager  
Port Stephens Council  
DX 21406  
RAYMOND TERRACE

**Attention: Ms Amy Stone**

Dear Ms Stone

**PACIFIC HIGHWAY (A1): TWELVE LOT INDUSTRIAL SUBDIVISION AND BUSINESS PARK SUBDIVISION, LOT: 202 DP: 1173564, 5 OLD PUNT ROAD, TOMAGO (DA 16/2014/353/1)**

I refer to the subject development application forwarded to Roads and Maritime Services for consideration. I apologise for the delay in responding.

Transport for NSW and Roads and Maritime's primary interests are in the road network, traffic and broader transport issues. In particular, the efficiency and safety of the classified road network, the security of property assets and the integration of land use and transport.

In accordance with the *Roads Act 1993*, Roads and Maritime has powers in relation to road works, traffic control facilities, connections to roads and other works on the classified road network. The Pacific Highway (A1) is a classified (State) road. Roads and Maritime concurrence is required for connections to these roads with Council consent, under Section 138 of the Act. Council is the roads authority for these roads and all other public roads in the area. Should road works be required on the classified (State) roads, Roads and Maritime would exercise the functions of roads authority under Sections 64 and 71 of the Act.

In this instance, the development is not 'integrated development', as Council is both the consent authority for the development and the approval authority for the Pacific Highway and Old Punt Road (refer to Section 91(3) of the *Environmental Planning and Assessment Act, 1979*). Consequently, Roads and Maritime cannot accept the payment of a fee for the assessment of this development application. As a result, the \$320 fee previously forwarded for this development is duly returned to Council for refund to the developer.

#### **Roads and Maritime Response and Requirements**

Roads and Maritime has reviewed the information provided and has no objections to the proposed development provided the following matters are addressed and included in Council's conditions of development consent:

- Provision shall be made for the internal road to be constructed as part of stage 3 to connect to Enterprise Drive. This connection must be operational when the Campbell Street / Tomago Road intersection is signalised, and any direct connection to Tomago Road shall be closed
- Should Stage 3 of the proposed development proceed prior to signalisation of the Campbell Street / Tomago Road intersection, the left in / left out intersection shall be constructed in accordance with the Austroads Guide to Road Design (2010) and RMS supplements, to the satisfaction of Roads and Maritime and Council. However, this access shall be closed to all traffic when the signalised intersection is constructed.
- Prior to the release of any Stage 2, Stage 3 or Stage 4 lots, the developer shall submit a revised Traffic Impact Study in accordance with the RMS *Guide to Traffic Generating Developments*. This study is to include, but not be limited to, the following:
  - Identification of all relevant vehicular traffic routes and intersections for access to / from the subject area.
  - Current traffic counts for all of the above traffic routes and intersections on a minimum of three consecutive days, identifying heavy vehicle usage.
  - The anticipated additional vehicular traffic generated from the proposed lots.
  - The distribution on the road network of the trips generated by the proposed development. It is requested that the predicted traffic flows are shown diagrammatically to a level of detail sufficient for easy interpretation.
  - Consideration of the traffic impacts on existing and proposed intersections and the capacity of the local and classified road network to safely and efficiently cater for the additional vehicular traffic generated by the proposed development. The study shall also give consideration to the cumulative traffic impacts of other proposed and approved developments in the area.
  - Identification of all required road infrastructure upgrades.

*Comment: Roads and Maritime has no objection to the occupation of Stage 1 lots. However, it is considered that a revised Traffic Impact Study is required to ensure the safety and network efficiency of the state road network is not compromised for any subsequent stage, and that any required road infrastructure upgrades will be identified at this time.*

- All works shall be carried out at full cost to the developer and at no cost to Roads and Maritime or Council, to Roads and Maritime and Council requirements.
- The property has a common boundary with the Pacific Highway (A1) which is declared Controlled Access Road. Direct access across this common boundary is restricted as shown in DP1021974 access is available via Old Punt Road, Tomago Road/School Drive.

### **Roads and Maritime Advice to Council**

- The property is within the Study area for the upgrading of the Pacific Highway F3 to Raymond Terrace, which is at the concept / EIA stage. The current corridor does not impact on the development, however, the proposal may change and include other options that have not been investigated to date, so no decision has been made as to the preferred



option and it is not possible at this date to provide any more definite information as to the likely requirement for any part of the subject property.

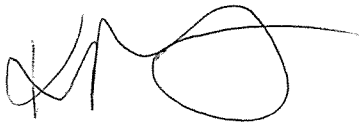
In the event that any land is required for road purposes, the Land Acquisition (Just Terms Compensation) Act 1991 guarantees that if and when the land is acquired by Roads and Maritime under the Act, the amount of compensation will not be less than market value of the land (assessed under the Act), as if the land were unaffected by any road proposal.

On receipt of the revised Traffic Impact Study for future stages Roads and Maritime will provide further comment and requirements. We also reserve the right to amend our requirements as outlined above.

On Council's determination of this matter, it would be appreciated if a copy of the Notice of Determination is forwarded to Roads and Maritime for record and / or action purposes.

Should you require further advice please contact me on (02) 4924 0688.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Kellee McGilvray', with a large, stylized loop at the end.

Kellee McGilvray  
A / Manager Land Use  
Hunter Region

## **ATTACHMENT 5: RFS CORRESPONDENCE**

*All communications to be addressed to:*

Headquarters  
15 Carter Street  
Lidcombe NSW 2141

Telephone: 1300 NSW RFS  
e-mail: [csc@rfs.nsw.gov.au](mailto:csc@rfs.nsw.gov.au)

Headquarters  
Locked Bag 17  
Granville NSW 2142

Facsimile: 8741 5433



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

Your Ref: 16-2014-353-1  
Our Ref: D14/1797  
DA14072293064 GB

**ATTENTION:** Amy Stone

24 July 2014

Dear Sir/Madam

### **Land Use Application for 202//1173564 5 Old Punt Road Tomago**

I refer to your letter dated 16 June 2014 seeking advice regarding bush fire protection for the above Land Use Application in accordance with Section 79C of the 'Environmental Planning and Assessment Act 1979'.

The Service provides the following recommended conditions:

#### **Asset Protection Zones**

The intent of measures is to provide sufficient space and maintain reduced fuel loads so as to ensure radiant heat levels of buildings are below critical limits and to prevent direct flame contact with a building. To achieve this, the following conditions shall apply:

1. At the commencement of building works for each Stage, the whole of that Stage and 20 metre buffer into the adjoining Stage, shall be managed as an asset protection zone as outlined within Appendices 2 and 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones' until that whole stage is developed.

#### **General Advice – consent authority to note**

Any future development application lodged within this subdivision under section 79BA of the 'Environmental Planning & Assessment Act 1979' should be assessed on a case by case basis against the aims and objectives of 'Planning for Bush Fire Protection 2006'. The provisions under the BCA for fire safety will be accepted for bush fire purposes where the aims and objectives of PBP can be met.

Any incorrect payment of fees can be refunded on written request.



For any queries regarding this correspondence please contact Garth Bladwell on 1300 NSW RFS.

Yours sincerely

A handwritten signature in black ink, appearing to read 'C. Ryland', followed by a period.

Catherine Ryland

**A/Team Leader Development Assessment and Planning**

The RFS has made getting information easier. For general information on 'Planning for Bush Fire Protection, 2006' , visit the RFS web page at [www.rfs.nsw.gov.au](http://www.rfs.nsw.gov.au) and search under 'Planning for Bush Fire Protection, 2006'.