

DATE OF DETERMINATION	21 October 2021
PANEL MEMBERS	Gordon Kirkby (Chair), Tim Fletcher, Renata Brooks
APOLOGIES	None
DECLARATIONS OF INTEREST	Peter Bascomb: As the CEO of the Snowy Monaro Regional Council, the applicant for 10.2015.498.3 at 1107 Monaro Highway Bunyan, I have a conflict of interest and should take no part in the consideration and determination of this application.

MATTER DETERMINED

2018STH027 – SNOWY MONARO – 10.2015.498.3 at 1107 Monaro Highway Bunyan – Extractive Industry – Modification and Deletion of Conditions (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.

Modification application

The modification application sought to delete or amend five conditions of consent:

- Deletion of Condition 5 relating to the inclusion of the 'exotic grassland' in the biodiversity offsets;
- Deletion of Condition 6 excluding grazing from the offset areas;
- Deletion of Condition 14 limiting extraction of materials to a total of 25 days per year;
- Deletion of Condition 20 requiring an extension of the 50 metre tree buffer area along the northern and western boundary; and,
- Delete Condition 25(d) relating to public consultation of the Property Vegetation Plan.

Pursuant to section 4.55 of the *Environmental Planning and Assessment Act 1979*, the Panel determined to approve the deletion of Condition 20, and to amend Condition 5 to maintain the 'exotic grassland' area in the offsets but clarify the requirements for its revegetation. The Panel refused the request to delete Conditions 6, 14 and 25(d).

The Panel's decision was unanimous.

REASONS FOR THE DECISION

The Panel's reasons are set out below:

Condition 5

- the Panel determined not to delete Condition 5 and maintain the requirement for the offset area to be increased to include the balance of the site identified as 'exotic grassland'. The Panel has amended the wording of the condition to remove the requirement to plant 'mature' canopy trees however will still require canopy trees to be planted in the offset areas in accordance with the Biodiversity Offset Plan.

Condition 20

- The Panel determined to delete Condition 20 (extension of landscape buffer along northern and western boundary). The Panel concurred with Council's assessment and recommendation that the condition be deleted on the basis that the proposed extension of canopy trees in this part of the

site would add little value in terms of screening of the development and would be located in the 'exotic grassland' area where canopy trees are not likely to establish.

- The Panel however has required that new conditions be included in the consent to incorporate the recommendations of the Visual Impact Assessment submitted by the Applicant in August 2020. The Conditions require additional tree planting in the areas to the north and east of the Stage 4 extraction area to be established to a sufficient height prior to extraction in that area, the requirement for a plan of the proposed bund areas to be submitted for the approval of Council, and the requirement for machinery and equipment to be located / parked within the existing pots and extraction areas.

Condition 6

- The Panel determined not to delete Condition 6 (permitting grazing within the offset areas). The Panel agreed with Council's advice that the proposed modification was inconsistent with the Court of Appeal judgement (Ku-ring-gai Council v Buyozo [2021] NSWCA 177) in that the proposed deletion of Condition 6 was not sufficiently related to a 'change in development'.

Condition 14

- The Panel determined not to delete Condition 14 (limiting extraction to 25 days per year). The Panel agreed with Council's assessment that the deletion of the condition will have an unreasonable impact on the amenity of surrounding residents in terms of noise emissions. The panel noted that the limit in the condition applies to extraction activities only and does not affect stockpiling or transport of materials from the site.

Condition 25(d)

- That Panel determined not to delete Condition 25(d) (public consultation for the Property Vegetation Plan). The Panel agreed with Council's advice that the proposed modification was inconsistent with the Court of Appeal judgement (Ku-ring-gai Council v Buyozo [2021] NSWCA 177) in that the proposed deletion of the Condition was not sufficiently related to a 'change in development'.




CONDITIONS

The modification application was approved subject to the conditions in the council assessment report as amended in **Attachment A**.

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the Panel considered written submissions made during public exhibition.

The Panel considers that concerns raised by the community have been adequately addressed in the assessment report. The Panel is of the view that the modifications to the consent do not significantly change the approved environmental management and compliance regime in the original consent.

PANEL MEMBERS	
 Gordon Kirkby (Chair)	 Renata Brooks
 Tim Fletcher	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	2018STH027 – SNOWY MONARO – 10.2015.498.3
2	PROPOSED DEVELOPMENT	Extractive Industry – Modification and Deletion of Conditions
3	STREET ADDRESS	1107 Monaro Highway Bunyan
4	APPLICANT/OWNER	Snowy Monaro Regional Council/ NW Walters & M Walters
5	TYPE OF REGIONAL DEVELOPMENT	S4.55(2) Modification Application
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> • Environmental planning instruments: <ul style="list-style-type: none"> ○ SEPP (State and Regional Development) 2011 ○ Cooma Monaro Local Environmental Plan 2013 • Draft environmental planning instruments: Nil • Development control plans: <ul style="list-style-type: none"> ○ Cooma Development Control Plan 2013 • Planning agreements: Nil • Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>: Nil • 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: 20 September 2021 • Written submissions during public exhibition: 4
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • Briefing: Monday, 11 February 2019 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Pam Allan (Chair), Alison McCabe, Renata Brooks ○ <u>Council assessment staff</u>: Sophie Ballinger, Peter Smith • Final briefing to discuss council's recommendation: Tuesday, 5 October 2021 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Gordon Kirkby (Chair), Tim Fletcher, Renata Brooks, Peter Beer ○ <u>Council assessment staff</u>: Sophie Ballinger ○ <u>Applicant representatives</u>: Pam Vipond
9	COUNCIL RECOMMENDATION	20 September 2021
10	DRAFT CONDITIONS	Attached to the council assessment report