

Hunter and Central Coast Regional Planning Panel

JRPP No	2019HCC-11
DA Number	16-2019-636-1
Local Government Area	Port Stephens
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.
Street Address	4226 Nelson Bay Road, Anna Bay (LOT: 591 DP: 1191380)
Applicant/Owner	Applicant – Tattersall Lander Pty Ltd Owners – Ragusa Pty Ltd
Number of Submissions	15
Regional Development Criteria (Schedule 4A of the Act)	The proposal is listed within Schedule 7, Part 3 of the <i>State Environmental Planning Policy (State and Regional Development) 2011</i> , being development for the purpose of an extractive industry, which meets the requirements for designated development under clause 19 of Schedule 3 to the <i>Environmental Planning and Assessment Regulation 2000</i> .
List of All Relevant s4.15(1)(a) Matters	Environmental planning instruments: s4.15(1)(a)(i) • 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). Development Control Plan: s4.15(1)(a)(iii) • Port Stephens Development Control Plan 2014 (DCP2014)
List all documents submitted with this report for the	Attachment 1 – Development Plans Attachment 2 – General Terms of Approval from Environmental Protection Agency (EPA) Attachment 3 – Recommended Conditions of Consent

panel's consideration	Attachment 4 – Schedule of Appendices for application supporting documentation Attachment 5 – Environmental Impact Statement (EIS) Attachment 6 – External agency advice Transport for NSW Attachment 7 – External agency advice Department of Planning & Environment – Division of Resources & Geoscience Attachment 8 – External agency advice from Department of Primary Industries – Fisheries Attachment 9 - External agency advice from Hunter Water Corporation Attachment 10 - External agency advice from Ausgrid
Recommendation	Approval with conditions
Report by	Ryan Falkenmire – Principal Development Planner
Report date	22 April 2020

ASSESSMENT REPORT AND RECOMMENDATION

EXECUTIVE SUMMARY

Development consent is sought for a development application (No. 16-2019-636-1) for sand extraction of up to 50,000 cubic metres (maximum) of sand per year over a 30-year period. The sand to be extracted is wind deposited at natural ground level within an existing 33kV electrical Ausgrid easement and land immediately south of this easement. The application also involves the construction of an ancillary site office and manager's residence, upgrades to the internal access road, vegetation clearing and other ancillary works to support the extractive operations.

The site is zoned RU2 – Rural Landscape under the Port Stephens Local Environment Plan 2013 (PSLEP 2013). Extractive industries are permitted with consent within the RU2 zone. The proposed development is considered to be consistent with the zone objectives.

The site is comprised of a single allotment, legally identified as Lot 591 in DP 1191380. The land is 13.12 hectares in size and rural in nature. An existing dwelling and shed are located on the northern portion of the site with the electrical easement situated to the south, towards Stockton Beach. The site has direct access to Nelson Bay Road to the north.

The application was notified and advertised for 28 days (25 October 2019 – 22 November 2019) in accordance with the *Environmental Planning and Assessment Regulations 2000 (EP&A Regs)* and Port Stephens Development Control Plan 2014. During this time 15 submissions were received.

The proposed development is classified as designated development and nominated integrated development pursuant to the provisions of the *Environmental Planning and Assessment Act 1979 (EP&A Act)* and the *Environmental Planning and Assessment Regulation 2000*.

The development constitutes a scheduled activity (extractive industry) pursuant to the *Protection of the Environment Operations Act 1997 (POEO Act)* requiring an Environment Protection Licence (EPL). Accordingly, the application was referred to the Environmental Protection Agency (EPA). A EPL was issued on 27 February 2020, which included conditions relating to waste, odour, pollution and noise.

Nelson Bay Road (MR108) is a classified State road, therefore the application was referred to Transport for NSW (formerly RMS) under s138 of the *Roads Act 1993* and clause 101 of the *State Environmental Planning Policy (Infrastructure) 2007*. Transport for NSW provided in principle support for the proposal subject to a basic left turn treatment (BAL) being constructed at the existing property entrance and regulating movements to 5 vehicles per hour. Given road works are required on Nelson Bay Road, Transport for NSW require the developer to enter into a Works Authorisation Deed (WAD).

The key issues in respect of the assessment of the application related to vegetation clearing, Aboriginal heritage impact, traffic generation, site rehabilitation, air quality and noise emissions. Supporting information from the applicant was submitted during the assessment to address these key issues. This included detailed noise, air quality, operational management, traffic, heritage and ecological studies. The recommendations and mitigation measures outlined in the specialist studies have been included in the conditions of consent where appropriate.

The proposal is referred to the Hunter and Central Coast Regional Planning Panel (HCCRPP) for determination pursuant to Schedule 7 'Regionally Significant Development' of the *State Environmental Planning Policy (State and Regional Development) 2011* and Schedule 2 being development for the purpose of an extractive industry, which meets the requirements for designated development under clause 19 of Schedule 3 to the *EP&A Regulations*.

The development has been assessed under Section 4.15 of the EP&A Act and is considered satisfactory. Accordingly, it is recommended that the application be approved subject to conditions of consent contained in **Attachment 3**.

1. RECOMMENDATION

That DA 16-2019-636-1 for the establishment of a sand extraction operation at 4226 Nelson Bay Road, Anna Bay (LOT: 595 DP: 1191380) be approved subject to the conditions in **Attachment 3**.

2. INTRODUCTION

This report provides a detailed overview of the proposed sand extraction operation at 4226 Nelson Bay Road, Anna Bay (LOT: 591 DP: 1191380). The development application is referred to the HCCRPP for determination pursuant to Schedule 7 'Regionally Significant Development' of the *State Environmental Planning Policy (State and Regional Development) 2011* and Schedule 2 being development for the purpose of an extractive industry, which meets the requirements for designated development under clause 19 of Schedule 3 to the *EP&A Regulations*.

3. BACKGROUND

Sand removal at the site will be initiated primarily by the need to remove sand for easement maintenance purposes. On this basis, the extraction rate will not necessarily reach its maximum threshold in any one year (50,000 cubic metres). The extracted sand resource is intended for general construction and bulk land filling purposes in various locations; primarily Newcastle and the Hunter Valley. The product will be classified as Virgin Excavated Natural Material (VENM). Sand will be loaded via a frontend loader into haulage trucks and removed from the site to market destinations via Nelson Bay Road.

4. SITE DESCRIPTION

The site is comprised of a single allotment (Lot 591 in DP 1191380) and is situated 12 km south west of Nelson Bay and 25 km north east of Newcastle Airport.

The subject site is a primarily undeveloped rural lot comprising 13.12 hectares. An existing dwelling and shed are located on the northern portion of the site with the electrical easement situated to the south, towards Stockton Beach. The site is accessed off Nelson Bay Road, which is a two-way bitumen sealed road bordering the north of the site, and at this location the road is divided.

There is significant vegetation within parts of the site. The southern portion of the site contains an electrical easement and an encroaching sand dune. There is an access track that traverses the site along the eastern boundary, commencing at Nelson Bay Road (north) and ending at the electrical easement (south). There are minor variations in the topography within the site, with small hollows, however, in reality, the site is flat.

Surrounding Land Uses

Adjoining the site to the south is the Stockton Beach dune system. The Stockton Beach dune system is the largest moving coastal land mass in the southern hemisphere, and stretches from Stockton to Anna Bay covering a distance of approximately 25 kilometres in length. The foreshore is located approximately 1km south of the sand extraction footprint.

Residential dwellings are located immediately to the west of the site, with the Worimi National Park located beyond. The Baylife Church is located on the property adjoining the site to the east. To the north of the site, beyond Nelson Bay Road are rural residential properties and rural holdings.

There are commercial facilities, including a nursery and a service station 700 metres to the west of the site. A showground and the Nelson Bay Shark and Ray Centre are located 500m east of the site. There are also three (3) current and historic sand extraction quarries to the east of the proposed development site and one (1) to the west. **Figure 1** shows the site and surrounding land uses.

Surrounding Sand Extraction Operations

Sand extraction operations have been occurring to the east of the subject site at No. 6 Road 578 (Lot 56 DP: 753204). The sand extraction development was approved by Council in January 1999 (DA 32/1999). The development application estimated that there would be 25,000 – 30,000 cubic metres of sand removed during the course of the development.

Sand extraction has been occurring 650m to the west of the subject site at 4096 Nelson Bay Road (Lot 588 DP 1108326) under DA-1991-5087. This operation is known as the Anna Bay Sand Quarry. The original approval was for the extraction of 50,000t/annum glass sand and additional 10,000t/annum foundry sand. Subsequent modifications have increased the extraction volume to 200,000t/annum and extension to the operational life of the activity.

Other emergency sand extraction activities have been occurring on properties within the vicinity of the transmission easement. These activities have been administered by either Ausgrid or Crown Lands. Not all activities currently have development consent for these works as they are being undertaken under *SEPP (Infrastructure) 2007* as Exempt Development. Crown Lands advised the following extraction tenures exist within the vicinity of the site:

Licence 335640 – Sibelco – Part Lot 588 DP 1108326;
 Licence 164141 – Metromix – Part Lot 588 DP 1108326;
 Licence 519359 – SS & LM Johnston Pty Ltd – Part Lots 46 & 56 DP 753204;

Licence 507487 - HAY Enterprises NSW Pty Ltd – Part Lots 130 & 131 DP 753204.

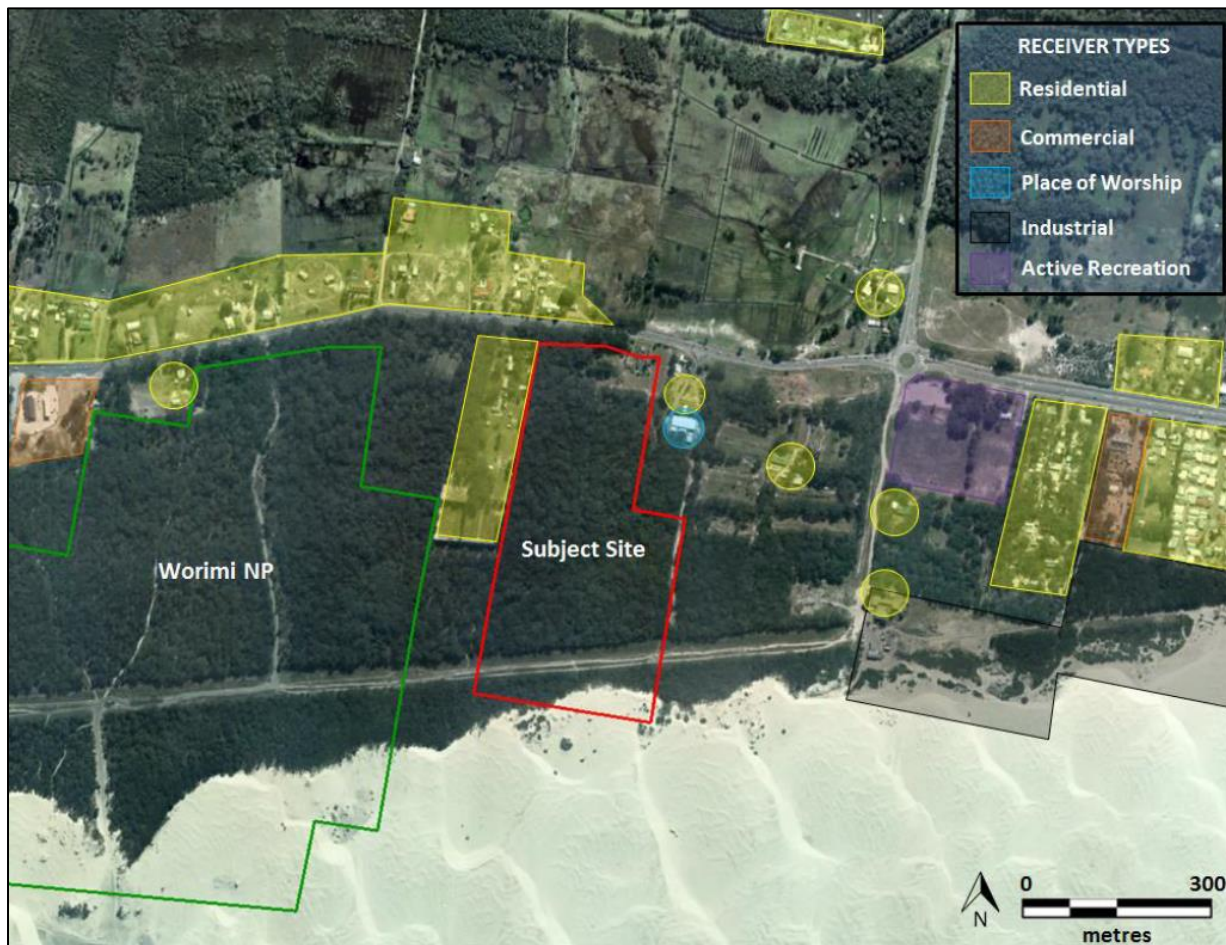


Figure 1: GIS aerial image of subject site and surrounding uses

The site is subject to a number of environmental constraints (as mapped on Councils' GIS system) including:

- Bushfire prone land;
- Acid sulphate soils (Class 3, 4 and 5);
- Supplementary koala habitat;
- Coastal Zone;
- Mapped as High Environmental Value;
- Heritage – Stockton Beach Dune System, including Aboriginal site and shell middens, ship wrecks, WWII ramparts, tank traps, proofing range, rifle range and tin huts;

A site inspection was carried out on 24 October 2019. The subject site can be seen in the photos below:



Photograph 1 – Site Access: View South into the Site at Intersection with Nelson Bay Road



Photograph 2 – View North-West from Distant Sand Dunes: 33kV Electricity Network in Background

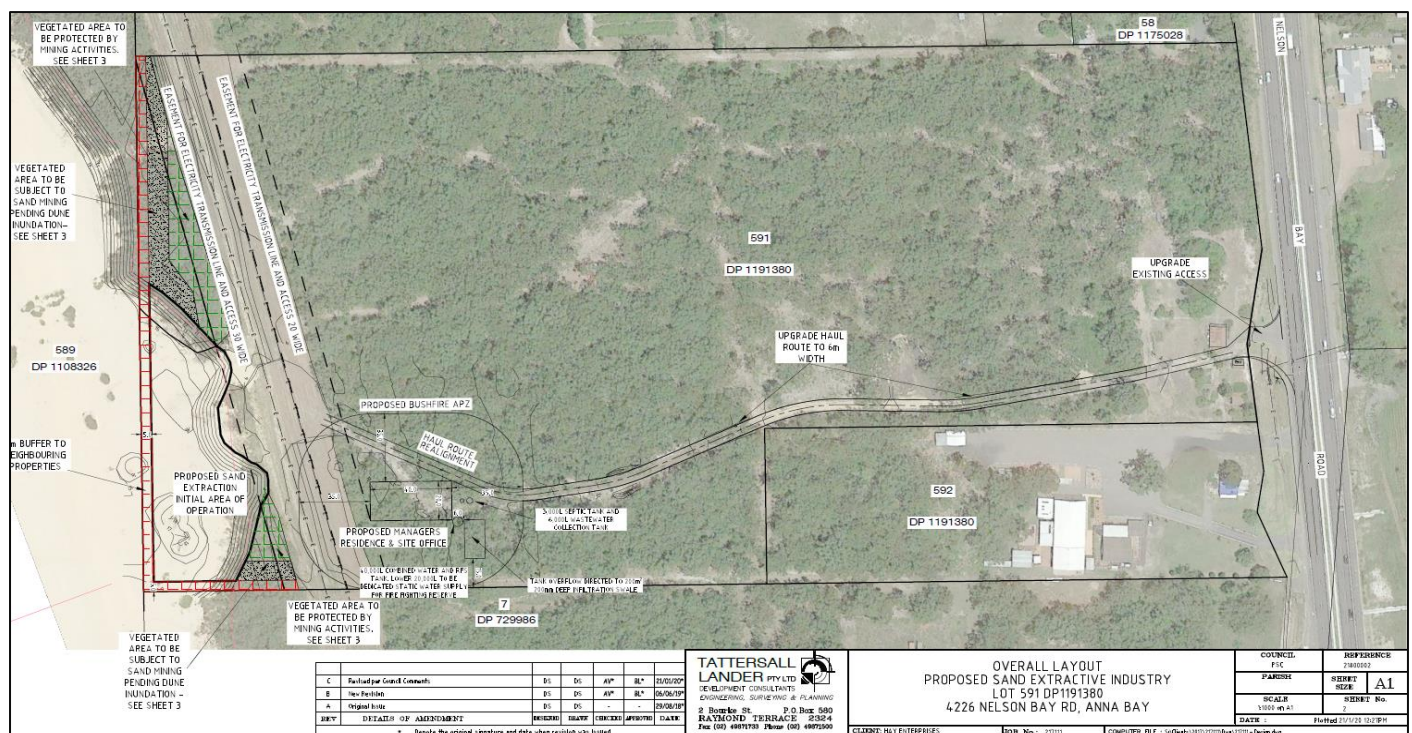


Photograph 3 – Existing internal road



Photograph 4 – View East along 33kV Electricity Network: Poles, Wires, Easement and Part of Sand Incursion

- Sand will be extracted to ground level within the identified sand quarrying area (see Figure 2). Sand will be removed as it moves in a transgressive sand sheet from the dune system into the transmission easement within the subject site. No disturbance below natural ground level is proposed to occur as a result of the quarrying activity.
- Initial sand extraction will commence in the south eastern portion of the site and progress along the rear boundary to the west as transgressive sand sheet from the dune system occurs. Vegetated areas of the dune will be cleared as extraction activity progresses across the area of operation.
- A front end-loader will load sand to trucks-and-dogs and remove directly from site per demand. Approximately 910 cubic metres of sand per day up to a maximum threshold of 50,000 cubic metres a year (for a maximum of 30 years). This equates to approximately 55 full days a year of sand movement undertaken by 35 tonne trucks at a rate of a maximum of 40 trucks per day (3-4 trucks per hour over an 11 hour period).
- A caretaker residence and machinery shed would be constructed for the project, the location of which is indicated in Figure 2.
- The existing access road will be widened to up to 6m and consist of basic gravel construction (unsealed) with adequate drainage; limited ground disturbance is expected for minor drainage purposes. There is no proposal to excavate into the existing road as fill will be used to level the road.
- The proposed development is intended to operate between the hours of 7am and 6pm Monday to Friday and 8am to 1pm on Saturdays. No operations are proposed to occur on Sundays or public holidays.



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Caretaker Residence

The caretaker residence and machinery shed would be constructed on cement slabs for minimal ground disturbance. The land where the new building is proposed to be constructed will need to be cleared of native vegetation. The site building will be occupied between 40 to 60 days per year.

The proposed site building, which comprises both a site office and manager's residence, is also intended to house vehicles and equipment associated with the proposed sand extraction. Concern was raised through the assessment process that the level of clearing is significant for the residence. However, the applicant has advised the residence is a vital component of the development and is necessary to provide toilet and kitchen facilities for employees. These facilities are intended to be provided within the site building.

Extraction Process

The level of dune inundation will determine the volume and timing of sand extraction. Dune inundation is the term that used to describe the natural windblown deposition of sand into the proposed extraction area. When sufficient sand is available in the extraction area, it will be removed as per the submitted Plan.

A front end-loader will load sand to trucks-and-dogs and remove directly from site per demand. In full operating capacity, it is proposed to remove approximately 910 cubic metres of sand per day up to a maximum threshold of 50,000 cubic metres a year (for a maximum of 30 years). This equates to approximately 55 full days a year of sand movement undertaken by 35 tonne trucks at a rate of 40 trucks per day.

The number of vehicles leaving the site is a function of how long it will take to position a truck in proximity to the single front-end loader and for the truck to be loaded. This process will take a minimum of 12 minutes per truck loading. This equates to a maximum of 5 trucks leaving the site per hour. Given the limited extraction face, normal operations would rarely require the need to stockpile any material elsewhere on the site.

A condition has been recommended that a logbook be maintained and kept on-site which details the number of truck movements per day and the amount of sand moved per load. In the absence of a weighbridge, the log book will assist in monitoring the number of truck movements per hour and volume of product extracted.

The applicant advised that fencing of the site and extraction area characterised by sand dunes is impractical as the property is being subjected to continual sand inundation by a transgressive dune. Any fencing in that location would be consumed by windblown sand. Therefore, a condition has been recommended to mark the limits (by survey) of the extraction area with highly visible fixed posts. The condition stipulates that no extraction is to occur outside that prescribed location.

6. PLANNING ASSESSMENT

6.1 Environment Protection & Biodiversity Conservation Act 1999

The Environment Protection and Biodiversity Conservation Act (1999) (EPBC Act) requires approval from the Commonwealth Minister for the Department of Agriculture, Water and Environment (DoAWE) for any activity that is considered likely to have a significant impact on Matters of National Environmental Significance (MNES).

The Biodiversity Development Assessment Report (BDAR) prepared by Wildthing Environmental Consultants concludes that the proposal is unlikely to have a significant impact on any MNES and therefore it is not required to be referred to DoAWE for approval.

6.2 Biodiversity Conservation Act 2016

The Biodiversity Conservation Act 2016 (BC Act) came into force on 25 August 2017 and supersedes the Threatened Species Conservation Act 1995 (TSC Act). The BC Act requires all types of development to be assessed to determine whether the biodiversity offset scheme is to be applied. The EP&A Act lists factors that must be taken into account in the determination of the significance of potential impacts of a proposed development on threatened species, populations or ecological communities (or their habitats) listed under the BC Act.

In accordance with the BC Act, the Biodiversity Assessment Method (BAM) (OEH 2017c) and entry into the Biodiversity Offsets Scheme (BOS) is applicable to certain development activities based on specific criteria. Preparation of a Biodiversity Development Assessment Report (BDAR) is required for a development application that meets any of the following criteria:

- Part 4 development activities deemed to be 'State Significant' under the NSW Environmental Planning and Assessment Act 1979 (NSW EP&A Act);
- Development activities that have the potential to impact Areas of Outstanding Biodiversity Value (AOBV) as listed under Part 3 of the BC Act;
- Development activities that have the potential to cause a significant impact on a threatened species, population or ecological community, listed under Schedules 1 and 2 of the BC Act, as determined by application of a five-part-test of significance in accordance with Section 7.3 of the BC Act;
- Development activities that have the potential to impact areas mapped as having 'high biodiversity value' as indicated by the NSW Biodiversity Values Map (BV Map); and
- Development activities that involve clearing of native vegetation that exceeds the Biodiversity Offset Scheme thresholds (BOS thresholds) as determined by the NSW BC regulation.

As the proposed development will require removal of 10.86ha of native vegetation which exceeds the BOS clearing threshold (1ha) detailed in Section 7.2 of the Biodiversity Conservation Regulation 2017, a BDAR is required to support a development application for the proposed development.

Wildthing Environmental Consultants prepared BDAR (March 2020) on behalf of the proponent for the proposed development. In this BDAR, biodiversity impacts were assessed through:

- Comprehensive mapping and assessment completed in accordance with the BAM;
- The identification of a threatened species of flora within the development site, the impacts of which have been adequately assessed;
- Mitigation measures which have been outlined to reduce the impacts to biodiversity;
- The generation of 17 Ecosystem Credit within the development site for impacts to native vegetation and the generation of 15 Species Credit for impacts to the Rough Doubletail and 20 Species Credit for the impact to Bush-stone Curlew.

The retirement of credits can be undertaken in accordance with the NSW Biodiversity Offsets Policy for Major Proposals, and will be achieved by either:

- (a) retiring credits under the Biodiversity Offsets Scheme
- (b) making payments into the Biodiversity Conservation Fund

(c) funding a biodiversity action

As the applicant does not own the subject land, the BDAR indicated the credits will be offset by payment into the Biodiversity Conservation Fund (BCF) to satisfy an offset obligation.

Council's Natural Resource Officers were generally satisfied with the BDAR and findings. The mitigation measures to reduce the residual impacts to the biodiversity values on the site will be managed through the implementation of a Biodiversity Management Plan to be prepared in accordance with the BDAR. Offset requirements have been included in the recommended conditions contained in **Attachment 3**.

6.2 Environmental Planning & Assessment Regulation 2000 (EP&A Regulation)

6.2.1 Clause 4 – What is Designated Development?

(1) Development described in Part 1 of Schedule 3 is declared to be designated development for the purposes of the Act unless it is declared not to be designated development by a provision of Part 2 or 3 of that Schedule.

Schedule 3 of the EP&A Regulation prescribes development which is designated development under the EP&A Act. Specifically, Part 1, Clause 19 of Schedule 3 states:

19 Extractive industries

(1) Extractive industries (being industries that obtain extractive materials by methods including excavating, dredging, tunnelling or quarrying or that store, stockpile or process extractive materials by methods including washing, crushing, sawing or separating):

- (a) that obtain or process for sale, or reuse, more than 30,000 cubic metres of extractive material per year, or*
- (b) that disturb or will disturb a total surface area of more than 2 hectares of land by:

 - (i) clearing or excavating, or*
 - (ii) constructing dams, ponds, drains, roads or conveyors, or*
 - (iii) storing or depositing overburden, extractive material or tailings, or**
- (c) that are located:

 - (i) in or within 40 metres of a natural waterbody, wetland or an environmentally sensitive area, or*
 - (ii) within 200 metres of a coastline, or*
 - (iii) in an area of contaminated soil or acid sulphate soil, or*
 - (iv) on land that slopes at more than 18 degrees to the horizontal, or*
 - (v) if involving blasting, within 1,000 metres of a residential zone or within 500 metres*
 - (vi) of a dwelling not associated with the development, or*
 - (vii) within 500 metres of the site of another extractive industry that has operated during the last 5 years.**

The proposed development is classified as designated development as:

- the proposal will exceed 30,000 cubic metres per year; and
- the proposal is within 500 metres of the site of other extractive activities that are either currently operating or have occurred within the last 5 years as per the figure below; and
- the proposed development is located in an area mapped as containing acid sulfate soils and potential acid sulfate soils.



Figure 3: Adjoining Sand Extraction Operations

The classification of the proposal as designated development requires an Environmental Impact Statement (EIS) to be submitted with the development application, which includes a requirement for the proponent to make an application to the Departmental Secretary to obtain SEARs pursuant to Schedule 2 of the EP&A Regulation.

An EIS (**Attachment 5**) has been submitted in accordance with the relevant requirements as outlined in the EP&A Regulation, Schedule 2, Parts 2 and 3.

6.3 Environmental Planning and Assessment Act 1979 (EP&A Act)

6.3.1 Section 23G – Joint Regional Planning Panels

Section 4.7 and Schedule 2 of the EP&A Act and Schedule 7, Part 3 of the State Environmental Planning Policy (State and Regional Development) 2011 requires the Hunter and Central Coast Regional Planning Panel (HCCRPP) to determine regionally significant development.

HCCRPP is the determining authority for the subject application as the proposal is regionally significant development as identified under Schedule 7 Clause 2 of State Environmental Planning Policy (State and Regional Development) 2011 ('SEPP State and Regional Development'), being development for the purpose of an extractive industry, which meets the requirements for designated development under clause 19 of Schedule 3 to the EP&A Regulations.

6.3.2 Section 4.46 – Integrated development

The proposal is integrated development pursuant to Section 4.46 of the EP&A Act as approval is required from the EPA under the *Protection of the Environment Operations Act 1997* and Transport for NSW (Transport) under section s138 of the *Roads Act 1993*.

Protection of the Environment Operations Act 1997 (POEO Act)

Protection of the Environment Operations Act 1997 (POEO Act) is the key piece of environment protection legislation administered by the EPA. The object of the Act is to achieve the protection, restoration and enhancement of the quality of the NSW environment.

The development constitutes a land based scheduled activity (extractive industry seeking to extract more than 30,000 tonnes of sand per annum) under the POEO Act requiring an Environment Protection Licence (EPL) pursuant to Sections 43(b), 48 and 55 and Schedule 1.

Accordingly, the application was referred to the Environmental Protection Agency (EPA). An EPL (**Attachment 2**) was issued on 27 February 2020, which included conditions relating to waste, odour, pollution and noise.

Roads Act 1993

A basic left turn treatment (BAL) is proposed to be constructed at the existing site entrance. This road treatment is necessary to manage risks associated with heavy vehicles turning left from Nelson Bay Road into the operation. Nelson Bay Road (MR108) is a classified State road, therefore approval is required under s138 of the Roads Act 1993 to carry out works over a public road.

Transport for NSW (TfNSW) provided in principal support (**Attachment 6**) for the proposal subject to the basic left turn treatment (BAL) being constructed in accordance with Austroads Guide to Road Design Part 4A (Unsignalised and Signalised Intersections) and the relevant Australian Standards. TfNSW also recommended vehicle numbers be regulated to 5 vehicle per hour (vph) and if truck movements exceed 5 vph that provision of an upgraded turning facility will be required.

Transport will also require the developer to enter into a Works Authorisation Deed (WAD).

National Parks & Wildlife Act 1974

The National Parks and Wildlife Act 1974 (NP&W Act) guides the management of conservation areas as well as the protection of native vegetation, native fauna and Aboriginal objects across the State. Under the NP&W Act it is illegal to move, damage, deface or destroy a relic without written permission from the Biodiversity & Conservation Division (BCD) of the Department of Planning, Industry and Environment (DPIE). All Aboriginal objects within the State of New South Wales are protected under Section 90 of the NP&W Act.

Niche Environment and Heritage (Niche) prepared an Aboriginal Cultural Heritage Assessment (ACHA) to inform development of the proposed sand extraction operation. The assessment included background archaeological and historical investigation, ongoing consultation with the Registered Aboriginal Parties and an archaeological survey.

During the survey, it was determined that the southern section of the site contains an area of high sensitivity (PAD 1) within a sand dune system, which may be a continuation of a previously recorded Aboriginal cultural heritage site. The area of sensitivity would be impacted by the proposed activity. Subsequently, an Aboriginal Heritage Impact Permit (AHIP) was applied for under s.90 of the NP&W Act to allow harm to Aboriginal objects by test excavation at the possible Aboriginal cultural heritage site. The AHIP (C0004974) was issued on 8 July 2019.

Investigation and excavation occurred in the identified area where no Aboriginal objects were identified. As a result, the investigations concluded that Anna Bay PAD 1 is not an Aboriginal cultural heritage site. An Aboriginal Site Impact Recording Form was submitted to BCD advising of the updated status "Not a Site".

Based on these findings no further investigation or impact assessment was required. Proposed works may proceed with caution without an Aboriginal Heritage Impact Permit. Advice from BCD confirmed that no further investigation or impact assessment for the proposed development with

respect to Aboriginal cultural heritage is required. Subsequently, the proposed development is not considered integrated development under s.90 of NP&W Act.

A number of recommendations were included in the ACHA to mitigate any potential impacts on Aboriginal cultural heritage site. These have been included in the recommended conditions (**Attachment 3**).

6.3.3 Section 4.15 Evaluation

The proposal has been assessed under the relevant matters for consideration detailed in s.4.15 (1) EP&A Act as follows:

6.3.3.1 Section 4.15(1)(a)(i) provisions of any environmental planning instrument

SEPP (Mining, Petroleum Production and Extractive Industries) 2007 (Mining SEPP)

State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007 (Mining SEPP) is the state policy which governs the way that mining, petroleum production and extractive material resource proposals are assessed and developed in NSW. The Mining SEPP aims to manage and sustainably develop these resources for the social and economic benefit of the community.

Under Part 2, Section 7 (development permissible with consent), Clause 3 (extractive industry), the proposed development is permissible with consent as it involves an extractive industry on land which development for the purpose of agriculture or industry may be carried out.

The following table outlines the relevant matters for consideration in assessment of the proposal as set out in Part 3 of the Mining SEPP.

Clause	Comment
<i>12 Compatibility of proposed mine, petroleum production or extractive industry with other land uses</i>	
Before determining an application for consent for development for the purposes of mining, petroleum production or extractive industry, the consent authority must— (a) consider— (i) the existing uses and approved uses of land in the vicinity of the development, and (ii) whether or not the development is likely to have a significant impact on the uses that, in the opinion of the consent authority having regard to land use trends, are likely to be the preferred uses of land in the vicinity of the development, and (iii) any ways in which the development may be incompatible with any of those existing, approved or likely preferred uses, and	Sand extraction has been undertaken within the general locality since 1990. The site is in a rural location. Surrounding land uses include low intensity rural farms, rural living and nature conservation. Adjoining land uses also include sand extraction and a place of public worship. Based on the studies provided with the application, the sand extraction operation will not preclude or have an unreasonable impact for development on adjoining properties. Sand extraction is permissible in the zone. Modelling of noise and dust impacts on nearby receptors has been undertaken. Mitigation measures have been included in the EIS and supporting studies. The proposed sand extraction is not considered incompatible with the existing uses in the vicinity of the development subject to conditions.

(b) evaluate and compare the respective public benefits of the development and the land uses referred to in paragraph (a)(i) and (ii), and	The development will be of public benefit in terms of social and economic outcomes. Mitigation and rehabilitation measures will ensure the site remains in an acceptable state, thereby ensuring social and environmental outcomes are achieved. The proposed development is permissible with consent in the zone. Subject to mitigation measures as recommended in the EIS and supporting studies, the proposal is not incompatible with development within the vicinity of the site.
(c) evaluate any measures proposed by the applicant to avoid or minimise any incompatibility, as referred to in paragraph (a)(iii).	Modelling of noise, environmental, coastal processes and dust impacts has been undertaken. Mitigation measures have been included in the EIS and supporting studies which will minimise any incompatibility.
<i>13 Compatibility of proposed development with mining, petroleum production or extractive industry</i>	
(1) This clause applies to an application for consent for development on land that is, immediately before the application is determined: (a) in the vicinity of an existing mine, petroleum production facility or extractive industry, or (b) identified on a map (being a map that is approved and signed by the Minister and copies of which are deposited in the head office of the Department and publicly available on the Department's website) as being the location of State or regionally significant resources of minerals, petroleum or extractive materials, or (c) identified by an environmental planning instrument as being the location of significant resources of minerals, petroleum or extractive materials.	The application is in the vicinity of extractive (sand) activities which have previously been undertaken on parts of adjoining properties.
(2) Before determining an application to which this clause applies, the consent authority must— (a) consider— (i) the existing uses and approved uses of land in the vicinity of the development, and (ii) whether or not the development is likely to have a significant impact on current or future extraction or recovery of minerals, petroleum or extractive materials (including by limiting access to, or impeding assessment of, those resources), and	The site is located within an area where there are multiple approved and existing uses. Uses include: - Extractive Industry at No. 6 Road 578 (adjoining site to the east, approx. 700m); - Extractive Industry at 4096 Nelson Bay Road (adjoining site to the west, approx. 650m). The proposed extractive industry is considered to be compatible with the existing uses within close proximity to the site and will not have a significant impact on current or future extraction of minerals. The application has demonstrated there will be no unacceptable cumulative impact (air quality, noise, traffic etc.) as a result of the proposed sand extraction activity.

(iii) any ways in which the development may be incompatible with any of those existing or approved uses or that current or future extraction or recovery, and	
(b) evaluate and compare the respective public benefits of the development and the uses, extraction and recovery referred to in paragraph (a) (i) and (ii), and	It is considered that the proposal will be of public benefit in terms of providing economic activity, access to resource in demand and maintenance of the transmission easement.
(c) evaluate any measures proposed by the applicant to avoid or minimise any incompatibility, as referred to in paragraph (a) (iii).	The proposal is for the removal of wind-blown sand with no extraction below ground level. The mitigation measures included in the EIS and supporting studies are considered sufficient to minimise incompatibility.
14 Natural resource management and environmental management	
(1) Before granting consent for development for the purposes of mining, petroleum production or extractive industry, the consent authority must consider whether or not the consent should be issued subject to conditions aimed at ensuring that the development is undertaken in an environmentally responsible manner, including conditions to ensure the following— (a) that impacts on significant water resources, including surface and groundwater resources, are avoided, or are minimised to the greatest extent practicable, (b) that impacts on threatened species and biodiversity, are avoided, or are minimised to the greatest extent practicable, (c) that greenhouse gas emissions are minimised to the greatest extent practicable.	The application has demonstrated that the proposed works and management procedures will be undertaken in a manner that would ensure that impacts on water resources, air quality, threatened species and biodiversity are minimised to the greatest extent practicable. The proposal will not result in a significant impact on threatened species or biodiversity. The EIS and supporting studies include environmental management measures that are generally supported by Council staff and external referral agencies that will ensure minimal impacts having regard to subclause (1).
(2) Without limiting subclause (1), in determining a development application for development for the purposes of mining, petroleum production or extractive industry, the consent authority must consider an assessment of the greenhouse gas emissions (including downstream emissions) of the development, and must do so having regard to any applicable State or national policies, programs or guidelines concerning greenhouse gas emissions.	Greenhouse gas emissions will be limited to the emissions caused by front end loaders, sand removal trucks, site office and manager's residence construction equipment and by light vehicles associated with the operation of the site. The extraction process is not considered a greenhouse gas emitting activity. Given the scale of the proposed operation, there will be no significant impact with regard to greenhouse gas emissions.
15 Resource recovery	

(1) Before granting consent for development for the purposes of mining, petroleum production or extractive industry, the consent authority must consider the efficiency or otherwise of the development in terms of resource recovery. (2) Before granting consent for the development, the consent authority must consider whether or not the consent should be issued subject to conditions aimed at optimising the efficiency of resource recovery and the reuse or recycling of material. (3) The consent authority may refuse to grant consent to development if it is not satisfied that the development will be carried out in such a way as to optimise the efficiency of recovery of minerals, petroleum or extractive materials and to minimise the creation of waste in association with the extraction, recovery or processing of minerals, petroleum or extractive materials.	Extraction of sand will involve the removal of windblown sand to ground level. Therefore, there will be limited waste generated from the proposed operation. The Site Waste Management Plan and EIS identifies green waste will be managed and re-used on-site, general and domestic waste will be delivered to the Port Stephens Resource Recovery Centre. All black water produced from portable toilets during the construction operations will be collected by a hired contractor on a regular basis. Conditions have been recommended to ensure resource efficiency for the proposed activity is achieved.
16 Transport	
(1) Before granting consent for development for the purposes of mining or extractive industry that involves the transport of materials, the consent authority must consider whether or not the consent should be issued subject to conditions that do any one or more of the following— (a) require that some or all of the transport of materials in connection with the development is not to be by public road, (b) limit or preclude truck movements, in connection with the development, that occur on roads in residential areas or on roads near to schools, (c) require the preparation and implementation, in relation to the development, of a code of conduct relating to the transport of materials on public roads.	Sand will be removed from the site via truck haulage. The capacity of the road has been assessed as being capable to accommodate the increase by TfNSW and Council Traffic Engineers. There is no alternative to remove sand from the site other than via truck haulage. Truck movements will be restricted to 5 vehicles per hour, up to a maximum of 40 trips per day. A specific code of conduct for transport of materials is not deemed warranted given the minor scope of the activity. This was also not requested in the advice from Transport NSW.
(2) If the consent authority considers that the development involves the transport of materials on a public road, the consent authority must, within 7 days after receiving	The application was referred to the TfNSW who supported the application subject to conditions.

the development application, provide a copy of the application to— (a) each roads authority for the road, and (b) the Roads and Traffic Authority (if it is not a roads authority for the road). (3) The consent authority— (a) must not determine the application until it has taken into consideration any submissions that it receives in response from any roads authority or the Roads and Traffic Authority within 21 days after they were provided with a copy of the application, and (b) must provide them with a copy of the determination.	
17 Rehabilitation	
(1) Before granting consent for development for the purposes of mining, petroleum production or extractive industry, the consent authority must consider whether or not the consent should be issued subject to conditions aimed at ensuring the rehabilitation of land that will be affected by the development.	At the cessation of sand mining, site rehabilitation works are proposed to be undertaken including dune stabilisation (batter works including stable angle of repose) and ecological works (rehabilitate vegetation, new dune plantings, weed management and monitoring). A Rehabilitation Management Plan has been prepared for the proposed development. A condition has also been recommended that the residence and shed be removed from the site at the cessation of the sand extraction activity.
(2) In particular, the consent authority must consider whether conditions of the consent should— (a) require the preparation of a plan that identifies the proposed end use and landform of the land once rehabilitated, or (b) require waste generated by the development or the rehabilitation to be dealt with appropriately, or (c) require any soil contaminated as a result of the development to be remediated in accordance with relevant guidelines (including guidelines under clause 3 of Schedule 6 to the Act and the <i>Contaminated Land Management Act 1997</i>), or (d) require steps to be taken to ensure that the state of the land, while being rehabilitated and at the completion of the rehabilitation, does not jeopardize public safety.	The recommended conditions of consent will ensure the Rehabilitation Management Plan is enacted and reflect the requirements with section 17 (2).

State Environmental Planning Policy (Koala Habitat Protection) 2019

This policy aims to encourage the conservation and management of areas of natural vegetation that provide habitat for koalas to support a permanent free-living population over their present range and reverse the current trend of koala population decline. This Policy commenced on 1 March 2020.

Clause 15 of State Environmental Planning Policy (Koala Habitat Protection) 2019 includes savings provisions stating that a development application made, but not finally determined, before the commencement of this policy in relation to land to which this Policy applies must be determined as if this policy had not commenced. Therefore, as the application was lodged prior to the commencement of this policy, State Environmental Planning Policy No. 44 - Koala Habitat Protection will apply.

State Environmental Planning Policy No. 44 - Koala Habitat Protection

The Port Stephens Council Comprehensive Koala Plan of Management (CKPoM), was prepared in accordance with State Environmental Planning Policy No. 44 - Koala Habitat Protection (SEPP 44). Compliance with the Port Stephens Council CKPoM will constitute compliance with SEPP 44 for relevant matters in the LGA.

Approximately 0.59ha of Supplementary Koala Habitat will be required to be removed for the proposed development. No Habitat Linking Areas are required to be removed. Approximately 9.64ha of Supplementary Koala Habitat will be retained within the site. No species of recognised preferred Koala food trees were found to be present within the clearing area and the proposal will not result in the removal of any individual feed trees.

Mitigation methods to resident fauna across the study area have been proposed in the BDAR including:

- exclusion fencing and signage;
- preclearance surveys completed on the morning of any clearance works;
- clearing utilising a 'soft felling' technique;
- any captured displaced fauna relocated to the nearest area of appropriate habitat; and
- all habitat tree felling activities and results to be summarised in a tree clearance report by the supervising ecologist, including fauna injuries.

The above mitigation measures will be implemented through the requirement of Biodiversity Management Plan that will be prepared prior to the release of a Construction Certificate.

State Environmental Planning Policy (Coastal Management) 2018

The SEPP (Coastal Management) 2018 aims to promote an integrated and co-ordinated approach to land use planning through the management of development within coastal management areas.

The SEPP protects vulnerable coastal land including various coastal areas, wetlands and rainforests.

A small portion of the subject site (south-east corner) is located within the 'Coastal Environment Area', which is part of the Coastal Management zone. The potential impacts of the proposed development are primarily restricted to the removal of approximately 0.92 ha of coastal vegetation and associated biodiversity values.

In accordance with Part 2, Division 3, Clause 13(1), development consent must not be granted unless the impact of the proposed development has been considered with regard to the following matters.

13 Development on land within the coastal environment area

(1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:

a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,

The EIS (Tattersall Lander, August 2018), Coastal Process Assessment (Tattersall Lander, January 2020) and Rehabilitation Plan (Wildthing, January 2020) have been prepared to assess, and provide for, management of the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment. Based on these studies, the proposed development is considered unlikely to impact the hydrological or ecological environment and while the biophysical environment will be impacted through clearing, it is considered unlikely to have an adverse impact on the integrity and resilience of this environment.

b) coastal environmental values and natural coastal processes,

The site is approximately 1.3km from the coastline and as such, works are considered unlikely to interfere with natural coastal processes.

c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,

The site is not located within the Port Stephens Marine Estate or any coastal lakes identified in Schedule 1. The application was referred to DPI Fisheries who raised no objection with regard to the Marine Estate Management Act 2014.

d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,

The proposed works will not impact marine vegetation, native vegetation or undeveloped headlands or rock platforms. Works do have the potential to impact native fauna through the removal of vegetation, however to reduce the impact rehabilitation works and mitigation measures to reduce the impacts to biodiversity of better quality will continue to provide habitat for native fauna are proposed. Further, required eco-system credits will be offset by payment into the Biodiversity Conservation Fund (BCF) to satisfy the BC Act 2016.

e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,

Access to the each and headland will not be restricted by the proposal.

f) Aboriginal cultural heritage, practices and places,

The proposal will not adversely impact any sensitive Aboriginal cultural heritage, practices or places. The application was supported by an Aboriginal and Cultural Heritage Assessment (ACHA) report prepared by Niche Environment and Heritage (2019). Based on these findings there was no identified impact on Aboriginal cultural heritage, practices and places. The report was referred to Council's external heritage advisor and Biodiversity Conservation Division who were satisfied with the findings.

g) the use of the surf zone.

There are no identified surf zones at or near the site.

(2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:

- (a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or*
- (b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
- (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.*

To avoid and minimise the impacts to coastal wetlands, the following safeguards are proposed to be implemented:

- Ensure stormwater is collected and diverted to appropriate stormwater infrastructure;
- Implementation of appropriate erosion and control measures;
- Measures to stabilise dunes;
- Dune management and rehabilitation post sand extraction activities;
- Ensure works are carried out in accordance with any Aboriginal Cultural Heritage Assessment.

These safeguards have been recommended as conditions to any consent via the preparation and implementation of a vegetation management plan and appropriate stormwater solution. Therefore, the objectives of SEPP (Coastal Management) 2018 have been met in this regard.

State Environmental Planning Policy No 33 – Hazardous and Offensive Development

SEPP No. 33 – Hazardous and Offensive Development (SEPP 33) presents a systematic approach to planning and assessing proposals for potentially hazardous and offensive development for the purpose of industry or storage. SEPP 33 aims to ensure that in determining whether a development is a hazardous or offensive industry, any measures proposed to be employed to reduce the impact of the development are taken into account. Clause 4 of SEPP No. 33, defines a 'hazardous storage establishment' as:

any establishment where goods, materials or products are stored which, when in operation and when all measures proposed to reduce or minimise its impact on the locality have been employed (including, for example, measures to isolate the establishment from existing or likely future development on the other land in the locality), would pose a significant risk in relation to the locality:

- (c) to human health, life or property, or*
- (d) to the biophysical environment.*

The proposed sand extraction does not propose to use or produce any potentially hazardous or offensive substances. On this basis, the proposal is not considered to satisfy the definition of a 'hazardous storage establishment'. A condition has been recommended that any chemicals or fuels stored on the site have appropriate bunding.

Clause 13 of SEPP No. 33 requires the consent authority to consider the following:

- (a) current circulars or guidelines published by the Department of Planning relating to hazardous or offensive development, and*
- (b) whether any public authority should be consulted concerning any environmental and land use safety requirements with which the development should comply, and*
- (c) in the case of development for the purpose of a potentially hazardous industry—a preliminary hazard analysis prepared by or on behalf of the applicant, and*
- (d) any feasible alternatives to the carrying out of the development and the reasons for choosing the development the subject of the application (including any feasible alternatives for the location of the development and the reasons for choosing the location the subject of the application), and*
- (e) any likely future use of the land surrounding the development.*

Bushfire, public safety and transport considerations have been appropriately considered under relevant chapters of the EIS. Therefore, the proposal is considered to satisfy the aims and objectives of SEPP No. 33.

State Environmental Planning Policy No.55 (Remediation of Land) (SEPP No.55)

Under Section 7, Clause 1 of State Environmental Planning Policy No 55—Remediation of Land (SEPP 55), a consent authority must not grant consent unless:

- (a) it has considered whether the land is contaminated, and*
- (b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
- (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*

The areas affected by the extractive procedures to be undertaken as part of the development have not been subject to contamination. The site has only been used for agricultural or residential uses or to support native vegetation. Rehabilitation of the site will be conditioned to ensure the site returns to a native or agricultural state.

Therefore, it is considered that the development is suitable for the proposed land use. On this basis, the provisions of SEPP 55 have been met.

Port Stephens Local Environmental Plan 2013

Clause 1.3 – Land to which Plan applies

PSLEP 2013 applies to land identified upon the 'Land Application Map'. The subject development occurs within this area.

Land Use Table - Zoning

The development application has been lodged for the purposes of an extractive industry. Extractive industries are defined in the PSLEP 2013 as:

'the winning or removal of extractive materials (otherwise than from a mine) by methods such as excavating, dredging, tunnelling or quarrying, including the storing, stockpiling or processing of extractive materials by methods such as recycling, washing, crushing, sawing or separating, but does not include turf farming.'

The site is zoned RU2 – Rural Landscape. The objectives of the RU2 zone include:

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*
- *To maintain the rural landscape character of the land.*
- *To provide for a range of compatible land uses, including extensive agriculture.*

Extractive industries are permitted with consent in the RU2 zone. The proposal is considered to be consistent with the aims and objectives of this zone. The proposed sand extraction is a primary industry that demonstrates a sustainable approach to natural resource base access. The ancillary development, being a site office and manager's residence, is considered consistent with a rural landscape character.

Clause 4.3 Height of buildings

The subject site has no maximum height limit under the PSLEP 2013.

Clause 5.10 Heritage conservation

The objectives of this clause are to conserve the heritage significance of Port Stephens. Neither the site nor adjoining lands are listed under Schedule 5 of the PSLEP as containing locally significant heritage significance.

Aboriginal Heritage

An AHIMS search and an Aboriginal and Cultural Heritage Assessment (Nice Environment, 2019) were prepared in support of the application. The ACHA provides further information and evidence about the potential for Aboriginal objects to be disturbed by the proposed development. The ACHA confirms that no Aboriginal objects are present or likely to be present in the footprint of the proposed sand extraction. There is a very low likelihood that objects will be disturbed within the natural dune landforms and dune forest during construction and operation of the facility. It was also concluded that an AHIP is not required for the proposed quarrying activity and associated works.

Based on the information discussed in the ACHA, the proposal may proceed without any further Aboriginal cultural heritage or archaeological investigation. Mitigation measures recommended in the ACHA report and by Council's Heritage Advisor have been included in the recommended conditions, including an unexpected finds protocol, prohibiting activities in the undisturbed areas, surveying / marking undisturbed areas and the use of signage.

European Heritage

The Historic Heritage Impact Assessment prepared by Nice Environment (March 2018) submitted with the application did not identify any areas of archaeological potential for the recovery of heritage significant relics at the subject site. There are also no listed heritage items within, or directly adjacent to, the site. The proposed works would therefore not impact on any heritage significant items or archaeological relics. There are no further non-Aboriginal (historic) heritage constraints for the proposed works.

Accordingly, subject to conditions that ensure the undisturbed Aboriginal and heritage significance of the site is preserved, the proposed development satisfies the objectives of Clause 5.10.

Clause 7.1 Acid sulfate soils

The objective of Clause 7.1 is to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage. The subject site is identified as containing Class 4 Acid Sulphate Soils (ASS).

Clause 7.1 states that a person must not, without development consent, carry out works beyond 2m below the natural ground surface within land identified as ASS Planning Category 3, except as otherwise provided in Clause 7.1. No works are proposed beyond 2m below ground level (AHD) as part of this proposal. The proposed sand extraction does not comprise works more than 2 metres below the natural ground surface: the proposed sand extraction only extends to the natural ground surface.

Further, ASS was considered as part of the Geotechnical Assessment (RCA, 2018). Based on the results of the ASS testing, the sand mining operations are not expected to encounter actual acid sulfate soils nor potential acid sulfate soils.

Notwithstanding, a condition has been recommended that will require the preparation and implementation of an Acid Sulphate Soils Management Plan if ASS is encountered during works for the managers residence and other ancillary works. Accordingly, the proposed development is considered to be satisfactory in regard to the management of ASS.

Clause 7.2 Earthworks

The objective of Clause 7.2 is to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items, or features of the surrounding land.

Initial site establishment earthworks are required for the manager's residence, internal access road and other ancillary components as identified on the Architectural and Engineering Plans.

In response to the objective of Clause 7.2, the proposed development is satisfactory against the matters for consideration under Clause 7.2(3), as:

- The majority of earthworks are located centrally within the site;
- There are no major works below natural ground level;
- There is a minor increase in permeable and hardstand surfaces that will disrupt drainage patterns;
- The preparation of a Construction Environmental Management Plan (CEMP) will be required prior to works commencing to mitigate the effect of the development on the existing and likely amenity of adjoining properties;
- There is likely to be a low impact on water sources or environmentally functions as demonstrated in the EIS and supporting site studies; and

- Control methods including sediment control measures such as the installation of a sediment fencing have been proposed and included in the recommended conditions.

Clause 7.6 Essential services

This clause provides that consent must not be granted unless the consent authority is satisfied that services that are essential for the development are available or that adequate arrangements have been made to make them available.

The following essential services will be provided:

- Potable water supply will be made available from the collection of roof water from the site office/manager's residence into rainwater tanks;
- Effluent will be disposed of via a pump-out effluent system;
- Electricity will be provided via solar supply; and
- Telecommunications will be wireless.

It is considered the proposed development satisfies this clause as adequate arrangements have been made to service the site including water, electricity, sewage, drainage and vehicular access. Conditions will be included on the consent to require that that essential services are available prior to the issue of an Occupation Certificate.

Clause 7.8 Drinking water catchments

The objective of this clause is to protect drinking water catchments by minimising the adverse impacts of development on the quality and quantity of water entering drinking water storages.

The proposed development borders the North Stockton Catchment Area as declared under the *Hunter Water Regulation 2015*. The Stockton Sandbeds are not currently a water source for Hunter Water. Hunter Water does, however, maintain an interest in ensuring that inappropriate development in the catchment does not occur.

The application was referred to Hunter Water Corporation (HWC) for comment (**Attachment 9**). Hunter Water's main concerns with sandmining in or near catchments relate to protecting the groundwater from contamination and potential loss of the groundwater resource. HWC requested recommended ensuring a minimum 1 metre buffer between the maximum allowable extraction depth and the maximum predicted groundwater level, storing contaminating substances out of the catchment area and implementation of an appropriate Spill Management Procedure and Groundwater Monitoring Plan.

The HWC measures have been included as part of the recommended conditions.

6.3.3.2 Section 4.15(1)(a)(ii) any draft environmental planning instrument that is or has been placed on public exhibition

The proposed Remediation of Land SEPP is intended to repeal and replace State Environmental Planning Policy No. 55 – Remediation of Land (SEPP No.55). The draft SEPP, which was exhibited from 25 January to 13 April 2018, is currently under consideration.

The proposed SEPP seeks to provide a state-wide planning framework to guide the remediation of land, including outlining provisions that require consent authorities to consider the potential for land to be contaminated when determining development applications; clearly lists remediation works that require development consent; and introducing certification and operational requirements for remediation works that may be carried out without development consent.

Consideration has been given to the suitability of the site with respect to potential land contamination under the SEPP No.55 discussion elsewhere within this report. The subject site has been identified as suitable for the proposed development and further investigation in respect to contamination is not warranted in this instance.

6.3.3.3 Section 4.15(1)(a)(ii) any development control plan (and section 7.11 plan)

The following sections of the Port Stephens Development Control Plan 2014 (DCP) are relevant to the proposal:

Chapter A – Part A.12 Development notification

The application was advertised and notified for a period of 28 days from 25 October 2019 to 22 November 2019. 15 submissions were received during this period.

Section B – General Controls

Chapter B3 – Environmental Management

Environmental Significance

According to the BDAR prepared by Wildthing (March 2020), no threatened matter consistent with serious and irreversible impacts (SAII) candidate species was identified as likely to occur or to contain significant habitat within the study area is likely to be impacted by the proposed development.

The assessment of environmental impacts and the mitigation measures provided in the BDAR are considered accurate and appropriate. Mitigation measures to reduce the residual impacts to the biodiversity values have been included in the recommended conditions contained in **Attachment 3**.

A Rehabilitation Plan has also been prepared for the proposed development (Wildthing Environmental Consultants, 2020) to restore the environmental value of the site post quarrying activities.

Biodiversity Offsets

An offset is required for the threatened species impacted by the development. The BDAR identified a requirement for the generation of 17 Ecosystem Credits within the development site for impacts to native vegetation and the generation of 15 Species Credit for impacts to the Rough Doubletail and 20 Species Credit for the impact to Bush-stone Curlew.

As the client does not own the subject land, they have indicated the credits will be offset by payment into the Biodiversity Conservation Fund (BCF) to satisfy an offset obligation.

Payment to the BCF has been included as a recommended condition of consent.

Koalas

Approximately 0.59ha of Supplementary Koala Habitat will be required to be removed for the proposed development. No Habitat Linking Areas are required to be removed. Approximately 9.64ha of Supplementary Koala Habitat will be retained within the site. No species of recognised preferred Koala food trees were found to be present within the study area, hence the proposal will not result in the removal of any individual feed trees.

A detailed assessment on koala impacts is provided in the preceding sections of this report under the SEPP No.44 – Koala Habitat Protection discussion.

Chapter B3 – Environmental Management

Acid Sulfate Soils

The subject site is identified as containing Class 4 Acid Sulphate Soils (ASS). ASS was considered as part of the Geotechnical Assessment (RCA, 2018). Based on the results of the ASS testing, the development is not expected to encounter actual acid sulfate (AAS) nor potential acid sulfate soils (PASS).

Air Quality

An Air Quality Impact Assessment (Advitech Environmental, 2018) was prepared for the proposed operation. Advitech modelled a worst-case scenario (i.e. 910 cubic metres per day approximately equating to 260,000 cubic metres of sand extracted per year) to assess the potential particulate impacts to sensitive receivers. The results of the modelling indicate that the operation will result in incremental increases for dust deposition at surrounding sensitive receivers.

However, dispersion modelling indicates that the Anna Bay Quarry operations will still be below the EPA impact assessment criteria for TSP, PM10 and PM2.5 as a result of cumulative impacts. Any exceedances that may occur will be likely attributed to elevated background concentrations rather than a significant incremental contribution from the proposed development.

The Air Quality report identifies that predicted dust levels at sensitive receiver (R17) 4206A Nelson Bay Road may exceed the impact assessment criteria, however this exceedance appears to be based on a maximum daily intensity of sand extraction of 260,000 cm³/yr (910m³/day). It is noted that the proposal is only seeking sand extraction of up to 50,000 cm³.

EPA and Council's Environmental Health Section were satisfied with the proposal and findings of the Air Quality report and supplementary material subject to conditions. Conditions that require the premises and activity to operate in a manner which prevents or minimises the emission of air impurities, including dust, from the premises have been included in the recommended conditions of consent.

Earthworks

Initial site establishment earthworks are required for the manager's residence, internal access road and other ancillary components as identified on the site plan. A condition has been included that erosion and sediment control measures are to be installed prior to the commencement of works.

Noise

A Noise Impact Assessment (Advitech, 2018) was submitted with the application. A noise assessment criteria was established for adjacent sensitive receiving noise environments.

Assessment of potential construction and operational phase noise impacts was made using a number of conservative assumptions as outlined in the report. The noise prediction indicates that exceedances of the noise goals may be expected under some construction and operational conditions.

During construction, exceedance of the Noise Management Levels (NML) at up to five residential receivers and one place of worship may be expected on a short-term basis during internal haul road widening works and the works to improve the site access. Although, it is expected that there would not be any exceedance of the high affected NMLs (75 dB(a)) during any of the construction activities. Noise impacts would be minimised during the construction phase of the proposal by implementing the recommended work practices provided within the Noise Impact Assessment. Supplementary

monitoring may be undertaken in response to, and to assist with the management of specific noise complaints.

During operation, marginal exceedances of the Project Specific Noise Levels (PSNL) at up to three residential receivers and one place of worship may be experienced during general quarrying operations and vegetation mulching activities. In addition to universal work practices to minimise the site generated noise, the following noise control recommendations are provided to minimise noise emissions during the operational phase of the proposal:

- during quarrying operations, internal vehicle movements are restricted to five heavy vehicles in any one hour of the day;
- noise levels generally fall to their lowest between 11:00am and 3:00pm. High noise generating activities such as mulching should be scheduled for periods of higher background noise levels, during which masking of noise is more likely to occur; and
- temporary barriers or local topography may be used to maximise the shielding of the nearby sensitive receivers from vegetation mulching activities.

Modelling results also indicate that exceedances of up to 2dB(A) are expected at the nearby Baylife church (R23) if mulching and quarry operations are to occur simultaneously. It therefore stands that receivers R4, R13, R14 and R23 are expected to be compliant with the PSNL if mulching operations (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.

No operations are proposed on Sundays or Public Holidays.

Ongoing mitigation measures have been recommended in the Acoustic Report to ensure that if adverse noise impacts are experienced as a result of the project and active investigation into the nature of the complaint and additional controls are conducted. These measures are listed below:

- noise monitoring is to be carried out to establish the noise emission level of the facility at sensitive receivers and determine compliance; and
- noise monitoring is undertaken on a quarterly basis for the first year of operation of the facility, with the frequency of noise monitoring reviewed each year afterwards.

Supplementary advice was provided at the Council's request to demonstrate that adoption of these measures will demonstrate compliance with the NMLs. The Supplementary Advice demonstrated that specific and universal mitigation measures will adequately address modelled exceedances of PSNL during all operational activities.

EPA and Council's Environmental Health Section were satisfied with the proposal and findings of the Acoustic Impact report and supplementary material subject to conditions. The universal and specific noise management measures have been included in the recommended conditions of consent.

Chapter B4 – Drainage and water quality

A stormwater management plan was submitted with the application and includes adequate quality and quantity controls as required by Councils policy. Rainwater will be collected from the proposed site office/manager's residence and stored in rainwater tanks for re-use on site.

The site is not located in a known drainage problem area. Given the location of the proposed dwelling within a large rural lot, the provision of site based detention to slow down runoff would be of no benefit. It is deemed that specific water quantity control (i.e. infiltration/OSD) is not necessary for this development. Given the location of the dwelling within a rural setting, it could reasonably be assumed that since stormwater runoff is discharged as overland flow over the rural grassed/sandy environment (receiving natural treatment and infiltration), impacts to the surrounding water quality would be negligible.

The stormwater drainage plan has been assessed as being consistent with the Infrastructure Specification and a condition of consent has been included in the recommended consent requiring the provision of detailed engineering plans, prior to the issue of a Construction Certificate.

Chapter B5 – Flooding

The 2017 Anna Bay and Tilligerry Creek Flood Study, Jacobs Sydney identifies the lot as flood prone. The site is classified as ‘Minimal Risk, Flood Prone Land’.

The proposal has been assessed by Council's Flood Engineers and it was concluded that the proposal will not have a significant impact on local flooding.

Chapter B6 – Essential services

The following essential services will be provided:

- Potable water supply will be made available from the collection of roof water from the site office/manager's residence into rainwater tanks;
- Effluent will be disposed of via an on-site effluent treatment system;
- Electricity will be provided via solar supply; and
- Telecommunications will be wireless.

The provision of the above services is deemed appropriate for the proposed development.

B8 - Heritage

The proposal is unlikely to impact on European or Aboriginal objects or places of heritage significance. Further detail on heritage matters has been assessed in the preceding sections of this report.

Chapter B9 – Road network and parking

Traffic Impacts

The site is located on Nelson Bay Road, a classified (arterial) state road. The proposal intends to have a maximum 40 truck movements in/40 trucks movements out per day, with an expected peak hour time of 5 in/5 out.

A Traffic Impact Assessment (TIA) prepared by Better Transport Futures (2018) anticipated that the proposal would generate a maximum increase of 0.5% to traffic volumes on Nelson Bay Road. The report advises that both local road and intersection capacity are not unduly impacted by traffic generation associated with the proposed development.

TfNSW and Council's Traffic Engineer reviewed the TIA and proposed development and were satisfied the traffic generated by the development should have minimal impact on the surrounding road network, subject to the construction of a Basic Left Turn Treatment (BAL) to provide egress to Nelson Bay Road from the site and regulating movements to 5 vehicles per hour. These measures have been included in the recommended conditions of consent.

Car parking

No designated parking areas have been included on the submitted Development Plans. Figure BT: On-Site Parking Requirements does not include a specific parking requirement for extractive facilities. Undercover car parking will only be required for the manager of the site and can be accommodated within the proposed site office building/manager's residence curtilage.

Access

Nelson Bay Road is a divided four lane dual carriageway, signposted at 80km/hr. A centre median is in place preventing right turn in/right turn out movements at the site. All access to the site would require use of the Nelson Bay/Port Stephens Drive roundabout, with left in and left out only provision for sites ingress/egress. The TIA notes that if any trucks need to travel east, there are several U-turn bays within a short distance to the west along Nelson Bay Road suitable for use by heavy vehicles. Trucks travelling to the site from the west can perform a U-turn at the Port Stephens Drive roundabout.

A basic left turn treatment (BAL) is proposed to be constructed at the existing property entrance. This requirement is necessary to manage risk associated with heavy vehicles turning left from Nelson Bay Road into the facility. Sight distances for the proposed access driveway exceeds minimum requirements as outlined in AS2890 and Austroads. Using Figure, A10(b) from AUSTROADS Guide to Road Design Part 4, a BAL intersection treatment would be adequate.

The internal site access will also be upgraded as part of this proposal, including appropriate queuing and manoeuvring areas for truck movements. The existing access road will be widened to 6m and consist of basic gravel construction (unsealed) with adequate drainage; other than for minor drainage purposes. There is no proposal to excavate into the existing road.

Council's Traffic Engineer and TfNSW reviewed the proposal and supporting information and raised no objection with regard to access and traffic arrangements. A condition has been included requiring detailed plans of internal roads and BAL treatment are provided prior to issue of the Construction Certificate.

Chapter B10 – Social Impact

A Social Impact Assessment (SIA) has been prepared for the proposal. The SIA concludes that the proposed development will not have a significant adverse impact on the locality nor on other stakeholders associated with the proposed development.

Council officers have no major concern for the proposal relating to social or economic impact.

Chapter C4 Dwelling House, Secondary Dwelling, Dual Occupancy or Ancillary Structures
Building Height

There is no prescribed maximum building height in this location. The height of the proposed site office/manager's residence is 6.5 metres. The height of the building is appropriate for the context and character of the area.

Ancillary Structures

The site office/manager's residence is considered as an ancillary structure.

DCP requirements are that ancillary structures are located a minimum of 10 metres from the side and rear boundaries and 5 metres from any other building. The proposed development is compliant with these requirements.

A condition has been included that construction colours will comprise neutral tones, consistent with the rural amenity of the location.

Streetscape and Privacy

The location and design of the site office/manager's residence is considered appropriate for a development of this nature. There are no privacy impacts associated with the proposal, largely due to property size and existing and proposed building locations.

Port Stephens Development Contribution Plan

The application attracts Section 7.12 Contributions pursuant to the *Environmental Planning and Assessment Act 1979* and the Port Stephens Development Contributions Plan. A condition has been included that a monetary contribution is to be paid to Council, pursuant to section 7.12 of the *EP&A Act* and the Port Stephens Council Fixed Development Contributions Plan, prior to release of the Construction Certificate.

6.3.3.4 Section 4.15(1)(a)(ia) Planning agreements

No planning agreements are relevant to the proposal.

6.3.3.5 Section 4.15(1)(a)(iv) the regulations (and other plans and policies)

No matters prescribed within the regulations apply to the proposed development that have not been addressed in the preceding sections of this report.

Strategic policies relevant to the proposal have been discussed below.

Hunter Regional Plan 2036

The Hunter Regional Plan (HRP) 2036 is a 20-year blueprint for the future of the Hunter. The HRP recognises the importance of extractive industries in the Hunter Region and the importance of the natural resources sector in growing the regional economy. The HRP also acknowledges the importance of planning for greater land use compatibility and mitigating conflict between resource recovery areas and other land use clusters.

The proposed development is considered to align with the Actions and Directions of the Hunter Regional Plan 2036 through the establishment of a sustainable resource recovery activity that adopts measures to reduce and minimise land use conflicts.

Port Stephens Planning Strategy 2011

The Port Stephens Planning Strategy (PSPS) aims to provide high level strategic direction for spatial planning in the Port Stephens Local Government Area (Port Stephens LGA) and has replaced the previous Port Stephens Community and Infrastructure Strategy 2006-2010. This Strategy is intended to act as a guideline to be read in conjunction with other planning documents, which regulate development in the LGA.

The PSPS does not contain any specific recommendations for this form of development nor the site. However, the PSPS highlights the need to facilitate employment generating activities and sustainable development patterns in the LGA. On this premise, the proposal delivers on the strategic direction and intent of the PSPS.

6.3.3.6 Section 4.15(1)(b) the likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

Built Environment

The site is located within a rural and coastal setting. The built environment comprises manifestations of low scale buildings fitting with the rural zoning.

Alterations to visual characteristics at the site include changes to the formation of the sand dune and the erection of the site office and caretaker's residence. A condition has been included that construction colours will comprise neutral tones, consistent with the rural amenity of the location.

Visual impacts from the proposed development are minimal, resulting in negligible or unaltered visual impact from the foreshore, surrounding properties and from Nelson Bay Road. A Visual Impact Assessment (VIA) was commissioned for the proposed development prepared by Tattersall Lander (2018). Council generally supports the findings of the VIA.

There are no public views from the public domain to Stockton Beach due to existing sand dunes and vegetation. It is not anticipated that the constructed facility will have any negative visual impacts on the built environment.

Natural Environment

The Biodiversity Development Assessment Report (BDAR) prepared by Wildthing Environmental Consultants (2020) concludes that the proposal is unlikely to have a significant impact on endangered flora or fauna. Avoidance, minimisation and rehabilitation measures have been achieved as part of the application.

The retirement of credits will be required and carried out in accordance with the NSW Biodiversity Offsets Policy for Major Proposals.

The mitigation and rehabilitation measures in accordance with the BDAR that will preserve the natural environment have been included in the recommended conditions of consent.

Social Impact

Relevant community and technical mitigation strategies have been cited in the Social Impact Assessment to address the variety of considerations which have been raised by both the public and by other stakeholders. The site of the proposed sand extraction has been assessed as being suitable because the proposal will not result in any significant impacts on the social environment.

Economic Impact

The proposed sand mine provides an opportunity for local employment at Anna Bay and other local and regional businesses through the multiplier effect. The proposed sand extraction through the life of the mining operations will allow for the continued employment of local workers. The construction and operation of the sand extraction facility will see jobs generated for up to 30 years.

6.3.3.7 Section 4.15(1)(c) the suitability of the site for the development

The site's location is considered suitable for the proposed sand extraction facility. There is a requirement to maintain the electrical easement free of obstruction. Southerly winds are resulting in continuous sand deposition, causing an ongoing issue with the ability to maintain the easement. The accumulation of these sands is a primary electricity maintenance consideration, and also a potential safety issue.

The proposed development enables satisfactory maintenance of the existing electricity easement. The proposed development also provides the efficient utilisation of available existing resources and presents overall economic benefits to local, regional and State economies.

Based on the assessment, it is considered that the site is suitable to accommodate the extraction facility in its proposed form and allows the operators to sustainably manage any potential impacts. The proposed outcomes will establish an ongoing critical maintenance activity that is compatible with the surrounding landscape. The site attributes are conducive to a development of this nature subject to conditions of consent.

6.3.3.8 Section 4.15(1)(d) any submissions made in accordance with this act or the regulations

The proposal was notified and advertised for a period of 28 days from 25 October 2019 to 22 November 2019 in accordance with the *EP&A Act*, *EP&A Regulations* and Section A of the DCP. Council received 15 submissions during that time. The content of the submissions and response have been outlined in the table below.

Concern	Comment
Addition of heavy vehicles to already congested roads by heavy vehicles will have a negative impact on tourism in the locality.	Nelson Bay Road has existing capacity to provide an adequate level of service having regard to addition of vehicles associated with the proposed development. TfNSW and Council Traffic Engineers have raised no objection to the proposal in this regard.
Adverse safety implications of additional trucks on Nelson Bay Road.	Nelson Bay Road has existing capacity to provide an adequate level of service having regard to addition of vehicles associated with the proposed development as demonstrated in the TIA, and advice from TfNSW.
The presence of sand mining is at odds with the promotion of the locality for tourism. There are ample sand mines in the locality already.	The proposed development is a permissible land use. The proposal provides a maintenance the essential electricity network operated Ausgrid. The proposed sand mine has been assessed as being compatible with the other land uses occurring in Anna Bay, including tourism.
Physical impacts to roads caused by the addition of heavy vehicles.	Nelson Bay Road has existing capacity to provide an adequate level of service having regard to addition of vehicles associated with the proposed development. TfNSW manage the maintenance of

	Nelson Bay Road and have no objection to the proposed increased heavy vehicle movements.
Likelihood of increased traffic accidents caused by the addition of heavy vehicles: associated impact on ingress/egress to and from the Tomaree Peninsula including access for emergency vehicles.	As per above comment.
The provision of additional heavy vehicles on Nelson Bay Road will cause adverse impacts to the physical structure of Tilligerry Creek Bridge.	TfNSW raised no concern with regard to the adverse impacts to the physical structure of Tilligerry Creek Bridge.
There are significant safety implications of heavy vehicles passing at the Tilligerry Creek Bridge.	As per above comment.
The proposed development will cause negative impacts to ecology generally.	Vegetation will be removed for works associated with the construction of the proposed site office/manager's residence including provision of the Asset Protection Zone for bushfire purposes, and minor improvements to the current site access road. Vegetation will also be removed during the extraction of sand from the site. To offset this impact, the retirement of biodiversity credits will be made by a payment into the Biodiversity Conservation Fund (BCF) in accordance with the <i>BC Act 2016</i>. Operational measures will be also be implemented to minimise impact to native flora and fauna during the life of the activity. Rehabilitation works will occur at the cessation of the sand extraction activity to restore the ecological value of the site.
Causation of negative impacts on the wildlife corridor in the locality and associated impacts on the movement of native fauna, including koalas.	Measures to reduce impact to resident fauna and flora within the study area during the construction and operations phase have been included via conditions of consent. Vegetation removal will be offset by payment into the Biodiversity Conservation Fund (BCF) as per the BC Act 2016.
The proposed development consists of the exploitation of a fragile and unique ecosystem.	Operational measures will be provided to minimise impact to native fauna. Measures to reduce impact to resident fauna and flora within the study area during the construction and operations phase have been included via conditions of consent. Vegetation removal will also be offset by payment into the Biodiversity Conservation Fund (BCF) as per the BC Act 2016. A comprehensive scope of rehabilitation of works is proposed at the cessation of the sand extraction activity.

Removal of vegetation will cause additional sand 'break outs.	The proposed removal of dead vegetation from sand dunes during the sand extraction process will have limited impact on further sand 'break outs'. Rehabilitation works are proposed for the sand extraction facility once the consent lapses.
Noise from vehicles and heavy machinery.	The NIA has advised that all receivers will be complaint with the PSNL if vegetation mulching occurs in conjunction with sand extraction activities and within the following hours: • 8am to 9am and 4pm to 6pm weekdays; and • 10am to 1pm on Saturdays. (No operations are proposed on Sundays or Public Holidays). Construction noise during site access works (formation widening, and paving works on Nelson Bay Road) will impact a number of receivers. However, it is noted that: 1. Construction works will be short term; 2. The model utilised in the acoustic assessment was conservative; i.e. all equipment running simultaneously and closest to receivers; 3. The mitigation measures recommended in the report should be considered reasonable and feasible given the short duration of works; and 4. Ongoing mitigation (including onsite noise measurements) will be employed to handle any complaints that arise from the construction phase. These measures have been included in the recommended conditions of consent.
Creation of air pollution associated with small particulate matter and truck diesel fumes and the associated impact on nearby residents.	The Air Quality Assessment report has demonstrated that the proposed development will not exceed NSW regulatory dust guideline levels. Notwithstanding, an Air Quality Management Plan is proposed to be implemented to ensure any potential air impacts are minimised. EPA have raised no objection to the proposal in this regard, subject to conditions.
Increase in air pollution generally.	As per above comment.
Sand should remain insitu to mitigate impacts associated with sea level rise.	The existing electrical infrastructure (Ausgrid easement) needs to be kept free of sand deposition. Enactment of a rehabilitation plan will provide dune stability post operations.

Sand dunes should remain as nature intended: humans should not be removing them for financial gain.	The proposed development is a permissible land use. Enactment of a rehabilitation plan will provide dune stability post operations.
The application seeks removal of more sand than that located under powerlines. Powerlines should be relocated.	The relocation of powerlines is an Ausgrid matter not a proposition to be considered as part of this assessment.
Objection to the removal of sand other than that within the electricity easement.	Additional sand removal is proposed beyond the electricity easement so that wind-blown sand deposition under transmission lines is minimised.
An additional fully functioning sand mine is not needed in this location.	Existing electrical infrastructure (Ausgrid easement) needs to be kept free of sand deposition. The application has demonstrated there is demand for the provision of sand resource within the local and regional economy.
Belief that the sand mine operator will exceed proposed extraction rates and truck movements: Council does not have the resources to monitor.	The conditions of consent have prescribed extraction rates and truck movements. Council will monitor the operation as per all other extractive operations in the LGA.
Sand is a limited resource: removal should be limited to 50 percent of that proposed so that the environment can rejuvenate and so that there will be a lesser number of trucks on the road compared with those currently proposed.	The NSW Department of Planning & Environment – Division of Resources & Geoscience was satisfied with the proposal, including size and quality of the resource extracted. TfNSW has advised Nelson Bay Road has existing capacity to provide an adequate level of service having regard to addition of vehicles associated with the proposed development. The BDAR and rehabilitation plan will ensure the rejuvenation of the site.
The amount of sand proposed to be extracted is excessive and should be reduced to between one quarter and one third. Should this not occur, massive impacts will occur to the sand dune environment.	As per above comment.
Adverse impact on the stability of sand dunes associated with adjoining land to the south and associated request for provision of a 15 metre (minimum) buffer between the top edge of the batter on the proposed extraction site and the southern boundary of the proposed development site. Belief that failure to provide this buffer will impact adjoining sand dune stability on land to the south of the proposed development site and will potentially impact Aboriginal cultural heritage values and its associated conservation value.	The geotechnical assessment report submitted with the application has confirmed that the proposed post operational dune profile will be stable. Creation of that profile is proposed with a 5 metre buffer between the top edge of the batter on the proposed extraction site and the southern boundary of the proposed development site. Dunes located directly to the south on adjoining land, including any associated Aboriginal cultural heritage and conservation values, will not be impacted by the proposed development.

Removal of sand below ground level and associated destabilisation of sand dunes.	No sand extraction is proposed below natural ground level.
Any conditional approval should require restrictions to traffic movements during certain times.	A condition limiting movements to 5 vehicles per hour have been included, while operating hours have also been stipulated.
Any conditional approval should require an independent study on the implications to the wildlife corridor and the associated movement of native animals.	The submitted BDAR and ecological studies have been assessed by Council's Natural Resource team.

6.3.3.9 Section 4.15 (1)(e) the public interest

Matters pertaining to the public interest have been discussed within this report with approval of the application is considered to be in the public interest. The development does not have any significant adverse impacts on the built or natural environment, and contributes to positive social and economic outcomes.

7. CONCLUSION

It is recommended that the Hunter and Central Coast Regional Planning Panel, as the consent authority, approve development consent to 16-2019-636-1 (2019HCC-11) for an 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) at 4226 Nelson Bay Road, Anna Bay (LOT: 591 DP: 1191380), pursuant to Section 4.16 of the *EP&A Act* subject to the conditions in **Attachment 3**.

Signed (Assessing Officer)



Date: 22 April 2020

Ryan Falkenmire
Principal Development Planner

Reviewed (Supervising Officer)



Date: 22 April 2020

Rean Lourens
Planning and Developer Relations Coordinator

Authorised for submission to HCCRPP



Date: 22 April 2020

Kate Drinan
Manager Development Assessment & Compliance