



Land and Environment Court of New South Wales

CITATION : **Diamond v Minister for Planning New South Wales and Another (No 2) [2004] NSWLEC 254**

PARTIES : APPLICANT
Neville Diamond
FIRST RESPONDENT
Minister for Planning New South Wales

SECOND RESPONDENT
Dixon Sand (Penrith) Pty Ltd
10206 of 2003

FILE NUMBER(S) :

CORAM: Talbot J

KEY ISSUES: Designated Development :- whether consent authority capable of adequate supervision - has there been a total system failure to monitor sand mining development - disruptive motives and integrity of objector applicant taken into account - allegations of fraud and misconduct not properly particularised

LEGISLATION CITED: Environmental Planning and Assessment Act 1979 s 4, s 76A(7), s 79(5), s 94
Protection of the Environment Operations Act 1997
Water Act 1912
Water Management Act 2000
Environment Planning and Assessment Regulation 2000 Sch 3
Development Control Plan No 500 - Extractive Industries
Sydney Regional Environmental Plan No 9 - Extractive Industries

CASES CITED:

DATES OF HEARING: 02/03/2004 (Site Inspection), 03/03/2004, 04/03/2004, 05/03/2004, 08/03/2004, 09/03/2004, 10/03/2004, 12/03/2004, 22/03/2004, 23/03/2004

DATE OF JUDGMENT: 05/24/2004

LEGAL REPRESENTATIVES: APPLICANT
In Person
SOLICITORS
NA
FIRST RESPONDENT
Mr M J Leeming (Barrister)
SOLICITORS
Department of Infrastructure, Planning and Natural Resources

SECOND RESPONDENT
Mr P R Clay (Barrister)
SOLICITORS
Astely Thompson Cox

JUDGMENT:

IN THE LAND AND
ENVIRONMENT COURT
OF NEW SOUTH WALES

10206 of 2003

Talbot J

24 May 2004

Neville Diamond

Applicant

v

Minister for Planning New South Wales

First
Respondent

Dixon Sand (Penrith) Pty Ltd

Second
Respondent

Judgment

Introduction

1 Dixon Sand (Penrith) Pty Limited (“the second respondent”) currently extracts and processes mortar and concrete sand on lot 29 and lot 196 DP 752025 at Old Northern Road, Maroota (“the site”).

2 In August 2001 Environmental Resources Management Australia Pty Limited (“ERM”) prepared an Environmental Impact Statement (“EIS”) in respect of the proposed extension of the sand extraction operations into lot 1 and lot 2 DP 547255 (“the adjoining lots”). It is proposed in the EIS that sand will be extracted from the adjoining lots and transported to an existing processing plant on lot 196 (formerly portion 196). The current operation was granted consent by this Court on 7 July 2000. The total amount of material leaving the site will be in accordance with the limits set in the earlier consent. The area of extraction will increase. The current consent for the purpose of extraction of material and rehabilitation is limited to a period of 10 years effective from 22 March 2000.

3 It is proposed to use the existing processing plant and ancillary facilities such as the workshop, weighbridge and office as well as the existing haul roads and a recently constructed intersection with Old Northern Road. As the existing consent is for 10 years and extraction and progressing rehabilitation within the adjoining lots is now proposed to take up to 20 years, parts of the existing operation will require a time extension.

4 The existing development consent requires the final landform to be rehabilitated by the end of the 10-year operation. Integration of the final landform between the various local extraction areas is required to create a future uniform landscape. To assist this, the proposed rehabilitation plan for the adjoining lots proposes to use the same species and rehabilitation techniques as the existing development.

5 The proposed extraction rate from the adjoining lots is greater than 200,000 tonnes per annum and, accordingly, the proposed development is state significant development within the meaning of s 76A(7) of the Environmental Planning and Assessment Act 1979 (“the EP&A Act”). The development is integrated development for the purposes of Div 5 Pt 4 of the EP&A Act because the applicant for the development application is required to hold a license under the Protection of the Environment Operations Act 1997 (“the PEO Act”).

6 As it is proposed that more than 30,000m³ of extractive material will be sold in each year, the proposed development will exceed the threshold in Sch 3 of the Environmental Planning and Assessment Regulation 2000 (“the Regulation”) for extractive industries and, accordingly, it is classified as designated development

under cl 4 of the Regulation.

7 The development application was referred to the Environment Protection Authority ("the EPA") which issued general terms of approval for the proposal on 20 August 2002, subject to a number of conditions. On 2 January 2003 the Minister for Planning New South Wales, as consent authority, determined the development application by granting consent, subject to conditions.

8 These proceedings were commenced by class 1 application filed on 26 February 2003 on behalf of Hawkesbury River Environment Centre ("HREC") and Neville Diamond. An objection had been lodged with the Department of Planning New South Wales ("Planning NSW") on the letterhead of HREC. The letter of objection was over the signature of Mr Diamond who was referred to in the letter as "*Contact Spokesperson*". The Court has been informed, and Mr Diamond, who appears in person, concedes, that HREC is not a legal person within the meaning of an objector in s 4 of the EP&A Act for the purposes of s 98. Section 98 of the EP&A Act provides that an objector who is dissatisfied with the determination of a consent authority to grant consent to a development application for designated development may appeal to the Court. An objector means a person who has made a submission under s 79(5) of the EP&A Act by way of objection to a development application for consent to carry out designated development. Following the disclosure of the lack of legal standing for HREC to make an objection, the proceedings have continued on the basis that Mr Diamond is the sole applicant. Furthermore, although Planning NSW is nominated in the class 1 application as a respondent the Minister for Planning (now the Minister for Infrastructure and Planning) has caused a Notice of Appearance to be filed on his behalf by General Counsel Legal Services Branch Department of Planning, who has instructed Mr Leeming of counsel. The second respondent is separately represented and Mr Clay of counsel has appeared on its behalf.

9 On 26 September 2003 the Chief Judge was informed during a directions hearing that the parties had reached agreement and that the Court would be asked to make orders in accordance with that agreement on 13 October 2003. Mr Diamond signed a letter addressed to him by the Department of Infrastructure Planning and Natural Resources ("DIPNR") dated 24 September 2003 whereby he agreed to settle the matter on the terms set out in the letter. Mr Diamond also signed a formal document intituled Consent Orders dated 25 September 2003 whereby it was proposed that the Court determine the development application by the grant of consent upon conditions set out as an annexure to the Consent Orders. The form of consent orders was also signed on behalf of the first and second respondent.

10 The Court had appointed hearing dates of 13 to 17 October 2003. On 26 September 2003 the Chief Judge directed that the Minister inform any other objectors to the development that an agreement had been reached between the parties and that if they wished to be heard in relation to whether or not the Court should make orders consistent with the agreement, they appear on 13 October 2003.

11 By the time the matter was mentioned before the Chief Judge on 13 October 2003 Mr Diamond had resiled from the agreement reached in September 2003. On 9 October 2003 Mr Diamond filed a notice of motion seeking orders that the hearing dates of 13 to 17 October 2003 be vacated. The notice of motion was returnable on 13 October 2003 when the Chief Judge stood the proceedings over for a further mention and directions hearing on 27 October 2003 for the purpose of setting further hearing dates. The matter was thereafter listed before me for a seven-day hearing commencing on 1 March 2004.

12 In an original Amended Statement of Issues filed on 14 August 2003, following an issues conference before Pain J, Mr Diamond identified issues relating to the validity of the EIS, consistency with the provisions of Sydney Regional Environmental Plan No. 9 – Extractive Industries ("SREP 9"), water quality, noise, air quality, alternative sites and the conditions of consent. He was subsequently given leave by the Chief Judge to rely on an Additional Statement of Issues filed on 14 November 2003. The additional issues concentrated particularly on what is described as "*a total systems failure*" by Planning NSW, Baulkham Hills Shire Council ("BHSC"), the EPA, DIPNR (formerly the Department of Land and Water Conservation ("DLWC")) and the annual reporting system in respect of water use at various sand extraction sites at Maroota. In addition the applicant raised concern about alleged fraud in relation to the collection of s 94 contributions, the failure to follow the recommendations of the Healthy Rivers Commission and cumulative issues in regard to the management of the Maroota Sand Mining Precinct. The details and particulars of many of these issues were not made clear until the hearing commenced on 1 March 2004. Even then, in many respects, the position of the applicant was not clarified to an acceptable degree. Further allegations of fraud were made during the hearing. I delivered a separate judgment in respect of that issue on 10 March 2004. The cross-examination of an officer from BHSC by Mr Diamond was terminated when Mr Diamond was unable to provide the Court, or the other parties (including BHSC for whom Mr Henry appeared when the issue arose), with acceptable particulars of the facts and circumstances that supported the allegations of fraud and other improper conduct that he proposed to

make in respect of the reporting procedures, compilation of records, assessment and collection of s 94 contributions from sand miners at Maroota.

13 Mr Leeming was invited to explain the nature of the development application to the Court by way of an opening statement. This was supplemented by a short opening address by Mr Clay, after which oral evidence was heard from individual objectors and the experts who provided statements of evidence in support of the respondents' cases. Mr Diamond attempted to rely upon statements of evidence from three witnesses he regarded as experts. None of this evidence was admitted as it had no bearing on any relevant matter. Furthermore, the witnesses relied upon by Mr Diamond as experts displayed no relevant expertise, if any. Accordingly, their evidence was rejected. Two local residents gave evidence. Mr Diamond also gave evidence.

The Residents

14 Local residents are represented on community liaison committees for the several sand mining operations carried on at Maroota. There is a widespread concern that mining activities may intercept the local water table and disrupt the underground aquifer system. The Court has been made aware that the adjacent Maroota Forest is alleged to contain the highest biodiversity of any national park in the Sydney region, except the Blue Mountains. Jackson's swamp contains another sensitive environment.

15 Patricia Ann Schwartz has been involved in environmental issues around Maroota for the last 15 years. Without being able to provide the relevant financial information Ms Schwartz claims that the very cheap price that sand is being sold out of Maroota fails to take into account the "*immeasurable environmental cost of its production*". Although she did not criticise the extent of efforts by the sand miners to regenerate the area after mining, she nevertheless perceives a lack of success in that area. She has personally been active in steps to control a problem with Croftan weed at mine sites in Maroota, but she recognises that the present Dixon Sand site is relatively free from infestation and that there have been attempts to re-vegetate areas along the southern boundary of lot 196. She expressed a preference for the use of some weed species that thrive in the area which ultimately would provide the organic material to support the proliferation of native areas from the surrounding forest. She explained that the non-native species may assist the take-up of nutrients, particularly phosphorous which are not conducive to native plant growth.

16 Ms Schwartz said that she feels free to contact any of the quarry operators at any time in respect of any matter of concern. However, there is no general forum where the operators come together with community representatives as a group. Her concerns regarding cumulative impact of sand extraction are succinctly stated as follows:-

A. Well the Maroota sand is a unique geological structure and if it is all taken away then we'll be losing something that's irreplaceable. There's an ecosystem, or many ecosystems that we believe to be dependent on the sand mass, from the water that comes from the sand mass. The Maroota forest has the highest formal diversity of any area in Sydney including all national parks. This information was provided by the National Parks Association, and the document that it's written is – was created by a consultant by the name of Liz-

Q. What was it, Maroota forest, did you –

A. Maroota forest, yeah. And also the Hawkesbury River surrounds this area of Maroota. Most authorities now are trying to improve the health of the Hawkesbury River and the Maroota area provides some of the last clean water catchments that enter the Hawkesbury Nepean system, so—

Q. It's a filter?

A. Yes, yes, well it's also—

Q. Is that what you're trying to say or am I leading you somewhere—

A. Well there's – well I'm not – well the water that comes from Maroota is clean, it's unpolluted, it doesn't go through sewage treatment plants or anything like that so it's, yeah, directly coming out of the forest areas and it has a high water quality. And the wetlands of the – probably the Broadwater wetland would be the most significant wetland in the Hawkesbury Nepean basin, so it is an extremely important area

environmentally. So of course I do have concerns about cumulative impact with extraction from the sand mass. The area is full of springs. Maroota forest and certainly Jackson swamp. I'm more familiar, much more familiar with Maroota forest area than I am with the Jackson swamp area. But Maroota forest is absolutely full of springs and I think this is what leads to the high faunal diversity, the fact that it's just so very wet and there's so much growth an opportunity for animals and various species.

17 Dr Marianne Sheumack lives at South Maroota. She holds a Bachelor of Science Honours and a PH Degree in Biological Sciences. She is a member of the Australian Water Association and Australian Society for Microbiology. She has worked as an Environment Consultant and University Lecturer. She gave her evidence in her capacity as a Maroota resident. She has been a member of the Community Liaison Committee for the Trig Hill development at Maroota. She is also a member of a Liaison Committee for a development carried out by PF Formation in the Hornsby Shire. The Hornsby Shire Committee meets annually and the Trig Hill Committee meets twice a year. Meetings are convened at the site and are usually attended by council officers together with a representative of DLWC and the EPA. She says the EPA has indicated that it does not propose to attend future meetings. She understood from a message given to one of the meetings she attended that the EPA did not have enough staff to send a representative to meetings at Maroota. It is her experience that DLWC is represented by a different officer each time.

18 Dr Sheumack has been the organiser of a Streamwatch group for about 4 years. She expressed the view that it would be preferable for DIPNR to attend liaison committee meetings if it is going to be the consent authority in the future. The regular attendance of other government authorities with responsibility in relation to the conduct of sandmining would encourage the local community to have more faith in their activities.

19 Dr Sheumack was a community member on the Steering Committee for the preparation of the Maroota Groundwater Study. She explained that some of the monitoring data was lost. The object was to collect data from groundwater monitoring bores into the shallow aquifer and the deep aquifer over a number of years in order to assess the potential impact of sandmining on the levels of groundwater. The main conclusion from the study is that the groundwater shallow aquifer is at the limit of extraction. She explained her concerns as follows:-

A. Indeed I have great concerns about all the sandmining at Maroota and its effect on the ground water because I believe that the shallow sands aquifer is very – under deep stress, that the aquifer has been breached in a number of places which allows for the possibility of contamination as well as over-abstraction, and in addition evaporation. And the community relies very much on this water source during dry times. We can actually buy spring water from this aquifer to fill up our tanks when it doesn't rain since we have no reticulated water out there so it's vital to this community to retain that source of ground water and that was the whole initiating reasons I believe that this study was undertaken to see what the relationship was between sand extraction and the amount of ground water.

20 In cross-examination Dr Sheumack acknowledged that she is aware that it was proposed to place a prohibition upon Dixon Sand intruding to within two metres of the shallow groundwater aquifer and that if there is a breach of the shallow groundwater system then sand extraction must cease. She expressed a concern, however, that if there was a breach and the aquifer was left open there could be a risk of contamination of the whole aquifer. Even if the aquifer was covered after a breach occurred, she would still be concerned about evaporation occurring from the groundwater table. She agrees that progressive rehabilitation would be a useful means of reducing adverse impact. She also recognises that the stripping of clay from above the aquifer could facilitate the infiltration of rainwater to the aquifer but doubted whether this could be achieved if the clay was replaced.

Noise

21 Najah Ishac is a Senior Professional Acoustic Engineer employed by ERM.

22 His evidence is that with respect to the Maroota Public School the noise assessment demonstrates compliance with the EPA's noise policy for the school playground and classrooms. After discussions with the EPA a revised and more stringent internal classroom noise goal has been satisfied. His calculations show that with the minimum quarry to school setback of 250 metres the EPA's recommended school playground goal of 55dB(A)Leq will be achieved.

23 Furthermore, the EIS noise assessment and subsequent correspondence demonstrates compliance with EPA policy in respect of neighbouring land uses. He says the calculations show that quarry related noise can be managed through mounding and operating modifications to below EPA recommendations. His results indicate that the EPA's recommended goal of 44dB(A)Leq 15 minute will be achieved at residences east of Old Northern Road.

24 For the purpose of assessing cumulative noise other industrial sites in the area were taken into account. He identified the EPA target for cumulative noise as 55dB(A)Leq during the daytime whereas the prediction for the site is about 44dB(A)Leq. A noise level 10dB(A)Leq lower than another does not add to the other noise. When both the Dixon operation and the adjoining PF Formation operation are combined the EPA target for amenity noise is achieved. Wind conditions, temperature and topography were all taken into account.

25 It is Mr Ishac's understanding that meteorological information was obtained from a site at Mangrove Mountain, possibly 30 kilometres to the north. He was not aware whether there was a station closer to the subject site but he recognised that a local one would be preferred if available. However, it has not been shown that there was any closer source of data available.

26 It is suggested in the EIS that extraction activities should cease if the wind speeds at any time are greater than 2m/sec within the arc of 214 degrees to 326 degrees. In this respect Mr Ishac expects that a weather station would be set up on site in accordance with Australian standards with a 10-metre mast to accommodate a wind vane and anemometer. The data would be logged electronically and displayed on computers. He says the station should be set up well in advance of operations to assess local weather conditions in order to foresee issues that might arise.

27 No satisfactory explanation was given as to how the operator would be expected to react to information received from the weather station at any given time. Typically, reporting would take place to the EPA on a regular basis such as quarterly, twice a year or annually. However, I am satisfied that the noise issue is adequately addressed in the EIS, the evidence and the proposed conditions.

28 Relying on his own experience, Mr Ishac expressed confidence that the EPA would act on complaints.

Baulkham Hills Shire Council

29 Peter John Lee is the Manager of Major and Special Projects at BHSC. He appeared to produce documents under subpoena. Maroota sandmining falls within his jurisdiction at the council as a major special project.

30 The documents produced comprise audit reports, an independent audit on s 94 contributions carried out in 1999 by a firm of chartered accountants, together with a number of internal audit reports, documents relating to complaints made to the Independent Commission Against Corruption ("ICAC") and the report of ICAC in respect of the collection of s 94 funds.

31 Mr Lee explained that contributions are collected by the council pursuant to s 94 based upon the tonnage of material removed. Those funds are forwarded to the Roads and Traffic Authority ("the RTA") to be applied for improvements to Old Northern Road and Wisemans Ferry Road. A works program has been developed in consultation with the RTA. In his evidence in chief Mr Lee said that the funds collected pursuant to s 94 from sand miners in Maroota had been collected in accordance with conditions of consent and the funds are being expended on the two main roads mentioned above.

32 During argument Mr Diamond contended that the tonnages of sand are not properly calculated for the purposes of s 94. Mr Lee explained that the files produced by him include the s 94 monthly returns which have been checked and verified by an independent chartered accountant. The audit process started in 1999. A physical audit is done of the books of all the operations. Where weighbridge dockets are produced the accountant inspects them and reviews the monthly readouts. A quantity survey is not undertaken. Mr Lee did not agree with Mr Diamond that a quantity survey was necessary. The confidential report produced by the accountant in 1999 was the consequence of a complaint made by Jimmy Gouskas, the then owner of lot 196 at a time when PF Formation operated the site. The s 94 independent audits have not been made public because

they contain legal advice and commercial confidential matters regarding tonnage rates for the operators in Maroota.

33 Cross-examination of Mr Lee by Mr Diamond ceased on 3 March 2004 when suggestions were being made by Mr Diamond that BHSC had corruptly protected PF Formation for the last 10 years to the disadvantage of Dixon Sand and that presently, as a consequence of a truce, BHSC are not supervising the operation on lot 196. During submissions Mr Diamond made it clear that he does not believe that the Court can grant a consent given the current situation at Maroota, namely with Mr Lee allegedly protecting certain miners in relation to s 94 contributions.

34 At this point of the hearing, following a long discussion about the future conduct of the case and, in particular, whether the Minister proposed to show that DIPNR would take a proactive role in the management of the development in lieu of BHSC, Mr Diamond was given the opportunity to particularise the matters upon which he relied to support allegations against BHSC, Planning NSW, DLWC, the EPA and the Department of Local Government that there has been a total systems failure.

35 In response, Mr Diamond produced a document. In the document he raised allegations of perjured testimony, fraud, misleading a court and various other serious allegations against BHSC and its individual officers, including Mr Lee. Mr Lee was excused until the following morning to enable him to take whatever advice he might consider to be appropriate. Mr Henry then appeared with leave on behalf of BHSC.

36 Mr Henry submitted firstly that the Court should not permit the pursuit of these matters on the ground of relevance. However, if the Court decided otherwise, BHSC should be joined as a party and the matters alleged properly and fully particularised and the alleged evidence upon which the claims are based be made available to BHSC so that it could be afforded a proper opportunity to meet the evidentiary case.

37 Mr Henry also submitted that issues arise as a consequence of Mr Diamond being an undischarged bankrupt who has made complaints to ICAC and the Ombudsman previously, and that, following investigation, the complaints were dismissed. The council made no formal application to be joined as a party at that stage.

38 The additional Statement of Issues filed on 14 Nov 2003 raised the following issues in relation to BHSC:-

5. There is a total systems failure in that Baulkham Hills Shire Council (BHSC) does not properly and professionally monitor consent conditions in the Maroota Sand Mining Precinct as per its legal responsibilities under the Local Government Act and under the Environment & Planning Assessment Act.

6. BHSC has clearly demonstrated, through its Extractive Industry Reports, that it has neither the will, skill, resources or ability to properly and professionally monitor and enforce consent conditions at Dixon Sands' sites.

7. BHSC has clearly demonstrated, through its Extractive Industry Reports, that it has neither the will, skill, resources or ability to properly and professionally monitor and enforce consent conditions at P F Formation's sites.

...

17. Section 94 fraud was identified by Dixons, Gouskos, Diamond, Tinda Creek Spiritual & Environment Centre, Hawkesbury River Environment Centre, the East Bend Group and in the past, by the Maroota Planning Group.

18. The Section 94 contributions and the issues associated have never been properly audited or replied to by BHSC.

19. Offers to provide evidence, after \$2 million worth of public fraud, have not been taken up by BHSC and staff and all this evidence was offered to ICAC, the Ombudsman, BHSC, the Premier, and the Department of Planning and no effort was made by any of these departments to source the correct position and to adjust this public fraud.

39 Mr Diamond has not complied with any of the directions made by the Chief Judge requiring evidence to be filed and served by certain dates. The respondents have informed me that they relied upon observations made by the Chief Judge at interlocutory hearings that the Court would not be prepared to make a formal finding of fraud in respect to the actions of BHSC or anyone else in these class 1 proceedings. However, they expected that the forensic inquiry might extend to the capacity of BHSC to effectively perform its functions in relation to the proposed development and the collection of s 94 contributions.

40 Following the intervention of Mr Henry on behalf of BHSC, Mr Diamond attempted to particularise the allegations in relation to alleged corrupt or improper conduct. Mr Diamond did not explain the facts and circumstances upon which he relied in a way that enabled the Court or the parties to identify the nature of the impropriety, particularly that alleged against BHSC. The so-called particulars merely comprised a list of documents peppered with unsubstantiated allegations against a competitor of the present applicant. Generally, relevant dates or particulars of events were not provided. Much of the material referred to relies upon hearsay and relates to events which are not current. References are made to alleged perjury by witnesses in proceedings which are not specified. It is apparent from the scant descriptions of the allegations that many of the complaints raised have been resolved or reported upon in other inquiries but obviously not to his satisfaction. In effect he was seeking to re-open questions which had already been substantially addressed elsewhere.

41 Moreover, and most unfortunately, the relevance of the material to the present inquiry was not readily apparent.

42 Mr Diamond tendered and had accepted into evidence, subject to relevance, 20 bundles of documents. No attempt has been made by Mr Diamond to identify from that bundle those individual documents that are specifically relevant to the allegation against BHSC.

43 During argument Mr Clay, who appears for the second respondent, referred in particular to the Compliance Program Strategic Plan prepared by DIPNR in September 2003 to show that it proposed to assume a critical role in the supervision and management of the carrying out of the proposed development to the extent that any role of BHSC in the conventional sense would be limited.

44 After hearing extensive argument I determined that any evidence in relation to the role of BHSC could be relevant only in respect of issues regarding the collection and application of s 94 contributions. Mr Henry then informed the Court that Mr Lee would be available for further cross-examination confined to that issue. Mr Diamond was informed that if he wished to pursue the issues of dishonesty, fraud, conspiracy and improper conduct in relation to the issue of the collection of s 94 contributions he would be required to produce evidence in support of those matters. At that point Mr Diamond was given an opportunity to further particularise the allegations in relation to dishonesty. It was made clear to him that it would be a final opportunity to litigate the wider issues he was seeking to raise.

45 On the following hearing day Mr Diamond produced another document. The fresh allegations referred to material outside the documents already produced or identified to the respondents by the applicant. Rather than there being a direct assertion that s 94 contributions were avoided, Mr Diamond appeared to be relying upon sets of circumstances where the Court would be invited to infer that s 94 contributions were not collected.

46 I came to the conclusion that Mr Diamond was still seeking to re-agitate issues that had been raised and resolved in other forums. Furthermore, it appeared that he would be making allegations of perjury and making misleading statements by council officers, in particular a council officer who is no longer employed by BHSC. Doing the best that I could in the circumstances I decided that the matters identified by Mr Diamond generally and in his oral submissions were not sufficiently directly relevant to the matters that had to be determined in these proceedings to allow the evidence in. In particular, I refused to conduct an inquiry into events occurring over the last 15 years some of which, at least, had already been referred to relevant authorities. Having reached that decision I disallowed any further cross-examination of Mr Lee.

Surface Water Quality

47 The applicant raises issues about the effect of sand mining on surface water quality. It will be a condition of approval under General Terms of Approval ("GTA") that a Soil and Water Management Plan must be prepared.

48 John Patrick Horkan is employed as a Principal Officer in the Sydney Industry section of the EPA. He explained that the intention of the GTA condition is to improve water quality management on site. Analysis

shows that drainage onto the Dixon site carried some elevated nutrients and total suspended solids but no contaminants. The concentrations are typical levels found in farming areas. If used for dust suppression they will have no contaminant effect or cumulative effect. Nutrients can promote algal blooms in ponds but he did not observe any blooms on his site inspection. In his opinion, there will be no impact on Jackson's swamp, approximately 3 kilometres downstream, because of the large areas available in the voids on site to contain, filter and settle out material before any runoff occurs. Basically, the investigations show that the watercourse below the site is in good order.

49 Mr Horkan was closely questioned regarding the run-off from the adjoining Accurso orchard property into the Dixon Sand dam. He did not deviate from the evidence he gave in chief that there were elevated nutrients but the dam was not considered to be contaminated. Mr Horkan thought it most unlikely that there would be enough rain to carry contaminants from the Accurso property into the Dixon Sand dam even if there was chook manure and contaminants on the orchard. There were no pesticides or other contaminants such as heavy metals when the water was tested for a whole sweep of parameters.

50 David Kitto is the Manager of the Mining and Extractive Industries in the Office of Sustainable Development Assessment and Approvals ("SDAA") within DIPNR. Mr Kitto expressed an opinion that if in carrying out the current development pursuant to the existing consent no water leaves lot 196 (as appears to be the case at present) it will have no impact on the Hawkesbury Nepean River system because the site comprising only about 11 hectares is a small proportion of the total catchment of something like 23,000 hectares. Rainfall and the flow from the balance of the catchment will flow to Jackson's Swamp. Any cost to the environment immediately below the site as a consequence of interrupted flows in the creek are, in Mr Kitto's view, "*well and truly outweighed*" by the proposal. Once the quarry operation ceases the interrupted intermittent waterways will be re-established, riparian zones will be re-created and the flows will be re-instated as part of the rehabilitation programme. Mr Kitto maintains that the development satisfies the requirements of SREP 9. In this case, there are no significant waters upstream of the site of the operations which need to be diverted to maintain a clean water system. The dirty water generated on-site should be contained so that there is no discharge to the creek.

51 Wayne Conners is a Natural Resource Planning Officer within the Sydney/South Coast Region of DIPNR. He observed that there are three main dams on lot 196 that provide the main water supply for the sand processing plant. The existing dams on the site are located off-creek or on non-permanent first order watercourses and are subject to the Farm Dams Policy ("the FDP") which was introduced in 1999. Notwithstanding assertions to the contrary by Mr Diamond, in Mr Conners' opinion, the dams are exempt pursuant to exemption 3 of the FDP, and, therefore, do not require a license.

52 Mr Conners says that, based upon his inspection of the site, there are no rivers on the site as defined by the Water Act 1912 ("the Water Act").

53 Mr Conners also explained that a s 22BA embargo exists on the Hawkesbury/Nepean Catchment, which means that the Department is not able to accept and process further applications on rivers within that area. The embargo does not apply, he says, to sites without rivers on them. He re-iterated that it is his opinion all the groundwater and surface water interception on the Dixon site are properly licensed. He says that even if this were not the case there would be nothing to prevent the grant of the required licenses.

Air Quality

54 Anthony Caruana is the National Manager of Air Quality for ERM. He reviewed the files and the EIS for the purpose of confirming the assessment for potential impact of dust emissions. The conclusions predicted in the EIS and by Mr Caruana are essentially the same. The predicted concentrations of dust are below the nominated criteria of the EPA and the National Environment Protection Measure 1998. He concludes that the EPA criteria for Total Suspended Particulate Matter ("TSP") and Particulate Matter less than 10 micron ("PM10") will be met for the Maroota School and neighbouring land. The EPA criterion for 24 hour PM10 g/level concentrations is 50ug/m3. The highest prediction is 37.0ug/m3 at a sensitive receptor. The EPA criterion for annual averages for PM10 total impact is 30ug/m3. The highest predicted concentration is 16.4ug/m3. The predicted annual averages for TSP are all below the EPA criterion of 90ug/m3 with the highest predicted concentration being 37.0ug/m3. The highest predicted TSP is 2.5g/m2/month compared to the EPA criterion of 4g/m2/month.

55 Mr Caruana recommended a condition of consent that would encompass installing a real-time dust monitor to some part of the operation with an alarm system connected back to a central point by electronic link. The

warning level for monitoring purposes would be set at the maximum predicted level which contributed to the setting of the average level. The continuous monitoring device contemplated by Mr Caruana is in addition to those initially proposed by the formulated draft conditions.

56 Dust suppression measures include watering and limitation of exposed areas. Furthermore, the stockpiles on-site have a reasonably high moisture content as a consequence of the washing process. Moreover, the particulate size would be larger than the fines which are washed out.

Ground Water

57 Dan McKibbin is a Senior Natural Resource Officer (Senior Hydrogeologist) within the Sydney/South Coast Region of DIPNR. Mr McKibbin has been involved with groundwater resource matters for the Maroota Extractive Industry area since 1996. His evidence addresses groundwater resource management issues in respect to the Dixon Sand operations on lot 196. Mr McKibbin has visited and surveyed the site several times since 1996.

58 He says that the operational dams on the Dixon Sand site have not intersected the permanent water table level of the Hawkesbury Sandstone Aquifer. On the basis of the drillers completion record of a new monitoring bore constructed in February this year, he is of the opinion that no groundwater was intersected in the fresh sandstone to a depth of 10 metres.

59 There is a much deeper groundwater system in the Hawkesbury Sandstone that occurs below about 35 metres. It appears to Mr McKibbin that the water levels in the new bore are an artefact of the presence of the stored waters in the main storage pond, and the disturbed nature of the ground. In his opinion, therefore, the operational dams on Dixon Sands north Maroota site do not require licensing under the Water Act.

60 When it was put to him in cross examination that a blue colour in water is an indication of the presence of groundwater he replied that blue coloration of the water is a matter of the light reflection and that blue water is not necessarily groundwater.

61 Mr Kitto says that the groundwater monitoring regime proposed would involve monitoring groundwater levels monthly and quality levels every six months with the results published in an annual report and an independent audit taken every three or four years. In addition, spot checks would occur when the department's officers were in the area or in response to complaints.

62 Mr Conners undertook an inspection of the site on 20 January 2004, which confirmed the existence of five monitoring bores and two production bores on the site as licensed.

63 As I have already said, in his opinion, all works intercepting groundwater on the site have been correctly licensed.

Water Licenses

64 In cross-examination, Mr Conners states that he is responsible for the approvals of groundwater and surface water licenses, including renewals and the issue of such licenses. He also has a role in liaising with senior management and preparing cases for objections received. When asked by Mr Diamond whether a system was in place to monitor the illegal use of water in the sand mining precinct at Maroota, Mr Conners told the Court that DIPNR renews licenses every five years, they respond to community complaints and concerns and "*do their best*" to follow those up as quickly as possible. He says that at present there are 13,000 licenses in the Sydney/South Coast Region and "*there just isn't the resource to be able to inspect these at renewal*". Mr Kitto nevertheless expressed confidence that the water licensing section of DIPNR has sufficient resources to "*properly manage and run licensing, detection and monitoring in the Maroota sand mining precinct*" [

65 In relation to complaints about unlicensed work involving surface water or groundwater, Mr Conners says that there is a compliance unit in every region and his department is now required to liaise with that compliance unit in relation to complicated complaints. In the first instance a water licensing officer would investigate that complaint and make a report.

Alternative Sites

66 George Arthur McLellan was retained to determine whether an alternative site for the proposed extension would have a lesser impact on the environment. He concerned himself only with long-term potential sources of

brickies sand. All alternative sites identified are more distant from Sydney than Maroota. Transport would therefore have an adverse environmental impact by increased fuel usage and emissions and create traffic problems, including safety issues.

67 Greg Thompson, a Consulting Geologist, agrees that extraction at more distant sources, namely Somersby Plateau, Newnes Plateau and the Southern Highlands could produce similar products but the greater transport distance would have an economic and environmental cost to the community.

68 According to Mr McLellan, other sites at Maroota are either committed to competitors or are more distant from the Dixon Sand processing plant. Furthermore, extraction as proposed for lot 1 and lot 2 will, in his opinion, have a lesser impact on the environment than from either of the available potential local sources. Mr Kitto is satisfied that the consideration of alternatives to the proposal considered in the EIS was adequate.

69 The Court is satisfied that the applicant has adequately addressed the prospect of carrying out the development at alternative sites.

Is There A Total Systems Failure?

70 Mr Kitto's team was responsible for co-ordinating the government's assessment of the development application and EIS submitted by Dixon Sand. The evidence of Mr Kitto is the first respondent's most critical response to the applicant's argument that the government and local government agencies do not have the skill, will or availability to fulfil their respective roles of monitoring and controlling sand mining development and that their organisation is in such disarray there is "*a total systems failure*" in that respect.

71 After reviewing the draft conditions of consent Mr Kitto is confident that there will be a comprehensive framework for regulating the environmental performance of the development proposal and for ensuring regular monitoring, auditing and reporting this performance. He explains as follows:-

Within Government there are several Departments that are responsible for ensuring compliance with the conditions of consent, or its associated licences and permits. However, in this case, the Department of Environment & Conservation and the Department of Infrastructure Planning and Natural Resources would carry the primary responsibility for ensuring compliance; and both of these Departments have dedicated compliance units with the necessary skills and powers to ensure compliance.

72 Furthermore, he states as follows:-

The Department of Infrastructure Planning and Natural Resources, for instance, has two compliance units: one in the Office of Sustainable Development Assessment & Approvals, which is responsible to ensuring compliance with the conditions of consent; and the other in the Corporate Counsel division, which is responsible for managing compliance issues across the Department.

73 Mr Kitto says that the compliance unit of the office of SDAA would carry the primary responsibility for ensuring compliance with the conditions of consent.

74 DIPNR will have a representative member on the Maroota Quarry Cumulative Committee ("MQCC") in the place of Planning NSW in the future. Expressions of interest lodged by other prospective members of MQCC have been lodged and assessed against the stated criteria published in a local newspaper.

75 The published aim of MQCC is as follows:-

(a) provide a forum for open communication between the community, the quarry companies, Councils and the State Government on cumulative issues relating to quarries at Maroota;

(b) improve the management of cumulative issues arising from extractive industry

operations at Maroota; and,

(c) improve the planning of future quarry proposals to minimise potential cumulative issues.

76 The applicant lodged an expression of interest but DIPNR rejected his application. The Court infers that Mr Diamond is resentful of this decision notwithstanding his expressed denial. In cross-examination, his line of questioning of other witnesses discloses a belief that he is the person most qualified for the position.

77 In response to cross-examination, Mr Kitto explained that the four members of the compliance unit within DIPNR have extensive experience in environmental issues. They are all university educated and have experience in auditing and conducting audits both in the private sector and with the government sector, particularly in the EPA.

78 I have already dealt substantially with the claim that the processing of s 94 contributions by BHSC is somehow corrupt. There is evidence that an independent report by a firm of accountants has been compiled following an audit of the council's records. The claims by Mr Diamond have not been substantiated let alone particularised in a way that enables the respondents to meet the challenge. There is, therefore, no evidence to support a refusal of consent on the basis that the collection of and accounting for s 94 contributions is corrupt. Furthermore, I am not satisfied that a proved fraud against BHSC would have justified refusal of consent to an application by an innocent developer.

79 Mr Diamond's wide ranging complaints about alleged deficiencies in the supervision of various industrial undertakings by the EPA has not been proved. Mr Horkan provided comprehensive responses to various circumstances put to him by Mr Diamond that show either appropriate responses are made when necessary or that the claims by Mr Diamond are unsubstantiated. There is no evidence to suggest that EPA officers carry out their duties other than to the best of their ability in a professional and competent manner according to the resources made available to them.

80 The 13,000 licenses referred to by Mr Connors at [64] above include 10,000 groundwater licenses and 3,000 surface water licenses. Five yearly inspections have been discontinued and there are some instances where unlicensed operations continue after notification to DWLC. The high point of the applicant's case occurred during the following exchange between Mr Connors and Mr Diamond in cross-examination:-

APPLICANT: Q. Do you think the department's efficient in its pursuit of unlicensed water pumps at Maroota sand mining precinct?

A. It is impossible with the amount of licenses that we have to deal with. The answer to that is we do our best under very difficult circumstances. With the amount of licenses, 3000 surface water licenses, we are spread very thinly.

Q. I've got some sympathy for you. You know that and I'm not trying to give you a hard time. Is the department, not you, is the department inefficient?

A. No, we're not inefficient. We're very efficient with the people we've got.

81 Bearing in mind that the functions previously conducted separately by DWLC will in future be carried out within DIPNR, Mr Connors' evidence in re-examination, as set out below, is important:-

A. The Department and as far as licensing has now developed a compliance unit and that compliance unit sits separately from water licensing, there is a compliance unit in every region and we are now required to liaise with that compliance unit in relation to complaints. If it is a minor infringement water licensing staff will be able to deal, should be able to deal with that directly, if it's more complicated we have a compliance unit who is trained in the matter of taking evidence, entering properties and the like, but in the first instance a water licensing officer would investigate that complaint and make a report.

82 Mr Kitto stated to Mr Diamond that DIPNR "has sufficient staff to properly monitor". This evidence was not challenged. Furthermore, comprehensive changes to the water management regime in New South Wales are

to take place under the Water Management Act 2000.

83 The combination of evidence from Mr Connors, Mr Kitto and Mr Horkan gives the Court confidence that DIPNR has sufficient resources and the necessary will to manage and supervise sand mining at Maroota in an acceptable manner so that the Court can expect that compliance with conditions of consent will be effectively monitored. The acting Minister, through offices of his department and legal representatives, is unlikely to give such strong assurances to the Court without a genuine expectation that any obligation to perform as promised can be fulfilled. The Court accepts those undertakings and finds that evidence of “*system failure*” has not been sustained except perhaps now in some irrelevant respects in the past.

84 The latter, I am assured, will be overcome in the future under current and proposed arrangements for ensuring compliance by the operator of the existing development and proposed extension.

Other General Issues

85 According to Mr Kitto, after receiving additional information requested from the company after the EIS was presented, DIPNR was satisfied that the nexus between the existing operation and the proposed extension had been adequately addressed.

86 In answer to questions from Mr Diamond, Mr Kitto indicated the Department of Health reported to DIPNR that the proposal would not have a significant impact on the school or the children in the school.

87 Mr Diamond’s attack on the EIS overlooks the established line of authority that it is not imperative for the statement to contain every last detail of the proposed development and its potential impact or benefit. Substantial compliance with the statutory requirements is required to the extent that it provides the consent authority and the public with sufficient relevant information to enable them to make a realistic assessment of the likely environmental effects. Any alleged failure to consider the material in earlier EIS’s in respect of the subject site and other sites at Maroota does not affect the validity of the EIS prepared by ERM, notwithstanding, even if it is correct as Mr Diamond asserts, some of them contain serious error.

88 Issues in respect of matters such as the potential use of contaminated water for dust suppression, cumulative impact from the proposal, together with existing development for sand mining at Maroota and the failure to carry out a full groundwater study are either wrong, irrelevant, not proved or adequately dealt with. Surface water management is plainly dealt with.

89 The application of the provisions of Development Control Plan No. 500 – Extractive Industries (“DCP 500”) in respect of diversion of upstream catchments was shown by Mr Kitto to be not relevant to the circumstances of this case where there is no significant upstream waters such as a defined stream or river running through the site.

90 Issue 5 raises the question as to whether the development is consistent with cl 2(d) of SREP 9, which aims to promote the carrying out of development for the purpose of extractive industries in an environmentally acceptable manner. Mike Shelley is a Senior Environmental Scientist employed by ERM in the Hunter Valley office. He had a primary responsibility for preparation of the EIS lodged in support of the development application. Mr Shelley says that noise assessments, rehabilitation and revegetation strategies and surface and groundwater impact assessment were completed as part of the EIS in accordance with, inter alia, cl 2 of SREP 9. Furthermore, he says, DCP 500 was prepared by BHSC in accordance with an earlier version of SREP 9. He states that the EIS made regular reference to DCP 500.

91 Issue 6 relates to “*whether development should be approved having regard to its potential impact on water quality*”. In his report, Mr Shelley provides a number of water quality test results for existing surface water. He says these results provide a relevant prediction of likely water quality during quarrying in the extension area. The water management system will be shared. In his opinion, the results indicate that the existing management system demonstrably and effectively controls sediment on the site. Moreover, he says that given the extension will have additional sediment traps “*it is reasonable to predict that water quality leaving the site will meet criteria once quarrying commences in the extension area*”.

92 Issue 7 is in respect of the potential impact of the proposed extension on Jacksons Swamp, which is a recognised wetland adjacent to the Hawkesbury River. The same water quality data referred to in [91] above shows, in Mr Shelley’s opinion, that the extension is unlikely to significantly impact on water quality off site.

93 Mr Diamond proposed an increase in the amount of a rehabilitation bond from \$2.00/m² to \$3.00/m². It is his primary contention, which is unsupported by any evidence, that the rehabilitation bond should be many times greater. The applicant accepts this suggestion of an increase to at least \$3.00 per square metre and the Minister has agreed to amend the draft conditions of consent accordingly. The calculation is based on the foreshadowed bond requirements in DCP 500. Although the Court does not have direct evidence of the adequacy of the bond now proposed, nevertheless Mr Diamond has solicited a response which has resulted in a 50 per cent increase of the amount and which is approved by the Minister as consent authority.

94 Issue 12 raises the question of whether an additional condition should be imposed requiring Dixon Sand “to ensure that vehicles leaving the site carrying a load that may generate dust are covered/tarped before they are weighed”. In Mr Shelley’s opinion, tarping is unlikely to measurably reduce dust emissions because the road from the stockpiles to the weighbridge, including the manoeuvring areas are watered by truck and fixed sprays in order to reduce dust. Furthermore, he says, due to the low speed at which the trucks travel, dust emissions from untarped loads would be negligible. The difficulties involved in tarping and untarping during the loading process also leads Mr Shelley to the conclusion that there is no valid reason to impose this condition. The applicant nevertheless accepts any condition that may be imposed in the response to this issue.

95 Issue 13 also relates to imposing an additional condition in relation to photographing and recording trucks leaving the site and providing this data to the council on a monthly basis “to enable it to verify s 94 contributions”. Christine Mackenzie, an employee of BHSC, advised Mr Shelley that the council has audited s 94 returns from Dixon Sand in recent years and there were no suggestions of irregularities. The council, she says, is satisfied that the current procedures are adequate. Furthermore, Mr Shelley says that it is unclear how photographs of trucks and more detailed recording would more effectively or efficiently provide data to the council in order to more accurately record due s 94 contributions.

96 The genuine issues raised by Mr Diamond in respect of alleged fraud in the process of collecting s 94 contributions has been dealt with earlier. I have not been satisfied that some sort of quantity survey foreshadowed but not defined by Mr Diamond is necessary or even appropriate. Mr Diamond has tried unsuccessfully to demonstrate that another developer at Maroota has avoided liability for s 94 contributions by excavating material while purporting to build a road that has no utility. Even if this could be proved, it has no bearing on the present application or the future performance of Dixon Sand. The company can be required by conditions of consent to provide reliable and verifiable reports relating to s 94 contributions. In the absence of credible evidence against the integrity of the applicant the conditions to that effect are as far as the Court proposes to take the matter. Moreover, although it occurred several years ago Mr Diamond himself wrote a letter to a former Minister for Local Government asserting that Dixon Sand were paying s 94 contributions in accordance with existing consent conditions.

97 In response to claims by Mr Diamond that the proper consent of the owners of the land has not been furnished the applicant has now lodged documents that overcome any legal or technical shortcoming in that respect.

Neville Diamond

98 The evidence given by Mr Diamond was primarily in the form of assertions and submissions based upon hearsay and conjecture relying upon his own judgement and assessment without the direct input of any expert. His allegations and complaints are wide ranging although they concentrate more particularly on the relationship between the company, PF Formation and BHSC. His failure to solicit a satisfactory response to his complaints made to ICAC, the Ombudsman, the Department of Local Government, the Premier, DLWC and Planning NSW appears to have driven him to an attempt to widen the enquiry undertaken by this Court in this hearing to bounds well beyond relevance to the subject appeal.

99 In cross examination he proved himself to be evasive and deliberately unresponsive in his answers to questions about his motives for commencing these proceedings, pursuing them after consent orders were agreed upon and his own criminal record following conviction in this Court by Bignold J in relation to breaches of waste control legislation. Furthermore, it became apparent during cross-examination that Mr Diamond has a justified reputation as an agitator and confrontationist in relation to environmental and pollution matters to the extent that he is blacklisted by authorities, in particular the EPA.

100 In an attempt to overcome the blacklisting Mr Diamond has resorted to using false names when contacting the EPA. Mr Diamond has made serious allegations against a number of persons without substantiation or corroboration. He has a history of making complaints that are unsubstantiated. Referring to his complaints

about illegal works Mr Connors said as follows:-

A....That basically was the former regime. We don't do that anymore, okay? As far as finding these illegal works, you have made a myriad of claims previously to DWLC about illegal works.

101 Mr Horkan could not be drawn to agree with Mr Diamond that his complaints to the EPA were either ignored or were of significant consequence in relation to a number of sites at Maroota and elsewhere. Mr Horkan explained that if a complaint was made to the EPA and there is a real issue to be resolved then an inspection will take place. When asked by Mr Diamond whether he had been blacklisted or banned by the EPA Mr Horkan gave the following answer:-

A. You've been written to by the Director-General of the EPA, the manager of Sydney Industry and the manager of Sydney Waste, saying on numerous occasions because of the number of times you've been ringing people, and sometimes been very rude, particularly to our Pollution Line, that you should not contact anybody by telephone but you must only contact the manager of Sydney Industry or Sydney Waste and no other person. That's been sent to you in writing several times from 1997 onwards until the most recent letter you got.

102 Mr Horkan also complained that Mr Diamond was rude to staff.

103 I had an opportunity to observe Mr Diamond in the witness box and I formed the view that although he may have a genuine interest in environmental matters his motives for maintaining the proceedings are more related to the dissatisfaction that he has with Dixon Sand and those associated with the company as his previous employer and to whom he attributes the cause of his bankruptcy than concerns about the environment. He also harbours malice against BHSC and certain of its officers for the same reason.

104 Nevertheless, the appeal having been made despite the questionable veracity of the appellant, the Court has a duty and an obligation to assess the development application objectively. It has done this.

Conclusion

105 I have concluded that the application for development consent may be determined by grant of consent subject to the conditions generally in the form submitted on behalf of the Minister and accepted by the second respondent.

The conditions of consent

106 Many objections to the conditions raised by the applicant have been dealt with in my earlier reasons. His claim that many of the proposed conditions are not being presently met, if true, means only that the first respondent will in future be further enjoined to comply, if not, at its own peril.

107 I have made some amendments to the conditions as follows:-

(1) Condition 3.1 has been amended to ensure that fencing of the buffer zone around the school and set-back boundary is sufficient to prevent the entry of unauthorised persons. This amendment is directed to ensuring that children in particular are, as far as is practicable, kept away from the operations in the extended area.

(2) Condition 4.3A has been re-drafted in the following terms:-

4.3A The applicant shall install a continuous monitoring device approved by the EPA and connected to an alarm system by electronic link at a central point in the operations area at sensitive sites such as Maroota school with a trigger level set at the maximum predicted level which respectively contributed to setting of the overall levels of 24 hour PM10 at 37.0Ug/m3 annual PM10 at

16.4ug/m3 annual TSP at 37.0ug/m3 and TSP at 2.5/m2/month tabulated by ERM Australia in its Air Quality Assessment for Proposed Maroota Quarry Extension September 2003 or such other level prescribed by the EPA from time to time. If the measured concentration of PM10 reaches the trigger level then the operations shall cease or be modified immediately such that the trigger level is not reached. The trigger level and period for averaging that level shall be certified by the EPA in writing.

This condition reflects the recommendation discussed with Mr Caruana and recorded at [56] above. There is no direct evidence to justify any further amendments or additional conditions.

(3) Condition 4.6 has been reinforced to incorporate the capacity of the Minister as consent authority to make a direction to implement noise mitigation measures, if required, at the school.

(4) The consent authority is authorised to inspect the original records relevant to calculation of s 94 contributions referred to in condition 3.57, as well as BHSC.

Costs

108 Mr Diamond has conducted a campaign through these proceedings which was neither justified nor reasonable. This is particularly so after he agreed to the making of consent orders in September 2003. He has not complied with many directions made by the Court and his raising of irrelevant and mischievous issues has contributed to a lengthy and, in most respects, unnecessary hearing. It is appropriate, therefore, to make an order for costs that is fair and reasonable in the circumstances, namely that he be ordered to pay the costs of the respondents.

Orders

109 The formal orders of the Court are as follows:-

- (1) Development Application No 250-09-01 made to the Minister and lodged with the Department of Urban Affairs and Planning on 21 September 2001 is determined by grant of consent, subject to the conditions annexed hereto and marked "A".
- (2) The applicant is ordered to pay each of the respondents costs of the proceedings in such amount as may be agreed or assessed.
- (3) The exhibits may be returned.

I hereby certify that the preceding 109 paragraphs are a true and accurate record of the reasons for judgment herein of the Honourable Justice RN Talbot

Associate

ANNEXURE A

Hawkesbury River Environment Centre and Neville Diamond v Planning NSW and Dixon Sand (Penrith) Pty Ltd

Land and Environment Court Proceedings No 10206 of 2003

CONDITIONS OF CONSENT

Development Application: DA No. 250-09-01, lodged with the then Department of Urban Affairs and

Planning on 21 September 2001;

Applicant: Dixon Sand (Penrith) Pty Ltd ("the Applicant");

Consent Authority: The Minister for Infrastructure and Planning;

Land: Lots 1 and 2, DP 547255, and Lots 29 and 196, DP 752025, Old Northern Road, Maroota, Baulkham Hills Shire local government area;

Proposed Development: The operation of an extractive industry on Lots 1 and 2 DP 547255; the continued use of the existing central processing plant on Lot 196, DP 752025; and water management and rehabilitation operations over Lots 1 and 2, DP 547255, and Lots 29 and 196, DP 752025, as described more particularly in Annexures "B" and "C".

State Significant Development The proposed development is within a class of development classified as State Significant development by virtue of a declaration made by the then Minister for Urban Affairs and Planning on 3 August 1999 under section 76A of the *Environmental Planning and Assessment Act*;

Integrated Development The proposed development requires an additional approval from the EPA under the *Protection of the Environment Operations Act 1997*. Consequently it is classified as integrated development under section 91 of the *Environmental Planning and Assessment Act 1979*.

Designated Development The proposed development would involve sand extraction and processing above the threshold in Schedule 3 of the *Environmental Planning and Assessment Regulation 2000*. Consequently it is classified as designated development under clause 4 of the *Environmental Planning and Assessment Regulation 2000*.

BCA Classification: This consent does not provide for construction of any buildings or structures.

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In this consent, except in so far as the context or subject-matter otherwise indicates or requires, the following terms have the meanings indicated:

Act Environmental Planning and Assessment Act, 1979

AEMR Annual Environmental Management Report

Applicant Dixon Sand (Penrith) Pty Ltd

BCA Building Code of Australia

Council Baulkham Hills Shire Council

DA Development Application

DEC NSW Department of Environment and Conservation

Department NSW Department of Infrastructure, Planning and Natural Resources

Director-General Director-General of the NSW Department of Infrastructure, Planning and Natural Resources, or delegate

dust any solid material that may become suspended in air or deposited

EIS Environmental Impact Statement

EMP Environmental Management Plan

EPA NSW Environment Protection Authority (now incorporated within the DEC)

EPL Environment Protection Licence issued under the *Protection of the Environment Operations Act, 1997*

Existing quarry the existing extraction area, processing plant, raw material and product stockpile areas, offices and amenities, and environmental controls on Lots 29 and 196 DP 752025, Old Northern Road, Maroota, currently operating under development consent 796/00/HE

Existing consent consent 796/00/HE awarded by the Land and Environment Court on 7 July 2000

GTA General Term of Approval

Minister Minister for Infrastructure, Planning and Natural Resources or delegate

NPWS NSW National Parks and Wildlife Service (now incorporated within the DEC)

operation any activity that results in the production, or intended production, of quantities of quarry products to be transported off site including clearing, stripping, sand extraction and processing, and overburden emplacement.

POEO Act *Protection of the Environment Operations Act, 1997*

Quarry extension Clearing, stripping, and sand extraction on Lots 1 and 2, DP 547255, and processing, overburden emplacement, haul roads, water management, weighbridge, offices, and associated infrastructure on Lots 29 and 196, DP 752025, Old Northern Rd, Maroota.

Regulation *Environmental Planning and Assessment Regulation, 2000*

RTA NSW Roads and Traffic Authority

Site, project site the land to which this consent applies

1. GENERAL

Obligation to Minimise Harm to the Environment

1.1 The Applicant shall implement all practicable measures to prevent or minimise any harm to the environment that may result from the construction and operation of the quarry extension, and rehabilitation of the project site.

Scope of Development

1.2 Incorporates EPA General Term of ApprovalThe Applicant shall carry out the development generally in accordance with:

- a) development application No. 250-09-01, lodged with the then Department of Urban Affairs and Planning on 21 September 2001;
- b) The extract from Chapter 2 and Chapter 5 of the *Maroota Quarry Extension - Environmental Impact Statement for Dixon Sand (Penrith) Pty Ltd* (one volume), dated August 2001 and prepared by Environmental Resources Management Australia Pty Ltd (ERM) forming Annexure "B" to this consent.
- c) The material contained in Annexure "C" being (i) ERM Figures 1-4 in relation to the Staging of Rehabilitation works and (ii) Plan prepared by Matthew and Peter Freeburn dated 4/9/02, and ERM figures 5 and 6 in relation to the final landform.
- d) The conditions of this consent.

1.3 In the event of an inconsistency between:

- a) the conditions of this consent and any document listed in condition 1.2a) to 1.2 c) inclusive, the conditions of this consent shall prevail to the extent of the inconsistency; and
- b) any document listed in condition 1.2a) to 1.2c) inclusive, and any other document listed from condition 1.2a) to 1.2c) inclusive, the most recent document shall prevail to the extent of the inconsistency.

Relationship with Existing Consent

1.4 The Applicant shall minimise duplication of documentation and avoid unnecessary complexity by ensuring EMPs, AEMRs and other documentation required by this consent, and the community consultative committee for the site comply with both this consent and consent 796/00/HE. The Applicant may apply to synchronise the timing of these activities, subject to written approval of the Director-General.

Period of Approval

1.5 This consent provides approval for:

- a) sand extraction on Lots 1 and 2, DP 547255;
- b) continued use of processing facilities, haul roads, water management, weighbridge, offices, and associated infrastructure on Lots 29 and 196, DP 752025;
- c) transport of product from the site, and,
- d) cessation of extraction operations, decommissioning of equipment, and rehabilitation and revegetation of the site,

for a period of eighteen (18) years from the date the consent operates. Extraction on Lots 29 and 196 DP 752025 shall not occur beyond the period of approval under development consent 796/00/HE.

Limits on Production

1.6 Combined production of quarry products from the existing quarry and the quarry extension shall not exceed 495,000 tonnes per annum.

1.7 Processing of extracted sandstone on the site shall not exceed 1750 tonnes per day.

1.8 The Applicant shall provide annual production data to the Department of Mineral Resources using the standard form for that purpose.

Provision of Documents

1.9 Where practicable, the Applicant shall provide all draft documents and reports required to be submitted to the Director-General under this consent in an appropriate electronic format. Final approved documents shall be provided in hard copy format. Provision of documents and reports to other parties, as required under this consent, shall be in a format acceptable to those parties and shall aim to minimise resource consumption.

1.10 Nothing in this consent prevents the Applicant from combining reporting requirements under this consent with identical or similar reporting requirements for submission to another relevant party. Reporting requirements shall only be combined with the prior agreement of the Director-General of Infrastructure and Planning and the Director-General (or equivalent) of the other relevant party.

1.11 Subject to commercial confidentiality the Applicant shall make the following documents available to the public upon request at the quarry site and Council, and shall post all documents on the internet, within 14 days of approval of the documents by the Director-General or relevant agency:

- a) this consent and the existing consent;
- b) any licences or approvals for the quarry obtained from Government agencies; and
- c) all documents required under this consent, including environmental management plans, AEMR's, and Independent Audits.

The Applicant shall ensure the address of the quarry internet site is publicised and freely available.

Dispute Resolution

1.12 In the event that a dispute arises between the Applicant and a public authority other than the Department, in relation to a specification or requirement applicable under this consent, the Applicant shall refer the matter to the Director-General, and if not resolved, to the Minister, whose determination of the dispute shall be final and binding on all parties. For the purpose of this condition, "public authority" has the same meaning as provided under section 4 of the Act.

Participation in Cumulative and Regional Studies

1.13 The Applicant shall provide all existing relevant information to assist the Director-General in any cumulative/regional studies related to extractive industry activities.

Fit and Proper Person

1.14 The Applicant must, in the opinion of the EPA, be a fit and proper person to hold a licence under the Protection of the Environment Operations Act 1997, having regard to the matters in s.83 of that Act.

Rehabilitation Bond

1.15 Prior to commencement of operations on Lots 1 and 2 DP 547255, the Applicant shall provide a Rehabilitation Bond in the sum of \$255,000 in the form of an insurance bond or bank guarantee acceptable to the Director-General from any bank licensed pursuant to the *Banking Act 1959 (Cth)*. The Rehabilitation Bond shall be made in favour of the Minister administering the *Environmental Planning & Assessment Act 1979* to ensure completion of the rehabilitation and landscaping works at the site. The sum of the Rehabilitation Bond is calculated based on \$3.00 per square metre for a maximum exposed area of 8.5 ha. Should progressive AEMR's or Independent Environmental Audits determine that the exposed, non-rehabilitated, area on the site is greater than 8.5 ha, the Director-General may direct the Applicant to increase the value of the Rehabilitation Bond at the rate of \$3.00 per square metre in excess of 8.5 ha.

The Director-General may at any time, and without notice to the Applicant, demand all or part of the monies available under the Rehabilitation Bond if, in the Director-General's opinion, the Applicant has failed to make satisfactory progress on the Rehabilitation and landscaping of the site. The Director-General shall apply the monies to ensure that the actions specified in the documents listed in condition 1.2 and/or any approved Site Environmental Management Plan are achieved.

The Rehabilitation Bond will be released when the Applicant submits documentation prepared by a

qualified landscape and rehabilitation consultant certifying that the final rehabilitation has been completed in accordance with the conditions of this consent and/or any approved Site Environmental Management Plan to satisfaction of the Director-General.

2 COMPLIANCE

2.1 The Applicant shall ensure that employees, contractors and sub-contractors are aware of, and comply with, the conditions of this consent relevant to their respective activities.

2.2 Prior to commencement of operations on Lots 1 and 2, DP 547255, the Applicant shall commission an independent person(s) or organisation(s), approved by the Director-General, to certify in writing to the satisfaction of the Director-General, that the Applicant has complied with all conditions of this consent applicable prior to that event.

2.3 Notwithstanding condition 2.2 of this consent, the Director-General may require an update report on compliance with all, or any part, of the conditions of this consent. Any such update shall meet the requirements of the Director-General and be submitted within such reasonable period as the Director-General may agree.

2.4 Any compliance report or compliance update required under condition 2.2 or 2.3 of this consent shall be made available for public inspection on request.

2.5 If at any time, the Director-General is made aware of the occurrence of any adverse environmental impacts from the proposal, the Director-General may order the Applicant to modify or cease the activities causing those impacts until those concerns have been addressed to the satisfaction of the Director-General.

3 ENVIRONMENTAL PERFORMANCE

Setbacks and Buffer Zones

3.1 Prior to commencement of operations on Lots 1 and 2, DP 547255, the Applicant shall engage a registered surveyor to mark out buffer zones and setbacks generally in accordance with the provisions of Baulkham Hills Development Control Plan 500 relating to extractive activities at the date of this consent. In this regard, a buffer zone shall be established which excludes areas from extraction between the quarry and nearby landuses or sensitive environmental areas. The boundary of the buffer zone(s) shall be located:

- a) not less than 250m from the boundary of Maroota Public School (Lot 18 DP 752025);
- b) not less than 10m from the boundary of Lot 117 DP 752025;
- c) not less than 50m from the existing house on Lot 1 DP 547255;
- d) in accordance with condition 3.50 around the threatened species conservation area; and,
- e) at the edge of the area of shallow groundwater indicated on Fig 2.1 of the EIS.

A survey plan of the buffer zone and setback boundary shall be submitted to the Director-General for approval at least one month prior to the commencement of operations on Lots 1 and 2, DP 547255. Once approved, the surveyed boundary and buffer zone shall be fenced to prevent vehicles and unauthorised persons entering the area(s). No works or operations on Lots 1 and 2, DP 547255 shall occur on the site until the approved boundary has been fenced.

Air Quality Impacts

Location of monitoring/discharge points

3.2 Incorporates an EPA General Term of ApprovalThe following points referred to in the table below are identified for the purposes of monitoring and/or the setting of limits for the emission of pollutants to the air from the point.

Air

ID Number	Type of Monitoring Point	Type of Discharge point	Description of Location
1	Ambient air monitoring	-	To be determined between EPA and the Applicant

Air Quality Standards/Goals and Performance Criteria

3.3 The applicant shall ensure that dust emissions from the development do not cause exceedences of the following ambient air quality standards/goals at affected residences and Maroota Public School:

Table 1 Particulate Matter Criteria

Pollutant	Standard / Goal	Agency
Total Suspended Particulate Matter (TSP)	90ug/m3 (annual mean)	NH & MRC
Particulate matter < 10um (PM10)	30 ug/m3 (annual mean)	NSW EPA
Particulate matter < 10um (PM10)	50ug/m3 (24 hr average)	NSW EPA

Table 2 NSW EPA Amenity Based Criteria for Dust Fallout

Pollutant	Averaging Period	Maximum Increase in Deposited Dust Level	Maximum Total Deposited Dust Level
Deposited dust	Annual	2 g/m2/month	4 g/m2/month Note: dust is assessed as insoluble solids as defined by AS 3580.10.1-1991 (AM-19)

Dust Emissions

3.4 Incorporates an EPA General Term of Approval The site must be maintained in a condition which minimises or prevents the emission of dust from the site, including the prompt and effective rehabilitation of all disturbed areas.

3.5 To prevent dust emissions from vehicles the Applicant shall ensure that all vehicles entering or leaving the site, carrying a load that may generate dust, are covered to prevent dust emissions at all times, except during loading and unloading. Vehicles leaving the site carrying a load that may generate dust are to be covered prior to final weighing.

3.6 The Applicant shall install, operate, and maintain dust control measures and/or equipment on the following areas at the site:

- a) all processing equipment;
- b) internal haul roads and disturbed areas;
- c) truck loading areas; and,
- d) all stockpiles including raw material, product, topsoil, and overburden.

3.7 A mobile water tanker equipped with a pump and sprays must be provided to suppress dust from unsealed roads when in use.

3.8 Haul roads must be surfaced in selected hard, non-friable material. Soft mudstone, claystone and shale must not be used.

Soil and Land Management

3.9 The Applicant shall ensure that extraction is undertaken in accordance with the extraction plan and sequence in the EIS.

3.10 The Applicant shall minimise the removal of trees and other vegetation from the project site, and restrict any clearance to the areas occupied by quarrying activities, processing plant, and those areas necessary for fire

control.

3.11 Any topsoil removed during operations must be stockpiled for use in the rehabilitation of the site. Topsoil should not be mixed with other overburden products. The topsoil stockpile location should have easy access and be protected from erosion. The topsoil stockpiles shall be sown with appropriate vegetation to stabilise the soil if they are to be stored for longer than six months. Topsoil stockpiles must have a maximum depth of 1.5 metres.

3.12 The Applicant shall complete rehabilitation and revegetation works of extracted strips to a point requiring only ongoing monitoring and management before commencement of works on the extraction strip following the next strip in the extraction sequence. Strips 5 and 6 shall be rehabilitated before the end of the period of approval for extraction under condition 1.5. In this regard, strips shall be rehabilitated in the following sequence:

Strip to be rehabilitated	Before event
1	Commencement of operations on strip 3
2	Commencement of operations on strip 4
3	Commencement of operations on strip 5
4	Commencement of operations on strip 6
5	End of period of approval (condition 1.5)
6	End of period of approval (condition 1.5)

3.13 The Applicant shall undertake all rehabilitation works and construction of the final landform of the eastern highwall of the quarry within 250m of Maroota Public School in school holiday periods only.

3.14 The Applicant shall implement appropriate measures, in consultation with DMR and Maroota Public School, to ensure public safety and restrict unsupervised access of school children to the quarry site. Those measures may include the erection of safety fencing around the highwall of the quarry or at the school boundary as well as the fencing referred to in condition 3.1.

3.15 The Applicant shall regularly consult with adjoining property owners to ensure property management issues including maintenance of common fences, weed control measures, and bushfire management are coordinated. Details of consultation are to be reported in the AEMR.

3.16 The Applicant shall establish a riparian zone, revegetated with local native species, along the entire length of the reconstructed ephemeral waterway on the quarry extension site. The reconstructed waterway shall be located generally in accordance with the Final Landform Plan (Fig 2.5 of the EIS). The riparian zone shall be no less than 20m wide measured horizontally and at right angles to the flow from the top of both banks. No exotic plant species, other than sterile cover crops, are to be planted in the riparian zone.

Water Quality Impacts

Pollution of waters

3.17 Except as may be expressly provided by a licence under the *Protection of the Environment Operations Act 1997* in relation of the development, section 120 of the *Protection of the Environment Operations Act 1997* must be complied with in and in connection with the carrying out of the development.

Surface Water

3.18 The stormwater system must be designed and installed in accordance with Managing Urban Stormwater: Soil and Conservation, Department of Housing 1998, to contain and treat all rainfall and runoff at the site resulting from a 90 percentile, 5 day rainfall event ("the design event").

3.19 The Applicant must maintain stormwater basins with the capacity to contain all rainfall and runoff generated from the "design event" specified in condition 3.18.

3.20 The Applicant must take all practical measures to avoid or minimise total suspended solids contained in wet weather discharges from the site.

3.21 The Applicant shall undertake appropriate measures to ensure that any vehicles which leave the site do not track materials onto public roads.

3.22 The Applicant shall consult with NSW Fisheries prior to commencement of operations in strip 4 (as described in the EIS) on Lots 1 and 2, DP 547255 and, if required, obtain a permit under the *Fisheries Management Act 1994* for works to be carried out on the site.

3.23 Discharge of stormwater from the site is to be clear of sediment and pollution in accordance with the provisions of the Protection of the Environment Operations Act, 1997, and the EPL for the quarry, and to the satisfaction of the Environment Protection Authority.

Groundwater

3.24 The Applicant shall maintain the four groundwater monitoring bores established on Lots 1 and 2, DP 547255, throughout the life of the development.

3.25 The Applicant shall ensure that no extraction or excavation works occur within two (2) metres of the highest recorded wet weather groundwater level.

3.26 The Applicant is to ensure that groundwaters are not breached or contaminated by its operations. In the event of groundwaters being breached or contaminated, operations are to cease within the vicinity of the affected area and the Applicant shall consult with the Director-General and Council to determine the basis upon which extraction may recommence.

3.27 The Applicant shall carry out remedial works to protect the groundwater system, to the satisfaction of the Director-General, if it is determined that any of the existing dams on the site breach the groundwater table.

3.28 Maintenance and equipment refuelling operations shall only be carried out in the designated workshop and refuelling areas on the existing quarry site.

Bunding and Spill Management

3.29 The Applicant shall store and handle all hazardous chemicals, dangerous goods, fuels and oils, strictly in accordance with:

- a) all relevant Australian Standards;
- b) a minimum bund volume requirement of 110% of the volume of the largest single stored volume within the bund; and
- c) the EPA's Environment Protection Manual Technical Bulletin *Bunding and Spill Management*.

In the event of an inconsistency between the requirements listed from a) to c) above, the most stringent requirement shall prevail to the extent of the inconsistency.

Traffic and Transport Impacts

3.30 The total number of laden vehicle movements from the quarry site, including those provided for in the existing consent, is not to exceed a combined total of 60 laden movements per day or 120 vehicle movements per day.

3.31 The number of vehicles permitted to enter and leave the subject site between the hours of 6.00am and 7.00am is 15 laden vehicles, subject to compliance with EPA noise limits.

3.32 All vehicles are to enter and leave the site in a forward direction and prominent and permanent signposting to this effect is to be provided and maintained at all times.

3.33 The Applicant is to ensure that the Old Northern Road pavement in the vicinity of the intersection with the Crown Access Road is regularly maintained and kept free of sand, clay and soil at all times. All costs of these

works are to be borne by the Applicant.

3.34 The Applicant shall advise its drivers and its clients not to arrive at the site prior to 5.45am on any day. Certified (under company seal) weighbridge dockets and a log book or equivalent computer records are to be kept to verify the arrival and departure times of vehicles. Copies of these records shall be summarised in the AEMR.

3.35A The applicant shall ensure all new truck drivers are provided with Site Induction for Drivers outlining site requirements, including the requirements of the Transport Code of Conduct referred to in condition 6.3 of this consent, and expected driver behaviour such as observing the 40 kph speed limit at Maroota School on school days between 8:30 am- 9:00 am and 3:00 pm -3:30 pm (or such other speed limits as may be imposed from time to time), and not using exhaust brakes, especially during morning periods

3.35B The applicant shall liaise with representatives of Maroota Public School as required, but no less than annually, to discuss the effectiveness of traffic management procedures.

3.35C The applicant shall impose a 20 km/hr speed limit on internal haul roads

and shall ensure that all vehicles using internal haul roads do not exceed this speed limit.

Noise Impacts

Noise Limit Interpretation and Measurement

3.35 All noise limits specified as part of this consent apply under:

- a) wind speeds up to 3 ms⁻¹ at 10 metres above ground level; and
- b) temperature inversion conditions up to 3oC per 100 metres.

3.36 For the purpose of assessment of noise levels specified in this consent, noise from the development shall be:

- a) measured at the most affected point on or within the receptor site boundary, or at the most affected point within 30 metres of the dwelling where the dwelling is more than 30 metres from the boundary to determine compliance with LAeq(15 minute) noise limits in condition 3.39;
- b) measured at 1 metre from the dwelling façade of the most affected classroom to determine compliance with LAeq(1 hour) noise limits in condition 3.40; and
- c) subject to the modification factors provided in Section 4 of the *New South Wales Industrial Noise Policy* (EPA, 2000).

3.37 Notwithstanding condition 3.36 of this consent, should direct measurement of noise from the site be impractical, the Applicant may employ an alternative noise assessment method deemed acceptable by the EPA (refer to Section 11 of the *New South Wales Industrial Noise Policy* (EPA, 2000)). Details of such an alternative noise assessment method accepted by the EPA shall be submitted to the Director-General prior to the implementation of the assessment method.

3.38 Noise limits identified in condition 3.39 do not apply for residential premises where there is a negotiated agreement between the Applicant and the landowner of the premises.

Noise Limits

3.39 Noise from the premises must not exceed:

- An LAeq(15 minute) noise emission criterion of 44 dB(A) between 7am and 6pm Monday to Saturday; and,
- An LAeq(15 minute) noise emission criterion of 37 dB(A) between 6am and 7am Monday to Saturday;

at any residence not owned by the Applicant.

3.40 INoise from the premises must not exceed an LAeq(1 hour) noise emission criterion of 45 dB(A) at the most affected classroom of Maroota Public School.

Hours of Operation

3.41 Construction of earth bunds around the Maroota Public School setback perimeter, required for the mitigation of noise and dust, must only be carried out between 7am and 6pm Monday to Friday during school holiday periods unless otherwise approved in writing by the EPA.

3.42 Loading of trucks and truck movements at the site must only be carried out between 6am and 6pm Monday to Saturday, and at no time on Sundays and Public Holidays. All other activities at the premises must only be carried out between 7am and 6pm Monday to Saturday, and at no time on Sundays and Public Holidays.

Operational Noise – Management of Operations

3.43 The Applicant shall design and implement a management system that ensures operations at the quarry site meet the criteria in conditions 3.39 and 3.40. In this regard, the Applicant shall:

- a) construct all bunds on the eastern, southeastern and northern sides of the quarry extension site to at least 5 m above the existing ground level;
- b) not use the bulldozer concurrently with any other plant on strips 4, 5, and 6 of the quarry extension site for any operations at quarry depths between existing ground level and six metres below the existing ground level; and,
- c) only use the bulldozer for clearing, stripping and bund construction on the quarry extension site in calm wind conditions.

The Applicant shall report on monitoring results from the on-site weather monitoring station, and corresponding operations and noise impacts in adverse weather conditions, in the AEMR and compliance reports required under condition 3.45. The Director-General, in consultation with EPA, may approve variations to the operating restrictions in this condition based on actual noise monitoring conducted by the Applicant on the site and/or the results of compliance reports required in condition 3.45.

3.44 The Applicant shall design quarry operations to minimise the need for reversing of trucks and machinery where reversing beepers may contribute to noise impacts exceeding the criteria in conditions 3.39 and 3.40.

Operation Noise – Compliance Report

3.45 The Applicant must undertake noise monitoring after noise mitigation earth bunds at strips 4, 5 and 6 are completed. The results of the noise monitoring must be submitted to the EPA and the Director-General in a report within 3 months of the completion of the earth bund construction. The report must include a statement of whether compliance has been achieved with noise limits specified in the Environment Protection Licence and this consent.

Operational Noise – Negotiated Agreement with G&M Accurso

3.46 The Applicant is to implement the noise mitigation measures contained in the agreement with Mr and Mrs G&M Accurso dated 5 April 2004 titled *Letter of Agreement between Mr and Mrs G&M Accurso and Dixon Sand (Penrith) Pty Ltd* forming Annexure “D” to this Consent. Noise limits contained in condition 3.39 do not apply to the Accurso residence (Lot 117, DP 752025) while the agreement is in force.

3.47 Should the agreement referred to in condition 3.46 be terminated for any reason the Applicant shall comply with noise criteria in condition 3.39.

Operation Noise - Residual Noise Management

3.48 In the event that noise from the site exceeds noise criterion in condition 3.39 or condition 3.40, or the negotiated agreement in condition 3.46 is terminated for any reason, then the Applicant shall actively manage residual noise (ie noise in excess of the criteria) at the affected receptor. Residual noise shall be managed in accordance with the residual noise management measures detailed in the approved Site Environmental Management Plan. As a minimum to ensure compliance, the Applicant shall undertake the following measures:

- a) implement a reactive management system where site operations are modified in adverse weather conditions identified through meteorological monitoring;
- b) implement additional controls or treatments on individual sources on the site or on site operations, or otherwise modify operations to ensure compliance; or

- c) provide other forms of benefit or amelioration of impacts of noise agreed between the Applicant and the affected party, as providing acceptable compensation for noise levels experienced; and,
- d) identify long term strategies to eliminate noise levels that exceed the noise criteria in condition 3.39 or 3.40.

Impacts on Flora and Fauna

3.49 Prior to commencement of operations on Lots 1 and 2, DP 547255, the Applicant shall engage a suitably qualified and experienced ecologist to identify all threatened plant species on the site and clearly mark vegetation to be conserved, generally in accordance with the proposed conservation areas in documents listed in condition 1.2. The Applicant shall then define a buffer zone(s) around threatened species conservation areas as follows:

- a) a 50 metre buffer around the populations of *Tetratheca glandulosa* and shale-sandstone transitional forest; and,
- b) a reduced buffer of 20 m on the northern point of the conservation area.

The boundary of the conservation area shall be surveyed and fenced in accordance with condition 3.1. Fencing around the threatened species conservation area shall be sufficient to ensure excavation operations, truck movements, overburden dumping, dust generation, and weed infestation due to quarry operations do not adversely affect flora and fauna. No works or operations on Lots 1 and 2, DP 547255 shall occur on the site until the approved conservation area boundary has been fenced.

3.50 The Applicant shall ensure that all natural bushland directly adjoining the site and bushland to be conserved within the development site, is not damaged or disturbed by its operations.

3.51 Native bush regeneration and habitat reconstruction techniques shall be used to rehabilitate the threatened species conservation area, extraction areas, tailings ponds, and disturbed areas, and stabilise environmental bunds on the site in accordance with the SEMP. Bush regeneration shall include a specific program to translocate, propagate, and revegetate threatened plant species on the site including *Tetratheca glandulosa*, Shale/sandstone transition forest, *Darwinia Fascicularis* susp. *oligantha*, and *Kunzea rupestris*. The specialised techniques shall be carried out under the direction of a qualified Plant Ecologist and shall include the re-use of stored topsoil that has not been contaminated with exotic grasses or weed species and the collection and propagation of species from the site.

Indigenous Heritage

3.52 If, during the course of any activities conducted under this consent, the Applicant becomes aware of any heritage or archaeological sites not previously identified, all work likely to affect the site shall cease immediately. The Applicant shall then consult with relevant authorities and decide on an appropriate course of action prior to recommencement of work. The relevant authorities may include NPWS, the NSW Heritage Office, and the relevant local Aboriginal community. Any necessary permits or consents shall be obtained and complied with prior to recommencement of work.

Waste Management Impacts

3.53 The Applicant shall not cause, permit or allow any waste generated outside the site to be received at the site for storage, treatment, processing, reprocessing or disposal, or any waste generated at the site to be disposed of at the site, except as expressly permitted by a licence under the *Protection of the Environment Operations Act 1997*. This condition only applies to the storage, treatment, processing, reprocessing or disposal of waste at the site if it requires an Environment Protection Licence under the *Protection of the Environment Operations Act 1997*.

3.54 All liquid and non-liquid wastes generated at the development shall be assessed, classified and managed in accordance with the EPA's Environmental Guidelines *Assessment, Classification and Management of Liquid and Non-Liquid Wastes* (EPA, 1999).

3.55 Any waste generated at the development shall only be transported to an EPA-approved waste management facility for treatment, recycling and/ or disposal, where relevant.

Section 94 Contributions

3.56 The applicant shall pay or procure payment to the Council of a contribution under Section 94 of the

Environmental Planning and Assessment Act 1979 at a rate in accordance with Baulkham Hills Shire Council's *Contributions Plan No: 6 – Extractive Industries*. The said contribution will be calculated and paid monthly from the date on which development consent became effective. The said contribution will be indexed and adjusted annually in accordance with *Contributions Plan No: 6 – Extractive Industries*. On or before the fourteenth day of each month for the duration of the consent, the applicant shall deliver or procure delivery to the Council of true certified copy weighbridge or other returns or records showing the true quantities of extracted/processed material transported from the property during the immediately preceding month and the Council will then, as soon as it can conveniently do so, issue an invoice to the applicant or its consenting assignee, who will pay to the Council within fourteen (14) days of the date thereof. The Council and the consent authority has the right to inspect and have the original records relation to any of the extracted/processed material, including numbers and types of laden trucks, trailers and load quantities transported from the property audited by any person nominated by its internal accountant any time when he may by written request so require. The Council will pay all of the said contribution payments into a specially identified account for payments towards the rehabilitation, restoration, repair and/or maintenance of Old Northern and Wisemans Ferry Roads from the intersection of the Crown Road access and the Baulkham Hills Shire boundary at Cattai Creek and other projects identified in the Plan of Management for Extractive Industries adopted by Council.

4 ENVIRONMENTAL MONITORING AND AUDITING

General Monitoring Requirements

4.1 The results of all monitoring required under this consent shall be

- a) in a legible form, or in a form that can be readily reduced to a legible form;
- b) kept for at least four years after the monitoring or event to which the results relate took place; and
- c) produced in a legible form to any authorised officer of the EPA or the Director-General, upon request; and
- d) kept with the following details for each sample required to be collected:
 - i) the date(s) on which the sample was collected;
 - ii) the time(s) at which the sample was collected;
 - iii) the point at which the sample was collected; and
 - iv) the name of the person who collected the sample.

Meteorological Monitoring

4.2 Incorporates an EPA General Term of Approval The Applicant shall monitor (by sampling and obtaining results by analysis) the parameters specified in Column 1. The applicant must use the sampling method, units of measure, averaging period and sample at the frequency, specified opposite in the other columns:

Parameter	Units of measure	Averaging Period	Frequency	Method
Rainfall	mm/hr	1-hour	Continuous	AM-4
Sigma Theta @ 10 m	°	1-hour	Continuous	AM-2
Siting	-	-	-	AM-1
Temperature @ 2 m	K	1-hour	Continuous	AM-4
Wind Direction @ 10 m	°	1-hour	Continuous	AM-2
Wind Speed @ 10 m	m/s	1-hour	Continuous	AM-2

Note: the purpose of condition 4.2 of this consent is to provide a mechanism for collection and recording meteorological data relevant to the site for use in on-going air quality and noise assessment and management.

Air Quality Monitoring

4.3 For each monitoring point or utilisation area specified in condition 3.2, the Applicant must monitor (by sampling and obtaining results by analysis) the concentration of each pollutant specified in Column 1 of the table below. The Applicant must use the sampling method, units of measure, and sample at the frequency, specified opposite in the other columns:

Air

Pollutant	Units of measure	Frequency	Sampling Method
Particulate matter – PM10	ug/m3	1 day in 6 or continuous, or as	AM-18 or AS3580.9.8 - 2001

		otherwise approved by EPA	
Particulate Matter (deposited matter)	g/m2/month	continuous	AM-19
Siting	-	-	AM-1

4.3A The applicant shall install a continuous monitoring device approved by the EPA and connected to an alarm system by electronic link at a central point in the operations area at sensitive sites such as Maroota school with a trigger level set at the maximum predicted level which respectively contributed to setting of the overall levels of 24 hour PM10 at 37.0Ug/m3 annual PM10 at 16.4ug/m3 annual TSP at 37.0ug/m3 and TSP at 2.5/m2/month tabulated by ERM Australia in its Air Quality Assessment for Proposed Maroota Quarry Extension September 2003 or such other level prescribed by the EPA from time to time. If the measured concentration of PM10 reaches the trigger level then the operations shall cease or be modified immediately such that the trigger level is not reached. The trigger level and period for averaging that level shall be certified by the EPA.

4.4 Monitoring for the concentration of a pollutant emitted to the air required to be conducted under this consent, or a licence under the *Protection of the Environment Operations Act 1997*, must be carried out in accordance with *Approved Methods for the Sampling and Analysis of Air Pollutants in NSW (EPA 2001)* or latest document.

Noise Monitoring

4.5 The Applicant shall engage an independent person(s) to conduct noise monitoring at sensitive residential locations and Maroota Public School every six months, or as otherwise approved by the Director-General, during the operation of the development to determine compliance with the noise criteria in conditions 3.39 and 3.40. Noise monitoring shall seek to coincide with worst case operating scenarios for noise generation and adverse weather conditions.

4.6 Within six months of the date of this consent, the Applicant shall engage an independent person(s) to conduct road traffic noise monitoring at Maroota Public School to determine the actual impact of truck movements on existing traffic noise levels compared to predictions made in the EIS for the existing development consent (796/00/HE). In the event that monitoring indicates that the relevant criteria in EPA's *Environmental Criteria for Road Traffic Noise* is exceeded, the Applicant shall implement noise mitigation measures at the School in consultation with Maroota Public School, Council, RTA, and EPA and as directed by the consent authority and in accordance with a specification approved by the consent authority.

Water Quality Monitoring

Surface Water

4.7 The Applicant shall undertake surface water monitoring and discharge monitoring in accordance with the EPL for the quarry.

Groundwater

4.8 The Applicant shall monitor groundwater levels in the four monitoring bores on Lots 1 and 2, DP 547255 monthly and following any periods of extreme wet weather. Water quality monitoring of groundwater shall be undertaken every six months. Results of groundwater monitoring shall be reported in the AEMR.

Flora and Fauna Monitoring

4.9 The Applicant shall prepare and implement a Flora and Fauna Monitoring Program to monitor the effects of the development on flora and fauna including known populations of *Tetratheca Glandulosa*, Shale-Sandstone Transitional Forest, *Darwinia fascicularis subsp. oligantha*, and *Kunzea Rupestris* on the site. The Program shall also monitor the success of revegetation works on the site. The Program shall be developed in consultation with NPWS and Council. The Program shall include annual surveys for threatened species during

quarry operations, and include monitoring of the threatened species conservation area. The Applicant shall include the Flora and Fauna Monitoring Program in the SEMP (condition 0).

4.10 The Flora and Fauna Monitoring Program shall begin before commencement of operations on the quarry extension site and continue until at least two years beyond the period of approval in condition 1.5.

Independent Auditing

4.11 The Applicant shall commission an independent person(s) to undertake an Environmental Audit of the entire quarry at the following stages of the development:

- a) before commencement of operations on strips 2, 3, 4, 5, and 6;
- b) at the end of the period of approval set out in condition 1.5; and,
- c) at the completion of the Flora and Fauna Monitoring program in condition 4.10,

or as otherwise required by the Director-General.

The independent person(s) shall be approved by the Director-General prior to the commencement of the Audit. An **Environmental Audit Report** shall be submitted to the Director-General, the EPA, NPWS, the RTA and Council within one month of the completion of the Audit. The Audit shall:

- a) be carried out in accordance with *ISO 14010 - Guidelines and General Principles for Environmental Auditing* and *ISO 14011 - Procedures for Environmental Auditing*;
- b) assess compliance with the requirements of this consent, and other licences and approvals that apply to the development;
- c) assess the development against the predictions made and conclusions drawn in the documents referred to under condition 1.2 of this consent;
- d) review the effectiveness of the environmental management of the development, including any environmental impact mitigation works; and
- e) independently review and validate monitoring systems and outcomes.

The Director-General may, having considered any submission made by the EPA, NPWS, the RTA or Council in response to the Environmental Audit Report, require the Applicant to undertake works to address the findings or recommendations presented in the Report. Any such works shall be completed within such time as the Director-General may require. The Applicant shall make the Environmental Audit Report available for public inspection on request. The Director-General may make the Environmental Audit Report available on the Department's internet site.

4.12 The Applicant shall provide a compliance report(s) to the Director-General detailing the implementation of the recommendations of the Environmental Audit Report (refer to condition 4.11). The compliance report(s) shall be submitted to the Director-General within such time, and at such frequency, as the Director-General may require. The Applicant shall make the compliance report(s) available for public inspection.

5 COMMUNITY INFORMATION, CONSULTATION AND INVOLVEMENT

Complaints Procedure

5.1 Throughout the life of the development, the Applicant shall ensure that the following are available for community complaints:

- a) a telephone number on which complaints about the development may be registered;
- b) a postal address to which written complaints may be sent; and
- c) an email address to which electronic complaints may be transmitted.

The telephone number, the postal address and the email address shall be advertised in at least one appropriate local newspaper prior to the commencement of operations on Lots 1 and 2, DP 547255. These details shall also be provided on the Applicant's internet site.

5.2 The Applicant shall record details of all complaints received through the means listed under condition 5.1 of this consent in a Complaints Register. The Register shall record, but not necessarily be limited to:

- a) the date and time, where relevant, of the complaint;
- b) the means by which the complaint was made (telephone, mail or email);

- c) any personal details of the complainant that were provided, or if no details were provided, a note to that effect;
- d) the nature of the complaint;
- e) any action(s) taken by the Applicant in relation to the complaint, including any follow-up contact with the complainant; and
- f) if no action was taken by the Applicant in relation to the complaint, the reason(s) why no action was taken.

The Complaints Register shall be made available for inspection by the EPA or the Director-General upon request. The Applicant shall also make summaries of the Register, without details of the complainants, available for public inspection.

Community Consultative Committee

5.3 The Applicant shall establish a Community Consultative Committee (CCC) to oversee the environmental performance of the development. The Applicant shall ensure that one committee is established for the entire site which meets the requirements of both this consent and the existing consent for the site while that consent operates. This committee shall:

(a) Be comprised of :

- 1 independent chairperson nominated by the Director-General in consultation with the Council, and agreed to by the Applicant;
- 2 representatives from the Applicant, including the Environmental Officer;
- 1 representative from Council;
- 1 representative from the Maroota Public School; and
- 2 representatives from the local community;

whose appointment has been approved by the Director-General in consultation with the Council;

(b) Meet at least once every six months; and

(c) Review and provide advice on the environmental performance of the development, including the Site Environmental Management Plan, monitoring results, audit reports, compliance reports, AEMR's or complaints.

5.4 Representatives from the Department may attend committee meetings. Representatives from relevant government agencies, the local community, the local Aboriginal community, or other individuals may be invited to attend meetings as required by the Chairperson.

5.5 The Applicant shall, at its own expense:

- (a) Ensure that 2 of its representatives attend all the Committee's meetings;
- (b) Provide the Committee with regular information on the environmental performance and management of the development;
- (c) Provide meeting facilities for the Committee;
- (d) Meet all reasonable costs associated with operating the Committee;
- (e) Allow the Committee to inspect the site, if necessary;
- (f) Take minutes of the Committee's meetings;
- (g) Make these minutes available for public inspection at the Council within 14 days of the Committee meeting, or as agreed by the Committee;
- (h) Respond to any recommendations the Committee may have in relation to the environmental performance of the development;
- (i) Forward a copy of the minutes of each Committee meeting verified by the independent chairperson, and any responses to the Committee's recommendations to the Director-General within 14 days of the Committee meeting.

5.6 The Applicant shall ensure that the Committee has its first meeting prior to the submission of the Site Environmental Management Plan.

Community Relations Plan

5.7 The Applicant shall prepare and implement a Community Relations Plan (CRP) to improve communications with the local community and Maroota Public School. The Plan shall be developed in

consultation with Council, the CCC, and MPS. The Plan shall include, but not be limited to:

- a) Identification of stakeholders potentially affected by the development;
- b) Details of strategies to ensure open communication between the Applicant and the community and Maroota Public School;
- c) Details of strategies to monitor and evaluate social impacts of the development on the local community and Maroota Public School;
- d) Measures to improve community relations including:
 - i) Quarry open days and education sessions to promote better understanding of quarry operations in the wider community;
 - ii) Participation in community activities;
 - iii) Strategies involving in-kind exchanges of expertise and resources for activities such as bush regeneration, Landcare, Streamwatch, and other community-based environmental programs.

The CRP shall be included in the SEMP.

6 ENVIRONMENTAL MANAGEMENT

Environmental Officer

6.1 Within 3 months of the operation of this consent, the Applicant shall nominate a suitably qualified and experienced Environmental Officer(s), approved by the Director-General. The Applicant shall employ an Environmental Officer(s) on a full-time basis throughout the life of the development. The Environmental Officer(s) shall be:

- a) the primary contact point for the Department, the EPA, the RTA, NPWS, Council and the community, as applicable, in relation to the environmental performance of the development;
- b) responsible for all Management Plans and Monitoring Programs required under this consent;
- c) responsible for considering and advising on matters specified in the conditions of this consent, and all other licences and approvals related to the environmental performance and impacts of the development;
- d) responsible for receiving and responding to complaints in accordance with condition 5.2 of this consent; and
- e) given the authority and independence to require reasonable steps be taken to avoid or minimise unintended or adverse environmental impacts, and failing the effectiveness of such steps, to direct that relevant actions be ceased immediately should an adverse impact on the environment be likely to occur.

The Applicant shall notify the Director-General, the EPA, the RTA, NPWS and Council of the name and contact details of the Environmental Officer upon appointment, and any changes to that appointment that may occur from time to time.

6.2 The Applicant shall prepare and implement a **Site Environmental Management Plan (SEMP)** to detail an environmental management framework, practices and procedures to be followed during the operation of the development. The SEMP shall cover operations on both the existing quarry site and the quarry extension. The Plan shall include, but not necessarily be limited to:

- a) demonstration of consistency with commitments made in documents listed in condition 1.2 and compliance with the conditions of this consent;
- b) identification of all statutory and other obligations that the Applicant is required to fulfil in relation to operation of the development, including all consents, licences, approvals and consultations;
- c) a description of the roles and responsibilities for all relevant employees involved in the operation of the development;
- d) overall environmental policies and principles to be applied to the operation of the development;
- e) standards and performance measures to be applied to the development, and a means by which environmental performance can be periodically reviewed and improved;
- f) management policies to ensure that environmental performance goals are met and to comply with the conditions of this consent;
- g) procedures to be followed to ensure the protection and conservation of Aboriginal cultural heritage;
- h) the CRP required in condition 5.7.
- i) the Management Plans listed under condition 6.3 of this consent; and,
- j) the environmental monitoring requirements outlined under conditions 4.1 to 4.12 of this consent, inclusive.

The SEMP shall be submitted for the approval of the Director-General no later than one

month prior to the commencement of operation of the development, or within such period otherwise agreed by the Director-General. Operation shall not commence until written approval has been received from the Director-General. Upon receipt of the Director-General's approval, the Applicant shall supply a copy of the SEMP to Council, the EPA, the RTA, NPWS as soon as practicable. The Applicant shall make the SEMP available for public inspection on request.

6.3 As part of the SEMP for the development, required under condition 6.2 of this consent, the Applicant shall prepare and implement the following Management Plans:

a) an **Air Quality Management Plan** to outline measures to minimise impacts from the development on local and regional air quality. The Plan shall address the requirements of the EPA and Council. The Plan shall include, but not necessarily be limited to:

- i) identification of all sources of dust emissions from the development and potentially affected properties;
- ii) detailed procedures for management and minimisation of dust emissions during operations on site;
- iii) procedures and schedules for rehabilitation of disturbed areas to minimise dust emissions;
- iv) a protocol for handling dust complaints;
- v) air quality monitoring, consistent with the requirements of this consent and any relevant Environment Protection Licence for the site; and
- vi) a contingency plan should an incident or weather event lead to air quality impacts above environmental performance goals/ limits.

b) an **Erosion and Sedimentation Control Plan** to detail measures to minimise erosion during site preparation and operation. The Plan shall address the requirements of the Director-General, the EPA, and Council. The Plan shall include, but not necessarily be limited to:

- i) results of investigations into soils associated with the site, in particular the stability of the soil and its susceptibility to erosion;
- ii) details of erosion, sediment and pollution control measures and practices to be implemented;
- iii) procedures for removal of farm dams on site to ensure that large volumes of water and sediment are not released to natural waterways;
- iv) demonstration that erosion and sediment control measures will conform with, or exceed, the relevant requirements and guidelines provided in the former Department of Land and Water Conservation's publication *Urban Erosion and Sedimentation Handbook*, the EPA's publication *Pollution Control Manual for Urban Stormwater* and the Department of Housing's publication *Managing Urban Stormwater: Soils and Construction*;
- v) design specifications for diversionary works, banks and sediment basins;
- vi) an erosion monitoring program during site preparation works and construction of the development; and
- vii) measures to address erosion, should it occur, and to rehabilitate/ stabilise disturbed areas of the site.

c)

a **Noise Management Plan** to detail measures to minimise noise impacts during the operation of the development and to manage residual noise (refer to condition 3.48 of this consent). The Plan shall be developed in consultation with Council and the EPA. The Plan shall include, but not necessarily be limited to:

- i) identification of a noise sources associated with the proposed development;
- ii) program to investigate and monitor noise levels from the development on periodic basis;
- iii) a protocol for handling noise complaints;
- iv) a program to investigate additional noise mitigation measures for the development if it is determined that noise criteria in this consent are being exceeded;
- v) a specific program to identify and implement, where appropriate, noise mitigation measures on the site, or at the receptor, to reduce residual noise impacts at the receptors including requirements of condition 3.48 of this consent; and,
- vi) a program to identify other forms of benefit or amelioration that may be applied, upon agreement of the Applicant and the affected party, at receptors the subject of condition 3.48 of this consent.

d) a **Water Management Plan** to outline measures to control and manage surface water, stormwater and groundwater on the site. The Plan shall address the requirements of the Director-General, the EPA and Council. The Plan shall include, but not necessarily be limited to:

- i) identification of all potential sources of surface water and groundwater pollution;
- ii) management measures to ensure separation of clean and dirty water on site;
- iii) measures to rehabilitate erosion-affected areas and areas the subject of excavation, including tree, shrub and/ or cover crop species and implementation;

- iv) management procedures for all surface water collection and storage structures on the site, including a maintenance program for associated infrastructure (eg pumps, pipes, dam walls etc) and a program for desilting of those structures, where relevant;
- v) a demonstration of consistency with the surface water management plan for the catchment, should one exist, or with the EPA's publication *Managing Urban Stormwater: Council Handbook* should a stormwater management plan for the catchment not exist;
- vi) management measures to ensure the groundwater table is not breached by the quarrying operation;
- vii) details of a program for monitoring surface water and groundwater quality and quantity at the site;
- viii) details of measures to ensure a sustainable water management system is created in the final landform on the site; and,
- ix) a strategy for the decommissioning of water management structures, including storage, and sedimentation dams once extraction is complete.
- e) a **Rehabilitation and Landscape Plan** to detail the proposed final landuse and landform for the site and measures to be undertaken to create that landform and vegetation cover. The Plan shall address the requirements of the Director-General, Council, NPWS, NSW Agriculture, and NSW Fisheries. The Plan shall include, but not necessarily be limited to:
 - i) details of all landscaping to be undertaken on the site;
 - ii) maximisation of flora species endemic to the locality in landscaping the site;
 - iii) a specific program to translocate, propagate, and revegetate and monitor threatened plant species on the site including *Tetratheca glandulosa*, Shale/sandstone transition forest, *Darwinia Fascicularis susp. oligantha*, and *Kunzea rupestris* ;
 - iv) Plans and cross-sections to scale, showing the proposed final landform demonstrating that it integrates with the surrounding terrain. The final landform shall be integrated across the entire site and adjoining land;
 - v) Site analysis used to determine compatible contours, shape, form, landscape features and quality of the final landform, including the identification of conservation areas;
 - vi) Details of rehabilitation and habitat construction works to be undertaken in the conservation area and buffer zones;
 - vii) Details of the progressive rehabilitation of both extraction areas, environmental bunds, and setback/buffer zones;
 - viii) Details of stream restoration works including:
 - a. Methods to stabilise the bed and banks of the waterway;
 - b. Establishment of riparian zones using local native vegetation;
 - c. Vegetation monitoring, maintenance, and performance criteria; and,
 - d. Use of an environmentally sympathetic, soft-engineering approach;
 - ix) a schedule of works and associated time period for the rehabilitation of each disturbed and/or exposed extraction area or strip with the aim to restore vegetative covers and habitat at the earliest possible opportunity;
 - x) procedures for weed control and feral animal control;
 - xi) Details of all backfilling works, including source of materials and the grades and stability of all batters. Batter design should be in accordance with the provisions of DCP No 500 – Extractive Industries, and certification is to be provided by appropriately qualified engineers regarding the stability of all designed batters;
 - xii) Details including a soil drainage plan sufficient for growing crops that require free drainage.
- f) A **Bushfire Management Plan** for the site, developed in consultation with Council and relevant emergency services. The Plan shall be consistent with any bushfire management measures for State Forests and National Parks in the region;
- g) A **Traffic Management Plan** to outline measures to minimise traffic impacts associated with the development. The Plan shall address the requirements of Council and the RTA. The Plan shall include specific measures to minimise the impact of heavy vehicles, including restrictions on routes and times (particularly in relation to peak hours, holiday periods and times immediately before and after school hours, i.e. 8.30am - 9.00am and 3.00pm – 3.30pm);
- h) A **Transport Code of Conduct** to outline minimum requirements for the movement of heavy vehicles to and from the site. The Code shall meet the requirements of Council and the RTA. The Code shall include, but not necessarily be limited to:
 - i) restrictions to routes (consistent with the Transport Management Plan required under g) above, where relevant);
 - ii) speed limits to be observed within certain periods along routes to and from the site;
 - iii) restrictions to the hours of transport operations under this consent;
 - iv) minimum requirements for vehicle maintenance to address noise and exhaust emissions;
 - v) behavioural requirements for drivers; and
 - vi) load coverage requirements.
- i)

A Flora and Fauna Management Plan to detail measures to minimise impacts on flora and fauna, particularly populations of threatened plants, on the site during the operation of the development. The Plan shall be developed in consultation with NPWS and Council and include:

- i) details of the creation, landscaping and management of on-site vegetation to provide habitat for fauna species likely to occur on the site;
 - ii) details of strategic vegetation management, outlining timeframes for clearing and re-vegetation activities and a map illustrating the Plan. The Plan should aim to maximise scope for new vegetation to establish and restore ecological integrity;
 - iii) details of the schedule for clearing activities incorporating seasonal habitat requirements for species such as bats and other mammals, with the objective of avoiding incidents during sensitive hibernation and breeding periods.
 - iv) details of pre-clearance inspections, including the identification and inspection of trees containing tree hollows, including stags, prior to clearing of any vegetation;
 - v) details of how micro habitats including dead trees, stags, stumps and hollow branches will, where practical, be salvaged and relocated to areas depauperate of tree hollow habitat and in the recreation of habitat areas;
 - vi) details of measures to care for any animals injured or found during clearing activities, including the use of WIRES to attend to fauna as necessary, and the methods for their relocation if appropriate. This shall include measures for harbouring and releasing nocturnal animals at night;
 - vii) measures to re-instate or relocate plants and vegetation communities and to use local endemic species and local provenance seed for revegetation;
 - viii) details of the methods for strategically placing felled trees between cleared and remnant bushland to provide runways of ground cover for dispersion of animals;
 - ix) strategies for the establishment of wildlife corridor links to adjoining habitat areas and integration of rehabilitation works with nearby mines;
 - x) details of strategies for the exclusion of grazing stock on areas of native bushland reconstruction;
 - xi) measures to monitor the success of revegetated areas, including revegetation in the threatened species conservation area, and plant additional species where necessary;
 - xii) consideration of Aboriginal heritage management to ensure that activities under the Plan do not impact on Aboriginal heritage values; and,
 - xiii) details of the flora and fauna monitoring required under this consent.
- j)

A Waste Management Plan to outline measures to minimise the production and impact of waste produced at the development during operation, through the implementation of waste reduction, reuse and recycling principles. The Plan shall meet the requirements of the EPA and Council. The Plan shall include, but not necessarily be limited to:

- i) identification of the types and quantities of waste materials produced on the site during operation of the development;
- ii) programs aimed at minimising the production of waste at the site through the implementation of operational and management measures;
- iii) details of potential reuse and recycling avenues for waste materials produced on the site, including collection and handling procedures;
- iv) details of appropriate disposal routes in the event that reuse and recycling avenues are not available or are not practicable; and
- v) programs for involving and encouraging employees and contractors to minimise domestic waste production on the site and reuse/ recycle where appropriate.

7 ENVIRONMENTAL REPORTING

Incident Reporting

7.1 The Applicant shall notify the EPA and the Director-General of any incident with the potential for adverse off-site impacts on people or the environment as soon as practicable after the occurrence of the incident. The Applicant shall provide written details of the incident to the EPA and the Director-General within seven days of the date on which the incident occurred.

Annual Performance Reporting

7.2 The Applicant shall, throughout the life of the development, prepare and submit for the approval of the

Director-General, an Annual Environmental Management Report (AEMR). The AEMR shall be prepared by an independent, qualified person(s), approved by the Director-General. The AEMR shall also serve as the Environmental Management Plan required under condition 6.1 of the existing consent. Requirements under condition 6.1 of the existing consent shall be incorporated into the AEMR. The AEMR shall review the performance of the development against the Site Environmental Management Plan (refer to condition 6.2 of this consent), the conditions of this consent and other licences and approvals relating to the development. The AEMR shall include, but not necessarily be limited to:

- a) details of compliance with the conditions of this consent;
- b) a copy of the Complaints Register (refer to condition 5.2 of this consent) for the preceding twelve-month period (exclusive of personal details), and details of how these complaints were addressed and resolved;
- c) a comparison of the environmental impacts and performance of the development against the environmental impacts and performance predicted in the EIS;
- d) results of all environmental monitoring required under this consent and other approvals, including interpretations and discussion by a suitably qualified person;
- e) a list of all occasions in the preceding twelve-month period when environmental performance goals for the development have not been achieved, indicating the reason for failure to meet the goals and the action taken to prevent recurrence of that type of incident;
- f) evaluation of the effectiveness of the environmental protection requirements and procedures in the SEMP and this consent;
- g) identification of trends in monitoring data over the life of the development to date;
- h) evaluation of the development against the principles of Ecologically Sustainable Development;
- i) a list of variations obtained to approvals applicable to the development and to the site during the preceding twelve-month period;
- j) environmental management targets and strategies for the following twelve-month period, taking into account identified trends in monitoring results; and,
- k) identify any modifications required to the SEMP.

The Applicant shall submit a copy of the AEMR to the Director-General, the EPA, the RTA, NPWS, Council every year, with the first AEMR to be submitted no later than twelve months after the commencement of operation of this consent. The Applicant shall make the AEMR available for public inspection on request.

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