

MINUTES OF THE DEVELOPMENT ASSESSMENT PANEL HELD FRIDAY, 25 JUNE 1993 COMMENCING AT 8.30 AM.

4. EXTRACTION OF SAND FROM THE BED OF THE TWEED RIVER WITHIN AN AREA KNOWN AS SITES B AND C AND ESTABLISH A LAND BASED FACILITY ON LOT 7 DP 565926 OZONE STREET, CHINDERAH - SECTION 102 AMENDMENT GR1/5/5-D Pt 2 DA91/281

On the unanimous decision of the Panel, that Council in accordance with Section 102 of the Environmental Planning and Assessment Act 1979 amend the consent as granted to River Sands Pty Ltd to extract sand from the bed of the Tweed River from within an area known as Sites B and C and establish a land based facility on Lot 7 DP 565926 Ozone Street, Chinderah as follows:-

- By the addition of a new Condition No. 31 to read as follows -

"That the access shown in the submitted EIS prepared by Land Plan Australia Pty Ltd and dated September 1991, be deleted and constructed in accordance with Consent No. 92/385."

- That Condition No. 18 be revised to read as follows -

"The maximum noise level (L10) from the dredging operation shall not exceed the background level (L90) by more than 10dB(A) during the hours of 7.00am to 6.00pm Monday to Friday and 8.00am to 1.00pm Saturday when measured to the nearest affected residence. Outside these hours the dredge must not operate within 800 metres of the nearest affected residence. The noise level when measured at the nearest affected residence shall not exceed background level (L90) by more than 5dB(A).

In the event of complaints being received Council shall establish a monitoring program (at cost to the applicant) to determine noise levels emanating from the operation. Should such monitoring establish exceedance of the latter level Council will restrict the hours of operation to those applicable to the land based facility, ie. Monday to Friday, 7.00am to 6.00pm and Saturday, 8.00am to 1.00pm. No work on Sundays or Public Holidays."

Amendment - to delete Cond 2. Consent corrected accordingly. Chair 8/7.

GR1/5/5-D Pt 2

6/7/1993

091/8281 - Section 102 Amendment 8/12/95.

PF 4010/40

091/9281 - Section 102 Amendment Reference Number.

J Balli

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**4. EXTRACTION OF SAND FROM THE BED OF THE TWEED RIVER
WITHIN AN AREA KNOWN AS SITES B AND C AND ESTABLISH A LAND BASED
FACILITY ON LOT 7 DP 565926 OZONE STREET, CHINDERAH - SECTION 102
AMENDMENT
GR1/5/5-D Pt 2
DA91/281**

Applicant: Tweed River Sand Supply & TJ Blundell
Owner: CALM and as above
Location: Lot 7 DP 565926, Ozone Street, Chinderah

Council at its meeting of 5 February 1992 resolved to grant consent to the abovementioned application subject to a number of conditions. Under Section 102 of the Environment Planning and Assessment Act, 1979 the applicant has requested a number of amendments to the consent as granted. The amendments may be summarised as follows:-

- The relocation of the Access driveway to the land based facility on Lot 7 DP 595926 incorporating through access across adjacent lots 5 and 6 in DP 565926 having the effect of maintaining an existing access as constructed to the Heritage Caravan Park.
- Amendment of Condition No. 18 regarding noise levels emanating from the development.

For simplicity, each matter is dealt with separately.

Relocation of Access

The land based facility is adjacent to the existing Heritage Caravan Park and the terms of consent as granted require the proponent of the extractive industry to construct a new access incorporating exit from both the existing caravan park and the proposed development via one intersection with the Pacific Highway.

During the processing of the application, strong representations were made by residents of the caravan park resulting in the access design as approved. However, it is fair to say that caravan park residents have always sought separate access off the highway to the proposed facility.

Subsequent to the granting of the Development Consent the proponent has since acquired adjacent lots 5 and 6 having the effect of gaining direct frontage to the Pacific Highway. In fact, Consent No. 92/385 was granted on 9 February 1993 which provides for construction of the access in the revised location. Hence the amendment requested is essentially to delete the access as approved by way of the original consent and allow for construction of the revised access as per Consent No. 92/385.

As this will have the effect of satisfying the intentions (from the outset) of caravan park residents and the RTA envisages no adverse traffic implications no objection is raised to this amendment. The amendment in this regard can readily be facilitated by way of an additional condition referring to Construction of Access as per the latter consent (N92/385).

Noise Condition (No. 18)

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The consent as granted includes Condition No. 18 reading as follows:-

"18. The maximum noise level (L10) from the dredging operation shall not exceed the background level (L90) by more than 10dB (A) when measured at the nearest affected residents. Council reserves the right to restrict further the hours of operation in respect of the land and/or water based facilities in liaison with SPCC in the event of a nuisance occurring."

During the 28 day appeal period available to third party objectors, representations were made by residents from Oxley Cove seeking an amendment of the above condition with a view to including more strenuous controls in relation to the emission of noise from the land, and in particular, the water-based facilities.

A third party appeal was in fact lodged with the Land and Environment Court with a view to pursuing the matter if a compromise between the proponent and residents was not achievable.

After some consultation in this regard agreement was reached to allow for an amendment of Condition No. 18 to read as follows:-

"No. 18 The maximum noise level from the dredging operation shall not exceed the background level (L90) by more than 10dB (A) during the hours of 7.00am to 6.00pm Monday to Friday, 8.00am to 1.00pm Saturdays when measured at the nearest affected residence (such distance shall be a minimum of 800 metres). Outside these hours the maximum noise level from the dredging operation shall not exceed the background levels (L90) by more than 5dB (A) when measured at the nearest affected residence (such distance shall be a minimum of 800m). In the event of complaints being received Council shall establish a monitoring program (at a cost to the applicant) to determine noise levels emanating from the operation. Should such monitoring establish exceedance of the latter level Council will restrict the hours of operation to those applicable to the land-based facility, ie. Monday to Friday 7.00am to 6.00pm, Saturday 8.00am to 1.00pm. No work on Sundays or Public Holidays."

The current Section 102 Application represents a formalisation of the agreement previously reached in this regard.

Notwithstanding the above, during exhibition of the proposed amendment as required by Section 102 a total of 8 submissions was received concerned about the proposed revision of the stated Condition. The following is a summary of the reasons outlined for concern:-

Oxley Cove Residents (6 submissions)

- Commercial activity will conflict with recreational uses of river.
- Adverse affects on flora and fauna habitating the river.
- Increase in noise levels will have adverse affects on lifestyle.
Request a minimum distance of 800 metres from any drilling.
- Distance measured anywhere less than 800 metres from the nearest dwelling could increase dramatically noise level in an otherwise quiet neighbourhood.
- Cost of determining noise level should be paid by the Mining Company - normal industry practice.
- Wording of revised Condition No. 18 very poor and could be misinterpreted.

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- Amended Condition only states that action will be taken in relation to exceedance of the latter level leaving no control over exceedance in daytime operation.

Other Submissions

- EPA recommends subtle amendments to the reworded condition to remove ambiguity.
- MSB Waterways - No objection.

From these submissions lodged it is evident that the proposed rewording of Condition No. 18 has caused some concern. Specifically the concerns relate to the ambiguity in the wording of the Condition and therefore its possible interpretation. These concerns are acknowledged and a further revision of the suggested Condition taking account of these concerns is embodied into the recommendation. In addition, subtle amendments suggested by the EPA have been included, such that the Condition is technically correct and legally enforceable. Subject to these amendments, no objection is raised to the rewording of Condition No. 18 as specified in the recommendation.

Finally, it is also noted that some submissions identified concerns relating to the total operation. It is important to remember that the terms of Section 102 of the EP&A Act 1979 only allow for consideration of those matters pertaining to the proposed amendments and not for a review of the original proposal.

RECOMMENDATION

That Council in accordance with Section 102 of the Environmental Planning and Assessment Act 1979 amend the consent as granted to River Sands Pty Ltd to extract sand from the bed of the Tweed River from within an area known as Sites B and C and establish a land based facility on Lot 7 DP 565926 Ozone Street, Chinderah as follows:-

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"That the access shown in the submitted EIS prepared by Land Plan Australia Pty Ltd and dated September 1991, be deleted and constructed in accordance with Consent No. 92/385."

- That Condition No. ¹⁸~~18~~ be revised to read as follows -

"The maximum noise level (L10) from the dredging operation shall not exceed the background level (L90) by more than 10dB(A) during the hours of 7.00am to 6.00pm Monday to Friday and 8.00am to 1.00pm Saturday when measured to the nearest affected residence. Outside these hours the dredge must not operate within 800 metres of the nearest affected residence. The noise level when measured at the nearest affected residence shall not exceed background level (L90) by more than 5dB(A).

In the event of complaints being received Council shall establish a monitoring program (at cost to the applicant) to determine noise levels emanating from the operation. Should such monitoring establish exceedance of the latter level Council will restrict the hours of operation to those applicable to the land based facility, ie. Monday to Friday, 7.00am to 6.00pm and Saturday, 8.00am to 1.00pm. No work on Sundays or Public Holidays."