



Mr Will Chyra
Chair
Friends of Minnamurra River (FOMR) Inc.
9 Samuels Lane
KIAMA DOWNS NSW 2533

Via email: FOMR2533@gmail.com

Dear Mr Chyra

Thank you for your correspondence on behalf of the Friends of Minnamurra River (FOMR) Inc. to the Hon. Rob Stokes MP, Minister for Planning and Public Spaces, regarding the Dunmore Lakes Sand Extraction Project (Modification 2). I note you also wrote to the Hon. Gladys Berejiklian MP, NSW Premier on this matter. Please accept this as a response to both enquiries.

I acknowledge your concerns regarding Modification 2, which was approved by the Independent Planning Commission (the Commission) on 16 November 2020.

The Department of Planning, Industry and Environment (the Department) led a comprehensive, whole-of-government assessment of Modification 2, in accordance with all relevant NSW legislation, policies and guidelines. The Department considered all community feedback, including submissions from FOMR, Kiama Municipal and Shellharbour City Councils and carried out a site visit prior to finalising its assessment. This assessment concluded the positive economic benefits of the modification outweighed its potential impacts and the proposal should be approved, subject to a range of strict conditions to protect water resources, biodiversity and cultural heritage values.

The Commission also carried out a rigorous independent assessment of the modification. The Commission invited and considered further community submissions and held a site visit with FOMR in attendance, prior to making its determination.

While I note your concerns regarding impacts on local biodiversity, both the Department and the Commission comprehensively considered biodiversity impacts and offset measures in accordance with the NSW *Biodiversity Conservation Act 2016* and the *Biodiversity Assessment Method*.

No direct impacts on vegetation communities listed under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* were predicted and potential impacts to the Grey Headed Flying Fox were also considered unlikely to occur. Consequently, the Applicant was not required to refer the application to the Commonwealth Department of Agriculture, Water and the Environment. Even if such a referral was required, failure to do so would not invalidate an approval granted under NSW legislation.

Regarding the approval pathway, I can advise that, notwithstanding the repeal of Part 3A of the *Environmental Planning and Assessment Act 1979* (the Act) in 2011, transitional Part 3A projects may still be lawfully modified under section 75W, provided that the modification application was made before 1 March 2018. The Department also considered that the

proposed modification fell within the scope of the modification powers under section 75W and did not constitute a radical transformation of the approved project. These matters are discussed further in Section 3.1 of the Department's Assessment Report. The Commission also agreed that the section 75W pathway was appropriate, as detailed in Section 4.2 of its Statement of Reasons.

With respect to your comments regarding clause 2A of Schedule 2 of the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017*, please be advised that this clause does not provide any power to overturn the granting of approval under section 75W.

If you have any further questions regarding this matter, you are welcome to contact Ms Lauren Evans, Team Leader, Resource Assessments, at the Department on 9274 6311 or lauren.evans@planning.nsw.gov.au.

Yours sincerely



30/04/2021

Chris Ritchie
Acting Executive Director
Energy, Industry and Compliance