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ADDENDUM 23 March 2021

This Addendum provides further details and substantiation of the reasons that the NSW Minister for the Environment should:

- **take action in the public interest to ensure that two new Boral Australia sand mining pits in the Minnamurra River catchment are subject to review under the current environmental assessment Regulations, and**

- **not allow to stand the Independent Planning Commission (IPC) consent which was approved in 2020 under Regulations repealed more than 10 years ago.**

The Minister for Environment has specific powers under the Regulations to act "in the public interest" to remedy the flawed IPC determination.

FOMR expressed its intention to raise and pursue these matters in a letter dated 23 March 2021 to the Minister for Environment, copied to the Premier, the Minister for Planning and Public Spaces, and to Gareth Ward MP, Member for Kiama and Minister for Families, Communities and Disability Services, among others.

This Addendum backgrounds and substantiates the issues and requests to the Ministers in that letter.

Gareth Ward crystallised the community's views on the proposed new sand mining pits when he told Parliament on 7 August 2019 that:

"…this (Boral) proposal simply burdens our community and our natural environment beyond any reasonable expectation. From the manner in which this proposal has been lodged, through to the bewildering lack of detail on key questions that must be answered by the assessor, this proposal raises far too many questions that have simply not been resolved. For these reasons I join with my local community in opposing this proposal."

Both the Kiama Municipal Council and Shellharbour City Council have joined Minister Ward in strongly opposing the sand mines and have formally expressed their opposition to the Department of Planning, Industry and Environment (DPIE) and the IPC.

Background

The issue for the Minister arises from a determination of the IPC on 16 November 2020, endorsed by the Department of Planning exercising its Ministerial delegation.

DPIE says this determination, which gave consent to a new sand mining Project (known as Dunmore Lakes - Modification 2), necessitates the destruction of 4.5ha of rare, ancient and high quality bird and animal habitat, being the Bangalay Sand Forest, comprising 100 to 400-year old trees.

This Bangalay Sand Forest, protected as an Endangered Ecological Community (EEC) under Regulations for which the Minister holds statutory authority, is to be cut and cleared to make way for the two new sand mining pits – with an operational life of only three to four years - in a sensitive river catchment area.

Further, in addition to the destruction of the protected 4.5ha of Bangalay Sand Forest, other protected vegetation and potentially significant environmental matters were not subject to sufficient scientific assessment of the direct and indirect impacts of the proposed new sand mining:

These additional protected ecosystems include:

- the Critically Endangered SE Littoral Rainforest, protected under NSW legislation and listed under the federal *Environment Protection and Biodiversity Conservation Act* (EPBC Act);

- another Endangered Ecological Community, Coastal Saltmarsh, protected in NSW and listed as vulnerable under the EPBC Act and for which the NSW government has developed a "Save Our Species" recovery program to try to reverse the continuing loss of this high value EEC, and

- Swamp Oak Flooplain Forest (EEC) protected in NSW and listed as Endangered under the federal *Environment Protection and Biodiversity Conservation Act* (EPBC Act).

- DPIE also says that six fauna species listed as threatened under the NSW *Biodiversity Conservation Act* have also been recorded in the mining site to be cut and cleared: the Dusky Woodswallow, Varied Sittella, Southern Myotis, Eastern Bentwing-bat, Eastern Freetail-bat and the Grey-headed Flying Fox

The NSW Government's Threatened Species Scientific Committee says that Littoral Rainforest in the NSW North Coast, Sydney Basin and South East Corner Bioregions is likely to become extinct in nature in New South Wales unless the circumstances and factors threatening its survival (including further fragmentation, clearing, mining and development) or evolutionary development, cease to operate. However, the IPC has approved potentially more of its destruction or degradation in its Dunmore Lakes determination.

In addition to the high risks to some of the most sensitive, protected and rare ecosystems/environments in NSW, this same IPC determination approving Boral Australia's two new sand mining pits presents other potentially significant and adverse environmental impacts in the sensitive Minnamurra River catchment.

Despite this and because DPIE conducted and approved an environmental assessment using legislation and regulations repealed 10 years ago, no Environmental Impact Statement (EIS) has been undertaken to determine the full extent and details of the various environmental impacts.

Indeed, the IPC has relied on a lower and repealed standard in order to support its determination. **This, surely, cannot be in the public interest.**

t is noted that the name of the Project, the *"Dunmore Lakes" Sand Extraction Project*, reflects the lasting consequences of legacy decisions in the sensitive Minnamurra River catchment. "Dunmore Lakes" is a recent name applied to an area known simply as "Dunmore" and/or "Minnamurra" since colonisation. Dunmore Lakes is in itself an artificial, low-value, foreign body of brackish water left as

a memorial to previous sand mining operations in the Minnamurra River catchment. It is of little community or environmental value.

Now, these additional mining operations seek to compound this historical error by expanding the "lakes" with the addition of two new sand extraction pits and once again, plans to leave artificial, low value artificial lakes in place of complex, rare and ancient ecosystems once sand mining is complete in only three to four years.

Given the above and an array of specific matters raised in written objections submitted to the IPC, FOMR believes that the Minister, therefore, has the following grounds for exercising authority under Part 2A, Public Interest consideration for Part 3A projects.

The Need for the project has not been demonstrated

Boral Australia has failed to demonstrate why it needs a new area for mining purposes, to be located in the Minnamurra River catchment, when adequate reserves exist within Boral's current approved site.

Boral's approach prioritises the economics of Boral's hard rock quarry, co-located with its existing sand mining pits, to the detriment of the Minnamurra River catchment. Boral has failed to plan and provide adequate infrastructure to enable both its quarries at Dunmore to operate side by side without interruptions over the next five to 10 years, consistent with its current approvals. The EA clearly states that its reluctance to move it current mining infrastructure is the reason for needing to find new extraction pits in new locations:

> *"Given recent high demand, the sand resource in Stage 3 of the approved project is expected to be exhausted in approximately three to five months. The last extraction stage, Stage 4, contains the existing site's road access and private rail line and infrastructure for the approved project and Boral's neighbouring Dunmore hard rock quarry.* ***As such, sand extraction cannot commence in this area until this infrastructure (*****for the Hard Rock Quarry*****) is relocated in future…****Boral, proposes to meet part of this increased demand in natural sand by establishing the additional Stage 5 extraction area* (in the Minnamurra River catchment) *on land adjoining its current operations."*

Therefore, the EA does not sufficiently contemplate any operational alternatives that would allow Boral to continue mining from the sufficient reserves still unextracted in its existing approved sand dredging areas. The EA does infer that such scenarios may require, planning, investment and operational continuity decisions, just as any other business would be expected to carry out in order to fulfil its current approvals **prior** to seeking additional any new locations to be mined.

This should be especially the case when new extraction pits are proposed to be located in a sensitive catchment and ecosystems in which such development is prohibited under local environmental plans (such as the Shellharbour Local Environmental Plan 2013 and the Kiama Local Environmental Plan 2011) and State government coastal protection policies and legislation (Coastal Management State Environmental Protection Policy – SEPP, 2018).

There is no material on the public record which demonstrates that the DPIE enquired about, researched or accessed any modelling to take any economic or planning advice into account when referring the matter to the IPC,. In particular, the DPIE failed to make adequate enquires as to Boral's intentions to utilise the reserves it already has approved. This would indicate that Boral intends to leave stranded an already approved quantity of sand reserves and instead acquire approval for new sites.

The IPC determination appears to rely on a superficial assessment of the need for the modification and the strategic context, accepting that the modification would "extend the life of an established quarrying operation and would ensure the continued delivery of high-quality construction sand products to the Illawarra and Greater Sydney regions". This, of course, is based on the inadequate review by DPIE of the alternatives.

Accordingly, the IPC failed to exercise due care and erred in its key finding:

> "*that the public interest is best served by meeting demand for the sand product on economic grounds".*

This raises the question as to whether the DPIE and the IPC failed to properly consider alternative options and as a consequence, the community and the environment are being pressured by this Proposal to accomodate/compensate Boral for their lack of operations' planning and investment in suitable infrastructure to support its co-located already approved existing operations.

It should be noted that Boral has recently been seeking to acquire access to properties that are adjacent to their existing sand mining operations, which would create further alternatives to opening up new pits in the Minnamurra River catchment. Such an option was dismissed in the EA as not feasible.

Strong and broad based community objection to the Project

The strong reaction and momentum against the IPC decision to approve Boral Australia's new sand mining pits in the Minnamurra River catchment took root with a mass public rally attended by more than 1,000 local residents (a high proportion of the affected electorate). Various guest speakers and local representatives participated. It was evident that strong community support existed for a protracted campaign to ensure that Boral's proposal was assessed and determined under current Regulations and not allowed to slide into place through a pathway of an administratively and legally questionable DPIE delegation based on legislation superseded a decade earlier.

Within weeks, 4,883 citizens had signed a petition objecting to the new locations of sand mining and it was referred to the NSW parliament by Justin Field MLC, who continues to support the community's strong objections. The request for submissions to the DPIE/IPC determination process resulted in 139 individual written submissions, including from 10 different community groups, including the strong and well researched submission from the Local Land Council, the voice of the Aboriginal traditional owners/custodians the area.

Of particular note, both the Shellharbour City and Kiama Councils have stepped forward with consistent and strong objections to the sand mining on both legal/approval/process issues, as well as the merits of the proposal including the lack of compliance with local environmental and coastal protection plans.

At the State level, local MP Gareth Ward, as well as the Member for South Coast, have been actively engaged with supporting the local community. Fiona Phillips, the Federal member for Gilmore, has represented the matter to the Federal Minister for Environment and notified the Department of Environment of a potential breach of the EPBC Act, given that the DPIE failed to refer the matter of the new mining application to the Federal Minister.

The community has been denied due process and appeal rights

The DPIE enabled the Applicant to use a Regulation repealed 10 years ago, which had the effect of avoiding due diligence of the Project via an Environmental Impact Statement (EIS). Additionally, the DPIE gave the applicant the benefit of internal DPIE legal advice, a discretional benefit not available to the community, when it stated in a letter dated 21 December 2018 to Boral :

> *" there is a degree of risk that "Modification 2" would not be considered substantially the same as the development for which the consent was originally granted. Alternatively, the above modification request may continue under section 75W approval pathway, provided that a complete EA is provided to the Department by no later than 28 February 2019."*

It should be noted that the cut-off date under the regulations for the lodgment of the modification application under section 75W was 1 March 2018, nearly 12 months prior to the date represented by the DPIE. As Minister Ward told Parliament in August 2019:

> *"In what seems to be an extraordinary stretch, the applicant has asked for a modification to an old consent for a fifth stage (of the existing mines) at a location over a kilometre away."*

The IPC's assessment of the Project or "modification" under the provisions of a regulation repealed a decade ago, also denied the community any right of appeal on the merits of the IPC's final determination. In addition to those merit-based grounds *(see "The section 75W approval pathway enabled inadequate environmental assessment* **")**, serious questions arise as to potential grounds for any judicial review, which the State government is aware, is beyond the capacity of most communities to sustain. These include:

- whether a "Request" was made by 28 February 2019
- the DPIE's power to extend the effect of the STOP Regulations
- the formation of an opinion by the Minister, without sufficient information within the Request
- whether or not the project was indeed a modification within the meaning of s75W because of material differences, including the facts of separate parcels of land, in a different and more sensitive catchment area.

These questions are at the heart of the contentious approval process that the DPIE enabled Boral to pursue and include whether the Department had the power to extend the "cut-off date" in the STOP Regulations beyond 1 March 2018? The EA was not produced until April 2019, some 13 months after the cut-off date of 1 March 2018 and therefore the "Request" had not been made by 1 March 2018 (although note that apparently an earlier EA was provided on 26 February 2019 but was considered inadequate by DPIE).

Between 28 February 2018 and April 2019, when the EA was lodged, no environmental assessment requirements were notified and, there being no intention to notify EARs, the Minister knew or ought to have known that the "Request" could not by itself be sufficient for the purpose of a section 75W modification application. The Minister therefore may be perceived as having erred in law and misconstrued his jurisdiction when determining the Modification Application on the basis that no "Request" was made by the cut-off date of 1 March 2018.

Another key question is whether there has been a failure to consider a relevant matter, being the fact that the new mining pits, Stages 5A and 5B are on completely separate parcels of land, from the existing previously approved mining areas. These two new parcels of land, proposed for the modification, are unrelated to and distant from the approved project and are not owned by Boral. Of particular concern is that the two parcels (5A and 5B) are in different catchments from the earlier approvals which are in the Rocklow Creek catchment, ie. They are in the more sensitive Minnamurra River catchment.

The potential for Federal intervention under the EPBC Act

Another question which the Illawarra community is still pursuing via a number of reported potential breaches of the EPBC Act to the Federal Department of Water, Agriculture and the Environment is whether or not an EPBC Act referral ought to have been made in relation to the SE Littoral Rainforest and other potentially impacted habitats. The Minnamurra Point Littoral Rainforest was listed as

Critically Endangered 10 October 2008 and is specified as part of the "Littoral Rainforest and Coastal Vine Thickets of Eastern Australia".

The *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) ensures that any 'nationally significant' animals, plants, habitats and heritage places are identified, and any potential negative impacts on them are carefully considered, before changes in land use or new developments are approved. This means that landowners, developers, companies, individuals and governments must seek Commonwealth approval in addition to state and territory or local government approvals if their plans might significantly impact on matters of national significance.

Specifically, the list of Threatened Ecological Communities and the Species Profile and Threats Database, pursuant to the EPBC Act, identifies the "Littoral Rainforest and Coastal Vine Thickets of Eastern Australia" to include the Minnamurra Point and is listed as "Critically Endangered". This area is located about 1.5km downstream in the Minnamurra River from the proposed extraction pits and would be affected by changes in groundwater, flooding and siltation among various other potential environmental changes arising from the new sand mining operations.

The DPIE's EA is therefore deficient because of its lack of proper consideration of these matters. For example, the very limited extent of its research is exposed in EA Section 4.11 in which Boral Australia states that:

> *"The Protected Matters Search Tool…was searched in December 2018 to find protected matters recorded within 10 km of the modification site (Appendix B). Results of this search are presented in Table 4.1. This data, together with other local knowledge and records was used to assess whether the project will have, or is likely to have, a significant impact upon a MNES or on Commonwealth land".*

The EA, however, does not identify in Appendix B or Table 4.1, or consider any potential negative impacts on the Minnamurra Point South Eastern Littoral Rainforest. The Minnamurra Point Littoral Rainforest, listed as Critically Endangered on 10 October 2008, can be evidenced by a 30 second Google search!

This is clearly not an example of taking due care or applying necessary rigour or satisfying the requirement for scientific certainty.

Consequently, any action that is likely to have a significant impact on listed threatened species and ecological communities under the EPBC Act must be referred to the Minister and undergo an environmental assessment and approval process.

This has not been done.

Boral has failed to refer the matter of a "Critically Endangered" habitat , as required under the EPBA Act, to the federal minister and therefore any consent for the new sand mining pits may be challenged on the basis that the NSW government may now be acting *ultra vires* in relation to the sand mining project approval under the repealed Regulations.

The section 75W approval pathway enabled inadequate environmental assessment

Specific environmental and community impacts of Boral Australia's proposal were not tested as a result of the DPIE advising the applicant to proceed under Regulations repealed 10 years ago. Additionally, there were omissions and errors in key assessment information provided by Boral and adopted by the DPIE in its referral to the IPC.

These broadly based and strongly held community and local government objections derive mostly from the demonstrable fact that the IPC made a determination to approve the sand mining proposal on the basis of environmental assessment data and information which was deficient, understated, inaccurate or not provided at all by the DPIE.

The Department's EA limits its assessment of qualitative and quantitative differences to a narrow set of operational/technical aspects of the sand extraction/logistics process, without adequate weight being given to the overall parameters of the Project.

The overall site footprint increases by 43%: the EA identifies that the current approval area of 88 ha, will be increased to a total of 126 ha for the Project area, but does not contemplate the qualitative and quantitative differences in the overall scale of the subject lands/footprint. Such an increase in overall footprint/interface with the surrounding environments, is clearly material, being a 43% increase.

Similarly, the new extraction pits are up to 120% deeper. The current operations have sand extraction pits at approx. 12m depth. The new pits are to be excavated to a maximum depth of 27m. This is a material difference (+120%) to one of the most important operational parameters that could impact groundwater in the Minnamurra River Catchment, the behaviour of the pits during flood events, siltation effects in the waterways, impact on sensitive ecosystems and the consideration of safe margins/angles of repose from waterways, roadways and structures in any revised EPA license conditions.

The new extraction pits are in a different Catchment area. The subject Lots and proposed new extraction pits for stage 5A and 5B are materially different in nature and context from the previously approved existing mining areas because they are situated in different catchment areas. The new locations are in the Minnamurra River catchment which has Endangered Ecological Communities within it, whereas the current operations are located in the Rocklow Creek catchment. The EA identifies the sensitivities of the new locations when it states:

> *"The proposed modification areas are located on privately owned land that would be leased to Boral for the duration of the continued operations. These lands are situated on the edge of an alluvial coastal floodplain and adjacent to the tidal reaches of the Minnamurra River, which drains to the Pacific Ocean around 1.5 km from the site."*

Additionally, the new extraction pits are to be located in different Local Environment Plan (LEP) zones: the two new mining pits are materially different in nature and context to the existing mining sites as they are subject to different zonings, being RU2 – Rural Landscape and E3 – Environmental Management in the Minnamurra River catchment.

This land is subject to Shellharbour City Council's LEP 2013 and the objectives of the RU2 and E3 zones are incompatible with Sand Mining (an Extractive Industry). Sand Mining and its associated dredging is not a compatible land-use with the objectives of the zone which focus on encouraging sustainable primary industry, the maintenance of the rural landscape and the protection of sensitive environmental areas

The new extraction pits are likely to be flooded every two years. Flooding is a common occurrence on the Minnamurra River floodplain, with local property owners reporting flooding for the years 1932, 1942, 1952, 1959, 1975, 1978, 1984, 1988 and 1991. The average maximum flood level on Terragong Swamp is about 4.0 m AHD, with a maximum of 4.9 m. The EA identifies that most of the Stage 5A extraction area is below 1.5m AHD, and states:

> *"as such backwater flooding from Rocklow Creek would inundate almost all of Stage 5A extraction area in a 1% AEP event, with about 60% of the disturbance footprint inundated in a 10% AEP event. The low lying nature of the Stage 5A extraction area comprising a*

significant portion below 1.5m AHD means that backwater flooding over this surface area is likely to be below the 50% AEP backwater flood level for Rocklow Creek meaning that inundation is estimated to occur every two years or so".

Nor are groundwater impacts are sufficiently contemplated. The EA does not adequately assess the new mining proposal's qualitative and quantitative differences in groundwater arising from the two new extraction pits.

"Due to insufficient information on groundwater impacts the DPIE Water Assessments, has significant concerns with the proposed excavation 5A and 5B as they are both located within 200 meters of a High priority Groundwater Dependent Ecosystem, Minnamurra River Estuary SEPP14 wetlands"

The proposed new mining area is a Prohibited Development, irrespective of the ultimate approval process. The aim of the *State Environmental Planning Policy (Coastal Management) 2018* is to promote an integrated and co-ordinated approach to land use planning in the coastal zone in a manner consistent with the objects of the *Coastal Management Act*.

The new mining site is in a 'coastal environment area'. The proposed Stage 5A extraction area is on land identified as a 'proximity area for coastal wetlands' and the Stage 5B extraction area is adjacent to land identified as a 'proximity area for coastal wetlands'. In accordance with clause 11 of the Coastal SEPP, prior to granting consent to a proposed development, a consent authority must be satisfied that the proposed development will not have a significant impact upon:

(a) the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or

(b) the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.

The Shellharbour Local Environmental Plan 2013 (LEP) objectives for lands zoned RU2-Rural landscape are to encourage sustainable primary industry and the maintenance of the rural landscape character of the land. The objectives of the zone are incompatible with Sand Mining (an Extractive Industry). Sand mining and its associated dredging is not a compatible land-use. The southern portion of Stage 5B extraction area is zoned E3 – Environmental Management. Extractive industries are not permitted in this zoning

IPC misinformed and inadequately informed by DPIE

When referring the matter to the IPC, the DPIE did not advise that the clearing of native vegetation is listed as a Key Threatening Process under the NSW *Threatened Species Conservation Act (1995)* or that the NSW government's Threatened Species Scientific Committee considers that Bangalay Sand Forests are:

"likely to become extinct in nature in New South Wales unless the circumstances and factors threatening their survival (ie.clearing, for example) cease to operate."

In fact, instead, DPIE stated in its referral to the IPC that the new sand mining operations:

"could be carried out in a manner that would not cause significant impacts to surrounding areas."

Of the actual area to be destroyed, inside the "surrounding areas", DPIE told the IPC members – and the IPC agreed with it – that the State-protected endangered ecological community could be cut and

cleared provided that the mining company, Boral Australia, paid compensation monies, as Biodiversity credits, into a NSW biodiversity Trust Fund.

Of course, dollars in a government trust fund are never going to compensate for or provide instant 100-year-old to 400-year-old trees or their diversity of multiple ecosystems that currently support a wealth of rare habitat for animals, birds and plants, many of them listed as endangered – not even following the mine pits' operational closure after only three or four years.

In its 16 November 2020 *Statement of Reasons for Decision* (to approve) the two new mining pits, the IPC stated that the Project posed only "limited environmental impacts" and only "residual risks" (p.17). It also makes no reference at all and does not recognise the very high habitat values of 'Bangalay Sand Forest' specifically. It refers only to "the removal of habitat trees, including hollow bearing trees." (p.11)

FOMR has sound evidence that the IPC's apparent ignorance of the importance and value of the protected and endangered Bangalay Sand Forest in an IPC decision that would ultimately mean its destruction, arose from DPIE's failure in its Assessment Report on the mining proposal to highlight the ecological importance of Bangalay trees and to provide accurate figures of the number of such trees and associated dead tree habitats.

There are numerous other questions on the merits of the project arising from the inadequate assessment of environmental impacts, including:

- failure to analyse cumulative impacts with the existing proposal and the new proposed infrastructure;

- failure to address the impact of the proposal on the Minnamurra River, a high priority Groundwater Dependent Ecosystem;

- failure to consider the impacts of other legislation (ie. EPBC Act);

- failure to properly consider impacts in relation to groundwater for threatened species and habitats and

- failure to properly consider the precautionary principle in relation to the broad range of direct and cumulative environmental impacts of sand mining on the Minnamurra River catchment

Additionally, there are various cases of key assessment data missing/omitted**.**

For example, the DPIE itself did not have a full count of the number of Bangalay trees to be cut and cleared and consequently, nowhere near an accurate estimate of more than 100 bird and animal habitat hollows that would be destroyed by cutting and clearing the protected forest.

DPIE therefore, could not and did not convey to the IPC – or to the public – the uniqueness and environmental significance and importance of the natural area whose future the IPC was considering for the mining application.

DPIE's figures were much lower than evidence shows, a deficit that would also have the tendency – along with the failure to identify to the IPC that these were Bangalay trees, not just 'hollow bearing trees' - to lower the number of biodiversity credits or monetary compensation payable by the mining company in return for the destruction of the protected Sand Forest.

Other demonstrable omissions, errors and unsubstantiated or gloss-over assertions in DPIE's assessment of Boral's new sand mining proposal, and requiring review or re-assessment, involve:

- Failure by the department to conduct *any* on-site visit to the proposed mining area in the preparation of its environmental assessment for the IPC – in other words, the environmental assessment on behalf of the NSW government was conducted by public servants from an office in Sydney;

- The inclusion in the Environment department's assessment of mining impacts of ***only*** three of the probable 41 listed endangered fauna species in the mining area;

- Risk of the release into the Minnamurra River high value estuary fish habitat and breeding area of toxic acid sulphate soils exposed by the sand mining;

- Increased flooding and flood velocities caused by mine infrastructure works leaching toxins into a tributary creek of the Minnamurra River from the old disused Kiama tip and night soil dump;

- Failure to provide figures in its assessment of the number of Bangalay trees in the forest to be cleared to make way for the largest mine pit;

- Substantial differences before and after the IPC determination in the number of biodiversity credits or compensation payable by the mining company for destroying the protected Bangalay Sand Forest and the habitat of three endangered bird species;

- DPIE's/IPC's disallowance of public appeals on the IPC's determination after originally stating appeals would be permitted;

- Incorrect identification and/or naming of flora and fauna species, many endangered, in the department's assessment area;

- Failure to provide any evidence of the mining company's need to establish new mines when it has large unexploited sand resources in its current sand mining operations well away from the Minnamurra River catchment across the four-lane Princes Highway, and

- The Aboriginal heritage assessment report is deficient and the rich archaeological deposits at the proposed mine sites demonstrate the need for a much more rigorous study. A part of the proposed mining area also coincides with the 1818 Minnamurra Aboriginal Massacre site, during the colonial war, and needs to be assessed as a significant colonial war historical site.

The Environmental Assessment (EA) was therefore not a sufficient basis for the IPC, the Secretary, nor the Minister to rely on when determining a matter under Regulations which were repealed 10 years before.

As the Minister is aware, when exercising your powers under Section 2A, you are not bound to take into account whether the departmental Secretary's report on the project did or did not give consideration to, or make any recommendation about, the public interest or any particular aspect of the public interest.

In seeking to exercise your regulatory powers under Section 2A, (Public Interest consideration for Part 3A projects), FOMR contends that it is clearly in the public interest for the Minister to require a new application to be subject to an assessment under current legislation and

regulations, including an EIS, to ensure an adequate scientific basis for the Minister to be able to determine any consent.

Given that in this particular case, where the approval process being used by the DPIE and the IPC was repealed 10 years ago, and the public's right to an appeal of the merits extinguished, the Minister should give particular weight to the public interest and apply the Regulation open to you.

FOMR is prepared to provide further information and details of the matters contained in this Addendum and/or to meet with you and your officers in order to work jointly towards achieving the outcomes we seek.

Will Chyra
Chair, FOMR
23 March 2021