



# **ANNUAL EPBC APPROVAL COMPLIANCE REPORT 2018**

January – December 2018

March 2019



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Prepared by  
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on behalf of  
**Mackas Sand Pty Ltd**

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# 1.0 EPBC Approval Compliance Report

On 29 November 2013, the Assistant Secretary Queensland and Sea Dumping Assessment Branch for the Department of the Environment approved the *Construction of an Alternative Route to Lot 218 Salt Ash NSW (EPBC 2011/6214)* (the EPBC Approval) under the *Environmental Protection and Biodiversity Conservation Act 1999* (EPBC Act). The alternative route was approved with 13 conditions having effect until 31 December 2029.

Condition 6 of the EPBC Approval states:

*'By 1 September of each year after the commencement of the action, the approval holder must publish a report on their website addressing compliance with the conditions of this approval over the previous 12 months including implementation of any management plans as specified in the conditions. Non-compliance with any of the conditions of this approval must be reported to the Department at the same time as the compliance report is published.'*

In accordance with Condition 6 of the EPBC Approval, Mackas Sand Pty Limited (Mackas Sand) undertook a compliance review of the Mackas Sand operation against the EPBC Approval during early 2019. This annual EPBC Compliance Report (the Report) has been prepared to provide a summary of the performance of the Mackas Sand operation over the period 1 January to 31 December 2018 (i.e. the compliance review period). The compliance status of the Mackas Sand operation against the EPBC Approval and associated management plan was managed during the reporting period by Mackas Sand.

This Report is based on compliance information provided by Mackas Sand. In preparing this Report, Umwelt (Australia) Pty Limited (Umwelt) has relied on this information in combination with other information sources such as environmental monitoring documentation, discussions with Mackas Sand representatives, and our general understanding of the operation. In preparing this report, Umwelt has not sought to undertake a full compliance audit, including secondary verification of the collated documentary evidence with relevant government agency staff, construction personnel or operational staff, site records, etc.

Overall, the review found the Mackas Sand operation to be compliant with the EPBC Approval. In completing this review, the compliance status of the condition and the associated sub-elements was assessed (i.e. 16 elements in total). The review found the Mackas Sand operation to be compliant with 11 elements and had not triggered 4 elements.

The overall compliance level against EPBC Approval, during the compliance review period is therefore 94%. The compliance status for each of the EPBC Approval conditions is detailed in **Tables 1.1, 1.2** and **1.3**.

**Table 1.1** summarises the compliance status of items which have an ongoing compliance obligation. These conditions primarily relate to the use of the alternate haul road. These conditions were active during the compliance review period (e.g. speed limit, hours of operation, annual compliance reporting, etc). Compliance against these conditions is assessed for each reporting period (i.e. calendar year).

**Table 1.2** summarises the compliance items which were not triggered during the current compliance review period. They are typically triggered by the Minister (e.g. independent audit). Compliance against these conditions is assessed for each compliance review period (i.e. calendar year). If the condition is triggered, its compliance status will be reported on under **Table 1.1**.

**Table 1.3** summarises the compliance items which Mackas Sand considers are completed and do not require ongoing management under this approval. These conditions primarily relate to construction phase of the alternate haul road. While these conditions remain applicable to the project, the obligation has been satisfied and are not relevant (i.e. active) to the use of the alternate haul road (e.g. construction of the haul road to be no greater than the approved maximum vegetation clearance footprint, submission and content of Landscape Management Plan, notification of commencement, etc). Compliance against these conditions will only be reviewed if construction/ground disturbance outside the “as constructed footprint” is undertaken during the current compliance review period (i.e. calendar year).

**Table 1.1 Mackas Sand EPBC Approval 2011/6214 Conditions Applicable during the Compliance Review Period**

Ref	Sub	Condition No.	Compliance Status	Supporting Evidence	Observations/ Commentary and Recommended Actions
5		To aid safe movement of the following ground dwelling, gliding and arboreal species across the alternate haul road, the proponent must:		As identified below:	No action required
	a)	Ensure a speed limit of 40 km/hr applies for all vehicles using the proposed alternate haul road; and	Compliant	Mackas Sand maintains site specific speed limits of 40 km within this area. This was further validated during the Independent Environmental Audit undertaken in January 2018. The auditor identified speed signage had been installed and vehicles were complying with the 40km/hr speed limit along the Alternate Haul Road.	No action required
	b)	Limit night traffic, consistent with the requirements of the Operating Conditions and Operating Hours as specified in the Environmental Assessment Modifications	Non-Compliant	<p>Mackas Sand limits night traffic consistent with the requirements of Operating Conditions and Hours as specified in the Environmental Assessment Project Approval 08_0142 (as modified). Mackas Sand reviews transport logs of laden trucks on a monthly basis against operating condition requirements as specified in the Environmental Assessment Modifications. According to weighbridge logs, 16 laden trucks exited Lot 218 between the hours of 5am and 6am on 15 November 2018 (i.e. two more than permitted). No truck movements occurred outside the nominated operating conditions. The incident investigation found that the combination of a procedural error (incorrect use of a swipe card by truck drivers) and a system design error in the computer system that manages the number of trucks leaving the site to be the cause.</p> <p>Mackas Sand in response has suspended the operational trial of using swipe cards.</p> <p>Mackas Sand advises that no impacts to fauna ground dwelling, gliding and arboreal species were recorded as a result of the two additional laden truck movements.</p>	No action required

Ref	Sub	Condition No.	Compliance Status	Supporting Evidence	Observations/ Commentary and Recommended Actions
6		By 1 September of each year after the commencement of the action, the approval holder must publish a report on their website addressing compliance with the conditions of this approval over the previous 12 months, including the implementation of any management plans specified in the conditions. Non-compliance with any of the conditions of this approval must be reported to the Department at the same time as the compliance report is published.	Compliant	One non-compliance was identified during the reporting period. The compliance report for the 2018 calendar year was been made publicly available before 1 September.  The annual submission of the compliance report, nominally in March, was identified as a non-compliance in the Independent Environmental Audit which considered the 2015 to 2017 calendar years. Mackas Sand has since confirmed with the DoEE that the nominal annual March submission of the report is not a non-compliance (Email from Keith Horwood EPBC Monitoring dated 14/6/2018).	Continue to publish annual compliance report prior to September of each Calendar year.
10		The approval holder must maintain accurate records substantiating all activities associated with or relevant to the conditions of approval, including those measures required by this approval, and make them available upon request to the Department. Such records may be subject to audit by the Department or an independent audit in accordance with section 458 of the EPBC Act, or used to verify compliance with the conditions of approval. Summaries of audits will be posted on the Department's website. The results of audits may also be published through the general media.	Compliant	Mackas Sand maintains accurate records to substantiate all activities associated with or relevant to the conditions of this approval.  Records will be made available upon request.	No action required
12		Unless otherwise agreed to in writing by the Minister, the person taking the action must publish all management plans, referred to in these conditions of approval on their website. Each management plan must be published on the website within 1 month of being approved.	Compliant	The EPBC Landscape Management Plan is available on the Mackas Sand website. <a href="http://www.mackassand.com.au/compliance">http://www.mackassand.com.au/compliance</a>	No action required



**Table 1.2 Mackas Sand EPBC Approval 2011/6214 Conditions Not Triggered during the Compliance Review Period**

Ref	Sub	Condition No.	Compliance Status	Supporting Evidence	Observations/ Commentary and Recommended Actions
7		Upon the direction of the Minister, the approval holder must ensure that an independent audit of compliance with the conditions of approval is conducted and a report is submitted to the Minister. The independent auditor must be approved by the Minister prior to the commencement of the audit. Audit criteria must be agreed to by the Minister and the audit report must address the criteria to the satisfaction of the Minister.	Not triggered	No direction was given by the Minister in 2018.	No action required
9		If the Minister believes that it is necessary or convenient for the better protection of threatened species and threatened ecological communities (s. 18 & 18A of the EPBC Act) to do so, the Minister may request that the approval holder make specified revisions to the plans approved pursuant to the above conditions and submit the revised plan for the Minister's written approval. The approval holder must comply with any such request. The revised approved plan must be implemented. Unless the Minister has approved the revised plan then the person taking the action must continue to implement the plan originally approved, as specified in the conditions.	Not triggered	The Minister did not request any specified revision be made to the approval plans during the reporting period.	No action required
11		If the approval holder wishes to carry out any activity otherwise than in accordance with the Environmental Assessment and the Landscape Management Plan referred to in the above Conditions, the person taking the action may submit a revised plan for the Minister's approval. If the Minister approves the revised plan submitted, the person taking the action must implement this plan instead of the plan originally approved.	Not triggered	Mackas Sand has not sought any variations to this approval.	No action required

**Table 1.3 Mackas Sand EPBC Approval 2011/6214 Conditions Completed during the Construction Phase and not Applicable during the Compliance Review Period**

Ref	Sub	Condition No.	Compliance Status	Supporting Evidence	Observations/ Commentary and Recommended Actions
1		<p>The approval holder must not clear outside the approved alternate haul route area (as depicted in <b>Figure 1</b> and coordinates)</p> <p>The approval holder must not clear more than 0.37 ha of habitat for Newcastle Doubletail (<i>Diuris praecox</i>), Leafless Tongue-orchid (<i>Cryptostylis hunteriana</i>), New Holland Mouse (<i>Pseudomys novaehollandiae</i>), Long-nosed Potoroo (<i>Potorous tridactylus tridactylus</i>), Spot-tailed Quoll (<i>Dasyurus maculates maculates</i>), Grey-headed Flying-fox (<i>Pteropus poliocephalus</i>) and Large-eared Pied Bat (<i>Chalinobus dwyeri</i>), Regent Honeyeater (<i>Anthochaera Phrygia</i>) and Swift Parrot (<i>Lathamus discolour</i>).</p>	Completed - Compliant	<p>The construction of the approved alternate haul route and the associated clearance works were completed in 2013/14.</p> <p>In accordance with the NSW State Approval (PA 08_0142), an Independent Environmental Audit (IEA) was undertaken in January 2018 for the audit period of January 2015 to December 2017. The auditor identified <i>“The operations have boundaries marked and are within the approved clearing boundaries”</i>.</p> <p>No further clearance works associated with the approved alternate haul route have been undertaken since initial works in 2013/14.</p>	No action required
2		The approval holder must submit a Landscape Management Plan for the alternate haul route area to the Minister within 6 months of the date of this approval or before any vegetation clearing of the alternate route area, whichever is sooner.	Completed - Compliant	The EPBC Landscape Management Plan was submitted to DoEE on 6 December 2013 and was subsequently approved on 13 December 2013.	No action required
3		The Landscape Management Plan must specify:		As identified below:	No action required
	a)	Pre-clearance surveys that will be undertaken before any vegetation clearing of the alternate route area;	Completed- Compliant	Section 2.1.2 of the EPBC Landscape Management Plan specifies this detail.	No action required
	b)	Weed monitoring and measurement measures, including ongoing monitoring parameters, frequencies, triggers, corrective actions, timing and scope for the duration of the project approval; and	Completed - Compliant	Section 2.2 of the EPBC Landscape Management Plan specifies this detail.	No action required
	c)	Rehabilitation measures with the objective of re-establishing the Coastal Sand Apple-Blackbutt Forest Community	Completed - Compliant	Section 3.0 of the EPBC Landscape Management Plan specifies this detail.	No action required

Ref	Sub	Condition No.	Compliance Status	Supporting Evidence	Observations/ Commentary and Recommended Actions
4		<p>Details of how the Landscape Management Plan will be monitored, reviewed and implemented must be provided to the minister.</p> <p>Note: The Minister may determine that a plan, strategy or program approved by the Director-General of the Department of Planning (NSW) satisfies a plan, strategy or program required by these conditions.</p>	Completed - Compliant	Section 5.0 of the EPBC Landscape Management Plan specifies this detail.	No action required
5*		<p>Within 30 days after the commencement of the action, the person taking the action must advise the Department in writing of the actual date of commencement.</p>	Completed - Compliant	<p>Mackas Sand obtained approval under the EPBC Act 1999 for the construction and utilisation of an alternate haul route from Nelson Bay Road to access Lot 218 on 29 November 2013.</p> <p>Construction of the alternate access route commenced on 9 December 2013.</p> <p>Formal notification of the Department regarding the commencement of the action was completed on 23 December 2013.</p>	No action required
8		<p>If at any time after five years from the date of this approval, the approval holder has not substantially commenced the action, then the approval holder must not commence the action without the written agreement of the Minister.</p>	Completed - Not Applicable	<p>The approval holder substantially commenced the action on 9 December 2013.</p> <p>Formal notification of the Department regarding the commencement of the action was completed on 23 December 2013.</p>	No action required

Note: EPBC Approval 2011/6214 incorrectly refers to Condition 5 twice. For the purposes of this report, the second Condition 5 is denoted by \*



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