

Inspection brief

Purpose: Inspect a build-up of sand on Yarrow Road crossing of Merrygoen Creek (Mendooran) and assess remediation options.

Analysis: Warrumbungle Shire Council has enquired as to whether Crown lands are able to provide assistance to address an ongoing issue, being a build-up of sand on Yarrow Road crossing of Merrygoen Creek at Mendooran. An inspection was carried out to assess the situation and investigate courses of action.

Recommendations

1. **Approve** forwarding this inspection and options report to Warrumbungle Shire Council for consideration.

Group Leader approval

Approved

Name: Jacky Wiblin

Date: 5 September 2022

Status

Merrygoen Creek

Merrygoen Creek is a fourth order, prescribed stream and tributary to the Castlereagh River. The Yarrow Road crossing is subject to a 33,000ha catchment with an estimated 95% cleared land- it is acknowledged that historical and current clearing activities has resulted in sediment build in waterways.

Yarrow Road

Yarrow Road is Public road managed by Warrumbungle Shire Council – 30m wide on the northern approach to Merrygoen Creek and 50m wide on the southern approach.

Inspection

From an inspection carried out February 2022 (Andrew Cosier & John Nolan, Department of Planning and Environment - Crown Lands (CL), it was found that there was a significant build-up of sand on Yarrow Road and for approximately 200m both upstream and downstream of the crossing. The build-up of sand on the roadway was approximately 30cm in depth and water had pooled making it impassable to most vehicles.

Options

Departmental resources are limited, with resources directed toward core business and legislatively binding activities. Removing sand from a waterway is outside of core business. Noting that activities on Crown land require consent from the Department, consent may be granted by a tenure, which includes short term or long term licences or permits for environmental or commercial purposes.

1. Extractive Industry Licence

Long Term (greater than

This type of licence can be considered for extraction of sand in waterways, the sand can be used for commercial purposes.

- a. **Private applicant:** Due to the accessibility of the site, Expressions of Interest would be called for. The preferred proponent would require:
 - o Development Application (if required), including Landowner's Consent from the Department to lodge a Development Application (DA) with Council as the consent authority;
 - o Statement of Environmental Effects; and
 - o Crown lands licence, subject to DA approval.

A significant outlay would be required from a potential applicant unless a local business is sourced, the running costs may out-way the benefit of having the licence.

- b. **Council:** Given the impact the sand is having on Council infrastructure, the Department may be able to directly deal with Council, bypassing the need to call for expressions of interest.
 - o Development Application (if required), including Landowner's Consent from the Department to lodge a Development Application (DA) with Council as the consent authority;
 - o Statement of Environmental Effects; and
 - o Crown lands licence, subject to DA approval.

Short Term (up to 12 months)

A short-term licence could be considered for environmental purposes, noting that a DA may still be required. The sand extracted, as part of a licence for environmental purposes, cannot be sold. Further information relating to licences can be found at:

<https://www.crownland.nsw.gov.au/licences-leases-and-permits/application-fees-and-rents>

2. Council Remediation Work

Another option for Council is to periodically remove the build-up of sand- with reference to the attached 'Overview Diagram', there is scope to remove a larger area of sand than just on the sealed road/causeway. The Council road corridor at the point of crossing the creek is approximately 30m wide on the northern approach and 50m wide approaching from the south.

3. Council infrastructure upgrade

Option 3 involves an upgrade to the crossing infrastructure which may include the construction of a bridge or other form of raised crossing.

Planning legislation

A review of the *Warrumbungle Local Environmental Plan 2013* indicates that the activity triggers a Development Application requirement; *Warrumbungle Local Environmental Plan 2013* > Part 6 Additional local provisions > 6.1 Earthworks (2)(a)(b).

The activity can only be undertaken within a DA process:

- *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007* > Part 2 Permissible development > (7) Development permissible with consent > (1) Mining (c) mining is any part of a waterway. The definition of mining in this policy means the winning or removal of materials by methods such as excavating, dredging etc., the definition of extractive material means sand, gravel etc.

The activity fits within the classification of designated development, generally speaking, this type of development is considered high impact, in most circumstances an Environmental Impact Statement (EIS) is required:

- *Environmental Planning and Assessment Regulation 2021* > Schedule 3 Designated development > Part 2 > Extractive industries (1) Development for the purposes of an extractive industry facility is designated development if the facility obtains or processes for sale, or reuse, more than 30,000 cubic metres of extractive material. *The amount of sand to be extracted is a factor.*
- *Environmental Planning and Assessment Regulation 2021* > Schedule 3 Designated development > Part 2 > Extractive industries (3) Development for the purposes of an extractive industry facility is designated development if the facility is located – (a) in or within 40 metres of a natural waterbody or environmentally sensitive area of State significance.
- *Environmental Planning and Assessment Regulation 2021* > Schedule 3 Designated development > Part 2 > Extractive industries (6) > *extractive industry facility* means a building or a **place** at which – (a) extractive materials are obtained by methods including excavating, dredging, tunneling or quarrying.

Note: If the work was to be undertaken by or on behalf of Crown Lands (Public Authority) development application would not be required; with reference to the Department of Planning and Environment Guidelines for Division 5.1 assessments a Review of Environmental Factors may be sufficient.

Other considerations

- *Ad-medium Filum Aquae* – Presumptive title to centre thread of a waterway. A review of the subject section of Merrygoen Creek indicates that a large portion of land adjoining the creek is Crown land, as can be seen on the attached Overview Diagram in green cross hatching. This means that the waterway to centre thread adjoining the Crown land is Crown estate, the only section where an adjoining landholder will need to be referenced as having presumptive title is the holder of Lot 49 DP754330.
- Department of Planning and Environment - Water (DPE | Water) approval – As Crown Lands would be issuing a Permit or Licence a Controlled Activity Approval to work in a waterway is not required. DPE | Water is consulted as part of any assessment process.
 - Controlled activity approval is not required; *Water Management Act (General) Regulation 2018* > Schedule 4 – Part 2 Controlled activities exemptions - Clause 18 Any activity carried out in accordance with any lease, licence, permit or other right in force under the *Mining Act 1992* or the *Crown Land Management Act 2016* or a petroleum title in force under the *Petroleum (Onshore) Act 1991*.
- Department of Industry - Fisheries (DPI | Fisheries) approval – As Crown Lands is authorising a Local Government Authority, approval is not required from Fisheries. DPI | Fisheries is consulted as part of any assessment process.
 - *Fisheries Management Act 1994* > Division 3 > 200 Circumstances in which a local government authority may carry out dredging or reclamation > (1)(2)(a) work authorised under the *Crown Land Management Act 2016*.

Summary

Crown land resources are directed toward activities that are core business.

Attracting a contractor by way of expression of interest to apply for a Crown land licence is unlikely due to current economic costs. This option could be discussed and explored further.

An integrated approach between Council and the Department (via a Crown lands Licence or Permit) to remove a significant amount of sand upstream and downstream is process and legislatively viable. This option would mitigate the of build-up of sand on the road in the short to medium term and require Council resourcing.

The short term and ongoing option would be for Council to periodically use machinery to remove sand from sealed road/causeway- as outlined previously sand could be removed from the entire Council road corridor.

The longer term - permanent option would entail construction of a bridge or other raised structure.

Course of Action

Warrumbungle Shire Council to consider the available options and re-engage with Crown lands to discuss a course of action.

Attachments

Attachment	Title
A	Overview Diagram and Inspection Photos

Departmental approval and contact

Approver	Position	Date approved
Jacky Wiblin	Group Leader	
Contact Name		Phone number
John Nolan	Natural Resource Management Project Officer	(02) 6883 3307

Attachment A – Overview Diagram & Inspection Photos



Department of Planning and Environment

Group Leader Briefing note

Submitted By: Andrew Cosier

Date of report: Thursday, 10 February 2022



Photo Number	01	Date of inspection:	10/02/2022 12.23 pm
Photo Name:	TC_00008.JPG		
Type of inspection:	Inspection		
Description of finding:	Creek crossing photo taken north western side of the creek crossing. Sand was at least 30cm deep before the causeway. The concrete causeway itself has had sand removed and pushed to either side as seen in the photo.		

Photo:



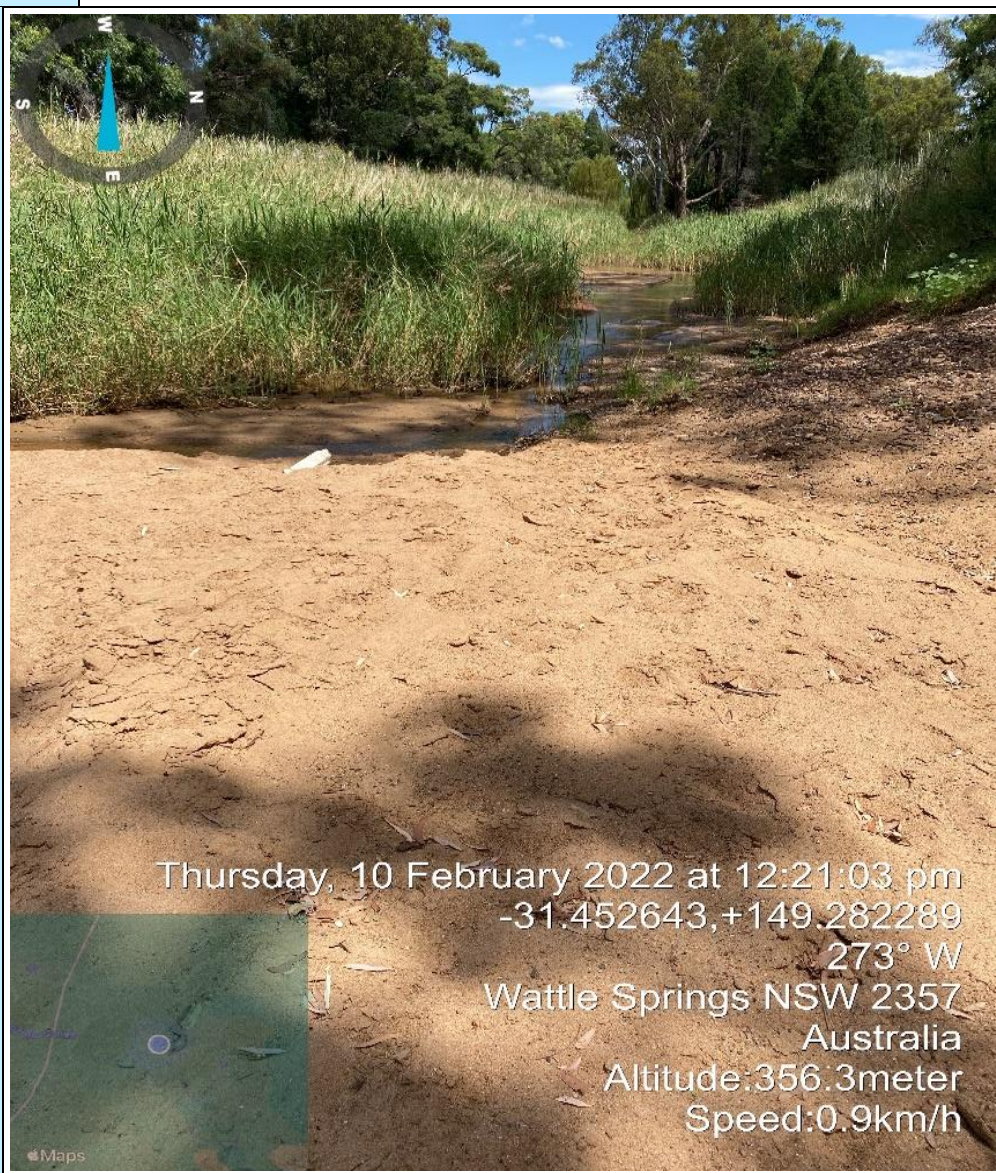
Department of Planning and Environment

Group Leader Briefing note



Photo Number	02	Date of inspection:	10/02/2022 12:21 pm
Photo Name:	TC_00006.JPG		
Type of inspection:	Inspection		
Description of finding:	Photo down-stream. <i>Phragmites australis</i> was found in large numbers growing in the sand on both sides and in the creek, significant buildup of sand.		

Photo:



Department of Planning and Environment

Group Leader Briefing note



Photo Number	03	Date of inspection:	10/02/2022 12:21pm
Photo Name:	TC_00007.JPG		
Type of inspection:	Creek Crossing inspection		
Description of finding:	Photo Up Stream. <i>Phragmites australis</i> was found in large numbers growing in the sand both sides and in the creek, significant buildup of sand.		

Photo:

