



17 October 2024

Notification of Modification of Consent Application No. 2020/054.002

Site Description: Lot: 22 DP: 1216060, 334 Pownall Road MULLALEY.

Notice is given that a Section 4.55(1A) Modification to Consent Application has been submitted for Council's consideration that involves a proposal for revised limits on waste acceptance at both the landfill and resource recovery facilities.

The address of the proposed development is 334 Pownall Road MULLALEY.

The applicant is Gunnedah Quarry Products Pty Ltd and Gunnedah Shire Council is the consent authority.

The Application to Modify Consent has been placed on public exhibition for a period of **15** days. The documents may be inspected at Council's office during office hours 9am-4pm or on Council's website <http://www.gunnedah.nsw.gov.au/>.

Any person may make a written submission about this application to the General Manager, Gunnedah Shire Council, PO Box 63, Gunnedah NSW 2380 or via email council@gunnedah.nsw.gov.au. The issues you raise will be included in the evaluation of the development application, along with the other matters Council must consider.

Submissions should be received no later than 5.00pm on **1 November 2024**. All submissions **must** include disclosure of any reportable political contribution or gift made in the previous two years.

If the submission includes an objection to the proposal, the grounds of objection must be given. You are advised that you may request that your name and address not be disclosed by stating prominently "OBJECTION IN CONFIDENCE" on your submission for reason that disclosure would result in detriment to you. However, Council may be obliged to release these details under the Freedom of Information Act 1989 even if these words are used in the submission. Further, submissions that do not contain the author's name and address may not be considered as Council will be unable to validate the submissions authenticity.

If you have any enquiries in relation to this Development Application, please contact Council's Duty Planner on 6740 2100

Yours faithfully

Wade Hudson
MANAGER DEVELOPMENT ASSESSMENT

Contact: 6740 2100
Reference: 2020/054.002
lw

Development Consent Cover Sheet – Council's Use

Made under the Environmental Planning & Assessment Act.1979

LAST UPDATED 23 JULY 2021

Date: 06/09/2023

DEVELOPMENT APPLICATION NUMBER

Development Application Number: 10.2020-054-002

APPLICANT DETAILS

Name(s): A Peacock

LAND TO BE DEVELOPED

Address: 334 Pownall Road, Mullaley, 2379 NSW

Lot Number: 22 DP Number: 1216066 Site Area:

BRIEF DESCRIPTION AND USE OF PROPOSED DEVELOPMENT

Revised limits on waste accepted at both the landfill and resource recovery facilities

PROPOSED DEVELOPMENT DETAILS

- ☐ Local Development
- ☒ Integrated Development (requires approval under another Act)
- ☐ Designated Development (requires an EIS to be submitted)

Total Project Value: \$0.00

Applicant contact details

Title	
First given name	Gary
Other given name/s	
Family name	Peacock
Contact number	
Email	
Address	
Application on behalf of a company, business or body corporate	Yes
ABN	97146581473
ACN	146581473
Name	Gunnedah Quarry Products Pty Ltd
Trading name	Gunnedah Quarry Products Pty Ltd
Is the nominated company the applicant for this application	No

Owner/s of the development site

Owner/s of the development site	A company, business, government entity or other similar body owns the development site
Owner #	1
Company, business or body corporate name	Gunnedah Quarry Products Pty Ltd
ABN / ACN	97 146 581 473
Owner #	2
Company, business or body corporate name	Ben Lee, Tim Lee, Matthew Lee
ABN / ACN	

I declare that I have shown this document, including all attached drawings, to the owner(s) of the land, and that I have obtained their consent to submit this application. - Yes

Note: It is an offence under Section 10.6 of the Environmental Planning and Assessment Act 1979 to provide false or misleading information in relation to this application.

Site access details

Are there any security or site conditions which may impact the person undertaking the inspection? For example, locked gates, animals etc.	No
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Developer details

ABN	97 146 581 473
ACN	146 581 473
Name	Gunnedah Quarry Products Pty Ltd
Trading name	Gunnedah Quarry Products Pty Ltd
Address	
Email Address	

Development details

Application type	Modification Application
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On what date was the development application to be notified determined	24/06/2021
Type of modification requested	S4.55(1A) - Modification involving minimal environmental impact, where the development will remain substantially the same as the development that was originally approved
Development Application number of the consent to be modified	DA2020/054
Description of the proposed modification	The s.4.55(1A) modification (MOD 1) provides for revised limits on waste accepted at both the landfill and resource recovery facilities- refer to accompanying Statement of Environmental Effects, prepared by Outline Planning Consultants Pty Ltd and dated September 2023, for details.
Was the DA applied for via the NSW Planning Portal?	No
What is the Development Application number of the consent to be modified?	DA2020/054
Site address #	1
Street address	334 POWNALL ROAD MULLALEY 2379
Local government area	GUNNEDAH
Lot / Section Number / Plan	22/-/DP1216060 <input checked="" type="checkbox"/>
Primary address?	Yes
Planning controls affecting property	Land Application LEP Gunnedah Local Environmental Plan 2012 Land Zoning RU1: Primary Production Height of Building NA Floor Space Ratio (n:1) NA Minimum Lot Size 200 ha Heritage NA Land Reservation Acquisition NA Foreshore Building Line NA Mineral and Resource Land Subject Land Terrestrial Biodiversity Biodiversity

Proposed development

Selected common application types	Change of use of land or a building or the classification of a building under the Building Code of Australia
Selected development types	General industry
Description of development	Approved landfill and resource recovery facility
Provide the proposed hours of operation	
Proposed to operate 24 hours on Monday	No
Monday	7:00 AM - 6:00 PM
Proposed to operate 24 hours on Tuesday	No
Tuesday	7:00 AM - 6:00 PM
Proposed to operate 24 hours on Wednesday	No
Wednesday	7:00 AM - 6:00 PM
Proposed to operate 24 hours on Thursday	No
Thursday	7:00 AM - 6:00 PM
Proposed to operate 24 hours on Friday	No
Friday	7:00 AM - 6:00 PM
Proposed to operate 24 hours on Saturday	No

Saturday	8:00 AM - 3:00 PM
Proposed to operate 24 hours on Sunday	
Sunday	-
Dwelling count details	
Number of dwellings / units proposed	
Number of storeys proposed	
Number of pre-existing dwellings on site	
Number of dwellings to be demolished	
Existing gross floor area (m2)	
Proposed gross floor area (m2)	0
Total site area (m2)	
Cost of development	
Estimated cost of work / development (including GST)	\$0.00
Do you have one or more BASIX certificates?	
Subdivision	
Number of existing lots	
Proposed operating details	
Number of additional jobs that are proposed to be generated through the operation of the development	0
Number of staff/employees on the site	3

Number of parking spaces

Category of development	Car parking spaces	Motorcycle spaces	Bicycle spaces
Industry	3	1	0
Total	3	1	0

Number of loading bays	5
Is a new road proposed?	No
Concept development	
Is the development to be staged?	No, this application is not for concept or staged development.
Crown development	
Is this a proposed Crown development?	No

Related planning information

Is the application for integrated development?	No
Is your proposal categorised as designated development?	No
Is your proposal likely to significantly impact on threatened species, populations, ecological communities or their habitats, or is it located on land identified as critical habitat?	No
Is this application for biodiversity compliant development?	No
Does the application propose a variation to a development standard in an environmental planning instrument (eg LEP or SEPP)?	No
Is the application accompanied by a	

Planning Agreement ?	No
Section 68 of the Local Government Act	
Is approval under s68 of the Local Government Act 1993 required?	No
10.7 Certificate	
Have you already obtained a 10.7 certificate?	
Tree works	
Is tree removal and/or pruning work proposed?	No
Local heritage	
Does the development site include an item of environmental heritage or sit within a heritage conservation area.	No
Are works proposed to any heritage listed buildings?	No
Is heritage tree removal proposed?	No
Affiliations and Pecuniary interests	
Is the applicant or owner a staff member or councillor of the council assessing the application?	No
Does the applicant or owner have a relationship with any staff or councillor of the council assessing the application?	No
Political Donations	
Are you aware of any person who has financial interest in the application who has made a political donation or gift in the last two years?	No
Please provide details of each donation/gift which has been made within the last 2 years	

Payer details

Provide the details of the person / entity that will make the fee payment for the assessment.

The *Environmental Planning and Assessment Regulation 2021* and Council's adopted fees and charges establish how to calculate the fee payable for your development application. For development that involves building or other works, the fee for your application is based on the estimated cost of the development.

If your application is for integrated development or requires concurrence from a state agency, additional fees will be required. Other charges may be payable based on the Council's adopted fees and charges. If your development needs to be advertised, the Council may charge additional advertising fees. Once this application form is completed, it and the supporting documents will be submitted to the Council for lodgement, at which time the fees will be calculated. The Council will contact you to obtain payment. Note: When submitting documents via the NSW Planning Portal, credit card information should not be displayed on documents attached to your development application. The relevant consent authority will contact you to seek payment.

The application may be cancelled if the fees are not paid:

First name	Gary
Other given name(s)	
Family name	Peacock
Contact number	
Email address	
Billing address	

Application documents

The following documents support the application.

Document type	Document file name
Category 1 Fire Safety Provisions	MOD 1 s.4.55(1A) Resource recovery
Statement of environmental effects	MOD 1 s.4.55(1A) Resource recovery

Applicant declarations

I declare that all the information in my application and accompanying documents is , to the best of my knowledge, true and correct.	Yes
I understand that the development application and the accompanying information will be provided to the appropriate consent authority for the purposes of the assessment and determination of this development application.	Yes
I understand that if incomplete, the consent authority may request more information, which will result in delays to the application.	Yes
I understand that the consent authority may use the information and materials provided for notification and advertising purposes, and materials provided may be made available to the public for inspection at its Offices and on its website and/or the NSW Planning Portal	Yes
I acknowledge that copies of this application and supporting documentation may be provided to interested persons in accordance with the Government Information (Public Access) 2009 (NSW) (GIPA Act) under which it may be required to release information which you provide to it.	Yes
I agree to appropriately delegated assessment officers attending the site for the purpose of inspection.	Yes
I agree to pay any required NSW Planning Portal Service Fee/s specified under Schedule 4 of the Environmental Planning and Assessment Regulation 2021 to the Department of Planning and Environment.	Yes
I have read and agree to the collection and use of my personal information as outlined in the Privacy Notice	Yes
I confirm that the change(s) entered is/are made with appropriate authority from the applicant(s).	



***Section 4.55(1A) Modification No. 1 (MOD 1)
Approved landfill and resource recovery
facility, Development Consent DA2020/054
Marys Mount Quarry, NSW
Statement of Environmental Effects***

September 2023

For

*Mackellar Excavations Pty Ltd & Gunnedah Quarry Products
Lot 22 DP 1216060 and Lot 2 DP 865898, Barker Road,
Marys Mount, NSW*




Outline Planning Consultants

Town Planning | Environmental Assessment

ABN 34 003 473 112



Author:	Gary Peacock (BTP UNSW) Member Planning Institute of Australia Managing Director Outline Planning Consultants Pty Ltd
Dated:	September 2023
Signed:	

**Section 4.55(1A) Application No. 1 (MOD 1)
for Modification of Development
Consent DA 2020/054
Approved landfill and resource recovery
facility, Marys Mount Quarry
Lot 22 DP 1216060 and Lot 2 DP 865898,
Barker Road, Marys Mount, NSW
September 2023**

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Outline Planning Consultants accept no responsibility for the consequences of this document being relied upon by any other party, or being used for any other purpose, or containing any error or omission which is due to an error or omission in data supplied to us by other parties. This document contains confidential information and proprietary intellectual property. It should not be shown to other parties without consent from us and from the party which commissioned it.

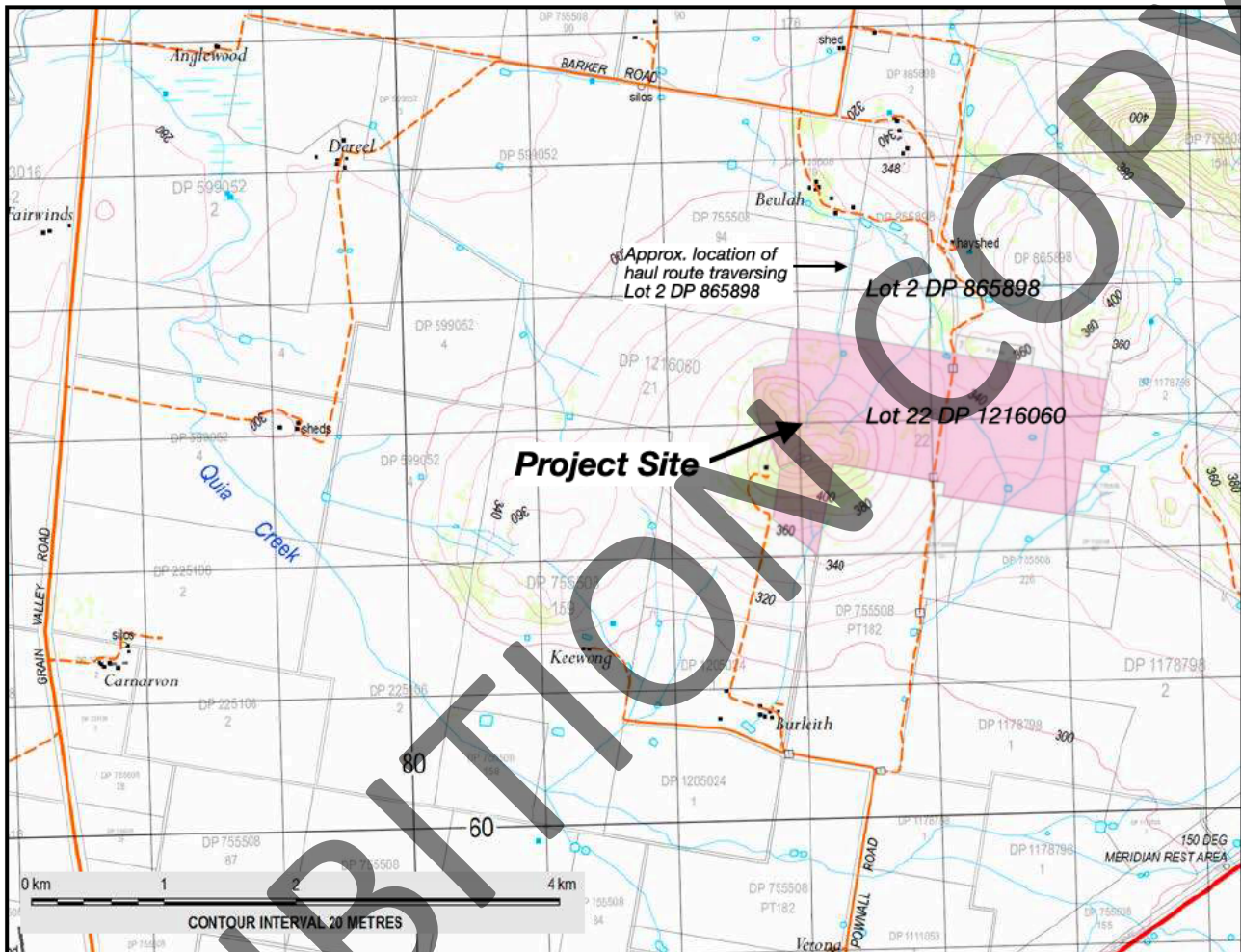


FIGURE 0.1: Location of Marys Mount Quarry (Project Site)- coloured pink

(Map Base Source: Mullaley 8835-N 1:50,000 GeoPDF Topographic map
NSW Dept. Finance Services & Innovation 2017)



EXECUTIVE SUMMARY

■ Outline Planning Consultants Pty Ltd act for Mackellar Excavations Pty Ltd and Gunnedah Quarry Products Pty Ltd (the quarry operator), who operate an existing, approved landfill, resource recovery and hard rock quarry at Marys Mount, in the Gunnedah Shire. These activities are conducted on Lot 22 DP 121600 ('Project Site'), with access to the public road system provided via Lot 2 DP 865898- refer **Figure 0.1**. Both the landfill and resource recovery facilities are now fully operational.

■ On 24 June 2021 the Northern Regional Planning Panel approved a development application, being DA 2020/054, for the establishment of a non-putrescible waste landfill facility, including a resource recovery facility, at Marys Mount Quarry- the "Waste Disposal Facility". Details of the resource recovery operations proposed forms a part of our submission to Council dated 21 May 2021- this submission referred to in condition A1 of the consent DA 2020/054.

■ The current development consent allows the importation of up to 200,000 tonnes pa of waste to the landfill: consent condition A2(a). However, when consent was issued there was no mention of the resource recovery facility in terms of volume of waste that could be accepted. Instead, and in the interests of limiting impacts, Council imposed via consent condition G6 a limit of 60 waste truck movements per day on the overall development- a limit that applied to the combined landfill and resource recovery waste operations. Assuming waste being transported by truck and dog, this equates to a total of 297,000 tonnes per annum.

■ Based on the above, and for the sake of clarity and certainty in terms of interpreting the scope and nature of the consent, this s.4.55(1A) modification, hereafter also referred to as "MOD 1", provides for the following revised limits on waste accepted at both the landfill and resource recovery facilities:

- 200,000 tonnes per annum of waste to the approved landfill per existing consent condition A2(a).
- 97,000 tonnes per annum of waste to the approved resource recovery facility per proposed consent condition A2(a1).

■ No other changes are proposed to the development consent or the nature of the approved Waste Disposal Facility, nor does this modification application give rise to any changes in likely environmental impacts associated with the approved development. In particular, no changes are sought in terms of approved truck volumes associated with the approved landfill and resource recovery facility.

■ This Statement of Environmental Effects report supports an application under Section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) for a modification to Development Consent DA 2020/054 to allow changes in the amount of waste and resource recovered material that can be accepted at the approved landfill an resource recovery facility, based on approved truck volumes permitted. It is considered that the development, as modified, will remain substantially the same development as that originally approved under DA 2020/054.

1. INTRODUCTION

1.1 Overview

Marys Mount Quarry is operated by Mackellar Excavations Pty Ltd and Gunnedah Quarry Products Pty Ltd (the quarry operator), on land comprising Lot 22 DP 1216060 and Lot 2 DP 865898, Barker Road, also known as No. 259 Baker Road, Marys Mount and No. 334 Pownall Road, Mullaley in the Gunnedah local government area ("subject site", "project site"). Outline Planning Consultants Pty Ltd act for Mackellar Excavations Pty Ltd and Gunnedah Quarry Products.

On 24 June 2021 the Northern Regional Planning Panel approved the establishment of a non-putrescible waste landfill, including a resource recovery facility, at Marys Mount Quarry pursuant to Development Consent DA 2020/054 (PPSNTH-55): the "Waste Disposal Facility". Both the landfill and resource recovery facilities are now fully operational.

DA 2020/054 permits the disposal of up to 200,000 tonnes per annum of non-putrescible waste to landfill, however, the consent does not specify the amount of waste that is to be accepted at the resource recovery of waste. Instead, and in the interests of limiting impacts, Council imposed via consent condition G6 a limit of 60 waste truck movements per day on the Waste Disposal Facility. Assuming waste being transported by truck and dog, this equates to 297,000 tonnes per annum.

Based on the above, and for the sake of clarity and certainty in terms of interpreting the scope and nature of the consent, this s.4.55(1A) modification, hereafter also referred to as "MOD 1", provides for the following revised limits on waste accepted at both the landfill and resource recovery facilities:

- 200,000 tonnes per annum of waste to the approved landfill per existing consent condition A2(a).
- 97,000 tonnes per annum of waste to the approved resource recovery facility per proposed consent condition A2(a1).

The s.4.55(1A) modification the subject of this application (MOD 1) seeks the approval of Council to provide for the changes described above, in order to achieve a more practical outcome for the combined landfill and resource recovery facility, reflecting the current approved limits on waste truck numbers.

This Statement of Environmental Effects (SEE) report supports an application under Section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) for a modification to Development Consent DA 2020/054 (MOD 1) to allow for the proposed change above. It is considered that the development, as modified, will remain 'substantially the same' development as that originally approved under DA 2020/054, with no additional environmental impacts arising, having regard for sections 4.55(1A) and 4.15(1). This SEE report should be read in conjunction with the original EIS prepared by Outline Planning Consultants dated July 2019 as well as the supporting documentation referred to in Development Consent DA 2020/054.

1.2 Property Description and Ownership

Lot 22 in DP 1216060 contains the approved quarry, landfill and resource recovery facility and associated infrastructure including stockpiles and stormwater detention- refer to Photograph 1.1 showing the quarry, lined Stage 1 Cell1 and Leachate Dam. The quarry haul route traverses a small part of Lot 2 in DP 865898 over a property known as 'Beulah', at No. 259 Barker Road, Marys Mount NSW, before connecting with the public road system. Refer Table 1.1.

Table 1.1: Property Description and Ownership

Lot and Deposited Plan No.	Ownership
Lot 22 in Deposited Plan 1216060	Gunnedah Quarry Products Pty Ltd. Contains the approved quarry, landfill and resource recovery facilities.
Lot 2 in Deposited Plan 865898	Lee family. Quarry haul route traverses privately owned land.

1.3 Planning Approvals History

The Marys Mount Quarry has been in operation since February 2011. The accompanying table 1.2 provides a timeline of key planning approvals granted for quarrying and landfill/resource recovery operations at Marys Mount Quarry.

Table 1.2: Select Planning Approvals History, Marys Mount Quarry

Approval Notification Date	Description
8 February 2011	Development Consent 507167 issued for a quarry operation on the subject site. Consent allows extraction of 30,000 cubic metres per annum.
27 June 2014	Development Consent 2012/185 issued for a quarry operation on the subject site. Consent allows extraction of 360,000 tonnes per annum and a limit of 60 loaded trucks per day (ie. 120 movements) and 248 loaded trucks (ie. 496 movements) per week. Condition A4 of this consent required the surrender of the earlier consent. Council endorsed the execution of an amended Voluntary Planning Agreement (VPA) at the July 2014 Ordinary Meeting.
21 October 2015	Modification approval granted by Gunnedah Shire Council (Development Consent 2012/185/2) for an amendment to condition referencing BioBanking Agreement, Flora and Fauna Assessment, Compensatory Habitat Assessment and Black Jack Mountain Offset Site Management Plan.
4 December 2019	Council resolution for the alteration to the endorsed Voluntary Planning Agreement (VPA) relating to the approved Extractive Industry, to amend timeframes for the completion of works to Marys Mount Road.
7 October 2020	Modification approval granted by Gunnedah Shire Council (Development Consent 2012/185/5) to temporarily increase the annual extraction volumes to 499,000 tonnes per annum, to service the ARTC N2N and N2NS Inland Rail projects. The modification also included the removal of percentage of haulage route use and vehicle volume as well as clarifying the definition of extraction.
24 June 2021	Approval granted by Northern Regional Planning Panel to the establishment of a landfill and resource recovery facility at the quarry, the landfill waste material to be deposited within the approved quarry void. The approval, being DA 2020/054 (PPSNTH-55), allows Gunnedah Quarry Products Pty Ltd to accept up to 200,000 tonnes per annum of waste to landfill within the quarry void. The land approved for the landfill and resource recovery operations includes the approved quarry area and allied activities, including but not limited to stockpile areas, weigh-bridge office and sediment basins.



PHOTOGRAPH 1.1: View of completed Stage 1 Cell 1, quarry and Leachate Dam
(Source: Mackellar Excavations June 2023)

1.4 Structure of the Report

This SEE report is divided into four subsequent sections:

- **Section 2** provides an overview of the approved quarry and landfill/resource recovery operations at Marys Mount.
- **Section 3** describes the proposed modification of Development Consent DA 2020/054 (MOD 1).
- **Section 4** analyses the environmental effects of the proposed modification based on the requirements of s.4.55(1A) and s.4.15(1) of the EP&A Act. This includes an assessment of the compliance of the proposal with prevailing planning controls and guidelines, including *State Environmental Planning Policy (Resources and Energy) 2021*.
- **Section 5** concludes the statement of the environmental effects.

2. SITE LOCATION AND DESCRIPTION

2.1 Operative Development Consents for Quarrying, Landfill and Resource Recovery Operations at Marys Mount Quarry

The Marys Mount Quarry has been in operation since February 2011. The quarry currently operates under an existing consent (DA2012/185, as modified). Development Consent DA 2020/054 (PPSNTH-55) allows the establishment of a landfill and resource recovery facility at Marys Mount Quarry. Refer to **Figure 2.1**.

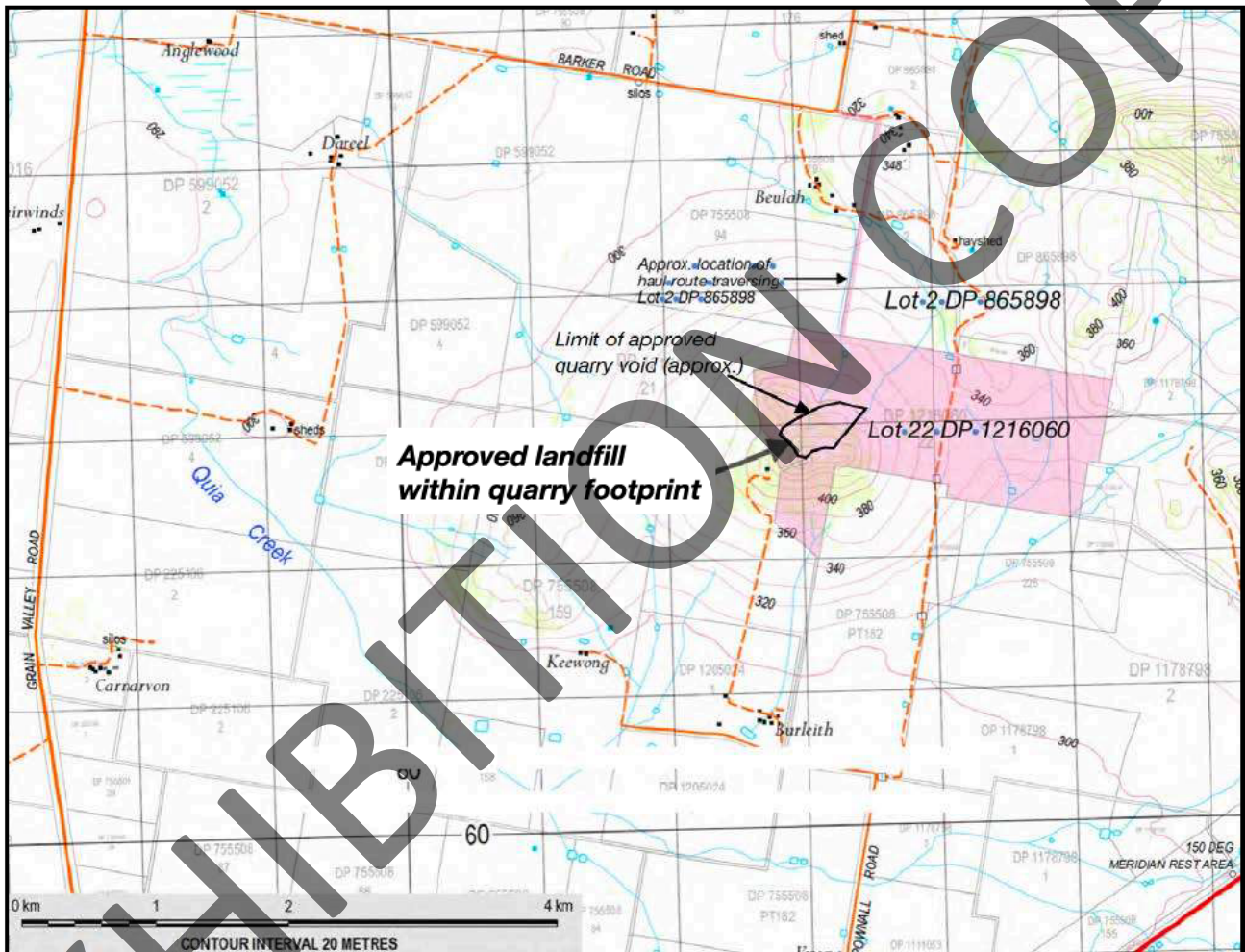


FIGURE 2.1: Location of Project Site and Approved Quarry Pit

(Map Base Source: Mullaley 8835-N 1:50,000 GeoPDF Topographic map NSW Dept. Finance Services & Innovation 2017)



Development Consent DA 2020/054 allows for a landfill that can accept up to 200,000 tonnes per annum of non-putrescible waste material. The first stage of the landfill (Cell 1) has been constructed, along with the main leachate dam, and now accepts landfill waste. Refer to accompanying photographs and **Figure 2.2**. DA 2020/054 also allows for the establishment of a resource recovery facility, located to the north of the existing quarry, utilising some of the existing quarry infrastructure, including office, access, weighbridge and stockpile areas/pads. A comprehensive management regime is already in place at Marys Mount Quarry relating to the conduct of the approved quarry as well as the approved landfill and resource recovery operations, summarised in the following. Both the landfill and resource recovery facilities are now fully operational.

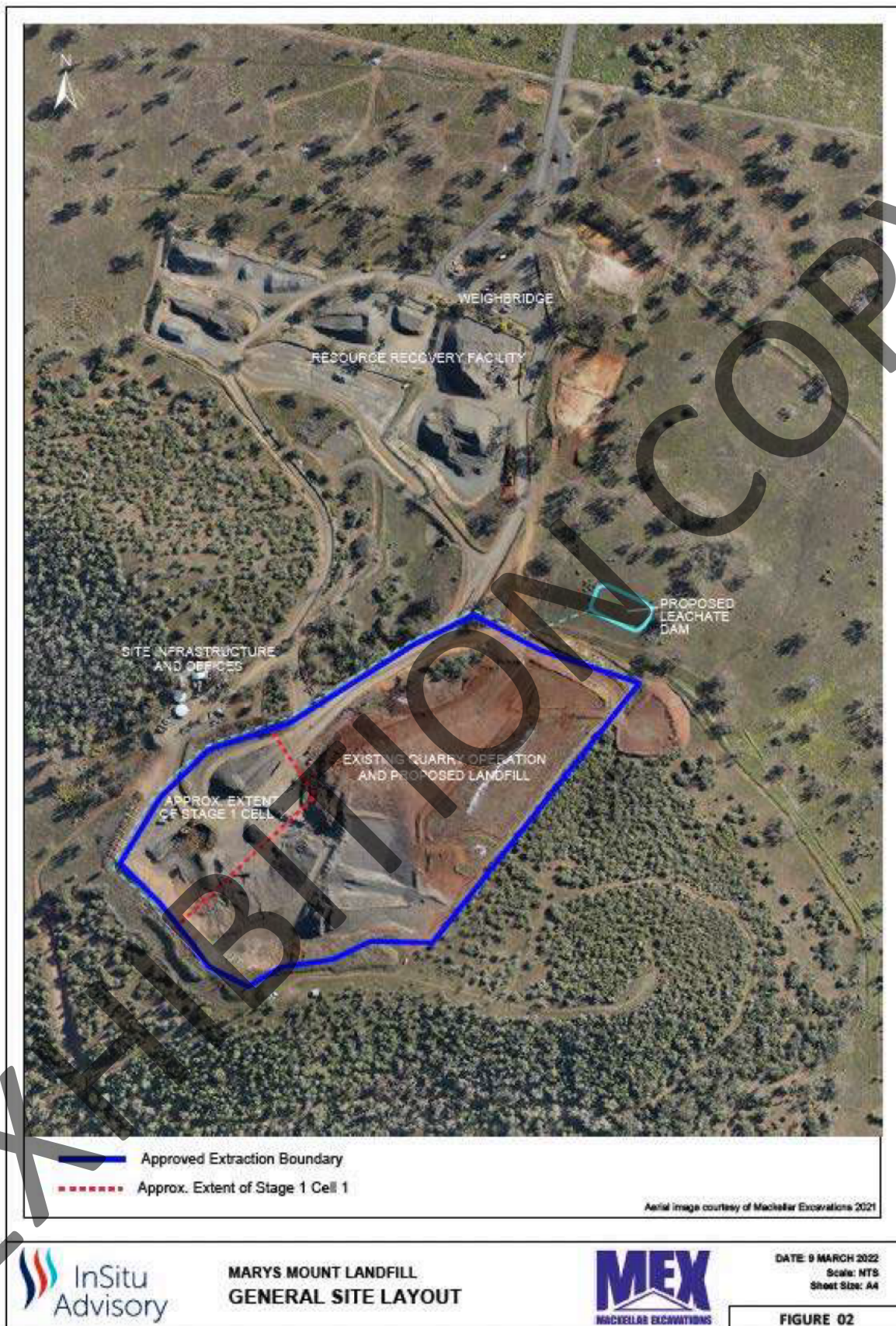


FIGURE 2.2: Existing Site Layout Marys Mount Quarry, Landfill & Resource Recovery Facility

(Source: Mackellar Excavations, InSitu Advisory)

2.2 Landfill Environmental Management Plan & Sub-Plans

In accordance with DA 2020/054 a Landfill Environmental Management Plan (LEMP) was prepared and approved to manage the environmental impacts of the approved landfill and resource recovery operations during its construction and operational phases. The most recent version of the Landfill Environmental Management Plan (LEMP) is dated February 2023, in response to minor revisions requested by the EPA relating to monitoring of water quality. In summary, the LEMP provides the following:

- A management tool for operation of the approved landfill and resource recovery operations on the site.
- A document that describes the land the subject of the LEMP and existing quarry operations.
- A document that provides a basis for monitoring, reporting and maintaining compliance of the approved landfill and resource recovery operations and to avoid adverse long-term environmental effects (Development Consent DA 2020/054 condition C2(a)).
- A guidance document for regulatory agencies responsible for oversight of the project, and in particular the NSW EPA and Gunnedah Shire Council.
- Identifies key environmental management issues pertinent to the operation of the approved landfill and resource recovery facility and mitigation measures, including landfill day management (condition C2(c)(vi)), noise management (condition C2(c)(iv)), and leachate management (condition C2(c)(i)); site security and OH & S management (Development Consent DA 2020/054 condition C2(e)(i) and (ii)).

The LEMP contains a number of sub-plans that have been required by Development Consent DA 2020/054, including management plans that currently relate to the approved quarry operations being:

- Bushfire management.
- Koala management.
- Pollution incident management.
- Driver Code of Conduct.
- Vegetation management.
- Soil and water management.

2.3 Environment Protection Licences

The quarrying, landfill and resource recovery activities currently being carried out at Marys Mount Quarry are 'scheduled activities' within the meaning of the *Protection of the Environment Operations Act, 1997*. In this regard Gunnedah Quarry Products Pty Ltd currently operates under the terms of the following environment protection licences.

However, due to the ambiguous wording in DA 2020/054, making no specific reference to the approved resource recovery facility, the combined volume of waste has been limited to 200,000 tonnes per annum, apportioned as follows:

- Environment Protection Licence (EPL) No.20262 for a quarry and landfill: 120,000 tonnes of waste per annum.
- Environment Protection Licence (EPL) No.21638 for a resource recovery facility: 80,000 tonnes of waste per annum.

2.4 Existing Quarrying, Resource Recovery and Landfill

■ Overview: Marys Mount Quarry

Typical quarrying operations undertaken at Marys Mount Quarry involve the following:

- Clearing and stripping of overburden ahead of extraction of the quarry resource.
- Ripping of weathered rock and blasting of unweathered (hard) rock.
- Drill and blast methods are then used to break up the hard rock. A drill rig stationed on top of each production bench drills a series of holes that are later charged with explosives, detonators and delays. Gunnedah Quarry Products apply standard practice of limiting the maximum instantaneous charge to stay within the relevant noise and vibration criteria.
- Loose rock won by blasting is then transported from the active quarry face to the processing plant within the quarry pit, where it is then crushed and screened to the desired product. Material is initially crushed in a primary mobile crusher located within the pit, which is currently fed by an excavator and front end loader. Conveyors from the processing plant distribute the screened products, relocated by front-end loader to specific stockpiles (pads) to the north of the active quarry pit, for future distribution of quarry products to customers.

■ Overview: Resource Recovery and Landfill Operations

The landfill and resource recovery component of the development was approved in accordance with Development Consent DA 2020/054 which commenced in 2022. The approved landfill and resource recovery facility accepts non-putrescible waste only. Up to 200,000 tonnes per annum of waste can be accepted at the facility per annum. Both the landfill and resource recovery facilities are now fully operational. The following summarises these approved uses:

- **Non-Putrescible Landfill:** Development Consent DA 2020/054 restricts the types of waste that can be accepted at the proposed landfill to that of General Solid Waste (non-putrescible) as defined in Schedule 1 of the *Protection of the Environment Operations Act, 1997* being soils, aggregates and fines which met the specifications defined in particular resource recovery orders. This includes building and demolition waste and virgin excavated natural material (VENM). Landfill cell construction and the installation of the leachate collection systems will be undertaken in a staged manner, with sequencing to allow for quarrying to stay ahead of landfilling. Leachate generated by water runoff from waste is contained within the landfill void and then collected by the leachate collection system. A large leachate dam lies outside of the area designated for landfill. Work on the leachate dam was completed in April 2023, with construction of the Stage 1, Cell 1 virtually completed (June 2023). Landfill waste is now being accepted at the facility.
- **Resource Recovery:** In addition to landfilling, Development Consent DA 2020/054 allows for the recovery of various categories of wastes at the approved landfill site as a functional part of the overall landfill project. In so doing, it minimises the final waste stream going to landfill. The recovery of valuable resources from waste accepted at the facility will reduce the amount of waste disposed to landfill. Trucks carrying waste suitable for resource recovery will be directed from the weigh-bridge to the designated stockpiles/pads located to the north of the landfilling/quarry area where it will be then initially stockpiled, prior to later sorting, separating and stockpiling into various waste categories. In accordance with EPA requirements, each stockpile of waste must be clearly delineated and separated from stockpiles of other listed waste types.



PHOTOGRAPH 2.1: Completed leachate dam. View looking north.
(Source: Mackellar Excavations April 2023)



PHOTOGRAPH 2.2: Resource recovery facility.
(Source: Photograph February 2023)

A summary of the approved landfill and resource recovery facility is provided in the accompanying Table 2.1.

Table 2.1: Summary of the Approved Landfill and Resource Recovery Project: Marys Mount Quarry

Project Element	Summary
Landfilling, resource recovery	General solid (non-putrescible) waste (Class 2) per the consent and EPL to be deposited within the existing void of the already approved quarry at Marys Mount. Resource recovery including but not limited to bricks, tiles, concrete, scrap metal, clay tiles and excavated road materials. Importantly, no toxic or putrescible or asbestos waste will be accepted at the facility.
Volume of waste	Up to 2,509,000 bench cubic metres (approximately 4,014,000 tonnes) of total landfill.
Rehabilitation	Rehabilitation of the final landform, restoring the site to that approximating the original, pre-quarry landform, with native vegetation (EEC) plantings.
Disturbance Area	Landfilling to be confined to existing approved quarry footprint and to associated infrastructure outside of the approved quarry footprint. Resource recovery to be undertaken to north of quarry.
Waste accepted	The approved facility to accept up to 200,000 tonnes per annum of waste to landfill. No mention of the resource recovery facility in terms of volume of waste that could be accepted. Instead, and in the interests of limiting impacts, Council imposed via consent condition G6 a limit of 60 waste truck movements per day on the overall development- a limit that applied to the combined landfill and resource recovery waste operations. Assuming waste being transported by truck and dog, this equates to 297,000 tonnes per annum.
Landfill management	Reliance on existing quarry management plans, supplemented by a Landfill Environmental Management Plan to deal with construction and operation matters under the Benchmark Techniques specified in the Environment Protection Authority (2016) Environmental Guidelines: Solid Waste Landfills including: <ul style="list-style-type: none"> ▶ Landfilling and leachate management. ▶ Ground and surface water management. ▶ Incident management. ▶ Landfill odour, noise and dust management. ▶ Landfill closure including rehabilitation and revegetation.
Employment	The landfill will provide full-time and part-time employment for 3 persons, with the opportunity for more casual employment.
Hours of Operation	<ul style="list-style-type: none"> ▶ 7.00 am and 6.00 pm Monday to Friday (Australian Eastern Daylight Time) ▶ 7.00am to 5.00pm Monday to Friday(Australian Eastern Standard Time) ▶ Saturday - 8.00am to 3.00pm ▶ Sunday and Public Holidays - closed.

3. PROPOSED MODIFICATION OF CONSENT

3.1 Description of Modification Sought & Justification

On 24 June 2021 the Northern Regional Planning Panel approved a development application, being DA 2020/054, for the establishment of a non-putrescible waste landfill facility, including a resource recovery facility, at Marys Mount Quarry- the "Waste Disposal Facility". Both the landfill and resource recovery facilities are now fully operational.

The current development consent DA 2020/054 allows the importation of up to 200,000 tonnes per annum of waste to the landfill: consent condition A2(a). However, there was no specific mention of the resource recovery facility itself in the consent, or to the volume of waste that could be accepted in any one year at the resource recovery facility. Instead, and in the interests of limiting impacts, Council imposed via DA 2020/054 consent condition G6 a limit of 60 waste truck movements per day (ie. 30 laden waste trucks per day) on the overall development- a limit that applied to the combined landfill and resource recovery waste operations. This consent condition states:

"G6. Operations of the Waste Disposal Facility is to be limited to a maximum of 60 truck movements (includes loaded and unloaded) per day."

Assuming waste being transported by truck and dog, this equates to 297,000 tonnes per annum. This figure has been derived based on the following calculations:

The consent allows the operation of the landfill and resource recovery facilities (Waste Disposal facility) 6 days per week. The proponent operates the facility for 50 weeks of the year. The following volumes of waste are possible:

30 loads/day x 6 days per week= 180 truck loads per week x 50 weeks pa= 9,000 loads per annum.

@ 33 tonnes per load (typical truck and dog)= 9,000 x 33= 297,000 tonnes per annum.

@36-38 tonnes per load (B-double)= 9,000 x 36-38= 324,000 tonnes to 342,000 tonnes per annum.

Based on the above, and for the sake of clarity and certainty in terms of interpreting the scope and nature of the consent, MOD 1 provides for the following revised limits on waste accepted at both the landfill and resource recovery facilities:

- 200,000 tonnes per annum of waste to the approved landfill per existing consent condition A2(a).
- 97,000 tonnes per annum of waste to the approved resource recovery facility per a proposed consent condition A2(a1).

No other changes are proposed to the development consent or the nature of the approved Waste Disposal Facility, nor does this modification application give rise to any changes in likely environmental impacts associated with the approved development. In particular, no changes are sought in terms of approved truck volumes associated with the approved landfill and resource recovery facility.

3.2 Proposed Modification Sought to DA 2020/054

■ Summary: Conditions of Consent Affected by this Modification Application

MOD 1 seeks to modify only Conditions A1 and A2 of Development Consent DA 2020/054 in order to provide details of the volume of waste that will be accepted in any one year at the resource recovery facility, as summarised in the accompanying Table 3.1.

Table 3.1: Conditions of consent affected by proposed modification (MOD 1). Numbering is the same for Development Consent 2020/054

Consent Condition Number	How Consent Condition is affected by this s.4.55(1A) modification
A1	<i>This Statement of Environmental Effects report prepared by Outline Planning Consultants Pty Ltd in support of the s.4.55(1A) modification application provides details of the modification sought.</i>
A2	<i>No change to maximum of 200,000 tonnes of waste to be accepted at the landfill. New wording added, referring to maximum volume of waste accepted at the resource recovery facility in any one year, in new consent condition A2(a1).</i>
A3-H1	<i>[No changes proposed]</i>

■ Proposed Modification of Development Consent DA2020/054

The consent conditions proposed to be modified in Development Consent DA2020/054 have the same numbering system as that of the current consent, as set down in the following. Words proposed to be inserted are shown in **green bold italics** (add). [NOTE: No wording in the current consent proposed to be deleted]

- **Condition A1 of the Development Consent DA 2020/054 is to be amended by inserting a reference to this Statement of Environmental Effects report as follows:**

"A1. The proposed development shall be carried out generally in accordance with the details set out in the following:

- *Development Application form lodged, 10 August 2020;*
- *Environmental Impact Statement, prepared by Outline Planning Consultants Pty Limited, dated July 2019;*
- *Response to Submissions: EIS Proposed Landfill Marys Mount Quarry, prepared by Outline Planning Consultants Pty Limited, dated 8 October 2020;*
- *Response to Council RFI: EIS Proposed Landfill Marys Mount Quarry, prepared by Outline Planning Consultants Pty limited, dated 15 January 2021;*
- *Response to Council's Further Request for Additional Information: Proposed landfill in Quarry Void at Marys Mount, prepared by Outline Planning Consultants Pty Limited, dated 21 May 2021;*
- ***Statement of Environmental Effects entitled Section 4.55(2) Modification Application No. 1 (MOD 1) Approved landfill and resource recovery facility, Development Consent DA 2020/054 Marys Mount Quarry, NSW prepared by Outline Planning Consultants and dated September 2023 andexcept as otherwise provided by the conditions of consent."***

[Reason for the above modifications to consent condition A1:

- ▶ To refer to this MOD 1 s.4.55 modification application report in the consent DA2020/054.]

- **Condition A2 of the Development Consent DA 2020/054 is to be amended by the insertion of an additional condition A2(a1) as follows:**

"A2. To confirm and clarify the terms of this approval, consent is given for the following:

a) Disposal of no more than 200,000 tonnes per annum of non-putrescible waste to landfill;

a1) Acceptance of no more than 97,000 per annum of waste to the resource recovery facility;

b) Disposal of no more than 2,509,000 cubic metres (approximately 4,014,000 tonnes) of non-putrescible waste to land fill over three {3} stages;

c) Rehabilitation of the site (Stage 4).

If contrary to the maximum disposal volume of 2,509,000 cubic metres listed as b), the final land form is not to exceed that of the Final Rehabilitation Landform Final Surface Plan, prepared by Martens & Associates Pty Ltd, dated 14/05/2020, Project No. P1907436, Drawing No. PSOI-CIOO, Rev B."

[Reason for the above modifications to consent condition A2:

- ▶ To include reference to the resource recovery facility component of the approved Waste Disposal Facility and to set a limit on the volume of waste that the resource recovery facility can accept in any one year. The types of waste that can be received at the resource recovery facility are specified in the submission by Outline Planning Consultants dated 21 May 2021, referred to in condition A1 of the consent DA2020/054.]

4. PLANNING ASSESSMENT

4.1 Overview

This Statement of Environmental Effects (SEE) report has been prepared pursuant to the *Environmental Planning and Assessment Act 1979* (EP&A Act) and the *Environmental Planning and Assessment Regulation 2021* (EP&A Regulation 2021), and reviews the relevant environmental planning instruments and guidelines that apply to the subject Section 4.55(1A) modification application: MOD 1. This SEE report also assesses the potential environmental impacts of the proposed modification with particular reference to the relevant heads of consideration listed under Section 4.15(1) of the EP&A Act. The proposed modifications to Development Consent DA2020/054 is considered to be consistent with the current objects of the EP&A Act for the following reasons:

- The site already supports an existing, lawfully established, operating landfill and resource recovery facility, licensed by the EPA.
- The proposed modification seeks to regularise the consent in terms of particularising the volumes of waste to be accepted in any one year by the landfill and resource recovery components of the approved development. The volumes of waste proposed accord with the limits on waste truck movements set down in condition G6 of the existing consent DA2020/054.
- There will be no likely impacts on the environment or the amenity of the neighbourhood arising from the proposed modification, satisfying s.4.55(1A)(a) of the EP&A Act.
- The modified development is substantially the same development as that for which consent was originally granted, satisfying s.4.55(1A)(b) of the EP&A Act.
- The proposed development will provide local employment opportunities in association with the continued use of the site as an operating landfill and resource recovery facility.

4.2 Section 4.55: Statutory Matters

The NSW EP&A Act establishes the system of development approvals in NSW. The power to modify development consents is provided in Section 4.55 of the EP&A Act, which confers three separate powers to modify a development consent:

- Modifications involving errors etc.- contained in s.4.55(1). Not applicable to this application.
- Modifications with minimal environmental impact- contained in s.4.55(1A). Applicable to this application.
- Other modifications- contained in s.4.55(2).Not applicable to this application.

Sub-section 4.55(1A) relevantly provides:

“(1A) Modifications involving minimal environmental impact A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if—

(a) it is satisfied that the proposed modification is of minimal environmental impact, and

(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and

(c) it has notified the application in accordance with—

- (i) the regulations, if the regulations so require, or
 - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and
 - (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.
- Subsections (1), (2) and (5) do not apply to such a modification. "

Accordingly, the key test for the Council to consider is to determine whether it has the power to assess a modification application is whether it is satisfied that the development is substantially the same development as the development for which consent was originally granted -commonly referred to as the 'substantially the same test'.

This modification application is one made under s.4.55(1A) of the EP&A Act, which implies "minor" or "minimal" environmental impact.

It is relevant to note that the words "to modify a development consent" is used. Related to the above to 'modify' means to alter without radical transformation per *Sydney City Council v Ilene Pty Ltd* [1984] 3 NSWLR 414 and *Agricultural Equity Investments Pty Ltd v Westlme Pty Ltd (No 3) (Westlme)* at [173] cited by Pain J in *Central Coast Council v 40 Gindurra Road Somersby Pty Ltd (No 2)* [2019] NSWLEC 171 at [147]. The modification power under s.4.55 of the EP&A Act is free-standing, and is unaffected by the prohibitions or restrictions which apply elsewhere in Part 4 of the EP&A Act. Importantly, a modification is not the granting of consent (s.4.55(4)). This is a fundamental characteristic of the power to modify a development consent. The distinction between a modification application and a development application was explained in *Windy Dropdown v Warringah Council* (2000) NSWLEC 240 at [28] where Talbot J when referring to s.96 (now s.4.55) of the EP&A Act said:

"[28] Subsection (4) of s 96 is the same as the previous subs (4) of s 102. It expressly distinguishes modification of a development consent from the granting of development consent, thereby suggesting that at least in some respects the consideration and approval of an application for modification is to take place in a different context to the consideration of an application for development consent.

Furthermore, the subject of an application made pursuant to s 96 is the development consent, not the development itself." [Our emphasis]

As a result, a determining authority simply has no power to consider a modification application afresh, as if it were a development application. This is because modification is not 'development' per the Land & Environment Court in *Moin Pty Limited v The Council of the City of Sydney* [2021] NSWLEC 1542 dated 21 September 2021 at [10].

Accordingly, this Section 4.55 application does not seek the grant of a development consent; merely an approval to modify conditions of Development Consent DA2014/0098. Refer to Section 4 of this SEE report for details. As a result, s.4.12 of the EP&A Act has no application and neither does Part 2 of Schedule 3 of the EP&A Regulation 2021 per the decision of Lloyd J in *Concrite Quarries Pty Ltd v Wingecarribee Shire Council* [2000] NSWLEC 97 (4 May 2000). This is because the language used in s.35 of Schedule 3 does not refer to a modification, but instead to development involving alterations or additions.

■ The first s.4.55 'test'

The **first 'test'** of a modification application involves a consideration of whether or not that proposal is 'substantially the same' development. This test has been the subject of case law and is relatively settled. The power under s 4.55 is simply one to "modify the consent", as explained by Preston CJ in *Scrap Realty Pty Limited v Botany Bay City Council* [2008] NSWLEC 333 (19 December 2008) at [13-14]:

*"Originally, the power to modify consents was restricted to modifying "details" of a consent. That restriction was removed in 1985 and the power was enlarged to be, simply, to modify the consent: see North Sydney Council v Michael Standley & Associates Pty Ltd [1998] NSWSC 163; (1998) 43 NSWLR 468 at 475. **The concept of modification involves "alteration without radical transformation...."**[our emphasis]*

A summary of the key components of the proposed modification (MOD 1) compared to the existing approved landfill and resource recovery operations is provided in the accompanying Table 4.1.

Table 4.1: Comparison of Approved Landfill/Resource Recovery Operations and Modification

DA 2020/054 Component	Current Approval	Proposed Modifications (MOD 1)
Landfill footprint, staging	As per DA2020/054	No change proposed.
Hours of operation of approved landfill and resource recovery facility	As per DA2020/054 ie. 7.00am to 6.00pm Monday to Friday (Australian Eastern Daylight Time); 7.00am to 5.00pm Monday to Friday (Australian Eastern Standard Time); 8.00am to 3.00pm on Saturdays; closed at any other time- per consent Condition G1.	No change proposed.
Approved haulage route, waste truck numbers	As per DA2020/054 ie. a limit of 30 laden waste trucks per day (60 movements) per consent Condition G6.	No change
Annual rate of acceptance of waste material	<ul style="list-style-type: none"> ▶ Landfill 200,000 tonnes pa per consent Condition A2(a). ▶ The consent is silent in terms of the annual tonnage of waste for the approved resource recovery facility. ▶ Consent condition G6 limits waste trucks to 30 laden trucks per day for combined landfill and resource recovery facilities= 297,000 tonnes pa (assumes truck and dog @33 tonnes/load) 	<ul style="list-style-type: none"> ▶ No change to types of waste to be accepted at either the landfill or resource recovery facilities. ▶ No change to volume of waste to landfill facility. ▶ Change proposed clarifying the volume of waste to be accepted by resource recovery facility based on truck numbers allowed by consent condition G6. Maximum of 97,000 tonnes pa to resource recovery.
Life of operation of approved landfill and resource recovery facility	As per DA2020/054 ie. 25 years or when final landform achieved, whichever occurs first.	No change

The term 'substantially' means "essentially or materially having the same essence" (*Vacik Pty Ltd v Penrith City Council* [1992] NSWLEC 8 and endorsed in *Agricultural Equity Investments Pty Ltd v Westlime Pty Ltd (No 3)* [2015] NSWLEC 7 at [173], and clarified even further by the Chief Judge of the NSW Land and Environment Court, Preston CJ, in *Arrage v Inner West Council* [2019] NSWLEC 85 dated 7 June 2019 at [24-31].

The changes proposed by the modification application are considered to satisfy the 'substantially the same' test, and in particular:

- The proposed s.4.55 modification is essentially the same as the presently approved approved landfill and resource recovery facility. Stated another way, the fundamental nature of the approved landfill and resource recovery facility is not proposed to be changed.
- The proposed modification clarifies the annual tonnage of waste to be accepted at the approved resource recovery facility, within the limits imposed by consent condition G6 regarding daily waste ruck volumes. Currently, the consent is silent in terms of the annual tonnage of waste intended to be directed to the approved resource recovery facility.
- This s.4.55 modification application does not contemplate any 'radical alteration' of the approved development. The proposed modification does not alter the previously approved limits the amount of waste to be accepted by the combined landfill and resource recovery facilities per consent condition G6, development footprint, operating hours, or the finished land form from the originally approved development. In short, a modification application is appropriate to obtain the necessary consent for the proposed modifications sought.

For the reasons outlined above, the proposed MOD 1 satisfies the 'substantially the same' test.

■ The second s.4.55 'test'

s.4.55(3) of the EP&A Act applies to s.4.55(1A) modification applications. It states:

"(3) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified."

The Courts have deemed the above to be the **second 'test'** of a modification application. s.4.15(1) of the EP&A Act sets out in the following:

"(a) the provisions of:

(i) any environmental planning instrument, and

(ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and

(iii) any development control plan, and

(iiia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and

(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), that apply to the land to which the development application relates,

(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,

(c) the suitability of the site for the development,

(d) any submissions made in accordance with this Act or the regulations,

(e) the public interest."

The second test of MOD 1 is assessed in the following sections.

4.3 Section 4.15(1)(a)(i) the Provisions of any Planning Instrument

■ Gunnedah Local Environmental Plan 2012

The *Gunnedah Local Environmental Plan* (LEP) 2012 is the comprehensive environmental planning instrument applying to the Marys Mount Quarry site. Under the LEP the approved landfill and resource recovery facility is a permitted use in the RU1 Primary Production zone. The proposed modification is consistent with the following relevant provisions of Gunnedah LEP 2012, summarised in the accompanying Table 4.2.

Table 4.2: Assessment of s.4.55(1A) modification against relevant provisions of Gunnedah LEP 2012

Relevant LEP provision	Compliance of modification (MOD 1)
Clause 1.2–Objectives of the LEP	Complies , in particular with Clauses 1.2(2)(b),(c) and (d) in that the proposed modification will promote the orderly and economic use of the land.
Clause 2.3 – Zone Objectives and Land Use Table	Complies . The Waste Disposal Facility, including the resource recovery facility, found to be in accordance with clause 2.3 when assessed by Council prior to approval being granted in 2021. No change is proposed to the nature or extent of the approved Waste Disposal Facility, or to waste truck numbers.
Clause 5.10 Heritage	Complies . No heritage conservation issues arise from the modification.
Clause 6.5 Services	Complies . The modification will not require any further services being provided.

■ State Environmental Planning Policies (SEPPs)

The proposed modification complies with the other state environmental planning policies (SEPPs), summarised in the following Table 4.3.

Table 4.3: Summary compliance of the s.4.55 Modification with relevant SEPPs

Relevant SEPP & provision	Compliance of modification (MOD 1)
State Environmental Planning Policy (Resources and Energy) 2021	Complies . Considered by the determining authority prior to the issue of the original consent DA2020/054. The s.4.55 modification: <ul style="list-style-type: none"> Will continue to be capable of achieving a suitable level of recovery of waste having regard for limits on waste truck volumes. The proposal is for the continuation of resource recovery of waste.
State Environmental Planning Policy (Planning Systems) 2021	Not applicable . Considered by the determining authority prior to the issue of the original consent DA2020/054, not relevant to consideration of this modification application.
State Environmental Planning Policy (Transport and Infrastructure) 2021	Complies . Sections 2.122, 2.118 and 2.119 of this SEPP are not applicable as no development consent is being sought. The s.4.55(1A) modification: <ul style="list-style-type: none"> Will continue to be capable of achieving a suitable level of recovery of waste. No change is proposed to existing transport arrangements or volumes of waste being transported to and from the approved Waste Disposal Facility.
SEPP (Biodiversity and Conservation) 2021	Complies . The modification do not result in any loss of land with ecological values - refer to Section 4.8 for further details.
SEPP(Resilience and Hazards) 2021	Complies . Considered by the determining authority prior to the issue of the original consent DA2020/054. No change proposed.

4.4 Section 4.15(1)(a)(ii) any Draft Planning Instrument

Not applicable.

4.5 Section 4.15(1)(a)(iii) any Development Control Plan

The *Gunnedah Development Control Plan 2012* (DCP) was considered prior to the grant of consent in 2014 and found to satisfy the relevant provisions of this DCP.

The DCP contains no provisions which specifically apply to landfill or resource recovery industries per se, however, it does cover a number of provisions of a more generic nature which may relate to such development.

The proposed modification is consistent with the following relevant provisions of the DCP, summarised in the accompanying Table 4.4.

Table 4.4: Assessment of modification against relevant provisions of the Gunnedah DCP 2012

Relevant DCP provision	Compliance of modification (MOD 1)
Clause 6.2- Parking	No changes arise from the modification proposed. No further assessment required.
Clause 6.3- Landscaping	No changes arise from the modification proposed. No further assessment required.
Clause 6.4- Outdoor lighting	No changes arise from the modification proposed. No further assessment required.
Clause 6.5 - Outdoor advertising/signage	No changes arise from the modification proposed. No further assessment required.
Clause 6.6 - Environmental effects, other issues	The environmental effects of the proposed modification have been assessed elsewhere in this SEE report. The proposed modification does not give rise to any additional impacts.

4.6 Section 4.15(1)(a)(iiia) any Planning Agreements

There is a voluntary planning agreement (VPA) in place following the grant of the quarry consent, in 2014, however, no such VPA applies to the approved landfill and resource recovery facilities.

4.7 Section 4.15(1)(a)(iv) the Regulations

The term "the Regulations" refers to the *Environmental Planning & Assessment Regulation 2021* (EP&A Regulation 2021), which commenced on 1 March 2022.

The currently approved landfill and resource recovery facility development has undergone a rigorous EIS approval process and was approved in June 2021 with numerous stringent conditions designed to minimise the impact of the development on the environment.

It should also be noted that Part 2 of Schedule 3 of the EP&A Regulation 2021 has no application per the decision of Lloyd J in *Concrite Quarries Pty Ltd v Wingecarribee Shire Council* [2000] NSWLEC 97 (4 May 2000).

4.8 Section 4.15(1)(b) Impacts

The proposed modification (MOD 1) seeks to clarify the amount of waste that can be accepted at the resource recovery facility, within the limits imposed on overall waste truck volumes dictated by consent DA2020/054 condition G6. The proposed s.4.55(1A) modification does not give rise to any additional impacts, and in particular:

- Groundwater and stormwater. Groundwater impacts were previously considered by Council when assessing DA2020/054 and found to be acceptable. No physical changes are proposed to the approved Waste Disposal Facility as a part of this s.4.55(1A) modification. Appropriate management and mitigation measures, as outlined in the site Landfill Environmental Management Plan (LEMP) and EPL No.s 21638 and 20262, will continue to be carried out.
- Roads and traffic impacts. Roads and traffic impacts were previously considered by Council when assessing DA2020/054 and found to be acceptable. No changes are proposed to existing arrangements. In particular, no changes are sought to DA2020/054 consent condition G6, which limits the number of waste trucks to a maximum of 30 laden trucks per day (ie. 60 movements). Appropriate management and mitigation measures, as outlined in the site LEMP and EPLs, will continue to be carried out.
- Hours of operation. The hours of operation of the landfill and resource recovery facility were previously considered by Council when assessing DA2020/054 and found to be acceptable. No changes are proposed to existing arrangements.
- Air quality. Air quality impacts were previously considered by Council when assessing DA2020/054 and found to be acceptable. No changes are proposed to existing arrangements. Appropriate management and mitigation measures, as outlined in the site LEMP and EPLs, will continue to be carried out.
- Ecological impacts. Ecological impacts were previously considered by Council when assessing DA2020/054 and found to be acceptable. No physical changes are proposed to the approved Waste Disposal Facility as a part of this s.4.55(1A) modification. Appropriate management and mitigation measures, as outlined in the site LEMP and EPLs, will continue to be carried out. Rehabilitation would take place progressively until the final surface level has been completed.
- Noise impacts. Noise impacts were previously considered by Council when assessing DA2020/054 and found to be acceptable. No additional on-site noise impacts arise as a result of the proposed modification. The operating hours of the landfill and resource recovery facility will be limited in accordance with the approved times. Appropriate management and mitigation measures, as outlined in the site LEMP and EPLs, will continue to be carried out.
- Visual impacts. Visual impacts were previously considered by Council when assessing DA2020/054 and found to be acceptable. No physical changes are proposed to the approved Waste Disposal Facility as a part of this s.4.55(1A) modification. Appropriate management and mitigation measures, as outlined in the site LEMP and EPLs, will continue to be carried out.
- Social and economic impacts. The proposed modification will provide certainty to the proponent in terms of clarifying the volume of waste that the resource recovery facility can accept. Social and economic impacts were previously considered by Council when assessing DA2020/054 and found to be acceptable. The proposed modification would result in continued long-term benefits in terms of employment creation and the acceptance of waste at the Waste Disposal Facility.
- Aboriginal heritage. No physical changes are proposed to the approved Waste Disposal Facility as a part of this s.4.55(1A) modification.

- Hazards and risks. Hazards and risks were previously considered by Council when assessing DA2020/054 and found to be acceptable. The environmental risks, potential impacts of the landfill and resource recovery facility and the ameliorative measures required to alleviate these risks are addressed throughout the original EIS. No physical changes are proposed to the approved Waste Disposal Facility as a part of this s.4.55(1A) modification. Appropriate management and mitigation measures, as outlined in the site LEMP and EPLs, will continue to be carried out.

4.9 Section 4.15(1)(c) Suitability of the Site

The suitability of the site for a landfill and resource recovery facility was considered by Council and the Northern Regional Planning Panel prior to the quarry being approved in August 2020.

The approved landfill and resource recovery facility is an existing waste resource recovery facility operating under a variety of approvals including the project approval Development Consent DA 2020/054, the approved *Landfill Environmental Management Plan* and EPLs No.s 20262 and 21638. Due to the history of operations at the facility, the social, physical and economic environments are well understood and the site has a well established environmental management systems. The proposed modification aims to clarify the volume of waste that can be accepted at the resource recovery facility in any one year.

4.10 Section 4.15(1)(d) Any Submissions

To be considered in due course by Council following exhibition of the proposed modification.

4.11 Section 4.15(1)(e) The Public Interest

■ ESD principles

The five accepted principles of ecologically sustainable development (ESD) were addressed in the original EIS, prior to the approval of DA2020/054 in August 2020. The approved landfill and resource recovery facility incorporates ESD principles in its current operations, with operations at the facility including a range of well-established management tools, controls and environmental management and mitigation measures to minimise potential impacts on the environment. The proposed modification would not impact on the ability of the facility to operate according to these principles. Following rehabilitation, the modification would enable the site to provide a landform rehabilitated with vegetation endemic to the region, enhancing the ecological and habitat value of the local area.

The proposed modifications thus constitute what is considered to be the orderly and economic development of the land and the proper development and management of resources and the approved facility as a whole.

■ NSW Waste Avoidance and Resource Recovery Strategy 2014–21

The NSW *Waste Avoidance and Resource Recovery Strategy 2014–21* has the aims of reducing waste generation and encouraging the recycling of waste. The strategy was released in December 2014. The proposed modification clarifies the volume of waste that can be accepted at the resource recovery facility in any one year. If approved, the modification will contribute to this strategy by increasing opportunities for resource recovery and recycling from building, demolition and other related wastes.

■ Public interest generally

There will be no significant detrimental effects arising as a result of this modification, given that no physical changes are proposed to the approved operation, or to the daily numbers of trucks bringing waste to the approved Waste Disposal Facility. The modification proposed will optimise the use of the site for the purposes of resource recovery.

■ Protection of the Environment Operations Act 1997

The *Protection of the Environment Operations Act 1997* (POEO Act) provides an integrated system of licensing for industries, like landfills and resource recovery facilities.

The landfill and quarry activities undertaken at Marys Mount Quarry currently operates under the terms and requirements of Environment Protection License (EPL No. 20262) for a Land Based Extractive Activity, issued pursuant to the provisions of the POEO Act. The resource recovery component of DA2020/054 currently operates under the terms and requirements of a separate Environment Protection License (EPL No. 22638).

The proposed modification does not activate the need for any change in the operative provisions of the current EPLs, save for reference to the modification, once approved. The landfill and resource recovery operations will continue to be subject to the same conditions of these two EPLs currently issued by the EPA.

5. CONCLUSIONS

The existing approved landfill and resource recovery facility operates on land that forms a part of Marys Mount Quarry. Landfilling of the quarry void forms a part of the Development Consent DA2020/054, issued in August 2020, as does the sharing of resource recovery and quarry stockpiling activities in the area to the north of the quarry pit.

The current development consent allows the importation of up to 200,000 tonnes pa of waste to the landfill: consent condition A2(a). However, when consent was issued there was no mention of the resource recovery facility in terms of volume of waste that could be accepted. Instead, and in the interests of limiting impacts, Council imposed via consent condition G6 a limit of 60 waste truck movements per day on the overall development- a limit that applied to the combined landfill and resource recovery waste operations. Assuming waste being transported by truck and dog, this equates to a total of 297,000 tonnes per annum.

Based on the above, and for the sake of clarity and certainty in terms of interpreting the scope and nature of the consent, this s.4.55(1A) modification (MOD 1) provides for the following revised limits on waste accepted at both the landfill and resource recovery facilities:

- 200,000 tonnes per annum of waste to the approved landfill per existing consent condition A2(a).
- 97,000 tonnes per annum of waste to the approved resource recovery facility per proposed consent condition A2(a1).

No other changes are proposed to the development consent or the nature of the approved Waste Disposal Facility, nor does this modification application give rise to any changes in likely environmental impacts associated with the approved development. In particular, no changes are sought in terms of approved truck volumes associated with the approved landfill and resource recovery facility.

In conclusion, this Section 4.55(1A) application (MOD 1) has planning merit and is substantially the same development for which the consent was originally granted, with acceptable impacts when considered in terms of Section 4.15 of the *Environmental Planning and Assessment Act 1979*. The proposal is in the public interest.

Given the above it is requested that Council can exercise its discretion to approve the s.4.55 modification as requested.



***Section 4.55(1A) Modification No. 1 (MOD 1)
Approved landfill and resource recovery
facility, Development Consent DA2020/054
Marys Mount Quarry, NSW
Statement of Environmental Effects***

September 2023

For

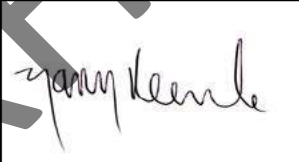
*Mackellar Excavations Pty Ltd & Gunnedah Quarry Products
Lot 22 DP 1216060 and Lot 2 DP 865898, Barker Road,
Marys Mount, NSW*



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Author:	Gary Peacock (BTP UNSW) Member Planning Institute of Australia Managing Director Outline Planning Consultants Pty Ltd
Dated:	September 2023
Signed:	

**Section 4.55(1A) Application No. 1 (MOD 1)
for Modification of Development
Consent DA 2020/054
Approved landfill and resource recovery
facility, Marys Mount Quarry
Lot 22 DP 1216060 and Lot 2 DP 865898,
Barker Road, Marys Mount, NSW
September 2023**

This document is issued for the party which commissioned it and for specific purposes connected with the above-captioned project only. It should not be relied upon by any other party or used for any other purpose.

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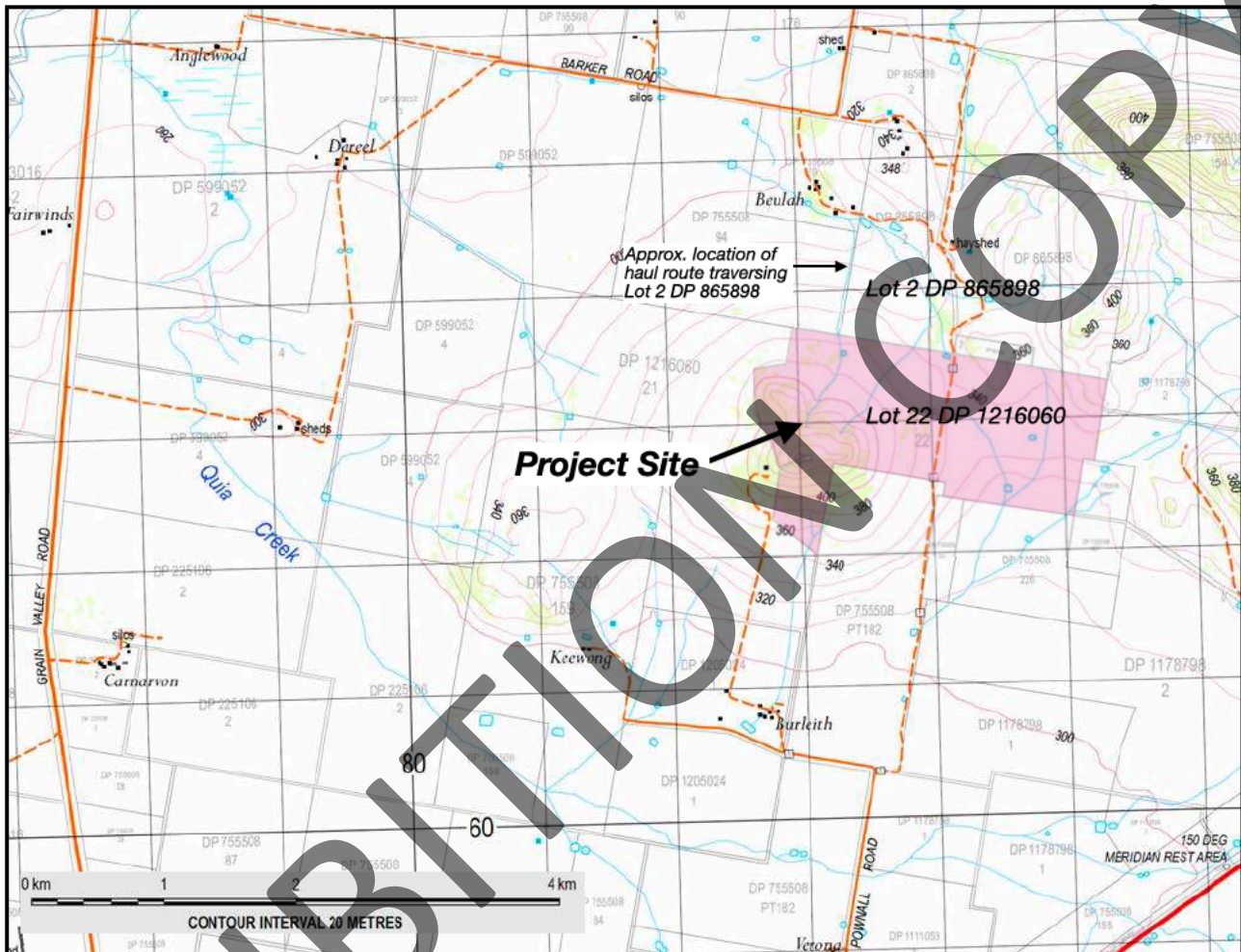


FIGURE 0.1: Location of Marys Mount Quarry (Project Site)- coloured pink

(Map Base Source: Mullaley 8835-N 1:50,000 GeoPDF Topographic map
NSW Dept. Finance Services & Innovation 2017)



EXECUTIVE SUMMARY

■ Outline Planning Consultants Pty Ltd act for Mackellar Excavations Pty Ltd and Gunnedah Quarry Products Pty Ltd (the quarry operator), who operate an existing, approved landfill, resource recovery and hard rock quarry at Marys Mount, in the Gunnedah Shire. These activities are conducted on Lot 22 DP 121600 ('Project Site'), with access to the public road system provided via Lot 2 DP 865898- refer **Figure 0.1**. Both the landfill and resource recovery facilities are now fully operational.

■ On 24 June 2021 the Northern Regional Planning Panel approved a development application, being DA 2020/054, for the establishment of a non-putrescible waste landfill facility, including a resource recovery facility, at Marys Mount Quarry- the "Waste Disposal Facility". Details of the resource recovery operations proposed forms a part of our submission to Council dated 21 May 2021- this submission referred to in condition A1 of the consent DA 2020/054.

■ The current development consent allows the importation of up to 200,000 tonnes pa of waste to the landfill: consent condition A2(a). However, when consent was issued there was no mention of the resource recovery facility in terms of volume of waste that could be accepted. Instead, and in the interests of limiting impacts, Council imposed via consent condition G6 a limit of 60 waste truck movements per day on the overall development- a limit that applied to the combined landfill and resource recovery waste operations. Assuming waste being transported by truck and dog, this equates to a total of 297,000 tonnes per annum.

■ Based on the above, and for the sake of clarity and certainty in terms of interpreting the scope and nature of the consent, this s.4.55(1A) modification, hereafter also referred to as "MOD 1", provides for the following revised limits on waste accepted at both the landfill and resource recovery facilities:

- 200,000 tonnes per annum of waste to the approved landfill per existing consent condition A2(a).
- 97,000 tonnes per annum of waste to the approved resource recovery facility per proposed consent condition A2(a1).

■ No other changes are proposed to the development consent or the nature of the approved Waste Disposal Facility, nor does this modification application give rise to any changes in likely environmental impacts associated with the approved development. In particular, no changes are sought in terms of approved truck volumes associated with the approved landfill and resource recovery facility.

■ This Statement of Environmental Effects report supports an application under Section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) for a modification to Development Consent DA 2020/054 to allow changes in the amount of waste and resource recovered material that can be accepted at the approved landfill an resource recovery facility, based on approved truck volumes permitted. It is considered that the development, as modified, will remain substantially the same development as that originally approved under DA 2020/054.

1. INTRODUCTION

1.1 Overview

Marys Mount Quarry is operated by Mackellar Excavations Pty Ltd and Gunnedah Quarry Products Pty Ltd (the quarry operator), on land comprising Lot 22 DP 1216060 and Lot 2 DP 865898, Barker Road, also known as No. 259 Baker Road, Marys Mount and No. 334 Pownall Road, Mullaley in the Gunnedah local government area ("subject site", "project site"). Outline Planning Consultants Pty Ltd act for Mackellar Excavations Pty Ltd and Gunnedah Quarry Products.

On 24 June 2021 the Northern Regional Planning Panel approved the establishment of a non-putrescible waste landfill, including a resource recovery facility, at Marys Mount Quarry pursuant to Development Consent DA 2020/054 (PPSNTH-55): the "Waste Disposal Facility". Both the landfill and resource recovery facilities are now fully operational.

DA 2020/054 permits the disposal of up to 200,000 tonnes per annum of non-putrescible waste to landfill, however, the consent does not specify the amount of waste that is to be accepted at the resource recovery of waste. Instead, and in the interests of limiting impacts, Council imposed via consent condition G6 a limit of 60 waste truck movements per day on the Waste Disposal Facility. Assuming waste being transported by truck and dog, this equates to 297,000 tonnes per annum.

Based on the above, and for the sake of clarity and certainty in terms of interpreting the scope and nature of the consent, this s.4.55(1A) modification, hereafter also referred to as "MOD 1", provides for the following revised limits on waste accepted at both the landfill and resource recovery facilities:

- 200,000 tonnes per annum of waste to the approved landfill per existing consent condition A2(a).
- 97,000 tonnes per annum of waste to the approved resource recovery facility per proposed consent condition A2(a1).

The s.4.55(1A) modification the subject of this application (MOD 1) seeks the approval of Council to provide for the changes described above, in order to achieve a more practical outcome for the combined landfill and resource recovery facility, reflecting the current approved limits on waste truck numbers.

This Statement of Environmental Effects (SEE) report supports an application under Section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) for a modification to Development Consent DA 2020/054 (MOD 1) to allow for the proposed change above. It is considered that the development, as modified, will remain 'substantially the same' development as that originally approved under DA 2020/054, with no additional environmental impacts arising, having regard for sections 4.55(1A) and 4.15(1). This SEE report should be read in conjunction with the original EIS prepared by Outline Planning Consultants dated July 2019 as well as the supporting documentation referred to in Development Consent DA 2020/054.

1.2 Property Description and Ownership

Lot 22 in DP 1216060 contains the approved quarry, landfill and resource recovery facility and associated infrastructure including stockpiles and stormwater detention- refer to Photograph 1.1 showing the quarry, lined Stage 1 Cell1 and Leachate Dam. The quarry haul route traverses a small part of Lot 2 in DP 865898 over a property known as 'Beulah', at No. 259 Barker Road, Marys Mount NSW, before connecting with the public road system. Refer Table 1.1.

Table 1.1: Property Description and Ownership

Lot and Deposited Plan No.	Ownership
Lot 22 in Deposited Plan 1216060	Gunnedah Quarry Products Pty Ltd. Contains the approved quarry, landfill and resource recovery facilities.
Lot 2 in Deposited Plan 865898	Lee family. Quarry haul route traverses privately owned land.

1.3 Planning Approvals History

The Marys Mount Quarry has been in operation since February 2011. The accompanying table 1.2 provides a timeline of key planning approvals granted for quarrying and landfill/resource recovery operations at Marys Mount Quarry.

Table 1.2: Select Planning Approvals History, Marys Mount Quarry

Approval Notification Date	Description
8 February 2011	Development Consent 507167 issued for a quarry operation on the subject site. Consent allows extraction of 30,000 cubic metres per annum.
27 June 2014	Development Consent 2012/185 issued for a quarry operation on the subject site. Consent allows extraction of 360,000 tonnes per annum and a limit of 60 loaded trucks per day (ie. 120 movements) and 248 loaded trucks (ie. 496 movements) per week. Condition A4 of this consent required the surrender of the earlier consent. Council endorsed the execution of an amended Voluntary Planning Agreement (VPA) at the July 2014 Ordinary Meeting.
21 October 2015	Modification approval granted by Gunnedah Shire Council (Development Consent 2012/185/2) for an amendment to condition referencing BioBanking Agreement, Flora and Fauna Assessment, Compensatory Habitat Assessment and Black Jack Mountain Offset Site Management Plan.
4 December 2019	Council resolution for the alteration to the endorsed Voluntary Planning Agreement (VPA) relating to the approved Extractive Industry, to amend timeframes for the completion of works to Marys Mount Road.
7 October 2020	Modification approval granted by Gunnedah Shire Council (Development Consent 2012/185/5) to temporarily increase the annual extraction volumes to 499,000 tonnes per annum, to service the ARTC N2N and N2NS Inland Rail projects. The modification also included the removal of percentage of haulage route use and vehicle volume as well as clarifying the definition of extraction.
24 June 2021	Approval granted by Northern Regional Planning Panel to the establishment of a landfill and resource recovery facility at the quarry, the landfill waste material to be deposited within the approved quarry void. The approval, being DA 2020/054 (PPSNTH-55), allows Gunnedah Quarry Products Pty Ltd to accept up to 200,000 tonnes per annum of waste to landfill within the quarry void. The land approved for the landfill and resource recovery operations includes the approved quarry area and allied activities, including but not limited to stockpile areas, weigh-bridge office and sediment basins.



PHOTOGRAPH 1.1: View of completed Stage 1 Cell 1, quarry and Leachate Dam

(Source: Mackellar Excavations June 2023)

1.4 Structure of the Report

This SEE report is divided into four subsequent sections:

- **Section 2** provides an overview of the approved quarry and landfill/resource recovery operations at Marys Mount.
- **Section 3** describes the proposed modification of Development Consent DA 2020/054 (MOD 1).
- **Section 4** analyses the environmental effects of the proposed modification based on the requirements of s.4.55(1A) and s.4.15(1) of the EP&A Act. This includes an assessment of the compliance of the proposal with prevailing planning controls and guidelines, including *State Environmental Planning Policy (Resources and Energy) 2021*.
- **Section 5** concludes the statement of the environmental effects.

2. SITE LOCATION AND DESCRIPTION

2.1 Operative Development Consents for Quarrying, Landfill and Resource Recovery Operations at Marys Mount Quarry

The Marys Mount Quarry has been in operation since February 2011. The quarry currently operates under an existing consent (DA2012/185, as modified). Development Consent DA 2020/054 (PPSNTH-55) allows the establishment of a landfill and resource recovery facility at Marys Mount Quarry. Refer to **Figure 2.1**.

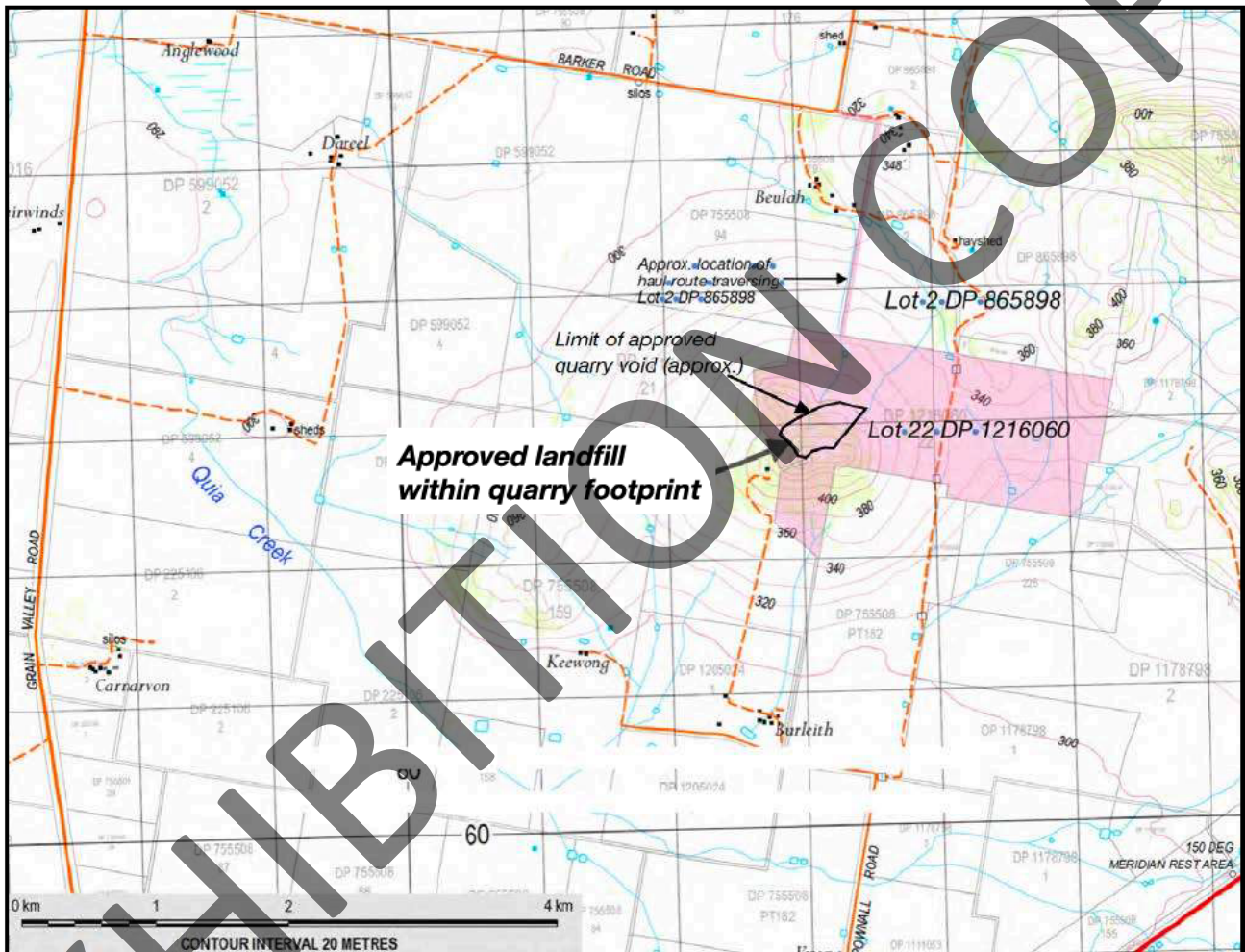


FIGURE 2.1: Location of Project Site and Approved Quarry Pit

(Map Base Source: Mullaley 8835-N 1:50,000 GeoPDF Topographic map NSW Dept. Finance Services & Innovation 2017)



Development Consent DA 2020/054 allows for a landfill that can accept up to 200,000 tonnes per annum of non-putrescible waste material. The first stage of the landfill (Cell 1) has been constructed, along with the main leachate dam, and now accepts landfill waste. Refer to accompanying photographs and **Figure 2.2**. DA 2020/054 also allows for the establishment of a resource recovery facility, located to the north of the existing quarry, utilising some of the existing quarry infrastructure, including office, access, weighbridge and stockpile areas/pads. A comprehensive management regime is already in place at Marys Mount Quarry relating to the conduct of the approved quarry as well as the approved landfill and resource recovery operations, summarised in the following. Both the landfill and resource recovery facilities are now fully operational.

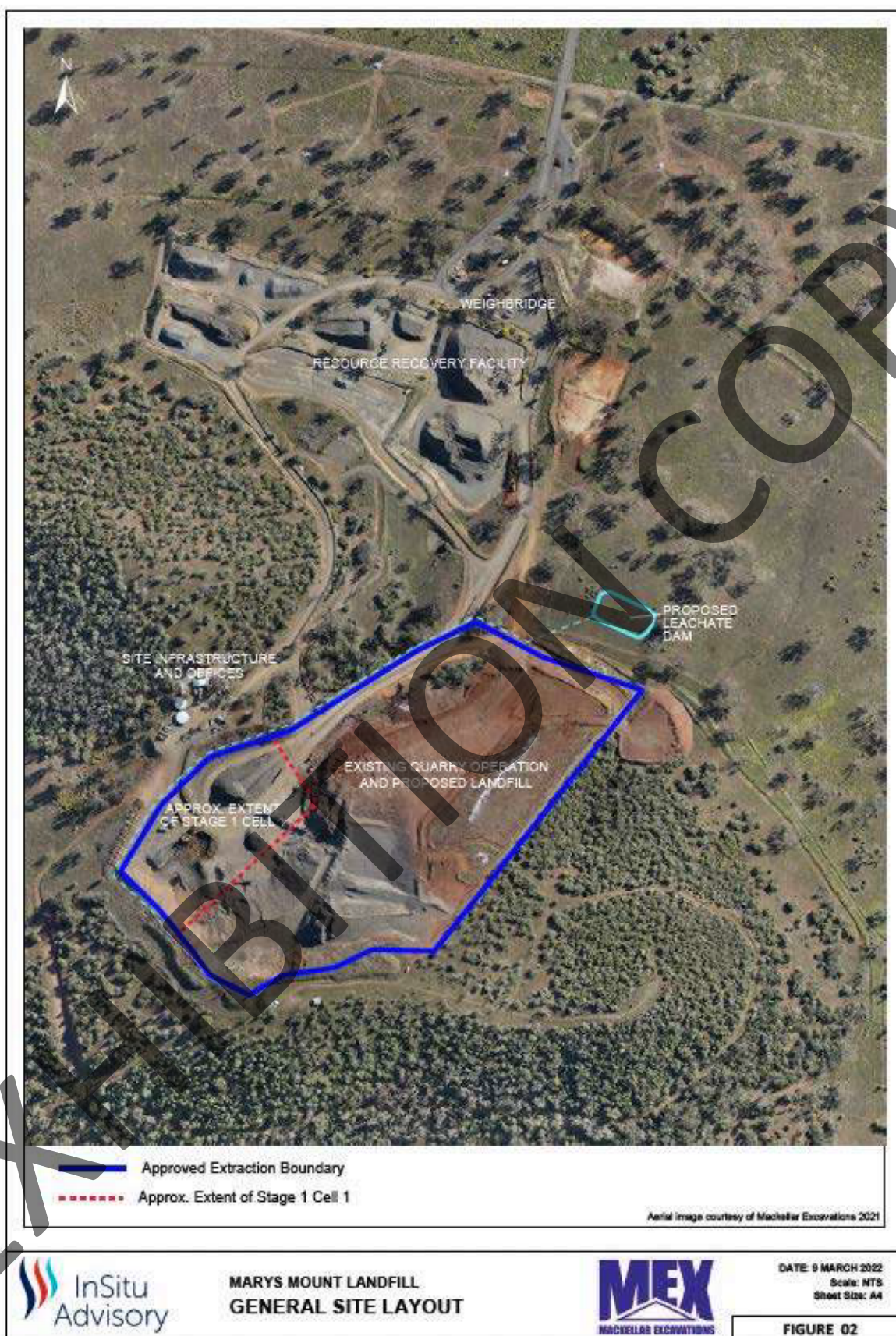


FIGURE 2.2: Existing Site Layout Marys Mount Quarry, Landfill & Resource Recovery Facility

(Source: Mackellar Excavations, InSitu Advisory)

2.2 Landfill Environmental Management Plan & Sub-Plans

In accordance with DA 2020/054 a Landfill Environmental Management Plan (LEMP) was prepared and approved to manage the environmental impacts of the approved landfill and resource recovery operations during its construction and operational phases. The most recent version of the Landfill Environmental Management Plan (LEMP) is dated February 2023, in response to minor revisions requested by the EPA relating to monitoring of water quality. In summary, the LEMP provides the following:

- A management tool for operation of the approved landfill and resource recovery operations on the site.
- A document that describes the land the subject of the LEMP and existing quarry operations.
- A document that provides a basis for monitoring, reporting and maintaining compliance of the approved landfill and resource recovery operations and to avoid adverse long-term environmental effects (Development Consent DA 2020/054 condition C2(a)).
- A guidance document for regulatory agencies responsible for oversight of the project, and in particular the NSW EPA and Gunnedah Shire Council.
- Identifies key environmental management issues pertinent to the operation of the approved landfill and resource recovery facility and mitigation measures, including landfill day management (condition C2(c)(vi)), noise management (condition C2(c)(iv)), and leachate management (condition C2(c)(i)); site security and OH & S management (Development Consent DA 2020/054 condition C2(e)(i) and (ii)).

The LEMP contains a number of sub-plans that have been required by Development Consent DA 2020/054, including management plans that currently relate to the approved quarry operations being:

- Bushfire management.
- Koala management.
- Pollution incident management.
- Driver Code of Conduct.
- Vegetation management.
- Soil and water management.

2.3 Environment Protection Licences

The quarrying, landfill and resource recovery activities currently being carried out at Marys Mount Quarry are 'scheduled activities' within the meaning of the *Protection of the Environment Operations Act, 1997*. In this regard Gunnedah Quarry Products Pty Ltd currently operates under the terms of the following environment protection licences.

However, due to the ambiguous wording in DA 2020/054, making no specific reference to the approved resource recovery facility, the combined volume of waste has been limited to 200,000 tonnes per annum, apportioned as follows:

- Environment Protection Licence (EPL) No.20262 for a quarry and landfill: 120,000 tonnes of waste per annum.
- Environment Protection Licence (EPL) No.21638 for a resource recovery facility: 80,000 tonnes of waste per annum.

2.4 Existing Quarrying, Resource Recovery and Landfill

■ Overview: Marys Mount Quarry

Typical quarrying operations undertaken at Marys Mount Quarry involve the following:

- Clearing and stripping of overburden ahead of extraction of the quarry resource.
- Ripping of weathered rock and blasting of unweathered (hard) rock.
- Drill and blast methods are then used to break up the hard rock. A drill rig stationed on top of each production bench drills a series of holes that are later charged with explosives, detonators and delays. Gunnedah Quarry Products apply standard practice of limiting the maximum instantaneous charge to stay within the relevant noise and vibration criteria.
- Loose rock won by blasting is then transported from the active quarry face to the processing plant within the quarry pit, where it is then crushed and screened to the desired product. Material is initially crushed in a primary mobile crusher located within the pit, which is currently fed by an excavator and front end loader. Conveyors from the processing plant distribute the screened products, relocated by front-end loader to specific stockpiles (pads) to the north of the active quarry pit, for future distribution of quarry products to customers.

■ Overview: Resource Recovery and Landfill Operations

The landfill and resource recovery component of the development was approved in accordance with Development Consent DA 2020/054 which commenced in 2022. The approved landfill and resource recovery facility accepts non-putrescible waste only. Up to 200,000 tonnes per annum of waste can be accepted at the facility per annum. Both the landfill and resource recovery facilities are now fully operational. The following summarises these approved uses:

- **Non-Putrescible Landfill:** Development Consent DA 2020/054 restricts the types of waste that can be accepted at the proposed landfill to that of General Solid Waste (non-putrescible) as defined in Schedule 1 of the *Protection of the Environment Operations Act, 1997* being soils, aggregates and fines which met the specifications defined in particular resource recovery orders. This includes building and demolition waste and virgin excavated natural material (VENM). Landfill cell construction and the installation of the leachate collection systems will be undertaken in a staged manner, with sequencing to allow for quarrying to stay ahead of landfilling. Leachate generated by water runoff from waste is contained within the landfill void and then collected by the leachate collection system. A large leachate dam lies outside of the area designated for landfill. Work on the leachate dam was completed in April 2023, with construction of the Stage 1, Cell 1 virtually completed (June 2023). Landfill waste is now being accepted at the facility.
- **Resource Recovery:** In addition to landfilling, Development Consent DA 2020/054 allows for the recovery of various categories of wastes at the approved landfill site as a functional part of the overall landfill project. In so doing, it minimises the final waste stream going to landfill. The recovery of valuable resources from waste accepted at the facility will reduce the amount of waste disposed to landfill. Trucks carrying waste suitable for resource recovery will be directed from the weigh-bridge to the designated stockpiles/pads located to the north of the landfilling/quarry area where it will be then initially stockpiled, prior to later sorting, separating and stockpiling into various waste categories. In accordance with EPA requirements, each stockpile of waste must be clearly delineated and separated from stockpiles of other listed waste types.



PHOTOGRAPH 2.1: Completed leachate dam. View looking north.
(Source: Mackellar Excavations April 2023)



PHOTOGRAPH 2.2: Resource recovery facility.
(Source: Photograph February 2023)

A summary of the approved landfill and resource recovery facility is provided in the accompanying Table 2.1.

Table 2.1: Summary of the Approved Landfill and Resource Recovery Project: Marys Mount Quarry

Project Element	Summary
Landfilling, resource recovery	General solid (non-putrescible) waste (Class 2) per the consent and EPL to be deposited within the existing void of the already approved quarry at Marys Mount. Resource recovery including but not limited to bricks, tiles, concrete, scrap metal, clay tiles and excavated road materials. Importantly, no toxic or putrescible or asbestos waste will be accepted at the facility.
Volume of waste	Up to 2,509,000 bench cubic metres (approximately 4,014,000 tonnes) of total landfill.
Rehabilitation	Rehabilitation of the final landform, restoring the site to that approximating the original, pre-quarry landform, with native vegetation (EEC) plantings.
Disturbance Area	Landfilling to be confined to existing approved quarry footprint and to associated infrastructure outside of the approved quarry footprint. Resource recovery to be undertaken to north of quarry.
Waste accepted	The approved facility to accept up to 200,000 tonnes per annum of waste to landfill. No mention of the resource recovery facility in terms of volume of waste that could be accepted. Instead, and in the interests of limiting impacts, Council imposed via consent condition G6 a limit of 60 waste truck movements per day on the overall development- a limit that applied to the combined landfill and resource recovery waste operations. Assuming waste being transported by truck and dog, this equates to 297,000 tonnes per annum.
Landfill management	Reliance on existing quarry management plans, supplemented by a Landfill Environmental Management Plan to deal with construction and operation matters under the Benchmark Techniques specified in the Environment Protection Authority (2016) Environmental Guidelines: Solid Waste Landfills including: <ul style="list-style-type: none"> ▶ Landfilling and leachate management. ▶ Ground and surface water management. ▶ Incident management. ▶ Landfill odour, noise and dust management. ▶ Landfill closure including rehabilitation and revegetation.
Employment	The landfill will provide full-time and part-time employment for 3 persons, with the opportunity for more casual employment.
Hours of Operation	<ul style="list-style-type: none"> ▶ 7.00 am and 6.00 pm Monday to Friday (Australian Eastern Daylight Time) ▶ 7.00am to 5.00pm Monday to Friday(Australian Eastern Standard Time) ▶ Saturday - 8.00am to 3.00pm ▶ Sunday and Public Holidays - closed.

3. PROPOSED MODIFICATION OF CONSENT

3.1 Description of Modification Sought & Justification

On 24 June 2021 the Northern Regional Planning Panel approved a development application, being DA 2020/054, for the establishment of a non-putrescible waste landfill facility, including a resource recovery facility, at Marys Mount Quarry- the "Waste Disposal Facility". Both the landfill and resource recovery facilities are now fully operational.

The current development consent DA 2020/054 allows the importation of up to 200,000 tonnes per annum of waste to the landfill: consent condition A2(a). However, there was no specific mention of the resource recovery facility itself in the consent, or to the volume of waste that could be accepted in any one year at the resource recovery facility. Instead, and in the interests of limiting impacts, Council imposed via DA 2020/054 consent condition G6 a limit of 60 waste truck movements per day (ie. 30 laden waste trucks per day) on the overall development- a limit that applied to the combined landfill and resource recovery waste operations. This consent condition states:

"G6. Operations of the Waste Disposal Facility is to be limited to a maximum of 60 truck movements (includes loaded and unloaded) per day."

Assuming waste being transported by truck and dog, this equates to 297,000 tonnes per annum. This figure has been derived based on the following calculations:

The consent allows the operation of the landfill and resource recovery facilities (Waste Disposal facility) 6 days per week. The proponent operates the facility for 50 weeks of the year. The following volumes of waste are possible:

30 loads/day x 6 days per week= 180 truck loads per week x 50 weeks pa= 9,000 loads per annum.

@ 33 tonnes per load (typical truck and dog)= 9,000 x 33= 297,000 tonnes per annum.

@36-38 tonnes per load (B-double)= 9,000 x 36-38= 324,000 tonnes to 342,000 tonnes per annum.

Based on the above, and for the sake of clarity and certainty in terms of interpreting the scope and nature of the consent, MOD 1 provides for the following revised limits on waste accepted at both the landfill and resource recovery facilities:

- 200,000 tonnes per annum of waste to the approved landfill per existing consent condition A2(a).
- 97,000 tonnes per annum of waste to the approved resource recovery facility per a proposed consent condition A2(a1).

No other changes are proposed to the development consent or the nature of the approved Waste Disposal Facility, nor does this modification application give rise to any changes in likely environmental impacts associated with the approved development. In particular, no changes are sought in terms of approved truck volumes associated with the approved landfill and resource recovery facility.

3.2 Proposed Modification Sought to DA 2020/054

■ Summary: Conditions of Consent Affected by this Modification Application

MOD 1 seeks to modify only Conditions A1 and A2 of Development Consent DA 2020/054 in order to provide details of the volume of waste that will be accepted in any one year at the resource recovery facility, as summarised in the accompanying Table 3.1.

Table 3.1: Conditions of consent affected by proposed modification (MOD 1). Numbering is the same for Development Consent 2020/054

Consent Condition Number	How Consent Condition is affected by this s.4.55(1A) modification
A1	<i>This Statement of Environmental Effects report prepared by Outline Planning Consultants Pty Ltd in support of the s.4.55(1A) modification application provides details of the modification sought.</i>
A2	<i>No change to maximum of 200,000 tonnes of waste to be accepted at the landfill. New wording added, referring to maximum volume of waste accepted at the resource recovery facility in any one year, in new consent condition A2(a1).</i>
A3-H1	<i>[No changes proposed]</i>

■ Proposed Modification of Development Consent DA2020/054

The consent conditions proposed to be modified in Development Consent DA2020/054 have the same numbering system as that of the current consent, as set down in the following. Words proposed to be inserted are shown in **green bold italics** (add). [NOTE: No wording in the current consent proposed to be deleted]

- **Condition A1 of the Development Consent DA 2020/054 is to be amended by inserting a reference to this Statement of Environmental Effects report as follows:**

"A1. The proposed development shall be carried out generally in accordance with the details set out in the following:

- *Development Application form lodged, 10 August 2020;*
- *Environmental Impact Statement, prepared by Outline Planning Consultants Pty Limited, dated July 2019;*
- *Response to Submissions: EIS Proposed Landfill Marys Mount Quarry, prepared by Outline Planning Consultants Pty Limited, dated 8 October 2020;*
- *Response to Council RFI: EIS Proposed Landfill Marys Mount Quarry, prepared by Outline Planning Consultants Pty limited, dated 15 January 2021;*
- *Response to Council's Further Request for Additional Information: Proposed landfill in Quarry Void at Marys Mount, prepared by Outline Planning Consultants Pty Limited, dated 21 May 2021;*
- ***Statement of Environmental Effects entitled Section 4.55(2) Modification Application No. 1 (MOD 1) Approved landfill and resource recovery facility, Development Consent DA 2020/054 Marys Mount Quarry, NSW prepared by Outline Planning Consultants and dated September 2023 andexcept as otherwise provided by the conditions of consent."***

[Reason for the above modifications to consent condition A1:

- ▶ To refer to this MOD 1 s.4.55 modification application report in the consent DA2020/054.]

- **Condition A2 of the Development Consent DA 2020/054 is to be amended by the insertion of an additional condition A2(a1) as follows:**

"A2. To confirm and clarify the terms of this approval, consent is given for the following:

a) Disposal of no more than 200,000 tonnes per annum of non-putrescible waste to landfill;

a1) Acceptance of no more than 97,000 per annum of waste to the resource recovery facility;

b) Disposal of no more than 2,509,000 cubic metres (approximately 4,014,000 tonnes) of non-putrescible waste to land fill over three {3} stages;

c) Rehabilitation of the site (Stage 4).

If contrary to the maximum disposal volume of 2,509,000 cubic metres listed as b), the final land form is not to exceed that of the Final Rehabilitation Landform Final Surface Plan, prepared by Martens & Associates Pty Ltd, dated 14/05/2020, Project No. P1907436, Drawing No. PSOI-CIOO, Rev B."

[Reason for the above modifications to consent condition A2:

- ▶ To include reference to the resource recovery facility component of the approved Waste Disposal Facility and to set a limit on the volume of waste that the resource recovery facility can accept in any one year. The types of waste that can be received at the resource recovery facility are specified in the submission by Outline Planning Consultants dated 21 May 2021, referred to in condition A1 of the consent DA2020/054.]

4. PLANNING ASSESSMENT

4.1 Overview

This Statement of Environmental Effects (SEE) report has been prepared pursuant to the *Environmental Planning and Assessment Act 1979* (EP&A Act) and the *Environmental Planning and Assessment Regulation 2021* (EP&A Regulation 2021), and reviews the relevant environmental planning instruments and guidelines that apply to the subject Section 4.55(1A) modification application: MOD 1. This SEE report also assesses the potential environmental impacts of the proposed modification with particular reference to the relevant heads of consideration listed under Section 4.15(1) of the EP&A Act. The proposed modifications to Development Consent DA2020/054 is considered to be consistent with the current objects of the EP&A Act for the following reasons:

- The site already supports an existing, lawfully established, operating landfill and resource recovery facility, licensed by the EPA.
- The proposed modification seeks to regularise the consent in terms of particularising the volumes of waste to be accepted in any one year by the landfill and resource recovery components of the approved development. The volumes of waste proposed accord with the limits on waste truck movements set down in condition G6 of the existing consent DA2020/054.
- There will be no likely impacts on the environment or the amenity of the neighbourhood arising from the proposed modification, satisfying s.4.55(1A)(a) of the EP&A Act.
- The modified development is substantially the same development as that for which consent was originally granted, satisfying s.4.55(1A)(b) of the EP&A Act.
- The proposed development will provide local employment opportunities in association with the continued use of the site as an operating landfill and resource recovery facility.

4.2 Section 4.55: Statutory Matters

The NSW EP&A Act establishes the system of development approvals in NSW. The power to modify development consents is provided in Section 4.55 of the EP&A Act, which confers three separate powers to modify a development consent:

- Modifications involving errors etc.- contained in s.4.55(1). Not applicable to this application.
- Modifications with minimal environmental impact- contained in s.4.55(1A). Applicable to this application.
- Other modifications- contained in s.4.55(2).Not applicable to this application.

Sub-section 4.55(1A) relevantly provides:

“(1A) Modifications involving minimal environmental impact A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if—

(a) it is satisfied that the proposed modification is of minimal environmental impact, and

(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and

(c) it has notified the application in accordance with—



- (i) the regulations, if the regulations so require, or
 - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and
 - (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.
- Subsections (1), (2) and (5) do not apply to such a modification. “

Accordingly, the key test for the Council to consider is to determine whether it has the power to assess a modification application is whether it is satisfied that the development is substantially the same development as the development for which consent was originally granted -commonly referred to as the 'substantially the same test'.

This modification application is one made under s.4.55(1A) of the EP&A Act, which implies “minor” or “minimal” environmental impact.

It is relevant to note that the words “to modify a development consent” is used. Related to the above to ‘modify’ means to alter without radical transformation per *Sydney City Council v Ilene Pty Ltd* [1984] 3 NSWLR 414 and *Agricultural Equity Investments Pty Ltd v Westlme Pty Ltd (No 3) (Westlme)* at [173] cited by Pain J in *Central Coast Council v 40 Gindurra Road Somersby Pty Ltd (No 2)* [2019] NSWLEC 171 at [147]. The modification power under s.4.55 of the EP&A Act is free-standing, and is unaffected by the prohibitions or restrictions which apply elsewhere in Part 4 of the EP&A Act. Importantly, a modification is not the granting of consent (s.4.55(4)). This is a fundamental characteristic of the power to modify a development consent. The distinction between a modification application and a development application was explained in *Windy Dropdown v Warringah Council* (2000) NSWLEC 240 at [28] where Talbot J when referring to s.96 (now s.4.55) of the EP&A Act said:

“[28] Subsection (4) of s 96 is the same as the previous subs (4) of s 102. It expressly distinguishes modification of a development consent from the granting of development consent, thereby suggesting that at least in some respects the consideration and approval of an application for modification is to take place in a different context to the consideration of an application for development consent.

Furthermore, the subject of an application made pursuant to s 96 is the development consent, not the development itself.”[Our emphasis]

As a result, a determining authority simply has no power to consider a modification application afresh, as if it were a development application. This is because modification is not ‘development’ per the Land & Environment Court in *Moin Pty Limited v The Council of the City of Sydney* [2021] NSWLEC 1542 dated 21 September 2021 at [10].

Accordingly, this Section 4.55 application does not seek the grant of a development consent; merely an approval to modify conditions of Development Consent DA2014/0098. Refer to Section 4 of this SEE report for details. As a result, s.4.12 of the EP&A Act has no application and neither does Part 2 of Schedule 3 of the EP&A Regulation 2021 per the decision of Lloyd J in *Concrite Quarries Pty Ltd v Wingecarribee Shire Council* [2000] NSWLEC 97 (4 May 2000). This is because the language used in s.35 of Schedule 3 does not refer to a modification, but instead to development involving alterations or additions.

■ The first s.4.55 'test'

The **first 'test'** of a modification application involves a consideration of whether or not that proposal is 'substantially the same' development. This test has been the subject of case law and is relatively settled. The power under s 4.55 is simply one to "modify the consent", as explained by Preston CJ in *Scrap Realty Pty Limited v Botany Bay City Council* [2008] NSWLEC 333 (19 December 2008) at [13-14]:

*"Originally, the power to modify consents was restricted to modifying "details" of a consent. That restriction was removed in 1985 and the power was enlarged to be, simply, to modify the consent: see North Sydney Council v Michael Standley & Associates Pty Ltd [1998] NSWSC 163; (1998) 43 NSWLR 468 at 475. **The concept of modification involves "alteration without radical transformation...."**[our emphasis]*

A summary of the key components of the proposed modification (MOD 1) compared to the existing approved landfill and resource recovery operations is provided in the accompanying Table 4.1.

Table 4.1: Comparison of Approved Landfill/Resource Recovery Operations and Modification

DA 2020/054 Component	Current Approval	Proposed Modifications (MOD 1)
Landfill footprint, staging	As per DA2020/054	No change proposed.
Hours of operation of approved landfill and resource recovery facility	As per DA2020/054 ie. 7.00am to 6.00pm Monday to Friday (Australian Eastern Daylight Time); 7.00am to 5.00pm Monday to Friday (Australian Eastern Standard Time); 8.00am to 3.00pm on Saturdays; closed at any other time- per consent Condition G1.	No change proposed.
Approved haulage route, waste truck numbers	As per DA2020/054 ie. a limit of 30 laden waste trucks per day (60 movements) per consent Condition G6.	No change
Annual rate of acceptance of waste material	<ul style="list-style-type: none"> ▶ Landfill 200,000 tonnes pa per consent Condition A2(a). ▶ The consent is silent in terms of the annual tonnage of waste for the approved resource recovery facility. ▶ Consent condition G6 limits waste trucks to 30 laden trucks per day for combined landfill and resource recovery facilities= 297,000 tonnes pa (assumes truck and dog @33 tonnes/load) 	<ul style="list-style-type: none"> ▶ No change to types of waste to be accepted at either the landfill or resource recovery facilities. ▶ No change to volume of waste to landfill facility. ▶ Change proposed clarifying the volume of waste to be accepted by resource recovery facility based on truck numbers allowed by consent condition G6. Maximum of 97,000 tonnes pa to resource recovery.
Life of operation of approved landfill and resource recovery facility	As per DA2020/054 ie. 25 years or when final landform achieved, whichever occurs first.	No change

The term 'substantially' means "essentially or materially having the same essence" (*Vacik Pty Ltd v Penrith City Council* [1992] NSWLEC 8 and endorsed in *Agricultural Equity Investments Pty Ltd v Westlime Pty Ltd (No 3)* [2015] NSWLEC 7 at [173], and clarified even further by the Chief Judge of the NSW Land and Environment Court, Preston CJ, in *Arrage v Inner West Council* [2019] NSWLEC 85 dated 7 June 2019 at [24-31].

The changes proposed by the modification application are considered to satisfy the 'substantially the same' test, and in particular:

- The proposed s.4.55 modification is essentially the same as the presently approved approved landfill and resource recovery facility. Stated another way, the fundamental nature of the approved landfill and resource recovery facility is not proposed to be changed.
- The proposed modification clarifies the annual tonnage of waste to be accepted at the approved resource recovery facility, within the limits imposed by consent condition G6 regarding daily waste ruck volumes. Currently, the consent is silent in terms of the annual tonnage of waste intended to be directed to the approved resource recovery facility.
- This s.4.55 modification application does not contemplate any 'radical alteration' of the approved development. The proposed modification does not alter the previously approved limits the amount of waste to be accepted by the combined landfill and resource recovery facilities per consent condition G6, development footprint, operating hours, or the finished land form from the originally approved development. In short, a modification application is appropriate to obtain the necessary consent for the proposed modifications sought.

For the reasons outlined above, the proposed MOD 1 satisfies the 'substantially the same' test.

■ The second s.4.55 'test'

s.4.55(3) of the EP&A Act applies to s.4.55(1A) modification applications. It states:

"(3) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified."

The Courts have deemed the above to be the **second 'test'** of a modification application. s.4.15(1) of the EP&A Act sets out in the following:

"(a) the provisions of:

- (i) any environmental planning instrument, and*
- (ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*
- (iii) any development control plan, and*
- (iiia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and*
- (iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), that apply to the land to which the development application relates,*
- (b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
- (c) the suitability of the site for the development,*
- (d) any submissions made in accordance with this Act or the regulations,*
- (e) the public interest."*

The second test of MOD 1 is assessed in the following sections.

4.3 Section 4.15(1)(a)(i) the Provisions of any Planning Instrument

■ Gunnedah Local Environmental Plan 2012

The *Gunnedah Local Environmental Plan* (LEP) 2012 is the comprehensive environmental planning instrument applying to the Marys Mount Quarry site. Under the LEP the approved landfill and resource recovery facility is a permitted use in the RU1 Primary Production zone. The proposed modification is consistent with the following relevant provisions of Gunnedah LEP 2012, summarised in the accompanying Table 4.2.

Table 4.2: Assessment of s.4.55(1A) modification against relevant provisions of Gunnedah LEP 2012

Relevant LEP provision	Compliance of modification (MOD 1)
Clause 1.2–Objectives of the LEP	Complies , in particular with Clauses 1.2(2)(b),(c) and (d) in that the proposed modification will promote the orderly and economic use of the land.
Clause 2.3 – Zone Objectives and Land Use Table	Complies . The Waste Disposal Facility, including the resource recovery facility, found to be in accordance with clause 2.3 when assessed by Council prior to approval being granted in 2021. No change is proposed to the nature or extent of the approved Waste Disposal Facility, or to waste truck numbers.
Clause 5.10 Heritage	Complies . No heritage conservation issues arise from the modification.
Clause 6.5 Services	Complies . The modification will not require any further services being provided.

■ State Environmental Planning Policies (SEPPs)

The proposed modification complies with the other state environmental planning policies (SEPPs), summarised in the following Table 4.3.

Table 4.3: Summary compliance of the s.4.55 Modification with relevant SEPPs

Relevant SEPP & provision	Compliance of modification (MOD 1)
State Environmental Planning Policy (Resources and Energy) 2021	Complies . Considered by the determining authority prior to the issue of the original consent DA2020/054. The s.4.55 modification: <ul style="list-style-type: none"> Will continue to be capable of achieving a suitable level of recovery of waste having regard for limits on waste truck volumes. The proposal is for the continuation of resource recovery of waste.
State Environmental Planning Policy (Planning Systems) 2021	Not applicable . Considered by the determining authority prior to the issue of the original consent DA2020/054, not relevant to consideration of this modification application.
State Environmental Planning Policy (Transport and Infrastructure) 2021	Complies . Sections 2.122, 2.118 and 2.119 of this SEPP are not applicable as no development consent is being sought. The s.4.55(1A) modification: <ul style="list-style-type: none"> Will continue to be capable of achieving a suitable level of recovery of waste. No change is proposed to existing transport arrangements or volumes of waste being transported to and from the approved Waste Disposal Facility.
SEPP (Biodiversity and Conservation) 2021	Complies . The modification do not result in any loss of land with ecological values - refer to Section 4.8 for further details.
SEPP(Resilience and Hazards) 2021	Complies . Considered by the determining authority prior to the issue of the original consent DA2020/054. No change proposed.

4.4 Section 4.15(1)(a)(ii) any Draft Planning Instrument

Not applicable.

4.5 Section 4.15(1)(a)(iii) any Development Control Plan

The *Gunnedah Development Control Plan 2012* (DCP) was considered prior to the grant of consent in 2014 and found to satisfy the relevant provisions of this DCP.

The DCP contains no provisions which specifically apply to landfill or resource recovery industries per se, however, it does cover a number of provisions of a more generic nature which may relate to such development.

The proposed modification is consistent with the following relevant provisions of the DCP, summarised in the accompanying Table 4.4.

Table 4.4: Assessment of modification against relevant provisions of the Gunnedah DCP 2012

Relevant DCP provision	Compliance of modification (MOD 1)
Clause 6.2- Parking	No changes arise from the modification proposed. No further assessment required.
Clause 6.3- Landscaping	No changes arise from the modification proposed. No further assessment required.
Clause 6.4- Outdoor lighting	No changes arise from the modification proposed. No further assessment required.
Clause 6.5 - Outdoor advertising/signage	No changes arise from the modification proposed. No further assessment required.
Clause 6.6 - Environmental effects, other issues	The environmental effects of the proposed modification have been assessed elsewhere in this SEE report. The proposed modification does not give rise to any additional impacts.

4.6 Section 4.15(1)(a)(iiia) any Planning Agreements

There is a voluntary planning agreement (VPA) in place following the grant of the quarry consent, in 2014, however, no such VPA applies to the approved landfill and resource recovery facilities.

4.7 Section 4.15(1)(a)(iv) the Regulations

The term "the Regulations" refers to the *Environmental Planning & Assessment Regulation 2021* (EP&A Regulation 2021), which commenced on 1 March 2022.

The currently approved landfill and resource recovery facility development has undergone a rigorous EIS approval process and was approved in June 2021 with numerous stringent conditions designed to minimise the impact of the development on the environment.

It should also be noted that Part 2 of Schedule 3 of the EP&A Regulation 2021 has no application per the decision of Lloyd J in *Concrite Quarries Pty Ltd v Wingecarribee Shire Council* [2000] NSWLEC 97 (4 May 2000).

4.8 Section 4.15(1)(b) Impacts

The proposed modification (MOD 1) seeks to clarify the amount of waste that can be accepted at the resource recovery facility, within the limits imposed on overall waste truck volumes dictated by consent DA2020/054 condition G6. The proposed s.4.55(1A) modification does not give rise to any additional impacts, and in particular:

- Groundwater and stormwater. Groundwater impacts were previously considered by Council when assessing DA2020/054 and found to be acceptable. No physical changes are proposed to the approved Waste Disposal Facility as a part of this s.4.55(1A) modification. Appropriate management and mitigation measures, as outlined in the site Landfill Environmental Management Plan (LEMP) and EPL No.s 21638 and 20262, will continue to be carried out.
- Roads and traffic impacts. Roads and traffic impacts were previously considered by Council when assessing DA2020/054 and found to be acceptable. No changes are proposed to existing arrangements. In particular, no changes are sought to DA2020/054 consent condition G6, which limits the number of waste trucks to a maximum of 30 laden trucks per day (ie. 60 movements). Appropriate management and mitigation measures, as outlined in the site LEMP and EPLs, will continue to be carried out.
- Hours of operation. The hours of operation of the landfill and resource recovery facility were previously considered by Council when assessing DA2020/054 and found to be acceptable. No changes are proposed to existing arrangements.
- Air quality. Air quality impacts were previously considered by Council when assessing DA2020/054 and found to be acceptable. No changes are proposed to existing arrangements. Appropriate management and mitigation measures, as outlined in the site LEMP and EPLs, will continue to be carried out.
- Ecological impacts. Ecological impacts were previously considered by Council when assessing DA2020/054 and found to be acceptable. No physical changes are proposed to the approved Waste Disposal Facility as a part of this s.4.55(1A) modification. Appropriate management and mitigation measures, as outlined in the site LEMP and EPLs, will continue to be carried out. Rehabilitation would take place progressively until the final surface level has been completed.
- Noise impacts. Noise impacts were previously considered by Council when assessing DA2020/054 and found to be acceptable. No additional on-site noise impacts arise as a result of the proposed modification. The operating hours of the landfill and resource recovery facility will be limited in accordance with the approved times. Appropriate management and mitigation measures, as outlined in the site LEMP and EPLs, will continue to be carried out.
- Visual impacts. Visual impacts were previously considered by Council when assessing DA2020/054 and found to be acceptable. No physical changes are proposed to the approved Waste Disposal Facility as a part of this s.4.55(1A) modification. Appropriate management and mitigation measures, as outlined in the site LEMP and EPLs, will continue to be carried out.
- Social and economic impacts. The proposed modification will provide certainty to the proponent in terms of clarifying the volume of waste that the resource recovery facility can accept. Social and economic impacts were previously considered by Council when assessing DA2020/054 and found to be acceptable. The proposed modification would result in continued long-term benefits in terms of employment creation and the acceptance of waste at the Waste Disposal Facility.
- Aboriginal heritage. No physical changes are proposed to the approved Waste Disposal Facility as a part of this s.4.55(1A) modification.

- Hazards and risks. Hazards and risks were previously considered by Council when assessing DA2020/054 and found to be acceptable. The environmental risks, potential impacts of the landfill and resource recovery facility and the ameliorative measures required to alleviate these risks are addressed throughout the original EIS. No physical changes are proposed to the approved Waste Disposal Facility as a part of this s.4.55(1A) modification. Appropriate management and mitigation measures, as outlined in the site LEMP and EPLs, will continue to be carried out.

4.9 Section 4.15(1)(c) Suitability of the Site

The suitability of the site for a landfill and resource recovery facility was considered by Council and the Northern Regional Planning Panel prior to the quarry being approved in August 2020.

The approved landfill and resource recovery facility is an existing waste resource recovery facility operating under a variety of approvals including the project approval Development Consent DA 2020/054, the approved *Landfill Environmental Management Plan* and EPLs No.s 20262 and 21638. Due to the history of operations at the facility, the social, physical and economic environments are well understood and the site has a well established environmental management systems. The proposed modification aims to clarify the volume of waste that can be accepted at the resource recovery facility in any one year.

4.10 Section 4.15(1)(d) Any Submissions

To be considered in due course by Council following exhibition of the proposed modification.

4.11 Section 4.15(1)(e) The Public Interest

■ ESD principles

The five accepted principles of ecologically sustainable development (ESD) were addressed in the original EIS, prior to the approval of DA2020/054 in August 2020. The approved landfill and resource recovery facility incorporates ESD principles in its current operations, with operations at the facility including a range of well-established management tools, controls and environmental management and mitigation measures to minimise potential impacts on the environment. The proposed modification would not impact on the ability of the facility to operate according to these principles. Following rehabilitation, the modification would enable the site to provide a landform rehabilitated with vegetation endemic to the region, enhancing the ecological and habitat value of the local area.

The proposed modifications thus constitute what is considered to be the orderly and economic development of the land and the proper development and management of resources and the approved facility as a whole.

■ NSW Waste Avoidance and Resource Recovery Strategy 2014–21

The NSW *Waste Avoidance and Resource Recovery Strategy 2014–21* has the aims of reducing waste generation and encouraging the recycling of waste. The strategy was released in December 2014. The proposed modification clarifies the volume of waste that can be accepted at the resource recovery facility in any one year. If approved, the modification will contribute to this strategy by increasing opportunities for resource recovery and recycling from building, demolition and other related wastes.

■ Public interest generally

There will be no significant detrimental effects arising as a result of this modification, given that no physical changes are proposed to the approved operation, or to the daily numbers of trucks bringing waste to the approved Waste Disposal Facility. The modification proposed will optimise the use of the site for the purposes of resource recovery.

■ Protection of the Environment Operations Act 1997

The *Protection of the Environment Operations Act 1997* (POEO Act) provides an integrated system of licensing for industries, like landfills and resource recovery facilities.

The landfill and quarry activities undertaken at Marys Mount Quarry currently operates under the terms and requirements of Environment Protection License (EPL No. 20262) for a Land Based Extractive Activity, issued pursuant to the provisions of the POEO Act. The resource recovery component of DA2020/054 currently operates under the terms and requirements of a separate Environment Protection License (EPL No. 22638).

The proposed modification does not activate the need for any change in the operative provisions of the current EPLs, save for reference to the modification, once approved. The landfill and resource recovery operations will continue to be subject to the same conditions of these two EPLs currently issued by the EPA.

5. CONCLUSIONS

The existing approved landfill and resource recovery facility operates on land that forms a part of Marys Mount Quarry. Landfilling of the quarry void forms a part of the Development Consent DA2020/054, issued in August 2020, as does the sharing of resource recovery and quarry stockpiling activities in the area to the north of the quarry pit.

The current development consent allows the importation of up to 200,000 tonnes pa of waste to the landfill: consent condition A2(a). However, when consent was issued there was no mention of the resource recovery facility in terms of volume of waste that could be accepted. Instead, and in the interests of limiting impacts, Council imposed via consent condition G6 a limit of 60 waste truck movements per day on the overall development- a limit that applied to the combined landfill and resource recovery waste operations. Assuming waste being transported by truck and dog, this equates to a total of 297,000 tonnes per annum.

Based on the above, and for the sake of clarity and certainty in terms of interpreting the scope and nature of the consent, this s.4.55(1A) modification (MOD 1) provides for the following revised limits on waste accepted at both the landfill and resource recovery facilities:

- 200,000 tonnes per annum of waste to the approved landfill per existing consent condition A2(a).
- 97,000 tonnes per annum of waste to the approved resource recovery facility per proposed consent condition A2(a1).

No other changes are proposed to the development consent or the nature of the approved Waste Disposal Facility, nor does this modification application give rise to any changes in likely environmental impacts associated with the approved development. In particular, no changes are sought in terms of approved truck volumes associated with the approved landfill and resource recovery facility.

In conclusion, this Section 4.55(1A) application (MOD 1) has planning merit and is substantially the same development for which the consent was originally granted, with acceptable impacts when considered in terms of Section 4.15 of the *Environmental Planning and Assessment Act 1979*. The proposal is in the public interest.

Given the above it is requested that Council can exercise its discretion to approve the s.4.55 modification as requested.