

DEVELOPMENT APPLICATION NO. 271/14, EXTRACTIVE INDUSTRY, LOT 24, DP 705683, 4003 PACIFIC HIGHWAY, DIRTY CREEK

PURPOSE:

This report provides an assessment of Development Application 271/14 for an extractive industry (gravel quarry) at 4003 Pacific Highway (Lot 24, DP 705683) Dirty Creek.

It is recommended that the application be refused, principally because the application is inadequate and because the consent of the adjoining land owner to the east (Crown Lands) has not been obtained.

THE PROPOSAL

The proposed development is for expansion of an extractive industry with a proposed extraction rate of 490 000 tonnes per annum. The extractive industry has a current operating license from the NSW Environment Protection Authority (EPL 13330) for the extraction of 50 000 tonnes per annum. The proposed development constitutes designated development pursuant to Clause 4(1) of the Environmental Planning and Assessment Regulation 2000.

The statement of environmental effects provided with the application specifies that the proposed development also includes installation of three crushers (to process 9000 tonnes of road base material per day), and that the development will operate from 7:00 am till 6:30 pm Monday to Saturday.

THE SITE:

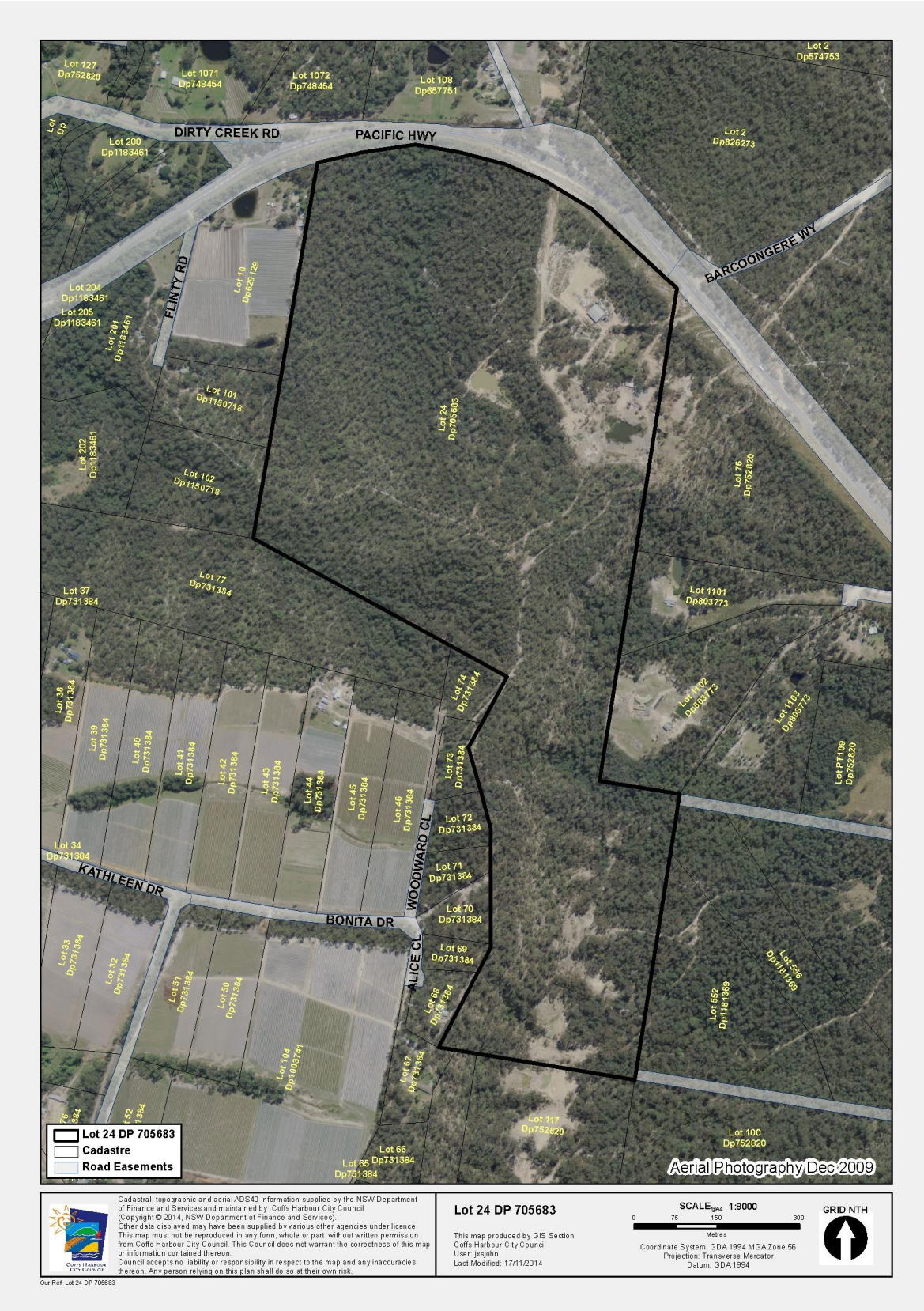
The development site is Lot 24, DP 705683, 4003 Pacific Highway, Dirty Creek.

The site is located approximately 40 kilometres north of the Coffs Harbour City Centre and approximately six kilometres north of Corindi Beach. The site is irregular in shape and shares a boundary with the Pacific Highway and 19 other properties. It is 76.38 hectares in area. There is significant slope to the site with fall to the north over the northern half of the site. The southern half of the site falls to the east. The site is mostly vegetated with existing quarry operations over parts of the site that are not vegetated.

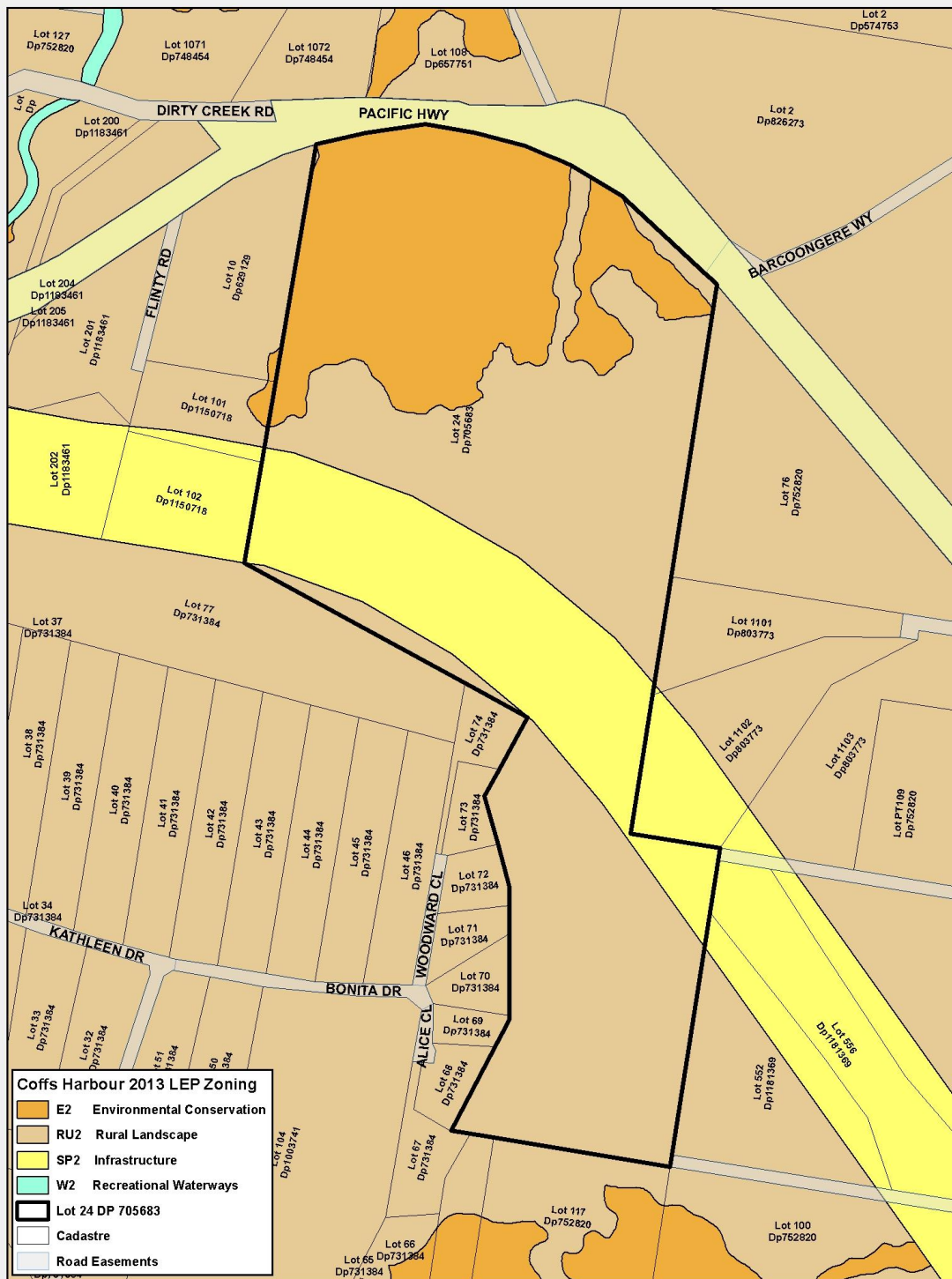
The site is zoned RU2 Rural Landscape, E2 Environmental Conservation and SP2 Infrastructure under Coffs Harbour Local Environmental Plan 2013. The SP2 Infrastructure zone on the site is the proposed location for the Pacific Highway as part of the Woolgoolga to Ballina upgrade project. An aerial photograph and zoning map of the site is provided on the following pages.

The development application plans show works associated with the development occurring on the adjoining land to the east (Lot 76, DP 752820). The fact that the owner of this land has not consented to lodgment of the application is a significant issue that prevents approval of the application. This matter is addressed in the Issues section of this report.

LOT 24, DP 705683, 4003 PACIFIC HIGHWAY – AERIAL PHOTOGRAPH



LOT 24, DP 705683, 4003 PACIFIC HIGHWAY **COFFS HARBOUR LOCAL ENVIRONMENTAL PLAN 2013 ZONING**



CONSULTATION:

Advertising and Notification

The application was advertised and notified in accordance with the statutory requirements for designated development. This included notification of all adjoining property owners and advertisement on 10 September 2014 and 24 September 2014 with a submission period from 11 September 2014 to 10 October 2014.

Three submissions were received. One submission was from NSW Trade and Investment (Crown Lands). Their concerns are addressed in the Issues section of this report. The matters raised in the remaining submissions are addressed in the S79C Evaluation appended to this report.

All of these submissions have been provided to the Department of Planning with the last submission received being provided on 16 October 2014.

State Government Referrals

The application was referred to NSW Environment Protection Authority, NSW Office of Environment and Heritage, NSW Office of Water and the NSW Roads & Maritime Service for comment. The matters raised by these submissions are addressed in the Section 79C Evaluation appended to this report.

Council Departments

Council internal departments have provided comment on the development proposal and their comments have been incorporated into the assessment of the application.

STATUTORY MATTERS:

The following Environmental Planning Instruments are relevant to assessment.

- State Environmental Planning Policy No 55 – Remediation of Land
- State Environmental Planning Policy (Infrastructure) 2007
- State Environmental Planning Policy (State & Regional Development) 2011
- State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007
- State Environmental Planning Policy (Rural Lands) 2008
- Coffs Harbour Local Environmental Plan 2013

Coffs Harbour Development Control Plan 2013 is also relevant to assessment of this application.

The application is identified as “regional development” under State Environmental Planning Policy (State and Regional Development) 2011 and as a result the application is to be determined by the Joint Regional Planning Panel (Northern Region).

Section 79C of the Environmental Planning & Assessment Act 1979 specifies the matters which a consent authority must consider when determining a development application. The consideration of matters is limited in so far as they must be of relevance to the particular application. All of the planning instruments specified above are considered in detail in the Section 79C Evaluation provided appended to this report.

ISSUES:

Development on adjoining land

The development application plans show works associated with the development occurring on the adjoining land to the east (Lot 76, DP 752820).

This land is administered by the NSW Trade and Investment (Crown Lands). Crown Lands have advised that there are currently no tenures issued by the Crown authorising use or occupation of the land or extraction of materials from the reserve and that they object to the proposal as land owner's consent has not been granted to making of the application.

This is a statutory and preliminary requirement to lodgment of a development application required by Regulation 49 of the Environmental Planning and Assessment Regulation 2000. It is not lawful to approve a development application without evidence that the owner of the land on which the development is to be carried out consents to the application.

Statutory Requirements for Designated Development and Environmental Impact Statements:

There are a number of statutory procedures that relate to the manner and form of development applications for designated development. This includes requirements relating to an environmental impact statement.

Schedule 2, Part 2 of the Environmental Planning and Assessment Regulation requires proponents preparing documentation for a designated development to obtain environmental assessment requirements from the Director General (Director General's Requirements). The Regulation also requires that a proponent prepare an environmental impact statement that complies with the environmental assessment requirements that have been provided by the Director General.

As provided in the development description of this report, the proposed development is an extractive industry with a proposed extraction rate of 490 000 tonnes per annum. The application also proposes installation of three crushers, to process 9000 tonnes of road base material per day.

The Director General's requirements provided with this application relate to a proposal for an extractive industry only and not to installation of a crusher.

The crusher component of the development would be defined as "Crushing, Grinding or Separating Works" which is an activity that is designated development in its own right. If consent is being sought for the crusher component then Director General's requirements should be sought and obtained and the environmental impact statement then prepared in accordance with requirements that relate to the crusher component.

As a result the development application is incomplete with respect to installation of the proposed crushers.

Development Application Documentation:

Plans

Development application documents and plans are required to be in accordance with Schedule 1, Part 1 of the Environmental Planning and Assessment Regulation 2000. The plans provided with Development Application 271/14 do not meet this required standard. Matters that plans do not provide (as required by this standard) include

- a site plan of the whole of the land
- the location, boundary dimensions, site area and north point of the land,
- existing vegetation and trees on the land,
- the boundaries of the existing and proposed quarry,
- the location of existing watercourses on the land,
- existing levels of the land (in relation to the quarry, roads and existing vegetation)
- The location of services
- The location or area of operation for equipment that will be used at the quarry
- the location, floor plans, elevations and sections of proposed buildings
- proposed parking arrangements
- proposed landscaping and treatment of the land
- the location of the proposed quarry operation with respect to the zoning of the land under Coffs Harbour Local Environmental Plan 2013

In addition to these inadequacies there are some inconsistencies between submitted plans and the statement of environmental effects to operational equipment and structures that are not shown on the plans.

This inadequate documentation means that the development proposal is unclear and that the application is unable to be assessed appropriately.

Contradictory Statements in Development Application Documentation

There are apparent contradictory statements within different documents of the application.

By way of example, the flora and fauna report makes reference to a proposed offset site located in the southeast corner of the property. It makes the statement that “the majority of the property will remain with a significant proportion protected in perpetuity”. This conflicts with statements provided in the statement of environmental effects which refer to this same area as “a potential further supply of extractive materials” and that this area is the “subject of an expanded profit a prendre”.

Assessment of Potential Impacts:

The application was referred to the NSW Roads and Maritime Services for comment. They provided a response and a copy of this was provided to the applicant.

The response expresses concern about the access to the site from the Pacific Highway, in particular site distances at the quarry access and traffic safety associated with traffic exiting the quarry. Given these comments and based on the documentation provided with the application it is considered likely that the safety, efficiency and ongoing operation of the Pacific Highway is likely to be adversely affected by the proposed development.

The application provides some documentation and statements with respect to the following aspects of the operation;

- blasting
- extent of vegetation removal (and location of the quarry in relation to environmental protection zones)
- rehabilitation of the site, during and after quarry operations
- sediment and erosion control

It is considered that there is insufficient detail and clarity to enable proper assessment of the potential impacts, with respect to the above matters.

SUMMARY:

This report highlights a number of inadequacies with the proposed development and documentation that has been provided with the development application.

Council wrote to the applicant on 5 November 2013 advising of specific concerns with the proposed development. In March 2014, Council received correspondence from the quarry operator's legal advisor which made statements about the development proposal, acknowledged inadequacies with application and advised that further information would be submitted. It is important to note that this correspondence does not constitute a formal amendment to the application which, the Environmental Planning and Assessment Regulation 2000 specifies, must be made by the applicant.

As provided in the report, the application remains incomplete with respect to plans, updates to the environmental impact statement and other application documents and owner's consent from the owner of Lot 76, DP 752820 has not been granted.

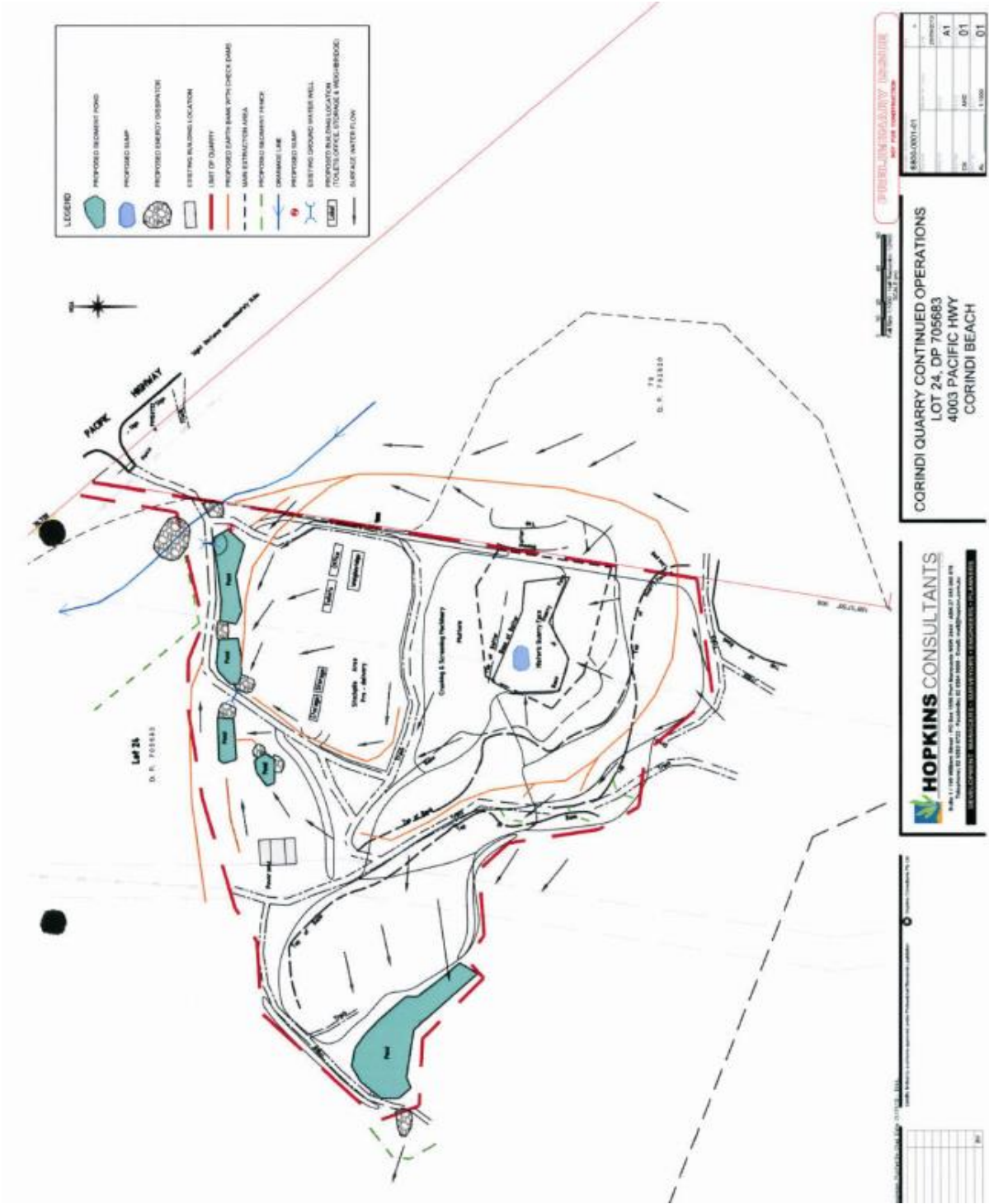
Council has on a number of occasions requested that additional information be provided or that the application be withdrawn. A response received in August 2014 requested an extension of time to provide documentation. A considerable period of time has elapsed since this correspondence and since lodgment of the application. It is considered unreasonable to continue to defer determination of the application for an undefined period of time.

RECOMMENDATION:

- 1. That Development Application No. 271/14 for an extractive industry at Lot 24, DP 705683, 4003 Pacific Highway, Dirty Creek, be refused for the following reasons;**
 - a) The application proposes development on Lot 76, DP 752820 and there is no evidence that the owner of this land consents to the application (as required by Regulation 49 of the Environmental Planning and Assessment Regulation).**
 - b) The application is not in accordance with Director General's Requirements that have been issued by the Department of Planning for crushing works.**
 - c) Plans of the proposed development are not in accordance with Part 1 of Schedule 1 of the Environmental Planning and Assessment Regulation 2000.**
 - d) Adequate information with respect to blasting, flora and fauna impacts, rehabilitation and sediment and erosion control for the proposed development has not been provided to enable likely impacts of the proposed development to be assessed.**
 - e) The safety, efficiency and ongoing operation of the Pacific Highway may be adversely affected by the development.**
- 2. That persons who have made submissions on the application be informed of the determination.**

APPENDIX A

Plan of Proposed Development



APPENDIX B

Section 79C Evaluation Development Application 271/14

a. the provisions of,

i. any environmental planning instrument, and

- ***State Environmental Planning Policy No 55—Remediation of Land***

This state policy requires that the consent authority must not consent to the carrying out of any development unless it has considered whether the land is contaminated.

The proponent has undertaken a preliminary site assessment which concluded that there is minimal likelihood of any contaminated land and it is reasonable to consider that the land is suitable for the proposed development.

- ***State Environmental Planning Policy (Infrastructure) 2007***

Relevant provisions of this state policy are Clause 101 *Development With Frontage To Classified Road* and Clause 104 *Traffic-Generating Development*.

Clause 101 stipulates that the consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied as to a number of specified matters.

Given the response that has been received from the NSW Roads and Maritime Services it is difficult to be satisfied that the safety, efficiency and ongoing operation of the Pacific Highway will not be adversely affected by the development.

- ***State Environmental Planning Policy (State & Regional Development) 2011***

Clause 20 and 21 of this policy state that Council consent functions are to be exercised by regional panels for developments of a class or description included in Schedule 4A of the *Environmental Planning and Assessment Act*.

The relevant provision of Schedule 4A for the proposed development is;

8 Particular designated development

Development for the purposes of:

(a) extractive industries, which meet the requirements for designated development under clause 19 of Schedule 3 to the Environmental Planning and Assessment Regulation 2000, or

The relevant provision of Schedule 3 to the Environmental Planning and Assessment Regulation 2000 for the proposed development is;

19 Extractive industries (1)(a) that obtain or process for sale, or reuse, more than 30,000 cubic metres of extractive material per year, or

The proposed extraction rate is above this amount and as a result, the proposed development is designated development and the application will be determined by the Joint Regional Planning Panel (Northern Region) and not Council.

- ***State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007,***

Part 3 Development applications—matters for consideration

12AA Significance of resource

This provision requires the consent authority to consider the significance of the resource. The proposed development is a significant resource and there will be economic benefit to the state and the region if the resource can be obtained. More detail is still required for the development application for this consideration to effect determination of the application.

12AB Non-discretionary development standards for mining

The non-discretionary development standards referred to in this provision are matters that must be considered before an application can be approved. There are no matters to consider given the recommendation for refusal.

12 Compatibility of proposed mine, petroleum production or extractive industry with other land uses

This provision requires the consent authority to consider the existing uses and approved uses in the vicinity of the proposed development, and determine whether or not the development is likely to have a significant impact on those uses.

The proposed development may have an impact on other uses in the area. Whether or not the impact is unacceptable can only be determined with additional information being provided for the application.

14 Natural resource management and environmental management

This provision requires the consent authority to consider whether the proposed development consent should be issued subject to conditions “aimed at ensuring that the development is undertaken in an environmentally responsible manner”.

Whether conditions of this kind are required can only be determined after full assessment of the application if additional information is provided for the application.

15 Resource recovery

This provision requires the consent authority to consider the efficiency of the development in terms of resource recovery.

The provision is only relevant where there is a recommendation of approval for the application. There are no matters to consider given the recommendation for refusal.

16 Transport

This provision requires that the consent authority consider whether or not the consent should be issued subject to conditions

- that require transport of materials not by public road, and
- that limit or preclude truck movements.

The provision is only relevant where there is a recommendation of approval for the application. There are no matters to consider given the recommendation for refusal.

17 Rehabilitation

This provision requires that the consent authority consider whether or not the consent should be issued subject to conditions aimed at ensuring the rehabilitation of land that will be affected by the development.

The provision is only relevant where there is a recommendation of approval for the application. There are no matters to consider given the recommendation for refusal.

- **State Environmental Planning Policy (Rural Lands) 2008,**

This policy requires that the consent authority consider whether the proposed development will have an adverse impact on State Significant Agricultural Land. The development site is not State Significant Agricultural Land. There are no further matters to consider under this state policy.

- **Coffs Harbour Local Environmental Plan 2013**

7.4 Terrestrial biodiversity

It is unclear from development application plans whether the quarry operation will occur on land identified as “Biodiversity” on the Terrestrial Biodiversity Map. Further and more detailed plans of the proposed development are required to determine whether this provision is a relevant consideration.

7.11 Essential services

More information is required to determine whether suitable vehicular access is available to the development.

ii. The provisions of any draft environmental planning instrument

There are no draft environmental planning instruments that require consideration.

iii. any Development Control Plan (DCP)

- **Coffs Harbour Development Control Plan 2013**

There are no specific assessment considerations under Coffs Harbour Development Control Plan 2013 that require consideration.

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

There are no matters as required by the regulations and that relate to the proposed development that require consideration under this section.

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,

The application was referred to the NSW Roads and Maritime Services for comment as the site has frontage to the Pacific Highway. Their response expresses concern about site distances at the quarry access and traffic safety associated with traffic exiting the quarry. Given these concerns it is considered that the “safety, efficiency and ongoing operation of the Pacific Highway will ... be adversely affected by the development”.

The application provides some documentation and statements about blasting proposed with the operation but there is insufficient certainty on the size and frequency of blasting events. Further detail of this kind is required to enable assessment as to whether impacts from blasting are appropriate and acceptable in the circumstances.

In addition to references in the flora and fauna report which conflict with statements provided in the statement of environmental effects, the report provides insufficient detail on the extent of vegetation removal, and the location of the quarry operation in relation to environmental protection zones, to enable proper assessment of environmental impact of the proposed development.

The application provides insufficient details of proposed rehabilitation of the site, during and after quarry operations. Details and plans of proposed sediment and erosion control are not clear.

c. the suitability of the site for the development,

The site may be suitable for the proposed development but assessment on this matter cannot be concluded without appropriate development application documentation.

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

Submissions in response to formal government department referral

Responses on the application have been received from NSW Environment Protection Authority, NSW Office of Water, NSW Office of Environment and Heritage and NSW Office of Environment and Heritage.

The submission from NSW Environment Protection Authority highlighted the need for additional information for the development application.

NSW Office of Environment and Heritage raised matters with respect to the assessment of the application but raised no specific concerns with the development as proposed.

NSW Office of Water raised no specific objections to the proposed development and provided general terms of approval.

NSW Roads & Maritime Service raised a number of concerns with the proposed development. The matters they raised have been addressed in the Issues section of this report.

Submissions in response to public notification

Three submissions were received. One submission was from NSW Trade and Investment (Crown Lands). Their concern was about quarry operations on the crown land reserve to the south (Lot 76, DP 752820). This concern has been addressed in the issues section of this report.

The matters raised in the remaining two submissions included concern about blasting, noise, vibration, dust, consultation about quarry operations, potential flora and fauna impact and impacts on backpacker accommodation.

e. the public interest:

Further information is required to determine whether or not the proposed development is within the public interest.

Notwithstanding, the development application is considered incomplete and the fact that owner's consent to lodgement of the application from the owner of Lot 76, DP 752820.