

JOINT REGIONAL PLANNING PANEL
Southern Region

Assessment Report and Recommendation Cover Sheet

JRPP No	2013STH029
DA Number	DA/180/1314
Local Government Area	Goulburn Mulwaree
Proposed Development	Expansion of existing limestone processing facility
Property & Street Address	709 South Marulan Road, Marulan
Applicant/Owner	Bruce McHugh for Eastern Sand & Gravel Co Pty Ltd
Number of Submissions	2 public submissions received.
Regional Development Criteria (Schedule 4A of the Act)	The development is for limestone works which meets the criteria for Designated Development under clause 20 of Schedule 3 Environmental Planning & Assessment Regulation 2000. The development is not specifically a Regional Development as defined by the Regional Development Criteria (Schedule 4A (8) as mines are not listed however it is of a category equivalent (extractive industries) to warrant regional assessment under the Environmental Planning & Assessment Act 1979).
List of All Relevant s79C(1)(a) Matters	<ul style="list-style-type: none"> • <i>State Environmental Planning Policy No 33 – Hazardous and Offensive Development;</i> • <i>State Environmental Planning Policy No 44 – Koala Habitat Protection;</i> • <i>State Environmental Planning Policy No 55 – Remediation of Land;</i> • <i>State Environmental Planning Policy (Infrastructure) 2007;</i> • <i>State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007</i> • <i>State Environmental Planning Policy (Rural Lands) 2008</i> • <i>State Environmental Planning Policy (State & Regional Development) 2011</i> • <i>State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011</i> • <i>Goulburn Mulwaree LEP 2009</i> • <i>Goulburn Mulwaree DCP 2009</i> • <i>Goulburn Mulwaree Section 94 Contribution Plan 2009</i> • <i>NSW Industrial Noise Policy</i> • <i>NSW Road Noise Policy</i> • <i>Department of Environment and Conservation (NSW) Approved Methods for the Modelling and Assessment of Air Pollutants in NSW</i> • <i>Department of Environment and Conservation (NSW) Approved for the Sampling and Analysis of Air Pollutants in NSW</i> <p>This application has been assessed in accordance with the matters for consideration under Section 23G, 77A, 79C and 91 of the <i>Environmental Planning and Assessment Act 1979</i> and found to be satisfactory.</p>
List all documents submitted with this report for the panel's	<ul style="list-style-type: none"> • Application and EIS Submitted 25/11/13 • 2 Submissions received following public exhibition (Marulan Chamber of Commerce & Boral)

consideration	<ul style="list-style-type: none"> • NSW EPA General Terms of Approval 15/1/2014 • NSW RMS Submission 24/1/2014 • Water NSW Concurrence 14/4/2015 • NSW Trade and Investment Resource and Energy Submission 16/1/2014 • NSW Department of Primary Industries Office Water 3/2/2014 • NSW Department of Primary Industries 20/12/2013 • Department of Primary Industries 7/1/2014 • Applicant's response to submissions 7/8/2014 • Consultant's (for Applicant) response to SCA additional request information 17/3/14 • Consultant's (for Applicant) response on Flora and Fauna to GM Council 31/10/14 • Assessment Report • Recommended draft conditions of consent
Recommendation	Approval with conditions.
Report by	Dianne James, Senior Town Planner, Goulburn Mulwaree Council

ASSESSMENT REPORT

EXECUTIVE SUMMARY

On 25 November 2013, a Development Application (DA) was received by Goulburn Mulwaree Council for the establishment of an expansion of the Eastern Sand and Gravel Facility "Limestone Works" from 25,000 tonnes per annum (tpa) to 120,000 tpa of processed and graded limestone sourced from the adjacent Boral limestone mine.

Submissions received in relation to the development from both public authorities and the general public concerning a range of environmental, economic and social issues.

The proposed development is a Designated Development as it is located within Biodiversity layer of the Terrestrial Biodiversity Layer to *Goulburn Mulwaree Local Environmental Plan 2009*. The Southern Region Joint Regional Planning Panel (SRJRPP) is strictly not the consent authority as the criteria is for an "Extractive Industry", which meets the requirements for designated development. This is an adjacent Limestone works adjacent to a mine.

The proposed development is considered ancillary to a "Mine" under the provisions of *Goulburn Mulwaree Local Environmental Plan 2009* (GMLEP 2009), as mine is not a type of "industry" under the GMLEP definitions. The site is zoned RU 1 Primary Production and Extractive Industries and Mines are permitted with consent within the RU 1 zone.

In accordance with Clause 7(1)(d) of the *State Environmental Planning Policy (Mining Petroleum Production and Extractive Industries) 2007* (Mining SEPP), processing may be carried out with consent where it is mined from adjoining land. The limestone is sourced from the adjacent Boral Limestone mine.



Concurrence Authorities:

Sydney Catchment Authority concurrence under the *State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011*



Integrated Authorities:

Office of Environment and Heritage (Environment Protection Agency) for scheduled activities under the *Protection of the Environment Operations Act 1997*



Other agencies that the application was referred to:

- NSW Department of Planning and Infrastructure
- NSW Trade and Investment (Resources and Energy)
- Goulburn Mulwaree Council
- NSW Office of Water (will require separate approval for use of bore water)
- Pejar LALC
- Goulburn Mulwaree Council
- The Roads & Maritime Services
- NSW Agriculture, NSW Fisheries
- Local Lands Service



Exhibition period: 5 December 2013 to 31 January 2014.

The application was advertised and notified for the required period of greater than 30 days, on-site in the local newspaper and on Council's website. The proposal was also notified to approximately 9 nearby properties. Public exhibition of the proposal resulted in 2 public submissions being received (one being verbal and included as a file note) the other from the adjoining landowner Boral. 7 Agency submissions were received. Copies of the Agency submissions are included in the Annexure to the report. The submissions to the proposal are addressed in the report.

No approval is required for works within 40m of a water course however NSW Office of Water have confirmed that a Water Access License will be required (if not already obtained) for commercial use of the existing bore for use with the facility. Agency responses have not been received by Southern Area Local Lands Service (LLS) and NSW Health. This is not considered critical to the assessment of the application.

The proposal generally complies with the essential criteria and intent of the relevant statutory provisions. There being no outstanding issues or unreasonable additional impacts from the proposal, it is recommended that 180/1314/DA be approved by way of a deferred commencement consent pursuant to Section 80 of the EP& A Act, subject to the recommended draft conditions. The deferred commencement condition relates to the applicant obtaining the necessary approvals under the *Water Management Act 2000*. A bore water license has been obtained from the NSW Department of Primary Industries (Water) however this is only for agricultural and related uses and not a commercial use.

The key issues relate to the traffic generation and procedural matters with the preparation of the EIS.

The application has been assessed under Section 79C of the *Environmental Planning and Assessment Act 1979*, and is recommended for approval subject to conditions.

1.0 INTRODUCTION

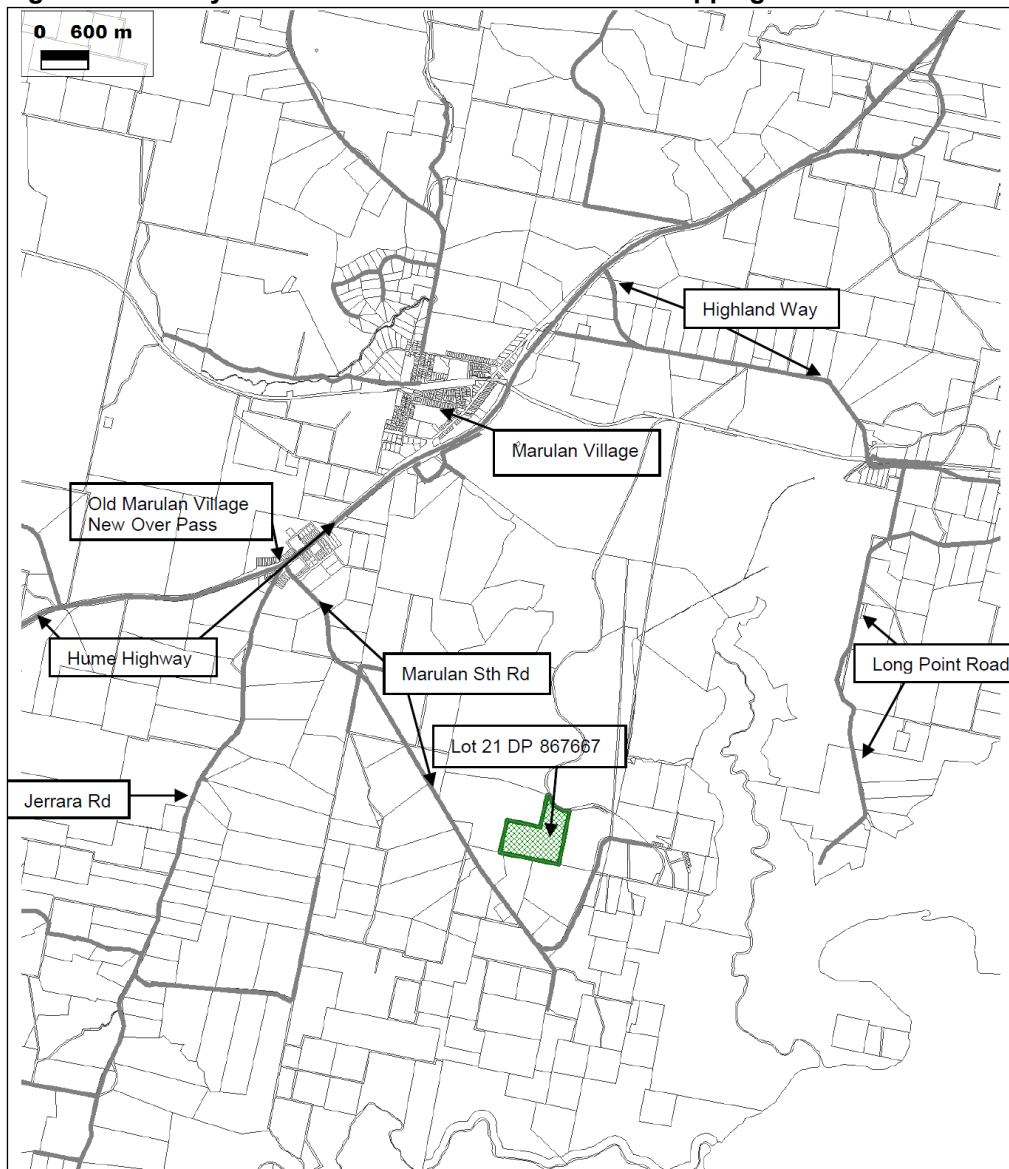
1.1 The Location

The subject site is within the Goulburn Mulwaree Local Government Area ('LGA'), which is situated in the NSW southern tablelands approximately 180km south-west of Sydney and 124 km north-east of Canberra, 33km east of Goulburn and 11km South of Marulan.

The development is proposed on Lot 21 DP 867667 (709) Marulan South Road near the former Marulan South Village.

The land is L shaped and has an area of 40.10ha. Access is gained by a 415m long right of carriageway 10m wide over Lot 22 (of the same DP). The site is also burdened by a 20m wide electricity line easement traversing east west near the southern boundary of the lot. A copy of the Deposited Plan is included as **Attachment 1** and a locality plan provided below in Figure 1.

Figure 1: Locality Plan Sources from Council's GIS Mapping



The land has an elevation of approximately 610-600m AHD with the land generally sloping down to the north and north-west to Tangarang Creek. The processing facility is located near the entrance to the land near the south-eastern boundary. There are two existing dams on the site near the development site; the most easterly dam located near the processing plant is proposed to contain runoff from the development. Unfortunately Council's GIS aerial photograph for this property is 2008

and outdated as a result of recent landuse changes. Consequently a Google Maps photo and consultant documents are provided with the assessment.

The land was created by subdivision approved by Council in 1996 to create the eastern lot (Lot 22) for the purposes of a buffer for Blue Circle Southern Cement. The land is surrounded by Boral land to the north, east and south, intensive agriculture (poultry farm) to the west and rural lifestyle to the south western corner.

The majority of the site is timbered with the exception of the processing plant site. Refer to below Figure.

The site generally consists of a large steel shed (existing manufacturing plant), a small site office, carpark, storage shed and a crusher located to the north of the manufacturing shed and lime stockpile further north and manoeuvring areas.

Figure 2: Aerial photo sourced from Google Maps



The wider surrounding area includes a manufacture of fireworks/pyrotechnics at 452 Marulan South Road and generally rural lifestyle and farmland grazing throughout the area.

1.2 Background

The land was purchased by Eastern Sand and Gravel in 2003 and the site was approved on 23 October 2003 by Mulwaree Shire Council (2003/0329/DA) for limestone processing works from material sourced from the adjacent South Marulan Limestone Mine. Refer to Attachment 4 Goulburn Mulwaree Council previous consent document.

The locality is currently undergoing significant changes with recent and proposed expansions by Boral at Marulan South. Due to limited aerial photography (a gap between aerial photographs undertaken by Lands Department) Council's aerial mapping is not as useful as figures produced by the 2012 "Peppertree Quarry Modification 3 Environmental Assessment" prepared for Boral Resources (NSW) Pty Limited by EMM and the following figures are acknowledge and Council has received approval from Boral and EMM to use the documents with references to the sourced documents.

Figure 3: Showing Boral Resource Boundary and Cement landholding (Source Peppertree Quarry Modification 3 Environmental Assessment" prepared for Boral Resources (NSW) Pty Limited by EMM (2012)

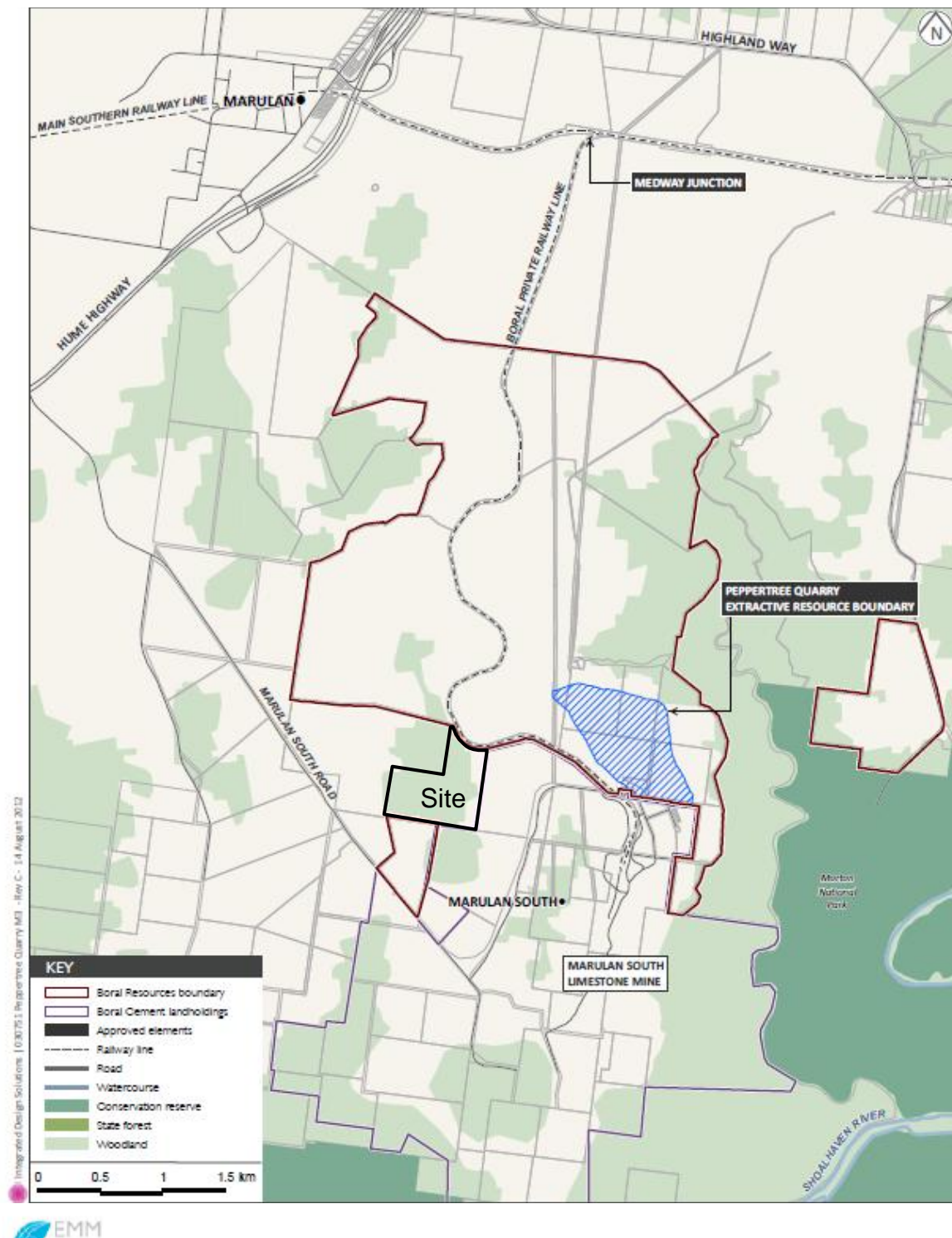
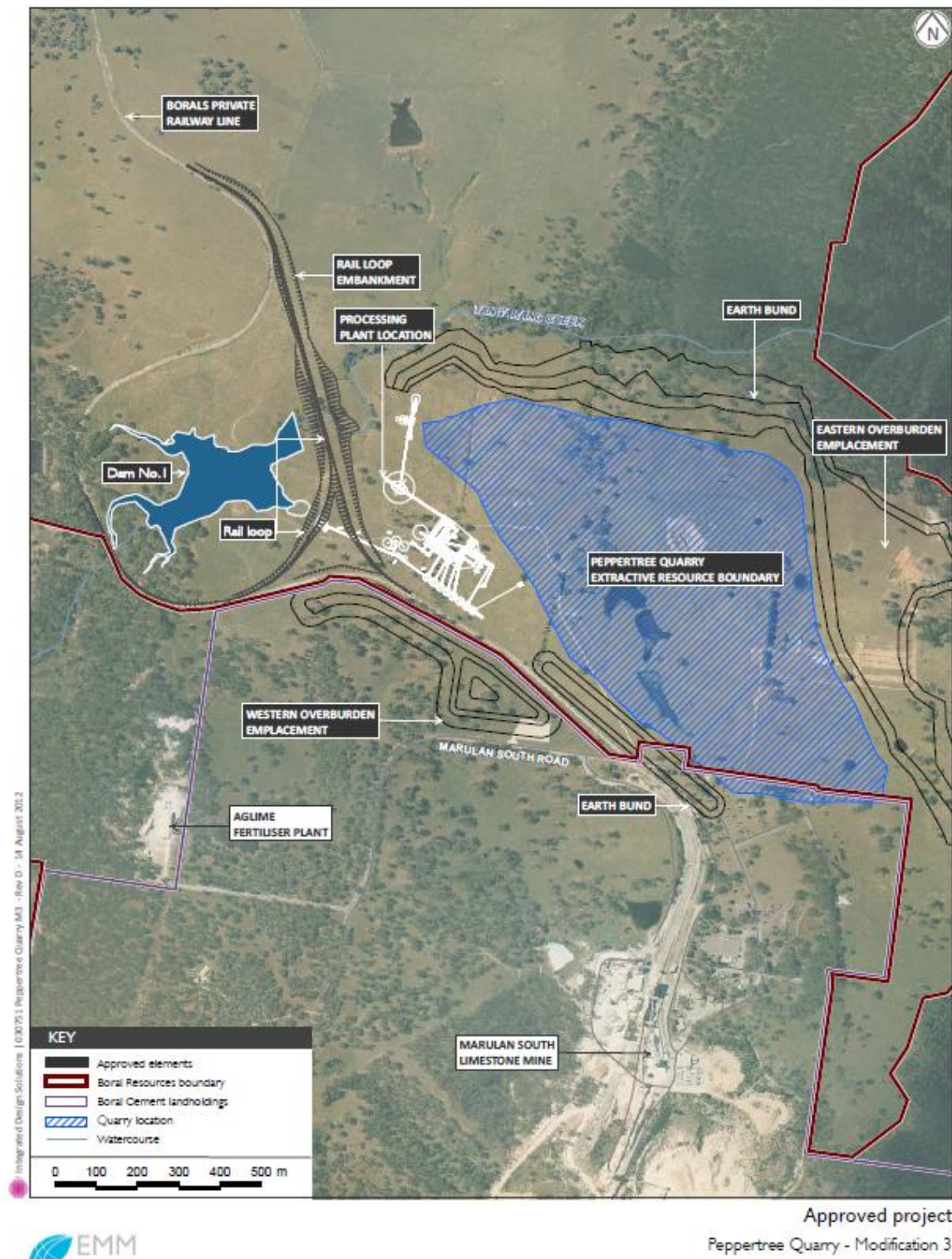
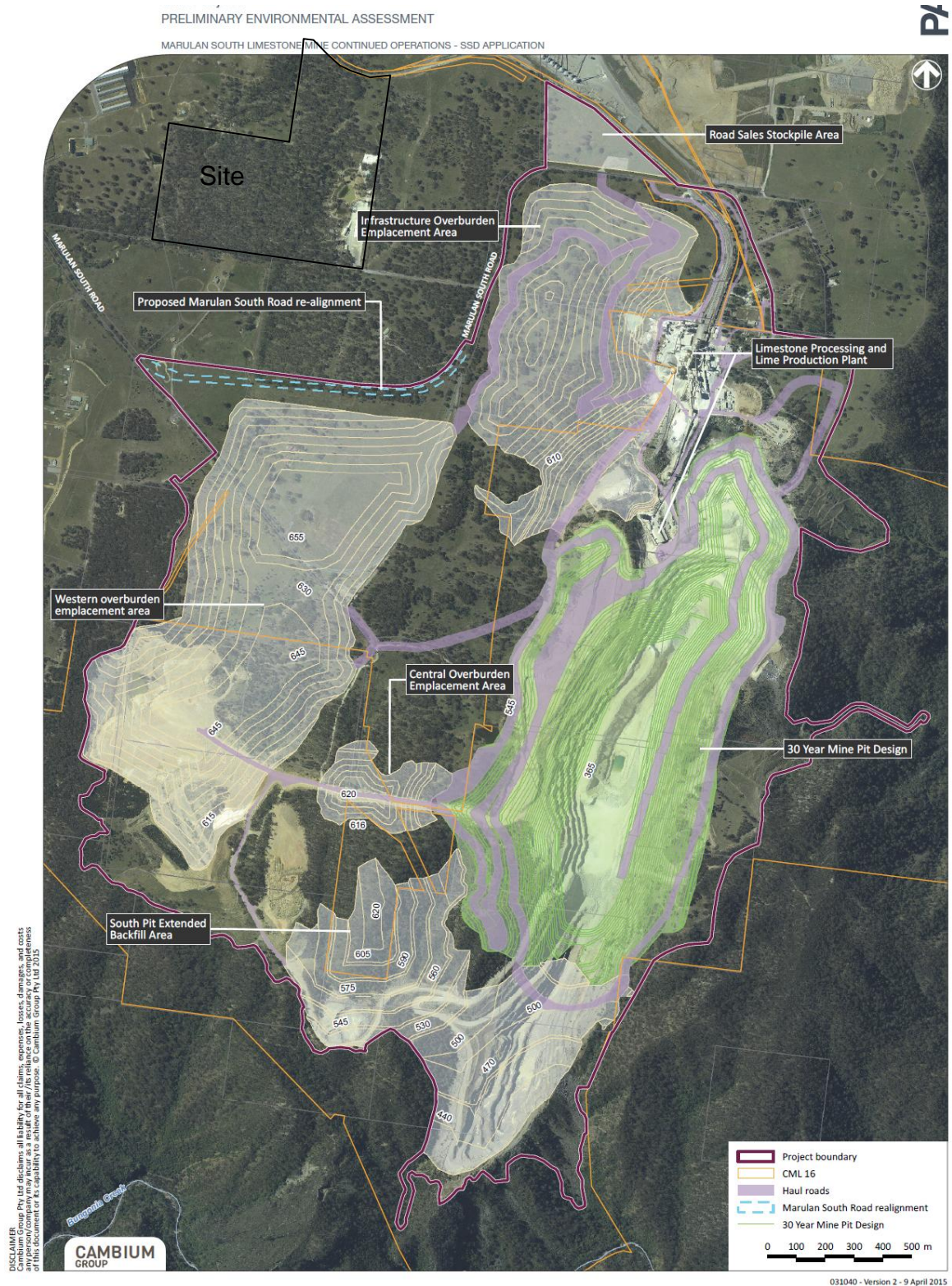


Figure 4: Aerial photograph overlay showing land uses within the vicinity (Source Peppertree Quarry Modification 3 Environmental Assessment" prepared for Boral Resources (NSW) Pty Limited by EMM (2012)



Furthermore Boral propose to enlarge the Marulan South Limestone mine and have available on their web a concept plan of the State Significant Development proposed for the limestone mine. The Director General Requirements were issued on 10 June 2015. Refer to Figure 5 for expansion proposal.

Figure 5: Proposed State Significant Development of Marulan South Limestone Mine
 (Source www.boral.com.au/article/marulan_operations_live_planning_apps.asp)



1.3 The Applicant

Council has considered whether owner's consent to the making of DA/0180/1314 has been obtained. Owners consent has been given by Bruce McHugh in his capacity as Director of Eastern Sand and Gravel Pty Ltd

1.4 Resource within the Local Government Area

Goulburn Mulwaree is proving to play an important part in providing natural resources from mines and quarries. It is noted that five quarries/mines in the area rely on the overpass on the Marulan South and Hume Highway intersection three for direct access and two (Johnniefields and Gunlake) for trucks travelling from the north in a southerly direction to the quarries are required to "make a U turn" using the overpass to then travel north along the Hume Highway towards Marulan:

- Boral Pepper Tree Marulan South – Granodiorite Products generated from the Boral Peppertree Quarry include a range of aggregates, shaped and sized for different purposes. The main production items are concrete and asphalt aggregates, although larger aggregates for 'armour' or 'gabion baskets' can be produced, along with railway ballast.
- Boral Marulan South – Limestone The mine is located in Marulan South, 10 kilometres (km) southeast of Marulan village and 35 km east of Goulburn, within the Goulburn Mulwaree Local Government Area

The Boral Marulan South Limestone Plant and Mine is formerly part of the Blue Circle Southern Cement folio of works. The site is renowned for its high quality limestone deposit, with its products being used in iconic structures such as the Sydney Opera House. Today's operations produce a range of raw materials used in construction, manufacturing and agriculture. As one example, lime products from Marulan South are transported by rail to the Berrima Cement Works where they are used in the production of around 60 percent of all cement used in NSW. Boral Marulan South Limestone is the employer of around 120 local people. In current market conditions, the site generates around 3 million tonnes per annum (Mtpa) of 'run-ofmine' limestone and 130 000 tonnes of shale per annum.

Council approved a manufactured sand plant in 2012 further widening the potential use of the resources to manufactured sand within the existing production volumes. Boral have been issued SEAR's for a proposed 30 year mine plan seeking extension and continued operation up to 3.5Mtpa and clay shale at 200,000 tpa.

- Gunlake Quarries - Resource material is tuffaceous rhyodacite Located on a rural property approximately eight kilometres north west of Marulan, 30 km east of Goulburn and about 160 km south west of Sydney. NSW to service Sydney and the Southern Highlands. This newly-built quarry produces a wide variety of premium bulk aggregates for concrete, construction and asphalt and specified and non-specified road base.

SEAR's have been issued for an expansion to Gunlake Quarry. Gunlake seeks a new development consent that allows: 2 million tonnes per annum (Mtpa) of saleable products to be produced; an increase in truck movements to an average of 440 movements per day; extension of the quarry pit footprint by 150 percent to approximately 63 ha; 24 hour per day primary crushing; additional overburden emplacement to accommodate the increase in production; and blasting twice weekly.

- Lynwood Quarry - ignibrite resource Holcim Australia operate a quarry which has consent for 5 Mtpa (approximately 30 year supply). Lynwood Quarry is a hard rock quarry currently being constructed by Holcim (Australia) Pty Ltd to the west of Marulan.

A SEAR's request has been lodged for a new pit 500m west of the approved pit to extract a granite resource within the current approved volumes. Holcim have identified the variability of the approved ignibrite resource will make it challenging to produce in-specification products.

Johnniefields Quarry - ignibrite resource Johnniefields Quarry has been operating since approximately 1981.

An extract of the NSW Trade and Investment (Resources and Energy) local mines and quarries can be found in [Attachment 2](#).

THE PROPOSED PROJECT

1.5 Description of the Proposed Development

The following is an extract of the proposed development and works as described in the Laterals EIS Proposal

The application includes plans for the full development that is proposed to be carried out over the next 1-5 years in the following manner. The period of development may vary depending upon the successful utilisation of the upgrade and expanded facilities and sale of products.

STEP 1. Will involve the following construction and works –

- a. The Raw Material Storage Building – for the receiving and storage of raw material obtained from the adjoining limestone quarry;*
- b. The Primary Processing Building for the installation of –*
 - i. A primary crushing machine,*
 - ii. A drying machine,*
 - iii. A primary screening machine,*
 - iv. A secondary crushing machine;*
- c. Aggregate bins adjacent to the Primary Processing Building for the storage of aggregate not proceeding to the secondary crushing machine;*
- d. Air filtration through extractors to clean the air inside the raw material building and primary processing building to retain dust for environmental improvement and product retention;*
- e. The conveyor that will provide for the transport of raw material from the raw material storage building to the primary crushing machine;*
- f. The containment bund and covering for the fuel storage area designed to contain 110% of the fuel and oil storage capacity (37 m³ bund area);*
- g. The establishment of a development pad under and surrounding all the facilities to be installed in STEP 1 and the sealing of that part of the pad that will not be built upon;*
- h. The installation of a wheel washer facility to remove dust from the wheels of trucks exiting the site;*
- i. The resealing of the existing transport movement areas (4,000 m²) and extension of fill and sealing of the extended development area and installation of the transport circulation road that enables entry to and through the raw material building and to the product storage building for the movement of semi-trailers and machinery associated with deliveries and management of the materials (3,400m²); and*
- j. The carrying out of additional stormwater management designed to manage runoff from the site.*

This step in the upgrade and expansion will provide for the installation of crucial buildings and activity that will provide for the immediate improvement of site management and the placement of all current and some proposed activities within buildings. All works relating to drainage will be carried out initially for the management of stormwater in accordance with the SEEC Water Cycle Management Plan. The formation of the development pad for buildings involved in STEP 1 and sealing will take place initially in STEP 1 (and complete in STEP 2 to avoid un-necessary expense in the initial STEP and enable finances to be allocated more efficiently to preliminary important works for environmental management of the site and operations).

Material to be delivered to the raw material building will initially be transported into the building by semi-trailer and tipped in the building. The building has been designed to accommodate the trucks with roads leading to the building being designed to also accommodate the anticipated truck movements. The trucks will be able to manoeuvre within the shed to unload directly into the bins and be capable of entering and leaving the building with flow through traffic design.

STEP 2. Will involve the following construction and works –

- a. That part of the Secondary Processing Building for the installation of the fine screening machine;*
- b. The Product Storage Building for the storage of materials held for sale and transport from the site;*
- c. The installation of a 2 silo sets adjacent to the primary screening building;*
- d. The installation of a 3 silo set similar to the existing 3 silo set for truck loading adjacent to the fine milling building;*
- e. Two silos adjacent to the Fine Screening Building for the storage of product; and*
- f. The aggregate bin adjacent to that part of the Fine Screening Building for the storage of material not proceeding to the Fine Milling Machine.*

STEP 3. Will involve the following construction and works –

- a. That part of the Secondary Processing Building for the installation of the fine milling machine;*
- b. A covered raw material unloading facility adjacent to the Raw Material Building for the receiving of raw material from the adjoining limestone quarry; and*
- c. The conveyor that will provide for the transport of raw material that is received into unloading facility to the raw material storage building.*

Each building that is proposed to be constructed has been designed based upon investigations by Eastern Sand & Gravel Pty Ltd for the type and size and general dimensions of machinery that is proposed to be installed.

The buildings have been designed to provide more space that is likely to be needed to accommodate the machinery. It may be found upon actual purchase at the time that the size of machinery and installation space will be less than is provided for in which case the designed buildings will be reduced in size and/or scale. It is not expected but remains possible that more space would be needed in which case the size of the building may increase. In each case the variation is not expected to be significant and it is anticipated that Construction Certificates could ensue from the original development consent without the need for a variation to the DA design provided no significant variation is proposed.

STEP 1 of the development will involve the use of the raw material shed for the receipt of raw material and the placement of the existing crusher in the raw material shed for crushing operations to be carried out inside for noise and dust management, and to remove dust from runoff water. This will enable immediate compliance with noise and dust management measures whilst the remainder of STEP 1 development is carried out. As the development proceeds and machinery is installed the operation can be progressively conducted as is intended in the design.

It is anticipated that the development will progressively enable ramping up of production to the maximum intended. Tonnage increase is anticipated to be achieved as follows –

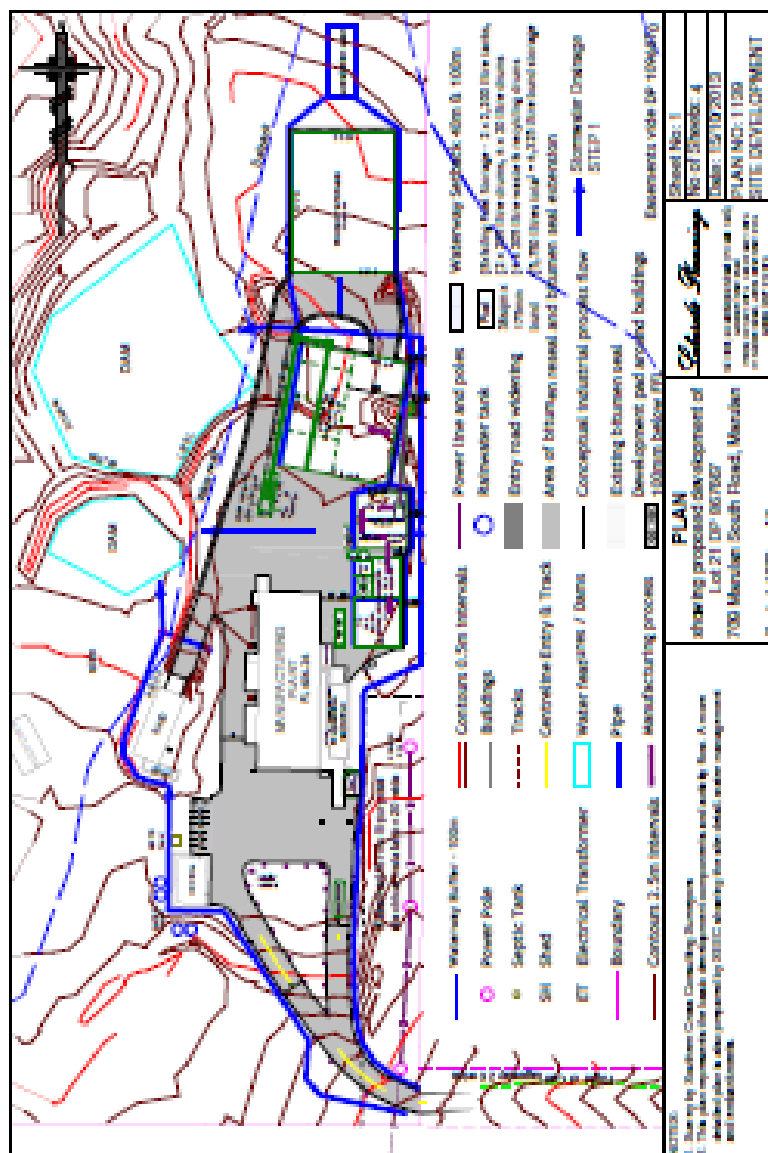
- Y Year 1-2 – 25,000 to 70,000 tpa (an increase of 45,000 tpa)*
- Y Year 3-4 – 70,000 tpa to 90,000 tpa (a further increase of 20,000 tpa)*
- Y Year 5 – 90,000 tpa to 120,000 tpa (a further 30,000 tpa).*

The proposed hours of operation of the site would be extended to 5:00am to 10:00pm Monday to Friday and 6:00am to 4:00pm Saturday, Sundays and Public Holidays only as required. The following additional notes further clarify unmanned/automated operations –

- 1. Material from surge/feeder bins and silos being transported by screw conveyors and bucket elevators (to minimise noise) to screens for tight cut sizes (i.e. close material size distributions where screens can only process so many tonnes per hour due to available surface area of each screen cloth). The longer time taken to process necessitates the later automated operation. The operation would be conducted after hours in a fully enclosed building.*
- 2. Some grinding in the fine milling building. The proposed equipment runs at 80dBA but comes with its own sound enclosure. The operation would be conducted after hours in a fully enclosed building.*
- 3. No receipt of raw materials would occur outside the hours of 5am to 7pm Monday to Friday.*

- Noise will be buffered by the existing buildings and all operations will be fully enclosed in the proposed buildings and individual sound enclosures' as required outside the hours of 5am to 6pm Monday to Friday and 6am to 4pm Saturday

Figure 6: Submitted Site Plan Layout



1.6 Amendments to the Development

The Applicant provided additional information 17/3/2014 to address Water NSW (previously called Sydney Catchment Authority) to satisfy Neutral or Beneficial Effect requirements of the Sydney Drinking Water Catchment SEPP. Additional information and amended plans were received by Council 31 March 2015.

Additional information concerning Flora and Fauna were received 31/10/2014 to address inadequacies of the report.

Additional information as part of the response to the submissions was received 7/8/2014. A copy is provided in the Attachments.

No re-notification was considered to be required as part of the receipt of the additional information. NSW Office of Water) have confirmed that an existing water bore is located on the site for the purposes of agricultural related uses and not commercial. Consequently the application is proposed to be deferred pending the approval and amendment of the necessary works by the NSW Department of Primary Industries (Water) for works under the *Water Management Act 2000*.

1.7 Project Need and Justification

The DA is supported by an EIS. Section 20 of the EIS (page 12) outlines alternatives and consequences of no development and page 41 discusses the environmental justification for the proposal.

3.0 STATUTORY PLANNING MATTERS

These are discussed below.

3.1 Environmental Planning and Assessment Regulation 2000

This section provides that 'designated development is development that is declared to be designated development by an environmental planning instrument or the Regulations. Relevant to the subject proposal is Schedule 3 of the Regulation, which identifies those developments to be characterised as designated development. The proposal comprises "limestone works" and "Crushing, Grinding and Separating Works" (Clause 20(3)(a)). The extract below shows the stipulated trigger underlined.

20 Limestone mines and works

- (1) *Limestone mines or works that disturb a total surface area of more than 2 hectares of land (being land associated with a mining lease or mineral claim under the [Mining Act 1992](#)) by:*
 - (a) *clearing or excavating, or*
 - (b) *constructing dams, ponds, drains, roads, railways or conveyors, or*
 - (c) *storing or depositing overburden, limestone or its products or tailings.*
- (2) *Mines that mine or process limestone and are located:*
 - (a) *in or within 40 metres of a natural waterbody, wetland, a drinking water catchment or an environmentally sensitive area, or*
 - (b) *if involving blasting, within 1,000 metres of a residential zone or within 500 metres of a dwelling not associated with the mine, or*
 - (c) *within 500 metres of another mining site that has operated within the past 5 years.*
- (3) *Limestone works (not associated with a mine):*
 - (a) *that crush, screen, burn or hydrate more than 150 tonnes per day, or 30,000 tonnes per year, of material, or*
 - (b) *that are located:*
 - (i) *within 100 metres of a natural waterbody or wetland, or*
 - (ii) *within 250 metres of a residential zone or a dwelling not associated with the development.*

Section 20(3)(b)(ii) stipulates 250m to a dwelling not associated with the development. Using Council's GIS mapping the distance to the nearest dwelling not associated with the development (although

associated with the adjacent mine) is located approximately 180m from the right of carriageway, approximately 215m to the south-eastern corner and approximately 300m to the existing office.

As a result of the exceedance of the 30,000 tonnes per year threshold an Environment Protection License (EPL) is required by NSW Office Environment and Heritage (Environment Protection Authority) (EPA) and the exceedance from the adjacent dwelling to the right of carriageway is not considered to be a significant matter.

3.2 Environmental Planning and Assessment Act 1979

3.2.1 Ecological Sustainable Development (ESD):

Refer to Section 5.5.2 (p115-116) of the EIS for an assessment against ESD. Namely:

The principles of ecologically sustainable development are as follows:

- (a) the **precautionary principle**, namely, that if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation. In the application of the precautionary principle, public and private decisions should be guided by:*
 - (i) careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment, and*
 - (ii) an assessment of the risk-weighted consequences of various options,*
- (b) **inter-generational equity**, namely, that the present generation should ensure that the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations,*
- (c) **conservation of biological diversity and ecological integrity**, namely, that conservation of biological diversity and ecological integrity should be a fundamental consideration,*
- (d) **improved valuation, pricing and incentive mechanisms**, namely, that environmental factors should be included in the valuation of assets and services, such as:*
 - (i) polluter pays, that is, those who generate pollution and waste should bear the cost of containment, avoidance or abatement,*
 - (ii) the users of goods and services should pay prices based on the full life cycle of costs of providing goods and services, including the use of natural resources and assets and the ultimate disposal of any waste,*
 - (iii) environmental goals, having been established, should be pursued in the most cost effective way, by establishing incentive structures, including market mechanisms, that enable those best placed to maximise benefits or minimise costs to develop their own solutions and responses to environmental problems.*

Together the requirement for the preparation of an Operational Management Plan prior to operation and the preservation of the remaining native vegetation will assist preserve the biodiversity value of the area and address the ESD requirements.

The preparation and implementation of a Code of Conduct for truck drivers transporting materials (or returning to load materials) on public roads will assist to improve road safety outcomes.

The development meets the needs of the current community and will not compromise the future needs of the residents of the locality based on the draft conditions proposed to mitigate the impacts on the social, environmental and economic considerations.

3.2.2 Section 23 G EPA Act - Joint regional planning panels (JRPP)

The development was forwarded to the JRPP because it was of a scale similar to that covered by Section 23G of the EPA Act gives the Southern Region Joint Planning Panel “*any of a council’s functions as a consent authority that are conferred on it under an environmental planning instrument*” and Schedule 4A (8) of the EPA Act, namely extractive industries, which meet the requirements for designated development under clause 20 of Schedule 3 to the EPA Regulation.

The development is for works ancillary to mine extraction which is a scale equivalent to that required to be forwarded to the JRPP.

3.2.3 Section 77A EPA Act – Designated development

The development is declared to be designated development by section 20(3)(a) of Schedule 3 of the EPA Regulations.

3.2.4 Section 79BA EPA Act – Consultation and development consent – certain bushfire prone land

Section 79BA of the *Environmental Planning and Assessment Act 1979* requires that Council not grant approval for any development in a bush fire prone area (other than those developments covered by Section 100B of the *Rural Fires Act 1997*) unless the proposal complies with *Planning for Bush Fire Protection 2006* or the Commissioner of the NSW Rural Fire Service has been consulted on any non-compliance.

Although generally for residential development *Planning for Bushfire Protection 2006* also applies to commercial and industrial developments or any DA on bush fire prone land that is not integrated. The consent authority is only required to consult with the NSW Rural Fire Service (NSW RFS) under section 79BA when a proposed residential dwelling (i.e. infill) does not comply with the "acceptable solutions" of *Planning for Bush Fire Protection 2006*.

The development has been conditioned to comply with the *Planning for Bush Fire Protection 2006*. Unless otherwise approved by Council (due to the existing building and operations)

3.2.5 Section 91 EP&A Act 1979 – What is “Integrated Development”

Integrated development is development that, in order to be carried out, requires development consent and one (1) or more specified approvals under a number of other Acts. Under the provisions of the EP&A Act 1979, the proposed development is classified as ‘integrated development’ as it requires the following approvals:

- An Environment Protection Licence from NSW Office Environment and Heritage (Environment Protection Authority) for scheduled works and activities listed in Schedule 1 under the *Protection of the Environment Operations Act 1997*.
- Approval under the *Water Management Act 2000* to apply for an amendment to use bore water for the purpose of Extractive Industry.
This aspect was not included as part of the Integrated Development Assessment process. Comments were sought and received from NSW Office of Water. Deferred draft conditions of approval are proposed to ensure compliance with the *Water Management Act 2000*.

3.2.6 Section 93 EPA Act - The Provisions of any Planning Agreement

The proposed development is not subject to the provisions of a Voluntary Planning Agreement under Section 93F EPA Act.

3.2.7 Section 147 EPA Act – Declaration

Section 147 EPA Act requires the declaration of donations/gifts in excess of \$1000 within Section 5 of the Development Application form. The Applicant has declared that there are no relevant political donations or affiliations. No declarations have been received by any of the submitters.

3.3 Commonwealth Legislation

The *Environmental Protection and Biodiversity Conservation Act 1999* (EPBC Act) commenced on 16th July 2000 and is administered by the Commonwealth Department of Environment, Water, Heritage and the Arts. Its primary objective is to “provide for the protection of the environment, especially those aspects of the environment that are matters of national environmental significance.”

The White Box-Yellow Box-Blakely’s Red Gum Grassy Woodland and Derived Native Grassland (Box-Gum Grassy Woodland) is listed as critically endangered under the EPBC Act. The “Ecological

Assessment” identifies that the Box-Gum Woodland on site does not fall into the definition under the Commonwealth legislation “due to the lack of native species in the understorey and this is accepted.

Conditioning of impact avoidance measures and appropriate adaptive management actions as well as opportunities to enhance existing biodiversity values within remaining vegetation to be retained will ensure the objectives of flora and fauna protection and preservation will be achieved.

The removal of a reported 20 trees is not considered significant nor have a significant impact on the Box – Gum Woodland (under TSC Act); however the draft consent conditions shall be conditioned to allow only the minimal extent necessary.

Therefore on balance no matters of national environmental significance are likely to be significantly affected by the proposal. The proposal has not been referred to the Commonwealth Minister for the Environment under the EPBC Act.

3.4 State Environmental Planning Policies (‘SEPPs’)

The following State Environmental Planning Policies are applicable to the proposal:

- *State Environmental Planning Policy No 33 – Hazardous and Offensive Development;*
- *State Environmental Planning Policy No 44 – Koala Habitat Protection;*
- *State Environmental Planning Policy No 55 – Remediation of Land;*
- *State Environmental Planning Policy (Infrastructure) 2007;*
- *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007*
- *State Environmental Planning Policy (Rural Lands) 2008*
- *State Environmental Planning Policy (State & Regional Development) 2011*
- *State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011*

These are assessed below.

3.4.1 State Environmental Planning Policy No 33 – Hazardous and Offensive Development (SEPP 33)

SEPP 33 deals with the definition of, and control of, hazardous and offensive developments. The policy also requires specified matters to be considered for proposals that are ‘potentially hazardous’ or ‘potentially offensive’ as defined by the legislation.

SEPP 33 defines potentially offensive industry as:

“a development for the purposes of an industry which, if the development were to operate without employing any measures (including, for example, isolation from existing or likely future development on other land) to reduce or minimise its impact in the locality or on the existing or likely future development on other land, would emit a polluting discharge (including for example, noise) in a manner which would have a significant adverse impact in the locality or on the existing or likely future development on other land, and includes an offensive industry and an offensive storage establishment.”

According to the Department of Planning and Infrastructure publication entitled *Applying SEPP 33 Guidelines* dated January 2011, this development may fall under the definition “potentially offensive or hazardous development” due to it being Designated Development. Furthermore, the Director-Generals Requirements for the EIS issued by the Department of Planning and Infrastructure (including input from Council and State Government agencies) required that an assessment be made against SEPP 33 and this SEPP does contain relevant principles to the proposed development that ought to be addressed in any robust planning assessment.

The proposed development could be considered a potentially offensive industry because if the development were to operate without measures (including, for example, crushing without exhaust measures and hours of operation) to reduce or minimise its impact in the locality or on the existing or

likely future development on other land, it would pose a significant risk in relation to the locality. A Preliminary Hazard Analysis (PHA) has not been undertaken by the applicant.

Given that the development is Limestone Works that crush or screen incremental increases resulting in a maximum volume of 120,000 tonnes per annum and the common threshold requiring an Environment Protection Licence (EPL) is more than 30,000tonnes the development is well in excess of the volume threshold. Clause 13 of SEPP 33 states that:

In determining an application to carry out development to which this Part applies, the consent authority must consider (in addition to any other matters specified in the Act or in an environmental planning instrument applying to the development):

- (a) *current circulars or guidelines published by the Department of Planning relating to hazardous or offensive development, and*
- (b) *whether any public authority should be consulted concerning any environmental and land use safety requirements with which the development should comply, and*
- (c) *in the case of development for the purpose of a potentially hazardous industry—a preliminary hazard analysis prepared by or on behalf of the applicant, and*
- (d) *any feasible alternatives to the carrying out of the development and the reasons for choosing the development the subject of the application (including any feasible alternatives for the location of the development and the reasons for choosing the location the subject of the application), and*
- (e) *any likely future use of the land surrounding the development.*

This clause is addressed as follows:

- a) As stated above, the current Department of Planning guidelines relating to hazardous or offensive development are entitled “Applying SEPP 33 – Hazardous and Offensive Development Application Guidelines” and dated January 2011. These guidelines state that SEPP 33 aims to ensure that only proposals which are suitably located, and able to demonstrate that they can be built and operated with an adequate level of safety and pollution control, can proceed.
- b) The Office of Environment and Heritage (OEHL EPA,) has been consulted during public exhibition of this DA and provided their General Terms Approval (GTAs). This is discussed further at Section 3.7.6.
- c) The proposed development is considered a potentially offensive industry. It is noted that the Limestone Works does not fall under the parent definition of Industry but is a separate type of development under mining.
- d) It has been assessed that this requirement has not been adequately considered in the EIS, particularly the improvement to the environment by establishment of modern machinery and methods. The appropriateness of the selected site and its impact on the surrounding area.
- e) Impacts on surrounding development have been discussed throughout the report.

In summary, despite SEPP 33 not being adequately addressed the proposed development due to its categorisation as a Limestone Works; this SEPP contains relevant principles to the proposed development that ought to be addressed in any robust planning assessment.

Whether meeting the definition of “potentially offensive development” in SEPP 33 or not, this development is still considered potentially offensive as the proposed tonnage throughput four times greater than the 30,000 tonne threshold. It could be considered that the Noise and Air Quality Assessment Reports are Quantitative Assessments and the modelling using worst case scenarios.

Council staff assessment against the heads of consideration in clause 13 of SEPP 33 finds that:

The proposal is suitably located and would therefore have beneficial impacts on surrounding development provided NSW EPA, Water NSW and Council's draft Conditions of Consent are included to mitigate impacts to acceptable standards.

The adequacy of the SEPP 33 assessment is therefore not considered fatal to the proposal or DA assessment.

3.4.2 State Environmental Planning Policy No 44 – Koala Habitat Protection

SEPP 44 aims to encourage the proper conservation and management of areas of natural vegetation that provide habitat for koalas to ensure a permanent free living population over their present range and reverse the current trend of decline

The flora and fauna assessment submitted with the application does not identify the site or as supporting likely Koala habitat. It does not identify 15% of the trees listed in Schedule 2 of the SEPP being contained within the upper or lower strata of the tree component.

The Ecological Assessment states "While koalas may occur occasionally within the district, this site and adjoining lands do not support likely habitat and despite searches no signs of Koala occupation were observed in the area during site visits. No further consideration under this SEPP is necessary."

Although the Fauna assessment does not appear to be consistent with Department Environment and Conservation *Threatened Biodiversity and Assessment: Guidelines for Developments and Activities (Draft 2004)*; There is useful information which has been obtained through the environmental assessments undertaken for the Boral activities.

Approximately 6 identified flora species either endangered or threatened under the TSC Act or EPBC and approximately were mentioned in <>

There was a Koala siting reported in the Niche (2014) as part of the "Marulan Limestone Mine Biodiversity Feasibility Assessment (March 2014). Office Environment and Heritage advised as part of the SEARs response that "the Bungonia Koalas local population is quite significant making up 80% of the known records within GM Shire Council Area. Indications are that numbers are fluctuating in recent times so it is important to get an accurate assessment of koala numbers on the Boral lease area to determine the significance of the development in regards to the Koala population."

Discussions have been made with OEH and it is considered the area is a vegetation link area between Bungonia and Tallong/Red Hills area. The recent siting on the Marulan South site was on the George side. The development site for this facility is on the northern side of Boral Marulan South.

The site is not considered to support likely Koala habitat but is in the vicinity of potential koala habitat and a requirement to conserve and protect the remaining vegetation will offset the minor scale of clearing. The adequacy of the Flora and Fauna Report is not considered fatal to the proposal or DA assessment.

3.4.3 State Environmental Planning Policy No 55 – Remediation of Land

SEPP 55 deals with the remediation of land and the consent authority is required to consider the items listed under Clause 7. As stated by Clause 7:

- "(1) A consent authority must not consent to the carrying out of any development on land unless:
- (a) It has considered whether the land is contaminated, and
 - (b) If the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and

- (c) *If the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*
- (2) *Before determining an application for consent to carry out development that would involve a change of use on any of the land specified in subclause (4), the consent authority must consider a report specifying the findings of a preliminary investigation of the land concerned carried out in accordance with the contaminated land planning guidelines.*
- (3) *The applicant for development consent must carry out the investigation required by subclause (2) and must provide a report on it to the consent authority. The consent authority may require the applicant to carry out, and provide a report on, a detailed investigation (as referred to in the contaminated land planning guidelines) if it considers that the findings of the preliminary investigation warrant such an investigation.*
- (4) *The land concerned is:*
- (a) *Land that is within an investigation area,*
- (b) *Land on which development for a purpose referred to in Table 1 to the contaminated land planning guidelines is being, or is known to have been, carried out,*
- (c) *To the extent to which it is proposed to carry out development on it for residential, educational, recreational or child care purposes, or for the purposes of a hospital—land:*
- (i) *in relation to which there is no knowledge (or incomplete knowledge) as to whether development for a purpose referred to in Table 1 to the contaminated land planning guidelines has been carried out, and*
- (ii) *On which it would have been lawful to carry out such development during any period in respect of which there is no knowledge (or incomplete knowledge)."*

The EIS did assess the application against SEPP 55, (page 141)

Contaminated land is defined in SEPP 55 to mean land in, on or under which any substance is present at a concentration above the concentration at which the substance is normally present in, on or under (respectively) land in the same locality, being a presence that presents a risk of harm to human health or any other aspect of the environment.

The EIS summary stated *"From this assessment there appears to be no contamination or potential contamination of the land which is the subject of the proposed development. Based on this preliminary assessment it is considered that the site is presently suitable for development as proposed."*

The land is therefore considered to be in a satisfactory state for the proposed land use. It has been assessed that the proposal can proceed without any special conditions relating to land contamination. Consequently it is considered SEPP 55 does not require any further consideration.

3.4.4 State Environmental Planning Policy (Infrastructure) 2007 (SEPP Infrastructure)

SEPP Infrastructure covers a range of infrastructure facility, development and works and outlines permissibility. The SEPP also includes requirements for referrals to a number of agencies where a proposal may impact upon an element, land or operation controlled by that authority. The following comment is provided.

The proposed development is not considered Traffic Generating Development under clause 104 and Schedule 3 of Infrastructure SEPP as extractive industry/mining is not a listed land use and the threshold of the industry category is 20ha. The development site is less than 20ha although the land has an area of approximately 40ha.

The development only proposes to generate *"An additional 20 truck movements per day (at maximum capacity of 120,000 tpa after 5 years) are anticipated as discussed and assessed within the Traffic Impact Assessment, once the development is completed."* which does not meet the 200 or more vehicles listed in Schedule 3 for the any other purpose.

Although not Traffic Generating Development the Roads and Maritime Services (RMS) have commented on the proposal and provided no objections or requirements. . Refer the Attachments for the RMS response.

3.4.5 State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007 (Mining SEPP)

The Mining SEPP permits the facilities for the processing or transportation of minerals or mineral bearing ores (limestone) on land on which mining may be carried out but only if they are mined from that or adjoining land under Clause 7 (1)(d).

Mining (open cut mining and underground mining is currently permitted with consent under the land use table to the RU1 zone to *Goulburn Mulwaree LEP 2009* and consequently mining facilities (processing or transportation) is permitted by way of Clause 7(1)(d) of the Mining SEPP. Clause 5 of the Mining SEPP enables the SEPP to override the GMLEP 2009. An extract of Clause 5 and 7 of the Mining SEPP and the RU1 land use table to GMLEP 2009 is provided below for your reference.

Clause 5 Relationship with other environmental planning instruments (Mining SEPP)

5 (3) Subject to subclause (4), if this Policy is inconsistent with any other environmental planning instrument, whether made before or after this Policy, this Policy prevails to the extent of the inconsistency.

Clause 7 Development permissible with consent (Mining SEPP)

(1) Mining

Development for any of the following purposes may be carried out only with development consent:

- (a) underground mining carried out on any land,*
- (b) mining carried out:*
 - (i) on land where development for the purposes of agriculture or industry may be carried out (with or without development consent), or*
 - (ii) on land that is, immediately before the commencement of this clause, the subject of a mining lease under the [Mining Act 1992](#) or a mining licence under the [Offshore Minerals Act 1999](#),*
- (c) mining in any part of a waterway, an estuary in the coastal zone or coastal waters of the State that is not in an environmental conservation zone,*
- (d) facilities for the processing or transportation of minerals or mineral bearing ores on land on which mining may be carried out (with or without development consent), but only if they were mined from that land or adjoining land.*

Zone RU1 Primary Production (GMLEP 2009)

1 Objectives of zone

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base*
- *To encourage diversity in primary industry enterprises and systems appropriate for the area.*
- *To minimise the fragmentation and alienation of resource lands.*
- *To minimise conflict between land uses within this zone and with adjoining zones.*
- *To promote the use of agricultural land for efficient and effective agricultural production.*
- *To avoid or minimise impacts on the natural environment and protect environmentally sensitive land.*
- *To allow the development of non-agricultural land uses which are compatible with the character of the zone.*
- *To allow the development of processing, service and value-adding industries related to agriculture and primary industry production.*
- *To protect and enhance the water quality of receiving watercourses and groundwater systems to reduce land degradation.*
- *To minimise the visual impact of development on the rural landscape.*

2 Permitted without consent

Environmental facilities; Environmental protection works; Extensive agriculture; Farm buildings; Home occupations; Roads

3 Permitted with consent

Cellar door premises; Dwelling houses; Extractive industries; Hardware and building supplies; Intensive livestock agriculture; Intensive plant agriculture; Kiosks; Landscaping material supplies; Light industries; Markets; **Open cut mining**; Plant nurseries; Roadside stalls; Rural supplies; Timber yards; **Any other development not specified in item 2 or 4**

4 Prohibited

Amusement centres; Attached dwellings; Boat building and repair facilities; Business premises; Dual occupancies; Exhibition homes; Exhibition villages; Home occupations (sex services); Industrial retail outlets; Industrial training facilities; **Industries**; Marinas; Mooring pens; Multi dwelling housing; Registered clubs; Residential flat buildings; Restricted premises; Retail premises; Self-storage units; Semi-detached dwellings; Seniors housing; Serviced apartments; Sex services premises; Shop top housing; Vehicle body repair workshops; Vehicle repair stations; Wharf or boating facilities; Wholesale

mining means mining carried out under the [Mining Act 1992](#) or the recovery of minerals under the [Offshore Minerals Act 1999](#), and includes:

- (a) the construction, operation and decommissioning of associated works, and
- (b) the rehabilitation of land affected by mining.

Note. Mining is not a type of **industry**—see the definition of that term in this Dictionary.

open cut mining means mining carried out on, and by excavating, the earth's surface, but does not include underground mining.

underground mining means:

- (a) mining carried out beneath the earth's surface, including bord and pillar mining, longwall mining, top-level caving, sub-level caving and auger mining, and
- (b) shafts, drill holes, gas and water drainage works, surface rehabilitation works and access pits associated with that mining (whether carried out on or beneath the earth's surface), but does not include open cut mining.

Significance of the Resource

Part 3 of the Mining SEPP requires consideration of the resource. Clause 12AA and 12AB applies to mining applications and is not applicable to the assessment of this application, as the significance of the resource however many of the matters listed for consideration for mining applications have been raised by Boral in *Marulan South Limestone Continued Operation State Significant Development Application – Preliminary Environmental Assessment prepared by PACT* (April 2015). Page 5 PACT 2015 identifies up to 3.38 million tonnes of product produced every year and

The mine is a strategically important asset for Boral, as it supplies the main ingredient for the manufacture of cement at Berrima Cement Works. This is also a strategically important operation for Sydney based consumers of these products as this represents around 60% of the cement sold in NSW and feeds into more than 30% of concrete sold in Sydney.

Source: PACT 2015. The proposed processing plant 120,000 tonnes consists a minor proportion of that production but an alternative producer.

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

Before determining an application for consent for development for the purposes of mining, petroleum production or extractive industry, the consent authority must:

- (a) consider:

- (i) *the existing uses and approved uses of land in the vicinity of the development, and*
 - (ii) *whether or not the development is likely to have a significant impact on the uses that, in the opinion of the consent authority having regard to land use trends, are likely to be the preferred uses of land in the vicinity of the development, and*
 - (iii) *any ways in which the development may be incompatible with any of those existing, approved or likely preferred uses, and*
- (b) *evaluate and compare the respective public benefits of the development and the land uses referred to in paragraph (a) (i) and (ii), and*
- (c) *evaluate any measures proposed by the applicant to avoid or minimise any incompatibility, as referred to in paragraph (a) (iii).*

In considering items under Clause 12, the Laterals EIS (p 44-45) improve the original processing plant and design while providing for an increased market demand also provide improved environmental outcomes.

It is therefore considered that the compatibility of the proposed mining processing plant with the adjacent land and uses will be acceptable; provided:

- the recommended mitigating measures proposed by BE for Noise and Air are implemented; and
- compliance with the draft conditions of consent including NSW EPA conditions.

Clause 12A Consideration of voluntary land acquisition and mitigation policy –

Not Applicable as the development is not State significant development.

Clause 13 Compatibility of proposed development with mining, petroleum production or extractive industry

Clause 13 states:

(1) This clause applies to an application for consent for development on land that is, immediately before the application is determined:

- (a) *in the vicinity of an existing mine, petroleum production facility or extractive industry, or*
- (b) *identified on a map (being a map that is approved and signed by the Minister and copies of which are deposited in the head office of the Department and publicly available on the Department's website) as being the location of State or regionally significant resources of minerals, petroleum or extractive materials, or*

Note. *At the commencement of this Policy, no land was identified as referred to in paragraph (b).*

- (c) *identified by an environmental planning instrument as being the location of significant resources of minerals, petroleum or extractive materials.*

Note. [Sydney Regional Environmental Plan No 9—Extractive Industry \(No 2—1995\)](#) is an example of an environmental planning instrument that identifies land as containing significant deposits of extractive materials.

(2) Before determining an application to which this clause applies, the consent authority must:

- (a) *consider:*
 - (i) *the existing uses and approved uses of land in the vicinity of the development, and*
 - (ii) *whether or not the development is likely to have a significant impact on current or future extraction or recovery of minerals, petroleum or extractive materials (including by limiting access to, or impeding assessment of, those resources), and*
 - (iii) *any ways in which the development may be incompatible with any of those existing or approved uses or that current or future extraction or recovery, and*
- (b) *evaluate and compare the respective public benefits of the development and the uses, extraction and recovery referred to in paragraph (a) (i) and (ii), and*
- (c) *evaluate any measures proposed by the applicant to avoid or minimise any incompatibility, as referred to in paragraph (a) (iii).*

The land is not identified on the GMLEP 2009 Mineral Resource Map however it is adjacent to sites identified of the map (Refer to Figure 7 of this report). Furthermore the site is identified with the recent map prepared from the Resources and Energy Division of NSW Trade and Investment titled *Mineral Resources Audit Goulburn Mulwaree LGA* (Jan 2015) as being transitional (i.e. buffer) to the significant identified mineral resources.

Mineral Resources Audit Goulburn Mulwaree LGA (Jan 2015) provides transitional zones which have been based upon previous criteria developed by the then EPA criteria of 1000m for where blasting is or would be used and 500m for sites where blasting is not required. The transitional zone surrounding the identified resource identified in the *Mineral Resources Audit* is 500m. The 1000m buffer is mapped in this instance.

It is acknowledged that Goulburn Mulwaree LGA is located within an important natural resource area and this development is well located to transport this material onto the national highway approximately 7km from the site. EPA have proposed GTAs to ensure the compatibility of the development with the surrounding locality.

Figure 7 Extract from Council's GIS system with GMLEP 2009 Mineral Resource Map

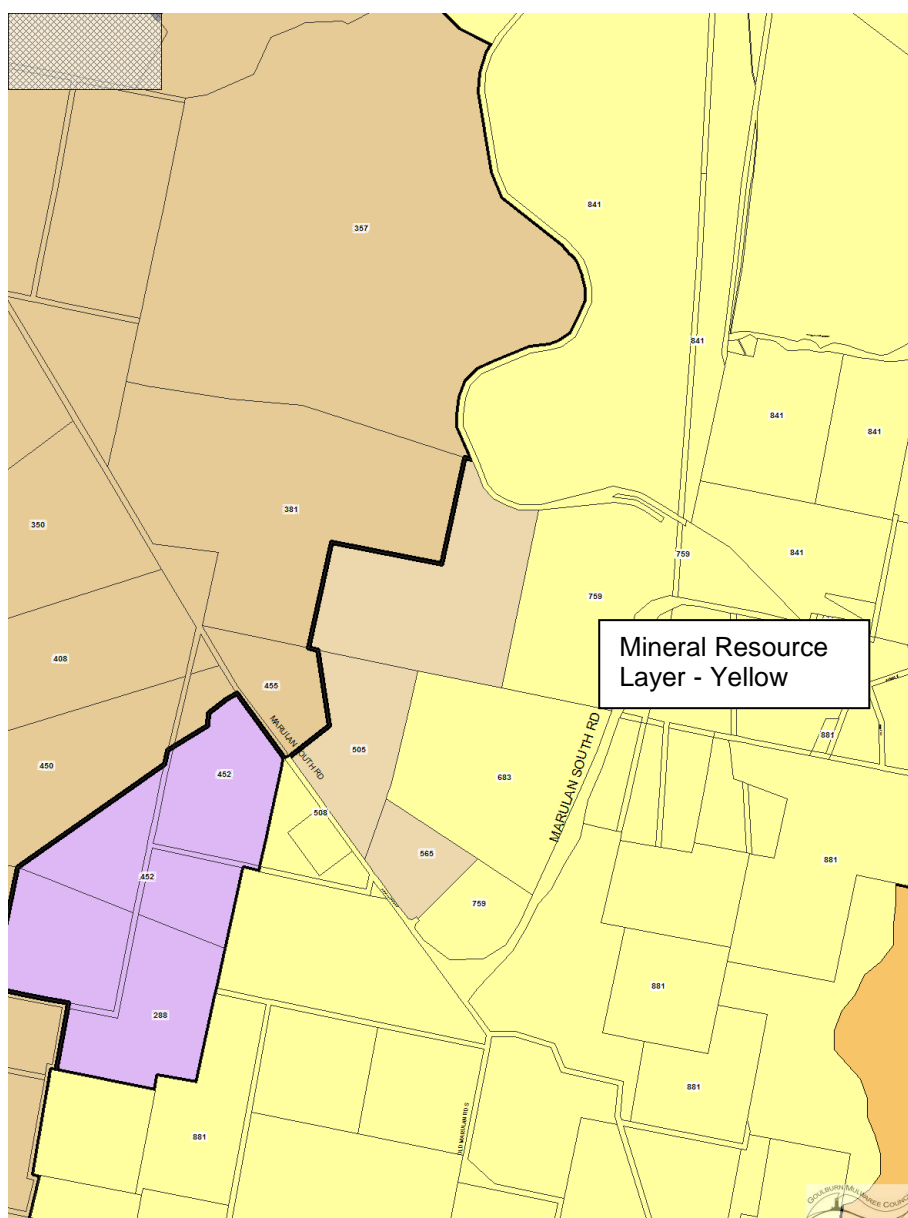
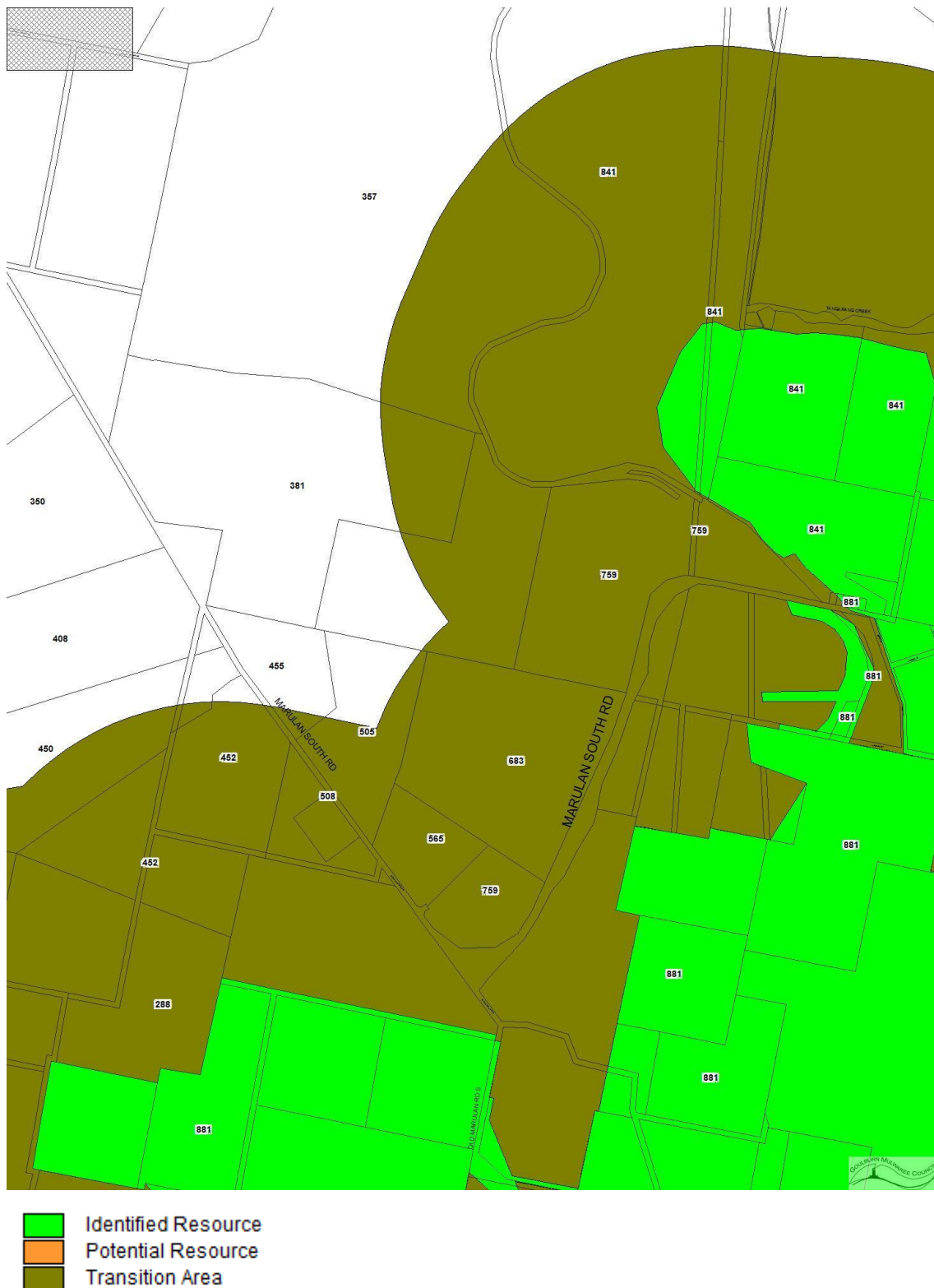


Figure 8: Extract from Council's GIS system with Department of Resources and Energy's 2015 Mineral Resource Audit overlay



Clause 14 Natural resource management and environmental management

Clause 14 states:

(1) Before granting consent for development for the purposes of mining, petroleum production or extractive industry, the consent authority must consider whether or not the consent should be issued

subject to conditions aimed at ensuring that the development is undertaken in an environmentally responsible manner, including conditions to ensure the following:

- (a) that impacts on significant water resources, including surface and groundwater resources, are avoided, or are minimised to the greatest extent practicable,
 - (b) that impacts on threatened species and biodiversity, are avoided, or are minimised to the greatest extent practicable,
 - (c) that greenhouse gas emissions are minimised to the greatest extent practicable.
- (2) Without limiting subclause (1), in determining a development application for development for the purposes of mining, petroleum production or extractive industry, the consent authority must consider an assessment of the greenhouse gas emissions (including downstream emissions) of the development, and must do so having regard to any applicable State or national policies, programs or guidelines concerning greenhouse gas emissions.
- (3) Without limiting subclause (1), in determining a development application for development for the purposes of mining, the consent authority must consider any certification by the Chief Executive of the Office of Environment and Heritage or the Director-General of the Department of Primary Industries that measures to mitigate or offset the biodiversity impact of the proposed development will be adequate.

Matters raised under Clause 14(1)-(3) are addressed later in the report with the exception of greenhouse gas emissions.

The EIS has not addressed the extent of greenhouse gas emissions. It recognises that the development would be proposed and will be conditioned to be carried out in an environmentally sensitive manner. The conditions of the EPA General Terms of Approval (GTA) and the Water NSW conditions in particular deal with the proper and efficient use of equipment, best practice road and stormwater control conditions while the Council road conditions will ensure the development is accessed to an acceptable and safe standard.

The adequacy of the greenhouse gas assessment is therefore not considered fatal to the proposal or DA assessment as the objective of energy efficiency is achieved through the proposed draft conditions.

Clause 15 Resource recovery

Clause 15 states:

- (1) Before granting consent for development for the purposes of mining, petroleum production or extractive industry, the consent authority must consider the efficiency or otherwise of the development in terms of resource recovery.
- (2) Before granting consent for the development, the consent authority must consider whether or not the consent should be issued subject to conditions aimed at optimising the efficiency of resource recovery and the reuse or recycling of material.
- (3) The consent authority may refuse to grant consent to development if it is not satisfied that the development will be carried out in such a way as to optimise the efficiency of recovery of minerals, petroleum or extractive materials and to minimise the creation of waste in association with the extraction, recovery or processing of minerals, petroleum or extractive materials.

The EIS states It is submitted for consideration that the Eastern Sand and Gravel facility is ideally located to enable excellent resource recovery by being located immediately adjacent to the raw material needed for the industry. (p126). It is accepted the location is an efficient matter for recovery. It is also recognized that the improved building design and machinery will further improve the efficiency of the operation.

Clause 16 Transport

Clause 16 states:

- (1) Before granting consent for development for the purposes of mining or extractive industry that involves the transport of materials, the consent authority must consider whether or not the consent should be issued subject to conditions that do any one or more of the following:
 - (a) require that some or all of the transport of materials in connection with the development is not to be by public road,

- (b) *limit or preclude truck movements, in connection with the development, that occur on roads in residential areas or on roads near to schools,*
 - (c) *require the preparation and implementation, in relation to the development, of a code of conduct relating to the transport of materials on public roads.*
 - (2) *If the consent authority considers that the development involves the transport of materials on a public road, the consent authority must, within 7 days after receiving the development application, provide a copy of the application to:*
 - (a) *each roads authority for the road, and*
 - (b) *the Roads and Traffic Authority (if it is not a roads authority for the road).*
- Note.** Section 7 of the [Roads Act 1993](#) specifies who the roads authority is for different types of roads. Some roads have more than one roads authority.
- (3) *The consent authority:*
 - (a) *must not determine the application until it has taken into consideration any submissions that it receives in response from any roads authority or the Roads and Traffic Authority within 21 days after they were provided with a copy of the application, and*
 - (b) *must provide them with a copy of the determination.*
 - (4) *In circumstances where the consent authority is a roads authority for a public road to which subclause (2) applies, the references in subclauses (2) and (3) to a roads authority for that road do not include the consent authority.*

Access to and from the site is only available by public road and there is no alternative transport option to the applicant. The above provisions have been satisfied by the conditions received Goulburn Mulwaree Council, EPA and Water NSW and in particular address hours of operation, transportation and code of transport conduct. RMS (formerly RTA) were consulted and did not provide any requirements.

Clause 17 Rehabilitation

Clause 17 states:

- (1) *Before granting consent for development for the purposes of mining, petroleum production or extractive industry, the consent authority must 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.*
- (2) *In particular, the consent authority must consider whether conditions of the consent should:*
 - (a) *require the preparation of a plan that identifies the proposed end use and landform of the land once rehabilitated, or*
 - (b) *require waste generated by the development or the rehabilitation to be dealt with appropriately, or*
 - (c) *require any soil contaminated as a result of the development to be remediated in accordance with relevant guidelines (including guidelines under section 145C of the Act and the [Contaminated Land Management Act 1997](#)), or*
 - (d) *require steps to be taken to ensure that the state of the land, while being rehabilitated and at the completion of the rehabilitation, does not jeopardize public safety.*

Clause 17 is considered to be satisfied by proposed conditions and in particular from Water NSW and EPA rehabilitation conditions.

Water NSW and the EPA have applied conditions relating to the monitoring of the potential pollutants. Refer to the draft conditions of consent.

3.4.6 State Environmental Planning Policy (Rural Lands) 2008

Clause 5 enables the Rural Lands SEPP to prevail over GMLEP 2009

Clause 7 Rural Planning Principles states:

The Rural Planning Principles are as follows:

- (a) *the promotion and protection of opportunities for current and potential productive and sustainable economic activities in rural areas,*
- (b) *recognition of the importance of rural lands and agriculture and the changing nature of agriculture and of trends, demands and issues in agriculture in the area, region or State,*
- (c) *recognition of the significance of rural land uses to the State and rural communities, including the social and economic benefits of rural land use and development,*
- (d) *in planning for rural lands, to balance the social, economic and environmental interests of the community,*

- (e) *the identification and protection of natural resources, having regard to maintaining biodiversity, the protection of native vegetation, the importance of water resources and avoiding constrained land,*
- (f) *the provision of opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities,*
- (g) *the consideration of impacts on services and infrastructure and appropriate location when providing for rural housing,*
- (h) *ensuring consistency with any applicable regional strategy of the Department of Planning or any applicable local strategy endorsed by the Director-General.*

The EIS makes an assessment on pages 140-141. The assessment and draft conditions address the planning principles (a)-(h). The site having an area of approximately 40ha is considered to have limited agricultural productive potential and the proposed use of the site as a processing facility is considered a productive and sustainable economic activity.

The development will not restrict the use of surrounding lands for rural activities.

3.4.7 State Environmental Planning Policy (State and Regional Development) 2011 SEPP (State & Regional Development)

A regional panel is empowered as a consent authority and may exercise any powers that would be vested in a consent authority under an environmental planning instrument. In this case, the regional panel is the consent authority as conferred on it under *State Environmental Planning Policy (State and Regional Development) 2011*. Although the development is not specifically listed it is of a class/category of Designated Development similar to Extractive Industry which would require the approval of the JRPP. As such it is recommended that the JRPP may be authorised to exercise consent authority functions of councils unless otherwise advised.

3.4.8 State Environmental Planning Policy Sydney Water Drinking Catchment 2011 – (SWDC SEPP)

The SWDC SEPP provides that a consent authority must not grant consent on land in the Sydney drinking water catchment unless it is satisfied that the carrying out of the proposed development would have a neutral or beneficial effect on water quality.

The SWDC SEPP further provides that a consent authority must not grant consent to the carrying out of development on land in the Sydney drinking water catchment except with the concurrence of the Water NSW (previously known as ‘SCA’).

The DA has been referred to Water NSW for the concurrence of the Chief Executive pursuant to clause 11 of this SEPP. Concurrence of Water NSW was received following a request for further information and the conditions have been incorporated into the draft conditions of consent.

3.5 Goulburn Mulwaree Local Environmental Plan 2009 - (GMLEP 2009)

Part 1 Preliminary

The site is within the Goulburn Mulwaree Local Government Area (‘LGA’) and the GMLEP 2009 is the applicable Local Environmental Plan.

GMLEP 2009 is a ‘Standard Instrument LEP’ prepared in accordance with S33A of the EP&A Act, which was published and commenced on 20 February 2009.

Clause 1.2 Aims of the Plan

The following aims of GMLEP 2009 are considered relevant to the proposed development:

- (a) *to promote and co-ordinate the orderly and economic use and development of land in the area,*
- (c) *to encourage the sustainable management, development and conservation of natural resources,*
- (d) *to promote the use of rural resources for agriculture and primary production and related processing service and value adding industries,*
- (e) *to protect and conserve the environmental and cultural heritage of Goulburn Mulwaree,*
- (i) *to allow development only if it occurs in a manner that minimises risks due to environmental hazards, and minimises risks to important elements of the physical environment, including water quality,*

- (j) to provide direction and guidance as to the manner in which growth and change are to be managed in Goulburn Mulwaree,
- (k) to protect and enhance watercourses, riparian habitats, wetlands and water quality within the Goulburn Mulwaree and Sydney drinking water catchments so as to enable the achievement of the water quality objectives.

Clause 1.4 Definitions

Applicable definitions from the GMLEP 2009 include:

mining means mining carried out under the [Mining Act 1992](#) or the recovery of minerals under the [Offshore Minerals Act 1999](#), and includes:

- (a) the construction, operation and decommissioning of associated works, and
- (b) the rehabilitation of land affected by mining.

Note. Mining is not a type of **industry**—see the definition of that term in this Dictionary.

open cut mining means mining carried out on, and by excavating, the earth's surface, but does not include underground mining.

underground mining means:

- (a) mining carried out beneath the earth's surface, including bord and pillar mining, longwall mining, top-level caving, sub-level caving and auger mining, and
- (b) shafts, drill holes, gas and water drainage works, surface rehabilitation works and access pits associated with that mining (whether carried out on or beneath the earth's surface), but does not include open cut mining.

Clause 1.9 Application of SEPPs

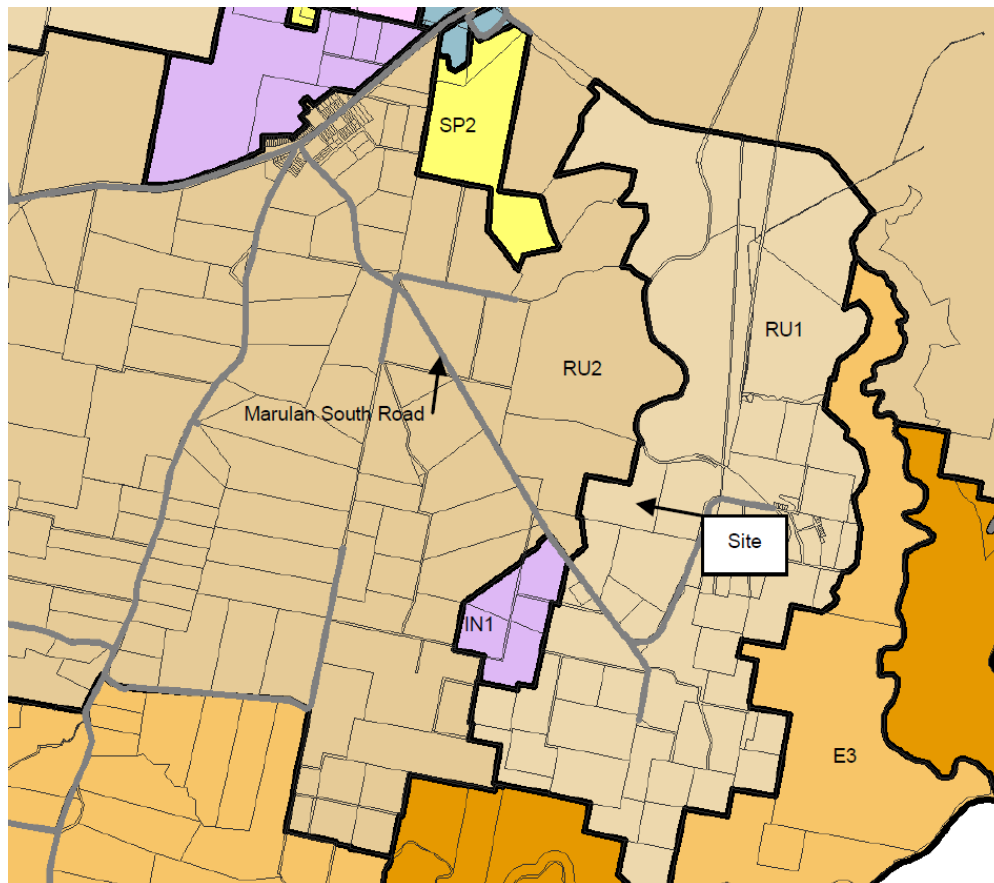
Enables the SEPPs to override GMLEP 2009.

Part 2 Permitted or Prohibited Development

Clause 2.2 Zoning

The land is currently zoned. RU1 and although Industries is prohibited in the zone, mining facilities (processing or transportation) is permitted by way of Clause 7(1)(d) of the Mining SEPP. Refer below to extract GMLEP 2009 sourced from Council's GIS Mapping system.

Figure 9: Extract from the GMLEP 2009 Land Zoning Map.



Clause 2.3 zone Objectives and Land Use Table

Clause 2.3(2) (Zone Use and Land Use Table) provides that the consent authority must have regard to the objectives for development in a zone when determining a development application in respect of land within the zone. The zone objectives for the RU1 zone are:

Objectives of zone

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base*
- *To encourage diversity in primary industry enterprises and systems appropriate for the area.*
- *To minimise the fragmentation and alienation of resource lands.*
- *To minimise conflict between land uses within this zone and with adjoining zones.*
- *To promote the use of agricultural land for efficient and effective agricultural production.*
- *To avoid or minimise impacts on the natural environment and protect environmentally sensitive land.*
- *To allow the development of non-agricultural land uses which are compatible with the character of the zone.*
- *To allow the development of processing, service and value-adding industries related to agriculture and primary industry production.*
- *To protect and enhance the water quality of receiving watercourses and groundwater systems to reduce land degradation.*
- *To minimise the visual impact of development on the rural landscape.*

The development is considered consistent with the objectives. The proposal is considered acceptable subject to the proposed draft conditions.

Although Industry is identified as Prohibited under the RU1 zone to GMLEP 2009. Section 36 of the EPA Act and Clause 1.9 of GMLEP 2009 provide that this is subject to any applicable SEPP. Clause

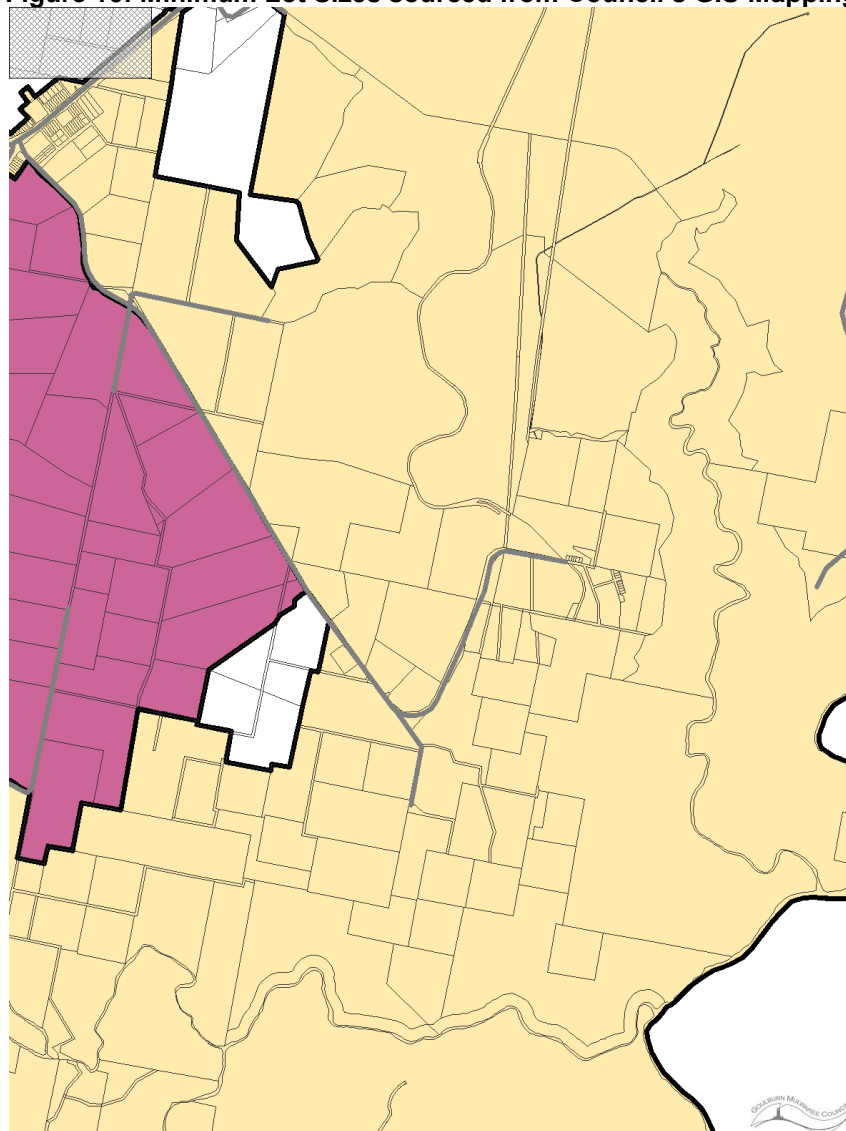
7(1)(d) of Mining SEPP provides that development for the purposes of processing minerals mined from adjacent land may be carried out with development consent.

Part 4 Principle Development Standards

Clause 4.1 Minimum Lot Sizes

The current minimum lot size for the surrounding land is 100ha however there is a portion of Marulan South Road identified as having a minimum lot size of 40ha (located on the southern side of Marulan South Road. Refer to Figure 10. Amendment No. 2 to GMLEP amended the minimum lot area for subdivision within AB2 area from 100ha to 40ha.

Figure 10: Minimum Lot Sizes sourced from Council's GIS Mapping System



Key

Minimum Lot Size

AB2	40 ha
AD	100 ha

Clause 5.3 Development near zone boundaries

The objective of this clause is to provide flexibility where the investigation of a site and its surroundings reveals that a use allowed on the other side of a zone boundary would enable a more

logical and appropriate development of the site and be compatible with the planning objectives and land uses for the adjoining zone.

This clause allows a use permitted within the adjoining RU2 zone to be undertaken within 50m of the zone boundary of the RU1 zone as the land is located on the boundary of the two zones.

The use proposed is permitted under the Mining SEPP which overrides the GMLEP 2009.

Clause 5.9 Preservation of trees or vegetation

Not applicable as the site is not a Heritage Item or located within a Heritage Conservation Area nor is it located within a Biodiversity Hotspot.

Clause 5.9AA Trees or vegetation not prescribed by a Development Control Plan

The Native Vegetation Act overrides this clause. Refer to Section 3.7.3 of this report.

Clause 5.10 Heritage Conservation

The nearest Heritage Items are the Towrang Bridge and Culverts and Towrang Convict Stockade (HI 345 and 346 respectively) which are located approximately 2.5km north east of the development. As the proposed development is not in the vicinity of any heritage items listed in GMLEP 2009, an assessment against clause 5.10 – Heritage conservation is not required. Heritage is discussed further at Section 3.7.4 of this report.

Part 7 Local provisions – general

Clause 7.1A Earth Works

While the Development Application consists of earth works which are not minor in nature these aspects have been considered and applied for under the whole Development Application.

(1) *The objectives of this clause are as follows:*

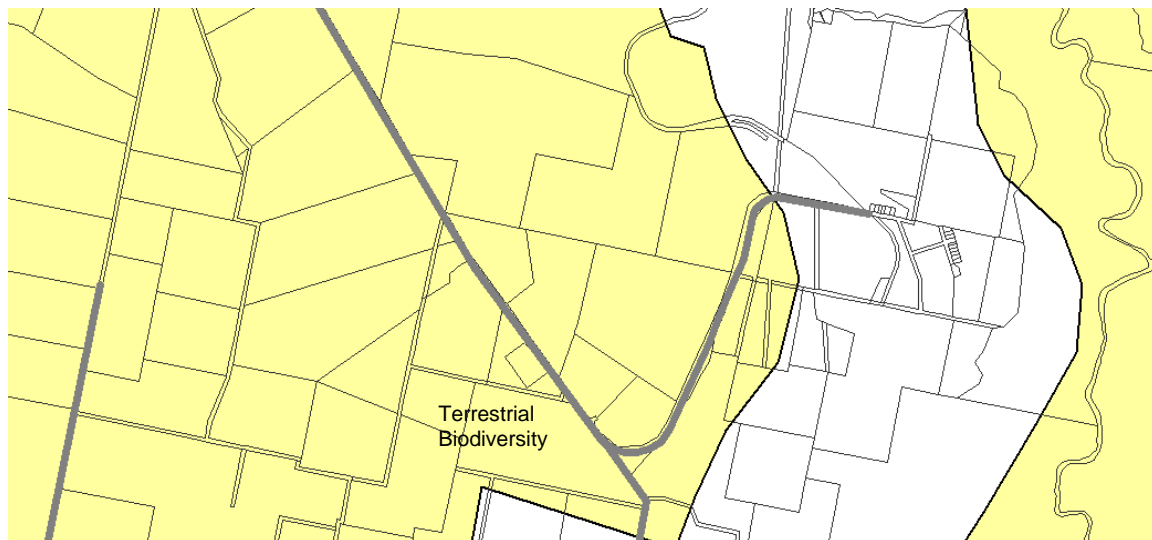
- (a) *to ensure that any earthworks will not have a detrimental impact on environmental functions and processes, neighbouring uses or heritage items and features of the surrounding land,*
- (b) *to allow earthworks of a minor nature without separate development consent.*
- (2) *Development consent is required for earthworks, unless:*
 - (a) *the work is exempt development under this Plan or State Environmental Planning Policy (Exempt and Complying Development Codes) 2008, or*
 - (b) *the consent authority is satisfied the earthworks are of a minor nature.*
- (3) *Before granting development consent for earthworks, the consent authority must consider the following matters:*
 - (a) *the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality,*
 - (b) *the effect of the proposed development on the likely future use or redevelopment of the land,*
 - (c) *the quality of the fill or of the soil to be excavated, or both,*
 - (d) *the effect of the proposed development on the existing and likely amenity of adjoining properties,*
 - (e) *the source of any fill material or the destination of any excavated material,*
 - (f) *the likelihood of disturbing Aboriginal objects or other relics,*
 - (g) *proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area.*

The excavation of the site has been assessed with particular consideration from Councils Engineers and Water NSW. Conditions of consent have been recommended with regard to the management, storage and re-use of the excavation material. This includes the transport arrangements to and from the site. While standard sediment and erosion conditions of consent are recommended and conditions to protect air quality, they will support the additional matters quoted above including (3)(a) to ensure no disruption of or any detrimental effect on existing drainage patterns and soil stability is secured; (3)(d) effect and likely amenity of adjoining properties; and (3)(g) protecting the drinking water catchment and environmentally sensitive land.

Clause 7.2 Terrestrial Biodiversity

The development is proposed within the land mapped as “terrestrial biodiversity” on the Natural Resources Map. Please see Figure 11 below.

Figure 11: Extract from Terrestrial Biodiversity layer from Council's GIS Mapping System.



-  **Resource Sensitivity Biodiversity**
-  **Biodiversity Hot Spots and Wetlands**

The objectives of the clause are triggered by the precautionary measures to protect significant stands of vegetation and wildlife corridors and listed below:

- (1) *The objectives of this clause are to protect, maintain or improve the diversity of the native vegetation, including:*
 - (a) *protecting biological diversity of native flora and fauna, and*
 - (b) *protecting the ecological processes necessary for their continued existence, and*
 - (c) *encouraging the recovery of threatened species, communities or populations and their habitats.*
- (2) *This clause applies to development on land that is identified as “Biodiversity” on the Terrestrial Biodiversity Map.*
- (3) *Development consent must not be granted to development on land to which this clause applies unless the consent authority has considered a report that addresses the following matters:*
 - (a) *identification of any potential adverse impact of the proposed development on any of the following:*
 - (i) *a native vegetation community,*
 - (ii) *the habitat of any threatened species, population or ecological community,*
 - (iii) *a regionally significant species of plant, animal or habitat,*
 - (iv) *a habitat corridor,*
 - (v) *a wetland,*
 - (vi) *the biodiversity values within a reserve, including a road reserve or a stock route, and*
 - (b) *a description of any proposed measures to be undertaken to ameliorate any such potential adverse impact.*
- (4) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development is consistent with the objectives of this clause and:*
 - (a) *the development is designed, sited and managed to avoid the potential adverse environmental impact, or*
 - (b) *if a potential adverse impact cannot be avoided, the development:*
 - (i) *is designed and sited so as to have minimum adverse impact, and*
 - (ii) *incorporates effective measures so as to have minimal adverse impact, and*
 - (iii) *mitigates any residual adverse impact through the restoration of any existing disturbed or modified area on the site.*

It is considered that the environmental values, water quality objectives and any likely adverse impact will be managed to minimise any likely adverse impact consistent with the above objectives of the clause and the biodiversity values and protecting potential threatened communities will be adequately addressed by the draft conditions.

Clause 7.4 Restrictions on development adjoining mineral resource areas

The objective of this clause is to provide for the proper management and development of mineral and extractive resources for the purpose of promoting social and economic benefits to Goulburn Mulwaree LGA and the State.

This clause applies to land adjoining, or in the vicinity of, land that is identified as “Mineral resources” on the Mineral Resource Area Map and applies to the site. Refer below

Development consent must not be granted for development on land to which this clause applies unless the consent authority has considered the following:

- (a) whether the proposed development would have any adverse impact on the availability of mineral or extractive resources,*
- (b) whether there would be any adverse impact on the proposed development arising from noise, dust, vibration or reduced visual amenity from the mine or extractive industry.*

With regards to (a) No adverse impact on the contrary extracting extractive resources within the site and in relation to (b) the proposed development is the extractive industry which has noise, dust and amenity conditions drafted to address the potential impacts. The EPA are satisfied these impacts are adequately addressed.

Refer to previous discussion <> above.

The application is making a product of a mineral mined from the locality satisfying (a) above. With regards to (b) draft conditions have been provided to address potential adverse impacts.

3.6 Any Draft Environmental Planning Instruments

There are no draft environmental planning instruments applicable to the subject land.

3.7 Other Relevant NSW Legislation

In addition to approval under the *Environmental Planning and Assessment Act 1979* ('EPA Act 1979'), the following Acts are relevant to either the decision making process or the construction and operation of the proposal.

3.7.1 National Parks and Wildlife Act (NPWA)

The NPW Act is administered by the Office of Environment & Heritage (OEH) and provides the basis for legal protection and management of Aboriginal sites and objects in NSW.

Section 87 of the NPW Act states that a permit may be issued to disturb or excavate land for the purpose of discovering an aboriginal object and under Section 90 of the NPW Act it is an offence to knowingly destroy, deface or damage an object, except in accordance with an approval granted under that section.

The EIS prepared by Laterals acknowledged that no Aboriginal sites were found during an inspection by a representative of Pejar Local Aboriginal Land. Section 87 or 90 permits would not be required unless items are discovered during the development. It is noted that a recommendation from Pejar LALC that:

If any previously undetected Aboriginal site or relic is uncovered or unearthed during any activity, work at that location must cease immediately and advice on appropriate action be obtained from the Pejar LALC in conjunction with NSW Department of Environment and Conservation.”

The recommendation condition will be incorporated into the draft consent conditions.

3.7.2 Threatened Species Conservation Act 1995 (TSC Act)

The TSC Act is administered by the OEH. Threatened species, populations and ecological communities, which are protected at a State level under the TSC Act, are listed in Schedules 1 and 2 of the TSC Act.

Section 5A of the EPA Act lists a number of factors to be taken into consideration when deciding whether there is likely to be a significant impact on threatened species, populations or ecological communities or their habitats. Should a threatened species or community be impacted, an assessment of significance must be completed to determine the significance of the impact. A Species Impact Statement is only required if there is likely to be a significant impact on a threatened species, population or ecological community or its habitat.

The original Flora and Fauna assessment accompanying this DA indicates that The Yellow Box, White Box Blakeley's Red Gum (Box-Gum Woodland) which is listed as an Endangered Ecological Community (EEC) under the TSC Act is not present on site and there were no threatened fauna found on site.

Revised assessment was received which considered an additional 4 species (birds and mammals) and the Box-Gum Woodland. The removal of 20 trees "with the majority recent regrowth" and representing 1% of the Box-Gum Woodland occurring locally.

The conclusion states "This proposal confines impacts to the parts of the site that area (are) already highly modified and largely cleared of native vegetation. Indirect impacts of the proposal on the existing community are not significant in that they will not result in a loss of area or quality of the ecological community in the wider area."

Based on the scale of the removal the development is not considered to have a significant impact.

3.7.3 Native Vegetation Act 2003 (NV Act)

The NV Act 2003 applies to the clearing of native vegetation outside certain specified areas. Although the site contains native vegetation as defined under Section 6 of the NV Act, Section 25 excludes the Act from applying to Designated Development. Therefore approval under the NV Act would not be required as the proposal is designated development under the EPA Act.

Despite not requiring separate approval, the aims and objectives to maintain and approve the quality and quantity of vegetation within the site is considered to be satisfied.

3.7.4 Heritage Act 1977

The *Heritage Act 1977* is administered by the NSW Heritage Council and its purpose is to ensure that the heritage of NSW is adequately identified and conserved. There are no State heritage listed items within or adjacent to the site. Therefore, there are no requirements for an application for approval to be made under Section 58 of the *Heritage Act 1977*.

Part 6, Division 9 of the *Heritage Act 1977* specifically provides for the protection of certain relics. Under Section 139, an excavation permit from the Heritage Council is required if a proposal is likely to disturb a relic. A person must not disturb or excavate any land knowing or having reasonable cause to suspect that the disturbance or excavation will or is likely to result in a relic being discovered, exposed, moved, damaged or destroyed unless the disturbance or excavation is carried out in accordance with an excavation permit or a notification granting exception. There are no known relics at the site.

3.7.5 Contaminated Land Management Act 1997

The objective of the *Contaminated Land Management Act 1997* (CLM Act) is to establish a process for investigating and (where appropriate) remediating land areas where contamination presents a significant risk of harm to human health or some other aspect of the environment.

As outlined above in Section 3.4.3 the EIS states *From this assessment there appears to be no contamination or potential contamination of the land which is the subject of the proposed development. Based on this preliminary assessment it is considered that the site is presently suitable for development as proposed.* The development is not for a sensitive use (i.e. dwelling) and contamination is discussed further at Section 3.4.3 of this report.

3.7.6 Protection of the Environment Operations Act 1997 (POEO ACT 1997)

The POEO Act 1997, prohibits any person from causing pollution of waters or air, and provides penalties for offences. The proposal is characterised within Schedule 1 "6 Cement or lime works" greater than 30,000 tonnes per year and must be licensed (Environmental Protection Licence) by the EPA for construction and operation in accordance with the provisions of Section 48 of the POEO Act 1997. The Environmental Protection Licence (EPL) is required for all scheduled activities and would be issued separately. The General Terms of Approval (GTA) have been incorporated into the draft conditions of consent.

3.7.7 Water Management Act 2000 (WM Act)

Controlled Activity Approval

It has been confirmed that a Controlled Activity Approval under the *Water Management Act 2000* will not be required by the NSW Office of Water

Water Access License

Council notes that the applicant did not apply as part of the application for works requiring a license or approval under integrated development and the *Water Management Act 2000*.

Council identified that the works may require an approval and a referral was forwarded to NSW Office of Water for comment and it appears that the development involves works for commercial use of the water bore. The developer will need to obtain approval for nominated works to interfere with an aquifer under the WM Act and ensure the bore has the capacity to produce the volumes of water required for the processing operation as deferred conditions of consent.

A deferred commencement condition is recommended in order to obtain/confirm that the necessary volume of a Water Access License has been obtained and attached to the property for a commercial purpose should there be insufficient on-site water.

The failure by the applicant to nominate any other integrated development approval for which General Terms of Approval may be required does not affect the validity of the application and as per the finding of the Land and Environment Court in *Maule v Liporoni and Another* (2003) (124 LGERA 227 by Cowdrey J) there is no compulsion on an applicant to make an application for integrated development approval (although beneficial to have all matters considered with the application).

A condition is to be imposed that construction or additional capacity is to take place prior to approval under the WM Act being obtained or confirmation that no bore water will be required.

3.7.8 Roads Act 1993

Under Section 138 of the *Roads Act* approval is required to:

- (a) *erect a structure or carry out a work in, on or over a public road, or*
- (b) *dig up or disturb the surface of a public road, or*
- (c) *remove or interfere with a structure, work or tree on a public road, or*
- (d) *pump water into a public road from any land adjoining the road, or*
- (e) *connect a road (whether public or private) to a classified road,*

The Council's draft conditions require that the haulage route along Marulan South Road shall be upgraded to the standard specified in the DCP of 7m sealed carriageway plus 1m shoulders (0.5m of which are sealed) each side and therefore the approval under the *Roads Act* of Goulburn Mulwaree Council as the roads authority will be required. Draft conditions addressing this requirement have been incorporated into the draft conditions of consent. Refer to Section 3.9 (ii) for traffic comments raised in response to submissions.

1.8 Any Development Control Plans

3.8.1 Goulburn Mulwaree Development Control Plan 2009 (GMDCP 2009)

The GMDCP 2009 is the relevant Development Control Plan and aims to support the provisions of the GMLEP 2009.

The GMDCP 2009 provides general development controls. The controls considered to be of relevance relate to the following:

- 3.2 Indigenous heritage and archaeology;
- 3.3 Landscaping;
- 3.4 Vehicle access and parking;
- 3.5 Disability Standards for Access;
- 3.6 Crime prevention through environmental design;
- 3.8 Tree and vegetation preservation;
- 3.10 Waterbody and wetland protection (for works adjacent to drainagelines);
- 3.15 Impacts on Drinking Water;
- 3.16 Bush fire;
- 3.17 Heavy vehicle generation;
- 5.8 Rural land use conflict;
- 6.11 Extractive industries; and
- 7.2 Terrestrial biodiversity;

A discussion of these provisions can be found in [Attachment 2](#)

In summary the proposed development would satisfy the provisions of GMDCP 2009 with the exception of the following:

Part 5.8 Rural land use conflict

The general objective of the GMDCP 2009 is that employment uses should be sensitively located to minimise conflict.

It is also noted that Table 5-1 to clause 5.8 in discussing rural land use conflict requires a minimum buffer distance of 1000m between Extractive Industries/Mines and rural dwellings. Whilst this is not satisfied, the use is not identified as an Extractive Industry or Mine but a processing facility ancillary to that use. The EIS reports on noise and air quality quantitatively to address these issues and have been reviewed and management strategies provided by EPA conditions.

GMDCP 2009 provides an example *"In the case of major recreation facilities (e.g. motor racing tracks), dwellings proposed closer than the recommended buffer distance, at a minimum should comply with industry best noise insulation standards."*

Based on this example it should be acceptable that *in the case of this development with dwellings closer than the recommended buffer distance, the facility at a minimum should comply with industry best noise insulation standards and any EPA requirement."*

The GMDCP 2009 also states:

The required buffers may be reduced if, in the opinion of Council, the development will not be adversely affected by the use of adjoining land. In assessing whether reduced buffers are acceptable in a particular case, Council will consider the following variation criteria:

- *the extent, nature and intensity of the adjoining land use*
- *the operational characteristics of the adjoining land use*
- *the external effects likely to be generated by the adjoining land use (i.e. dust, fumes, odour, spray drift, light and noise) and their potential to cause conflict*
- *the potential of adjoining land to be used for various commercial activities including agriculture, quarries, rural industries etc*

- *any topographical features or vegetation which may act to reduce the likely impacts of an adjoining land use*
- *prevailing wind conditions and any other climatic characteristics*
- *any other mitigating circumstances*

Part 6.11 Extractive industries or Mines

The Objectives include:

- *Consider the social, economic and environmental issues in the assessment and management of extractive industries.*
- *Encourage community participation in all phases of extractive industry development.*
- *Provide sound technical parameters to facilitate the orderly development of extractive resources within environmentally sensitive areas.*

The controls listed are discussed below under the respective heading:

- Community Consultation

The community have been engaged during pre-lodgement and development assessment. The EPA have conditioned the recording and reporting of complaints and a complaint line which will ensure community consultation during on-going operation and management.

It is not expected that community engagement will occur with rehabilitation or post extraction land uses unless there is a compliance matter with any remediation requirements of consent.

The development process including assessment of submissions from public consultation and draft conditions of consent ensure community views and concerns are identified, assessed and responded to as appropriate.

It is considered that the complaints line and reporting of complaints is sufficient and no Management Committee is required. The JRPP could condition a Management Committee including at least three permanent residents not associated with the operation as part of the consent conditions. This Management Committee may provide input into the proponent company's environmental management system and details of which may be recorded in the annual Environmental Management Plan.

- Setbacks

GMDCP 2009 requires extraction operations should be setback no less than:

- 10 metres from adjoining property boundaries; or
- 30 metres from a public road;
- 40 metres from any boundary to a National Park or State Forest or unalienated Crown Lands;
- 40 metres from any site or relic of heritage, archaeological, geological, cultural significance;
- 150 metres from the Wollondilly, Shoalhaven and Mulwaree Rivers;
- 150 metres from major water storage areas;
- 250 metres from a well;
- 100 metres from intermittent watercourse;
- 40 metres from the top bank of a watercourse;
- 100 metres from a community facility;
- 1,000 metres from a residence not associated with extractive operations;

The GMDCP 2009 states “The above setbacks may vary depending upon the nature and location.” The above setbacks are satisfied with the exception for the 1000m setback. The EPA conditions are evidence that the development can satisfy the acceptable noise and amenity criteria despite the reduced buffer to dwelling houses.

The Applicant shall consult with Country Energy or a suitable accredited authority to ensure any future power is an acceptable design and setback from electricity transmission lines. Power is currently available to the site.

The development is required to comply with the requirements of *State Environment Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007* and the assessment is made in Section 3.4.5 of this report.

Part 7.7.2 Haulage Route standards:

Council requires the upgrading of Marulan South Road haulage routes, to the following standard:

- 7m wide carriageways in rural areas.
- 1m wide shoulder with 500mm seal.

It is noted that the consent of Council as the roads authority is required for making of an application to carry out road improvements. The design is required to comply with Council's current *Standards for Engineering Work 2013* which includes measures to ensure all relevant matters are considered in the design. The GMDCP quotes the *Standards for Engineering Work 2006* which has been replaced by the *Standards for Engineering Work 2013*. The GMDCP is pending administration updates including an update to incorporate the revised date of the Standards for Engineering Work.

Part 9 Contributions

Contributions will be sought under *Goulburn Mulwaree Section 94 Contribution Plan 2009* in accordance with the Part 11 “Development involving heavy vehicle movements likely to cause road pavement damage.

3.8.2 Section 94A Assessment

The proposed development is subject to Goulburn Mulwaree Section 94 Development Contribution Plan 2009 (Amendment No. 2 (GMS94DCP2009)).

This application applies to Amendment No. 1 Section 11.0 Development involving heavy vehicle movements likely to cause road pavement damage.

In accordance with Council's Section 94 Development Contributions Plan 2009, a contribution shall be made for the heavy vehicle movements.

The current (2015/16) rate is \$0.0462 per tonne per kilometre.

For the length of road involved along Marulan South Road of 7.09km, the rate of contribution is therefore \$0.327558 per tonne.

This rate shall be applied to all operations (not only those greater than the current approved development of 25,000 tonnes per annum).

Pavement

The s94 Plan states that “a pavement shall have a minimum remaining life of 10 years”. The haulage route along Marulan South Road shall be investigated for this standard and rectified where deficient.

Relevant Contributions Plan	GMS94DCP 2009
Rate 1516 financial year	\$0.327558/tonne
Quarry - Heavy Vehicle Movements estimated at:	<p>\$0.327558/tonne x 70,000 max production = \$22,929.06 (based on 1516 rate) for years 1 & 2</p> <p>\$0.327558/tonne x 90,000 max production = \$29,480.22 (based on 1516 rate) for year 3-4</p> <p>\$0.327558/tonne x 120,000 maximum production = \$39,306.96 (based on 1516 rate) for year 5 onwards</p>

Note: The total contribution payable is to be indexed in accordance with the applicable contributions plan between the date of the consent and the date of payment of the contribution. The contribution is to be paid in full annually or as otherwise agreed to by Council.

3.9 Section 79C(1)(b) EP&A Act 1979 – The Likely Impacts of the Development

The likely impacts of the development, including environmental impacts on both the natural and built environments, and the social and economic impacts in the locality

(i) Natural Environment

Context & Setting

To ensure the timbered character of the locality is maintained, whilst protecting existing vegetation it is recommended that the most significant trees (including those with hollows, ecologically significant and most healthy) be retained where possible. Protecting the remaining area of the site is proposed to offset the development.

Soils

Recommended erosion and sediment control measures be conditionally imposed.

Flora & Fauna

Part 5A test was included with the application. Yellow box community is an EEC (TSC Act) and has been identified in the locality and on part of the site. Development as conditioned contended to be the best possible outcome for the site. No significant impact identified therefore no Species Impact Statement required. Protection of the remaining remnant vegetation will also assist with habitat protection for flora and fauna on site.

Natural Hazards

Planning for Bushfire Protection (2006) Guidelines have been considered. There is potential for overland flow from stormwater runoff on this site. This issue has been assessed under the Water NSW concurrence. Contamination has been discussed in with the SEPPs of this report. No other natural hazards have been identified on this site.

Air & Microclimate

Traffic generated from the development and the Noise Assessment have been assessed in earlier in the report. The application will be conditioned to control dust and noise emissions from the site during construction and operation.

(ii) Built Environment

Context & Setting

The site is within a rural and extractive setting and not visible from the South Marulan Road. This will also reduce the visual impact on the setting and is considered appropriate in this setting.

The EIS refers to the height of the silos to the top of the dust extractor (highest point of the structure) on page 54 – 23.7m which is the same as the height of the existing silos.

The EIS states” *The site would be visible from the boundary to the south where there are two residences, however it is noted that all the new buildings are located to the north of the existing facility and will mostly be hidden from view. The view from the dwellings themselves is also obscured by the vegetation between them and the facility.*”

The height of the development is a requirement for the category of development and considered acceptable in this instance.

Health & Building Comments

The proposal has been examined and there are no objections subject to appropriate conditions being included in any consent.

Public Domain

The benefit to the public domain will be the upgrade to South Marulan Road.

Utilities & Access, Transport & Traffic

Concern was raised with regards to the haulage route requirements. Council’s Engineers have advised the route will need to comply with the DCP standards and are incorporated into the draft conditions of consent

The s94 Plan states that “a pavement shall have a minimum remaining life of 10 years”. The haulage route along Marulan South Road shall be investigated for this standard and rectified where deficient prior to commencing operation.

Council has undertaken some recent road works as part additional contributions from Boral for pavement widening/safety measures however it is understood the road currently does not comply with the full haulage route requirements. The Mine expansion proposal which has recently received the SEARs requirements identifies potential road realignment.

Heritage

The EIS investigated the potential for Aboriginal artefacts and no sites were found within the property. The applicant will be advised that should any sites or artefacts be discovered the requirement is to stop works and contact Council and the National Parks and Wildlife Service.

Water

Refer to details discussed under *Water Management Act 2000* Section 3.7.7 of the Report.

Waste

A rural waste service is currently available to the site it is not expected that any change is required.

Energy

Reticulated electricity is available to the site. Precautionary condition with regards to any upgrade/servicing of new buildings will require consultation with the local service provider separate to the development process. No further clearing will be permitted as a result of connection to electricity.

Noise & Vibration

An acoustic assessment was conducted to determine what impact the proposal would have on noise sensitive receivers. The assessment was carried out and reviewed by EPA. Refer to Attachments EPA response.

The EPA provided a limit of 35dBA LAeq (15min) or the average noise level over any 15 minute period.

The mitigating measures together with EPA noise limit of 35dBA LAeq are considered sufficient to ensure the site would not unacceptably impact on nearby receivers and covers both construction and operational activities.

During the construction phase and operation phase of the development the impacts of noise and vibration will be controlled by operating hours and noise limits set by the EPA EPL. It is considered that the impact will be acceptable as the development is conditioned to meet current standards.

Technological Hazards

No technological hazards have been identified nor will any be created by the development.

Site Design & Internal Design

The design of the quarry, subject to the proposed conditions, has taken into account the constraints of the site and has been assessed as being capable of being approved.

(iii) Social Impacts

Safety, Security & Crime Prevention

Referencing Council's protocol, the proposal is too low key to warrant crime prevention measures.

Social Impact in the Locality

The issues contributing to the potential social impacts are assessed and discussed throughout the report. The social impact is considered acceptable with the draft conditions proposed.

Cumulative Impacts

The cumulative impact of making an alternate resource available in the locality will result in additional natural resources for development to be locally available. The potential impacts have been reduced by the draft conditions proposed.

(iv) Economic Impacts

Economic Impact in the Locality

The development will provide employment for those involved in the initial construction of the site and subsequent ongoing development.

(v) Codes and Policies

Planning for Bushfire Protection guidelines have been considered and implemented. The best practice guidelines for stormwater and erosion and sedimentation control will be employed by this development.

3.10 Section 79C(1)(b) EP&A Act 1979 – The Suitability of the Site for the Development

The proposed works will provide a resource for the local area and potentially the wider regional area. The proposal is considered appropriate with regards to the zoning of the site and permissibility under the Mining SEPP. It is not expected to have unacceptable negative impacts on the amenity of the locality or adjoining developments subject to the proposed draft conditions being applied. Noise in particular is proposed to be conditioned to comply with acceptable standards within an EPA GTAs. Therefore in accordance with the above considerations the site is considered suitable for the proposed works.

4.0 EIS EXHIBITION AND ANY SUBMISSION MADE IN RELATION TO THE DEVELOPMENT

The proposal has been placed on public exhibition from 5/12/2013 to 31/1/2015 for an extended period given the holiday period was within the exhibition period. The proposal was notified to approximately 9 nearby properties, on site and notified in the local newspaper and on Council's website. Public exhibition of the proposal resulted in 2 public submissions being received.

The submissions are included at the end of the Attachments as there is no private information to withhold. Agency submissions are included in the Attachments.

4.1 Referrals

Internal Consultation

Engineer	No objection subject to conditions for inclusion in any consent
Building Surveyor	No objection subject to conditions for inclusion in any consent.

External Consultation

NSW Trade and Investment Resources and Energy	No objection. Refer Public Submissions
Roads and Maritime Services	No objection. Refer Public Submissions
Water NSW	No objection received subject to conditions for inclusion in any consent. Refer Public Submissions
Environment Protection Authority	General Terms of Approval issued. Refer Public Submissions
NSW Office Water	No Controlled Activity Approval sought under the DA process. Approval required under <i>Water Management Act</i> to transfer the licence to commercial purposes. Subject to deferred commencement conditions.
Goulburn Mulwaree Council	No objection subject to draft conditions. Refer Public Submissions
Pejar LALC	No response received. Recommendation provided by Pejar LALC in the EIS submission..
NSW Primary Industries Fisheries	Advised no comment on the proposal
NSW Primary Industries Agriculture	Advised no formal response. Referred to guidelines available on DPI web
Southern Local Lands Service	No response received. Used their SEARs response. Refer to Section 3.7.3

4.2 Community Consultation

- Traffic and Road Pavement

Issues were raised in the submissions with regards to road standards and conditions.

Should the application be approved the development will be conditioned so that the haulage route along Marulan South Road be upgraded to the standard specified in the Development Control Plan namely:

- 7m sealed carriageway
- plus 1m shoulders (0.5m of which are sealed) each side

The s94 Plan states that “a pavement shall have a minimum remaining life of 10 years”. The haulage route along Marulan South Road shall be investigated for this standard and rectified where deficient.

Boral had an agreement for Council to undertake some heavy duty patching to Marulan South Road. These works were completed in 2013/2014 period. This was to make some repairs to the road surface and not to bring it up to the 10 year standard.

- Contributions

In accordance with Council's Section 94 Development Contributions Plan 2009, a contribution shall be made for the heavy vehicle movements which are discussed previously in this report. It is recommended that the haulage route contribution rate shall be applied to all operations (i.e. all of the extraction up to 120,000 tonnes per year) not only those greater than the current approved development of 25,000 tonnes per annum.

It is noted that the existing development under 2003/0329/DA was only subject to a one-off contribution charge of \$5,712.90 for roads, bushfire and garbage waste charges under the previous Mulwaree Contributions Plan (2003/2004 rate). It is now contended that extraordinary road damage/haulage route should be charged on the full annual haulage quantity (i.e. up to 120,000 tonnes/yr) given the scale and nature of the development.

Any Consent that may issue should include a condition for contributions toward extraordinary road damage.

- **Technical / procedural issues**

The existing development has a Consent issued by Council under 2003/0329/DA. To ensure there is no conflict with the conditions under the previous consent and any consent that may be issued for the proposed development it is considered necessary that the proposal be conditioned to surrender the existing Consent at the appropriate time.

Shed sizes and dimensions – approximate and to be confirmed at Construction Certificate stage provided the design and size is substantially the same development as submitted with the Development Application.

Use of Bore Water – will require purchase of a Water Allocation License and conversion for commercial purposes with Office of Water.

Gazettal of the remainder of Marulan South Road as a B Double route will be required following compliance with the road construction standards and prior to issue of any Occupation Certificate.

Hours of operation have been limited in the General Terms of Approval by the EPA as the licensing authority.

The revised Flora and Fauna Report only identifies 4 threatened species as identified on the site. From assessment of proposals in the vicinity it appears to have limited assessment and has some omissions and does not consider or discuss:

- clearing, fragmentation, alteration and destruction of native vegetation and animal habitats;
- pollution of watercourses and wetlands;
- sediment, nutrient and pollutant run-off into adjacent vegetation and animal habitats;
- noise and vibration disturbances to bat roosting sites;
- an increase in feral plants and animals; and
- road fatalities.

Despite the limitations of the report, conditions can be applied to achieve an acceptable protection on likely flora and fauna.

4.3 Applicant's Response to Submissions

The Applicant was given an opportunity to address these concerns and the response is also included in the Attachment. The submissions were forwarded to the integrated approval and concurrence authorities prior to confirming/providing their GTAs and concurrence.

All external referral authorities have provided their General Terms of Approval / Concurrence or comments and raise no objection to the application (refer Attachments). Final comments have been received and included in the Attachment. Agency conditions have incorporated into the draft conditions of consent.

4.5 Conflict of Interest Statement

I declare that I have no potential or actual conflict of interest in assessing this application. There are no identified potential or actual conflicts of interest in assessing this application.

4.6 Section 79C(1)(e) EP&A Act 1979 – The Public Interest

The application is not expected to have any unacceptable negative impacts on the environment or the amenity of the locality. With consideration to the environmental planning instruments and proposed conditions to mitigate potential impact the impacts on any environmental planning instrument are considered to be acceptable.

5.0. CONCLUSION

This application has been assessed having regard to the relevant matters for consideration prescribed by Section 79C(1) of the *Environmental Planning & Assessment Act 1979*. The proposal is permitted by way of Clause 7(1)(d) Mining SEPP. The proposal is consistent with applicable provisions of GMLEP 2009. It is also consistent with the requirements of *Goulburn Mulwaree Development Control Plan 2009* with the exception of the 1000m buffer distances. No formal variation was applied for to the Buffer distances however the variation is supported by the submission of Noise and Air Quality Assessments. The variation is recommended for approval subject to the inclusion of all the draft conditions of consent including the mitigating measures proposed by the EPA in their GTAs.

The development meets the overarching objective listed in GMDCP 2009 including:

- To respect and respond to the natural environment of the locality;
- To ensure a balance between economic, social and environmental outcomes; and
- To ensure that new developments are sustainable and integrate with the character of the existing environment
- To maintain the natural environment and visual character;
- To improve environmental benefits;
- To maintain privacy and safety.

6.0. RECOMMENDATIONS

It is recommended that development application No. 180/1314/DA (**2013STH029**) be approved by way of a deferred commencement consent pursuant to Section 80 of the *Environmental Planning & Assessment Act 1979*, subject to the draft conditions provided.