

Section 3

Planning and Legislative Context

PREAMBLE

This section considers the planning and legislative context within which the Quarry would operate and describes any environmental issues that are raised from these instruments that should be addressed within the EIS. Relevant NSW State environmental planning legislation and local government legislation is included in the review as well as any additional policies and guidelines that are relevant to the Proposal.

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3.1 INTRODUCTION

A range of legislation and planning instruments apply to the Proposal. These pieces of legislation and statutory instruments were reviewed to identify which environmental aspects require consideration in the EIS. In addition, the EARs identified a number of guideline documents that could potentially be of assistance during the preparation of the EIS (see **Appendix 2**). A brief summary of each relevant piece of legislation and planning instrument is provided in the following subsections. The application and relevance of planning instruments to specific environmental issues have been addressed in the relevant specialist consultant assessments (see Appendices) and considered in Section 4 of this document.

3.2 COMMONWEALTH LEGISLATION

Environmental Protection and Biodiversity Conservation Act 1999

The Environment Protection and Biodiversity Conservation Act 1999 (Cth) (EPBC Act) covers 'matters of national environmental significance'. Matters of national environmental significance include:

- world heritage properties;
- wetlands listed under the Ramsar Convention;
- listed threatened species and ecological communities;
- listed migratory species protected under international agreements;
- nuclear actions;
- the Commonwealth marine environment; and
- National heritage places.

'Actions' are defined in the EPBC Act to include projects and developments. Actions which would or would be likely to have significant impacts on matters of national environmental significance, or which might significantly impact on the environment or Commonwealth land, are 'controlled actions'. The Minister for the Environment determines whether a proposed action is a controlled action for the purpose of the EPBC Act. The carrying out of controlled actions is prohibited, unless approved by the Minister.

Assessment of threatened ecology undertaken for the proposal has identified that the threatened Koala is likely to occur within the Project Site and the endangered Spotted-tailed Quoll and four species of migratory birds were considered to potentially occur within the Project Site (see Section 4.7.5). Assessment of these species against the 'Significant Impact Criteria' provided in the EPBC Act Policy Statement *Matters of National Environmental Significance: Significant impact guidelines 1.1* (DoE, 2013) concluded that impacts would not be considered significant and would therefore the Proposal would not be considered a 'controlled action' under the EPBC Act.

3.3 NSW LEGISLATION

The key NSW legislation relating to the approvals and licences required for the Proposal are identified and discussed as follows.

- *Environmental Planning and Assessment Act 1979*
- *Protection of the Environment Operations Act 1997*
- *Roads Act 1993*
- *Threatened Species Conservation Act 1995*
- *National Parks and Wildlife Act 1974*

Environmental Planning and Assessment Act 1979

The EP&A Act provides the framework for the assessment and approval of development in NSW and is administered by New South Wales Department of Planning and Environment (DP&E). Development consent is required for “Designated Development”, under Part 4 of the EP&A Act, as the Proposal is classified as “Extractive Industry” under Schedule 19(1) of the EP&A Reg as the threshold for the production of extractive materials (30 000m³)¹ would be exceeded.

The submitted development application and accompanying EIS (and associated documentation) would therefore to be determined by Tenterfield City Council, or by the Joint Regional Planning Panel, should Council choose this pathway to determine the development application for the Proposal.

Protection of the Environment Operations Act 1997

The POEO Act provides the legislative and administrative framework to protect, restore and enhance the quality of the environment in New South Wales by reducing risks to human health and the preventing the degradation of the environment from development and other relevant activities. The most significant element of the legislation with regard to the Proposal is the management of Environmental Protection Licences (EPL). An EPL is required to authorise the carrying out of any ‘Scheduled Activities’. As an ‘Extractive Industry’, the Proposal (as a “land-based extractive activity”) would be classified as a ‘Scheduled Activity’ under Schedule 1(19) of the POEO Act and therefore would require an EPL given annual production exceeds 30 000 tonnes¹.

Should development consent be granted for the Proposal, the Applicant would apply for an EPL from the EPA. This application would be completed prior to any clearing or extractive operations commencing within the extended extraction area.

Roads Act 1993

The *Roads Act 1993* (Roads Act) applies to public roads in NSW, and depending upon the type of road, is administered by the Roads & Maritime Service or local council.

Consent is required under section 138 of the Roads Act for works or structures that disturb the surface of a public road or connect a road to a classified road.

¹ It is noted that two different thresholds exist for the EP&A Act and POEO Act, albeit with the same quantum but different units (m³ -v- tonnes).

A series of permits under the Roads Act will be required to undertake the proposed intersection works and improvements for the Proposal. Tenterfield Shire Council would be the issuing authority for the required permits.

Threatened Species Conservation Act 1995

The *Threatened Species Conservation Act 1995* aims to conserve biodiversity and promote ecologically sustainable development by preventing extinction and promoting recovery of threatened species, populations, ecological communities and their habitats. This is done through eliminating and managing threats to the survival or evolutionary development of species, populations, ecological communities, such as the impacts of development.

No endangered or threatened ecological communities have been identified within the Project Site (see Section 4.7.3). Three threatened fauna species have been identified to occur within the Project Site and a further 11 threatened fauna species have the potential or a likely to occur within the Project Site. Design features, operational controls and management measures have been proposed to suitably avoid and minimise impacts on local flora and fauna (see Section 4.7.6).

National Parks and Wildlife Act 1974

The *National Parks and Wildlife Act 1974* (NP&W Act) aims to manage and conserve nature, objects, places and features that have ecological and cultural value. The NP&W Act is administered and enforced by the OEH.

Aboriginal places and objects are protected under the NP&W Act. The Director-General has a database of information and records regarding Aboriginal objects whose existence and location have been reported, known as the Aboriginal Heritage Information Management System (AHIMS). An Aboriginal Heritage Impact Permit (AHIP) is generally required for consent to destroy, deface or damage Aboriginal object or Aboriginal place.

No Aboriginal places or objects of significance have been identified within the Project Site and the available Aboriginal history of the LGA provided in the *Tenterfield LGA Aboriginal Heritage Study* (AMBS, 2013) indicates it is not likely that Aboriginal places or objects would be found within the Project Site. Aboriginal cultural heritage is further addressed in Section 4.8.2.

3.4 STATE ENVIRONMENTAL PLANNING POLICIES

State Environmental Planning Policy (State and Regional Development) 2011

This State Environmental Planning Policy (SEPP) was gazetted on 28 September 2011 and applies to all projects satisfying nominated criteria made following that date. One of the purposes of this SEPP is to confer functions on joint regional planning panels to determine development applications. As extractive industry with an annual production rate greater than 30 000m³ per annum, the Proposal would be classified as “designated development” under Section 77A of the EP&A Act and Schedule 3(1)(19) of the EP&A Regulation. This classification allows the development application for the proposal to be determined by a Joint Regional Planning Panel (in accordance with Schedule 4A(8) of the EP&A Act and meeting the requirements of Part 4 of the *State Environmental Planning Policy (State and Regional*

Development 2011). It remains Council's decision whether a development application is determined by a Joint Regional Planning Panel.

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

This SEPP ("the Mining SEPP") was gazetted in recognition of the importance to New South Wales of mining, petroleum production and extractive industries and to provide proper management and orderly and economic use and development of land containing mineral, petroleum and extractive material resources and to establish appropriate planning controls to encourage ecologically sustainable development through environmental assessment, and sustainable management.

The SEPP specifies matters requiring consideration in the assessment of any mining, petroleum production and extractive industry development, as defined in NSW legislation. A summary of the matters that the consent authority needs to consider when assessing a new or modified proposal and where these have been addressed in this document is provided in **Table 3.1**.

Table 3.1
Application of SEPP (Mining, Petroleum Production and Extractive Industries) 2007

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Relevant SEPP Clause	Description	EIS Section
12: Compatibility with other land uses	Consideration is given to:	
	• the existing uses and approved uses of land in the vicinity of the development;	4.1.2.2
	• the potential impact on the preferred land uses (as considered by the consent authority) in the vicinity of the development; and	4.1.2
	• any ways in which the development may be incompatible with any of those existing, approved or preferred land uses.	
	The respective public benefits of the development and the existing, approved or preferred land uses are evaluated and compared.	2.2.2, 4.12, 6.3.4
	Measures proposed to avoid or minimise any incompatibility are considered.	4.1.2, Section 5
12AA: Significance of resource	Consideration is given to the significance of the resource that is the subject of the application, having regard to:	
	• the economic benefits, both to the State and the region; and	4.12.3
	• the advice provided by the DG of DTIRIS as to the relative significance of the resource in comparison with other mineral resources across the State.	N/A
12AB: Non-discretionary development standards for mining	Consideration is given to development standards that, if complied with, prevents the consent authority from requiring more onerous standards for those matters	Various subsections of Section 4

Table 3.1 (Cont'd)
Application of SEPP (Mining, Petroleum Production and Extractive Industries) 2007

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Relevant SEPP Clause	Description	EIS Section
13: Compatibility with mining, petroleum production or extractive industry	Consideration is given to whether the development is likely to have a significant impact on current or future mining, petroleum production or extractive industry and ways in which the development may be incompatible.	2.4
	Measures taken by the Applicant to avoid or minimise any incompatibility are considered.	N/A
	The public benefits of the development and any existing or approved mining, petroleum production or extractive industry must be evaluated and compared.	2.2.2, 4.12, 6.3.4
14: Natural resource and environmental management	Consideration is given to ensuring that the development is undertaken in an environmentally responsible manner, including conditions to ensure:	
	<ul style="list-style-type: none"> impacts on significant water resources, including surface and groundwater resources, are avoided or minimised; 	4.6
	<ul style="list-style-type: none"> impacts on threatened species and biodiversity are avoided or minimised; and 	4.7
	<ul style="list-style-type: none"> greenhouse gas emissions are minimised and an assessment of the greenhouse gas emissions (including downstream emissions) of the development is provided. 	4.3.3
15: Resource recovery	The efficiency of resource recovery, including the reuse or recycling of material and minimisation of the creation of waste, is considered.	2.4, 4.11
16: Transportation	The following transport-related issues are considered.	
	<ul style="list-style-type: none"> The transport of some or all of the materials from the Project Site by means other than public road. 	2.8
	<ul style="list-style-type: none"> Limitation of the number of truck movements that occur on roads within residential areas or roads near to schools. 	2.8
	<ul style="list-style-type: none"> The preparation of a code of conduct for the transportation of materials on public roads. 	4.2.3
17: Rehabilitation	The rehabilitation of the land affected by the development is considered including:	
	<ul style="list-style-type: none"> the preparation of a plan that identifies the proposed end use and landform of the land once rehabilitated; 	2.13
	<ul style="list-style-type: none"> the appropriate management of development generated waste; 	4.11
	<ul style="list-style-type: none"> remediation of any soil contaminated by the development; and 	N/A
	<ul style="list-style-type: none"> the steps to be taken to ensure that the state of the land does not jeopardize public safety, while being rehabilitated or at the completion of rehabilitation. 	2.13

State Environmental Planning Policy (Rural Lands) 2008

The aims of the 'Rural Lands SEPP' are to facilitate development on rural land that is orderly and economic, promotes the social, economic and environmental welfare of the State and avoids land use conflicts with existing agriculture. It also allows government authorities to identify State significant agricultural land and ensure the ongoing viability of agriculture in the State.

Specifically, and as described in Clause 12, the objectives of the Rural Lands SEPP are to provide for the protection of agricultural land:

- *that is of State or regional agricultural significance, and*
- *that may be subject to demand for uses that are not compatible with agriculture, and*
- *if the protection will result in a public benefit.*

The Proposal is considered with respect to these aims.

- The land that would be affected by the Proposal has not been identified as State or regionally significant agricultural land by *Schedule 2* of the Rural Lands SEPP.
- The Proposal would not impact on any additional land currently managed for agriculture. As demonstrated at numerous other quarry sites where agricultural activities are undertaken concurrently within extractive industry, the Proposal would not be incompatible with continued agricultural land use surrounding the Project Site.
- The protection of the land that is the subject of the Proposal would not provide any public benefit. In fact, the employment and local economic stimulus that would be generated by the Proposal is considered to be of wider public benefit.

As a result, the Rural Lands SEPP is not considered further in this document.

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

Hazardous and offensive industries, and potentially hazardous and offensive industries, relate to industries that, without the implementation of appropriate impact minimisation measures, would, or potentially would, pose a significant risk in relation to the locality, to human health, life or property, or to the biophysical environment.

The hazardous substances and dangerous goods to be held or used within the Project Site are required to be identified and classified in accordance with the risk screening method contained within the document entitled *Applying SEPP 33 Final* (DP&I, 2011). Hazardous materials are defined within DP&I (2011) as substances falling within the classification of the *Australian Code for Transportation of Dangerous Goods by Road and Rail* (Dangerous Goods Code), (National Transport Commission, 2011). The substances relevant to this policy are primarily diesel and ammonium nitrate.

The Proposal would involve the use of diesel fuel, a Class 3 C1 combustible liquid, and small amounts of other hydrocarbons including lubricating oils and combustible liquids. As the diesel fuel and lubricating oils and greases would not be stored on site, SEPP 33 does not require these to be considered further.

Ammonium nitrate would not be stored on site, rather it would be transported to the Project Site for blasting on the day of the blast. As the quantity required for each blast does not exceed the relevant thresholds for Class 5.1 materials, this does not need to be considered further.

Finally, because no hazardous materials would be stored on the Project Site, no further consideration of SEPP 33 is required.

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 Koala population decline. Tenterfield is identified in Schedule 1 of the SEPP as a local government area that could provide Koala habitat.

SEPP 44 requires an investigation be carried out to determine if potential or core Koala habitat is present on the areas of the Project Site likely to be disturbed. Core Koala habitat comprises land with a resident population of Koalas whereas potential Koala habitat comprises land with native vegetation with known Koala feed trees constituting at least 15% of the total number of trees present on a site. An ecological survey of the Project Site (Eco Logical, 2014) identified that the Project Site has been used as Koala habitat in the past, however, does not contain a resident population of Koalas or have areas of native vegetation of which Koala feed trees constitute more than 15% of the total number of trees in the upper or lower strata of the tree component. Therefore it is not considered that the Project Site contains core or potential Koala habitat as defined in SEPP 44. The application of the provisions of this SEPP are discussed further in the fauna assessment in Section 4.7.5 including controls and safeguards to be established to manage Koalas on the Project Site.

State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55)

SEPP 55 aims to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment. In particular, this policy requires consideration of whether a development requires a consent for remediation works or not and, where warranted, requires that remediation works meet certain standards and notification requirements.

As the areas proposed for disturbance within the Project Site have previously been used only for extractive industry or minor grazing cattle and passive nature conservation, the Applicant is satisfied that no contaminated land occurs on the Project Site. SEPP 55 is therefore not considered further in this document.

3.5 LOCAL PLANNING INSTRUMENTS

3.5.1 Tenterfield Local Environmental Plan 2013

The current Tenterfield Council Local Environmental Plan (LEP) was gazetted in 2013 guides development in the local government area by encouraging the proper management, development and conservation of natural resources and the built environment. The Project Site is located on land zoned RU1 Primary Production under the existing LEP. The objectives of this zone and how the Proposal has been designed to satisfy these objectives is described in the following subsections.

To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.

The land that is the subject of the Proposal has been used in the past for minor grazing and stock sheltering. Soil resources are discussed in detail in Section 4.9, however in summary the skeletal soils within the bulk of the Project Site would only allow for grazing with limitations,

forestry and nature conservation. The proposed use of the land for extractive industry provides productive use of these natural resources. The land would be returned to minor grazing, stock sheltering and passive nature conservation at the end of Project life with no significant loss of land capability.

To encourage diversity in primary industry enterprises and systems appropriate for the area.

The Proposal would provide for the continued supply of a range of ivory-coloured stone products for use in decorative concrete and landscaping products. This industry, i.e. an extractive industry, would continue to operate alongside a variety of primary industry enterprises in the Tenterfield LGA and assist to maintain the economic diversity of the area.

To minimise the fragmentation and alienation of resource lands.

The Proposal would allow for the extension and continued operation of the existing quarry along the ridge indicated in **Figure 2.1** and would therefore not result in the fragmentation of resource lands.

To minimise conflict between land uses within this zone and land uses within adjoining zones.

The land within and immediately surrounding the Project Site is zoned RU1 – Primary production. The Project Site is located approximately 2.5km south of Bald Rock National Park and approximately 8km northeast of the town of Tenterfield. It is considered that the Proposal would not result in land use conflicts between the RU1 zone and the E1 Zone - National Parks and Nature Reserves to the north or the town of Tenterfield which has been zoned RU5 Zone – Village.

3.5.2 Development Control Plans and Section 94 Contributions Plan

There are no existing development control plans for the Tenterfield Local Government Area that are relevant to the Proposal. However, Section 94 and Section 94A of the EP&A Act establishes that a consent authority may require Applicants to provide a reasonable dedication or contribution, or a levy based on the cost to carry out the development, to be used by Council for the provision, extension or augmentation of public amenities and services. The use of these funds is to be authorised through a contributions plan. The Tenterfield Shire Council has prepared development contributions plans based on Section 94 and Section 94A of the EP&A Act.

Section 94 contributions that relate to the Proposal include administrative cost recoveries, contributions for the maintenance of local roads based on heavy truck use and contributions to the Community Enhancement Program.

As the total cost of the Proposal would exceed \$200 001, under Council's Section 94A Plan, the expected contribution towards the recovery of administrative costs (i.e. over and above the development application fee) would be 1.0% of the total cost of development or the capital investment value, i.e. 1% of \$410 000 or \$4,100. The capital investment value for the Proposal comprises the following component costs.

- Excavator (PC300) = \$150 000
- Drill Rig: 5% (i.e. one day per month) = \$20 000
- 3 Road-registered trucks = \$240 000

Constructive Solutions (2014) records that the contributions payable to Council under the Section 94 Contributions plan are as follows.

- Laden trucks travelling from Dowe's Quarry to the Sunnyside Crushing and Screening Plant = \$0.264/tonne.
- Laden trucks backloading fines from the Sunnyside Crushing and Screening Plant to Dowe's Quarry = \$0.352/tonne.

3.6 OTHER ENVIRONMENTAL POLICIES, GUIDELINES AND PLANS

The EARs require that in assessing the identified key assessment requirements, reference be made to any relevant guideline documents. In addition, a number of the government agencies consulted in relation to the Proposal also required reference to other environment guideline documents. Where appropriate, the relevant guidelines are addressed in the relevant section(s) of this report, including the Appendices.

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