

JOINT REGIONAL PLANNING PANEL (Southern Region)

JRPP No	2014STH011
DA Number	DA.2014.035
Local Government Area	Palerang
Proposed Development	Sand Extraction
Street Address	Kings Highway, Bungendore
Applicant/Owner	Applicant - Carnavalesca Pty Ltd Trading as Paragalli Sands
Number of Submissions	Adjoining Owners – Two Submissions Departments – Nine Submissions
Regional Development Criteria (Schedule 4A of the Act)	Section 8 Particular designated development Development for the purposes of: (a) extractive industries, which meet the requirements for designated development under clause 19 of Schedule 3 to the <u>Environmental Planning and Assessment Regulation 2000</u> .
List of All Relevant s79C(1)(a) Matters	List all of the relevant environmental planning instruments: s79C(1)(a)(i) <ul style="list-style-type: none"> • State Environmental Planning Policy (Rural Lands) 2008 • State Environmental Planning Policy No 44 – Koala Habitat Protection • State Environmental Planning Policy (Infrastructure) • Tallaganda Local Environmental Plan 1991 (TLEP 1991) • Yarrawlumla Local Environmental Plan 2002 (YLEP 2002) List any proposed instrument that is or has been the subject of public consultation under the Act and that has been notified to the consent authority: s79C(1)(a)(ii) <ul style="list-style-type: none"> • Draft Palerang Local Environmental Plan 2013 (DPLEP 2013) List any relevant development control plan: s79C(1)(a)(iii) <ul style="list-style-type: none"> • Tallaganda Shire Council - Development Control Plan No.4 – Rural 1(a) • Yarrawlumla Development Control Plan - Rural Zones
List all documents submitted with this report for the	<ul style="list-style-type: none"> • Environmental Impact Statement, prepared by David Hogg Pty Ltd, Dated February 2014 • Section 10 – Supporting Information, dated 17

panel's consideration	February 2014 <ul style="list-style-type: none"> • Supplementary information – Resonse to OEH comments, prepared by David Hogg Pty Ltd, dated 5 May 2014
Recommendation	Consent subject to the attached conditions
Report by	Haydon Murdoch

Assessment Report and Recommendation Cover Sheet

Assessment Report and Recommendation

SUBJECT	Determination under section 80 of the <i>Environmental Planning & Assessment Act 1979</i> of Development Application DA.2014.035 for a sand extraction quarry at Lots 50, 52, 183 and 196 DP754878 Lots 3 and 4 DP1160367, and Lot 31 DP1178883.		
FILE NO.	DA.2014.035	DIVISION	Planning & Environmental Services

Attachments

1. Aerial photograph
2. Proposed Conditions of Consent

Synopsis

Applicant: Carnavalesca Pty Ltd trading as Paragalli Sands

Owner: Thomas William John Gordon
Robert David Henry Gordon
Chloe Violet Bambach
Elle Elizabeth Bambach

Date lodged: 17 February 2014

Site Area: Lot 50 – 460.09 ha
Lot 52 – 354.92 ha
Lot 183 – 120.98 ha
Lot 196 – 16.31 ha
Lot 3 – 428.4 ha
Lot 4 – 96.6 ha
Lot 31 – 4.45 ha
Total – 1481.75 ha

Zoning: TLEP 1(a) Rural
YLEP 1(a) Rural

Recommendation

That Development Application DA.2014.035 for a Sand Extraction Quarry, on Lots 50, 52, 183 and 196 DP754878, Lots 3 and 4 DP1160367 and Lot 31 DP1178883 be approved under Section 80 of the *Environmental Planning and Assessment Act 1979*, subject to the attached conditions.

Report

Proposal description

The proposal seeks approval to undertake sand extraction on approximately 14 ha across the south eastern corner of Lot 183 DP754878, across Lot 31 DP1178883, extending on to the south western corner of Lot 3 DP1160367. Specifically, the proposal includes:

- Extraction of a total volume of 117,000 cubic metres of sand over an eight year period;

- An annual extraction rate of 15,000 cubic metres;
- Clearing of approximately 14 ha of former pine plantation;
- Lowering the surface of the extraction site up to 2 metres;
- Truck movements between 7am and 4pm via the Birkenburn access road across the Timber Tops property to the Kings Highway, then via the Kings Highway to Paragalli Sands' yard in Queanbeyan.
- Relocation of highway intersection.
- Access Road across Lot 50 DP754878, Lot 4 DP1160367, Lot 196 DP754878 and Lot 52 DP 754878.
- Associated moveable site buildings

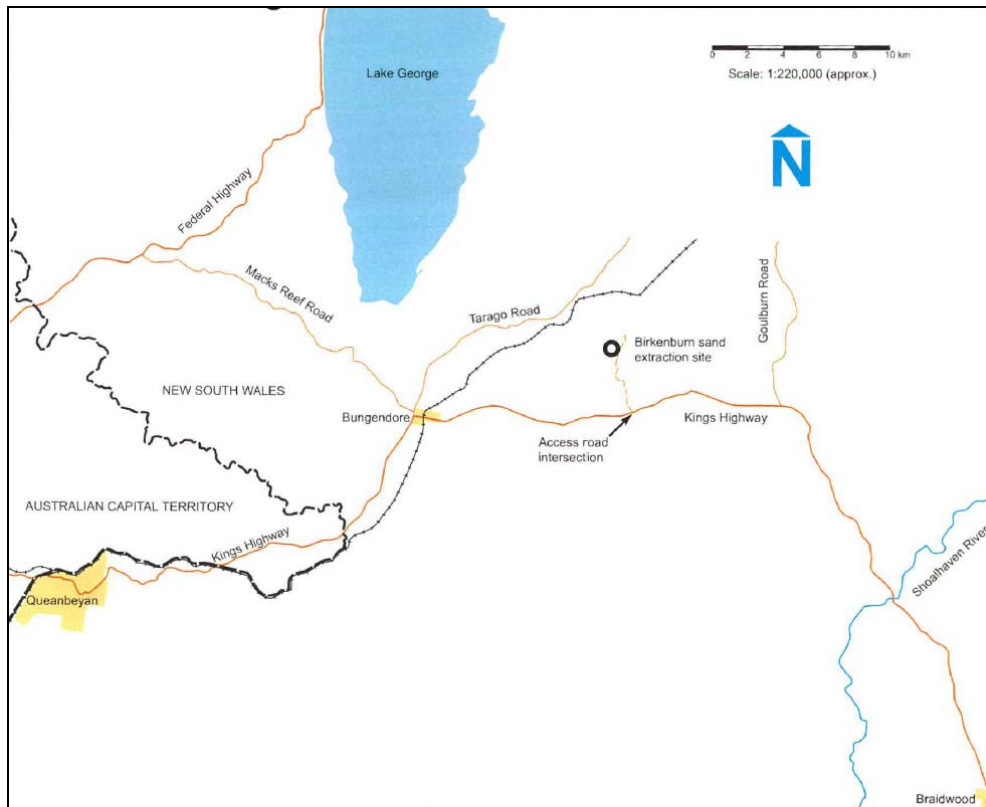
The application will be undertaken in six stages, with each stage being essentially independent. It is proposed that as the extraction processes is completed for each stage, rehabilitation will commence on the affected part of the site.

Site description and location

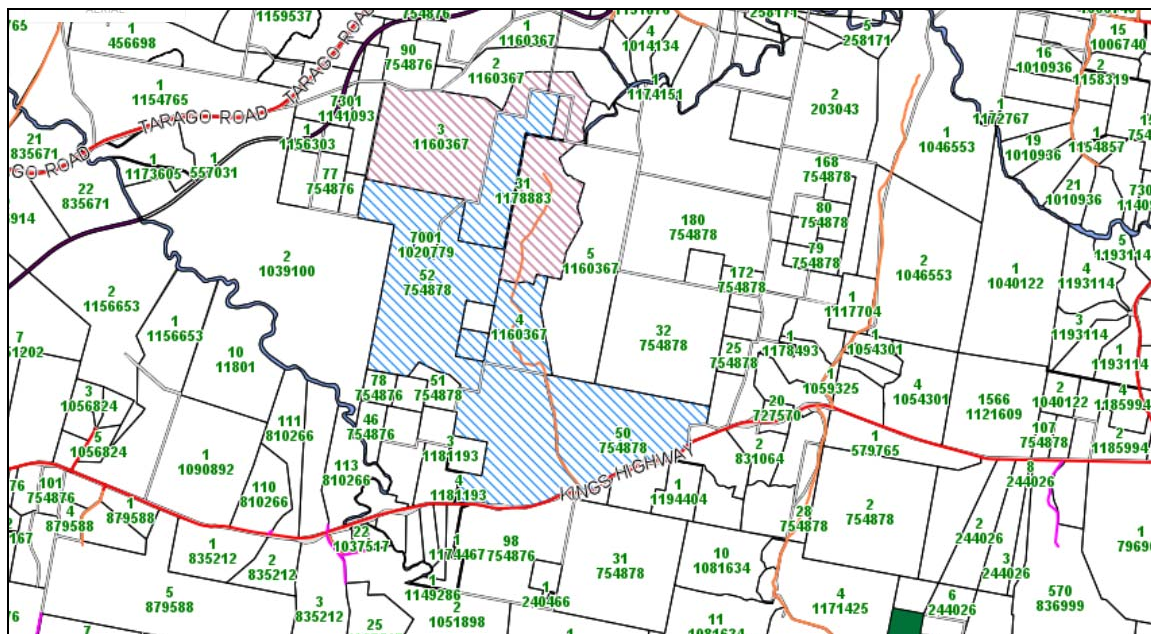
The site is located approximately 10 kilometres east of Bungendore along the Kings Highway and is legally known as Lots 50, 52, 183 and 196 DP754878, Lots 3 and 4 DP1160367, and Lot 31 DP1178883. The allotments feature a mixture of agricultural uses, pine plantation, native vegetation and revegetated extractive sites. The application has detailed that extractive industries have been undertaken on the Birkenburn property since the 1960s, predominately along the southern and eastern slopes of the range of Hills known as The Sand Hills. The existing property is accessed via an unsealed road off the Kings Highway. The site also contains three rural dwellings, shearers' quarters and ancillary rural outbuildings. The slopes of the allotments are undulating. The extractive area is sloped predominantly in an easterly direction.

Surrounding development is of a rural nature comprising of rural dwellings and detached structures on varying allotment sizes containing undulating slopes, drainage lines and dams and a mixture of grazing land, pine plantations and native vegetation.

Location plan



Land affected by development application



Statutory Framework

Consent authority

In accordance with the *Environmental Planning and Assessment Act 1979* (EP&A Act) the proposal is considered to be designated development. Under Schedule 4A of the EP&A Act the

proposal is regional development for which the regional panel is authorised to exercise the consent authority functions of council.

Assessment

Environmental Planning and Assessment Act 1979 (EP&A Act)

Section 77A - Designated development

The proposal is designated development under Schedule 3 of the *Environmental Planning and Assessment Regulation 2000 (EP&A Regulation)* because the total area of disturbance would be more than 2 hectares. In addition, some parts of the extraction operation would be located within 40 metres of a natural water body.

19 Extractive industries

- (1) *Extractive industries (being industries that obtain extractive materials by methods including excavating, dredging, tunnelling or quarrying or that store, stockpile or process extractive materials by methods including washing, crushing, sawing or separating):*
- (a) *that obtain or process for sale, or reuse, more than 30,000 cubic metres of extractive material per year, or*
 - (b) *that disturb or will disturb a total surface area of more than 2 hectares of land by:*
 - (i) *clearing or excavating, or*
 - (ii) *constructing dams, ponds, drains, roads or conveyors, or*
 - (iii) *storing or depositing overburden, extractive material or tailings, or*
 - (c) *that are located:*
 - (i) *in or within 40 metres of a natural waterbody, wetland or an environmentally sensitive area, or*
 - (ii) *within 200 metres of a coastline, or*
 - (iii) *in an area of contaminated soil or acid sulphate soil, or*
 - (iv) *on land that slopes at more than 18 degrees to the horizontal, or*
 - (v) *if involving blasting, within 1,000 metres of a residential zone or within 500 metres of a dwelling not associated with the development, or*
 - (vi) *within 500 metres of the site of another extractive industry that has operated during the last 5 years.*
- (2) *This clause does not apply to:*
- (a) *extractive industries on land to which the following environmental planning instruments apply:*
 - (i) *Sydney Regional Environmental Plan No 11—Penrith Lakes Scheme*,
 - (ii) *Western Division Regional Environmental Plan No 1—Extractive Industries*, or
 - (b) *maintenance dredging involving the removal of less than 1,000 cubic metres of alluvial material from oyster leases, sediment ponds or dams, artificial wetland or deltas formed at stormwater outlets, drains or the junction of creeks with rivers, provided that:*
 - (i) *the extracted material does not include contaminated soil or acid sulphate soil, and*
 - (ii) *any dredging operations do not remove any seagrass or native vegetation, and*
 - (iii) *there has been no other dredging within 500 metres during the past 5 years, or*
 - (c) *extractive industries undertaken in accordance with a plan of management (such as river, estuary, land or water management plans), provided that:*
 - (i) *the plan is prepared in accordance with guidelines approved by the Director-General and includes consideration of cumulative impacts, bank and channel stability, flooding, ecology and hydrology of the area to which the plan applies, approved by a public authority and adopted by the consent authority and reviewed every 5 years, and*
 - (ii) *less than 1,000 cubic metres of extractive material is removed from any potential extraction site that is specifically described in the plan, or*
 - (d) *the excavation of contaminated soil for treatment at another site, or*
 - (e) *artificial waterbodies, contaminated soil treatment works, turf farms, or waste management facilities or works, specifically referred to elsewhere in this Schedule, or*
 - (f) *development for which State Environmental Planning Policy No 52—Farm Dams and Other Works in Land and Water Management Plan Areas requires consent, or*

(g) maintenance dredging of alluvial material from oyster leases and adjacent areas in Wallis Lake, but only if the dredging is undertaken in accordance with the document entitled Protocol for Wallis Lake Oyster Lease Maintenance Dredging approved by the Director-General and published in the Gazette, as amended by the Director-General from time to time by publication of an amended Protocol in the Gazette.

On 17 February 2014, the applicant lodged this development application with Council. After review of the application Council requested additional fees for integrated development referral and public participation purposes. On receipt of the additional information, Council put the application on public exhibition and notification of the application was undertaken in accordance with Section 79 of the EP&A Act as follows:

- The application was put on public exhibition for a period of not less than 30 days (32 days) commencing on the day after the notice of the application was first published in the local newspaper (Braidwood Times & Bungendore Mirror). The application was exhibited at the Palerang Council offices in Braidwood and Bungendore, the Joint Regional Planning Panel office in Sydney and the NSW Department of Planning office in Queanbeyan.
- All relevant State Government Agencies and other interested bodies were notified in accordance with clause 77 of the EP&A Regulation;
- Written notice of the application was undertaken in accordance with clause 78 of the EP&A Regulation to persons who own the land adjoining the land to which the development application relates and to other persons who own land which could be detrimentally affected if the designated development is carried out;
- A notice of the application was exhibited in accordance with clause 79 of the EP&A Regulation on the land to which the application relates;
- A notice of the application was published in accordance with clause 80 of the EP&A Regulation in a newspaper circulating in the locality on two separate occasions (Braidwood Times & Bungendore Mirror);

The proposal was referred to the following State Agencies:

- Roads and Maritime Services (response received)
- NSW Office of Water (response received)
- NSW Office of Environment & Heritage (response received)
- NSW Rural Fire Service (response received)
- NSW Department of Primary Industries (response received)
- NSW Department of Industry & Investment (response received)
- South East Local Land Services (response received)
- NSW Department of Planning & Infrastructure (no response received)

In accordance with Section 80(9)(b) of the EP&A Act and clause 81 of the EP&A Regulation, the two submissions received as part of the public participation period were forwarded to the Director General on 15 June 2014.

Integrated Development

The development is classified as integrated development under Section 91 of the EP&A Act because it required the following additional approval:

Water Management Act 2000 – The proposed development requires the NSW Office of Waters' approval as the extraction area is within 40 metres of a watercourse. General Terms of Approval have been received and have attached to the schedule of conditions.

The development does not require any other additional approvals as follows:

National Parks and Wildlife Act 1974 - An Aboriginal heritage impact permit (AHIP) will be required as Aboriginal artefacts have been identified on the site and are intended to be disturbed. In accordance with section 91 (2) of the EP&A Act because the artefacts were known before the date the development application was lodged with Council, the application is integrated development. However, the applicant has not indicated in the application form that approval is being sought through the development application process and has elected to seek the necessary approval separately, applying for the AHIP prior to lodging the development application. In the case of *Maule vs Liporoni & Anor (2002)*, the Honourable Mr Justice Lloyd determined that *the provisions relating to integrated development are there for the benefit of applicants for development consent and not to hinder them* and that *there was and is no compulsion on an applicant to make an application for an integrated development approval, if he or she chooses not to do so*.

A condition has been included in the recommended conditions of consent that will require an Aboriginal heritage impact permit to be obtained before any work occurs.

Fisheries Management Act 1994 - The development does not include a fishery and will not be located within any waters that are within the limits of the State.

Heritage Act 1977 - An interim heritage order or listing on the State Heritage Register does not apply to a place, building, work, relic, moveable object, precinct, or land on the site.

Mine Subsidence Compensation Act 1961 - The development does not include improvements within a mine subsidence district or to subdivide land therein.

Mining Act 1992 - The development does not involve mining of the site.

Petroleum (Onshore) Act 1991 - The proposed development does not include any works which would require a petroleum title.

Protection of the Environment Operations Act 1997 - The proposed extraction operation would involve less than 30,000 tonnes per year, which is the threshold for consideration as scheduled development, as listed in *Schedule 1 of the Protection of the Environment Operations Act*.

Rural Fires Act 1997 - The proposed development does not require authorisation under section 100B of the Rural Fires Act 1997 in respect of bush fire safety because it does not involve subdivision and is not classified as a special fire protection purpose.

Roads Act 1993 - Whilst the development application indicated integrated development and the development application was advertised and notified as integrated development with the NSW RMS, the development application is not integrated development approval under section 138 of the *Roads Act 1993* from NSW RMS. However, concurrence is required to be obtained from the NSW RMS before any consent is granted.

Section 94 contribution plans

Section 94 contributions are not required under any section 94 Contributions plan. The development will not require the provision of or increase the demand for public amenities or public services within the area.

Section 64 contribution plans

Section 64 contributions are not required for the proposed development.

Assessment

79B(3)b Is the development likely to significantly affect a threatened species, population, or ecological community, or its habitat

An Ecological Assessment was undertaken on site by a suitably qualified person and was lodged with the development application. The ecological assessment concluded that the areas affected by the proposed works contain limited habitat features that would support threatened species or ecological communities. The assessment noted that the proposed road works area off the Kings Highway is less disturbed than the extraction site and contains potential habitat. Surveys were undertaken, which demonstrated impacts on threatened species or ecological communities were unlikely to occur.

As part of the notification under 77 of the EP&A Regulation, Council received a response from NSW OEH, who has recommended conditions to further mitigate any potential impacts.

79BA Consultation and development consent—certain bush fire prone land

The subject site is classified as bushfire prone. Under section 79BA of the EP&A Act, development consent cannot be granted for the proposed development unless the consent authority is satisfied that the development conforms to the specifications and requirements of the document entitled *Planning for Bush Fire Protection 2006* (PBP).

Subject to the recommended conditions of consent, the proposed development is assessed as conforming with the relevant clauses of PBP as outlined in the following table:

Clause	Comment
Aim of PBP	
<i>The aim of PBP is to use the NSW development assessment system to provide for the protection of human life (including firefighters) and to minimise impacts on property from the threat of bush fire, while having due regard to development potential, on-site amenity and protection of the environment.</i>	The proposed development is considered to be consistent with this aim because the operations and infrastructure associated with the development will minimise the bushfire threat on the property and surrounding properties.
Objectives of PBP	
<i>(i) afford occupants of any building adequate protection from exposure to a bush fire;</i>	The existing moveable site buildings are considered to be sited in suitable locations to establish adequate protection from the exposure to bushfire.
<i>(ii) provide for a defensible space to be located around buildings;</i>	Given the nature of the development and the associated extraction process, the moveable site buildings are able to establish a defensible space.
<i>(iii) provide appropriate separation between a hazard and buildings which, in combination with other measures, prevent direct flame contact and material ignition;</i>	Subject to the conditions of consent the moveable buildings associated with the extraction processes will be located to provide appropriate separation from hazards.
<i>(iv) ensure that safe operational access and egress for emergency service personnel and residents is available;</i>	Adequate access roads have/will be provided as they have been designed to accommodate heavy vehicles and will enable fire trucks to turn around within the site.

Clause	Comment
<i>(v) provide for ongoing management and maintenance of bush fire protection measures, including fuel loads in the asset protection zone (APZ); and</i>	The nature of the development ensures ongoing maintenance of area around the moveable site building.
<i>(vi) ensure that utility services are adequate to meet the needs of fire fighters (and others assisting in bush fire fighting).</i>	The sediment control ponds and the water tank attached to the moveable buildings ensure adequate utility services are provided for bushfire fighting.
3.1 Bush Fire Protection Measures	
<i>a) The provision of clear separation of buildings and bush fire hazards, in the form of fuel-reduced APZ (and their subsets, inner and outer protection areas and defensible space);</i>	The operation of the quarry ensures suitable locations for the site's moveable buildings. It is considered that the placement of these building will create clear separation from bush fire hazards.
<i>b) Construction standards and design;</i>	As the moveable site buildings are able to be relocated around the site throughout the operation processes and are not habitable buildings, it is considered that the buildings are not required to be upgraded to comply with <i>Planning for Bushfire Code 2006</i> .
<i>c) Appropriate access standards for residents, fire fighters, emergency service workers and those involved in evacuation;</i>	Appropriate access has been provided having regard to widths and turning areas.
<i>d) Adequate water supply and pressure;</i>	The site is not serviced by a reticulated water supply. However the sediment control ponds and attached water tank ensure adequate measures are provided for bushfire fighting.
<i>e) Emergency management arrangements for fire protection and/or evacuation; and</i>	An emergency evacuation plan will be prepared and enforced on site (recommended condition of consent).
<i>f) Suitable landscaping, to limit fire spreading to a building.</i>	Operating works and landscaping being established will limit the likelihood of fire spreading to the moveable site buildings.

Assessment

Section 79C(1)(a)(i) the provisions of any environmental planning instrument (Group heading)

State environmental planning policies (SEPPs)

SEPP No. 33 - Hazardous and Offensive Development

Clause 8 of the SEPP states:

"In determining whether a development is:

(a) a hazardous storage establishment, hazardous industry or other potentially hazardous industry, or

(b) an offensive storage establishment, offensive industry or other potentially offensive industry,

consideration must be given to current circulars or guidelines published by the Department of Planning relating to hazardous or offensive development."

The proposed sand extraction does not propose to use or produce any potentially hazardous or offensive substances other than diesel fuel (up to 4000 L). The 4000 L quantity is below the screening threshold of 10 tonnes applied in Table 3: General Screening Threshold Quantities for Class 1.3 substances within the *Hazardous and Offensive Development Application Guidelines*. As such SEPP 33 does not apply to the proposal because it is not classified as a potentially hazardous or offensive industry.

SEPP (Mining, Petroleum Production and Extractive Industries) 2007

Under Part 2, Section 7 (development permissible with consent), Clause 3 (extractive industry), the proposed development is permissible with consent as it involves an extractive industry on land which development for the purpose of agriculture or industry may be carried out.

The following provisions of SEPP (Mining, Petroleum Production and Extractive Industries) 2007 are considered relevant to assessment of the proposal:

Clause	Comment
Part 3 Development Application – Matters for consideration	
12 Compatibility of proposed mine, petroleum production or extractive industry with other land uses	
<p><i>Before determining an application for consent for development for the purposes of mining, petroleum production or extractive industry, the consent authority must:</i></p> <p><i>(a) consider:</i></p> <p><i>(i) the existing uses and approved uses of land in the vicinity of the development, and</i></p> <p><i>(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</i></p> <p><i>(iii) any ways in which the development may be incompatible with any of those existing, approved or likely preferred uses, and</i></p>	<p>The existing use of the site is a mixture of grazing agricultural land, former pine plantation and previously extracted areas. The sand extraction would occur on land previously used for exotic timber production which will be progressively rehabilitated to native vegetation or agricultural grazing. Therefore, the proposed use is consistent with the existing uses on the site and will not detract from preferred land uses within the area.</p> <p>The extraction area has been located a minimum of 1.3 km from the nearest adjoining property (not part of the development application), located on the western side of The Sand Hills. The development is also located 1.8km from the closest properties to the south and north and 1.5km from properties to the west. These distances together with the existing vegetation around the extraction area and access track, and topography of the land will minimise any incompatibility with other land uses within the area.</p>
<p><i>(b) evaluate and compare the respective public benefits of the development and the land uses referred to in paragraph (a) (i) and (ii), and</i></p>	<p>The development will be of public benefit compared with the alternate use of the extractive site for the uses listed above. Given the current state of the extraction area is a clearfelled pine plantation and the site once extracted will be rehabilitated to native vegetation or agricultural grazing conditions, it is considered the</p>

Clause	Comment
	proposal will have a positive public benefit.
<i>(c) evaluate any measures proposed by the applicant to avoid or minimise any incompatibility, as referred to in paragraph (a) (iii).</i>	Given the current use and proposed potential use of the extraction site once operations have concluded, there will be an improvement of the site's compatibility with the surrounding area.
13 Compatibility of proposed development with mining, petroleum production or extractive industry	
<p><i>(1) This clause applies to an application for consent for development on land that is, immediately before the application is determined:</i></p> <p><i>(a) in the vicinity of an existing mine, petroleum production facility or extractive industry, or</i></p> <p><i>(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</i></p> <p><i>(c) identified by an environmental planning instrument as being the location of significant resources of minerals, petroleum or extractive materials.</i></p>	The application is in the vicinity of an extractive industry which was previously undertaken on part of the subject site.
<p><i>(2) Before determining an application to which this clause applies, the consent authority must:</i></p> <p><i>(a) consider:</i></p> <p><i>(i) the existing uses and approved uses of land in the vicinity of the development, and</i></p> <p><i>(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</i></p> <p><i>(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</i></p>	Figure 4.3 within the EIS shows previously extracted areas in the vicinity of the proposed extractive area. As these were previously used and there are no incompatible existing uses in the vicinity of the proposal, the development is considered to comply with Clause 2.
<i>(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</i>	It is considered that the proposal will be of public benefit in terms of providing alternative economic resource choice of bricklayers' sand to local and

Clause	Comment
	regional markets.
<i>(c) evaluate any measures proposed by the applicant to avoid or minimise any incompatibility, as referred to in paragraph (a) (iii).</i>	There are no measures considered warranted or proposed.
14 Natural resource management and environmental management	
<i>(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.</i>	The application has demonstrated that the proposed works and management procedures will be undertaken in a manner that would ensure that impacts on water resources, threatened species and biodiversity are minimised to the greatest extent practical. Furthermore, responses have been received from SCA, NSW Office of Water and OEH recommending conditions that will ensure minimal impacts having regard to Clause 1, (a), (b), (c).
<i>(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.</i>	The EIS has been assessed in terms of greenhouse gas emissions. The EIS noted that the total CO ₂ equivalent emissions per annum are estimated to be 1198 tonnes. This is equal to approximately 0.00075 percent of the State total. A comparable or greater amount of carbon would be withdrawn from the atmosphere as the vegetation on the site regenerated following rehabilitation. There will be no net impact in terms of increased carbon emissions from this source.
15 Resource recovery	
<i>(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</i>	Section 6.10 within the EIS demonstrates the proposal's ability to minimise waste and therefore the efficiency of the extractive industry. All material extracted is to be sold or used to rehabilitate the site. The recommended conditions of consent optimise and reinforce the development commitment to recover and reuse materials and minimise waste.

Clause	Comment
<p><i>conditions aimed at optimising the efficiency of resource recovery and the reuse or recycling of material.</i></p> <p><i>(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.</i></p>	
16 Transport	
<p><i>(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:</i></p> <p><i>(a) require that some or all of the transport of materials in connection with the development is not to be by public road,</i></p> <p><i>(b) limit or preclude truck movements, in connection with the development, that occur on roads in residential areas or on roads near to schools,</i></p> <p><i>(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.</i></p>	<p>A suitable traffic movement statement has been provided within section 6.16 of the EIS. The traffic movements are between the Birkenburn site along the Kings Highway through Bungendore to Queanbeyan. Trucks will then turn off the Kings Highway at the heavy vehicle bypass route on the east side of Queanbeyan and following that route (Faunce Street and Aurora Avenue) through the industrial area to Chapman Street, which leads to the Paragalli Sands yard in Barber Street. Subject to conditions of consent truck movements will be restricted to the route detailed above. No trucks will be permitted on local roads within the Palerang Council local government area.</p>
<p><i>(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:</i></p> <p><i>(a) each roads authority for the road, and</i></p> <p><i>(b) the Roads and Traffic Authority (if it is not a roads authority for the road).</i></p> <p>Note. Section 7 of the <u>Roads Act 1993</u> specifies who the roads authority is for different types of roads. Some roads have more than one roads authority.</p> <p><i>(3) The consent authority:</i></p> <p><i>(a) must not determine the application until it has taken into consideration any submissions that it receives in response</i></p>	<p>The development involves transport of materials on the Kings Highway and public roads within the Queanbeyan City local government area (as discussed above).</p> <p>The application was referred to the NSW RMS who did not object to the application subject to the attached conditions.</p> <p>Consultation was also undertaken with Queanbeyan City Council. The Council indicated that it had no concerns with the proposal.</p> <p>A copy of the determination will be forwarded to the RMS and Queanbeyan City Council within 21 days of the date of determination..</p>

Clause	Comment
<i>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.</i>	
17 Rehabilitation	
<p><i>(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.</i></p> <p><i>(2) In particular, the consent authority must consider whether conditions of the consent should:</i></p> <p><i>(a) require the preparation of a plan that identifies the proposed end use and landform of the land once rehabilitated, or</i></p> <p><i>(b) require waste generated by the development or the rehabilitation to be dealt with appropriately, or</i></p> <p><i>(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 <u>Contaminated Land Management Act 1997</u>), or</i></p> <p><i>(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.</i></p>	<p>The proposal includes a rehabilitation plan outlining the way in which the site will be rehabilitated to encourage the natural regeneration of the site to native forest or to allow agricultural use at the conclusion of the proposed works. The recommended conditions of consent will ensure the regeneration plan is undertaken and reflect the requirements with section 17 (2).</p>

SEPP No. 55 – Remediation of Land

Clause	Comment
7 Contamination and remediation to be considered in determining development application	
<p><i>(1) A consent authority must not consent to the carrying out of any development on land unless:</i></p> <p><i>(a) it has considered whether the land is contaminated, and</i></p> <p><i>(b) if the land is contaminated, it is</i></p>	<p>The areas affected by the extractive procedures to be undertaken as part of the development have not been subject to contamination. The site has only been used for pine plantation, agricultural land or native vegetation. Rehabilitation of the site will be conditioned to ensure the site returns to a native or agricultural state. SEPP 55 is considered not to apply.</p>

Clause	Comment
<p><i>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</i></p> <p><i>(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.</i></p>	

SEPP No. 44 - Koala Habitat Protection

The following provisions of SEPP No. 44 - Koala Habitat Protection are considered relevant to assessment of the proposal:

Clause	Comment
7 Step 1—Is the land potential koala habitat?	
<p><i>(1) Before a council may grant consent to an application for consent to carry out development on land to which this Part applies, it must satisfy itself whether or not the land is a potential koala habitat.</i></p> <p><i>(2) A council may satisfy itself as to whether or not land is a potential koala habitat only on information obtained by it, or by the applicant, from a person who is qualified and experienced in tree identification.</i></p> <p><i>(3) If the council is satisfied:</i></p> <p><i>(a) that the land is not a potential koala habitat, it is not prevented, because of this Policy, from granting consent to the development application, or</i></p> <p><i>(b) that the land is a potential koala habitat, it must comply with clause 8.</i></p>	<p>An Ecological Assessment was prepared by David Hogg from David Hogg Pty Ltd, Environmental Consultants and submitted as part of the EIS.</p> <p>The assessment found that there are no mature trees within the extraction site which would support koalas, and that the tree species in the forest adjoining the Kings Highway do not provide suitable habitat.</p>

SEPP (Sydney Drinking Water Catchment) 2011

The following provisions of SEPP (Sydney Drinking Water Catchment) 2011 are considered relevant to assessment of the proposal:

Clause	Comment
Part 2 Assessment and approval of development and activities	
11 Development that needs concurrence of Chief Executive	
<i>(1) A consent authority must not grant consent to the carrying out of</i>	The development application required concurrence

Clause	Comment
<p><i>development under Part 4 of the Act on land in the Sydney drinking water catchment except with the concurrence of the Chief Executive.</i></p> <p><i>(2) For the purposes of section 30 (3) of the Act, the matters that are to be taken into consideration by the Chief Executive in deciding whether to grant concurrence are:</i></p> <p><i>(a) whether the development incorporates the Authority's current recommended practices and standards, and</i></p> <p><i>(b) if the development does not incorporate those practices and standards, whether the alternative practices that relate to the protection of water quality that have been adopted in relation to the development will achieve outcomes not less than those achieved by the Authority's current recommended practices and standards, and</i></p> <p><i>(c) whether the development would have a neutral or beneficial effect on water quality.</i></p> <p><i>(3) A consent authority must forward a copy of its determination of a development application that requires the concurrence of the Chief Executive to the Chief Executive within 10 days after the determination is made.</i></p> <p><i>(4) This clause does not apply if:</i></p> <p><i>(a) the Minister is the consent authority, or</i></p> <p><i>(b) the consent authority is satisfied that the proposed development has no identifiable potential impact on water quality.</i></p>	<p>from the Chief Executive under Part 4 of the Act. The development application was referred to the SCA on 28 February 2014. Additional information was requested by SCA on 14 March 2014. The additional information was provided to Council on 7 May 2014 and forwarded to the SCA on 8 May 2014. SCA concurrence was received on 11 June 2014, subject to the attached conditions.</p> <p>SCA will be forwarded a copy of the determination within 10 days after the determination is made.</p>

Local Environmental Plans

The location of the proposed quarry and the proposed access road extension are located wholly within areas of the site zoned 1(a) General Rural under the Tallaganda Local Environmental Plan 1991 (TLEP), with only sections of the existing access road which is to service the proposed sand mine being located within the 1(a) General Rural zone under the Yarrowlumla Local Environmental Plan 2002 (YLEP). Under Clause 34 of the YLEP consent is not required for the construction of access roads on holdings having an area of 80 hectares or more within the 1 (a) zone. Because the existing access road within the 1 (a) zone is on a holding which exceeds 80 hectares, consent is not required for any necessary upgrading of this road.

Having regard to the above, the proposal is considered against the relevant provisions of the TLEP below.

Tallaganda Local Environmental Plan 1991 (TLEP)

The table within Clause 9 of the TLEP permits the proposal with consent, subject to the matters for consideration under s 79C of the EP&A Act and consistency with the relevant provisions of the TLEP.

The proposed development has been assessed as consistent with the objectives of the TLEP outlined in the tables below.

Objective	Comment
Zone No 1 (a) (General Rural) – Objectives of zone	
<p><i>(a) protecting, enhancing and conserving:</i></p> <p><i>(i) agricultural land, particularly prime crop and pasture land, in a manner which sustains its efficient and effective agricultural production potential,</i></p> <p><i>(ii) soil stability by controlling and locating development in accordance with soil capability, as identified by the Soil Conservation Service,</i></p> <p><i>(iii) forests of existing and potential commercial value for timber production,</i></p> <p><i>(iv) valuable deposits of minerals, coal, petroleum and extractive materials by controlling the location of development for other purposes in order to ensure the efficient extraction of those deposits,</i></p> <p><i>(v) trees and other vegetation on environmentally sensitive land and in any place where the conservation of the vegetation is significant to the protection of scenic amenity or natural wildlife habitat or is likely to control or contribute to the control of land degradation,</i></p> <p><i>(vi) water resources and water catchment areas for use in the public interest,</i></p> <p><i>(vii) localities of significance for nature conservation, including localities with rare plants, wetlands, permanent watercourses and significant wildlife habitat, and</i></p> <p><i>(viii) places and buildings of archaeological or heritage significance, including aboriginal relics and places,</i></p>	<p>The extractive area is located on land previously used for a pine plantation. The location of the extraction area identified within the submitted plans, demonstrate that no agricultural land in the surrounding area is to be impacted. Remediation works proposed will result in the extraction area being recovered for future agricultural land uses.</p> <p>The application has been accompanied by a Water Cycle Management Study prepared by SEEC, and a Quarry Pit Plan and Operation Manual prepared by Paragali Sands. Both documents have demonstrated the development's ability to maintain soil stability. Subject to recommended conditions, the development does not present any detrimental impacts on soil stability.</p> <p>The development is located on a site previously used as a pine plantation. The site was clearfelled in 2003 with no replanting's undertaken; the site is now predominately regrowth of pines, eucalypts and wattle and exotic pasture grasses. As such, it is considered that the development does not detract from existing commercial timber productions.</p> <p>The application proposes an extractive industry (extracting bricklaying sand) on a previously used plantation site. The EIS demonstrated efficient process in order to extract those deposits.</p> <p>The EIS outlines potential habitat within the new road extension. However, no significant impacts will occur. Furthermore, OEH have recommended conditions of consent to ensure the conservation of vegetation. The location of the extraction site is sheltered from the surrounding area and scenic amenity will not be significantly affected. The Sand Hills to the west of the site ensure scenic views of the site from the west are minimised. To the north and east the extraction site will be obscured by a line of existing pine trees. The area south of the extraction site contains a substantial amount of rehabilitated vegetation.</p>

Objective	Comment
	<p>As outlined above the application was required to be referred to the SCA for concurrence. The SCA concluded that the development is able to maintain a neutral or beneficial effect on water resources and has granted concurrence.</p> <p>As outlined above the accompanying documents have demonstrated minimal impacts will occur to rare plants, wetlands, watercourses and wildlife habitat.</p>
<i>(b) facilitating farm adjustments,</i>	No farm adjustment is proposed.
<i>(c) minimising the cost to the community of:</i> <i>(i) fragmented and isolated development of rural land, and</i> <i>(ii) providing, extending and maintaining public amenities and services, and</i>	<p>It is considered that because of the location of the development on land previously used for a pine plantation it will not fragment existing rural land.</p> <p>The development will use the Kings Highway. All required works associated with the development and the Kings Highway will be at the cost of the developer.</p>
<i>(d) providing land for future urban development, for rural residential development and for development for other non-agricultural purposes, in accordance with the need for that development, and subject to the capability of the land and its importance in terms of the other provisions of this clause.</i>	The development site is considered suitable for the proposal. The development application has demonstrated the extractive industry's ability to maintain the existing land capabilities and to rehabilitate the extraction area once extraction processes have been completed.

Control	Comment
Clause 10 - General considerations for development within the shire	
<i>The Council may consent to an application to carry out development on land within Zone No 1 (a), 1 (c) or 2 (v) providing it has taken into consideration, if relevant, the effect of the carrying out that development on:</i>	
<i>(a) the present use of the land for the purposes of agriculture and the potential of any land which is prime crop and pasture land for sustained agricultural production,</i>	As outlined above; the extraction site is located in an area previously used for a pine plantation. As such it is considered that the development will not impact on any prime crop or pasture land. Rehabilitation works may result in the land becoming productive pasture land for agricultural purposes in future.
<i>(b) vegetation, timber production, land capability (including soil stability) and water resources (including the quality and stability of watercourses, aquatic wildlife habitat, ground water storage and riparian rights),</i>	<p>The development application was submitted with an Ecological Assessment prepared by David Hogg. The assessment and the accompanying EIS demonstrate the development's ability to minimise impacts on existing vegetation and wildlife habitat.</p> <p>Outlined above, the extraction site is located on a former pine plantation site, clearfelled in 2003. The site</p>

Control	Comment
	<p>is considered to have minimal timber production value.</p> <p>The EIS was accompanied with Water Cycle Management Study prepared by SEEC and a Quarry Operation Manual prepared by Paragali Sands. Both accompanying documents illustrate measures to be undertaken to minimise impacts on water resources and maintain existing land capabilities.</p>
<i>(c) the future recovery of known or prospective areas of valuable deposits of minerals, coal, petroleum or extractive materials,</i>	The application proposes to extract valuable bricklaying sand in a known resource location.
<i>(d) the protection of localities of significance for nature conservation or of high scenic or recreational value, and places and buildings of archaeological or heritage significance, including aboriginal relics and places,</i>	<p>The location of the site (being a former pine plantation) together with the recommended conditions of consent will ensure that localities of significance for nature conservation and high scenic and recreational value are protected.</p> <p>The EIS has identified potential sites of aboriginal relics and places. It is understood that an Aboriginal Heritage Impact Permit has been applied for through OEH. A condition is recommended to ensure the AHIP is obtained before any works commence.</p>
<i>(e) the cost of providing, extending and maintaining public amenities and services to the development,</i>	<p>The development will use the Kings Highway. Therefore section 94 contributions do not apply. However the connection of the access road from the property to the Kings Highway will be at the cost of the developer.</p> <p>The development does not present any undue impacts on public amenities and services.</p>
<i>(f) future expansion of settlement in the locality, and</i>	The developments location, being 10km east of Bungendore, presents no impacts on the future expansion of settlement in the locality.
<i>(g) the quality and availability of water resources within the water catchment area.</i>	As outlined above, the application was referred to SCA who determined that it will have a neutral or beneficial impact on water resources in the water catchment area.

Control	Comment
Clause 26 – Advertised development	
<i>Development for the purposes specified in Schedule 4 is identified as advertised development for the purposes of this plan.</i>	The development was both advertised and notified.

Control	Comment
<i>Clause 27 – Development along arterial roads</i>	
<i>(1) The Council may grant consent to an application to carry out development on land which has frontage to an arterial road, providing:</i>	
<i>(a) access to that land is provided by a road other than the arterial road, wherever practicable,</i>	The proposal includes the construction of an extension to the existing internal access road to the Kings Highway. It is considered that the proposed entrance is the most practical access point to the property. As a result of the new access the application was required to be referred to the NSW RMS. RMS did not object to the proposed access point subject to the attached conditions.
<i>(b) in the opinion of the Council, the safety and efficiency of the arterial road will not be adversely affected by:</i> <i>(i) the design of the access to the proposed development,</i> <i>(ii) the emission of smoke or dust from the proposed development, or</i> <i>(iii) the nature, volume or frequency of vehicles using the arterial road to gain access to the proposed development, and</i>	The safety and efficiency of the arterial road as result of the proposed access has been assessed by the NSW RMS. Subject to the attached conditions it is considered that the proposed entrance will not adversely affect the Kings Highway.
<i>(c) the location, design and construction of access points and on-site roadways and parking areas are to be such as do not cause erosion or sedimentation or traffic hazards.</i>	As outlined above the proposed access point is considered to meet the relevant standards subject to the recommended conditions. An assessment has been undertaken by Council's Development Engineer and the SCA in regards to the internal access roads. Subject to the attached conditions it is considered that the development will not cause any detrimental impacts to soil erosion, sedimentation or traffic hazards.
<i>(2) Unless adequate provision is made for safe access and the maximum abatement of traffic safety problems, the Council shall not consent to the development of rural land within Zone No 1 (a) or 1 (c) for any purpose listed in Schedule 5 if the development of the land for the purpose will have direct access to:</i>	
<i>(a) an arterial road, or</i>	The application includes a proposed access which was referred to the NSW RMS. The NSW RMS did not object to the application subject to the attached conditions. The conditions ensure safe access and egress.
<i>(b) a road connecting an arterial road, and the access to that road is within 90 metres (measured along the road alignment of the connecting road) of the alignment of the arterial road.</i>	Not relevant. The access road connects directly to the Kings Highway.

Control	Comment
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Control	Comment
Clause 28 – Environmentally sensitive land	
<p><i>(2) A person shall not carry out development on environmentally sensitive land for the purposes of:</i></p> <p><i>(a) intensive livestock keeping,</i></p> <p><i>(b) junk yards,</i></p> <p><i>(c) liquid fuel depots,</i></p> <p><i>(d) offensive or hazardous industries,</i></p> <p><i>(e) sawmills, or</i></p> <p><i>(f) commercial stockholding yards.</i></p>	<p>The development does not include any purpose listed in clause (2).</p>
<p><i>(3) A person must not carry out forestry works on environmentally sensitive land, except with the consent of the Council.</i></p>	<p>The development is not undertaking forestry works.</p>
<p><i>(4) A person shall not clear or drain environmentally sensitive land for any purpose, except with the consent of the Council.</i></p>	<p>The extension of the internal access road to the Kings Highway is the only part of the development that is located within environmentally sensitive land. Some clearing has occurred without the necessary consent and more will be required if the application is approved. An Ecological Assessment prepared by David Hogg demonstrates proposed works within this area will not have a detrimental impact on significant vegetation or wildlife habitat.</p>
<p><i>(5) The Council may not grant consent to the clearing or draining of land unless:</i></p> <p><i>(a) in the opinion of the Council, the clearing or draining will be carried out in a manner which minimises:</i></p> <p><i>(i) the risk of soil erosion or other land degradation,</i></p> <p><i>(ii) the loss of scenic amenity, and</i></p> <p><i>(iii) the destruction of significant vegetation systems and natural wildlife (including aquatic) habitats, and</i></p> <p><i>(b) the area to be cleared or drained does not exceed 1 hectare or does not exceed 5% of the area of environmentally sensitive land within an existing holding (whichever is less) and is not within 30 metres of a watercourse.</i></p>	<p>The area that has been cleared will require addition works to ensure the access road meets the relevant standards. These works will be subject to conditions which will minimize the risk of soil erosion and land degradation. The access and internal road do not present any detrimental impacts on the existing scenic amenity. The submitted Ecological Assessment prepared by David Hogg demonstrated that required works and works already undertaken will not place any significant detrimental impacts on significant vegetation systems and natural wildlife habitats. The area that has been cleared does not exceed 5% of the area of the environmentally sensitive land within the existing holding.</p>

Control	Comment
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Control	Comment
Clause 30 – Land subject to bush fire hazards	
<i>The Council shall not grant consent to the subdivision of land, other than for boundary adjustments, or to the erection of a building on land that is considered to be a medium to high bush fire hazard by reason of the vegetation on the land or on any adjacent land and following an assessment of the subject lands by the Council, unless in the opinion of the Council:</i>	
<i>(a) adequate provision is made for access for fire fighting vehicles,</i>	The existing access to the extraction site with the proposed upgrading is considered to be of a suitable standard for the provision of access for fire fighting vehicles.
<i>(b) adequate safeguards are adopted in the form of dams, fire breaks, reserves and fire radiation zones,</i>	The establishment of sedimentation ponds and the extractive area ensures the moveable site offices have adequate safeguards in relation to water and fire radiation zones.
<i>(c) adequate water supplies are available for fire fighting purposes,</i>	The development will contain a number of sedimentation ponds which could also act a suitable water supply for the bushfire protection. A small water tank is attached to the moveable site office which could also be utilized in the event of an emergency.
<i>(d) fire protection measures can be undertaken within the boundaries of the subdivision or allotment and there will be no adverse effect on environmentally sensitive land, and</i>	These fire protection measures can be maintained within the confines of the development site.
<i>(e) access tracks, dams and firebreaks are designed so as not to cause erosion or sedimentation of drainage lines or other soil.</i>	Subject to the attached conditions it is considered access roads will not cause detrimental impacts having regard to erosion and sedimentation.

Control	Comment
Clause 31 – Heritage items	
<i>(1) A person shall not, in respect of a building, work, relic, place or tree that is a heritage item:</i>	<p>There are no listed heritage items on the site.</p> <p>A number of Aboriginal relics have been identified within the EIS. It is understood that a separate AHIP application has been lodged with OEH. As a result a condition is recommended to ensure the AHIP has been obtained before any works commence.</p>
<i>(a) demolish or alter the building or work,</i>	
<i>(b) damage or move the relic,</i>	
<i>(c) excavate for the purpose of exposing the relic,</i>	
<i>(d) damage or despoil the place or tree,</i>	
<i>(e) erect a building on or subdivide land on which the building, work or relic is situated or that comprises the</i>	

Control	Comment
<i>place, or</i> <i>(f) damage any tree on land on which the building, work or relic is situated or on the land which comprises the place,</i> <i>except with the consent of the Council.</i>	
<i>(2) The Council shall not grant consent to a development application required by subclause (1) unless it has taken into consideration the extent to which the carrying out of the proposed development would affect the heritage significance of the item and any stylistic or horticultural features and its setting.</i>	No works are proposed as part of the application on heritage buildings.

Control	Comment
Clause 32 – Development in the vicinity of heritage items	
<i>The Council may grant consent to a development application to carry out development adjoining, or adjacent to, land on which a heritage item is situated, providing the Council has made an assessment of the effect which the carrying out of that development will have on the heritage significance of the item and its setting.</i>	The development is not within the vicinity of a heritage item.

Section 79C(1)(a)(ii) any draft environmental planning instrument that is or has been placed on exhibition and details of which have been notified to the consent authority;

The Draft *Palerang Local Environmental Plan 2013* (draft PLEP) went on exhibition on 27 November 2013 and is expected to be made by the Minister in the near future. Under the draft PLEP the subject site will be within the Zone RU1 Primary Production. The proposed development will be permissible with consent under the Draft PLEP. Clauses 1.2, 2.1, 2.3, 5.9, 5.9AA, 6.5, 6.8, 6.10, 6.11, 6.12, 6.13 and 6.15 of the Draft PLEP would apply to the proposed development. The proposal is considered to be consistent with the Draft PLEP because it will not contradict the aims and objectives of the plan, zone or any of the relevant clauses.

Section 79C(1)(a)(iii) any development control plan;

The proposal is considered against the relevant clauses of the Tallaganda Development Control Plan No. 4 – Rural 1(a) in the following tables:

Aims and Objectives	Comment
Clause 1 - Introduction and Aims of the Plan	
<i>1.3 To provide a co-ordinated, orderly and consistent framework for controlling development in the Rural</i>	Subject to the conditions of consent, the development is consistent with controlling development in the Rural

Aims and Objectives	Comment
<i>1(a) Zone of the Shire.</i>	1(a) Zone of the Shire.
<i>1.4 To provide technical standards for rural development.</i>	The EIS has established the proposed development's ability to meet the relevant technical standards.
<i>1.5 To protect and enhance rural visual amenity and elements which add to that amenity.</i>	As outline above the development is considered to maintain the existing scenic amenity in the area due to the surrounding topography and the existing vegetation that surrounds the extraction site.
<i>1.6 To phase development logically and economically.</i>	The location of the development on a former pine plantation is considered a logical and economical reuse of the site.
<i>1.7 To attempt to arrange the major individual uses allocated in the Plan, so that they are capable of change and expansion, with minimal effect on surrounding uses.</i>	The proposal involves staging of the extraction and rehabilitation of the extractive in order to allow expansion without creating conflict with surrounding land uses.

Aims and Objectives	Comment
Clause 4 - Rural Industry, Mining and Extractive Industry	
<i>4.1 To provide a co-ordinated, orderly and consistent framework for the management of rural industry, mining and extractive land use within the Shire.</i>	The proposal is considered to be consistent with the framework for the management of extractive land within the Shire as demonstrated in this table.
<i>4.2 The objective of this section of the Plan is to make adequate provision for the use and protection of natural and rural resources, while protecting other land use options and the natural environment.</i>	The development meets the objective of this section of the plan as the extractive area is located on a former pine plantation site. By doing so, the development protects the surrounding environment and makes use of the natural resource being bricklayers' sand.
<i>4.3 To protect valuable natural and man-made resources, for example, attractive and unspoilt countryside, important areas of high quality agricultural land, significant forest areas, extractive and mining areas, homesteads of historic interest, settings worthy of conservation and locations which may be habitats for rare and endangered flora and fauna.</i>	The extraction site is located on a former pine plantation which is surrounded by undulating slopes and vegetation. Subject to the recommended conditions, the development will not cause any detrimental impacts on attractive views, agricultural land, forest areas, homesteads and habitat for rare and endangered flora and fauna.
<i>4.4 To maintain a high quality of life for all members of the community through the provisions of an adequate supply of rural resource materials and processing opportunities.</i>	The extractive material is high quality bricklayers' sand which is in high demand in the area due to development in Queanbeyan and Canberra.

Control	Comment
Clause 5 - Extractive Industry and Mining	
<i>5.1 Council shall not grant consent to carry out an extractive industry unless it has made an assessment of the following matters.</i>	
<i>5.1.1 A full description of the site, location and materials, the extent of operations including a time frame and the site management.</i>	As the proposal is Designated development an EIS was required to be prepared in accordance with the Director-General's requirements. These included the requirements within clause 5.1.1 and are considered to be appropriate.
<i>5.1.2 Emissions from the site into the air including noise and vibration levels, and the requirements of the EPA.</i>	The application documentation has considered emissions into the air including noise and vibration levels. The levels detailed will have a minimal impact on surrounding properties.
<i>5.1.3 The effect of the proposal on water quality, and the hydrodynamics of any water course or underground waters in the area.</i>	The EIS was accompanied with a Water Cycle Management Assessment prepared by SEEC which details the proposal's impact on water in the area. The application was also referred to the SCA for concurrence which was received subject to the attached conditions. As such there will be a neutral or beneficial impact on water resources.
<i>5.1.4 The proposed rehabilitation measures and guarantees, including whether or not they will be carried out in accordance with the Department of Land and Water Conservation "Guidelines To Meet Requirements for Information on Soil and Land Stability in Proposals for Open Cut Mining and Rehabilitation".</i>	The EIS has addressed the site rehabilitation in accordance with the relevant guidelines. Subject to the conditions of consent, the rehabilitation processes proposed are appropriate.
<i>5.1.5 The effect on the Shire road network and the recovery of costs under Section 94 of the Environmental Planning and Assessment Act, together with any Section 94 plan in force at the time of the application.</i>	No section 94 contributions are applicable as the development does not propose to use any Palerang local roads.
<i>5.1.6 The bush fire regime of the locality and, where the hazard is moderate to very high, any method of: - reducing the likelihood of fire spreading from the site into surrounding areas; - protecting the site from external fire sources.</i>	The proposal intends to remove bushfire risks that are an immediate threat to the site throughout the extraction process. The EIS states that removal of this vegetation will not occur on high fire risks days. Subject to the attached conditions of consent the development does not present any significant threat as a result of bushfire.
<i>5.1.7 The archaeology of the locality and any matters raised by consultation with the NSW National Parks and Wildlife Service.</i>	The development as part of the assessment process was notified to OEH. A separate AHIP has been lodged with OEH as Aboriginal artefacts have been identified on the site. As such a condition is recommended to be placed on the consent to ensure the AHIP has been obtained before any works are undertaken.

Control	Comment
<i>5.1.8 Any matters, buildings or sites of historical significance.</i>	There are no known buildings of historical importance on the site. Aboriginal sites have been identified on the site. A condition requiring no works to be undertaken until an AHIP has been obtained is recommended. Subject to the attached conditions there will be minimal impacts on sites of historical significance.
<i>5.1.9 Effects on surrounding land, including the agricultural value of that land, dwellings or other land use which may be in conflict with the proposal. The amenity of that land.</i>	The extraction site is located 1.3km from the nearest property in separate ownership not affected by the development application. As such it is considered that surrounding dwellings are unlikely to be impacted.
<i>5.1.10 Alternative sources of the material to be extracted and whether they should be mined first. This applies especially when mining is to be within 40m of the Shoalhaven River.</i>	The development is not within 40m of the Shoalhaven River. The staging and methodology of the development is considered to be appropriate.
<i>5.1.11 Any management plan developed for the site, including soil and water management plans, staging plans and plans for alternative uses.</i>	Subject to the conditions of consent the EIS has demonstrated suitable management practices including soil and water and staging plans.
<i>5.1.12 Local employment provisions.</i>	Not relevant
<i>5.1.13 The existing use of the land, the potential use for agriculture and the protection of extractive material.</i>	The site was previously pine plantation land which was clearfelled in 2003. Regrowth has occurred with no potential use for productive agriculture. The EIS has outlined how the potential rehabilitation of the site could result in grazing land.
<i>5.1.14 Any requirement for a Fauna Impact Statement.</i>	A fauna impact statement was not required. The Ecological Assessment will form part of the endorsed documents with the consent. OEH has also recommended conditions of consent to ensure the best practice management of native flora and fauna.
<i>5.1.15 The visual amenity of the site and any landscaping measures aimed at mitigation of the effects.</i>	As outlined above and throughout the report the development's location associated with the topography and existing vegetation surrounding the extractive area ensure the visual amenity of the locality will be maintained.
<i>5.2 Where an Environmental Impact Statement (EIS) is required, these matters are to be included in the EIS. Where no EIS is required, a Statement of Environmental Effects will be required by the Council and will be required to include the above matters. In any case, the applicant will be required to comply with the EIS or the Statement of Environmental Effects, as</i>	Conditions to this effect have been included in the schedule of conditions.

Control	Comment
<i>modified by conditions of consent.</i>	
<i>5.3 Where a development occurs within the vicinity of known extractive materials, or an existing extractive site, Council will taken into consideration:</i>	
<i>5.3.1 the effect, or likely effect, of that development or any extractive industry as if it were considering the effect of the extractive industry on that development.</i>	It is not considered that the proposal will adversely impact any surrounding sand quarries in the area. Furthermore, the application was both notified and advertised in accordance with the EP&A Act with no submissions received relating to potential impacts.
<i>5.4 In any case, Council will not permit: - the erection of a dwelling within 500 metres of a known resource, or within 1,000 metres of a known resource which requires, or may require, blasting operations. - the erection of a dwelling within 100 metres of a sealed road, used by a resource or within 500 metres of an unsealed road. - unless it has taken into consideration the effects of the dwelling on the resource, as if it were considering the effect of the resource on the dwelling.</i>	No blasting operations are proposed as part of the development. No dwelling is located within 500m of the unsealed road used by the development.

Control	Comment
Clause 11 – Archaeological Sites	
<i>11.4 Applicants should identify whether any Aboriginal sites have been recorded on the land and/or adjoining the land and include this information in the development application.</i>	The EIS has identified Aboriginal sites. An AHIP has been sought from OEH separate from the subject development application. As a result a condition is recommended to be placed on the consent to ensure the AHIP has been obtained before any works are undertaken.
<i>11.5 Generally, an archaeological survey of the land would be recommended where relics or Aboriginal places are likely or have been recorded. The survey should, as a minimum, cover all areas that would be physically disturbed by the development (in the case of subdivision for example, road corridors) and should include consultation with the relevant local Aboriginal Land Council.</i>	As detailed above.

Section 79C(1)(a)(iii)(a) any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F,

There are no planning agreements applying to the subject site.

Section 79C(1)(a)(iv) any matters prescribed by the regulations, that apply to the land to which the development application relates;

Conditions have been included within the recommended conditions of consent regarding compliance with the erection of signs and shoring of adjoining property, to satisfy Clauses 98A, and 98E of the EP&A Regulation 2000.

Section 79C(1)(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts of the locality;

Access and Traffic

The proposal includes the construction of an extension of the existing internal access road to the Kings Highway. As such the application was required to be referred to the NSW RMS who did not object to the application subject to the entrance being constructed in accordance with RMS standards.

The standard of the proposed access is considered to be a suitable standard having considered the average vehicle movement rates generated by the proposal. As such the development is not considered to adversely affect the condition of the Kings Highway and will in fact increase the safety for users of the site and the highway generally.

Surface and Groundwater

The Water Cycle Management Study prepared by SEEC was lodged with the application which was assessed by SCA. The SCA provided recommendations for the management of surface and groundwater during any required construction and operation of the extractive site. Conditions have been included within the recommended schedule of conditions of consent to ensure the SCA recommendations are implemented to minimise any potential impacts.

Noise

Predicted noise and vibration levels were supplied within the EIS to address potential impacts on the surrounding properties in the area. As the nearest adjoining property not included within the proposal is 1.3 km away it is considered that noise and vibration impacts will be minimal. Conditions to this effect are included within the recommended schedule of conditions of consent to ensure any dwellings located nearby on adjoining properties are not impacted by the development.

Flora and Fauna

An Ecological Assessment prepared by David Hogg was submitted as part of the development application. The assessment identified areas which have significant endangered flora and fauna values. The only site identified to potentially contain these sites was located along the existing and proposed extension to the internal access road. The assessment concluded as a result of the proposed works it would be unlikely that threatened flora and fauna or habitat would be destroyed or impacted.

As part of the notification process a comments were received from OEH detailing concerns with the proposed works. These concerns were addressed by the applicant. OEH subsequently recommended conditions of consent which have been included in the schedule of conditions.

Visual Amenity

The extraction area is located a minimum of 1.3 km from the nearest adjoining property (not impacted by the development application), located on the western side of The Sand Hills. The development is also located 1.8 km from properties to the south and north and 1.5 km from properties to the west. These distances together with the existing vegetation around the

extraction area and access track, and the topography of the land, minimises any potential impacts on the visual amenity of the surrounding area.

Heritage

An Aboriginal Heritage Impact Permit will be required as Aboriginal artefacts have been identified on the site and are intended to be disturbed. In accordance with section 91 (2) of the EP&A Act as the artefacts were known before the date the development was lodged with Council the application is integrated development. However, as discussed above the applicant has not indicated in the application form that AHIP approval is being sought through the development application process and the AHIP application is being dealt with separately.

The recommended conditions require an Aboriginal Heritage Impact Permit to be obtained before any work occurs and before a construction certificate is issued.

Dust

The nearest property to the west is about 1.3 km away on the far side of the Sand Hills range, while the distances to other neighbouring property boundaries are 1.8 km to the north, 1.8 km to the south and 1.5 km to the west. These distances, together with shielding by topography and vegetation, would be more than adequate to ensure that neighbouring properties will not be affected by dust.

Section 79C(1)(c) the suitability of the site for the development;

As assessed above, subject to the inclusion of the recommended conditions of consent, the site of the proposed sand extraction has been assessed as being suitable because the proposal will not result in any significant impacts on the natural, social or economic environments.

Section 79C(1)(d) any submissions made in accordance with the Act or Regulations;

Notification

The application was notified in accordance with the requirements of the EP&A Regulation 2000. Two submissions of objection to the proposed development were received from two separate property owners to the north of the subject site. Their concerns are addressed as follows;

Visual Amenity

Section 6.5 deals with visual impacts and indicates that there will be no problems for those residing on the Birkenburn property, as there is plenty of foliage. The photographs have all been taken from ground level on that property. No account has been taken of the views from surrounding properties on high ground overlooking the proposed development sites. There will be a great, and unpleasant, visual impact from my home, if this development is to go ahead.

Comment: The submission relates to a property approximately 4km from the extractive site. Figure 6.2 within the EIS shows the topography of the surrounding area in relation to the extraction site. It is considered that section 6.5 within the EIS has adequately addressed potential visual impacts which are considered to be minimal.

Noise

Section 6.6 deals with operating noise. As the development proceeds the noise will affect those around. In a Rural Residential area, the properties are about life-style, peace and quiet and not about industrial encroachment.

Comment: The application is not located within a Rural Residential area, the character of the locality is agricultural land, native vegetation and pine plantation. Furthermore conditions are recommended within the schedule of the conditions to ensure potential noise levels do not

exceed 5dBA above background noise levels at each location of each dwelling in the surrounding area.

Dust

Section 6.7 deals with the air quality because of sand dust. Any problem is minimized and refers only, again, to those residences on the Birkenburn property. This area is in a wind tunnel, hence the wind farms already present here to the West and the proposal to build another in the East. Although the prevailing winds tend to come from the West, there is an afternoon change to the opposite direction. However, during any day, the wind often boxes the compass. There is no problem to the air quality of this locality now, but that will change if this proposal goes ahead.

Comment: The EIS has demonstrated that a number of factors contribute to the prevention of dust impacting on surrounding properties. These include a significant distance between the extraction site and the nearest dwelling, prevailing wind is from a west to north west direction (away from the nearest dwelling), and there are several hundred metres of mature or regenerating forest between the site and the nearest dwellings. These combined factors mitigate any potential impacts.

Access

The development proposal states that access to and from the extraction site will be from access off the Kings Highway, our concern is that this should be the only access approved and that no additional access roads be allowed ie. via Steepers Road, Sandhills Road or Dolomite Drive. The reasons for this condition is that these are minor dirt roads and do not have the capability for large scale truck movements that would lead to accelerated degradation and erosion of these roads.

Comment: Conditions are recommended within the schedule of conditions of consent to ensure all truck movements associated with the development are to only access and exit the site via the Kings Highway. No vehicles shall access or exit the site via Steepers Road, Sandhills Road or Dolomite Drive.

Water Quality

Another concern of this development proposal is the contamination to the nearby creek systems, especially with the water quality of the creeks which make up part of the Sydney Catchment Area.

Comment: The application was accompanied with the relevant documents which demonstrated the developments ability to maintain a neutral or beneficial impact on water quality. Furthermore, the application was referred to SCA and NSW Office of Water with no objections received subject to the attached conditions of consent.

Development Engineer

The proposed development was referred to Council's Development Engineer for assessment of the proposed access and internal road to the extractive industry. The response received indicated that the proposed access would comply with the relevant Austroads standards subject to the implementation of the recommended conditions of consent.

NSW Roads and Maritime Services

The application was referred to the NSW RMS because the application seeks approval to connect an access road on to the Kings Highway. The RMS responded on the 14 March 2014 stating they have no objections with the development subject to the attached conditions. The conditions however, referred to 'prior the release of subdivision certificate'. On 17 July 2014 Council staff contacted RMS to notify them of the error. RMS responded on the 17 July 2014 outlining the error and for Council to make the necessary amendments to their conditions.

NSW Office of Water

The application was referred to the NSW Office of Water in accordance with section 91 of the EP&A Act, as the development is located within 40m of a watercourse. The NSW Office of Water issued General Terms of Approval which have been included in the recommended conditions of consent.

Sydney Catchment Authority

The application was referred to the Sydney Catchment Authority as required concurrence in accordance with section 11 under the *State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011*. Additional information was requested on 17 March 2014 which was forwarded to the applicant on 17 March 2014. The applicant responded to the additional information request on 7 May 2014 and forwarded to SCA on 9 May 2014. SCA gave concurrence to the development on 11 June 2014, subject to the attached conditions of consent.

NSW Department of Primary Industries

The application was referred to the NSW Department of Primary Industries under section 77 of the *EP&A Regulation 2000* as an authority which may have an interest in the development. A response was received indicating that no comments would be supplied.

South East Local Land Services

The application was referred to the South East Local Land Services under section 77 of the EP&A Regulation 2000 as an authority which may have an interest in the development. A response was received detailing no objection was being made. However, a recommended species list was supplied to be incorporated in the rehabilitation process.

Department of Industry & Investment

The application was referred to the NSW Department of Primary Industry & Investment under section 77 of the EP&A Regulation 2000 as an authority which may have an interest in the development. A response was received detailing satisfaction with the EIS.

NSW Office of Environment & Heritage

The application was referred to the NSW Office of Environment & Heritage under section 77 of the EP&A Regulation 2000 as an authority which may have an interest in the development. Additional information was requested on 7 April 2014. The applicant responded to the additional information request on 7 May 2014 which was forwarded on 9 May 2014. A response was received from OEH on 29 May 2014 demonstrating their satisfaction with the EIS and additional information. However, matters in relation to Aboriginal heritage are being dealt with separately.

An AHIP was lodged separate to the development application and as such was not considered Integrated Development under section 91 of the E&A Act as discussed above.

NSW Rural Fire Service

The application was referred to the NSW Rural Fire Service Industries under section 77 of the EP&A Regulation 2000 as an authority which may have an interest in the development. A response was received detailing no comments were to be supplied.

NSW Department of Planning and Infrastructure

The application was referred to the NSW Department of Planning and Infrastructure under section 77 of the EP&A Regulation 2000 as an authority which may have an interest in the development. No response was received.

Section 79C(1)(e) the public interest

As discussed above and subject to the recommended conditions of consent; it is not considered that the proposed development would be contrary to the public interest because potential impacts on the natural, social and economic environments are considered to be minimal, with appropriate measures to be implemented during the construction and operation process to mitigate against any negative impacts.

Conclusion

The application has been assessed in accordance with the EP&A Act and the relevant Environmental Planning Instruments and Development Control Plans.

It is considered that, subject to the implementation of the recommended conditions of consent, the development can be operated in a manner that would avoid significant impact on the locality having regard to the natural, social and economic environments.

Recommendation

That Development Application DA.2014.035 for a Sand Extraction Quarry, on Lots 50, 52, 183 and 196 DP754878, Lots 3 and 4 DP1160367 and Lot 31 DP1178883 be approved under Section 80 of the *Environmental Planning and Assessment Act 1979*, subject to the attached conditions.