

JOINT REGIONAL PLANNING PANEL
Southern Region

Assessment Report and Recommendation Cover Sheet

JRPP No	2014STH013
DA Number	DA/0350/1314
Local Government Area	Goulburn Mulwaree
Proposed Development	Extractive Industry (Basalt Quarry)
Property & Street Address	Lot 1 DP 1094055 288 Tiyces Lane (previously Known as 63 Curlewin Lane), Towrang
Applicant/Owner	Applicant – Peter F Miller on behalf Argyle (NSW) Pty Ltd Owner – Argyle Gravel & Concrete P/L as Trustee for Figtree Reserve Superannuation Fund
Number of Submissions	17 public submissions received from 15 submitters.
Regional Development Criteria (Schedule 4A of the Act)	Regional Development Criteria - The development is an Extractive Industry which meets the criteria for Designated Development under clause 19 of Schedule 3 Environmental Planning & Assessment Regulation 2000. The development is Regional Development as defined by the Regional Development Criteria (Schedule 4A (8) of the <i>Environmental Planning & Assessment Act 1979</i>) because its located within Council's Environmentally Sensitive Land (Biodiversity on the Terrestrial Biodiversity Map to <i>Goulburn Mulwaree LEP 2009</i>).
List of All Relevant s79C(1)(a) Matters	<ul style="list-style-type: none"> • <i>State Environmental Planning Policy No 33 – Hazardous and Offensive Development</i>; • <i>State Environmental Planning Policy No 44 – Koala Habitat Protection</i>; • <i>State Environmental Planning Policy No 55 – Remediation of Land</i>; • <i>State Environmental Planning Policy (Infrastructure) 2007</i>; • <i>State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007</i> • <i>State Environmental Planning Policy (Rural Lands) 2008</i> • <i>State Environmental Planning Policy (State & Regional Development) 2011</i> • <i>State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011</i> • <i>Goulburn Mulwaree LEP 2009</i> • <i>Goulburn Mulwaree DCP 2009</i> • <i>Goulburn Mulwaree Section 94 Contribution Plan 2009</i> • <i>NSW Industrial Noise Policy</i> • <i>NSW Road Noise Policy</i> • Department of Environment and Conservation (NSW) <i>Approved Methods for the Modelling and Assessment of Air Pollutants in NSW</i> • Department of Environment and Conservation (NSW) <i>Approved for the Sampling and Analysis of Air Pollutants in NSW</i> <p>This application has been assessed in accordance with the matters for consideration under Section 23G, 77A, 79C and 91 of the <i>Environmental Planning and Assessment Act 1979</i> and found to be satisfactory.</p>
List all documents submitted with this	<ul style="list-style-type: none"> • Application and EIS Submitted 14/5/14 • Submissions received following public exhibition

report for the panel's consideration	<ul style="list-style-type: none"> • NSW EPA General Terms of Approval 8/12/2014 • NSW RMS Submission 11/12/2014 • Water NSW Concurrence 17/4/2015 • NSW Trade and Investment Resource and Energy Submission 3/6/2014 • Applicant's response to submissions 16/5/2015 • Consultant's (for Applicant) response to GM Council 23/3/2015 • Assessment Report • Recommended draft conditions of consent
Recommendation	Approval with conditions.
Report by	Dianne James, Senior Town Planner, Goulburn Mulwaree Council

ASSESSMENT REPORT

EXECUTIVE SUMMARY

On 14 May 2014, a Development Application (DA) was received by Goulburn Mulwaree Council for the establishment of an "Extractive Industry" at the abovementioned site, including site offices, amenities building with disabled facilities, landscaping and off-street car parking. The facility provides for the extraction of up to 30,000 cubic metres of basalt per annum. The *Water Cycle Management Study* prepared by SEEC Morse McVey identified a quarry area of approximately 1.2ha of basalt. There is also an area of approximately 2694m² clay/gravel excavation which is assumed for the proposed internal road.

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

The proposed development is a Designated Development as it is located within Biodiversity layer of the Terrestrial Biodiversity Layer to *Goulburn Mulwaree Local Environmental Plan 2009*. The Southern Region Joint Regional Planning Panel (SRJRPP) is the consent authority as the development is for an "Extractive Industry", which meets the requirements for designated development.

The proposed development is defined as a "Extractive Industry" under the provisions of *Goulburn Mulwaree Local Environmental Plan 2009* (GMLEP 2009), and the site is zoned E3 Environmental Management. Extractive Industries are prohibited development within the E3 zone.

Agriculture is permitted with consent under the land use table to the E3 zone to Goulburn Mulwaree LEP 2009 and in accordance with Clause 7(3)(a) of the *Environmental Planning Policy (Mining Petroleum Production and Extractive Industries) 2007* (Mining SEPP), Extractive Industry is permitted. In accordance with Clause 5 the Mining SEPP overrides GMLEP 2009.



Concurrence Authorities:

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



Integrated Authorities:

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

NSW Roads & Maritime Services for approval under Section 138 of the *Roads Act 1993*

Goulburn Mulwaree Council for approval under Section 138 of the *Roads Act 1993*



Other agencies that the application was referred to:

NSW Department of Planning and Infrastructure
NSW Trade and Investment (Resources and Energy)
Goulburn Mulwaree Council
NSW Office of Water
Pejar LALC



Exhibition period: 29 May 2014 –8 July 2014

The application was advertised and notified for the required period of greater than 30 days and 17 public submission and 7 Agency submissions were received. Copies of the Agency submissions are included in the Annexure to the report. The submissions to the proposal are addressed in the report.

The proposal generally complies with the essential criteria and intent of the relevant statutory provisions. There being no outstanding issues or unreasonable additional impacts from the proposal, it is recommended that 350/11314/DA be approved by way of a deferred commencement consent pursuant to Section 80 of the EP& A Act, subject to as recommended conditions at the end of this report. The deferred commencement condition relates to the applicant obtaining a works approval under the *Water Management Act 2000*. A Water Access License (WAL) has been obtained from the NSW Department of Primary Industries (Water) however works approval is required to attach the WAL to a nominated site.

The key issues relate to the traffic generation, noise in the locality and loss of amenity to adjoining residents. The application provided reports to demonstrate compliance with acceptable standards. Secondary issues relate to site constraints and the extent of site landscaping.

Public submissions have in the majority opposed the development and it appears that a pro-forma submission has been used or adapted for many of the submissions.

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

1.0 INTRODUCTION

1.1 Background

A previous Development Application (266//0809/DA) was lodged with Council for an Extractive Industry at 63 Curlewin Lane, Towrang in 2009 (the same site). The site was zoned “Rural Landscape” at the time and the proposal was permissible within the zone. The proposal was reported as just below the 2ha disturbance threshold for designated development and submitted as local development.

It was found that the extent of works was greater than 2ha and considered designated development and consequently refused based on the following reasons:

1. The proposal based upon total site disturbance calculations is properly categorised as Designated Development.
2. The supporting documentation provided with the application is insufficient to permit a full and proper assessment of the proposal.

There was an appeal taken to the Land and Environment Court concerning the Council refusal and when Laterals Planning, as agent for the applicant, received the Notice of Determination at the specified PO Box. The appeal was set aside on the basis that it was made out of time. The Court ordered that the applicant pay Council’s costs.

1.2 The Applicant

Council has considered whether owner’s consent to the making of DA/0350/1314 has been obtained. Owners consent under the *Environmental Planning and Assessment Act 1979* (EPA Act) has the same meaning as in the *Local Government Act 1993* and includes:

- Every person who jointly or severally, whether at law or in equity, is entitled to the land for any estate of freehold in possession, and
- Every such person who is entitled to receive, or is in receipt of, or if the land were to let to a tenant would be entitled to receive, the rents and profits of the land, whether as beneficial owner, trustee, mortgagee in possession, or otherwise.

Therefore there can be more than one person as an owner of land and a person can be an “owner” of land even if they are not the registered owner. A title search has found the following:

- Argyle Gravel and Concrete Pty Limited is listed as the First Schedule as the registered owner of the land
- Antiquaire Pty Limited and Peter Francis Miller are both listed in the Second Schedule as having a Caveat over the land;
- The Figtree Reserve Superannuation Fund and Argyle (NSW) Pty Limited do not have a registered interest in the land.

The two caveats in favour of Anticare Pty Limited and Peter Miller protect an equitable interest in the land and as such are both “owners” and must consent to the making of the development application to satisfy the requirements of the *Environmental Planning and Assessment Regulations* (EPP Regulations).

It is considered that Figtree Reserve Superannuation Fund are not “beneficial owners” under the LG Act.

Mr Peter Francis Miller has since signed the Development Application as an individual) and given his consent to the making of the DA before it is determined.

1.3 The Location

The subject site is within the Goulburn Mulwaree Local Government Area (‘LGA’), which is situated in the NSW southern tablelands approximately 185km south-west of Sydney and 110 km north-east of Canberra, 5km east of Goulburn and 1.8km along Tiyces Lane.

The site is legally described as Lot 1 DP 1094055; 288 Tiyses Lane, Towrang (also known as 63 Curlewin Lane) Towrang ([Attachment 1](#)) and located on the north-eastern junction of Tiyses Lane and Curlewin Lane.

The subject site is irregular in shape, with the southern boundary having approximately 730m frontage to Tiyses Lane and the lane partly split by Curlewin Lane with approximately 2.7ha on the eastern side of Curlewin Lane with the remainder (approximately 41 ha) on the western side of Curlewin Lane. The subject site has an area of 44.08ha.

The Land has an elevation of approximately 720-730m AHD with the highest area located near the north-eastern boundary. The land then slopes down generally to the west and south west. The land generally drains to the west to Towrang Creek. There is also a drainageline to the south of the quarry site which drains to the east. There are two existing dams on the site, the most westerly dam which the proposed internal access traverses on the eastern side of the dam bank. No approval was sought for works within 40m of a water course however NSW Office of Water have confirmed no approval is required. It has been confirmed that a Water Access License will be required (if not already obtained) for commercial use with the quarry from the NSW Office of Water.

There is also an existing dam located at the junction of Tiyses Lane and Curlewin Lane,

There is an existing farm shed/building on the site south of the proposed quarry site proposed to be used as a machinery shed.

The site is currently affected by the following easements/restrictions:

- Easement for transmission line 60.96m wide;
- Easement for overhead power line 20m wide
- Right of carriageway 20m wide (benefiting Lot 2 DP 1094055);

The land was created by subdivision approved by Council in 2004 and modified in 2005. The plan was registered with a S88B restriction requiring areas of native remnant vegetation to be fenced and protected from stock ([Attachment 2](#)).

The land is generally cleared except for some remnant vegetation to the west and south-east. Remnants of the Endangered Ecological Community Yellow Box, White Box Blakely's Redgum (Box-Gum Woodland) as listed under the NSW *Threatened Species Conservation Act 1995*. It is not typical Box-Gum Woodland however elements of Box-Gum Woodland are located in the northern western and south-western sections of the site.

The proposal may involve the removal of a small overstorey component from the site to provide access to the development area. A small number of Yellow Box *E. melliodora* trees however this is not considered significant given the 8.8ha of proposed revegetation within the site.

The 88B Instrument prohibits direct access to or from the Hume Highway to Lot 2 (the adjoining northern lot and provides access from a right of carriageway over Lot 1 (the subject land). Both Lots 1 and 2 of DP 1094055 are currently owned by the Applicant.

The immediate surrounding area is characterised by a mixture of land uses including extensive agriculture including grazing, intensive agriculture (poultry farm) as well as rural lifestyle lots. Located near or within the vicinity of the site include:

- 249 Tiyses Lane (existing dwelling and vacant lot with proposed dwelling);
- 287 Tiyses Lane (existing dwelling and horse training)
- 288 Tiyses Lane (Vacant Lot 2 DP 1094055)
- 16917 Hume Highway (intensive poultry farm);

The wider surrounding area includes a rural subdivision along Marian Vale Road which has approval for 37 lots. A small number of houses and a commercial aquaculture (fish farm) have been built within the subdivision.

1.4 Resource within the Local Government Area

Goulburn Mulwaree is proving to play an important part in providing natural resources from mines and quarries. A quick review over the internet revealed the following large quarry approvals for the Goulburn Mulwaree area include (but not limited to):

- Pepper Tree Marulan South – Granodiorite Products generated from the Boral Peppertree Quarry include a range of aggregates, shaped and sized for different purposes. The main production items are concrete and asphalt aggregates, although larger aggregates for 'armour' or 'gabion baskets' can be produced, along with railway ballast.
- Boral Marulan South – Limestone The mine is located in Marulan South, 10 kilometres (km) southeast of Marulan village and 35 km east of Goulburn, within the Goulburn Mulwaree Local Government Area
The Boral Marulan South Limestone Plant and Mine is formerly part of the Blue Circle Southern Cement folio of works. The site is renowned for its high quality limestone deposit, with its products being used in iconic structures such as the Sydney Opera House. Today's operations produce a range of raw materials used in construction, manufacturing and agriculture. As one example, lime products from Marulan South are transported by rail to the Berrima Cement Works where they are used in the production of around 60 percent of all cement used in NSW. Boral Marulan South Limestone is the employer of around 120 local people. In current market conditions, the site generates around 3 million tonnes per annum (Mtpa) of 'run-of-mine' limestone and 130 000 tonnes of shale per annum.
Council approved a manufactured sand plant in 2012 further widening the potential use of the resources to manufactured sand within the existing production volumes. Boral have been issued SEAR's for a proposed 30 year mine plan seeking extension and continued operation up to 3.5Mtpa and clay shale at 200,000 tpa.
- Ardmore Park – Bungonia (Multiquip Quarries sand and basalt). "Ardmore Park" Quarry situated at Bungonia 25km southeast of Goulburn NSW. The property contains a vast resource of both basalt rock and river sand. Multiquip has approval to produce up to 400,000tpa of sand and hard rock products per year.
- Gunlake Quarries - Resource material is tuffaceous rhyodacite Located on a rural property approximately eight kilometres north west of Marulan, 30 km east of Goulburn and about 160 km south west of Sydney. NSW to service Sydney and the Southern Highlands. This newly-built quarry produces a wide variety of premium bulk aggregates for concrete, construction and asphalt and specified and non-specified road base.
SEAR's have been issued for an expansion to Gunlake Quarry. Gunlake seeks a new development consent that allows: 2 million tonnes per annum (Mtpa) of saleable products to be produced; an increase in truck movements to an average of 440 movements per day; extension of the quarry pit footprint by 150 percent to approximately 63 ha; 24 hour per day primary crushing; additional overburden emplacement to accommodate the increase in production; and blasting twice weekly.
- Lynwood Quarry - ignimbrite resource Holcim Australia operate a quarry which has consent for 5 Mtpa (approximately 30 year supply). Lynwood Quarry is a hard rock quarry currently being constructed by Holcim (Australia) Pty Ltd to the west of Marulan.
A SEAR's request has been lodged for a new pit 500m west of the approved pit to extract a granite resource within the current approved volumes. Holcim have identified the variability of the approved ignimbrite resource will make it challenging to produce in-specification products.
- Woodlawn Mine - located on the Great Dividing Range 10 km west of Tarago in the Goulburn Mulwaree local government area. TriAusMin Limited proposed to re-establish mining operations on part of the former mine. The development has two stages - the recovery of resources from the existing tailings dams and the reopening of the underground mine.
TriAusMin would extract up to 1.5 million tonnes of tailings and underground ore per year to produce a maximum of 150,000 tonnes of copper, lead and zinc ore concentrate per year, for

up to 21 years. This concentrate would be trucked to Port Kembla, Port Botany or the Port of Newcastle (or a combination of all three) for export. Approval has been obtained.

An extract of the NSW Trade and Investment (Resources and Energy) local mines and quarries can be found in [Attachment 3](#).

Figure 1 Locality Plan Extract from Council's Cadastre GIS Mapping System

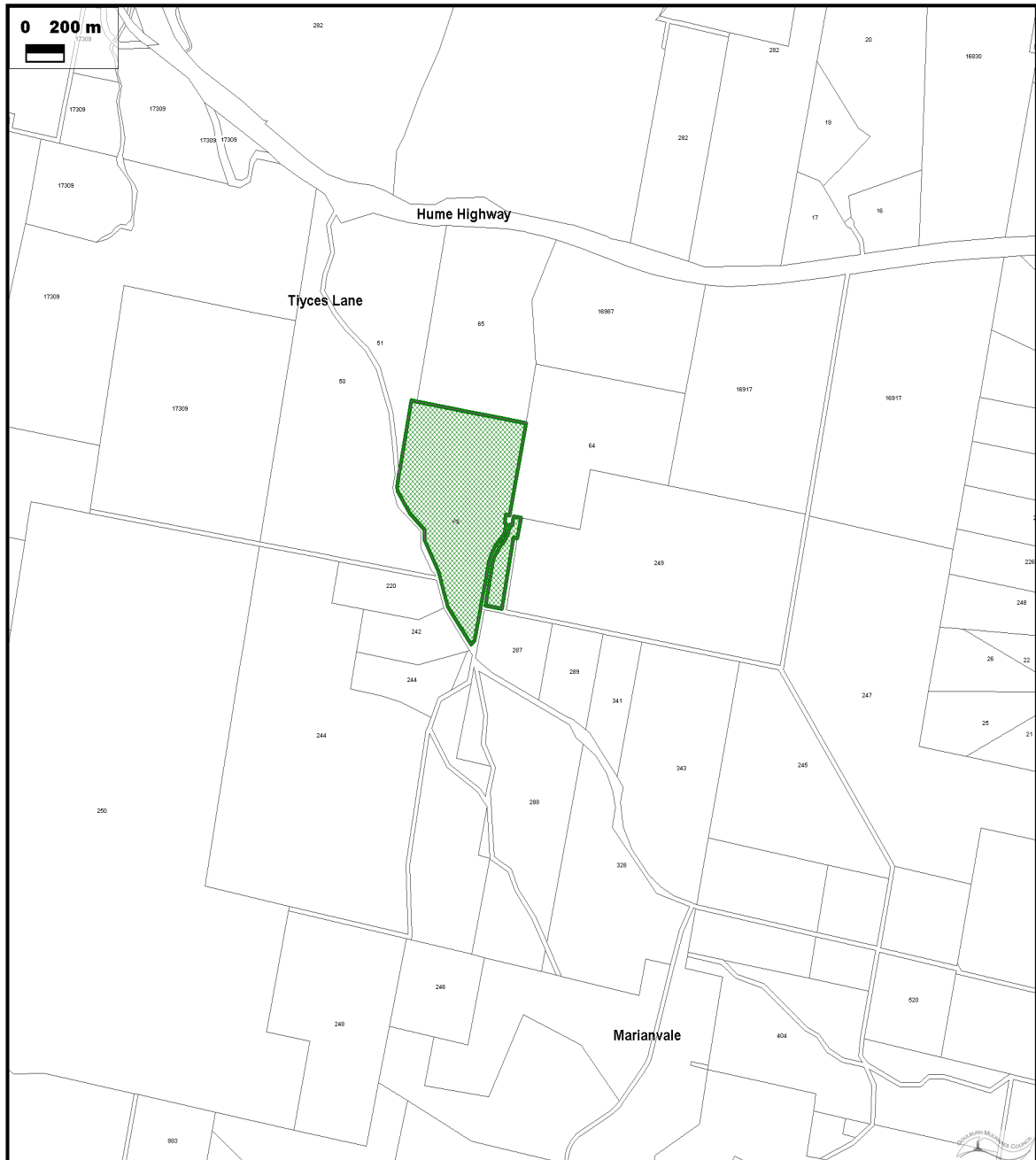


Figure 2: Aerial Photograph retrieved from Council's Mapping System (photograph taken Dec 2008) of the locality of the quarry and surrounding lands.

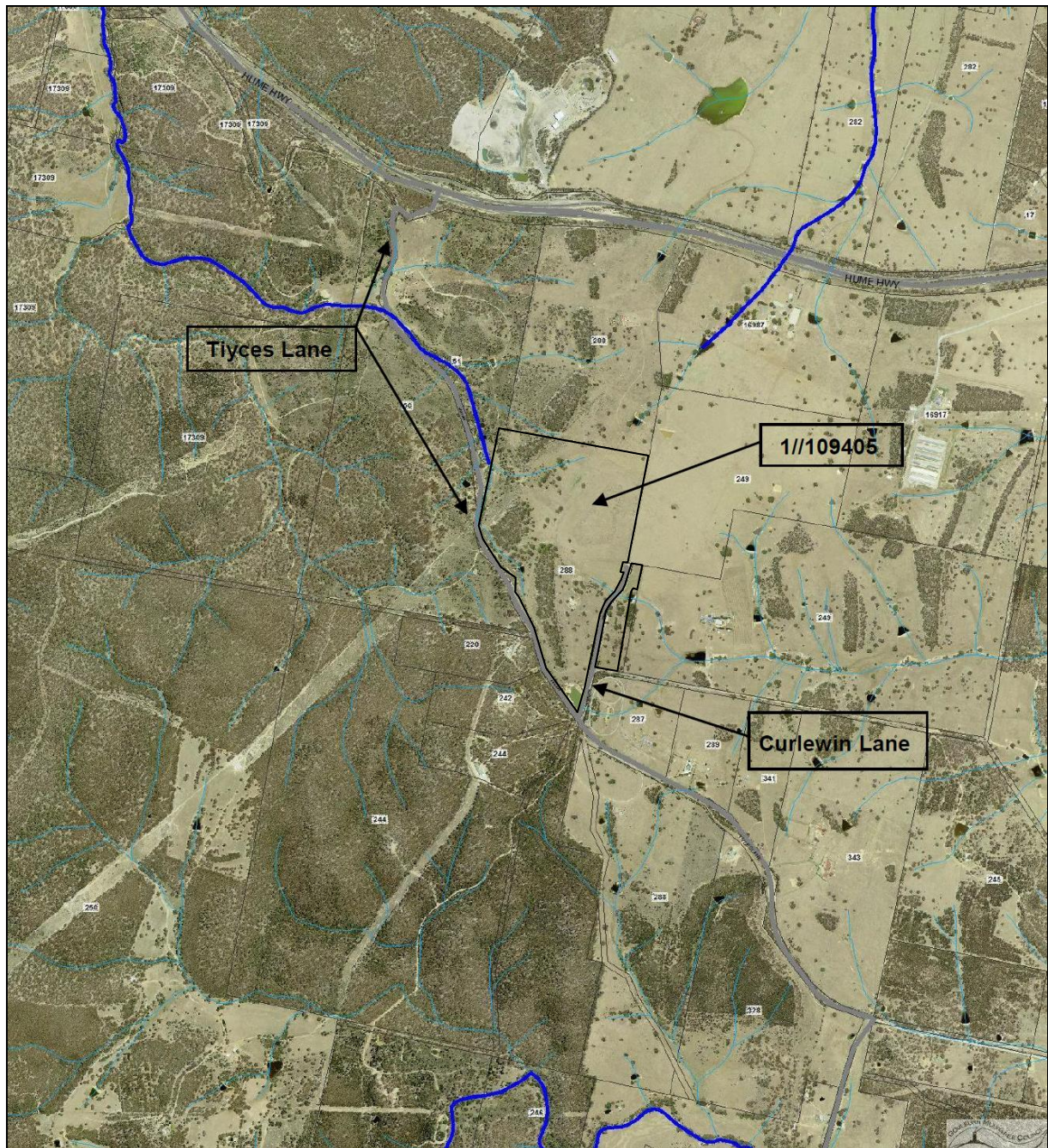


Figure 3: Extract from Council's GIS Mapping – Contours and Drainagelines



2.0 THE PROPOSED PROJECT

2.1 Description of the Proposed Development

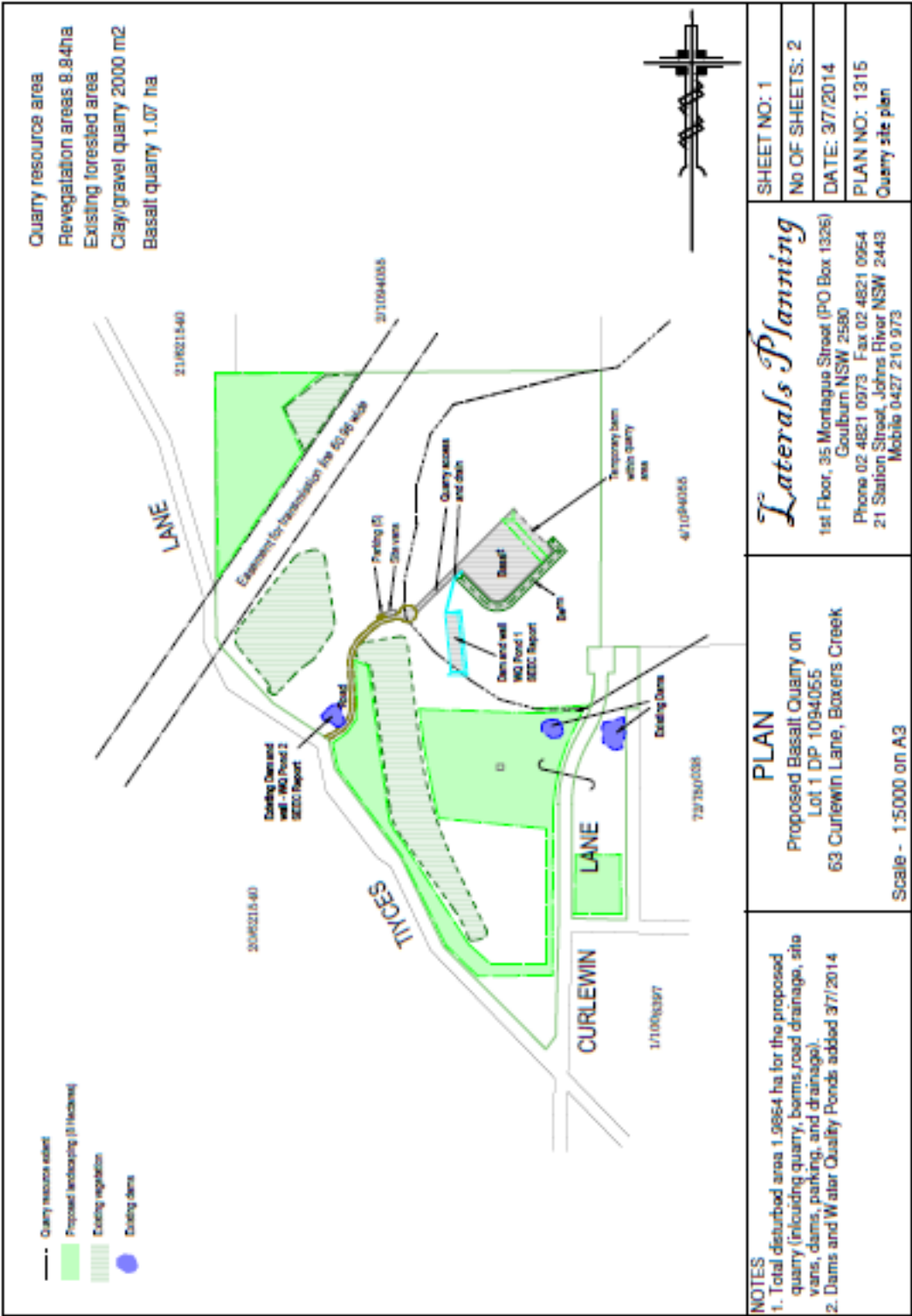
The applicant has sought development consent for:

- Extracting, processing and transporting by road up to 30,000 cubic metres of extractive material (basalt) per year for 5.5 years i.e. an average of 120 m³ will be extracted per day (assuming 250 days of operation per annum).
- Construction of an unsealed internal access road off Tiyces Lane
- Use of portable site van structures for office
- Use of portable toilets
- 5 vehicle parking area plus 1 parking space for an articulated truck
- Use of a portable crusher inside the quarry
- Stormwater management ponds
- Installation of sound control berms
- Use of an bore license (80 ML) for back up water supply/additional water source Installation of 5000L rainwater tank
- Landscaping
- Extension of electricity and telephone to the locked compound

The proposal involves:

- Use of the following machinery:
 - Crusher (mobile) (1)
 - Material sizing screen (1)
 - Bulldozer (1)
 - Front end loader (1)
 - Backhoe (1)
 - Trucks (estimate average of 14 movements per day over the 10 day crushing cycle)
 - Water truck (1)
- Operation of the crusher over a 10 day consecutive period (excluding weekends and public holidays to allow stockpiling of a months supply of material within the quarry.
- Proposed hours of operation 7am – 5pm Monday to Friday and 7am – 1pm Saturdays with no operation Sundays and public holidays
- Employment of 6 full time persons in operations.

Figure 4: Submitted Site Plan Layout



2.2 Amendments to the Development

The development application, as originally submitted, did not include an on-site effluent management facility, rather the use of portable toilets. Water NSW (previously called Sydney Catchment Authority) provided conditions based on no on-site effluent disposal system. Requirements under the Building Code of Australia identified the development is required to provide permanent site facilities and the applicant was requested to provide additional information and amend the application for a permanent on-site effluent management facility. This element of the proposal was added to the development application with the agreement (request) of Council. Additional information and amended plans were received by Council 31 March 2015. No re-notification was considered to be required. Water NSW have provided revised concurrence based on the amended report provided by Strategic Environmental and Engineering Consulting (SEEC).

The applicant proposed to use site vans however no plans were included with the application. Photos of temporary construction vans were submitted however there was concern whether the buildings would comply with the Building Code Australia. Final building plans are included in the **Attachment 4**. No re-notification was considered to be required as the buildings were proposed and described as part of the original Designated Development Application however emitted from the list of plans.

Advice was received from the applicant on 10 July 2015 that *“The operator can now confirm that 150 megalitres of potable ground water is available from the Goulburn Fractured Rock aquifer (situated below the quarry site), via a series of NSW Government (N.O.W.) Water Allocation Licenses, for use at the quarry site (previously stated as 80 megalitres)”*. This is assessed in Section 3.7.7 of the report.

Department of Primary Industries Water (also known as NSW Office of Water) have confirmed that a Water Access License has been obtained for 150ML however 100ML has not been attached to a location (i.e. bore) and further licensing approvals will be required. Consequently the application is proposed to be deferred pending the approval and amendment of the necessary works by the NSW Department of Primary Industries (Water) for works under the *Water Management Act 2000*.

2.3 Project Need and Justification

The DA is supported by an EIS. Section 20 of the EIS (page 156) outlines the applicant's justification for the proposal.

3.0 STATUTORY PLANNING MATTERS

These are discussed below.

3.1 Environmental Planning and Assessment Regulation 2000

This section provides that 'designated development is development that is declared to be designated development by an environmental planning instrument or the Regulations. Relevant to the subject proposal is Schedule 3 of the Regulation, which identifies those developments to be characterised as designated development. The proposal comprises of an Extractive Industry which is located in an Environmentally Sensitive Area (Environmentally Sensitive Layer Biodiversity – Clause 7.2 GMLEP 2009). The extract below shows the stipulated trigger is an intended environmental trigger.

Extractive industries (EPA Regulation)

- (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.

Noted: The highlight has been added for interpretation reasons.

Submissions have been received regarding the area of disturbance and whether it exceeds the 2ha threshold. Water NSW also raised whether there are inconsistencies with some plans and details submitted with the application. This matter is raised in Section 4.2. Given that an Environment Protection License (EPL) is required by NSW Office Environment and Heritage (Environment Protection Authority) (EPA) the exceedance of the 2ha threshold in (b) above is not considered to be a significant matter.

3.2 Environmental Planning and Assessment Act 1979

3.2.1 Ecological Sustainable Development (ESD):

Refer to Section 17 (p128-129) of the EIS for an assessment against ESD. Namely:

The principles of ecologically sustainable development are as follows:

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

The Mining SEPP requires the efficiency of resource recovery must be considered when assessing a DA for a quarry, to ensure that:

- Important primary resources are not wasted through poor operational practices
- Reuse and recycling of resources is promoted
- The creation of waste from the extraction and processing of materials is minimised.
-

The requirement for the preparation of an Operational Management Plan prior to operation will address these requirements.

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

The development meets the needs of the current community and will not compromise the future needs of the residents of the locality based on the draft conditions proposed to mitigate the impacts on the social, environmental and economic considerations. Revegetation of 8.8ha will help offset any removal of individual trees removed and balance the biodiversity value of the area and development.

3.2.2 Section 23 G EPA Act - Joint regional planning panels

Section 23G of the EPA Act gives the Southern Region Joint Planning Panel "*any of a council's functions as a consent authority that are conferred on it under an environmental planning instrument*" because the proposed development is of a class or description as set out in Schedule 4A (8) of the EPA Act, namely extractive industries, which meet the requirements for designated development under clause 19 of Schedule 3 to the EPA Regulation.

3.2.3 Section 77A EPA Act – Designated development

The development is declared to be designated development by section 19 of Schedule 3 of the EPA Regulations.

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

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

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

The development has been conditioned to comply with the *Planning for Bush Fire Protection 2006*. Including but not limited to:

- Where no reticulated water supply is available, a water supply of 20,000L reserve (i.e. water tank or dam) dedicated to firefighting purposes should be installed and maintained.
- Electricity services should be located so that the possibility of ignition of the surrounding bushland or fabric of the buildings is limited.
- A minimum carriageway width of four metres
- The rural property access road shall have passing bays every 200 metres that are 20 metres long by two metres wide, making a minimum trafficable width of six metres at the passing bay.
- A minimum vertical clearance of four metres to any overhanging obstructions, including tree branches.
- Curves have a minimum inner radius of six metres and are minimal in number to allow for rapid access and egress.
- The minimum distance between inner and outer curves is six metres.
- The crossfall is not more than 10 degrees.
- Maximum grades for sealed roads do not exceed 15 degrees and not more than 10 degrees for unsealed roads. Note: Some short constrictions in the access may be accepted where they are not less than the minimum (3.5m), extend for no more than 30m and where the obstruction cannot be reasonably avoided or removed.
- Suitable connection for firefighting purposes is made available and located within the IPA and away from the structure. A 65mm Storz outlet with a Gate or Ball valve is provided.
- Gate or Ball valve and pipes are adequate for water flow and are metal rather than plastic.
- Underground tanks have an access hole of 200mm to allow tankers to refill direct from the tank. A hardened ground surface for truck access is supplied within 4 metres of the access hole.

- Above ground tanks are manufactured of concrete or metal and raised tanks have their stands protected. Plastic tanks are not used. Tanks on the hazard side of a building are provided with adequate shielding for the protection of fire fighters.
- All above ground water pipes external to the building are metal including and up to any taps. Pumps are shielded.
- Where practicable, electrical transmission lines are underground.
- Where overhead electrical transmission lines are proposed: -
 - lines are installed with short pole spacing (30 metres), unless crossing gullies, gorges or riparian areas; and
 - No part of a tree is closer to a power line than the distance set out in accordance with the specifications in 'Vegetation Safety Clearances' issued by Energy Australia (NS179, April 2002).

It is noted that an alternate egress via Curlewin Lane would be available in case of a fire however the only exit currently from Tiyces Lane is north onto the Hume Highway.

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

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

- An Environment Protection Licence from NSW Office Environment and Heritage (Environment Protection Authority) for scheduled works and activities listed in Schedule 1 under the *Protection of the Environment Operations Act 1997*
- Section 138 approval from Roads and Maritime Services under the *Roads Act 1993* for works to Hume Highway and
- Section 138 approval from Goulburn Mulwaree Council under the *Roads Act 1993* for works to Tiyces Lane
- Approval under the *Water Management Act 2000* to apply for an amendment to use bore water for the purpose of Extractive Industry and attach an approval to access water from the property.

This aspect was not included as part of the Integrated Development Assessment process. Deferred draft conditions of approval are proposed to ensure compliance with the *Water Management Act 2000*. The applicant/bore licence holder would also need to ensure the bore has the capacity to produce the volumes of water required for the quarrying operation.

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

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

3.2.7 Section 147 EPA Act - Declaration

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

3.3 Commonwealth Legislation

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

White Box-Yellow Box-Blakely's Red Gum Grassy Woodland and Derived Native Grassland (Box-Gum Grassy Woodland) is listed as critically endangered under the EPBC Act. The application contends that the Box-Gum Woodland on site does not fall into the definition under the Commonwealth legislation. There is no description as to why it is not considered Box-Gum Grassy

Woodland under the EPBC.

From an inspection and advice provided by Council's Environmental Officer and review of the definition EPBC Box-Gum Woodland must also:

- *have a predominantly native understorey (i.e. more than 50% of the perennial vegetative groundlayer must comprise native species), and*
- *be 0.1 hectare (ha) or greater in size and contain 12 or more native understorey species (excluding grasses), including one or more identified important species (see Appendix 1); or*
- *be 2 ha or greater in size and have either natural regeneration of the overstorey species or an average of 20 or more mature trees per ha.*

The EIS reports limited native groundcover on the site.

The *National Recovery Plan for White Box - Yellow Box - Blakely's Red Gum Grassy Woodland and Derived Native Grassland* (The Recovery Plan) states:

The objective of this recovery plan is to promote the recovery and minimise the risk of extinction of the ecological community through:

- *achieving no net loss in extent and condition of the ecological community throughout its geographic distribution;*
- *increasing protection of sites in good condition;*
- *increasing landscape function of the ecological community through management and restoration of degraded sites;*
- *increasing transitional areas around remnants and linkages between remnants; and*
- *bringing about enduring changes in participating land manager attitudes and behaviours towards environmental protection and sustainable land management practices to increase extent, integrity and function of Box-Gum Grassy Woodland.*

Although it is accepted that the Box-Gum Woodland is recognised as not falling within the prescribed definition, the proposal has the potential to satisfy the above objectives of the National Recovery Plan subject to the proposed draft conditions.

The Recovery Plan states "mining poses a significant threat to Box-Gum Grassy Woodland because it is an industry generally excluded from clearing controls....Land clearing is the main impact of mining, and tends to be severe and localised. Clearing may further result from service infrastructure to mining activities. Wider impacts from mining activities may stem from pollution, sedimentation or diversion of water ways, erosion, salinity and changed soil profiles."

The Recovery Plan considered minimum viable sizes and *"The minimum size requirement for a viable patch of remnant Box-Gum Grassy Woodland is highly dependent on a number of variables,"* the Recovery Plan lists variables such as *"existing structure, habitat elements present, component species, disturbance history, surrounding landuse and connectivity to other remnants. Additionally, minimum patch size will depend upon which group or species of woodland flora or fauna are being considered. Studies by Prober and Thiele have shown that in the absence of outside disturbance, patches less than 2 ha can be viable habitat for many grasses and forbs (Prober and Thiele 1995); whereas in highly fragmented landscapes, birds such as the Peaceful Dove (Geopelia striata) and Fan-tailed Cuckoo (Cacomantis flabelliformis), may require patches greater than 400 ha (Barrett et al. 1994). Prober and Brown (1994) also identified that White Box require a minimum population of 500 trees to maintain genetic diversity. The Threatened Species Scientific Committee (TSSC) listing advice for Box-Gum Grassy Woodland identifies a viable patch supporting high species richness as having a minimum size of 0.1 ha (TSSC 2006)."*

Eucalypts containing large hollows are rarely less than 220 years old (Gibbons and Lindenmayer 2002). Larger, older trees also provide a greater density of hollows per tree (e.g. Bennett et al. 1994; Lindenmayer et al. 2000; Shelly 2005). As such, large old hollow-bearing trees are relatively more valuable to hollow-using fauna than younger hollow-bearing trees. The latter are important as a future resource.

The Recovery Plan recommends any fencing of remnant areas to restrict domestic stock grazing. This

measure is widely recommended to assist in improving vegetation condition and has potential benefits and can lead to improvements in the floristic diversity and vegetative cover of the groundlayer, better tree regeneration, less cover of introduced annual weeds and reduced soil compaction. The Recovery Plan identifies studies have also shown that there is a need to consider limiting the use of barbed wire on the top strands of fences around woodland remnants to reduce potential impacts on fauna species (Lindenmayer et al. 2003).

It is recommended that the landscaping (and management plan) comply with Table 4 “Current Best Practice Site Management Practices for Continued Existence of Box-Gum Grassy Woodland” of the Recovery Plan.

The removal of a limited number of Yellow Box trees is not considered significant nor have a significant impact on the Box – Gum Woodland, however the landscaping plan shall be conditioned to allow only the minimal extent necessary.

It is noted that an 8.8ha area proposed to be planted out to native vegetation should include Box-Gum species within the nominated areas. Therefore on balance no matters of national environmental significance are likely to be significantly affected by the proposal. The proposal has not been referred to the Commonwealth Minister for the Environment under the EPBC Act.

3.4 State Environmental Planning Policies (‘SEPPs’)

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

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

These are assessed below.

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

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

SEPP 33 defines potentially offensive industry as:

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

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

33 and this SEPP does contain relevant principles to the proposed development that ought to be addressed in any robust planning assessment.

The proposed development could be considered a potentially offensive industry because if the development were to operate without measures (including, for example, the earth berm and location of the crusher below the existing ground level and noise control limit of 35dB(A)) to reduce or minimise its impact in the locality or on the existing or likely future development on other land, it would pose a significant risk in relation to the locality. A Preliminary Hazard Analysis (PHA) has not been undertaken by the applicant.

Given that the development is an Extractive Industry, which will process up to 30,000 cubic metres and the common threshold requiring an Environment Protection Licence (EPL) is 30,000 cubic metres the development is close to the EPL volume threshold. This development is caught under the EPL by its location within an Environmental Sensitivity Area (Biodiversity on the Terrestrial Biodiversity Map to the *Goulburn Mulwaree Local Environmental Plan 2009*). Clause 13 of SEPP 33 states that:

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

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

This clause is addressed as follows:

- a) As stated above, the current Department of Planning guidelines relating to hazardous or offensive development are entitled “Applying SEPP 33 – Hazardous and Offensive Development Application Guidelines” and dated January 2011. These guidelines state that SEPP 33 aims to ensure that only proposals which are suitably located, and able to demonstrate that they can be built and operated with an adequate level of safety and pollution control, can proceed. The relevant matters regarding this statement have been addressed in a general planning sense in Section 4.2.
- b) The Office of Environment and Heritage (OEH EPA,) has been consulted during public exhibition of this DA. This is discussed further at Section 3.7.6.
- c) The proposed development is considered a potentially hazardous industry. It is noted that Extractive Industry does not fall under the parent definition of Industry but is a separate type of development. Nevertheless, the potential impacts of the development are discussed in Section 6.
- d) It has been assessed that this requirement has not been adequately considered in the EIS, particularly the assessment of alternative sites. Instead, there has been a focus on “an initial small extraction” approach and depending on further results to the testing and analysis an additional application may be lodged in the future. The appropriateness of the selected site and its impact on the surrounding area are discussed further in Section 4.2.

- e) Impacts on surrounding development have been discussed in Section 4.2.

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

Whether meeting the definition of “potentially offensive development” in SEPP 33 or not, this development is still considered potentially offensive as the proposed tonnage throughput is up to 30,000 cubic metres, with the general threshold above 30,000 requiring an Environment Protection Licence (EPL). Despite this threshold the development still requires an EPL due to its location within a Biodiversity area. It could be considered that the Noise and Air Quality Assessment Reports are Quantitative Assessments and the modelling using worst case scenarios.

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

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

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

3.4.2 State Environmental Planning Policy No 44 – Koala Habitat Protection

The flora and fauna assessment undertaken and Council’s internal environmental referral does not identify the site or adjoining land as supporting likely Koala habitat.

Although the Fauna assessment does not appear to be consistent with Department Environment and Conservation *Threatened Biodiversity and Assessment: Guidelines for Developments and Activities (Draft 2004)*; the site is not considered to support likely Koala habitat. The adequacy of the Flora and Fauna Report is not considered fatal to the proposal or DA assessment.

3.4.3 State Environmental Planning Policy No 55 – Remediation of Land

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

- “(1) A consent authority must not consent to the carrying out of any development on land unless:
 - (a) It has considered whether the land is contaminated, and
 - (b) If the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and
 - (c) If the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.
- (2) Before determining an application for consent to carry out development that would involve a change of use on any of the land specified in subclause (4), the consent authority must consider a report specifying the findings of a preliminary investigation of the land concerned carried out in accordance with the contaminated land planning guidelines.
- (3) The applicant for development consent must carry out the investigation required by subclause (2) and must provide a report on it to the consent authority. The consent authority may require the applicant to carry out, and provide a report on, a detailed investigation (as referred to in the contaminated land planning guidelines) if it considers that the findings of the preliminary investigation warrant such an investigation.
- (4) The land concerned is:
 - (a) Land that is within an investigation area,

(b) Land on which development for a purpose referred to in Table 1 to the contaminated land planning guidelines is being, or is known to have been, carried out,

(c) To the extent to which it is proposed to carry out development on it for residential, educational, recreational or child care purposes, or for the purposes of a hospital—land:

(i) in relation to which there is no knowledge (or incomplete knowledge) as to whether development for a purpose referred to in Table 1 to the contaminated land planning guidelines has been carried out, and

(ii) On which it would have been lawful to carry out such development during any period in respect of which there is no knowledge (or incomplete knowledge)."

The EIS did not assess the application against SEPP 55,

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

The only known previous use was agricultural (being part of a farming property and having been used for grazing) which is a use listed within Table 1 of the *Managing Land Contaminated Planning Guidelines SEPP 55 – Remediation of Land (1998)* and the proposed land use is not a listed sensitive use or for residential purposes. There is no evidence that such contamination exists in respect to the quarry site and access road, and no reason to suspect that the land may be contaminated.

The risk of contamination impacting this proposal is considered extremely low for the following three reasons;

1. Basalt is a natural resource that will be tested and screened. Should foreign material be detected it will not be suitable for use and easily recognised.
2. The terrain of the site is consistent with the topographical maps.
3. There is a separate regulatory regime for the reporting as part of the operational requirement of the draft conditions applied by the EPA.

The land is considered to be in a satisfactory state for the proposed land use. To apply the framework of the *Contaminated Land Management Act 2008*, to this proposal would be an unnecessary duplication. It has been assessed that the proposal can proceed without any special conditions relating to land contamination. Consequently it is considered SEPP 55 does not require any further consideration.

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

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

The proposed development is not considered Traffic Generating Development under clause 104 and Schedule 3 of Infrastructure SEPP as extractive industry is not a listed land use and the threshold of the industry category is 20ha. The development site is (approx 13ha) although the land has an area of approximately 40ha.

The development only proposes to generate 22 vehicles per day which does not meet the 200 or more vehicles listed in Schedule 3 for the any other purpose.

Although not Traffic Generating Development the Roads and Maritime Services (RMS) have commented on the proposal. Refer to Section 4.2 for a summary of RMS requirements and the Attachments for the RMS response.

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

The Mining SEPP permits Extractive Industries under Clause 7 (3)(a) where agriculture or industry may be carried out.

Agriculture is permitted with consent under the land use table to the E3 zone to *Goulburn Mulwaree LEP 2009* and consequently Extractive Industry is permitted by way of Clause 7(3)(a) of the Mining SEPP. Clause 5 of the Mining SEPP enables the SEPP to override the GMLEP 2009. An extract of Clause 5 and 7 of the Mining SEPP and the E3 land use table to GMLEP 2009 is provided below for your reference.

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

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

Clause 7 Development permissible with consent (Mining SEPP)

(1) NA

(2) NA

(3) Extractive industry

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

- (a) extractive industry on land on which development for the purposes of agriculture or industry may be carried out (with or without development consent),
- (b) extractive industry in any part of a waterway, an estuary in the coastal zone or coastal waters of the State that is not in an environmental conservation zone.

(4) Co-location of industry

If extractive industry is being carried out with development consent on any land, development for any of the following purposes may also be carried out with development consent on that land:

- (a) the processing of extractive material,
 - (b) the processing of construction and demolition waste or of other material that is to be used as a substitute for extractive material,
 - (c) facilities for the processing or transport of extractive material,
 - (d) concrete works that produce only pre-mixed concrete or bitumen pre-mix or hot-mix.
- (5) This clause is subject to clause 6 and to clause 8K of the [Environmental Planning and Assessment Regulation 2000](#).

Zone E3 Environmental Management (GMLEP 2009)

1 Objectives of zone

- To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.
- To provide for a limited range of development that does not have an adverse effect on those values.
- To facilitate the management of water catchment areas, environmentally sensitive land and areas of high conservation value.

2 Permitted without consent

Environmental protection works; Extensive agriculture; Home occupations

3 Permitted with consent

Agriculture; Air strips; Animal boarding or training establishments; Camping grounds; Caravan parks; Cemeteries; Child care centres; Community facilities; Depots; Dwelling houses; Eco-tourist facilities; Emergency services facilities; Entertainment facilities; Environmental facilities; Farm buildings; Forestry; Home-based child care; Home businesses; Home industries; Information and education facilities; Recreation areas; Recreation facilities (indoor); Recreation facilities (outdoor); Research

stations; Roads; Rural workers' dwellings; Secondary dwellings; Signage; Stock and sale yards; Tourist and visitor accommodation; Water recycling facilities

4 Prohibited

Industries; Intensive livestock agriculture; Multi dwelling housing; Residential flat buildings; Retail premises; Rural industries; Seniors housing; Service stations; Serviced apartments; Warehouse or distribution centres; **Any other development not specified in item 2 or 3.**

Significance of the Resource

Part 3 of the Mining SEPP requires consideration of the resource. Clause 12AA and 12AB only applies to mining applications and is not applicable to the assessment of this application, however many of the matters listed for consideration for mining applications have been addressed separately in the report.

Section 1.4 identifies the resource and location of mines and quarries within the Local Government Area (LGA).

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

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

(a) consider:

- (i) the existing uses and approved uses of land in the vicinity of the development, and*
- (ii) whether or not the development is likely to have a significant impact on the uses that, in the opinion of the consent authority having regard to land use trends, are likely to be the preferred uses of land in the vicinity of the development, and*
- (iii) any ways in which the development may be incompatible with any of those existing, approved or likely preferred uses, and*

(b) evaluate and compare the respective public benefits of the development and the land uses referred to in paragraph (a) (i) and (ii), and

(c) evaluate any measures proposed by the applicant to avoid or minimise any incompatibility, as referred to in paragraph (a) (iii).

In considering items under Clause 12, the Laterals EIS (pg 21-23, 72-75 & 135-140) and additional information provided by Benbow Environmental (BE) (dated 5/8/2014) in response to additional information requested by the EPA assessment, stated that no recently approved developments were located within the impacted area (noise/dust); The additional information also compared the differences in assessment of the noise assessment guidelines.

The BE response included the following statement:

"Based on the air assessment with the most conservative approach, the proposal will comply with the EPA's criterion provided that dust mitigation measures are fully implemented on site as outlined in BE's air assessment report. These measures should be implemented to all activities associated with the proposal including excavation, crushing, screening, loading, unloading, material handling and haul roads. These measures should include but not be limited to the use of water sprayers/sprinklers and water trucks, and any other dust suppressant measures approved by the authorities to ensure that dust emissions are minimised.

It is noted that compliance with the most conservative approach and worst case scenario means compliance with all other scenarios that are likely to occur on site. This should provide all stakeholders including community and government authorities with confidence that the proposal could proceed with minimal or no impact on the environment and human health.

In conclusion, the existing environment has not changed and no additional noise assessments (including traffic noise, construction noise and operations noise) are required for the proposal. However, the proponent should ensure that the mitigation measures and amelioration strategies recommended in the quantitative noise assessment be implemented to ensure full compliance with current Council and EPA noise requirements. Similarly, no additional air assessment is required since there is no change in the existing environment or proposed activities."

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

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

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

Not Applicable as the development is not State significant development.

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

Clause 13 states:

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

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

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

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

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

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

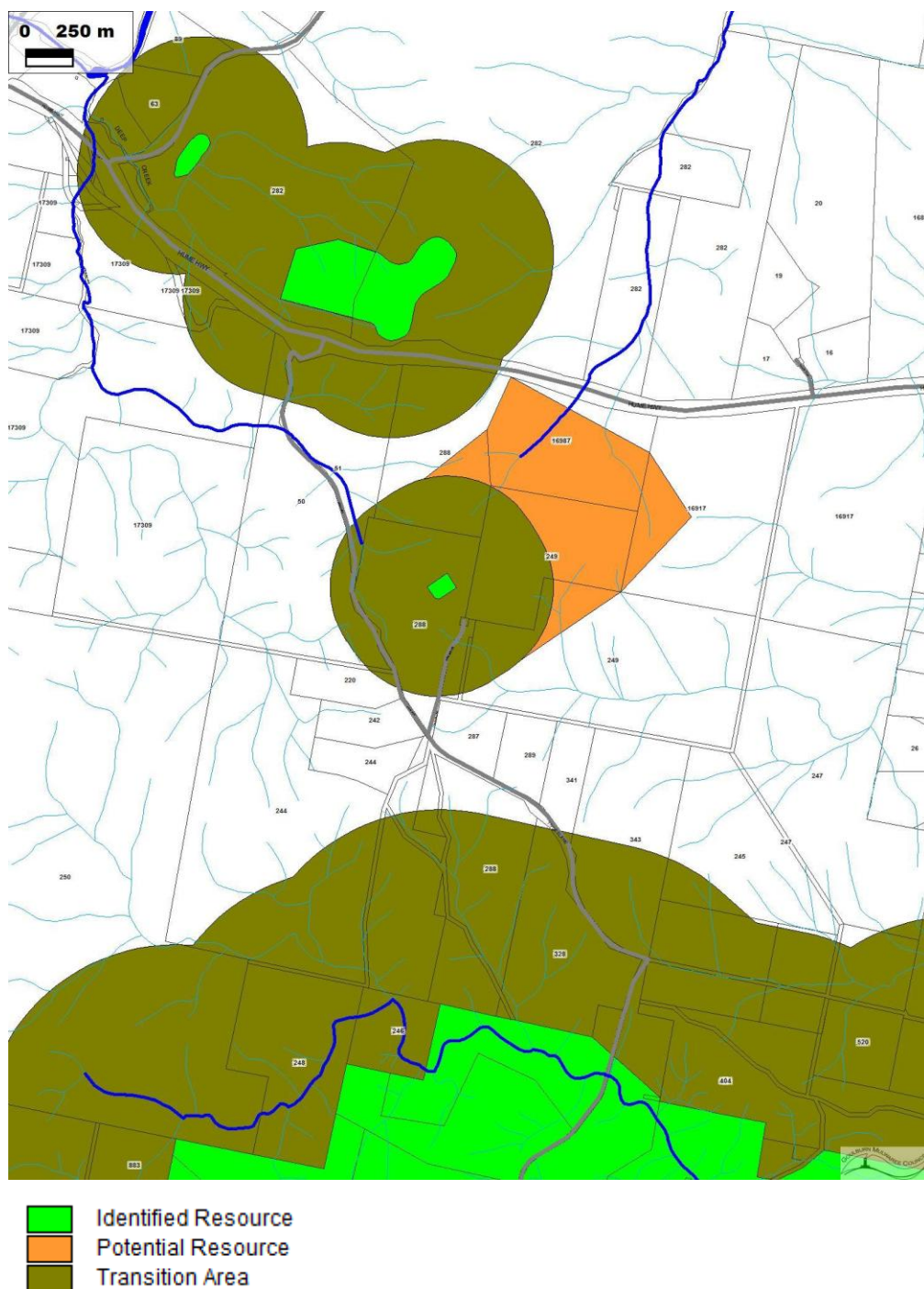
- (a) consider:*
 - (i) the existing uses and approved uses of land in the vicinity of the development, and*
 - (ii) whether or not the development is likely to have a significant impact on current or future extraction or recovery of minerals, petroleum or extractive materials (including by limiting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

The land is not identified on the GMLEP 2009 Mineral Resource Map however it is identified on a map (Refer to Figure 5 of this report) prepared from the Resources and Energy Division of NSW Trade and Investment titled *Mineral Resources Audit Goulburn Mulwaree LGA* (Jan 2015) as being significant. The EIS proposed that the development with a maximum extraction rate of up to 30,000 cubic metres per year and a life of 5.5 years the development will impact less properties particularly with regards to traffic if commenced and completed prior to the release of Marian Vale allotments (approximately 1.7km to the south along Tiyces Lane at the junction with Marian Vale Road).

Mineral Resources Audit Goulburn Mulwaree LGA (Jan 2015) provides transitional zones which have been based upon previous criteria developed by the then EPA criteria of 1000m for where blasting is or would be used and 500m for sites where blasting is not required. The transitional zone surrounding the identified resource identified in the *Mineral Resources Audit* is 500m. This matter is further discussed under Section 4.2.

It is acknowledged that Goulburn Mulwaree LGA is located within an important natural resource area and this development is well located to transport this material onto the national highway less than 2km from the site. EPA have proposed GTAs to ensure the compatibility of the development with the surrounding locality.

Figure 5: Extract from Council's GIS system with Department of Resources and Energy's 2015 Mineral Resource Audit overlay



Clause 14 Natural resource management and environmental management

Clause 14 states:

(1) Before granting consent for development for the purposes of mining, petroleum production or extractive industry, the consent authority must consider whether or not the consent should be issued subject to conditions aimed at ensuring that the development is undertaken in an environmentally responsible manner, including conditions to ensure the following:

(a) that impacts on significant water resources, including surface and groundwater resources, are avoided, or are minimised to the greatest extent practicable,

(b) that impacts on threatened species and biodiversity, are avoided, or are minimised to the greatest extent practicable,

(c) that greenhouse gas emissions are minimised to the greatest extent practicable.

(2) Without limiting subclause (1), in determining a development application for development for the purposes of mining, petroleum production or extractive industry, the consent authority must consider an assessment of the greenhouse gas emissions (including downstream emissions) of the development, and must do so having regard to any applicable State or national policies, programs or guidelines concerning greenhouse gas emissions.

(3) Without limiting subclause (1), in determining a development application for development for the purposes of mining, the consent authority must consider any certification by the Chief Executive of the Office of Environment and Heritage or the Director-General of the Department of Primary Industries that measures to mitigate or offset the biodiversity impact of the proposed development will be adequate.

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

The EIS has not addressed the extent of greenhouse gas emissions. It recognises that the alternatives to this proposal would increase the incidence of greenhouse gas emissions as a result of additional distances to obtain the product and the development would be conditioned to be carried out in an environmentally sensitive manner. The mandatory conditions numbered 1 and 2 of the EPA General Terms of Approval (GTA) and the Water NSW conditions in particular deal with the proper and efficient use of equipment, best practice road and stormwater control conditions while the RMS and Council road conditions will ensure the development is accessed to an acceptable and safe standard. The adequacy of the greenhouse gas assessment is therefore not considered fatal to the proposal or DA assessment as the objective of energy efficiency is achieved through the proposed draft conditions.

Clause 15 Resource recovery

Clause 15 states:

(1) Before granting consent for development for the purposes of mining, petroleum production or extractive industry, the consent authority must consider the efficiency or otherwise of the development in terms of resource recovery.

(2) Before granting consent for the development, the consent authority must consider whether or not the consent should be issued subject to conditions aimed at optimising the efficiency of resource recovery and the reuse or recycling of material.

(3) The consent authority may refuse to grant consent to development if it is not satisfied that the development will be carried out in such a way as to optimise the efficiency of recovery of minerals, petroleum or extractive materials and to minimise the creation of waste in association with the extraction, recovery or processing of minerals, petroleum or extractive materials.

The applicant has stated that the current application is proposed to confirm the grade and suitability of the material and may be enlarged subject to a future application. This is considered an acceptable means of determining the efficiency of the material and extraction. The development is proposed to be conditioned to optimize the efficiency of the resource recovery (extraction and processing) and transportation. The proposed 10 day cycle is considered a means to maximize the efficiency of the extraction.

Clause 16 Transport

Clause 16 states:

(1) Before granting consent for development for the purposes of mining or extractive industry that involves the transport of materials, the consent authority must consider whether or not the consent should be issued subject to conditions that do any one or more of the following:

(a) require that some or all of the transport of materials in connection with the development is not to be by public road,

(b) limit or preclude truck movements, in connection with the development, that occur on roads in residential areas or on roads near to schools,

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

Access to and from the site is only available by public road and there is no alternative transport options. The above provisions have been satisfied by the conditions received by RMS (formerly RTA), Goulburn Mulwaree Council, EPA and Water NSW and in particular address hours of operation, transportation and code of transport conduct.

Clause 17 Rehabilitation

Clause 17 states:

- (1) *Before granting consent for development for the purposes of mining, petroleum production or extractive industry, the consent authority must consider whether or not the consent should be issued subject to conditions aimed at ensuring the rehabilitation of land that will be affected by the development.*
 - (2) *In particular, the consent authority must consider whether conditions of the consent should:*
 - (a) *require the preparation of a plan that identifies the proposed end use and landform of the land once rehabilitated, or*
 - (b) *require waste generated by the development or the rehabilitation to be dealt with appropriately, or*
 - (c) *require any soil contaminated as a result of the development to be remediated in accordance with relevant guidelines (including guidelines under section 145C of the Act and the [Contaminated Land Management Act 1997](#)), or*
 - (d) *require steps to be taken to ensure that the state of the land, while being rehabilitated and at the completion of the rehabilitation, does not jeopardize public safety.*
- Clause 17 is considered to be satisfied by proposed conditions and in particular from Water NSW and EPA rehabilitation conditions.

Water NSW and the EPA have applied conditions relating to the rehabilitation of the quarry. Refer to the draft conditions of consent.

3.4.6 State Environmental Planning Policy (Rural Lands) 2008

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

Clause 7 Rural Planning Principles states:

The Rural Planning Principles are as follows:

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

- (f) *the provision of opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities,*
- (g) *the consideration of impacts on services and infrastructure and appropriate location when providing for rural housing,*
- (h) *ensuring consistency with any applicable regional strategy of the Department of Planning or any applicable local strategy endorsed by the Director-General.*

The assessment and draft conditions address the planning principles (a)-(h) above and the development is for approximately 5.5 years extraction at maximum extraction with the product proposed to be used for concrete aggregate for the construction industry. The site having an area of approximately 40ha is considered to have limited agricultural productive potential and the proposed use of the site as an Extractive Industry is considered a productive and sustainable economic activity.

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

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

A regional panel is empowered as a consent authority and may exercise any powers that would be vested in a consent authority under an environmental planning instrument. In this case, the regional panel is the consent authority as conferred on it under *State Environmental Planning Policy (State and Regional Development) 2011* due to the development being listed as Designated Development Extractive Industry. Development for which regional panels may be authorised to exercise consent authority functions of councils in accordance with Schedule 4A of the EP&A Act.

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

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

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

The DA has been referred to Water NSW for the concurrence of the Chief Executive pursuant to clause 11 of this SEPP. Concurrence of Water NSW was received and revised concurrence has been received for the on-site waste water management facility and the conditions have been incorporated into the draft conditions of consent.

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

Part 1 Preliminary

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

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

Clause 1.2 Aims of the Plan

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

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

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

Clause 1.4 Definitions

Applicable definitions from the GMLEP 2009 include:

extractive industry means the winning or removal of extractive materials (otherwise than from a mine) by methods such as excavating, dredging, tunnelling or quarrying, including the storing, stockpiling or processing of extractive materials by methods such as recycling, washing, crushing, sawing or separating, but does not include turf farming.

Note. Extractive industries are not a type of **industry**—see the definition of that term in this Dictionary. **extractive material** means sand, soil, gravel, rock or similar substances that are not minerals within the meaning of the [Mining Act 1992](#).

Clause 1.9 Application of SEPPs

Enables the SEPPs to override GMLEP 2009.

Clause 1.9A Suspension of Covenants, Agreements and Instruments

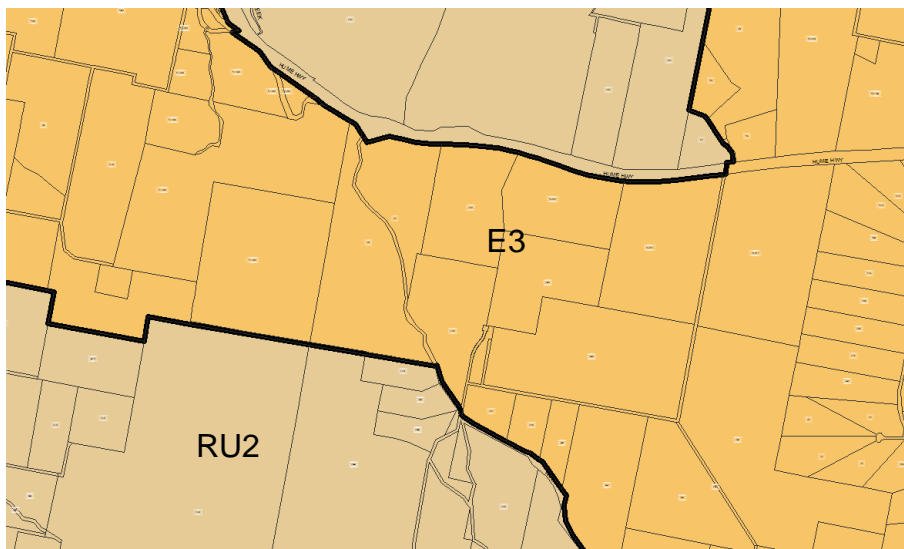
The assessment report supports the construction of the internal access road, however this is located within/adjacent to vegetation retention site protected by an 88B Instrument of which Council has the authority to vary. From a site inspection it was noted the areas was fenced. The proposal to increase the area of vegetation by an additional 8.8ha is considered to offset the biodiversity and habitat of the locality from the development.

Part 2 Permitted or Prohibited Development

Clause 2.2 Zoning

The land is currently zoned E3 Environmental Management. Refer below to extract GMLEP 2009 sourced from Council's GIS Mapping system. It is noted that the zone to the GMLEP 2009 was amended in July 2012 from RU2 Rural Landscape to E3 Environmental Management.

Figure 6: Extract from the GMLEP 2009 Land Zoning Map.



Clause 2.3 zone Objectives and Land Use Table

Clause 2.3(2) (Zone Use and Land Use Table) provides that the consent authority must have regard to the objectives for development in a zone when determining a development application in respect of land within the zone. The zone objectives for the E3 Environmental Management zone are:

- *To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.*
- *To provide for a limited range of development that does not have an adverse effect on those values.*
- *To facilitate the management of water catchment areas, environmentally sensitive land and areas of high conservation value.*

While the proposal is not strictly consistent with the objectives, the development will enable further development consistent with the objectives as well as being not in-consistent with the objectives overall.

The use of the subject site as an Extractive Industry was not considered a use compatible with the Environmental Management zone and consequently prohibited however the Mining SEPP overrides GMLEP 2009. Refer to Section 3.4.5 of this report for assessment of this legislation discussion.

Submissions from the community raise concerns as to the compatibility of the quarry in the locality.

Revegetation as a result of planting will enhance the environmental characteristics of the site more than grazing which is permitted without consent and would and not require 8.8ha of revegetation. Therefore, the proposed use would be considered an employment generating use that would protect and enhance the ecological and aesthetic values of the site and locality viz:

- the proposal will not create a visible scar from the surrounding ground levels
- increase native vegetation including screening,
- the development has been assessed as being able to achieve a neutral or beneficial effect on water quality and would therefore not have a negative impact on objective dot point 3 above.

The proposal is considered acceptable subject to the proposed draft conditions.

Extractive Industry is identified as Prohibited under GMLEP 2009 because it does not fall into a category of development specified as permissible with or without consent. Section 36 of the EPA Act and Clause 1.9 of GMLEP 2009 provide that this is subject to any applicable SEPP. Clause 7(3)(a) of Mining SEPP provides that development for the purposes of an extractive industry may be carried out with development consent on land where development for the purposes of agriculture or industry may be carried out (with or without development consent). While development for the purposes of Industry is prohibited in the E3 zone, agriculture is permissible in the E3 zone with development consent. Also refer to Section 3.4.5 earlier in this report.

Part 3 Exempt and Complying Development

Clause 3.3 Environmentally Sensitive Area Excluded

Clause 3.3 Exempt and Complying Development is not available to the land by virtue of it being located within the Terrestrial Biodiversity Layer to Clause 7.2 of GMLEP 2009. An extract of the relevant clause is provided below:

3.3(2) For the purposes of this clause:

environmentally sensitive area for exempt or complying development means any of the following:

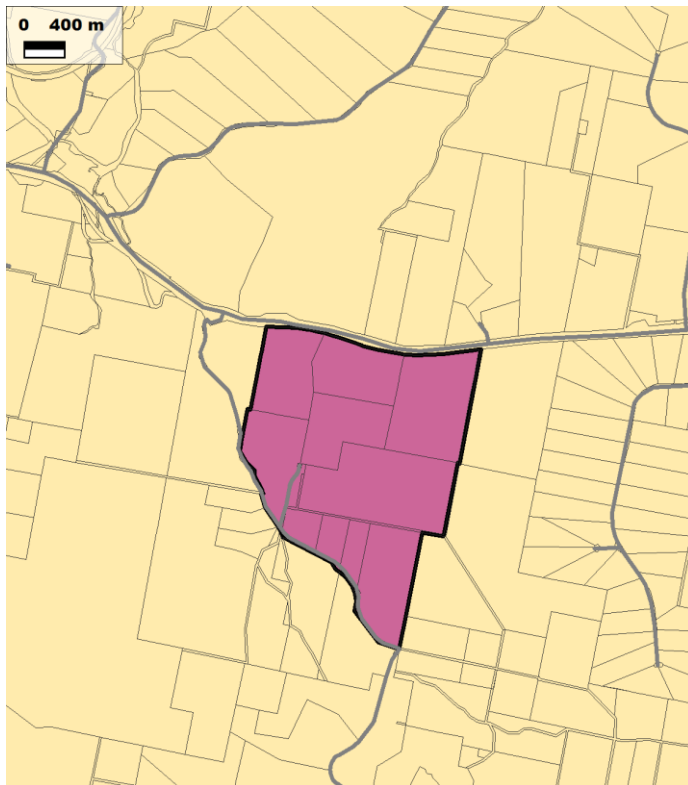
(g) land identified in this or any other environmental planning instrument as being of high Aboriginal cultural significance or high biodiversity significance,

Part 4 Principle Development Standards

Clause 4.1 Minimum Lot Sizes

Amendment No. 2 to GMLEP amended the minimum lot area for subdivision within the Curlewin Lane area from 100ha to 40ha. Refer figure 7 below and the AB2 area.

Figure 7: Minimum Lot Sizes sourced from Council's GIS Mapping System



Key

Minimum Lot Size

AB2	40 ha
AD	100 ha

- From a review of the lot sizes within the 40ha minimum lot size area (i.e. AB2)
 - 3 lots have an area of approximately 10ha
 - 5 lots have an area of 40-50ha
 - 1 lot has an area of approximately 69ha
 - 1 lot has an area of 89 ha (and has potential for subdivision Lot 72 DP 750038 (part 249 Tiyces Lane)

This change in the LEP is noted and creates the potential for one additional allotment within the 40ha minimum lot size.

Clause 5.3 Development near zone boundaries

Although the development is near a zone boundary this clause specifically states it does not apply to the E3 zone.

Clause 5.9 Preservation of trees or vegetation

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

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

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

Clause 5.10 Heritage Conservation

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

Part 7 Local provisions – general

Clause 7.1A Earth Works

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

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

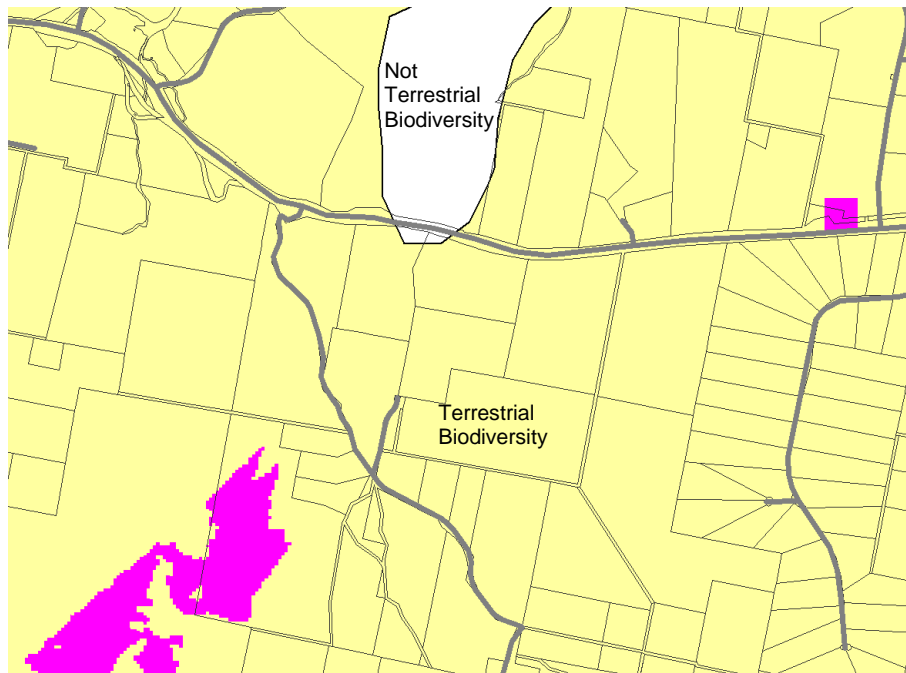
- (a) to ensure that any earthworks will not have a detrimental impact on environmental functions and processes, neighbouring uses or heritage items and features of the surrounding land,*
- (b) to allow earthworks of a minor nature without separate development consent.*
- (2) Development consent is required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

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

Clause 7.2 Terrestrial Biodiversity

The development is proposed within the land mapped as “terrestrial biodiversity” on the Natural Resources Map. Please see Figure 8 below.

Figure 8: Extract from Terrestrial Biodiversity layer from Council's GIS Mapping System.



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

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

The environmental values of the Box-Gum Woodland Community have been discussed previously in this report. The intent is to specify the Environmental Protection Licence conditions relating to discharge limits and monitoring requirements after completion of an environmental management plan by the Applicant. It is considered that the water quality objectives will ensure that the development will be managed to minimise any likely adverse impact consistent with the above objectives of the clause and the biodiversity values and protecting threatened communities will be adequately addressed by the draft conditions.

Clause 7.4 Restrictions on development adjoining mineral resource areas

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

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

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

(a) whether the proposed development would have any adverse impact on the availability of mineral or extractive resources,

(b) whether there would be any adverse impact on the proposed development arising from noise, dust, vibration or reduced visual amenity from the mine or extractive industry.

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

The application is consistent with (a) above. With regards to (b) Council recommended at it's meeting held April 2015:

A submission from Council be lodged with the JRPP raising the concerns identified in the report by the Senior Development Assessment Officer dated 7th April 2015. Council to include in its submissions a request to prohibit the use of explosives, a rock breaker and any heavy equipment that when operating exceeds a noise level of 35Dba” The JRPP may accept this as a draft condition or alternatively consider the EPA noise limit conditions adequately address this issue. Refer to Section 3.9 (ii) Noise further in the report.

3.6 Any Draft Environmental Planning Instruments

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

3.7 Other Relevant NSW Legislation

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

3.7.1 National Parks and Wildlife Act (NPWA)

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

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

The EIS prepared by Laterals acknowledged that advice received from Pejar Local Aboriginal Land Council indicated they did not identify any Aboriginal archaeological sites, artefacts or areas of cultural heritage significance at the subject site, which indicates there will be no impact. Section 87 or 90 permits would not be required unless items are discovered during the development. The DA was

referred to Pejar Local Aboriginal Lands Council for comment and no response was received. It is noted that a response from Pejar LALC was included in the *Aboriginal Site Survey and Assessment* prepared by Stedinger (2009) submitted with the DA. The recommendations made by Pejar LALC and included in the Stedinger Report are supported and will be incorporated into the draft consent conditions as part of draft condition number 1 so as to comply with the submitted plans and reports).

3.7.2 Threatened Species Conservation Act 1995 (TSC Act)

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

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

The Flora and Fauna assessment accompanying this DA indicates that The Yellow Box, White Box Blakeley's Red Gum (Box-Gum Woodland) which is listed as an Endangered Ecological Community (EEC) under the TSC Act is present on site and the proposed access track will require the removal of a small number of Yellow Box trees for construction of the internal access between the new gateway and the quarry site. An alternate not raised in the EIS is to access the site via the existing legal access further east along Tiyces Lane then along Curlewin Lane and the existing gate. It is presumed this alternate was not discussed as it will generate traffic closer to existing and proposed dwelling sites to the east of the property and would also require additional costs to upgrade the transport route and provide contributions along a greater length of Council's roads. The alternate access would travel on an additional 1.3km of Council roads (approximately).

The Flora and Fauna assessment states that the removal of the trees would not have any significant impact on the viability of the EEC in the locality.

3.7.3 Native Vegetation Act 2003 (NV Act)

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

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

3.7.4 Heritage Act 1977

The *Heritage Act 1977* is administered by the NSW Heritage Council and its purpose is to ensure that the heritage of NSW is adequately identified and conserved. There are no State heritage listed items within or adjacent to the site. Therefore, there are no requirements for an application for approval to be made under Section 58 of the *Heritage Act 1977*. The Convict Built Bridge at Towrang is listed on the State Heritage Register (Item 01905 1/2/2013 Gazette 8 p.267) and is in the locality but not the vicinity of the site (over 2.5km away to the north east adjacent to the Hume Highway). The proposed development is not expected to adversely impact on this heritage item.

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

3.7.5 Contaminated Land Management Act 1997

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

As outlined above in Section 3.4.3 the EIS did not assess the application under SEPP 55 which is called up under the CLM Act. The proposal would be undertaken on land that has been used in the past for agricultural purposes. As outlined above the adequacy of the assessment is therefore not considered to be fatal to the proposal or assessment. It is considered unlikely that any contamination would be present that would result in the site being unsuitable for the intended use or present a significant risk of harm to human health or the environment. The development is not for a sensitive use (i.e. dwelling) and contamination is discussed further at Section 3.4.3 of this report.

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

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

3.7.7 Water Management Act 2000 (WM Act)

Controlled Activity Approval

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

Water Access License

Council notes that the applicant did not apply as part of the application for works requiring a Water Access License (WAL) under integrated development and the *Water Management Act 2000*.

Council identified that the works may require a Water Access License late in the assessment process and did not wish to further delay the assessment of the development application.

A referral was forwarded to NSW Office of Water (and then to NSW Primary Industries) for an initial comment and it appears that the development involves works for commercial use of the water bore. Refer to NSW Office of Water Agency Response below:

A review of our Water Licensing System indicates that there is a current groundwater approval attaching to Lot 1 DP1094055. The approval number is 10CA117967 that authorises two groundwater works (bores) for the purposes of recreation, irrigation, stock watering and domestic use. The work approval is linked to Water Access License (WAL) 35518. The current entitlement attaching to WAL35518 is 50.0 megalitres per annum. Both works & use approval and WAL are held in the name of Argyle Gravel & Concrete Pty Ltd.

Should water from the authorised bore be required for quarrying activities, the proponent would be required, under Section 91 of the Water Management Act, to apply for an amendment to the purpose of the work prior to the work being used for that activity.

The Applicant has advised:

"The Operator can now confirm that 150 megalitres of potable ground water is available from the Goulburn Fractured Rock aquifer (situated below the quarry site), via a series of NSW Government (N.O.W.) Water Allocation Licenses, for use at the quarry site (previously stated as 80 megalitres)."

Discussions with Department of Primary Industries, Water revealed that there is an agreement to buy water rights for 100ML which is not attached to a site. The Applicant/developer will need to obtain approval for nominated works to interfere with an aquifer under the WM Act and ensure the bore has the capacity to produce the volumes of water required for the quarrying operation as deferred conditions of consent.

A deferred commencement condition is recommended in order to obtain/confirm that the necessary volume of a Water Access License has been obtained and attached to Lot 1 DP 1094055 for the purposes of an Extractive Industry (quarry) prior to acting on any consent issued.

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

A condition is to be imposed that no site excavation is to take place prior to approval under the WM Act being obtained.

3.7.8 Roads Act 1993

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

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

The proposal involves works to the Hume Highway and Tiyces Lane and therefore the approval under the *Roads Act* of the RMS and Goulburn Mulwaree Council respectively. Draft conditions addressing this requirement have been incorporated into the draft conditions of consent. Refer to Section 3.9 (ii) for traffic comments raised in response to submissions.

3.8 Any Development Control Plans

3.8.1 Goulburn Mulwaree Development Control Plan 2009 (GMDCP 2009)

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

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

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

A discussion of these provisions can be found in **Attachment 5**.

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

Part 5.8 Rural land use conflict

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

It is also noted that Table 5-1 to clause 5.8 in discussing rural land use conflict requires a minimum buffer distance of 1000m between Extractive Industries and rural dwellings. Whilst this is not satisfied, the EIS reports on noise and air quality quantitatively to address these issues and have been reviewed

and management strategies provided by EPA conditions. The EIS states “The studies applied to the development have established that all relevant noise and air qualities aspects can be conducted for the quarry without exceeding standards applicable to the industry. As such it is not seen that the development cannot be co-located in the area containing dwelling houses.” This is discussed further in Section 3.9 Noise and Vibration.

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

Based on this example it should be acceptable that *in the case of Extractive Industries (Tiyces quarry) with dwellings proposed closer than the recommended buffer distance, the quarry at a minimum should comply with industry best noise insulation standards and any EPA requirement.*”

The GMDCP 2009 also states:

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

- *the extent, nature and intensity of the adjoining land use*
- *the operational characteristics of the adjoining land use*
- *the external effects likely to be generated by the adjoining land use (i.e. dust, fumes, odour, spray drift, light and noise) and their potential to cause conflict*
- *the potential of adjoining land to be used for various commercial activities including agriculture, quarries, rural industries etc*
- *any topographical features or vegetation which may act to reduce the likely impacts of an adjoining land use*
- *prevailing wind conditions and any other climatic characteristics*
- *any other mitigating circumstances*

Where a variation is proposed, the applicant must provide a written statement to Council addressing the variation criteria, with an explanation as to how potential conflicts can be addressed. In keeping with ecologically sustainable development principles, a precautionary approach will be taken when assessing buffer variations.

Part 1.7 deals with variations to the GMDCP 2009 and states:

When circumstances warrant, Council may consent to an application which departs, to a minor extent, from the provisions of this plan. In such cases, a written submission must be lodged with the development application, outlining the variation, providing reasons why the variation is necessary or desirable, and setting out how the objectives of the particular provision are satisfied by the proposal. Some of the relevant factors in determining whether a departure from this plan is warranted include:

- (a) *whether there will be any detrimental impact on the amenity of the existing and future residents*
- (b) *whether there will be any detrimental impact on the amenity of the area*
- (c) *the nature and size of the departure*
- (d) *the degree of compliance with other relevant requirements*
- (e) *the circumstances of the case, including whether the particular provision is unreasonable and/or necessary*
- (f) *priorities identified in a site analysis of being of more importance than what is being departed from*
- (g) *whether non-compliance will prejudice the objectives of the zone and the aims of this plan*

It is contended that the Noise and Air Assessments and EPA conditions address (a)-(g) above and form part of the quantitative justification for the variation to the GMDCP 2009 1000m buffer.

The EIS (p154) also relies on Schedule E to a Section 149 Planning Certificate and a resolution adopted by Council in 2002. The Planning Certificate is now outdated and notice to purchasers of rural land is no longer a practice or policy of Council. The justification for the variation based on a former Council resolution to an old s149 Planning Certificate is not supported.

The variation based on the quantitative Air and Noise Assessments is considered acceptable based on the EPA conditions proposed which will ameliorate the potential impacts to an acceptable standard.

Part 6.11 Extractive industries

The Objectives include:

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

The controls listed are discussed below under the respective heading:

- Community Consultation

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

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

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

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

- Setbacks

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

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

The GMDCP 2009 states "The above setbacks may vary depending upon the nature and location of extractive industries." The above setbacks are satisfied with the exception for the 1000m setback. The

EPA conditions are evidence that the development can satisfy the acceptable noise and amenity criteria despite the reduced buffer to dwelling houses.

Extraction operations shall consult with Country Energy or a suitable accredited authority to ensure an acceptable design and setback from electricity transmission lines

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

Part 7.7.2 Haulage Route standards:

Council requires the upgrading of Tiyces Lane haulage routes, to the following standard:

- 7m wide carriageways in rural areas.
- 1m wide shoulder with 500mm seal.
- 8m wide culverts and bridges (i.e. from barrier to barrier).
- Replacement of road surface with asphaltic concrete in village areas.
- Possible intersection upgrades.

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

Part 9 Contributions

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

3.8.2 Section 94A Assessment

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

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

Council's Section 94 Contributions Plan 2009 states Extractive Industries (Quarries and Mines) should contribute \$0.0924 (1516 rate) per tonne per kilometre for local road maintenance. Tiyces Lane is the only local road affected by this development and the proposed site access is approximately 2 km from the Hume Highway intersection and it is estimated this contribution charge would generate \$4,136 per annum on the first year based on an extraction rate of 44,760 tonnes and \$5,544 per annum thereafter (based on an average year's output of 60,000 tonnes). The draft condition for contributions toward extraordinary road damage has been applied and shall be subject to annual cost adjustment.

Relevant Contributions Plan	GMS94DCP 2009
Rate 1516 financial year	9.24c/tonne
Quarry - Heavy Vehicle Movements estimated at:	9.24c x 44,760 tonnes = \$4,135.82 (based on 516 rate) for the first year 9.24c x 60,000 tonnes = \$5,544 (at the current 1516) subject to annual cost adjustment for the second year and thereafter

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

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

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

(i) Natural Environment

Context & Setting

To ensure the timbered character of the locality is maintained, whilst protecting existing vegetation it is recommended that the most significant trees (including those with hollows, ecologically significant and most healthy) be retained. Revegetating 8.8ha of the site is proposed to offset the development.

Soils

Recommended erosion and sediment control measures be conditionally imposed.

Flora & Fauna

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

Natural Hazards

Planning for Bushfire Protection (2006) Guidelines have been considered. There is potential for overland flow from stormwater runoff on this site. This issue has been assessed under the Water NSW concurrence. Contamination has been discussed in Section 3.4.3 of this report. No other natural hazards have been identified on this site.

Air & Microclimate

Traffic generated from the development and the Noise Assessment have been assessed in Section 4.2 of the report. The application will be conditioned to control dust and noise emissions from the site during construction and operation.

(ii) Built Environment

Context & Setting

The site is within a rural setting. The proposal requires construction of earth berms to control sound. This will also reduce the visual impact on the setting and is considered appropriate in this setting.

The EIS states "The earthen mounds surrounding the south and east of the quarry may be partially visible from Curlewin Lane and the land to the east but the quarry and its activity would not be visible as that activity is below the level of the mounds."

The development proposes additional landscaping that may screen the development, conditions are recommended requiring additional landscape plans and screening for the development from Tiyces Lane and boundaries visible from adjoining dwellings.

Health & Building Comments

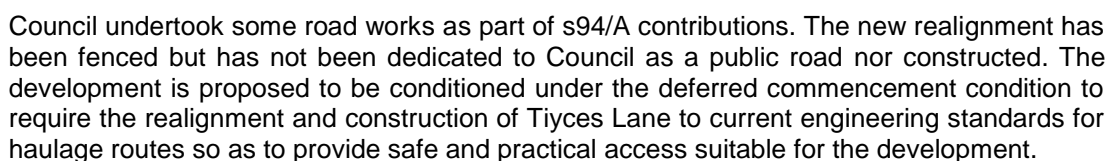
The proposal has been examined and there are no objections subject to appropriate conditions being included in any consent.

Public Domain

The benefit to the public domain will be the upgrade to the Hume Highway intersection and Tiyces Lane. The development will aid in the passive surveillance of the area which is currently vacant.

Concern was raised with the alignment of Tiyces Lane near the intersection with the Hume Highway. Council's Engineers have advised:

Figure 9 Proposed Road Realignment of Tiyces Lane near the Hume Highway intersection drawing R_776



The sight distance required at the entrance shall comply with AS 2890.1 for a commercial driveway based on a speed limit of 100km/h, i.e. 160m.

The entrance shall be configured to Council's standard rural entrance as widened to comply with a RMS standard BAL/BAR. The entrance shall be sealed from the sealed carriageway of Tiyyces Lane to the entrance gate.

Figure 9: Extract of Council's GIS Mapping showing approximate location of 160m site distance (bold black)



Vehicle access has been assessed as satisfactory by Council's engineers subject to conditions and no objection has been raised by the RMS subject to conditions. Conditions of consent are recommended requiring a Section 138 of the *Roads Act* approval; road restorations, maintenance bond for local roads construction works.

The speed limit for Tices Lane was reported to be limited to 50km/hour or 60km/hour in the supporting EIS documents, however the following RMS email advice has been received with regards to speed limits:

RMS' only comments relates to the applicants suggestion of a lower speed limit for trucks on Tices Lane. RMS is responsible for all speed zoning in NSW and the proposal would need to comply with RMS Speed Zoning Guidelines (link below). There is not a lot of information in the guidelines on this type of issue. My understanding is that lower speed limits for heavy vehicles generally relate to roads with steep descents. I think a lower speed limit for heavy vehicles on Tices Lane is unlikely, though it is important to highlight that it would not be my decision.

DA/0132/2002 (known as the Marian Vale Subdivision) was conditioned to construct a deceleration lane for left turn into Tices Lane however this has been deferred and the deceleration lane will be required to be constructed in accordance with the RMS GTAs.

The proposed provision of 4 staff parking spaces, one visitor parking space and 1 articulated truck parking space not involved with the loading of quarry product is considered suitable in this instance.

The pavement assessment report was prepared in 2009 and was considered outdated. Since the preparation of the report Council has undertaken road improvement works with Section 94A funds including bitumen sealing. Council requested an updated assessment report to enable assessment of the road as it currently exists. The applicant requested that the pavement assessment be deferred until prior to issue of the Construction Certificate, should the application be approved. This was considered as an acceptable option given that construction may not occur for a number of years and there is potential for further dilapidation of the road. Deferring the pavement assessment will ensure a more up to date assessment prior to construction and optimise the safety of the road and any improvements.

Heritage

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

Water

Refer to details discussed under *Water Management Act 2000* Section 3.7.7 and Section 4.2 of the Report.

Waste

A rural waste service currently allowing up to one (1) 240L bin each of landfill, recyclable and green waste per week will be accepted at a Goulburn Mulwaree Council Waste Management Facility. If there is any larger requirement, the Applicant will need to arrange for a commercial waste service or pay the relevant disposal fees.

Energy

Reticulated electricity is available to the land however an upgrade is required. Refer to Section 3.2.1 of the report.

Noise & Vibration

An acoustic assessment was conducted to determine what impact the proposal would have on noise sensitive receivers. The assessment was carried out in accordance with the EPA (OEHL) NSW *"Industrial Noise Policy"* in 2009 with a later review in 2014 to address differences between noise assessment criteria amongst separate documents. Refer to Attachments for Benbow Environmental additional information response to EPA.

A list of 13 residential noise receivers, or potentially affected noise receivers have been identified. The range of distances from the residences to the quarry is reported as 220m and 610m (for the closest 2 receptors with Lot 4 to the east and 249 Tiyces Lane to the east) to 1400m. Noise mitigating measures have been proposed in the Noise Assessment Report by Benbow Environmental.

The EPA provided a limit of 35dBA LAeq (15min) or the average noise level over any 15 minute period. An explanation from the EPA on how the noise limit criteria was calculated is provided below:

Noise Limits (Condition L3.1) in General Terms of Approval (Notice no. 1526520)

For the three representative locations where unattended noise monitoring was undertaken (R1, R4, and R7), the daytime Rating Background Levels (RBL) were 36 dB(A), 37 dB(A) and 29 dB(A), respectively. According to the NSW Industrial Noise Policy, where the RBL is found to be less than 30 dB(A) then it is set to 30 dB(A), therefore the RBL for R7 is set at 30 dB(A).

The Project Specific Noise Levels (PSNL's) in the noise assessment were derived by considering the intrusiveness criteria (allowing an additional 5dB(A)), which limits noise during operation to 41 dB(A), 42dB(A) and 35 dB(A). The intrusiveness criterion essentially means that the equivalent continuous (energy-average) noise level of the operations should not be more than 5 dB(A) above the RBL.

The modelling undertaken by the proponent's consultant showed that under various operating conditions, the predicted contribution from the proposed quarry to noise levels at sensitive receivers was, at a worst case scenario, no higher than 34 dBA (Tables 4.2 to 4.6 in Noise Impact Assessment). Therefore the operations should be able to comply with a noise limit of 35 dBA at all sensitive receivers and so setting noise limits in this instance based exclusively on the PSNL's would not be appropriate as this would result in a pollute to goal arrangement.

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

Council included in its submission and requirements a request to prohibit the use of explosives, a rock breaker and any heavy equipment that when operating exceeds a noise level of 35Dba. This would be covered by the noise limits of the EPL proposed by the EPA if the JRPP do not wish to incorporate the draft condition "to prohibit the use of explosives, a rock breaker and any heavy equipment that when operating exceeds a noise level of 35dBALAeq (15 min)."

During the construction phase and operation phase of the development the impacts of noise and vibration will be controlled by operating hours and noise limits set by the EPA EPL.

It is considered that the impact will be acceptable as the development is conditioned to meet current standards.

Technological Hazards

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

Site Design & Internal Design

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

(iii) Social Impacts

Safety, Security & Crime Prevention

Referencing Council's protocol, the proposal is too low key to warrant crime prevention measures. The proposed development will include security fencing and will allow the passive surveillance of the area. In this aspect there will be a positive benefit on the safety and security of the area.

Social Impact in the Locality

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

Cumulative Impacts

The cumulative impact of clearing and quarrying will result in additional natural resources for development to be locally available. The potential impacts have been reduced by the draft conditions proposed.

(iv) Economic Impacts

Economic Impact in the Locality

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

(v) Codes and Policies

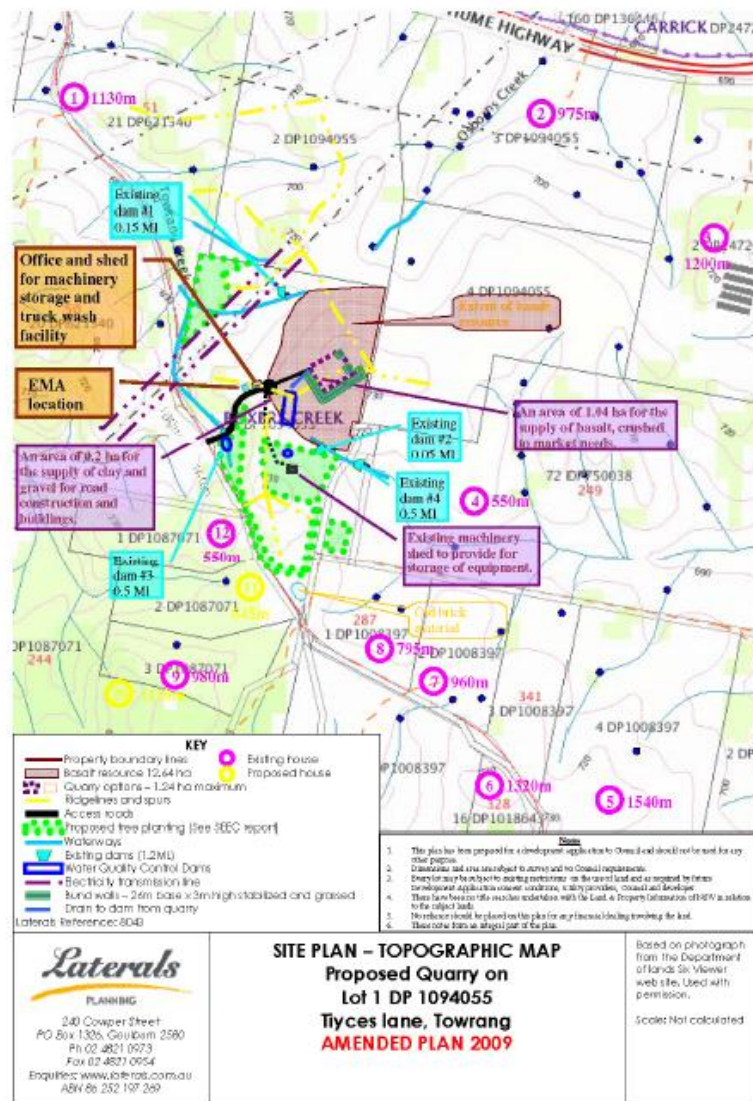
Planning for Bushfire Protection guidelines have been considered and implemented. The best practice guidelines for stormwater and erosion and sedimentation control will be employed by this development.

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

The proposed works will provide a resource for the local area and potentially the wider regional area. The proposal is considered appropriate with regards to the zoning of the site and permissibility under the Mining SEPP. It is not expected to have unacceptable negative impacts on the amenity of the locality or adjoining developments subject to the proposed draft conditions being applied. Noise and dust in particular are proposed to be conditioned to comply with acceptable standards within an EPA GTAs. Extensive site controls are proposed by the Applicant which can be seen in the following figure (Figure 10). Therefore in accordance with the above considerations the site is considered suitable for the proposed works.

Figure 10: Site Plan of proposed development (Source: Laterals Planning (April 2014) EIS)

Figure 2-1: Topographical Site Plan



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

The proposal was been placed on public exhibition from 29/5/2014 to 8/7/2014. The proposal was notified to approximately 42 nearby properties and notified in the local newspaper and on Council's website. Public exhibition of the proposal resulted in 17 public submissions being received from 15 submitters.

To ensure the Southern Joint Region Planning Panel (JRPP) members have a complete understanding of the issues raised in the submissions and to comply with Council's *Access to Information Policy* the submissions have not been released publicly but have been provided in full to the JRPP. A summary of the issues raised is listed under each submission to show the frequency of the issues raised in the submissions.

Agency submissions are included in the Attachments.

4.1 Referrals

Internal Consultation

Engineer	No objection subject to conditions for inclusion in any consent
Building Surveyor	No objection subject to conditions for inclusion in any consent.
Environmental and Health Officer	No objection subject to conditions for inclusion in any consent.

External Consultation

NSW Trade and Investment Resources and Energy	No objection subject to conditions for inclusion in any consent. Refer Public Submissions
Roads and Maritime Services	No objection subject to conditions for inclusion in any consent. Public Submissions
Water NSW	No objection received subject to conditions for inclusion in any consent. Public Submissions
Environment Protection Authority	General Terms of Approval issued. Public Submissions
NSW Office Water	No SEARs sought for proposed Bore. No Controlled Activity Approval not required. Approval required under s89-91 <i>Water Management Act</i> for nominated works, transfer the licence to commercial purposes and aquifer interference where required. Subject to deferred commencement conditions.
Goulburn Mulwaree Council	No objection subject to draft conditions. Refer Public Submissions
Pejar LALC	No response received. Recommendation provided by Pejar LALC in the 2009 <i>Aboriginal Site Survey and Assessment Report</i> .

4.2 Community Consultation

A summary of the submissions is provided below with the majority of the submissions in a pro-forma format covering similar issues:

Submission Number	Issue Number
1	<ol style="list-style-type: none"> 1. Prohibited in E3 zone 2. Lack of resource significance 3. Non-compliance 1000m buffer 4. Question whether blasting may be required and potential noise 5. 6 dwellings within 500m of site boundary 6. Intersection safety Tiyces Lane and Hume Highway (& School traffic) 7. Poor location and site distance for new site entrance 8. Speed along Tiyces Lane is 100km 9. Damage to road by trucks 10. 2ha disturbance area to be exceeded 11. Underestimate cost of development
2	<ol style="list-style-type: none"> 1. As above 2. As above 3. As above 5. 6 dwellings within 500m of site boundary 6. Intersection safety Tiyces Lane and Hume Highway (& School traffic) 7. Poor location and site distance for new site entrance 8. Speed along Tiyces Lane is 100km

	10. 2ha disturbance area to be exceeded 11. Underestimate cost of development 12. Limited core and test sites to base information
3	1. As above 12. As above 5. As above 6. As above 7. As above 8. As above 10. As above & lack of detailed plans 11. As above
4	As per Submission 3
5a	As per Submission 3
5b	1. As above 13. 12AA applies to mines not quarries 5. As above 10. As above 14. Discrepancies with BE distances 6. As above 7. As above 15. Staff No. discrepancies 6. As above 10. As above 11. As above
5c	4. Need for blasting and rockbreaker 3. As above
6	As per Submission 3
7	5. As above 8. As above 7. As above 6. As above 11. As above 12. As above 2. As above 16. Previous projects left uncompleted 1. As above
8	As per submission 1
9	As per submission 1
10	17 Stormwater overflow
11	12. As above 4. As above 5. As above 3. As above 18. Bushfire prone 1. As above 2. As above 6. As above 7. Above 19. Connecting to a classified road 11. As above
12	11. As above 20. Not a fit and proper person 16. As above 21. Outstanding road upgrade works from Marian Vale subdivision 22. Ownership , breach of act and application should not be made 6. As above 3. As above 1. As above

	2 As above 23. Close to existing quarry with same resource 24. Vicinity rural small holdings 25. Power consumption not efficient 26. Insufficient ground water 27. Carbon Pollution
13.	As per Submission 3
14	6. As above should be upgraded by applicant
15	As per Submission 3 28. Not available on web
16	No submission received. Requested copy of correspondence

Issue Number 1 Prohibited in E3 zone

While the proposal is prohibited under the *Goulburn Mulwaree LEP 2009* it is permissible under clause 7(3)(a) of the Mining SEPP. The Mining SEPP permits extractive industry where agriculture is permitted. The Mining SEPP overrides the LEP and was discussed in Section 3.4.5 of this report.

Issue Number 2 Lack of resource significance

Goulburn Mulwaree has a number of large and significant resources within the LGA. This site is not as large but still identified by NSW Trade and Investment (Resources and Energy) as an important resource due to its presence in their 2015 Audit Report and requiring consideration with future rezonings and landuse changes within the areas as shown on Figure 5 of this report. The *Mining of Construction Material from Marian Vale - East of Goulburn. A preliminary feasibility assessment* prepared by Groundwater Imaging Pty Ltd (Sept. 2006) identified 40ha of the Basalt would have a value of \$400 million dollars. The proposed development is for approximately 1.2ha of the basalt resource.

Issue Number 3 Non-compliance 1000m buffer

A variation to the 1000m GMDEC 2009 buffer is sought. Refer to Section 3.8.1 of this report.

Issue Number 4 Question whether blasting may be required and potential noise

All noise from the premises will be controlled by EPA noise limit conditions and an EPL. Council has proposed to prohibit the use of explosives, a rock breaker and any heavy equipment use when operating exceeds a noise level of 35dBAL_{Aeq} (15 min).

Issue Number 5. Six dwellings within 500m of site boundary

JRPP shall refer to the table provided with the public submissions for distances from submitters properties to the lot boundary of the quarry. This information has not been provided publicly as personal information is contained within the submissions and has been withheld in accordance with Council's *Access to Council Information* policy. All noise from the premises will be controlled by EPA noise limit conditions

Issue Number 6. Intersection safety Tiyces Lane and Hume Highway (& School traffic)

Issue Number 7. Poor location and site distance for new site entrance

Issue Number 8. Speed along Tiyces Lane is 100km

Issue Number 9. Damage to road by trucks

Issues were raised in the submissions regards the safety of the intersection onto Hume Highway and at the entrance gate on Tiyces Lane as well as the road standard of Tiyces Lane and potential deterioration of the road network. Safety for users including school children/school bus activities, dust and noise issues were also part of the issues raised in the submissions.

The transportation of materials will be provided via Tiyces Lane, using 37 tonne trucks. There are some contradictions with the expected traffic generation provided in the EIS listing both 14 and 20 average truck movements per day and both 8 and 10 car movements per day. Based on the highest estimated number reported of 20 truck movements and 10 car movements the development will generate 30 vehicle movements per day (i.e. 15 inwards and 15 outward movements).

The application was forwarded to RMS and the development. If approved, RMS has required:

- the applicant provide a southbound left turn deceleration lane on the Hume Highway on the intersection with Tiyces Lane

- Quarry trucks exiting Tiyces Lane will not be permitted to turn right onto the Hume Highway to travel north but required to turn left from Tiyces Lane onto the Hume Highway and travel south to the South Goulburn Interchange and undertake a u-turn to then travel north.
- A drivers Code of Conduct; and
- Road construction works on the Hume Highway will require separate approval and consent from the RMS.

A request for Tiyces Lane pavement testing has been deferred and is required to be submitted prior to issue of any Construction Certificate. This is seen as advantageous to the developer and Council given that a report may become outdated if Construction Certificate is not sought for a number of years.

Tiyces Lane will be required to be upgraded to comply with the haulage route standards as set out in Goulburn Mulwaree Development Control Plan 2009, namely:

- 7m wide sealed carriageway
- 1m wide shoulder with 500mm seal
- 8m wide culverts and bridges

Tiyces Lane will be required to be realigned in accordance with Goulburn Mulwaree Council drawing R_776 as depicted on Page 38 of the EIS at the developer's expense prior to commencement of operation. Refer Figure 9 of this report.

The sight distance required at the entrance shall comply with AS 2890.1 for a commercial driveway based on a speed limit of 100km/h, i.e. 160m.

The entrance shall be configured to Council's standard rural entrance as widened to comply with a RMS standard BAL/BAR. The entrance shall be sealed from the sealed carriageway of Tiyces Lane to the entrance gate.

The unsealed internal access will be compacted road base and this is considered acceptable provided it complies with the criteria for internal access requirements of *Planning for Bushfire Guidelines* requirements. However further landscaping and watering could be used to help minimise dust.

Issue Number 10. 2ha disturbance area to be exceeded

In submissions received there was concern that the area of disturbance would be greater than the reported 2ha which is summarised by Submission 5b.

"In regard to the maximum surface disturbance (Schedule 3 EP&AR 2004) I would suggest that the area required for construction of the noise/visual bund surrounding the quarry is also "disturbed" and needs to be included in the maximum surface disturbance. Assuming a base of 26m an additional area of approximately 1.4ha requires pre-stripping of any topsoil/subsoil prior to emplacement of overburden/waste. This area plus the 1.175 ha for the basalt quarry totals 2.575ha exceeding the 2.0 ha maximum trigger for designated development. (See attached example of quarry layout) The same to apply for the gravel quarry extraction area."

Given that an EPA EPL is required for the development despite the area of disturbance provided as less than 2ha. This matter has been satisfied by obtaining the EPA GTAs.

This potential discrepancy will not impact on the validity of the application given the EPA GTAs have been provided and an EPL is required for Designated Development prior to operation. The exceedance of the 2ha threshold is another criteria to classify development as Designated Development. Discussions with EPA do not raise any potential issue should there be a minor discrepancy.

Despite the comment above, plans will be required to ensure compliance with the submitted Water Cycle Management Study. Water NSW have conditioned compliance with the submitted plans and "that no revised works layout or staging that will impact on water quality shall be permitted without the prior agreement of Water NSW."

Issue Number 11. Underestimate cost of development

Submissions questioned whether a non-genuine estimate of development costs has been provided. The applicant has confirmed that the equipment will be hired rather than purchased for the development.

It is Council's understanding that there is nothing in the EPA Act or Regulation to suggest that failure to accurately determine the cost of works would impact on the validity of a Development Application or any consent that may issue. The Cost of construction/establishment would (in this case) only impact on the Development Application fee and is not considered detrimental to the assessment and determination of the application.

Issue Number 12. Limited core and test sites to base information

Refer to Section 3.4.5.

Issue Number 13. 12AA applies to mines not quarries

Refer to Section 3.4.5.

Issue Number 14. Discrepancies with BE distances

The distances measured were clarified by BE in their supplementary report of 5/8/2014. For the noise assessment a distance was measured from a point within 30m of the dwelling to the nearest noise source.

By contrast for the air assessment the distance is measured from the dwelling to the boundary of the subject site (quarry land) as dust can be generated not just from the quarry site. The NSW EPA have reviewed the application and issued their GTAs. A site plan identifying the location of the submitters in relation to the quarry site has been provided separately to the JRPP.

Issue Number 15. Staff No. discrepancies

The Traffic Report mentions 4 staff however the Water Cycle Management Plan suggests 6 staff. Council has used the higher values of 6 staff in the assessments.

Issue Number 16. Previous projects left uncompleted

Development consents remains with the land and are transferred to the new owners and therefore when land is sold, the responsibilities under the consent become the responsibility of the new owner.

Issue Number 17. Stormwater overflow

The stormwater identified from the submission is currently natural/existing stormwater matters. Figure 3 highlights the natural drainage within and adjacent to the site. There will also be approximately half of the new revegetation planted around the existing shed (Machinery shed) and proposed WQCP 2.

The considerations under SDWC SEPP require assessment of pervious and impervious land and a neutral or beneficial effect (NorBE). Consequently there is to be no increase in stormwater runoff post development as compared to pre development. Water NSW have provided their concurrence.

Use of stormwater for dust control and maintenance of landscaping will help reduce stormwater storage levels; however the development cannot be used to prevent a current stormwater drainage issue.

Issue Number 18. Bushfire prone

An internal assessment was undertaken in accordance with Section 79BA EPA Act. The development will be conditioned to comply with the Planning for Bushfire Guidelines (where applicable). Refer to Section 3.2.4

Issue Number 19. Connecting to a classified road

RMS GTAs have been obtained and included in the draft conditions of consent. Separate approval is required by RMS for works to Hume Highway. Refer to RMS submission in the Attachments for requirements.

Issue Number 20. Not a fit and proper person

The development assessment process can only assess the merits of the application and compliance and non-compliance with the relevant planning instruments and policies.

The EPA (Condition A2) requires the EPL holder to be a fit and proper person under the POEO Act.

Issue Number 21. Outstanding road upgrade works from Marian Vale subdivision

Council is currently holding a bond and in communications with the land owner of Marian Vale as to when the deferred works are required to be undertaken. The Marian Vale subdivision although registered at Land and Property is required to be held in the one ownership until the necessary road and intersection works are completed.

Issue Number 22. Ownership breach of act and application should not be made

Refer to Section 1.2.

Issue Number 23. Close to existing quarry with same resource

Refer to Section 3.4.5

Issue Number 24 Vicinity rural small holdings

This matter is addressed throughout the report with particular reference to obtaining EPA GTAs and Water NSW concurrence.

Issue Number 25. Power consumption not efficient

Refer to Section 3.4.5 for Greenhouse gas assessment.

Issue Number 26. Insufficient ground water

Refer to Section 3.7.7 and response from NSW Office of Water.

Issue Number 27. Carbon Pollution

Refer to Section 3.4.5.

Issue Number 28. Not available on web

This was an initial matter resolved when downloading plans onto Council's web page.

Issue 29. Inconsistencies with the documentation

Some of the supporting documents were prepared with the previously submitted DA and Council has accepted the more recent plans and details prevail over any inconsistencies with previous plans and reports.

For example the Water Cycle Management Study reported on-site effluent system which was not originally incorporated with the DA but later incorporated into the development.

4.3 Applicant's Response to Submissions

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

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

4.5 Conflict of Interest Statement

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

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

The application is not expected to have any unacceptable negative impacts on the environment or the amenity of the locality. With consideration to the environmental planning instruments and proposed

conditions to mitigate potential impact the impacts on any environmental planning instrument are considered to be acceptable.

5.0. CONCLUSION

This application has been assessed having regard to the relevant matters for consideration prescribed by Section 79C(1) of the *Environmental Planning & Assessment Act 1979*. The proposal is permissible with consent in the E3 Environmental Management Zone by way of Clause 7(3)(a) Mining SEPP despite being prohibited under the provisions of *Goulburn Mulwaree Local Environmental Plan 2009*. The proposal is consistent with applicable provisions of GMLEP 2009. It is also consistent with the requirements of *Goulburn Mulwaree Development Control Plan 2009* with the exception of the 1000m buffer distances. No formal variation was applied for to the Buffer distances however the variation is supported by the submission of Noise and Air Quality Assessments. The variation is recommended for approval subject to the inclusion of all the draft conditions of consent including the mitigating measures proposed by the EPA in their GTAs.

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

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

The development assessment has considered matters including:

- Landscape and visual character;
- Tree preservation;
- Biodiversity;
- Bushfire;
- Aboriginal cultural heritage;
- Non-Indigenous cultural heritage;
- Water cycle management;
- Noise;
- Odour;
- Disability standards;
- Crime prevention design standards;
- Social infrastructure;
- Utility services; and
- Roads, traffic and access.

6.0. RECOMMENDATIONS

It is recommended that development application No. 350/1314/DA (2014STH013) be approved by way of a deferred commencement consent pursuant to Section 80 of the *Environmental Planning & Assessment Act 1979*, subject to the draft conditions provided.