

RESPONSE TO APPLICANT'S REQUEST TO AMEND RECOMMENDED CONDITIONS

The applicant has provided a response to the recommended conditions proposed to be imposed in the event that the application is approved. The applicant has requested that three conditions be modified.

1. CONDITION 1 - APPROVED DEVELOPMENT

Request	Strike out "This consent does not approve the processing of any material that is not obtained from the development site" from Condition 1.
Proposed Amended Wording	1. This development consent approves an extractive industry which will win and remove extractive materials from the development site and includes the storing, stockpiling and processing of the extractive materials that have been obtained by washing, crushing, sawing and separating. This consent does not approve the processing of any material that is not obtained from the development site. The total amount of material that may be obtained from the site is 2 200 000 tonnes. The maximum rate at which material can be obtained, processed and transported from the site is 490 000 tonnes per annum.

This matter was addressed in the assessment report in 'The Proposal' section of the report (page 2, second paragraph) and in the 'Issues' section of the report under the heading 'Waste Material Proposed to be Brought to the Site' (Page 9). The matter is not considered in the Section 4.15 Evaluation Report provided as Appendix B as it was not considered to be a component of the development that can be approved under this development application.

REASONS FOR CONDITION 1 AND RELATIONSHIP TO OTHER CONDITIONS

Condition 1 is considered an appropriate and required condition to be imposed on the proposed extractive industry for the following reasons:

- To describe the development broadly,
- To prescribe the broad parameters of the development that is approved,
- To ensure that the approved development is an extractive industry and that all elements of the definition of extractive industry can occur under the development consent,
- To ensure that the development is a permissible land use,
- To limit the extent of the development to a total amount of material that may be obtained from the site,
- To limit the rate at which material can be obtained, processed and transported from the site

The part of Condition 1 that the applicant requests to be removed 'This consent does not approve the processing of any material that is not obtained from the development site' is a matter that goes to ensuring that the development is a permissible land use.

There are other conditions in the schedule of recommended conditions that relate, and refer, to the limitations imposed by Condition 1. These include;

- Condition 2 - Duration of Quarry Operations, and
- Condition 53 - Quarry Closure and Rehabilitation Plan - Implementation

Condition 2 stipulates the maximum time period during which the extractive industry may operate. Under this condition quarry operations must cease upon expiry of 20 years ... or upon completion of quarry operations (by the total amount of material that may be obtained from the site of 2 200 000 tonnes being reached), whichever is the sooner.

Condition 53 stipulates that the approved Quarry Closure and Rehabilitation Plan must be implemented in full immediately upon expiry of 20 years or upon completion of quarry operations (by the total amount of material that may be obtained from the site of 2 200 000 tonnes being reached), whichever is the sooner.

PERMISSIBLE LAND USES AND RELEVANT ENVIRONMENTAL PLANNING INSTRUMENTS

The Section 4.15 Evaluation Report provided at Appendix B of the development assessment report addresses the two planning instruments that contain provisions that relate to the permissibility of the proposed development which are;

- Coffs Harbour Local Environmental Plan 2013, and
- State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007

The proposed development is located in those parts of the site zoned RU2 Rural Landscape and E2 Environmental Conservation under Coffs Harbour Local Environmental Plan 2013. Extractive Industry is permitted with consent in the RU2 Rural Landscape zone, but is prohibited in the E2 Environmental Conservation zone.

Clause 7(3)(a) of State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007 provides that an extractive industry is permissible with consent where development for the purposes of agriculture may be carried out. Under Coffs Harbour Local Environmental Plan 2013 agriculture is permitted in the RU2 zone and the E2 zone. As a result the extractive industry is permissible with consent.

While the relevant provisions of these instruments are inconsistent on permissibility, Clause 5 of State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007 prescribes that the state policy 'prevails' for the extent of the inconsistency. This means that the proposed development is permissible as an extractive industry.

As the development is only permissible as an extractive industry it is essential that the proposed development can be properly regarded as an extractive industry.

EXTRACTIVE INDUSTRY DEFINITION AND THE PROPOSED DEVELOPMENT

The process of determining whether or not a development is a permissible land use requires an examination of the proposed development through a principle well-established under case law known as characterisation of development. It starts with a premise that all development must be for a purpose.

Once the purpose of the development is established, each development component must then be examined against the permissible land uses for the site.

The definition of Extractive Industry is provided below:

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.

All of the components of the development associated with the winning and removal of extractive materials from the development site are accepted as being for the purpose of an extractive industry. Likewise, the storing, stockpiling and processing of the extractive materials that have been obtained, by washing, crushing, sawing and separating is also accepted as for the purpose of an extractive industry.

The component of the development which involves the importation of waste concrete to the site and processing of this material (with the plant and equipment used for extracted material) is not accepted as being for the purpose of an extractive industry.

The following reasons for this are provided.

- There is not an interdependent relationship between the processing of waste material and winning and obtaining of material from the site,
- Processing of waste material that is brought to the site can operate in a way that is independent of the winning and processing of material that is obtained from the site,
- Processing of waste material not obtained from the site is not dependent on material that is available from the site,
- The fact that some waste material will be may be blended with extracted material does not mean that the processing of waste material is not an independent use,
- The processing of waste requires a licence variation from the EPA,
- Waste concrete satisfies the definition of waste under the Protection of the Environment Operations Act. There are a number of matters that require detailed consideration and assessment with an activity of this nature involving waste.
- The processing of waste involves elements that are not required or related the extractive industry including different on-site management methods, additional and separate on-site storage areas and specific waste management requirements.

The applicant's reference to Clause 37A of Schedule 3 of the Environmental Planning and Assessment Regulation 2000, is misplace in the circumstances as this is a provision that stipulates what development is not designated development.

While the applicant submits that this component of the development is ancillary to an extractive industry, this contention provides little benefit to the overall argument as it is a recognised principle in case law that an ancillary use can still be a distinct, separate and independent use in its own right. As this development component can be an independent use in its own right it must be examined against land uses of Coffs Harbour Local Environmental Plan 2013.

The most applicable definition for this component of the development is the land use of resource recovery facility which is provided below:

resource recovery facility means a building or place used for the recovery of resources from waste, including works or activities such as separating and sorting, processing or treating the waste, composting, temporary storage, transfer or sale of recovered resources, energy generation from gases and water treatment, but not including re-manufacture or disposal of the material by landfill or incineration.

A resource recovery facility is a prohibited land use in the RU2 zone and the E2 zone under City of Coffs Harbour Local Environmental Plan 2013. There are no other provisions of any environmental planning instrument that would affect the permissibility of this development component. As a result this component of the development is prohibited and cannot be approved.

ENVIRONMENTAL IMPACTS AND SCALE OF THE DEVELOPMENT IF WASTE MATERIAL CAN BE PROCESSED AT THE SITE

Notwithstanding everything that has been provided, there are environmental reasons why the processing of waste material on the site is not appropriate in the circumstances.

Some of these matters were outlined in the Issues section of the development assessment report (under the heading 'Waste Material Proposed to be Brought to the Site'). The applicant has outlined that these matters can be detailed in an environmental management plan. It is considered that these are matters that the consent authority should be satisfied on, prior to determination, and should not be left to be provided at a later date to satisfy a condition of development consent.

The applicant's reference to the proposed maximum extraction rate (of 490 000 tonnes per annum) is only relevant to the amount of material that will leave the site in any given year. Clearly, where material is being brought to the site, this means that more material will leave the site as a total. That is, more material will leave the site than the maximum amount of material that may be obtained from the site (stipulated as 2 200 000 tonnes by Condition 2).

Because both conditions 2 and 53 both rely on circumstances relating to an amount of material obtained from the site being reached, allowing material to be brought to the site has the effect of extending both the duration of the consent and when quarry rehabilitation must commence.

The majority of processing figures that have been provided with the application are for the processing of material that is obtained from the site. Processing of additional material that is brought to the site means that the equipment and plant that is used for processing will be subject to greater and more constant use. They will be used for greater volumes of material than that proposed for only the material that is obtained from the site. There will be additional environmental impacts associated with this including dust and noise emission.

SUMMARY

In summary the processing of waste material that is not obtained from the site is not considered to be for the purpose of an extractive industry because it is a development component that can operate independently and in its own right. As a result it must be examined against the permissible land uses. This use satisfies the definition of a resource recovery facility. This use not a permissible on the site given the zoning of the land under Coffs Harbour Local Environmental Plan 2013.

The proposed amendment to Condition 1 is not accepted as appropriate as this would allow a component of the development that is prohibited.

2. CONDITION 17 - TRAFFIC SAFETY WORKS

Request	Alter the requirement for intersection upgrading works from, 'prior to commencement of quarry operations' to 'prior to the quarry operations exceeding 100 000 tonnes per annum'.
Proposed Amended Wording	17. The following works must be completed prior to commencement of quarry operations: (1) Installation of hinged 'truck entering' warning signs on Solitary Islands Way either side of the quarry entry point; (2) Installation of a 80km/hour repeater sign on the southern approach on Solitary Island Way; (34) Road pavement construction of the first 30 metres of the access road from Solitary Islands Way. The plans for the access road must provide for two-way access for all quarry vehicle types. THE FOLLOWING WORKS MUST BE COMPLETED PRIOR TO THE QUARRY OPERATIONS EXCEEDING 100,000 TONNES PER ANNUM: (43) Upgrading of the intersection of the quarry site and Solitary Islands Way (through Lot 76 DP 752820) to a BAL intersection including an acceleration lane for trucks exiting the site to the north in accordance with Austroads – Guide to Road Design – Part 4A; Plans and specifications are to be submitted to Council and approved prior to issue of Civil Works Certificate. Plan submissions are to be accompanied by payment of prescribed fee. Council attendance at any required inspections will be charged in accordance with the adopted 'Fees & Charges' current at the time of the inspections. Payment is required prior to any inspections. Plans and specifications submitted later than six (6) months from the date of development consent shall comply with Council's current specifications at a date six (6) months prior to submission. All work is to be at the developer's cost.

One significant reason why imposition of this condition was considered appropriate was that the intersection currently does not satisfy the requirements under Austroads for Safe intersection sight distances. Upgrading of the intersection of the quarry site and Solitary Islands Way (to a BAL intersection including an acceleration lane) in accordance with Austroads standards addresses this issue.

Providing these intersection upgrading works, on the basis of an extraction rate, does not address this issue. The intersection does not meet an appropriate standard, regardless of extraction rates.

With an extraction rate of 100 000 tonnes per annum and a total proposed quarry resource of 2 200 000 tonnes (provided in Condition 1), the full duration of the consent (stipulated as 20 years in Condition 2) could occur without any requirement that this intersection be upgraded. This is not considered an acceptable or appropriate response to the traffic safety implications that arise from the existing standard and circumstances of the intersection. The amended wording requested by the applicant is not accepted as appropriate.

3. CONDITION 21 – INSTALLATION OF WEIGHBRIDGE

Request	Alter the requirement for installation of weighbridge from, 'prior to commencement of quarry operations' to 'prior to the quarry operations exceeding 100 000 tonnes per annum' with 'a system approved by Council' (to record material in loaded vehicles) being operational prior to commencement of quarry operations and for operations within an extraction rate of 100 000 tonnes per annum.
Proposed Amended Wording	21. A system approved by Council the weighbridge must be installed and operational prior to commencement of quarry operations, to ensure that the weight of material in all loaded vehicles can be recorded upon commencement BUT THE WEIGHBRIDGE MUST BE INSTALLED AND OPERATIONAL PRIOR TO COMMENCEMENT OF QUARRY OPERATIONS EXCEEDING AN EXTRACTION RATE OF 100,000 TONNES PER ANNUM.

The need for conditions such as Condition 21 was addressed under the Issues section of the development assessment report under the heading 'Monitoring, Reporting and Recording'. Given the scale of this development and potential for unacceptable impacts to occur with an unmonitored and unregulated development, measures to monitor, report and record on the operation (and its compliance with conditions of consent) are appropriate.

For a number of reasons it is appropriate that an accurate means to record the amount of material that will leave the site on loaded vehicles is implemented. The EIS stated that a weighbridge would be installed. Now with this submission another approach is suggested. It is difficult to understand how any other system would provide an appropriate level of accuracy or would not require a manual and un-automated method of recording.

Providing the weighbridge on the basis of an extraction rate does not acknowledge the need to record extractive material volumes. A significant and substantial amount of material may still leave the site.

With an extraction rate of 100 000 tonnes per annum and a total proposed quarry resource of 2 200 000 tonnes (provided in Condition 1), the full duration of the consent (stipulated as 20 years in Condition 2) could occur without requirement that the weighbridge be installed. This is not considered an acceptable or appropriate response for the ongoing operation of the quarry up to a maximum duration of 20 years. The amended wording requested by the applicant is not accepted as appropriate.