

JRPP Reference: 2016NTH002

Response to Council's draft "Proposed Conditions" (DA 2015-953)

Proposed Lookout Road Quarry (on Compartments 42 & 43 Bago State Forest, Herons Creek)

Definitions

In this document, the term "FCNSW" means the Forestry Corporation of NSW.

Introduction

The great majority of the 85 (draft) "Proposed Conditions" (as recommended by Council) are reasonable and well worded.

However, for the sake of clarity, and to avoid ambiguity, there are a number of Council's "draft Proposed Conditions" where it is justified to modify the current wording.

The modifications fall into the following categories:

- More appropriate definitions
- Amplified wording
- More appropriate time period
- Deletion of unnecessary items
- Condition challenged
- More appropriate description of extent or terminology
- More appropriate specification
- Amplification of clause to enable resumption of works
- Amplification to nominate relevant authority
- Modification to enable limited use during construction.

Our recommendations in that regard are set out below:

A- General Matters

Condition A (4)

In lieu of the words "development site", insert the words "quarry precinct"

Justification

Whilst the subject land comprises the whole of Compartments 42 and 43, the Deed of Agreement (that has been entered into by CTKNR and FCNSW) specifies that FCNSW is permitted to carry out routine forestry management activities on all parts of Compartments 42 and 43 excluding the quarry precinct.

Condition A (10)

At the beginning of the sentence, add the words "Where practicable".

Justification

On that part of the subject land that is outside the quarry precinct, FCNSW will be carrying out ongoing Forest management activities including hazard reduction burning and tree harvesting. Those activities may have an impact on the trees identified as "Visual buffer".

Condition A (12) (a)

Delete the entire clause, but if Council is unwilling to do so, delete all of the words after the word "completed", and replace with the words "not later than the completion of each particular stage of quarrying".

Justification

The process of rehabilitation at the end of each stage of quarrying will involve many weeks of work. Is unreasonable, and an unnecessary economic burden for the next stage of quarrying to be suspended for many weeks while the rehabilitation work (on the previous stage) is carried out.

B- Prior to issue of a Construction Certificate

Condition B (1)

Delete the words “water supply”.

Justification

Recognising that there will be no reticulated water supply to the project, (and that the sole source of water will be from the roof-top catchment of on-site buildings, and, in the case of the water storage dam, the geographic catchment of the subject land), it is unnecessary to require the consent of Council in this instance.

Condition B (11)

Before the word “impact”, add the word “ adversely”

Justification

As previously notified, one or more all the numerous existing hollow bearing trees may be partly impacted by the earthwork activities during the construction of the dam. Even in the event of the hollow bearing tree dying as a consequence all those earthworks, the hollow within the tree is located well above ground level, and will still be available as a habitat tree for the local wildlife community.

Condition B (13)

Relocate this entire clause, and add it to clause E (18)

Justification

It is only necessary to provide one (1) acoustic report prior to Occupation Certificate

Condition B (14) (e)

In lieu of the words “for approximately the first 50 m from Bago Road”, insert the words “for the full extent of the public road reserve”

Justification

Lookout Road is not a public road, but is a forestry road. In addition to haulage trucks transporting quarry product from the quarry, Lookout Road (and its intersection with Bago Road) will continue to be used on a regular basis by logging trucks. Those trucks have a tendency during their turning manoeuvres to damage sealed surfaces. For that reason, throughout the entire forest, there are no sealed roads. Outside the public road reserve, it is the intention of FCNSW to maintain all of you their roads as gravel roads.

C- Prior to any Work Commencing on Site

Condition C (2)

Firstly, in lieu of the words “fencing compliant with A.S. 4970/ 2009 *Protection of trees on development sites*”, insert the words “physical marking”, and secondly, in the second sentence, in lieu of the word “fencing” insert the words “physical marking”.

Justification

Recognising the ongoing forestry management activities (including hazard reduction burning and tree harvesting) that will be undertaken on the subject land outside the quarry precinct, there is a high probability that fencing of the type specified in AS 4970 will be damaged on a regular basis. For that reason, it is more appropriate for a simpler form of physical marking to be installed in this instance.

D- During Work

Condition D (4)

At the end of the clause, add a new sentence generally as follows:
“Excavation works may resume as soon as clearance has been given by the National Parks and Wildlife Service”.

Justification

The condition as originally worded could be construed as ambiguous with no clear protocol for resuming work.

Condition D (5)

At the end of the clause, add the words: “unless such burning is supervised by the Rural Fire Service or the Forestry Corporation of New South Wales”.

Justification

There is potentially a massive quantity of waste vegetation which may lay dormant on the site for extended periods. Such waste would constitute a serious fire risk to the surrounding plantation forest. It would constitute good management practice to burn that vegetation waste at appropriate times (likely to be during the winter months) simultaneous with the adjoining fuel hazard reduction burning that will be carried out on a regular basis by FCNSW.

Condition D (7)

After the word “Any”, add the word: “serious”

Justification

In the course of any year, there is always some damage caused to trees in State Forests as a consequence of hail storms, wind storms, hazard reduction burning, and the like. It is essential in this instance to differentiate between damage and serious damage.

Condition D (8)

In lieu of the word “consultant”, insert the word: “professional”

Justification

There are numerous professionals working in a variety of Government departments, Local Government Authorities, and State Corporations (such as the Forestry Corporation of New South Wales) who are practising in the field of ecology on a day to day basis. Ecology professionals on the staff of FCNSW conduct ecological surveys and inspections within the state forest on a regular basis, and are well versed in, and more readily available to address the matters broached in this clause.

D- During Work (cont.)

Condition D (9)

In lieu of the words “fencing compliant with A.S. 4970/ 2009 *Protection of trees on development sites*”, insert the words “physical marking”.

Justification

In line with the suggested revision to Condition “C.(2)” (above), recognising the ongoing forestry management activities (including hazard reduction burning and tree harvesting) that will be undertaken on the subject land outside the quarry precinct, there is a high probability that fencing of the type specified in AS 4970 will be damaged on a regular basis. For that reason, it is more appropriate for a simpler form of physical marking to be installed in this instance.

Condition D (10)

After the word “works”, add the words: “on any public road”

Justification

It is unreasonable for the Council to require the specification for private roads (which will only have a limited lifespan) to be subject to Councils stringent engineering requirements that have been designed to protect Council’s assets over the long term.

Condition D (11)

After the word “course”, add the words: “on any public road”

Justification

Again, it is unreasonable for the Council to require the specification for private roads (which will only have a limited lifespan) to be subject to Councils stringent engineering requirements which have been designed to protect Council’s assets over the long term.

E- Prior to Occupation or the issue of Occupation Certificate

Condition E (2)

After the word “means”, add the words:

“(which may include a lease agreement or a license agreement executed by the Forestry Corporation of New South Wales)”

Justification

A properly executed License Agreement will be sufficient to prevent separate dealings in the land. The Forestry Corporation of New South Wales has a standard format for such license agreements, and that format has been approved by their lawyers. The terms and conditions of a specific license agreement relating to this project have already been settled by FCNSW. This matter can be confirmed by discussion with FCNSW management personnel.

Condition E (4)

After the word “areas”, add the words:

“in the immediate vicinity of the management centre”

Justification

Recognising that quarries are notoriously dusty environments with the position of driveways and access aisles changing regularly, it is unreasonable to require driveways that are remote from the management centre to be paved. Regular watering of the driveways will achieve a satisfactory outcome with respect to dust and air equality control.

Condition E (12)

In the 3rd line, in lieu of the word “shall”, insert the word: “may”

Justification

Recognising that, in the vicinity of the proposed works, there are no existing underground services, there are no aboveground power and telephone services, there is no street lighting, and it is not intended (nor necessary) to install any of those services, it is inappropriate to specify that they SHALL be undertaken as ancillary works.

F-Occupation of the Site

Condition F (10)

After the word “immediately”, add the words:
“and only resumed when the breach has been rectified to the satisfaction of Council”

Justification

The condition as originally worded could be construed as ambiguous with no clear protocol for resuming work.

Condition F (11)

After the word “within”, add the word: “approximately”

Justification

It is unreasonable for activities such as rock excavation and quarrying to be limited to a precise geometric specification. The outcome intended in Council's recommendation can be achieved within a tolerance of plus or minus 10°.

Condition F (13)

After the term “EIS”, add the words
“unless previously approved by Council”

Justification

If market conditions should change, it may be necessary at a future date to install an additional crusher. Should that situation arise, it would be appropriate for the quarry operator to make a written submission to the Council accompanied by the appropriate justification report that would address critical environmental matters.

Condition F (15)

At the beginning of the clause, add the words:
“Other than during the construction phase”,

Justification

During the construction phase, the ultimate access road to the quarry (via Lookout Road and Forestry Trail 43/2) will be impassable for many weeks whilst earthworks and pavement construction are carried out. During that time, it will be necessary for other plant and equipment to be delivered to the quarry precinct, and the only available access will be via Milligans Road.