

COUNCIL ASSESSMENT REPORT COVER SHEET

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| Panel Reference | 2016NTH022 |
| DA Number | MOD2016/0035 (original application DA2014/0098) |
| LGA | Clarence Valley Council |
| Proposed Development | Modification to Extractive Industry (Sheridan's Hard Rock Quarry). Previous JRPP Ref: 2014NTH006. Previous Clarence Valley Council Ref: DA2014/0098 |
| Street Address | 242 Faheys & Bulgins Road, Bald Hills, Hernani |
| Applicant/Owner | Outline Planning Consultants Pty Ltd for Matsid Pty Ltd |
| Date of DA lodgement | 21 August 2016 |
| Number of Submissions | Original Notification (24 August 2016): Five (5) submissions and three (3) NSW Government Agency responses - eight (8) in total Second Notification (12 & 16 December 2017): 2 submissions from NSW Roads and Maritime Services Submissions to draft Voluntary Planning Proposal (12 and 23 December 2017): Nil |
| Recommendation | That Development Application MOD2016/0035 (to DA2014/0098) (JRPP reference No. 2016NTH022) to modify the consent by allowing up to a maximum of 66 loaded quarry trucks Monday to Friday and 36 loaded quarry trucks on Saturdays; within the approved hours of operation (7.00am to 6.00pm Monday to Friday and 7.00am to 1.00pm Saturdays) be approved pursuant to Section 4.16 of the <i>Environmental Planning and Assessment Act 1979</i> and the conditions of consent be modified as set out in the draft schedule of conditions to the report. |
| Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011) | The development is declared to be regionally significant development for the purposes of the Act under Schedule 7 of SEPP (State and Regional Development) 2011. Section 4.5(b) of the act provides that the consent authority is as follows: <i>(b) in the case of development of a kind that is declared by an environmental planning instrument as regionally significant development—the Sydney district or regional planning panel for the area in which the development is to be carried out.</i> |
| List of all relevant s4.15(1)(a) matters | <ul style="list-style-type: none"> • SEPP (State and Regional Development) 2011 • SEPP 33 Hazardous and Offensive Development • SEPP 44 Koala Habitat Protection • SEPP Mining & Petroleum and Extractive Industries 2007 • SEPP Rural Lands 2008 • Clarence Valley Local Environmental Plan 2011 • Development Control Plan for Development in Rural Zones • Proposed Sheridan's Hard Rock Quarry Planning Agreement Voluntary Planning Agreement |
| List all documents submitted with this report for the Panel's consideration | Submissions received during exhibition period Statement of Environmental Effects June 2016 NSW EPA Response 22/9/2016 NSW RMS Response 21/9/2016 & 12/3/18 NSW OEH Response 22/9/2016 JRPP Record of Deferral Consultant's (for applicant) response to notice for deferral 9 June 2017 Council's minutes and resolution Draft Voluntary Planning Agreement Quarry Owners submission to Council meeting 14 May 2018 Driver Code of Conduct February 2018 |

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|---------------------------|-----------------------------------------|
| Report prepared by | Pat Ridgway, Senior Development Planner |
| Report date | 28 June 2018 |

Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report? **Yes**

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report? **Yes**

e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report? **Not Applicable**

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)? **No**

Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

COUNCIL ASSESSMENT REPORT

REF: 2016NTH022

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Executive Summary

Council has received a Section 4.55 application under the *Environmental Planning & Assessment Act 1979* (the EP&A Act) to modify the approval issued under development application DA2014/0098 (JRPP Ref: 2014NTH006) approved by the Joint Regional Planning Panel - Northern (the Panel) on 21 August 2014. It is proposed that the approval be modified from 20 loaded quarry trucks per day to allow a maximum of 66 loaded quarry trucks Monday to Friday and 36 loaded quarry trucks on Saturdays; within the approved hours of operation (7.00am to 6.00pm Monday to Friday and 7.00am to 1.00pm Saturdays).

This matter was previously set down for determination on 15 December 2016 and was deferred for the reasons outlined in the Record of Deferral with a request for Council to provide additional information.

On 9 June 2017 the applicant responded to the information request and included an offer to enter into a Voluntary Planning Agreement to maintain and upgrade the haul route. Council staff entered into negotiations and reported the offer to Clarence Valley elected Councillors for consideration. At its meeting of 15 May 2018 Council resolved to accept an offer of a voluntary planning agreement; the resolution of Council is provided below. The full report and minutes of the meeting and attached to this report.

That Council :

1. Accept the offer of a voluntary planning agreement (VPA) in relation to MOD 2016/0035 – Sheridan’s Hard Rock Quarry, Hernani, as detailed in the attachments to this report, with the following amendments :

(i) the operator of the quarry to contribute to a road maintenance contribution in accordance with condition 18 of Development Consent DA2014/0098. Note: This equates to an annual road maintenance contribution of \$0.21 per cubic metre extracted (adjusted to CPI).

(ii) The operator submitting a bond or guarantee in accordance with clause 7.1 of the VPA to the equivalent of 2 years maximum extraction.

(iii) Requiring annual independent audit of the road condition, from a suitably qualified consultant agreed to by both parties, and paid for by the quarry operator.

(iv) Defects liability period being increased to six months after the completion of the quarry operation.

(v) Amendments to clauses 4.3(g) and 4.2 as detailed in this report.

2. Re-advertise the amended VPA in accordance with the requirements of the EP&A Act.

3. Endorse the revised VPA for consideration of MOD 2016/0035 by the Joint Regional Planning Panel, subject to there being no substantive objections received to the revised VPA during re-exhibition.

The application is referred back to the Panel to consider the inclusion of the proposed Voluntary Planning Agreement and other issues in regard to making a determination. If a Voluntary Planning Agreement to maintain and upgrade the haul route is entered into in the terms accepted by Council it is submitted that the outstanding issues and concerns now been sufficiently addressed.

The development application has been assessed in accordance with Section 4.55 of the EP&A Act and the relevant State and local environmental planning instruments which are detailed in this report.

The application was initially advertised and notified for the required period of 14 days and five (5) submissions and three (3) NSW Government Agency responses - eight (8) in total received. The information provided by the applicant has been re-advertised and notified (including an explanatory note and 28 day exhibition for the draft Voluntary Planning Agreement); two further responses were provided by the NSW Roads and Maritime Services with no other additional submissions received.

A detailed assessment against the provisions of the LEP, other relevant Environmental Planning Instruments and the Clarence Valley Council Zones Development Control Plan 2011 (DCP) is contained in the s4.15 assessment forming part of this report (see section 4.1).

A summary of the relevant clauses that list matters the consent authority must be satisfied with as set out in the relevant instruments is contained in the below table.

| Environmental Planning Instrument | Clause | Summary / Recommendations |
|-----------------------------------------------|-------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| SEPP No. 44 – Koala Habitat Protection | Clause 7: Step 1—Is the land potential koala habitat? | Satisfactory evidence has been provided to determine that the land is not potential koala habitat. |
| | Clause 8: Step 2—Is the land core koala habitat? | Satisfactory evidence has been provided to determine that the land is not core koala habitat. As such, a Koala Plan of Management is not required to be prepared in accordance with SEPP 44. |
| SEPP No. 55 – Remediation of Land | Clause 7: Contamination and remediation to be considered in determining development application | Satisfactory evidence has been provided to determine that the land is considered suitable for the proposed development. |
| | | |
| Clarence Valley Local Environmental Plan 2011 | Clause 7.7: Drinking water catchment | Satisfactory evidence has been provided to determine that the development is designed, sited and will be managed to avoid any adverse impact on water quality and flows. |
| | Clause 7.8: Essential services | Satisfactory evidence has been provided to determine that services that are essential for the proposed development are available. |

Request for information following Record of Deferral

Following the deferral of the determination of this application the Panel requested that Council staff provide the Panel with further information and when this information has been received, the Panel will further consider the matter. Below is a summary to the comments that are provided in response to the Panel's request which are outlined in the s4.15 assessment report:

- There is no objection to the reference to the documents Statement of Environmental Effects accompanying the s4.55 application and supporting documents. An amendment to condition 1 is proposed.
- A new condition 13B is proposed to reflect the maximum number of loaded quarry trucks permitted on the haul route on any particular day of the week.
- A new condition 36 is proposed to reflect the offer and agreement to enter into a Voluntary Planning Agreement.
- A new Condition 37 is proposed in regard to the updated code of conduct and NSW RMS advice for it to be regularly reviewed.
- A new condition 38 is proposed to require that the quarry machinery have on-board weighing systems to keep accurate records of extraction rates of the quarry with records to be provided on a quarterly basis.
- A new condition 39 is proposed to reflect the requirement of the applicant to obtain approval to carry out works in the public road reserve in accordance Section 138 of the Roads Act 1993. It is intended that a Section 138 approval will expire and have to be renewed annually.
- It is submitted that maintenance issues of the haul route will be suitably addressed under a Voluntary Planning Agreement, in the terms agreed with Council. The NSW RMS is generally satisfied with the impacts on the Bald Hills Road and Waterfall Way intersection.
- Further consultation with NSW RMS and Bellingen Council has been addressed with particular regard to the impacts of peak truck movements through Dorrigo and Bellingen.

Site Description & Location

The quarry site is located in a remote rural location and is shown on the locality map.

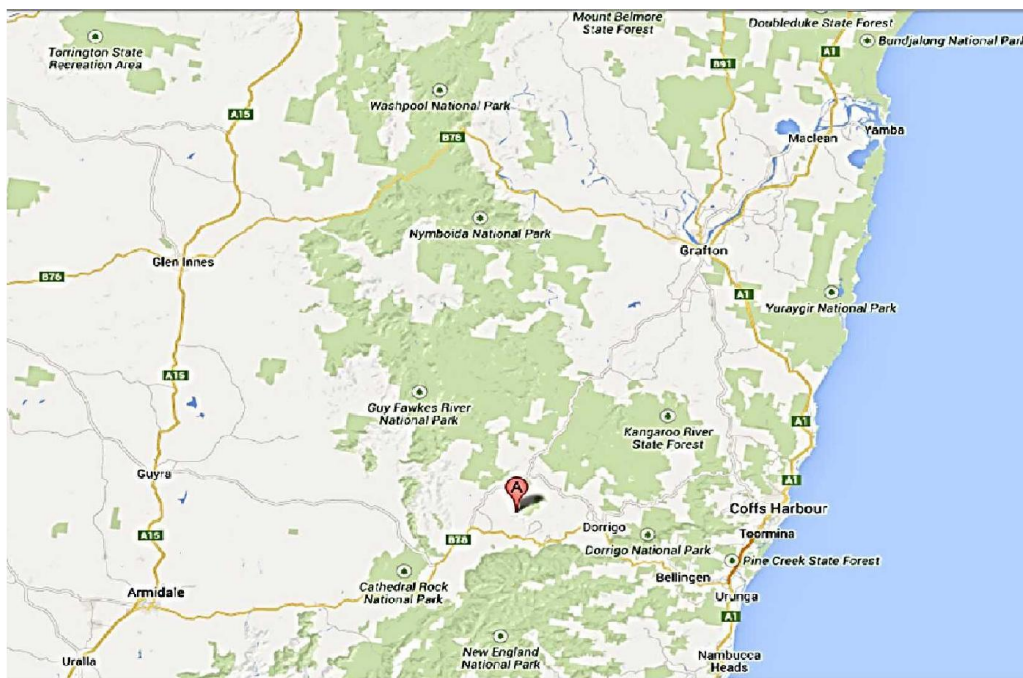


Figure 1 Locality Map – Quarry Site marked 'A' on the map (Source: Google Maps)

There are three (3) rural dwellings located along the haul route (from the quarry to the intersection of Bald Hills Road and Waterfall Way) as shown in red on the following map extracted from the EIS.

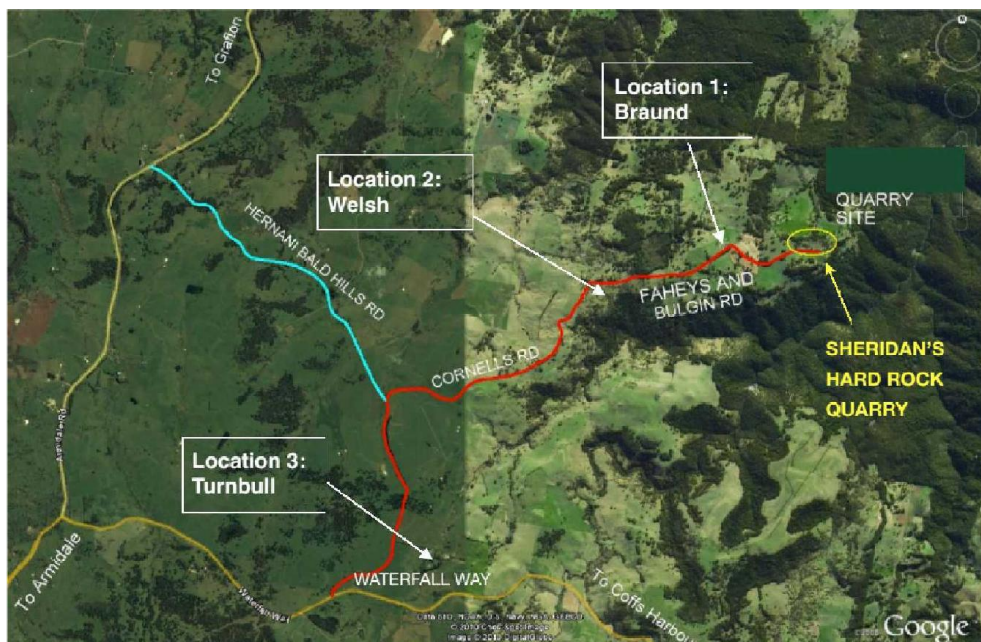


Figure 2 Aerial photograph and haul route (Source: EIS Outline Planning Consultants)

Details of Proposal

As approved by the JRPP - Northern, DA2014/0098 increased the extraction rate of product from Sheridan's Hard Rock Quarry from 30,000m³ to 73,600m³ per annum (up to 198,000 tonnes) and increased quarry footprint from 2ha to 5.73ha in area. The consent limited the loaded quarry truck movements to 20 laden trucks per day.

It is proposed that the approval be modified from 20 loaded quarry trucks per day to allow a maximum of 66 loaded quarry trucks Monday to Friday and 36 loaded quarry trucks on Saturdays; within the approved hours of operation (7.00am to 6.00pm Monday to Friday and 7.00am to 1.00pm Saturdays). As per the original consent quarry traffic east of the intersection of Waterfall Way and Maynards Plains Road will still be prohibited on a Saturday.

The approved quarry route is along Faheys & Bulgin Road, Cornell's Road and Bald Hills Road to the intersection of Bald Hills Road and Waterfall Way (as shown in Figure 2 of this report). Quarry traffic can then either go west towards Armidale or east to Dorrig, Bellingen and to the Pacific Highway. Waterfall Way is a State controlled road.

It is submitted by the applicant that under the proposed modification the quarry will operate in the same way as the existing approved quarry operations on site and the increase in laden quarry trucks will enable the quarry operator to meet peak demand periods for quarry product and in particular provide product for the Pacific Highway Project upgrades.

The modification to the approved consent will not increase the approved maximum extraction rate of 73,600 m³ per year nor the maximum area of the quarry footprint of 5.73ha as outlined in conditions 7 and 8 of the approval under DA2014/0098.

The majority of submissions received from the public notification raise concern over the impacts from the substantial potential increase in truck movements on Waterfall Way (and through the townships of Dorrig and Bellingen) that may occur if the proposal to modify

the consent is approved. It is noted that no submissions were received from the owners of the dwellings along the approved haul route.

In this respect the assessment of the proposal can be narrowed to the impacts from the permitted increases in daily truck movements that may result along the haul route and along Waterfall Way, particularly through Dorrigo and Bellingen town centres.

Under the current quarry demand the applicant notes that the majority of quarry product (75%) has been historically delivered westwards along Waterfall Way. It is noted that quarry product for the Pacific Highway upgrade works will likely change this pattern intermittently and in the short term as per the demand for quarry product.

Statutory Development Assessment Framework

A consent authority may modify the consent if:

- (a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and
- (b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and
- (c) it has notified the application in accordance with:
 - (i) the regulations, if the regulations so require, or
 - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and
- (d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.

Council is satisfied that the application is substantially the same development as the development for which consent was originally granted and can be modified, by the Joint Regional Planning Panel, under Section 4.55(2). The relevant authorities have been notified and the application has been notified in accordance with the Regulation and Council's DCP. The submissions made have been considered in this report.

Extractive industries that obtain or process for sale, or reuse, more than 30,000 cubic metres of extractive material per year, or that disturb or will disturb a total surface area of more than 2 hectares are declared to be Designated Development under Clause 19, Schedule 3 of the *Environmental Planning & Assessment Regulation 2000* (the EP&A Regulation).

The original development is listed as development that is Designated Development and for which development consent was granted by the Joint Regional Planning Panel – Northern on 21 August 2014, which is authorised to exercise the consent authority functions of councils under the *Environmental Planning and Assessment Act 1979* (the EP&A Act). The quarry has been granted development consent with conditions under DA2014/0098.

The original application was approved as Integrated Development under s91 of the EP&A Act and requires the approval of the NSW Environmental Protection Authority (EPA) under the *Protection of the Environment Operations Act 1997*.

Council has received General Terms of Approval from the above State authority and the EPA has advised that the continuation of the quarry will operate under the existing Environmental Protection Licence.

The application has been referred to the NSW RMS in accordance with clause 16(3) of the State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007. The responses from the RMS are discussed in this report.

In regard to the Section 4.55 Application to Modify the Consent, *State Environmental Planning Policy (State and Regional Development) 2011*, provides that a regional panel may exercise the consent authority functions of the council for the determination of applications for the modification of development consents previously granted by the panel, in accordance with Part 4 of the EP&A Act.

In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section s4.15 as are of relevance to the development the subject of the application.

S4.15 Assessment

(1) Matters for consideration - General

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

(a) the provisions of:

(i) any environmental planning instrument

State Environmental Planning Policy (State and Regional Development) 2011

Part 4, Clause 21, provides that a regional panel may exercise the consent authority functions of the council for the determination of applications for the modification of development consents previously granted by the panel, in accordance with Part 4 of the EP&A Act. The proposal is not State Significant Development.

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

Council must have regard to the heads of consideration contained in Clause 13 of the Policy. Having regarded the existing approved and proposed operation of the quarry it is considered that the operation does not constitute a potentially hazardous or offensive operation.

State Environmental Planning Policy No 44 - Koala Habitat Protection (SEPP 44)

The Flora and Fauna Survey Report determined that the subject land is not a core koala habitat. As such, a Koala Plan of Management is not required.

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

Clause 7: Development permissible with consent
Extractive industries are permitted with consent on the subject land under the SEPP.

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

The surrounding lands are utilised for agricultural uses including vegetable farming and grazing lands. The proposed development will not conflict with the existing or future uses of land in the vicinity of the development.

The subject lot is located within proximity of the Clarence Valley Council border that is shared with Bellingen Shire Council. A referral was sent to Bellingen Shire Council who has made a submission. The submission is considered in this report.

The Noise Impact Assessment, the Flora and Fauna Survey and the Traffic Impact Study have recommended measures to avoid and minimise potential impacts of the development. As a result, there is not considered to be substantial incompatibility with these land uses nor have significant adverse impacts.

The resources recovered will be available to local and regional markets and the development will create minor economic activity and employment generation.

With the recommendations in this report adopted there are no unreasonable conflicts with surrounding land uses anticipated.

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

There are no anticipated conflicts with surrounding mining, petroleum production or extractive industries.

Clause 14: Natural resource management and environmental management

Water from the development area is diverted to a sedimentation dam within the work area. Water quality monitoring is required to be undertaken and detailed in annual Plans of Management to be approved in accordance with the draft conditions of consent. The EPA has required an updated Stormwater Management Plan in the General Terms of Approval.

The Flora and Fauna Report assessment concluded that the development will not have significant impacts on threatened species or biodiversity. The NSW OEH has no objections to the modification.

Greenhouse gas emission from the development is considered to be minimal for the proposed development.

Clause 15: Resource recovery

The resource recovery rate is considered to be efficient. There is considered to be little waste material from the development. A Waste Management Plan will be required to be addressed in the Plan of Management.

Clause 16: Transport

Current conditions of approval restrict haulage times so as to not coincide with school bus runs. It is proposed that the same condition be applied to this consent. A code of conduct for truck drivers is required to be submitted as part of the Plan of Management.

The RTA has responded to the referral and the submission has been taken into consideration in the assessment of the application.

A Traffic Impact Study, including a road audit, was submitted with the application. A condition of consent will restrict the transport of material on Council maintained roads during the daily pickup and drop-off school bus run times. Transport eastwards along Waterfall Way on Saturdays is not permitted.

Clause 17: Rehabilitation

The proposed rehabilitation is to utilise the quarry as a farm dam at the completion of the quarry operations by filling it with water. A Plan of Management will be required to be submitted detailing rehabilitation plans. The dam is proposed to be adequately fenced and signed.

State Environmental Planning Policy (Rural Lands) 2008

This SEPP applies to the subject site as a consequence of its existing RU1 – Primary Production Zone under CVLEP 2011.

The land upon which the proposed extractive industry is located has limited agricultural productive potential due to the shallow soils over the rock base and the proposed use of the site as an extractive industry is considered to be a productive and sustainable economic activity.

The proposed development provides positive economic benefits to the local economy and adverse social impacts can be mitigated through the imposition of appropriate conditions of consent.

Clarence Valley Local Environmental Plan 2011

The subject land is zoned RU1 Primary Production under the Clarence Valley LEP. Extractive Industries are permitted in this zone subject to consent from Council.

Under the LEP 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 objectives of the zone are:

- To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.
- To encourage diversity in primary industry enterprises and systems appropriate for the area.
- To minimise the fragmentation and alienation of resource lands.
- To minimise conflict between land uses within the zone and land uses within adjoining zones.
- To prevent dispersed rural settlement.
- To ensure that development does not unreasonably increase the demand for public services or public facilities.
- To ensure development is not adversely impacted by environmental hazards.

The proposal is not inconsistent with the objectives of the zone as it does not interfere with the agricultural potential of the land or surrounding land and is considered to be compatible with the existing and potential agricultural land uses in the area.

With the recommendations in this report adopted there are no unreasonable conflicts with surrounding land uses anticipated.

Part 7 Local Provisions Clarence Valley Local Environmental Plan 2011

7.2 - Earthworks

The quarry operates under the established measures in accordance with the Environment Protection Licence issued by the EPA, with additional measures to be implemented with the staging of the quarry operations. The site has shallow soils over hard rock and the excavation of soil limited to the quarry footprint. There have been no Aboriginal objects or places identified on the site. The likely impacts on watercourses, drinking water catchments and environmental sensitive areas are minimal and can be adequately managed and or mitigated.

7.7 - Drinking Water Catchment

The quarry site is mapped within the Drinking Water Catchment Map of the LEP. Runoff from the catchment area of the quarry footprint is directed to the sediment basin that is located on the floor of the quarry. There are no watercourses that run through the quarry site and the proposed management of the sediment basin will prevent sediments or stormwater runoff from leaving the quarry site. The EPA has required that an updated Stormwater Management Plan be provided in accordance with the 'Blue Book'. The proposed measures once implemented will minimise any adverse impacts on the quality and quantity of surface water and groundwater entering drinking water storages.

(ii) any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the draft instrument has been deferred indefinitely or has not been approved),

No relevant draft environmental planning instruments relevant to the proposal.

(iii) any development control plan,

Development Control Plan for Development in Rural Zones (DCP)

There are no specific requirements for extractive industries under the DCP. The application was advertised and notified in accordance with the DCP and the requirements of the DCP provisions were adequately addressed through the Environmental Impact Statement submitted with the application. The proposed development is considered to be consistent with the relevant development controls in the DCP.

(iiia) any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F,

A draft planning agreement has been offered by the applicant and the draft agreement forms part of the assessment of the proposed modifications to the quarry operations.

(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), that apply to the land to which the development application relates,

The proposed development is not inconsistent with the prescribed matters.

(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality.

Further assessment by Council of proposed amendments to condition 1

Condition 1 of the consent refers to the documents and plans that are relevant for the approval and reads as follows:

1. The development being completed in conformity with the Environmental Planning & Assessment Act 1979, the Regulations thereunder, the Building Code of Australia and being generally in accordance with the following documents and plans:
 - 'Hard Rock Quarry: Environmental Impact Statement', dated March 2014, prepared by Outline Planning Consultants Pty. Limited; including
 - Flora & Fauna Assessment by BushfireSafe (Australia) Pty Ltd, February

2014

- Noise Impact Assessment by Vicpac Engineers & Scientists, dated 18 February 2014
 - Aboriginal Objects Due Diligence Assessment Report, BushfireSafe (Australia) Pty Ltd, dated February 2014 &
 - Traffic & Transport Assessment by RoadNet, dated March 2014
- Erosion and Sediment Management Plan prepared by RoadNet, dated 8 October 2010,

or where modified by any conditions of this consent.

The applicant has proposed a modification to condition 1 to remove the reference to the Erosion and Sediment Management Plan and to include references to the Statement of Environmental Effects and accompanying documents submitted with the application to modify the consent.

Council has no objection to the removal of the references to the Erosion and Sediment Management Plan as it is agreed that it relates to a previous approval for the quarry and which has now been superseded.

It is submitted that the quarry operates in accordance with the November 2014 Quarry Plan of Management and subsequent updated annual Plans of Management as required by the consent. There is no objection to the reference to the documents Statement of Environmental Effects accompanying the s4.55 application and supporting documents. A draft condition is provided in the Schedule of Draft Conditions to this report.

Amendments to other conditions of consent

When an application is made to modify a consent the application must be evaluated as required by s4.55(3) and relevant matters referred to in s4.15 must be considered. It is submitted that the Consent Authority has power to impose conditions in respect of consent to a modification application after considering all matters relevant to original consent and the proposed modification. When considering such an application the Consent Authority can consider relevant elements of the proposal and if it perceives a need to, may impose a new condition. (Reference: *1643 Pittwater Road Pty Ltd v Pittwater Council* [\[2004\] NSWLEC 685](#). (51 – 54)).

New conditions of consent that are proposed are as follows:

1. Additional condition 13B to reflect the maximum number of loaded quarry trucks permitted on the haul route on any particular day of the week as proposed under the application. This is in similar terms to a proposed condition of the applicant.
- 13B. A maximum of 66 loaded quarry trucks within the approved hours of operation Monday - Friday and a maximum of 36 loaded quarry trucks within the approved hours of operation on Saturdays are permitted to travel along the approved haul route.
2. New Condition 36 to reflect the agreement to enter into a Voluntary Planning Agreement and to reflect Council's resolution. A copy of the quarry owner's

submission to Council in relation to an offer of a Voluntary Planning Agreement is provided in the attachments.

36. Pursuant to section 4.16(1) of the *Environmental Planning and Assessment Act 1979* (EP&A Act), the applicant is to execute and deliver to the Council the Planning Agreement, in accordance with Subdivision 2, Division 6 of Part 4 of the EP&A Act, in the terms which the applicant has offered to enter into and the resolution of Clarence Valley Council Item 14.048/18 on 15 May 2018.
3. New Condition 37 in regard to the updated code of conduct and NSW RMS advice for it to be regularly reviewed:
37. The quarry is to operate in accordance with the Sheridan's Hard Rock Quarry Driver Code of Conduct and Traffic Management Plan dated February 2018. The Code of Conduct is to be regularly reviewed with the submission of the annual updated Plan of Management required under this consent.
4. New condition 38 requiring that the quarry machinery have on-board weighing systems to keep accurate records of extraction rates of the quarry. As per the applicant's advice the records are to be provided on a quarterly basis i.e. every three (3) months from the approval of MOD2016/0035.
38. The quarry is to have and maintain on-board weighing systems installed on all front end loaders, excavators and all other loading machinery in order to keep accurate records of extraction rates. The stored weighing data is to be provided to Council every three (3) months from approval of the application to modify the consent under MOD2016/0035.
5. New condition 39 to reflect the requirement for an independent annual road audit to be undertaken and submitted to Council.
39. An annual independent road audit of the road condition of the haul route is to be undertaken by a suitably qualified consultant, agreed to by both the quarry operator and Council, at full cost to the quarry operator. The independent road audit report is to be submitted to both Council and the quarry operator on its completion.
6. New conditions 40, 41 & 42 to reflect the requirements of the applicant to obtain approval to carry out works in the public road reserve in accordance Section 138 of the Roads Act 1993. It is intended that a Section 138 approval will expire and have to be renewed annually.
40. Approval pursuant to Section 138 of the Roads Act 1993 to carry out works required by the development consent on or within the public road reserve is to be obtained from Clarence Valley Council.

Any rectification works identified in the road audit will require a works design prepared by a suitable qualified professional.

A Section 138 Roads Act application must be accompanied with a design of the proposed works, traffic & construction management plan and erosion and

sediment control plan.

The Section 138 approval will expire and have to be renewed annually.

41. Prior to the commencement of works inside the road reserve the applicant is required to submit the following to Council
 - Notice of Commencement, 48 hours before commencement.
 - Notification to the residents affected by the works, one (1) week before commencement.
42. Upon the completion of the works certification of the works from the supervising professional must be submitted to Council.

A review of an updated traffic impact assessment by the Applicants, including:

- a. A road pavement impact assessment on the haul route,
- b. An assessment of the intersection of Bald Hills Road and Waterfall Way using current traffic data, and
- c. An assessment of the intersection of Cornells Road and Bald Hills Road.

It is submitted that Council's concerns as to the ongoing condition and maintenance issues of the haul route under the maximum permitted peak volumes of haul route traffic will be suitably addressed under a Voluntary Planning Agreement, in the terms agreed with Clarence Valley Council.

Correspondence from the NSW Roads and Maritime Services dated 12 March 2018 has provided that the information provided to the Service from the applicant that previous identified concerns have been addressed, including an updated traffic impact assessment of the intersection of Bald Hills road and Waterfall Way and that the RMS and Bellingen Shire Council has been further consulted in regard to the impacts of peak truck movements through Dorrigo and Bellingen.

Details of the outcome of Council negotiation with the applicant to ensure appropriate monitoring and compliance arrangements for quarry truck movements

As agreed with the applicant and similar to Council's agreement with other quarry operations the use of the on-board weighing method currently used by the quarry will provide an appropriate method to accurately monitor quarry production. Condition 6 of the consent requires written details of the quantity of material extracted in the immediately preceding 12 months to be submitted with an annual update of the Plan of Management. It is proposed that a new condition 38 be imposed on the consent to reflect the agreed monitoring of quarry product that is to be provided on a quarterly basis (every 3 months). This will also enable Council to appropriately monitor the extraction rates over the annual operation of the quarry.

Evidence that the RMS and Bellingen Council have been further consulted with particular regard to the impacts of peak truck movements through Dorrigo and Bellingen

To facilitate further consultation information letters were sent out on 12 December 2017 to all known interested parties, former persons who made submissions and registered an appearance at the last Panel meeting including Dorrigo Plateau Local Aboriginal Land Council, Bellingen Shire Council and relevant agencies (EPA, RMS NPWS, OEH). Full copies of

the documents were made available at the Bellingen Shire Council for interested persons to view the full documentation.

Public Notice was also made in regard to the proposed draft Voluntary Planning Agreement:

- Clarence Valley Local Government Area Daily Examiner newspaper on 16 December 2017 with the exhibition period ending on 15 January 2018.
- An addition advertisement was also made in the Bellingen Courier Sun 20 December 2017 and the Dailey Examiner 23 December 2017.

Other than the responses from the NSW RMS no other submission was made from the advertisements and notification of the applicant's information and draft Voluntary Planning Agreement.

With regard to the abovementioned issues, the submission of information from the applicant and subject to the imposition of suitable conditions of consent the impacts from the proposed modification to Sheridan's Quarry consent DA2014/0098 it is submitted that the impacts can be suitably managed and the proposal is submitted for approval by the Panel as:

- Road maintenance could potentially be better managed by the quarry operator under a Voluntary Planning Agreement who is able to constantly monitor the road conditions and requirement of repairs.
- Damages that occur to the road may require a higher level maintenance than Council can provide given the remote location of the haul route roads and the additional cost will be borne by the quarry operator.
- Sections of the gravel roads on the haul route that are currently not constructed to Council's design specifications will be upgraded over time to provide progressive road upgrades to meet Council's design specifications. The maintenance schedule requires that the roads will be periodically maintained and improved.
- Road safety audits from an independent consultant will be provided annually.
- The proposal, if implemented with the recommended conditions, will on balance provide an ongoing sustainable development with reasonable buffers to the maximum perceived adverse impacts; particularly during peak traffic periods.
- Ecologically, the impacts of the development can be adequately managed through the approved conditions of consent.
- Economically there are positive outcomes through the efficient use of available natural resource for infrastructure.
- Socially there are potential negative impacts on adjoining communities that use the haul route and Waterfall Way which will be improved under the VPA and road maintenance agreement. Cultural and historical impacts have been adequately assessed. It is anticipated that cultural values will not be impacted by the proposed modification.
- The increase in impacts will be intermittent and dependent on demand for quarry product and can be adequately managed through consent requirements.

It is recommended that the proposed development be approved subject to reasons outlined in this report and the proposed draft conditions listed in Schedule 1 to this report.

(c) the suitability of the site for the development,

The site has a current development approval for an extractive industry and the resource located on the site is of a high quality. The development footprint is over an area that is not considered to be of high ecological significance and measures to protect the environment are in place. The adjoining escarpment which is of high ecological significance will be protected from ongoing quarry operation. The surrounding lands are zoned for rural purposes and the proposal is considered to have a minimal impact on these uses. The site is located in close proximity to major roads, being the Waterfall Way and the Armidale-Grafton Road, and associated potential markets. Under the proposed VPA road maintenance issues will be provided to an acceptable level of service. With the recommendations in this report adopted there are no unreasonable conflicts with surrounding land uses anticipated.

(d) any submissions made in accordance with this Act or the regulations,

The proposed development was notified and advertised in accordance with Act, Regulations and Council's DCP. During the exhibition period eight (8) submissions (including Agency submissions) were received. A copy of the submissions has been provided to the Panel Secretariat. The concerns raised in the submissions are considered in this assessment. The applicant's consultant has responded to the issues raised in the submissions, a copy of the response is included as an attachment to this report.

- Truck movements on Waterfall Way, amenity impacts, impacts on threatened fauna, monitoring of truck movements and health and safety

Concern has been raised regarding the potential increase of quarry traffic along Waterfall Way, the suitability of the road, road safety and the impacts on the towns located along this road; these being Dorrig and Bellinger.

The Roads and Maritime Services (RMS) has advised that their key interests are the safety and efficiency of the road network, traffic management, the integrity of infrastructure assets and the integration of land use transport. The RMS has not objected to the proposal and has commented that the increase in truck numbers hauling from Sheridan's Quarry will be within the operational capacity of Waterfall Way. The RMS has also recommended that a Code of Conduct that is regularly reviewed be required as a condition of consent.

It is noted that the modification does not propose to amend the restriction outlined in condition 13A of the Notice of Determination, prohibiting laden quarry trucks from the quarry east of the intersection of Waterfall Way and Maynards Plains Road on a Saturday.

It is also noted that a Code of Conduct was a requirement of the current approval for Sheridan's Hard Rock Quarry and a new condition is proposed in the draft conditions for this approval. As per the consent the Code of Conduct has been implemented through the Quarry Plan of Management.

The increases in quarry traffic along Waterfall Way will be dependent on the demand for quarry product, particularly during the period of works for the Pacific Highway upgrade project which is projected to be completed by 2020. The annual quarry output is limited through the consent conditions and the quarry operator could not deliver quarry product at the peak rate all year round, if it did the quarry operator will be open to legal action as it would be a breach of the conditions of consent. It is also a requirement of the consent for the quarry operator to keep accurate records of quantities extracted for inspection to enable Council officers to monitor extraction rates. An agreed method for recording and monitoring through the provision of records from the on-board weighing system installed on front end loaders and excavators is proposed.

One submission raised concerns on the potential impacts on the Bellinger River Snapping Turtle. The quarry has consent to deliver quarry product along the Waterfall Way. The survival rates of the Snapping Turtle appear to be complex and the increase in truck movements proposed is not considered to have a direct correlation or increased impact to

the survival rates of the turtle.

- Comments from NSW Agencies

Comments provided by the NSW Roads and Maritime Services, NSW Environmental Protection Authority and NSW Office of Heritage & Environment have been discussed in the report and considered in reaching the proposed recommendation.

The proposed modification, along with the adoption of the recommendations outlined in this report and the existing conditions of consent, is considered to be reasonable to enable the quarry operator to meet peak demand periods for quarry product, to safely haul quarry product within the operational capacity of the surrounding road network.

(e) the public interest

The proposed development complies on planning grounds with the relevant legislation and local Council policies ensuring that the public interest is maintained and any potential impacts from the development are minimised.

The majority of submissions raised concerns with Waterfall Way and the capacity of the existing road network to support the increased traffic from the development. These issues are considered under the proposal and options presented for the determination of the proposal.

The terms of an agreed Voluntary Planning Agreement have been considered by Council and if adopted into the consent it will be exhibited and advertised in accordance with legislative requirements.

Schedule 1: Draft Advices and Conditions

The conditions of consent are proposed to be modified as follows:

A. Modify Condition 1 as follows:

1. The development being completed in conformity with the Environmental Planning & Assessment Act 1979, the Regulations thereunder, the Building Code of Australia and being generally in accordance with the following documents and plans:
 - 'Hard Rock Quarry: Statement of Environmental Effects', dated March 2014, prepared by Outline Planning Consultants Pty. Limited; including
 - Flora & Fauna Assessment by BushfireSafe (Australia) Pty Ltd, February 2014
 - Noise Impact Assessment by Vicpac Engineers & Scientists, dated 18 February 2014
 - Aboriginal Objects Due Diligence Assessment Report, BushfireSafe (Australia) Pty Ltd, dated February 2014
 - Traffic & Transport Assessment by RoadNet, dated March 2014
 - ~~Erosion and Sediment Management Plan prepared by RoadNet, dated 8 October 2010,~~
 - The report entitled Statement of Environmental Effects accompanying a s4.55 Application to Clarence Valley Council Sheridan's Hard Rock Quarry Pty Ltd Pt. Lot 62 & 63 in Deposited Plan 752807 No. 242 Faheys & Bulgins Road Hernani, NSW, prepared by Outline Planning Consultants Pty Ltd and dated June 2016; with attachments:
 - Acoustic advice from consultants V IPAC dated 11 May 2016 Ref : 29N-12-0122-GCO-473113-0;
 - Dust advice from consultants VIPAC dated 23 June 2016 Ref: 29N-

12-0122-GCO-399163-0;

- Advice from traffic consultants Streetwise Pty Ltd to Clarence valley Council dated 22 June 2016;
- Traffic Impact Assessment report prepared by traffic consultants Streetwise Pty Ltd dated 15 June 2016.

- The applicant's submission dated 9 June 2017,

or where modified by any conditions of this consent.

B. Insert new conditions of consent 13B, 36, 37 & 38 as follows:

- 13B. A maximum of 66 loaded quarry trucks within the approved hours of operation Monday - Friday and a maximum of 36 loaded quarry trucks within the approved hours of operation on Saturdays are permitted to travel along the approved haul route.
36. Pursuant to section 4.16 of the Environmental Planning and Assessment Act 1979 (EP&A Act), the applicant is to execute and deliver to the Council the Planning Agreement, in accordance with Subdivision 2, Division 6 of Part 4 of the EP&A Act, which the applicant has offered to enter into following the resolution Clarence Valley Council Item 14.048/18 on 15 May 2018.
37. The quarry is to operate in accordance with the Sheridan's Hard Rock Quarry Driver Code of Conduct and Traffic Management Plan dated February 2018. The Code of Conduct is to be regularly reviewed with the submission of the annual updated Plan of Management required under this consent.
38. The quarry is to have and maintain on-board weighing systems installed on all front end loaders, excavators and all other loading machinery in order to keep accurate records of extraction rates annual. The stored weighing data is to be provided to Council every three (3) months from approval of the application to modify the consent under MOD2016/0035.
39. An annual independent road audit of the road condition of the haul route is to be undertaken by a suitably qualified consultant, agreed to by both the quarry operator and Council, at full cost to the quarry operator. The independent road audit report is to be submitted to both Council and the quarry operator on its completion.
40. Approval pursuant to Section 138 of the Roads Act 1993 to carry out works required by the development consent on or within the public road reserve is to be obtained from Clarence Valley Council.

Any rectification works identified in the road audit will require a works design prepared by a suitable qualified professional.

A Section 138 Roads Act application must be accompanied with a design of the proposed works, traffic & construction management plan and erosion and sediment control plan.

The Section 138 approval will expire and have to be renewed annually.

41. Prior to the commencement of works inside the road reserve the applicant is required to submit the following to Council
 - Notice of Commencement, 48 hours before commencement.
 - Notification to the residents affected by the works, one (1) week before commencement.
42. Upon the completion of the works certification of the works from the supervising professional must be submitted to Council.

Attachments

Submissions received during exhibition period
Statement of Environmental Effects June 2016
NSW EPA Response 22/9/2016
NSW RMS Response 21/9/2016 & 12/3/18
NSW OEH Response 22/9/2016
JRPP Record of Deferral
Consultant's (for applicant) response to notice for deferral 9 June 2017
Council's minutes and resolution
Draft Voluntary Planning Agreement
Quarry Owners submission to Council meeting 14 May 2018
Driver Code of Conduct February 2018