

JOINT REGIONAL PLANNING PANEL

(Western Region)

JRPP No	JRPP Reference Number: 2016WES012 DA
DA Number	2016/202
Local Government Area	Bathurst Regional
Proposed Development	Extractive Industry
Street Address	233 College Road, South Bathurst
Applicant/Owner	Norma Rowling (applicant) Heather Carter (owner)
Number of Submissions	1 (in support)
Recommendation	Approval with Conditions
Report by	Lucie Clifton, Development Control Planner

PLANNING CONTEXT

NSW LEGISLATION
Environmental Planning and Assessment Act 1979 (as amended)
REGULATIONS
Environmental Planning and Assessment Regulation 2000
STATE ENVIRONMENTAL PLANNING POLICIES
State Environmental Planning Policy (State and Regional Development) 2011
State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007
State Environmental Planning Policy 33 - Hazardous and Offensive Developments
State Environmental Planning Policy 55 - Remediation of Land
State Environmental Planning Policy (Infrastructure) 2007
ENVIRONMENTAL PLANNING INSTRUMENTS
Bathurst Regional Local Environmental Plan 2014
DEVELOPMENT CONTROL PLANS
Bathurst Regional Development Control Plan 2014

RECOMMENDATION AND ASSESSMENT REPORT

Development Application Information

Application No: 2016/202
Applicant: Norma Rowling
Property: Lot 8 DP575940, 233 College Road, South Bathurst
Proposal: Extractive Industry.

Purpose of Report

The purpose of this report is to seek determination from the Western Joint Regional Planning Panel of the subject development application for an extractive industry at 233 College Road, South Bathurst.

Recommendation

That the Western Regional Joint Regional Planning Panel grant consent to Development Application 2016/202 for:

EXTRACTIVE INDUSTRY

Subject to conditions included in the Draft Notice of Determination (see **attachment 1**) with any further conditions or amendments as determined by the Acting Director Environmental Planning & Building Services pursuant to Section 80 (A) of the Environmental planning and Assessment Act 1979, as amended.

Executive Summary

Development Application 2016/202 (2016WES012) for an extractive industry was lodged with Council on the 28 June 2016.

The subject site is Lot 8, DP 575940, 233 College Road, South Bathurst. College Road runs perpendicular to the subject site generally in a north-south direction. The subject site is 25.02 hectares. The subject site currently contains a dwelling and numerous rural outbuildings, located on eastern side of College Road.

On the western boundary of the site is the Great Western Railway line and Vale Road (Main Road 54).

There is currently one existing extraction pit on the subject site where sand and gravel extraction has occurred since the 1960's. Development consent to continue extraction on the land was granted in 1996(DA96/066) pursuant to SEPP 37 – Continued Mines and Extractive Industries. The existing development consent limits the area to less than 2 hectares in area and production less than 30,000m³ per annum. The consent itself is due to expire on 5 December 2016

The current proposal forms an extension of this existing pit.

Access to the pit will be by way of the existing entry from College Road. The proposal does not involve crossing the Great Western Railway line or access to Vale Road.

The nearest non-associated residence is located approximately 380 metres south of the extraction area (546 Vale Road). Other residences located on the neighbouring properties to the north and south are more than 600 metres away from the extraction area. There are no other non-associated residences in the immediate vicinity of the subject site.

The proposal involves an extension to the existing extraction area of approximately 2.7ha. The extension of the extraction area will occur to the west and south-west.

The proposed extension is not proposing to extract more than 30,000 tonnes of gravel and sand per annum. Screening, occasional crushing and sorting of gravel will continue within the existing extraction area.

The proposed development is Designated Development pursuant to Clause 19 Extractive Industries of Schedule 3 of the Environmental Planning and Assessment Regulation 2000.

Pursuant to Schedule 4A of the Environmental Planning and Assessment Act 1979 (as amended) the consent authority is the Joint Regional Planning Panel.

The proposed development is not considered Integrated Development under Section 91 of the Environmental Planning and Assessment Act 1979. Notably the development does not require a Controlled Activity Approval as the extraction area is greater than 40m of any water course and an Environmental Protection Licence is not required as the quarry does not exceed annual and daily rates of the nominated threshold.

The Development Application has also been referred to a number of Government Authorities including the Roads and Maritime Services, Environment Protection Authority, Department of Primary Industries Water, Department of Primary Industries Lands and Office of Environment and Heritage. These Departments did not raise any significant issues that would preclude approval.

The Development Application was publicly exhibited in accordance with the requirements for Designated Development between 11 July 2016 and 9 August 2016. The proposal was notified to adjoining property owners. During the exhibition period, one (1) submission was received in support of the proposed development.

Proposed Development

The proposed development seeks consent for the continued extraction of sand and gravel. The existing extractive industry has consent pursuant to DA96/066 however that consent is due to lapse in December 2016.

The development involves expansion of the existing pit by 2.7ha within a total project site area of approximately 10ha. The expansion is to the south and south-west of the existing quarry area. It is expected the expansion will extend the life of the quarry by fifteen (15) years.

Material will be extracted in two methods. Firstly, bulldozer push would strip the gravel from the top of the quarry face to the bottom. Secondly, excavator recovery uses an excavator bucket to collect and direct to trucks for removal. The excavated material will be either stockpiled or loaded immediately onto customer trucks. The quarry proposes to extract on a campaign basis, for periods of 2-3 week blocks to supply for 1-2 months. Screening, sorting and landform construction activities would occur during times of non-extraction.

The applicant proposes to extract between 1,000m³ and 10,000m³ per month depending on demand. These rates are equivalent to existing extraction rates.

The screening process involves stockpiling the material within the existing area of the quarry with a screening plant separating fine clays, silts and sands from gravel. Water is applied when necessary. Sorting and blending of extracted material will be on a needs basis as per customer requirements and specifications.

Transport movement remains similar to existing conditions which generally average 12 truck movements daily. During higher volume campaigns, it is expected there may be up to 30 truck movements daily.

No fixed plant/equipment will be left on the site. The following plant/equipment will be used:

- One medium sized bulldozer
- One medium sized excavator (40t)
- One 16t front end loader
- 1 operating dump truck
- Water truck for dust suppression to be used occasionally
- All machinery will be fuelled with a mobile tanker

The quarry (inclusive of truck movements) will operate between the hours of 7:00am and 6:00pm Monday to Friday. Product sales may be undertaken between 7:00am to 5:00pm on Saturday. No activity is proposed for Sundays and Public Holidays.

Prior to the commencement of operation, land preparation will be undertaken. This involves land clearing (predominately pasture grass) that is stripped and transferred to area prepared for rehabilitation and future use. The stockpile management area aims to achieve 50% grass coverage in 50 days, and 70% in 120 days, in order to minimise erosion.

Runoff from the extraction area is collected in a sediment basin to be used for dust suppression. A clean water diversion drain will be installed immediately upslope of the extraction area. Discharge will be spread via sills to grassed areas of the subject site.

Rehabilitation is proposed to occur progressively at selected decommissioning of areas of the subject site and at the overall completion of extraction. Rehabilitation will involve backfilling, battering of 21.5° to allow for stabilisation and growth of pasture.

The subject land

The subject land comprises one parcel known as 233 College Road, South Bathurst. It is legally defined as Lot 8 DP 575940.

College Road runs perpendicular to the subject site generally in a north-south direction. The subject site is 25.02 hectares. The subject site currently contains a dwelling and numerous rural outbuildings and these are located on eastern side of College Road.

There is one existing pit on the subject site where sand and gravel has occurred since the 1960's. The existing pit is approximately 480 metres from College Road and 100 metres from Vale Road (MR 54).

The nearest non-associated residence is located approximately 380 metres south of the extraction area. Other residences located on the neighbouring properties to the south and north are more than 600 metres of the extraction area.

Legislative Requirements

(i) Joint Regional Planning Panel (JRPP)

The Joint Regional Planning Panel is the consent authority for the determination of the subject Development Application, by virtue Schedule 4A of the Environmental Planning and Assessment Act 1979.

(ii) Designated Development

Environmental Planning and Assessment Regulation 2000

“4 What is Designated Development?”

- (1) Development described in Part 1 of Schedule 3 is declared to be designated development for the purposes of the Act unless it is declared not to be Designated development by provision of Part 2 or 3 of that Schedule.”*

“Schedule 3 Designated Development

Part 1 What is Designated Development?

19 Extractive Industries

- (1) Extractive industries (being industries that obtain extractive materials by methods including excavating, dredging, tunnelling or quarrying or that store, stockpile or process extractive materials by methods including washing, crushing, sawing or separating):*
- (a) that obtain or process for sale, or reuse, more than 30,000 cubic metres of extractive material per year, or*
 - (b) that disturb or will disturb a total surface area of more than 2 hectares of land by:*

- (i) clearing or excavating, or
- (ii) constructing dams, ponds, drains, roads or conveyors, or
- (iii) storing or depositing overburden, extractive material or tailings, or
- (c) that are located:
 - (i) in or within 40 metres of a natural waterbody, wetland or an environmentally sensitive area, or
 - (ii) within 200 metres of a coastline, or
 - (iii) in an area of contaminated soil or acid sulphate soil, or
 - (iv) on land that slopes at more than 18 degrees to the horizontal, or
 - (v) if involving blasting, within 1,000 metres of a residential zone or within 500 metres of a dwelling not associated with the development, or
 - (vi) within 500 metres of the site of another extractive industry that has operated during the last 5 years.”

The proposed development is Designated Development because the quarry is an extractive industry disturbing more than 2 hectares of land and is within 500m of a non-associated dwelling. Another extractive Industry is within 600m of the subject site.

(iii) Integrated Development

The proposed development is not considered Integrated Development under Section 91 of the Environmental Planning and Assessment Act 1979. The proposed quarry and extension is more than 40 metres of any water course and extraction does not exceed daily or annual threshold for an Environmental Protection Licence.

(iv) S79C Assessment

79C(1)(a)(i) Environmental planning instruments (State Environmental Planning Policies and Local Environmental Planning Policies)

SEPP (State and Regional Development) 2011

The proposed development is listed under Schedule 4A of the Environmental Planning and Assessment Act 1979 and accordingly the Joint Regional Planning Panel is the consent authority, having functions of a consent authority under SEPP (State and Regional Development) 2011.

SEPP (Mining, Petroleum Production and Extractive Industries) 2007

State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007 applies to the whole state of NSW.

SEPP (MPPEI) prevails over any inconsistencies with any other environmental planning instruments including Bathurst Regional Local Environmental Plan (BRLEP 2014).

Under the SEPP (MPPEI) the proposed development is defined as an *extractive industry*. The definition of an extractive industry is:

“The winning or removal of extractive materials (otherwise than from a mine) by methods such as excavating, dredging, 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:

- (a) turf farming, or
- (b) tunnelling for the purpose of an approved infrastructure development, or
- (c) cut and fill operations, or the digging of foundations, ancillary to approved development, or
- (d) the creation of a farm dam if the material extracted in the creation of the dam is used on site and not removed from the site”.

It is noted that pursuant to Clause 7(3) of the SEPP, an extractive industry may be carried out with development consent on any land on which agriculture or industry may be carried out. Under BRLEP 2014, agriculture may be carried in the RU1 Primary Production zone. Accordingly, the SEPP enables consent to be granted to the development subject to consideration of the matters contained in the SEPP.

Part 3 – Development Applications – matters for consideration

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*

The adjoining and surrounding land represents a mixture agriculture and non-typical uses. Other significant uses in the locality include the Bathurst Harness Racing Club to the north, the Mount Panorama Racing Circuit to the west, Council's Waste Management Centre on College Road and Omya Minerals limestone processing facility to the south.

- (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*

The subject lot and adjoining lot to the south, east and west are used for agricultural uses and a range of non-typical uses as noted above.

There is unlikely to be significant adverse impacts on surrounding land uses.

Given the continuous use of the quarry and minor extension, the impact on the preferred uses of the land will be minimal.

- (iii) *any ways in which the development may be incompatible with any of those existing, approved or likely preferred uses, and*

Subject to the inclusion of appropriate management controls the development is not considered incompatible with the existing, approved or likely preferred uses in the area.

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

The material extracted from the subject site will be crushed and screened and then transported privately.

Having been in operation since the 1960's the operation of the quarry demonstrates the

successful business within the region supply the locality with gravel and sand resources. It is considered that the proposed continuation and minor expansion of the quarry is capable of operating in a consistent manner to the existing conditions.

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

No blasting is required to extract the gravel. Extraction will occur in the form of bulldozer push and excavator recovery. Further, extraction will occur on a campaign basis (i.e. 2-3 weeks at a time) to ensure 1-2 months of gravel supply.

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

(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.

The proposal adjoins the existing extractive industry on the land and accordingly Clause 13 applies.

(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

(d) any incompatibility, as referred to in paragraph (a) (iii).

The existing use as a quarry is considered a compatible continued use given it has operated as a quarry since the 1960's.

The proposed development is unlikely to have significant adverse impact on the current or future extraction of resources as it has been strategically designed to ensure the longevity of the quarry.

The proposed development is not considered to be incompatible with any existing or an approved use within the vicinity given it is currently operating with minimal disturbance to surrounding land uses.

14 Natural resource management and environmental management

(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,

Queen Charlotte Creek, a 3rd Strahler order waterway, is located approximately 130 metres east of the quarry area. The proposed extraction and extension area is more than 40 metres from Queen Charlotte Creek. The quarry and proposed extension will not require to remove or add water from Queen Charlotte Creek.

DPI (Water) has advised that several requirements are required should the quarry need to irrigate, intercept ground water and exceed the Maximum Harvestable Right.

Further, DPI (Water) requires that maintenance of surface water in the dam post operation is required during the rehabilitation process.

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

The applicant has prepared an Ecological Assessment submitted with the application.

The Ecological Assessment considers both aquatic ecology and land-based ecology.

Aquatic Ecology investigations did not reveal any threatened aquatic species or populations that have potential to occur within the subject site. No aquatic communities were identified within the subject site.

Land-based ecology investigations did not identify any native vegetation communities due to the disturbed history of the subject site. Flora species identified several species, but only two of which are native, being Couch (*Cynodon dactylon*) and Red Box (*Eucalyptus polyanthemus*). The Ecological Assessment noted that the native species are in competition with the extensive exotic and weed species found at the subject site.

The subject site has the potential to contain fauna species, given presence within the Bathurst Regional LGA. No threatened species, populations or communities have previously been recorded at the subject site. The Ecological Assessment acknowledges that due to the disturbed nature of the subject site, low levels of remnant vegetation and impact on waterways, fauna species are likely to be small populations.

It is considered the proposed quarry and extension are unlikely to have a further impact on the ecology of the subject site.

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

It is anticipated that emissions from plant and equipment will result in the emission of some greenhouse gas however it is not considered necessary to impose specific conditions in relation to greenhouse gas emissions.

(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.

Emissions will be limited to machinery associated with quarrying activities and transport.

15 Resource recovery

(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.

The development will result in limited amounts of waste being generated. The majority of material will be either processed and transported or used for rehabilitation purposes. The small amount of waste rock generated will be repurposed on site for water management features or final rehabilitation works.

(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.

Given the limited amount of waste generated no specific conditions are considered warranted.

(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 volume of waste/spoil will be minimal and refusal on this basis is not considered warranted.

16 Transport

(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.*

Access to the site will be by way of College Road as currently occurs.

The quarry proposes to extract on a campaign basis, for periods of 2-3 week blocks to supply for 1-2 months. Screening, sorting and landform construction activities would occur during times of non-extraction.

Transport movement are considered to remain similar to existing conditions, whereby 12 truck movements occur daily. During higher volume campaigns, it is expected there may be up to 20 truck movements daily.

Given the relatively low number of heavy vehicle movements proposed it is not considered necessary to impose specific conditions (with the exception of those recommended by RMS) in relation to transport of material as outlined in Clause 16.

It is further noted the College Road is also used to service the Council Waste Management Centre located to the south of the site. The Waste Management Centre is also the generator of a significant number of heavy vehicle movements

- (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.*

College Road is a Council controlled road. Whilst the subject land has frontage to the RMS controlled Vale Road (MR 54) no access is proposed from it.

The Development Application was referred to the RMS for its consideration and comment. RMS raised no objection to the proposed development and recommended conditions.

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.*

RMS did not object to the proposed development but did make a recommendation that the applicant prepare a Code of Conduct relating to transport of materials including:

- details of transportation hours;
- procedure for transport of hazardous materials;
- details of school bus routes, operating hours and pick-up and drop-off points

- along the transportation routes;
- Requirement for drivers to operate in a safe, professional and courteous manner; and
- Safe intersection Site Distances requirements to be maintained at the vehicular access off College Road.

Council will provide RMS with a copy of the conditions.

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.

17 Rehabilitation

- (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*

The NSW Department of Industry – Resources & Energy raised no objection to the proposed development.

Rehabilitation procedures are outlined in the EIS identifying rehabilitation is to occur during the life of the quarry by progressively battering and forming the landform for unused areas, as well as complete rehabilitation once the site is decommissioned. Conditions will be imposed regarding rehabilitation of the site.

- (b) require waste generated by the development or the rehabilitation to be dealt with appropriately, or*

The development will result in limited amounts of waste being generated. The majority of material will be either processed and transported or used for rehabilitation purposes. The small amount of waste rock generated will be repurposed on site for water management features or final rehabilitation works.

- (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*

The principal potential source of contamination from the proposed development will be from fuel or oil spill from plant or equipment. The plant operator's standard procedures in relation to hazardous materials will apply in the event of a fuel or oil spill.

- (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.*

The applicant will undertake responsibility for the decommissioning and rehabilitation of the subject site in accordance with the conditions of consent, licencing requirements and other approvals.

SEPP 33 - Hazardous and Offensive Developments

The development would not be classified as being a hazardous or offensive industry or a potential hazardous or offensive industry.

SEPP 55 - Remediation of Land

The subject site is identified as being contaminated lands, being Mining and Extractive Industries (561) and prior use as Scrap Yards (581).

The subject site is seeking consent for continued use and expansion of an extractive industry. It is not considered necessary for remediation or further investigation at this stage. Rehabilitation processes should be undertaken in accordance with SEPP 55 – Remediation of Land.

SEPP (Infrastructure)

The Great Western Railway line is located approximately 70m from the existing extractive industry. The works do not fall within the triggers contained in Clause 86 of SEPP (Infrastructure) for referral/concurrence from State Rail.

86 Excavation in, above or adjacent to rail corridors

- (1) This clause applies to development (other than development to which clause 88 applies) that involves the penetration of ground to a depth of at least 2m below ground level (existing) on land:*
- (a) within or above a rail corridor, or*
 - (b) within 25m (measured horizontally) of a rail corridor. or*
 - (c) within 25m (measured horizontally) of the ground directly above an underground rail corridor.*

The extension to the extractive industry is generally to the west of the current operations. Accordingly works will be further away from the railway line than the current operations.

Bathurst Regional Local Environmental Plan 2014

The following clauses of Bathurst Regional Local Environmental Plan 2014 have been assessed as being relevant and matters for consideration in assessment of the Development Application.

Land Use Table

The subject site is zoned RU1 Primary Production. The objectives of the zone are as follows:

- *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 this zone and land uses within adjoining zones.*
- *To maintain the rural and scenic character of the land.*
- *To provide for a range of compatible land uses that are in keeping with the rural character of the locality, do not unnecessarily convert rural land resources to non-agricultural land uses, minimise impacts on the environmental qualities of the land and avoid land use conflicts.*

The proposal is not inconsistent with the objectives of the zone.

The proposal is defined as an *extractive industry*, the definition pursuant to Bathurst Regional LEP 2014 of which is:

“... 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.”

Extractive industries are permissible with consent in the RU1 Primary Production zone.

7.1 Flood planning

- (1) *The objectives of this clause are as follows:*
 - (a) to minimise the flood risk to life and property associated with the use of land,*
 - (b) to allow development on land that is compatible with the land's flood hazard, taking into account projected changes as a result of climate change,*
 - (c) to avoid significant adverse impacts on flood behaviour and the environment.*
- (2) *This clause applies to:*
 - (a) land identified as “Flood Planning Area” on the Flood Planning Map, and*
 - (b) other land at or below the flood planning level.*
- (3) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:*
 - (a) is compatible with the flood hazard of the land, and*
 - (b) will not significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and*
 - (c) incorporates appropriate measures to manage risk to life from flood, and*
 - (d) will not significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and*
 - (e) is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.*
- (4) *Development consent is not required by this clause if:*
 - (a) the applicant has notified the consent authority in writing of the development, and*
 - (b) the consent authority has formed the opinion that the development is of a minor nature, and*
 - (c) the consent authority is satisfied that the development meets the requirements of subclause (3), and*
 - (d) the consent authority has advised the applicant in writing before the development is carried out that it is satisfied that development consent is not required because of the exception created by this subclause.*

- (5) *A word or expression used in this clause has the same meaning as it has in the Floodplain Development Manual (ISBN 0 7347 5476 0) published by the NSW Government in April 2005, unless it is otherwise defined in this clause.*
- (6) *In this clause:*

flood planning level means the level of a 1:100 ARI (average recurrent interval) flood event plus 0.5 metre freeboard.

A section of the property is identified as being within the “flood planning area”. The area affected is located on the south-eastern corner of the property. The extractive industry is located outside the flood planning area.

7.6 Mount Panorama environs

- (1) *The objectives of this clause are as follows:*
- (a) *to ensure development in and around the Mount Panorama Racing Circuit accounts for potential noise and other land use conflicts associated with motor racing and related events,*
 - (b) *to ensure the future of Mount Panorama as an international motor racing circuit.*
- (2) *This clause applies to land identified as “50 dBA” on the Mount Panorama Environs Map.*
- (3) *Development consent must not be granted to development on land to which this clause applies unless the consent authority has considered:*
- (a) *whether the development will result in an increase in the number of dwellings or land uses identified by the consent authority as sensitive noise receivers exposed to noise and other land use conflicts from motor racing and associated events, and*
 - (b) *whether noise impacts from motor racing and associated events are mitigated by or minimised by the design, siting or construction of the development to ensure that the amenity of the development is not adversely affected.*

The property is wholly identified as being within the 50 dBA noise contour from the Mount Panorama Racing Circuit. The development does not however involve any residential development nor would it be considered as a sensitive noise receiver.

Bathurst Regional Development Control Plan 2014

Chapter 9 Environmental Considerations

9.3 Riparian land and waterways

Queen Charlotte Creek is identified as a Sensitive Waterway, Key Fish Habitat and Protected Riparian Lands under the Bathurst Regional Development Control Plan 2014.

The proposed extraction is a dry process that will not add water to or remove water from the adjacent Queen Charlotte Creek. The quarry and proposed extension will be more than 40 metres from Queen Charlotte Creek. There is the potential for runoff from the development to impact upon water quality although it is proposed that this be managed by way of erosion and sedimentation control.

9.4 Biodiversity

It is noted that areas to the south and west of the property are identified as being of moderate or high biodiversity. This area is associated with remnants of Box Gum Woodland EEC which occurs in the area.

The extraction area is not located in of the Moderate or High Biodiversity Sensitivity area. The extraction area and its immediate surrounds are highly disturbed and are devoid of all native vegetation.

9.5 Groundwater

The extraction area is identified as being a High Groundwater Vulnerability area under the Bathurst Regional Development Control Plan 2014. Extractive industries are not listed in the types of development that require specific consideration under Chapter 9.5 of the DCP.

9.8 Flora and Fauna Surveys

The applicant has prepared an Ecological Assessment as part of the application.

The Ecological Assessment considers both aquatic ecology and land-based ecology.

Land-based ecology did not identify any native vegetation communities likely due to the disturbed history of the subject site being agricultural use and extraction industry. Flora species identified several species, but only two of which are native, being Couch (*Cynodon dactylon*) and Red Box (*Eucalyptus polyanthemos*). The Ecological Assessment noted that the native species are in competition with the extensive exotic and weed species found at the subject site.

The subject site has a potential to contain fauna species, given their presence within the Bathurst Regional LGA. No threatened species, populations or communities have previously been recorded at the subject site. The Ecological Assessment acknowledges that due to the disturbed nature of the subject site, low levels of remnant vegetation and impact on waterways, fauna species are likely to be small populations.

It is considered the proposed quarry and extension are unlikely to have a significant impact on the ecology of the subject site.

S79(c)(1)(b)Environmental (natural and built), social and economic impacts

Scenic quality

The extractive area and associated facilities will be facing predominately east. The proposed expansion to the current extraction area is 2.7 hectares to the west resulting in a total area of disturbance of approximately 10 ha.

Visual appearance of the proposed extractive industry was not raised as an issue from surrounding landowners.

Whilst there will be an increase in the extraction area, the extraction area will continue to be not visible from College Road due to the slope of the land and adequately setback. The site is visible from the Vale Road and vantage points to the east and south of the site. The proposed continuation of the quarry and expansion will continue to be visible from these viewpoints.

Traffic Generation

Access to the subject site is via College Road. College Road is a sealed Bathurst Regional Council maintained road, accessed from Havannah Street.

The quarry is located east of College Road, approximately 480 metres from the road. Access to the quarry is via an existing internal unsealed road.

College Road is well used as it services Bathurst Waste Management Facility and Bathurst BMX Club. The EIS notes that up to 25% of traffic movement on College Road is heavy vehicles, predominately associated with Bathurst Waste Management Facility.

During an extraction campaign a truck carrying up to 30 tonnes of material would make a maximum of 30 trips a day from the site. Truck movements would be around 12 trips per day outside campaign times. The traffic movement associated with the quarry will continue at existing levels and therefore no increase in traffic generation is expected.

RMS requested a Code of Conduct be prepared to identify hours of transportation, procedure for transporting hazardous materials, prohibiting transportation along school bus routes and at certain times, and requirement for vehicles to operate in safe, courteous manner.

Council has adopted a Section 94 Plan for Traffic Generating Developments. The development will be subject to contributions pursuant to this Plan.

Pollution

Odour

The proposed development is not anticipated to generate any offensive odours.

Noise

The EIS was accompanied by a Noise Impact Assessment prepared by Spectrum Acoustics.

The Noise Assessment did not undertake any direct background noise monitoring in the vicinity. The noise assessment instead relies upon an historical noise assessment associated with Mount Panorama dating back to 1989. The historic noise assessment indicate background noise levels in the order of 38 dBA measured near the north western corner of 233 College Road.

Due to the absence of direct or timely data in relation to the noise levels a review of other acoustic assessments undertaken in the vicinity of the proposal has occurred. The review indicated that background levels in the vicinity were generally lower than the 38 dBA adopted.

SOURCE	PROPERTY	RBL
PKA – Assessment of proposed Go Kart Facility at Mount Panorama	402 Conrod Straight	31 dBA
	527 Conrod Straight	32 dBA

PKA – Assessment of Bathurst Harness Racing proposal	182 College Road	31 dBA
	23 Ethelton Avenue	31 dBA

The primary changes to noise generating activities include:

- A small increase in the operating time for the various equipment.
- The introduction of occasional campaign crushing operations.
- A slight increase in the proximity of operating Quarry equipment to the west, and residential receivers on College Road.
- Occasional increases in the number of trucks entering and exiting the quarry from College Road.

The EIS acknowledges that the expected noise level generated by Rowling Quarry would not increase significantly as a result of this proposal. Notably, as there would be no change to the equipment currently being used for extraction, stockpile management and processing at the quarry, the $L_{AEQ(15 \text{ Minute})}$ noise levels generated by these are unlikely to change.

The development will generate two distinct types of noise generated by the proposal, namely generated on the project site (operational noise) and noise generated by traffic travelling to and from project site (travelling noise).

Operational Noise

The proposed operational safeguard controls and management measures outlined in the EIS are as follows:

1. All mobile equipment would be fitted with standard muffling apparatus.
2. Stockpiles would be constructed and maintained to provide an acoustic barrier to such noise generating activities.
3. Quarry access road upgraded to double coat bitumen seal to the perimeter of the extraction area. Other internal roads would be well maintained.
4. Restricting noise-generating activities to nominated hours of operation.
5. Regular maintenance of all equipment.
6. Maintenance of dialogue with neighbours to ensure any concerns over operational noise.

Additional operational safeguards to be adopted by the applicant would include:

1. Restricting noise-generating activities to the nominated hours of operation;
2. Regular maintenance of all equipment; and
3. Maintenance of dialogue with neighbours to ensure any concerns over operational noise are addressed.

The above safeguards and controls have been incorporated into the noise model developed by Spectrum Acoustics to assess the likely changes to local noise levels.

The assessment of operational noise was conducted using RTA Technologies Environmental Noise Model (ENM) v3.06, using source power level spectra for each of the Project Site noise source from Spectrum Acoustics database of measure quarry noise sources. All noise sources were assumed to be operating for the full 15 minutes assessment period simultaneously.

The operating scenarios modelled by Spectrum were for the the “worst case scenarios”:

The Acoustic Assessment adopts a project specific noise goal of 43 dBA (ie 38 dBA plus 5 dBA). It may however be more appropriate given the absence of timely or direct data as to background noise levels to adopt the more recent data obtained by PKA in its more recent assessments. The net result would be a project specific noise goal of 36 dBA (ie 31 dBA plus 5 dBA).

The following table shows the modelling under meteorological conditions considered to be features of the local setting (in accordance with the INP classification for meteorological features) for each scenario as follows:

- Neutral (calm) conditions – 20°C, 70% Relative Humidity (neutral); and
- South-southeast wind (3m/s) - 20°C, 70% Relative Humidity.

Table 1: Predicted $L_{Aeq(15 \text{ min})}$ Noise levels.

Residential Receiver	Meteorological Condition		Criteria(Spectrum)	Criteria (BRC)
	Neutral	South-southeast Wind (3m/s)		
Scenario 1				
R1	42	41	43	36
R2	33	37	43	36
R3	22	27	43	36
R4	32	36	43	36
R5	33	37	43	36
R6	30	34	43	36
R7	25	24	43	36
R8	36	34	43	36
R9	39	35	43	36
R10	20	<20	43	36
R11	34	29	43	36
R12	30	29	43	36
R13	30	28	43	36
R14	27	27	43	36
R15	29	28	43	36
R16	24	24	43	36
Scenario 2				
R1	41	40	43	36
R2	28	33	43	36
R3	20	25	43	36
R4	28	33	43	36
R5	28	33	43	36

R6	31	33	43	36
R7	22	22	43	36
R8	32	29	43	36
R9	37	35	43	36
R10	20	<20	43	36
R11	32	28	43	36
R12	28	25	43	36
R13	27	26	43	36
R14	26	25	43	36
R15	30	28	43	36
R16	20	<20	43	36
Source: Modified after Spectrum (2016)				

As illustrated above the noise levels are below the noise criteria adopted by the applicant however exceed the noise criteria suggested by Council.

The properties and scenarios where exceedances may occur are:

- R1 (Carter) by up to 6 dBA
- R2 (Council/Harness Racing Club) by 1 dBA in adverse weather conditions
- R9 (Crossing) by up to 3 dBA in neutral conditions

It is to be noted however that R1 is owned by and located on the same land as the extractive industry. In that context it is considered to be associated with the extractive industry itself.

Property R2 being the Council owned land containing the Harness Racing Club is a non-residential receiver and accordingly is considered acceptable.

Property R9 (Crossing) may experience noise levels of up to 3 dBA above the more conservative criteria. It is however noted that dwelling is located closer to the Omya Crushing plant and Vale Road than any of the available background readings. The exceedance is not considered unreasonable given that the use is largely ongoing in nature. It is noted that the adjoining owner was notified and raised no ongoing issues associated with noise or other aspects of the development.

It is noted that the EPA provided comments in relation to the development (incorrectly referred to as GTA's in their correspondence) indicating that a condition to the effect that noise from the premises must not exceed 43 dB(A) $LA_{eq(15 \text{ minutes})}$ at any time at any neighbouring residential property. To determine this compliance with the 43 dB(A) $LA_{eq(15 \text{ minutes})}$ noise limit, noise must be measured:

- Approximately on the property boundary, where any dwelling is situated 30 metres or less from the property boundary closest to the premises; or
- Within 30 metres of a dwelling façade, but not closer than 3 metres where any dwelling on the property is situated more than 30 metres from the property boundary closest to the premises.

Traffic Noise

The EIS states that during peak demand periods for the quarries products predicted vehicle movements will be equal to 100 movements per week (equal to 30 truck movements per day). Under these conditions, it is predicted that a $LA_{eq(15 \text{ hour})}$ traffic noise level of 49.6 dB(A) at a receiver 20 metres from the road. This is considerably less than the day time criterion of 55 dB(A).

Traffic noise mitigation measures include:

1. Transport operations restricted to nominated hours of operation.
2. Entry refused to poorly maintained vehicles or those reported to generate excessive noise levels.
3. Truck drivers would be instructed to avoid the use of engine breaks on approach to the project site.
4. All drivers required to obey all traffic signs, speed zones and operate in a safe, courteous manner.

Comments made by RMS identified a code of conduct is to be prepared and Safe Intersection Sight Distances for the access road are maintained. This will be imposed as a condition of consent.

Waste

The applicant has proposed the following types of bins that will emptied regularly at an appropriate waste disposal facility in the local government area:

- General solid waste (putrescible);
- General solid waste (recyclables);
- General solid waste (non -putrescible);
- Waste oils and greases;
- Tyres; and
- Screened waste.

The EIS states that the proposed controls and safeguards for waste management would cause minimal waste issues.

Air Quality - Dust

The air quality of the environs surrounding the Project Site is typical of a semi-rural setting with airborne contaminants generated by existing land uses.

The EIS states that the campaign approach to extraction, screening and blending operations of the existing quarry would be typical of a semi-rural setting. All sensitive receivers are in excess of 300 metres of the quarry site and the quarry and extension is unlikely to generate dust emissions which would exceed EPA Criteria. EPA noted that operations are to be undertaken in a manner that minimises generation or emission of dust from the premises.

The applicant has proposed operational controls, safeguards and management procedures that would be adopted:

- Water would be used during screening activities and applied to internal roads to reduce the potential generation of dust;
- The exhaust of all earthmoving equipment would be diverted away from the ground surface so as not to generate dust;
- Soil stockpiles would have a cover of vegetation equivalent to 70% coverage within 60 days of establishment (unless the soil is to be re-excavated and used in rehabilitation within the next 6 months);
- The exhausts of earthmoving equipment would be diverted away from the ground surface so as to not generate dust;
- Disturbance would be limited to the area required for 6 to 12 months operations;
- Activities such as stripping of soil and ripping if the weathered granite would not be carried out during times of higher than normal potential for dust generation such as periods of high winds and dry weather;
- Progressive rehabilitation over the life of the quarry would reduce exposed areas generating dust; and
- All product trucks would be required to have their loads covered.

All sensitive receivers are in excess of 300 metres from the extraction area. It is considered that activities of the scale proposed are unlikely to generate dust emissions which would exceed nominated criteria.

A condition of consent has been imposed for dust monitoring at locations surrounding the Project Site to demonstrate emission levels attributable to quarry-related activities comply with nominated criteria. The results are to be reported to Bathurst Regional Council and EPA and any additional controls are to be implemented.

The EPA have included a more generalised condition in their GTA's a condition in relation to air quality, attached in **attachment 7**.

Water Management

It is proposed that water collected on the site will be used for processing of materials and dust suppression activities.

The EIS includes an assessment of the predicted available water resources which indicates that sufficient water would be available from runoff collection to supply the quarry.

The existing quarry and extension have been designed to be more than 40m from Queen Charlotte Creek therefore do not require a Controlled Activity Permit.

It is proposed that as part of the Extraction and Rehabilitation Plan the applicant will be required to prepare an erosion and sedimentation plan prior to commencement of work.

Economic Impacts

The beneficial social and economic impacts resulting from the proposed development is the continued extraction of gravel and sand from the quarry, resulting in continued employment and supply of base materials for the local construction industry.

Threatened Species

A Flora and Fauna Assessment and field survey of the project site was completed by OzArk Environmental and Heritage Management (15 December 2015). The field survey did not result in the recording of native vegetation communities within the subject site, likely due to the extensive quarrying and agricultural history. Two native flora species were identified, *Cynodon dactylon* (Couch) and *Eucalyptus polyanthemos* (Red Box).

One native species was identified, being *Marcropus giganteus* (Eastern Grey Kangaroo), listed as a threatened fauna species. No threatened species, populations or communities have been previously recorded within the subject site.

Both direct and indirect impacts were analysed. Due to the disturbed nature of the subject site, from the extensive history of quarrying and agriculture, the impact on the continuation and expansion of the quarry is unlikely to have a significant adverse impact. Further, it is considered unlikely that the operation of the quarry will contribute to the extinction of any species.

The Ecological Assessment proposes various avoid and mitigation measures. Mitigation measures include erosion and sediment control, weed management, and notifying relevant authorities during a citing of a threatened species. Avoid measures include not extracting from the areas close to the waterbody.

S79C(1)(c) *Suitability of the site*

The proposed development represents a continuation and extension to an existing extractive industry. The majority of the infrastructure already exists including access road to the site, internal road, office, process and stockpiling areas and water storage facilities.

As the site is located within close proximity of non-associated dwellings, the continued use and expansion will have the potential to impact on the surrounding residents.

S79C(1)(d) *Submissions*

The Development Application was publicly exhibited in accordance with the requirements for Designated Development between 11 July 2016 and 9 August 2016. The proposal was notified to all adjoining property owners. During the public exhibition period no submissions were received that would preclude approval. A letter was received from adjoining landholders that had been notified of this proposal and did not object to the continuation and expansion of the quarry. Refer [attachment 2](#).

S79C(1)(e) *Public interest.*

The proposed development is considered to be within the public interest as it provides employment both directly and indirectly. The continuation of the quarry provides the local and regional community with sand and gravel supplies. The continuation of the quarry at the already disturbed site is considered within the public interest as ceasing excavation would require extraction elsewhere potentially impacting on undisturbed land threatening quality of flora and fauna.

Referrals

The Development Application was referred to a number of Government Authorities including:

- Roads & Maritime Services
- NSW Department of Industry (Division of Resources & Energy)
- NSW Department of Primary Industries – Water
- NSW Department of Primary Industries – Lands
- NSW Environment Protection Authority
- NSW Office of Environment & Heritage

Roads & Maritime Services

The Development Application was referred to Roads and Maritime Services under Clause 16 of the State Environmental Planning Policy (Mining, Petroleum Products and Extractive Industries) 2007 because the proposal is for an extractive industry that involves the transport of material on a public road.

The Development Application was referred to Roads and Maritime Services (RMS) on 5 July 2016 and a final response was received on 27 July 2016.

RMS requested a Code of Conduct be prepared that details transportation hours pursuant to the approval of the DA, procedure for the transport of hazardous materials, details of local school bus routes, operating hours and pickup/drop-off points for school bus routes, and a requirement for drivers operate vehicles in a safe, professional and courteous manner.

Safe Intersection Sight Distances requirements are to be maintained at the vehicular access to the development from College Road in accordance with *Austroads Guide to Road Design* Part 4A. Refer **attachment 3**.

Council will forward RMS a copy of the consent in accordance with SEPP (Mining, Petroleum Production and Extractive Industries) 2007.

NSW Department of Industry (Division of Resources & Energy)

The Development Application was referred to NSW Department of Industry (Division of Resources & Energy) on 5 July 2016.

NSW Department of Industry raised no objections to the proposed development. Refer **attachment 4**.

NSW Department of Primary Industries – Water

The Development Application was referred to NSW Department of Primary Industries – Water on 8 July 2016 and General Terms of Approval were received on 1 August 2016.

NSW Department of Primary Industries – Water raised no objection to the proposed development but detailed potential for specific licences and approvals to be required should the excavation interfere with water bodies. Refer **attachment 5**.

NSW Department of Industries – Lands

The Development Application was referred to NSW Department of Primary Industries – Lands on 5 July 2016 and a response was received on 12 August 2016.

NSW Department of Primary Industries – Lands noted that the development is to be conducted in a way that will minimise disturbance to Crown Land and waterways (refer **attachment 6**). This includes drainage, waste, overflow, spread of noxious weeds or contaminated waste is to be properly managed to minimise impact on Crown Land and waterways. Should any of the quarry excavation area or operations occur on Crown Land, consent is required in the form of a development application. This will be imposed as conditions of consent.

NSW Environment Protection Authority

The Development Application was referred to NSW Environment Protection Authority on 5 July 2016 and a response was received on 7 September 2016.

The NSW EPA provides comments in the form of GTA's however the development is neither integrated development nor does it meet the thresholds for requiring a licence under the Protection of the Environment Operations Act 1997. That said conditions recommended by the EPA can be incorporated into the consent. Refer **attachment 7**.

NSW Office of Environment & Heritage

The Development Application was referred to NSW Office of Environment and Heritage on 5 July 2016 and a response was received on 27 June 2016.

NSW Office of Environment & Heritage requested a survey undertaken for Duramana Fingers (*Calandenia attenuate*) within the recommended survey period of October to November. Should this species be located on the subject site, an Assessment of Significance (Seven-Part Test) is to be undertaken. This will be imposed as a condition of consent. Refer **attachment 8**.

Internal Referrals

The proposed development was referred internal within Council to the following officers:

- Development Assessment Engineer;
- Environmental Officer; and
- Development Assessment Planner.

Conditions have been recommended by the above Council officers, which have been included within the Draft Notice of Determination attached in **attachment 1**.

SUMMARY

The proposed development seeks consent for the continued use of the site as an extractive industry and a 2.7ha expansion of the extraction area to the west. The quarry extracts sand and gravel benefitting the local and regional area.

The subject site, Lot 8 DP575940, 233 College Road, South Bathurst is situated within the Bathurst Regional Local Government Area. The proposed development is considered Designated Development under the provisions of Schedule 3(1) of the Environmental Planning and Assessment Regulation 2000. The proposal is classified Regional Development under Part 4 of the State Environmental Planning Policy – State and Regional Development 2011, by effect of Schedule 4A(8) of the Environmental Planning and Assessment Act 1979. The proposal is not considered Integrated Development pursuant to Environmental Planning and Assessment Regulation 2000 as the quarry extraction area is more than 40 metres from a waterbody and does not require a approval under the Protection of the Environment Operations Act.

The quarry has been operating since 1960's, with time limited consent granted to the current operations in 1996. The proposal is for the continued use of the quarry and a 2.7ha expansion to the west of the existing extraction area. The proposed development will allow for the quarry to continue operating for fifteen (15) years.

The DA was referred to several government agencies, relevant comments and requirements have been imposed as conditions of consent.

The DA was referred to adjoining landholders, with one (1) submission received in support of the continued operation of the quarry by the current operators.

The DA has been assessed against relevant State and local planning legislation. The continuation and proposed expansion is not considered to have an adverse environmental, social or economic impact. The quarry will continue to supply sand and gravel to local and regional locations.

It is considered that the development warrants conditional development consent.