

COUNCIL ASSESSMENT REPORT

WESTERN REGIONAL PLANNING PANEL

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| PANEL REFERENCE & DA NUMBER | PPS-2016WES013 – Development Application 10.2017.33.1 (DA 033/17) |
| PROPOSAL | Extractive Industry - Extension of area of existing sandpit and increase in extraction volume |
| ADDRESS | Lot: 97 DP: 751140 - 79 Rushy Road MOAMA NSW 2731 |
| APPLICANT | EMM Group P/L |
| APPLICATION TYPE | Development Application Integrated Development (NSW EPA) Designated Development |
| REGIONALLY SIGNIFICANT CRITERIA | Clause 7, Schedule 7 of the SRD SEPP: <i>Development for the purposes of— extractive industries, which meet the requirements for designated development under clause 19 of Schedule 3 to the Environmental Planning and Assessment Regulation 2000,</i> |
| KEY SEPP/LEP | SEPP (Mining, Petroleum Production and Extractive Industries) 2007, SEPP (Primary Production and Rural Development) 2019, Murray LEP 2011 |
| CIV | \$0 |
| RECOMMENDATION | Deferred Commencement consent |
| DATE OF REPORT | 29 October 2021 |
| SCHEDULED MEETING DATE | 9 November 2021 |

EXECUTIVE SUMMARY

The Application seeks permission for the extension of the area of an existing extractive industry (sand pit) on site and increase in extraction volume to 200,000 tonnes per annum. The subject site of the proposed development is located at 79 Rushy Road MOAMA NSW 2731 on Lot: 97 DP: 751140 and which is zoned RU1 Primary Production under the Murray Local Environmental Plan 2011.

The proposed development is classed as an 'extractive industry' which is permitted with development consent in the RU1 zone. The site contains an existing consent, being Development Application 200/06 for Leveling & Removal of sand which was approved by the former Murray Shire Council on 2 June 2006. The consent outlined the gravel/sand pit must not exceed the area size limit of 2 hectares or volume of 30,000 cubic metres per annum.

The Development Application was notified to surrounding property owners in accordance with legislation and Council's Notification Policy. One (1) public submission (objection) was received during the exhibition period. The objection raised concern regarding impact to the natural environment and potential Aboriginal Cultural Heritage which may exist on site.

The application was also referred to numerous Government agencies under various legislation, with the application being classed as Designated Development, Integrated Development (with NSW EPA), Advertised development under Section 13 of Murray Regional Environmental Plan No 2- Riverine Land, and advertised under Section 77 of the Environmental Planning and Assessment Regulation 2000.

It is noted NSW Office of Environment and Heritage (OEH) requested additional information on 13 October 2016 related to issues including Aboriginal Cultural Heritage and Biodiversity concerns. The Applicant was therefore required to provide additional information which was subsequently referred back to OEH (who have since split into two departments, being NSW Department of Planning, Industry and Environment – Biodiversity Conservation Division), and Heritage NSW). A final response has yet to be received from Heritage NSW therefore a deferred commencement condition relating to Aboriginal Cultural Heritage matters has been drafted to proceed with the assessment.

An assessment undertaken against Section 4.15 of the *Environmental Planning and Assessment Act* 1979 has been completed which outlines the proposal complies with all relevant planning criteria (subject to conditions of deferred commencement consent). The proposed development has the potential to provide positive economic impacts to the locality and weighing up all relevant criteria is considered is not inconsistent with the public interest.

It is considered the proposed development is generally consistent with the Murray Local Environmental Plan 2011 (Murray LEP 2011), the Murray Development Control Plan 2012 (Murray DCP 2012), the Murray Strategic Land Use Plan 2010-2030 (Murray SLUP) and other relevant planning instruments associated with the site. The Application has been assessed in accordance with Section 4.15 of the *Environmental Planning and Assessment Act* 1979 and is deemed consistent with the requirements therein. The proposed development is considered appropriate for the location and does not significantly adversely impact upon the existing amenity and neighbourhood character of the area and is appropriately located within a Primary Production precinct outside of Moama.

It is therefore recommended the proposed development be granted deferred commencement development consent subject to appropriate conditions of consent as attached to this report.

1. INTRODUCTION

1.1 Background

A chronology of the development application is outlined below including the Panel's involvement (briefings, deferrals etc) with the application:

Table 1: Chronology of the DA

| Date | Event |
|-------------------------|---|
| 12 August 2016 | DA lodged |
| 21 October 2016 | Exhibition of the application |
| 2 September 2016 | DA referred to external agencies |
| 2 September 2016 | Request for Information from Council to applicant |
| 9 November 2021 | Panel briefing |
| 13 October 2016 | Original Request for additional information received from NSW Office of Environment and Heritage (final response from current Department known as Heritage NSW not received). |

1.2 Site History

Development Application 200/06 for Leveling & Removal of sand was granted consent by the former Murray Shire Council on 2 June 2006. The consent outlined the gravel/sand pit must not exceed the area size limit of 2 hectares or volume of 30,000 cubic metres per annum.

2. THE SITE AND LOCALITY

2.1 The Site

The site subject to this development application is located at 79 Rushy Road MOAMA NSW 2731 on Lot: 97 DP: 751140. The site is zoned RU1 Primary Production and is mapped as Murray Regional Environmental Plan No. 2 – Riverine Land. The site is partially mapped as Bush Fire Prone Land, Wetlands, Flood Prone Land and Terrestrial Biodiversity (Native Vegetation). The site is not mapped as Key Fish Habitat (Aquatic Biodiversity), RAMSAR Wetlands, a Watercourse, Urban Release Area, or contaminated land.

The site adjoins the Murray Valley National Park (Moirra Precinct), which is also mapped as RAMSAR Wetlands. The site does not contain any non-Aboriginal items of environmental heritage significance. The site is irregular in shape and contains an existing sand pit, mapped as mining resources. Some vegetation also remains on site.

Figure 1 – Aerial photograph of subject site. Subject site marked by black star. (Photo taken 28/12/2015)



2.2 The Locality

The subject site is located within the Primary Production zone. The site adjoins the Murray Valley National Park (Moirra Precinct), which is also mapped as RAMSAR Wetlands.

3. THE PROPOSAL

The proposed development is for the extension of the area of an existing extractive industry (sand pit) on site and increase in extraction volume to 200,000 tonnes. The Applicant has submitted an Environmental Impact Statement, Aboriginal Cultural Heritage Assessment, Flora and Fauna Assessment Report, and other additional documentation to support the proposal.

4. STATUTORY CONSIDERATIONS

Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* ('EP&A Act') outlines the matters which the consent authority must take into consideration in determining a development application. These matters as are of relevance to the development application include the following:

- (a) the provisions of any environmental planning instrument, proposed instrument, development control plan, planning agreement and the regulations
- (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,
- (c) the suitability of the site for the development,
- (d) any submissions made in accordance with this Act or the regulations,
- (e) the public interest.

These matters are further considered below.

It is noted the proposal is considered to be (which are considered further in this report):

- Integrated Development (s4.46)
- Designated Development (s4.10)
- Requiring concurrence/referral (s4.13)

4.1 Section 4.15(1)(a)(i) - Provisions of Environmental Planning Instruments

The following Environmental Planning Instruments are relevant to this application:

- *State Environmental Planning Policy (Koala Habitat Protection) 2020*
- *State Environmental Planning Policy No. 55 – Remediation of Land*
- *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*
- *State Environmental Planning Policy (Infrastructure) 2007*
- *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007*
- *State Environmental Planning Policy (Primary Production and Rural Development) 2019*
- *State Environmental Planning Policy (State and Regional Development) 2011*
- *Murray Regional Environmental Plan No. 2—Riverine Land.*
- *Murray Local Environmental Plan 2011.*

These instruments are considered below.

State Environmental Planning Policy (Koala Habitat Protection) 2020

Comment: The subject land is not considered to be core koala habitat or potential koala habitat.

State Environmental Planning Policy No. 55 – Remediation of Land

Comment: The subject land is not considered to be contaminated or likely to be contaminated and is not listed on Council's Contaminated Land Register. In accordance with Clause 7 of SEPP 55, Council is satisfied that, the land is suitable in its current state for the purpose for which the development is proposed to be carried out.

State Environmental Planning Policy (Exempt and Complying Development Codes) 2008

Comment: The proposed development cannot be classed as exempt or complying development as it does not meet all development requirements.

State Environmental Planning Policy (Infrastructure) 2007

Comment: Not applicable.

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

Part 1 Preliminary

2 Aims of Policy

The aims of this Policy are, in recognition of the importance to New South Wales of mining, petroleum production and extractive industries—

- (a) to provide for the proper management and development of mineral, petroleum and extractive material resources for the purpose of promoting the social and economic welfare of the State, and*
- (b) to facilitate the orderly and economic use and development of land containing mineral, petroleum and extractive material resources, and*
- (b1) to promote the development of significant mineral resources, and*

- (c) to establish appropriate planning controls to encourage ecologically sustainable development through the environmental assessment, and sustainable management, of development of mineral, petroleum and extractive material resources, and*
- (d) to establish a gateway assessment process for certain mining and petroleum (oil and gas) development—*
 - (i) to recognise the importance of agricultural resources, and*
 - (ii) to ensure protection of strategic agricultural land and water resources, and*
 - (iii) to ensure a balanced use of land by potentially competing industries, and*
 - (iv) to provide for the sustainable growth of mining, petroleum and agricultural industries.*

Comment: The proposal is not inconsistent with the aims of the policy.

Part 2 Permissible development

7 Development permissible with consent

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

Comment: Development consent is required for the proposed development.

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*

Comment: The subject land is located within the RU1 Primary Production zone and adjoins existing farming properties and the Murray Valley National Park (Moirā Precinct). The applicant has provided a map showing nine dwellings on outlining properties within a 5km radius of the subject site. Due to the information provided to support the application, it is considered the proposal is unlikely to create a significantly adverse impact upon these existing uses on agricultural land.

- (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*

Comment: Having regard to land use trends, it is considered the subject area will continue to be zoned and utilised for predominately agricultural purposes.

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

Comment: It is considered the proposed development is not incompatible with any existing, approved or likely preferred uses in the vicinity of the site.

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

Comment: In evaluating and comparing the respective public benefits of the development and the land uses referred to above, it is considered the proposed development is not an undesirable use of the land.

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

Comment: It is considered the proposed development is suitable for the site and the applicant has provided sufficient information to support its approval subject to conditions.

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

Comment: The subject site contains an existing extractive industry however the proposal is for the expansion of such development, therefore there are no inconsistencies with the requirements of this clause.

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,

Comment: This requirement is considered appropriate to form a condition of consent to protect the natural environment.

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

Comment: This requirement is considered appropriate to form a condition of consent to protect the natural environment.

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

Comment: This requirement is considered appropriate to form a condition of consent to protect the natural environment.

(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.

Comment: The applicant has submitted an assessment of the greenhouse gas emissions of the development. It is considered the information provided is sufficient and the proposal is not inconsistent with the requirements of this subclause.

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

Comment: Not applicable.

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.

Comment: It is considered the efficiency of the development in terms of resource recovery is not inappropriate.

(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.

Comment: It is considered it is appropriate to condition any approval regarding optimising the efficiency of resource recovery and the reuse or recycling of material.

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

Comment: It is considered the applicant has provided sufficient information to support the application regarding the efficiency of recovery of extractive materials and to minimise the creation of waste in association with the extraction of extractive materials.

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,

Comment: The application was referred to Council's Engineering Department and Transport for NSW – Roads (formally RMS), both of which did not object to permitting transport of materials 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,

Comment: This requirement is considered appropriate and will form a condition of consent.

(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.

Comment: This requirement is considered appropriate and will form a condition of consent.

(2) If the consent authority considers that the development involves the transport of materials on a public road, the consent authority must, within 7 days after receiving the development application, provide a copy of the application to—

(a) each roads authority for the road, and

(b) the Roads and Traffic Authority (if it is not a roads authority for the road).

Note. Section 7 of the [Roads Act 1993](#) specifies who the roads authority is for different types of roads. Some roads have more than one roads authority.

(3) The consent authority—

(a) must not determine the application until it has taken into consideration any submissions that it receives in response from any roads authority or the Roads and Traffic Authority within 21 days after they were provided with a copy of the application, and

(b) must provide them with a copy of the determination.

(4) In circumstances where the consent authority is a roads authority for a public road to which subclause (2) applies, the references in subclauses (2) and (3) to a roads authority for that road do not include the consent authority.

Comment: The application was referred to Council's Engineering Department and Transport for NSW – Roads (formally RMS), both of which did not object to the granting of consent subject to conditions.

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.

Comment: This requirement is considered appropriate and will form a condition of consent.

(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

Comment: This requirement is considered appropriate and will form a condition of consent.

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

Comment: This requirement is considered appropriate and will form a condition of consent.

(c) require any soil contaminated as a result of the development to be remediated in accordance with relevant guidelines (including guidelines under clause 3 of Schedule 6 to the Act and the [Contaminated Land Management Act 1997](#)), or

Comment: This requirement is considered appropriate and will form a condition of consent.

(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.

Comment: This requirement is considered appropriate and will form a condition of consent.

State Environmental Planning Policy (Primary Production and Rural Development) 2019

Part 1 Preliminary

3 Aims of Policy

The aims of this Policy are as follows—

- (a) to facilitate the orderly economic use and development of lands for primary production,*
- (b) to reduce land use conflict and sterilisation of rural land by balancing primary production, residential development and the protection of native vegetation, biodiversity and water resources,*
- (c) to identify State significant agricultural land for the purpose of ensuring the ongoing viability of agriculture on that land, having regard to social, economic and environmental considerations,*
- (d) to simplify the regulatory process for smaller-scale low risk artificial waterbodies, and routine maintenance of artificial water supply or drainage, in irrigation areas and districts, and for routine and emergency work in irrigation areas and districts,*
- (e) to encourage sustainable agriculture, including sustainable aquaculture,*
- (f) to require consideration of the effects of all proposed development in the State on oyster aquaculture,*
- (g) to identify aquaculture that is to be treated as designated development using a well-defined and concise development assessment regime based on environment risks associated with site and operational factors.*

Comment: The proposed development is not inconsistent with the aims of the Policy.

Part 1 Preliminary

3 Aims of Policy

The aims of this Policy are as follows—

- (a) to identify development that is State significant development,
- (b) to identify development that is State significant infrastructure and critical State significant infrastructure,
- (c) to identify development that is regionally significant development.

Comment: Noted.

Part 4 Regionally significant development

20 Declaration of regionally significant development: section 4.5 (b)

- (1) Development specified in Schedule 7 is declared to be regionally significant development for the purposes of the Act.
- (2) However, the following development is not declared to be regionally significant development—
 - (a) complying development,
 - (b) development for which development consent is not required,
 - (c) development that is State significant development,
 - (d) development for which a person or body other than a council is the consent authority,
 - (e) development within the area of the City of Sydney.

Comment: Noted.

Schedule 7 Regionally significant development

7 Particular designated development

Development for the purposes of—

- (a) extractive industries, which meet the requirements for designated development under clause 19 of Schedule 3 to the [Environmental Planning and Assessment Regulation 2000](#),

Comment: The proposal is classed as ‘Regionally significant development’ as the proposal is for an extractive industry which meets the requirements for designated development under clause 19 of Schedule 3 to the Environmental Planning and Assessment Regulation 2000.

Murray Regional Environmental Plan No. 2—Riverine Land.

Comment: The subject site is mapped as Murray Regional Environmental Plan 2 – Riverine Land.

Part 1 Introduction

2 Aims of the plan

Comment: The proposed development is not inconsistent with the aims of this plan. The use of the land is unlikely to detrimentally impact upon the riverine environment of the River Murray and is well setback from any watercourse (1.5km).

3 Objectives of the plan

Comment: The proposed development is not inconsistent with the objectives of this plan.

Part 2 Planning principles

9 General principles

Comment: The proposed development is not inconsistent with the general principles of this plan and is unlikely to significantly adversely affect the River Murray.

10 Specific principles

Comment: The proposed development is not inconsistent with the specific principles of this plan and is unlikely to significantly adversely affect the River Murray.

Part 3 Planning requirements and consultation

13 Planning Control and Consultation Table

Comment: The Application was referred in accordance with the requirements of the clause.

14 Building setbacks—special provisions

Comment: The proposed development is set well back from the Murray River (in excess of 1.5km) which is considered an acceptable outcome.

Murray Local Environmental Plan 2011.

Part 1 Preliminary

1.2 Aims of Plan

Comment: The proposed development is not inconsistent with the aims of Murray LEP 2011.

1.9A Suspension of covenants, agreements and instruments

Comment: For the purpose of enabling development on land in any zone to be carried out in accordance with this Plan or with a consent granted under the Act, any agreement, covenant or other similar instrument that restricts the carrying out of that development does not apply to the extent necessary to serve that purpose.

Part 2 Permitted or prohibited development

2.3 Zone objectives and Land Use Table (development permissibility)

Zone: RU1 Primary Production

- *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 minimise conflict between land uses within this zone and land uses within adjoining zones.*

Comment: The proposed development is not inconsistent with the objectives of the RU1 Primary Production zone of the Murray LEP 2011.

Permissibility

Comment: The application is for the extension to the area of an existing sand pit & increase in its extraction volume. The proposal relates to an extractive industry, which is permitted within consent in the RU1 Zone.

Under the Murray LEP 2011,

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

Note.

Extractive industries are not a type of **industry**—see the definition of that term in this Dictionary.

extractive material means sand, soil, gravel, rock or similar substances that are not minerals within the meaning of the [Mining Act 1992](#).

Part 5 Miscellaneous provisions

5.10 Heritage conservation

(1) Objectives The objectives of this clause are as follows—

- (a) to conserve the environmental heritage of Murray,
- (b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,
- (c) to conserve archaeological sites,
- (d) to conserve Aboriginal objects and Aboriginal places of heritage significance.

Comment: The proposed development is not inconsistent with the objectives of the clause. The site does not contain any mapped items of Environmental Heritage Significance within the Murray LEP 2011. The Applicant has submitted an Aboriginal Cultural Heritage Assessment and additional information regarding the proposed development. At the date of writing this report a final response from Heritage NSW had yet to be provided.

(2) Requirement for consent Development consent is required for any of the following—

- (a) demolishing or moving any of the following or altering the exterior of any of the following (including, in the case of a building, making changes to its detail, fabric, finish or appearance)—
 - (i) a heritage item,
 - (ii) an Aboriginal object,
 - (iii) a building, work, relic or tree within a heritage conservation area,
- (b) altering a heritage item that is a building by making structural changes to its interior or by making changes to anything inside the item that is specified in Schedule 5 in relation to the item,
- (c) disturbing or excavating an archaeological site while knowing, or having reasonable cause to suspect, that the disturbance or excavation will or is likely to result in a relic being discovered, exposed, moved, damaged or destroyed,
- (d) disturbing or excavating an Aboriginal place of heritage significance,
- (e) erecting a building on land—

- (i) on which a heritage item is located or that is within a heritage conservation area, or*
- (ii) on which an Aboriginal object is located or that is within an Aboriginal place of heritage significance,*
- (f) subdividing land—*
 - (i) on which a heritage item is located or that is within a heritage conservation area, or*
 - (ii) on which an Aboriginal object is located or that is within an Aboriginal place of heritage significance.*

Comment: Consent is required for the proposed development.

(3) When consent not required However, development consent under this clause is not required if—

- (a) the applicant has notified the consent authority of the proposed development and the consent authority has advised the applicant in writing before any work is carried out that it is satisfied that the proposed development—*
 - (i) is of a minor nature or is for the maintenance of the heritage item, Aboriginal object, Aboriginal place of heritage significance or archaeological site or a building, work, relic, tree or place within the heritage conservation area, and*
 - (ii) would not adversely affect the heritage significance of the heritage item, Aboriginal object, Aboriginal place, archaeological site or heritage conservation area, or*
- (b) the development is in a cemetery or burial ground and the proposed development—*
 - (i) is the creation of a new grave or monument, or excavation or disturbance of land for the purpose of conserving or repairing monuments or grave markers, and*
 - (ii) would not cause disturbance to human remains, relics, Aboriginal objects in the form of grave goods, or to an Aboriginal place of heritage significance, or*
- (c) the development is limited to the removal of a tree or other vegetation that the Council is satisfied is a risk to human life or property, or*
- (d) the development is exempt development.*

Comment: Not applicable. Consent is required for the proposal.

(4) Effect of proposed development on heritage significance The consent authority must, before granting consent under this clause in respect of a heritage item or heritage conservation area, consider the effect of the proposed development on the heritage significance of the item or area concerned. This subclause applies regardless of whether a heritage management document is prepared under subclause (5) or a heritage conservation management plan is submitted under subclause (6).

Comment: It is considered the proposal is suitable for the site subject to any consent including relevant conditions of consent.

(5) Heritage assessment The consent authority may, before granting consent to any development—

- (a) on land on which a heritage item is located, or*
- (b) on land that is within a heritage conservation area, or*

(c) on land that is within the vicinity of land referred to in paragraph (a) or (b), require a heritage management document to be prepared that assesses the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item or heritage conservation area concerned.

Comment: Not applicable. See subclause (8).

(6) Heritage conservation management plans *The consent authority may require, after considering the heritage significance of a heritage item and the extent of change proposed to it, the submission of a heritage conservation management plan before granting consent under this clause.*

Comment: Not applicable. See subclause (8).

(7) Archaeological sites *The consent authority must, before granting consent under this clause to the carrying out of development on an archaeological site (other than land listed on the State Heritage Register or to which an interim heritage order under the [Heritage Act 1977](#) applies)—*

- (a) notify the Heritage Council of its intention to grant consent, and*
- (b) take into consideration any response received from the Heritage Council within 28 days after the notice is sent.*

Comment: Not applicable. See subclause (8).

(8) Aboriginal places of heritage significance *The consent authority must, before granting consent under this clause to the carrying out of development in an Aboriginal place of heritage significance—*

- (a) consider the effect of the proposed development on the heritage significance of the place and any Aboriginal object known or reasonably likely to be located at the place by means of an adequate investigation and assessment (which may involve consideration of a heritage impact statement), and*
- (b) notify the local Aboriginal communities, in writing or in such other manner as may be appropriate, about the application and take into consideration any response received within 28 days after the notice is sent.*

Comment: It is considered the proposed development is not inconsistent with the requirements of this subclause.

(9) Demolition of nominated State heritage items *The consent authority must, before granting consent under this clause for the demolition of a nominated State heritage item—*

- (a) notify the Heritage Council about the application, and*
- (b) take into consideration any response received from the Heritage Council within 28 days after the notice is sent.*

Comment: Not applicable.

(10) Conservation incentives *The consent authority may grant consent to development for any purpose of a building that is a heritage item or of the land on which such a building is erected, or for any purpose on an Aboriginal place of*

heritage significance, even though development for that purpose would otherwise not be allowed by this Plan, if the consent authority is satisfied that—

- (a) the conservation of the heritage item or Aboriginal place of heritage significance is facilitated by the granting of consent, and*
- (b) the proposed development is in accordance with a heritage management document that has been approved by the consent authority, and*
- (c) the consent to the proposed development would require that all necessary conservation work identified in the heritage management document is carried out, and*
- (d) the proposed development would not adversely affect the heritage significance of the heritage item, including its setting, or the heritage significance of the Aboriginal place of heritage significance, and*
- (e) the proposed development would not have any significant adverse effect on the amenity of the surrounding area.*

Comment: Any consent issued will include conditions of consent as requested by Heritage NSW. This is considered an appropriate outcome.

5.21 Flood planning

Comment: The subject site is partially mapped as flood prone land. The proposal is not inconsistent with the requirements of this clause.

Part 7 Additional local provisions

7.1 Essential services

Development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the proposed development are available or that adequate arrangements have been made to make them available when required:

| Subclause | Comment |
|---|--|
| <i>(a) the supply of water,</i> | Available. |
| <i>(b) the supply of electricity,</i> | Electricity is available. |
| <i>(c) the disposal and management of sewage,</i> | No additional sewage is to be created. |
| <i>(d) stormwater drainage or on-site conservation,</i> | No additional stormwater is to be created. |
| <i>(e) suitable road access</i> | Existing access to the property. |

7.2 Earthworks

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

- (a) to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land,*
- (b) to allow earthworks of a minor nature without requiring separate development consent.*

Comment: The proposal is not inconsistent with the objectives of this clause.

(2) Development consent is required for earthworks unless—

- (a) the work is exempt development under this Plan or another applicable environmental planning instrument, or*

- (b) the work is ancillary to other development for which development consent has been given, or*
- (c) the consent authority is satisfied that the work is of a minor nature.*

Comment: Development consent is required for the earthworks associated with the proposed development.

(3) Before granting development consent for earthworks, the consent authority must consider the following matters—

- (a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality,*

Comment: The proposal is unlikely to adversely impact upon existing drainage patterns and soil stability in the locality. No authority objected to the granting of consent subject to conditions.

- (b) the effect of the proposed development on the likely future use or redevelopment of the land,*

Comment: Part of the site is currently already used as an extractive industry. The proposed development seeks to expand the existing sand quarry on site, however the submitted EIS stated that existing extensive agriculture practices on site can also continue after the proposed development has commenced.

- (c) the quality of the fill or the soil to be excavated, or both,*

Comment: The proposal is for the increase to size of an existing sand quarry on site.

- (d) the effect of the proposed development on the existing and likely amenity of adjoining properties,*

Comment: The proposal is suitable for the site and is unlikely to significantly adversely impact upon the amenity of adjoining properties. Any approval will be appropriately conditioned to protect the amenity of the area.

- (e) the source of any fill material and the destination of any excavated material,*

Comment: The proponent has stated the materials extracted on site will be utilised within the Echuca Moama region.

- (f) the likelihood of disturbing relics,*

Comment: There is the potential for the proposal to disturb relics. Any consent issued will include a Deferred Commencement condition outlining that the proponent must address the requirements of Heritage NSW/Department of Planning, Industry and Environment - Biodiversity and Conservation Division.

- (g) the proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area.*

Comment: Any consent issued will include a Deferred Commencement condition outlining that the proponent must address the requirements of Heritage NSW/Department of Planning, Industry and Environment - Biodiversity and Conservation Division.

Note.

The *National Parks and Wildlife Act 1974*, particularly section 86, deals with disturbing or excavating land and Aboriginal objects.

Comment: Noted.

7.3 Biodiversity protection

Comment: A small portion of the subject site is mapped as Terrestrial Biodiversity (Native Vegetation). The proposal is not inconsistent with the requirements of this clause.

Figure 2 – Terrestrial Biodiversity (Native Vegetation) mapping. Subject site marked by black star.



7.4 Development on river front areas

Comment: Not applicable. The subject land is not classed as a river front area.

7.5 Riparian land and Murray River and other watercourses—general principles

Comment: Not applicable. The proposed development is not occurring on riparian land.

7.6 Additional provisions—development on river bed and banks of the Murray and Wakool Rivers

Comment: Not applicable.

7.7 Wetlands

Comment: Part of the subject site is mapped as a Wetland. The proposal is not inconsistent with the requirements of this clause. Any consent issued will include appropriate conditions of consent to ensure the protection of wetlands is achieved.

4.2 Section 4.15 (1)(a)(ii) - Provisions of any Proposed Instruments

Comment: No relevant proposed instruments applicable.

4.3 Section 4.15(1)(a)(iii) - Provisions of any Development Control Plan

The following Development Control Plan is relevant to this application:

- *Murray Development Control Plan 2012: Amendment 5 dated 2/2/2016*

Chapter 6 Strategic Land Use Plan

Comment: The proposed development is not inconsistent with the SLUP.

Chapter 9 Vegetation Removal

Comment: The applicant has advised that no vegetation is proposed to be removed.

Chapter 10 Watercourses & Riparian Land

Comment: Not inconsistent.

Chapter 11 Flood Prone Land

Comment: The proposal is not inconsistent with the requirements of this chapter.

Chapter 12 Notification Policy

Comment: The application was notified to adjoining property owners.

The following contributions plans are relevant pursuant to Section 7.18 of the EP&A Act and have been considered in the recommended conditions (notwithstanding Contributions plans are not DCPs they are required to be considered):

- Murray Shire Council Section 94 (7.11) Development Contributions Plan 2011
- Murray Shire Council Section 94A (7.12) Levy Development Contributions Plan 2011

These Contributions Plans have been considered and included in the recommended draft consent conditions.

4.4 Section 4.15(1)(a)(iiia) – Planning agreements under Section 7.4 of the EP&A Act

There have been no planning agreements entered into and there are no draft planning agreements being proposed for the site.

4.5 Section 4.15(1)(a)(iv) - Provisions of Regulations

Clause 92(1) of the Regulation contains matters that must be taken into consideration by a consent authority in determining a development application. These provisions have been considered and addressed in the draft conditions (where necessary).

4.6 Section 4.15(1)(b) - Likely Impacts of Development

The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality must be considered. In this regard, potential impacts related to the proposal have been considered in response to SEPPs, LEP and DCP controls outlined above and the Key Issues section below.

The consideration of impacts on the natural and built environments includes the following:

Environmental Impacts

Natural Environment

The proposed development is for the expansion of an existing sand quarry on site. As the application is for an extractive industry, some impact to the natural environment will occur which is unavoidable. The applicant however has stated no native vegetation is proposed to be removed, whilst a detailed EIS has been provided, outlining how the impacts to the natural environment have been minimised.

Built Environment

The proposed development is unlikely to adversely impact upon the built environment.

Social Impacts

The proposed development is unlikely to create any significant adverse social impact.

Economic Impacts

The proposed development has the potential to create positive economic effects to the community.

- Context and setting – The proposal is considered to be generally consistent with the context of the site, in that the proposed development is appropriate as a result of the assessment of the application and responses received from relevant agencies.
- Access and traffic – The proposed development will increase traffic movements in the area, however appropriate conditions will be placed on any consent granted to ensure adverse impacts do not occur.
- Public Domain – No impact to the public domain.
- Utilities – No impact.
- Heritage – It is considered subject to conditions the proposal can proceed. Please see assessment against Section 5.10 of the Murray LEP 2011.
- Other land resources – The application is for an extractive industry on land zoned Primary Production. The majority of the subject site will continue to be utilised for extensive agricultural purposes and is considered appropriate subject to conditions of consent.
- Water/air/soils impacts - The application is for an extractive industry. Any consent issued will be appropriately conditioned to ensure the protection of water/air/soil characteristics.
- Flora and fauna impacts – Any deferred commencement consent issued will include a condition outlining no clearing of vegetation is permitted at any time.
- Natural environment – The proposal will alter the contours of the subject site, however it is noted the proposal is permitted with development consent and can be appropriately conditioned to protect the natural environment.
- Noise and vibration – It is considered any potential impacts can be mitigated by conditions of consent.

- Natural hazards – No issues identified (subject to conditions where applicable).
- Safety, security and crime prevention – Not applicable.
- Social impact – No issues identified.
- Economic impact – The proposed development has the potential to create a positive economic impact through employment generation.
- Site design and internal design – It is considered the proposal is set out appropriately on the site to mitigate potential impacts. In addition to this only Stage 1 is recommended for approval.
- Construction – No construction works proposed.
- Cumulative impacts – It is considered the proposal is generally consistent with the planning controls applicable to the site.

Accordingly, it is considered the proposal once appropriately conditioned will not result in any significant adverse impacts in the locality as outlined above.

4.7 Section 4.15(1)(c) - Suitability of the site

Comment: The subject site is considered suitable for the proposed development. The applicant has provided sufficient information to address the requirements of the Act, whilst any consent issued will include a condition of consent outlining the requirement to complete necessary studies to comply with the requirements of Heritage NSW/Department of Planning, Industry and Environment - Biodiversity and Conservation Division.

4.8 Section 4.15(1)(d) - Public Submissions

These submissions are considered in Section 5 of this report.

4.9 Section 4.15(1)(e) - Public interest

The public's interest has been taken into consideration in the assessment of this development application. It is considered the proposed development will have a net community benefit.

5. REFERRALS AND SUBMISSIONS

5.1 Agency Referrals and Concurrence

The development application has been referred to various agencies for comment/concurrence as required by the EP&A Act and outlined below:

| Agency | Response |
|--|---|
| DPI Water | No objections subject to conditions. |
| Department of Planning, Industry and Environment - Biodiversity and Conservation Division (Formally OEH) | Council has received numerous responses from NSW OEH, due to the nature of the application and the requirement for the applicant to provide additional information to address NSW OEH concerns (regarding Biodiversity and Aboriginal Cultural Heritage). OEH advised the following on Thursday 3 October 2019: |

| | |
|--|---|
| | <p><i>“Based on the information provided Council should wait until the proponent can submit the completed ACHAR in support of the proposed sand quarry.</i></p> <p><i>The ACH consultant is rightly (based on our previous discussions with them and the proponent) currently undertaking consultation on the methodology for subsurface testing prior to submitting an AHIP for this testing.</i></p> <p><i>This is required because the amount of subsurface testing required is outside of that which can be accommodated under the Code of Practice for Archaeological Investigation of Aboriginal Objects in NSW, and so they will require a permit to do this. This is not uncommon for mine or quarry assessments and is consistent with requirements.</i></p> <p><i>The proponent can submit the completed ACHAR for the testing AHIP and the outcomes from that assessment (subsurface testing) will inform the next steps. Either:</i></p> <ul style="list-style-type: none"> <i>(a) this may show that subsurface testing is all that is required, and that harm can be avoided</i> <i>OR</i> <i>(b) if harm to ACH cannot be avoided, the proponent will need to submit an AHIP application for this harm.</i> <p><i>Based on the subsurface testing they could apply for this AHIP to harm.</i></p> <p><i>The Department would have the information required to make an informed decision as to whether this AHIP would be approved, and under what conditions.</i></p> <p><i>If this AHIP were required, Council should require this to be submitted as Integrated Development and request General Terms of Approval (GTAs) from us.</i></p> <p><i>We would then have all the documentation to make an assessment as to whether an AHIP would be issued upon formal request,</i></p> |
|--|---|

| | |
|---|---|
| | <p><i>and be able to provide Council with appropriate conditions as part of our GTAs response.</i></p> <p><i>This may not be the quick resolution that the JRPP is seeking but this process provides certainty for all parties and avoids DA approval without an AHIP or vice versa, which is an undesirable planning outcome”.</i></p> <p>The JRPP however has requested the assessment report be completed prior to the required studies being finalized, therefore in order to facilitate a decision OEHL have provided conditions which will be included on any consent issued.</p> |
| EPA | No objections subject to conditions |
| DPI Agriculture | Comments received. |
| NSW Crown Lands | No objections. |
| RMS (Roads) | No objections subject to conditions. |
| Geological Survey of NSW | No objections, comments received. |
| NSW RFS | No objections subject to conditions. |
| Department of Planning, Industry and Environment – Planning Services Western Division | No objections. |
| DPI Fisheries | No objections. |
| MDBA | No response received. |
| Murray LLS | No response received. |
| NPWS | No response received. |

The outstanding issues raised by Agencies are considered in the Key Issues section of this report.

5.2 Council referrals (internal)

The development application has been referred to various Council officers for technical review as outlined in **Table 4**.

Table 2: Consideration of Council Referrals

| Officer | Comments |
|-------------|--------------------------------------|
| Engineering | No objections subject to conditions. |
| Building | N/A |

The outstanding issues raised by Council officers are considered in the Key Issues section of

this report.

5.3 Community Consultation

The proposal was notified in accordance with the DCP from 21 October 2016 until 28 November 2016. The notification included the following:

- An advertisement in the local newspapers the Riverine Herald and Pastoral Times;
- A sign placed on the site;
- Notification letters sent to adjoining and adjacent properties (23 letters sent);
- Notification on the Council's website.

The Council received a total of 1 unique submission, comprising 1 objection against the proposal. The issues raised in this submission are considered in **Table 5**.

Table 3: Community Submissions

| Issue | Council Comments |
|---|---|
| Impact to natural environment | The submission maker's comments are noted. The Application seeks permission to expand an existing sand quarry on the subject site. Extractive industries are permitted within consent in the RU1 Primary Production zone. The applicant has provided a detailed Environmental Impact Statement which is considered suitable and has addressed the relevant criteria under the Act. The application was referred to numerous authorities who did not object subject to conditions of consent where applicable. |
| Impact to potential Aboriginal burial sites | Regarding Aboriginal Cultural Heritage, the Applicant is still working with Heritage NSW to ensure compliance with relevant requirements. Any consent issued will include an appropriate deferred commencement condition to ensure all required studies etc. have been completed to the satisfaction of Heritage NSW/Department of Planning, Industry and Environment - Biodiversity and Conservation Division. |

6. KEY ISSUES

The following key issues are relevant to the assessment of this application having considered the relevant planning controls and the proposal in detail:

Note – where conditions of consent are recommended to address impacts these should be cross referenced in this section of the report.

6.1 Issue: Aboriginal Cultural Heritage assessment

Perspectives: It is noted NSW Office of Environment and Heritage (OEH) requested additional information on 13 October 2016 related to issues including Aboriginal Cultural Heritage and Biodiversity concerns. The Applicant was therefore required to provide additional information which was subsequently referred back to OEH (who have since split into two departments, being NSW Department of Planning, Industry and Environment – Biodiversity Conservation Division), and Heritage NSW). A final response has yet to be received from Heritage NSW.

Council comment: As the application is urgently required to be determined by the JRPP, the assessment has proceeded.

Resolution: A deferred commencement condition of consent has been drafted and included in the attachment.

7. CONCLUSION

This development application has been considered in accordance with the requirements of the EP&A Act and the Regulations as outlined in this report. Following a thorough assessment of the relevant planning controls, issues raised in submissions and the key issues identified in this report, it is considered the application can be supported.

It is considered the key issues as outlined in Section 6 have been resolved satisfactorily through the recommended draft conditions at Attachment A.

8. RECOMMENDATION

It is recommended Development Application 10.2017.33.1 for an Extractive Industry - Extension of area of existing sandpit and increase in extraction volume at 79 Rushy Road MOAMA be APPROVED pursuant to Section 4.16(1)(a) of the *Environmental Planning and Assessment Act 1979* subject to the draft conditions of consent attached to this report at Attachment A.

The following attachments are provided:

- Attachment A: Draft Conditions of consent including Appendixes
- Attachment B: Submitted EIS (already saved in PP)