

REPORT: Extractive Industry (Quarry); Lot 211, DP 1220433, No. 20L Sheraton Road, Dubbo.

Applicant: *Regional Hardrock Pty Ltd*

Owner: *Regional Hardrock Pty Ltd*

Assessing Officer: Mr S Reynolds – Senior Planner 1

Date: 18 April 2017

File: **D16-482 Part 1**

REPORT

1. PROPOSED DEVELOPMENT

A Development Application (D16-482) was lodged with Council on 7 October 2016 for an extractive industry (quarry). The extractive industry (quarry) is proposed to be located at Lot 211, DP 1220433, No.20L Sheraton Road, on the south-eastern outskirts of Dubbo.

The quarry, which would mine basalt for civil construction purposes, is proposed to have an extraction area of approximately 24 hectares, to a depth of 12-15 metres below the natural ground surface. The quarry will have a production rate of up to 250,000 tonnes per annum over a period of up to 30 years.

Specific details of the development as identified in the Environmental Impact Statement (EIS) are:

- Extraction of basalt and limited volumes of overburden from an Extraction Area of approximately 24 hectares, to a depth of 12-15 metres below the surface;
- Production of up to 250,000 tonnes per annum of basalt products for a period of up to 30 years;
- On-site crushing, screening and stockpiling of extracted material to produce a range of aggregate and crushed rock products;
- Transportation of the above products directly to the customers using B-double trucks and truck and dog combination;
- Establishment of ancillary infrastructure, including bunds, water management structures, a workshop, a weighbridge and offices;
- Construction of an access road and intersection with Sheraton Road;
- Upgrade of Sheraton Road to allow for the safe and efficient movement of heavy vehicles (up to B-double configuration) between the Project Site and the Mitchell Highway. The maintenance of the upgraded road is proposed to be undertaken via a Planning Agreement; and
- Construction and rehabilitation of a final landform that would be geotechnically stable and would be suitable for a final land use of intermittent grazing, consistent with the current land use.

Plans of the proposed development are provided attached as per **Appendix 1**.

Given the scale of the proposed extractive industry (quarry), the proposed development is deemed to be Designated Development under Schedule 3 Designated Development of the Environmental Planning and Assessment Regulation, 2000, Clause 19 Extractive Industries. The proposed development is also deemed to be Integrated Development under s91 of the Environmental Planning and Assessment Act, 1979.

2. OWNER/APPLICANT

The owner of the subject land is Regional Hardrock Pty Ltd.

The applicant for the proposed development is Mr Wes Maas (Managing Director) on behalf of Regional Hardrock Pty Ltd. Regional Hardrock is a subsidiary of Maas Group Pty Ltd.

The applicant has utilised R W Corkery and Co to prepare the Development Application and provide technical advice.

3. SITE CHARACTERISTICS

The property is located on the eastern side of Sheraton Road. It has an area of 92.7 hectares with a frontage to Sheraton Road of 311.4 metres. For an aerial view of the site and locality see **Figure 1**.

Slope

The centre of the proposed quarry area represents the high point of the land, with the natural fall to the east and west from this point.



Figure 1. Aerial view of 20L Sheraton Road and locality - blue area represents extent of extraction area

Vegetation

The site has been previously cleared of most native vegetation, apart from native grasses across the site. Native vegetation in the form of established trees remain in the centre of the property around the existing dwelling and to the east of the development site.

Access

Vehicular access to the property is obtained via Sheraton Road.

Drainage

With there being no stormwater infrastructure in the area, stormwater drainage conforms to the natural contours of the land.

Services

The property is connected to reticulated electricity and telecommunications services. There are no Council services (i.e. reticulated water and sewer) in the area.

Adjoining uses

The property is located on the south-eastern outskirts of Dubbo within the urban area of Dubbo. Adjoining land uses are predominantly rural or rural-residential, with an existing quarry adjoining on the southern boundary. The land immediately adjoining to the north has recently received approval for a 33 Megawatt solar farm (D16-171) and land adjacent to the site is zoned for residential development and is the subject of future structure planning as a component of Southlakes Estate to the west.

4. SITE HISTORY

Lot 211 was created via subdivision being registered with Land Property Information (LPI) on 26 May 2016, having been approved by Council on 28 April 2016 (SC15-568). The property contains a dwelling and a number of rural sheds, although Council does not hold any record of their construction approvals. There are no other development/building approvals pertaining to the land and it is assumed the land has a history purely for primary production.

5. LEGISLATIVE REQUIREMENTS – JOINT REGIONAL PLANNING PANEL

Under the Environmental Planning and Assessment Act 1979, *Schedule 4A Development for which regional panels may be authorised to exercise consent authority functions of councils, Clause 8 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](#).*

As such, the Joint Regional Planning Panel is the consent authority for the determination of this Development Application.

6. LEGISLATIVE REQUIREMENTS – DESIGNATED DEVELOPMENT

In accordance with the Environmental Planning and Assessment Regulation, 2000 Part 1 Section 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 a provision of Part 2 or 3 of that Schedule.”

Further, in accordance with 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 ... 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...*

The proposed development is categorised as an extractive industry with a proposed output level of up to 250,000 tpa that will disturb an area greater than two (2) hectares. **Figure 2** illustrates the proposed site layout.

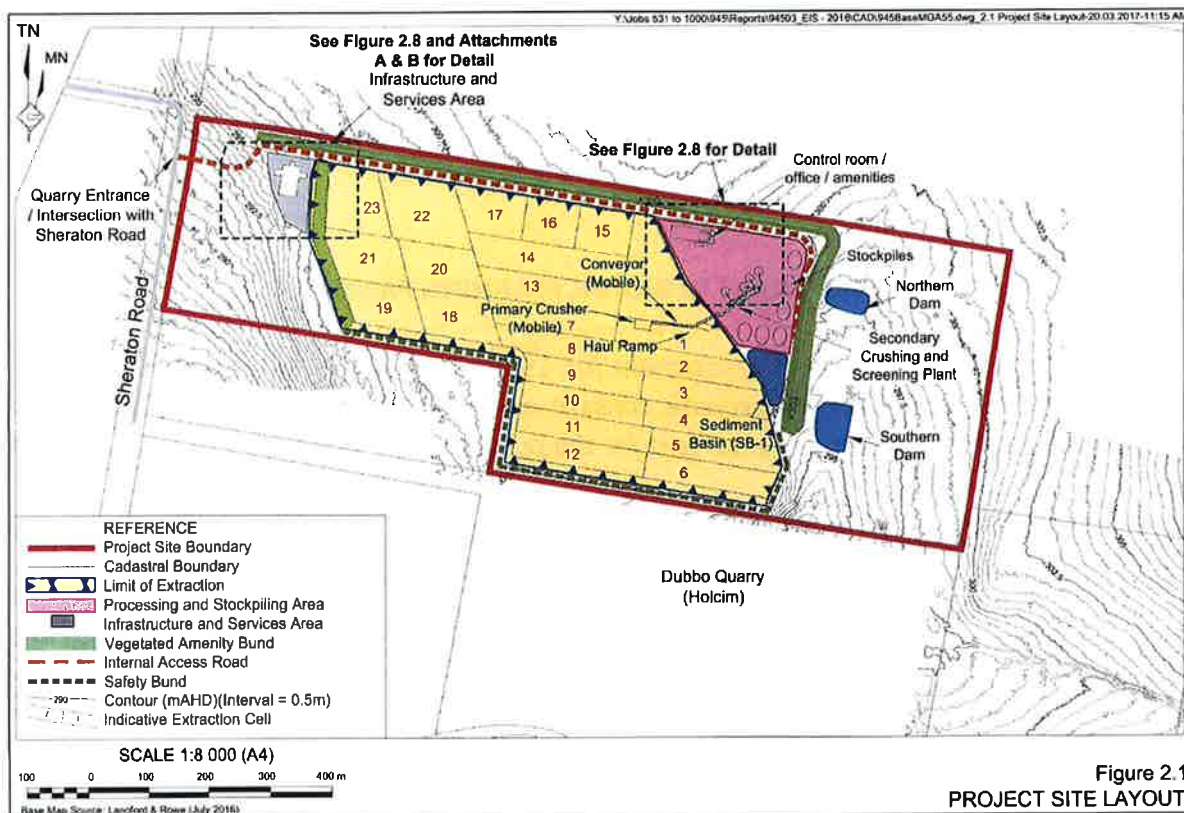


Figure 2. Site layout

7. LEGISLATIVE REQUIREMENTS – INTEGRATED DEVELOPMENT

The proposed development is also deemed to be Integrated Development under s91 of the Environmental Planning and Assessment Act 1979, with regard to:

- Environment Protection Licence – for the regulation of pollution from the quarry. The licence would be issued by the Environment Protection Agency (EPA) under the Protection of the Environment Operations Act 1997.

The EPA has provided Council with General Terms of Approval (GTA) in correspondence dated 1 February 2017. The GTAs have been included in **Appendix 2**.

8. LEGISLATIVE REQUIREMENTS – ASSESSMENT S79C(1)

As required by the Environmental Planning and Assessment Act, 1979, Section 79C(1), the following relevant matters are addressed below:

- Environmental planning instruments (State Environmental Planning Policies, Local Environmental Plans);
- Draft environmental planning instruments;
- Development control plans;
- Environmental (natural and built), social and economic impacts;
- Suitability of the site;
- Submissions; and
- Public interest.

(a)(i) Environmental Planning instruments

State Environmental Planning Policy No. 33 – Hazardous and Offensive Development

Hazardous and offensive industry, and potentially hazardous and offensive industry, relates to development that would, without the implementation of appropriate impact minimisation measures, pose a significant risk to human health, life or property, or the biophysical environment.

The applicant has identified that potentially hazardous goods will be used and stored within the project site. These would include diesel and other hydrocarbons which are classified as Combustible Liquids (C1). The Applicant has also identified that there will be no other flammable materials used or stored on the project site.

As per the requirements of the SEPP, the Department of Planning publication *Hazardous and Offensive Development Application Guidelines – Applying SEPP 33*, dated January 2011 was consulted. Section 7.1 of the Guideline outlines how to identify potentially hazardous industry. The following is noted:

“If combustible liquids of class C1 are present on site and are stored in a separate bund or within a storage area where there are no flammable materials stored they are not considered to be potentially hazardous. If, however, they are stored with other

flammable liquids, that is, class 3PGI of II or II, then they are to be treated as class 3PGIII, because under these circumstances they may contribute fuel to a fire."

The Applicant has confirmed that the only potentially hazardous products stored on site will be diesel. Therefore, as per the Guidelines, this product alone would not be considered potentially hazardous. No further investigations are thus required and an appropriate condition will be included on the consent that all fuel products be stored within an appropriately bunded area.

State Environmental Planning Policy No. 55 – Remediation of Land

The property is not listed on Council's Potentially Contaminated Lands Register. However, the land appears to have past history associated with agricultural purposes rendering the land potentially contaminated through agricultural practices such as spraying, sheep and cattle dips and the like. Pursuant to Clause 7 of the SEPP, Council must consider whether the land is contaminated and whether the land is suitable for the proposed use.

The application makes note of the previous uses of the land, namely primary production, as well as noting the introduction of clean fill material which has been stockpiled along the southern boundary of the site. The proposed extractive industry (quarry) is not considered to be a sensitive land use. Further, it is noted the products won from the quarry will be used as part of civil construction works such as roads and will not be used as part of development with close human exposure. Council's Environmental Control Branch has reviewed the application and provided the following comments in relation to contamination:

"The land is proposing to change from agricultural land to quarry uses, the sensitivity and soil exposure of the site is not foreseen to be increasing and therefore there is no requirement for further soil investigations in relation to contamination."

The comments provided above are noted and no further investigations in relation to contamination are required.

State Environmental Planning Policy (Infrastructure), 2007

Pursuant to Clause 45 of SEPP (Infrastructure), 2007 the local electricity supply authority (Essential Energy) was notified of the application. Essential Energy responded on 20 October 2016 stating that there are overhead powerlines operating in the vicinity of the development site. Essential Energy raised no objection to the proposed development subject to conditions.

The requirements specified by Essential Energy have been included as a notation in the draft conditions included in **Appendix 2**.

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

Clause 2 Aims of Policy

Subclause (b) states that an aim of the policy is to facilitate the orderly and economic use and development of land containing extractive material. Council is of the opinion that while the extractive material has an economic value, its location to rural/residential and

residential areas, plus local schools means that the impacts (noise, vibration, dust, visual amenity, traffic, etc,) result in disorderly development.

Clause 7 Development permissible with consent

Clause 7(3)(a) of the SEPP outlines the permissibility of development regulated by this SEPP.

“(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).”*

It is noted the land is zoned RU2 Rural Landscape, RE2 Private Recreation and IN3 Heavy Industry, with the majority of the development being undertaken in the RE2 zone (see **Figure 3**). Both *agriculture* and *industry* are prohibited in the RE2 zone and as such, the proposed development is considered by Council to be prohibited.

The matter was raised with the Applicant who subsequently provided legal advice from Ashurst Australia (**Appendix 4**).

The basis of the Ashurst Australia argument is as follows:

Agriculture is defined in Dubbo LEP 2011 (and all standard instrument based planning instruments) as follows:

agriculture means any of the following:

- (a) aquaculture,*
- (b) extensive agriculture,*
- (c) intensive livestock agriculture,*
- (d) intensive plant agriculture.*

The submitted legal advice from Ashurst Australia (**Appendix 4**) is that by virtue of a subterm being permissible (such as aquaculture for example) the entire group term of agriculture can be read in its place, in effect positioning that the subterm and group term are interchangeable for the purpose of permissibility. In effect, the legal advice argues that *agriculture* means *aquaculture* and *aquaculture* means *agriculture*.

Council does not agree with this premise on the basis that it is contrary to basic logic, the practice guidelines on the Department's website regarding the standard instrument, definitions, group terms, subterms and the like support this position. In addition, Council would rely on the findings of Brown C in *Capuano v Port Macquarie Hastings Council* (NSW LEC 1043) (**Appendix 5**) where the Court accepted the submissions of Mr McEwen SC in respect of the use of group terms based on the 'genus' and 'species' approach which identifies a number of distinct groups of land use that have a number of related land uses that fall under the umbrella of the group term.

The proponent takes the position that *aquaculture* (which is a type of agriculture) is permissible in the RE2 Private Recreation zone in accordance with SEPP 62 – Sustainable

Aquaculture. Therefore, if *aquaculture* is permissible in the RE2 Private Recreation zone and *aquaculture* means *agriculture* (which is a group term), then *agriculture* is permissible and, as per SEPP (Mining, Petroleum Production and Extractive Industries) 2007, S7(3)(a) *extractive industries* are also permissible. If this approach is taken further in the context of other group terms such as 'residential accommodation', for instance, this would mean that under the LEP that everywhere a dwelling house was permissible, then a residential flat building would also be permissible, as a dwelling house is a form of residential accommodation defined in the LEP. This is clearly not the intent of a Local Environmental Plan.

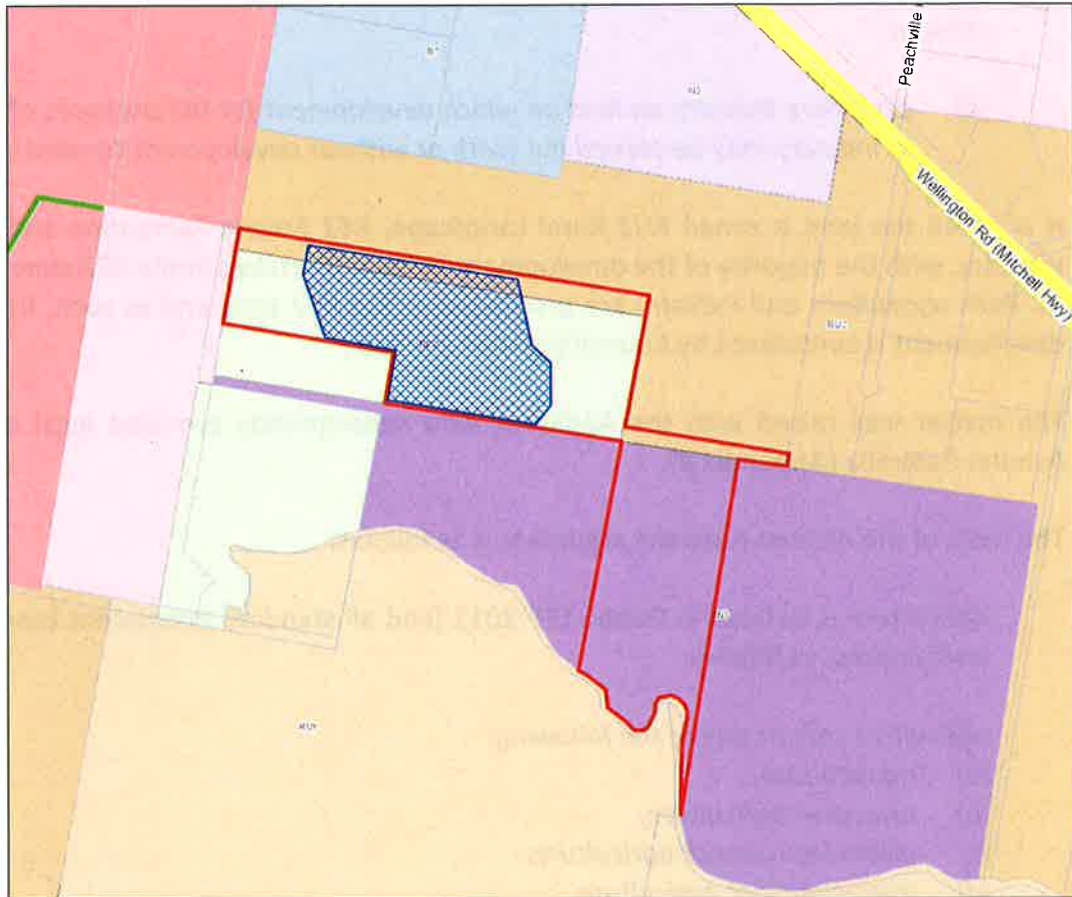


Figure 3. Zoning map of 20L Sheraton Road and locality. The blue hatched area represents the extent of the extraction area

Dubbo Local Environmental Plan (LEP) 2011, subclause 2.3(3)(b) reads as follows (paraphrased):

- (3) *In the Land Use Table at the end of this Part:*
 - (b) *a reference to a **land use** does not include (despite any definition in this Plan) a reference to a **land use** referred to separately in the Land Use Table in relation to the same zone.*

This subclause substantiates the group term and subterm throughout the standard instrument, meaning in this specific case that the group term *agriculture* (which contains the subterm *aquaculture*) is prohibited, but because the subterm (*aquaculture*) is separately listed as permissible, it is not included in the group term. The legal advice received thus far, has ignored this basic principle, although the applicant in this case is going further and arguing that the group term can be both prohibited and permissible within the same land use table.

It should be noted that the only reason *aquaculture* is permissible in the RE2 zone is due to the land use being permissible under SEPP 62. No other subset term of agriculture is permissible.

Council is therefore of the view that despite the applicant's legal advice (**Appendix 4**) as the group term *agriculture* is prohibited in the RE2 zone, *extractive industry* is intended to be prohibited. Whether any subset land use terms are permissible is considered inconsequential in determining permissibility.

Given this position and the potential implications on other zones and LEPs across NSW, Council sought formal advice from the Department of Planning and Environment on 23 March 2017 (**Appendix 6**). Advice received from the Department via email on 13 April 2017 stated as follows:

"I refer to Council's letter dated 23 March 2017.

Following our discussion yesterday, the advice we sought favours the interpretation that Clause 7 of the Mining SEPP operates to make the development for an extractive industry (quarry) permissible with consent at the subject Sheraton Road site.

While Council should seek and rely solely on its own legal advice, the permissibility matter may be considered further by the JRPP if raised in Council's recommendation."

While Council understands the provisions of the SEPP and the literal interpretation that has been applied, it is the implications of the precedent that are likely to be created by such an interpretation. Sound planning practice would dictate that the intent of the Standard Instrument and the interpretation of Group Terms would not be to undermine the entire LEP and facilitate development in locations clearly not intended based on the zone objectives and the strategic planning that underpins the Dubbo LEP, accordingly Council cannot accept the literal interpretation being applied in this instance.

Clause 12 Compatibility of proposed ... extractive industry with other land uses

As discussed, surrounding land uses are a mixture of primary production, extractive industry, or rural-residential and residential. Land to the west and north-west is vacant however zoned for residential use.

The application has identified the following mitigation measures designed to mitigate impacts of the proposed development:

- Not diverting surface water run-off away from existing agricultural properties;
- Make provision for an erosion and sediment control plan to minimise the potential for impacts associated with siltation of waterways or dust suppression on crops or pasture;
- Construction of a vegetated bund to minimise the visibility of the quarry from residential vantage points;
- Restrictions to hours of operation and traffic movement times;
- The undertaking of initial small trial blasts to establish the design of future larger blasts;
- Sealing of the internal access road to minimise dust emissions; and
- Scheduling heavy vehicle movements to avoid school pick-up and drop-off times.

Council identified compatibility with surrounding land uses as a critical priority early in the project implementation. It is considered that compatibility with adjoining residential zoned land is a particular area of concern. The land immediately to the west is zoned rural-residential, contains an existing dwelling and has subdivision potential with the minimum lot size being 1.5 hectares (the land has an area of 48.95 hectares equating to a lot potential of 32 residential lots). The land to the north-west is zoned low-density residential and is currently vacant however Council is currently considering a Development Application for a 51 lot residential subdivision. Therefore, with the potential for an increased residential presence in the area, locating an *extractive industry (quarry)* on the adjacent property is a concern. It is not considered 'good planning practice' to locate an *extractive industry (quarry)* adjacent to residential zoned land due to the land use conflicts that can arise.

From a strategic planning perspective the RE2 zone was originally designed/used in this instance to act as a buffer between the existing quarries and the residential zoned land. The approach taken in the LEP 2011 follows on from the previous LEP (LEP 1998) which also zoned the land 6(c) Commercial Recreation with the then Council's express view that residential development should not impact on/limit the commercial operations of the two existing quarries and hence zoned the land to provide a buffer to residential land.

The establishment of an *extractive industry (quarry)* within the RE2 land erodes this buffer, resulting in no setback between the two land uses. The Applicant has noted that the extraction/processing area will still be setback a minimum of approximately 230 metres from the western property boundary. It is the Applicant's view that this, coupled with mitigation measures such as the vegetated earth bund, will ensure land use conflict is prevented.

However, as discussed previously, the prevention of land use conflict is largely dependent on the effective management of the *extractive industry (quarry)* by the operator. In theory, the mitigation measures appear effective however may not be undertaken efficiently in practice over the next 30 years. The zoning buffer as presently exists ensures land use conflict is minimised. The encroachment of quarrying closer to residential land increases the risk of land use conflict.

In terms of subclause (b), the application has identified public benefits of the development as:

- Employment during the construction and operational phases of the development which in turn helps to support the local economy;
- A wider contribution to the state and national economies through the payment of taxes, royalties and purchase of goods and services from outside the local area;
- Benefits to the local economy through the expenditure of wages, and through the purchase of goods and services;
- Provision of civil construction materials for local infrastructure projects;
- Upgrade of Sheraton Road by the developer; and
- Protection of a remnant Endangered Ecological Community to encourage the continued presence of native flora and fauna.

Conversely, the Applicant has identified the following potential adverse impacts:

- Impacts on neighbouring properties and users of Sheraton Road such as noise, air quality and traffic; and

- The aesthetic appeal of the local setting could be reduced, particularly during the construction phase before protective aspects such as the amenity bund is established.

In terms of subclause (c), the measures proposed by the Applicant to avoid or minimise adverse impacts are noted however, it is considered that to apply such mitigation measures at the level proposed reinforces the fact that the land is not suitable for the development given its proximity to other sensitive land uses.

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

An existing *extractive industry (quarry)* exists to the south of the development site on Lot 1 DP 623367 (Holcim) and a smaller *extractive industry (quarry)* also exists further to the south-east on a Lot 96 DP 754308 (Boral) (refer to Figure 1). The immediately adjacent *extractive industry (quarry)*, which is operated by Holcim Australia, has operated on this property since 1980 and extracts a similar product to the proposed quarry (basalt).

It is considered the proposed development will not have an adverse impact on the operations of the existing *extractive industry (quarry)*. It is considered their operations will not conflict with each other, and once upgrades to Sheraton Road are complete, this roadway will have the capacity to accommodate heavy vehicles generated by all development that utilises it.

However, it is considered necessary to ensure that the cumulative impacts of the three (3) quarries operating side by side do not cause an adverse cumulative impact to the wider locality. This is particularly critical given the proposed *extractive industry (quarry)* will be located closer to residential zoned land than the existing quarries.

The various environmental studies undertaken have generally considered cumulative impacts of all *extractive industry (quarry)* developments in the locality. These demonstrate that despite the existing conditions, the additional *extractive industry (quarry)* will not cause an adverse impact on the locality in terms of aspects such as increased noise and dust generation as well as additional blasting impacts (all discussed elsewhere in this report). Increased traffic generation on Sheraton Road has also been considered (again discussed elsewhere in this report).

However, all studies assume the *extractive industry (quarry)* will operate in a controlled manner. This may not always occur and given the proximity to residential zoned land the margin for error is critical. Consequently, a significant cumulative impact may be generated should the proposed *extractive industry (quarry)*, as well as the existing quarries, not operate in a controlled manner.

Clause 14 Natural resource management and environmental management

Should the application be granted consent, appropriate conditions can be included ensuring the development is undertaken in an environmentally sustainable manner. This includes protection of water resources, biodiversity (in particular the Endangered Ecological Community (EEC) on the land), and that greenhouse gas emissions are minimised.

Clause 15 Resource recovery

It is considered the development will be undertaken in an efficient manner where wastes will be minimised. Production wastes will be predominantly soils. The application states that any soils that will be removed for extraction will be stockpiled on site and respread on the final landform. Additional soils will be used to form the amenity bund. While the northern and eastern bunds are proposed to remain, the additional overburden will be placed in the final quarry void. Appropriate conditions would be included on the consent concerning such matters, if granted (**Appendix 2**).

Other non-production waste that will be generated include domestic waste and recycles from the office component, waste oils, batteries, tyres, and scrap metals. The Applicant has indicated that suitable measures will be in place to ensure these wastes are stored and disposed of appropriately. Suitable conditions on the consent can cover such matters, if granted and are included in **Appendix 2**.

Clause 16 Transport

This clause requires consideration of the transportation of materials on public roads and ensuring impacts to the roadway and adjoining land uses are minimised. In this regard it is noted that materials will be transported off site north along Sheraton Road to the intersection with Wellington Road (Mitchell Highway) where vehicles will travel east or west along Wellington Road, or continue north on Sheraton Road. The direction vehicles travel will be dependent on the final destination of the product. It is noted that the transport of materials on a public road is necessary and it is not possible to transport materials by other means.

Sheraton Road from Wellington Road to approximately 800 metres south comprises a bitumen 'dual carriageway' with two (2) x 3.5 metre wide lanes and one (1) x 3 metre wide parking lane either side, with a speed limit of 60km/h. This section of roadway is in reasonable condition. The remainder of the roadway (which coincides with the conclusion of the built development) comprises of a two-lane bitumen roadway with a width of approximately 7.2 metres, with a speed limit of 100km/h. Two (2) x 90 degree bends exist along this section with an advised speed limit of 30km/h. This section of roadway has deteriorated, particularly at the two (2) x 90 degree bends through a combination of poor construction, lack of maintenance, use of heavy vehicles associated with the existing *extractive industry (quarry)*, and age-related deterioration.

As discussed previously, Sheraton Road provides access to three (3) schools. These are located to the north of the development site ensuring vehicles associated with the development are required to pass these schools. The remainder of Sheraton Road consists of business, and vacant agricultural land. This agricultural land however is zoned for residential purposes ensuring that in future Sheraton Road may be characterised by residential development. Council is currently considering a Development Application for a 51 lot rural/residential subdivision on Lot 1 DP 880413 where some lots would have frontage to Sheraton Road.

In terms of minimising impacts on the existing development that fronts Sheraton Road the application proposes the following:

- Restrictions on vehicle movements during school drop-off and pick-up times (8:15am to 9:15am and 3:00pm to 4:00pm) would be implemented;
- Ensure that all loads are covered prior to leaving the development site to prevent loose materials falling onto the roadway or the creation of excessive dust; and
- Ensuring all laden heavy vehicles are weighed prior to leaving the extraction area to ensure mass limits are not exceeded.

In accordance with subclause (1)(c), the applicant has identified a Driver Code of Conduct will be developed, implemented and enforced to manage road safety issues associated with climatic conditions, existing land use activities (e.g. schools) and general driver behaviour. No other details have been provided in relation to this Code of Conduct and how it will be implemented. Should the application be approved, an appropriate condition is recommended (**Appendix 2**) that the detailed Code of Conduct be submitted to Council for approval prior to the commencement of quarrying operations. The Code of Conduct shall include the matters of consideration identified by NSW Roads and Maritime Services (see below).

In addition, the Applicant has proposed to undertake upgrades to Sheraton Road from where the 'dual carriageway' concludes to the quarry entrance to make the roadway suitable for the increased heavy traffic. Further, ongoing maintenance is proposed to be addressed through a Planning Agreement (PA) with Council. Council's Technical Support Branch have resolved a PA would be suitable with the ongoing contribution to be levied based on a tonnage rate of extraction. Should the application be approved, an appropriate condition (**Appendix 2**) is recommended that prior to the commencement of quarrying operations the PA be formally entered into with Council in accordance with the requirements of Section 93F of the Environmental Planning and Assessment Act, 1979.

Dubbo Regional Council is the roads authority for Sheraton Road. In accordance with subclause (2), Roads and Maritime Services (RMS) were notified of the application. A response was provided on 10 January 2017. RMS identified that they do not object to the application subject to the following requirements:

- *"The proponent is to prepare and implement a code of conduct relating to transport of materials on public roads as part of the considerations under Clause 16(1) of State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007 (the SEPP). The code of conduct is to include:*
 - *Details of transportation hours and vehicle types pursuant to approval of the development application.*
 - *Procedure for the transport of hazardous materials.*
 - *Details of local school operating hours and in particular, student drop off/pick up times. Haulage operations in the vicinity of schools adjoining Sheraton Road during student drop off and pick up times is to be prohibited.*
 - *Requirement for drivers to operate vehicles in a safe, professional and courteous manner.*
- *Safe Intersection Sight Distance (SISD) requirements outlined in the Austroads Guide to Road Design Part 4 is to be provided and maintained at the vehicular access to the development from Sheraton Road."*

As discussed previously, should the application be approved, an appropriate condition is recommended that the detailed Code of Conduct (**Appendix 2**) which includes the matters of consideration listed above, be submitted to Council for approval prior to the

commencement of quarrying operations. A copy of the RMS correspondence will be provided to the applicant with the consent, if granted.

Clause 17 Rehabilitation

In accordance with subclause (2)(a) a plan has been submitted which identifies the end use and landform of the land once rehabilitated (see **Figure 4**). The plan demonstrates areas of biodiversity conservation (native woodland), primarily around the perimeter of the extraction area, with the remainder forming the growth of exotic pasture (ie for stock grazing) and native grassland. Tree species chosen for the earth bund will be required to be native and comparable to the surrounding vegetation.

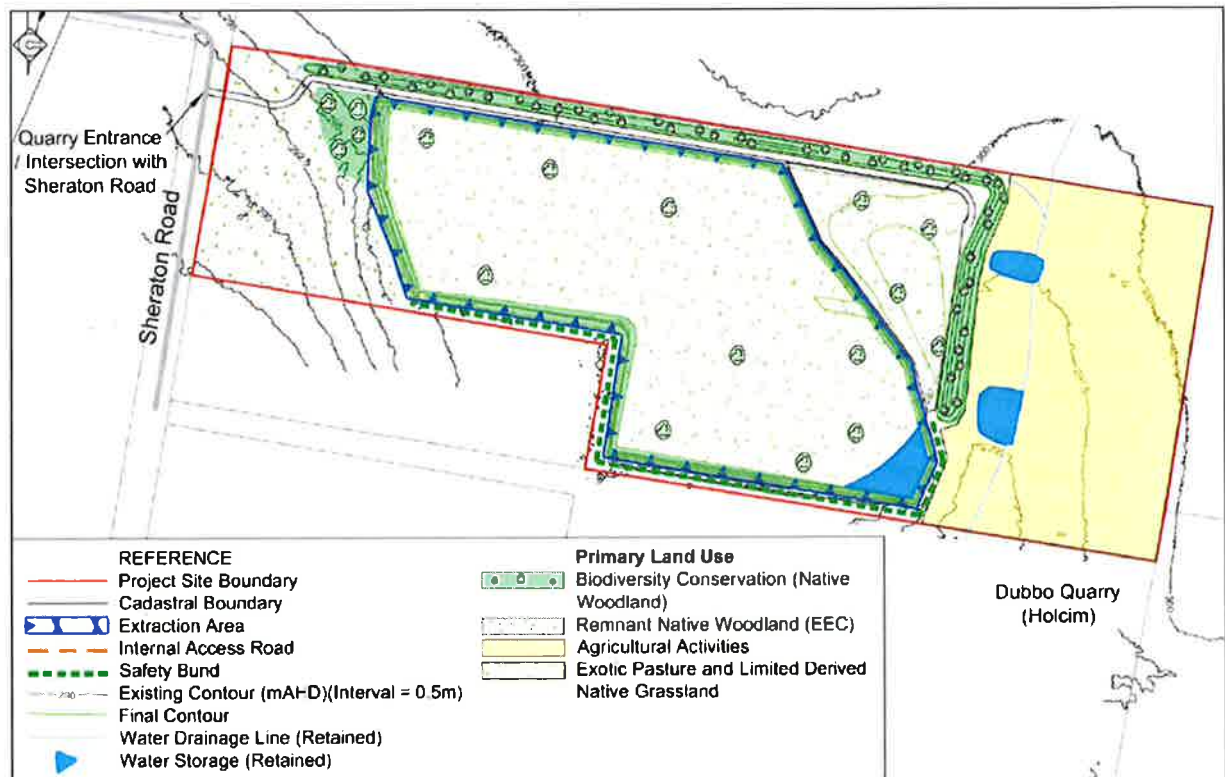


Figure 4. Proposed rehabilitation plan (source: Figure 2.9 of the EIS)

As discussed previously, excess soil stockpiled on site, as well as from the earth bunds will be used to backfill the extraction area. All other building features would also be removed including infrastructure and ancillary equipment, all buildings, the weighbridge, and fuel store.

In terms of potential contamination and rehabilitation the application has identified that the areas of the site surrounding the hydrocarbon storage area will be inspected for contamination. Should any contamination be identified the area will be segregated, the contamination material excavated and transferred to a facility licenced to accept such materials. It is considered such rehabilitation techniques will be undertaken so as to not jeopardise public safety. Should the application be approved, an appropriate condition regarding such rehabilitation practices is recommended (**Appendix 2**).

Clause 18 Receipt and disposal of waste

Should the application be approved, an appropriate condition is recommended that no waste materials including soil be brought onto the property as part of the operation or rehabilitation of the site (**Appendix 2**).

State Environmental Planning Policy (State and Regional Development), 2011

Schedule 1, Clause 7 outlines State Significant Development for *extractive industries*. Through assessment of the Environmental Impact Statement it is considered the development is not State Significant Development, as the proposed extractive industry will not extract more than 500,000 tonnes per year (being a maximum of 250,000 tonnes per annum (tpa)), nor will it extract a total resource of more than five million tonnes.

The EIS identified an extraction rate of up to 250,000 tpa over a 25-30 year lifespan. Utilising the maximum rate for every year the quarry would be in operation indicates the 5 million tonne total resource would be exceeded. The Applicant has provided further clarification in relation to the matter as stated below:

"The extraction area was designed to ensure the resource which was the subject of this development application remained less than 5 million tonnes.

Based on the resource drilling undertaken by the Applicant, a resource model was generated by Langford and Rowe Consulting Surveyors (LRCS) which identified the depth to basalt across the Project Site. A copy of this resource model is enclosed. Accounting for the variable overburden layer, LRCS developed a pit shield to provide for the extraction of less than 5 million tonnes of basalt. Correspondence provided by LRCS identifies how the volume and tonnage of basalt was calculated and confirms that the total basalt resource which forms the subject of this development application is 4,852,425 tonnes. This correspondence is also enclosed.

It is noted that the EIS references extraction to a depth of between 12m and 15m. This represents the maximum depth of extraction (where overburden layers are greater) with the actual depth of basalt to be extracted varying across pit from 5.5m in Cells 18 and 19 to over 10m in Cells 15, 16 and 17 based on local topography."

Council is therefore satisfied that the development is not State Significant Development.

Given the development fits the criteria under Schedule 4A of the Environmental Planning and Assessment Act 1979, the development is considered Regional Development pursuant to Clause 20.

Dubbo Local Environmental Plan 2011

The following clauses of Dubbo Local Environmental Plan 2011 have been assessed as being relevant and matters for consideration in assessment of the Development Application.

Clause 1.2 Aims of Plan

The application is not inconsistent with the aims and objectives of the plan.

Clause 2.2 *Zoning of Land to Which Plan Applies*

The land is zoned part RU2 Rural Landscape, part RE2 Private Recreation and part IN3 Heavy Industrial. The activities associated with the development will however be restricted to the RU2 and RE2 zones, with 90% of the activity located in the RE2 zone.

Clause 2.3 *Zone objectives and Land Use Table*

The proposed land use is defined as an *extractive industry* under the Dubbo LEP 2011 which states as follows:

“The winning or removal of extractive materials (otherwise than from a mine) by methods such as excavating, ... or quarrying, including the storing, stockpiling or processing of extractive materials by methods such as recycling, washing, crushing, sawing or separating ... ”

Extractive industry (quarry) is a prohibited land use within the RE2 Private Recreation zone. The permissibility of *extractive industry (quarry)* in the three land use zones, particularly the RE2 zone, has been discussed previously under Clause 7 of State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007.

The RE2 zone objectives are as follows:

- *To enable land to be used for private open space or recreational purposes.*
- *To provide a range of recreational settings and activities and compatible land uses.*
- *To protect and enhance the natural environment for recreational purposes.*

The basis for the land use zones and planning controls provided in the Dubbo Local Environmental Plan 2011 is the Dubbo Urban Areas Development Strategy (UADS). The UADS was first adopted by the former Dubbo City Council in 1996 and is made up of a number of individual strategies for residential, commercial, industrial, institutional and recreational lands.

The Industrial Areas Development Strategy (IADS) is a key strategy of the overarching UADS which was adopted by the former Dubbo City Council at its meeting on 24 February 1997. A major component of the IADS is the inclusion of four Industrial Candidate Areas (ICAs) which were identified through the analysis and consideration of 10 key criteria; groundwater, flooding, land use conflict, distance from facilities, transport infrastructure, complementary industries, utilities, land pricing, land fragmentation and geotechnical considerations.

The first of these areas is Industrial Candidate Area 1 – Mitchell/Eulomogo, as shown in **Figure 5**.

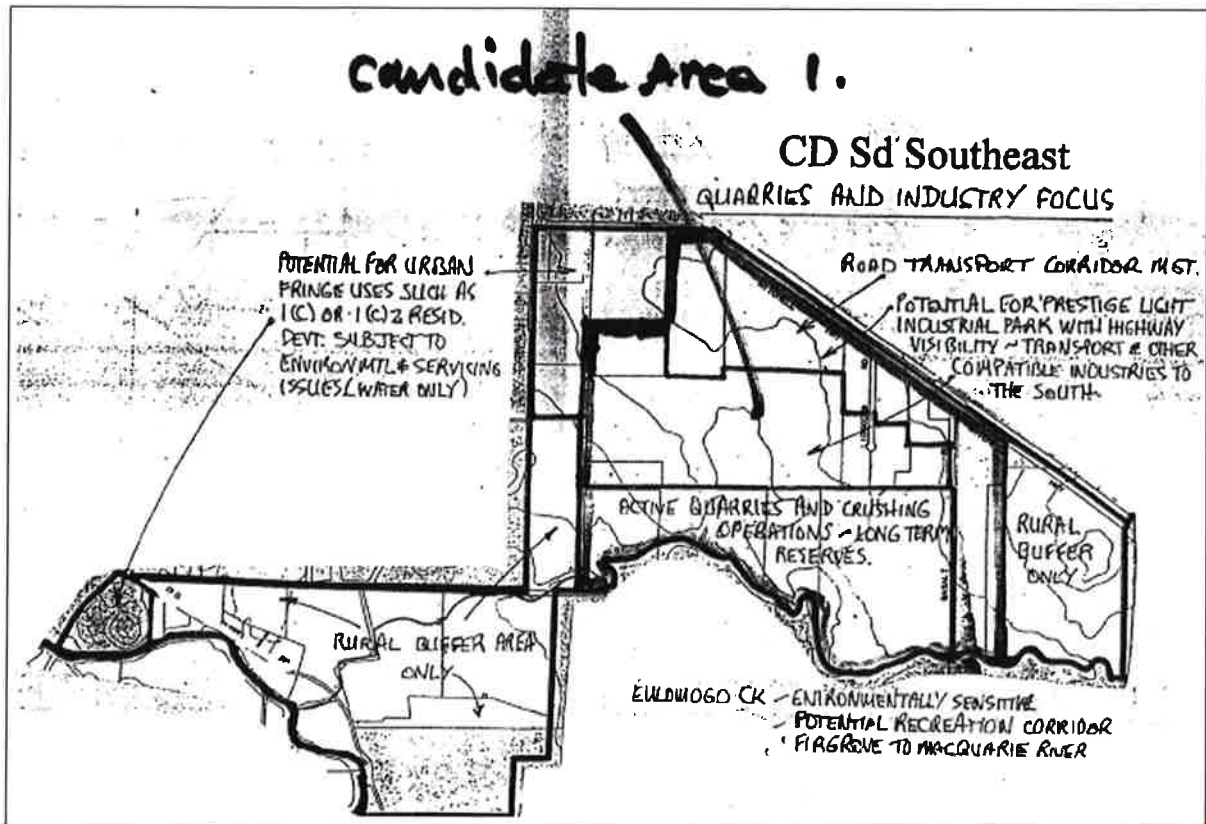


Figure 5. Industrial Candidate Area No. 1 – Mitchell/Eulomogo

The Industrial Candidate Area is located on the Mitchell Highway approximately 6 kilometres southeast of the Dubbo Central Business District and is located within a reasonable proximity to the Main Western Rail Line. Overall, the Industrial Candidate Area includes an area of approximately 640 hectares across a range of land holdings. The ICA currently comprises a number of land use zones, including B5 Business Development, B7 Business Park, IN2 Light Industrial, IN3 Heavy Industrial, RE2 Private Recreation and RU2 Rural Landscape. It should be noted that Figure 5 as provided above recognises the importance of extractive industries within the Industrial Candidate Area with an area of the ICA having the following designation:

"Active quarries and crushing operations – long term reserves."

It should also be noted that the subject site is situated in a section of the ICA which provides the following designation:

"Transport and other compatible industries to the south."

A review of the Dubbo Urban Areas Development Strategy, including the Industrial Areas Development Strategy, was undertaken by the former Dubbo City Council in 2006. The Urban Areas Development Strategy 1995-2015 – Discussion Paper First Five Yearly Review was adopted by Council on 26 February 2007.

The Discussion Paper included a detailed analysis of each land use strategy, including the Industrial Areas Development Strategy. Within the discussion in respect of the Industrial Areas Development Strategy, the paper reaffirmed the role and importance of the four ICAs to meeting the demand for industrial land in the City. It concluded that there was a sufficient supply of industrial land to meet current and projected future demand and did not

recommend any need to rezone any additional industrial land or recognise any further extension of extractive industries in ICA 1.

As can be seen in **Figure 6**, the subject land is situated adjacent to the eastern edge of the Dubbo urban area. Land directly adjacent to the subject site is situated in the South-East Residential Urban Release Area, which is one of three (3) defined Residential Urban Release Area's in the Dubbo Local Environmental Plan 2011. Land situated within the defined Residential Urban Release Area's will provide the majority of residential development opportunities in the south-eastern section of the City.

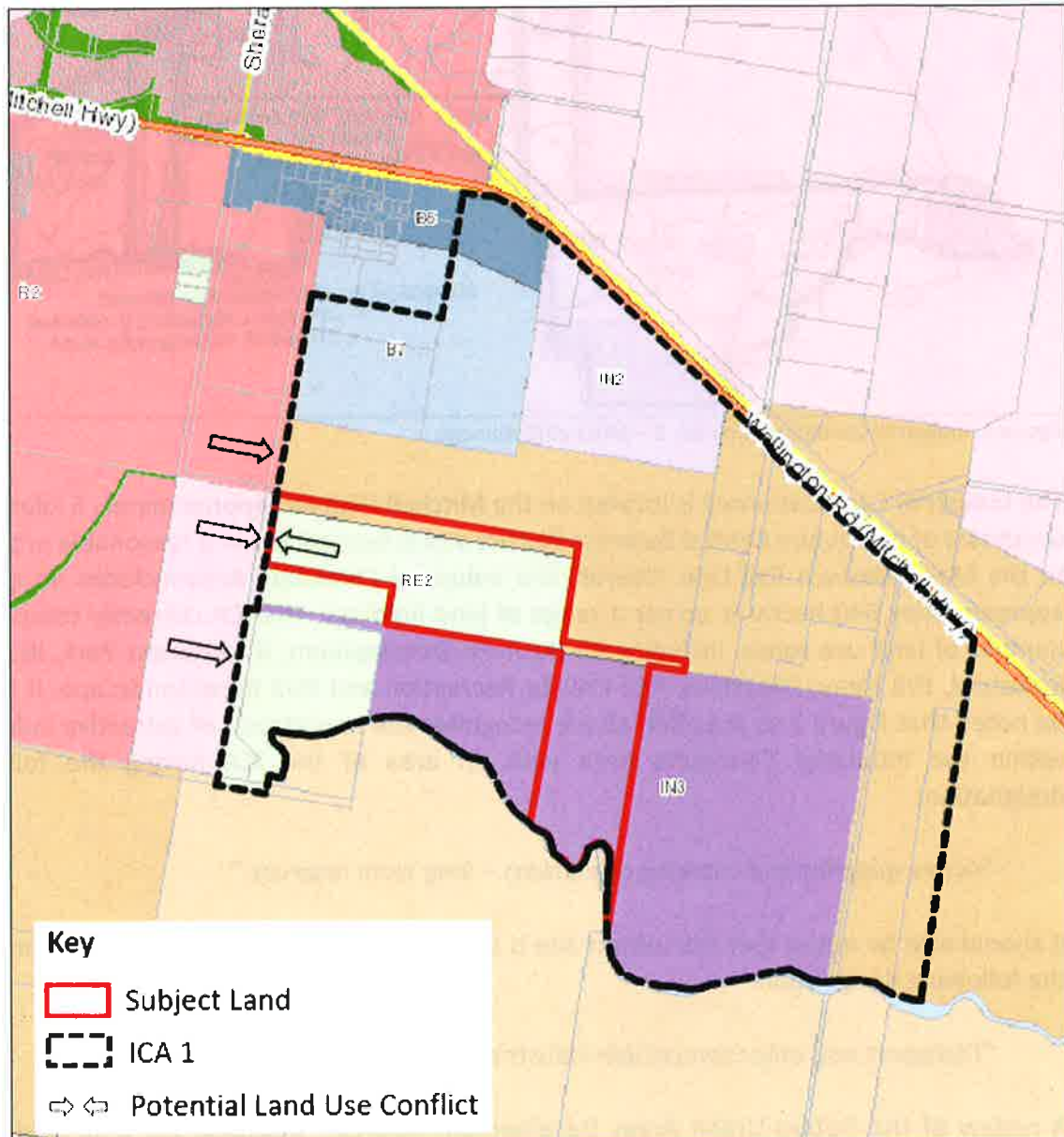


Figure 6. Precinct characteristics

The extractive industry is proposed to be developed directly adjacent to land included in the South-East Residential Urban Release Area. As a long accepted planning principle, extractive industries or industrial development activities should not be provided adjacent to land zoned for the purposes of residential development. Industrial activities and in the case of the proposed extractive industry are generally incompatible activities. This incompatibility usually results in a reduction in residential amenity through increased heavy vehicle traffic, the potential for dust, noise, odour and visual impacts associated with such a development.

If the Development Application is approved, Council will be required to reconsider the relationship of the subject site within the adjoining Residential Urban Release Area and the potential for impacts associated with quarrying activities on residential amenity. If the development application is approved, it is recommended that a further report be provided to Council, including options for the proposed rezoning of the adjacent Lot 2 DP 880413, 24R Sheraton Road, Dubbo, to consider an appropriate density for development of the land having regard to the likely impacts of the proposed development.

Council requested the Applicant address this matter. In a response provided 20 March 2017 the Applicant has advised that given where there is an inconsistency between SEPPs and LEPs the SEPP takes precedence, in this instance the objectives and requirements of SEPP (Mining, Petroleum Production and Extractive Industries) 2007 takes precedence and the objectives of the LEP zoning. However, as stated earlier in the report, it is Council's opinion that the proposal fails to meet the relevant aim of SEPP (Mining, Petroleum Production and Extractive Industries) 2007, in that it results in disorderly use of the land.

Although it should be noted that the failure of the proposal with regard to the objectives of the zone is a further indication that Council never envisaged an *extractive industry (quarry)* in the RE2 Private Recreation zone.

Council acknowledges that a SEPP overrides an LEP and that studies have been undertaken to demonstrate how the proposal can be mitigated with regard to detrimental impacts. However, local considerations should also be taken into account. Clearly the development proposal does not conform to the zone objectives. The purpose of the RE2 zoning here was originally to provide for a golf course development (private recreation) as was envisaged by the previous land owner. Additionally, it is also strategically located to act as a buffer between the quarrying activities in the IN3 zone and the surrounding residential zoned land. An *extractive industry (quarry)* is therefore considered to be an incompatible use in the zone.

Clause 2.7 Demolition requires development consent

To enable the development proposal to proceed, a number of buildings will be required to be demolished, including the existing dwelling. The demolition forms part of this consent. Should the application be approved, appropriate conditions will be included on the consent concerning the buildings' demolition to ensure the demolition is undertaken in accordance with the relevant Australian Standards and all hazardous wastes are disposed of appropriately.

Clause 5.10 Heritage conservation

The subject property is not listed within Schedule 5 of the Dubbo LEP 2011. Further, there are no heritage items within the vicinity of the property.

An Aboriginal and Historical Cultural Heritage Assessment has been submitted with the application. The Assessment identified two (2) historical built features. These are the South Keswick homestead (HS01) and auxiliary structures (HS02) which include five (5) sheds and a milling station. It was determined that these items carry no heritage significance and their removal should be given approval.

An Aboriginal Archaeological field survey was also undertaken to determine if there are any Aboriginal heritage items located on the property (see Appendix 9 of the EIS). The survey

found no additional Aboriginal sites. Further, no landform within the development site was assessed as likely to contain subsurface archaeological deposits.

A previous study undertaken in 1998 identified an Aboriginal site being an *open campsite – artefact scatter* site (AHIMS 36-1-0248). The site is located immediately to the east of the extraction area and was identified as containing 35 surface artefacts. Although the site is located outside of the extraction area, it has the potential to be disturbed through minor earth works or other infrastructure works. The field survey undertaken as part of this application determined that the site has low archaeological value due to the lack of integrity and artefact assemblage typical of other sites in the region.

The Assessment subsequently recommended the following in relation to Aboriginal heritage:

- “1. Site 36-1-0248 will not be impacted by the Proposal. However, a 10 metre buffer should be fenced during the construction of the Proposal to ensure the site will not be inadvertently impacted;*
- 2. An updated site card will be submitted to AHIMS showing the extension of site 36-1-0248;*
- 3. Outside of Site 36-1-0248 there are no constraints to the Proposal, however, the following precautions should be made:*
 - a. All land-disturbing activities must be confined within the assessed Project Site. Should the parameters of the proposed work extend beyond the assessed area, then further archaeological assessment may be required;*
 - b. All soil removed for the Proposal should be stockpiled for reuse within the Project Site.*
- 4. In the unlikely event that objects suspected to be of Aboriginal origin (including skeletal material) are encountered, the Aboriginal Heritage: Unanticipated Finds Protocol should be followed; and*
- 5. Work crews should undergo cultural heritage induction training to ensure they are able to recognise Aboriginal artefacts and are aware of the legislative protection of Aboriginal objects under the NPW Act and the contents of the Aboriginal Heritage: Unanticipated Finds Protocol.”*

The Assessment also recommended the following in relation to European heritage:

- “1. Sites South Keswick-HS01 and South Keswick-HS02 hold no heritage significance and therefore receive no statutory requirements. As a result of this, both sites can be impacted by the proposed work, without any further requirements;*
- 2. The former landowner, Mr Warren, has told OzArk he will be transporting the ‘Harden Bel’ house out of the project site when he moves. As a result of this, no further assessment is required.*
- 3. All land-disturbing activities must be confined within the assessed Project Site. Should project impacts change such that the area to be impacted is altered then additional assessment may be required;*
- 4. All contractors undertaking the work should be made aware of the legislative protection of historical heritage sites in the event of unknown heritage items are encountered during the work; and*
- 5. Under the Heritage Act, it is an offence to disturb, destroy or remove historic relics without the prior consent of the NSW Heritage Division. Accordingly, in the event that any significant subsurface previously unknown historic deposit is observed, work should cease immediately at the specific location and a qualified*

heritage consultant and OEH contacted to provide further direction on the project – refer to the Historical Heritage: Unanticipated Finds Protocol.”

The conclusions and recommendations of the Assessment are noted. It is considered the development will not have an adverse impact on Aboriginal or European heritage. No further investigations in relation to heritage conservation are required.

Clause 5.14 Siding Spring Observatory – maintaining dark sky

The applicant has identified that most operations associated with the *extractive industry* (quarry) would be undertaken during day light hours with only truck loading and dispatch occurring prior to 7 am and after 6 pm. It is stated that these activities would not require more than one or two (2) lighting plants at the loading point, and a shielded outside light fitting at the weighbridge. It is considered that such lighting would not exceed one million lumens and as such concurrence with the Observatory Secretary is not required.

Clause 7.2 Natural Resource – Biodiversity

Part of the land is identified as having high biodiversity value. This area is specifically located on the western and southern portions of the subject property. The extraction area has been sited so as to avoid these areas. Some components of the development however, will be undertaken in the biodiversity area on the western portion, namely the construction of the internal access road and the infrastructure and services area.

The application was accompanied by an Ecological Assessment (Appendix 8 of the EIS). The Assessment undertook a desk top review and a field survey to determine the extent of ecology on the site. The survey and Assessment identified 40 flora species, of which there were no threatened flora, 20 native flora species and 20 exotic flora species. The groundcover was generally between 80-95% density. Five (5) noxious weeds were recorded. In terms of fauna, 14 species were recorded of which there was no threatened fauna, 12 species of native fauna and two (2) species of exotic fauna. The Assessment subsequently made a number of recommendations including:

- Any change to the development footprint will require further ecological survey;
- Making personnel on site aware of the legislative consequence for the destruction of native vegetation without approval;
- Vegetation is removed in a manner that avoids damage to surrounding vegetation;
- Prior to clearing, trees are to be inspected for nests or hollows;
- Erosion and sediment controls to be installed and regularly checked;
- Food scraps and rubbish to be appropriately disposed of to prevent providing forage habitats for foxes, rats, dogs and cats; and
- Any fallen timber, dead wood and bush rock to be left in situ or relocated to a suitable place.

Based on these findings and recommendations, the Assessment subsequently drew the following conclusions:

“Where possible, impact to the environment has been avoided through modification to the extraction area and use of existing access tracks to proposal. Additional safeguards and mitigation measures have been provided to minimise harm to the environment. If these are implemented then the proposal is unlikely to have a

significant impact to species, populations and communities listed under the EPBC, TSC or FM Acts."

The application was referred to NSW Office of Environment and Heritage (OEH) for comment. The OEH in their correspondence dated 29 November 2016 initially requested further information in relation to the number and species of trees being removed as part of the project, and a full species list of flora that will be used to establish the amenity bund. It was also requested that surveys of some flora species be undertaken during a recommended survey period that coincides with their growth cycle. It was noted the survey was undertaken in mid-July when some species are dormant.

The Applicant provided additional information clarifying the areas of concern. Following review OEH in correspondence dated 23 February 2017 advised that they have no further concerns with the development from an ecological perspective. Council's Environmental Control Branch concurs with this analysis.

Clause 7.3 Earthworks

Significant earthworks are proposed ensuring assessment against this clause of the LEP is required. Under this clause the consent authority must consider whether the development will have a detrimental impact on the environmental functions and processes and neighbouring land uses or features of the surrounding land.

In terms of the matters of consideration under this clause the following from the EIS is noted:

- a) The application has demonstrated drainage patterns will not be altered by these earthworks. Appropriate sediment and erosion control measures will ensure runoff from the site is not increased;
- b) The application has identified what rehabilitation techniques will be undertaken to ensure future uses of the land is able to be undertaken following decommissioning of the quarry;
- c) The Applicant has identified the soil to be excavated will be clean fill and no contaminating activities will be undertaken on the site;
- d) Through several environmental studies it is demonstrated that the development will not have an adverse impact on the likely or future amenity of the locality;
- e) The application has demonstrated no fill will be brought into the property;
- f) As discussed, an Aboriginal and Historical Cultural Heritage Assessment has been submitted which demonstrates no Aboriginal relics will be disturbed; and
- g) As discussed, a Groundwater Impact Assessment has been submitted which demonstrates groundwater will not be impacted upon by this application.

It is therefore considered that the earthworks can be undertaken in accordance with Dubbo LEP 2011 requirements.

Clause 7.5 Groundwater vulnerability

The land is identified as having moderately-high groundwater vulnerability according to the Natural Resources – Groundwater Vulnerability Map.

The Applicant has undertaken a Groundwater Impact Assessment. The Assessment was undertaken by reviewing legislation and guidelines, reviewing local groundwater bore data, and reviewed potential groundwater impacts based on activities proposed. The Assessment subsequently drew the following conclusions:

"An Assessment of groundwater data within the Study Area indicates that the Proposal does not represent an 'aquifer interference' activity. The Project involves excavation of basalt to a depth of approximately 290 metres AHD. Available groundwater data indicates that the standing water level in the vicinity of the proposed excavation is approximately 270 metres AHD, some 20 metres below the base of the proposed excavation. Groundwater extraction is not proposed for water supply or dewatering purposes.

The proposal will not cause unacceptable impacts to surrounding groundwater users or the environment. Proposed environmental controls and management procedures at the Project Site are expected to provide adequate protection to the quality of groundwater beneath the Project Site.

Groundwater dependent ecosystems or culturally sensitive groundwater sites were not identified within the Project Site or Study Area."

The application was referred to Council's Environmental Control Branch who provided the following comment in relation to aquifer interference and groundwater vulnerability:

"The applicant has engaged Ground Doctor Pty Ltd to conduct a hydrogeological assessment of the site. A number of onsite investigations were conducted by the consultant and it has been concluded that the groundwater will occur below the maximum depth of the quarry and it is therefore unlikely to be encountered. The applicant has outlined a range of measures to ensure the protection of ground water in the event of a spill or leak, or in the event that the quarry encountered groundwater during the excavation period. The hydrogeological assessment provided is considered to be suitable for the intended quarry."

The comments provided above are noted. It is therefore considered that the development will not have an adverse impact on the groundwater below the development site and no further investigations are required.

Clause 7.7 Airspace operations

The natural ground height of the development site ranges from 295 metres AHD to 300 metres AHD. The Obstacle Limitation Surface (OLS) level of the Dubbo City Regional Airport at this location is 430 metres AHD. It is therefore considered that no part of the development will breach the OLS and there will be no adverse impact on the operations of the airport.

(a)(ii) Draft environmental planning instruments

No draft environmental planning instruments apply to the land to which the Development Application relates.

Dubbo Development Control Plan 2013

An assessment is made of the relevant chapters and sections of this DCP. Those chapters or sections not discussed here were considered not specifically applicable to this application or are discussed elsewhere in this report.

Chapter 3.1 – Access and Mobility

While not stated, it is assumed that disabled access will largely not be provided to the development. Further, the public will not be accessing the development with access by employees only. In regard to this, all employees will be required to be reasonably able bodied to undertake the tasks required at the *extractive industry (quarry)*. Staff are required to be reasonably able bodied to work in the industry and to drive heavy vehicles.

Clause D3.4 of the Building Code of Australia (BCA) identifies a concession for providing disabled access to components of a development where disabled people would not normally utilise. Such concession states:

“The following areas are not required to be accessible:

- (a) An area where access would be inappropriate because of the particular purpose for which the area is used.*
- (b) An area that would pose a health or safety risk for people with a disability.*
- (c) Any path of travel providing access only to an area exempted by (a) or (b).”*

Part 4 of the Premises Standards of the Disability Discrimination Act 1992 contains a similar concession. Due to the nature of the facility it is reasonable that the development would be able to avail itself of this concession.

As such, a detailed assessment as to the development’s compliance with this chapter of the DCP or the Premises Standards will not be undertaken. Should the application be approved, an appropriate condition is recommended that the above concessions through appropriate justification be applied for with the Construction Certificate application for the built features of the development.

Chapter 3.2 – Economic Impact

In accordance with Section 3.2.4 of the DCP an Economic Impact Assessment is not required to be provided for a development of this nature. Nevertheless, the application has addressed economic impacts within the EIS as required under Schedule 2 of the Environmental Planning and Assessment Regulation 2000.

This was a requirement of the SEARS which required the EIS to provide an assessment of the likely economic impacts of the development, including consideration of both the significance of the resource and costs and benefits of the proposal. The Assessment has identified the following potential adverse impacts as a consequence of the development:

- Noise, air quality and traffic impacts to neighbouring property. Potential mitigation measures have been discussed in this report; and

- The aesthetic appeal of the local setting could be reduced, in particular during the construction phase. Potential mitigation measures have been discussed in this report including earth and vegetative screening around the site.

It should be noted that the above points are considered to be more environmental impacts, with no quantitative economic value provided.

In contrast, the following positive impacts have been identified:

- Direct employment for between 12 and 24 people and a further six (6) to eight (8) positions for truck drivers;
- The development will provide for an initial capital investment of between \$5 million and \$6 million dollars, with an ongoing contribution of between \$3.3 million and \$5 million per year. The proposal would also contribute to the national and state economies through the payment of taxes and royalties;
- Flow-on benefits to the economy through the expenditure of wages paid to employees, profits made on the sale of quarry profits and through the purchase of goods and services for the ongoing operation;
- The increased supply of construction materials will benefit the local civil construction industry and ensure a continued supply for construction projects throughout the Dubbo LGA;
- The Applicant would contribute to the upgrading of Sheraton Road; and
- Securing the remnant EEC area on the western side of the property to assist in maintaining the local aesthetic of the area.

Overall, the applicant considers the proposal to be a positive economic impact, outweighing the adverse environmental impacts generated by this development and therefore resulting in a net social-economic benefit to the local and wider community.

Chapter 3.3 – Social Impact

In accordance with Section 3.3.5 of the DCP a Social Impact Assessment (SIA) is required for any type of Designated Development. A specific SIA has not been submitted with this application however, it is considered the EIS adequately addresses social impacts (positive and negative), as is required under Schedule 2 of the Environmental Planning and Assessment Regulation, 2000. As discussed above under economic impacts, the application has identified a number of positive social-economic impacts as a consequence of the development.

The positive social-economic impacts described above, focus on the benefits to the wider community through job creation, expenditure, etc. Potential adverse social impacts to those residing on surrounding residential land was also mentioned. While the various studies outline methods of minimising such impacts, their minimisation relies heavily on the good operating procedures of the operator. Should this not occur, adverse social impacts on neighbouring property owners is likely.

Chapter 3.5 – Parking

As discussed, access to the development site will be via a bitumen sealed culverted access off Sheraton Road. The Applicant has indicated for dust suppression reasons all internal roadways will be sealed. This would also be in accordance with the requirements of Section

3.5.7 of the DCP which requires all industrial developments to be provided with sealed driveways and car parking areas. The surface treatment is therefore considered suitable in consideration of the nature of the site/development and traffic volumes.

This chapter of the DCP requires a minimum number of car parking spaces to be provided for certain types of development. The application would most closely be defined to *industry* which requires one (1) space per 90m² Net Lettable Area (NLA). The office and workshop building in the north-western corner of the site has a NLA of 1,514m². Therefore 16.8 (say 17) off-street car parking spaces are required. Plans indicate 26 off-street car parking spaces adjacent to this building thereby ensuring compliance.

It is also noted that three (3) transportable buildings are proposed adjacent to the screening/crushing area comprising an office, lunch room, and toilet. No specific floor plans have been provided for these buildings. It is noted however, that there is also proposed to be 24 off-street car parking spaces adjacent to this area which is considered suitable.

Chapter 3.7 – Environmental Management

This Chapter of the DCP provides guidance relating to the local environmental values in relation to biodiversity, riparian areas, waterways, groundwater vulnerability and bushfire. All matters have been addressed by the Applicant and have been discussed previously in this report.

(a)(iia) Planning agreement

It is also noted the Applicant has proposed to enter into a Planning Agreement (PA) with Council for the ongoing maintenance of Sheraton Road pursuant to Section 93F of the Environmental Planning and Assessment Act, 1979. This is through an acknowledgment by the Developer that the *extractive industry (quarry)* will increase the amount of heavy traffic on Sheraton Road which will in turn require an increased maintenance regime. The PA would involve an ongoing monetary contribution to Council based on the tonnage of extraction by the development. Council's Technical Services Division have agreed 'in principle' to the proposal. The specifics of this, including a suitable contribution based on a tonnage extraction rate has not been resolved. Should the application be approved, an appropriate condition (**Appendix 2**) is recommended that the applicant enter into a Planning Agreement with Council for the ongoing maintenance of Sheraton Road.

(a)(iv) The regulations

No additional matters prescribed in the Regulations affect determination of this application.

(b) Likely impacts on the natural and built environments, and social and economic impacts in the locality

Natural and Built Environment

As discussed, some vegetation will be required to be removed as a consequence of the development, including areas identified as having high biodiversity value. As discussed previously, an Ecological Assessment has been undertaken with this application which demonstrated the development can be undertaken with minimal impact to native flora and

fauna. Any impacts through the removal of native vegetation will be mitigated through the provision of native vegetation around the earth bund.

In terms of the built environment, the siting of the *extractive industry (quarry)* adjacent to rural/residential and residential zoned land is considered to potentially generate adverse impacts to those residing in the immediately locality if the development.

Social and economic impacts

Social and economic impacts to the wider region have been discussed previously in this report with predominantly positive impacts identified by the consultant. However, as discussed, the siting of an *extractive industry (quarry)* adjacent to rural/residential and residential zoned land is considered to potentially generate adverse social and economic impacts to those residing in the immediately locality if the development.

(c) *Suitability of the site for the development*

Context, setting and public domain

Will the development have an adverse effect on the landscape/scenic quality, views/vistas, access to sunlight in the locality or on adjacent properties?

Despite the earthworks proposed it is generally considered the development will not reduce access to views or sunlight to neighbouring property or the scenic quality of the locality. Nevertheless, it is considered the general quarrying activities that will be occurring in close proximity to rural/residential and residential zoned land has the potential to create adverse impacts.

Is the external appearance of the development appropriate having regard to character, location, siting, size or external appearance of development in the locality?

Following completion of earth and vegetative screening it is considered the external appearance of the development will be appropriate having regard to the character of the locality. It is considered the earth and vegetative screening will ensure the quarrying operations and built features are not readily visible.

Is the size and shape of the land to which the Development Application relates suitable for the siting of any proposed building or works?

It is considered the size and shape of the land is suitable for the siting of the proposed development.

Will the development proposal have an adverse impact on the existing or likely future amenity of the locality?

As discussed, the development is proposed to be constructed adjacent to rural/residential and residential zoned land. Numerous studies have been provided to demonstrate the development can be suitably operated (mitigated) with minimal impact on neighbouring property.

Compliance with the Assessment recommendations however, relies heavily on the good practices of the operator which may not always occur. It is generally not 'good planning practice' to locate a quarry adjacent to rural/residential and residential zoned land due to the land use conflicts. The establishment of an *extractive industry (quarry)* adjacent to rural/residential and residential zoned land which is likely to be developed in the near future is considered to have an adverse impact on the likely future amenity of the locality.

Will the development have an adverse effect on the public domain?

It is considered the development will not have an adverse effect on the surrounding agricultural and industrial public domain. It is considered however, that the development may have an adverse impact on the surrounding residential public domain if the development is not operated strictly in accordance with the recommendations of the various studies. Impacts particularly from dust, noise, vibration, blasting and traffic has a potential to adversely impact on the residential public domain.

Landscaping

Has adequate provision been made for the landscaping of the subject land?

As discussed, landscaping will be provided around the perimeter of the development for aesthetic reasons as well as a means of filtering dust, light and noise impacts. Such landscaping is considered adequate to serve its purpose. Should the application be approved, an appropriate condition is recommended requiring the completion of landscaping prior to quarrying operations commencing (**Appendix 2**).

Environmental considerations

Is the development likely to adversely impact/harm the environment in terms of air quality, vibration and noise?

Cumulative air quality level

An Air Quality Assessment (EIS Appendix 7) was undertaken which analysed the annual average predicted particulate matter and deposited dust concentrations at 20 representative receivers surrounding the development site under two (2) different operating scenarios. According to the Assessment the modelling has been based on 'worst case operations' as they include maximum production levels and locations where operations are located closest to sensitive receivers. It also noted cumulative emissions from the existing quarry operations. The Assessment drew the following conclusions:

"The results of the dispersion modelling indicate that the predicted annual average PM₁₀, Total Suspended Particulate (TSP) and dust deposition at the closest sensitive receivers are all predicted to comply with the impact assessment criteria, even when considering the existing air quality and the contribution from the adjoining Holcim Quarry.

The cumulative 24-hour assessment showed that all sensitive receivers would experience PM₁₀ concentration above 50 micrograms/m³ but that these were all due to an already exceeding background level and the contribution from the proposal was minor.

In Scenario 1, there was one additional day predicted over the 24-hour PM_{2.5} National Environment Protection Measure (NEMP) standard due to the Proposal at potential future receivers (P8b and P8c) to the northwest of the Project Site. In Scenario 2 there were two (2) additional days predicted over the standard due to the Project Site at receiver P8b. The cumulative assessment was deemed to be conservative due to the background data assumed and results are likely to be lower in reality. It is considered that with the implementation of appropriate management measures, these exceedances are unlikely to occur."

Both receivers P8b and P8c described above are on Lot 1 DP 170259 to the north-west of the development site which is currently vacant land, however zoned for residential. Appropriate management measures listed in the Assessment include:

- Use of water cart to control emissions from haul roads;
- Enforcement of speed limits on site;
- Use of water injections while drilling;
- Progressive rehabilitation of exposed areas; minimising drop height of material during truck loading and unloading where possible;
- Management of dust generating activities during unfavourable meteorological conditions; and
- Keeping materials moist including the use of water sprays on stockpiles.

It is also stated that the operator proposes to install three (3) dust deposition gauges around the development site to monitor dust emissions.

The Environmental Protection Authority (EPA) have reviewed the Assessment. Concerns were raised that the modelling was not undertaken against best practice emission control and management measures, as well as a cumulative assessment which includes maximum activity rates for the neighbouring Holcim Quarry.

A response was provided by the applicant however, EPA still held concerns with dust pollution. Consequently in the General Terms of Approval (GTAs) the EPA advised that a revised Air Quality Impact Assessment must be completed and submitted with an application for an Environment Protection Licence (8.2). Concerns are therefore held with regard to ongoing dust emissions, with particular regard to the residential zoned land to the north-west which experienced the highest levels in previous testing.

Notwithstanding the above analysis and results, the proximity of the *extractive industry (quarry)* to rural/residential and residential zoned land remains a concern in terms of dust generation. Compliance with the Assessment recommendations and the GTAs relies heavily on the good practices of the operator which may not always occur. It is generally not 'good planning practice' to locate an *extractive industry (quarry)* adjacent to rural/residential or residential zoned land.

Airblast overpressure

According to the application, blast overpressure results have been calculated using Australian Standard 2187.2 – *Explosives – Storage and Use*, as applicable to blasting in hard rock. Under this Standard the recommended maximum level for airblast is 115dB linear

peak. The level of 115dB may be exceeded on up to 5% of the total number of blasts over 12 months. However, the level should not exceed 120dB linear peak at any time.

Analysis has been undertaken at the three (3) most affected receivers, namely the existing residential receiver to the north (Lot 253 DP 754308), the closest point of the potential residential subdivision to the north-west (Lot 1 DP 880413), and the closest point to the approved layout of the Neoen Photovoltaic Power Plant (Lot 210 DP 1220433).

In terms of blasting and overpressure results, the Assessment conservatively predicted that predicted blast overpressure and vibration levels identify that maximum instantaneous charge (MICs) should be carefully managed when in close proximity to receivers. It was also recommended that trial blasting in conjunction with vibration monitoring be completed during the start-up phase (cell 1) of the quarry to identify the relationship between MIC and received levels and to establish a site law for the project. The recommendation is that this commence with smaller sized blasts, progressively increasing to allow for increased analysis.

The Environmental Protection Authority (EPA) have reviewed the information and issued GTAs in relation to air blast overpressure. The requirements correlate with those requirements of the Standard as described above. It is noted GTA L7.3 restricts blasting to between 9 am and 3 pm Monday to Saturday inclusive and shall be limited to one (1) blast per day.

In terms of cumulative impact, the applicant has also advised that regular communications would be held between the developer and the operator of the adjacent quarry (Holcim) to ensure blasts did not occur simultaneously. This would minimise the cumulative impact between blasting at both quarries as they would not be occurring simultaneously however, these arrangements would still be discretionary.

Notwithstanding the above analysis and results, the proximity of the *extractive industry (quarry)* to rural/residential and residential zoned land remains a concern in terms of impacts from blasting. Compliance with the Assessment recommendations and the GTA's relies heavily on the good practices of the operator which may not always occur. It is generally not 'good planning practice' to locate an *extractive industry (quarry)* adjacent to rural/residential and residential zoned land due to the land use conflicts.

Ground Vibration

According to the application, ground vibration results have been calculated using Australian Standard 2187.2 – *Explosives – Storage and Use*, as applicable to blasting in hard rock. Under this Standard peak particle velocity (PPV) from ground vibration at residential receivers should not exceed 5mm/s for more than 5% of the total number of blasts over 12 months. However, the maximum level should not exceed 10mm/s at any time.

The Noise and Vibration Impact Assessment undertook an analysis at the three (3) most affected residences as described above. The predictions in the table provided in the EIS indicate that compliance with ground vibration criteria is achievable. The Assessment subsequently drew the following conclusions:

"MIC blast patterns for the project will be designed specifically to meet the relevant ANZECC guidelines at receivers and can be completed in conjunction with an appropriate blast monitoring program. Furthermore, trial blast events in conjunction

with vibration monitoring will be completed to quantify levels of overpressure and vibration at the proposed Neoen Power Plant when operation commences in Cell 1 of the quarry."

The Assessment however indicates that full results and recommendations are dependent on further trial blasts within Cell 1. The recommendation is that this commence with smaller sized blasts, progressively increasing to allow for increased analysis.

The Environmental Protection Authority (EPA) have reviewed the information and issued GTAs in relation to vibration. The requirements correlate with those requirements of the Standard as described above.

In terms of cumulative impact, the applicant has also advised that regular communications would be held between the developer and the operator of the adjacent quarry (Holcim) to ensure blasts did not occur simultaneously. This would minimise the cumulative impact of vibration from both quarries as they would not be occurring simultaneously however, these arrangements would still be discretionary.

Notwithstanding the above analysis and results, the proximity of the *extractive industry (quarry)* to rural/residential and residential zoned land remains a concern in terms of impacts from blasting and ground vibration. Compliance with the Assessment recommendations and the GTA's relies heavily on the good practices of the operator which may not always occur. It is generally not 'good planning practice' in 2017 to locate an *extractive industry (quarry)* adjacent to rural/residential and residential zoned land due to the land use conflicts.

Cumulative noise level

The application has undertaken a Noise and Vibration Impact Assessment utilising noise modelling software which considered noise generation from the initial surface extraction area, as well as extraction from the north-western most extraction cell to present worst case operations for noise that rural/residential and residential areas receive to the west.

Potential operational noise emissions assessed included extraction, drilling, processing, and dispatch via heavy vehicle. The results of the Assessment, which included noise testing at 14 potential noise receival sites (EIS Appendix 6), demonstrate that operational noise levels can comply with the relevant Industrial Noise Policy criteria for the morning shoulder, daytime and evening assessment periods once noise controls outlined in this Assessment are implemented on site. These controls listed include:

- Construction of a 3 metre high vegetated amenity bund along the northern, eastern and western site boundaries;
- The implementation of acoustic treatment options to the primary crushing plant and secondary/tertiary cone crusher to restrict the overall sound power level. Such options include establishment of near-field screens, stockpiles or cladding (or a combination of each);
- The primary crushing plant operating on the extraction floor following the development of the initial box cut within Cell 1; and
- The primary crushing plant operating as close to a completed extraction face as possible, in particular when operating south to north.

The Assessment subsequently provided the following conclusions:

"Results identify that noise levels from the proposed construction works are anticipated to satisfy standard hours construction noise management levels at all of the surrounding receivers, with the exception of R30. It is likely that dwellings may not be established within the proposed residential development (R30) at the commencement of project construction activities. Notwithstanding, where this is not the case, it is recommended that the project incorporate noise management measures to minimise the potential for construction noise impacts.

Catchments surrounding the quarry are anticipated to have negligible increase in cumulative industrial noise as a result of the quarry and remain below the INPs amenity criteria."

In the extraction above, the R30 receptor is Lot 1 DP 880413, which is currently vacant however zoned for residential development. The noise management measures referenced are those the writer has listed in dot point form above.

When undertaking the noise assessment the background noise levels included those generated by the existing Holcim Quarry adjacent. Consequently, Council is satisfied that the cumulative noise impact of the two (2) quarries has been considered.

Traffic noise was also considered, particularly along Sheraton Road. It was identified that during peak delivery periods, the development would generate up to 120 daily truck movements between 5 am and 10 pm. Considering the worst case scenario of maximum potential movements it is determined that at 30 metres from the road there will be an increase in the day time traffic noise level of 0.8dB(A) and an increase in night time traffic noise level of 1.1dB(A). The predicted noise levels, being 49.1dB(A) and 45.3dB(A) respectively, are considerably lower than the traffic noise criteria of 60dB(A) and 55dB(A) for day and night time traffic noise as per the NSW Road Noise Policy.

It is therefore considered that noise generated by the quarry, both through operations at the quarry, as well as traffic generation, have been considered against the Industrial Noise Policy, with noise determined not to exceed acceptable levels if operational, accordingly.

Will the development have an effect on conserving or using valuable land resources?

The development will utilise land resources, in this instance basalt from quarrying activities. Such resource is considered a 'valuable land resource' and as such the quarrying of this resource is desirable to the Applicant from an economic aspect.

Is the development likely to generate any adverse cumulative impacts?

As discussed there are existing quarries in proximity to this development site, namely the Holcim Quarry immediately to the south on Lot 1 DP 623367, and the smaller Boral Quarry to the south-east on Lot 96 DP 754308.

Cumulative impacts of the proposed *extractive industry (quarry)* and the existing development have been considered, as stated above. Studies demonstrate that the intensification of quarrying operations would not impact on neighbouring property, subject to numerous mitigation activities. The cumulative impact of additional quarry traffic utilising Sheraton Road was also considered and it was deemed that the road system (subject to

upgrades) could accommodate additional traffic movements as a consequence of this development.

While the studies have considered cumulative impacts the intensification of quarrying operations in close proximity to rural/residential and residential zoned land remains a concern in terms of the general reduction in the amenity of the area and the adverse impacts that may be generated if not operated soundly.

Hazards

The development will not generate any natural or technological hazards, noting the inherent hazards associated with any extractive industry.

Access, transport and traffic

Has the surrounding road system in the locality the capacity to accommodate the traffic generated by the proposed development?

The Traffic Impact Assessment considered traffic generation as a consequence of this development, as well as existing traffic conditions, and considered impacts of these traffic movements on the local road system and neighbouring property. The Assessment concluded that the surrounding road system has the capacity to accommodate traffic generated by the proposed development, subject to the upgrading of Sheraton Road.

Council's Development Engineer in his report dated 15 March 2017 has required the following condition on the development consent (included in **Appendix 2**), if approved:

"Sheraton Road (between Wellington Road and the Quarry Site) is required to be upgraded at full cost to the developer to accommodate for the increased traffic proposed to be generated by the Regional Hardrock Pty Ltd (in particular the forecast volumes of heavy vehicles).

These upgrading works are to include requirements for oversized/weight vehicles, Higher Mass Limit vehicles.

However, prior to any construction works being undertaken on the upgrade of Sheraton Road, detailed design (fully dimensioned) site plan(s) are to be lodged with and approved by Council.

All design and construction works to be in accordance with Council's adopted Aus-Spec Standards, Austroads 'Guide to Road Design' Standards (or any subsequent Council adopted standards ie. NATSPEC)."

As discussed previously, the Applicant has proposed to enter into a Planning Agreement (PA) with Council for the ongoing maintenance of Sheraton Road. This is an acknowledgment by the Developer that the *extractive industry (quarry)* will increase the amount of heavy traffic on Sheraton Road which will in turn require an increased maintenance regime. As discussed, Council's Technical Services Division has agreed 'in principle' to enter into the PA with the specific details of how this will be implemented to be determined following determination.

Utilities and waste considerations

Are utility services available and adequate for the development?

The property is connected to reticulated electricity and telecommunications services. The application has indicated that the development will utilise such services, in particular for the office, control room, meeting rooms etc. The provision of such services will be required to be undertaken in accordance with the requirements of the respective service provider.

Dubbo Regional Council is the service provider for water and sewer. The property is not connected to either utility. Given the property location and nature of the development Council will not require the property to be connected to such utility services as part of this development. The application identifies that the development will use water sourced from on-site dams for industrial activities and potable water will be transported in and stored onsite for use within the office components.

Wastewater will be disposed of on-site. Should the application be approved an appropriate condition is recommended that a separate approval be obtained by Council for the provision of a suitable wastewater treatment system (**Appendix 2**).

(d) Submissions

As the application is Designated Development it was placed on public exhibition for a period of 30 days from 20 October to 21 November 2016. The application was notified in the Daily Liberal on 20 and 27 October 2016. Neighbouring landowners were also notified of the application and a notice was placed on the entrance to the subject property.

During the exhibition period Council received three (3) submissions. The matters raised in the submissions are summarised below:

- Dust generation

Comment:

The writer represents the approved solar farm on adjacent Lot 210 DP 229170. Concerns were expressed that dust generated by the Quarry's vehicles on their internal roads will affect workers and cause dust to settle and cover the panels. As discussed previously, the Applicant has proposed to seal all internal driveways and car parking areas which will minimise dust impacts from vehicles.

- Access concerns to Lot 210 DP 229170

Comment:

The writer represents the approved solar farm on adjacent Lot 210 DP 229170. Both the subject lot (Lot 211) and Lot 210 will share the access driveway. Concerns were expressed that the upgrades required to the driveway as part of the quarry may impede access to the solar farm (Lot 210). Should the application be approved an appropriate condition is recommended that during construction works of the access driveway off Sheraton Road, access to the Lots 210 not be denied.

- Permissibility of extractive industry in the RE2 zone

Comment:

Land use permissibility has been discussed previously in this report.

- EIS inconsistencies

Comment:

The writer pointed out inconsistencies in the EIS in terms of production rates. The executive summary states that the maximum production rate is 250,000 tonnes per annum while it also quotes a maximum extraction rate of 770,000m³ per annum. The writer notes that with basalt having a density of 2.9 t/m³ the maxim extraction rate is 2.23 million tonnes per annum. It is noted however that production rate differs from the extraction rate. The production rate refers to the amount of product that is 'won' from the quarry, in this case the basalt. The extraction rate refers to the total amount of product that dug out of the quarry which includes the non-production materials that is waste (referred to as overburden). Therefore, Council considers there are no inconsistencies as reference is made to 2 different aspects, being production rate and extraction rate, which are separately considered.

Figures referenced in SEPP (State and Regional Development) 2011 refer to extractive materials and a total resource. This refers to the production rates of the resource won rather than a total extraction rate. Therefore, and as discussed previously in this report, the production rates proposed do not reach those figures of State Significant Development.

One submission also identifies an inconsistency between the value of works as stated on the application form and the EIS. Section 2.10.2 identifies an initial investment of \$5 to \$6 million however, the application form identifies the cost of works as being \$2.5 million. The Applicant provided the following clarification on such matter:

"For this proposal, the Estimated Cost of the Development, as required by Question 14 of the development application, refers to the cost of works as defined by Clause 25J of the EP&A Reg, i.e. the capital costs specific to the commencement of the 'work'. These costs include the purchase of mobile and fixed plant, establishment of ancillary infrastructure on the Quarry Site, and initial site earthworks to enable commencement of quarry development activities. In accordance with Clause 25J(3), these costs exclude property purchase, resource development (drilling) costs, wages to employees and contractors, consultants and other assessment fees, development application fees and initial on-site development costs (prior to production).

In contrast, the Initial Investment value, nominated in Section 2.10.2 of the EIS, provides an illustration of the overall economic contribution made by the Applicant through the development of the Quarry. This includes many of the exclusions from 'Cost of Development' identified in Clause 25J(3) of the EP&A Reg, most notably: property purchase; resource definition and assessment (drilling); project marketing and financing; project management costs; consultancy and other assessment costs; and initial on-site development costs (prior to production). The Initial Investment value is provided in the context of overall contribution the Quarry has and would make to the local economy."

Council is satisfied with this explanation and that the cost of works provided on the application form is accurate, and subsequently the correct application fees have been paid.

- Production rates exceed State Significant Development

Comment:

Schedule 1, Clause 7 of SEPP (State and Regional Development) 2011 outlines State Significant Development for extractive industries. Through assessment of the Environmental Impact Statement it is considered the development is not State Significant Development as the proposed extractive industry will not extract more than 500,000 tonnes per year (being a maximum of 250,000 tonnes per annum (tpa)), nor will the development extract a total resource of more than 5 million tonnes.

As discussed previously, initial review of the EIS identified an extraction rate of 250,000tpa over a 25-30 year lifespan. Utilising the maximum rate every year indicates the 5 million tonne total resource would be exceeded. However, as specified previously through assessment under SEPP (State and Regional Development) 2011, the Applicant has clarified that the total resource to be extracted would not exceed 5 million tonnes (specifically being 4,852,425 tonnes). Therefore Council is satisfied the development is not State Significant Development.

- Air quality

Comment:

The writers express concern regarding some aspects of the Air Quality Impact Assessment, namely clarification of the use of controlled emission factors for the processing plant components, no assessment of diesel combustion emissions, the uncertainty of cumulative impacts and the implementation of an air quality management plan.

As discussed previously, air quality impacts have been assessed by the Environmental Protection Authority (EPA). Submissions were also forwarded to the EPA in accordance with Section 69(2) of the Environmental Planning and Assessment Regulation, 2000. The EPA noted the Assessment presented and advised that a revised Air Quality Impact Assessment must be completed and submitted with an application for an Environment Protection Licence (8.2). Concerns are therefore noted with regard to dust emissions, in particular the rural/residential and residential zoned land to the north-west which experienced the highest levels in previous testing.

- Transport

Comment:

The writers express concern that the submitted Traffic Impact Assessment submitted with the application is inadequate through the use of out of date data and does not adequately address impacts to neighbouring land uses on Sheraton Road or construction stage impacts. Further, concerns were raised that the Assessment did not adequately address existing daily traffic movements past the school precinct.

The Traffic Assessment was reviewed by Council's Technical Support Branch who concurred with the recommendations and conclusions of the report. The data, which includes statistics taken between 2006 and 2016, is considered to be current and reliable data. It is also considered that impacts on existing development along Sheraton Road including the schools have been considered through proposed mitigation measures such as not undertaking vehicle movements past the schools during peak pick-up and drop off times.

The writer also identifies that Sheraton Road south of the schools would require upgrading to cater for the additional heavy vehicle movements and that such works should be at the cost of the

developer. As discussed previously, the Applicant has identified that they will undertake upgrading works to Sheraton Road prior to construction works associated with the quarry commencing. Should the application be approved, appropriate conditions on the consent will outline the details of such works. Additionally, the Applicant has agreed to enter into a Planning Agreement (PA) for the maintenance of Sheraton Road. The PA will be based on a tonnage rate which will be agreed to by Council and the developer.

- Noise and Vibration

Comment:

The writer expresses concern that the Noise and Vibration Impact Assessment submitted with the application has not adequately addressed such matters, in particular the methodology of assessing background and ambient noise levels and existing industrial noise levels at the nearest receiver locations, and potential blasting impacts on the existing Holcim quarry and how potential safety risks to this existing development will be mitigated.

Noise and vibration impacts have been assessed by the Environmental Protection Authority (EPA) and discussed previously in this report.

- Groundwater

Comment:

The writer has reviewed the Groundwater Impact Assessment and has requested further clarification in relation to the exact groundwater elevation to ensure the development will not interfere with the aquifer, and to provide more suitable groundwater monitoring.

As discussed previously in this report, it has been determined that the development will not have any adverse impact on the groundwater below the site by way of polluting groundwater or altering the water table below the site. No further investigations are required.

- Surface water

Comment:

The writers have reviewed the Surface Water Assessment and Water Balance Investigation submitted with the application (EIS Appendix 5). Concerns have been expressed in relation to alternative water sources during drought conditions, as well as how to mitigate discharge of water and sediments during high/prolonged rainfall events.

In terms of alternative water sources, the Assessment notes two (2) existing dams on the property to the east of the extraction area. These dams have a combined maximum capacity of 9.4ML. A sediment basin is also proposed to be constructed in the south of the extraction area which will capture additional water from runoff and provide storage for up to 4ML. The Assessment notes that sufficient water is likely to be available from the noted water storages under the majority of rainfall conditions, with a shortfall only expected if three (3) or more low rainfall months (<10th percentile rainfall) coincide with the existing dams being empty at commencement of this three (3) month period. The Applicant has indicated as an alternative water source a licence for a bore can be obtained through the NSW Office of Water.

- Ecology

Comment:

The writer has reviewed the Ecological Assessment (EIS Appendix 8). Particular concerns were raised regarding the impacts on the Yellow Box Blakely's Red Gum Woodland EEC which is located on the property, and impacts on the Superb Parrot which is listed as a vulnerable species and has been recorded within close proximity to the development site.

The Applicant provided further detail in terms of minimising impacts to native vegetation, particularly the removal of native vegetation on the western side of the site where the EEC is located. It is acknowledged native vegetation will be required to be removed as a consequence of the quarry. To offset this, native vegetation is proposed to be provided around the amenity bund. The species and density of vegetation to be provided is aimed to establish a yellow box woodland community on the amenity bund to mitigate and offset existing native vegetation removal. Species to be provided (as detailed on Table 2.7 of the EIS) include Yellow Box, Fuzzy Box, Kurrajong, Wattle, Wilga, Plains Grass and Kangaroo Grass.

Impacts on the Superb Parrot have not been addressed by OEH or the Applicant. Nevertheless, it is considered the offsetting of the partial EEC removal will ensure a suitable habitat is maintained.

- Consultation

Comment:

The writer identifies that there was no community or neighbour consultation undertaken prior to the lodgement of the application as required by the SEARs. The writer requests stakeholder engagement be undertaken to allow the developer to adequately communicate the proposed development.

Pre-lodgement consultation is undertaken at the discretion of the developer. Council only undertakes neighbour notification after an application has been lodged in accordance with the requirements of the Dubbo Development Control Plan 2013.

- Socio-economic impacts

Comment:

The writer disputes the statement made in the EIS that there is insufficient supply of road material in the area and that this new quarry will help to ease this shortage and ensure projects are able to be undertaken. The writer asserts that the establishment of an additional quarry will cause a 'glut' of supply which will impact on the production ability of all quarry operators in the area.

The creation of competition to existing businesses does not form a consideration under Section 79C of the Environmental Planning and Assessment Act, 1979.

- Cultural heritage

Comment:

The writer identifies there is uncertainty as to whether Registered Aboriginal Parties (RAPs) responded to the Aboriginal and Historic Cultural Heritage Assessment.

Section 4.7.5 of the EIS states that in accordance with Aboriginal Heritage Consultation Requirements for Proponents (DECCW 2010), letters were sent to a range of organisations

requesting any Aboriginal persons with a cultural knowledge of the site to register their interest in determining the significance of the proposal and Aboriginal values located therein. It is clear that four (4) groups/persons were identified as RAPs however, it states that only two (2) were present throughout the field assessment. The writer requests confirmation on the status, inclusion and consideration of comments from all RAPs.

The applicant has provided clarification that the two (2) groups/persons who did not take part in the field assessment did not respond to requests and subsequently the assessment was undertaken without their input. Regardless, it is considered the assessment has been undertaken in accordance with legislation and a suitable field assessment was carried out which included the presence of two (2) groups/persons. The applicant has further clarified that despite their non-response, the two (2) groups/persons who did not respond were still sent copies of the Assessment report and results.

(e) Public interest

Despite the information provided and the mitigation proposed, it is considered the establishment of an *extractive industry (quarry)* adjacent to rural/residential and residential zoned land is contrary to the public interest due to the potential land use conflict and adverse social and economic impacts that may result.

9. SECTION 64/94 DEVELOPER CONTRIBUTIONS

Water and Sewerage Supply Headworks Contributions Policy

The property is not connected to reticulated water or sewerage services. The applicant is not proposing to utilise these utility services with water use (including 'domestic' use) to be sourced independently through dams and rain water tanks, and waste water to be disposed of onsite. Further, Council's Technical Services Division has identified that it is not proposed to connect the property to such services in the near future. Consequently water and sewerage contributions will not be levied against this development.

Open Space and Recreation Facilities Contributions Plan

The application is not for residential development and therefore no such contributions are applicable in this instance.

Urban Stormwater Drainage Headworks Contributions Plan

The property is located outside the stormwater catchment area and therefore contributions are not applicable in this instance.

Urban Roads Contributions Plan

The Plan outlines various development types and trip generations of these. Under the Plan the closest development type would be industry which has a daily trip generation of five per 100m² Gross Floor Area (GFA). Given the size of the buildings does not necessarily reflect trip generation of the development it is considered more suitable to devise the trip generation based on the expected daily trip numbers stated in the EIS.

Section 2.5.33 of the EIS states that the development would generate an average of 38 daily movements. The property would benefit from an 11 trip credit ensuring the daily net traffic generation would be 27. Consequently, contributions would be calculated as follows:

$$\begin{aligned}\text{Contribution} &= \$\text{rate} \times \text{trips} \\ &= \$512.40 \times 27 \\ &= \$13,834.80\end{aligned}$$

Should the application be approved an appropriate condition is recommended for the payment of the above contribution prior to commencement of quarrying operations (**Appendix 2**).

As stated in the EIS, the applicant has proposed to undertake the necessary upgrade works to Sheraton Road to make the roadway suitable for the increased traffic movements as a consequence of the development. As discussed a suitable condition is recommended for such upgrading works to be undertaken prior to quarrying operations commencing with such works to be undertaken at full cost of the developer (**Appendix 2**). As permitted under Section 3.2 of the Policy, Council may accept works 'in kind' in lieu of a monetary contribution. The upgrade works to Sheraton Road to be undertaken by the developer may fall into this category. It is assumed the required works would exceed the contribution figure stipulated above. Therefore, should agreeance be provided by Council's Technical Services Division, the above contribution may be waived if the works 'in kind' are accepted.

It is also noted that the Applicant has proposed to enter into a Planning Agreement (PA) with Council for the ongoing maintenance of Sheraton Road. This is an acknowledgment by the developer that the quarry will increase the amount of heavy traffic on Sheraton Road which will in turn require an increased maintenance regime. The PA will involve an ongoing monetary contribution to Council based on the tonnage of extraction by the development. Council's Technical Services Division have agreed 'in principle' to the proposal. The specifics of this, including a suitable contribution based on a tonnage extraction rate has not been resolved. Should the application be approved, an appropriate condition is recommended that the Applicant enter into a Planning Agreement with Council for the ongoing maintenance of Sheraton Road (**Appendix 2**).

SUMMARY

The applicant is seeking development consent to undertake an *extractive industry (quarry)* and associated infrastructure at Lot 211 DP 1220433, 20L Sheraton Road, Dubbo.

The development is predominantly proposed on land which is zoned RE2 Private Recreation. Despite legal advice from the applicant advising otherwise, Council considers *extractive industry* a prohibited land use in the RE2 zone as both *agriculture* and *industry* are prohibited land uses in the zone (Clause 7(3) State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industry) 2007). The development is also not consistent with the objectives of the RE2 zone.

Numerous studies have been submitted supporting the application. The studies demonstrate the *extractive industry (quarry)* can operate with minimal impact to surrounding property, even accounting for the cumulative impact of the adjoining *extractive industries*. It is also demonstrated that through the construction of the vegetative earth mound no aspect of the quarry will be visible from the immediate surrounds.

Notwithstanding the results and analysis of these studies, the proximity an *extractive industry (quarry)* to rural/residential and residential zoned land remains a concern. Compliance with the Assessment recommendations rely heavily on the good practices of the operator which may not always occur. Noise, dust and vibration impacts may be prevalent to surrounding property if the development is not operated soundly. Given the proximity of the development to rural/residential and residential zoned land the margin for error is minimal and the developer will therefore be required to be vigilant as to how the development is managed.

From a basic planning perspective it is generally not 'good planning practice' in 2017 to locate a quarry adjacent to rural/residential and residential zoned land due to the land use conflicts that can arise. From a strategic planning perspective the purpose of the RE2 zone is to act as a buffer between the existing *extractive industries* on the IN3 Heavy Industrial zoned land and the surrounding residential zoned land. The siting of an *extractive industry (quarry)* as proposed compromises this buffer.

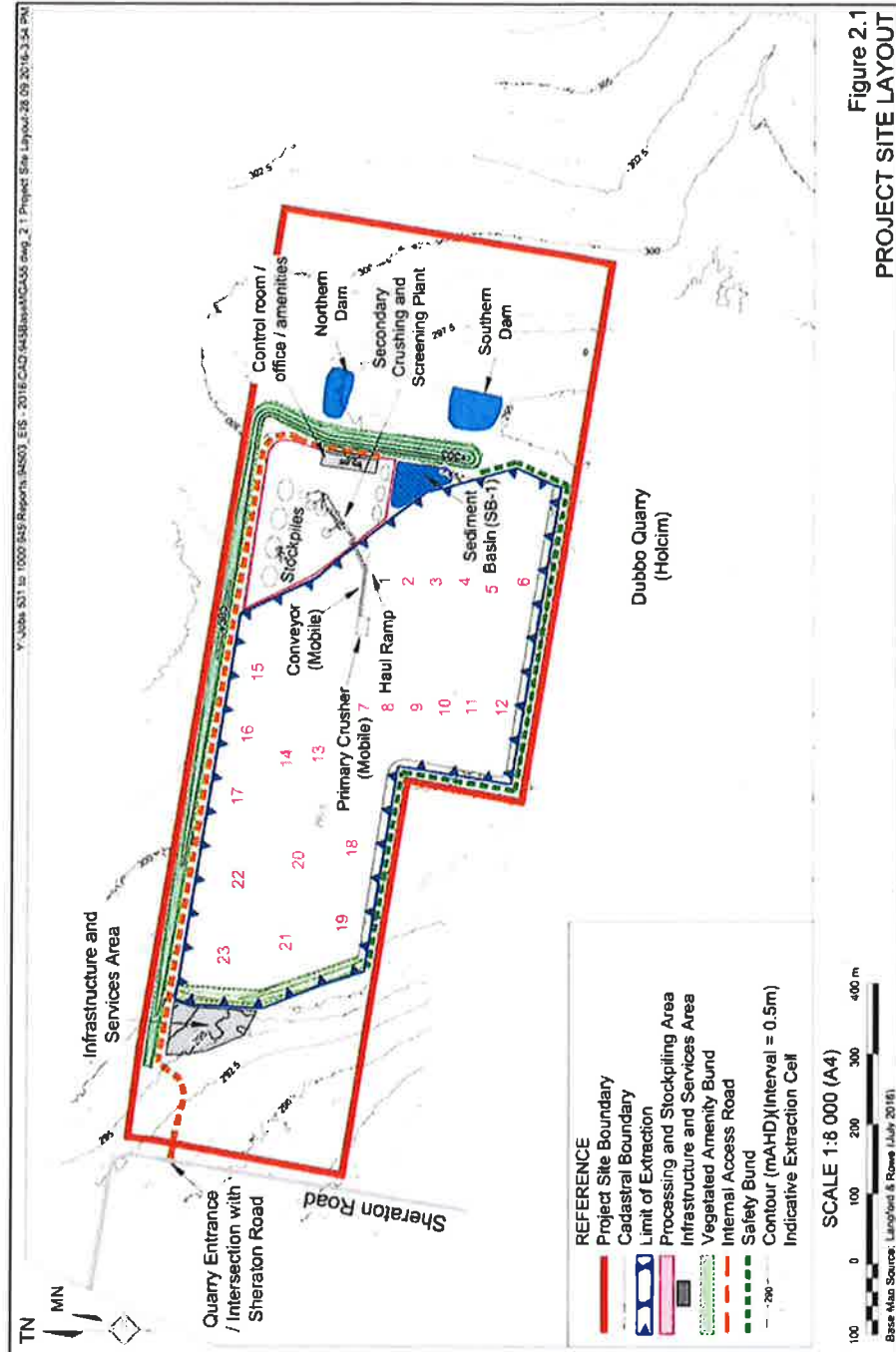
Consequently, the proposed development is considered likely to have a detrimental impact upon the future residential amenity of the locality. Council therefore recommends refusal of the Application for the following reasons:

- (i) The development does not represent orderly development of land containing extractive material, given the proximity of rural/residential, residential zoned land, local schools and the nature of *extractive industry (quarry)*. (Cl.2 SEPP (Mining, Petroleum Production and Extractive Industries) 2007, as per S79C(1)(a)(i) Environmental Planning and Assessment Act, 1979 and S5(a)(ii) Environmental Planning and Assessment Act, 1979;
- (ii) Both *agriculture* and *industry* are prohibited in the RE2 Private Recreation zone under Dubbo Local Environmental Plan 2011 and therefore the development should also be prohibited pursuant to Cl.3(a) SEPP (Mining, Petroleum Production and Extractive Industries) 2007 (S79C(1)(a)(i) Environmental Planning and Assessment Act, 1979);
- (iii) The proposed development is deemed to be incompatible with the locality given the proximity of rural/residential, residential zoned land, local schools and the nature of *extractive industry (quarry)*, despite the mitigated measures proposed (Cl.12 SEPP (Mining, Petroleum Production and Extractive Industries) 2007, as per S79C(1)(a)(i) Environmental Planning and Assessment Act, 1979);
- (iv) The development is contrary to the RE2 Private Recreation zone objectives of Dubbo Local Environmental Plan 2011 (S79C(1)(a)(i) Environmental Planning and Assessment Act, 1979); and
- (v) The development, given the proximity of rural/residential, residential zoned land, local schools and the nature of *extractive industry (quarry)*, is considered to be contrary to the public interest (S79C(1)(e) Environmental Planning and Assessment Act, 1979).

The application requires determination by the Western Joint Regional Planning Panel (JRPP). Should the Panel recommend approval, a draft list of conditions is provided attached as **Appendix 2**.

REGIONAL HARDROCK PTY LTD
South Keswick Quarry
Report No. 945/03

ENVIRONMENTAL IMPACT STATEMENT
Section 2 – Description of the Proposal



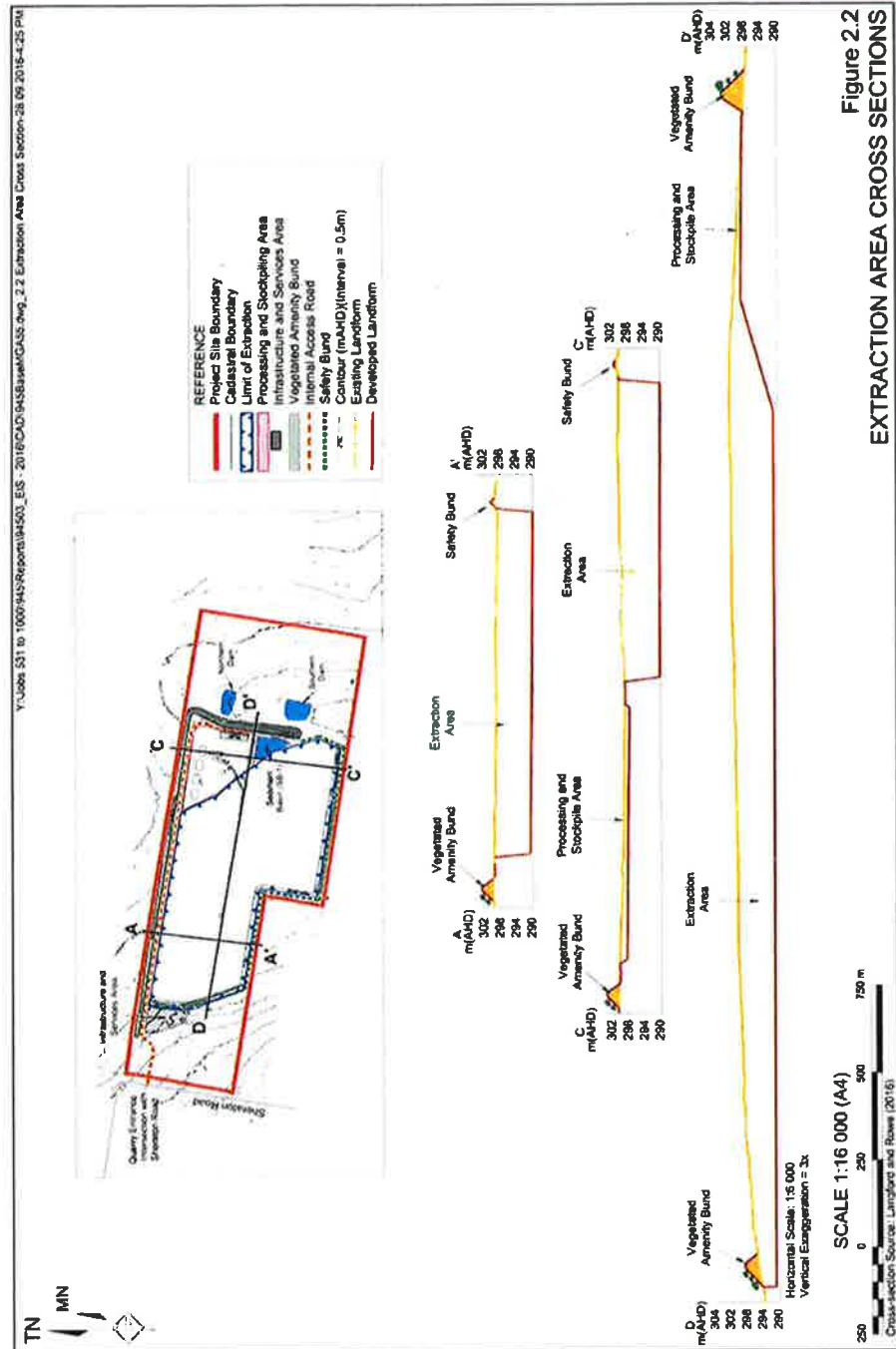
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R.W. CORKERY & CO. PTY. LIMITED

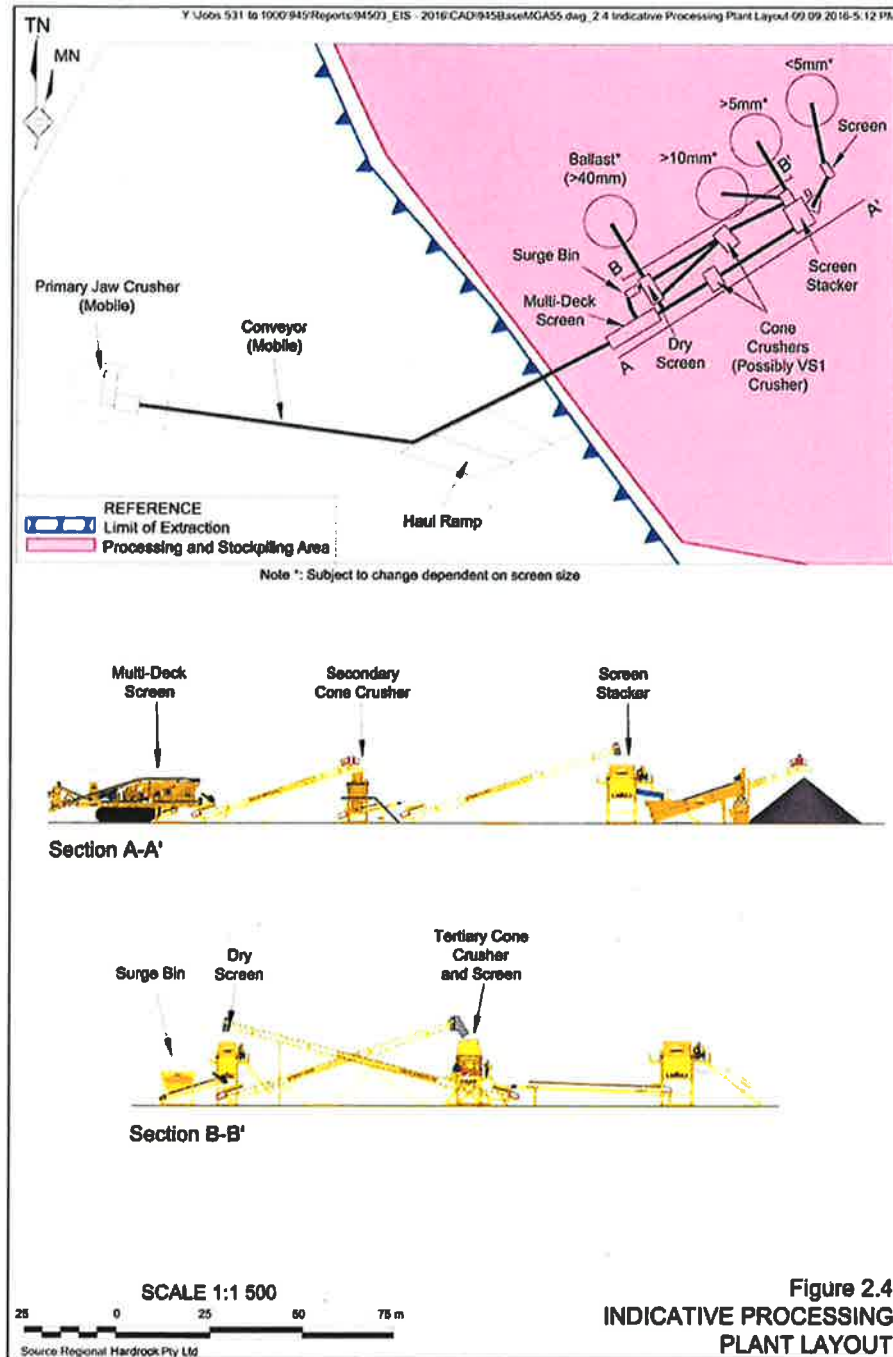
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South Keswick Quarry
Report No. 945/03

ENVIRONMENTAL IMPACT STATEMENT
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REGIONAL HARDROCK PTY LTD
South Keswick Quarry
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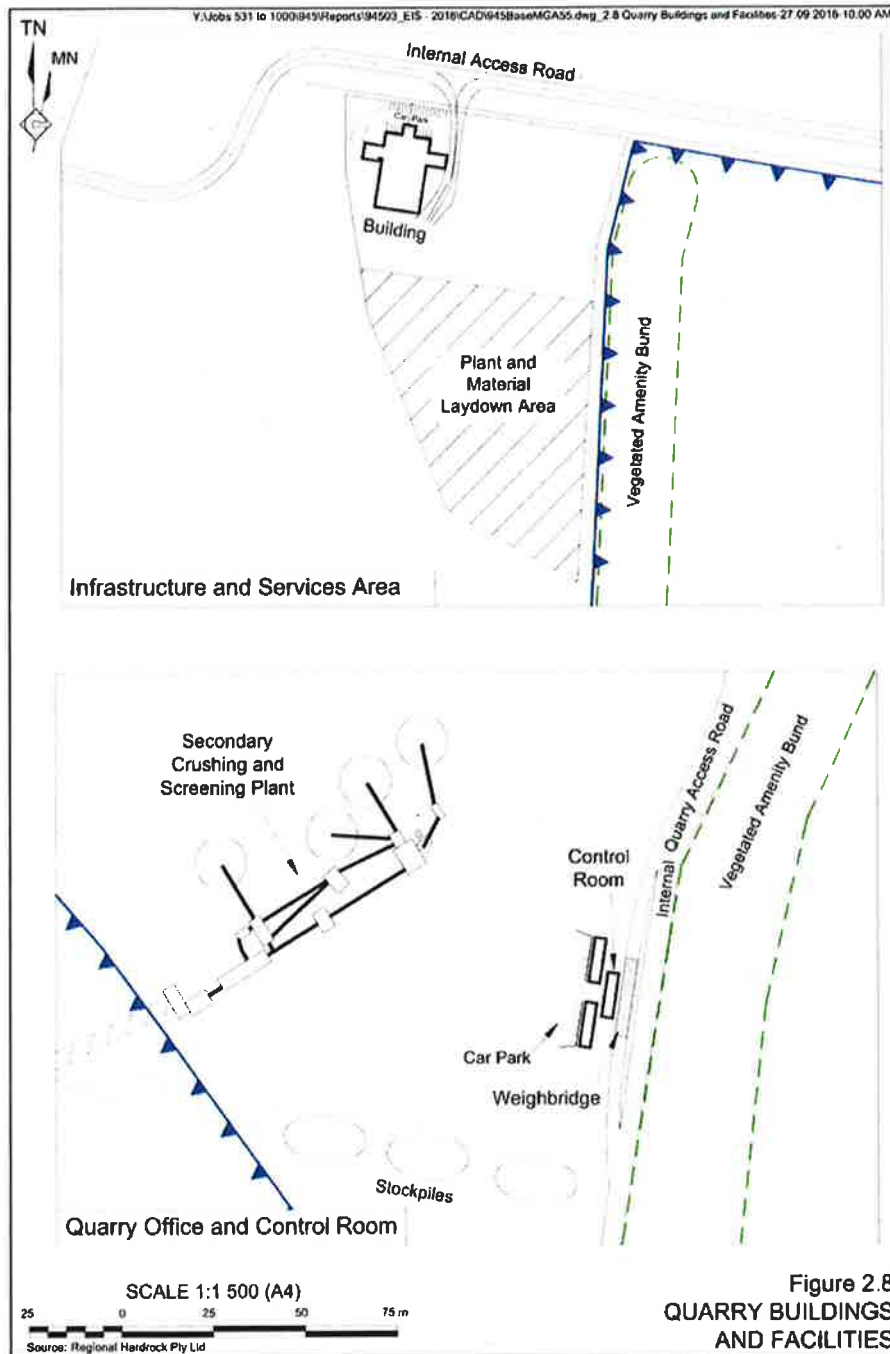


R.W. CORKERY & CO. PTY. LIMITED

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ENVIRONMENTAL IMPACT STATEMENT
 Section 2 – Description of the Proposal

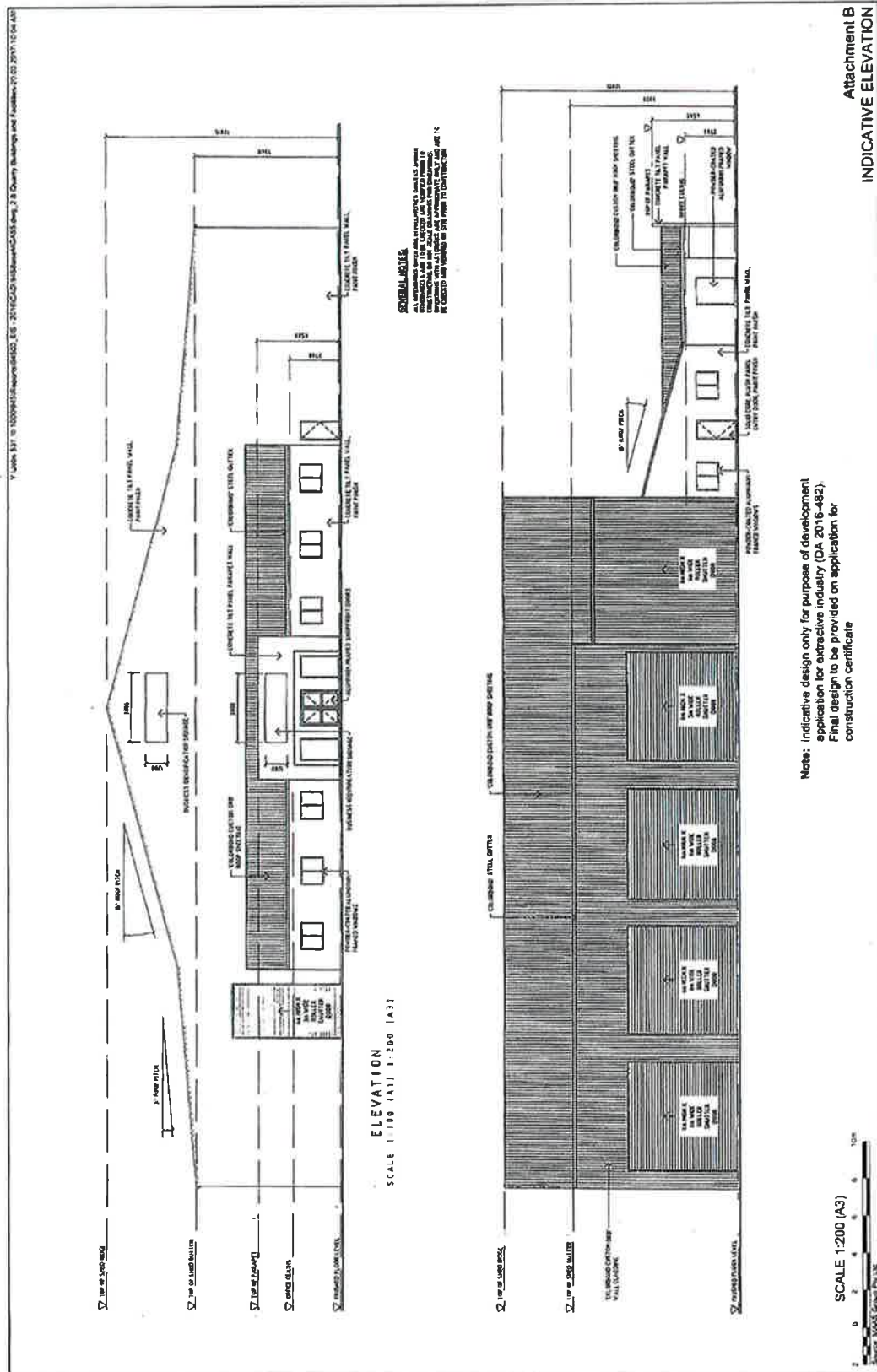
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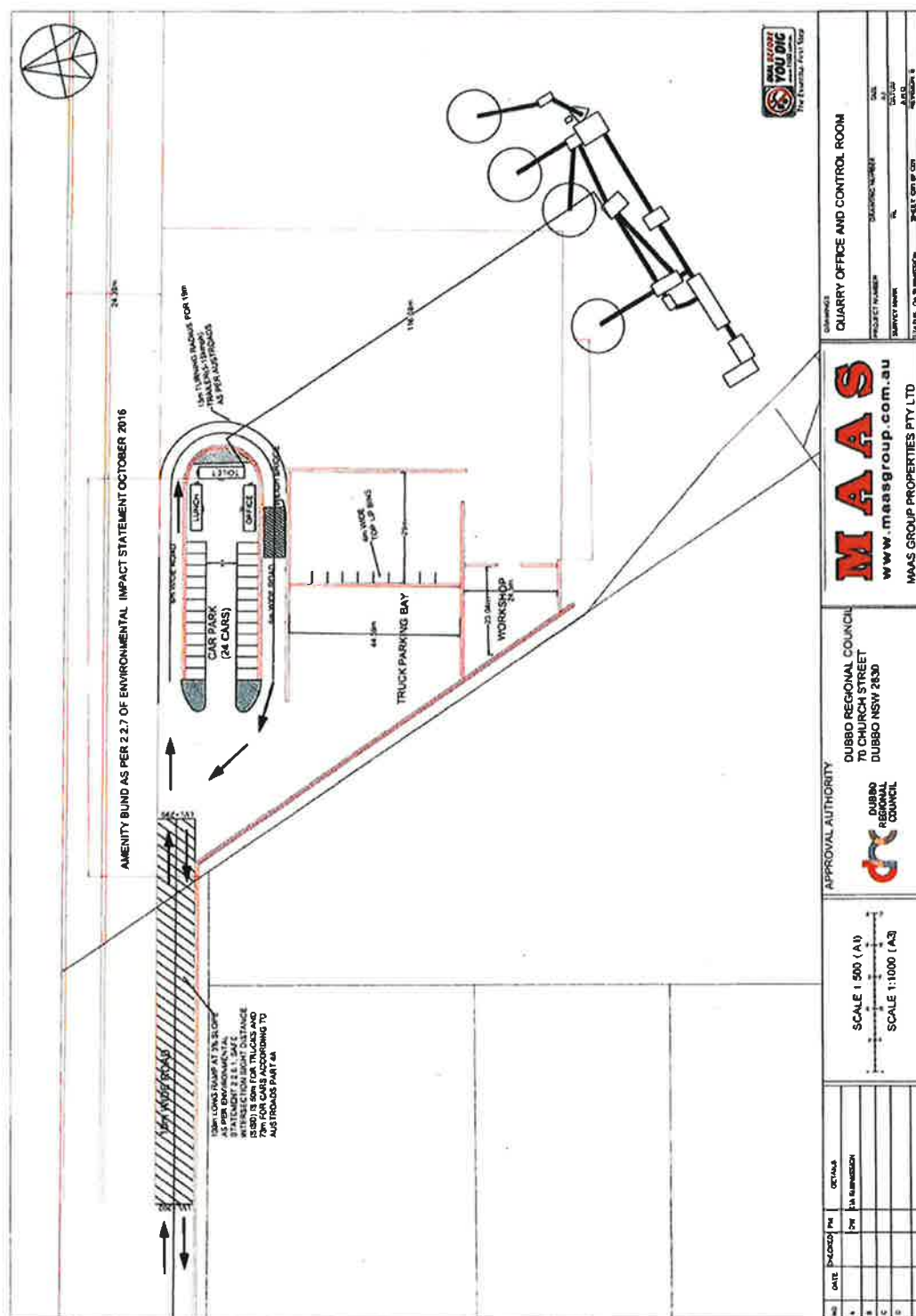


R.W. CORKERY & CO. PTY. LIMITED

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CONDITIONS

- (1) The development shall be undertaken generally in accordance with the Environmental Impact Statement dated October 2016 prepared by R W Corkery and Co. Pty Ltd, subsequent provided information, and stamped approved plans detailed as follows except where modified by any of the following conditions:

Drawing Title: Proposed Site Layout
 Drawing Number: Figure 2.1
 Dated: July 2016

Drawing Title: Extraction Area Cross Sections (Modified)
 Drawing Number: Figure 2.2
 Dated: 2016

Drawing Title: Indicative Processing Plant Layout
 Drawing Number: Figure 2.4
 Dated: October 2016 (as per Statement of Environmental Effects)

Drawing Title: Quarry Buildings and Facilities
 Drawing Number: Figure 2.8
 Dated: undated

Drawing Title: Indicative Floor Plan
 Drawing Number: Attachment A
 Dated: undated

Drawing Title: Indicative Elevations
 Drawing Number: Attachment B
 Dated: undated

Drawing Title: Quarry Office and Control Room
 Drawing Number: N/A
 Dated: undated
 Revision: 0

{Reason: To ensure that the development is undertaken in accordance with that assessed}

- (2) The Applicant/Proponent shall comply with the 'General Terms of Approval', Notice No. 1548744 dated 1 February 2017, from the NSW Environmental Protection Authority (copy attached).

{Reason: To ensure compliance with the NSW Environmental Protection Authority and Section 91 of the EP&A Act 1979}

- (3) Prior to any works commencing on site, the Applicant shall enter into a Planning Agreement with Dubbo Regional Council pursuant to Section 93F of the Environmental Planning and Assessment Act 1979, which will address the following issues:

- (i) Maintenance of Sheraton Road from the intersection with Wellington Road (Mitchell Highway) to the vehicular access point for 20L Sheraton Road.

The contribution shall be based on a monetary figure based on the tonnage rate of product won from the subject development as determined by Dubbo Regional Council and the Applicant.

(Reason: To ensure that the impact of the proposed development upon public road is adequately addressed)

- (4) Sheraton Road (between the conclusion of the 'dual carriageway' adjacent to Lot 1 DP 270326 and the Quarry entrance at Lot 211 DP 1220433) is required to be upgraded at full cost to the Developer to accommodate for the increased traffic proposed to be generated by the extractive industry (quarry) (in particular the forecast volumes of heavy vehicles).

These upgrading works are to include requirements for oversized/weight vehicles, Higher Mass Limit (HML) vehicles.

However, prior to any construction works being undertaken on the upgrade of Sheraton Road, detailed design (fully dimensioned) plan(s) are to be lodged with and approved by Council.

All design and construction works to be in accordance with Council's adopted Aus-Spec Standards, Austroads 'Guide To Road Design' Standards (or any subsequent Council adopted standards i.e. NATSPEC).

(Reason: To ensure that the impact of the proposed development upon public road is adequately addressed)

- (5) The existing access servicing the proposed Quarry (Lot 211) and Solar Farm (Lot 210) off Sheraton Road shall be upgraded by and at full cost to the Developer with construction of a Type AUL intersection to Council's satisfaction.

The ingress/egress to the development (i.e. the AUL component) is to be constructed as a bitumen sealed culverted access. Additionally, all internal access roads are to also be fully bitumen sealed. These roads are to be of sufficient width so as to accommodate two-way traffic flow based upon the turning swept paths of 'semi-trailer 19.0 m' (utilising the Austroads design templates, with a turning speed of 5-15 km/hr) with such design width to ensure that at no stages will a semi-trailer be required to cross over onto the wrong side of Sheraton Road when either entering or exiting the proposed development.

All works required to fulfil the above condition are to be undertaken in accordance with Council's adopted AUS-SPEC #1 Development Specification Series – Design and Construction standards, with detailed engineering design plans being submitted to, and approved prior to any construction works commencing.

Should Council's Development Engineer (or his representative) not undertake the required routine inspections during the course of construction of this condition, then a detailed list of inspections undertaken by an accredited private certifier verifying

compliance with Council standards will be required to be lodged with Council prior to the issue of the Occupation Certificate for the proposed development.

During construction works, vehicular access to adjoining Lot 210 DP 1220433 (which utilises the same access driveway) shall be maintained.

{Reason: To provide a satisfactory means of entry/exit to the proposed development and adjoining Lot 210 DP 1220433}

- (6) Under no circumstances are any construction works or activities to commence on or within the road reserve area (which includes the footpath area) until such time as a 'Road Opening Application' has been lodged with and approved by Council. As part of the proposed works encroach onto the Sheraton Road (and/or road) areas, a separate 'Road Opening Application' (Section 138 Application under the Roads Act 1993) will be required to be made to Council's Technical Services Division, plus payment of any appropriate fee(s).

General Note: These Section 138 Approval(s) are not only required for the proposed upgrading of Sheraton Road but will also be required for any other utilities / infrastructure where crossing over, or under, public roads (i.e. construction of the gas main, water main, etc).

Prior to the issue of the Occupation Certificate for the proposed development, the Developer/Applicant is to provide the Principal Certifying Authority with written evidence/confirmation that the required S138 Application was lodged with Council, and that any relevant condition(s) have been complied with.

{Reason: Implementation of Council's Policy and Section 138 of the Roads Act}

- (7) No vehicles larger than a 'B-Double' 25 metres in length (utilising the Austroads design templates) are permitted to access the subject land and development proposal.
{Reason: The internal maneuverability and access to the subject land and proposed development will only facilitate B-Double 25.0 m in length or vehicles of lesser dimensions at this location}
- (8) This consent permits access to the property for 25 metre 'B-Double' vehicles. Should the Developer wish to operate these vehicle types in association with the development they are advised that:

- Sheraton Road is currently a B-Double route southbound only to the Bunnings Service delivery access;
- A separate application will need to be submitted to National Heavy Vehicle Regulator for consideration of the access requirement along Sheraton Road which will then be referred to Council; and
- Council will be required to undertake a route assessment in accordance with Roads and Maritime Services "Restricted Access Vehicle Route Assessment Guidelines" to determine the suitability or otherwise of the road network. The assessment may identify the need to undertake road improvements which will be required before final approval and gazettal of Sheraton Road as a 'B-Double' route to the development site.

{Reason: Requirements of Council and the Roads and Maritime Services}

- (9) All vehicles must enter and exit the subject land and proposed development in a forward direction. No reversing of vehicles onto the public roadway system will be permitted.
{Reason: To provide safety for the travelling public utilising the public roadways}
- (10) All loading and unloading of goods related to the development proposal shall be carried out within the confines of the allotment's boundary. Under no circumstances will the loading or unloading of goods on the public roadway system be permitted.
{Reason: Requirement of Council so as not to create adverse traffic conditions}
- (11) The proposed security access gateway(s), plus any associated security fencing, are to be 'set-back' at the proposed entry/exit driveway location, such that at a bare minimum an 25 metre B-Double vehicle is able to 'stand clear' and be totally contained within the subject lands allotment boundaries and not at any stage overhang onto the road reserve area (which includes the footpath reserve area).
- Additionally, the proposed security access gate(s) are to be constructed and erected to open 'inwards' only to the proposed development site (not 'outwards' which would have the potential to reduce the 'clear zone' specified in the above paragraph).
{Reason: To provide safety for the travelling public utilising the public road system}
- (12) The finished floor level of the proposed building(s) at the location of each building's overflow (relief) gully shall achieve:
- (a) A minimum of 225 mm above the finished surrounding ground level; or
 - (b) Where the overflow (relief) gully is located in a path or paved area which is finished such that surface water cannot enter it and is graded away from the building, a minimum of 150 mm above the finished surrounding path or paved area.
- {Reason: Council requirement to ensure free board provisions of sanitary drainage regulations can be achieved}
- (13) The sanitary drainage and water plumbing installations shall comply with the provisions of the Local Government (General) Regulation, 2005 and the requirements of Council as the water utility provider and delegated plumbing/drainage regulator.
{Reason: Statutory and Council requirement}
- (14) The proposed development shall be designed and constructed in conformity with the applicable design criteria applicable under the Building Code of Australia (BCA) and *Disability (Access to Premises — Buildings) Standards 2010* of the Disability Discrimination Act 1992.
{Reason: Council requirement to ensure compliance with the applicable Premises Standards under the DDA is demonstrated}
- (15) Any required disabled car parking space provided within the proposed car park for the main workshop/office building, shall have its marking and signage to such car park space maintained in a trafficable and legible condition. Such parking space shall have a continuous accessible path of travel provided between it and the principal pedestrian entrance to the main workshop/office building.
{Reason: Council requirement in consideration of section 79C of the EP&A Act and the DDA 1992}

- (16) The sanitary drainage associated with the development's sanitary facilities requires the separate approval of Council prior to being installed. In this regard a Sewage Management Facility Application form is available from Council, and must be completed and returned to Council with all associated design, installation details and fees. No drainage must be installed until Council has approved the proposed treatment and disposal method for the site and issued an approval to install the intended sewage management facilities.

{Reason: Council and statutory requirement of Section 68 Local Government Act, 1993}

- (17) Temporary closet accommodation shall be provided onsite before work on the proposed buildings is commenced.

{Reason: Council requirement to preserve public hygiene}

- (18) The top of the building's overflow (relief) gully shall be a minimum 150 mm below the building's lowest sanitary fixture.

The building's overflow (relief) gully shall also:

- (a) Be a minimum 75 mm above the finished surrounding ground level; or
- (b) Where the overflow (relief) gully is located in a path or paved area which is finished such that surface water cannot enter it and is graded away from the building, it may be finished level with such path or paved area.

{Reason: Statutory requirement}

- (19) The following applicable works shall be inspected and passed by an officer of Council, irrespective of any other inspection works undertaken by an accredited certifier, prior to them being covered. In this regard, at least 24 hours notice shall be given to Council for inspection of such works. When requesting an inspection, please quote Council's reference number located in the top left hand corner of this page.

- Internal and external sanitary plumbing and drainage under hydraulic test.
- The development's sewage management facility installation and disposal field.
- Final inspection of the installed sanitary and water plumbing fixtures and sewage management facility upon the building's completion prior to its occupation or use.

{Reason: Statutory provision and Council requirement being the delegated water and sewerage regulator}

- (20) All sanitary plumbing and drainage associated with the sewage management facilities shall be carried out by a licensed plumber and drainer.

{Reason: Council requirement}

- (21) The hot water delivered to the outlets used for personal hygiene purposes which includes hand-basins and showers, shall not exceed 50°C, whilst similar disabled fixtures shall not exceed 45°C.

{Reason: Council policy and statutory requirement of the Plumbing Code of Australia}

- (22) An adequate water supply incorporating on-site storage shall be provided to service the development's sanitary and ablution facilities. In this regard, it is recommended that the roof water from the main workshop/office building be harvested for this purpose; as well as for potable purposes. The overflow from the storage tanks is to be discharged at least 3 m clear of any building.
{Reason: To ensure an adequate water supply is provided to service the development's ablution facilities}
- (23) No building shall be occupied or used until the Principal Certifying Authority has first issued an Occupation Certificate.
{Reason: Statutory requirement to ensure the building is fit for occupation}
- (24) A site rubbish container shall be provided on the site for the period of the construction works prior to commencement of any such work.
{Reason: Council requirement to prevent pollution of the environment by wind-blown litter}
- (25) All excavations associated with the erection of the buildings and installation of associated services must be properly guarded and protected to prevent them from being dangerous to life or property. Excavations undertaken across or in a public place must be kept adequately guarded and/or enclosed and lit between sunset and sunrise, if left open or otherwise in a condition likely to be hazardous to persons in the public place.
{Reason: Council requirement for protection of public}
- (26) All building work must be carried out in accordance with the provisions of the Building Code of Australia.
{Reason: Prescribed statutory condition under EP&A Act}
- (27) Prior to building works commencing the Applicant shall ensure that a sign is erected on the work site in a prominent position at the front of the property showing:
- (a) The name, address and telephone number of the Principal Certifying Authority (PCA) for the work;
 - (b) The name of the principal contractor for the building/demolition work and a telephone number on which that person may be contacted outside of working hours; and
 - (c) Stating that unauthorised entry to the work site is prohibited.
- Such sign must be maintained on the site during the course of the building/demolition work and not be removed until the work has been completed.
{Reason: Statutory condition imposed by clause 98A of the EP&A Regulation 2000}
- (28) The person having the benefit of this Development Consent carrying out the building work must, unless that person is the principal contractor, ensure that the principal contractor has been notified of the critical stage inspections and any other inspections that are specified by the appointed Principal Certifying Authority (PCA) to be carried out.
- Note: The 'principal contractor' is the person responsible for the overall coordination and control of the carrying out of the building work.
{Reason: Statutory requirement imposed by the EP&A Act 1979}

(29) Any rainwater tank(s) installed shall be provided with:

- A top or lid to shield the interior from light penetration; and
- A screen to all inlets and openings into the tank to prevent debris and mosquito entry.

{Reason: Council requirement to reduce contamination of the supply and breeding of mosquitoes}

(30) If Council is engaged to act as the Principal Certifying Authority (PCA), the applicant shall ensure that the responsible builder and/or applicable contractors submit to Council documentary evidence identifying and confirming that their respective work was undertaken in conformity with the relevant Section J provisions of the BCA, as approved under the Construction Certificate for the workshop/office building. Such documentation must be provided prior to issue of the building's Occupation Certificate.

{Reason: To satisfy Council as the PCA that the applicable work has been undertaken in conformity with the BCA}

(31) In the event of any Aboriginal archaeological material being discovered during earthmoving/construction works, all work in that area shall cease immediately and the Office of Environment and Heritage (OEH) notified of the discovery as soon as practicable. Work shall only recommence upon the authorisation of the OEH.

{Reason: Council and statutory requirement to protect Aboriginal heritage}

(32) Should any contaminated, scheduled, hazardous or asbestos material be discovered before or during demolition works, the applicant and contractor shall ensure the appropriate regulatory authority (eg Office of Environment and Heritage (OEH), WorkCover Authority, Council, Fire and Rescue NSW etc) is notified, and that such material is contained, encapsulated, sealed, handled or otherwise disposed of to the requirements of such Authority.

Note: Such materials cannot be disposed of to landfill unless the facility is specifically licensed by the EPA to receive that type of waste.

{Reason: Council requirement to prevent the contamination of the environment}

(33) All solid waste from construction and operation of the proposed development shall be assessed, classified and disposed of in accordance with the *Department of Environment and Climate Change - Waste Classification Guidelines*. Whilst recycling and reuse are preferable to landfill disposal, all disposal options (including recycling and reuse) must be undertaken with lawful authority as required under the Protection of the Environment Operations Act.

{Reason: Council requirement to require compliance with the POEO Act}

(34) If any threatened species as defined under the Threatened Species Conservation Act 1995 are observed during the operation, work is to cease and the National Parks and Wildlife Service is to be contacted.

{Reason: To protect and preserve the existing native vegetation and conserve the habitat for local flora and fauna and a requirement of the National Parks and Wildlife Service}

- (35) No residential habitation, including on a temporary or short-term basis, shall be undertaken on the subject development site.

{Reason: The site is not suitable for human habitation}

- (36) Site rehabilitation and landscaping shall be carried out in accordance the Environmental Impact Statement dated October 2016, 'Figure 2.9 Indicative Final Landform'. The site shall be rehabilitated as sections of the site are exhausted. Five (5) yearly reports shall be provided to Council on the extent of rehabilitation, which also includes planning for the forthcoming five (5) year period, including the final period when the extractive industry ceases.

Upon the decommissioning of the area where hydrocarbons are stored, suitable remediation shall be undertaken to ensure the land is made suitable for future use.

{Reason: To protect the environment, public health, safety and comply with SEPP 55}

- (37) All chemicals shall be stored in accordance with:

- (i) *Australian Standard AS 1940 – 2004 The Storage and Handling of Flammable and Combustible Liquids;*
- (ii) *Environmental Protection Authority's Environment Protection Manual for Authorised Officers: Technical Section (Bunding and spill management);*
- (iii) *NSW WorkCover Authority requirements and observe appropriate spill prevention controls.*

{Reason: To prevent pollution of the environment and waterways}

- (38) Any water discharged from the site shall ensure that water quality is maintained in accordance with all quality standards being chemical, physical and microbiological for primary recreational water contact as stated *ANZECC Guidelines and water quality objectives in NSW 2000*.

{Reason: To prevent pollution of the environment and waterways}

- (39) Any soil brought externally to the development site to reshape the land (including the earth bund) shall be clean fill only. Fill that contains foreign matter such as building materials shall not be used.

{Reason: Council requirement to ensure the land does not become contaminated from unauthorised fill}

- (40) Prior to quarrying operations on the subject property commencing, a Code of Conduct for the transportation of materials on public roads shall be submitted to and approved by Council. The Code of Conduct shall incorporate the requirements as stipulated in Roads and Maritime Services correspondence dated 10 January 2017 (copy attached). The Code of Conduct as approved shall be implemented for the life of the development.

{Reason: Requirement of Clause 16(1)(c) of SEPP (Mining, Petroleum and Extractive Industries) 2007}

- (41) The demolition of all buildings and structures on the property shall be carried out in accordance with the applicable provisions of AS 2601 – 1991: *The Demolition of Structures*.

{Reason: Council requirement imposed in consideration of the EP&A Regulation 2000 to ensure the demolition works are undertaken in an appropriate manner}

- (42) Prior to quarrying operations on the subject property commencing, the contribution by the developer of \$13,834.80 (27 industrial trips) for Urban Roads headworks contribution, calculated on a trip basis, in accordance with Council's adopted Amended Section 94 Contributions Plan – Roads, Traffic Management and Carparking, operational 3 March 2016, shall be paid by the developer.

Such contribution rate is adjusted annually in accordance with Section 6.0 of the Section 94 Contributions Plan becoming effective from the 1 July each year and as adopted in Council's Annual Revenue Policy.

Note 1: Council's adopted 2016/2017 financial year rate is \$512.40 (including administration) per industrial trip.

Note 2: As the above contribution rate is reviewed annually, the current contribution rate is to be confirmed prior to payment.

Note 3: Noting the required upgrade works of Sheraton Road by the developer, the above contribution may be credited as a consequence of 'works in kind'.

{Reason: Implementation of Council's Section 94 Contributions Plan – Roads, Traffic Management and Carparking dated 2016}

- (43) A vegetative earth bund around the extraction area shall be progressively established in accordance with the approved extraction area cross section plan (Figure 2.2 of the Environmental Impact Statement prepared by R. W. Corkery & Co. Pty Ltd dated October 2016). Upon completion of the earthworks appropriate landscaping shall be established. Such landscaping shall include appropriate grasses to minimise erosion potential.

{Reason: To ensure the development is suitably screened from surrounding development}

- (44) The landscaping to be provided around the perimeter of the development site on the earth bund shall be undertaken in accordance with Table 2.7 of the Environmental Impact Statement prepared by R. W. Corkery & Co. Pty Ltd dated October 2016, and the stamped approved plans and be maintained for the life of the project.

Such landscaping shall at a minimum be undertaken progressively in stages to correlate with the construction of earth bund.

{Reason: To maintain and improve the aesthetic quality of the development}

- (45) A separate application for any proposed onsite advertising/signage shall be submitted to Council if such signage does not comply with Part 2, Division 2 of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.

{Reason: To ensure onsite advertising/signage is appropriate for the site and the locality}

- (46) All exterior lighting associated with the development shall be designed and installed so that no obtrusive light will be cast onto any adjoining property, and the emittance of light to the night sky will be minimised.

Reason: To minimise the effect of light on adjoining properties and reduce the effect of artificial lighting on the night sky}

NOTES

- (1) A separate application is required to be submitted to either Council or an accredited certifier to obtain a Construction Certificate to permit the erection of the proposed buildings.
- (2) The proposed Workshop/office building is required by the Deemed-to-satisfy BCA and the Premises Standards to provide disabled access. However, notwithstanding this, the applicant's attention is drawn to the owners' and employers' obligations under the NSW Anti-Discrimination Act and Federal Disability Discrimination Act whereby the design of the premises and workplace should not discriminate against disabled persons visiting and obtaining access to such premises. It should be noted that compliance with the BCA and the Premises Standards is not a defence against prosecution, or the issue of a rectification order under the subject Acts in respect of all disability access issues. Accordingly, Council recommends that the applicant and owner investigate their liability under such Acts.
- (3) A list of Fire Safety Measures must be submitted with the Construction Certificate application pursuant to clause 139 of the Environmental Planning and Assessment Regulation 2000. The Regulation prescribes that the information to be submitted must include:
 - A list of any existing fire safety measures provided in relation to the land or any existing building on the land; and
 - A list of the proposed fire safety measures to be provided in relation to the land and any building on the land as a consequence of the building work.
- (4) Details of the disabled facilities (including access paths, toilets, signage and location of any tactile ground surface indicators) need to be adequately detailed on the Construction Certificate application plans to permit assessment and compliance evaluation with the provisions of the Council's Development Control Plan (where applicable), the Premises Standards and the BCA. In particular, the submitted details for the proposed disabled and ambulant toilets should include elevations and floor plans of the facilities drawn to a scale of 1:20. Reference should be made to AS 1428.1, the Access Code under the Premises Standards and AS/NZS 2890.6 regarding specific design parameters.
- (5) It is a statutory requirement that an Approval to Operate a System of Sewage Management must be obtained from the Council prior to occupation of the building and/or commissioning of the sewage management facility (eg septic tank, AWTS etc). This approval to operate the sewage management system is time limited and must therefore, be renewed on a regular basis by the owner of the premises. Accordingly, the applicant to this consent should ensure that the owner of the subject premises is made aware of the following:
 - (a) That an approval to Operate a System of Sewage Management must be obtained from the Council prior to occupation of the building and/or commissioning of the sewage management facility; and
 - (b) That such approval once obtained must be renewed on a regular basis.

- (6) On completion of the erection of the subject Workshop/office building, the owner of the building is required to submit to the Principal Certifying Authority (PCA) a Fire Safety Certificate(s) with respect to each *essential fire safety measure* installed in association with the building - as listed on the Fire Safety Schedule attached to the Construction Certificate. Such certificate(s) must be submitted to the PCA prior to occupation or use of the subject building.

Copies of the subject Fire Safety Certificate(s) must also be forwarded by the owner to Council (if not the appointed PCA) and the Commissioner of Fire and Rescue NSW and displayed within the subject building in a prominent position.

- (7) The owner of the Workshop/office building is required to submit to Council at least once in each period of 12 months following the completion of the building an Annual Fire Safety Statement(s) with respect to each essential fire safety measure associated with the building.

Copies of the subject Annual Fire Safety Statements must also be forwarded by the owner to the Commissioner of the Fire and Rescue NSW and displayed within the subject building in a prominent position. In this regard Fire and Rescue NSW has requested that only electronic copies of the statement be forwarded, with their dedicated email address for such Statements being afss@fire.nsw.gov.au

- (8) A number of design aspects with the main workshop/office building's conformity with the Deemed-to-satisfy BCA have been identified of which, several are highlighted below for your information and subsequent investigation for its construction certificate application:

- Sufficient sanitary facilities for the projected deemed occupation need to be provided. Additional toilet facilities will be required unless a more accurate method of determination of the occupation of the building is submitted with the Construction Certificate application documentation, than just utilising Table D1.13 of the BCA;
- Fire hydrants will be required to protect the building. In the absence of a reticulated water supply a fire-fighting storage tank of at least 288,000 litres (4 hours fire-fighting supply) would be required, with the appropriate pumps, booster assembly and on-site hydrant installation - refer Clause E1.3 of BCA & AS 2419.1;
- Fire Hose Reels will also be required to protect the building and thus necessitate connection to the aforementioned fire-fighting supply, its own additional storage capacity;
- Disabled access design and compliance for the building will need to be addressed in terms of both the BCA and the Premises Standards under the Disability Discrimination Act. Any exemptions under clause D3.4 of the BCA and Access Code (of the Premises Standards) and/or performance solutions intended to be relied upon, need to be adequately detailed in the construction certificate application documentation.

- (9) Approvals that will be required to be obtained under Section 68 of the Local Government Act include:
- Install and construct a human waste storage facility and drain connected to such facility; and
 - Operate a system of sewage management (within the meaning of section 68A).
- (10) Offensive noise as defined under the Protection of the Environment Operations Act 1997 shall not be emitted from the proposed development.
- Air impurities as defined under the Protection of the Environment Operations Act 1997 shall not be released or emitted into the atmosphere in a manner which is prejudicial to the health and safety of occupants, the surrounding inhabitants or the environment.
- (11) The Development shall be carried out in accordance with Essential Energy's correspondence dated 20 October 2016 (copy attached).
- (12) The Development shall be carried out in accordance with Roads and Maritime Services correspondence dated 10 January 2017 (copy attached).
- (13) The Council Section 94/64 Contribution Plans referred to in the conditions of this consent, may be viewed by the public without charge, at Council's Administration Building, Church Street, Dubbo between the hours of 9 am and 5 pm, Monday to Friday. Copies are also available from: www.dubbo.nsw.gov.au

RIGHT OF APPEAL

Section 97 of the Environmental Planning and Assessment Act 1979 confers the right for an applicant who is dissatisfied with Council's determination to appeal to the Land and Environment Court within six months after the date on which you receive this Notice.

Protection of the Environment Operations Act 1997

General Terms of Approval - Issued



Notice No: 1548744

The General Manager
Dubbo Regional Council
PO Box 81
DUBBO NSW 2830

Attention: Shaun Reynolds

Notice Number 1548744
Date 01-Feb-2017

Re: DA2016-482 Extractive Industry (Quarry) Lot 211 DP 1220433, 20L Sheraton Road, Dubbo

Issued pursuant to Section 91A(2) Environmental Planning and Assessment Act 1979

I refer to the development application and accompanying information provided for the Extractive Industry (Quarry) at Lot 211 DP 1220433 20L Sheraton Road, Dubbo received by the Environment Protection Authority (EPA) on 13 October 2016.

The EPA has reviewed the information provided and has determined that it is able to issue a licence for the proposal, subject to a number of conditions. The applicant will need to make a separate application to the EPA to obtain this licence prior to the commencement of scheduled development (construction) work or scheduled activities.

The general terms of approval for this proposal are provided in **Attachment A**. If Dubbo Regional Council (Council) grants development consent for this proposal these conditions should be incorporated into the consent.

These general terms relate to the development as proposed in the documents and information currently provided to the EPA. In the event that the development is modified either by the applicant prior to the granting of consent or as a result of the conditions proposed to be attached to the consent, it will be necessary to consult with the EPA about the changes before the consent is issued. This will enable the EPA to determine whether its general terms need to be modified in light of the changes.

The EPA would like to advise Council that every Protection of the Environment Operation Act 1997 (POEO) licence will contain a number of mandatory conditions. A copy of the mandatory conditions has been included as a separate attachment to the general terms of Approval and is provided in **Attachment B**.

The proponent should also be aware of their obligations to prepare a Pollution Incident Response Management Plan (PIRMP) for the premises as required by the Protection of the Environment Legislation

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Protection of the Environment Operations Act 1997

General Terms of Approval - Issued



Notice No: 1548744

Amendment Act 2011. Guidelines on the preparation of the PIRMP can be found at <http://www.environment.nsw.gov.au/resources/legislation/201200227egpreppirmp.pdf>.

If you have any questions, or wish to discuss this matter further please contact Joshua Loxley on 02 6883 5326.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Bradley Tanswell', written over a horizontal line.

Bradley Tanswell

Acting Head Pesticides, Operations & Planning

Unit

North - Dubbo

(by Delegation)

Protection of the Environment Operations Act 1997

General Terms of Approval - Issued



Notice No: 1548744

Administrative conditions

A1. Information supplied to the EPA

A1.1 Except as expressly provided by these general terms of approval, works and activities must be carried out in accordance with the proposal contained in:

- the development application DA2016-482 submitted to Dubbo Regional Council on 7 October 2016;
- The Environmental Impact Statement for Regional Hardrock Pty Ltd's *South Keswick Quarry* dated October 2016 at Lot 211 DP 1220433 20L Sheraton Road, Dubbo

A2. Fit and Proper Person

A2.1 The applicant must, in the opinion of the EPA, be a fit and proper person to hold a licence under the Protection of the Environment Operations Act 1997, having regard to the matters in s.83 of that Act.

Discharges to Air and Water and Application to Land

P1.1 The following points referred to in the table are identified in this licence for the purpose of the monitoring and/or setting of limits for discharges of pollutant to water from the point.

EPA identification no.	Types of Monitoring Point	Type of discharge point	Location Description
Sediment Basin 1 Overflow (location TBA)	Surface quality monitoring	Surface water discharge	TBC in site specific Water management Plan
Sediment Basin 2 overflow (location TBA)	Surface Quality monitoring	Surface water discharge	TBC in site specific water Management Plan
Air Quality Monitoring Point 1	Air quality Monitoring		TBC in consultation with the EPA
Weather station	On site weather station		TBC in specific Air Quality Management Plan

Notes:

- 1) The monitoring requirements may be modified by the EPA subject to ongoing review of the licence conditions and monitoring results.
- 2) A licence application will need to define the sediment basins and other monitoring and discharge points on the premises.
- 3) Discharge of pollutants to water from the sediment basins is only permitted when the discharge occurs solely as a result of rainfall that exceeds the minimum design criteria for sediment control measures in *Managing Urban Stormwater: Soils and Construction - Volume 2E Mines and Quarries*.

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Protection of the Environment Operations Act 1997

General Terms of Approval - Issued



Notice No: 1548744

Limit conditions

L1. Pollution of waters

L1.1 Except as may be expressly provided by a licence under the Protection of the Environment Operations Act 1997 in relation of the development, section 120 of the Protection of the Environment Operations Act 1997 must be complied with in and in connection with the carrying out of the development.

L3 Concentration Limits

L3.1 For each discharge point or utilisation area specified in the table/s below, the concentration of a pollutant discharges at that point, or applied to that area, must not exceed the concentrations limits specified for that pollutant in the table.

L3.2 Where a pH quality limited is specified in the table, the specified percentage of samples must be within the specified ranges.

L3.3 To avoid any doubt, this condition does not authorise the discharge or emission of any other pollutant.

Water and Land

Monitoring Point 1 & 2

Pollutant	Unit of Measure	50% concentration limit	90% concentration limit	3DGM concentration Limit	100% Concentration Limit
TSS	mg/L				<50
Oil and Grease	mg/L				<10
pH					6.5-8.5

L5. Waste

L5.1 The licensee must not cause, permit or allow any waste generated outside the premises to be received at the premises for storage, treatment, processing, reprocessing or disposal or any waste generated at the premises to be disposed of at the premises, except as expressly permitted by a licence under the Protection of the Environment Operations Act 1997.

L5.2 This condition only applies to the storage, treatment, processing, reprocessing or disposal of waste at the premises if it requires an environment protection licence under the Protection of the Environment Operations Act 1997.

L6. Noise limits

L6.1 Noise generated at the premises must not exceed the noise limits in the table below. The locations referred to are from Figure 2 Locality Plan on Page 15 of the Noise and Vibration Impact Assessment Proposed South Keswick Quarry Project (Document ID MAC160254P1V01 Final dated 05 September 2016) by Muller Acoustic Consulting Pty Ltd.

Protection of the Environment Operations Act 1997

General Terms of Approval - Issued



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TABLE 1 - NOISE LIMITS IN dB(A)

Locality	Location	NOISE LIMITS dB(A)			
		Day	Evening	Night (Shoulder)	
		LAeq (15 minute)	LAeq (15 minute)	LAeq (15 minute)	LAmx
R4 A. Howd	Dubbo	35	35	35	45
R7 D. Wykes	Dubbo	35	35	35	45
R10 Cameron	Dubbo	35	35	35	45
R11MJ Simpson	Dubbo	35	35	35	45
R14 TW & J Warren	Dubbo	35	35	35	45
R15 HC & CN Wilcockson	Dubbo	35	35	35	45
R18 IB & JA Robertson	Dubbo	35	35	35	45
R19 KP Sheridan & M Goldsmith	Dubbo	35	35	35	45
R20 LA Wilkinson	Dubbo	35	35	35	45
All other residential receptors	Dubbo	35	35	35	45

L6.2 For the purpose of condition L6.1;

- Day is defined as the period from 7am to 6pm Monday to Saturday and 8am to 6pm Sunday and Public Holidays.
- Evening is defined as the period 6pm to 10pm.
- Night is defined as the period from 10pm to 7am Monday to Saturday and 10pm to 8am Sunday and Public Holidays.

L6.2 (A) Construction activity is permitted between the hours of 7:00 am to 6:00 pm Monday to Friday and Saturday 8:00 am to 1:00 pm, with no construction activity on Sundays and Public Holidays. Construction activity is permitted outside these hours strictly in accordance with the limits set out in the Interim Construction Noise Guidelines.

Activities that may also be undertaken outside the hours specified in Condition L6.2 (A) above are:

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- a. the delivery of oversized plant or structures that police or other authorised authorities determine require special arrangements to transport along public roads for safety reasons;
- b. emergency activities to avoid the loss of life or property, or to prevent environmental harm.

L6.2 (B) Permitted hours of operation other than truck haulage are from 7:00 am to 6:00 pm Monday to Saturday. Truck haulage is permitted between 5:00am and 10:00pm Monday to Friday and Saturday 5:00am to 6:00pm. No activity is permitted at the site on Sundays and Public Holidays.

L6.3 The noise limits set out in condition L6.1 apply under all meteorological conditions except for the following:

- a. Wind speeds greater than 0.5 metres/second at 10 metres above ground level; or
- b. Stability category F temperature inversion conditions and wind speeds greater than 0.5 metres/second at 10 metres above ground level; or
- c. Stability category G temperature inversion conditions.

Meteorological Monitoring

L6.4 For the purposes of condition L6.3:

- a. Data recorded by the meteorological station identified as "EPA Identification Point TBC" must be used to determine meteorological conditions ; and
- b. Temperature Inversion conditions (stability category) are to be determined by the sigma-theta method referred to in Part E4 of Appendix E to the NSW Industrial Noise Policy.

Note: the applicant must engage the EPA to negotiate the location of the meteorological station identified in condition L6.4a.

L6.5 To determine compliance:

- a. with the Leq(15 minute) noise limits in condition L6.1, the noise measurement equipment must be located:
 - 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 3m, where any dwelling on the property is situated more than 30 metres from the property boundary closest to the premises; or, where applicable
 - within approximately 50 metres of the boundary of a National Park or a Nature Reserve.
- b. with any LAmax noise limits in condition L6.1, the noise measurement equipment must be located within 1 metre of a dwelling façade.
- c. with the noise limits in condition L6.1, the noise measurement equipment must be located:
 - at the most affected point at a location where there is no dwelling at the location; or
 - at the most affected point within an area at a location prescribed by conditions L6.5(a) or L6.5(b).

L6.6 A non-compliance of condition L6.1 will still occur where noise generated from the premises in excess of the appropriate limit is measured:

- at a location other than an area prescribed by conditions L6.5(a) and L6.5(b); and/or
- at a point other than the most affected point at a location

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L6.7 For the purposes of determining the noise generated at the premises the modification factors in Section 4 of the NSW Industrial Noise Policy must be applied, as appropriate, to the noise levels measured by the noise monitoring equipment.

L7. Blasting

Overpressure

L7.1 The airblast overpressure level from blasting operations at the premises must not exceed 120dB (Lin Peak) at any time at any noise sensitive locations. Error margins associated with any monitoring equipment used to measure this are not to be taken into account in determining whether or not the limit has been exceeded.

L7.2 The airblast overpressure level from blasting operations at the premises must not exceed 115dB (Lin Peak) at any noise sensitive locations for more than five per cent of the total number of blasts over each reporting period. Error margins associated with any monitoring equipment used to measure this are not to be taken into account in determining whether or not the limit has been exceeded.

Ground vibration (ppv)

L7.3 Ground vibration peak particle velocity from the blasting operations at the premises must not exceed 10mm/sec at any time at any noise sensitive locations. Error margins associated with any monitoring equipment used to measure this are not to be taken into account in determining whether or not the limit has been exceeded.

L7.4 Ground vibration peak particle velocity from the blasting operations at the premises must not exceed 5mm/sec at any noise sensitive locations for more than five per cent of the total number of blasts over each reporting period. Error margins associated with any monitoring equipment used to measure this are not to be taken into account in determining whether or not the limit has been exceeded.

L7.5 A breach of the abovementioned limits will still occur where airblast overpressure or ground vibration levels from the blasting operations at the premises exceeds the limit specified at any "noise sensitive locations" other than any specific locations identified above.

L7.6 The airblast overpressure and ground vibration levels do not apply at noise sensitive locations that are owned by the licensee or subject to a private agreement, relating to airblast overpressure and ground vibration levels, between the licensee and land owner.

L7.7 The proponent may exceed the limits in condition L7.3 if it has a written negotiated blasting agreement with any landowner for higher blasting overpressure and vibration limits, and a copy of the agreement has been forwarded to the EPA

L7.8 Airblast overpressure or ground vibration as a result of blasting at the premises must not exceed levels that cause cosmetic or other damage, and in relation to condition L7.7 only if specifically allowed for in the written agreement between the proponent and the landholder.

Time of blasting

L7.3 Blasting operations on the premises shall only take place:

- (i) between 9:00am and 3:00pm Monday to Saturday inclusive;
- (ii) are limited to one blast each day; and

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(iii) at other times as approved by the EPA.

L7.4 The hours of operation for blasting operations specified in this condition may be varied if the EPA, having regard to the effect that the proposed variation would have on the amenity of the residents in the locality, gives written consent to the variation.

Frequency of blasting

L7.5 Blasting at the premises is limited to 1 blast each day on which blasting is permitted.

Note: The restrictions on times and frequency of blasting referred to above are based on the ANZEC guidelines – "Technical basis for guidelines to minimise annoyance due to blasting overpressure and ground vibration" September 1990.

Operating Conditions

O1. Odour

O1.1 The licensee must not cause or permit the emission of offensive odour beyond the boundary of the premises.

Note: The POEO Act states that no offensive odour may be emitted from particular premises unless potentially offensive odours are identified in the licence and the odours are emitted in accordance with conditions specifically directed at minimising the odours are permitted.

O2. Dust

O2.1 Activities occurring at the premises must be carried out in a manner that will minimise emissions of dust from the premises.

O2.2 Trucks entering and leaving the premises that are carrying loads must be covered at all times, except during loading and unloading.

O2.3 All dust control equipment must be operable at all time with the exception of shutdowns required for maintenance.

O3. Stormwater/sediment control - Construction Phase

O3.1 An *Soil and Water Management Plan (SWMP)* must be prepared and implemented. The plan must describe the measures that will be employed to minimise soil erosion and the discharge of sediment and other pollutants to lands and/or waters during construction activities. The SWMP should be prepared in accordance with the requirements for such plans outlined in *Managing Urban Stormwater: Soils and Construction* (available from the Department of Housing).

O4. Stormwater/sediment control - Operation Phase

O4.1 A Stormwater Management Scheme must be prepared for the development and must be implemented. Implementation of the Scheme must mitigate the impacts of stormwater run-off from and within the premises following the completion of construction activities. The Scheme should be consistent with the Stormwater Management Plan for the catchment. Where a Stormwater Management Plan has not yet been prepared the Scheme should be consistent with the guidance contained in *Managing Urban Stormwater: Council Handbook* (available from the EPA).

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O5 Bunding Requirements

All above ground storages containing Flammable and combustible liquids must be bunded in accordance with Australian Standard AS 1940-2004

O6. Prepare and Implement Water Management Plan (WMP)

O6.1 The licensee must prepare and implement a Water Management Plan (WMP). The WMP for the project must be prepared to the satisfaction of the EPA and must be submitted with the Environment Protection Licence application. This plan must:

- (a) be prepared by a suitably qualified and experienced person(s);
- (b) address construction, operation and post closure monitoring, management and response arrangements;
- (c) include a commitment to meet the discharge limits outlined in condition L3.3.
- (d) include:
 - (i) a Site Water Balance; and
 - (ii) a Soil and Water Management Plan.

O6.2 The Site Water Balance, must identify how any water removed from the sediment basins to return to the design freeboard will be managed.

O6.3 The Water Management Plan must include, as minimum:

- (a) describe how soil erosion and sediment pollution will be managed following the guidelines, principles and minimum design standards in Managing Urban Stormwater: Soils and Construction - Volume 1 (the Blue Book) during the construction/commencement stages;
- (b) describe how long-term soil erosion and sediment pollution measures such as dirty water diversion drains, sediment basins and soil stockpile areas will be designed and managed consistent with the guidelines, principles and minimum design standards in Managing Urban Stormwater: Soils and Construction - Volume 2E Mines and Quarries;
- (c) provide plan drawings showing the locations of best management practices for the site during all construction/commencement and operational stages;
- (d) include written text detailing the installation, monitoring and maintenance requirements for each of the recommended best management practices for erosion and sediment control;
- (e) include drawings of any engineering structures such as sediment basins and dirty water diversion structures, including design standards and management regimes to return the erosion and sediment control system to design capacity following rainfall events;
- (f) include design calculations and sizing for all dirty water diversion bunds and sediment basins on site;
- (g) consider the potential for increasing the size of sediment basins to maximise water reuse and reduce the need for managed overflows or discharge;
- (h) ensure that unsealed roads are maintained consistent with the practices and principles in 'Managing Urban Stormwater - Soils and Construction Volume 2C Unsealed Roads';
- (i) ensure that any service installation will be managed consistent with the guidelines, principles and minimum design standards in Managing Urban Stormwater: Soils and Construction - Volume 2A: Installation of Services.

O7. Noise

Blast management protocol

O7.1 A Blasting/Vibration Management Protocol must be prepared in relation to the development and implemented. The protocol must include, but need not be limited to, the following matters:

- compliance standards;

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- mitigation measures;
- remedial action;
- monitoring methods and program;
- monitoring program for flyrock distribution*;
- measures to protect underground utilities (eg: rising mains, subsurface telecommunication and electric cables) and livestock nearby;
- notification of procedures for neighbours prior to detonation of each blast;
- measures to ensure no damage by flyrock to people, property, livestock and powerlines.*

O8. Air

Air Management Plan

O8.1 An Air Quality Management Plan must be reviewed to include any additional air quality management measures identified in the Air quality assessment listed in condition O8.2.

Air Quality Assessment

O8.2 A revised Air quality impact assessment must be conducted strictly in accordance with the *Approved Methods for the Modelling and Assessment of Air Pollutants in New South Wales Guidelines* and submitted with an application for an Environment Protection Licence;

- The Air Quality Assessment is to incorporate all proactive and reactive air quality management systems in the Air Quality Management Plan;
- The Air Quality Assessment is to ensure that no additional exceedances of the air quality assessment listed in the *Approved Methods for the Modelling and Assessment of Air Pollutants in NSW*;
- where additional exceedances are predicted management of the activities should be revised to include additional air quality management measures.

Monitoring and recording conditions

M1 Monitoring records

M1.1 The results of any monitoring required to be conducted by the EPA's general terms of approval, or a licence under the Protection of the Environment Operations Act 1997, in relation to the development or in order to comply with the load calculation protocol must be recorded and retained as set out in conditions M1.2 and M1.3.

M1.2 All records required to be kept by the licence must be:

in a legible form, or in a form that can readily be reduced to a legible form;

kept for at least 4 years after the monitoring or event to which they relate took place; and

produced in a legible form to any authorised officer of the EPA who asks to see them.

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M1.3 The following records must be kept in respect of any samples required to be collected: the date(s) on which the sample was taken;

the time(s) at which the sample was collected;

the point at which the sample was taken; and

the name of the person who collected the sample.

M2. Requirement to monitor concentration of pollutants discharged

M2.1 For each monitoring/ discharge point or utilisation area specified below (by a point number), the applicant must monitor (by sampling and obtaining results by analysis) the concentration of each pollutant specified in Column 1. The applicant must use the sampling method, units of measure, and sample at the frequency, specified opposite in the other columns:

Water and Land

Monitoring Point 1 and 2

Pollutant	Unit of measure	Frequency	Sampling Method
Total Suspended Solids (TSS)	mg/L	Daily during discharge	Grab sample
Oil and Grease	mg/L	Daily during Discharge	Grab Sample
pH		Daily during Discharge	Insitu

M4. Testing methods - concentration limits

M4.2 Monitoring for the concentration of a pollutant discharged to waters or applied to a utilisation area required by condition M3 must be done in accordance with:

the Approved Methods Publication; or

if there is no methodology required by the Approved Methods Publication or by the general terms of approval or in the licence under the Protection of the Environment Operations Act 1997 in relation to the development or the relevant load calculation protocol, a method approved by the EPA in writing before any tests are conducted, unless otherwise expressly provided in the licence.

Blast Monitoring

M5.1 The meteorological weather station must be maintained so as to be capable of continuously monitoring the parameters specified in condition M5.1.

M5.1 For each monitoring point specified in the table below the licensee must monitor (by sampling and obtaining results by analysis) the parameters specified in Column 1. The licensee must use the sampling method, units of measure, averaging period and sample at the frequency, specified opposite in the other columns.

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Point 3 - Location to be confirmed in consultation with EPA

Parameter	Units of Measure	Frequency	Averaging Period	Sampling Method
Air temperature	°C	Continuous	1 hour	AM-4
Wind direction	°	Continuous	15 minute	AM-2 & AM-4
Wind speed	m/s	Continuous	15 minute	AM-2 & AM-4
Sigma theta	°	Continuous	15 minute	AM-2 & AM-4
Rainfall	Mm	Continuous	15 minute	AM-4
Siting				AM-1
Relative humidity	%	Continuous	1 hour	AM-4

M6 Requirement to Monitor Noise

M6.1 To assess compliance with Condition L6.1, attended commissioning noise monitoring must be undertaken in accordance with Conditions L6.5 and:

- at locations R4, R7 and R10 as listed in Condition L6.1;
- occur within 3 months of commencement of operations;
- occur during one day, evening and night period (morning shoulder) as defined in the NSW Industrial Noise Policy for a minimum of:
 - 15 minutes of typical processing activity during the day;
 - 15 minutes of typical processing activity during the evening; and
 - 15 minutes of typical night time processing activity during the night.

M6.2 To determine compliance with the blast limits:

- Airblast overpressure and ground vibration levels must be measured and electronically recorded at the nearest residences or noise sensitive locations for all the parameters in the first column of the table below.
- The licensee must use the units of measure, sampling method, and sampling frequency specified in the other columns.

Parameter	Units of Measure	Frequency	Sampling Method
Airblast overpressure	Decibels (linear peak)	Continuous during all blasts	Australian Standard AS2187.2-2006
Ground vibration peak particle velocity	Millimetres/second	Continuous during all blasts	Australian Standard AS2187.2-2006

M6.3 A Traffic Noise Management Strategy (TNMS) be developed by the proponent, for the purposes of construction and operational noise impacts and to improve operation transport, to ensure that feasible and reasonable noise management strategies for vehicle movements associated with the facility are identified and applied, that include but are not necessarily limited to the following;

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- driver training to ensure that noisy practices such as the use of compression engine brakes are not unnecessarily used near sensitive receivers,
- best noise practice in the selection and maintenance of vehicle fleets,
- movement scheduling where practicable to reduce impacts during sensitive times of the day,
- communication and management strategies for non-licensee/proponent owned and operated vehicles to ensure the provision of the TNMS are implemented,
- a system of audited management practices that identifies non conformance, initiates and monitors corrective and preventative action (including disciplinary action for breaches of noise minimization procedures) and assesses the implementation and improvement of the TNMS,
- specific procedures to minimize impacts at identified sensitive areas,
- clauses in conditions of employment, or in contracts, of drivers that require adherence to the noise minimization procedures and facilitate effective implementation of the disciplinary actions for breaches of the procedures.

M6.4 The Traffic Noise Management Study must be submitted with an application for the Environment Protection Licence.

M7 Telephone complaint line

M7.1 The licensee must operate during its operating hours a telephone complaints line for the purpose of receiving and complaint from members of the public in relation to activities conducted at the premises or by the vehicle or mobile plant, unless otherwise specified in the licence.

M7.2 The licensee must notify the public of the complaints line telephone number and the fact that it is a complaints line so that the impacted community knows how to make a complaint.

M7.3 The preceding two conditions do not apply until three months after the date of the issue of this licence.

Reporting conditions

R1.1 The applicant must provide an annual return to the EPA in relation to the development as required by any licence under the Protection of the Environment Operations Act 1997 in relation to the development. In the return the applicant must report on the annual monitoring undertaken (where the activity results in pollutant discharges), provide a summary of complaints relating to the development, report on compliance with licence conditions and provide a calculation of licence fees (administrative fees and, where relevant, load based fees) that are payable. If load based fees apply to the activity the applicant will be required to submit load-based fee calculation worksheets with the return.

R2.1 Noise Monitoring Report

A noise compliance assessment report must be submitted to the EPA within 30 days of the completion of the commissioning monitoring. The assessment must be prepared by a suitably qualified and experienced person and include:

- a. an assessment of compliance with noise limits for R4, R7, and R10 ; and
- b. specify any management actions needed to be implemented to address any exceedences of the noise limits for R4, R7, and R10.

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Attachment B- Mandatory Conditions for all EPA licences

Administrative conditions

Other activities

(To be used on licences with ancillary activities)

This licence applies to all other activities carried on at the premises, including:

- Extractive Activities; and
- crushing, grinding and separating

Operating conditions

Activities must be carried out in a competent manner

Licensed activities must be carried out in a competent manner.

This includes:

- a. the processing, handling, movement and storage of materials and substances used to carry out the activity; and
- b. the treatment, storage, processing, reprocessing, transport and disposal of waste generated by the activity.

Maintenance of plant and equipment

All plant and equipment installed at the premises or used in connection with the licensed activity:

- c. must be maintained in a proper and efficient condition; and
- d. must be operated in a proper and efficient manner.

Monitoring and recording conditions

Recording of pollution complaints

The licensee must keep a legible record of all complaints made to the licensee or any employee or agent of the licensee in relation to pollution arising from any activity to which this licence applies.

The record must include details of the following:

- the date and time of the complaint;
- the method by which the complaint was made;
- any personal details of the complainant which were provided by the complainant or, if no such details were provided, a note to that effect;
- the nature of the complaint;

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- the action taken by the licensee in relation to the complaint, including any follow-up contact with the complainant; and
- if no action was taken by the licensee, the reasons why no action was taken.

The record of a complaint must be kept for at least 4 years after the complaint was made.

The record must be produced to any authorised officer of the EPA who asks to see them.

Telephone complaints line

The licensee must operate during its operating hours a telephone complaints line for the purpose of receiving any complaints from members of the public in relation to activities conducted at the premises or by the vehicle or mobile plant, unless otherwise specified in the licence.

The licensee must notify the public of the complaints line telephone number and the fact that it is a complaints line so that the impacted community knows how to make a complaint.

This condition does not apply until 3 months after this condition takes effect.

Reporting conditions

Annual Return documents

What documents must an Annual Return contain?

The licensee must complete and supply to the EPA an Annual Return in the approved form comprising:

- Statement of Compliance; and
- Monitoring and Complaints Summary.

A copy of the form in which the Annual Return must be supplied to the EPA accompanies this licence. Before the end of each reporting period, the EPA will provide to the licensee a copy of the form that must be completed and returned to the EPA.

Period covered by Annual Return

An Annual Return must be prepared in respect of each reporting, except as provided below

Note: The term "reporting period" is defined in the dictionary at the end of this licence. Do not complete the Annual Return until after the end of the reporting period.

Where this licence is transferred from the licensee to a new licensee,

- the transferring licensee must prepare an annual return for the period commencing on the first day of the reporting period and ending on the date the application for the transfer of the licence to the new licensee is granted; and
- the new licensee must prepare an annual return for the period commencing on the date the application for the transfer of the licence is granted and ending on the last day of the reporting period.

Note: An application to transfer a licence must be made in the approved form for this purpose.

Where this licence is surrendered by the licensee or revoked by the EPA or Minister, the licensee must prepare an annual return in respect of the period commencing on the first day of the reporting period and ending on

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- a. in relation to the surrender of a licence - the date when notice in writing of approval of the surrender is given; or
- b. in relation to the revocation of the licence - the date from which notice revoking the licence operates.

Deadline for Annual Return

The Annual Return for the reporting period must be supplied to the EPA by registered post not later than 60 days after the end of each reporting period or in the case of a transferring licence not later than 60 days after the date the transfer was granted (the 'due date').

Notification where actual load can not be calculated

(Licences with assessable pollutants)

Where the licensee is unable to complete a part of the Annual Return by the due date because the licensee was unable to calculate the actual load of a pollutant due to circumstances beyond the licensee's control, the licensee must notify the EPA in writing as soon as practicable, and in any event not later than the due date.

The notification must specify:

- the assessable pollutants for which the actual load could not be calculated; and
- the relevant circumstances that were beyond the control of the licensee.

Licensee must retain copy of Annual Return

The licensee must retain a copy of the annual return supplied to the EPA for a period of at least 4 years after the annual return was due to be supplied to the EPA.

Certifying of Statement of Compliance and Signing of Monitoring and Complaints Summary

Within the Annual Return, the Statement of Compliance must be certified and the Monitoring and Complaints Summary must be signed by:

- a. the licence holder; or
- b. by a person approved in writing by the EPA to sign on behalf of the licence holder.

A person who has been given written approval to certify a Statement of Compliance under a licence issued under the Pollution Control Act 1970 is taken to be approved for the purpose of this condition until the date of first review this licence.

Notification of environmental harm

Note: The licensee or its employees must notify the EPA of incidents causing or threatening material harm to the environment immediately after the person becomes aware of the incident in accordance with the requirements of Part 5.7 of the Act

Notifications must be made by telephoning the EPA's Pollution Line service on 131 555.

The licensee must provide written details of the notification to the EPA within 7 days of the date on which the incident occurred.

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28 November 2016

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ashurst

Dear Mr Maas

Development application No. D2016-482 for the South Keswick Quarry

We refer to the letter from Dubbo Regional Council (**Council**) dated 10 November 2016 regarding the permissibility of development for the purposes of extractive industry on Lot 211 DP 1220433, known as 20L Sheraton Road, Dubbo (**Land**).

1. PURPOSE

The purpose of this letter is to provide advice as to whether development of the purposes of extractive industry is permissible on land zoned "RE2 Private Recreation" under the *Dubbo Local Environmental Plan 2011 (Dubbo LEP)*.

2. SUMMARY

In our view, development for the purposes of extractive industry is permissible on land zoned "RE2 Private Recreation" under the Dubbo LEP for the reasons set out below.

3. BACKGROUND

Regional Hardrock Pty Ltd (**Regional Hardrock**) lodged an application (No. D2016-482) with Council on 7 October 2016 (**Development Application**) for development consent under the *Environmental Planning and Assessment Act 1979 (NSW) (EP&A Act)*. The Development Application sought consent to extract, crush, screen and blend approximately 250,000 tonnes of basalt per year for 25 years from an area of approximately 24.1 ha on the Land. The proposed development will be known as the South Keswick Quarry.

The proposed development is both designated development and integrated development by virtue of ss 77A and 99(1) of the EP&A Act and cl 19 of Schedule 3 of the *Environmental Planning and Assessment Regulation 2000 (NSW)*.

Most of the Land on which the development is proposed to be carried out is zoned "RE2 Private Recreation" under the Dubbo LEP.

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243156025 06

Wesley Maas

28 November 2016

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In response to the Development Application, Council sent the letter dated 10 October 2016 stating that, in Council's view, the proposed development is not permissible on the part of the Land zoned "RE2 Private Recreation" for the following reasons:

- (a) under clause 7(3)(a) of the *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007 (Mining SEPP)*, development for the purposes of extractive industry may be carried out with development consent on "land on which development for the purposes of agriculture or industry may be carried out (with or without development consent)";
- (b) "agriculture" is prohibited within zone "RE2 Private Recreation" under the Dubbo LEP;
- (c) "aquaculture" is a "subset land use within the group term *agriculture*"; and
- (d) while "aquaculture" is permissible within zone "RE2 Private Recreation" under the Dubbo LEP, "[t]he permissibility of the subset land use does not imply that the group term *agriculture* may be carried out."

The letter from Council requested that the Development Application be withdrawn or amended, or alternatively, further clarification be provided demonstrating that "extractive industry" is permissible in the "RE2 Private Recreation" zone.

You have requested that we advise you whether development for the purposes of extractive industry is permissible within the "RE2 Private Recreation" zone under the Dubbo LEP.

4. **ADVICE**

4.1 **Mining SEPP**

Clause 7(3) of the Mining SEPP provides that:

"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" (our emphasis).

The term "agriculture" is not defined under the Mining SEPP. However, clause 3(1) of the Mining SEPP provides that words that are not defined in the Mining SEPP have the same meaning as under the *Standard Instrument—Principal Local Environmental Plan (Standard Instrument)*.

In the Standard Instrument, the term "agriculture" is defined as follows:

"**agriculture** means any of the following:

- (a) aquaculture,
- (b) extensive agriculture,
- (c) intensive livestock agriculture,
- (d) intensive plant agriculture" (our emphasis).

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Section 36 of the EP&A Act has the effect that, in general terms, a State environmental planning policy prevails over a local environmental plan.

Consequently, if the relevant local environmental plan provides that development for the purposes of "agriculture" as defined in the Mining SEPP is permissible with or without consent, then clause 7 of the Mining SEPP would have the effect that development for the purposes of extractive industry is permissible with consent, even if extractive industry is prohibited under the Dubbo LEP.

4.2 Dubbo LEP

The Dubbo LEP defines "agriculture" in identical terms to the Standard Instrument.

Under the land use table for zone "RE2 Private Recreation", development for the purposes of "aquaculture" is permissible with consent alongside other uses that are not relevant for the purpose of this advice.

Any other development that is not specified to be permitted with or without consent is within the innominate use category which is prohibited. This innominate use category would include development for the purposes of "extensive agriculture", "intensive livestock agriculture" or "intensive plant agriculture".

4.3 Discussion

The interpretation of clause 7(3)(a) of the Mining SEPP in the context of the definition of "agriculture" in the Standard Instrument has not been judicially considered, nor are we aware of any cases concerning the meaning of "agriculture" more broadly that would be relevant to this issue. Therefore, regard must be had to the general principles of statutory interpretation and, more specifically, case law on the interpretation of similar planning instruments.

Literal Interpretation

The starting point is the natural and ordinary meaning of the language used in the statute (*Amalgamated Society of Engineers v Adelaide Steamship Co Ltd (Engineers' Case)* (1920) 28 CLR 129 at 161-2). This is known as the literal approach to interpretation.

In interpreting the substantive provision of an Act by reference to defined terms, the High Court in *Kelly v R* (2004) 218 CLR 216 at [103] (*Kelly*) stated that the proper course is to:

"read the words of the definition into the substantive enactment and then construe the substantive enactment – in its extended or confined sense – in its context and bearing in mind its purpose and the mischief that it was designed to overcome. To construe the definition before its text has been inserted into the fabric of the substantive enactment invites error as to the meaning of the substantive enactment."

The term "agriculture" is defined to mean "any" of the four types of agriculture listed in the definition. If the definition of "agriculture" were inserted into clause 7(3)(a) consistently with *Kelly*, then clause 7(3)(a) would essentially read as follows:

"development for the purposes of extractive industry may be carried out with development consent on land on which development for the purposes of any of the following:

(a) aquaculture,

(b) extensive agriculture,

(c) intensive livestock agriculture,

(d) intensive plant agriculture.]

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or industry may be carried out (with or without development consent)" (underlined text is the definition of "agriculture").

The term "any" ordinarily means things in whatever quantity or number (whether that be one or a number of things). That is, "any" means "one or more" of the types of agriculture listed in the definition.

Development for the purposes of "aquaculture" is permissible with consent in zone "RE2 Private Recreation". Consequently, development for the purposes of paragraph (a) of the definition of "agriculture" is permissible.

As the definition of "agriculture" is development for "any" (i.e. "one or more", or "some") of the types of development listed in paragraphs (a) - (d), and "aquaculture" is permissible with development consent in zone "RE2 Private Recreation", then reading clause 7(3)(a) in a literal manner, as set out above, leads to the conclusion that development for the purposes of extractive industry is permissible with development consent under the Mining SEPP on land zoned "RE2 Private Recreation" under the Dubbo LEP.

That is, clause 7(3)(a) would be read such that "development for the purposes of extractive industry may be carried out with development consent on land on which development for the purposes of ... (a) aquaculture ... may be carried out with or without development consent".

Alternative Interpretation

On the other hand, it may be contended that the word "any" in the definition of "agriculture" should be taken to mean "every", "all" or "each of" the types of development specified in paragraphs (a) - (d) of the definition. That is, clause 7(3)(a) would be read so that extractive industry is permissible with development consent only on land on which "any" of aquaculture, extensive agriculture, intensive livestock agriculture, intensive plant agriculture is permissible with or without development consent (i.e. pick any of the types in (a) - (d) and it needs to be permissible with or without consent for clause 7(3)(a) to be applicable). Put another way, clause 7(3)(a) applies only where the genus of "agriculture" is permissible in its entirety, rather than one or more of the individual species comprising the genus "agriculture".

On this alternative construction, clause 7(3)(a) would only apply where the particular zone permits all of the types of development in paragraphs (a) - (d) of the definition of "agriculture" either with or without development consent.

It is noted that development for the purposes of paragraphs (b) - (d) of the definition of "agriculture" (i.e. extensive agriculture, intensive livestock agriculture, intensive plant agriculture) are prohibited in zone "RE2 Private Recreation". In these circumstances, development for the purposes of one form of "agriculture" is permissible with consent in zone "RE2 Private Recreation" and the other forms of "agriculture" are prohibited. The alternate contention would be that "agriculture" is a grouped term which should be applied in total such that all sub-types of development in paragraphs (a) - (d) would need to be permissible in the zone for clause 7(3)(a) of the Mining SEPP to apply.

We understand from the letter that this is Council's interpretation of the Mining SEPP.

Opinion

We are of the view that the literal interpretation, and not the alternative interpretation, would be adopted due to the following reasons:

- (a) the usual way to interpret statutory instruments is to insert the text of the definition into the text of the substantive enactment (see *Kelly*);

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- (b) the substantive enactment where the definition of "agriculture" is to be applied is clause 7(3)(a) of the Mining SEPP, not the Dubbo LEP;
- (c) the natural and ordinary meaning of "any" is things in whatever quantity or number (i.e. one or more);
- (d) the natural reading with the definition of "agriculture" inserted into the substantive part of clause 7(3)(a) suggests that if *any* of the types of development in paragraphs (a) - (d) are permissible, then development for the purpose of extractive industry is permissible with consent;
- (e) the aims of the Mining SEPP (set out in clause 2) in recognition of the importance to NSW of mining, petroleum production and extractive industries are to, among other things, facilitate the orderly and economic use and development of land containing mineral, petroleum and extractive material resources. The literal interpretation of clause 7(3)(a) is consistent with these aims when considered in the context of the other provisions in the Mining SEPP. The alternative interpretation would have the effect that clause 7(3)(a) would only apply so as to permit extractive industries where every particular form of agriculture (such as grazing, cropping, feedlots, turf farming, viticulture, forestry, irrigated crops, piggeries, dairies, aquaculture etc) is permissible. This alternative interpretation significantly restricts the circumstances in which clause 7(3)(a) would apply and does not support the aims of the Mining SEPP. For example, the alternative interpretation would give rise to the result that mining, petroleum production and extractive industry would not be permissible in zone "RU2 Rural Landscape" because "intensive livestock agriculture" (a type of agriculture) is expressly prohibited, even though "agriculture" is permitted with consent. Further, clause 7(3)(b) permits extractive industry in waterways, irrespective of the zoning;
- (f) there is case law in respect of other State environmental planning policies that, whilst not directly applicable, supports the literal interpretation. This is discussed below; and
- (g) Council's alternative interpretation would only apply where an applicant is proposing some form of agricultural development. In that circumstance, it would be correct to say that just because aquaculture is permissible with consent, does not mean that all other types of agriculture are also permissible. However, where the proposed development is mining, petroleum production or extractive industry, it is not necessary to distinguish between the types of agriculture that are permissible within the relevant zone. Once any one of the types of agriculture is permissible, clause 7(3)(a) of the Mining SEPP applies to permit extractive industry with development consent.

In *DEM (Aust) Pty Ltd v Pittwater Council* (2004) 136 LGERA 187 (*DEM v Pittwater*), the applicant applied for consent for a seniors living development pursuant to the (now repealed) *State Environmental Planning Policy No 5—Housing for Older People or People with a Disability (SEPP 5)*. The land was zoned "3(e) (Office Business E)" under the then *Pittwater Local Environmental Plan (Pittwater LEP)*. The Pittwater LEP prohibited the proposed development in that zone.

However, clause 4(1)(b) of SEPP 5 was in a similar form to clause 7 of the Mining SEPP. Clause 4(1)(b) of SEPP 5 permitted development for the purpose of seniors living on land:

"on which development for the purpose of any of the following is permitted:

- (i) dwelling houses;
- (ii) residential flat buildings;
- (iii) hospitals;

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- (iv) development of a kind identified in respect of land zoned for special uses..." (our emphasis).

Within zone "3(e) (Office Business E)" under the Pittwater LEP not all dwelling-houses were permitted with consent. Only those *"dwelling houses used in conjunction with commercial premises or industry and situated on the land on which the commercial premises or industry are or is conducted"* were permissible. All other dwelling houses were prohibited.

The Court of Appeal found that clause 4(1)(b) of the SEPP 5 assumed that land to which it applied would have a zoning permitting one of the purposes set out in that clause (i.e. dwelling houses) and the permitted purpose of dwelling houses may be qualified or limited in some manner peculiar to the applicable local planning instrument. The Court held that such qualification did not detract from the conclusion that once the land could be developed for the purpose of dwelling-houses, even on a qualified or limited basis, SEPP No 5 applied (at [54]).

In interpreting clause 4(1)(b)(i) of SEPP 5, the Court of Appeal at [47]-[50] stated that SEPP 5 was:

"In the category of remedial or beneficial provisions which should be construed to afford 'the fullest relief which the fair meaning of its language will allow' ... Where a beneficial statute is expressed in general terms, so far as possible within the text, decision-makers will construe the legislation to advance and achieve those beneficial purposes - not to frustrate and defeat their attainment ... SEPP 5 is intended to encourage the provision of housing for the elderly and disabled" (references omitted).

Whilst the case is not directly applicable to the interpretation of the Mining SEPP, we are of the view that the case is generally consistent with the literal interpretation of clause 7(3)(a) of the Mining SEPP that applies where one of the particular forms of agriculture is permissible under Dubbo LEP. This is because the Court of Appeal in *DEM v Pittwater*:

- (a) applied clause 4(1)(b) of SEPP 5 which had the same formula of "development for the purposes of any of the following ..." in the same way as the literal interpretation, to mean "one of the purposes set out in sub-cl 4(1)(b)(i)-(iv)" not all of the purposes (at para [54]);
- (b) took a broad view that SEPP 5 applied even where only some forms of dwelling houses were permissible with consent under the local environmental plan and other forms of dwelling-houses were prohibited; and
- (c) held that:

"remedial or beneficial provisions which should be construed to afford 'the fullest relief which the fair meaning of its language will allow' ... Where a beneficial statute is expressed in general terms, so far as possible within the text, decision-makers will construe the legislation to advance and achieve those beneficial purposes - not to frustrate and defeat their attainment" (at [47]-[50]).

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5. **CONCLUSION**

In our view, development for the purposes of extractive industry is permissible on land zoned "RE2 Private Recreation" under the Dubbo LEP having regard to clause 7(3)(a) of the Mining SEPP.

Should you have any questions, please contact Tony Hill on (02) 9258 6185 or Kylie Wilson on (02) 9258 5978.

Yours faithfully



Ashurst Australia

243156025.06



D2016-482 Part 1
Parcel 26717
SPR:SC

23 March 2017

The Manager
Department of Planning and Environment
Western Region
PO Box 58
DUBBO NSW 2830

Dear Sir/Madam

DEVELOPMENT APPLICATION D2016-482

Location of Premises: Lot 211 DP 1220433, 20L Sheraton Road, Dubbo.
Proposed Development: Extractive industry (quarry)

Council is in receipt of a Development Application for the abovementioned property for the proposed use of an *extractive industry (quarry)*.

The subject site is zoned RE2 Private Recreation under Dubbo Local Environmental Plan (LEP) 2011, within which *extractive industries* are a prohibited land use. Council's LEP was gazetted 11 November 2011 and is based on the Standard Instrument, reflecting all relevant State Environmental Planning Policies (SEPPs), as much as is possible. Council's Land Use Matrix (available on Council's website) reflects the LEP and provides additional references to the various SEPPs and relevant clauses.

SEPP (Mining, Petroleum Production and Extractive Industries) 2007, S7(3)(a) states:

(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 ... may be carried out (with or without development consent),*

Agriculture is a prohibited land use in the RE2 Private Recreation zone on the Dubbo LEP 2011. As such, Council will recommend refusal of the Development Application when the matter is referred to the Western Region Joint Regional Planning Panel.

The applicant has however provided an alternate argument with regard to the permissibility of the proposed land use and has provided legal opinion supporting their claim. The basis of the argument is as follows:

- *Agriculture* is defined in Dubbo LEP 2011 (and all standard instrument based planning instruments) as follows:

agriculture means any of the following:

- (a) *aquaculture,*
- (b) *extensive agriculture,*
- (c) *intensive livestock agriculture,*
- (d) *intensive plant agriculture.*

The legal advice is that the literal meaning of the definition is that: *agriculture means 'any', not all (a) to (d) or is simply the 'group term', but 'any'. Therefore agriculture means aquaculture and aquaculture means agriculture.*

Council does not agree with this interpretation. It is contrary to basic logic, the practice guidelines on the Department's website regarding the standard instrument, definitions, group terms, subterms and the like.

- The next step in the argument is that *aquaculture* is permissible in the RE2 Private Recreation zone in accordance with SEPP 62 – Sustainable Aquaculture, S7 Pond-based and tank-based aquaculture permissible in certain zones with consent. Therefore, if *aquaculture* is permissible in the RE2 Private Recreation zone and *aquaculture* means *agriculture*, then *agriculture* is permissible and then as per SEPP (Mining, Petroleum Production and Extractive Industries) 2007, s7(3)(a) *extractive industries* are also permissible.

Council does not agree with this interpretation, but unfortunately legal opinion from both the applicant and the advice which Council has sought, appears to agree with this reasoning based on the literal interpretation of the clause.

Council has also brought to the attention of its' legal representative, subclause 2.3(3)(b) of the standard instrument which reads as follows (paraphrased):

- (3) *In the Land Use Table at the end of this Part:*
 - (b) *a reference to a **land use** does not include (despite any definition in this Plan) a reference to a **land use** referred to separately in the Land Use Table in relation to the same zone.*

This subclause substantiates the group term and subterm throughout the standard instrument, meaning in this specific case that the group term *agriculture* (which contains the subterm *aquaculture*) is prohibited, but because the subterm (*aquaculture*) is separately listed as permissible, it is not included in the group term. The legal advice received thus far, has ignored this basic principle, although the applicant in this case is going further and arguing that the group term can be both prohibited and permissible within the same land use table.

This argument raises two (2) concerns for the Department. The first is that Council will put this argument with the relevant report to the Western Joint Regional Planning Panel and Council is unsure how they will deal with such a matter. The second is that it is Council's view that this argument undermines the entire basis for the land use table system in every local council LEP in New South Wales and may potentially render all the LEPs null and void.

Council is now seeking comment from the Department or the Department's legal branch in respect of this matter.

Further enquiries should be directed to Council's Senior Planner, Shaun Reynolds, during normal office hours, on 6801 4000.

Yours faithfully

Stephen Wallace
Manager Building and Development Services

Enclosed: Legal advice provided by Ashurst Australia Lawyers via the Applicant
Further Information provided by the Applicant regarding land use permissibility

Capuano v Port Macquarie-Hastings Council [2011] NSWLEC 1043 (16 February 2011)

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Capuano v Port Macquarie-Hastings Council [2011] NSWLEC 1043 (16 February 2011)

Last Updated: 17 April 2011

Land and Environment Court

New South Wales

Case Title: Capuano v Port Macquarie-Hastings Council

Medium Neutral Citation: [\[2011\] NSWLEC 1043](#)

Hearing Date(s): 30 November 2010, 1, 2 December 2010

Decision Date: 16 February 2011

Jurisdiction:

Before: Brown C

Decision: Appeal dismissed

Catchwords: DEVELOPMENT APPLICATION -
characterisation of development - weight to draft
LEP - unacceptable impact on the amenity of the

<http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/nsw/NSWLEC/2011/1043.html?stem=0&s...> 18/04/2017

Capuano v Port Macquarie-Hastings Council [2011] NSWLEC 1043 (16 February 2011)

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nearby residential development by way visual
impact, noise, odour and traffic

Legislation Cited: Environmental Planning and Assessment Act 1979
Hastings Local Environmental Plan 2001
Draft Port Macquarie-Hastings Local
Environmental Plan 2010

Cases Cited: Blackmore Design Group Pty Ltd v North Sydney
Council [2001] NSWLEC 279
Chamwell Pty Ltd v Strathfield Council (2007)
NSWLEC 114
Foodbarn Pty Ltd v Solicitor - General (1975) 32
LGERA 99
Grace v Thomas Street Caf [2007] NSWCA 359;
(2007) 159 LGERA 57
Hunters Hill Council v Fraser [2006] NSWLEC
744
McCabe v Blue Mountains City Council [2006]
NSWLEC 176; 145 LGERA 86
Royal Agricultural Society of New South Wales v
Sydney City Council (1987) 61 LGERA 305
Shire of Perth v O'Keefe [1964] HCA 37; (1964)
110 CLR 529
Terrace Tower Holdings Pty Ltd v Sutherland
Shire Council (2003) NSWCA 289
Warriewood Properties Pty Ltd v Pittwater Council
[2010] NSWLEC 215
Woolworths Ltd v Pallas Newco Pty Ltd [2004]
NSWCA 422; (2004) 136 LGERA 288

Texts Cited:

Category: Principal judgment

Parties: Jason Capuano (Applicant)
Port Macquarie - Hastings Council (Respondent)

Representation

- Counsel: Counsel:
Mr A Galasso SC (Applicant)
Mr C McEwen SC with Mr M Staunton
(Respondent)

- Solicitors: Solicitors:
Norton Rose (Applicant)
Lindsay Taylor Lawyers (Respondent)

File number(s): 10686 of 2010

<http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/nsw/NSWLEC/2011/1043.html?stem=0&s...> 18/04/2017

Capuano v Port Macquarie-Hastings Council [2011] NSWLEC 1043 (16 February 2011)

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Publication Restriction:

Judgment

1. **COMMISSIONER:** This an appeal against the refusal of DA 2009/0194 by Port Macquarie-Hastings Council (the council) for the demolition of an existing general store and fuel outlet and the construction of a restaurant with a drive through facility, car parking, boundary adjustment and signage to be operated by McDonalds at the corner of Ocean Drive and Greenmeadows Drive, Port Macquarie (the site).
2. The contentions raised by the council can be summarised as:

whether the proposed development is appropriately characterised as a "refreshment room",

what weight should be given to a draft local environmental plan that applies to the site, and

whether the proposed development will have an unacceptable impact on the amenity of the nearby residential development by way visual impact, noise, odour and traffic.

The site

3. The site consists of two existing irregularly shaped lots, with Lot 34 having an area of 1511 sq m and Lot 35 having an area of 5279 sq m giving a total site area of 6790 sq m. The topography of the site has a fall of around 6 m. The site is currently occupied by a disused general store and petrol outlet with associated car parking and an existing community centre (Sweeney House). Access to the site is provided from the signalised intersection of Ocean Drive and Greenmeadows Drive and then via an existing roundabout in Greenmeadows Drive.
4. The surrounding area has a range of land uses including schools, age care housing and residential allotments containing single dwellings and medium density residential dwellings.

The proposal

5. The proposal provides for the demolition of all existing improvements on the site with the exception of Sweeney House. The proposed development will consist of the construction of a single storey restaurant, drive through facility and car parking. The restaurant will have a gross floor area of 395 sq m and seating capacity for 64 internal seats, 38 external seats and a 14 seat party room. The proposed car park will provide 34 off street car parking spaces, a loading bay and waste storage area. An 11 car drive-through queue and 2 waiting bays are also provided together with the necessary earthworks, landscaping and signage.
6. The proposed hours of operation are 5 a.m. to 11 p.m. Sunday to Thursday and 5 a.m. to 12 midnight Friday and Saturday.
7. The adjustment of the boundary between Lots 34 and 35 will create two new lots, being Lot 1 with an area of 3882 sq m and Lot 2 with an area of 2908 sq m. Lot 1 will contain the proposed development and Lot 2 will contain Sweeney House with access provided via a right of carriageway over Lot 1.
8. The proposal is to be undertaken in two stages. Stage 1 involves the demolition and site works and Stage 2 involves the construction and subdivision.

Relevant planning controls

<http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/nsw/NWLEC/2011/1043.html?stem=0&s...> 18/04/2017

9. The site is within Zone 2(a1) Residential under *Hastings Local Environmental Plan 2001* (LEP 2001). The application was submitted on the basis that the proposed development was characterised as a "refreshment room" although this was not a characterisation accepted by the council. A refreshment room is a permissible use within Zone 2(a1).
10. Clause 9(2) provides that consent may be granted to development only if the consent authority has taken into consideration the objectives of the zone that are relevant to the development. The relevant objectives are:

(b) To ensure the provision of services and facilities associated with residential land uses or which are unlikely to affect residential amenity.

(d) To enable appropriate development where allowed with consent.

11. *Draft Port Macquarie-Hastings Local Environmental Plan 2010* (the draft LEP) applies to the site. The site is within Zone R1 General Residential under the draft LEP. The parties differed on whether the proposed development was permissible with consent in this zone.

IS THE PROPOSAL A "REFRESHMENT ROOM"?

The council's case

12. Mr McEwen SC submits that the proposed use is properly characterised as two independent purposes, firstly a "refreshment room" and secondly a "shop" or possibly "commercial premises"; the latter two, being uses that are prohibited within Zone 2(a1) unless they form part of a "neighbourhood centre" although this is not suggested by the applicant. The relevant definitions are:

commercial premises means a building or place used as an office or for other business or commercial purposes, but (in the table to clause 9) does not include a building or place elsewhere specifically defined in this Dictionary or a building or place used for a land use elsewhere specifically defined in this Dictionary.

neighbourhood centre means an integrated development containing shops and commercial premises which serve the local community and are limited in scale, with ancillary parking and landscaping and whether or not it also contains development for the purpose of a bus station, child care centre, club, community facility, dwelling attached to other buildings, hotel, place of assembly, place of public worship, medical centre, public building, recreation facility, refreshment room, retail plant nursery or service station.

refreshment room means a restaurant, caf, tearoom, eating house or the like.

shop means a building or place used for the purpose of selling, exposing or offering for sale by retail, goods, merchandise or materials, but (in the table to clause 9) does not include a building or place elsewhere specifically defined in this Dictionary or a building or place used for a land use elsewhere specifically defined in this Dictionary.

13. Mr McEwen submits that in terms of characterisation:

the accepted and conventional approach to characterisation is to ask what, according to ordinary terminology, is the appropriate designation for the purpose to be served by the use (*Shire of Perth v O'Keefe* [1964] HCA 37; (1964) 110 CLR 529 at 535 at [535]),

it is appropriate to look at the entirety of the proposal for the purpose of characterisation (*Woolworths Ltd v Pallas Newco Pty Ltd* [2004] NSWCA 422; (2004) 136 LGERA 288 at [101]),

land may be used for more than one purpose and if so, each purpose is to be individually characterised (*Royal Agricultural Society of NSW v Sydney City Council* (1987) 61 LGRA 305), and

it must be done in a commonsense and practical way (*Chamwell Pty Ltd v Strathfield Council* (2007) NSWLEC 114 at [101]).

14. In *Grace v Thomas Street Caf* [2007] NSWCA 359; (2007) 159 LGERA 57, the Court of Appeal accepted that a take-away food shop is a fundamentally different use in town planning terms to a use as a refreshment room, cafe or restaurant. It is accepted that a premises without seating and tables, that sells food for consumption off the premises is not a refreshment room and the mere presence of tables and chairs does not oblige characterisation only as a refreshment room when a substantial component of the business does not utilise that feature.
15. Mr McEwen submits that the premises do not operate as a refreshment room as it also sells substantial quantities of food, which is packaged specifically for consumption off the premises. In accordance with the principles set out above, it is plainly operating for two purposes, neither of which subserves the other. The purposes may be related or interdependent but nonetheless there are two separate purposes; a refreshment room and a shop. In this case, there are separate dedicated facilities for the sale and dispensing of take-away food via a drive-through facility, which is attached to but otherwise physically separate from the refreshment room building.
16. For the purposes of characterisation, it is not enough that there will be the sale of prepared food to the public. More is required when identifying the proper characterisation of use for planning purposes. In *Grace* [146-147], it is stated that "both a mobile coffee bar and an a-la-carte restaurant sell food to the public but they are a use for a different purpose". In characterising the purpose (or purposes), it is not necessary for there to be evidence, which identifies, with precision, the ratios of income generated from the take-away component and eat in component (*Foodbarn Pty Ltd v Solicitor - General* (1975) 32 LGERA 99 at [160]). Mr McEwen submits that it is sufficient for the Court to take judicial notice and conclude that the take-away and drive-through components are substantial, important and separate (from a business point of view) from in-store consumption.
17. Mr McEwen relies on the Concise Oxford Dictionary that provides the following definitions:

"restaurant" means public premises where meals or refreshments may be had;

"cafe" means coffee house, tea shop, restaurant, bar.

"tearoom" means a shop selling tea.

"eating house" means restaurant.

18. In his submissions, Mr McEwen states that each term has in common the attribute of the provision of food or refreshments for consumption on the premises. This attribute is an essential component. Whilst the occasional sale of food or refreshments for take-away purposes will not result in there being two

uses, the same outcome would not follow when, as here, the sale of take-away is demonstrably a substantial component of the applicant's business.

The applicant's case

19. Mr Galasso SC submits that in the determination of the purpose of development, the relevant test requires the purpose of the use of land to be described only at the level of generality, which is necessary and sufficient to cover the individual activities, transactions or processes carried on at the relevant date. The test is not so narrow that it requires the characterisation of purpose in terms of the detailed activities, transactions or processes which are taking place (*Hunters Hill Council v Fraser* [2006] NSWLEC 744 at [17]). In this case, Jagot J rejected an approach of attempting to separate out the component parts of a development that involved water storage tanks, landscaping, and a roof structure over the storage tanks, preferring the observation of the purpose of the development being that the relevant activities were all directed to the end or object of providing an enclosure to house the water tanks and make them less visually intrusive. This approach was relied upon in *Chamwell and Royal Agricultural Society of New South Wales v Sydney City Council* (1987) 61 LGERA 305 at [18]).
20. In this case, characterisation involves nothing more than undertaking an assessment, at a level of generality, which is necessary and sufficient to cover the individual activities, transactions and processes proposed to be carried out on the site. This involves merely looking at the proposed plans for the site, and recognising that in all material aspects, the use that is being undertaken is that of a refreshment room. No serious suggestion could be made that it is operating as either as a shop or as a commercial premises. To paraphrase even the identified elements of the defined term, its purpose is undoubtedly for the provision of meals to customers. Whether those meals are provided for on-site consumption or otherwise is beside the point when, at the relevant level of generality, it is observed that this is the overall purpose.
21. While it is clear that food may be obtained in different forms, it is the provision of a meal, in essence for immediate consumption, that distinguishes the concept of a refreshment room from that of a shop. Unlike decisions involving findings of separately identifiable purposes, the circumstances of the present case can only lead to the conclusion that the proposed purpose is a refreshment room. The purpose is achieved via the same menu, serving the same demographic (that is people who wish to be served a meal), and involving the same types of meals, which are prepared, packaged and presented in precisely the same manner. The mere election by the consumer of the place of consumption does not convert the purpose from that of a refreshment room into any other purpose.
22. Unlike the circumstances in *Grace*, there are not different planning considerations within the proposed uses on the site; rather, there is but one set, and that one set determines the appropriate characterisation of the purpose for the use as a refreshment room.
23. Mr Galasso relies on definitions from the Macquarie Dictionary (4th Edition) to support his submissions. The definitions are:

"restaurant" - an establishment where meals, especially main meals, served to customers.

"cafe" - a room or building where coffee and light refreshments are served.

"tea room" - a room or restaurant where tea and other refreshments are served to customers.

"eating house" - a cafe or restaurant, especially a cheap one.

24. He submits that all these definitions contemplate concepts of the service of a prepared meal to customers. The thing that distinguishes them is the concept of food in the form of a prepared meal, being for consumption by customers, rather than food as a mere good, merchandise or material. Importantly, none of the terms exclude the possibility that the consumption of the food can occur off the premises.

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25. The general approach to characterisation for planning purposes is best set out by Preston CJ in *Chamwell Pty Limited v Strathfield Council* (2007) 151 LGERA 114 for a supermarket where His Honour includes the relevant cases and relevantly states (at 27 and 28):

27 *In planning law, use must be for a purpose: Shire of Perth v O'Keefe* [1964] HCA 37; (1964) 110 CLR 529 at 534-535 and Minister Administering the Crown Lands Act v New South Wales Aboriginal Land Council (1993) 80 LGRA 173 at 188. *The purpose is the end to which land is seen to serve. It describes the character which is imparted to the land at which the use is pursued: Shire of Perth v O'Keefe* [1964] HCA 37; (1964) 110 CLR 529 at 534.

28 *In determining whether land is used for a particular purpose, an enquiry into how that purpose can be achieved is necessary: Council of the City of Newcastle v Royal Newcastle Hospital* [1957] HCA 15; (1957) 96 CLR 493 at 499-500. *The use of land involves no more than the "physical acts by which the land is made to serve some purpose": at 508.*

26. His Honour further relevantly states (at 33 to 36 and 45):

33 The fact that the nature of the uses of different components or parts of the development may vary is not necessarily of importance. Obviously, the only part of the proposed development that will have a use of the specific nature of supermarket is that part of the building which incorporates the supermarket. The nature of the uses of other parts of the building, such as the car park, driveways, access ways, and landscaped forecourt, is different.

34 However, the nature of the use needs to be distinguished from the purpose of the use. Uses of different natures can still be seen to serve the same purpose; see *Shire of Perth v O'Keefe* [1964] HCA 37; (1964) 110 CLR 529 at 534, 535 and *Warringah Shire Council v Raffles* (1978) 38 LGRA 306 at 308.

35 In this case, the use of the car park, driveways, access ways and landscaped forecourt are each designed to serve the end of enabling the supermarket to be carried on. That is their purpose and that purpose imparts to the land on which those uses are pursued the character of shop, including the supermarket. The end to which the parts of the land in Lot D is to serve is not roads.

36 The characterisation of the purpose of a use of land should be done at a level of generality which is necessary and sufficient to cover the individual activities, transactions or processes carried on, not in terms of the detailed activities, transactions or processes: *Royal Agricultural Society of NSW v Sydney City Council* (1987) 61 LGRA 305 at 310.

45 The characterisation of the purpose of development must also be done in a common sense and practical way...

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27. The general thrust of the findings in *Chamwell* is that the characterisation must focus on the purpose of the land. This must be done at a level of generality and in a commonsense and practical way that is sufficient to include the individual uses that make up the purpose. While there may be a number of different uses, these different uses may still serve the same purpose.
28. While dictionaries can be useful in determining the meaning of words, some caution must be exercised in their use. In *McCabe v Blue Mountains City Council* [2006] NSWLEC 176; 145 LGERA 86 Jagot J referred at [51] to *House of Peace Pty Ltd v Bankstown City Council* [2000] NSWCA 44; (2000) 48 NSWLR 498; where Mason P identified the limits on the use of dictionaries in the search of meaning. Her Honour noted that at [22], [24] and [30], Mason P emphasised that the context of the search is planning law and that environmental planning instruments and consents are concerned with "physical use, environmental impact and amenity".
29. In this case, I do not accept that the dictionary definitions are overly helpful. There was little disagreement that a "refreshment room" could generally and ordinarily be seen to be premises where food is prepared for consumption but where the consumption may not exclusively occur on the premises. I am satisfied that such a description could reasonably include a restaurant, a caf, a tearoom, an eating house or an establishment of a similar type. I agree with Mr McEwen that it is not enough that there will be simply the sale of prepared food to the public and that a premises without seating and tables that sells food for consumption off the premises is not a refreshment room. Similarly, I would also accept that premises that provide only a token amount of seating and tables would not be characterised as a refreshment room.
30. This however is not the case in the proposed application. A significant level of seating and tables is provided (64 internal seats, 38 external seats and a 14 seat party room), as well as the option for take-away and drive-through provision of food. There can be no suggestion that the dine-in component is not a legitimate and integral part of the operation, as much as the take-away and drive-through components of the business. It could also be argued that the dine-in component is actively encouraged through the provision of a childrens play area and party room.
31. In my view, the characterisation falls squarely within the approach adopted by Preston J in *Chamwell* where he distinguishes between purpose and use and accepts that a purpose may have a number of different uses however these different uses may still serve the same purpose. I agree with the submission of Mr Galasso that the purpose is a refreshment room as all components of the business use the same menu, serve the same demographic, and involve the same types of meals, which are prepared, packaged and presented in precisely the same manner. I would also add that all meals, irrespective of how they are consumed, are prepared in the same kitchen.
32. Adopting a general, commonsense and practical approach, I am satisfied that the purpose is for a refreshment room and that this purpose has different uses, such as the take-away and drive-through components of the business. In my view, these uses do not change the purpose as a refreshment room to the point where there could it could be said there are two separate purposes. Rather, the take-away and drive-through components of the business could more reasonably be seen as a natural or evolutionary change in the method of carrying on a business (see *Royal Agricultural Society*) particularly taking into account that the original eat-in component of the business remains and is still actively used.

THE DRAFT LEP

33. The draft LEP was placed on public exhibition between 8 March 2010 and 7 May 2010. The site is within Zone R1 General Residential under the draft LEP. The zone objectives are:

To provide for the housing needs of the community.

To provide for a variety of housing types and densities.

To enable other land uses that provide facilities for services to meet the day today needs of residents.

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34. A s 68 report has been endorsed by the council and forwarded to the Department of Planning for finalisation on 11 October 2010. The latest correspondence from the Department of Planning on 9 November 2010 states that "the Department is currently reviewing the draft Plan submitted by Council and will be working as quickly as possible in conjunction with Council staff to finalise the plan ready for the Ministers consideration".
35. Clause 1.8A of the draft LEP is relevant and provides savings provisions that state:

If a development application has been made before the commencement of this Plan in relation to land to which this Plan applies and the application has not been finally determined before that commencement, the application must be determined as if this Plan had been exhibited but had not commenced.

The council's evidence

36. Mr Patrick Galbraith-Robertson, a town planner, provided evidence for the council. He states that the proposed development is appropriately characterised as a "retail premises" (that includes "food and drink premises") under the draft Plan. This is a purpose that is prohibited within Zone R1 General Residential under the draft LEP. He further states that the proposed development is inconsistent with and antipathetic to the third objective of the zone as it does not provide a facility or services to meet the day to day needs of residents. This is because of the nature of proposed development that provides food and drinks prepared and retailed to customers for immediate consumption on or off the premises. Also, the range of goods is very limited and the proposal targets a high percentage of patronage from outside the immediate locality with the traffic assessment indicating 35% of customers will be from passing trade.
37. Mr Galbraith-Robertson also states that the draft LEP is unlikely to change with regard to the site and should be considered to be quite certain and imminent.

The applicant's evidence

38. Mr Mike Svikis, a town planner, provided evidence for the applicant. He states that the draft LEP is not certain or imminent and may change before it is gazetted. He also relies on the savings provisions in cl 1.8A.
39. Mr Svikis notes that the draft LEP contains no statement as to what is the desired future character of this locality. The proposed zone is used widely throughout the local government area and other centres and does not include any additional (non-standard) objectives for the proposed zone. He states that there are a number of non-residential uses nominated as being permissible with consent, including building and business identification signs, child-care centres, medical centres, neighbourhood shops, and places of public worship. In the absence of any character statement for this locality, it is reasonable to assume that the intention of the council, for this locality, is to continue to allow a range of residential and non-residential uses. In his opinion, the proposed development is consistent with both existing and proposed character of the locality.
40. In relation to the zone objectives, Mr Svikis states that the proposed development will cater for the day today needs of residents as it sells food and drinks that can be consumed on or off the premises. The proposal also provides a place for residents to meet and socialise.

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41. The weight to be attributed to a draft environmental planning instrument will be greater if there is a greater certainty that it will be adopted (*Terrace Tower Holdings Pty Ltd v Sutherland Shire Council* (2003) NSWCA 289 at par 5). Relevantly, in *Terrace Tower*, Spigelman CJ states at pars 6 and 7 that:

6. Notwithstanding 'certainty and imminence', a consent authority may of course grant consent to a development application which does not comply with the draft instrument. The different kinds of planning controls would be entitled to different levels of consideration and of weight in this respect.

7. Where a draft instrument seeks to preserve the character of a particular neighbourhood that purpose will be entitled to considerable weight in deciding whether or not to reject a development under the pre-existing instrument, which would in a substantial way undermine that objective.

42. If the draft LEP is imminent and certain, *Terrace Tower* (par 7) raises the question of whether the proposed development will preserve the character anticipated by Zone R1 General Residential and whether the proposed development will undermine the objectives of the zone.

43. In *Blackmore Design Group Pty Ltd v North Sydney Council* [2001] NSWLEC 279, Lloyd J relevantly states:

30. Whether one applies the test of "significant weight", or "some weight", or "considerable weight" or "due force" or "determining weight" to the later instrument is not, however, the end of the matter. The savings clause still has some work to do. The proposed development is a permissible development by dint of the savings clause. In giving the 2001 LEP the weight of being imminent and certain, that does not mean that there is no further inquiry. It is necessary to look at the aims and objectives of the later instrument and then see whether the proposed development is consistent therewith. Various expressions have been used to define this concept, but the approach which has been favoured in the Court of Appeal is to ask whether the proposal is "antipathetic" thereto (*Coffs Harbour Environment Centre Inc v Coffs Harbour City Council* (1991) 74 LGR 185 at 193).

31. This approach was adopted in the cases to which I have referred. In *Mathers v North Sydney Council* Talbot J (as noted in par [22] above) attributed significant weight to the then draft LEP to the extent the Court ought to be satisfied that approving the development would not detract from its objectives as expressly stated or reflected in the proposed controls.

32. In that case Talbot J refused the appeal on the ground that the proposed development was inconsistent with the proposed planning controls in the draft local environmental plan.

33. Similarly, in *Architects Haywood & Bakker v North Sydney Council* after stating that significant weight should be placed upon the provisions of the draft plan, Pearlman J considered whether the proposed development accorded with the planning approach and objectives of the proposed controls in the draft local environmental plan. It was the fact that the proposed development ignored the planning approach adopted by the draft LEP that led Her Honour to refuse the application in that case.

34. In *Edward Listin Properties v North Sydney Council* Talbot J said (at par [15]):

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Although it may not be appropriate to dwell too heavily upon the detailed controls implemented by the draft LEP, it is certainly important to have regard to the broad objectives which the draft planning instrument seeks to achieve.

35. His Honour further stated (at par [35]):

...If what is proposed is unsatisfactory in general terms and inconsistent, in particular, with the expressed future planning objectives for the area, then it should be rejected.

36. In *Walker v North Sydney Council* Cowdroy J found that the evidence established that the development application was contrary to the planning objectives of the locality, for which reason His Honour rejected the development application.

44. The questions to be answered are firstly, whether the draft LEP is imminent and certain and if so, what weight should the draft LEP be given in the consideration of the application. Secondly, how is the proposed development characterised under the draft LEP and whether the proposed use is prohibited or permissible and thirdly, whether the proposal undermines the expressed future planning objectives for the area in the draft LEP.
45. On the question of whether the draft LEP is imminent and certain, I accept that the draft LEP is likely to be gazetted as it is well advanced in the plan making process and that it should be given considerable weight. The draft LEP has been advertised, the council staff have assessed the submissions from the advertising, reported to the council where the report was endorsed by the elected council and sent to the Department of Planning, prior to referral to the Minister for finalisation. Also, I accept that the likelihood of gazettal is heightened given the more rigid format required by the Standard Instrument. The undisputed evidence of Mr Galbraith-Robertson was that the council received no submissions regarding the proposed zoning of the site and locality during the public exhibition period and that the draft LEP was not likely to change for the site.
46. On the question of imminency, the evidence indicates that the council referred the draft LEP to the Department of Planning on 11 October 2010 although no time frame has been provided by the Department of Planning for its finalisation. In my opinion, the issue of imminency is less critical than the issue of certainty in determining the weight that should be attributed to the draft LEP. It would seem that the particular provisions of the draft LEP have greater bearing on the question of weight than when the draft LEP is finalised, subject of course to the finalisation being within a reasonable timeframe. There was no evidence to suggest that the finalisation of the draft LEP would take an excessively long period of time (see par 34).
47. The question of whether the proposed development is permissible or prohibited under the draft LEP was in dispute between the parties. Given the consistent approach in previous decisions of the Court in considering the proposed development against the broad objectives of the draft LEP; the question of whether the proposed development is permissible or prohibited is a relevant matter to be considered as it goes to the potential consistency with the future character of the area anticipated by the draft LEP.
48. Mr McEwen submitted that the proposed development is prohibited under the draft LEP. Mr Galasso submitted that the proposed development was permissible with consent.
49. Clause 2.3 of the draft LEP states:

2.3 Zone objectives and Land Use Table [compulsory]

(1) The Land Use Table at the end of this Part specifies for each zone:

(a) the objectives for development, and

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- (b) development that may be carried out without consent, and
 - (c) development that may be carried out only with consent, and
- development that is prohibited.

(2) The consent authority must have regard to the objectives for development in a zone when determining a development application in respect of land within the zone.

(3) In the Land Use Table at the end of this Part:

(a) a reference to a type of building or other thing is a reference to development for the purposes of that type of building or other thing, and

a reference to a type of building or other thing does not include (despite any definition in this Plan) a reference to a type of building or other thing referred to separately in the Land Use Table in relation to the same zone.

(4) This clause is subject to the other provisions of this Plan.

50. Mr McEwen submits that the proposed development falls within a definition of "food and drink premises". The Dictionary provides the following definition:

food and drink premises means retail premises used for the preparation and retail sale of food or drink for immediate consumption on or off the premises, and includes restaurants, cafes, take away food and drink premises, milk bars and pubs.

51. Mr McEwen further submits that as "food and drink premises" also means retail premises, this definition is also relevant and for the development to be permissible, "retail premises" must also be permissible in Zone R1. The Dictionary provides the following definition;

retail premises means a building or place used for the purpose of selling items by retail, or for hiring or displaying items for the purpose of selling them by retail or hiring them out, whether the items are goods or materials (or whether also sold by wholesale).

52. As "retail premises" is identified as a development that is prohibited within Zone R1, the proposed development must be prohibited. To support his submissions, Mr McEwen provided a document from the Department of Planning entitled *Preparing LEP's using the standard instrument: definitions*. The document makes reference to cl 12(3) (and helpfully using the example of a retail premise) states that "retail premises" may be identified as permissible with consent under Item 3 (that is, development that may be carried out only with consent) however "take-away food or drink premises" may be identified as being prohibited under Item 4 (that is, development that is prohibited). The effect is that the zoning table should be read as permitting all types of retail premises **except** take-away food or drink premises.

53. Mr Galasso submits that the proposed development may be carried out with development consent on the basis that "food and drink premises" are not specifically identified as either being permitted without consent (Item 2), permitted with consent (Item 3) or prohibited (Item 4) and as such the development

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falls within "Any development not specified in item 2 or 4" in the uses permitted with consent. Further evidence of this acceptability of this interpretation is found in the zoning table for Zone 4 High Density Residential where "food and drink premises" are permitted with consent whereas "retail premises" are prohibited.

54. In balancing the competing submissions, I accept the submissions of Mr McEwen that the proposed development is prohibited. In accepting that the Court's role is to determine the permissibility or otherwise from the draft LEP, it would appear that the format of the Standard Instrument has changed from more traditional planning instruments (where land uses the individually identified) to a document that adopts a "genus" and "species" approach by identifying a number of distinct groups of land use terms (the genus, for example "retail premises") that have a number of related land uses that fall under the umbrella of the **group term** (the species, for example "take-away food and drink premises"). As I understand, this approach is made possible by cl 12(3).
55. The next question is whether the proposed development will, as stated in *Blackmore Design* (at 35), in general terms be inconsistent with the expressed future planning objectives for the area. As a refreshment room is a prohibited development within the zone, I accept that there is a potential inconsistency although this by itself is not a reason to refuse the application because of the savings provisions in cl 1.8A. Further guidance on this question can be obtained from the zone objectives, which are:

To provide for the housing needs of the community.

To provide for a variety of housing types and densities.

To enable other land uses that provide facilities or services to meet the day to day needs of residents.

56. In this case, only the third objective is directly relevant. While allowing other uses within the R1 zone, the objective provides that these uses must *meet the day to day needs of residents*. Mr Galbraith-Robertson maintained that the proposed development did not satisfy this objective whereas Mr Svikis came to the opposite conclusion.
57. In *Warriewood Properties Pty Ltd v Pittwater Council* [2010] NSWLEC 215, Sheahan J addressed a similar question in relation to a supermarket and a neighbourhood shop. His Honour relevantly states (at 89):

89 Although I agree that a supermarket of 2,222 sq m would likely satisfy "the day-to-day needs of people who live or work in the local area", it would also likely satisfy the needs of people who live or work beyond the local area, given the size of the supermarket and the likely range of goods offered for sale. The use of the word "neighbourhood" further reinforces the intent of providing small retail facilities for a local area.

58. In this case, I accept that the proposed development will likely provide facilities to meet the day-to-day needs of residents but at the same time provide facilities for people who were not necessarily residents but travellers using Ocean Drive. This is borne out by the evidence of the applicants traffic engineer who estimate that 35% of patrons will be from passing trade. I am also satisfied a reference to the word "residents" in this objective must be a reference to residents who live within a reasonable distance of the site who could gain reasonable access to the site by walking or a short car trip. I do not accept that the objective can be so broadly interpreted that it would include all residents from the local government area or beyond.
59. Further guidance on the desired future character under the draft LEP can also be obtained from the types of developments seen as being suitable through their permissibility in Zone R1. While Mr Svikis identified a number of uses that he stated supported his position of consistency with the zone objective, I am not satisfied that these uses give any great support to his position. Child-care centres, medical centres, neighbourhood shops, and places of public worship are consistently, and appropriately found in residential areas. I note that the definition of "neighbourhood shop" is limited to the type of goods that

can be provided and is further limited in providing "for the day-to-day needs of people who live or work in the local area".

60. If the objectives for Zone R1 are considered collectively, the future desired character for the zone is predominantly residential with a variety of housing types and densities while providing other land uses that serve the needs of the residential population. There is a clear focus on residential use and complementary non-residential land uses. While Mr Svikis stated that character statement for this locality should be provided to allow a greater understanding the desired character; no such statements exist and the Court must base its findings on the evidence that is available.
61. I am satisfied that the proposed development will have a dominant commercial character by way of its likely patronage, design, signage, illumination and hours of operation that it will be so inconsistent with the desired future character envisaged by the draft LEP that this is a sufficient reason for the refusal of the application even taking into consideration the existing use of the site and the lack of direct amenity impacts identified later in the judgment.

Amenity impacts

Visual impact

62. Mr Galbraith-Robertson and Mr Svikis assess the visual impact of the proposed development against the existing character of the locality. They differ on their interpretation of the existing character of the area even though there was agreement on the non-residential uses in the locality that consisted of schools, Sweeney House and the general store and fuel outlet on the site and the absence of residential development on the site.
63. Mr Galbraith-Robertson describes the character of the locality as "primarily residential and supportive uses which form predominantly residential type streetscapes and character" whereas Mr Svikis describes the character of the locality as being "a mixture of uses and not exclusively residential".
64. In relation to the proposed building form, Mr Galbraith-Robertson and Mr Svikis agree that the proposed building is not excessive in bulk or scale and does not exceed the residential height limit of 8 m, the relevant FSR of 0.5: 1 and will not overshadow or overlook existing residential buildings or private open space. Notwithstanding these concessions, Mr Galbraith-Robertson maintains that the development will be incompatible with the existing immediate locality given the commercial character of the proposal while Mr Svikis maintains that the building will not be visually intrusive and will fit in well with the existing mixture of uses in the locality.
65. Mr Galbraith-Robertson and Mr Svikis also address the proposed signage and while it was agreed that there were no breaches of *Hastings Development Control Plan No 7*, except in relation to the time for the illumination of signage, Mr Galbraith-Robertson maintained that the signage and illumination will add to the proposals commercial character and incompatibility with the locality. Mr Svikis noted that the Greenmeadows Drive roundabout and the Ocean Drive/Greenmeadows Dr intersection are already illuminated at night by street lights and this will ameliorate the impact of outdoor lighting and illuminated signage associated with the proposed development.
66. The question of visual impact is a different question to that addressed in the previous paragraphs on the draft LEP. If the draft LEP had not reached its level of certainty and imminence and the principal planning document was LEP 1998, where "refreshment rooms" are a permissible use, then I would accept the evidence of Mr Svikis that the visual impact of the proposed development would not be reason to refuse the development application.

Noise

67. The contentions raised by the council relate to:

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the intensity of vehicular and pedestrian traffic generation to and from the site, especially during the evening and night, that will be incompatible with the existing residential amenity and character, and

the proposal will generate unacceptable noise impacts from patrons through the extended hours of operation, which will be incompatible with the existing residential amenity and character.

68. Mr Graham Atkins, an acoustical engineer, provided evidence for the applicant. The council provided no expert acoustical evidence although Mr Atkins was cross-examined on his evidence. Mr Atkins provided a Noise Assessment Report that was prepared in accordance with the procedures published in the Department of Environment, Climate Change and Water, the *Industrial Noise Policy* and the *Noise Guide for Local Government*. The assessment included the establishment of background noise levels through on-site measurements, the identification of the potential noise sources, the appropriate noise goals for the identified noise sources and a comparison of the noise likely to be generated by the proposed by the development with the appropriate noise goals. The report concluded that:

the primary source of noise emissions from the proposed development would be associated with mechanical plant, outdoor dining terrace, drive-through facility and car park activities from customers and vehicles,

noise from the identified activities associated with the use of the outdoor dining terrace satisfy the required project noise goals,

noise from transient customer and vehicle site activities satisfies the recommended noise goals, and

noise from the operation of mechanical plant can be controlled to satisfy the recommended noise goals with appropriate selection and effective controls.

69. Overall, Mr Atkins concludes that the acoustic impacts of the proposed development are acceptable subject to the appropriate selection criteria for air-conditioning condensers, refrigeration condensers and exhaust fans and the construction of an acoustic screen not less than 1.8 m adjacent to the drive-through lane along the southern boundary and the upgrading of the existing boundary fences to 1 Cairncross Place between 1.8 m and 2 m.
70. While Mr Atkins was cross-examined on his conclusions, I am satisfied that his conclusions remain valid and in the absence of any contradictory expert evidence, I accept his conclusions that noise impacts from the proposed development do not warrant its refusal.

Odour

71. The council contended that the proposed development would create unacceptable odour impacts on the adjoining residential area.
72. Mr Gary Graham, a scientist with expertise in air quality provided evidence for the applicant. The council provided no expert acoustical evidence although Mr Graham was cross-examined on his evidence. Mr Graham provided an Odour Impact Assessment and a supplementary report. His assessment was undertaken in accordance with the NSW Department of Environment Climate Change and Water publication *Technical Framework: Assessment and Management of Odour from Stationery Sources* (the Framework) in New South Wales. The assessment involved the identification of odour sources from the proposed development, the modelling of local meteorological conditions, the identification of the nearest potentially affected residences and the dispersion of odorous emissions to predict the level of impact that may be experienced in the surrounding environment.
73. Mr Graham modelled two different scenarios, firstly the development as set out in the development proposal and taking into account be different patterns of usage and secondly, a worst-case scenario based

on constant emission rates. For the first scenario, the maximum predicted odour impact was found to be 1.7 OU (odour units). This needs to be compared to the appropriate odour assessment criteria of 3 OU in the Framework. For the second scenario, the odour assessment criteria of 3 OU is also not exceeded. On this basis Mr Graham concludes that the operation of the proposed development will not result in unacceptable odour at any surrounding residential properties and consequently would not be a reason to refuse the development application.

74. The supplementary report of Mr Graham re-models the two scenarios but uses a different terrain input (complex terrain rather than no terrain). Mr Graham states that the impact of modelling with complex terrain is marginal and does not alter his conclusions that the proposed development will not result in unacceptable odour at any surrounding residential properties.
75. While Mr Graham was cross-examined on his conclusions, I am satisfied that his conclusions remain valid and in the absence of any contradictory expert evidence, I accept his conclusions that odour impacts from the proposed development do not warrant its refusal.

Traffic

76. The traffic implications of the proposed development or addressed by Mr Tim Rogers, a traffic engineer, on behalf of the applicant. The council did not provide any expert traffic evidence although Mr Rogers was cross-examined on his evidence. Mr Rogers prepared a statement of evidence that included references to previous assessments prepared for the site in June 2009 and February 2010 and correspondence to the council on traffic matters on 28 April 2010. The February 2010 report concluded that:

the traffic signals at the intersection of Greenmeadows Drive and Ocean Drive will operate at a satisfactory level of intersection operation with the development traffic in place,

the roundabout at the intersection of Greenmeadows Drive and the site access/school access will operate at a satisfactory level of intersection operation with development traffic in place,

the proposed provision of parking on site is considered appropriate,

the proposed access to the site and internal circulation is considered appropriate, and

the surrounding road network that will be able to cater for the traffic from the proposed development.

77. Mr Rogers concludes that there are no traffic and parking reasons why the proposed development should not be approved based on his analysis of passing trade, peak traffic generation, analysis of the non school weekday afternoon peak period, traffic distribution, the operation of the Ocean Drive/Greenmeadows Drive intersection and a comparison with similar operations.

78. While Mr Rogers was cross-examined on his conclusions, I am satisfied that his conclusions remain valid and in the absence of any contradictory expert evidence, I accept his conclusions that there are no traffic and parking reasons why the proposed development should not be approved.

ORDERS

79. The orders of the Court are:

1. The appeal is dismissed.

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2. DA 2009/0194 for the demolition of an existing general store with fuel outlet and the construction of a restaurant with a drive through facility, car parking, boundary adjustment and signage at the corner of Ocean Drive and Greenmeadows Drive, Port Macquarie is refused.

3. The exhibits are returned with the exception of exhibit A.

G T Brown

Commissioner of the Court

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