

JOINT REGIONAL PLANNING PANEL
Southern Region

Assessment Report and Recommendation Cover Sheet

Panel Reference	2017STH017
DA Number	DA/0330/1617
LGA	Goulburn Mulwaree
Proposed Development	Designated Development Extractive Industry (Quarry)
Street Address	Lots 1 & 2 DP 1094055, 63 & 65 Curlewin Lane (AKA Part 288 Tiyces Lane and also referred to as 17033 Hume Highway)
Applicant/Owner	Madeline Rose Miller, Jasminco Resources Pty Ltd, C/- Laterals Planning and Engineering
Regional Development Criteria (Schedule 4A of the EP&A Act)	<p>A Designated Development, under Schedule 3, Clause 19(1)(b) and (c)(i) of the <i>EP&A Regulation 2000</i>.</p> <p>Regional Development Criteria - The development is an Extractive Industry which meets the criteria for Designated Development under clause 19(1)(b) and (c)(i) of Schedule 3 <i>Environmental Planning & Assessment Regulation 2000</i>. The development is Regional Development as defined by the Regional Development Criteria (Schedule 4A (8) of the <i>Environmental Planning & Assessment Act 1979</i>) because it is a nominated Designated Extractive Industry.</p>
Date of DA lodgement	11/5/2017
Number of Submissions	<p><u>Advertising period</u>: 1 June 2017 – 3 July 2017 on Council's website and in the Goulburn Post Weekly on 1 June 2017 and 3 July 2017.</p> <p><u>Notification</u>: On 1 June 2017 Council notified the application to 36 adjoining and nearby landowners.</p> <p><u>Submissions received</u>: 15 (4 submissions with no objection).</p>
List of All Relevant s79C(1)(a) Matters	<ul style="list-style-type: none"> • This application has been assessed having regard to the Heads of Consideration under Section 79C(1) of the Environmental Planning and Assessment Act 1979 and found to be largely unsatisfactory Relevant environmental planning instruments: s79C(1)(a)(i) • <i>State Environmental Planning Policy No 33 – Hazardous and Offensive Development</i>; • <i>State Environmental Planning Policy No 44 – Koala Habitat Protection</i> and draft EIE public exhibition 18/11/16 – 3/3/17; • <i>State Environmental Planning Policy No 55 – Remediation of Land</i>; • <i>State Environmental Planning Policy (Infrastructure) 2007 and draft SEPP</i>; • <i>State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007</i>; • <i>State Environmental Planning Policy (Rural Lands) 2008</i>; • <i>State Environmental Planning Policy (State & Regional Development) 2011</i>; • <i>State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011</i>; • <i>State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017</i>; • <i>Goulburn Mulwaree LEP 2009 (as amended)</i>;

	<p>Any relevant development control plan: s79C(1)(a)(iii)</p> <ul style="list-style-type: none"> • <i>Goulburn Mulwaree DCP 2009</i> (as amended); • <i>Goulburn Mulwaree Section 94 Contribution Plan 2009</i> (as amended); <p>Proposed instrument/s that is or has been the subject of public consultation under the Act and that has been notified to the consent authority s79C(1)(a)(ii)</p> <ul style="list-style-type: none"> • <i>Draft State Environmental Planning Policy (Primary Production Land Rural Development) 2017</i> on exhibition until 18/12/17 EIE only; • <i>Draft State Environmental Planning Policy (Environment)</i> on exhibition until 15/01/18 EIE only <p>This application has been assessed in accordance with the matters for consideration including Section 23G (JRPP), 77A (Designated Development), 79C (Evaluation) and 91 (Integrated Development) of the <i>Environmental Planning and Assessment Act 1979</i> and recommended for refusal.</p> <p>There has been no planning agreement that has been entered into under section 93F, or any draft planning agreement that the developer has offered to enter into under section 93F: s79C(1)(a)(iv)</p> <p>List any relevant regulations: c 77-81 and 94A (Development Levies). Schedule 1 (Forms), Schedule 2 (EIS), Schedule 3 (Designated Development) to <i>Environmental Planning and Assessment Regulation 2000</i>.</p>
List all documents submitted with this report for the panel's consideration	<ul style="list-style-type: none"> • Application and EIS Submitted 11/5/2017 • Submissions received following public exhibition • NSW EPA General Terms of Approval 27/7/2017 • NSW RMS Submission 14/8/2017 • Water NSW Concurrence 18/7/2017 • NSW Department of Planning and Environment – Division of Resources and Geoscience, Geological Survey of NSW Submission 16 June 2017 • Department of Primary Industries Fisheries Submission 19/6/2017 • Department of Primary Industries Agriculture Submission 28/6/2017 • Public submissions • Applicant's response to submissions 21/7/17 • Consultant's (for Applicant) response to GM Council 2/11/17 • Assessment Report dated 22/11/17
Recommendation	Recommended for refusal - draft reasons for refusal at the end of the report.
Report by	Dianne James, Senior Development Assessment Officer, Goulburn Mulwaree Council

ASSESSMENT REPORT

EXECUTIVE SUMMARY

On 11 May 2017, a Development Application (DA) was received by Goulburn Mulwaree Council for the establishment of an "Extractive Industry" at Lots 1 and 2 DP 1094055 (the site), including site offices, amenities building with disabled facilities, landscaping and off-street car parking. The facility provides for the extraction of up to 30,000 cubic metres of basalt per annum for 5.9 years. The *Water*

Cycle Management Study prepared by SEEC Morse McVey identified an extraction area of 1.04ha of basalt and approximately 1.318ha for the proposed ingress and egress roads.

Submissions were received in relation to the development from both public authorities and the general public concerning a range of environmental, economic and social issues.

The proposed development is a Designated Development as it is located within the Terrestrial Biodiversity Layer to *Goulburn Mulwaree Local Environmental Plan 2009* (19(1)(c)) and disturbance of greater than 2ha (19(1)(b)). The Southern Region Joint Regional Planning Panel (SRJRPP) is the consent authority as the development is for an “Extractive Industry”, which meets the requirements for designated development.

The proposed development is defined as an “Extractive Industry” under the provisions of *Goulburn Mulwaree Local Environmental Plan 2009* (GMLEP 2009), and the site is zoned E3 Environmental Management. Extractive Industries are prohibited development under the GMLEP 2009 within the E3 zone.

Agriculture is permitted with consent under the land use table to the E3 zone to GMLEP 2009 and in accordance with Clause 7(3)(a) of the *Environmental Planning Policy (Mining Petroleum Production and Extractive Industries) 20007* (Mining SEPP), Extractive Industry is permitted. In accordance with Clause 5, the Mining SEPP overrides GMLEP 2009.

↳ **Concurrence Authorities:**

Water NSW concurrence under the *State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011*

↳ **Integrated Authorities:**

Office of Environment and Heritage (Environment Protection Agency) for scheduled activities under the *Protection of the Environment Operations Act 1997*

NSW Roads & Maritime Services for approval under Section 138 of the *Roads Act 1993*

↳ **Exhibition period:** 1 June 2017 – 3 July 2017

The application was advertised and notified for the required period of greater than 30 days and 15 public submissions (including 4 with no objection) and 7 Agency submissions were received (including Goulburn Mulwaree council). Copies of the Agency submissions are included in the Annexure to the report. The submissions to the proposal are addressed in the report.

The current Director General’s requirements/SEARs was dated 20/4/17.

The proposal relies on numerous reports either prepared for a previous application refused by the Southern Regional Joint Planning Panel in 2015 or reports prepared prior to the SEARs dated 20/4/17 including:

<u>Document No.</u>	<u>Document Title</u>
D	Operational Environmental Management Plan dated 13/4/17
H	Material Testing Results tests conducted 2007, 2008 and retesting of original material 2014
J(part 1)	Marian Vale Geological Assessment of Potential construction Material Resources dated Dec 2016
J (part 2)	Marian Vale Cored Drilling Assessment Report dated Jan. 2007
K	Mining of construction Material from Marian Vale – East of Goulburn. A Preliminary feasibility assessment dated September 2006
L	Pavement Condition Report: Tiyces Lane, Hume Highway to Proposed quarry Entrance dated April 2009
N	Air Assessments by Benbow Environmental dated October 2009 and May 2016
O	Noise Assessments by Benbow Environmental dated May 2016

- Q Aboriginal Archaeological Assessment prepared by Stedinger March 2009 and AHIMS Search (50m buffer) dated May 2016
- S & T Water Supply matters January 2016 and December 2015
- U Rippability Assessment dated March 2016
- X EPBC Act Protected Matters Report dated January 2009

The application therefore does not address all the criteria of the relevant agencies and statutory provisions under EPA Regulations 2000 with outstanding issues and impacts from the proposal, it is recommended that DA/0330/1617 be refused pursuant to Section 80 of the EP& A Act, based on the recommended reasons at the end of this report.

The key issues relate to the traffic generation and safety over Tiyces Lane with a significant variation requested to Council's heavy haulage road design standards, lack of design plans of road works.

Public submissions have in the majority opposed the development.

The application has been assessed under Section 79C of the Environmental Planning and Assessment Act 1979 and is recommended for refusal.

1.0 INTRODUCTION

1.1 Background

A previous Development Application (266//0809/DA) was lodged with Council for an Extractive Industry at 63 Curlewin Lane, Towrang in 2009 (Lot 1 DP 1094055 same quarry site). The site was zoned "Rural Landscape" at the time and the proposal was permissible within the zone. The proposal was reported as just below the 2ha disturbance threshold for designated development and submitted as local development.

It was found that the extent of works was greater than 2ha and considered designated development and consequently refused based on the following reasons:

1. The proposal based upon total site disturbance calculations is properly categorised as Designated Development.
2. The supporting documentation provided with the application is insufficient to permit a full and proper assessment of the proposal.

There was an appeal taken to the Land and Environment Court concerning the Council refusal. The appeal was set aside on the basis that it was made out of time. The Court ordered that the applicant pay Council's costs.

Subsequent to this a Development Application (DA/0350/1314) was lodged with Council for a Designated Development Extractive Industry at 63 Curlewin Lane, Towrang on Lot 1 DP 1094055 (the same quarry site) The development was considered by JRPP on 29 July 2015 and refused based on the following:

1. That the resource survey information was inadequate to determine whether the Basalt resource can be extracted without blasting and, therefore, whether extraction can take place without breaching noise limits imposed by the EPA.
2. Lack of information supplied with the Development Application to assess the visual impact of the extraction and associated structures on adjoining properties and public places.
3. The Panel was not satisfied that the proposed deferred condition of consent regarding the dedication of the land for road widening on Tiyces Lane can be satisfied in the absence of the consent of the owner of the land affected by the proposed road widening.
4. The Panel was not satisfied that the proposed access onto Tiyces Lane to meet the required minimum sight distance has been adequately addressed in terms of potential environmental and road safety impacts.

5. Notwithstanding the advice of the RMS to require a code of conduct to be imposed in order to restrict truck movements to left turn only, the Panel was not satisfied as to the safe use of the intersection of the Hume Highway and Tiyces Lane from potential north bound truck movements associated with the proposed quarry.

The application was the subject of a court appeal which was discontinued in March 2017 prior to the proposed Land and Environment Court hearing.

A Prelodgement Meeting was held with Council staff on 3/5/17 to review the documents proposed to be lodged with the current application under consideration. Advice was provided regarding the inconsistencies with the DGRs/SEARs. The application was receipted 11/5/17.

1.2 The Applicant

Council previously considered whether owner's consent to the making of DA/0350/1314 had been obtained. Owners consent under the *Environmental Planning and Assessment Act 1979* (EPA Act) has the same meaning as in the *Local Government Act 1993* and includes:

- Every person who jointly or severally, whether at law or in equity, is entitled to the land for any estate of freehold in possession, and
- Every such person who is entitled to receive, or is in receipt of, or if the land were to let to a tenant would be entitled to receive, the rents and profits of the land, whether as beneficial owner, trustee, mortgagee in possession, or otherwise.

Therefore there can be more than one person as an owner of land and a person can be an "owner" of land even if they are not the registered owner. A title search has found the following:

- Argyle Gravel and Concrete Pty Limited is listed as the First Schedule as the registered owner of the land
- Antiquaire Pty Limited and Peter Francis Miller are both listed in the Second Schedule as having a Caveat over the land;
- The Figtree Reserve Superannuation Fund and Argyle (NSW) Pty Limited do not have a registered interest in the land.

The two caveats in favour of Antiquaire Pty Limited and Peter Miller protect an equitable interest in the land and but as the caveats do not entitle the caveators to *possession* of the land, they do not qualify as an owner "entitled to the land for any estate of freehold in possession" are not "owners" and are not required to provide separate owners consent.

It is considered that Figtree Reserve Superannuation Fund are not "beneficial owners" under the Local Government Act 1993.

James Seymour Miller (Director) and Peter Francis Miller (Managing Director/Secretary) signed for Argyle Gravel and Concrete Pty Ltd (Acting as Trustee for Figtree Reserve Superannuation Fund).

1.3 The Location

The subject site is within the Goulburn Mulwaree Local Government Area ('LGA'), which is situated in the NSW southern tablelands approximately 185km south-west of Sydney and 110 km north-east of Canberra, 5km east of Goulburn and 1.8km along Tiyces Lane.

The site is legally described as Lot 1 and Lot 2 DP 1094055; Part 288 Tiyces Lane, Towrang (also known as 63 & 65 Curlewin Lane) Towrang (Figure 1) and located on the north-eastern junction of Tiyces Lane and Curlewin Lane. The subject site has an area of 44.08ha within Lot 1 and 45.06ha within Lot 2.

The ingress is proposed via a left turn deceleration lane along the Hume Highway and internally an unsealed road (1,100 m x 7 m pavement in a 19m wide easement) from the Hume Highway to the Facilities Area and the Extraction Area. The egress is proposed via an unsealed road (500 m x 4 m wide pavement in a 10 m wide easement) from the extraction area to Tiyces Lane. An emergency exit track and a similar low-volume vehicular track from Curlewin Lane to the Facilities Area (approx. 580m x 6 m wide pavement) is also proposed.



**INSTRUMENT SETTING OUT TERMS OF EASEMENTS AND RESTRICTION AS
TO USER INTENDED TO BE CREATED PURSUANT TO SECTION 88B OF THE
CONVEYANCING ACT 1919**

(Sheet 1 of 4 Sheets)

DP1094055

Plan of subdivision of Lot 7, 42 & 86
D.P. 750038, Lot 2 D.P. 247198, Lot 1 & 2
D.P. 1043931 in Goulburn Mulwaree
Council DA No. 2003/0518/DA covered
by Subdivision Certificate no.

**Full name and address
of Registered Proprietor of
the land**

Anne Jannett Lawson &
Robert Austin Lawson
49 Wilson St
NEWTON NSW 2042

PART 1

1. **Identity of Easement Firstly referred to
in the abovementioned plan:** Right of Carriageway 20 wide

Schedule of lots etc. affected

Lot(s) Burdened:

**Lot(s), name of road, or Authority
Benefited:**

1

2

2. **Identity of Easement Secondly referred
to in the abovementioned plan:** Easement for Overhead Power Lines 20
Wide

Schedule of lots etc. affected

Lot(s) Burdened:

**Lot(s), name of road, or Authority
Benefited:**

1, 3 & 4

Country Energy ABN 37 428 185 226

Figure 2: Section 88B Instrument Registered on Land Title DP 1094055

**INSTRUMENT SETTING OUT TERMS OF EASEMENTS AND RESTRICTION AS
TO USER INTENDED TO BE CREATED PURSUANT TO SECTION 88B OF THE
CONVEYANCING ACT 1919**

(Sheet 2 of 4 Sheets)

PLAN:

DP1094055

Plan of subdivision of Lot 7, 42 & 86
D.P. 750038, Lot 2 D.P. 247198, Lot 1 & 2
D.P. 1043931 in Goulburn Mulwaree
Council DA No. 2003/0518/DA covered
by Subdivision Certificate no.

3. Identity of Easement Thirdly referred to in the abovementioned plan: Easement for Overhead Power Lines 38.6 Wide & Variable Width

Schedule of lots etc. affected

Lot(s) Burdened:

2 & 3

Lot(s), name of road, or Authority

Benefited:

Country Energy ABN 37 428 185 226

4. Identity of Restriction Fourthly referred to in the abovementioned plan: Restriction As To User

Schedule of lots etc. affected

Lot(s) Burdened:

2

Lot(s), name of road, or Authority

Benefited:

Goulburn Mulwaree Council

5. Identity of Restriction Fifthly referred to in the abovementioned plan: Restriction As To User

Schedule of lots etc. affected

Lot(s) Burdened:

All lots.

Lot(s), name of road, or Authority

Benefited:

Goulburn Mulwaree Council

Figure 2: Continued: Section 88B Instrument Registered on Land Title DP 1094055

**INSTRUMENT SETTING OUT TERMS OF EASEMENTS AND RESTRICTION AS
 TO USER INTENDED TO BE CREATED PURSUANT TO SECTION 88B OF THE
 CONVEYANCING ACT 1919**

(Sheet 3 of 4 Sheets)

PLAN:

DP1094055

Plan of subdivision of Lot 7, 42 & 86
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 D.P. 1043931 in Goulburn Mulwaree
 Council DA No. 2003/0518/DA covered
 by Subdivision Certificate no.

PART 2

- | | |
|--|--|
| 1. <u>Identity of easement firstly referred to in abovementioned plan.</u> | Refer to Part A of Memorandum AA 26009 currently registered at LPI |
| 2. <u>Identity of easement second referred to in abovementioned plan.</u> | Refer to Part A of Memorandum AA 26009 currently registered at LPI |
| 3. <u>Identity of Restriction as to User fourthly referred to in abovementioned plan</u> | Restriction as to User, namely, that access to and from the lot burdened by and for all mechanized and horse drawn vehicles including motor cars, trucks and tractors is prohibited to and from the Hume Highway |
| 4. <u>Identity of easement fifthly referred to in abovementioned plan.</u> | Restriction as to user, namely: |
| (i) stock-proof fencing must be constructed and maintained to enclose areas of remnant vegetation as identified on the plan held at Goulburn Mulwaree Council quoting file D.A. no. 2003/0518/DA condition no.28 Pt. B (ii) in order to exclude cattle, sheep, horses and other livestock. The fence should be erected no closer than 3m to any existing tree; | |
| (ii) within the identified areas referred to in (i) above, the cutting of living or dead trees for firewood, the removal of fallen timber, inappropriate hazard reduction burning, the grazing of livestock, the construction of roads or any activities that will result in the clearance or disturbance of native vegetation and habitat are prohibited; and | |



Figure 2: Continued: Section 88B Instrument Registered on Land Title DP 1094055

**INSTRUMENT SETTING OUT TERMS OF EASEMENTS AND RESTRICTION AS
TO USER INTENDED TO BE CREATED PURSUANT TO SECTION 88B OF THE
CONVEYANCING ACT 1919**

(Sheet 4 of 4 Sheets)

DP1094055

Plan of subdivision of Lot 7, 42 & 86
D.P. 750038, Lot 2 D.P. 247198, Lot 1 & 2
D.P. 1043931 in Goulburn Mulwaree
Council DA No. 2003/0518/DA covered
by Subdivision Certificate no.

- (iii) for the purpose of providing fauna habitat, mature, senescent or dead hollow-bearing Eucalypts may be not be removed from within the said identified areas.

**Name of Authority empowered to release vary or modify the easements fourthly and
fifthly referred to in the abovementioned plan:**

Goulburn Mulwaree Council

SIGNED by ANNE JANNETT
LAWSON in the presence of:

Robert S. Minter
ROBERT S MINTER

SIGNED by ROBERT AUSTIN
LAWSON in the presence of:

Robert S. Minter
ROBERT S MINTER
12744 MARKET ST
SYDNEY NSW 2000
Approved by the Council of the Goulburn Mulwaree

Andrew Budd
General Manager/Authorised Person
AUTHORISED PERSON

Date: 30 Nov 2005

Anne Jannett

Robert Austin Lawson
FOR ROBERT AUSTIN LAWSON
BY HER ATTORNEY ANNE
JANNETT LAWSON UNDER
POWER OF ATTORNEY
REGISTERED BOOK 4372 NO. 254

I certify that the attorney for the *Bank*
with whom I am personally acquainted or as to
whose identity I am otherwise satisfied, signed
this instrument in my presence.

Signature of witness: *Andrew Budd*

Name of witness: ANDREW BUDD

Address of witness: 1 King Street
Concord West NSW

Certified correct for the purposes of the Real Property Act
1900 by the

SIGNED by *BRIAN HOLI* as attorney for *Westpac*
Banking Corporation under power of attorney Book 4372
No. 332

(Signature) *Brian Holli* Tier Three Attorney

By executing this instrument the attorney states that the
attorney has received no notice of the revocation of the
power of attorney.



Figure 2 Continued: Section 88B Instrument Registered on Land Title DP 1094055

Lot 1 DP 1094055

The quarry site has an elevation ranging from 725.5-731.5m AHD with the highest area located at the north-eastern boundary of the quarry boundary. The land then slopes down generally to the west and

south west. The land generally drains to the west to Towrang Creek (north-west). There is also a drainage line to the south of the quarry site which drains to the east. There are four existing dams on Lot 1. Of the two larger dams, the most westerly dam (WQ Pond 3) has the proposed internal egress traverses to the eastern side of the dam adjacent to the protected vegetation area. No approval was sought for works within 40m of a water course however NSW Office of Water have previously confirmed no approval is required.

The largest dam is located at the junction of Tiyces Lane and Curlewin Lane. The other two minor dams are located to the south-west of Curlewin cul-de-sac bulb and the forth dam identified a WQ Pond 2 north of the quarry and near the boundary of Lots 1 and 2.

The land is generally cleared except for tree patches of remnant vegetation generally to the west of the Lot. Remnants of the Endangered Ecological Community Yellow Box, White Box Blakely's Redgum (Box-Gum Woodland) is listed under the NSW *Threatened Species Conservation Act 1995* occur on the land. The Box-Gum Woodland is identified in the revised *Flora and Fauna Assessment* prepared by Pat Guinane, May 2017 (Document F) as per extract provided below and to the north-west and north of the quarry site

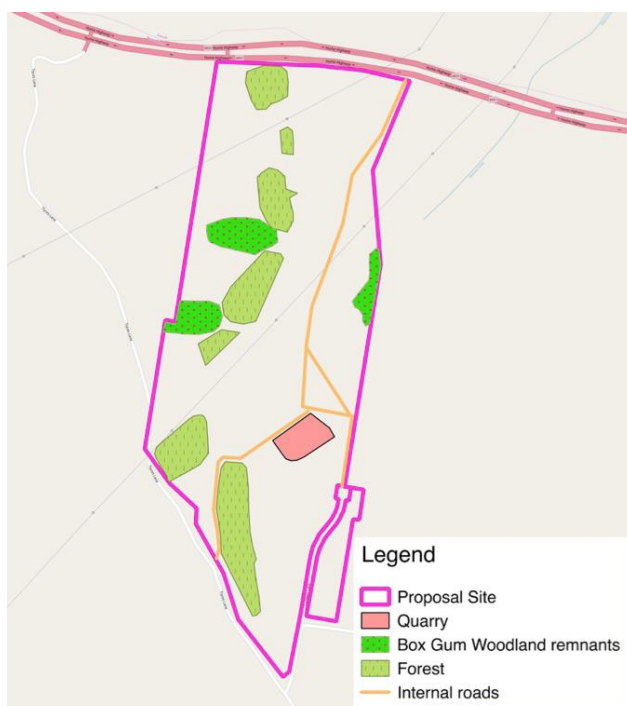


Figure 3: (Extract of Flora and Fauna Assessment May 2017)

There is an existing farm shed/building south of the proposed quarry site used as a machinery shed.

Lot 2 DP 1094055

The proposed access location for internal ingress road is located on the north-eastern corner at approximately 700m AHD. Rising to approximately 715mAHD at the southern boundary of Lot 2 (and continues to rise to the boundary of the access to the pit at approximately 728mAHD).

Lot 2 has 2 existing dams, neither are proposed to be used as part of the quarry. There is generally 3 patches of remnant vegetation which will not be affected by the proposal.

Title Details

The land was created by subdivision approved by Council in 2004 and modified in 2005. The plan was registered with a S88B under the Conveyancing Act 1919 with a restriction as to user requiring areas of native remnant vegetation to be fenced and protected from stock, prohibit direct vehicular access to or from the Hume Highway to Lot 2 and provide access for Lot 2 from a right of carriageway over Lot 1 refer to s88B Figure 2 above.

Surrounding Area

The immediate surrounding area is characterised by a mixture of land uses including extensive agriculture, intensive agriculture (poultry farm) as well as rural lifestyle lots. Located near or within the vicinity of the site include:

- 249 Tiyces Lane (existing dwelling and vacant lot with proposed dwelling);
- 287 Tiyces Lane (existing dwelling and horse training)
- 16917 Hume Highway (intensive poultry farm);

The wider surrounding area includes a rural subdivision along Marian Vale Road which has approval for 37 lots. A small number of houses and a commercial aquaculture (fish farm) have been built within the subdivision.

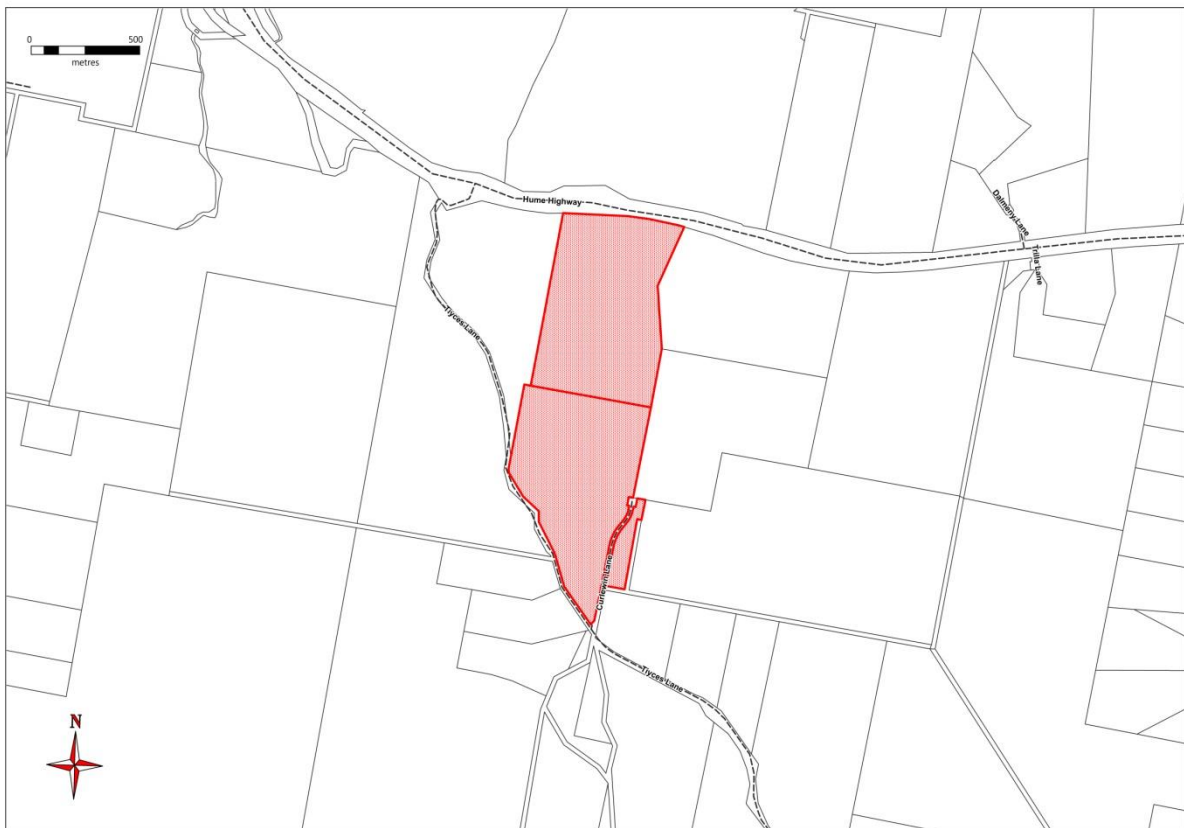


Figure 4: Locality Plan Extract from Council's Cadastre GIS Mapping System



Figure 5: Aerial Photograph retrieved from Council's Mapping System (photograph taken Dec 2013) of the locality of the quarry and surrounding lands.

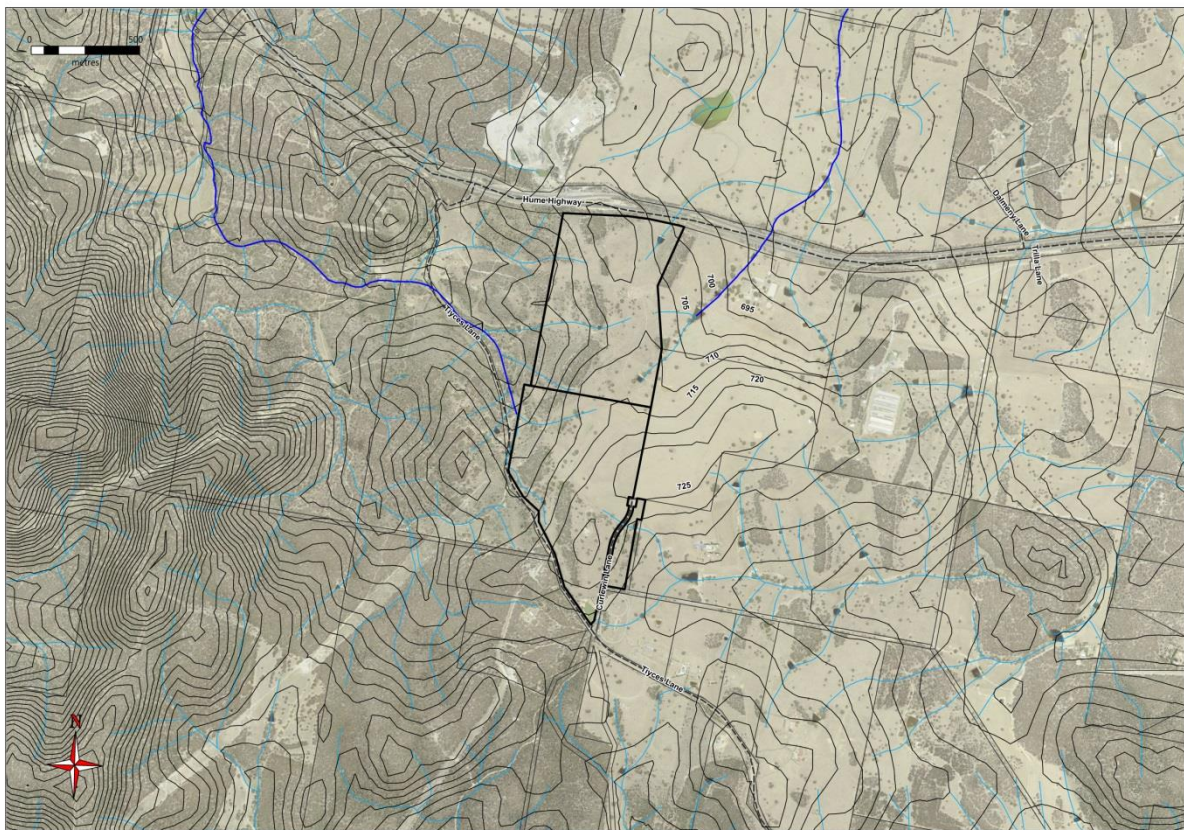


Figure 6: Extract from Council's GIS Mapping – Contours and Drainage lines

THE PROPOSED DEVELOPMENT

1.4 Description of the Proposed Development

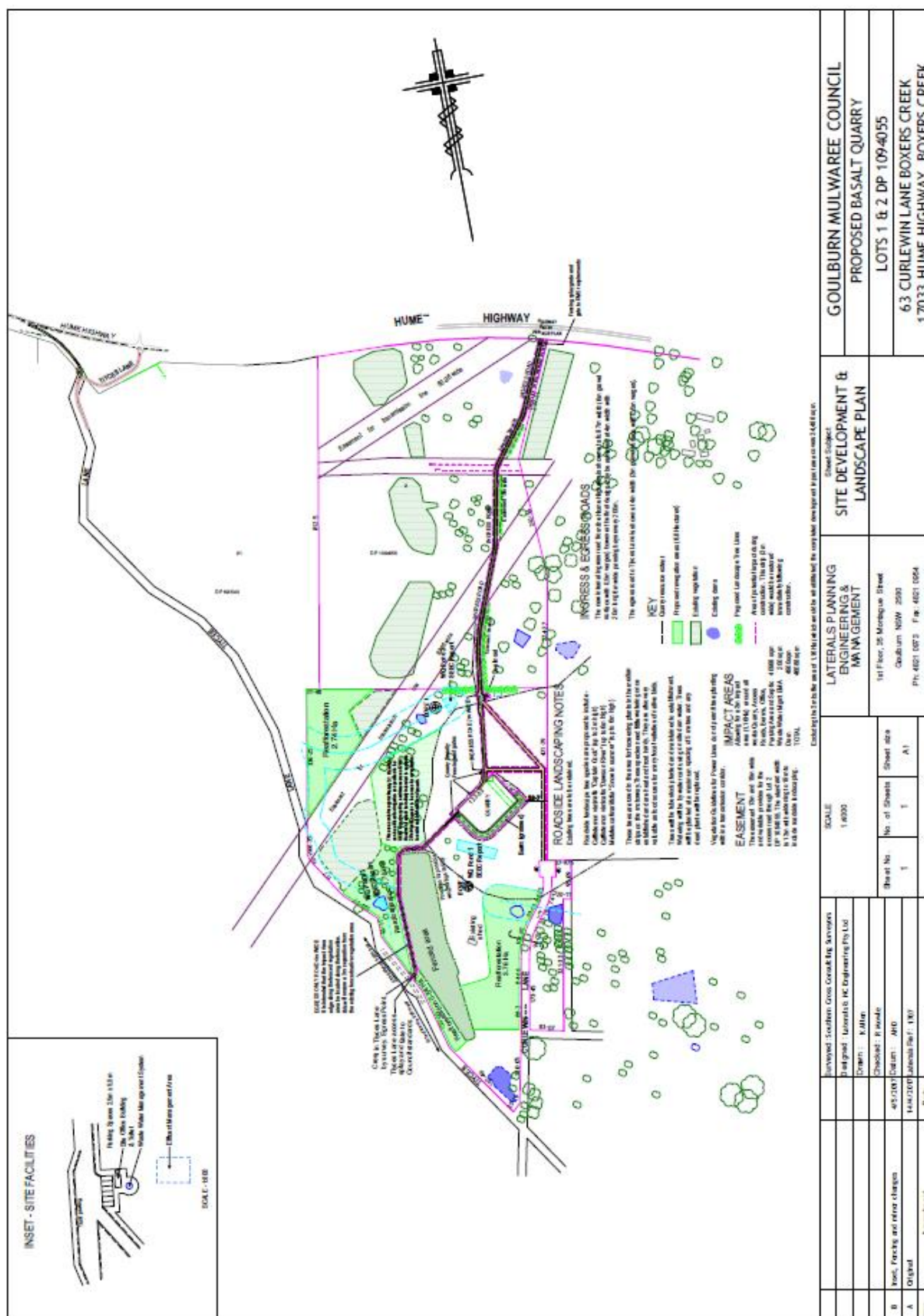
The applicant has sought development consent for:

1. A basalt quarry (1.04 Ha) for the extraction of up to 30,000 cubic metres of basalt per annum. The operation of the quarry by the extraction of the resource (Non-blasting), crushing using a mobile crusher, screening to size the materials, stockpiling within the quarry area and transport from the site.
2. The construction of an ingress road from the Hume Highway with associated drainage. The entry point from the Hume Highway would be fenced with gates at the intersection point of the entry lane and then splayed back to the boundary fence along the highway. The gate would be stock proof with a stock grate to prevent stock from entering the highway. The fencing standard would be stock proof fencing as required by RMS.
3. The construction of an exit road to Tiyces Lane with associated drainage and gateway.
4. The construction of a new acceleration lane from Tiyces Lane to the Hume Highway.
5. The construction emergency access roads from Curlewin Lane to the quarry and office facilities for emergency access for bushfire and other emergency egress.
6. The installation of an office, parking for 5 vehicles and a truck along with on-site waste water management facilities.
7. The installation of water management ponds per reports by SEEC and as outlined in the Operational Environmental Management Plan.
8. The planting of trees as shown in the report by SEEC in the Operational Environmental management Plan.
9. The installation of grassed sound control bunds around parts of the quarry sides.
10. The construction of a security fence around the quarry 2.1m high. Quarry pit gates will similarly be made of two panels of 2.1m high x 2.4m wide galvanised construction/security fencing (giving a vehicular entry opening to the pit itself of about 4.4m wide). They will also be sign-posted with "No Unauthorised Access" signs. The fencing would be permanently fixed to the property and contain 1 strand of barb wire over the top. One strand of electric fencing may also be inserted at 1.2m height around the fence to keep any cattle or deer from rubbing/pushing against the quarry pit security fence. The electric fencing will be powered by an approved Gallagher solar energizer (uncomfortable if touched but generally safe for humans). The electric fencing will be adequately signposted with "Electric Fence" signs/warnings and the security fencing sign-posted with "No Trespassing" signs and "Danger - Keep Out" signs.
11. The placement of a transportable rock crusher inside the quarry.
12. The use of the following machinery during operations -
 - Crusher (mobile) (1)
 - Material sizing screen (1)
 - Bulldozer (1)
 - Front end loader (1)
 - Backhoe (1)
 - Trucks (estimate average of 3)
 - Water truck (1)
13. Utilise an existing bore license for quarry purposes as a backup and additional water supply source.
14. The installation of the following site infrastructure for the quarry operations:
 - Office and staff amenities;
 - Security compound fencing around the quarry (including lockable access gate to Hume Highway);
 - Electricity extension to office compound;
 - Telephone extension to office compound;
 - Water supply – existing dams on site and to be constructed and the bore (10 ML of WAL 35518 - 50 ML license)

15. Operation of the crusher over a 10 day consecutive period (excluding weekends and public holidays) to allow stockpiling of a months supply of material within the quarry.
16. Proposed hours of operation 7am – 5pm Monday to Friday and 7am – 1pm Saturdays with no operation Sundays and public holidays. No transport of product is proposed during school bus hours (document G Traffic Impact Statement prepared by Laterals dated May 2017)
17. Transport by truck and trailer configuration not exceeding 19m with a load of approximately 37 tonne.
18. An estimated 14 heavy vehicle movements and 8 light vehicle (staff and delivery) movements per day.
19. Employment of 6 full time persons in operations.

1.5 Other Proposed Development (not part of this application)

There is approval for an additional 2 farm /rural sheds under DA/0282/1617 yet to be constructed. One shed was approved near the electricity easement and ingress road on Lot 2 and the second shed to the east of the protected vegetation area on Lot 1 and within part of the original 8.8ha revegetation area (refer Figure 17). The following site plan (Figure 7) has been revised by Figure 17



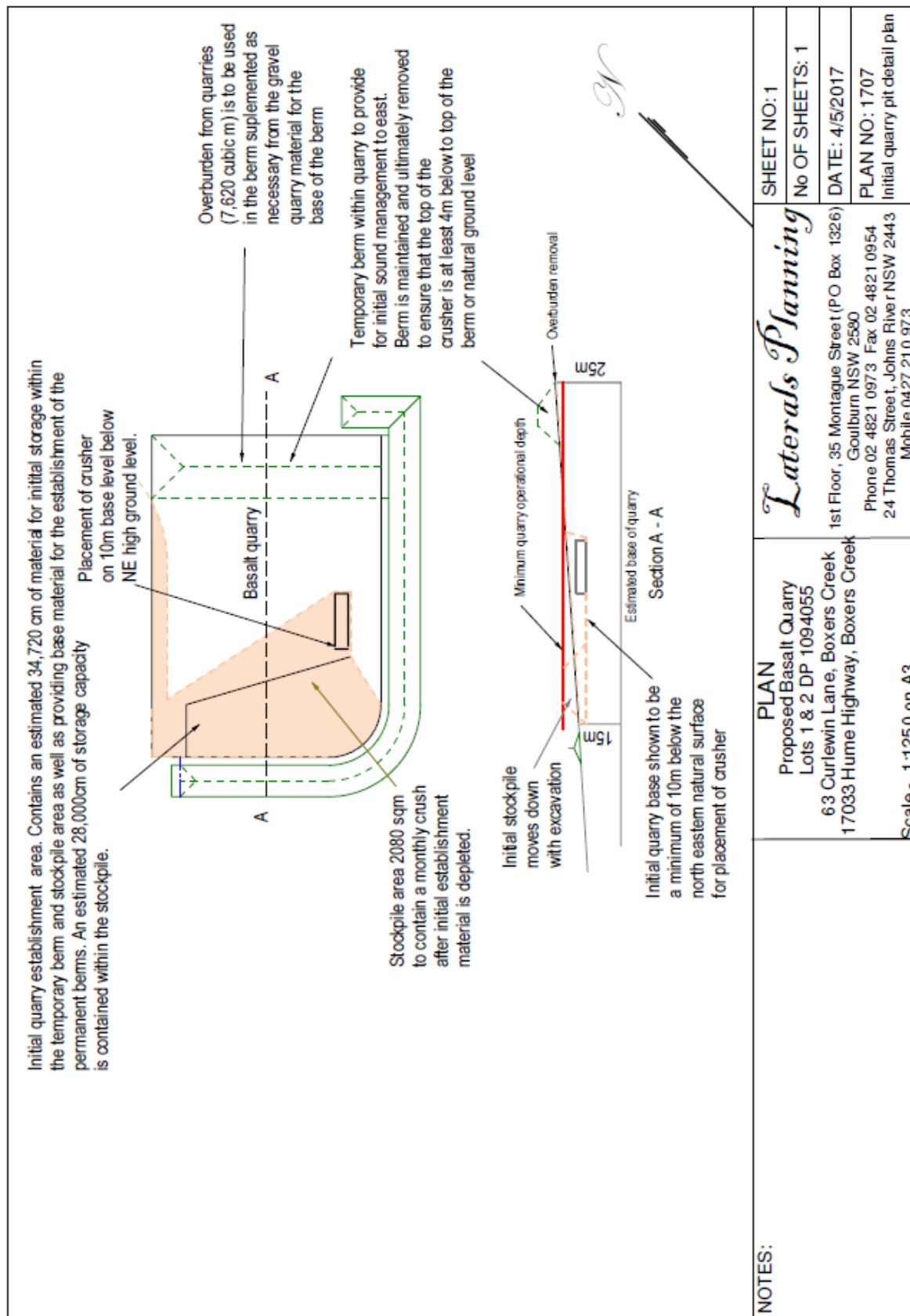


Figure 8: Submitted Quarry Pit Design

1.6 Amendments to the Development

The development application, as originally submitted, did not include a current Flora and Fauna Assessment. A revised report was received 1/6/2017 and notification included the revised report. A response to the public submissions was received 21/7/17 (Refer to Document F).

Following a JRPP briefing meeting additional information was sought (refer to Document 04 in the package of information to support the assessment) a response was received from the applicant on 24/10/2017 that *"...the additional matters raised in your letter requesting additional information have been satisfactorily addressed for consideration by Council and relevant government agencies and the public. As such it is advised that the additional information sought is not being provided."*

A further response was received 2 November 2017 to address the additional information requested and is included in Document 05 in the package of information to support the assessment. These details have been added to the application.

The amendment to the development included:

- Rather than provide a detailed survey of the road design the applicant has requested Council condition to comply with council standards
- Pavement condition report be deferred until prior to issue of a construction Certificate/s138 approval
- Cumulative impact of lane changes to Hume Highway has been considered by RMS
- The environmental assessment (flora and fauna, stormwater drainage and aboriginal cultural heritage) be the responsibility of the RMS as part of the application to be lodged with the RMS should consent be issued
- Revised quarry cross section plan (Figure 16)
- No hollow trees are proposed to be removed
- Changes to OEH guideline on Aboriginal Cultural Heritage
- Suggest "reasonable justification to the variation of s88B restriction to reduce the traffic using Tiyces Lane"
- Existing Tiyces Lane and Hume Street intersection will be unaffected by the development and remain

No re-notification was considered to be required. Water NSW have reviewed the revised quarry pit plan and advised no change to their previous concurrence.

1.7 Project Need and Justification

The DA is supported by an EIS. Section 21 of the EIS (pages 161-163) outlines the applicant's justification for the proposal with only Ardmere Quarry, located 25km southeast of Goulburn (near Bungonia) as a comparative basalt resource which has not yet commenced operations. There is no assessment or description of when the resource is likely to become available to the market, whether there would be competition for the same market and whether there will be insufficient quantities or an oversupply.

3.0 STATUTORY PLANNING MATTERS

3.1 Environmental Planning and Assessment Regulation 2000

This section provides that 'designated development is development that is declared to be designated development by an environmental planning instrument or the Regulations. Relevant to the subject proposal is Schedule 3 of the Regulation, which identifies those developments to be characterised as designated development. The proposal comprises of an Extractive Industry which is located in an Environmentally Sensitive Area (Environmentally Sensitive Layer Biodiversity – Clause 7.2 GMLEP 2009). The extract below shows the stipulated trigger is an intended environmental trigger.

Extractive industries (EPA Regulation)

- (1) *Extractive industries (being industries that obtain extractive materials by methods including excavating, dredging, tunnelling or quarrying or that store, stockpile or process extractive materials by methods including washing, crushing, sawing or separating):*
- (a) *that obtain or process for sale, or reuse, more than 30,000 cubic metres of extractive material per year, or*
 - (b) *that disturb or will disturb a total surface area of more than 2 hectares of land by:*
 - (i) *clearing or excavating, or*
 - (ii) *constructing dams, ponds, drains, roads or conveyors, or*
 - (iii) *storing or depositing overburden, extractive material or tailings, or*
 - (c) *that are located:*
 - (i) *in or within 40 metres of a natural waterbody, wetland or an environmentally sensitive area, or*
 - (ii) *within 200 metres of a coastline, or*
 - (iii) *in an area of contaminated soil or acid sulphate soil, or*
 - (iv) *on land that slopes at more than 18 degrees to the horizontal, or*
 - (v) *if involving blasting, within 1,000 metres of a residential zone or within 500 metres of a dwelling not associated with the development, or*
 - (vi) *within 500 metres of the site of another extractive industry that has operated during the last 5 years.*

Noted: The underline has been added for interpretation reasons.

During the assessment it has become evident that the area of disturbance exceeds the 2ha threshold. The exceedance of the 2ha threshold in (b) above is not considered to be a significant matter as the concurrence of WNSW has been obtained and the application was already identified as designated development.

3.2 Environmental Planning and Assessment Act 1979

3.2.1 Ecological Sustainable Development (ESD):

Refer to Section 18 (p137-138) of the EIS for an assessment against ESD. Namely:

The principles of ecologically sustainable development are as follows:

- (a) *the **precautionary principle**, namely, that if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation. In the application of the precautionary principle, public and private decisions should be guided by:*
 - (i) *careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment, and*
 - (ii) *an assessment of the risk-weighted consequences of various options,*
- (b) ***inter-generational equity**, namely, that the present generation should ensure that the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations,*
- (c) ***conservation of biological diversity and ecological integrity**, namely, that conservation of biological diversity and ecological integrity should be a fundamental consideration,*
- (d) ***improved valuation, pricing and incentive mechanisms**, namely, that environmental factors should be included in the valuation of assets and services, such as:*
 - (i) *polluter pays, that is, those who generate pollution and waste should bear the cost of containment, avoidance or abatement,*
 - (ii) *the users of goods and services should pay prices based on the full life cycle of costs of providing goods and services, including the use of natural resources and assets and the ultimate disposal of any waste,*
 - (iii) *environmental goals, having been established, should be pursued in the most cost effective way, by establishing incentive structures, including market mechanisms, that enable those best placed to maximise benefits or minimise costs to develop their own solutions and responses to environmental problems.*

The Mining SEPP requires the efficiency of resource recovery must be considered when assessing a DA for a quarry, to ensure that:

- Important primary resources are not wasted through poor operational practices

- Reuse and recycling of resources is promoted
- The creation of waste from the extraction and processing of materials is minimised.

The requirement for the preparation of an Operational Management Plan prior to operation can address these requirements.

The preparation and implementation of a Code of Conduct for truck drivers transporting materials (or returning to load materials) on public roads to improve road safety outcomes has been questioned in public submissions.

The OEMP states “All but one haulage driver will be contracted and might operate under their own code of conduct. However, all drivers hauling from the Quarry must:

- Have undertaken a site induction carried out by the Quarry Manager;
- Hold a valid driver’s licence for the class of vehicle that they operate;
- Operate the vehicle in a safe manner within and external to the quarry site;
- Comply with the direction of authorised site personnel when within the site; and
- Comply with the Australian Road Rules external to the site.”

It is questioned whether operators and in particular haulage drivers contracted and non-contracted operators will turn left on exiting Tiyces Lane and travel the 17 kms to the south Goulburn interchange at South Goulburn roundabout and then travel north along the Hume Highway another 17 kms to exit the quarry to ultimately travel north (consisting of a 34 km round trip). The additional fuel consumption is not assessed in the ESD assessment. Similarly, all heavy vehicles northbound wishing to enter the development site must travel north along the Hume Highway and undertake a u-turn at the interchange south of Marulan (at the intersection of Jerrara Road/Marulan South Road) which is an approximately 25 km round trip. This adds an additional say 60 km for vehicles travelling from south of the site empty and exiting the site to travel north.

Based on the ABS *Survey of Motor Vehicle Use 12 Month Ended 30 June 2016* (9208.0) an average of 56 litres/100km trip for an articulated truck and current estimate of \$1.30/ litre for diesel equates to an additional consumption of \$22/vehicle or \$308/day (based on 14 vehicle movements) or \$1694 (5.5 days/week). It appears from the OEMP (refer to Document D with the package of information supporting the assessment) that the operating hours proposed is “other activities” for product haulage as it does not fit within the construction or crushing activities definitions. Based on 5.5 day per week for 45.5 weeks, fuel consumption is estimated at approximately \$77,077 (1694 x 45.5).

The development proposes to mitigate the impacts on the social, environmental and economic considerations. There is no justification as to whether the 8.8ha will adequately offset the environmental impacts (including clearing) as the areas required to be cleared have not been identified. Revegetation of 8.8ha will help offset any removal of individual trees removed and balance the biodiversity value of the area and development; however no assessment on the biodiversity, stormwater measures or Aboriginal Cultural Heritage has been made for the proposed s138 works to Tiyces Lane or the Hume Highway. The application does not list the current needs of basalt in the local or regional community.

Consequently the assessment does not fully assess ESD, the potential impacts of the ancillary aspects or the efficiency of the extraction and therefore the application is deficient under ESD principles of the EPA Act and the application is unable to be determined in the absence of the Assessment.

3.2.2 Section 23 G EPA Act - Joint regional planning panels

Section 23G of the EPA Act gives the Southern Region Joint Planning Panel “*any of a council’s functions as a consent authority that are conferred on it under an environmental planning instrument*” because the proposed development is of a class or description as set out in Schedule 4A (8) of the EPA Act, namely extractive industries, which meet the requirements for designated development under clause 19 of Schedule 3 to the EPA Regulation.

3.2.3 Section 77A EPA Act – Designated development

The development is declared to be designated development by section 19 of Schedule 3 of the EPA Regulations.

3.2.4 Section 79BA EPA Act – Consultation and development consent – certain bushfire prone land

Section 79BA of the *Environmental Planning and Assessment Act 1979* requires that Council not grant approval for any development in a bush fire prone area (other than those developments covered by Section 100B of the *Rural Fires Act 1997*) unless the proposal complies with *Planning for Bush Fire Protection 2006* or the Commissioner of the NSW Rural Fire Service has been consulted on any non-compliance.

Although generally for residential development *Planning for Bushfire Protection 2006* applies to any developments on bush fire prone land that is not integrated. The consent authority is only required to consult with the NSW Rural Fire Service (NSW RFS) under section 79BA when a proposed residential dwelling (i.e. infill) does not comply with the "acceptable solutions" of *Planning for Bush Fire Protection 2006*.

The development could be conditioned to comply with the *Planning for Bush Fire Protection 2006*. Including but not limited to:

- Where no reticulated water supply is available, a water supply of 20,000L reserve (i.e. water tank or dam) dedicated to fire fighting purposes should be installed and maintained.
- Electricity services should be located so that the possibility of ignition of the surrounding bushland or fabric of the buildings is limited.
- A minimum carriageway width of four metres
- The rural property access road shall have passing bays every 200 metres that are 20 metres long by two metres wide, making a minimum trafficable width of six metres at the passing bay.
- A minimum vertical clearance of four metres to any overhanging obstructions, including tree branches.
- Curves have a minimum inner radius of six metres and are minimal in number to allow for rapid access and egress.
- The minimum distance between inner and outer curves is six metres.
- The crossfall is not more than 10 degrees.
- Maximum grades for sealed roads do not exceed 15 degrees and not more than 10 degrees for unsealed roads. Note: Some short constrictions in the access may be accepted where they are not less than the minimum (3.5m), extend for no more than 30m and where the obstruction cannot be reasonably avoided or removed.
- Suitable connection for fire fighting purposes is made available and located within the Inner Protection Area (IPA) and away from the structure. A 65mm Storz outlet with a Gate or Ball valve is provided.
- Gate or Ball valve and pipes are adequate for water flow and are metal rather than plastic.
- Underground tanks have an access hole of 200mm to allow tankers to refill direct from the tank. A hardened ground surface for truck access is supplied within 4 metres of the access hole.
- Above ground tanks are manufactured of concrete or metal and raised tanks have their stands protected. Plastic tanks are not used. Tanks on the hazard side of a building are provided with adequate shielding for the protection of fire fighters.
- All above ground water pipes external to the building are metal including and up to any taps. Pumps are shielded.
- Where practicable, electrical transmission lines are underground.
- Where overhead electrical transmission lines are proposed: -
 - lines are installed with short pole spacing (30 metres), unless crossing gullies, gorges or riparian areas; and
 - No part of a tree is closer to a power line than the distance set out in accordance with the specifications in 'Vegetation Safety Clearances' issued by Energy Australia (NS179, April 2002).

It is noted that an alternate egress via Curlewin Lane is proposed in case of a fire or emergency however Curlewin Lane still exits along Tiyces Lane therefore not a real alternate option.

In accordance with Section 79BA EPA Act

79BA Consultation and development consent—certain bush fire prone land

(1) Development consent cannot be granted for the carrying out of development for any purpose (other than a subdivision of land that could lawfully be used for residential or rural residential purposes or development for a special fire protection purpose) on bush fire prone land unless the consent authority:

(a) is satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled *Planning for Bush Fire Protection* prepared by the NSW Rural Fire Service in co-operation with the Department (or, if another document is prescribed by the regulations for the purposes of this paragraph, that document) that are relevant to the development (the relevant specifications and requirements), or
(b) has been provided with a certificate by a person who is recognised by the NSW Rural Fire Service as a qualified consultant in bush fire risk assessment stating that the development conforms to the relevant specifications and requirements.

(1A) If the consent authority is satisfied that the development does not conform to the relevant specifications and requirements, the consent authority may, despite subsection (1), grant consent to the carrying out of the development but only if it has consulted with the Commissioner of the NSW Rural Fire Service concerning measures to be taken with respect to the development to protect persons, property and the environment from danger that may arise from a bush fire.

(1B) This section does not apply to State significant development.

(1C) The regulations may exclude development from the application of this section subject to compliance with any requirements of the regulations. The regulations may (without limiting the requirements that may be made):

(a) require the issue of a certificate by the Commissioner of the NSW Rural Fire Service or other qualified person in relation to the bush fire risk of the land concerned, and
(b) authorise the payment of a fee for the issue of any such certificate.

As the land is bushfire prone land, compliance with *Planning for Bushfire Protection* is required.

Details are not available or appear inconsistent to enable the proper assessment of the effect of the proposed development (i.e. egress) on the environmental significance of the existing native vegetation and therefore the application is deficient and the application is unable to be determined in the absence of an environmental assessment and detailed road design plans.

3.2.5 Section 91 EP&A Act 1979 – What is “Integrated Development”

Integrated development is development that, in order to be carried out, requires development consent and one (1) or more specified approvals under a number of other Acts. Under the provisions of the EP&A Act 1979, the proposed development is classified as ‘integrated development’ as it requires the following approvals:

- An Environment Protection Licence from NSW Office Environment and Heritage (Environment Protection Authority) for scheduled works and activities listed in Schedule 1 under the *Protection of the Environment Operations Act 1997* and
- Section 138 approval from Roads and Maritime Services under the *Roads Act 1993* for works to Hume Highway

3.2.6 Section 93 EPA Act - The Provisions of any Planning Agreement

The proposed development is not subject to the provisions of a Voluntary Planning Agreement under Section 93F EPA Act.

3.2.7 Section 147 EPA Act - Declaration

Section 147 EPA Act requires the declaration of donations/gifts in excess of \$1000 within Section 5 of the Development Application form. The Applicant has declared that there are no relevant political donations or affiliations. No declarations have been received by any of the public submitters.

3.3 Commonwealth Legislation

The *Environmental Protection and Biodiversity Conservation Act 1999* (EPBC Act) commenced on 16th July 2000 and is administered by the Commonwealth Department of Environment, Water,

Heritage and the Arts. Its primary objective is to “provide for the protection of the environment, especially those aspects of the environment that are matters of national environmental significance.”

White Box-Yellow Box-Blakely’s Red Gum Grassy Woodland and Derived Native Grassland (Box-Gum Grassy Woodland) is listed as critically endangered under the EPBC Act. The application contends that the Box-Gum Woodland on site does not fall into the definition under the Commonwealth legislation as they do not have a *predominantly native understorey*.

The *National Recovery Plan for White Box - Yellow Box - Blakely’s Red Gum Grassy Woodland and Derived Native Grassland* (The Recovery Plan) states:

The objective of this recovery plan is to promote the recovery and minimise the risk of extinction of the ecological community through:

- *achieving no net loss in extent and condition of the ecological community throughout its geographic distribution;*
- *increasing protection of sites in good condition;*
- *increasing landscape function of the ecological community through management and restoration of degraded sites;*
- *increasing transitional areas around remnants and linkages between remnants; and*
- *bringing about enduring changes in participating land manager attitudes and behaviours towards environmental protection and sustainable land management practices to increase extent, integrity and function of Box-Gum Grassy Woodland.*

Although it is accepted that the Box-Gum Woodland is recognised as not falling within the prescribed definition, the proposal has the potential to satisfy the above objectives of the National Recovery Plan should the application be approved.

The Landscaping and revegetation plan will be required to comply with the current guidelines and standards including:

- Retention of existing trees with hollows
- Any fencing of remnant areas to restrict domestic stock grazing and excluding barbed wire in the design.
- Comply with Table 4 “Current Best Practice Site Management Practices for Continued Existence of Box-Gum Grassy Woodland” of the Recovery Plan.
- The 8.8ha area proposed to be planted out to native vegetation should include Box-Gum species within the nominated areas.

Therefore on balance no matters of national environmental significance are likely to be significantly affected by the proposal. The proposal has not been referred to the Commonwealth Minister for the Environment under the EPBC Act.

3.4 State Environmental Planning Policies (‘SEPPs’)

The following State Environmental Planning Policies are applicable to the proposal:

- *State Environmental Planning Policy No 33 – Hazardous and Offensive Development;*
- *State Environmental Planning Policy No 44 – Koala Habitat Protection* and draft EIE public exhibition 18/11/16 – 3/3/17;
- *State Environmental Planning Policy No 55 – Remediation of Land;*
- *State Environmental Planning Policy (Infrastructure) 2007 and draft SEPP;*
- *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007*
- *State Environmental Planning Policy (Rural Lands) 2008*
- *State Environmental Planning Policy (State & Regional Development) 2011*
- *State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011*
- *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017;*

These are assessed below.

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

SEPP 33 deals with the definition of, and control of, hazardous and offensive developments. The policy also requires specified matters to be considered for proposals that are 'potentially hazardous' or 'potentially offensive' as defined by the legislation.

The SEPP 33 assessment in the EIS is an unreferenced extract of Councils previous assessment report under the previous DA refused by the JRPP.

In accordance with *Applying SEPP 33 Guidelines* dated January 2011, this development may fall under the definition "potentially offensive development" due to it being Designated Development.

The proposed development could also be considered a potentially offensive industry because if the development were to operate without measures including:

- the earth berm
- location of the crusher below a minimum floor level below the existing ground level
- and noise control limit of 35dB(A))

to reduce or minimise its impact in the locality or on the existing or likely future development on other land, it would pose a significant risk in relation to the locality. A Preliminary Hazard Analysis (PHA) has not been undertaken by the applicant.

Given that the development is an Extractive Industry, which will process up to 30,000 cubic metres and the common threshold requiring an Environment Protection Licence (EPL) is 30,000 cubic metres the development is close to the EPL volume threshold. This development is caught under the EPL by the site being located within an Environmentally Sensitivity Area (Biodiversity on the Terrestrial Biodiversity Map to the *Goulburn Mulwaree Local Environmental Plan 2009*). Clause 13 of SEPP 33 states that:

In determining an application to carry out development to which this Part applies, the consent authority must consider (in addition to any other matters specified in the Act or in an environmental planning instrument applying to the development):

- (a) *current circulars or guidelines published by the Department of Planning relating to hazardous or offensive development, and*
- (b) *whether any public authority should be consulted concerning any environmental and land use safety requirements with which the development should comply, and*
- (c) *in the case of development for the purpose of a potentially hazardous industry—a preliminary hazard analysis prepared by or on behalf of the applicant, and*
- (d) *any feasible alternatives to the carrying out of the development and the reasons for choosing the development the subject of the application (including any feasible alternatives for the location of the development and the reasons for choosing the location the subject of the application), and*
- (e) *any likely future use of the land surrounding the development.*

This clause is addressed as follows:

- a) As stated above, the current Department of Planning guidelines relating to hazardous or offensive development are entitled "Applying SEPP 33 – Hazardous and Offensive Development Application Guidelines" and dated January 2011. These guidelines state that SEPP 33 aims to ensure that only proposals which are suitably located, and able to

demonstrate that they can be built and operated with an adequate level of safety and pollution control, can proceed. The relevant matters regarding this statement have been addressed by EPA requirement in their General Terms of Approval (refer to Document 02 Submissions for EPA response).

- b) The Office of Environment and Heritage (OEHPA,) has been consulted during public exhibition of this DA. This is discussed further at Section 3.7.6.
- c) The proposed development is considered a potentially hazardous industry. It is noted that Extractive Industry does not fall under the parent definition of Industry but is a separate type of development. Nevertheless, a summary of the potential impacts of the development are discussed in Section 19 of the EIS.
- d) It has been assessed that this requirement has not been adequately considered in the EIS, particularly the assessment of alternative sites. Instead, there has been a focus on “an initial small extraction” approach and depending on further results to the testing and analysis an additional application may be lodged in the future. The appropriateness of the selected site and its impact on the surrounding area are discussed further in Section 6-13 of the EIS.
- e) Impacts on surrounding development have been discussed in Section 6-13 of the EIS

In summary, despite SEPP 33 not being adequately addressed the proposed development due to its categorisation as an Extractive Industry; this SEPP contains relevant principles to the proposed development that ought to be addressed in any robust planning assessment.

Whether meeting the definition of “potentially offensive development” in SEPP 33 or not, this development is still considered potentially offensive as the proposed tonnage throughput is up to 30,000 cubic metres, with the general threshold above 30,000 requiring an Environment Protection Licence (EPL). Despite this threshold the development still requires an EPL due to its location within a Biodiversity area. It could be considered that the Noise and Air Quality Assessment Reports are Quantitative Assessments and the modelling using worst case scenarios.

Council staff assessment against the heads of consideration in clause 13 of SEPP 33 finds that:

Since the application relies on Air and Noise reports dated 2009 and 2016 the application could not address all the SEARs requirements from 2017 and therefore the proposal cannot currently be assessed as having acceptable impacts on the location despite the General Term of Approval/concurrence or requirements of NSW EPA, RMS, Water NSW.

3.4.2 State Environmental Planning Policy No 44 – Koala Habitat Protection

The flora and fauna assessment undertaken and Council’s internal environmental referral does not identify the site or adjoining land as supporting likely Koala habitat.

The application does not address the *Draft Explanation of Intended Effect SEPP 44 Koala Habitat Protection (EIE)* which closed exhibition 3 March 2017. The EIE states that “The updated process will require an applicant to establish whether a site contains koala habitat following an assessment of the vegetation as described in the guidelines. Where koala habitat is established, further assessment will be required to determine if koalas are present before an application is submitted.” Given that the site does not contain Koala habitat there appears to be no impact as a result of the draft EIE.

Although the Fauna assessment does not appear to be consistent with Department Environment and Conservation *Threatened Biodiversity and Assessment: Guidelines for Developments and Activities (Draft 2004)*; the site is not considered to support likely Koala habitat. The adequacy of the Flora and Fauna Report is not considered fatal to the proposal or DA assessment with regard to potential for Koala Habitat.

3.4.3 State Environmental Planning Policy No 55 – Remediation of Land

SEPP 55 deals with the remediation of land and the consent authority is required to consider the items listed under Clause 7. As stated by Clause 7:

- “(1) A consent authority must not consent to the carrying out of any development on land unless:*
- (a) It has considered whether the land is contaminated, and*
 - (b) If the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
 - (c) If the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*
- (2) Before determining an application for consent to carry out development that would involve a change of use on any of the land specified in subclause (4), the consent authority must consider a report specifying the findings of a preliminary investigation of the land concerned carried out in accordance with the contaminated land planning guidelines.*
- (3) The applicant for development consent must carry out the investigation required by subclause (2) and must provide a report on it to the consent authority. The consent authority may require the applicant to carry out, and provide a report on, a detailed investigation (as referred to in the contaminated land planning guidelines) if it considers that the findings of the preliminary investigation warrant such an investigation.*
- (4) The land concerned is:*
- (a) Land that is within an investigation area,*
 - (b) Land on which development for a purpose referred to in Table 1 to the contaminated land planning guidelines is being, or is known to have been, carried out,*
 - (c) To the extent to which it is proposed to carry out development on it for residential, educational, recreational or child care purposes, or for the purposes of a hospital—land:*
 - (i) in relation to which there is no knowledge (or incomplete knowledge) as to whether development for a purpose referred to in Table 1 to the contaminated land planning guidelines has been carried out, and*
 - (ii) On which it would have been lawful to carry out such development during any period in respect of which there is no knowledge (or incomplete knowledge).”*

The EIS has undertaken a preliminary contamination assessment of the application against SEPP 55 and with no previous record of intensive agricultural landuses or cattle or sheep dips the site the report concludes there appears to be no potential for contamination, however a precautionary approach is suggested should any works disturb any suspect material works, works are to stop and further investigation required (page 133-134).

Contaminated land is defined in SEPP 55 to mean land in, on or under which any substance is present at a concentration above the concentration at which the substance is normally present in, on or under (respectively) land in the same locality, being a presence that presents a risk of harm to human health or any other aspect of the environment.

Despite agricultural activities being listed within Table 1 of the *Managing Land Contaminated Planning Guidelines SEPP 55 – Remediation of Land (1998)*, the proposed land use is not a listed sensitive use or for residential purposes. Given there is no evidence that such contamination exists in respect to the disturbed areas for the quarry development there appears to be no reason to suspect that the land may be contaminated.

The risk of contamination impacting this proposal is considered extremely low for the following three reasons;

1. Basalt is a natural resource that will be tested and screened. Should foreign material be detected it will not be suitable for use and easily recognised.
2. The terrain of the site is consistent with the topographical maps.
3. There is a separate regulatory regime for the reporting as part of the operational requirement of the draft conditions applied by the EPA.

The land is considered to be in a satisfactory state for the proposed land use and any further investigation unnecessary. Consequently it is considered SEPP 55 does not require any further consideration.

3.4.4 State Environmental Planning Policy (Infrastructure) 2007 (SEPP Infrastructure)

SEPP Infrastructure covers a range of infrastructure facility, development and works and outlines permissibility. The SEPP also includes requirements for referrals to a number of agencies where a proposal may impact upon an element, land or operation controlled by that authority. The EIS does not address the SEPP only lists it under Section 1.3 of the EIS Legislative Requirements.

The following comment is provided under the assessment.

The proposed development is not considered Traffic Generating Development under clause 104 and Schedule 3 of Infrastructure SEPP as extractive industry is not a listed land use and the threshold of the industry category is 20ha. The development site is (approx. 4.61ha) although the land has an area of approximately 89ha.

The development proposes to generate 22 vehicles per day which does not meet the 200 or more vehicles listed in Schedule 3 for the any other purpose.

Although not Traffic Generating Development, the Roads and Maritime Services (RMS) have commented on the proposal. Refer to Document 02 of the package of information to support the assessment for the RMS responses.

Clause 94(1) of SEPP Infrastructure provides the ability of a person to carry out road works without development consent, following an environmental assessment under Part 5 of the EPA Act, where the road or road infrastructure facility works is carried out "by or on behalf of a public authority." The application has requested approval for works under s138 of the Roads Act and identified RMS approval is required.

The proposed Hume Highway acceleration lane, deceleration lane and Tiyces Lane road widening are integral ancillary components of the application for the quarry for which approval has been sought from the roads authorities, namely RMS and Council. Therefore the road works cannot be separated from the current Development Application proposal as suggested by Laterals in their additional information response letter dated 2/11/17. Furthermore, without proof from the applicant that the road works are being carried out by or on behalf of RMS, the road works are considered part of the application and environmental assessment of the design needs to be assessed with the current application. In the absence of an environmental assessment and plans of the works the application cannot be approved.

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

The Mining SEPP permits Extractive Industries under Clause 7 (3)(a) where agriculture or industry may be carried out.

Agriculture is permitted with consent under the land use table to the E3 zone to *Goulburn Mulwaree LEP 2009* and consequently Extractive Industry is permitted by way of Clause 7(3)(a) of the Mining SEPP. Clause 5 of the Mining SEPP enables the SEPP to override the GMLEP 2009. An extract of Clause 5 and 7 of the Mining SEPP and the E3 land use table to GMLEP 2009 is provided below reference.

Clause 5 Relationship with other environmental planning instruments (Mining SEPP)

5 (3) Subject to subclause (4), if this Policy is inconsistent with any other environmental planning instrument, whether made before or after this Policy, this Policy prevails to the extent of the inconsistency.

Clause 7 Development permissible with consent (Mining SEPP)

(1) NA

(2) NA

(3) **Extractive industry**

Development for any of the following purposes may be carried out with development consent:

- (a) **extractive industry on land on which development for the purposes of agriculture or industry may be carried out** (with or without development consent),
- (b) extractive industry in any part of a waterway, an estuary in the coastal zone or coastal waters of the State that is not in an environmental conservation zone.
- (4) Co-location of industry
If extractive industry is being carried out with development consent on any land, development for any of the following purposes may also be carried out with development consent on that land:
 - (a) the processing of extractive material,
 - (b) the processing of construction and demolition waste or of other material that is to be used as a substitute for extractive material,
 - (c) facilities for the processing or transport of extractive material,
 - (d) concrete works that produce only pre-mixed concrete or bitumen pre-mix or hot-mix.

The land use table to the E3 Environmental Management zone objectives are provided below (GMLEP 2009). Agriculture is shown as permitted with consent and Extractive Industry is included in Item 4 prohibited as “**Any other development not specified in item 2 or 3.**”

1 Objectives of zone

- To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.
- To provide for a limited range of development that does not have an adverse effect on those values.
- To facilitate the management of water catchment areas, environmentally sensitive land and areas of high conservation value.

2 Permitted without consent

Environmental protection works; Extensive agriculture; Home occupations

3 Permitted with consent

Agriculture; Air strips; Animal boarding or training establishments; Camping grounds; Caravan parks; Cemeteries; Child care centres; Community facilities; Depots; Dwelling houses; Eco-tourist facilities; Emergency services facilities; Entertainment facilities; Environmental facilities; Farm buildings; Forestry; Home-based child care; Home businesses; Home industries; Information and education facilities; Recreation areas; Recreation facilities (indoor); Recreation facilities (outdoor); Research stations; Roads; Rural workers' dwellings; Secondary dwellings; Signage; Stock and sale yards; Tourist and visitor accommodation; Water recycling facilities

4 Prohibited

Industries; Intensive livestock agriculture; Multi dwelling housing; Residential flat buildings; Retail premises; Rural industries; Seniors housing; Service stations; Serviced apartments; Warehouse or distribution centres; **Any other development not specified in item 2 or 3.**

Significance of the Resource

Part 3 of the Mining SEPP requires consideration of the resource. Clause 12AA and 12AB only applies to mining applications and is not applicable to the assessment of this application, however many of the matters listed for consideration for mining applications have been addressed separately in the report. The significance of the resource has not fully been justified as compared to the Ardmore Park quarry resource discussed separately.

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

Before determining an application for consent for development for the purposes of mining, petroleum production or extractive industry, **the consent authority must:**

- (a) **consider:**
 - (i) the **existing uses and approved uses of land in the vicinity of the development**, and

- (ii) ***whether or not the development is likely to have a significant impact on the uses that, in the opinion of the consent authority having regard to land use trends, are likely to be the preferred uses of land in the vicinity of the development, and***
- (iii) ***any ways in which the development may be incompatible with any of those existing, approved or likely preferred uses, and***
- (b) ***evaluate and compare the respective public benefits of the development and the land uses referred to in paragraph (a) (i) and (ii), and***
- (c) ***evaluate any measures proposed by the applicant to avoid or minimise any incompatibility, as referred to in paragraph (a) (iii).***

In considering items under Clause 12(a)(i) the existing uses and approved uses in the vicinity of the development will be discussed below.

The immediate surrounding area is characterised by a mixture of land uses including extensive agriculture, intensive agriculture (poultry farm) as well as rural lifestyle lots. Located near or within the vicinity of the site include:

- 249 Tiyces Lane (existing dwelling and vacant lot with proposed dwelling);
- 287 Tiyces Lane (existing dwelling and horse training)
- 16917 Hume Highway (intensive poultry farm);

The wider surrounding area includes a rural subdivision along Marian Vale Road which has approval for 37 lots. A small number of houses and a commercial aquaculture (fish farm) have been built within the subdivision.

Most of the rural land within the LGA has a minimum lot area under GMLEP of 100ha, despite there being lots previously approved or created with approximately 10-40ha. The minimum lot area surrounding the site is 20ha. The preferred uses are therefore larger rural lifestyle lots with associated dwellings and rural development.

In considering items under Clause 12(a)(ii) and (ii), the Air Quality Assessment and Noise Assessments prepared by Benbow Environmental (BE) (dated 10/5/16 and 9/5/16) are based on the most conservative approach and worst case scenario. This should provide all stakeholders including community and government authorities with confidence that the proposal could proceed with minimal or no impact on the environment and human health, however the EPA noted *“much public concern” and despite the application being conditioned to meet the EPA guideline requirements “this does not guarantee that potential land use conflicts may not still arise as a result of the proposal given historical planning decisions made with regard to the area surrounding the site.*

The proposed operation of the quarry for a maximum of 5.9 years is not a long term development and therefore does not pose a significant long term impact on the preferred uses of the locality.

There are inconsistencies in the BE Air Quality Assessment and Noise Assessments site plans which do not show the proposed ingress from the Hume Highway to the quarry site in the current proposed location, nor does it assess the potential noise impact of the deceleration and acceleration lanes proposed on the Hume Highway. Despite having the EPA GTAs the inconsistencies give further weight and cause to the recommendation to refuse the application.

The BE Report recommends a variable noise limit of between 39-47 $L_{Aeq\ 15\ min}$ for quarry operations and between 44 -56 $L_{Aeq\ 15\ min}$ for the construction noise limit, based on four proposed monitoring locations. The EPA GTAs further limit operational noise from the premises to not exceed 35 $L_{Aeq\ 15\ min}$ for receptors 1-12 and construction noise limits from the premises varying between 35 45 $L_{Aeq\ 15\ min}$ depending on the receptor location.

In considering items under Clause 12(b) the development can be considered to have a potential public benefit with an upgrade to Tiyces Lane and the Hume Highway, however without environmental assessments and measures to identify and mitigate any environmental impact (e.g. on flora or fauna or as a result of the construction works) the overall benefit of the proposal cannot be ascertained.

In conclusion, the EPA have conditioned the application to comply with the current standards despite inconsistent plans being included in the Noise and Air Quality Reports. The proposed monitoring requirements would need to be revised to comply with the revised limits and compliance reported to the EPA should the application be approved to ensure full compliance with current EPA noise requirements.

Clause 12A Consideration of voluntary land acquisition and mitigation policy –

Not Applicable as the development is not State significant development.

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

Clause 13 states:

(1) This clause applies to an application for consent for development on land that is, immediately before the application is determined:

- (a) in the vicinity of an existing mine, petroleum production facility or extractive industry, or*
- (b) identified on a map (being a map that is approved and signed by the Minister and copies of which are deposited in the head office of the Department and publicly available on the Department's website) as being the location of State or regionally significant resources of minerals, petroleum or extractive materials, or*

Note. At the commencement of this Policy, no land was identified as referred to in paragraph (b).

- (c) identified by an environmental planning instrument as being the location of significant resources of minerals, petroleum or extractive materials.*

Note. [Sydney Regional Environmental Plan No 9—Extractive Industry \(No 2—1995\)](#) is an example of an environmental planning instrument that identifies land as containing significant deposits of extractive materials.

(2) Before determining an application to which this clause applies, the consent authority must:

- (a) consider:*
 - (i) the existing uses and approved uses of land in the vicinity of the development, and*
 - (ii) whether or not the development is likely to have a significant impact on current or future extraction or recovery of minerals, petroleum or extractive materials (including by limiting access to, or impeding assessment of, those resources), and*
 - (iii) any ways in which the development may be incompatible with any of those existing or approved uses or that current or future extraction or recovery, and*
- (b) evaluate and compare the respective public benefits of the development and the uses, extraction and recovery referred to in paragraph (a) (i) and (ii), and*
- (c) evaluate any measures proposed by the applicant to avoid or minimise any incompatibility, as referred to in paragraph (a) (iii).*

The land is not identified on the GMLEP 2009 Mineral Resource Map however it is identified on a map (Refer to Figure 9) prepared from the Resources and Energy Division of NSW Trade and Investment titled *Mineral Resources Audit Goulburn Mulwaree LGA* (Jan 2015) as being significant. The EIS proposed that the development with a maximum extraction rate of up to 30,000 cubic metres per year and a life of 5.9 years the development will impact less properties particularly with regards to traffic if commenced and completed prior to the release of Marian Vale allotments (approximately 1.7km to the south along Tiyces Lane at the junction with Marian Vale Road).

The *Mineral Resources Audit Goulburn Mulwaree LGA* (Jan 2015) provides transitional zones which have been based upon previous criteria developed by the then EPA criteria of 1000m for where blasting is or would be used and 500m for sites where blasting is not required. The transitional zone surrounding the identified resource identified in the *Mineral Resources Audit* is 500m.

It is acknowledged that Goulburn Mulwaree LGA is located within an important natural resource area and this development is well located to transport this material onto the national highway less than 2km from the site. EPA have proposed GTAs to ensure the compatibility of the development with the surrounding locality. It is accepted that the proposed conditions provided by the EPA will provide an acceptable limit to the development. The measures in the OEMP do not fully address how the conditions will be enforced and complied with or resolved if exceeded.

Council is not aware of any proposed development applications or undetermined applications in the vicinity of the quarry site development except for a modification to the existing fish farm. Without an environmental assessment of the s138 Roads Act works the full environmental impacts cannot be identified and fully assessed and as a result refusal is recommended.

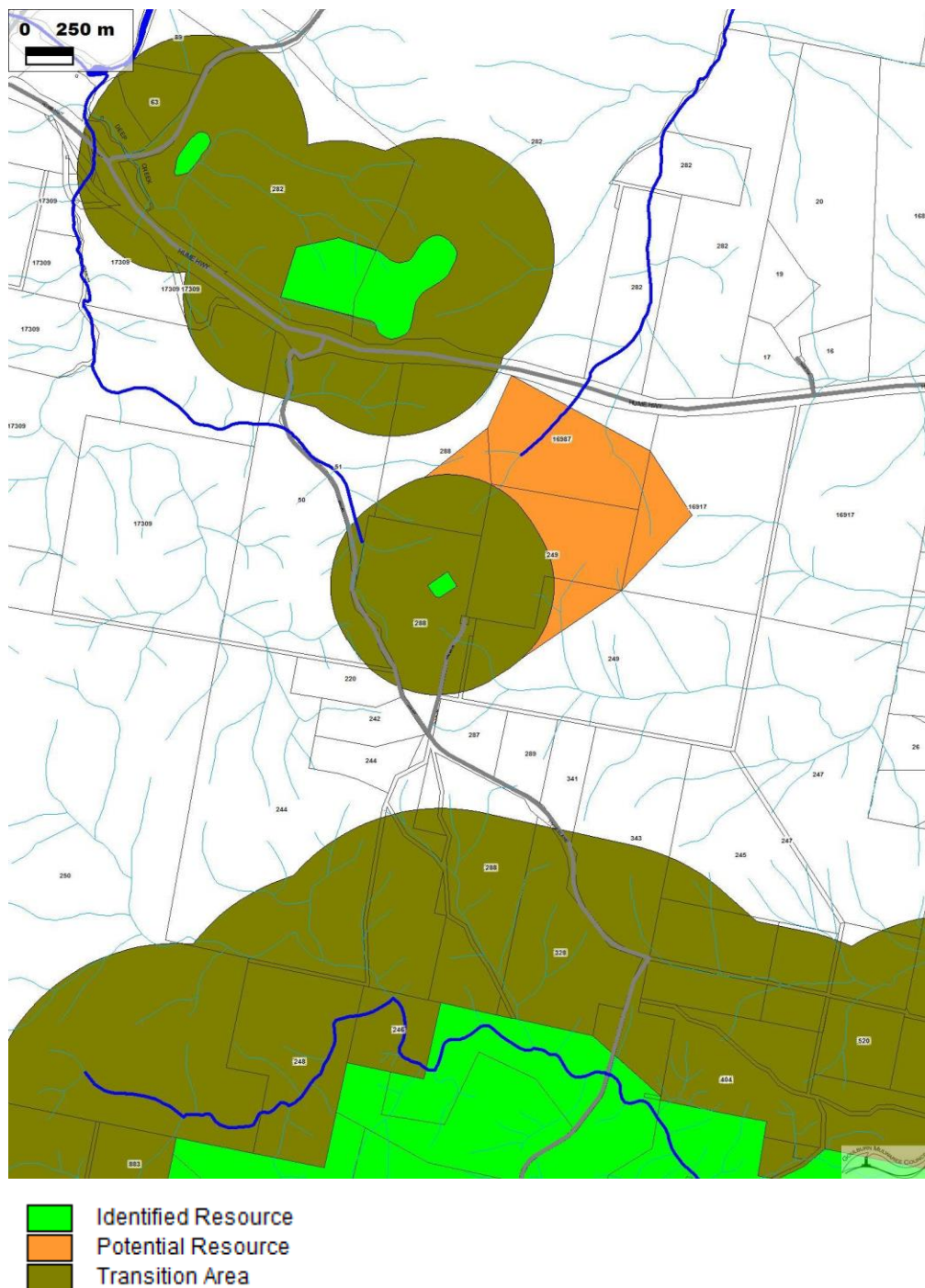


Figure 9: Extract from Council's GIS system with Department of Resources and Energy's 2015 Mineral Resource Audit overlay

Clause 14 Natural resource management and environmental management

Clause 14 states:

(1) Before granting consent for development for the purposes of mining, petroleum production or extractive industry, **the consent authority must consider whether or not the consent should be issued subject to conditions aimed at ensuring that the development is undertaken in an environmentally responsible manner, including conditions to ensure the following:**

(a) that impacts on significant water resources, including surface and groundwater resources, are avoided, or are minimised to the greatest extent practicable,

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

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

(2) Without limiting subclause (1), in determining a development application for development for the purposes of mining, petroleum production or extractive industry, **the consent authority must consider an assessment of the greenhouse gas emissions (including downstream emissions) of the development, and must do so having regard to any applicable State or national policies, programs or guidelines concerning greenhouse gas emissions.**

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

The application does not fully address matters raised under Clause 14(1)(b) and (c) as no flora and fauna assessment has been undertaken as a result of road widening or calculation to the extent of greenhouse gas emissions. Without an assessment of the impacts, potential measures to mitigate cannot fully be assessed.

The EIS suggests the efficiency of the development being able to connect onto the Hume Highway quoting "The resource is also capable of direct access to and from the Hume Highway for efficient management or transport and giving direct access to transport routes to users with no interference to other rural roads that might otherwise need traffic management measures imposed". However there is no assessment on the required 36km round trip to travel north or 25km to travel south as imposed by RMS requirements and proposed by the Traffic Code of Conduct by excluding vehicle use of the existing Hume Highway median at the existing Tiyces Lane intersection.

The RMS requires that quarry trucks must not undertake any right turn movements between Tiyces Lane and the Hume Highway. Instead, all vehicles wishing to exit Tiyces Lane and travel north must do so by travelling south along the Hume highway and undertaking a u-turn at the South Goulburn Interchange (near the Big Merino and South Goulburn Service Centre) which is approximately a 36km round trip. Similarly, all heavy vehicles northbound wishing to enter the development must travel north along the Hume Highway and undertake a u-turn at the interchange south of Marulan (at the intersection of Jerrara Road/Marulan South Road) which is an approximately 25km round trip.

Based on the ABS *Survey of Motor Vehicle Use 12 Month Ended 30 June 2016* (9208.0) an average of 56 litres/100km trip for an articulated truck and current estimate of \$1.30/ litre for diesel equates to an additional consumption of \$22/vehicle or \$308/day (based on 14 vehicle movements) or \$1694 (5.5 days/week). It appears from the OEMP (document d) that the operating hours proposed is "other activities" for product haulage as it does not fit within the construction or crushing activities definitions. Based on 5.5 day per week for 45.5 weeks, fuel consumption is estimated at approximately \$77,077 (1694 x 45.5).

Whilst the mandatory conditions numbered 1 and 2 of the EPA General Terms of Approval (GTA) and the Water NSW conditions in particular deal with the proper and efficient use of equipment, best practice road and stormwater control conditions while the RMS and Council road conditions ensure the development is accessed to an acceptable and safe standard the onus should be on the applicant to address the greenhouse gas emissions and environmental impacts of the proposed road works within the application.

The issue of whether owner's consent is required for proposed road widening along Tiyces Lane is addressed in Section 3.8.1 Development Control Assessment and consideration of environmental impact of the Section 138 road works of the Roads Act section of the assessment report.

The adequacy of the greenhouse gas assessment is deficient in the application and the necessary assessment of energy efficiency under this clause cannot be determined without a proper and detailed report. In accordance with Clause 14 of Mining SEPP, details on energy efficiency which must be considered prior to determination are not available to enable to make a proper assessment and the application is unable to be determined in the absence of a details.

Clause 15 Resource recovery

Clause 15 states:

(1) *Before granting consent for development for the purposes of mining, petroleum production or extractive industry, the consent authority **must consider** the efficiency or otherwise of the development in terms of resource recovery.*

(2) *Before granting consent for the development, the consent authority must consider whether or not the consent should be issued subject to conditions aimed at optimising the efficiency of resource recovery and the reuse or recycling of material.*

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

The applicant has stated that the current application is proposed to confirm the grade and suitability of the material and the operation may be enlarged subject to a future application. This is not considered an acceptable means of determining the efficiency of the material and extraction. The proposed 10 day cycle is considered a means to maximize the efficiency of the extraction; however the efficiency of machinery to be used has not been quantitatively assessed or compared. The development excludes blasting and the basalt pit is identified as having good rippability but measures to optimize efficiency appear to be lacking in the EIS.

In accordance with Clause 15 (1) and (3) of Mining SEPP, details are deficient to enable the proper assessment of the efficiency of the extraction and the application is unable to be determined in the absence the details.

Clause 16 Transport

Clause 16 states:

(1) *Before granting consent for development for the purposes of mining or extractive industry that involves the transport of materials, the **consent authority must consider** whether or not the consent should be issued subject to conditions that do any one or more of the following:*

- (a) *require that some or all of the transport of materials in connection with the development is not to be by public road,*
- (b) *limit or preclude truck movements, in connection with the development, that occur on roads in residential areas or on roads near to schools,*
- (c) *require the preparation and implementation, in relation to the development, of a code of conduct relating to the transport of materials on public roads.*

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

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

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

(3) **The consent authority:**

- (a) **must not determine the application** until it has taken into consideration any submissions that it receives in response from any roads authority or the Roads and Traffic Authority within 21 days after they were provided with a copy of the application, and
- (b) **must provide them with a copy of the determination.**
- (4) *In circumstances where the consent authority is a roads authority for a public road to which subclause (2) applies, the references in subclauses (2) and (3) to a roads authority for that road do not include the consent authority.*

Access to and from the site is only available by public road and there is no alternative transport options. The above provisions have been considered and the application includes a draft Traffic Code of Conduct and limits truck movements outside school bus hours. The RMS were consulted under s138 *Roads Act* and RMS requirements have been received.

Council's assessment raises concerns that design requirements have been provided for acceleration and deceleration lane works on the Hume Highway by RMS (a critical element of the application) however there is no evidence of the draft design plans and implications as final plans have not been prepared to show compliance with RMS requirements.

Currently Tiyces Lane from the Highway to the site entrance is generally a 6m wide seal, plus gravel shoulders that vary from zero to 1.5m each side. The applicant proposes to only upgrade the north bound lane of Tiyces Lane to Council's DCP standards from the site egress to the Hume Highway. The north bound lane would therefore be proposed to be widened by approximately 0.5m to 3.5m wide with the south bound lane remaining at approximately 3m wide with the shoulder varying from 0m to 1.5m.

Council's Development Engineer is not in support of variation to DCP 2009. Tiyces Lane over the haulage route is required to have:

- ***A 7 metre seal plus 1 metre shoulder each side. This is clarified as each lane shall have a minimum sealed width of 3.5m. In addition there shall be a 1m shoulder each side;***
- ***80km/h design standard;***
- ***A remaining life of 10 years for the pavement, from the date of commencement of operations. Therefore, the 2009 analysis will need to be updated close to the date of commencement of operations and pavement action taken as necessary;***
- 8m wide culverts and bridges;
- Edge lines and centreline markings shall be provided.
- A Driver Code of Practice shall be implemented for heavy vehicle drivers limiting:
- The speed of heavy vehicles along Tiyces Lane to 60km/h;
- Vehicle movement operations not occurring during school bus drop off and pick up times.
- The applicant's proposal to construct the rural property access as per Document E of the applicant's plans, is satisfactory. The access shall be sealed from the gate to the sealed carriageway of Tiyces Lane;
- Developer Contributions
In accordance with Council's S94 Plan, development contributions apply due to this development involving heavy vehicle movements. The formula is given below (2017/18 rate).
Contribution per tonne = \$0.0478 / km / tonne
In this case, the length of the haulage route is approximately 2km, with the exact length to be determined.

Council is not prepared to vary the DCP to such an extent

Based on the lack of supporting information, additional community and council safety concerns, Council is not prepared to vary the minimum haulage requirements under s7.2.3 of GMDCP.

Clause 17 Rehabilitation

Clause 17 states:

- (1) *Before granting consent for development for the purposes of mining, petroleum production or extractive industry, **the consent authority must consider** whether or not the consent should be issued subject to conditions aimed at ensuring the rehabilitation of land that will be affected by the development.*
- (2) *In particular, the consent authority must consider whether conditions of the consent should:*
 - (a) *require the preparation of a plan that identifies the proposed end use and landform of the land once rehabilitated, or*
 - (b) *require waste generated by the development or the rehabilitation to be dealt with appropriately, or*
 - (c) *require any soil contaminated as a result of the development to be remediated in accordance with relevant guidelines (including guidelines under section 145C of the Act and the [Contaminated Land Management Act 1997](#)), or*
 - (d) *require steps to be taken to ensure that the state of the land, while being rehabilitated and at the completion of the rehabilitation, does not jeopardize public safety.*

Clause 17 is considered to be satisfied conditions (from Water NSW and EPA) and the objectives of the draft OEMP. Water NSW and the EPA have applied conditions relating to the rehabilitation of the quarry. Refer to their draft conditions of consent in their responses in Document 02 (Submissions) of the package of information to support the assessment.

3.4.6 State Environmental Planning Policy (Rural Lands) 2008

Clause 5 enables the Rural Lands SEPP to prevail over GMLEP 2009

Clause 7 *Rural Planning Principles* are as follows:

- (a) *the promotion and protection of opportunities for current and potential productive and sustainable economic activities in rural areas,*
- (b) *recognition of the importance of rural lands and agriculture and the changing nature of agriculture and of trends, demands and issues in agriculture in the area, region or State,*
- (c) *recognition of the significance of rural land uses to the State and rural communities, including the social and economic benefits of rural land use and development,*
- (d) *in planning for rural lands, to balance the social, economic and environmental interests of the community,*
- (e) *the identification and protection of natural resources, having regard to maintaining biodiversity, the protection of native vegetation, the importance of water resources and avoiding constrained land,*
- (f) *the provision of opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities,*
- (g) *the consideration of impacts on services and infrastructure and appropriate location when providing for rural housing,*
- (h) *ensuring consistency with any applicable regional strategy of the Department of Planning or any applicable local strategy endorsed by the Director-General.*

The EIS (p 63) states that “the proposed use is not inconsistent with ‘the promotion and protection of opportunities for current and potential productive and sustainable economic activities in rural areas’ in that it recognises the significance of the economic geological resource that is proposed to be extracted, the resource is in a location where it can be extracted without significant impact on the environment (and in relation to assessment within the Sydney Catchment area will result in a neutral or beneficial impact) as a balance to ‘social, economic and environmental interests of the community’. The resource can be extracted at a time prior to the potential development of the land for other purposes in close proximity to Goulburn that could sterilise the resource.”

The assessment has raised concerns that (d) and (e) above have not been identified or assessed in the application. The development is for approximately 5.9 years extraction at maximum extraction with the product proposed to be used for concrete aggregate for the construction industry. The site having an area of approximately 40ha is considered to have limited agricultural productive potential and the proposed use of the site as an Extractive Industry is considered a productive and sustainable economic activity.

The development will not restrict the use of surrounding lands for rural activities.

Based on the lack of supporting information to items (d) and (e) to enable the assessment of the effect of the proposed development (i.e. road widening) on flora and fauna the application is deficient. Therefore the application is unable to be determined in the absence of a biodiversity assessment based on detailed road design plans.

3.4.7 State Environmental Planning Policy (State and Regional Development) 2011 SEPP (State & Regional Development)

A regional panel is empowered as a consent authority and may exercise any powers that would be vested in a consent authority under an environmental planning instrument. In this case, the regional panel is the consent authority as conferred on it under *State Environmental Planning Policy (State and Regional Development) 2011* due to the development being listed as Designated Development Extractive Industry. Development for which regional panels may be authorised to exercise consent authority functions of councils in accordance with Schedule 4A of the EP&A Act.

3.4.8 State Environmental Planning Policy Sydney Water Drinking Catchment 2011 – (SWDC SEPP)

The SWDC SEPP provides that a consent authority must not grant consent on land in the Sydney Drinking Water Catchment unless it is satisfied that the carrying out of the proposed development would have a neutral or beneficial effect on water quality.

The SWDC SEPP further provides that a consent authority must not grant consent to the carrying out of development on land in the Sydney drinking water catchment except with the concurrence of the Water NSW (previously known as 'SCA').

A Water Cycle Management Study (WCMS) and separate Waste Water Assessment Report has been undertaken by SEEC Consulting and forms part of the Development Approval and evaluates existing conditions and likely impacts of the development. The WCMP and WWAR demonstrates how the development will have a neutral effect on the water quality local drainage systems and the ground water on site, and that the management practices are sustainable and comply with relevant Government standards.

The DA has been referred to Water NSW and the concurrence of the Chief Executive pursuant to clause 11 of this SEPP with draft conditions obtained should the application be approved.

3.4.9 State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017

The SEPP came into force on 25 August 2017. General savings and transitional provisions apply under clause 26(2)

"26 General savings and transitional provisions

(2) An application for a permit to remove vegetation under an environmental planning instrument that has not been determined on the commencement of this Policy may continue to be dealt with as if it had been made under this Policy."

The works do not fall under the definition of Routine Agricultural Management Activity (RAMA) works under the former *Native Vegetation Act 2003* and consent for removal of Native Vegetation is required by Council under the transitional arrangements. Council is not prepared to approve road works without an environmental assessment and information including designs and survey works for the proposed Section 138 Road Works.

3.5 Goulburn Mulwaree Local Environmental Plan 2009 - (GMLEP 2009)

Part 1 Preliminary

The site is within the Goulburn Mulwaree Local Government Area ('LGA') and the GMLEP 2009 is the applicable Local Environmental Plan.

GMLEP 2009 is a 'Standard Instrument LEP' prepared in accordance with S33A of the EP&A Act, which was published and commenced on 20 February 2009.

Clause 1.2 Aims of the Plan

The following aims of GMLEP 2009 are considered relevant to the proposed development:

- (a) *to promote and co-ordinate the orderly and economic use and development of land in the area,*
- (b) *to provide a framework for the Council to carry out its responsibility for environmental planning provisions and facilitate the achievement of the objectives of this Plan,*
- (c) *to encourage the sustainable management, development and conservation of natural resources,*
- (d) *to promote the use of rural resources for agriculture and primary production and related processing service and value adding industries,*
- (e) *to protect and conserve the environmental and cultural heritage of Goulburn Mulwaree,*
- (i) *to allow development only if it occurs in a manner that minimises risks due to environmental hazards, and minimises risks to important elements of the physical environment, including water quality,*
- (j) *to provide direction and guidance as to the manner in which growth and change are to be managed in Goulburn Mulwaree,*
- (k) *to protect and enhance watercourses, riparian habitats, wetlands and water quality within the Goulburn Mulwaree and Sydney drinking water catchments so as to enable the achievement of the water quality objectives*

Clause 1.4 Definitions

Applicable definitions from the GMLEP 2009 include:

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

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

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

Clause 1.9 Application of SEPPs

Enables the SEPPs to override GMLEP 2009.

Clause 1.9A Suspension of Covenants, Agreements and Instruments

The title of the land of Lot 2 is covered by a restriction as to user under s88B of the *Conveyancing Act 1919*, fourthly referred to (and to the benefit of Council) listing that “access to and from the lot burdened by and for all mechanised and horse drawn vehicles including motor cars, trucks and tractors is prohibited to and from the Hume Highway.” Refer to Figure 2 of Section 1.3 earlier in the assessment report.

Despite Clause 1.9A suspending covenants, agreements and Instruments subclause (2)(a) does not apply to a covenant imposed by the Council or that the Council requires to be imposed.

The restriction states that Council is the authority, and therefore is not affected by clause 1.9A. The EIS does not request a variation or release of the restriction but provides a letter from the owner to create an easement for access. The letter of authority has no legal standing. Council has considered the application and is not prepared to release the restriction due to the following reasons:

- Design Plans showing compliance with RMS requirements has not been provided
- The environmental impacts of the road designs have not been assessed

Furthermore, restriction fifthly referred to prohibits the construction of roads or any activity that involves the clearing of vegetation or disturbance of habitat. The actual proposed clearing of protected vegetation for the construction of the internal egress access road is unclear as it is located within/adjacent to the vegetation retention site protected by an 88B Instrument of which Council has the authority to vary. Without clear details of the clearing required Council is not prepared to release or vary the restriction. The proposal to increase the area of vegetation by an additional 8.8ha is included in the application to help justify the development but does not address the restriction.

Based on the lack of supporting information Council is not prepared to vary release the restriction fourthly or fifthly listed in the restriction on the title.

Part 2 Permitted or Prohibited Development

Clause 2.2 Zoning

The land is currently zoned E3 Environmental Management. Refer below to extract GMLEP 2009 sourced from Council's GIS Mapping system. It is noted that the zone to the GMLEP 2009 was amended in July 2012 from RU2 Rural Landscape to E3 Environmental Management.

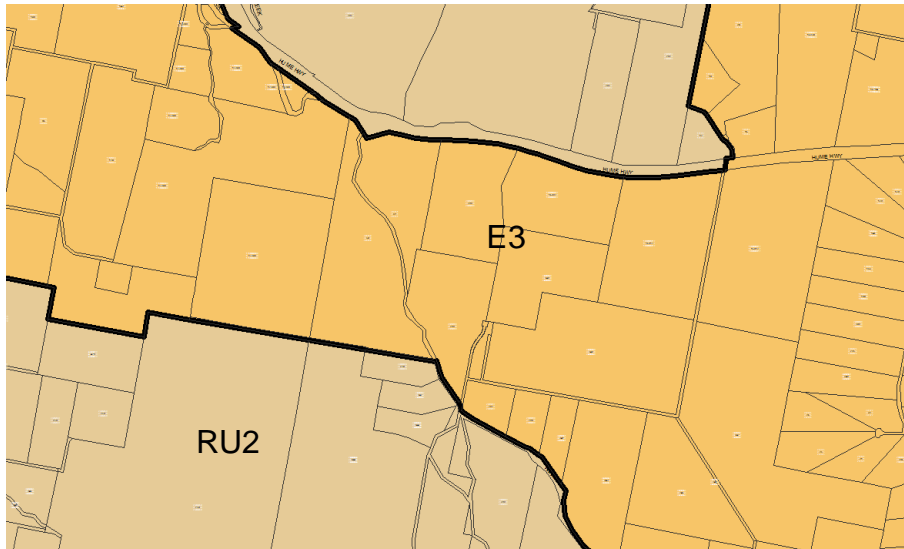


Figure 10: Extract from the GMLEP 2009 Land Zoning Map.

Clause 2.3 zone Objectives and Land Use Table

Clause 2.3(2) (Zone Use and Land Use Table) provides that the consent authority must have regard to the objectives for development in a zone when determining a development application in respect of land within the zone. The zone objectives for the E3 Environmental Management zone are:

- *To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.*
- *To provide for a limited range of development that does not have an adverse effect on those values.*
- *To facilitate the management of water catchment areas, environmentally sensitive land and areas of high conservation value.*

2 Permitted without consent

Environmental protection works; Extensive agriculture; Home occupations

3 Permitted with consent

Agriculture; Air strips; Animal boarding or training establishments; Camping grounds; Caravan parks; Cemeteries; Centre-based child care facilities; Community facilities; Depots; Dwelling houses; Eco-tourist facilities; Emergency services facilities; Entertainment facilities; Environmental facilities; Farm buildings; Forestry; Home-based child care; Home businesses; Home industries; Information and education facilities; Recreation areas; Recreation facilities (indoor); Recreation facilities (outdoor); Research stations; Roads; Rural workers' dwellings; Secondary dwellings; Signage; Stock and sale yards; Tourist and visitor accommodation; Water recycling facilities

4 Prohibited

Industries; Intensive livestock agriculture; Multi dwelling housing; Residential flat buildings; Retail premises; Rural industries; Seniors housing; Service stations; Serviced apartments; Warehouse or distribution centres; Any other development not specified in item 2 or 3

The use of the subject site as an Extractive Industry was not considered a use compatible with the Environmental Management zone and consequently prohibited however the Mining SEPP overrides GMLEP 2009. Refer to Section 3.4.5 of this report for assessment of this legislation discussion.

Submissions from the community raise concerns as to the compatibility of the quarry in the locality.

Revegetation on-site as a result of planting will potentially enhance the environmental characteristics of the site more than grazing, which is permitted without consent and would not require 8.8ha of revegetation. Therefore, the proposed use can be considered an employment generating use that could protect and enhance the ecological and aesthetic values of the site and locality viz:

- the proposal will not create a visible scar from the surrounding ground levels

- increase native vegetation including screening,
- the development has been assessed as being able to achieve a neutral or beneficial effect on water quality and would therefore not have a negative impact on objective dot point 3 above.

While the proposal itself is identified to potentially protect and enhance the ecological and aesthetic values, the proposed road works are not strictly consistent with the objectives as the *ecological, scientific, cultural and aesthetic values* have not been assessed for the acceleration lane and deceleration lane proposed along the Hume Highway and the road widening along Tiyces Lane. Therefore the development cannot be assessed as development that does not have an adverse effect on those values.

Extractive Industry is identified as Prohibited under GMLEP 2009 because it does not fall into a category of development specified as permissible with or without consent. Section 36 of the EPA Act and Clause 1.9 of GMLEP 2009 provide that this is subject to any applicable SEPP. Clause 7(3)(a) of Mining SEPP provides that development for the purposes of an extractive industry may be carried out with development consent on land where development for the purposes of agriculture or industry may be carried out (with or without development consent). While development for the purposes of Industry is prohibited in the E3 zone, agriculture is permissible in the E3 zone with development consent. Also refer to Section 3.4.5 earlier in this report.

Part 3 Exempt and Complying Development

Clause 3.3 Environmentally Sensitive Area Excluded

Clause 3.3 Exempt and Complying Development is not available to the development by virtue of the development involves the removal, pruning or other clearing of vegetation that requires a permit, development consent or other approval by way of s88B restriction as to user. An extract of the relevant subclause is provided below:

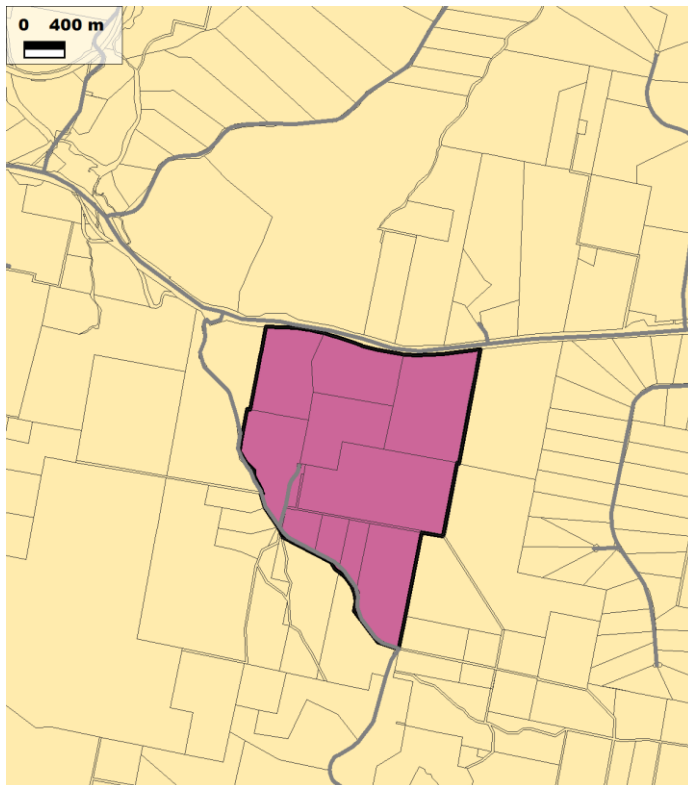
(5)(b) To be exempt development, the development must ... (b) not involve the removal, pruning or other clearing of vegetation that requires a permit, development consent or other approval unless it is undertaken in accordance with a permit, development consent or other approval.

Clearing requires approval over the protected areas and it is inconclusive as to the extent and location of clearing to provide the necessary approval on the information provided.

Part 4 Principal Development Standards

Clause 4.1 Minimum Lot Sizes

Amendment No. 2 to GMLEP amended the minimum lot area for subdivision within the Curlewin Lane area from 100ha to 40ha. Refer Figure 11 below and the AB2 area.



Key

Minimum Lot Size

AB2	40 ha
AD	100 ha

Figure 11: Current Minimum Lot Sizes sourced from Council's GIS Mapping System

From a review of the lot sizes within the 40ha minimum lot size area (i.e. AB2)

- 3 lots have an area of approximately 10ha
- 5 lots have an area of 40-50ha
- 1 lot has an area of approximately 69ha
- 1 lot has an area of 89 ha (and has potential for subdivision Lot 72 DP 750038 (part 249 Tiyces Lane)

This change in the LEP is noted and creates the potential for one additional allotment within the 40ha minimum lot size.

Clause 5.3 Development near zone boundaries

Although the development is near a zone boundary this clause specifically states it does not apply to the E3 zone.

Clause 5.9 Preservation of trees or vegetation

This clause was repealed under the recent Biodiversity legislation. Refer to Section <> of the report for assessment under State Environmental Planning Policy Vegetation in Non-Rural Areas 2017.

Clause 5.9AA Trees or vegetation not prescribed by a Development Control Plan

This clause was repealed under the recent Biodiversity legislation. Refer to Section <> of the report for assessment under State Environmental Planning Policy Vegetation in Non-Rural Areas 2017.

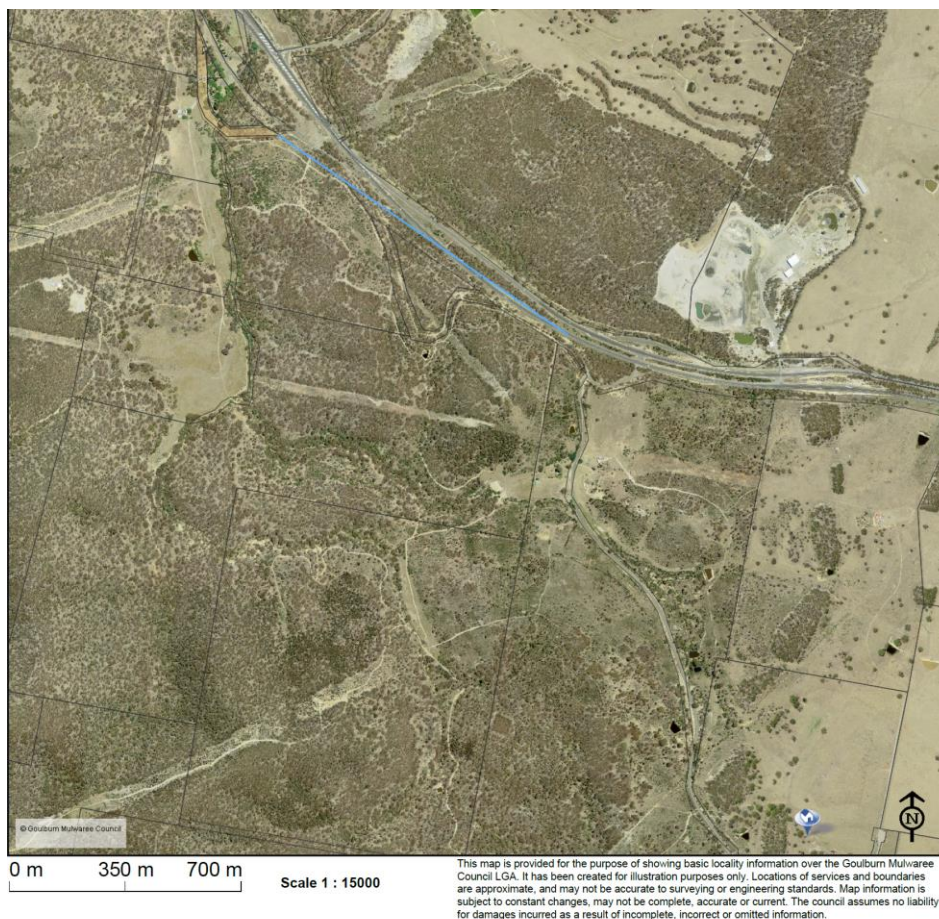
Clause 5.10 Heritage Conservation

The EIS does not identify any matters for consideration under clause 5.10 as page 153 of the EIS states "The site is not within a heritage conservation area and is not identified as a heritage item. "

The nearest Heritage Items are the Towrang Bridge and Culverts and Towrang Convict Stockade (HI 345 and 346 respectively) which are located approximately 2.5km north east of the development or approximately 1.07km from the proposed commencement of the acceleration lane (refer to an extract of Council's GIS Figure 12 below).

HI 345 states:

"The Towrang Bridge and Culverts are historically very significant for their association with the convict era and with the building of the Great South Road and thus the development of Goulburn and the southern region of New South Wales. The structures provide insights into early road building methods and they have rarity value due to the many changes made to the line of this highway which have resulted in the loss of much of the original road (Criterion A.4 and B.2). The bridge and culverts, having carried traffic over an extensive period, reflect a fine level of workmanship in stone (Criterion F.1). The Towrang Bridge and culverts are historically and archaeologically very significant for their association with the convict era and with the building of the Great South Road and therefore, the development of Goulburn and the southern region of New South Wales. The structures provide an insight into early road building methods and they have rarity value due to the many changes made to the line of this highway which have resulted in the loss of much of the original road. The bridge and culverts, having carried traffic over an extensive period, reflect a fine level of stonemasonry. They are considered as being of NSW State Heritage Significance."



Key

Blue line estimated approx. 1067m

Figure 12: Approximately distance from Tiyces Lane Acceleration Lane to Towrang Bridge and Culverts

The proposed acceleration lane concept plan (document I(k)) identifies the acceleration lane extending past HI345. Furthermore the RMS response dated 14 August 2017 under the first dot point states "...Noting the lengths indicated on the current plans may need to be increased upon further assessment."

Clause 5.10(4) "Effect of proposed development on heritage significance" states that "The consent authority must, before granting consent under this clause in respect of a heritage item or heritage conservation area, consider the effect of the proposed development on the heritage significance of the item or area concerned."

Clause 5.10(5) permits Council to require a heritage management document to be prepared that assesses the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item or heritage conservation area concerned. Given that the statement of significance relevant to the Heritage Item suggests it is of state significance a heritage management document should be required prior to assessment.

It is contended that the lack of design plans to comply with the RMS requirements makes assessment against clause 5.10 unable to be satisfied without a Statement of Heritage Impact and acceleration design plans.

In accordance with Clause 5.10(4) of GMLEP 2009, details are not available to enable the assessment of the effect of the proposed development (i.e. acceleration lane) on the heritage significance of HI345. Therefore the application is deficient and the application is unable to be determined in the absence of a Heritage Impact Assessment and detailed acceleration road design plans.

Heritage is discussed further at Section 3.7.4 of this report.

Part 7 Local provisions – general

Clause 7.1A Earth Works

While the Development Application consists of earth works which are not minor in nature these aspects have been considered and applied for in the Development Application.

(1) *The objectives of this clause are as follows:*

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

(2) *Development consent is required for earthworks, unless:*

- (a) *the work is exempt development under this Plan or State Environmental Planning Policy (Exempt and Complying Development Codes) 2008, or*
- (b) *the consent authority is satisfied the earthworks are of a minor nature.*
- (3) ***Before granting development consent for earthworks, the consent authority must consider the following matters:***
 - (a) ***the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality,***
 - (b) ***the effect of the proposed development on the likely future use or redevelopment of the land,***
 - (c) ***the quality of the fill or of the soil to be excavated, or both,***
 - (d) ***the effect of the proposed development on the existing and likely amenity of adjoining properties,***
 - (e) ***the source of any fill material or the destination of any excavated material,***
 - (f) ***the likelihood of disturbing Aboriginal objects or other relics,***
 - (g) ***proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area.***

The excavation of the quarry site has been assessed with particular consideration from Councils Engineers, Water NSW and EPA with draft Conditions of consent recommended with regard to the management, storage and re-use of the excavation material.

With regards to the proposed road works to Hume Highway and Tiyces Lane there has been no assessment to items 7.1(3)(a)-(g). While standard sediment and erosion conditions of consent are

recommended and conditions to protect air quality the additional matters quoted above including (3)(a)-(g) have not been satisfied.

In accordance with Clause 7.1A of GMLEP 2009, details are not available to enable the assessment of the effect of the proposed development (i.e. acceleration and deceleration lane along the Hume Highway and works to Tiyces Lane) is deficient and the application is unable to be determined in the absence of a details design plans.

Clause 7.2 Terrestrial Biodiversity

The development is proposed within the land mapped as “terrestrial biodiversity” on the Natural Resources Map. Please see Figure 13 below.

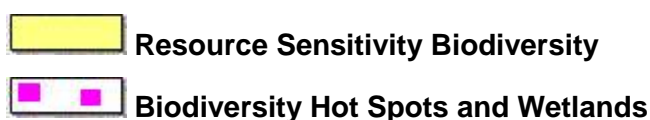
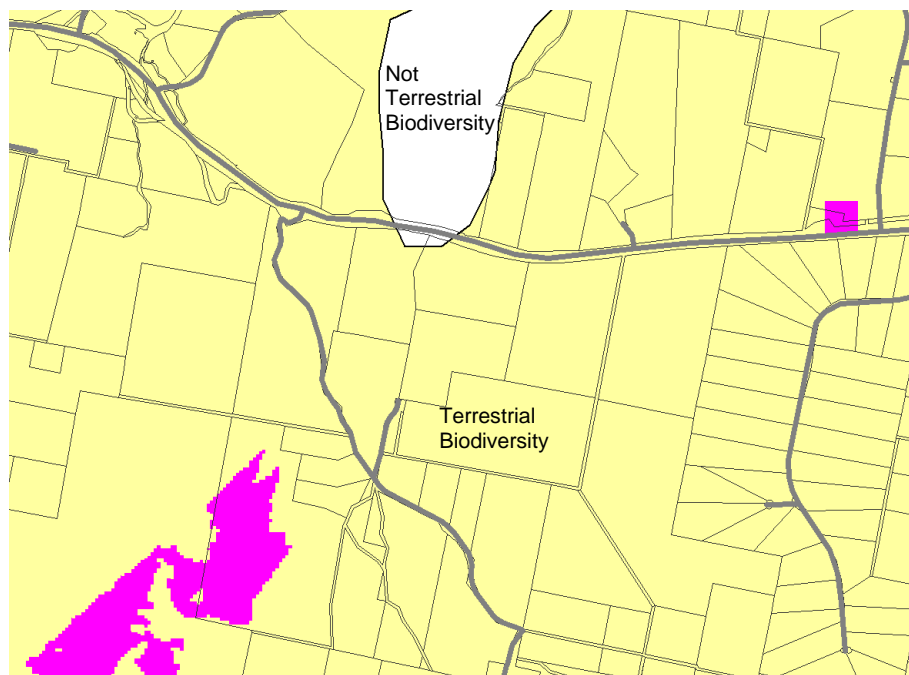


Figure 13: Extract from Terrestrial Biodiversity layer from Council's GIS Mapping System.

The objectives of the clause are triggered by the precautionary measures to protect significant stands of vegetation and wildlife corridors and listed below:

- (1) *The objectives of this clause are to protect, maintain or improve the diversity of the native vegetation, including:*
 - (a) *protecting biological diversity of native flora and fauna, and*
 - (b) *protecting the ecological processes necessary for their continued existence, and*
 - (c) *encouraging the recovery of threatened species, communities or populations and their habitats.*
- (2) *This clause applies to development on land that is identified as “Biodiversity” on the Terrestrial Biodiversity Map.*
- (3) **Development consent must not be granted** to development on land to which this clause applies **unless the consent authority has considered a report that addresses the following matters:**
 - (a) **identification of any potential adverse impact of the proposed development on any of the following:**
 - (i) **a native vegetation community,**
 - (ii) **the habitat of any threatened species, population or ecological community,**
 - (iii) **a regionally significant species of plant, animal or habitat,**
 - (iv) **a habitat corridor,**
 - (v) **a wetland,**

- (vi) *the biodiversity values within a reserve, including a road reserve or a stock route, and*
- (b) *a description of any proposed measures to be undertaken to ameliorate any such potential adverse impact.*
- (4) ***Development consent must not be granted*** to development on land to which this clause applies ***unless the consent authority is satisfied that the development is consistent with the objectives of this clause and:***
 - (a) *the development is designed, sited and managed to avoid the potential adverse environmental impact, or*
 - (b) *if a potential adverse impact cannot be avoided, the development:*
 - (i) *is designed and sited so as to have minimum adverse impact, and*
 - (ii) *incorporates effective measures so as to have minimal adverse impact, and*
 - (iii) *mitigates any residual adverse impact through the restoration of any existing disturbed or modified area on the site.*

The environmental values under subclause 3 and 4 have not been assessed. Therefore, in accordance with Clause 7.2 of GMLEP 2009, details are not available to enable the assessment of the effect of the proposed development (i.e. acceleration and deceleration lane along the Hume Highway and works to Tiyces Lane) on the native vegetation, habitats and biodiversity along the road reserves. The information is deficient and the application is unable to be determined in the absence of detailed design plans and a flora and fauna assessment.

Clause 7.4 Restrictions on development adjoining mineral resource areas

The objective of this clause is to provide for the proper management and development of mineral and extractive resources for the purpose of promoting social and economic benefits to Goulburn Mulwaree LGA and the State.

This clause applies to land adjoining, or in the vicinity of, land that is identified as “Mineral resources” on the Mineral Resource Area Map and applies to the site. Refer below

Development consent must not be granted for development on land to which this clause applies unless the consent authority has considered the following:

- (a) *whether the proposed development would have any adverse impact on the availability of mineral or extractive resources,*
- (b) *whether there would be any adverse impact on the proposed development arising from noise, dust, vibration or reduced visual amenity from the mine or extractive industry.*

With regards to (a) No adverse impact, on the contrary extracting extractive resources within the site and in relation to (b) the proposed development is for an extractive industry which has noise, dust and amenity conditions proposed by government referral authorities to address the potential impacts. The EPA are satisfied these impacts are adequately addressed.

3.6 Any Draft Acts or Regulations

3.6.1 Draft Environmental Planning & Assessment Amendment (ePlanning) Regulation 2017

No impact on the assessment of the application was identified. The application was forwarded to Department of Planning and Environment for exhibition during the public exhibition period under the new system.

3.6.2 Environmental Planning Instruments

There are a number of recent drafts which are included below:

- **Draft Infrastructure SEPP 2007**

The proposed changes will make it easier and faster to deliver and maintain social infrastructure including health facilities, correctional centres, emergency and police services, and council services. They will simplify the approval process while still ensuring appropriate levels of environmental assessment and consultation are undertaken for these activities. The changes do not appear to impact the proposed development or assessment.

▪ **Draft State Environmental Planning Policy (Primary Production and Rural Development) 2017**

The NSW State government is proposing a new *State Environmental Planning Policy (Primary Production and Rural Development) 2017*. The rationale for this review is to provide a clearer planning framework and to raise the threshold levels for assessment of both strategic and development assessment proposals where they are of state or regional significance. The changes will help ensure planning applications affecting rural land and property are properly assessed and provide greater certainty to farmers on the types of activities that will require development assessment.

An *Explanation of Intended Effects* is currently on exhibition and submissions are invited until 18 December 2017 and the SEPP will involve the repeal of a number of existing SEPP with State Environmental Planning Policy (Rural Lands) 2008 being applicable to the development.

▪ **Draft Environment State Environmental Planning Policy**

This SEPP is intended to replace a number of existing SEPPs related to water catchments and natural areas including SEPP (Sydney Drinking Water Catchment) 2011. It is intended to deliver a policy instrument that is consistent with the Standard LEP Order 2006 which addresses planning provisions for catchments, waterways, bushland and protected areas. This will mean changes to Council's LEP. An *Explanation of Intended Effects* is on exhibition until 15 January 2018. The transfer of the Sydney Drinking Water Catchment SEPP to ensure the protection of Sydney's drinking water and clarification of the use of WNSW Assessment tool will not adversely impact the assessment of the application.

3.7 Other Relevant NSW Legislation

In addition to approval under the *Environmental Planning and Assessment Act 1979* ('EPA Act 1979'), the following Acts are relevant to either the decision making process or the construction and operation of the proposal.

3.7.1 National Parks and Wildlife Act (NPW Act)

The NPW Act is administered by the Office of Environment & Heritage (OEH) and provides the basis for legal protection and management of Aboriginal sites and objects in NSW.

Section 87 of the NPW Act states that a permit may be issued to disturb or excavate land for the purpose of discovering an aboriginal object and under Section 90 of the NPW Act it is an offence to knowingly destroy, deface or damage an object, except in accordance with an approval granted under that section.

The EIS prepared by Laterals acknowledged that advice received from Pejar Local Aboriginal Land Council indicated they did not identify any Aboriginal archaeological sites, artifacts or areas of cultural heritage significance at the subject site, which indicates there will be no impact. Section 87 or 90 permits would not be required unless items are discovered during the development. The DA was referred to Pejar Local Aboriginal Lands Council for comment and no response was received. It is noted that a response from Pejar LALC was included in the *Aboriginal Site Survey and Assessment* prepared by Stedinger (2009) submitted with the DA. The recommendations made by Pejar LALC and included in the Stedinger Report.

The EIS relies on reports dated 2009. In 2010, The Office of Environment & Heritage (OEH then DECCW) released guidelines for the assessment of Aboriginal cultural heritage. These guidelines include:

- Code of Practice for Archaeological Investigation of Aboriginal Objects in New South Wales (DECCW 2010b) (the Code)
- Aboriginal cultural heritage consultation requirements for proponents (DECCW 2010a) (consultation requirements)
- Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales (DECCW 2010c).

Consequently the assessment does not comply with the current standard requirements (and SEARs requirements under the NPW Act as the assessment submitted with the application is older than 5 years and the AHIMS search on Lots 1 and 2 is only 50m. There is no assessment on the proposed roads works. Therefore it is considered that the application is deficient and the application is unable to

be determined in the absence of a current Aboriginal Cultural Heritage Assessment for the whole development.

3.7.2 Biodiversity Conservation Act 2016 (BC Act)

The BC Act is commenced 25 August 2017. In accordance with clause 28 of the Biodiversity Conservation (Savings and Transitional Regulation 2017) an undetermined application continues to be determined under the previous planning provisions. Extract provided below. Therefore the requirements of the BC Act do not apply to this application.

Clause 28 Former planning provisions continue to apply to pending or interim planning applications

(1) The former planning provisions continue to apply (and Part 7 of the new Act does not apply) to the determination of a pending or interim planning application.

(2) However, Part 7 of the new Act applies to the determination of a pending or interim planning application referred to in paragraph (b), (c) or (d) of the definition of pending or interim planning application in clause 27 (1) if the applicant or proponent and the planning approval body for the application agree in writing that Part 7 of the new Act is to apply to the determination of the application instead of the former planning provisions.

pending or interim planning application means any of the following:

(a) an application for planning approval (or for the modification of a planning approval) made before the commencement of the new Act but not finally determined immediately before that commencement,

administered by the OEH. Threatened species, populations and ecological communities, which are protected at a State level under the TSC Act, are listed in Schedules 1 and 2 of the TSC Act.

3.7.2.1 Threatened Species Conservation Act 1995 (TSC Act)

Section 5A of the EPA Act lists a number of factors to be taken into consideration when deciding whether there is likely to be a significant impact on threatened species, populations or ecological communities or their habitats. Should a threatened species or community be impacted, an assessment of significance must be completed to determine the significance of the impact. A Species Impact Statement is only required if there is likely to be a significant impact on a threatened species, population or ecological community or its habitat.

The Flora and Fauna assessment accompanying this DA indicates that The Yellow Box, White Box Blakeley's Red Gum (Box-Gum Woodland) which is listed as an Threatened Ecological Community (TEC) under the TSC Act is present on site, however no works are proposed in the vicinity. The EIS plans appear to require a small number of trees to be removed however the Flora and Fauna Assessment makes no mention or assessment to the location, number and significance of any native vegetation removal.

An alternate option not raised in the EIS is to exit the site via Curlewin Lane and then Tiyces Lane to the Hume Highway. It is presumed this alternative was not discussed as it will generate traffic closer to existing and proposed dwelling sites to the east of the property and would also require additional costs to upgrade the transport route and provide contributions along a greater length of Council's roads. The alternate access would travel on an additional 1.3km of Council roads (approximately).

The Flora and Fauna Assessment report did not assess the potential native vegetation removal along Tiyces Lane (or the Hume Highway) due to the lack of plans of the proposed road works.

Based on no details available which show any impacts to native vegetation to enable the assessment of the effect of the proposed development (i.e. acceleration and deceleration lane along the Hume Highway and works to Tiyces Lane) on flora, fauna and biodiversity, the application is deficient. Therefore the application is unable to be determined in the absence of a detailed design plans and flora and fauna assessment.

3.7.3 Native Vegetation Act 2003 (NV Act)

The NV Act 2003 applied to the clearing of native vegetation outside certain specified areas. Although the site contains native vegetation as defined under Section 6 of the NV Act, Section 25 excluded the Act from applying to Designated Development. The NV Act was repealed 25 August 2017.

3.7.4 Heritage Act 1977

The *Heritage Act 1977* is administered by the NSW Heritage Council and its purpose is to ensure that the heritage of NSW is adequately identified and conserved. The Convict Built Bridge at Towrang is listed on the State Heritage Register (Item 01905 1/2/2013 Gazette 8 p.267) as *Towrang Convict*

Stockade, Associated Sites and Road Formations and is adjacent to the acceleration lane proposed on the Hume Highway.

Part 6, Division 9 of the *Heritage Act 1977* specifically provides for the protection of certain relics. Under Section 139, an excavation permit from the Heritage Council is required if a proposal is likely to disturb a relic. A person must not disturb or excavate any land knowing or having reasonable cause to suspect that the disturbance or excavation will or is likely to result in a relic being discovered, exposed, moved, damaged or destroyed unless the disturbance or excavation is carried out in accordance with an excavation permit or a notification granting exception.

139 Excavation permit required in certain circumstances

- (1) *A person must not disturb or excavate any land knowing or having reasonable cause to suspect that the disturbance or excavation will or is likely to result in a relic being discovered, exposed, moved, damaged or destroyed unless the disturbance or excavation is carried out in accordance with an excavation permit.*

The Statement of Significance on the Department of Environment and Heritage states:

The Towrang Stockade, associated sites and road formations has outstanding significance as a rare, partially intact convict stockade and road side site unaffected by significant development. It reflects the culmination of Governor Darling's systematic identification of roadwork as a form of secondary punishment. Constructed as part of Thomas Mitchell's Great South Road project, the stockade is believed to have held the largest concentration of convicts in southern NSW during its operation and provides insight into the nature of convict life and labour and early road building in NSW.

It is unclear whether the proposed acceleration lane will require drainage easements onto private land including Lots 110 and 111 DP 865202, part of the state listed Convict Built Bridge Item or disturb any ruins associated with the item.

Works are proposed adjacent to State Heritage Item 01905. In accordance with Part 4 Division 3 of the *Heritage Act 1977* and Part 6, Division 9 of the *Heritage Act 1977* works are proposed in the vicinity of the item which is likely to disturb a relic and in the absence of the information on the works proposed and any potential impacts, the application cannot be determined until the necessary permits and approvals are obtained.

3.7.5 Contaminated Land Management Act 1997

The objective of the *Contaminated Land Management Act 1997* (CLM Act) is to establish a process for investigating and (where appropriate) remediating land areas where contamination presents a significant risk of harm to human health or some other aspect of the environment.

As outlined above in Section 3.4.3 the EIS assess the application under SEPP 55 which is called up under the CLM Act. The proposal would be undertaken on land that has been used in the past for agricultural purposes. It is considered unlikely that any contamination would be present that would result in the site being unsuitable for the intended use or present a significant risk of harm to human health or the environment. The development is not for a sensitive use (i.e. dwelling) and contamination is discussed separately in this report.

3.7.6 Protection of the Environment Operations Act 1997 (POEO ACT 1997)

The POEO Act 1997, prohibits any person from causing pollution of waters or air, and provides penalties for offences. The proposal is characterised within Schedule 1 'Extractive Industry' and must be licensed (Environmental Protection Licence) by the EPA for construction and operation in accordance with the provisions of Section 48 of the POEO Act 1997. The Environmental Protection Licence (EPL) is required for all scheduled activities and would be issued separately. The General Terms of Approval (GTA) have been obtained and can be incorporated into draft conditions of consent should the application be recommended for approval. It is council's intention to recommend refusal and therefore no draft conditions of consent prepared.

3.7.7 Water Management Act 2000 (WM Act)

Controlled Activity Approval

It has been confirmed that a Controlled Activity Approval under the *Water Management Act 2000* will not be required by the NSW Office of Water

Water Access License

It is proposed to utilise part of an existing bore license (10ML of WAL 35518 - 50 Megalitres) for quarry purposes as a backup and additional supply source.

There is no mention as to whether the applicant has obtained or is required to obtain any necessary licences to use the bore water for quarrying purposes.

A previous investigation of the Water Licensing System indicated that there is a current groundwater approval attaching to Lot 1 DP1094055. The approval number is 10CA117967 that authorises two groundwater works (bores) for the purposes of recreation, irrigation, stock watering and domestic use. The work approval is linked to Water Access License (WAL) 35518. The current entitlement attaching to WAL35518 is 50.0 megalitres per annum. Both works & use approval and WAL were held in the name of Argyle Gravel & Concrete Pty Ltd.

Discussions with Department of Primary Industries, Water revealed that there is an agreement to buy water rights for 100ML which is not attached to a site. The Applicant/developer will need to obtain approval for nominated works to interfere with an aquifer under the WM Act and ensure the bore has the capacity to produce the volumes of water required for the quarrying operation as deferred conditions of consent.

Should water from the authorised bore be required for quarrying activities, the proponent would be required, under Section 91 of the Water Management Act, to apply for an amendment to the purpose of the work prior to the work being used for that activity.

The applicant will need to obtain/confirm that the necessary volume of a Water Access License has been obtained and attached to Lot 1 DP 1094055 for the purposes of an Extractive Industry (quarry) prior to acting on any consent issued.

The failure by the applicant to nominate any other integrated development approval for which General Terms of Approval may be required does not affect the validity of the application and as per the finding of the Land and Environment Court in *Maule v Liporoni and Another* (2003) (124 LGERA 227 by Cowdrey J) there is no compulsion on an applicant to make an application for integrated development approval (although beneficial to have all matters considered with the application).

3.7.8 Roads Act 1993

Under Section 138 of the *Roads Act 1993* approval is required to:

- (a) erect a structure or carry out a work in, on or over a public road, or
- (b) dig up or disturb the surface of a public road, or
- (c) remove or interfere with a structure, work or tree on a public road, or
- (d) pump water into a public road from any land adjoining the road, or
- (e) connect a road (whether public or private) to a classified road,

The proposal involves works (a, b, c and e above) to the Hume Highway and Tiyces Lane and therefore the approval under the *Roads Act* of the RMS and Goulburn Mulwaree Council is required respectively.

Plans on the extent of works required under s138 of the *Roads Act 1993* have not been prepared and in the absence of the information the application is unable to be properly assessed and recommended for refusal.

3.7.9 Conveyancing Act 1919

Document "c" submitted with the application proposed to grant an easement over Lot 2 to benefit the quarry for the purpose of creating an easement for access and the installation and maintenance of landscaping along the access and water management structures. This authority does not override or permit a variation to the existing restriction prohibiting direct vehicular access to the Hume Highway.

The proposal contradicts whether any trees are required to be removed however it would appear to involve the removal of a small number of trees from the site to provide access from the quarry site to Tiyces Lane. The EIS states that the removal is not considered significant given the 8.8ha of proposed revegetation within the site.

The 88B lists Goulburn Mulwaree Council as the Authority to vary the restriction for vehicular access from the Hume Highway, and despite the RMS requirements for works to the Hume Highway (dated

14/8/2017) for ingress to the site, Council under delegation, is not prepared to vary the restriction to permit direct vehicular access to or from the Hume Highway to Lot 2 (and then Lot 1) without design plans to prove compliance is possible.

a. Any Development Control Plans

3.8.1 Goulburn Mulwaree Development Control Plan 2009 (GMDCP 2009)

The GMDCP 2009 is the relevant Development Control Plan and aims to support the provisions of the GMLEP 2009.

The GMDCP 2009 provides general development controls. The controls considered to be of relevance relate to the following:

- 1.7 Public participation
- 1.8 Variations to controls
- 2.1 General development objectives
- 2.4 Rural development objectives
- 3.1 European (non-indigenous) heritage conservation
- 3.2 Indigenous heritage and archaeology;
- 3.3 Landscaping;
- 3.4 Vehicle access and parking;
- 3.5 Disability Standards for Access;
- 3.6 Crime prevention through environmental design;
- 3.8 Tree and vegetation preservation;
- 3.10 Waterbody and wetland protection (for works adjacent to drainagelines);
- 3.11 Groundwater
- 3.13 Biodiversity management
- 3.14 Stormwater pollution
- 3.15 Impacts on drinking water catchments;
- 3.16 Bushfire risk management;
- 5.5 Rural industries
- 5.8 Rural land use conflict;
- 6.11 Extractive industries;
- 7.2.3 Heavy vehicle haulage routes
- 7.3.3 Soil and water management
- Appendix A criteria for the assessment of heritage significance of aboriginal sites
- Appendix H Heritage impact statement requirements

A discussion of these provisions can be found in Attachment1.

In summary the proposed development would satisfy the provisions of GMDCP 2009 with the exception of the following:

Part 5.8 Rural land use conflict

The general objective of the GMDCP 2009 is that employment uses should be sensitively located to minimise conflict.

It is also noted that Table 5-1 to clause 5.8 in discussing rural land use conflict requires a minimum buffer distance of 1000m between Extractive Industries and rural dwellings. Whilst this is not satisfied, the EIS reports on noise and air quality quantitatively to address these issues and have been reviewed and management strategies provided by EPA conditions. Page 158 of the EIS states "The studies applied to the development have established that all relevant noise and air qualities aspects can be conducted for the quarry without exceeding standards applicable to the industry. As such it is not seen that the development cannot be co-located in the area containing dwelling houses."

This is discussed further in Section 3.9 Noise and Vibration.

Page 183 of GMDCP 2009 provides an example “*In the case of major recreation facilities (e.g. motor racing tracks), dwellings proposed closer than the recommended buffer distance, at a minimum should comply with industry best noise insulation standards.*”

Based on this example it should be acceptable that *in the case of Extractive Industries (i.e. the quarry) with dwellings closer than the recommended buffer distance, the quarry at a minimum shall comply with industry best noise insulation standards and any EPA requirement” or 35dBA LAeq (15min)*

The GMDCP 2009 also states:

The required buffers may be reduced if, in the opinion of Council, the development will not be adversely affected by the use of adjoining land. In assessing whether reduced buffers are acceptable in a particular case, Council will consider the following variation criteria:

- *the extent, nature and intensity of the adjoining land use*
- *the operational characteristics of the adjoining land use*
- *the external effects likely to be generated by the adjoining land use (i.e. dust, fumes, odour, spray drift, light and noise) and their potential to cause conflict*
- *the potential of adjoining land to be used for various commercial activities including agriculture, quarries, rural industries etc*
- *any topographical features or vegetation which may act to reduce the likely impacts of an adjoining land use*
- *prevailing wind conditions and any other climatic characteristics*
- *any other mitigating circumstances*

Where a variation is proposed, the applicant must provide a written statement to Council addressing the variation criteria, with an explanation as to how potential conflicts can be addressed. In keeping with ecologically sustainable development principles, a precautionary approach will be taken when assessing buffer variations. While noise is proposed to be monitored and the development licenced by the EPA, complaint handling will need to be closely assessed in the OEMP.

Part 1.8 deals with variations to the GMDCP 2009 and states:

When circumstances warrant, Council may consent to an application which departs, to a minor extent, from the provisions of this plan. In such cases, a written submission must be lodged with the development application, outlining the variation, providing reasons why the variation is necessary or desirable, and setting out how the objectives of the particular provision are satisfied by the proposal. Some of the relevant factors in determining whether a departure from this plan is warranted include:

- (a) *whether there will be any detrimental impact on the amenity of the existing and future residents*
- (b) *whether there will be any detrimental impact on the amenity of the area*
- (c) *the nature and size of the departure*
- (d) *the degree of compliance with other relevant requirements*
- (e) *the circumstances of the case, including whether the particular provision is unreasonable and/or necessary*
- (f) *priorities identified in a site analysis of being of more importance than what is being departed from*
- (g) *whether non-compliance will prejudice the objectives of the zone and the aims of this plan*

It is contended that the Noise and Air Assessments and EPA conditions address (a)-(g) above and form part of the quantitative justification for the variation to the GMDCP 2009 1000m buffer.

The EIS (p160) also relies on Schedule E to a Section 149 Planning Certificate and a resolution adopted by Council in 2002. The Planning Certificate is now outdated and notice to purchasers of rural land is no longer a practice or policy of Council. The justification for the variation based on a former Council resolution to an old s149 Planning Certificate is not supported.

The variation based on the quantitative Air and Noise Assessments is considered acceptable based on the EPA conditions proposed which will ameliorate the potential impacts to an acceptable standard.

Part 6.11 Extractive industries

The Objectives include:

- *Consider the social, economic and environmental issues in the assessment and management of extractive industries.*
- *Encourage community participation in all phases of extractive industry development.*
- *Provide sound technical parameters to facilitate the orderly development of extractive resources within environmentally sensitive areas.*

The controls listed are discussed below under the respective heading:

- Community Consultation

The community have been engaged during pre-lodgement (although previous application) and development assessment. The EPA have conditioned the recording and reporting of complaints and a complaint line which will ensure community consultation during on-going operation and management.

It is not expected that community engagement will occur with rehabilitation or post extraction land uses unless there is a compliance matter with any remediation requirements of consent.

The development process including assessment of submissions from public consultation and draft conditions of consent ensure community views and concerns are identified, assessed and responded to as appropriate.

It is considered that the complaints line and reporting of complaints is sufficient and no Management Committee is required. The JRPP could condition a Management Committee including at least three permanent residents not associated with the operation as part of the consent conditions should the application be approved. This Management Committee may provide input into the proponent company's environmental management system and details of which may be recorded in the annual Environmental Management Plan.

- Setbacks

GMDCP 2009 requires extraction operations should be setback no less than:

- 10 metres from adjoining property boundaries; or
- 30 metres from a public road;
- 40 metres from any boundary to a National Park or State Forest or unalienated Crown Lands;
- 40 metres from any site or relic of heritage, archaeological, geological, cultural significance;
- 150 metres from the Wollondilly, Shoalhaven and Mulwaree Rivers;
- 150 metres from major water storage areas;
- 250 metres from a well;
- 100 metres from intermittent watercourse;
- 40 metres from the top bank of a watercourse;
- 100 metres from a community facility;
- 1,000 metres from a residence not associated with extractive operations;

The GMDCP 2009 states "The above setbacks may vary depending upon the nature and location of extractive industries." The above setbacks are satisfied with the exception for the 1000m setback. The EPA conditions are evidence that the development can satisfy the acceptable noise and amenity criteria despite the reduced buffer to dwelling houses. Without a current Aboriginal Cultural Heritage Assessment and European Statement of Heritage Impact setback to items is unknown. It is more efficient to have a comprehensive assessment undertake prior to construction works or the development commencing because the disturbance of an artifact or find may hold the development up and incur additional equipment costs.

Consultation with Essential Energy and other utility service providers will be required to ensure an acceptable design and location of services.

The development is required to comply with the requirements of *State Environment Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007* and the assessment is made in Section 3.4.5 of this report.

Part 7.2.3 Heavy vehicle haulage Route

Council requires the upgrading of Tiyces Lane haulage routes, to the following standard:

- 7m wide carriageways in rural areas.
- 1m wide shoulder with 500mm seal.
- 9m wide culverts and bridges (i.e. from barrier to barrier).
- Minimum remaining pavement life of 10 years at the time of commencement of operations
- Replacement of road surface with asphaltic concrete in village areas.
- Possible intersection upgrades.

It is noted that the consent of Council as the roads authority is required for making of an application to carry out road improvements to Tiyces Lane. The design is required to comply with Council's current *Standards for Engineering Work 2013* which includes measures to ensure all relevant matters are considered in the design. The GMDCP quotes the *Standards for Engineering Work 2006* which has been replaced by the *Standards for Engineering Work 2013*. The GMDCP is pending administration updates including an update to incorporate the revised date of the Standards for Engineering Work.

Tiyces Lane appears to currently encroach over private land. Council requested a detailed survey design 23/10/17 and the matter of insufficient room for road works was raised in the public submissions forwarded to the applicant 17/7/17.

The applicants response dated 2/11/17 did not address the potential for encroachments, the need for owners consent and/or whether the road design layout can comply within the existing road reserve.

Based on the following matters:

- Significant variation request to the DCP haulage road standards
- road safety concerns
- lack of detail of road design layout (including potential current encroachments onto private land and whether the road design layout can comply within the existing road reserve)

details are not available to enable the assessment of the effect of the proposed road works along Tiyces Lane. As the application is deficient the application is unable to be determined in the absence of detailed design plans.

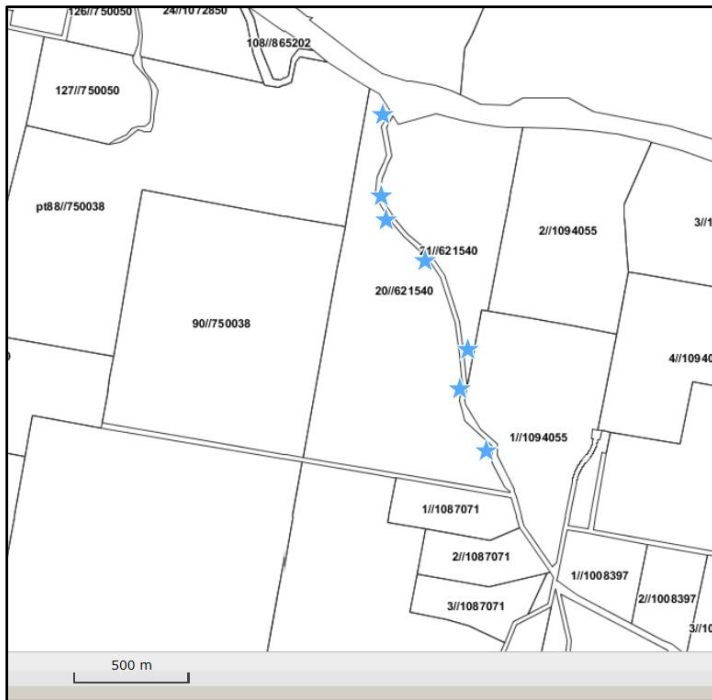


Figure 14: Potential location of encroachments

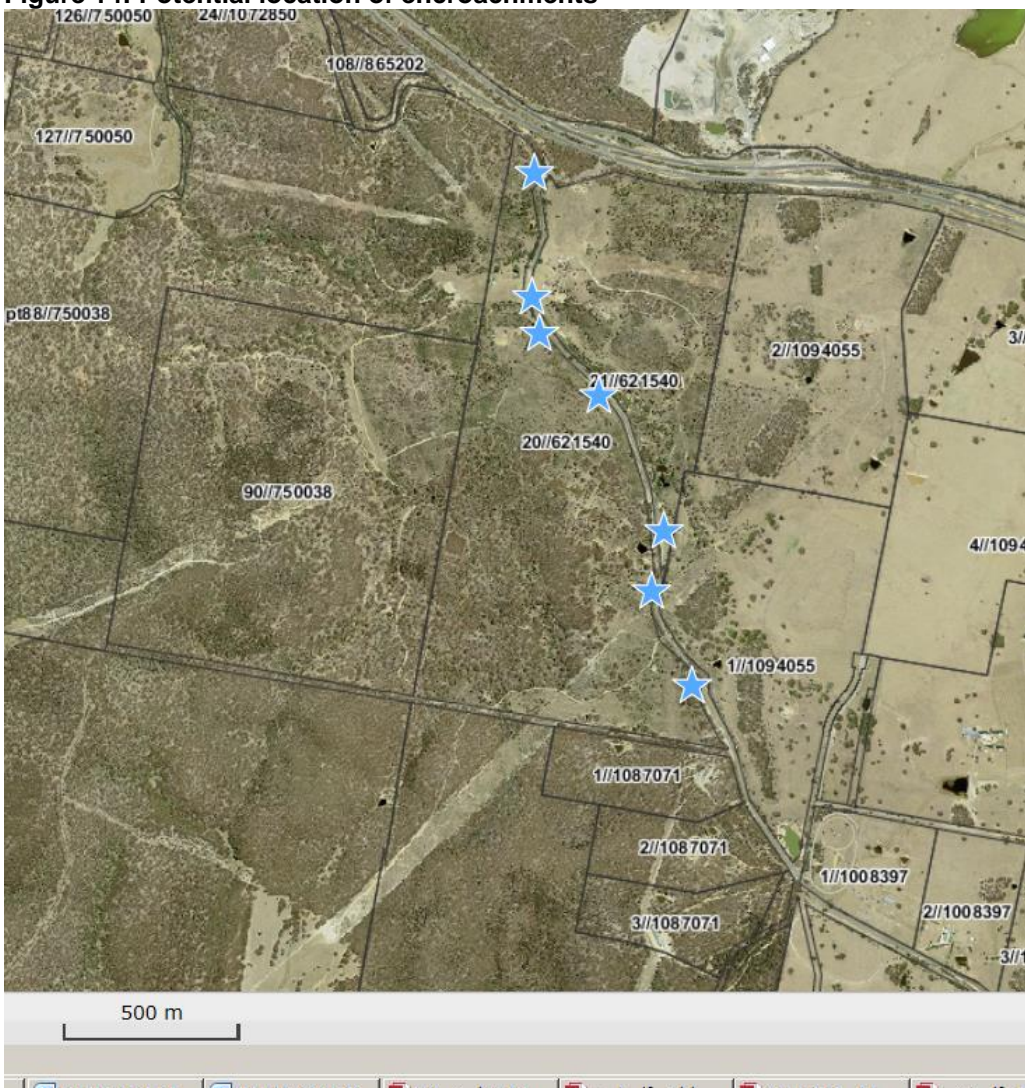


Figure 15: Potential Location of Encroachments

Part 9 Contributions

Contributions will be sought under *Goulburn Mulwaree Section 94 Contribution Plan 2009* in accordance with the Part 11 "Development involving heavy vehicle movements likely to cause road pavement damage should the application be approved.

Council may vary the road standard and development application information requirements described above subject to consideration of the following:

- the number of proposed heavy vehicle movements
- the volume of material to be hauled
- the intended life of the development
- the condition of the road/s
- any arrangement proposed in a development application to address ongoing road repairs and maintenance whether by financial or in-kind contributions.

If such a variation is sought an applicant should:

- discuss the matter with Council staff prior to lodging a development application (pre-lodgement meetings are available on request); and
- include justification for the variation and any alternative arrangement in the Statement of Environmental Effects based on the matters for Council consideration outlined above.

No variation is recommended due to the lack of sufficient information provided with the application and responded to additional information requests.

3.9 Goulburn Mulwaree Section 94 Development Contributions Plan 2009 (revised June 2016)

Section 11 to Part E applies to *Development involving heavy vehicle movements likely to cause road pavement damage* and Extractive Industries. Where any development requires capital works to the road network to be undertaken, the requirements will be by way of a condition imposed on the development consent under section 80A(1)(f) of the *Environmental Planning and Assessment Act 1997*. The condition will be in addition to any Section 94 contribution authorised to be imposed under this Plan.

Refer to Engineers Requirements separately in the report. Council will require road works in addition to contributions to this plan.

The proposed development is subject to Goulburn Mulwaree Section 94 Development Contribution Plan 2009 (Amendment No. 2 (GMS94DCP2009)).

This application applies to Section 11.0 Development involving heavy vehicle movements likely to cause road pavement damage.

Council's Section 94 Contributions Plan 2009 states Extractive Industries (Quarries and Mines) should contribute \$0.0924 (1516 rate) per tonne per kilometre for local road maintenance. Tiyces Lane is the only local road affected by this development and the proposed site access is approximately 2 km from the Hume Highway intersection and it is estimated this contribution charge would generate \$4,136 per annum on the first year based on an extraction rate of 44,760 tonnes and \$5,544 per annum thereafter (based on an average year's output of 60,000 tonnes). A condition for contributions towards extraordinary road damage can be applied and shall be subject to annual cost adjustment should the application be approved.

Relevant Contributions Plan	GMS94DCP 2009
Rate 1718 financial year	Contribution per tonne = \$0.0478 / km / tonne
Quarry - Heavy Vehicle Movements estimated at:	<p>In accordance with Council's S94 Plan, development contributions apply due to this development involving heavy vehicle movements. The formula is given below (2017/18 rate).</p> <p>Contribution per tonne = \$0.0478 / km / tonne</p> <p>In this case, the length of the haulage route is approximately 2km, with the exact length to be determined.</p>

	<p>Estimate based on 1718 rate of:</p> <p>\$0.0478 x 44,760 tonnes = \$2,139.53 and \$0.0478 x 60,000 tonnes = \$2,868.00 both subject to annual cost adjustment and each financial year thereafter.</p>
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Note: The total contribution payable is to be indexed in accordance with the applicable contributions plan between the date of the consent and the date of payment of the contribution. The contribution is to be paid in full annually or as otherwise agreed to by Council.

3.10 Section 79C(1)(b) EP&A Act 1979 – The Likely Impacts of the Development

The likely impacts of the development, including environmental impacts on both the natural and built environments, and the social and economic impacts in the locality

(i) Natural Environment

Context & Setting

The likely impacts of the existing vegetation to be removed has not been adequately assessed and therefore the application should be refused based on insufficient information to make an informed decision.

Soils

Recommended erosion and sediment control measures have been addressed by WNSW concurrence requirements should the application be approved.

Flora & Fauna

Part 5A test was included with the application. Yellow box community is an Endangered Ecological Community under TSC Act and has been identified in the locality of the site. The likely impacts of the existing vegetation to be removed has not been adequately assessed and therefore the application should be refused based on insufficient information to make an informed decision.

Natural Hazards

Planning for Bushfire Protection (2006) Guidelines have been considered. There is potential for overland flow from stormwater runoff on this site. This issue has been assessed under the Water NSW concurrence. Contamination has been discussed in Section 3.4.3 of this report. No other natural hazards have been identified on this site.

Air & Microclimate

Traffic generated from the development and the Noise Assessment have been assessed in Section 4.2 of the report. The application can be conditioned to control dust and noise emissions from the site during construction and operation should the application be approved.

(ii) Built Environment

Context & Setting

The site is within a rural setting. The proposal requires construction of earth berms to control sound. This will also reduce the visual impact on the setting and is considered appropriate in this setting. The development proposes additional landscaping and screening for the development from Tiyces Lane and boundaries visible from adjoining dwellings. Any landscaping will need to be carefully maintained.

Health & Building Comments

The proposal has been examined and there are no objections subject to appropriate conditions being included in any consent.

Public Domain

The benefit to the public domain will be the upgrade to the Hume Highway with a deceleration lane and an acceleration lane and to Tiyces Lane. There is concern that part of

Tiyces Lane may not be located within the road reserve and therefore any proposed works will either need all owners consent or road works to be kept within the dedicated road reserve. Consequently the application is recommended for refusal based on insufficient information to make an informed decision.

Utilities & Access, Transport & Traffic

Concern was raised with the alignment of Tiyces Lane near the intersection with the Hume Highway.

Concern was raised with the location of the new Hume Highway lane works and the RMS condition has suggested lane work may be longer than as indicated on the plan. Council is of the view that plans showing design compliance should be prepared and assessed prior to determination and as a result the application is recommended for refusal based on insufficient information to make an informed assessment and decision.

The proposed provision of 5 parking spaces, and 1 truck parking space not involved with the loading of quarry product is considered suitable in this instance.

The pavement assessment report was prepared in 2009 and was considered outdated. Council's Engineers has agreed that the pavement assessment be deferred until prior to issue of the Construction Certificate, should the application be approved. This was considered as an acceptable option given that construction may not occur for a number of years and there is potential for further dilapidation of the road. Deferring the pavement assessment will ensure a more up to date assessment prior to construction and optimise the safety of the road and any improvements.

Heritage

The EIS investigated the potential for Aboriginal artefacts in 2009 and no sites were found within the property. OEH have revised requirements in 2010 which the current assessment does not satisfy. Consequently the application is recommended for refusal based on insufficient information to make an informed decision.

There was no assessment or Statement of Heritage Impact undertaken for the locally listed and state heritage listed Towrang Bridge and Culverts located adjacent to the proposed acceleration lane works on the Hume Highway. Consequently the application is recommended for refusal based on insufficient information to make an informed decision.

Water

Refer to details discussed under *Water Management Act 2000* and WaterNSW requirements and their concurrence.

Waste

A rural waste service currently allowing up to one (1) 240L bin each of landfill, recyclable and green waste per week will be accepted at a Goulburn Mulwaree Council Waste Management Facility. If there is any larger requirement, the Applicant will need to arrange for a commercial waste service or pay the relevant disposal fees.

Energy

Reticulated electricity is available to the land however an upgrade is required. Refer to Section 3.2.1 of the report. The application is deficient with regards to greenhouse gas assessments and ESD assessments. Consequently the application is recommended for refusal based on insufficient information to make an informed decision.

Noise & Vibration

An acoustic assessment was conducted to determine what impact the proposal would have on noise sensitive receivers in 2016. The assessment was carried out in accordance with the EPA (OEH) NSW *"Industrial Noise Policy"* in 2009. Despite the assessment was undertaken prior to the SEARs/DGRs being provided the EPA have provided their GTAs.

A list of 13 residential noise receivers, or potentially affected noise receivers have been identified. The range of distances from the residences to the quarry is reported as 220m and 610m (for the closest 2 receptors with Lot 4 to the east and 249 Tiyces Lane to the east) to 1400m. Noise mitigating measures have been proposed in the Noise Assessment Report by Benbow Environmental.

The EPA provided a limit of 35dBA LAeq (15min) or the average noise level over any 15 minute period. An explanation from the EPA on how the noise limit criteria was calculated is provided below:

The mitigating measures together with EPA noise limit of 35dBA LAeq are considered sufficient to ensure the quarry would not unacceptably impact on nearby receivers during operational activities. Construction activities have in some instances slightly higher range 35 – 45dBA LAeq (15min).

There is no proposal to use of explosives, furthermore the EPA conditions prohibit the use of explosives, a rock breaker and any heavy equipment that when operating exceeds a noise level of 35Dba. This would be covered by the noise limits of the EPL proposed by the EPA if the JRPP wish approve the application.

During the construction phase and operation phase of the development the impacts of noise and vibration will be controlled by operating hours and noise limits set by the EPA EPL.

It is considered that the impact will be acceptable as the development is conditioned to meet current standards.

Technological Hazards

No technological hazards have been identified nor will any be created by the development.

Site Design & Internal Design

A revised cross section of the proposed pit was requested and received. It is still unclear as to how the excess material, required to be extracted to a floor level of not less than 8m below the existing ground level prior to any crushing works . A crude estimate of approximately cubic m of material will need to be extracted prior to commencement of the quarry

Quarry dimensions

Area	122 x 87	= 10,614sq m
Volume	10,614 x 8	= 84,912 cu m volume with 8 m depth all extracted
		<i>NB revised cross section plan shown pit to 10m depth</i>
		<i>(additional 21,228 cu m based on level contour)</i>
Overburden bund		= 7,620 cu m
Material in pit/stored		= 77,292 cu m (prior to commencement of crushing)

Access & crusher	= est. 2,603 sq m
Stockpile	= 2,080 sq m
0.5ML stormwater detention	= unknown (est 500cu m 5mdepth x 10 x 10= 100sq m)
Screening area	= unknown
Bulldozer/front end loader/backhoe	= unknown

Vehicular access and manoeuvring of the 19m truck and trailer to enable forward entrance and exit into and out of the pit, sufficient siting for the crusher, screening and stormwater detention (volume 0.5ML p10 of SEEC WCMP) has not been shown. The design of the quarry should be sufficiently detailed to ensure sufficient area at the worst case scenario. Consequently the application is recommended for refusal based on insufficient information to make an informed decision.

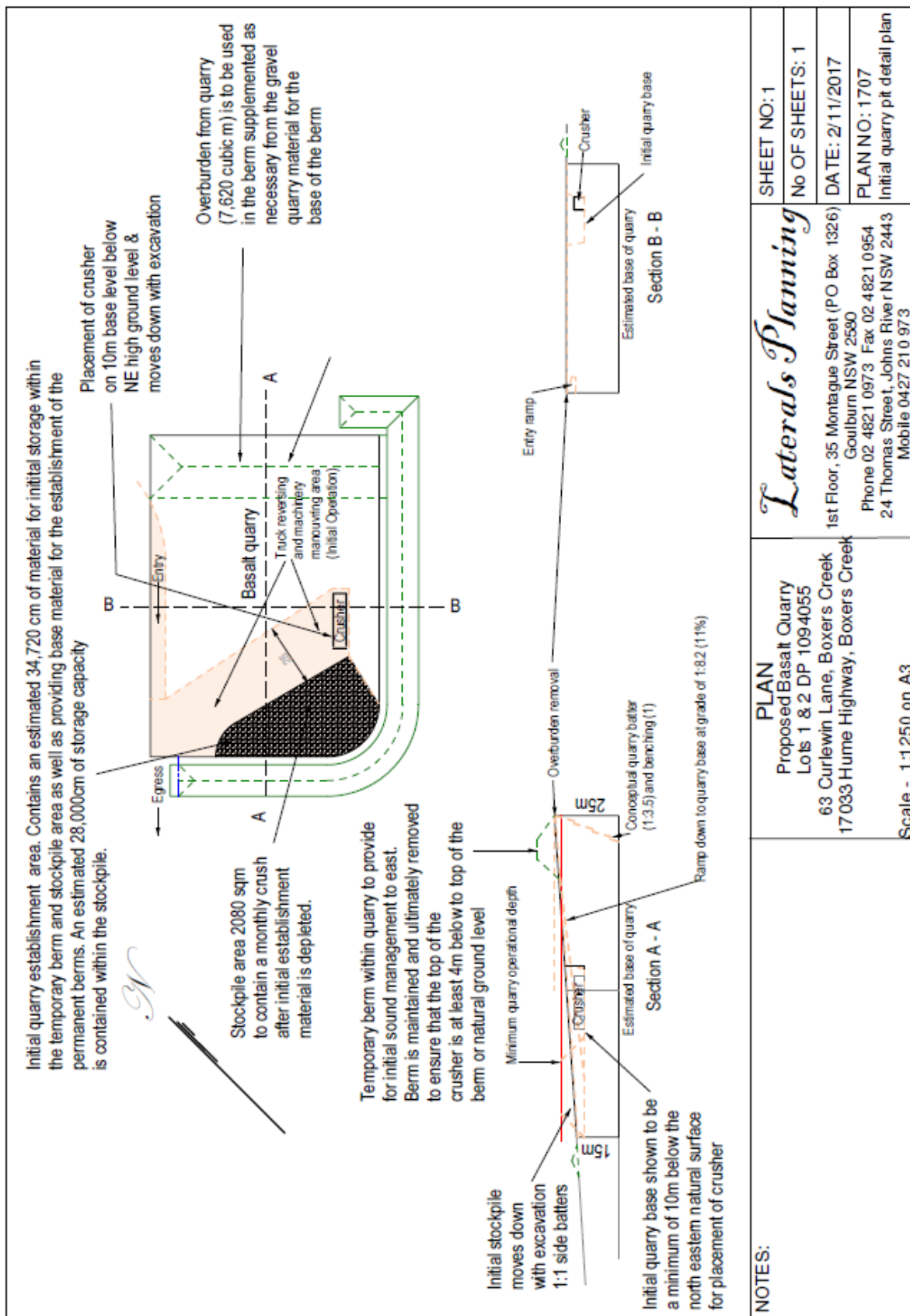


Figure 16: Revised Quarry Pit Plan

(iii) Social Impacts

Safety, Security & Crime Prevention

The proposal does not warrant specific crime prevention measures. The proposed development will include security fencing and will allow the passive surveillance of the area. In this aspect there will be a positive benefit on the safety and security of the area. Concerns have been raised with road safety matters which remain unanswered and consequently the application is recommended for refusal based on insufficient information to make an informed decision.

Social Impact in the Locality

The issues contributing to the potential social impacts are assessed and discussed throughout the report. The social impact is considered acceptable conditions should the application be approved.

Cumulative Impacts

The cumulative impact of clearing has not been addressed for the proposed access roads. Consequently the application is recommended for refusal based on insufficient information to make an informed decision.

(iv) Economic Impacts

Economic Impact in the Locality

The development will provide employment for those involved in the initial construction of the quarry and subsequent ongoing development.

(v) Codes and Policies

Planning for Bushfire Protection guidelines have been considered and can be implemented. The best practice guidelines for stormwater and erosion and sedimentation control will be employed by this development as a result of WNSW requirements.

3.11 Section 79C(1)(b) EP&A Act 1979 – The Suitability of the Site for the Development

The proposed works could provide a resource for the local area and potentially the wider regional area. The proposal is considered appropriate with regards to the zoning of the site and permissibility under the Mining SEPP. It is not expected to have unacceptable negative impacts on the amenity of the locality or adjoining developments subject to the necessary conditions being applied. Noise and dust in particular are proposed to be conditioned to comply with acceptable standards within an EPA GTAs. Extensive site controls are proposed by the Applicant which can be seen in the site plans submitted with the application including Figure 17 (refer to Documents E and Draft Operational Environmental Management Plan Document D submitted with the application).

The egress from the site via Curlewin Lane would remove the need to remove any native vegetation. Furthermore the preparation of detailed plans would enable assessment of any native flora and fauna and stormwater control measure. Without the additional information an informed decision cannot be reached consequently the application is recommended for refusal based on insufficient information to make an informed decision.

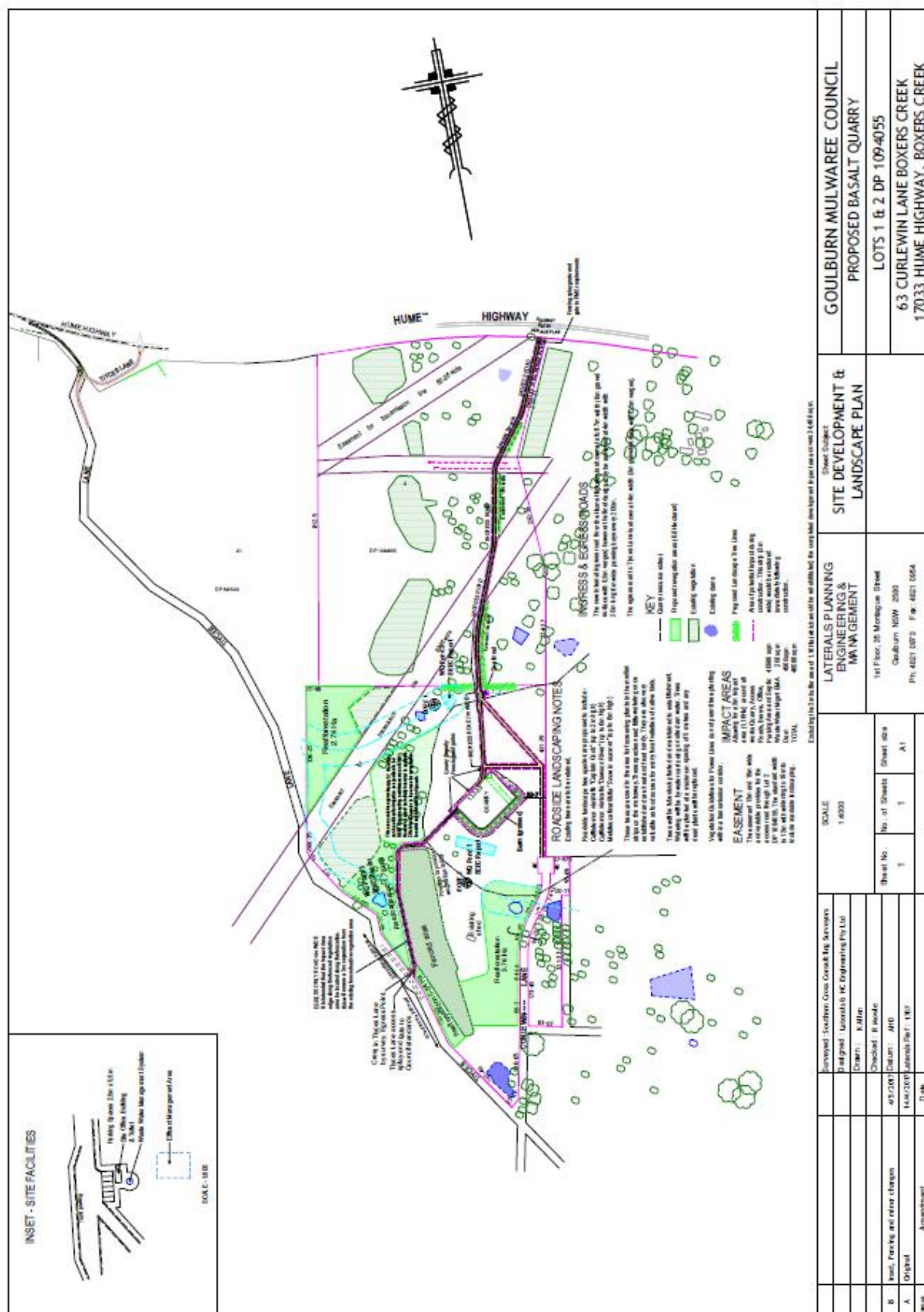


Figure 17: Revised Site Plan of proposed development

4.0 EIS EXHIBITION AND ANY SUBMISSION MADE IN RELATION TO THE DEVELOPMENT

The proposal was been placed on public exhibition from 29/5/2014 to 8/7/2014. The proposal was notified to approximately 42 nearby properties and notified in the local newspaper and on Council's website. Public exhibition of the proposal resulted in 15 public submissions being received

To ensure the Southern Joint Region Planning Panel (JRPP) members have a complete understanding of the issues raised in the submissions and to comply with Council's *Access to Information Policy* the submissions have not been released publicly but have been provided in full to the JRPP. A summary of the issues raised is listed under each submission to show the frequency of the issues raised in the submissions.

Agency submissions are included in the Attachments.

4.1 Referrals

Internal Consultation

Engineer	<p>Objection to proposed variation to DCP haulage road standard</p> <ul style="list-style-type: none">- for approval under Section 138 under <i>Roads Act 1993</i> for works within road reserve i.e. Tiyces Lane;- not in support of variation to DCP, Tiyces Lane over the haulage route is required to have:<ul style="list-style-type: none">• <i>A 7 metre seal plus 1 metre shoulder each side. This is clarified as each lane shall have a minimum sealed width of 3.5m. In addition there shall be a 1m shoulder each side;</i>• <i>80km/h design standard;</i>• <i>A remaining life of 10 years for the pavement, from the date of commencement of operations. Therefore, the 2009 analysis will need to be updated close to the date of commencement of operations and pavement action taken as necessary;</i>• 8m wide culverts and bridges;• edge lines and centreline markings shall be provided.- A Driver Code of Practice shall be implemented for heavy vehicle drivers limiting:<ul style="list-style-type: none">• the speed of heavy vehicles along Tiyces Lane to 60km/h;• vehicle movement operations not occurring during school bus drop off and pick up times.- The applicant's proposal to construct the rural property access as Document E of,
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	<p>is satisfactory. The access shall be sealed from the gate to the sealed carriageway of Tiyces Lane;</p> <ul style="list-style-type: none"> - Developer Contributions <p>In accordance with Council's S94 Plan, development contributions apply due to this development involving heavy vehicle movements. The formula is given below (2017/18 rate).</p> <p>Contribution per tonne = \$0.0478 / km / tonne</p> <p>In this case, the length of the haulage route is approximately 2km, with the exact length to be determined.</p>
Building Surveyor	No objection subject to conditions for inclusion in any consent.

External Consultation

<p><i>NSW Department of Planning and Environment – Division of Resources and Geoscience, Geological Survey of NSW</i></p>	<ul style="list-style-type: none"> - Thorough geological assessment should be undertaken to determine the nature, quality and extent of resource; - Failure to undertake such assessment could lead to operational problems and possibly even failure of the proposal; - GSNSW has no statutory role apart from <i>WHS Act 2011</i> and associated regulations; - Environmental Assessment to address Attachment A of submission; - Development conditioned to provide annual construction material production data to GSNSW. - Refer Public Submissions
<p><i>NSW Department of Primary Industries – Fisheries</i></p>	<ul style="list-style-type: none"> - Integrated development not triggered - Waterways not directly impacted by development - No objection - Refer Public Submissions
<p><i>NSW Department of Primary Industries - Agriculture</i></p>	<ul style="list-style-type: none"> - No impacts on agriculture; - Require efficient access for agricultural purposes (raised in submissions).
<p><i>NSW Roads and Maritime Services</i></p>	<ul style="list-style-type: none"> - Additional information requested 14/7/17; - RMS provided General Terms of Approval on 14/8/17 that despite additional information being preferred, RMS provided 7 additional design details required and the imposition of 13 conditions;

	<ul style="list-style-type: none"> - S138 approval under <i>Roads Act</i> required from RMS prior to construction; - Consent authority may require additional environmental assessment for any ancillary road works. - Refer Public Submissions
Water NSW	<ul style="list-style-type: none"> - Concurrence under the <i>State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011</i>; - Conditional concurrence to the Development was granted by Water NSW on 18/7/17 and the imposition of 10 conditions. - Refer Public Submissions
Office of Environment and Heritage (Environment Protection Authority)	<ul style="list-style-type: none"> - Environmental Protection Licence for scheduled activities under the <i>Protection of the Environment Operations Act 1997</i>; - The EPA issued General Terms of Approval on 27/7/17 subject to numerous conditions - Refer Public Submissions
NSW Rural Fire Services	<ul style="list-style-type: none"> - No referral was sent to RFS. - Council assessed requirements in accordance with <i>Planning for Bushfire Protection</i>.
Pejar LALC	<ul style="list-style-type: none"> - The application was referred to PLALC on 24 May 2017. No comments were received. - Recommendation provided by Pejar LALC in the 2009 <i>Aboriginal Site Survey and Assessment Report</i>. - Outdated report in accordance with current standards as greater than 5 years. - Non-compliance with current OEH requirements for Aboriginal Cultural Heritage Assessment and SEARs/DGRs

4.2 Community Consultation

A summary of the issues raised in the submissions is provided below:

.	Issue Raised	Response to Issue
	Dwelling at 220 Tiyces lane 550m from quarry location and less than 100m from quarry property boundary	A variation to the 1000m GMDEC 2009 buffer is sought. Refer to Section 3.8.1 of this report. Quantitative Air Quality and Noise Assessments reviewed by

		<p>EPA and development conditions received to ensure development complies with current standards</p> <p>The distances measured is different for noise assessment as compared to air quality. For the noise assessment a distance is measured from a point within 30m of the dwelling to the nearest noise source.</p> <p>By contrast for the air assessment the distance is measured from the dwelling to the boundary of the subject site (quarry land) as dust can be generated not just from the quarry site. The NSW EPA have reviewed the application and issued their GTAs.</p>
	<p>Prohibited in E3 zone</p> <p>Permissibility of the development and lack of resource significance and justification to permit development under Mining SEPP</p>	<p>While the proposal is prohibited under the <i>Goulburn Mulwaree LEP 2009</i> it is permissible under clause 7(3)(a) of the Mining SEPP. The Mining SEPP permits extractive industry where agriculture is permitted. The Mining SEPP overrides the LEP and was discussed in Section 3.4.5 of this report.</p>
	<p>Inaccurate estimate of project cost given the deceleration lane and acceleration lanes proposed and operational machinery listed (in excavator, backhoe, articulated dump truck, front end loader and bulldozer);</p>	<p>It is Council's understanding that there is nothing in the EPA Act or Regulation to suggest that failure to accurately determine the cost of works would impact on the validity of a Development Application or any consent that may issue. Council received the cost estimate in good faith and without alternate information accepted the information as fair and reasonable.</p> <p>The Cost of construction / establishment would (in this case) only impact on the Development Application fee and is not considered detrimental to the assessment and determination of the application as contributions are not based on the cost of the development.</p>
	<p>Previous projects and reputation</p>	<p>Development consents remains with the land and are transferred to the new owners and therefore when land is sold, the</p>

		responsibilities under the consent become the responsibility of the new owner. The development assessment process can only assess the merits of the application and compliance and non-compliance with the relevant planning instruments and policies. The EPA (Condition A2) requires the EPL holder to be a fit and proper person under the POEO Act.
	Quarry not consistent with the zone objectives	Refer to separate section in Assessment Report
	<p>Devalue property values and prevent finance being obtained for development of dwelling; Changing character;</p> <p>Proximity of the development to existing surrounding dwellings (40 residential blocks on Tiyces Lane and side streets);</p>	<p>Devaluation of property values Not a planning consideration Changing character and preferred future landuse character included under Mining SEPP assessment JRPP shall refer to the location plan provided with the public submissions for distances from submitters properties to the lot boundary of the quarry. This information has not been provided publicly as personal information is contained within the submissions and has been withheld in accordance with Council's <i>Access to Council Information</i> policy.</p> <p>All noise from the premises will be controlled by EPA noise limit conditions</p>
	<p>Not in the public interest;</p> <p>Potential for future staging and expansion.</p>	Omissions of critical matters acknowledged gives further weight and cause to recommend refusal.
	<p>Inconsistencies in development application documentation:</p> <ul style="list-style-type: none"> • View assessment taken from driveway rather than within property site lines. • Objector omitted from p129 of EIS which may give false indication of acceptance to development by the neighbour. Any further omissions? • Requested Noise Assessment at residence and no response. 	The inconsistencies give further weight and cause to recommend refusal.
	<p>Inadequate information or assessment:</p> <ul style="list-style-type: none"> • Submitted examples of local/regional quarries that require secondary methods of extraction i.e. drilling and blasting; 	The lack of information gives further weight and cause to recommend refusal.

	<ul style="list-style-type: none"> Noise impacts (blasting unlikely and needs to be guaranteed will not be used); Accuracy of noise and air quality assessment (using Goulburn airport data); Concern of insufficient assessment for the need/use of a Rock Breaker for road construction in the Noise Assessment and identified as “unlikely that a rockbreaker will be required” (p31 5.2); Believe rock breaker equipment and blasting will be required to operate/extract from the quarry and assessment of noise and air quality not representative of actual noise and air quality impacts; Inadequate resource survey information (no new core testing just retesting of previous samples (2), 2 samples not representative only taken from 1 side of source). Suggest 4 drill holes necessary to define north, south, east and west extent of quarry; Different data sets used for wind velocity and direction for modelling and assessment; Limited core and test site information; Rippability Assessment cannot definitively rule out the need for secondary extraction methods (a semi-quantitative relative indication); Magnetic Field Survey assessment identifies the resource indicates a lack of uniformity and submitter questions need for further extraction methods; Lack of additional information to confirm extraction can occur without blasting and rock breaking; Lack of detail on pit area; Lack of consideration of the impact of dust from the proposed development; 	
	Air Quality Assessment accuracy questioned. 20% stable results based on Goulburn Airport Weather Station located at elevation 652m. Quarry site located at 750m with greater pressure gradient between warm and cold air likely to result more unstable conditions.	Note differences in terrain. Without alternate accurate data acceptable practice to use nearest weather station
	Questions dust concerns from dust from crushing and screening as a result of reduce air stability and risk of subsequent respiratory impact and exacerbation of pre-existing conditions to neighbours	EPA conditioned continuous testing of particulates in the air per month. Refer to EPA GTAs for air quality testing and reporting and complaint management
	Residents rely on rainwater tank water for principal water supply and concern for potential contamination from dust blown onto roofs	Monitoring and compliance with EPA standards will enable air quality to comply with current standards. During high wind and dust periods where watering of operations is not sufficient

		measures to stop works be implemented.
	Concern with self-regulation/monitoring of development and limited effectiveness for noise and dust	Reporting to be undertaken by EPA approved person/s.
	Potential conflict with school bus stop hours Mon-Fri 0800-0830 and 1500-1600 at Tiycles Lane and families travelling to bus stop particularly during construction with the additional traffic generated	Applicant has volunteered in the Traffic Assessment to exclude the transport of heavy vehicles during school (bus stop) hours
	Road widening not available for full extent of road length due to existing land boundaries	Submission forward to applicant and no direct response provided. Applicants final response dated 2/11/17 relies on Council's Engineers response for design requirements however the potential for separate owners consent has not been addressed giving further weight and cause to recommend refusal of the application due to insufficient information
	Noise related matters: <ul style="list-style-type: none"> - Potential for blasting - 5km from Hume Highway and can hear road traffic. Expect properties near the quarry will be similarly impacted 	All noise from the premises will be controlled by EPA noise limit conditions and an EPL. Council could propose to prohibit the use of explosives, a rock breaker and any heavy equipment use when operating exceeds a noise level of 35dBAL _{Aeq} (15 min). EPA condition effectively removes the potential for noisy equipment and operations by setting the noise (operational) limits to 35dBAL _{Aeq} (15 min).
	Traffic Safety issues Road width: <ul style="list-style-type: none"> • Tiycles Lane non-compliance with Australian Road Design Standards – unacceptable risk to residents and traffic to Tiycles Lane (NB DCP has greater standards than Australian Road Design Standards for heavy vehicle haulage development routes); • Use of larger vehicles by local residential land holders i.e. stock crates, horse floats. Concern with passing traffic to quarry trucks; • Tiycles Lane road upgrade (to benefit applicant and not road safety); • Issue of poor safety with passing traffic and inadequate road lane width; • Increasing residential traffic along Tiycles Lane; • Road safety and the impact of trucks on Tiycles Lane; • Owners consent for road widening; 	The application was forwarded to RMS, if approved RMS has required: <ul style="list-style-type: none"> • the applicant provide a southbound left turn deceleration lane on the Hume Highway to the entrance to Lot 2 • Quarry trucks exiting Tiycles Lane will not be permitted to turn right onto the Hume Highway to travel north but required to turn left from Tiycles Lane onto the Hume Highway and travel south to the South Goulburn Interchange and undertake a u-turn to then travel north (additional approx.36kms round

	<ul style="list-style-type: none"> • Traffic speed on Tiyces Lane (NB current speed limit is 100km/hr); <p>Intersection safety at Tiyces Lane and Hume Highway:</p> <ul style="list-style-type: none"> • for school bus stop; • Traffic speed on Hume Highway; • Increased waiting times to cross Hume Highway as traffic numbers increased over time; • Traffic safety impacts at intersection to Hume Highway and objection to closing existing median at Tiyces Lane intersection. Additional 40 min travel time to head north; • Travel time implications if median closed to Hume Highway for Tiyces Lane residents (NB no proposed change to median by applicant); • Concern Plan of Management insufficient means to avoid unlawful u-turns to shorten the distance to quarry entrance; • Safety of access to and from the Hume Highway. • Poor efficiency increased cost of travel with u-turn at southern Goulburn interchange for north bound traffic leaving the quarry and a u-turn at the interchange south of Marulan for traffic travelling to the site from the south; • Safety impacts on school bus stop at Tiyces Lane. <p>Road damage:</p> <ul style="list-style-type: none"> • Potential road damage from haulage vehicles; • Estimated contributions to road damage (approx.. \$5,660) will not meet maintenance costs; • Regular road maintenance required with current traffic numbers; <p>The transportation of materials will be provided via Tiyces Lane, truck and dog with maximum 19m length and a load of 37 tonne.</p>	<p>trip) or trucks travelling north wanting to turn into the property travel north along the Hume Highway to the South Marulan interchange (intersection of Jerrara Road and Marulan South Road) and undertake a u-turn to then travel south (additional approx. 25kms round trip).</p> <ul style="list-style-type: none"> • A drivers Code of Conduct; and • Road construction works on the Hume Highway will require separate approval and consent from the RMS. <p>A request for Tiyces Lane pavement testing has been deferred and would be required to be submitted prior to issue of any Construction Certificate. This is seen as advantageous to the developer and Council given that a report may become outdated if a Construction Certificate is not sought for a number of years.</p> <p>Tiyces Lane will be required to be upgraded to comply with the haulage route standards as set out in Goulburn Mulwaree Development Control Plan 2009, namely:</p> <ul style="list-style-type: none"> • 7m wide sealed carriageway • 1m wide shoulder with 500mm seal • 9m wide culverts and bridges • 80km/hr design standard • A revised plan and/or schedule identifying any upgrades required to the pavement to ensure that the road has a minimum pavement life of 10 years taking into account the additional load. • The unsealed internal access will be compacted road base and this is considered
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		<p>acceptable provided it complies with the criteria for internal access requirements of <i>Planning for Bushfire Guidelines</i> requirements. However further landscaping and watering could be used to help minimise dust.</p>
	<p>In submissions received there was concern that the area of disturbance would be greater than 2ha and fall within (<i>Schedule 3 EP&A Regulation 2000</i>) designated development criteria</p>	<p>The development already meets the designated development criteria and other criteria will not alter the EIS process and assessment.</p> <p>This potential discrepancy will not impact on the validity of the application given the EPA GTAs have been provided and an EPL is required for Designated Development prior to operation. The exceedance of the 2ha threshold is another criteria to classify development as Designated Development.</p> <p>Water NSW concurrence includes compliance with the submitted plans and that no revised works layout or staging that will impact on water quality shall be permitted without the prior agreement of Water NSW.</p>
	<p>Lack of resource significance</p>	<p>Goulburn Mulwaree has a number of large and significant resources within the LGA. This site is not as large but still identified by NSW Trade and Investment (Resources and Energy) as an important resource due to its presence in their 2015 Audit Report and requiring consideration with future rezonings and landuse changes within the areas as shown on Figure 9 of this report. The <i>Mining of Construction Material from Marian Vale - East of Goulburn. A preliminary feasibility assessment</i> prepared by Groundwater Imaging Pty Ltd (Sept. 2006) identified 40ha of the Basalt would have a value of \$400 million dollars. The proposed development is for approximately 1.2ha of the basalt resource (i.e. estimate of at \$10 million dollar value).</p>

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4.3 Applicant's Response to Submissions

The applicant was requested to provide additional information following pre-lodgement advice and again on 18/7/17.

A revised Flora and Fauna Assessment was received 1/6/17 electronically and hard copies on 2/6/17 which was exhibited with the application.

In that regard the following assessment matters are outstanding and necessary in order to complete a full assessment of the proposal:

- i A detailed survey record of the access route along Tiyces Lane is required to assess the impacts of the proposed access route, particularly from the proposed exit driveway location to the Hume Highway by generated traffic associated with the proposal, particularly the design largest quarry truck employed. Road design layout, road reserve boundary and owners consent for any road widening;
- ii A Road Safety Audit that reviews the condition of the proposed routes and identifies any safety issues which may be exacerbated by the development, as required by the Director General's requirements dated 20/4/17;
- iii The assessment does not include a current pavement condition report on the existing condition of the proposed haulage route as the plan submitted is dated 2014;
- iv Cumulative impact of lane speed changes along Hume Highway in the vicinity of the development site including deceleration to Tiyces Quarry left lane, deceleration to right lane to turn at Divall's Quarry median, crossing traffic and decelerating traffic at the existing Tiyces Lane intersection, accelerating traffic exiting new Tiyces Lane;
- v Environmental implications of clearing and construction of new Tiyces Lane/acceleration lane with Hume Highway.

Quarry Design

- i Insufficient information has been provided in relation to on the pit cross section to confirm sufficient area for operation including storage of gained material, benching, stormwater, machinery, ramps and access and manoeuvring within the pit;
- ii The EIS does not identify trees to be removed or assess hollows of the existing trees or proposed trees to be removed as required by the SEARs;
- iii The EIS does not address the OEH current guidelines:
 - Code of Practice for Archaeological Investigation of Aboriginal Objects in New South Wales (DECCW 2010b) (the Code);
 - Aboriginal cultural heritage consultation requirements for proponents (DECCW 2010a) (consultation requirements);
 - Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales (DECCW 2010c).
- i.e. The Study provided is greater than 5 years old, legislative changes have occurred since 2009 and an updated assessment for Aboriginal cultural Heritage was required by the SEARs advice by OEH and dated 27/3/17.
- iv Variation to s 88B to permit vehicular access from the Hume Highway

To date these matters have not been satisfactorily addressed and the applicant has indicated that no further information will be provided (Refer to Laterals letter dated 21/7/17 attached).

The Applicant was given an opportunity to address these concerns and the response is also included in the Attachment. The submissions were forwarded to the integrated approval and concurrence authorities prior to confirming/providing their GTAs and concurrence.

All external referral authorities have provided their General Terms of Approval / Concurrence or comments and raise no objection to the application (refer Attachments). Final comments have been received and included in the Attachment. Agency conditions have incorporated into the draft conditions of consent.

4.5 Conflict of Interest Statement

I declare that I have no potential or actual conflict of interest in assessing this application. There are no identified potential or actual conflicts of interest in assessing this application.

4.6 Section 79C(1)(e) EP&A Act 1979 – The Public Interest

The application is not in the public interest as information and details are deficient to allow an informed and proper assessment. With the level of information lacking it is not possible propose conditions to mitigate potential impact the impacts and refusal is recommended.

5.0. CONCLUSION

This application has been assessed having regard to the relevant matters for consideration prescribed by Section 79C(1) of the *Environmental Planning & Assessment Act 1979*. The proposal is permissible with consent in the E3 Environmental Management Zone by way of Clause 7(3)(a) Mining SEPP despite being prohibited under the provisions of *Goulburn Mulwaree Local Environmental Plan 2009*.

It is Council's intention to recommend refusal of the application based on:

- a. The proposed development is deficient in information supporting the application and the application is unable to be properly assessed in the absence of identified information;
- b. The EIS accompanying the application is inadequate and does not address the matters required in Part 3, clause 7 of Schedule 2 of the Regulation; and
- c. There are inconsistencies in the documents submitted with the application and with additional information.

The particulars that relate to each reason for refusal are articulated throughout the draft assessment report and on the balance of the matters I am satisfied that they are relevant considerations that enable the Southern Region JPP to refuse the DA.

6.0. RECOMMENDATIONS

It is RECOMMENDED that the SRJPP refuse to grant development consent pursuant to Section 80 of the *Environmental Planning & Assessment Act 1979*, to Development Application No. 0330/1617/DA (2017STH017) for a proposed Designated Development for an Extractive Industry (Quarry) Development at Part 288 Tiyces Lane (AKA 63 & 65 Curlwein Lane Towrang (Lot 1 and Lot 2 DP 1094055)), for the following reasons:

The proposed development is deficient in information supporting the application and the application is unable to be properly assessed in the absence of the following information:

Particulars

- 1) Details of the proposed alignment, design and construction standard for the upgrade of Tiyces Lane to meet the haulage route standards required by Goulburn Mulwaree Council's Standards for Engineering Works 2013, Clause 7.1A (Earthworks) of GMLEP 2009 and Part 3.17 and Part 7 of DCP 2009.
- 2) A detailed survey record of the access route along Tiyces Lane is required to assess the impacts of the proposed access route, particularly from the proposed exit driveway location to the Hume Highway. Road design layout, road reserve boundary and owners consent for any road widening is required to show compliance with council's and RMS requirements;
- 3) Written confirmation of land owner's consent for the proposed road widening not located within the existing road reserve.

- 4) A Road Safety Audit that reviews the condition of the proposed routes and identifies any safety issues which may be exacerbated by the development, as required by the Director General's requirements dated 20/4/17.
- 5) Cumulative impact of lane speed changes along Hume Highway in the vicinity of the development site including deceleration to Tiyces Quarry left lane, deceleration to right lane to turn at Divall's Quarry median, crossing traffic and decelerating traffic at the existing Tiyces Lane intersection, accelerating traffic exiting new Tiyces Lane.
- 6) Flora, Fauna and Biodiversity Assessment of any native Vegetation clearing required as a result of the internal egress road, works to Tiyces Lane and Hume Highway
- 7) The EIS does not address the OEH current guidelines:
 - a) Code of Practice for Archaeological Investigation of Aboriginal Objects in New South Wales (DECCW 2010b) (the Code);
 - b) Aboriginal cultural heritage consultation requirements for proponents (DECCW 2010a) (consultation requirements);
 - c) Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales (DECCW 2010c).

The Study provided is greater than 5 years old, legislative changes have occurred since 2009 and an updated assessment for Aboriginal Cultural Heritage was required by the SEARs advice by OEH and dated 27/3/17.
- 8) In accordance with Clause 15 (1) and (3) of Mining SEPP, details are deficient to enable the proper assessment of the efficiency of the extraction and the application is unable to be determined in the absence of those details.
- 9) In accordance with Clause 5.10(4) of GMLEP 2009 and Part 4 Division 3 of the *Heritage Act 1977* and Part 6, Division 9 of the *Heritage Act 1977* works are proposed in the vicinity of State Heritage Item 01905 no assessment has been made on the potential impacts on the item or measures to mitigate impacts and whether any permits and approvals are obtained.
- 10) Goulburn Mulwaree Council's authority under s 88B of the Conveyancing Act 1919 to release the restriction as to users listed fourthly and fifthly to the title of the land under DP 1094055 has not been obtained due to lack of supporting plans showing compliance with RMS requirements dated 14/8/17
- 11) Based on the lack of supporting information Council is not prepared to vary or release the restriction fourthly or fifthly listed in the restriction on the title under s 88B of the Conveyancing Act 1919 to DP 1094055
- 12) Council is not prepared to defer the Pavement Assessment and rely on A Pavement Condition Report was prepared for Tiyces Lane by Pavement Management Services on the 30 March 2009 without the abovementioned road design plans and assessment

The EIS accompanying the application is inadequate and does not address the matters required in Part 3, clause 7 of Schedule 2 of the EPA Regulation 2000 (Regulations)

Particulars

- 1) No analysis of any feasible alternatives to the carrying out of the development, having regard to the objectives, including the consequences of not carrying out the development is undertaken in the EIS, as required by clause 7© in Part 3 of Schedule 2 to the Regulations
- 2) The analysis of the development (as required by clause 7(d), Part 3 Schedule 2 of the Regulations) is inadequate because the supporting assessment reports are so outdated it is unclear whether they remain accurate and correct, for example the Geological Assessment is dated December 2006, the Core Drilling Assessment Report is dated January 2007 and further testing was only undertaken on the previous test material. There is still limited core and test site information.

- 3) Design details of the proposed deceleration and acceleration lane works demonstrating compliance and measures to mitigate potential impacts demonstrating safety design requirements can be achieved in accordance with the RMS current requirements dated 14/8/2017.
- 4) Inadequate information has been provided in relation to on the pit cross section to confirm sufficient area for operation including storage of gained material, benching, stormwater storage, machinery, ramps, access and manoeuvring within the quarry pit.
- 5) A revised cross section of the proposed pit was requested and received. It is still unclear as to how the excess material required to be extracted to a floor level of not less than 8m required prior to any crushing works, vehicular access and manoeuvring of the 19m truck and trailer to enable forward entrance and exit into and out of the pit, sufficient siting for the crusher, screening and stormwater detention (volume 0.5ML p10 of SEEC WCMP). The design of the quarry should be sufficiently detailed to ensure sufficient area at the worst case scenario. Consequently the application is recommended for refusal based on insufficient information to make an informed decision.
- 6) Concern Plan of Management Code of Conduct is insufficient means to avoid unlawful u-turns to shorten the distance to the quarry entrance;

There are inconsistencies in the documents submitted with the application and with additional information provided

Particulars

- 1) The EIS did not assess the application against SEPP 55 as it only lists the SEPP as applicable (page 64),
- 2) The AIR ASSESSMENT REPORT – AMENDED QUANTITATIVE AIR ASSESSMENT FOR MARIAN VALE PASTORAL CO PTY LTD 63 TIYCES LANE, TOWRANG, NSW (document N) prepared by Benbow Environmental does not assess the ingress road to its current proposed location. (p iv) and does not address all the SEARs requirements of 20/4/17
- 3) The AIR QUALITY MONITORING PLAN FOR ARGYLE (NSW) PTY LTD TIYCES LANE, BOXERS CREEK (document N(b)) prepared by Benbow Environmental does not assess the ingress road to its current proposed location. (p 3 and 11) and does not address all the SEARs requirements of 20/4/17
- 4) NOISE IMPACT ASSESSMENT FOR ARGYLE (NSW) PTY LTD TIYCES LANE, BOXERS CREEK (Document O (a)) prepared by Benbow Environmental does not assess the ingress road to its current proposed location. (p 3, 5, 11, 35-39 and 43) and does not address all the SEARs requirements of 20/4/17
- 5) NOISE MONITORING PLAN FOR ARGYLE (NSW) PTY LTD TIYCES LANE, BOXERS CREEK (Document O (b)) prepared by Benbow Environmental does not assess the ingress road to its current proposed location. (p 3) and does not address all the SEARs requirements of 20/4/17
or
 - Revised Noise Assessment prepared by Benbow, dated May 2016 (pages 3 and 5 document O(a)) assesses noise impact of the proposed ingress from the Hume Highway at a different location to the current site plan
 - Revised Noise Assessment prepared by Benbow, dated May 2016 (page 6 document O(a)) incorrectly identifies the zone as RU2 rather than the current E3 zone. “The site is currently zoned Rural Landscape RU2 under Goulburn Mulwaree Local Environmental Plan 2009.”
- 6) The proposal relies on numerous reports prepared for a previous application in 2015 including 12 documents. The application therefore does not address all the criteria of the relevant agencies and statutory provisions under *EPA Regulations 2000* with outstanding issues and impacts from the proposal.