

From: [Lauren Evans](#)
To: [Terri O'Brien](#)
Subject: RE: SEARs 1075 - DA10.2017.35776.1 for Extractive Industry at Rockwood Quarry, 208 Winchester Lane Table Top.
Date: Wednesday, 25 July 2018 9:06:31 AM
Attachments: [image006.png](#)

Hi Terri

Apologies for the delay in responding.

The Department's view is that the SEARs will not lapse on 5 September, as the Regulations only require the Applicant to consult further with the Secretary if a development application is not made within 2 years. In this case, the application has been made, albeit without an adequate EIS.

That said, Council may request that the Applicant consult with us again if the EIS is not submitted by 5 September. The Department can then review the existing SEARs and determine whether they should be revised. In reviewing the SEARs, the Department would have to consider the progress made to date in the preparation of the EIS. If technical assessments are well-progressed, we may be reluctant to revise the SEARs.

I should also note that the Department's ability to revise the biodiversity component of the SEARs is limited by Part 7 of the *Biodiversity Conservation (Savings and Transitional) Regulation 2017*. Based on an initial reading of Part 7, it appears that the DA would be a 'pending or interim planning application', and as such, the former planning provisions would continue to apply to the assessment of the application.

If you need any further information or clarification, please feel free to contact me.

Kind Regards

Lauren Evans

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From: Terri O'Brien [mailto:TOBrien@alburycity.nsw.gov.au]
Sent: Tuesday, 24 July 2018 1:15 PM
To: Lauren Evans <Lauren.Evans@planning.nsw.gov.au>
Cc: David Christy <dchristy@alburycity.nsw.gov.au>
Subject: RE: SEARs 1075 - DA10.2017.35776.1 for Extractive Industry at Rockwood Quarry, 208 Winchester Lane Table Top.

Importance: High

Hi Lauren

Can you advise if you have considered our questions below, so that we can advise the applicant accordingly.

Thanks heaps

Terri O'Brien
SENIOR TOWN PLANNER

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From: Terri O'Brien
Sent: Friday, 13 July 2018 12:16 PM
To: 'Lauren.Evans@planning.nsw.gov.au'
Cc: David Christy
Subject: SEARs 1075 - DA10.2017.35776.1 for Extractive Industry at Rockwood Quarry, 208 Winchester Lane Table Top.

Good afternoon Lauren

Further to our discussion this week regarding the Development Application lodged for the continuation/expansion of Rockwood Quarry at Table Top, I provide the following information in relation to the processing of the application and our concerns regarding the completion of the development process.

As you can see from the attached correspondence, Council requested significant additional/revised information from the applicant in March 2018 as we considered that the EIS submitted did not adequately address the SEARs issued in September 2016 and that the EIS was therefore not capable of being relied upon to assess the application. Consequently, we consider that the EIS as submitted also does not meet the requirements of the *Environmental Planning & Assessment (EP&A) Act* and EP&A Regulations in respect to *designated development* and is not valid.

As discussed, we did not **reject** the Development Application as the EP&A Regulations (at Clause 51) stipulate that Council must do so within 14 days of the lodgement of an application and can ONLY reject development applications for the following reasons:

*(a) the application is illegible or unclear as to the development consent sought, or
(b) the application does not contain any information, or is not accompanied by any document, specified in Part 1 of Schedule 1, or
(c) being an application referred to in section 78A (8A) of the Act, the application is not accompanied by an environmental impact statement referred to in that subsection.*

The application was:

1. identified on the application form that it was being made for the purpose of an extractive industry;
2. accompanied by documents which the applicant claimed contained all information required by Part 1 of Schedule 1; and
3. accompanied by an Environmental Impact Statement that the applicant certified:
 - a. had been prepared in accordance with the requirements of Schedule 2 of the EP&A Regulation;
 - b. contained all of the available information that was relevant to the environmental assessment of the application; and
 - c. was not false or misleading.

Consequently, Council had no grounds under Clause 51 of the Regulations to reject the application within 14 days of lodgement. It was only after detailed assessment of the application that the significant gaps in the EIS were identified by both Council and state agencies, including OEH, EPA and DPE Resources and Geoscience.

Following the detailed review of the submitted EIS by referral agencies and Council, we determined that the EIS did not meet the requirements of Schedule 2; had not addressed the SEARs issued for the development; and, in addition, that the application significantly exceeded the volumes and lifespan of the development subject to the SEARs. As we were unable to reject the application owing to the length of time provided to agencies to respond to the application, we could only ask for amended plans and information as detailed in the attachment to this email, or report the application to the Southern Joint Regional Planning Panel with a recommendation that they refuse the application.

We considered that on the basis of the meetings held with the relevant stakeholders and Council in March 2018 and following the receipt of the attached letter, that the applicant had a clear understanding of the information required and a timeline for its completion, and therefore considered that it was appropriate to enable the lodgement of the revised EIS rather than proceeding to report the application to the SJRPP with a recommendation to refuse the application.

On 22 March 2018, the applicant forwarded an email from you dated 16 March 2018 advising that:

*The Department has reviewed the information provided, and is satisfied that the original SEARs dated 5 September 2016 need not be re-issued. You may continue to rely on these SEARs until **5 September 2018**.*

However, I would encourage you to consult with the relevant agencies regarding the amendments to the proposal. I also recommend that you clearly identify and explain

these changes in the EIS.

Council has now received correspondence from the applicant (on Monday 9 July 2018) that they have experienced delays producing all of the information requested and that they are unlikely to complete the Aboriginal Cultural Heritage Assessment Report and EPBC approval for the removal/impact upon Federally listed vulnerable species and endangered communities for a further 4-5 months. This timeframe takes them beyond the 5 September 2018 expiration of the SEARs and the expiration of the existing development consent.

We are of the opinion that if a valid EIS (which is fully compliant with the SEARs issued on 5 September 2016) is not submitted before 5 September 2018, then the SEARs will expire and the applicant must seek revised SEARs prior to lodging a new EIS. We would further contend that in this event, the current application must be withdrawn and new Development Application be lodged when the revised SEARs have been issued and the EIS prepared to comply with them.

We are aware that the legislative environment has changed since the issue of the SEARs in 2016, especially in regard to Biodiversity and vegetation management. Council's LEP has also been amended since that time to reduce the area subject to Biocertification of the LEP to only the Residential, Industrial and Business zones. Given the nature of this development and its location partly within an E3 *Environmental Management* zone and partly within a RU2 *Rural Landscape* zone, we consider that the SEARs issued in 2016 no longer address all relevant environmental matters, particularly in regard to the *Biodiversity Conservation Act 2016*. Although the expiration date of the SEARs can be extended by the Department if the applicant can provide you with sufficient justification and if they can demonstrate significant progress towards the completion of a valid EIS, for the above reasons, we consider that it may not be appropriate to do so.

Can you advise Council, as a matter of some urgency, whether the SEARs issued for this project will expire on 5 September 2018 unless a valid and fully compliant EIS is lodged in accordance with the SEARs before that date, please?

Please do not hesitate to contact me if you require any clarification of the above, or further details in regard to the application.

Regards

Terri O'Brien
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