

## COUNCIL ASSESSMENT REPORT

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| <b>Panel Reference</b>  | 2018NTH009 DA  |
| <b>DA Number</b>  | DA 3/2018  |
| <b>LGA</b>  | Liverpool Plains Shire Council   |
| <b>Proposed Development</b>   | Extraction of Additional Conglomerate, Increase annual extraction for the quarry from 200,000 tpa to 400,000 tpa; Extract up to 5,000,000 t of hard rock resource over the life of the quarry;<br>Amend the site boundary to encompass additional land (Lot 1 in DP 502092); and, to continue current quarry operations  |
| <b>Street Address</b>   | 250-256 Merriwa Road, WILLOW TREE NSW 2339   |
| <b>Applicant/Owner</b>  | Mr Philip Marheine   |
| <b>Date of DA lodgement</b>   | 4 January 2018   |
| <b>Number of Submissions</b>  | One (1)  |
| <b>Recommendation</b>   | Approval   |
| <b>Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011)</b> | Designated Development - Extractive Industry   |
| <b>List of all relevant s4.15(1)(a) matters</b>   | Liverpool Plains Local Environmental Plan 2011<br>Liverpool Plains Shire Council Development Control Plan 2012<br>State Environmental Planning Policy (Infrastructure) 2007<br>State Environmental Planning Policy (Mining, Petroleum and Extractive Industries) 2007<br>State Environmental Planning Policy No. 55 – Remediation of Land<br>State Environmental Planning Policy No. 33 – Hazardous & Offensive Development<br>State Environmental Planning Policy (State and Regional Development)<br>State Environmental Planning Policy 44 - Koala Habitat Protection |
| <b>List all documents submitted with this report for the Panel's consideration</b>                  | <ul style="list-style-type: none"> <li>• Statement of Environmental Effects and Plans of the Proposed Development</li> <li>• Proposed Conditions of Development Consent</li> <li>• Agency referrals</li> <li>• Public submission</li> </ul>  |
| <b>Report prepared by</b>   | Shay Riley-Lewis<br>Consultant Town Planner  |
| <b>Report date</b>  | 1 August 2018  |

### Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?

**Yes**

### Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report?

**Yes**

*e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP*

### Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?

**Not Applicable**

**Special Infrastructure Contributions**

Does the DA require Special Infrastructure Contributions conditions (S7.24)?

**Not Applicable**

*Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions*

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**Conditions**

Have draft conditions been provided to the applicant for comment?

**Yes**

*Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report*

# **Assessment Report and Recommendations**

## **DA 3/2018, JRPP Ref: 2018NTH009**

### **Executive Summary**

#### **Consideration by Joint Regional Planning Panel**

The Joint Northern Regional Planning Panel (JRPP) is the determining authority for this DA pursuant to Schedule 7 (7)(a) of *State Environmental Planning Policy (State and Regional Development) 2011*. The proposal constitutes development for the purposes of an extractive industry, which meets the requirements for designated development under Clause 19 of Schedule 3 to the *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation). That is, an extractive industry that processes more than 30,000 cubic metres (m<sup>3</sup>) of extractive material per year and involves the disturbance of more than 2 Ha of land.

Pursuant to Schedule 3 Clause 35 and Clause 36 of the EP&A Regulation, the proposal is not considered to be designated development and therefore does not require an Environmental Impact Statement (EIS). It is deemed that the proposal involves alterations or additions to an approved development, which does not significantly increase the environmental impacts of the total development compared with the approved development.

#### **Background**

The existing quarry, which is known as Willow Tree Gravels, has been operating for over twenty (20) years under Development Application (DA) No. 20/1994, which was granted by the former Murrurundi Shire Council on 31 January 1995. A modification to DA 20/1994 under Section 96(2) of the *Environmental Planning and Assessment Act 1979* was approved by Liverpool Plains Shire Council (LPSC) on 21 October 2014 (DA 20/1994-02), enabling the continued operation of the quarry and amending the allowable timeframes for blasting.

The development consent, as modified, permits the extraction of a total of 4,000,000 tonnes of hard rock resources and up to 200,000 tonnes of material in any twelve (12) month period. The quarry comprises two pits, Pit 1 and Pit 2, from which basalt and conglomerate material are extracted, respectively. Further conglomerate resources occur to the east of the approved footprint of Pit 2, which was identified in the original EIS for the quarry (ERM 1994) as a future extension area. However, despite being identified, approval was not sought or granted for the extraction of hard rock resources within this extension area, as specified in Condition 16 of the development consent, as modified.

#### **Proposal**

This DA proposes the following development on the subject site:

- extraction of material in the Pit 2 extension area (the extension area);
- extraction of up to 400,000 tonnes per annum (tpa) from the quarry;
- extraction of up to 5,000,000 (Mt) of hard rock resource over the life of the quarry;
- amendments to the site boundary to encompass additional land (Lot 1 in DP 502092); and
- continuation of current quarry operations.

The Statement of Environmental Effects (SEE), plans and technical studies accompanying the subject application are contained in Appendix 1.

The proposed development is identified as being integrated development under Clause 4.8 of the *Environmental Planning and Assessment Act 1979* as it requires an Environmental Protection Licence (EPL) under the *Protection of the Environment Operations Act 1997*.

## **Environmental Planning Instruments**

The subject land is zoned RU1 Primary Production in accordance with the provisions of the *Liverpool Plains Local Environmental Plan 2011* (LEP). The proposed development is considered to be consistent with the objectives of the RU1 zone and is permissible with development consent. The proposed development is also deemed to be consistent with the provisions under six (6) State Environmental Planning Policies, as detailed in a later Section of this report.

## **Key Issues**

From the attached Assessment Report, the key issues for this project are:

- Noise and vibration impacts;
- Hours of operation;
- Blasting activities and impacts;
- Air quality impacts;
- Visual impacts; and,
- Traffic impacts.

The proposed development is considered compliant with applicable statutory planning controls and is consistent with the intent of relevant provisions of Council's Development Control Plan (DCP).

Notification and referral requirements have been complied with as a part of the assessment of the subject application. The subject application was notified to adjoining landowners and advertised in the *Quirindi Advocate* for a period of thirty (30) days, commencing Monday 8 January 2018 and ending Wednesday 7 February 2018. The DA was also referred to seven (6) other government agencies, the Australian Rail Track Corporation and Council's Technical Officers for comment – all of which raised no objections to the proposal subject to the imposition of suitable conditions of development consent.

One (1) public submission was received during the notification and advertising period. The matters raised in the submission have been considered as part of the assessment of this application, as detailed in a later section of this Report.

## **Recommendation**

The proposed development is considered satisfactory with regard to the identified key issues, including noise and vibration, air quality, visual, traffic and cumulative impacts, subject to the imposition of suitable conditions of development consent. The proposal has been assessed against the relevant matters for considered under Section 4.15(1) of the *Environmental Planning and Assessment Act 1979*.

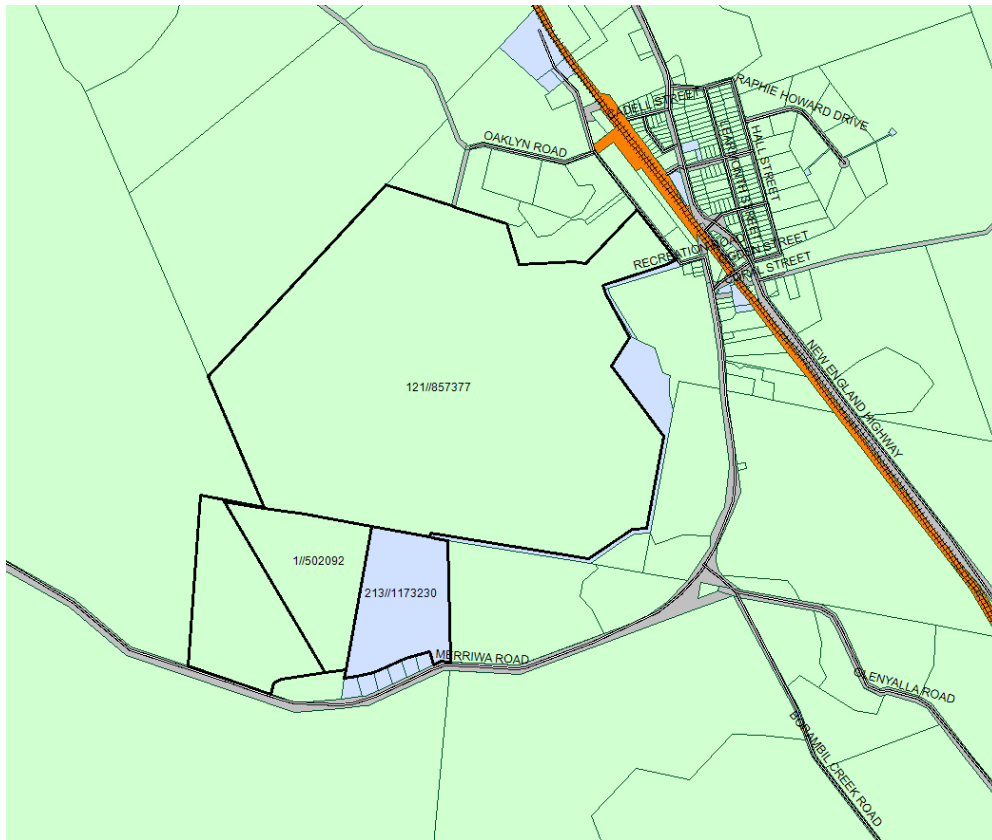
It is recommended that DA 3/2018 be approved subject to the conditions contained in Appendix 2.

## **Appendices**

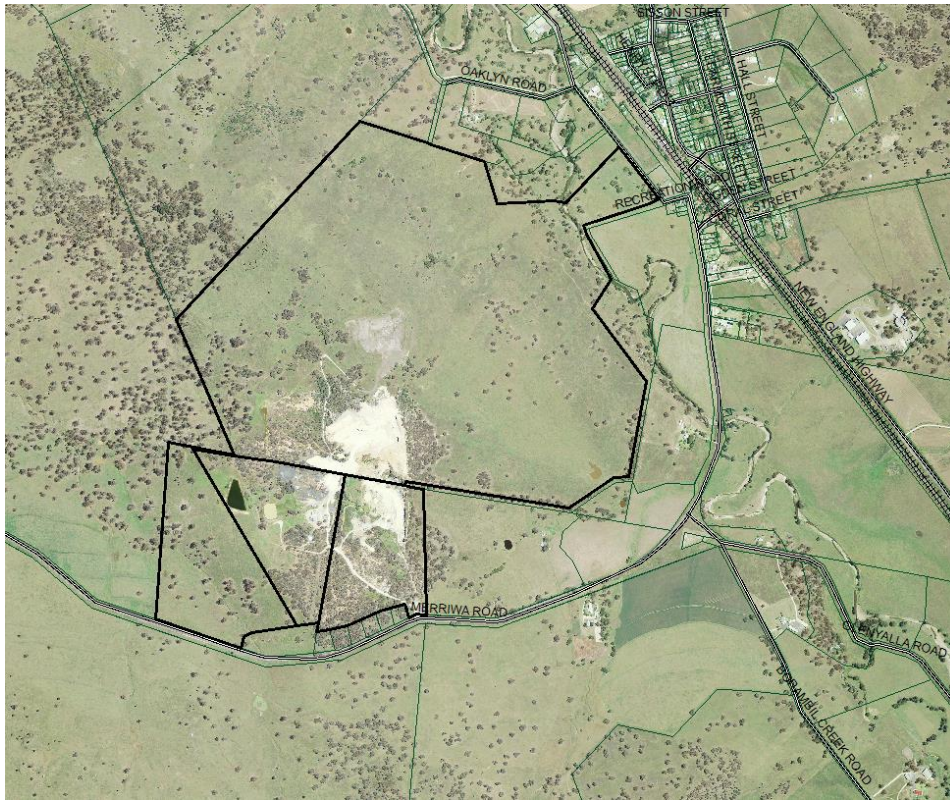
- Appendix 1 – Statement of Environmental Effects and Plans of the Proposed Development
- Appendix 2 – Proposed Conditions of Development Consent
- Appendix 3 – Agency Referrals
- Appendix 4 – Public Submission

## Subject Site and Locality

The site is known as 250-256 Merriwa Road, WILLOW TREE NSW 2339, and is described as Lot 121 in DP 857377, Lot 1 in DP 502092 and Lot 213 in DP 1173230. Cadastral and aerial images of the subject land are included as Figures 1 and 2, below.



**Figure 1 - Cadastral Image of the Subject Lands, 250-256 Merriwa Road, Willow Tree NSW 2339, Lot 121 in DP 857377, Lot 1 in DP 502092 and Lot 213 in DP 1173230.**



**Figure 2 - Aerial and Cadastral Image of the Subject Lands, 250-256 Merriwa Road, Willow Tree NSW 2339, Lot 121 in DP 857377, Lot 1 in DP 502092 and Lot 213 in DP 1173230.**

The existing Willow Tree Gravels (WTG) quarry is located in a rural locality and is situated approximately 2km south-west of the village of Willow Tree. There are a number of scattered rural residential properties located within a 2km radius of the site. The closest privately owned residence is located south-east of the extension area, approximately 800m from the project area boundary. Willow Tree Public School is approximately 1.3km east of the project area on Merriwa Road.

The Main Northern Rail Line and the New England Highway are located to the east of the project area and are oriented in a north-south direction through the village of Willow Tree. An active LPSC quarry and landfill adjoins the southern boundary of the project area, which are operated on an intermittent basis.

Access to the quarry is via an informal and unsealed access track over Council owned land, being Lot 213 in DP117230, off Merriwa Road. The access road is shared with Council's landfill and quarry.

An easement across Lot 213 DP 1173230 was requested during the assessment process in order to formalise the access from Merriwa Road to the WTG quarry. Council, at their Ordinary Meeting held on 18 April 2018, agreed to the creation of an easement for access purposes over Lot 213 in DP 1173230 and for the costs to be equitably shared between both Council and the proponent.

No items of local, State, National or World heritage significance identified on the State Heritage Register, Liverpool Plains LEP or Australian Heritage Database are within, or in close proximity to, the project area. The nearest listed place within the Australian Heritage Database is Murrurundi Urban Conservation Area, approximately 18 km south-east of the project area. There are a number of items of local heritage significance within the village of Willow Tree listed on the Liverpool Plains LEP. The nearest listed place is the Willow Tree Railway Station, approximately 1.5 km north-east of the project area.

A native title claim by the Gomeroi People has been registered over the extension area and is undetermined. The claim covers a large area extending roughly from Muswellbrook in the south, Goondawindi to the north, Glen Innes in the east and west of Walgett. However, native title claims can only be successful on vacant Crown land, National Parks, State Forests, Crown Reserves, some types of non-exclusive leases, land covered by permissive occupancies and licenses, inland waters and the sea. A search of the Aboriginal Heritage Information Management System (AHIMS) database and a field survey by the proponent's consultant did not identify any Aboriginal artefacts or areas of potential archaeological significance within the project area.

The subject lands are identified as being prone to bushfire hazards and partially liable to inundation by flooding. The NSW Rural Fire Service has provided advice regarding bushfire protection for the proposed development in accordance with Section 4.14 of the EP&A Act, which has been included within the recommended conditions of development consent contained in Appendix 2. The eastern portion of Lot 121 in DP 857377 is identified as being liable to inundation by flooding under the *Warrah Creek Floodplain Management Study (2007)* and the *Murrurundi, Blandford and Willow Tree Floodplain Management Study (1998)*. However, as the proposed development will be located outside of the flood inundation area, it is considered that the proposal is unlikely to cause adverse impacts on flood behavior and the environment or warrant the application of flood-related controls.

## Other Relevant Legislation

### Environment Protection and Biodiversity Conservation Act 1999

The proposed development will involve the clearing of 1.97 Ha of EPBC Act listed Critically Endangered Ecological Community (CEEC). The Commonwealth Department of Environment & Energy has confirmed the proposed clearing is not a matter of national environment significance (MNES), therefore approval under the EPBC is not required.

### Biodiversity Conservation Act 2016

In August 2017, the *Biodiversity Conservation Act 2016* commenced operation and changed the way impacts to biodiversity are assessed and offset in NSW, with offsetting required for any projects exceeding certain clearing thresholds outlined in the *Biodiversity Conservation Regulation 2017* (BC Regulation). Concurrent with the commencement of the BC Act, the NSW Government released the *Biodiversity Conservation (Savings and Transitional) Regulation 2017* (Savings and Transitional Regulation). This Regulation sets out a number of transitional arrangements, for which development applications can be considered under the previous legislation if assessment requirements have been issued or substantial environmental assessment was undertaken before the 25 August 2017.

The Willow Tree Gravels extension project received assessment requirements on the 8 August 2017, which specified the use of the BioBanking Assessment Methodology (BBAM) (OEH 2014). Therefore, the BBAM (OEH 2014), established under section 127B of the TSC Act, has been used to assess and offset impacts.

Within the SEE and the BAR, references to *White Box Yellow Box Blakely's Red Gum Woodland* EEC, as listed under the NSW TSC Act, align directly with *White Box Yellow Box Blakely's Red Gum Woodland*, as listed under the BC Act. Schedule 2 of the BC Act lists *White Box Yellow Box Blakely's Red Gum Woodland* (as described in the determination of the Scientific Committee under Division 5 of Part 2 of the TSC Act) as a TEC.

The *EIA requirements for Statement of Environmental Effects - Willow Tree Gravel Quarry Extension*, dated 8 August 2017 (OEH) (the EIA requirements), had specific requirements in regards to the clearing of native vegetation identified as a threatened ecological community



(TEC). OEH recommended that the impacts and offsets for the TEC be calculated using the BioBanking Assessment Methodology (BBAM) (OEH 2014) as it allows quantification of impacts and assessment value of offset areas and associated management regimes for those areas (this is addressed throughout the BAR). The BioBanking scheme provides an alternative path for proponents to the threatened species assessment of significance process, and therefore assessment of significance, as per Section 7.3 of the BC Act (or Section 94 of the TSC Act), are not required.

#### Biodiversity Conservation Regulation 2017

##### **6.31 Changes in biodiversity assessment method**

- (1) *If the biodiversity method is changed, a biodiversity assessment report may, during the designated period after the method is changed, be prepared on the basis of the method in force before the change, but only if the report states that it has been prepared on that basis.*
- (2) *For the purposes of this clause, the designated period is:*
  - (a) *except as provided by this subclause—6 months, or*
  - (b) *in the case of a biodiversity development assessment report in respect of State significant development or State significant infrastructure—12 months, or*
  - (c) *in the case of a biodiversity certification assessment report for an application that is not a strategic biodiversity certification application—12 months, or*
  - (d) *in the case of a biodiversity certification assessment report for a strategic biodiversity certification application—12 months or such longer period as the Minister approves in a particular case.*

#### Biodiversity Conservation (Savings and Transitional) Regulation 2017 (BC Transitional Regulation)

The provisions under the BC Transitional Regulation allow a DA to be determined under the former provisions. Part 7 Clause 28 of the BC Transitional Regulation states:

##### **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’ is defined as follows:

- (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,*
- (b) *an application for planning approval (or for the modification of a planning approval) made within 18 months after the commencement of the new Act if an environmental impact statement is to be submitted in connection with the application and the Secretary of the Department of Planning and Environment issued, before the commencement of the new Act, environmental assessment requirements for the preparation of the statement,*
- (c) *an application for planning approval (or for the modification of a planning approval) made within 12 months after the commencement of the new Act if a species impact statement is to be submitted in connection with the application and the Environment*



*Agency Head issued, before the commencement of the new Act, requirements for the preparation of the statement,*

- (d) an application for planning approval (or for the modification of a planning approval) made after the commencement of the new Act if an environmental impact statement is to be submitted in connection with the application and the Secretary of the Department of Planning and Environment determines in writing that the proponent had undertaken substantial environmental assessment in connection with the statement before the commencement of the new Act (but only if the application is made within 18 months after that determination),*
- (e) except in the case of State significant development—an application for development consent under Part 4 of the [Environmental Planning and Assessment Act 1979](#) (or for the modification of such a development consent) made within 6 months after the commencement of the new Act (but only if any species impact statement that is to be submitted in connection with the application is submitted within 12 months after the commencement of the new Act),*

The BC Act 2016 commenced on 25 August 2017. DA 3/2018 was lodged with LPSC on 4 January 2018, which is within the 6 month timeframe (i.e. before 25 February 2018).

A Species Impact Statement is not required to be submitted in connection with the subject application for the following reasons:

- The biodiversity assessment report contained in Appendix G of the SEE concludes that the proposed development is unlikely to have a significant impact to threatened species; and
- The proposed development is likely to affect critical habitat declared under the TSC Act, as detailed in the submitted biodiversity assessment report.

#### Protection of the Environment Operations Act (POEO) 1997

Willow Tree Gravels (WTG) has an existing Environment Protection Licence (EPL) #5154 under the POEO Act. The EPL limits extraction to 200,000 tonnes per annum. The EPL has monitoring and reporting requirements for water discharges, air and noise.

EPA have provided General Terms of Approval for the proposed increased production (see Appendix 3). A separate application to vary the licence will be required.

#### Water Management Act 2000 (WMA)

The proponent holds a water licence (90WA821995) under the WMA that is registered to Lot 121 DP857377.

The Department of Industry – Lands & Water has advised in letter dated 22 February 2018 (ref: IDAS1104484) that the proposed activity is not occurring on waterfront land and therefore does not constitute a controlled activity as defined by the WM Act.

## **Proposed Development**

This DA proposes the following development on the subject lands:

- extraction of material in the Pit 2 extension area (the extension area);
- extraction of up to 400,000 tpa from the quarry;
- extraction of up to 5 Mt of hard rock resource over the life of the quarry;
- amendments to the site boundary to encompass additional land (Lot 1 in DP 502092); and
- continuation of current quarry operations.

The proposed development is identified as being integrated development under Clause 4.8 of the *Environmental Planning and Assessment Act 1979* as it requires an Environmental Protection Licence under the *Protection of the Environment Operations Act 1997*.

## Submitted Documents and Plans

The following documentation has been relied upon for assessment of the subject DA:

1. Statement of Environmental Effects, Prepared by EMM Consulting, Dated 6/11/2017;
2. Noise & Vibration Impact Assessment, Prepared by EMM Consulting, Dated 6/11/2017;
3. Air Quality Impact Assessment, Prepared by Northstar Air Quality Pty Ltd, Dated 10/11/2017;
4. Aboriginal Due Diligence Assessment, Prepared by EMM Consulting, Dated 9/11/2017;
5. Biodiversity Assessment Report, Prepared by EMM Consulting, Dated 8/11/2017 & Additional Information re: 'Willow Tree Gravel – Biodiversity', Received via Email on 19/06/2018; and,
6. Traffic Impact Assessment, Prepared by EMM Consulting, Dated 27/10/2017.

The Statement of Environmental Effects (SEE), plans and technical studies accompanying the subject application are contained in Appendix 1

## Agency Referrals

The following agencies were notified of the subject DA:

| Referral Agency:                             | Response Date:   | Summary of Advice / Issues:   |
|--|------------------|---|
| NSW Environment Protection Authority (EPA)   | 1 March 2018     | <p>The EPA have reviewed the information provided and has determined that it is able to vary the existing Environment Protection Licence (#5154) for the proposal, subject to a number of conditions. The applicant will need to make a separate licence variation application to the EPA to amend this licence.</p> <p>The EPA's General Terms of Approval for the proposal are contained in Appendix 3.</p>   |
| NSW Office of Environment and Heritage (OEH) | 29 January 2018  | The OEH reviewed the proposed development and information provided with the subject application. OEH recommends that Council specify the number and type of credits to be retired as per the Biobanking Credit Report provided in the Biodiversity Assessment Report in the consent conditions for this development.  |
| NSW Department of Industry – Lands & Water   | 22 February 2018 | <p>The Department of Industry (Lands &amp; Water) has reviewed the information provided with the subject application and considers that, for the purposes of the <i>Water Management Act 2000</i> (WM Act), a controlled activity approval and no further assessment by this agency is required as:</p> <ul style="list-style-type: none"> <li>• The proposed activity is not occurring on waterfront land; and,</li> <li>• The proposed activity is not a controlled activity as defined by the WM Act.</li> </ul> |
| NSW Roads and Maritime Services (RMS)        | 15 February 2018 | The existing intersection between Merriwa Road and the access road to the quarry should be formed up, sealed and line marked in accordance with the current AUSTROADS standards in order to define turning movements and improve safety. The existing   |

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|  |                 | <p>access road should also be sealed back from Merriwa Road to reduce tracking of loose material.</p> <p>Merriwa Road is an approved B-Double route. The traffic impact assessment mentions the use of B-Doubles for haulage. The existing traffic facilities do not cater for their increased length and turning paths. The use of B-Doubles should be subject to further review.</p> <p>It is recommended that a Driver's Code of Conduct should be implemented.</p>   |
| NSW Rural Fire Service (RFS)   | 30 January 2018 | The NSW RFS have recommended for a condition to be imposed requiring an inner protection area to be maintained around the site office and workshop buildings to minimise the risk of bushfire attack.  |
| NSW Department of Planning and Environment – Division of Resources & Geoscience, Geological Survey of New South Wales (GNSW) | 31 January 2018 | <p>GSNSW has reviewed the Statement of Environmental Effects and notes the expansion area of Pit 2 was identified as part of the geological study/resource assessment that accompanied the quarry's original development application in 1994. GSNSW also notes that further exploration drilling in the extension area of Pit 2 (referred to in page E.1 of the Statement of Environmental Effects) has confirmed the high quality of the resource in the extension area and its suitability for a range of intended applications. GSNSW has no concerns relating to the quarry expansion and supports maximising resource extraction at the site.</p> <p>In order to assist in the collection of construction material production data, the proponent should be required to provide annual production data for the subject site to the NSW Division of Resources and Geoscience as a condition of any new or amended development consent.</p> |
| Australian Rail Track Corporation (ARTC)   | 5 February 2018 | ARTC have no objections to the proposed development, as described, and recommends that Council should consider the provisions and associated Guidelines under <i>State Environmental Planning Policy (Infrastructure) 2007</i> .   |

A copy of the abovementioned agency comments is contained in Appendix 3.

### Internal Referrals

Internal consultation was carried out as a part of the assessment of the subject application. This included consultation with Council's Consultant Environmental Health Officer, Consultant Heritage Advisor, Director of Engineering Services and Water Services Manager. Conditions have been incorporated into the recommended terms of consent in line with the advices received from the aforementioned Council Officers.

### Political Donations

At the time of lodging the Development Application the applicant indicated, pursuant to Section 10.4 (4) of the EP&A Act, that no reportable political donation or gift had been made

by the applicant or any person with a financial interest in this application to a local Councillor or employee of Liverpool Plains Shire Council.

## Assessment - Matters for Consideration

The assessment of this DA has been undertaken in accordance with Section 4.15(1) of the EP&A Act, as amended. In determining a development application, a consent authority is to take into consideration the following matters as relevant to the proposal:

### Environmental Planning Instruments [S4.15(1)(a)(i)]

The following State Environmental Planning Policies (SEPPs) are relevant to the subject DA:

#### State Environmental Planning Policy (Infrastructure) 2007

This Policy aims to facilitate the effective delivery of infrastructure across the State by providing consistent approval process for infrastructure providers. The proposed increased production constitutes a traffic generating development pursuant to Clause 104 and Schedule 3 of this Policy being 'other development' of 200 vehicles. Clause 104 states:

#### **104 Traffic-generating development**

*(1) This clause applies to development specified in Column 1 of the Table to Schedule 3 that involves:*

- (a) new premises of the relevant size or capacity, or*
- (b) an enlargement or extension of existing premises, being an alteration or addition of the relevant size or capacity.*

In accordance with Clause 104(3)(b), the consent authority must take into consideration:

- (i) any submission that RMS provides in response to that notice within 21 days after the notice was given (unless, before the 21 days have passed, RMS advises that it will not be making a submission), and*
- (ii) the accessibility of the site concerned, including:*
  - (A) the efficiency of movement of people and freight to and from the site and the extent of multi-purpose trips, and*
  - (B) the potential to minimise the need for travel by car and to maximise movement of freight in containers or bulk freight by rail, and*
- (iii) any potential traffic safety, road congestion or parking implications of the development.*

The NSW RMS has provided comment on the proposal, which is outlined in the previous section of this Report. Council's Director of Engineering Services supports the RMS's advice to upgrade the existing road intersection and seal the existing access road and specified that a Right of Carriage Way easement on Lot 213 in DP1173230 over the existing access road in use off Merriwa Road to Lot 121 DP 857377 will also be required to be established. These recommendations have been incorporated into the conditions of consent contained within Appendix 2 to this Report.

The traffic assessment provided with the application indicates the intersection will continue to operate with a Level of Service (LoS) A. The proposed development is expected to generate an additional 28 truck movements per day to/from the north and 12 truck movements per day to/from the south. The 50% increase in heavy vehicle traffic is not expected to have a demonstrable affect on traffic safety, road congestion or parking.

The proposed use is considered appropriate in accordance with Clause 104 of this Policy and consistent with the associated Guidelines.

State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007 (Mining SEPP) aims to provide for the proper management and development of mineral, petroleum and extractive material resources for the social and economic welfare of the State.

Part 3 of the SEPP requires consent authorities to consider the following factors in assessing a DA for extractive industry, as detailed below:

| Matter for Consideration  | Comments   |
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| <p><b>12 Compatibility of proposed mine, petroleum production or extractive industry with other land uses</b></p> <p>Before determining an application for consent for development for the purposes of mining, petroleum production or extractive industry, the consent authority must:</p> <p>(a) consider:</p> <ul style="list-style-type: none"> <li>(i) the existing uses and approved uses of land in the vicinity of the development, and</li> <li>(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</li> <li>(iii) any ways in which the development may be incompatible with any of those existing, approved or likely preferred uses, and</li> </ul> <p>(b) evaluate and compare the respective public benefits of the development and the land uses referred to in paragraph (a) (i) and (ii), and</p> <p>(c) evaluate any measures proposed by the applicant to avoid or minimise any incompatibility, as referred to in paragraph (a) (iii).</p> | <p>The proposed development is on land of an existing quarry. The site is surrounded by grazing land and rural residential development.</p> <p>The proposed increased production rate is not considered likely to have a significant impact on surrounding land uses. The external impacts on traffic, dust and noise will be adequately managed onsite to avoid demonstrable impact.</p> <p>The ongoing quarry use is considered an appropriate use for the location, able to co-exist with the existing rural and low density residential. The area comprises large lots with no strategic plans to intensify residential development.</p> <p>The proposed environmental measures to ameliorate dust, traffic and noise impacts are considered adequate.</p> |
| <p><b>14 Natural resource management and environmental management</b></p> <p>(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:</p>  | <p>Water management measures are in place and will be maintained to avoid impacts to surface water. Water discharges limits for TSP are enforced by the EPA with the EPL. Monitoring and reporting of conductivity, oil and grease and pH are also required by the EPL.</p> <p>The proposed development requires clearing of 3.73 Ha of vegetation. The biodiversity assessment provided with the</p>  |

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| <p>(1) that impacts on significant water resources, including surface and groundwater resources, are avoided, or are minimised to the greatest extent practicable,</p> <p>(2) that impacts on threatened species and biodiversity, are avoided, or are minimised to the greatest extent practicable,</p> <p>(3) that greenhouse gas emissions are minimised to the greatest extent practicable.</p> <p>(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.</p> <p>(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.</p> | <p>application confirms the proposal will not have a significant impact on threatened species or biodiversity. Biodiversity offset of 192 ecosystem credits must be provided in accordance with <i>Biodiversity Banking Assessment Methodology</i> (Office of Environment and Heritage 2014).</p> <p>Greenhouse emissions from the proposal are expected to be minimal.</p> <p>Not applicable to the proposed development.</p> |
| <p><b>15 Resource recovery</b></p> <p>(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.</p> <p>(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.</p>  | <p>The quarry is efficient in their resource recovery by extracting resources on a campaign basis in response to customer orders. Thereby reducing any waste or product decline over time.</p>   |
| <p><b>17 Rehabilitation</b></p>   |  |

|  |  |
|--|--|
| <p>(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.</p>   | <p>Conditions of consent will be included reflecting the rehabilitation commitments in the SEE and Quarry's existing Operational Management Plan (OMP). The site will be rehabilitated in accordance with the rehabilitation section of the original EIS prepared by</p>   |
| <p>(2) In particular, the consent authority must consider whether conditions of the consent should:</p> <ol style="list-style-type: none"> <li>require the preparation of a plan that identifies the proposed end use and landform of the land once rehabilitated, or</li> <li>require waste generated by the development or the rehabilitation to be dealt with appropriately, or</li> <li>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 <i>Contaminated Land Management Act 1997</i>), or</li> <li>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.</li> </ol> | <p>The quarry will be rehabilitated to achieve the post quarry objectives in the rehabilitation section of the submitted Statement of Environmental Effects.</p> <p>Topsoil will be stockpiled for later use in rehabilitation.</p> <p>No other wastes will be generated.</p> <p>The proposal will not require remediation of any contaminated soils.</p> <p>Rehabilitation of the land will not jeopardise public safety.</p> |

The proposed development satisfies the requirements of the Mining SEPP.

*State Environmental Planning Policy No. 55 – Remediation of Land*

The objective of SEPP 55 is to provide a state-wide planning approach to the remediation of contaminated land. The SEPP requires consideration of previous land uses and promotes the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment.

The subject land is an existing quarry which has the potential to be contaminated from fuel spills.

*SEPP 55 Planning Guidelines* (1998) requires planning authorities to consider the following principles in assessing development applications in relation to land that is, or may be contaminated:

- *No planning decision should be made unless sufficient information is available to make the decision.*
- *Development applications should include sufficient information on past uses of the subject land to allow the suitability of the land for the proposed use to be assessed.*
- *Changes of use on contaminated land may proceed provided:*



- the land is suitable for the intended use, or
- provisions are included in the planning instrument to require appropriate investigation or restrictions on any subsequent development applications, or
- conditions are attached to the development consent to ensure that the subject land can and will be remediated to a level appropriate to its intended use prior to, or during, the development stage.

The increased extraction rate is not considered a sensitive use and is unlikely to disturb any onsite contamination or create any exposure risk to humans or the environment. The proposal is not a change of use. Conditions are included in the consent to manage any onsite spills and waste. The proposed increased extraction rate is considered an appropriate for the site.

#### State Environmental Planning Policy No. 33 – Hazardous & Offensive Development

State Environmental Planning Policy No 33 – Hazardous and Offensive Development (SEPP 33) applies to development for the purposes of a potentially hazardous or offensive industry.

The applicant proposes to increase production at the quarry, which could be deemed 'offensive' due to generation of noise and air quality emissions. Noise and air quality assessments of the proposed development demonstrate that, with environmental safeguards in place, the proposal will not significantly contribute to current noise or air quality emissions from the quarry. Therefore, the proposal is not considered to be an 'offensive industry'.

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

The application constitutes a regionally significant project to be determined by Joint Regional Planning Panel (JRPP).

Clause 7 of Schedule 7 of SEPP (State and Regional) Development 2011 states:

##### **7 Particular designated development**

*Development for the purposes of:*

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

The proposed development satisfies the definition of extractive industry under Cl.19(1)(b)(i) of Schedule 3 of the *Environmental Planning and Assessment Regulation 2000* and is therefore to be determined by the Joint Regional Planning Panel (JRPP). Clause 19 states:

##### **19. Extractive industries**

(1) *Extractive industries (being industries that obtain extractive materials by methods including excavating, dredging, tunnelling or quarrying or that store, stockpile or process extractive materials by methods including washing, crushing, sawing or separating):*

(a) *that obtain or process for sale, or reuse, more than 30,000 cubic metres of extractive material per year, or*

(b) *that disturb or will disturb a total surface area of more than 2 hectares of land by:*

(i) *clearing or excavating, ...*

(c) *that are located:*

...

(v) *if involving blasting, within 1,000 metres of a residential zone or within 500 metres of a dwelling not associated with the development...*"

Notwithstanding, the proposal is not considered to constitute designated development pursuant to Clause 35 of Schedule 3 of the *Environmental Planning and Assessment Regulation 2000*. The proposed 'alterations and additions do not significantly increase the environmental impacts of the total development'. Therefore, an Environmental Impact Statement (EIS) is not required for the proposal.

#### State Environmental Planning Policy No. 44 - Koala Habitat Protection

This Policy (SEPP No. 44) applies to areas of native vegetation greater than 1 Ha and in the Local Government Areas (LGAs) listed in Schedule 1. The development site is located in the Liverpool Plains Council (an amalgamation of Quirindi Shire with parts of Parry, Murrurundi and Gunnedah LGAs). The Quirindi, Parry and Gunnedah shires are listed in Schedule 1, therefore Koala habitat should be considered.

One (1) Koala feed tree species, as defined within Schedule 2 of the SEPP, was identified within the development site. White Box (*Eucalyptus albens*) makes up greater than 15% of the tree species within the development site. Therefore, the vegetation within the development site is considered potential Koala habitat as defined under SEPP 44.

The Koala has not been recorded within the locality and scats were not recorded during site surveys. There is little connectivity from the proposed extension area to larger patches of vegetation within the locality. Further, there are no concentrations of Koala records until closer to Gunnedah in the north-west and in larger remnants of vegetation (State Forests, National Parks) along the Great Dividing Range. Based on a lack of a resident population of Koalas, the area is not defined as core Koala habitat under SEPP 44.

#### Liverpool Plains Local Environmental Plan 2011

The subject land is zoned RU1 Primary Production in accordance with the provisions of the Liverpool Plains LEP. The objectives of the RU1 zone are as follows:

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*
- *To encourage diversity in primary industry enterprises and systems appropriate for the area.*
- *To minimise the fragmentation and alienation of resource lands.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*

The proposed development is considered to be consistent with the objectives of the RU1 zone as listed above.

The existing quarry on the subject land can be defined under the LEP as follows:

**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.

Extractive industries are permitted with consent on land zoned RU1 Primary Production.

#### **Draft Environmental Planning Instruments [S4.15(1)(a)(ii)]**

At the time of submission of this Report, there were no draft environmental planning instruments that applied to the subject site.

## Liverpool Plains Development Control Plan 2012 [S4.15(1)(a)(iii)]

The *Liverpool Plains Shire Council Development Control Plan (DCP) 2012* applies to the land. The following Table outlines the relevant Chapters / provisions of the DCP that have been considered in connection with this assessment.

| Chapter  | Comment   |
|--|---|
| 2.2.1 Notification<br>2.2.2 Advertising        | <p>The subject application was notified to adjoining landowners and advertised in the <i>Quirindi Advocate</i> for a period of thirty (30) days, commencing Monday 8 January 2018 and ending Wednesday 7 February 2018.</p> <p>One (1) public submission was received during the public consultation period. The matters raised are detailed and addressed later in this Report.</p>  |
| 4.1.1 Development on flood affected land       | <p>The eastern portion of Lot 121 in DP 857377 is identified as being liable to inundation by flooding under the <i>Warrah Creek Floodplain Management Study (2007)</i> and the <i>Murrurundi, Blandford and Willow Tree Floodplain Management Study (1998)</i>. However, as the proposed development will be located outside of the flood inundation area, it is considered that the proposal is unlikely to cause adverse impacts on flood behavior and the environment or warrant the application of flood-related controls.</p> |
| 4.1.2 Outdoor Signage & 4.1.3 Outdoor Lighting | <p>No outdoor signage or addition outdoor lighting is proposed.</p>   |
| 4.1.4 Parking                                  | <p>The quarry may be considered an 'industrial use' in accordance with the Appendix C – Parking Schedule. As such the DCP requires: 1 space per 75m<sup>2</sup> GFA or 1 space per 2 employees (whichever is greater). The proposed development will not generate the need for any additional staff or customer parking. The current onsite parking provision is considered appropriate.</p>  |
| 4.1.5 Landscaping                              | <p>Additional landscaping will be required as screen planting along the eastern perimeter of the extension area. A condition of consent will be included.</p>   |
| 4.1.6 Heritage Conservation                    | <p>The proposed use is not located within Quirindi or Werris Creek CBD. A desktop search confirms the absence of any listed heritage items in proximity to the development.</p>   |
| 4.2.1 Environmental Effects                    | <p>The SEE provided with the application adequately demonstrates how impacts on traffic, flooding, waste, noise, dust and water will be addressed. Existing onsite stormwater detention basin will required upgrade to accommodate the increased extraction area runoff. Conditions of consent will be included.</p>  |
| 4.2.2 Erosion and Sediment Controls            | <p>Condition of consent will be included to address erosion and sedimentation. Existing controls of the existing consent remain applicable.</p>   |
| 4.2.3 Land Use Buffers                         | <p>The proposal is within the footprint of the existing approved quarry. A field survey indicates the absence of any Aboriginal artefacts or areas of potential archaeological deposit (PAD). The proposed use is not considered likely to generate any significant offsite impacts leading to land use conflict.</p>   |
| 4.2.4 On-site Wastewater Management Systems    | <p>The existing onsite facilities remain appropriate for the expansion.</p>   |

|                        |   |
|------------------------|---|
| 4.2.5 Waste Management | The existing approved waste management facilities remain appropriate.   |
| 4.2.7 Noise            | The noise impact assessment provided with the SEE predicts an acceptable impact at nearby residences. The EPA has provided GTAs for the future modification of the site EPL in relation to noise to ensure acceptable offsite impact. |
| 4.2.8 Geology          | The quarry operations are not affected by any erosive soils, saline, low wet strength or reactive soils.  |

#### **Provisions of any Planning Agreement [S4.15(1)(a)(iia)]**

Not applicable.

#### **The Provisions of the Regulations [S4.15(1)(a)(iv)]**

The provisions under Clauses 92, 93, 94 and 94A of the EP&A Regulation do not apply to the proposed development.

The quarry constitutes designated development pursuant to Schedule 3 Clause 19 of the EP&A Regulation being an extractive industry that processes more than 30,000 cubic metres (m<sup>3</sup>) of extractive material per year and involves the disturbance of more than 2 Ha of land. However, pursuant to Schedule 3 Clause 35 of the EP&A Regulation, a development involving alterations or additions to an approved development, which does not significantly increase the environmental impacts of the total development compared with the approved development, is not designated development. Clause 35 states:

**35 Is there a significant increase in the environmental impacts of the total development?**

*Development involving alterations or additions to development (whether existing or approved) is not designated development if, in the opinion of the consent authority, the alterations or additions do not significantly increase the environmental impacts of the total development (that is the development together with the additions or alterations) compared with the existing or approved development.*

Clause 36 of the EP&A Regulation details the factors to be taken into consideration:

- (a) *the impact of the existing development having regard to factors including:*
  - (i) *previous environmental management performance, including compliance with the conditions of any consents, licences, leases or authorisations by a public authority and compliance with any relevant codes of practice, and*
  - (ii) *rehabilitation or restoration of any disturbed land, and*
  - (iii) *the number and nature of all past changes and their cumulative effects, and*
- (b) *the likely impact of the proposed alterations or additions having regard to factors including:*
  - (i) *the scale, character or nature of the proposal in relation to the development, and*
  - (ii) *the existing vegetation, air, noise and water quality, scenic character and special features of the land on which the development is or is to be carried out and the surrounding locality, and*
  - (iii) *the degree to which the potential environmental impacts can be predicted with adequate certainty, and*
  - (iv) *the capacity of the receiving environment to accommodate changes in environmental impacts, and*
- (c) *any proposals:*
  - (i) *to mitigate the environmental impacts and manage any residual risk, and*
  - (ii) *to facilitate compliance with relevant standards, codes of practice or guidelines published by the Department or other public authorities.*

In consideration of the above criteria, the proposed increase in extraction/production from 200,000 tpa to 400,000 tpa is not considered likely to significantly increase the environmental impacts of the development.

## **The Likely Impacts of the Development [S4.15(1)(b)]**

### Impacts on the Natural Environment

3.73 Hectares of vegetation will be removed for the proposal. Of this, 0.93 Hectares is listed under the *Biodiversity Conservation Act 2016* as Endangered Ecological Community (EEC) and 1.97ha of EPBC Act listed Critically Endangered Ecological Community (CEEC). The Commonwealth Department of Environment & Energy has confirmed the proposed clearing is not a matter of national environment significance (MNES), therefore approval under the EPBC is not required.

A condition of consent has been imposed requiring 192 ecosystem credits to be provided in accordance with *Biodiversity Banking Assessment Methodology* (Office of Environment and Heritage 2014). A biobanking offset strategy must be finalised in consultation with OEH and LPSC prior to vegetation clearing within the extension area. Any property required for offsetting will be secured under a Biobanking agreement in accordance with *Biodiversity Banking Assessment Methodology* (Office of Environment and Heritage 2014).

Surface water will be managed by the sedimentation dam included in the original approved DA. Water management measures are in place and will be maintained to avoid impacts to surface water. The sedimentation dam depth is to be increased to accommodate the predicted increased peak flows generated by the quarry extension as described in the SEE. The proposal will not affect groundwater.

Water discharge from the onsite dam is monitored and regulated by EPL #5154. Water discharges limits for TSP are enforced by the EPA with the EPL. Monitoring and reporting of conductivity, oil and grease and pH are also required by the EPL.

The proposed development does not appear to pose any significant impacts to soil quality, site erosion, land degradation or salinity, nor does it pose any risk for subsidence or landslip. The proposed development is anticipated to have minimal impact on other land resources, such as productive agricultural land, mineral/extractive resources and water supply catchments.

Quarry noise emission levels are predicted to be below the relevant project specific noise levels at all assessment locations for both the existing operations and for the proposed extension. The predicted traffic noise levels satisfy the relevant criteria (of LAeq,15 hour 60 dB (external)), as well as the relative increase criteria since the predicted increase is less than 2 dB. Hence, the project is not predicted to generate road traffic noise impacts at the nearest potentially affected receivers. Blast overpressure and ground vibration levels from the project are predicted to satisfy relevant EPA guidelines. Maximum noise levels and monitoring, blasting overpressure and vibration are included the EPA GTAs.

The extended extraction area may be partially visible from the Willow Tree township. Screen planting will be conditioned along the eastern perimeter of the extension area to filter views to the extraction area.

### Impacts on the Built Environment

The proposed development is not expected to have any deleterious impacts on the built environment. A condition has been imposed requiring an inner protection area to be maintained around the existing buildings associated with the quarry in order to minimise the risk of bushfire hazards.

### Social & Economic Impacts

The proposed development will have a positive economic impact on the locality, providing new jobs and business to the local area. The proposal is not expected to have negative social impacts.

### Cumulative Impacts

The potential impacts of the proposal on the locality have been considered in detail during the assessment of the DA and within this Report. Cumulative traffic, dust and noise will result from the development and are considered to be acceptable.

### **The Suitability of the Site for the Development [S4.15(1)(c)]**

The subject site is considered suitable for the proposed development for the following reasons:

- The proposed development is not expected to result in deleterious impacts;
- The proposed development is considered to be compatible with the character of the surrounding area as the quarry has been operational for a significant period of time; and,
- There are no other known environmental hazards or constraints associated with the site as detailed within this report (flooding, threatened species, contamination etc.).

### **Any Submissions made in accordance with the Act or Regulations [S4.15(1)(d)]**

One (1) public submission was received during the notification and advertising period for the subject application (see Appendix 4). The matters raised in the submission are outlined and addressed below:

- **Noise and vibration** – the noise and vibration modelling that was submitted with the subject application has predicted compliance with EPA criteria. Audibility does not constitute unacceptable noise. EPA GTAs establish acceptable criteria and monitoring requirements that will be included as conditions of consent and be included the amended EPL for the site to ensure compliance with noise and vibration.
- **Operating hours** – A condition of consent relating to operating hours will be included reflecting the EPA GTAs of 7am and 5pm, Monday to Friday and 7am-4pm on Saturday.
- **Blasting frequency** – A new condition of consent is included in the EPA GTAs limiting blasting to once per day only between 11am-3pm Monday to Friday.
- **Blasting notification** – a new condition of consent will be included requiring 24hrs notice to residences within 1km of the site prior to blasting.
- **Air Quality** – background levels are used in conjunction with local topography to model air impacts. Multiple sources of dust exist (including the Council quarry and landfill) making it difficult to assign a point source. The modelling predicts compliance with EPA criteria. The screen planting to be required as a condition of consent will assist in reducing offsite dust deposition as will sealing the access road to the quarry. The EPA have the authority to condition air emissions. The EPA requirement to install a weather monitoring station will enable review of the EPA as to the accuracy of the modelling.
- **Visual** – a condition of consent has been included for screen planting along the eastern perimeter of the extraction area to minimise the visual impact. The additional extraction area is over 800m from the visual receptor R1 is not considered likely to cause a significant impact.

- **Road traffic noise** - The project is not predicted to generate road traffic noise impacts at the nearest potentially affected receivers. 100 trucks per day is within the current approved extraction rate and the peak daily production numbers used in the traffic assessment to model the future proposed impacts. Road speed limits are not a development application issue but will be taken under notice with Council's traffic department for further consideration. Council will consider a reduction in the speed limit and consider erecting a 'no air-braking' sign.
- **Stakeholder engagement** - There was no obligation under the EP&A Act to consult with neighbours prior to lodging the DA. Council's notification process ensures the community has an opportunity to review and comment. Community feedback is considered pursuant to S4.15 of the EP&A Act.

Agency submissions have been addressed in previous sections of this report.

### **The Public Interest [S4.15(1)(e)]**

The proposed development has been assessed to be in the public interest as detailed throughout this Report, subject to the imposition of appropriate conditions of development consent. The proposed development is not expected to have a negative impact on the health and safety of the public.

## **Assessment Conclusion & Recommendation**

The proposed development constitutes an extractive industry and is permissible with development consent in accordance with the provisions of the *Liverpool Plains Local Environmental Plan 2011*, under which the subject lands are zoned RU1 Primary Production.

One (1) public submission was received raising various concerns to aspects of the development. These concerns have been considered as part of the assessment of the subject application.

As a result of this assessment, it is recommended that the proposal be granted conditional development consent. Appendix 2 to this report contains all relevant conditions identified throughout the assessment process and as discussed in this report.