

## DETERMINATION AND STATEMENT OF REASONS

### NORTHERN REGIONAL PLANNING PANEL

<b>DATE OF DETERMINATION</b>	Wednesday, 15 August 2018
<b>PANEL MEMBERS</b>	Garry West (Chair), Pamela Westing, Stephen Gow, Virginia Black and Doug Hawkins
<b>APOLOGIES</b>	None
<b>DECLARATIONS OF INTEREST</b>	Virginia Black and Doug Hawkins as Councillors attended a Council briefing regarding this DA before it was disclosed it would be a Regional Planning Panel Matter. Neither Councillor expressed an opinion or voted on any matters relating to the DA.

Public meeting held at Liverpool Plains Shire Council on 15 August 2018, opened at 2.31pm and closed at 3.22pm.

#### MATTER DETERMINED

2018NTH009 – Liverpool Plains - DA 3/2018 at 250-256 Merriwa Road WILLOW TREE (as described in Schedule 1)

#### PANEL CONSIDERATION AND DECISION

The Panel considered: the matters listed at item 6, the material listed at item 7 and the material presented at meetings and the matters observed at site inspections listed at item 8 in Schedule 1.

Having regard to clauses 35 and 36 of Schedule 3 to the Environmental Planning and Assessment Regulation 2000, the Panel as the Consent Authority is satisfied that the proposed development is not designated development as the proposed alterations and additions to the quarry would not significantly increase the environmental impacts of the total development compared with the approved development.

The Panel determined to approve the development application pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979*.

The decision was unanimous.

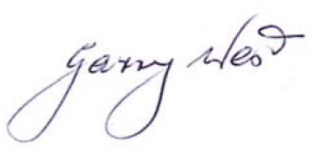

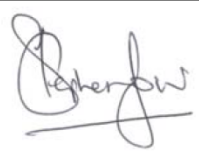


#### REASONS FOR THE DECISION

- The identified environmental impacts of noise, air quality and visual are considered to be appropriately mitigated by the conditions of consent and the GTA's issued by the EPA;
- The proposed clearing of Critically Endangered Ecological Community (CEEC) land has been appropriately offset by conditioning the use of the BioBanking Assessment Methodology;
- SEPP 55 – Remediation of Land, the subject land is an existing quarry which has the potential to be contaminated from fuel spills. Conditions are included in the consent to manage any onsite spills and waste. 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;
- SEPP 44 – Koala Habitat Protection, the Koala has not been recorded within the locality and scats were not recorded during the site visit surveys. Based on a lack of a resident population of Koalas, the area is not defined as core Koala habitat.

#### CONDITIONS

The development application was approved subject to the conditions in the Council Assessment Report with the following amendments:

- New condition 2 was added to ensure the new consent was not inconsistent with the previous consent;
- New condition 3 was added to ensure the consent is consistent with the GTA's issued by the EPA;
- New condition 4 was added to ensure the quarry updated their Operational Management Plan to include a code of conduct, an induction procedure, a map of the haulage route highlighting residential areas and school zones and a complaint handling resolution procedure.

PANEL MEMBERS	
 Garry West (Chair)	 Pamela Westing
 Stephen Gow	 Virginia Black
 Doug Hawkins	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	2018NTH009 – Liverpool Plains - DA 3/2018
2	PROPOSED DEVELOPMENT	[Insert description as per the council assessment report as it may have been amended since lodgment]
3	STREET ADDRESS	LOT: 121 DP: 857377, LOT: 1 DP: 502092 & LOT: 213 DP: 1173230– 250-256 Merriwa Road WILLOW TREE
4	APPLICANT/OWNER	Mr Philip Marheine
5	TYPE OF REGIONAL DEVELOPMENT	Designated development - extractive industry
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> <li>Environmental planning instruments: <ul style="list-style-type: none"> <li>State Environmental Planning Policy (Infrastructure) 2007</li> <li>State Environmental Planning Policy (Mining, Petroleum and Extractive Industries) 2007</li> <li>State Environmental Planning Policy No 55 – Remediation of Land</li> <li>State Environmental Planning Policy No 33 - Hazardous and Offensive Development</li> <li>State Environmental Planning Policy (State and Regional Development) 2011</li> <li>State Environmental Planning Policy No 44 – Koala Habitat Protection</li> <li>Liverpool Plains Local Environmental Plan 2011</li> </ul> </li> <li>Draft environmental planning instruments: Nil</li> <li>Development control plans: <ul style="list-style-type: none"> <li>Liverpool Plains Shire Council Development Control Plan 2012</li> </ul> </li> <li>Planning agreements: Nil</li> <li>Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>: Nil</li> <li>Coastal zone management plan: Nil</li> <li>The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</li> <li>The suitability of the site for the development</li> <li>Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations</li> <li>The public interest, including the principles of ecologically sustainable development</li> </ul>
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> <li>Council assessment report: 1 August 2018</li> <li>Written submissions during public exhibition: one (1)</li> <li>Oral submissions at the public meeting: <ul style="list-style-type: none"> <li>Support – Noel Saunders, Chairman of the Willow Tree Village Committee and quarry subcontractor; Brendan Scholz, employee of the quarry</li> <li>Object – NIL</li> <li>On behalf of the applicant – Nicole Armit, Associate Director, Environmental Assessment &amp; Management, EMM</li> </ul> </li> </ul>
8	MEETINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> <li>Site inspection on 15 August 2018</li> <li>Final briefing meeting to discuss council's recommendation, 15 August 2018 at 12.30pm. Attendees: <ul style="list-style-type: none"> <li><u>Panel members</u>: Garry West (Chair), Pamela Westing, Stephen Gow, Virginia Black and Doug Hawkins</li> <li><u>Council assessment staff</u>: Shay Riley-Lewis, Consultant Town Planner; Donna Ausling, Director Environmental and Economic</li> </ul> </li> </ul>



**Property Zoning**

Zone RU1 Primary Production

**Liverpool Plains Local Environmental Plan 2011**

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**Determination**

made on (date)

\*\*/\*\*/2018

Determination

☒ consent granted subject to conditions described below –  
*see Page 3*

consent to operate from (date)

\*\*/\*\*/2018

consent to lapse on (date)

\*\*/\*\*/2023

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**right of appeal**

If you are dissatisfied with this decision Section 8.7 of the *Environmental Planning and Assessment Act 1979* gives you the right to appeal to the Land and Environment Court within 6 months after the date on which you receive this notice.

**Review of Determination - Section 8.2 Environmental Planning and Assessment Act 1979:** - An applicant in accordance with provisions of Section 8.2 of the *Environmental Planning and Assessment Act 1979*, may request the Council where it is the consent authority to review a determination of application. Applicants seeking a review of a determination should discuss the process with Council's Director Environmental Services.

*An applicant may request Council to undertake a review of any applicants determination under Section 8.2 of the Environmental Planning and Assessment Act 1979 where:*

- *the request is made in writing*
- *the appropriate fee is paid*

*A determination cannot be reviewed after:*

- a) *the time limited for making of an appeal under Section 8.7 expires, if no such appeal is made against the determination.*
- b) *after an appeal under Section 8.7 against the determination is disposed of by the Court, if such an appeal is made against the determination.*

*If you wish to have a review of your determination it is suggested in the first instance an appointment is made with Council's Environmental Services Department on (02) 6746 1755 to further discuss the determination or by contacting Council via email [lpssc@lpssc.nsw.gov.au](mailto:lpssc@lpssc.nsw.gov.au) or by post PO Box 152 Quirindi NSW 2343.*

## **Conditions of Consent – Liverpool Plains Shire Council**

### General

1. The quarry operators shall carry out the development in accordance with the application made, the stamped plans and the terms of this consent. The development shall not be modified except with the written consent of the Council, or to satisfy the Council Consent conditions.

**Plans:**

- Statement of Environmental Effects, Prepared by EMM Consulting, Dated 6/11/2017;
- Noise & Vibration Impact Assessment, Prepared by EMM Consulting, Dated 6/11/2017;
- Air Quality Impact Assessment, Prepared by Northstar Air Quality Pty Ltd, Dated 10/11/2017;
- Aboriginal Due Diligence Assessment, Prepared by EMM Consulting, Dated 9/11/2017;
- 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,
- Traffic Impact Assessment, Prepared by EMM Consulting, Dated 27/10/2017.

If there is any inconsistency between the Conditions of Consent and the documents listed above, the Conditions of Consent shall prevail to the extent of the inconsistency.

*Reason:*

*To confirm the terms of Council's approval.*

2. This consent is to be read and applied in conjunction with the previous consents applying to part of the land, being DA 20/1994 and DA 20/1994-02. In the event of an inconsistency between this consent and the previous consent, as modified, this consent shall prevail to the extent of the inconsistency.

*Reason:*

*To confirm the terms of the approval.*

3. The development is to be consistent with the General Terms of Approval for the project issued by the Environmental Protection Authority.

*Reason:*

*To ensure the development is consistent with the statutory obligations of the GTA's.*

4. Within six months of the date of this consent or prior to the commencement of works in the extension area, whichever comes first, the Willow Tree Gravels Operational Management Plan shall be amended to include the extended area. It shall also be amended to include:
  - A Code of Conduct for heavy vehicle operators, staff and contractors;
  - An induction procedure addressing the Code of Conduct;
  - A map of the primary haulage route highlighting residential areas and school zones; and
  - A complaint handling and resolution procedure.

A copy shall be provided to Council.

*Reason: To ensure the governing plan reflects this consent.*

5. An annual Operations Report shall be submitted to Council in December of each year, which addresses the following matters:-
- a. The amounts of all material extracted from the site during each of the previous twelve (12) months,
  - b. The amounts of all material transported by road haulage from the site,
  - c. Details of all monitoring which has been carried out in accordance with the recommendations of the Statement of Environmental Effects. Copies of all such approvals are to be forwarded to Council,
  - d. Details and conclusions of the effectiveness of the implementation of the environmental management measures proposed in the Statement of Environmental Effects,
  - e. Details regarding the management of the extension area and any associated Biodiversity Offset Area,
  - f. Mitigation and management measures for indirect and direct impacts on biodiversity, including performance measures for commitments,
  - g. Production forecasts for the following twelve (12) months,
  - h. The applicant shall engage appropriately qualified personnel to carry out all necessary monitoring referred to and to prepare the annual operations report.
  - i. Annual production data for the quarry shall also be provided to the NSW Division of Resources and Geosciences.

*Reason:*

*To confirm the terms of Council's approval.*

#### Asset Protection Zones

6. At the commencement of the development and in perpetuity, the property around the site office and workshop buildings to a distance of 30 metres, shall be maintained as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.

*Reason:*

*To provide sufficient space and maintain reduced fuel loads so as to ensure radiant heat levels of buildings are below critical limits and to prevent direct flame contact with a building.*

#### Biodiversity Impacts



7. The quarry operator and all personnel on the site shall implement mitigation measures for indirect and direct impacts on biodiversity for the life of the development, including but not limited to those described in the submitted Biodiversity Assessment Report, Prepared by EMM Consulting, Dated 8/11/2017.

*Reason:*

*To avoid and minimise biodiversity impacts.*

#### Access

8. The existing access road in use off Merriwa Road to Lot 121 DP 857377 shall be constructed within six (6) months of the date of this consent as a 9m wide pavement of suitable thickness to carry the expected heavy vehicle traffic loading from the quarry for the period of operations together with a minimum 8m wide 14/10 two-coat bitumen seal including line marking and maintained for the period of operations of the quarry by the developer and all at the developer's cost. The design and standard of all works shall be approved by the Director of Engineering Services.

*Reason:*

*To clarify the terms of Council's previous approvals.*

9. A Right of Carriageway easement on Lot 213 in DP 1173230 over the existing access road in use off Merriwa Road to Lot 121 DP 857377 shall be established within six (6) months of the date of this consent.

*Reason:*

*To formalise legal access over the existing road in use.*

10. The applicant shall upgrade the intersection between the access road serving the existing development and Merriwa Road within six (6) months of the date of this consent to comply with the current AUSTROADS standards. In this regard, an AUSTROADS BAL arrangement (Figure 8.2 attached) shall be constructed off the east bound traffic lane of Merriwa Road, the west bound traffic lanes on Merriwa Road shall be remarked to an AUSTROADS CHR(s) arrangement (Figure A29 attached) and the Access Road shall be line marked as an AUSTROADS BAL arrangement (Figure 8.2 attached). The applicant is to submit to Council construction plans for approval prior to commencement of works on the intersection.

*Reason:*

*To clarify the terms of Council's previous approvals to ensure compliance with AUSTROADS Guidelines as well as improve safety for road users.*

#### **PRIOR TO THE COMMENCEMENT OF WORKS:**

11. An amended Environment Protection Licence (EPL) No. 5154 shall be obtained from the NSW Environment Protection Authority (EPA) prior to the commencement of works.

*Reason:*

*To clarify the terms of Council's approval.*

## **PRIOR TO THE COMMENCEMENT OF WORKS IN THE NEW EXTENSION AREA:**

### BioBanking

12. A Biodiversity Offset Strategy must be prepared and finalised in consultation with NSW Office of Environment & Heritage (OEH) and Council prior to vegetation clearing within the extension area.

*Reason:*

*To confirm the terms of Council's approval.*

13. The class and number of ecosystem credits in Table 1 must be retired to offset the residual biodiversity impacts of the development in accordance with the Biodiversity Offset Strategy (refer to Condition 12):
- The requirement to retire credits in Condition No. 12 may be satisfied by payment to the Biodiversity Conservation Trust of an amount equivalent to the class and number of ecosystem credits, as calculated by the BioBanking Credit Calculator.
  - Evidence of the retirement of credits or payment to the Biodiversity Conservation Trust in satisfaction of Condition No. 12 must be provided to Council in accordance with the requirements of the Biodiversity Offset Strategy.

Table 1. Ecosystem Credits Required to be Retired

<b>Impact Plant Community Type</b>	<b>Number of Ecosystem Credits</b>	<b>IBRA Sub-Region</b>
1383 - White Box Grassy Woodland	126	Liverpool Plains (Part B)
1383 - White Box Grassy Woodland	21	Liverpool Plains (Part B)
1118 - Rough-barked Apple Riparian Forb/Grass Open Forest	45	Liverpool Plains (Part B)
<b>TOTAL</b>	<b>192</b>	

*Reason:*

*To confirm the terms of Council's approval.*

#### Site Works

14. Prior to the commencement of works in the new extension area, the boundaries of the approved extension shall be delineated on site in order to contain disturbance within the approved area.

*Reason:*

*To confirm the terms of Council's approval.*

15. Prior to the commencement of works in the new extension area, the depth of the sediment dam shall be increased to accommodate the predicted increased peak flows generated by the quarry extension area, as described in the submitted Statement of Environmental Effects, Prepared by EMM Consulting, Dated 6/11/2017.

*Reason:*

*To confirm the terms of Council's approval.*

16. The applicant shall liaise with local residents to establish lines of communication, to provide information and to facilitate prompt, local resolution of any problems which might arise from the operation of the quarry.

*Reason:*

*To confirm the terms of Council's approval.*

#### Visual Impact

17. Prior to the commencement of works in the new extension area, a vegetation screen shall be planted on the eastern boundary of the extension area. The screen should include fast growing native trees and a densely foliated understorey. Trees are to be planted at 5m spacings in three (3) rows for the length of the extension area.

*Reason:*

*To mitigate visual and dust impacts.*

#### **DURING WORKS:**

18. The clearing of any hollow-bearing trees shall follow the procedure described in the submitted Statement of Environmental Effects, Prepared by EMM Consulting, Dated 6/11/2017.

*Reason:*

*To confirm the terms of Council's approval.*

19. Dust suppression by watering or other approved chemical treatments shall be carried out at the quarry face and on all unsealed roads and working areas.

*Reason:*

*To confirm the terms of Council's approval.*

20. Construction impacts must be restricted to the development site and must not encroach into areas of retained native vegetation and habitat. All materials stockpiles, vehicle parking, machinery storage and other temporary facilities must be located within the areas for which biodiversity impacts were assessed in the submitted Biodiversity Assessment Report, Prepared by EMM Consulting, Dated 6/11/2017.

*Reason:*

*To confirm the terms of Council's approval.*

## **CONTINUED OPERATIONS:**

21. All landscaped areas on the site must be maintained in good order for the life of the development at a survival rate of not less than 80%.
22. The use of engine brakes in the vicinity of the Willow Tree Public School shall be avoided wherever possible.
23. A maximum of 5,000,000 tonne of material is to be extracted from the subject lands over the life of the quarry.
24. Production shall not exceed 400,000 tonnes of material in any twelve (12) month period unless further approval has been given by Council.
25. No contaminated water shall leave the site to any watercourse.
26. A potable water supply shall be available at all times during operation of the quarry.
27. There is to be no blasting outside the hours of 11:00am to 15:00pm Monday to Friday. The quarry operator shall provide 24 hours notice to residences within 1km of the subject site prior to any blasting.

28. Throughout the life of the quarry weed control is to be undertaken to the satisfaction of NSW Department of Primary Industries.
29. Rehabilitation of the site shall be commenced as soon as practicable and be a continuous process throughout the life of the development.

## **Environmental Planning and Assessment Act 1979**

In determining this development application, Council has considered all matters under Section 4.15 of the *Environmental Planning and Assessment Act 1979*.