COUNCIL ASSESSMENT REPORT

Panel Reference	2018WES012
DA Number	2018/115
LGA	Bathurst Regional Council
Proposed Development	Continued and Expanded operation of an extractive industry
Street Address	1329 Midwestern Highway, Evan Plains
Applicant/Owner	The Yarragrove Family Trust
Date of DA lodgement	09 April 2018
Number of Submissions	1
Recommendation	Approval subject to conditions
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011	Section 7. Particular designated development. Extractive industries, which meet the requirements for designated development under clause 19 of schedule 3 to the *Environmental Planning and Assessment Regulation 2000*.
List of all relevant s4.15(1)(a) matters	S4.15(1)(a)(i) – Environmental Planning and Assessment Act 1979 – as amended; Bathurst Regional Local Environmental Plan 2014; SEPP (State and Regional Development) 2011; SEPP (Mining, Petroleum and Extractive Industries) 2007; SEPP 33 Hazardous and Offensive Developments; SEPP 55 Remediation of Land; SEPP (Infrastructure) 2007; S4.15(1)(a)(iii) – Bathurst Regional Development Control Plan 2014; S4.15(1)(a)(iv) – Environmental Planning and Assessment Regulation 2000; S4.15(1)(b) – the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality; S4.15(1)(c) – the suitability of the site for the development; S4.15(1)(d) – any submission made in accordance with the Act or Regulations; and S4.15(1)(e) – the public interest.
List all documents submitted with this report for the Panel's consideration	• Aerial Image; • DA Application form; • EIS Swan Ponds Quarry; • EIS Appendices Cover; • EIS Appendix 2 – SEAR's; • EIS Appendix 3 – SEAR's Coverage; • EIS Appendix 4 – Heritage Assessment; • EIS Appendix 5 – Noise Impact Assessment; • EIS Appendix 6 – Traffic Impact Assessment; • Final Assessment Report Attachment 1; • Final Assessment Report Attachment 2; • Final Assessment Report; • Location Diagram • Survey Plan • Submissions Applicants response 4 March 2019; Applicants response 9 November 2018; Applicants response 29 May 2019; Applicants response June 2018; Barnson Intersection Design Report 4 September 2018; EPA GTA's 27 June 2018; Neighbour Submission 27 May 2018; NSW DoI (NRAR) 10 January 2019;

	NSW DoI (NRAR) 28 March 2019; NSW DPI Fisheries 19 December 2018; NSW RFS 09 May 2018; OEH GTA's 29 May 2018; RMS response 17 April 2019; RMS response 28 May 2018 • Response to Submissions for the Swan Ponds Quarry - prepared by R.W. Corkery & Co Pty Ltd dated June 2018; • Swan Ponds Quarry, Evans Plains NSW, Intersection Design Report - prepared by Barnson dated 04.09.2018; • Additional information for the Swan Ponds Quarry - prepared by R.W. Corkery & Co Pty Ltd dated 9 November 2018; • Further Response to Submissions for the Swan Ponds Quarry - prepared by R.W. Corkery & Co Pty Ltd dated 4 March 2019.
Report prepared by	Wayne McDonald – Development Control Planner
Report date	**April 2019**

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 ~~/ No~~**
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? *e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP*	**Yes ~~/ No / Not Applicable~~**
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?	**~~Yes /~~ No ~~/ Not Applicable~~**
Special Infrastructure Contributions Does the DA require Special Infrastructure Contributions conditions (S7.24)? *Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions*	**~~Yes /~~ No ~~/ Not Applicable~~**
Conditions Have draft conditions been provided to the applicant for comment? *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*	**Yes ~~/ No~~**

Purpose of Report

The purpose of this report is to seek determination by the Western Joint Regional Planning Panel, of the subject development application seeking the continued use and expanded operation of the Swan Ponds Quarry extractive industry, situated at 1329 Mid Western Highway, Evans Plains.

Recommendation

That the Western Joint Regional Planning Panel grant consent to Development Application 2018/115 for:

> **CONTINUED OPERATION AND EXPANSION OF THE SWAN PONDS QUARRY EXTRACTIVE INDUSTRY,**

Subject to conditions included in the Draft Notice of Determination (see **attachment 1**) with any further conditions or amendments as determined by the Director Environmental Planning & Building Services pursuant to Section 4.17 of the *Environmental Planning and Assessment Act, 1979* as amended.

Executive Summary

Development Application 2018/115 (2018WES012) for the continued operation and expansion of an extractive industry (Swan Ponds Quarry) was lodged with Council on the 9 April 2018.

The quarry has been operating for many years with the present owners purchasing the site in approximately 2003 based on the assumption that continuing use right existed to the operation. The applicant has continued the operation of the quarry and in mid-2016 recognised that the continuing use rights may not exist. In consultation with Council the operations have continued whist this new development approval is sought.

The subject site is Lot 241, DP 1185616, 1329 Mid Western Highway, Evans Plains.

The holding upon which the subject site is located comprises a total area of 183.3 hectares. The subject is situated on southern side of the Mid Western Highway approximately 13 kilometres south-west of Bathurst and currently contains a dwelling, numerous rural outbuildings and an operational extractive industry.

Evans Plains Creek runs through the property and is located within close proximity to the proposal.

There is currently one existing extraction pit on the subject site where sand and gravel extraction has and does occur without appropriate authorisation. There is no evidence of former registration or approval ever being sought or granted under the former governing Abercrombie Shire Interim Development Order, the subsequent Evans Local Environmental Plan or the *State Environmental Planning Policy No 37 'Continued Mines and Extractive Industries'* repealed in 2007, now *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007*.

The current proposal seeks approval for the continued operation of the existing activities and an extension of this extraction area and operation.

Access to the pit will be by way of the existing entry to the property from the Mid Western Highway.

The nearest non-associated residences are:

- 1316 Mid Western Highway - located approximately 540 metres north-west of the extraction area and approximately 170 metres off the boundary of the property upon which the extractive industry operates; and

- 1455 Mid Western Highway - located about 780 metres south-west of the extraction area and approximately 100 metres off the boundary of the property upon which the extractive industry operates.

There are another 4 residences located south and south-west approximately 150 to 400 metres away from the boundary of the property upon which the extractive industry operates. The distance to the actual extraction area and proposed expansion area varies between 700 and in excess of 1000 metres. Other residences located on the neighbouring properties to the north, north-west and west are in excess of 1000 metres away from the extraction area.

The proposal involves an extension of the existing extraction area of approximately 10.3ha in total.

The extension of the extraction area will occur to the west and south-west of the existing extraction site.

The continued operation and expansion is proposing to extract up to 50,000 tonnes of gravel and sand per annum with an annual average of approximately 35,000 tonnes per annum with an anticipated operational life of about 18 years.

The extraction method will be by bulldozer and excavator on a campaign basis to rip and stockpile weathered material. Some screening, crushing and sorting of the material will continue within the existing extraction area.

The proposed development is Designated Development pursuant to Clause 19 Extractive Industries of Schedule 3 of the *Environmental Planning and Assessment Regulation 2000.* Pursuant to Schedule 7 of the *State Environmental Planning Policy (State and Regional Development) 2011.* The consent authority will be the Western Joint Regional Planning Panel.

The proposal is considered Integrated Development pursuant to section 4.46 of the *Environmental Planning and Assessment Act 1979* as amended as the quarry extraction operation requires an Environment Protection Licence under Clause 19 of Schedule 1 of the *Protection of the Environment Operations Act 1997* and an Aboriginal Heritage Impact Permit under section 90 of the *National Parks and Wildlife Act 1974*.

The Development Application was referred to a number of Government Authorities including the Roads and Maritime Services (RMS), NSW Rural Fire Service (RFS), Environment Protection Authority (EPA), Department of Primary Industries, Fisheries NSW and Water NSW, NSW Planning and Environment and the Greater Sydney Office of Environment and Heritage (OEH). Responses were received from RFS, RMS, OEH and EPA providing issues for consideration and general terms of approval conditions for incorporation into any consent determination issued. These Departments did not raise any significant issues that would preclude approval.

The Development Application was publicly exhibited in accordance with the requirements for Designated Development between 30 April 2018 and 29 May 2018. The proposal was notified to adjoining property owners. During the exhibition period, only one (1) submission was received which was generally in support of the proposed development.

Proposed Development

The proposed development seeks consent for the continued extraction of sand and gravel.

There is no evidence of former registration or approval ever being sought or granted under the former governing Abercrombie Shire Interim Development Order, the subsequent Evans Local Environmental Plan, the *State Environmental Planning Policy No 37 'Continued Mines and Extractive Industries'* repealed in 2007, now *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007,* or the current Bathurst Regional Local Environmental Plan 2014.

The proposed development is seeking approval for the continued use of the existing site and an expansion of the existing pit by approximately 10.3ha within a total project site area of approximately 183.3ha.

The development site is proposed to be confined to the area south and generally east of the Evans Plains Creek by the limitations and natural constraints imposed thereby. The expansion is to the west, south and south-east generally of the existing quarry area. It is expected the expansion will extend the life of the quarry by eighteen (18) years and will provided employment for two full time and several part time and casual employees as required by operations.

Material will be extracted by two methods. Firstly, bulldozer push would strip the gravel from the top of the quarry face to the bottom. Secondly, excavator recovery uses an excavator bucket to collect and direct to trucks for transport. The excavated material will be either stockpiled or loaded immediately onto trucks. The quarry proposes to extract on a campaign basis. Screening, sorting and landform construction activities will occur during times of non-extraction.

Extraction volumes are anticipated to average 35,000 tonnes per annum with a maximum of up to 50,000 tonnes per annum and will be spread over the year as much as possible to ensure stable and consistent supply of material is either transported or stockpiled.

Transport movement is proposed by rigid body and semi-trailer trucks with occasional B-double movement. The volume of product and size of vehicles indicates that a maximum annual average daily traffic (AADT) movement including staff would be in the vicinity of 20 into and 20 out of the site per day at peak production.

The following plant/equipment will be used:

- One bulldozer
- One excavator
- Two front end loaders
- One dump truck
- Two road trucks
- One water truck for dust suppression to be used occasionally
- Mobile Screening Washing Plant
- All machinery will be fuelled with a mobile tanker

The quarry (inclusive of truck movements) is proposing to operate between the hours of 7:00am and 5:00pm Monday to Friday and between 8:00am to 12:00pm on Saturday. No activity is proposed for Sundays and Public Holidays. This is consistent with the GTA's issued by the NSW EPA.

Prior to expansion operations, land preparation will be undertaken. This involves land clearing (predominately pasture grass and top soil) that will be stripped and transferred to areas prepared for rehabilitation and future use.

Plans are being prepared to ensure no water from disturbed sections of the project site will flow to Evans Plains Creek. Processing water, wherever possible will be redirected for reuse through the primary and secondary silt ponds. Runoff from the extraction area will be collected in a sediment basin within the extraction area.

Plans are being prepared for a clean water diversion drain to be installed to ensure that in the event of significant rainfall and surface flows that such water will be diverted to eliminate interaction with disturbed areas of the site.

Rehabilitation is proposed to occur progressively following selected decommissioning of areas of the subject site and at the overall completion of extraction. Rehabilitation will involve backfilling, battering of 21.5° to allow for stabilisation and growth of pasture.

The Subject Land

The subject land comprises one parcel known as 1329 Mid Western Highway, Evans Plains.

It is legally defined as Lot 241 DP 1185616.

The subject site is 183.3 hectares.

The subject site currently contains a dwelling and numerous rural outbuildings.

There is one existing pit on the subject site where sand and gravel excavation activity has and does occur.

The nearest non-associated residences are:

- 1316 Mid Western Highway - located approximately 540 metres north-west of the extraction area and approximately 170 metres off the boundary of the property upon which the extractive industry operates; and

- 1455 Mid Western Highway - located about 780 metres south-west of the extraction area and approximately 100 metres off the boundary of the property upon which the extractive industry operates.

There are another 4 residences located south and south-west approximately 150 to 400 metres away from the boundary of the property upon which the extractive industry operates. The distance to the actual extraction area and proposed expansion area varies between 700 and in excess of 1000 metres. Other residences located on the neighbouring properties to the north, north-west and west are in excess of 1000 metres away from the extraction area.

It is to be acknowledged that in the applicant's Further Response to Submissions dated 4 March the applicants refer to a pollution incident that occurred on 28 January 2019 as a result of a high rainfall event and failures in stormwater management. Subsequent inspections of the site were held be EPA and Council officers. As a result of that incident the applicant has provided undertakings to:

- Establish vegetated buffers along Evans Plains Creek.

- Engage a suitably qualified riparian vegetation expert to prepare a Revegetation and Stabilisation Plan identifying earthworks to be completed, vegetation to be planted or established and a schedule to complete works. The plan would address all land within the high bank of Evans Planins Creek in the vicinity of the existing disturbed area and all non cropping land between the southern high bank and the existing areas of disturbance.

- Engage a suitably qualified expert to prepare a Surface Water Management Plan for the quarry in accordance with the requirements of Managing Urban Water.

For the sake of completeness these matters can be incorporated into the conditions of consent.

Figure 1: Locality Plan

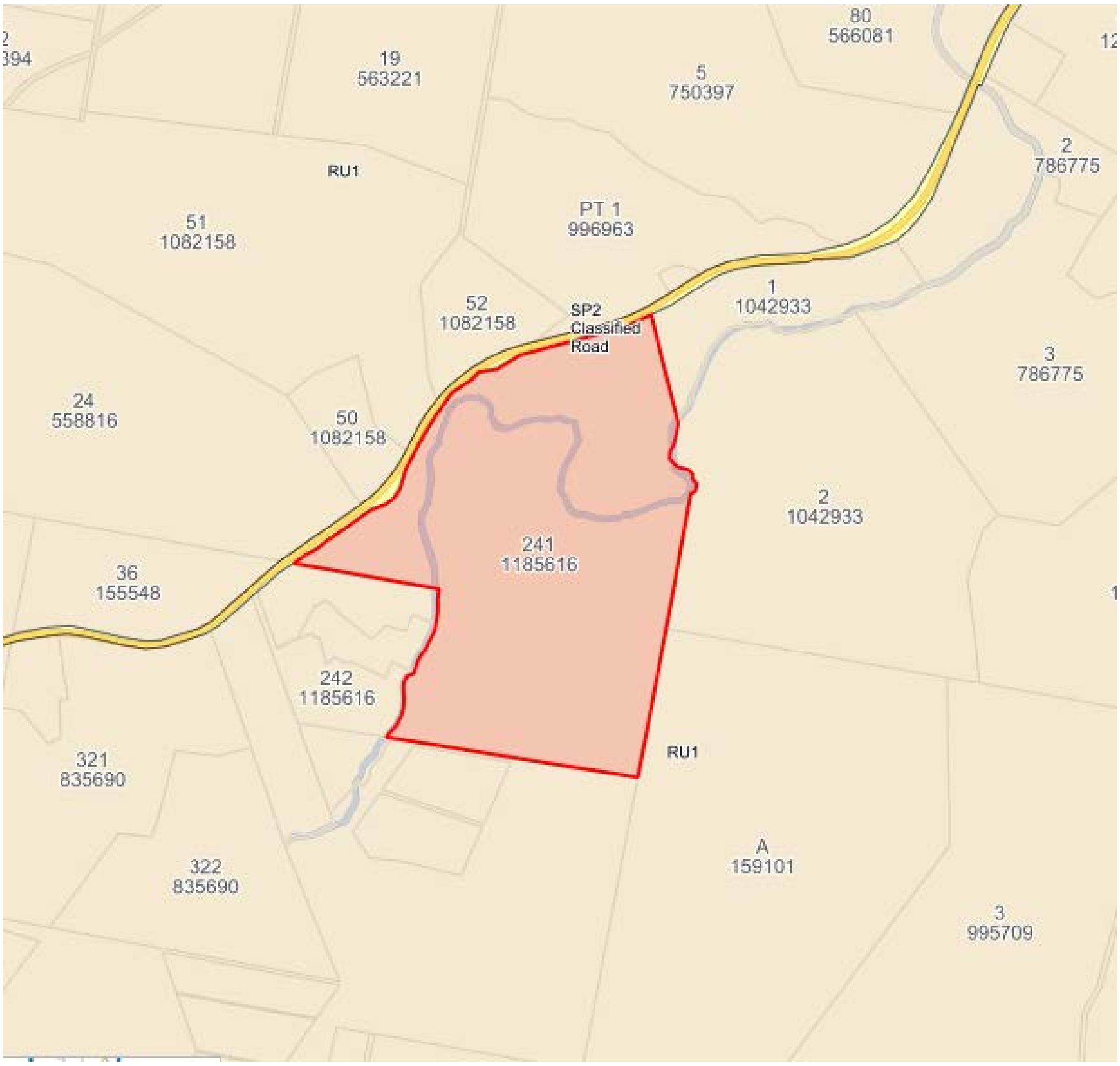
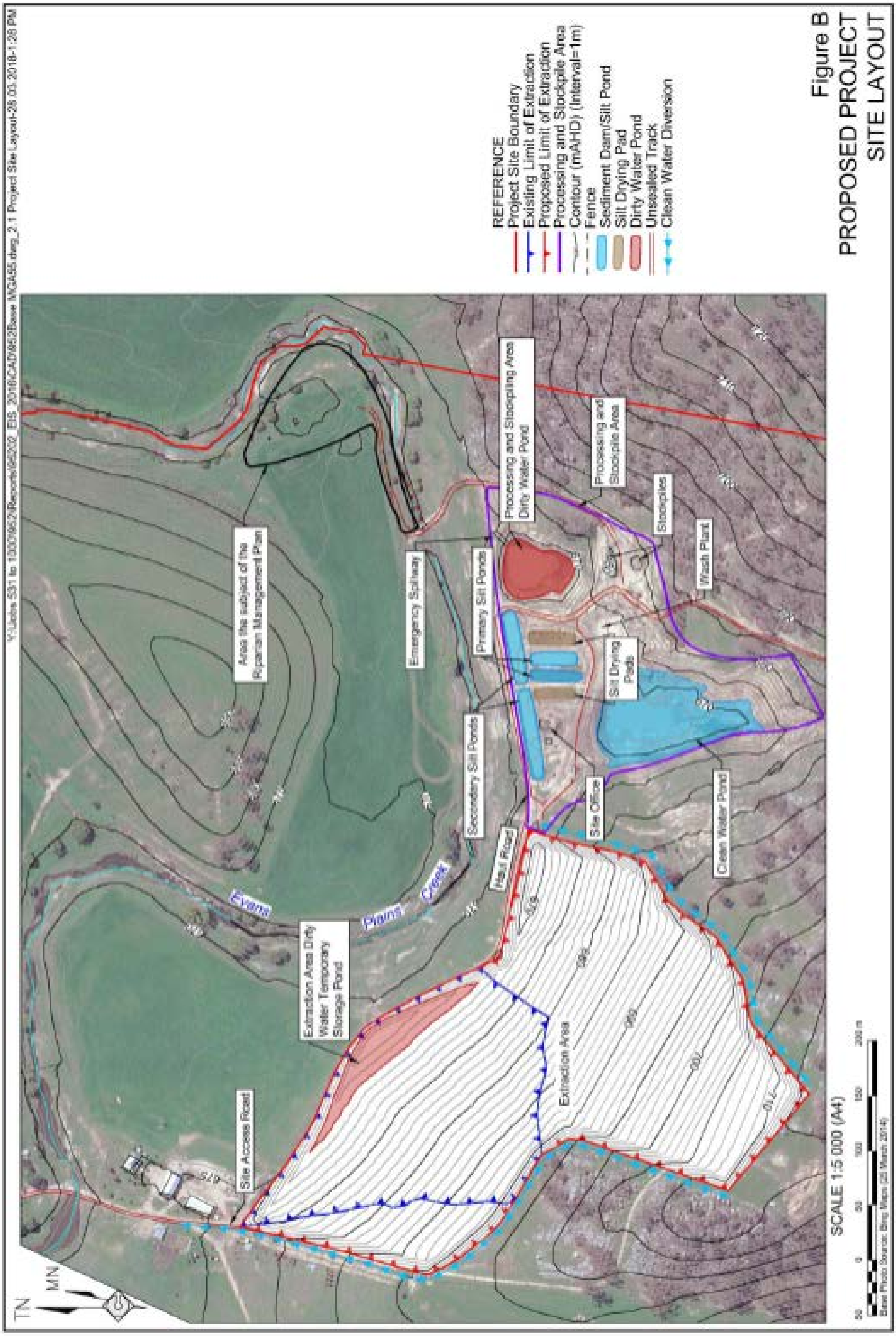


Figure 2: Aerial Image

Figure 3: Proposal



Legislative Requirements

Joint Regional Planning Panel

The Western Joint Regional Planning Panel is the consent authority for the determination of the subject Development Application, by virtue of Schedule 7 of the *State Environmental Planning Policy (State and Regional Development).*

Designated Development

Environmental Planning and Assessment Regulation 2000

"4 What is Designated Development?

(1) Development described in Part 1 of Schedule 3 is declared to be designated development for the purposes of the Act unless it is declared not to be Designated development by provision of Pert 2 or 3 of that Schedule."

"Schedule 3 Designated Development
Part 1 What is Designated Development?

19 Extractive Industries

(1) Extractive industries (being industries that obtain extractive materials by methods including excavating, 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."*

The proposed development is Designated Development because the quarry is an extractive industry disturbing more than 2 hectares of land and the site has been the subject of an extractive industry in the last five (5) years.

Integrated Development

The proposal is considered Integrated Development pursuant to Environmental Planning and Assessment Regulation 2000 as the quarry extraction operation requires an Environment Protection Licence under Clause 19 of Schedule 1 of the *Protection of the Environment Operations Act 1997* and an Aboriginal Heritage Impact Permit under Section 90 of the *National Parks and Wildlife Act 1974*.

The relevant responses from both agencies are provided following:

NSW Office of Environment and Heritage:

> *'I refer to your letter dated 19 April 2018 requesting comments on the above proposal from the Office of Environment and Heritage (OEH) on the exhibited Environmental Impact Statement (EIS) for the proposed expansion of Swan Ponds Sand and Topsoil Quarry.*
>
> *Biodiversity*
>
> *OEH note that the area to be impacted has been previously disturbed and that the area is likely to be dominated by exotic species, however the EIS provides no evidence in the form of plot data to support this. As the consent authority Council should be satisfied that the proposed impact area has been adequately assessed.*
>
> *Aboriginal Cultural Heritage*
>
> *OEH has reviewed the Aboriginal cultural heritage assessment report prepared by Navin Officer Heritage Consultants Pty Ltd, appendix 4 of the EIS, dated March 2018. The assessment concludes that one Aboriginal site of low significance (site SPQ1) occurs within the development footprint and a Potential Archaeological Deposit (PAD), recorded as SPQ2, exists in areas where development activities are proposed. The assessment indicates that both areas are predicted to have very few Aboriginal objects based on surface finds at SPQ1 and a landform site predictive model (Officer 2018 pp 19-20).*
>
> *Considering the above, OEH provides the following Aboriginal cultural heritage general terms of approval:*
>
> - *SPQ1/PAD must be registered on the Aboriginal Heritage Information Management System (AHIMS) database as soon as practicable, if this has not already happened.*
> - *A section 90 Aboriginal Heritage Impact Permit (AHIP) under the National Parks and Wildlife Act 1974 must be sought and granted by OEH for harm to Aboriginal site SPQ1.*
> - *The AHIP application must consider the archaeological and cultural significance of the Aboriginal objects at SPQ1 and provide reasonable and proportionate mitigation strategies to offset harm to SPQ1. Equally, the application must describe how Aboriginal objects are to be managed if it is the Aboriginal community preference to have them collected.*
> - *The AHIP application must be accompanied by appropriate documentation and mapping as outlined on page 6 of Applying for an Aboriginal Heritage Impact Permit*
> - *Consultation with the Aboriginal community undertaken as part of the AHIP application must be in accordance with section 90N of the NPW Act 1974 as described in the Aboriginal cultural heritage community consultation requirements for proponents (DECCW 2010)*

NSW EPA:

> *The EPA has reviewed the above-mentioned information and the public submission received regarding the Proposal on 15 June 2018 and has determined that it is able to issue an environment protection licence for the Proposal, subject to a number of conditions. The proponent will need to make a separate application to the EPA to*

obtain this environment protection licence should consent be granted by Bathurst Regional Council (Council).

*The EPA's General Terms of Approval (GTAs) for this Proposal are provided at **Attachment A.** If Council grants development consent for the Proposal, then these conditions should be incorporated into the consent. These GTAs relate to the Proposal as described in the development application and accompanying information currently held by the EPA. In the event that the Proposal is modified either by the proponent prior to the granting of consent or as a result of the conditions proposed to be attached to the consent and/or environment protection licence, it will be necessary to consult with the EPA about the changes before the consent is granted. This will enable the EPA to determine whether its GTAs need to be modified in light of the changes.*

It should be noted that the EPA's Central West Region has adopted more streamlined GTAs to avoid conflicts with development approvals, to limit the need for ongoing modifications to development approvals for small matters that are the responsibility of the EPA and to provide the EPA with greater flexibility regarding site specific environmental conditions to be placed on any environment protection licence.

*The EPA has also provided at **Attachment B,** for Council and the Proponent's reference, more specific conditions that would be present on the environment protection licence if consent is granted (noting that all environment protection licences contain general conditions for all licensees). However, these conditions should not be included in the consent document, unless deemed necessary for Council's own specific purposes*

ATTACHMENT A
EPA's GENERAL TERMS OF APPROVAL
RECOMMENDED CONDITIONS OF DEVELOPMENT CONSENT

- *Except as expressly provided by these General Terms of Approval (GTAs) or by any conditions of consent granted by Bathurst Regional Council or the conditions of an in-force environment protection licence issued by the Environment Protection Authority, works and activities must be carried out in accordance with the proposal contained in:*
  - *the Development Application 2018-115 submitted to Bathurst Regional Council; and*
  - *any other additional information provided to Council.*

- *Should any conflict exist between the abovementioned documents, the most recent document or revision supersedes the conflict, except where superseded by any conditions of approval issued by Council or the conditions of an in-force environment protection licence issued by the Environment Protection Authority.*

- *An Environmental Management Plan must be prepared and implemented within 3 months of development consent being granted and prior to the commencement of any surface disturbance related to the Project. The plan must include, but not be limited to:-:*
  - i. *The identification and mitigation of potential impacts to surface water and soils. The plan must make reference to the requirements outlined in the document "Managing Urban Stormwater: Soils and Construction (Landcom, 2004) and "Managing Urban Stormwater: Soils and Construction - Volume 2E - Mines and Quarries (DECC, 2008);*
  - ii. *Air quality (dust) management measures;*
  - iii. *Waste handling measures; and*
  - iv. *Noise management measures.*

- *Hours of Operation:*

Construction Activities: Construction activities related to the Proposal must only be undertaken during the following hours:

- *7 am to 5 pm, Monday to Friday;*
- *8 am to 12 pm, Saturday; and*
- *At no time on Sundays or Public Holidays.*

Except where superseded by the condition above, construction activities must be undertaken in accordance with the "Interim Construction Noise Guidelines" (DECC, 2009) or any revision.

Operational Activities: Operational activities related to the Proposal may only be undertaken during the following hours:
7 am to 5 pm, Monday to Friday;
8 am to 12 pm, Saturday; and
at no time on Sundays or Public Holidays.

- *Construction and soil stripping operations must only be undertaken when the prevailing wind direction is from the north-west to south-west quadrant.*

- *Disturbed sections of the Project Site must be progressively rehabilitated throughout the life of the Proposal. The Proponent is required to prepare and submit to Council a Rehabilitation Plan within 3 months of the date of the granting of development consent.*

- *Any dirty water collected in either the Extraction Area Dirty Water Pond or the Processing and Stockpile Area Dirty Water Pond and irrigated on adjacent lucerne fields must be done so in a way that prevents excess water runoff from the irrigation area to Evans Plains Creek.*

- *Trucks entering and leaving the premises that are carrying loads of dust generating materials must have their loads covered at all times, except during loading and unloading.*

- *The internal quarry access/haulage road must be maintained in a condition that prevents or minimises the emission into the air of air pollutants (which includes dust).*

- *The first 100 m of the site access road must be sealed to reduce tracking of mud onto the Mid-Western Highway within 3 months of the date of the granting of development consent.*

- *All trucks and mobile plant operating within the premises must be fitted (where there is a requirement for such devices to be fitted under the Work Health and Safety legislation) with broad-spectrum (frequency modulated) reversing alarms.*

- *The Proponent must apply for and hold an in-force environment protection licence issued by the Environment Protection Authority prior to the Proponent carrying out any scheduled activities under the Protection of the Environment Operations Act 1997 as proposed.*

ATTACHMENT B
EPA's SPECIFIC LICENCE CONDITIONS

'Limit conditions:

Hours of operation:

Hours of Operation (Construction Activities): Construction activities related to the Proposal must only be undertaken during the following hours:

- *7 am to 5 pm, Monday to Friday;*
- *8 am to 12 pm, Saturday; and*
- *At no time on Sundays or Public Holidays.*

Except where superseded by the condition above, construction activities must be undertaken in accordance with the "Interim Construction Noise Guidelines" (DECC, 2009) or any revision.

Hours of Operation (Operational Activities): Operational activities related to the Proposal may only be undertaken during the following hours:

- *7 am to 5 pm, Monday to Friday;*
- *8 am to 12 pm, Saturday; and*
- *At no time on Sundays or Public Holidays.*

Pollution of Waters:

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

For each discharge point or utilisation area established under this license specified in the tablets below, the concentration of a pollutant discharged at that point, or applied to that area, must not exceed the concentrations limits specified for that pollutant in the table.

Where a pH quality limit is specified in the Table, the specified percentage of samples must be within the specified ranges.

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

Discharge from processing and stockpiling area dirty water pond:

Pollutant	*Units of measure*	*50% concentration*	*90% concentration*	*100% concentration*
Total suspended solids	*milligrams per litre*			*50*

Waste:

The licensee must not cause, permit or allow any waste to be received at the premises.

Operating conditions:

Licensed activities must be carried out in a competent manner. This includes:

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

  All plant and equipment installed at the premises or used in connection with the licensed activity:
- *must be maintained in a proper and efficient condition; and*
- *must be operated in a proper and efficient manner.*

Dust

Activities occurring in or on the premises must be carried out in a manner that will minimise the generation,or emission emissions of dust from the premises.

Trucks entering and leaving the premises that are carrying loads of dust generating materials must have their loads covered at all times, except during loading and unloading.

Monitoring and recording conditions:

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

Water and/ or Land Monitoring Requirements

Discharge from processing and stockpiling area dirty water pond:

Pollutant	*Units of measure*	*Frequency*	*Sampling method*
Oil and Grease	*Milligrams per litre*	*Weekly during discharge*	*Grab sample*
pH	*pH*	*Weekly during discharge*	*Grab sample*
Total suspended solids	*Milligrams per litre*	*Weekly during discharge*	*Grab sample*

Recording of pollution complaints

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

The record must include details of the following:

- *the date and time of the complaint;*
- *the method by which the complaint was made;*
- *any personal details of the complainant which were provided by the complainant or, if no such details were provided, a note to that effect;*
- *the nature of the complaint;*
- *the action taken by the licensee in relation to the complaint, including any follow-up contact with the complainant; and*
- *if no action was taken by the licensee, the reasons why no action was taken.*

The record of a complaint must be kept for at least 4 years after the complaint was made. The record must be produced to any authorised officer of the EPA who asks to see them.

Telephone complaints line

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

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

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

Reporting conditions:

Annual Return documents

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

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

At the end of each reporting period, the EPA will provide to the licensee a copy of the form that must be completed and returned to the EPA

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

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

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

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

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

Where this licence is surrendered by the licensee or revoked by the EPA or Minister, the licensee must prepare an Annual Return in respect of the period commencing on the first day of their porting period and ending on:

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

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

The licensee must retain a copy of the Annual Return supplied to the EPA for a period of at least 4 years after the Annual Return was due to be supplied to the EPA Within the Annual Return, the Statement of Compliance must be certified, and the Monitoring and Complaints Summary must be signed by:

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

Notification of environmental harm

Notifications (of environmental harm) must be made by telephoning the Environment Line service on 131 555.

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

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

<u>Written report</u>

Where an authorised officer of the EPA suspects on reasonable grounds that:

- *where this licence applies to premises, an event has occurred at the premises;or*
- *where this licence applies to vehicles or mobile plant, an event has occurred in connection with the carrying out of the activities authorised by this licence,*

and the event has caused, is causing or is likely to cause material harm to the environment (whether the harm occurs on or off premises to which the licence applies), the authorised officer may request a written report of the event.
The licensee must make all reasonable inquiries in relation to the event and supply the report to the EPA within such time as may be specified in the request.

The request may require a report which includes any or all of the following information:
the cause, time and duration of the event;

- *the type, volume and concentration of every pollutant discharged as a result of the event;*
- *the name, address and business hours telephone number of employees or agents of the licensee, or a specified class of them, who witnessed the event;*
- *the name, address and business hours telephone number of every other person (of whom the licensee is aware) who witnessed the event, unless the licensee has been unable to obtain that information after making reasonable effort;*
- *action taken by the licensee in relation to the event, including any follow-up contact with any complainants; details of any measure taken or proposed to be taken to prevent or mitigate against a recurrence of such an event; and*
- *any other relevant matters.*

The EPA may make a written request for further details in relation to any of the above matters if it is not satisfied with the report provided by the licensee. The licensee must provide such further details to the EPA within the time specified in the request.

General conditions:

A copy of this licence must be kept at the premises to which the licence applies.

The licence must be produced to any authorised officer of the EPA who asks to see it.

The licence must be available for inspection by any employee or agent of the licensee working at the premises.'

<u>It is noted that the application did not nominate the development as requiring a permit from NRAR Water under the Water Management Act due to the proximity of the quarry to Evans Plains Creek. NRAR have been consulted as part of the assessment process and have subsequently advised that a Controlled Activity Approval will be required for any works located within 40 metres of Evans Plains Creek. NRAR have recommended that the following condition be imposed:</u>

The applicant is to obtain a controlled activity approval from the Natural Resource Access Regulator prior to any works being carried out on waterfront land (within 40m of the high bank of Evans Plains Creek).

Section 4.15 Assessment

Section 4.15(1)(a)(i) Environmental planning instruments (State Environmental Planning Policies, Local Environmental Plans, Development Control Plans)
State Environmental Planning Policies

SEPP (State and Regional Development) 2011

The proposed development is listed under Schedule 7 of the *State Environmental Planning Policy (State and Regional Development) 2011* and accordingly the Joint Regional Planning Panel is the consent authority, having functions of a consent authority under SEPP (State and Regional Development) 2011.

SEPP (Mining, Petroleum Production and Extractive Industries) 2007

State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007 applies to the whole state of NSW.

SEPP (MPPEI) prevails over any inconsistencies with any other environmental planning instruments including Bathurst Regional Local Environmental Plan (BRLEP 2014).

Under the SEPP (MPPEI) the proposed development is defined as an *extractive industry*.

The definition of an extractive industry is:

"The winning or removal of extractive materials (otherwise than from a mine) by methods such as excavating, dredging, 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:

(a) turf farming, or

(b) tunnelling for the purpose of an approved infrastructure development, or

(c) cut and fill operations, or the digging of foundations, ancillary to approved development, or

(d) the creation of a farm dam if the material extracted in the creation of the dam is used on site and not removed from the site".

It is noted that pursuant to Clause 7(3) of the SEPP, an extractive industry may be carried out with development consent on any land on which agriculture or industry may be carried out. Under BRLEP 2014, agriculture may be carried in the RU1 Primary Production zone. Accordingly, the SEPP enables consent to be granted to the development subject to consideration of the matters contained in the SEPP.

Part 3 – Development Applications – matters for consideration
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

The adjoining and surrounding land uses are primarily mixed agriculture.
Approximately 2.5 kilometres to the north-east of the subject site are 2 further extractive industries (Townsend and McKay).

(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

The subject lot and adjoining lot to the south, east and west are used for agricultural uses. There is unlikely to be significant adverse impacts on surrounding land uses.
Given the continued use of the quarry and proposed extension, the impact on the preferred uses of the land will be minimal.

(iii) any ways in which the development may be incompatible with any of those existing, approved or likely preferred uses, and

Subject to the inclusion of appropriate management controls the development is not considered incompatible with the existing, approved or likely preferred uses in the area.

(b) evaluate and compare the respective public benefits of the development and the land
uses referred to in paragraph (a) (i) and (ii), and

The material extracted from the subject site will be crushed and screened and then transported privately.

Having been in operation (albeit without development approval) for several years the existing quarry demonstrates a successful business and resource supported within the region for the supply of gravel and sand product. It is considered that the proposed continuation and expansion of the quarry is capable of operating in a consistent manner.

(c) evaluate any measures proposed by the applicant to avoid or minimise any incompatibility, as referred to in paragraph (a) (iii).

No blasting is required to extract the gravel. Extraction will occur in the form of bulldozer push and excavator recovery on a campaign basis.

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

(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.

The proposal adjoins the existing extractive industry on the land and accordingly Clause 13 applies.

(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*
>
> *(d) any incompatibility, as referred to in paragraph (a) (iii).*

The existing use as a quarry is considered a compatible continued use, given its existence and operation by the current land owners since 2003. The proposed development is unlikely to have significant adverse impact on the current or future extraction of resources as it has been designed to ensure the longevity of the quarry. The proposed development is not considered to be incompatible with any existing or approved uses within the vicinity given it is currently operating with minimal disturbance to surrounding land uses.

14 Natural resource management and environmental management

(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,*

Evans Plains Creek, a 3rd Strahler order waterway, is located within close proximity to the existing extraction areas, haul roads and settlement ponds. In many cases this existing infrastructure is within 40 metres of Evans Plains Creek. The haul roads are the closest and are in some instances as close as 25 metres to the main channel of Evans Plans Creek. The proposed extraction and extension area is more than 40 metres from Evans Plains Creek.

The large dam (clean water pond) within the project area currently exceeds the harvestable right for the land area owned. The applicant has undertaken to ensure that the volume of the clean water pond will be reduced to match the harvestable right but no detail or plan has been submitted indicating how this will be achieved. It is also unclear how much water will be used in the operation as a detailed water balance had not been provided.

The applicant has foreshadowed a Surface water Management Plan. The Plan will reduce the volume of the clean water pond to ensure that the capacity of all storages within the land held by the applicant is less than the Harvestable Right if other options are unsuccessful.

It is noted that the applicant currently has two water access licences (34511 and 34794). However, the applicant has not provided detail on current or proposed usage of these licences and so it is unclear what impact there is of approving commercial use of these access licences on the Evans Plains Creek water resource.

The current and proposed access road crosses the Evans Plains Creek via a bed level causeway located approximately 260 metres in from the entry point on the Mid Western Highway and approximately 200 metres from the development site.

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

The applicant has prepared an Ecological Assessment submitted with the application. The Ecological Assessment considers both aquatic ecology and land-based ecology.

Aquatic Ecology investigations did not reveal any threatened aquatic species or populations that have potential to occur within the subject site. No aquatic communities where identified within the subject site.

The investigations did not identify any native vegetation communities due to the disturbed history of the subject site. Flora species identified several species, only two of which are native, being Couch (Cynodon dactylon) and Red Box (Eucalyptus polyanthemos). The Ecological Assessment noted that the native species are in competition with the extensive exotic and weed species found at the subject site.

Subsequent additional assessment undertaken by the applicant has provided:

'Biodiversity

Your email of 27 August 2018 noted the following.

"Please provided detail of who undertook the assessment of the trees and what are their qualifications to decide that they are not part of the EEC. Pasture improvement is not an automatic trigger for grassy- box gum woodland destruction. There has never been an assessment of this land for its ecological condition and presence/absence and so a flora and fauna report must be completed. This report should also consider the likely impacts of consistent noise on fauna likely to be present in the nearby EEC."

Mr Phil Cameron of AREA Environmental Consultants and Communication Pty Ltd (AREA) undertook a field survey of the Swan Ponds Quarry site, and of the areas beside the Mid-Western Highway requiring management of vegetation to achieve a Safe Intersection Sight Distance (SISD), on 10 September 2018. Mr Cameron, Principal Consultant with AREA, is a Certified Environmental Practitioner, and is accredited under the NSW Biodiversity Assessment Method (accreditation number BAAS 17082) and in BioBanking (accreditation number 01 17). Please find attached the letter report prepared by Mr Cameron, referred to hereafter as AREA (2018).

The survey applied the Biodiversity Assessment Method 2017 (BAM) to measure the nature and extent of potential impacts from the Quarry, and to determine if the development triggered the requirement for biodiversity offsetting. The assessment involved vegetation plots and transects, and threatened species transects.

In relation to the proposed expanded quarry area, the survey recorded one Plant Community Type (PCT) zone within the Quarry Site, namely PCT 277 Blakelys Red Gum – Yellow Box grassy tall woodland of the NSW South Western Slopes. This PCT is classified as an Endangered Ecological Community (EEC) in NSW.

Six Eucalyptus blakelys trees would be removed by the Proposed Extraction Area (see Figure AREA, 2018). Five of these trees were classified as part of PCT 277 because they are located within 50m of each other. The sixth tree in the *southwestern section of the Proposed Extraction Area was classified as a paddock tree and therefore was not classified as part of PCT 277. As a result, AREA (2018) determined that approximately 1.73ha of PCT 277 would be disturbed, with composition, condition and function scores for the vegetation to be disturbed recorded as low (3.5), low (0.9) and low (2.3) respectively.*

The remainder of the Proposed Extraction Area was assessed to be Not Native Vegetation dominated by Hordeum leporinum, Barley Grass and other exotic species.

AREA (2018) determined that impact to PCT 277 within the Proposed Extraction Area does not trigger a need for biodiversity offsetting, as the vegetation integrity score of the PCT in the BAM Credit Calculator was lower than the threshold score that would trigger the requirement to offset the impact under the Biodiversity Conservation Act 2016.

AREA (2018) also undertook a five-part assessment of the significance of potential impacts on threatened species, populations or communities in accordance with the BAM. This assessment determined that removal of the PCT would not significantly impact any ecosystem or species credits species under the BAM, and that impacts were therefore not significant.

In relation to the vegetation clearing on the south side of the Mid Western Highway to maintain the required SISD, AREA (2018) determined that the vegetation is Not Native Vegetation. The vegetation comprises willows or escaped fruit trees and exotic ground cover.

Two native trees were identified within the SISD area to the southwest of the Site Entrance within the Project Site, namely a large Blakey's Red Gum (Eucalyptus blakelys) and a medium-sized River She Oak (Casuarina cunninghamiana) (see Plates 12 and 13 of AREA, 2018). AREA (2018) states that removal of these trees would not result in a significant adverse impact on any ecosystem or species credits species under the BAM, and that impacts were therefore not significant.

Table 2 of AREA (2018) lists fauna species predicted to occur within PCT 277 and presents an assessment of the potential impacts of noise from the Quarry on each species. In summary, AREA (2018) states that no native fauna species would be impacted by noise from the Quarry, either because there is no suitable habitat available for particular species and hence, they are unlikely to be present, or because noise does not appear to affect the life cycle of the species.

Irrigation of Lucerne Paddocks

Your email of 27 August 2018 noted the following.

"Concern is raised that the lucerne paddock is being used for disposal of waste water and it does not appear on the project plans and labelled as such - it needs to be included and labelled in the discussions. What happens to waste water outside of the growing season for lucerne? What are the likely volumes to be disposed of and will there be any impacts on the alluvial groundwater present at that location? Your previous response notes that the water access licence will be used for gravel washing and the impact of this change in use of the licence on Evans Plains Creek (time and duration of pumping - the volume is set by the licence but the impact of potentially increased extraction or changed timing of extraction) has not been discussed in the EIS. Discussion of proposed volumes, timings and impacts on the riparian environment are to be provided."

There are three lucerne paddocks within the Project Site, with a total area of 24ha (see attached figure entitled "Lucerne Paddocks"). Each of these paddocks are irrigated using a "hardhose irrigator" approximately four time per year. Water for irrigation is sourced from the final settlement dam.

A description of the water circuit procedure at the Quarry is provided on page 2 of the attached document entitled "Paddock Irrigation and Water Circuit" and is shown in the attached figure entitled "Closed Circuit Sand Processing Works". The Applicant calculated that between 3.l ML and 3.7ML of water is applied to the paddocks per application, for a total of between 12.4ML and 14.7ML per year. This equates to approximately l 8mm of water applied to the paddocks per application. The methods used to calculate these totals are provided i n the attached document. Since water is applied every three months, only one application of water occurs during the colder months outside of the lucerne growing season. The Applicant ensures that the rate of irrigation is such that all irrigated water is permitted to enter the soil profile and that overland flow is not generated. The Applicant contends that given the volume, rate and frequency of water applied to the paddocks, this application has no impact on the alluvial groundwater system.

The Applicant holds two water licences under the Queen Charlottes Vale Evans Plains Creek Water Source, WAL3481 and WAL34794. These licences permit extraction of up to 31ML of water per year. There will be no change to the volumes of water extracted from Evans Plains Creek under these l icences or to the timings of extraction, and hence no changes to potential impacts on the riparian environment.

Impacts on Riparian Zone

Your email of 27 August noted the following.

"There has been no discussion of the impacts on riparian environments - the development currently sits within the Riparian Zone and has significantly modified the riparian environment and there is no discussion of the need for riparian buffers or exclusion zones which under the Guidelines for Riparian Corridors on Water Front Land are required."

AREA (2018) notes that the areas mapped as "Key Fish Habitat" in Figure 1 of that report are classified as Water Front Land. No additional disturbance is proposed within areas of Water Front Land. In addition, the Proposal would result in the retention of all water within the proposed Extraction Area. As a result, the Proposal would not result in an increased risk of discharge of sediment laden water. As a result, there would be no requirement for riparian buffers or exclusion zones.'

The subject site has the potential to occasionally host listed fauna species, given the proximity of PCT 277 woodland remnant to the south east of the project site. No threatened species or populations have previously although there are sightings of listed species within 5km of the site. Due to the disturbed nature of the subject site, low levels of remnant vegetation and impact on waterways, fauna species are unlikely to be impacted by the operations. It is considered the continued operation of the quarry and the proposed quarry extension are unlikely to have a significant impact on the ecology of the subject site. The applicant has not yet provided documentation or plans for proposed riparian buffers. Progressive rehabilitation plans will be required as part of the conditions of consent.

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

It is anticipated that emissions from plant and equipment will result in the emission of some greenhouse gas however it is not considered necessary to impose specific conditions in relation to greenhouse gas emissions.

(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.

Emissions will be limited to machinery associated with quarrying activities and transport.

15 Resource recovery

(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.

The development will effectively and efficiently strip sand and gravel material from the site on a campaign basis. The nature of the material and the market dictates that there is unlikely to be any waste material generated. The majority of material will be either processed and transported or used for rehabilitation purposes.

(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.

Given the limited amount of waste generated no specific conditions are considered warranted.

(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 volume of waste/spoil will be minimal and refusal on this basis is not considered warranted.

16 Transport

(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.*

Supporting the EIS is a Traffic Impact Assessment prepared by Barnson Pty Ltd. A subsequent report by Barnson relative to the proposed intersection design after consultation with the RMS has also been provided.

Access to the site will be by way of Mid Western Highway as currently occurs.

As the operations are presently existing, transport movements are considered to remain similar to existing conditions, with a potential increase when the expansion area is commenced, and campaign thresholds increase. It is estimated that during peak operation approximately 20 vehicle movements into and out of the site would occur daily.

The Barnson Traffic Impact Assessment notes that the existing quarry entrance has very short sight distances and does not comply with the Approach Sight Distance (ASD) and the Safe Intersection Site Distance (SISD) required for trucks. The existing entrance provides a Basic Right (BAR) and Basic Left (BAL) treatment. During the assessment of the application further details were provided in relation to the ASD and SISD. The net result of this has been an amendment of the Barnson Intersection and Design report to show the areas beside the Mid Western Highway in which vegetation will need to be removed or maintained below 0.9m in height to achieve the required 262 m SISD in both directions.

Given the number of heavy vehicle movements proposed it is not considered necessary to impose specific conditions (with the exception of those recommended by RMS) in relation to transport of material as outlined in Clause 16.

(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.*

The Mid Western Highway is an RMS controlled Road.

The Development Application was referred to the RMS for its consideration and comment.

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.

The RMS has provided a number of responses, provided below:

In correspondence dated 28 May 2018:

> *'The documentation submitted in support of DA2018/115 has been reviewed and the following aspects of the proposal are noted:*
>
> - *Material extracted from the quarry will be transported using vehicles up to 26 metres long.*
> - *A maximum 50,000 tonnes per annum would be extracted from the quarry with an average annual extraction rate of 35,000 tonnes. This equates to a maximum 40 heavy vehicle movements per day with an average of 6-7 daily movements.*
> - *Vehicular access to the site will be from the Mid Western Highway via an existing property access. The applicant has committed to undertaking a survey of the intersection to determine whether the existing intersection meets the minimum Basic Right (BAR) and Basic Left (BAL) Austroads treatments. However, preliminary assessment indicates it does not, nor does the access location achieve Safe Intersection Sight Distance (SISD).*
>
> *In accordance with clause 16 of State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007, Roads and Maritime recommends that Council require the applicant to provide the following additional information:*

• An assessment of the existing road environment at the intersection of the site access and the Mid-Western Highway. The assessment is to identify intersection sight distance for each turning movement and works required to achieve SISD. For a 100km/h speed environment, the required SISD on a State road is 262 metres.

• An assessment of the intersection of the site access and the Mid-Western Highway geometry to determine works required to provide Austroads Guide to Road Design BAR and BAL intersection treatments (copies enclosed).

• Should SISD note be able to be practicably achieved, the applicant is to investigate other vehicular access options/locations where SISD can be achieved. The applicant should be aware that without SISD, the requirement to provide a site access with the minimum BAR and BAL treatments will need to be revisited and possibly a higher order intersection treatment required to achieve a high level of road safety and traffic efficiency for quarry related traffic and other road users.'

Subsequent response dated 17 April 2019 provides:

I refer to DA2018/115 and Roads and Maritime Services submission to Council dated 28 May 2018 (Attachment A). Reference is also made to ongoing correspondence between Roads and Maritime and those acting on behalf of the proponent, namely Barnson and RW Corkery in the provision of the requested additional information.

Roads and Maritime received a copy of an Advanced Regional Environmental Assessment (AREA) via RW Corkery on the 8 April, 2019. It is understood that this was undertaken by the proponent in order to ascertain appropriate environmental considerations as part of achieving the required Austroads intersection treatments and Safe Intersection Sight Distance (SISD) at the access to the site located along the Mid Western Highway. RW Corkery further advised that the ecology assessment of the vegetation within the Mid Western Highway road reserve determined that the vegetation was non-native with the exception of two trees. AREA Environmental determined that the removal of those trees would ***not*** *result in significant adverse biodiversity impacts and that offsetting requirements were not triggered. Noteworthy to Roads and Maritime is that in order to achieve the required SISD and Austroads intersection treatments the appropriate level of vegetation removal can now be undertaken.*

Reference is also made to a Traffic Impact Assessment (TIA) report undertaken by Barnson on behalf of the proponent (reference 27955-CR01_A) and forwarded to Roads and Maritime on 04 September 2018. This quantified required works to be undertaken at the site in order to meet Austroads Guide to Road Design treatment requirements as outlined by Roads and Maritime in our previous correspondence to the proponent (as attached).

Roads and Maritime does not object to the proposed development and pursuant to section 138(2) of the Roads Act 1993, grants its concurrence subject to the following conditions being met:

- *The vehicular access servicing the land from the Mid Western Highway is to be constructed and maintained to the following standards:*
    - *A sealed Basic Left (BAL) turn treatment as shown in Part 4A Figure 8.2 of the Austroads Guide to Road Design 2017.*
    - *A sealed Basic Right (BAR) turn treatment as shown in Part 4 Figure A.28 of the Austroads Guide to Road Design 2017. As noted in the TIA in order to meet this Austroads requirement the following works will need to be undertaken by the proponent:*
        - *Shoulder widening to the northern side of road for approximately 120m.*
        - *Consideration of laden heavy vehicles exiting the site towards Bathurst as part of the shoulder widening treatments to accommodate this right turn manoeuvre should be undertaken.*

        - *Lengthening of the existing culvert.*
        - *Relocation of existing guard rail for approximately 53m.*
        - *A copy of construction plans are to be submitted and approved by Roads and Maritime for the proposed works prior to them commencing.*

    - *Vehicular access sealed a minimum of twenty (20) metres from the edge of the travel lane in the Mid Western Highway.*

    - *Safe Intersection Sight Distance (SISD) requirements outlined in Part 4A of the Austroads Guide to Road Design is to be provided and maintained at the vehicular access servicing the land from the Mid Western Highway. As noted in the TIA removal and/or height maintenance of vegetation growth within the road corridor is to be undertaken to ensure growth is less than 0.9m to enable 262m SISD in each direction at all times.*

    - *For a 100km/h speed environment, the required SISD on a State Road is 262 metres.*

- *Vehicular access to the development from the Mid Western Highway is to be via the approved vehicular access only.*

- *Consideration of elevating the access driveway to assist with achieving a greater level of SISD.*

- *Installation of Advance Truck warning signs (W5-22 Size B) with a distance plate (W8-5 Size B) under, located 250 metres in advance of the access in each direction of the Mid Western Highway.*

- *The Mid Western Highway is a State Road and the developer will be required to undertake private financing and construction of works on a road in which Roads and Maritime Services has a statutory interest. A formal agreement in the form of a Works Authorisation Deed (WAD) is required between the developer and Roads and Maritime Services prior to works commencing in the Mid Western Highway.*

- *Prior to the commencement of construction works, the proponent is to contact Roads and Maritime's Field Traffic Manager on 1300 656 371 to determine if a Road Occupancy Licence (ROL) is required. In the event that an ROL is required, the proponent will obtain the ROL prior to works commencing within three (3) metres of the travel lanes in the Mid Western Highway.*

Roads and Maritime in accordance with clause 16 of State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007, provide the following recommendations for Council's consideration:

- *All activities including loading and unloading of materials associated with the project are to be carried out onsite. All loads are to be adequately covered and managed to include dust reduction strategies which may include the use of water trucks.*
- *Vehicles leaving the site are to be in a clean condition and not result in dirt being tracked onto the public road.*
- *Haulage operations coinciding with local student school bus pick up/ drop off times are to be avoided.*
- *The applicant is to prepare and implement a driver code of conduct for the task of transporting materials on public roads.*
- *Scheduling of haulage vehicle movements to minimise convoy lengths or platoons.*

NOTE: the requirement for the sealing of the first 20 metres of the entrance is less than the 100 metres required by the EPA GTA's. The EPA GTA's will prevail.

17 Rehabilitation

(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*

Rehabilitation procedures are outlined in the EIS identifying rehabilitation is to occur during the life of the quarry by progressively battering and rehabilitating the landform or resource depleted sites, as well as complete rehabilitation once the site is decommissioned. Due to the potential visual impact on the neighbouring property a progressive rehabilitation plan will be required that limits active extraction to 5ha. This is in addition to the stockpiling and processing area which is approximately 3ha. This approach is consistent with Council's previous approvals for similar operations.

> *(b) require waste generated by the development or the rehabilitation to be dealt with appropriately, or*

The development will result in limited amounts of waste material being generated. The majority of material will be either processed and transported or used for rehabilitation purposes.

> *(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*

The principal potential source of contamination from the proposed development will be from fuel or oil spill from plant or equipment. The plant operator's standard procedures in relation to hazardous materials will apply in the event of a fuel or oil spill.

> *(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.*

The applicant will have responsibility for the decommissioning and rehabilitation of the subject site in accordance with the conditions of consent, licencing requirements and other approvals.

SEPP 33 - Hazardous and Offensive Developments

The development would not be classified as being a hazardous or offensive industry or a potential hazardous or offensive industry.

SEPP 55 - Remediation of Land

The subject site is identified as being potentially contaminated lands, being the site of former Mining and Extractive Industries.

The subject site is seeking consent for continued use and expansion of an extractive industry. It is not considered necessary for remediation or further investigation at this stage. Rehabilitation processes should be undertaken in accordance with SEPP 55 – Remediation of Land, as well as in accordance with the site management and operations, involving progressive rehabilitation.

Bathurst Regional Local Environmental Plan 2014

The following Clauses of Bathurst Regional Local Environmental Plan 2014 have been assessed as being relevant and matters for consideration in assessment of the Development Application.

Land Use Table

The subject site is zoned RU1 Primary Production. The objectives of the 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.*
• *To maintain the rural and scenic character of the land.*
• *To provide for a range of compatible land uses that are in keeping with the rural character of the locality, do not unnecessarily convert rural land resources to non-agricultural land uses, minimise impacts on the environmental qualities of the land and avoid land use conflicts.*

The proposal is not inconsistent with the objectives of the zone.

The proposal is defined as an *extractive industry*, the definition pursuant to Bathurst Regional LEP 2014 of which is:

"… 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 permissible with consent in the RU1 Primary Production zone.

Bathurst Regional Development Control Plan 2014

Chapter 9 Environmental Considerations

9.3 Riparian land and waterways

Evans Plains Creek is identified as a Sensitive Waterway, Key Fish Habitat and Protected Riparian Lands under the Bathurst Regional Development Control Plan 2014.

The proposed extraction is a dry process that will not change extraction of water nor contribute flows to Evans Plains Creek. The applicant currently owns two water access licences with a total volume of 31ML/annum. The applicant has not provided detail on current or future use of water at the quarry other than to state that the usage will not change. The quarry and proposed extension will be more than 40 metres from Evans Plains Creek, although the current haul road is as close as 25 metres from the edge of the main channel in places. There is the potential for runoff from the development to impact upon water quality although it is proposed that this be managed by way of erosion and sedimentation control mitigation measures.

9.4 Biodiversity

It is noted that areas to the south and west of the subject site are identified as being of high biodiversity. This area is associated with remnants of Box Gum Woodland EEC which occurs in the area.

The extraction area is not located in the High Biodiversity Sensitivity area.

The extraction area and its immediate surrounds are highly disturbed and are devoid of Significant native vegetation.

9.5 Groundwater

The extraction area is identified as being a High Groundwater Vulnerability area under the Bathurst Regional Development Control Plan 2014. Extractive industries are not listed in the types of development that require specific consideration under Chapter 9.5 of the DCP.

9.8 Flora and Fauna Surveys

The applicant has prepared an Ecological Assessment as part of the application.

The Ecological Assessment considers both aquatic ecology and land-based ecology.

Land-based ecology did not identify any native vegetation communities likely due to the disturbed history of the subject site being agricultural use and extraction industry. Flora species identified several species, but only two of which are native, being Blakley's Red Gum – Yellow Box – open woodland of the tablelands which is part of the 'WhiteBox-Yellow Box – Blakey' Red Gum (Box Gum) woodland Endangered Ecological Community.

The subject site has a potential to contain fauna species, given their presence within the Bathurst Regional LGA. No threatened species, populations or communities have previously been recorded at the subject site. It is considered the proposed quarry and extension are unlikely to have a significant impact on the ecology of the subject site.

<u>Section 4.15(1)(b) Environmental (natural and built), social and economic impacts</u>

Scenic quality

The extractive area and associated facilities will be facing predominately north. The proposed expansion to the current extraction area will result in a total area of disturbance of approximately 10.3 ha.

Visual appearance of the proposed extractive industry was raised as an issue by the adjoining land holder to the south who overlooks the development site.

The site and expansion are visible from the adjoining property to the south-west as the dwelling thereon is elevated above the creek flat excavation area.

Traffic Generation

The EIS was accompanied by a Traffic Impact Assessment prepared by Barnson Pty Ltd.

Access to the subject site is via the Mid-Western Highway. The Highway is an RMS road.

Access to the quarry is via an existing internal unsealed road.

As the operations are presently existing transport movements are considered to remain similar to existing conditions, with a potential increase when the expansion area is commenced, and campaign thresholds increase. It is estimated that during peak operation approximately 20 vehicle movements into and out of the site would occur daily.

Given the number of heavy vehicle movements proposed it is not considered necessary to impose specific conditions (with the exception of those recommended by RMS) in relation to transport of material as outlined in Clause 16.

A Code of Conduct should be prepared to identify hours of transportation, procedure for transporting hazardous materials, prohibiting transportation along school bus routes and at certain times, and requirement for vehicles to operate in a safe and courteous manner.

Pollution

Odour

The proposed development is not anticipated to generate any offensive odours.

Noise

The EIS was accompanied by a Noise Impact Assessment prepared by Muller Acoustic Consulting Pty Ltd.

The Assessment conclusion states that:

‘the results of the noise impact assessment (NIA) demonstrate that operational noise levels comply with the relevant Industrial Noise Policy criteria for all assessment periods at all privately-owned non-project related receivers.

Additionally, the NIA demonstrates that the road noise criteria as specified in the road noise policy (RNP) will be satisfied at receiver distances of greater than 15m and Project related vehicle will not increase existing road noise levels by more than 2dB.

Based on the NIA result, there are no noise related issues which would prevent the approval of the Project. The results of the assessment show compliance with the relevant operational and road noise criteria. Additionally, the results of the assessment demonstrate compliance with the relative EPA and DECCW policies, without ameliorative measures being implemented.’

Aboriginal Archaeology

The EIS provides at Appendix No.4 a Heritage Assessment prepared by Navin Officer Heritage Consultant Pty Ltd covering Aboriginal Archaeology.

The assessment identified 2 sites on the AHIMS site within the general vicinity of the project although they are located between 1.5km and 1.7km from the site. Two aboriginal sites where identified on the subject site itself. These are referred to as SPQ1 and SPQ2 in the assessment.

SPQ1 covers an area of approximately 170 x 280 metres and is located within the area impacted by the proposed new extractive area. SPQ1 contains a scatter of at least 12 artefacts recorded over eight locations. The Assessment also notes that there is a moderate to high likelihood for there to be additional artefacts and a low to moderate potential for archaeological deposits. It is likely that these deposits have been disturbed and are very shallow covering an area of 450m x 190m.

SPQ2 represents an area that has the potential of archaeological deposits however it has historically and continues to be used for cropping purposes. Subsequent to the surveys the area subject to SPQ2 has been removed from the project scope. The impact of the development is therefore limited to SPQ1. The site and the artefacts are considered to be of moderate to low local significance.

The Assessment provides the following results and recommendations:

> *‘This report documents the results of a cultural heritage assessment of the Swan Ponds Quarry.*
>
> ***Results:***

Two Aboriginal sites were recorded in the Project Site (SPQ1 and SPQ2). These sites comprise an artefact scatter with associated potential archaeological deposit (PAD) and a PAD with no recorded surface artefacts.

No historical sites or features are located in the Project Site.

***Recommendations**:*

1. *Where possible, sites should be avoided.*

2. *Where sites cannot be avoided, the following preliminary mitigation methods are suggested as a guide.*

   a. *The collection of all surface artefacts at Aboriginal site SPQ1. Collection of surface artefacts can only occur with an approved AHIP.*

   b. *A program of archaeological monitoring should be undertaken in the area of PAD during all initial ground disturbing works. The monitoring should include:*

      i. *Inspection of all areas of ground disturbance by an archaeologist and Aboriginal representative, both before and after initial ground disturbance.*

      ii. *Cultural material identified as a result of ground disturbance will be collected and placed in bags with appropriate identification on the bag.*

      iii. *Photographs and drawings will be made of areas where appropriate.*

      iv. *Short reports will be compiled detailing the result of the above.*

3. *No harm should come to any of the sites listed in this report, until approvals for impacts have been sought and gained;*

4. *Information in this report relating to the exact location of Aboriginal sites should not be published or promoted in the public domain;*

5. *The protocols for the unanticipated discovery of archaeological material and suspected human remains (presented in Appendix 3) be implemented as necessary during activities involving ground surface disturbance and excavation;*

6. *A copy of this report should be provided to each of the Registered Aboriginal Parties (RAPs) for their comment.*

7. *This report should be provided to the OEH for its information and records.*

The NSW Office of Environment and Heritage GTA's requires the inclusion of the following in conditions of consent.

- *SPQ1/PAD must be registered on the Aboriginal Heritage Information Management System (AHIMS) database as soon as practicable, if this has not already happened.*
- *A section 90 Aboriginal Heritage Impact Permit (AHIP) under the National Parks and Wildlife Act 1974 must be sought and granted by OEH for harm to Aboriginal site SPQ1.*
- *The AHIP application must consider the archaeological and cultural significance of the Aboriginal objects at SPQ1 and provide reasonable and proportionate mitigation strategies to offset harm to SPQ1. Equally, the*

application must describe how Aboriginal objects are to be managed if it is the Aboriginal community preference to have them collected.

- *The AHIP application must be accompanied by appropriate documentation and mapping as outlined on page 6 of Applying for an Aboriginal Heritage Impact Permit*
- *Consultation with the Aboriginal community undertaken as part of the AHIP application must be in accordance with section 90N of the NPW Act 1974 as described in the Aboriginal cultural heritage community consultation requirements for proponents (DECCW 2010)*

Section 4.15(1)(c) Suitability of the site

The proposed development represents a continuation and extension to an existing extractive industry. The majority of the infrastructure already exists including access road to the site, internal road, office, process and stockpiling areas and water storage facilities. As the site is located within close proximity of non-associated dwellings, the continued use and expansion will have the potential to impact on the surrounding residents.

Section 4.15(1)(d) Submissions

The Development Application was publicly exhibited in accordance with the requirements for Designated Development between 29 April 2018 and 30 May 2018. The proposal was notified to all adjoining property owners. During the public exhibition period only one submission was received which was generally supportive of the proposal and did not object to the continuation and expansion of the quarry. Refer **attachment 2**.

Section 4.15(1)(e) Public Interest

The proposed development is considered to be within the public interest as it provides employment both directly and indirectly. The continuation of the quarry provides the local and regional community with sand and gravel supplies. The continuation of the quarry at the already disturbed site is considered within the public interest as ceasing excavation would require extraction elsewhere potentially impacting on undisturbed land threatening quality of flora and fauna.

Summary

The proposed development seeks consent for the continued use of the site (Swan Ponds Quarry) as an extractive industry and an expansion area to the west and south east of the existing extraction area of approximately 10.3ha.

The quarry extracts course and fine sand from weathered granite for concrete aggregates, as well as material for road construction and maintenance and select fill benefitting the local and regional area.

The subject site, Lot 241 DP1185616, 1329 Mid Western Highway, Evans Plains is situated within the Bathurst Regional Local Government Area.

The proposed development is considered Designated Development under the provisions of Schedule 3(1) of the *Environmental Planning and Assessment Regulation 2000*.

The proposal is classified Regionally Significant Development under Part 4 of the *State Environmental Planning Policy – State and Regional Development 2011* and schedule 7 thereto.

The proposal is considered Integrated Development pursuant to Environmental Planning and Assessment Regulation 2000 as the quarry extraction operation requires an Environment Protection Licence under clause19 of Schedule 1 of the *Protection of the Environment Operations Act 1997* and an Aboriginal Heritage Impact Permit under section 90 of the *National Parks and Wildlife Act 1974*.

The quarry has been operating for many years with the present owners purchasing the site in approximately 2003 based on the assumption that continuing use right existed to the operation. The applicant has continued the operation of the quarry and in mid-2016 recognised that the continuing use rights may not exist. In consultation with Council the operations have continued whist this new development approval is sought.

The proposal is for the continued use of the existing quarry and an expansion area to the west and south east of the existing extraction area of approximately 10.3ha. The proposed development will allow for the quarry to continue operating for eighteen (18) years.

The DA was referred to several government agencies, relevant comments and requirements have been imposed as conditions of consent.

The DA was referred to adjoining landholders, with one (1) submission received in support of the continued operation of the quarry by the current operators.

The DA has been assessed against relevant State and local planning legislation.

The continuation operation and proposed expansion is considered unlikely to have a negative or adverse environmental, social or economic impact.

The quarry will continue to supply sand and gravel to local and regional locations.

It is considered that the development warrants conditional development consent.

ATTACHMENTS