

COUNCIL ASSESSMENT REPORT

Panel Reference	PPS-2018WES020
DA Number	DA294/18
LGA	LITHGOW CITY COUNCIL
Proposed Development	The proposal seeks approval to import approximately 1.2 million cubic metres (approximately 2.2 million tonnes) of VENM and ENM fill to the site of the former Bell Quarry on Sandham Road Dargan, including the de-watering of the existing voids and rehabilitation and revegetation of the site to approximate original topography. The project has an estimated life of 15 years with hours of operation of 7.00am to 6.00pm Monday to Friday and 7.00am to 1.00pm Saturday.
Street Address	Lot 23 DP75161 Sandham Road Dargan
Applicant/Owner	Applicant – Bell Quarry Rehabilitation Project Pty Ltd Owner – Chalouhi Rural Pty Ltd
Date of DA lodgement	27 November 2018
Number of Submissions	11 Government Agencies, 3 Local Councils and 470 written submissions, including 149 form letters
Recommendation	Refusal for the reasons detailed on Schedule A of the Report
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011	Clause 7c of Schedule 7 – Particular Designated Development : waste management facilities or works under clause 32 of Schedule 3 of EP&A Regulation 2000
List of all relevant s4.15(1)(a) matters	<p>Lithgow LEP 2014 SEPP44 – Koala Protection SEPP (Infrastructure)2007 SEPP (Mining, Petroleum Production and Extractive Industries)2007 SEPP33 -Hazardous and Offensive Development SEPP 565 – Remediation of Land SEPP (Sydney Drinking Water Catchment) 2011</p> <p>No proposed instrument that is or has been the subject of public consultation under the Act and that has been notified to the consent authority</p> <p>No development control plan applies to site or development</p> <p>No planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4</p> <p>No coastal zone management plan applies</p> <p>SEARS (1105) issued in accordance with the provisions in Schedule 2 of EP&A Regulation 2000</p>
List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> • Attachment 1 – GHD Report on submissions, dated June 2019 • Attachment 2 – GHD letter dated 11 October 2019 additional response to submissions • Attachment 3 – GHD letter dated 1 November 2019 response to additional EPA comments • Attachment 4 – GHD letter dated 14 November 2019 response to RMS submissions • Attachment 5 – EPA submission dated 20 March 2019 • Attachment 6 – EPA submission dated 2 September 2019 • Attachment 7 – EPA submission dated 15 October 2019 • Attachment 8 – EPA submission dated 13 January 2020 • Attachment 9 – Department of Industry- Crown Lands and Water letter dated 18 March 2019 granting owners consent • Attachment 10 – Department of Planning and Environment letter dated 2 October 2019 and National Parks and Wildlife Service letter of 14 October 2019 • Attachment 11 – Secretary's Environmental Assessment Requirements (SEARS 1105) • Attachment 12 - Environmental Impact Statement prepared by GHD

Clause 4.6 requests	Nil.
Summary of key submissions	<ul style="list-style-type: none"> • Adverse environmental impacts on Blue Mountains National Park, Greater Blue Mountains World Heritage Area and Wollangambe and Colo River systems from the importation of VENM and ENM fill; • Adverse impacts on groundwater dependent ecosystem, being the prickly pear-sedge wet heath swamp, which is listed as an endangered ecological community under Threatened Species Conservation Act 1997; • Adverse impacts on ground water dependent ecosystem, being the temperate highland peat swamp on sandstone, which is listed as an endangered ecological community under the Commonwealth Environment Protection and Biodiversity Conservation Act 1999; • Adverse environmental and erosion impacts on Blue Mountains National Park associated with the dewatering of the Bell Quarry voids; • Impact of heavy traffic movements on Bells Line of Road and Great Western Highway; • Public safety and amenity impacts to residents and users of Sandham Road, including noise, dust; • Existing condition and width of Sandham Road unable to safely accommodate projected 74 daily movements of 42.5 tonne truck plus trailer; • Loss of static water source for aerial firefighting purposes;
Report prepared by	Kerry Nash, KN Planning Pty Ltd
Report date	6 March 2020

Summary of s4.15 matters

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

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report? **Not Applicable**
e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report? **Not Applicable**

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (\$7.24)? **Not Applicable**
Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

Conditions

Have draft conditions been provided to the applicant for comment? **No**
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

EXECUTIVE SUMMARY

Lithgow City Council is in receipt of Designated Development Application DA294/18 on behalf of Bell Quarry Rehabilitation Project Pty Limited for the utilisation of the former Bell Quarry voids located adjacent to Sandham Road, Dargan to accommodate the importation of 1.2 million cubic metres (approximately 2.2 tonnes) of VENM and ENM fill and the rehabilitation of the site to a final landform that replicates the original topography prior to quarrying.

The Bell Quarry is located on Sandham Road in Dargan. Lot 23 DP75161, being the main project site, covers a total area of 13.7ha, is separated by the Main Western Railway and located to the northeast of Bells Line of Road. The northern parcel of land covers an area of 9.5 ha and formed the basis of the previous quarry operations. The southern parcel of land has not been previously developed or subject to extraction operations. The quarry currently contains three large voids that are partially filled with water and drainage directs surface flows internally towards the voids.

Rehabilitation activities will be restricted entirely to the former quarry site on the northern parcel of land on the eastern side of the Main Western Railway. It is proposed that an encroachment of some works will be undertaken on the adjoining Lots 7031 & 7032 DP 1066257 to the west of the project site and discharge of water within the adjoining Blue Mountains National Park to the east.

The proposed development involves:-

- The importation of approximately 1.2 million cubic metres of VENM and ENM as required to fill the site over a period of approximately 15 years;
- Vehicle haulage for a rate of up to 140,000 tonnes per annum (tpa);
- Dewatering of voids and discharge of water off site;
- Emplacement and compaction of clean fill material within the existing quarry voids to closely represent the pre-quarry landform;
- Development of a water management system to control surface water discharge throughout the rehabilitation program and from the final landform;
- Revegetation of the site with locally endemic species to provide effective integration with the surrounding landscape and Blue Mountains National Park.

A conceptual staging plan was developed which included six stages based upon access, dewatering requirements, environmental management and progressive rehabilitation. The estimated time period for each stage is outlined below at Table 1:-

Table 1: Quarry staging

Phase	Cubic Metres	Tonnes	Time period to complete each stage
Stage 1	88,800	162,504	1 year 2 months
Stage 2	271,700	497,211	3 years 5 months
Stage 3	52,000	95,160	8 months
Stage 4	367,600	654,408	4 years 8 months
Stage 5	293,800	537,654	3 years 10 months
Stage 6	140,500	257,115	1 year 10 months
<i>Total</i>	<i>1,204,400</i>	<i>2,204,052</i>	<i>15 years 9 months</i>

The existing haul road is proposed to be regraded at the commencement of site operations to provide safe entry and exit to the site. A portable site office and amenities building is proposed to be established in the central portion of the site. The amenities area would be serviced with a pump-out sewerage system with the sewage to be disposed off-site.

A stockpile area will be developed adjacent to the site office to allow unloading of clean fill prior to placement in the active rehabilitation cell.

It is anticipated that the development would employ approximately 4-6 people plus haulage drivers.

The operating hours for the proposed development are:-

- Rehabilitation activities and haulage to the site will be restricted between 7.00am and 6.00pm Monday to Friday and 7.00 am to 1.00 pm on Saturdays.
- Minor daily site preparation activities involving the use of a grader and roller to prepare the site for haulage vehicles are proposed between 6.00 am and 7.00 am Monday to Saturday.

The proposed development is Designated Development requiring the application to be submitted to the Western Regional Panel for determination as the proposal is for a "*waste or resource management facility*" which meet the requirements for designated development under clause 32 of Schedule 3 to the Environmental Planning and Assessment Regulation 2000.

The land is zoned E3 Environmental Management under the Lithgow LEP 2014.

The proposed development, being a "*waste or resource management facility*" is prohibited in the E3 zone, however, the use is permissible with consent under the SEPP(Mining, Petroleum Production and Extractive Industries)2007 and SEPP(Infrastructure)2007 through "*extensive agriculture*" being a permissible use within the E3 zone.

The application has being assessed against the relevant Acts and Environmental Planning Instruments, namely:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000 (EP&A Regulation);
- Crown Land Management Act 2016,
- Native Title Act 1993
- Roads Act 1993,
- Threatened Species Conservation Act 1997
- Environment Protection and Biodiversity Conservation Act 1999,
- Biodiversity Conservation Act 2016,
- Protection of the Environment Operations Act 1997,
- Biosecurity Act 2015,
- Rural Fires Act 1997,
- Water Management Act 2000,
- Local Government Act 1993
- Fisheries Management Act 1994
- State Environmental Planning Policy No 33—Hazardous & Offensive Development
- State Environmental Planning Policy No 44 – Koala Habitat Protection
- State Environmental Planning Policy No 55—Remediation of Land
- State Environmental Planning Policy (Infrastructure) 2007,
- State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011,
- State Environmental Planning Policy State and Regional Development, and
- Lithgow Local Environmental Plan 2014.

The development has been assessed against the environmental impacts on both the natural and built environments, social and economic impacts in the locality, including amongst other things:

- Adjoining land uses,
- Context and Setting,
- Safety and Security,
- Rehabilitation,
- Access/traffic,
- Heritage,
- Social and Economic Impact
- Water quality,
- Air quality,
- Natural Hazards,
- Flora and Fauna,
- Noise and Vibration.

The proposal was sent to the Environmental Protection Authority, Department of Planning- Resource and Energy, Department of Planning, Office of Environment and Heritage, Department of Primary Industries, Lands & Water Division; Natural Resources Access Regulator; Department of Primary Industries, WaterNSW, Roads and Maritime Services (now Transport for NSW), NSW National Parks and Wildlife Services, Blue Mountains City Council, Hawkesbury City Council, NSW Rural Fire Service, Sydney Trains, Central Tablelands Local Land Services, Endeavour Energy and Council's Engineers for comment.

The proposal was also sent to surrounding landowners, advertised in the local paper and placed on public display in Council's Administration Building for a period of 30 days. The exhibition period was extended for a further 14 days to accommodate a community meeting.

A total of 470 submissions were received from the community, including the following community groups:

- Bell Quarry Working Group;
- North Richmond & Districts Community Action Association Inc.;
- Zig Zag Railway;
- Kurrajong Community Forum;
- Hawkesbury Environmental Network;
- Friends of Colo Inc.; and
- Mt Wilson Progress Association.

A total of 321 written submissions were received and 149 form letters.

The primary concerns raised in the submissions can be summarised as follows:

- Adverse impacts on Greater Blue Mountains World Heritage Area;
- Impacts of the importation of the fill on groundwater;
- Impacts of dewatering on Blue Mountains National Park;
- Potential contamination of Wollongambe and Colo Rivers, including domestic water supply from Colo River;
- Spraying of water to mitigate dust and washdown of trucks will flow into Wollangambe River, part of the Hawkesbury-Nepean Catchment;

- Loss of water source in quarry will increase bushfire risk for local communities and restrict RFS aircraft capabilities to fight local fires;
- Traffic impacts on Bells Line of Road and Great Western Highway, in particular in Mt Victoria from additional heavy truck movements;
- Existing condition and width of Sandham Road unable to safely accommodate heavy truck movements, particularly in respect to the school bus, pedestrians, cyclists and local resident vehicle movements and needs to be upgraded if the proposal is approved;
- Intersection of Sandham Road and Bells Line of Road has poor sight lines and needs to be improved;
- Potential for queuing of trucks in Sandham Road and Bells Line of Road prior to 7.00am opening of facility;
- Amenity impacts on Sandham Road residences with dust, noise and public safety; and
- Proposed development is not a continuation of the earlier development consent(108/94) as it has been abandoned upon satisfaction of Condition 12 of that consent relating to rehabilitation of the site and retained ponds as a water source for bush fire purposes.

The Applicant provided a detailed response to the submissions from Government Agencies and community concerns dated June 2019.

The Environmental Protection Authority (EPA) submitted four (4) comprehensive submissions to Council during and after the notification process (**Attachments 5-8** to this report) and raised major concerns in respect to the following matters, including:

- That the Secretary's Environmental Assessment Requirements (SEARS) issued on 18 January 2016 (SEARS1105) have not been satisfied;
- That the Applicant did not refer the proposal to the Commonwealth under the *Environmental Protection and Biodiversity Conservation Act 1999* in respect to a groundwater dependent ecosystem, being the prickly pear-sedge wet heath swamp and the temperate highland peat swamp on sandstone;
- That the proposal will have unacceptable environmental impacts on the adjoining Blue Mountains National Park, the Greater Blue Mountains World Heritage Area and the Wollangambie and Colo River systems through the de-watering process and the importation of fill over the life of the project and beyond; and
- That the EPA will not provide an Environmental Protection License for the discharging of water under clause 43(d) of the Protection of the Environment Operations Act 1997 nor their Integrated Development Approval required for the development under Division 4.8 of the AP&A Act 1979.
- The EPA recommended that the Project be refused.

Based on the submissions from the EPA and other Agencies detailing the likely adverse environmental impacts arising from the proposed development an assessment of the application against the E3 zone objectives and the provisions under clauses 7.1 – Earthworks, 7.4 – Terrestrial Biodiversity and 7.7 - Sensitive Lands concluded that the proposal did not satisfy the environmental outcomes sought under the abovementioned clauses in the Lithgow LEP 2014.

Another primary concern relates to potential adverse amenity impacts on local residents arising from the use of Sandham Road as the sole means of access to the site for trucks (up to 42.5 tonnes truck and trailer) with an average of 74 truck movements per day. Concerns include noise disturbance, dust

management and public safety issues in respect to potential conflicts between truck movements and school bus run and local traffic given narrow carriageway and largely unsealed nature of Sandham Road. The recommendations of Councils Engineer for the widening and sealing of Sandham Road would address local concerns as to dust and public safety in the event of the approval of the development embodying the Council Engineer recommendations.

Other amenity and traffic concerns were raised by local councils, communities and individuals responsible for or living on the Bells Line of Road and Great Western Highway.

However, given that the site adjoins the Blue Mountains National Park, which forms part of the Greater Blue Mountains World Heritage Area and the Wollemi Wilderness Area, over which the dewatering process for the former quarry will flow it is appropriate for the environmental issues raised by the EPA be afforded determinative weight in respect to Designated Development Application 294/18.

The application is forwarded for determination by the Western Region Panel. The **recommendation** of Lithgow City Council is for **refusal** for the reasons detailed in Schedule A of this Report.

DRAFT FINAL 4.3.20

DESIGNATED DEVELOPMENT ASSESSMENT REPORT – DA294/18 - PROPOSED REHABILITATION OF BELL QUARRY, LOT 23 DP 751631, SANDHAM ROAD, DARGAN NSW 2790

1. PROPOSAL

Council is in receipt of Designated Development Application DA294/18 for the utilisation of the former Bell Quarry voids on land at Lot 23 DP 751631, for Lots 7031 & 7032 DP1066257 Sandham Road, Dargan to accommodate the importation of 1.2 million cubic metres (approximately 2.2 million tonnes) of clean fill, consisting of VENM and ENM, and rehabilitation of the site to a final landform that replicates the original topography of the site prior to quarrying.

The Bell Quarry is located on Sandham Road in Dargan. Lot 23 DP75161, being the main project site, covers a total area of 13.7ha, is separated by the Main Western Railway and located to the east of Bells Line of Road. The northern parcel of land covers an area of 9.5 ha and formed the basis of the previous quarry operations. The southern parcel of land has not been previously developed or subject to extraction operations. The quarry currently contains three large voids that are partially filled with water and drainage directs surface flows internally towards the voids.



Cell 7/8 (bottom of photograph), Cell 6/7 (top) and Cell 2 (to the right)

Rehabilitation activities will be restricted entirely to the former quarry site on the northern parcel of land on the eastern side of the Main Western Railway. It is proposed that an encroachment of some works will be undertaken on the adjoining Lots 7031 & 7032 DP 1066257 to the west of the project site and discharge of water within the adjoining Blue Mountains National Park to the east.



Cell 3 water storage adjacent to Blue Mountains National Park

The proposed development involves:-

- The importation of approximately 1.2 million cubic metres of VENM and ENM as required to fill the site over a period of approximately 15 years;
- Vehicle haulage for a rate of up to 140,000 tonnes per annum (tpa);
- Dewatering of voids and discharge of water off site;
- Emplacement and compaction of clean fill material within the existing quarry voids to closely represent the pre-quarry landform;
- Development of a water management system to control surface water discharge throughout the rehabilitation program and from the final landform;
- Revegetation of the site with locally endemic species to provide effective integration with the surrounding landscape and Blue Mountains National Park.

DEVELOPMENT STAGING AND TIMELINE

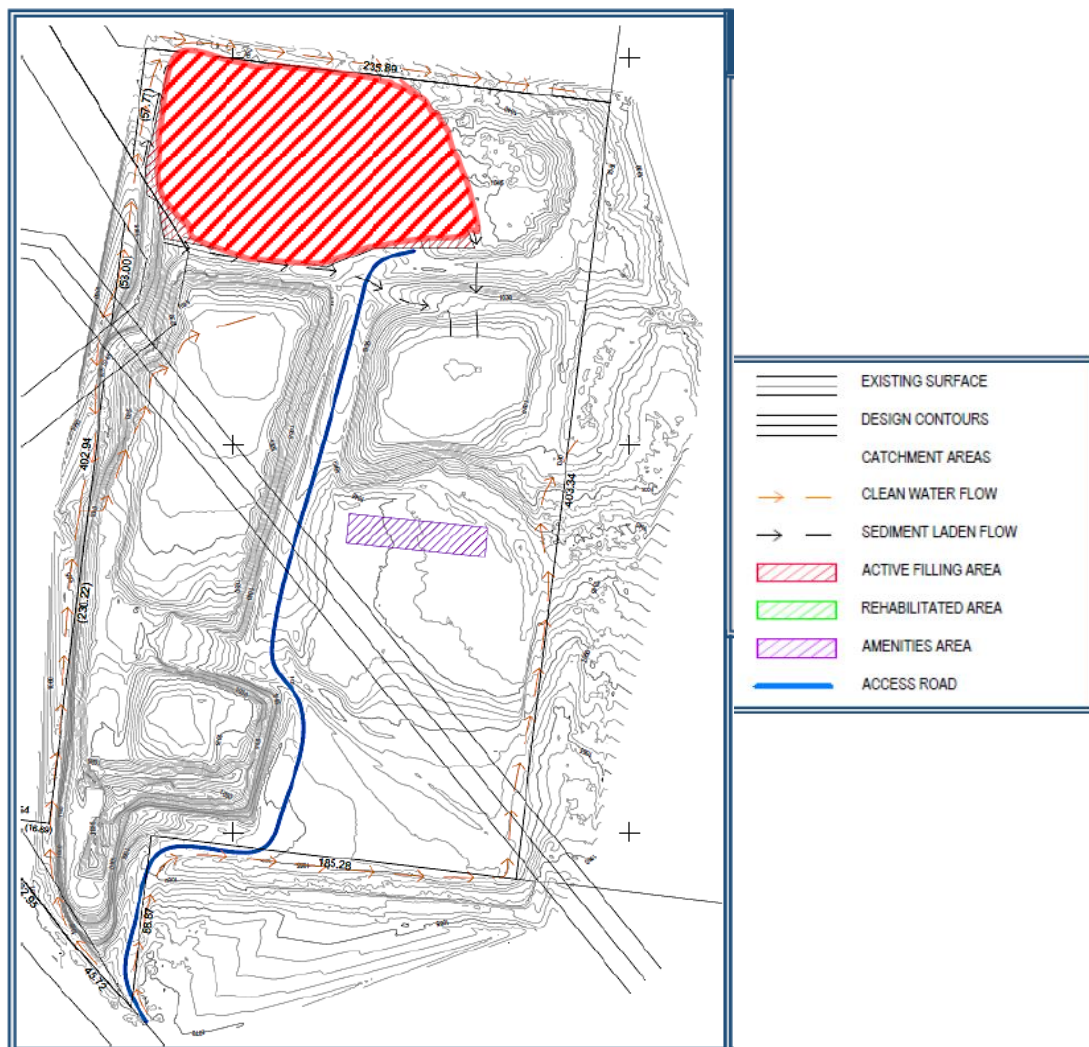
A conceptual staging plan was developed which included six stages based upon access, dewatering requirements, environmental management and progressive rehabilitation. The estimated time period for each stage is outlined below at Table 1:-

Table 1 Quarry staging

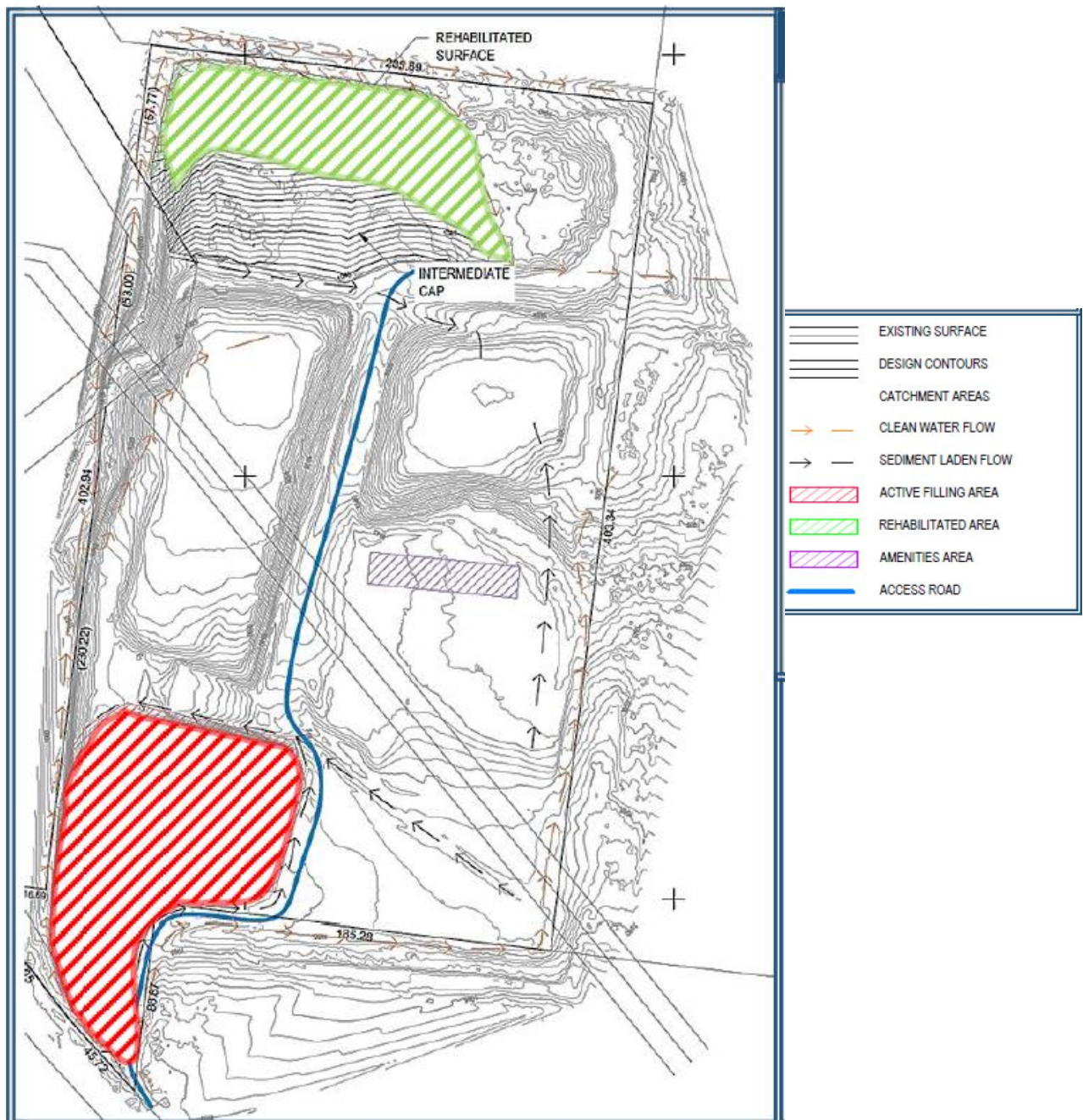
Phase	Cubic Metres	Tonnes	Time period to complete each stage
Stage 1	88,800	162,504	1 year 2 months
Stage 2	271,700	497,211	3 years 5 months
Stage 3	52,000	95,160	8 months
Stage 4	367,600	654,408	4 years 8 months
Stage 5	293,800	537,654	3 years 10 months
Stage 6	140,500	257,115	1 year 10 months
<i>Total</i>	<i>1,204,400</i>	<i>2,204,052</i>	<i>15 years 9 months</i>

The development is proposed to be undertaken in the following stages:-

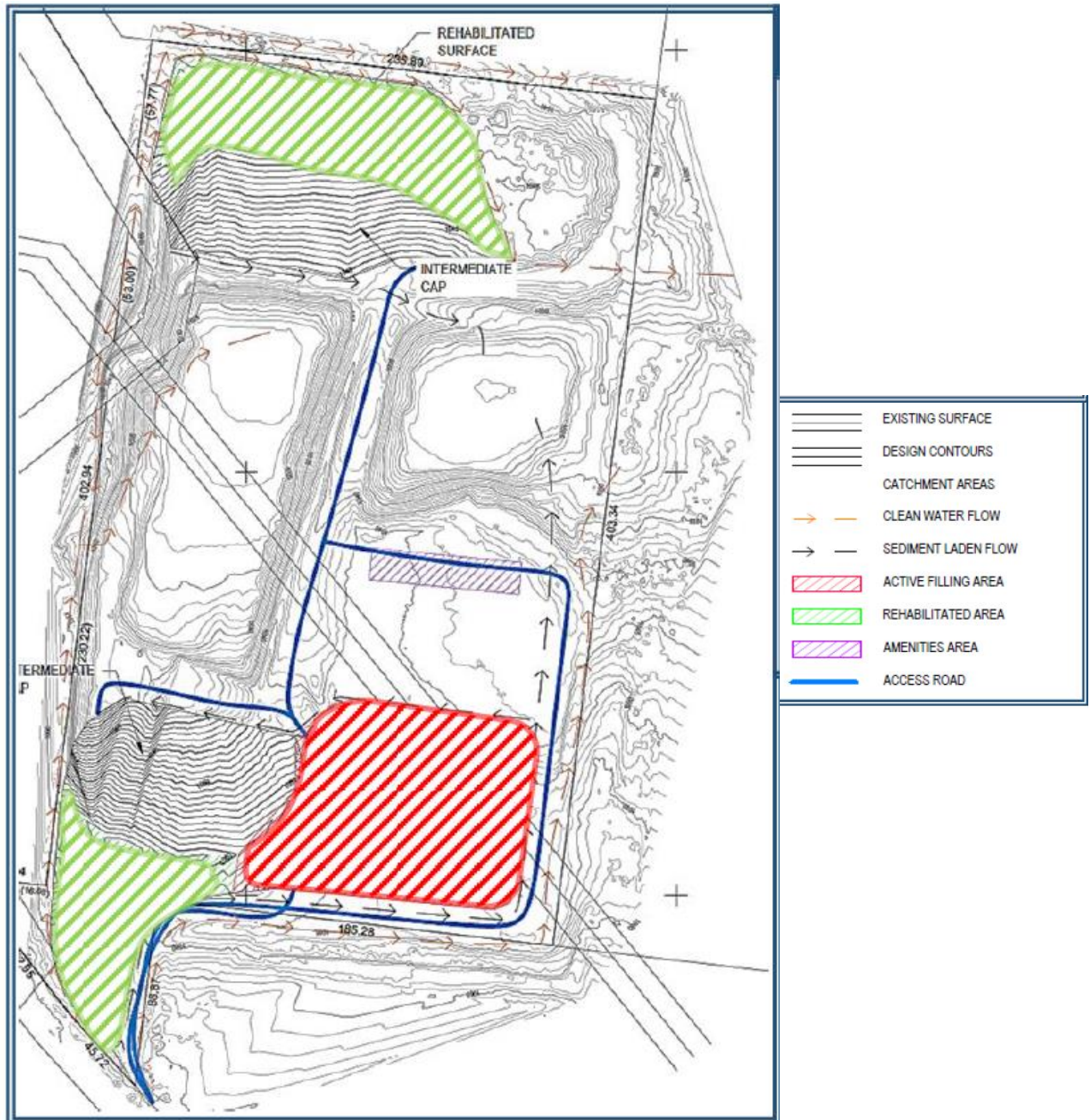
- Stage 1 - Volume: 88,800m³
 - Filling works within the north western corner of the site;
 - The southern fill batter will be graded at 1 (vertical) to 3 (horizontal) and an intermediate cap placed;
 - Dewatering of the existing voids in preparation for Stage 2; the main void will need to be dewatered to a level below RL 202m to allow the south void to be completely dewatered in preparation of filling;
 - No revegetation to occur in this stage.
 - Stripping of planted regrowth vegetation with any remaining topsoil to be retained and used during the progressive rehabilitation of the site.



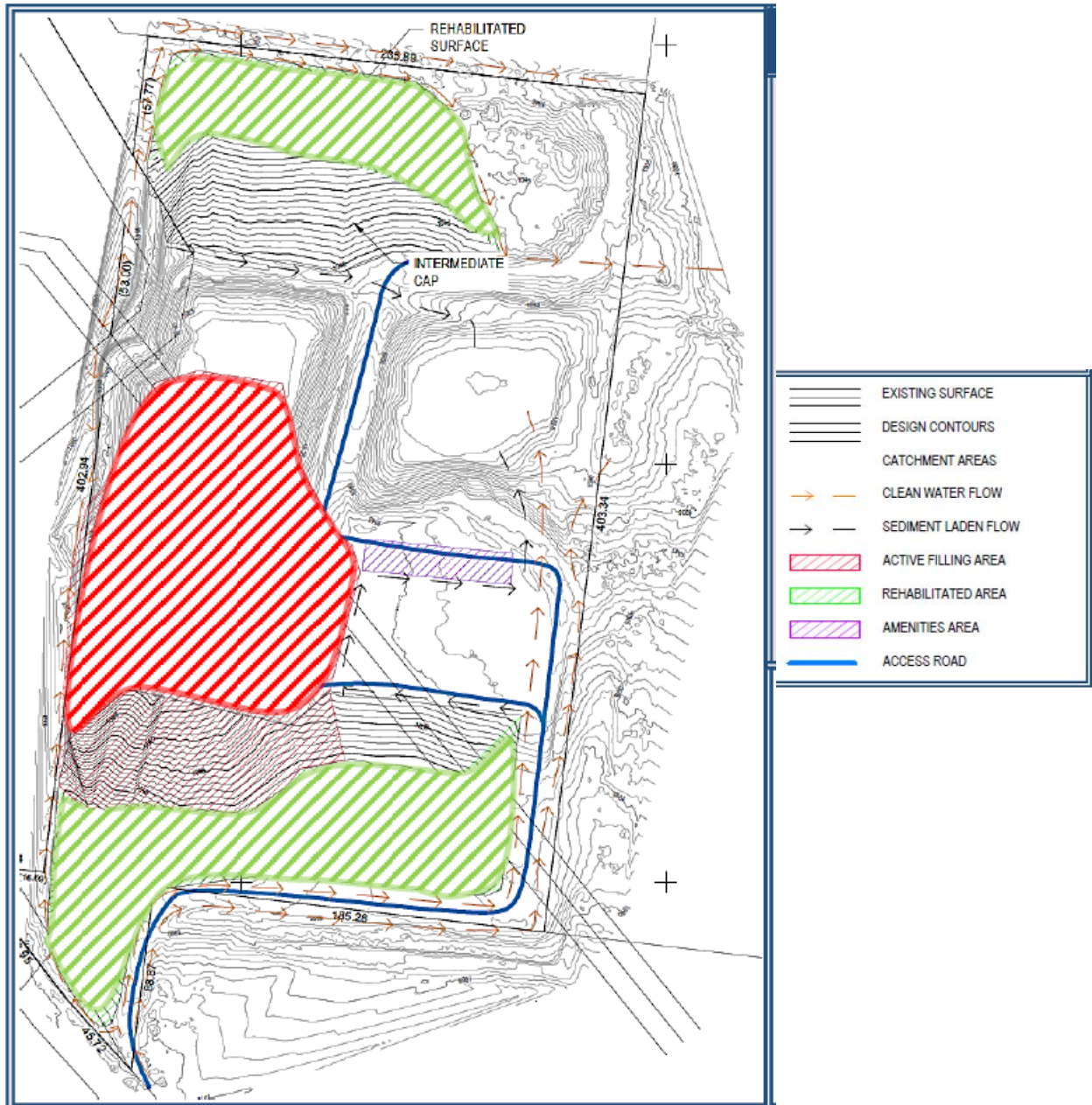
- Stage 2 – Volume: 271,700m³
 - Filling works in the south void with surface water runoff to be directed to the main void.
 - Areas of Stage 1 at final levels revegetated.
 - Construct access road and extension of the stormwater drainage system to divert around the south eastern corner of the site.



- Stage 3 - Volume: 52,000m³
 - Filling in the south eastern corner of the site, to the south of the east void.
 - Areas filled in Stage 2 at final levels will be revegetated.
 - The main void will be dewatered and a temporary sump installed in the north east corner of the main void to manage stormwater.



- Stage 4 - Volume: 357,600m³
 - Filling in the southern portion of the main void.
 - Stage 4 fill works will allow surface water running onto the site from the west to flow over the fill area. Appropriate erosion and sediment controls will be installed along this drainage line.
 - Areas of Stage 3 which have reached final levels would be revegetated.



- Stage 5 – Volume: 293,800m³
 - The northern portion of the main void will be filled.
 - Areas of Stage 4 which have reached final levels would be revegetated.
 - The east void will be dewatered.



The operating hours for the proposed development are:-

- Rehabilitation activities and haulage to the site will be restricted between 7.00am and 6.00pm Monday to Friday and 7.00 am to 1.00 pm on Saturdays.
- Minor daily site preparation activities involving the use of a grader and roller to prepare the site for haulage vehicles are proposed between 6.00 am and 7.00 am Monday to Saturday.

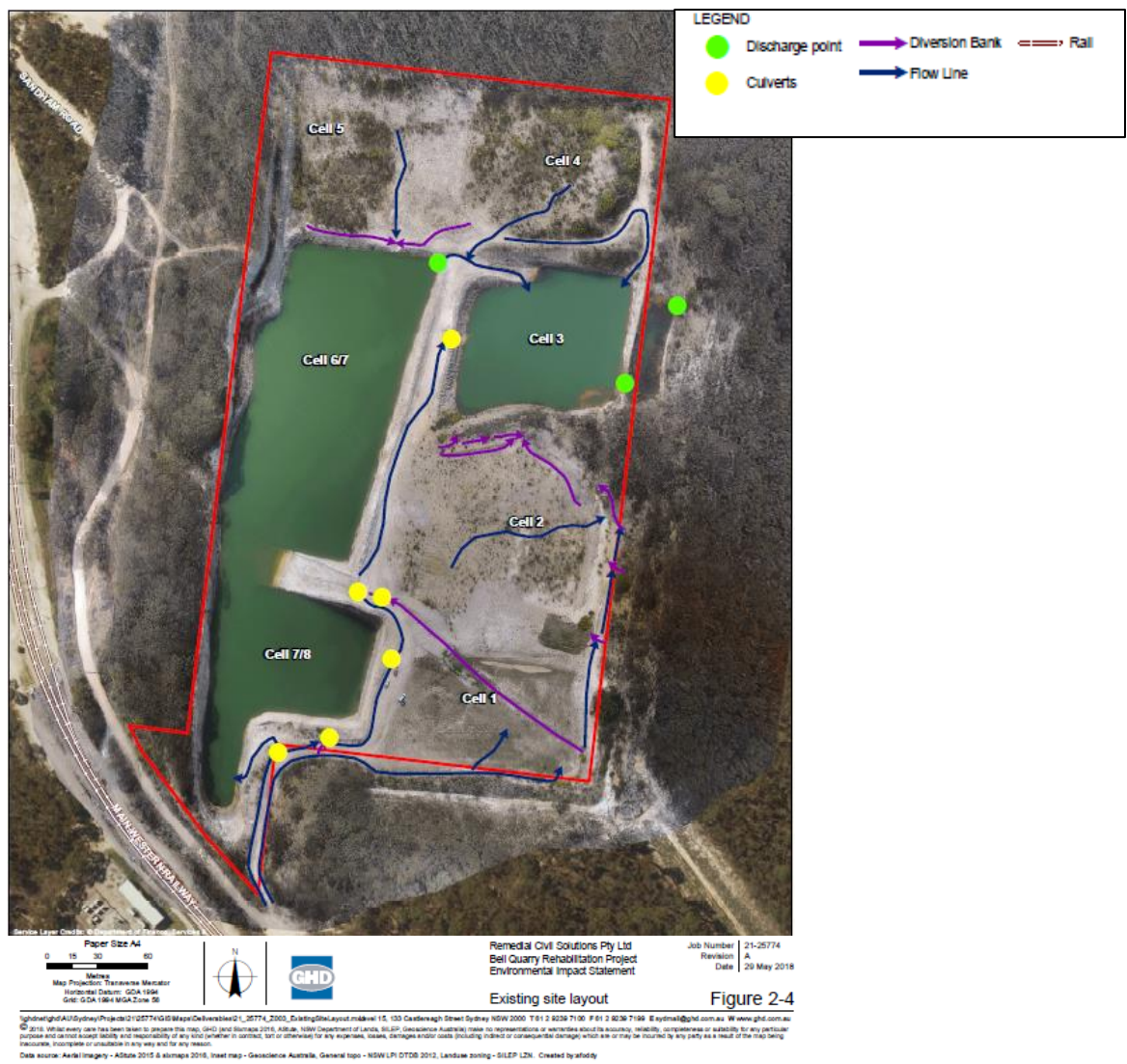
The Designated Development Application lodged with the Council was supported by an Environmental Impact Statement (EIS) prepared by GHD dated August 2018. Subsequent documentation from the applicant has been submitted for the proposal as part of the assessment process and includes:

- GHD Submission Report June 2019 (**Attachment 1**)
- GHD Letter 11 October 2019- Additional response to submission (**Attachment 2**)
- GHD Letter 1 November 2019 - Response to Additional EPA Comments (**Attachment 3**)
- GHD Letter 14 November 2019- Response to Additional RMS Comments (**Attachment 4**)

Owners Consent

The subject site is owned by Chalouhi Rural Pty Limited.

However, the proposed rehabilitation of the former Bell Quarry site will encompass lands outside of the boundaries of Lot 23 DP 751631, as evident in the detailed Plan of Survey of the site undertaken as part of the EIS, being Figure 2-4 below.



The EIS states:-

"The disturbance footprint of the previous extractive operations has extended beyond the surveyed site boundary at two locations which is likely to be a function of the accuracy of survey data at the time of establishment of the quarry. The edge of the main quarry void along the western boundary extends as a thin strip of approximately two metres onto Crown Land. The haul road into the site also bisects a small portion of land within the NPWS estate at the entrance to the site.

Rehabilitation at the site will be undertaken entirely within the existing disturbance footprint of the quarry. It will be necessary to fill marginally beyond the surveyed boundary of the site to encompass the entire disturbance area to provide effective stability and stormwater management for the final landform. Filling to the extent of the near vertical existing batters will be required to prevent pooling and uncontrolled discharge of stormwater from the site and the rehabilitation strategy is consistent with the requirement to undertake rehabilitation within a 20 metre strip of the adjoining Blue Mountains National Park within the existing consent.

The sedimentation pond adjoining 'Cell 3' is located on NPWS land and is fundamental for the proposed dewatering process and long term management of surface water flow.



Sedimentation Dam adjacent to Cell 3 located within Blue Mountains National Park



Drainage overflow between Cell 3 and Sedimentation Dam on Blue Mountains National Park land

The development application lodged with Lithgow Council on 27 November 2018 was absent owner's consent from the Minister of Lands and Forestry (for encroachment on the Crown Reserve to the west) and from the National Parks and Wildlife Service for encroachment on the Blue Mountains National Park (to the east and south).

The Department of Industry – Crown Lands and Water, Orange issued a conditional land owner's consent for the lodgement of the development application on 18 March 2019.

The National Parks and Wildlife Service issued land owner's consent for the lodgement of the development application on 14 October 2019, with the following qualification:

"We reiterate that NPWS will not provide approval for use of the dam unless the Environmental Protection Authority is satisfied that the water quality will be acceptable, and that this consent does not imply support or concurrence with the Development Application"

Further issue relating to owner's consent is that an Aboriginal Land Claim held by the New South Wales Aboriginal Land Council, together with a Native Title Claim Application (NSD 857/2017) by Warrabinga Wiradjuri, was suggested to have been lodged over the area on Lots 7031 & 7032 DP1066257. GHD applied for a 'Search for Aboriginal Lands Claims' with the Office of Registrar for the *Aboriginal Land Rights Act 1983* with a response submitted 3 February 2020 which states:

'We refer to your request, dated 3 February 2020 to search the Register of Aboriginal Lands Claims ('the Register') in relation to land described by you as Lot 7031 & Lot 7032 DP1066257, within the Parish of Clwydd, County of Cook. We have searched the Register and advise the properties referred to above do not appear as being affected by Aboriginal Land Claims, pursuant to sections 36 or 37 of the Aboriginal Land Rights Act 1983 (NSW)'

Therefore, no further action is required to be undertaken for ownership matters regarding this Development Application.

Past Applications

Extraction operations of the Bell Quarry commenced in 1967 and operated under existing use rights until 1994, when a Development Application (DA 108/94) was approved by Council to provide for the continued operation of the quarry. An Environment Protection Licence (EPL) for extractive operations was also issued by the NSW Environment Protection Authority. Quarry operations have since ceased and the licenced surrendered on 24 October, 2014.

The rehabilitation of the site required by conditions of consent in DA 108/94 has not yet been fulfilled by Rocla Quarry Products.



Cell 1 , partially rehabilitated



Cell 4, northern end of site, partially rehabilitated

It is noted that the conditions of consent imposed by Council in 1994 have no bearing on the assessment of impacts arising from the proposal given it requires its own merit based assessment.

Past development and building applications relating to the site include:-

- DA159/94 - Sand Plant
- DA108/94 - Continued Operations of Bell Sand Quarry to extract additional tonnes
- BA392/94 - Sand Plant
- Records File Number 808/23/00, Property File 55310

2. SUMMARY

To assess and recommend determination of DA 294/18, with a recommendation for refusal for the reasons detailed in Schedule A to this report

3. LOCATION OF THE PROPOSAL

Legal Description: Lot 23 DP 751631, Lot 7031 DP1066257, 7032 DP1066257
and Blue Mountains National Park

Property Address: Sandham Road, DARGAN NSW 2790



LEGEND

- | | |
|--|--|
| Bell Quarry | — Waterways |
| Reserves and State Forests | —+—+—+— Rail |
| | — Roads |

Paper Size A4
0 200 400 600
Metres
Map Projection: Transverse Mercator
Horizontal Datum: GDA 1994
Grid: GDA 1994 MGA Zone 56



Remedial Civil Solutions Pty Ltd
Bell Quarry Rehabilitation Project
Environmental Impact Statement

Job Number	21-25774
Revision	A
Date	29 May 2018

Site area map

Figure 2-1

4. ZONING: The land is zoned E3 Environmental Management under Lithgow Local Environmental Plan (LEP) 2014. The objectives of the E3 zone are:-

"Zone E3 Environmental Management

1. Objectives of zone

- *To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.*
- *To provide for a limited range of development that does not have an adverse effect on those values.*
- *To facilitate the management of environmentally sensitive lands and riparian areas.*
- *To protect and conserve the vegetation and escarpment landscape surrounding Lithgow.*
- *To maintain or improve the water quality of receiving water catchments."*

The Environment Protection Authority (EPA) have provided four (4) submissions to Council in response to the proposed development, dated 20 March 2019, 2 September 2019, 15 October 2019 and 13 January 2020. Copies of the submissions are at **Attachments 5 - 8**.

In summary, the EPA's position was as stated in its letter of 15 October 2019, namely:

" In considering the Project against the objectives of the Protection of the Environment Operations Act 1997 and the Environmental Planning and Assessment Act 1979, the EPA notes the following with respect to the current status of the site:-

- 1. The site has been rehabilitated consistent with the existing development approval (DA108/94) and the operating licence at the time, which was surrendered with EPA approval in 2014;*
- 2. This rehabilitation included the provision to store water in the pit as a firefighting resource;*
- 3. The landform is stable;*
- 4. Aside from slightly reduced flow rates, there is no impact to surface or groundwater within the UNESCO World Heritage listed Greater Blue Mountains Area (World Heritage Area) from the site.*

The EPA notes the following with respect to the Project:-

- 1. Inherent difficulty in managing waste over the fifteen-year life of the Project to ensure no contaminated waste is taken to the site;*
- 2. Potential risks to surface and groundwater within the World Heritage Area downstream of the site;*
- 3. Potential risk of erosion from discharges impacting on the receiving drainage line and an endangered ecological community located within the World Heritage Area;*
- 4. No commitment to establishing a liner to reduce potential impacts to groundwater within the World Heritage Area;*
- 5. Improvement to the aesthetic appeal of the site will only be achieved following the life of the Project and an undefined regeneration period; and*
- 6. The environmental assessment does not demonstrate there will be an improved environmental outcome in the long-term, when compared to the current stabilised site.*

When assessing any proposal which involves the use of waste in accordance with the NSW resource recovery framework, the consent authority, like the EPA, must be satisfied it is a genuine re-use opportunity rather than simply a method of opportunistic waste disposal and does not cause harm to the environment or human health.

Recently the UNESCO World Heritage Committee (Forty-third session, 30 June – 10 July 2019) articulated concerns about mining projects and activities in the vicinity of the World Heritage Area which might cumulatively result in significant impact on the outstanding universal value of the World Heritage Area. The Committee specifically noted the World Heritage Area's increased vulnerability to edge effects as it does not have a formal buffer zone, and the need to assess the potential cumulative impacts of existing and planned mining projects in its vicinity.

Having regard to the legitimacy of the Project under the NSW waste framework, the principles of ecologically sustainable development including the precautionary principle, and the sensitivity of the World Heritage Area including its vulnerability to edge effects, the EPA does not support the Project and maintains its recommendation that the Project be refused."

The recommendation for refusal was maintained in the EPA's letter of 13 January 2020.

In the circumstances it is considered that the proposed development will not be consistent with the objectives of the E3 Environmental Management zone under the Lithgow LEP2014.

5. PERMISSIBILITY: The development is defined under Council's LEP 2014 as:-

"waste or resource management facility means any of the following:-

- (a) a resource recovery facility,*
- (b) a waste disposal facility,*
- (c) a waste or resource transfer station,*
- (d) a building or place that is a combination of any of the things referred to in paragraphs (a)–(c)."*

The development, as clarified by the applicant in correspondence dated 11 October 2019 and 1 November 2019, will involve only VENM and ENM fill material. This is considered to meet the definition of a *waste or resource management facility* as it involves the placement of waste on land.

The development, being a *waste or resource management facility* is prohibited in the E3 Environmental Management zone under the Lithgow LEP 2014.

State Environmental Planning Policy (Infrastructure) 2007 (ISEPP) permits waste or resource management facilities in certain zones and through:

Section 121 (3) Development for the purpose of the recycling of construction and demolition material, or the disposal of virgin excavated natural material (within the meaning of Schedule 1 to the Protection of the Environment Operations Act 1997) or clean fill, may be carried out by any person with consent on land on which development for the purpose of industries, extractive industries or mining may be carried out with consent under any environmental planning instrument.

The State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007 states;

Extractive industry: *Development for any of the following purposes may be carried out with development consent—*

- (a) extractive industry on land on which development for the purposes of agriculture or industry may be carried out (with or without development consent),*
- (b) extractive industry in any part of a waterway, an estuary in the coastal zone or coastal waters of the State that is not in an environmental conservation zone.*

In relation to (a) above, whilst "agriculture" as defined in the Standard Instrument—Principal Local Environmental Plan is prohibited within the E3 Environmental Management zone under the Lithgow LEP 2014, "*extensive agriculture*", being '*any agriculture*' is permissible without consent in the E3 zone. Therefore, a waste resource facility, the subject of this application is permissible utilising Clause 121(3) of the ISEPP.

The application is for **Integrated Development** because it will require an environment protection licence under Clause 43(d) of the *Protection of the Environment Operations Act 1997 (POEO Act)* to facilitate the discharge of water onto Blue Mountains National Park land if approved. As such, the proposal is integrated development (*POEO Act*) under Division 4.8 of the *Environmental Planning and Assessment Act*.

This application is for **Designated Development** because the subject site is partially located within a Sydney Drinking Water Catchment and additionally because it is proposed to dispose of fill up to 140,000 tonnes per year under Clause 32, Schedule 3 of the *Environmental Planning and Assessment Regulation 2000*.

5.1 COMMONWEALTH AND STATE LEGISLATION

5.1.1 Commonwealth

Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)

The EIS has addressed the potential of impacts under the EPBC Act and concludes in the following terms:

"The project is considered as an "action" which is broadly defined under the EPBC Act to include a project, development undertaking, activity or series of activities. It is the responsibility of the applicant proposing to undertake an action to initially consider whether the Project is likely to have a significant impact on listed matters of national environmental significance (MNES). If the applicant considers there is potential for significant impacts upon any matters protected under the EPBC Act, then a referral is required to be submitted to the Minister for the Environment. Developments considered likely to result in significant impacts are defined as "controlled actions" and require assessment and approval under the EPBC Act.

The project site is located adjacent to the Greater Blue Mountains Area which is also listed on the United Nations Educational, Scientific and Cultural Organization (UNESCO) World Heritage List and is also listed as a national heritage place on the National Heritage List. Detailed consideration of the impact upon the world heritage, national heritage and other values of the Greater Blue Mountains has been undertaken in chapter 13 of this EIS.

There will be no direct impacts upon world heritage values and rehabilitation of the site to achieve a landform that is contiguous with the surrounding landscape is considered complimentary to the values of the area.

Consideration of potential impacts upon listed threatened species and communities and any other MNES potentially impacted by the Project has been undertaken in chapter 9(sic). The site has been previously cleared and will not impact upon any MNES."

However, the EPA in its submission dated 20 March 2019 (**Attachment 5**) raised the following issues in respect to unacceptable environmental impacts on groundwater dependent ecosystems, namely:

"Nothing in the EIS identifies any controls to stop any pollutants present in the fill material from mixing with and polluting the groundwater within the quarry. Once mobilised within groundwater, nothing in the EIS identifies any measures to stop pollutants within groundwater from moving from the quarry and downstream into the Wollangambe.

The EIS identifies a groundwater dependent ecosystem, being the prickly pear-sedge wet heath swamp which is listed as an endangered ecological community under the Biodiversity Conservation Act 2016(NSW; formerly the Threatened Species Conservation Act 1997), as potentially impacted by the Project.

OEH mapping further identifies a groundwater dependent ecosystem, being the temperate highland peat swamp on sandstone which is listed as an endangered ecological community under the Environment Protection and Biodiversity Conservation Act 1999 (Commonwealth), as potentially impacted by the Project.

The EPA notes that, despite its potential impacts on a World Heritage Area and endangered ecological communities, the Project does not appear to have been referred to the Commonwealth as a matter of national environmental significance.

The EPA considers it is likely that some of the soil leachates will adversely alter the natural characteristics and ionic balance of water draining into the Greater Blue Mountains World Heritage Area and the Colo River, Greater Blue Mountains World Heritage Area. As such, the EPA does not support the Project and recommends that the Project be refused."

In the circumstances, based on the submissions from the EPA, it is considered that in the absence of a referral to the Commonwealth, the proposal does not satisfy the provisions of the *Environmental Protection and Biodiversity Conservation Act 1999*.

5.1.2 New South Wales

Crown Land Management Act 2016

The EIS states:-

"The disturbance footprint of the previous extractive operations has extended beyond the surveyed site boundary at two locations which is likely to be a function of the accuracy of survey data at the time of establishment of the quarry. The edge of the main quarry void along the western boundary extends as a thin strip of approximately two metres onto Crown Land."

The Department of Industry – Crown Lands and Water issued a conditional land owner's consent for the lodgement of the development application on 18 March 2019. A copy of the consent is at **Attachment 9**.

Native Title Act 1993

The letter from Crown Lands referred to above also advised that *"native title does not appear to have been extinguished on the subject land and that the proposal will require notification under the Native Title Act 1993 (Cth) in order to afford any claimants or potential claimants procedural rights. (Note – Native Title claim NSD857/2017 Warrabinga – Wiradjuri #7 covers the area of this proposal) This can be undertaken by the Department when your licence application is lodged."*

The relevant Local Aboriginal Land Councils – Bathurst and Mingaan Aboriginal Corporation – have been notified by Council, however, no responses has been received to date.

GHD applied for a 'Search for Aboriginal Lands Claims' with the Office of Registrar for the *Aboriginal Land Rights Act 1983* with a response submitted 30 January 2020 (Lot 23 DP751631) and 3 February 2020 (Lot 7031 & Lot 7032 DP1066257) which stated:

We have searched the Register and advise the properties referred to above do not appear as being affected by Aboriginal Land Claims, pursuant to sections 36 or 37 of the Aboriginal Land Rights Act 1983 (NSW)'

Roads Act 1993

The development proposes to utilise Chifley Road, the Bells Line of Road and the Great Western Highway which are owned and controlled by the Roads and Maritime Services (RMS). The development proposes the importation of fill material at a maximum rate of 140,000 tonnes per annum using truck and trailer combinations up to 42.5 tonne capacity generating up to 74 additional heavy truck movements per day.

Clause 59 of the Roads Act states:-

"59 Matters to be considered by RMS

RMS must take the following matters into consideration before deciding on what to recommend to the Minister:

(b) whether the main road or proposed main road is or may become a major route for long-distance traffic,"

As such the development was referred to the RMS and two (2) submissions dated 8 February 2019 and 18 December 2019 were received by Council and are detailed later in this report.

Biodiversity Conservation Act 2016

The Office of Environment and Heritage noted in its submission dated 5 February 2019 *"that, as the development application for the project has been lodged prior to 25 February 2019, the project is a pending or interim planning application under the Biodiversity Conservation (Savings and Transitional) Regulation 2017 and the requirements of the Biodiversity Conservation Act 2016 do not apply."*

Threatened Species Conservation Act 1997

The EIS states that a detailed assessment of impacts upon biodiversity values within the site and the adjoining Blue Mountains National Park has been undertaken. The majority of the site has been previously disturbed, with some areas of revegetation undertaken to assist with the stabilisation of soils and some limited remnant vegetation around the periphery of the site. A total of 2.48 hectares of planted vegetation and 0.13 hectares of remnant vegetation will be removed and reinstated with progressive revegetation undertaken over the 15 year life of the development.

The EPA in its submission dated 20 March 2019 (**Attachment 5**) raised the following issue in respect to the Biodiversity Conservation Act 2016, namely:

"Nothing in the EIS identifies any controls to stop any pollutants present in the fill material from mixing with and polluting the groundwater within the quarry. Once mobilised within groundwater, nothing in the EIS identifies any measures to stop pollutants within groundwater from moving from the quarry and downstream into the Wollangambe."

*The EIS identifies a groundwater dependent ecosystem, being the prickly pear-sedge wet heath swamp which is listed as an endangered ecological community under the Biodiversity Conservation Act 2016(NSW; **formerly the Threatened Species Conservation Act 1997**), as potentially impacted by the Project.*

The EPA recommends that the proposed development be refused as detailed in the submissions at **Attachments 5-8**.

The Department of Planning & Environment – Biodiversity and Conservation Division in their letter 2 October 2019 and the NPWS letter of 14 October 2019 also express concerns in relation to the quality of water being proposed to be discharged in a World Heritage Area and support EPA's concerns- see **Attachment 10**

Protection of the Environment Operations Act 1997

The Environmental Impact Statement states that all emplacement material brought to the site as part of the rehabilitation works will meet the requirements of the excavated natural material (ENM). VENM would also be brought to site and is subject to exemptions under the Protection of the Environment Operations Act 1997.

Part 9 (Clauses 91 and 92) of the Regulations states the requirements for exemptions from the EPA Licence provisions. A summary of the regulations and requirements that would be reinstated in any consent includes:-

- *At the time the excavated natural material is received at the premises, the material must meet all chemical and other material requirements (via stringent sampling and testing).*
- *The excavated natural material can only be applied to land as engineering fill or for use in earthworks.*
- *The consumer must keep a written record of the following for a period of six years:-*
 - *the quantity of any excavated natural material received; and*
 - *the name and address of the supplier of the excavated natural material received*
- *The consumer must make any records required to be kept under this exemption available to authorised officers of the EPA on request.*
- *The consumer must ensure that any application of excavated natural material to the land must occur within a reasonable period of time after its receipt."*

The regulations also state the requirements for the transportation of waste, EPA requirements and facilities receiving the waste.

The development was referred to the Environmental Protection Authority for comment.

The EPA, in its submission dated 13 January 2020 (**Attachment 8**), makes the following commentary in respect to the application of *Protection of the Environment Operations Act 1997* in the following terms:

"Since the environmental impact assessment was written, the proponent has clarified that the proposed waste types to be received at the Premises are virgin excavated natural material (VENM) and excavated natural material (ENM) only. VENM and ENM are subject to various exemptions from the Protection of the Environment Operations Act 1997 and the Protection of the Environment Operations (Waste) Regulation 2014, including an exemption from the environment protection licensing requirement for 'waste disposal (application to land)'.

While VENM/ENM is exempt from this waste disposal licensing requirement (provided the conditions of the ENM order and exemption are met), and therefore from the integrated development provisions of the Environmental Planning and Assessment Act 1979, resource recovery waste orders and exemptions explicitly provide that the EPA is not in any way endorsing the use of the substance, or guaranteeing that the substance will confer benefit, or guaranteeing that the environment, human health or agriculture will not be harmed.

Regardless of any resource recovery waste orders and exemptions provided by the EPA, and having regard to the information provided to the EPA to date, including the GHD letters dated 11 October 2019 and 1 November 2019, the EPA maintains its recommendations that the Project be refused."

As such the EPA will not be providing a Environment Protection Licence for the discharging of water under Clause 43(d) of the *Protection of the Environment Operations Act 1997 (POEO Act)* nor their Integrated Development Approval required for the development under Division 4.8 of the EP&A Act.

Rural Fires Act 1997

The majority of the property is located within the bushfire prone area. The land surrounding the former quarry site is highly vegetated and has had numerous bushfires over the past few years. Although the development is not for habitable purposes, it will be developed in accordance and comply with Planning for Bush Fire Protection (NSWRFS 2016). This is to ensure that there are minimal risks to the safety of workers at the site or the surrounding environment.

Some bushfire protection measures include safe access and roads and the availability of water resources.

The development was referred to the Rural Fire Service for comment. These comments are found later in this report.

Further to the comments received from the RFS to date Council has requested the RFS to provide advise as to likely impacts arising from the loss of the static water source currently provided by the existing quarry for fire fighting purposes in the future in the event of the approval of the proposed development. The RFS advised that this would not be a concern as no formal arrangement exists for the water to be used for fire fighting purposes.

Water Management Act 2000

The project involves emplacing clean fill material within 40 metres of an intermittent drainage channel and therefore triggers the need for a controlled activity approval under Section 91(2) of the Water Management Act.

An aquifer interference activity includes any works that involve:-

- "a. the penetration of an aquifer;*
- d. the interference with water in an aquifer;*
- e. the obstruction of the flow of water in an aquifer;*
- f. the taking of water from an aquifer in the course of carrying out mining, or any other activity prescribed by the regulations;*
- g. the disposal of water from an aquifer as referred to in paragraph (d)."*

The historical quarry operations have previously extended below the groundwater levels and therefore involved penetration of an aquifer. The development involves filling the existing voids upon extraction of water in the voids. The dewatering of voids will also be required during active emplacement operations and will result in removing the water from the aquifer.

A water licence is required where an aquifer interference activity causes the removal of water from a water source or the transfer of water from one water source to another. A water licence will need to be obtained for under Section 56 of the *Water Management Act 2000*.

The application was referred to the NSW Office of Water, whose comments are found later in this report.

Local Government Act 1993

Section 68 Application would be required for any onsite waste disposal system on the property. This would be conditioned in any consent and required prior to any Construction Certificate being obtained for building works.

Biosecurity Act 2015

A total of 105 flora species from 38 families, comprising 95 native and 10 exotic species were recorded within the study area encompassing the Project area within the existing quarry footprint and the surrounding bushland and drainage line flowing from the site.

One priority weed, *English Broom*, listed under the Biosecurity Act for the Lithgow LGA was recorded in the project site. Mitigation measures to prevent the spread of this species is embodied in the EIS.

A total of 55 native fauna species were positively recorded during the field survey, including 28 bird species, 4 terrestrial mammal species, 3 bat species, 7 reptiles species, 6 frog species and 6 dragonfly species.

Two additional bat species were possibly recorded using echolocation call analysis, including one threatened species, the Eastern Bentwing Bat (*Miniopterus schreibersii oceanensis*), but poor data quality and/or interspecific call similarities precluded reliable identification of this species. No introduced species were recorded during the survey.

Commentary relating to potential biodiversity impacts arising from the proposed development are embodied in the submissions from the EPA (**Attachments 5-8**), the Office of Environment and Heritage and other relevant agencies later in this report.

Fisheries Management Act 1994

The Fisheries Management Act has been addressed as part of the biodiversity assessment within the EIS through consideration of potential impacts upon aquatic habitats and listed threatened species, populations and ecological communities.

The Department of Primary Industries-Fisheries has responded to the notification of the application in the following terms:

'The former Bell Quarry on Lot 23 DP751631 is not located within Key Fish Habitat (Third order stream or larger, Strahler Stream Ordering System), although it does have a first order stream pass thru the site. In addition, no threatened species, populations, communities from the Fisheries Management Act 1994 were identified as being impacted upon the development.'

Therefore the department prefers to leave comments to other agencies that have legislative obligations regarding this development.'

State Environmental Planning Policy 44 – Koala Habitat Protection

SEPP 44 is applicable to the site given that it exceeds 1ha in size and is located within the Lithgow Local Government Area to which the SEPP applies. Part 2 of the SEPP requires Council to consider whether the land, the subject of the application, retains potential and subsequently core koala habitat. Many of the trees listed within Schedule 2 of the SEPP are common within the Lithgow Local Government area, however core koala habitat within this area is rare, with only 12 koala sightings ever reported on private land within the LGA.

The EIS states that an assessment of the NSW EPA Native Forestry Map Viewer shows that there have been no koala sightings on the property. The Bionet-Atlas of NSW Wildlife also has no recordings of koalas. Given clearing is proposed to be undertaken on the property a flora and fauna report was undertaken.

State Environmental Planning Policy (Infrastructure) 2007

SEPP (Infrastructure) 2007 – Compliance Check		
Clause		Compliance
Subdivision 2	Development in or adjacent to rail corridors and interim rail corridors— notification and other requirements	
85	Development adjacent to rail corridors	Yes
Subdivision 2	Development in or adjacent to road corridors and road reservations	
100	Development on proposed classified road	Yes
101	Development with frontage to classified road	Yes
Division 23	Waste or resource management facilities	
121	Development permitted with consent	Yes
Schedule 3	Traffic generating development to be referred to the RTA (RMS)	Yes

The Main Western Railway Line runs through the subject site. The development is proposed to be undertaken wholly within the boundaries of the existing quarry on the northern side of the Main Western Railway Line.

The development is not likely to have an adverse effect on rail safety as there is an existing access from Chifley Road to the Quarry site (Sandham Road) which will require major upgrade in the event of consent being granted, as detailed in the Council's Engineers report found later in this report.

The development was referred to Sydney Trains for comment. These comments are found later in this report.

The subject site, Lot 23 DP751631, adjoins Chifley Road which is a classified road owned and managed by the Roads and Maritime Service (RMS), acknowledging that the development site, north of the railway line, is access from Sandham Road. The development will create additional heavy traffic movements, in the order of 74 truck movements per day, on main roads leading to the site over the 15 year life of the project.

To ensure that the development does not compromise the effective and ongoing operation and function of classified roads a traffic report was submitted with the application. The report includes the nature, volume and frequency of vehicles using the classified roads, the design and safe vehicular access and the emission of smoke or dust from the development.

Material is proposed to be transported from the Sydney area, using truck and trailers of up to 42.5 tonne capacity. Traffic generated by the development is anticipated to be an average of 74 vehicle movements per day.

The EIS stated the predicted increase in traffic noise levels during maximum operation is proposed to be less than 55 dBA and complies with the EPA's Road Noise Policy.

The development proposes to limit haulage to be within the maximum extraction volumes for the rehabilitation works with vehicle movements to be similar to the original approval of the quarry. The haulage traffic represents a relatively small proportional increase to background traffic on the wider regional road network.

The EIS also states that given the roads (Chifley Road, Bells Line of Road and Great Western Highway) are currently utilised by a high volume of traffic, the expected vehicle movements associated with the development is unlikely to impact the operations of the road network.

Accordingly, the development was referred to the Roads and Maritime Services (RMS) for comment. Two submissions, dated 8 February 2019 and 18 December 2019, are found later in this report.

In relation to a Waste and Resource Management Facility, Clause 121 Development permitted with consent states:-

- "2. (c) *land on which development for any of the following purposes is permitted with consent under any environmental planning instrument:*
 - (i) *industry,*
3. *Development for the purpose of the recycling of construction and demolition material, or the disposal of virgin excavated natural material (as defined by the PoEO Act) or clean fill, may be carried out by any person with consent on land on which development for the purpose of industries, extractive industries or mining may be carried out with consent under any environmental planning instrument."*

A waste and resource management facility therefore complies with the Infrastructure SEPP.

The development involves importing VENM and ENM fill material for the purpose of site rehabilitation of a previous extractive industry.

State Environmental Planning Policy State and Regional Development

The project is not considered to meet the criteria for State Significant Development (SSD) in accordance with Clause 23 of Schedule 1 in the *State and Regional Development SEPP* and therefore development consent is required from Council.

The development will be restricted to receiving a maximum 140,00 tonnes per annum of VENM and ENM fill.

Under Section 20 of the *State and Regional Development SEPP*, a regional panel may exercise consent authority functions for determination of certain development applications under Part 4 of the EP&A Act. If the proposal is considered a designated development (not state significant) for an extractive industry or waste management facility, it is also defined as regional development under Clause 7 of Schedule 7 of the *State and Regional Development SEPP* and would be determined under a Regional Planning Panel.

The site adjoins sensitive environments within the Blue Mountains National Park and is therefore considered to trigger designated development provisions.

State Environmental Planning Policy No. 33 – Hazardous and Offensive Development

The EIS states that dangerous goods will be limited to the storage of fuels and oils for equipment and machinery operating within the site. The storage, handling and use of dangerous goods would be required to be in accordance with the Occupational Health and Safety Act 2000 (OHS Act) and the Storage and Handling of Dangerous Goods Code of Practice (WorkCover NSW, 2005). Secure, bunded areas would be provided around storage areas for oils, fuels and other hazardous liquids.

Impervious bunds and facilities would be provided to contain the storage of the dangerous goods.

Subject to appropriate conditions, the development complies with the State Environmental Planning Policy No. 33 – Hazardous and Offensive Development.

State Environmental Planning Policy 55 – Remediation of Land

The property has been used for sand extraction since 1967. The development proposes to rehabilitate the old quarry to its natural landform.

There has been no evidence of site contamination in any historical investigations or in the soil and water investigations undertaken for the development. All emplacement material is proposed to consist of VENM and ENM. Material is proposed to be tested prior to it being transported to the site.

Remediation of the site is not required to allow the site to transfer to the final rehabilitation phase of the proposed development.

State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011

SEPP (Sydney Drinking Water Catchment) 2011 – Compliance Check		
	Clause	Compliance
10	Development consent cannot be granted unless neutral or beneficial effect on water quality	Yes
11	Development that needs concurrence of the Chief Executive	Yes

The proposed development was referred to Water NSW under the SEPP given that part of the property, south of the railway line and not part of the proposed development site, is within the Sydney Drinking Water Catchment.

Water NSW has assessed the development and determines that it can achieve a neutral or beneficial effect on water quality. Therefore the development complies with the provisions of the SEPP.

Water NSW comments and conditions are found later in this report.

Environmental Planning and Assessment Act 1979

The *Environmental Planning and Assessment Act 1979* (EP&A Act) regulates development in NSW. Under this Act, the development is classified as 'designated development', as the development is partially within a Sydney Drinking Water Catchment and also because it is proposed to dispose of waste that comprises more than 200 tonnes per year of waste material under Clause 32, Schedule 3 of the *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation). Accordingly, approval for the Proposal is required under Division 4.1 of the Act.

Secretary's Environmental Assessment Requirements (SEARS)

The Secretary of the NSW Department of Planning and Environment issued their environmental assessment requirements for the proposed development on 18 January 2016 (SEAR 1105). A copy of the SEARS is at **Attachment 11**.

The EIS has been prepared in accordance with the EP&A Act, Schedule 2 of the Environmental Planning and Assessment Regulation 2000 and the Secretary's Environmental Assessment Requirements (SEARS) issued by the Department of Planning and Environment (DP&E) in November 2016.

The Project is permissible under the SEPP(Mining, Petroleum Production and Extractive Industries)2007 and SEPP(Infrastructure)2007 and a DA required in accordance with Part 4 of the *Environmental Planning and Assessment Act, 1979*.

For the reasons detailed elsewhere in this report, the EPA has concluded that the SEARS requirements have not been satisfied and that the proposal will have unacceptable environmental impacts on the adjoining Blue Mountains National Park and the Wollangambe and Cox River systems and recommends that the designated development application be refused.

Matters of Consideration under s4.15 EP&A Act 1979

In determining a development application, a consent authority is required to take into consideration the matters of relevance under Section 4.15 of the *Environmental Planning and Assessment Act 1979*. These matters for consideration are as follows:

Any Environmental Planning Instruments

Lithgow Local Environmental Plan 2014

LEP 2014 – Compliance Check		
Clause		Compliance
Land Use table	E3 Environmental Management	No
7.1	Earthworks	No
7.4	Terrestrial biodiversity	No
7.7	Sensitive lands	No
7.10	Essential services	Yes

The proposed use as a "*waste or resource management facility*" is a prohibited use under the E3 Environmental Management zone, however, the provisions of the Lithgow LEP are overridden by the provisions of the *SEPP (Infrastructure) 2007*.

For the reasons detailed in Section 4 of this report it is considered that the proposed development is not compatible with the environmental outcomes envisaged under the objectives to the E3 Environmental Management zone.

Clause 7.1 Earthworks

" 7.1 Earthworks

- (1) *The objective of this clause is to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.*
- (2) *Development consent is required for earthworks unless:*
 - (a) *the earthworks are exempt development under this Plan or another applicable environmental planning instrument, or*
 - (b) *the earthworks are ancillary to development that is permitted without consent under this Plan or to development for which development consent has been given.*
- (3) *In deciding whether to grant development consent for earthworks (or for development involving ancillary earthworks), the consent authority must consider the following matters:*
 - (a) *the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development,*
 - (b) *the effect of the development on the likely future use or redevelopment of the land,*
 - (c) *the quality of the fill or the soil to be excavated, or both,*
 - (d) *the effect of the development on the existing and likely amenity of adjoining properties,*
 - (e) *the source of any fill material and the destination of any excavated material,*
 - (f) *the likelihood of disturbing relics,*
 - (g) *the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,*
 - (h) *any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development,*
 - (i) *the proximity to, and potential for adverse impacts on, any heritage item, archaeological site or heritage conservation area."*

The provisions in Clause 7.1(1) and (3) are relevant.

The development proposes the importation of 1.2 million cubic metres of VENM and ENM fill material for the old quarry site over a period of 15 years. The proposed importation of fill is not expected to impact any heritage items, archaeological sites or heritage conservation areas, as the earthworks will be retained within the footprint of the former quarry works and where no heritage items are identified.

However, submissions from the EPA at **Attachments 5-8**, the Office of Environment and others detailed later in the report, have raised significant concerns relating to unacceptable environmental impacts on groundwater dependent ecosystems downstream of the development site arising from the importation of the fill and likely adverse impacts on the adjoining Blue Mountains National Park, Greater Blue Mountains World Heritage Area and Wollangambe and Colo Rivers including:

"Nothing in the EIS identifies any controls to stop any pollutants present in the fill material from mixing with and polluting the groundwater within the quarry. Once mobilised within groundwater, nothing in the EIS identifies any measures to stop pollutants within groundwater from moving from the quarry and downstream into the Wollangambe.

The EIS identifies a groundwater dependent ecosystem, being the prickly pear-sedge wet heath swamp which is listed as an endangered ecological community under the Biodiversity Conservation Act 2016(NSW; formerly the Threatened Species Conservation Act 1997), as potentially impacted by the Project.

OEH mapping further identifies a groundwater dependent ecosystem, being the temperate highland peat swamp on sandstone which is listed as an endangered ecological community under the Environment Protection and Biodiversity Conservation Act 1999 (Commonwealth), as potentially impacted by the Project.

The EPA notes that, despite its potential impacts on a World Heritage Area and endangered ecological communities, the Project does not appear to have been referred to the Commonwealth as a matter of national environmental significance.

The EPA considers it is likely that some of the soil leachates will adversely alter the natural characteristics and ionic balance of water draining into the Greater Blue Mountains World Heritage Area and the Colo River, Greater Blue Mountains World Heritage Area. As such, the EPA does not support the Project and recommends that the Project be refused." (EPA 20.3.19, Attachment 1, page 4)

In this context it is considered that the proposal fails to satisfy the requirements of Clause 7.1(1) in that the proposal will have a detrimental impact on environmental functions and processes.

In respect to Clause 7.1 (3) the comprehensive submissions from the EPA and others detailed later in this report raise concerns that the proposal, including the dewatering of the site, will fail to satisfy the requirements under clause 7.1(3)(a), (c), (d), (e) and (g) of the Lithgow LEP 2014.

In support of this conclusion are relevant extracts from the Attachments 1 and 2 to the EPA letter of 20 March 2019 (**Attachment 5**) including the following:-

- *The EPA also notes that, despite its potential impacts on a World Heritage Area and endangered ecological communities, the Project does not appear to have been referred to the Commonwealth as a matter of significance.*
- *The EPA considers it likely that some of the soil leachates will adversely alter the natural characteristics and ionic balance of water draining into the Greater Blue Mountains World Heritage Area and the Colo River, Greater Blue Mountains World Heritage Area. As such, the EPA does not support the Project and recommends that the Project be refused.*
- *The EIS identified proposed discharges into a tributary of the Wollangambe. It identified a swamp located on the tributary approximately 200m downstream of where the discharge is proposed. The tributary (and its connected swamp) is proposed to receive pumped out water from the quarry pits, any leachate from the material that is emplaced in the pits and overland flow once the area is rehabilitated. The tributary and swamp are in the GBMWhA. There is currently no licensed discharge location for the site.*
- *The Biodiversity Impact Assessment identified the Prickly Tea-tree – sedge wet heath swamp below the quarry discharge location as a Newnes Plateau Shrub Swamp (EEC under the TSC Act) and Temperate Highland Peat Swamps on Sandstone (EEC under the EPBC Act). As the project potentially impacts on the WHA and EPBC listed THPSS, the proposal should have been forwarded to the Commonwealth for assessment.*
- *The existence of the swamp in the headwaters of the drainage line downstream of Bell Quarry strongly suggests that there is a groundwater source which helps support/maintain the swamp in this location.*

- *The Water Resources Assessment Section of the EIS has not clearly defined the downstream swamp as a GDE; it has not assessed the level of groundwater dependence for the swamp and the likely pathways (e.g. disruption of groundwater connections, reduction in groundwater quality) by which the project might impact on the swamp; and it does not consider issues surrounding water discharge rates or their effect on geomorphic stability for the swamp. It has therefore not appropriately assessed the risk the project will have on the THPS swamp. Further investigations into the hydrological characteristics of the swamp are needed.*

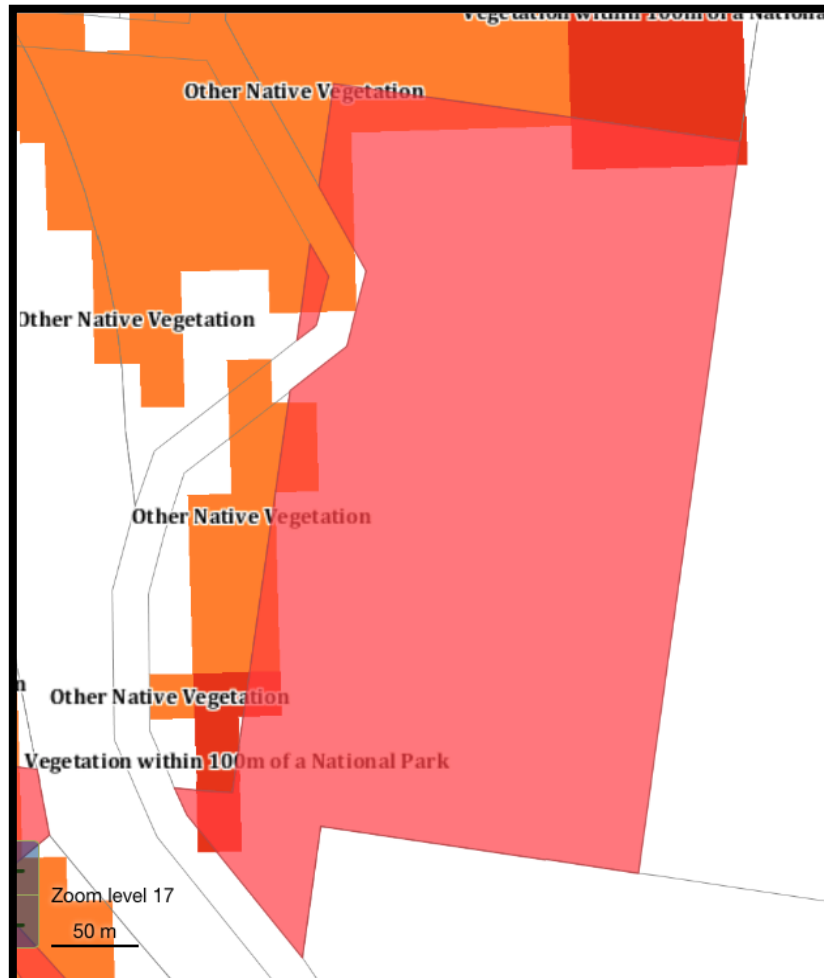
GHD (2018a) stated that the discharge from the site only occurs when the balance of rainwater, groundwater flow and evaporation are such that the voids are fully and overflowing. However, it is proposed that water in the quarry pits is to be de-watered, with water directed to the downstream tributary at the location of a previous licensed discharge. ADE (2017) identified that the licence was surrendered on 1 October 2014, so there is currently no licensed discharge location for the site. GHD (2018a) did not discuss the pump out rates in the EIS, however if flow rates to the tributary are too high, then there is significant potential to destabilise sediments in the downstream swamp. If an erosional nick-point is established in the swamp, it could lead to the loss of the swamp in its entirety through erosion and gullyng. The EIS does not consider issues surrounding discharge rates or their effect on geomorphic stability for the swamp.

The EPA in its letter of 13 January 2020 " *maintains its recommendations that the Project be refused.*"

Clause 7.4 Terrestrial Biodiversity

" 7.4 Terrestrial biodiversity

- (1) The objective of this clause is to maintain terrestrial biodiversity by:*
 - (a) protecting native fauna and flora, and*
 - (b) protecting the ecological processes necessary for their continued existence, and*
 - (c) encouraging the conservation and recovery of native fauna and flora and their habitats.*
- (2) This clause applies to land identified as "Biodiversity" on the Environmentally Sensitive Areas—Biodiversity Overlay Map.*
- (3) In deciding whether to grant development consent for development on land to which this clause applies, the consent authority must consider:*
 - (a) whether the development is likely to have:*
 - (i) any adverse impact on the condition, ecological value and significance of the fauna and flora on the land, and*
 - (ii) any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna, and*
 - (iii) any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land, and*
 - (iv) any adverse impact on the habitat elements providing connectivity on the land, and*
 - (b) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*
- (4) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:*
 - (a) the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or*
 - (b) if that impact cannot be reasonably avoided by adopting feasible alternatives—the development is designed, sited and will be managed to minimise that impact, or*
 - (c) if that impact cannot be minimised—the development will be managed to mitigate that impact."*



The EIS states that a detailed assessment of impacts upon biodiversity values within the site and the adjoining Blue Mountains National Park has been undertaken. The majority of the site has been previously disturbed, with some areas of revegetation undertaken to assist with the stabilisation of soils and some limited remnant vegetation around the periphery of the site. A total of 2.48 hectares of planted vegetation and 0.13 hectares of remnant vegetation will be removed and reinstated with progressive revegetation undertaken over the 15 year life of the development.

A total of 105 flora species from 38 families, comprising 95 native and 10 exotic species were recorded within the study area encompassing the Project area within the existing quarry footprint and the surrounding bushland and drainage line flowing from the site.

One priority weed, *English Broom*, listed under the Biosecurity Act for the Lithgow LGA was recorded in the project site. Mitigation measures to prevent the spread of this species is embodied in the EIS.

A total of 55 native fauna species were positively recorded during the field survey, including 28 bird species, 4 terrestrial mammal species, 3 bat species, 7 reptiles species, 6 frog species and 6 dragonfly species.

Two additional bat species were possibly recorded using echolocation call analysis, including one threatened species, the Eastern Bentwing Bat (*Miniopterus schreibersii oceanensis*), but poor data quality and/or interspecific call similarities precluded reliable identification of this species.. No introduced species were recorded during the survey.

Based on the comprehensive assessment of likely environmental impacts of the proposed development by the EPA dated 20 March 2019 and subsequent submissions it is considered reasonable to accept that the proposal fails to satisfy the provisions under clause 7.4 of the LEP.

Clause 7.7 Sensitive lands

" 7.7 Sensitive lands

(1) The objective of this clause is to protect, maintain and improve the diversity and stability of landscapes including the restriction of:

- (a) development on land generally unsuitable for development due to steep slopes or shallow soils, and*
- (b) development on land subject to salinity, and*
- (c) the removal of native vegetation, and*
- (d) development on land that is subject to regular or permanent inundation, and*
- (e) development on land that is within significant karst environments.*

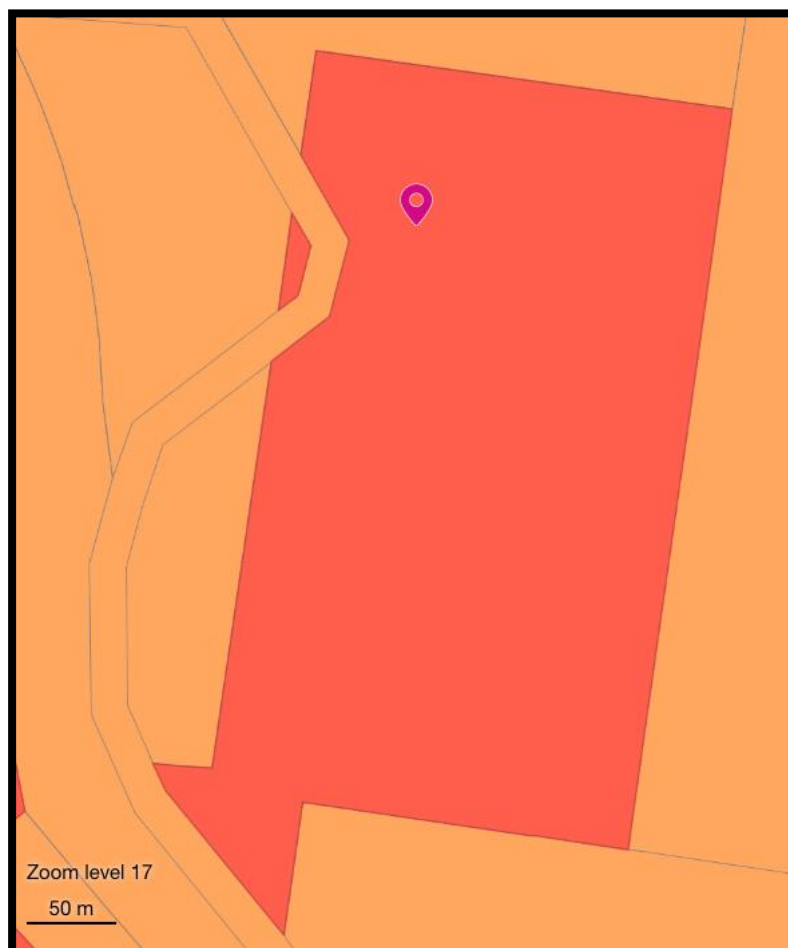
(2) This clause applies to land identified as "Sensitive Land Areas" on the Environmentally Sensitive Areas—Land Overlay Map.

(3) Before determining a development application for development on land to which this clause applies, the consent authority must consider whether the development is likely to have any adverse impact on the following:

- (a) any land with slopes greater than 25%,*
- (b) any land subject to high erosion potential,*
- (c) any land subject to salinity or impeded drainage,*
- (d) any land subject to regular or permanent inundation,*
- (e) any significant karst environment (including ecological, air quality and movement, water quality, biodiversity, geodiversity (geomorphical and geological), heritage, recreational and sociological values).*

(4) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:

- (a) the development is designed, sited and will be managed to avoid significant adverse environmental impact, or*
- (b) if that impact cannot be avoided—the development is designed, sited and will be managed to minimise that impact, or*
- (c) if that impact cannot be minimised—the development will be managed to mitigate that impact."*



The proposal involves the removal of 2.48 hectares of planted vegetation, which formed the rehabilitation planting undertaken in 2014 arising from the consent conditions under Development Application 108/1994, and 0.13 hectares of remnant vegetation.

The proposal seeks approval for the site, post importation of fill to be reinstated with progressive revegetation undertaken over the 15 year life of the development.

The dewatering of the quarry voids has been assessed by the EPA as having the potential to erode the existing intermittent watercourse and swamp located downstream of the site through increased water flows during the dewatering program planned over Stages 1 to 5 of the project.

The EPA, in its submission dated 20 March 2019 (**Attachment 5**) stated:

" GHD (2018a) stated that the discharge from the site only occurs when the balance of rainwater, groundwater flow and evaporation are such that the voids are fully and overflowing. However, it is proposed that water in the quarry pits is to be dewatered, with water directed to the downstream tributary at the location of a previous licensed discharge. ADE (2017) identified that the licence was surrendered on 1 October 2014, so there is currently no licensed discharge location for the site. GHD (2018a) did not discuss the pump out rates in the EIS, however if flow rates to the tributary are too high, then there is significant potential to destabilise sediments in the downstream swamp. If an erosional nick-point is established in the swamp, it could lead to the loss of the swamp in its entirety through erosion and gulying. The EIS does not consider issues surrounding discharge rates or their effect on geomorphic stability for the swamp."

Based on the comprehensive assessment of likely environmental impacts of the proposed development by the EPA dated 20 March 2019 and subsequent submissions it is considered reasonable to accept that the proposal fails to satisfy the provisions under clause 7.7 of the LEP.

Clause 7.10 Essential services

"7.10 Essential services

Development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required—

- (a) the supply of water,*
- (b) the supply of electricity,*
- (c) the disposal and management of sewage,*
- (d) stormwater drainage or on-site conservation,*
- (e) suitable vehicular access.*

The proposal details the provision of a portable site office and amenities building will be established in the central portion of the site. The amenities area would be serviced with water, electricity and a pump-out sewerage system with the sewage to be disposed off-site.

The proposal will satisfy the requirements of clause 7.10 of the LEP.

Given the adverse environmental impacts arising from the proposed development detailed above and in the submissions received from Government agencies provided later in the report, it is considered that the proposal does not comply with the relevant requirements of the Lithgow LEP and accordingly it is recommended that the Designated Development Application be refused.

Any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority

Nil.

Any Development Control Plan

Nil.

Any planning agreement that has been entered into under Section 93F, or any draft planning agreement that a developer has offered to enter into under Section 93F?

Nil.

Any matters prescribed by the Regulations that apply to the land

The *Biodiversity Conservation (Savings and Transitional) Regulation 2017* is relevant as it excludes (under Part 7) the development application from the provisions under the *Biodiversity Conservation Act 2016* which came into effect on 25 August 2017.

The Environmental Planning & Assessment Regulation 2000 is relevant in the assessment of the proposed development.

Part 5 of the Regulation is applicable to the development which states the following:-

"5 *Advertised development*

- (1) *For the purposes of the definition of advertised development in section 4 (1) of the Act, the following types of development (not being designated development or State significant development) are identified as advertised development:*
 - (b) *integrated development (not being threatened species development or Class 1 aquaculture development) that requires an approval (within the meaning of section 90A of the Act) under:-*
 - (ii) *a provision of the Water Management Act 2000 specified in section 91 (1) of the Act,"*

Therefore, the proposal being integrated development, has been advertised for a period of 28 days and submission supplied to the Department of Primary Industries- Water for consideration. The development complies with the requirements of the Regulation.

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

Surrounding land use: The Dargan village and Clarence village are located on the western side of Chifley Road and the Main Western Railway line approximately one kilometre to the south and west of the site. The Newnes Junction is located approximately 250 metres to the north-west of the site and contains a small number of residential dwellings.

Sandham Road at Bell, to the east of the site and the sole means of truck access to the site, has a number of dwellings located on both sides of the road near its junction with Bells Line of Road and proximate to Bell Railway Station.



The Clarence Colliery (pit top, rail loop and loading facilities) and the Hansen Quarry are located approximately 750 metres to the north of the site. The Newnes Kaolin Mine is located between the colliery and the northern extent of Bell Quarry.

The Blue Mountains National Park adjoins the subject site to the east. Newnes State Forest is also located within proximity of the site to the north.

The former quarry is located within the Wollangambe River catchment that drains towards the east and into the Colo River (Hawkesbury-Nepean catchment area).

Given that Sandham Road is the only means of truck access to the subject site, involving up to 74 truck movements a day, six days a week for the 15 year life of the project, the primary concerns relate to amenity impacts on the residential properties fronting Sandham Road, including issues such as noise disturbance, vibration, dust and public safety.

It is noted that the recommendations proposed by Council's Engineers for the upgrade of Sandham Road, as detailed later in this report, will address resident concerns relating to dust management and public safety in respect to school bus, local traffic use of Sandham Road and the potential conflict with the heavy truck movements on the largely unsealed narrow road. These issues are discussed further below.

As detailed in the EPA submissions it is likely that the proposal will have adverse environmental impacts on the Blue Mountains National Park World Heritage Listed and Wollangambe and Colo River systems.

Air quality: The development will generate dust through the rehabilitation activities and vehicle haulage along Sandham Road. The recommendation by Council's Engineers for Sandham Road to be widened to 8 metres and sealed from the subject site to the Bells Line of Road will address the major dust management issue relating to the proposal.

The EIS advises that the development will comply with the EPA air quality guidelines and that it is not anticipated to significantly impact upon any sensitive receivers.

Management of dust from uncovered trucks and trailers and dust suppression measures from importation of the fill within the site will be the subject of conditions in the event of the approval of the development application.

Noise and Vibration: Noise associated with the development is predicted to comply with the noise trigger levels at surrounding residential receivers. The EIS indicates that the maximum noise emission levels from the site are predicted to not be greater than LAeq 50 dBA when calculated 200 metres south, north-east and north of the site boundary. The National Park that adjoins the site is also predicted to receive noise levels from the development below LAeq 50 dBA.

The majority of the noise levels to residential dwellings is predicted to be from heavy vehicles utilising Sandham Road with the dwellings located within 20m of the road. The EIS states that the predicted traffic noise levels during maximum operation are proposed to be less than 55 dBA.

The issue of noise impacts on the residential receivers is directly related to the hours of operation of the proposed development which are:

- Rehabilitation activities and haulage to the site will be restricted between 7.00am and 6.00pm Monday to Friday and 7.00 am to 1.00 pm on Saturdays.
- Minor site preparation activities involving the use of a grader and roller to prepare the site for haulage vehicles are proposed between 6.00 am and 7.00 am Monday to Saturday.

As noise disturbance from truck movements is the primary concern for residential properties located on Sandham Road at Bell during the night-time period (10.00pm to 7.00am) the potential for trucks to queue in Sandham Road prior to the opening of the quarry at 7.00am could lead to a significant non-compliance with the relevant noise standard for night-time given the relatively low background noise levels currently enjoyed by residents since the closure of the Rocla quarry nearly 10 years ago.

A condition that prevented truck access to Sandham Road at its intersection with the Bells Line of Road prior to 7.00am would resolve that issue in respect to noise disturbance during the hours of 10.00pm and 7.00am.

Conditions would be imposed on the consent to ensure that the development complies with the EPA's Road Noise Policy at all receivers.

Vibration levels from activities such as excavation are proposed to be negligible at distances greater than 50 metres. As the nearest receiver (310 Sandham Road) is 250 metres from the site, vibration levels from equipment use are not anticipated to adversely impact receivers.

The development was referred to the Environmental Protection Authority (EPA) for comment. These comments are found later in this report and at **Attachments 5-8**.

Aboriginal Heritage: Rehabilitation activities will be undertaken within the existing quarry footprint with the existing public road network to be utilised for haulage. The development is proposed to have minimal potential impact to the natural ground surface of culturally modified trees. The site has been disturbed by the previous extraction activities. There is also no known evidence of significant aboriginal culture activities being located on the site. As such it is considered that the development would have no impact to aboriginal heritage.

Traffic and Transport: Emplacement material is proposed to be sourced from earthworks projects throughout the Sydney Basin and the local region. The material will be transported to the site using truck and trailers of up to 42.5 tonne capacity. Traffic generated by the development is anticipated to be an average of 74 heavy vehicle movements per day. An estimated 5-6 employees are indicated to be on the site during its operation.

The haulage traffic for the rehabilitation activities is proposed to increase the existing background conditions based upon the vehicle counts embodied in the EIS.

The development was referred to the Roads and Maritime Services (RMS) and by letter dated 8 February 2019 provided the following advice in respect to conditions, namely

" Pursuant to clause 16 of the State Environmental Planning Policy (Mining, Petroleum and Extractive Industries) 2007, Roads and Maritime provides the following recommendations for Council's consideration:-

- Roads and Maritime support conditions outlined in the original consent as being relevant to the rehabilitation component proposed. In particular those pertaining to Product Transport, being Condition 5 of DA108/94.*
- Safe Intersection Sight Distance (SISD) in accordance with Part 4A of Austroads Guide to Road Design is to be provided and maintained at the intersection of Sandham Road and Bells Line of Road (MR184) (60km/h speed zone) and the intersection of Bells Line of Road and Darling Causeway (80km/h speed zone). In this regard the proponent needs to be aware that SISD for an 80km/h speed environment is 181 metres and SISD for a 60km/h speed environment is 123 metres.*
- 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.*
- In accordance with Clause 16(1) of the State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007, the applicant is to prepare and implement a driver code of conduct for the task of transporting materials on public roads. A driver code of conduct and traffic management plan is to be developed to:*
- Manage risks associated with staff commuting by road to and from the site and to include heavy vehicle haulage drivers and contractors.*
- Procedures addressing risks of driver fatigue and poor driver behaviour (including dangers associated with speed and use of mobile phones) and include strategies to mitigate those risks to promote safe driving practices.*

- *Procedures to ensure haulage operations coinciding with local student school bus pick up/drop off times are to be avoided.*
- *Procedures to ensure the requirement for drivers to operate vehicles in a safe, professional and courteous manner cognisant of noise and dust emissions.*
- *Scheduling of haulage vehicle movements to minimise convoy lengths or platoons.*
- *Notifying the local community about project-related traffic impacts."*

The reference to the condition 5 of the consent to DA108/94 is not relevant nor appropriate to this development application for the following reasons:

- (i) the development consent is deemed to have lapsed in 2014 upon surrender of its EPL licence on 24 October 2014 and part completion of the rehabilitation works required under the consent;
- (ii) the consent granted in 1994 was to regularise an unauthorised quarrying use that relied on existing use rights under the Environmental Planning and Assessment Act 1979;
- (iii) the proposal is of the importation of fill not quarrying; and
- (iv) the proposed hours of operation of the development site are significantly different, being 7.00am to 6.00pm Monday to Friday and 7.00am to 1.00pm on Saturday.

Furthermore, it is proposed to impose a condition in the event of approval that restricts truck access to Sandham Road from 6.00pm to 7.00am.

The recommendations of Council's Engineers requiring substantial works and sealing of Sandham Road as part of any consent will significantly improve the safe operation of the facility over its life of 15 years.

Visual: Visibility of the quarry is largely restricted to the perimeter fence and a small section of Sandham Road immediately adjacent to the site. The site can also be seen from passing trains.

The development involves rehabilitation of the site with the emplacement of VENM and ENM fill within the existing quarry footprint. This is to enable the site to be returned to a condition closely representing the original landform and be visually integrated with the National Park that adjoins the site and the surrounding landscape.

The development proposes to progressively revegetate the final landform with locally endemic species to provide effective soil control and erosion.

The internal haulage road is proposed to be upgraded to allow safe entry around the site following the completion of filling and compaction of the southern void during Stage 2. The internal haulage road is currently located around the edge of the southern void and comprises of an approximate 30 metre near vertical drop. The existing access road and adjacent disturbed land is proposed to be rehabilitated with the fence line adjusted to reflect the updated boundary survey of the site.

The voids cannot be viewed from Chifley Road due to the existing vegetation and surrounding topography of the land.

As the site will be progressively rehabilitated and cannot be viewed from the main road, the development is expected to have minimal visual impacts.

Water Management: The EIS states that the water management of the site includes:-

- Progressive dewatering of voids;
- Discharge of void watering at varied rates to minimise downstream geomorphic impacts;
- Ongoing surface and groundwater monitoring;
- Erosion and sediment control measures, such as -
 - Minimising the extent and duration of disturbed areas, and top soiling;
 - revegetation following the completion of each project stage;
 - Ongoing fill activities to maintain landforms and minimise erosion hazard;
 - Runoff from the site will be diverted around active fill areas and towards the voids in a manner to minimise erosion; and
 - Temporary control measures such as geotextile sediment fencing and straw bale Filters.

Surface water infrastructure will be required to be installed to divert clean off-site water from some areas around the site, outside of the rehabilitation footprint. Stormwater collection drains will also be constructed and developed to promote drainage to designated water storage areas within the existing void.

The EPA in their submission dated 20 March 2019 (**Attachment 5**) raised the following issues in respect to the de-watering process, namely:

" The Water Resources Assessment Section of the EIS has not clearly defined the downstream swamp as a GDE; it has not assessed the level of groundwater dependence for the swamp and the likely pathways (e.g. disruption of groundwater connections, reduction in groundwater quality) by which the project might impact on the swamp; and it does not consider issues surrounding water discharge rates or their effect on geomorphic stability for the swamp. It has therefore not appropriately assessed the risk the project will have on the THPS swamp. Further investigations into the hydrological characteristics of the swamp are needed.

GHD (2018a) stated that the discharge from the site only occurs when the balance of rainwater, groundwater flow and evaporation are such that the voids are full and overflowing. However, it is proposed that water in the quarry pits is to be de-watered, with water directed to the downstream tributary at the location of a previous licensed discharge. ADE (2017) identified that the licence was surrendered on 1 October 2014, so there is currently no licensed discharge location for the site. GHD (2018a) did not discuss the pump out rates in the EIS, however if flow rates to the tributary are too high, then there is significant potential to destabilise sediments in the downstream swamp. If an erosional nick-point is established in the swamp, it could lead to the loss of the swamp in its entirety through erosion and gullyng. The EIS does not consider issues surrounding discharge rates or their effect on geomorphic stability for the swamp."

The development was referred to WaterNSW for comment. These comments are found later in this report.

Soil and Water Resources: The quarry is located within the Wollangambe River catchment and the Hawkesbury-Nepean catchment. The Wollangambe River runs in a north-easterly direction north of the development site.

The site contains three large voids (cells) that are partially filled with water through a combination of surface water run-off and groundwater seepage. Water is discharged from the site through an established sediment basin adjoining Cell 3 on the eastern edge of the site within the Blue Mountains National Park and discharges into an unnamed tributary within the National Park.

The EIS states that *"the development proposes to restore the flow regime to the natural run-off conditions to before the commencement of the quarry operations. The changes to the flow regime are relatively minor and are not anticipated to significantly impact downstream processes due to the natural stream profile and thick/well established vegetation in the immediate receiving waters"*.

A detailed water quality model was submitted with the application and demonstrates that both surface water discharges and groundwater are expected to have minimal impact to the immediate receiving waters in the downstream tributary and swamp located approximately 200 metres from the site.

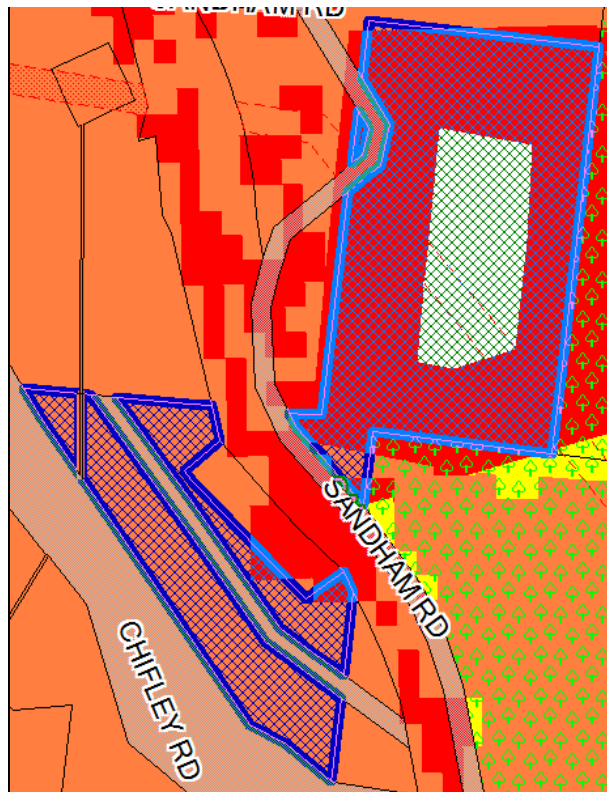
However, as detailed above the EPA has specific concerns as to potential adverse groundwater impacts and erosion arising from the proposed dewatering of the site and placement of fill in the quarry voids.

The development was also referred to Lands & Water Division; Natural Resources Access Regulator; Department of Primary Industries for comment. These comments are found later in this report.

Bushfire: The majority of the property is located within the bushfire prone area. The property is highly vegetated and has had numerous bushfires over the past few years. Although the development is not for habitable purposes, it will be developed in accordance and comply with Planning for Bush Fire Protection (NSWRFS 2016). This is to ensure that there are minimal risks to the safety of workers at the site or the surrounding environment.

The development was referred to the Rural Fire Service for comment. These comments are found later in this report.

The bushfire prone area is mapped below:-



Many of the submissions received during the notification period raised the issue of the loss of the existing water source in the quarry voids for firefighting purposes. The RFS has provided confirmation that there is no formal agreement to use this water as a fire fighting resource and therefore raise no concerns with this matter.

Social and Economic Impact: The development proposal states that up to 6 persons will be employed on site during the site establishment phase of works, and throughout the life of the development. Other employment opportunities include vehicle maintenance, site surveying, ongoing rehabilitation, environmental monitoring and road maintenance (for Sandham Road). The employment generated by the development creates a small but positive economic contribution to the region.

The progressive rehabilitation of Bell Quarry will support long term investment in the Lithgow LGA, employment and supplier contracts for local.

In respect to social impacts the proposal is likely to have an adverse impact on the amenity of residents located on Sandham Road given the estimate of 74 heavy truck movements per day between 7.00am and 6.00pm, Monday to Friday and 7.00am to 1.00pm on Saturday.

The recommendations in the Council Engineers report relating to upgrading Sandham Road will address dust management and public safety concerns expressed by local residents in their submissions.

Services: A portable site office and amenities building will be established in the central portion of the site. The amenities area would be serviced with a pump-out sewerage system with the sewage to be disposed off-site. The site will need to be connected to potable water and electricity services prior to commencement.

The Suitability of the site for the development

The surrounding land uses are for a mixture of rail, national park, residential and extractive purposes being sand and coal mining. The size and nature of the development is considered to be consistent with the current land form being a quarry and the surrounding extractive uses.

However, the primary concerns arising from the proposed development relate to the potential for unacceptable environmental impacts on the Blue Mountains National Park, the Greater Blue Mountains World Heritage Area and the Wollangambe and Colo Rivers.

At the local level, the primary concerns relate to public safety on Sandham Road, adverse amenity impacts on residential properties from dust and noise from truck movements in Sandham Road.

In this context, it is considered that considerable weight should be given to the detailed assessment and response to the proposal by the EPA and its recommendation that the development application should be refused.

Any submissions made in accordance with this Act or the Regulations

The proposal was sent to the Environmental Protection Authority, Department of Planning- Resource and Energy, Department of Planning, Office of Environment and Heritage, Department of Primary Industries, Lands & Water Division; Natural Resources Access Regulator; Department of Primary Industries, WaterNSW, Roads and Maritime Services (now Transport for NSW), NSW National Parks and Wildlife Services, Blue Mountains City Council, Hawkesbury City Council, NSW Rural Fire Service, Sydney Trains, Central Tablelands Local Land Services, Endeavour Energy and Council's Engineers for comment with their recommendations detailed below.

The proposal was also sent to surrounding landowners, advertised in the local paper and placed on public display in Council's Administration Building for a period of 30 days. The exhibition period was extended for a further 14 days to accommodate a community meeting.

A total of 470 submissions were received from the community, including the following community groups:

- Bell Quarry Working Group;
- North Richmond & Districts Community Action Association Inc.;
- Zig Zag Railway;
- Kurrajong Community Forum;
- Hawkesbury Environmental Network;
- Friends of Colo Inc.; and
- Mt Wilson Progress Association.

After excluding duplicates, a total of 321 written submissions were received and 149 form letters.

The primary concerns raised in the submissions can be summarised as follows:

- Adverse impacts on Greater Blue Mountains World Heritage Area;
- Impacts of the importation of the fill on groundwater;
- Impacts of dewatering on Blue Mountains National Park;
- Potential contamination of Wollongambe and Colo Rivers, including domestic water supply from Colo River;
- Spraying of water to mitigate dust and washdown of trucks will flow into Wollongambe River, part of the Hawkesbury-Nepean Catchment;
- Loss of water source in quarry will increase bushfire risk for local communities and restrict RFS aircraft capabilities to fight local fires;
- Traffic impacts on Bells Line of Road and Great Western Highway, in particular in Mt Victoria from additional heavy truck movements;
- Existing condition and width of Sandham Road unable to safely accommodate heavy truck movements, particularly in respect to the school bus, pedestrians, cyclists and local resident vehicle movements and needs to be upgraded if the proposal is approved;
- Intersection of Sandham Road and Bells Line of Road has poor sight lines and needs to be improved;
- Potential for queuing of trucks in Sandham Road and Bells Line of Road prior to 7.00am opening of facility;
- Amenity impacts on Sandham Road residences with dust, noise and public safety; and
- Proposed development is not a continuation of the earlier development consent(108/94) as it has been abandoned upon satisfaction of Condition 12 of that consent relating to rehabilitation of the site and retained ponds as a water source for bush fire purposes.

The Applicant provided a detailed response to the submissions from Government Agencies and community concerns dated June 2019. A copy of the submission is at **Attachment 1**. Two further submissions were received from GHD on behalf of the applicant following a meeting with Council, EPA and GHD held on 3 October 2019, dated 11 October 2019 (**Attachment 2**) and 1 November 2019 (**Attachment 3**). A further submission dated 14 November 2019 (**Attachment 4**) was received specifically addressing matters raised in submissions from the Roads and Maritime Services.

The submissions from Government agencies, local government and authorities are detailed below.

ENVIRONMENT PROTECTION AUTHORITY (20 March 2019)

Reference is made to the designated development application DA294/18, including the environmental impact statement (the EIS; GHD, August 2018), for the proposed rehabilitation project at the former Bell sand quarry (the Premises) referred to the NSW Environmental Protection Authority (the EPA) by Lithgow City Council (the Council) on 9 January 2019 (the Project).

The project proposes to receive 2.2 million tonnes of waste at the Premises at up to 140,000 tonnes per year from earthworks projects across Sydney and the local regional area and apply that waste to the existing quarry voids. The waste proposed to be applied to land is a combination of virgin excavated natural material (VENM), excavated natural material (ENM) and other 'clean fill' material.

The premises is located adjacent to the Blue Mountains National Park/Greater Blue Mountains Area, which is included in the UNESCO World Heritage List and the National Heritage List. The Premises intersects an unnamed ephemeral tributary to the Wollangambe River, which is within the catchment of the declared wild river known as the Colo River, Greater Blue Mountains World Heritage Area.

The EPA provided input to the Secretary's Environmental Assessment Requirements (the SEARs) for the project on 8 November 2015. The EPA noted that it would:-

- Require clarification on 'clean fill' and any relevant exemptions,
- Review the EIS to determine if the project requires an environment protection license, and
- Review the EIS to determine if environmental impacts have been identified and adequately addressed.

The EPA has reviewed the EIS and has identified that:-

- No clarification has been provided on 'clean fill' and any relevant exemptions,
- An environmental protection license would be required, therefore the EPA considered the Project to be 'integrated development'
- The environmental impacts of the project have not been fully identified, however sufficient information has been provided for the EPA to consider that the Project poses an unacceptable water pollution risk to the Greater Blue Mountains World Heritage Area, including the Wollangambe River/Colo River.

Further details of the EPA's review are included in Attachment 1 and Attachment 2. The EPA acknowledges the assistance of the Office of Environment and Heritage (OEH) in its review of the proposal.

Since the EPA considers that the Project poses an unacceptable risk of water pollution to a World Heritage Area and declared wild river catchment, the EPA does not support the Project and recommends that the Project be refused.

Relevant extracts from the Attachments 1 and 2 to the EPA letter of 20 March 2019 include the following:-

- The EPA also notes that, despite its potential impacts on a World Heritage Area and endangered ecological communities, the Project does not appear to have been referred to the Commonwealth as a matter of significance.
- The EPA considers it likely that some of the soil leachates will adversely alter the natural characteristics and ionic balance of water draining into the Greater Blue Mountains World Heritage Area and the Colo River, Greater Blue Mountains World Heritage Area. As such, the EPA does not support the Project and recommends that the Project be refused.
- The EIS identified proposed discharges into a tributary of the Wollangambe. It identified a swamp located on the tributary approximately 200m downstream of where the discharge is proposed. The tributary (and its connected swamp) is proposed to receive pumped out water from the quarry pits, any leachate from the material that is emplaced in the pits and overland flow once the area is rehabilitated. The tributary and swamp are in the GBMWH. There is currently no licensed discharge location for the site.
- The Biodiversity Impact Assessment identified the *Prickly Tea-tree – sedge wet heath* swamp below the quarry discharge location as a Newnes Plateau Shrub Swamp (EEC under the TSC Act) and Temperate Highland Peat Swamps on Sandstone (EEC under the EPBC Act). As the project potentially impacts on the

WHA and EPBC listed THPSS, the proposal should have been forwarded to the Commonwealth for assessment.

- The existence of the swamp in the headwaters of the drainage line downstream of Bell Quarry strongly suggests that there is a groundwater source which helps support/maintain the swamp in this location.
- The Water Resources Assessment Section of the EIS has not clearly defined the downstream swamp as a GDE; it has not assessed the level of groundwater dependence for the swamp and the likely pathways (e.g. disruption of groundwater connections, reduction in groundwater quality) by which the project might impact on the swamp; and it does not consider issues surrounding water discharge rates or their effect on geomorphic stability for the swamp. It has therefore not appropriately assessed the risk the project will have on the THPS swamp. Further investigations into the hydrological characteristics of the swamp are needed.

GHD (2018a) stated that the discharge from the site only occurs when the balance of rainwater, groundwater flow and evaporation are such that the voids are fully and overflowing. However, it is proposed that water in the quarry pits is to be de-watered, with water directed to the downstream tributary at the location of a previous licensed discharge. ADE (2017) identified that the licence was surrendered on 1 October 2014, so there is currently no licensed discharge location for the site. GHD (2018a) did not discuss the pump out rates in the EIS, however if flow rates to the tributary are too high, then there is significant potential to destabilise sediments in the downstream swamp. If an erosional nick-point is established in the swamp, it could lead to the loss of the swamp in its entirety through erosion and gullyng. The EIS does not consider issues surrounding discharge rates or their effect on geomorphic stability for the swamp.

ENVIRONMENT PROTECTION AUTHORITY (2 September 2019)

I refer to the designated development application, DA294/18 (the Project), including the environmental impact statement (the EIS; GHD, August 2018), for the proposed rehabilitation project at the former Bell sand quarry (the Premises) referred to the NSW Environment Protection Authority (the EPA) by Lithgow City Council (Council) on 9 January 2019 (the Project). I refer more specifically to the submissions report (GHD, June 2019) referred to the EPA by Council on 3 July 2019 (the Report; GHD, June 2019).

The EPA notes DA2904/18 proposes to receive a total of 2.2 million tonnes (1.2 million cubic metres) of waste at the Premises at up to 140,000 tonnes per year from earthworks projects across Sydney and the local regional area with application of that waste to existing quarry voids. The Report provides that the waste proposed to be applied to the existing quarry voids may be virgin excavated natural material (VENM), excavated natural material (ENM) or other "clean fill" material. Further, the Report clarifies that "clean fill" is currently undefined and refers to waste "specifically authorised at some point in the future by a site-specific resource recovery exemption".

As you may be aware, the Premises is located adjacent to the Blue Mountains National Park/Greater Blue Mountains Area, which is included on the UNESCO World Heritage List and the National Heritage List. The Premises intersects an unnamed ephemeral tributary to the Wollangambe River, which is within the catchment of the declared wild river known as the Colo River, Greater Blue Mountains World Heritage Area.

The EPA and Office of Environment and Heritage (OEH) consider the Report does not provide the required high level of confidence that discharges related to the Project will not adversely impact the Wollangambe River and the Greater Blue Mountains World Heritage Area as minimal additional scientific information has been provided to establish the local water quality and local water quality criteria.

The national water quality guidelines ("ANZECC guidelines"; both the 2000 version cited and the current 2018 version) emphasise the benefits of locally-derived guideline values rather than default guideline values. The EIS identifies that default values, rather than locally-derived values, were adopted because two years of contiguous monthly data is not available. The application for environmental assessment requirements for the Project was submitted in late 2016 and to date data for only one local sampling even (9 March 2017) has been provided.

Given the ecological sensitivity of the receiving environment, the EPA strongly recommends that local water quality and local water quality objectives are established consistent with the current ANZECC guidelines and contemporary guidance notes such as *Deriving site-specific guideline values for physico-chemical parameters and toxicants* (IESC, 2019).

Council should note the EPA is progressively working with licensees within the Wollangambe catchment, particularly Centennial Coal who holds environment protection licence No 726 for the nearby Clarence colliery, to tighten local water quality discharge criteria (licence limits) and ultimately remove those discharges from the Wollangambe catchment in the short to medium term. The EPA considers that the Project, in proposing default water quality values and unlicensed discharges, is inconsistent with the significant environmental improvements underway in the Wollangambe catchment.

Based on the information provided in the EIS and the Report, the EPA still considers that insufficient local information has been provided to demonstrate with an appropriate level of certainty that the Project does not pose an unacceptable risk of water pollution to the declared wild river catchment/World Heritage Area.

The EPA would be pleased to meet with Council and the proponent to discuss this matter further.

ENVIRONMENT PROTECTION AUTHORITY (15 October 2019)

I refer to the meeting held on 3 October 2019 between representatives from the Environment Protection Authority (EPA), Office of Environment and Heritage (OEH), Lithgow City Council (Council) and the proponent for the proposed Bell Quarry Rehabilitation Project (Project) to discuss the EPA's submissions dated 20 March 2019 and 2 September 2019.

In considering the Project against the objectives of the *Protection of the Environment Operations Act 1997* and the *Environmental Planning and Assessment Act 1979*, the EPA notes the following with respect to the current status of the site:-

5. The site has been rehabilitated consistent with the existing development approval (DA108/94) and the operating licence at the time, which was surrendered with EPA approval in 2014;
6. This rehabilitation included the provision to store water in the pit as a firefighting resource;
7. The landform is stable;
8. Aside from slightly reduced flow rates, there is no impact to surface or groundwater within the UNESCO World Heritage listed Greater Blue Mountains Area (World Heritage Area) from the site.

The EPA notes the following with respect to the Project:-

7. Inherent difficulty in managing waste over the fifteen-year life of the Project to ensure no contaminated waste is taken to the site;
8. Potential risks to surface and groundwater within the World Heritage Area downstream of the site;
9. Potential risk of erosion from discharges impacting on the receiving drainage line and an endangered ecological community located within the World Heritage Area;
10. No commitment to establishing a liner to reduce potential impacts to groundwater within the World Heritage Area;
11. Improvement to the aesthetic appeal of the site will only be achieved following the life of the Project and an undefined regeneration period; and
12. The environmental assessment does not demonstrate there will be an improved environmental outcome in the long-term, when compared to the current stabilised site.

When assessing any proposal which involves the use of waste in accordance with the NSW resource recovery framework, the consent authority, like the EPA, must be satisfied it is a genuine re-use opportunity rather than simply a method of opportunistic waste disposal and does not cause harm to the environment or human health.

Recently the UNESCO World Heritage Committee (Forty-third session, 30 June – 10 July 2019) articulated concerns about mining projects and activities in the vicinity of the World Heritage Area which might cumulatively result in significant impact on the outstanding universal value of the World Heritage Area. The Committee specifically noted

the World Heritage Area's increased vulnerability to edge effects as it does not have a formal buffer zone, and the need to assess the potential cumulative impacts of existing and planned mining projects in its vicinity.

Having regard to the legitimacy of the Project under the NSW waste framework, the principles of ecologically sustainable development including the precautionary principle, and the sensitivity of the World Heritage Area including its vulnerability to edge effects, the EPA does not support the Project and maintains its recommendation that the Project be refused.

ENVIRONMENT PROTECTION AUTHORITY (13 JANUARY 2020)

"I refer to the designated development application DA294/18 for the proposed rehabilitation project at the former Bell sand quarry (the Premises) first referred to the NSW Environment Protection Authority (EPA) by Lithgow City Council (Council) on 9 January 2019 (the Project).

As you are aware, the Project proposes to receive 2.2 million tonnes of waste at the Premises at up to 140,000 tonnes per year from earthworks projects across Sydney and the local regional area and apply that waste to existing quarry voids. The Premises is located adjacent to the Blue Mountains National Park/Greater Blue Mountains Area which is included on the UNESCO World Heritage List and the National Heritage List. The Premises intersects an unnamed tributary to the Wollangambe River, which is within the catchment of the declared wild river known as the Colo River, Greater Blue Mountains World Heritage Area.

The EPA provided input into the Secretary's Environment Assessment Requirements (SEARs) for the Project on 8 November 2016. The EPA has subsequently commented on DA298/18 as follows:-

- *EPA letter 20 March 2019 re the environmental impact assessment (GHD, August 2018)*
- *EPA letter 2 September 2019 re the submissions report (GHD, June 2019)*
- *Meeting 3 October 2019 between proponent, Council and EPA*
- *EPA letter 15 October 2019 following the meeting 3 October 2019*

Since the environmental impact assessment was written, the proponent has clarified that the proposed waste types to be received at the Premises are virgin excavated natural material (VENM) and excavated natural material (ENM) only. VENM and ENM are subject to various exemptions from the Protection of the Environment Operations Act 1997 and the Protection of the Environment Operations (Waste) Regulation 2014, including an exemption from the environment protection licensing requirement for 'waste disposal (application to land)'.

White VENM/ENM is exempt from this waste disposal licensing requirement (provided the conditions of the ENM order and exemption are met), and therefore from the integrated development provisions of the Environmental Planning and Assessment Act 1979, resource recovery waste orders and exemptions explicitly provide that the EPA is not in any way endorsing the use of the substance, or guaranteeing that the substance will confer benefit, or guaranteeing that the environment, human health or agriculture will not be harmed.

Regardless of any resource recovery waste orders and exemptions provided by the EPA, and having regard to the information provided to the EPA to date, including the GHD letters dated 11 October 2019 and 1 November 2019, the EPA maintains its recommendations that the Project be refused."

DEPARTMENT OF PLANNING, INDUSTRY AND ENVIRONMENT – INDUSTRY ASSESSMENTS

Thank you for your emails dated 13 September 2019 and 14 November 2019, which forwarded copies of submissions received during the period of public exhibition for the above proposal in accordance with Section 4.16(9) of the *Environmental Planning and Assessment Act 1979*.

The Department of Planning, Industry and Environment (the Department) notes the Western Regional Planning Panel (WRPP) is the determining authority for the proposal, in accordance with Schedule 7 of State Environmental Planning Policy (State and Regional Development) 2011.

The Department has reviewed the submissions received by Lithgow City Council (Council) to date and understands the site adjoins the Blue Mountains National Park, which forms part of the Greater Blue Mountains World Heritage Area (GBMWhA).

The Department notes the concerns raised by the Environment Protection Authority and the Department's Biodiversity and Conservation Division regarding the risk of surface and groundwater impacts to the GBMWhA. The Roads and Maritime Services has also requested additional information regarding the haulage routes/methods which would be used to transport fill material to the site.

A significant number of submissions were also received from Trish Doyle MP, Andrew Gee MP, Blue Mountains City Council, Hawkesbury City Council, local community groups and the general public during the exhibition period. These submissions raised a number of concerns in relation to the proposal including, but not limited to:-

- potential impacts to the GBMWhA and adjacent swampland areas, including the risks associated with the discharge of surface and groundwater to these areas;
- the importation and use of contaminated material;
- potential impacts to native flora and fauna;
- increased bushfire risk associated with the removal of existing quarry voids;
- potential social and economic impacts;
- potential noise, air quality and traffic impacts upon surrounding sensitive receivers.

The Department recommends Council and the WRPP ensure these concerns are adequately and appropriately addressed before determining the subject development application.

DEPARTMENT OF PLANNING, INDUSTRY AND ENVIRONMENT – BIODIVERSITY AND CONSERVATION

Thank you for your email of 24 September 2019 seeking consent from the National Parks and Wildlife Service (NPWS) to discharge water into a dam on Blue Mountains National Park.

As stated in our letter dated 5 February 2019, it is not necessary for the NPWS consent to be in place before development consent is approved for the project provided a condition requiring the NPWS consent is included in the development consent.

Please note that we have concerns regarding the quality of water proposed to be released into the dam and overflow into the national park. We are aware that the Environment Protection Authority (EPA) considers that there is an unacceptable risk of water pollution to the Greater Blue Mountains World Heritage Area.

NPWS will not provide consent for use of the dam unless the EPA is satisfied that the water quality and risk of water pollution will be acceptable.

NATIONAL PARKS AND WILDLIFE SERVICE

Thank you for your email of 4 October 2019 seeking landowners consent from the National Parks and Wildlife Service (NPWS) to make a development application that will potentially affect Blue Mountains National Park.

NWPS hereby grants consent to make a development application for the Bell Quarry rehabilitation project (DA294/18) in accordance with clause 49(b) of the Environmental Planning and Assessment Act Regulation 2000. Please note that this consent does not constitute an approval for any works on national parks estate associated with the proposal. Additional approvals will be required for any potential works on the national park estate such as fencing of the boundary and use of the dam. We anticipate that Lithgow City Council will include the requirement for additional approvals from NPWS in the consent conditions for the project if it is approved.

We reiterate that NPWS will not provide approval for use of the dam unless the Environment Protection Authority is satisfied that the water quality will be acceptable, and that this consent does not imply support or concurrence with the Development Application.

OFFICE OF ENVIRONMENT AND HERITAGE

Thank you for your Development Application referral received on the 10 January 2019 relating to DA294/18 – Lot 23 DP 751631 – Newnes Forest Road CLARENCE NSW 2790.

A preliminary review has indicated that the subject site is neither within the curtilage nor in the vicinity of any State Heritage Register (SHR) items, or known European historical archaeology. Consequently, no specific comments are provided as no impacts to SHR items have been identified.

Please note the North Western Regional Operations Division of the Office of Environment and Heritage may provide separate comment in relation to Aboriginal cultural heritage.

OEH notes that, as the development application for the project has been lodged prior to 25 February 2019, the project is a pending or interim planning application under the *Biodiversity Conservation (Savings and Transitional) Regulation 2017* and the requirements of the *Biodiversity Conservation Act 2016* do not apply.

Work within the Blue Mountains National Park

The project encroaches into the Blue Mountains National Park. OEH, including the National Parks and Wildlife Service (NPWS), supports the rehabilitation of areas of the park that have been impacted by the quarry's operations, and the restoration of a stable landform.

OEH intend to issue a licence under the *National Parks and Wildlife Act 1974* to enable the proponent to conduct these works. Licence conditions are currently being determined by NPWS and will be negotiated with the proponent.

OEH advises that it is not necessary for the NPWS licence to be in place before Council approves development consent for the project provided a condition requiring the NPWS licence is included in the development consent.

Recommendation

1. If Council approves the project, a condition be included in the development consent requiring a licence from the National Parks and Wildlife Service for works within the Blue Mountains National Park.

Introduction of pathogens to the site

OEH is concerned about the potential for the project to introduce pests and pathogens to the Blue Mountains National Park. This is of particular concern given the proximity of the endangered Newnes Plateau Shrub Swamp directly downstream of the site, and that the works will impact on the Greater Blue Mountains World Heritage Area.

The biodiversity assessment supporting the development application includes some consideration of Phytophthora (*Phytophthora cinnamomi*), Myrtle Rust (*Uredo rangeli*) and Chytrid fungus (*Batrachochytrium dendrobatidis*). Mitigation measures include washing of vehicles. However, there is no consideration of the potential to import these pathogens to the site within the fill being used to fill the quarry voids.

OEH considers that no fill should be imported from areas known to contain Phytophthora, Myrtle Rust or Chytrid fungus. In addition, samples of fill should be tested at the point of origin for these pathogens. No fill returning positive results for pathogens should be transported to Bell Quarry.

In addition, a baseline study of these pathogens at the site is required, and an ongoing monitoring program established.

Recommendations

2. No fill is to be imported from areas known to contain Phytophthora, Myrtle Rust or Chytrid fungus
3. Samples of fill should be tested at point of origin, and results received, prior to transporting to Bell Quarry. In the event that a positive result is returned, the fill should not be imported to Bell Quarry.
4. A baseline study of pathogens at the site should be conducted, and an ongoing monitoring and review program established.

Monitoring and adaptive management

Water is discharged from the site through an established sediment basin on the eastern edge. This discharges into an unnamed tributary, passing through a Newnes Plateau Shrub Swamp, within the Blue Mountains National Park.

The project will alter flow regimes until the voids have been dewatered, after which it is anticipated that flows will be restored so that they are closer to natural conditions than is currently the case.

OEH considers that adequate monitoring, review and adaptive management are essential to ensure that surface and groundwater quality and levels do not negatively impact on biota. Similarly, monitoring of pathogens is also required at the project site.

The water resources assessment supporting the development application indicates that site discharge, the downstream tributary, and a reference site will be monitored monthly (during discharge), the pit water will be monitored monthly, and runoff from clean fill and other areas will be monitored monthly (when there is rainfall).

Ground water quality will be compared to baseline groundwater monitoring events (representing a minimum of two post summer and two post-winter periods). Ongoing groundwater monitoring will then be undertaken annually, or more frequently should the baseline indicate variability in the groundwater quality or levels at the site.

However, a review of the impacts of fill material on water quality, volumes and levels is to be undertaken only every two years (and at least for each rehabilitation stage) over the approximately fifteen-year life of the project. OEH does not consider two-yearly reviews to be frequent enough to ensure action can be taken if detrimental impacts occur.

Adequate monitoring and review is required for all components of the project, including (but not limited to):-

- Surface and groundwater levels and quality
- Pathogens
- Weeds
- Revegetation of rehabilitated areas

A detailed monitoring plan, incorporating a trigger, action, response plan (TARP), should be included as part of the Construction Environment Management Plan (CEMP)

Recommendation

5. A detailed monitoring plan, incorporating a TARP, be developed for the project which addresses all potentially detrimental impacts (including surface and ground water levels and quality, pathogens, weeds and rehabilitation).

Mitigation of impacts

OEH strongly supports the mitigation measures outlined in section 7.3 of the biodiversity assessment. Please note that this includes management and disposal of the weeds that are present in the project area (especially Pampas Grass and Broom) prior to commencement of earthworks and throughout the duration of the project.

The use of local provenance seed and seedlings for revegetation is also an important mitigation measure.

OEH requests that we be consulted during the preparation of the CEMP, particularly regarding the flora and fauna management sub-plan.

Recommendation

6. All mitigation measures in section 7 of the Biodiversity Impact Assessment should be implemented.
7. OEH to be consulted during the preparation of the CEMP

Boundary survey and fencing

A site survey to exactly locate the eastern boundary of Bell Quarry is required. The site should then be fenced along the boundary with Blue Mountains National Park so that land tenure can be identified on-site.

Recommendation

8. The boundary between Bell Quarry and Blue Mountains National Park is to be surveyed and fenced in consultation with NPWS.

DEPARTMENT OF PRIMARY INDUSTRIES (DPI) - AGRICULTURE

DPI Agriculture has no issues in relation to this project. The site does not include agricultural land use outcomes.

DEPARTMENT OF PRIMARY INDUSTRIES (DPI) - FISHERIES

The former Bell Quarry on Lot 23 DP751631 is not located within Key Fish Habitat (Third order stream or larger, Strahler Stream Ordering System), although it does have a first order stream pass thru the site. In addition, no threatened species, populations, communities from the *Fisheries Management Act* 1994 were identified as being impacted upon the development.

Therefore the department prefers to leave comments to other agencies that have legislative obligations regarding this development.

ROADS AND MARITIME SERVICES (RMS) (8 February 2019)

Thank you for your email on 10 January 2019 referring DA294/18 including the Environmental Impact Statement (EIS) for the former Bell Quarry Rehabilitation Project to Roads and Maritime Services for comment.

Roads and Maritime notes the proposal is for a final rehabilitated landform achieved via importation of virgin excavated natural material (VENM), excavated natural material (ENM) and other clean fill sourced from earthworks projects across Sydney and the local regional area. This will involve:-

- Importation of approximately 1.2 million cubic metres of VENM, ENM and other clean fill over a period of approximately 15 years.
- Vehicle haulage at a rate of up to 140,000 tonnes per annum (tpa) consistent the maximum permitted in accordance with the existing consent.
- Haulage vehicles used for transportation of material will be via truck and trailers up to 42.5 tonne capacity.
- It is anticipated 37 heavy vehicle movements per day, equivalent in number to previous quarry operations and the existing consent for the site.

Pursuant to clause 16 of the *State Environmental Planning Policy (Mining, Petroleum and Extractive Industries) 2007*, Roads and Maritime provides the following recommendations for Council's consideration:-

- Roads and Maritime support conditions outlined in the original consent as being relevant to the rehabilitation component proposed. In particular those pertaining to *Product Transport*, being Condition 5 of DA108/94.
- Safe Intersection Sight Distance (SISD) in accordance with Part 4A of *Austroads Guide to Road Design* is to be provided and maintained at the intersection of Sandham Road and Bells Line of Road (MR184) (60km/h speed zone) and the intersection of Bells Line of Road and Darling Causeway (80km/h speed zone). In this regard the proponent needs to be aware that SISD for an 80km/h speed environment is 181 metres and SISD for a 60km/h speed environment is 123 metres.
- 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.
- In accordance with Clause 16(1) of the *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007*, the applicant is to prepare and implement a driver code of conduct for the task of transporting materials on public roads. A driver code of conduct and traffic management plan is to be developed to:

- Manage risks associated with staff commuting by road to and from the site and to include heavy vehicle haulage drivers and contractors.
- Procedures addressing risks of driver fatigue and poor driver behaviour (including dangers associated with speed and use of mobile phones) and include strategies to mitigate those risks to promote safe driving practices.
- Procedures to ensure haulage operations coinciding with local student school bus pick up/drop off times are to be avoided.
- Procedures to ensure the requirement for drivers to operate vehicles in a safe, professional and courteous manner cognisant of noise and dust emissions.
- Scheduling of haulage vehicle movements to minimise convoy lengths or platoons.
- Notifying the local community about project-related traffic impacts.

TRANSPORT FOR NSW (Former RMS – 18 December 2019)

Thank you for the email dated 13 December 2019 referring a response to additional comments made by TfNSW (formerly Roads and Maritime Services) prepared by GHD, 14 November 2019.

TfNSW was made aware by Council of a significant number of submissions received for this proposal following our original assessment and review of the Bell quarry Rehabilitation proposal dated 08 February 2019. Further to this Council reiterated that this proposal was not a continuation of the previous development consent and sought TfNSW assess and review this proposal as such. Subsequently TfNSW undertook to offer an additional review and relevant comments.

TfNSW has reviewed the response undertaken by GHD to our additional comments and is satisfied these have been adequately addressed by the proponent. TfNSW has no further comments to the proposed development.

WATERNSW (WOLLANGAMBE RIVER CATCHMENT)

Reference is made to Council's letter received 14 January 2019 requesting the concurrence of Water NSW under Clause 11 of the State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011 (the SEPP) with a proposal for extraction of friable sandstone material and rehabilitation of the former bell quarry through importation of clean fill.

The subject property is located partially within the Warragamba catchment which forms part of Sydney's water supply. Water NSW notes that only the south-south-western part of the property, located on the west side of the Main Western Railway, is within the Sydney drinking water catchment and that the proposed works are located outside the Sydney drinking water catchment.

An Environmental Impact Statement (dated August 2018) prepared by GHD Pty Ltd has been considered in the assessment of the application.

Based on the information provided, the proposed development has been assessed by Water NSW as being able to achieve a neutral or beneficial effect (NorBE) on water quality provided appropriate conditions are included in any development consent and are subsequently implemented.

Water NSW concurs with Council granting consent to the application subject to the following conditions:-

General

1. The layout, works and staging shall be as specified in the Environmental Impact Statement (dated August 2018) prepared by GHD Pty Ltd. No revisions to the site layout or works or staging that will impact on water quality shall be permitted without the agreement of Water NSW.

Reason for Condition 1 – Water NSW has based its assessment under the State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011 on this version of the development.

BLUE MOUNTAINS CITY COUNCIL

Blue Mountains City Council wishes to express its opposition to the proposed rehabilitation of the Bell Quarry.

It is the Council's understanding that the Lithgow City Council opposes this development application and that the EPA are also proposing to make a submission in which it will highlight its objections to the proposal.

At the Ordinary meeting of the 26 March 2019, the Council resolved (inter alia):-

1. That the Council acknowledges and thanks Lithgow Council for extending the deadline to allow a formal submission to be adopted by Council;
2. That the Council endorses the formal submission contained in Attachment 1, which opposes the Development Application No. DA294/18-Lot 23 DP751631-Off Sandham Road Newnes Junction NSW 2790.
3. That the Council writes under the signature of the General Manager to Lithgow Council, Mayor Ray Thompson and General Manager Graeme Faulkner, NSW Minister for Planning; Anthony Roberts MP, Blue Mountains MP Trish Doyle, and Greens NSW Spokesperson on Environment, Transport and Roads and Ports Cate Faehrmann MLC noting Council's concerns about the impact of the proposed rehabilitation, including trucking of 1.5 million tonnes of landfill which will be transport across the Blue Mountains LGS from Sydney to Bell, and any other matters as identified by Council's investigations and
4. That the Council receives a briefing on the determination of the Regional Planning Panel.
(Min No 92)

The comments in this submission, as endorsed by the Council relates to the review of the following documents:-

- Development Application No.DA294/18,
- Bell Quarry Rehabilitation EIS Master Volume 1-3

In addition to the above documents, Council has engaged with local communities and environmental organisations with relevant comments and concerns.

Priority Areas of Concern

Five priority areas of concern that have been identified to focus the Council's response to this development, as detailed as follows:-

Nature Environment

Council rejects the statement in the EIS that *"The project would not result in any significant environmental impacts and will result in environmental benefits by restoring the landform of the quarry to similar to the original, while ensuring beneficial reuse of ENM and VENM clean fill materials and avoiding their disposal in landfill"*.

Council has considerable concern on the potential impacts on downstream high value natural assets such as GBMWhA which is immediately adjacent the Bell Quarry and the iconic Wollangambe River, which is a sub catchment of the declared Wild River, the Colo River. Given the environmentally sensitive environment, the development should only be approved if the proponent can definitively demonstrate that there will be no adverse impact on the downstream and adjacent natural assets over the life of the project and beyond under all environmental conditions including the increasingly severe and erratic climate conditions predicted under climate change including more frequent and intense storm events.

The risk of contamination of the GBMWhA by mining and extractive industries has been demonstrated by the recent catastrophic collapse of a coal tailing dam after heavy rainfall at the Clarence Colliery and the subsequent pollution of the Wollangambe River. The project is bordering the GBMWhA and within the catchment of the Colo Wild River and any impacts or failures of protective systems will have a direct impact on these natural assets without the benefit of any buffering.

The potential impacts of the importation of VENM, ENM and “other clean fill material” into the voids has predominantly been assessed through the modelling of the chemical composition of leachate from the site in terms of heavy metals and contaminants. However the importation of significant amounts of higher nutrient non-sandstone based materials such as shale based soils from the Cumberland plain into a low nutrient sandstone environment could increase the nutrient composition of the discharging water as well as the increased discharge of finer clay sediments in suspension leading to possible algal blooms in the voids and downstream riparian environments. Any increased nutrients and sediments would also facilitate weed invasion into the vegetation communities such as the downstream Newnes Plateau Shrub Swamp community and riparian communities which are adapted to low nutrient sandstone influenced conditions.

There is also the risk of the inadvertent importation of weed propagules in the fill material leading to the establishment of new weed population on the border of the GBMWA. These may be exotic species or non-endemic native species. If the fill consists of higher nutrient soils it is also likely to facilitate their establishment. Consideration should be made to ensure that the final capping to a depth of 3-5m is of sandstone material of a composition analogous to the existing geology if it is to support native endemic plantings. There is also the risk of importing diseases such as Phytophthora or Cheered fungus etc.

Hydrology

The hydrology of the study area is already substantially modified by the existing quarry. The proposal would alter the landform through placement of fill and modify surface water flows.

The dewatering process for the voids with the predicted increase of moderate flow events during dewatering event is likely to have a deleterious effect on the downstream Newnes Plateau Shrub Swamp. Limited details of the proposed volumes of the frequency of flows have been provided but they are unlikely to mimic the original flow patterns which typically consist predominantly of subsurface groundwater flows rather than concentrated surface flows. The channelisation of Newnes Plateau Shrub Swamps by mine dewatering on the Newnes Plateau is a salient example of the consequences of altering the natural hydrology swamp systems.

Bush Fire Management

The site is designated as bushfire prone due to the presence of bushfire prone lane within and adjoining the site. It is noted that the project will be developed in accordance with the aims and objectives of Planning for Bushfire Protection (NSWRFS 2016) and pose minimal risk to the safety of workers at the site or the surrounding environment.

The current water reserves in the quarry are currently accessed for firefighting and mitigation purposes. The filling of the voids will represent a loss of valuable firefighting resource for aerial firefighting operations.

Transport and Road Impacts

The proposal, to transport excess excavated materials, an estimated 140,000tpa for 15 years, from the Sydney basin infrastructure projects would have a profound impact on road safety and local road infrastructure. Haulage to the site will be undertaken using “truck and trailers” with a capacity of around 30 tonnes and will result in approximately 9400 vehicle movements per year or 30 individual trips per day. Whilst this is an approximation across the proposed life span, it is detailed in the EIS that haulage may be undertaken in campaigns, based upon the supply of VENM and ENM from major construction projects. This means that the daily movements could exponentially increase at any time in response to excavation activities in Sydney.

Council rejects the statement in the EIS “The haulage traffic represents a relatively small proportional increase to background traffic on the wider regional road network. The minor increases to traffic are not considered to impact upon the safety or capacity of the road network”. To base the increased movements on the regional/state network is not reflective of the movements that would occur on Sandham Road, which in most parts is an unsealed road which currently experiences very low heavy vehicle movements.

The EIS does not address that impact on cyclists along the proposed haulage routes. Cycling has a strong tourism and transport focus with sections of the highway between the quarry and Katoomba in particular being hazardous with no shoulder or dedicate cycle lane provided. Also of concern is the interaction of truck traffic with tourism traffic on the Greta Western Highway. There is considerable collateral around this high priority tourism resource.

Council notes that the Greta Western Highway is classified as a State Road and under the care and control of Roads and Maritime Services (RMS). Any additional maintenance as a result of the additional truck movements is therefore the concern of RMS, the Council is extremely concerned that the additional maintenance is put in place to ensure the current standards are maintained. The use of Harley Avenue, a regional road which is maintained by the Council will be impacted by the increase in heavy vehicle numbers. Additional funding will need to be provided to maintain this connection between the state road networks.

Drive Neighbourly Agreement – ‘Respect ... Our Code on Blue Mountains Roads’. Such is the Council’s concern with the movement of freight and bulk materials across the Blue Mountains, it initiated its own high profile campaign. The ‘Respect...Our Code On Blue Mountains Road’ initiative arose out of the 2016 “Blue Mountains Heavy Vehicle Drive Neighbourly Agreement” and is endorsed by community groups, major industry participants and government agencies, including the Australian Trucking Association, Road Freight NSW, the region’s main heavy vehicle operators, Roads and Maritime Services and NSW Police.

At the core of the Respect initiative is promoting road safety (including implementation of advanced heavy vehicle safety technology), and reducing the impact of HV emissions and noise on residential areas.

The Respect program will reinforce good driver behavior, especially:-

- Keeping appropriate distances between vehicles,
- Overtaking with care,
- Observing designated speed limits,
- Making sufficient allowance for slowing down and stopping,
- Exercising caution in reduced visibility conditions,
- Considering cyclist and pedestrians,
- Convoying.

Reducing heavy vehicle emissions and noise-especially exhaust brakes-is also a key focus of the campaign. Working with the industry, engine brake noise close to residential areas in the Blue Mountains will be minimised by:-

- Installing special mufflers to reduce engine brake noise,
- Ensuring exhaust systems are in good operating condition,
- Turning off noisy engine brakes in built-up areas.

In the event that development approval was granted, the proponent should seek to have all haulage contractors partner with the Council on this Agreement and their support for the delivery of the “Respect ... Our Code on Blue Mountains Roads” Heavy Vehicle Drive Neighbourly Agreement.

Residential Amenity

Dust, noise and vibration will certainly be generated by haulage vehicles travelling along Sandham Road through Bell which is used for access to the site. The impact on Bell residents will be severe. The impacts on Mt Victoria from additional heavy vehicle movements along Station Road and west along the Great Western Highway will certainly be affected in similar ways, together with adverse impacts upon pedestrian and cyclist safety. The proposed route through Mt Victoria is the main pedestrian and cycle access route for children, other residents and visitors, traveling to school or accessing the shops and main park in the village. Similarly Blackheath will suffer from added heavy vehicle movements through its single lane town centre which is a tourism precinct.

Summary

Council and community have a strong vested interest in the proposed rehabilitation of the Bell Quarry. The impacts from the project, detailed in this submission, are submitted for consideration as part of the assessment process. It identifies the range of concerns the Bell Quarry DA if approved, would have on the residents and environs of the Blue Mountains and Lithgow LGA’s especially relating to the World Heritage Listed Greater Blue Mountains Area.

Council representatives will attend the Regional Panel meeting and make representations to the meeting in relation to this matter.

LITHGOW CITY COUNCIL

Reference is made to the development application which will be determined by the Western Regional Planning Panel. At its ordinary meeting of 25 February 2019, the Council resolved to lodge a submission to the Planning Panel to reject the application.

In consideration of presentations by members of the public during Council's public forum and debate by Councillors on the matter there are a number of concerns that brought Council to its decision to seek rejection of the proposal. These include, but are not limited to:-

Amenity, traffic and safety impacts associated with heavy vehicle movements both locally and through the Blue Mountains.

Various amenity impacts such as noise and dust particularly relating to residents in the vicinity of the proposal and along the transport route.

The existing water bodies at the site have been used in helicopter operations combating bushfires in the area. There is significant concern as to the potential loss of this valuable resource.

The rehabilitation of the quarry has occurred. Therefore, this proposal cannot be said to be rehabilitation but rather waste disposal.

If the waste material is of good quality it would be better utilised in other such activities such as construction and not dumped as a waste product.

Finally, Lithgow City Council has a long-standing position of opposing the acceptance of waste from outside the Lithgow Local Government Area. As there may be other open cut and mining voids in the Lithgow Local Government area, Council would be concerned that this could be seen as the 'thin edge of the wedge' that encourages further proposals. The potential negative impacts on tourism and reputational damage to the Local Government area are of great concern.

HAWKESBURY CITY COUNCIL

Hawkesbury City Council at its Ordinary Meeting on 12 March 2019 considered a Notice of Motion regarding the proposed Development Application for the Bell Quarry Rehabilitation Project at Clarence within the Lithgow Local Government Area. Council discussed the possible effects that the proposal could have on residents of the Hawkesbury.

The Notice of Motion relates to minor rehabilitation being environmentally risky with the potential to introduce contaminated fill. The Blue Mountains World Heritage National Park adjoins the Bell Quarry and the Wollangambe River is also located downstream of the subject site. The Wollangambe River is part of a sub catchment of the Colo River, which is a declared 'Wild River' that transverses through the Hawkesbury Local Government Area. Contaminants from fill have the potential to leach into these National Parks and waterways resulting in adverse environmental impacts on waterways within the Hawkesbury.

It is considered that, the appropriateness of fill material proposed to be used on the site needs to be established:-

- Will the material support the revegetation of the site with locally endemic species i.e. does the fill material match the geology of the locality?
- How will it be ensured that the fill material is not contaminated?
- How will it be ensured that the fill material will not contribute in the importation of weed species in the locality?

It was considered that foreign fill cannot return a site to its original condition and this project should more correctly be viewed as a spoil dumping ground for infrastructure projects in the Sydney Metropolitan area. Council also considered that bush care would provide better rehabilitation and could allow the site to be used as a possible tourist asset.

The Notice of Motion highlighted that it was understood that Rural Fire Services are concerned that filling in this quarry is a retrograde move. The Notice of Motion stated that the quarry currently holds approximately 850 million litres of water used by the Rural Fire Services and National Parks and Wildlife Service in bushfire fighting operations. This was critical in saving Bell in the 2013 bush fires.

Concerns are also raised in relation to an increase in the number of large trucks and their trailers traversing Bells Line of Road and other arterial roads through the Hawkesbury Local Government Area, carrying up to 42 tonnes of fill material each, over the next 15 years if approved.

It is understood that it is estimated the development will generate an average of 30 vehicle movements per day. However the application identifies that importation of fill to the subject site may be undertaken in campaigns, dependent on the availability of fill material. In this regard, the Application does not give an indication as to the likely maximum truck movements that could occur in a day.

In addition, consideration should be given to the impacts of increased truck movements on the amenity of residential properties, villages and townships along parts of Bells Line of Road located within the Hawkesbury Local Government Area. Increased noise, increased truck movements, road safety and the time of day in which these trucks will be utilising the road will have an impact on the amenity and character of Hawkesbury's rural communities in particular.

Following discussion on the above concerns, at its Ordinary Meeting on 12 March 2019, Council resolved as follows:

That Council:-

1. Notes that:-
 - a) The development Application including Environmental Impact Statement for Bell Quarry Rehabilitation Project at Clarence (DA294/18).
 - b) The impact of the proposed project on Hawkesbury residents will be high, with Bells Line of Road carrying 40% of truck movements, in particular that 2.2 million tonnes of fill from Sydney and Central West development projects is proposed to be transported using the Great Western Highway, Darling Causeway and Bells Line of Road, generating an average 74 truck movements per day for around 15 years.
2. Make a submission on the Development Application for Bell Quarry Rehabilitation Project identifying the likely impacts of the DA on Bells Line of Road users and residents, local roads and other relevant impacts including:-
 - a) Impacts on the natural environment;
 - b) Hydrology;
 - c) Bushfire Management;
 - d) The desirability of managing waste product within the area that it is created, rather than transporting it by road to an out of region location.

SYDNEY TRAINS

No response received.

RURAL FIRE SERVICE (RFS)

Reference is made to the correspondence dated 9 January 2019 seeking comments regarding bush fire protection in relation to the above application in accordance with the Environmental Planning and Assessment Act 1979.

The New South Wales Rural Fire Service (NSW RFS) has reviewed the information provided and advises the following:-

- At the commencement of building works and in perpetuity, the property around the proposed office building to a distance of 20 meters 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*.

- Water, electricity and gas are to comply with section 4.1.3 of Planning for Bush Fire Protection 2006.
 - A 10,000 litre water supply shall be provided for firefighting purposes together with a minimum 3Kw (5hp) petrol or diesel powered pump and a 19mm (internal diameter) fire hose capable of reaching all parts of the building.
- A Bush Fire Emergency Management and Evacuation Plan shall be prepared consistent with *Development Planning-A Guide to Developing a Bush Fire Emergency Evacuation Plan December 2014*.

ENDEAVOUR ENERGY

Reference is made to Council's letter of 9 January 2019 regarding Development Application DA294/18 at Newnes Forest Road CLARENCE NSW 2790 (Lot 23 DP 751631) for 'Rehabilitation of Bell Quarry'.

As shown in the site plan from Endeavour Energy's G/Net master facility model in regard to the northern parcel of land (Bell Quarry) there are:

- Easements over the site benefitting Endeavour Energy for:-
 - 66,000 volt/66 kV high voltage overhead power lines and overhead earth cables to the adjoining Sandham Road road verge/roadway.
 - 11,000 volt/11 kV (constructed at 132,000 volt/132 kV) high voltage overhead power lines traversing the site.
- No existing low voltage service conductor/customer connection point.
- Endeavour Energy's Newnes Junction Switching Station located at Sandham Road Newnes Plateau (Lot 1 DP 437491) is located on the south west on the opposite side of the Main Western Railway.

As an adjoining or nearby owners and occupiers, Endeavour Energy's Newnes Junction Switching Station is a non-habitable site/building and will be comparatively less impacted. However, whilst not necessarily opposed to the proposed development, Endeavour Energy does have concerns and observations regarding the dust emissions from the site.

Although Endeavour Energy's Newnes Junction Switching Station is not a 'sensitive receptor' in the traditional sense of being a habitable/residential use, the electrical equipment/operation of the site would be affected by excessive/cumulative dust emissions. In particular the Newnes Junction Switching Station is an 'outdoor' design and whilst the most sensitive protection, automation and control equipment is located in switching station control building, the equipment in the open yard including switches, circuit breakers etc. should not be subject to excessive dust emissions. From Endeavour Energy's perspective it is imperative that the appropriate air quality management measures are implemented and adhered to [enforced by Council and/or NSW Environment Protection Authority (EPA)?] in order to minimise any impact on the Newnes Junction Switching Station.

Subject to the resolution of the foregoing and the following recommendations and comments, Endeavour Energy has no objection to the Development Application:-

- **Earthing**

The construction of any building or structure (including fencing, signage, flag poles, hoardings etc.) whether temporary or permanent that is connected to or in close proximity to Endeavour Energy's electrical network is required to comply with Australian/New Zealand Standard AS/NZS 3000:2018 'Electrical installations' as updated from time to time. This Standard sets out requirements for the design, construction and verification of electrical installations, including ensuring there is adequate connection to the earth. Inadequate connection to the earth to allow a leaking/fault current to flow into the grounding system and be properly dissipated places persons, equipment connected to the network and the electricity network itself at risk from electric shock, fire and physical injury.

- ***Vegetation Management***

The planting of large trees in the vicinity of electricity infrastructure is not supported by Endeavour Energy. Suitable planting needs to be undertaken in proximity of electricity infrastructure. Only low growing shrubs not exceeding 3.0 metres in height, ground covers and smaller shrubs, with non-invasive root systems are the best plants to use. Larger trees should be planted well away from electricity infrastructure (at least the same distance from overhead power lines as their potential full grown height) and even with underground cables, be installed with a root barrier around the root ball of the plant. Landscaping that interferes with electricity infrastructure may become a potential safety risk, cause of bush fire, restrict access, reduce light levels from streetlights or result in the interruption of supply. Such landscaping may be subject to Endeavour Energy's Vegetation Management program and/or the provisions of the *Electricity Supply Act 1995* (NSW) Section 48 'Interference with electricity works by trees' by which under certain circumstances the cost of carrying out such work may be recovered.

- ***Dial Before You Dig***

Before commencing any underground activity the applicant is required to obtain advice from the ***Dial Before You Dig 1100*** service in accordance with the requirements of the *Electricity Supply Act 1995* (NSW) and associated Regulations. This should be obtained by the applicant not only to identify the location of any underground electrical and other utility infrastructure across the site, but also to identify them as a hazard and to properly assess the risk.

- ***Public Safety***

Workers involved in work near electricity infrastructure run the risk of receiving an electric shock and causing substantial damage to plant and equipment. Endeavour Energy's public safety training resources, were developed to help general public/ workers to understand why you may be at risk and what you can do to work safely. The public safety training resources are available via Endeavour Energy's website via the following link:

<http://www.endeavourenergy.com.au/wps/wcm/connect/ee/nsw/nsw+homepage/communitynav/safety/safety+brochures> .

- ***Emergency Contact***

In case of an emergency relating to Endeavour Energy's electrical network, the applicant should note the Emergencies Telephone is 131 003 which can be contacted 24 hours/7 days.

CENTRAL TABLELANDS LOCAL LAND SERVICES (PREVIOUSLY HAWKESBURY-NEPEAN CATCHMENT)

No response received.

COUNCIL'S ENGINEERS

I refer to the abovementioned Development Application in regards to your referral and provide the following comments:

The development involves significant heavy vehicle movements over an extended period of time. This will impact on the required maintenance of the road and the safety of other road users. If the development were to be approved, significant measures would be required to mitigate these impacts.

It is recommended that the following conditions be placed on the development consent:

- Sandham Road, from the Lithgow Council / Blue Mountains Council boundary to the quarry entrance, is to be upgraded to a rural minor road standard as defined in Council's 'Guidelines for Civil Engineering Design and Construction for Development'. This includes the following requirements:
 - 8.0m carriageway width
 - 1.0m wide sealed shoulders
 - An approved sealed pavement
- A Construction Certificate must be obtained prior to the commencement of any Civil Works.

- All engineering works are to be to the standard specified in Council's "Guidelines for Civil Engineering Design and Construction for Development". This document is available on Council's website or upon request from Council's administration desk.
- That a Geotechnical Report be provided for all proposed roads, including subgrade design prior to a Construction Certificate being issued. Geotechnical compaction tests and visual deflection tests are to be undertaken and to be approved by Council prior to the application of seal. Such tests are to be included with the Construction Certificate Engineering Drawings.
- A site investigation is to be performed which is to include logging of test holes to a depth not less than one metre below design subgrade levels (unless rock is encountered). Soil tests shall be taken at the design depth and samples taken for CBR testing in accordance with Australian Standard 1289. The design California Bearing Ratio (CBR) shall be selected following a careful assessment of the materials encountered in the site investigation and the variability of subgrade moisture and density conditions likely in service. The design CBR value should assume poor drainage and shall be determined from soaked CBR. A copy of the site investigation, including test results, is to be included with the Engineering Drawings. Where the design subgrade CBR is below 3, the subgrade shall be chemically stabilised to a minimum depth of 150mm, and the pavement design based on a CBR of 3.
- The road crossfall must not exceed a maximum of 3% at any point.
- All batters must not exceed a maximum gradient of 1:5.
- The road grade must not exceed a maximum of 12% at any point. All internal roads shall have a minimum of 150mm (subject to testing) of DGB-20 road base applied and compacted providing a smooth transitional surface. The road surface is to be constructed to an 8m wide carriageway formation within a 15m wide minimum road reserve (minimum).
- A fully certified traffic control plan and road works signage will be required where machinery may obstruct traffic on any Public Road whilst construction work is being undertaken. A traffic control plan and certification of fully qualified contractors/persons will be required to be submitted to Council prior to any work commencing on the shoulder of any Public Road. Failure to comply may result in Work Cover Intervention and may also include Council stopping all work immediately until such time the developer complies with suitable traffic management procedures.
- A maintenance bond of 5% of final construction costs shall be paid to Council upon final inspection and approval of all civil works. The value of the maintenance bond shall be approved by Council after witnessing a certified copy of the contract documentation showing all civil construction costs for the subdivision. The maintenance period will start from the date of final inspection for a period of 12 months. At the conclusion of the 12 month period a final inspection is to be undertaken by Council at the request of the developer to determine if any defects have arisen during this time. All deficiencies are to be rectified by the developer, should outstanding works remain Lithgow City Council reserves the right to expend bond monies on rectification works.
- Each layer of pavement shall be tested for compaction and deflection as detailed below. The Director of Operations or his delegate must approve each layer prior to the placing and compaction of subsequent layers.
 - (a) Compaction Testing:

The subgrade, and all pavement layers, shall be density tested in-situ at the start and finish of the work (within the first/last five metres), and thereafter at intervals of no more than 50 metres, or as indicated by Council's Development Engineer. A minimum of two tests will be required for road pavements less than 50 metres in length. At cul-de-sacs, additional testing will be required at the turning head. The test sites selected should be representative of the likely minimum pavement compaction levels achieved. Density testing must be undertaken by an authorised representative of a laboratory registered by the National Association of Testing Authorities (NATA). Density testing may be conducted using either the sand replacement test, nuclear gauge, or other NATA approved method.

Where a nuclear gauge in direct transmission mode is used to determine pavement density, the test method shall comply with RTA Test Method T173. Results of density testing shall be forwarded directly to Council for approval. No pavement layer shall be covered by a subsequent layer until the results of the density testing have been delivered to and approved by Council's Development Engineer. Table 1 below sets out the minimum compaction requirement for each pavement layer.

Layer	Compaction Requirement	Standard
Subgrade	98% standard maximum dry density California Bearing Ratio (CBR) test	AS 1289.E1.1 AS 1289.F1.1
Sub-Base	100% standard maximum dry density	AS 1289.E1.1
Base	100% standard maximum dry density <ul style="list-style-type: none"> • <i>Unbound Materials</i> • <i>Cemented Materials</i> Density in place test California Bearing Ratio (CBR) test	AS 1289.E2.1 AS 1289.E3.1 AS 1289.E3.1 AS 1289.F1.1

Laboratory determination of maximum dry density for pavement materials which have been modified with cement must be undertaken within 4 hours of the cement being added to the material. Materials tested outside this time will be subject to an adjustment to correctly determine the maximum dry density of the sample. For either natural or modified material, the laboratory determination of maximum dry density shall be undertaken at a frequency of no less than one determination for each days production of material.

(b) Deflection Testing:

All pavement layers must be proof-rolled, and approved by Council's Development Engineer prior to the placement of subsequent pavement layers.

The proof-rolling will be conducted using either:

- (i) a roller having a load intensity of seven (7) tonnes per metre width of roller.
- (ii) a tandem axle rigid vehicle, having a maximum load of 15 tonnes per axle group (8 tyres), 12 tonnes per axle group (6 tyres), or 10 tonnes per axle group (4 tyres). Single axle vehicles should have maximum loads of 8.5 tonnes (dual tyres), or 5.4 tonnes (single tyres).

Any movement of the pavement layer under loading will be deemed a failure.

Although not a subdivision requirement at this stage, Council strongly encourages Developers to specify in their contracts the use of Benkelman Beam tests to test for any deflection in the pavement layers, and as a means of quality assurance.

(c) Final Road Profile:

The mean construction tolerance on pavement surface crossfalls should be within $\pm 5\%$ of the design crossfall. The maximum allowable construction tolerance is $\pm 5\%$, and the maximum standard deviation of crossfalls is 5%. The vertical alignment should not deviate by more than 25mm from the value shown on the drawings.

- A "Work-As-Executed" (WAE) plan is required to be prepared by a Registered Surveyor or professional engineer and forwarded to Council prior to the final inspection. The WAE is to include, as a minimum:
 - certification that all works have been completed generally in accordance with the approved plans and specification,
 - any departure from the approved plans,
 - any additional/deleted work,
 - the location of conduits, subsoil lines, stub mains and inter-allotment drainage lines,
 - pipeline long sections showing the constructed invert levels of each pipe at each pit and pipe dimensions,
 - details of overland flow provisions,
 - site regrading areas by new contours, and
 - all other details which have a bearing on the extent of works and their acceptance by Council

- All Engineering Drawings submitted to Council for approval are to have a title block showing the following:
 - Applicant's Name,
 - Consultant's Name, Address, Phone No. and Contact Name,
 - Drawing Number, Sheet Number and Amendment Number,
 - Schedule showing Date and Nature of Amendments,
 - Site Address, including Lot and Deposited Plan (DP) Number,
 - Council's File Reference,
 - Stage Number,
 - Drawing Title,
 - Scale with Scale Bar, and
 - Signature of Authorised Person
- The applicant shall submit a soil erosion and sedimentation control plan with the engineering design for Council approval. Such shall address both short and long term management of all disturbed areas and specified methods and structures to be employed to minimise any impact.
- The applicant is to comply with all reasonable requests from Council with regard to any complaints received during construction works.

DEPARTMENT OF PLANNING – RESOURCE AND ENERGY

The Resources Regulator Compliance Operations section has reviewed the Bell Quarry Rehabilitation Project Environmental Impact Statement.

It is noted that there is no Mining Title covering the Bell Quarry and that no Mining Title is required as materials quarried at this site were not prescribed minerals under the Mining Act 1992 / Mining Regulation 2016. There is an Exploration Title covering the site (Exploration Licence 7674) which remains in force (renewal pending) but is not expected to affect the rehabilitation program.

As such, the Resources Regulator, Compliance Operations section has no jurisdiction over the Bell Quarry site and no comments to provide on the Bell Quarry Rehabilitation project.

DEPARTMENT OF PLANNING -INDUSTRY & ENVIRONMENT

Thank you for your emails dated 13 September 2019 and 14 November 2019, which forwarded copies of submissions received during the period of public exhibition for the above proposal in accordance with section a.16(9) of the Environmental Planning and Assessment Act 1979.

The Department of Planning, Industry and Environment (the Department) notes the Western Regional Planning Panel (WRPP) is the determining authority for the proposal, in accordance with Schedule 7 of *State Environmental Planning Policy (State and Regional Development) 2011*.

The Department has reviewed the submissions received by Lithgow City Council (Council) to date and understands the site adjoins the Blue Mountains National Park, which forms part of the Greater Blue Mountains World Heritage Area (GBMWH).

The Department notes the concerns raised by the Environment Protection Authority and the Department's Biodiversity and Conservation Division regarding the risk of surface and groundwater impacts to the GBMWH. The Roads and Maritime Services has also requested additional information regarding the haulage routes/methods which would be used to transport fill material to the site.

A significant number of submissions were also received from Trish Doyle MP, Andrew Gee MP, Blue Mountains City Council, Hawkesbury City Council, local community groups and the general public during the exhibition period. These submissions raised a number of concerns in relation to the proposal including, but not limited to:

- potential impacts to the GBMWH and adjacent swampland areas, including the risks associated with the discharge of surface and groundwater to these areas
- the importation and use of contaminated material
- potential impacts to native flora and fauna

- increased bushfire risk associated with the removal of existing quarry voids
- potential social and economic impacts
- potential noise, air quality and traffic impacts upon surrounding sensitive receivers

The Department recommends Council and the WRPP ensure these concerns are adequately and appropriately addressed before determining the subject development application. It would be appreciated if a copy of the WRPP's determination could be forwarded to the Department for our records. Should you have any enquiries, please contact Patrick Copas on (02) 9274 6273 or via email at patrick.copas@planning.nsw.gov.au.

OFFICE OF ENVIRONMENT AND HERITAGE

Thank you for your Development Application referral received on the 10 January 2019 relating to DA294/18 – Lot 23 DP 751631 – Newnes Forest Road CLARENCE NSW 2790.

A preliminary review has indicated that the subject site is neither within the curtilage, nor in the vicinity, of any State Heritage Register (SHR) items, or known European historical archaeology. Consequently, no specific comments are provided as no impacts to SHR items have been identified.

Please note the North Western Regional Operations Division of the Office of Environment and Heritage may provide separate comment in relation to Aboriginal cultural heritage.

The public interest

The proposed development has been the subject to a substantial number of submissions of objection by government agencies, local councils, special interest and resident groups and individuals in terms of the adverse environmental and amenity impacts arising from the importation of 1.2 million cubic metres (2.2 million tonnes) of VENM and ENM fill to the former Bell Quarry.

5.2 POLICY IMPLICATIONS (OTHER THAN DCP's)

Policy 7.5 Notification of Development Applications

This Policy does not apply to development applications that are required to be notified under specific legislation. At the date of commencement of this policy this included notification procedures for the following types of development defined under the Environmental Planning and Assessment Act, 1979 and its regulations, including:-

- Designated Development;
- Advertised Development including Integrated Development

The development is defined as being Designated Development and Integrated under the Environmental Planning and Assessment Regulations 2000 that states:-

78 Information to be contained in notice for designated development

"(2) The period referred to under subclause (1) (e) must include the period of 30 days commencing on the day after which notice of the development application is first published in a newspaper under clause 80."

The application is for 'Designated' and 'Integrated Development' therefore the proposal was notified to surrounding landowners and placed on display for a period of 30 days to coincide with the required newspaper advertising period and therefore complies with Council's Policy.

Policy 7.1 Filling and Levelling of Land

Council's Policy states:-

"Unless otherwise provided by an Environmental Planning Instrument or Development Control Plan, a development application is required in the following circumstances:-

- 1. Where land is subject to inundation by floodwaters, or*
- 2. Where excavation or the depth of fill exceeds 900mm.*

Separate development applications are not required where the cut and/or fill is identified in a development application for a structure on the land or in relation to a subdivision where such works are identified."

A development application is submitted for the development as it involves proposes works that require more than 900mm of fill.

Policy 7.10 Voluntary Planning Agreements

The Applicant has not proposed a Voluntary Planning Agreement (VPA) as part of the development application.

5.3 FINANCIAL IMPLICATIONS

Planning Agreements

There are none proposed.

5.4 LEGAL IMPLICATIONS

The development has been assessed in accordance with the Environmental Planning & Assessment Act 1979 and other planning instruments as discussed above.

6. DISCUSSION AND CONCLUSIONS

The Bells Quarry was used for sand mining from 1967 to early 2000's with rehabilitation of the site partially completed in 2014 in accordance with conditions of consent embodied in DA108/94. The site retains three voids partially filled with water which were to be available as a static water source for aerial firefighting purposes by the RFS.

The proposed development seeks approval for the dewatering of the three voids over Blue Mountains National Park land adjoining the subject site to the east and the importation of 1.2 million cubic metres of VENM and ENM fill over 15 years to return the site to its original topography and the progressively revegetate the whole of the site.

The primary concerns from an environmental perspective relate to potential adverse impacts on groundwater quality on natural environments within the Blue Mountains National Park (BMNP), the Greater Blue Mountains World Heritage Area and the Wollangambe and Colo Rivers and the potential for erosion of critical ecosystems from the dewatering of the quarry voids over the BMNP land as detailed in the EPA and other submissions. The EPA has recommended refusal of the Designated Development Application

Another primary concern relates to potential adverse amenity impacts on local residents arising from the use of Sandham Road as the sole means of access to the site for trucks (up to 42.5 tonnes truck and trailer) with an average of 74 truck movements per day.

Concerns include noise disturbance, dust management and public safety issues in respect to potential conflicts between truck movements and school bus run and local traffic given narrow carriageway and largely unsealed nature of Sandham Road. The recommendations of Councils Engineer for the widening and sealing of Sandham Road would address local concerns as to dust and public safety in the event of the approval of the development embodying the Council Engineer recommendations.

Other amenity and traffic concerns were raised by local councils, communities and individuals responsible for or living on the Bells Line of Road and Great Western Highway.

However, given that the site adjoins the Blue Mountains National Park, which forms part of the Greater Blue Mountains World Heritage Area, over which the dewatering process for the former quarry will flow it is appropriate for the environmental issues raised by the Environmental Protection Authority be afforded determinative weight in respect to Designated Development Application 294/18 and that the application be refused.

7. ATTACHMENTS

- Attachment 1 – GHD Report on submissions, dated June 2019
- Attachment 2 – GHD letter dated 11 October 2019 additional response to submissions
- Attachment 3 – GHD letter dated 1 November 2019 response to additional EPA comments
- Attachment 4 – GHD letter dated 14 November 2019 response to RMS submissions
- Attachment 5 – EPA submission dated 20 March 2019
- Attachment 6 – EPA submission dated 2 September 2019
- Attachment 7 – EPA submission dated 15 October 2019
- Attachment 8 – EPA submission dated 13 January 2020
- Attachment 9 – Department of Industry- Crown Lands and Water letter dated 18 March 2019 granting owners consent
- Attachment 10 – Department of Planning and Environment letter dated 2 October 2019 and National Parks and Wildlife Service letter of 14 October 2019
- Attachment 11 – Secretary's Environmental Assessment Requirements (SEARS 1105)

8. RECOMMENDATION

THAT Designated Development Application DA294/18 be refused for the reasons detailed in Schedule A.

Schedule A: Reasons for refusal DA294/18

- 1 The Environment Protection Authority has concluded that the SEARS (1105) requirements have not been satisfied and that the proposal will have unacceptable environmental impacts on the adjoining Blue Mountains National Park and the Wollangambe and Colo River systems.
- 2 The Environment Protection Authority considers, based on its' submissions to Council that the absence of a referral of the Designated Development Application to the Commonwealth, the proposal does not satisfy the provisions of the *Environmental Protection and Biodiversity Conservation Act 1999* for the reason that:
 - (i) The EIS identifies a groundwater dependent ecosystem, being the prickly pear-sedge wet heath swamp which is listed as an endangered ecological community under the Biodiversity Conservation Act 2016(NSW; formerly the Threatened Species Conservation Act 1997), as potentially impacted by the Project.
 - (ii) OEH mapping further identifies a groundwater dependent ecosystem , being the temperate highland peat swamp on sandstone which is listed as an endangered ecological community under the Environment Protection and Biodiversity Conservation Act 1999 (Commonwealth), as potentially impacted by the Project.
- 3 The Environment Protection Authority considers, based on its submissions to Council that the proposal will have unacceptable environmental impacts on the Greater Blue Mountains World Heritage Area arising from the following:
 - (i) it is likely that some of the soil leachates will adversely alter the natural characteristics and ionic balance of water draining into the Greater Blue Mountains World Heritage Area and the Colo River, Greater Blue Mountains World Heritage Area (GBMWhA).
 - (ii) proposed discharges into a tributary of the Wollangambe River were identified that would impact on a swamp located on the tributary approximately 200m downstream of where the discharge is proposed. The tributary (and its connected swamp) is proposed to receive pumped out water from the quarry pits, any leachate from the material that is emplaced in the pits and overland flow once the area is rehabilitated. The tributary and swamp are in the GBMWhA. There is currently no licensed discharge location for the site.
 - (iii) The Biodiversity Impact Assessment identified the *Prickly Tea-tree – sedge wet heath* swamp below the quarry discharge location as a Newnes Plateau Shrub Swamp (EEC under the TSC Act) and Temperate Highland Peat Swamps on Sandstone (EEC under the EPBC Act). As the project potentially impacts on the WHA and EPBC listed THPSS, the proposal should have been forwarded to the Commonwealth for assessment.
 - (iv) The existence of the swamp in the headwaters of the drainage line downstream of Bell Quarry strongly suggests that there is a groundwater source which helps support/maintain the swamp in this location.
 - (v) The Water Resources Assessment Section of the EIS has not clearly defined the downstream the likely pathways (e.g. disruption of groundwater connections, reduction in groundwater quality) by which the project might impact on the swamp; and it does not consider issues surrounding water discharge rates or their effect on geomorphic stability for the swamp. It has therefore not appropriately assessed the risk the project will have on the THPS swamp.

- (vi) The dewatering of the quarry voids is likely to be significant potential to destabilise sediments in the downstream swamp. If an erosional nick-point is established in the swamp, it could lead to the loss of the swamp in its entirety through erosion and gullyng.
- 4 The Environment Protection Authority will not be providing a Environment Protection License for the discharging of water under Clause 43(d) of the *Protection of the Environment Operations Act 1997 (POEO Act)* nor their Integrated Development Approval required for the development under Division 4.8 of the EP&A Act for the reasons detailed in (3) above recognising that the previous licensed discharge was surrendered on 24 October 2014.
- 5 The proposed development will not be consistent with the objectives of the E3 Environmental Management zone under the Lithgow LEP 2014 due to the adverse environmental impacts to the GBMWhA arising from the dewatering of the former quarry voids and importation of fill to the site as detailed by the EPA in its submissions, contrary to s4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979.
- 6 The proposed development fails to satisfy the requirements of Clause 7.1 Earthworks (1) of the Lithgow LEP 2014 in that the proposal will have a detrimental impact on environmental functions and processes, contrary to s4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979.
- 7 The proposed development fails to satisfy the provisions under Clause 7.1 Earthworks (3) (a), (c), (d), (e) and (g) of the Lithgow LEP 2014 given the adverse environmental impacts on the GBMWhA and the Wollangambe and Colo Rivers arising from the dewatering of the site and the importation of fill to the site, contrary to s4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979.
- 8 The proposed development fails to satisfy the requirements of Clause 7.4 Terrestrial Biodiversity of the Lithgow LEP 2014 given the comprehensive assessment of likely environmental impacts of the proposed development detailed by the EPA in its submissions, contrary to 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979.
- 9 The proposed development fails to satisfy the requirements under Clause 7.7 Sensitive Lands of the Lithgow LEP 2014 given the comprehensive assessment of likely environmental impacts of the proposed development detailed by the EPA in its submissions, contrary to s4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979.
- 10 The proposed development will have unacceptable environmental and amenity impacts arising from the activity associated with the importation of fill to the former quarry site contrary to s4.15(1)(b) of the Environmental Planning and Assessment Act 1979.
- 11 The scope of the likely adverse environmental impacts on the GBMWhA and Wollangambe and Colo Rivers arising from the proposed development indicates that the site is not suitable for the proposed use, contrary to s4.15(1)(c) of the Environmental Planning and Assessment Act 1979.
- 12 The notification of the Designated Development application attracted submissions from relevant Government agencies, local government, special interest groups and individuals. A total of 470 submissions of objection, excluding duplicates, were received by Council including 321 individual submissions and 149 form letters, expressing concerns in relation to:
- Adverse environmental impacts on Greater Blue Mountains World Heritage Area;
 - Impacts of the importation of the fill on groundwater;

- Impacts of dewatering on Blue Mountains National Park;
- Potential contamination of Wollongambe and Colo Rivers, including domestic water supply from Colo River;
- Spraying of water to mitigate dust and washdown of trucks will flow into Wollongambe River, part of the Hawkesbury-Nepean Catchment;
- Loss of water source in quarry will increase bushfire risk for local communities and restrict RFS aircraft capabilities to fight local fires;
- Traffic impacts on Bells Line of Road and Great Western Highway, in particular in Mt Victoria from additional heavy truck movements;
- Existing condition and width of Sandham Road unable to safely accommodate heavy truck movements, particularly in respect to the school bus, pedestrians, cyclists and local resident vehicle movements and needs to be upgraded if the proposal is approved;
- Intersection of Sandham Road and Bells Line of Road has poor sight lines and needs to be improved;
- Potential for queuing of trucks in Sandham Road and Bells Line of Road prior to 7.00am opening of facility;
- Amenity impacts on Sandham Road residences with dust, noise and public safety; and

In the circumstances it is considered that approval of the designated development application would not be in the public interest under s4.15(1)(e) of the Environmental Planning and Assessment Act 1979.