

DETERMINATION AND STATEMENT OF REASONS

NORTHERN REGIONAL PLANNING PANEL

DATE OF DETERMINATION	Thursday, 21 November 2019
PANEL MEMBERS	Pam Westing (Acting Chair), Stephen Gow and John Griffin
APOLOGIES	Garry West
DECLARATIONS OF INTEREST	Cr Danielle Mulholland and Cr John Burley declared conflicts of interest as Kyogle Council purchases significant product from the quarry.

Public meeting held at Kyogle Seniors Centre on 21 November 2019, opened at 2:30 p.m. and closed at 3:58 p.m.

MATTER DETERMINED

2019NTH006 – Kyogle – 2011-34 at Edenville Road, Cedar Point – modify haulage route (as described in Schedule 1)

PANEL CONSIDERATION AND DECISION

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

Development application

The panel determined to approve the development application pursuant to section 4.55 of the *Environmental Planning and Assessment Act 1979*.

The decision was Unanimous.

REASONS FOR THE DECISION

- The Panel was satisfied that the proposed modification:
 - o is substantially the same development as the development for which consent was originally granted and that consent has not otherwise been modified;
 - o has been notified
 - o submissions have been considered
 - o that the matter has been assessed having regard to s4.15(1) of the EP&A Act 1979.
- The Council assessment report considered and addressed relevant issues, including road capacity and safety, the condition of Wadsworth Bridge, noise impacts and residential amenity, and the public interest.
- The proposal is an interim solution until Cedar Point Bridge is upgraded, at which time the use of the alternative haul route will cease. A condition further limits the use of the modified haul route to three years maximum.
- Safety issues have been considered and safety improvements to the haul route are to be determined by way of Traffic Committee consideration prior to use of the modified route commencing.
- Conditions limiting haulage times will minimise potential conflict with school traffic.
- Maximum numbers of trucks permissible per week and reduction in current use of the haul route by empty trucks will minimise noise impacts and potential traffic conflicts with residents and other road users.

CONDITIONS

The development application was approved subject to the conditions in the council assessment report with the following amendments.

- Condition 37 - haulage hours along Omagh Road and Anzac Drive from Monday to Friday are to be between the hours of 7AM - 6PM with the exception of 8-9am and 3-4pm during school periods, when no haulage is to occur.
- Condition 16.1 - minor clarification of requirements for the drivers' Code of Conduct.
- Condition 71.1 amended to limit the operation of the modification to a maximum of three years.
- Condition 74 amended to update references to the relevant provisions of the EP&A Act.
- New condition inserted to require consideration of alterations to speed limits and centre line markings by the local Traffic Committee and implementation of any required improvements prior to the use of the modified haul route commencing.


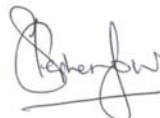

The approved set of conditions is attached as Schedule 2.

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the panel considered written submissions made during public exhibition and heard from all those wishing to address the panel. The panel notes that issues of concern included:

- Road safety and sightlines – considering road alignment, private driveways and intersection suitability
- Design and quality of Omagh Road and bridges along this roadway to support the proposed traffic movements and truck loads
- Compatibility with all road users – commuters, buses, school children, pedestrians, cyclists, farmers and cattle
- Enforcement of any revised Traffic Management Plan
- Impacts on the CBD
- Rural amenity
- Public interest and benefit

The panel considers that concerns raised by the community have been adequately addressed in the assessment report and that no new issues requiring assessment were raised during the public meeting. The panel notes that in addressing these issues a Noise Impact Assessment, Capacity Assessment of Wadsworth Bridge, Condition Assessment of Omagh Road and traffic counts have been carried out. Appropriate conditions have been imposed addressing road safety and capacity, compatibility with other road users, particularly school traffic, reducing empty truck numbers on the route, and limiting the use of the additional haul route to three years.

PANEL MEMBERS	
 Pamela Westing (Chair)	 Stephen Gow
 John Griffin	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	2019NTH006 – Kyogle – 2011-34
2	PROPOSED DEVELOPMENT	The application seeks to modify Condition 71 of the existing consent to allow for an additional haulage route for material extracted from the quarry. The modified haul route proposed in this application would incorporate Omagh Road (Cedar Point and Geneva) and Anzac Drive (Geneva and Kyogle).
3	STREET ADDRESS	Edenville Road, Cedar Point
4	APPLICANT/OWNER	Stephen Fletcher and Associates Pty Ltd / Graham Quarries Pty Ltd
5	TYPE OF REGIONAL DEVELOPMENT	Section 4.55(2) Modification Application
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> • Environmental planning instruments: <ul style="list-style-type: none"> ○ State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007 ○ Kyogle Local Environmental Plan 2012 • Draft environmental planning instruments: Nil • Development control plans: <ul style="list-style-type: none"> ○ Kyogle Development Control Plan 2014 • Planning agreements: Nil • Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>: Nil • Coastal zone management plan: Nil • The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality • The suitability of the site for the development • Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations • The public interest, including the principles of ecologically sustainable development
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> • Council assessment report: 6 November 2019 • Written submissions during public exhibition: 33 • Verbal submissions at the public meeting: <ul style="list-style-type: none"> ○ In support – Nil ○ In objection – Cheryl Beacroft, Bill Gale, Allan Marsh, Joe McErlean (tabled submission) ○ Council assessment officer - Lachlan Black, Luke Blandford (consultant), Matt Plain (consultant) ○ On behalf of the applicant – Stephen Fletcher, Rodney Graham (tabled submission)
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • Site inspection: 21 November 2019 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Pam Westing (Acting Chair), Stephen Gow and John Griffin ○ <u>Council assessment staff</u>: Lachlan Black, Luke Blandford (consultant), Matt Plain (consultant), Graham Kennett (General Manager)

9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the council assessment report

SCHEDULE 2					
1.	<p>The development shall be in accordance with development application number 2011/0034 submitted on October 5, 2010 and in accordance with the following:</p> <table><tr><td>Environmental Impact Statement dated September 2010, as prepared by Greg Alderson & Associates on behalf of R. & K. Graham.</td></tr><tr><td>Addendum Report dated 22 March, 2011 prepared by Greg Alderson & Associates</td></tr><tr><td>Report titled Application to Modify Development Application dated 11 December 2018 as prepared by Stephen Fletcher & Associates.</td></tr><tr><td>Traffic Impact Assessment dated 24 October 2018, prepared by RCS Group.</td></tr></table> <p>except where otherwise provided by the conditions of this development consent.</p>	Environmental Impact Statement dated September 2010, as prepared by Greg Alderson & Associates on behalf of R. & K. Graham.	Addendum Report dated 22 March, 2011 prepared by Greg Alderson & Associates	Report titled Application to Modify Development Application dated 11 December 2018 as prepared by Stephen Fletcher & Associates.	Traffic Impact Assessment dated 24 October 2018, prepared by RCS Group.
Environmental Impact Statement dated September 2010, as prepared by Greg Alderson & Associates on behalf of R. & K. Graham.					
Addendum Report dated 22 March, 2011 prepared by Greg Alderson & Associates					
Report titled Application to Modify Development Application dated 11 December 2018 as prepared by Stephen Fletcher & Associates.					
Traffic Impact Assessment dated 24 October 2018, prepared by RCS Group.					
2.	<p>In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent prevail.</p>				
3.	<p>This development consent is limited to a period of five (5) years in accordance with Section 95(1) of the <i>Environmental Planning and Assessment Act 1979</i>. Following the expiration of this period the consent will lapse unless work relating to the development is physically commenced before the date on which the consent would otherwise lapse.</p>				
4.	<p>Upon receiving a written request for acquisition from the owner of land listed in Table 1, the Applicant shall acquire the land in accordance with the procedures set out in Appendix A.</p> <p><i>Table 1: Land subject to acquisition upon request</i></p> <table><tr><td>Lot 1 DP559560 - Lynch</td><td>Lot 11 DP582916 - Stuart</td></tr></table> <p><i>Table 2: Land subject to acquisition or relocation of a dwelling within the allotment upon request</i></p> <table><tr><td>Lot 13 Section B DP5080 - Canty</td></tr></table> <p>However, the Applicant is not required to acquire the land listed in Tables 1 and 2 if:</p> <ul style="list-style-type: none">• The Applicant has a current written negotiated agreement with the landowners in regard to the management of impacts associated with quarry operational activities.	Lot 1 DP559560 - Lynch	Lot 11 DP582916 - Stuart	Lot 13 Section B DP5080 - Canty	
Lot 1 DP559560 - Lynch	Lot 11 DP582916 - Stuart				
Lot 13 Section B DP5080 - Canty					
5.	<p>That the subject parcels on which the extractive industry are to be undertaken, being Lot 12 DP582916 and Lot 1 DP366036 are to be consolidated into one allotment prior to any extracted material being transported from the site.</p>				
6.	<p>Lot 2 DP232453 is to be retained in the same ownership as the proposed quarry site and access being Lot 12 DP 582916 and Lot 1 DP 366036 whilst the quarry is operational.</p>				

7. This consent is limited to the extraction, processing and haulage of materials from the subject site. It does not include any approval to import or haul sand or concrete/waste products for blending or recycling by back loading or any other means.
8. Where this development consent envisages the erection of a building or buildings (including the installation of a 6 metre high barrier wall), no temporary buildings shall be placed on the site and no site excavation, filling, removal of trees or other site preparation shall be implemented prior to the issue of a Construction Certificate concerning these buildings or structures.
9. Extraction of material from the Quarry is limited to a maximum total extraction of 2.021 million cubic metres and 47,000 cubic metres in any calendar year.
10. All crushing and screening of extracted material is to be undertaken within a suitable location of the work area which is to have appropriate noise bunds installed prior to the commencement of these uses.
11. Vegetation screening must be planted and maintained to provide a dense canopy between the development (including buildings, driveways and vehicle bays, stockpiles, plant, drill rigs and barriers) and any public place. In order to obtain the desired density, landscaping must extend from the ridgeline of the development site to at least 15 metres below the ridgeline. All plantings shall:
 - (a) be derived from seed or rootstock taken from provenance within the boundaries of the development site, or the vicinity of the site;
 - (b) be of a species type and distribution that replicates the vegetation communities mapped by LandPartners in the plan entitled *Vegetation Map*, Drawing Number LM100006-PL3A, 22 June 2010;
 - (c) be spaced and located to maximise screening whilst mimicking natural vegetation communities; and
 - (d) be functional and safe.

The plantings must be undertaken prior to the commencement of quarry operations and shall be undertaken in accordance with a plan prepared by a suitably qualified practitioner to an auditable standard and endorsed by the consent authority detailing:

- (a) the use of seed or rootstock derived from provenance taken within the boundaries of the development site, or the vicinity of the site;
- (b) species type and distribution;
- (c) specifications for soil preparation, weed control, watering, fertilising and general maintenance during establishment;
- (d) provisions to preclude the impacts of farming activities and provide for sustainable vegetation communities; and
- (e) spacings and locations to maximise environmental benefits and be functional and safe.

The plan must be complied with at all times.

12. Compensatory plantings of the open woodland (Swamp Box, Broad-leaved Apple, Pink Bloodwood) must be undertaken prior to the commencement of any land clearing operations. The plantings shall target the floodplain in the northeast of the site in order to capture similar ecological characteristics to the area affected by the development, and shall be subject to a detailed rehabilitation plan that addresses, but is not necessarily limited to:
 - (a) the use of seed or rootstock derived from provenance taken within the boundaries of the development site, or the vicinity of the site;
 - (b) measures to provide a 1:1 offset ratio at maturity at a minimum;
 - (c) species type and distribution to replicate the endangered ecological community "Subtropical coastal floodplain forest of the NSW North Coast bioregion;"
 - (d) specifications for soil preparation, weed control, watering, fertilising and general maintenance during establishment;

- (e) provisions to preclude the impacts of farming activities and provide for sustainable vegetation communities; and
- (f) spacings and locations to maximise environmental benefits and be functional and safe.

The plans/specifications must be prepared by a suitably qualified practitioner to an auditable standard and, subject to endorsement, must be complied with at all times.

13. Land clearing must be undertaken in stages, with each stage to be limited to the minimum necessary to quarry the cell the subject of the stage. No land clearing shall be undertaken outside six (6) months of the commencement of quarry operations in a new cell.

Note. For the purposes of this condition, each cell is as defined by the plan entitled *Figure 8: Quarry Plan of Management*, prepared by Greg Alderson and Associates Pty Ltd for Grahams Concrete.

14. The quarry operator must apply for and obtain a licence under the *Protection of the Environment and Operations Act 1997* prior to the commencement of any quarrying operations. Quarrying operations are to be undertaken in accordance with the licence conditions as required by the relevant NSW Government agency.

15. Prior to the commencement of any works a plan of management for Aboriginal cultural heritage on the land must be prepared by a suitably qualified practitioner in conjunction with the Local Aboriginal Land Council. The plan must ensure that the conservation of the Aboriginal place of heritage significance and its setting is facilitated by the development consent and shall address matters such as offsets for development from the scar trees. The plan is subject to the approval of the consent authority and must be complied with at all times.

The following practices are also to be implemented in the conduct of the quarry:-

- (a) That the proponent continue to consult with the Aboriginal stakeholders over potential impact mitigation activities and other social benefits that may result from the Project.
- (b) The culturally scarred trees be protected by means of the following management strategies:
 - a permanent fence to be constructed around the trees to prevent inadvertent damage during the course of the activities.
 - Staff and Contractors of the Proponent to be instructed as to the cultural significance of the trees and advised of the offence in accordance with provisions detailed in Section 86 of the NPW Act.
- (c) That staff and contractors be inducted prior to commencement of works, including:
 - an introduction to Aboriginal culture and tradition, including why evidence of Aboriginal occupation is important to Aboriginal people.
 - a summary of the requirements under New South Wales cultural heritage legislation.
 - a brief introduction on how to identify Aboriginal Objects; and
 - a review of procedures in the event that Aboriginal cultural heritage is identified during the course of undertaking the project.
- (d) It is recommended that if human remains are located at any stage during earthworks within the Project Area, all works must halt in the immediate area to prevent any further impacts to the remains. It is also recommended that in all dealings with Aboriginal human remains, the Proponent should use respectful language, bearing in mind that they are the remains of Aboriginal people rather than scientific specimens.
- (e) That if it is suspected that Aboriginal material has been uncovered as a result of development activities within the Project Area:
 - work in the surrounding area is to stop immediately.

- A temporary fence is to be erected around the site, with a buffer zone of at least 10 metres around the known edge of the site.
 - an appropriately qualified archaeological consultant is to be engaged to identify the material.
 - If the material is found to be of Aboriginal origin, the Aboriginal community is to be consulted in a manner as outlined in the OEH guidelines: *Aboriginal Cultural Heritage Consultation Requirements for Proponents* (2010).
- (f) That if Aboriginal cultural materials are uncovered as a result of development activities within the Project Area, they are to be registered as Sites in the Aboriginal Heritage Information Management System ('AHIMS') managed by the OEH. Any management outcomes for the site will be included in the information provided to the AHIMS.
- (g) That all effort must be taken to avoid any impacts on Aboriginal Cultural Heritage values at all stages during the development works. If impacts are unavoidable, mitigation measures should be negotiated between the Proponent, OEH and the Aboriginal Community.

QUARRY PRODUCTION AND OPERATION

16. An Operational Plan of Management is to be prepared for the approval of Council prior to commencement of extraction works on the site. The Operational Plan of Management is to include:-

- (a) projected date of an annual audit of quarry operations to be undertaken, including planting of vegetation, noise attenuation, monitoring and bunding or screening (including that surrounding the site office), details of volumetric surveys, discharges from sedimentation ponds, projected dates for blasting to be undertaken on site;
- (b) ground and surface hydrology and water quality management;
- (c) Soil and Water Management Plan;
- (d) Occupational Health and Safety and NSW Workcover matters and requirements to be implemented;
- (e) a detailed landscaping and revegetation plan (including noise mounds) to avoid any adverse impacts on the scenic amenity of the locality and vegetation regeneration on the site;
- (f) waste disposal, including that of disused plant and equipment from the site;
- (g) air quality management and monitoring;
- (h) Aboriginal archaeology procedures;
- (i) procedures on the receipt of complaints against operations and action to be taken in response to complaints;
- (j) truck movement and traffic/haulage management, including a code of conduct for drivers to adhere to that includes, but is not limited to, the prohibition of using compressed air brakes near houses close to haulage roads or access points, the prohibition of tailgating and the limiting of all trucks to within the posted weight limits and speed limits;
- (k) benchmarks for progressive reporting on staged rehabilitation, including provision and ongoing maintenance of landscaping and revegetation;
- (l) performance reviews of quarry operations, including soil and water management, compliance with *Protection of the Environment and Operations Act 1997* licence terms and conditions of consent (Non compliance may result in additional works to be carried out by others at full cost to the quarry operator to ensure compliance, or even the cessation of operations); and
- (m) measures to be incorporated into the operation of the quarry to reduce greenhouse gas emissions.

16.1. A revised truck movement and traffic/ haulage management plan including a Code of Conduct for drivers is to be prepared. The Code of Conduct is to include, but not be limited to:

- A map of the primary haulage routes highlighting critical locations.

- Safety initiatives for haulage through residential areas and/ or school zones including:
 - Limiting of all trucks using Omagh Road to speeds of 80km/h and 20km/h at Wadsworth Bridge approach or as otherwise signposted, whichever is the lesser. Trucks using Anzac Drive or Summerland Way are to adhere to the signposted speed limits.
 - Limiting the haulage of heavy vehicles to periods outside of school bus times.
- Procedures for communicating with other trucks and buses on the same road via UHF radio
- The prohibition of use of compressed air brakes near houses close to haulage roads or access points.
- The prohibition of tailgating.
- A complaint resolution and disciplinary procedure.

The haulage management plan must be submitted to and approved by Council prior to the commencement of the use of the proposed haulage route.

17. The proponent shall engage, at the proponent's cost, a registered surveyor to prepare and sign a plan of survey to delineate and peg accurately the proposed limit of disturbance/extraction as nominated in the Environmental Impact Statement and the Statement of Environmental Effects Carill's Quarry, dated 27/5/2010. This plan shall be completed and submitted to Council prior to the commencement of works, including any land clearing. The delineation pegs are to be monitored and protected for the duration of this consent. Any pegs removed during the operation shall be replaced by the registered surveyor and a new signed plan resubmitted indicating the placed peg and the date of that replacement.
18. Prior to the commencement of any quarry operations the proponent must submit to the consent authority a sub-surface assessment of geology and material properties undertaken by a suitably qualified practitioner.
19. Council must be notified in writing within seven (7) days of the commencement of the extractive industry the date on which the industry commenced.
20. Every twelve (12) months after the commencement of the extractive industry, the owner/operator shall submit to Council a volumetric survey report from a registered surveyor. The report shall indicate the extent of material extracted from the site and the extent of overburden stock piled on the site for rehabilitation. The report must be submitted to Council within thirty (30) days of this period passing.
21. No topsoil or overburden shall be sold or otherwise removed from the site.
22. All topsoil shall be progressively stripped from areas to be excavated and stockpiled separately. Stockpiles are to be located away from the general operation of the quarry in a location to assist in noise mitigation and be preserved for the future rehabilitation of the quarry. Topsoil that is stripped is to be stockpiled in a suitable location with appropriate sedimentation management practices.
23. All overburden extracted from the approved extraction area shall be stockpiled separately. Stockpiles are to be located away from the general operation of the quarry in a location to assist in noise mitigation and be preserved for the future rehabilitation of the quarry. Overburden stockpile are to be sited in a suitable location with appropriate sedimentation management practices.
24. All hazardous materials are to be appropriately stored so as to prevent environmental damage in case of spillage. Oils and lubricants must be stored in an impermeable bunded and roofed area with:

- (a) a holding capacity of 110% of the capacity of the largest container, or
- (b) a holding capacity equal to the capacity of the largest tank plus the volume that would be displaced by other tanks or structures within the bund area,

whichever is the greater volume, at a minimum. Re-fuelling areas shall be located upslope from sedimentation dams and shall be indicated in the plan of management. No waste fuels or oils or grease containers are to be disposed of on-site. All repairs and major services must be carried out at the respective depot for each machine.

25. All vehicles and machines used as part of the operation must comply with the *Protection of the Environment Operations Act 1997* and all regulations made under that Act and be fitted with properly maintained emission controls relevant to their date of manufacture.
26. The boundary of the quarry must be appropriately fenced along areas easily accessible in a manner to discourage unauthorized entry and maintained at all times to accord with NSW Work Cover specifications. Regenerated areas are to be permanently fenced to exclude stock from grazing in these areas and avoid damage to newly planted trees.
27. Annual audits shall be carried out of quarry operations against the approved Operational Plan of Management, inclusive of the Environmental, Noise, Soil and Water and Rehabilitation Management Plans and consent and licence conditions. The audit shall be undertaken by an independent, suitably qualified practitioner and shall identify areas of non-compliance and management responses to the same. An annual report of audit findings shall be submitted to Council prior to the 31st January following the date of this consent.

Where non-compliance is identified the proponent shall identify amelioration works to be implemented and shall undertake monthly monitoring until the amelioration measures have been completed and compliance demonstrated.

28. Industry and Investment or its successor must be provisioned with annual production data on the prescribed form at the end of each financial year. The data must detail the quantity and value of construction materials produced.
29. An annual update of the Operational Plan of Management shall be submitted to council by 31 January in each year. This update must include:
 - (a) the quantity of material extracted in the immediately preceding calendar year;
 - (b) the area of land used in quarry operations in the immediately preceding calendar year (this is to be related to the survey undertaken for the current year);
 - (c) the rehabilitation undertaken in the immediately preceding calendar year and the rehabilitation program for the current year;
 - (d) results from the water quality monitoring program of sedimentation dams and ground water bores for the immediately preceding calendar year;
 - (e) details of all sedimentation ponds constructed during the immediately preceding calendar year or proposed to be constructed during the current year; and
 - (f) two (2) volumetric surveys of the development site from a certified surveyor for the immediately preceding calendar year.
30. All discharges from the sedimentation ponds shall meet the requirements of the *Protection of the Environment Operations Act 1997* and the relevant criteria of the appropriate NSW Government agency. Design details shall cater for the one in ten year Average Recurrence Interval storm for 24 hours, with all discharges to contain less than 50 mg/L of non-filterable residue, no visible oil or grease, less than 10 mg/L of oil and grease, and a pH in the range 6.5 - 8.5 unless an alternative standard is approved in writing by the DECCW, in which case all discharges shall comply with the DECCW standard as applicable at the time of discharge. The soil and water management plan will be constructed and implemented in accordance with Plans 09094 – 01/01 and 09094 – 04/04.

BLASTING

31. Blasting activities shall comply with the criteria of the Environment Protection Authority in relation to over blast pressure and ground vibration and amelioration measures are to be used as described in the Quarry Operational Management plan section 4.5 (blasting) and the Blast Impact Assessment dated April 2012.
32. A minimum of three days prior to any blast, written notification shall be given to the occupants of all dwellings within 1,000 m of the quarry and notice to Kyogle Council of the impending closure of Edenville and Omagh roads 1km from the proposed blast site before blasting taking place.
33. All blasts (other than those associated with 'popping' boulders) shall be monitored for peak particle velocity and blast over pressure at the four (4) nearest residences. As a part of the monitoring process, the following records shall be kept and made available to Council and the public, if requested:
- (a) date and time of blast, and name of the person responsible for the blast;
 - (b) location of blast and blast drilling pattern;
 - (c) type and weight of explosive used in each hole;
 - (d) Maximum Instances Charge (MIC) weight;
 - (e) climatic conditions generally, including wind direction and extent of cloud cover;
 - (f) vibration and air blast emission levels recorded; and
 - (g) a record of the blast, including yield.

For each blast event the proponent shall monitor noise, air blast over pressure and ground vibration at a different boundary location approximately 250m from blast site. Licensed drilling and blasting contractors must always be used in the quarry. No flying rock is permitted to travel past the property boundary or more than 250 meters from the blast site.

34. In the event that any structural damage is demonstrated to have occurred as a consequence of the quarry operations, the operator shall either compensate the respective property owners or carry out satisfactory repairs to make new or restore the structures to their previous state.
35. The air blast overpressure level from blasting operations in or on the premises must not exceed:
- (a) 115 dB (Lin Peak) for more than 5% of the total number of blasts during each reporting period; and
 - (b) 120 dB (Lin Peak) at any time
- at the most affected residence or noise sensitive location that is not owned by the quarry land owner and/or quarry operator.

GROUND VIBRATION

36. The ground vibration peak particle velocity from blasting operations carried out in or on the premises must not exceed:

- (a) 5mm/s for more than 5% of the total number of blasts carried out on the premises during each reporting period; and
- (b) 10 mm/s at any time

at the most affected residence or noise sensitive location that is not owned by the quarry land owner and/or quarry operator, or subject to a private agreement between the owner of the residence or noise sensitive location and the quarry operator as to an alternative ground vibration peak particle velocity.

37. Hours of operation for the development shall not exceed the following table:

Activity	Monday to Friday	Saturday
Quarry extraction	7AM - 6PM	8AM – 1PM
Crushing, Washing and Screening	8AM - 5PM	8AM – 1PM

Routine Maintenance (satisfying EPA noise design goals)	7AM - 6PM	8AM - 1PM
Haulage vehicles using Edenville Road to Summerland Way	7AM - 6PM	8AM – 1PM
Haulage vehicles using Omagh Road	7AM - 6PM Note: No haulage is to occur along Omagh Road between the hours of 8-9am or 3-4pm during school periods	8AM – 1PM
Haulage vehicles using Anzac Drive	7AM - 6PM Note: No haulage is to occur along Anzac Drive between the hours of 8-9am or 3-4pm during school periods	8AM – 1PM
Blasting	10AM - 3PM	No Blasting
Drilling	9AM - 3PM	No Drilling

There shall be no quarrying, processing or transportation on Sundays or statutory public holidays. Council may permit access and operation outside of the periods identified in this consent for emergency purposes only.

NOISE

38. The proposed land use shall not result in the emission of offensive noise. Offensive noise means noise that by reason of its level, nature, character or quality, or the time at which it is made, or any other circumstance, is likely to:
- a) be harmful to,
 - b) be offensive to,
 - c) interfere unreasonably with the comfort or repose of, a person who is:
 - (i) if the offensive noise is made in premises that are not a public place - outside those premises,
 - or
 - (ii) if the offensive noise is made in premises that are a public place - within or outside those premises.
39. Where the affected sensitive receptors are in ownership other than the quarry land owners and/or the quarry operators, intrusive Noise impact from the premises shall not exceed sound pressure level ($L_{Aeq15minute} \leq \text{rating background level plus } 5 \text{ dB (A)}$) as presented in 5.4.3 of Advitech Background Noise Assessment for the Receptors as described below:
- R2 = 37 dB (A)
 - R3 = 35 dB (A)
 - R4 = 37 dB (A)

during the operations, where L_{Aeq} means the equivalent continuous noise level - the level of noise equivalent to the energy-average of noise levels occurring over a measurement period.

40. Where the affected sensitive receptors are in ownership other than the quarry land owners and/or the quarry operators, all noise attenuation measures as provided for in the EIS appendix B Quarry Operational Management Plan section 4.4 and 4.5 – Carlills Quarry, dated September 2010, shall be implemented to meet the limits in Condition 39.

Note: Noise from the premises is to be measured at the most affected point on or within the residential property boundary or, if this is more than 30m from the residence, at the most affected point within 30m of the residence to determine compliance with this condition.

DUST AND AIR POLLUTION

41. All trucks carrying quarry or crusher products from the site shall ensure their loads are fully covered by a suitable material to prevent spillage or dust falling from the truck.
42. Internal unsealed roadways, quarry floor and stockpiles shall be watered as required to ensure that dust generation does not impact on the natural or built environment.
43. Screening, crushing and blending activities shall have water sprays installed and operated to minimise the generation of dust.
44. Accidental spillage occurring from haulage trucks on site shall be cleaned up by the proponent as soon as practicable.
45. Burning of site refuse and materials is prohibited and all such materials shall be prevented from escaping onto adjoining land and shall be maintained in a tidy manner while on site at all times.

WATER AND WASTE

46. Existing ground water bores on the property known as GW 30087 and GW 046190 shall be tested prior to undertaking any works and shall be tested annually thereafter for contamination and changes in water quality. All results must be submitted to Council within one month of test completion. The following parameters shall be tested:
- pH;
 - Conductivity;
 - total dissolved salts;
 - total suspended solids;
 - BOD₅; and
 - TPH.
47. Bottled potable water must be made available to all personnel at the development site. Where rain water is to be harvested on site, a first flush device must be incorporated in the plumbing of the water storage tank to prevent the first portion of runoff from being conveyed to the storage tank. This water shall only be used for flushing of toilets and cleaning purposes and all tanks shall bear a sign a minimum of 450mm wide by 250mm high stating that the water is "not for drinking."
- Non-potable water from sedimentation ponds may be used for dust suppression within the quarry cells and watering of rehabilitated landscaped areas only.
48. All waste materials generated from construction and demolition works must be disposed at waste management facilities capable of receiving the waste as classified under the NSW Department of Environment and Climate Change (EPA) guideline document *Waste Classification Guidelines: Part 1 Classifying Waste 2008* and the *Protection of the Environment Operations Act 1997* and waste regulations there under.
49. All stormwater from the site shall be disposed of without causing nuisance to adjoining properties or pollution to natural waterways.

DILAPIDATION SURVEY

50. Within six (6) months of the date of this consent, a dilapidation survey by a suitably qualified structural engineer, architect or building surveyor shall be undertaken subject to agreement by

landowners and submitted to Council. The dilapidation survey shall cover all buildings nominated as sensitive receptors 1-4 described in section 3.1.1 of the QOMP dated September 2010.

GENERAL CONDITIONS

51. The Proponent must establish a Community Consultative Committee (CCC) for the Project to the satisfaction of the Council. This CCC must be operated in general accordance with the Guidelines for Establishing and Operating Community Consultative Committees for Mining Projects (Department of Planning, 2007, or its latest version) to the satisfaction of the Council. The Committee should comprise an independent chair and appropriate representation from the Proponent, Council, recognised environmental groups and the general community in the area of the Quarry.
52. The Proponent must maintain a publicly accessible website to provide the public with blast notifications and monitoring data referred to in this consent.
53. The proponent shall ensure that all State and Federal statutory requirements are met, with copies of all issued licenses, approvals and notices to be provided to Council within fourteen (14) days of their issue.
54. Council reserves the right to restrict the days and hours of operation described under condition 34 to minimise the emission of "offensive noise" as defined in the *Protection of the Environment Operations Act 1997* and its Regulations.
55. The proponent shall install signs within the site, as required by the Department of Mineral Resources, alerting the public to any potential hazards. The signs shall be located, designed and constructed to the satisfaction of Council's Director Planning and Environmental Services.
56. The applicant shall ensure that the site is secure during non-working hours by the means of appropriate lockable gates and fencing, in accordance with the requirements of the Department of Mineral Resources.
57. Where any staff member or contractor undertakes any task or performs any function on or around the site and where a person or company must be an authorised, licensed or otherwise approved person to do that task then that person or company must hold all current valid approvals and licences and authorisations.
58. All exploration holes shall:
 - (a) be sealed or otherwise supported to prevent collapse of surrounding surfaces; and
 - (b) be permanently sealed upon completion of use with cement plugs to prevent surface discharge to ground waters.

Where any drill hole meets natural gas, methane or other noxious vapour or gas the hole must be immediately plugged to prevent their escape. The incident must be reported immediately to Council.

Where any drill hole meets artesian or sub-artesian flow the hole must be immediately plugged and sealed to prevent contamination of aquifers. The incident must be reported immediately to Council.

Once any drill hole ceases to be used the hole, the land in which it is constructed and its immediate vicinity must be left in a clean, neat, tidy and stable condition.

BULK EARTHWORKS

59. Measures shall be put in place to control stormwater runoff. These control measures shall be in place prior to the commencement of works and shall prevent soil erosion and the transport of sediment from the development site into either:
 - adjoining land
 - natural drainage courses
 - constructed drainage systems, or

- waterways.

All disturbed areas shall be stabilised and revegetated. Turfing or another approved seeding method shall be undertaken in each part of the development within 14 days of completion of earthworks.

60. Sediment shall not be tracked by vehicles onto any public road.

IMPORTED MATERIAL CONDITIONS

61. No material such as clay, gravel, sand, soil or rock fines, and waste concrete shall be introduced into or onto the development site unless that material is required to comply with the consent. All material so imported must be clean and free from any contamination within the meaning of the *Managing Land Contamination – Planning Guidelines – SEPP55 – Remediation of Land* document published in 1998 by the NSW Government. All material must be Virgin Excavated Natural Material as defined in the *Protection of the Environment Operations Act 1997*.

Written verification from the supplier certifying the volume of material provided and that all the materials are free from contamination must be obtained by the proponent. Prior to undertaking any work with the material details demonstrating compliance with this condition must be submitted to and approved by the Certifying Authority.

A copy of the approved documentation must be submitted to the Consent Authority for record purposes.

MONITORING OF QUARRY OPERATIONS

62. Accurate records of sales shall be kept and maintained and be available for inspection by authorised council officers on request. The method of sales recording and the location where records are to be kept are to be outlined in the Plan of Management and be to the satisfaction of Council's Director Planning and Environmental Services.
63. This approval allows for extraction only of material produced on-site. No imported quarry or waste bi-products are permitted to be deposited on the site without subsequent approval from Council.
64. The Plan of Management must be updated at least once every 5 years and a fully amended and updated plan must be formally lodged with Council for approval. All works must comply with the amended Plan of Management as endorsed by Council.
65. All site rehabilitation shall occur in accordance with the approved Site Rehabilitation Management Plan and the following:
- (a) any soil contaminated as a result of the development must be remediated in accordance with the relevant guidelines (including guidelines under section 145C of the *Environmental Planning and Assessment Act 1979* and the *Contaminated Land Management Act 1997*);
 - (b) the final profile must be safe;
 - (c) the final profile must be designed to preclude prime habitat for the cane toad *Bufo marinus*; and
 - (d) all plantings must mimic the existing vegetation community found on the land.
66. The use must not involve exposure to view from any adjacent premises or from any public place of any unsightly matter.
67. The premises shall be maintained in a clean and tidy state at all times.
68. The industry must be conducted in such a manner so as not to interfere with the amenity of the neighbourhood by reason of the emission or discharge of noise, fumes, vapour, steam, soot, ash, dust, waste water, waste products, grit, oil or other harmful products of the industry.

69. The operator must not use mercury, cyanide or any other mineral recovery chemical agent without the prior written approval of the Department of Environment and Heritage and the Council.
70. In the event of an incident on the premises that has caused, is causing, or is likely to cause harm to the environment, the proponent shall report the event to Council immediately it becomes known to the proponent or the proponent's agent.

HEAVY HAULAGE CONDITIONS

71. Permitted haulage routes
- a) Haulage route permitted at all times:
 - i. Loaded vehicles leaving the quarry that do not exceed the weight limit of the Cedar Point bridge must travel via Edenville Road directly to the Summerland Way via the Cedar Point bridge. The exception to this is for local deliveries on Edenville road between rural road numbers 224 and 880 and Omagh Road between rural road numbers 361 and 800.
 - b) Additional haulage route permitted to be used whilst Cedar Point bridge has a 20 tonne weight limit:
 - i. Loaded vehicles leaving the quarry that exceed the weight limit of the Cedar Point bridge must travel via Edenville Road to Omagh Road thence via Anzac Drive to the Summerland Way.
 - c) Restriction on route for trucks returning to the quarry:
 - i. Omagh Road and Anzac Drive are not to be used for empty or unladen trucks returning to the quarry.
- 71.1 A maximum of 60 loaded quarry vehicles per week are permitted to travel along the Omagh Road and Anzac Drive haulage route within the approved hours of operation. The use of this haulage route is not permitted once the Cedar Point Bridge over the Richmond River is upgraded to remove the 20 tonne weight limit or three years after the date of the modified consent, whichever occurs sooner.
- 71.2 If at any time during the period that Omagh Road is permitted to be utilised as a haulage route for the Cedar Point quarry Council determines that:
- The standard of the utilised section of Omagh Road has fallen significantly below the conditions identified in the Omagh Road Condition Assessment Report dated 27 September 2019 prepared by Kyogle Council, and
 - The road standard has fallen as a result of Cedar Point Quarry haulage, and
 - The road standard cannot be remedied through the Heavy Haulage Contribution and scheduled routine Council road maintenance.
- Then maintenance and repair work to bring the standard of the road back to the condition identified in the Omagh Road Condition Assessment report dated 27 September 2019 will be required to be delivered by the quarry operator to the satisfaction of Council.
- 71.3 The quarry operator is to maintain accurate records of daily deliveries including time of delivery, haulage route and destination and tonnage to enable Council to check

compliance with this consent as required. The records are to be available for inspection by Council when requested.

72. The quarry operator and the truck drivers shall be responsible for ensuring vehicles leaving the site are loaded so as not to exceed the legal weight limitations in force on the Edenville Road (Cedar Point) Bridge at the time.
73. Hinged truck entering warning signs shall be erected on each approach to the quarry access on Edenville Road and displayed during quarry operational hours.
74. Payment of heavy haulage contributions under Section 7.11 of the *Environmental Planning and Assessment Act 1979* and the Kyogle Council *Section 94 (7.11) Contributions Plan – Urban and Rural Roads 2002 (as amended)* are required. Kyogle Council levies these contributions for the provision of public amenities and services in such a manner as will meet the increased demand for those amenities and services arising from this development.

- A. Contribution payable during period that Omagh Road and Anzac Drive are permitted to be used as a haul route:

The rate and amount to be paid as at the date of this notice is **\$70,213.57** per annum, as described in the Schedule, to be paid in two (2) equal half yearly instalments. The first instalment is to be paid within six (6) months of the date of this consent notice or within six (6) months of the development commencing operation, whichever is the latter (in this condition the term ‘commencing operations’ means the physical commencement of the use of the development and not the ‘commencement’ of the Development Consent Notice).

- B. Contribution payable at all other times:

The rate and amount to be paid as at the date of this notice is **\$4,792** per annum, as described in the Schedule, to be paid in two (2) equal half yearly instalments. The first instalment is to be paid within six (6) months of the date of this consent notice or within six (6) months of the development commencing operation, whichever is the latter (in this condition the term ‘commencing operations’ means the physical commencement of the use of the development and not the ‘commencement’ of the Development Consent Notice).

The levy is to be increased annually in accordance with the Consumer Price Index for Brisbane commencing January each year for the life of the development.

Where the total contribution payable exceeds \$10,000, payment to Council must be by bank cheque or cash (personal cheques are not acceptable).

The contributions set out in the schedule are exclusive of any GST (if any) and where the provision of any services or the construction of any infrastructure or any other thing with those contributions occurs, then in addition to the amount specified above the Applicant will pay to the Council the GST (as defined below) which is payable by the Council in respect of the provision of such services or construction of any infrastructure or any other thing.

GST means any tax levy charge or impost under the authority of any GST Law (as defined by the GST Act) and includes GST within the meaning of the GST Act.

The GST Act means *A New Tax System (Goods and Services Tax) Act 1999* or any amending or succeeding legislation.

VEHICULAR ACCESS

75. The proponent must make written application to Council (accompanied by a location plan) for a vehicular access to the development and construct it in accordance with Council’s approval (refer to Council’s Property Access and Addressing Management Plan). No other accesses may be constructed or opened onto a Council road without the prior written approval of Council.

76. The proposed access to the quarry must be constructed to meet the requirements for a BAR basic right turn treatment with sealed widened shoulders in accordance with Figure 7.5 of Austroads Guide to Road Design 2009 Part 4A: Unsignalised and Signalised Intersections.
77. An all weather vehicular access shall be constructed and maintained from the point of connection to Council's road network to the proposed quarry site in accordance with Council's Property Access and Addressing Management Plan and the Northern Rivers Development and Design Manuals. This requires that the grade of the access does not exceed a grade of 1 in 6 or 16.67% within the road reserve, and does not exceed a grade of 1 in 4 or 25% within private property. Any section of the access that exceeds a grade of 1 in 8.3 or 12% shall be provided with a sealed surface on a suitable pavement. The access road is to be a minimum of 6m wide, with a minimum pavement depth of 300mm of compacted gravel, a maximum crossfall of 10%, and the radius on the inside of any bends shall not be less than 6m. Note that the proposed access at the top of the ridge line is to be moved to the north as far as is practical in order to provide maximum separation between the access road and the scar trees which are to be preserved on the site.
78. All loading and unloading shall take place within the property boundaries, including the parking of construction and private vehicles associated with the development.
79. Vehicles using any off-street loading/unloading and/or parking area must enter and leave in a forward direction. All driveways and turning areas shall be kept clear of obstructions that prevent compliance with this condition.
80. All allotments where access is obtained from a sealed road shall have a sealed vehicular access from the roadway to the boundary of private property in accordance with Council's Property Access and Addressing Management Plan.

ROADS GENERAL

81. The proponent shall provide the following roadworks with associated stormwater drainage structures that have been designed and constructed in accordance with the requirements of the Roads and Traffic Authority. The proponent shall be responsible for any costs associated with the provision of the works and compliance with the requirements of the Roads and Traffic Authority. Required roadworks are:
 - (1) The intersection of Edenville Road and the Summerland Way is to be upgraded to provide for the following treatments:
 - (a) CHR(S) channelized right turn treatment with a short turn slot in accordance with Figure 7.6 of Austroads Guide to Road Design 2009 Part 4A: Unsignalised and Signalised Intersections,
 - (b) BAL basic left turn treatment in accordance with Figure 8.2 of Austroads Guide to Road Design 2009 Part 4A: Unsignalised and Signalised Intersections, and
 - (c) AUL auxiliary left turn treatment in accordance with Figure 8.4 of Austroads Guide to Road Design 2009 Part 4A: Unsignalised and Signalised Intersections.
82. The proponent shall provide the following roadworks with associated stormwater drainage structures that have been designed and constructed in accordance with the Northern Rivers Local Government Development, Design and Construction Manual. The proponent shall be responsible for any costs associated with the provision of the works. Required roadworks are:
 - (1) The intersection of Edenville Road and Omagh Road must be upgraded to meet the requirements of a Simple Left Turn Treatments for Rural Intersections in accordance with Figure D1.8 of the Northern Rivers Local Government Development and Design Manual Part D1 Geometric Road Design (Urban and Rural); and
 - (2) Edenville Road must be upgraded from the intersection with the Summerland Way to 150m west of the proposed quarry access (excluding Edenville Bridge) to meet the requirements for a Minor Road 150-500 AADT in accordance with the Carriageway

and seal widths for rural roads shown in Table T1.27 of the Northern Rivers Local Government Development and Design Manual Part D1 Geometric Road Design (Urban and Rural), ie a 6m seal with 1m shoulders.

83. Full design plans of the proposed engineering works shall be submitted to and approved by Council prior to commencement of these works. Such plans shall be accompanied by the fee, as adopted at the time of the relevant payment, as indicated in Council's Fees and Charges.
84. No tree in the road reserve shall be damaged, destroyed or removed without the written consent of the Council.
85. Prior to carrying out any works within a public road reserve, the proponent shall complete an application under Council's Road Reserve Management Plan and receive written approval from Council. Satisfactory arrangements for restoration with Council's Technical Services Department shall also be required, with all works constructed according to Council's Development, Design and Construction Manuals (as amended). All costs shall be the responsibility of the proponent.
86. The proponent shall provide a plan of management for the construction of all civil works outside the real property boundaries of the proposed development. The plan shall table scheduling of works so as to be completed in the shortest possible time with minimal impact on the general community. The plan shall include all requirements of Council's Road Reserve Management Plan. This plan of management shall be lodged with Council prior to the commencement of works.
87. A certified "Works as Executed" plan from a suitably qualified Engineer or Registered Surveyor must be submitted before the commencement of extraction operations certifying that the works have been constructed in accordance with the drawings and to the levels specified.
88. A maintenance period and Construction Bond shall apply to all construction carried out where the ownership of the asset is to pass to Council. The Construction Bond is to be paid upon completion of the works. The maintenance period shall extend from the completion of the construction and subsequent approval by Council, for six months. Within that time the developer is responsible for any omissions or defects. At the end of the maintenance period Council will inspect the asset and any work found not conforming to the plans and specifications shall be the responsibility of the developer to rectify. The maintenance bond shall be returned at the completion of the maintenance period and subsequent defect free approval by Council.

Construction (contract) price Bond

up to \$50,000 - 10% of contract price (minimum bond \$1,000)

over \$50,000 \$5,000 plus 5% of balance over \$50,000

89. Where the existing physical road encroaches on the subject land, this area must be surveyed out and dedicated as public road. If the existing road is not contained within a public road reserve, the area is to be dedicated as public road with a suitable width. This must be done for the full area of the site at no cost to Council. A registered surveyor must provide confirmation in writing that this condition has been met, and no further encroachments exist before the commencement of extraction operations.
90. Plant, equipment or materials of any kind shall not be placed or stored upon the roadway unless approved by Council in writing.
91. That the modified haulage arrangements proposed in DA 2019NTH066 (modification to Kyogle Council DA 2011-0034) are not to commence until the Kyogle Local Traffic Committee has made a determination on the need for:
 - i. Modified speed limits for trucks on Omagh Road including at the Wadsworth Bridge approaches;
 - ii. Centre line road markings along Omagh Road;

in connection with the proposal and in the interests of improved road safety for users. Any changes approved by the Committee are to be implemented before the modified haulage arrangements commence.

ADVISORY NOTES

The Applicant is requested to take note of the following advice and where pertinent to convey the advice to future owners or users:

1. It is still possible that some of the Receptors in close proximity will be impacted upon by the proposed quarry, and that the limits proposed by DECCW and Council may not be met. If this is found to be the case during the Operational Management Plan auditing process or by the contact by or receipt of complaints from nearby residents and it is established that mitigation measures cannot be put in place to comply with the limits imposed, the only way the quarrying activities could continue would be if the affected receptors were removed. This could be done by either purchasing the receptors and retaining them in the same ownership as the quarry land and/or quarry operator, or by relocation of the affected dwelling/s.

2. The proponent must apply for an Aboriginal Heritage Impact Permit in accordance with the *National Parks & Wildlife Act 1974* (NPW Act) prior to disturbing, damaging or destroying Aboriginal objects that occur on the land.

If Aboriginal cultural objects are uncovered due to development activities, all works should halt in the immediate area to prevent any further impacts to the find or finds, to resume only in accordance with the requirements of the Office of Environment and Heritage and the NPW Act.

3. Clearing native vegetation shall require a clearing consent from the Northern Rivers Catchment Management Authority under the *Native Vegetation Act 2003* prior to the conduct of works.
4. The proponent should ensure that the development accords with the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).
5. Approval under the *Threatened Species Conservation Act 1995* may be required to clear native vegetation consisting only of groundcover.
6. Water extracted under Basic Landholder Rights in the *Water Management Act 2000* cannot be used for commercial purposes and the NSW Office of Water should be contacted prior to undertaking any such extraction.
7. The NSW Office of Water regulates groundwater under the provisions of the *Water Management Act 2000*.
8. A separate application must be made for a licence under *Protection of the Environment Operations Act 1997*.
9. A section 68 approval under the *Local Government Act 1993* is required to install and operate an on-site waste management system.
Note: Any Effluent and Waste Water Management system must be designed by a qualified soil scientist, geotechnical engineer or water scientist or other suitably qualified person.
10. To protect the health, safety and welfare of people working in the extractive industry, compliance with the *Mine Health and Safety Act 2004* and the *Mine Health and Safety Regulation 2007* is required.
11. To protect, secure and promote the health, safety and welfare of people at work, compliance with the *Occupation Health and Safety Act 2000* and the *Occupation Health and Safety Regulation 2001* is required.

- 12 If the quarry is to service the Queensland market then the potential to minimise the need for travel by truck and to maximise movement of freight by rail should be investigated and used if found viable (based on an assessment of the triple bottom line).
- 13 Industry and Investment NSW advises:-
 - that ongoing protection of the wetland at the southwestern edge of the subject property is to be consistent with the I&I NSW Policy for Protection of Key Fish Habitats;
 - The subject site is to be managed in conformity with the Primefact entitled, “Agricultural Issues for Extractive Industries on Rural Lands”.
- 14 Apart from developer funded works, no improvements to existing roads, access and services will be provided by Council or any other utility authority.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

PART 8 – REVIEWS AND APPEALS

Section 8.7 Appeal by an applicant – development applications

- (1) An applicant who is dissatisfied with the determination of a consent authority with respect to the applicant’s development application (including a determination on a review section 8.2A) may appeal to the Court within 6 months after:
 - (a) the date on which the applicant received notice, given in accordance with the regulations, of the determination of that application, or
 - (b) the date on which that application is taken to have been determined under section 4.16.
- (2) An applicant who is dissatisfied with a decision that a consent authority, or a person specified by the consent authority, is not satisfied as to a matter, being a specified aspect of the development that is to be carried out to the satisfaction of the consent authority, or person, pursuant to a condition imposed under section 4.17, may appeal to the Court within 6 months after:
 - (a) the consent authority or person notifies the applicant of its decision, or
 - (b) the date on which the applicant’s request is taken to have been determined under Section 8.4.
- (3) An applicant who is dissatisfied with a decision that a consent authority is not satisfied as to a matter, being a matter as to which it must be satisfied before a “deferred commencement” consent under section 4.16(3) can operate, may appeal to the Court within 6 months after the consent authority notifies the applicant of its decision.

Section 8.9 Appeal by applicant – modification of development consent

An applicant for the modification of a development consent who is dissatisfied with the determination of the application by the consent authority may appeal to the Court against the determination.

APPENDIX A

NOTIFICATION OF LANDOWNERS

1. Prior to commencement of quarry operations, the Applicant shall notify the landowners of land listed in Condition 4 Table 1 in writing that they have the right to require the Applicant to acquire their land in accordance with condition 4 under Acquisition Upon Request and conditions 1 to 3 under Land Acquisition.
2. Prior to the commencement of Stage 3 of quarry operations, the Applicant shall notify the landholders of land listed in Condition 4 Table 2 in writing that they have the right to require the Applicant to acquire their land in accordance with condition 4 under Acquisition Upon Request and conditions 1 to 3 under Land Acquisition OR negotiate the relocation of a dwelling elsewhere within that allotment in order to eliminate future land use issues associated with quarry operational activities.

LAND ACQUISITION

1. Within 3 months of receiving a written request from a landowner with acquisition rights as specified above, the Applicant shall make a binding written offer to the landowner based on:
 - (a) The current market value of the landowner's interest in the property at the date of this written request, as if the property was unaffected by the development the subject of the development application, having regard to the:
 - Existing and permissible use of the land, in accordance with the applicable planning instruments at the date of the written request; and
 - Presence of improvements on the property and/or any approved building or structure which has been physically commenced at the date of the landowner's written request, and is due to be completed subsequent to that date.
 - (b) The reasonable costs associated with:
 - Relocating within the Kyogle local government area, or to any other local government area determined by the General Manager of the Kyogle Council;
 - Obtaining legal advice and expert advice for determining the acquisition price of the land, and the terms upon which it is required; and
 - (c) Reasonable compensation for any disturbance caused by the land acquisition process.

However, if at the end of this period, the Applicant and landowner cannot agree on the acquisition price of the land, and/or the terms upon which the land is to be acquired, then either party may refer the matter to the General Manager of the Kyogle Council for resolution (see Appendix B).

Upon receiving such a request, the General Manager shall request the President of the NSW Division of the Australian Property Institute to appoint a qualified independent valuer or Fellow of the Institute, to consider submissions from both parties, and determine a fair and reasonable acquisition price for the land, and/or terms upon which the land is to be acquired.

Within 14 days of receiving the Independent valuer's determination, the Applicant shall make a written offer to purchase the land at a price not less than the independent valuer's determination.

If the landowner refuses to accept this offer within 6 months of the date of the Applicant's offer, the Applicant's obligations to acquire the land shall cease, unless otherwise agreed by the General Manager.

The Applicant shall bear the costs of any valuation or survey assessment requested by the independent valuer, or the General Manager and the costs of determination referred above.

If the Applicant and landowner agree that only part of the land shall be acquired, then the Applicant shall pay all reasonable costs associated with obtaining Council approval for any plan of subdivision (where permissible), and registration of the plan at the Office of the Registrar-General.