

COUNCIL ASSESSMENT REPORT

Panel Reference	2019NTH011
DA Number	DA2015 – 953.3
LGA	Port Macquarie-Hastings
Proposed Development	Modification to Location of Water Storage Dam for Extractive Industry (Quarry)
Street Address	Broken Bago State Forest - 31 Lookout Road, Herons Creek; Milligans Road, Herons Creek; The Paddock Road, Bago.
Applicant/Owner	Applicant: CTK Natural Resources Owner: Forestry Corporation of NSW
Date of DA lodgement	1 April 2019
Number of Submissions	10
Recommendation	Consent subject to amended conditions
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011	Section 4.55(2) modification of development previously approved by the Regional Planning Panel.
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> • State Environmental Planning Policy No. 33 – Hazardous and Offensive Development • State Environmental Planning Policy No. 44 – Koala Habitat Protection • State Environmental Planning Policy No. 55 – Remediation of land • State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2008 • State Environmental Planning Policy (State and Regional Development) 2011 • Port Macquarie-Hastings Local Environmental Plan 2011 • Port Macquarie-Hastings Development Control Plan 2013
List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> • Plans • Addendum 3 EIS • Proposed Modified Conditions • Modified General Terms of Approval - NSW EPA
Report prepared by	Chris Gardiner – Development Assessment Planner
Report date	August 2019

Summary of s4.15 matters

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

Yes

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? <i>e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP</i>	Yes
Clause 4.6 Exceptions to development standards If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?	Not Applicable
Special Infrastructure Contributions Does the DA require Special Infrastructure Contributions conditions (S7.24)? <i>Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions</i>	Not Applicable
Conditions Have draft conditions been provided to the applicant for comment? <i>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</i>	Yes

Executive summary

The Northern Joint Regional Planning Panel granted consent to DA2015 - 953.1 (2016NTH002) on 15 February 2017 for the establishment of a hard rock quarry and processing plant to produce a maximum of 200,000 tonnes of quarry material per year for a 20 year period.

This report considers a Section 4.55(2) application to modify the consent by changing the location of the approved water storage dam.

The proposal is classified as 'Designated Development' under *Schedule 3* of the *Environmental Planning and Assessment Regulation 2000*. The proposal will result in the extraction of more than 30,000m³ of material per year.

An Addendum Environmental Impact Statement (EIS) prepared by de Groot & Benson Pty Ltd has been submitted with the application and is referred to in this report.

The development is also Integrated Development as it requires an Environment Protection Licence (EPL) under Section 48 of the Protection of the Environment Operations Act 1997 (POEO Act).

The proposal has been advertised in accordance with the requirements of the *Environmental Planning and Assessment Regulation 2000*. Following exhibition of the application, a total of ten (10) written submissions were received. Of the submissions received, two (2) supported the proposal, and eight (8) objected.

The assessment of the application has also considered written submissions from the following public authorities:

- NSW Environment Protection Authority;
- NSW Rural Fire Service;
- NSW Natural Resources Access Regulator; and
- NSW Roads and Maritime Services.

This report provides an assessment of the application in accordance with the Environmental Planning and Assessment Act 1979. The consent authority must be satisfied in relation to a number of provisions in relevant environmental planning instruments applicable to the proposal before granting consent to the development. A detailed assessment of the relevant clauses is noted within the report. A summary is also provided below:

- **Clause 7 of SEPP No 44 – Koala Habitat Protection.** Council officers are satisfied that the land is potential koala habitat. Clause 8 of the SEPP therefore must also be considered;
- **Clause 8 of SEPP No 44 – Koala Habitat Protection.** Council officers are satisfied that the land is not core koala habitat. The consent authority is therefore not prevented from granting consent because of this Policy;
- **Clause 7 of SEPP No 55 – Remediation of Land.** The land is not known to have previously been used for a purpose referred to in Table 1 of the contaminated land planning guidelines. The land is therefore not considered to be contaminated and Council officers are satisfied that the proposed development meets the provisions of clause 7(1) of the SEPP;

- **Clause 7.13 of the Port Macquarie-Hastings LEP 2011 – Essential Services.**

Clause 7.13 requires the consent authority to be satisfied that any services that are essential for the proposed development are available or that adequate arrangements have been made to make them available when required. Subject to conditions of consent, Council officers are satisfied that the proposed development meets the provisions of clause 7.13 of the LEP;

In summary, the assessment of the proposed development has adequately addressed all consent considerations required by the above environmental planning instrument clauses. It is therefore considered that the Panel can proceed with determining the application, subject to the recommended amendments to the conditions of consent.

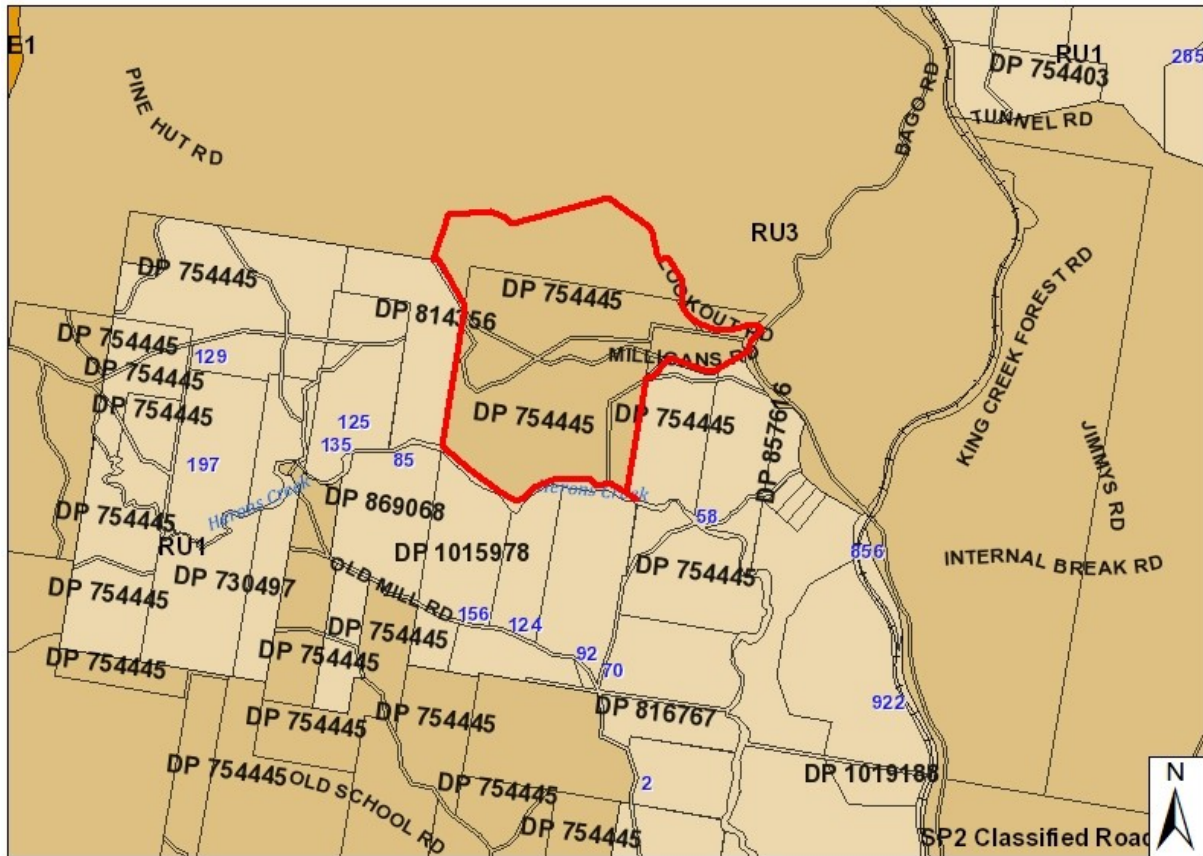
The Applicant has been provided with a copy of the draft 'without prejudice' amended conditions for review. There are no matters of disagreement in relation to the draft conditions.

1. BACKGROUND

Existing sites features and surrounding development

The site is located on Lot 161 DP 754445, and Compartments 43 of Broken Bago State Forest (described as Seq: 184 Ext: 15, Seq: 184 Ext: SEVERAL in Council's property database), which have a combined area of 188 hectares. The proposed quarry footprint is approximately 20 hectares in area, with the proposed modified dam comprising 0.7 hectares of this area.

The site is zoned RU3 Forestry in accordance with the Port Macquarie-Hastings Local Environmental Plan 2011, as shown in the following zoning plan:

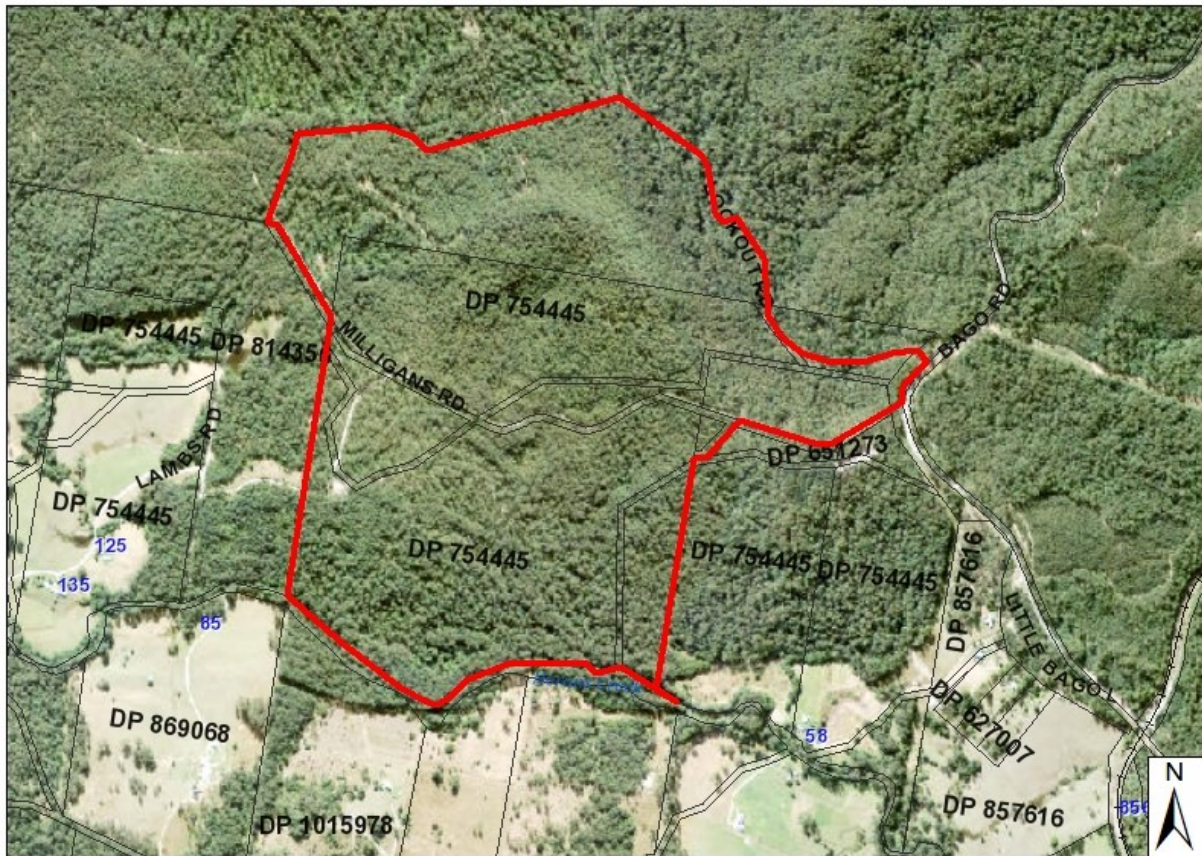


The site is located approximately 8 kilometres south of the Wauchape town centre and 4.5 kilometres to the north-west of the closest part of the Pacific Highway alignment.

Access to the site is from Bago Road via a forestry road known as Lookout Road (or Baulman Lookout Road).

Land in the immediate surrounds of the quarry to the north, north-west and east is forestry within Crown land set aside as Broken Bago State Forest. Land to the west and south is privately owned rural holdings, with areas generally in the order of 40 hectares and containing rural dwellings. The Bago Vineyard and Maze is located approximately 2.5 kilometres to the south-west of the proposed quarry. An existing hard rock quarry known as Coastal Quarry Products (also previously known as Bago Quarry or Volcanic Resources) is located approximately 2 kilometres west of the subject site.

The existing subdivision pattern and location of existing development within the locality is shown in the following aerial photographs:



2. DESCRIPTION OF DEVELOPMENT

The approved development included a water storage dam located approximately 500m south of the quarry area. The dam was proposed to have a capacity of 7.8ML and cover a total flooded area of 0.38 hectares. The extent of impacted vegetation was approximately 0.94 hectares.

The proposed modification seeks consent for the water storage dam and associated pump shed and pipelines to be located in an alternative location, approximately 150m north-east of the quarry area. The modified dam would have a capacity of 9.1ML and cover a total flooded area of 0.60 hectares. The extent of impacted vegetation is approximately 0.70 hectares.

Plans of the modified proposal are included in the attachments to this report.

Designated Development

The proposal is classified as 'Designated Development' under *Schedule 3* of the *Environmental Planning and Assessment Regulation 2000*. The proposal will result in the extraction of more than 30,000m³ of material per year.

An Addendum Environmental Impact Statement (EIS) prepared by de Groot & Benson Pty Ltd has been submitted with the application and is referred to in this report.

Integrated Development

The development is also an 'Integrated Development' as it requires an Environment Protection Licence (EPL) under Section 48 of the Protection of the Environment Operations Act 1997 (POEO Act).

3. STATUTORY ASSESSMENT

Section 4.55(2)(a) Is the proposal substantially the same?

Section 96 (now Section 4.55) has been described as "beneficial and facultative" in *Houlton v Woollahra Municipal Council* (1997) 95 LGERA 201 at [213] and *North Sydney Council v Michael Standley & Associates Pty Ltd* (1998) 97 LGERA 433 at [440]. Accordingly, the provisions of s 96 (4.55) should not be artificially constrained by allowing a narrow construction.

In *Vasic Pty Ltd v Penrith City Council* [1992] NSWLEC 8, Stein J held that "substantially" meant "essentially all material or having the same essence."

In *Moto Projects (No 2) Pty Ltd v North Sydney Council* (1999) 106 LGERA 298 at [56] Bignold J held that the task for determining whether a development as proposed to be modified is substantially the same as the consent granted was as follows:

"The comparative task does not merely involve a comparison of the physical features or components of the development as currently approved and modified where that comparative exercise is undertaken in some type of sterile vacuum. Rather, the comparison involves an appreciation, qualitative, as well as quantitative, of the developments being compared in their proper contexts (including the circumstances in which the development consent was granted)."

In the context of the current application, the proposal can be considered to be substantially the same as the development to which consent was originally granted for the following reasons:

- The modified development contains all the same material elements, including extraction area and volumes, processing plant, ancillary buildings and infrastructure, haulage routes, and water storage.
- All components of the development are still contained within the Broken Bago State Forest.
- The extent of vegetation clearing is not substantially different to that originally approved.
- The volume of water storage is not substantially different to that originally approved.
- The proposed modification would not alter any of the operational aspects of the approved quarry.

Section 4.55(2)(b) Are there any condition(s) of consent imposed by a Minister, government or public authority that require modification?

The assessment of the application has included consultation with all the public authorities that provided comments on the original proposal. Of those authorities, responses have been received from the following:

- NSW Environment Protection Authority;
- NSW Rural Fire Service;
- NSW Natural Resources Access Regulator; and
- NSW Roads and Maritime Services.

The recommendations from NSW Rural Fire Service, NSW Natural Resources Access Regulator, and NSW Roads and Maritime Services do not require any modification to conditions of consent.

The NSW Environment Protection Authority have issued amended General Terms of Approval (Notice No: 1580100) dated 29 May 2019, which are required to be incorporated into the consent. It is recommended that condition A(6) of the consent be amended accordingly.

Section 4.55(2)(c) Does the application require notification/advertising in accordance with the regulations and/or any Development Control Plan?

Neighbour notification and advertising has been undertaken in accordance with the regulations and Council's DCP.

Section 4.55(2)(d) Any submissions made concerning the modification

Following exhibition of the application, a total of ten (10) written submissions were received. Of the submissions received, two (2) supported the proposal, and eight (8) objected. The issues raised in the submissions are discussed below.

Submission Issue/Summary	Planning Comment/Response
Incorrect reference to Compartment 42, and unclear labelling of dam infrastructure.	The Applicant has corrected these errors in the amended plans.

<p>The concept drawings make no reference to swales, sediment basins, gravel bed level spreader, or the water course to the water storage dam after discharging from these components. An amended Water Management Plan should be submitted.</p>	<p>The proposal does not include any change to the water quality treatment facilities for the proposed quarry. These facilities will remain in the location originally proposed within the quarry footprint, with discharge to the Herons Creek catchment. Water quality standards for water discharged from the sediment basins would remain as specified in the Environment Protection License. The sediment basins will not discharge into the catchment of the proposed new water storage dam.</p>
<p>Given the issues of poor quality material, management of hollow bearing trees, and the risk of dam failure noted in the application, why was the dam originally approved in this location?</p>	<p>It is the role of the consent authority to consider the impacts associated with the construction and use of the water storage dam and this was carried out in the original assessment. The approved dam was capable of being constructed, although there would be cost implications of importing suitable material, managing retained trees, and engineering a safe dam wall.</p> <p>The cost/feasibility of constructing the dam proposed is a matter for the Applicant.</p>
<p>There is no documentation to substantiate the Applicant's claims that the proposed new dam site will contain superior fill material and is more suitable for dam construction. No geotechnical investigation has been carried out.</p>	<p>As noted above, it is possible to construct the dam as proposed (even if this requires suitable material to be imported). The suitability of the existing material is a matter for consideration by the Applicant.</p>
<p>Concerns that recent forestry activities in the area have removed the visual buffer to the proposed quarry.</p>	<p>This concern relates to the overall development and is not applicable to the aspects of the development that are proposed to be modified. However, it is noted that the visual screening provided by the forestry plantation was an important component of the original visual assessment. The Forestry Corporation have advised that the area is planned to be re-planted as soon as favourable weather and seasonal conditions permit. Once re-planted the trees would not be harvested within the 20 year life of the quarry, and would re-establish a dense visual buffer for the quarry from Bago Road and parts of Milligans Road.</p>
<p>The information submitted with the application is inadequate to assess the impacts of the proposal.</p> <ul style="list-style-type: none"> • The visual and acoustic appendices are opinion only and do not contain quantifiable analysis. • Geotechnical investigations have been submitted for the previous dam site only and not the new dam site. 	<p>The information submitted is considered to be adequate for the scope of the proposed modification.</p> <p>Visual and acoustic impacts of the proposed modification are considered later in this report.</p> <p>It is not necessary to provide full geotechnical investigations and engineering drawings at the Development Application (concept) stage.</p>

<ul style="list-style-type: none"> There are no engineering drawings or drainage diagrams for the new dam. 	
Disagree with the Applicant's statements that the proposed dam would not be prominent in the landscape and that it would not be visible due to being surrounded by State Forest.	The dam is not considered to be visually prominent due to its location in a drainage line at a much lower level than the quarry site. Once the dam is completed and filled with water it is not expected to be visually offensive, even if it were visible due to current harvesting of the surrounding State Forest. The forestry plantation will be re-established and ultimately screen the proposed new dam location from view.
Disagree with the Applicant's statements that the proposed dam is more remote than the approved dam.	<p>The proposed dam is only more remote in the sense that it is located further from dwellings than the previously approved dam. The original dam site would be considered more remote in the context of its accessibility and separation from the quarry operations.</p> <p>Remoteness is not considered critical for the water supply dam given the nature of its use and likely impacts.</p>
Disagree with the Applicant's statements that the proposed dam will not generate any waste material. The dam will fill with crystalline silica from quarry processing activities, which will need to be regularly removed and stored.	<p>The water storage dam will catch surface water runoff from outside the quarry footprint and this is expected to be of the same quality as water currently draining through the watercourse.</p> <p>Surface water from within the quarry footprint will continue to drain to sediment basins for water quality treatment before discharging to the south of the quarry site into the Herons Creek catchment.</p> <p>It is not considered that the water storage dam will generate any significant waste product.</p>
Without geotechnical investigations and engineering design there is risk of dam failure, which will impact those travelling on Lookout Road, downstream King Creek residents and receiving flora and fauna.	<p>The dam is not a prescribed dam under the Dams Safety Act 1978.</p> <p>Lookout Road is a forestry road, and while the public are able to use the road, its primary purpose is for forestry activities. The Forestry Corporation will need to manage their risk and liability in this regard.</p> <p>The nearest downstream residence in the King Creek catchment of approximately 3.5km from the proposed dam. In the event of a dam failure the flood waters would need to pass over/under Lookout Road and through culverts beneath Bago Road and the North Coast Railway, which would create restrictions on flows. Given the capacity of the proposed storage dam, it is not expected that a dam failure would significantly impact water levels in the King Creek area.</p>

<p>Relocating the dam to compartment 43 will mean that compartment 42 is no longer part of the development. Compartment 42 must therefore be relinquished from the Forest Materials Licence and considered as an environmental offset and wildlife corridor.</p>	<p>The consent authority does not have any role in the Forest Materials Licence.</p>
<p>The proposal is not considered to be substantially the same development as originally approved for the following reasons, and should not be considered under Section 4.55(2).</p> <ul style="list-style-type: none"> • Water Management Plan must be re-written to reflect the proposed dirty water discharge flows north into King Creek instead of south to Herons Creek as approved; 100% variation • Dam wall approved at 10 metres now becomes 4 metres; 60% variation • Dam size approved for 7.8 mega litres increased to 9.1 mega litres; 16.6% variation • Dam vegetation clearing approved 0.35ha revised location 0.7ha to be cleared; 100% variation • Previously the dam was to be out of sight, surrounded by trees. Extensive harvesting has exposed the quarry and proposed dam site making the area highly visible to all traffic along Milligans, Lookout and Bago Roads; Extreme variation • Documents referred to as acoustic and visual appendices offer opinions that are not supported by measurable analysis; Unknown variation • Spillway and sediment basins essential to quarrying operations, are not included. Undisclosed variation • Visual impacts are not the same. • The dam is on the opposite side of the ridgeline in a different catchment. 	<p>Whether the development is substantially the same requires consideration of the approved development as a whole, and not just the specific differences between the approved water storage dam and the proposed modified water storage dam. As discussed earlier in this report, Council officers are satisfied that the proposal can be considered to be substantially the same.</p> <p>Clarification is provided below in relation to some of the items raised in the submission.</p> <ul style="list-style-type: none"> • The modified proposal does not include discharge of dirty water into King Creek. Stormwater runoff within the quarry area will continue to drain to sediment basins for treatment before being discharged to the Herons Creek catchment in accordance with the water quality standards specified in the Environment Protection Licence. • While the extent of clearing for dam construction differs, the total area of vegetation that will be lost due to dam construction and the ultimate flooding of the dam is comparable. The extent of impacted vegetation for the modified dam site is less than the previously approved site. • Sediment basins for quarry operations have not been included in the submitted plans as the application does not include any modification to the approved concept plans.

A new Water Management Plan must be submitted that replaces the Approved EIS and Addendum.	The application only modifies the approved Water Management Plan in relation to the water balance calculations for the reliability of the water supply. It is not considered necessary for a new Water Management Plan to be submitted as all the operational aspects of the approved Water Management Plan remain the same.
A new Master Plan must be submitted that supersedes PM-004.	Submitted plan CC-40 contains similar information to approved plan PM-004. Plan PM-004 is considered to be redundant and it is recommended that condition A(1) be amended accordingly.
A new Sediment & Process Water Dam plan must be submitted that supersedes PM-013.	Plan CC-41 has been submitted and supersedes PM-013. It is recommended that condition A(1) be amended accordingly.
A new Sediment & Process Water Dam Embankment Section plan must be submitted that supersedes PM-024.	Plan CC-41 contains sufficient information on levels and batters of the dam embankment and spillway to understand the extent of work proposed for dam construction. Plan PM-024 is considered to be redundant and it is recommended that condition A(1) be amended accordingly.
A Water Balance Model must be submitted for the new dam.	<p>The previous water balance model has been reviewed by Council officers using adjusted parameters to reflect the proposed new dam. Having regard to the increased catchment area and dam capacity, Council officers are satisfied that the modified proposal would not reduce the reliability of the water supply.</p> <p>It is noted that quarry operator is obligated to manage dust from quarry activities in accordance with the conditions of consent and the Environment Protection Licence even if the water storage dam is empty.</p>
Updated stormwater MUSIC modelling must be submitted.	The proposal does not include any changes to the operational aspects of the quarry or the approved water quality management. Updated MUSIC modelling is not required.
Conflicting statements about the relative catchment sizes for the existing and proposed dam sites.	The original proposed dam site had a larger catchment, but following comments from the NSW Office of Water it was required to be moved upstream to a second order stream. This resulted in a reduction in catchment area, which was not clarified in the Council Assessment Report.

The proposal should be considered as designated development due to previous breaches of the conditions of consent.	The modified proposal remains designated development as it still exceeds the thresholds in the Environmental Planning and Assessment Regulation 2000 for extractive industries. The considerations noted by the Applicant in the Addendum EIS would only apply to any subsequent applications for alterations or additions to the quarry. Consideration of the previous environmental performance of the quarry is not necessary to form an opinion as to whether the development is designated development.
A Construction Certificate has been issued by Council for the previous dam site. This should be withdrawn until a new Water Management Plan is approved.	The Applicant will need to discuss with the Principal Certifying Authority whether it is necessary to modify the Construction Certificate that has been issued.

Section 4.55(3) Any matters referred to in section 4.15 (1) relevant to the modification, and the reasons given by the consent authority for the grant of the consent sought to be modified.

The provisions (where applicable) of:

(a)(i) Any environmental planning instrument

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

The initial assessment of the application determined that the proposal does not constitute an offensive industry. The proposed modification does not include any attributes that would alter this conclusion.

State Environmental Planning Policy No. 44 - Koala Habitat Protection

With reference to clauses 6 and 7, the subject land is greater than 1 hectare (including any adjoining land under same ownership) and therefore the provisions of the SEPP must be considered.

The EIS submitted with the original application included a Statutory Environmental Assessment prepared by Naturecall Environmental and dated December 2015, which included consideration of the SEPP. The site was identified as being potential koala habitat due to Tallowood constituting more than 15% of canopy trees in a 1 hectare area in the south of the quarry footprint.

Further investigation was carried out by the author to determine whether the site constituted core koala habitat. However, the site failed to qualify as core koala habitat for the following reasons:

- Lack of any recent or historical sightings of Koalas in the study area.
- Lack of evidence to indicate breeding activity eg females with young or a territorial male Koala response to call playback.
- Failure to identify an Area of Major Activity.

A Koala Plan of Management was therefore not required.

A further Ecological Assessment prepared by Biodiversity Australia and dated 21 February 2019 has been submitted with the current application and considers the potential changes in impacts arising from the proposed modified dam location. The survey identified that 2 Koala food trees (Tallowwoods) would be impacted and likely die off once the dam is flooded. The Koala food trees constitute less than 15% of the trees in the area and the immediate dam footprint would not constitute potential koala habitat on its own.

No explicit signs of Koala activity (including claw markings and scats) were observed and no Koalas were sighted by the ecologist at the time of the survey.

State Environmental Planning Policy No. 55 – Remediation of Land

Following an inspection of the site and a search of Council records, the subject land is not identified as being potentially contaminated and is therefore considered suitable for the intended use in accordance with Clause 7(1) of the SEPP.

The land is not known to have been used for a purpose referred to in Table 1 of the contaminated land planning guidelines. The land has had a long history of forestry use. Therefore, a preliminary investigation is not required prior to determining the application.

State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2008

This SEPP aims to ensure the sustainable operation and management of mineral, petroleum and extractive material resources.

Clause 7 - Development for the purpose of an extractive industry is permissible with consent on land on which development for the purposes of agriculture or industry may be carried out (with or without development consent). Agriculture and extractive industries are permitted with consent in the RU3 Forestry zone under the Port Macquarie-Hastings Local Environmental Plan 2011.

The below table considers the relevant provisions in Part 3 of the SEPP that must be considered for development applications.

Applicable clauses for consideration	Comments
12(a)(i) - The existing uses and approved uses of land in the vicinity of the development.	Land in the immediate surrounds of the quarry to the north, north-west and east is forestry within Crown land set aside as Broken Bago State Forest. Land to the west and south is privately owned rural holdings, with areas generally in the order of 40 hectares and containing rural dwellings. The Bago Vineyard and Maze is located approximately 2.5 kilometres to the south-west of the proposed quarry. An existing hard rock quarry known as Coastal Quarry Products (also previously known as Bago Quarry or Volcanic Resources) is located approximately 2 kilometres west of the subject site.

<p>12(a)(ii) - Whether or not the development is likely to have a significant impact on the uses that, in the opinion of the consent authority having regard to land use trends, are likely to be the preferred uses of land in the vicinity of the development.</p>	<p>The likely impacts of the overall development were considered in detail as part of the original assessment. The proposed modification is expected to reduce visual and ecological impacts of the dam construction, as well as noise impacts associated with pumping water to the quarry site. The alternative dam site is substantially further from dwellings in the locality.</p>
<p>12(a)(iii) - Any ways in which the development may be incompatible with any of those existing, approved or likely preferred uses.</p>	<p>The following aspects of the overall development were considered to potentially be incompatible with existing and approved agricultural, tourist and residential uses in the vicinity:</p> <ul style="list-style-type: none"> • Noise; • Blasting; • Air and water quality impacts; • Traffic; • Visual impact. <p>Of the above aspects noise and visual impacts are relevant to the modified proposal. Air and water quality impacts are also relevant, but only to the construction phase of the dam.</p>
<p>12(b) - Evaluate and compare the respective public benefits of the development and the land uses referred to in paragraph (a) (i) and (ii).</p>	<p>The relative benefits of the proposal and the existing forestry land use were evaluated as part of the original assessment of the application. The proposed modification to the water storage dam location does not alter the relative benefits.</p>
<p>12(c) - Evaluate any measures proposed by the applicant to avoid or minimise any incompatibility, as referred to in paragraph (a) (iii).</p>	<p>Proposed mitigation measures are evaluated in detail later in this report.</p>
<p>14(1) - Whether or not the consent should be issued subject to conditions aimed at ensuring that the development is undertaken in an environmentally responsible manner, including conditions to ensure the following:</p> <ul style="list-style-type: none"> (a) that impacts on significant water resources, including surface and groundwater resources, are avoided, or are minimised to the greatest extent practicable, (b) that impacts on threatened species and biodiversity, are avoided, or are minimised to the greatest extent practicable, (c) that greenhouse gas emissions are minimised to the greatest extent practicable. 	<p>Appropriate conditions were imposed on the original consent to address these matters. No additional conditions are considered necessary for the modified proposal, other than the modified general terms of approval issued by the NSW EPA.</p>

14(2) - The consent authority must consider an assessment of the greenhouse gas emissions (including downstream emissions) of the development, and must do so having regard to any applicable State or national policies, programs or guidelines concerning greenhouse gas emissions.	The proposed modification would not increase greenhouse gas emissions compared with the original proposal.
14(3) - The consent authority must consider any certification by the Chief Executive of the Office of Environment and Heritage or the Director-General of the Department of Primary Industries that measures to mitigate or offset the biodiversity impact of the proposed development will be adequate.	No such certification has been issued.
15(1) - The consent authority must consider the efficiency or otherwise of the development in terms of resource recovery.	Not applicable to modification.
15(2) - The consent authority must consider whether or not the consent should be issued subject to conditions aimed at optimising the efficiency of resource recovery and the reuse or recycling of material.	Not applicable to modification.
15(3) - The consent authority may refuse to grant consent to development if it is not satisfied that the development will be carried out in such a way as to optimise the efficiency of recovery of minerals, petroleum or extractive materials and to minimise the creation of waste in association with the extraction, recovery or processing of minerals, petroleum or extractive materials.	Not applicable to modification.
16(1) - The consent authority must consider whether or not the consent should be issued subject to conditions that do any one or more of the following: (a) require that some or all of the transport of materials in connection with the development is not to be by public road,	The existing consent includes conditions relating to the haulage route and requiring the preparation and implementation of a code of conduct for the transport of materials on public roads.

<p>(b) limit or preclude truck movements, in connection with the development, that occur on roads in residential areas or on roads near to schools,</p> <p>(c) require the preparation and implementation, in relation to the development, of a code of conduct relating to the transport of materials on public roads.</p>	
<p>16(3) Consideration of comments received from the Roads and Traffic Authority (now RMS).</p>	<p>The RMS have provided written advice dated 16 April 2019 that the proposal would have no impact on RMS infrastructure or interests.</p>
<p>17(1) and 17(2) - Whether or not the consent should be issued subject to conditions aimed at ensuring the rehabilitation of land that will be affected by the development.</p> <p>In particular, the consent authority must consider whether conditions of the consent should:</p> <p>(a) require the preparation of a plan that identifies the proposed end use and landform of the land once rehabilitated, or</p> <p>(b) require waste generated by the development or the rehabilitation to be dealt with appropriately, or</p> <p>(c) require any soil contaminated as a result of the development to be remediated in accordance with relevant guidelines (including guidelines under section 145C of the Act and the Contaminated Land Management Act 1997), or</p> <p>(d) require steps to be taken to ensure that the state of the land, while being rehabilitated and at the completion of the rehabilitation, does not jeopardize public safety.</p>	<p>The existing consent includes appropriate conditions regarding rehabilitation. The original EIS for the project indicated that the water storage dam was intended to be retained at completion of extraction for fire-fighting use by the Forestry Corporation. No specific rehabilitation requirements therefore apply to the modified proposal.</p>

State Environmental Planning Policy (State and Regional Development) 2011

Clause 20 - The proposal is regionally development identified in Schedule 7 of the SEPP, being a Section 4.55(2) modification of an extractive industry that meets the requirements for designated development. The Northern Regional Planning Panel is the consent authority for the application.

Port Macquarie-Hastings Local Environmental Plan 2011

The proposal is consistent with the LEP having regard to the following:

- Clause 2.2, the subject site is zoned RU3 Forestry. In accordance with clause 2.3(1) and the RU3 zone landuse table, the proposed development for an extractive industry is a permissible landuse with consent.

The objectives of the RU3 zone are as follows:

- To enable development for forestry purposes.
- To enable other development that is compatible with forestry land uses.

In accordance with Clause 2.3(2), the proposal is consistent with the zone objectives having regard to the following:

- The proposal is a permissible landuse;
- The development is for a purpose that is compatible with forestry land uses. The Forestry Corporation of NSW have given owners' consent for lodgement of the development application and have entered into a Forest Material Licence Deed with the Applicant to ensure compatibility of the development with their surrounding forestry land uses.
- Clause 7.13, satisfactory arrangements are in place for provision of essential services including electricity supply, water supply, on-site sewage management, stormwater drainage and suitable road access to service the development.

(a)(ii) Any proposed instrument that is or has been placed on exhibition

No draft instruments apply to the site.

(a)(iii) Any DCP in force

Port Macquarie-Hastings Development Control Plan 2013:

DCP 2013: General Provisions			
DCP Objective	Development Provisions	Proposed	Complies
2.3.3.8	Removal of hollow bearing trees	No hollow bearing trees are impacted by the modified dam footprint.	Yes
2.4.3	Bushfire risk, Acid sulphate soils, Flooding, Contamination, Airspace protection, Noise and Stormwater	Refer to main body of report.	

(a)(iii)(a) Any planning agreement or draft planning agreement

The Lookout Road Hard Rock Quarry Planning Agreement was entered into between Port Macquarie-Hastings Council and CTK Natural Resources Pty Limited on 13 March 2017, following determination of the original development application. The Planning Agreement provides for payment by the developer to Council of a monetary contribution of \$0.20 per tonne, towards the maintenance of the Bago Road haulage route.

The modified proposal would not result in any changes to the haulage route and the Applicant has not requested any changes to the existing Planning Agreement.

(a)(iv) Any matters prescribed by the regulations

No matters prescribed by the regulations are applicable to the proposal.

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

Haulage Route

No changes to the approved haulage route are proposed.

Roads and Traffic

The proposed modification to the water storage dam location would not result in any changes to the operational traffic impacts of the quarry. No changes are proposed to the extraction volume or approved haulage route.

Construction and maintenance access to the new water storage dam site is available from Lookout Road, which is an existing Forestry road and is considered suitable for this purpose.

Heritage

No known items of European heritage significance exist on the property.

The Applicant has submitted a further Aboriginal Cultural Heritage Survey Report for the proposed new dam site. The survey was conducted under the supervision of site officers from the Bunyah Local Aboriginal Land Council. No items of cultural heritage significance were found in the study area.

Other land resources

The modified proposal would affect a similar extent of the of the existing hardwood plantation as the original approved development.

Water Management

A Water Management Plan dated December 2015 and Addendum dated May 2016 were prepared as part of the original development. The Management Plans outlined how site operations will be managed so that potential impacts on soil and water resources are minimised and the operational water needs on the site are met.

Water Supply:

The report has considered water demands for the development to include the following:

- Human consumption;
- Sanitation and hygiene;
- Processing Plant operation;
- Dust suppression; and
- Irrigation.

The Water Management Plan included a water balance calculation, which determined that the total annual water demand for the development would be 39ML, based on maximum production of 200,000 tonnes per annum. Using 103 years of rainfall data, the water supply reliability was been determined to be 96.6%. The modified water storage dam would not reduce the reliability of the supply due a slightly larger storage capacity and a slightly larger catchment area.

The water supply pipeline will no longer be required to cross Milligans Road, and it is recommended that condition B(4) be modified to remove the reference to this work.

Stormwater Flow Management and Water Quality Control:

The modified proposal does not include any changes to the approved stormwater management for the quarry. The existing conditions of consent are considered to adequately address this issue.

Water Management Act 2000:

The application was referred to the NSW Natural Resources Access Regulator, as the proposed modifications involved works within 40m of a watercourse. A response dated 19 July 2019 has been received, stating that a controlled activity approval is not required for the proposal and no further consideration by the agency is required.

Air and microclimate

The modified proposal would not result in any changes to the operational air quality impacts of the quarry. The water storage dam is important for successful operational dust management and the original Water Management Plan calculated the reliability of the water supply to be 96.6%. The modified water storage dam would not reduce the reliability of the supply due a slightly larger storage capacity and a slightly larger catchment area.

Construction impacts would be similar to those modelled for the original dam location. However, the increased separation of the new water storage dam location from residential receivers would be expected to result in reduced impacts compared to the approved development.

The existing conditions of consent include a requirement for adequate dust suppression to be implemented during construction.

Flora and fauna

An ecological assessment prepared by Biodiversity Australia and dated 21 February 2019. The report notes that the proposal will have the following direct impacts:

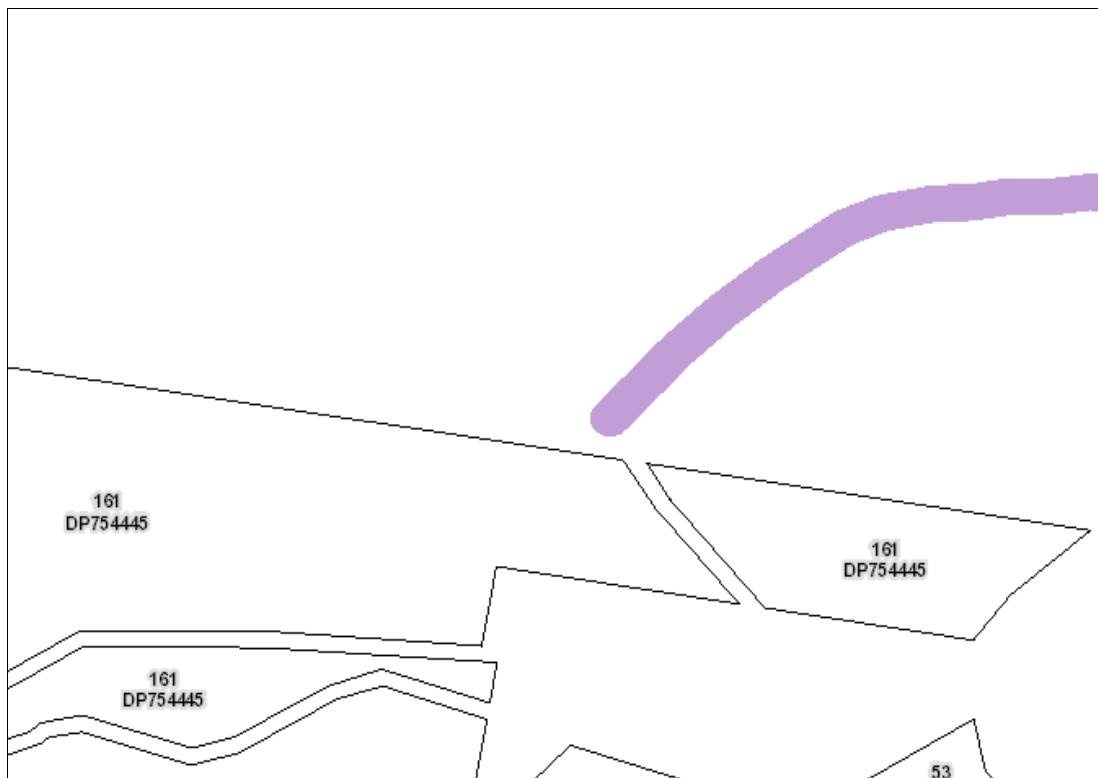
- Loss/modification of approximately 0.8 hectares of native vegetation; and
- Loss of fallen hollow logs within the proposed dam footprint.

A series of indirect impacts have also been considered in the assessment, including the following:

- Erosion and sedimentation;
- Fragmentation and landscape change;
- Weed invasion; and
- Edge effects.

The assessment includes a Test of Significance in accordance with Part 7 of the Biodiversity Conservation Act 2016 addressing the above likely impacts, and it is concluded that the development is unlikely to have any significant adverse impacts on biodiversity or threatened species of flora and fauna.

The proposed dam site is in proximity to a riparian area mapped on the Biodiversity Values Map (see below).



The plans have been amended to move the dam slightly upstream and clear of the mapped area.

A supplementary report also prepared by Biodiversity Australia and dated July 2019 has been submitted addressing Clause 30A(2)(c) of the Biodiversity Conservation (Savings and Transitional) Regulation 2017. The clause provides that a biodiversity development assessment report is not required to be submitted if the authority or person determining the application for modification (or determining the environmental assessment requirements for the application) is satisfied that the modification will not increase the impact on biodiversity values.

The reports have been reviewed by Council's ecologist and it is considered that the assessment has been carried out appropriately. Council's ecologist is satisfied that the modification will not increase the impact on biodiversity values and therefore a biodiversity development assessment report is not required to be submitted

The report includes a number of recommendations to mitigate the potential ecological impacts of the development, which include the following:

- Salvage and relocation of hollow bearing trees.
- Pre-clearing fauna survey;
- Implementation of a Weed Management Plan.
- Sedimentation and erosion control.

A condition is recommended incorporating the above requirements.

Visual Impact

The modified water storage dam is located on the opposite side of the ridge to the nearest dwellings to the south of the development and would not be visible from any dwelling. The dam would also be screened from view from Bago Road by existing vegetation and topography.

The dam may be visible from Milligans Road until such time as the forestry plantation recently harvested becomes re-established. Once the water storage dam is filled with water it is unlikely to be considered visually offensive in any case.

Waste

The construction waste (cleared vegetation) associated with the proposed modified dam location is not expected to be substantially different to the volume of waste generated by the approved development. Existing conditions of consent prevent the burning of cleared vegetation associated with the development.

Noise and Blasting

A detailed Noise and Blasting Assessment prepared by EMM Consulting was submitted as part of the EIS for the original application and demonstrated that the proposed development would satisfy relevant construction and operational noise criteria.

Noise sources associated with the water storage dam are limited to construction noise and noise from the pumps supplying water to the quarry site. A letter from EMM Consulting dated 5 March 2019 has been submitted with the modification application stating that:

“Due to the increased distance to the nearest sensitive receivers and the topographic shielding provided by the intersecting ridgeline, the proposed location of the storage dam would only serve to decrease noise levels received at the nearest sensitive receivers.”

The basis for the conclusion regarding noise impacts is considered reasonable and existing condition B(13) of the consent requires acoustic certification for the pump shed associated with the water storage dam. No changes are recommended to the existing conditions regarding noise impacts.

Bushfire

The site is identified as being bushfire prone.

The application has been referred to the NSW Rural Fire Service, and comments and recommended conditions were received on 2 May 2019.

The recommended conditions are identical to those recommended on the original application and include:

- Provision and maintenance of a minimum 70 metre inner protection area around the management centre buildings.
- Minimum 20,000 litre static fire-fighting water supply.
- Construction of buildings in the management centre comprising office, amenities and lunch room to comply with BAL-12.5 requirements.
- Development of a Bushfire Emergency Response Plan for the site.

The existing consent includes conditions addressing the above recommendations and no changes are required in this regard.

Social impacts in the locality

The proposed modification to the storage dam design and location is not expected to result in any additional/changed social impacts from those considered in the original assessment.

Economic impact in the locality

The proposed modification to the storage dam design and location is not expected to result in any changes to the economic impacts considered in the original assessment.

(c) The suitability of the site for the development

All site constraints have been adequately addressed and appropriate conditions of consent recommended. No particular hazards that would make the site unsuitable for the proposed development have been identified.

The suitability of the site in terms of the likely impacts of the development on the environment and the amenity of nearby residents has been discussed in detail in the above section of this report.

(d) Any submissions made in accordance with this Act or the regulations

See comments earlier in this report.

(e) The public interest

The proposed development (as modified) remains consistent with relevant planning strategies for the region and is not expected to impact on the wider public interest.

Section 4.55(3) Reasons given by the consent authority for the grant of the consent that is sought to be modified

The reasons for the original decision by the Panel and applicable comments are provided in the table below:

Reason	Planning Comment/Response
The relevant clauses in all applicable environmental planning instruments have been satisfied.	Relevant clauses in all applicable environmental planning instruments are still satisfied by the modified proposal.
Agriculture and extractive industries are permitted with consent in the RU3 Forestry zone under the Port Macquarie-Hastings LEP 2011.	Agriculture and extractive industries are still permissible in the RU3 zone.
The EPA has issued General Terms of Agreements (GTA's) for the development.	The EPA has issued amended GTA's for the modified development.
The designated haulage route was deemed appropriate with minimal impacts.	No changes have been proposed to the approved haulage route.
The Air Quality Impact Assessment had been carried out in accordance with the EPA Approved Methods and the report concluded that the predicted incremental and cumulative TSP, PM10 and PM2.5 concentrations and dust deposition rates are well within NSW EPA assessment criteria.	The modified proposal does not include any changes to the operational aspects of the development and therefore will not change the modelled air quality outcomes.
Port Macquarie-Hastings Council ecologist confirmed a Species Impact Statement was not required.	Council's ecologist is satisfied that the modification will not increase the impact on biodiversity values and therefore a biodiversity development assessment report is not required to be submitted.

The visual impacts on residential dwellings has been deemed to be temporary in nature and the overall visual impact from public locations was deemed negligible.	See comments on visual impact earlier in this report. Impacts of the modified proposal are still considered to be negligible.
The hours of operation were amended restricting operations to not commence before 7am Monday to Saturday and at no time on Sundays and public holidays.	No changes to the hours of operation are proposed in the application.
Blasting hours on Saturdays have been restricted by a condition limiting blasting hours to between 10.00am and 1.00pm.	No changes to the hours of operation are proposed in the application.
The Noise Impact Assessment identifies that no residential receivers are within the 35 db(A) contour and the GTA's stipulate the noise at all residential receivers must not exceed this noise limit.	As noted earlier in this assessment, the modified proposal would result in the water supply dam being located substantially further away from the nearest residential receivers and on the opposite side of the ridgeline. Noise levels associated with this aspect of the proposal would be reduced compared to those originally modelled. The existing conditions of consent require acoustic certification of the pump shed to ensure that the noise criteria are met.

4. PROTECTION OF THE ENVIRONMENT OPERATIONS ACT 1997

If consent is granted to the modified proposal, the proponent will need to make a separate application to the EPA to obtain a modified Environment Protection License (EPL) in accordance with the Protection of the Environment Operations Act 1997.

The modified proposal was referred to the EPA as integrated development and amended general terms of approval issued on 29 May 2019.

It is recommended that condition A(6) of the consent be modified to incorporate the EPA's amended general terms of approval into the consent.

5. DEVELOPMENT CONTRIBUTIONS

The modified proposal does not change the development contributions applicable to the original development.

6. CONCLUSION

The application has been assessed in accordance with Section 4.55 of the Environmental Planning and Assessment Act 1979.

Issues raised during assessment and public exhibition of the application have been considered in the assessment of the application.

The site is suitable for the proposed development. The modified proposal is not contrary to the public's interest and will not have a significant adverse social, environmental or economic

impact. It is recommended that the application be granted consent, subject to the modified conditions, which include the following changes:

- Amending the wording of conditions A(1), A(6), A(13), and B(4); and
- Deleting condition B(11).