



Your reference 10.2018.36584.1
Our reference: DOC19/38894
Contact: Miranda Kerr
02 6022 0607
Date: 12 February 2019

Mr Michael Keys
Director, Planning and Environment
Albury City Council
PO Box 323
ALBURY NSW 2640
Via email: info@alburycity.nsw.gov.au

Attn: Marius Shepherd, Town Planner

Dear Mr Keys

**RE: DA 10.2018.36584.1 – Extractive Industry – Extension of existing clay mine
Andersons Clay Mine, 253 Shaw St, Springdale Heights**

I refer to your letter of 18 December 2018 requesting comment from the Office of Environment and Heritage (OEH) regarding the proposed extension of the existing Andersons Clay Mine. The letter was incorrectly addressed and only received by the OEH Planning Team in Albury on 16 January 2019.

We have reviewed the Development Application and associated documents.

Ordinarily OEH would be asked to provide General Terms of Approval (GTA) for integrated development where an Aboriginal Cultural Heritage Impact Permit (AHIP) under section 90 of the *National Parks and Wildlife Act 1974* will be required. At this stage OEH is not able to determine if an AHIP could be issued for this development.

We offer the following recommended actions in relation to Aboriginal cultural heritage (ACH) and biodiversity. Detailed comments are in **Attachment A**.

Aboriginal cultural heritage

It appears that an Aboriginal object (Andersons PAD 1-1) was collected and removed from site during the test excavation. If so, this is not in accordance with the 'Code of Practice for Archaeological Investigation of Aboriginal Objects in NSW'. In addition, this Aboriginal object has not been registered on the Aboriginal Heritage Information Management System (AHIMS).

Recommended actions:

1. Council require the proponent to advise OEH on the present location of the Aboriginal object - Isolated Artefact Andersons PAD 1-1, a quartz flake identified in the ACHAR.
2. Council require the proponent to advise OEH as to why the Aboriginal artefact Andersons PAD 1-1 has not been registered on AHIMS.
3. Council require the proponent to revise the ACHAR in accordance with the comments provided in Attachment A prior to submission of an AHIP application.

Biodiversity

Parts of the proposal site are zoned E3 Environmental Management and include native vegetation mapped as high condition. Clearing of this vegetation would have implications for Albury City Council's offset requirements as part of the biodiversity certification of the *Albury Local Environmental Plan 2010*.

Recommended action:

1. Council consider requiring an appropriate offset for any clearing of E3-zoned high condition vegetation on the proposal site.

Attachment A also includes recommended conditions of development consent, should it be granted. If you wish to discuss this matter further, please contact Miranda Kerr on (02) 6022 0607 or by email miranda.kerr@environment.nsw.gov.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'A Fisher', with a stylized, flowing script.

ANDREW FISHER
Senior Team Leader Planning
South West Branch
Conservation and Regional Delivery
Office of Environment & Heritage

ATTACHMENT A – Detailed comments and recommended conditions of development approval for the proposed Anderson Clay Mine extension (DA 10.2017.35487.1)

ATTACHMENT A – Detailed comments and recommended conditions of development approval for the proposed extension to Andersons Clay Mine (DA 10.2018.36584.1)

Aboriginal cultural heritage

An Aboriginal Cultural Heritage Assessment Report, (Appendix F of the EIS) was prepared for the proposed Clay Mine Extension by NGH Environmental Pty Ltd in August 2018. This report along with the ACH component of the EIS was reviewed against OEH EARs ID No. 1146 for the proposal, contained in DOC17/221241. Key issues are as follows:

- The EIS and ACHAR imply that an Aboriginal object 'Andersons PAD 1-1' was collected and removed from site during the test excavation (VGT Environmental Compliance Solutions, 2018:171, 233 and NGH, 2018:31). The artefact was observed 6 metres south west of probe 3 or test unit 3 (NGH, 2018:34) and therefore not from within a test unit. Under the 'Code of Practice for Archaeological Investigation of Aboriginal Objects in NSW' ('CoP', DECCW 2010) Aboriginal objects may be recovered from test excavation in accordance with requirements set out in the CoP, not salvaged from surface sites. See also CoP requirements 18a – Visible artefacts on the ground. The requirements do not authorise removal of surface artefacts from the site. See action 1 below.
- The Aboriginal object was not registered on AHIMS, see action 2 below.
- Other comments requiring action are detailed in points 3-9 below.

Recommended actions:

1. *The proponent is to advise OEH on the present location of the Aboriginal object - Isolated Artefact Andersons PAD 1-1, a quartz flake identified in the ACHAR.*
2. *The Aboriginal artefact Andersons PAD 1-1 has not been registered on AHIMS in accordance with S89A of the NPW Act and as specified in the EARs for the project. The consultants are required to register the site on AHIMS. The AHIMS number is to be presented in the revised ACHAR. The proponent is to advise OEH as to why this had not been done previously.*
3. *Section 1.1 of the ACHAR does not provide detail on statutory controls and development context for the proposal. This section should state which section of the EP&A Act the proposal is being assessed under; who is the consent authority (e.g. Albury City Council); and that the project is designated development being a mine. The Parish should be listed in the Introduction section in accordance with the 'Guide to investigate, assessing and reporting on Aboriginal cultural heritage in NSW' (OEH 2011).*
4. *In Section 1.4 of the ACHAR the qualifications of the project personnel need to be provided in accordance with Requirement 11 of the CoP.*
5. *In Section 3.2.2 of the ACHAR the AHIMS search was conducted on 19 June 2017 and is greater than 12 months currency and cannot be relied on. The ACHAR is to have an up to date AHIMS search conducted within 12 months currency of the revised final report.*
6. *Section 3.2.3 of the ACHAR refers to no dated excavations in the Deniliquin area. It is not explained what the relevance is to the current project area.*
7. *No mitigation is proposed in the ACHAR. No management is proposed for the Aboriginal object identified. The proponent is to consider mitigation to manage or minimise harm to the object and to any unknown ACH that may be identified during works.*
8. *In Appendix A of the ACHAR in the consultation log, contact with the National Native Title Tribunal (NNTT) is blank. This is to be updated in accordance with requirements of the EARs and NPW Regulation 80C.*
9. *The proponent should be advised to consult with the Registered Aboriginal Parties (RAPs) at least every six months prior to the AHIP submission to the OEH.*

Recommended conditions of development consent:

- *No harm can occur to any Aboriginal objects within the development area unless an Aboriginal Heritage Impact Permit (AHIP) has been issued by OEH.*
- *The applicant must comply with the conditions of any AHIP that is issued by OEH.*

- *The applicant must ensure that all persons involved in actions or works covered by an AHIP (whether employees, contractors, sub-contractors, agents and invitees) are made aware of, and comply with, the conditions of any AHIP.*
- *No human remains in, on or under the land may be harmed. If any human remains are discovered and/or harmed in, on or under the land, the proponent or AHIP holder must:*
 - *not further harm these remains*
 - *immediately cease all work at the particular location*
 - *secure the area so as to avoid further harm to the remains*
 - *notify the local police and OEH's Environmental Line on 131 555 as soon as practicable and provide any available details of the remains and their location*
 - *not recommence any work at the particular location unless authorised in writing by OEH.*

Biodiversity

Biodiversity certification offsets

We note that this development application is a transitional project under the *Biodiversity Conservation (Savings and Transitional) Regulation 2017*.

The site is within the Albury Biodiversity Certification area. This development is taken to not be likely to have a significant impact on any threatened species, population or ecological community or its habitat, so an Assessment of Significance is not required to comply with the *Threatened Species Act 1995*.

However, parts of the proposal site are zoned E3 Environmental Management. In the OEH advice to DPE regarding Secretary's Environmental Assessment Requirements (SEARs) we noted that any removal of open forest/woodland vegetation that is mapped as high condition in land zoned E3 on this site would have implications for Albury City Council's offset requirements as part of the biodiversity certification of the *Albury Local Environmental Plan 2010*.

Map 1 at **Attachment B** shows the extent of high condition vegetation within E3 zoned land on the proposal site.

Recommended action:

1. *Council consider an appropriate offset for any clearing of E3-zoned high condition vegetation on the proposal site.*

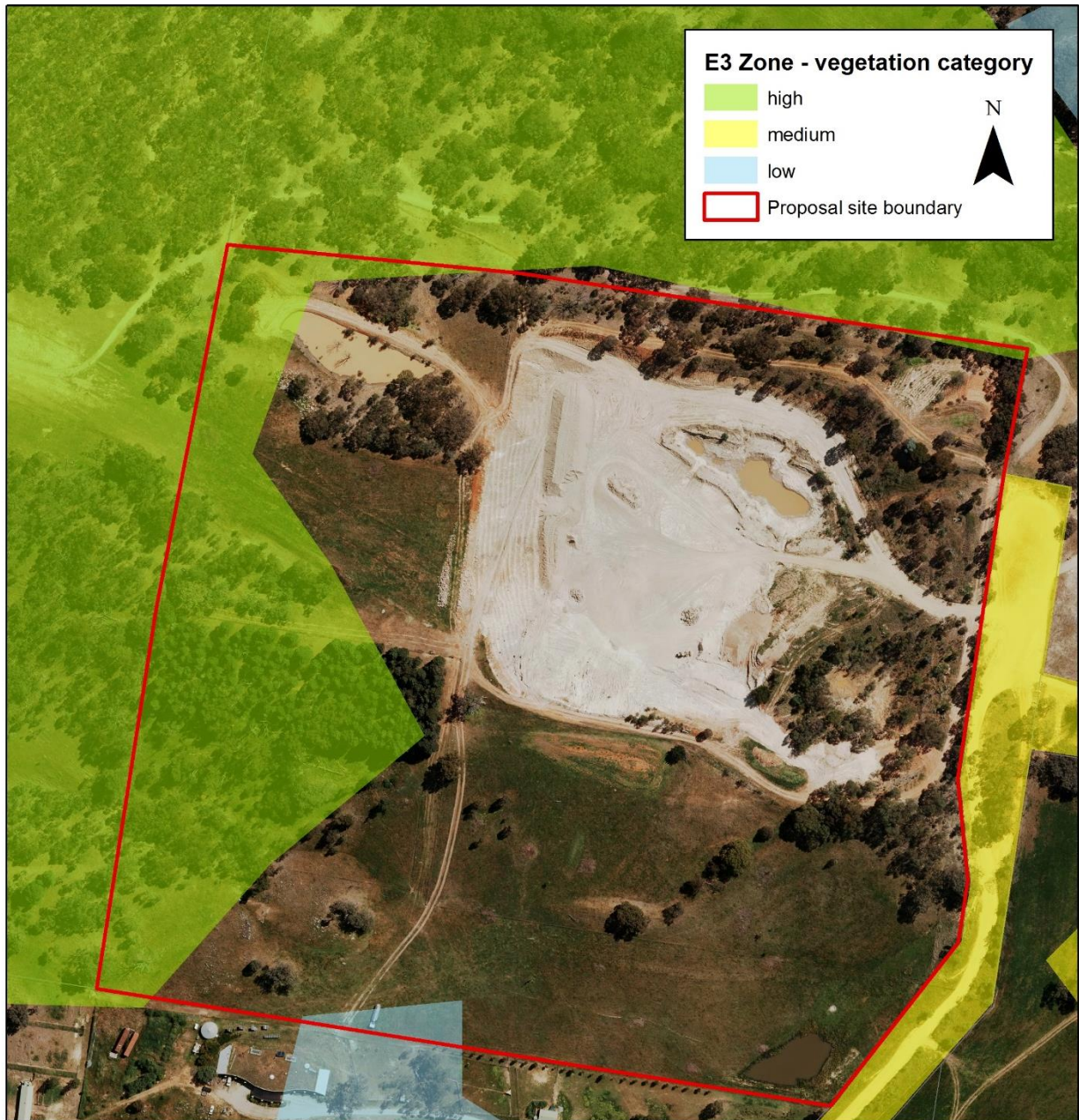
Threatened species

The biodiversity assessment includes a letter dated 28 September 2018 stating that targeted surveys for threatened fauna species were completed in spring, following recommendations from the initial biodiversity survey in 2016. Although there is a history of grazing at the proposal site, targeted surveys should have been undertaken for *Caladenia concolor* (Crimson Spider Orchid) given its restricted distribution in NSW and habitat requirements. The vegetation type mapped on the site and described as "White Box - Blakely's Red Gum - Red Box - Red Stringybark Woodland" conforms to PCT 269, which is known habitat for *Caladenia concolor*.

Recommended conditions of development consent:

- *Targeted survey for Caladenia concolor be undertaken prior to clearing by an appropriately qualified ecologist when the species is likely to be above ground and identifiable.*

ATTACHMENT B – Map of high condition native vegetation in E3-zoned land on the proposed development site for Andersons Clay Mine (DA 10.2018.36584.1)





DOC17/221320-04

The General Manager
Albury City Council
PO Box 323
ALBURY NSW 2640

By email: info@alburycity.nsw.gov.au

Attention: Marius Shepherd

Dear Mr Zaknich

Re DA 10.2018.36584.1 – Proposed extension of Andersons Clay Mine

I refer to the letter from Albury City Council regarding the development application and accompanying Environmental Impact Statement received by the Environment Protection Authority (EPA) on 9 January 2019 for the proposed extension of the Anderson Clay Mine at Lot 2 DP 856969, 253 Shaw Street, Lavington.

We have reviewed the development application and accompanying information and note that there is no increase to extraction rates for the proposal but rather an extension of the footprint to include an extra 2.5 hectares to be mined. We have determined that we are able to modify the existing Environment Protection Licence (EPL No 20938) for the proposal, subject to the additional conditions outlined in Attachment A.

If Albury City Council grants development consent for this proposal, the conditions provided in Attachment A should be incorporated into the consent. The conditions are in addition to the existing licence conditions and therefore the applicant will need to make a separate application to the EPA to vary the licence.

Please note, on 6 March 2019 we contacted the proponent and advised them of our intended general terms that would include conditions relating to noise and dust which require further assessment and approval from the EPA, prior to the extension works being carried out.

In the event that the development is modified either by the applicant prior to the granting of the consent or as a result of conditions imposed by the determining authority, we request that further consultation occur with us about the proposed changes prior to the consent being issued. This will enable us to determine whether our conditions are required to be modified as a result of any proposed alterations.

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(from *outside* NSW)

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www.epa.nsw.gov.au
riverina.farwest@epa.nsw.gov.au

If you have any further enquiries about this matter please contact Amanda Baldwin by telephoning 02 6969 0700 or by electronic mail at riverina.farwest@epa.nsw.gov.au.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'J. Creed', is positioned to the left of the date.

7 March 2019

JESSICA CREED
Head Regional Operations Unit – Riverina Far West Region
Environment Protection Authority

Attachment 'A'

Extraction limit

Activities at the premises must not exceed 50,000 tonnes per annum extracted, being the amount equivalent to the extraction limit approved by the development consent granted under the *Environmental Planning and Assessment Act 1979* for the premises.

Dust Management Plan

The proponent must engage a suitably qualified and experienced person to develop a dust management plan, prepared in accordance with the *Approved Methods for the Modelling and Assessment of Air Pollutants in NSW (2005)* to assess the potential impacts of particulates on nearby sensitive receptors.

The assessment must include, but is not limited to, the following.

- A detailed description of the activities occurring at the premises;
- Details about the receiving environment, including the following:
 - Meteorology and climate;
 - Topography;
 - Surrounding land use;
 - Nearby sensitive receptors; and
 - Ambient air quality.
- A consideration of 'worst case' emission scenarios and impacts at proposed emission limits. Justification for the 'worst case' must also be included.
- Account for cumulative impacts associated with existing emission scenarios as well as any currently approved developments linked to the receiving environments.
- Air dispersion modelling where there is a risk of adverse air quality impacts, or where there is sufficient uncertainty to warrant a rigorous numerical impact assessment.
- Demonstrates the premises ability to comply with the relevant regulatory framework, specifically the *Protection of the Environment Operations (POEO) Act 1997* and the POEO (Clean Air) Regulation 2010.
- Detail emission control techniques/practices that will be employed at the premises; and
- Locations that are representative of the nearest sensitive receptors where dust deposition gauges will be installed and monitored by the proponent.

The dust management plan must be provided to the EPA by electronic mail to riverina.farwest@epa.nsw.gov.au for review and approval prior to the commencement of works associated with the expansion approval granted under development application 10.2018.36584.1.

Noise Management Plan

The proponent must engage a suitably qualified and experienced person to develop a noise management plan, prepared in accordance with the NSW Noise Policy for Industry (2017).

The noise management plan must include, but is not limited to, the following:

- The project noise trigger levels for the activities occurring and proposed to occur at the premises;
- A prediction or measurement of the noise levels produced by the proposal; having regard to the presence of annoying noise characteristics (Fact Sheet C) and meteorological effects such as temperature inversions and wind (Fact Sheet D);
- A comparison of the predicted or measured noise levels with the project noise trigger level; and an assessment of the impacts and the need for noise mitigation and management measures;
- A consideration of residual noise impacts;
- Proposed noise limits for the premises; and
- Proposed noise monitoring for the premises.

The noise management plan must be provided to the EPA by electronic mail to riverina.farwest@epa.nsw.gov.au for review and approval prior to the commencement of works associated with the expansion approval granted under development application 10.2018.36584.1.

Vibration Management Plan

The proponent must engage a suitable qualified and experienced person to develop a vibration management plan assessment, prepared in accordance with the *Environmental Noise Management Guideline - Assessing Vibration: a technical guideline (DEC, 2006)*, to determine potential vibration impacts from the premises and identify mitigation measures to be implemented should impacts be identified.

The vibration management plan must be provided to the EPA by electronic mail to riverina.farwest@epa.nsw.gov.au for review and approval prior to the commencement of works associated with the expansion approval granted under development application 10.2018.36584.1.



18 February 2019

The General Manager
Albury City Council
PO Box 323
ALBURY NSW 2640

Attention: Marius Shepherd

DA10.2018.36584.1 – PROPOSED EXTENSION OF EXTRACTIVE INDUSTRY, ANDERSONS CLAY MINE, LOT 2 DP856969, SHAW STREET, SPRINDALE HEIGHTS, ALBURY.

I refer to your correspondence regarding the subject Application which was referred to Roads and Maritime Services for assessment and comment.

From the information provided it is understood that the proposal represents the continued operation of an existing Quarry. The application is supported by an Environmental Impact Statement (EIS) prepared by VGT Environmental Compliance Solutions dated October 2018. The subject site has an existing access to Shaw Street, which is classed as a local road.

It is understood from the submitted information that the proposal objective is to extend the current envelope of extraction of the quarry. The application does not propose any changes to the current extraction rate of 50,000 tonnes per annum. There will be no changes to the frequency of transportation, hours of operation and traffic routes to and from the site.

Vehicular access to the subject site is via Shaw Street. The haulage route from the Quarry is to the Brickworks in Jinderra. The surrounding road network is classed as local roads under the provisions of the Roads Act. The majority of traffic generated by the development would be towards Jinderra to the north west of the site. Given that the proposal does not proposed an increase in traffic volumes it is not considered that the development proposal will significantly change the current impacts of the existing quarry operation on the classified road network.

Roads and Maritime is interested in the characteristics of the traffic generated by the development and in the impact of the development on the safety and efficiency of the classified road network. On this basis Roads and Maritime Services advises that it would have no objection to the development proposal subject to consideration of the issues outlined above by the consent authority.

Any enquiries regarding this correspondence may be referred to the Manager, Land Use for Roads and Maritime Services (South West Region), Maurice Morgan, phone (02) 6923 6611.

Yours faithfully

Per:
Lindsay Tanner
Director
South West NSW

From: Bradley.Bourke@rfs.nsw.gov.au
Sent: 18/01/2019 5:36 PM
To: info@alburycity.nsw.gov.au
Subject: Development Application 10.2018.36584.1 2//856969 - 253 SHAW STREET SPRINGDALE HEIGHTS
Attachments: DA-116807-110639-5.pdf

BRIMS DA record DA19010316807 received on 24/12/2018 for a S.79C assessment.

The Rural Fire Service response to the above development application referral is attached.

If you require further information please contact Bradley Bourke on 1300 679 737.

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Headquarters
Locked Bag 17
Granville NSW 2142

Facsimile: 8741 5433



The General Manager
Albury City Council
PO Box 323
ALBURY NSW 2640

Your Ref: 10.2018.36584.1
Our Ref: D18/8710
DA19010316807 BB

ATTENTION: Marius Shepherd

18 January 2019

Dear Mr Shepherd

Development Application - 2//856969 - 253 Shaw Street Springdale Heights

I refer to your correspondence dated 18 December 2018 seeking advice regarding bush fire protection for the above Development Application in accordance with Section 4.15 of the 'Environmental Planning and Assessment Act 1979'.

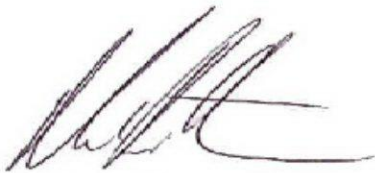
The New South Wales Rural Fire Service (NSW RFS) has considered the information submitted and provides the following recommended conditions:

1. A Fire Management Plan (FMP) shall be prepared for the proposed development in consultation with the local NSW RFS District Office. The FMP shall include:
 - 24 hour emergency contact details including alternative telephone contact;
 - Site infrastructure plan;
 - Fire fighting water supply plan;
 - Site access and internal road plan;
 - Construction of asset protection zones and their continued maintenance;
 - Location of hazards (physical, chemical and electrical) that will impact on the fire fighting operations and procedures to manage identified hazards during the fire fighting operations; and
 - Such additional matters as required by the NSW RFS District Office.
2. Essential equipment should be designed and housed in such a way as to minimise the impact of bush fire on the capabilities of infrastructure which provide communication during bush fire emergencies.

3. To allow for emergency service personnel to undertake property protection activities, a minimum 10 metre Asset Protection Zone (APZ) shall be provided around all assets. This APZ shall be managed as an Inner Protection Area (IPA) as outlined within section 4.1.3 and Appendix 5 of Planning for Bush Fire Protection 2006 and the NSW Rural Fire Service's document Standards for asset protection zones.
4. A minimum 20,000 litres of water shall be provided within the site for fire fighting purposes in accordance with Section 4.1.3 of Planning for Bush Fire Protection 2006.

Should you wish to discuss this matter please contact Bradley Bourke on 1300 NSW RFS.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'M. Dotter', with a stylized, flowing script.

Martha Dotter

Acting Team Leader, Development Assessment and Planning

For general information on bush fire protection please visit www.rfs.nsw.gov.au