

## COUNCIL ASSESSMENT REPORT ADDENDUM

### HUNTER AND CENTRAL COAST REGIONAL PLANNING PANEL

<b>PANEL REFERENCE &amp; DA NUMBER</b>	PPSHCC-203 DA 42/2023
<b>PROPOSAL</b>	Wyndham Quarry – Continuing operation and increase production from 100,000 tonnes per annum to 330,000 tonnes per annum for 15 years
<b>ADDRESS</b>	4458 Golden Highway, Merriwa, NSW 2329 Lot 1521 DP 1133556 Lot 1522 DP 1133556
<b>AUTHOR</b>	Paul Smith – Senior Environmental Planner
<b>DATE</b>	4 June 2024
<b>ADDITIONAL/AMENDED DOCUMENTATION</b>	<ul style="list-style-type: none"> <li>• Amendment Report 2 – 24 May 2024 (including Appendices: Sediment Dam Calculations, BDAR and Rehabilitation Strategy)</li> <li>• Additional Information – 13 June 2024</li> <li>• Biodiversity Development Assessment Report – 22 May 2024 (as separate document)</li> <li>• Rehabilitation Strategy – 22 May 2024 (as separate document)</li> </ul>

### Background

This development application was considered by the Planning Panel on 17 April 2024 and was deferred on 29 April 2024 as further information was required to properly assess the development. In particular the Panel was not satisfied that:

- i. The proposed water management system, monitoring program and mitigation of impacts are sufficiently detailed or properly considered in the BDAR.
- ii. The extent of measures to maintain and improve biodiversity values on the site are adequate.
- iii. Estimates of the quantity and nature of the waste streams have been provided.
- iv. The rehabilitation strategy is appropriate
- v. The BDAR has specifically considered the impact, if any, of the requirements for APZs.

The Applicant was asked to provide the following information:

- a) *Additional information to satisfy the SEARs requirements and address points (i) to (v)*
- b) *A rehabilitation strategy that includes progressive rehabilitation*

- c) *Updated BDAR that includes latest survey data and consideration of the APZ and any works required to upgrade the water management system*
- d) *Details of the existing consent*
- e) *Council's comments regarding the applicants' request regarding Section 7.11 Contributions*

Revised information was submitted by the Applicant on 27 May 2024. This comprised Amendment Report 2 which included Sediment Dam Calculations, Revised Rehabilitation Strategy and Revised Biodiversity Development Assessment Report. Following a review a number of clarifications were requested by Council on 4 June 2024 in relation to the following:

- Details on the particular progressive rehabilitation actions that will occur for each stage
- Details of the measures taken to bring the fresh water diversion system below Dam East 1 to its connection with the Worandi Rivulet up to best practice standards.
- Clarification on matters related to the BDAR

The application submitted further information to address these issues on 14 June 2024.

**a) Additional information to satisfy the SEARs requirements and address points (i) to (v)**

Water Management System

The SEARs require that the EIS provides a *detailed description of the proposed water management system, water monitoring program and other measures to mitigate surface and groundwater impacts*. The Amendment Report 2 (AR) provides additional information in relation to the implementation of sediment and erosion control measures through the following strategies:

- *No land disturbing activities associated with quarry extraction works, such as topsoil stripping or haul road construction, will be undertaken unless appropriate soil and water management measures have been installed.*

Comment: It is recommended that an operational water management plan be submitted that provides more detail about the timing of the implementation of the soils and water management measures.

- *Fresh water runoff will be diverted around the new disturbance area and returned to the adjacent catchments. Due to the longer-term design life (15 years minimum), these diversion drainage structures should conform to Managing Urban Stormwater: Soils and Construction – Volume 1 (Landcom 2004).*

Comment: The AR provides an example of Standard Drawing SD earth bank (5–6 high flow), as Plate 2.1. Dimensions of these diversion structures will be confirmed prior to construction to suit the proposed disturbance area and its associated upstream catchment, which could vary as the proposed of 4.4 ha may or may not all be disturbed at once. It is recommended that the staged rollout of the fresh water diversion structures are provided as part of the Operational Water Management Plan to be submitted prior to the commencement of quarry operations under this consent.

The AR advises “These freshwater diversion structures will be seeded with pasture species to reduce the risk of sedimentation of diverted runoff water”. Rather than being seeded with pasture species, it is recommended that the wording in the Operational Water Management Plan is “established and maintained” with pasture species as the provision of a permanent groundcover species is essential for the effective operation of the diversion structures. In addition it would be necessary to exclude livestock from the water management structures to prevent disturbance and groundcover depletion.

The Additional Information provided by the Applicant advises that the existing freshwater diversion system below Dam East 1 will be upgraded to meet required standards within two years of commencement. However given that the system is already inadequate and likely be generating sediment movement, the upgrade needs to occur prior to the commencement of quarry operations under this consent. Furthermore and contrary to Applicant’s view, as the watercourse has been extensively altered for the purpose of the quarry, the responsibility for the adequacy of the system extends to its confluence with the Worandi Rivulet (this would also be subject to the General Terms of Approval under the Water Management Act 2000).

- *Sediment water control structures such as diversion banks will be installed to direct the flow of runoff from disturbed areas into appropriately sized sediment control dams or basins or will be directed into the quarry excavations. Due to the small disturbance area of 4.4 ha and relatively short design life between topsoil stripping and removal of the underlying rock (approximately 3 years), the sediment water diversion drains should conform to the Managing Urban Stormwater: Soils and Construction – Volume 1 (Landcom 2004)*

Comment: The AR provides an example of Standard Drawing SD earth bank (5–5 low flow reproduced in Plate 2.2) and advises that dimensions will be confirmed prior to construction given that not all the 4.4 ha may be disturbed at once.

- *Sediment laden runoff water may also be managed through the use of appropriately constructed sediment fences to reduce sediment laden runoff from leaving the site.*
- *Sediment water from the processing and stockpile area reports to the sediment dam currently approved under the existing site environmental protection licence (EPL 20746). This sediment control dam is shown on Figure 2.1. This water is used for dust control in the quarry processing facilities and in the water truck used for haul road and access road dust control.*
- *Freshwater diversion structures and sediment water controls will remain in place after the cessation of operations until rehabilitation has been undertaken including the establishment of adequate revegetation on exposed areas to ensure freshwater catchments are protected from sediment laden water leaving the site.*
- *Sediment and erosion management structures will be maintained through the life of the Project to ensure adequate ongoing operational performance.*

The AR also provides an outline of the required water monitoring program. It proposes to collate historical water quality monitoring results to provide relevant baseline data for the Worandi Rivulet based on the parameters of pH, Salinity, Total Suspended Solids (TSS) and Total Nitrogen (TN). It then proposes monitoring points at the Worandi Rivulet, the Sediment Control Dam and Dam East 1. It also proposes to develop a Trigger Action Response Plan (TARP) – it is recommended that this is provided as part of the conditions of consent pertaining to the provision of the Operational Water Management Plan.

In this regard it is considered that the water management details provided in the AR are sufficient for the purpose of the DA, however additional detail will need to be provided in the operational water management plan.

### Biodiversity

In relation to biodiversity, the SEARs require that the EIS include a *detailed description of the proposed measures to maintain or improve the biodiversity values of the site in the medium to long term, as relevant*. The AR proposes two primary strategies including a continuation of sustainable grazing practices (the use of rotational grazing and the control of feral animals and weeds) and habitat enhancement zones.

The AR also identifies riparian zone as being part of this habitat enhancement, however limited details have been provided. Figure 3.1 identifies areas along the eastern edge of the quarry and freshwater diversion system as part of the riparian zone, however these areas are not likely to be appropriately defined as riparian areas. If any revegetation of this area is possible then it should count as part of the stabilisation work rather than habitat enhancement.

It is proposed to use a 10ha area (in total) of land to the south-west of the quarry site to achieve the following outcomes:

- *provide ecological diversity in the landscape*
- *providing alternate foraging and nesting habitat for a range of mammal and avian species*
- *providing wildlife corridor linkages across the landscape*
- *improve soil stability in proximity to creek lines and reduce erosion risks leading to Improved stream water quality.*

According to the AR:

*Revegetation activities will focus on plantings of dominant tree species of PCT 1693 grassy woodland in the habitat enhancement zones at spacings to replicate the former grassy woodland PCT.*

However the site also comprises PCT 483 – Grey Box x White Box grassy open woodland on basalt hills in the Merriwa region, upper Hunter Valley. Which forms the critically endangered ecological community known as White Box – Yellow Box – Blakely's Red Gum Grassy Woodland and Derived Native Grassland.

This will involve fencing, installation of alternate stock watering, revegetation and habitat enhancement. Some of the detail that is proposed needs further consideration, for example it proposes plantings of native species with “tubestock planting at distances of 10m to 50m apart to replicate the density of the open grassy woodland

and will be placed at higher densities adjacent to water flow areas and, and at lower density across the habitat enhancement zone”.

Assuming a moderate attrition, the proposed planting density of tubestock is unlikely to achieve a benchmark canopy cover for the PCT. In bushland regeneration it is necessary to over-plant to account for seedling losses. It is recommended that over planting in this landscape occurs by at least 50%. In addition no consideration is given to understory species

In addition the AR refers to “planting of ...” implying a one off process whereas the *establishment of...* and a success target of at 80% survival is more appropriate and needs to be reflected in the Biodiversity Management Plan. The AR gives no consideration to natural tree regeneration from the existing trees – this may be a means of achieving canopy cover provided there is sufficient stock exclusion.

The AR proposes planting of only two tree species Yellow Box (*Eucalyptus melliodora*) and Rough-bark Apple (*Angophora floribunda*). However there is scope to establish a mix of other species relevant to the ecological community including Blakelys Red Gum (*E. blakleyi*) or Forest Red Gum (*E. teriticornis*), and possibly on higher ground, E. Inland Grey Box (*E. macrocarpa*). It is recommended that the biodiversity management plan provides a list of all species including understory species in the relevant PCT(s) to establish the appropriate benchmark.

Limited detail is provided on proposed grazing regimes for the Habitat Enhancement Zones. In keeping with current practice on offset sites, the restoration area should be fenced with permanent stock proof fencing and subject one event of crash grazing over a few days in autumn to a minimum ground cover of 10cm should be maintained. Furthermore no grazing would be appropriate while planted trees are establishing. More regular grazing may be possible once planted or regenerating trees reach a DBH over 5cm, and height over 2 meters.

Overall this satisfies the biodiversity aspect of the SEARs, however there remain concerns about the approach taken to restore the particular plant community, timeframes, implementation and measures of success. There are also concerns longevity of the habitat enhancement strategy.

It is recommended that a condition of consent be imposed that requires that a Biodiversity Management Plan be prepared and submitted to the consent authority for approval prior to the commencement of quarry operations under this consent. In addition a condition of consent has been added regarding the timing of the establishment of the Habitat Enhancement Zone (along with the plan in Appendix 6 of the conditions).

### Waste

The SEARs require that the EIS covers the issue of waste management, including *estimates of the quantity and nature of the waste streams that would be generated or received by the development and any measures that would be implemented to minimise, manage or dispose of these waste streams*. The AR provides additional details of the waste stream quantities (Table 4.1 – Waste quantities and management) which is deemed sufficient to satisfy the SEARs.

### Rehabilitation

The SEARs require the EIS includes *a detailed description of the proposed rehabilitation measures that would be undertaken throughout the development and during quarry closure*. The AR provides a revised rehabilitation strategy that covers the rehabilitation measures that would be undertaken. This is discussed in the following section.

**b) A rehabilitation strategy that includes progressive rehabilitation**

A revised rehabilitation strategy has been included in the AR (Section 5 and Appendix B – Rehabilitation Strategy). This maintains that *“the application of progressive rehabilitation techniques is especially relevant to large open cut coal mines using strip mining methods, where the overburden from each successive open cut strip is placed into the previously mined strip, allowing reshaping and rehabilitation works to be undertaken progressively”*. Notwithstanding progressive rehabilitation is considered to be best practice in extractive industry and the Applicant has now identified opportunities for progressive rehabilitation. The rehabilitation approach now includes stages for progressive rehabilitation shown in Table 7.1 and Figure 7.1 of the Additional Information.

This provides more detail about rehabilitation actions will occur in each stage. Notwithstanding much of the significant rehabilitation – of the quarry floor and benches is delayed until close to the end of the operational period of the quarry under this consent (ie not until year 13). It is suggested that some of the quarry benches to eastern side and southern side – leading to the proposed ramp could start to be rehabilitated soon after disturbance of the “additional disturbance area” commences (this area forms Phase 1 of the quarry operation according to Fig 3.2 in the EIS). It is considered important to make a start on these areas that are more likely to be more difficult to rehabilitate due to lack of topsoil (ie topsoil could be transferred from the new disturbance area in Phase 2 to the benches).

Given some level of uncertainty it is recommended that a rehabilitation management plan be submitted prior to the commencement of quarry operations under this consent.

**c) Updated BDAR that includes latest survey data and consideration of the APZ and any works required to upgrade the water management system**

The Applicant has submitted an Amended BDAR (V3.3), dated 22 May 2024 (which is the date signed by the Accredited Assessor. The Amended BDAR was submitted on 27 May 2024. The BAM-C report was finalised on the 20 May 2024. In this regard the BDAR satisfies the requirements of Section 6.15 of the Biodiversity Conservation Act 2016. The key changes presented in the Amended BDAR reflect further targeted sampling of flora and fauna species and their removal from Assumed Present and as such removing the requirements for any species credits.

These species include:

- Pink-tailed legless lizard (*Aprasia parapulchella*)
- Stripped legless lizard (*Delma impar*)
- Bluegrass (*Dichanthium setosum*)
- Barking Owl (*Ninox connivens*)

The Applicant has submitted further information that the asset protection zones (APZs) and the water management system upgrades do not require consideration in the BDAR.

The Bushfire Assessment Report makes a recommendation that: *A minimum 10m asset protection zone (APZ), maintained to the standard of an inner protection area (IPA) must be provided around the existing and any new demountable buildings and storage facilities in accordance with the requirements of Appendix 4 of Planning for Bush Fire Protection 2019 as summarised in the Bush Fire Management and Operations Plan.*

This means that for a distance of 10m around the existing site office and facilities need to be managed as an inner protection area that involves the slashing of grass. This comprises weighbridge and parking hardstand area (to the west), a hardstand area to the north, a drainage area which is part of the freshwater drainage system, to the east and hardstand area to the south. The workshop and fuel storage area on the western side of the “processing, stockpile and infrastructure area” has hardstand to the north, east and south, and part of the existing freshwater diversion system to the west. The Applicant submits that the required APZs are already maintained as part of the existing quarry operation. As such these areas do not need to be considered in the BDAR. However there is nothing in the existing consent (DA 7/1980) that suggests these areas have been already established or managed as APZs (nor are they shown as part of the existing disturbance area in the Indicative Project Layout plan). In this regard it would appear the Applicant has not addressed this issue as requested by the Planning Panel.

The Applicant also advises that the water management system upgrades do not need any further consideration in the BDAR. The new freshwater division banks around the additional 4.4ha area have already been considered in the BDAR. However the plan shows a proposed freshwater diversion structure extending across the top of the waste rock emplacement area which is not included in the “subject area” in the BDAR. In addition it is likely that upgrades to the freshwater division system below Dam East 1 to the outlet into the Worandi Rivulet should be included. In this regard the Applicant has not addressed this requirement.

**d) Details of the existing consent**

The site contains an existing quarry operation approved under DA 7/1980, originally approved on 1<sup>st</sup> June 1981 for a Gravel Quarry, Rail Siding and Stock Pile - “Wyndham”, Merriwa. The Environmental Impact Statement submitted as part of the development application (and therefore being part of the consent) established areas of “Environmental Safeguards” (Section 5) in relation to “Soils and Erosion”, “Drainage and Water Quality”, “Air quality”, “Noise”, “Vegetation” and “Rehabilitation”. These issues have been incorporated into the EIS and recommended conditions of consent for DA 42/2023.

The current consent includes nine conditions of consent that were imposed and have been considered (some have been subject to subsequent modifications). A number of these conditions are no longer relevant or have been addressed through new recommended conditions. Refer to Attachment 1.

**e) Council’s position regarding the applicants’ request regarding Section 7.12 Contributions**

As part of its written submission to the Planning Panel Hearing on 17 April 2024, the Applicant, requested the removal of the condition requiring the payment of the \$29,300 contribution under the Upper Hunter Section 94A (Section 7.12) Contributions Plan 2008.

Section 7.12(1) provides that: *A consent authority may impose, as a condition of development consent, a requirement that the applicant pay a levy of the percentage, authorised by a contributions plan, of the proposed cost of carrying out the development.* The Upper Hunter Section 94A (Section 7.12) Contributions Plan 2008 is applicable to many development types and of particular relevance to “any other non-residential development where the proposed cost for carrying out the development exceeds \$200,000”. This includes extractive industries (not being included in the list of exemptions). The contributions plan is applied consistently to all relevant development applications and as such Council respectfully decline to remove the condition requiring the payment.

**f) Other Matters**

At the Planning Panel Hearing on 17 April 2024, the Applicant submitted:

*The Proponent is concerned about the real potential for delays including from engaging a contractor, from TfNSW approval processes, and potential construction delays from weather and equipment availability. These delays are out of the control of the proponent, and may conceivably mean that the intersection design, upgrade and TfNSW final approval could take longer than 18 months. Given that the existing development consent must be surrendered (per the proposed Condition A14) at 18 months, the quarry operations would cease until the intersection delays can be rectified. This would place an intolerable financial burden on the proponent who needs ongoing operations to fund the expansion of the quarry including the requirements of this consent.*

*The proponent respectfully requests that Condition B25 be amended to allow transportation of quarry product under this new consent at up to 1,000 tonnes per day – consistent with the existing consent - until the intersection upgrade has been completed and approved.*

A fundamental component of this development application is the increased production from 100,000 tonnes per annum to 330,000 tonnes per annum, with corresponding daily haulage amounts from 1,000 tpd to 2,100 tpd. It has to be assumed that these haulage amount will actually occur and as such upgrades must be in place prior to the *commencement of transportation of quarry product under this consent from the Project Site*. Council is concerned that the Applicant’s proposed condition (based past experience) creates a risk that timely upgrade will not occur or be subject to contestation. In addition as previously noted TfNSW advise: Delaying the necessary intersection upgrade will create additional risks upon the safety and efficiency of the State road network. Notwithstanding in noting the Applicant’s concerns about achieving the upgrade within 18 months (based on the timeframe for surrender of the consent under Condition B14), it is proposed that Condition B14 be amended to:

*Within 3 Years of the date of commencement of quarry operations under this consent, or other timeframe agreed by the Consent Authority, the Applicant must surrender the*

*existing development consent (Development Consent No. 7/1980) in accordance with Section 4.17(1)(c) of the Environmental Planning and Assessment Act 1979.*

It is considered this timeframe is more than sufficient to undertake the required intersection upgrade and address any other conditions that require particular action prior to the commencement of quarry operations/transportation of quarry product under this consent.

### **Conclusion and Recommendation**

In view of the above considerations, it remains the recommendation of Council Officers that the proposed development be approved subject to the recommended conditions of consent included in Attachment 2 (Provided as a separate attachment). Some of the recommended conditions of consent have been amended or added since the 17 April 2024 Panel meeting to reflect new information (these are highlighted in Attachment 2).

**Attachment 1: Details of Existing Consent (DA 7/1980) – Surrendering the Existing Consent**

Condition	Retain (Yes/No)	Reason
<p>1. All product ballast extracted from the site being transported from the site by Railway from a rail siding at the site of extraction.</p> <p>A modification to the existing consent approved on 10 November 1992 to:</p> <p>1(a) to allow transport of quarry product to be either by railway or road.</p> <p>1(b) road maintenance contribution condition under Section 94 was also applied. This was levied at a rate of \$0.40 for every tonne of material removed by truck transport, indexed to CPI and to be made at six monthly intervals commencing the 30 December 1992 (this was later modified to be 5.5 cents per tonne, GST inclusive).</p> <p>1(c) It also stipulated that "Quarried materials transported from the site shall not exceed 1,000 tonnes per day and a maximum of 100,000 tonnes per annum.</p>	No	<p>Transport of quarry product will be by road.</p> <p>Council's current Section 7.11 Contributions Plan is not applicable as it only applies to local roads – the Golden Highway is a state classified road. Notwithstanding a one off contribution of \$29,300 is required under the Section 94A (Section 7.12) Contributions Plan 2008 (as discussed).</p> <p>This is no longer relevant as the new DA proposes to increase production to 330,000 tonnes per annum and the transportation of 2,100 tonnes per day.</p>
<p>2. The owners of the adjoining properties being provided with a blasting schedule and all blasting works being confined to the scheduled hours provided.</p>	Yes	<p>This has been added to the recommended conditions of consent.</p>

3. The applicant Company and all contractors or employees involved in the operation of the quarry carrying insurance at a level sufficient to meet any claims for damage to property or injury to persons, in any Court of competent jurisdiction, which may arise out of the development.	No	This does not seem to be a relevant planning condition.
4. Upon completion of the quarrying operations, the applicant Company is to reinstate the land and remove all structures from the site to the satisfaction of the land owner and in this regard, the applicant is required to enter into a legal agreement prepared by Council's solicitors at the applicant's expense and is to lodge a performance bond in the sum of \$20,000.00.	No	This is addressed through the Rehabilitation Strategy and condition related to the Rehabilitation Management Plan.
5. Full details of site amenities and the disposal of wastes there from are to be submitted to and approved by Council's Health Surveyor prior to the erection of amenities.	No	These have already been erected on site.
6. The consents and where necessary, licences from all Statutory Authorities are to be obtained prior to the commencement of quarry operations.	No	This is now addressed through the Integrated Development provisions. Condition B15 requires: <i>Prior to the commencement of quarry operations under this consent the Applicant must obtain a controlled activity approval under the Water Management Act 2000.</i>
7. The hours of operation being restricted to those hours between 6am and 7pm Monday to Saturday inclusive and prohibited on Sundays, Christmas Day, Good Friday and before 6am and after 7pm Monday to Friday inclusive. The company operating the quarry is to notify all sub-contractors agents' employees	No	This is covered by Condition A11 Hours of Operation.

<p>8. (As modified) The existing intersection of the haul road and SR209 to be upgraded and the applicant to pay Council \$16,700 to meet the cost of the intersection reconstruction to satisfy the requirements of the RTA for the construction of a type 'BAL' layout for rural site including a passing lane of suitable length on the opposite side to the intersection. Plans of the proposed are to be prepared by the developer and forwarded to the RTA Tamworth Office for approval.</p>	<p>Yes</p>	<p>This has been replaced by new intersection requirements as per Condition B21 and is required to be upgraded prior to the commencement of transport of quarry product under this consent.</p>
<p>9. (as modified) Traffic warning signs to be erected each side of the intersection along SR209 in accordance with the RTA guidelines</p>	<p>No</p>	<p>Condition B22 - <i>Appropriate traffic safety signs must be installed at the intersection in accordance with Transport for NSW requirements.</i> Has now been included.</p>