

## COUNCIL ASSESSMENT REPORT

<b>Panel Reference</b>	<b>PPSNTH-10</b>
<b>DA Number</b>	<b>DA2019/37</b>
<b>LGA</b>	<b>Moree Plains Shire Council</b>
<b>Proposed Development</b>	<b>Extractive industry - Quarry</b>
<b>Street Address</b>	<b>73 Wilgaroy Road, GURLEY, Lot 10 DP 751753, Lot 110 DP 257328</b>
<b>Applicant/Owner</b>	John Meppem
<b>Date of DA lodgement</b>	28 May 2019
<b>Number of Submissions</b>	5 <b>Key issues of concern are:</b> -Water usage and groundwater impacts -Traffic increase and road condition -Dust suppression -Blasting -Bushfire hazard
<b>Recommendation</b>	<b>Approval</b>
<b>Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011)</b>	Development for the purposes of extractive industries, which meet the requirements for designated development under clause 19 of Schedule 3 to the Environmental Planning and Assessment Regulation 2000
<b>List of all relevant s4.15(1)(a) matters</b>	<ul style="list-style-type: none"> <li>• State Environmental Planning Policy 44 - Koala Habitat Protection</li> <li>• State Environmental Planning Policy 55 – Remediation of Land</li> <li>• State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007</li> <li>• State Environmental Planning Policy (Infrastructure) 2007</li> <li>• State Environmental Planning Policy (State and Regional Development) 2011</li> <li>• New England North West Regional Plan 2036</li> <li>• Moree Plains Local Environmental Plan 2011</li> <li>• Moree Plains Development Control Plan 2013</li> </ul>
<b>List all documents submitted with this report for the Panel's consideration</b>	<ul style="list-style-type: none"> <li>• Location plan</li> <li>• Site plan</li> <li>• Statement of Environmental Effects</li> <li>• Agency submissions</li> <li>• Draft conditions of approval</li> </ul>
<b>Report prepared by</b>	<b>Murray Amos</b>
<b>Report date</b>	<b>15 March 2021</b>

### 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?

**Yes**

### Clause 4.6 Exceptions to development standards

**Not Applicable**

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?

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**Special Infrastructure Contributions**

Does the DA require Special Infrastructure Contributions conditions (S7.24)?

**No**

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**Conditions**

Have draft conditions been provided to the applicant for comment?

**Yes**

# EXECUTIVE SUMMARY

## Description of Proposal

John Meppem (the applicant) proposes to establish a hard rock quarry (the proposal) at Manamoi Road, Bellata, New South Wales on the land identified as Lot 10 DP751753 and Lot 110 DP257328 (the site). The site is approximately 9 kilometres east of the Inland Rail Project (IRP) and approximately 50 kilometres North of Narrabri, 44 kilometres south of Moree and 10 kilometres north-east of Bellata, in New South Wales (refer **Figure 1 – Location Plan**).

The proposal is not classified as a State Significant Development (SSD), pursuant to the *State Environmental Planning Policy (State and Regional Development) 2011*, as the extraction volume is 490,000 tonnes per annum, the total available resources is less than 5 million tonnes and extraction will not occur from an environmentally sensitive area of State significance. The proposal is 'Designated Development' as described in Part 1, Section 19 of Schedule 3 of the *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation) for 'Extractive Industries'. Therefore, under Part 4, Division 2 of the *Environmental Planning Act and Assessment Act 1979* (EP&A Act) development consent is required.

The proposal will extract 490,000 tonnes of material per annum, with consent being sought for an operational period of up to ten (10) years, subject to the progress of the IRP and associated road upgrade projects, not including any necessary time for completion of any rehabilitation works once the resource is exhausted. The proposal includes extraction, processing, stockpile and water management areas of 8.34ha with vehicular access being obtained from Manamoi Road. The proposal includes a construction phase and an operational phase. The proposal would impact a total of 7.5ha of existing native vegetation over three clearing stages and the applicant intends to retire the offset obligation for each vegetation clearing stage separately.

The haul route to the Newell Highway is north via Manamoi Road, Boo Boo Road, Gurley Creek Road into the township of Gurley (refer to **Figure 3 – Haul route**). Traffic generation and the ongoing condition of public roads are key considerations for this proposal. Road upgrade works and ongoing contributions would be required from the applicant as part of any development approval for the proposal.

The proposal would produce a number of products, suitable for the needs of the IRP and associated road upgrade projects. Upon completion of supply of materials to the project, the operation of the quarry will be required to be rehabilitated to a suitable landform for continuing rural activities.

Archaeology and historic heritage, traffic, public road condition, biodiversity, noise and air quality, vibration and water are key aspects of the proposal which could potentially cause environmental impacts. Accordingly, these matters were addressed by the applicant in further detail through a series of specialist assessment reports. The assessment of heritage, biodiversity, noise and air quality found that the proposal would either avoid areas of significance or would require management and mitigation measures to minimise the risk of potential impacts.

## Amendments to Proposal

The current iteration of the EIS includes the following updates:

1. The haulage route of the proposal has changed and now relies only on local roads under the control of Moree Plains Shire Council to reach the Newell Highway via Manamoi Road, Boo Boo Road and Gurley Creek Road;
2. The internal access road from the quarry footprint to Manamoi Road has been moved to the middle of the site to address concerns previously raised by the landowner to the west regarding perceived potential noise, dust or surface water impacts from the internal access road; and
3. Vegetation clearing for the development would occur in 3 vegetation clearing stages, as would financial contributions for the corresponding biodiversity offsets; and

4. In the event that the proposal is not self-sufficient for water, the proposal will source water for dust suppression from Moree Plains Shire Council or other appropriately licenced water suppliers rather than groundwater bores as originally proposed.

## Site Description & Surrounding Land Uses

The proposed development site is located on Manamoi Road, Bellata, approximately 9 kilometres east of the IRP. The site is approximately 50 kilometres North of Narrabri, 44 kilometres south of Moree and 10 kilometres north-east of Bellata, in north-east New South Wales. The local area is predominantly used for agricultural purposes.

The proposed quarry site is situated on a knoll which is locally referred to as Black Hill. Quarrying activities would be focused on the higher elevation areas of Black Hill which contain a high-quality basalt resource.

## Property Description

The real property description of the land is Lot 10 on DP751753 and Lot 110 DP257328. The site is located within the Local Government Area of Moree Plains Shire Council and is approximately 160 hectares in size. The land is currently zoned 'RU1 'Primary Production' under the *Moree Plains Local Environmental Plan 2011*.

## 1.5 Surrounding Land Uses

The adjoining properties are all zoned RU1 'Primary Production' and have historically been used for dryland farming. Bellata is a small town with a population of approximately 200 people, located 9.5 kilometres south-west of the subject site. Bellata services a rich agricultural region which is also known for its natural minerals.

The nearest sensitive receptors (private rural dwellings) to the quarry site are mapped below.

Figure A- Map of sensitive receptors



Table A – Separation distances from sensitive receptors

Receptor	Receptor Type	Address	Distance (m)
1	Rural Dwelling	425 Manamoi Road, Gurley	1,950
2	Rural Dwelling	207 Wilgaroi Road, Bellata	3,000
3	Rural Dwelling	1499 Berrigal Creek Road, Bellata	4,700
4	Rural Dwelling	1396 Berrigal Creek Road, Bellata	4,950
5	Rural Dwelling	1733 Boo Boo Road, Bellata	6,000
6	Rural Dwelling	1215 Berrigal Creek Road, Bellata	3,000
7	Rural Dwelling	79 Wilgaroi Road, Bellata	4,900

The potential impacts for land use conflicts with sensitive receptors are typically caused by environmental nuisance in the form of dust, noise, odour and visual impacts.

The Department of Primary Industries' Living & Working in Rural Areas Handbook provides recommended minimum buffer distances for various land use types. Table B below outlines minimum buffer distances recommended for mining, petroleum production and extractive industries. The recommended buffer distance for the proposal is 1km, which the proposal is consistent with. Management and mitigation measures for potential environmental nuisance such as dust, noise, vibration, odour or visual impacts, are detailed in the relevant sections in this EIS and will form part of Construction and Operations Management Plans.

Table B – Recommended minimum buffer distances

Mining, Petroleum Production & Extractive Industries		
Receptor	Normal Operations (m)	Blasting (m)
Residential areas & urban development	500	1000
Rural dwellings	500	1000
Educational facilities & pre-schools	500	1000
Rural tourist accommodation	500	1000
Watercourses & wetlands	SSD	SSD
Bores & wells	SSD	SSD
Potable water supply/catchment	SSD	SSD
Property boundary	SSD	SSD
Roads (public)	SSD	SSD

SSD: Site Specific Determination.

Source: Department of Primary Industries (2007) Living and Working in Rural Area Handbook.

## Permissibility

The proposed quarry is defined as an “extractive industry” under the Moree Plains Local Environmental Plan 2011 (LEP).

“Extractive industry” is defined as follows in the LEP:

“Extractive industry means the winning or removal of extractive materials (otherwise than from a mine) by methods such as excavating, dredging, tunnelling or quarrying, including the storing, stockpiling or processing of extractive materials by methods such as recycling, washing, crushing, sawing or separating, but does not include turf farming.”.

The subject site is located within the RU1 – Primary Production Zone (RU1 Zone). Under the RU1 Zone, within the LEP, “extractive industries” are permitted with consent.

## Recommendation

The proposed development is considered to be generally compatible with its surrounds and provides for a diversification of land uses on the property.

The subject site is considered suitable for the proposed development for the following reasons:

- The subject site is within a rural/agricultural area and contains a mineral resource on land not classified as Biophysical Strategic Agricultural Land (BSAL).
- The Environment Protection Authority (EPA) is generally satisfied with the proposal. The quarry will require an Environment Protection Licence issued by the EPA.
- The proposed development is able to mitigate any potential impacts and is generally compatible with existing land uses in the locality
- The proposed development is permissible within the RU1 Primary Production zone under the Moree Plains Local Environmental Plan 2011.
- Access to the subject site is available from Manamoi Road, Boo Boo Road, Gurley Creek Road and the Newell Highway
- Water is able to be sourced for the development without using local groundwater.

As a result of this assessment, the proposed development is recommended for conditional consent. Appendix 1 to this report contains the proposed conditions of consent.

### Recommendation:

- a) **That having regard to the assessment of the application, DA2019/37 (NRP Ref. PPSNTH-10) be granted conditional approval as a deferred development consent (pending the issue of General Terms of Approval from EPA) in the terms set out in Appendix 1 to this report.**



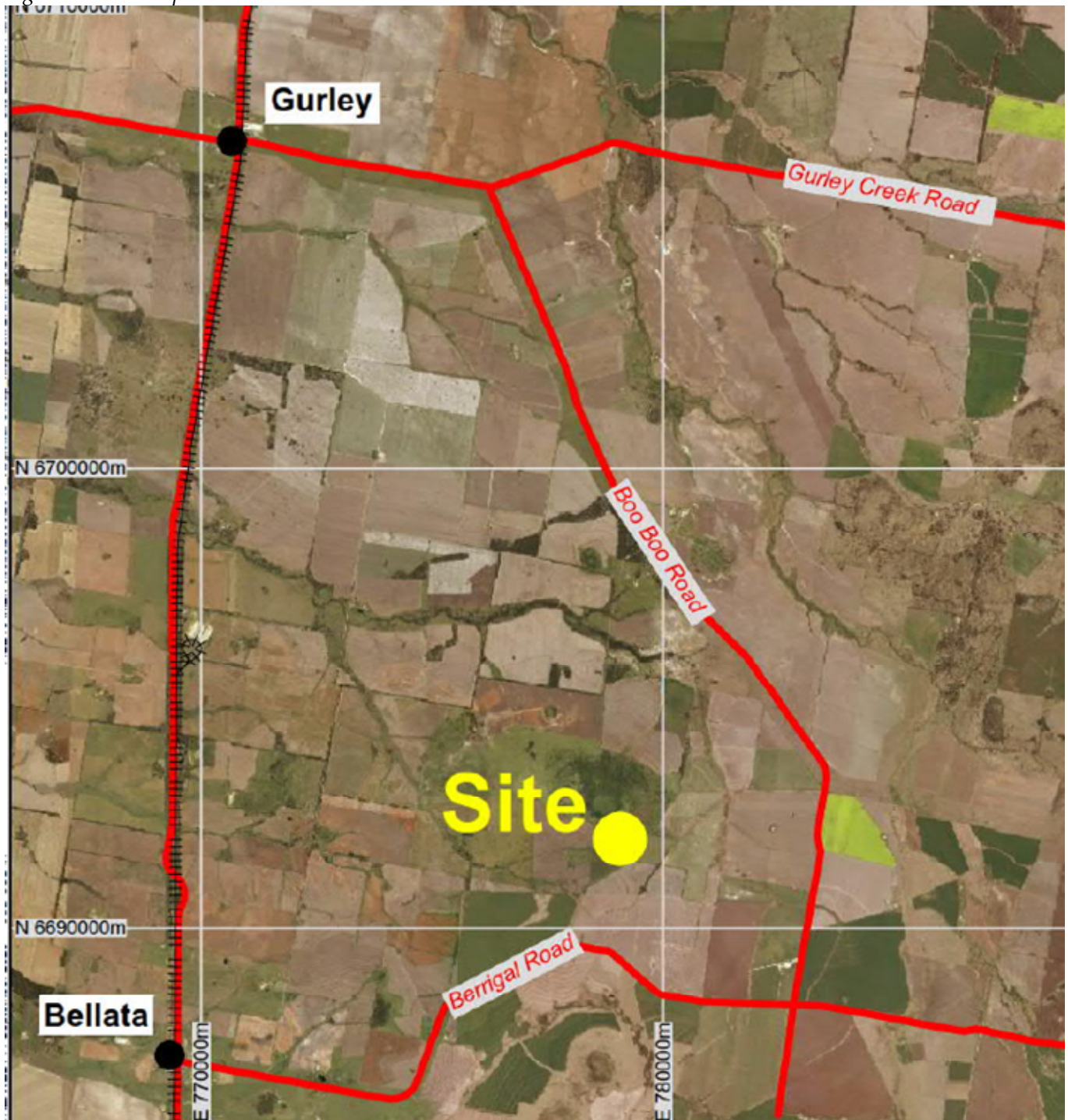
## PLANNING REPORT

### 1. Site and locality

The proposed quarry would be situated on a basaltic knoll which is known as Black Hill. The proposed development site is located on Manamoi Road, Bellata, approximately 10 kilometres north-east of Bellata and 44 kilometres south of Moree. The local area is predominantly used for agricultural purposes. The real property description of the land is Lot 10 on DP751753 and Lot 110 DP257328. The total site area is approximately 160 hectares.

The subject land is currently zoned RU1 'Primary Production' under the Moree Plains Local Environmental Plan 2011. The property is owned by John Meppem.

Figure 1 Location plan





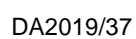
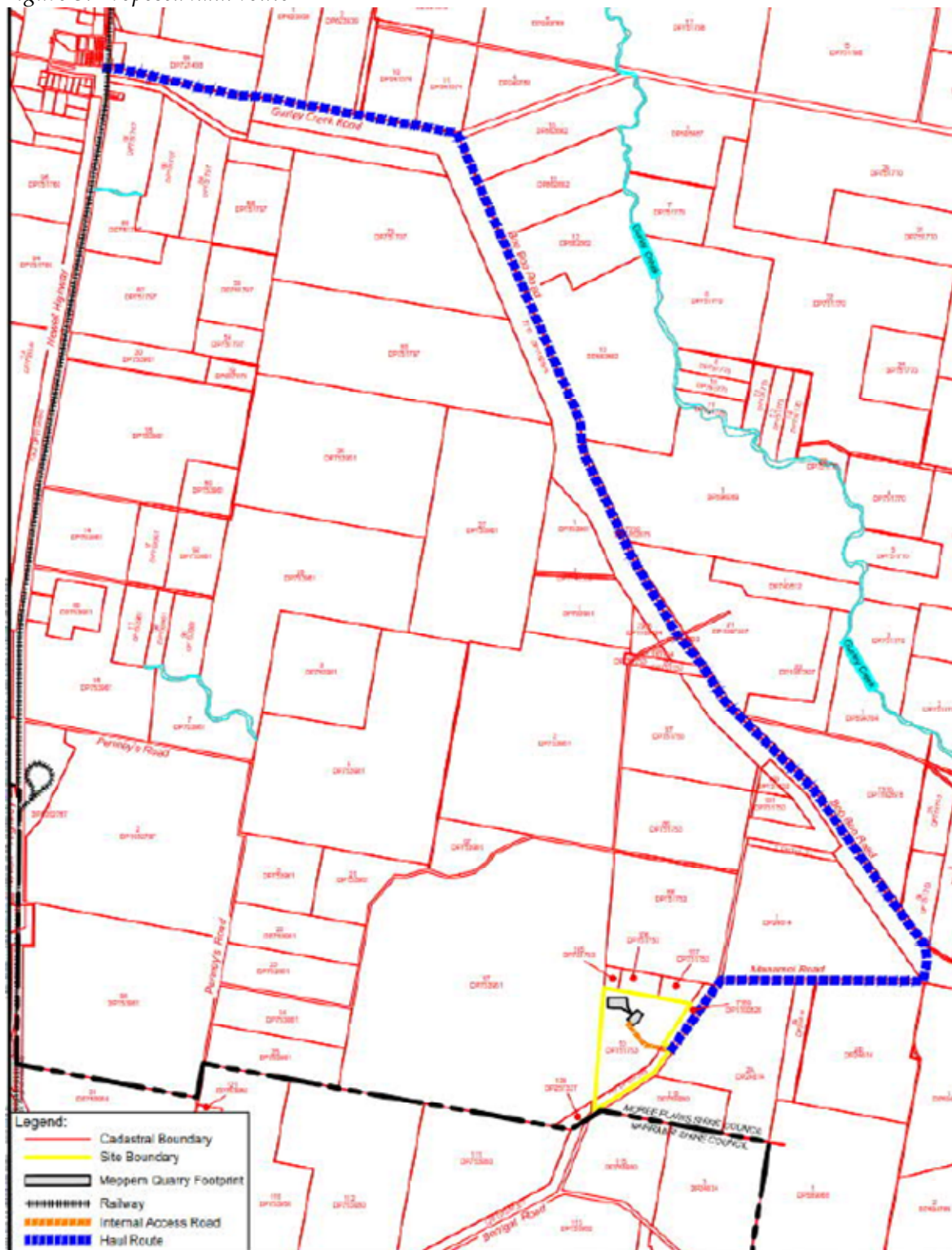




Figure 3: Proposed haul route



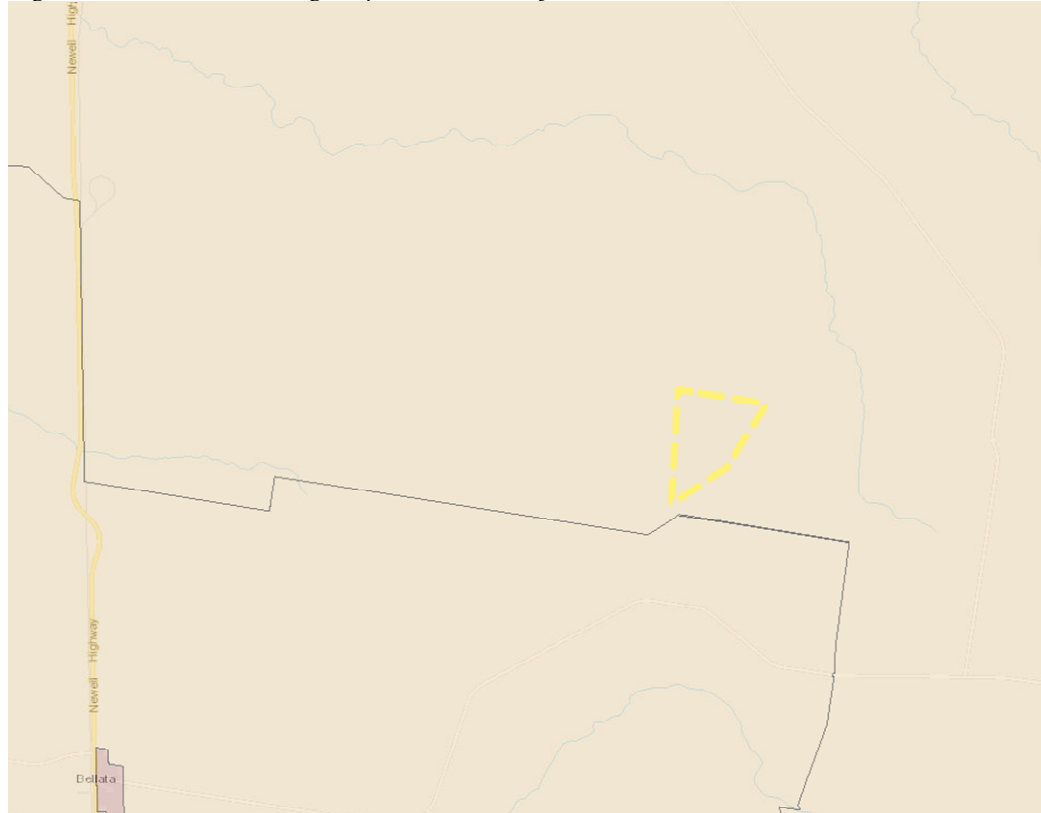
## 2. Statutory Development Assessment Framework

### 2.1 Permissibility

#### Regionally Significant development

The site is zoned RU1 - Primary Production under Moree Plains Local Environmental Plan 2011 (LEP) as shown in the figure below. The development proposal is defined as an 'extractive industry' and is permissible under the LEP Land Use Table.

*Figure 3 Land Use Zoning map RU1 Primary Production*



## **2.2 Public Participation**

The development application (**DA**) was publicly notified as required by the provisions of the Moree Plains Community Participation Plan 2019.

The DA was publicly notified and exhibited for a period of 28 days commencing 27 October 2020 and closing 24 November 2020. The notification included letters to property owners/occupiers if, in the opinion of the Council's Planning and Development Department, the enjoyment of land adjoining the development may be detrimentally affected by the proposed development. Those properties that were notified are indicated in the figure below.

Figure 5 Notification plan – Development site at Black Hill



During the notification period five (5) submissions were received. The issues raised in the submissions are detailed as follows:

Issue	Assessing officer comment
Water sourcing and impacts on groundwater (from quarrying activities such as blasting).  Allegations of applicant seeking groundwater access on neighbouring farms despite officially claiming to not require groundwater.	There has been a reduction in the stated quantities of water to be used. This is primarily due to the original EIS figure of 91.2ML being based on 7 days of activity per week for 52 weeks and the current EIS being based on 5.5 days per week for 50 weeks per year. This is a saving in the order of 25%.  According to the Surface Water Report by Groundwork Plus the onsite dams and sediment basin would have surplus water supply in an above-average rainfall year and a shortfall of 19ML in a below average rainfall year. Where a shortfall exists water would need to be sourced from an authorised and licenced provider such as Moree Plains Shire Council.



	<p>With regard to the potential use of groundwater, the current EIS does not include groundwater as a proposed water source. Council has drafted a condition to prohibit the use of groundwater for the development.</p> <p>The quarry site is on top of a knoll and is well above the groundwater table. However, to ensure the preservation of the groundwater table a condition has been drafted requiring the applicant to demonstrate that blasting activities will not disrupt or impact upon groundwater reserves.</p>
Use of Polo Citrus dust suppressant and associated applicant claims of significant water demand reductions	<p>Polo Citrus Australia's Haulage DC dust suppressant product appears to be used by various businesses within the quarry industry. The applicant is commended for utilising a product to reduce dust generation from the development.</p> <p>With regard to the suggested reductions in water usage resulting from the use of Haulage DC there is a lack of certainty regarding the level of water-saving benefit. This assessment has not seen independent, scientific evidence of the product's performance. As such the product cannot currently be relied upon to influence water usage levels for the development.</p> <p>A condition has been drafted requiring the applicant to either provide independent, scientific verification of Haulage DC's water saving capability or update the project water balance to exclude any reference to Haulage DC's impact on water demand.</p> <p>If the suggested water saving from the use of Haulage DC remain unverified the proposal would need to source additional water from Moree Plains Shire Council or alternative licenced provider.</p>
<p>Safety issues associated with a significant increase in traffic generation on Boo Boo Road and Gurley Creek Road</p> <p>Public road standard and ongoing maintenance</p>	<p>The average quarry operation truck movements per day are 94 trucks per day and the peak quarry operation truck movements are 264 truck per day.</p> <p>Applying the average of 94 truck movements per day to the estimated existing traffic volume on Boo Boo Road results in an increase of 147%.</p> <p>If the peak daily truck movements of 264 trucks per day is applied, the percentage increase in traffic volume on Boo Boo Road is 412%.</p> <p>Council's Engineering Department requires that the applicant be responsible for upgrades to Manamoi Road, Boo Boo Road and Gurley Creek</p>

	<p>Road. These works include widening of the public road formation and re-sheeting the road surfaces. Further detailed in the Agency submission section below.</p> <p>The applicant has requested that a bond be arranged for upgrade works to the public road. This would permit quarry operations to commence and upgrade works completed within 5 months of the commencement of haulage from the property.</p> <p>The intersection upgrades for Gurley Creek Road and the Newell Highway would need to be completed prior to the commencement of haulage.</p> <p>The applicant will be required to make ongoing road maintenance contributions in accordance with Council's Section 7.11 Plan for Traffic Generating Development 2021.</p>
Dust generation and impacts on crops near the haul route	<p>The applicant is required to upgrade the public road network along the haul route and to provide road maintenance contributions to Council. This coupled with the use of dust suppressants and road use protocols for haulage vehicles, such as limitations on truck speeds, is considered to reduce dust generation.</p> <p>Dust management is required to be addressed in an Operations Management Plan for the site and would include dust monitoring at the quarry site and along the haul route. The Air Quality Impact Assessment recommends the enforcement of a maximum speed of 40km/h on unsealed haul and internal roads.</p>
Non-compliance with the objectives of the RU1 Primary Production land use zone under the Moree Plains Local Environmental Plan 2011	<p>Under clause 2.3(2) of the LEP, the consent authority must have regard to the objectives for development in a zone when determining a development application in respect of land within the zone.</p> <p>The objectives of the RU1 Primary Production zone include the following relevant objectives:</p> <ul style="list-style-type: none"> <li><i>To minimise the fragmentation and alienation of resource lands.</i></li> <li><i>To permit development for certain purposes if it can be demonstrated that suitable land or premises are not available elsewhere.</i></li> </ul> <p>It is considered that the proposed quarry is consistent with these objectives as it would utilise</p>

	<p>resource lands for a quarry development which is not able to be developed elsewhere.</p> <p>The relationship between the proposed quarry and adjacent agricultural land uses is able to be managed to minimise land use conflict.</p>
Bushfire hazard increase	<p>It is intended that the quarry would form a buffer around quarry assets and providing defensible space.</p> <p>The proposed development would increase the number and type of ignition sources in the local area. However, the proposed management and mitigation measures, in conjunction with general clearing activities associated with the development would ensure that an acceptable bushfire hazard is maintained.</p> <p>NSW Rural Fire Service have provided their concurrence for the proposal and have required that a range of fire management measures be implemented. The proposed measures would be collated within a Fire Management Plan.</p>
Blasting- separation from sensitive land uses and impacts on breeding stock	<p>The Noise Impact Assessment (NIA) by Advitech provides that 'adverse impacts are not expected' from blasting activities. The focus in this report is on neighbouring dwellings as sensitive receptors. The NIA recommends that monitoring of blasts be undertaken to demonstrate compliance. It also recommends that a strategy for notifying neighbours of planned blasts be developed and implemented, and a method for receiving, investigating and responding to complaints be provided.</p> <p>The strategy should include an address of stock management on neighbouring lands to ensure the general wellbeing of stock.</p> <p>The strategy is required to be included in the Operations Management Plan.</p>
Appeal rights – Inadequate notification including no notification for landowners in Narrabri Shire	<p>The current proposal was advertised and notified to potentially affected residents in both Moree Plains Shire and Narrabri Shire. It is considered that potentially affected parties had an opportunity to participate in the assessment process.</p>



## 2.3 Referrals

- Internal - Council Engineering Department
- External - NSW Rural Fire Service  
 - Transport for NSW  
 - Department of Industry – Division of Resource & Geoscience  
 - Biodiversity & Conservation Division  
 - Environment Protection Authority (EPA)

Agency	Comments
Council Engineering Department	<p>Council's Engineering Department has made the following requirements to upgrade the public road network. These requirements are complemented by road maintenance contributions from the applicant under Council's Section 7.11 Plan for Traffic Generating Development.</p> <ul style="list-style-type: none"> <li>• Manamoi Road - Haul route area of unsealed road to be constructed to a 6m formation with 5m all-weather road surface.</li> </ul> <p>Note: Alternatives to this design may be considered in conjunction with a related Traffic Management Plan. Reason this road is a very low use, local road.</p> <ul style="list-style-type: none"> <li>• Boo Boo Road unsealed portion- A full gravel resheeting 7m wide with minimum depth of 200mm is required. Note: Council does not have a gravel resheeting program except for critical causeways and a 100mm depth will be quickly eroded – a preferable depth of 200mm would allow reworking of the remaining road base with subsequent resheetings.</li> <li>• Boo Boo Road sealed section requires road widening to 9m formation excluding the table drains and with a minimum 7.5m wide bitumen seal.</li> <li>• Boo Boo Road causeway crossing of Little Bumble Creek shall be upgraded to a concrete slab crossing with a minimum length of 80m in accordance with Council's standards.</li> <li>• Gurley Creek Road sealed road shoulder widening to a formation width of 9m and bitumen-sealed width of 7.5m including resealing the full road width.</li> <li>• Gurley Creek intersection with Boo Boo shall be reconstructed as a channelised right turn (CHR) on a two-lane rural road, with associated road widening in accordance Austroads 2017 specifications or equivalent.</li> </ul> <p>Council's Planning &amp; Building Section arranged for an independent review of the Traffic Impact Assessment to be undertaken by Premise consultants. Premise made the following recommendations:</p> <p><u>Meppem Quarry Access Road</u>          The proponent intends to construct a two-lane gravel road as the internal farm road access to the quarry. The construction of a two-lane gravel road is to allow unimpeded operation of entering and exiting heavy vehicles during quarry operations.          The upgrading of the Meppem Quarry access road to this standard is appropriate for the safe operation of the heavy vehicles.</p> <p><u>Manamoi Road</u>          Moree Plains Shire Council has considered that this road can be single lane based on the frequency of truck traffic if pull over areas are established. Unloaded trucks returning to the quarry can therefore pull off the single road to</p>

	<p>allow loaded trucks, including am local farm traffic to continue toward Boo Boo Road.</p> <p>Moree Plains Shire Council should reconsider the requirements for upgrading Manamoi Road to reconstruct the road to a two-lane road. The upgrading of Manamoi Road to this standard is appropriate for the safe operation of the heavy vehicles.</p> <p><u>Boo Boo Road</u></p> <p>Whilst Moree Plains Shire Council has listed a number of conditions for the upgrading of Boo Boo Road to a widened gravel surfaced road, given the volume of heavy vehicles and existing vehicles using this road, Council should reconsider that Boo Boo Road should be further upgraded to a bitumen sealed road in accordance with Council's standards for a sealed rural road.</p> <p>The upgrading of Boo Boo Road to this standard is appropriate for the safe operation of the heavy vehicles.</p> <p><u>Gurley Creek Road</u></p> <p>Moree Plains Shire Council has indicated that the bitumen seal on Gurley Creek Road is to be widened to a minimum width of 7.7m including improving the road shoulder and table drain area.</p> <p>The upgrading of Gurley Creek Road to this standard is appropriate for the safe operation of the heavy vehicles.</p> <p><b>Assessing officer comment:</b> Council's Engineering Department require a range of public road improvements for the development. The key focus issue is the proposed treatment of Boo Boo Road. The Premise review recommends that Boo Boo Road be upgraded to include a bitumen-seal. Council's Engineering Department are satisfied with a full gravel re-sheeting and expanded road formation.</p>
NSW Rural Fire Service	<p>NSW RFS recommends that the following items be reflected in any consent:</p> <ul style="list-style-type: none"> <li>-a Fire Management Plan</li> <li>-property access road asset-protection zone</li> <li>-20,000 litre water supply located adjoining the internal property access road</li> <li>-provision for unobstructed vehicle access</li> </ul> <p><b>Assessing officer comment:</b> No issues. These items have been included as draft conditions.</p>
Transport for NSW	<p>Transport for NSW seek the following requirements to be reflected in approval conditions:</p> <ul style="list-style-type: none"> <li>-ARTC concurrence for traffic generation at the level crossing at Gurley</li> <li>-development to meet all relevant explosives management requirements</li> <li>-Implement a driver code of conduct</li> <li>-Avoid haulage operations coinciding with local school bus pick up/ drop off times.</li> <li>-Upgrade the Gurley Creek Road-Newell Highway intersection</li> </ul> <p><b>Assessing officer comment:</b> No issues. These items have been included as draft conditions.</p>
DPIE Division of Resources and Geoscience	<p>The proponent should confirm the suitability of the material for its intended purposes, including demonstrating they meet ARTC specifications. If deemed commercial-in-confidence, the proponent should commit to providing the Division with the additional resource assessment documentation separately.</p> <p><b>Assessing officer comment:</b> No issues</p>

DPIE Biodiversity & Conservation Division	<p>The Biodiversity Development Assessment Report (BDAR) is noted and the number and type of credits to be retired as part of the offset requirement shall be described in the consent conditions.</p> <p>BCD accepts the findings of the Aboriginal cultural heritage assessment by Advitech and note that the findings are consistent with known landscape and site distribution patterns.</p> <p><b>Assessing officer comment:</b> The biodiversity offset retirement of credits has been included as a draft condition.</p>
Environment Protection Authority (EPA)	<p>The EPA has not yet provided General Terms of Approval (GTA's) for the development.</p> <p>EPA have confirmed their concurrence with the information relating to noise and surface water. Further information had been requested on air quality, which has since been provided by the applicant, and EPA has informally advised that they are satisfied with this.</p> <p><b>Assessing officer comment:</b> The proposal is recommended for approval as a deferred commencement consent pending the issue of GTA's from EPA. It is expected that the GTA's will be issued shortly. A further condition requires the development to be licenced prior to the issue of an Occupation Certificate.</p>

## 2.4 Section 4.15 assessment

In determining a DA, a consent authority is to take into consideration matters referred to in section 4.15(1) of the EPA Act (previous s 79C) as are of relevance to the development the subject of the application. The relevant matters for this application are detailed below:

- a) **4.15 Evaluation– any environmental planning instrument; any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority, any development control plan, any planning agreement entered into under Section 7.4 or any draft planning agreement that a developer has offered to enter into under Section 7.4, and the Regulations;**

### **Environmental Planning & Assessment Act, 1979 and Environmental Planning & Assessment Regulation, 2000**

#### **Designated development**

Schedule 3 of the EP&A Regulation provides thresholds for “extractive industries” which may be considered designated development under the EP&A Act and associated regulations.

*Environmental Planning and Assessment Regulation 2000  
Schedule 3 Designated development*

#### 19 *Extractive industries*

- (1) *Extractive industries (being industries that obtain extractive materials by methods including excavating, dredging, tunnelling or quarrying or that store, stockpile or process extractive materials by methods including washing, crushing, sawing or separating):*
  - (a) *that obtain or process for sale, or reuse, more than 30,000 cubic metres of extractive material per year, or*
  - (b) *that disturb or will disturb a total surface area of more than 2 hectares of land by:*
    - (i) *clearing or excavating, or*
    - (ii) *constructing dams, ponds, drains, roads or conveyors, or*



- (iii) *storing or depositing overburden, extractive material or tailings, or*
  - (c) *that are located:*
    - (i) *in or within 40 metres of a natural waterbody, wetland or an environmentally sensitive area, or*
    - (ii) *within 200 metres of a coastline, or*
    - (iii) *in an area of contaminated soil or acid sulphate soil, or*
    - (iv) *on land that slopes at more than 18 degrees to the horizontal, or*
    - (v) *if involving blasting, within 1,000 metres of a residential zone or within 500 metres of a dwelling not associated with the development, or*
    - (vi) *within 500 metres of the site of another extractive industry that has operated during the last 5 years.*
- (2) *This clause does not apply to:*
- (a) *extractive industries on land to which the following environmental planning instruments apply:*
    - (i) *Sydney Regional Environmental Plan No 11 – Penrith Lakes Scheme,*
    - (ii) *Western Division Regional Environmental Plan No 1 – Extractive Industries, or*
  - (b) *maintenance dredging involving the removal of less than 1,000 cubic metres of alluvial material from oyster leases, sediment ponds or dams, artificial wetland or deltas formed at stormwater outlets, drains or the junction of creeks with rivers, provided that:*
    - (i) *the extracted material does not include contaminated soil or acid sulphate soil, and*
    - (ii) *any dredging operations do not remove any seagrass or native vegetation, and*
    - (iii) *there has been no other dredging within 500 metres during the past 5 years, or*
    - (c) *extractive industries undertaken in accordance with a plan of management (such as river, estuary, land or water management plans), provided that:*
      - (i) *the plan is prepared in accordance with guidelines approved by the Planning Secretary and includes consideration of cumulative impacts, bank and channel stability, flooding, ecology and hydrology of the area to which the plan applies, approved by a public authority and adopted by the consent authority and reviewed every 5 years, and*
      - (ii) *less than 1,000 cubic metres of extractive material is removed from any potential extraction site that is specifically described in the plan, or*
    - (d) *the excavation of contaminated soil for treatment at another site, or*
    - (e) *artificial waterbodies, contaminated soil treatment works, turf farms, or waste management facilities or works, specifically referred to elsewhere in this Schedule, or*
    - (f) *development for which State Environmental Planning Policy No 52 – Farm Dams and Other Works in Land and Water Management Plan Areas requires consent, or*
    - (g) *maintenance dredging of alluvial material from oyster leases and adjacent areas in Wallis Lake, but only if the dredging is undertaken in accordance with the document entitled Protocol for Wallis Lake Oyster Lease Maintenance Dredging approved by the Planning Secretary and published in the Gazette, as amended by the Planning Secretary from time to time by publication of an amended Protocol in the Gazette.*

The proposed development triggers the provisions 1(a) and 1(b).

## **Integrated development**

The proposed quarry is considered to be integrated development under Division 4.8 of the EP&A Act as it requires additional licencing under the:

- Protection of the Environment Operations Act 1997

### **Environment Protection and Biodiversity Conservation Act 1999**

Under the Federal *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), referral is required to the Australian Government for proposed actions that have the potential to significantly impact on Matters of National Environmental Significance (MNES) or the environment of Commonwealth land. The assessment of the proposal's impact on MNES and the environment of Commonwealth land found that there is unlikely to be a significant impact on relevant MNES or on Commonwealth land. Accordingly, the proposal has not been referred to the Australian Government Department of the Environment and Energy (DoEE) under the EPBC Act.

### **National Parks and Wildlife Act 1974**

The National Parks and Wildlife Act 1974 provides for the protection of native flora and fauna and the protection, preservation and management of Aboriginal relics throughout NSW regardless of land tenure. A flora and fauna assessment and Aboriginal cultural heritage assessment has been provided in the EIS. The assessment concluded that the proposed development does not pose a risk to threatened species, populations or communities.

### **Biodiversity Conservation Act 2016**

The Biodiversity Conservation Act 2016 (BC Act 2016) provides a framework for the management of flora and fauna on lands within NSW. Under this Act the principles of ecologically sustainable development are used to achieve the conservation and protection of biodiversity values. In conjunction with this the BC Act 2016 the Biodiversity Assessment Method (BAM) is a model for undertaking biodiversity assessments on all major projects. The BAM provides a classification and credit system to ensure that there is no net loss of biodiversity values across the state. As the proposed clearing is above the thresholds under clause 7.23 of the Biodiversity Conservation Regulation 2017 a full assessment has been conducted against the relevant provisions of the BAM. This assessment has calculated the staged biodiversity offset requirements to ensure the project meets the requirements of this Act.

### **Protection of the Environment Operations Act 1997**

Pursuant to Schedule 1(1)(19) of the Protection of the Environment Operations Act 1997 (POEO Act), the proposed development is identified as a 'Scheduled Activity' as a land based extractive activity involving the extraction, processing or storage of more than 30,000 tonnes per year of extractive materials. The proposal therefore requires an Environmental Protection License (EPL) under Section 48 of the POEO Act. The Environment Protection Authority (EPA) administers the management of EPLs. The applicant will seek a license following the granting of development consent.

### **Water Management Act 2000**

The objective of the Water Management Act 2000 is the sustainable and integrated management of the State's water sources for the benefit of both present and future generations by applying the principles of ecologically sustainable development to protect, enhance and restore water sources and their associated ecosystems, ecological processes and biological diversity and their water quality. The objectives of this Act were considered throughout the planning and design phases of this development. A quarry requires a secure and reliable water supply to operate. The watercourses and groundwater in the vicinity of the property are intended to be protected through design and management practices, including diversion banks and sediment traps. Appropriate buffers are to be maintained in order to minimise the risk of stream pollution.

### **Heritage Act 1977**

The Heritage Act 1977 (the Heritage Act) aims to conserve and manage the States Heritage, whether they are places, buildings, works, relics, movable objects or precincts of Local or State Heritage significance. A property is a heritage item if it is listed in the heritage schedule of the Local Council's Local Environmental Plan or on the State Heritage Register, a register of places and items of particular importance to the people of NSW. If an item of heritage value was identified, then consultation would be undertaken with Moree Plains Shire Council and an assessment undertaken in accordance with OEH guidelines for Assessing Heritage Significance (Heritage Office 2001). The heritage statement is the basis for policies and management structures that will affect an item's future. There are no identified heritage items present at the subject site.

### **Contaminated Land Management Act 1997**

The Contaminated Land Management Act 1997 establishes a process for investigating and (where appropriate) remediating land areas where contamination presents a significant risk of harm to human health or some other aspect of the environment. The Act provides that the EPA may declare land to be contaminated and to declare investigation areas. The EPA has not declared the subject land to be contaminated land nor part of an investigation area.

### **State Environmental Planning Policies**

#### **State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007**

This SEPP has the following aims:

- (a) to provide for the proper management and development of mineral, petroleum and extractive material resources for the purpose of promoting the social and economic welfare of the State, and*
- (b) to facilitate the orderly and economic use and development of land containing mineral, petroleum and extractive material resources, and*
- (b1) to promote the development of significant mineral resources, and*
- (c) to establish appropriate planning controls to encourage ecologically sustainable development through the environmental assessment, and sustainable management, of development of mineral, petroleum and extractive material resources, and*
- (d) to establish a gateway assessment process for certain mining and petroleum (oil and gas) development –*



- (i) to recognise the importance of agricultural resources, and*
- (ii) to ensure protection of strategic agricultural land and water resources, and*
- (iii) to ensure a balanced use of land by potentially competing industries, and*
- (iv) to provide for the sustainable growth of mining, petroleum and agricultural industries.*

Clause 12 of the SEPP provides a number of matters that a consent authority must consider before determining a development application. The EIS provides an assessment of the potential environmental impacts of the proposal and outlines the measures that will be implemented to minimise potential environmental impacts. It is concluded that the proposal is compatible with the rural setting of the site and the surrounding rural land uses.

Clause 13 requires that Council must consider the compatibility of development proposals on land in the vicinity of existing mines etc. or of land containing mineral or extractive resources. This clause is not applicable because the proposal is not for development adjacent to mining, petroleum production or extractive industry.

Clause 14 requires consideration of the development with respect to environmental responsibilities. The proposal addresses the minimisation of potential surface water impacts. It also details the avoidance of potential groundwater impacts by not intercepting groundwater and not relying on groundwater for operational water.

The EIS addresses how potential impacts to threatened species and biodiversity are minimised and where there is a significant residual impact how it will be offset in accordance with the relevant State legislative requirements.

With respect to greenhouse gas management the proposal was assessed as being low-impact. The applicant has outlined a range of measures to reduce greenhouse gas emissions.

Clause 15 addresses resource recovery. The EIS states that 'overburden on the hill consists of a very thin veneer of residual basaltic soil (<500mm) and cobbles'. On that basis, large overburden stockpiles are unlikely to be required and any surplus overburden materials will be reused onsite for construction safety bunds and erosion and sediment controls, internal roads. Overburden and topsoil materials will also be reused in the rehabilitation of the site at the end of life of the proposal. On that basis, the proposal will recover the extractive materials in an efficient manner and will minimise the creation of waste.

Clause 16 (3) provides that the consent authority must not determine the development application until it has taken into consideration any submission received from the roads authorities and Transport for NSW (TfNSW). TfNSW made submission on the proposal which has been considered in this assessment. There is no school in Gurley although a school bus does operate on part of the haul route. This is considered to be manageable through the upgrade of the roads and haul vehicle protocols.

Clause 17 requires that the consent authority must consider whether or not the consent should be issued subject to conditions requiring rehabilitation of the land affected by the development. The project proposal includes a rehabilitation component and would be conditioned as part of an approval.

### **State Environmental Planning Policy 44 - Koala Habitat Protection**

The SEPP 44 encourages the conservation and management of areas of natural vegetation that provide habitat for koalas, to ensure a permanent free-living population over their present range and reverse the current trend of koala population decline. Schedule 1 identifies the local government areas (LGA) subject to assessment under the policy of which Moree Plains LGA is included, making assessment for koala habitat a requirement for the proposed development.

An assessment of potential koala habitat on site was conducted as part of the ecological impact assessment carried out by Advitech. The assessment concluded that the proposed development is a low likelihood of Koalas on the site and none were recorded during the field work carried out for the survey. On that basis the land is not considered to be potential koala habitat for the SEPP 44.

For the SEPP, potential koala habitat means 'areas of native vegetation where the trees of the types listed in Schedule 2 constitute at least 15% of the total number of trees in the upper or lower strata of the tree component'. One species of trees listed in Schedule 2 of the SEPP is found on site being the *Eucalyptus populnea* (Bimblebox) which the BDRA describes as occurring within the PCT 147 vegetation occurring 'infrequently along the midslope of the hill'. But none were found within the quadrant searches conducted for the BDAR within the quarry footprint. Furthermore, the BDAR prepared for the EIS identifies that there is a low likelihood of occurrence / impact and that the nearest record of Koala is the township of Bellata to the west of the site and that there is no vegetation connectivity to continuous or large isolated patches of vegetation to the proposal site. On that basis, the land is not a potential koala habitat for the purpose of SEPP 44.

For the SEPP, core koala habitat means, 'an area of land with a resident population of koalas, evidenced by attributes such as breeding females (that is, females with young) and recent sightings of and historical records of a population'. As outlined in the BDAR for the EIS, no evidence of Koala was found on site. Therefore, the land is not core koala habitat under SEPP 44.

### **State Environmental Planning Policy No 55 – Remediation of Land**

The SEPP 55 promotes the remediation of contaminated land for the purpose of reducing the risk of harm to human health or other aspects of the environment. SEPP 55 requires consideration of whether there have been activities carried out on the land in the past that may have resulted in contamination. If contamination may be present, the proponent is required to undertake suitable investigation and, if necessary, remediation works. On 20th of February 2019 a search of the NSW contaminated land register was undertaken. The site is not listed as contaminated land as it has not historically been subjected to any contaminating activities. Upon the cessation of resource extraction, the proposal will involve full rehabilitation of the site.

### **State Environmental Planning Policy (Infrastructure) 2007**

The infrastructure SEPP provides a consistent planning regime for infrastructure and the provision of services and public works across NSW, along with providing for consultation with relevant public authorities during the assessment process. The proposal is not identified in Schedule 3 of the SEPP as traffic generating development to be referred to Transport for NSW. The proposed development is therefore taken to be 'Any other purpose' under Schedule 3 and it will not generate 200 or more motor vehicle movements per hour.

### **State Environmental Planning Policy (State and Regional Development) 2011**

The State and Regional Development SEPP identifies significant development and infrastructure and confer functions on regional panels to determine development applications.

The application is classified as 'Regional Development' and has been assessed by Moree Plains Shire Council for determination by the Northern Regional Panel in accordance with this SEPP.

The development is for the purposes of extractive industries, which meet the requirements for designated development under clause 19 of Schedule 3 to the Environmental Planning and Assessment Regulation 2000. This is outlined in Schedule 7 of the State Environmental Planning Policy (State and Regional Development) 2011.

***Schedule 7 Regionally significant development***

***7 Particular designated development***

*Development for the purposes of –*

*(a) extractive industries, which meet the requirements for designated development under clause 19 of Schedule 3 to the Environmental Planning and Assessment Regulation 2000*

**New England North-West Regional Plan 2036**

The New England North West Regional Plan 2036 (the Plan) recognises that this region provides mineral resources and raw materials for major infrastructure projects, new housing, and industrial and agricultural businesses.

The quarry site is not mapped as comprising Biophysical Strategic Agricultural Land according to Figure 4 of the Plan. The proposal is considered to be compatible with the agricultural use of the balance of the property.

The Plan outlines twenty-four Strategic Directions for the North West Slopes and Plains region in NSW. Strategic Direction Number 4 is to ‘Sustainably manage mineral resources’. The Plan encourages the following actions to be taken to achieve this goal:

- 4.1 Consult with the NSW Division of Resources and Geoscience when assessing applications for land use changes (strategic land use planning, rezoning and planning proposals) and new developments or expansions.
- 4.2 Protect areas of mineral and energy resource potential through local strategies and local environmental plans.
- 4.3 Protect infrastructure that facilitates mining from development that could affect current or future extraction.

The proposed development is not contrary to actions associated with Strategic Direction Number 4 of the Plan.

**Moree Plains Local Environmental Plan 2011 (LEP)**

**Land Use Table**

The land is zoned RU1 - Primary Production under the LEP. The zone objectives as provided in the Land Use Table are:

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*
- *To encourage diversity in primary industry enterprises and systems appropriate for the area.*
- *To minimise the fragmentation and alienation of resource lands.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- *To permit development for certain purposes if it can be demonstrated that suitable land or premises are not available elsewhere.*
- *To protect significant agricultural resources in recognition of their value to the longer term economic sustainability of Moree Plains.*
- *To maintain the rural character of the land.*

Under clause 2.3(2) of the LEP, the consent authority must have regard to the objectives for development in a zone when determining a development application in respect of land within

the zone. It is considered that the proposed quarry is consistent with the third and fifth objectives as it would utilise resource lands for a quarry development which is not able to be done elsewhere. The relationship between the proposed quarry and adjacent agricultural land uses is able to be managed to minimise land use conflict.

The proposed quarry is defined as an “extractive industry” under the Moree Plains Local Environmental Plan 2011 (LEP).

“Extractive industry” is defined as follows in the LEP:

*“Extractive industry means the winning or removal of extractive materials (otherwise than from a mine) by methods such as excavating, dredging, tunnelling or quarrying, including the storing, stockpiling or processing of extractive materials by methods such as recycling, washing, crushing, sawing or separating, but does not include turf farming.”.*

The subject site is located within the RU1 – Primary Production Zone (RU1 Zone). Under the RU1 Zone, within the LEP, “extractive industries” are permitted with consent.

### **Clause 5.10 – Heritage conservation**

Heritage was considered during the assessment. In brief, it is concluded that the site does not contain any European heritage items, conservation areas or indigenous places or objects.

The site is not identified as or located near a known Aboriginal Place of Heritage Significance on the Aboriginal Cultural Significance map or in the Moree Plains Aboriginal Heritage Study and therefore no Aboriginal Heritage Impact Assessment is required.

The applicant will develop a Cultural Heritage Management Plan including unexpected find procedures and training material.

### **Clause 7.6 Flood Planning**

The quarry site, situated at the top of Black Hill, is not identified as being flood-prone.

### **Clause 7.7 Places of Aboriginal cultural significance**

The development is not located on land identified as “place of Aboriginal cultural significance”.

## **Moree Plains Development Control Plan 2013 (DCP)**

### **Chapter 2 – Parking**

The ‘Performance Outcomes’ of the DCP require new car parks to be sufficient in number and design to provide appropriately for the needs of new developments. The nature of the proposed quarry operations is such that designated parking is unnecessary, and as such is not required.

### **Chapter 9 – Rural Development**

This chapter addresses various aspects of rural development including biodiversity, bushfire management, recreational vehicles, feedlots, access to rural properties and dwelling development.

Quarries are not specifically discussed in this chapter although the development addresses relevant issues such as land use compatibility and rural sustainability.

## **Chapter 10 – Notification Policy**

The DA was publicly notified and exhibited for a period of 28 days commencing 27 October 2020 and closing 24 November 2020.. The notification included letters to property owners/occupiers if, in the opinion of the Planning and Building Section, the enjoyment of land adjoining the development may be detrimentally affected by the proposed development.

During the notification period five (5) submissions were received. The issues raised in the submissions are outlined earlier in this report.

The proposed development complies with all aspects of Moree Plains Development Control Plan 2013.

**b) Section 4.15(1)(b) – the likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts on the locality:**

It is considered that the likely impacts of the development including design, height, car parking, traffic, flood impacts and drainage have been satisfactorily addressed.

The proposed development has been designed in compliance with the acceptable solutions of the DCP and it is believed that the proposed development will not have any unfavourable social or environmental impacts.

**c) Section 4.15 (1)(c) – the suitability of the site for development;**

In considering the suitability of the site for the development Council should have regard to the zoning of the site and its objectives under the current environmental planning instrument (LEP) and the permissibility of the development under the LEP. The proposed quarry is defined as an “extractive industry” under the Moree Plains Local Environmental Plan 2011 (LEP). Under the RU1 Zone, within the LEP, “extractive industries” are permitted with consent.

In terms of assessing the various aspects of the proposal, direction has been taken from the planning principles adopted by the Land and Environment Court of NSW.

***Davies v Penrith City Council [2013] NSWLEC 1141***

In this case, Moore, SC revised the *criteria for assessing impact on neighbouring properties within this Planning Principle*.

*The following questions are relevant to the assessment of impacts on neighbouring properties:*

- *How does the impact change the amenity of the affected property? How much sunlight, view or privacy is lost as well as how much is retained?*  
Comment: Blasting impacts will be a key potential source of land use conflict. This is able to be satisfactorily managed through limiting blasting hours, blasting to generally be undertaken within the quarry excavation and advising neighbours of blasting scheduling. The Department of Primary Industries (2007) Living and Working in Rural Areas Handbook prescribes a minimum buffer distance of



1000m from blasting activities. The nearest neighbouring dwelling is some 1,950m from the quarry.

- *How reasonable is the proposal causing the impact?*  
Comment: The closest sensitive receptor is located approximately 1.95 kilometres to the north-east of the site. Therefore, the proposal exceeds the minimum buffer distance requirements identified in the Department of Primary Industries (2007) Living and Working in Rural Areas Handbook. It is therefore considered that the proposal is sufficiently separated from nearby sensitive land uses surrounding the site and therefore the risk of land use conflict and adverse amenity impacts associated with the development is minimal.
- *How vulnerable to the impact is the property receiving the impact? Would it require the loss of reasonable development potential to avoid the impact?*  
Comment: The neighbouring lands are utilised for a range of agricultural endeavours. The assessment focuses on neighbouring dwellings as sensitive receptors although other receivers of note include cattle and other stock. A neighbour notification strategy is required to be developed and implemented by the applicant for blasting activities and this will include an address of stock management.
- *Does the impact arise out of poor design? Could the same amount of floor space and amenity be achieved for the proponent while reducing the impact on neighbours?*  
Comment: The project design is considered to be acceptable given the location of the quarry material reserves.
- *Does the proposal comply with the planning controls? If not, how much of the impact is due to the non-complying elements of the proposal?*  
Comment: The proposal is in accordance with the relevant planning controls.

The proposal is considered to meet the relevant objectives of the RU1 - Primary Production zone, complies with the relevant clauses of the LEP and performance outcomes of the DCP. On this basis the development is considered generally appropriate for the site.

The subject site is considered suitable for the proposed development for the following reasons:

- The subject site is within a rural/agricultural area and contains a mineral resource on land not classified as Biophysical Strategic Agricultural Land (BSAL).
- The Environment Protection Authority (EPA) is generally satisfied with the proposal. The quarry will require an Environment Protection Licence issued by the EPA.
- The proposed development is able to mitigate any potential impacts and is generally compatible with existing land uses in the locality
- The proposed development is permissible within the RU1 Primary Production zone under the Moree Plains Local Environmental Plan 2011.
- Access to the subject site is available from Manamoi Road, Boo Boo Road, Gurley Creek Road and the Newell Highway

- Water is able to be sourced for the development without using local groundwater.

**d) Section 4.15 (1) (d) – any submissions made in accordance with the Act or the Regulations;**

As discussed earlier.

**e) Section 4.15 (1) (e) – the public interest.**

The proposal has been designed in line with the adopted standards of the DCP and as such, development consent of this proposal will not undermine the public interest.

### **3. Recommendation**

It is recommended that DA2019/37 be approved as a deferred development consent (pending the issue of General Terms of Approval from EPA) subject to the draft conditions contained in Appendix 1.

