

COUNCIL ASSESSMENT REPORT

NRPP Number	PPSNTH-101
DA Number	DA1989/0062.01
LGA	Richmond Valley
Proposed Development	Section 4.55 (2) modification to approved Extractive Industry to enable: a) The annual extraction limit to be described in tonnes rather than cubic metres b) The annual extraction limit to increase from 50,000m ³ to 73,740m ³ , which if expressed in tonnes (t) is an increase from 139,000t to 205,000t c) Modernisation / alignment with the conditions of the Environment Protection Licence
Street Address	4250 Bruxner Highway, Woodview
Applicant/Owner	Groundworks Plus Pty Ltd/Richmond Valley Council
Date of DA lodgement	29 June 2021
Number of Submissions	Nil (0)
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011)	The application is a Section 4.55(2) modification to designated development.
Recommendation	Development application number DA1989/0062.01 be approved subject to conditions contained in in the proposed conditions of consent at Attachment B.
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> • Environmental Planning & Assessment Act 1979 • Environmental Planning & Assessment Regulation 2000 • State Environmental Planning Policy (State and Regional Development) 2011 • State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007 • State Environmental Planning Policy (Infrastructure) 2007 • Richmond Valley Local Environmental Plan 2012
Documents submitted with this report for consideration	<ul style="list-style-type: none"> • Site plan • Statement of Environmental Effects • Traffic Advise
Summary of key submissions	N/A – no submissions received
Report prepared by	Megan Yates, Development Assessment Planner
Report date	14 September 2021

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

Yes

relevant recommendations summarized, in the Executive Summary of the assessment report?

e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?

Not Applicable

Special Infrastructure Contributions

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

Not Applicable

Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

Conditions

Have draft conditions been provided to the applicant for comment?

Yes

Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report

**Modification to Existing Extractive Industry – Development Application Number
DA1989/0062.01 (NRPP Reference No. PPSNTH-101)
Assessment Report and Recommendation**

1. Executive Summary

Development Application DA1989/0062.01 seeks consent for the modification of the existing extractive industry on Lot 1 DP 1136818 & Lot 3 DP 833453, 4250 Bruxner Highway, Woodview. The modification seeks consent to enable:

- a) The annual extraction limit to be described in tonnes rather than cubic metres
- b) The annual extraction limit to increase from 50,000m³ to 73,740m³, which if expressed in tonnes (t) is an increase from 139,000t to 205,000t
- c) Modernisation / alignment with the conditions of the Environment Protection Licence

The application has been prepared by Groundworks Plus Pty Ltd and is lodged on behalf of Grahams Quarry Cedar Point Pty Ltd. The land owner is Richmond Valley Council.

The following environmental planning instruments require matters that the consent authority must be satisfied about before granting consent.

- *Environmental Planning & Assessment Act 1979*
- *Environmental Planning & Assessment Regulation 2000*
- *State Environmental Planning Policy (State and Regional Development) 2011*
- *State Environmental Planning Policy (Infrastructure) 2007*
- *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007*
- *Richmond Valley Local Environmental Plan 2012*

The application has been notified and assessed in accordance with requirements of the Richmond Valley Council Community Participation Plan 2020. The application was placed on public exhibition from 9 July 2021 to 6 August 2021. Nil (0) submissions were received.

The existing quarry operates under an Environmental Protection Licence (EPL No. 10192) and therefore, the modification application was referred to NSW Environmental Protection Agency pursuant to Schedule 1 of the *Protection of Environment Operations Act 1997*. The application has also been referred to Roads and Maritime Service pursuant to Clause 101 of *State Environmental Planning Policy (Infrastructure) 2007* & Clause 16 of *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007*.

The determining authority is the Northern Regional Planning Panel pursuant to cl. 2.15 of the Environmental Planning and Assessment Act 1979 and Schedule 7 of State Environmental Planning Policy (State and Regional Development) 2011, being Section 4.55(2) modification to designated development.

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act, 1979 and the relevant environmental planning instruments. The proposed conditions are contained within Attachment B to this report.

Recommendation

It is recommended that;

1. Development application number DA1989/0062.01 be approved subject to conditions contained in Schedule of recommended Consent Conditions at Attachment B.

Attachments

Attachment A	Proposed Development Plans.
Attachment B	Recommended Conditions of Consent.
Attachment C	NSW Environmental Protection Authority General Terms of Approval
Attachment D	NSW Roads and Maritime Service comments

2. Development Proposal

The modification seeks consent to enable:

- The annual extraction limit to be described in tonnes rather than cubic metres
- The annual extraction limit to increase from 50,000m³ to 73,740m³, which if expressed in tonnes (t) is an increase from 139,000t to 205,000t
- Modernisation / alignment with the conditions of the Environment Protection Licence

Property Description	Lot 1 DP 1136818 & Lot 3 DP 833453
Property Address	4250 Bruxner Highway, Woodview
Registered Owners	Richmond Valley Council
Applicant	Groundworks Plus Pty Ltd
Land Area	135.946 Hectares
Existing Use	Lot 1 DP 1136818 – existing extractive industry and agricultural land Lot 3 DP 833453 – existing extractive industry and agricultural land
Property Zoning	RU1 – Primary Production
Integrated Referrals	NSW Environmental Protection Agency
Other External Referrals	Roads and Maritime Service

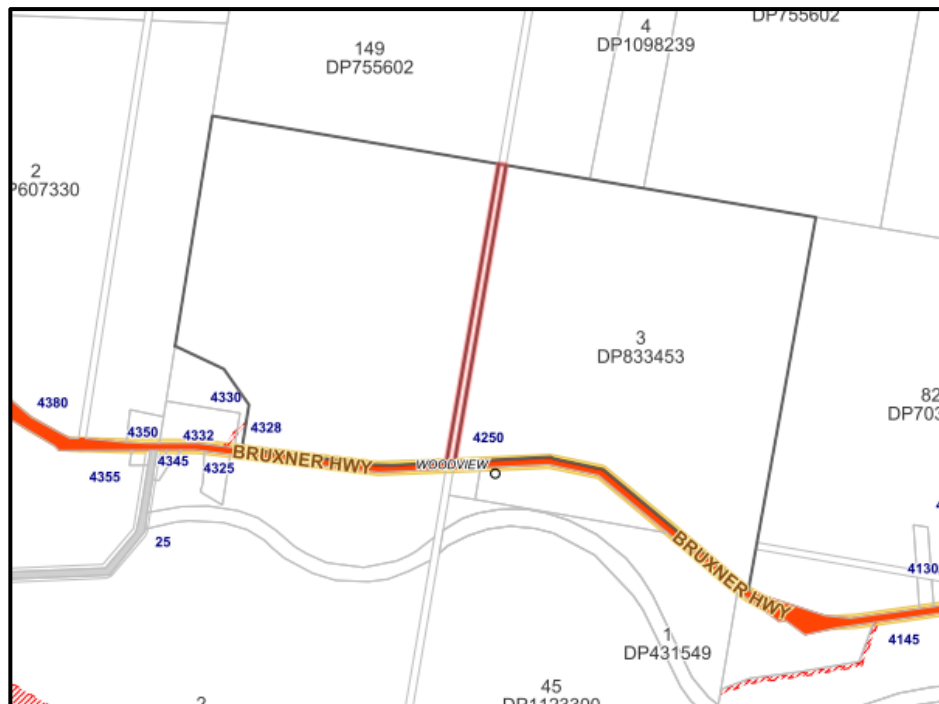


Figure 1 – Proposed development site.

The proposed development footprint is shown in Figure 2 below.

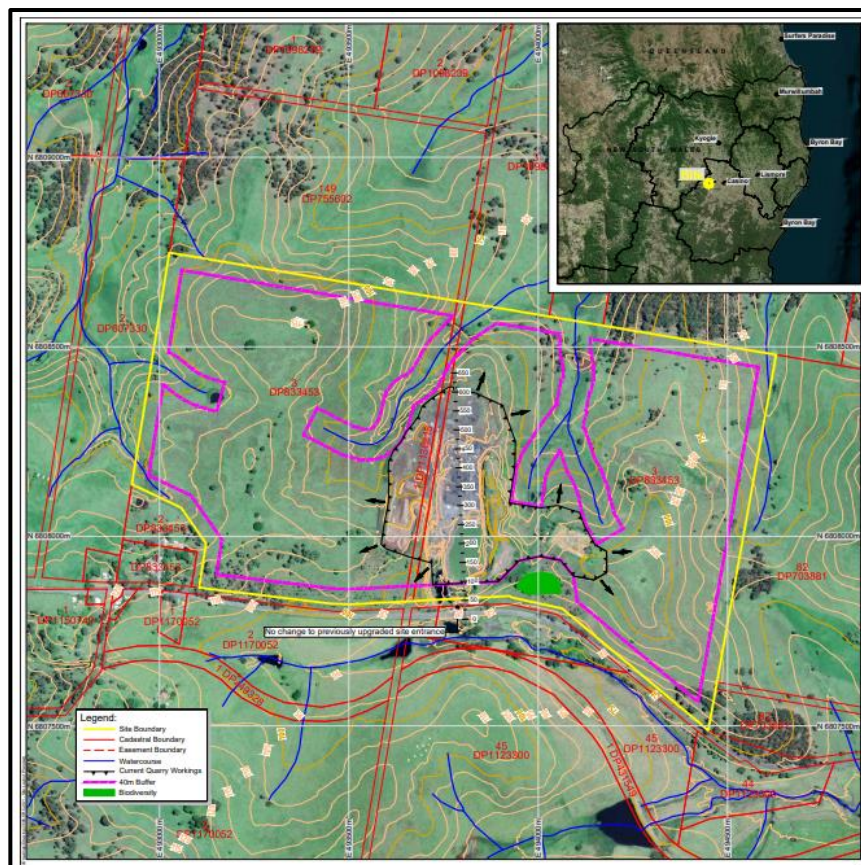


Figure 2 – Proposed Development

3. Referrals

The following referrals were undertaken as part of the assessment process:

External

Authority	Comment
NSW EPA	Comments were received on 26 July 2021 supporting the development
RMS	Comments were received 22 July 2021 supporting the development subject to conditions

Internal

Authority	Comment
Environmental Health	Acceptable subject to conditions.
Development Engineer	Acceptable subject to conditions.

4. Environmental Planning and Assessment Act 1979

Section 1.7: Application of the Biodiversity Conservation Act 2016 and Part 7A of Fisheries Management Act 1994

The provisions of Part 7 of the Biodiversity Conservation Act contains additional requirements with respect to assessments, consents and approvals under the EPA Act. The development does not include removal of vegetation and therefore no further assessment is required.

Section 2.22: Mandatory Community Participation Requirements

Part 1 of Schedule 1 sets out the mandatory requirements for community participation.

The development application was placed on public exhibition from 9 July 2021 to 6 August 2021. Written notification to land owners within 1 kilometres of the site was undertaken. No submissions were received.

Section 4.2: Development that needs consent

The proposal is seeking consent under Part 4 of the Act.

Section 4.5: Designation of Consent Authority

The application triggers the requirements for Regional Development Pursuant to Schedule 7 of the State Environmental Planning Policy (State and Regional Development) 2011, being Section 4.55(2) modification to designated development which would have been determined by the Regional Panel. The determining authority is the Northern Regional Planning Panel pursuant to cl. 2.15 of the Environmental Planning and Assessment Act 1979.

Section 4.15: Evaluation

Section 4.15 details matters the consent authority is to take into consideration in determining an application. Consideration of the matters is provided in detail throughout this report.

<i>Provision</i>	<i>Comment</i>
(1)(a)(i) – Environmental planning instruments	Refer to section 5.
(1)(a)(ii) – Draft environmental planning instruments	No draft instruments are applicable
(1)(a)(iii) – Development control plans	Refer to section 6.
(1)(a)(iia) – Planning Agreements	No planning agreements relate to the application.
(1)(a)(iv) – The Regulations	Refer to section 7.
(1)(a)(v) – Repealed	N/A
(1)(b) – Likely impacts of the development	Refer to section 8.
(1)(c)(i) – Site suitability	Refer to section 9.
(1)(d)(i) – Submissions	No submissions were received.
(1)(e)(i) – The public interest	Refer to section 11.

Section 4.55: Modification of consents – generally

Section 4.55 details matters the consent authority is to take into consideration in determining a modification application. Consideration of the matters is provided in detail throughout this report.

<i>Provision</i>	<i>Comment</i>
(2)(a) – Substantially the same development	Refer to section 12
(2)(b) – Consultation with relevant Minister, public authority or approval body	Refer to section 3 & attachments C & D of this report
(2)(c) – Notification	Refer to Section 2.22 above
(2)(d) – Submissions	N/A no submissions received
(3) – Consideration of Section 4.15	Refer to sections 5 to 11

5. Environmental Planning Instruments - Section 4.15(1)(a)(i)

The Environmental Planning instruments applying to this application are;

- *State Environmental Planning Policy (State and Regional Development) 2011*
- *State Environmental Planning Policy (Infrastructure) 2007*
- *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007*
- *Richmond Valley Local Environmental Plan 2012*

5.1 State Environmental Planning Policy (Infrastructure) 2007

This policy aims to facilitate the effective delivery of infrastructure across the State by providing standards for certain developments to be undertaken as exempt development and development without consent.

Clause/Development Standard	Comment
Clause 101 Development with Frontage to a Classified Road	
<p>(1) The objectives of this clause are—</p> <p>(a) to ensure that new development does not compromise the effective and ongoing operation and function of classified roads, and</p> <p>(b) to prevent or reduce the potential impact of traffic noise and vehicle emission on development adjacent to classified roads.</p> <p>(2) The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that—</p> <p>(a) where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and</p> <p>(b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of—</p> <p>(i) the design of the vehicular access to the land, or</p> <p>(ii) the emission of smoke or dust from the development, or</p> <p>(iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land, and</p> <p>(c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the</p>	<p>The site has direct access to the Bruxner Highway and was therefore referred to NSW Roads and Maritime Services. A response was received 22 July 2021 with the following comments:</p> <ol style="list-style-type: none"> 1. TfNSW notes that the Statement of Environmental Effects (SoEE) has not addressed the relevant heads of consideration under Clause 16 of the MSEPP. TfNSW suggests the Consent Authority condition the Traffic Management Plan (TMP) is updated to include a Driver Code of Conduct (DCoC) in accordance with Cl.16 (1) (c) of the MSEPP, prior to commencement of the proposed modification. <p>Comment: A condition of consent is recommended to require an amended Traffic Management Plan to include a Driver Code of Conduct, see Attachment B.</p> <ol style="list-style-type: none"> 2. TfNSW notes that the supporting Traffic Advice (TA) has identified the current access arrangement from the Bruxner Highway as an auxiliary right-turn (AUR). TfNSW identifies that as documented in the TfNSW Supplements, AUR treatments are not supported by TfNSW. The Consent Authority should be satisfied that the current arrangement does not impact on the safety of other road users. <p>Comment: The existing access is an Auxiliary Right-Turn (AUR). TfNSW have identified that this access treatment is not supported. The existing AUR</p>

<p>development arising from the adjacent classified road.</p>	<p>treatment is relative to a completely sealed Basic Right-Turn (BAR) in the current Austroads guidelines, as such the current AUR treatment is considered to be a higher standard treatment than a typical BAR treatment. The traffic assessment undertaken in conjunction with the modification application resulted in an access requirement of a BAR treatment, the current AUR treatment would be considered a higher standard than a BAR treatment. The current AUR treatment exceeds all current sight distance requirements. Over the 30 years the quarry has been operating, there are no known accidents recorded at the intersection.</p> <p>3. TfNSW notes that RAV vehicles are not currently permitted to access the site, it is understood that a previous request to permit RAV vehicles to access the site. TfNSW advises that if the applicant proposes to use RAV vehicles to access the site, the current access arrangement will require upgrading to meet current TfNSW and Austroads standards.</p> <p>Comment: The proposed modification does not include permitting RAV vehicles to the site.</p>
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5.2 State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007

This policy aims to provide for proper and orderly management and development of mineral, petroleum and extractive industries across the State by providing standards and requirements from mineral, petroleum and extractive industry developments to considered and comply with. The application involves a modification to an existing extractive industry. In accordance with Clause 16 the modification application was referred to NSW Roads and Maritime Services with comments being received 22 July 2021, refer to ISEPP table for comments and response.

5.3 Richmond Valley Local Environmental Plan 2012

The site is zoned as RU1 Primary Production as shown in Figure 3 below.



Figure 3 – RVLEP Zoning

Objectives of the zone

The RU1 Primary Production zone objectives 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 ensure that development does not unreasonably increase the demand for public services or public facilities.

The development involves a modification to an existing extractive industry to increase the extractive limit, change the terminology from m³ to tonnes (t), alignment with existing EPL. The development site is an existing extractive industry and is therefore is not considered to fragment or alienate resource lands, impact the diversity of primary production enterprises in the area, create additional land use conflict or increase demand on public services or facilities. The modification to an existing extractive industry is not considered to have an adverse impact on the natural resource base.

Richmond Valley LEP contains a number of provisions that are of relevance to the application. These are detailed in the table below.

Clause	Compliance
5.21 Flood planning Requires a consent authority consider developments compatibility with flood characteristics, evacuation during flood events, management of risk to life in the event of a flood, impacts on the environment during flood events	The property is not affected by flood and has ground levels ranging between RL 60-100m AHD. The nearest 100-year ARI design flood level is RL 32.0 m AHD. The modification is not considered to have any impacts on flood behavior and characteristics, evacuation routes or the environment during flood events.
6.2 Essential Services Requires a consent authority consider that essential services (water, electricity, sewage, stormwater drainage and road access) are available or suitable arrangements for its provision have been made.	<u>Water</u> No changes to the existing water supply is proposed. <u>Sewerage</u> No changes to the existing <u>Electricity</u> No changes to the existing electrical connections is proposed. <u>Stormwater</u> No changes to the existing stormwater arrangements are proposed. <u>Access</u> The site has frontage and vehicular access to Bruxner Highway. The application was referred to RMS, see ISEPP table for comments and responses.
6.6 Terrestrial Biodiversity	The property includes three mapped areas as terrestrial biodiversity under the RVLEP. All three areas are outside the footprint of the existing quarry and are

	not considered to be impact by the proposed modification.
6.7 Landslide risk	The property includes mapped areas as landslide risk under the RVLEP. The mapped area is over the existing quarry area. The footprint of the quarry is not proposed to change as a result of the modification. Blasting will be in accordance with the Environmental Protection License issued by EPA. The modification to the quarry is not considered to endanger life or property and is considered suitable to continue on the land.
6.10 Wetlands	The property has two small section mapped as wetlands under the RVLEP. One section is located approximately 300 metres from the existing quarry and is not considered to be impact by the modification. The second mapped wetland is located at the entrance to the facility, however it is considered the mapping to be an error as it mapped over an existing sediment basin associated with the extractive industry.

6. Development Control Plans – Section 4.15(1)(a)(iii)

Richmond Valley Development Control Plan 2015

The DCP provisions applicable to the proposed development are listed below.

Part	Comment
Part I Other Considerations	A range of other matters for consideration are outlined in this Chapter. Those of relevance to the current application are detailed below.
17 Noise Impacts	An acoustic review undertaken by Muller Acoustic Consulting was submitted with the application. The review outlined the changes in truck types and payloads, and determined the noise emissions, including engine noise and air brake release would remain consistent with the existing truck fleet. The review determined the changes in noise emissions are not anticipated to be significant and would be indiscernible to the community compared against current emissions. Any noise impacts from the internal operations of the existing quarry and proposed modification will be subject to the requirements of the Environmental Protection License issued by EPA.
111 Land use conflict risk assessment (LUCRA)	The proposed development involves a modification to an existing extractive industry. The modification includes an increased extraction limit however does not proposed to increase the footprint of the quarry. Truck movements are not proposed to increase due to the trucks providing a larger payload. There are no perceived additional land use conflict issues as a result of the proposed modification.

7. The Regulations – Section 4.15(1)(a)(iv)

The matters relevant to the application as provided in the Environmental Planning and Assessment Regulation are detailed below.

Environmental Planning and Assessment Regulation 2000		
Part	Provision	Comment
Cause 25J and 25K	Section 7.12 levy— determination of proposed cost of development Maximum percentage	N/A – no heavy haulage as direct access onto State road.
Part 6 Division 7	Public participation – Other Advertised Development	The Application was advertised and notified as required.
Part 6 Division 8 Additional matters to be considered:	Demolition	N/A
	Paper Subdivisions	N/A
	Dark Sky Planning	N/A – The development is not within a dark sky planning area.
Part 9	Fire Safety and BCA compliance	N/A – no buildings proposed as part of modification application.

8. The Likely Impacts of the Development - Section 4.15(1)(b)

The main issues and likely impacts of the development arising from the assessment of the development application are the traffic impacts, and noise. These issues are discussed below.

8.1 Traffic impacts

The modification application proposes an increase to the extraction limit of the existing extractive industry. However, it is proposed that this increase will not create an increase in traffic movements due to changing the truck types utilized by the quarry to increase the payload.

The application was referred to NSW Roads and Maritime Services pursuant to Clause 101 of the State Environmental Planning Policy (Infrastructure) 2007 and Clause 16 of State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007. RMS response required a condition be included for an amended Traffic Management Plan to include a Driver Code of Conduct. The response also stated the existing auxiliary right turn (AUR) was not supported by TfNSW. Council's engineers have reviewed the intersection and RMS comments and provided the following response:

The existing access is an Auxiliary Right-Turn (AUR). TfNSW have identified that this access treatment is not supported. The existing AUR treatment is relative to a completely sealed Basic Right-Turn (BAR) in the current Austroads guidelines, as such the current AUR treatment is considered to be a higher standard treatment than a typical BAR treatment. The traffic assessment undertaken in conjunction with the modification application resulted in an access requirement of a BAR treatment, the current AUR treatment would be considered a higher standard than a BAR treatment. The current AUR treatment exceeds all current sight distance requirements. Over the 30 years the quarry has been operating, there are no known accidents recorded at the intersection. In this regard, Council is satisfied the existing access treatment is suitable for the modification application.

Additionally, RMS comments stated the access to the site was not permitted for RAV vehicles, and that is the applicant proposed to use RAV vehicles, upgrading of the access arrangements would be required. The proposed modification does not include permitting RAV vehicles to the site.

Given the modification does not result in additional truck movements, and the assessment undertaken by Council's engineers regarding the existing access, Council is satisfied the modification will not result in any additional adverse traffic impacts.

8.2 Noise impacts

The existing extractive industry operates under an Environmental Protection Licence being EPL No. 10192. Any noise impacts from internal operations of the existing operation, and proposed modification will be subject to the requirements of the Environmental Protection Licence. The NSW Environmental Protection Authority have issued General Terms of Approval for the modification and are satisfied with the proposal subject to an amended EPL being sought and issued.

It is not perceived likely external noise impacts will increase as a result of the proposed modification. While the modification proposes an increased extraction limit, truck movements are proposed to remain the same due to a change in truck types and an increase in payloads per truck. An acoustic review undertaken by Muller Acoustic Consulting was submitted with the application. The review outlined the changes in truck types and payloads, and determined the noise emissions, including engine noise and air brake release would remain consistent with the existing truck fleet. The review determined the changes in noise emissions are not anticipated to be significant and would be indiscernible to the community compared against current emissions. In this regard, Council is satisfied the modification will not create additional noise impacts than the existing quarry operations.

9. Site suitability - Section 4.15(1)(c)

The site currently maintains an existing extractive and primary production land. The site operates under an Environmental Protection Licence (EPL No. 10192) and has direct access onto the Bruxner Highway.

The application was referred to NSW Roads and Maritime Service (RMS) and NSW Environmental Protection Authority (EPA). Comments were received from RMS on 22 June 2021 supporting the modification subject to conditions. Comments were received from EPA 26 July 2021 supporting the application.

The proposed development will not change the existing land uses on the site being extractive industry and primary production land, and therefore is considered suitable in this location.

10. Submissions - Section 4.15(1)(d)

The development application was placed on public exhibition from 9 July 2021 to 6 August 2021. Written notification to land owners within 1 kilometres of the site was undertaken. No submissions were received.

11. The Public Interest - Section 4.15(1)(e)(i)

The proposed development will provide additional resources through an increased extraction limit benefiting the wider community and industries that utilise these resources.

The application was referred to NSW Roads and Maritime Service (RMS) and NSW Environmental Protection Authority (EPA). Comments were received from RMS on 22 June 2021 supporting the modification subject to conditions. Comments were received from EPA 26 July 2021 supporting the application.

The submitted application has considered the likely impacts of the development and proposed management and mitigation measures as necessary. Therefore, the proposal is considered to be in the public interest.

12. Substantially the same development – Section 4.55(2)(a)

Consent was originally granted for 'to enable the continued use of the Woodview Quarry at an expanded capacity of up to 50,000 m³ per annum'. The modified development remains the same use being an extractive industry.

The modification includes an increase in the extraction limit from 173,000 tonnes (50,000m³) to 205,000 tonnes (73,740m³). It does not however include any change to the footprint of the extractive industry. No additional truck movements are required due to the increase in extraction limit. This is as a result of a change in truck types, increasing the payloads for each truck. The changes in truck types results in 38 tonnes per truck being transported, as opposed to 25.7 tonnes per truck under the current truck types which enables the increased extraction limit to be undertaken without an increase in truck moments.

The existing extractive industry and development consent does not provide a project life for the development. A condition of consent is proposed to limit to the extraction to 205,000 tonnes per annum, and to ensure the development does not exceed 5 million tonnes over the life of the development. The existing development consent does not include hours of operation. The proposed modification states hours of operation will be from 7am to 6pm Monday to Saturday, which will be included as a recommended condition of consent.

The onsite impacts including noise, dust, vibration, surface water and water are all regulated by the Environmental Protection Licence issued by the Environmental Protection Authority (EPA). The EPA have provided comments supporting the application, subject to an amended EPL being issued for the site.

Given the above, the proposed modification is considered substantially the same as the original development.

12. Conclusion and Recommendation

Modification to the existing development consent is sought to enable:

- a) The annual extraction limit to be described in tonnes rather than cubic metres
- b) The annual extraction limit to increase from 50,000m³ to 73,740m³, which if expressed in tonnes (t) is an increase from 139,000t to 205,000t
- c) Modernisation / alignment with the conditions of the Environment Protection Licence

The proposed development complies with legislative requirements, has appropriately considered potential impacts, is suitable for the location and will have positive social and community benefits. The development is not considered to be inconsistent with the public interest subject to proceeding in accordance with the Statement of Environmental Effects and recommended consent conditions.

It is recommended that;

1. Development application number DA1989/0062.01 be approved subject to conditions contained in Schedule of recommended Consent Conditions at Attachment B.

