



Section 3

Planning and Legislative Context

PREAMBLE

This section considers the planning and legislative context within which the Quarry would operate and describes any environmental issues that are raised from these instruments that should be addressed within the EIS. Relevant NSW State environmental planning legislation and local government planning instruments are included in the review as well as any additional policies and guidelines that are relevant to the Proposal.



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3.1 Introduction

A range of legislation and planning instruments apply to the Proposal. These pieces of legislation and statutory instruments were reviewed to identify which environmental aspects require consideration in the EIS. In addition, the SEARs identified a number of guideline documents that could potentially be of assistance during the preparation of the EIS (see **Appendix 2**). A brief summary of each relevant piece of legislation and planning instrument is provided in the following subsections. The application and relevance of planning instruments to specific environmental issues have been addressed in the relevant specialist consultant assessments (see Appendices) and considered in Section 5 of this document.

3.2 Commonwealth Legislation

Environment Protection and Biodiversity Conservation Act 1999

The *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act) covers 'matters of national environmental significance' (MNES) that include:

- world heritage properties;
- wetlands listed under the Ramsar Convention;
- listed threatened species and ecological communities;
- listed migratory species protected under international agreements;
- nuclear actions;
- the Commonwealth marine environment; and
- National heritage places.

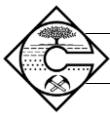
Under the EPBC Act, if a project has the potential to have a significant impact on a matter of national environmental significance, it is required to be referred to the Commonwealth Department of the Environment and Energy for assessment as to whether it represents a 'controlled action' and therefore requires approval from the Minister for the Environment.

The ecological assessment undertaken by Eco Logical Australia (ELA) (2019) has concluded that significant impacts to MNES are not anticipated and referral of the Proposal to the Commonwealth Department of the Environment and Energy is not required. An assessment of potential biodiversity impacts is presented in Section 5.5 and in ELA (2019) which is included as **Appendix 10**.

3.3 NSW Legislation

The key NSW legislation relating to the approvals and licences required for the Proposal are identified and discussed as follows.

- *Environmental Planning and Assessment Act 1979* (EP&A Act)
- *Protection of the Environment Operations Act 1997* (POEO Act)



- *Biodiversity Conservation Act 2016* (BC Act)
- *National Parks and Wildlife Act 1974* (NP&W Act)

Environmental Planning and Assessment Act 1979

The EP&A Act provides the framework for the assessment and determination of development in NSW and is administered by the Department of Planning, Industry and Environment (DPIE).

Extractive industry is permitted with development consent on land zoned for Primary Production under the *Tenterfield Local Environmental Plan 2013*. Development consent for the Proposal is being sought in accordance with Part 4, Division 4.1 of the EP&A Act and will need to be evaluated in accordance with Section 4.15 of the EP&A Act.

As an extractive industry with an annual production rate greater than 30 000m³ per annum, the Proposal is classified as “designated development” under Clause 19 of Schedule 3 of the *Environmental Planning and Assessment Regulation 2000*. As designated development for the purpose of an extractive industry, the application is also classified as Regionally Significant Development under Schedule 7 of the *State Environmental Planning Policy (State and Regional Development) 2011* and the consent authority for the application will be the Northern Regional Planning Panel in accordance with Section 4.5(b) of the EP&A Act.

The Proposal is also classified as ‘integrated development’ in accordance with Division 4.8 of the EP&A Act as a variation to Environment Protection Licence (EPL) 20598 would be required. Therefore, the application will be referred to the Environment Protection Authority (EPA), and in accordance with Section 4.47 of the EP&A Act, Council must obtain general terms of approval from the EPA prior to approving the application. Any consent must be consistent with those general terms of approval.

Protection of the Environment Operations Act 1997

The POEO Act provides the legislative and administrative framework to protect, restore and enhance the quality of the environment in NSW by reducing risks to human health and the preventing the degradation of the environment from development and other relevant activities. The most significant element of the legislation with regard to the Proposal is the management of Environment Protection Licences (EPL). An EPL is required to authorise the carrying out of any ‘Scheduled Activities’. As land-based extractive industry, the existing operation is classified as a ‘Scheduled Activity’ under Schedule 1(19) of the POEO Act and therefore operates in accordance with EPL 20598.

As noted above, Council will refer the application to the EPA and seek general terms of approval. Should development consent be granted for the Proposal, the Applicant would apply for a variation to EPL 20598 in accordance with the general terms of approval provided by the EPA.

Biodiversity Conservation Act 2016

The purpose of the BC Act is to maintain a healthy, productive and resilient environment for the greatest well-being of the community, now and into the future, consistent with the principles of ecologically sustainable development.



The Applicant has considered opportunities to minimise impacts to native vegetation for the Proposal. Residual impacts to biodiversity would include removal of approximately 6.41ha of native vegetation. This impact triggers the Biodiversity Offset Scheme and therefore the residual impacts have been assessed in accordance with the Biodiversity Assessment Method and documented in a Biodiversity Development Assessment Report (BDAR) prepared by Eco Logical Australia. Residual impacts to biodiversity values would be offset in accordance with the BC Act.

National Parks and Wildlife Act 1974

The *National Parks and Wildlife Act 1974* (NP&W Act) aims to manage and conserve nature, objects, places and features that have ecological and cultural value. The NP&W Act is administered and enforced by the Biodiversity Conservation Division of the DPIE (BCD).

Aboriginal places and objects are protected under the NP&W Act. The Director-General has a database of information and records regarding Aboriginal objects whose existence and location have been reported, known as the Aboriginal Heritage Information Management System (AHIMS). An Aboriginal Heritage Impact Permit (AHIP) is required for consent to destroy, deface or damage Aboriginal object or Aboriginal place.

No Aboriginal places or objects of significance have been identified within the Quarry Site and the available Aboriginal history of the LGA provided in the *Tenterfield LGA Aboriginal Heritage Study* (AMBS, 2013) indicates it is not likely that Aboriginal places or objects would be found within the Quarry Site. Aboriginal cultural heritage is further addressed in Section 5.6.

3.4 State Environmental Planning Policies

State Environmental Planning Policy (State and Regional Development) 2011

One of the purposes of this State Environmental Planning Policy (SEPP) is to provide the basis for development to be declared 'regionally significant development' and to further confer the function of a regional planning panel to determine development applications. As designated development for the purpose of extractive industry, the Quarry is also regional development under this SEPP and therefore determination of the application will be by the Northern Regional Planning Panel.

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

This SEPP ("the Mining SEPP") was gazetted in recognition of the importance to New South Wales of mining, petroleum production and extractive industries and to provide proper management and orderly and economic use and development of land containing mineral, petroleum and extractive material resources and to establish appropriate planning controls to encourage ecologically sustainable development through environmental assessment, and sustainable management.

The SEPP specifies matters requiring consideration in the assessment of any mining, petroleum production and extractive industry development, as defined in NSW legislation. A summary of the matters that the consent authority needs to consider when assessing a new or modified proposal and where these have been addressed in this document is provided in **Table 3.1**.



Table 3.1
Application of SEPP (Mining, Petroleum Production and Extractive Industries) 2007

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Relevant SEPP Clause	Description	EIS Section
12: Compatibility with other land uses	Consideration is given to:	4.3.2
	<ul style="list-style-type: none"> the existing uses and approved uses of land in the vicinity of the development; 	4.3.2, 5.7
	<ul style="list-style-type: none"> the potential impact on the preferred land uses (as considered by the consent authority) in the vicinity of the development; and 	
	<ul style="list-style-type: none"> any ways in which the development may be incompatible with any of those existing, approved or preferred land uses. 	5.10
	The respective public benefits of the development and the existing, approved or preferred land uses are evaluated and compared.	
12AB: Non-discretionary development standards for mining	Measures proposed to avoid or minimise any incompatibility are considered.	N/A
	Consideration is given to development standards that, if complied with, prevents the consent authority from requiring more onerous standards for those matters	5.2, 5.3
13: Compatibility with existing mining, petroleum production or extractive industry	Consideration is given to whether the development is likely to have a significant impact on current or future mining, petroleum production or extractive industry and ways in which the development may be incompatible.	N/A
	Measures taken by the Applicant to avoid or minimise any incompatibility are considered.	N/A
	The public benefits of the development and any existing or approved mining, petroleum production or extractive industry must be evaluated and compared.	N/A
14: Natural resource and environmental management	Consideration is given to ensuring that the development is undertaken in an environmentally responsible manner, including conditions to ensure:	5.4
	<ul style="list-style-type: none"> impacts on significant water resources, including surface and groundwater resources, are avoided or minimised; 	5.5
	<ul style="list-style-type: none"> impacts on threatened species and biodiversity are avoided or minimised; and 	5.2.8
15: Resource recovery	greenhouse gas emissions are minimised to the greatest extent feasible.	
	The efficiency of resource recovery, including the reuse or recycling of material and minimisation of the creation of waste, is considered.	2.10
16: Transportation	The following transport-related issues are considered.	N/A
	<ul style="list-style-type: none"> The transport of some or all of the materials from the Quarry Site by means other than public road. 	5.1
	<ul style="list-style-type: none"> Limitation of the number of truck movements that occur on roads within residential areas or roads near to schools. 	5.1.3
	<ul style="list-style-type: none"> The preparation of a code of conduct for the transportation of materials on public roads. 	



Table 3.1 (Cont'd)

Application of SEPP (Mining, Petroleum Production and Extractive Industries) 2007

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Relevant SEPP Clause	Description	EIS Section
17: Rehabilitation	The rehabilitation of the land affected by the development is considered including:	
	• the preparation of a plan that identifies the proposed end use and landform of the land once rehabilitated;	2.14
	• the appropriate management of development generated waste;	2.14
	• remediation of any soil contaminated by the development; and	2.14
	• the steps to be taken to ensure that the state of the land does not jeopardise public safety, while being rehabilitated or at the completion of rehabilitation.	2.14

State Environmental Planning Policy No. 33 – Hazardous and Offensive Development (SEPP 33)

Hazardous and offensive industries, and potentially hazardous and offensive industries, relate to industries that, without the implementation of appropriate impact minimisation measures, would, or potentially would, pose a significant risk in relation to the locality, to human health, life or property, or to the biophysical environment.

The hazardous substances and dangerous goods to be held or used within the Quarry Site are required to be identified and classified in accordance with the risk screening method contained within the document entitled *Hazardous and Offensive Development Application Guidelines – Applying SEPP 33* (DP&I, 2011). Hazardous materials are defined within DP&I (2011) as substances falling within the classification of the *Australian Code for Transportation of Dangerous Goods by Road and Rail* (Dangerous Goods Code), (National Transport Commission, 2011). The substances relevant to this policy are primarily diesel and ammonium nitrate.

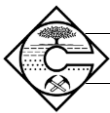
The Proposal would involve the use of diesel fuel, a Class 3 C1 combustible liquid, and small amounts of other hydrocarbons including lubricating oils and combustible liquids. As the diesel fuel and lubricating oils and greases would not be stored on site, SEPP 33 does not require these to be considered further.

Ammonium nitrate would not be stored on site, rather it would be transported to the Quarry Site for blasting on the day of the blast. As the quantity required for each blast does not exceed the relevant thresholds for Class 5.1 materials, this does not need to be considered further.

Finally, because no hazardous materials would be stored on the Quarry Site, no further consideration of SEPP 33 is required.

State Environmental Planning Policy (Primary Production and Rural Development) 2019

The aims of this SEPP (the “Primary Production and Rural Lands SEPP”) are to facilitate development on rural land that is orderly and economic, promotes the social, economic and environmental welfare of the State and avoids land use conflicts with existing agriculture. It also allows government authorities to identify State significant agricultural land and ensure the ongoing viability of agriculture in the State.



Specifically, and as described in Clause 10 the objectives of the Primary Production and Rural Lands SEPP are to provide for the protection of agricultural land;

- *that is of State or regional agricultural significance, and*
- *that may be subject to demand for uses that are not compatible with agriculture, and*
- *if the protection will result in a public benefit.*

The Proposal is considered with respect to these aims.

- The land that would be affected by the Proposal has not been identified as State or regionally significant agricultural land by *Schedule 1* of the Primary Production and Rural Lands SEPP.
- The Proposal would not impact on any additional land currently managed for agriculture. As demonstrated at numerous other quarry sites where agricultural activities are undertaken concurrently within extractive industry, the Proposal would not be incompatible with continued agricultural land use surrounding the Quarry Site.
- The protection of the land that is the subject of the Proposal would not provide any public benefit. In fact, the employment and local economic stimulus that would be generated by the Proposal is considered to be of wider public benefit.

As a result, the Primary Production and Rural Lands SEPP is not considered further in this document.

State Environmental Planning Policy No 44 – Koala Habitat Protection

This SEPP aims to encourage the proper 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. Tenterfield Shire Local Government Area (LGA) is identified in Schedule 1 of the Koala Habitat Protection SEPP as a local government area that could provide Koala habitat.

The Koala Habitat Protection SEPP requires an investigation be carried out to determine if potential or core Koala habitat is present on the areas of the Quarry Site likely to be disturbed. Core Koala habitat comprises land with a resident population of Koalas whereas potential Koala habitat comprises land with native vegetation with known Koala feed trees constituting at least 15% of the total number of trees present on a site. It is noted that land on the eastern side of the Quarry Site is mapped on the Native Vegetation Regulatory Map¹, indicating that the land is considered core Koala habitat.

An ecological survey of the Quarry Site (ELA, 2019) did not identify a resident population of Koala or indications of past use (usually indicated through scats and scratches). The survey identified two species of secondary feed trees for the Koala. As the Quarry Site contains only secondary Koala feed trees and no resident Koala were identified, it is considered that it is not core or potential Koala habitat as defined in SEPP 44.

¹ <https://www.environment.nsw.gov.au/topics/animals-and-plants/biodiversity/native-vegetation-regulatory-map>



State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55)

SEPP 55 aims to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment. In particular, this policy requires consideration of whether a development requires a consent for remediation works or not and, where warranted, requires that remediation works meet certain standards and notification requirements.

As the areas proposed for disturbance within the Quarry Site have previously been used only for extractive industry or minor grazing cattle and passive nature conservation, the Applicant is satisfied that no contaminated land occurs on the Quarry Site. This SEPP is therefore not considered further in this document.

3.5 Local Planning Issues

3.5.1 Tenterfield Local Environmental Plan 2013

The current Tenterfield Local Environmental Plan (LEP) which was gazetted in 2013 and guides development in the Tenterfield Shire LGA by encouraging the proper management, development and conservation of natural resources and the built environment. The Quarry Site is located on land zoned RU1 Primary Production under the existing LEP. The objectives of this zone and how the Proposal has been designed to satisfy these objectives is described in the following subsections.

To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.

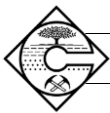
The land that is the subject of the Proposal has been used in the past for minor grazing and stock sheltering. Soil resources are discussed in detail in Section 5.7, however in summary the skeletal soils within the bulk of the Quarry Site would only allow for grazing with limitations, forestry and nature conservation. The proposed use of the land for extractive industry provides productive use of these natural resources. The land would be returned to minor grazing, stock sheltering and passive nature conservation at the end of Project life with no significant change in land capability.

To encourage diversity in primary industry enterprises and systems appropriate for the area.

The Proposal would provide for the continued supply of a range of ivory-coloured stone products for use in decorative concrete and landscaping products. This industry, i.e. an extractive industry, would continue to operate alongside a variety of primary industry enterprises in the Tenterfield Shire LGA and assist to maintain the economic diversity of the area.

To minimise the fragmentation and alienation of resource lands.

The Proposal would allow for the extension and continued operation of the existing quarry along the ridge indicated in **Figure 2.1** and would therefore not result in the fragmentation of resource lands.



To minimise conflict between land uses within this zone and land uses within adjoining zones.

The land within and immediately surrounding the Quarry Site is zoned RU1 – Primary Production. The Quarry Site is located approximately 2.5km south of Bald Rock National Park and approximately 8km northeast of the town of Tenterfield. It is considered that the Proposal would not result in land use conflicts between the RU1 zone and the E1 Zone - National Parks and Nature Reserves to the north or the town of Tenterfield which has been zoned RU5 Zone – Village.

3.5.2 Tenterfield Development Control Plans

The Tenterfield Development Control Plan (DCP) applies to all land to which the Tenterfield LEP applies and provides development controls for specific types of development. There are no specific controls in the Tenterfield DCP relating to development for extractive industry except for community notification requirements. Chapter 2 of the Tenterfield DCP outlines Council's policy for community notification in the assessment of development applications. In accordance with Table 1 of Chapter 2, neighbour notification is required for extractive industry within land zoned RU1 – Primary Production. Notification of the Proposal will occur during the public exhibition of the EIS for the Proposal.

3.6 Other Environmental Policies, Guidelines and Plans

The SEARs require that in assessing the identified key assessment requirements, reference be made to any relevant guideline documents. In addition, a number of the government agencies consulted in relation to the Proposal also required reference to other environment guideline documents. Where appropriate, the relevant guidelines are addressed in the relevant section(s) of this report, including the Appendices.