



PEER REVIEW

**RVC Assessment Report DA2022/250 (PAN-231653)
Petersons Quarry, Coraki**

Prepared for Richmond Valley Council
By Planit Consulting Pty Ltd

June 2023





This report has been prepared by:



Planit Consulting Pty Ltd
ABN 20 099 261 711

Level 2, 11-13 Pearl Street
Kingscliff, NSW

PO Box 1623
Kingscliff, NSW 2487

Telephone: (02) 6674 5001
Facsimile: (02) 6674 5003

Email: admin@planitconsulting.com.au
Web: www.planitconsulting.com.au

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1. Introduction

1.1 Background

Planit Consulting Pty Ltd (Planit) has been engaged by Richmond Valley Council (Council) to undertake an independent peer review of Council's assessment report of Development Application DA2022/250 (PAN-231653) for operation of an extractive industry and ancillary facilities at Coraki, NSW.

This report has been commissioned by Council to manage potential conflicts of interest and increase transparency of the development process, for this council-related development, in accordance with Council's *Managing Conflicts of Interest for Council-Related Development Policy*.

The following matters have been taken into consideration to determine the adequacy of Council's assessment of the application, its recommendation, and recommended conditions of consent:

- The relevant matters listed in Section 4.15 of the *Environmental Planning and Assessment Act 1979*;
- The prescribed matters under the *Environmental Planning and Assessment Regulation 2000*;
- The findings and recommendations of Council's Assessment Report;
- The submissions received from the community and external agencies and authorities; and
- The recommended conditions of consent.

1.2 Overview

Richmond Valley Council is in receipt of a development application DA 2022/250 seeking development consent for extension to the Petersons Quarry footprint to include the existing area of disturbance established for the Coraki Quarry (SSD 7036). The operation will extract a maximum of 350,000 tonnes per annum (tpa) and a maximum of 4,900,000 tonnes of material in total over the intended life of the quarry.

The proposal is located at Petersons Road, Coraki, New South Wales approximately 2km North of Coraki, 19km south of Lismore and 25 km south-east of Casino.

The subject site incorporates 12 land parcels listed in **Table 1**. The site is land owned by KIS Plant Pty Ltd and Richmond Valley Council.

Table 1 – Subject land

Lot	DP
Lot 401	DP633427
Lot 402	DP802985
Lot 403	DP802985
Lot 408	DP1166287
Lot A	DP397946
Lot A	DP389418
Lot 3	DP701197
Lot 2	DP954593
Lot 1	DP954592
Lot 1	DP310756
Lot 1	DP1165893
Lot 1	DP1225621

2. Consistency with Statutory Considerations

2.1 Environmental Planning and Assessment Act 1979

The proposal has been appropriately classified as 'extractive industry' and constitutes 'development' as defined by the *Environmental Planning and Assessment Act 1979* (the Act), requiring development consent as per the *Richmond Valley Local Environmental Plan 2012*.

Section 4.15 of the Act establishes the assessment process applicable to development applications, which are addressed, in the same order, below.

2.2 Environmental Planning Instruments

Council's assessment report accurately identifies the environmental planning instruments relevant to the proposal being:

- State Environmental Planning Policy (Planning Systems) 2021;
- State Environmental Planning Policy (Resources and Energy) 2021;
- State Environmental Planning Policy (Transport and Infrastructure) 2021;
 - Chapter 2 Infrastructure;
- State Environmental Planning Policy (Resilience and Hazards) 2021;
 - Chapter 3 – Hazardous and offensive development;
 - Chapter 4 – Remediation of Land;
- State Environmental Planning Policy (Biodiversity and Conservation) 2021;
 - Chapter 3 – Koala Habitat Protection 2020;
- Draft Remediation SEPP; and
- Richmond Valley Local Environmental Plan 2012.

For completeness it is noted that the Draft State Environmental Planning Policy (Environment), which was exhibited between 31 October 2017 and 31 January 2018, seeking to consolidate seven (7) existing environmental SEPPs is not relevant to the proposal.

2.2.1 State Environmental Planning Policy (Planning Systems) 2021

State Environmental Planning Policy (Planning Systems) 2021 identifies what development is classified as regionally significant development. Pursuant to Clause 2.19 of the SEPP, the proposal is a Regionally Significant Development as it satisfies the criteria listed in Clause 7(a) of Schedule 6 of the SEPP, given:

- the proposal is development for extractive industries; and
- is classified Designated Development under clause 19 of Schedule 3 to the *Environmental Planning and Assessment Regulation 2000*.

The proposed development meets the requirements for Designated Development under Clause 19, Schedule 3 of *Environmental Planning and Assessment Regulation 2000*, being an extractive industry that:

- obtains or processes for sale, or reuse, more than 30,000m³ of extractive material per year; and
- will disturb a total surface area of more than 2 ha of land by clearing or excavating.

Accordingly, the Northern Regional Planning Panel is the consent authority for the application.

The proposal and Council's assessment is considered to be consistent with this Policy.

2.2.2 State Environmental Planning Policy (Resources and Energy) 2021

In recognition of the importance to NSW of extractive industries, the *State Environmental Planning Policy (Resources and Energy) 2021* provides a suite of provisions aimed to ensure the proper management and development of mineral, petroleum and extractive materials resources. This policy aims to manage and sustainably develop these resources for the social and economic benefit of the community.

Council's assessment report appropriately identifies the relevant Clauses of the SEPP as:

- Clause 2.9 – which addresses permissibility;
- Clause 2.17 – which provides specific heads of consideration relating to compatibility;
- Clause 2.2 – which provides specific heads of consideration relating to natural resource management and environmental management;
- Clause 2.21 - which provides specific heads of consideration relating to resource recovery;
- Clause 2.22 – which provides specific heads of consideration relating to transport; and
- Clause 2.23– which provides specific heads of consideration requiring the consent authority to consider the imposition of conditions relating to rehabilitation.

Council's assessment report provides a comprehensive review against these provisions, confirming permissibility and addressing the specific heads of consideration.

It is noted that quarrying operations have occurred on the site since 1916 and surrounding land uses are predominately grazing and industrial. Formal agreements are in place with 4 rural residential receivers (referred to as R2, R3, R7 and R3) to permit an exceedance of noise criteria. The NSW EPA has reviewed the application, has knowledge of the agreements and has granted General Terms of Approval for the proposal.

It is further noted that Council's assessing officer referred the application to Transport for NSW as required under Clause 2.22. Transport NSW responded on 18 January 2022 raising no objection to the proposal but providing comments for Council's consideration. The comments received were considered by Council's Engineers and can be addressed through appropriate conditions of consent.

The proposal and Council's assessment is considered to be consistent with this Policy.

2.2.3 State Environmental Planning Policy (Transport and Infrastructure) 2021

In accordance with Clause 2.119 a consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied regarding the safety, efficiency and ongoing operation of the classified road. Council's assessing officer has accurately determined that the development does not have direct frontage to a classified road and consequently, this clause is not applicable to the proposal.

Council's assessing officer referred the application to Transport for NSW as required under Clause 2.122 of the SEPP, as detailed above.

The proposal and Council's assessment is considered to be consistent with this Policy.

2.2.4 State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 3 – Hazardous and offensive development

In accordance with Chapter 3 of the SEPP, Council must consider whether a development is a potentially hazardous or offensive development. It is noted that the proposed development does not propose storage of any explosives onsite, however, small quantities of hazardous materials are likely to be held or used onsite during operations including fuel, other hydrocarbons, along with lubricating oils and greases.

It is noted that Council's assessing officer has recommended a condition of consent requiring such materials be stored, handled and transported in accordance with the relevant Australian Standards, particularly AS 1940 and AS 1596, and the Dangerous Goods Code. This response is supported.

The proposal and Council's assessment is considered to be consistent with this Policy.

Chapter 4 – Remediation of Land

Both the application and Council's assessment have considered whether the land is contaminated land in accordance with Clause 4.6(1) of the SEPP. A recent Surface Soil Contamination Assessment has been prepared for the site. Based on the findings of the report, the site is considered suitable subject to appropriate measures being implemented to address any unexpected finds.

The proposal and Council's assessment is considered to be consistent with this Policy.

2.2.5 State Environmental Planning Policy (Biodiversity and Conservation) 2021

The aim of Chapter 3 - Koala Habitat Protection 2020 is 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.

Based on the findings of the Flora and Fauna Assessment Report prepared by Eco Logical Australia as an attachment to the EIS, it appears evident that a Koala Plan of Management is not necessary in this instance.

The proposal and Council's assessment is considered to be consistent with this Policy.

2.2.6 Draft Remediation SEPP

As outlined above, the proposed development has been assessed against the provisions of Chapter 3 of the *State Environmental Planning Policy (Resilience and Hazards) 2021* through preparation of a Soil Contamination Assessment, including soil sampling. The investigation concluded that the site is considered suitable, from a contamination perspective, for its intended use as a quarry.

The proposal and Council's assessment is considered to be consistent with this draft Policy.

2.2.7 Richmond Valley Local Environmental Plan 2012

The subject site is zoned RU1 Primary Production and C2 Environmental Conservation under the provisions of the *Richmond Valley Local Environmental Plan 2012* (LEP). The proposal seeks consent for the expansion and operation of a hard rock quarry and ancillary facilities on the subject site.

The proposal has been appropriately classified as 'extractive industry' which is defined under the LEP as "*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.*"

As detailed by Council's assessing officer, the extractive industry is permissible with consent in the RU1 Primary Production zone and prohibited in the C2 Environmental Conservation zone.

As depicted in the EIS, the proposed development is wholly located within the RU1 Primary Production zoned portion of the site.

Council's assessment of the proposal against the objectives of the RU1 Primary Production zone and relevant LEP controls is deemed to be appropriate. It is noted that it is largely contained within already disturbed areas associated with the existing Petersons Quarry and Coraki Quarry, minimising the fragmentation and alienation of productive agricultural land.

In addition to the commentary provided by Council's assessing officer, it is noted that the proposed extension of existing quarrying operations will help facilitate maximised recovery of the exposed hard rock raw materials from the already established site, which is a more sustainable approach than establishment of a new hard rock quarry operation.

2.3 Development Control Plan

As detailed by Council's assessing officer, the Development Control Plan (DCP) relevant to this application is the Richmond Valley DCP 2021.

The Richmond Valley DCP does not contain specific provisions relating to extractive industries and therefore Council's assessment was undertaken against the following sections:

- Part I-2 Development In, On, Over or Under a Public Road;
- Part I-7 Noise Impact Assessment; and

- Part I-11 Land Use Conflict Risk Assessment.

Based on Council's assessment the proposal does not result in a variation to the DCP objectives or controls. Nevertheless, conditions of consent have been recommended to ensure any necessary subsequent approvals are obtained, such as approval under Section 138 of the Roads Act 1993 to carry out works within a public road reserve.

Council's assessment of the proposal against the relevant DCP provisions is considered appropriate.

Additionally, the Richmond Valley Council *Section 94 Heavy Haulage Contributions Plan 2013* is applicable to the proposal. Council's assessing officer has recommended a draft condition of consent to collect levies consistent with this contribution plan.

Council's assessment of the proposal against the provisions of the contribution plan is considered appropriate.

2.4 Planning Agreements

No Planning Agreements or Draft Planning Agreements are applicable to the site or the proposal.

2.5 Environmental Planning and Assessment Regulation 2000

As detailed by Council's assessing officer, the proposed development is:

- Designated Development - as it would exceed criteria identified by Clause 19 of Schedule 3 of the *Environmental Planning and Assessment Regulation 2000*;
- Regionally Significant Development – as it is an extractive industry facilities that meet the requirements for designated development under Schedule 3 of the *Environmental Planning and Assessment Regulation 2021*; and
- Integrated Development – as it requires an Environmental Protection Licence (EPL) from the NSW Environmental Protection Authority (EPA) under Section 53 of the *Protection of the Environment Operations Act 1997*.

As a result an Environmental Impact Statement (EIS) has been prepared by GroundWork Plus on behalf of the applicant, KIS Quarries Pty Ltd, in accordance with the Secretary's Environmental Assessment Requirements (SEARs) issued on 28 June 2022.

2.6 Likely Impacts of the Development

Council's assessment of the likely impacts of the proposal on both the natural and built environments, and social and economic impacts in the locality identified the following matters for consideration:

- Noise;
- Blasting;
- Air quality;
- Traffic and transport;
- Water resources;
- Heritage;
- Visual amenity;
- Agricultural resources;
- Hazards and risk;
- Waste;
- Social and economic;
- Biodiversity;
- Rehabilitation and closure; and
- Cumulative impacts.

Council's assessment is deemed to be appropriate, subject to the following comments.

Noise

Modelling results indicate exceedances of the noise criteria at 3 residential receivers (referred to as R2, R3 and R7) by up to 8dB. Intrusive noise criteria are typically based on background noise levels plus 5dB. A noise level of 8dB over background noise levels is considered intrusive but not necessarily offensive.

It is understood that formal agreements are in place with the above-mentioned residential receivers to permit an exceedance of noise criteria, however, the level of exceedance accepted under the agreement is not specified.

It is considered appropriate that a further recommended condition of consent be considered by the Panel to limit exceedances at the specified residential receivers to 8dB above the criteria (that is, 48dB(A)), in accordance with the modelling results.

It is further considered appropriate that an additional condition be considered by the Panel, requiring that as soon as practicable and no longer than 7 days after obtaining monitoring results showing an exceedance over 8 dB above the criteria, the Applicant/Operator provide details of the exceedance to any affected landowners and/or tenants.

Traffic

Council's assessing officer has recommended conditions of consent requiring upgrade works to the intersection of Lagoon Road with Casino Coraki Road, Queen Elizabeth Drive and Dawson Street to achieve compliance with basic right turn (BAR) and basic left turn (BAL) treatment standards.

The Applicant has made representations to Council and the Panel via letter dated 15 June 2023 seeking to have this condition removed on the basis of the existing long term operation of the quarry. Council's assessment of this issue is supported, and the imposition of the proposed condition is considered both appropriate and reasonable. Notwithstanding the long term operation of the existing quarry, an historic arrangement does not justify a variation to current safety standards.

Surface Water

Council's assessment report notes that based on the submitted Water Balance Assessment, it is expected that the quarry would be self sufficient in water supply, however, if the sediment basins did run dry water would be purchased from licenced water suppliers.

Extractive industries by the nature of their activities result in large areas of exposed surfaces which are subject to cause nuisance dust emissions during dry conditions if not appropriately managed. Dust suppression is managed through the use of water carts to dampen surfaces, particularly unsealed trafficable haul roads.

Council's inclusion of a consent condition requiring the Applicant/Operator ensure it has sufficient water for all stages of the development, and if necessary, adjust the scale of operations to match its water availability, is supported.

2.7 Suitability of the Site

It is noted that quarrying operations have occurred on the site since 1916. The site is relatively unconstrained, and the proposal is largely contained within already disturbed areas associated with the existing Petersons Quarry and Coraki Quarry, minimising the fragmentation and alienation of productive agricultural land.

In addition to the commentary provided by Council's assessing officer, it is noted that the proposed extension of existing quarrying operations will help facilitate maximised recovery of the exposed hard rock raw materials from the already established site, which is a more sustainable approach than establishment of a new hard rock quarry operation.

Council's assessment of the suitability of the site for the proposed development is supported.

2.8 Public Interest

Council's conclusion that the development is deemed to be in the public interest is supported given that the proposal:

- complies with the relevant legislation;
- is consistent with the RU1 Primary Production zone objectives;
- complies with the relevant development standards for the site;
- received only two community submissions, which have been adequately addressed;
- maximises recovery of hard rock raw materials from the site; and
- provides ongoing employment opportunities and flow on economic benefits.

It is considered that the likely impacts of the development can be appropriately mitigated by way of the recommended conditions of consent. Furthermore, the proposal has been referred to and reviewed by relevant state agencies and there are no outstanding concerns subject to the recommended conditions being imposed.

2.9 Public Submissions

The proposal was notified in accordance with Richmond Valley Council's *Community Participation Plan 2022*, from 18 July 2022 to 15 August 2022. Two unique submissions were received.

Council's assessing officer undertook a review of the submissions received during the exhibition period and provided a response in the assessment report.

A review of the submissions and the adequacy of Council's response has found:

- Council's assessing officer has undertaken a satisfactory exhibition process in accordance with the relevant legislative requirements and Council's Community Participation Plan;
- That Council's assessing officer's response to the issues raised in the submissions received is considered and appropriate, addressing each of the issues raised in the submissions.

2.10 External Referrals

In addition to public notification of the application, the application was referred to the following external agencies for concurrence/referral/comment:

- Transport for NSW;
- Department of Primary Industries – Agriculture;
- Water NSW;
- Department of Planning and Environment – Heritage;
- Department of Regional NSW – Mining, Exploration and Geoscience;
- Essential Energy; and
- NSW Environment Protection Authority (EPA).

It is noted that while referral to Transport for NSW, Essential Energy and the EPA was required, referral to the other agencies was undertaken as a courtesy demonstrating a precautionary approach.

The responses from each external authority were provided with Council's Assessment Report. Council's consideration of each referral agency's responses is deemed appropriate and is reflected in Council's assessment report as well as the recommended conditions of consent. There are no outstanding matters of concern resulting from the agency responses.

3. Council's Assessment Process

3.1 Adequacy of Council's Assessment

Council's assessment of the application is deemed to be reasonable and appropriate based on the following:

- The application was correctly classified as Regionally Significant Development, Designated Development and Integrated Development by Council and referred to the relevant government agencies and authorities for review.
- Council's assessing officer undertook a suitable exhibition and notification process in accordance with the relevant legislation and Council's Community Participation Plan 2022.
- Council's assessing officer undertook a comprehensive assessment of the proposal against the relevant matters of consideration listed under Section 4.15 of the EP&A Act,
- Council's review and response to the public submissions received is considered appropriate; and
- Council's assessment of the likely impacts of the proposal including environmental impacts on both the natural and built environments, and social and economic impacts in the locality is deemed to be appropriate.

3.2 Adequacy of Council's Recommended Conditions of Consent

A review of the recommended conditions of consent has been undertaken with consideration of the proposal, Council's assessment of the proposal, external referral responses and public submissions to ensure they are adequate for the application.

The review found that the recommended conditions of consent are generally satisfactory and comparative with similar scaled extractive industry approvals in the region.

Some points have been raised throughout this report and noted again below:

- Noise - It is considered appropriate that further recommended conditions of consent be considered to:
 - limit exceedances at the specified residential receivers to 8dB above the criteria (that is, 48dB(A)), in accordance with the modelling results; and
 - require that as soon as practicable and no longer than 7 days after obtaining monitoring results showing an exceedance over 8 dB above the criteria, the Applicant/Operator provide details of the exceedance to any affected landowners and/or tenants.
- Traffic – That the Applicants representations seeking to have the draft condition requiring upgrade works to the intersection of Lagoon Road with Casino Coraki Road, Queen Elizabeth Drive and Dawson Street removed be rejected and Council's recommended condition supported.
 - It is considered that, notwithstanding the long term operation of the existing quarry, an historic arrangement does not justify a variation to current safety standards.
- Surface Water - It is considered appropriate that the condition of consent ensuring dust suppression is achieved during extended dry periods should the sediment basins run dry, is included.

In addition to the points, the following comments are provided for consideration:

- Council's assessing officer has recommended two conditions in relation to the site being operated as a single entity, being:
 - "The extractive industry is to be operated by a single entity and under a single Environmental Protection Licence."
 - It is recommended that this condition be extended to specify that an Environmental Protection Licence is to be held and maintained for the site until any rehabilitation conditions are achieved."
 - "The lots comprising each separate ownership must be consolidated so that only two separate parcels exist prior to commencement of operations. Easements shall be created as required at the time of consolidation."
 - It is recommended that this condition be extended to specify "...to the satisfaction of Council."

Finally, it is noted that the Applicant has made representations to Council via letter dated 15 June 2023 seeking to several conditions removed or amended. The following comments are provided for consideration by the Panel:

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- Condition 12 – Heavy Vehicles
 - The applicant's objection is noted, however, Council's Engineers are best placed to respond to this requirement.
 - Condition 26 – Damage caused to infrastructure
 - The proposed hard rock quarry involves blasting activities carried out in proximity to public infrastructure. The potential exists for damage to be caused due to blasting impacts, particularly, flyrock. Council's inclusion of blasting in this condition is supported.
 - Condition 47 – Dilapidation reports
 - The requirement for preparation of dilapidation reports is considered best practice and provides protection for the quarry operators, as well as the surrounding landowners. Council's inclusion of this condition is supported.
 - Condition 61 – Road Works
 - Inclusion of this condition has been addressed above and is supported.
 - Conditions 62 to 68
 - The proposed conditions provide guidance and could be incorporated as notes, if considered more appropriate by the Panel.

6. Conclusion

This independent peer review has been prepared by Planit Consulting on behalf of Richmond Valley Council to manage potential conflicts of interest and increase transparency of the development process, for this council-related development, in accordance with Council's *Managing Conflicts of Interest for Council-Related Development Policy*.

The Development Application DA2022/250 (PAN-231653) seeks approval for operation of an extractive industry and ancillary facilities at Coraki, NSW. The site is land owned by KIS Plant Pty Ltd and Richmond Valley Council.

The following matters were taken into consideration as part of this independent peer review:

- Relevant matters listed in Section 4.15 of the Environmental Planning and Assessment Act 1979;
- Prescribed matters under the Environmental Planning and Assessment Regulation 2000;
- The evaluation and recommendations in Council's Assessment Report;
- Submissions received from the community and external agencies and authorities; and
- Council's recommended conditions of consent.

In summary, this independent peer review found:

- Application was correctly classified and referred to the relevant external agencies and authorities;
- The application was correctly notified in accordance with the relevant legislation and Council's Community Participation Plan;
- Council's assessing officer undertook a comprehensive assessment of the proposal against the relevant matters of consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979*;
- Council's review and response to public submissions and agency/authority referral comments was appropriate;
- Council's assessing officer's assessment of the likely impacts, suitability of the site and public interest is appropriate and supported.

Council's Assessment Report and Recommendation for Approval subject to the draft schedule of conditions and consideration of the matters outlined in this report is considered appropriate and supported by the findings of this independent peer review.