

## COUNCIL ASSESSMENT REPORT

<b>Panel Reference</b>	PPSNTH-25
<b>DA Number</b>	2020/0008
<b>LGA</b>	Narrabri
<b>Proposed Development</b>	Extractive industry – hard rock quarry to extract and process 500,000 tonnes per year
<b>Street Address</b>	Lots 114 & 124 in DP753950, 475 Haystack Road, BELLATA NSW 2397
<b>Applicant/Owner</b>	Ooononba-Bellata Quarry Pty Ltd
<b>Date of DA Lodgement</b>	24 July 2019
<b>Number of submissions</b>	<ul style="list-style-type: none"> <li>3 submissions</li> </ul>
<b>Recommendation</b>	Refusal
<b>Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011</b>	Clause 7 Particular Designated Development. Development for the purpose of an extractive industry which meets the requirements of designated development under clause 19 of schedule 3 of the <i>Environmental Planning &amp; Assessment Regulation 2000</i> .
<b>List of all relevant s.4.15(1)(a) matters</b>	<ul style="list-style-type: none"> <li>Environmental Planning &amp; Assessment Regulation 2000</li> <li>State Environmental Planning Policy (State &amp; Regional Development) 2011</li> <li>State Environmental Planning Policy No. 55 – Remediation of Land</li> <li>State Environmental Planning Policy (Koala Habitat Protection) 2020</li> <li>State Environmental Planning Policy (Primary Production and Rural Development) 2019</li> <li>State Environmental Planning Policy (Infrastructure) 2007</li> <li>State Environmental Planning Policy No. 33 – Offensive &amp; Hazardous Development</li> <li>State Environmental Planning Policy (Mining, Petroleum Production &amp; Extractive Industries) 2007</li> <li>Narrabri Local Environmental Plan 2012</li> <li>Narrabri Development Control Plans</li> </ul>
<b>List all documents submitted with this report for the Panel's consideration</b>	<ul style="list-style-type: none"> <li>Environmental Impact Statement (EIS)</li> <li>Site plan</li> <li>Contour map and footprint</li> <li>Quarry access road landscape plan</li> <li>Access road creek crossing landscape plan</li> <li>Quarry and access road landscape plan</li> <li>Additional information request from NSW Environment Protection Authority (NSW EPA) dated 22 January 2020</li> <li>Additional information from Narrabri Shire Council dated 02 June 2020</li> </ul>
<b>Clause 4.6 requests</b>	Not applicable
<b>Summary of key submissions</b>	<ul style="list-style-type: none"> <li>Traffic &amp; access</li> <li>Cumulative impacts</li> <li>Noise</li> <li>Vibration</li> <li>Air quality (noise and dust)</li> <li>Groundwater impacts</li> <li>Surface water management</li> <li>Rehabilitation</li> <li>Cultural heritage</li> <li>Community consultation</li> <li>Traffic safety</li> <li>Resource reserves and quarry lifespan</li> </ul>
<b>Report prepared by</b>	Donna Ausling (Manager Strategic Planning)
<b>Report date</b>	20 July 2021

<b>Summary of s4.15 matters</b>	
Have all recommendations in relation to the relevant s4.15 matters been summarised in the Executive Summary of the assessment report?	<b>Yes</b>
<b>Legislative clauses requiring consent authority satisfaction</b>	
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 summarised, in the Executive Summary of the assessment report? <i>e.g. Clause 7 of SEPP 55 – Remediation of Land, Clause 4.6(4) of the relevant LEP</i>	<b>Yes</b>
<b>Clause 4.6 exceptions to development standards</b>	
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?	<b>Not applicable</b>
<b>Special Infrastructure Contributions</b>	
Does the DA require Special Infrastructure Contributions conditions (s7.24?) <i>Note: certain DAs in the Western Sydney Growth Areas Special Contribution Areas may require specific Special Infrastructure Contributions (SIC) conditions</i>	<b>No</b>
<b>Conditions</b>	
Have draft conditions been provided to the applicant for comment?	<b>No</b>

## **1. Executive Summary**

### **1.1 Reasons for consideration by the Regional Planning Panel**

The application is required to be determined by the Regional Planning Panel pursuant to s.2.19(1)(a) of the *Environmental Planning and Assessment Act 1979* and clause 7, schedule 7 of *State Environmental Planning Policy (State and Regional Development) 2011* as the development is classified as an extractive industry and is designated development under clause 19 of schedule 3 of the *Environmental Planning and Assessment Regulation 2000*.

### **1.2 Description of the Proposal**

Development Application (DA) 2020/0008 seeks development consent for the establishment of a hard rock quarry and processing plant to produce a maximum of 500,000 tonnes of quarry material per year for a period of approximately three (3) years predominantly catering for the Inland Rail project. Once the Inland Rail project is completed, the quarry would continue to operate with a lesser annual extraction rate of 30,000 tonnes per annum to supply local projects.

The project would also incorporate the following key components:

- Site office and lunchroom
- Installation of three (3) shipping containers for equipment storage
- Crushing area
- Stockpile area
- Drains
- Sediment pond
- Internal roads

Buildings and quarrying equipment will be of a portable nature only. The quarry will be shaped to incorporate a low area which will act as an internal sediment pond and stormwater catchment. Water captured in this area will be utilised for dust suppression purposes associated with quarrying and crushing operations.

Trucks will enter the edge of the quarry to be loaded. A one-way road is proposed to reduce the manoeuvring area requirements and associated disturbance footprint.

### **1.3 Key Issues**

From the assessment of the subject application, the key issues for this Project are summarised as follows:

- Failure by the applicant to respond to multiple additional information requests that are essential for an informed assessment of the proposal to be undertaken and in order to enable general terms of approval (GTAs) to be issued for the integrated development;
- Traffic and access;
- Cumulative impacts;
- Air quality (noise and dust);
- Groundwater impacts;
- Surface water management;
- Rehabilitation;
- Cultural heritage;
- Community consultation;
- Traffic safety; and
- Resource reserves and quarry lifespan.

### **1.4 Compliance with Planning Controls**

The subject land is zoned RU1 Primary Production in accordance with the provisions of the *Narrabri Local Environmental Plan 2012* (NLEP). The proposed development is considered to be consistent with the objectives of the RU1 zone and is permissible with development consent.

The proposed development is integrated development pursuant to section 4.46(1) of the *Environmental Planning & Assessment Act 1979*, as the development requires an Environmental Protection Licence (EPL) issued by the NSW Environment Protection Authority (NSW EPA), as required by schedule 1(19) of the *Protection of the Environment Operations Act 1997*.

No General Terms of Approval (GTAs) have been issued by the NSW EPA as the applicant has failed to respond to requests for information that would enable the informed assessment and consideration of the proposal.

The proposed development is also identified as designated development pursuant to section 4.10 of the *Environmental Planning & Assessment Act 1979*, and clause 19 schedule 3 of the *Environmental Planning & Assessment Regulation 2000*.

### **1.5 Consultation**

Notification and referral requirements have been complied with as part of the assessment of DA 2020/0008. The DA was notified to adjoining landholders and advertised in the Courier newspaper and Council's website for a period of twenty-eight (28) days, commencing 02 January 2020 and ending 31 January 2020. The DA was also referred to NSW NRAR, NSW EPA, NSW Department of Planning, Industry & Environment (DPIE), Transport for NSW (TfNSW), Moree Plains Shire Council and the Siding Spring Observatory.

TfNSW raised no objection to the development proposal subject to the imposition of appropriate consent conditions.

As detailed previously, NSW EPA requested the following information:

1. Air Quality Impact Assessment – additional information relating to an emissions inventory.
2. Noise Impact Assessment – additional information as required for operational conditions, meteorological data, further explanations on operational noise level predictions and noise mitigation measures to be implemented.

Despite numerous additional information requests the above items were not submitted in further support of the application.

Additional information was also requested by Council in relation to the following items:

- A representations report providing a response to submissions;
- Supporting information for the required upgrade of Berrigal Road which was identified as not being suitable in its current form to support the development; and
- A Greenhouse Gas Assessment pursuant to clause 14(2) of *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007* (the 'Mining SEPP').

The above information was also not forthcoming despite repeated requests with a total of four (4) written attempts to obtain the information.

A total of three (3) submissions by way of objection were received in relation to the proposal.

The matters raised in the submissions have been addressed in a latter section of this Report.

### **1.6 Recommendation**

It is recommended that DA2020/008 be refused based on the following:

- Failure to respond to additional information requests which would permit an informed assessment of the proposal;
- The application has not demonstrated that the noise from the project will not unreasonably impact surrounding local residents;
- The application has not demonstrated that the emissions generated from the project will not unreasonably impact surrounding local residents;
- Non-compliance with clause 14(2) of *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007* (the 'Mining SEPP').
- The application is not considered to be in the public interest.

## 1.7 Annexures

**Annexure A** – Plans, Environmental Impact Statement and Technical Assessments

**Annexure B** – Responses for External Agencies

**Annexure C** – Public Submissions

**Annexure D** – Request for additional information (copy of fourth RFI)

## 2.0 Evaluation of Development Application

### 2.1 Proposed Development

Development Application (DA) 2020/0008 seeks development consent for a hard rock quarry and associated infrastructure on Lots 114 & 124 in DP753950, known as 475 Haystack Road, Bellata. Cadastral and aerial images of the subject lands are shown in Figure 1 and Figure 2 below:



**Figure 1** – Cadastral image of the subject land



**Figure 2** – Aerial image of the subject land

According to the Environmental Impact Statement (EIS) accompanying the subject application, the proposed hard rock quarry will be operated on the property “Ooononba”. The property is located approximately 9 kilometres east of Bellata and 46 kilometres north north-east of Narrabri. The quarry would have an annual limit of 500,000 tonnes. The primary objective of the proposed quarry is to secure a supply of quality ballast material and associated quarry projects for the Inland Rail project. Upon completion of the Inland Rail project, the quarry would continue to operate with a lesser annual extraction rate of 30,000 tonnes per annum.

The resource to be excavated consists of hard basalt rock material that is present within a hill area on the property of Ooononba. The rock will provide an extremely hard ballast material and which is also a key component in high quality road base materials.

The site offers approximately 1.5M tonne of material within the proposed footprint. Operation of the quarry will include the use of portable crushing equipment within the quarry footprint which will be removed upon cessation of site operations. The quarry will result in below ground extraction and as a consequence all internal runoff will be captured within the quarry site.

According to the submitted documentation, operating hours for the quarry will be between the hours of 6:00am to 6:00pm from Monday-Saturday. Potential requirements for extended work hours have also been foreshadowed to cater for short-term increases in demand from the Inland Rail project. This may involve 24 hour operations at some stages of the development. It has been outlined that authorities and neighbours would be advised of these circumstances and additional mitigation measures would be implemented.







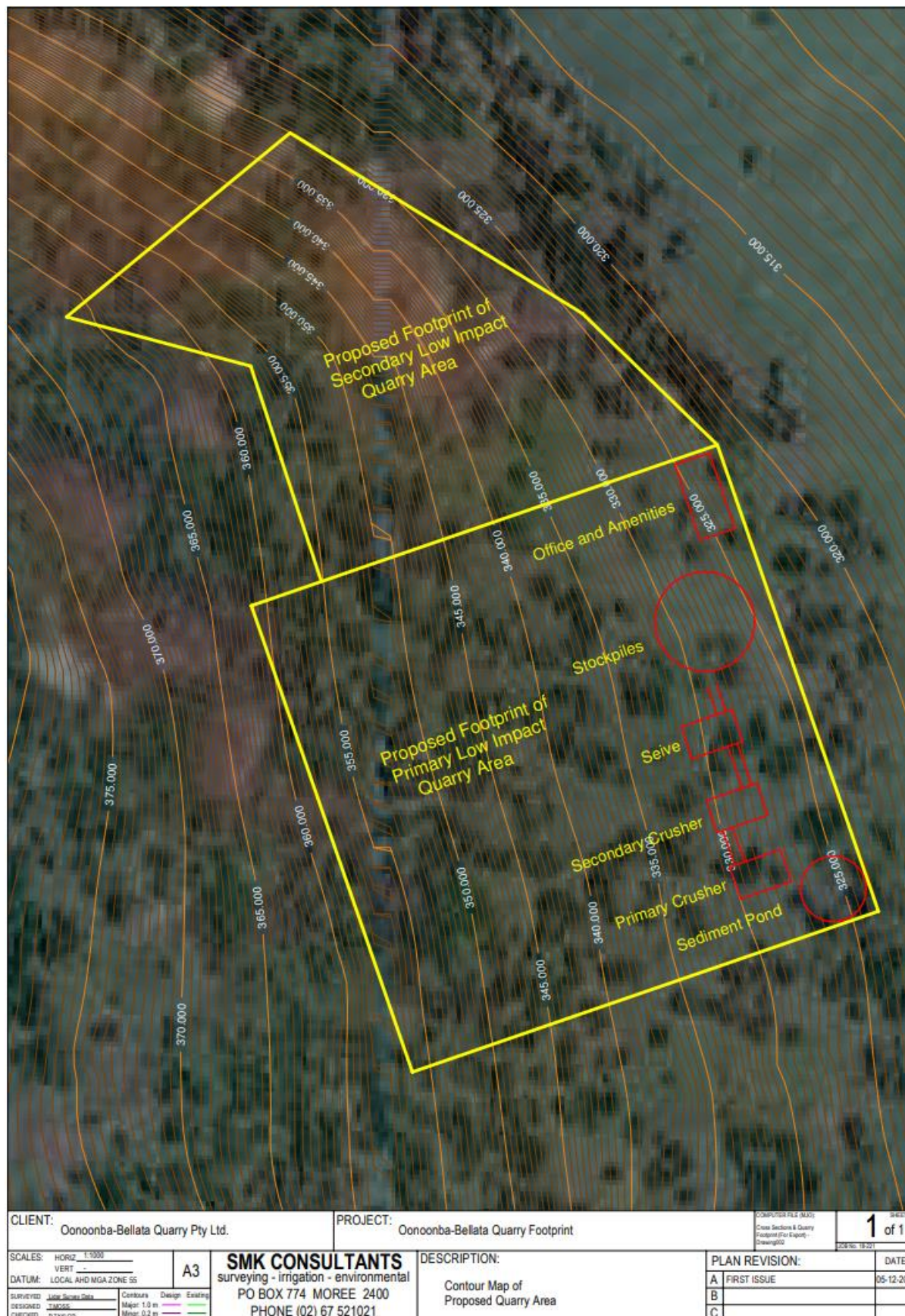


Figure 4 – Site Contour Map



## 2.3 Other Relevant Legislation

### ➤ *Environmental Protection and Biodiversity Conservation Act 1999*

The *Environmental Protection and Biodiversity Conservation Act 1999* (EPBC) aims to ensure that actions likely to cause a significant impact on Matters of National Environmental Significance undergo an assessment and approval process. The Flora and Fauna assessment report prepared by Advitech Pty Ltd advised that the vegetation identified on site was consistent with 'Semi evergreen vine thickets of the Brigalow Belt and Nandewar bioregions' (SEVT) listed under the EPBC Act. The submitted report further identifies that whilst this vegetation will be impacted by the proposal, the impact would not be significant given the relatively small degraded area to be impacted and the potential to improve retained areas. The footprint of the quarry was subsequently modified and will retain 91.5% of the SEVT associated with the outcrop area.

Advice was also provided of the intention to lodge a Biodiversity Conservation Action to retain the remaining area of SEVT on the outcrop as a Stewardship site in accordance with the Biodiversity Conservation Act. This approach was proposed with the view of ensuring that an area of like-for-like vegetation is retained to offset the clearing from the quarry area. The decision to proceed with this conservation action was resultant from the absence of similar vegetation types to enable purchase of like-for-like credits in the current credit market in NSW. No other SEVT is available for purchase or trade. If a stewardship agreement is put in place, the landowner will be financially supported to maintain and improve the remaining 39 ha or more of SEVT. At present, the outcrop receives no management actions as it has no value in relation to grazing or other productivity. It was concluded by the assessment that the proposal does not need to be referred to the Federal Minister for the Environment.

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

An Aboriginal Due Diligence Assessment was undertaken by Advitech Environmental and submitted with the subject application to address the provisions of the *National Parks and Wildlife Act 1974*. The purpose of this report is to assess potential Aboriginal heritage issues from the operation and construction of the proposed quarry and, where required, identify feasible and reasonable mitigation measures. This assessment included a desktop review of historic information and a field assessment. A search of the NSW AHIMS register indicated that there were two (2) Aboriginal sites recorded in or near the property. An extensive search revealed that the site included a modified tree (carved or scarred) and an artefact. The field inspection also discovered potential stone artefacts and imported stone material. No Potential Archaeological Deposits (PADs) or areas of archaeological sensitivity were noted during the survey.

As a result of the Due Diligence Assessment outcomes, a more detailed Aboriginal Cultural Heritage Assessment (ACHA) was undertaken. In accordance with the requirements of the *NSW Aboriginal Cultural Heritage Consultation Requirements for Proponents 2010*, community consultation was undertaken. The ACHA determined that the impact related to the proposed quarry would be minimal however with the view of mitigating the impact to the known heritage items the quarry layout and access route was amended.

### ➤ *Water Management Act 2000*

The submitted EIS outlines that the quarry intends to initially utilise available surface water supplies under the NSW Harvestable Rights Policy. If a more secure water supply is needed, the Proponent intends to obtain approval from Water NSW to drill a new groundwater bore and obtain an entitlement to utilise the water for industrial purposes. The groundwater bore will require an approval for water supply works and water use from Water NSW in accordance with section 92 of the *Water Management Act 2000*.

The project will also entail the upgrade of the Myall Hollow Creek crossing. This activity will occur in a watercourse and would therefore be subject to an application to NRAR for a Controlled Activity Approval. The application and approval would relate specifically to “Construction of watercourse crossing such as bridges, causeways, and bed level crossing, and ancillary works such as roads.”

As the subject application also constitutes integrated development, the development application was referred to NRAR. In accordance with section 91 of the *Water Management Act 2000*, associated General Terms of Approval (GTAs) were issued on 01 June 2020 (IDAS1121720).

➤ *Biodiversity Conservation Act 2016 and Biodiversity Conservation Regulation 2017*

The Biodiversity Conservation Act 2016 (BC Act) aims to maintain a healthy, productive and resilient environment for the greatest wellbeing of the community, now and into the future, consistent with the principles of ecologically sustainable development. A Biodiversity Development Assessment Report (BDAR) is required to accompany a DA if the proposal will ‘significantly affect threatened species’ and the Biodiversity Offset Scheme (BOS) will apply.

Under section 7.2 of the BC Act, the development will ‘significantly affect threatened species’ if:

- a. It is likely to affect threatened species or ecological communities, or their habitats, according to the test in section 7.3; or,
- b. The development exceeds the BOS threshold if the BOS applies to the impact of the development on biodiversity values; or,
- c. It is carried out on a declared area of outstanding biodiversity value.

Section 7.2(1)(b) of the BC Act and clause 7.1 of the *Biodiversity Conservation Regulation 2017* (BC Regulation) sets out the BOS threshold, being whether:

- a. The amount of native vegetation being cleared exceeds a threshold area;
- b. The development involves the clearing of native vegetation or prescribed impacts on an area mapped on the biodiversity values map.

The proposed development exceeded the area threshold for native vegetation clearing associated with the property and a BDAR was prepared by Advitech Environmental. A copy of this report is attached to the EIS.

## **2.4 External Referrals**

DA 2020/0008 was referred to the Natural Resources Access Regulator (NRAR) as an integrated development under section 4.46 of the *Environmental Planning and Assessment Act 1979* and section 91 of the *Water Management Act 2000*. As detailed previously, the GTAs from NSW NRAR were issued on 01 June 2020.

The application was also referred to the NSW EPA who requested additional information to enable their informed assessment of the application and to facilitate the formulation of the associated GTAs. As detailed in a previous section, a response was not forthcoming from the proponent.

Moree Plains Shire Council made a written submission and provided feedback on water sourcing and management, dust mitigation and management, noise feedback, and a recommendation that the proponent enter into road upgrade and maintenance agreement (Voluntary Planning Agreement). Rehabilitation considerations were also highlighted.

Written notice was given to Transport for NSW (TfNSW) raised no objection to the proposal and outlined a series of recommended conditions including, but not limited to, concerns regarding cumulative impacts from the nearby Meppem Quarry, the implementation of a Driver Code of Conduct, and ensuring that future intersection upgrades are undertaken in accordance with Austroad standards.

Copies of the comments from external referrals are contained in **Annexure B**.

## 2.5 Internal Referrals

Internal consultation was carried out as part of the assessment of DA 2020/0008. This included consultation with Council's Infrastructure Services (Engineering) Department. The following issues were identified:

- The private (internal) access road is classified as a natural surface road and is primarily an unformed road/track used for farming purposes which will require upgrading.
- Acknowledgement of the submission of concept design plans for the requisite upgrade of the intersection with Berrigal Road and associated advice that additional detail is required to justify a range of matters including pavement design and vehicle manoeuvring capability.
- Necessary upgrades to Berrigal Road to increase the required pavement thickness, strength and width to accommodate the additional vehicle movements.
- Potential traffic safety issues as the haulage route passes Bellata Public School.
- Request for clarification on maximum vehicle size (for example Road Train combination).
- Concurrence with TfNSW proposed conditions.
- Imposition of appropriate developer contributions.

The abovementioned considerations were communicated to the proponent throughout the assessment process. Concerns were communicated to Council by the proponent regarding the requisite cost of such upgrades.

## 2.6 Environmental Planning & Assessment Act 1979

The assessment of DA 2020/0008 has been undertaken in accordance with section 4.15 of the *Environmental Planning and Assessment Act 1979*, as amended. In determining a development application, a consent authority is to take into consideration the following matters as relevant to the proposal.

### ➤ 4.15(1)(a)(i) the provisions of any environmental planning instrument

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

This Policy aims to identify development that is State and regionally significant, and State significant infrastructure and critical State significant infrastructure. The DA has been referred to the Regional Planning Panel pursuant to s.2.19(1)(c) of the *Environmental Planning and Assessment Act 1979* and clause 7, schedule 7 of *State Environmental Planning Policy (State and Regional Development) 2011* as the proposal constitutes an extractive industry and is designated development.

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

This Policy (the 'ISEPP') aims to facilitate the effective delivery of infrastructure across the State. Whilst the provisions of clauses 100 or 104 of the ISEPP do not apply to the development, the application was referred to TfNSW for comment given the proximity of the proposal to the Newell Highway. Outcomes of this referral process are detailed in a preceding section.

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

The objective of this Policy is to provide a state-wide planning approach to the remediation of contaminated land. The SEPP requires consideration of previous land uses and promotes 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 accordance with the provisions of clause 7(1) of this Policy, it is considered that the subject site is suitable for the development as proposed and that no further investigation is required. The development site has been historically used for primary production and is currently used for the same purpose. A search of Council's records has not produced any approvals for activities listed under Table 1 of *Planning Guidelines SEPP 55 – Remediation of Contaminated Land* 1998. There are no known previous investigations about contamination on the subject land or land use restrictions issued by the NSW Environment Protection Authority (NSW EPA). It is therefore concluded that the provisions under clause 7(1) of this Policy have been satisfied.

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

This Policy applies to the State and aims to facilitate the orderly economic use and development of lands for primary production, to reduce land use conflict and sterilisation of rural land, to identify State significant agricultural land and to encourage and protect aquaculture.

The proposed development is considered to be consistent with the aims of this Policy.

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

Extractive industries are by their nature and the operations involved, potentially hazardous and/or offensive uses. Under the circumstances regard must be given to the heads of consideration contained in clause 13.

Having regard to the size, location, nature of operations, and taking into account the existing extractive operation, it is considered that the proposal does not constitute a potentially hazardous or offensive operation for the purposes of SEPP 33.

State Environmental Planning Policy (Koala Habitat Protection) 2020 in force as of 30 November 2020

This Policy 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. This Policy applies to each Local Government Area (LGA) listed in schedule 1 of *State Environmental Planning Policy (Koala Habitat Protection 2021)*, which includes the Narrabri Shire LGA, and which are zoned RU1 Primary Production.

An assessment of potential koala habitat was undertaken in accordance with the SEPP as part of the Biodiversity Impact Assessment prepared by Advitech Environmental. The assessment determined that no primary or secondary feed trees were identified within or adjacent to the proposal area and no indications of koalas were observed during the survey. The EIS has outlined that preferred habitat in the local area occurs along creeks and box woodland with the nearest record located approximately 8.5km north-east of the proposed site. As such the site is not considered to constitute potential koala habitat in accordance with clause 8 of the SEPP, and no further consideration is required under this assessment.

State Environmental Planning Policy (Koala Habitat Protection) 2021

This Policy aims to encourage the conservation and management of areas of natural vegetation that provide habitat for koalas to support a permanent free-living population over their present range and reverse the current trend of koala population decline. SEPP Koala Habitat Protection (2021) came into effect on 17 March 2021.

In accordance with clause 18 of the SEPP (2021) relevant transitional provisions are in place. In relation to this proposal, a DA made in relation to land, but not finally determined before this Policy applied to the land, must be determined as if this Policy had not commenced.

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

Clauses 12-17 of the Mining SEPP are of particular relevance to this application:

*Clause 12 – compatibility of proposed extractive industry with other land uses*

The surrounding area is used primarily for agricultural purposes. It is not considered that the development would be incompatible with these surrounding land uses subject to appropriate mitigations being put in place.

*Clause 13 – compatibility of the proposed development with mining, petroleum production or extractive industry*

There are no other such activities on site. The proposed activity is therefore not considered to be inconsistent with this provision.



#### Clause 14 – Natural Resource Management and Environmental Management

An assessment of the quarry proposal indicated that there is little or no potential impact on groundwater or groundwater dependent ecosystems (GDEs). It is considered that the proposed operation will have minimal impact on the water cycle in the locality.

Potential impacts on biodiversity have been considered in a preceding section of this Report.

As detailed in preceding sections, the applicant has failed to submit information required under subclause 14(2) of the Mining SEPP:

*(2) Without limiting subclause (1), in determining a development application for development for the purposes of mining, petroleum production or extractive industry, the consent authority must consider an assessment of the greenhouse gas emissions (including downstream emissions) of the development, and must do so having regard to any applicable State or national policies, programs or guidelines concerning greenhouse gas emissions.*

On this basis, the proposal is considered to be contrary to the requirements of the Mining SEPP.

#### Clause 15 – Resource Recovery

This clause requires Council to consider whether the proposed resource recovery is efficient. It is noted that modern equipment and best practice management principles are used in the operation of the quarry to ensure that resource recovery is efficient and economically viable.

#### Clause 16 – Transport

Berrigal Road will provide the only haulage route between the quarry and the Newell Highway. The EIS outlines that no other local roads would be used by trucks generated from the quarry when they are hauling materials.

Calculations in the submitted Traffic Impact Assessment (TIA) detail that at peak production an additional 88 two (2) way truck trips would occur from Monday to Saturday along Berrigal Road. Eight (8) trucks per hour will be moving from and back to the quarry. This is a significant increase in local traffic and as a consequence the rate of deterioration of this road will be exacerbated if any sections of the road start to fail.

The TIA also identifies a range of matters that need to be considered and managed as a consequence of this development. Such matters include:

- The necessity to upgrade the access intersection into Berrigal Creek Road which does not meet Austroad standards;
- Current condition of Berrigal Road, which is narrow in sections;
- Potential damage to the shoulders of Berrigal Road due to passing trucks;
- The need for truck speed to be carefully controlled on Berrigal Road and within the village of Bellata adjacent to the public school;
- Communication being required between the operator and the school bus company; and
- Need for establishment of a driver code of conduct.

TfNSW provided the following recommendations in their submission to the proposal pursuant to clause 16(1) of the Mining SEPP:

- Prior to the commencement of haulage the proponent is to prepare and implement a Driver Code of Conduct for the task of transporting materials on public roads, this is to also apply to any haulage undertaken via contractors;
- Safe Intersection Sight Distance (SISD) in accordance with Part 4A of Austroads Guide to Road Design is to be provided and maintained at the intersection of the site access and Berrigal Road;
- Haulage operations coinciding with local student school bus pick up/drop off times and locations is to be avoided. Relevant consultation with local schools and local school bus operators should be undertaken and demonstrated in any subsequent Driver Code of Conduct.

The proposal was internally referred to Council's Infrastructure Delivery (Engineering Services) Department and a range of transport-related considerations were identified, as detailed in a preceding section. These were communicated to the proponent during the assessment period.

In response, a series of representations were received from the proponent raising concerns regarding the impact of the foreshadowed road upgrade requirements on the overall viability of the development. Such issues related primarily to cost and the limited lifespan of the quarry at full production. It is considered, however, that such upgrades are necessary and appropriate in the context of this development, and in the interest of community and road safety. A suitable rationale for the removal of such upgrade requirements, or alternative amelioration measures, was not presented.

#### *Clause 17 - Rehabilitation*

A draft Rehabilitation Plan has been prepared in support of the submitted DA. It is proposed that rehabilitation will involve achievement of the following objectives:

- To produce a stable final landform able to support the rehabilitation of the land for agricultural purposes;
- To minimise the environmental impact of all site earthworks associated with the rehabilitation works;
- To optimise the use of available overburden and topsoil as a substrate for vegetation; and
- To achieve a stable and functional drainage system at the site under extreme rainfall events.

It is considered that satisfactory arrangements have been made for site rehabilitation.

#### *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 proposal is considered to be compatible with the agricultural use of the balance of the property. As detailed in Figure 7 of the EIS, sections of the property are designated as Biophysical Strategic Agricultural Land (BSAL), the subject site is not included in the mapped BSAL area.

The Plan outlines twenty-four (24) 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.

#### *Narrabri Shire Local Environmental Plan 2012*

The subject lands are zoned RU1 Primary Production pursuant to the provisions of the Narrabri Shire LEP 2012. The objectives of the zone are as follows:

- *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 allow for non-agricultural land uses that will not restrict the use of other land for agricultural purposes.

The proposed development is defined as an extractive industry, as follows:

**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.

**Note—**

Extractive industries are not a type of **industry**—see the definition of that term in this Dictionary.

An “extractive industry” is a permitted use with consent within the RU1 zone and is generally considered to be consistent with the zone objectives.

**Clause 6.1 – Earthworks**

“Earthworks” are defined as “excavation or filling” and provides that prior to granting consent for such, the consent authority must consider the following:

- (a) the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development,
- (b) the effect of the development on the likely future use or redevelopment of the land,
- (c) the quality of the fill or the soil to be excavated, or both,
- (d) the effect of the development on the existing and likely amenity of adjoining properties,
- (e) the source of any fill material and the destination of any excavated material,
- (f) the likelihood of disturbing relics,
- (g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,
- (h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.

As outlined previously in this report, the matters above have been appropriately addressed in the submitted documentation.

**Clause 6.2 – Flood Planning**

The site is not mapped as being subject to inundation by flooding under the NLEP.

**Clause 6.4 – Development in Areas Subject to Aircraft Noise**

The development site is located a considerable distance away from Narrabri Airport, it will not have any impact on the Obstacle Limitation or Operations Surface.

**Clause 6.5 – Essential Services**

Adequate arrangements can be made for connection to essential services.

- **4.15(1)(a)(ii) any proposed instrument that is or has been subject of public consultation under this Act and that has been notified to the consent authority**

At the time of submission of this Report, there were no draft environmental planning instruments that applied to the subject lands.

- **4.15(1)(a)(iii) any development control plan**

The following Development Control Plans (DCPs) are applicable to the development assessment:

- DCP Parking Code No. 1
- DCP Building Line

- Drainage to Buildings DCP

<b>DCP Parking Code No. 1</b>		
<b>Required</b>	<b>Provided</b>	<b>Compliance</b>
<b>Parking Provision</b>		
<p>Level of provision to comply with RTA Guide to Traffic Generating Developments.</p> <ul style="list-style-type: none"> <li>• No parking requirements specified for extractive industries.</li> </ul>	<p>The development provides for employment of between 5-6 full time equivalent staff and additional part time staff. These staff would be onsite to operate the machinery and additional contractors would be engaged for haulage operations.</p> <p>Sufficient area exists within the quarry area to accommodate onsite parking of associated vehicles.</p>	✓
<b>Parking Design</b>		
The design of tenant/customer parking is to conform to Australian Standard AS2890.1 – Car Parking.	Not applicable to this proposal.	N/A
All parking areas are to be paved, and the manoeuvring and parking spaces are to be clearly delineated. The parking area is to be drained to Council's stormwater network.	Not applicable to this proposal.	N/A
It is suggested that car parking areas be landscaped, especially with shade trees.	Not applicable to this proposal.	N/A
<b>DCP Building Line</b>		
Land zoned general business under a Local Environmental Plan applicable to the subject land shall not be required to observe a building line.	Not applicable to this proposal.	N/A
Land zoned 1(a) General Rural under a Local Environmental Plan applicable to the subject land Council recommends a minimum distance from a gravel/natural earth road of 200 metres.	Complies with this part.	✓
<p>All other buildings are to be erected a minimum of 6m from the front boundary of an allotment, however, the Director of Environmental Services may vary this requirement under the following circumstances:</p> <ul style="list-style-type: none"> <li>• Properties having frontages to two streets must observe the building line to the street which the building faces only.</li> <li>• Open types structures such as verandahs, patios, pergolas, trellises and carports may extend into the building line setback if Council considers there will be no significant detrimental affect on adjoining properties or the streetscape and that there are no other reasonable opportunities elsewhere on the allotment.</li> <li>• Existing buildings on the street are generally erected at a lesser distance and the proposed structure is intended to be erected in conformity with existing buildings.</li> <li>• Where there are no other viable opportunities on the site the application will be considered having regard to the likely affect on adjoining properties and streetscape.</li> <li>• The topography of the land and shape of the allotment will also be considered.</li> </ul>	Not applicable to this proposal.	N/A



Drainage to Buildings DCP		
Required	Provided	Compliance
<b>Roof Water Drainage</b>		
<p>All buildings, (except those exempted from the need to obtain approval in the circumstances listed in Part 1.2) shall be fitted with rood guttering, downpipes and drainage system connected to either:</p> <ul style="list-style-type: none"> <li>• The street gutter (using an approved outlet); or</li> <li>• A Council stormwater main (at an approved point of connection or to Council's direction); or where it is not possible to comply with subclause 2.1.1 or 2.1.2.</li> <li>• An absorption trench (located a minimum of 3 metres from any buildings and the boundaries of the allotment); or</li> <li>• 3 metres from the building in a downhill direction and splayed for even distribution (buildings on rural land only).</li> </ul>	<p>Stormwater is able to be satisfactorily managed on site.</p>	✓
<b>Sanitary Drainage</b>		
<p>Where an application is received to erect or alter a building, all soil and waste fixtures shall be connected to either:</p> <ul style="list-style-type: none"> <li>• The sewer if sewer is available, or</li> <li>• A septic tank (or sullage trench in the case of approved waste fixtures) if sewer is not available.</li> </ul>	<p>Land is not connected to Council's sewerage network.</p> <p>Onsite sewage management system (OSMS) able to be installed onsite.</p>	✓
<b>Effluent Disposal</b>		
<p>Effluent is to be piped to a transpiration area of a type specified in AS1547 – Small Septic Tanks and NSW Department of Health Guidelines or disposed of in accordance with written directions given by Council's Environmental Services Department to suit the particular conditions of the site. The number of persons deemed to occupy a dwelling shall be the greater of:</p> <ul style="list-style-type: none"> <li>• The number of persons specified in the application; or</li> <li>• One person for each bedroom plus one person.</li> </ul>	<p>Not applicable to this proposal.</p>	N/A

#### Developer Contributions

Council may levy contributions for the development in accordance with its adopted Section 7.11 Contributions Plan. The prospective levying of development contributions in accordance with this Plan is acknowledged in the submitted EIS.

- **4.15(1)(a)(iia) any planning agreement that has been entered into under section 7.4 or any draft planning agreement that the developer has offered to enter into under section 7.4**

There is no planning agreement or draft planning agreement that has been entered into between the developer, relevant body or Council under section 7.4 of the Act.

- **4.15(1)(a)(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph)**

The provisions of clause 92 – 94A of the *Environmental Planning and Assessment Regulation 2000* are of relevance to this development.

### Dark Sky Planning Guideline

Clause 92(1)(d) of the *Environmental Planning and Assessment Regulation 2000* applies to the proposed development. Information received from the proponent via email on 18 November 2019 advises that lighting plans have not been prepared and that it is the intention of the proponent to address these matters post-approval. Subject to the imposition of appropriate conditions of development consent the project would be unlikely to be inconsistent with the applicable Dark Sky Planning Guideline.

### Fire Safety

Clause 93 and 94 of the Regulation apply to this development. It is considered that matters pertaining to fire safety for temporary structures in accordance with clause 94A have been satisfactorily addressed in the submitted application.

➤ **4.15(1)(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality**

The following Table outlines the likely impacts of the proposed development that have been considered in connection with the assessment of DA2020/0008.

Primary Matters	Comments
Context & Setting	It is considered that the proposed development is generally appropriate for the site and surrounding locality, subject to implementation of appropriate measures to ameliorate associated impacts. However, as detailed in the preceding sections, the proponent has failed to submit sufficient documentary evidence pertaining to likely acoustic impacts that would enable these mitigation measures to be appropriately considered and in order for General Terms of Approval (GTAs) to be issued in respect of the development.
Site Design & Internal Design	The design of the proposal has been discussed throughout this assessment report.
Access, Transport & Traffic	As detailed throughout this assessment report, traffic impacts on the surrounding road network are of a key concern in relation to this development. Refer comments throughout this report.  Moree Plains Shire Council (MPSC) and the TIA both identify cumulative traffic impacts resultant from the proposal. MPSC have also made a recommendation that the applicant prepare a VPA offer for both the Ooononba and adjacent Meppem quarry (MPSC DA 2019/37; PPSNTH-10) with the view of addressing funding and agreed road upgrades.  The Panel are advised that an offer for the VPA has not been made.
Public Domain	The proposed development is considered to have negligible impact on the public domain in terms of public recreation opportunities, public spaces and pedestrian linkages.
Utilities	It is considered that the proposed development is unlikely to have an adverse impact on the availability and capacity of utilities. Minimal utilities are expected to be required during construction and as part of ongoing operations of this type of operation.
Heritage	Potential impacts of the proposal on indigenous heritage have been outlined in an earlier section of this assessment report.  No impacts on historic heritage have been identified as a result of this proposal.
Other Land Resources	The proposed development is not expected to have an adverse impact on the conservation and use of land resources, including productive agricultural land, mineral or extractive resources and water supply catchments.
Water	Implications of the operation of the <i>Water Management Act 2000</i> have been discussed in a preceding section.
Soils	The proposed development is not expected to have an adverse impact on soil conservation.

Air & Microclimate	Inadequate information has been provided by the proponent in relation to an Air Quality Impact Assessment and a Noise Impact Assessment. This information is considered essential and is required for preparation of an emissions inventory and to formulate operational conditions by the NSW Environment Protection Authority (NSW EPA).
Flora & Fauna	<p>A biodiversity assessment prepared by Advitech Environmental advises that the majority of the development site is located in a landscape that has been cleared for agricultural purposes. The Subregion of Northern Basalt in the Brigalow Belt South Bioregion is classified as having flora including:</p> <p><i>Brigalow, belah, whitewood, wilga, budda and poplar box on basalt hills. Silver-leaved ironbark, spotted gum and smooth-barked apple on stony hills. River red gum, belah myall and poplar box on basalt flats. Silver-leaved ironbark and white cypress pine in sandstone rocks, smooth-barked apple, white cypress, Blakely's red gum, Moreton Bay ash, poplar box, wilga, rough-barked apple, bull oak, on lower sandstone slopes. White box, with silver-leaved ironbark, whitewood, bull oak and brigalow on alluvial clays. River red gum on all streams. (NSW NPWS 2003, p.136).</i></p> <p>The fauna at the site includes both native and introduced species. Invasive species such as pigs, goats, foxes, rabbits, wild dogs, feral cats and carp have been noted in the bioregion.</p> <p>The Five-Part Test concluded that the proposed activity will contribute to the decline of the identified Endangered Ecological Community (EEC) <i>Semi-evergreen Vine Thicket in the Brigalow Belt South and Nandewar Bioregions</i> including Plant Community Types (PCT) 147 and 378. It was further noted in the submitted report that the relatively minor extent of vegetation removal (2.39% of the local extent) is not likely to place the local occurrence of this EEC at risk of extinction. Works within the site will be restricted to identified areas and it is unlikely that the proposed works would substantially modify the composition of any retained areas of EEC.</p> <p>One (1) threatened plant, <i>Homopholic belsonii</i> – Belson's Panic (listed as Vulnerable) was recorded at the development site. The EEC and the threatened species were assessed in accordance with <i>Matters of National Environmental Significance: Significant impact guidelines 1.1 Environment Protection and Biodiversity Conservation Act 1999</i> (DoEE 2013).</p> <p>The assessment further identified that the proposed development is unlikely to significantly impact on any Matters of National Environmental Significance.</p> <p>As detailed in a preceding section of this Report, advice was also provided of the intention to lodge a Biodiversity Conservation Action to retain the remaining area of SEVT on the outcrop as a Stewardship site in accordance with the provisions of the Biodiversity Conservation Act.</p>
Waste	The EIS identifies that a range of mitigation measures will be implemented including labelling of waste materials and placement into individual bins. Waste materials would be transported off site and disposed of at an approved waste disposal facility.
Energy	No deleterious impacts in respect of energy matters have been identified as a result of this proposal.
Noise & Vibration	<p>A Noise Impact Assessment (NIA) prepared by Advitech Environmental was submitted in support of the subject application. The NIA concludes that the development will be audible at some receivers. Road traffic noise associated with product haulage was identified as the most significant noise constraint associated with the proposed development. This particular constraint is driven by high levels of existing road noise and confounded by a lack of alternative haulage routes which dictate haulage through populated areas. The NIA further identifies that the lack of alternative haulage routes also dictates that mitigation of the potential impact is largely limited to effective communication and management of project specific impacts.</p> <p>As detailed in previous sections of this Report, the applicant has failed to submit additional information which would permit an informed assessment in respect of potential noise impacts of the development and which would permit the issuing of GTAs by the NSW EPA.</p>

	Blasting is also proposed at the site and the appropriate buffer distance is nominated at 1,000 metres. The closest residence on a surrounding property is located approximately 2.3 km to the north north-east of the quarry site. The available separation distances therefore exceed minimum buffer distance requirements as outlined in the EIS.
Natural Hazards	<p>The potential bushfire hazard of the subject site was assessed via a desktop assessment of known areas of bushfire hazard which was then groundtruthed. Results of this assessment concluded that the site is not designated as bushfire prone land.</p> <p>As detailed in a preceding section of this Report, the land is not identified as being flood prone.</p>
Technological Hazards	Refer commentary throughout this report regarding management of potential technological hazards.
Safety, Security & Crime Prevention	The proposed development is not expected to have an adverse impact on safety, security and crime prevention.
Economic Impact in the Locality	In addition to the investment during the construction phase, the applicant indicates that should the quarry be approved that 5-6 full time equivalent (FTE) positions would be created on site. Additional employment will be available for haulage and service contracts for the machinery required to operate the quarry. Approval of the quarry will also assist in enabling the completion of the economically significant Inland Rail Project.
Social impacts	<p>Identification of the scope of the potential impact of the proposed development was undertaken in accordance with the NSW Department of Planning and Environment's <i>Social Impact Assessment Guideline</i> (2017). The proposed development has the potential to produce a range of adverse social impacts in the absence of appropriate mitigation measures. These impacts relate to:</p> <ul style="list-style-type: none"> <li>• Acoustic</li> <li>• Aboriginal cultural</li> <li>• Health</li> <li>• Safety</li> <li>• Air</li> <li>• Biodiversity</li> <li>• Land</li> <li>• Water</li> </ul> <p>A social impact assessment checklist, and associated assessment with regard to potential impact of the project, have been submitted as part of the EIS. A Land Use Conflict Risk Assessment (LUCRA) was also completed to assess the risk of land use conflict as a result of the proposed quarry. The submitted LUCRA identified a suite of management methods which should be adopted if the quarry is approved in order to appropriately manage land use conflict.</p> <p>It should be further noted that the applicant has also failed to formally respond to issues raised in submissions throughout the exhibition period. This is likely to generate concern amongst the potentially impacted community.</p>
Construction	The EIS provides that establishment of the quarry site will require minor earthworks to construct the sediment pond, catch drains and diversion banks. The mobile plant, site offices and storage containers will be delivered to the site using up to 15 low loader truck movements. The EIS also nominates that construction works would involve graders, roller and other civil construction equipment. Intersection upgrades are also proposed for the internal site access and Berrigal Road.
Cumulative Impacts	Cumulative impacts are discussed throughout this development assessment report.
Other matters	The consultant engaged for the preparation of the submitted documentation has verbally advised the assessing officer that the proponent company (Ooononba-Bellata Quarry Pty Ltd) is no longer trading.



➤ **4.15(1)(c) the suitability of the site for the development**

A full analysis of the suitability of the site for the development as proposed has been unable to be completed due to the absence of critical site-specific information pertaining to development impacts. As a consequence, the site has been deemed unsuitable for the development as proposed having appropriate regard to the tenets of the precautionary principle.

➤ **4.15(1)(d) any submissions made in accordance with this Act or the regulations**

Three (3) public submissions were received during the consultation period for DA2020/0008 (refer **Annexure C**). Of the three (3) submissions:

- All three (3) submissions were opposed to the proposal.

Agency submissions have been addressed in detail throughout this report.

➤ **4.15(1) the public interest**

Given the absence of critical information to enable a full assessment of the impacts of the proposal, approval of the application is not considered to be in the public interest.

### **3.0 Assessment Conclusion and Recommendation**

The proposed development is an 'extractive industry' which is permitted with consent within the RU1 Primary Production Zone. Despite repeated requests for the provision of additional information to support the development application and to enable an informed assessment of the proposal, the requisite information has not been forthcoming, and a considerable period of time has now elapsed. Additionally, General Terms of Approval (GTAs) have been unable to be issued by the NSW Environment Protection Authority (NSW EPA).

Written notice was provided to the proponent of Council's intention to refer the application to the Regional Planning Panel (RPP) for determination in the context of clause 54(6) of the *Environmental Planning and Assessment Regulation 2000*, wherein the applicant is taken to have notified that the information will not be provided, and the application may be dealt with accordingly.

For the reasons detailed in this assessment report, it is recommended that the application be REFUSED by the Northern Regional Planning Panel for the following reasons.

1. Failure of the proponent to respond to additional information requests which would permit an informed assessment of the proposal and the issuing of General Terms of Approval (GTAs) for integrated development in accordance with the requirements of **Division 4.8 Integrated Development** of the *Environmental Planning & Assessment Act 1979*.
2. The application has not demonstrated that the noise from the project will not unreasonably impact surrounding local residents.
3. The application has not demonstrated that the emissions generated from the project will not unreasonably impact surrounding local residents.
4. Non-compliance with clause 14(2) of *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007* (the 'Mining SEPP') due to failure to provide assessment documentation pertaining to Greenhouse Gas emissions.
5. The application is not considered to be in the public interest.