



OBERON COUNCIL

COUNCIL ASSESSMENT REPORT – MODIFICATION APPLICATION WESTERN REGIONAL PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSWES-197 – DA 10.2016.38.2
PROPOSAL	Extractive Industry and Waste Management Facility – Modification to increase extraction and production rates, add new waste materials and processes and increase traffic movements.
ADDRESS	Lot 2 DP 1112479 50 Sewells Creek Road OBERON
APPLICANT	Zac Rowlinson, Oberon Earthmoving
OWNER	Clift Engineering (Oberon) Pty Ltd
MOD LODGEMENT DATE	5 June 2023
ORIGINAL DA DETERMINATION DATE	3 December 2018
APPLICATION TYPE	Modification Application under Section 4.56
REGIONALLY SIGNIFICANT CRITERIA	Clause 7(a), Schedule 6 of <i>State Environmental Planning Policy (Planning Systems) 2021</i> : Extractive industry that is designated development.
CIV	\$315,000 (excluding GST)
CLAUSE 4.6 REQUESTS	Nil
KEY SEPP/LEP	<ul style="list-style-type: none"> State Environmental Planning Policy (Planning Systems) 2021 State Environmental Planning Policy (Transport and Infrastructure) 2021 State Environmental Planning Policy (Biodiversity and Conservation) 2021 State Environmental Planning Policy (Primary Production) 2021 State Environmental Planning Policy (Resilience and Hazards) 2021 State Environmental Planning Policy (Resources and Energy) 2021 Oberon Local Environmental Plan 2013
TOTAL & UNIQUE SUBMISSIONS ISSUES SUBMISSIONS	8 Submissions <u>Key Issues:</u> <ul style="list-style-type: none"> Dust Noise

	<ul style="list-style-type: none"> • Odour • Impact on roads from truck movements • Amenity of locality • Visual impacts • Biodiversity impacts • Links between Middle Creek Quarry and Bettergrow Oberon • Proposal is a significant change and not a modification • Reports submitted are out of date • Lack of data on how current operations are monitored • Potential for further expansion of quarry • Suitability of the site • Water use and impact on groundwater.
DOCUMENTS SUBMITTED FOR CONSIDERATION	<ul style="list-style-type: none"> • Statement of Environmental Effects by Umwelt, dated 4 May 2023 • Air Quality Impact Assessment by Jacobs, dated 18 November 2022 • Noise Impact Assessment by Muller Acoustic Consulting, dated 4 July 2022 • Biodiversity Assessment Report, by Area Environmental and Heritage Consultants, dated 1 December 2022 • Supplementary Integrated Transport Assessment by Pavey Consulting Services, dated 16 May 2024 • Aboriginal Cultural Heritage Due Diligence Assessment by Area Environmental and Heritage Consultants, dated 1 December 2022
SPECIAL INFRASTRUCTURE CONTRIBUTIONS (\$7.24)	N/A
RECOMMENDATION	Approval
DRAFT CONDITIONS TO APPLICANT	Yes
SCHEDULED MEETING DATE	10 September 2024
PREPARED BY	Mark Hitchenson, Navigate Planning
DATE OF REPORT	20 August 2024

EXECUTIVE SUMMARY

The modification application has been lodged pursuant to section 4.56 of the *Environmental Planning and Assessment Act 1979* ('EP&A Act') and seeks consent for amendments to a consent granted under DA 10.2016.38.1 approved by the Western Regional Planning Panel on 21 March 2018.

Class 1 Appeals were commenced in the Land and Environment Court against the determination to approve the application. At a Conciliation Conference held over 29-30 October 2018, the parties agreed to amend the conditions of consent. The Court upheld the appeals and ordered that development consent be granted subject to amended conditions.

The consent approved an extractive industry and waste management facility on Lot 2 DP 112479 at 50 Sewells Creek Road, Oberon ('the site'). The modification application includes the relevant information required by Clause 100 of the *Environmental Planning and Assessment Regulation 2021* ('2021 EP&A Regulation').

The application is referred to the Western Regional Planning Panel ('the Panel') as the development is '*regionally significant development*', pursuant to Section 2.19(1) and Clause 7(a) of Schedule 6 State Environmental Planning Policy (Planning Systems) 2021 as it comprises an extractive industry with a volume of more than 30,000 cubic metres.

The proposed modification seeks to increase the extraction and production rates and introduce new waste streams to the site. A new area for the waste storage and processing activities will be developed adjacent to the quarry by the filling of a gully with overburden from the quarrying activities. A new pollution control dam will be constructed downstream of this new area. Five trees will be removed in the area of works. Heavy vehicle movements are also proposed to be increased.

The proposed modification is considered to satisfy the "substantially the same development" test required by Section 4.56 of the EP&A Act.

The application was placed on public exhibition from 14 September 2023 to 13 October 2023, with 8 submissions received. These submissions raised issues relating to environmental, health and amenity impacts (eg. dust, noise, odour, biodiversity and visual impacts), traffic impacts from increased heavy vehicle movements and matters relating to the submission and assessment of the proposed modification. These issues are considered further in this report.

A briefing was held with the Panel on 19 September 2023 where key issues were discussed, including compliance with the provisions of the Act relating to modifications (i.e. can the proposed modification be considered as a modification or should it be a new DA), the public interest, and compliance with existing conditions and licenses.

The key issues associated with the proposal identified in the assessment of the application included:

1. *Meeting the 'Substantially the same development' test* - The applicant has provided legal advice that the proposed development is substantially the same as the approved development and is therefore correctly submitted as a modification application for the following key reasons:
 - *There is no proposed change to the fundamentals of the development as it is authorised under the 2016 Consent – the site will still operate for the purpose of an "extractive industry and waste management facility";*
 - *There is no proposed change to the extraction area; and*

- *While there is an intensification of the use in respect of the extraction rate and production rate (which in turn lead to an increase in truck movements per day), there is a net decrease in the importation of material for the purpose of resource recovery.*

Council is satisfied that the proposed modifications result in development that is substantially the same as the development approved under DA10.2016.38.1 and that the proposed modifications are a relatively minor change to the operations of the development.

2. *Environmental, health and amenity impacts* - The applicant has provided relevant technical reports assessing the environmental, health and amenity impacts of the proposed modification. The reports recommend a range of mitigation measures to minimise such impacts. Where existing conditions of consent do not adequately address the potential impacts, new conditions are recommended to be included on the development consent.
3. *Traffic Impacts* – The Modification application was referred to Transport for NSW who advised that no objection is raised to the proposed modification subject to Council being satisfied of certain matters. Council Technical Services officers also reviewed the application and the letter from Transport for NSW and raised no objections to the modification due to no significant impacts on Abercrombie Rd, provided that the relevant guidelines mentioned in the Transport for NSW letter are complied with. The guidelines are included in the modified conditions of consent.

Following consideration of the matters for consideration under Section 4.15(1) and 4.56 of the EP&A Act, it is considered that the proposed modification can be supported.

1. THE SITE AND LOCALITY

1.1 The Site

The subject site is located on Lot 2 DP 1112479 at 50 Sewells Creek Road OBERON, approximately 4 kilometres (km) west of Oberon, within the Oberon Council Local Government Area (LGA). It is zoned RU1 Primary Production under Oberon Local Environmental Plan (LEP) 2013 and has an area of 140.2 hectares. The location of the site is shown in Figure 1 below.

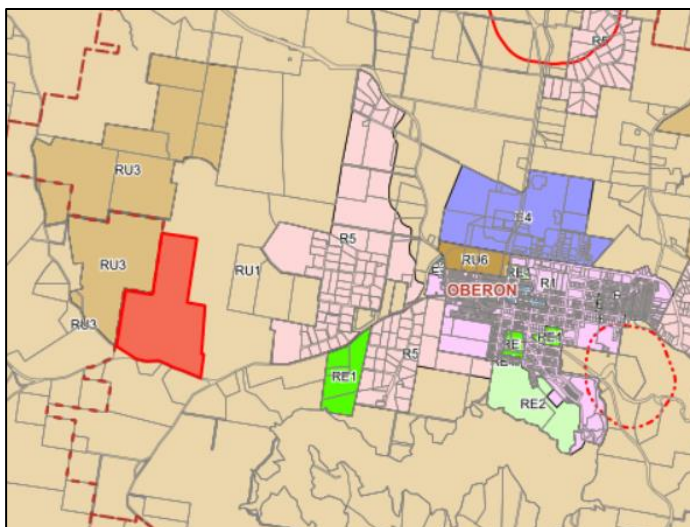


Figure 1: Location Map

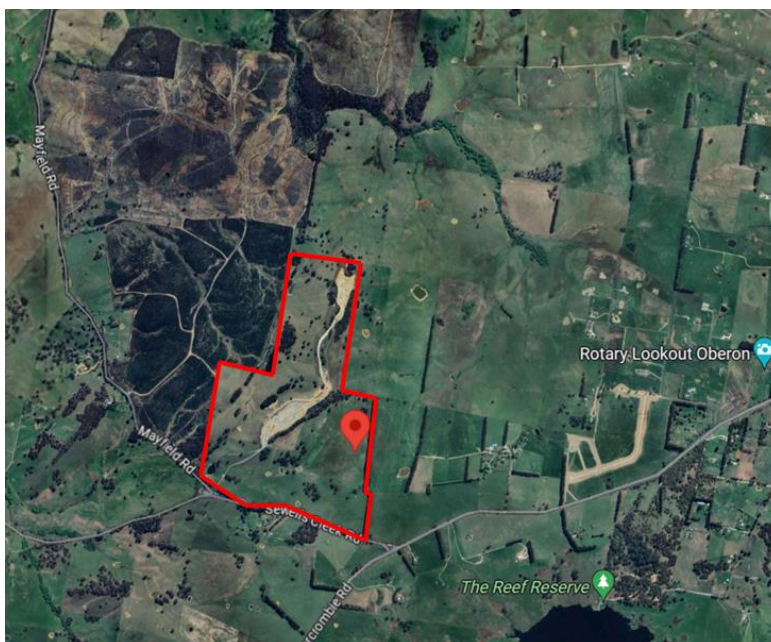
The location of the proposed works associated with the modification application is a steep gully immediately to the west of the approved extraction area. This area is screened from surrounding properties by the topography and existing vegetation. The following photo shows the location of the new works associated with the modification application.



Photo of area of proposed new works

1.2 The Locality

The site is immediately surrounded by rural and forestry land, with a relatively new and developing rural-residential subdivision located between the subject site and the Oberon township. An aerial photo of the proposed site and surrounding land is provided below.



Aerial photo of subject land and locality

2. THE PROPOSAL AND BACKGROUND

2.1 The Proposed Modification

The proposal seeks consent for modifications to the conditions of consent for an approved and operational Extractive Industry and Waste Management Facility (DA 10.2016.38.1). The aspects of the approved operations proposed to be modified (and added) are outlined in Table 1 below.

Table 1: Proposed Modifications to Operation of Quarry

Control	Approved	Proposal	Condition
Extraction Rate	Up to 150,000 tpa	Up to 200,000 tpa (Increase 33%)	2
Resource Recovery	Importation of VENM, ENM, Treated Drilling Muds for land application or processing and sale	Importation of waste concrete for crushing and sale. Importation of plasterboard under Resource Recovery Exemption	11
	Importation of organic (green) waste with a limit of 25,000 tpa	Up to 45,000 tpa (80% increase)	11
	Importation of drilling mud with a limit of 60,000 tpa.	Up to 15,000 tpa (75% decrease)	11
Processing Operations	Campaign crushing and screening	Addition of a washing circuit	
Production	Rate Up to 250,000 tpa	Up to 315,000 tpa (26% increase)	2
Transport Operations	Maximum of 100 truck movements per day (Mon-Fri)	Maximum of 180 truck movements per day (Mon- Fri)	3
	Maximum 60 truck movements per day (Saturday)	Maximum 90 truck movements per day (Saturday)	

The works associated with the modification application include the filling of an area of land adjacent to the approved quarry area for the storage and processing of various waste products (green waste and plasterboard) and the construction of a new pollution control basin. The Pollution Control Dam will have a compacted earth lining of at least 1m in depth. The works will also include the provision of clean water diversion drains.

The proposed new washing circuit is proposed to be located in an area of completed extraction below natural surface level allowing for control and recycling of water used. Over time, the washing circuit may be relocated to other completed extraction areas.

Waste concrete is also proposed to be stored and processed in an area of completed extraction and over time may be relocated to other completed extraction areas.

The original development consent approved (in Condition 1) an Environmental Impact Statement, a Biodiversity Impact Assessment Supplementary Report and a Rehabilitation & Landscaping Management Plan. A plan of the quarry contained in the Rehabilitation and Landscape Management Plan is provided in Figure 2 below.

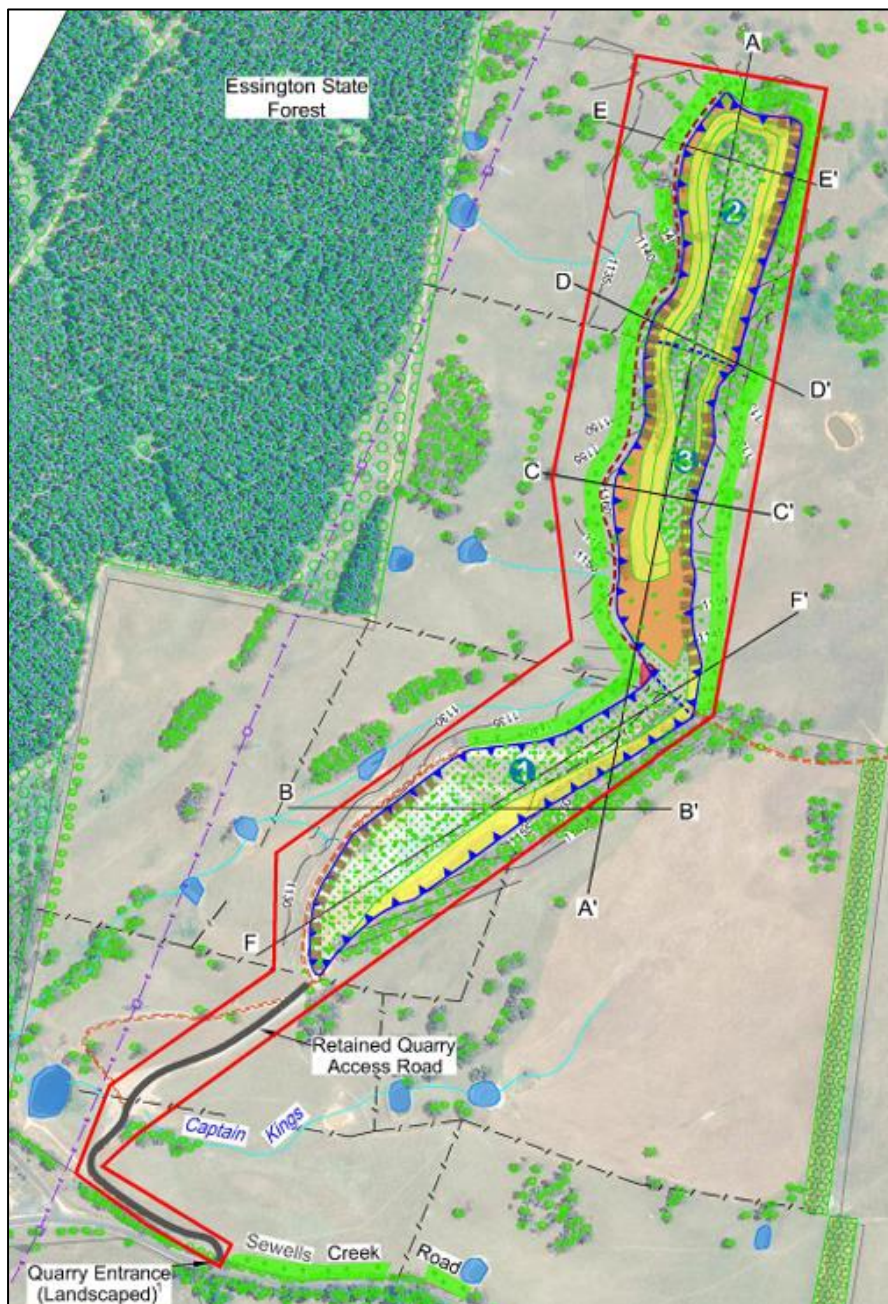


Figure 2: Approved Rehabilitation and Landscape Management Plan

The proposed modification relates to a relatively small part of the site to the north and west of the approved quarry, as shown in Figure 3 below.

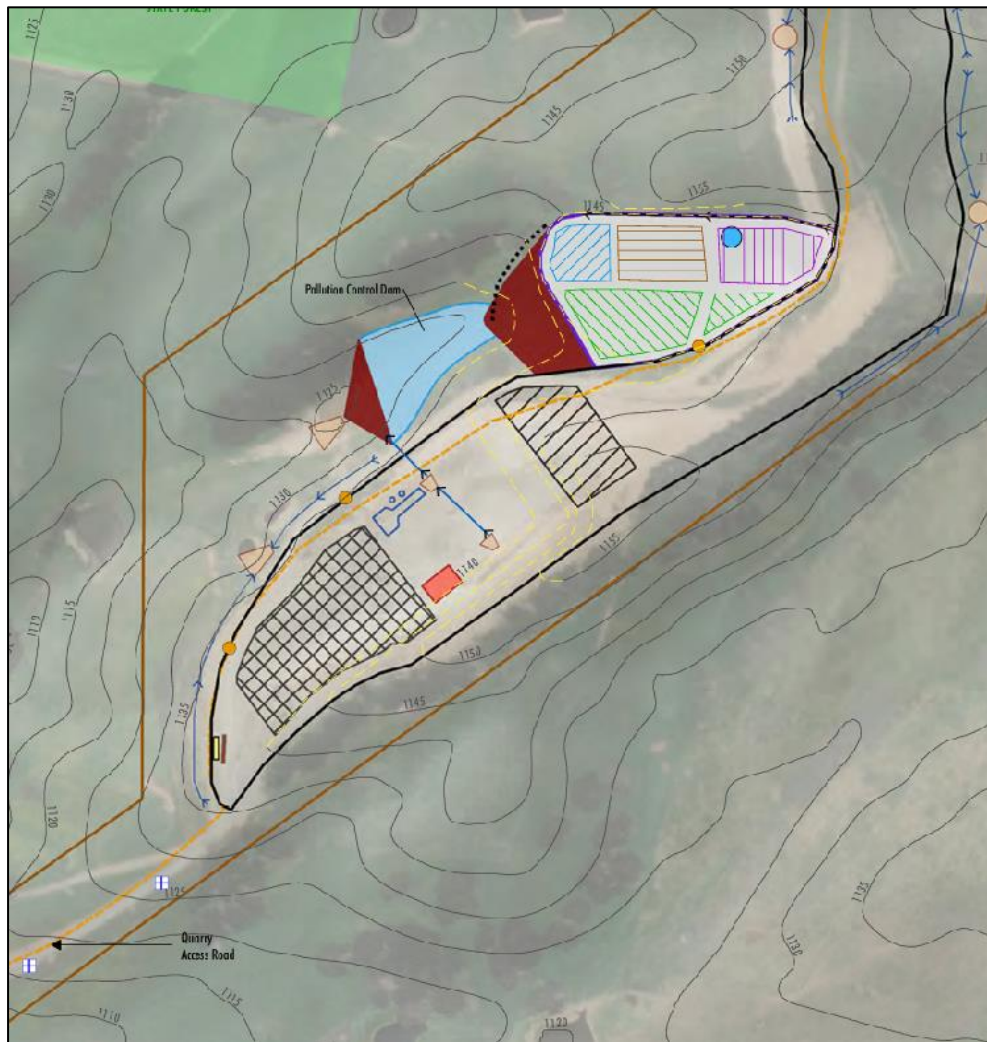


Figure 3: Plans of proposed modification

The area of the proposed new works for waste storage and composting is a relatively steep gully that will be in part cut and in part filled. The extent of cut is up to approximately 6m and the extent of fill is up to approximately 7.8m.

The following cross sections through the site identify the extent of cut and fill proposed. It is noted that the proposed final landform does not rely on the importation of any additional fill as the fill will comprise soil from the area being cut and overburden produced through quarrying activities on the site.

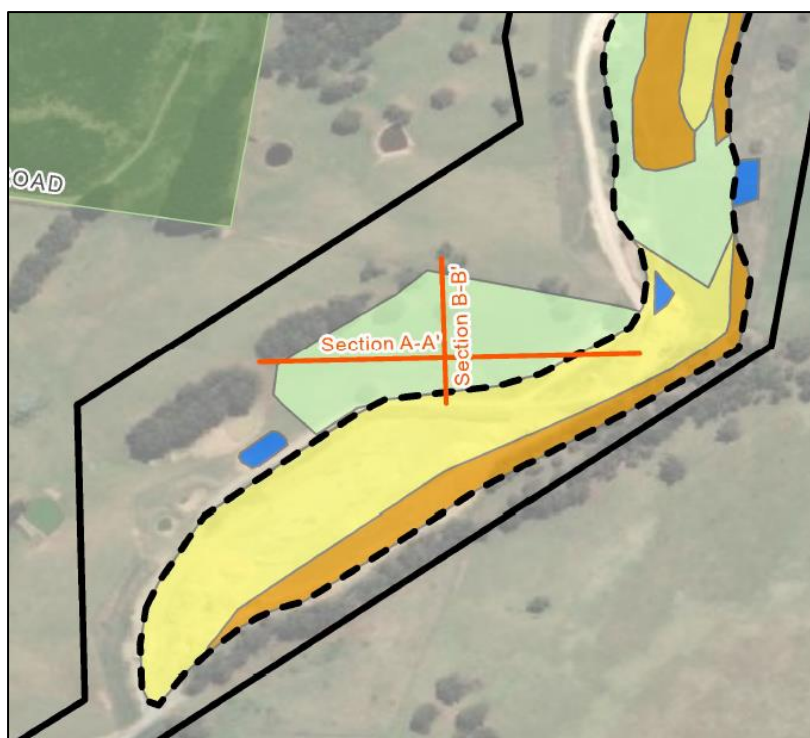


Figure 4: Location of sections through the new waste storage and composting area.

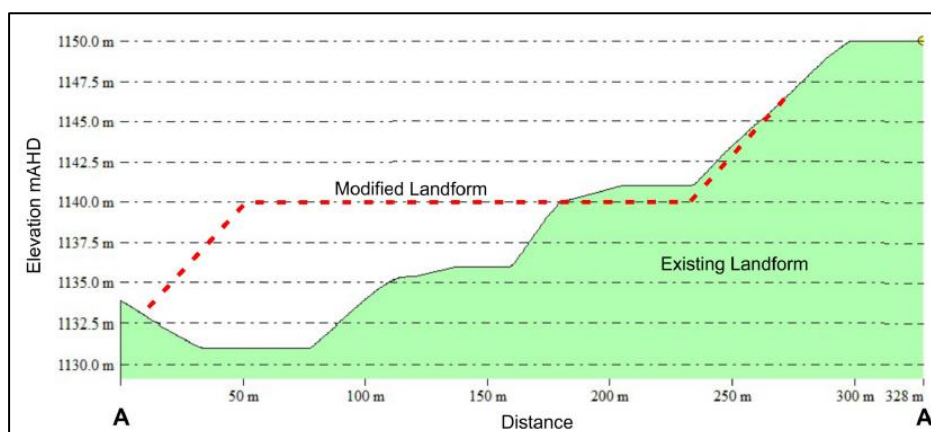


Figure 5: Section A-A

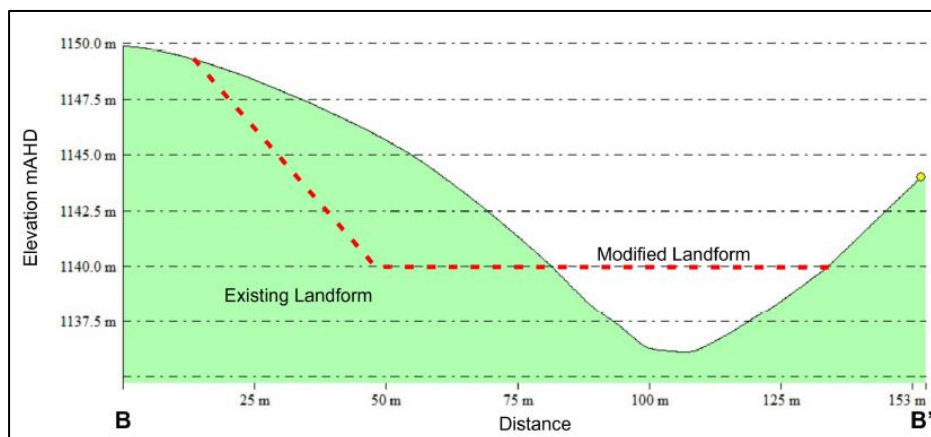


Figure 6: Section B-B

Proposed Changes to Conditions

Table 2 below outlines the proposed changes to conditions of consent.

Table 2: Proposed Changes to Conditions

Condition No	Condition requirements	Change Proposed	Reason for Change
1	General Terms of Approval (Approved Documents and Plans)	Add modification documents and plans	To identify the documents and plans approved with the modification application.
2	Extraction and Production Limits	Increase extraction amounts per year from 150,000 tonnes to 200,000 tonnes. Increase total production limits from 250,000 tonnes to 315,000 tonnes.	To facilitate an expansion of quarrying and waste management activities on the site.
3	Transportation	Increase maximum number of truck movements from 100 to 180 per day (Mon-Fri) and from 60 to 90 per day (Saturday).	To reflect the increased truck movements associated with the expansion of quarrying and waste management activities at the site.
New Condition 3A	Traffic Management Plan	Require a TMP to be prepared and endorsed by Council.	To manage the impacts of increased truck movements.
4	Code of Conduct	Require a revised Driver Code of Conduct.	To manage the impacts of increased truck movements.
11	Importing and accepting waste materials.	Add waste concrete (up to 45,000 tpa) and plasterboard (up to 10,000 tpa) to the types of waste permitted to be imported to the site. Increase organic (green) waste from 25,000 to 45,000 tpa. Decrease drilling mud from 60,000 to 15,000 tpa.	To reflect the additional waste streams proposed to be imported and processed at the site.

		The source of green waste accepted for composting would be extended to included green waste from additional sources such as commercial and horticultural landscaping projects.	
New Condition 14A	Environmental Protection Licence	Environment Protection Licence to be varied.	To comply with the Protection of the Environment Operations Act 1997.
New Condition 14B	Air quality mitigation measures	Air Quality Management Plan to be updated.	To ensure the recommendations of the Air Quality Impact Assessment are implemented.
New Condition 14C	Noise mitigation measures	Acoustic Management Plan to be updated.	To ensure the recommendations of the Noise Impact Assessment are implemented.
New Condition 14D	Bush Fire Emergency Management and Operations Plan	Bush Fire Emergency Management and Operations Plan to be prepared.	To comply with Planning for Bushfire Protection 2019.
New Condition 14E	Asset Protection Zone	A 10m asset protection zone is to be maintained around the northern and western edges of the new waste handling area.	To comply with Planning for Bushfire Protection 2019.
New Condition 14F	Waste Receival, Handling and Compost Management Plan	A revised Waste Receival, Handling and Compost Management Plan addressing the additional waste streams proposed and biosecurity is to be provided.	To ensure the management plans for the development are updated to reflect the proposed modification.
New Condition 14G	Rehabilitation and Landscape Management Plan	A revised Rehabilitation and Landscape Management Plan addressing the final rehabilitation and	To ensure the management plans for the development are updated to reflect the proposed modification.

		landscaping of the expanded area for waste storage and compost and associated pollution control dam and sediment basin is to be provided.	
New Condition 14H	Surface Water and Sediment Management Plan	A revised Surface Water and Sediment Management Plan is to be provided.	To ensure the management plans for the development are updated to reflect the proposed modification.
New Condition 14I	Clearing of Vegetation	Clearing to be undertaken in accordance with the Biodiversity Assessment Report.	To ensure clearing is undertaken in manner that minimises environmental impacts.

In addition to the above, the original consent did not include a condition number 14 and a number of conditions did not have a reason. The recommended amended consent conditions have been renumbered where appropriate and reasons have been included.

2.2 Background

The modification application was lodged on 5 June 2023. A chronology of the modification application since lodgement is outlined in Table 3.

Table 2: Chronology of the Modification Application

Date	Event
25 August 2023	Referred to external agencies: <ul style="list-style-type: none"> • Transport for NSW • EPA
31 August 2023	Response from Environmental Protection Authority received raising no objections to the proposed modification. The EPA noted that a variation to increase the extraction limits listed on the Applicant's Environment Protection Licence (EPL) for the Premises will be required for the Applicant to operate at the modified extraction limits and the EPL will need to be varied to include "Crushing and Grinding" as a scheduled activity.
14 September to 13 October 2023	Exhibition of the application.
16 October 2023	Request for Transport for NSW for additional information made via the Planning Portal, for a revised traffic assessment.
19 September 2023	Panel briefing

15 March 2024	<p>Request for additional information made through the Planning Portal (and via email) for the following information:</p> <ul style="list-style-type: none"> • Clarification as to how the proposal is substantially the same development, • Confirmation that no putrescible waste is proposed to be imported to the site • Responses to submissions received.
18 March 2023	<p>Further request for additional information (via email) for the following information:</p> <ul style="list-style-type: none"> • A copy of the existing Water Access Licence (if any). • A revised Waste Receiving, Handling and Compost Management Plan addressing the additional waste streams proposed and biosecurity. • A revised Rehabilitation and Landscape Management Plan addressing the final rehabilitation and landscaping of the expanded area for waste storage and compost and associated pollution control dam and sediment basin. • A revised surface water impact assessment. • A bushfire impact assessment. • A copy of the most recent report addressing compliance with the existing conditions of consent.
29 April 2024	<p>Further request for additional information (via email) requesting a signed copy of land owner's consent.</p>
17 June 2024	<p>Additional information received, including:</p> <ul style="list-style-type: none"> • A revised traffic assessment requested by Transport for NSW • Owner's consent • Responses to the issues raised in submissions • A copy of the latest annual return to the Environmental Protection Authority • Legal advice that the modification is substantially the same development • Clarification that no putrescible waste is proposed to be imported to the site. <p>The additional information received did not fully satisfy all of the abovementioned requests, as follows:</p> <ul style="list-style-type: none"> • No Water Access Licence currently exists for the site. • The applicant has requested that conditions be imposed to require the following prior to the commencement of works: <ul style="list-style-type: none"> ○ a revised Waste Receiving, Handling and Compost Management Plan ○ a revised Rehabilitation and Landscape Management Plan, a revised surface water impact assessment and ○ a bushfire impact assessment.
18 June 2024	<p>Land owner's consent received.</p>
19 June 2024	<p>Revised traffic assessment referred to Transport for NSW.</p>
10 July 2024	<p>Final response from Transport for NSW received, raising no objection to the proposed modification subject to Council being satisfied of certain matters.</p>

11 July 2024	Response from Transport for NSW referred to Council's Engineers for comment.
23 July 2024	Council's Engineers provided final comments on the proposal.

2.3 Site History

Development application 10.2010.66.1 was approved by Oberon Council on 10 November 2010 proposing "Extractive Industry – Gravel Extraction". The activity limited the extraction of material to less than 30,000 tonnes per annum and land disturbance to less than 2 hectares, and was determined under local development.

Development application 10.2016.38.1 proposed an expansion of the existing approved quarry and the inclusion of waste processing at the site. This DA resulting in the development becoming designated development and was therefore determined by the Western Regional Planning Panel. This DA for "Extractive Industry and Waste Management Facility" was the subject of a Public Meeting, held by the Western Regional Planning Panel on 16th March 2017.

The original application was subsequently approved by the Western Joint Regional Planning Panel (WJRPP) on 21 March 2018 (2016WES011). As a consequence of this approval, Class 1 Appeals were commenced in the Land and Environment Court.

The appeals sought to amend the conditions of consent relating to contended issues including; visual amenity, air and noise quality, traffic, waste management, public interest and consistency with the zone objectives.

A Conciliation Conference was held over 29-30 October 2018 at which the parties agreed to amend the conditions of consent (the appeal was upheld). The conditions of consent were amended pursuant to s4.17(1)(a) of the EP&A Act 1979.

Specifically, the parties to the appeal explained that:

- The amended rehabilitation and landscape plan will address potential visual impact, together with additional conditions for air quality/noise amenity protection including limitation on days/hours for noise emitting activities.
- The traffic issue was addressed by way of conditions that relate to hours of operation, as well as a limitation on truck movements with auditing and code of conduct.
- The waste issue was addressed by requiring a chain of custody condition for import/export of waste materials that are defined under the POEO (Waste) Regulation 2014.

By satisfactorily resolving the issues above the contentions relating to the public interest and consistency with zone objectives were agreed and resolved.

The approved use commenced on the site. To date, the only activities undertaken on the site under the development consent have been the extractive industry activities.

This is the first modification application to the original development consent.

3. STATUTORY CONSIDERATIONS

When determining a modification application, the consent authority must take into consideration the matters outlined in 4.56 of the EP&A Act in relation to modification of consents provisions, Section 4.15(1) of the EP&A Act in relation to matters for consideration for applications and Part 5 of the 2021 EP&A Regulation in relation to information requirements and notification. These matters are considered below.

3.1 Section 4.56 of the EP&A Act

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the Court and subject to and in accordance with the regulations, modify the consent if a number of matters are satisfactorily addressed, as follows:

- (a) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all) (s4.56(1)(a)), and*

The applicant has provided legal advice that the proposed development is substantially the same as the approved development and is therefore correctly submitted as a modification application for the following key reasons:

- *There is no proposed change to the fundamentals of the development as it is authorised under the 2016 Consent – the site will still operate for the purpose of an "extractive industry and waste management facility";*
- *There is no proposed change to the extraction area; and*
- *While there is an intensification of the use in respect of the extraction rate and production rate (which in turn lead to an increase in truck movements per day), there is a net decrease in the importation of material for the purpose of resource recovery.*

Council is satisfied that the proposed modifications result in development that is substantially the same as the development approved under DA10.2016.38.1 and that the proposed modifications are not a significant change to the operations of the development.

- (b) *it has notified the application in accordance with—*
(i) *the regulations, if the regulations so require, and*
(ii) *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent (s4.56(1)(b)), and*

The modification application was notified and exhibited in accordance with the Council's Community Participation Plan and Division 2 of Part 5 of the 2021 EP&A Regulation. Refer to Section 4 of this Report.

- (c) *it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person (s4.56(1)(c)), and*

Attempts were made to notify all persons who made a written submission to the original development application.

- (d) *it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be (s4.56(1)(d)).*

Eight submissions have been received raising a number of issues relating to environmental, health and amenity impacts (eg. dust, noise, odour, biodiversity and visual impacts), traffic impacts from increased heavy vehicle movements and matters relating to the submission and assessment of the proposed modification.

Refer to Section 4 of this Report for a detailed summary and response to the issues raised in submissions.

- (e) *In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified (s4.56(1A)).*

The matters required to be considered include:

- Matters for consideration pursuant to Section 4.15(1) of the EP&A Act – these matters are considered below in Section 3.2 of this report; and
- Reasons given by the consent authority for the grant of the consent that is sought to be modified – outlined below.

Reasons for Grant of Consent

The Court ordered development consent does not include reasons for the decision. The judgment of the Court also did not state specific reasons for the decision, other than the following explanation for upholding the appeal:

“With respect to the DA conditions of consent under appeal, the parties identified the jurisdictional prerequisites of particular relevance in these proceedings, pursuant to s 4.15(1) of the EP&A Act 1979, as consistency with the Oberon Local Environmental Plan 2013 (OELP 2013). Specifically, the parties explained that the amended rehabilitation and landscape plan will address potential visual impact, together with additional conditions for air quality/noise amenity protection including limitation on days/hours for noise emitting activities. The traffic issue was addressed by way of conditions that relate to hours of operation, as well as a limitation on truck movements with auditing and code of conduct. The waste issue was addressed by requiring a chain of custody condition for import/export of waste materials that are defined under the Protection of the Environment Operations (Waste) Regulation 2014. By satisfactory resolution of the contentions above, the contentions relating to public interest and consistency with zone objectives are agreed as resolved.”

In considering the above explanation, the following comments are made:

- The area of the proposed modification will not be visible from surrounding areas due to topography and vegetation. In any case, a revised rehabilitation and landscape plan is recommended to be required as a condition of consent.
- Appropriate assessments of potential air quality and noise impacts resulting from the proposed modification have been submitted and it is considered that the proposed modification will not result in significant impacts. In any case, revised Air Quality and Acoustic Management Plans are recommended to be included as a condition of consent.
- No change is proposed to hours of operation.
- Appropriate assessment of the impact of the proposed increase in truck movements has been submitted and no objections have been raised to the modification by Transport for NSW or Council's Technical Services Department. A revised transport code of conduct is recommended to be required as a condition of consent.
- No change is proposed to the chain of custody components of the waste management condition. In any case, a revised Waste Receiving, Handling and Compost Management Plan is recommended to be included as a condition of consent.

The reasons outlined by the Western Regional Planning Panel for their decision to approve the development on 21 March 2018 are also considered relevant. The reasons outlined in the Statement of reasons for this decision included the following:

- The proposed development is permissible with consent
- The environmental impacts of the development are acceptable and are able to be adequately managed through the proposed mitigation measures and recommended conditions of consent.
- In terms of transport impacts, these are considered to be acceptable in light of:
 - The hours of construction and operation required by the Environmental Protection Authority;
 - The prohibition of quarry related heavy vehicles using Mayfield Road (except for deliveries to properties on Mayfield Road);
 - The traffic Code of Conduct required by condition 4 of the consent.
- In terms of visual impact of the proposed development, impacts on local and distant views are able to be adequately mitigated through the revised Rehabilitation and Landscape Management Plan.
- The Panel also notes that the Environmental Protection Authority has issued General terms of Approval, indicating it is satisfied with the level of assessment provided and that it is of the view that the proposed development is able to be managed through the proposed management and mitigation measures and licence conditions for impacts associated with noise, dust, odour and water quality.

The proposed modification is consistent with the above reasons as:

- The development remains permissible with consent.
- Environmental impacts associated with the development as proposed to be modified remain acceptable and can be adequately managed through mitigation measures included or recommended to be included in the development consent.
- No change is proposed to the conditions to mitigate traffic impacts and the increase in traffic movements is considered acceptable.
- The proposed modification will not increase visual impacts.

- The Environmental Protection Authority has raised no objection to the proposed modification subject to amendments being made to the environmental protection licence.

3.2 Section 4.15(1) of the EP&A Act

Section 4.15(1) of the EP&A Act contains matters which the consent authority must take into consideration in determining a development application and modification applications pursuant to Section 4.56(1A), which are of relevance to the application.

These matters include the following, which are considered in detail below:

- (a) *the provisions of—*
 - (i) *any environmental planning instrument, and*
 - (ii) *any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*
 - (iii) *any development control plan, and*
 - (iiia) *any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and*
 - (iv) *the regulations (to the extent that they prescribe matters for the purposes of this paragraph),*
- that apply to the land to which the development application relates,*
- (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,*
- (c) *the suitability of the site for the development,*
- (d) *any submissions made in accordance with this Act or the regulations,*
- (e) *the public interest.*

3.2.1 **Section 4.15(1)(a) - Provisions of Environmental Planning Instruments, Proposed Instruments, DCPs, Planning Agreements and the Regulations**

The relevant provisions under s4.15(1)(a) are considered below.

(a) **Environmental planning instruments (s4.15(1)(a)(i))**

The following Environmental Planning Instruments are relevant to this modification application:

- *State Environmental Planning Policy (Biodiversity and Conservation) 2021*
- *State Environmental Planning Policy (Planning Systems) 2021*
- *State Environmental Planning Policy (Primary Production) 2021*
- *State Environmental Planning Policy (Resilience and Hazards) 2021*
- *State Environmental Planning Policy (Resources and Energy) 2021*
- *State Environmental Planning Policy (Transport and Infrastructure) 2021*
- *Oberon Local Environmental Plan 2013.*

A summary of the key matters for consideration arising from these State Environmental Planning Policies are outlined in **Table 4** and considered in more detail below.

Table 3: Summary of Applicable State Environmental Planning Policies

EPI	Matters for Consideration	Comply (Y/N)
State Environmental Planning Policy (Biodiversity & Conservation) 2021	<p><u>Chapter 3: Koala Habitat Protection 2020</u></p> <p>This SEPP requires a consent authority to satisfy itself whether or not the land is a potential koala habitat or core koala habitat.</p> <p>A Biodiversity Assessment Report was prepared for the proposed modification. The report included a koala habitat assessment. The assessment identified five trees to be removed, none of which are koala feed tree species. No evidence of koalas was found on the site and no sightings of koalas have been recorded within 5kms of the site. The nearest large area contiguous vegetation is the Essington State Forest which is a softwood pine plantation.</p> <p>In accordance with clause 3.7 of the SEPP, because the site is not identified as containing core koala habitat, a consent authority is not prevented from granting consent to the development application under the requirements of the SEPP.</p>	Yes
State Environmental Planning Policy (Planning Systems) 2021	<p><u>Chapter 2: State and Regional Development</u></p> <p>Section 2.19(1) declares the proposal regionally significant development pursuant to Clause 7(a) of Schedule 6 as it comprises extractive industry that is designated development.</p> <p>Therefore, the Western Regional Planning Panel is the consent authority.</p>	Yes
State Environmental Planning Policy (Primary Production) 2021	<p><u>Chapter 2: Primary Production and rural development</u></p> <p>Section 2.8 refers to State significant agricultural land. No land has been declared State significant, however a draft State Significant Agricultural Land Map was released for comment in 2021. The subject land is not identified on the draft map.</p> <p>There are no other provisions of the SEPP relevant to the proposed modification.</p>	Yes
SEPP (Resilience & Hazards) 2021	<p><u>Chapter 4: Remediation of Land</u></p> <p>Section 4.6 requires potential contamination to be considered in the assessment of development applications. The subject land has a history of agricultural and quarrying activities. Agricultural activities are listed as potentially contaminating, primarily due to the use of pesticides and fertilisers and activities such as sheep dips.</p> <p>The original Environmental Impact Statement submitted with the development application 10.2016.38.1 states that “as the areas proposed for disturbance within the Project Site have previously been used only for extractive industry,</p>	Yes

	<p><i>grazing cattle and/or passive nature conservation, the applicant is satisfied that no contaminated land occurs on the Project Site".</i></p> <p>The modification includes additional land adjoining the existing approved quarry. This additional land has a history of only grazing and passive nature conservation activities, therefore the above statement remains relevant to this land. Given the above, there are no identified contamination issues and no remediation works are necessary.</p>	
State Environmental Planning Policy (Resources and Energy) 2021	<p><u>Chapter 2: Mining, petroleum production and extractive industries</u></p> <p>Section 2.9(3) provides for extractive industries to be permissible with consent on land in an agricultural zone. Other provisions of the SEPP relating to extractive industries apply to the Sydney basin and are therefore not relevant to the proposed modification.</p>	Yes
State Environmental Planning Policy (Transport and Infrastructure) 2021	<p><u>Chapter 2: Infrastructure</u></p> <p>Section 2.122 relates to traffic-generating development. The proposal does not meet the criteria in Schedule 3 and is therefore not traffic generating development. Notwithstanding, the application was referred to Transport for NSW under the traffic generating development clause for their comment. Transport for NSW raised no objections to the proposed modification, subject to Council being satisfied of certain matters.</p> <p>Division 23 relates to waste or resource management facilities. Section 2.153 states that development for the purpose of waste or resource management facilities may be carried out by any person with consent on land in a prescribed zone. The RU1 zone is a prescribed zone. Other provisions of this Division of the SEPP relate to landfill and are therefore not relevant to the proposed modification.</p>	Yes
Proposed Instruments	None relevant to the proposed development.	N/A
Oberon LEP 2013	<ul style="list-style-type: none"> • Clause 2.3 – Permissibility and zone objectives • Clause 6.1 – Earthworks • Clause 6.3 – Riparian Land and Watercourses • Clause 6.5 – Utility Services 	Yes
Oberon DCP 2001	Part A – Rural Development	Yes

Oberon Local Environmental Plan 2013

The relevant local environmental plan applying to the site is the *Oberon Local Environmental Plan 2013* ('the LEP'). The aims of the LEP include:

- *to encourage sustainable economic growth and development in Oberon,*
- *to encourage and provide opportunities for local employment growth and the retention of the population in Oberon,*
- *to encourage the retention of productive rural land in agriculture,*
- *to identify, protect, conserve and enhance Oberon's natural assets,*

- *to identify and protect Oberon's built and cultural heritage assets for future generations*

The proposal is consistent with these aims as the proposed modification:

- Increases economic and employment opportunities in Oberon
- Represents a relatively small increase in the area of land changing from agricultural use to waste management use and will not significantly reduce the agricultural capacity of the remainder of the site.
- Results in a small number of trees to be removed and will not have a significant impact on biodiversity on the site.
- There are no built heritage assets and it is unlikely that the proposal will harm any cultural assets.

Zoning and Permissibility (Part 2)

The site is located within the RU1 Primary Production Zone pursuant to Clause 2.2 of the LEP, as shown in Figure 4 below.

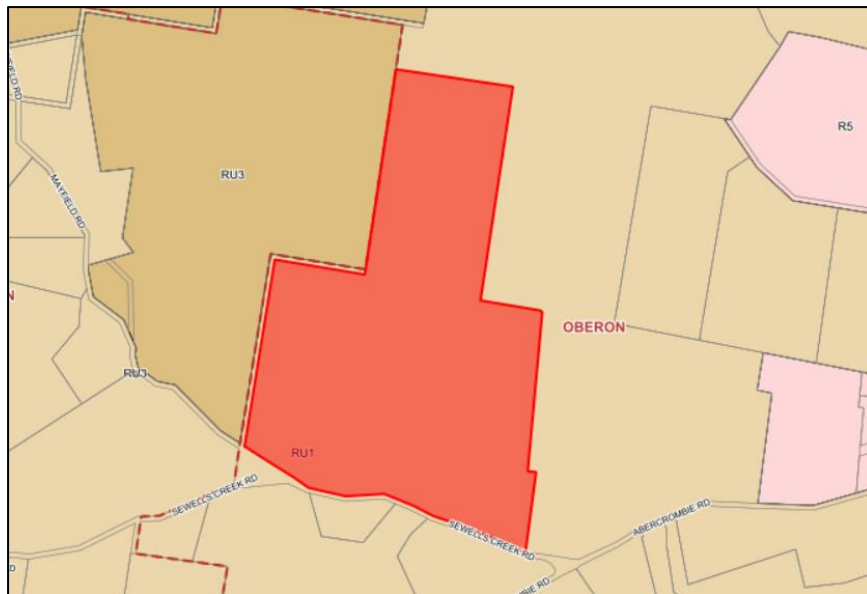


Figure 4: Zoning Map

According to the definitions in Clause 1.4 (contained in the Dictionary), the proposal satisfies the definitions of extractive industry and waste or resource management facility.

An extractive industry is a permissible use with consent in the Land Use Table in Clause 2.3 and in accordance with State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007.

A waste or resource management facility is not a nominated permissible use in the RU1 Primary Production zone under the Oberon Local Environmental Plan 2013. Waste or resource management facilities are permissible with consent on land in a prescribed zone pursuant to Division 23 of State Environmental Planning Policy (Transport and Infrastructure) 2021. Clause 2.152 of the SEPP states that the RU1 Zone is a prescribed zone and therefore a waste management facility is permissible with consent.

The zone objectives include the following (pursuant to the Land Use Table in Clause 2.3):

- *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 enable other forms of development associated with primary production activities, which may require an isolated location or which support tourism or recreational activities.*

The proposal is considered to be consistent with these zone objectives for the following reasons:

- Extractive industry and waste management facilities are permissible uses in the RU1 zone.
- The proposal manages the natural resources of the site in a manner that, with appropriate management and mitigation actions, will have minimal impacts on surrounding properties.
- As part of the site will be retained for agricultural purposes the proposed activities provide diversity in primary production activities on the site.
- The proposal does not fragment or alienate rural lands.
- The subject land will be rehabilitated and restored following quarrying works enabling much of the site to return to grazing and/or rural woodland country.

General Controls and Development Standards (Part 2, 4, 5 and 6)

The LEP also contains controls relating to development standards, miscellaneous provisions and local provisions. The controls relevant to the proposal are considered in **Table 5** below.

Table 4: Consideration of the LEP Controls

Control	Requirement	Proposal	Comply
Minimum subdivision Lot size (Cl 4.1)	100ha	N/A. No subdivision of land is proposed.	N/A
Heritage (Cl 5.10)	Consider any items of environmental or cultural heritage.	N/A. The site does not contain a heritage item and is not in a heritage conservation area. The proposal is unlikely to disturb cultural heritage.	N/A
Flood planning (Cl 5.21)	Consider compatibility of development with flood behaviour.	N/A. The site is not flood prone.	N/A
Earthworks (Cl. 6.1)	Consider impacts of earthworks on certain	The proposal involves cutting and filling of land to	Yes

	<p>matters, including drainage patterns, adjoining properties and disturbance o relics.</p>	<p>create a level pad for the new waste management area. Fill is to be sourced from soil in the area of cut and overburden produced through quarrying activities on the site.</p> <p>The proposed earthworks will not have a detrimental effect on drainage patterns or soil stability. The earthworks facilitate the proposed development with no impacts on adjoining properties.</p> <p>Based on the Aboriginal Cultural Heritage Due Diligence Assessment, works associated with the proposed modification are unlikely to disturb any relics.</p> <p>The area of filling contains a mapped watercourse, however NRAR have inspected the site and advised that it does not constitute waterfront land. The land will continue to drain to man-made waterbodies (dams).</p>	
Riparian Land and Watercourses (Cl. 6.3)	Consider impacts of development on watercourses and water quality.	<p>The proposal involves fill in a mapped watercourse, however NRAR have inspected the site and advised that it does not constitute waterfront land. The land will continue to drain to man-made waterbodies (dams). The Biodiversity Assessment Report has determined that the gully and dam to which it drains contains no aquatic habitat.</p>	Yes
Essential Services (Cl 6.4)	Consider any services that are essential for the development are available or that	The site is adequately serviced with essential services required for the development. No further	Yes

	adequate arrangements have been made to make them available.	services are required to be provided to the site for the proposed modification.	
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The proposal is considered to be consistent with the LEP.

(b) Provisions of any Proposed Instruments (s4.15 (1)(a)(ii))

None relevant to the proposed development.

(c) Provisions of any Development Control Plan (s4.15(1)(a)(iii))

The Oberon Development Control Plan is relevant to this application, as follows:

Part A Rural Development

A.2.1 General Policy

Council is concerned to ensure that development in the rural zones is carried out in a way that protects and promotes agricultural activities. To this end, the following general policies apply:

- a) Non agricultural development, including dwellings, should be located on land that is not prime crop and pasture land, unless there are no alternative suitable sites.*

Comment – The area proposed for the new waste storage and processing activities directly adjoins the quarry and is a relatively steep gully not considered to be prime crop or pasture land.

- b) Non agricultural development, particularly dwellings, should be sited and carried out so that it is unlikely to inhibit or give rise to complaints about normal farming and forestry practices (eg pine harvesting, crop and weed spraying, separation from noxious odours etc).*

Comment – The proposed development is not considered likely to give rise to complaints about farming or forestry practices on the land or on surrounding lands.

- c) Non agricultural development should be carried out in a way that minimises any adverse effects on adjoining land – particularly by way of:*
- i) Land degradation.*
 - ii) Alteration of drainage patterns.*
 - iii) Pollution of ground water.*
 - iv) Spread of noxious plants and animals.*
 - v) Increased fire hazard.*

Comment – It is considered that the proposed modification will not have adverse effects on adjoining land as a result of land degradation, drainage patterns, pollution, spread of noxious plants or animals or increased fire hazard, providing appropriate mitigation measures are implemented. Such measures are to be included in revised management plans proposed to be required as modified conditions of consent.

- d) *Development which assists the process of farm build-up and the strengthening of the family farm unit, including development which enables revenue to be raised for farm build up, is encouraged.*

Comment – The proposed modification provides additional revenue to the land owner and a source of compost for use on farm (or for sale to other farmers).

- e) *Non agricultural development should be located and carried out in a manner that minimises the likelihood of added costs to ratepayers of the Shire as a result of the development.*

Comment – The proposed modification is unlikely to give rise to additional costs to ratepayers, particularly given the existing condition of consent requiring an annual road maintenance levy.

- f) *Sustainable development that generates employment in the Shire is encouraged.*

Comment – The proposal utilises waste that would otherwise be taken to landfill, provides new materials for re-use and has the potential to generate additional employment opportunities.

A.2.6 Specific Aspects

- a) *Prime Crop and Pasture Land*

In considering whether development (ie dwelling and subdivision) would fragment or otherwise affect prime crop and pasture land, the Council will have regard to the definition in the Oberon LEP 1998.

Comment – The area of the proposed modification is not considered to be prime crop or pasture land.

- b) *Concentration of Non Agricultural Use*

In considering a development application involving a concentration of non-agricultural uses (Eg. more than three dwellings) or which has the effect of creating such a concentration through a series of individual developments (including previous approvals and existing development), the Council will have regard to whether the concentration is likely to have the effect of:

- i) Inhibiting or restricting farming or forestry practices in the area by way of increased complaints, land management problems or otherwise, and*
- ii) Increasing demands for the Council to spend ratepayer's money providing services to the land.*

Comment – The proposed development is not considered likely to give rise to complaints about farming practices on the land or on surrounding lands and is unlikely to give rise to additional costs to ratepayers.

- c) *Dwellings – Not applicable*

- d) *Land Degradation*

In general, developments should have regard to the following principles:

- i) Try as much as possible to use natural features in any development. In particular, for subdivisions, lot boundaries should be located with regard to the topography and site conditions. This will eliminate the need for large areas of clearing, stripping or excavation.*

Comment – The proposed modification does not require large areas of clearing. While the proposed land cutting and filling changes the natural features of the land, the location of the filling is a relatively narrow gully that drains to an existing dam. The proposal is considered acceptable in relation to landform.

- ii) Developments should be phased so that the area exposed at any one time is confined to an area of workable size.

Comment – The proposed modification relates to a relatively small part of the site and does not require staging.

- iii) Where areas to be worked are to be stripped of topsoil it should be stockpiled for respreading after final landscaping has taken place to help in the revegetation of the area.

Comment – The proposed modification involves the cutting and filling of land. The soil in the area of cut will be used as fill on site. The existing Rehabilitation and Landscape Management Plan identifies that topsoil will be either used to create bunds or stockpiled for future use. A revised management plan is recommended to be required as a condition of consent.

- iv) Drainage works should be planned and installed as one of the first steps in development. These should be designed to divert surface runoff around disturbed areas to minimise the potential for erosion and not adversely impact adjoining premises.

Comment – The proposed works will include clean water diversions to divert surface runoff around the subject area.

- v) Sediment and erosion control structures such as sediment or retarding basins, perimeter banks etc may be necessary on larger projects to prevent possible land degradation. Where necessary, these structures should be installed before any land disturbance takes place.

Comment – Sediment and erosion controls will be in place during works and long-term clean water diversions will be constructed. These will be detailed in a revised surface water impact assessment to be approved prior to the commencement of works.

- vi) All sediment and erosion control structures should be revegetated or mulched as soon as they are built to prevent erosion of the structures. Similarly, all disturbed areas should be revegetated within thirty days of final landscaping.

Comment – Revegetation will be addressed in the revised Rehabilitation and Landscape Management Plan to be completed for Council approval prior to the commencement of works.

- e) Siting of Water Tanks – Not applicable.

- f) Buffer Distances

In order to minimise land use conflicts and avoid undue interference with the living amenity of residents, residential development shall be located so as to ensure the following minimum buffer areas around intensive agriculture establishments, the

Oberon Industrial area, quarries, sewerage treatment plants and the other existing land uses with a nuisance potential:

Extractive Industry – 500 metres (from footprint of operations and is to be provided wholly within the proponent's land or by appropriate lease over the buffer area. Council may consider less stringent conditions based on partial use and/or annual production volume having regard for public benefit.

Comment – The site is an existing quarry. The area of the proposed modification is to the west of the quarry area, further away from adjoining properties to the north, south and east than the closest part of the existing operations. To the west is a State Forest. In any case, the closest residence is located approximately 610m south of the closest point of the proposed extraction and processing activities.

A.3 HAZARDS

A.3.1 Flooding – Not applicable as the site is not flood prone.

A3.2 Bush Fire

The whole of the Rural 1(a) zone in Oberon Shire is susceptible and or liable to bush fires and grass fires, the Council will have regard to:

- a) Whether it is feasible to require a perimeter road or fire radiation zone.*
- b) Whether evacuation or on-site refuge measures are feasible.*
- c) Whether any buildings are sited so as to minimise fire risk.*
- d) Measures available to ensure the property can be managed to minimise the risk to it and to other land and buildings.*
- e) Whether building materials and any proposed planting should be of a fire resistant type*

Comment – The site is bushfire prone. A bushfire assessment report has not been provided with the modification application. Planning for Bushfire Protection contains the following provisions for mining activities:

Where mining and associated activities are carried out on BFPL, consideration should be given to any hazards and risks associated with bush fire. It may be necessary to implement measures to control and manage any identified hazards and risks. As a minimum, a 10m APZ should be provided around any infrastructure associated with mining and petroleum production.

Given the potential hazard and risks, a Bush Fire Emergency Management and Operations Plan should be prepared to cover any mining activities and petroleum production undertaken on BFPL, with consideration to the same provisions detailed in section 8.3.5 for wind and solar farms.

It is recommended that a 10m Asset Protection Zone be imposed along the northern and western edges of the new area proposed for waste storage and processing and that a Bush Fire Emergency Management and Operations Plan be prepared prior to the commencement of operations associated with the modification application.

A.4 OTHER ASPECTS

A.4.1 Road Contributions

Council may require the developer to make contributions to Council for the upgrading of public roads to the appropriate standard related to the traffic generated by the development.

Comment – An existing condition of consent requires an annual road maintenance levy to be paid.

A.4.2 Stormwater Drainage – Stormwater falling on the proposed waste storage and processing area will be directed to a pollution control dam, with clean water diverted around the area. Water in the dam will be reused on site as required. The proposed modification is considered acceptable in relation to stormwater drainage.

A.4.3 Building Setback from Roads – Not applicable to the proposed development.

A.4.4 Development Fronting Main Roads – Not applicable to the proposed development.

The following contributions plans are relevant pursuant to Section 7.18 of the EP&A Act and have been considered in the recommended conditions (notwithstanding Contributions plans are not DCPs they are required to be considered):

Oberon Development Contributions and Water Management Works Plan (Amendment) 2004

The proposed modification will not be subject to additional development contributions for the following reasons:

- Contributions were levied and paid for DA 10.2010.66.1 for Extractive Industry – Gravel Extraction (but not for recurrent annual expenditure on roads).
- Additional contributions for recurrent annual expenditure on roads within the locality were levied on DA10.2016.38.1. No change to this condition is proposed or recommended.

(d) Planning agreements under Section 7.4 of the EP&A Act (s4.15(1)(a)(iia))

There have been no planning agreements entered into and there are no draft planning agreements being proposed for the site.

(e) Provisions of Regulations (s4.15(1)(a)(iv))

None relevant to the proposed development.

3.2.2 Section 4.15(1)(b) - Likely Impacts of Development

The consideration of impacts on the natural and built environments includes the following:

- Context and setting – The proposal is considered to be generally consistent with the context of the site, in that the proposed changes are located in a part of the site that is not visible from surrounding lands. Impacts of the proposed development on surrounding lands will be able to be adequately mitigated through conditions of consent.
- Access and traffic – The modification application was referred to Transport for NSW who raised no objections subject to Council being satisfied of certain matters. Council Technical Services officers also reviewed the application and the letter from Transport for NSW and raised no objections to the modification due to no significant impacts on Abercrombie Rd, provided that the relevant guidelines

mentioned in the Transport for NSW letter are complied with. The guidelines are included in the modified conditions of consent.

- Public Domain – The proposed modifications will have no significant impact on the public domain. Impacts on the road network from truck movements are addressed through an existing condition of consent requiring an annual road maintenance levy.
- Utilities – Not applicable to the proposed modification.
- Heritage – The site does not contain a heritage item and is not in a heritage conservation area. There are no heritage items in the vicinity of the site. An Aboriginal Cultural Heritage Due Diligence Assessment was undertaken for the proposed modification. The assessment identifies the landscape within the study area as consisting of gullies and steep slopes with exposures associated with quarry-related disturbance. Several mature trees were present within the study area. No culturally modified scars were observed on the trees (Figure 3-1). No Aboriginal objects or areas of potential archaeological depots were identified during the site inspection, within the study area or are likely to occur within it.
- Other land resources – The proposed modification results in a small area of additional rural land being changed to a different use. It is considered that this will not significantly reduce agricultural use of the remainder of the land. The proposal will not have a significant impact on ground or surface water.
- Water impacts -The applicant has advised that no water has been discharged from the site during existing operations since commencement, other than in a small number of heavy rainfall events (outside of the testing thresholds in the environmental protection licence). With next to no discharge from the site, no significant impacts on downstream water quality are expected. With the construction of a new pollution sediment basin and the proposed use of water in this basin on site, it is expected that minimal water discharge from the site will occur as a result of the modification. Nevertheless, the testing regime will remain in the event of any future discharges. In relation to potential impact on groundwater, the type of waste materials to be stored and processed on site are not of a kind likely to cause pollution of groundwater. In any case, the proposed pollution control dam will capture any potential contaminants from the waste materials.
- Soil impacts – The site has a long history of grazing and extractive industry. There is no evidence of any previous use that might have caused contamination of the soil. The proposal involves cutting and filling an area of land. The fill will be soil from the area of cut and overburden from the extractive industry activities on the site. The waste products proposed include organic (green) waste, concrete and plasterboard. These products are unlikely to cause contamination of the soil. The proposal is unlikely to have a significant impact on soils.
- Air quality impacts – The applicant provided an Air Quality Impact Assessment that modelled potential impacts from works associated with the proposed modification. The assessment determined that emissions from the site will not exceed relevant criteria and recommended the continued implementation of the Air Quality Management Plan for the site, with some additional measures relating to blast fumes and diesel exhaust. A new condition is recommended to require the Air Quality Management Plan to be updated.

- Flora and fauna impacts – A small number of isolated paddock trees are proposed to be removed and the grassland to be removed has been assessed as low conservation grassland dominated by invasive pasture grasses and weeds. The area of the proposed works is not included on the Biodiversity Values Map. The Biodiversity Assessment Report recommends measures to mitigate environmental impacts during clearing activities. Subject to the implementation of those mitigation measures through a condition of consent, it is considered that the proposal will have no significant impact on biodiversity.
- Natural environment – The proposal involves cutting and filling of the area to be used for waste storage and handling. Fill material will be sourced from the area of cut and overburden from quarrying activities on the site. This area contains a mapped watercourse, however this drainage line has no structure or form and flows into a farm dam which contains no aquatic fauna or habitat. The Natural Resources Access Regulator inspected the site in 2019 and advised that the gully did not represent a 'river' in accordance with the Water Management Act 2000 and a Controlled Activity Approval is not required and it is not Integrated development.
- Noise and vibration – The proposed modification has the potential to generate additional noise, principally from the crushing of waste concrete and from additional truck movements. The nature of the noise is similar to existing quarrying activities. A noise impact assessment has been provided demonstrating that the modification will not result in noise exceedances at surrounding residential receivers. It is noted that the noise report was undertaken in 2022 and since then additional rural residential development has taken place to the east of the site. The closest part of the new rural residential area to the site of the proposed new works is approximately 1.67km and based on the noise contours in the Noise Assessment report, dwellings in this area will fall within the 25-30dB(A) contour, well below the relevant noise criteria. The existing operations are undertaken within the recommendations of an Acoustic Management Plan. A new condition is recommended to require the Air Quality Management Plan to be updated.
- Natural hazards – The site is bushfire prone. To comply with Planning for Bushfire Protection 2019, a 10m asset protection zone should be managed along the northern and western edges of the waste handling and processing area and a Bush Fire Emergency Management Plan should be prepared for the site. The site is not known to be flood prone.
- Safety, security and crime prevention – There are no safety or security concerns with the proposed modification.
- Social impact – Subject to the implementation of management measures as required by conditions of consent, it is considered that the proposed modification will have no significant health or safety impacts on the community.
- Economic impact – The proposed modification ensures ongoing economic benefits to the community through the materials excavated and produced at the site and maintain employment generation at the site.
- Site design and internal design – The location of the proposed new waste storage and processing area is appropriate being adjacent to the existing quarry and within a gully that is shielded from view from surrounding areas.

- Construction – Construction impacts will be managed in accordance with conditions of consent. No change is proposed to hours of operation.
- Cumulative impacts – It is considered that the proposal will not result in any adverse cumulative impacts.

Accordingly, it is considered that the proposed modification will not result in any significant adverse impacts in the locality as outlined above.

3.2.3 **Section 4.15(1)(c) - Suitability of the site**

The site is an existing quarry and the proposed modifications are considered suitable for the site. Subject to conditions, it is considered that the proposal will have minimal impacts on the amenity of the surrounding area.

3.2.4 **Section 4.15(1)(d) - Public Submissions**

Submissions are considered in Section 4.3 of this report.

3.2.5 **Section 4.15(1)(e) - Public interest**

The proposed modification is considered to be in the public interest as it facilitates the continued extracting of the gravel resources on the site and the production of new materials from waste products that will benefit the community in a manner that has minimal social and environmental impacts.

3.3 **Part 5 of the 2021 EP&A Regulation**

There are a number of matters required to be addressed in an application for modification of development consent pursuant to Division 1, 2 and 3 of Part 5 of the 2021 EP&A Regulation. These matters are considered in **Table 6** below.

Table 6: Consideration of the Requirements under the Regulation

Matter	Comment	Comply
Clause 100 Application for modification of development consent		
May be made by— (a) the owner of the land to which it relates, or (b) another person, with the consent of the owner of the land (CI 98(1))	The application has been made by Zac Rowlandson of Oberon Earthmoving, with the consent of the owner of the land.	Y
NSW Aboriginal Land Council consent required for land owned by a Local Aboriginal Land Council (CI 98(6)).	The land is not owned by a Local Aboriginal Land Council.	N/A
Form approved by Planning Secretary and on portal (CI 99).	The application has been provided in accordance with the Regulation.	Y
Applicant details (CI 100(1)(a))	Provided on the NSW Planning Portal ('the Portal').	Y

Description of the development (CI 100(1)(b))	Provided on the Portal and outlined in Section 2 of this Report.	Y
Address and title details (CI 100(1)(c))	Provided on the Portal and outlined in Section 1 of this Report.	Y
Description of the proposed modification (CI 100(1)(d))	Provided on the Portal and outlined in Section 2 of this Report.	Y
Whether to correct a minor error, mis-description or miscalculation, or some other effect (CI 100(1)(e))	The proposed modification is to modify the original consent under Section 4.56 to allow an increase in the extraction and production limits and add new waste materials to be processed on site and is not to correct a minor error, misdescription or miscalculation.	Y
Description of the expected impacts of the modification (CI 100(1)(f))	There are unlikely to be any significant impacts resulting from the proposed modification given the area of new works is within a gully shielded from view from surrounding properties. Potential air quality and noise impacts have been addressed in the application and subject to the implementation of management measures through conditions of consent, the impacts are expected to be minimal.	Y
Undertaking that modified development will remain substantially same as development originally approved (CI 100(1)(g))	The modified development will remain substantially the same development as that originally approved. Refer to Section 3.1 of this Report.	Y
If accompanied by a Biodiversity development assessment report, the biodiversity credits information (CI 100(1)(h))	A Biodiversity Assessment Report was submitted with the development application. The report determines that the area of clearing does not exceed the Biodiversity Offset Scheme threshold and does not impact on land mapped on the Biodiversity Values Map. Therefore, a Biodiversity Development Assessment Report is not required.	N/A
Owner's consent (CI 100(1)(i))	Owner's consent has been provided.	Y
Whether the application is being made to the Court (under section 4.55) or to the consent authority (under section 4.56) (CI 100(1)(j)).	This Application is made to the consent authority pursuant to 4.56(1) of the EP&A Act.	Y
BASIX Certificate (CI 100(3))	The proposed modification does not involve BASIX development.	N/A
Penrith Lakes Development Corporation (CI 101)	The proposed modification does not relate to the Penrith Lakes Development Corporation.	N/A

Qualified designer statement for residential apartment development (CI 102)	The proposed modification does not involve residential apartment development.	or N/A
Mining and petroleum development consents (CI 103)	The proposed modification does not relate to mining and petroleum development consents.	N/A
Notification and exhibition requirements (CII 105-112)	Refer to Section 4.3 of this report.	Y
Notification of concurrence authorities and approval bodies (CI 109) (to be undertaken by Council)	The modification application has been referred to the relevant authorities as outlined in Section 4.1 of this Report.	Y

4. REFERRALS AND SUBMISSIONS

4.1 Agency Referrals and Concurrence

The modification application was referred to Transport for NSW, the Environmental Protection Authority, the Department of Planning and the Department of Regional NSW - Mining, Exploration & Geoscience.

The Department of Planning and Department of Regional NSW - Mining, Exploration & Geoscience advised that referral was not required, therefore no written response to the referrals was provided.

The responses from Transport for NSW and the Environmental Protection Authority are provided in **Table 7**.

There are no outstanding issues arising from these concurrence and referral requirements subject to the imposition of the recommended conditions of consent being imposed.

Table 7: Concurrence and Referral Agencies

Agency	Concurrence/referral Trigger	Comments (Issue, resolution, conditions)	Resolved
Referral/Consultation Agencies			
Environmental Protection Authority	Protection of the Environment and Operations Act s43(d), 48, 55 - scheduled activity	No objections to the modification application. The EPA notes that a variation to increase the extraction limits listed on the Applicant's Environment Protection Licence (EPL) for the Premises will be required for the Applicant to operate at the modified extraction limits. Additionally, the EPL will need to be varied to include	Yes

		“Crushing and Grinding” as a scheduled activity.	
Transport for NSW	S2.121 of the <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i>	<p>No objections to the proposed modification subject to Council being satisfied that the development will not adversely affect safety at the intersection of the classified road by considering the intersection warrants within Part 6 of Austroads Guide to Traffic Management being the provision of the minimum treatment of a rural Basic right-turn (BAR). Should Council determine that the intersection require an upgrade to support the additional heavy vehicle traffic, TfNSW recommends that the BAR be designed in accordance with Part 4A of Austroads Guide to Road Design ensuring that the length and width is capable of accommodating a B-double at a design speed of 110km/h and the road work be completed prior to commencement of increased operations at the subject site.</p> <p>Please note that road works on Abercrombie Road would require TfNSW concurrence prior to Council issuing consent under s.138 of the Roads Act 1993.</p> <p>Further to the above, Council should consider imposing the following conditions of consent:</p> <ul style="list-style-type: none"> • The quarry is restricted to a maximum of 16 haulage vehicle movements in a peak hour (up to 8 in, 8 out). • The design vehicle is restricted to a 26m B-doubles or PBS Level 2B vehicle. • Prior to operation of the quarry a Traffic Management Plan (TMP) including a Driver Code of Conduct must be prepared in consultation with Council and the principal contractor(s) and endorsed by Council. • The TMP is to be implemented for the life of the development and is to be reviewed and updated in response to any changes in operating conditions. Copies of relevant sections of the TMP and 	Yes

		Driver Code of Conduct must be provided to contractors and employees as part of the site induction.	
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4.2 Council Referrals

The modification application was referred to various Council officers for technical review as outlined **Table 8**. The outstanding issues raised by Council officers are considered in the Key Issues section of this report.

Table 8: Consideration of Council Referrals

Officer	Comments	Resolved
Engineering / Traffic	Council's Technical Services officers reviewed the application and the letter from Transport for NSW and raised no objections to the modification due to no significant impacts on Abercrombie Rd, provided that the relevant guidelines mentioned in the Transport for NSW letter are complied with. The guidelines are included in the modified conditions of consent.	Yes

4.3 Notification and Community Consultation

The modification application was notified in accordance with Council's Community Participation Plan from 14 September 2023 until 13 October 2023. The notification included the following:

- An advertisement in the local newspaper, the Oberon Review;
- Notification on Council's website;
- Notification letters sent to surrounding properties (80 letters sent);

The Council received a total of 8 unique submissions, comprising 8 objections and 0 submissions in support of the proposal. The issues raised in these submissions are considered in **Table 9**.

Redacted copies of submissions were provided to the applicant for comment.

The issues raised in the community submissions have been addressed in this report and in the recommended conditions of consent in **Attachment A**.

Table 9: Community Submissions

Issue	No.	Council Comments
Dust / Air quality impacts	6	<p>The submissions raised concerns about increased dust emanating from the site and the associated health hazards.</p> <p>Council considers that the following responses from the applicant satisfactorily addresses the concerns regarding dust and air quality impacts:</p>

		<ul style="list-style-type: none"> • <i>monthly dust deposition monitoring results going back to January 2022 indicate that insoluble solids, combustible material, and ash were observed below the criteria level of 4 units on all but one occasion.</i> • <i>In January 2022, exceedances for insoluble solids and combustible matter at gauge number 1 were observed, which were explained as likely contamination from bird droppings and organic matter.</i> • <i>The most recent EPA Annual Return indicates that no complaints were received regarding air quality during the reporting period.</i> • <i>Further, Oberon Earthmoving has not received any formal complaints regarding air quality at the Quarry at any other time.</i> • <i>The Air Quality Impact Assessment for the Proposed Modification found that air quality concentrations are predicted to comply with the relevant criteria for annual average emissions, 24-hour emissions, total suspended particulates, deposited dust, and gas emissions, and are not expected to significantly differ from background concentrations even when cumulative emissions are considered.</i> • <i>A comparative analysis of crystalline silica concentration with a much larger quarry (Martins Creek Quarry) indicates that the concentration would not exceed 0.6 µg/m³, well below the noted criteria of 3 µg/m³.</i> • <i>Air quality mitigation measures include continued implementation of the Air Quality Management Plan (AQMP)</i> • <i>Blast fume management will include</i> <ul style="list-style-type: none"> ○ <i>explosive formulation and quality assurance (as per the NSW Explosives Act 2003 and NSW Explosives Regulations 2013)</i> ○ <i>blasting will be restricted to confined and competent formations</i> ○ <i>blasting will occur above the groundwater table</i> ○ <i>the depth of blast holes will be less than 20 metres (m)</i> ○ <i>blast zones and holes will be maintained appropriately</i> ○ <i>exhaust gas management, including appropriate servicing and maintenance of Quarry machinery.</i> <p>Council's records indicate that there have been no air quality complaints relating to the operation of the site.</p> <p>The Air Quality Impact Assessment submitted with the modification application recommends that the Air Quality Management Plan be updated to include additional mitigation measures. A condition to this effect is recommended.</p> <p>Subject to the implementation of the updated Air Quality Management Plan in accordance with the development consent and the environmental protection licence, it is considered that there will be no significant impacts on surrounding properties</p>
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		from the increase in extraction proposed, or from the addition of concrete crushing at the site. The introduction of plasterboard composting is also not considered to generate any significant dust concerns given the process of composting involves the watering of the product.
Noise	5	<p>The submissions raised concerns about noise from quarrying activities and truck movements on the surrounding area.</p> <p>Council considers that the following responses from the applicant satisfactorily addresses the concerns regarding noise impacts:</p> <p><i>A Noise Impact Assessment for the Proposed Modification was completed to evaluate noise associated with construction, operations, and traffic/haulage.</i></p> <ul style="list-style-type: none"> • <i>The assessment noted that construction noise levels would remain below the relevant noise management levels at all receiver locations. Further, the assessment demonstrated that operational noise levels would comply with the relevant criteria for all assessment periods at the most affected sensitive receiver locations.</i> • <i>Noise mitigation measures include:</i> <ul style="list-style-type: none"> ○ <i>Toolbox and induction of personnel prior to shift to discuss noise control measures that may be implemented to reduce noise emissions to surrounding receivers.</i> ○ <i>Training (of employees to conduct quieter work practices).</i> ○ <i>Equipment which is used intermittently is to be shut down when not in use.</i> ○ <i>Where possible, machinery will be located/orientated to direct noise away from the closest sensitive receivers.</i> ○ <i>Undertake regular maintenance of machinery to minimise noise emissions. Maintenance will be confined to standard daytime construction hours and where possible, away from noise sensitive receivers.</i> ○ <i>The quietest suitable machinery reasonably available will be selected for each work activity</i> ○ <i>Avoid queuing of vehicles adjacent to any receivers.</i> ○ <i>Where practicable, ensure noisy plant/machinery are not working simultaneously in close proximity to receivers.</i> ○ <i>Where possible, all plant are to utilise a broad band reverse alarm in lieu of the traditional hi-frequency type reverse alarm.</i> ○ <i>Minimising the need for reversing or movement alarms.</i> <p>Council's records indicate that there have been no noise complaints relating to the operation of the site.</p> <p>Given the proposed new activities associated with this modification application will be undertaken within the existing quarry area or adjacent to it in an area the is screened from view by existing topography, and subject to the implementation</p>

		of the mitigation measures, it is considered that the proposal will not generate significant noise impacts on surrounding properties.
Odour	2	<p>The submissions raise concerns about odour if waste to be composted includes food, organic and garden waste, biosolids and manure.</p> <p>Council considers that the following responses from the applicant satisfactorily addresses the concerns regarding odour impacts:</p> <ul style="list-style-type: none"> <i>The Quarry undertakes operations in accordance with an AQMP which outlines the key controls and management measures to reduce air emissions and odour, along with triggers for corrective actions.</i> <i>The air quality mitigation measures outlined in the SEE (Umwelt, 2023) (refer to Section 2.10.3.3) will mitigate any adverse air quality impacts related to the Proposed Modification, including odour impacts.</i> <p>All material proposed to be processed and/or composted is non-putrescible. Given no putrescible waste is proposed, there is unlikely to be any significant odour concerns arising from the proposed modification.</p>
Impact on roads from truck movements	7	<p>The submissions raised concerns about damage to roads from increased truck movements.</p> <p>Council considers that the following responses from the applicant satisfactorily addresses the concerns regarding traffic impacts:</p> <ul style="list-style-type: none"> <i>The road capacity was assessed with reference to the Austroads Guide to Traffic Management Part 6: Intersections, Interchanges and Crossing Movements, which provides turn warrants and guide treatments for various intersections. A prior upgrade to the Quarry Access Road/Sewells Creek Road intersection was designed and constructed with sufficient capacity for the proposed traffic volume increases.</i> <i>With increased truck movements, the existing Basic Right (BAR) turn treatment is considered sufficient for the Proposed Modification, and no further upgrade is required.</i> <i>During peak hour traffic, the number of vehicle movements is well under capacity of the existing roads and will not require any upgrade to accommodate for the increased truck movements. Sewells Creek Road and Abercrombie Road are classed as single lane Level of Service A roads with a capacity of 200 vehicles per hour per lane. The forecast peak hour traffic with the Modification is 214 vehicles, with 107 movements in each direction. The Site Access Road will be regularly inspected and maintained to prevent excessive dust emissions and prevent degradation of the road surface.</i>

		<ul style="list-style-type: none"> • <i>Further, a Supplementary Integrated Transport Assessment was prepared by Pavey Consulting Services. Based on a variety of assessments the outcome states that there are no traffic engineering related matters that should prohibit approval of the Proposed Modification. Key findings from the report include but are not limited to:</i> <ul style="list-style-type: none"> ○ <i>The speed environment is adequate for the available sight distance.</i> ○ <i>Current traffic counts take into account the existing developments within the area.</i> ○ <i>The 3% growth rate takes into account any increase in development in the surrounding area.</i> ○ <i>Total traffic generation remains low and does not impact the performance of the intersection both at present and in a 10-year planning horizon.</i> ○ <i>Level of service remains level A for all modes tested.</i> ○ <i>The current instruction operates well within the requirements of a rural BAR, and such does not need to be upgraded to a complying rural BAR type intersection based on the findings of the report.</i> <p>The application was referred to Transport for NSW who raised no objections subject to Council being satisfied of certain matters. Council's Engineers have considered those matters and has also raised no objections subject to appropriate conditions of consent.</p> <p>It is noted that there is an existing condition on the development consent relating to contributions for recurrent annual expenditure on roads within the locality. No change to this condition is proposed or recommended.</p> <p>Given the above, the proposal is considered satisfactory in relation to impacts on the road network.</p>
General objection to an increase in truck movements.	1	<p>The submission stated that the original consent was only granted as the applicant agreed to limitations of truck movements.</p> <p>The Environmental Planning and Assessment Act 1979 makes provision for applicants to seek to modify development consents, including those granted by the Land and Environment Court. The subject modification is supported by a traffic assessment and the proposed increase in traffic movements was referred to Transport for NSW and Council's Engineers for comment. No objection was raised to the proposed modification subject to conditions.</p>
Amenity of locality	3	<p>The submissions stated that the expansion of the quarry will further impact on the amenity of nearby rural residential properties.</p>

		<p>Council considers that the following responses from the applicant satisfactorily addresses the concerns regarding impacts on the amenity of the locality:</p> <ul style="list-style-type: none"> ○ <i>The Proposed Development does not result in a cumulative amenity noise level greater than the acceptable noise levels for residences that are private dwellings.</i> ○ <i>In order to minimise land use conflicts and avoid undue interference with the amenity of residents, Development Control Plan 2001 requires that residential development be located so as to ensure a 500m buffer from the footprint of operations of extractive industries. The closest residence is located approximately 610 m south of the closest point of the proposed extraction and processing activities. In any event, Oberon Earthmoving has endeavoured to meet the objectives of the DCP through designing the proposed operations to meet accepted criteria regardless of the distance from the footprint of operations.</i> ○ <i>The Proposed Modification does not involve any changes which would alter the visibility of the Quarry (as approved).</i> ○ <i>In addition to proposed mitigation measures and management procedures relating to amenity aspects including noise, air quality, visibility, and transportation, Oberon Earthmoving would implement management and mitigation measures to ensure that Proposed Modification-related benefits for the community surrounding the Quarry are maximised and adverse impacts are minimised:</i> <p><u><i>Social and Community</i></u></p> <ul style="list-style-type: none"> ○ <i>Engage landowners and residents surrounding the Quarry in dialogue in relation to Quarry operations.</i> ○ <i>Proactively and regularly consult throughout the life of the Quarry with those landowners, land users and residents most likely to be adversely impacted by the Quarry.</i> ○ <i>Continue implementing environmental monitoring program and provide access to the results of monitoring to the local community. The results of environmental monitoring would be regularly reviewed to identify where improvement in performance can be made.</i> ○ <i>Advertise and maintain a community complaints telephone line.</i> <p><u><i>Economic Contribution and Development</i></u></p> <ul style="list-style-type: none"> ○ <i>Give preference, where practicable and cost-competitive, to suppliers of equipment, services or consumables located within the Oberon LGA.</i> <p><u><i>Agricultural Lands</i></u></p> <ul style="list-style-type: none"> ○ <i>Maintain agricultural operations on land not required for extraction, processing, stockpiling or biodiversity conservation purposes.</i> ○ <i>Continue to appropriately manage weeds, pests and bush fire risks on land held by Oberon Earthmoving in consultation with surrounding landowners.</i> <p><u><i>General</i></u></p>
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		<ul style="list-style-type: none"> ○ <i>Adhere to all operating conditions including restrictions on hours of operation and the required standard of facility.</i> ○ <i>Notably, the Quarry is now an established feature of the local setting and on the basis that tree planting and amenity bunds are maintained, and dust is managed, no additional impact is considered likely as a result of the Proposed Modification.</i> <p>Subject to the implementation of mitigation measures, it is considered that the proposed modification will not have a significant impact on the amenity of the locality.</p>
Visual impacts	2	<p>The submission noted that a visual impact assessment was not provided with the modification application.</p> <p>The area of the proposed modification is shielded from view from surrounding lands by existing topography and vegetation. Council considers that the proposed modification will not have significant visual impacts.</p>
Biodiversity impacts	1	<p>The submission noted that some earthmoving had already been undertaken in an area mapped as having high biodiversity without a Biodiversity Development Assessment Report.</p> <p>A Biodiversity Assessment Report has been submitted with the modification application demonstrating that the proposed works, including works already undertaken outside of the original approved quarry area, do not trigger the Biodiversity Offset Scheme and will have no significant impact on biodiversity. Council is satisfied that the proposed modification will not have significant biodiversity impacts.</p> <p>It is noted that the area of the proposed works is not included on the Biodiversity Values Map. The only part of the site included on the Biodiversity Values Map is a watercourse that runs across the site from east to west in the southern part of the site, well away from the area of proposed works.</p>
Links between Middle Creek Quarry and Bettergrow Oberon	2	<p>The submissions asked if there was a connection between the Middle Creek Quarry modification application and the expansion of the Bettergrow plant currently under construction.</p> <p>The issue raised is not considered a planning consideration and no further consideration of this issue is warranted.</p>
Proposal is a significant change and not a modification	3	<p>The submissions questioned whether the scale of the proposed modification was a modification or a new DA.</p> <p>Council is satisfied that the proposed modifications result in development that is substantially the same as the development approved under DA10.2016.38.1 and that the proposed modifications are a relatively minor change to the operations of the development.</p>

Reports submitted are out of date	2	<p>The submissions noted that some of the reports submitted with the modification were not current.</p> <p>The following reports submitted with the Modification Application were updated to reflect the proposed modification:</p> <ul style="list-style-type: none"> • Biodiversity Assessment Report (December 2022) • Noise Impact Assessment (July 2022) • Air Quality Impact Assessment (November 2022) • Traffic Impact Assessment (September 2022). A Supplementary Integrated Transport Assessment was prepared in May 2024. • Aboriginal Cultural Heritage Due Diligence Assessment (December 2022) <p>The following supporting documents were not updated:</p> <ul style="list-style-type: none"> • Waste Receival, Handling and Compost Management Plan • Rehabilitation and Landscape Management Plan • Surface Water and Sediment Management Plan <p>The applicant has requested that <i>“updates to the WRHCMP, RLMP and SMP be included as conditions of consent. Oberon Earthmoving then proposes that the updated management plans be approved by Oberon Council prior to construction”</i>.</p> <p>It is considered that relevant reports required to assess the impacts of the proposed modification on the environment and the amenity of the locality have been provided. It is common practice to impose conditions relating to the development of various management plans prior to the commencement of works. Appropriate conditions are recommended.</p>
Lack of data on how current operations are monitored	1	<p>The submission stated that information about current operations would assist in understanding the impacts of the proposed modification.</p> <p>The applicant has provided an annual return to the Environmental Protection Authority for Licence No. 21098 for the reporting period ending 3 February 2024, along with a recent noise monitoring assessment and monthly dust deposition monitoring results. These reports demonstrate that the current operation is being undertaken within the relevant guidelines.</p>
Potential for further expansion of quarry	1	<p>The submission questioned whether there would be further modifications to expand the quarry operations.</p> <p>Any further expansion of the quarry would be the subject of a new development application or modification application.</p>
Suitability of site.	1	<p>The submission questioned whether the site was suitable for the use given the proximity to residential properties.</p> <p>The applicant has advised as follows:</p>

		<p><i>The Quarry is located within a transitional environment surrounded by agricultural activities, forestry, and low-density residential development. The site is considered suitable for the Proposed Modification for the following reasons:</i></p> <ul style="list-style-type: none"> <i>• The site contains extensive gravel resources, waste importation and processing facilities and composting facilities, and is located within proximity to markets for these resources and products.</i> <i>• The site has been used for the extraction of gravel and the importation of waste materials including raw mulch, treated drilling mud, and excavated natural material since approval was granted in 2018.</i> <i>• The Proposed Modification is located on land largely disturbed by previous agricultural activities and involves only minor additional disturbance to native vegetation communities and fauna habitat.</i> <i>• The Proposed Modification is compatible with surrounding land uses and can co-exist with these existing uses.</i> <i>• Topography, planted and remnant vegetation, and constructed bunds provide some visual shielding from the surrounding area.</i> <i>• Suitable safe access to Sewells Creek Road is provided from the Quarry without impacting adversely on the local road network.</i> <p>For the reasons outlined by the applicant, the site is considered suitable for the proposed use and the proposed modification is not considered to be a significant expansion of current approved activities.</p>
Water use and Impact on groundwater	1	<p>The submission questioned the water usage of the proposal and how the modification would impact on groundwater.</p> <p>Council considers that the following responses from the applicant satisfactorily addresses the concerns regarding water use and impact on groundwater:</p> <p><i>At the time the SEE was drafted, it was expected that Oberon Earthmoving would have secured a 50 ML Water Access Licence. Unforeseen delays in securing the Water Access Licence have occurred since then. Oberon Earthmoving is currently in the process of securing a 50 ML Water Access Licence, a copy of which will be provided to Council prior to construction.</i></p> <p><i>It is also reiterated, as per the SEE (Umwelt, 2023), that water extraction will not be increased through the Proposed Modification, and water management will be improved through a Pollution Control Dam (PCD) serving the following functions:</i></p> <ul style="list-style-type: none"> <i>• For the storage of water which accumulates within the completed extraction area under high rainfall, with a nominal capacity of 16 ML.</i> <i>• For the collection of water diverted from upslope of the new pad and delivered to the PCD via a rock lined spillway.</i>

		<ul style="list-style-type: none"> • <i>As a secondary control for water contained and stored on the relocated composting area.</i> <p>The development currently does not access groundwater and adequate water for operational use is available in an existing tank supplied by existing dams. Should a water access licence be approved, the operator will be required to comply with the conditions of that licence.</p> <p>In relation to potential impact on groundwater, the type of waste materials to be stored and processed on site are not of a kind likely to cause pollution of groundwater. In any case, the proposed pollution control dam will capture any potential contaminants from the waste materials.</p>
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5. CONCLUSION

This modification application has been considered in accordance with the requirements of the EP&A Act and the 2021 EP&A Regulation as outlined in this report. Following a thorough assessment of the relevant planning controls, issues raised in submissions and the key issues identified in this report, it is considered that the application can be supported.

The original consent approved an extractive industry and waste management facility on Lot 2 DP 112479 at 50 Sewells Creek Road, Oberon. The proposed modification seeks to increase the extraction and production rates and introduce new waste streams to the site. A new area for the waste storage and processing activities will be developed adjacent to the quarry by the filling of a gully with overburden from the quarrying activities. A new pollution control dam will be constructed downstream of this new area. Five trees will be removed in the area of new works. Heavy vehicle movements are also proposed to be increased.

The application was placed on public exhibition from 14 September 2023 to 13 October 2023, with 8 submissions received. These submissions raised issues relating to environmental, health and amenity impacts (eg. dust, noise, odour, biodiversity and visual impacts), traffic impacts from increased heavy vehicle movements and matters relating to the submission and assessment of the proposed modification.

The key issues associated with the proposal identified in the assessment of the application included:

1. *Meeting the 'Substantially the same development' test* - The applicant has provided legal advice that the proposed development is substantially the same as the approved development and is therefore correctly submitted as a modification application for the following key reasons:
 - *There is no proposed change to the fundamentals of the development as it is authorised under the 2016 Consent – the site will still operate for the purpose of an "extractive industry and waste management facility";*
 - *There is no proposed change to the extraction area; and*
 - *While there is an intensification of the use in respect of the extraction rate and production rate (which in turn lead to an increase in truck movements per day), there is a net decrease in the importation of material for the purpose of resource recovery.*

Council is satisfied that the proposed modifications result in development that is substantially the same as the development approved under DA10.2016.38.1 and that the proposed modifications are a relatively minor change to the operations of the development.

2. *Environmental, health and amenity impacts* - The applicant has provided relevant technical reports assessing the environmental, health and amenity impacts of the proposed modification. The reports recommend a range of mitigation measures to minimise such impacts. Where existing conditions of consent do not adequately address the potential impacts, new conditions are recommended to be included on the development consent.
3. *Traffic Impacts* – The Modification application was referred to Transport for NSW who advised that no objection is raised to the proposed modification subject to Council being satisfied of certain matters. Council Technical Services officers also reviewed the application and the letter from Transport for NSW and raised no objections to the modification due to no significant impacts on Abercrombie Rd, provided that the relevant guidelines mentioned in the Transport for NSW letter are complied with. The guidelines are included in the modified conditions of consent.

It is considered that the key issues have been resolved satisfactorily in the recommended draft conditions at **Attachment A**.

Based on the assessment, it is considered that the site is suitable for the proposed modification and that the development as modified will not have significant impacts on the locality.

6. RECOMMENDATION

It is recommended:

- That the Modification Application MOD/DA No 10.2016.38.2 for extractive industry and waste management facility at 50 Sewells Creek Road, Oberon (Lot 2 DP 1112479) be APPROVED pursuant to Section 4.56(1) of the *Environmental Planning and Assessment Act 1979* subject to the draft conditions of consent attached to this report at Attachment A; and
- Pursuant to Clause 118 of the *Environmental Planning and Assessment Regulation 2021*, a notice of determination is to be prepared by Council following the Panel's determination of this modification application.

The following attachments are provided:

- Attachment A: Draft Conditions of consent
- Attachment B: Development Reports and Plans (all included in Planning Portal)

ATTACHMENT A – DRAFT CONDITIONS OF CONSENT**GENERAL****1. General terms of approval**

The development shall be carried out in accordance with the approved stamped plans and supporting documents set out in the table below, except where modified by any conditions of this consent.

In the event of any inconsistency between conditions of this development consent and the approved plans and supporting documents, the conditions of this development consent prevail. If there is any inconsistency between the plans and documentation referred to in the table, the most recent document shall prevail to the extent of the inconsistency.

Document	Author	Date
Environmental Impact Statement	R.W.Corkery & CO.PTY.LTD	November 2017
Biodiversity Impact Assessment Supplementary Report	Danny O'Brien Environmental Assessments Pty Ltd	October 2016
Rehabilitation & Landscaping Management Plan	R.W. Corkery & Co. Pty. Ltd	November 2018
Statement of Environmental Effects	Umwelt	4 May 2023
Air Quality Impact Assessment	Jacobs	18 November 2022
Noise Impact Assessment	Muller Acoustic Consulting	4 July 2022
Biodiversity Assessment Report	Area Environmental and Heritage Consultants	1 December 2022
Supplementary Integrated Transport Assessment	Pavey Consulting Services	16 May 2024
Aboriginal Cultural Heritage Due Diligence Assessment	Area Environmental and Heritage Consultants	1 December 2022

Reason: To confirm and clarify the terms of Council's approval.

2. Extraction limits

The total amount of material extracted from the site in accordance with this consent shall not exceed 5,000,000 tonnes. The total annual extraction from the site shall not exceed ~~150,000~~ **200,000** tonnes (measured from the date of commencement of this consent). The combined production of all products will not exceed 250,000 **315,000** tonnes per annum.

Reason: To ensure compliance with the application and approved plans and to confirm and clarify the terms of Council's approval.

3. Transportation

- a) The applicant must ensure that the development does not generate more than ~~50~~ **90** truck loads/~~100~~ **180** movements per weekday (Monday to Friday)
- b) The applicant must ensure that the development does not generate more than ~~30~~ **45** truck loads/~~60~~ **90** movements on Saturday.
- c) The applicant must ensure that the haul route for trucks accessing the quarry and transporting extracted aggregate material shall be in accordance with the approved truck code of conduct.
- d) The applicant must ensure that an independently auditable system is in place to monitor daily truck movements. This may include weighbridge records, traffic counters, GPS records or any other reasonably suitable method to the satisfaction of the Council.
- e) The applicant must provide to Council within 14 days of any request by Council a summary of truck movements.
- f) The quarry is restricted to a maximum of 16 haulage vehicle movements in a peak hour (up to 8 in, 8 out).**
- g) The design vehicle is restricted to a 26m B-doubles or PBS Level 2B vehicle.**

Reason: To confirm and clarify the terms of Council's approval.

3A Traffic Management Plan

Prior to the commencement of works associated with the approved modifications under DA10.2016.38.2, a Traffic Management Plan (TMP) including a revised Driver Code of Conduct must be prepared in consultation with Council and the principal contractor(s) and endorsed by Council. The Plan must be prepared by a suitably qualified person.

The TMP is to be implemented for the life of the development and is to be reviewed and updated in response to any changes in operating conditions. Copies of relevant sections of the TMP and Driver Code of Conduct must be provided to contractors and employees as part of the site induction.

The Traffic Management Plan (TMP) and Driver Code of Conduct is to outline measures to manage traffic related issues associated with all phases of the development (e.g. deliveries, construction, operation, maintenance, decommissioning), any construction or excavated materials, machinery and personnel involved.

The TMP is to detail the potential impacts associated with the development, the measures to be implemented, and the procedures to monitor and ensure compliance. The TMP is to address (but not be limited to):

- a) Details of origin, destination, quantity, size and frequency of vehicle movements associated with the development including those accessing and egressing the site.
- b) Timings and staging of operation of the development.
- c) Existing and projected background traffic, peak hour volumes and types and their interaction with projected development related traffic.
- d) Loads, weights, lengths and number of movements of haulage and construction related vehicles including Over Size Over Mass (OSOM) loads.

- e) The management and coordination of construction and staff vehicle movements to the site and measures to limit disruption to other motorists, including special OSOM management measures.
- f) Scheduling of haulage vehicle movements to occur outside of daily commuter peak periods, local special event times, school bus (both in rural and town areas) and school zone operating hours.
- g) Active communication procedures for traffic such as school buses or haulage vehicles from other quarries, or near potential safety hazards.
- h) Scheduling of heavy vehicle movements to minimise convoy or platoon lengths.
- i) Consideration to minimise the route length for road transport, particularly for OSOM loads.
- j) Any OSOM movements will be the subject of separate permits through the National Heavy Vehicle Regulator.
- k) Mitigation of local climate conditions that may affect road safety for vehicles used during construction, operation and decommissioning of the facility (e.g. scheduling during daylight hours, or outside of fog, wet weather, ice or snow).
- l) Transport of hazardous materials in accordance with the relevant transport codes.
- m) Specific mitigation measures along the approved transport routes. Road and intersection improvement works are to be completed prior to the commencement of haulage under this DA unless specifically approved otherwise in the conditions of consent.
- n) Consultation and engagement with affected stakeholders, including regulatory authorities, landowners, businesses, bus operators and so forth.
- o) Policies and procedures for addressing concerns raised by the community on project related matters.
- p) Dust suppression and mitigation measures on public roads and within the site boundaries.
- q) Toolbox meetings to facilitate continuous improvement initiatives and incident awareness.
- r) Truckloads are to be covered at all times when being transported, to minimise dust and loss of material onto roads which may form a traffic hazard.
- s) Measures to ensure responsible fatigue management and discourage driving under the influence of alcohol and/or drugs, dangers of mobile phone use and driving to the conditions, and adherence to posted speed limits.

Reason: To ensure the environmental impacts of heavy haulage of adequately managed.

4. Code of conduct

~~Prior to the commencement of the extractive industry the applicant is to prepare and submit to Council a code of conduct that will be applied to the transport of materials from the site.~~
The **revised** code of conduct is to be applied to all heavy vehicle operators that access the development, including haulage and delivery vehicles. All drivers shall be required to sign a register (or similar) acknowledging and accepting the code of conduct. The code of conduct is to include:

- (a) A map detailing the approved haulage route highlighting critical locations and prohibiting use of Mayfield Road (with the exception of deliveries on Mayfield Road), safety issues and other relevant traffic/transport issues,
- (b) Procedures and/or safety initiatives for trucks travelling through residential precincts, school zones and roads where school bus pick up/set down areas are located,
- (c) Procedures to minimise noise and dust emissions,
- (d) Procedures to ensure all loads are covered prior to leaving the quarry and that all extractive material is swept/removed from external truck/trailer components, and
- (e) Procedure for complaints resolution and disciplinary action.

When preparing the code of conduct the applicant must consult with the owners of Munjarra and Mayfield Gardens in relation to the content of the code of conduct and consider in good faith and incorporate into the code of conduct any reasonable submissions.

Reason: To ensure the environmental impacts of heavy haulage of adequately managed.

5. Protection of amenity

The development is to be conducted in a manner that will not, in so far as is reasonably practicable, interfere with the amenity of the locality by reason of the emission of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit, oil, or by causing interference to television or radio reception or otherwise.

Reason: To ensure the development does not unreasonably impact on the amenity of the surrounding area.

6. Business identification signage

A business identification sign is to be erected adjacent to the entrance gate of the subject site containing the name of the quarry operator and the phone number, postal address and email address of the permanent site contact so that complaints or any other issues relating to operation of the quarry can be received and addressed in a timely manner. The erection or installation of any other advertising signage is prohibited.

Reason: To provide relevant contact details to the public and restricts advertising.

PRIOR TO COMMENCEMENT OF OPERATIONS UNDER THIS CONSENT

7. Access improvements

Prior to the commencement of the extraction and transportation of materials, the applicant must obtain approval for the undertaking of road safety improvement works in Sewells Creek Road at the entrance to the quarry site.

The applicant shall obtain a construction certificate from the principal certifying authority for the proposed improvements and undertake the necessary upgrade works as approved prior to the commencement of the extractive industry.

An application for construction certificate and approval under section 138 of the Roads Act 1993 is to be submitted to Council supported by the following:

- a) Vehicle access servicing the development must be upgraded and maintained in accordance with Austroads Guide to Road Design: Part 4 Figure 7 standard rural property access. The design of the vehicle access needs to ensure that vehicles exiting the site approach Sewells Creek Road at or very near to perpendicular.

- b) A Basic Right (BAR) turn treatment constructed in accordance with Austroads Guide to Road Design: Part 4 Figure 7 Type BAR must be provided adjoining the westbound travel lane in Sewells Creek Road opposite the proposed vehicle access.
- c) A Basic Left turn (BAL) and acceleration lane constructed in accordance with Austroads Guide to Road Design must be provided adjoining the eastbound travel lane in Sewells Creek Road adjacent to the proposed vehicle access.
- d) Safe Intersection Sight Distances (SISD) requirements outlined in the Austroads Guide to Road Design: Part 4A must be provided at the vehicle access to the development from Sewells Creek Road.
- e) Council must be consulted with and approve for the installation of “Trucks Turning” signs (W5205) on Sewells Creek Road at each approach to the extractive industry/waste management facility vehicle access. The signs must be within 230 – 280 metres either side of the access and removed upon closure of the development.
- f) To provide for suitable storage capacity for the largest class of vehicle accessing the extractive industry/waste management industry, any gate, grid or similar structure installed in the access must be setback appropriately, 20 metre for rigid truck and dog trailer off Sewells Creek Road.
- g) A Traffic Management Plan prepared by a suitably qualified person in accordance with Australian Standard 1742 and the RTA Traffic Control at Work Sites Manual 2010, Note: The requirements of the Roads and Traffic Authority are to be incorporated in the existing design.

Reason: To ensure compliance with the requirements of Section 81A of the Environmental Planning and Assessment Act 1979 and to provide sufficient safe access to the site without impacting on road safety or traffic movements in accordance with Roads & Maritime Services (RMS) Guidelines

8. Entrance gate setback

Prior to the commencement of the extractive industry, the existing entrance gate is to be setback sufficiently to allow storage capacity from the carriageway for the largest articulated vehicle required to access the site.

Reason: To provide sufficient safe access to the site without impacting on road safety or traffic movements.

9. Notification of commencement

The applicant is to provide written notification to Council of the intended date of commencement of extractive operations under this consent no less than two (2) weeks prior to commencement.

Reason: To inform Council of commencement of operations.

10. Hours of Operation

The hours of operation of the extractive industry are limited to the hours specified in the following table.

Days	Hours
Construction activities	
Monday to Friday	7.00am to 6.00pm

Saturday	8.00am to 1.00pm
Sunday & Public Holiday	No works permitted
Operational activities	
Monday to Friday	7.00am to 6.00pm
Saturday*	8:00am – 2:00pm
Sunday & Public Holiday	No works permitted

* There will be no blasting or drilling on Saturdays

* The operator of the quarry will not carry out any operations (including quarrying or transportation or acceptance of materials) on Easter Saturday in any year. The operator of the quarry will cease quarrying operations (including blasting, drilling, ripping and crushing) but may transport materials out of the site and accept materials onto the site on up to 9 other Saturdays in a calendar year when the owner of "Munjarra" so requests provided that the request is given with two weeks' notice.

Reason: To minimise impacts on the adjoining properties and ensure the operations of the development are consistent with the application and approved plans.

11. Importing and accepting waste materials

Prior to commencement of operations, the applicant must prepare to the satisfaction of Council and the NSW EPA a "Waste Receiving, Handling and Compost Management Plan". The plan is to include, among other matters specified by Council and/or the NSW EPA:

- i. A chain of custody procedure which documents the importing and acceptance of any waste materials including material test results undertaken in accordance with conditions of an in force environment protection licence issued by the NSW Environmental Protection Authority.
- ii. All chain of custody documentation must ensure the supplier can identify the source, point of origin and volume of the material along with confirmation that it conforms to Protection of the Environment Operations (Waste) Regulation 2014, Part 9 and published Resource Recovery Orders issued under Part 9 of Protection of the Environment Operations (Waste) Regulation 2014 (The Regulation). The waste is not to include any material that is classified as a trackable waste as defined by the Regulations.

The maximum importation of waste for stockpiling and sale will be ~~raw mulch~~ **organic (green) waste** (up to ~~25,000~~ **45,000** tonnes per annum), treated drilling mud (up to ~~60,000~~ **15,000** tonnes per annum), **waste concrete (up to 45,000 tonnes per annum, plasterboard (up to 10,000 tonnes per annum)** and excavated natural material (up to 50,000 tonnes per annum).

'For the purposes of this Development Approval, and the EIS, terms 'raw mulch', 'treated drilling mud' and 'excavated natural material' have the same meaning as those terms are defined under the Protection of the Environment Operations (Waste) Regulation 2014.'

Reason: To clarify the terms of the approval.

12. Waste

- a) Composting activities must be undertaken in accordance with the EPA guideline document "Environmental Guidelines: Composting and Related Organics Processing Facilities (DEC, July 2004)

b) General solid waste (putrescible) (as defined in the Protection of the Environment Operations Act 1997) is prohibited from being received onto the site.

Reason: To ensure the development is undertaken in accordance with relevant guidelines and to clarify the terms of the approval.

13. Prohibited Waste

Engineered wood products including particle board and fibre board are prohibited from being received as waste material to the site. These products are waste types which are specifically excluded from the resource recover orders that the applicant has identified as operating under in the preparation of compost and mulches.

Reason: To clarify the terms of the approval.

14. EPA General Terms of Approval

a) Except as expressly provided by these General Terms of Approval (GTAs) or by any conditions of consent granted by Oberon Council or the conditions of an in-force environment protection licence issued by the Environmental Protection Authority, works and activities must be carried out in accordance with the proposal contained in:

- Development Application 10.2016.38.1 submitted to Oberon Council, and

Any other additional information provided to council.

b) Should any conflict exist between the above mentioned documents, the most recent document or revision supersedes the conflict, except where superseded by any conditions of approval issued by Council or the conditions of an in-force environment protection licence issued by the Environmental Protection Authority.

c) The proponent must apply for and hold an in-force environment protection licence issued by the Environmental Protection Authority prior to the proponent carrying out any scheduled activities under the Protection of the Environment Operations Act 1997 as proposed.

d) The following management plans must be prepared and implemented within 3 months of development consent being granted and prior to commencement of any surface disturbance:

☐ Surface water and sediment management plan. This plan must be prepared in accordance with the requirements for such plans outlined in the document "Managing Urban Stormwater: Soils and Construction (Landcom, 2004) and "Managing Urban Stormwater: Soils and Construction – Volume 2E Mines and Quarries (DECC, 2008):

☐ Acoustic management plan (including steps that will be taken to minimise acoustic impacts on the residences identified on Figure 4.1 of the EIS)

☐ Air Quality management plan (including impacts and controls for dust and odour)

☐ Waste handling and compost management plan (incorporating all requirements contained within the EPA document – "Environmental Guidelines: Composting and Related Organics Processing Facilities (DEC, July 2004)") and

☐ Blast Management Plan which will include details of blasting methods and which will provide for:

☐ a maximum of one blast per day;

☐ for blasting between the hours of 10am and 4pm Monday to Friday only;

☐ the written notification of proposed blasting to residential receptors R2, R4, R6, R9, R11, R12, R13, R16, R17, R18, R19 (at the receptor's nominated notification address) at least 48

hours before any blasting is to occur, such notice to be provided by email where that is practicable,

e) Construction activities related to the proposal must only be undertaken during the following hours:

- ☐ 7am to 6pm, Monday to Friday
- ☐ 8am to 1pm, Saturday; and
- ☐ At no time on Sunday's or Public Holidays.

f) Except where superseded by the condition above, construction activities must be undertaken in accordance with the 'Interim Construction Noise Guidelines' (DECC, 2009) or any revision.

Operational activities related to the proposal may only be undertaken during the following hours:

- ☐ 7.00am to 6.00pm, Monday to Friday;
- ☐ 8:00am to 2:00pm on Saturdays; and
- ☐ At no time on Sunday or Public Holiday's

g) The proponent must have in place and operate a calibrated weighbridge to record the volume of all waste brought on to the premises

h) Trucks entering and leaving the premises that are carrying loads must be covered at all time, except during loading and unloading

i) The internal quarry access/haulage road must be maintained in a condition that prevents or minimises the emission into the air of air pollutants (which includes dust).

j) All trucks and mobile plant operating within the premises must be fitted (where there is a requirement for such devices to be fitted under the Work Health and Safety legislation) with broad-spectrum reversing alarms. The reversing alarms will be set to emit multiple frequencies attenuated above 4000Hz with a sound power level not exceeding 107dB on large machinery and 97dB on smaller vehicles and equipment. The sound power levels of the reversing alarms will be audited annually, or in accordance with the acoustic management plan, and immediately replaced or remediated where noise exceeds design specification.

k) All waste storage and composting areas must be isolated from the balance of the quarry premises to prevent both run-on and run-off of surface water.

Reason: To ensure the development is undertaken in accordance with the requirements of the Environmental Protection Authority.

14A. Environmental Protection Licence

Prior to the commencement of works associated with the approved modifications under DA10.2016.38.2, the applicant must obtain from the Environmental Protection Agency a revised Environmental Protection Licence for the site.

Reason: To comply with the requirements of the Protection of the Environment Operations Act 1997.

14B. Air Quality Management Plan

Prior to the commencement of works associated with the approved modifications under DA10.2016.38.2, the Air Quality Management Plan for the site must be updated

to incorporate the recommendations of the Air Quality Impact Assessment by Jacobs dated 18 November 2022. The updated Plan must be provided to the Environmental Protection Authority with the application to vary the Environmental Protection Licence.

Reason: To ensure the site is operated in a manner that minimise air quality impacts.

14C. Acoustic Management Plan

Prior to the commencement of works associated with the approved modifications under DA10.2016.38.2, the Acoustic Management Plan for the site must be updated to incorporate the recommendations of the Noise Impact Assessment by Muller Acoustic Consulting dated 4 July 2022. The updated Plan must be provided to the Environmental Protection Authority with the application to vary the Environmental Protection Licence.

Reason: To ensure the site is operated in a manner that minimise acoustic impacts.

14D. Bush Fire Emergency Management and Operations Plan

Prior to the commencement of works associated with the approved modifications under DA10.2016.38.2, a Bush Fire Emergency Management and Operations Plan for the site shall be prepared in accordance with the requirements of Planning for Bushfire Protection 2019. The Plan must be prepared in consultation with the Rural Fire Service.

Reason:- To meet the requirements of; section 4.14 of the Environmental Planning and Assessment Act 1979, the NSW Rural Fire Service Planning for Bushfire Protection Guidelines.

14E. Asset Protection Zone

From the start of building works and for the life of the development, the northern and western edges of the proposed waste storage and processing area must be managed as an inner protection area (IPA) for a minimum distance of 10m.

When establishing and maintaining an IPA the following requirements apply:

- tree canopy cover should be less than 15% at maturity;
- trees at maturity should not touch or overhang the building;
- lower limbs should be removed up to a height of 2m above the ground;
- tree canopies should be separated by 2 to 5m;
- preference should be given to smooth barked and evergreen trees;
- large discontinuities or gaps in vegetation should be provided to slow down or break the progress of fire towards buildings;
- shrubs should not be located under trees;
- shrubs should not form more than 10% ground cover; and
- clumps of shrubs should be separated from exposed windows and doors by a distance of at least twice the height of the vegetation.
- grass should be kept mown (as a guide grass should be kept to no more than 100mm in height); and
- leaves and vegetation debris should be removed.

Reason:- To meet the requirements of; section 4.14 of the Environmental Planning and Assessment Act 1979, the NSW Rural Fire Service Planning for Bushfire Protection Guidelines.

14F. Waste Receival, Handling and Compost Management Plan

Prior to the commencement of works associated with the approved modifications under DA10.2016.38.2, the Waste Receival, Handling and Compost Management Plan shall be updated to address the additional waste streams proposed and biosecurity. The updated Plan must be provided to the Environmental Protection Authority with the application to vary the Environmental Protection Licence.

Reason: To ensure the approved management plan is appropriately updated.

14G. Rehabilitation and Landscape Management Plan

Prior to the commencement of works associated with the approved modifications under DA10.2016.38.2, the Rehabilitation and Landscape Management Plan shall be updated to address the final rehabilitation and landscaping of the expanded area for waste storage and compost and associated pollution control dam and sediment basin. The updated Plan must be provided to the Environmental Protection Authority with the application to vary the Environmental Protection Licence.

Reason: To ensure the approved management plan is appropriately updated.

14H. Surface Water and Sediment Management Plan

Prior to the commencement of works associated with the approved modifications under DA10.2016.38.2, the Surface Water and Sediment Management Plan must be updated to address the new area of works. The updated Plan must be provided to the Environmental Protection Authority with the application to vary the Environmental Protection Licence.

Reason: To ensure the approved management plan is appropriate updated.

14I. Clearing of Vegetation

The clearing of vegetation for the new waste storage and processing area must be undertaken in accordance with the recommendations of the Biodiversity Assessment Report by Area Environmental and Heritage Consultants dated 1 December 2022 and condition 30 of this consent.

Reason: To ensure clearing of vegetation is undertaken in a manner that minimises impacts on the environment.

15. Notification of commencement

The applicant is to provide written notification to Council of the intended date of commencement of the expanded extractive operations and commencement of the waste management facility under this consent no less than two (2) weeks prior to commencement.

Reason: To inform Council of commencement of operations.

16. Sediment and erosion control

Prior to the commencement of extractive operations, appropriate sediment and erosion controls are to be implemented and functional. The sediment and erosion control measures must remain in place and be functional during the life of the activity.

Reason: To protect the surrounding environment.

17. Rehabilitation plan implementation

Landscape Preparation Phase 1 as detailed in the Rehabilitation and Landscape Management Plan (including Sheet No. RP 01 – RP 11, Revision 1, dated 9 November 2018) must be planted in the first spring or autumn after commencement and completed within twelve months of the notice of commencement being given in accordance with condition 9 of this consent.

Reason: To ensure the site is rehabilitated and implemented in accordance with the approved plans and documentation in a time appropriate manner.

18. Annual return – Road Maintenance Levy

The operator of the extractive industry approved in this consent is to submit to Council an annual return within two (2) weeks of twelve (12) months following the commencement of quarrying works approved under this consent. The annual return will be applied retrospectively from 22 August 2015 as quarry works did not cease.

The annual return is to quantify the amount of material (tonnes) removed from the site and is to be submitted with payment in arrears of recurrent contributions towards road maintenance levied in accordance with the Oberon Development Contributions and Water Management Works Plan (Amendment) 2004.

The annual recurrent levy is to be calculated based on an amount of 15 cents (indexed annually on 1 July) per tonne of extracted material multiplied by 1 (the length in kilometres of the haulage route from the quarry entrance to the State controlled Abercrombie Road). The recurrent levy paid annually is to be reconciled with the amount of extracted material removed from the site as reported in the annual return.

Reason: To ensure compliance with the approved plans, documentation and extraction amount and to enable the payment of a recurrent road maintenance levy in accordance with Council's contributions plan.

19. Annual return

The operator is to report to Council on an annual basis within two (2) weeks of each twelve (12) month period following the commencement of site operations approved under this consent.

The return will include:

- ☐ the tonnages of material received, processed and dispatched from the site over the previous twelve month period;
- ☐ details of any complaints collected or the register required by to be maintained under Condition 26; and
- ☐ details of any non-compliances with these conditions of consent, including what steps have been taken to avoid future breaches.

Reason: To ensure compliance with the consent and waste requirements.

20. Operation of plant and equipment

The applicant is to ensure that all plant and equipment used on site is maintained in a proper and efficient condition, in a safe and working order; and operated in a proper and efficient manner.

Reason: To protect and minimise impacts on the surrounding environment.

21. Aboriginal Heritage

That the areas containing the lithic scatter (see Aboriginal Heritage Due Diligence Assessment by Environmental Assessments Pty Ltd) be fenced (12m x 7m) to prevent vehicles from entering this area to protect the stone artefacts present within that area. Appropriate signage should be placed on the fence stating 'conservation area-keep put'. No mention should be made to the presence of any Aboriginal sites or relics at the lithic scatter site.

Reason: To ensure cultural heritage is understood and protected.

22. Cultural heritage awareness

The applicant is to provide all plant operators that undertake initial ground disturbance within the site, with a cultural heritage induction to cover legislative requirements regarding Aboriginal cultural heritage, the importance of Aboriginal cultural heritage, the location of and protection measures applying to the site within the quarry, an introduction on how to identify Aboriginal objects and the procedure to be followed in the event that suspected Aboriginal material is uncovered within the site.

Reason: To ensure cultural heritage is understood and protected.

23. Cultural heritage management

If Aboriginal cultural objects or human remains are uncovered during extractive works, all works must cease in the immediate vicinity to prevent any further impacts on the object(s) or remains. Notification is to be made to the NSW Police, the Aboriginal community and the Office of Environment and Heritage as appropriate. Works are not to resume until written authorisation from the NSW Police and/or Office of Environment and Heritage is received.

Reason: To ensure appropriate action is taken upon discovery of Aboriginal cultural heritage items and/or human remains.

24. Groundwater

Should groundwater be intercepted at any time during the operational works of the extractive industry, all works are to cease immediately and Council and the Department of Primary Industries – Water notified. Works are not to resume until written authorisation is received from DPI-Water.

Reason: To protect and minimise impacts on the surrounding environment.

25. Complaints register

During the operational phases of the extractive and waste management facility activity, the applicant is to record details of all complaints received in a Complaints Register. The Register shall record, but not necessarily be limited to:

- (a) The date and time of the complaint;

- (b) The means by which the complaint was made (telephone, mail or email);
- (c) Any personal details of the complainant that were provided, or if no details were provided, a note to that effect;
- (d) The nature of the complaint;
- (e) Any action(s) taken by the Applicant in relation to the complaint, including any follow up contact with the complainant; and
- (f) If no action was taken by the Applicant in relation to the complaint, the reason(s) for no action being taken.

The Complaints Register shall be made available for inspection by the Council upon request.

Reason: To ensure complaints in relation to the proposed development are appropriately addressed.

26. Limit of clearing and quarry operations

No works, activities or vegetation clearing shall occur outside of the project site boundary identified within the approved Environmental Impact Statement.

Reason: To ensure the development is contained within the approved area of operations.

27. Toilet facilities

Toilet facilities are to be provided at the work site at all times at the rate of one closet for every 20 persons employed at the site. If temporary closet accommodation is proposed, each closet must:

- (a) be at least 1050 mm wide, 1350 mm long and 2100 mm high (measured internally),
- (b) have a hinged door capable of being fastened from both inside and outside,
- (c) have sufficient walls and a roof to ensure privacy, each constructed of material that is weatherproof,
- (d) have a floor constructed of a material that is rigid and impervious,
- (e) be provided with a suitable receptacle for, and an adequate supply of, deodorising or fly repelling fluid, and
- (f) comply with any relevant requirements of the Building Code of Australia.

Reason: To ensure adequate facilities are provided for workers.

28. Documentation

A copy of the approved documents and plans relating to this consent are to be kept by the quarry and waste management facility operator at all times and shall be made available for inspection upon request by Council or an authorised government agency.

Reason: To ensure the relevant approval documents are available for inspection.

29. Protection of flora and fauna

Vegetation clearing and removal shall be minimised and limited to the proposed project site boundary and no damage should occur to retained vegetation. Exclusion tape and signage

should be installed on site to ensure that machinery does not enter the vegetated areas to be retained that may otherwise damage the remaining vegetation not intended for clearing.

During any authorised clearing works, appropriate protection procedures are to be implemented including (but not limited to):

- (a) Engagement of a suitably qualified and experienced spotter-catcher to undertake an initial assessment of the area to be cleared for threatened species and to guide and inspect the felling of any hollow bearing trees,
- (b) Checking all trees for the presence of nesting or roosting fauna immediately before felling or removal.
- (c) The appropriate care taken during the removal of any identified hollow bearing trees to enable animals to vacate,
- (d) Avoid leaving felled trees on the ground unmanaged for more than two weeks to prevent creation of habitat for hollow dependent species, and
- (e) Salvage tree trunks, major limbs and minor branches as appropriate for use in the rehabilitation of disturbed areas and the biodiversity offset area.

Reason: To minimise and mitigate impacts on the natural environment during vegetation clearing works.

30. Light Pollution Management

Outside of the approved hours of operation, all lighting used on the site shall be extinguished or, if required to be maintained for Work Health and Safety reasons, is to be directed and managed such that no illumination is visible from residences R16, R17, R18 and R19.

Reason: To minimise and mitigate visual impacts.