

# **20 August 2025**

# **Development Assessment Panel**

## **Business Paper**

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**2:00 PM Wednesday**

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**Port Macquarie-Hastings Council**  
**17 Burrawan Street, Port Macquarie**  
**Function Room**

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# DEVELOPMENT ASSESSMENT PANEL SUB COMMITTEE CHARTER

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Adopted: Ordinary Council 2022 09 15

## 1.0 OBJECTIVES

To assist in managing Council's development assessment function by providing independent, transparent and expert determinations of development applications that fall outside of staff delegations.

## 2.0 KEY FUNCTIONS

- To review development application reports and conditions. The focus of the Panel's review is to be on those issues raised in submissions received following exhibition of development applications;
- To determine development applications where there are 3 or more unique submissions or where an application is outside of staff delegations;
- To refer development applications to Council for determination where necessary;
- To provide a forum for objectors and applicants to make submissions on applications before the Development Assessment Panel(DAP);
- To maintain transparency in the determination of development applications.

### Delegated Authority of Panel

Pursuant to Section 377 of the Local Government Act, 1993 delegation to:

- Determine (approve or refuse) development applications under Part 4 of the Environmental Planning and Assessment Act 1979 having regard to the relevant environmental planning instruments, development control plans and Council policies.
- Vary, modify or release restrictions as to use and/or covenants created by Section 88B instruments under the Conveyancing Act 1919 in relation to development applications being considered by the panel.
- Determine Koala Plans of Management under State Environmental Planning Policy (Biodiversity and Conservation) 2021 associated with development applications being considered by the Panel.

Noting the trigger to escalate decision making to Council as highlighted in section 5.2.

## 3.0 MEMBERSHIP

### 3.1 Voting Members

- 3 independent external members will be selected for each scheduled DAP meeting from an appointed pool of members. One of the independent external members to be the Chairperson. Independent members will be rostered onto meeting on a rotational basis where possible.
- Group Manager Development Services (alternate - Director Community, Planning and Environment or Development Assessment Planning Coordinator).

The independent external members shall have expertise in one or more of the following areas: planning, architecture, heritage, the environment, urban design, economics, traffic and transport, law, engineering, government and public administration.

### **3.2 Non-Voting Members**

Not applicable.

### **3.3 Obligations of members**

- Members must act faithfully and diligently and in accordance with this Charter.
- Members must comply with Council's Code of Conduct.
- Except as required to properly perform their duties, DAP members must not disclose any confidential information (as advised by Council) obtained in connection with the DAP functions.
- Members will have read and be familiar with the documents and information provided by Council prior to attending a DAP meeting.
- Members must act in accordance with Council's Workplace Health and Safety Policies and Procedures
- External members of the Panel are not authorised to speak to the media on behalf of Council. Council officers that are members of the Committee are bound by the existing operational delegations in relation to speaking to media.

### **3.4 Member Tenure**

The independent external members will be appointed for the term of 4 years or until such time as an expression of interest process to source panel members is completed for the proceeding 4 year term.

### **3.5 Appointment of members**

- A pool of independent external members (including the Chair) shall be appointed by the Chief Executive Officer following an external Expression of Interest process. Previous Panel members are eligible to be reappointed on the Panel following this expression of interest process.
- Independent members will be rostered on to Panel meetings on a rotational basis where possible to suit Panel member availability and Panel operational needs.
- Staff members on the Panel shall be appointed by the Chief Executive Officer.

## **4.0 TIMETABLE OF MEETINGS**

- The Development Assessment Panel will generally meet on the 1st and 3rd Wednesday each month at 2.00pm at the Port Macquarie offices of Council. Meetings may be conducted on-line or a combination of in person and on-line.
- Special Meetings of the Panel may be convened by the Director Community, Planning and Environment Services with 3 days notice.

## **5.0 MEETING PRACTICES**

### **5.1 Meeting Format**

- At all Meetings of the Panel the Chairperson shall occupy the Chair and preside. The Chair will be responsible for keeping order at meetings.
- Meetings shall be open to the public.

- The Panel will hear from an applicant and objectors or their representatives. Speakers are required to register to speak by close of business on the day prior to the Panel meeting.
- The Panel shall have the discretion to ask the applicant and objectors questions relating to the proposal and their submission. There is no 'right of reply' for an objector or applicant.
- Where there are a large number of persons making submissions with common interests, the Panel shall have the discretion to hear a representative of those persons rather than multiple persons with the same interest.
- Council assessment staff will be available at Panel meetings to provide technical assessment advice and assistance to the Panel.
- Where considered necessary, the Panel will conduct site inspections prior to the meeting.

## **5.2 Decision Making**

- Decisions are to be made by consensus. Where consensus is not possible on any item, that item is to be referred to Council for a decision.
- All development applications involving a proposed variation to a development standard greater than 10% under Clause 4.6 of the Local Environmental Plan will be considered by the Panel and recommendation made to the Council for a decision.

## **5.3 Quorum**

3 members must be present at a meeting to form a quorum.

## **5.4 Chairperson and Deputy Chairperson Independent**

Chair (alternate - independent member).

## **5.5 Secretariat**

- The Director Community, Planning and Environment is to be responsible for ensuring that the Panel has adequate secretariat support. The secretariat will ensure that the business paper and supporting papers are circulated at least 3 days prior to each meeting. Minutes shall be appropriately approved and circulated to each member within 3 weeks of a meeting being held.
- The format of and the preparation and publishing of the Business Paper and Minutes shall be similar to the format for Ordinary Council Meetings.

## **5.6 Recording of decisions**

Minutes will be limited to the recording of decisions of the DAP and how each member votes for each item before the Panel. Meetings may be recorded via an on-line platform where practical.

## **6.0 CONVENING OF “OUTCOME SPECIFIC” WORKING GROUPS**

Not applicable.

## **7.0 CONFIDENTIALITY AND CONFLICT OF INTEREST**

- Members of the Panel must comply with Council's Code of Conduct. It is the personal



responsibility of members to comply with the standards in the Code of Conduct and regularly review their personal circumstances with this in mind.

- Panel members must declare any conflict of interest at the start of each meeting or before discussion of a relevant item or topic. Details of any conflicts of interest are to be appropriately minuted. Where members are deemed to have a real or perceived conflict of interest, it may be appropriate they be excused from deliberations on the issue where the conflict of interest may exist. A Panel meeting may be postponed where there is no quorum.

## **8.0 LOBBYING**

All members and applicants are to adhere to Council's Lobbying policy. Outside of scheduled Development Assessment Panel meetings, applicants, their representatives, Councillors, Council staff and the general public are not to lobby Panel members via meetings, telephone conversations, correspondence and the like. Adequate opportunity will be provided at Panel inspections or meetings for applicants, their representatives and the general public to make verbal submissions in relation to Business Paper items.

## **9.0 CONDUCT AT MEETINGS**

All parties in attendance at a DAP meeting shall conduct themselves respectfully i.e. not disrupt the conduct of the meeting, interject, act courteously and with compassion and empathy and sensitivity and will not insult, denigrate or make defamatory or personal reflections on or impute improper motives to the DAP, Council staff or other members of the public.

# Attendance Register

|   | 21/05/25 | 04/06/25 | 18/06/25 | 16/07/25 | 6/08/25 |
|---|----------|----------|----------|----------|---------|
| <b>Member</b>   |          |          |          |          |         |
| David Crofts<br>(Independent Chair)                               | ✓        | A        | ✓        | ✓        | ✓       |
| Tony McNamara<br>(Independent Member)                             | A        | ✓        |          | ✓        |         |
| Chris Gee<br>(Independent Member)                                 |          | ✓        | ✓        | ✓        | ✓       |
| Murray Blackburn-Smith<br>(Independent Member)                    | ✓        | ✓        | ✓        |          | ✓       |
| Dan Croft<br>(Group Manager Development Services)                 | ✓        | ✓        | A        | ✓        | ✓       |
| <b>Other attendees</b>  |          |          |          |          |         |
| Melissa Watkins<br>(Director Community, Planning and Environment) |          |          |          |          |         |
| Grant Burge<br>(Development Engineering Coordinator)              | ✓        | ✓        | ✓        | ✓        |         |
| Kerrod Franklin<br>(Acting Development Engineering Coordinator)   |          |          |          |          |         |
| Patrick Galbraith-Robertson<br>(Development Planning Coordinator) |          | ✓        | ✓        | ✓        |         |
| Steven Ford<br>(Development Assessment Planner)                   |          |          |          |          |         |
| Chris Gardiner<br>(Development Assessment Planner)                | ✓        | ✓        |          |          | ✓       |
| Vanessa Penfold<br>(Development Assessment Planner)               |          |          |          |          |         |
| Clinton Tink<br>(Development Assessment Planner)                  |          |          |          |          |         |
| Jon Power<br>(Act Development Engineer Coordinator)               |          |          |          |          |         |
| Beau Spry<br>(Development Assessment Planner)                     |          |          |          |          |         |
| Ben Roberts<br>(Development Assessment Planner)                   |          |          | ✓        |          |         |
| Kate Kennedy<br>(Building Surveyor)                               |          |          |          |          |         |
| Warren Wisemantel<br>(Building Surveyor)                          |          |          |          |          |         |
| Bob Slater<br>(Development Assessment Planner)                    |          |          |          |          |         |
| Alton Dick<br>(Stormwater Engineer)                               |          |          |          |          |         |
| Fiona Tierney<br>(Development Assessment Planner)                 |          | ✓        |          |          |         |
| Nicholas Powers<br>(Development Assessment Planner)               |          |          |          |          |         |

**Key:** ✓ = Present, A = Absent With Apology X = Absent Without Apology

## Meeting Dates for 2025

|              |               |        |
|--------------|---------------|--------|
| 5 February   | Function Room | 2.00pm |
| 19 February  | Function Room | 2.00pm |
| 5 March      | Function Room | 2.00pm |
| 19 March     | Function Room | 2.00pm |
| 2 April      | Function Room | 2.00pm |
| 16 April     | Function Room | 2.00pm |
| 7 May        | Function Room | 2.00pm |
| 21 May       | Function Room | 2.00pm |
| 4 June       | Function Room | 2.00pm |
| 18 June      | Function Room | 2.00pm |
| 2 July       | Function Room | 2.00pm |
| 16 July      | Function Room | 2.00pm |
| 6 August     | Function Room | 2.00pm |
| 20 August    | Function Room | 2.00pm |
| 3 September  | Function Room | 2.00pm |
| 17 September | Function Room | 2.00pm |
| 1 October    | Function Room | 2.00pm |
| 15 October   | Function Room | 2.00pm |
| 5 November   | Function Room | 2.00pm |
| 19 November  | Function Room | 2.00pm |
| 10 December  | Function Room | 2.00pm |

Agenda

Items of Business

| Item | Subject   | Page      |
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| 02   | Apologies .....   | <u>9</u>  |
| 03   | Confirmation of Minutes .....   | <u>9</u>  |
| 04   | Disclosures of Interest.....  | <u>9</u>  |
| 05   | DA2024 - 409.1 - SECTION 4.55 MODIFICATION TO DA1994 -<br>518 FOR PREVIOUSLY APPROVED QUARRY AT LOT 154 DP<br>754405, LOT 21 DP 1295883, LOT 132 DP 654554, LOT 2 DP<br>114360 NO. 241 DIAMOND HEAD ROAD, DUNBOGAN..... | <u>17</u> |
| 06   | General Business.....   |           |

## Agenda

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**Item: 01**

**Subject: Acknowledgement of Country**

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### Recommendation

"I acknowledge that we are gathered on Birpai Land. I pay respect to the Birpai Elders both past and present. I also extend that respect to all other Aboriginal and Torres Strait Islander people present."

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**Item: 02**

**Subject: Apologies**

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### Recommendation

That the apologies received be accepted.

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**Item: 03**

**Subject: Confirmation of Minutes**

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### Recommendation

That the Minutes of the Development Assessment Panel Meeting held on 6 August 2025 be confirmed.

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**Item: 04**

**Subject: Disclosure of Interest**

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### Recommendation

That Disclosures of Interest be presented.

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# Minutes

6 August 2025

## Development Assessment Panel

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### Members:

David Crofts (Independent Chair)

Murray Blackburn-Smith (Independent Member)

Chris Gee (Independent Member)

Dan Croft (Group Manager Development Services)

### Other Attendees:

Chris Gardiner (Senior Development Assessment Planner)

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**The meeting opened at 2.00pm**

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## 01 Acknowledgement Of Country

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The Acknowledgement of Country was delivered.

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## 02 Apologies

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Nil.

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## 03 Confirmation Of Minutes

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### Consensus:

**That the Minutes of the Development Assessment Panel Meeting held on 16 July 2025 be confirmed.**

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## 04 Disclosures Of Interest

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There were no disclosures of interest presented.

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## 05 DA2025 - 342.1 Alterations and Additions to Dwelling at Lot 12 DP 1229697, No 26 Birchwood Court, Port Macquarie

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Speakers:

Craig Maltman (applicant)

### Consensus:

**That DA2025 - 342.1 for Alterations and Additions to Dwelling at Lot 12, DP 1229697, No. 26 Birchwood Court, Port Macquarie, be determined by granting consent subject to the recommended conditions.**

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## 06 General Business

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Nil

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**The meeting closed at 2.07pm.**



## Agenda

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Item: 04

Subject: DISCLOSURES OF INTEREST

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### RECOMMENDATION

That Disclosures of Interest be presented

#### DISCLOSURE OF INTEREST DECLARATION

|   |       |
|---|-------|
| Name of Meeting:  |       |
| Meeting Date:   |       |
| Item Number:  |       |
| Subject:  |       |
| <p>I, the undersigned, hereby declare the following interest:</p> <p><b>Pecuniary:</b></p> <p><input type="checkbox"/> Take no part in the consideration and voting and be out of sight of the meeting.</p> <p><b>Non-Pecuniary – Significant Interest:</b></p> <p><input type="checkbox"/> Take no part in the consideration and voting and be out of sight of the meeting.</p> <p><b>Non-Pecuniary – Less than Significant Interest:</b></p> <p><input type="checkbox"/> May participate in consideration and voting.</p> |       |
| For the reason that:  |       |
| Name:<br><br>Signed:  | Date: |
| Please submit to the Governance Support Officer at the Council Meeting.   |       |

*(Refer to next page and the Code of Conduct)*

# Agenda

## Pecuniary Interest

- 4.1 A pecuniary interest is an interest that you have in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to you or a person referred to in clause 4.3.
- 4.2 You will not have a pecuniary interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision you might make in relation to the matter, or if the interest is of a kind specified in clause 4.6.
- 4.3 For the purposes of this Part, you will have a pecuniary interest in a matter if the pecuniary interest is:
  - (a) your interest, or
  - (b) the interest of your spouse or de facto partner, your relative, or your partner or employer, or
  - (c) a company or other body of which you, or your nominee, partner or employer, is a shareholder or member.
- 4.4 For the purposes of clause 4.3:
  - (a) Your “relative” is any of the following:
    - i) your parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child
    - ii) your spouse’s or de facto partner’s parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child
    - iii) the spouse or de facto partner of a person referred to in paragraphs (i) and (ii)
  - (b) “de facto partner” has the same meaning as defined in section 21C of the *Interpretation Act 1987*.
- 4.5 You will not have a pecuniary interest in relation to a person referred to in subclauses 4.3(b) or (c)
  - (a) if you are unaware of the relevant pecuniary interest of your spouse, de facto partner, relative, partner, employer or company or other body, or
  - (b) just because the person is a member of, or is employed by, a council or a statutory body, or is employed by the Crown, or
  - (c) just because the person is a member of, or a delegate of a council to, a company or other body that has a pecuniary interest in the matter, so long as the person has no beneficial interest in any shares of the company or body.

## Non-Pecuniary

- 5.1 Non-pecuniary interests are private or personal interests a council official has that do not amount to a pecuniary interest as defined in clause 4.1 of this code. These commonly arise out of family or personal relationships, or out of involvement in sporting, social, religious or other cultural groups and associations, and may include an interest of a financial nature.
- 5.2 A non-pecuniary conflict of interest exists where a reasonable and informed person would perceive that you could be influenced by a private interest when carrying out your official functions in relation to a matter.
- 5.3 The personal or political views of a council official do not constitute a private interest for the purposes of clause 5.2.
- 5.4 Non-pecuniary conflicts of interest must be identified and appropriately managed to uphold community confidence in the probity of council decision-making. The onus is on you to identify any non-pecuniary conflict of interest you may have in matters that you deal with, to disclose the interest fully and in writing, and to take appropriate action to manage the conflict in accordance with this code.
- 5.5 When considering whether or not you have a non-pecuniary conflict of interest in a matter you are dealing with, it is always important to think about how others would view your situation.

## Managing non-pecuniary conflicts of interest

- 5.6 Where you have a non-pecuniary conflict of interest in a matter for the purposes of clause 5.2, you must disclose the relevant private interest you have in relation to the matter fully and in writing as soon as practicable after becoming aware of the non-pecuniary conflict of interest and on each occasion on which the non-pecuniary conflict of interest arises in relation to the matter. In the case of members of council staff other than the Chief Executive Officer, such a disclosure is to be made to the staff member’s manager. In the case of the Chief Executive Officer, such a disclosure is to be made to the mayor.
- 5.7 If a disclosure is made at a council or committee meeting, both the disclosure and the nature of the interest must be recorded in the minutes on each occasion on which the non-pecuniary conflict of interest arises. This disclosure constitutes disclosure in writing for the purposes of clause 5.6.
- 5.8 How you manage a non-pecuniary conflict of interest will depend on whether or not it is significant.

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- 5.9 As a general rule, a non-pecuniary conflict of interest will be significant where it does not involve a pecuniary interest for the purposes of clause 4.1, but it involves:
- a) a relationship between a council official and another person who is affected by a decision or a matter under consideration that is particularly close, such as a current or former spouse or de facto partner, a relative for the purposes of clause 4.4 or another person from the council official's extended family that the council official has a close personal relationship with, or another person living in the same household
  - b) other relationships with persons who are affected by a decision or a matter under consideration that are particularly close, such as friendships and business relationships. Closeness is defined by the nature of the friendship or business relationship, the frequency of contact and the duration of the friendship or relationship.
  - c) an affiliation between the council official and an organisation (such as a sporting body, club, religious, cultural or charitable organisation, corporation or association) that is affected by a decision or a matter under consideration that is particularly strong. The strength of a council official's affiliation with an organisation is to be determined by the extent to which they actively participate in the management, administration or other activities of the organisation.
  - d) membership, as the council's representative, of the board or management committee of an organisation that is affected by a decision or a matter under consideration, in circumstances where the interests of the council and the organisation are potentially in conflict in relation to the particular matter
  - e) a financial interest (other than an interest of a type referred to in clause 4.6) that is not a pecuniary interest for the purposes of clause 4.1
  - f) the conferral or loss of a personal benefit other than one conferred or lost as a member of the community or a broader class of people affected by a decision.
- 5.10 Significant non-pecuniary conflicts of interest must be managed in one of two ways:
- a) by not participating in consideration of, or decision making in relation to, the matter in which you have the significant non-pecuniary conflict of interest and the matter being allocated to another person for consideration or determination, or
  - b) if the significant non-pecuniary conflict of interest arises in relation to a matter under consideration at a council or committee meeting, by managing the conflict of interest as if you had a pecuniary interest in the matter by complying with clauses 4.28 and 4.29.
- 5.11 If you determine that you have a non-pecuniary conflict of interest in a matter that is not significant and does not require further action, when disclosing the interest you must also explain in writing why you consider that the non-pecuniary conflict of interest is not significant and does not require further action in the circumstances.
- 5.12 If you are a member of staff of council other than the Chief Executive Officer, the decision on which option should be taken to manage a non-pecuniary conflict of interest must be made in consultation with and at the direction of your manager. In the case of the Chief Executive Officer, the decision on which option should be taken to manage a non-pecuniary conflict of interest must be made in consultation with and at the direction of the mayor.
- 5.13 Despite clause 5.10(b), a councillor who has a significant non-pecuniary conflict of interest in a matter, may participate in a decision to delegate consideration of the matter in question to another body or person.
- 5.14 Council committee members are not required to declare and manage a non-pecuniary conflict of interest in accordance with the requirements of this Part where it arises from an interest they have as a person chosen to represent the community, or as a member of a non-profit organisation or other community or special interest group, if they have been appointed to represent the organisation or group on the council committee

# Agenda

## SPECIAL DISCLOSURE OF PECUNIARY INTEREST DECLARATION

*This form must be completed using block letters or typed.*

*If there is insufficient space for all the information you are required to disclose, you must attach an appendix which is to be properly identified and signed by you.*

|   |   |
|---|---|
| <b>By</b><br><i>[insert full name of councillor]</i>  |   |
| <b>In the matter of</b><br><i>[insert name of environmental planning instrument]</i>  |   |
| <b>Which is to be considered at a meeting of the</b><br><i>[insert name of meeting]</i>   |   |
| <b>Held on</b><br><i>[insert date of meeting]</i>   |   |
| <b>PECUNIARY INTEREST</b>   |   |
| Address of the affected principal place of residence of the councillor or an associated person, company or body<br><i>(the <b>identified land</b>)</i>              |   |
| Relationship of identified land to councillor<br><i>[Tick or cross one box.]</i>  | <input type="checkbox"/> The councillor has interest in the land (e.g. is owner or has other interest arising out of a mortgage, lease, trust, option or contract, or otherwise).<br><input type="checkbox"/> An associated person of the councillor has an interest in the land.<br><input type="checkbox"/> An associated company or body of the councillor has interest in the land. |
| <b>MATTER GIVING RISE TO PECUNIARY INTEREST<sup>1</sup></b>   |   |
| Nature of land that is subject to a change in zone/planning control by proposed LEP <i>(the <b>subject land</b><sup>2</sup>)</i><br><i>[Tick or cross one box]</i>  | <input type="checkbox"/> The identified land.<br><input type="checkbox"/> Land that adjoins or is adjacent to or is in proximity to the identified land.  |
| Current zone/planning control<br><i>[Insert name of current planning instrument and identify relevant zone/planning control applying to the subject land]</i>       |   |
| Proposed change of zone/planning control<br><i>[Insert name of proposed LEP and identify proposed change of zone/planning control applying to the subject land]</i> |   |
| Effect of proposed change of zone/planning control on councillor or associated person<br><i>[Tick or cross one box]</i>   | <input type="checkbox"/> Appreciable financial gain.<br><input type="checkbox"/> Appreciable financial loss.  |

*[If more than one pecuniary interest is to be declared, reprint the above box and fill in for each additional interest]*

**Councillor's Signature:** ..... **Date:** .....

*This form is to be retained by the council's Chief Executive Officer and included in full in the minutes of the meeting*

Last Updated: 3 June 2019

# Agenda

## Important Information

This information is being collected for the purpose of making a special disclosure of pecuniary interests under clause 4.36(c) of the Model Code of Conduct for Local Councils in NSW (the Model Code of Conduct).

The special disclosure must relate only to a pecuniary interest that a councillor has in the councillor's principal place of residence, or an interest another person (whose interests are relevant under clause 4.3 of the Model Code of Conduct) has in that person's principal place of residence.

Clause 4.3 of the Model Code of Conduct states that you will have a pecuniary interest in a matter because of the pecuniary interest of your spouse or your de facto partner or your relative or because your business partner or employer has a pecuniary interest. You will also have a pecuniary interest in a matter because you, your nominee, your business partner or your employer is a member of a company or other body that has a pecuniary interest in the matter.

"Relative" is defined by clause 4.4 of the Model Code of Conduct as meaning your, your spouse's or your de facto partner's parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child and the spouse or de facto partner of any of those persons.

You must not make a special disclosure that you know or ought reasonably to know is false or misleading in a material particular. Complaints about breaches of these requirements are to be referred to the Office of Local Government and may result in disciplinary action by the Chief Executive of the Office of Local Government or the NSW Civil and Administrative Tribunal.

This form must be completed by you before the commencement of the council or council committee meeting at which the special disclosure is being made. The completed form must be tabled at the meeting. Everyone is entitled to inspect it. The special disclosure must be recorded in the minutes of the meeting.

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<sup>1</sup> Clause 4.1 of the Model Code of Conduct provides that a pecuniary interest is an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person. A person does not have a pecuniary interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision the person might make in relation to the matter, or if the interest is of a kind specified in clause 4.6 of the Model Code of Conduct.

<sup>2</sup> A pecuniary interest may arise by way of a change of permissible use of land adjoining, adjacent to or in proximity to land in which a councillor or a person, company or body referred to in clause 4.3 of the Model Code of Conduct has a proprietary interest

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**Item:** 05

**Subject:** DA2024 - 409.1 - SECTION 4.55 MODIFICATION TO DA1994 - 518 FOR PREVIOUSLY APPROVED QUARRY AT LOT 154 DP 754405, LOT 21 DP 1295883, LOT 132 DP 654554, LOT 2 DP 114360 NO. 241 DIAMOND HEAD ROAD, DUNBOGAN

**Report Author** Development Assessment Officer (Planner), Benjamin Roberts

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**Applicant:** Adbri Concrete and Quarries Northern NSW Pty Ltd  
**Owner:** Hurd Haulage Pty Ltd  
**Estimated Cost:** \$270,000  
**Parcel no:** 36216, 72284, 16909, 30848

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#### **Alignment with Delivery Program**

4.3.1 Undertake transparent and efficient development assessment in accordance with relevant legislation.

#### **Recommendation**

**That the section 4.55 modification to DA1994 - 518 for a proposed modification to an existing and approved quarry at Lot 154, DP 754405, Lot 21 DP 1295883, Lot 132 DP 654554, Lot 2 DP 114360 No.241 Diamond Head Road, Dunbogan, be determined by granting consent subject to the recommended consent condition changes.**

#### **Executive Summary**

This report considers a modification application for an extension to the extraction footprint of the approved operational sand quarry at the subject site and provides an assessment of the application in accordance with the Environmental Planning and Assessment Act 1979 (Act).

The site has been operating as a sand quarry under the development consent issued by Port Macquarie-Hastings Council on 3 October 1995. This application seeks an expansion of the quarry extraction footprint by 0.98 hectares or 9,800m<sup>2</sup>.

The application as originally made sought an expansion of 3.12 hectares or 31,200m<sup>2</sup> and was publicly exhibited from 25 July to 23 August 2024 to which 25 submissions were received. The application was subsequently amended during assessment. The amendment involved a reduction to the extent of the quarry extraction footprint to 0.98 hectare or 9,800m<sup>2</sup>. The amended application was publicly exhibited from 5 December 2024 to 24 January 2025 to which 20 submissions were received.

The site is considered suitable for the proposed modified development and the proposal adequately addresses relevant planning controls. The modified development



is not considered to be contrary to the public's interest, despite the level of interest in the matter or likely to result in a significant adverse social, environmental or economic impact.

This report recommends that the modification application be approved subject to the attached updated conditions. (Attachment 1).

The reason for the application being referred to Council's Development Assessment Panel (DAP) is because 3 or more objections to the proposal have been received which remain unresolved following the assessment of the application. A copy of the DAP Charter outlining the delegations and functions of the DAP is available on Council's website.

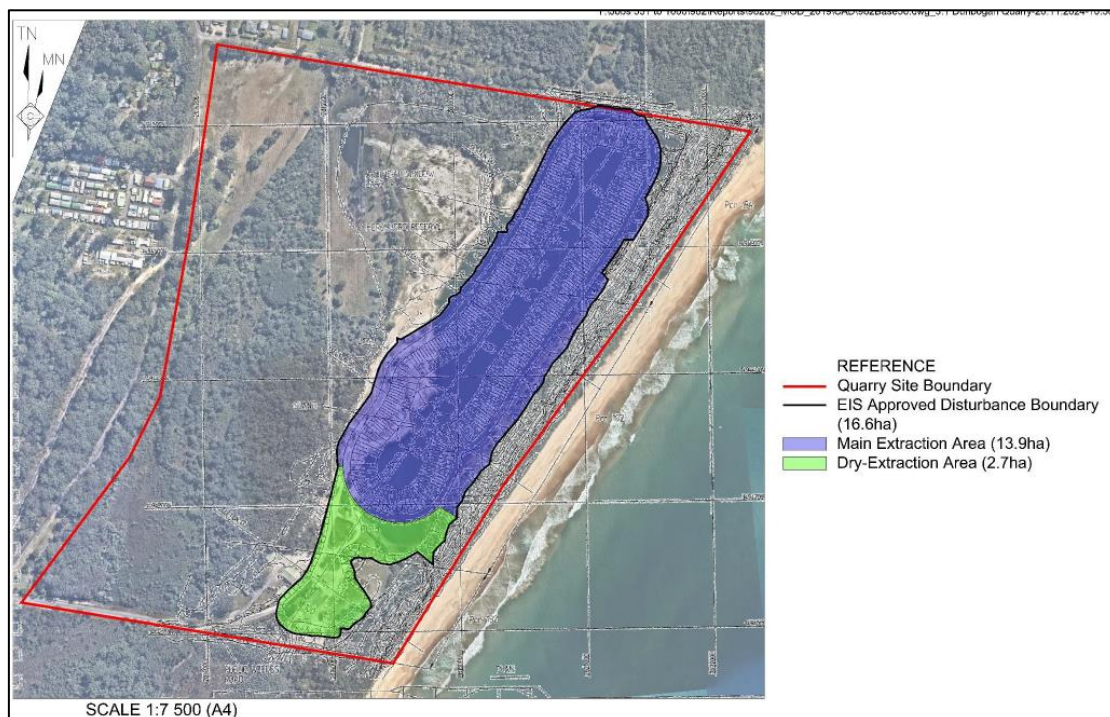
## Report

### 1. Background

#### Existing Sites Features and Surrounding Development

The site represents an area of 88.5 hectares and is located approximately 3 kilometres south of Laurieton and is bound by Beach Street in the north, Diamond Head Road in the west, Dunbogan Beach to the east and Crowdy Bay National Park in the south. The site has been subject to a long history with heavy mineral mining and dredging dating back to the approximately the late 1960s but has more recently been operating as a sand quarry under a development consent issued by Port Macquarie-Hastings Council on 12 October 1995.

The figure below shows the extent of the originally approved quarry footprint.



The site is currently zoned RU1 Primary Production and C2 Environmental Conservation in accordance with the Port Macquarie-Hastings Local Environmental Plan 2011, as shown in the following zoning plan:





The location of the operations and existing development within the locality is shown in the following aerial photograph (source Nearmap):



## 2. Description of Development

Key aspects of the development proposal include the following:

- Westward expansion of the quarry extraction footprint by 0.98 hectares or 9,800m<sup>2</sup> in an area midway down the existing quarry dredge pond.

- Regularise the identified inconsistencies with the current development footprint to that originally approved.
- No change to extraction or processing methods or operational components of the quarry are proposed.

Plans of the proposed development are at the end of this report (Attachment 2).

## Application Chronology

- 3 July 2024 - Application lodged.
- 16 July 2024 - Referred externally to NSW Environmental Protection Authority (EPA), Essential Energy, Transport for NSW and NSW National Parks and Wildlife Services (NPWS).
- 25 July to 23 August 2024 - Public exhibition and neighbour notification.
- 25 July 2024 - Additional information request to applicant seeking detail and chain of reasoning as to why the application is designated development.
- 31 July 2024 - Additional information request to applicant for digital shape files for Biodiversity Development Assessment Report (BDAR).
- 31 July 2024 - Additional information request and queries to applicant surrounding noise impact assessment.
- 1 August 2024 - Digital Shape Files provided for BDAR.
- 1 August 2024 - Essential Energy comments provided.
- 7 August 2024 - NSW EPA comments received.
- 9 August 2024 - Transport for NSW comments received.
- 15 August 2024 - NSW NPWS comments received.
- 16 August 2024 - Site inspection.
- 19 August 2014 - Additional information request seeking approval details of vegetation clearing observed on site within the proposed expansion area.
- 19 August 2024 - Referral of application to DPE - Heritage and Water NSW.
- 21 August 2024 - Additional information response from applicant advising clearing occurred in accordance with provisions of the Local Land Services Act 2013.
- 26 August 2024 - Water NSW comments received.
- 29 August 2024 - Request to applicant for update on outstanding additional information requests.
- 2 September 2024 - Copy of legal advice provided from applicant suggesting the application is not designated or integrated development and clarifying details submitted in supporting SOEE.
- 2 September 2024 - Additional information response with additional noise impact assessment details.
- 2 September 2024 - Copy of legal advice, dated 20 February 2024, provided from applicant suggesting the proposal is 'substantially the same' and processed as a section 4.55(2) application.
- 4 September 2024 - Revised SOEE submitted removing reference to application being designated and integrated development.

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- 5 September 2024 - Additional information request received from DPE - Heritage and sent to applicant.
  - 6 September 2024 - Additional information request received from DPE- Water and sent to applicant.
  - 13 September 2024 - Additional information request and advice to applicant suggesting that direct comparison with originally defined and approved quarry footprint suggest the proposal may not be 'substantially the same'.
  - 2 October 2024 - Applicant response to RFI from DPE - Heritage.
  - 2 October 2024 - DPE - Heritage comments received.
  - 4 November 2024 - Applicant response to RFI from DPE - Water.
  - 7 November 2024 - Applicant response to issues raised from community submissions.
  - 15 November 2024 - DPE - Water comments received.
  - 22 November 2024 - Amendment to application received with revised SOEE and supporting documentation. The amendments include a reduced expansion footprint and to regularise identified inconsistencies with the current and approved quarry footprint.
  - 27 November 2024 - Referral of amended application to external government agencies.
  - 29 November 2024 - Revised DPE - Water comments received.
  - 6 December 2024 - Additional information request received from DPE - Heritage and sent to applicant.
  - 5 December 2024 to 24 January 2025 - Re-exhibition of amended application.
  - 17 December 2024 - Revised NSW EPA comments received.
  - 10 January 2025 - Revised NSW NPWS comments received.
  - 28 January 2025 - Additional information response from applicant to ecological assessment matters.
  - 28 January 2025 - Additional information response to DPE - Heritage RFI and referred.
  - 31 January 2025 - Revised DPE - Heritage comments received.
  - 27 February 2025 - Additional information request to applicant.
  - 4 March 2025 - Council advised of compliance investigation by NSW DECCW regarding lawfulness of vegetation removal in proposed expansion area.
  - 5 March 2025 - Applicant advised modification being placed on hold pending outcome of compliance investigation by NSW DECCW.
  - 15 May 2025 - Additional information response.
  - 19 May 2025 - Cover letter lodged seeking assessment of application progress on basis of updated ecological assessment having regard to vegetation in existence prior to clearing being undertaken.



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### 3. Statutory Assessment

The application has been lodged pursuant to Section 4.55(2) on the basis that it is substantially the same development to that which was originally consented to.

Section 4.55 of the Environmental Planning and Assessment Act 1979 enables the modification of consents and categorises modifications into Section 4.55(1) for modifications involving minor error, mis-description or miscalculation, Section 4.55(1A) are for modifications involving minimal environmental impact and Section 4.55(2) are for other modifications. Each type of modification must be considered as being substantially the same to that which was originally consented.

In determining the modification application, Council is required to take into consideration matters as are relevant to the development that apply to the land to which the modification application relates. The requirements of Section 4.55(2) are considered as follows:

#### **Section 4.55(2)(a) Is the proposal substantially the same?**

In considering the modification, an assessment of the following has been undertaken to establish whether the modification proposal (as amended) is substantially the same development with a particular focus on the following:

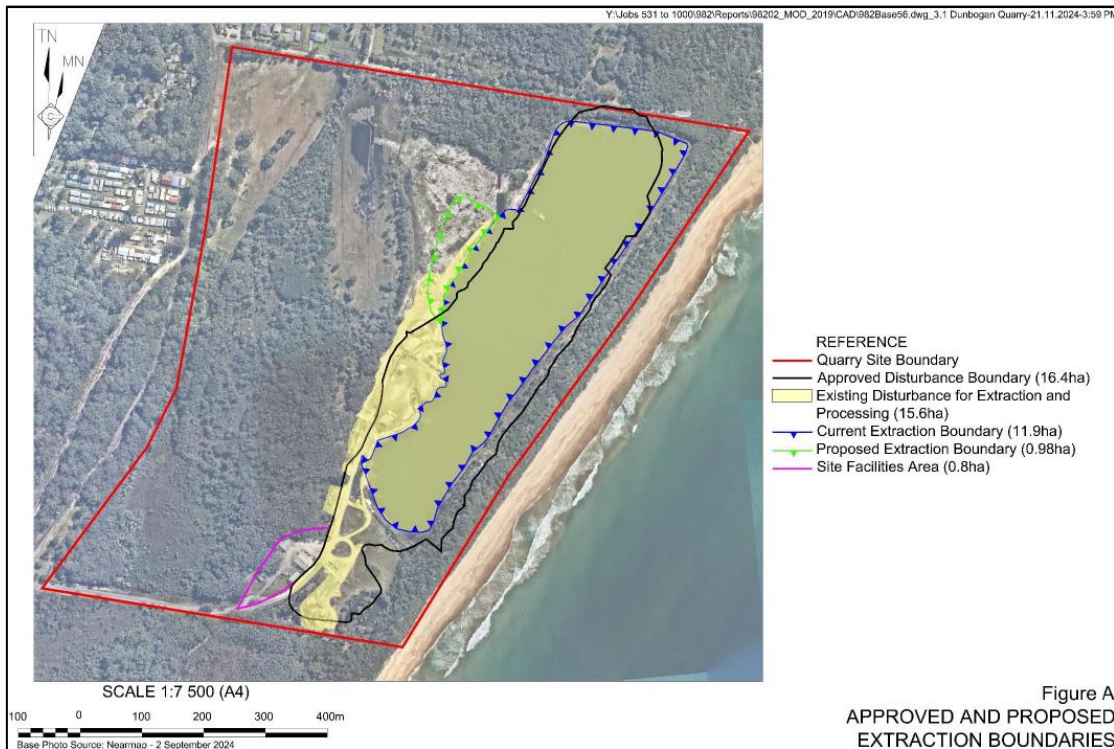
- Comparison of the quantitative and qualitative differences between the original and modified development.
- Comparison of the material and essential features (critical elements) of the original and modified development.
- Comparison of the consequences of carrying out the modification with the original approval.

The applicant has submitted justification and details suggesting the proposal is substantially the same with supporting legal advice (Attachment 3). It is noted that the legal advice was obtained prior to lodgement of the application and is based on an increase in the extraction area by 4.3 hectares. The application as amended seeks reduced expansion to the extraction footprint of 0.98 hectare or 9,800m<sup>2</sup>. The justification provided by the applicant can be summarised as follows:

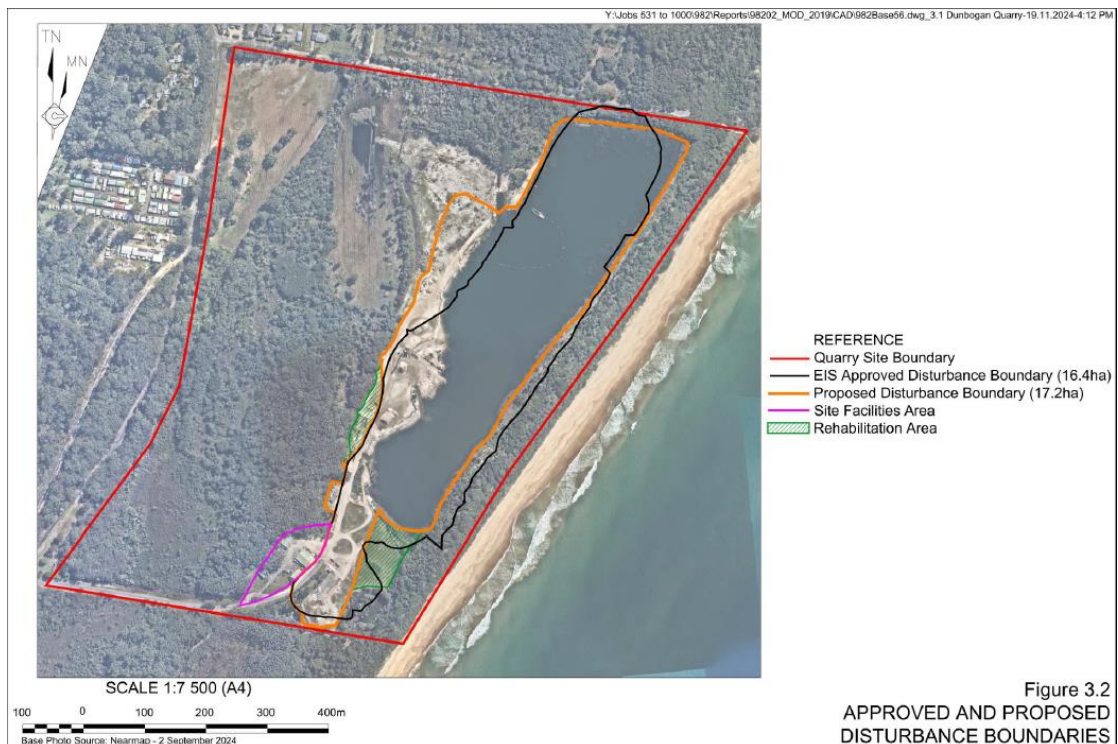
- The quarry extraction and processing operations will not change.
- There is no change to the nature of the development or associated environmental impacts.
- There is no change to the depth of extraction.
- There is no change to transportation of material, transport route or number of truck movements.
- The site is to be rehabilitated consistent with that originally approved.
- There are a number of relevant and precedent cases in the Land and Environment Court for extractive industries seeking similar or larger expansion being 'substantially the same' and determined as modifications.

In providing additional information and plans during assessment it was identified that the current quarry footprint is not consistent with the originally approved quarry footprint plan represented in figure 4.5 of the original EIS and Figure 2.1 of the Environmental Management and Site Rehabilitation Plan (EMSRP). The figure below illustrates the

originally approved quarry footprint and site facilities area compared to the current quarry footprint and site facilities.



The figure below illustrates the originally approved quarry footprint and proposed quarry footprint sought under this modification application. The proposed quarry footprint includes the expansion of the extraction area and regularisation of current areas identified that extend beyond the originally approved footprint.



Having regard to the above, the following assessment comments are provided:

- The application was amended during assessment to reduce the extent of the proposed expansion to extraction area from 3.12 hectares or 31,200m<sup>2</sup>

to 0.98 hectares or 9,800m<sup>2</sup> in response to assessment concerns surrounding whether the proposal was 'substantially the same'.

- The current dredge pond covers an area of approximately 11.9 hectares. The proposed expansion of the extraction area and dredge pond by 0.98 hectares compared to its current area represents an 8.2% increase.
- The application as amended, which includes the increased extraction area and rectification of discrepancies identified with the originally approved and current quarry footprint, will result in an overall increase to the development footprint from 16.4 hectares to 17.2 hectares which equates to 4.9% increase from that originally approved.
- The proposal does not change the use of the approved development as an extractive industry, and it remains for the purpose of a sand quarry as originally approved.
- The proposal does not result in any change to the extraction methods, processing operations and transportation methods of the sand quarry from that originally approved.
- The proposal will not result in any significant adverse environmental impacts from that originally approved.
- The proposal will not result in a radical transformation of the development from that originally approved.

Consequently, it is considered that the proposal as amended is substantially the same development to that originally approved.

#### **Section 4.55(2)(b) Consultation with relevant Minister or Public Authority or approval body**

The operation is subject to an Environmental Protection Licence (EPL) issued by the NSW Environment Protection Authority (EPA) and consultation with the EPA has been undertaken. A copy of the NSW EPA feedback is provided as Attachment 4. The comments provided by the EPA have been considered and appropriate consent conditions recommended.

Consultation has occurred with the Department of Planning and Environment - Water and Department of Planning Environment - Heritage. The comments provided by these agencies are provided in Attachments 5 and 6. The comments have been considered and appropriate consent conditions recommended advising of the further permit/approval requirements of both agencies.

Consultation has occurred with NSW National Parks and Wildlife Services (NPWS) as an adjoining landowner to the site. The feedback provided by NPWS is included in Attachment 7. These comments have been considered and where appropriate consent conditions have been updated or added as recommended.

#### **Section 4.55(2)(c) The application has been notified in accordance with the regulations and Council's Community Participation Plan**

The application was exhibited from 25 July to 23 August 2024. The application was subsequently amended during assessment on 22 November 2024 to reduce the extent of the proposed expansion footprint. The amended application was re exhibited from 5 December 2024 to 24 January 2025. The application has been notified in accordance with Council's Community Participation Plan.

#### **Section 4.55(2)(d) Consideration of any submissions received**

Following initial exhibition of the application on 25 July to 23 August 2024, 25 submissions were received. Following exhibition of the amended application on 5 December 2024 to 24 January 2025, 20 submissions were received.

The key issues raised in the submissions received during both exhibition periods were provided to the applicant for consideration and a response has been provided during assessment.

Copies of all written submissions have been provided separately to members of the DAP. Copies of the Statement of Environmental Effects and specialist reports have been made publicly available and are accessible on Council's DA tracker.

Key planning issues raised in the submissions received and comments are provided as follows:

| Submission Issue/Summary  | Planning Comment/Response   |
|---|---|
| Pre-emptive clearing has already occurred to facilitate the proposed quarry expansion.  | The applicant maintains the clearing was undertaken lawfully in accordance with the provisions of the Local Land Services Act 2013.   |
| The claim that clearing was undertaken under the provisions of the Local Land Services Act for agricultural purposes is flawed. No agricultural activities have been observed on the site, and this is contrary to advice provided LLS staff. | The lawfulness of this clearing is currently subject to a compliance investigation by the appropriate regulatory authority being the NSW Department of Climate Change, Energy, the Environment and Water.   |
| The proposal is not 'substantially the same' and should be subject to a new development application.  | As detailed earlier within this report, it is considered that the proposal as amended is substantially the same development to that originally approved for the purposes of the Environmental Planning and Assessment Act.  |
| Inadequate and inaccurate consultation and information has been provided by the quarry to surrounding residents.  | The assessment of this application is based on the information submitted to Council in the application and as publicly exhibited in accordance with the Community Participation Plan.   |
| Adverse impacts upon flora and fauna.   | The impacts of the proposed modified development on flora and fauna are discussed in detail under the flora and fauna heading of this report. In summary it is considered that subject to the implementation of the mitigation measures and recommended changes to the consent conditions that the modified proposal will not result in any significant adverse impact to flora and |



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|  | fauna that would warrant refusal of the application.   |
| Concern that no updated or revised environmental management and site rehabilitation plan has been submitted.   | Consent conditions have been recommended requiring submission and approval of a revised Environmental Management and Site Rehabilitation Plan by Council prior to works commencing in the expanded extraction area.  |
| No progressive rehabilitation has occurred, or wildlife corridors created as required by the consent. Instead, these areas have been continually slashed or subject to ongoing disturbance.  | This is a requirement of the development consent. New and updated consent conditions have been recommended to re-enforce requirements. Refer to comments under the flora and fauna heading of this report addressing impacts.  |
| No annual environmental management reporting has occurred as required by the current consent. Nor have any updates been made to the EMSRP to overcome any shortcomings.  | This is a requirement of the existing development consent. New and updated consent conditions have been recommended to reinforce the monitoring and reporting requirements.  |
| There is no island in the dredge pond. Dredging has not occurred progressively north to south. There is no noise bund wall in place. There is no accurate complaints register. Failure to install noise monitoring equipment at the closest residence.   | The assessment has identified issues of non-compliance with the existing consent. The application acknowledges this and seeks to undertake compliance with the consent.  |
| The quarry is currently operating unlawfully and beyond the approved extraction and disturbance boundaries of the consent and therefore approval should not be granted for any expansion. Approval of such would create an unacceptable precedent to allow developers to ignore significant environmental mitigation and protection measures and then seek retrospective approval. | <p>The application acknowledges discrepancies identified with the current quarry footprint compared to that originally approved and seeks to regularise this under this application.</p> <p>While non-compliance with the development consent is acknowledged as an important consideration, it is not considered to carry sufficient weight upon which to refuse this modification application.</p> |
| The validity of the original development consent is questionable having regard to the vagueness and uncertainty provided in consent condition No 1 requiring the development be conducted substantially in accordance with the application plan.   | The original development consent is considered to be valid and open for consideration of this modification application.  |

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| <p>The lack of compliance with the existing consent brings into question the operator's ability to fulfill their important environmental management obligations. As a result, they have lost trust with the community and left relevant regulatory authorities exposed.</p>   | <p>New and updated consent conditions have been recommended to reinforce the consent requirements.</p>  |
| <p>Adverse impacts from disturbance of acid sulfate soils.</p>  | <p>Refer to comments under clause 7.1 of the Port Macquarie-Hastings Local Environmental Plan 2011 within this report. An acid sulphate soils management plan supports the application and it is recommended that the requirements of this plan be incorporated into the revised environmental management and site rehabilitation plan.</p> |
| <p>Adverse environmental impacts of the dredge pond becoming saline were not envisaged or assessed in the original application. It was supposed to be freshwater lake and now appears to be recharged by seawater. Adverse hydrological impacts from the risk of lowering the ground water table in conjunction with increased salinity could lead to an irreversible environmental disaster.</p> | <p>Refer to comments under water quality heading of this report. A ground water assessment supports the application which acknowledges the current saline nature of the dredge pond and recommends a groundwater monitoring program be established. Appropriate conditions can be applied to address this.</p>                              |
| <p>Adverse operational noise impacts from expansion of the extraction area.</p>   | <p>Refer to comments under noise heading of this assessment report. A noise impact assessment supports the application. The assessment concludes that the estimated change in noise at receivers would be less than 0.5dbA and that this change would not be significant.</p>   |
| <p>Adverse noise, vibration and odour impact from increased heavy vehicle truck movements. A cap should be put on truck movements.</p>  | <p>There is no change proposed to the current truck movements to and from the site. Consent conditions have been recommended to clarify approved movements and enable enforcement if necessary.</p>   |
| <p>Adverse vibration and structural impact from heavy vehicle truck movements on dwellings.</p>   | <p>There is no change proposed to the current truck movements to and from the site. There will be no additional vibration impacts from the modified development.</p>  |

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| Adverse impact and damage to road infrastructure.   | There is no change proposed to the current truck movements or haulage route. No additional impacts on the road infrastructure is identified from the modified development.  |
| Trucks frequently enter and exit the site outside the approved hours of operation.  | Operating hours are already stipulated within a consent condition. No change to the approved hours of operation is proposed.  |
| Adverse dust impacts.   | Refer to air quality heading within this report. An air quality assessment supports the application. Subject to the implementation of dust controls measures there will be no adverse dust impacts resulting from the modified development.                         |
| Adverse visual and amenity impact upon adjoining residents and tourists.  | Having regard to the location within the site, minor nature of the expansion area and proposed corridors, no adverse visual or amenity impacts would result.  |
| Anxiety, stress and mental health impacts.  | This not considered to be a relevant planning consideration. The environmental impacts have been considered in this assessment, including noise.  |
| Adverse health impacts from diesel engine exhaust emissions.  | There is no change proposed to the current truck movements or haulage route. No additional or adverse air quality impacts are identified from the modified development.   |
| There are no details confirming the profile and depth of the dredge pond is in accordance with the consent. This needs to be clarified before consideration of any expansion. | A survey was provided illustrating general compliance with the maximum extraction depth. Consent conditions have been recommended to require a maximum depth extraction report and contour plan to demonstrate consistency and ongoing compliance with the consent. |
| Concerns expressed over 'future resource area' indicated on plans and that a larger expansion will follow.  | This application is for the minor expansion to the extraction area only as outlined in the application and plans. Any future plans for further expansion would be subject to a separate application.  |

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| <p>There is no consideration surrounding the implications and consequences of climate change. The site is subject to flooding and sits at the narrowest point on the Dunbogan peninsula. There are storm surge and rising sea level risks with only the sand dune separating the dredge pond from the ocean and there appears to be discrepancies between the required 20m setback from the dune to the quarry operations that was required to ensure the stability and integrity of this dune. An independent assessment of the dune profile should occur as a failure of the dune will result in significant environment impact on the coastal environment.</p> | <p>Having regard to the minor expansion to the extraction area on the western edge of the dredge pond there are no adverse impact or climate change risks beyond that which already exist from the modified development.</p> <p>Figure 3.2 within the SOEE illustrates the location of the originally approved disturbance boundary and the proposed disturbance boundary. No eastward extension toward the ocean and dune system beyond the minimum originally approved is proposed.</p> |
| <p>The population dynamic, number of business (including tourism operations) and character of the area surrounding the quarry site and broader Camden Haven area is substantially different to that which existed in in 1994.</p>   | <p>Having regard the extent of expansion proposed, the modified proposal will not result in any adverse amenity impacts upon on the area from the originally approved.</p>  |
| <p>Adverse impacts on bore water quality.</p>   | <p>The groundwater assessment had regard to potential impacts on bore water quality and recommends a monitoring program. This is recommended to be incorporated into the revised environmental management and site rehabilitation plan.</p>   |
| <p>Adverse traffic and safety impacts with the heavy vehicle route through Laurieton and past schools. There needs to be zebra crossing at the school.</p>  | <p>Refer to comments under transport and traffic heading of this report. A haulage route assessment supports the application which concludes the route is suitable for continued use by heavy vehicles from the quarry site to the Pacific Highway.</p>   |
| <p>The trucks often speed along Diamond Head Road. The current 80km/hr speed limit on Diamond Head Road should be reviewed by Transport for NSW with a view of decreasing it to 50km/hr.</p>  | <p>A site-specific driver induction program is recommended to be incorporated into the revised environmental management and site rehabilitation plan to encourage driving below 60km/hr on Diamond Head Road near Beach Street. The quarry has written to Transport for NSW seeking and supporting a reduction to the speed limit.</p>  |

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| The trucks are in need of constant repair which adds to noise output.   | There has been no evidence provided to confirm noise levels have been exceed from truck disrepair. The maximum permitted noise levels for traffic are provided for in the consent. |
| Concerns surrounding impacts upon Aboriginal heritage sites and whether local indigenous persons have been consulted.   | Refer to detailed comments under clause 5.10 of the LEP 2011 heading of this report.   |
| Concerns that appropriate regulatory authority responsibilities have not been met.  | The assessment of this application has been undertaken in accordance with the matters for consideration identified in relevant planning legislation.                               |
| The assertion of widespread community support within the application is considered unrepresentative of the community's true views and is misleading.  | Assessment of this application has taken into consideration the issues and matters raised directly by the community to Council as part of the public exhibition process.           |
| Why is there no island in the dredge pond as illustrated on the approved plans in the original EIS?   | This application seeks to modify and remove the island within the dredge pond that was originally approved.  |
| There are no detailed engineering drawings or contour plans provided for the expansion of the extraction area.  | A proposed extraction limit with cross-sections has been provided for the expansion area which is recommended to be referenced in the approved modified plans.                     |
| The extension of sand mining within an established mining site will be beneficial to the economy, community/community groups, provide employment opportunities, provide for a crucial resource and will have minimal impact on the environment into the future. | Noted.   |
| The local community need to be represented in the environmental monitoring and rehabilitation programs and be updated at least every 3 months and granted access on request.  | Council is the appropriate regulatory authority for development compliance. More stringent monitoring and reporting protocols have been recommended in the consent conditions.     |
| There are a number of identified deficiencies and inaccuracies within the application and specialist reports supporting the application.  | The application and supporting specialist reports have been reviewed by Council technical staff.   |
| Inadequate public exhibition time has been provided to enable an in-depth   | The application was originally exhibited on 25 July to 23 August 2024. The amended application was exhibited on 5  |

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| review of such a complicated application.   | December 2024 to 24 January 2025. On both occasions extensions were provided to interested community members to enable the making of submissions. The application has been notified in accordance with Council's Community Participation Plan.  |
| History of non-compliance with the consent should result in the modification application being refused.   | While non-compliance with the development consent is acknowledged it is not considered to be a matter carrying sufficient weight to warrant refusal of this modification application.   |
| The validity of the development consent is questionable in terms of conditions and compliance.  | While non-compliance with conditions of the development consent is acknowledged the modified proposal is still considered to be substantially the same development to that which was originally approved.   |
| It should be clarified as to why the quarry has been able to operate contrary to the development consent for so long.   | Assessment of this application has highlighted areas of non-compliance and revisited associated impacts where applicable to the modification application. Council's Development Compliance team are aware and have undertaken investigations.   |
| The precautionary principle should be considered as a matter of public interest and there is significant risk of serious and irreversible damage from climate change processes and specifically a dune collapse. The application should be referred to the Department of Environment and Heritage under the Coastal Management Act. | The proposed minor expansion to the extraction area is westward and not toward the beach or adjoining dune system. The site is not located within a coastal vulnerability area or identified in any coastal management plans as being subject to coastal erosion risk. Referral to the Department is not required.  |
| There no evidence demonstrating that 2.6 million tonnes of sand, or more, has not already been extracted from the site and contrary to the current consent. It is also unclear how 249,000 tonne could be extracted from 0.98 hectares while achieving compliance with the approved dredge pond profiles.                           | <p>No evidence has been provided to indicate that the quarry has exhausted its resource and extraction sand beyond that originally approved.</p> <p>The approved dredge profiles remain part of the consent. Consent conditions have been recommended to require a maximum depth extraction report and contour plan to demonstrate consistency and ongoing compliance with the consent.</p> |

**4.55(3) 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.**

Planning assessment matters, as only relevant to the modification application are reconsidered below having regard to section 4.15(1) of the Act below:

**(a) The provisions (where applicable) of:**

**(i) Any Environmental Planning Instrument**

**State Environmental Planning Policy (Biodiversity and Conservation) 2021**

Chapter 3 - Koala habitat protection 2020

Clause 3.3 - The land is part zoned RU1 Primary Production and this chapter applies.

Clause 3.5 - The land is subject to an approved Koala Plan Management prepared by ERM Michell McCotter Pty Ltd and dated April 1995.

Clause 3.8 - The council's determination of the development application must not be inconsistent with the plan of management.

The key mitigation measures outlined in the plan are reproduced below with comments provided:

- Habitat conservation - The quarry operations will not cause loss of Koala habitat on site. A re-vegetation plan and weed control plan to limit weed invasion into Koala habitat areas.

Comment: No Koala habitat is present in the expansion area. The Environmental Management and Site Rehabilitation Plan incorporates re-vegetation and weed management provisions. This will require updating to incorporate new areas of rehabilitation and required fauna corridors. Appropriate consent conditions have been recommended.

- Habitat enhancement - Favoured Koala food trees should be planted within the developed and undeveloped parts of the study area. These species should ideally be swamp mahogany, broad-leaved paperbark, tallowwood and blackbutt.

Revegetation of degraded areas in the northern end of the blackbutt forest corridor that exists on the western edge of the study site.

Planting of swamp mahogany in the northern end of the swamp mahogany corridor that runs through the centre of the site to enable an adequate fauna corridor to be created. This replanting should occur on the edge of the proposed lake to ensure the water table is sufficiently close to the surface for this swamp species to survive.



Comment: Favoured koala food trees are identified in the revegetation strategy of the Environmental Management and Site Rehabilitation Plan.

The modified proposal details the blackbutt forest corridor along the western edge of the site and revegetation in its northern extent.

The modified proposal identifies a central swamp mahogany corridor and revegetation in its northern extent. However, it is no longer to occur on the edge of the lake, rather relocated approximately 100m to the west. The proposed relocation of the central swamp mahogany corridor is acceptable in principle as it will provide separation from extraction and processing activities. However, it needs to be located in an area suitable for sustaining swamp mahogany plantings. A consent condition has been recommended to require this corridor to be located in an area that is representative of the plant community type containing swamp mahogany. This is considered achievable and consistent with the intent of the plan. Specific details will need to be outlined in the revised Environmental Management and Site Rehabilitation Plan.

- Traffic management - Traffic to only operate on internal roads during daylight hours. An awareness program to alert drivers to the presence of Koalas. Erection of warning signs where Koalas cross the southern internal road as it runs parallel to the adjoining National Park.

Comment: The modification remains consistent with these requirements. These requirements are outlined within and will remain part of the revised Environmental Management and Site Rehabilitation Plan.

- Feral animal management - A feral animal management plan should be undertaken for the Dunbogan Peninsular by Hastings Council and NPWS.

Comment: There is no obligation on the proponent and the modification application makes no change to this recommendation. The EMSRP identifies no evidence of feral animals on the site however if they are identified offers development and implementation of strategy as necessary.

- Bushfire management - Fire-fighting equipment should be kept on-site and the grounds near equipment and offices kept free of litter (leaf and paper), to avoid accidental ignition.

Comment: The modification remains consistent with these requirements. The EMSRP details the requirement to keep fire-fighting equipment onsite and maintenance of areas to avoid accidental ignition.

- Education - Employees on-site should be educated as to the crossing sites of Koalas to avoid possibility of traffic mortality.

Comment: The modification remains consistent with these requirements. The EMSRP refers to a driver awareness campaign which involves the erection of a series of Koala crossing signs along the access road adjoining the National Park and incorporation of a 30 kph speed limit.

- Monitoring programs - Ongoing monitoring to determine amount of road kills on internal roads and whether further mitigation measures required.

Continual monitoring of revegetation to ensure weed infestation minimised and adequate Koala food resources maintained. Exotic weed management program established to combat bitou bush and lantana onsite and monitoring incorporated.

Monitoring of possible effect of drawdown on the water table and the vegetation onsite.

Monitoring programs be incorporated into the feral animal management plan.

Spotlighting and/or Koala scat searches be conducted annually on the site over approximately a 3-day period to ensure operations are not affecting the Koala population.

Comment: The modification remains consistent with these requirements. The EMSRP contains monitoring provisions consistent with the above requirements.

The modified development does not include any removal or impact on Koala habitat and would remain consistent with the approved Koala Plan of Management.

Consent conditions have been recommended to re-enforce the incorporation of these mitigation measures into a revised Environmental Management and Site Rehabilitation Plan (EMSRP) and to ensure the required monitoring and reporting is undertaken.

## Chapter 4 - Koala habitat protection 2021

Clause 4.4 - The land is part zoned C2 Environmental Conservation with revegetation proposed within the C2 zone and this chapter applies.

Clause 4.8 - The land is subject to an approved Koala Plan Management prepared by ERM Michell McCotter Pty Ltd and dated April 1995. The council's determination of the development application must not be inconsistent with the plan of management.

As detailed in the comments above under Chapter 3 the application has demonstrated consistency with the approved Koala plan of management.

## **State Environmental Planning Policy (Planning Systems) 2021**

The application is for a modification to an existing development consent and is not seeking development consent. The modification application is not recognised as state significant or regionally significant development.

## **State Environmental Planning Policy (Primary Production) 2021**

## Chapter 2 - Primary Production and rural development

Clause 2.27 - Before determining a development application for any development, a consent authority -

- (a) must consider whether, because of its nature and location, the development may have an adverse effect on oyster aquaculture development or a priority oyster aquaculture area, and
- (b) if it suspects that the development may have that effect, must give notice of the application to the Secretary of the Department of Industry.

The site is located approximately 270 metres from the Camden Haven River which contains oyster aquaculture development and priority oyster aquaculture areas.

Having regard to the proximity of the site to the river and supporting environmental assessments, no adverse impact or effect on oyster aquaculture development or priority oyster aquaculture areas is suspected or anticipated. Notice to the Secretary of the Department of Industry is not required.

## State Environmental Planning Policy (Resilience and Hazards) 2021

## Chapter 2 - Coastal management

Clause 2.5 - This policy prevails over the Port Macquarie-Hastings LEP 2011 in the event of any inconsistency.

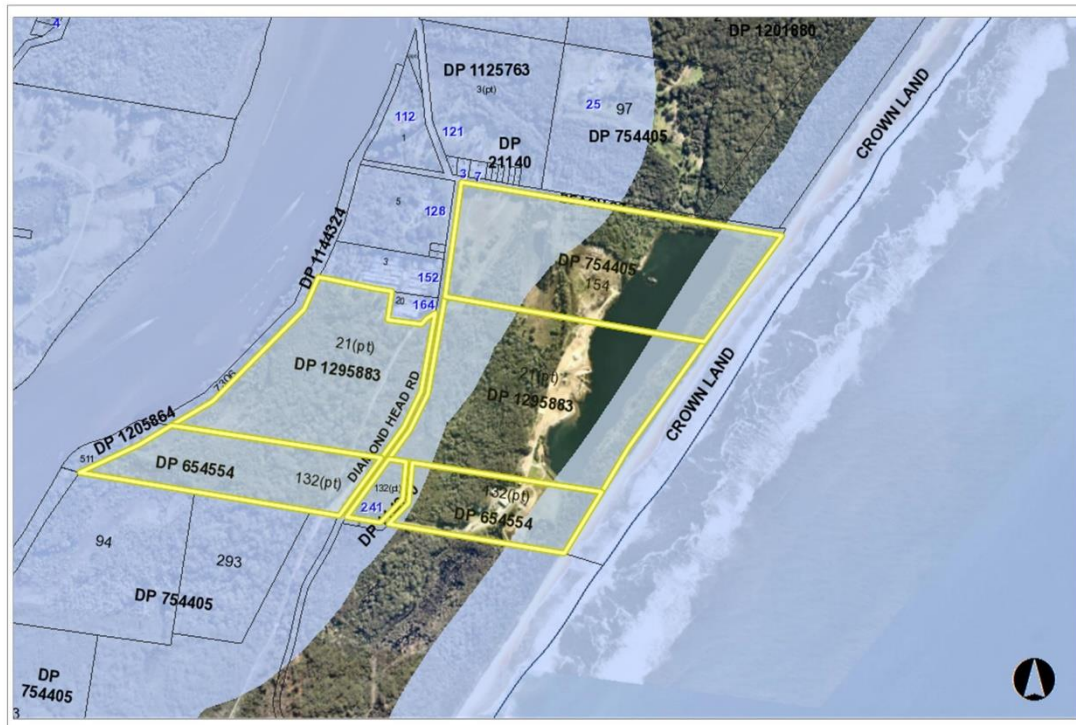
Clauses 2.7 and 2.8 - The proposed expansion to the extraction footprint is not located within mapped coastal wetland or proximity area to coastal wetland. The mapped coastal wetland and land within proximity to coastal wetland on the site is illustrated in the figure below.



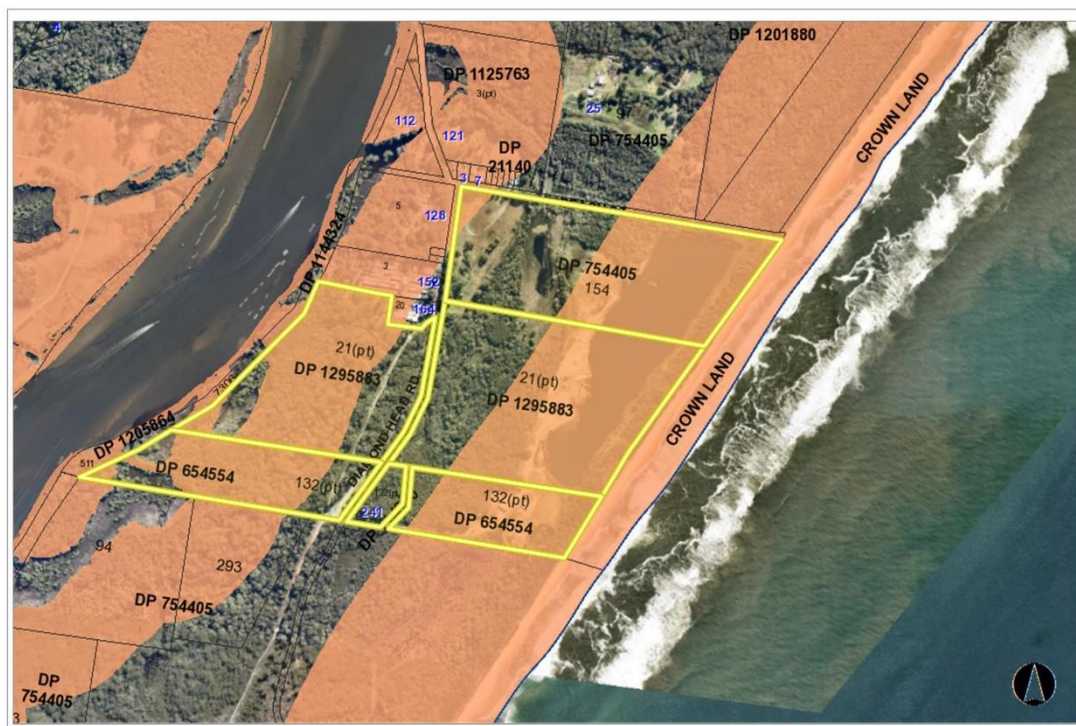
Clause 2.9 - The land is not mapped as being within any coastal vulnerability area.



Clause 2.10 - The proposed expansion to the extraction footprint is not located within the mapped coastal environment area. The extent of the mapped coastal environment area is illustrated in the figure below:



Clause 2.11 - The proposed expansion to the extraction footprint is located within the mapped coastal use area. The extent of the mapped coastal use area is illustrated in the figure below:



Having regard to clause 2.11 the proposed development is not considered likely to result in any of the following:

- a) any adverse impacts on existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability
- b) overshadowing, wind funnelling and the loss of views from public places to foreshores
- c) any adverse impact on the visual amenity and scenic qualities of the coast, including coastal headlands
- d) subject to obtaining the relevant permits, any adverse impact on Aboriginal cultural heritage, practices and places
- e) any adverse impacts on the cultural and built environment heritage

The site is operating as a sand quarry with dredge pond and open machinery areas. Having regard to the scale and size of the existing development, the expansion to the extraction proposed remains compatible with the existing surrounding coastal and built environment.

Clause 2.12 - The proposed expansion to the extraction area is westward and not toward the beach or adjoining dune system. The modified development proposal is not likely to cause increased risk of coastal hazards on the land or other land.

Clause 2.13 - There is no certified Coastal Management Program that applies to the land.

### Chapter 3 - Hazardous and offensive development

This chapter was introduced to clarify the definitions for hazardous and offensive industries and to apply guidelines for the assessment of industries that have the potential to create hazards or an offence.

Part 2 - The development as proposed to be modified is not identified as a hazardous or offensive industry.

Part 3 - Clause 3.10 - The development and its operations are subject to an Environmental Protection Licence (EPL) and therefore the development is identified as a potentially offensive industry.

Clause 3.11 - This is a modification application only and no change to the extraction or processing methods or operational components of the development is proposed. A preliminary hazard analysis is not considered necessary.

Clause 3.12 - There is no change to the extraction or processing methods or operational components of the development proposed. Consultation with the NSW EPA has been undertaken surrounding environmental and licensing requirements.

Having considered the above and with the imposition of conditions, the proposed development is not considered to be an offensive industry and will create no significant risk.

### Chapter 4 - Remediation of land

Clause 4.6 - This is a modification application only. Development consent has already been granted. The provisions of this policy do not apply.

### **State Environmental Planning Policy (Resources and Energy) 2021**

Chapter 2 - Mining, petroleum production and extractive industries

Part 2.2 - Clause 2.9 (3) - Development consent for an extractive industry has already been granted.

Part 2.3 - Development applications - matters for consideration

This is a modification application only. Development consent for an extractive industry has already been granted and the provisions of this part do not apply.

However, it is considered that the modified development is not incompatible with existing and approved uses of land in the vicinity of the development. Environmental impacts have been adequately assessed and consent conditions recommended to ensure the development is undertaken in an environmentally responsible manner.

### **State Environmental Planning Policy (Transport and Infrastructure) 2021**

Clause 4.8 - There is no electricity infrastructure located within proximity to the proposed expansion area, however the application was referred to Essential Energy as a matter of process. Essential Energy provided a response advising it has no comments to make as to potential safety risks arising from the proposed development.

Clause 2.122 - Traffic generating development. The application involves an expansion to the existing extractive industry, which is greater than 20,000m<sup>2</sup> in site area. The application was referred to Transport for NSW seeking comment. Transport for NSW response is provided in Attachment 8 advising it raises no objection to or requirement for the proposed development as it is considered there will be no significant impact on the nearby classified (State) road network.

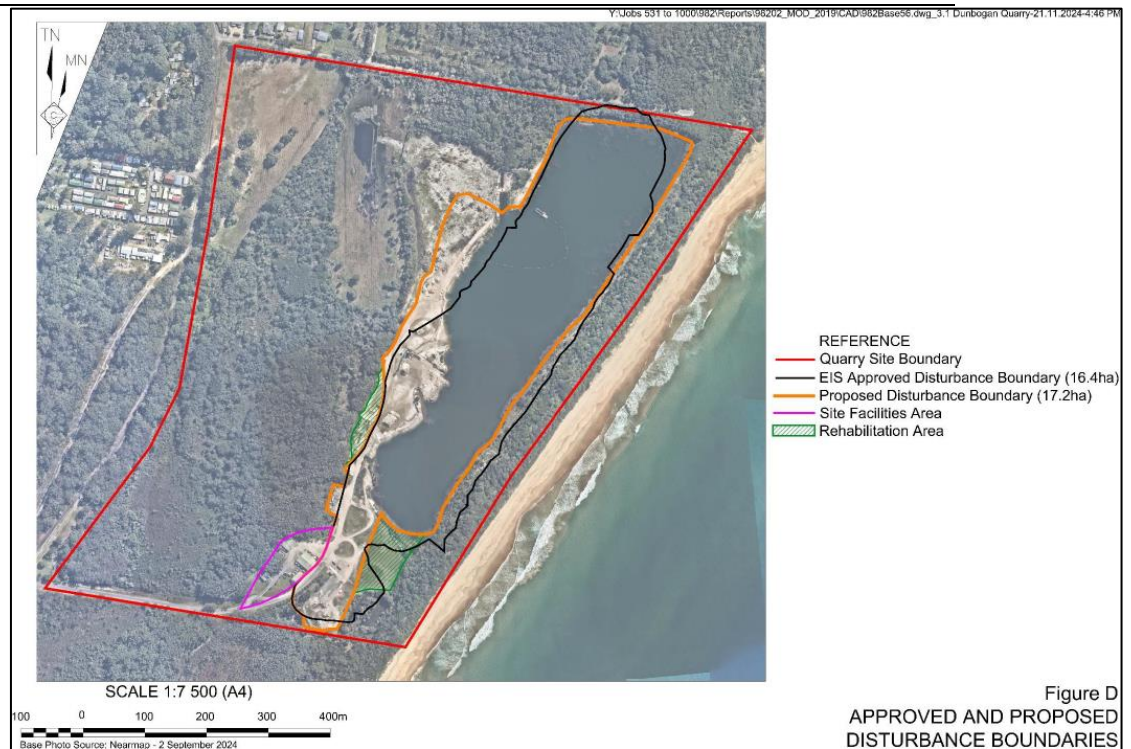
There is no change to the approved access and traffic movements on the site and no additional impacts surrounding traffic safety, road congestion or parking.

### **Port Macquarie-Hastings Local Environmental Plan 2011**

The proposal is consistent with the LEP having regard to the following:

- Clause 2.2: The subject site is zoned RU1 Primary Production and C2 Environmental Conservation. The proposed expansion to the quarry footprint and regularisation of the current quarry footprint is located within the RU1 zone. A small portion of the current quarry footprint was identified as encroaching into part of the E2 zone. The figure below illustrates the small portion on the western edge of the quarry footprint (hatched in green) that had encroached into the C2 zone and is proposed to be rehabilitated.





- 1.
- 2.
3. Clause 2.3(1) and the RU1 zone landuse table: The development to be modified remains for the purpose of an 'extractive industry' which is a permissible landuse in the RU1 zone.
- 4.
5. The objectives of the RU1 Primary Production zone are as follows:
6.
  - 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.
- 7.
8. Clause 2.3(2): The proposal is consistent with the zone objectives having regard to the following:
9.
  - The proposal is an expansion of the approved extractive industry which is a permissible land use within the zone.
  - The proposal will not impact on any primary production industry.
  - The proposal will not result in fragmentation and alienation of resource lands.
  - The site contains and adjoins rural and environmental zoned land. Subject to the implementation of environmental controls there will be no impact upon the environmental zones.
- 10.
11. Clause 5.10: Development consent is sought for potential disturbance and/or excavating Aboriginal objects. An Aboriginal Cultural Heritage

Assessment report prepared by Austral Archaeology Pty Ltd and dated 23 September 2024 supports the application.

The recommendations of the assessment are as follows:

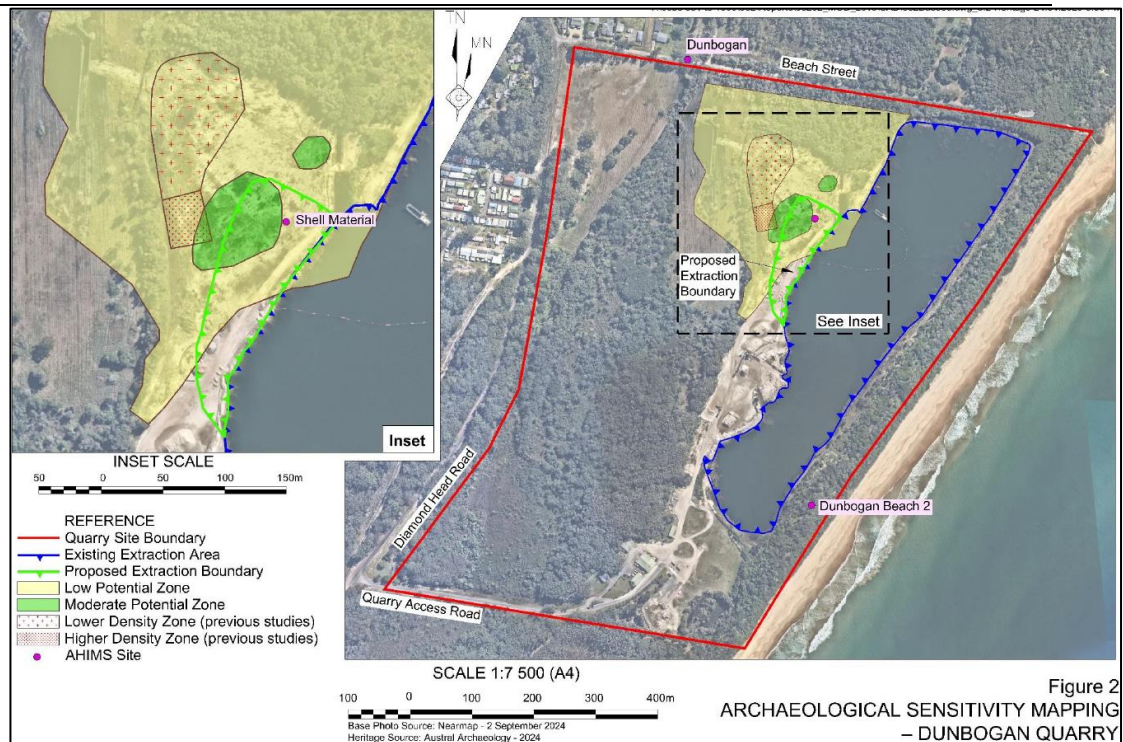
- Owing to the extensive disturbances and loss of stratigraphic integrity, no further assessment or archaeological works are required to be undertaken within the proposed extraction zone.
- The proposed works are likely to impact disarticulated shell materials. As a midden ('Dunbogan' [AHIMS #30-6-0025]) is recorded within the proposed expansion to the extraction zone, an Aboriginal Heritage Impact Permit (AHIP) must be granted prior to the commencement of any associated works.
- It is understood that former market gardens are located in the west of the proposed extraction area. Agricultural works may be undertaken on those areas of the market gardens that were surveyed as part of the original 2020 ACHA.
  - An additional archaeological assessment including additional survey works will need to be completed prior to the undertaking of any agricultural works outside of this boundary. This may also involve additional approvals, to be confirmed following that assessment.
- If there are any changes to the proposed design, a reanalysis of the Aboriginal heritage constraints should be undertaken by a qualified archaeological consultant.
- An AHIP does not allow for the destruction of human remains. In the event that human skeletal remains are encountered, all works in the vicinity must cease immediately. NSW Police must be contacted, they will then notify the Coroner's Office.
  - If the remains are believed to be of Aboriginal origin, then the Aboriginal stakeholders and Heritage NSW must be notified. No further harm should occur to the suspected remains. Do not recommence works at the particular location unless authorised by OEH in writing.
- It is recommended that the proponent continues to inform the Aboriginal stakeholders about the management of Aboriginal cultural heritage within the study area throughout the completion of the project. The consultation outlined as part of this ACHA is valid for six months and must be maintained by the proponent for it to remain continuous. If a gap of more than six months occurs, then the consultation will not be suitable to support an AHIP for the project.
- A copy of this report should be forwarded to all Aboriginal stakeholder groups who have registered an interest in the project.

The following figure illustrates the location of the AHIMS site referenced which is located within the proposed expanded extraction area. The figure also illustrates the location of lower and higher density zones (previous studies) in this figure. This is 'site 1' referred to in consent condition No 38 which is reproduced below:

"Site 1 identified within the Aboriginal Study is to be excluded from the extraction area and protected during any works."

The expansion to the extracting area does not extend into 'site 1' and no change to the consent condition is proposed or required.





Consultation has occurred with the Department of Environment - Heritage who have reviewed the report, its findings and recommendations. Comments provided by the department have been considered and consent conditions recommended to advise of the requirement to obtain an Aboriginal Heritage Impact Permit.

Subject to the recommendations of the assessment report being implemented and a AHIP being obtained from Department of Environment - Heritage the modified development will not result in any significant heritage impacts that would warrant refusal of the application.

12. Clause 5.21: The site is land which is considered to be within a "flood planning area". In this regard, the following comments are provided which incorporate consideration of the objectives of Clause 5.21, Council's Flood Policy 2018, the NSW Government's Considering Flooding in Land Use Planning Guideline 2021 and the NSW Government's Floodplain Development Manual (2005):

- The modified proposal is sufficiently compatible with the flood function and behaviour on the land;
- The modified proposal will not result in any significant adverse effects on flood behaviour that would result in detrimental increases in the potential flood affectation of other development or properties;
- The modified proposal will not result in any adverse effects on the safe occupation and efficient evacuation of people along existing evacuation routes for the surrounding area;
- The modified proposal is not likely to significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses;
- The modified proposal is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.

13.

14. Clause 7.1: Acid sulfate soils. The proposed expansion area is located within an area mapped as containing class 3 acid sulfate soils to which works more than 1 metre below the natural ground surface will occur and

development consent is sought. An acid sulfate soils management plan supports the application.

15.

16. Clause 7.13: There is no change proposed or required to existing services.

**(iii) Any Development Control Plan in force**

**Port Macquarie-Hastings Development Control Plan 2013 (DCP)**

There are no development specific provisions of this plan applicable to this form of development.

The following applicable general provisions of the plan are addressed in the following table:

| <b>DCP 2013: Part B - General Provisions - B2: Environmental Management</b> |   |   |                 |
|---|---|---|-----------------|
| <b>DCP Objective</b>  | <b>Development Provisions</b>   | <b>Proposed</b>   | <b>Complies</b> |
| <b>Environmental Management Areas and Buffers</b>                           |   |   |                 |
| 7   | a) For coastal floodplain endangered ecological communities a minimum, fully vegetated buffer of 35m must be provided.              | <p>The supporting ecological assessment suggests that no recognised coastal flood plain endangered ecological community exists on the site.</p> <p>Council's ecologist has suggested that the vegetation located adjacent the expanded extraction area within the C2 zone has key diagnostic characteristics and should be recognised as a coastal flood plan endangered ecological community. The expansion area is located a minimum of 35m from the edge of the C2 zone.</p> | Yes             |
|   | b) For Freshwater Wetland on Coastal Floodplain endangered ecological community a fully vegetated buffer of 100m is to be provided. | None identified.  | N/A             |

|   |  |   |     |
|---|--|---|-----|
|   | c) For all other endangered ecological communities, a fully vegetated buffer of 50m must be provided.  | None identified.  | N/A |
|   | d) Stormwater management facilities may be considered within buffer areas only where the applicant can demonstrate the proposal is justified on the basis of practical engineering related site constraints and where it is adequately demonstrated that the applicable objectives are achieved. | No stormwater management facilities proposed in buffer areas.   | N/A |
|   | e) Fully vegetated buffers cannot contain road infrastructure or an asset protection zone.   | Not proposed.   | N/A |
|   | f) Where different buffers (including riparian buffers) apply to an area, the greater of the buffer widths applies.  | Noted.  | N/A |
| 8 | a) Any habitat/vegetation which will be lost as a consequence of development is to be offset through the dedication of suitable land utilising expert ecological knowledge to determine the impact and offset based on the principle of 'improve and maintain'.                                  | No vegetation removal is proposed under this application.   | N/A |
|   | b) Improvement and maintenance of existing habitat and corridors and the consolidation of fragmented bushland are to be considered as the first preference for any development offset.   | Improvement and establishment of fauna corridors is proposed.   | Yes |
|   | c) A Vegetation Management Plan (VMP) is to be prepared for any environmental land that is to be retained or used to offset development impacts.   | Revegetation of parts of the E2 zoned land is required. Consent conditions are recommended requiring details to be incorporated | Yes |

|                                       |  |  |     |
|---------------------------------------|--|--|-----|
|                                       |  | into the revised Environmental Site and Rehabilitation Plan.   |     |
|                                       | d) VMPs are required to address Council's VMP "Heads of Consideration"   | Details consistent with these guidelines to be incorporated into the revised Environmental Site and Rehabilitation Plan. | Yes |
| 9                                     | a) A minimum, fully vegetated buffer from the top of bank to both sides of a watercourse is to be provided in accordance with the following: <ul style="list-style-type: none"> <li>– 10m for 1st order streams that flow intermittently.</li> <li>– 30m for 1st order streams that flow permanently.</li> <li>– 40m for 2nd order streams.</li> <li>– 50m for 3rd order streams.</li> <li>– 65m for 4th order streams.</li> </ul> | There are no defined natural water courses on the site.  | N/A |
|                                       | b) Stormwater management facilities may be considered within buffer areas only where the applicant can demonstrate the proposal is justified on the basis of practical engineering related site constraints and where it is adequately demonstrated that the applicable objectives are achieved.   | N/A  | N/A |
|                                       | c) Fully vegetated buffers cannot contain road infrastructure or an asset protection zone.   | N/A  | N/A |
| <b>Tree Management – Private Land</b> |  |  |     |
| 11                                    | a) Pruning must be undertaken in accordance with Australian Standard AS 4373 - Pruning of Amenity Trees.   | No tree pruning proposed.  | N/A |
|                                       | b) An application for the removal of a tree listed in Table 1 must be accompanied by an  | No tree removal is proposed under this application.  | N/A |

|  |   |     |     |
|--|---|-----|-----|
|  | <p>Arborist's report stating that the tree:</p> <ul style="list-style-type: none"> <li>– is dangerous; or</li> <li>– is dying and remedial pruning would not improve the deteriorated condition of the tree; or</li> <li>– has a history of branch fall (documented or photographic evidence to be provided); or</li> <li>– is structurally unsound or; or</li> <li>– diseased.</li> <li>– Advice on the requirement of an arborist report associated with a tree removal permit can be obtained from Council's Tree Assessment staff.</li> <li>– The requirement for an arborist report for tree removal associated with a development application will be determined on merit by Council's Development Assessment.</li> </ul> |     |     |
|  | <p>c) Where a tree listed in Table 1 is approved for removal it must be compensated with 2 x koala habitat trees. Significant large-scale development will require an advanced size koala food tree or habitat tree (primary Koala browse species) that meets AS2303:2015 Tree Stock for Landscape Use. The compensation tree is to be planted in a suitable location as determined by the Director of Development and Environment or their delegate.</p>   | N/A | N/A |
|  | <p>d) Removal of dead branches including palm fronts and the selective removal of branches up to and including a diameter of 50mm may be undertaken without a permit or development consent where the removal:</p> <ul style="list-style-type: none"> <li>– Does not alter the canopy of the tree, and</li> </ul>   | N/A | N/A |

|  |   |     |     |
|--|---|-----|-----|
|  | <ul style="list-style-type: none"> <li>– Does not destroy the aesthetic appearance of the tree canopy; and</li> <li>– Does not alter the growth structure of the tree, and</li> <li>– Is carried out in accordance with Australian Standard AS 4373 - Pruning of Amenity Trees.</li> </ul>  |     |     |
|  | e) The pruning of large garden shrubs in excess of 3 metres in height for the purpose of ornamental shaping is permitted without a permit or development consent.   | N/A | N/A |
|  | f) Where a development is proposed adjoining Council controlled land, the plans must identify all trees that fall within 6.0m of the property boundary and any trees proposed to be removed, identified on that plan.   | N/A | N/A |
|  | g) Any pruning or removal of any tree on private land must be undertaken in accordance with Council's tree management specifications.   | N/A | N/A |
|  | <p>h) A tree removal permit can be sought for tree removal associated with a Complying Development Certificate (CDC), subject to the tree removal meeting the following criteria:</p> <ul style="list-style-type: none"> <li>– Must be associated with CDC and removal must not occur until CDC issued.</li> <li>– Application must identify and locate all trees within proximity to the development.</li> <li>– No more than 3 trees over 6m in height to be removed. Trees taken to be impacted on by the development are to be determined in accordance with AS 4970 - Protection of trees on development sites (i.e 12 x DBH tree</li> </ul> | N/A | N/A |



|   |   |  |     |
|---|---|--|-----|
|   | <p>protection zone required for those trees to be retained).</p> <ul style="list-style-type: none"> <li>– Must not involve removal of hollow bearing trees.</li> <li>– The removal of any koala browse tree species are to be replaced at a ratio of 2:1 on site or at a secure off site location agreed to by Council. Any on site replanting is to have regard for services and buildings and is to be agreed to by Council.</li> </ul> |  |     |
| <b>Tree Management - Hollow Bearing Trees</b> |   |  |     |
| 13  | a) All hollow bearing trees within the development area are to be accurately located by survey and assessed by an appropriately qualified ecologist in accordance with Council's Hollow-bearing tree assessment (HBT) protocol  | No hollow bearing tree removal proposed. | N/A |
|   | b) Any tree that scores less than 8 using the HBT assessment protocol may be considered for removal subject to compensatory measures specified below.   | N/A                                      | N/A |
|   | c) Any tree that scores 8-12 using the HBT assessment protocol may be considered for removal if management measures are 'impractical to allow retention'  | N/A                                      | N/A |
|   | d) Any tree that scores more than 12 using the HBT assessment protocol the assessment must be retained and afforded a development exclusion buffer or located within environmental lands.   | N/A                                      | N/A |
|   | e) Where a development exclusion buffer is proposed it shall have a radius of 1.25  | N/A                                      | N/A |

|    |   |     |     |
|----|---|-----|-----|
|    | times the height of the tree measured from its base.  |     |     |
| 14 | a) A strategy for tree removal (timing and methodology) that minimises impacts on native wildlife shall accompany any development that proposes the removal of HBTs.  | N/A | N/A |
|    | b) The removal of HBTs is to be offset by the retention of recruitment trees.<br>Compensatory recruitment trees shall be provided at the rate of two for one for trees that scored 8-12, Development Control Plan 2013 page 25 and at the rate of one for one for trees that scored less than 8. A tree can be considered to be a compensatory recruitment tree under the following criteria:<br><ul style="list-style-type: none"> <li>– Does not have any major structural defects or is suffering from disease that would lead to premature death; and</li> <li>– Is from the same vegetation community and same genus; and</li> <li>– Are to be located within environmental lands and managed in accordance with a VMP; and</li> <li>– Have a DBH of 50cm or greater and do not possess hollows. For Blackbutt <i>Eucalyptus pilularis</i> a DBH of 100cm or greater applies.</li> </ul> | N/A | N/A |
|    | c) The removal of HBTs are to be offset by the installation of nesting boxes of similar number and size as those to be removed.   | N/A | N/A |
|    | d) Nesting boxes are to be installed like for like (both type and number, and host tree to genus level) and must be   | N/A | N/A |

|  |  |     |     |
|--|--|-----|-----|
|  | located within proposed open space or environmental lands.   |     |     |
|  | e) Nesting Boxes are to be installed and maintained within environmental lands in accordance with a VMP.   | N/A | N/A |
|  | f) Nesting Boxes to be inspected and maintained by a qualified ecologist.  | N/A | N/A |
|  | g) Any HBT that will not afford protection via an exclusion buffer or within environmental lands will attract the same offsetting requirements as if it was to be removed. | N/A | N/A |

**DCP 2013: Part B - General Provision - B3: Hazards Management**

| DCP Objective   | Development Provisions   | Proposed  | Complies |
|-----------------|--|---|----------|
| <b>Flooding</b> |  |   |          |
| 19              | a) Development must comply with Council's Floodplain Management Plan and Flood Policies. | Modified proposal is consistent with Council's flood policy. Refer to comments under clause 5.21 of LEP 2011. | Yes      |

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

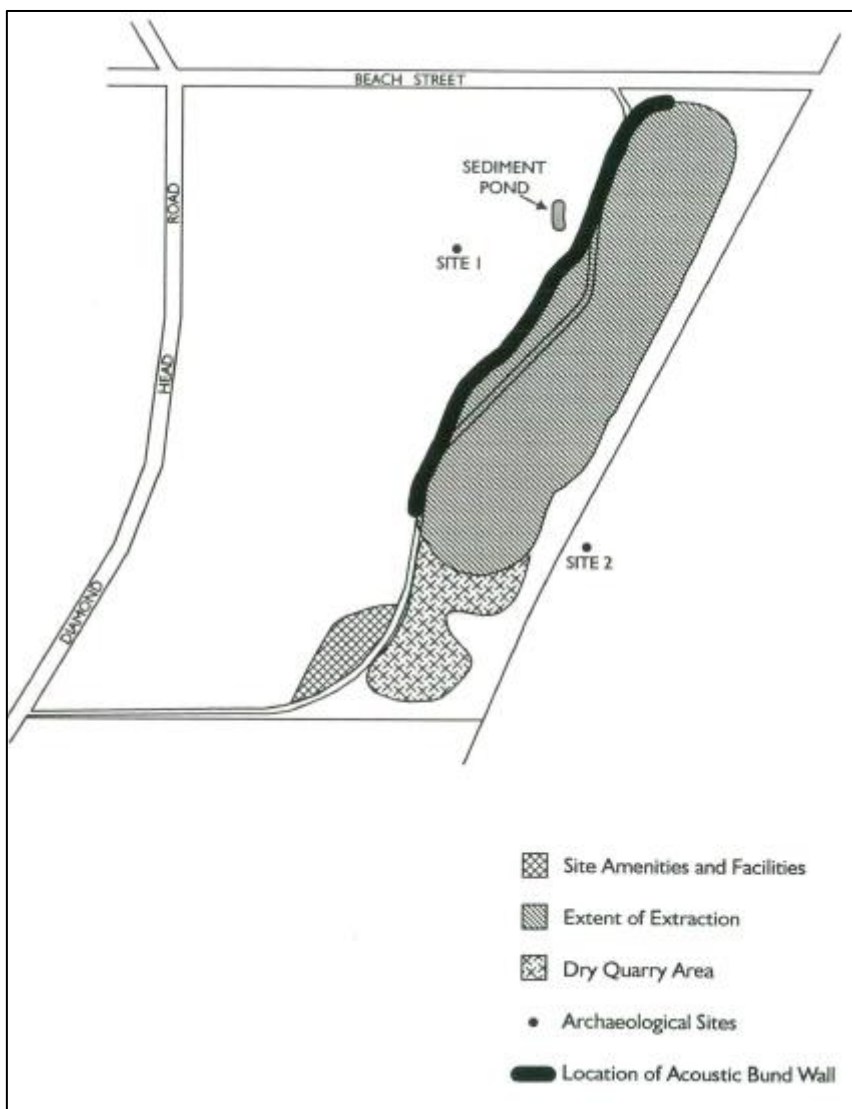
**Noise**

Potential exists for increased noise impacts with the expansion of the quarry westward toward residential receivers on Diamond Head Road and Beach Street. An air quality and noise assessment prepared by Todoroski Air Services Pty Ltd and dated 14 May 2024 supports the application. The assessment concludes that the estimated change in noise at receivers would be less than 0.5dbA and that this change would be indiscernible in the field and likely to go unnoticed.

Council's environment officer has reviewed the proposal and supporting air quality and noise assessment. Of note was that equipment operating noise levels were extrapolated from the original EIS and it is understood that no operational noise measurements were undertaken and relied upon in preparing the report.

The report makes no recommendations surrounding amendment or removal of any noise mitigation measures outlined in the original EIS and outlined in the Environmental Management and Site Rehabilitation Plan. The original EIS and consent required a 3m high bund wall be located between the western edge of the working area as the pit moved south to provide acoustic shielding to receivers.

The location of the bund wall is illustrated in figure 3.1 of the Environmental Management and Site Rehabilitation Plan and is extracted below:



It is recommended that the environmental management and site rehabilitation plan be revised to show the 3m high bund wall extending around the expanded extraction area to ensure no adverse noise impacts upon nearby receivers.

### Air quality

Potential exists increased dust emissions with the expansion of the quarry. An air quality and noise assessment prepared by Todoroski Air Services Pty Ltd and dated 14 May 2024 supports the application. The assessment concludes that given the nature of the air emission sources and the proposed dust control measures, the receiving environment, and the prevailing wind conditions it is expected that the project can operate without causing any adverse air quality impact in the surrounding environment.

Councils environmental officer has reviewed the proposal and supporting air quality and noise assessment and agrees with the findings and conclusions. It has been

recommended that appropriate dust control measures be incorporated into the revised environmental and site rehabilitation plan, which is contained within the recommend consent condition changes.

### Water quality

Potential exists for surface waters to be impacted by the expanded onsite operations. The application is supported by a groundwater assessment, prepared by Katarina David and dated 29 October 2024. The assessment provides the following conclusions:

- Groundwater at the Quarry Site is associated with an unconfined coastal sands aquifer comprising of sand and clayey sands.
- The hydraulic conductivity of this aquifer is high and typical of a fine to medium sand aquifer.
- Groundwater level is close to ground surface, particularly in low lying areas of the Quarry Site.
- The Project would involve extension of the current Dredge Pond to the northwest with extraction of sand to a depth to -15 mAHD. The extraction will create a void that would over time create a surface water feature.
- Localised groundwater flow direction is from the south to the north and north-west. During wet periods groundwater flows towards and through the Dredge Pond. However, during dry weather periods the hydraulic gradient near the Dredge Pond is reversed and surface water is contributing to the groundwater system in the northwest of the Dredge Pond. This is supported by the groundwater levels and the fact that the downgradient bores have higher salinity compared to the upgradient bores
- The predicted maximum inflows are 1.64 ML/year and the Applicant will rely upon the exemption under Clause 7 of the Schedule 4 of the WMP for water access licence.
- Dredge Pond water is saline, while groundwater ranges from fresh upgradient of the Quarry Site to brackish and saline near the Dredge Pond.
- The main hydrogeochemical processes affecting groundwater chemistry are evaporation and mixing with seawater. The mixing of groundwater with Dredge Pond and seawater occurs via diffusion and is influenced by evaporation, tides and operational activities on site.
- The review of the likely impacts to the groundwater regime and downgradient users identified one private downgradient bore which may be impacted by this Project. The potential for impact is based on the observed groundwater gradient during dry weather period and higher salinity of bores downgradient of the Dredge Pond. A baseline dataset of flow and quality is required for this bore to establish the condition to measure against the future performance. Given the current limited productive use for groundwater in this area, this is not likely to result in a change to the beneficial use of groundwater at bore GW300277.
- Detailed ecology site survey did not identify any GDEs therefore there is no predicted impact to the ecosystem.
- Water monitoring program needs to continue as follows:

- 
- Groundwater levels need to be continuously monitored and manual reading undertaken on a 6-monthly basis
  - Groundwater quality needs to be undertaken on an annual basis with samples analysed for field parameters (pH and EC), major ions and major metals.
  - Surface water levels in the Dredge Pond and proposed extraction area need to be continuously monitored using a datalogger. It is recommended that water quality sampling is undertaken for the same parameters and frequency as groundwater.
  - Registered private bore GW300277 needs to be included in the monitoring program and sampled annually for the pH, EC and major dissolved metals (as per Table 3). If the access is not granted to sample the private bore, then an additional bore needs to be installed and monitored at the north-western part of the Quarry downgradient of the proposed extension area.
- A groundwater monitoring plan would be developed for the Quarry with regular annual reports prepared to document the results of the groundwater and surface water monitoring.
  - Strategies to minimise the risks and uncertainties related to any potential impacts would depend on progressive monitoring results throughout the operation.

In summary, the assessment report recommends establishing a surface and groundwater water quality monitoring plan with results included in annual reporting.

The ground water assessment report has been reviewed by Council's environment officer and ecologist who agree with the findings and recommendation of establishing a surface and groundwater water quality monitoring plan. It is recommended that the revised environmental management and site rehabilitation plan incorporate a surface and groundwater water monitoring plan.

### **Flora and fauna**

The area of expansion to the extraction footprint currently contains no native vegetation and no native vegetation removal is proposed under this application.

During assessment of this application, it became evident that native vegetation did exist in the proposed expansion area and was recently removed. The applicant maintains the vegetation was removed lawfully under the provisions of the Local Land Services Act 2013.

The lawfulness of this clearing is currently subject to a compliance investigation by the appropriate regulatory authority being the NSW Department of Climate Change, Energy, the Environment and Water. The application was placed on hold when Council was advised of the Department's compliance investigation. However, in the interests of progressing the modification application, the proponent submitted a revised biodiversity assessment report to include consideration and assessment of native vegetation located within the site of the proposed expanded extraction area, prior to clearing.



The revised biodiversity assessment report was prepared by Biodiversity Australia and is dated 12 May 2025. The assessment provides the following key findings and conclusions:

- Field studies, that were undertaken before the vegetation clearing, determined two plant community types occurred within the development footprint, but neither qualifies as an endangered ecological community due to the lack of characteristic species or suitable soil types / inundation periods.
- One threatened fauna species was confirmed present within the development footprint, being the Grey-Headed Flying Fox with a further 9 species confirmed present in the wider subject land. These being the Little Lorikeet, White-bellied Sea Eagle, Powerful Owl, Glossy Black Cockatoo, Koala, Eastern Chestnut Mouse, Little Bent-wing Bat, Grey-Headed Flying Fox, Southern Myotis and Common Blossom Bat. Suitable Koala habitat is present within the subject land, though absent from the development footprint. No Koala feed trees are present within the development footprint.
- No species credits are required to be offset by the project. Although the Grey-headed Flying Fox was recorded within the development footprint, species credits are not required for this species as no breeding habitat is present. No additional candidate species were recorded within the development footprint, and as such, no species credits are required.
- Assessment under the Port Macquarie Hastings Council Development Control Plan 2013 (PMHC DCP) identified that provisions for the removal of Koala food trees (KFTs), EECs, hollow bearing trees and aquatic habitats do not apply to the proposed development, as these features do not occur within the development footprint.
- Potential indirect impacts include habitat fragmentation, increased edge effects and weed invasion. A range of mitigation measures will be implemented to reduce other impacts associated with the development. These are described in section 6 of the report. The primary mitigation measure is the establishment of 2 fauna corridors along the western and northern boundaries of the subject land. The fauna movement corridor will provide a dispersal pathway connecting the Crowdy Bay National Park and native dune vegetation to the north of the project.
- A test of significance revealed the proposed works are unlikely to result in a significant impact on threatened flora and fauna species due to the small extent of native vegetation within the development footprint (only 0.22 ha), disturbed nature of the development footprint and lack of critical habitat features (e.g. hollow-bearing trees, Koala food trees).
- The development footprint does not include coastal wetlands or littoral rainforest pursuant to the Resilience and Hazards SEPP or area mapped as supporting biodiversity values.

Councils' ecologist has reviewed the application and revised biodiversity assessment report and agrees in principle with its findings. Some key comments provided as part of considering the proposal and supporting biodiversity assessment are as follows:

- It is not possible to accurately verify, as the area has already been cleared, that only 0.22 ha of native vegetation existed and was cleared in the proposed reduced development footprint and that a Biodiversity Development Assessment Report (BDAR) not required. However, having regard to aerial photography it is unlikely the clearing would have exceeded the area clearing threshold of 1 hectare applicable to the site.
- The revised biodiversity assessment suggests that Plant Community Type (PCT) 4006 Northern Paperbark-Swamp Mahogany Saw-sedge Forest does not qualify as NSW Biodiversity Conservation Act listed Swamp Sclerophyll Forest on Coastal Floodplains Threatened Ecological Community (TEC) or the EPBC Act listed Coastal Swamp Sclerophyll Forest of New South Wales and Southeast Queensland TEC. Council's ecologist maintains that the area of PCT 4006 on the subject land is consistent with both listings and has been regarded as a TEC for the purposes of this assessment. However, the revised and reduced footprint is unlikely to result in a significant impact to the TEC located in the adjacent C2 zone.
- The fauna corridors proposed in plate 13 (page 52) of the biodiversity assessment are proposed as follows:



It is considered that minimum widths needs to be nominated, consistent with that originally approved and identified in the EIS and environmental site management and rehabilitation plan, and that the corridor adjoining Beach Street on the northern boundary run the full extent of the northern boundary to provide connection to environmental zoned land beyond the existing dredge pond. Specific conditions have been recommended requiring expansion and establishment of these amended fauna corridors be clearly identified in the revised environmental site management and rehabilitation plan.

Subject to the implementation of the mitigation measures and recommended changes to the consent conditions it is considered that the modified proposal will not result in

any significant adverse impact to flora and fauna that would warrant refusal of the application.

**Access, Traffic and Transport**

The site is currently approved for a maximum of 30 laden truck (i.e. 60 truck movements) per day. No changes are proposed to the site access arrangements, number of truck movements or the haulage route. The proposal will increase the amount of resource to be extracted and subsequently extend the life of the quarry. Given the age of the consent, the applicant was requested to undertake an assessment of the suitability of the haulage route. TTPP Transport Planning undertook a haulage route assessment dated 22 November 2024 which supports the application. Key findings and concludes of the assessment are:

- The route was found to be suitable for continued use by heavy vehicles from the quarry site to the Pacific Highway.
- There were no high-risk issues identified and no significant patterns of crashes that may be exacerbated by continued use by heavy vehicles.
- Some issues that could be addressed to improve road safety along the route include installation of signs, speed limits, crash barriers on public roads which would be the responsibility of the road authority.
- Other issues could be addressed through a site-specific driver induction for the quarry, such as driving below 60km/hr on Diamond Head Road near Beach Street.
- Other issues directly related to the operation of the quarry, particularly the road condition of Diamond Head Road should be reported to Council if the road shows signs of dilapidation.

Having regard to the above no adverse impacts in terms of access, traffic and transport are identified that would warrant refusal of the application. A condition has been recommended to incorporate driver induction to inform and educate drivers to drive below 60km/hr on Diamond Head Road near Beach Street.

**Heritage**

Refer to detailed comments under clause 5.10 of the LEP 2011 heading earlier within this report.

**Other land resources**

The site has historically been subject to sand mining and extraction. The modified development will not sterilise any significant mineral or agricultural resource.

**Soils**

Subject to the implementation of appropriate erosion and sediment control measures which are detailed in the Environmental Management and Site Rehabilitation Plan the modified development will not have any significant adverse impacts on soils in terms of quality, erosion, stability and/or productivity. prior to and during construction.

**Social impacts in the locality**

Given the nature of the development and its location the modified proposal is not considered to have any significant adverse social impacts.

**Economic impact in the locality**

The modified proposal is not considered to have any significant adverse economic impacts on the locality. A likely positive impact is that the modified development will maintain employment in the industry and provide for additional industry resource, which will lead to flow impacts such as expenditure in the area.

#### **Cumulative impacts**

The modified development is not considered to have any significant adverse cumulative impacts on the natural or built environment or the social and economic attributes of the locality.

#### **(c) The suitability of the site for the development**

The application and supporting specialist reports have demonstrated that the modified proposal will fit into the locality and the site attributes are conducive to the development.

#### **(d) Any submissions made in accordance with this Act or the regulations**

Refer to submissions table earlier within this report.

#### **(e) The public interest**

The development as proposed to be modified satisfies relevant planning controls and has satisfactorily demonstrated it will not have any significant adverse impacts on the wider public interest.

#### **Ecologically Sustainable Development and Precautionary Principle**

Ecologically sustainable development requires the effective integration of economic and environmental considerations in decision-making processes.

The four principles of ecologically sustainable development are:

- the precautionary principle,
- intergenerational equity,
- conservation of biological diversity and ecological integrity,
- improved valuation, pricing and incentive mechanisms.

The principles of ESD require that a balance needs to be struck between the man-made development and the need to retain the natural vegetation. Based on the assessment provided in the report and with recommended conditions of consent, it is considered an appropriate balance has been struck.

#### **Climate change**

The proposal is not considered to be vulnerable to any risks associated with climate change.

**Section 4.55(4) The modification of a development consent in accordance with this section is taken not to be the granting of development consent under this Part, but a reference in this or any other Act to a development consent includes a reference to a development consent as so modified.**

Noted.

**Section 4.55(5) To avoid doubt, a consent authority is not prevented from modifying a consent under subsection (2) merely because the modification only**

**modifies a condition of consent and would not result in a change to the development the subject of the consent.**

Noted. A change to the development is sought and not just consent conditions.

#### **4. Development Contributions**

No development contributions currently apply to the development and no changes are proposed that trigger the application of development contributions.

#### **5. Conclusion and Statement of Reason**

The application has been assessed in accordance with Section 4.55 and 4.15 of the Environmental Planning and Assessment Act 1979.

Issues raised during assessment and exhibition of the application have been considered in the assessment of the application. The application has been amended during assessment in response to assessment issues and changes to consent conditions are recommended to manage impacts attributed to the development.

The proposed modified development does not raise any significant general public interest issues, despite the level of interest demonstrated through the submissions received, beyond matters already addressed in this report. Overall, the proposed development remains consistent with the existing development consent, and the provisions and objectives of the relevant planning controls. It is anticipated that the proposed modified development will have an acceptable impact on the surrounding natural and built environment.

Approval of the application is considered to be in the public interest as it achieves the LEP objectives for development in the zone. No significant adverse environmental, social or economic impacts on the locality have been identified.

#### **Attachments**

1 [!\[\]\(bd3b31712ad9bab5a241210fa6925cdd\_img.jpg\)](#) Attachment 1 - Recommended Conditions

2 [!\[\]\(0fb13ad0bfa3d86868cdd3883e5665b3\_img.jpg\)](#) Attachment 2 - Plans

3 [!\[\]\(799877f5c2f906134441300079881630\_img.jpg\)](#) Attachment 3 - Legal Advice re substantially the same development dated 20 February 2024

4 [!\[\]\(41aea2746216b27a6939d696d8e035da\_img.jpg\)](#) Attachment 4 - NSW EPA comments dated 6 August 2024

5 [!\[\]\(7bc43b319a082987e20f7bf78f4bab80\_img.jpg\)](#) Attachment 5 - DPE - Water comments dated 29 November 2024

6 [!\[\]\(e50091943b385fe16d3277389202856f\_img.jpg\)](#) Attachment 6 - DPE - Heritage comments dated 31 January 2025

7 [!\[\]\(4436e6b00b9d5e62c2a161129eb3e4d0\_img.jpg\)](#) Attachment 7 - NPWS comments 3 March 2025 & 10 January 2025

8 [!\[\]\(179f167ede0522ebb4ea025b3ad78ca7\_img.jpg\)](#) Attachment 8 - TfNSW comments dated 9 August 2024

DA2024 - 409.1 - DRAFT RECOMMENDED CONSENT CONDITIONS - Updates recommended in red

The **fifty five (55)** conditions of consent referred to in the Notice of Determination of Development Application No 518/94 are as follows:-

**Town Planning Conditions:**

1. The development must be carried out in accordance with the following approved plans and documents, except where the conditions of this consent expressly require otherwise.

Approved plans

| Plan number            | Revision number | Plan title  | Drawn by                 | Date of plan  |
|------------------------|-----------------|---|--------------------------|---------------|
| Figure 3.1 within SOEE | -               | Quarry Site Layout  | R W Corkery & Co Pty Ltd | November 2024 |
| Figure A               | -               | Current and Proposed Extraction limit with cross sections | R W Corkery & Co Pty Ltd | 13 May 2025   |

Approved documents

| Document title  | Version number | Prepared by                   | Date of document |
|---|----------------|-------------------------------|------------------|
| Environmental Impact Statement Volumes 1 and 2                      | -              | ERM Mitchell McCotter Pty Ltd | November 1994    |
| Environmental Management and Site Rehabilitation Plan               | -              | ERM Mitchell McCotter Pty Ltd | July 1996        |
| Koala Plan of Management  | -              | ERM Mitchell McCotter Pty Ltd | April 1995       |
| Statement of Environmental Effects - Dunbogan Quarry Modification 1 | -              | R W Corkery & Co Pty Ltd      | November 2024    |
| Biodiversity Assessment Report                                      | 1.0            | Biodiversity Australia        | 12 May 2025      |



|   |     |                                    |                   |
|---|-----|------------------------------------|-------------------|
| Groundwater Impact Assessment           | I   | Katarina David                     | 29 October 2024   |
| Aboriginal Cultural Heritage Assessment | 9   | Austral Archaeology                | 23 September 2024 |
| Haulage Route Assessment                | -   | The Transport Planning Partnership | 22 November 2024  |
| Acid Sulfate Soil Management Plan       | 1.3 | ENV Services Pty Ltd               | 11 April 2024     |
| Air Quality and Noise Assessment        | 001 | Todoroski Air Sciences Pty Ltd     | 14 May 2024       |

**Reason:** To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

2. Separate development application is to be made for all advertising structures to be erected on the property prior to the erection or placement in position of such structures.

**Reason:** To advise of relevant provisions of the Local Government Act and Ordinance in respect of building/subdivision matters.

3. The extraction rates are to be generally in accordance with Figures 4.1 to 4.5 within the Environmental Impact Statement document dated November 1994 as amended by any conditions of this consent. The final bench is to be a maximum of -15 AHD.

**Reason:** To confirm the details of the application as submitted by the applicant as approved by Council.

4. This consent does not include consent to use the lake as a public recreation facility. A separate development application will be necessary for this use.

**Reason:** To ensure all issues regarding the management of this public facility are addressed.

5. Hours of operation for the proposed development are to be as follows:

6am to 5pm Monday to Friday  
6am to 1pm Saturday

The following activities may be carried out outside the hours specified above:

- (a) activities that are inaudible at non-associated residences;
- (b) emergency work to avoid the loss of life, property or to prevent material harm to the environment.

**Reason:** To minimise noise impacts and protect the amenity of the area and provide flexibility for emergency and environmental protection measures.

**Engineering Conditions:**

6. Submission and obtaining approval of Engineering plans and specifications based on Australian Height Datum for:
  - I. Construction of a suitable intersection in accordance with approved plans No. 4206 of Luke and Company to serve the development at no cost to Council including:
    - (a) Reconstruction of the existing pavement, if required. to provide uniform crossfalls.
    - (c) All necessary surface and subsoil drains.
    - (d) Provision of traffic signs.
    - (e) Consultation with Council regarding the provision of adequate sight distance for north bound traffic travelling out of Crowdy Bay National Park.
  - II. Construction of silt retention facilities including:
    - (a) Details of catch drains
    - (b) Retarding basins
    - (c) Methods of retaining eroded soils within the site during the processing operation.

**Reason:** Section 90(1)(i) and (m1) - to specify Council's access requirements to the property and to minimise any potential soil erosion associated with the development.
7. Construction of work specified in (6.I) above to satisfaction of Director Development and Environment.

**Reason:** To ensure compliance with Council's standards.
8. Compliance with the requirements of NorthPower regarding provision of electricity to serve the development.

**Reason:** Section 90(1)(1) - to provide for adequate electrical power for the proposed development.
9. Any necessary alterations to or relocations of public utility services to be carried out at no cost to Council.

**Reason:** Section 90(1)(d) - to ensure that public works required as a result of the development are not a financial burden on the community at large.
10. Provision of on-site silt retention facilities to the satisfaction of the Director Development and Environment.

**Reason:** Section 90(1)(m1) - to minimise any potential soil erosion associated with the development.
11. All Engineering works on Public property or involving extension or modification to public utilities under Council's control are to be carried out in accordance with plans and specifications approved by, under the supervision of and to the satisfaction of the

Director Development and Environment.

**Reason:** Section 90(1)(i),(j),(1), (m1) to ensure the satisfactory completion of engineering works on public property.

12. Provision of a security deposit or bank guarantee, prior to release of approved building plans, to cover the estimated cost plus 30% of all engineering works required on public property as assessed by the Director Development and Environment prior to the release of any subsequent building approval, plus a written agreement undertaking to carry out the works required prior to commencement of occupation of the building, together with an authorisation for Council to use the funds to complete undertaking to carry out the works required prior to commencement of occupation of the building, together with an authorisation for Council to use the funds to complete any unfinished works. Such bond is to be for limited period of two (2) years and cash securities, only, will be for bonds less than \$1,000.

**Reason:** Section 90(1)(i),(j),(l), (ml) to ensure the satisfactory completion of engineering works on public property.

#### Environment Conditions

13. An updated Environmental Protection License (EPL) shall be obtained from the NSW Environment Protection Authority (EPA). A copy of the license shall be provided to Port Macquarie-Hastings Council prior to the commencement of works within the expansion area.

**Reason:** To ensure compliance with the provisions of the relative statutory authorities.

14. Effluent treatment and disposal from all site amenities shall be via an environment protection authority approved system. Details of the Environment Protection Authority approval shall be submitted to Council prior to the installation of the system.

**Reason:** To ensure the protection and preservation of the environment

15. Prior to any works commencing within the expansion area, a revised Environmental Management and Site Rehabilitation Plan (EMSRP) shall be submitted to and approved by Port Macquarie-Hastings Council. The revised EMSRP must be prepared in consultation with the NSW National Parks and Wildlife Services (NPWS) and incorporate any agreed actions, monitoring and reporting requirements. The revised EMRP must be consistent with the documents identified in condition 1, except where varied by specific consent conditions. This plan is to be subject to periodic revision as specified in the plan itself.

The site manager shall be responsible for the implementation of the approved EMSRP and all monitoring, reporting and compliance activities carried out on site.

The revised EMSRP is to include the following:

- i. A summary of how the EMRP meets the requirements identified by this consent;
- ii. A figure showing the native fauna corridors to be established within the site generally in accordance with the documents listed under condition 1 and

generally in accordance with the Koala Habitat Protection Guidelines prepared by Department of Planning and Environment and dated March 2022. The minimum width and location of the fauna corridors identified in the plan shall be:

- Western Blackbutt Open Forest fauna corridor of the same dimensions to that shown in the approved EMSRP being between 50 - 170m in width running north - south for the full extent of western boundary of the site.
  - Central Swamp Mahogany/Coastal Heath fauna corridor of same dimensions to that shown in the approved EMRP being between 50 - 150m wide running north-south of the full extent of the site. The corridor must be consistent with the approved KPoM and include replanting of Eucalyptus robusta swamp forest in its northern extent to create an adequate fauna corridor. This corridor must be in the location that is consistent with the plant community type containing swamp mahogany and connect to the existing intact swamp mahogany forest.
  - Northern fauna corridor with appropriate koala feed trees and habitat for the full extent of the northern boundary of the site that provides connection to the western and central fauna corridors on the site and adjoining C2 Environmental Conservation zoned land beyond the dredge pond to the north. Except for the area immediately beyond the northern edge of the dredge pond, this corridor shall be a minimum width of 50m;
- iii. A program to manage and monitor surface and groundwater quality and, where relevant, quantity, within the quarry site, including a program to monitor for the potential impacts to surrounding groundwater users (i.e. surrounding bores and potential Groundwater Dependent Ecosystems). The EMSRP should include a Trigger Action Response Plan to address potential impacts to surrounding groundwater users from any significant changes in water quality or level.
  - iv. A program to manage and monitor for the potential occurrence of Acid Sulphate Soils. The program shall be consistent with the Acid Sulphate Soils Management Plan prepared by ENV Solutions and dated 11 April 2024. Relevant documents and ASS Neutralisation Certification Reports shall be retained and made available to authorised officers on request.
  - v. A program to manage and monitor environmental hazards and risks, including from flooding bushfire.
  - vi. A program to manage and monitor areas of retained native vegetation and habitat for native fauna within the Quarry Site, including bats and koala, as identified by the documents listed under Condition 1. This must include monitoring and management of the C2 Environmental Zone that are located within the Quarry Site.
  - vii. All mitigation measures of the KPoM must be included and an appropriate monitoring program established. Specifically, the program is to monitor for the occurrence of Koala within the Quarry Site, as well as for the management of key risks associated with Koala (i.e. native vegetation condition, weed abundance, staff/vehicle interactions). The EMSRP should include a Trigger Action Response Plan to address potential impacts associated with risks to Koala populations within the Quarry Site. Annual Koala Surveys shall be conducted generally in accordance with the Koala (Phascolarctos cinereus) Biodiversity Assessment Method Survey Guide prepared by Department of Planning and Environment dated June 2022). Methods may include the use of a Koala detection dog, SAT surveys or other methods as described in the guide.
  - viii. A program to monitor for and manage the occurrence of weed populations that may present risk to native flora and fauna within the Quarry Site. This must include monitoring and management of the C2 Environmental Zone located

- within the Quarry Site.
- ix. A program for the re-vegetation of the native fauna corridors and rehabilitation of quarry-related disturbance as identified by the documents identified under Condition 1 or as otherwise approved by Council. The program shall be prepared in accordance with the Guidelines for preparation of Vegetation Management Plans (VMP) prepared by Port Macquarie-Hastings Council, dated 2023 and include information on:
    - a. Specific management units for each area.
    - b. Target plant species lists.
    - c. A schedule and identified timing for the revegetation and rehabilitation operations. Plantings within the fauna corridors shall commence within 3 months of the revised EMSRP being approved and completed within 12 months of the EMRP approval date.
    - d. Proposed objectives and completion criteria for each management area.
    - e. An appropriate notification mechanism to ensure Port Macquarie-Hastings Council is advised when planting commences.
  - x. A program to manage and monitor noise levels from Quarry activities within the Quarry Site and from Quarry-related traffic on specific public roads where practicable.
  - xi. A program to manage and monitor heritage sites / values within the Quarry Site, in accordance with all relevant approvals. The EMSRP should include a specific Cultural Heritage Finds Protocol and a suitable Competence Training and Awareness Program.
  - xii. A program to monitor and manage dust emissions from the Quarry Site.
  - xiii. A program to manage and monitor community complaints.
  - xiv. A program to manage and monitor compliance with approved disturbance and extraction limits.
  - xv. A program for notification to Council of key events, incidents, or potential non-compliance that may occur.
  - xvi. A site-specific driver induction requirement to inform and educate drivers to drive below 60km/hr along Diamond Head Road near Beach Street.

**Reason:** To ensure the protection and preservation of the environment.

- 15a. The Applicant must prepare and submit to Port Macquarie-Hastings Council an Annual Environmental Report for the Quarry Site for each calendar year for the development. The Annual Environmental Report must be submitted no later than 1 March each year until the completion of rehabilitation operations and closure of the Quarry Site.

The Annual Environmental Report must include for each reporting period at a minimum:

- i. A summary of operations undertaken during the reporting period, including any construction, extraction, revegetation, rehabilitation, or key property maintenance activities.
- ii. A statement of compliance for all relevant approvals and licenses which are required for the Quarry.
- iii. A summary of total material sales.
- iv. A summary of all environmental monitoring data and/or reports.
- v. A summary of all stakeholder consultations that occurred, including the outcomes of any consultation as relevant.

- vi. A summary of any complaints received by the Quarry or any Agency relating to the Quarry.
- vii. A summary of the status of all revegetation and/or rehabilitation activities that are required for the Quarry Site. It shall include details of how successful plantings have occurred. These details shall include certification from an accredited bush regenerator with Australian Association of Bush Regenerators (AABR) with a minimum qualification in Conservation and Land Management (Natural Area Restoration and Management) Certificate III.

**Reason:** To ensure Port Macquarie-Hastings Council is aware of the status and environmental performance of the Quarry.

16. The Environmental Management and ~~Site~~ Rehabilitation Plan is to provide specific details with regard to all monitoring activities and the proposed amelioration measures associated with the affects of the lowered watertable on vegetation communities adjacent to the western bank of the artificial lake: In the event that adverse impacts become apparent, work is to cease pending further impact assessment and the adoption of a Council approved contingency plan.

**Reason:** To ensure the protection and preservation of the environment

17. The Environmental Management and ~~Site~~ Rehabilitation Plan is to include a strategy to control/minimise temporary water quality problems in the proposed artificial lake due to autumn turnover.

**Reason:** To protect and preserve the environmental conditions of the artificial system.

- ~~18. The site manager is to be responsible for the implementation of the approved Environmental Management and Rehabilitation Plan and all monitoring activities carried out on site.~~

~~**Reason:** To ensure the proper implementation of the Environmental Management and Rehabilitation Plan.~~

- ~~19. Further acid sulphate soil assessment is to be carried out prior to any new excavation stages being commenced. Details of testing frequency and reporting are to be outlined in the Environmental Management Plan.~~

~~**Reason:** To ensure compliance with the provision of the Clean Waters Act, 1970.~~

20. The high iron and suspended solid content of water in the wash water ponds are to be monitored and suitably treated to ensure acceptable levels are reached prior to disposal.

Details of this monitoring and treatment are to be incorporated into the Environmental ~~Management and Site Rehabilitation~~ Management Plan.

**Reason:** To ensure compliance with the provision of the Clean Waters Act, 1970.

21. Sludge from the settling ponds is to be removed and combined with soil for rehabilitation purposes.



**Reason:** To avoid the creation of localised sludge deposits.

22. Waste waters are not to be disposed of to any areas of surrounding wetland on land zoned 7(a) Environment Protection. 'A' (Wetlands).

**Reason:** To ensure compliance with the Environment Protection Authority guidelines "Discharges to Natural Wetlands (1989)".

23. Drained water from stockpiles is to be directed either to the settling ponds or the main dredge pond.

**Reason:** To ensure compliance with the provision of the clean Waters Act, 1970.

24. The 3m high acoustic bund wall is to be constructed prior to excavation works proceeding **and shall extend around the expansion to the extraction area before any extraction commences within that area.**

**Reason:** To ensure compliance with the provision of the Noise Control Act, 1975.

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25. An acoustical enclosure is to be constructed around any electricity generation equipment installed on site. Details to be included in the **Environmental Management and Site Rehabilitation Plan**.
- Reason:** To ensure compliance with the provisions of the Noise Control Act, 1975.
26. Noise levels from the use of the Quarry shall not exceed 5dBA above the background noise level when measured at the nearest residential boundary.
- Reason:** To ensure compliance with the provision of the Noise Control Act, 1975.
27. Noise levels due to traffic generated by the quarry at residences on Diamond Head Road and Bold Street shall not exceed the Environment Protection Authorities recommended criteria of 55dBA(A) Leq.
- Reason:** To ensure compliance with the provision of the Noise Control Act, 1975.
- 27a. Should it be found that quarry operations are resulting in noise levels beyond that approved the Applicant shall employ the services of a qualified acoustic consultant to undertake further assessment and implement any recommendations identified by the consultant and adhere to any further direction given by Port Macquarie-Hastings Council in relation to noise abatement.
- Reason:** To ensure ongoing compliance with approved noise levels.
28. The bank slope of the proposed artificial lake is to be constructed at an angle of 18° to the horizontal as recommended by Golder Associates. (refer to EIS Volume II, Appendix E, Appendix C-5.3)
- Reason:** To ensure a stable slope of bank materials to avoid degradation by water action.
29. Areas identified by GM Hoy's report (May 1994) as bat habitat are to be excluded for mining operations. These areas are to be identified in the Environmental Management and Rehabilitation Plan.
- Reason:** To ensure the protection and preservation of natural fauna habitat.
30. Physical speed control devices are to be constructed on the internal access road
- Reason:** To ensure the protection and preservation of natural fauna.
31. Any fuel storage areas are to be bunded to 110% of the storage capacity and protected against any flood event.
- Reason:** To ensure compliance with the provisions of the Clean Waters Act, 1970.
32. Prior to commencement, a cultural heritage awareness programme shall be implemented with site employees in conjunction with the National Parks and Wildlife Service to ensure that employees reflect the contingencies that may arise if relics

are uncovered and to ensure that employees are skilled in identifying Aboriginal heritage material. This Heritage awareness will be an ongoing program. Details of such to be included in the Environmental Management and Site Rehabilitation Plan.

**Reason:** Section 90(1)(a) - To ensure that the conservation cultural heritage is guaranteed through the works stage.

33. Should any Aboriginal objects be discovered in any areas of the site then all excavation or disturbance to the area is to stop immediately and the National Parks and Wildlife Service is to be informed in accordance with Section 89A of the *National Parks and Wildlife Act 1974*. Subject to an assessment of the extent, integrity and significance of any exposed objects, applications under either Section 87 or Section 90 of the *National Parks and Wildlife Act 1974* may be required before work resumes.

**Reason:** To protect culturally significant places and items.

#### General Conditions

34. The applicant to ensure that no disturbance of the 7(a) zones occur. These areas should be appropriately marked and protected. Workers on-site are to be made aware of this protection. Details of such to be included in the Environmental Management and Site Rehabilitation Plan.

**Reason:** To ensure preservation and protection of the environment.

35. The existing 10m wide firebreak straddling the boundary between Portion 132 and the National Park to be maintained.

**Reason:** To minimise bushfire risk.

36. The Environmental Management and Site Rehabilitation Plan will include a procedure for addressing any complaints received from the public or public authority.

**Reason:** To minimise any adverse effects on the environment.

37. All extractive dredging works are to be a minimum of 200m from SEPP 14 Wetland No. 530.

**Reason:** To protect the wetland.

38. Site 1 identified within the Aboriginal Study is to be excluded from the extraction area and protected during any works.

**Reason:** To protect areas of Aboriginal Heritage.

39. All areas not being worked should be stabilised by way of grass cover whenever possible. Details to be included in the Environmental Management and Site Rehabilitation Plan.

**Reason:** To reduce potential erosion on-site.

40. Consultation with NSW Fisheries regarding the importation of fish into the window lake. Details in the Environmental Management and Site Rehabilitation Plan.

**Reason:** To ensure appropriate species are imported to the lake.

41. Consultation with the Department of Land and Water Conservation for any consents required in accordance with the provisions of SEPP 46 - Protection and Management of Native Vegetation.

**Reason:** To ensure that all State Environmental Planning Policies are complied with.

42. The General Terms of Approval (GTAs) from the following authorities, as referred to in section 4.50 of the Environmental Planning and Assessment Act 1979, and referenced below, are attached and form part of the consent conditions for this approval.

- NSW Department of Climate Change, Energy, the Environment and Water - Heritage - Reference ID: 8073 / DOC24/264440-21 and dated Agency dated 31 January 2025 are attached and form part of this consent.
- NSW Environment Protection Authority - Reference Notice Number 1642062 File Number DOC24/569373 and dated 6 August 2024 are attached and form part of this consent.

**Reason:** To ensure that external State agency requirements are satisfied.

43. An application shall be made to WaterNSW for the necessary licenses and approvals prior to commencing any work in the expanded extraction area.

**Reason:** The ensure that external State agency requirements are satisfied.

44. This consent does not permit clearing of native vegetation outside the areas shown on figure 3.1 of the Statement of Environmental Effects, prepared by R. W. Corkey & Co Pty Ltd and dated November 2024.

**Reason:** To protect the biodiversity and landscape values of the site and ensure site rehabilitation is consistent with the current approval.

45. The mitigation measures outlined on pages 49 to 53 of the Biodiversity Assessment Report prepared by Biodiversity Australia and dated 12 May 2025 form part of this consent, shall be incorporated into the revised Environmental Management and Site Rehabilitation Plan and implemented throughout the respective stages of the development.

**Reason:** To protect the biodiversity and landscape values of the site and ensure site rehabilitation is consistent with the current approval.

46. All trees and native vegetation retained or compensatory planted on site shall be maintained and protected and shall not be removed through provisions of any other mechanism such as the NSW Rural Fire Service 10/50 or Rural Boundary Clearing Code.

**Reason:** To ensure that the development does not have any unintended biodiversity impacts.

47. Consolidation of the lots comprising the site into a single holding within 6 months of the date of this modified consent.
- Reason:** To ensure that the development is completed in an orderly fashion.
48. The applicant must ensure that all staff are made aware of, and are instructed to comply with, the conditions of this consent relevant to activities they carry out in respect of the development.
- Reason:** To ensure the development operates in accordance with the application.
49. Prior to any works commencing in the extended extraction area a survey plan with GPS coordinates shall be prepared by a registered land surveyor and a copy submitted to Port Macquarie-Hastings Council. The survey plan shall clearly delineate all the areas and boundaries illustrated in figure 3.1 of the Statement of Environmental Effects, prepared by R. W. Corkey & Co Pty Ltd and dated November 2024. The approved development footprint shall be pegged out and clearly marked onsite with appropriate fencing/flagging in accordance with the survey as to ensure no encroachment beyond the approved development footprint.
- Reason:** To ensure the approved development footprint is clearly defined and identified onsite.
50. Prior to any works commencing in the extended extraction area the applicant must commission a maximum extraction depth report and contour plan for the site. A copy of this report and plan shall be provided to Port Macquarie-Hastings Council. This report and plan must:
- (a) Be prepared by a suitably qualified and experienced expert/s;
  - (b) Establish the maximum extraction depth and profiles in accordance with the consent and Environmental Impact Statement;
  - (c) Provide a maximum extraction depth contour map for the project; and
  - (d) Provide recommended management measures as to how compliance with the extraction depths specified in the report can be achieved, including consideration of the use of continuous GPS tracking of sand extraction machinery.
- Reason:** To ensure the operations of the development remains consistent with the approved development.
51. Offensive noise as defined under the Protection of the Environment Operations Act 1997, shall not be generated as a result of the operation of the development.
- Reason:** To ensure that the development does not result in unacceptable noise impacts.
52. Appropriate dust control measures shall be implemented and maintained onsite, and operations shall not give rise to adverse dust impacts on nearby residents.
- Reason:** To protect the amenity of the area.
53. The proponent shall not extract more than 125,000 tonnes of extractive materials from the site in any calendar year. Documentary evidence (including weighbridge data) shall be maintained and made available on request to an authorised officer.

**Reason:** To ensure the operations are undertaken in accordance with the development consent.

54. Documentary evidence (including weighbridge data) shall be maintained and made available on request to an authorised officer of Port Macquarie-Hastings Council to confirm the amount of resource extracted from the expansion area.

**Reason:** To ensure the operations are undertaken in accordance with the development consent.

55. A maximum of 30 laden trucks (i.e. 60 truck movements) is permitted from the site on any day. Documentary evidence shall be maintained and made available on request to an authorised officer of Port Macquarie-Hastings Council to confirm daily truck movements.

**Reason:** To ensure the operations are undertaken in accordance with the development consent.

DRAFT



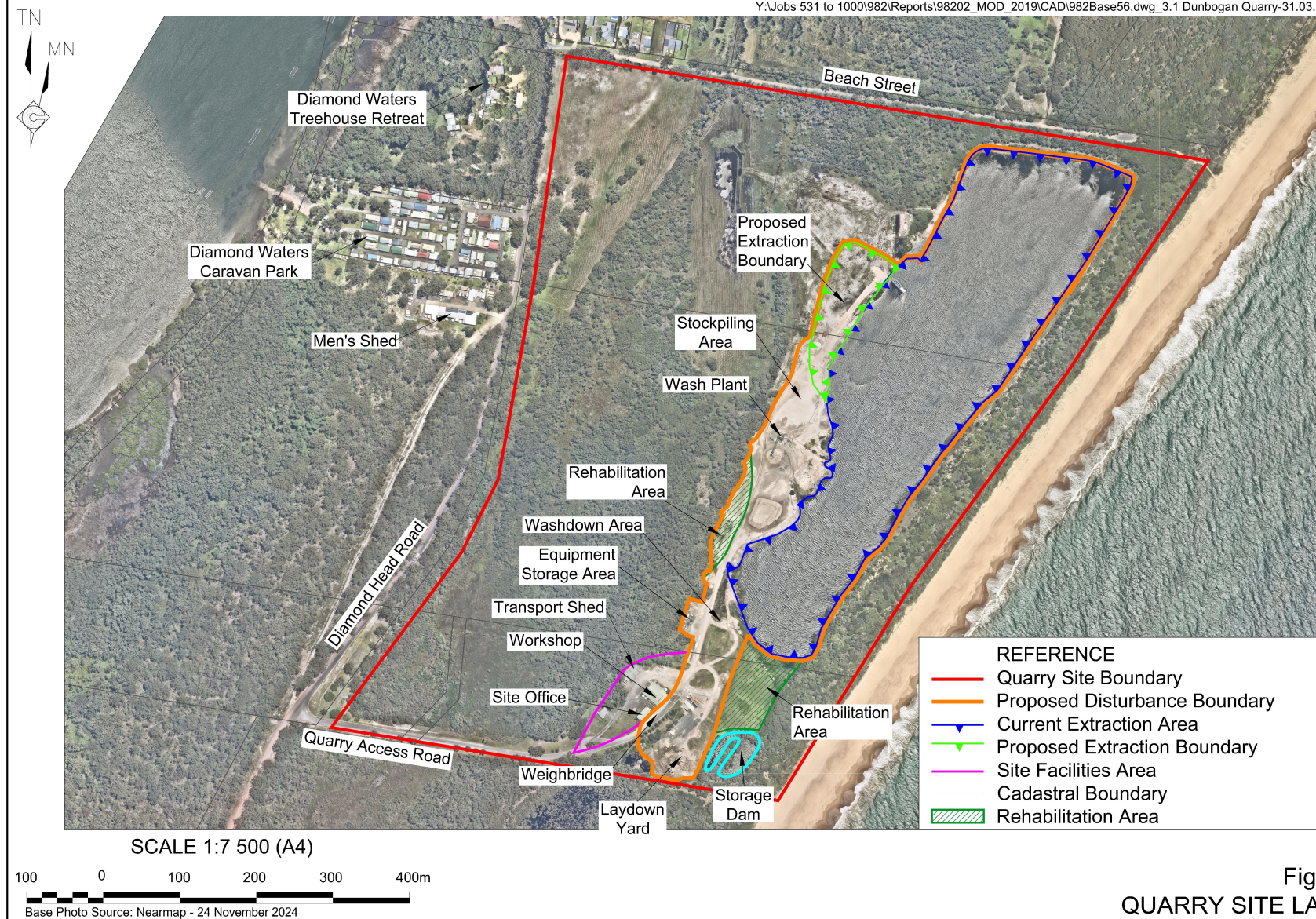
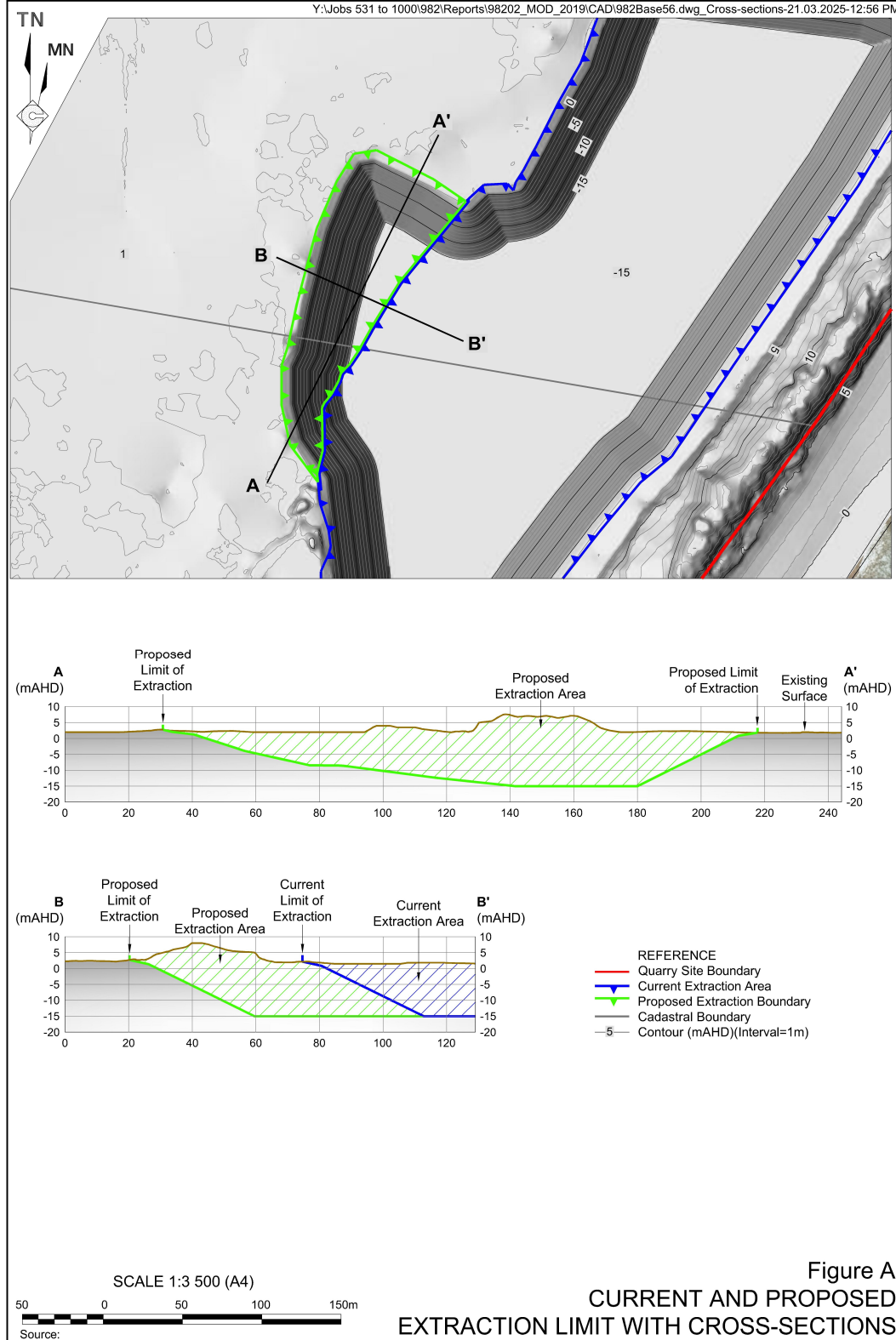


Figure 3.1  
QUARRY SITE LAYOUT







20 February 2024

Mr Dan Croft  
Group Manager, Development Assessment  
Port Macquarie-Hastings Council  
PO Box 84  
PORT MACQUARIE NSW 2444

Sent by email to:  
Dan.Croft@pmhc.nsw.gov.au  
council@pmhc.nsw.gov.au

Dear Dan

**Re: Dunbogan Quarry – Modification Application**

Following our meeting on 23 January 2024 to discuss the proposed modification application for Development Consent DA 518/94 (DA 518/94) for the Dunbogan Quarry (the Quarry or Project), R.W. Corkery & Co (RWC) has compiled a justification of the proposed approval pathway for the application on behalf of Hy-Tec Industries Pty Ltd (Hy-Tec). It is intended that this justification addresses Port Macquarie-Hastings Council's (Council's) concerns that the development must remain substantially the same as that originally approved and that both quantitative and qualitative aspects must be considered. To that end, the following justification considers three important aspects of the application.

1. The legal power to grant an approval for the proposed modification.
2. The environmental impacts of the proposed modification compared to the existing development.
3. Social and economic aspects of the existing development and proposed modification.

It is our considered opinion that each of the above supports not only the approval of the proposed modification but also that the application may be accepted and determined as a modification to DA 518/94.

As mentioned in the meeting held on 23 January 2024, we have sought legal advice on the proposed legal power to grant approval to the modification from McPhee Kelshaw Solicitors and Conveyancers (McPhee Kelshaw). That advice is presented as **Attachment 1** and is summarised below. We note that the environmental, social and economic risks and impacts associated with the proposed modification will be assessed in detail in the forthcoming Statement of Environmental Effects for the application. However, to aid Council's consideration of the approval pathway, a brief consideration of expected impacts is presented below.

**Approval Pathway**

Hy-Tec propose to modify DA 518/94 under Section 4.55(2) of the *Environmental Planning and Assessment Act 1979* (EP&A Act). Section 4.55(2) provides the requirements that must be satisfied before a consent authority may modify development consent under Section 4.55(2) of the EP&A Act. The important provision for this review is that described in Section 4.55(2a) as follows.

*A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if—*

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

**Attachment 1** presents a number of precedent cases from the NSW Land and Environment Court (LEC) that considered similar matters as required for the proposed modification. Several of these cases have established precedent in the manner under which a modification may be considered and include the following key phrasing.

- ‘Substantially’ has been taken to mean ‘essentially or materially or having the same essence’ (see *Moto Projects (no 2) Pty Ltd v North Sydney C* (1999) NSWLEC 280<sup>1</sup>)
- The power of a consent authority to modify a consent has been considered a power to alter without radical transformation (see *Scrap Realty Pty Limited v Botany City Council* [2008] NSWLEC 333<sup>1</sup>).

There are also a number of LEC cases relating to extractive industries that have particular relevance to the proposed modification.

- An appeal challenging a modification application for the Cowal Gold Mine was dismissed in *Williams v NSW Minister for Planning (No 3)* [2010] NSWLEC 204 after it was agreed that the approval to permit access to an additional 8.6 million tonnes of material (amongst other things) would result in an operation that was substantially the same as that originally approved.
- Approval was granted to modify the development consent for the Gunlake Quarry to permit a change in production from 2.0 million tonnes per annum (Mtpa) to 2.6 Mtpa (30% increase) and transportation from 370 trucks per day to 440 trucks per day (see *Gunlake Quarries Pty Ltd v Minister for Planning and Public Spaces* [2021] NSWLEC 1333).
- A proposed change in use was considered in *Vacik Pty Ltd v Penrith City Council* [1992] NSWLEC 8 with the judge noting the following.

*What is important is that a development, particularly extractive industry, must be assumed to include the way in which the development is to be carried out.*

In this case the modification was refused as it requested a new use (that is, a landfill) which was determined to be a materially different. However, what is important here is that when considering the development, it is important to consider all aspects including the setting, the way it is carried out and the impacts of existing and proposed activities.

In the recent experience of Hy-Tec in NSW two applications of a similar nature have been accepted and approved. In these instances, their applications have not been tested in the NSW LEC but were accepted as modification applications by the relevant consent authority.

- Additional extraction activities were approved at the Yarrabee Road Quarry involving the addition of 10 years to the life of the approval and approximately 4.0 million tonnes of resource (an increase of 44%) (refer to Modification 5 to DA T4-95-104 for the Yarrabee Road Quarry approved by Kempsey Shire Council in November 2015).
- In August 2018 the then NSW Department of Planning and Environment approved an extension to the production rate at the Austen Quarry from 1.1 Mtpa to 1.6 Mtpa (45% change) and the associated increase to the maximum daily product truck despatch limit from 250 to 300 trucks and the average daily product truck despatch limit from 150 to 200 trucks.

<sup>1</sup> <https://www.caselaw.nsw.gov.au/decision/549f8bf03004262463adb404>

Other relevant examples where a quantitative value has been accepted in modification applications include the following.

- In June 2022 the approved resource at the Tritton Copper Mine was increase from 10.2Mt to 12.8Mt (an increase of 25%).
- In July 2021 the production rate at the Hearses Road Quarry in Maroota, NSW was extended from 250ktpa to 495ktpa (a 98% increase) and material importation (VENM/ENM) was increased from 100,000tpa to 250,000tpa (250%).
- The Albion Park Quarry increased production from 400,000t to 600,000t in 2009 (50% increase). In this case a doubling of production (to 800,000t) was not supported and was amended to a 50% increase.

The proposed modification presents a change that is quantifiable (see below for more detail), however any determination relating to whether the operation of the Quarry under the proposed modification is substantially the same as that currently approved must consider the nature of the development. This includes its location or setting, and the manner in which the proposed change would alter the environmental and social impacts of the development. As noted in paragraph 66 of the McPhee Kelshaw advice (**Attachment 1**),

*...determination of whether a development proposed to be modified will be substantially the same as the development for which consent was originally granted involves questions of fact and degree. The matter is to be considered depending on the specific circumstances of the application before the decision-maker. It is not a question which is capable of scientific or mathematical precision.*

With this in mind, McPhee Kelshaw considered that the 'tests' described in various precedent cases (some that were approved and some that were refused) would be satisfied for the proposed modification to the Dunbogan Quarry. It is concluded that the proposed modification may be lawfully approved by Council.

#### Operational and Environmental Review

**Table 1** presents a comparison of the development as it was originally approved and currently operates with the proposed modified operation including consideration of the potential environmental impacts of any proposed change.

Based on the above review, the proposed ongoing operation would not fundamentally change the nature of the development or associated environmental impacts. Physical changes to the development would involve extension into an area that is mostly comprised of low value agricultural land and would permit extractive activities to continue in an area that is mostly separated from other land uses. The proposed modification would avoid the need to identify and develop a new sand resource to supply the construction and infrastructure development industries in Port Macquarie.

It is also notable that as the intensity of operations would not change, environmental management activities are also not likely to change. It is therefore concluded that the environmental performance of the operation is also likely to continue in a manner consistent with existing demonstrated performance.

20 February 2024

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**Table 1**  
**Overview of the Approved and Proposed Activities**

Page 1 of 3

| Component or Activity              | Approved Operation  | Proposed Modifications                  | Potential Environmental Impacts of Proposed Activities   |
|------------------------------------|---|---|--|
| Total Resource Volume              | 2.6 million tonnes  | An additional approximately 1,000,000t. | The additional resource would provide for up to an additional eight to ten years of operations.  |
| Total Area of Physical Disturbance | 20.6ha  | An additional 4.3ha                     | The expansion of the extraction area would involve the removal of 0.7ha of native vegetation and 3.6ha of agricultural land (market garden).<br><br>No new items of Aboriginal heritage significance have been identified in field surveys undertaken with Aboriginal community stakeholders.  |
| Extraction Area/Dredge Pond        | 11.6ha  | An extension of 5.2ha                   | 0.9ha of proposed extended extraction area is already within the approved boundary. The existing environmental risks would continue and would be managed in the same manner as under existing operations.<br><br>The extension of the extraction area would require the dredge to operate further to the west than it has in the past but recent mitigations have been applied that make noise generated by the dredge difficult to perceive. In addition, views of the development from nearby properties and Diamond Head Road would remain consistent with what is visible now. |
| Duration of Approval               | No limit  | No Change                               | There is no expiry date on the existing consent and this is not proposed to change under the proposed modification.  |
| Maximum Annual Sales Level         | 125,000tpa  | No Change                               | The annual sales level limits the number of heavy vehicles required to depart the Quarry on an annual basis. The annual limit is set in the existing approval and daily variations in production occur to meet demand. There would be no change to daily fluctuation in traffic generation and limits to annual production.  |
| Employment                         | 3 permanent operational staff and 1 fulltime manager at the Quarry.<br><br>5 people employed for transportation operations. | No Change                               | No change  |

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20 February 2024

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**Table 1 (Cont'd)**  
**Overview of the Approved and Proposed Activities**

Page 2 of 3

| Component or Activity  | Approved Operation  | Proposed Modifications                       | Potential Environmental Impacts of Proposed Activities  |
|--|---|--|---|
| Transportation Route   | The trucks turn right on Diamond Head Road to head to Kew Road with the majority following this route to the Pacific Highway to enter Port Macquarie, the predominant market for the Quarry's products. Some vehicles may turn right at Ocean Drive towards Laurieton should clients be located in this area of Bonnie Hills. | No change                                    | The transport route and number of trucks leaving the Quarry would not change. Therefore, the community's experience of traffic generated by the Quarry would not change.  |
| Method of Extraction   | Free dig extraction above the water table and cutter and suction dredging once water is encountered   | No Change – no longer using free dig methods | Mapped acid sulphate soils would continue to be managed by returning all material not sold to the dredge pond. In this way there is limited opportunity for exposure to air that may result in acid generation. Therefore, risks associated with acid sulphate soils would remain low and would not change. |
| Depth of Extraction  | The floor of the dredge pond is to be a maximum of -15m AHD   | No Change                                    | No change   |
| Processing Operations  | Wash plant including screening  | No Change                                    | Washing processes limit dust generation in processing and would continue to occur at the same intensity as is currently experienced. There would be no change to environmental impacts of processing operations at the Quarry.  |
| Silt / Fines Management                                      | Fine materials or silts that are removed in processing activities are returned to the dredge pond and settle on the floor of the pond   | No Change                                    | No Change   |
| Product Stockpiling within the secondary processing area     | Adjacent to wash plant  | No Change                                    | No change   |
| Hours of Operations for Extraction and Processing Activities | Monday to Friday – 6:00am to 5:00pm<br>Saturday – 6:00am to 1:00pm  | No Change                                    | No change   |

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20 February 2024

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**Table 1 (Cont'd)**  
**Overview of the Approved and Proposed Activities**

Page 3 of 3

| Component or Activity                                  | Approved Operation  | Proposed Modifications                    | Potential Environmental Impacts of Proposed Activities |
|--|---|---|--|
| Loading Product Trucks and Despatch Hours of Operation | Monday to Friday – 6:00am to 5:00pm<br>Saturday – 6:00am to 1:00pm  | No Change                                 | No change  |
| Quarry Access Road                                     | Between administration area and Diamond Head Road   | No Change                                 | No change  |
| Daily Truck Loads                                      | Dependent on demand but maximum of 30 laden trucks per day  | No Change                                 | No change  |
| On-site Administration and Amenities                   | Located in southern section of Quarry   | No change                                 | No change  |
| Water Management System                                | Small on-site dam. Given the sandy nature of the substrate, rainfall quickly infiltrates the surface and management is not required.                            | No change                                 | No change  |
| Rehabilitation   | Regeneration and maintenance of beach-side dune system.   | Progressive rehabilitation to continue    | No change  |
| Biodiversity Offsetting                                | No requirements.  | Biodiversity Offset Scheme not triggered. | No change  |
| Diesel   | 10,000 L tank on site   | No change                                 | No change  |
| Waste Management                                       | Non-production wastes, such as general rubbish, recyclables, waste oil, tyres and batteries, are removed to a licenced waste facility by a licenced contractor. | No change                                 | No Change  |
| Telecommunications including NBN                       | One line in   | No change                                 | No change  |
| Sewerage   | Septic system   | No change                                 | No change  |

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### Social and Economic Considerations

Hy-Tec has maintained a positive relationship with the community in Dunbogan over the period it has owned and operated the Quarry. The relationship is supported by Hy-Tec's sponsorship of the Men's Shed on Diamond Head Road and assistance with groundskeeping and other matters at the Dunbogan Caravan Park. Only one complaint (now a number of years ago) has been received at the Quarry since Hy-Tec purchased the operation which related to heavy vehicle traffic on Diamond Head Road. Upon investigation the vehicles were found to be NOT related to the Quarry.

Recent consultation undertaken by Hy-Tec with local residents has identified two key issues.

- The local community expressed a preference that the traffic levels did not change. Hy-Tec would not change the number of trucks entering and leaving the Quarry under the proposed modification.
- The second issue was the current speed limit for all vehicles on Diamond Head Road. The speed limit on Diamond Head Road is set by Transport for NSW (TfNSW). Hy-Tec supports a restriction on heavy vehicle speed in Diamond Head Road in the first instance (that is, a reduced speed permitted for trucks on the road) but would also support a reduction in speed from the current limit of 80km/hr to 60km/hr for all vehicles.

There would be very few changes to the physical operations undertaken at the Quarry under the proposed modification. Based on this and the consultation undertaken to date, Hy-Tec expects that the community experience of the Quarry operation and perceived impacts would not change under the proposed modification.

Further to this, Hy-Tec employs a number of staff directly at the Quarry or who's employment is balanced between this and other operations in the region. The sand produced at the Quarry supports the operation of the Grants Head Quarry, Yarrabee Road Quarry, along with the company own concrete plants and other concrete producers in the region. Approximately 75% of current production is used by external clients (including Council). This supply continues to generate employment and spending on consumables in the Port Macquarie Hastings region.

Hy-Tec is aware of high levels of existing and future demand for sand resource in the region. Should the ongoing operation not proceed, Hy-Tec would need to look for a suitable location to develop a sand quarry that could support the business as well as the external clients that rely on the operation. The development of a greenfield site elsewhere, providing that a suitable material source can be located, would have far greater environmental implications than the proposed modification.

### Conclusion

Hy-Tec believes that precedent legal examples, the nature of the existing and ongoing environment, social and economic impacts, as well as the history of positive social impacts support the argument that the proposed modification satisfies the "substantially the same test" applied through the EP&A Act.

Hy-Tec accepts that conceptually it may be difficult to understand how the existing Quarry operates within the current environment and local region. To that end, an invitation is extended to relevant Council staff to visit the Quarry and see the existing operation and experience a tour of the proposed area of extension. Hy-Tec expects this familiarity will reliably support the detailed information provided above.

20 February 2024

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It would be appreciated if Council could respond to this review noting its acceptance or otherwise of the above justification to proceed with a modification to the existing consent.

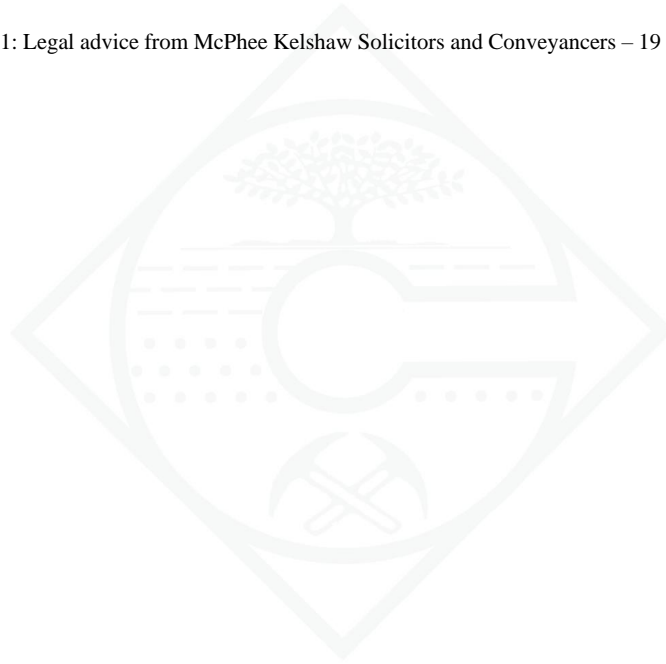
Yours sincerely



Nick Warren  
Principal Environmental Consultant

Copy: Hy-Tec

Attachment 1: Legal advice from McPhee Kelshaw Solicitors and Conveyancers – 19 February 2024



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19 February 2024

Mr Darryl Thiedeke  
Manager, National Planning & Development  
Hy-Tec Industries Pty Limited

By email: [Darryl.Thiedeke@adbri.com.au](mailto:Darryl.Thiedeke@adbri.com.au)



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ANASTASIA DALITZ B.A., LL.B. (Hons)

LICENSED CONVEYANCER

EMMA BREW

Dear Mr Thiedeke,

**Dunbogan Quarry: Proposed Modification to Development Consent No. 518/94**

**Background**

1. We are instructed to advise Hy-Tec Industries Pty Limited (**Hy-Tec**) concerning the proposed modification of the development consent which regulates the conduct of the Dunbogan Quarry, located at Diamond Head Road, Dunbogan (**Quarry**). To assist us to provide that advice, we have been provided by RW Corkery & Co Pty Ltd (**RWC**) with background information and documents concerning the Quarry and the current development consent under which the Quarry is conducted.
2. Included in those documents are copies of each of the following:
  - (1) Development Consent No. 518/94 granted on 12 October 1995 by the then Hastings Council, regulating the conduct of the Quarry, and comprising a letter dated 12 October 1995 from Hastings Council to ERM Mitchell McCotter (**ERM**) with an attached schedule to Notice of Determination of Development Application recording the 41 conditions on which the consent was granted (**DA 518**).
  - (2) Letter dated 16 November 1995 forwarded by Hastings Council to ERM correcting an error in DA 518 (as issued on 12 October 1995) and confirming that DA 518 related, among other lots, to Lot 102 in DP 754405 (**1995 letter**).
  - (3) Email letter dated 9 March 2023 forwarded by RWC to McPhee Kelshaw providing background information concerning DA 518 and the conduct of the Quarry since October 1995, together with details of the proposed expansion of the Quarry and the proposed modification of DA 518.

McPHEE KELSHAW PTY LTD TRADING AS MCPHEE KELSHAW

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**The Existing Development**

3. Our instructions confirm that DA 518 was granted to permit the expansion of extraction, dredging and processing of sand on the land then identified as Lot 154 DP 754405, Lot 102 DP 754405 (noting the 1995 letter) and Lot 132 DP 654554. We understand that there have been some changes in the title descriptions since DA 518 was granted. We are not instructed to address that matter, although we do note that the external boundaries of the site (**Quarry site**) have not changed.
4. The development approved by DA 518 was established and continues to operate to provide the building and construction industry with supplies of high quality sand. The Quarry operates by extracting sand from the Quarry site down to a depth of 15m below natural ground level. Once the level of excavation goes beyond the water table, the excavation operation is conducted by dredge, which floats within the lake that has been created by the dredging that has occurred in the period from 1996 to date.
5. The operating procedure is reasonably straightforward. Sand is excavated or dredged from the site. When dredging is used, the sand is pumped from the dredge to the processing plant. The methods used in the sand extraction component of the development and in the sand processing component of the development were identified in the Environmental Impact Statement prepared by ERM (**ERM EIS**) and lodged in support of the application for the grant of DA 518. Those methods have not changed in the period from 1996 to date and are not proposed to change if DA 518 is modified as described below.
6. The sand processing plant is periodically dismantled and relocated within the approved extraction area of the Quarry. While the processing plant is not mobile, we are instructed that it is possible for the plant to be dismantled and reconstructed to accommodate increases in the excavated area within the Quarry, and the increase in size of the lake. Once the processing plant is dismantled, a new concrete slab is laid at a new location within the approved extraction area, the dismantled processing plant is reconstructed and processing of sand is continued.
7. We are instructed that DA 518 has not been modified since it was granted on 12 October 1995. Over the intervening 28 year period the Quarry has continued to operate in accordance with the 41 conditions imposed by DA 518. However, the sand resource within the approved extraction area of the Quarry, identified under DA 518, is close to exhaustion. If the Quarry is to continue, and if the local building and construction industry is to retain a valuable source of high quality sand, then the approved extraction area must be laterally expanded.
8. The need for that expansion is addressed in our instructions, in the following summary paragraph:

*The Quarry was granted development consent DA 518/94 in October 1995 for the extraction of a total of approximately 2.6 million tonnes of sand to a maximum depth of -15m within the dredge pond via free dig extraction and, once water is encountered, cutter suction dredging. DA 518/94 does not specify an expiry date. However, as the existing resource within the extraction area is nearing exhaustion, an extension to the extraction area of the Quarry is being sought to prolong the*



*productive life of the Quarry and enable the continued supply of sand for local markets.*

#### The Continuing Permissibility of the Existing Development

9. In October 1995, when DA 518 was granted, the land within which the Quarry is located was zoned under *Hastings Local Environmental Plan 1987 (LEP 1987)*.
10. We understand that the western part of that land, bordered by Diamond Head Road, was zoned 7(a) (Environmental Protection "A") (Wetlands Zone) under LEP 1987. DA 518 includes condition 22 which prohibits the discharge of waste waters to wetlands located on the land originally zoned 7(a) under LEP 1987.
11. The entire site is now zoned under Port Macquarie-Hastings Local Environmental Plan 2011 (**LEP 2011**). Our review of the Zone Map (Sheet LZN\_014) (**Sheet 14**) for LEP 2011 confirms that the site is now zoned as to part RU1 Primary Production (**RU1**) (being the major part of the site) and as to Part C2 Environmental Conservation (**C2**). The land within which the Quarry is located is zoned RU1. Any lateral expansion of the approved extraction area will also be located within that part of the site zoned RU1.
12. Among the documents made available to us is a document entitled "Figure A", which depicts the land within which the Quarry is located and identifies the approved sand extraction area under DA 518 and the area within which the Quarry will expand, if an approval is secured. A copy of Figure A is **attached**.
13. Within the RU1 zone, development for the purpose of extractive industries is permissible with consent.
14. The term *extractive industry* is defined in the Dictionary to LEP 2011 (**Dictionary**) as follows:
 

***extractive industry** means the winning or removal of extractive materials (otherwise than from a mine) by methods such as excavating, dredging, tunnelling or quarrying, including the storing, stockpiling or processing of extractive materials by methods such as recycling, washing, crushing, sawing or separating, but does not include turf farming.*

***Note** – Extractive industries are not a type of **industry** – see the definition of that term in this Dictionary.*
15. The term *extractive material*, which is used in the definition of *extractive industry* is defined in the Dictionary as follows:
 

***extractive material** means sand, soil, gravel, rock or similar substances that are not minerals within the meaning of the Mining Act 1992.*
16. The existing sand mining operation within the Quarry therefore remains permissible with development consent. Any modification of DA 518, to approve an expansion of the existing approved and permissible development will not require the assessment of issues relating to existing use rights or the intensification or expansion of an existing use.

**The Proposed Modification does not involve Designated Development**

17. Development Application No. 518/94, which resulted in the grant of DA 518, was submitted as an application for consent to proposed designated development. In relation to that issue, we note that the development application was supported by the ERM EIS, referred to in paragraph 5 of this advice.
18. Although DA 518 was granted for designated development, the modification of DA 518 will not require the preparation of a new EIS. The proposed new application will be an application to modify DA 518. A new development application will not be submitted.
19. Clause 48 within Schedule 3 Part 3 "Exceptions" of the *Environmental Planning and Assessment Regulation 2021 (EP&A Regulation)* regulates alterations or additions to existing or approved development. However, clause 48 includes Note 2 which reads as follows:

*"Note 2 - This section does not apply in relation to an application for modification of a development consent."*

20. The proposed application to modify DA 518 would not constitute an application for the conduct of designated development and will not require the preparation of an Environmental Impact Statement in support of the application.

**The Proposed Modification**

21. Figure A, to which we referred in paragraph 12 of this advice, depicts each of the following:
  - (1) The boundary of the total site, outlined by the red line, within which the existing Quarry and all associated infrastructure is located. The site also includes land not utilised for sand extraction purposes.
  - (2) An area outlined by the orange line, which depicts the extent of the existing Quarry operations, and within which all existing infrastructure and all areas disturbed by the development conducted in accordance with DA 518 are located.
  - (3) An area identified by the blue line which depicts the existing extraction boundary of the Quarry, being the area approved under DA 518 for the conduct of extractive activities whether by dry sand mining or by dredging.
  - (4) The proposed expanded extraction boundary, outlined by the green line, within which extraction of sand will be undertaken, if the proposed modification application is approved.
22. **Attached** and marked "**B**" is a copy of a document identified as "Table 1" (**Table 1**), which has been prepared to identify the existing approved operation of the Quarry and the modifications to the approved development that will be sought, when the modification application is lodged. On that issue, we note that the modification application will seek the amendment of DA 518. As a result, the focus of the

modification application will be amendments to the existing conditions, as required to permit the expanded operation that is necessary to extend the life of the Quarry.

23. Table 1 confirms that the primary change that would be secured by the modification, if the application is approved, will be an increase in the available sand resource and an expansion of the total area of disturbance of the Quarry. The area of disturbance will increase by an additional 4.3ha, representing an increase of approximately 21% in the disturbed area approved under DA 518.
24. Table 1 confirms that the extraction area, including the dredge pond, will increase by approximately 5.15ha in comparison with the existing dredge pond and extraction area. However, Table 1 also confirms that 0.85ha of this extended area is already within the approved boundary of the extraction area, being the area outlined by the blue line on the Layout Plan. The extension of 5.15ha should therefore be adjusted and accepted to be an increase of approximately 4.3ha, as already noted.
25. Table 1 then lists the components of the development approved under DA 518 which will not change. Once the total resource volume and the total area of disturbance is taken into account, there will be no other change in the current method of operation of the Quarry.
26. The rate of sand extraction will not change. By reference to the ERM EIS that maximum rate of extraction is 125,000 tonnes per annum.
27. In relation to the rehabilitation of the Quarry site, we are instructed that progressive rehabilitation has occurred to date, and will continue to occur, as the Quarry area expands and as extraction of sand in other areas.
28. We are also instructed that all of the land within which the Quarry is proposed to laterally expand, if the modification of DA 518 is approved by PMHC, is Category 1 – exempt land (**Category 1 land**), as defined in s 60H of the *Local Land Services Act 2013 (LLS Act)*. The land concerned falls within the definition of Category 1 land because it was cleared of native vegetation as at 1 January 1990. The land was then used for agricultural purposes.
29. In summary, the modification of DA 518 is proposed by your company to extend the life of the Quarry and the existing sand resource. The Quarry will continue to be conducted within the existing site and the methods of operation will not be altered in any way.
30. Having regard to the conditions imposed when DA 518 was granted, and as noted in paragraph 23 of this advice, the primary focus of the modification application is likely to be amendments to the text of each of condition 1 and condition 3. Those conditions read as follows:

1. *The development being completed substantially in accordance with the application plan, except where varied by conditions of this Consent.*

**Reason:** *To confirm the details of the application as submitted by the applicant as approved by the Council.*

3. *The extraction rates are to be generally in accordance with Figures 4.1 to 4.5 within the Environmental Impact Statement document dated November 1994 as amended by any conditions of this consent. The final bench is to be a maximum of -15 AHD.*

**Reason:** *To confirm the details of the application as submitted by the applicant as approved by Council.*

31. DA 518 would be appropriately modified, if the modification is approved by PMHC, by amending the wording of conditions 1 and 3 to align with both the documents and supporting materials lodged in support of the modification application and the original documentation submitted with the 1994/1995 development application.

#### **The Power to Modify a Development Consent**

32. The power to modify DA 518 is found in s 4.55 of the *Environmental Planning and Assessment Act 1979 (EP&A Act)*. We consider that s 4.55(2) of the EP&A Act will apply to the proposed modification. The following matters are relevant to PMHC's consideration of modification applications submitted under this provision.
33. The modification application does not propose any change to the way in which the current sand extraction and sand processing operations are undertaken, as we have noted above. Those operations will continue to be conducted using the existing extraction and processing methods. The depth of extraction will continue to be 15m noting that the sand resource has a proven depth in the order of 18m.
34. The development purpose will not change. The Quarry is conducted to extract, dredge and process sand. If the footprint of the Quarry is expanded, development for each of those purposes will continue.
35. In summary, the modification of the development consent will result in each of the following outcomes:
- (1) An increase of the area of the total disturbed area within the site by approximately 21% (from 20.6 ha to 24.9 ha).
  - (2) An increase of approximately 4.3 ha in the footprint of the extraction area/dredge pond.
  - (3) The extension of the operational life of the Quarry, resulting from an increase of approximately 27% in the available sand resource.
  - (4) No change in the way in which the Quarry is being conducted. Sand will be removed from the site by excavation and dredging. That sand will then be transported to the processing facility for treatment, stockpiling and ultimate removal, without any change to current operations.
  - (5) The land from which the Quarry is conducted will remain unchanged. Sand extraction will continue to take place within the existing site owned by Hy-Tec.

- (6) Processed sand will continue to be transported from the processing plant by truck. Those trucks will continue to use the same transport route as has been followed since DA 518 was first approved. As the annual extraction rate of the sand resource will not change, the number of truck movements will not change.
- (7) Progressive rehabilitation of the site will continue.
36. Section 4.55 has been characterised by the Courts in New South Wales as *beneficial and facultative* provision. In this regard, the decisions in *Houlton v Woollahra Municipal Council* [1997] 95 LGERA 201 at 203 and *North Sydney Council v Michael Standley & Associates Pty Ltd* [1998] 97 LGERA 433 at 440 are relevant.
37. Section 4.55(2)(a) requires that PMHC, before it approves the proposed modification of DA 518, must be *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*.
38. The meaning of the word *substantially* was considered by Justice Stein of the LEC in the decision of *Vacik Pty Ltd v Penrith City Council* [1992] NSWLEC 8 (24 February 1992). Although that decision related to the former s 102 of the EP&A Act (originally succeeded by s 96 of the EP&A Act and now by s 4.55) Justice Stein's analysis of the relevant issues has been adopted with approval in many subsequent decisions of the LEC.
39. We note the following passages from the judgment in *Vacik*:
- Turning to the issue of s.102(1)(a). Is the proposed modified development substantially the same development as that in the development consent (as already amended)? In my opinion 'substantially' when used in the section means essentially or materially or having the same essence. The applicant for modification bears the onus of showing that the modified development is substantially the same, ...*
- In approaching the s.102 exercise one should not fall into the trap of saying that the development was for a certain use - extractive industry - and, as amended, it will be for precisely the same use and accordingly is substantially the same development. What is important is that a development, particularly extractive industry, must be assumed to include the way in which the development is to be carried out. Otherwise, there may be little purpose in s.102.*
- Nonetheless, the use of the land consented to is relevant to the assessment to be made under s.102(1)(a). ...*
40. This approach to addressing the requirement of *substantially the same development* was followed in the judgment of Preston CJ of the LEC in the decision of *Scrap Realty Pty Limited v Botany Bay City Council* [2008] NSWLEC 333 (19 December 2008). In that decision the LEC considered an application to modify a development consent. One element of that application was the proposed extension of the area used for storage (as part of the approved development) into an adjoining lot that was not part of the land identified in the original development consent.

41. His Honour concluded that a modification to secure that outcome was possible, in the particular circumstances of that case. His Honour's judgment included the following passages, relating to this issue:
13. *The power under s 96, whether in (1), (1A) or (2), is simply one to "modify the consent". Originally, the power to modify consents was restricted to modifying "details" of a consent. That restriction was removed in 1985 and the power was enlarged to be, simply, to modify the consent: see North Sydney Council v Michael Standley & Associates Pty Ltd [1998] NSWSC 163; (1998) 43 NSWLR 468 at 475. The concept of modification involves "alteration without radical transformation": see Sydney City Council v Ilenace Pty Ltd [1984] 3 NSWLR 414 at 421; North Sydney Council v Michael Standley Pty Ltd [1998] NSWSC 163; (1998) 43 NSWLR 468 at 474. The object of the modification is the consent.*
  14. *Hence, the power of a consent authority to "modify" a consent is a power to alter without radical transformation the consent.*
  15. *Exercise of the power to modify a consent is made conditional, in the case of modifications under s 96(2), on the consent authority forming an opinion of satisfaction that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all).*
  16. *This condition precedent to the exercise of the power to modify consents focuses on "the development", making a comparison between the development as modified and the development as originally granted.*
42. In his judgment in *Williams v NSW Minister for Planning (No 3)* [2010] NSWLEC 204 (15 October 2010) Biscoe J considered a challenge to the validity of an approved modification (identified as "Modification 7") of a development consent (which had been modified on previous occasions) regulating the conduct of an existing gold mine. While the decision concerned a consent originally granted under Part 4 of the EP&A Act, that development consent was subsequently treated as an approval under the then Part 3A of that Act. Nonetheless, the principles applied by Biscoe J, when determining whether the modification of the consent should be approved, are relevant to the Quarry.
43. For the purpose of this advice, we note that modification 7 approved an increase in the total quantity of waste rock that would be removed from the mine pit (as a consequence of the proposed lateral extension of that pit) from 128 million tonnes to 136.6 million tonnes. The modification also proposed the relocation of 1.4 million tonnes of previously mined waste rock from the perimeter emplacement to the northern and southern emplacements of the mine. Parts of the northern and southern emplacements were to increase in height by 10m and 15m respectively, to accommodate that additional waste rock, while other sections of the perimeter waste emplacement were to be reduced in height.



44. Despite the volume of materials, the changes in height and the other changes identified in the judgment in relation to modification 7, the Court declined to overturn the decision of the Minister's delegate, when initially determining the modification application by approval, that the development as proposed to be modified was substantially the same development as the originally approved development.
45. The decision in *Williams* is consistent with the decision delivered by the Chief Judge in *Scrap Realty*. In that decision, as noted above, the Court determined that land could be added to the site that was the subject of the original development consent, and that the area occupied for the purposes of the development could be expanded.
46. In the decision of *Moto Projects (No 2) Pty Ltd v North Sydney Council* [1999] NSWLEC 280 (17 December 1999), Bignold J in paragraphs [54] to [56] inclusive identified the task to be undertaken to determine whether a development proposed to be modified will be substantially the same as the development for which consent was originally granted, as follows:
  54. *The relevant satisfaction required by s 96(2)(a) to be found to exist in order that the modification power be available involves an ultimate finding of fact based upon the primary facts found. I must be satisfied that the modified development is substantially the same as the originally approved development.*
  55. *The requisite factual finding obviously requires a comparison between the development, as currently approved, and the development as proposed to be modified. The result of the comparison must be a finding that the modified development is "essentially or materially" the same as the (currently) approved development.*
  56. *The comparative task does not merely involve a comparison of the physical features or components of the development as currently approved and modified where that comparative exercise is undertaken in some type of sterile vacuum. Rather, the comparison involves an appreciation, qualitative, as well as quantitative, of the developments being compared in their proper contexts (including the circumstances in which the development consent was granted).*
47. The modification of DA 518, as proposed by Hy-Tec, will result in the continuing conduct of the Quarry and these continued operations will be "essentially or materially" the same as the operations approved when DA 518 was first granted. There will be no "radical transformation" to DA 518, with the result that the requirements addressed and summarised by Preston CJ in paragraphs [13] to [16] inclusive of the *Scrap Realty* decision, will be satisfied.
48. However, it is useful to consider the proposed modification in light of the factual circumstances addressed by the LEC in the judgments referred to above and in other decisions of the Court.

#### Consideration of Judgments and Their Factual Background

49. The decision in *Vacik* related to an established quarry in the Penrith local government area. That quarry was established and conducted under a development consent granted

on 23 November 1981. The original consent was subsequently modified in 1982 and 1986. The *Vacik* decision related to the refusal of a further modification application, with the appeal lodged on 25 June 1991.

50. The *Vacik* consent related to the conduct of a sand and shale extractive industry. The development consent granted by Penrith City Council identified the means by which the quarry would be rehabilitated and a final land form established.
51. The modification sought approval to amend the consent to enable the applicant to *backfill our existing quarry with non-putrescible waste*. The proposed amendment involved changes to a number of the conditions and the approval of a new final land form, quite different to that proposed when the development consent was granted.
52. The modification, in essence, proposed the introduction of a new development purpose, being the receipt and deposit of waste at the quarry, a matter noted in the judgment.
53. In view of the introduction of that new and distinct use, the Court concluded that the development consent, if modified, would make the development different from the development for which consent was granted in 1981.
54. There is no such element in relation to the proposed modification of DA 518. The consideration of *the way in which the development is to be carried out* (to adopt the words of Justice Stein) leads to the conclusion that there will be no such change.
55. The proposed modification of DA 518 will allow the lateral extension of the area within which sand may be extracted from the site. On that issue, the decision of *Scrap Realty* is relevant. That decision allowed the lateral extension of the approved container development, with the extension achieved by adding to the approved development site land that was not identified in the development consent, as granted.
56. The *Scrap Realty* decision is the first decision in which the LEC had approved the addition of land to an identified development site through the modification of a development consent. The decision was therefore “novel” but that novelty did not prevent Preston CJ from reaching his decision and allowing an increase in the development footprint.
57. The decision in *Moto Projects* related to a proposed modification application of a development consent relating to the proposed redevelopment and refurbishment of the North Sydney Club premises at Berry Street North Sydney. The approved development allowed the addition of 4 to 6 floors to the existing building to provide for 48 residential apartments. The approved development also included a proposed vehicle access ramp to the premises from the Warringah Expressway.
58. The modification application proposed the deletion of the access ramp and an adjustment to the car parking within the approved development could follow from the deletion of the access ramp. The deletion of that ramp (which provided exclusive access from the Expressway to the premises) would have resulted in a reduction of the motor vehicle access points, being a laneway, would be created within an easement that existed over adjoining land.

59. Bignold J of the LEC was required to consider whether the development consent, if modified, would regulate a development that was substantially the same as the development approved by the Court. At paragraph [31] of the judgment in *Moto Projects*, Bignold J asked the following question:
31. *Can it be said of the approved development, which incorporates the ramp access from Warringah Expressway for all ingressing traffic to the Club carpark that it will be substantially the same as the modified development which eliminates the ramp access and instead relies upon the Walker Street ROW for all traffic (including traffic to the Club) both ingressing and egressing the redevelopment?*
60. His Honour ultimately concluded that the separate ingress for vehicular traffic from the Expressway was a material and essential physical element of the approved development. That separate ingress was regarded by the Court to *important* and, in the assessment of Bignold J, allowed the appeal and the granting of development consent, in accordance with the LEC orders. The proposed elimination of the access ramp materially changed the approved development.
61. There are only a limited number of LEC decisions relating to extractive industries and the modification of consents relating to such industries. In some cases, those judgments follow conferences convened in accordance with s 34 of the *Land and Environment Court Act 1991 (LEC Act)*. However, such judgments may be significant, given that a Commissioner of the Court will not make orders upholding an appeal and grant a development consent, where parties to a conciliation conference agree that this outcome is appropriate, unless the Commissioner is satisfied that the Court has jurisdiction to make the orders proposed by the parties. In most cases, a presiding Commissioner will require written submissions on jurisdiction from the parties, or at least one of the parties, with consent.
62. The decision of Dixon SC in *Gunlake Quarries Pty Ltd v The Minister for Planning and Public Spaces* [2021] NSWLEC 1333 falls within this category. The judgment related to an application to modify State Significant Development Consent SSD 7090, originally granted by the LEC in 2017, to increase the approved truck movements to and from the approved quarry and to increase the annual quarry product transport limit.
63. The modification application before the Court in 2021 was made pursuant to s 4.55(2) of the EP&A Act. The modifications proposed by the applicant are summarised in paragraph 16 of the judgment as follows:
16. *The proposed modification of the existing consent may be summarised as follows:*
- (1) *amend Condition 7 to allow 2.6 million tonnes of quarry product to be transported per annum instead of 2 million tonnes;*
- (2) *amend Condition 9 to allow for the limit of truck movements on the Primary Transport Route to be an average of 220 inbound and 220 outbound instead of a total daily average of 370 trucks;*

- (3) *amend the averaging period in Condition 9 from each calendar month to 3-monthly;*
  - (4) *amend Condition 9 to allow a maximum of 295 inbound and 295 outbound truck movements on any given day instead of a maximum of 490 trucks; and*
  - (5) *no change to the number of movements on the Secondary Transport Route.*
64. The proposed modification application did not change the footprint of the approved quarry. However, the increase in the annual quarry transportation from 2m tonnes to 2.6m tonnes represented an increase of 30% in the volume of product that could be transported. In relation to the change in the average daily number of truck movements, Dixon SC concluded that *the change to the average daily number of truck movements, and the averaging period and the daily limits, while different, will not radically alter the development from that approved* (paragraph [17]).

#### Conclusion and Advice

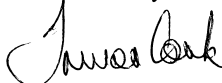
65. The NSW Court of Appeal in *North Sydney Council v Michael Standley & Associates Pty Ltd* [1998] 97 LGERA 433 (Mason P) agreed (at page 440 of the judgment) with the statement of Bignold J in *Houlton v Woollahra Municipal Council* [1997] 95 LGERA 201 at 203 that the power to modify a consent, now conferred by s 4.55 of the EP&A Act (and previously regulated by s 102 and then by s 96) is *beneficial and facultative*.
66. In his decision in *Michael Standley*, Mason P concluded that the word “modify”, in its context within the provision, means *to alter without radical transformation*. On that issue he referred to the decision of *Sydney City Council v Ilenace Pty Ltd* [1984] 54 LGERA 217 at 222-223.
67. As also noted by Mason P (*Michael Standley* page 439) a *modified consent must of necessity be different in some respect to its predecessor*.
68. The wording in s 4.55(2) requires that a consent authority (or the LEC on appeal) compare the following two elements when considering a modification application:
- (a) the development consent originally granted for the Dunbogan Quarry; and
  - (b) the development that will be conducted at the Quarry, if the modification application is granted.
69. When these two elements are compared, they must be substantially the same, if the modification application is to be approved.
70. The various decisions of the LEC and Court of Appeal in the period since *Vacik*, confirmed that the determination of whether a development proposed to be modified will be substantially the same as the development for which consent was originally granted involves questions of fact and degree. The matter is to be considered depending on the specific circumstances of the application before the decision-maker. It is not a question which is capable of scientific or mathematical precision.

71. As a result, consideration of percentage increases in the quantity of the resource that will be extracted if the footprint of the Quarry extraction area is expanded, or a consideration of the additional resource that will be unlocked as a result of that expansion, is not determinative, in isolation. That reality no doubt underpinned the decision in *Gunlake* with the significant increases in both quantity of product that could be transported, and the number of truck movements that were approved, through the modification application.
72. The substantive question to be considered is whether the expansion of the quarry footprint, and the consequent increase in the quantity of sand that will be processed and transported (noting that the extraction and processing methods, and the volume of truck movements, will not change) will result in the modified development being anything other than substantially the same as the development originally approved.
73. That question is to be considered from both a qualitative and a quantitative perspective.
74. From a qualitative perspective, the nature, purpose and method of operation of the Quarry will not change. There is no proposed introduction of some new element into the development which would change or add to the approved development purpose. The site of the development won't change and all operational aspects of the development, if the consent is modified, will remain unchanged.
75. From a quantitative perspective, the approved disturbed area will increase by 21%. Within that expanded disturbed area the Quarry footprint will also expand. That expansion will take place on land zoned RU1. Part of the land concerned has been cleared of vegetation, and part includes land that is used for agricultural purposes.
76. There will be no stark or significant physical differences between the development approved under DA 518 and the development that will be conducted if the consent is modified.
77. In our opinion, the modification of DA 518 to permit an expansion of the Quarry footprint, with the consequence that sand will be removed from the expanded extraction area, will meet the test specified in each of the *Vacik* and *Standley* decisions. The sand extraction, dredging and processing operation conducted by Hy-Tec will remain essentially or materially the same, and will retain the same essence as the operation that was approved by the then Hastings Council in October 1995. There will be no *radical transformation of the existing development* or of the way in which the existing Quarry operates or of the way in which the post-development site will be rehabilitated.
78. In accordance with s 4.55(3) PMHC, when determining the application for modification, will take into consideration such of the matters referred to in s 4.15(1) as are relevant to the development the subject of the modification application. PMHC will also consider the reasons given by the former Hastings Council when DA 518 was granted.
79. We have reviewed those reasons, which are set out at the end of each of conditions 1 to 41 inclusive of DA 518. In our assessment, none of those reasons would be appropriately nominated by PMHC as the basis for refusing the proposed modification application. The majority of the conditions on which DA 518 was granted will not

require any change in their wording and the reasons for the imposition of the conditions will remain unchanged.

80. On the basis of our review of all the materials made available with our instructions we conclude that the proposed modification may lawfully be approved by PMHC.

Yours faithfully



**McPhee Kelshaw**





20 February 2024

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**Table 1**  
**Overview of the Approved and Proposed Activities**

Page 1 of 3

| Component or Activity              | Approved Operation  | Proposed Modifications                  | Potential Environmental Impacts of Proposed Activities   |
|------------------------------------|---|---|--|
| Total Resource Volume              | 2.6 million tonnes  | An additional approximately 1,000,000t. | The additional resource would provide for up to an additional eight to ten years of operations.  |
| Total Area of Physical Disturbance | 20.6ha  | An additional 4.3ha                     | The expansion of the extraction area would involve the removal of 0.7ha of native vegetation and 3.6ha of agricultural land (market garden).<br>No new items of Aboriginal heritage significance have been identified in field surveys undertaken with Aboriginal community stakeholders.  |
| Extraction Area/Dredge Pond        | 11.6ha  | An extension of 5.2ha                   | 0.9ha of proposed extended extraction area is already within the approved boundary. The existing environmental risks would continue and would be managed in the same manner as under existing operations.<br>The extension of the extraction area would require the dredge to operate further to the west than it has in the past but recent mitigations have been applied that make noise generated by the dredge difficult to perceive. In addition, views of the development from nearby properties and Diamond Head Road would remain consistent with what is visible now. |
| Duration of Approval               | No limit  | No Change                               | There is no expiry date on the existing consent and this is not proposed to change under the proposed modification.  |
| Maximum Annual Sales Level         | 125,000tpa  | No Change                               | The annual sales level limits the number of heavy vehicles required to depart the Quarry on an annual basis. The annual limit is set in the existing approval and daily variations in production occur to meet demand. There would be no change to daily fluctuation in traffic generation and limits to annual production.  |
| Employment                         | 3 permanent operational staff and 1 fulltime manager at the Quarry.<br>5 people employed for transportation operations. | No Change                               | No change  |

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20 February 2024

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**Table 1 (Cont'd)**  
**Overview of the Approved and Proposed Activities**

Page 2 of 3

| Component or Activity  | Approved Operation  | Proposed Modifications                       | Potential Environmental Impacts of Proposed Activities  |
|--|---|--|---|
| Transportation Route   | The trucks turn right on Diamond Head Road to head to Kew Road with the majority following this route to the Pacific Highway to enter Port Macquarie, the predominant market for the Quarry's products. Some vehicles may turn right at Ocean Drive towards Lauriston should clients be located in this area of Bornie Hills. | No change                                    | The transport route and number of trucks leaving the Quarry would not change. Therefore, the community's experience of traffic generated by the Quarry would not change.  |
| Method of Extraction   | Free dig extraction above the water table and cutter and suction dredging once water is encountered   | No Change – no longer using free dig methods | Mapped acid sulphate soils would continue to be managed by returning all material not sold to the dredge pond. In this way there is limited opportunity for exposure to air that may result in acid generation. Therefore, risks associated with acid sulphate soils would remain low and would not change. |
| Depth of Extraction  | The floor of the dredge pond is to be a maximum of -15m AHD   | No Change                                    | No change   |
| Processing Operations  | Wash plant including screening  | No Change                                    | Washing processes limit dust generation in processing and would continue to occur at the same intensity as is currently experienced. There would be no change to environmental impacts of processing operations at the Quarry.  |
| Silt / Fines Management                                      | Fine materials or silts that are removed in processing activities are returned to the dredge pond and settle on the floor of the pond   | No Change                                    | No Change   |
| Product Stockpiling within the secondary processing area     | Adjacent to wash plant  | No Change                                    | No change   |
| Hours of Operations for Extraction and Processing Activities | Monday to Friday – 6:00am to 5:00pm<br>Saturday – 6:00am to 1:00pm  | No Change                                    | No change   |

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20 February 2024

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Table 1 (Cont'd)  
Overview of the Approved and Proposed Activities

Page 3 of 3

| Component or Activity                                  | Approved Operation  | Proposed Modifications                    | Potential Environmental Impacts of Proposed Activities |
|--|---|---|--|
| Loading Product Trucks and Despatch Hours of Operation | Monday to Friday – 6:00am to 5:00pm<br>Saturday – 6:00am to 1:00pm  | No Change                                 | No change  |
| Quarry Access Road                                     | Between administration area and Diamond Head Road   | No Change                                 | No change  |
| Daily Truck Loads                                      | Dependent on demand but maximum of 30 laden trucks per day  | No Change                                 | No change  |
| On-site Administration and Amenities                   | Located in southern section of Quarry   | No change                                 | No change  |
| Water Management System                                | Small on-site dam. Given the sandy nature of the substrate, rainfall quickly infiltrates the surface and management is not required.                            | No change                                 | No change  |
| Rehabilitation   | Regeneration and maintenance of beach-side dune system.   | Progressive rehabilitation to continue    | No change  |
| Biodiversity Offsetting                                | No requirements.  | Biodiversity Offset Scheme not triggered. | No change  |
| Diesel   | 10,000 L tank on site   | No change                                 | No change  |
| Waste Management                                       | Non-production wastes, such as general rubbish, recyclables, waste oil, tyres and batteries, are removed to a licenced waste facility by a licenced contractor. | No change                                 | No Change  |
| Telecommunications including NBN                       | One line in   | No change                                 | No change  |
| Sewerage   | Septic system   | No change                                 | No change  |

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## Part 4 Modification Application - EPA Comments



Notice No. - 1642062

Port Macquarie Hastings Council  
11 236 901 601  
PO Box 84  
Port Macquarie NSW 2444

Attention: The Proper Officer

Notice Number 1642062  
File Number DOC24/569373  
Date 06-Aug-2024

### Re: 132 Diamond Head Road Dunbogan - Expansion of extraction and dredging-Dunbogan Quarry-Adbri Concrete and Quarries Northern NSW Pty Ltd Trading as HY-TEC CONCRETE AND AGGREGATES

#### Issued pursuant to Section 4.46 Environmental Planning and Assessment Act 1979

I refer to the application submitted by Adbri Concrete and Quarries Northern NSW Pty Ltd Trading as Hy-Tec Concrete and Aggregates (the Proponent) to modify development consent DA 518/94 and the accompanying information provided to the Environment Protection Authority (EPA) on 16/07/2024. The modification of the consent is sought to authorise the Expansion of extraction and dredging area at 132 Diamond Head Road Dunbogan (the Premises).

Port Macquarie Hastings Council (the Consent Authority) granted development consent (DA 518/94) under the *Environment Planning and Assessment Act 1979* to the Proponent in respect of the water based extractive activities occurring at the Premises. The Proponent currently holds an Environmental Protection Licence (EPL No. 4039) under the *Protection of the Operations Act 1997*. EPL No. 4039 was issued by the EPA and allows the undertaking of the Scheduled Activities of *Water-based extractive activity* and *Crushing, grinding or separating* at the Premises.

The EPA has reviewed the application and information provided and is of the view that if the current activity is modified, EPL No. 4039 should be varied to effectively regulate the modified activity. The Proponent will need to apply separately to the EPA to vary this licence.

The proposed licence conditions relate to the expansion of the extraction and dredging area as outlined in the application and information provided to the EPA. In the event that the proposal is further modified, either by the Proponent prior to the granting of consent or as a result of the conditions proposed to be attached to the consent, the EPA requests that the consent authority consult with the EPA about the changes before

Page 1

## Part 4 Modification Application - EPA Comments



Notice No. - 1642062

modifying the consent. This will enable the EPA to determine whether the proposed licence conditions need to be modified in light of the changes.

In assessing the proposal the EPA has also identified a number of environmental issues that the Consent Authority may wish to consider in its overall assessment of the application. This includes:

1. The Premises currently has no noise limits on their licence. The Premises is subject to the *Protection of the Environment Operations Act 1997* and the current version of the *Noise Policy for Industry (2017)*.

2. The Proponent will have to apply for a licence variation if the consent authority supports the proposal. An updated premises map will need to be provided as part of the licence variation. Ensure the plan is prepared by a registered surveyor and includes:

- clear delineation of the premises boundary including points of reference in eastings and northings on major corners, extraction area, etc.;
- be restricted to the footprint that the scheduled activity is being carried on or intending to be carried on;
- the location(s) of all environmental controls within the premises boundary; and
- the location of major plant and facilities that are fixed.

3. No other significant impact to environment was identified as part of this assessment.

If you have any questions, or wish to discuss this matter further please contact Peter Geronimi on 02 9995 5979.

Yours sincerely

A handwritten signature in black ink, appearing to read 'J. Grimston'.

.....  
**Jarrod Grimston**

**Unit Head**

**Environment Protection Authority**

(by Delegation)





29 November 2024

The General Manager  
Port Macquarie-Hastings Council

By planning portal

**Case reference A-88002 for Modification application MA 2024.409.1 – Dunbogan Sand Quarry**

Dear Ben,

Thank you for your email dated 12 November 2024 confirming that A-88002 was not an integrated development referral.

WaterNSW reviewed the additional information response dated 4 November 2024, however, as the matter is not integrated, there is no requirement for WaterNSW to consider the provision of general terms of approval. WaterNSW can, however, provide advice on what approvals and licences are required by the proponent. The additional information, water account balance, can form part of any application/s made.

No current approvals and/or licences have been identified for the Dunbogan Sand Quarry and based on the information provided, WaterNSW believes that the proponent requires a water supply work approval under s90(2) of the *Water Management Act 2000* (the Act) for the existing development and proposed expansion.

If the water use associated with the quarry is not authorised under development consent, meaning no exemption from a water use approval applies under s35(a) of the *Water Management (General) Regulation 2018* (the Regulations), then a water use approval under s89 of the Act may also be required as part of the application process.

Any potential impacts of the existing quarry and proposed expansion will be assessed as part of the application process.

It is important to note that aquifer interference activity approvals under s91(3) of the Act have not yet commenced. In the absence of s91(3), any activity involving an aquifer requires a water supply work approval under s90(2) of the Act.

The RW Corkery & Co response to submission dated 4 November 2024 (the response) indicates that the quarry is a water supply work as follows:

- A groundwater excavation for the take of groundwater from a water source, and
- A dam for the capture and containment of surface water runoff under the harvestable rights provisions of the Act.

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**WaterNSW** ABN 21 147 934 787  
169 Macquarie Street Parramatta NSW 2150  
PO Box 398, Parramatta NSW 2124  
t. 1300 662 077 e. [Customer.Helpdesk@waterNSW.com.au](mailto:Customer.Helpdesk@waterNSW.com.au)

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As advised previously, there is no exemption from the requirement for a water supply work approval under the Regulations in relation to the groundwater excavation (quarry). The proponent will need to apply for a water supply work approval which will be subject to a hydrogeological assessment of the proposal. This assessment will clarify if the proposal is exempt from the requirement for a water access licence (WAL), for the take of water in accordance with 3ML/y as outlined in Part 1 of Schedule 4 of the Regulations.

The Harvestable Rights (coastal-draining catchments) Order 2023 provides for the capturing and storage of rainfall runoff in a dam/s in the harvestable right area. The maximum harvestable right volume for a landholding is expressed as a dam capacity (in megalitres). Where a dam capacity exceeds the maximum harvestable right dam capacity (MHRDC), an approval and a WAL is required for that volume that is in excess of the MHRDC.

The order refers to mixed-rights dam which are dams for capturing and storing of harvestable rights water and other water that has been lawfully taken from a water source. Obtaining a WAL for the volume of runoff water, in excess of the MHRDC, is other water that has been lawfully taken from a water source.

The response states in section 2.2 that the quarry site has a maximum harvestable right dam capacity of 7.89ML. If the existing quarry is a dam for the capture of harvestable rights, it far exceeds the properties MHRDC and requires a water supply works approval and a WAL of sufficient unit shares.

If the surface area of the quarry (existing and proposed expansion) is 12.93ha (129,300 square m) and has a depth of 15m, then the capacity of the dam may be 776ML in capacity. It is estimated that direct rainfall into the quarry would only equate for approx. 197ML.

If the inflow of groundwater into the quarry is estimated at 1.64ML/y and direct rainfall capture is 197ML, the size of the quarry would indicate that it has the ability to capture and additional 577ML of rainwater runoff from the greater catchment. Should a WAL be required for the volume of water in excess of the properties MHRDC, the site is subject to the Watson Taylors Lake Water Source of the Water Sharing Plan for the Hastings Unregulated and Alluvial Water Sources 2019. It should be noted that there are only 3 unregulated river WALs in this water source totalling 146-unit shares. Trades are permitted into the water source from the Camden Haven River Water Source and the Stewarts River Water Source provided the sum of all WALs in the Watson Taylors Lake Water Source do not exceed 282-unit shares.

The proponent and their suitably qualified consultant should contact WaterNSW to discuss their licence and approval requirements in more detail.

Council should consider including a condition in the development application that requires the proponent to make an application to WaterNSW for the necessary licences and approvals prior to commencing any work.

Please feel free to contact Melissa Hundy on 0447 202 523 or [melissa.hundy@waternsw.com.au](mailto:melissa.hundy@waternsw.com.au) should you require further information.

Yours sincerely,



Melissa Hundy  
Water Regulation Specialist



Department of Climate Change, Energy, the Environment and  
Water



HMS Application ID: 8073 / DOC24/674440-21

Mr Ben Roberts  
Planner  
Port Macquarie-Hastings Council  
PO BOX 84  
PORT MACQUARIE NSW 2444  
Email: ben.roberts@pmhc.nsw.gov.au  
Letter uploaded to the NSW Planning Portal

Address: 164 and 241 Diamond Head Road, Dunbogan

Proposal: Expansion of Extraction, Dredging and processing of sand.

Development Application no: DA 2024.409, CNR-71082, A-88001. Received: 26 November 2024.

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**Subject: Submission of amended plans for a Modification to an Integrated Development Application, *National Parks and Wildlife Act 1974***

Dear Mr Roberts

Thank you for referring amended plans for the above proposal to our office under clause 37 of the *Environmental Planning and Assessment Regulation 2021* - amendment of development application. We have reviewed the amended plans and documents and provide the following comments in relation to Aboriginal cultural heritage matters pursuant to s.90 of the *National Parks and Wildlife Act 1974*. We note:

- Heritage NSW issued general terms of approval for the modification to an integrated development application DA 2024.409 on 2 October 2024 (refer to DOC24/674440-10) that an Aboriginal Heritage Impact Permit would be required.
- Heritage NSW received an amended plans referral to the modification on 26 November 2024. Amended plans identified a significantly reduced 'Proposed Extraction Boundary'.
- Heritage NSW requested further information on 6 December 2024 (DOC24/674440-17 / HMS 8073) including updated reporting and mapping of the reduced 'Proposed Extraction Boundary' against the known midden extent of site 30-6-0025 and sought clarification if an Aboriginal Heritage Impact Permit would still be required.

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Locked Bag 5020, Parramatta 2124  
NSW Planning Portal reference: CNR-71082

[www.environment.nsw.gov.au/topics/heritage](http://www.environment.nsw.gov.au/topics/heritage)

Page: 1 of 4

- A response to the requested information from RW Corkery & Co was uploaded to the portal on 28 January 2025. The response provided:
  - Updated mapping identifying Aboriginal objects in the form of disturbed shell material forming part of site 30-6-0025 was identified during surveys by Austral in 2020 within the area of the amended 'Proposed Extraction Boundary' for Modification DA 2024.409.
  - The applicant does not intend on updating the ACHAR as the applicant intends on applying for an Aboriginal Heritage Impact Permit over the area surveyed in the report to allow for future use of the property including approved extraction industry or for agricultural activities.
  - The proposed Aboriginal Heritage Impact Permit remains unchanged from the report (Austral, 23 September 2024) and is in Figure 1 of the response.

The report states: "archaeological testing within the study area is not recommended, as any cultural material identified in the significantly disturbed study area would not add meaningful data to the archaeological record". (Austral, 2024:50).

Submitted information identifies that disturbed shell material from midden 30-6-0025 will be partially impacted by the proposed modification. The applicant recommends this work be conducted under an Aboriginal Heritage Impact Permit. Protection measures have been proposed in the form of a heritage induction for contractors and stop works procedure if Aboriginal objects are identified.

We note public submissions were uploaded to the portal on 13 September 2024. The following public submission referred to Aboriginal cultural heritage matters:

- One public submission noted a registered Aboriginal site had been destroyed. In response to the submission, the applicant notes an Aboriginal Cultural Heritage Assessment Report was prepared for the proposed modification that included consultation with the Aboriginal community. The applicant notes an Aboriginal Heritage Impact Permit would be sought prior to the commencement of works that would disturb shell fragments from the midden. Heritage NSW understands that possible harm to Aboriginal objects was reported to Environment Line. We understand this matter will be subject to separate review by the Department of Climate Change, Energy, the Environment and Water.

Considering the above, and in accordance with Section 4.47 of the *Environmental Planning and Assessment Act 1979*, the following new general terms of approval are granted:

#### **Approved Development**

Development must be in accordance with:

- a. Dunbogan Sand Quarry, Dunbogan, New South Wales Aboriginal Cultural Heritage Assessment (Austral Archaeology, 23 September 2024).
- b. Response to Additional Information Request #2 - Proposed Dunbogan Quarry Expansion – Modification Application MA2024.409.1 (RWCorkery & Co, 28 January 2024).
- c. Dunbogan Quarry Modification 1 Statement of Environmental Effects (RWCorkery & Co, November 2024).
- d. Response to Submissions - Review of approved boundaries for the Dunbogan Quarry (RWCorkery & Co, 22 November 2024).

- e. Response to Submissions – Proposed Dunbogan Quarry Expansion of Extraction, Dredging and Processing of Sand, Lot 154/-/DP754405, Diamond Head Road Dunbogan – Modification Application MA2024.409.1 (RWCorkery & Co, 15 November 2024).

**Except as amended by the following general terms of approval:**

1. A s.90 Aboriginal Heritage Impact Permit for the proposed works must be sought and granted prior to the commencement of works.
2. The Aboriginal Heritage Impact Permit application must be accompanied by appropriate documentation and mapping as outlined in Applying for an Aboriginal Heritage Impact Permit: Guide for applicants (2011).
3. Consultation with the Aboriginal community undertaken as part of the Aboriginal Heritage Impact Permit application must be in accordance with the Aboriginal cultural heritage consultation requirements for proponents 2010.
4. The Aboriginal Heritage Impact Permit application must be completed with reference to the requirements of the Guide to investigating, assessing and reporting on Aboriginal cultural heritage in NSW (2011).
5. The Aboriginal Heritage Impact Permit application must include complete records satisfying the requirements of the Code of Practice for Archaeological Investigation of Aboriginal Objects in New South Wales (2010).
6. Long term management of Aboriginal objects must be considered as part of the Aboriginal Heritage Impact Permit application.

**Advice**

We recommend the following reporting is provided to Heritage NSW with the Aboriginal Heritage Impact Permit application:

- Confirmation that updated site details and mapping of midden 30-6-0025 reflecting the results of archaeological survey conducted by Austral Archaeology have been provided to AHIMS.
- Mapping that identifies both the amended 'Proposed Extraction Boundary' for Modification DA 2024.409 and areas proposed for future use of the property including approved extraction industry or for agricultural activities.

**Aboriginal community consultation must be maintained**

Consultation with the registered Aboriginal parties must be maintained. We recommend updates on the project are provided to the registered Aboriginal parties every 6 months to ensure the consultation is continuous.

Please note that any modification of the above development that will result in impacts to Aboriginal cultural heritage must be referred to Heritage NSW to determine whether changes to these general terms of approval are required.

If you have any questions in relation to these general terms of approval, please contact Lyndon Patterson, Senior Assessments Officer at Heritage NSW on (02) 9873 8500 or [heritagemailbox@environment.nsw.gov.au](mailto:heritagemailbox@environment.nsw.gov.au)

Yours sincerely

*Nicole Davis*

Nicole Davis  
Strategic Manager, Major Projects  
Heritage NSW  
Department of Climate Change, Energy, the Environment and Water  
As Delegate under *National Parks and Wildlife Act 1974*  
31 January 2025

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NSW Planning Portal reference: CNR-71082

[www.environment.nsw.gov.au/topics/heritage](http://www.environment.nsw.gov.au/topics/heritage)

Page: 4 of 4



**Ben Roberts**

**From:** Nicholas Warren <nick@rwcorkery.com>  
**Sent:** Monday, 3 March 2025 4:35 PM  
**To:** Ben Roberts  
**Cc:** Ben Stevenson; David Cilento (david.cilento@adbri.com.au); Paul O'Connor (Paul.O'Connor@adbri.com.au)  
**Subject:** FW: 982 - Dunbogan Quarry

Good afternoon Ben,

Please see below email from Ben Stevenson of NPWS regarding the recent submission from NPWS on the modification application.

Regards,  
Nick



**Nick Warren**

Principal Consultant  
B.Sc., M. Bus., M. Env.Sc  
*I do not work Wednesday mornings*  
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**From:** Ben Stevenson <>  
**Sent:** Monday, 3 March 2025 1:29 PM  
**To:** Nicholas Warren <nick@rwcorkery.com>  
**Cc:** Piers Thomas <Piers.Thomas@environment.nsw.gov.au>; Shane Robinson <Shane.Robinson@environment.nsw.gov.au>  
**Subject:** RE: 982 - Dunbogan Quarry

**Caution:** This email is from outside our organisation. Be cautious with all links and attachments. Do not click on any links or open any attachments unless you are certain of the sender's identity.

Hi Nick

Following our discussion last week, I have briefed and sought further advice from the NPWS Environmental Planning Team and the local NPWS Area Manager regarding the NPWS recommendation for an independent expert review of the groundwater assessment.

Given the reduction in footprint associated with the updated DA modification application (from 3.12ha to 0.98ha), NPWS is now satisfied with the groundwater assessment undertaken for this proposal. However, please note in response to any future DA to expand operations we would request peer-reviewed groundwater assessment and monitoring to ensure no impact on values within the neighbouring Crowdy Bay National Park.

We are happy to hear that your client has agreed to implement the recommended fauna habitat corridors and develop associated management plans. We look forward to the documents being referred to NPWS for comment, either as part of this modification or post determination.

Regards

**Ben Stevenson**  
Ranger  
Hastings Macleay Area  
NSW National Parks and Wildlife Service  
Birpai / Biripi Country

22 Blackbutt Rd  
Port Macquarie NSW 2444  
T 02 6561 6734 M 0439 357 852  
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**From:** Nicholas Warren  
**Sent:** Wednesday, 29 January 2025 9:46 AM  
**To:** [benjamin.stevenson@environment.nsw.gov.au](mailto:benjamin.stevenson@environment.nsw.gov.au)  
**Subject:** 982 - Dunbogan Quarry

Hi Benjamin,

I have tried calling in relation to the attached comments provided to Port Macquarie-Hastings Council regarding the Dunbogan Quarry.

We are starting to prepare the management plan for the site in advance of the determination of the application and I would like to discuss your comments to ensure I have understood them and we are providing what you need.

Regards,  
Nick



**Nick Warren**

Principal Environmental Consultant

*B.Sc., M. Bus, M. Env.Sc., TIQA, MIAP2, MEIANZ (CEnvP with REAP)*

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NSW National Parks and Wildlife Service

Your ref: DA 10.2024.409.1(2)  
Our ref: DOC24/634942-10

Chief Executive Officer  
Port Macquarie Hastings Council  
PO Box 84  
PORT MACQUARIE NSW 2444

Email: [council@pmhc.nsw.gov.au](mailto:council@pmhc.nsw.gov.au)

Dear Dr Allen,

**Development Application (Modification) 10.2024.409.1 - Dunbogan Sand Quarry**

Thank you for the email dated 27 November 2024 about the Response to Submission (RTS) addressing NSW National Parks and Wildlife Service (NPWS) comments on the original consultation on Development Application (DA) 10.2024.409.1 dated 15 August 2024 (our ref DOC24/634942-3). NPWS originally advised on the proposed development as the expansion of extraction, dredging and processing of sand on Lot 154/ DP754405, Diamond Head Road (Dunbogan Sand Quarry) as a Modification to DA 518/1994. NPWS interest remains as the quarry is adjacent to Crowdy Bay National Park as land reserved under the *National Parks and Wildlife Act 1974*. NPWS appreciates this opportunity to review the RTS, and the revised documents.

On considering the RTS and the revised *Dunbogan Quarry Modification 1- Statement of Environmental Effects prepared by R.W. Corkery and Co Pty Ltd dated November 2024* (SEE) and technical appendices, NPWS would like to reiterate the matters around groundwater in more detail and request a revision (update) of Approval Conditions with the respect to the agency's role and commitments made.

**1. Groundwater changes and impacts to Crowdy Bay National Park**

NPWS remains concerned about the impacts to groundwater, and the adequacy of the monitoring and reporting regimes attached to the current Quarry's operations. NPWS also requested Council seek independent expert review of the groundwater assessment to ensure its technical adequacy as the consent authority prior to progressing any approval. This request remains current.

**NPWS recommends**

1.1 Port Macquarie-Hastings Council as the consent and regulatory authority for this DA undertake a compliance review of environmental performance based on the DA 518/94 Planning Approval as issued and as Modified prior to progressing this modification under Section 4.55(2) of the *Environmental Planning and Assessment Act 1979*. With respect to groundwater consider:

- a. auditing the environmental performance of the Quarry, addressing effects on the adjoining NPWS estate, coastal wetland, Groundwater Dependent Ecosystems (GDE) and detected changes in quantity and quality of groundwater in the absence of any previous reporting in the context of Condition 16 of DA 518/1994 and the *current/approved Environmental Management and Site Rehabilitation Plan for the Quarry* (ERM Mitchell McCotter, 1996)
- b. impacts to GDEs as identified immediately west and south of the Quarry's operations, especially those attached to the proposed extraction area extension, of the identified 'low relief coastal blackbutt and swamp mahogany' vegetation communities. These

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[www.nationalparks.nsw.gov.au](http://www.nationalparks.nsw.gov.au)

communities formed part of the identified Koala Corridors on site which are critical to management of koalas in this coastal landscape and the connections to Crowdy Bay National Park

- c. seek specialist advice on the adequacy of the structured monitoring program, its ability to detect groundwater impacts attached to Quarry operations, nominate triggers, escalate actions based on impacts and require reporting or notification to relevant authorities in the context of Condition 16 of DA 518/1994. NPWS simply wants to ensure no negative impacts occur to the coastal wetlands and other sensitive ecosystems located on Crowdy Bay National Park.

**2. NPWS recommends revised conditions as part of any future approval of the modification to DA 518/994**

NPWS requests the following conditions be revised as part of any future modification approval as issued under Part 4 of the NSW *Environmental Planning and Assessment Act 1979*. These should form part of a consolidated consent issued by Port Macquarie Hastings Council. These revised conditions will facilitate protection of Crowdy Bay National Park consistent with the intent of the *Environmental Impact Statement (EIS) for the Proposed Expansion of Dunbogan Sand Quarry* (ERM Mitchell McCotter, 1996) and assist in delivering on the koala management actions which link koala habitat to the north of the Quarry Development Site to Crowdy Bay National Park, a declared Asset of Intergenerational Significance site for the protection of koalas.

**Environmental management**

- 2.1 Condition 15 of DA 518/1994 - as the Park Authority for Crowdy Bay National Park, land reserved under the *National Parks and Wildlife Act 1974*, NPWS requests to be identified as a relevant authority in the preparation of a revised Environmental Management and Site Rehabilitation Plan (EMSRP).
- 2.2 Condition 15 of DA 518/1994 - that the EMSRP is revised, submitted, and approved by Council prior to the proposed quarry extension works commencing. The revised EMSRP is to contain clear and concise targeted actions with set timelines governing the delivery of both the stated progressive and final rehabilitation of the Quarry. These are to remain consistent with the EIS, and incorporate
  - a. Koala (and other fauna) Management Subplan, to deliver on the actions cover the management of Koalas (and other species) and the action attributed to their protection, habitat restoration, corridor establishment and monitoring targets as set under the EIS. The subplan should include:
    - i. weed control program
    - ii. exclusion areas maps which includes areas of habitat such as the Swamp Mahogany Coastal Heathland which are excluded from quarry operations in accordance with Conditions 29 and 34 of DA 518/94 and the EIS
    - i. final (and approved) wildlife corridor alignment, width, and restoration actions for both koalas and other fauna consistent with the EIS/ *Koala Management Plan - Dunbogan Sand Quarry* (KPOM) prepared by ERM Mitchell McCotter (ERM, 1995), and/or if approved by Council, in accordance with the *Ecological Assessment Report as prepared by Biodiversity Australia Pty Ltd* (BioAus, 2024) where a new corridor alignment will improve on biodiversity outcomes for the Quarry Site. The corridor should be regenerated/revegetated consistent with the Plant Community Type identified for this locality, with a focus on Koala Feed Trees for canopy species
    - ii. reference to the Koala Asset of Intergenerational Significance as declared on Crowdy Bay National Park (AIS\_E0\_182) under Part 12A of the NPW Act with respect to protection, and movement of the local koala population from the Quarry site to/from Crowdy Bay National Park - [Koala \(\*Phascolarctos cinereus\*\) conservation action plan | NSW Environment and Heritage](#).

- b. Lake Management Subplan to address the management of the Lake (extraction) as per Conditions 17, 20, 28 of DA 518/1994 and drive its rehabilitation to an artificial window lake in accordance with the EIS. This should include progressive rehabilitation of non-operational areas/banks on the northern, eastern, and southern sides.
- c. Acid Sulphate Management Subplan consistent with Condition 19 of DA 518/94, NPWS advises that exposure and inappropriate management of acid sulphate soils represents a significant risk to coastal wetlands and Crowdy Bay National Park.

**Monitoring and reporting**

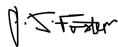
- 2.3 Condition 16 of DA 518/1994 - as the Park Authority for Crowdy Bay National Park, land reserved under the *National Parks and Wildlife Act 1974*, NPWS requests to be identified as a relevant authority receiving a copy of the Annual EMSRP Report, including a copy of the Annual Groundwater Monitoring Report.
- 2.4 Conditions 16 and 18 of DA 518/1994 - monitoring and reporting requirements outlined in the EIS (approved SEE for this modification) must be set out in the revised EMSRP, and should apply environmental management best practice when establishing the new and more comprehensive (compliant) monitoring framework for the Quarry operations consistent with the DA 518/1994 Approval. The framework is to set benchmarks against the data provided in the EIS (an supplementary plans), specify triggers based on a precautionary approach with direct Quarry response, actions, and reporting.

**Aboriginal cultural heritage**

- 2.5 Condition 32 of DA 518/1994 – the delivery of a Cultural Heritage Awareness Program for the Quarry must be undertaken in consultation with Heritage NSW as primary agency governing Part 6 of the *National Parks and Wildlife Act 1974*. The revision and implementation of this condition with respect to the EMSRP is to occur in consultation with Heritage NSW.
- 2.6 Condition 33 of DA 518/1994 – any Aboriginal objects found must be reported to Heritage NSW as the primary agency. All reporting is to be directed to NSW Environment Line on 1300 361 967 or email requests for consultation via their mailbox at [heritagemailbox@environment.nsw.gov.au](mailto:heritagemailbox@environment.nsw.gov.au).

If you have any further questions, please contact Mr Ben Stevenson, Ranger, NPWS Ranger for Crowdy Bay National Park, on 02 6561 6734 or at [benjamin.stevenson@environment.nsw.gov.au](mailto:benjamin.stevenson@environment.nsw.gov.au).

Kind regards



**Peter Foster**  
A/Manager, Hasting-Macleay Area  
**NSW National Parks and Wildlife Service**  
10 January 2025



## Transport for NSW



9 August 2024

File No: NTH24/00542/001  
Your Ref: DA2024.409.1

Chief Executive Officer  
Port Macquarie Hastings Council  
PO Box 84  
PORT MACQUARIE NSW 2444

**Attention: Ben Roberts**

**Ocean Drive (MR600): DA2024.409.1, Expansion of Extraction, Dredging and processing of sand, Lot 154/-/DP754405, Diamond Head Road Dunbogan**

I refer to the abovementioned Development Application referred to Transport for NSW (TfNSW) on 19 July 2024 for comment in accordance with Section 2.122 of the State Environmental Planning Policy (Resources and Energy) 2021.

TfNSW key interests are the safety and efficiency of the transport network, the needs of our customers and the integration of land use and transport in accordance with the *Future Transport Strategy*.

Ocean Drive (MR600) is a classified Regional road and Diamond Head Road is a local road. Council is the roads authority for both roads and all other public roads in the area, in accordance with Section 7 of the *Roads Act 1993*.

TfNSW has reviewed the information provided and raises no objection to or requirements for the proposed development as it is considered there will be no significant impact on the nearby classified (State) road network.

On Council's determination of this matter, please forward a copy of the Notice of Determination to TfNSW for our records. Should you require further information please contact Kane Hitchcock, Development Services Case Officer, on 1300 207 783 or by emailing [development.north@transport.nsw.gov.au](mailto:development.north@transport.nsw.gov.au).

Yours faithfully,

A handwritten signature in black ink that reads "Court Walsh".

**Court Walsh**  
Team Leader Development Services  
North Region | Community & Place  
Regional & Outer Metropolitan  
Metropolitan

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### OFFICIAL

6 Stewart Avenue (Locked Bag 2030) Newcastle West NSW 2302  
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