

**TITLE:** [PR-PC] Development Application DA04/0162.02 for an Amendment to Development Consent DA04/0162 for Expansion and Amalgamation of Existing Quarries at Lot 28 DP 1079480 Pollards Road, Dulguigan

**SUBMITTED BY:** Development Assessment and Compliance

Validms



## Civic Leadership

### LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

1	Civic Leadership
1.2	Improve decision making by engaging stakeholders and taking into account community input
1.2.1	Council will be underpinned by good governance and transparency in its decision making process

### SUMMARY OF REPORT:

In November 2004 Council approved DA04/0162 which authorised the amalgamation and expansion of three existing quarries at Dulguigan Road, North Tumbulgum. These quarries were the Reedy Creek, Sanderson's, and Pollards Quarries. DA04/0162 was issued as a deferred commencement consent which was later activated on 7 March 2005. The quarries were merged and the material between the three quarries has started to be removed to allow the site to operate as one quarry operation over new Lot 28 in DP 1079480. The amalgamated quarry was previously known as the Reedy Creek Quarry but is now known as the Hy-Tec Tumbulgum Quarry as new owners took over the site in 2011.

In December 2014 Council received a Section 96(2) Modification to DA04/0162 from Hy-Tec Industries (Queensland) Pty Ltd. The application specifically seeks consent to amend the extraction boundary of the quarry (predominantly increasing the development footprint to allow an extra 1,400,000m<sup>3</sup> of resource to be extracted over an extra 7 years). In addition the application seeks consent to modify conditions 1, 26 and 27 of the existing consent as it relates to the approved plans, noise barriers and the acoustic fence requirements.

The S96(2) Modification was initially advertised and notified to any adjoining neighbours within 1.5km of the site in January 2015. Council received 13 submissions (from 9 individuals) objecting to the proposal predominantly concerned with the visual implications of the expansion, and the extra noise, dust, traffic and environmental impacts that could be associated with the proposed larger quarry. There was great concern that Dulguigan Road in its existing format is inadequate for the existing traffic.

In response to Council's initial assessment and the 13 submissions the applicant amended their S96 (2) Modification by reducing the size of the proposed expansion. However, revised figures of extraction indicated that whilst the actual footprint is being reduced the extraction figure was increasing to 1,755,000m<sup>3</sup> (which will add 9 years to the total life of the quarry) as the original figures were incorrect. This amended S96 was placed on Council's DA Tracker and the neighbours were given a further 14 days in May 2015 to comment on

the proposal in June 2015. Following this exhibition Council received a further 5 submissions (including a petition with 10 signatures) objecting to the proposal and 10 letters of support for the business.

Council Officers still had some concerns with the proposed expansion footprint and the proposed environmental mitigation measures and asked the applicant to again consider amending their plans to better address these concerns. Subsequently the applicant lodged their final set of proposed plans with Council in August 2015.

The final version of the amended S96 was again placed on Council's DA Tracker and the neighbours were given a further 14 days in September 2015 to comment on the proposal. Council received a further submission objecting to the proposal and requesting additional blast information.

The following report assesses the amended S96 as received on 5 August 2015.

Council's role in the assessment of this S96(2) application is to only modify the consent if :

- 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;
- it has had regard for any government agency submissions;
- it has considered the submissions; and
- it has considered those matters of relevance under 79C(1);

The following report has addressed each of these matters. It should be noted that whilst the proposed expansion of Hy-Tec Tumbulgum Quarry will result in the quarry extracting an additional 1,755,000m<sup>3</sup> which will add 9 years to the life of the quarry and the revised boundaries will result in a change to the visual outlook for adjoining neighbours the actual overall day to day operations of the quarry will remain unchanged.

The quarry will **continue** to:

- Extract 200,000m<sup>3</sup> per annum (195,000m<sup>3</sup> average over a three year period);
- Operate between the hours of 7.30am – 6pm Monday to Friday, 7.30am to 12 Noon Saturdays and have no works Sundays or Public Holidays;
- Blast 3 times per month;
- Have a maximum of 40 trucks per day (averaged over the year); and
- Keep the existing single access point.

Therefore the amendment before Council seeks to

- Increase the boundary of extraction (an extra 1,755,000m<sup>3</sup> of material over 9 years). This is more than originally notified (1,400,000m<sup>3</sup> over 7 years) however, since originally lodged the applicant has undertaken more detailed extraction figures and through the amended plans the figure has been refined. So whilst the extraction amount is more than originally notified the actual boundary has been reduced from the original plan. This change results in Condition 1 needing to be amended;
- Amend Condition 26 to remove the reference to a noise barrier for an existing house (Lot 27 DP 814950) which is now owned by the proponent; and
- Delete Condition 27 in regards to the noise barrier for Lot 7 DP 814950.

The original and amended application was also referred to the NSW Office of Environment & Heritage (OEH) to consider the likely environmental impact as a result of the additional clearing required to accommodate the expanded quarry boundary. The amended application addressed initial agency concerns by preparing reports generally in accordance with the NSW Biodiversity Banking and Offsets Scheme as adopted under the Threatened Species Conservation Act 1995. OEH have now concluded that:

*the applicant has clearly and reportedly demonstrated an intention to provide an offset for the biodiversity impacts of the proposal'*

Accordingly, additional conditions of consent have been recommended by OEH and Council's Natural Resource Management Unit to formalise the proposed Biobanking Agreement. While such agreement is being drafted the offset area will be protected under a 88B Instrument which no longer have effect once the Biobanking Agreement is in place with OEH. It is important to note that, once the Biobanking Agreement is in place. OEH will be responsible for enforcing compliance with the terms of the Agreement and Council will have no role in compliance over the Agreement. The applicant has agreed to these extra conditions which now form part of the proposed S96(2) Application.

Each proposed amendment has been assessed on its merits and has been assessed in the context of the variation only, as this is not an opportunity to re-visit the original determination.

The amended S96 Modification has been carefully balanced and assessed against the public submissions and the current applicable planning controls.

The quarry's significance as a regionally significant extractive resource (as per the Far North Coast Regional Strategy) has resulted in the recommendation for approval of the proposed amended S96 Application with additional recommended conditions to more effectively manage the environmental considerations of the site. Such conditions have been accepted by the applicant and can therefore lawfully be imposed. No further additional conditions can be imposed without the prior authorisation of the applicant.

It should be noted that since the application was publically exhibited the quarry operators have made steps to purchase two of the nearest adjoining properties which are 36 Pollards Rd Tumbulgum and 645 Dulguigan Rd Tumbulgum. The original objections received from 645 Dulguigan Road Tumbulgum have since been withdrawn. Therefore, the objection numbers referenced above need to be reduced as the objections have been formally withdrawn.

On the balance of these factors, it is recommended that the proposed Modification be approved, subject to conditions.

#### **RECOMMENDATION:**

**That Development Application DA04/0162.02 for an amendment to Development Consent DA04/0162 for expansion and amalgamation of existing quarries at Lot 28 DP 1079480 Pollards Road, Dulguigan be approved subject to the following changes being made to Schedule B of the consent:**

- 1. Delete Schedule B Condition 1 and replace it with Condition 1A which reads as follows to reflect the new plan:**

- 1A. The development shall be completed in accordance with the following:**
- a. Statement of Environmental Effects prepared by Jim Glazebrook & Associates Pty Ltd (JGA) dated February 2004,**
  - b. Further information as per the JGA letter of 30 July 2004 as later amended by their letter of 8 October 2004**
  - c. The approved "Rehabilitation and Environmental Management Plan" approved from time to time by Council's Director of Planning & Regulation**

**Except where varied by the approved S96 DA04/0162.02 application material specifically incorporating Dwg. No. 1374.044 Rev. 6 Extraction Boundary Alignment dated 02 May 2016 prepared by Groundwork Plus**

**AND**

**Except where varied by the following conditions**

- 2. Insert new condition in Schedule B after Condition 1A which is numbered 1.1 which reads as follows to reflect the NSW Office of Environment & Heritage requirement for BioBanking:**
  - 1.1. Prior to the commencement of the quarry expansion (as approved by DA04/0162.02), the proponent must develop a biodiversity offset strategy to the written satisfaction of the Office of Environment and Heritage and the Tweed Shire Council. The strategy must quantify the biodiversity impacts of the quarry expansion using the BioBanking Assessment Methodology and identify the BioBanking biodiversity credit requirements required to offset the impacts of the proposal. The strategy must also identify the measures proposed to offset these impacts. If the measures include the securing of any identified offset site in perpetuity, then this strategy must identify a suitable mechanism to achieve this.**
- 3. Insert new condition in Schedule B after Condition 1.1 which is numbered 1.2 which reads as follows to reflect the requirements for the REMP:**
  - 1.2. Within 90 days of the issue of S96 DA04/0162.02 consent, the amended REMP prepared in accordance with those matters prescribed in new Attachment 1 forming part of this consent shall be submitted to and approved by Council. The amendments may be made as an attachment and/or addendum of the REMP. Where any conflict or inconsistency exists between the REMP and attachment and/or addendum (consistent with Attachment 1 of this consent) the provisions detailed in the later shall prevail.**
- 4. Insert new condition in Schedule B after Condition 1.2 which is numbered 1.3 which reads as follows to reflect the requirements for the Restrictive Covenant:**
  - 1.3. Within 90 days of the issue of S96 DA04/0162.02 consent a restrictive statutory covenant for conservation purposes in respect of the entire area described as 'Offset Area (15.08 ha)' shown on Dwg. No. 1374.044 Rev. 6 Extraction Boundary Alignment dated 02 May 2016 prepared by Groundwork Plus shall be created under s. 88B of the Conveyancing Act 1919 for the benefit of the Tweed Shire Council on the terms specified below:**

- a. The area described as 'Offset Area (15.08 ha)' must be subject to a habitat restoration program undertaken in accordance with an approved REMP and managed as a natural area for conservation purposes in perpetuity.
- b. The following activities are not permitted within the 'Offset Area (15.08 ha)':
  - i. Clearing, lopping or removal of any native plants, whether existing at the date of this approval or planted pursuant to conditions of this consent;
  - ii. Erection of any fixtures or improvements, including buildings or structures;
  - iii. Construction of any trails or paths unless otherwise approved by the NSW Rural Fire Service (or equivalent state agency) and Council;
  - iv. Depositing of any fill, soil, rock, rubbish, ashes, garbage, waste or other material foreign to the protected area;
  - v. Keeping or permitting the entry of domestic animals or any other animals that are not indigenous to the Offset Area; and
  - vi. Performance of any other acts which may have detrimental impact on the values of the Offset Area.

**Burden: Part Lot 28 DP1079480. Benefit: Tweed Shire Council**

5. Insert new condition in Schedule B after Condition 1.3 which is numbered 1.4 which reads as follows to reflect the requirements for the new boundary to be surveyed:
  - 1.4. Within 90 days of the issue of S96 DA04/0162.02 consent the following boundary lines as shown on Dwg. No. 1374.044 Rev. 6 Extraction Boundary Alignment dated 02 May 2016 prepared by Groundwork Plus shall be physically surveyed, clearly marked and delineated at regular intervals by a registered surveyor:
 

The 'Offset Area (15.08 ha)'; and  
The 'Proposed Extraction Boundary (19 ha)'
6. Insert new condition in Schedule B after Condition 1.4 which is numbered 1.5 which reads as follows to reflect the requirements for separate approvals:
  - 1.5. The applicant is required to seek under a separate application to the NSW Local Land Services (or equivalent state consent authority), approval for the removal of native vegetation regulated under the *Native Vegetation Act 2003* where:
    - a. The native vegetation proposed to be removed occurs within the 'Proposed Extraction Boundary (19 ha)' shown on *Dwg. No. 1374.044 Rev. 6 Extraction Boundary Alignment dated 02 May 2016 prepared by Groundwork Plus* the 'plan' referred herein) yet not within the area identified on the plan as 'Approved Extraction Boundary (15.08 ha)' (pursuant to Condition 26A); and/or

- b. **Where clearing is proposed within the 'Approved Extraction Boundary (15.08 ha)' as shown on the plan and is to exceed 2 ha per annum**
  
- 7. Insert new condition in Schedule B after Condition 1.5 which is numbered 1.6 which reads as follows to reflect the requirements for an 88B Instrument until the BioBanking Agreement is in place:**
  - 1.6. Upon entering into a BioBanking Agreement with the NSW Office of Environment and Heritage that involves securing in perpetuity the onsite Offset Area under the Threatened Species Conservation Act 1995, the Tweed Shire Council (as covenantee) will agree to revoke any 88B instrument (registered for conservation purposes under the Conveyancing Act 1919) that applies to that land.**
  
- 8. Insert new condition in Schedule B after Condition 1.6 which is numbered 1.7 which reads as follows to reflect the requirements for a S68 Approval for onsite sewage management system:**
  - 1.7. Within 90 days from the date of consent (DA04/0162.02) the applicant is required to lodge an application to operate any new onsite sewage management system under Section 68 of the Local Government Act 1993, pay the appropriate fee and be issued with a determination.**
  
- 9. Insert new condition in Schedule B after Condition 1.7 which is numbered 1.8 which reads as follows to reflect the requirements for a S68 Approval for onsite sewage management system:**
  - 1.8. In regard to DA04/0162.02 prior to the relocation of the amenities building the applicant is required to lodge an application to install/operate any new onsite sewage management system under Section 68 of the Local Government Act 1993, pay the appropriate fee and be issued with a determination. Any application shall be supported by design report prepared by a suitable qualified and experienced consultant.**
  
- 10. Insert new condition in Schedule B after Condition 1.8 which is numbered 1.9 which reads as follows to reflect the requirements for a S68 Approval for onsite sewage management system:**
  - 1.9. If during construction works any Aboriginal object or relic is disturbed or uncovered, works are to cease and the NSW Office of Environment & Heritage are to be notified immediately, in accordance with the provisions of the National Parks and Wildlife Act 1974.**
  
- 11. Delete condition 26 in Schedule B and replace it with a new proposed Condition 26A which updates the conditions to reflect the new plan:**
  - 26A. No work (excluding rehabilitation) shall be undertaken beyond the 'Proposed Extraction Boundary (19 ha)' as shown on Dwg. No. 1374.044 Rev. 6 Extraction Boundary Alignment dated 02 May 2016 prepared by Groundwork Plus unless works are required by the NSW Rural Fire Service (or equivalent state agency) for bushfire hazard management and those works are concurrently approved by Council's General Manager or delegate.**

12. Delete condition 27 in Schedule B (as noise barrier not required for adjoining site anymore) and replace it with a new proposed Conditions 27.1 and 27.2 which provides generic noise conditions leaving specific noise criteria to the NSW EPA:

27.1. The LAeq, 15 min noise level emitted from the premises shall not exceed the adopted noise criteria of 37dB(A) during the approved operating hours at any affected residence as detailed in the Assessment of Noise and Dust Impacts prepared by MWA Environmental dated 17 November 2014.

27.2. Upon receipt of a noise complaint that Council deems to be reasonable, the operator/owner is to submit to Council a Noise Impact Study (NIS) carried out by a suitably qualified and practicing acoustic consultant that assesses compliance with the adopted noise criteria detailed in the Assessment of Noise and Dust Impacts prepared MWA Environmental dated 17 November 2014. The NIS is to be submitted to the satisfaction of the General Manager or delegate and is to include recommendations for noise attenuation if required. The operator/owner is to implement the recommendations of the NIS within a timeframe specified by Council's Authorised Officer.

13. Delete condition 32 in Schedule B and replace it with a new proposed Condition 32A which updates the condition to reflect the current provisions surrounding Native Vegetation removal with the relevant State Agency:

32A. Any proposal to clear native vegetation in excess of 2ha per annum within the area shown as 'Approved Extraction Boundary (15.08 ha)' on *Dwg. No. 1374.044 Rev. 6 Extraction Boundary Alignment dated 02 May 2016 prepared by Groundwork Plus* (the 'plan' referred herein) yet not within the expanded area shown on the plan as 'Proposed Extraction Boundary' (pursuant to Condition 1.5) is to be the subject of a separate application to the NSW Local Land Services (or equivalent state consent authority).

14. Delete condition 36 in Schedule B relating to hours of operation as this is licenced by NSW EPA and detailed in the General Terms of Approval by NSW EPA which form part of this consent.
15. Delete condition 41 in Schedule B relating to noise levels and blasting criteria as this is licenced by NSW EPA and detailed in the General Terms of Approval by NSW EPA which form part of this consent.
16. Insert After Condition 43) – The NSW EPA – GENERAL TERMS OF APPROVAL as follows:

***GENERAL TERMS OF APPROVAL UNDER SECTIONS 43(b), 48 and 55 OF THE PROTECTION OF THE ENVIRONMENT OPERATIONS ACT 1997 (Environment protection licence to authorise carrying out of scheduled activities at any premises)***

***Administrative conditions***

***Note: Mandatory conditions for all general terms of approval***

***A1. Information supplied to the EPA***

**A1.1 Except as expressly provided by these general terms of approval, works and activities must be carried out in accordance with the proposal contained in:**

- **Development Application No.2015.069 submitted to Council on 30 September 2014 and attachments;**
- **Statement of Environmental Effects - Section Amendment to DA04/0162 and attachments.**

**Discharges to Air and Water and Applications to Land**

**P1.1 The following utilisation areas referred to in the table below are identified in the EPA's general terms of approval, or a licence under the Protection of the Environment Operations Act 1997, for the purposes of the monitoring and/or setting of limits for any application of solids or liquids to the utilisation area.**

<b>EPA Identification no.</b>	<b>Type of Monitoring Point</b>	<b>Type of Discharge Point</b>	<b>Location Description</b>
<b>Sediment Basin Discharge</b>	<b>Water</b>	<b>Water</b>	<b>Overflow point of stormwater from quarry floor</b>

**Limit conditions**

**L1. Pollution of waters**

**Note: Mandatory condition**

**L.1.1 Except as may be expressly provided by a licence under the Protection of the Environment Operations Act 1997 in relation of the development, section 120 of the Protection of the Environment Operations Act 1997 must be complied with in and in connection with the carrying out of the development.**

**L2. Concentration limits**

**L2.1 For each monitoring/discharge point or utilisation area specified in the tablets (by a point number), the concentration of a pollutant discharged at that point, or applied to that area, must not exceed the concentration limits specified for that pollutant in the table.**

**L2.2 Where a pH quality limit is specified in the Table, the specified percentage of samples must be within the specified ranges.**

**L2.3 To avoid any doubt, this condition does not authorise the pollution of waters by any pollutant other than those specified in the tablets.**

**L2.4 Water and/or Land Concentration Limits**

**DISCHARGE POINT 1 (Sediment Basin Discharge)**

<b>Pollutant</b>	<b>Units of measure</b>	<b>100% concentration</b>
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<b>Total Suspended Solids</b>	<b>mg/L</b>	<b>50</b>
<b>pH</b>	<b>pH units</b>	<b>6.5-8.5</b>
<b>Oil and grease</b>	<b>mg/L</b>	<b>Nil</b>

**L2.5** *The concentration limits in the above table do not apply to any discharge from the sediment basin (at Point 1) solely arising from rainfall measured at the premises exceeding 82.5 mm in total falling over any consecutive five day period.*

**L2.6** *If the applicant uses turbidity (NTU) in place of total suspended solids (TSS) to determine compliance with the EPA's general terms of approval, or a licence issued under the Protection of the Environment Operations Act 1997, the applicant must develop a statistical correlation which identifies the relationship between NTU and TSS for water quality in the sediment basin/s in order to determine the NTU equivalent of 50 mg/L TSS prior to its use.*

**L2.7** *If the applicant uses turbidity (NTU) in place of total suspended solids (TSS) to determine compliance with the EPA's general terms of approval, or a licence issued under the Protection of the Environment Operations Act 1997, the applicant must provide the EPA with a copy of the statistical correlation assessment methodology and results before using NTU in place of TSS.*

**L2.8** *If the applicant uses turbidity (NTU) in place of total suspended solids (TSS) to determine compliance with the EPA's general terms of approval, or a licence issued under the Protection of the Environment Operations Act 1997, the applicant must develop and implement a method to enable the ongoing verification of the relationship between NTU and TSS.*

**L2.9** *If the applicant uses turbidity (NTU) in place of total suspended solids (TSS) to determine compliance with the EPA's general terms of approval, or a licence issued under the Protection of the Environment Operations Act 1997, the applicant must provide the EPA with any amendments the applicant makes to the statistical correlation as a result of the ongoing verification required by Condition L2.8 before using the revised statistical correlation.*

### **L3. Waste**

**L3.1** *The applicant must not cause, permit or allow any waste generated outside the premises to be received at the premises for storage, treatment, processing, reprocessing or disposal or any waste generated at the premises to be disposed of at the premises, except as expressly permitted by a licence under the Protection of the Environment Operations Act 1997.*

**L3.2** *This condition only applies to the storage, treatment, processing, reprocessing or disposal of waste at the premises if it requires an environment protection licence under the Protection of the Environment Operations Act 1997.*

### **L4. Noise limits**

**L4.1** *Noise from the premises must not exceed an LAeq (15 minute) noise emission criterion of 37 dB(A) for the nearest residential receivers as identified in Statement of Environmental Effects - Drawing 1, except as expressly provided by these general terms of approval.*

**L4.2 Noise from the premises is to be measured at nearest residential receiver as identified in the Statement of Environmental Effects - Drawing 1, that does not have written permission from the property owners for an exceedance of condition L4.1 has been provided to the EPA.**

**L4.3 The noise limits set out in condition L4.1 apply under all meteorological conditions except for the following:**

- **Wind Speeds greater than 3 metres/second at 10 metres above ground level; or**
- **Temperature inversion conditions up to 30 C/100m and wind speeds greater than 2 metres/second at 10 metres above ground level; or**
- **Temperature inversion conditions greater than 30Cf100m.**

#### **L5. Blasting**

**L5.1 Blasting operations at the premises may only take place between 09:00 to 15:00 Monday to Friday. (Where compelling safety reasons exist, the Authority may permit a blast to occur outside the above mentioned hours. Prior written (or facsimile) notification of any such blast must be made to the Authority).**

**L5.2 The airblast overpressure level from blasting operations in or on the premises must not exceed:**

- a) **115 dB (Lin Peak) for more than 5% of the total number of blasts during each reporting period;**

**and**

- b) **120 dB (Lin Peak) at any time,**

**at any point within 1 metre of any affected residential boundary or other noise sensitive location unless the location is owned by the licensee or is subject to a private written agreement between the owner of the residence or noise sensitive location as to an alternative overpressure level.**

**L5.3 The ground vibration peak particle velocity from blasting operations carried out in or on the premises must not exceed:**

- a) **5mm/s for more than 5% of the total number of blasts carried out on the premises during each reporting period; and**

- b) **10 mm/s at any time,**

**at any point within 1 metre of any affected residential boundary or other noise sensitive location unless the location is owned by the licensee or is subject to a private written agreement between the owner of the residence or noise sensitive location as to an alternative ground peak velocity level.**

**L5.4 All sensitive receivers are to be given at least 24 hours' notice when blasting is to be undertaken.**

#### **L6. Hours of operation**

**L6.1 Activities covered by the EPA's general terms of approval, or a licence under the Protection of the Environment Operations Act 1997, must only be carried out between the hours of 7:30 am and 6:00 pm Monday to Friday, and 8:00 am and 1:00 pm Saturday, and at no time on Sundays and Public Holidays.**

**L6.2 This condition does not apply to the delivery of material outside the hours of operation permitted by condition L6.1 if that delivery is required by police or other authorities for safety reasons; and/or the operation or personnel or**

**equipment are endangered. In such circumstances, prior notification must be provided to the EPA and affected residents as soon as possible, or within a reasonable period in the case of emergency.**

**L6.3 The hours of operation specified in condition L6.1 may be varied with written consent if the EPA is satisfied that the amenity of the residents in the locality will not be adversely affected.**

**L6.4 Heavy vehicles (including excavators, haul trucks, loader and water carts) and machinery [including screening plant, jaw crusher, feed bin, cone crusher, rock drill, water pump and generator (genset)] cannot be started, maintained, arrive or leave the site or operated outside of operating hours as detailed in L6.1 and at no time on Sundays and Public Holidays.”**

### **Operating conditions**

#### **01. Dust**

**01.1 Activities occurring in or on the premises must be carried out in a manner that will minimise the generation, or emission from the premises, of wind-blown or traffic generated dust.**

#### **02. Processes and management**

**02.1 Sediment basins shall be treated, if required, to reduce the Total Suspended Solids level to the concentration limit of 50 mg/L provided by the EPA's general terms of approval, or a licence under the Protection of the Environment Operations Act 1997, before being released to the environment. Treatment can be with gypsum or any other material that has been approved by the EPA.**

**02.2 The applicant must maximise the diversion of run-on waters from lands upslope and around the site whilst land disturbance activities are being undertaken.**

**02.3 The applicant must maximise the diversion of stormwater runoff containing suspended solids to sediment basins installed on the premises.**

**02.4 Where sediment basins are necessary, all sediment basins and associated drainage must be installed and commissioned prior to the commencement of any clearing or grubbing works within the catchment area of the sediment basin that may cause sediment to leave the site.**

**02.5 The applicant must ensure the design storage capacity of the sediment basins installed on the premises is reinstated within 5 days of the cessation of a rainfall event that causes runoff to occur on or from the premises.**

**02.6 The applicant must ensure that sampling point(s) for water discharged from the sediment basin(s) are provided and maintained in an appropriate condition to permit:**

- a) the clear identification of each sediment basin and discharge point;**
- b) the collection of representative samples of the water discharged from the sediment basin(s); and c) access to sampling point(s) at all times by an authorised officer of the EPA.**

**02.7 The applicant must endeavour to maximise the reuse of captured stormwater on the premises.**

**02.8 Each sedimentation basin must have a marker (the "sediment basin marker") that identifies the upper level of the sediment storage zone.**

**02.9 Whenever the level of liquid and other material in any sedimentation basin exceeds the level indicated by the sedimentation basin marker, the licensee must take all practical measures as soon as possible to reduce the level of liquid and other material in the sedimentation basin.**

**02.10 The sediment basins must meet the design and operational standards of Managing Urban Stormwater Soils and Construction: Volume 1 and Volume 2 E. Mines and quarries. This document requires that at a minimum 85 percentile five-day rainfall event be used to determine basin sizing for quarries.**

**02.11 All liquid chemicals, fuels and oils must be stored in tanks or containers inside suitable bund(s). Bund(s) are to be designed, constructed and maintained in accordance with AS1940-2004 Storage and Handling of Flammable and Combustible Liquids.**

### **Monitoring and recording conditions**

#### **M1 Monitoring records**

**M1.1 The results of any monitoring required to be conducted by the EPA's general terms of approval, or a licence under the Protection of the Environment Operations Act 1997, in relation to the development or in order to comply with the load calculation protocol must be recorded and retained as set out in conditions M1.2 and M1.3.**

**M1.2 All records required to be kept by the EPA's general terms of approval, or a licence under the Protection of the Environment Operations Act 1997, must be:**

- a) in a legible form, or in a form that can readily be reduced to a legible form;**
- b) kept for at least 4 years after the monitoring or event to which they relate took place; and**
- c) produced in a legible form to any authorised officer of the EPA who asks to see them.**

**M1.3 The following records must be kept in respect of any samples required to be collected:**

- a) the date(s) on which the sample was taken;**
- b) the time(s) at which the sample was collected;**
- c) the point at which the sample was taken; and**
- d) the name of the person who collected the sample.**

#### **M2. Requirement to monitor concentration of pollutants discharged**

**M2.1 The applicant must monitor (by sampling and obtaining results by analysis) the concentration of each pollutant specified in Column 1. The applicant must use the sampling method, units of measure, and sample at the frequency, specified opposite in the other columns:**

#### **POINT 1 Water and Land**

##### **Discharge point 1**

<b>Pollutant</b>	<b>Units of measure</b>	<b>Frequency</b>
<b>Total Suspended Solids</b>	<b>mg/L</b>	<b>Special Frequency 1</b>

<b>pH</b>	<b>pH units</b>	<b>Special Frequency 1</b>
<b>Oil and grease</b>	<b>mg/L</b>	<b>Special Frequency 1</b>

**< Special Frequency 1 > means sampling any discharge, whether controlled or otherwise, which has not occurred from rainfall exceeding 82.5 mm over any consecutive five day period.**

### **M3. Testing methods - concentration limits.**

**M3.1 Subject to any express provision to the contrary of the EPA's general terms of approval, or a licence under the Protection of the Environment Operations Act 1997, monitoring for the concentration of a pollutant discharged to waters or applied to a utilisation area must be done in accordance with the Approved Methods Publication unless another method has been approved by the EPA in writing before any tests are conducted.**

### **M4. Environmental monitoring**

**M4.1 The applicant is required to install and maintain a rainfall depth measuring device.**

**M4.2 Rainfall at the premises must be measured and recorded in millimetres per 24 hour period, at the same time each day.**

**Note: The rainfall monitoring data collected in compliance with Condition M4.2 can be used to determine compliance with L2.4.**

### **M6. Other monitoring and recording condition**

**M6.1 For the purposes of monitoring for compliance with the noise limit conditions of the EPA's general terms of approval, or a licence under the Protection of the Environment Operations Act 1997, (condition L4) noise emitted from the premises must be measured or computed at 30 metres from the nearest residential dwelling/s over a period of 15 minutes using the "FAST" response on the sound level meter. A modifying factor correction must be applied for tonal, impulsive, or intermittent noise in accordance with the document NSW Industrial Noise Policy (NSW EPA, January 2000).**

### **M7. Blast Monitoring**

**M7.1 The time of blasting, the air-blast overpressure level from blasting operations and the ground vibration peak particle velocity from blasting operations must be measured at the nearest sensitive receiver for each blast.**

### **Reporting conditions**

**Note: Mandatory condition to be used on all general terms of approvals**

**R1.1 The applicant must provide an annual return to the EPA in relation to the development as required by any licence under the Protection of the Environment Operations Act 1997 in relation to the development. In the return the applicant must report on the annual monitoring undertaken (where the activity results in pollutant discharges), provide a summary of complaints relating to the development, report on compliance with licence conditions and provide a calculation of licence fees (administrative fees and, where relevant, load based fees) that are payable. If load based fees apply to the activity the applicant will be required to submit load-based fee calculation worksheets with the return.**

### **Special Conditions**

**E1. Noise and dust mitigation measures**

**E1.1 The applicant must implement all noise and dust mitigation measures recommended in the Statement of Environmental Effects - Attachment 6 - Assessment of noise and dust impacts of proposed modification of extraction boundary Tumbulgum Quarry Dulguigan, prepared by MWA Environmental dated 17 November 2014.**

**Noise mitigation measures to be implemented are to be found in section 2.3.2 of the aforementioned Statement of Environmental Effects attachment.**

**Dust mitigation measures to be implemented are to be found in section 3.4 of the aforementioned Statement of Environmental Effects attachment.**

**E1.2 The noise and dust mitigation measures outline in condition E1.1 must be completed prior to the commencement of quarrying activities.**

17. **Insert (after GENERAL TERMS OF APPROVAL) ATTACHMENT 1 - CONDITIONS – REHABILITATION AND ENVIRONMENTAL MANAGEMENT PLAN (REMP) AMENDMENTS as follows:**

**ATTACHMENT 1****CONDITIONS – REHABILITATION AND ENVIRONMENTAL MANAGEMENT PLAN (REMP) AMENDMENTS**

As referenced in Condition 1.2 of the s96 Consent DA04/0162.02

The applicant shall amend the existing approved REMP being *Rehabilitation & Environmental Management Plan for Reedy Creek Quarry at Dulguigan Road North Tumbulgum dated December 2004 prepared by Jim Glazebok & Associates Pty Ltd* in accordance with all the amendment items detailed herein. The amendments may be made as an attachment and/or addendum of the REMP. Where any conflict or inconsistency exists between the REMP and attachment and/or addendum (consistent with Attachment 1 of this consent) the provisions detailed in the later shall prevail.

To be clear, the following amendments have been based on review of the contemporary draft REMP being *Rehabilitation and Environmental Management Plan (REMP 2015) Version 5.0 dated May 2015 prepared by Groundwork Plus* submitted on the 19 May 2015 as part of the application material for DA04/0162.02

**1. Amendment Item 1 General Provisions**

- a. All REMP components and reference to the quarry layout plan shall be consistent with and reflect the approved layout plan being *Dwg. No. 1374.044 Rev. 6 Extraction Boundary Alignment dated 02 May 2016 prepared by Groundwork Plus*
- b. Ensure consistency between any general provisions of the REMP and those stipulated in specific supplementary management plan sub-components described below
- c. Remove reference to:
  - i. NSW National Parks & Wildlife Service concurrence requirements
  - ii. Survey requirements of the ecotone line - Monitoring shall be focussed on the progress of restoration effort and health of threatened flora species in accordance with the Habitat Restoration Plan (HRP) sub-component of the REMP (pursuant to the relevant provisions detailed below)

- d. **Section 3.10.4 Monitoring**
  - i. The 'Monitoring Table' shall be modified to be consistent with the Vegetation Management Plan (VMP) and HRP sub-components of the REMP
  - ii. On-site *Endiandra muelleri ssp. bracteata* population monitoring shall be undertaken for the duration of quarry operations. Based on the monitoring an annual health status report shall be provided to Council's Natural Resource Management (NRM) Unit every year for the 5 (five) year HRP monitoring period and 2 (two) years thereafter.
- e. **Section 3.10.7 Corrective Action** - This shall include consultation with Council's NRM Unit to ensure corrective actions are appropriate
- f. Provide an updated Environmental Monitoring Summary Table (similar to that included in the REMP 2004) based on the detail provided in the supplementary plans

## 2. Amendment Item 2 Vegetation and Fauna Management Plan

A Vegetation and Fauna Management Plan ('V&FMP') shall be prepared by a suitably qualified ecologist to be implemented during the construction and operational phase of the development. The V&FMP shall be included as a sub-component of the REMP and detail the following:

- a. Particulars and locations of vegetation to be removed and vegetation to be retained in order to facilitate the development
- b. Clearly identify the 'Proposed Extraction Boundary (19 ha)' (as shown on *Dwg. No. 1374.044 Rev. 6 Extraction Boundary Alignment dated 02 May 2016 prepared by Groundwork Plus* to ensure all necessary measures are implemented to:
  - i. Ensure works remain within the 'Proposed Extraction Boundary (19 ha)'
  - ii. Habitat beyond the 'Proposed Extraction Boundary (19 ha)' is afforded adequate protection during the construction and operational phase of quarry operations
- c. Details of all proposed infrastructure, site access and services
- d. Details of strategies and methods to be implemented to protect vegetation and habitat to be retained in accordance with the *Australian Standard AS 4970-2009 Protection of trees on development sites*
- e. Information on how the clearing will be undertaken including:
  - i. Whether the clearing will be undertaken in stages
  - ii. Special considerations for clearing (e.g. juvenile vegetation first)
  - iii. Time periods between clearing of staged areas (where applicable) or immature vegetation
  - iv. Direction of clearing
  - v. Details of erosion and sediment control measures to be employed prior to, or immediately following clearing activity
- f. Methods for the reuse of felled vegetation from the subject site (i.e. sensitively placing felled material where appropriate within retained areas to improve habitat values)
- g. Disposal methods for remaining debris after the above methods have been employed

- h. Identification of known and potential habitat trees (displaying values such as hollows, fissures, nests, drays, arboreal termitaria used as nests etc.) and description of fauna species known/likely to utilise habitat features
- i. Information on how trees are to be inspected for denning or nesting animals including constraints for inspecting trees (to provide acceptable alternative methods) and summary of removal and relocation methods for each faunal group (including observed species and species likely to occur in the area to be disturbed)
- j. Considerations relating to time periods for when fauna is likely to be removed/flushed prior to clearing. Regard shall be given to nesting/roosting times when scheduling tree works
- k. Details of special equipment required (such as cameras, elevated platforms etc.)
- l. Identification of general locations that wildlife may be relocated/translocated to if required (based on habitat requirements and subject to any required licences/permits)
- m. Specify that all fauna management procedures shall be undertaken by a suitably qualified wildlife specialist who holds all necessary permits/licences issued by the NSW Department of Environment & Heritage (or equivalent agency at the time)
- n. Any long term fauna management requirements i.e. installation of nest boxes (where hollows are to be removed), removal of unnecessary barbed fencing or retrofitting to make fauna friendly
- o. Any other vegetation management measures as detailed in Section 5.0 of the *Further Ecological Assessment Tumbulgum Quarry, Dulguigan NSW dated 07 May 2015 prepared by BAMB Ecological Consultants*

### 3. Amendment Item 3 Long Term Voluntary Conservation Area Management Plan

A general long term Voluntary Conservation Area Management Plan (VCMP) sub- component for the area described as 'Offset Area (15.08 ha)' shown on *Dwg. No. 1374.044 Rev. 6 Extraction Boundary Alignment dated 02 May 2016 prepared by Groundwork Plus* shall be incorporated into the REMP detailing all management measures and monitoring to be undertaken within the Offset Area in perpetuity (under a secure statutory mechanism). The VCMP sub-component shall include (but not be limited to):

- a. Description of the approved development including a plan showing the location of the Offset Area
- b. A description of how the document is to be read, including the purpose and intent of the Offset Area and general requirements at each phase of the development
- c. Schedule of prohibited activities within the Offset Area consistent with relevant conditions of the consent
- d. Detailed descriptions of the Offset Area including:
  - i. Topography
  - ii. Waterways, flow paths, gullies
  - iii. Vegetation communities and significant species
  - iv. Fauna habitat and significant species
  - v. Other significant features.
- e. Summary of requirements to be fulfilled by the proponent including:
  - i. Construction phase habitat protection requirements (vegetation and fauna management, sediment and erosion control)



- ii. Rehabilitation, including summaries of rehabilitation activities (based on the Habitat Restoration Plan sub-component)
- iii. Maintenance requirements including activities, timeframes and standards to be achieved following the five (5) year active establishment/maintenance phase
- iv. Monitoring details including baseline data/photographs; and
- v. Compliance/certification
- f. General information, including:
  - i. Duration of requirements / responsibilities;
  - ii. Checklists for Council to assess compliance with the VCMP sub-component (including remedial actions for non-compliance)

#### 4. Amendment Item 4 Habitat Restoration Plan

A Habitat Restoration Plan ('HRP') shall be prepared as a sub-component of the REMP for the entire 'Offset Area (15.08 ha)' as shown on *Dwg. No. 1374.044 Rev. 6 Extraction Boundary Alignment dated 02 May 2016 prepared by Groundwork Plus*

The HRP shall be prepared by a suitably qualified professional in accordance with Council's *Draft Habitat Restoration Plan Preparation Guideline dated February 2012* (attached) to include the following information (but not be limited to):

- a. An appraisal of the present condition of remnant and regrowth vegetation
- b. A plan overlaying an aerial photograph of the site which divides the area into appropriate management zones
- c. A management strategy for each of the zones, using a combined 'Assisted Natural Regeneration' and 'Reconstruction' approach
- d. A schedule of local native plant species (necessary to re-establish the pre-clear vegetation community) including Glossy Black Cockatoo (*Calyptorhynchus lathami*) feed trees (i.e. *Allocasuarina littoralis* and *A. torulosa*). Planting density shall be prescribed at one (1) plant per two (2) square metres in areas where a 'reconstruction' approach is adopted.
- e. Where 'Assisted Natural Regeneration' is applied natural recruitment must exceed one (1) plant per metre square
- f. A program of works to be undertaken to remove invasive weed species (noxious and environmental weeds);
- g. A schedule of timing of proposed works and frequency of activities developed to achieve site capture and meet both the short and long term objectives of the Offset Area
- h. A schedule of activities not permitted within the Offset Area consistent with relevant conditions of the consent
- i. Requirement for a Section 132C Licence issued under the *National Parks and Wildlife Act 1974*
- j. Management of domestic farm/feral animals (if appropriate) and any fencing/signage requirements to restrict access and increase landholder/public awareness
- k. Nomination of key performance indicators/criteria for monitoring purposes

- l. An active maintenance, monitoring and reporting schedule with developer commitment for a period of not less than five (5) years**
- m. An adaptive management statement detailing how potential problems arising may be overcome and requiring approval of Council's General Manager or delegate for such changes.**
- n. Incorporate threatened flora species monitoring and evaluation similar to that adopted in the REMP 2004**

**5. Amendment Item 5 Site Remediation Works**

**The applicant shall provide the following details in respect to progressive rehabilitation of internal quarry batters as shown on *Dwg. No. 1374.056 Rev.1* in *Rehabilitation Management Plan dated 05 May 2015 prepared by Groundwork Plus*:**

- a. Clear schedule of timeframes for remediation activity and establishment and maintenance periods to achieve site capture and slope stabilisation**
- b. Species list comprising 100% local native species suitable to the site and conditions**
- c. Provide a 10 m x 10 m indicative planting palette showing one (1) plant per metre square.**
- d. Provide details of performance criteria generally consistent with Council's *Draft Habitat Restoration Plan Preparation Guideline dated February 2012* requirements i.e. 90% success of planted stock, no environmental weed species present, growth of 1 m by year 3 and 1.5 m by year 5**

**REPORT:**

**Applicant:** HY-Tec Industries (Queensland) Pty Ltd  
**Owner:** Mr Leslie J Cowell & Ms Sandra M Cowell & Ms Julie R Cowell  
**Location:** Lot 28 DP 1079480; Pollards Road Dulguigan  
**Zoning:** RU2 Rural Landscape  
**Cost:** \$1,000,001

**Background:**

The current quarry is located on Lot 28 in DP 109480 (which was a consolidated Lot created in 2005) on the north western side of Dulguigan Road, approximately 7 kilometres north east of Murwillumbah and 2.5 kilometres west of Tumbulgum. The surrounding area comprises sugar cane, bushland, grazing land and six dwelling houses. The land comprises a ridge rising up to approximately RL 90 metres at the peak, which is located in the centre of the site. Other than the existing extraction areas, the land is heavily vegetated.

The site contains a significant well connected tract of remnant vegetation known to support a suite of threatened flora and fauna species and ecological communities. The vegetation proposed to be removed as part of the quarry expansion includes:

- 2.9 ha Brush Box Open Forest / Brush Box Tall Moist Forest (drier forest on ridges)
- 1.5 ha Brush Box Open Forest / Brush Box Tall Moist Forest (moister forest on lower slopes)

The application proposes that areas to the immediate north, east and west of the extraction boundary are to remain undisturbed and protected and managed for conservation purposes. This area is shown on the site layout plan and described as 'Offset Area (15.05 ha)'. Koalas are known to occur across the northern part of the site whilst potential koala habitat exists to the east of the extraction footprint. Incidental sightings of koala have been reported from neighbouring properties.

Following is a table detailing the history of the site and how the amalgamated quarry and current controls came about with a comparison to the proposed amended consent:

ITEM	REEDY CREEK QUARRY	SANDERSON'S QUARRY	POLLARDS QUARRY	AMALGAMATED QUARRY AS PER DA04/0162	PROPOSED QUARRY AS PER DA04/0162.02
<b>EXTRACTION RATE</b>	200,000m <sup>3</sup> pa 195,000m <sup>3</sup> average over a three year period	30,000m <sup>3</sup> pa 20,000m <sup>3</sup> average over a three year period	7,300m <sup>3</sup> pa 0.3ha lateral expansion during any 12 month period	200,000m <sup>3</sup> pa 195,000m <sup>3</sup> average over a three year period (Approximately 5,100,000m <sup>3</sup> total extraction)	<b>No increase</b>  (Approximately 4,239,800m <sup>3</sup> total extraction as a result of increased boundaries but also increased bench widths which lowers the overall extraction volume)
<b>QUARRY LIFE</b>	20 years	40-50 years	Unknown	27 years from November 2014	<b>An Extra 9 Years to</b>

				(2031)	<p>enable extraction of the additional material 1,755,000m<sup>3</sup> (2040)</p> <p>Note: The amended S96 plans reassessed extraction volumes and resulted in more accurate extraction rates which are increased to that originally notified but decreased in physical area.</p>
<b>OPERATING HOURS</b>	<p>7.30am – 6pm Monday to Friday</p> <p>7.30am to 12 Noon Saturdays</p> <p>No works Sundays or Public Holidays</p>	<p>7.00am to 5pm Monday to Friday</p> <p>7.00am to 12 Noon Saturdays</p>	Unknown	<p>7.30am – 6pm Monday to Friday</p> <p>7.30am to 12 Noon Saturdays</p> <p>No works Sundays or Public Holidays</p>	<p><b>No change proposed however the current EPA licence states:</b></p> <p><b><i>Saturday operating hours as 8am to 1pm</i></b></p> <p>The applicant needs to comply with both approvals so Council Officer's recommend Council align the consent with the existing EPA licence.</p>
<b>BLASTING FREQUENCY</b>	Max 3 times per month	As required	Unknown	Max 3 times per month	<b>No change</b>
<b>TRAFFIC</b>	Max 40 trucks per day (averaged over a year)	No specific limits on consent, however the EIS indicated 8 truck loads per day	Unknown	Max 40 trucks per day (averaged over a year)	<b>No change</b>
<b>ACCESS</b>	One main entry/exit.	One small unformed entry/exit	One small unformed entry/exit	One main entry/exit (the old Reedy Creek access) with all other access points off Dulguigan Road	<b>No change</b>

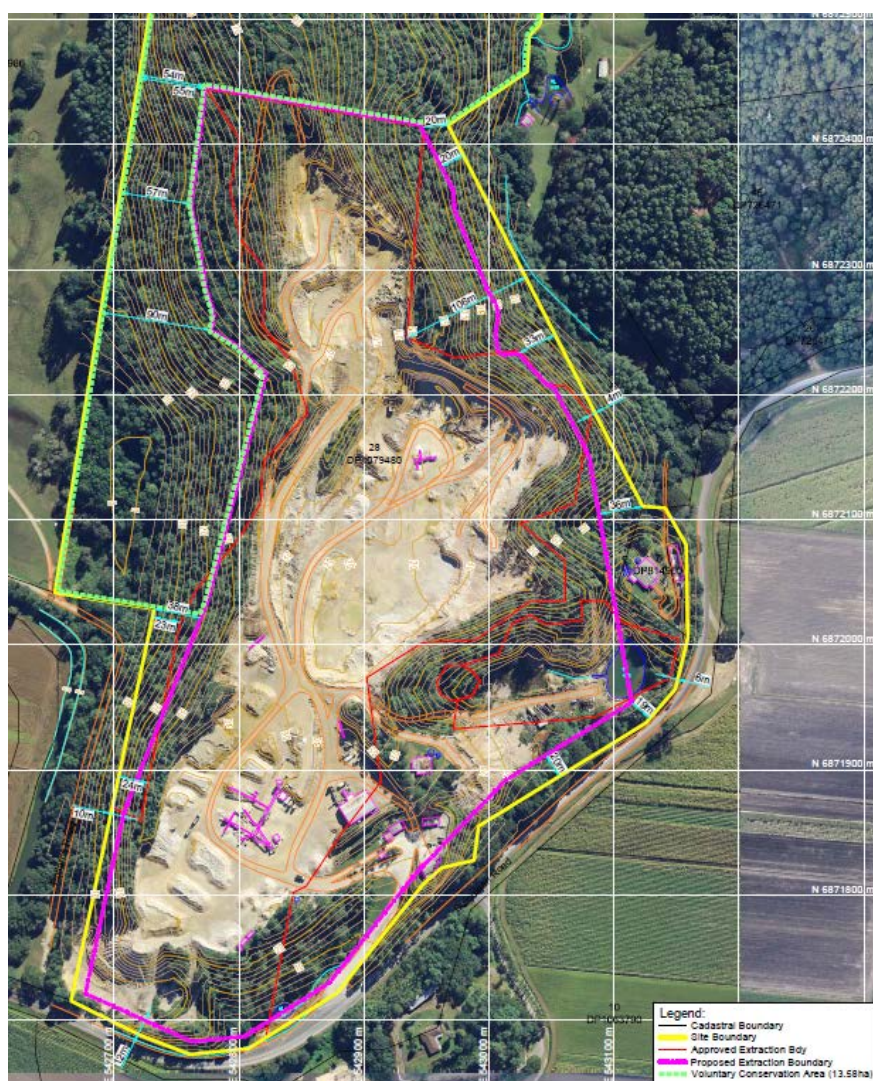
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The 2004 approval documentation anticipated a total yield of 5,100,000m<sup>3</sup> with 10m high and 4m wide benches. The applicant has now advised that such figures were overly generous and that the benches should be 10m wide to allow better stability and sufficient soil for re-vegetated benches. This effectively means that the site will actually only yield 4,239,800m<sup>3</sup> taking into account the newly proposed extraction areas and increased bench widths.

The facility maintains an existing NSW EPA Licence No.3430 issued on the 3 August 2011. The quarry is required to operate in accordance with a Rehabilitation and Environmental Management Plan (REMP) which was updated in August 2014. An updated version of the REMP has been provided addressing the items Council initially identified. A Safety, Health and Environment Policy has been provided to demonstrate management commitments and capabilities.

The current S96 Modification therefore seeks approval for:

- An overall increase to the boundary of extraction (an extra 1,755,000m<sup>3</sup> of material over 9 years). to the west and east of the site as shown below from the red to the pink line (note there are some areas on the eastern boundary where the proposed boundary has been pulled in):



This results in the need for Condition 1 to be amended to reflect the revised plan. Condition 1 currently reads as follows:

1. *The development shall be completed in accordance with the Statement of Environmental Effects prepared by Jim Glazebrook & Associates Pty Ltd (JGA) dated February 2004, further information as per the JGA letter of 30 July 2004 as later amended by their letter of 8 October 2004, and the approved "Rehabilitation and Environmental Management Plan" approved from time to time by the Director Development Services, except where varied by the following conditions.*
- Amendment of Condition 26 to remove the reference to a noise barrier for an existing house (Lot 27 DP 814950). Condition 26 currently reads as follows:
    26. *No work, including the construction of noise barrier, is to be undertaken beyond the boundary of the extraction area as identified in the REMP (excluding rehabilitation). The noise barrier and any bushfire retardation measures are to occur within the identified extraction area unless otherwise approved by Council, NSW Rural Fire Service and the National Parks and Wildlife Service.*
  - Delete Condition 27 in regards to the noise barrier for Lot 7 DP 814950 (shown diagrammatically below).



Condition 27 currently reads as follows:

27. The noise barrier is to consist of a fence constructed in accordance with the recommendations of the Noise Impact Statement by James Heddle Acoustical Consultants dated 10 January 2004 in the vicinity of the wet sclerophyll/rainforest vegetation. An earthen bund will not be accepted in this vicinity due to the disturbance to vegetation.

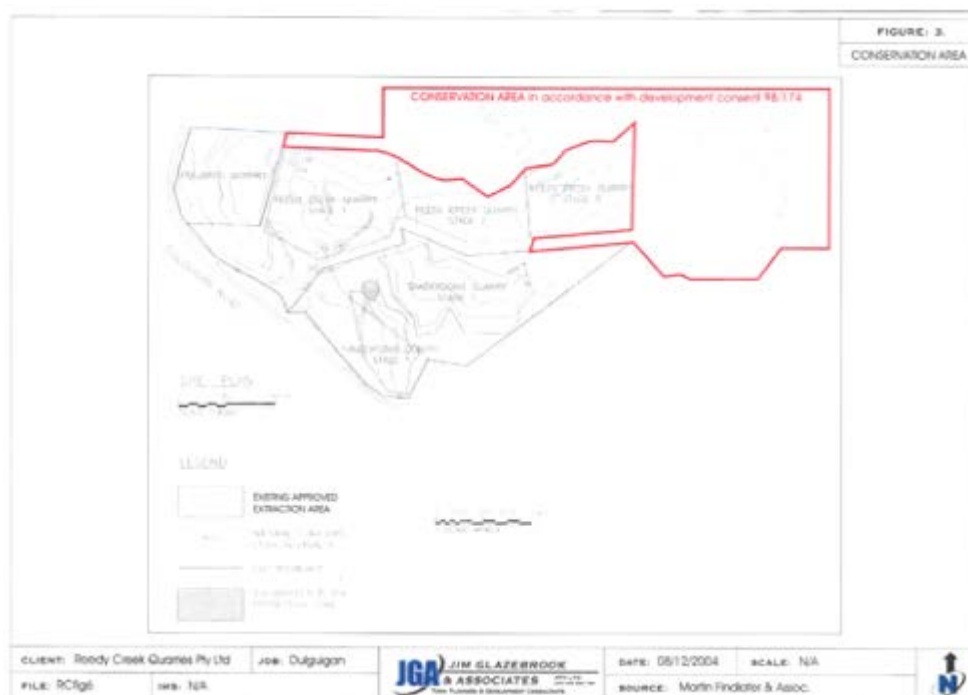
The applicant has advised that “The noise barrier referred to in Condition 26 and 27 was required in relation to the dwelling located on Lot 7 DP814950 which at the time of the 2004 application was owned by a member of the public and the assessment by James Heddle Acoustical Consultants determined that a noise barrier would be required to protect the amenity of that dwelling. However, Lot 7 on DP814950 is now owned by Hy-Tec and is no longer utilised as a private residence. Hy-Tec intend to amalgamate Lot 7 DP814950 with the Quarry in due course. Accordingly, the requirement to retain the noise barrier is no longer applicable.

It should also be noted that as a result of this detailed assessment it has been necessary to amend many more conditions of consent to ensure the consent reflects current legislation and assessment of DA04/0162.02. Each of the required amendments are further discussed throughout this report and can be seen combined in the recommendation for approval.

Council Officers and some Councillors attended a site visit on 19 February 2015. As part of this site visit the neighbouring properties were also visited.

Council Officers reviewed the application as lodged in December 2014 and requested additional information from the applicant on 25 March 2015 in regard to:

- Compliance matters with the existing Rehabilitation and Environmental Management Plan (REMP) in regards to a possible Voluntary Conservation Agreement which may have satisfied National Parks and Wildlife Services about vegetation loss associated with the quarry.



- Satisfying the substantially the same test as required by S96(2) of the Environmental Planning & Assessment Act 1979;
- The economic effect on the local community;
- A more comprehensive visual analysis;
- A more comprehensive ecological survey and flora and fauna assessment incorporating assessments of significance and site pegging; and
- A revised Rehabilitation and Environmental Management Plan (REMP).

The applicant responded to this additional information request (19 May 2015), and below are some extracts from that response:

- *There is no evidence that the previous operator established the proposed Voluntary Conservation Area. Hy-Tec will pursue this matter after the assessment of the current S96 Modification. The revised plan as later submitted in August 2015 shows a revised Voluntary Conservation Area measuring 13.58ha in size protecting all land north of the existing extraction boundary and most of the land west of proposed extraction boundary. This proposed area is shown in green below:*



- *The proposed modification does not alter the approved land use, annual extraction volumes, truck movements, method of extraction and processing equipment, plant, operating hours or depth of construction. The proposed boundaries allow for the rationalisation of boundaries and the clear delineation of the areas now proposed for protection as part of a Voluntary Conservation Area. The proposed modification is substantially the same as that originally approved.*



- *Extractive resources underpin all urban and infrastructure development and make a major contribution to the ongoing economic growth of local communities through direct and indirect employment opportunities. Extractive resources are site specific, limited in occurrence by geological conditions and are finite. Because they are high volume, low value materials, they need to be located close to communities that use them as the cost of transport to the end user contributes greatly to the overall cost of the delivered product. No new quarries have established in the Tweed Shire Council Area for quite some time and as Council is aware the establishment of a new quarry is very complex. Accordingly there is a general preference to extend the operational life of an existing quarry wherever possible rather than initiate a new quarry and introduce new impacts to a community and environment. Hy-Tec estimates that the quarry provides \$5,000,000 per annum to the local community per annum by way of direct sales to customers, employment of local staff, associated trades and supplies. The quarry plays an important role in the local economy and Hy-Tec wish to continue that role over the long term.*
- *Detailed visual analysis has been provided in the form of a 3D image that rotates around the entire site. Based on the latest plans the residents to the west will not have direct sight lines into the quarry.*
- *A Further Ecological Assessment was provided to justify the proposal and the latest proposed boundary alignment protects the significant vegetation identified by Council.*
- *A revised Rehabilitation and Environmental Management Plan (REMP) was provided as per Council's request.*
- *A response to the 13 submissions was provided as follows:*

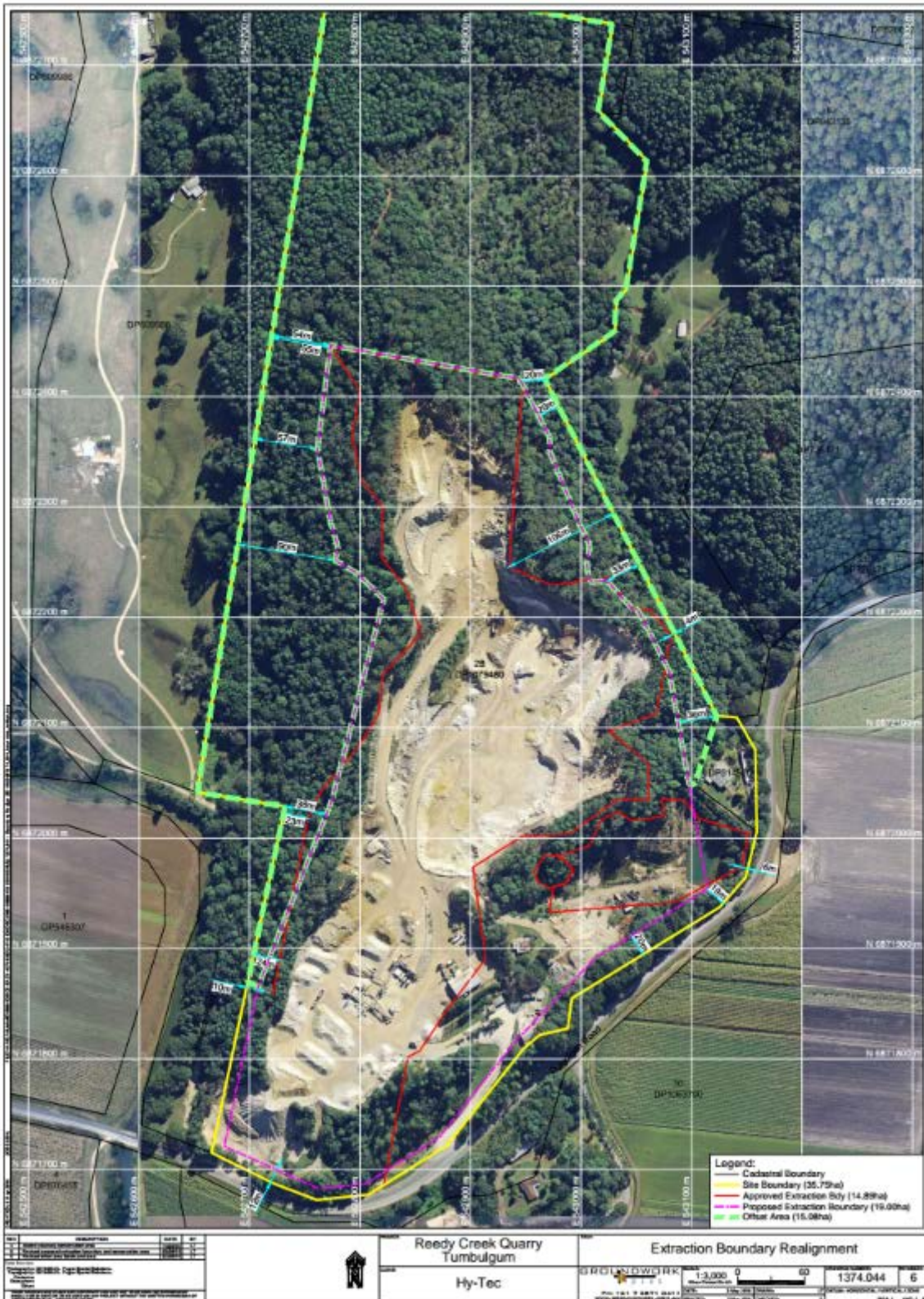
**Table 1 – Submissions**

<b>Summary of submitter comments</b>	<b>Applicant response</b>
Assessment of potential impacts to properties east of the quarry.	The dwellings to the west of the quarry are closer than the dwellings located to the east of the quarry. Furthermore, the approved quarry footprint extends to within 4m of the eastern boundary of the site. Whereas, the proposed extraction boundary increases the setback to the eastern boundary to 20m. Compliance with the relevant noise, dust and vibration criteria were already required under the existing approval for operations within 4m of the property boundary. Therefore, as the separation distance to the properties to the east of the quarry will be increased from that currently approved, the technical assessments rightly focused on the primary area of change to the extraction boundaries, being the risk of potential impacts to the properties to the west of the quarry.
Visual amenity impacts to properties west of the quarry.	The applicant met with the surrounding residents and following receipt of the information request from Council, undertook a full review of the proposed extraction boundary and quarry design. Subsequently, the proposal has been revised. The proposal as shown on the attached drawings ensures dwellings to the west of the quarry will not have line of sight into the quarry. The higher level of topographic shielding will also assist in managing and mitigating other potential impacts such as noise.
Proximity of extraction and associated noise dust and vibration impacts.	The proposed extraction boundary moves closer to the property boundaries. Technical assessments of noise, dust, and vibration impacts have been provided which confirm that compliance with the relevant performance criteria can continue to be achieved.
Potential impacts to flora and biodiversity values.	The further ecological assessment by BAAM identified a number of protected plants and mapped the extents of the 'lowland subtropical rainforest'. The proposed extraction boundary and quarry design has been revised to protect those identified values. A VCA has been identified and will be actioned by Hy-Tec following the assessment of this application.

<b>Summary of submitter comments</b>	<b>Applicant response</b>
Potential impacts to fauna including koalas.	The further ecological assessment by BAAM confirms that <i>'the study area does not meet the definition of potential Koala habitat under SEPP 44'</i> . BAAM also undertook an 'Assessment of Significance' as requested by Council which determined that no significant impact was likely for each identified species.
Protection of downstream water quality	The revised REMP continues to require the implementation of stormwater management measures. It should be noted that the Environment Protection Authority have contacted Hy-Tec to review the existing conditions of the Environment Protection Licence (EPL) 3430. Outcomes of those discussions will be incorporated into the REMP as necessary.
Removal of the requirement for noise fencing.	The assessment by James Heddle Acoustical Consultants dated 10 January 2004 considered 'residence b' within Lot 7 DP814950 and as depicted on Figure 9.3.1 of that assessment recommended the installation of an acoustic fence (directly adjacent to the residence) to protect the amenity of the residence. Hy-Tec now own Lot 7 DP814950, accordingly an acoustic fence for that residence is no longer required. Subsequently, this application seeks that the requirement for the acoustic fence to the residence on Lot 7 DP814950 be removed.
Heavy vehicle traffic	As previously noted, this application does not seek to change the maximum annual rate of extraction or hours of operation. Accordingly, there will be no increase in the volume of heavy vehicle traffic from quarry on an annual basis beyond what has previously be approved. It should be noted that an existing condition of approval states as follows, 'the average number of trucks departing the quarry is to be 40 vehicles per day', and it is not proposed to change this condition.

Council's assessment of the submissions is detailed later in this report.

Upon review of this material Council's Natural Resource Management Unit were concerned that some significant vegetation along the western alignment was not protected. Accordingly the applicant again re-aligned the boundary (Amended Plan dated August) and is now proposing all significant vegetation (as identified by the applicant's reports and agreed to by Council's Natural Resource Management Unit) be protected and managed for conservation purposes. This area is shown on the site layout plan and described as 'Offset Area (15.05 ha)' in a plan Version 6 which was submitted to Council and OEH in May 2016 and which now forms part of this application.



In addition the applicant again responded to the additional public submissions.

Accordingly the following report reviews the latest version of the application and undertakes an assessment of public submissions and the current applicable planning controls. The amended footprint to protect significant vegetation and the quarry's significance as a regionally significant extractive resource (as per the Far North Coast Regional Strategy) has resulted in Council Officer's recommending approval of the proposed amended S96 Application with additional recommended conditions to more effectively manage the environmental considerations of the site. Such conditions have been accepted by the

applicant and can therefore lawfully be imposed. No further additional conditions can be imposed without the prior authorisation of the applicant. The changes sought by the S96 Modification are considered to satisfy the substantially the same development test as required by the Act.

**LOCALITY PLAN:**



**Locality Plan**

Lot 28 DP1079480  
Pollards Road, Dulguigan

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Cadastre 21/10/2015  
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Boundaries shown should be considered approximate only.



Map Projection: Universal Transverse Mercator  
Horizontal Datum: Geocentric Datum of Australia 1994  
Grid: Map Grid of Australia, Zone 56

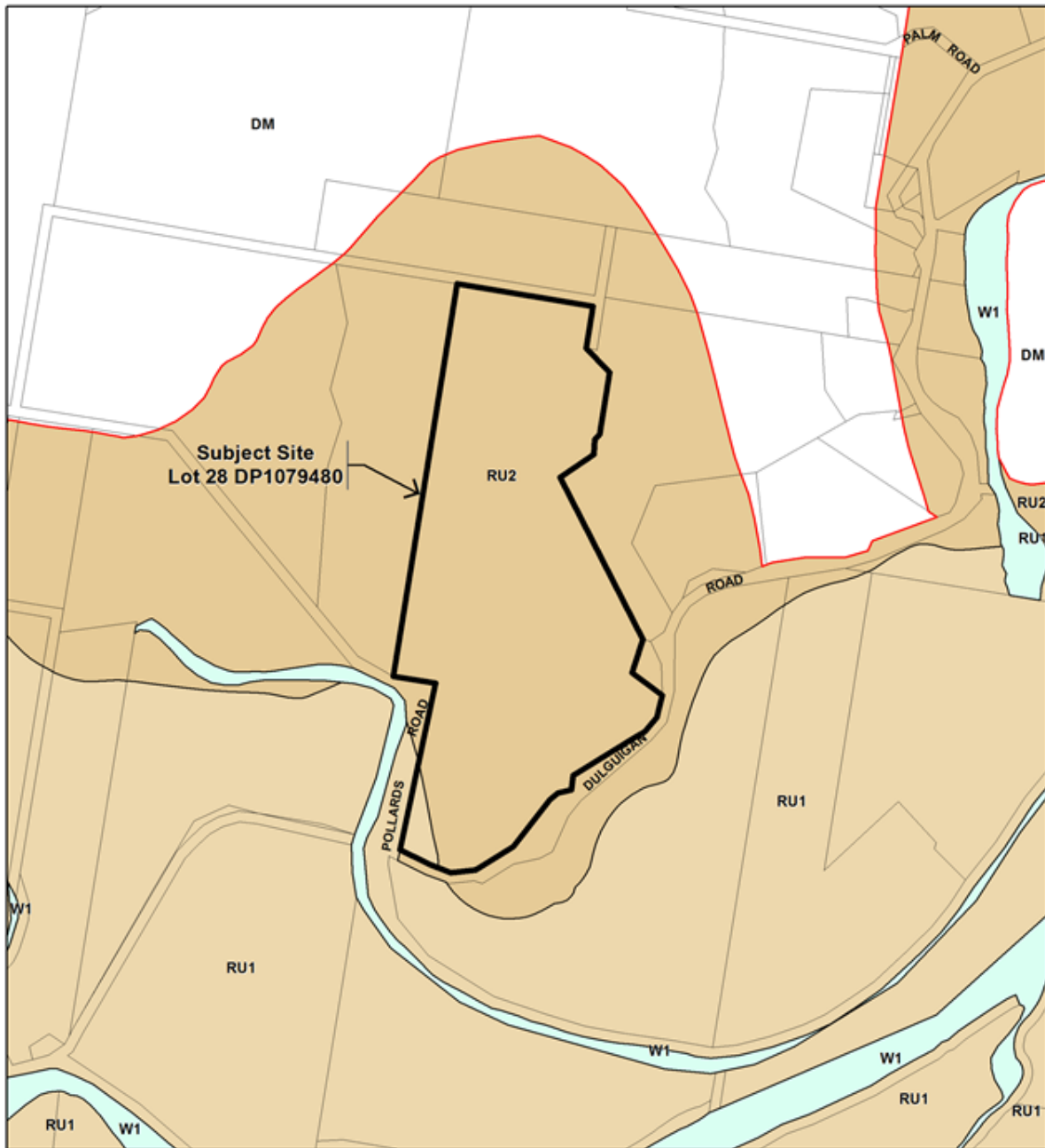
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Civic and Cultural Centre  
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Murwillumbah NSW 2484  
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**TWEED**  
SHIRE COUNCIL

ZONING PLAN:



**CURRENT LAND ZONING**

Lot 28 DP1079480  
Pollards Road, Dulguigan

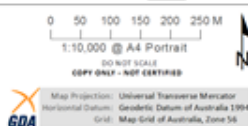
**Tweed Local Environmental Plan 2014**

**Land Zoning**

<b>B1</b> Neighbourhood Centre	<b>E1</b> National Parks & Nature Reserves	<b>R5</b> Large Lot Residential	<b>SP1</b> Special Activities	<b>DM</b> Deferred Matter
<b>B2</b> Local Centre	<b>IN1</b> General Industrial	<b>RE1</b> Public Recreation	<b>SP2</b> Infrastructure	<b>MD</b> SEPP (Major Development) 2005
<b>B3</b> Commercial Core	<b>IN4</b> Working Waterfront	<b>RE2</b> Private Recreation	<b>SP3</b> Tourist	<b>TCC</b> Tweed City Centre LEP 2012
<b>B4</b> Mixed Use	<b>R1</b> General Residential	<b>RU1</b> Primary Production	<b>W1</b> Natural Waterways	
<b>B5</b> Business Development	<b>R2</b> Low Density Residential	<b>RU2</b> Rural Landscape	<b>W2</b> Recreational Waterways	
<b>B7</b> Business Park	<b>R3</b> Medium Density Residential	<b>RU5</b> Village	<b>W3</b> Working Waterways	

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Cadastral: 21 October, 2015  
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**AERIAL IMAGE:**



**AERIAL PHOTO - April 2015**

Lot 28 DP1079480  
Pollards Road, Dulguigan

SOURCE:  
Aerial imagery was captured  
April 2015 © AAM Pty Ltd and NSW LPI

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Map Projection: Universal Transverse Mercator  
Horizontal Datum: Geodesic Datum of Australia 1994  
Grid: Map Grid of Australia, Zone 56

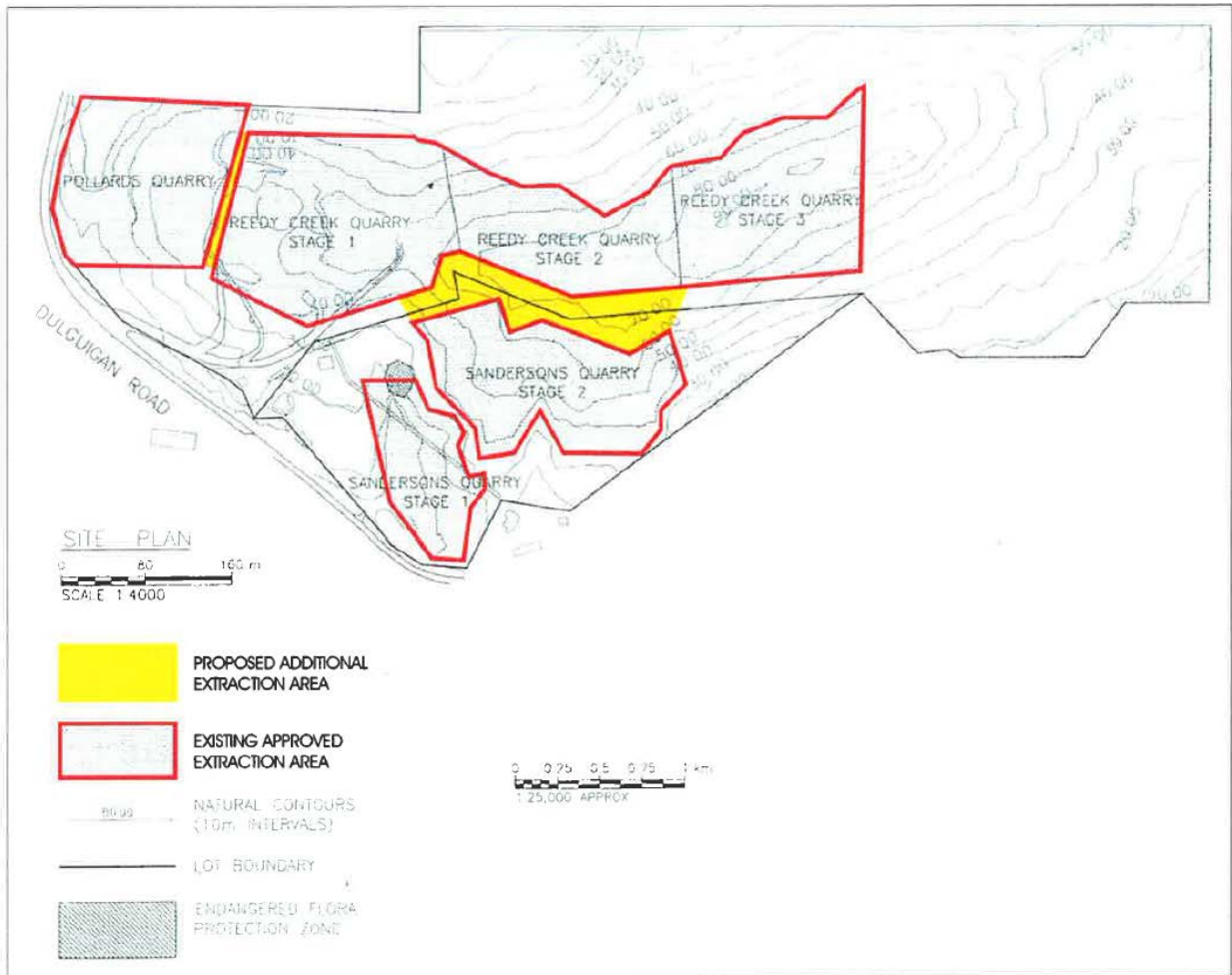
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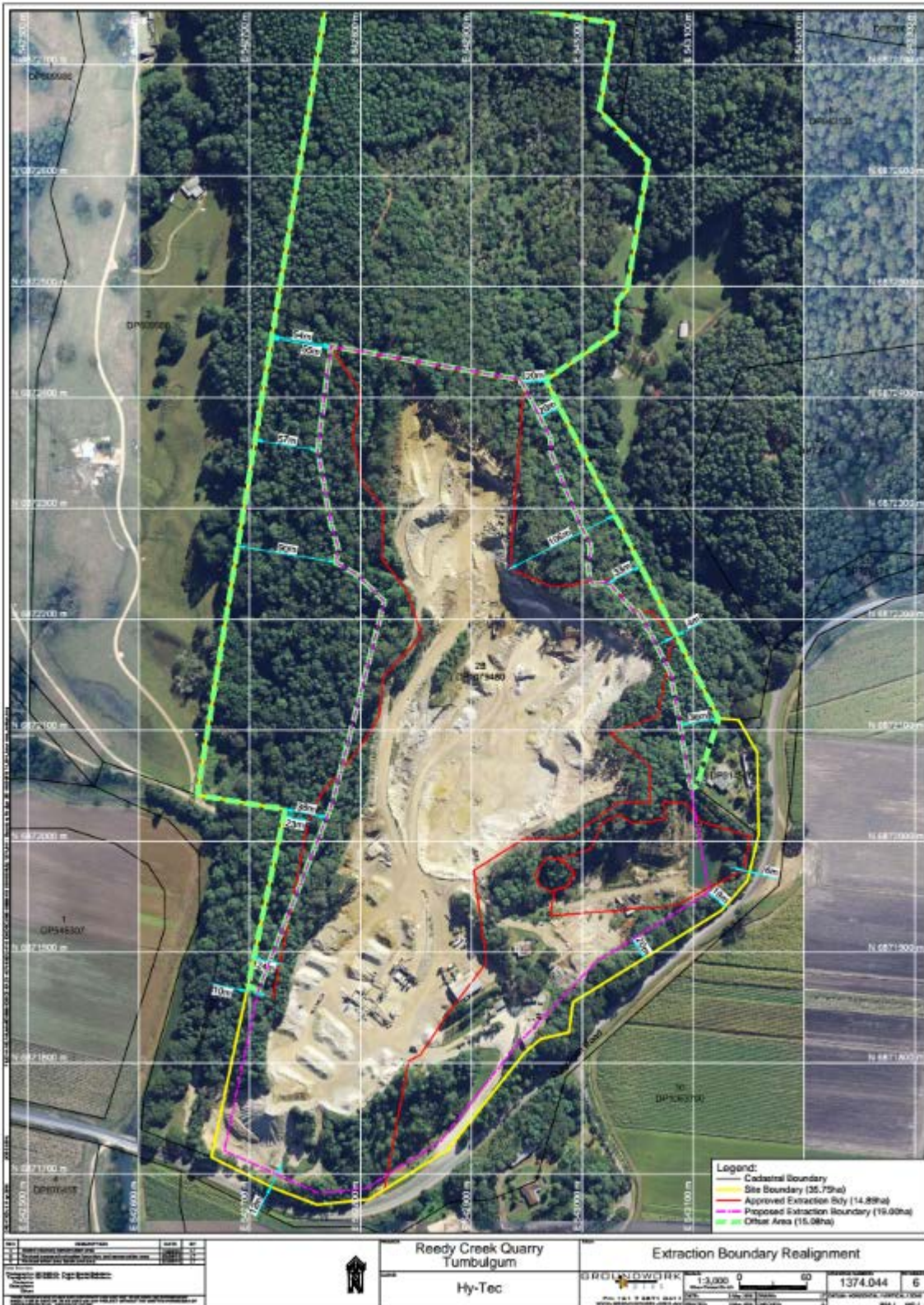


**ORIGINAL DA04/0162 DEVELOPMENT PLANS:**



**CURRENT S96 MODIFICATION DA04/0162.02 PROPOSED PLAN  
SUBMITTED MAY 2016**

(Note: red line existing approved boundary, pink line proposed alignment; green line depicts area for a Biodiversity Offset Area as Per OEH Guidelines):



## Considerations under Section 96(2) and 79C of the Environmental Planning and Assessment Act 1979.

S96(2) and 96(3) of the Act specifies that:

(2) **Other modifications**

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:

- (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), and
- (b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and
- (c) it has notified the application in accordance with:
  - (i) the regulations, if the regulations so require, or
  - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and
- (d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.

Subsections (1) and (1A) do not apply to such a modification.

- (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 79C (1) as are of relevance to the development the subject of the application.

Accordingly, the following report addresses these heads of consideration.

To determine if the S96 Application meets the substantially the same test a 79C (1) Assessment has been undertaken in the first instance:

### **79C (1) Assessment – Environmental Planning and Assessment Act 1979**

(a) (i) **The provisions of any environmental planning instrument**

**Tweed Local Environmental Plan 2014**

(Note : The original DA was assessed against LEP 2000)

**Clause 1.2 – Aims of the Plan**

The aims of this plan as set out under Section 1.2 of this plan are as follows:

- (1) *This Plan aims to make local environmental planning provisions for land in Tweed in accordance with the relevant standard environmental planning instrument under section 33A of the Act.*
- (2) *The particular aims of this Plan are as follows:*
  - (a) *to give effect to the desired outcomes, strategic principles, policies and actions contained in the Council's adopted strategic planning documents, including, but not limited to, consistency with local*

- indigenous cultural values, and the national and international significance of the Tweed Caldera,*
- (b) to encourage a sustainable, local economy, small business, employment, agriculture, affordable housing, recreational, arts, social, cultural, tourism and sustainable industry opportunities appropriate to Tweed Shire,*
  - (c) to promote the responsible sustainable management and conservation of Tweed's natural and environmentally sensitive areas and waterways, visual amenity and scenic routes, the built environment, and cultural heritage,*
  - (d) to promote development that is consistent with the principles of ecologically sustainable development and to implement appropriate action on climate change,*
  - (e) to promote building design which considers food security, water conservation, energy efficiency and waste reduction,*
  - (f) to promote the sustainable use of natural resources and facilitate the transition from fossil fuels to renewable energy,*
  - (g) to conserve or enhance the biological diversity, scenic quality, geological and ecological integrity of the Tweed,*
  - (h) to promote the management and appropriate use of land that is contiguous to or interdependent on land declared a World Heritage site under the Convention Concerning the Protection of World Cultural and Natural Heritage, and to protect or enhance the environmental significance of that land,*
  - (i) to conserve or enhance areas of defined high ecological value,*
  - (j) to provide special protection and suitable habitat for the recovery of the Tweed coastal Koala.*

Through the lodgement of the additional information the applicant has sufficiently demonstrated that the amended S96 Modification can be supported subject to the recommended conditions of consent that specifically address environmental management.

### Clause 2.3 – Zone objectives and Land Use Table & Permissibility

The subject site is now zoned RU2 Rural Landscape which has the following zone objectives:

#### **Objectives of zone**

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*
- *To maintain the rural landscape character of the land.*
- *To provide for a range of compatible land uses, including extensive agriculture.*
- *To provide for a range of tourist and visitor accommodation-based land uses, including agri-tourism, eco-tourism and any other like tourism that is linked to an environmental, agricultural or rural industry use of the land.*

The quarry would be best defined as an extractive industry which is permissible with consent however permissibility of this modification is derived by S109B 2(b) of the Environmental Planning and Assessment Act 1979 which states:

#### **109B Saving of effect of existing consents**

- (1) *Nothing in an environmental planning instrument prohibits, or requires a further development consent to authorise, the carrying out of development in accordance with a consent that has been granted and is in force.*

- (2) *This section:*
- (a) *applies to consents lawfully granted before or after the commencement of this Act, and*
  - (b) *does not prevent the lapsing, revocation or **modification**, in accordance with this Act, of a consent, and*
  - (c) *has effect despite anything to the contrary in section 107 or 109.*

The proposed expansion of the quarry is considered a rationalisation of the existing boundaries to ensure as much of the available product is sustainably removed. This particular quarry is quite unique in that different parts of the site have different types of rock material in terms of colour and texture. The operators have advised that this quarry is essential to supplying the required rock material for the local industry and it should be utilised as effectively as possible.

The revised boundaries are considered to offer a good compromise between utilising an existing finite resource while keeping sufficient surrounding vegetation in a conservation area.

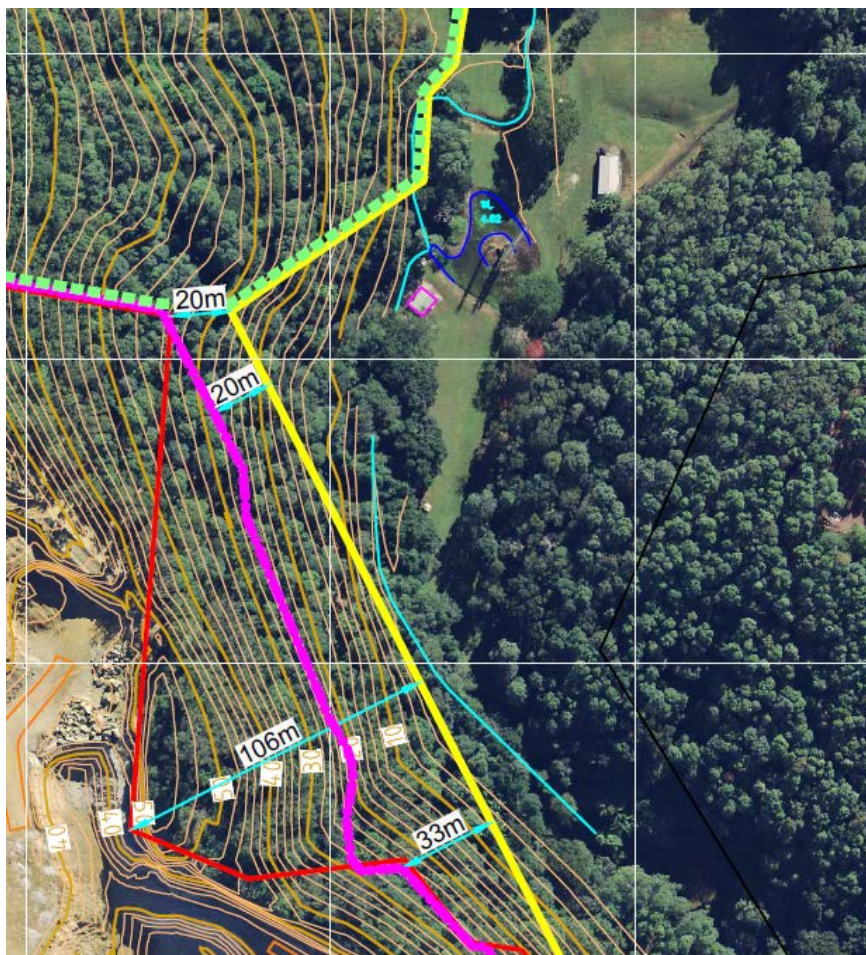
In terms of the impact on scenic quality, the zone objective refers to maintenance of the 'rural landscape' character of the land. It is important to note that whilst a loss of 'naturalness' may represent a loss of that particular valued scenic quality, the established landscape character within an area is not necessarily described exclusively by natural features. The present day rural character of the Tweed Valley is based on a rich cultural history which has transformed the landscape through each stage of European settlement. The resulting landscape includes cultural landmarks which form recognisable features within the rural setting. Historical aerial photography shows that the quarry has been operational since at least 1962, and as mentioned above it provides an essential resource to local industry and is directly related to the primary zone objective of encouraging sustainable primary industry. In that regard, whilst it may not be aesthetically agreeable it can justifiably be recognised as a pre-existing feature of the 'rural landscape'.



**Aerial photography from August 1962 shows the quarries in operation.**

Regarding the impact for nearby residents, the applicant has submitted detailed 3D images to assist Council's assessment in terms of the shorter range visual impact on the rural landscape character of the area. Where the quarry expands to the west the view lines for residents in that area won't significantly change as the elevation and vegetation will continue to shield the quarry floor.

However where the quarry expands to the east it will have a visual impact for the residents at No. 645 Dulguigan Road as the Quarry wall will be between 20m -30m from their property boundary when the current allowable setback is between 20m - 106m at its greatest depth. The current residents at this location stated that they use the southern part of this property for outdoor enjoyment and the proposed quarry location will affect this residential amenity. The main house however is located 126m to the north east of the property boundary. However, this property has recently been purchased by the quarry operators and the objections from this property have been withdrawn.



Despite the objection being withdrawn and the property being bought by the quarry owners the individual impacts on any adjoining property owners needs to be weighted against the broader strategic objectives of utilising a finite resource in a sustainable manner. Subject to the recommended conditions of consent regarding site management and environmental conservation the proposed S96 Modification on balance is considered to be consistent with the zone objectives.

#### Clause 5.9 – Preservation of Trees or Vegetation

Council's Natural Resource Management Unit have reviewed the application and recommended suitable amendments to the applicant's extraction boundary (which forms the applicant's latest plans) to protect significant vegetation. In addition the remaining areas north and west of the extraction boundary will be protected and managed in an Offset Area for conservation purposes. This clause is considered satisfied subject to the recommended conditions of consent.

#### Clause 5.10 – Heritage Conservation

This Clause has an objective to conserve Aboriginal objects and Aboriginal places of heritage significance.

The application was supported by an initial Due Diligence Report and a final Cultural Heritage Assessment (Feb 2016) which were considered by the Aboriginal Advisory Committee.

The Aboriginal Advisory Committee resolved at their meeting of the 4 March 2016 (endorsed at Council on 21 April 2016) as follows:

*"That Council notes that the Aboriginal Advisory Committee raises no objection to the proposed S96 Application (DA04/0162.02) for Dulguigan Quarry as long as the standard conditions of consent are imposed including:*

1. *Retention of highest point on the site.*
2. *If any artefacts are identified on site standard protection measures will apply through notification to relevant authorities.*
3. *Protection of remaining vegetation into the future."*

The highest point is retained by condition1 by virtue of the approved plan.

A new condition has been imposed which states:

*If during construction works any Aboriginal object or relic is disturbed or uncovered, works are to cease and the Department of Environment, Climate Change and Water are to be notified immediately, in accordance with the provisions of the National Parks and Wildlife Act 1974.*

The Biodiversity offset area will protect the remaining vegetation into perpetuity.

The recommended conditions of consent are considered adequate to address the issues raised by the AAC and Clause 5.10.

#### Clause 5.11 - Bush fire hazard reduction

The application was referred to the NSW Rural Fire Service who made no objection to the proposal.

#### Clause 7.1 – Acid Sulfate Soils

The subject site is partially affected by Class 5 Acid Sulfate Soils. The REMP adequately addresses this.

#### Clause 7.2 - Earthworks

The REMP adequately addresses the method of extraction and site management in regards to earthworks.

#### Clause 7.3 – Flood Planning

The quarry is designed for all water to drain back into the centre of the site. Furthermore the floor of the quarry will not change as a result of the S96 Modification (5.00mRL) and therefore the modification will have no impact on flood planning.

#### Clause 7.4 - Floodplain risk management

The floor of the quarry will not change as a result of the S96 Modification (5.00mRL) and therefore the modification will have no impact on floodplain risk management.



### Clause 7.6 - Stormwater Management

The proposed amendments will make no change to the existing stormwater management as all works will ensure drainage back into the quarry site and the REMP adequately addresses stormwater management.

### Clause 7.10 - Essential Services

All essential services are available to the development.

### State Environmental Planning Policies

#### SEPP (Mining, Petroleum Production and Extractive Industries) 2007 and SEPP (Infrastructure) 2007

In accordance with Clause 104 Traffic Generating Developments and Schedule 3 of the Infrastructure SEPP and Clause 16 of the SEPP (Mining, Petroleum Production and Extractive Industries) 2007 the application was referred to the Roads and Maritime Services who advised that Council should be satisfied as to certain matters pertaining to traffic as the affected roads are local roads and for Council's consideration.

The application was accordingly referred to Council's Traffic Engineer who advised that:

*"The quarry will **continue** to:*

- *Extract 200,000m<sup>3</sup> per annum (195,000m<sup>3</sup> average over a three year period);*
- *Operate between the hours of 7.30am – 6pm Monday to Friday, 7.30am to 12 Noon Saturdays and have no works Sundays or Public Holidays;*
- *Blast 3 times per month;*
- *Have a maximum of 40 trucks per day (averaged over the year); and*
- *Keep the existing single access point.*

*From a traffic engineering perspective, this is largely a continuation of the previously approved status quo, albeit with a prolonged lifetime.*

### **Dulguigan Road**

*Traffic volumes on Dulguigan Road are currently around 500 vpd (481 vpd @ quarry - 2012) at the quarry and approaching 900 vpd (812 vpd @ Terranora Rd - 2012) at the Tumbulgum end. Traffic count records for Dulguigan Rd dating back to 2003 show little to no growth in traffic volumes during the period.*

*The Dulguigan Road formation typically incorporates a sealed width of 6.6m or greater which roughly corresponds to a class B rural road in Council's specifications. Council's development design specification D2 - Road Design and Standard Drawing SD.009 suggest a class B rural road is suitable for up to 250 vpd. However, Austroads Guide to Road Design Part 3: Geometric Design (Table 4.5) suggests that a road of this width is suitable for up to 1000 vpd.*

*No detailed analysis of sight distances at the multiple corners and intersections along the haul route has been performed.*

*Dulguigan Rd has a rural speed limit of 100kph, however, the road geometry along the haul route generally restricts speeds to less than this. A truck speed limit of 60kph is applied to the haul route between the quarry and Terranora Rd.*

### **Public Submissions**

*The S96 application has been through 3 rounds of public comment receiving a total of 19 objections and 10 letters of support.*

*Objections from members of the public which contain traffic related comments generally include:*

- *Safety concerns related to the quarry trucks sharing the road with cars, cyclists, school buses and pedestrians on Dulguigan Rd.*
- *The capacity of Dulguigan Rd to cater for the volume of heavy vehicle traffic generated by the quarry*
- *Road maintenance issues*
- *Damage caused to the road by heavy vehicle traffic*

*As mentioned above, the S96 does not propose to increase average daily extraction or traffic on Dulguigan Rd over the levels already approved in DA04/0162 and therefore, for the already approved lifetime of the quarry (extraction boundaries), the application does not present an opportunity to reassess the traffic aspects of the quarry. However, the application will result in an extended lifetime for the quarry and therefore a review of the traffic aspects relating to the extended component of the quarries lifetime is warranted.*

*No major changes to the Dulguigan/North Tumbulgum road network are programmed in Council's forward planning. There are no earmarked urban or employment land release areas in the vicinity. The surrounding road network is expected to remain substantially the same for the lifetime of the quarry with minimal increases in traffic volume.*

*Public submissions that include reference to a specific area of road or issue:*

*"...road needs repairing regularly on the corner of Skinners Reserve where the weight of the trucks has impacted on the integrity of the road".*

*Council's maintenance crews have recently completed repairs to this area and this should no longer be an issue. Also, it would be unfair to blame these defects entirely on quarry traffic as they are not the only heavy vehicles to use Dulguigan Rd (i.e. Cane trucks) and defective pavement is a likely factor.*

*"Between the bridge and the Rous River. This section of road is falling into the river...."*

*Council has recently completed revetment works in this area to stabilise the riverbank. The primary cause of this slumping would be erosion due to the proximity of the river.*

*"Just west of Mayes Hill Road. This section has formed a 30+ metre drain on the north section of the road...."*

Although heavy vehicles may be the major cause of the pavement deformation, the root of the problem here is insufficient pavement depth. This area of pavement is scheduled for replacement by Council's maintenance staff.

### **RMS Comments**

1. *"The Statement of Environmental Effects (SoEE) and Rehabilitation and Environmental Management Plan (REMP) provide limited information regarding the primary haulage routes used for the transport of extracted materials on public roads. The SoEE refers to a Traffic Impact Assessment undertaken in 2004, which may not reflect current or future network conditions. Council should be satisfied that the proposed modification will not impact adversely on the safety and efficiency of the road network for the proposed life of the development."*

*As per above comments, the surrounding road network is expected to remain substantially the same for the lifetime of the quarry with minimal increases in traffic volume.*

2. *"Council should consider the safety of key intersections along the primary haulage routes and that they are consistent with the applicable guidelines and standards".*

*No detailed analysis of the intersections along the haul route has been performed. The road network has already been deemed appropriate for the traffic generated by the quarry through the DA approval. No increase in average daily traffic from the quarry is proposed, the surrounding road network is expected to remain substantially the same for the lifetime of the quarry and minimal increases in traffic volume are expected.*

3. *"Council may wish to require that the REMP include a Code of Conduct relating to the transport of materials on public roads as referred to under Clause 16(1)(c) of the SEPP. It is suggested that the code address, but not be limited to;*
  - a. *A map of the primary haulage routes highlighting critical locations.*
  - b. *Procedures and/or safety initiatives specific to residential areas and school zones.*
  - c. *Format of an induction process for new operators and regular toolbox meetings.*
  - d. *A complaints resolution and disciplinary procedure.*
  - e. *Any community consultation measures to address busy haulage periods"*

*The DA applied extensive traffic related conditions upon the development and the applicants REMP outlines procedures/responsibilities, similar to a code of conduct, for traffic.*

*The REMP contains:*

- *Traffic strategy*
- *Staff Training and Induction Measures*
- *Incidents and Complaints Procedure*

- *Communication Procedure*

*The requirements of State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007 clause 16(1)(c) appear to have been fulfilled through the applicant's REMP"*

Therefore S96 Modification is considered satisfactory with all other provisions of the SEPP's as the Modification is consistent with the existing consent and its conditions of consent.

#### SEPP44 - Koala Habitat Protection

Forested habitat within the study area is assessed as:

- (a) not meeting the definition of either core Koala habitat or potential Koala habitat under the NSW State Environmental Planning Policy No. 44 - Koala Habitat Protection (SEPP 44);
- (b) meeting the definition of 'habitat critical to the survival of Koala' under the EPBC Act referral guidelines, with a habitat score of 5; however the project is likely to have a low risk of a significant impact on Koala.

Numerous surveys were undertaken by the applicant, all of which were considered inadequate by Council's NRM Unit as they were undertaken outside the peak activity period for the Koala, and SEPP 44 potential koala habitat assessment was not undertaken within the area where a higher density of Koala feed trees occur.

Notwithstanding, during each field inspection conducted by Council (2 officers over 3 visits totalling approximately 15 hours), no signs of Koala occupation was recorded on the western side of the quarry despite extensive searches beneath the canopy of the preferred feed tree species. A number of pellets were found along the eastern edge in proximity to several semi-mature koala food trees (*Eucalyptus microcorys*), yet due to their age a positive identification could not be made. Council's independent assessment concluded that preferred feed tree species density did not exceed the 15% threshold in any areas within or immediately adjacent to the proposed quarry footprint expansion to qualify as Potential Koala Habitat for the purposes of the SEPP 44.

Koalas have been anecdotally reported on adjoining properties and are known to occur in the northern parts of the site, however this area will be protected and managed in an Offset Area for conservation purposes. Given the restrictions of the SEPP particularly with regard to the non-localised schedule of Koala feed tree species and incidental (non-verified) observations of Koala, a precautionary approach should be taken to avoid significant impact on any koala habitat. As such the area of higher density *E. microcorys* on the eastern flank is to be retained, positioned outside the proposed quarry footprint. It is recommended that this amended footprint be used to ensure all necessary environmental impacts be appropriately mitigated. Furthermore, compensatory planting will take place to offset the loss of any preferred Koala food trees, and is required under the approved habitat restoration and management plan.

#### SEPP 55 – Remediation of Land

The land that is subject of any proposed quarrying activity is vegetated land that has not been used for any farming activities, or other uses that may potentially

result in land contamination. Given the land use history of the site, soil contamination is an unlikely risk. Therefore SEPP 55 is not considered to apply to this application.

**(a) (ii) The Provisions of any Draft Environmental Planning Instruments**

Nil applicable

**(a) (iii) Development Control Plan (DCP)**

A16-Preservation of Trees or Vegetation

See the detailed Flora and Fauna comments below.

There are no other specific sections of the DCP, which would apply to the proposal.

**(a) (iv) Any Matters Prescribed by the Regulations**

Designated Development

In November 2004 Council resolved that:

*the application DA04/0162) is not considered to constitute Designated Development within the meaning of Section 77A of the Environmental Planning & Assessment Act, as the development would not significantly increase the environmental impacts; and the application be approved with the following conditions.....*

This decision was based on Clause 35 of Schedule 3 to the Environmental Planning & Assessment Regulation 2000 which provides that alterations and additions to development (whether existing or approved) are not designated development, where the consent authority is of the opinion that the development would not significantly increase the environmental impacts of the total development compared with the existing or approved development.

Having regard to Clause 36 of Schedule 3 (which details the factors that the Consent Authority must have consideration for when determining the applicable environmental factors) the amalgamation of the three quarries and the expansion between the existing quarry areas did not significantly increase the environmental impacts of the total development compared with the existing or approved development.

Therefore as the original application did not constitute "Designated Development" the current S96(2) has been assessed against the relevant legislation but not as a Designated S96 Application.

Clause 92(1)(a)(ii) Government Coastal Policy

The proposed site is located outside the area covered by the Government Coastal Policy.

Clause 92(1)(b) Applications for demolition

No demolition is proposed in the application.

Clause 93 Fire Safety Considerations

No consideration of fire safety within the bounds of Clause 93 is required.

Clause 94 Buildings to be upgraded

There are no buildings to be upgraded.

(a) (v) **Any coastal zone management plan (within the meaning of the Coastal Protection Act 1979),**

Not applicable

**Tweed Shire Coastline Management Plan 2005**

Not applicable

**Tweed Coast Estuaries Management Plan 2004**

Not applicable

**Coastal Zone Management Plan for Cobaki and Terranora Broadwater (adopted by Council at the 15 February 2011 meeting)**

Not applicable

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

Flora and Fauna

The site occurs within a Regional Fauna Corridor aligned east-west to the north of the site. Focal species include the Common Blossom Bat, Koala, Grey headed Flying Fox and Black Bittern. Remnant vegetation onsite forms part of a broader connected remnant heterogeneous tract of habitat greater than 500 ha. The site supports remnant vegetation representative of the following Endangered Ecological Communities as listed under the *Threatened Species Conservation Act 1995* (TSC Act):

- *Lowland rainforest in the NSW North Coast and Sydney Basin bioregions*
- *Lowland rainforest on floodplain in the NSW North Coast bioregion*

Both of the above-mentioned communities qualify as Critically Endangered Ecological Community - *Lowland Rainforest of Subtropical Australia* as listed under the (EPBC Act). Five flora species identified onsite during contemporary survey are listed as threatened under the TSC Act, two (2) of these species are listed under the federal *Environmental Protection & Biodiversity Conservation Act 1999* being:

- *Endiandra muelleri subsp. bracteata* - Green-leaved Rose Walnut
- *Archidendron hendersonii* - White Lace Flower
- *Endiandra hayesii* - Rusty Rose Walnut
- *Syzygium hodgkinsoniae* - Red Lilly Pilly

- *Lepiderema pulchella* - Fine-leaved Tuckeroo

Three (3) fauna species observed onsite during contemporary survey are listed as threatened under the TSC Act being:

- Glossy Black Cockatoo - *Calyptorhynchus lathami*
- Wompoo Fruit Dove - *Ptilinopus magnificus*
- Rose-crowned fruit dove - *Ptilinopus regina*

Numerous modifications to the original proposal were made which increased buffers from vegetation communities regarded as candidate EEC; the natural waterway to the west of the site and associated riparian habitats; potential koala habitat to the east; known Glossy Black Cockatoo habitat to the east; and known threatened flora species and associated habitats.

Furthermore, the applicant agreed to detailed conditions of consent to ensure long term protection, rehabilitation of core habitat areas and commitment to the preparation and implementation of construction/operation based vegetation and fauna management plans.

Finally, to ameliorate the ecological impact of the expansion of the quarry by 4.1ha, which will involve the removal of an additional 1.6ha of remnant vegetation 15.08 ha (Offset Area) is to be protected under a statutory covenant (88B instrument), which will be the subject of future restoration effort in accordance with a detailed habitat restoration plan. The existing Rehabilitation and Environmental Management Plan is to be updated to reflect the modifications and additional commitment to site management including preparation and implementation.

Based on the amended footprint and implementation of conditions of consent, it is considered that any adverse ecological impacts likely to be associated with the proposed development can be avoided, minimised and managed to an acceptable level.

The application was referred to the NSW Office of Environment and Heritage (OEH) for comment. A response was received dated 27 February 2015. The OEH disagreed with the applicant's claims that the proposed modification would not have an environmental impact additional to what has already been described and approved as part of the DA04/0162 consent.

To address the agencies concerns and demonstrate that the proposal would not have significant impact on threatened species and endangered ecological communities the applicant prepared the following reports generally in accordance with the NSW Biodiversity Banking and Offsets Scheme as adopted under the *Threatened Species Conservation Act 1995*:

- *Addendum Biodiversity Assessment Report Tumbulgum Quarry, Dulguigan NSW dated July 2016 prepared by NGH Environmental*
- *Biodiversity Offset Plan Tumbulgum Quarry dated July 2016 prepared by NGH Environmental*

The reports were reviewed and assessed by the OEH. On the 01 July 2016 a letter was forwarded to Council expressing the view that '*the applicant has clearly*

*and reportedly demonstrated an intention to provide an offset for the biodiversity impacts of the proposal'* Anomalies and errors in the calculation of offsets were noted however the OEH were satisfied that any shortfall of offsets could be resolved in the future prior to the quarry expansion. Accurately calculated offset requirements and details of offsetting measures would be detailed in a Biodiversity Offsets Strategy and approved by the OEH and Council. As such the OEH recommended a condition that reflects this requirement.

It is important to note that once the Biobanking Agreement is in place OEH will be responsible for enforcing compliance with the terms of the Agreement and Council will have no role in compliance over the Agreement.

Upon review it was considered that additional conditions of consent were required to be imposed (rather than rely solely on the OEH condition) to satisfactorily address matters of habitat compensation and long term land management of the 'Offset Area'. The primary grounds for imposing additional standalone conditions are as follows:

1. The OEH condition only applies 'prior to commencement with quarry expansion'. This may not occur for many years depending on extraction material demand and therefore fundamental requirements such as securing the conservation area and rehabilitation that are required regardless of the quarry expansion under the existing approval that still remain outstanding would be further delayed.
2. There is no certainty that offsets are to be made onsite where reliant on the OEH condition alone.
3. There is no specified timing as to when areas have to be secured and rehabilitation works implemented

Therefore additional/modified conditions of consent to ensure the sites ecological values are appropriately protected, restored and managed in the interim period, prior to a BioBanking Agreement being secured under the *Threatened Species Conservation Act 1995* is recommended.

The OEH condition is to be imposed requiring that a BioBanking Agreement is secured prior to commencement of quarry expansion and a condition shall be imposed that generally reads:

*'Where the proponent enters into a BioBanking Agreement that involves securing in perpetuity the onsite Offset Area under the Threatened Species Conservation Act 1995 any 88B instrument that applies to that land will be sterilised upon completion of the Bio-Banking agreement by the Tweed Shire Council'*

In addition, Condition 32 currently reads

*"Any proposal to clear native vegetation in excess of 2ha per annum is to be the subject of a separate application to the Department of Infrastructure Planning and Natural Resources"*

This condition appears to have been transferred from the surrendered DA98/174 consent that incorporated NPWS Concurrence Conditions. By virtue of the condition it may be taken that any clearing on the subject site within the existing and approved extraction boundary may not require separate consent from Local Land Services regardless of current *Native Vegetation Act 2003* (NV Act)



provisions, unless the clearing is proposed to exceed the threshold limit of 2 ha per annum.

Under the current proposal however the following aspects of the development and regulatory requirements in respect to the NV Act are to be considered:

The quarry boundary has expanded capturing additional native remnant vegetation not contemplated for removal under the existing conditions:

- The current *Native Vegetation Regulation 2013* does not provide any exemptions for native vegetation clearing for the purposes of quarry operations; and
- The current application did not require concurrence from the Office of Environment and Heritage in order for the agency to consider the implications of the condition under the NV Act if remained unchanged.

Based on the above dual consent is likely to be required for the future removal of native vegetation beyond the previously approved quarry boundary regardless of the rate of annual clearing. As such, it is considered prudent that a condition be imposed in this regard to ensure that the applicant's obligations under the *Native Vegetation Act 2003* are clearly stipulated. Accordingly, it is recommended that Condition 32A read as follows:

*32A. Any proposal to clear native vegetation in excess of 2ha per annum within the area shown as 'Approved Extraction Boundary (14.89 ha)' on Dwg. No. 1374.044 Rev. 6 Extraction Boundary Alignment dated 02 May 2016 prepared by Groundwork Plus (the 'plan' referred herein) yet not within the expanded area shown on the plan as 'Proposed Extraction Boundary' (pursuant to Condition 1.4) is to be the subject of a separate application to the NSW Local Land Services (or equivalent state consent authority).*

The final recommended conditions of consent are considered to ensure any adverse ecological impacts likely to be associated with the proposed development can be avoided, minimised and managed to an acceptable level.

#### Access, Transport and Traffic

As mentioned above, the application was referred to Council's Traffic Engineer who made the following general comments regarding access, transport and traffic:

*"The S96 application does not propose to increase daily traffic volumes generated by the development and therefore does not present opportunity to make any changes to the traffic aspects of the existing approval.*

*A review of the extended lifetime of the quarry with respect to future plans for the haul route and projected growth in traffic indicates that the road network will remain capable of catering for the quarry traffic.*

*No objection to the proposed amendments to DA04/0162 are raised on traffic grounds."*

With regards to Section 94 developer contributions, the following comments were given:

*"TRCP is primarily levied off daily trip generation. The S96 does not propose an increase in the average daily traffic to the quarry and therefore involves no increase in traffic over what is already approved. Heavy Haulage contributions are linked to the destination, not the origin, of heavy vehicle trips and are therefore not applicable (see section 3.6.2 of CP04). No additional roads contributions are necessary."*

### Noise & Hours of Operation

The subject site is located within 1km of existing residential dwellings. The closest residence is the dwelling located immediately east of the Quarry on Lot 7 DP814950, however that property is now owned by Hy-Tec. Surrounding residences are also located to the north east, north west, west and south of the quarry.

Council's consent limits the existing and proposed hours of operation as:

- 7.30am to 6pm Monday to Friday;
- 7.30am to 12pm Saturday; and
- Nil Sunday or Public Holidays.

An Assessment of Noise and Dust Impacts has been prepared by MWA Environmental Pty Ltd dated 17 November 2014. The report states the following;

"The proposed quarrying activities within the modified Extraction Boundary (western area):

1. Can comply with the relevant NSW Industrial Noise Policy criteria at the nearest residences to the west; and
2. Not result in a significant change to noise levels that would otherwise be expected within the currently approved Extraction Boundary."

The report has been prepared by a suitably qualified consultant and in general accordance with the NSW Industrial Noise Policy. The report is considered adequate and all monitoring, control and management strategies have been detailed in the amended Rehabilitation and Environmental Management Plan.

The study does not include an assessment of noise impacts on the closest dwelling being Lot 7 DP 814950. This site is currently owned by the proponent and it is proposed to amend and delete conditions that reference the requirement for a noise barrier. It is stated that the noise barrier was only required for Lot 7 DP814950. The removal of conditions relating to the noise barrier are supported.

Noise modelling is to be verified in the event that justified complaints are received. Suitable new conditions have been provided below and form part of the recommendation for approval:

*New Condition:* The LAeq, 15 min noise level emitted from the premises shall not exceed the adopted noise criteria of 37dB(A) during the approved operating

hours at any affected residence as detailed in the Assessment of Noise and Dust Impacts prepared by MWA Environmental dated 17 November 2014.

*New Condition:* Upon receipt of a noise complaint that Council deems to be reasonable, the operator/owner is to submit to Council a Noise Impact Study (NIS) carried out by a suitably qualified and practicing acoustic consultant that assesses compliance with the adopted noise criteria detailed in the Assessment of Noise and Dust Impacts prepared MWA Environmental dated 17 November 2014. The NIS is to be submitted to the satisfaction of the General Manager or delegate and is to include recommendations for noise attenuation if required. The operator/owner is to implement the recommendations of the NIS within a timeframe specified by Council's Authorised Officer.

*Delete Conditions - No.27 (relating to construction of noise barrier), No. 41. (relating to general noise levels and will be replaced with specific performance criteria as added above).*

The EPA Licence has the following criteria for Hours of Operation:

**L6. Hours of operation**

**L6.1** *Activities covered by the EPA's general terms of approval, or a licence under the Protection of the Environment Operations Act 1997, must only be carried out between the hours of 7:30 am and 6:00 pm Monday to Friday, and 8:00 am and 1:00 pm Saturday, and at no time on Sundays and Public Holidays.*

**L6.2** *This condition does not apply to the delivery of material outside the hours of operation permitted by condition L6.1 if that delivery is required by police or other authorities for safety reasons; and/or the operation or personnel or equipment are endangered. In such circumstances, prior notification must be provided to the EPA and affected residents as soon as possible, or within a reasonable period in the case of emergency.*

**L6.3** *The hours of operation specified in condition L6.1 may be varied with written consent if the EPA is satisfied that the amenity of the residents in the locality will not be adversely affected.*

**L6.4** *Heavy vehicles (including excavators, haul trucks, loader and water carts) and machinery [including screening plant, jaw crusher, feed bin, cone crusher, rock drill, water pump and generator (genset)] cannot be started, maintained, arrive or leave the site or operated outside of operating hours as detailed in L6.1 and at no time on Sundays and Public Holidays."*

To avoid inconsistency it is proposed to remove Council's Condition 36 in regard to hours of operation and allow EPA to licence this aspect.

Delete Condition 36 which currently states:

36. *The hours of operation are: -*
- *Quarrying & Hauling: 0730 hrs - 1800 hrs Monday to Friday*
  - *0730 hrs - 1200 hrs Saturday*
  - *No work on Sundays or public holidays*

Dust

An Assessment of Noise and Dust Impacts has been prepared by MWA Environmental Pty Ltd dated.17 November 2014. The report states the following;

*"Based upon our review of the available dust monitoring results the current quarrying activities are compliant with the relevant objective by a significant margin at the nearest residential land to the west. As such, subject to implementation of the dust management measures recommended in Section 3.4, it is considered that the proposed extraction activities within the western area of Modified Extraction Boundary can occur in compliance with the requirements of the REMP and without causing unreasonable dust nuisance at properties to the west"*

The report has been prepared by a suitably qualified consultant and is considered adequate. Monitoring, control and management strategies have been detailed in the updated Rehabilitation and Environmental Management Plan.

### Vibration/Blasting

A Blasting Impact Assessment prepared by ORICA Quarry Services dated 19 September 2014 has been submitted. The report has been prepared by a suitably qualified consultant and recommends monitoring and management strategies which have been detailed in the Rehabilitation and Environmental Management Plan. The monitoring and management strategies are detailed in the Rehabilitation and Environmental Management Plan and appear to be adequate.

Some of the recent objectors raised issue with some recent blast activities stating that they were not correctly notified and that the blasts themselves seemed to be particularly noisy. Council is not the regulatory authority for the blasting activities and forwarded these complaints to the EPA as the licencing authority.

EPA responded to these complaints as follows:

*"The EPA has been communicating with the complainant on blasting activities at Reedy Creek Quarries Dulguigan [Environment Protection Licence (EPL) 3430], specifically in relation to the blasts of 28 May & 12 August 2015. Upon request, the licensee has provided information to the EPA showing that the blasts on these occasions were within EPL limits. This has been communicated to the complainant.*

*The EPA has sought assurance from the licensee that an additional blast monitor will be set up at a neighbouring property for subsequent blasts."*

### On-Site Sewage Management

The REMP states that there is an existing on-site sewage management system and that approval will be obtained prior to relocation of the amenities building.

Standard conditions of consent are recommended for this to ensure approval to operate is obtained for any existing systems and approval to install is obtained for any future relocation of these facilities.

*New Condition:* Within 90 days from the date of consent (DA04/0162.02) the applicant is required to lodge an application to operate any new onsite sewage management system under Section 68 of the Local Government Act 1993, pay the appropriate fee and be issued with a determination.

*New Condition:* Prior to the relocation of the amenities building the applicant is required to lodge an application to install/operate any new onsite sewage management system under Section 68 of the Local Government Act 1993, pay the appropriate fee and be issued with a determination. Any application shall be supported by design report prepared by a suitable qualified and experienced consultant.

### Water Quality

The surface water management strategy for the property includes the diversion of all stormwater runoff from within the quarry to a central sediment control pond. This water will be utilised for dust suppression and any excess water will be pumped to the polishing pond including water treatment prior to any controlled discharges. Any controlled discharges will be required to meet performance goals detailed in the Tweed Shire Council Development Design Specifications D7 - Stormwater Quality.

The NSW EPA General Terms of Approval do not specify any water quality performance criteria. The performance criteria detailed in the REMP is consistent with the Tweed Shire Council Development Design Specifications D7 - Stormwater Quality. The monitoring and management strategies are detailed in the Rehabilitation and Environmental Management Plan and appear to be adequate.

### Approvals from other Regulatory Authorities

The facility maintains an existing NSW EPA Licence No.3430 issued on the 3 August 2011. The NSW EPA recommended general terms of approval will be incorporated into the consent and existing conditions will be amended where required to ensure consistency.

In particular Section 3.5.3 Management Measures relating to noise states that vehicle operators will be permitted to arrive at the site from 6:50am only.

This appears to conflict with the proposed operating hours and the general terms of approval provided by the NSW EPA. The applicant will be asked to align both approvals in terms of operating hours as follows

- 7.30am – 6pm Monday to Friday (change REMP to not allow trucks before 7.30am)
- 8.00am to 1pm Saturdays (previously Council said 7.30 – noon but change as per EPA Licence)
- No works Sundays or Public Holidays (no change)

### Rehabilitation and Environmental Management Plan

A comprehensive review of the Rehabilitation and Environmental Management plan was undertaken by Council staff in 2013 following the submission of the REMP for approval under the existing consent Condition No.1. The items identified during this review and subsequent reviews have now been addressed.

Where any conflicts exist between REMP and the NSW EPA General Terms of Approval or conditions of consent these will be required to be corrected in an

amended REMP with 60 days from issue of the consent. Condition No.1 can be amended to require an amended REMP.

### Visual Analysis & Amenity

There are long distance sight lines to the quarry from many areas throughout the Shire including the intersection of Cane and Tumbulgum Roads Murwillumbah when travelling north (see Photo 1), and the increased footprint will change the visual appearance of the already very prominent quarry by enlarging the extent of visual interruption to the forested hillsides which are highly valued and form the scenic backdrop to the site. However, the expansion will be gradual over multiple years, as it has been since prior to 1970 (see Photo 2), meaning the public will become consistently accustomed to the change rather than having to accept a single drastic event, which would have a far greater perceived impact. Given the quarry face is already highly visible (due to the lack of vegetation and unique white rock) the slowly advancing footprint is considered an acceptable intensity of gradual impact over time. This, coupled with the requirement for future rehabilitation of exhausted quarry areas, means the cumulative long term impact to scenic quality will be negligible.



Photo 1: Quarry as viewed from intersection of Cane Road and Tumbulgum Road, Murwillumbah.



Photo 2: Quarry as viewed from intersection of Cane Road and Tumbulgum Road, Murwillumbah (zoomed in).

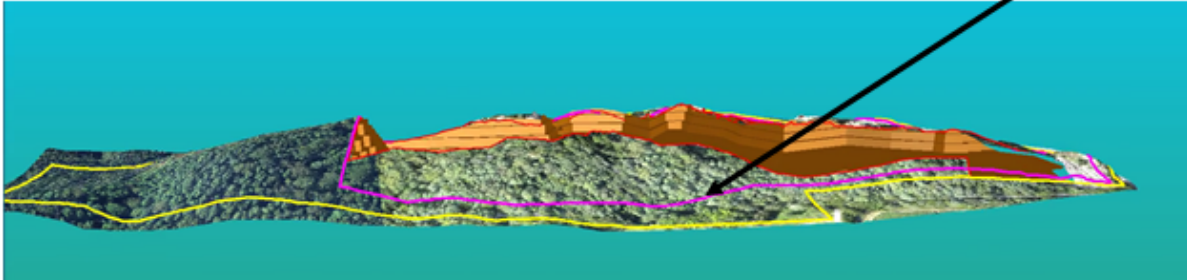


Photo 3: Aerial photography from 11 January 1970

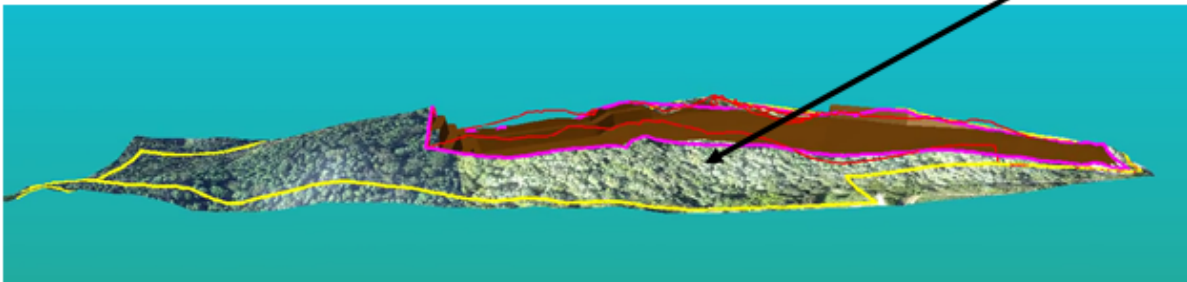
Some of the submissions contained hand drawn view analysis diagrams to depict the impact of the proposed extension to the extraction boundaries. As a result the applicant had a complete 3D Visualisation of the amended quarry design which is a 360 degree view of the quarry from a drone hovering around the site.

Where the quarry expands to the west the view lines for residents in that area won't significantly change as the elevation and vegetation will still shield the quarry floor.

The Existing Approved Pit 3D Visualisation Video for the western view is shown below (note that the pink line shown below as indicated here was the original proposed expansion which has since been reduced by way of the amended plans of August 2015):



The Proposed Pit 3D Visualisation Video for the western view is shown below with the proposed pink line much closer to the existing extraction boundary allowing for the retention of the vegetation in this area:



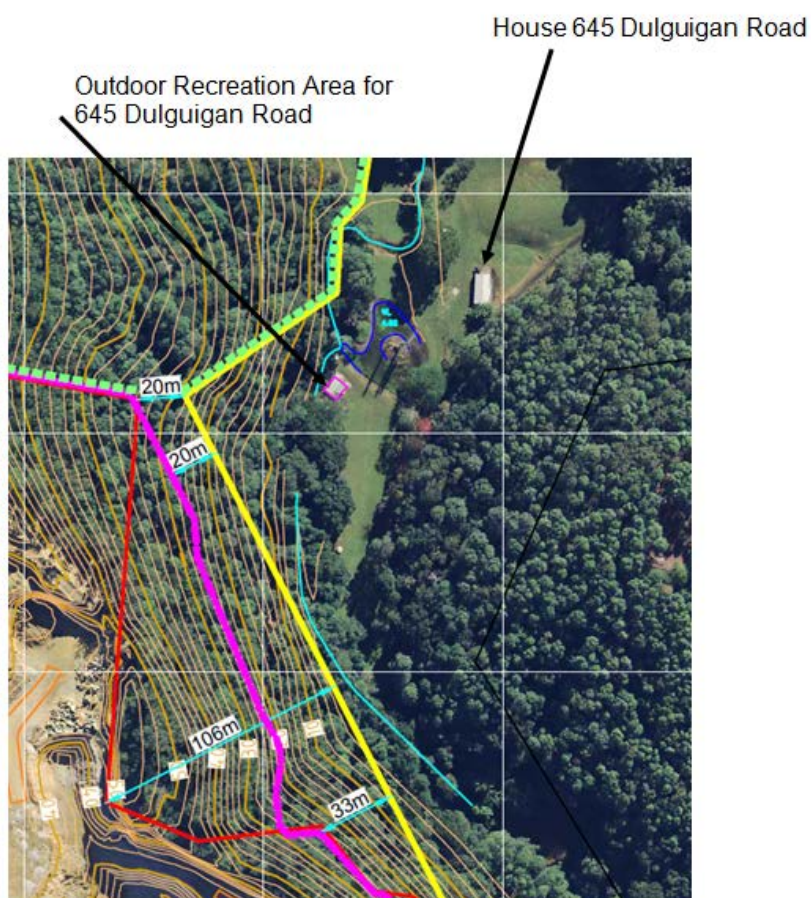
Based on the amended plans the view lines from the west are considered satisfactory.



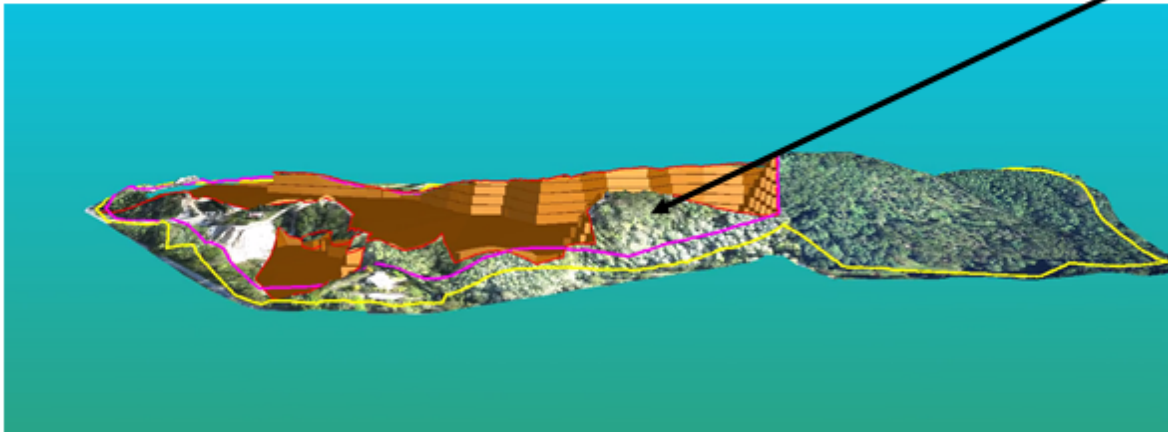
However where the quarry expands to the east it will have a visual impact for the residents at No. 645 Dulguigan Road as the Quarry wall will be between 20m -30m from their property boundary when the current allowable setback is between 20m - 106m at its greatest depth. The residents at this location use the southern part of this property for outdoor enjoyment and the proposed quarry location will affect this residential amenity. The main house however is located 126m to the north east of the property boundary.

However this property has now been purchased by the Quarry operators and the objections previously received by this landowner have been formally withdrawn.

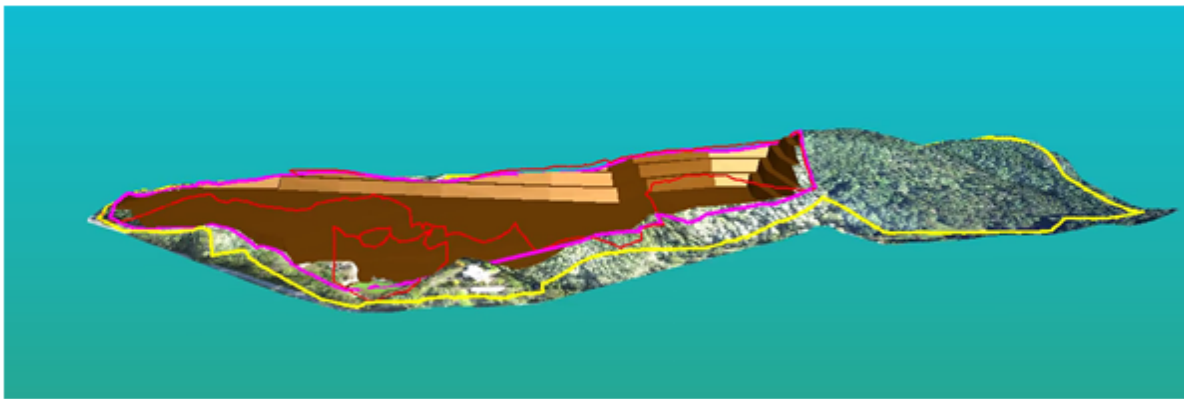
See the below map extract:



The Existing Approved Pit 3D Visualisation Video for the eastern view is shown below and it is the removal of this area that will impact the neighbours the most:



The Proposed Pit 3D Visualisation Video for the eastern view is shown below:



Despite this neighbouring property now being owned by the quarry the individual impacts on any adjoining property owner needs to be weighted against the broader strategic objectives of utilising a finite resource in a sustainable manner. Given the view implications predominantly affect the property of No. 645 Dulguigan Road rather than the house at No. 645 Dulguigan Road the proposed expansion is considered reasonable on merit. Subject to the recommended conditions of consent regarding site management and environmental conservation the proposed S96 Modification on balance is considered acceptable when considering the view analysis.

### Scenic Landscape Impacts

Consideration was given to *Brouwer, C. 1995, Tweed Shire Scenic Landscape Evaluation Report, prepared for Tweed Shire Council by Catherine Brouwer Landscape Architects, Teneriffe*. Brouwer recognises that the prominent characteristics that give the Tweed landscapes their scenic quality are amongst the major reasons it has a high sensitivity to change of its visual character and loss of scenic quality. It identifies one of these major scenic qualities as the openness of the Tweed River valley and the wide long views this affords, coupled with the uniformity of the forested hillsides that form its natural edge and accentuate any intrusion or clearing. Within the Tweed Valley Scenic District, Tumbulgum and Dulguigan Roads are recognised as designated scenic routes yet the existing quarry is acknowledged as an existing 'Degraded Area'.

In *Corkery, N. 2004, Visual Management System for NSW Coast (Tweed Pilot), prepared for the Comprehensive Coastal Assessment (DoP) by URS Asia Pacific, North Sydney*, 'adverse visual impact' is defined as 'any modification in landforms, water bodies, or vegetation, or any **introduction** of structures which negatively interrupts the visual character of the landscape and disrupts the harmony of the basic elements (i.e form, line, colour and texture)' – the existing quarry is already considered an existing degraded area – minor expansion cannot be deemed a new and therefore unacceptable adverse impact.

In *Super Studio v Waverley [2004] NSW LEC 91*, SC Roseth states "that the acceptability of an impact depends not only on the extent of the impact but also on reasonableness of, and necessity for, the development that causes it. In his judgement SC Roseth continues by inferring that just because a type of development will be new when compared to that surrounding does not make the development inappropriate, only that its impact should be assessed with heightened sensitivity, and further that it the development is only acceptable if its impact were minor or negligible.

Further, in *Tenacity Consulting v Warringah [2004] NSW LEC 140* SC Roseth in relation to view sharing establishes the step of assessing the reasonableness of the proposal that is causing the impact, stating "[a] development that complies with all planning controls would be considered more reasonable than one that breaches them."

The applicant has agreed to detailed conditions of consent to ensure long term protection, rehabilitation of core habitat areas and commitment to the preparation and implementation of construction/operational based vegetation and fauna management plans. These measures as well as the proposed development's consistency with the relevant planning controls are considered to make the proposed quarry expansion reasonable. In addition the proposal includes extensive rehabilitation measures that will restore the scenic and environmental qualities of the disturbed areas of the site in the future, and the acceptance of a restrictive statutory covenant over 15ha which shall be managed as a natural area for conservation purposes in perpetuity.

Given the quarry face is already highly visible (due to the lack of vegetation and unique white rock) the slowly advancing footprint is considered an acceptable intensity of gradual impact over time and the expected long term impact to scenic quality will be negligible.

The resultant short term impacts on scenic quality are considered acceptable as there will be a gradual increase over several years to what is an existing extractive industry resulting in a necessary interruption to the scenic landscape character of the Tweed Valley.

**(c) Suitability of the site for the development**

Strategic Framework – Far North Coast Regional Strategy

The strategy is intended to protect the unique environmental assets, cultural values, and natural resources of the Region while ensuring that future planning maintains the character of the Region and provides for economic opportunities.

The key elements of the Strategy are represented on the overall Regional Strategy map, supported by a series of more detailed maps. The Natural Resources map identifies the site as a Regionally Significant Extractive Resource

as shown below by purple shading. The surrounding orange shading represents regionally significant farmland which accurately depicts the areas sugar cane crops.



The Strategy seeks to ensure sustainable management of and access to natural resources and protection of rural landscapes from increased settlement.

The amended plan is considered a good balance between use of a finite resource and environmental conservation by way of the Biodiversity Offset.

**(d) Any submissions made in accordance with the Act or Regulations**

The S96 Application was referred to the following Government Agencies and their relevant responses are detailed below:

<b>Government Agency</b>	<b>Nature of Government Agency Comments</b>
<i>NSW Rural Fire Service</i>	No objection – no conditions
<i>NSW Office of Environment &amp; Heritage</i>	In February 2015 OEH raised objections to the increased footprint of the development as a result of the outdated Flora and Fauna Survey and deficient ecological data. In addition OEH requested an Aboriginal Cultural Heritage Assessment.  The amended application and Biodiversity Offset have adequately responded to the ecological issues raised by OEH.  The submitted Aboriginal Cultural Heritage Assessment of March 2016 was considered acceptable.
<i>NSW Transport Roads and Maritime Services</i>	The roads in the area are classified as local roads and are under the responsibility of Council. The RMS wants Council to be satisfied to the validity of the old traffic report figures, the adequacy of the key intersections and the possibility of having a Code of Conduct relating to Traffic in the REMP.  Council's Traffic & Transport Engineer has advised that no objections are raised to traffic issues.  Therefore the issues raised by RMS have been adequately addressed by way of the recommended conditions of consent.
<i>NSW Department of Primary Industries</i>	<i>Agriculture</i> No objection – No conditions <i>Industry &amp; Investment</i> – No comment

Government Agency	Nature of Government Agency Comments								
	<i>Resource Planning &amp; Development Unit – No comment</i>								
NSW Environment Protection Authority	<p>This application relates to an existing facility which is currently licensed under the Protection of the Environment Operations Act (POEO Act). The premise holds Environmental protection Licence (EPL) 3430.</p> <p>The EPA have recommended General Terms of Approval to ensure the consent reflects the current and future licence requirements as follows (these are included in the recommendation and have been accepted by the applicant):</p> <p><b>GENERAL TERMS OF APPROVAL UNDER SECTIONS 43(b), 48 and 55 OF THE PROTECTION OF THE ENVIRONMENT OPERATIONS ACT 1997 (Environment protection licence to authorise carrying out of scheduled activities at any premises)</b></p> <p><b>Administrative conditions</b></p> <p><b>Note: Mandatory conditions for all general terms of approval</b></p> <p><b>A1. Information supplied to the EPA</b></p> <p><b>A1.1</b> Except as expressly provided by these general terms of approval, works and activities must be carried out in accordance with the proposal contained in:</p> <ul style="list-style-type: none"> <li>• Development Application No.2015.069 submitted to Council on 30 September 2014 and attachments;</li> <li>• Statement of Environmental Effects - Section Amendment to DA04/0162 and attachments.</li> </ul> <p><b>Discharges to Air and Water and Applications to Land</b></p> <p><b>P1.1</b> The following utilisation areas referred to in the table below are identified in the EPA's general terms of approval, or a licence under the Protection of the Environment Operations Act 1997, for the purposes of the monitoring and/or setting of limits for any application of solids or liquids to the utilisation area.</p> <table border="1" data-bbox="715 1261 1485 1518"> <thead> <tr> <th data-bbox="715 1261 930 1375">EPA Identification no.</th> <th data-bbox="930 1261 1114 1375">Type of Monitoring Point</th> <th data-bbox="1114 1261 1297 1375">Type of Discharge Point</th> <th data-bbox="1297 1261 1485 1375">Location Description</th> </tr> </thead> <tbody> <tr> <td data-bbox="715 1375 930 1518">Sediment Basin Discharge</td> <td data-bbox="930 1375 1114 1518">Water</td> <td data-bbox="1114 1375 1297 1518">Water</td> <td data-bbox="1297 1375 1485 1518">Overflow point of stormwater from quarry floor</td> </tr> </tbody> </table> <p><b>Limit conditions</b></p> <p><b>L1. Pollution of waters</b></p> <p>Note: Mandatory condition</p> <p><b>L.1.1</b> Except as may be expressly provided by a licence under the Protection of the Environment Operations Act 1997 in relation of the development, section 120 of the Protection of the Environment Operations Act 1997 must be complied with in and in connection with the carrying out of the development.</p> <p><b>L2. Concentration limits</b></p> <p><b>L2.1</b> For each monitoring/discharge point or utilisation area specified in the tablets (by a point number), the concentration of a pollutant discharged at that point, or applied to that area, must not exceed the concentration limits specified for that pollutant in the table.</p> <p><b>L2.2</b> Where a pH quality limit is specified in the Table, the specified percentage of samples must be within the specified ranges.</p> <p><b>L2.3</b> To avoid any doubt, this condition does not authorise the pollution of waters by any pollutant other than those specified in the</p>	EPA Identification no.	Type of Monitoring Point	Type of Discharge Point	Location Description	Sediment Basin Discharge	Water	Water	Overflow point of stormwater from quarry floor
EPA Identification no.	Type of Monitoring Point	Type of Discharge Point	Location Description						
Sediment Basin Discharge	Water	Water	Overflow point of stormwater from quarry floor						

Government Agency	Nature of Government Agency Comments												
	<p>tablets.</p> <p><b>L2.4 Water and/or Land Concentration Limits</b></p> <p><b>DISCHARGE POINT 1</b> (Sediment Basin Discharge)</p> <table border="1" data-bbox="619 300 1380 528"> <thead> <tr> <th data-bbox="619 300 868 344">Pollutant</th> <th data-bbox="874 300 1098 344">Units of measure</th> <th data-bbox="1104 300 1380 344">100% concentration</th> </tr> </thead> <tbody> <tr> <td data-bbox="619 353 868 430">Total Suspended Solids</td> <td data-bbox="874 353 1098 430">mg/L</td> <td data-bbox="1104 353 1380 430">50</td> </tr> <tr> <td data-bbox="619 439 868 483">pH</td> <td data-bbox="874 439 1098 483">pH units</td> <td data-bbox="1104 439 1380 483">6.5-8.5</td> </tr> <tr> <td data-bbox="619 492 868 528">Oil and grease</td> <td data-bbox="874 492 1098 528">mg/L</td> <td data-bbox="1104 492 1380 528">Nil</td> </tr> </tbody> </table> <p><b>L2.5</b> The concentration limits in the above table do not apply to any discharge from the sediment basin (at Point 1) solely arising from rainfall measured at the premises exceeding 82.5 mm in total falling over any consecutive five day period.</p> <p><b>L2.6</b> If the applicant uses turbidity (NTU) in place of total suspended solids (TSS) to determine compliance with the EPA's general terms of approval, or a licence issued under the Protection of the Environment Operations Act 1997, the applicant must develop a statistical correlation which identifies the relationship between NTU and TSS for water quality in the sediment basin/s in order to determine the NTU equivalent of 50 mg/L TSS prior to its use.</p> <p><b>L2.7</b> If the applicant uses turbidity (NTU) in place of total suspended solids (TSS) to determine compliance with the EPA's general terms of approval, or a licence issued under the Protection of the Environment Operations Act 1997, the applicant must provide the EPA with a copy of the statistical correlation assessment methodology and results before using NTU in place of TSS.</p> <p><b>L2.8</b> If the applicant uses turbidity (NTU) in place of total suspended solids (TSS) to determine compliance with the EPA's general terms of approval, or a licence issued under the Protection of the Environment Operations Act 1997, the applicant must develop and implement a method to enable the ongoing verification of the relationship between NTU and TSS.</p> <p><b>L2.9</b> If the applicant uses turbidity (NTU) in place of total suspended solids (TSS) to determine compliance with the EPA's general terms of approval, or a licence issued under the Protection of the Environment Operations Act 1997, the applicant must provide the EPA with any amendments the applicant makes to the statistical correlation as a result of the ongoing verification required by Condition L2.8 before using the revised statistical correlation.</p> <p><b>L3. Waste</b></p> <p><b>L3.1</b> The applicant must not cause, permit or allow any waste generated outside the premises to be received at the premises for storage, treatment, processing, reprocessing or disposal or any waste generated at the premises to be disposed of at the premises, except as expressly permitted by a licence under the Protection of the Environment Operations Act 1997.</p> <p><b>L3.2</b> This condition only applies to the storage, treatment, processing, reprocessing or disposal of waste at the premises if it requires an environment protection licence under the Protection of the Environment Operations Act 1997.</p> <p><b>L4. Noise limits</b></p> <p><b>L4.1</b> Noise from the premises must not exceed an LAeq (15 minute) noise emission criterion of 37 dB(A) for the nearest residential receivers as identified in Statement of Environmental Effects - Drawing 1, except as expressly provided by these general terms of approval.</p> <p><b>L4.2</b> Noise from the premises is to be measured at nearest residential receiver as identified in the Statement of Environmental Effects - Drawing 1, that does not have written permission from the property owners for an exceedance of condition L4.1 has been provided to the EPA.</p>	Pollutant	Units of measure	100% concentration	Total Suspended Solids	mg/L	50	pH	pH units	6.5-8.5	Oil and grease	mg/L	Nil
Pollutant	Units of measure	100% concentration											
Total Suspended Solids	mg/L	50											
pH	pH units	6.5-8.5											
Oil and grease	mg/L	Nil											

Government Agency	Nature of Government Agency Comments
	<p><b>L4.3</b> The noise limits set out in condition L4.1 apply under all meteorological conditions except for the following:</p> <ul style="list-style-type: none"> <li>• Wind Speeds greater than 3 metres/second at 10 metres above ground level; or</li> <li>• Temperature inversion conditions up to 30 C/100m and wind speeds greater than 2 metres/second at 10 metres above ground level; or</li> <li>• Temperature inversion conditions greater than 30Cf100m.</li> </ul> <p><b>L5. Blasting</b></p> <p><b>L5.1</b> Blasting operations at the premises may only take place between 09:00 to 15:00 Monday to Friday. (Where compelling safety reasons exist, the Authority may permit a blast to occur outside the above mentioned hours. Prior written (or facsimile) notification of any such blast must be made to the Authority).</p> <p><b>L5.2</b> The airblast overpressure level from blasting operations in or on the premises must not exceed:</p> <p>a) 115 dB (Lin Peak) for more than 5% of the total number of blasts during each reporting period;</p> <p>and</p> <p>b) 120 dB (Lin Peak) at any time,</p> <p>at any point within 1 metre of any affected residential boundary or other noise sensitive location unless the location is owned by the licensee or is subject to a private written agreement between the owner of the residence or noise sensitive location as to an alternative overpressure level.</p> <p><b>L5.3</b> The ground vibration peak particle velocity from blasting operations carried out in or on the premises must not exceed:</p> <p>a) 5mm/s for more than 5% of the total number of blasts carried out on the premises during each reporting period; and</p> <p>b) 10 mm/s at any time,</p> <p>at any point within 1 metre of any affected residential boundary or other noise sensitive location unless the location is owned by the licensee or is subject to a private written agreement between the owner of the residence or noise sensitive location as to an alternative ground peak velocity level.</p> <p><b>L5.4</b> All sensitive receivers are to be given at least 24 hours' notice when blasting is to be undertaken.</p> <p><b>L6. Hours of operation</b></p> <p><b>L6.1</b> Activities covered by the EPA's general terms of approval, or a licence under the Protection of the Environment Operations Act 1997, must only be carried out between the hours of 7:30 am and 6:00 pm Monday to Friday, and 8:00 am and 1:00 pm Saturday, and at no time on Sundays and Public Holidays.</p> <p><b>L6.2</b> This condition does not apply to the delivery of material outside the hours of operation permitted by condition L6.1 if that delivery is required by police or other authorities for safety reasons; and/or the operation or personnel or equipment are endangered. In such circumstances, prior notification must be provided to the EPA and affected residents as soon as possible, or within a reasonable period in the case of emergency.</p> <p><b>L6.3</b> The hours of operation specified in condition L6.1 may be varied with written consent if the EPA is satisfied that the amenity of the residents in the locality will not be adversely affected.</p> <p><b>L6.4</b> Heavy vehicles (including excavators, haul trucks, loader and water carts) and machinery [including screening plant, jaw crusher, feed bin, cone crusher, rock drill, water pump and generator (genset)] cannot be started, maintained, arrive or leave the site or operated outside of operating hours as detailed in L6.1 and at no time on Sundays and Public Holidays."</p>

Government Agency	Nature of Government Agency Comments
	<p><b>Operating conditions</b></p> <p><b>01. Dust</b></p> <p><i>01.1 Activities occurring in or on the premises must be carried out in a manner that will minimise the generation, or emission from the premises, of wind-blown or traffic generated dust.</i></p> <p><b>02. Processes and management</b></p> <p><i>02.1 Sediment basins shall be treated, if required, to reduce the Total Suspended Solids level to the concentration limit of 50 mg/L provided by the EPA's general terms of approval, or a licence under the Protection of the Environment Operations Act 1997, before being released to the environment. Treatment can be with gypsum or any other material that has been approved by the EPA.</i></p> <p><i>02.2 The applicant must maximise the diversion of run-on waters from lands upslope and around the site whilst land disturbance activities are being undertaken.</i></p> <p><i>02.3 The applicant must maximise the diversion of stormwater runoff containing suspended solids to sediment basins installed on the premises.</i></p> <p><i>02.4 Where sediment basins are necessary, all sediment basins and associated drainage must be installed and commissioned prior to the commencement of any clearing or grubbing works within the catchment area of the sediment basin that may cause sediment to leave the site.</i></p> <p><i>02.5 The applicant must ensure the design storage capacity of the sediment basins installed on the premises is reinstated within 5 days of the cessation of a rainfall event that causes runoff to occur on or from the premises.</i></p> <p><i>02.6 The applicant must ensure that sampling point(s) for water discharged from the sediment basin(s) are provided and maintained in an appropriate condition to permit:</i></p> <ul style="list-style-type: none"> <li><i>a) the clear identification of each sediment basin and discharge point;</i></li> <li><i>b) the collection of representative samples of the water discharged from the sediment basin(s); and c) access to sampling point(s) at all times by an authorised officer of the EPA.</i></li> </ul> <p><i>02.7 The applicant must endeavour to maximise the reuse of captured stormwater on the premises.</i></p> <p><i>02.8 Each sedimentation basin must have a marker (the "sediment basin marker") that identifies the upper level of the sediment storage zone.</i></p> <p><i>02.9 Whenever the level of liquid and other material in any sedimentation basin exceeds the level indicated by the sedimentation basin marker, the licensee must take all practical measures as soon as possible to reduce the level of liquid and other material in the sedimentation basin.</i></p> <p><i>02.10 The sediment basins must meet the design and operational standards of Managing Urban Stormwater Soils and Construction: Volume 1 and Volume 2 E. Mines and quarries. This document requires that at a minimum 85 percentile five-day rainfall event be used to determine basin sizing for quarries.</i></p> <p><i>02.11 All liquid chemicals, fuels and oils must be stored in tanks or containers inside suitable bund(s). Bund(s) are to be designed, constructed and maintained in accordance with AS1940-2004 Storage and Handling of Flammable and Combustible Liquids.</i></p> <p><b>Monitoring and recording conditions</b></p> <p><b>M1 Monitoring records</b></p> <p><i>M1.1 The results of any monitoring required to be conducted by the EPA's general terms of approval, or a licence under the Protection of the Environment Operations Act 1997, in relation to the development</i></p>



Government Agency	Nature of Government Agency Comments												
	<p><i>or in order to comply with the load calculation protocol must be recorded and retained as set out in conditions M1.2 and M1.3.</i></p> <p><b>M1.2</b> <i>All records required to be kept by the EPA's general terms of approval, or a licence under the Protection of the Environment Operations Act 1997, must be:</i></p> <ol style="list-style-type: none"> <li><i>a) in a legible form, or in a form that can readily be reduced to a legible form;</i></li> <li><i>b) kept for at least 4 years after the monitoring or event to which they relate took place; and</i></li> <li><i>c) produced in a legible form to any authorised officer of the EPA who asks to see them.</i></li> </ol> <p><b>M1.3</b> <i>The following records must be kept in respect of any samples required to be collected:</i></p> <ol style="list-style-type: none"> <li><i>a) the date(s) on which the sample was taken;</i></li> <li><i>b) the time(s) at which the sample was collected;</i></li> <li><i>c) the point at which the sample was taken; and</i></li> <li><i>d) the name of the person who collected the sample.</i></li> </ol> <p><b>M2. Requirement to monitor concentration of pollutants discharged</b></p> <p><b>M2.1</b> <i>The applicant must monitor (by sampling and obtaining results by analysis) the concentration of each pollutant specified in Column 1. The applicant must use the sampling method, units of measure, and sample at the frequency, specified opposite in the other columns:</i></p> <p><b>POINT 1 Water and Land</b></p> <p><b>Discharge point 1</b></p> <table border="1" data-bbox="715 1160 1484 1393"> <thead> <tr> <th data-bbox="715 1160 975 1211">Pollutant</th> <th data-bbox="975 1160 1222 1211">Units of measure</th> <th data-bbox="1222 1160 1484 1211">Frequency</th> </tr> </thead> <tbody> <tr> <td data-bbox="715 1211 975 1294">Total Suspended Solids</td> <td data-bbox="975 1211 1222 1294">mg/L</td> <td data-bbox="1222 1211 1484 1294">Special Frequency 1</td> </tr> <tr> <td data-bbox="715 1294 975 1346">pH</td> <td data-bbox="975 1294 1222 1346">pH units</td> <td data-bbox="1222 1294 1484 1346">Special Frequency 1</td> </tr> <tr> <td data-bbox="715 1346 975 1393">Oil and grease</td> <td data-bbox="975 1346 1222 1393">mg/L</td> <td data-bbox="1222 1346 1484 1393">Special Frequency 1</td> </tr> </tbody> </table> <p><i>&lt; Special Frequency 1 &gt; means sampling any discharge, whether controlled or otherwise, which has not occurred from rainfall exceeding 82.5 mm over any consecutive five day period.</i></p> <p><b>M3. Testing methods - concentration limits.</b></p> <p><b>M3.1</b> <i>Subject to any express provision to the contrary of the EPA's general terms of approval, or a licence under the Protection of the Environment Operations Act 1997, monitoring for the concentration of a pollutant discharged to waters or applied to a utilisation area must be done in accordance with the Approved Methods Publication unless another method has been approved by the EPA in writing before any tests are conducted.</i></p> <p><b>M4. Environmental monitoring</b></p> <p><b>M4.1</b> <i>The applicant is required to install and maintain a rainfall depth measuring device.</i></p> <p><b>M4.2</b> <i>Rainfall at the premises must be measured and recorded in millimetres per 24 hour period, at the same time each day.</i></p> <p><i>Note: The rainfall monitoring data collected in compliance with Condition M4.2 can be used to determine compliance with L2.4.</i></p> <p><b>M6. Other monitoring and recording condition</b></p> <p><b>M6.1</b> <i>For the purposes of monitoring for compliance with the noise limit conditions of the EPA's general terms of approval, or a licence</i></p>	Pollutant	Units of measure	Frequency	Total Suspended Solids	mg/L	Special Frequency 1	pH	pH units	Special Frequency 1	Oil and grease	mg/L	Special Frequency 1
Pollutant	Units of measure	Frequency											
Total Suspended Solids	mg/L	Special Frequency 1											
pH	pH units	Special Frequency 1											
Oil and grease	mg/L	Special Frequency 1											

Government Agency	Nature of Government Agency Comments
	<p>under the Protection of the Environment Operations Act 1997, (condition L4) noise emitted from the premises must be measured or computed at 30 metres from the nearest residential dwelling/s over a period of 15 minutes using the "FAST" response on the sound level meter. A modifying factor correction must be applied for tonal, impulsive, or intermittent noise in accordance with the document NSW Industrial Noise Policy (NSW EPA, January 2000).</p> <p><b>M7. Blast Monitoring</b></p> <p><b>M7.1</b> The time of blasting, the air-blast overpressure level from blasting operations and the ground vibration peak particle velocity from blasting operations must be measured at the nearest sensitive receiver for each blast.</p> <p><b>Reporting conditions</b></p> <p>Note: Mandatory condition to be used on all general terms of approvals</p> <p><b>R1.1</b> The applicant must provide an annual return to the EPA in relation to the development as required by any licence under the Protection of the Environment Operations Act 1997 in relation to the development. In the return the applicant must report on the annual monitoring undertaken (where the activity results in pollutant discharges), provide a summary of complaints relating to the development, report on compliance with licence conditions and provide a calculation of licence fees (administrative fees and, where relevant, load based fees) that are payable. If load based fees apply to the activity the applicant will be required to submit load-based fee calculation worksheets with the return.</p> <p><b>Special Conditions</b></p> <p><b>E1. Noise and dust mitigation measures</b></p> <p><b>E1.1</b> The applicant must implement all noise and dust mitigation measures recommended in the Statement of Environmental Effects - Attachment 6 -Assessment of noise and dust impacts of proposed modification of extraction boundary Tumbulgum Quarry Dulguigan, prepared by MWA Environmental dated 17 November 2014.</p> <p>Noise mitigation measures to be implemented are to be found in section 2.3.2 of the aforementioned Statement of Environmental Effects attachment.</p> <p>Dust mitigation measures to be implemented are to be found in section 3.4 of the aforementioned Statement of Environmental Effects attachment.</p> <p><b>E1.2</b> The noise and dust mitigation measures outline in condition E1.1 must be completed prior to the commencement of quarrying activities.</p>

Therefore, in accordance with Clause 96(2)(b) Council has adequately consulted the relevant Government Agencies and made appropriate recommendations based on the advice provided.

Further to the Government agency referrals the application was initially advertised and notified for a period of 14 days initially in January 2015.

Council received 13 submissions from 9 objectors. The main issues raised were similar across the submissions, and are summarised as follows:

Issue	Assessment
<p><i>Negative impacts on the use and enjoyment of our property- especially visual impact</i></p>	<p>The quarry is currently operating under an existing approval, with conditions of consent. As noted in the submission, the objectors were aware of the quarry when purchasing their property. The proposed amendment does not intend to alter the approved land use, annual extraction volumes, daily or annual truck movements, methods of extraction or processing,</p>

Issue	Assessment
	<p>equipment plant, operating hours or depth of extraction.</p> <p>The visual implications of the proposed expansions have been detailed throughout this report with a 3D Model provided by the applicant to show the existing and proposed implications of the expansion. And whilst the visual landscape will change this change needs to be considered against the broader strategic objectives of utilising a finite resource in a sustainable manner. This issue alone does not warrant refusal of the proposed amendment.</p>
<i>Detrimental Impact on property value</i>	<p>Council has considered the amenity issues raised as a result of the proposed application and whilst these amenity issues may affect property prices in the immediate vicinity, they are not a matter for consideration under Section 79(C) of the EP&amp; A Act.</p>
<i>Adverse environmental impacts, wildlife and fauna</i>	<p>The applicant has submitted a final revised layout plan (with a restricted quarry footprint) and a comprehensive Rehabilitation and Environmental Management Plan which addresses the ecological concerns of the NSW Office of Environment and Heritage and Council's Natural Resource Management Unit to a satisfactory level. The applicant has agreed to detailed conditions of consent to ensure long term protection, rehabilitation of core habitat areas and commitment to the preparation and implementation of construction/operational based vegetation and fauna management plans. Furthermore, a large proportion of the site consisting of a significant well connected tract of remnant vegetation, known to support a suite of threatened flora and fauna species and ecological communities, is to be protected under formal statutory protection mechanism for conservation purposes. Based on the above, it is considered that any adverse ecological impacts likely to be associated with the proposed development can be avoided, minimise and managed to an acceptable level.</p>
<i>Impacts of the proposed amendments on neighbours</i>	<p>The nearest affected neighbouring properties have now been purchased by the quarry operators.</p> <p>The S96 itself will not significantly affect neighbouring properties further afield as the general quarry operations will remain unchanged. The visual implications have been discussed in detail throughout this report and do not warrant refusal of the application.</p>
<i>Inadequate solicitation for public comment – inadequate time to seek legal advice; not placed in broad reaching newspaper</i>	<p>The Environmental Planning and Assessment Regulations 2000 define Local newspaper as: <i>a newspaper circulating throughout the relevant area at intervals of not more than 2 weeks</i>. The Tweed Link is an ISSN registered print newspaper which is delivered free on a weekly basis to over 40,000 households in the Tweed Shire. It is well established that the Tweed Link carries Council's statutory advertising, which it has done for over 15 years. Advertising development proposals via the Tweed Link is in full compliance with Council's legislative requirements for public notification. Furthermore this application was on exhibition multiple times in accordance with the statutory obligations.</p>
<i>Inconsistent with S96(2) Not substantially the same development</i>	<p>The proposal is considered substantially the same development, justified as follows: It does not intend to alter the approved land use, annual extraction volumes, daily or annual truck movements, methods of extraction or processing, equipment plant, operating hours or depth of extraction. The modification relates only to a horizontal extension of the quarry boundary and</p>

Issue	Assessment
	an extension to the life of the quarry by approximately 9 years.
<i>Impact on roads, traffic &amp; Road Safety</i>	As per Council's Traffic Engineer's comments, the proposed amendment would not result in a daily increase in the number of trucks on Dulguigan Road. The quarry currently has approval for an average of 40 truck movements a day and this limit will not change with approval of the proposed amendment as the day to day operations will remain the same. The condition of Dulguigan Rd will continue to be assessed on an annual basis as part of Council's standard works program and any repairs prioritised as necessary.
<i>Increased noise levels "Generator starts very early in the morning and hums all day long, the closer they come to our boundary the louder and more disruptive they will become. On a Sunday when the plant is down the silence is bliss."</i>	The quarry is currently operating with development consent with both prescriptive and general terms of approval issued by the NSW EPA regarding regulating noise emission from the site. The NSW EPA is the regulatory authority for compliance issues in this regard. The proposal before Council does not intend to alter the approved land use, annual extraction volumes, daily or annual truck movements, methods of extraction or processing, equipment plant, operating hours or depth of extraction. Therefore there is no anticipated increase in noise. Any issues of non-compliance should be reported the NSW EPA. This objection does not warrant refusal of the proposal.
<i>Blasting / Land Stability/House damage</i>	The amendment does not propose any increase in blast frequency or intensity. The NSW EPA General Terms of Approval have prescriptive conditions for Blasting (L.5 Blasting) that the applicant is required to meet. In the event that the criteria are not met, the NSW EPA as the appropriate regulatory authority will seek compliance with the conditions and seek mitigation if required. The proposed amendment does not seek any changes to the currently approved blasting regime, and as such blasting is not a matter for further assessment.
<i>Impact on visual amenity</i>	The quarry already creates an existing scar on the visual landscape. The proposed expansion will impact on the view lines of the neighbouring properties however these view lines have been assessed in detail throughout the report with a digital 3D model provided by the applicant.  The changed visual impact is not considered unreasonable and is not considered to warrant refusal of the application
<i>Lifestyle</i>	Council has considered the amenity issued raised as a result of the proposed application and Council also notes that the nearest affected properties have since been purchased by the quarry operators to mitigate this impact. The lifestyle implications for properties further afield are limited in nature and are not considered to warrant refusal of the application
<i>Pollution</i>	The quarry is currently operating with consent with conditions of approval which regulate potential pollution concerns. The proposal does not intend to alter the approved land use, annual extraction volumes, daily or annual truck movements, methods of extraction or processing, equipment plant, operating hours or depth of extraction. Therefore an increase in pollution is not anticipated.
<i>Current practices not adhering to imposed restrictions. No confidence that future expanded practices will.</i>	Any breach of consent reported to Council or the EPA as the licencing authority is thoroughly investigated and action taken as necessary. Concern of future noncompliance is not considered grounds for refusal of any application

<b>Issue</b>	<b>Assessment</b>
<i>Example stockpile collapse, falling boulders etc</i>	
<i>Existing use no longer compatible with neighbourhood</i>	The site has been used as a quarry since the 1960's. The surrounding area has been used for residential and farming purposes since this time. Any purchasers to the local area would have been aware of the quarry and purchased in the area knowing that the quarry was in existence. The proposed expansion will not change the daily operational movements of the quarry. The new boundary has been reviewed and considered reasonable on merit subject to the recommended conditions of consent.

Since this time any person who made a submission has been advised of the two amendments being placed on the Council's DA Tracker and invited to again comment on the application (in May and September).

Council received 10 letters of support from businesses and individuals who use the quarry and find it a valuable business and resource for the local community

A further 5 objections were received (including a petition with 10 signatures) to the amended application on similar grounds to the original application as follows (however please be aware that since this time the two nearest affected properties are under a sale of contract with the quarry operators to purchase the blocks and accordingly the objection letters from 645 Dulguigan Road have since been formally withdrawn):

<b>Issue</b>	<b>Assessment</b>
<i>Impact on view lines – appreciate changes but still concerned</i>	As detailed above this objection does not warrant refusal of the proposed amendment.
<i>Financial impact</i>	As detailed above this objection does not warrant refusal of the proposed amendment.
<i>Visual impact</i>	As detailed above this objection does not warrant refusal of the proposed amendment.
<i>Increased dust and noise</i>	As detailed above this objection does not warrant refusal of the proposed amendment.
<i>Not substantially the same development.</i>	As detailed above this objection does not warrant refusal of the proposed amendment.
<i>Request blast monitoring devices be put on property</i>	Additional blast monitoring stations have been installed as requested.
<i>The Number of trucks leaving the quarry exceeds their current allowance.</i>	<p>Council received data from the quarry operators for 2015 which indicated they had 14,626 trucks leave the site which is 26 more than allowed by their consent (0.1% variation).</p> <p>The quarry is obligated to keep detailed logs of all material and trucks leaving the site to meet their licence obligations with NSW EPA. At any time Council or NSW EPA can request information from the quarry to ensure compliance with their conditions of consent.</p> <p>As the consent allows the operators to have a maximum of 40 trucks per day (averaged over a year) there may be times when</p>

Issue	Assessment
	<p>there are more than 40 trucks a day however the consent allows for this and slower months throughout the year means the quarry can generally comply with the conditions of consent in regard to overall trip numbers in any given year.</p> <p>This objection does not warrant refusal of the proposed amendment.</p>
<p><i>This morning at 8.20 am 4/4/2016 XXXX was traveling down Pollards Road to Dulguigan Road when a large rock came down the hill from the quarry from above nearly hitting the car she moved to the other side of the road to avoid it and found she had to get out of the car to move it: When another rock came down to the side of her car she was scared to the point of tears: There was a a large machine clearing trees and bush above</i></p> <p><i>The quarry manager was contacted. He arrived by 8.35 and pushed the rocks off the road then left.</i></p>	<p>The following response was provided by Council's Team Leader Development Assessment:</p> <p><i>Thank you for your e-mail of 4 April 2016 advising Council of the recent site activities at the quarry.</i></p> <p><i>I have had Council's Environmental Health Officer and Council's Manager Roads and Stormwater review the situation in consultation with the site Manager and Mr Angus McDouall from the NSW Department of Primary Industry (Mines) who is the regulatory authority in regards to Mines.</i></p> <p><i>I believe Mr McDouall has also been in contact with you.</i></p> <p><i>The site Manager will be implementing additional site management techniques to ensure this sort of thing does not occur again including the implementation of a spotter or 'stop/go' person as a control measure.</i></p> <p><i>I hope the responses you have received in regards to this matter have been satisfactory.</i></p> <p>The following response was received back from the complainant:</p> <p><i>Thank you we are pleased with the response from Council and action taken by the quarry</i></p> <p><i>The manager from the quarry is leaving soon I feel one mistake made from Hy tec has been a total lack of communication in the past I hope the new manager makes himself known to the neighbors</i></p> <p><i>From our end we are happy for the DA to go ahead and hope everything is settled soon.</i></p> <p><i>Thank you again for your help.</i></p>

The objections to date have all been addressed in the content of this report. They have been seriously considered, however, in this instance are not considered to warrant refusal of the application. The quarry will continue to operate as it does today. The revised boundaries will have very little impact on the day to day operations of the quarry. The extended life of the quarry, physical impacts from the expansion and the additional view implications are considered reasonable subject to the recommended conditions.

**(e) Public interest**

The S96 application is considered to generally be in accordance with the public interest as it allows for a finite resource to be utilised in a sustainable manner.

**S96(2) Modification Substantially the Same Development**

As detailed above the proposal to increase the level of extraction to 1,755,000m<sup>3</sup> (which will add 9 years to the life of the quarry) will still result in less overall extraction than originally approved (despite the increased footprint) as the applicant is now proposing 10m wide benches instead of the approved 4m wide benching. Furthermore the quarry will **continue** to:

- Extract 200,000m<sup>3</sup> per annum (195,000m<sup>3</sup> average over a three year period);
- Operate between the hours of 7.30am – 6pm Monday to Friday, 7.30am to 12 Noon Saturdays and have no works Sundays or Public Holidays;
- Blast 3 times per month;
- Have a maximum of 40 trucks per day (averaged over the year); and
- Keep the existing single access point.

Therefore the Modification Application is considered to be substantially the same development as that approved by DA04/0162 and be capable of approval as substantially the same development as required by S96(2) of the Act.

#### **OPTIONS:**

1. Approve the S96 Modification subject to the recommended conditions which have been authorised by the applicant; or
2. Refuse the application.

Council Officers recommend Option 1.

#### **CONCLUSION:**

Each proposed amendment has been assessed on its merits and has been assessed in the context of the variation only, as this is not an opportunity to re-visit the original determination.

The amended S96 Modification has been carefully balanced and assessed against the public submissions and the current applicable planning controls.

The quarry's significance as a regionally significant extractive resource (as per the Far North Coast Regional Strategy) has resulted in Council Officer's recommending approval of the proposed amended S96 Application with additional recommended conditions to more effectively manage the environmental considerations of the site. Such conditions have been accepted by the applicant and can therefore lawfully be imposed. No further additional conditions cannot be imposed without the prior authorisation of the applicant.

#### **COUNCIL IMPLICATIONS:**

##### **a. Policy:**

Corporate Policy Not Applicable.

##### **b. Budget/Long Term Financial Plan:**

Not Applicable.

##### **c. Legal:**

Not Applicable.

**d. Communication/Engagement:**

Not Applicable.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Attachment 1.	Original Determination Notice - DA04/0162 (ECM 4152228)
Attachment 2.	NSW Office of Environment and Heritage letter outlining benefits of biobanking (ECM 4134511)
Video presentation	3D Visual Implications Video - Existing Extraction Implications (to be shown at Planning Committee meeting if required)
Video presentation	3D Visual Implications Video - Proposed Extraction Implications (to be show at Planning Committee meeting if required)

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