

Council Reference: DA04/0162.03
Your Reference: TCA letters June & July

XX August 2018

Tumbulgum Community Association
C/O Jenny Kidd

E-Mail:
tumbulgumcommunityassociation@hotmail.com

Dear Jenny,

**TSC Response to TCA Letters June and July 2018 – Compliance & Modification
DA04/0162.03 - amendment to Development Consent DA04/0162 for expansion
and amalgamation of existing quarries at Lot 28 DP 1079480 Pollards Road
Dulguigan**

I refer to your letters of 12 June and 11 July 2018 which address matters in association with the Dulguigan Quarry.

Following are responses to your questions, however, please note that DA04/0162.03 was reported back to the Planning Committee Meeting of 2 August and it was resolved as follows in regard to the subject site:

XXXX

The content of the Tumbulgum Community Association letter is duplicated below in black by topic area followed by Council commentary in [blue](#). The letter of 12 June is addressed first:

Attachment 1 – TSC - Table - Extraction Volume Calculations & Trips
Tumbulgum Community Association letter of 12 June 2018

1. Material Definition

The Council, the quarry operator and the TCA now agree that the original consent refers to the annual extraction rate as “bulked” cubic metres of material as appears in the source documents and identified in the report to the May Planning Committee.

In your email of the 15 May 2018, you state your preference is working with the terminology “bulked” as “*extracted material sitting in a truck*”. The TCA accepts this definition as it applies to a truck loaded to leave the quarry but not one used to transport unprocessed or “unbulked” material within the quarry.

The latest report to the Planning Committee introduced the new terminology, “Bank Cubic Metres (**BCM**)” as if it is interchangeable with “bulked Cubic metres”. The TCA had not heard of BCM prior to receiving of the meeting report. The TCA has not found any reference to the term as a measurement of quarry activity in any other quarry development consent in NSW.

The TCA does not accept “banked” as a descriptor relevant to the current consent and believe it is misleading therefore we are requesting all reference to this term be removed.

Since the 3 May 2018 Planning Committee Report was drafted the quarry operators and the NSW EP&A have been approached to again clarify whether everyone agreed on the definition of “bank cubic metres”.

It has been discovered that there is a fundamental difference between Council’s interpretation of bank cubic metres and the applicant’s terminology of bank cubic metres.

The applicant interprets “banked cubic metres” as what is more commonly known as “bulked material” i.e. sitting in a truck.

Council had been led to believe bank cubic meters was the in situ material when sitting in hill format.

Therefore Council does not believe bank cubic metres should be used due to the differing interpretations.

The terminology that appears to be understood universally is:

- **In situ material (hill format); or**
- **Bulked material (loose material sitting in a truck or stockpile).**

DA04/0162 states the quarry is bound by the following conditions:

Condition 1A - which states:

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,*

Attachment 1 – TSC - Table - Extraction Volume Calculations & Trips

- 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.

The Statement of Environmental Effects says:

*"The proposed expanded and amalgamated quarry would operate **generally within the parameters contained in the approved Reedy Creek Rehabilitation and Environmental Management Plan (REMP)**. That is:*

- *The maximum extraction rate would be 200,000m³ per annum with an average of 195,000m³ per annum over a 3 year period.*
- *Hours of operation would be 7.30 am to 6.00 pm Monday to Friday and 7.30 am to 12 noon Saturdays, with no work on Sundays or public holidays.*
- *The maximum number of trucks accessing the site would be 40 per day.*
- *Maximum of three (3) blasts per month.*

The quarry operations would differ from the existing Reedy Creek and Sandersons quarry consents, with respect to staging. The existing consents have clearly defined stage boundaries (refer Figure 3 and Appendix B & D) comprising a vertical plane through the site(s) at the stage boundary, at various locations. The current proposal would not have clearly defined boundaries and all stages of the existing consents may be worked concurrently."

Condition 2 – which states:

The maximum annual rate of extraction in any 12 month period is 200,000m³. The maximum average rate of extraction is 195,000m³ over any 3 year period.

DA04/0162 is **not clear** on whether 200,000m³ = in situ or bulked.

The quarry operators have now provided legal advice that they believe it is in situ (hill format).

Council notes that Tumbulgum Community Association believe it should be bulked because that was what the old Environmental Impact Statement implied in the traffic assessment as it linked the 200,000m³ to truckloads i.e. bulked.

Attachment 1 – TSC - Table - Extraction Volume Calculations & Trips

Whenever a consent is not 100% clear it is almost impossible to take compliance action.

Because of this very confusion modern day approvals for quarries will always have a maximum extraction in any year based on tonnes instead of m³.

The NSW EPA have advised that their licence must be compliant with the Development Consent for the quarry. The NSW adopted 550,000 tonnes at the subject site equating to 200,000m³ based on the applicants advice that 200,000 x 2.75 = 550,000 tonnes. The 2.75 figure is the conversion factor for the in situ material at this quarry. This is based on a scientific reading from a lab.

However, NSW EPA have also advised that they would lower this 550,000 tonne limit if Council advised that this was inconsistent with the consent condition.

If the 200,000m³ values is considered to be a bulked measurement (i.e. sitting in a truck) the conversion from 200,000m³ to tonnes would be multiplied by approximately 1.7 to equate to 340,000 tonnes rather than the current EPA licence which states 550,000 tonnes.

Therefore the difference between in situ measurement and bulked measurement is 550,000 – 340,000 = 210,000 tonnes BUT the consent is capped at 40 daily trucks averaged over a year and therefore 14,600 trucks per year.

The quarry have advised the average material leaving the quarry in trucks is 34 tonnes.

34 tonnes x 14,600 tonnes per truck = 496,400 tonnes

It was recommended to Council to obtain legal advice on this issue.

Attachment 1 to this letter shows TSC - Table - Extraction Volume Calculations & Trips

2. Measurement of Material

Under Schedule B General Condition 2 of the Development Consent DA 04/0162 it states:

'...the maximum annual rate of extraction in any 12 month period is 200,000m³. The maximum average rate of extraction is 195,000m³ over any 3 year period.'

Attachment 1 – TSC - Table - Extraction Volume Calculations & Trips

The material in the development consent is only calculated in cubic metres and has no reference to tonnes.

The Council has accepted cubic metres of “bulked” material as the measure for annual extraction but not required the quarry to report its annual activity using this measure.

The latest report to the Planning Committee describes annual extraction in tonnes only. These figures indicate the extraction rate in bulk cubic metres has been exceeded for 2015/6 and 2016/7.

The TCA requests that quarry activity reports reflect the consent conditions of bulked cubic metres or both cubic metres and tonnes. The tonnes need to also reference an agreed conversion rate.

The Planning Committee Report of 3 May 2018 has utilised the data provided by the applicant and this is in both tonnes and m³ but the m³ appears to be measured from an in situ situation of dividing the tonnes by 2.7 (see page 45 of 53 from the May Council Meeting Report) which states:

Year	Volume
1 July 2013 to 30 June 2014	261,525t / 95,100m ³
1 July 2014 to 30 June 2015	248,288t / 90,285.55m ³
1 July 2015 to 30 June 2016	416,633t / 151,502.9m ³
3 Year Average	112,296.15m ³

Year	Volume
7 March 2014 to 6 March 2015	264,424.84t / 96,154.49m ³
7 March 2015 to 6 March 2016	372,562.64t / 135,477.32m ³
7 March 2016 to 6 March 2017	411,703.62t / 149,710.41m ³
3 Year Average	127,114.07m ³

If the bulked 1.7 conversion factor was used on the applicant’s figures above the following extraction rates have occurred over three year 2014 - 2017:

	Tonnes	In situ - Hill Format (tonnes divided by 2.75)	Bulked Material (tonnes divided by 1.7)
7 March 2014 – 6 March 2015	264,424 tonnes	96,154.49m ³	155,543.53m³
7 March 2015 – 6 March 2016	372,562.64 tonnes	135,477.32m ³	219,154.49m³
7 March 2016 – 6 March 2017	411,703.62 tonnes	149,710.41m ³	242,178.6m³
3 year average		127,114.07 m ³	205,625.54m³

Therefore if you adopt the bulked rates the quarry has exceeded the annual extraction for the three year period by 10,625 tonnes.

However, DA04/0162 is not clear that the applicant is bound to a bulked conversion rate, and hence the need for legal advice.

Attachment 1 – TSC - Table - Extraction Volume Calculations & Trips

3. Reporting of Material

The reporting of activity in only tonnes does not clearly indicate the annual extraction rates without an agreed conversion to cubic metres. The TCA requests that all documents containing measures be reported in both tonnes and bulked cubic metres to avoid further confusion.

As detailed above we do have the applicants figure in m³ however the applicant has presented them based on an in situ conversion rate when the tonne measurement is occurring in a bulked manner.

4. Truck Movements

Under Schedule B General Condition 3 of the Development Consent DA 04/0162 it states:

“The average number of trucks departing the quarry is to be 40 vehicles per day”

The maximum annual number of laden truck trips under this condition is 12,480, based on 312 operating days (52 weeks x 6 working days per week: refer EIS) with an average of 40 trucks per day.

The calculation of the number of trucks permitted to depart the quarry is based on the original 2004 consent and confirmed by sequential review of the documentation.

The development is outlined at page 6 of the Statement of Environmental Effects by Jim Glazebrook and Associates in February 2004. Scanned extract follows.

The proposed expanded and amalgamated quarry would operate generally within the parameters contained in the approved Reedy Creek Rehabilitation and Environmental Management Plan (REMP). That is:

- The maximum extraction rate would be 200,000m³ per annum with an average of 195,000m³ per annum over a 3 year period.
- Hours of operation would be 7.30 am to 6.00 pm Monday to Friday and 7.30 am to 12 noon Saturdays, with no work on Sundays or public holidays.
- The maximum number of trucks accessing the site would be 40 per day.
- Maximum of three (3) blasts per month.

Attachment 1 – TSC - Table - Extraction Volume Calculations & Trips

This proposal sequentially lists in the first three (3) bullet points the extraction amount followed by operating hours and days/half day of operation then followed by allowable numbers of truck movements. Reading down of this document clearly implies the linkage between operating days and truck movements.

Although the latter letter from Jim Glazebrook and Associates of 8 October 2004 misrepresents the Development Consent 98/178 by replacing maximum number of trucks with average per day, it does **NOT** remove the relationship between operating days and truck activity. Trucks cannot enter or leave the quarry on non-working days.

The 1998 EIS for Reedy Creek Quarry is also referenced by the above documents by Jim Glazebrook. On page 61 at Exhibit 4.20 the same relationship is established. Refer to scanned extract following.

GeoLINK
Engineers, Planners & Landscape Architects

Reedy Creek Quarry
North Tumbulgum EIS

- the 1994 production level of Reedy Creek Quarry was distributed approximately 90% northwards and 10% southwards. This distribution ratio is expected to continue with quarry expansion.

4.9.3 Future Traffic Conditions

Production at the quarry is proposed to increase from 16,000 m³ to a maximum of 200,000 m³ per annum. At this production level it is envisaged that the capacity of trucks used for transportation will be of 20 m³. Forecast of truck movements for 200,000 m³/annum production are set out in Exhibit 4.20.

Exhibit 4.20 - Forecast Truck Movements Departing Reedy Creek Quarry

	1994	Proposed Future Extraction
Production/yr (m ³)	16,000	200,000
Trucks/yr	1,600	10,000
Trucks/day	5	32

Note: 1994 Based on 10 m³ truck capacity
Future extraction based on 20 m³ truck capacity
All figures based on a 6 day working week.

The forecast given in Exhibit 4.21, shows that as production expands from 16,000 m³ to 200,000 m³ the number of truck movements departing the quarry will increase from 5 to 32. Total movements, that is, out and return, will increase from 10 to 64 movements per day.

Combining the existing 700 AADT with the forecasted increase above, the capacity for Dulgungum road is not exceeded.

Annual Average Daily Traffic (AADT) is a road traffic study term and appears in the final paragraph of the extract. It is used out of context in the 8 October 2004 Jim Glazebrook letter and appears as shorthand for daily quarry traffic. The use of non-working days in calculation of allowable truck numbers has never been mentioned prior to 2016.

The interpretation of truck numbers by the quarry operator which relies on AADT to calculate the annual allowable number of trucks using 365 days, i.e. include non-operating days in calculating annual permitted truck numbers, is not in keeping with the original intent or meaning.

In summary, the maximum allowable trucks per year should be 12,500 based on 312 operating days x 40 trucks per day (rounded to the nearest 100) and not 14,600 trucks per year.

The TCA does not accept 14,600 as the allowable number of trucks per annum.

Council understands the Tumbulgum Community Associations position, however the conditions of DA04/0162 are considered to prevail over all past documentaion which

Attachment 1 – TSC - Table - Extraction Volume Calculations & Trips
may or may not have informed the conditions. The DA04/0162 consent clearly calls
up the Jim Glazebrook letter of 8 October 2004 which states:

1. Truck Movements

There appears to have been a misconception that the quarry has not met its obligations under the current development approval, on the basis that truck numbers may exceed forty (40) (loaded) on any given day.

As agreed during our discussions, the limitation on truck numbers represents an annual average daily traffic (AADT) figure and not an absolute limitation on any given day. This is clearly evident from the original EIS prepared by GeoLINK in 1998.

The cyclical nature of demand on quarry materials means that there will be peaks and troughs in production, with a concomitant fluctuation in truck movements. Truck numbers could exceed 100 trucks a day during peak production, while numbers could be below 40 trucks on other days.

Furthermore, it should be noted that the quarry only operates for approximately 260 days a year. That means that in a year where production approaches peak levels, truck numbers would routinely average sixty (60) to sixty five (65) vehicles per operational day (130 vtpd).

It also means that there are over 100 days per annum, where there are no movements associated with the quarry.

It is important to note, that this is the current lawful situation. In the event that the application presently before the Council was unsuccessful, this would have no effect on these continued operations.

From our discussions with Council officers, it appears that there is nothing new in this and that this was always understood by Council's Engineering Services Division.

Since the quarry commenced operation under Development Consent No. 98/174 (December 2001), AADT truck movements for the calendar years 2002 and 2003 were as follows:

- 2002 : approximately 16.37[#] trucks AADT
- 2003 : approximately 32.35 trucks AADT

[#] (weighbridge docketing system installed May 2002 - annual figure extrapolated from monthly average May-December 2002).

In addition Condition 3 states:

3. The average number of trucks departing the quarry is to be 40 vehicles per day, and all trucks are to be fitted with airbag suspension and residential grade mufflers.

Council are of the view that these two documents read in conjunction with one another and prevail over the historic EIS interpretation.

Based on these documents the quarry appears to be able to have 14,600 truckloads of material leave the site in any given year.

Attachment 1 – TSC - Table - Extraction Volume Calculations & Trips

However, legal advice could also be sought on trip numbers which forms part of Option 2 within the August Planning Committee Report.

5. Safe Daily Truck Numbers - Request for Variation to Condition 3

The current consent does not include a daily cap, effectively permitting all 12,500 loaded trucks to leave the quarry on a single day, creating an unsafe situation in the road leading from the quarry. Note that the original Reedy Creek DA (2000) had a daily cap on movements.

The TCA requests that a daily cap be put back on this DA at a safe level.

The TCA has requested and is yet to receive a daily breakdown on truck numbers, but expects the figures per day to reach up to five (5) times the average, particularly at the time leading up to the most recent truck rollover.

The TCA is aware of statements by TSC staff about the ability of the current road to safely manage this uncontrolled volume of heavy vehicle traffic. Statements were made questioning the suitability of the road to sustain current truck movements at the February PBS workshop with the TCA. At that workshop it was proposed that an evaluation of the road be conducted. To date the TCA have not received a copy of this study.

The TCA disagrees with any variation to the s96 that seeks to increase truck numbers for any defined period of time by the operator. This has been proven to have not worked previously with several breaches of the original DA resulting with truck numbers in excess of allowable limits.

Furthermore, the TCA seeks to have a cap put back on maximum number of trucks per day. We draw Councils attention to other quarry' documents at both Lithgow and Teven which include capping on truck numbers, per day.

The TCA welcomes the offer to install a traffic counter. Given this is critical to the open and transparent operation of the quarry we believe the quarry should only be able to open on days when this is in operation.

DA04/0162 does not have a daily cap but rather explicitly allows an average of 40 trucks a day (14,600 trucks per year based on the Jim Glazebrook letter which is called up by Condition 1) to leave the site in any given year.

Council cannot amend the DA by imposing a daily cap without the applicant seeking such an amendment.

Attachment 1 – TSC - Table - Extraction Volume Calculations & Trips

6. Truck Size

The EIS states the truck size associated with the Development Consent is 20 cubic metres (Refer to the 2nd extract in 4 above). 20 cubic metres of processed material equals 34 tonnes and you would expect it to be carried in a truck of gross weight of 50.5 tonnes

As stated at the workshop on the 31 October 2017 by the quarry operator and the truck company representative, and weighbridge docket of the truck that overturned in August 2017, trucks at a gross weight of 57.5 tonnes are being loaded out of the quarry, representing 40 tonnes of processed material, representing 23.5 cubic metres. This is above the DA allowance.

Whilst the Council road manager may grant permission for the trucks of this size to travel on local roads, it is not consistent with the current Development Consent.

If the quarry operator is seeking to increase the truck capacity size, the community would be seeking an equivalent decrease in truck numbers as per the aim of the PBS system.

The community supports action to address past non-compliance. We also support monitoring of quarry activity to discourage future non-compliance and allow action to be taken in a timely manner.

The consent authorises trucks and does not specify whether they are PBS Trucks or not.

DA04/0162 does not restrict PBS Trucks and therefore whether PBS trucks can service the quarry by way of a request to utilise the road is a separate matter to be addressed under separate legislation.

Council cannot amend the DA to prohibit PBS Trucks or reduce the trips based on PBS truck use without the applicant seeking such an amendment.

Conclusion

The TCA seeks an undertaking from the council that:

1. The allowable extraction rate is measured as bulked material;

DA04/0162 is not clear. The applicant has produced legal advice to say in their opinion they are entitled to have the 200,000m³ measured in situ.

Whenever a consent is not 100% clear it is almost impossible to take compliance action.

Legal advice is therefore recommended.

2. The term “banked” is explicitly excluded to avoid future confusion;

Agree.

The terminology that appears to be understood universally is:

- **In situ material (hill format); or**

Attachment 1 – TSC - Table - Extraction Volume Calculations & Trips

- **Bulked material (loose material sitting in a truck or stockpile).**

3. The conversion rate of 1.7 tonnes per cubic metre is established;

DA04/0162 is not clear. The applicant has produced legal advice to say in their opinion they are entitled to have the 200,000m³ measured in situ which would mean a conversion rate of 2.75 NOT 1.7 which is the bulked conversion rate. Legal advice may be able to clarify this.

4. Extraction rates were exceeded in 2015/6 and 2016/7 be acknowledged;

Using the applicant's in situ extraction rates – there was no breach

Year	Volume
1 July 2013 to 30 June 2014	261,525t / 95,100m ³
1 July 2014 to 30 June 2015	248,288t / 90,285.55m ³
1 July 2015 to 30 June 2016	416,633t / 151,502.9m ³
3 Year Average	112,296.15m ³

Year	Volume
7 March 2014 to 6 March 2015	264,424.84t / 96,154.49m ³
7 March 2015 to 6 March 2016	372,562.64t / 135,477.32m ³
7 March 2016 to 6 March 2017	411,703.62t / 149,710.41m ³
3 Year Average	127,114.07m ³

If the bulked 1.7 conversion factor was used on the applicant's figures above the following extraction rates have occurred over three year 2014 - 2017:

	Tonnes	In situ - Hill Format (tonnes divided by 2.75)	Bulked Material (tonnes divided by 1.7)
7 March 2014 – 6 March 2015	264,424 tonnes	96,154.49m ³	155,543.53m³
7 March 2015 – 6 March 2016	372,562.64 tonnes	135,477.32m ³	219,154.49m³
7 March 2016 – 6 March 2017	411,703.62 tonnes	149,710.41m ³	242,178.6m³
3 year average		127,114.07 m ³	205,625.54m³

Therefore if you adopt the bulked rates the quarry has exceeded the annual extraction for the three year period by 10,625 tonnes.

However, DA04/0162 is not clear that the applicant is bound to a bulked conversion rate, and hence the need for legal advice.

5. Annual permitted laden truck numbers are established at 12,500;

Based on DA04/0162 and the approval documentation the quarry appear to be able to have 14,600 truckloads of material leave the site in any given year. Option 2 of the

Attachment 1 – TSC - Table - Extraction Volume Calculations & Trips

Planning Committee report of 2 August provides Council with an avenue to seek legal advice on trips as well as extraction.

6. A daily cap be agreed with TCA for laden trucks leaving the quarry be re-introduced;

Council cannot amend the DA by imposing a daily cap without the applicant seeking such an amendment.

7. Rules be established for the operation of the proposed traffic counter, including penalties for days that it is not operational (including provision to close the quarry on days the counter is non operational); and

Council should continue to work collaboratively with the applicant to achieve traffic counters at the site. However, their current consent does not mandate that they entertain such compliance monitoring. If Option 1 of the Planning Committee Report of 2 August 2018 is adopted (by approving DA04/0162.03) Condition 3 will be modified to ensure better surveillance occurs in the future.

8. The current ad hoc activity compliance monitoring system should be replaced by a regular monthly reporting of daily truck and material volume by the quarry operator to the Council and be made available to the Community and other interested parties.

Council should continue to work collaboratively with the applicant to achieve suitable compliance monitoring that is transparent and available to the general public.

Should anything in this letter not be supported, the TCA requests evidence be provided as to why this will not occur prior to the workshop commencing. This will better facilitate discussion at the workshop making it more effective and determinate of an outcome.

The above information is provided to aid in discussion and understand the prevailing documents in planning law. However this information could be reviewed by Council's Lawyers.

Attachment 1 – TSC - Table - Extraction Volume Calculations & Trips Tumbulgum Community Association letter of 11 July 2018

The Tumbulgum Community Association (TCA) wishes to now advise the Council that we have received further advice from the Environmental Defenders Office (EDO) in conjunction with other expert advice relating to the application listed above.

The following includes a summary of this advice.

Definitional Change

Changes to Condition 2 of the DA 04/0162 have not been sought within the current application. On discussion, the EDO confirms that we are correct in our interpretation of the consent as being 'bulked' and not 'in situ or banked'. There is nothing ambiguous being applied here, which is further evidenced by the clear chain of documents verified by the EDO as linked to this application and attached.

On advice, the TCA again requests that the Council desist from reference to the term 'banked' or 'insitu' when speaking about allowable extraction limits. To do otherwise would be incorrect and would lead to a substantial error in law.

Any attempt to significantly increase the currently permitted annual extraction rate by way of variation to the definition of material from bulked to in situ (60%) is NOT only misleading, it is NOT a minor change and should NOT be treated as such.

The Association's interpretation is noted and it is recommended in the Planning Committee Report of 2 August that Council obtain legal advice on the extraction volume bulked v in situ.

Retrospective approval for non-compliance

The specific request in DA04/0162.03 for changes to Condition 3 seeks retrospective approval for two (2) years of excessive truck movements.

Any support for this application would be seen to regularise non-compliance and, in effect, authorise future breaches.

The TCA is strongly of the view that granting such approval encourages Hy-Tec Industries (Queensland) Pty Ltd in future breaches, given their existing track record of breaches.

DA04/0162.03 in no way authorises future breaches. It is an application for past non-compliances only.

Attachment 1 – TSC - Table - Extraction Volume Calculations & Trips

Other proposed changes contained in Condition 3

The TCA supports other proposed changes to Condition 3.

- *“The applicant is to liaise with Council in finding a suitable location for a traffic counter at the quarry.*
- *The traffic counter is to be installed at the applicant’s expense within 4 months of DA04/0162.03 being determined.”*

We do however request a change the following paragraph:

“The quarry is to forward quarterly reports to Council demonstrating the traffic counter data, demonstrating a comparison of the traffic counter data with the weighbridge data, explanatory notes to interpret the data and demonstrating the likely level of compliance in any given quarter based on future projections.”

to instead read:

*“The quarry is to forward ~~quarterly~~ **monthly** reports to Council demonstrating the **daily** traffic counter data, demonstrating a comparison of the traffic counter data with the weighbridge data, explanatory notes to interpret the data and demonstrating the likely level of compliance in any given quarter based on future projections.*

- ***The reports are to be made available to the community.”***

and an additional part be added stating:

“Rules be established for the operation of the traffic counter, including penalties for the days it is not operational (including provision to close the quarry on days the counter is non-operational).”

The Association’s request to modify Condition 3 is noted. Council should consider any further amendments to proposed condition 3 if they want to approve DA04/0162.03.

The TCA expects that the operators of the quarry will comply with conditions of the development consent. We also expect that the Council will have a robust monitoring system and the conditions of the consent will be fully enforced.

It should not be up to the community to ensure action is taken where breaches of the development consent are identified. However, should the consent authority fail in its duty, the TCA reserves the right to seek remedy and restraint in protecting the interests of the community, including to the Land and Environment Court.

The community at any time can bring proceedings in the Court for a breach of the Act in accordance with the following provisions of the EP&A Act 1979.

9.45 Restraint etc of breaches of this Act (cf previous s 123)

- (1) Any person may bring proceedings in the Court for an order to remedy or restrain a breach of this Act, whether or not any right of that person has been or may be infringed by or as a consequence of that breach.
- (2) Proceedings under this section may be brought by a person on his or her own behalf or on behalf of himself or herself and on behalf of other persons (with their consent), or a body corporate or unincorporated (with the consent of its committee or other controlling or governing body), having like or common interests in those proceedings.
- (3) Any person on whose behalf proceedings are brought is entitled to contribute to or provide for the payment of the legal costs and expenses incurred by the person bringing the proceedings.
- (4) (Repealed)

Based on the resolution from Council of 2 August 2018 the matter will now advance as follows:

XXXX

For further information on this matter please contact Council's Team Leader Development Assessment Denise Galle on 02 6670 2459

Yours faithfully

Vince Connell
Director Planning & Regulation

Enc. Attachment 1 – TSC - Table - Extraction Volume Calculations & Trips

Attachment 1 – TSC - Table - Extraction Volume Calculations & Trips

	Tonnes	In situ - Hill Format (tonnes divided by 2.75)	Theoretical Trucks based on applicants extraction volume figures In situ Material Limit 40 average daily trucks = 14,600 trucks per year with average 34 tonnes (20m³)	Bulked Material (tonnes divided by 1.7)	Theoretical Trucks based on applicants extraction volume figures Bulked Material Limit 40 average daily trucks = 14,600 trucks per year with average 34 tonnes (20m³)	Actual truck Numbers Reported by the quarry Based on 14,600 trucks allowed per year (red represents breach per year)	Actual truck Numbers Reported by the quarry (red represents breach per day) Based on average of 40 trucks allowed per day	Actual truck Numbers Reported by the quarry Breaches Based on 12,500 trucks as proposed by <u>Tumbulqum Community Association</u>
7 March 2014 – 6 March 2015	264,424 tonnes	96,154.49m ³	4,807 trucks	155,543.53m ³	7,777 trucks	12,036 trucks p/a	32.9 trucks per day	Complied
7 March 2015 – 6 March 2016	372,562.64 tonnes	135,477.32m ³	6,774 trucks	219,154.49m ³	10,958 trucks.	16,199 trucks p/a Breach 1599 trucks per year	44.4 trucks per day Breach 4.4 trips a day	3699 trucks over per year or 10 trucks per day based on 365 days in years 12.9 trucks per day breach (per working day of quarry 5.5 days)
7 March 2016 – 6 March 2017	411,703.62 tonnes	149,710.41m ³	7,486 trucks	242,178.6m ³	12,109 trucks	15,864 trucks p/a Breach 1264 trucks per year	43.5 trucks per day Breach 3.5 trips a day	3364 over trucks per year or 9.2 trucks based on 365 days in year 11.8 truck per day breach (per working day of the quarry 5.5 days)
3 year average as required for extraction but not trips		127,114.07 m³		205,625.54m³				