

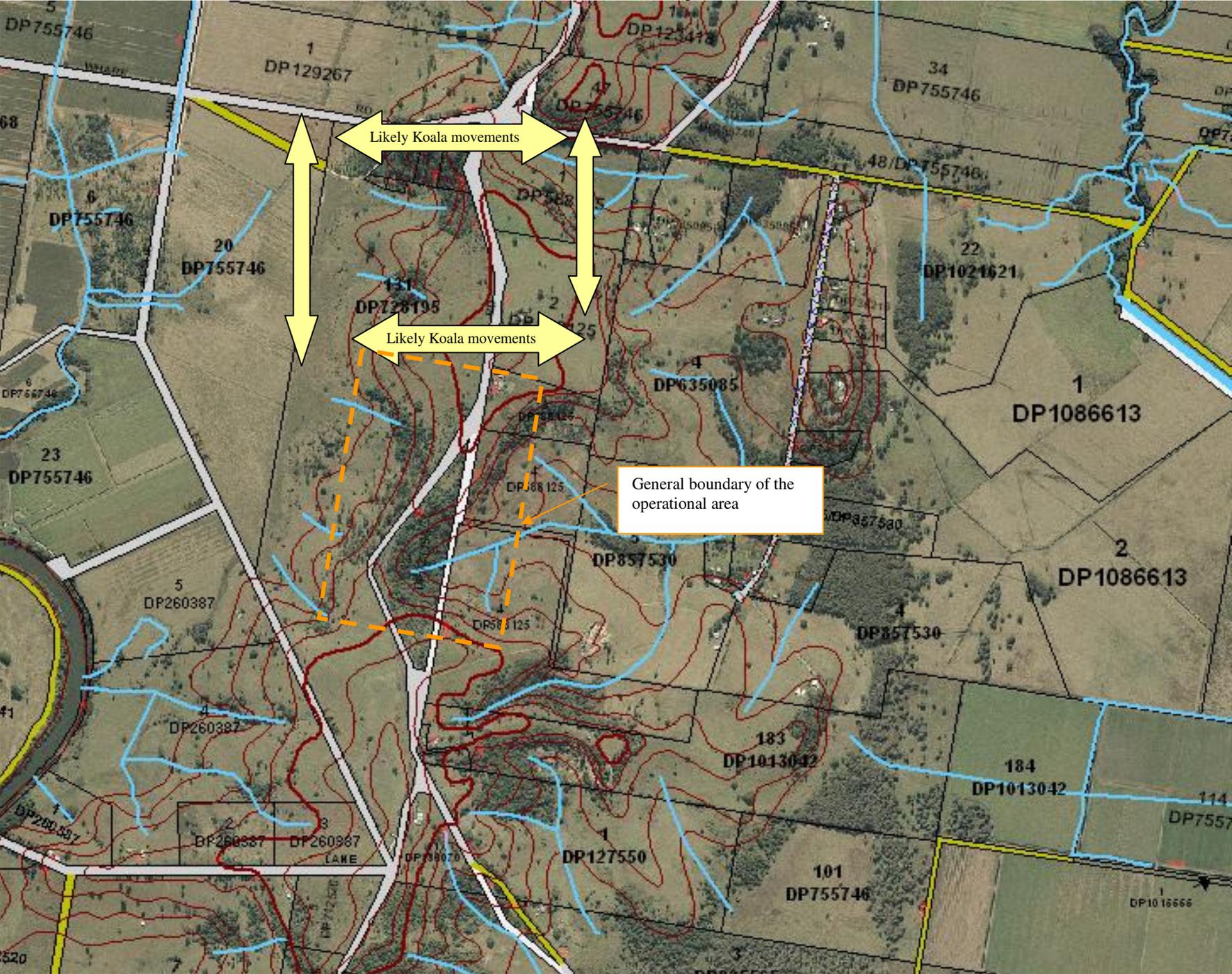
Attachment 2: Landscape Plantings



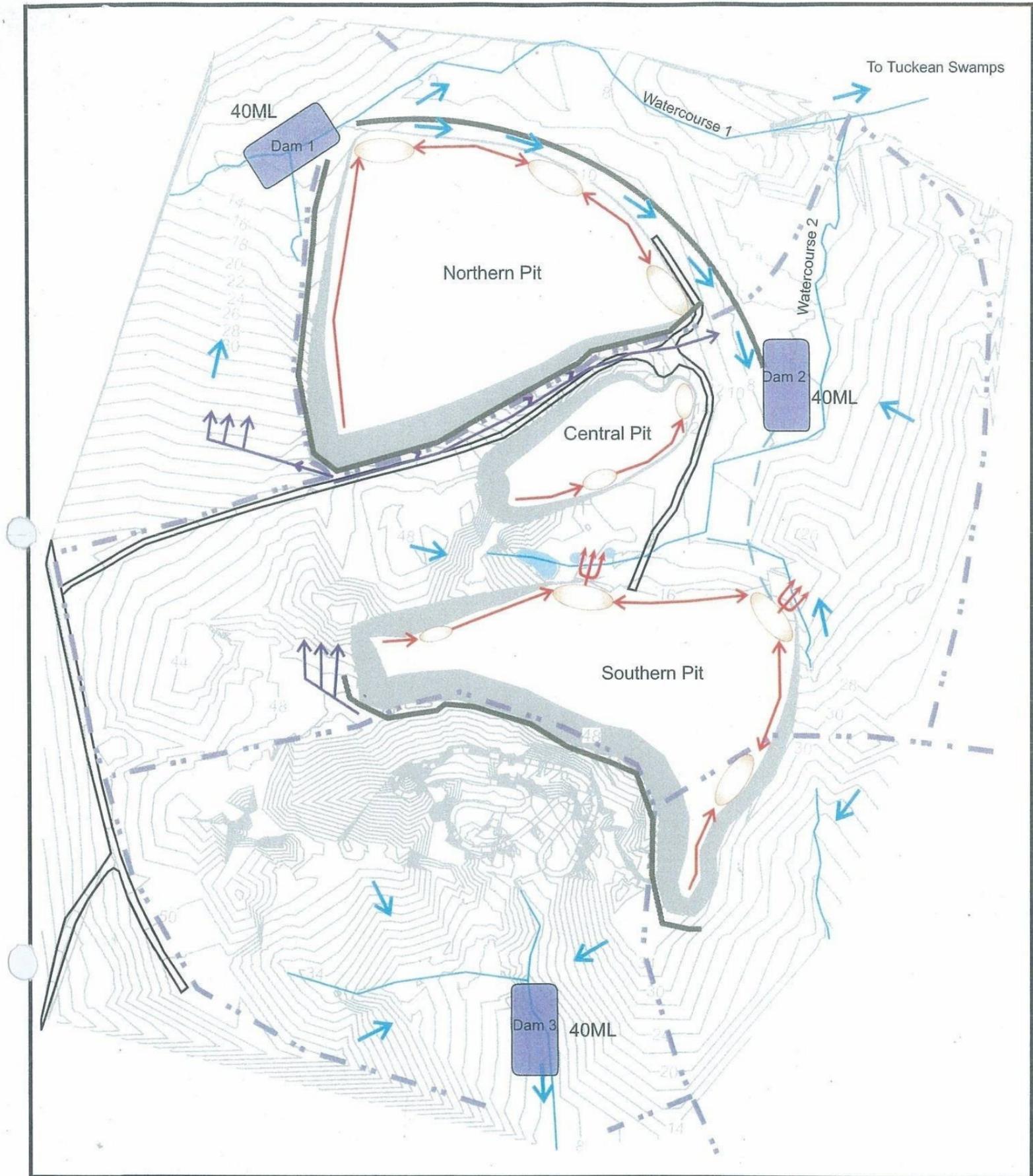
Attachment 3: Receivers Visual Assessment



Attachment 4: Potential Koala Movements in the Locality



Attachment 5: Location of Dams



- Legend**
- Access & Haul Roads
 - New Dams
 - Existing Dams
 - Sediment Basins (Indicative)
 - 2 metre contours
 - Ephemeral Creeks
 - Contour Bank
 - Gravity pipeline
 - Subcatchment Boundary
 - Direction of Surface Drainage
 - Catch Drain (dirty water)
 - Level Spreader

Client:	Champions Quarry
Project:	Champions Quarry
Drawing No:	0073787pm_12v2
Date:	28/08/08
Drawn by:	AM
Source:	Champions Quarry
Scale:	Refer to Scale Bar
Suffix No:	v2
Drawing size:	A4
Reviewed by:	AB

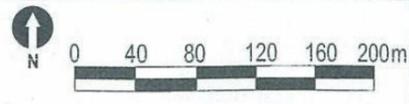


Figure 3.3
Proposed Surface Water Management Plan
 Environmental Resources Management Australia Pty Ltd
 PO Box 5711 3/146 Gordon Street
 Port Macquarie NSW 2444
 Telephone +61 2 6584 7155



Attachment 6: Receivers Noise Assessment



Figure 2.1

Legend

- Noise Logger Location
- Noise Assessment Location

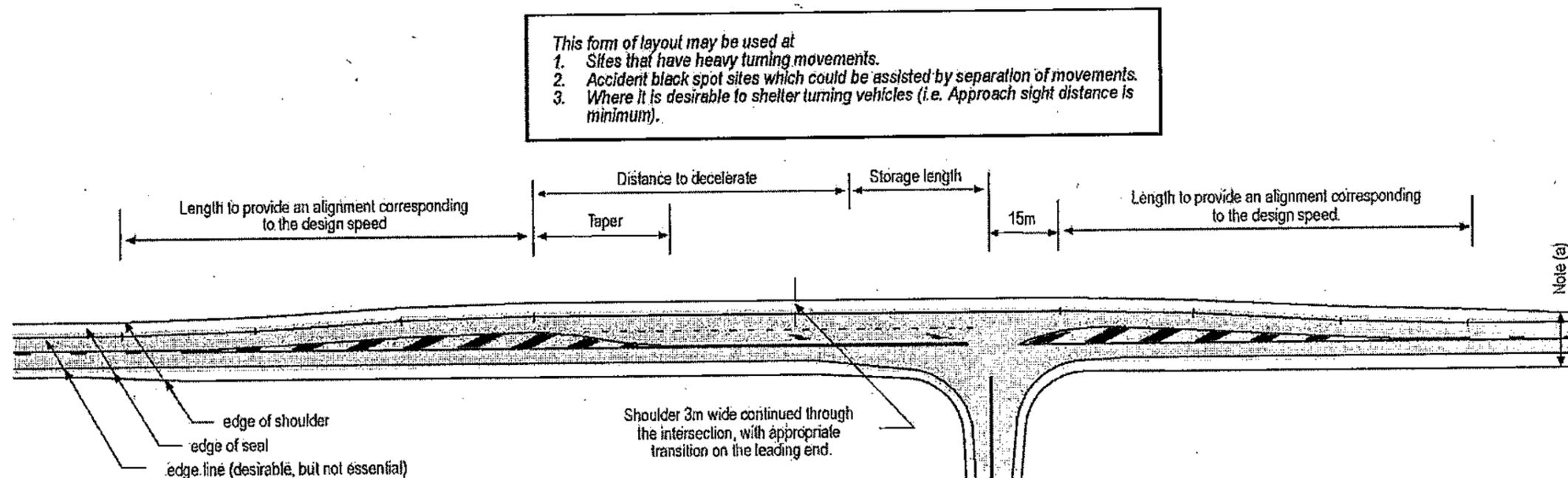
Client:	Champions Quarry	
Project:	Champions Quarry Noise Assessment	
Drawing No:	0073787s_02	
Date:	29/01/2008	Drawing size: A4
Drawn by:	GC	Reviewed by: MS
Source:	-	
Scale:	Not to Scale	

Noise Assessment and Logging Locations

Environmental Resources Management Australia Pty Ltd
 Building C, 33 Saunders St, Pymont, NSW 2009
 Telephone +61 2 8584 8888



Attachment 7: Roads and Traffic Authority Intersection Layout



NOTES

- (a) Lane and shoulder widths on each leg for a minimum distance of 100 metres from the start of each median and curve widening (where necessary) to be in accordance with Austroads *Rural Road Design* (2003).
- (b) The longest expected vehicle to be used to define the turning path assuming a turning speed of 5-15km/h. Turning paths are NOT to cross the centreline of the street or road being entered.
- (c) Sight distance to be appropriate for the 85th percentile free speed of each approach movement. Furniture (especially signs) and planting are not to interfere with sight distance requirements.
- (d) On a curved alignment the alignment is still to have geometry appropriate to the design speed. A system of offsets, as shown in Figure 6.39, may be used to determine initial geometry.
- (e) All non-frangible furniture and drainage headwalls to be located outside the clear zone or protected.
- (f) Signs and markings to be in accordance with Australian Standards, including the need for advance warning signs and direction signs.

Figure 2.7 — Type CHR Rural Intersection Layout General Details

Our ref: deg:LIS001/1
Your ref: Chris Soulsby

8 January 2009

The General Manager
Lismore City Council
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LISMORE

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Dear Chris,

Advice on DCP Variation for Development Application No. 2008/233 ("DA")

Thank you for your instructions in this matter.

1 Advice Sought

1.1 We confirm you require our advice about the following:

- (a) Is it open to the Council to refuse the DA due to non-compliance with the Lismore Development Control Plan ("**the Lismore DCP**"), even though there are good merit reasons to vary from the requirements of the DCP?
- (b) Can the Council apply a variation to the buffer standards outside the scope of the variation clause contained in the Lismore DCP?
- (c) If the above question (b) is answered in the affirmative, does the Council expose itself to having the consent quashed by judicial review? (The basis for this proposition being that the Council could be seen to be taking into account an irrelevant matter, being the principles for variation set out in the now repealed Development Control Plan 27 ("**DCP 27**"), when varying the buffer standards).

1.2 The advice contained in this letter relies on the following information provided by you:

- (a) Letter from the Council to Sparke Helmore Lawyers dated 2 December 2008.

2 Background

2.1 In order to establish a context, we think it is necessary to provide a brief outline of our understanding of the matters relevant to this advice, based



on the information provided by you. If this information is in any way inaccurate, please let us know as it may impact on our advice.

2.2 These matters are as follows:

- (a) On 9 August 2006, the Council approved DA2005/999, being an application to *“expand the extraction rate of an existing extractive industry quarry from 5,000 cubic metres per annum, to a maximum rate of 29,000 cubic metres per annum, together with associated drainage, access roadway, road construction in Wyrallah Road reserve and signage works”* (“**the First DA**”).
- (b) The First DA was assessed under the terms of DCP 27.
- (c) The expansion to the quarry proposed by the First DA did not comply with the recommended buffer distances for extractive industries set out in clause 3.8 of DCP 27. This clause requires a primary buffer of 500 metres and secondary buffer of 800 metres for large quarries (i.e. more than 10,000 cubic metres per annum).
- (d) The Council utilised the variation clause in DCP 27 to approve the First DA on its merits. The variation clause contained in DCP 27 provides as follows:

1.6 Departures

Applications for variations to the buffer areas nominated in this Plan must demonstrate to Council’s satisfaction that there is a clear case for variation of the standard and that the objectives of this Plan will be satisfied. The following matters must be addressed in any application for variation:

- (a) The extent, nature and intensity of the conflicting land use.
 - (b) The operational characteristics of the land use.
 - (c) The external effects likely to be generated by the land use (e.g. spray drift, odour, dust, noise etc).
 - (d) Any topographical features or vegetation which may act to reduce the likely impacts of the land use.
 - (e) Prevailing wind conditions and any other climatic characteristics.
 - (f) Any other mitigating circumstances.
- (e) DCP 27 was repealed on 28 June 2007. The buffer distance requirements set out in DCP 27 were copied into the Lismore DCP which was adopted by the Council on 12 June 2007, and came into effect on 28 June 2007. However, the variation clause



from DCP 27 was not incorporated into the Lismore DCP. A generic variation clause was instead used and relevantly provides as follows:

Variations to the Plan

.....Council may approve development that does not strictly comply with this Plan. This will only be considered where the variation is considered to be minor, or where it can be demonstrated that compliance is physically impossible or impractical, or where the alternative proposed is substantiated as a better design solution.

Variations to this Plan will not be supported where the purpose of the variation is to erode either the objectives or minimum standards, or simply to save development costs.

- (f) The Council is currently assessing the DA, which is an application to expand the quarry approved by the First DA from an annual extraction rate of 29,000m³ per annum to 120,000m³ per annum. The DA is integrated and designated development.
- (g) The Environmental Impact Statement submitted with the DA indicates that 10 existing dwellings are on lands within the secondary buffer of 800 metres, and 6 are within the primary buffer of 500 metres. The closest dwellings unrelated to the quarry are 270 metres away. The DA does not comply with the buffer requirements set out in the Lismore DCP (which applies to the DA).
- (h) The DA has raised significant levels of objection with over 1,100 submissions received.
- (i) The Council's assessment officers have concluded that on merit a variation to the buffer setbacks in the Lismore DCP is acceptable. The merit reason for the variation is that there will be no significant adverse impacts on the amenity of the dwellings as a result of noise, dust or vibration. This opinion is based on utilising the criteria from the variation clause of DCP 27 which contains the issues usually considered when determining whether a DCP should be strictly applied. This approach has been confirmed by the Department of Environment and Climate Change which has issued their General Terms of Approval.
- (j) We note the comment in your letter dated 3 December 2008 that the Council is unable to rely on the variation clause contained in the Lismore DCP because the variation is not minor, compliance is not physically impossible or impracticable and there is no improved design outcome relevant to the variation being sought.



ADVICE

3 Is it open to the Council to refuse the DA due to non-compliance with the Lismore DCP, even though there are good merit reasons to vary from the DCP?

3.1 Section 79C(1)(a)(iii) of the EP&A Act expressly includes “*any development control plan*” as a relevant matter which a consent authority must have regard to in determining a development application. The provisions of the Lismore DCP are therefore plainly relevant to the determination of the DA and must be taken into account by the Council.

3.2 The role of a development control plan was considered by the Court of Appeal in *Zhang v Canterbury City Council* (2001) 115 LGERA 373 (“*Zhang*”), where Spigelman CJ found that a development control plan is:

... to be considered as a ‘fundamental element’ in or a ‘focal point’ of the decision making process.

3.3 The weight to be given to a development control plan will depend on a number of factors, which were summarised by the former Chief Justice McClellan in *Stockland Development Pty Ltd v Manly Council* [2004] NSWLEC 472 (“*Stockland*”) as follows:

- A DCP is a detailed planning document which reflects a council’s expectation for parts of its area, which may be a large area or confined to an individual site. The provisions of a DCP must be consistent with the provisions of any relevant local environmental plan. However, a DCP may operate to confine the intensity of development otherwise permitted by a local environmental plan.
- A DCP adopted after consultation with interested persons, including the affected community, will be given significantly more weight than one adopted with little or no community consultation.
- A DCP which has been consistently applied by a council will be given significantly greater weight than one which has only been selectively applied.
- A DCP which can be demonstrated, either inherently or perhaps by the passing of time, to bring about an inappropriate planning solution, especially an outcome which conflicts with other policy outcomes adopted at a State, regional or local level, will be given less weight than a DCP which provides a sensible planning outcome consistent with other policies.
- Consistency of decision-making must be a fundamental objective of those who make administrative decisions. That objective is assisted by the adoption of DCPs and the making of decisions in individual cases which are consistent with them. If this is done, those with an interest in the site under consideration or who may be affected by any development of it have an opportunity to make decisions in relation to



their own property which is informed by an appreciation of the likely future development of nearby property.

- 3.4 We have not been instructed about what impacts the principles in the *Stockland* case have on the application of the Lismore DCP. We cannot therefore provide any advice about the level of weight which should to be given by the Council to the DCP in the present circumstances.
- 3.5 The Lismore DCP is to be treated as a “focal point” of the Council’s determination of the DA. In those circumstances, it is open to the Council to refuse the DA on grounds that it does not comply with the buffer requirements contained in the Lismore DCP. This course of action is open to the Council even though there may also be reasons why the DA could be approved on its merits.

4 Can the Council choose to apply a variation to the buffer standards outside the scope of the variation clause contained in the Lismore DCP?

- 4.1 A development control plan does not constitute an environmental planning instrument (see section 4 of the EP&A Act). As was noted by Spigelman CJ in *Zhang*:

...the requirement in section 80 of the EP&A Act that a consent authority “must refuse” an application that would “result in a contravention of” an environmental planning instrument does not apply to a development control plan.

- 4.2 Accordingly, a non compliance with a development control plan is not determinative. This means that while the Lismore DCP is a relevant consideration for the purposes of section 79C of the EP&A Act, a non-compliance with its requirements does not prevent the DA from being assessed and indeed approved.
- 4.3 In addition, while the terms of the variation clause contained in the Lismore DCP may not apply in the present circumstances, it is generally accepted that the requirements of a development control plan can be departed from where there are compelling economic, environmental or social grounds and the overarching objectives and principles of the plan can be achieved. From our instructions we note that a departure from the buffer requirements in the present circumstances would be acceptable given there are no significant adverse impacts on the amenity of the dwellings caused by noise, dust or vibration.
- 4.4 In the circumstances it is open to the Council to apply a variation to the buffer standards outside of the scope of the variation clause contained in the Lismore DCP. We note that if the Council does vary the buffer zones it should do so as a matter of planning merit, not based on the variation clause contained in DCP 27.
- 4.5 If the Council relied on the variation clause in DCP 27 it could be alleged that it had taken into account an irrelevant consideration.

5 If the above question is answered in the affirmative, does the Council expose itself to having the consent quashed by judicial review?

- 5.1 Should the Council decide to approve the DA on the basis that the buffer requirement can be varied, there is the potential for a third party to challenge Council's decision in the Land and Environment Court pursuant to section 123 of the EP&A Act. Section 123(1) of the EP&A Act enables "any person" to bring proceedings to remedy or restrain a breach of the Act.
- 5.2 Judicial review proceedings commenced pursuant to section 123 of the EP&A Act are not concerned with the merits of a Council's decision (as is the case with a Class 1 Appeal), but rather whether there has been a procedural error in the making of that decision. Any proceedings challenging the validity of the development consent must generally be commenced within 3 months from the date on which public notice of the granting of the consent is given (section 101 of the EP&A Act).
- 5.3 By way of general overview, a decision to grant development consent may be the subject of judicial review proceedings where:
- (a) the Council has failed to take into account a relevant consideration;
 - (b) the Council has taken into account an irrelevant consideration;
 - (c) the Council's decision is so unreasonable that no reasonable body properly understanding its duties could have reached such a decision (*Parramatta City Council v Hale* (1983) 47 LGRA 319; *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1 KB 223); and
 - (d) the Council's decision is made in bad faith or constitutes an abuse of process.
- 5.4 In the present circumstances, a third party might argue that the Council took into account an irrelevant consideration (in relaxing the Lismore DCP requirements by reference to the principles contained in DCP 27's variation clause), or failed to take into account a relevant consideration (namely the variation clause/buffer requirements contained in the Lismore DCP).
- 5.5 However, the Courts are extremely reluctant to interfere with a decision on grounds that there has been a failure to take into account a relevant consideration. As Mason P (as he then was) cautioned in *Minister for Aboriginal Affairs v Peko-Wallsend Ltd* (1986) 162 CLR 24:
- ...a court should proceed with caution when reviewing an administrative decision on the ground that it does not give proper weight to relevant factors, lest it exceed its supervisory role by reviewing the decision on its merits.



- 5.6 An applicant seeking a declaration that a consent authority's decision to grant development consent is so unreasonable that no reasonable body could have reached such a decision also carries a heavy burden of proof [see *George v Lismore CC* (1983) 52 LGRA 178]. The Land and Environment Court has stated that it will decline to vitiate a decision, even if it disagrees with it, if it is satisfied that the decision was one which was reasonably open to the decision-maker (*Bentham v Kiama MC* (1986) 59 LGRA 94 ("*Bentham*")).
- 5.7 As Stein J stated in *Bentham* (at 99):
- ... is the decision 'looked at objectively, so devoid of any plausible justification that no reasonable body of persons could have reached' Lord Diplock in *Bromley London Borough v Greater London Council* (1983) 1 AC 768 at 821.
- 5.8 Should the DA be approved, it is our view that any challenge to the validity of the consent, based on the Council's failure to take into account a relevant consideration or taking into account of an irrelevant consideration, would be unlikely to succeed. The approval of the DA on grounds that the departure from the Lismore DCP's requirements does not give rise to significant adverse impacts on the amenity of the dwellings would not, in our view, be unreasonable in the *Wednesbury* sense – that is, so unreasonable that no reasonable body could have reached it. Moreover, even though a relevant consideration, a development control plan is not determinative and a DA can still be approved where there is a departure from a DCP's requirements.
- 5.9 Having regard to narrow circumstances in which a judicial review challenge can succeed, we think it is more likely that any objector in this case would pursue a Class 1 Appeal against an approval of the DA [this avenue being open to an objector (who made a written submission) as the DA involves designated development].

6 Summary

6.1 We summarise our advice as follows:

- (a) The Lismore DCP is to be treated as a "focal point" of the Council's determination of the DA. In those circumstances, it is open to the Council to refuse the DA on grounds that it does not comply with the buffer requirements contained in the Lismore DCP (in circumstances where that requirement cannot be varied by the DCP's variation clause). This course of action is open to the Council even though there may also be reasons why the DA could be approved on its' merits.
- (b) In the circumstances it is open to the Council to apply a variation to the buffer standards outside of the scope of the variation clause contained in the Lismore DCP. We note that if the Council does



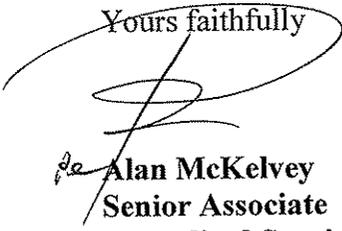
vary the buffer zones it should do so on planning merit, not based on the variation clause contained in DCP 27. If the Council relied on the variation clause in DCP 27 it could be alleged that it had taken into account an irrelevant consideration.

- (c) Should the DA be approved, it is our view that any challenge to the validity of the consent, based on the Council's failure to take into account a relevant consideration or taking into account of an irrelevant consideration, would be unlikely to succeed.
- (d) Having regard to narrow circumstances in which a judicial review challenge can succeed, we think it is more likely that any objector in this case would pursue a Class 1 Appeal against an approval of the DA (this avenue being open to an objector as the DA involves designated development).

6.2 This summary should be read together with the detailed reasoning and analysis provided in the above sections.

If you have any questions regarding the contents of this advice, please do not hesitate to contact us.

Yours faithfully



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Attachment 9: Assessment, as required by the Environmental Planning and Assessment Act 1979.

1. Any Environmental Planning Instruments

1.1 State Environmental Planning Policies (SEPPS)

STATE ENVIRONMENTAL PLANNING POLICIES	ASSESSMENT
State Environmental Planning Policy No 11— Traffic Generating Developments	Repealed 31 December 2007
State Environmental Planning Policy No 14— Coastal Wetlands	SEPP 14 applies only to the land outlined by the outer edge of the heavy black line on the map. The area identified in this application is not registered on the SEPP 14 map. Therefore this SEPP does not apply.
State Environmental Planning Policy No 33— Hazardous and Offensive Development	<p>The proposed expansion will not result in any need to store explosives and/or detonators on the lands as no blasting is required. A 12,000L permanent bunded fuel facility is proposed to be provided at the central section of the proposed quarry. Oil and lubricants in 25L and 200L drums will be stored in a bunded hydrocarbon storage facility.</p> <p>As a result the proposal is not considered under any of the following and therefore, this SEPP does not apply to this application:</p> <ul style="list-style-type: none"> ▪ Under SEPP 33 the proposed development is not a potentially hazardous industry. ▪ Under SEPP 33 the proposed development is not a potentially offensive industry. ▪ Under SEPP 33 the proposed development is will not be a hazardous storage establishment
SEPP 44 Koala Habitat Protection	<p>Koala Habitat Protection – SEPP 44</p> <ul style="list-style-type: none"> ▪ An inspection in August 2008 of all mapped vegetated areas within the proposed site did not identify any koala faecal scats beneath, or ‘poc’ markings on the trunks of, potential koala feed trees. No koalas were sighted. ▪ The proposed site is therefore not considered ‘core’ koala habitat under SEPP 44. ▪ All sclerophyll areas of the proposed site are dominated by <i>Corymbia intermedia</i> (Pink Bloodwood) – whilst being a potential koala food tree Pink Bloodwood it is not listed under Schedule 2 of SEPP 44 as an indicator of ‘potential koala habitat’. Whilst 1 or 2 individual <i>Eucalyptus microcorys</i> (Tallowwood) were located in open areas - in no areas did they comprise over 15% of the canopy designating ‘potential koala habitat’. ▪ The proposed site is therefore not considered ‘potential’ koala habitat under SEPP 44. <p>As the site is not considered ‘core’ or ‘potential’ koala habitat the requirement for an individual koala plan of management cannot be imposed.</p> <ul style="list-style-type: none"> ▪ Whilst the site does not constitute ‘core’ or ‘potential’ habitat under SEPP 44 it is probable that koalas may occasionally traverse, or enter into, the proposed site. To acknowledge and facilitate this movement it is recommended that any restoration or buffer plantings to the north of the site use suitable koala feed trees and be of an appropriate width to maintain their biological integrity (recommended as 20m by Department of Environment and Climate Change’s (DECC) (letter dated 14/11/2008). Koala food trees should not be used in cases where they may draw koalas towards potential threats (e.g. machinery movements). ▪ In conclusion conditions of consent will be drafted outlining the above.

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

CLAUSE	ASSESSMENT
<p>4 Land to which Policy applies This Policy applies to the State.</p>	<p>This policy applies to this application.</p>
<p>7 Development permissible with consent (3) Extractive industry Development for any of the following purposes may be carried out with development consent: (a) extractive industry on land on which development for the purposes of agriculture or industry may be carried out (with or without development consent), (b) extractive industry in any part of a waterway, an estuary in the coastal zone or coastal waters of the State that is not in an environmental conservation zone.</p>	<p>a) Development consent is required for extractive industry under this SEPP b) This subclause does not apply to this application.</p>
<p>8 Determination of permissibility under local environmental plans (1) If a local environmental plan provides that development for the purposes of mining, petroleum production or extractive industry may be carried out on land with development consent if provisions of the plan are satisfied: (a) development for that purpose may be carried out on that land with development consent without those provisions having to be satisfied, and (b) those provisions have no effect in determining whether or not development for that purpose may be carried out on that land or on the determination of a development application for consent to carry out development for that purpose on that land. (2) Without limiting subclause (1), if a local environmental plan provides that development for the purposes of mining, petroleum production or extractive industry may be carried out on land with development consent if the consent authority is satisfied as to certain matters specified in the plan, development for that purpose may be carried out on that land with development consent without the consent authority having to be satisfied as to those specified matters.</p>	<p>The proposed development complies with the provisions of the LEP (refer below for detailed review of provisions of the LEP).</p>
<p>12 Compatibility of proposed mine, petroleum production or extractive industry with other land uses Before determining an application for consent for development for the purposes of mining, petroleum production or extractive industry, the consent authority must: (a) consider: (i) the existing uses and approved uses of land in the vicinity of the</p>	<p>A) i) The land surrounding properties are zoned 1(a) General Rural and 1(r) Riverland and approved uses range from small rural allotments with approved dwellings to sugar cane and grazing land. ii) The proposed development may have varying impacts on the adjoining land uses. ▪ Noise The impact of noise on the agricultural use such as grazing and sugar cane is likely to be minimal. DECC have issued their GTA indicating that the noise</p>

<p>development, and</p> <p>(ii) whether or not the development is likely to have a significant impact on the uses that, in the opinion of the consent authority having regard to land use trends, are likely to be the preferred uses of land in the vicinity of the development, and</p> <p>(iii) any ways in which the development may be incompatible with any of those existing, approved or likely preferred uses, and</p> <p>(b) evaluate and compare the respective public benefits of the development and the land uses referred to in paragraph (a) (i) and (ii), and</p> <p>(c) evaluate any measures proposed by the applicant to avoid or minimise any incompatibility, as referred to in paragraph (a) (iii).</p>	<p>impacts on the adjoining dwelling may be mitigated. The measures which are to be used have not been determined to date. As a result of this a condition of consent has been drafted to defer commencement of the consent until the issues raised in DECC GTA have been addressed.</p> <p>• Water Management</p> <p>In the view of Council's Environmental Health Officers, DECC's and DWE comments provided on this application it has been considered that the impact of the proposal on water management in the area on both the agricultural uses and small allotments is not likely to be significant.</p> <p>Proposed conditions of consent imposed by DECC and Council should ensure compliancy with current legislation and regulations.</p> <p>▪ Air Quality</p> <p>In review of Council's Environmental Health Officers, DECC's and DWE comments provided on this application it has been considered that the impact of dust on both the agricultural uses and small allotments is not likely to be significant. This is due to the proposed conditions of consent, sealing of the internal access tracks and the wetting down of exposed surfaces the existing legislation and regulations that the Department of Environment and Climate Change and Council regulate.</p> <p>▪ Visual</p> <p>The proposal will increase the bulk and scale of the existing quarry and this will have an impact on the landscape and visual amenity of the locality. It should be noted that the cells will be operating concurrently and that only part of a cell will be active at any one time. This, when coupled with the progressive rehabilitation of the cells, will limit the visual impact of the quarry. However the quarry will have an impact and Council will have to determine if this impact is acceptable.</p> <p>The assessment of the visual impact of the development was conducted in accordance with the 'Principles of View Sharing' as set out in the Land and Environment Court Planning Principles and based on the methodology for the assessment of visual impacts as accepted by the Court in <i>Taralga Landscape Guardians Inc v Minister for Planning and RES Southern Cross Pty Ltd</i> [2007] NSWLEC 59. This matter involved the erection of wind turbines in a rural environment which would result in a significantly changed visual environment and as such direct parallels can be drawn between that application and the impacts from this DA.</p> <p><i>Tenacity Consulting v Waringah</i> [2004] NSWLEC 140 provides the principles of view sharing and these are set out as follows:</p> <p>1) <i>The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (eg of the Opera House, the Harbour Bridge, North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, eg a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.</i></p> <p>2) <i>The second step is to consider from what part of the</i></p>
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property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.

3) The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.

4) The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.

Attachment 3 shows the location of receivers (dwellings that will be impacted upon visually by the quarry). There is a threshold question to be answered when considering visual impact. Fundamentally should any alteration of the landscape be allowed? If the answer to this question is yes then to what extent should the landscape be allowed to be altered? The four principles of view sharing can be used to answer the second question. To answer the first question consideration needs to be given to following matters:

- the permissible uses within the zone;
- specific clauses in the Lismore City Local Environmental Plan 2000 relating to visual impact;
- the quality of the landscape to be altered.

It is not a reasonable position to determine that no visual change should be allowed to occur in the rural environment. This is based on the fact that various forms of development (quarries, glasshouses, rural industries etc) are permissible in this locality and all of these would alter the view of the landscape from the receivers. Based on the permissible uses within the zone alteration of the landscape is acceptable.

Clause 41 of the LEP relates to assessment of visual impact of development on ridgetops. The clause is set out as follows:

41 Development on ridgetops in rural areas

- (1) *This clause applies to land within Zone No 1 (a), 1 (b), 1 (c), 1 (d) or 1 (r).*
- (2) *Consent may be granted to the carrying out of development on land to which this plan applies on or near any ridgeline visible from any public road only if, in the opinion of the consent authority, the development is not likely to detract from the visual amenity of the rural area and is in the community interest.*
- 3) *In determining whether to grant such a consent, the consent authority shall consider the following:*
- (a) the height and location of any building that will result from carrying out the development,*
 - (b) the reflectivity of materials to be used in carrying out the development,*
 - (c) the likely effect of carrying out the development on the stability of the land,*
 - (d) the bush fire hazard,*
 - (e) whether landscaping proposals satisfactory to the consent authority have been made.*
 - (f) (Repealed)*

This clause applies to this DA as it is visible from a public road. The views of the site are broken by roadside vegetation. Council should also consider the broader public interest (as set out in subclause 2) of the visual impact. The quarry cannot be viewed by a large section of the community and only limited interrupted views can be seen from a moving vehicle along Wyrallah Road. These would best be described as fleeting. In relation to subclause (3) there are no buildings associated with the quarry that will affect the visual impacts of the quarry. Accordingly item (a) is not relevant. Item (b) is specifically targeting the materials to be used in a building and it is acknowledged that no reflective material will be bought onto the site to complete the development. However because of the nature of the sandstone to be extracted the face of the quarry will be white and this will be a stark contrast to the green pasture. This contrast creates the biggest visual impact and will be partly visible from the road and from receiver 1. Because the view of the quarry from the road will be limited due to vehicle speed and roadside vegetation Council can be satisfied that the development complies with this clause. Further discussion of this impact on receiver 1 is conducted below. Item (c) is relevant as the quarry will be altering the stability of the land. Suitable remediation measures are proposed to ensure the long term stability of the land once the site is rehabilitated. Item (d) is not relevant to this development. The applicant has proposed significant landscaping to minimise the visual impacts of the proposal and item (e) has been satisfied.

The alteration of the landscape will be permanent due to the removal of the knoll and ridge. This area will be rehabilitated over time and will be returned to pasture in the longer term. The views of the knoll from the road are limited and will not impact upon a significant section of the

community. On this basis Council could form the opinion that the development will not detract from the visual amenity of the rural area when viewed from Wyrallah Road. On this basis it is considered that the development satisfies the clauses relating to visual impact contained within the LEP.

Any assessment of the quality of the landscape to be altered will be highly subjective. There can be no question that the landscape has scenic value to the residents who enjoy the views through (and of) the developers property. The landscape is typically rural in nature with pasture being the predominant characteristic of the landscape. The most visually dominant feature of the landscape is the ridge and knoll that will be removed in the southern cell and the gentle slope of pasture in northern cell. Various rating schemes have been considered by the Court but have been held to provide little assistance in determining the value of a landscape. It cannot be denied that the landscape holds intrinsic value for those that enjoy a view of it from their dwellings. However this is not sufficient reason to determine that there should be no alteration to the landscape. The landscape is not viewed by a significant amount of the community nor is it unique. On this basis it is contended that development that alters the landscape should be acceptable.

If Council accepts the premise that alteration of the landscape is acceptable due to:

1. the fact that many uses that are permissible with (quarries and rural industries) and without consent (horticulture) can be conducted in the locality; and
2. that the proposal is allowable having considered the specific controls on visual impact on ridgelines; and
3. that whilst the landscape has value for those that view it the landscape is not so significant to the greater community so as to warrant specific protection; then

Council can assume that the threshold question of should any alteration to the landscape be allowed has been answered in the affirmative.

Council should now utilise the principle of view sharing to consider if the level of alteration of the landscape is acceptable.

Step 1 - Consider the type of view to be affected at each receiver:

Receiver 1: The views are not considered Iconic (an example of an iconic view in this locality would be Mount Warning or Cape Byron), or whole views. The majority of their view field is to the east with the quarry being located in the south. The view that is impacted on is a partial view (approximately 30 degrees of a 180 degree view). The area of the view that is affected will be significantly altered by the development for the life of the quarry (25 years). There are no mitigation measures that will prevent the residents from seeing the quarry.

Receiver 2: The views are not considered Iconic, or a whole views. The view is a partial view, and will be significantly modified by the development and their view will change. As the proposed mitigation measures will change the view from

grazing lands with rolling hills to grazing and a vegetated bund (densely planted vegetation). Receiver 2 will suffer from view loss due to the mitigation measures.

Receiver 3: The views are not considered iconic, or a whole views. The view is a partial view, however will be significantly modified by the development and their view will change. As the proposed mitigation measures will change the view from grazing lands with rolling hills to grazing and a vegetated bund (densely planted vegetation). Receiver 3 will suffer from view loss due to the mitigation measures.

Step 2 - Consider from what part of the receiver property the views are obtained

Receiver 1: The views that are most likely to be impacted on would be obtained from the lawn area oriented to the south of the dwelling. The outdoor entertaining area will also have it's view impacted upon from both sitting and standing positions. However the view will also be unaffected to the east and southeast.

Receiver 2: The views that are most likely to be impacted on would be obtained from the side of the dwelling (facilities on the southern side of the house unknown). The view of the pasture lands and knoll will be obscured by the creation of the vegetated bund.

Receiver 3: The views that are most likely to be impacted would be obtained from the outdoor entertaining area, kitchen and living spaces from both sitting and standing positions.

Step 3 - Consider the extent of the impact.

Receiver 1: Considering the views of the whole property, not just the affected areas, the impact is likely to be minor. This receiver will retain unaltered views to the east and north from the entertaining and pool area. Landscaping will not reduce the visual impact of the quarry to the south. The view whilst altered will be retained in the long term. The progressive rehabilitation of each cell somewhat mitigates against the altered form of the view. Considering that only part of their view to the south is altered and that this altered view will consist of the central cell and up to 3ha at any one time of the southern or northern cells the altered view will not have a significant detrimental impact on the amenity of this residence.

Receiver 2: Considering the views of the whole property, not just the affected areas, the impact is likely to be minor. The loss of the view due to the vegetation screen plantings will not significantly impact on the use of enjoyment of the outdoor areas. The vegetative buffers will be located an acceptable distance from these areas. There will be no overshadowing or other significant alteration of the amenity of this property resulting from the planting of these buffers.

Receiver 3: When evaluating the views from the whole property, not just the affected areas, the impact is likely to be minor given that the vegetated buffer will soften or block the visual impacts of quarry. The main area of impact on this receiver will come from the southern cell. Because this

	<p>cell will be worked from west to east the visual impact will only occur for a limited time of one to two years whilst the final part of the knoll is removed. The vegetated buffer means that these works are unlikely to be seen in any case. A condition of consent could be imposed requiring this final stage of the southern cell to be removed within a specific time frame and this material stockpiled in the central cell. By limiting the time of exposure, coupled with the mitigation plantings and progressive rehabilitation of the southern cell as the working face moves west to east the visual impact is considered to be minimal on this receiver.</p> <p>Step 4 - Consider the reasonableness of the application having regard to compliance with Council's planning controls</p> <p>The proposed development does not comply with Council's Development Control Plan Part A Chapter 11 Buffers. Receiver 1 is located within the secondary buffer. This buffer was not established for visual impact, rather the buffers have been established to mitigate against noise and air quality issues that may arise from such an activity, therefore it is reasonable that this variation does not apply to the assessment of visual impact. The development is permissible with consent and is a commonly accepted use within rural areas. The development complies with clause 41 of the LEP. For these reasons it is considered that the proposal is reasonable.</p> <p>Conclusion on Visual Impact:</p> <p>Having accepted that the alteration of the landscape and acceptable and that the proposal complies with the relevant planning controls it is open to Council to conclude that the visual impacts are acceptable. This is not to say that the impacts on receiver 1 won't result in a reduction of their visual amenity nor can it be said that the screening plantings won't change the outlook from receivers 2 and 3 but these impacts are not so great so as to warrant refusal of the application.</p>
<p>13 Compatibility of proposed development with mining, petroleum production or extractive industry</p> <p>(1) This clause applies to an application for consent for development on land that is, immediately before the application is determined:</p> <p>(a) in the vicinity of an existing mine, petroleum production facility or extractive industry, or</p> <p>(b) identified on a map (being a map that is approved and signed by the Minister and copies of which are deposited in the head office of the Department and publicly available on the Department's website) as being the location of State or regionally significant resources of minerals, petroleum or extractive materials, or</p> <p>Note. At the commencement of this Policy, no land was identified as referred to in paragraph (b).</p>	<p>This clause does not apply as there are no extractive industries in the vicinity of the proposed development.</p>

<p>(c) identified by an environmental planning instrument as being the location of significant resources of minerals, petroleum or extractive materials. Note. <u>Sydney Regional Environmental Plan No 9—Extractive Industry (No 2—1995)</u> is an example of an environmental planning instrument that identifies land as containing significant deposits of extractive materials.</p> <p>(2) Before determining an application to which this clause applies, the consent authority must:</p> <p>(a) consider:</p> <p>(i) the existing uses and approved uses of land in the vicinity of the development, and</p> <p>(ii) whether or not the development is likely to have a significant impact on current or future extraction or recovery of minerals, petroleum or extractive materials (including by limiting access to, or impeding assessment of, those resources), and</p> <p>(iii) any ways in which the development may be incompatible with any of those existing or approved uses or that current or future extraction or recovery, and</p> <p>(b) evaluate and compare the respective public benefits of the development and the uses, extraction and recovery referred to in paragraph (a) (i) and (ii), and</p> <p>(c) evaluate any measures proposed by the applicant to avoid or minimise any incompatibility, as referred to in paragraph (a) (iii).</p>	
<p>14 Natural resource management and environmental management</p> <p>(1) Before granting consent for development for the purposes of mining, petroleum production or extractive industry, the consent authority must consider whether or not the consent should be issued subject to conditions aimed at ensuring that the development is undertaken in an environmentally responsible manner, including conditions to ensure the following:</p> <p>(a) that impacts on significant water resources, including surface and groundwater resources, are avoided, or are minimised to the greatest extent practicable,</p> <p>(b) that impacts on threatened species and biodiversity, are avoided, or are minimised to the greatest extent practicable,</p> <p>(c) that greenhouse gas emissions are minimised to the greatest extent practicable.</p> <p>(2) Without limiting subclause (1), in</p>	<p>1a) Council, DECC and DWE have proposed conditions of consent to ensure the proposed expansion of the extractive industry complies with current environmental standards, current legislation, regulations and guidelines.</p> <p>The DWE and DECC are recognised by Council as the assessing experts in relation to soil and water management and Council will therefore rely on their commentary in the overall assessment of the Soil and Water Management plan.</p> <p>The Soil and Water Management Plan prepared by ERM states that the extent of erosion over the site is not expected to increase as a result of the quarry expansions. The soils were considered to have limited capacity to support long-term agriculture and the continuation of the quarrying activities would not significantly degrade this resource any further. The site will be returned to agricultural use following rehabilitation.</p> <p>ERM conclude that given the location of the site within the upper reaches of the catchment and the size of the area to be disturbed it is unlikely that the quarry will cause significant changes to environmental flows in the tributaries or Tucki Tucki Creek.</p>

<p>determining a development application for development for the purposes of mining, petroleum production or extractive industry, the consent authority must consider an assessment of the greenhouse gas emissions (including downstream emissions) of the development, and must do so having regard to any applicable State or national policies, programs or guidelines concerning greenhouse gas emissions.</p>	<p>DWE have stated to the applicant in correspondence that if groundwater is utilised or intercepted a licence is required which will be conditional on the development of a groundwater management plan.</p> <p>Appropriate site management is expected to reasonably minimise impacts on water quality and on the quality of run off. Existing water quality conditions must be established prior to commencement of the expansion operations and clear performance objectives shall be stated. As a result of a Stop the Clock request the applicant has submitted further information which addresses this.</p> <p>DECC through their GTA have required a number of conditions relating to soil and water management including submission of a Final Soil and Water Management Plan with the required application for an environment protection licence.</p> <p>1b) Koala Habitat Protection – SEPP 44 An inspection in August 2008 of all mapped vegetated areas within the proposed site did not identify any koala faecal scats beneath, or ‘poc’ markings on the trunks of, potential koala feed trees. No koalas were sighted.</p> <p>The proposed site is therefore not considered ‘core’ koala habitat under SEPP 44.</p> <p>All sclerophyll areas of the proposed site are dominated by <i>Corymbia intermedia</i> (Pink Bloodwood) – whilst being a potential koala food tree Pink Bloodwood is not listed under Schedule 2 of SEPP 44 as an indicator of ‘potential koala habitat’. Whilst 1 or 2 individual <i>Eucalyptus microcorys</i> (Tallowwood) were located in open areas - in no areas did they comprise over 15% of the canopy designating ‘potential koala habitat’.</p> <p>The proposed site is therefore not considered ‘potential’ koala habitat under SEPP 44.</p> <p>As the site is not considered ‘core’ or ‘potential’ koala habitat the requirement for an individual koala plan of management cannot be imposed.</p> <p>Whilst the site does not constitute ‘core’ or ‘potential’ habitat under SEPP 44 it is probable that koalas may occasionally traverse, or enter into, the proposed site. To acknowledge and facilitate this movement it is recommended that any restoration or buffer plantings to the north of the site use suitable koala feed trees and be of an appropriate width to maintain their biological integrity (recommended as 20m by Department of Environment and Climate Change’s (DECC) (letter dated 14/11/2008). Koala food trees should not be used in cases where they may draw koalas towards potential threats (e.g. machinery movements).</p> <p>Proposed conditions of consent have been drafted to facilitate koala’s movement through the site.</p>
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Threatened Flora and Fauna

Koalas are listed as listed as Vulnerable under the Threatened Species Conservation Act 1995. In August 2008 a desk top assessment of the site using Councils GIS system, which includes records from the NSW Wildlife Atlas, identified no koala sightings within the proposed site. However a letter from DECC received 14 November, 2008 states that 'four threatened species records for the Koala exist within the development site' and that 'these records have only recently been added to DECC's internal spatial data layers and may not yet be recorded on the NSW Wildlife Atlas public website'.

This is consistent with the comments above, and because the site does not constitute 'core' or 'potential' koala habitat according to SEPP 44 definitions it is not considered that the proposed development will not have an adverse impact on koalas.

The proposed dual purpose planting (visual and koala) running east west along the northern boundary of the site may produce a marginal increase in koala movements in an east/ west direction across Wyrallah Rd (refer attachment 4). This is recognised in the DECC letter of 14/11/2008, however, given these movements are currently occurring, and the applicant is not affecting 'core' habitat under SEPP 44, any recommended condition to reduce the risk of vehicles hitting koalas on Wyrallah Road must be applied in a reasonable manner.

It is recommended that a condition of consent be drafted requiring koala crossing signage along Wyrallah Road at appropriate distances from the proposed plantings. It is also recommended that Council write to DECC, as the threatened species experts, requesting information on suitable options to address vehicle strike.

1c) The extraction and haulage of sandstone using conventional methods will generate fossil fuels and that improvements in technology are needed to assist with cleaner extraction of such materials. The proposed expansion to the extractive industry has proposed the following measure to assist in reducing the impact of the proposal on greenhouse emissions:

- proposing the extraction of the sandstone in a manner that does not rely or depend on electricity
- not causing adverse air pollution by sealing the internal access road, having a water truck on the operational cell to minimise dust particles
- Not proposing use of groundwater resources.
- Re-using and recycling water for sand washing and reducing the need to pump water by using gravity.
- The protection of to remnant patches of vegetation(hoop pine forest and subtropical rainforest)
- The provisions of plantings at a 4:1 ratio no including the proposed shrubs and understorey
- Management of lands in accordance with the *Native Vegetation Act, 2003*.
- Approximately 15% of the applicants surrounding farmland which remains native forests that are managed voluntarily.

	<ul style="list-style-type: none"> ▪ The resource is in demand in the region with limited supply available therefore reducing the need for the sandstone to sourced outside of the region and reducing the truck haulage. <p>2) In consideration of the above proposal and discussions with the DoP regarding this clause, the following conclusion were made:</p> <ul style="list-style-type: none"> ▪ There are no current policies or guidelines outlining targets, goals, and/or methods to reduce emission of greenhouse emission for extractive industry to date. ▪ The proposed measures are achievable to with current technology. <p>Therefore in considering the proposed measures and the limited information available for a comparative assessment it is considered that the proposed measures should assist the proposed development in reducing greenhouse gas emissions.</p>
<p>15 Resource recovery</p> <p>(1) Before granting consent for development for the purposes of mining, petroleum production or extractive industry, the consent authority must consider the efficiency or otherwise of the development in terms of resource recovery.</p> <p>(2) Before granting consent for the development, the consent authority must consider whether or not the consent should be issued subject to conditions aimed at optimising the efficiency of resource recovery and the reuse or recycling of material.</p> <p>(3) The consent authority may refuse to grant consent to development if it is not satisfied that the development will be carried out in such a way as to optimise the efficiency of recovery of minerals, petroleum or extractive materials and to minimise the creation of waste in association with the extraction, recovery or processing of minerals, petroleum or extractive materials.</p>	<p>1) In the assessment of the application under this SEPP Council has considered the efficiency proposed in terms of resource recovery. The following are provisions have been determined to be efficient resource recovery methods for the proposed extractive industry given the current level of technology available:</p> <ul style="list-style-type: none"> ▪ The proposed development will provide water demands and needs consistent with the harvestable rights in the <i>Water Management Act 2000</i>. This will be achieved by capturing stormwater runoff in the excavation area and its re-use and recycling for sand washing, dust control and if necessary watering of landscape and habitat tree corridors. ▪ Organic waste will be stored and recycled as mulch on the landscaped areas ▪ Recyclables such as glass and metals will be taken to Lismore Waste Depot. ▪ Hydro-carbon contaminated objects will be taken to Lismore Waste Depot. ▪ General Waste will be taken to Lismore Waste Depot. <p>2) The above are considered reasonable methods to recover resources and conditions of consent will be drafted to ensure the above are undertaken in accordance with current legislation and regulations.</p> <p>3) Due to the limited information available in determining the most efficient and cleanness way to quarry sandstone, the proposed measures are considered reasonable given the technology and knowledge available.</p>
<p>16 Transport</p> <p>(1) Before granting consent for development for the purposes of mining or extractive industry that involves the transport of materials, the consent authority must consider whether or not the consent should be issued subject to conditions that do any one or more of the following:</p> <p>(a) require that some or all of the transport of materials in connection with the development is not to be by public road,</p> <p>(b) limit or preclude truck movements, in connection with the development, that occur on roads in residential areas or on</p>	<p>1a) Due to the location of the quarry, road haulage is the only suitable means of transport.</p> <p>1b) A condition of consent has been drafted to reduce the impacts of haulage vehicles on roads which have been determined by the Development Engineer to be not suitable (local roads) for such vehicles.</p> <p>1c) The Quarry Plan of Management (in the draft conditions of consent) will be subject to Council's Development Engineers review to ensure this addressed.</p> <p>2a & b) The application was referred to the Roads and Traffic Authority, the Local Traffic Committee and the Regional Traffic Committee.</p> <p>3) Refer to the comments from the RTA and Development Engineers comments.</p> <p>4) The consent Authority is Council.</p>

<p>roads near to schools, (c) require the preparation and implementation, in relation to the development, of a code of conduct relating to the transport of materials on public roads. (2) If the consent authority considers that the development involves the transport of materials on a public road, the consent authority must, within 7 days after receiving the development application, provide a copy of the application to: (a) each roads authority for the road, and (b) the Roads and Traffic Authority (if it is not a roads authority for the road). Note. Section 7 of the <u>Roads Act 1993</u> specifies who the roads authority is for different types of roads. Some roads have more than one roads authority. (3) The consent authority: (a) must not determine the application until it has taken into consideration any submissions that it receives in response from any roads authority or the Roads and Traffic Authority within 21 days after they were provided with a copy of the application, and (b) must provide them with a copy of the determination. (4) In circumstances where the consent authority is a roads authority for a public road to which subclause (2) applies, the references in subclauses (2) and (3) to a roads authority for that road do not include the consent authority.</p>	<p>A review of the EIS, the comments provided from the RTA's and Council's Development Engineers has resulted in the conclusion that the proposed development complies with this clause in the SEPP.</p>
<p>17 Rehabilitation (1) Before granting consent for development for the purposes of mining, petroleum production or extractive industry, the consent authority must consider whether or not the consent should be issued subject to conditions aimed at ensuring the rehabilitation of land that will be affected by the development. (2) In particular, the consent authority must consider whether conditions of the consent should: (a) require the preparation of a plan that identifies the proposed end use and landform of the land once rehabilitated, or (b) require waste generated by the development or the rehabilitation to be dealt with appropriately, or (c) require any soil contaminated as a result of the development to be remediated in accordance with relevant guidelines (including guidelines under section 145C of the Act and the <u>Contaminated Land Management Act 1997</u>), or</p>	<p>1) A condition of consent has been drafted to ensure the rehabilitation of the effected land will achieve a mix of both pastoral land and native vegetation to ensure the following are achieved: <ul style="list-style-type: none"> ▪ Regional Significant Farmland restored ▪ Connectivity of remanent vegetation and landscape plantings. 2a) This information has been identified in the EIS. However, the Department of Primary Industries and Council's Natural Resource Management Officer require a more detailed plan be submitted to ensure the issues raised above are achieved in the amended plan. 2b) Addressed in draft conditions of consent 2c) A condition of consent has been drafted to ensure any soil contamination is remediated in the appropriate manner. 2d). Conditions have been drafted to ensure compliance with applicable state legislation, regulations and policies and a final plan of management for the quarry must be submitted to Council.</p>

<p>d) require steps to be taken to ensure that the state of the land, while being rehabilitated and at the completion of the rehabilitation, does not jeopardize public safety.</p>	
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1.2 Regional Environmental Plan (REP)
North Coast Regional Plan

CLAUSE	ASSESSMENT
<p>12 Development control – impact of development on agricultural activities The council shall not consent to an application to carry out development on rural land unless it has first considered the likely impact of the proposed development on the use of adjoining or adjacent agricultural land and whether or not the development will cause a loss of prime crop or pasture land.</p>	<p>In the assessment of the application the surrounding land uses range from small rural allotments with approved dwellings to agriculture (sugar cane and grazing). The impacts of the proposed expansion will vary dependant on the use.</p> <ul style="list-style-type: none"> ▪ Noise The impact of noise on the agricultural use such as grazing and sugar cane is likely to be minimal. ▪ Water Management The DWE and DECC are recognised by Council as the assessing experts in relation to soil and water management and Council will therefore rely on their commentary in the overall assessment of the Soil and Water Management plan. <p>The Soil and Water Management Plan prepared by ERM states that the extent of erosion over the site is not expected to increase as a result of the quarry expansions. The soils were considered to have limited capacity to support long-term agriculture and the continuation of the quarrying activities would not significantly degrade this resource any further. The site will be returned to agricultural use following rehabilitation.</p> <ul style="list-style-type: none"> ▪ Air Quality The report concludes that operations as modelled would meet the NSW DECC air quality impact criteria for pm10 and TSP short and long term averages and dust deposition, and that the proposed expansion is not anticipated to have a significant impact on local air quality. The report inventory, modelling, and results were conducted in an acceptable manner and the conclusion is considered to be reasonable. <p>DECC through their GTA have required a number of conditions relating to dust and odour control which are stated in the detailed section of this report.</p> <ul style="list-style-type: none"> ▪ Traffic The impact of the increased traffic on Wyrallah Road and other local roads is not likely to have a significant impact on the agricultural uses in the surrounding area.
<p>15 Development Control – wetlands or fishery habitat The council shall not consent to an application to carry out development for any purpose within, adjoining or upstream of a river or stream, coastal or inland wetland or fishery habitat area or within</p>	<p>15) The proposed expansion is upstream of a coastal wetland therefore the following has been taken into consideration in the assessment process:</p> <ol style="list-style-type: none"> a) The DECC have drafted conditions which will ensure that the water quality and flows leaving the quarry will be maintained to achieve the standards outlined in the GTA's. b) The above conditions should ensure that there is no

<p>the drainage catchment of a river or stream, coastal or inland wetland or fishery habitat area unless it has considered the following matters:</p> <p>(a) the need to maintain or improve the quality or quantity of flows of water to the wetland or habitat,</p> <p>(b) the need to conserve the existing amateur and commercial fisheries,</p> <p>(c) any loss of habitat which will or is likely to be caused by the carrying out of the development,</p> <p>(d) whether an adequate public foreshore reserve is available and whether there is adequate public access to that reserve,</p> <p>(e) whether the development would result in pollution of the wetland or estuary and any measures to eliminate pollution,</p> <p>(f) the proximity of aquatic reserves dedicated under the Fisheries Management Act 1994 and the effect the development will have on these reserves,</p> <p>(g) whether the watercourse is an area of protected land as defined in section 21AB of the Soil Conservation Act 1938 and any measures to prevent soil erosion, and</p> <p>(h) the need to ensure that native vegetation surrounding the wetland or fishery habitat area is conserved, and</p> <p>(i) the recommendations of any environmental audit or water quality study prepared by the Department of Water Resources or the Environment Protection Authority and relating to the river, stream, wetland, area or catchment.</p>	<p>impact on commercial fisheries as a result of the proposed development.</p> <p>c) The water quality and flow conditions should ensure that the proposal will not reduce habitat within the wetland.</p> <p>d) Given the nature of the proposal there is no requirement that such infrastructure be provided by the applicant for Tuckean Swamp.</p> <p>e) Refer to a)</p> <p>f) The proposal is not located within an area that may have an impact on an aquatic reserve.</p> <p>g) This subclause is not applicable to this application.</p> <p>h) Given that the proposal is not adjoining the Wetland, this subclause does not apply to this application.</p> <p>i) No studies have been identified which require consideration.</p>
<p>18 Development control – extractive industry</p> <p>1) The council shall not consent to a development application for an extractive industry unless it includes any necessary conditions of consent to require implementation both during and after extractive operations of an erosion and sediment control plan and rehabilitation plan.</p>	<p>1) Conditions of consent have been drafted to ensure that erosion and sediment control plan and rehabilitation plan will be prepared prior to the commencement of the operation.</p>

1.3 Model Provisions

CLAUSE	ASSESSMENT
<p>5. Consideration of certain applications (4) The consent authority shall, in respect of an application under the Act for its consent or approval to development for the purpose of an extractive industry or mine, take into consideration the advisability of imposing conditions to secure the reinstatement of the land, to facilitate the removal of waste material or refuse, to secure public safety in the neighbourhood and to protect the amenity of the neighbourhood.</p>	<p>In the assessment of the application Council has taken into consideration and has drafted conditions to ensure waste removal is conducted in a suitable manner, and that the requirements of the Department of Primary Industries (who regulate quarry safety) have been noted.</p> <p>The proposed landscaping and final rehabilitation of the quarry should result in a functioning grazing property with improved native vegetation.</p>

1.4 State Government Act, Policies and Guidelines

Native Vegetation Act, 2003	<p>The Catchment Management Authority is the Regulatory Authority for vegetation removal in this zone, not Council.</p> <p>Council has considered the proposed vegetation removal and proposed replanting (landscape plantings) and determined that the removal of trees should be done in accordance with this Act. The removal of the trees is supported for the following reasons:</p> <ul style="list-style-type: none"> ▪ Range of species ▪ The location of the plantings ▪ Increased habitat ▪ The improved biodiversity of the site ▪ The connectivity of existing remnants. <p>A condition of consent has been drafted to ensure compliance with the Native Vegetation Act.</p>
Threatened Species Conservation Act, 1995	<p>Threatened Flora and Fauna Koalas are listed as listed as Vulnerable under the Threatened Species Conservation Act 1995. In August 2008 a desk top assessment of the site using Councils GIS system, which includes records from the NSW Wildlife Atlas, identified no koala sightings within the proposed site. However a letter from DECC received November 14, 2008 states that 'four threatened species records for the Koala exist within the development site' and that 'these records have only recently been added to DECC's internal spatial data layers and may not yet be recorded on the NSW Wildlife Atlas public website'.</p> <p>This is consistent with the comments above, and because the site does not constitute 'core' or 'potential' koala habitat according to SEPP 44 definitions it is not considered that the proposed development will not have an adverse impact on koalas.</p> <p>With the proposed dual purpose planting (visual and koala) running east west along the northern boundary of the site, it may produce a marginal increase in koala movements in an east/ west direction across Wyrallah Road (refer attachment 4). This is recognised in the DECC letter of November 14, 2008, however, given these movements are currently occurring, and the applicant is not affecting 'core' habitat under SEPP 44, any recommended condition to reduce the risk of vehicles hitting koalas on Wyrallah Road must be applied in a reasonable manner.</p> <p>It is recommended that a condition of consent be drafted requiring</p>

	koala crossing signage along Wyrallah Road at appropriate distances from the proposed plantings. It is also recommended that Council write to DECC, as the threatened species experts, requesting information on suitable options to address vehicle strike.
Water Management Act, 2000	The assessment is undertaken by Department of Water and Energy, please refer to their comments.
Protection of the Environmental Operations Act, 1997.	The assessment is undertaken by Department of Environment and Climate Change please refer to their comments.
Planning for Bush Fire Protection Guidelines, 2006	Please refer to comments provided by the NSW Rural Fire Services.
Local/Regional Traffic Committee Referral	Please refer to comments provided by the Regional and Local traffic committee's

1.5 Lismore Local Environmental Plan (LEP)

LISMORE LOCAL ENVIRONMENTAL PLAN 2000	ASSESSMENT
<p>30.1 Objectives of zone 1(a) The objectives are: (a) to maintain and encourage sustainable agricultural activities within the zone, and (b) to enable a range of other uses to occur on rural land providing such uses do not conflict with existing or potential agriculture and do not detract from the scenic amenity and character of the rural environment, and (c) to discourage the fragmentation of rural land, and (d) to restrict the establishment of inappropriate traffic generating uses along main road frontages, and (e) to enable the provision of rural tourist accommodation and facilities only where such facilities are compatible with the form and density of the nature of the locality.</p>	<p>a) The proposal will result in area of grazing land being used as quarry, however prior to commencing works in subsequent cells rehabilitation must have commenced in the southern cell. A condition of consent has been drafted to ensure the land is suitably rehabilitated for both wildlife and grazing land. b) The proposed quarry is a land use that is permissible with consent within the zone. The Department of Primary Industries did not indicate that the proposal would result in significant impacts on the adjoining agricultural land. The proposed landscape plantings should significantly reduce the visual impact on all receivers with the exception of receiver 1 (1566 Wyrallah Road, Tucki Tucki). c) The proposed subdivision will ensure that the surrounding properties which are currently under the same ownership are not fragmented by the quarry. d) The quarry will increase traffic on Wyrallah Road. However, it has been determined that the proposed upgrades to the intersection will achieve the required Standards (for more detailed information refer to the Development Engineers comments). e) Not Applicable to this application</p>
<p>35.1 Objectives of zone 1(r) The objectives are: (a) to encourage the use of the land for its optimum productive potential, and (b) to permit a range of activities that support the agricultural industries being conducted on the land and limit development that may, in the opinion of the Council, reduce the agricultural production potential of the land, and (c) to discourage the fragmentation of rural land, and (d) to control development that may restrict the function of, or create a traffic hazard along, classified and other formed roads, and (e) to limit the development of non-agricultural uses, except those which will not be adversely affected by flooding.</p>	<p>a) The proposal will be utilising a resource that is available. b) The Department of Primary Industries did not indicate that the proposal would result in significant impacts on the adjoining agricultural land. c) The proposed subdivision will ensure the surrounding properties which are currently under the same ownership are not fragmented by the quarry. d) The quarry will increase traffic on Wyrallah Road. However it has been determined that the proposed upgrades to the intersection will achieve the Australian Standards. e) The proposed expansion is unlikely to have a significant impact on flooding. Given the location within the catchment and the proposed water harvesting and storage facilities it is unlikely that the proposed quarry will enhance or impact on the</p>

LISMORE LOCAL ENVIRONMENTAL PLAN 2000	ASSESSMENT
	current flood regime of the area.
<p>Clause 29 (3) The consent authority must not grant consent to the carrying out of development in a particular zone unless the consent authority is of the opinion that the proposed development is consistent with the objectives of the zone in which it is to be carried out.</p>	Refer above for comments on objectives for both 1(a) and 1(r) zones.
<p>30.4 Only with development consent—advertised development</p>	The application has been advertised in accordance with the Regulations and the Development Control Plan Part A, Chapter 10.
<p>35.4 Only with development consent—advertised development</p>	The application has been advertised in accordance with the Regulations and the Development Control Plan Part A, Chapter 10.
<p>28A Acid Sulfate Soils Clause (6) Considerations for consent authority Council must not grant consent, pursuant to this clause, unless it has first considered: (a) the adequacy of an acid sulfate soils management plan prepared for the proposed development in accordance with the <i>Acid Sulfate Soils Assessment Guidelines</i>, and (b) the likelihood of the proposed development resulting in the discharge of acid water, and (c) any comments received from the Department of Land and Water Conservation within 21 days of the Council having sent that Department a copy of the development application and of the related acid sulfate soils management plan.</p>	An addendum to the ERM Soil and Water Management Report was submitted on 4 September 2008 in relation to Potentially Acid Sulphate Soils (PASS). The work cell sites are classified Class 5 on Councils records. Utilising information including DLWC Risk mapping, and results of geological drilling previously undertaken, the addendum report concludes that PASS is not expected to be impacted as a result of the development. As a precautionary measure targeted assessment of the Dam 2 site will be conducted. ERM recommend that the proposed development will not require a site specific PASS Management Plan.
<p>10 Advertised development The consent authority must not consent to advertised development unless the consent authority has had regard to the matters relating to environmental impact specified in Schedule 5.</p>	Refer below for assessment of Schedule 5.

LISMORE LOCAL ENVIRONMENTAL PLAN 2000	ASSESSMENT
<p>Schedule 5 Matters relating to environmental impact</p> <p>1 The objectives of the proposed development and how it relates to the objectives of this plan and the relevant zone.</p> <p>2 The existing environment, including existing land use, slope, aspect, geology, soils, flood liability, vegetation, fauna and hydrology likely to be affected by the proposed development, if carried out.</p> <p>3 The interaction between the proposed development and the natural and human made environment (for example, habitat, vegetation, open space, recreational system, drainage system, and road, bicycle and pedestrian movement systems).</p> <p>4 The likely impact of the proposed development on the surrounding natural and human made environment, such as loss of agricultural land, impact on water resources and any land use conflicts and the means proposed to reduce any adverse impact (for example visual controls, stormwater controls, erosion controls, traffic controls and provision of community facilities).</p> <p>5 Measures to be taken in conjunction with the proposed development to protect the environment and the assessment of the likely effectiveness of those measures.</p> <p>6 Any likely increase in demand for facilities or services as a result of the development.</p> <p>7 An assessment of the likely impact of the proposed development on people occupying the locality within which it will be carried out.</p> <p>8 The likely effects of the proposed development on any Aboriginal cultural heritage or European heritage matters.</p>	<p>1) Refer above to the assessment of the objectives of both the 1(a) and 1(r) zones.</p> <p>2)</p> <ul style="list-style-type: none"> • The proposed development is unlikely to impact on the existing agricultural uses on the farm. Please refer to Department of Primary Industries (DPI) comments. • The proposed development will change the slope of the operational area of the quarry significantly and is proposed to be rehabilitated at the closure of each cell to ensure both wildlife and agriculture can be reintroduced into the area at the end of the quarry life. • The proposed development will not impact on the aspect of the site • The proposed development will change the geology of the area as it proposes to extract the sandstone. • The change in bedrock material may modify the composition of top soil in the future. • The proposed development will result in the removal of 443 mature trees, which will be conditioned to be removed in accordance with the Native Vegetation Act, 2003. The replacement ratio of proposed is 1:4 (totalling 1975 plus understorey shrubs) with a range of rainforest and koala food trees. It is concluded that the proposed works are likely to improve the biodiversity of the site and create connection between existing remnants. • The proposal is not likely to have a significant impact on the fauna on the site. The increase in traffic may result an increase roads kills and as a result a conditions of consent will be drafted to ensure signs are erected to notify vehicles of fauna movements.

	<ul style="list-style-type: none"> • After reviewing the comments provided by the DWE, the DECC and the Environmental Health Officer it is concluded that the proposed development will be conditioned and monitored to ensure the impacts on the existing hydrology are minimal. <p>3) The interaction between the proposed development and the natural environment is likely to change during the operational hours of the quarry given an increase in traffic and noise levels in the operation area. By ensuring suitable conditions of consent are imposed to reduce such impacts and mitigation measure are put in place, such as noise bunds, the proposed development should have a moderate impact on the surrounding environment both natural and human.</p>
	<p>4). The assessment of the impacts on agriculture were undertaken by the Department of Primary Industries (DPI) which determined that the impact will be moderate for a period of time and then will be restored to the existing state.</p> <p>Sufficient commentary was not provided in the EIS on the justification for variation of the buffers distances. The applicant was notified of this matter and further information was requested by Council. A submission dated September 1, 2008 has been presented by the applicant with justification for the variance to the buffer distances. The critical matter for justification of a buffer variation for this development is the management of noise impacts. This matter has been discussed in detail under 'key issues' and addressed by DECC in the GTA. Based on the information presented a variation is supported to the nominated buffers on the revised NIS demonstrating compliance with the PSNC for the development.</p> <p>5) Refer to the drafted conditions of consent.</p> <p>6) The proposed development is not likely to place an increased demand on public recreational facilities and conditions of consent will be drafted to ensure minimal impact on services.</p> <p>7) The quarry is unlikely to have a significant detrimental social impact across the broader Lismore population. There will be destabilising effects within the immediate local community due to disunity and ongoing anger and dispute between the objectors and the developer. It is acknowledged that there are adverse impacts but these are not so significant as to warrant refusal of the application.</p> <p>8) After reviewing the comments and recommended conditions from DECC it has been determined that there is sufficient information provided to date and with the required inspection prior to commencement of works and other draft conditions Aboriginal Cultural Heritage should be adequately protected.</p>

36 Subdivision and development in rural zones

(1) Consent must not be granted to the subdivision of land within a zone shown in Column 1 of the Table to this subclause unless the area of each lot to be created is not less than the area shown opposite that zone in Column 2 of the table.

Table

Column 1 Zone	Column 2 Minimum area
No 1 (a) General Rural Zone	40 ha
No 1 (b) Agricultural Zone	20 ha (see Note 1 to this Table)
No 1 (c) Rural Residential Zone	0.2 ha (see Note 2 to this Table)
No 1 (d) Investigation Zone	40 ha
No 1 (r) Riverlands Zone	40 ha

Note 1. See also subclause (2).

Note 2. See also clause 40 (2) (e).

(2) Notwithstanding subclause (1), consent may be granted to the subdivision of land within Zone No 1 (b), if the consent authority is satisfied the land will be used for the purpose of horticulture, where the area of each lot to be created is not less than 13 hectares and, before consent is granted, a plan of management and a financial feasibility report have been prepared that are to the satisfaction of the consent authority.

(3) In determining an application to which subclause (2) applies, the consent authority shall consider the following matters:

- (a) any opinion from the Director-General of the Department of Agriculture regarding the area and quality of the land concerned and its potential horticultural productivity,
- (b) the likely effects, both economic and otherwise, that the proposed subdivision will have on agricultural/horticultural industries in the area and the resources employed by or in connection with those industries,
- (c) the likely effects, both economic and otherwise, that the proposed subdivision will have on the use and development of other land and resources in the area,
- (d) whether there are any reasonable alternatives to the proposed subdivision in the circumstances,
- (e) the effect of the existence of, or potential to erect, a dwelling on the land concerned,
- (f) the cumulative effect of similar proposals,
- (g) the likelihood of the proposed lots remaining available for horticultural use,
- (h) the adequacy of the water supply to the proposed lots.

The proposed boundary adjustment and creation of special purpose allotment for the quarry operation is consistent with the special provisions of Clause 36(4).

The following lots have dwelling entitlements; therefore the proposed subdivision is not resulting in any additional dwelling entitlements.

- Lot 5 DP 857530 currently is 41.77ha
- Lot 4 DP 588125 is currently 38.71ha and a dwelling entitlement search was conducted in 2004
- Lot 183 DP 1013042 is currently 46.85ha
- Lot 1 SP 127550 is currently 34.20ha and a dwelling entitlement search was conducted in 2002
- Lot 101 DP 755740 is currently 24.483ha and a dwelling entitlement search was conducted in 2002

The proposed boundary adjustment complies with the provisions of clause 36 (5) of the LEP.

Whilst these lots have dwelling entitlements they do not have dwellings on them. If applications were lodged for dwellings on these lots it would be a requirement that the development application address the appropriate buffers to an existing extractive industry. When the quarry life is complete these lots will still retain the rights for a dwelling.

<p>(4) Despite subclause (1), consent may be granted to the subdivision of land within Zone No 1 (a), 1 (b), 1 (c), 1 (d) or 1 (r) to create a lot of any size if the consent authority is satisfied that the lot will be used for a public utility undertaking within that zone and, in the opinion of the consent authority:</p> <ul style="list-style-type: none"> (a) the lot has a satisfactory shape and frontage for that use, and (b) the lot will not cause a traffic hazard or create or tend to create further ribbon development along a road. <p>(5) Notwithstanding subclause (1), consent may be granted to a subdivision of land to adjust common boundaries between rural lots so as to create allotments that will be smaller than allowed by that subclause where:</p> <ul style="list-style-type: none"> (a) the consent authority is satisfied that a more efficient land use can be achieved that is not significantly inconsistent with the objectives of the rural zones, and (b) no additional lots or dwelling entitlements are created, and (c) the proposed use of the lots would not conflict with the surrounding agricultural or other uses, and (d) consideration has been given by the consent authority to the minimum lot sizes contained in the Table to subclause (1) and in subclause (2), and (e) no additional entitlement for subdivision is created pursuant to subclause (1) or (2). <p>(6) Nothing in this clause shall prohibit or restrict subdivision for any of the following purposes:</p> <ul style="list-style-type: none"> (a) the opening or widening of a public road, (b) adjustments to common property boundaries where the area of the existing lots is unaltered, (c) rectifying an encroachment on an existing lot. 	
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<p>41 Development on ridgetops in rural areas</p> <p>(1) This clause applies to land within Zone No 1 (a), 1 (b), 1 (c), 1 (d) or 1 (r).</p> <p>(2) Consent may be granted to the carrying out of development on land to which this plan applies on or near any ridgeline visible from any public road only if, in the opinion of the consent authority, the development is not likely to detract from the visual amenity of the rural area and is in the community interest.</p> <p>3) In determining whether to grant such a consent, the consent authority shall consider the following:</p> <p>(a) the height and location of any building that will result from carrying out the development,</p> <p>(b) the reflectivity of materials to be used in carrying out the development,</p> <p>(c) the likely effect of carrying out the development on the stability of the land,</p> <p>(d) the bush fire hazard,</p> <p>(e) whether landscaping proposals satisfactory to the consent authority have been made.</p> <p>(f) (Repealed)</p>	<p>This clause applies to this DA as it is visible from a public road. The views of the site are broken by roadside vegetation. Council should also consider the broader public interest (as set out in subclause 2) of the visual impact. The quarry cannot be viewed by a large section of the community and only limited interrupted views can be seen from a moving vehicle along Wyrallah Road. These would best be described as fleeting. There are no buildings associated with the quarry that will affect the visual impacts of the quarry. Accordingly item (a) is not relevant. Item (b) is specifically targeting the materials to be used in a building and it is acknowledged that no reflective material will be bought onto the site to complete the development. However because of the nature of the sandstone to be extracted the face of the quarry will be white and this will be a stark contrast to the green pasture. This contrast creates the biggest visual impact and will be partly visible from the road and from receiver 1. Because the view of the quarry from the road will be limited due to vehicle speed and roadside vegetation Council can be satisfied that the development complies with this clause. Further discussion of this impact on receiver 1 is conducted below. Item (c) is relevant as the quarry will be altering the stability of the land. Suitable remediation measures are proposed to ensure the long term stability of the land once the site is rehabilitated. Item (d) is not relevant to this development. The applicant has proposed significant landscaping to minimise the visual impacts of the proposal and item (e) has been satisfied.</p> <p>The alteration of the landscape will be permanent due to the removal of the knoll and ridge. This area will be rehabilitated over time and will be returned to pasture in the longer term. The views of the knoll from the road are limited and will not impact upon a significant section of the community. On this basis Council could form the opinion that the development will not detract from the visual amenity of the rural area when viewed from Wyrallah Road. On this basis it is considered that the development satisfies the clauses relating to visual impact contained within the LEP.</p>
<p>Is the development “Advertised Development” Clauses</p>	<p>The application has been advertised in accordance with the Regulations and the Development Control Plan Part A, Chapter 10.</p>
<p>Is the development “Designated Development”</p>	<p>The Development Application is Designated Development in accordance Schedule 3 of the Environmental Planning and Assessment Regulations 2000, as the proposed quarry expansion involves the extraction of more than 30,000m³ of material per annum and will disturb more than 20ha of land. Such development requires an Environmental Impact Statement.</p>

2. **Any Draft EPI that is or has been placed on Exhibition**

There are no draft plans that apply to the site.

3. **Any Development Control Plan**

PART, CHAPTER NUMBER AND NAME	ASSESSMENT
<p>Part A Chapter 4 – Subdivision and Infrastructure (General requirements)</p> <p>4.1 Objectives of this Chapter</p> <ol style="list-style-type: none"> 1. To facilitate subdivision which is sustainable and appropriate for its intended use; 2. To ensure subdivisions are provided with the necessary services required by Council; 3. To ensure subdivisions are designed in accordance with the best engineering and planning practices, meeting Council's minimum requirements to improve levels of amenity, accessibility and safety; 4. To encourage the use of innovative planning, design and engineering practices; 5. To provide for subdivisions which recognise development industry and community expectations, environmental constraints and the circumstances unique to the City of Lismore; 6. To maximise the efficient use of land and provision of infrastructure that avoids adverse environmental impacts. 	<ol style="list-style-type: none"> 1) The subdivision of the land was done in accordance with a request by Council to ensure the operational area of the quarry was retained within one lot. The use of the remaining is primarily for agricultural and given the comments provided from DPI the operational quarry is unlikely to have significant impact on such uses. 2) All lots in the proposed subdivision will have access to necessary services. Conditions of consent have been drafted to ensure these provisions are provided. 3) As the proposal is modifying the layout it is unlikely that the subdivision only will have an impact on the amenity of the surrounding area. The layout complies with the requirements of Chapter 6 (refer below). 4) The layout reflects the proposed operational area of the quarry and hence may not reflect best design principles but does allow for one title over the quarry to comply with Council's recommendation. 5) The proposed subdivision reflects the proposal for quarry expansion and allows for one title over the quarry to comply with Council's recommendation. 6) By ensuring that the operational area of the quarry is located within lot the subdivision should minimise adverse impacts on adjoining land.
<p>Part A Chapter 6 – Subdivision and Infrastructure (Village and Rural Subdivision)</p> <p>6.3.2 Design Elements</p> <p>To encourage rural and rural special purpose lots located in a manner that reinforces existing rural settlement patterns and the needs of the use by:</p> <ul style="list-style-type: none"> • providing for the needs of the proposed use; • protecting the environment; • encouraging compatible land use and character; • efficient provision of services, self reliance and resource management. <p>Element:- Major Movement Networks</p> <p>To provide movement networks for vehicles and public transport that are integrated, cost effective, environmentally acceptable, and minimise the impact of traffic on the rural road network.</p> <p>Element:- Road Construction</p> <p>To construct roads that support the design intentions without unnecessary construction and whole of life cycle costs.</p> <p>Element:- Utility Services</p> <p>To ensure that rural areas are adequately serviced with sewerage (where required),</p>	<p>Design Elements</p> <ul style="list-style-type: none"> ▪ The subdivision will ensure that the operational area remains on one title. ▪ Having the operational area of the quarry on one title will assist in protecting the environment. ▪ This subdivision is unlikely to impact on landuse compatibility (please refer to DPI comments). ▪ Conditions of consent will be drafted to ensure each lot will have adequate provisions provided. <p>Major Movement Networks</p> <p>The proposed subdivision is not resulting in an increase in lots therefore this section does not apply to this application.</p> <p>Road Construction</p> <p>Refer to the Development Engineers and the Roads and Traffic Authority comments.</p> <p>Utility Services</p> <p>Each lot has suitable area to provide onsite waste water facilities.</p> <p>Flooding</p> <p>The proposed expansion is unlikely to have a significant impact on flooding. Given the location within the catchment and the proposed water harvesting and storage facilities it is unlikely that the proposed quarry will enhance or impact on the current flood regime of the area.</p> <p>Rural Landscape</p> <p>The proposed subdivision alone is unlikely to have a</p>

<p>water, fire fighting, electricity and communication services in a timely, cost effective, co-ordinated and efficient manner that supports sustainable development practices.</p> <p>Element:- Flooding Ensure the most appropriate development for flood prone land in rural areas.</p> <p>Element:- Rural Landscape To provide attractive landscapes that are sensitive to the built form, rural landscape, native vegetation and environmental conditions of the site and locality.</p> <p>Element:- Lot Layout To provide a range and mix of lot sizes to suit agriculture and uses permitted in the respective zone, with areas and dimensions to meet user and servicing requirements.</p> <p>Element:- Bushfire To reduce the level of fire risk associated with building in bushfire-prone areas by adopting suitable passive and active protection measures relating to siting, layout, design and construction techniques, and landscaping.</p> <p>Element:- Buffers to Avoid Land Use Conflicts To minimise land use conflicts between agricultural and industrial land uses and potentially incompatible land uses through the establishment of appropriate buffers.</p> <p>Element:- Prime Agricultural Land To retain and enhance prime agricultural lands.</p>	<p>significant impact on the rural landscape. The propose use of lot 5 which is addressed throughout the report is likely to change the rural landscape.</p> <p>Lot Layout The proposed subdivision will result in more efficient land use management with the quarry on one allotment. The proposed land use is consistent with the objectives of the rural zone.</p> <p>Bushfire After reviewing the comments provided by the NSW Rural Fire Services it is determined the impacts of the subdivision on bush fire are minimal.</p> <p>Buffers to Avoid Land Use Conflicts Refer Part A Chapter 11 – Buffers Assessment</p> <p>Prime Agricultural Land After reviewing the comments provided by the Department of Primary Industries, it is determined that the subdivision is unlikely to have an impact on agricultural practices.</p>
<p>Part A Chapter 10 – Notification and Advertising of DAs</p>	<p>The application has been advertised in accordance with the Regulations and the Development Control Plan Part A, Chapter 10.</p>
<p>Part A Chapter 11 – Buffers Extractive Industries Extractive industries involve the use of an extensive range of plant and equipment which creates noise and dust as material is won from the quarry face and then crushed and screened for loading and transport. In some cases blasting is necessary to extract the material. Quarrying activities are incompatible with many land uses, particularly those of a residential nature. It is therefore desirable to provide a buffer area around quarries to minimise land use conflicts and safeguard quarry resources which could be sterilised as a result of encroachment by residential land uses.</p> <p>The extent of the buffer requirement depends on the size of the quarry, whether blasting is utilised, the nature of production methods, the extent of crushing and screening operations, topography and site conditions and the intensity of surrounding development and land uses. A two level buffer standard is recommended with the primary and secondary</p>	<p>Buffers The objective of Lismore’s Development Control Plan (DCP) Part A, Chapter 11 - Buffers is to minimise land use conflicts between potentially incompatible land uses through the establishment of appropriate buffer areas. A buffer may serve to mitigate against the a number of different impacts caused by a development.</p> <p>A two level buffer applies to large quarries, primary 500m and the secondary 800m. Rural residential development is excluded from the primary and secondary buffer areas. Single dwellings on agricultural holdings may be permitted in the secondary buffer.</p> <p>Council may grant variations to the numerical standards within the plan. The current provision for variation to the plan is set out in the introduction to the Lismore DCP and is as follows:</p> <p><i>Council may approve development that does not strictly comply with this Plan. This will only be considered where the variation is considered to</i></p>

<p>buffer as follows:</p> <ul style="list-style-type: none"> ▪ Large quarries (>10,000m³ pa) <ul style="list-style-type: none"> i) Primary Buffer = 500m ii) Secondary Buffer = 800m 	<p><i>be minor, or where it can be demonstrated that compliance is physically impossible or impractical, or where the alternative proposed is substantiated as a better design solution.</i></p> <p>It is to be noted that this variation provision differs significantly to the variation provision that was included in the previous DCP 27 - Buffers. Due to a directive from the Department of Planning that Councils may only have one DCP, Council's Strategic Planners compiled all the individual DCPs into chapters of the current Lismore DCP. When this occurred all the individual variation clauses were removed and the above generic clause was adopted. The original text that provided a more flexible approach in determining if a variation is acceptable is provided as follows:</p> <p><i>Applications for variations to the buffer areas nominated in this Plan must demonstrate to Council's satisfaction that there is a clear case for variation of the standard, and that the objectives of this Plan will be satisfied. The following matters must be addressed in any application for variation:</i></p> <ul style="list-style-type: none"> <i>(a) The extent, nature and intensity of the conflicting land use.</i> <i>(b) The operational characteristics of the land use.</i> <i>(c) The external effects likely to be generated by the land use (eg spraydrift, odour, dust, noise etc).</i> <i>(d) Any topographical features or vegetation which may act to reduce the likely impacts of the land use.</i> <i>(e) Prevailing wind conditions and any other climatic characteristics.</i> <i>(f) Any other mitigating circumstances.</i> <p>Under the previous DCP 27 provisions Council had some flexibility in varying the DCP. This ability has been significantly curtailed under the terms of the current DCP. Council is advised that it must not rely on the previous variation provisions in making a determination to vary the DCP. This would be consideration of an irrelevant matter and could leave the decision of Council open to challenge.</p> <p>The Environmental Impact Statement (EIS) identifies that 10 existing dwellings are on lands within the secondary buffer of 800m, and 6 of those are within the primary buffer of 500m with the closest distances</p>
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of unrelated properties being approximately 270m - Receiver 4, and 320m - Receiver 2. Receiver 1 is 550m and Receiver 3 is 510m. Refer Table 15 and Appendices 3 & 4 of the EIS.

It is acknowledged that the variation to the buffer distances is not minor and that the design parameter is not relevant. The non compliance with the numerical standards and with the variation provision raises a difficulty in the assessment of the application. The assessment team sought specific legal advice on the issue of the buffers chapter and variation clause of the DCP. A copy of that advice is provided in Attachment 8. The DCP is a specific matter for consideration under the provisions of section 79C of the Environmental Planning and Assessment Act 1979 (EP&A). It does not however have the statutory weight of the Local Environmental Plan (LEP).

The following table sets out the hierarchy of planning controls and a brief outline of how Council should consider them:

Control	Consideration
Environmental Planning and Assessment Act 1979 and Environmental Planning and Assessment Regulation 2000	Must be complied with. Any variation or inconsistency may invalidate the assessment process resulting in the Land and Environment Court quashing the consent.
Environmental Planning Instruments eg LEP, Regional Environmental Plan (REP) and State Environment Planning Policy (SEPP)	Must be complied with. Any variation or inconsistency may invalidate the assessment process resulting in the Land and Environment Court quashing the consent.
Development Control Plans	A matter for consideration under section 79C of the Act. Council may vary a DCP either using a variation clause built into the DCP or by giving consideration to pertinent facts and the principles established by the Court (discussed below).
Internal Guidelines and Procedures	Not a matter for consideration under the Act. May be varied on merit providing the principles of natural justice and procedural fairness have been applied.

The Land and Environment Court in *Stockland Development Pty Ltd v Manly Council* [2004] NSWLEC 472 (3 August 2004) consolidated the previous case law on the weight to be given to a DCP. The weight to be given to a DCP is based on the sets out the factors to be considered

- A) *A development control plan is a detailed planning document which reflects a council's expectation for parts of its area, which may be a large area or confined to an individual site. The provisions of a development control plan must be consistent with the provisions of any relevant local environmental plan. However, a development control plan may operate to confine the intensity of development otherwise permitted by a local environmental plan.*
- B) *A development control plan adopted after consultation with interested persons, including the affected community, will be given significantly more weight than one adopted with little or no community consultation.*
- C) *A development control plan which has been consistently applied by a council will be given significantly greater weight than one which has only been selectively applied.*
- D) *A development control plan which can be demonstrated, either inherently or perhaps by the passing of time, to bring about an inappropriate planning solution, especially an outcome which conflicts with other policy outcomes adopted at a State, regional or local level, will be given less weight than a development control plan which provides a sensible planning outcome consistent with other policies.*
- E) *Consistency of decision-making must be a fundamental objective of those who make administrative decisions. That objective is assisted by the adoption of development control plans and the making of decisions in individual cases which are consistent with them. If this is done, those with an interest in the site under consideration or who may be affected by any development of it have an opportunity to make decisions in relation to their own property which is informed by an appreciation of the likely future development of nearby property.*

	<p>On consideration of items A, B, C and E some weight must be placed on the provisions of the DCP. However with respect to item D the buffer distances in the DCP may bring about an inappropriate planning solution in this case where the appropriate regulatory (DECC) will allow the extraction to occur closer to the dwellings than that as prescribed by the DCP. The buffer distances are arbitrary and have not changed over time to reflect the regulatory role that DECC. This clearly shows that the DCP is not consistent with the State Government legislative changes to the regulation of large quarries. On this basis less weight should be given to the DCP.</p> <p>DECC is satisfied that the quarry can meet the noise criteria and that appropriate strategies are in place to minimise the impacts of air pollution and particulate matter on the adjoining properties. These issues have been extensively discussed in this report.</p> <p>It is open to Council to refuse the DA on the basis of non compliance with the DCP. However this is not recommended. The legal advice is clear that Council may vary the DCP outside of the scope of the variation clause. That is, although the variation is not minor Council may determine that less weight should be placed on the DCP because of the inconsistencies created between the DCP and DECCs regulation of the quarry.</p> <p>The DCP is a focal point in the assessment of the DA and despite the conclusion that less weight may be given to the DCP Council must also decide if the underlying objectives of DCP are being met. The DCP should only be varied where there is sufficient planning merit. Because the merit assessment of the noise and air quality issues has demonstrated that there are no adverse impacts created by varying the prescriptive numerical standards it is contended that the underlying objective of separating incompatible land uses has been achieved and that the DCP may on merit be varied. .</p>
<p>Part A Chapter 18 – Extractive Industries 18.4 Extractive Industries – Haulage Routes Generally Council requires that primary haulage routes and routes servicing larger quarries (production greater than 10,000m³ pa) have a sealed road width of 6 metres. 18.5 Buffer areas around Extractive Industry sites 18.6 Rehabilitation of Quarries 18.8 Extractive Industry Management Plans</p>	<p>18.4 Refer to the Development Engineers comments. 18.5 Refer to Chapter 11 comments. 18.6 A condition of consent has been drafted to ensure the rehabilitation of the quarry is conducted in accordance with this section and DPI's requirements. 18.8 A condition of consent has been drafted to ensure the extractive industry management plan of the quarry is conducted in accordance with this section.</p>

4. Any Council Policies

COUNCIL'S POLICIES	ASSESSMENT
Social Impact Assessment	Refer to the Community Servicers Officer comments.
Determination by Council of DA's and other planning matters	The application will be determined by Council. A site inspection, workshop and Council report will be undertaken.

5. Any Matters Prescribed By The Regulations

Environmental Planning and Assessment Act Regulations 2000

Clause	ASSESSMENT
<p>4 What is designated development? (cf clause 53C of EP&A Regulation 1994) (1) Development described in Part 1 of Schedule 3 is declared to be designated development for the purposes of the Act unless it is declared not to be designated development by a provision of Part 2 or 3 of that Schedule.</p>	<p>1) The proposed expansion to an approved extractive industry is determined to be Designated Development as describe in Part 1 of Schedule 3 (refer below).</p>
<p>6 When is public notice given? (cf clause 5 of EP&A Regulation 1994) Public notice in a local newspaper is given for the purposes of this Regulation when the notice is first published in a local newspaper, even if the notice is required to be published more than once or in more than one newspaper.</p>	<p>In accordance with Environmental Planning and Assessment Regulation (2000) and Council's Development Control Plan Part A, Chapter 10 – Notification and Advertising of Development Applications the Development Application was advertised and the general public were given 28 days to provide a written submission. The following was undertaken:</p> <ul style="list-style-type: none"> ▪ Adjoining landowners/occupiers were sent written notification of the Development Application on May 14, 2008. The notification outlined the description of the development, the description of the land, the type of development and lists the Government referrals for Integrated Development. ▪ An advertisement was placed in the Echo on May 22, 2008 and June 5, 2008. ▪ Four advertisement signs were erected on May 19, 2008. Due to these being removed on several occasions they were replaced on May 29, 2008, June 6, 2008 and June 18, 2008. <p>The notifications and advertisements outlined the description of the development, the description of the land, the type of development and a list of the Government referrals for Integrated Development.</p> <p>Due to an error in the exhibition the application was re-exhibited for a further 29 days. The following was undertaken:</p> <ul style="list-style-type: none"> ▪ Adjoining landowners/occupiers were sent written notification of the Development Application on July 1, 2008. The notification outlined the description of the development, the description of the land, the type of development and lists the Government referrals for Integrated Development. ▪ An advertisement was placed in the Echo on July 3, 2008 and July 17, 2008. ▪ Four advertisement signs were erected on July 1,

Clause	ASSESSMENT
	<p>2008. Due to these being removed they were replaced on July 10, 2008.</p> <p>The public exhibition period totalled 57 days for this development application.</p>
<p>8F Owner’s consent or notification (1) The consent of the owner of land on which a project is to be carried out is required for a project application unless: (a) the application is made by a public authority, or (b) the application relates to a critical infrastructure project, or (c) the application relates to a mining or petroleum production project, or (d) the application relates to a linear infrastructure project, or (e) the application relates to a project on land with multiple owners designated by the Director-General for the purposes of this clause.</p>	<p>1) Owners consent was given on the Development Application when that application was lodged by Jeffrey Francis Champion.</p>
<p>50 How must a development application be made? (cf clause 46A of EP&A Regulation 1994) (1) A development application: (a) must contain the information, and be accompanied by the documents, specified in Part 1 of Schedule 1, and (b) if the consent authority so requires, must be in the form approved by that authority, and (c) must be accompanied by the fee, not exceeding the fee prescribed by Part 15, determined by the consent authority, and (d) must be delivered by hand, sent by post or transmitted electronically to the principal office of the consent authority, but may not be sent by facsimile transmission. (3) Immediately after it receives a development application, the consent authority: (a) must register the application with a distinctive number, and (b) must endorse the application with its registered number and the date of its receipt, and (c) must give written notice to the applicant of its receipt of the application, of the registered number of the application and of the date on which the application was received. (6) If the development application is for designated development, the consent authority must forward to the Director-General (where the Minister or the Director-General is not the consent authority) and to the council (where the council is not the consent authority) a copy of the environmental impact statement, together with a copy of the relevant application.</p>	<p>1a) Refer below b) Lismore City Council (LCC) requires that the approved Development Application form be completed prior to lodgement. The form was completed prior to lodgement. c) The appropriate fees totalling \$1,901 were paid at lodgement. d) The application was delivered by hand. 3a) The application was registered with Development Application Number 2008/233. b) It was dated and receipted on May 9, 2008. c) Written notice was sent to the applicant on May 14, 2008. 6) LCC sent written notification to the Director General on May 14, 2008 with a copy of the application form and Environmental Impact Statement.</p>

Clause	ASSESSMENT
<p>74 Consent authority may require additional copies of environmental impact statement (cf clause 55A of EP&A Regulation 1994) The consent authority may require an applicant for development consent for designated development to give it as many additional copies of the environmental impact statement as are reasonably required for the purposes of the Act.</p>	<p>Lismore City Council requested six extra copies of the Environmental Impact Statement during the exhibition period.</p>
<p>77 Notice of application for designated development to public authorities (other than concurrence authorities and approval bodies) (cf clause 57 of EP&A Regulation 1994) At the same time as giving public notice under section 79 (1) of the Act, the consent authority must give written notice of a development application for designated development to such public authorities (other than relevant concurrence authorities or approval bodies) as, in the opinion of the consent authority, may have an interest in the determination of that development application.</p>	<p>The following Public Authorities, Committees and adjoining Councils were notified of the application:</p> <ul style="list-style-type: none"> ▪ Department of Primary Industries ▪ Department of Environment and Climate Change ▪ Department of Water and Energy ▪ New South Wales Rural Fires Service ▪ Department of Planning ▪ Roads and Traffic Authority ▪ The Regional Traffic Committee ▪ The Local Traffic Committee ▪ Ballina Shire Council ▪ Richmond Valley Council
<p>81 Forwarding of submissions to Director-General (cf clause 62 of EP&A Regulation 1994) For the purposes of section 80 (9) (b) of the Act, the consent authority must, immediately after the relevant submission period, forward to the Director-General (if the Minister or the Director-General is not the consent authority) a copy of all submissions (including submissions by way of objection) received in response to the public exhibition of a development application for designated development. Note. This requirement will not apply if the Director-General has waived the requirement under section 80 (10) (b) of the Act.</p>	<p>A copy of all of the submissions received were sent to the following Authorities:</p> <ul style="list-style-type: none"> ▪ Department of Primary Industries ▪ Department of Environment and Climate Change ▪ Department of Water and Energy ▪ New South Wales Rural Fires Service ▪ Department of Planning ▪ Roads and Traffic Authority ▪ The Regional Traffic Committee ▪ The Local Traffic Committee

Clause	ASSESSMENT
<p>Part 1 Development applications</p> <p>1 Information to be included in development application</p> <p>A development application must contain the following information:</p> <p>(a) the name and address of the applicant,</p> <p>(b) a description of the development to be carried out,</p> <p>(c) the address, and formal particulars of title, of the land on which the development is to be carried out,</p> <p>(d) an indication as to whether the land is, or is part of, critical habitat,</p> <p>(e) an indication as to whether the development is likely to significantly affect threatened species, populations or ecological communities, or their habitats (unless the development is taken to be development that is not likely to have such an effect, because of the issue of a biobanking statement under Part 7A of the <i>Threatened Species Conservation Act 1995</i>, in which case it is sufficient to indicate that the statement has been issued),</p> <p>(f) a list of any authorities from which concurrence must be obtained before the development may lawfully be carried out,</p> <p>(g) a list of any approvals of the kind referred to in section 91 (1) of the Act that must be obtained before the development may lawfully be carried out,</p> <p>(h) the estimated cost of the development,</p> <p>(i) if the applicant is not the owner of the land, a statement signed by the owner of the land to the effect that the owner consents to the making of the application,</p> <p>(j) a list of the documents accompanying the application.</p> <p>2 Documents to accompany development application</p> <p>(1) A development application must be accompanied by the following documents:</p> <p>(a) a site plan of the land,</p> <p>(b) a sketch of the development,</p> <p>(c) a statement of environmental effects (in the case of development other than designated development),</p> <p>(d) in the case of development that involves the erection of a building, an A4 plan of the building that indicates its height and external configuration, as erected, in relation to its site (as referred to in clause 56 of this Regulation),</p> <p>(e) an environmental impact statement (in the case of designated development),</p> <p>(f) a species impact statement (in the case of land that is, or is part of, critical habitat or development that is likely to significantly affect threatened species, populations or ecological communities, or their habitats),</p> <p>(g) if the development involves any subdivision work, preliminary engineering drawings of the</p>	<p>1a) The application contained this information.</p> <p>1b) The application contained this information.</p> <p>1c) The application contained this information.</p> <p>1d) The application contained this information.</p> <p>1e) The application contained this information.</p> <p>1f) The application contained this information.</p> <p>1g) The application contained this information.</p> <p>1h) The application contained this information.</p> <p>1i) The applicant is the owner</p> <p>1j) The application contained this information.</p> <p>2) 1a) The application contained this information</p> <p>2) 1b) The application contained this information</p> <p>2) 1c) The application contained this information</p> <p>2) 1d) No building are proposed</p> <p>2) 1e) The application contained this information</p> <p>2) 1f) Not required</p> <p>2) 1g) The application contained this information</p> <p>2) 1h) Not required</p> <p>2) 1i) The application does not involve a change of use therefore this subclause does not apply.</p> <p>2) 1j) The land is not wilderness area therefore this subclause does not apply.</p> <p>2) 1k) BASIX does not apply to this application therefore this subclause does not apply.</p> <p>2) 1m) BASIX does not apply to this application therefore this subclause does not apply.</p> <p>2) 1n) The application contained this information</p> <p>2) 1o) The application does not involved the use of property for public entertainment therefore this subclause does not apply.</p> <p>2) 2a) The application contained this information</p> <p>2) 2b) The application contained this information</p> <p>2) 2c) The application contained this information</p> <p>2) 2d) The application contained this information</p> <p>2) 2e) The application contained this information</p>

Clause	ASSESSMENT
<p>work to be carried out,</p> <p>(h) if an environmental planning instrument requires arrangements for any matter to have been made before development consent may be granted (such as arrangements for the provision of utility services), documentary evidence that such arrangements have been made,</p> <p>(i) if the development involves a change of use of a building (other than a dwelling-house or a building or structure that is ancillary to a dwelling-house and other than a temporary structure):</p> <p>(i) a list of the Category 1 fire safety provisions that currently apply to the existing building, and</p> <p>(ii) a list of the Category 1 fire safety provisions that are to apply to the building following its change of use,</p> <p>(j) if the development involves building work to alter, expand or rebuild an existing building, a scaled plan of the existing building,</p> <p>(k) if the land is within a wilderness area and is the subject of a wilderness protection agreement or conservation agreement within the meaning of the <i>Wilderness Act 1987</i>, a copy of the consent of the Minister for the Environment to the carrying out of the development,</p> <p>(l) in the case of development to which clause 2A applies, such other documents as any BASIX certificate for the development requires to accompany the application,</p> <p>(m) in the case of BASIX optional development—if the development application is accompanied by a BASIX certificate or BASIX certificates (despite there being no obligation under clause 2A for it to be so accompanied), such other documents as any BASIX certificate for the development requires to accompany the application,</p> <p>(n) if the development involves the erection of a temporary structure, the following documents:</p> <p>(i) documentation that specifies the live and dead loads the temporary structure is designed to meet,</p> <p>(ii) a list of any proposed fire safety measures to be provided in connection with the use of the temporary structure,</p> <p>(iii) in the case of a temporary structure proposed to be used as a place of public entertainment—a statement as to how the performance requirements of Part B1 and NSW Part H102 of Volume One of the <i>Building Code of Australia</i> are to be complied with (if an alternative solution, to meet the performance requirements, is to be used),</p> <p>(iv) documentation describing any accredited building product or system sought to be relied on for the purposes of section 79C (4) of the Act,</p>	

Clause	ASSESSMENT
<p>(v) copies of any compliance certificates to be relied on,</p> <p>(o) in the case of development involving the use of a building as a place of public entertainment—a statement that specifies the maximum number of persons proposed to occupy, at any one time while entertainment is being provided, any part of the building used as a place of public entertainment.</p> <p>(2) The site plan referred to in subclause (1) (a) must indicate the following matters:</p> <p>(a) the location, boundary dimensions, site area and north point of the land,</p> <p>(b) existing vegetation and trees on the land,</p> <p>(c) the location and uses of existing buildings on the land,</p> <p>(d) existing levels of the land in relation to buildings and roads,</p> <p>(e) the location and uses of buildings on sites adjoining the land.</p>	
<p>Schedule 3 Designated development</p> <p>Part 1 What is designated development?</p> <p>19 Extractive industries</p> <p>(1) Extractive industries (being industries that obtain extractive materials by methods including excavating, dredging, tunneling or quarrying or that store, stockpile or process extractive materials by methods including washing, crushing, sawing or separating):</p> <p>(a) that obtain or process for sale, or reuse, more than 30,000 cubic metres of extractive material per year, or</p> <p>(b) that disturb or will disturb a total surface area of more than 2 hectares of land by:</p> <p>(i) clearing or excavating, or</p> <p>(ii) constructing dams, ponds, drains, roads or conveyors, or</p> <p>(iii) storing or depositing overburden, extractive material or tailings, or</p> <p>(c) that are located:</p> <p>(i) in or within 40 metres of a natural waterbody, wetland or an environmentally sensitive area, or</p> <p>(ii) within 200 metres of a coastline, or</p> <p>(iii) in an area of contaminated soil or acid sulphate soil, or</p> <p>(iv) on land that slopes at more than 18 degrees to the horizontal, or</p> <p>(v) if involving blasting, within 1,000 metres of a residential zone or within 500 metres of a dwelling not associated with the development, or</p> <p>(vi) Within 500 metres of the site of another extractive industry that has operated during the last 5 years.</p>	<p>The Development Application is Designated Development in accordance Schedule 3 of the Environmental Planning and Assessment Regulations 2000, as the proposed quarry expansion involves the extraction of more than 30,000m³ of material per annum and will disturb more than 20ha of land.</p>

6. **The Likely Impacts of that Development, including Environmental Impacts on both the Natural and Built Environments, and Social and Economic Impacts in the Locality**

IMPACTS	ASSESSMENT
<p>Context & setting (bulk, scale, height, mass; design, character of locality, streetscape, compatibility with adjacent properties, overshadowing, privacy, views, etc)</p>	<ul style="list-style-type: none"> ▪ Bulk and Scale The proposal is likely to change the existing character of the locality by increasing the scale of the existing quarry, changing the landscape and form, modifying existing views. The scale of the proposal will dominate the landscape, however the proposed mitigation measure of landscaping and the life span of the quarry should result in a reduction of these impacts. Ensuring that the rehabilitation plan adequately addresses the rural and environmental qualities of the surrounding area should reduce the scale of the proposal over time. ▪ Locality To ensure that the locality of the proposal is suitable the following key issues were assessed; ▪ Noise A key issue is the control and mitigation of noise. As DECC are the ARA Environmental Health will ultimately rely on their expertise in relation to the assessment of noise. Environmental Health however offers the following comments in summary and detailed comments further on in relation to the noise assessment. The noise assessment submitted was conducted in an acceptable manner and the conclusion is considered to be reasonable. With consideration that the more conservative Industrial Noise Policy (INP) <i>intrusive noise criteria</i> is the nominated Project Specific Noise Level (PSNL), implementation of the nominated mitigation methods are considered reasonable to control and minimise potential noise impacts. In addition it is expected that noise will progressively decrease as a result of progressive movement of plant in-pit to greater depths and progressive increase in height of earth bunds adjacent to pits. However, mitigation methods should not rely on the progressive nature of the activity, and adequate mitigation measures shall be implemented on commencement of operations. The ERM noise report identifies there is potential for noise impacts during the initial Southern Section stage, and during general operation of the Northern Section. The October addendum to the noise report has identified that a four metre high bund as part of the Southern Section works near Noise Assessment Location (NAL) 4 will be constructed within the first four weeks to provide attenuation during the initial overburden stripping. The report concludes that its <i>'unlikely that the long-term PSNC would be exceeded and works are predicted to meet relevant construction noise criteria'</i>. Similarly, the addendum report states that noise levels for the Northern Section will exceed the Project Specific Noise Level (PSNL) by approximately 5dB(A). Although these levels exceed the predicted modelling is argued as conservative, is unacceptable at this stage and therefore it is recommended that no excavations within the Northern Section shall be

permitted until such time as the proponent can demonstrate through a revised Noise Impact Assessment (NIA) compliance with the PSNL.

In recognition of the reporting to date DECC have nominated in their GTA a number of conditions which incorporate submission of a revised NIA demonstrating compliance with the PSNL. An Environmental Protection Licence will not be issued without DECC approval of the revised NIA. All GTA conditions relating to noise are provided in the detailed assessment section of this report.

The ERM noise assessment was modelled on the proposed extraction of 200,000 tonnes per annum. Given that the proposal seeks approval for an annual **average** 200,000t per annum (average of 800,000t over any 4 year period to a max of 5,000,000t for the life of the quarry), there is potential for the truck movements to increase and be significantly higher than those modelled. This could impact on the results of the noise assessment and this matter needs to be considered as part of the revised NIA so as to ensure that concentrated operations over an extended period do not result in the road traffic noise criteria being exceeded.

An independent review of the ERM noise assessment was submitted to Council by the Environment Defenders Office (EDO) in June 2008. Environmental Health has noted that the report is a review and a comparative noise assessment was not undertaken, therefore the matters raised were noted but not considered definitive. The review was submitted to DECC for their consideration and Council will ultimately be relying on their expertise in the assessment of noise. It has been noted that a number of the concerns raised in the review have since been since addressed in further submissions by ERM.

Visual Impact

The proposal will increase the bulk and scale of the existing quarry and this will have an impact on the landscape and visual amenity of the locality. It should be noted that the cells will be operating concurrently and that only part of a cell will be active at any one time. This when coupled with the progressive rehabilitation of the cells will limit the visual impact of the quarry. However the quarry will have an impact and Council will have to determine if this impact is acceptable.

The assessment of the visual impact of the development was conducted in accordance with the 'Principles of View Sharing' as set out in the Land and Environment Court Planning Principles and based on the methodology for the assessment of visual impacts as accepted by the Court in *Taralga Landscape Guardians Inc v Minister for Planning and RES Southern Cross Pty Ltd* [2007] NSWLEC 59. This matter involved the erection of wind turbines in a rural environment which would result in a significantly changed visual environment and as such direct parallels can be drawn between that application and the impacts from this DA.

Tenacity Consulting v Waringah [2004] NSWLEC 140 provides the principles of view sharing and these are set out

as follows:

1) *The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (eg of the Opera House, the Harbour Bridge, North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, eg a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.*

2) *The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.*

3) *The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.*

4) *The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.*

Attachment 3 shows the location of receivers (dwellings that will be impacted upon visually by the quarry). There is a threshold question to be answered when considering visual impact. Fundamentally should any alteration of the landscape be allowed? If the answer to this question is yes then to what extent should the landscape be allowed to be altered? The four principles of view sharing can be used to answer the second question. To answer the first question consideration needs to be given to following matters:

- the permissible uses within the zone;
- specific clauses in the Lismore City Local Environmental Plan 2000 relating to visual impact;
- the quality of the landscape to be altered.

It is not a reasonable position to determine that no visual change should be allowed to occur in the rural environment. This is based on the fact that various forms of development

(quarries, glasshouses, rural industries etc) are permissible in this locality and all of these would alter the view of the landscape from the receivers. Based on the permissible uses within the zone alteration of the landscape is acceptable.

Clause 41 of the LEP relates to assessment of visual impact of development on ridgetops. The clause is set out as follows:

41 Development on ridgetops in rural areas

- (1) This clause applies to land within Zone No 1 (a), 1 (b), 1 (c), 1 (d) or 1 (r).*
- (2) Consent may be granted to the carrying out of development on land to which this plan applies on or near any ridgeline visible from any public road only if, in the opinion of the consent authority, the development is not likely to detract from the visual amenity of the rural area and is in the community interest.*
- 3) In determining whether to grant such a consent, the consent authority shall consider the following:*
 - (a) the height and location of any building that will result from carrying out the development,*
 - (b) the reflectivity of materials to be used in carrying out the development,*
 - (c) the likely effect of carrying out the development on the stability of the land,*
 - (d) the bush fire hazard,*
 - (e) whether landscaping proposals satisfactory to the consent authority have been made.*
 - (f) (Repealed)*

This clause applies to this DA as it is visible from a public road. The views of the site are broken by roadside vegetation. Council should also consider the broader public interest (as set out in subclause 2) of the visual impact. The quarry cannot be viewed by a large section of the community and only limited interrupted views can be seen from a moving vehicle along Wyrallah Road. These would best be described as fleeting. There are no buildings associated with the quarry that will affect the visual impacts of the quarry. Accordingly item (a) is not relevant. Item (b) is specifically targeting the materials to be used in a building and it is acknowledged that no reflective material will be bought onto the site to complete the development. However because of the nature of the sandstone to be extracted the face of the quarry will be white and this will be a stark contrast to the green pasture. This contrast creates the biggest visual impact and will be partly visible from the road and from receiver 1. Because the view of the quarry from the road will be limited due to vehicle speed and roadside vegetation Council can be satisfied that the development complies with this clause. Further discussion of this impact on receiver 1 is conducted below. Item (c) is relevant as the quarry will be altering the stability of the land. Suitable remediation measures are proposed to ensure the long term stability of the land once the site is rehabilitated. Item (d) is not relevant to this development. The applicant has proposed significant landscaping to minimise the visual impacts of the proposal and item (e) has been satisfied.

The alteration of the landscape will be permanent due to the removal of the knoll and ridge. This area will be rehabilitated over time and will be returned to pasture in the longer term. The views of the knoll from the road are limited and will not impact upon a significant section of the community. On this basis Council could form the opinion that the development will not detract from the visual amenity of the rural area when viewed from Wyrallah Road. On this basis it is considered that the development satisfies the clauses relating to visual impact contained within the LEP.

Any assessment of the quality of the landscape to be altered will be highly subjective. There can be no question that the landscape has scenic value to the residents who enjoy the views through (and of) the developers property. The landscape is typically rural in nature with pasture being the predominant characteristic of the landscape. The most visually dominant feature of the landscape is the ridge and knoll that will be removed in the southern cell and the gentle slope of pasture in northern cell. Various rating schemes have been considered by the Court but have been held to provide little assistance in determining the value of a landscape. It cannot be denied that the landscape holds intrinsic value for those that enjoy a view of it from their dwellings. However this is not sufficient reason to determine that there should be no alteration to the landscape. The landscape is not viewed by a significant amount of the community nor is it unique. On this basis it is contended that development that alters the landscape should be acceptable.

If Council accepts the premise that alteration of the landscape is acceptable due to:

1. the fact that many uses that are permissible with (quarries and rural industries) and without consent (horticulture) can be conducted in the locality; and
2. that the proposal is allowable having considered the specific controls on visual impact on ridgelines; and
3. that whilst the landscape has value for those that view it the landscape is not so significant to the greater community so as to warrant specific protection; then

Council can assume that the threshold question of should any alteration to the landscape be allowed has been answered in the affirmative.

Council should now utilise the principle of view sharing to consider if the level of alteration of the landscape is acceptable.

Step 1 - Consider the type of view to be affected at each receiver

Receiver 1: The views are not considered Iconic (an example of an iconic view in this locality would be Mount Warning or Cape Byron), or whole views. The majority of their view field is to the east with the quarry being located in the south. The view that is impacted on is a partial view (approximately 30 degrees of a 180 degree view). The area of the view that is affected will be significantly altered by the development for the life of the quarry (25 years). There are no mitigation measures that will prevent the residents from seeing the quarry.

Receiver 2: The views are not considered Iconic, or a whole views. The view is a partial view, and will be significantly modified by the development and their view will change. As the proposed mitigation measures will change the view from grazing lands with rolling hills to grazing and a vegetated bund (densely planted vegetation). Receiver 2 will suffer from view loss due to the mitigation measures.

Receiver 3: The views are not considered Iconic, or a whole views. The view is a partial view, however will be significantly modified by the development and their view will change. As the proposed mitigation measures will change the view from grazing lands with rolling hills to grazing and a vegetated bund (densely planted vegetation). Receiver 3 will suffer from view loss due to the mitigation measures.

Step 2 - Consider from what part of the receiver property the views are obtained

Receiver 1: The views that are most likely to be impacted on would be obtained from the lawn area oriented to the south of the dwelling. The outdoor entertaining area will also have its view impacted upon from both sitting and standing positions. However the view will also be unaffected to the east and southeast.

Receiver 2: The views that are most likely to be impacted on would be obtained from the side of the dwelling (facilities on the southern side of the house unknown). The view of the pasture lands and knoll will be obscured by the creation of the vegetated bund.

Receiver 3: The views that are most likely to be impacted would be obtained from the outdoor entertaining area, kitchen and living spaces from both sitting and standing positions.

Step 3 - Consider the extent of the impact

Receiver 1: Considering the views of the whole property, not just the affected areas, the impact is likely to be minor. This receiver will retain unaltered views to the east and north from the entertaining and pool area. Landscaping will not reduce the visual impact of the quarry to the south. The view whilst altered will be retained in the long term. The progressive rehabilitation of each cell somewhat mitigates against the altered form of the view. Considering that only part of their view to the south is altered and that this altered view will consist of the central cell and up to 3ha at any one time of the southern or northern cells the altered view will not have a significant detrimental impact on the amenity of this residence.

Receiver 2: Considering the views of the whole property, not just the affected areas, the impact is likely to be minor. The loss of the view due to the vegetation screen plantings will not significantly impact on the use of enjoyment of the outdoor areas. The vegetative buffers will be located an acceptable distance from these areas. There will be no overshadowing or other significant alteration of the amenity of this property resulting from the planting of these buffers.

Receiver 3: When evaluating the views from the whole property, not just the affected areas, the impact is likely to be minor given that the vegetated buffer will soften or block the visual impacts of quarry. The main area of impact on this receiver will come from the southern cell. Because this cell will be worked from west to east the visual impact will only occur for a limited time one to two years whilst the final part of the knoll is removed. The vegetated buffer means that these works are unlikely to be seen in any case. A condition of consent could be imposed requiring this final stage of the southern cell to be removed within a specific time frame and this material stockpiled in the central cell. By limiting the time of exposure, coupled with the mitigation plantings and progressive rehabilitation of the southern cell as the working face moves west to east the visual impact is considered to be minimal on this receiver.

Step 4 - Consider the reasonableness of the application having regard to compliance with Council's planning controls

The proposed development does not comply with Council's Development Control Plan Part A, Chapter 11 - Buffers. Receiver 1 is located within the secondary buffer. This buffer was not established for visual impact, rather the buffers have been established to mitigate against noise and air quality issues that may arise from such an activity, therefore it is reasonable that this variation does not apply to the assessment of visual impact. The development is permissible with consent and is a commonly accepted use within rural areas. The development complies with clause 41 of the LEP. For these reasons it is considered that the proposal is reasonable.

Conclusion on Visual Impact:

Having accepted that the alteration of the landscape and acceptable and that the proposal complies with the relevant planning controls it is open to Council to conclude that the visual impacts are acceptable. This is not to say that the impacts on receiver 1 won't result in a reduction of their visual amenity nor can it be said that the screening plantings won't change the outlook from receivers 2 and 3 but these impacts are not so great so as to warrant refusal of the application.

Koala Habitat

Koala Habitat Protection – SEPP 44

An inspection in August 2008 of all mapped vegetated areas within the proposed site did not identify any koala faecal scats beneath, or 'poc' markings on the trunks of, potential koala feed trees. No koalas were sighted.

The proposed site is therefore not considered 'core' koala habitat under SEPP 44.

All sclerophyll areas of the proposed site are dominated by *Corymbia intermedia* (Pink Bloodwood) – whilst being a potential koala food tree Pink Bloodwood it is not listed under Schedule 2 of SEPP 44 as an indicator of 'potential koala habitat'. Whilst 1 or 2 individual *Eucalyptus microcorys* (Tallowwood) were located in open areas - in no areas did they comprise over 15% of the canopy designating 'potential koala habitat'.

The proposed site is therefore not considered 'potential' koala habitat under SEPP 44.

As the site is not considered 'core' or 'potential' koala habitat the requirement for an individual koala plan of management cannot be imposed.

Whilst the site does not constitute 'core' or 'potential' habitat under SEPP 44 it is probable that koalas may occasionally traverse, or enter into, the proposed site. To acknowledge and facilitate this movement it is recommended that any restoration or buffer plantings to the north of the site use suitable koala feed trees and be of an appropriate width to maintain their biological integrity (recommended as 20m by Department of Environment and Climate Change's (DECC) (letter dated 14/11/2008). Koala food trees should not be used in cases where they may draw koalas towards potential threats (e.g. machinery movements).

Proposed conditions of consent have been drafted to facilitate koala's movement through the site.

Threatened Flora and Fauna

Koalas are listed as listed as Vulnerable under the Threatened Species Conservation Act 1995. In August 2008 a desk top assessment of the site using Councils GIS system, which includes records from the NSW Wildlife Atlas, identified no koala sightings within the proposed site. However a letter from DECC received 14 November, 2008 states that 'four threatened species records for the Koala exist within the development site' and that 'these records have only recently been added to DECC's internal spatial data layers and may not yet be recorded on the NSW Wildlife Atlas public website'.

This is consistent with the comments above, and because the site does not constitute 'core' or 'potential' koala habitat according to SEPP 44 definitions it is not considered that the proposed development will not have an adverse impact on koalas.

With the proposed dual purpose planting (visual and koala) running east west along the northern boundary of the site, it may produce a marginal increase in koala movements in an east/ west direction across Wyrallah Rd (refer attachment 4). This is recognised in the DECC letter of 14/11/2008, however, given these movements are currently occurring, and the applicant is not affecting 'core' habitat under SEPP 44, any recommended condition to reduce the risk of vehicles hitting koalas on Wyrallah Rd must be applied in a reasonable manner.

It is recommended that a condition of consent be drafted requiring koala crossing signage along Wyrallah Road at appropriate distances from the proposed plantings. It is also recommended that Council write to DECC, as the threatened species experts, requesting information on suitable options to address vehicle strike.

Buffers

The objective of Lismore's Development Control Plan (DCP) Part A, Chapter 11 - Buffers is to minimise land use conflicts between potentially incompatible land uses through the establishment of appropriate buffer areas. A buffer may serve to mitigate against the a number of different impacts caused by a development.

A two level buffer applies to large quarries, primary 500m and the secondary 800m. Rural residential development is excluded from the primary and secondary buffer areas. Single dwellings on agricultural holdings may be permitted in the secondary buffer.

Council may grant variations to the numerical standards within the plan. The current provision for variation to the plan is set out in the introduction to the Lismore DCP and is as follows:

Council may approve development that does not strictly comply with this Plan. This will only be considered where the variation is considered to be minor, or where it can be demonstrated that compliance is physically impossible or impractical, or where the alternative proposed is substantiated as a better design solution.

It is to be noted that this variation provision differs significantly to the variation provision that was included in the previous DCP 27 - Buffers. Due to a directive from the Department of Planning that Councils may only have one DCP, Council's Strategic Planners compiled all the individual DCPs into chapters of the current Lismore DCP. When this occurred all the individual variation clauses were removed and the above generic clause was adopted. The original text that provided a more flexible approach in determining if a variation is acceptable is provided as follows:

Applications for variations to the buffer areas nominated in this Plan must demonstrate to Council's satisfaction that there is a clear case for variation of the standard, and that the objectives of this Plan will be satisfied. The following matters must be addressed in any application for variation:

- (a) The extent, nature and intensity of the conflicting land use.*
- (b) The operational characteristics of the land use.*
- (c) The external effects likely to be generated by the land use (eg spraydrift, odour, dust, noise etc).*
- (d) Any topographical features or vegetation which may act to reduce the likely impacts of the land use.*
- (e) Prevailing wind conditions and any other climatic characteristics.*
- (f) Any other mitigating circumstances.*

Under the previous DCP 27 provisions Council had some flexibility in varying the DCP. This ability has been significantly curtailed under the terms of the current DCP. Council is advised that it must not rely on the previous variation provisions in making a determination to vary the DCP. This would be consideration of an irrelevant matter and could leave the decision of Council open to challenge.

The Environmental Impact Statement (EIS) identifies that 10 existing dwellings are on lands within the secondary buffer of 800m, and 6 of those are within the primary buffer of 500m with the closest distances of unrelated properties being approximately 270m - Receiver 4, and 320m - Receiver 2. Receiver 1 is 550m and Receiver 3 is 510m. Refer Table 15 and Appendices 3 & 4 of the EIS.

It is acknowledged that the variation to the buffer distances is not minor and that the design parameter is not relevant. The non compliance with the numerical standards and with the variation provision raises a difficulty in the assessment of the application. The assessment team sought specific legal advice on the issue of the buffers chapter and variation clause of the DCP. A copy of that advice is provided in Attachment 8. The DCP is a specific matter for consideration under the provisions of section 79C of the Environmental Planning and Assessment Act 1979 (EP&A). It does not however have the statutory weight of the Local Environmental Plan (LEP).

The Land and Environment Court in *Stockland Development Pty Ltd v Manly Council* [2004] NSWLEC 472 (3 August 2004) consolidated the previous case law on the weight to be given to a DCP. The weight to be given to a DCP is based on the sets out the factors to be considered

- A) *A development control plan is a detailed planning document which reflects a council's expectation for parts of its area, which may be a large area or confined to an individual site. The provisions of a development control plan must be consistent with the provisions of any relevant local environmental plan. However, a development control plan may operate to confine the intensity of development otherwise permitted by a local environmental plan.*
- B) *A development control plan adopted after consultation with interested persons, including the affected community, will be given significantly more weight than one adopted with little or no community consultation.*
- C) *A development control plan which has been consistently applied by a council will be given significantly greater weight than one which has only been selectively applied.*
- D) *A development control plan which can be demonstrated, either inherently or perhaps by the passing of time, to bring about an inappropriate planning solution, especially an outcome which conflicts with other policy outcomes adopted at a*

State, regional or local level, will be given less weight than a development control plan which provides a sensible planning outcome consistent with other policies.

- E) Consistency of decision-making must be a fundamental objective of those who make administrative decisions. That objective is assisted by the adoption of development control plans and the making of decisions in individual cases which are consistent with them. If this is done, those with an interest in the site under consideration or who may be affected by any development of it have an opportunity to make decisions in relation to their own property which is informed by an appreciation of the likely future development of nearby property.*

On consideration of items A, B, C and E some weight must be placed on the provisions of the DCP. However with respect to item D the buffer distances in the DCP may bring about an inappropriate planning solution in this case where the appropriate regulatory (DECC) will allow the extraction to occur closer to the dwellings than that as prescribed by the DCP. The buffer distances are arbitrary and have not changed over time to reflect the regulatory role that DECC. This clearly shows that the DCP is not consistent with the State Government legislative changes to the regulation of large quarries. On this basis less weight should be given to the DCP.

DECC is satisfied that the quarry can meet the noise criteria and that appropriate strategies are in place to minimise the impacts of air pollution and particulate matter on the adjoining properties. These issues have been extensively discussed in this report.

It is open to Council to refuse the DA on the basis of non compliance with the DCP. However this is not recommended. The legal advice is clear that Council may vary the DCP outside of the scope of the variation clause. That is, although the variation is not minor Council may determine that less weight should be placed on the DCP because of the inconsistencies created between the DCP and DECCs regulation of the quarry.

The DCP is a focal point in the assessment of the DA and despite the conclusion that less weight may be given to the DCP Council must also decide if the underlying objectives of DCP are being met. The DCP should only be varied where there is sufficient planning merit. Because the merit assessment of the noise and air quality issues has demonstrated that there are no adverse impacts created by varying the proscriptive numerical standards it is contended that the underlying objective of separating incompatible land uses has been achieved and that the DCP may on merit be varied.

Traffic

The application and accompanying traffic impact assessment has been reviewed and the following comments are provided with regard to traffic matters associated with the assessment and determination of the proposed development.

The key issues within the application relating to traffic include: the volume of traffic to be generated by the development, the adequacy of the existing road for the anticipated traffic and the design of the intersection to access the quarry. The following details are provided in relation to these issues

The Environmental Impact Assessment lodged included a Traffic Impact Assessment prepared by Roadnet Pty Ltd. The report primarily quotes loaded truck movements and also tends to deal with increases upon what has previously been approved but is not yet operational rather than increases upon existing traffic volumes. In light of this the following is an independent calculation detailing total truck numbers for the proposed average annual extraction rate of 120,000m³.

Approval for 200,000 tons or 120,000m³ per annum with 10% trucks carrying 10m³ and 90% carrying 20m³. To calculate total annual number of loaded trucks the following calculations were undertaken:

- Number loaded trucks x 0.1x10 +Number loaded trucks x 0.9x20=120,000m³
- Therefore number loaded trucks per year to transport 120,000m³ = 6316 trucks, being 632 trucks carrying 10m³ and 5,684 trucks carrying 20m³
- This will mean 12,632 truck movements per year will be generated by the quarry.
- If 50% of trucks head north and 50% head south this will mean that there will be 6,316 trucks in each direction per year. Or that existing traffic counts will increase by 6,316.
-

Report identifies 260 working days per year, to calculate average daily truck numbers generated in each direction per day, 6,316/260, yields an average of 24 trucks (total, loaded and unloaded) per day each direction.

The traffic counts undertaken by Council in 2002 identified that of a week day an average of 2200 vehicles per day utilise Wyrallah Road, south of Wyrallah Ferry Road, with 6.6% being trucks. This equates to a daily average of 145 trucks. If the 24 additional truck movements, as calculated above, are added to this figure it results in 169 truck movements per day upon the road equivalent to 7.6% of the final traffic upon the road being trucks.

Wyrallah Road would be classified as a regional sub-arterial road by traffic engineering standards. The expected range for percentage of heavy vehicles utilising such a road would be 6%-10%. The average expected percentage of heavy vehicles upon Wyrallah Road with the quarry operating at its annual extraction rate of 120,000m³ per annum and a 50% traffic split, at 7.6%, is well within this expected range.

A similar calculation for the worse case of maximum production with all traffic in one direction has been undertaken. Under the proposal the maximum annual production would be 4 times the average annual i.e. 800,000 tons per annum, as opposed to 200,000 tons used above. Therefore it would yield a maximum of 192 truck movements (including both loaded and unloaded trucks) per day. This is the maximum theoretical traffic generation assuming all trucks in the same direction with 4 years production in 1 year.

Further predictions were also undertaken by using 2200 vehicles per day utilising Wyrallah Road, south of Wyrallah Ferry Road, with 6.6% or 145 vehicles currently being trucks. If we add the proposed 192 trucks it would give 337 truck movements or 14.1% of movements as trucks. If the consent was limited to averaging production over two years or three years maximum yearly production would be 400,000 or 600,000 tons. These production rates would yield heavy haulage percentage figures of 10.5% and 12.3%, assuming worst case of all traffic in one direction.

From the above it is evident that the averaging of production between years could have a significant effect on the percentage of heavy vehicles within the traffic stream. To manage this effect it is proposed that the request to allow an averaging of production over four years be denied. It is recommended that if an average of production of years is to be approved then the average of production be over a maximum of two years.

The above test of the adequacy of the road has been based on Wyrallah Road being at the standard of a regional sub-arterial road. Whilst it is acknowledged that there maybe components of Wyrallah Road that are not at the standard identified for this class of road, such as pavement depth and vertical alignment, this is often the case for roads within Councils road network due to changes in standards over time. It is considered that this road does fulfil the role of a sub-arterial within Council's road network and as such it is appropriate for Wyrallah Road to be utilised for as a haulage route. Imposing a condition upon the development to upgrade the existing road to meet the current standard would fail the planning test of reasonableness given that it currently functions at this level, the significant cost involved in such an upgrade and the small percentage of final traffic volume that the development will generate.

The proposed development operating at its approved extraction rate of 120,000m³ per year will generate road improvement levies in the order of \$181,000 per annum. These will be available to Council for maintenance and improvements of this road.

The proposed entrance that has been recently constructed is considered suitable for the proposed development and the anticipated traffic. The geometry of the intersection design that has been constructed provides additional traffic facilities to what would be required by Austroads intersection design standards for the traffic volume anticipated from this development. Based on the expected traffic generation of the development a type AUR intersection would be required. This

is where vehicles turning right into the development do so from the through lane and vehicles that are travelling through the intersection are required to veer left around the turning vehicle. This requires through vehicles to spot the turning vehicle and manoeuvre around the turning vehicle.

The intersection constructed has been constructed to a type CHR which provides a protected right turn lane for vehicles entering the property. This is a higher level of treatment than that recommended within the Austroads standard for the traffic volumes proposed. The reason for this was that though the proposed entrance provides the required sight distances for vehicles to view other vehicles with adequate distance to make appropriate decisions to turn or stop at the intersection it does not provide for approach sight distance. This is the required distance for a vehicle approaching the intersection to see the line marking at the intersection with adequate time to interpret and react to the line marking. It should be noted that design standards require approach sight distance at all locations upon the road, however, in practise a lot of Lismore's existing road network does not meet this requirement. To remove the impact of the short fall in approach sight distance the applicant proposed to construct a protected right turn lane that removes the need for through traffic to site the line marking and react, the reason that approach sight distance is relevant to intersection design, by ensuring that through traffic have uninterrupted travel through the intersection. It is considered that this approach is acceptable as it provides a solution that both overcomes the functional requirement of the standard, being the need to see the line marking and delivers additional benefit being removing turning traffic from the through travel lane.

It is considered that this design approach does meet the intent of the standard and therefore the intersection does satisfy the requirements of the standard. The intersection design has been discussed with, and accepted by, the RTA.

Detailed responses to submissions regarding traffic matters are included separately within this report.

Conditions of consent and an amendment to the proposed average extraction rate of the quarry have been recommended. The proposed conditions include; requiring works to existing intersections at Wyrallah Rd/Wyrallah Ferry Rd and Wyrallah Ferry Rd/Coraki Rd, limiting the roads that can be utilised for the haulage of material from the quarry, requiring payment of levies for maintenance of haulage roads and stipulating that the quarry management plan address traffic related issues. In addition due to the volume of traffic that could be generated from an approval to average extraction over 4 years it has been recommended that the approval limit the averaging to a period of two years.

Water and Soil Management

The DWE and DECC are recognised by Council as the assessing experts in relation to soil and water management and Council will therefore rely on their commentary in the overall assessment of the Soil and Water Management plan.

	<p>The Soil and Water Management Plan prepared by ERM states that the extent of erosion over the site is not expected to increase as a result of the quarry expansions. The soils were considered to have limited capacity to support long-term agriculture and the continuation of the quarrying activities would not significantly degrade this resource any further. The site will be returned to agricultural use following rehabilitation.</p> <p>ERM conclude that given the location of the site within the upper reaches of the catchment and the size of the area to be disturbed it is unlikely that the quarry will cause significant changes to environmental flows in the tributaries or Tucki Tucki Creek.</p> <p>DWE have stated to the applicant in correspondence that if groundwater is utilised or intercepted a licence is required which will be conditional on the development of a groundwater management plan.</p> <p>Appropriate site management is expected to reasonably minimise impacts on water quality and on the quality of run off. Existing water quality conditions must be established prior to commencement of the expansion operations and clear performance objectives shall be stated. As a result of a Stop the Clock request the applicant has submitted further information which addresses this.</p> <p>DECC through their GTA have required a number of conditions relating to soil and water management including submission of a Final Soil and Water Management Plan with the required application for an environment protection licence.</p> <p>Air Quality</p> <p>The report concludes that operations as modelled would meet the NSW DECC air quality impact criteria for pm10 and TSP short and long term averages and dust deposition, and that the proposed expansion is not anticipated to have a significant impact on local air quality.</p> <p>The report inventory, modelling, and results were conducted in an acceptable manner and the conclusion is considered to be reasonable.</p> <p>DECC through their GTA have required a number of conditions relating to dust and odour control which are stated in the detailed section of this report.</p>
<p>Access to development site and public transport; traffic generation and parking</p>	<p>The site will be accessed from Wyrallah Road via an upgraded intersection. The RTA and Council's Development Engineer have reviewed the proposed upgrade and have determined that the proposal will adequately address the objectives of the standard. For a more detailed assessment refer to the Development Engineers comments on traffic.</p>
<p>Impact on, adequacy of and availability of utilities services;</p>	<p>The proposal is for the quarry to provide water through storage dams and bottled water for potable use. The proposal is to provide for potalooos, and if required an on-site waste water system may be installed. A condition of consent will be drafted to ensure any system that is proposed must be submitted and approved by Council.</p>
<p>Impact of the development on public recreational opportunities; pedestrian linkages (NB. Refer to Parks for</p>	<p>The proposed quarry is unlikely to have a significant impact on the public recreational facilities in the area or place more demand on them.</p>

<p>comment if DA creates a new public reserve, is adjoining a public reserve or proposes removal of a street tree)</p>	
<p>Effect on Natural Resources (water, soils, air & microclimate, Flora & Fauna, Threatened Species, waste, energy, productive agricultural land, water supply catchment etc)</p>	<p>Refer above for detailed assessment on natural resources including threatened species, flora and fauna, soil, water and air quality.</p> <p>The comments provided by the Department of Primary Industries regarding productive agricultural are as follows:</p> <p>Agricultural issues</p> <p><u>DPI comments</u></p> <p><u>Impact on lands mapped as regionally significant farmland</u> The Northern Rivers Farmland Protection mapping shows part of the higher area of the subject lands cross-hatched as regionally significant farmland. Section 117 Direction 5.3 – Farmland of State and Regional Significant on the NSW Far North Coast only applies when a council prepared a draft LEP that proposes the conversion of land to urban and residential land uses. No draft LEP amendment is proposed in this case and extractive industries are a permissible use with consent in the zones that apply.</p> <p><u>Loss of productive agricultural land</u> The subject lands comprise a small area of mapped Class 2 agricultural land, though the majority of the land is mapped as Class 4 and 5 agricultural land. A site inspection undertaken on September 18, 2008 confirms that the property contains a diversity of land classes, with the majority of the land comprising class 4 and 5 lands. The ridge country, which contains rock outcrops as well as the vegetated areas, comprises Class 5 agricultural land. The cleared slopes are Class 4 lands and there are smaller areas of Class 3 grazing country. The proposed southern quarry area (ridge country) will not impact on prime crop or pasture land. The proposed northern quarry area will impact on grazing land, though with considered rehabilitation the lands could potentially be restored for continued grazing. The Clause 7 and Clause 12 of the North Coast REP are relevant, though the likely impact on agricultural resources is considered to be localised and not deemed to be significant. The Far North Coast Regional Strategy highlights the importance of protecting the agricultural resource. The strategy also highlights the importance of maintaining access to natural (extractive) resources in rural areas. The rural planning principles of the Rural Lands SEPP do not exclude quarries in rural areas.</p> <p><u>Development diminishes agriculture land use opportunities e.g. beef cattle grazing</u> The expansion of the quarry and disturbance of the site by excavation will not significantly diminish the agricultural land use opportunities of the site. The better quality agricultural lands of the property will not be affected by the quarry operations. The access road into the quarry crosses lands that have been classified as high quality agricultural land, though the access road is already permitted by prior development consent and the impact of the access road on agricultural lands is limited. The majority of the better quality grazing land of the property will not be affected by the proposed development. Rural lands have diverse land use</p>

	<p>values, including quarrying and extractive industries and other primary industry land uses. Extractive industry operations are considered a legitimate use of rural and agricultural lands, subject to the environmental assessment process and subject to mitigation of potential adverse off-site impacts.</p> <p><u>Rehabilitation plan may not adequately return the land to grazing</u></p> <p>The priority objectives of site rehabilitation, following disturbance of the subject lands, should be public safety, land stabilisation and land management. Return of the subject land to some form of agricultural production is desirable, though the priority objectives are more important and in some cases environmental restoration may have priority over rehabilitation for agricultural land uses. A clear and well defined rehabilitation plan is important for accountability, planning, operational and auditing purposes. NSW DPI would support the rehabilitation of disturbed lands where practical and feasible to a productive use such as grazing.</p> <p><u>Loss of some 50 ha of agricultural land when government is trying to protect productive farmland</u></p> <p>Protection of productive farmland is an objective of government and regional policy, but not at the exclusion of all other legitimate uses of rural lands. Urban encroachment and land sterilisation by non-primary industry development in rural areas are the greatest risk to productive farmland.</p>
<p>Any Natural Hazards (site stability, Floodplain Risk Management Plan, bushfire, ASS, contamination)</p>	<p><u>Floodplain Management</u></p> <p>The proposed expansion is unlikely to have a significant impact on flooding. Given the location within the catchment and the proposed water harvesting and storage facilities it is unlikely that the proposed quarry will enhance or impact on the current flood regime of the area. Conditions of consent will be drafted to ensure the amount of water leaving the development does not exceed pre development levels.</p> <p><u>Bushfire</u></p> <p>Please refer to NSW Rural Fire Services comments.</p> <p><u>Acid Sulphate Soils</u></p> <p>An addendum to the ERM Soil and Water Management Report was submitted on September 4, 2008 in relation to Potentially Acid Sulphate Soils (PASS). The work cell sites are classified Class 5 on Council's records. Utilising information including DLWC Risk mapping, and results of geological drilling previously undertaken, the addendum report concludes that PASS is not expected to be impacted as a result of the development. As a precautionary measure targeted assessment of the Dam 2 site will be conducted. ERM recommend that the proposed development will not require a site specific PASS Management Plan.</p>
<p>Safety, Security and Crime Prevention</p>	<p>Please refer to NSW Police Crime Prevention Officers comments.</p>
<p>Social Impact (effect of the development on social cohesion, community structure, character, social equity, etc)</p>	<p>The potential social impact of this proposal is difficult to determine and impossible to quantify. There are a number of specific impacts on people's amenity (point impacts) that will increase stress due to noise, loss of visual amenity (and a corresponding decrease in property values). This stress clearly will adversely impact on the family unit and it's</p>

	<p>interaction within this small community. The number of households that these point impacts affect is small however the magnitude of the impact on these households is potentially great. The point impacts may not be of sufficient magnitude to warrant refusal of the application but the effects that these impacts have on the families that reside in the affected dwellings requires consideration by Council.</p> <p>The social impacts identified in the submissions are mostly concerned with traffic, noise, dust and visual amenity. These impacts will occur to a greater extent to those residences closest to the quarry. Given that the majority of respondents to the consultation survey stated that the reason they live in the area include views and character of the area, the proposed expansion of the quarry will have potential negative social impacts on the residents, however small in number.</p> <p>A number of mitigation strategies have been identified in the final SIA report including;</p> <ul style="list-style-type: none"> ▪ Noise limit goals ▪ Noise barriers ▪ Provision of perimeter and other landscaping and habitat corridors ▪ Progressive rehabilitation ▪ Quarry plan of management, environmental performance standards and on-going monitoring and reporting of quarry operation ▪ Retention of areas of ecological/aboriginal significance. <p>There are a number of conditions of development consent that are proposed which may mitigate against the point impacts.</p> <p>The quarry is unlikely to have a significant detrimental social impact across the broader Lismore population. There will be destabilising effects within the immediate local community due to disunity and ongoing anger and dispute between the objectors and the developer. It is acknowledged that there are adverse impacts but these are not so significant as to warrant refusal of the application.</p>
<p>Economic impact of the development on the surrounding locality</p>	<ul style="list-style-type: none"> • The impact of the proposal on the local economy is not likely to be significant • It is likely to provide employment in the region. • It is unlikely to prohibit agricultural production both on the properties in the application and the adjoining land.
<p>The sensitivity of the site and internal design, in regards to local environmental conditions and site attributes (size, shape and design of allotments, easements, roads site coverage, positioning of buildings, landscaping, open-space, etc.)</p>	<p>Council must consider the proposed methods of removal, and location of excavation is reasonable in the surrounding environment.</p> <p>In the assessment of the application it was determined that the proposed vegetation removal and proposed vegetation replacement would increase biodiversity and habitat on the site. It would also enhance corridors connecting existing remnants. A condition of consent has been drafted to ensure the rehabilitation of the quarry will suitably achieve both Council's requirements for environmental enhancement and maintenance as well as DPI requirements to restore Regional Significant farmland status to parts of the site.</p> <p>Given the above and compliances with Regulations and Acts</p>

	it has been determined that the design of the subdivision and the nature of extractive industries that the proposal has considered the sensitive areas on the site and provide sufficient protection with the layout of the operational area. .
Noise and Vibration	Please refer to DECC's comments and General Terms of Approval. Also refer to Environmental Health Officers comments.
Cumulative impacts;	The cumulative impacts of the proposal are considered reasonable given the mitigation measures proposed and the draft conditions of consent proposed by Council and other Authorities.

7. The Suitability of the Site for the Development

IMPACTS	ASSESSMENT
Does the proposal fit the locality?	The proposed development, if conducted in accordance with the draft conditions of consent, is a suitable proposal for the location, given the above assessment.
Are the site attributes conducive to the development?	<p>Council must consider the proposed methods of removal, and location of excavation is reasonable in the surrounding environment.</p> <p>In the assessment of the application it was determined that the proposed vegetation removal and proposed vegetation replacement would increase biodiversity and habitat on the site. It would also enhance corridors connecting existing remnants. A condition of consent has been drafted to ensure the rehabilitation of the quarry will suitably achieve both Council's requirements for environmental enhancement and maintenance as well as DPI requirements to restore Regional Significant farmland status to parts of the site.</p> <p>Given the above and compliances with Regulations and Acts it has been determined that in relation to the design of the subdivision and the nature of extractive industries, the proposal has considered the sensitive areas on the site and provides sufficient protection with the layout of the operational area.</p> <p><u>Lot Layout</u> The proposed subdivision will result in more efficient land use management with the quarry on one allotment. The proposed land use is consistent with the objectives of the rural zone.</p>
Are any issues identified on the property file/record which affect the proposal?	There are no issues on the file which may affect the proposal.

8. Any Submissions made in Accordance with this Act or the Regulations

Please refer to Attachment 10 of the report for the summary and assessment of the submissions.

9. The Public Interest

The development is **not** contrary to the public interest. This is not to say that there have not been objections made by the public. The public interest is not based upon number of submissions, particularly where those submissions are not based on actual impacts but are based on a fear or perception that the development may have an impact. A fear or concern without rational or justified foundation is not a matter which, by itself, can be considered as an amenity or social impact pursuant to s 79C(1)(b) of the EPA Act. (Perry Properties Pty Ltd v Ashfield Municipal Council [2000] NSWLEC 188).

An activity which is otherwise not likely to significantly affect the environment should not be declared to be not in the public interest merely because it excited opposition by a section of the public. This reasoning on the public interest was confirmed by Justice McClelland in *Newton v Wyong Shire Council* (6 September 1983, unreported) where he said:

"I had an uneasy feeling that an attempt was being made to smuggle into planning and environmental law a new doctrine which might be expressed as follows: If local residents, however mistakenly, believe that a proposed scheme will be environmentally damaging, that belief is a factor, and an important one, which determining authorities should take into account in reaching their decisions".

The public interest must be seen in a broad manner and is based in policy and resource allocation rather than the perceived impacts by a number of residents.

The Department of Primary Industries stated that resources in the North Coast are abundant, but many are not accessible due to a variety of environmental or operational constraints. The supply of construction material in this region is uncertain. The location of the quarry in relation to Lismore and other regional towns and villages has been considered a significant factor in reducing carbon emissions, by reducing the amount of material required to be transported from outside of the region. The location of the quarry and the availability of the resource will contribute to the economic growth of the region through the construction and upgrading of roads.

The review of the key issues noise, buffers, soil and water management, koalas, visual impact and traffic concluded that the proposed development complies with the current Legislation, Regulations and Policies and the drafted conditions should enable the development to provide the resource within the current legislative framework. Because the development complies with the relevant planning policies it cannot be said to be contrary to the public interest.

Attachment 10: Summary and assessment of the issues raised in the submissions for Development Application 2008/233

Submissions within 1km of proposed Development

- 55 people living within 1km of the proposal lodged an objection.
- Those 55 people came from 10 households located within 1km of proposal
- 8 people living within 1km of the proposal made a written submission supporting the proposal.

Submissions within 2km of proposed Development

- 24 people living within 2km of the proposal lodged an objection.
- Those 24 people came from 10 households located within 2km of proposal
- 0 people living within 2km of the proposal made a written submission supporting the proposal

Submissions within 3km of proposed Development

- 19 people living within 3km of the proposal lodged an objection.
- Those 19 people came from 10 households located within 3km of proposal
- 0 people living within 3km of the proposal made a written submission supporting the proposal

Submissions within 5km of proposed Development

- 51 people living within 5km of the proposal lodged an objection.
- Those 51 people came from 21 households located within 5km of proposal
- 0 people living within 5km of the proposal made a written submission supporting the proposal

Submissions within 10km of proposed Development

- 49 people living within 10km of the proposal lodged an objection.
- Those 49 people came from 35 households located within 10km of proposal
- 10 people living within 10km of the proposal made a written submission supporting the proposal

Submissions greater than 10km from proposed Development

- 307 people living greater than 10km of the proposal lodged an objection.
- Those 307 people came from 257 households located greater than 10km of proposal
- 6 people living greater than 10km 1km of the proposal made a written submission supporting the proposal

There were 60 acknowledgment letters which were returned by people who did not make a submission and requested that they be taken off Council's list.

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Summary and assessment of the issues raised in the submissions for Development Application 2008/233

Topic	Issues	Within 1km of proposal	Between 1km and 2km of the proposal	Between 2km and 3km of the proposal	Between 3km and 5km of the proposal	Between 5km and 10km of the proposal	Greater than 10km from	Assessment
EIS	The local community were not consulted with.	Yes	No	No	No	No	No	On November 20 2007 between 11:30amd and 4:30pm the following was delivered to the 28 dwellings (all residents were within a 2km radius of the proposed development): <ul style="list-style-type: none"> ▪ introduction letter to landowner/resident ▪ the survey ▪ stamped return addressed envelope.
	The figures on page 73 in table 15 allocate buffer distances these are incorrect.	Yes	No	No	No	No	No	Addressed in additional information provided
	SEPP 44 should apply.	Yes	No	No	No	No	No	Refer to Natural Resource Management Officers Comments.
	SEPP 14 should apply	Yes	No	No	No	No	No	Does not apply to this application. Refer to detailed assessment for reasons.
	Haul roads are drawn outside of the operational area this needs to included in operational area and therefore in the noise assessment.	Yes	No	No	No	No	No	Addressed and amended in additional information provided.
	Ballina and Richmond Valley Council should be compensated for the road impacts.	Yes	No	No	No	No	No	Refer to comments provided by Ballina Shire Council. Richmond Valle Council did not provide a response.
	Staff movements about the site need to be included in the EIS and modelled in the noise report.	Yes	No	No	No	No	No	Staff movements within the operational area of the proposal have been assessed. Detailed information on their movements outside of the operation area is not considered reasonable under the regulations.
	Storage of 327,000 tonnes of material – visually unpleasant and degrades the areas, drainage and leeching that could occur, dust, what will happen to this stockpile?	Yes	No	No	No	No	No	<ul style="list-style-type: none"> ▪ The EIS states storage of 21,000 tonnes of material will be retained for rehabilitation ▪ The EIS states storage of 11,000 tonnes of topsoil will be retained for rehabilitation ▪ It is estimated that 8,000t of a blend of topsoil and overburben will be retained for rehabilitation ▪ The EIS states storage 35,000t of raw material will be stored at the base of the work cell ▪ The EIS states storage 33,000t of processed resource will be stored in 6 covered areas/bays ▪ The EIS states storage 106,000t of overburben will be stored at base of work cells ▪ The EIS states storage 53,000t of topsoil will be stored at base of work cells The visual screening (landscaping) and the location of the stockpiling will reduce any visual impact to must adjoining residents
	When did quarry start – EIS states in 1950's Local say it was used by Gundurimba Shire for roads and was not a quarry until 1993.	Yes	No	No	No	No	No	No
Page 27 Table 5 states 140 Hazlemount Lanes belongs to the Applicant, however it does not.	Yes	No	No	No	No	No	No	This was amended in the additional information provided.

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EIS	We pay rural residential rates why are we being treated as general rural zone?	Yes	No	No	No	No	No	<p>Each parcel of land within Council's boundary must be placed in a rating category. The Local Government Act 1993 (LGA) stipulates the four categories that can be used which include Business, Residential, Farmland and Mining (no property in the council area meets the definition for mining).</p> <p>Within each category, subject to the limitations provided within the LGA, a council may also define sub-categories. Council currently has two sub-categories of the Residential rate:-</p> <ul style="list-style-type: none"> • <i>Residential Urban/Village</i> - for residential properties within the defined Urban area of Lismore and the various Villages including Dunoon, Clunes, Nimbin, Modanville etc, including vacant land. • <i>Residential Rural</i> – for residential properties outside the Urban area and Villages, including vacant land. <p>The other category that is generally associated with rural properties is Farmland. This category can be levied on any property regardless of where it is located based upon its compliance with the definition of Farmland within the LGA. As the use of the property must meet certain criteria the owner must complete an application form, which asks for a description of the type and extent of the activity taking place, before it can be considered for this category.</p> <p>If a property, that is already receiving Farmland rates, is either sold or significantly changed due to a subdivision/boundary adjustment its category automatically reverts back to the appropriate residential rate based on its location and a new application for Farmland rates must be made.</p>
	Figure 3.1 does not show the site boundary	Yes	No	No	No	No	No	It is identifying the topography of the area
	Figure 3.2 Existing site drainage plan – does not show site boundary.	Yes	No	No	No	No	No	It is identifying the drainage of the area
	Figure 3.3 Proposed Site drainage pan – does not show site boundary.	Yes	No	No	No	No	No	It is identifying the changes in drainage if the proposal does ahead.
	Figure 4.4 3D model of final landform – dated 1/1/06 – pre-purchase of Blackmans farm purchased June 2007	Yes	No	No	No	No	No	The purchase date of the property is not relevant to this assessment.
	Landscape plan – 10m koala tree planting buffer n the northern boundary is design to provide visual screening but due to slope it will not.	Yes	No	No	No	No	No	Agreed this will not reduce the visual impact, has been modified by the developer.
	Operating hours should be 7am to 4pm Monday to Fridays with no public holidays or weekend work.	Yes	No	No	No	No	No	<p>The hours may be varied in consideration with community concerns during the planning process, this requires DECC comment as well. Currently the hours propose a minor adjustment to industry standard operating hours of 7.30am to 1pm Saturday. Nominated operating hours are Monday to Friday 7am to 5.30pm, Saturday 7.30am to 3pm.</p> <p>Sundays and public holidays will not be incorporated into the approval at this stage.</p>

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EIS	Staff amenities?	Yes	No	No	No	No	No	<ul style="list-style-type: none"> Staff will be provided with an air-conditioned demountable building which will include a lunch room, fridge, supply of potable water, handwashing facility, emergency shower and storage of personal items. Short term toilet facilities will be existing dwelling Long term chemical toilet facilities will be provided
	Inappropriate questions asked on in community consultation.	Yes	No	No	No	No	No	The questions in the survey were considerable to comply with the requirements of Council's Social Impact Assessment Guidelines
	Does not comply with FNCRS policy for protecting high habitat and scenic amenity.	Yes	No	No	No	No	Yes	The FNCRS identifies Mt Warning, caldera and Cape Byron as Iconic landforms not the hill which is proposed to be quarried. There is no vegetation of high habitat value proposed to be removed in this application.
	The North Coast extractive Industries committee did not identify the existing quarry of having regional significance.	Yes	No	No	No	No	No	Refer to Department of Primary Industries comments
	SEPP 11 should apply	Yes	No	No	No	No	No	Repealed
	Page 90 Clause 14(2) Clause 15(3) Clause 16(2) – Council to determine?	Yes	No	No	No	No	No	This information has been provided and addressed in the additional information on 3/9/08
	Additional assessment will be done prior to commencement of works in the northern section?	Yes	No	No	No	No	No	This information has been provided and addressed in the additional information on 3/9/08
	Council must apply the Living and Working in Rural Areas (DPI).	Yes	No	No	No	No	Yes	Refer to Department of Primary Industries comments
	It should be assessed under SEPP 33.		No	No	No	No	No	<ul style="list-style-type: none"> Under SEPP 33 the proposed development is not a potentially hazardous industry. Under SEPP 33 the proposed development is not a potentially offensive industry. Under SEPP 33 the proposed development is will not be a hazardous storage establishment
	Location of machinery such as generators this is important and should have been included in the noise assessment.	Yes	No	No	No	No	No	Refer to Department of Environment and Climate Change's comments
	Destroying over 50ha of productive farmland	No	No	Yes	No	No	No	Refer to Department of Primary Industries comments
	The EIS fails to mention that the <i>Primary Industries in the North Coast Region of NSW Strategic Review (DPI, 2006)</i> states that sustainability of construction material supply in the North Coast region is problematic, despite abundant resources.	No	No	No	No	No	Yes	Refer to Department of Primary Industries comments
	Levies are not reasonable – should be higher	No	No	No	No	No	Yes	These may vary and will be calculated by Council at determination if approved.
	It will effect cane growth and livestock due to the water quality running off onto downstream farms.	No	No	No	No	No	Yes	Refer to Department of Primary Industries comments
	The area is mapped as Regional Significant Farmland	No	No	No	No	No	Yes	Refer to Department of Primary Industries comments

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EIS	Appendix 8 1.1 states that sequential extraction and rehabilitation within 'section Areas' will take place in up to three 'work cells' that will have a maximum area of 3 ha. DNR requests in May2007 recommend no more than 1 ha extraction to be open at any one time. The proponent plans to operate at three times this level with no justification in the EIS.	No	No	No	No	No	Yes	As the Department of Natural Resources is no longer a Department and its roles and responsibilities were divided between the Department of Environment and Climate Change, the Department of Primary Industries, and the Department of Water and Energy it is considered that this issue has been satisfied as none of the Departments have required information on this requirement.
Soil and Water Management	The water flows have been mapped incorrectly in the report (refer letter 08-5649)	Yes	No	No	No	No	No	DWE to comment
	No information provided on quality and quantity of runoff from the sand washing area.	Yes	No	No	No	No	No	EIS states 20% of topsoil stockpiled retained for rehab, and seeding proposed to reduce surface erosion.
	The Soiltech report is old and should be updated	Yes	No	No	No	No	No	The ERM S&W MP Section 4 states all water from disturbed areas will be diverted to settling ponds prior to leaving the site in compliance with accepted guidelines. The sand washing area is encompassed in the central area, runoff from this area is captured by ponds. Monitoring is required which will provide a mechanism to assess water quality prior to release into the environment and will enable assessment of the effectiveness of the drainage system. DWE are considering overall water management.
	The variation in chemical contents at the three cells should be measured and addressed in the report.	Yes	No	No	No	No	No	Contemporary and comprehensive soil and water sampling was conducted by EAL in Feb/March 2008. Council considers this data to be satisfactory.
	If high sulphates are likely to occur in the sand wash runoff what other chemical compounds will occur?	Yes	No	No	No	No	No	The ERM S&W MP Section 4 states all water from disturbed areas will be diverted to settling ponds prior to leaving the site in compliance with accepted guidelines. The sand washing area is encompassed in the central area, runoff from this area is captured by ponds. Monitoring is required which will provide a mechanism to assess water quality prior to release into the environment and will enable assessment of the effectiveness of the drainage system. DWE are considering overall water management.
	The sediment ponds will not have the capacity to hold the excessive amounts of water that we have in Tucki Tucki area.	Yes	No	No	Yes	Yes	Yes	S&WMP provide satisfactory water balance data utilising accepted rainfall data. DWE also to comment.
	Page 13 3.1.5 The discharge from these ponds is not currently monitored and as such the efficacy of the ponds and quality of water leaving the site is unknown "no quality control existing"	Yes	No	No	No	No	No	The SWMP recommends monitoring be undertaken immediately to gain an understanding of the existing water quality conditions. Council has discussed this with the proponent and reaffirmed that background levels must be established. Proponent advised Council monitoring will commence immediately.
	Should connect to town water supply instead of depleting the bores and natural systems	Yes	No	No	No	No	No	Council requires connection to potable water supply. DWE have commented on water storage proposal and will licence any extraction for industry purposes.
	The report did not mention of southern slope drainage.	Yes	No	No	No	No	No	Figure 4.1 of SWMP shows flow and capture of southern slope.
	Page 18 states that the extraction is likely to lower the perched water table – what is being done about this?	Yes	No	No	No	No	No	DWE to comment.
Existing bore is not on the current approve sites from DWE webpage?	Yes	No	No	No	No	Yes	DWE responded - all monitoring bores are licensed, and an application has been sent to the proponent for the windmill.	

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Soil and Water Management	Many residents in the area have legal bores which are used for both domestic and stock and having these polluted is not acceptable.	No	Yes	Yes	No	No	No	A Soil and Water Management plan has been presented addressing water quality monitoring and performance objectives. Surface and groundwater monitoring sampling and objectives have been stated in accordance with accepted guidelines (ANZECC (2000), and AS 55667.11 Water Quality, Sampling, Guide to the Collection of Groundwater). Background data is proposed to be established. Council is satisfied with the information to date. DECC is also to comment.
	Will dams need approval by DWE?	Yes	No	No	No	No	No	DWE responded.
	More detailed water balance is required as this one is not accurate as stated on page 24 4.3	Yes	No	No	No	No	No	DWE to comment.
	What assurances have the community have that water management practices will be adhere to?	Yes	No	No	No	No	No	DECC will set licensing conditions. Council has recommended conditions which require submission of water quality monitoring results to be routinely submitted to Council and DECC to assess and ensure approved SWMP water quality objectives are met.
	What will the effects be from the extra acidity and other pollutants running off into Tuckean Wetland	Yes	No	No	No	No	No	ERM SWMP Section 4 states all water from disturbed areas will be diverted to settling ponds prior to leaving the site in compliance with accepted guidelines. Monitoring is required which will provide a mechanism to assess water quality prior to release into the environment and will enable assessment of the effectiveness of the drainage system. Surface and groundwater monitoring sampling and objectives have been stated in the SWMP in accordance with accepted guidelines (ANZECC (2000), and AS 55667.11 Water Quality, Sampling, Guide to the Collection of Groundwater). Background data is proposed to be established. Council is satisfied with the information to date. DECC is also to comment.
	The area has acid sulphate soils which have not addressed in the report or how they will address this if it arises?	Yes	No	No	No	No	No	The work cell sites are classified Class 5 on Councils records. The applicant has provided further commentary from ERM which concludes that PASS is not expected to be impacted as a result of the development and as a precautionary measure targeted assessment of the Dam 2 site will be conducted.
	The runoff will drain directly into our Tuckean wetland and the underground water. This wetland sustains thousands of animals and is very important to our local fishing industry.	No	Yes	Yes	No	No	Yes	ERM SWMP section 4 states all water from disturbed areas will be diverted to settling ponds prior to leaving the site in compliance with accepted guidelines. Monitoring is required which will provide a mechanism to assess water quality prior to release into the environment and will enable assessment of the effectiveness of the drainage system. Surface and groundwater monitoring sampling and objectives have been stated in the SWMP in accordance with accepted guidelines (ANZECC (2000), and AS 55667.11 <i>Water Quality-Sampling-Guide to the Collection of Groundwater</i>). Background data is proposed to be established. Council is satisfied with the information to date. DECC is also to comment.
	What protection measure are proposed in to protect the communities water resources from spills of chemical, washing down of machinery, diesel, what sort of environmental standards will be put in place.	No	Yes	Yes	Yes	No	Yes	To ensure compliance with the <i>Protection of the Environment Operations Act 1997</i> the following is required: All liquid and chemical materials, hazardous materials, and waste products shall be stored in an area that is sealed, bunded and roofed to prevent leaks, spills or other pollutants from entering the water management system or leaving the site. The bund must be impermeable, and have a holding capacity of 110% of the volume of the largest container stored within the bund. Appropriate spill management equipment shall be provided on-site and be easily accessible. DECC will provide licensing conditions as well.

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Soil and Water Management	Increase flows in Tuckean	No	No	No	Yes	Yes	Yes	The report presented by ERM concludes that given the location of the site within the upper reaches of the catchment and the size of the area to be disturbed <i>it is unlikely that the quarry will cause significant changes to environmental flows in the tributaries or Tucki Tucki Creek.</i> Council considers that appropriate site management and monitoring will ensure there are minimal impacts on water quality and on the quality of run off. Design of the system will generally mimic pre-development flows.	
	Pollution of groundwater – how will affect people with legal bores	No	No	No	Yes	Yes	No	DWE has stated to the applicant that if groundwater is utilised or intercepted a licence is required which will be conditional on the development of a groundwater management plan.	
	Slow groundwater refill why can't the applicant connect to town water supply to reduce the pressure on other ground water users.	No	No	No	No	No	No	Yes	Council requires connection to potable water supply.
	Potential for erosion has been underestimated.	No	No	No	No	No	No	Yes	SWMP has been submitted which reasonably address sediment and erosion control measures.
	Rainfall data for Lismore has been cited but actual data for Tuckurimba is significantly higher approximately 150mm a year	No	No	No	No	No	No	Yes	Council considers Lismore data to be representative of the area.
	Drainage from the site has not been correctly describe and is likely to impact on Tuckean Swamp contrary to the assessment.	No	No	No	No	No	No	Yes	DWE will comment on acceptance of pond structure.
	The data from the boreholes indicates that a fuel spill has entered the groundwater.	No	No	No	No	No	No	Yes	The SWMP states that the elevated Total Petroleum Hydrocarbons detected at 2 bore holes was an anomaly and likely to be a result of drilling activities, subsequent sampling showed no elevated TPH. There is currently no bulk fuel or oil storage on the site.
	The expected water usage and losses to evaporation are not correctly assessed	No	No	No	No	No	No	Yes	DWE to comment
	There is a significant risk of acid mine drainage within the proposed dams, based on findings of Pyrite within one of the boreholes	No	No	No	No	No	No	Yes	The work cell sites are classified Class 5 on Councils records. The applicant has provided further commentary from ERM which concludes that PASS is not expected to be impacted as a result of the development and as a precautionary measure targeted assessment of the Dam 2 site will be conducted.
The flow is not all via constructed channel, it spreads overland to the south east through adjoining lands and therefore will result in sediment deposition.	No	No	No	No	No	No	Yes	SWMP has been submitted which reasonably address sediment and erosion control measures.	
Traffic and Road	The report does not differentiate between 15t rigid trucks and 15t trailer attached trucks	Yes	No	No	No	No	No	No	The report identifies that material from the site will be transported utilising both rigid body trucks and truck and dog combination this is considered a reasonable mode of operation for a quarry of this nature.
	How can they predict which way the trucks will go?	Yes	No	No	No	No	No	No	As stated this is a prediction, as such it is an estimation of where the material exported from the site will be distributed to. This would be based on where their expected markets are. It is thought that a large quantity of the material extracted will be utilised for the ongoing upgrade of the Pacific Highway. Given the sites location in regard to the Pacific Highway accesses at Ballina and Woodburn/Broadwater it would appear to be a reasonable assumption that there will 50-50 split

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Traffic and Road	Fails to mention and count the return journeys	Yes	No	No	No	No	No	The report does primarily quote loaded truck movements and also tends to deal with increases upon what has previously been approved but is not yet operational. In light of this an independent calculation detailing total truck numbers for the total approved average annual extraction rate has been undertaken and is included with the planning report
	Fails to look at maximum production scenarios?	Yes	No	No	No	No	No	The report did not address this so an independent calculation detailing total truck numbers for the maximum possible yearly extract has been undertaken and is included with the planning report
	Ignores Broadwater Road, Dungarubba Road	Yes	No	No	No	No	No	A condition of consent has been proposed to be placed upon the application that will require haulage vehicles to be restricted to preferred haulage routes. However, Councils Infrastructure Services Section has identified that Broadwater Rd would be acceptable, due to recent upgrading, for use by haulage trucks, so the use of Broadwater has not been restricted.
	Entrance at a crest is unsafe	Yes	No	No	No	No	No	The proposed entrance that has been recently constructed is considered suitable for the proposed development and the anticipated traffic. The geometry of the intersection design that has been constructed provides additional traffic facilities than what would be required within Austroads intersection design standards to compensate for a deficiency in approach sight distance. The intersection constructed provides a protected right turn lane for vehicles entering the property. This is a higher level of treatment than that recommended within the Austroads standard for the traffic volumes proposed. It is considered that the approach adopted provides a solution that both meets the functional requirement of the standard and provides additional benefits to through traffic.
	Road is not currently up to standard	Yes	Yes	Yes	Yes	Yes	Yes	Though the road does not satisfy all the design components for a sub-arterial road it is currently operating as a regional sub-arterial road.
	Ignores dangerous with Mathieson land, Munros Wharf and Wyrallah road intersection	Yes	Yes	Yes	Yes	Yes	Yes	The development will not generate additional turning movements at Mathieson Lane and Munro Wharf Rd as such it is considered that the proposal would not significantly effect the existing situation.
	Ignores proximity to children's playground in Wyrallah	Yes	No	No	No	No	Yes	As the existing road is currently operating as a sub-arterial the proposed development will not significantly change the existing situation.
	The ferry road intersection is not a level alignment	Yes	No	No	No	No	Yes	A condition of consent has been proposed for upgrading works to be required to this intersection prior to expansion of the quarry.
	They chop and changes between 8% and 10% in calculations of peak hour volumes (which is it)	Yes	No	No	No	No	Yes	The expected conversion rate from average annual daily traffic to vehicles per hour for Wyrallah road would be in the range of 10- 15% whilst the figure for the Pacific Highway would typically be lower, in the range of 8-10%. The different figures used in the report related to the different roads, Wyrallah Rd and Pacific Highway and are generally in line with the expected values.
	Traffic impact is 400% more than the report indicates	Yes	No	No	No	No	No	A separate calculation of the maximum possible generation has been included within the planning report.
	Does not differentiate between trucks and cars in the report and these must have a different impact on the road.	Yes	Yes	No	No	No	Yes	It is my opinion that the report does differentiate between cars and trucks where appropriate for traffic calculations.
	Slight lines are inadequate.	Yes	No	No	No	No	No	Sight distance is considered adequate. This has been addressed in greater detail in the planning report
Road repairs will become an unreasonable financial burden to Council and Ratepayers.	Yes	Yes	Yes	No	No	Yes	Section 94 levies in accordance with Councils adopted plan will be collected to fund road maintenance to haulage routes	

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Traffic and Road	Road is not designed for the size, quantity, weight of the quarry trucks. The road is narrow and has not the substantial road base require to sustain constant use by massive number of truck	Yes	Yes	Yes	Yes	Yes	Yes	As reported the expected percentage of heavy vehicles upon the road post development will be within expected volumes for a road of this classification. Through the payment of section 94 levies the development will contribute to the ongoing maintenance of the haulage route.
	Page 7 direct loading..... trucks 10-10m or greater – How big can they go?	Yes	No	No	No	No	No	The load capacity of trucks is regulated by the RTA. The application proposes that the majority of the material will be transported utilising a 20m3 capacity truck and dog combination.
	Traffic volumes were taken in 1996 – surely there is more recent data?	Yes	No	No	No	No	Yes	Various sources of data have been utilised for traffic calculations. This is standard practise due to availability of data. The report actually utilises both existing data and data collected for the assessment.
	Traffic volumes were taken in 1996 – surely there is more recent data?	Yes	No	No	No	No	Yes	It is considered that the entrance is legal and does meet the standards. A more detailed assessment of the intersection is included in the planning report
	The quarry entrance is not legal it does not meet the current standards.	Yes	No	No	No	No	No	It has been calculated that the proposed annual extraction rate in total may contribute up to 2% of the traffic upon Wyrallah Rd if all traffic travels in the same direction. The difference in the figure shown is how the figure is reported. The 0.5% is based on a 50% direction split and excluding additional traffic that will be generated by a prior approval.
	Page 4 – is this statement correct “pavement failures 0.5%	Yes	No	No	No	No	No	Answered above
	They have not shown current traffic generation – 19996 figures	Yes	No	No	No	No	Yes	The RTA withdrew their request for a review of the driveway location and has supported the proposal to utilise the existing upgraded entrance.
	Have not shown driveway location alternatives as requested by the RTA	Yes	No	No	No	No	Yes	The report states that several bus companies operate school services along Wyrallah Rd but does not list which bus companies.
	Page 8 did not look into Quinns or Amos bus movements on Wyrallah road.	Yes	Yes	No	No	No	Yes	Yes this is correct but should not alter the findings of the traffic report
	Wyrallah road have Coraki Road on left should be right when going south bound.	Yes	No	No	No	No	No	Counts are legible in original
	Traffic counts table count be read	Yes	No	No	No	No	Yes	The calculations included in the assessment indicate that this figure could be up to 2%.
	Page 24 can we check 0.83% accuracy	Yes	No	No	No	No	No	Condition of consent has been proposed to define haulage routes.
	Consideration of noise issues have been addressed with the design of the Wyrallah road intersection with the quarry access how and where was this addressed.	Yes	No	No	No	No	Yes	An independent assessment of the expected traffic generation is included in the planning report
	Preferred route will be generally – which other routes will be taken	Yes	No	No	No	No	Yes	The assessment of the application has been done on the basis that the speed limit will remain at 100km/hr. If the speed limit was to be changed this would have to be endorsed by the RTA.
	The proposal will generate 42 additional trucks per day not 13 states in the traffic report	Yes	No	No	No	No	Yes	An independent assessment of the expected traffic generation is included in the planning report
	Reduction of speed limit to 80km	Yes	No	No	No	No	Yes	The assessment of the application has been done on the basis that the speed limit will remain at 100km/hr. If the speed limit was to be changed this would have to be endorsed by the RTA.
	The proposed truck will generate 94 truck movements a day 1 every 5 minutes.	Yes	No	No	No	No	Yes	An independent assessment of the expected traffic generation is included in the planning report
Increase number of truck on the road	Yes	Yes	Yes	Yes	Yes	Yes	The proposal will generate additional trucks upon the road. An assessment of the volume of trucks utilising Wyrallah Rd post develop shows that the percentage of trucks within the traffic stream would remain within normal levels.	
The intersection is located in the wrong Place it should be on the flat near the sugar cane farms	No	No	No	Yes	Yes	No	Detail regarding the assessment of the intersection is included in the planning report	

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Geological Assessment	This report suggests rock breaking and blasting may be required, which contradict the conclusion.	Yes	No	No	No	No	No	Approval if granted will not approve blasting.	
	Concerns with the elevated sulphate content (15 times specification) which is to be off and into the Tuckean	Yes	No	No	No	No	No	Can't locate this figure in reports.	
	The EIS at pp42-43 is not entirely reflective of the Geological Assessment. In particular the assessment questions whether the less weathered-high strength sandstone will be suitable for concrete because of the pyrite found in it, and also is clearly much more cautions about the material being available for 1-2 ^o roads under the RTA specification (section 5.5 7 and see appendix C). This should be taken into consideration whether it is in the public interest.	No	No	No	No	No	No	Yes	Council has noted this.
Noise Assessment	The noise of the trucks reversing can be heard now and that will only increase	Yes	No	No	No	No	Yes	Need to find out if alarms included in assessment. Exemption of reversing alarm possible for individual site management.	
	Noise vibration report not submitted it is needed to determine the impacts.	Yes	No	No	No	No	Yes	The acoustic report is considered to be a reasonable representation of noise sources. DECC asked for further information in relation to noise which has since been presented. DECC to provide comment.	
	The noise assessment undertaken took lower background noise levels therefore the proponent's calculations are inaccurate.	Yes	No	No	No	No	No	Yes	The acoustic report is considered to be a reasonable representation of noise sources. The methodology was in accordance with the Industrial Noise Policy. DECC asked for further information in relation to noise which has since been presented.
	Effectiveness of bunds in various on climate conditions and the proposed bunds would not protect residents from the noise.	Yes	No	No	No	No	No	Yes	The acoustic report is considered to be a reasonable representation of noise sources. DECC asked for further information in relation to noise which has since been presented.
	Internal haul roads need to be in the noise modelling	Yes	No	No	No	No	No	Yes	Internal haul roads removed, key haul road was included in report.
	Entry and exist noise of the vehicles must be modelled not just entry.	Yes	No	No	No	No	No	No	ERM confirmation that this was modelled.
	Noise impacts at 140 Hazlemount Lane can not be mitigated against.	No	No	No	No	No	No	Yes	The acoustic report is considered to be a reasonable representation of noise sources. The report concludes that project specific noise levels will be achieved at this location. DECC asked for further information in relation to noise which has since been presented.
	The noise assessment has not considered the animals which will be effected by the quarry.	No	No	No	No	No	No	Yes	The acoustic report is considered to be a reasonable representation of noise sources. DECC asked for further information in relation to noise which has since been presented.
The excavation of the sandstone block for landscaping will require a rock saw and Jack Hammer and the reflective noise from this around the valley will be intolerable.	Yes	No	No	No	No	No	No	This activity is limited to around 3 weeks a year and has been included in the acoustic report. Project specific noise levels must be satisfied and monitoring is required.	
Visual Impact	Visual impact will be significant	Yes	Yes	Yes	Yes	No	Yes	The visual impact can be mitigated for all adjoining dwellings with the exception of visual receiver 1. The proposed plantings along the access road will provide some minor relief however due to the elevation of the dwelling it is unlikely that any planting will reduce the visual impact.	
	Disagree that it will not impact on the public domain when viewed from adjoining land	Yes	Yes	Yes	No	No	Yes	The view from the adjoining land will be modified. Majority of the impact will be reduced by the tree plantings however the existing view over grazing land will be modified.	
	Visual impact from 140 Hazlemount Lane (refer 08-7903) is incorrect	Yes	No	No	No	No	Yes	The view from the adjoining land will be modified. Majority of the impact will be reduced by the tree plantings however the existing view over grazing land will be modified.	

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Visual Impact	The visual impact from 1566 Wyrallah road is incorrectly described and photographed. Due to elevations it will be impossible to screen the southern central or northern section from the property. The proposed koala trees will not be seen from the property due to elevations.	Yes	No	No	No	No	Yes	Refer to the visual impact assessment in the report.
	Photographs are not correct in the visual assessment (refer 08-6527).	Yes	No	No	No	No	Yes	Refer to the visual impact assessment in the report.
	According to the EIS the hill is 50m (southern section) that will become a hole in the ground. This vista is unique and treasured by residents. The physical scar is not acceptable.	No	No	Yes	Yes	Yes	Yes	Refer to the visual impact assessment in the report.
	The FNCRS aims to limit development in places that are constrained by inter alia landscapes of high scenic value. While the site is not in the level of Mt Warning the community consider that the diverse landscape is worth preserving for the local community members and in relation to these travelling the road near the site. The landscape includes a vista of hillside and valley, grasslands, and trees which should be considered at of moderate scenic value on a regional basis.	No	No	No	No	No	No	Yes
Development Control Plan	Does not comply with buffers in Chapter 18	Yes	No	No	No	No	Yes	Refer to Assessment of Development Control Plan in the report
	Object to the subdivision	Yes	No	No	No	No	No	The subdivision complies with the Development Control Plan
Local Environmental Plan (2000)	Does not comply with the objectives of the zone as it will not be sustaining and enhancing the natural systems of the land.	Yes	No	No	No	No	Yes	Refer to assessment of the LEP in the report
	Add 4 dwelling entitlements in the buffer	Yes	No	No	No	No	No	Refer to assessment of the LEP in the report
	Does not comply with Clause 36	No	No	No	No	No	Yes	Refer to assessment of the LEP in the report
	Does not comply with Clause 20	No	No	No	No	No	Yes	Refer to assessment of the LEP in the report
Amenity	It will dominate the landscape deteriorating the area	Yes	Yes	Yes	Yes	No	Yes	Refer to the visual impact assessment in the report.
	The surrounding area is rural residential not agricultural	Yes	No	No	No	No	Yes	The zoning of the adjoining land is 1(a) General Rural and 1(r) Riverlands zone, not 1(c) Rural residential
	Quite peaceful place – tranquil area will turn noisy and unliveable	Yes	Yes	Yes	Yes	No	Yes	DECC's GTA's should ensure that the area retains the same level of noise that is currently experienced.
	Beautiful views which will be removed	Yes	No	No	No	No	Yes	Refer to the visual impact assessment in the report.
	The 50m high hill is a visual feature on the landscape this should not be lost.	Yes	No	No	No	No	No	Yes

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Safety	Fences must be erected to prevent access to the cells. To prevent children (who can go wandering) from being injured. Cattle fences are not adequate.	Yes	No	No	No	No	No	Spoke with Angus from DPI about the fences that would be required to ensure a safe operational area at the quarry. There are no specific guidelines for type of fence required. DPI Do a risk analysis of the site and surrounding areas to determine what would be suitable. Angus stated that the existing fence would be adequate given the quarries location.
	Increase in trucks and the safety of the children on the road and the playground at Wyrallah Road bridge	No	Yes	Yes	Yes	Yes	Yes	Refer to Development Engineers comments in the above report.
Air Quality	Dust from access road the road should be sealed	Yes	No	No	No	No	Yes	Further information submitted proposing the road shall be sealed in a staged program. Stage 1 – prior to commencement sealing 50m from Wyrallah Rd towards quarry, Stage 2 – within 1 year of commencement sealing from Stage 1 to halfway towards quarry section, Stage 3 – within 2 years seal halfway to central section.
	They are proposing chemical suppression of dust – What chemical?	Yes	No	No	No	No	Yes	Council did not note information stating this in the ERM report.
	Information on the filter sizes to monitor dust must be supplied.	Yes	No	No	No	No	Yes	The air quality report was conducted in accordance with the recognised <i>NSW DECC Approved Methods and Guidance for the Modelling and Assessment of Air Pollutants in NSW</i> and is considered to be a reasonable representation of emissions. It concludes the operations would meet the NSW DECC air quality impact criteria for PM10 and TSP short and long term averages and dust deposition.
	The pollution from potential 26 motor vehicles ranging in size will affect the health of our family and all of the adjoining neighbours.	Yes	No	No	No	No	Yes	Short term as road will be sealed in staged program - Stage 1 – prior to commencement sealing 50m from Wyrallah Rd towards quarry, Stage 2 – within 1 year of commencement sealing from Stage 1 to halfway towards quarry section, Stage 3 – within 2 years seal halfway to central section.
	Dust pollution on surrounding orchards – does not any trees planted along the boundary for dust protection as this will result in loss of production also due to overshadowing at 1566 Wyrallah to prevent dust form impacted on the fruit.	Yes	No	No	No	No	Yes	The air quality report was conducted in accordance with the recognised <i>NSW DECC Approved Methods and Guidance for the Modelling and Assessment of Air Pollutants in NSW</i> and is considered to be a reasonable representation of emissions. It concludes the operations would meet the NSW DECC air quality impact criteria for PM10 and TSP short and long term averages and dust deposition.
	The dust from the current quarry operations is not bearable forcing the local residents to live indoors.	No	Yes	Yes	Yes	Yes	Yes	The air quality report was conducted in accordance with the recognised <i>NSW DECC Approved Methods and Guidance for the Modelling and Assessment of Air Pollutants in NSW</i> and is considered to be a reasonable representation of emissions. It concludes the operations would meet the NSW DECC air quality impact criteria for PM10 and TSP short and long term averages and dust deposition.
Koala	The dust must impact on Koala's nutrition by smothering the leaves.	Yes	No	No	No	No	No	Council and DECC have required that the access road be sealed and a water truck will be required to ensure that the dust coming from the operational area is minimised. As a result it is not likely that the dust will have a significant impact on the koala food trees in the surrounding areas.
	The proposal will result in a significant loss of koalas – road kill	No	Yes	No	No	Yes	Yes	The proposal is likely to result in an increase in traffic on Wyrallah Road which may result in an increase in koala road kill incidents. As a result signs will be erected to notify drivers of the potential for koalas to cross Wyrallah Road

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Koala	It cuts a koala corridor in half (fragmentation).	No	Yes	No	Yes	Yes	Yes	The operational area of the proposed quarry has not been identified as either core koala habitat or potential koala habitat. Council acknowledges that the koala's move through a range of habitat's. However the current situation is dominant pasture with patches of remanent vegetation (which majority is being retained) and the proposed landscape buffers (some are proposed koala food trees) will increase the corridors for koalas on the site.
	The dust will affect their health and the noise will push them away.	No	Yes	No	No	No	Yes	Council and DECC have required that the access road be sealed and a water truck will be required to ensure that the dust coming from the operational area is minimised. As a result it is not likely that the dust will have a significant impact on the koala food trees in the surrounding areas. Council is not aware of any reports relating noise impacts on koala's leaving an area. Council are aware of several Koala populations which live around developments which produce high levels of noise such as Willamtown RAAF base in the Port Stephens Local Government Area.
	High koala population in the area that will be placed under significant stress from the quarry	No	No	No	Yes	Yes	Yes	The proposed quarry expansion may cause stress to the koalas in the area. However the koala habitat will be increased corridors will be linked to enable them to travel through forested areas instead of pasture land.
Koala	Koala equal tourism and therefore this will impact on the economy.	No	No	No	Yes	No	No	The operational area of the proposed quarry has not been identified as either core koala habitat or potential koala habitat. Council acknowledges that the koala's move through a range of habitat's. However the current situation is dominant pasture with patches of remanent vegetation (which majority is being retained) and the proposed landscape buffers (some are proposed koala food trees) will increase the corridors for koalas on the site.
	The proposal is within a kilometre of Tucki Tucki Nature Reserve.	No	No	No	No	Yes	No	The quarry is located within 1km of Tucki Tucki Reserve and proposes to link the reserve to Hazlemount Lane.
Rehabilitation Plan	Rehabilitation will not survive on such slopes or without drip irrigation.	Yes	No	No	No	No	Yes	A condition of consent will be drafted to ensure a detailed rehabilitation plan will be required.
	It is impossible to rehabilitate 45 degree slopes with 5m benches	Yes	No	No	No	No	Yes	A condition of consent will be drafted to ensure a detailed rehabilitation plan will be required.
	Rehabilitation measure in appendix 8 are inadequate.	No	No	No	No	No	Yes	A condition of consent will be drafted to ensure a detailed rehabilitation plan will be required.
Heritage	The report has ignored Aboriginal heritage many locals remember bora rings and camps on the site.	Yes	No	No	No	No	No	Refer to the comments and proposed conditions from DECC
	The southern hill is a significant landmark to Aboriginal tribes in the area.	Yes	No	No	No	No	No	Refer to the comments and proposed conditions from DECC
	Verbal report is not acceptable	Yes	No	No	No	No	No	Refer to the comments and proposed conditions from DECC
Climate Conditions	Using Lismore data is not correct we are more coastal on still days and nights you can hear the surf. The conditions need to be model on the site conditions not Lismore.	Yes	No	No	No	No	No	Lismore data is considered representative of the area.
	Significantly more rainfall than the report indicates. This will effect proposed sediment and erosion controls.	No	No	No	No	No	Yes	Lismore data is considered representative of the area. SWMP has been submitted which reasonably address sediment and erosion control measures
	Air quality uses Lismore conditions should be Tucki as it has different conditions.	Yes	No	No	No	No	Yes	Council considers Lismore data to be representative of the area.

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Location	Alternative Resources the EIS states that there is no other sand stone material in LCC, However there is o mention is made of significant san and sandstone quarries in Ballina and Richmond Valley.	Yes	Yes	No	No	No	Yes	Additional information provided on the 3/9/08 outlined the processes in 9 other quarries within the region. All of the quarries require drilling, blasting and continual processing by either crushing and/or screening.
Quarry Managemene nt Plan	Page 4 states the foot print will be further refined via a detailed survey' Is the community involved in this.	Yes	No	No	No	No	No	There will not be community involvement required
	Who is responsible is it the Quarry Manager, The Quarry General Manager?	Yes	No	No	No	No	No	Both positions play a role in the management of the quarry.
Ecological Assessement	The Ecological Assessment fails to conform to the Threatened Biodiversity Survey and Assessment: Guidelines for Development and Activities (DEC, 2004).	No	No	No	No	No	Yes	These are guidelines and not required for assessment.
	Concerns with the assessment include: insufficient time to field investigations, lack of seasonal replications, inadequate survey effort, unacceptable reporting, invalid impact assessment (omission of several threatened species and endangered communities)	No	No	No	No	No	Yes	A review of the EIS and a site inspection provided sufficient information for Council staff to determine what the environmental impacts may occur as a result of the development.
	The qualification of the person(s) who undertook the ecological report were not provided and DECC requested hat the study be undertaken by a person with suitable qualifications	No	No	No	No	No	Yes	This information was provided and the person who undertook the study is suitable qualified.
	The assessment did not register Swamp Banksias (Banksia paludosa). No information has been provided on the Coast Banksia (Banksia integrifolia) which is likely to occur on the site and is know habitat for the Eastern Blossom-bat, black flying fox, and grey headed flying fox.	No	No	No	No	No	Yes	Site inspections of the site did not identify Swamp Banksia on the property.
	The descriptions of the habitats are inadequate as they do not inform on vegetation structure, floristic composition or map them. No assessment of the context of the site habitats such as their significance in providing stepping stone habitat for nomadic or migratory birds and extends to habitat for threatened species.	No	No	No	No	No	Yes	A review of the EIS and a site inspection provided sufficient information for Council staff to determine what the environmental impacts may occur as a result of the development.
	Survey methods are not in accordance with the guidelines: no survey for reptiles, diurnal birds were not surveyed, no call-back was used for cryptic bird, nocturnal birds were only surveyed on one night, bats were only recorded for one night instead of the required two, and mammals were only surveyed using spotlighting.	No	No	No	No	No	Yes	A review of the EIS and a site inspection provided sufficient information for Council staff to determine what the environmental impacts may occur as a result of the development.
	The Hoop Pine and Brushbox rainforest clearly represent the endangered Ecological Community (EEC) Lowland rainforest, however this was not recognised.	No	No	No	No	No	Yes	Refer to the assessment by the Natural Resource Management Officers comments

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Ecological Assessment	There is a strong possibility that the regeneration of pink bloodwood forest oak woodland fits the descriptions of Subtropical Coastal Floodplain Forest not identified.	No	No	No	No	No	Yes	Refer to the assessment by the Natural Resource Management Officers comments
	Only test 25% of potential threatened species on the site: such as White Laceflower, Hairy joint grass, Thorny pea, fragrant myrtle, rough-shelled bush nut, arrow headed vine, square tailed kite, pale-vented bush hen, rose-crowned fruit dove, powerful owl, masked owl, white-eared monarch, common planigale, three-toed snake-tooth skink, eastern blossom bat, black flying fox, yellow-bellied Sheathtail bat, hoary wattled bat, greater broad-nosed bat	No	No	No	No	No	Yes	Refer to the assessment by the Natural Resource Management Officers comments
	The EIS claims at 2.25 that Professor Baverstock has previously undertaken detailed description of the flora and fauna of the land, however not apparent in this report.	No	No	No	No	No	Yes	This is not relevant to this application
	Community is concerned that the 10m koala buffer as shown the EIS plan will direct koala straight on the road, increasing chances of koala road strike.	No	No	No	No	No	Yes	Refer to comments provided by DECC.
	The measures proposed to mitigate the impacts are vague and entirely inadequate to compensate for the substantial losses of vegetation (including part of an ECC).	No	No	No	No	No	Yes	Draft conditions of consent have been developed to ensure these are incorporated into the rehabilitation plan.