



PORT STEPHENS

C O U N C I L

SUPPLEMENTARY INFORMATION

ORDINARY COUNCIL MEETING
25 FEBRUARY 2025

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SUBJECT

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COUNCIL REPORTS

6. **MODIFICATION APPLICATION 7-1985-2683-7 FOR S4.55(2)
MODIFICATION TO SEAHAM QUARRY - LOWER PIT FLOOR LEVEL BY
10M, AND DELETE CONDITIONS 29 AND 31, AT 139 & 139A ITALIA
ROAD, BALICKERA3**

- Nb. **Bold** Items listed above have not been previously received or viewed by Councillors.

SUPPLEMENTARY INFORMATION

ITEM NO. 6

FILE NO: 25/38238

EDRMS NO: 7-1985-2683-7

MODIFICATION APPLICATION 7-1985-2683-7 FOR S4.55(2) MODIFICATION TO SEAHAM QUARRY - LOWER PIT FLOOR LEVEL BY 10M, AND DELETE CONDITIONS 29 AND 31, AT 139 & 139A ITALIA ROAD, BALICKERA

REPORT OF: RYAN FALKENMIRE - DEVELOPMENT AND COMPLIANCE
SECTION MANAGER
DIRECTORATE: COMMUNITY FUTURES

RECOMMENDATION IS THAT COUNCIL:

- 1) Refuse S4.55(2) Modification Application 7-1985-2683-7 for Modification to Seaham Quarry - Lower Pit Floor level by 10m and delete Conditions 29 and 31, for the reasons contained in **(ATTACHMENT 1)**.

BACKGROUND

The purpose of this Supplementary Report is to acknowledge and address 2 additional late submissions received outside the notification period for the S4.55(2) modification to development consent 7-1985-2683-7 (Seaham Quarry). The application relates to an extractive industry (hard rock quarry) presented to Council for determination.

Only the 2 additional late submissions have been addressed as part of this report. All submissions are addressed in the updated Planner's Assessment Report in **(ATTACHMENT 1)** of the Supplementary Report.

Public Submissions

The application was publicly exhibited through notification and advertising from 30 October 2024 to 13 November 2024 in accordance with the provisions of the Port Stephens Council Community Engagement Strategy. During this time, 9 submissions opposing the development were received and 2 submissions provided support for the modification proposal.

A further 2 submissions opposing the modification were received outside of the notification period and have been addressed in the table below. The Planner's Assessment Report has been updated to include these submissions **(ATTACHMENT 1)** of the Supplementary Report. The late submissions were received from the Forestry Corporation of NSW (FCNSW), the land manager of the northern adjacent property, and Australian Resource Development Group (ARDG). ARDG is the proponent for the Stone Ridge Quarry project located on FCNSW land to the north of

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the Seaham Boral Quarry. ARDG is not an adjoining landowner or public authority that requires notification of the modification application.

Matter raised	Response
<ul style="list-style-type: none">• DA 16-2023-477-1 is the mechanism by which all 3 quarry parties can safely access the Pacific Highway from Italia Road, which was lodged by Boral on behalf of all 3 quarry parties, following direction from TfNSW that all 3 quarry parties work together to achieve a short-term highway access solution.• FCNSW supports Council's existing position that quarry trucks accessing the Pacific Highway at Italia Road should be directed to the north via a left turn out (per condition 29 of DA 7-1985-2683-6).• Condition 29 in its current form is insufficient to improve road safety at the intersection, given that it does not reference the intersection upgrade works approved by Council under DA 16-2023-477-1 (for which Boral was the proponent), which are critical for enabling heavy vehicles to safely turn left out of Italia Road. Condition 29 in its current form would significantly reduce road safety (given the absence of any acceleration/merge lane suitable for laden heavy vehicles), which is clearly not the intention of Council. It is requested Council give urgent consideration to amending Condition 29 in order to achieve its desired outcome of improving road safety at the intersection. Condition 29 would be strengthened and made more defensible if it contained additional wording to the effect of: Prior to transporting any quarry products under this consent from the site on public roads, the Applicant must	<p>DA16-2023-477-1 relates to the approval of road upgrades at the Italia Road and Pacific Highway intersection. DA 16-2023-477-1 was approved by the Regional Planning Panel on 5 December 2024. The approved road upgrade works seek to support the expansion of 3 quarries in the vicinity of the intersection.</p> <p>2 recently approved State Significant Development quarry projects on Italia Road both require completion of the approved intersection road upgrade works to facilitate a left-turn only from Italia Road to the Pacific Highway.</p> <p>Both submissions support Council's existing position that quarry trucks accessing the Pacific Highway at Italia Road should be directed to the north via a left turn out and suggest amendments to Condition 29.</p> <p>Condition 29 was previously imposed by Council to improve road safety at the intersection of Pacific Highway and Italia Road, by way of restricting right hand turn southbound truck movements. This condition permitted continued operations at the Seaham Quarry, without road infrastructure upgrades at the subject intersection, subject to compliance with Conditions 29, 31 and all other consent conditions that will improve traffic safety. The previous Modification Approval (DA 7-1985-2683-6) predated the approval of DA16-2023-477-1, therefore the conditions as recommended in the submissions could not have been imposed.</p>

Matter raised	Response
<p>ensure that the intersection at the junction of the Pacific Highway and Italia Road is upgraded in accordance with DA 16-2023-477-1.</p>	<p>Further, there are limitations on a consent authority's power to amended existing conditions retrospectively when assessing a S4.55(2) modification application. Therefore, the recommended amendments to Condition 29 will not be imposed by Council retrospectively. The amended Condition 29 would be more onerous than that previously imposed by Council as part of DA 7-1985-2683-6 with no clear nexus or grounds to support such an amendment as part of this application.</p> <p>Furthermore, the modification application is recommended for refusal on grounds relating to insufficient information to address environmental impacts and traffic safety grounds. Therefore, amendment of Condition 29 is not a relevant consideration for Council based on the recommendation of refusal.</p>
<p>Forestry Corporation of NSW (FCNSW), as the landowner adjacent to the subject land, was not notified of the application.</p>	<p>Notification letters were distributed to the postal address of the northern adjoining landholder, identified as being under State Government ownership. Forestry Corporation of NSW (FCNSW) has not identified if they are the landowner or land manager, nor do Council's records reflect FCNSW as the landowner.</p> <p>Notwithstanding, the submission was received and considered as part of this report. Council's land ownership and contact details for the subject site have also been updated to address the comments raised in the submission.</p> <p>ARDG, the other late submitter, is not an adjoining landowner and were not required to be notified as part of the modification application.</p>

CONSULT	The application was publicly exhibited from 30 October 2024 to 13 November 2024 in accordance with the provisions of the Port Stephens Council Community Engagement Strategy. During this time, 9 submissions opposing the development were received and 2 submissions provided support for the proposal. A further 2 submissions opposing the development were received outside of the notification period. A detailed response to these submissions is provided in the Planner's Assessment Report in (ATTACHMENT 1) of the Supplementary Report.
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OPTIONS

- 1) Accept the recommendation.
- 2) Amend the recommendation.
- 3) Reject the recommendation.

ATTACHMENTS

- 1) Planner's Assessment Report.

COUNCILLORS' ROOM/DASHBOARD

All information relating to this development application (DA) is available on the Councillors' Dashboard.

TABLED DOCUMENTS

Nil.

ISSUES

Nil.



PORT STEPHENS
COUNCIL

S4.55(2) MODIFICATION APPLICATION ASSESSMENT REPORT

APPLICATION REFERENCES

Modification Application Number	7-1985-2683-7
Development Description	Extractive Industry (hard rock quarry)
Modification Description	S4.55(2) Modification to Quarry - Lower pit floor level from (RL) 45m to RL35m, and delete Conditions 29 and 31
Applicant	BORAL RESOURCES (NSW) PTY LTD
Date Of Lodgement	11/10/2024

PROPERTY DETAILS

Property Address	139 Italia Road BALICKERA, 139A Italia Road BALICKERA
Lot and DP	LOT: 66 DP: 753200, LOT: C DP: 164505
Zoning	RU2 RURAL LANDSCAPE
Site Constraints That Affect The Modification	HWC Special Area Grahamstown Dam Bushfire Prone Land Acid Sulfate Soils – Class 5 Koala Habitat Endangered Ecological Communities (Hunter Valley Dry Rainforest) Wildlife Atlas – Fauna Biodiversity Values Map

ASSESSMENT SUMMARY

Designated Development	The original development was designated development. Despite this, a modification pursuant to section 4.55 of the EP&A Act is not considered 'development' but rather a modification of a development consent. Notwithstanding, the development is not considered to be designated development in accordance with Clause 36 of the EP&A Regulations, as discussed in this report.
Integrated Development	The original application was integrated development in accordance with s4.46 of the EP&A Act as the Water Management Act 1912. However, modifications pursuant to Section 4.55 are not integrated development.
Concurrence	The application does not require the concurrence of another body.

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PLANNERS PRE-ASSESSMENT CHECKLIST

OWNERS CONSENT	YES	N/A
Check if S.4.55 to be reported to Council (original DA determined by Council)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Check whether consent is still valid (check lapse date).	<input checked="" type="checkbox"/>	<input type="checkbox"/>
NOTIFICATION	YES	N/A
S.4.55 application only - notify previous objectors.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
REFERRALS	YES	N/A
S.4.55 Application only - Integrated referral bodies notified.	<input checked="" type="checkbox"/>	<input type="checkbox"/>

MODIFICATION PROPOSAL

The application proposes to modify a hard rock quarry, originally approved in 1985. The modification application comprises two components: lowering the permitted pit floor level from RL 45m to RL35m, and deletion of conditions 29 and 31 of the consent. Details of each component is provided below:

Lower pit floor level

The proposed modification seeks to lower the ignimbrite pit floor from RL 45m AHD to a finished level of RL 35m AHD, through establishment of an additional bench within the existing pit (see **Figure 1**). The development consent currently limits extraction to a depth of RL 45m AHD. The additional bench and pit lowering is proposed within the existing development footprint and would not involve any additional disturbance to land outside the pit floor or vegetation removal. By lowering the pit floor, the operation would have access to an additional 950kt of resource.

The applicant has advised the primary quarry pit area is nearing the end of its extractive life, with the final quarry floor depth and extractive boundaries approaching consented limits imposed under the approval (as modified). In April 2024, the applicant submitted State Significant Development application SSD-59254474 seeking consent to expand the quarry and extend its operation by 30 years. Given the complexity of this SSD application and while it is assessed by the Department of Planning, Housing and Infrastructure (DPHI), the applicant is seeking access to additional hard rock resource to ensure the quarry can continue to deliver construction materials to the Hunter, Central Coast and Lower North Coast regions. Without undertaking the proposed pit deepening, the quarry is expected to exhausted by the end of 2026, based on current extraction rates.

The operation is currently limited to extracting between 0.5 million and 2 million tonnes per annum under the Environmental Protection Licence (EPL) 3956 managed by the Environment Protection Authority (EPA). The Statement of Environmental Effects lodged with the application asserts that no changes to any operational aspect of the development is proposed, including:

- Permitted quarry life
- Hours of operation
- Numbers employed
- Extraction footprint
- Production or transportation rate
- Type of product being extracted
- Extraction methodology.

Deletion of conditions 29 and 31

Conditions 29 and 31 of the consent were imposed by modification in August 2024. They specify:

- (29) *All trucks travelling southbound from the quarry must first turn left (i.e. northbound) onto the Pacific Highway and utilise the Tarean Road Interchange to perform a U-turn. No trucks are permitted to conduct a right hand turn from Italia Road onto the Pacific Highway.*
- (31) *Prior to the commencement of quarrying within the north-east quarry pit to lower the pit floor from RL 75m to RL 45m, the following steps relating to regulatory signage are to be undertaken:*

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- (a) A Roads Act Approval Application is to be made to Council in accordance with Section 138B of the Roads Act 1993 for the installation of regulatory signage at the approach of the intersection of Italia Road and Pacific Highway prohibiting the right hand turn of quarry trucks from Italia Road onto the Pacific Highway. The regulatory signage is to apply to quarry trucks only, through a means endorsed by the Local Traffic Committee. The sign is to specify any exceptions to which the signage does not apply, such as light vehicles, buses and the like.
- (b) The Roads Act Approval Application, inclusive of regulatory signage is to be referred to the Local Traffic Committee for endorsement.
- (c) The approval or recommendation of the Local Traffic Committee is to be implemented under the Roads Act Approval.

A Road Safety Review (RSR) of truck turning movements at the intersection of Italia Road and the Pacific Highway provided with the application, concludes that compliance with condition 29 is likely to worsen vehicle crash risk at the intersection of Italia Road and Pacific Highway in comparison to transport route allowances that applied before condition 29 was imposed. The proposed deletion of condition 29 will reverse that exacerbation.

The proposed deletion of condition 29 will render condition 31 redundant, warranting its deletion also.

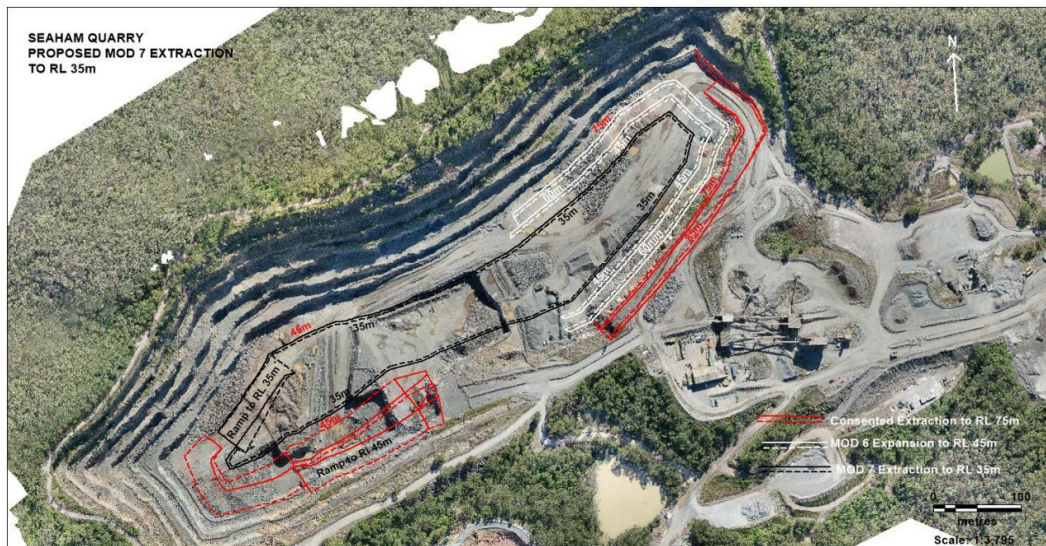


Figure 1: Proposed Pit Lowering Plan (Source: Applicants documentation)

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Figure 2: Current Quarry Layout (Source: Applicants documentation)

SITE DESCRIPTION

The subject site, known as Seaham Quarry, is located 139 & 139A Italia Road, Balickera, 10km north of the Raymond Terrace town centre. The site is legally identified as LOT: 66 DP: 753200, LOT: C DP: 164505 and measures a combined area of 303.67ha (see **Figure 3** below). Access is provided via a private haul road, which connects the quarry to the Pacific Highway via Italia Road. An area of approximately 28.1ha area has previously been cleared of vegetation to accommodate the quarry extraction footprint. The residual site area is densely vegetated and covers an area of approximately 275ha.

Surrounding land uses include an approved motor racing track to the south east, rural residences and an approved rock quarry (known as Eagleton Rock quarry) to the south, rural residential and agriculture to the north, and an approved rock quarry (known as Stone Ridge Quarry) to the north east.

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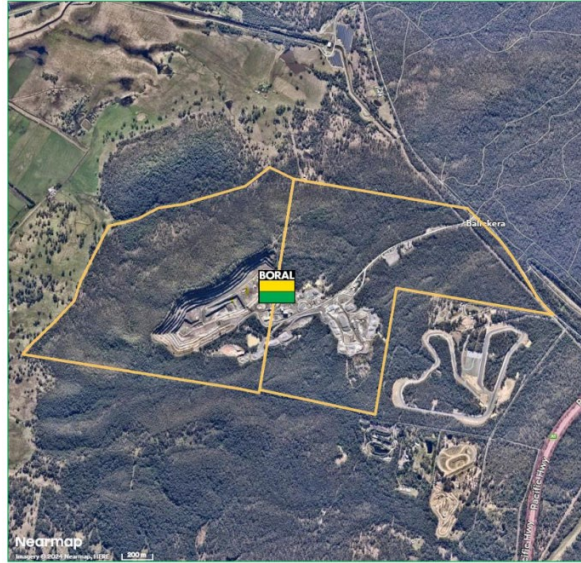


Figure 3: Satellite Image Overview of Site (Source: Applicants documentation)

SITE HISTORY & BACKGROUND

The quarry has been in operation since 1991. The quarry extracts ignimbrite and rhyolite to produce an array of hard rock products for Newcastle and Hunter region markets. The existing ignimbrite pit proposed to be modified is located immediately west of the crushing plant and stockpile areas and extends for a distance of 450 metres along NE – SW axis. Rock is currently extracted through drill and blast methods, at the south-western portion of the pit to a depth of RL 45m AHD from two benches. Dislodged rock is loaded from the blast heap into dump trucks (35 tonne) using a front end loader or excavator and transported to the primary crusher for processing.

The quarry currently extracts approximately 1.3 million tonnes of resource per year. The development consent issued for the site does not include a limit on the amount of material that can be extracted from the quarry annually, however access to resource is limited by the consented quarry depth and the Environmental Protection Licence (EPL), administered by the Environmental Protection Authority (EPA). Seaham Quarry operates under EPL 3956, used under the *Protection of the Environment Operations Act 1997* (POEO Act) for crushing, grinding or separating of between 500,000 tonnes per annum (tpa) – 2,000,000 tpa. The EPL identifies the site as a “land based extractive activity” of a scale of “>500,000 – 2,000,000 tonnes”.

A series of sediment control dams across nine sub-catchments divert clean water and capture and treat sediment laden water. Captured stormwater runoff is used to provide a source of water for operational activities. Stormwater collected in the dams is pumped to water tanks across the site for use in quarry operations. During high rainfall conditions stormwater is discharged at designated licenced locations subject to the quarry EPL licence.

All extracted resource is hauled via public roads using a B-Double and truck and dog fleet. Extracted resources are typically directed to southern markets via an existing seagull type intersection for southbound travel from Italia Road onto the Pacific Highway, with TfNSW advising the existing

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seagull intersection was constructed in the 1990's and early 2000's as part of wider upgrades to the highway (see **Figure 4**).

With consideration to factors including: (the substantial impact of traffic growth along the Pacific Highway; additional truck movements generated through lowering of the quarry pit floor; and traffic impacts associated with additional SSD quarries within the locality); Council established that road safety risks associated with heavy vehicle right-turn traffic movements from Italia Road onto the Pacific Highway was unacceptable.

To address the safety risks associated with the continued use of the Italia Road and Pacific Highway intersection by quarry trucks; under modification application (DA 7-1985-2683-6) quarry trucks were banned from making right hand turns from Italia Road onto the Pacific Highway, with south bound quarry truck movements required to turn left onto the Pacific highway, travelling for 11km before performing a U-turn at the Tarean Road grade separated interchange and heading south. This restriction was similarly imposed under (DA 16-2023-477-1) for road infrastructure upgrades to support the expansion of three (3) quarries which would all direct haulage through the Italia Road and Pacific Highway intersection. These turning restrictions reduce conflict points associated with the current seagull type design from three (3) points when turning right, to one (1) under a left turn (see **Figures 5 and 6**).



Figure 4: Existing Intersection Layout (Source: Applicants documentation)

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Figure 5: Left turn conflict points (Source: Applicants documentation)



Figure 6: Right turn conflict points (Source: Applicants documentation)

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The following modification applications have been sought since the original application:

Date of consent	Application reference	Proposal	Changes to Conditions
17 July 1985	7-1985-2683-1	Extractive Industry (Hard Rock Quarry).	Conditions 1-17 first imposed.
7 February 1989	P9/1/12/2683	Delete conditions.	Conditions 11 and 12 deleted and remaining conditions renumbered 11 to 15.
4 April 1997	D6283/85	Additional extraction area.	Condition 16-24 added. Advice note 1 and 2 added. No other changes.
23 December 1997	D6283/85	Temporary change to operating hours.	Condition 25 and 26 added. No other changes.
16 May 2000	7-1985-2683-2	Temporary change to operating hours.	Conditions 27, 28 and 29 (referred to as 1, 2 & 3 in consent letter) added. No other changes.
5 June 2001	7-1985-2683-3	Change hours of operations for additional extraction area.	Condition 16 modified to 16A. No other changes.
8 November 2011	7-1985-2683-4	South western Pit floor lowering to RL45m AHD	Condition 3 modified to 3A. Condition 17, 25, 26, 27, 28 and 29 deleted and remaining conditions renumbered 17-23. Following renumbering, new conditions 24 to 27 were added. Advice note 3 added.
N/A application refused	7-1985-2683-5	North eastern pit floor lowering to RL45m AHD.	No changes.
2 August 2024	7-1985-2683-6	North eastern pit floor lowering to RL45m AHD.	Condition 27 modified to 27A. New conditions 28-39 were added.

Pre-lodgement written advice was provided to the applicant on 24 September 2024, which reviewed a proposal to lower the pit floor of the quarry and delete conditions prohibiting quarry trucks from making right hand turns from Italia Road onto the Pacific Highway.

The following key issues were raised in the pre-lodgement written advice:

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- Approval pathway
- Designated Development
- Legislation and Policy
- Notification and advertising
- Review of the Road Safety Review (RSR) of truck turning movements at the intersection of Italia Road and the Pacific Highway
- Inconsistency of proposal with DA 16-2023-477-1 for road infrastructure upgrades to Italia Road and Pacific Highway intersection
- Limitations restricting issue of a partial consent for a modification application.

A number of existing, approved and proposed hard rock quarries are located within the locality. The quarries include the approved Australian Resource Development Group (ARDG) Stone Ridge Quarry at 150 Italia Road Balickera, and the Eagleton Hard Rock Quarry at 13 Barleigh Ranch Way, Eagleton.

Stone Ridge Quarry

The Stone Ridge Quarry is a State Significant Development (SSD-10432) for the purpose of extracting hard rock resource from land within the Wallaroo State Forest. The Project Area occupies 139 ha of land; including extraction, processing, stockpiling area and buffers, with a disturbance area of approximately 68 ha. The Project would produce up to 1.5 Mtpa of saleable quarry product with approval sought for an initial 30-year quarrying period.

The application was approved by the Independent Planning Commission of NSW on 8 July 2024. Condition B36 (a) of this Development Consent states *'prior to transporting any quarry products from the site on public roads, the Applicant must: ensure that the intersection at the junction of The Pacific Highway and Italia Road is upgraded to the satisfaction of TfNSW'*.

It is estimated the Stone Ridge Quarry would generate 334 truck movements (in/out) per day, all of which would occur through the Italia Road Pacific Highway intersection.

Eagleton Quarry Project

The Eagleton Quarry Project is a State Significant Development (SSD-7332) for purpose of extracting 600,000 tonnes of hard rock resource per annum. The proposed quarry is expected to have a lifespan of 30 years. The proposed disturbance area is 33ha, including extraction, processing, stockpiling area and buffers.

The application was approved by the Independent Planning Commission of NSW on 8 July 2024. Condition B34 (a) of this Development Consent states *'prior to transporting any quarry products from the site on public roads, the Applicant must: ensure that the intersection at the junction of The Pacific Highway and Italia Road is upgraded to the satisfaction of TfNSW'*.

It is estimated the Eagleton Quarry would generate 170 truck movements (in/out) per day, all of which would occur through the Italia Road Pacific Highway intersection.

Seaham Quarry Project

The proposed Seaham Quarry Project is a State Significant Development (SSD-59254474) to expand the existing quarry footprint, by 30.6ha, enabling access to produce 2 million tonnes per

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annum (Mtpa) over a period of 30 years. Without the expansion, the quarry is expected to exhaust its approved hard rock resource within a few years.

It is estimated the expanded Boral Seaham Quarry would generate 224 truck movements (in/out) per day, and up to 325 movements during peak operation, all of which would occur through the Italia Road and Pacific Highway intersection.

PLANNING ASSESSMENT

The proposed development was referred to the following internal specialists and external agencies. The comments provided by the special staff and external agencies have been used to carry out the assessment against the S4.15 Matters for Consideration below:

Internal

Development Engineering

Comment:	<p>The application was assessed by Council's Development Engineer in relation to traffic and road network impacts.</p> <p>No objection was made to the application relating to lowering of the quarry pit floor given that no changes to any operational aspect of the development is proposed.</p> <p>Deletion of conditions 29 and 31 was not supported based on Council's Traffic Engineer's concurrence with findings of the 'Heavy vehicle turn Safety Review' of the Road Safety Review prepared by GHD. Findings of this 'Heavy vehicle turn Safety Review' stated:</p> <ul style="list-style-type: none"> <i>The GHD Safety Review conclusion that heavy vehicle right turns out movement out of Italia Road at the intersection of Pacific Highway is safer than left turns out movement is not supported.</i> <i>It is concluded that banning right turns for heavy vehicles out of Italia Road on to Pacific Highway would improve the safety situation at this intersection. The overall intersection operation would also be improved to a satisfactory level which is currently operating at an unsatisfactory level.</i>
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Natural Systems

Comment:	<p>The application was assessed by Council's Environmental Planner in relation to water quality and hydrological impacts associated with the proposal. Council's Environmental Planner concluded that insufficient information was lodged with the application to assess these impacts, with the following information required:</p> <ul style="list-style-type: none"> Biodiversity Development Assessment Report (prescribed impacts (water sustainability) on Seven Mile Creek biodiverse riparian lands as mapped on the NSW Biodiversity Values Map). Quantification of potential water contaminant levels associated with the proposed works. Detailed water quality management plan. Details associated water discharge (quantity, frequency, etc.). Analysis of past water quality monitoring data (i.e. prior to commencement of blasting and extraction activities) compared to current observed levels and trends over time.
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	Given the considerable increase in groundwater interception, the substantial level of uncertainty associated with water quality impacts and the sensitivity of the receiving environment, the application is not supported.
Environmental Health	
Comment:	The application was assessed by Council's Environmental Health Officer in relation to noise, vibration and air quality. Council's Environmental Health Officer made no objection and supported the application unconditionally.
Infrastructure Contributions	
Comment:	Council's Infrastructure Contributions Officer advised that the existing consent contains a condition relating to Section 94 contributions and haulage fees, which should remain unchanged as a result of the proposed modification.
External	
Transport for NSW	
Comment:	<p>The application was referred to TfNSW for comment in accordance with Section 2.22 of the Transport of the State Environmental Planning Policy (Resources and Energy) 2021.</p> <p>In response TfNSW made no objection to the proposal and noted the following:</p> <p><i>The proposed modification does not change the quarry life, hours of operations, numbers employed, extraction footprint, production or transportation rate, type of product being extracted, or the extraction methodology.</i></p> <p><i>TfNSW has no comments regarding the proposed modification on the basis that this proposal is considered to have no significant impact on the State road network.</i></p>
Hunter Water Corporation	
Comment:	<p>The application was referred to Hunter Water Corporation (HWC) in accordance with Section 51 of the <i>Hunter Water Act 1991</i>. HWC referral comments received on 15/01/2025 concluded that insufficient information was provided with the application to assess surface and ground water quality impacts.</p> <p>HWC noted the existing quarry operations are of substantial interest to Hunter Water as they are known to have a long history of adverse and unacceptable impacts on the Grahamstown Dam drinking water catchment as a result of degraded water quality, particularly elevated sediment loads and nitrogen concentrations, being discharged from the site during high rainfall events.</p> <p>Not only does water quality discharged from the site not meet current standards (NorBE) but monitoring results published on the quarry operator's website indicates that substantial breaches of the quarry's total suspended solids limit imposed by Environment Protection Licence (EPL) 3956 are frequently recorded during high rainfall events. The quarry is not required under the EPL conditions to monitor the load of sediment discharged from the site, however, the monitoring results indicate that a significant sediment load is discharged to Grahamstown Dam.</p> <p>It is also known from recent water quality monitoring work undertaken by the quarry operator and monitoring at other hard rock quarrying operations that significant concentrations of nitrogen are present in water discharged from the site.</p>

	<p>Degraded water quality discharged from the quarry presents various risks to the drinking water supply system. Recent revisions to the quarry's EPL 3956 by the NSW Environment Protection Authority have sought to address some of the causes of these adverse impacts on the drinking water catchment and are greatly appreciated, however, the ability to enforce the implementation of improved management controls at the quarry is limited by the age of the planning consent. The quarry operator is not required to implement such improvements to management practices under the existing consent and, as a result, current best practice management has not been implemented at the quarry operations.</p> <p>Given the factors described above, Hunter Water holds the view that the proposed Modification 7 is not in the best interest of drinking water catchment management or, therefore, the public interest and those interests would be best served by allowing the current quarry expansion project assessment process to be determined and enabling the prerequisite conditions to be satisfied in order to provide continuity of operations as desired by the proponent.</p>
Environment Protection Authority	
Comment:	<p>The application was referred to the NSW Environment Protection Authority (EPA) as the quarry is a scheduled activity under Section 48 of the <i>Protection of the Environment Operations Act 1997</i>. The EPA highlighted that the quarry is currently subject to an Environment Protection Licence (EPL) 3956.</p> <p>EPA referral comments received on 28/10/2024 concluded that insufficient information was provided with the application to assess quantitative air and noise impacts; noting the existing consent dates from the 1980's and predates modern environmental impact assessment techniques, guidance and policies.</p> <p>Additional comments were received on 17/12/2024, documenting the EPA's concerns in relation to total suspended solids (TSS) and nitrogen levels in stormwater runoff and discharges from the Premises. The Proposal does not currently include any proposed upgrades to stormwater management and the EPA is concerned that if the Proposal is approved, the proposed surface water management upgrades as part of SSD-59254474 (Seaham Quarry Project) may not occur for some time. Additional information was requested from the EPA demonstrating how the proposal will incorporate the following surface water upgrades:</p> <ul style="list-style-type: none"> • Sediment basins are upgraded to be sized to minimise the risk of uncontrolled discharges in storm events not exceeding the 24-hour duration, 0.2% AEP storm event; • Water captured in sediment ponds is treated prior to discharge with water treatment systems for the removal of solids and nutrients; and • A Trigger Action Response Plan (TARP) is implemented to guide when water should be discharged to manage water quality impacts on the downstream receiving environment. <p>As identified by the EPA, insufficient technical information was lodged with the application to assess and manage the environmental impacts associated with the proposal.</p>
Water NSW	

Comment:	<p>The application was referred to Water NSW under Section 89 of the Water Management Act 2000 for a water use approval. In response Water NSW made no objection to the proposal and noted the following:</p> <p><i>WaterNSW has reviewed the information submitted with the application regarding the Extractive Industry - Hard Rock Quarry, at 139 & 139A Italia Road, Balickera NSW 2324, and considers that for the purposes of the Water Management Act 2000, no further investigation is required by this agency.</i></p>
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Environmental Planning and Assessment Act 1979

Section 4.55(2) – Other Modifications

S4.55(2)(a) – Substantially The Same Development

The development as modified is deemed to be substantially the same as the approved development for the following reasons:

- The proposal will not change the extraction area footprint;
- The annual rate of production would not change as a result of the modification;
- The type of product being extracted would not change as a result of the modification;
- The operational and extraction processes (drilling and blasting practices) would not change as a result of the modification;
- The proposed transport routes (as permitted by the original consent) would not change as a result of the modification;
- The hours of operation would not change as a result of the modification; and
- The number of employees on the site would not change as a result of the modification.

It is noted that quantitatively, the proposal would enable access to an additional 950kt of resource, and thereby additional truck movements that would not have otherwise occurred. Despite this, the materials to be extracted are located in an existing quarry pit, which would be extracted and lowered at substantially the same rate currently approved.

On this basis, it is considered that the essence of the development is not substantially altered and the application is substantially the same.

S4.55(2)(b) – Concurrence and Integrated Development

The proposed modification does not constitute integrated development and does not require the concurrence of any external agency. However, referrals were sent to agencies that previously provided comment on the original application, as outlined in the external referrals section, elsewhere in this report.

S4.55(2)(c) – Notification

In accordance with Councils Development Control Plan and Councils Community Participation Plan, the application has been notified and advertised. The application was notified from 30 October 2024 – 13 November 2024.

S4.55(2)(d) – Submissions

There were 11 submissions received relating to the proposed modification. 9 submissions objected to the proposal, while two (2) submissions provided support for the proposal.

The matters raised in the submissions objecting to the development are discussed in the table below:

Matter raised	Response
The subject intersection is no longer fit for purpose to accommodate right hand turn movement of quarry trucks from Italia Road onto the Pacific Highway.	Independent traffic engineering advice commissioned by Council, undertook SIDRA modelling of the existing and the heavy vehicle right turn ban scenarios for the intersection of Italia Road and Pacific Highway, using turning volumes documented in the Road Safety Review (RSR) prepared by GHD dated 16 August 2024. The SIDRA results indicate that currently the right turn movement out of Italia Road is experiencing significant delay due to the mix of heavy and light vehicles for this movement, and the intersection is failing with a Level of Service (LoS) rating of F. Once, right turn for heavy vehicle is banned and only allowed to make left hand turns out of Italia Road the delay and LoS improved to a satisfactory level. This SIDRA modelling reinforces the subject intersection is no longer fit for purpose to accommodate right hand turn movement of quarry trucks from Italia Road onto the Pacific Highway.
The proposed deletion of conditions 29 and 31 is inconsistent with the applicant's development consent (DA 16-2023-477-1) for 'road infrastructure – upgrades to Italia Road and Pacific Highway Intersection', to support the expansion of three (3) quarries which would all direct haulage through the Italia Road and Pacific Highway intersection.	On 20 June 2022 TfNSW provided in-principle acceptance (subject to conditions being met) to a strategic design for northbound access to the Pacific Highway, to service the proposed Eagleton & Stone Ridge quarries and support further intensification of the existing Seaham quarry at Balickera. This position was substantiated through TfNSW support of the approved intersection upgrade under DA 16-2023-477-1, subject to detailed design through the WAD approval process. Whilst TfNSW made no objection to the proposal under assessment, the proposed deletion of conditions restricting right hand turn movement of quarry vehicles southbound remains entirely inconsistent with the resolutions to improve intersection performance and traffic safety implemented under DA 16-2023-477-1.

Matter raised	Response
The Road Safety Review (RSR) relies on an inadequate survey period for traffic data collection; and has not sought community consultation in preparation of the document.	These traffic data collection matters are not identified as contentions with the independent traffic engineering advice or engineering referral.
The proposal will generate significant noise, pollution and congestion impacts to the local community.	As identified in the referrals section above, insufficient technical information was lodged with the application to assess and manage the environmental impacts associated with the proposal.
Request that the Council reassess the right-turn ban and instead consider the installation of an acceleration lane or other measures to enhance safety for all road users. This would ensure that safety concerns are fully addressed without restricting the operational efficiency of the site.	DA16-2023-477-1 was approved on 5/12/2024 for 'road infrastructure – upgrades to Italia Road and Pacific Highway Intersection' to support the expansion of three (3) quarries whilst enhancing road safety and intersection performance for road users. The proposal includes upgrade of the existing left out treatment from Italia Road to the Pacific Highway to include a channelised left out treatment (CHL) and dedicated acceleration lane for north-bound vehicles. The approximate length of the acceleration lane required is 435 m (including 110 m merge). This proposed intersection upgrade is an interim upgrade as agreed with TfNSW whilst it undertakes its long-term strategic planning as part of its highway post-duplication strategy.
Request for the consent authority to consider the Council Resolution made on 23/07/2024 that; <i>'The elected body of Port Stephens Council will not support any future traffic solution associated with new quarry development applications or modifications at the Italia Road/M1 intersection unless it is a grade separated, fly over interchange'</i> . The Council Resolution should be a reason for refusing the application to remove Conditions 29 & 31, which would have the effect of allowing a continuation of dangerous right turn movements out of Italia Road by an ever-increasing volume of heavy vehicle traffic.	The subject resolution made by the elected body of Port Stephens Council on the 23/07/2024 has been considered during assessment of the application. Following review of the application, Council maintains heavy vehicles should be banned from making right hand turns from Italia Road onto the Pacific Highway as enforced through conditions 29 and 31.
The operating conditions for this quarry are far more permissive than those for other quarries in the area. There may be an opportunity for Council to address the inconsistency in quarrying consents and bring the operating times for the Boral Seaham Quarry into line with more modern conditions.	The operating conditions for the quarry are regulated by the development consent and EPL issued over the site. As the application does not seek to modify any operational aspect, it is not reasonable to impose a condition of consent reducing the operating times for the quarry.

Matter raised	Response
Traffic counts made in 2022 are not a true indication of the use of the intersection as since that time the Clarence Town Bridge has been closed to articulated vehicles and Six Mile Road has had a heavy vehicle limit put on it.	Temporary closures elsewhere in the broader network are not a consideration in a Traffic Impact Assessment. Council Engineers and TfNSW have considered these existing conditions during assessment of RSR and raise no concerns.
Until safety concerns regarding the Italia Road/Pacific Highway intersection are addressed by a major upgrade, this application for further deepening of the Seaham Quarry and for removal of Conditions 29 & 31 should be refused.	As no changes to quarry operations are proposed, Council's Development Engineer did not object to the lowering of the quarry pit floor, subject to the retention of conditions banning the right turn movement of quarry trucks from Italia Road onto the Pacific Highway. Conditions of consent have been imposed on IPC determined quarry projects at Eagleton & Stone Ridge restricting operation until upgrade of the Italia Road and Pacific Highway intersection to the satisfaction of TfNSW.
<p>The Road Safety Review's claim that the operation of the intersection would be less safe as a result of Condition 29, justifying its deletion, is considered to be disingenuous. The Road Safety Review is based a series of assumptions including, that truck drivers are competent and would not engage in risky behaviours, and that current turning demand is the basis of this safety assessment and that there will be no material change to traffic volumes from existing conditions.</p> <p>The justification for the removal of Conditions 29 and 31 in the Modification Application therefore appears to be that the right turn movements by Boral Quarry extension trucks is slightly less unsafe than forcing all trucks to turn left. Not that right turn movements are safe – just that it is slightly less unsafe.</p>	<p>Council acknowledges assumptions used in preparation of the RSR. Independent traffic engineering advice commissioned by Council - 'Heavy vehicle turn Safety Review' prepared by Barker Ryan Stewart and dated 5/09/2024, further disputes findings of the RSR, noting fundamental issues within the collection and assessment of data used within the Safe System process. Council's Traffic Engineer has reviewed all available documentation, and concurred with the findings of the Heavy vehicle turn Safety Review that:</p> <ul style="list-style-type: none"> <i>The GHD Safety Review conclusion that heavy vehicle right turns out movement out of Italia Road at the intersection of Pacific Highway is safer than left turns out movement is not supported.</i> <i>It is concluded that banning right turns for heavy vehicles out of Italia Road on to Pacific Highway would improve the safety situation at this intersection. The overall intersection operation would also be improved to a satisfactory level which is currently operating at an unsatisfactory level.</i>

Matter raised	Response
<p>Limiting access could lead to potentially hazardous situations and increased safety risks for drivers, public road users and the broader community, as drivers may be forced to make unsafe manoeuvres or seek alternative routes that are less suitable, and that create higher safety risks for heavy vehicles, and other road users.</p> <p>Limiting access may also worsen congestion on surrounding roads, leading to longer delays for all road users.</p>	<p>SIDRA modelling data indicates that currently the right turn movement out of Italia Road is experiencing significant delay due to the mix of heavy and light vehicles for this movement, and the intersection is failing with a Level of Service (LoS) rating of F. Once, right turn for heavy vehicle is banned and only allowed to make left hand turns out of Italia Road the delay and LoS improved to a satisfactory level. This SIDRA modelling reinforces the subject intersection is no longer fit for purpose to accommodate right hand turn movement of quarry trucks from Italia Road onto the Pacific Highway.</p>
<p>There is no merge lane for northbound access, which prevents vehicles from accelerating to a safe speed before merging into highway traffic. Additionally, there are no immediate plans by Transport for NSW to construct a merge lane due to the limited distance between the Italia Road intersection and the Balickera Bridge. Which if created would only partially address the safety concerns created by the proposed changes.</p>	<p>DA16-2023-477-1 was approved on 5/12/2024 for 'road infrastructure – upgrades to Italia Road and Pacific Highway Intersection' to support the expansion of three (3) quarries whilst enhancing road safety and intersection performance for road users. The proposal includes upgrade of the existing left out treatment from Italia Road to the Pacific Highway to include a channelised left out treatment (CHL) and dedicated acceleration lane for north-bound vehicles. The approximate length of the acceleration lane required is 435 m (including 110 m merge). This proposed intersection upgrade is an interim upgrade as agreed with TfNSW whilst it undertakes its long-term strategic planning as part of its highway post-duplication strategy. Furthermore, conditions of consent imposed on IPC determined quarry projects at Eagleton & Stone Ridge restrict operation of quarries until upgrade of the Italia Road and Pacific Highway intersection to the satisfaction of TfNSW.</p>
<p>Clarity on which route the anticipated alternative turnaround point will be or what evaluations have been conducted to date to assess potential safety impacts for drivers as well and community members.</p>	<p>Trucks travelling from Italia Road onto the Pacific Highway southbound would be required to turn left at the Italia Road / Pacific Highway seagull intersection and travel north on the Pacific Highway to perform a U-turn at the grade separated interchange approximately 11 km north of Italia Road, before travelling south. The safety impacts of this route were assessed under DA 16-2023-477-1, which demonstrated an acceptable southbound truck merge speed capacity at the Tarean Road interchange.</p>

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Matter raised	Response
Increased heavy vehicle traffic through Medowie is likely to negatively affect local residents, by contributing to increased road noise. For example, If traffic is rerouted through Medowie, it is likely to force drivers to navigate through school zones, particularly at the Williamstown end.	Quarry trucks must adhere to approved B-Double gazette routes, which does not include Medowie Road. Existing behavioural controls including GPS tracking, signposting and driver training programs are implemented as conditions of consent.
It is clear that the proposed change is also likely to have an impact on pricing due to rising fuel and travel time expenses of the operators given that the closest available overpass is 10 kms away from the intersection.	Council must foremost assess the environmental impacts of the proposal including traffic safety, with a priority of reducing heavy vehicle conflict at the intersection. Additional fuel and material pricing considerations are not relevant to assessment of the application.
The environmental impacts associated with the proposal would render Balickera homestead unlivable and the property unsaleable.	As identified in the referrals section above, insufficient technical information was lodged with the application to assess and manage the environmental impacts associated with the proposal.
Council is in receipt of a legal opinion from 2019 advising that this application to deepen the quarry does not constitute 'substantially the same development' as that for which approval was originally granted in 1985 (attached).	As outlined under section 4.55(2)(a) of this report, the development as modified is deemed to be substantially the same as the approved development.
Council should reconsider the propriety of approving Boral's application to deepen the quarry when it clearly constitutes a component of a more major project currently under consideration by the NSW Department of Planning as a State Significant Development, as well as the Commonwealth Department of Climate Change, Energy, the Environment and Water. It is quite clear that the issues raised by this application exceed the limits of Council's authority.	The application has been made in accordance with Section 4.55 of the EP&A Act 1979. State Significant Development thresholds listed under Chapter 2 of State Environmental Planning Policy (Planning Systems) 2021 do not apply to a modification pursuant to section 4.55 of the EP&A Act 1979.

Matter raised	Response
<p>Seaham Quarry does “pose a significant risk in relation to the locality a) to human health, life or property, or (b) to the biophysical environment”, and that the quarry’s operational noise is a “polluting discharge” that Boral must recognise, with the utmost attention applied to reduce that risk. The fact that the quarry was approved in 1985 with minimal conditions does not make this appropriate now. We query whether blasting lower down in the pit will not cause any different impacts to what has been inflicted on neighbours for the last 40 years, but we do not have the expertise to investigate.</p>	<p>As identified in the referrals section above, insufficient technical information was lodged with the application to conclude the proposal will not generate adverse environmental impacts. This is further assessed in section 4.15(b) of this assessment report.</p>
<ul style="list-style-type: none"> • DA 16-2023-477-1 is the mechanism by which all 3 quarry parties can safely access the Pacific Highway from Italia Road, which was lodged by Boral on behalf of all 3 quarry parties, following direction from TfNSW that all 3 quarry parties work together to achieve a short-term highway access solution. • FCNSW supports Council's existing position that quarry trucks accessing the Pacific Highway at Italia Road should be directed to the north via a left turn out (per condition 29 of DA 7-1985-2683-6). • Condition 29 in its current form is insufficient to improve road safety at the intersection, given that it does not reference the intersection upgrade works approved by Council under DA 16-2023-477-1 (for which Boral was the proponent), which are critical for enabling heavy vehicles to safely turn left out of Italia Road. Condition 29 in its current form would significantly reduce road safety (given the absence of any acceleration/merge lane suitable for laden heavy vehicles), which is clearly not the intention of Council. It is requested Council give urgent consideration to amending Condition 29 in order to achieve its desired outcome of improving road safety at the intersection. Condition 29 would be strengthened and made more 	<p>DA16-2023-477-1 relates to the approval of road upgrades at the Italia Road and Pacific Highway intersection. DA 16-2023-477-1 was approved by the Regional Planning Panel on 5 December 2024. The approved road upgrade works seek to support the expansion of 3 quarries in the vicinity of the intersection.</p> <p>2 recently approved State Significant Development quarry projects on Italia Road both require completion of the approved intersection road upgrade works to facilitate a left-turn only from Italia Road to the Pacific Highway.</p> <p>Both submissions support Council’s existing position that quarry trucks accessing the Pacific Highway at Italia Road should be directed to the north via a left turn out and suggest amendments to Condition 29.</p> <p>Condition 29 was previously imposed by Council to improve road safety at the intersection of Pacific Highway and Italia Road, by way of restricting right hand turn southbound truck movements. This condition permitted continued operations at the Seaham Quarry, without road infrastructure upgrades at the subject intersection, subject to compliance with Conditions 29, 31 and all other consent conditions that will improve traffic safety. The previous Modification Approval (DA 7-1985-2683-6) predated the approval of DA16-2023-477-1, therefore the conditions as recommended in the submissions could not have been imposed.</p>

Matter raised	Response
<p>defendable if it contained additional wording to the effect of: Prior to transporting any quarry products under this consent from the site on public roads, the Applicant must ensure that the intersection at the junction of the Pacific Highway and Italia Road is upgraded in accordance with DA 16-2023-477-1.</p>	<p>Further, there are limitations on a consent authority's power to amended existing conditions retrospectively when assessing a S4.55(2) modification application. Therefore, the recommended amendments to Condition 29 will not be imposed by Council retrospectively. The amended Condition 29 would be more onerous than that previously imposed by Council as part of DA 7-1985-2683-6 with no clear nexus or grounds to support such an amendment as part of this application.</p> <p>Furthermore, the modification application is recommended for refusal on grounds relating to insufficient information to address environmental impacts and traffic safety grounds. Therefore, amendment of Condition 29 is not a relevant consideration for Council based on the recommendation of refusal.</p>
<p>Forestry Corporation of NSW (FCNSW), as the landowner adjacent to the subject land, was not notified of the application.</p>	<p>Notification letters were distributed to the postal address of the northern adjoining landholder, identified as being under State Government ownership. Forestry Corporation of NSW (FCNSW) has not identified if they are the landowner or land manager, nor do Council's records reflect FCNSW as the landowner.</p> <p>Notwithstanding, the submission was received and considered as part of this report. Council's land ownership and contact details for the subject site have also been updated to address the comments raised in the submission.</p> <p>ARDG, the other late submitter, is not an adjoining landowner and were not required to be notified as part of the modification application.</p>

S4.55(3) – S4.15(1) Assessment

S.4.55(3) provides that in determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.

The relevant matters within S.4.15 are assessed in the following section.

s4.15(1)(a)(i) – The provisions of any EPI

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The application is not consistent with the provision of the PSLEP 2013 and relevant SEPPs applicable to the proposal as detailed below.

State Environmental Planning Policy (Resources and Energy) 2021

State Environmental Planning Policy (Resources and Energy) 2021 seeks to standardise the approach throughout NSW to the assessment and approval of mining and petroleum activities under Part 4 of the EP&A Act 1979.

Chapter 2 provides matters that are to be considered in development applications for mining, petroleum production and extractive industries. The relevant sections for consideration are Clause 2.20, 2.21, 2.22 and 2.23.

Section 2.20 of the SEPP requires the consent authority to 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. Whilst existing conditions of the development consent and EPL licence manage current environmental impacts of the quarry; insufficient information was lodged with the application to assess the additional water quality and hydrological impacts associated with the proposal. Given the considerable increase in groundwater interception, the substantial level of uncertainty associated with water quality impacts and the sensitivity of the receiving environment, the project has not demonstrated that impacts have been avoided, or are minimised to the greatest extent practicable in accordance with the requirements of the SEPP.

Clause 2.21 requires the consent authority consider the efficiency or otherwise of the development in terms of resource recovery. In this regard, the application does not propose any amendment to existing resource extraction methods and therefore has no implication relating to efficiency.

Clause 2.22 of the SEPP requires the consideration of consent conditions relating to transport. Due to the proposal requiring transport of materials on a public road, the consent authority is required to refer the application to TfNSW for comment and take into consideration any response received.

In response, TfNSW made no objection to the application on the basis that:

- *The proposed modification does not change the quarry life, hours of operations, numbers employed, extraction footprint, production or transportation rate, type of product being extracted, or the extraction methodology.*

Clause 2.23 of the SEPP requires the consent authority to 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. It is noted that there are existing conditions of consent for rehabilitation which satisfies the requirements of Clause 2.23.

State Environmental Planning Policy (Resilience and Hazards) 2021**Chapter 4 – Remediation of Land**

Section 4.6 of Chapter 4 of the Resilience and Hazards SEPP requires the consent authority to consider whether land is contaminated, is in a suitable state despite contamination, or requires remediation to be made suitable for the proposed development.

The proposal involves extraction of virgin quarry material within the confines of the existing quarry. Quarries are a known source of potential pollution and accordingly, existing controls are in place to manage contamination of the environment, including the conditions of the quarry EPL licence.

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Noting the proposal is to continue quarry operations and does not involve a change of use, the site is considered to be suitable in its current state and satisfies the requirements of Chapter 4 of this SEPP.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

The proposed modification does not include any vegetation clearing, as it proposed to lower the pit floor of an already disturbed area; within the current extraction boundary. As a result, the proposal is consistent with the requirements of this SEPP.

State Environmental Planning Policy (Planning Systems) 2021

Chapter 2 – State and Regional Development

This chapter aims to identify development that is state significant development, critical state significant infrastructure and regionally significant development.

Schedule 1 includes thresholds for state significant development for the purposes of extractive industry at Clause 7 - Extractive industries:

- (1) *Development for the purpose of extractive industry that:*
 - (a) *extracts more than 500,000 tonnes of extractive materials per year, or*
 - (b) *extracts from a total resource (the subject of the development application) of more than 5 million tonnes, or*
 - (c) *Extracts from an environmentally sensitive area of State significance.*

Schedule 6 includes thresholds for regionally significant development for extractive industry that is designated development.

Despite these provisions, a modification pursuant to Section 4.55 of the EP&A Act is not considered 'development' but rather a modification of a development consent. Therefore, the thresholds for regional and state significant development only apply to new development applications and not the proposed modifications.

State Environmental Planning Policy (Transport and Infrastructure) 2021

Chapter 2 – Infrastructure

There are no applicable provisions within this SEPP that would apply to the proposed modification. The proposal is not identified as traffic generating development.

Section 2.118 (Development on proposed classified road) of SEPP (Transport and Infrastructure) 2021 provides that development proposed on a classified road may only be granted only with the concurrence of TfNSW. No development is proposed on a classified road, however, the proposed haulage route includes the Pacific Highway, which is a classified road and so a non-statutory referral was made to TfNSW. In response, TfNSW made no objection to the application.

Transport and infrastructure related provisions that specifically apply to extractive industries have been assessed against State Environmental Planning Policy (Resources and Energy) 2021 above.

Port Stephens Local Environmental Plan 2013 (PSLEP 2013)

Clause 2.3 – Zone Objectives and Land Use Table

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The approved development is defined as an extractive industry - quarry which is permissible with consent in the RU2 Rural Landscape zone. The proposed modification is not compatible with the objectives of the zone as follows:

- The proposal does not demonstrate how additional impacts to any nearby primary production activities by way of noise, vibration and air quality impacts will be managed.
- The proposal does not demonstrate how existing environmental controls will manage additional impacts generated by the proposal, to ensure quarry operations will remain compatible with both surrounding land uses and existing or future visitor oriented land uses within the locality.

Clause 5.10 – Heritage conservation

The objectives of this clause are as follows—

- (a) *to conserve the environmental heritage of Port Stephens,*
- (b) *to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,*
- (c) *to conserve archaeological sites,*
- (d) *to conserve Aboriginal objects and Aboriginal places of heritage significance.*

In accordance with Clause 5.10.(4) the consent authority must, before granting consent under this clause in respect of a heritage item or heritage conservation area, consider the effect of the proposed development on the heritage significance of the item or area concerned.

The proposed development is located within proximity to the Local Heritage listed item – 'Balickera House'. The proposal is not located near any state heritage listed items. The proposed pit floor lowering is located 576m from the heritage items curtilage and 1.1km from the house. Due to the topography between the quarry and the heritage item, the quarry is not visible from Balickera House. Due to the substantial distance and lack of a direct site line between the quarry and Balickera House, the proposal would not result in any adverse impacts to the heritage item.

A search of the Aboriginal Heritage Management Systems did not reveal any previously recorded Aboriginal sites in proximity to the proposed development. The existing quarry is cut into the side of a ridgeline which is a sensitive Aboriginal Landscape feature as per the 'Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales'. Despite this, the pit floor deepening is proposed in an area that has already been quarried to a significant depth and therefore it is unlikely there would be any unrecorded Aboriginal artefacts uncovered as a result of the proposed pit floor lowering.

Clause 7.1 – Acid Sulfate Soils

The objective of this clause is to ensure that development does not disturb, expose or drain acid sulfate soils (ASS) and cause environmental damage.

The subject land is mapped as containing potential Class 5 acid sulfate soils. The proposed extractive industry is not within 500m of Class 1, 2, 3 or 4 mapped areas and therefore it is unlikely ASS would be encountered during extraction and an ASS management plan is not required.

Clause 7.2 – Earthworks

The objective of this clause is to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

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In accordance with Clause 7.2(3) before granting development consent for earthworks (or for development involving ancillary earthworks), the consent authority must consider the following matters—

(a) the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development,

Insufficient technical information was lodged with the application to assess whether the proposal will have a detrimental effect on drainage patterns and soil stability in the locality of the development.

The existing EPL conditions set limits for the discharge of pollutants which are monitored for compliance. The application was referred to the NSW EPA to determine whether the proposed modification would require modification to the EPL. In response, the EPA raised concerns in relation to total suspended solids (TSS) and nitrogen levels in stormwater runoff and discharges from the Premises.

The Proposal does not currently include any proposed upgrades to stormwater management and the EPA is concerned that if the Proposal is approved, the proposed surface water management upgrades as part of SSD-59254474 (Seaham Quarry Project) may not occur for some time. Additional information was requested from the EPA demonstrating how the proposal will incorporate the following surface water upgrades:

- Sediment basins are upgraded to be sized to minimise the risk of uncontrolled discharges in storm events not exceeding the 24-hour duration, 0.2% AEP storm event;
- Water captured in sediment ponds is treated prior to discharge with water treatment systems for the removal of solids and nutrients; and
- A Trigger Action Response Plan (TARP) is implemented to guide when water should be discharged to manage water quality impacts on the downstream receiving environment.

As identified by the EPA, insufficient technical information was lodged with the application to assess and manage the environmental impacts associated with the proposal. These comments were reiterated by Hunter Water Corporation (HWC) who noted the existing quarry operations are known to have a long history of adverse and unacceptable impacts on the Grahamstown Dam drinking water catchment as a result of degraded water quality, particularly elevated sediment loads and nitrogen concentrations, being discharged from the site during high rainfall events.

(b) the effect of the development on the likely future use or redevelopment of the land,

The approved development includes a rehabilitation plan which includes rehabilitation strategies for the land once the quarry resource is exhausted. The proposed pit floor lowering would require additional backfilling to rehabilitate the land but would otherwise not impact the existing rehabilitation plan or its intended goals. The existing consent includes a condition requiring a final end use plan is to be submitted to Council twenty four (24) months prior to cessation of quarry operations. The final end use plan is to provide information relating to the land use of the site following the cessation of quarry operations and provide details of rehabilitation works to be undertaken. Information is also to be provided which is pertinent to the final land use, including access arrangements.

(c) the quality of the fill or the soil to be excavated, or both,

The proposed location of the pit floor lowering has been subject to geological testing from the applicant which has found the presence of rhyolite and ignimbrite rock resource. The resource to be

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extracted is a virgin material that is not expected to be contaminated. By-products unearthed during excavation would be screened and separated from the rock resource prior to export offsite.

(d) the effect of the development on the existing and likely amenity of adjoining properties,

The existing development incorporates adequate noise, air quality and traffic controls to minimise amenity impacts to neighbouring properties to an acceptable level. Notwithstanding, insufficient technical information was lodged with the application to assess whether the proposal will have a detrimental effect on the existing and likely amenity of adjoining properties. Further detailed assessment of noise, air quality and traffic related impacts is provided as part of the assessment against Section B3 of the Port Stephens Development Control Plan 2014.

(e) the source of any fill material and the destination of any excavated material,

Excavated materials include rhyolite and ignimbrite rock resource which is intended to be sold on a commercial basis for use in infrastructure projects such as road construction. No import of fill material is proposed.

(f) the likelihood of disturbing relics,

As discussed against clause 5.10 above, it is unlikely that relics would be uncovered during the proposed operations as the pit floor deepening is proposed in an area that has already been significantly disturbed due to previous quarrying.

(g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,

Insufficient technical information was lodged with the application to assess whether the proposal will have a detrimental effect on waterways, drinking water catchments or environmentally sensitive area.

The existing EPL conditions set limits for the discharge of pollutants which are monitored for compliance. The application was referred to the NSW EPA to determine whether the proposed modification would require modification to the EPL. In response the EPA raised concerns in relation to total suspended solids (TSS) and nitrogen levels in stormwater runoff and discharges from the Premises. These comments were reiterated by Council's Environmental Planner who noted an overall decline of water quality near the subject site, with the proposal is likely to generate water quality impacts in both the surface water and groundwater environments. The site currently discharges water to Seven Mile Creek, which feeds into Grahamstown Dam (drinking water source) and groundwater flows are towards Balickera Canal (which also feeds into Grahamstown Dam).

The proposal further leads to a high risk of impact to stygofauna communities over an area of approximately 541 Ha. Stygofauna are a diverse subsurface community of fauna that inhabit the pore spaces and voids of groundwater environments, and are a type of groundwater dependent ecosystem. They have many values, including water quality benefits, biodiversity value and add to the ecological diversity in a region.

Hunter Water Corporation (HWC) noted that not only does water quality discharged from the site not meet current standards (NorBE) but monitoring results published on the quarry operator's website indicates that substantial breaches of the quarry's total suspended solids limit imposed by Environment Protection Licence (EPL) 3956 are frequently recorded during high rainfall events. The

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quarry is not required under the EPL conditions to monitor the load of sediment discharged from the site, however, the monitoring results indicate that a significant sediment load is discharged to Grahamstown Dam. It is also known from recent water quality monitoring work undertaken by the quarry operator and monitoring at other hard rock quarrying operations that significant concentrations of nitrogen are present in water discharged from the site.

Degraded water quality discharged from the quarry presents various risks to the drinking water supply system. Recent revisions to the quarry's EPL 3956 by the NSW Environment Protection Authority have sought to address some of the causes of these adverse impacts on the drinking water catchment, however, the ability to enforce the implementation of improved management controls at the quarry is limited by the age of the planning consent. The quarry operator is not required to implement such improvements to management practices under the existing consent and, as a result, current best practice management has not been implemented at the quarry operations.

(h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.

Insufficient technical information was lodged with the application to assess whether the proposed pit floor lowering will have a detrimental effect on the local environment. Further detailed assessment of noise, air quality and traffic related impacts is provided as part of the assessment against Section B3 of the Port Stephens Development Control Plan 2014.

Clause 7.8 – Drinking Water Catchments

The objective of this clause is to protect drinking water catchments by minimising the adverse impacts of development on the quality and quantity of water entering drinking water storages.

Insufficient technical information was lodged with the application to assess whether the proposal will have a detrimental effect on drainage patterns and water quality. The application was referred to Hunter Water Corporation (HWC) in accordance with Section 51 of the *Hunter Water Act 1991*.

Hunter Water Corporation (HWC) noted that not only does water quality discharged from the site not meet current standards (NorBE) but monitoring results published on the quarry operator's website indicates that substantial breaches of the quarry's total suspended solids limit imposed by Environment Protection Licence (EPL) 3956 are frequently recorded during high rainfall events. The quarry is not required under the EPL conditions to monitor the load of sediment discharged from the site, however, the monitoring results indicate that a significant sediment load is discharged to Grahamstown Dam. It is also known from recent water quality monitoring work undertaken by the quarry operator and monitoring at other hard rock quarrying operations that significant concentrations of nitrogen are present in water discharged from the site.

Degraded water quality discharged from the quarry presents various risks to the drinking water supply system. Recent revisions to the quarry's EPL 3956 by the NSW Environment Protection Authority have sought to address some of the causes of these adverse impacts on the drinking water catchment, however, the ability to enforce the implementation of improved management controls at the quarry is limited by the age of the planning consent. The quarry operator is not required to implement such improvements to management practices under the existing consent and, as a result, current best practice management has not been implemented at the quarry operations.

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The proposal does not accurately identify the potential risks to water quality, or propose a solution that will manage these risks to the maximum degree practicable, in accordance with the Australian Drinking Water Guidelines (ADWG).

s4.15(1)(a)(ii) – Any Draft EPI

Assessment	
There are no draft EPI's that are relevant to the proposed development	<input checked="" type="checkbox"/>
Comment:	

s4.15(1)(a)(iii) – Port Stephens Development Control Plan 2014

DCP Chapter		Compliant
B – General Controls		<input checked="" type="checkbox"/>
Comment:	B2 – Natural Resources <p>The site is located in proximity to environmentally sensitive areas and therefore this section applies.</p> <p>The proposed modification does not include any vegetation clearing, as it proposed to lower the pit floor of an already disturbed area; within the current extraction boundary.</p> <p>Consideration has been given to potential impacts to stygofauna communities as a result of groundwater draw down. The proposal further leads to a high risk of impact to stygofauna communities over an area of approximately 541 Ha. Stygofauna are a diverse subsurface community of fauna that inhabit the pore spaces and voids of groundwater environments, and are a type of groundwater dependent ecosystem (GDE). They have many values, including water quality benefits, biodiversity value and add to the ecological diversity in a region.</p> <p>Additionally, the proposal is likely to generate water quality impacts in both the surface water and groundwater environments. The site currently discharges water to Seven Mile Creek, which feeds into Grahamstown Dam (drinking water source) and groundwater flows are towards Balickera Canal (which also feeds into Grahamstown Dam).</p> <p>Insufficient technical information was lodged with the application to conclude the proposal is consistent with Section B2 of the DCP.</p>	
	B3 – Environmental Management <u>Air Quality & Noise</u> <p>EPA referral comments received on 28/10/2024 concluded that insufficient information was provided with the application to assess quantitative air and noise</p>	

impacts; noting the existing consent dates from the 1980's and predates modern environmental impact assessment techniques, guidance and policies.

B4 – Drainage and Water Quality

Insufficient technical information was lodged with the application to assess whether the proposal will have a detrimental effect on drainage patterns and water quality.

The existing EPL conditions set limits for the discharge of pollutants which are monitored for compliance. The application was referred to the NSW EPA to determine whether the proposed modification would require modification to the EPL. In response, the EPA raised concerns in relation to total suspended solids (TSS) and nitrogen levels in stormwater runoff and discharges from the Premises. These comments were reiterated by Council's Environmental Planner who noted an overall decline of water quality near the subject site, with the proposal is likely to generate water quality impacts in both the surface water and groundwater environments. The site currently discharges water to Seven Mile Creek, which feeds into Grahamstown Dam (drinking water source) and groundwater flows are towards Balickera Canal (which also feeds into Grahamstown Dam).

The Proposal does not currently include any proposed upgrades to stormwater management and the EPA is concerned that if the Proposal is approved, the proposed surface water management upgrades as part of SSD-59254474 (Seaham Quarry Project) may not occur for some time. Additional information was requested from the EPA demonstrating how the proposal will incorporate the following surface water upgrades:

- Sediment basins are upgraded to be sized to minimise the risk of uncontrolled discharges in storm events not exceeding the 24-hour duration, 0.2% AEP storm event;
- Water captured in sediment ponds is treated prior to discharge with water treatment systems for the removal of solids and nutrients; and
- A Trigger Action Response Plan (TARP) is implemented to guide when water should be discharged to manage water quality impacts on the downstream receiving environment.

These comments were reiterated by Hunter Water Corporation (HWC) who noted the existing quarry operations are known to have a long history of adverse and unacceptable impacts on the Grahamstown Dam drinking water catchment as a result of degraded water quality, particularly elevated sediment loads and nitrogen concentrations, being discharged from the site during high rainfall events.

As identified by the EPA and HWC, insufficient technical information was lodged with the application to assess drainage and water quality impacts associated with the proposal.

B8 – Traffic and car parking

The proposal results in additional truck movements through extension of the life of the development, via pit deepening and access to an additional 950 kilo tonnes of rock resource. The proposal also includes the proposed deletion of conditions that restrict the right hand turn truck movements from Italia Road onto the Pacific

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	<p>Highway southbound, and deletion of conditions relating to regulatory signage control for this prohibited turning movement. An assessment of these two components has been undertaken below:</p> <p><u>Lowering of pit floor level:</u></p> <p>The Statement of Environmental Effects (SEE) prepared by Boral dated 4 October 2024 asserts the 'the proposed modification does not involve or necessitate any change to the nature, number or frequency of material transport traffic movements'. This assertion has presumably been formed through available traffic volumes modelled for the development in the Transport Impact Assessment (TIA) prepared by GHD dated 7 November 2023 submitted with the previous modification application (DA 7-1985-2683-6).</p> <p>Under this previous application which sought to lower the pit floor by 30m AHD, the TIA outlined that traffic volumes would remain consistent with those currently occurring under the existing consent at approximately 1,000-5,000 tonnes of material per day, equivalent of up to 263 truck movement movements per day based on an extraction rate of 5,000 tonnes per day. Council's Development Engineer concurred with the overall findings of the TIA, being the proposed pit floor lowering would not generate adverse traffic impacts. Consistent with the findings of the previous TIA, Council's Development Engineer has concluded the proposed pit floor lowering would not generate additional traffic impacts outside of those previously assessed by Council.</p> <p><u>Deletion of conditions 29 and 31:</u></p> <p>In support of the proposal's request to delete conditions that restrict right hand turn truck movements from Italia Road onto the Pacific Highway southbound, Boral commissioned a Road Safety Review (RSR) prepared by GHD dated 16 August 2024, of truck turning movements at the intersection of Italia Road and the Pacific Highway. The RSR determined that a heavy vehicle left turn from Italia Road to Pacific Highway northbound is riskier than a right turn to Pacific Highway southbound, and a ban on heavy vehicle right-turn traffic movements is in fact likely to worsen crash risk at the intersection. This assertion primarily relies on data (as detailed in Section 3 of the RSR) to conclude the greater time needed for a left turning heavy vehicle to reach a safe traffic speed on the Pacific Highway northbound (to avoid rear-end collision or near-miss) is significantly greater than the time taken for a right turning heavy vehicle to clear the intersection.</p> <p>The applicant requested Council review the RSR and proposed deletion of condition 29 and 31 through a Pre-Lodgement Meeting Request (18-2024-44-1) lodged with Council on 13/09/2024. Noting the findings of the RSR were contrary to Council's established position that it is safer for heavy vehicles to undertake the left turn movement at the Pacific Highway intersection rather than the right-turn movement, independent traffic engineering advice was commissioned by Council. The 'Heavy vehicle turn Safety Review' undertaken by Barker Ryan Stewart and dated 5/09/2024, reviewed the Road Safety Assessment prepared by GHD.</p> <p>The 'Heavy vehicle turn Safety Review' disputed the findings of the RSR, noting fundamental issues regarding the collection and assessment of data used within</p>
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	<p>the Safe System process. Based on these issues the 'Heavy vehicle turn Safety Review' formed the following conclusions:</p> <ul style="list-style-type: none"> • <i>The GHD Safety Review conclusion that heavy vehicle right turns out movement out of Italia Road at the intersection of Pacific Highway is safer than left turns out movement is not supported.</i> • <i>It is concluded that banning right turns for heavy vehicles out of Italia Road on to Pacific Highway would improve the safety situation at this intersection. The overall intersection operation would also be improved to a satisfactory level which is currently operating at an unsatisfactory level.</i> <p>All contentions raised within the 'Heavy vehicle turn Safety Review' were provided to the applicant on 24/09/2024 as Pre-Lodgement Written Advice. The modification application subsequently lodged with Council on 11/10/2024, neither revised the RSR or provided technical documentation to address contentions of the 'Heavy vehicle turn Safety Review'. Council's Traffic Engineer proceeded to review the findings of both the RSR and Heavy vehicle turn Safety, with concurrence provided for the findings of the 'Heavy vehicle turn Safety Review'.</p> <p>The RSR ultimately fails to demonstrate that a ban on heavy vehicle right-turn traffic movements is in fact likely to worsen crash risk at the intersection. Council maintains heavy vehicles should be banned from making right hand turns from Italia Road onto the Pacific Highway as enforced through conditions 29 and 31.</p> <p>Taking the above into consideration, the proposed deletion of conditions 29 and 31 is not supported, noting the safety related issues associated with deletion of these conditions.</p>
C Development Type	<input checked="" type="checkbox"/>
Comment:	There are no development types specified within the DCP that relate to the proposal.
D Specific Areas	<input checked="" type="checkbox"/>
Comment:	There are no specific areas within the DCP that relate to the proposal.

s4.15(1)(a)(iia) – Any planning agreement or draft planning agreement entered into under section 93F

Assessment	
There are no planning agreements that have been entered into under section 7.4 relevant to the proposed development.	<input checked="" type="checkbox"/>
Comment:	

s4.15(1)(a)(iv) – The regulations

Assessment

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There are no matters within the regulations that are relevant to the determination of the application.	<input type="checkbox"/>
Comment:	<p>Schedule 3 Designated Development</p> <p><u>Part 2 – Are alterations or additions designated development?</u></p> <p>The original development was designated development. Despite this, a modification pursuant to section 4.55 of the EP&A Act is not considered 'development' or 'alterations and additions' but rather a modification of a development consent. Notwithstanding, development that involves alterations or additions to (whether existing or approved) is not designated development if, in the opinion of the consent authority, the alterations or additions do not significantly increase the environmental impacts of the total development (that is the development together with the additions or alterations) compared with the existing or approved development. Clause 36 of the Regulations provides factors to be considered by the consent authority when forming the opinion as to whether or not development is designated development.</p> <p>The environmental impacts of the proposed modification are generally limited by the nature of the operations being located within the existing extraction footprint, with no changes to any operational aspect of the development is proposed, including:</p> <ul style="list-style-type: none"> • Permitted quarry life • Hours of operation • Numbers employed • Extraction footprint • Production or transportation rate • Type of product being extracted • Extraction methodology. <p>On this basis, it is considered the proposed modification does not significantly increase the environmental impacts of the development and the proposal is not considered to be designated development.</p>

s4.15(1)(b) – The likely impacts of the development

Assessment	
Social and Economic Environment	
Comment:	<p>The proposal would enable extraction of a known resource on an existing quarry site. The proposal makes good use of the existing development footprint thereby minimising economic and social costs of extracting materials in an undisturbed area.</p> <p>The extraction of additional resources enables distribution for use in construction and development related industry, whilst improving economic viability of the operation, thereby maintaining employment opportunities for the surrounding community.</p> <p>Notwithstanding, the proposal would result in unacceptable social impacts as a result of the traffic and road safety issues, through deletion of conditions that restrict right hand turn quarry truck movements from Italia Road onto the Pacific Highway southbound.</p>

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Built Environment	
Comment:	The proposal includes the lowering of a pit floor within an existing quarry which is screened from view from any public road or surrounding properties. Accordingly, there would be no impact to the built environment as a result of the proposal.
Natural Environment	
Comment:	<p>The proposed modification does not include any vegetation clearing, as it proposed to lower the pit floor of an already disturbed area, within the current extraction boundary.</p> <p>Insufficient technical information was lodged with the application to conclude the proposal will not generate indirect impacts to ground water dependent ecosystems. Additionally, the proposal is likely to generate water quality impacts in both the surface water and groundwater environments. The site currently discharges water to Seven Mile Creek, which feeds into Grahamstown Dam (drinking water source) and groundwater flows are towards Balickera Canal (which also feeds into Grahamstown Dam).</p> <p>Furthermore, insufficient technical information was lodged with the application to demonstrate how additional environmental impacts by way of noise, vibration and air quality will be managed.</p>

s4.15(1)(c) – The suitability of the site

The proposal occupies the existing disturbed development footprint already subject to quarrying activities. The proposal makes good use of the existing development footprint thereby minimising environmental, economic and social costs of extracting materials in an undisturbed area.

The site and surrounding locality is zoned RU2 Rural landscape zone and as a result the residential density of the locality is very low. The low residential density minimises the number of sensitive receivers subject to noise, air quality, traffic and amenity related impacts of the development.

The site benefits from ridgelines that act as a natural sound barrier minimising noise impacts to nearby rural residences. The sites topography and dense vegetation also screen the development from view from any public place or residential premises.

The site contains existing asset protection zones for bushfire protection/defence and an all-weather surface for vehicle egress during a bushfire event. The site is not flood affected.

For this reason, the subject site is suitable for the proposed modifications.

s4.15(1)(d) – Any submissions

Submissions have been considered against S.4.55(2)(d) above.

s4.15(1)(e) – The public interest

The proposal is not considered to be in the public interest, as deletion of conditions that restrict right hand turn quarry truck movements from Italia Road onto the Pacific Highway southbound, will result in unacceptable safety impacts to road users. Furthermore, insufficient technical information was lodged with the application to demonstrate how additional environmental impacts by way of noise, vibration, air and water quality will be managed.

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On these grounds, the proposed development is not considered to be in the public interest.

DETERMINATION

The modification application is recommended to be refused by Council, subject to the recommended reasons for refusal.

Isaac Lancaster

Senior Development Planner