

Lynwood Quarry Administrative Modification (DA 128-5-2005 MOD 5)

Environmental Assessment Report Section 75W of the *Environmental Planning and Assessment Act 1979*

1 BACKGROUND

Holcim (Australia) Pty Ltd (Holcim) owns and operates the Lynwood Quarry (Lynwood), located approximately 3 kilometres (km) west of Marulan and 27 km northeast of Goulburn in the Goulburn Mulwaree local government area (see **Figure 1**).



Figure 1: Location of Lynwood Quarry

Lynwood operates under development consent DA 128-5-2005, granted by the Minister for Planning in 2005 under section 80 of the *Environmental Planning and Assessment Act 1979* (EP&A Act). The consent has been modified previously four times. The most recent modification (MOD 4) was approved in May 2016 and largely involved the development of a new granite pit.

2 PROPOSED MODIFICATION

On 13 April 2017, Holcim lodged an application under section 75W of the EP&A Act to modify condition 48A of Schedule 3 of DA 128-5-2005.

Condition 48A concerns the retirement of biodiversity credits in accordance with the *Framework for Biodiversity Assessment – NSW Biodiversity Offsets Policy for Major Projects* (FBA). Specifically, Holcim is required to retire 3038 ecosystem credits and 1725 species credits for the Squirrel Glider due to the biodiversity impacts associated with MOD 4. Under the conditions, these credits may be retired progressively, at five-yearly increments, and must equate to the vegetation clearance expected for the forthcoming five years. The first such deadline for the retirement of credits associated with the first five years of vegetation clearance is 31 May 2017.

The Department understands that Holcim will be using the Biobanking Scheme under the *Threatened Species Conservation Act 1995* (TSC Act) as its preferred offsetting mechanism. However, due to the relatively recent establishment of the Biobanking Scheme and the limited availability of Biobanking sites (i.e. credits) currently available in the open market, Holcim will be establishing its own Biobanking sites using both onsite and offsite land.

Holcim has commenced work towards securing credits for the first fifteen years of its intended disturbance. The required credits have been identified and fieldwork completed to commence the preparation of a Biobanking Agreement application. Holcim is expecting to submit the application to the Office of Environment and Heritage (OEH) prior to 31 May 2017, however the credits will not be retired until OEH assesses and determines the application. As such, Holcim will likely miss the 31 May 2017 deadline for retiring the credits, and the current drafting of condition 48A does not allow for any time extensions to be granted by the Secretary.

Therefore, Holcim has proposed to add the following phrase, “or otherwise agreed to by the Secretary” within condition 48A to make the deadline more flexible.

The proposed changes would not affect the nature and scale of the site’s quarrying operations and would not alter the environmental impacts of the project.

3 STATUTORY CONTEXT

3.1 Section 75W

Lynwood was originally approved on 21 December 2005 as State significant development under Part 4 of the EP&A Act. Under clause 8J(8)(c) of the *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation) and the transitional arrangements under Schedule 6A of the EP&A Act, the modification must be determined under the now-repealed section 75W of the EP&A Act.

The Department notes that the proposed modification is of a minor administrative nature and would not result in any major changes to Lynwood. Consequently, the Department is satisfied that the proposed modification is within the scope of section 75W, and may be determined accordingly.

3.2 Consent Authority

The Minister for Planning is the approval authority for the application. However, the Director Resource Assessments may determine the application under the Minister’s delegation of 16 February 2015, as there were no public objections, Goulburn Mulwaree Council (Council) did not object to the proposal, and no political donations have been declared.

4 CONSULTATION

Due to the minor administrative nature of the proposed modification, the Department considered that public exhibition was not required. However, the application and accompanying letter (see **Appendix A**) were placed on the Department’s website and comments were sought from Council and OEH. Both Council and OEH provided submissions (see **Appendix B**).

Council raised no objections to the proposal.

OEH supported the modification but it was not entirely satisfied with Holcim's justification. It did not consider it appropriate to attribute the delay to the time taken by OEH to process Biobanking Agreements, when the application itself had not yet been submitted to OEH.

OEH also requested that appropriate timeframes should be included in any extension to ensure the credits are retired in the shortest possible time. This matter is further discussed in **Section 5**, below.

The Department is satisfied that the notification process met the requirements of the EP&A Act and the EP&A Regulation.

5 ASSESSMENT

The Department has assessed the merits of the proposed modification in accordance with the relevant objects and requirements of the EP&A Act. In assessing these merits, the Department has considered the:

- Environmental Impact Statement (EIS) for the original development application;
- conditions of consent, as amended by subsequent modifications;
- the modification application and accompanying letter (see **Appendix A**);
- agency submissions; and
- relevant environmental planning instruments, policies and guidelines.

The key assessment consideration for this modification is whether the proposed modification changes the biodiversity outcomes at Lynwood.

Holcim is seeking to revise condition 48A to make it possible to seek a time extension to the 31 May 2017 deadline for retiring credits associated with the first five years of its proposed disturbance. Holcim has justified this request by explaining that one year is insufficient time to retire biodiversity offset credits in accordance with the FBA. This is mainly due to the:

- limited Biobanking sites available on the market; and
- difficulty in locating properties with credit potential and then undertaking fieldwork to calculate the credits generated.

Because of these reasons, Holcim is only now in a position to submit its Biobanking Agreement application to OEH. Assuming the application is of a suitable standard, the approval process is largely now in the control of OEH and this process may take some months. Thus, Holcim would be in non-compliance with condition 48A, even if it had submitted its application to OEH.

The Department accepts that a hard deadline for retiring credits under a relatively new Biobanking Scheme is challenging. The Department also accepts that the additional flexibility is justified when considering the relevant circumstances. The Department also acknowledges that the proposed amendment would give Holcim an opportunity to continue to achieve compliance with its development consent.

Holcim cannot commence vegetation clearance until the associated credits are retired. Therefore, any delay in the retirement of credits would also delay quarrying operations in the new granite pit. This will continue to incentivise Holcim to retire the credits in a timely manner.

The Department considers Holcim's request to be reasonable and has recommended an amendment to the development consent to this effect. Consultation with OEH will be undertaken to agree on appropriate timeframes for finalising the retirement of biodiversity credits.

6 RECOMMENDED CONDITIONS

The Department has drafted a recommended notice of modification (see **Appendix C**) and a consolidated version of the consent as it is proposed to be modified (see **Appendix D**). The recommended change to condition 48A is similar to that proposed by Holcim, inserting the words "unless otherwise agreed by the Secretary". The Department has also taken the opportunity to update some conditions to reflect current drafting standards, including providing further clarity on compliance and consultation requirements.

The Department considers that the environmental impacts of the project can continue to be appropriately managed through the amended conditions of consent.

Holcim has reviewed and accepted the recommended conditions.

7 CONCLUSION

The Department has assessed the merits of the proposed modification in accordance with the requirements of the EP&A Act. This assessment has concluded that condition 48A of Schedule 3 can be amended without any adverse environmental impacts. The proposed modification would provide Holcim with an opportunity to seek the Secretary's approval to adjust the timing of retiring credits. The modification would provide appropriate flexibility without removing Holcim's obligation to obtain the necessary credits or facilitating any delay in their retirement. The Department is therefore satisfied that the proposed modification is in the public interest and should be approved, subject to conditions.

8 RECOMMENDATION

It is recommended that the Director, Resource Assessments, as delegate of the Minister:

- **considers** the findings and recommendations of this report;
- **determines** that the modification is within the scope of section 75W of the EP&A Act;
- **approves** the modification application, under section 75W, subject to conditions; and
- **signs** the notice of modification at **Appendix C**.


29.5.17

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A/ Team Leader
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Howard Reed 29.5.17
Director
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APPENDIX A: MODIFICATION APPLICATION

See: http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8400

APPENDIX B: SUBMISSIONS

See: http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8400

APPENDIX C: NOTICE OF MODIFICATION

APPENDIX D: CONSOLIDATE CONSENT
