

ASSESSMENT REPORT

PROPOSED MODIFICATION–POSSUM BRUSH QUARRY

1. BACKGROUND

Pacific Blue Metal Pty Ltd (the Applicant) operates the Possum Brush Quarry at Possum Brush Road, Possum Brush, about 5 km north-east of Nabadig and 20 km south of Taree in the Greater Taree local government area.

The quarry operates under a Ministerial consent granted on 25 May 1998, following a Commission of Inquiry. The consent for the expanded quarry permits the production and transportation of up to 200,000 tonnes of hard rock a year, and required the upgrading of Possum Brush Road by 25 August 1999 and payment of a contribution for its maintenance commencing in 2003. The quarry is outlined in orange and Possum Brush Road is highlighted in yellow in Figure 1 below.

In June 2002 the Applicant lodged an application with the Department to modify the development consent to reduce the width of the road pavement (from 9 metres to 8 metres) and change the completion date of the road upgrade works (required to be completed within 15 months of the consent date). The Greater Taree Council (the Council) supported the application.

The Minister approved the modification on 4 February 2003 and required the road upgrade works to be completed by 31 July 2003.

The Applicant encountered delays in reaching agreement with the Council over the standard of the road works. The road upgrade works were completed in May 2005.

The Applicant now proposes to modify the development consent to change the date on which payment of the road maintenance contribution commences (from 2003 to 2008) and the rate of the contribution.

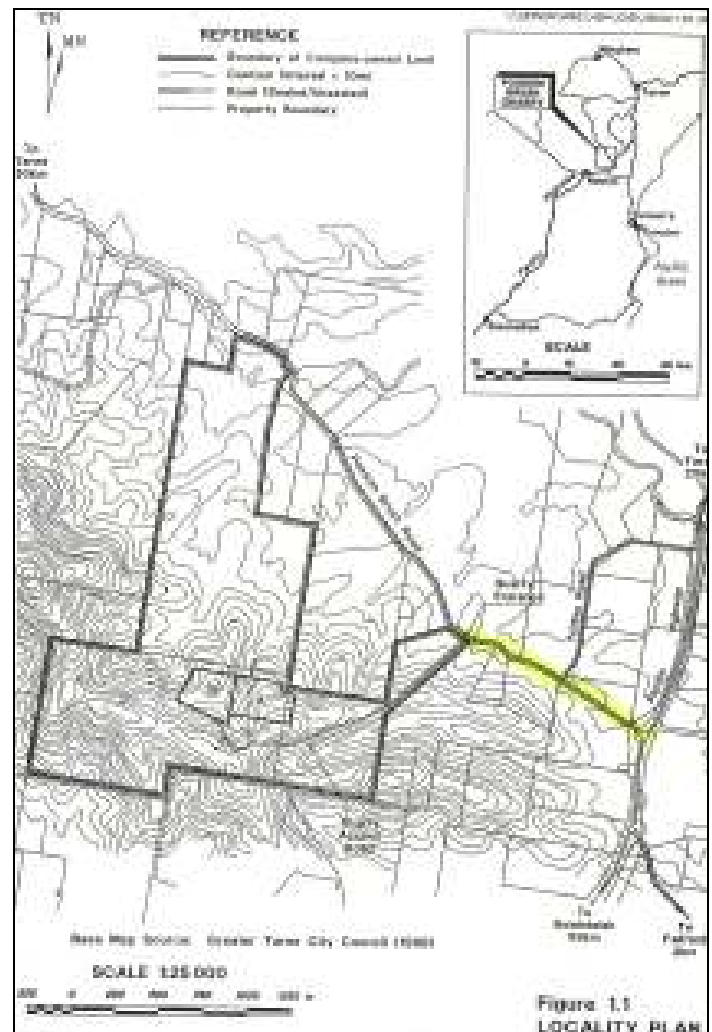


Figure 1: Location Map

2. THE PROPOSAL

On 29 August 2006, the Applicant lodged an application with the Department under section 96(1A) of the *Environmental Planning and Assessment Act 1979* (the EP&A Act) to modify the development consent for the Possum Brush Quarry.

The application seeks to modify Condition 36 of the development consent to:

- require the road maintenance contribution to be payable 10 years after the date of the original consent rather than 5 years; and
- change the rate of the contribution from 5 cents per tonne to 7.5 cents/tonne for 5 years, then 10 cents/tonne for the next 5 years, and increasing by 5 cents/tonne for each subsequent 5 year period.

The modified condition 36 implements an agreement made between the Applicant and Greater Taree Council over the future maintenance of Possum Brush Road.

3. STATUTORY CONTEXT

Under section 96(1A) of the EP&A Act, a consent authority may modify a development consent if it is satisfied that:

- (a) *the proposed modification is of minimal environmental impact; and*
- (b) *the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all)...*

Based on its assessment (see Section 5) the Department is satisfied that the proposed modification would be of minimal environmental impact and that the development, as modified, would be substantially the same development for which consent was originally granted.

The Minister was the consent authority for the original development application and is therefore the consent authority for the proposal. The Executive Director, Major Project Assessments may determine the application under delegated authority, in accordance with the Minister's Instrument of Declaration dated 5 April 2006.

4. CONSULTATION

There is no requirement under the *Environmental Planning and Assessment Regulation 2000* to notify an application made under section 96(1A) of the EP&A Act. However, the Department has consulted with the Council which advised that on 12 July 2006 its Planning Committee resolved to support the application.

5. ASSESSMENT

The Department has assessed the application under section 79C of the EP&A Act and is satisfied that the proposal has minimal environmental impacts.

Condition 36 of the development consent required the Applicant to pay a levy of 5 cents per tonne of product moved from the quarry for the maintenance of Possum Brush Road. The amount equivalent to the first five years contribution for the road maintenance would be paid upfront for the reconstruction of the road, and payment of contributions for the maintenance of the road would commence 5 years after the original consent date (ie. 25 May 2003).

The Applicant completed the road upgrade works in May 2005. The Applicant has subsequently requested Council to delay the commencement of payment of the contribution for road maintenance until May 2008, 10 years after the consent date (rather than 5 years originally required under the consent). The Applicant states that delaying the commencement of the maintenance contribution for an additional 5 years is justified as the actual costs of the road upgrading works were well in excess of the original estimates. Additional costs were incurred as a result of complying with Council's requirements for the reconstruction of Possum Brush Road. Further, construction was not completed until 7 years after consent, as against 15 months originally planned.

On 12 July 2006, Council's Planning Committee resolved to support the Applicant's proposal to modify condition 36 to delay the commencement of payment of the road maintenance levy until May 2008. The Committee also resolved to change the rate of the contribution, from 5 cents per tonne to 7.5 cents/tonne for 5 years, then 10 cents/tonne for the next 5 years, and progressively increasing by 5 cents/tonne for each subsequent 5 year period.

The Department and the Council is satisfied that the Applicant has complied with the development consent by completing the upgrading of Possum Brush Road. The proposal to change the date that maintenance contributions are payable and the contribution rate implements an agreement made between the Applicant and Council. The new contribution rate would index the rate over the life of the quarry in 5 yearly increments.

6. RECOMMENDED CONDITIONS

The Department has prepared a draft notice of modification for the consent. The Council and the Applicant have agreed to the proposed new condition 36.

7. CONCLUSION

The Department has assessed the application in accordance with the requirements of section 79C of the EP&A Act and is satisfied that the proposal would have minimal environmental impacts. The Department supports the proposal as it implements an agreement with the Greater Taree Council on maintenance of a public road used by the quarry trucks, and recommends that the Minister's delegate approve the application.

8. RECOMMENDATION

It is RECOMMENDED that the Executive Director, as delegate for the Minister:

- i. consider the findings and recommendations of this report;
- ii. determine that the development, as modified, would relate to substantially the same development to which consent was originally granted;
- iii. approve the proposed modification under section 96(1A) of the *Environmental Planning and Assessment Act 1979*; and
- iv. sign the attached notice of modification (Tag A).

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A/ Manager Mining & Extractive Industries
11 December 2006

Mike Young
A/Director
Major Development Assessment

Chris Wilson
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