

Appendix 2

Correspondence with the DPE re: Compliance

(Total No. of pages including blank pages = 20)

* A colour version of this Appendix is available on the digital version of this document

This page has intentionally been left blank



Planning &
Environment

Contact: Chris Schultz
Phone: 02 4224 9478
Fax: 02 4224 9470
Email: Christopher.Schultz@planning.nsw.gov.au

Sitegoal Pty Limited
Att: Mr John Charles McAuley
Level 1
191 Main Street
LITHGOW NSW 2790

Dear Mr McAuley

**Wallerawang Quarry (DA 344-11-2001)
Show Cause – Vegetation Clearing**

I refer to the inspections of Wallerawang Quarry undertaken on 10 June 2016 and 12 July 2016 by Chris Schultz, Senior Compliance Officer and Ray Sharwood, Site Manager Wallerawang Quarry, and the Annual Review for Wallerawang Quarry dated 26 August 2016, submitted to the Department in accordance with Condition 3.7 of Development Consent 344-11-2001 (the approval).

This letter is in relation to vegetation clearing at the proposed and new stockpile areas only.

It was noted during the site inspections that clearing had been undertaken on the western side of the site in the area shown in orange on Figure 2 in the Annual Review and labelled as 'Proposed Stockpile Area' and on the eastern side of the site shown in yellow on Figure 2 in the Annual Review and labelled 'New Stockpile Area'.

The Environmental Impact Statement - Proposed Wallerawang Quarry (EIS), developed by Pacrim Environmental and dated November 2001, identifies the extent of clearing for the Surface Facilities in Figure 1.2 (attached as Annexure 1) and Figure 3.10 (attached as Annexure 2). The layout for the proposed quarry operation is shown in Attachment 1 of the approval – Figure 3: Plan of the Proposed Quarry Operation (attached as Annexure 3).

The area labelled as 'Proposed Stockpile Area' in Figure 2 of the Annual Review is outside of the area as defined for surface facilities as shown in Figure 1.2 and Figure 3.10 in the EIS and Figure 3 (Attachment 1) of the approval. In addition, the area identified as 'New Stockpile Area' in Figure 2 of the Annual Review is not shown as an area of disturbance in Figure 1.2 of the EIS or Figure 3 (Attachment 1) of the approval.

Condition 1.2 of the approval states that:

The Applicant shall carry out the development generally in accordance with the:

- a) DA No. 344-11-2001;
- b) EIS titled Proposed Wallerawang Quarry, Report 01/206.1 dated November 2001, and prepared by Pacrim Environmental;
- c) Report titled Supplementary Report to the EIS for the Proposed Wallerawang Quarry, Report 02/206.1 dated July 2002, and prepared by Pacrim Environmental; and
- d) Conditions of the consent

I have formed the view that there are reasonable grounds to believe that Sitegoal Pty Ltd has undertaken clearing outside of the areas designated in the EIS and the approval.

Department of Planning & Environment

L2, 84 Crown Street Wollongong NSW 2500 | PO Box 5475 Wollongong NSW 2520 | T 02 4224 9478 | F 02 4224 9470 | www.planning.nsw.gov.au

The purpose of this letter is to give you the opportunity to show cause as to why the Department should not take formal action in relation to this non-compliance.

Representations should be received no later than close of business **4 November 2016**.

After consideration of any representations made by you, the Department will take the appropriate enforcement action in accordance with the Department's Compliance Policy, which can be accessed as <http://www.planning.nsw.gov.au/~media/Files/DPE/Plans-and-policies/compliance-and-enforcement-compliance-policy-2010-09-29.ashx>.

Should you need to discuss the above, please contact Chris Schultz, Senior Compliance Officer, on 4224 9478 or at christopher.schultz@planning.nsw.gov.au.

Yours sincerely

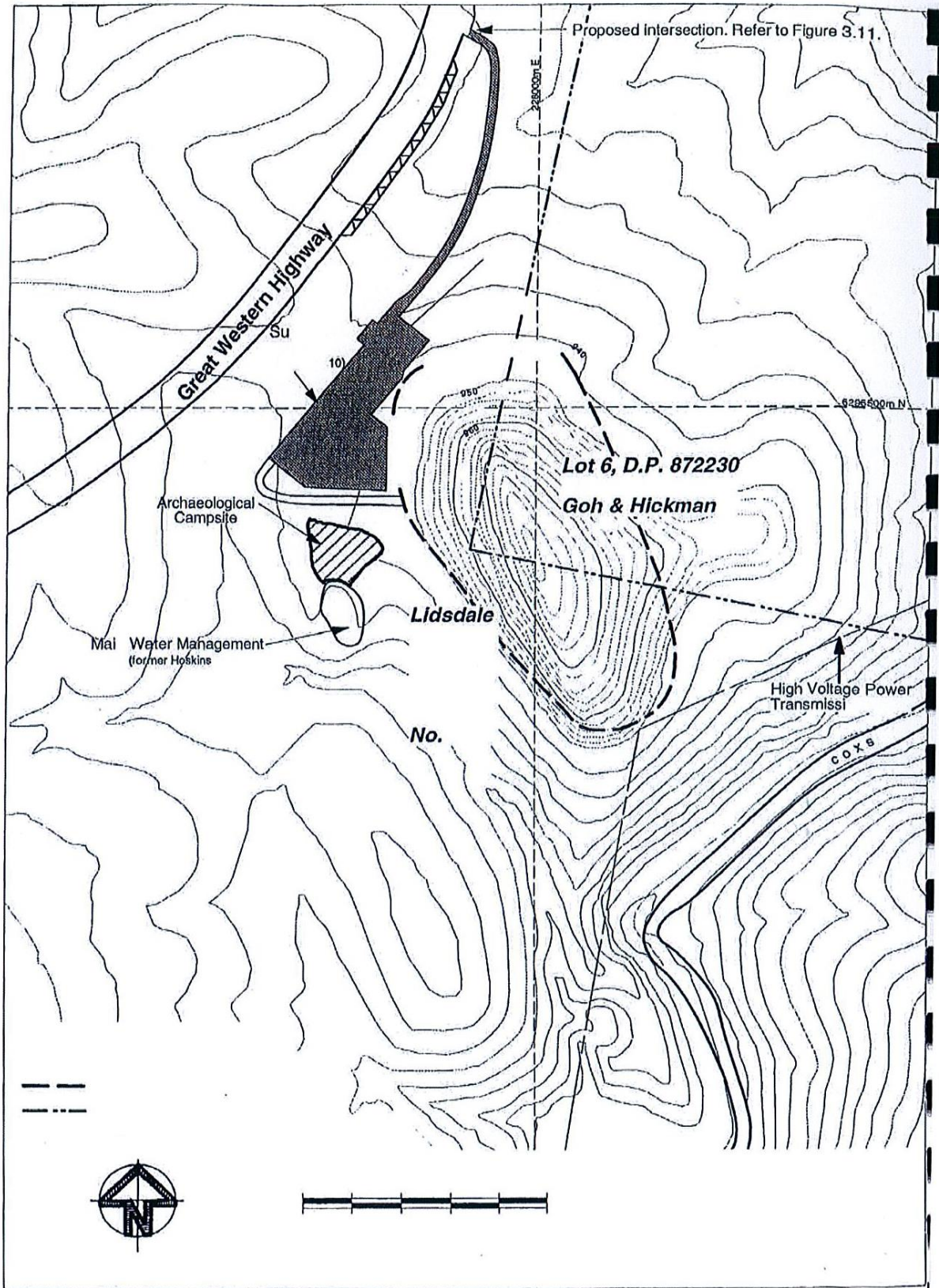


Katrina O'Reilly
Team Leader Compliance Southern Region

Attached:

- Annexure 1: Figure 1.2 Site Context Plan from EIS
- Annexure 2: Figure 3.10 Surface Facilities from EIS
- Annexure 3: Figure 3: Plan of Proposed Quarry Operation (Attachment 1 DA 344-11-2001)

Annexure 1: Figure 1.2 Site Context Plan from EIS



Annexure 2: Figure 3.10 Surface Facilities from EIS

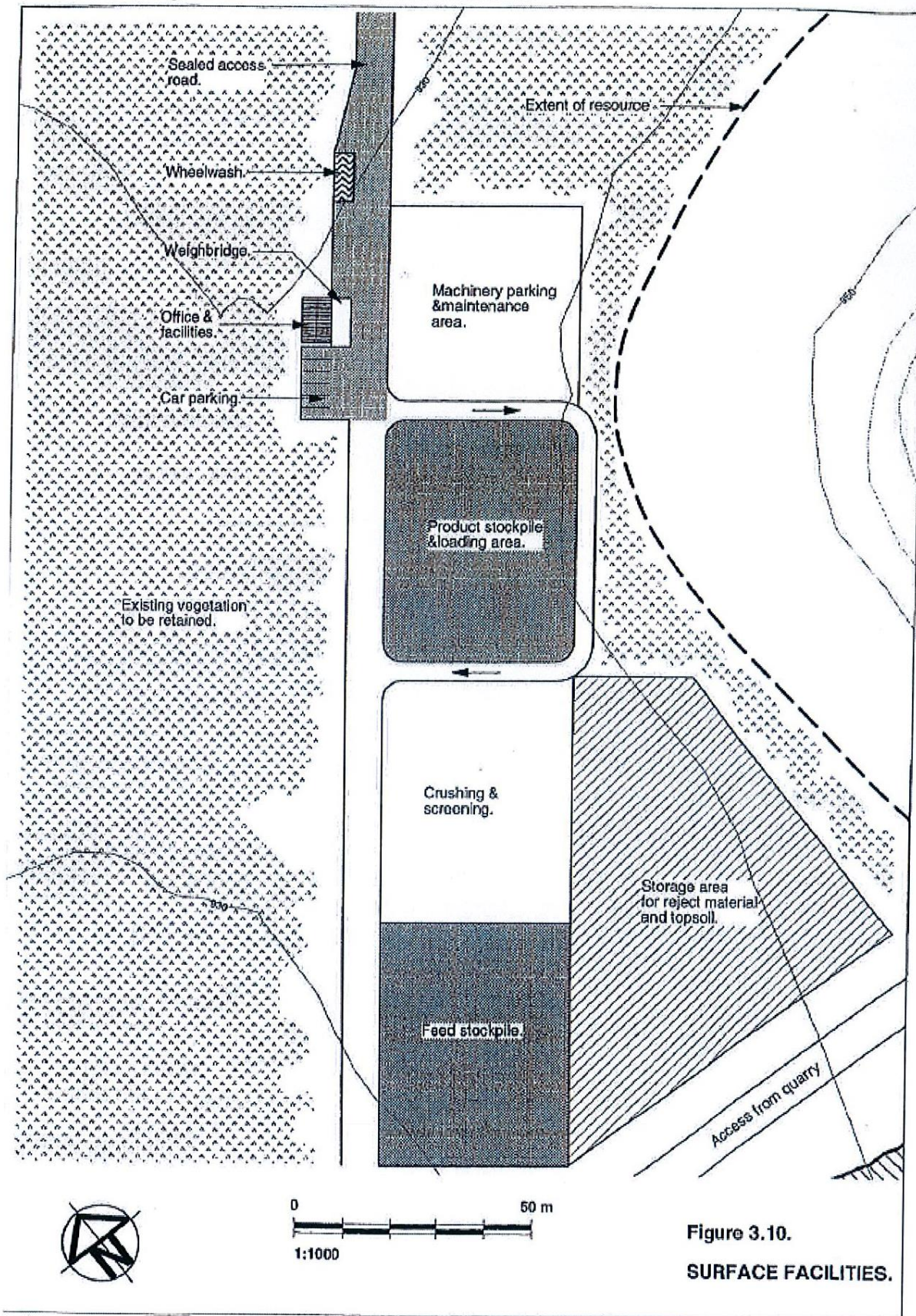
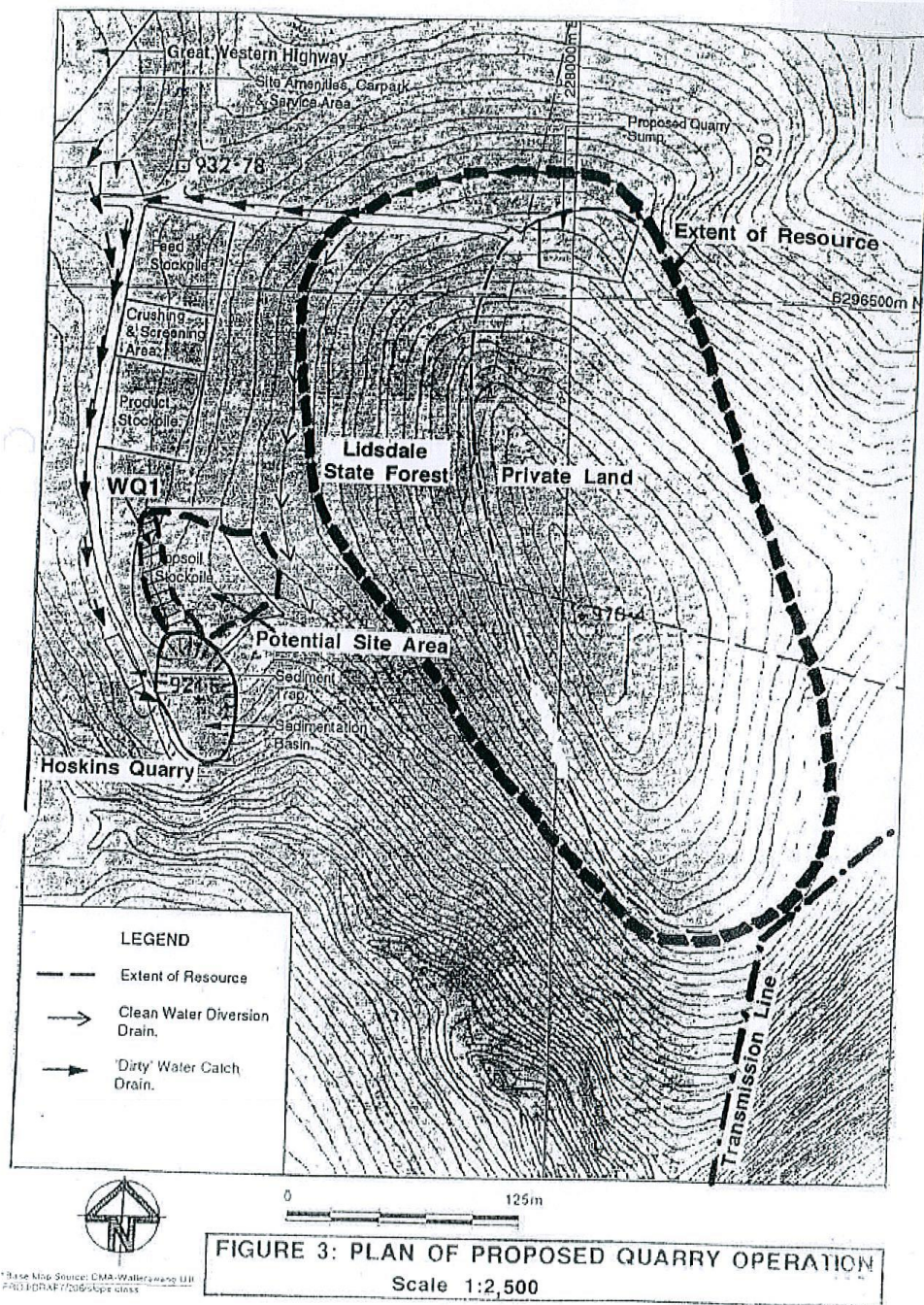


Figure 3.10.
SURFACE FACILITIES.

Annexure 3: Figure 3: Plan of Proposed Quarry Operation (Attachment 1 DA 344-11-2001)





I:\Jobs 531 to 1000\949\Reports\94904_Response to Show Cause\Letters\94904_26J16_DPE_.docx

26 October 2016

Katrina O'Reily
Team Leader Compliance Southern Region
Department of Planning & Environment
PO Box 5475
WOLLONGONG NSW 2520

Originally sent by email to:
chris.schultz@planning.nsw.gov.au

Attention: Chris Schultz

Dear Chris,

Re: Wallerawang Quarry (DA 344-11-2001): Show Cause – Vegetation Clearing

The following has been prepared on behalf of Walker Quarries Pty Limited in response to correspondence from the Department of Planning & Environment (DPE) (dated 19/10/16) inviting Walker Quarries to show cause as to why no further action should be taken in relation to clearing associated with land identified as the 'Proposed Stockpile Area' and 'New Stockpile Area' on *Figure 2* of the Annual Review.

In both cases, Walker Quarries acknowledge that the areas cleared fall outside the areas nominated on the EIS Figures noted and supplied. However, in the case of the Proposed Stockpile Area, Walker Quarries undertook this clearing on the understanding that it was approved. In the case of the New Stockpile Area, Walker Quarries acknowledge that this did not fall within an area of the Quarry Site for which they considered approval for disturbance was held.

Walker Quarries have informed me that operations have been undertaken on the basis that development for the purpose of the Wallerawang Quarry was permitted as long as:

- this remained on the land identified in the EIS and DA 344-11-2001;
- avoided disturbance to an identified Aboriginal heritage site;
- avoided impact on threatened species (including Purple Copper Butterfly);
- undertake activities with impacts no greater than presented in the EIS and supplementary documentation; and
- remained within the impact footprint nominated by a valid Mining Operations Plan within the Mining Lease (ML) 1633.

26 October 2016

- 2 -

The area identified as the Proposed Stockpile Area (1.8ha) was the subject of a recent amendment to the MOP (refer to *Appendix IV* of the AEMR and Annual Review). The Department of Industry – Division of Resources & Energy (DRE) approved this MOP Amendment and clearing proceeded.

As indicated above, Walker Quarries have expressed genuine belief that the approval of the MOP, and management of impacts on the surrounding environment in accordance with the conditions of DA 344-11-2001, the EIS and supplementary documentation, satisfied the requirements for the authorised disturbance. In support of this, Walker Quarries has ensured that the identified Aboriginal heritage site remains undisturbed and protected (fenced). Furthermore, having identified that the threatened species Purple Copper Butterfly, and its associated habitat (Native Blackthorn Bush, *Bursaria spinosa subsp. lasiophylla*), had previously been identified on ML 1633, Walker Quarries commissioned a field survey of the Proposed Stockpile area for Native Blackthorn Bush prior to clearing. This survey was completed on 30 April 2015 with two juvenile plants identified (see attached). Identification of Purple Copper Butterfly was not attempted as the survey was outside the period when the identifiable adult butterflies are on wing. The two plants were subsequently translocated to a location where a known population of Native Blackthorn are present.

In keeping with Walker Quarries' understanding of authorised clearing and development at the Quarry, it is noted that on receipt of correspondence from the DRE which queried clearing within the area identified as the 'New Stockpile Area', Walker Quarries identified this as outside the approved impact footprint of the MOP and has agreed to immediately redress this action and rehabilitate the area in question. Further detail on this clearing and actions to be taken is provided in the attached correspondence sent to the DRE on 18 October 2016 (949_18J16_DRE_1.pdf – see attached).

While the area identified as the 'Proposed Stockpile Area' has yet to be developed for the purpose of product stockpiling, it is identified as important to operations going forward. Since the original development application in 2001, it has been identified that in order to remain economically viable, a variety of rock and sand based products must be produced. This requires increased stockpiling areas when compared to the original EIS which considered the production of only one or two aggregate based products. Walker Quarries seeks permission, or advice on how to proceed in order to obtain permission to develop the Proposed Stockpile Area.

Walker Quarries misunderstanding as to the relationship between the development consent and mining lease is somewhat understandable given the significant period of time between the EIS being completed, DA 344-11-2001 being issued and the commencement of operations at the Quarry. To avoid future errors in interpretation, and as the DPE may be aware (following review and approval of recently amended management plans) Walker Quarries has now instigated a Vegetation Clearing Protocol (as *Section 4.2.2* of an approved *Flora and Fauna Management Plan*) as follows.

Vegetation clearing within the Quarry Site will be undertaken as the extraction area is progressively developed to its full extent and the establishment of surface infrastructure.

Clearing will be limited to approved areas only, with areas to be minimised to avoid impacts to native vegetation. Progressive clearing will ensure that vegetation is retained for as long as possible and only removed immediately before an area is required for operations.

Clearing campaigns will be scheduled to avoid spring to reduce the potential impact to roosting or breeding fauna species.

26 October 2016

- 3 -

Vegetation clearing within the Quarry Site will occur in accordance with the following protocols.

- *Areas to be cleared will be subject to a pre-clearing survey, including survey of individual trees specifically directed towards detecting any roosting or nesting fauna.*
- *Investigation of trees will be conducted on the day that they are to be cleared, to detect any individual animals present at the time.*
- *Where arboreal species are detected, a 10m buffer will be established around the tree and it will be left overnight to allow animal to vacate the tree.*
- *Large habitat trees and those in which species have previously been identified will be carefully felled and any hollows checked at the end of the process for wildlife.*
- *Where fauna remains or is captured during vegetation clearing the animal will be released into nearby native vegetation where it is considered that doing so does not put the species at risk of injury.*
- *Should clearing activities result in injury to any native fauna species, the local WIRES organisation or a suitable alternative will be contacted immediately for assistance.*

While the protocol is primarily aimed at managing disturbance to native vegetation and protecting native fauna, it ensures that Quarry management review any future areas to be cleared against the EIS, DA 344-11-2001, the MOP and other approval documentation. This will minimise the potential for unauthorised clearing in the future.

On behalf of Walker Quarries, we reiterate our regret that the clearing identified by the DPE has occurred. I hope the Department is satisfied with the information provided, the commitment of Walker Quarries to redress this occurrence and steps in place to ensure it does not occur again.

Should you have any further queries, please do not hesitate to contact either myself (02 6362 5411) or Mr David Murray (0418 264 745).

Yours sincerely



Alex Irwin
Senior Environmental Consultant

Attached: 949_18J16_DRE_1.pdf
Blackthorn Field Survey prior to clearing (RME)

Copy: Walker Quarries



Contact: Chris Schultz
Phone: 02 4224 9478
Fax: 02 4224 9470
Email: Chris.Schultz@planning.nsw.gov.au

Sitegoal Pty Ltd
Att: Mr David Murray
Level 1
191 Main Street
LITHGOW NSW 2790

Dear Mr Murray

**Wallerawang Quarry (DA 344-11-2001)
Penalty Notice - Clearing**

I refer to the inspections of Wallerawang Quarry undertaken on 10 June 2016, 12 July 2016 and 14 November 2016 by Chris Schultz, Senior Compliance Officer of the Department of Planning and Environment (the Department), the Annual Review for Wallerawang Quarry dated 26 August 2016, submitted to the Department in accordance with Condition 3.7 of Development Consent 344-11-2001 (the approval) and the Show Cause letter dated 19 October 2016 from the Department and a subsequent response dated 26 October 2016 from RW Corkery and Co on behalf of Walker Quarries Pty Ltd.

Having concluded the investigation, I have formed the view that there are reasonable grounds to believe that Sitegoal Pty Ltd (Sitegoal) has failed to comply with the approval.

Schedule 2 Condition 1.2 of the approval states that:

"The Applicant shall carry out the development generally in accordance with the:

- a) DA No. 344-11-2001;*
- b) EIS titled Proposed Wallerawang Quarry, Report 01/206.1 dated November 2001, and prepared by Pacrim Environmental;*
- c) Report titled Supplementary Report to the EIS for the Proposed Wallerawang Quarry, Report 02/206.1 dated July 2002, and prepared by Pacrim Environmental; and*
- d) Conditions of the consent".*

The Department's investigation determined that clearing of the areas described as "Proposed Stockpile Area" and "New Stockpile Area" on Figure 2 of the Annual Review was not in accordance with the extent of clearing for the Surface Facilities in Figure 1.2 and Figure 3.10 of the Environmental Impact Statement - Proposed Wallerawang Quarry (EIS), developed by Pacrim Environmental and dated November 2001 and the layout for the proposed quarry operation, provided in Attachment 1 of the approval – Figure 3: Plan of the Proposed Quarry Operation.

It is an offence under sections 76A (1) (b) and 125 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) for a proponent not to comply with the conditions of a consent.

The Department has assessed this breach in accordance with the Department's Compliance Policy (available electronically at <http://www.planning.nsw.gov.au/en/Assess-and-Regulate/Development-Assessment/Compliance>) and determined to issue Sitegoal with the enclosed penalty notice in the amount of \$15,000.

I note Sitegoal has co-operated with this investigation and voluntarily assisted the Department with its inquiries.

Should any further breaches of this nature occur, they are likely to attract stronger enforcement action which may include the commencement of proceedings in the Land and Environment Court.

It is noted that in conversations with the Department, Sitegoal has identified that the "Proposed Stockpile Area" is critical to the ongoing operations at the quarry.

Sitegoal are not permitted to use or further develop the "Proposed Stockpile Area" and "New Stockpile Area" until compliance with the consent is achieved.

Accordingly, please find attached a draft Order given in accordance with item No. 15 of the Table in section 121B of the *Environmental Planning and Assessment Act 1979*. The Department intends to issue the Order on 20 January 2017 unless you can provide reasons as to why the Order should not be given or as to the terms of the compliance period.

You are reminded that sediment and erosion control measures at these two locations must be effectively maintained in the interim.

Please discuss any assessment matters with Howard Reed, Director Resource Assessments, on 9274 6308 or at howard.reed@planning.nsw.gov.au.

Should you need to discuss the above, please contact Chris Schultz, Senior Compliance Officer on 02 4224 9478 or email to chris.schultz@planning.nsw.gov.au.

Yours sincerely,



Kirsty Ruddock 21/12/16.
Director - Compliance and Investigations
as nominee of the Secretary

Attachment: Penalty Notice
Draft Order

cc: Walker Quarries Pty Ltd

PART C CCP 007		GENERAL PENALTY NOTICE		PENALTY NUMBER 3120699093	
Rego. No. <input type="text"/>		<input type="checkbox"/> 1. PARKING <input checked="" type="checkbox"/> 2. GENERAL <input type="checkbox"/> 3. TRAFFIC		DATE POSTED <input type="text"/>	
SURNAME/COMPANY NAME (block letters) WALKER QUARRIES PTY LTD		SEX <input type="text"/>			
GIVEN NAMES (block letters) LEVEL 1, 191 MAIN STREET					
who furnished place of residence/business as LITHGOW NSW		Postcode <input type="text"/>		State of Issue <input type="text"/>	
D.O.B. <input type="text"/>		Licence No. <input type="text"/>		Class <input type="text"/>	
It is alleged that at <input type="text"/> : <input type="text"/> hrs to <input type="text"/> : <input type="text"/> hrs on <input type="text"/> (day) <input type="text"/>		date <input type="text"/>			
at <input type="text"/> (street) between <input type="text"/> and <input type="text"/>		suburb <input type="text"/>			
the following offence was committed		<input type="text"/>			
(1) you drove/stood motor <input type="text"/> bearing plates <input type="text"/>		State of Registration <input type="text"/>		Registration Plate Type: Motorcycle <input type="checkbox"/> Other <input type="checkbox"/>	
(2) in relation to <input type="text"/>					
OFFENCE CODE		SHORT TITLE OF OFFENCE			
<input type="text"/>		DESIGNATED ETC DEVELOPMENT NOT			
<input type="text"/>		ACCUSED CONSENT - PENALTY NOTICE			
PENALTY AMOUNT \$ <input type="text"/>		SERVED BY OTHER - COOPERATION			
Issuing authority <input type="text"/>		Demerit offence? YES / NO			

HOW TO FINALISE THIS PENALTY NOTICE:

(Further action will be taken if this notice is not finalised within 21 days of the date of service).

A. Choose from the payment options below **OR**

B. See additional information on the reverse side of this notice.

PLEASE TEAR ALONG DOTTED LINE

PAYMENT OPTIONS		3120699093	
1. Website www.sdro.nsw.gov.au (Mastercard and Visa card accepted. A card payment fee applies.)		BOX 1 Date of Offence <input type="text"/>	
2. Phone 1300 130 112		BOX 2 Offence Code <input type="text"/>	
3. Post the payment slip with cheque or money order made payable to the State Debt Recovery Office, PO Box 4444, Parramatta NSW 2124 (write penalty notice number clearly on back of cheque or money order)		BOX 3 Amount due \$ <input type="text"/>	
4. In person Go to any Post Office		BOX 4 Amount paid \$ <input type="text"/>	

If making part-payment, retain payment slip.

PAYMENT SLIP

*2033 3120699093



Sitegoal Pty Ltd
Att: Mr David Murray
Level 1
191 Main Street
LITHGOW NSW 2790

**Wallerawang Quarry (DA 344-11-2001)
Draft Order - Clearing**

This is an Order given in accordance with item No. 15 of the Table in section 121B of the *Environmental Planning and Assessment Act 1979 (Act)* to comply with a development consent issued under Part 4 of the Act, namely the failure to comply with Schedule 2 Condition 1.2 of Development Consent 344-11-2001 (**Consent**) in relation to unauthorised clearing of land and its use and development for stockpile areas.

This Order is served on you as the person who is acting otherwise than in compliance with the development consent or who is entitled to act on the Consent (as defined above).

Premises

Lot 6 DP 872230, Part Lot 194, DP 751651 Lidsdale State Forest No 707 ("Wallerawang Quarry").

Development Consent

The Consent, determined by the former Minister for Planning and Infrastructure on 19 October 2004 was granted to Sitegoal Pty Ltd (**Proponent**) under Part 4 of the Act and authorized clearing of 11 ha for the use and development of the Wallerawang Quarry as a hard rock quarry (**Project**).

Terms of Order

The terms of this Order are to rectify non-compliance with Schedule 2 Condition 1.2 of the Consent.

Period for compliance:

No later than 28 February 2017.

Reasons for the Order

The Secretary considers the Order is required to ensure compliance with Schedule 2, Condition 1.2 of the Consent. It is an offence under section 125 of the Act to breach s76A(1)(b) of the Act which states that if an environmental planning instrument provides that specified development may not be carried out except with development consent, a person must not carry the development out on land unless the development is carried out in accordance with the consent and the instrument.

The Secretary's view is based on the following facts:

1. The Consent and the Environmental Impact Statement - Proposed Wallerawang Quarry and Supplementary Report developed by Pacrim Environmental and dated November 2001 (EIS), and July 2002 (Supplementary Report) do not authorise the Proponent to clear habitat for use and development at Wallerawang Quarry outside the 11 hectare area and

extent set out in those documents (footprint). The relevant parts of those documents that identify the footprint for the clearing of habitat for development are:

- a) Surface Facilities in Figure 1.2 of the EIS;
 - b) Figure 3.10 of the EIS;
 - c) the layout for the proposed quarry operation, provided in Attachment 1 of the Consent – Figure 3: Plan of the Proposed Quarry Operation;
 - d) pages 6-8 of the report prepared by WildThing for the proponent dated April 2002 included in the Supplementary Report; and
 - e) the report prepared in September 2002 by Wildthing appended to the Walker Quarries Limited Flora and Fauna Management plan dated 2014.
2. The areas described as “Proposed Stockpile Area” and “New Stockpile Area” on Figure 2 of the Annual Review fall outside the footprint of cleared habitat in the Consent. They also appear to fall within an area specifically identified in the Flora and Fauna Management Plan Appendix as being a location where *Bursaria* (butterfly habitat) has been identified and where it was recommended that stockpiles should not be developed.
 3. The environmental and social impacts associated with the unauthorized clearing of habitat and development of the land for stockpiles have not been assessed by the Department.

APPEAL

You are advised that you may appeal to the Land and Environment Court against the terms of this Order or a specified part of this Order under the provisions of section 121ZK of the Act. Such appeal must be made within 28 days after the service of this Order on you, and does not affect the requirement for you to comply with the terms of this Order.

Yours sincerely,

Kirsty Ruddock

Director - Compliance and Investigations
as delegate of the Minister for Planning



Contact: Chris Schultz
Phone: 02 4224 9478
Fax: 02 4224 9470
Email: Chris.Schultz@planning.nsw.gov.au

Sitegoal Pty Ltd
Att: Mr David Murray
Level 1
191 Main Street
LITHGOW NSW 2790

Dear Mr Murray

**Wallerawang Quarry (DA 344-11-2001)
Order**

I refer to the inspections of Wallerawang Quarry undertaken on 10 June 2016, 12 July 2016 and 14 November 2016 by Chris Schultz, Senior Compliance Officer of the Department of Planning and Environment, the Annual Review for Wallerawang Quarry dated 26 August 2016, submitted to the Department in accordance with Condition 3.7 of Development Consent 344-11-2001 (consent) and the Show Cause letter dated 19 October 2016 from the Department and a subsequent response dated 26 October 2016 from RW Corkery and Co on behalf of Walker Quarries Pty Ltd.

The Department's investigation determined that clearing of the areas described as "Proposed Stockpile Area" and "New Stockpile Area" on Figure 2 of the Annual Review was not in accordance with the extent of clearing for the Surface Facilities in Figure 1.2 and Figure 3.10 of the Environmental Impact Statement - Proposed Wallerawang Quarry (EIS), developed by Pacrim Environmental and dated November 2001 and the layout for the proposed quarry operation, provided in Attachment 1 of the consent – Figure 3: Plan of the Proposed Quarry Operation.

Schedule 2 Condition 1.2 of the consent states:

"The Applicant shall carry out the development generally in accordance with the:

- a) DA No. 344-11-2001;*
- b) EIS titled Proposed Wallerawang Quarry, Report 01/206.1 dated November 2001, and prepared by Pacrim Environmental;*
- c) Report titled Supplementary Report to the EIS for the Proposed Wallerawang Quarry, Report 02/206.1 dated July 2002, and prepared by Pacrim Environmental; and*
- d) Conditions of the consent".*

The Secretary is of the opinion that the clearing of habitat in the "Proposed Stockpile Area" and "New Stockpile Area" is a breach of Schedule 2 Condition 1.2 that requires the applicant to carry out the development generally in accordance with the EIS and the consent.

Accordingly, please find attached an Order given in accordance with item No. 15 of the Table in section 121B of the *Environmental Planning and Assessment Act 1979*.

Sitegoal are not permitted to use or further develop the "Proposed Stockpile Area" and "New Stockpile Area" until compliance with the consent is achieved.

You are reminded that sediment and erosion control measures at these two locations must be effectively maintained in the interim.

ENVIRONMENTAL ASSESSMENT

DA 344-11-2001 Modification 1

Report No. 949/05

WALKER QUARRIES PTY LTD

Wallerawang Quarry

Please discuss any assessment matters with Howard Reed, Director Resource Assessments, on 9274 6308 or at howard.reed@planning.nsw.gov.au.

Should you need to discuss the above, please contact Chris Schultz, Senior Compliance Officer on 02 4224 9478 or email to chris.schultz@planning.nsw.gov.au.

Yours sincerely,



Kirsty Ruddock 31/1/17
Director - Compliance and Investigations
as nominee of the Secretary



**Wallerawang Quarry (DA 344-11-2001)
Order**

This is an Order given in accordance with item No. 15 of the Table in section 121B of the *Environmental Planning and Assessment Act 1979* (**Act**) to comply with a development consent issued under Part 4 of the Act, namely the failure to comply with Schedule 2 Condition 1.2 of Development Consent 344-11-2001 (**Consent**) in relation to unauthorised clearing of land and its use and development for stockpile areas.

This Order is served on you as the person who is acting otherwise than in compliance with the development consent or who is entitled to act on the Consent (as defined above).

Premises

Lot 6 DP 872230, Part Lot 194, DP 751651 Lidsdale State Forest No 707 ("Wallerawang Quarry").

Development Consent

The Consent, determined by the former Minister for Planning and Infrastructure on 19 October 2004 was granted to Sitegoal Pty Ltd (**Applicant**) under Part 4 of the Act and authorized clearing of 11 ha for the use and development of the Wallerawang Quarry as a hard rock quarry (**Project**).

Terms of Order

The terms of this Order are to ensure compliance with Schedule 2 Condition 1.2 of the Consent.

Period for compliance:

No later than 28 February 2017.

Reasons for the Order

The Secretary considers the Order is required to ensure compliance with Schedule 2, Condition 1.2 of the Consent. It is an offence under section 125 of the Act to breach s76A(1)(b) of the Act which states that if an environmental planning instrument provides that specified development may not be carried out except with development consent, a person must not carry the development out on land unless the development is carried out in accordance with the consent and the instrument.

The Secretary's view is based on the following facts:

1. The Consent and the Environmental Impact Statement - Proposed Wallerawang Quarry and Supplementary Report developed by Pacrim Environmental and dated November 2001 (EIS), and July 2002 (Supplementary Report) do not authorise the Proponent to clear habitat for use and development at Wallerawang Quarry outside the 11 hectare area and extent set out in those documents (footprint). The relevant parts of those documents that identify the footprint for the clearing of habitat for development are:

Department of Planning & Environment
L2, 84 Crown Street Wollongong NSW 2500 | PO Box 5475 Wollongong NSW 2520 | T 02 4224 9478 | F 02 4224 9470 | www.planning.nsw.gov.au

- a) Surface Facilities in Figure 1.2 of the EIS;
 - b) Figure 3.10 of the EIS;
 - c) the layout for the proposed quarry operation, provided in Attachment 1 of the Consent – Figure 3: Plan of the Proposed Quarry Operation;
 - d) pages 6-8 of the report prepared by Wildthing for the proponent dated April 2002 included in the Supplementary Report; and
 - e) the report prepared in September 2002 by Wildthing appended to the Walker Quarries Limited Flora and Fauna Management plan dated 2014.
2. The areas described as “Proposed Stockpile Area” and “New Stockpile Area” on Figure 2 of the Annual Review fall outside the footprint of cleared habitat in the Consent. They also appear to fall within an area specifically identified in the Flora and Fauna Management Plan Appendix as being a location where *Bursaria* (butterfly habitat) has been identified and where it was recommended that stockpiles should not be developed.
 3. The environmental and social impacts associated with the unauthorized clearing of habitat and development of the land for stockpiles have not been assessed by the Department.

Non-compliance with the Order

It is an offence pursuant to Section 125 of the Act to fail to comply with this Order. The maximum penalty for breaching or failing to comply with an Order issued under Section 121B of the Act is \$2 million and a further penalty of \$20,000 for each day that the offence is continuing.

Appeal

You are advised that you may appeal to the Land and Environment Court against the terms of this Order or a specified part of this Order under the provisions of section 121ZK of the Act. Such appeal must be made within 28 days after the service of this Order on you, and does not affect the requirement for you to comply with the terms of this Order.

Yours sincerely,



Kirsty Ruddock 21/1/17
Director - Compliance and Investigations
as delegate of the Minister for Planning

This page has intentionally been left blank