

**Enquiries**  
**Please ask for** Ms A J Evans  
**Direct**  
**Our reference** DA 410/1994  
**Your reference**

28 August 2019

Rosebrook Sand & Gravel Pty Ltd  
C/- HDB Town Planning and Design  
PO Box 40  
Maitland NSW 2320

Dear Sir/Madam

**Development Application No. 410/1994 - S4.55(1 A) Modification - Extractive Industry**  
**Lot: 72 DP: 1199484**

I refer to your application received by Council on 10-04-2019, requesting an amendment to the subject development consent.

The application to amend the development consent by amendment to Condition 1 to extend the approval to 13 November 2022 was considered by Council pursuant to Section 4.55 of the Environmental Planning and Assessment Act 1979, and Council has now determined the application.

In this regard, conditions of the development consent have been amended in the following manner:

- Replacement and reissue of Conditions of Consent

The application has been determined in the following manner:

**APPROVE SUBJECT TO NEW CONDITIONS**

It is recommended that you review the new conditions of consent in a timely manner and ensure that all new conditions are complied with.

In particular Council wishes to draw your attention to condition 3 and 4 require the submission of a new rehabilitation strategy within 3 months of the determination of this modification to prevent the lapsing of the development consent.

**Council advises that the conditions of development consent have been amended and now comprise:**

1. This approval is limited to a period of twenty-seven (27) years from the date of consent. The applicant shall on or before 13 November 2022:
  - a) remove all extraction-related machinery, storage facilities and amenities, and
  - b) reshape, stabilise and rehabilitate the site to the satisfaction of the Council, the Department of Primary Industry (Water) and the Department of Planning, Industry and Environment (DPIE), or their successor, at its own expense.

If the applicant defaults in respect of this condition, Council may, in addition to or alternative to any other rights and remedies available to it, but without any obligation to do so:

- enter on the subject land with its own workmen and/or contractors and carry out such works, and
  - recover the costs and expenses of so doing from the applicant either directly or pursuant to the term of the said guarantee and surety.
2. Unless otherwise agreed to by Council, the export of soil or mixed soil from the site is prohibited.
  3. Unless otherwise agreed to by Council, the person acting with this consent shall prepare and submit, to Council's satisfaction, a site Rehabilitation Strategy to Muswellbrook Shire Council within three (3) months of the date of determination of this modification. The Rehabilitation Strategy must:
    - a) Be prepared by a suitably qualified and experienced person;
    - b) Build upon the site rehabilitation and land use outcomes expressed in the Environmental Impact Statement prepared by Resource Planning;
    - c) Identify the future land use or uses for the site and a reference site for each such use.
    - d) Describe the measures to be implemented to ensure that the land is rehabilitated to the standard required to support its future use and to the standard of the reference site or sites;
    - e) Include a staging plan for the progressive rehabilitation of the site;
    - f) Include a weed management strategy to control the spread of weeds within the site, and particularly in relation to rehabilitated areas.
    - g) management of stock on site.
  4. In the event that the Rehabilitation Strategy is not submitted in accordance with condition 3, the consent shall lapse.
  5. Rehabilitation of the site is to be carried out in accordance with the approved Rehabilitation Strategy.
  6. The applicant shall not produce or transport more than 150,000 tonnes of material per annum in total from this site.

7. Unless modified by these conditions of consent, all works shall be restricted to and fully contained within the area defined under the development application, accompanying Environmental Impact Statement and as amended by the Application for Modification dated April 2001 and as further amended by the Application for Modification dated 13<sup>th</sup> December 2006, being within Part Lot 1 DP 324629 and Part Lot 1 DP 324630 in the Parish of Althorpe, County of Durham, Shire of Muswellbrook.
8. The proposed development being carried out strictly in accordance with the details and operational limits set out in the development application and accompanying Environmental Impact Statement, additional information and the Application for Modification dated April 2001, the Application for Modification dated 13<sup>th</sup> December 2006, and the Application for Modification dated 28<sup>th</sup> March 2019, except as modified by the conditions of this consent. All relevant licences, permits and notices as may be required from all relevant Authorities together with such other approvals or licences as may be required under future legislation or regulations for the duration of the proposed development are to be obtained by the applicant. The applicant shall conduct the development in accordance with the terms of such approvals and licences. Copies of the said licences and approvals are to be held on the site at all times.
9. The maximum amount of product or reject material held on site at any one time shall not exceed 30,000 tonnes. All material stockpiles shall not be greater than 5 metres in height.
10. All transport of product and all vehicle movements, with the exception of vehicles under 2 tonnes tare, shall be undertaken on a private haul road from the site through Portions 112, 113, 32, 109, 111 and Part Portion 8, Parish of Althorpe to Jerrys Plains Road. No vehicles greater than 2 tonnes tare are permitted to access the operation via Dalswinton Road.

The agreement for the operations of the private haul road shall be in place at all times for the life of the application.

11. The applicant is required to maintain the private haul road as specified under DA 66/91 for the period of haulage operations.
12. The Applicant shall lodge a bond or bank guarantee with Council in assurance that all conditions are fully complied with including conditions relating to the rehabilitation of the site. The amount of the bond is to be \$50,000 plus an amount calculated as the cost of rehabilitating the site, from time to time, in accordance with this consent. If an amount cannot be agreed between the person acting with this consent and Council's General Manager, the bond shall be in the amount determined by a suitably qualified expert nominated by Council. The cost of the engagement of the suitably qualified expert is to be paid by the Applicant.

In the event that conditions of consent are not complied with, or the rehabilitation of the site is not completed to the satisfaction of the consent authority, the bond or bank guarantee is to be forfeited.

13. The applicant shall commission an environmental audit by a reputable consultant two years from the date of consent. This shall include full referral to all conditions of consent, licences, permits and notices required for the operation by relevant government authorities, together with an assessment of management practices,

success of rehabilitation procedures and storage of hazardous and/or flammable goods. Should the audit results be unacceptable to Council, the applicant will be instructed to undertake rectification works within 30 days of the date of the audit. Should rectification works not be completed to the satisfaction of Council within 30 days of the date of notice, the consent shall lapse.

The applicant shall undertake further environmental audits during the period of consent when considered necessary by Council.

14. Any relocation or alteration or damage to public utilities made necessary as a result of this development is to be carried out at the developer's cost.
15. The maximum permitted area of the site to be cleared and excavated at any one time is two (2) hectares.
16. Plant and equipment on the site shall operate between the following hours:

MONDAY TO FRIDAY	5.00 am to 12.00 midnight
SATURDAYS	5.00 am to 1.30 pm

No excavation, or related operations of plant and equipment is permitted on SUNDAYS.

17. Commercial vehicles including laden and unladen gravel trucks shall use the private haul at times subject to written agreement between the applicant, the landholders, and the adjoining properties to the property on which the haul road is constructed. Notification of the agreed haulage times is to be forwarded to Council prior to commencement of vehicle movements to and from the site.
18. A water cart is to be used by the applicant in the processing area, on all gravel roads on the facility, and on the private haul road to Jerrys Plains Road to ensure that dust emissions are contained within acceptable limits as defined by the EPA and Council.
19. Noise monitoring is to be carried out following establishment of the processing plant at Site 1 (refer to location in DA 410/94 E.I.S.) and the results reported to Council within 30 days of fulltime excavation, processing and transport activities. The maximum background level permitted at the nearest affected residence throughout the duration of the operations is 5dB(A) above background. All noise complaints received by the applicant in respect to the operation are to be recorded on a log sheet and held on site at all times as permanent records.
20. The processing plant and all stockpiled material shall be suitably screened to obscure their view from public places or adjoining dwellings.
21. The site shall be provided with adequate washing and toilet facilities for use of site personnel.
22. All oils, fuels and bitumen pre-coat solutions shall be stored in appropriate containers and tanks in a bunded area which complies with AS 1940, the design of which is approved by Council and the Environment Protection Authority. Safe storage and handling information cards for hazardous materials shall be prominently displayed near any chemical, described by SAA2508, which is stored on or within the site.

23. The applicant shall submit to Council for approval a suitable Soil and Water Management Plan for the extraction operation, processing plant and haul road. The Plan shall include, but not be limited to, the following:
- a) Suitable plans showing location of works and erosion control measures;
  - b) Existing hydrology, soil, landforms and constraints;
  - c) Existing vegetation, gradients including options for staging works;
  - d) Mitigation and control of erosion;
  - e) Movement of water around, through and off the site;
  - f) Methods to protect groundwater quality and ensure supply to all existing bores;
  - g) Revegetation plan, including timetable for each section to be worked, floral species to be re-planted, together with a timetable for revegetation of each section.
24. The applicant shall de-silt all sediment control structures at regular intervals to prevent build-up of sediment.
25. Road culverts are to be constructed to contain the three major flow-lines that cross the haul road to ensure handling a 1 in 10 year storm.
26. Clean water diversion systems are to be installed upslope from the extraction site, processing area and stockpiles to prevent runoff water entering the site. Additional containment structures are to be constructed within the extraction, processing and storage areas to prevent sediment leaving the site.
27. The applicant shall pay a contribution in accordance with Council's Section 94 Contributions Plan in respect of all material produced from this site and transported on public roads.
- a) The amount of the contribution shall be based on the tonnage produced. Calculations shall be made by a qualified Civil Engineer employed by the applicant and approved by Council in accordance with the formula adopted by Council and attached (Appendix A).
  - b) The applicant shall make the contribution calculated in 23(a) at three monthly intervals, the first being on 9 January 1996.
28. Material transported from existing stockpiles under DA 129/86 along Dalswinton Road as well as material transported from further extraction and production under DA 129/86 shall be subject to a Contribution as defined in consent DA 129/86. All product transported along the haul road shall be subject to Section 94 contributions calculated under DA 410/94.
29. The Council has the right to inspect and have the original records relating to any of the extractive material including number and types of laden truck and trailers and load quantities, transported from the development and audited by any person nominated by its internal accountant at anytime as and when a written request is required.

30. Compliance with the requirements of the Roads and Maritime Services (RMS) as specified in their correspondence dated 8 October 2001, by 13 November 2002 or amended requirements of that authority after further negotiations by the applicant with the RMS.
31. Erection of truck turning warning signs on both approaches to the intersection.
32. Submission of details regarding construction material production from the quarry to the Department of Mineral Resources.
33. The applicant shall prepare an annual report in respect to the performance of the development and shall submit such a report to Council in respect to the calendar year ended 31<sup>st</sup> December. The annual report shall include information regarding the following matters (as a minimum):
  - (a) The performance of the development;
  - (b) The production quantities of the development including markets and production type;
  - (c) The implementation and effectiveness of environment controls and conditions relating to the development;
  - (d) Results on environmental monitoring;
  - (e) Production operations and mining operations undertaken in the preceding 12 months;
  - (f) Workforce characteristics of the development;
  - (g) Any modifications or proposed work practices outlined in the Environmental Impact Statement required to mitigate adverse environmental effects;
  - (h) Copy of all relevant licences and approvals required of the development by relevant authorities;
  - (i) The applicant is to provide a complaints register for the recording of complaints with quarterly reports being submitted to Council identifying such complaints and the action taken to rectify such complaints.
  - (j) Matters as specified in any guidelines provided by Council from time to time.

The report shall be submitted to Council in the month of January throughout the life of the development.
34. During operations and rehabilitation, the proponent must maintain relevant groundwater and or surface water licences.
35. At cessation of operations, no groundwater is to be exposed unless significant flooding of the Hunter River is occurring, or it is part of a stock watering dam. Consistent with the original EIS, a buffer of 2 metres above groundwater is to remain after extraction has ceased. The groundwater benchmark for the determination of this level in the Departments' opinion is an AHD equivalent to the rated 98<sup>th</sup> percentile flow height in the Hunter River.

It should be noted that this approval remains effective from the original date of consent.

Section 4.55 confers on an applicant who is dissatisfied with this determination a right of appeal to the Land and Environment Court under Section 4.55(6) of the Environmental Planning and Assessment Act 1979 (except in the case of State Significant Development). This appeal provision is pursuant to the Land and Environment Court Rules and is exercisable within sixty (60) days of the date of determination.

Should you require further information in relation to this matter, please contact Council's Projects Planner, A J Evans on 02 6549 3770.

**APPROVED BY DEVELOPMENT ASSESSMENT COMMITTEE 26 AUGUST 2019  
AND SIGNED ON BEHALF OF THE CONSENT AUTHORITY**



Alisa Evans  
**Project Planner**