

Notice of Modification

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

As delegate of the Minister for Planning and Infrastructure, I modify the project approval referred to in Schedule 1, as set out in Schedule 2.

David Kitto
Director, Mining & Industry Projects

Sydney, **3 NOVEMBER** 2011

SCHEDULE 1

Project approval 06_0074 for the Marulan South Quarry, granted by the Minister for Planning on 28 February 2007.

SCHEDULE 2

1. In the Table of Contents:
 - (a) beneath the words "Independent Environmental Audit", insert "Revision of Strategies, Plans and Programs";
 - (b) beneath the words "Project Site", insert the following:

APPENDIX 2A

Noise Receiver Location Plan

- (c) delete the following:

APPENDIX 4

Independent Dispute Resolution Process

2. Delete the definitions for "AEMR", "DECC", "Department", "Director-General" and "DWE" in the Definitions in Schedule 2, and insert in alphabetical order the following:

Annual Review	The review required by condition 4 of schedule 5
Department	Department of Planning and Infrastructure
Director-General	Director-General of the Department of Planning and Infrastructure (or delegate)
Noise bund	Bunds built for noise and visual mitigation purposes and which do not exceed 10 metres in height
NOW	NSW Office of Water, within the Department of Primary Industries
OEH	Office of Environment and Heritage

3. Delete all references to "DECC" and replace with "OEH".
4. Delete all references to "DWE" and replace with "NOW".
5. Delete all references to "AEMR" and replace with "Annual Review".
6. In condition 2 of schedule 2, delete all words after "February 2009;" and replace with the following:
 - d) modification application 06_0074 – MOD 2 and the accompanying EA titled *Boral Peppertree Quarry Section 75W Modification Report*, dated June 2011, prepared by ERM Australia, and the responses to issues raised in submissions, including those titled *Peppertree Quarry Submissions*

Report, dated 24 August 2011, Response to OEH Submission, dated 12 October 2011, and Response to Armit Submission, dated 25 October 2011; and

e) conditions of this approval.

7. In condition 4 of schedule 3, delete Table 1 and all words following and insert in their place:

Residential Receiver	Day Shift	Night Shift		
	Day	Evening	Night	
	$L_{Aeq}(15\text{ minute})$	$L_{Aeq}(15\text{ minute})$	$L_{Aeq}(15\text{ minute})$	$L_{A1}(1\text{ minute})$
1	35	35	35	45
2	39	35	35	45
3	42	35	35	46
4	37	35	35	46
5	35	35	35	45
6	35	35	35	45
16	41	35	35	45
Any other noise sensitive location	35	35	35	45

Notes:

- The identified "Day" noise criteria apply throughout the period of the site's Day Shift (ie 7.00am to 7.00pm) on all days, despite the general definitions of Evening and Night otherwise applying to the approval. The identified "Evening" and "Night" criteria apply only during the period of the site's Night Shift (ie 7.00pm to 7.00am).
- Noise generated by the project is to be measured in accordance with the relevant procedures and exemptions (including certain meteorological conditions) of the NSW Industrial Noise Policy.
- Residential receiver locations are shown in Appendix 2A.

8. In condition 5 of schedule 3, insert the following row at the bottom of Table 2:

16	44	44
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9. Delete conditions 9 and 10 of schedule 3 and replace with the following:

Operating Conditions

9. The Proponent shall:

- implement best practice noise management, including all reasonable and feasible noise mitigation measures to minimise the noise generated by the project;
 - investigate ways to minimise the noise generated by the project;
 - operate a comprehensive noise management system that uses a combination of predictive meteorological forecasting and noise monitoring data to guide the day to day planning of quarrying operations and the implementation of both proactive and reactive noise mitigation measures to ensure compliance with the relevant conditions of this approval;
 - minimise noise impacts during adverse weather conditions; and
 - report on these investigations and the implementation and effectiveness of these measures in the Annual Review,
- to the satisfaction of the Director-General.

Noise Management Plan

10. The Proponent shall prepare and implement a Noise Management Plan for the project to the satisfaction of the Director-General. This plan must be prepared in consultation with OEH and submitted to the Director-General for approval by the end of March 2012, and must:

- describe the measures that would be implemented to ensure compliance with the relevant conditions of this approval;
- describe the noise management system;
- include a noise monitoring program that:
 - supports the noise management system;

- provides information to evaluate the performance of the project;
 - includes a protocol for determining exceedances of relevant conditions of this approval; and
 - provides for the use of real-time and/or supplementary attended monitoring measures, if directed by the Director-General;
- (d) include a community notification protocol for the proposed construction activities; and
- (e) detail who would be responsible for monitoring, reviewing and implementing the plan.

10. Delete conditions 17 – 21 of schedule 3 and insert the following:

Air Quality Impact Assessment Criteria

17. The Proponent shall ensure that all reasonable and feasible avoidance and mitigation measures are employed so that particulate matter emissions generated by the project do not exceed the criteria listed in Tables 6, 7 and 8 at any residence on privately owned land, or on more than 25 percent of any privately owned land.

Table 6: Long term impact assessment criteria for particulate matter

Pollutant	Averaging period	^d Criterion
Total suspended particulate (TSP) matter	Annual	^a 90 µg/m ³
Particulate matter < 10 µm (PM ₁₀)	Annual	^a 30 µg/m ³

Table 7: Short term impact assessment criterion for particulate matter

Pollutant	Averaging period	^d Criterion
Particulate matter < 10 µm (PM ₁₀)	24 hour	^a 50 µg/m ³

Table 8: Long term impact assessment criteria for deposited dust

Pollutant	Averaging period	Maximum increase² in deposited dust level	Maximum total¹ deposited dust level
^c Deposited dust	Annual	^b 2 g/m ² /month	^a 4 g/m ² /month

Notes to Tables 6-8

^a Total impact (ie incremental increase in concentrations due to the project plus background concentrations due to all other sources);

^b Incremental impact (ie incremental increase in concentrations due to the project on its own);

^c Deposited dust is to be assessed as insoluble solids as defined by Standards Australia, AS/NZS 3580.10.1:2003: Methods for Sampling and Analysis of Ambient Air - Determination of Particulate Matter - Deposited Matter - Gravimetric Method; and

^d Excludes extraordinary events such as bushfires, prescribed burning, dust storms, sea fog, fire incidents or any other activity agreed by the Director-General.

Land Acquisition Criteria

18. If particulate matter emissions generated by the project exceed the criteria in Tables 9, 10, and 11 at any residence on privately-owned land, or on more than 25 percent of any privately owned land, then upon written request for acquisition from the landowner, the Proponent shall acquire the land in accordance with the procedures in conditions 6-7 of schedule 4.

Table 9: Long term land acquisition criteria for particulate matter

Pollutant	Averaging period	^d Criterion
Total suspended particulate (TSP) matter	Annual	^a 90 µg/m ³
Particulate matter < 10 µm (PM ₁₀)	Annual	^a 30 µg/m ³

Table 10: Short term land acquisition criteria for particulate matter

Pollutant	Averaging period	^{da} Criterion
Particulate matter < 10 µm (PM ₁₀)	24 hour	^a 150 µg/m ³
Particulate matter < 10 µm (PM ₁₀)	24 hour	^b 50 µg/m ³

Table 11: Long term land acquisition criteria for deposited dust

Pollutant	Averaging period	Maximum increase² in deposited dust level	Maximum total¹ deposited dust level
^c Deposited dust	Annual	^b 2 g/m ² /month	^a 4 g/m ² /month

Notes to Tables 9-11

^a Total impact (ie incremental increase in concentrations due to the project plus background concentrations due to all other sources);

^b Incremental impact (ie incremental increase in concentrations due to the project on its own);

^c Deposited dust is to be assessed as insoluble solids as defined by Standards Australia, AS/NZS 3580.10.1:2003: Methods for Sampling and Analysis of Ambient Air - Determination of Particulate Matter - Deposited Matter - Gravimetric Method; and

^d Excludes extraordinary events such as bushfires, prescribed burning, dust storms, sea fog, fire incidents or any other activity agreed by the Director-General.

Operating Conditions

19. The Proponent shall:

- (a) implement best management practice on site, including all reasonable and feasible measures to minimise the off-site odour, fume and dust emissions generated by the project;
- (b) minimise any visible air pollution generated by the project;
- (c) minimise the surface disturbance of the site generated by the project; and
- (d) operate a comprehensive air quality management system that uses a combination of predictive meteorological forecasting and air quality monitoring data to guide the day to day planning of quarrying operations and the implementation of both proactive and reactive air quality mitigation measures to ensure compliance with the relevant conditions of this approval;

to the satisfaction of the Director-General.

Air Quality Management Plan

20. The Proponent shall prepare and implement a detailed Air Quality Management Plan for the project to the satisfaction of the Director-General. This plan must:

- (a) be prepared in consultation with OEH and submitted to the Director-General by the end of March 2012;
- (b) describe the measures that would need to be implemented to ensure compliance with the relevant conditions of this approval;
- (c) include a program for the implementation of the measures referred to in (b) above; and
- (d) include an air quality monitoring program that:
 - uses a combination of high volume samplers and dust deposition gauges to evaluate the performance of the project;
 - supports the air quality management system;
 - provides information to evaluate the performance of the project;
 - includes a protocol for determining exceedances of relevant conditions of this approval; and
 - provides for the use of real-time monitoring measures, if directed by the Director-General.

METEOROLOGICAL MONITORING

21. For the life of the project, the Proponent shall ensure that there is a meteorological station in the vicinity of the site that:

- (a) complies with the requirements in the *Approved Methods for Sampling of Air Pollutants in New South Wales* guideline; and
- (b) is capable of continuous real-time measurement of temperature lapse rate in accordance with the *NSW Industrial Noise Policy*.

11. After condition 23 of schedule 3, insert the following:

23A. The Proponent shall prepare an onsite wastewater report for the proposed effluent management system consistent with the requirements of *Sydney Catchment Authority – “Developments in Sydney’s Drinking Water Catchment” – Water Quality Information Requirements, 2011*. The effluent management system must be designed and constructed to be in accordance with this onsite wastewater report and its design must be approved by Council prior to construction.

13. After condition 33 of schedule 3, insert the following:

Threatened Species Protection

33A. The Proponent shall:

- (a) prior to clearing of vegetation and site preparation on the site of the Western Overburden Emplacement and extension, clearly and securely mark out the proposed boundary of the emplacement and extension;
 - (b) avoid disturbance of *Box Gum Woodland* Endangered Ecological Community and other native vegetation adjacent to the site of the Western Overburden Emplacement and extension;
 - (c) only undertake clearing of vegetation on the site of the Western Overburden Emplacement and extension following a recent fauna survey undertaken by a suitably qualified expert who has been approved by the Director-General; and
 - (d) seek to avoid clearing of native vegetation on the site of the Western Overburden Emplacement and extension during the period August to November of any year.
14. Delete conditions 37 to 39 of schedule 3, and replace with the following:

Visual Amenity and Lighting

37. The Proponent shall:
- (a) minimise the visual impacts, and particularly the off-site lighting impacts, of the project;
 - (b) revegetate overburden emplacements, emplacement extensions and bunds as soon as practicable;
 - (c) take all practicable measures to further mitigate off-site lighting impacts from the project; and
 - (d) ensure that all external lighting associated with the project complies with *Australian Standard AS4282 (INT) 1995 - Control of Obtrusive Effects of Outdoor Lighting*, to the satisfaction of the Director-General.
15. In condition 41 of schedule 3, delete the word "AEPR" and replace with "Annual Review".
16. In condition 2 of schedule 4, delete all words after "satisfied that an independent review is warranted," and replace with the following:
- "then within 2 months of the Director-General's decision, the Proponent shall:
- (a) commission a suitably qualified, experienced and independent expert, whose appointment has been approved by the Director-General, to:
 - consult with the landowner to determine his/her concerns;
 - conduct monitoring to determine whether the project is complying with the relevant impact assessment criteria in schedule 3; and
 - if the project is not complying with these criteria then:
 - determine if the more than one quarry/mine is responsible for the exceedance, and if so the relative share of each quarry/mine regarding the impact on the land;
 - identify the measures that could be implemented to ensure compliance with the relevant criteria; and
 - (b) give the Director-General and landowner a copy of the independent review."
17. In condition 4 of schedule 4, delete all words after "then the Proponent shall:" and replace with the following:
- "(a) implement all reasonable and feasible mitigation measures, in consultation with the landowner and appointed independent expert, and conduct further monitoring until the project complies with the relevant criteria; or
- (b) secure a written agreement with the landowner to allow exceedances of the relevant impact assessment criteria,
- to the satisfaction of the Director-General.
- If the independent review determines that the project is not complying with the relevant acquisition criteria, and that the project is primarily responsible for this non-compliance, then upon receiving a written request from the landowner, the Proponent shall acquire all or part of the landowner's land in accordance with the procedures in condition 6-7 below."
18. Delete condition 5 of schedule 4, and replace with the following:
5. If the independent review determines that the relevant criteria are being exceeded, but that more than one quarry/mine is responsible for this exceedance, then together with the relevant quarry/mine/s, the Proponent shall:
- (a) implement all reasonable and feasible mitigation measures, in consultation with the landowner and appointed independent expert, and conduct further monitoring until there is compliance with the relevant criteria; or
 - (b) secure a written agreement with the landowner and other relevant mine/s to allow exceedances of the relevant impact assessment criteria,
- to the satisfaction of the Director-General.

If the independent review determines that the project is not complying with the relevant acquisition criteria in schedule 3, but that more than one mine is responsible for this non-compliance, then upon receiving a written request from the landowner, the Proponent shall acquire all or part of the landowner's land on as equitable a basis as possible with the relevant quarries/mine/s, in accordance with the procedures in conditions 6-7 below.

19. In condition 6 of schedule 4:

- (a) delete all references to "property" and replace with "land"; and
- (b) delete all words after "Upon receiving such a request, the Director-General" and replace with the following:

"will request the President of the NSW Division of the Australian Property Institute to appoint a qualified independent valuer to:

- consider submissions from both parties;
- determine a fair and reasonable acquisition price for the land and/or the terms upon which the land is to be acquired, having regard to the matters referred to in paragraphs (a)-(c) above;
- prepare a detailed report setting out the reasons for any determination; and
- provide a copy of the report to both parties.

Within 14 days of receiving the independent valuer's report, the Proponent shall make a binding written offer to the landowner to purchase the land at a price not less than the independent valuer's determination.

However, if either party disputes the independent valuer's determination, then within 14 days of receiving the independent valuer's report, they may refer the matter to the Director-General for review. Any request for a review must be accompanied by a detailed report setting out the reasons why the party disputes the independent valuer's determination. Following consultation with the independent valuer and both parties, the Director-General will determine a fair and reasonable acquisition price for the land, having regard to the matters referred to in paragraphs (a)-(c) above, the independent valuer's report, the detailed report of the party that disputes the independent valuer's determination and any other relevant submissions.

Within 14 days of this determination, the Proponent shall make a binding written offer to the landowner to purchase the land at a price not less than the Director-General's determination.

If the landowner refuses to accept the Proponent's binding written offer under this condition within 6 months of the offer being made, then the Proponent's obligations to acquire the land shall cease, unless the Director-General determines otherwise."

20. Delete conditions 7 to 8 of schedule 4 and replace with the following:

7. The Proponent shall pay all reasonable costs associated with the land acquisition process described in condition 6 above, including the costs associated with obtaining Council approval for any plan of subdivision (where permissible), and registration of this plan at the Office of the Registrar-General.

21. Delete condition 4 of schedule 5 and replace with the following:

Annual Review

4. By the end of March each year, the Proponent shall prepare and submit a review of the environmental performance of the project to the satisfaction of the Director-General. This review must:
 - (a) describe the development that was carried out in the previous calendar year, and the development that is proposed to be carried out over the next year;
 - (b) include a comprehensive review of the monitoring results and complaints records of the project over the previous calendar year, which includes a comparison of these results against the
 - the relevant statutory requirements, limits or performance measures/criteria;
 - the monitoring results of previous years; and
 - the relevant predictions in the EA;
 - (c) identify any non-compliance over the last year, and describe what actions were (or are being) taken to ensure compliance;
 - (d) identify any trends in the monitoring data over the life of the project;
 - (e) identify any discrepancies between the predicted and actual impacts of the project, and analyse the potential cause of any significant discrepancies; and
 - (f) describe what measures will be implemented over the next year to improve the environmental performance of the project.

22. Delete condition 7 of schedule 5 and replace with the following:

REVISION OF STRATEGIES, PLANS AND PROGRAMS

7. Within 3 months of:
- the submission of an incident report under condition 3 above;
 - the submission of an annual review under condition 4 above;
 - the submission of an audit report under condition 5 above; and
 - any modification to the conditions of this approval, (unless the conditions require otherwise), the Proponent shall review, and if necessary revise, the strategies, plans, and programs required under this approval to the satisfaction of the Director-General.

Note: This is to ensure the strategies, plans and programs are updated on a regular basis, and incorporate any recommended measures to improve the environmental performance of the project.

23. Delete conditions 12 and 13 of schedule 5 and replace with the following:

ACCESS TO INFORMATION

10. By 31 January 2012, the Proponent shall:
- (a) make copies of the following publicly available on its website:
- the documents referred to in condition 2 of schedule 2;
 - all current statutory approvals for the project;
 - all approved strategies, plans and programs required under the conditions of this approval;
 - the monitoring results of the project, reported in accordance with the specifications in any conditions of this approval, or any approved plans and programs;
 - a complaints register, updated on a monthly basis;
 - minutes of CCC meetings;
 - the annual reviews of the project;
 - any independent environmental audit of the project, and the Proponent's response to the recommendations in any audit;
 - any other matter required by the Director-General; and
- (b) keep this information up-to-date, to the satisfaction of the Director-General.

24. In Appendix 1:

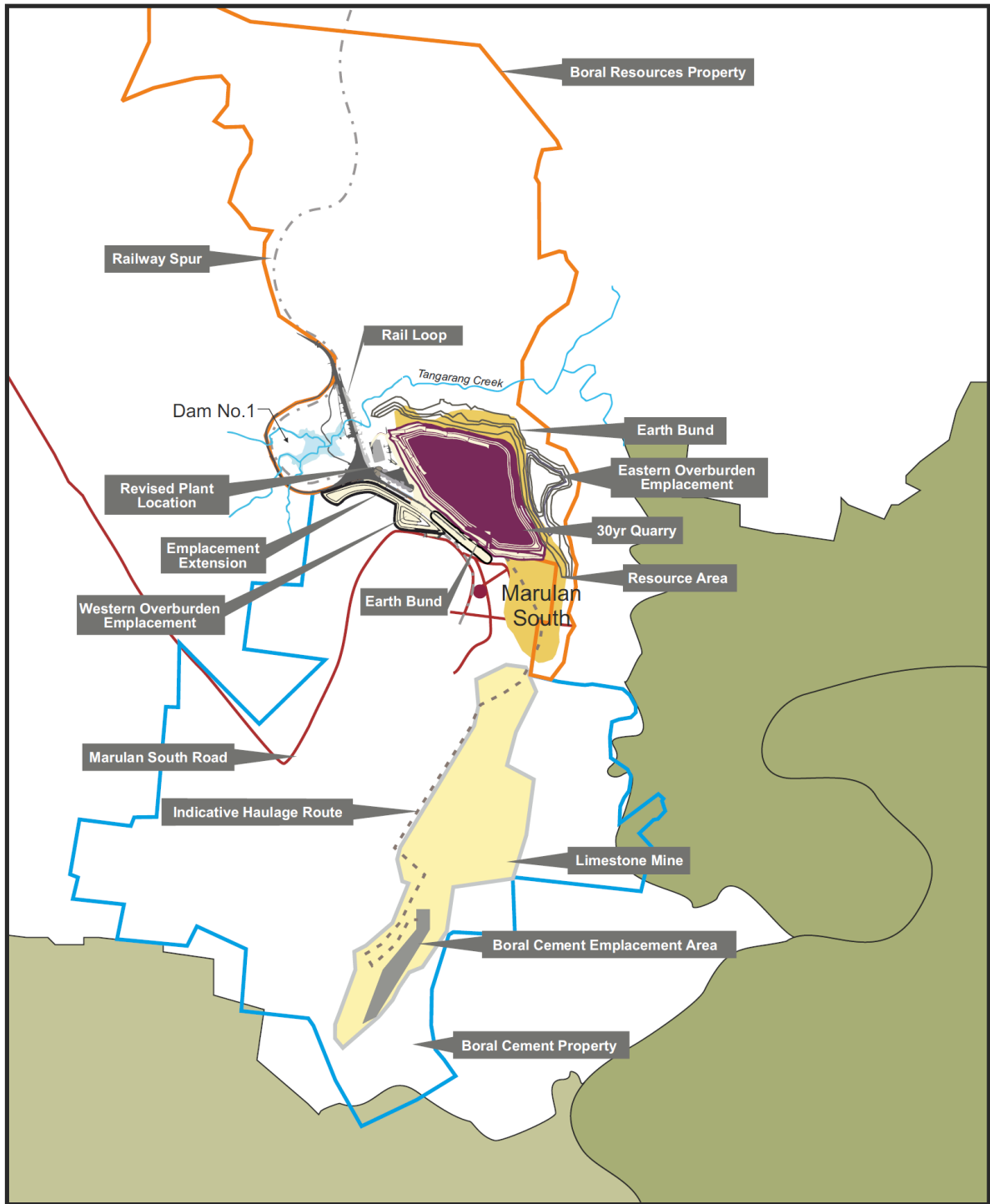
(a) delete the following rows; and

100	1064791
5	106569

(b) insert the following rows in their places, respectively:

100	1064794
1	1124189

25. Delete the figure in Appendix 2 and insert the following:



Legend
 Morton National Park
 Bungonia State Conservation Area

Figure 1.1
Peppertree Quarry - Proposed Site Layout

Client:	Boral
Project:	Peppertree Quarry
Drawing No:	0118026s_Sect75W_C001_R4.cdr
Date:	27/10/2011
Drawn by:	SQW
Reviewed by:	RS
Scale:	Refer to Scale Bar

Environmental Resources Management Australia Pty Ltd
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 Telephone +61 2 8584 8888

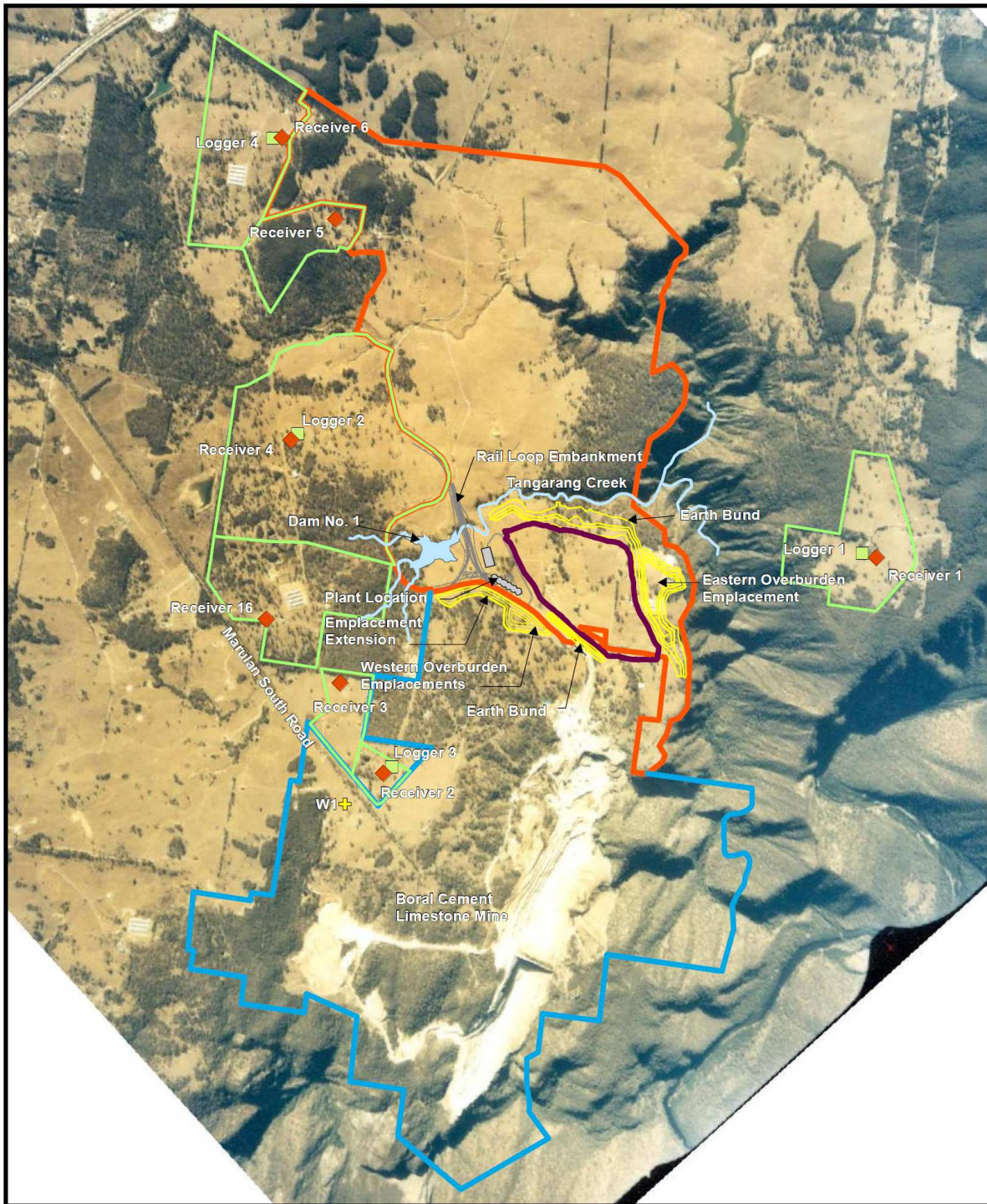
0 0.25 0.5 1.0km

ERM

Maps and figures contained within this document may be based on third party data, may not be to scale and is intended for use as a guide only. ERM does not warrant the accuracy of any such maps or figures.

26. After the figure in Appendix 2, insert the following:

**APPENDIX 2A
NOISE RECEIVER LOCATION PLAN**



- Legend**
- ◆ Receiver Locations
 - Noise Logger Locations
 - + Weather Station
 - Quarry Location
 - Boral Cement Property Boundary
 - Boral Peppertree Property Boundary
 - Proposed Dam Location
 - Proposed Plant Location
 - Cadastre
 - Tangarang Creek

Client:	Boral
Project:	Peppertree Quarry
Drawing:	0118026s_Sect75W_G016_R0.mxd
Date:	27/10/2011
Drawn By:	SQW
Reviewed By:	RS
Projection:	GDA 1994 MGA Zone 56
Scale:	Refer to scale bar

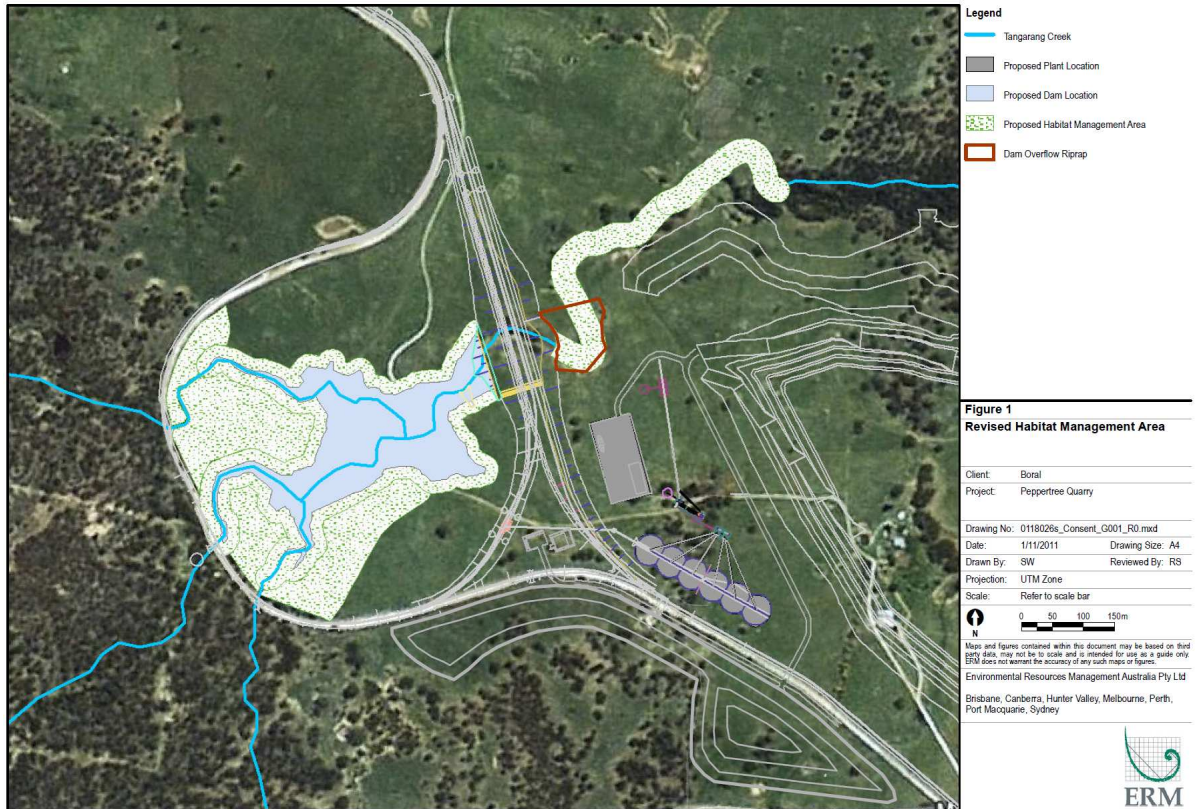
Maps and figures contained within this document may be based on third party data, may not be to scale and is intended for use as a guide only. ERM does not warrant the accuracy of any such maps or figures.

**Figure 5.1
Location of Noise Receivers**

Environmental Resources Management Australia Pty Ltd
Brisbane, Canberra, Hunter Valley, Melbourne, Perth,
Port Macquarie, Sydney



27. Delete the figure in Appendix 3 and insert the following:



28. Delete Appendix 4, including the figure.