

21 July 2022

Department of Planning, Industry and Environment

Via email: Allison.Sharp@planning.nsw.gov.au

Council Reference: REQ 08939/2022
Albion Park Quarry (Cleary Bros.) – Stage 7 expansion (SSD - 10369)
Lots 1 & 7 DP3709, Dunster Lane, Croom

Dear Sir/Madam

Thank you for the chance to provide further advice on SSD-10369. Council technical officers have reviewed the documentation provided on the Major Projects website with regard to the State Significant Development 10369 and can provide the following comments from Council.

The application seeks consent for:

- Expansion of existing quarrying – Stage 7
- Continue extraction of remnant material within Stages 1 to 6
- Rehabilitation of all stages.

Executive Summary

Council wishes to provide commentary to the application for extension to Albion Park Quarry at Dunsters Lane, Dunmore. Matters considered of importance as part of this proposal are heritage, environmental, and statutory planning. Several concerns have been raised as part of this review.

Council has considered all relevant issues and provided detailed comments below. A list of recommendations is provided in section 5 of this letter.

1. Statutory Planning Considerations

1.1 Consideration of zone objectives and permissibility

The subject land includes land within the RU1 zone and C3 zone, detailed below in Figure 1:

Zone RU1 – Primary Production

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*
- *To encourage diversity in primary industry enterprises and systems appropriate for the area.*
- *To minimise the fragmentation and alienation of resource lands.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*

Zone C2 Environmental Conservation

- To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values.
- To prevent development that could destroy, damage or otherwise have an adverse effect on those values.

The proposed Stage 7 quarry expansion will not directly affect any existing agricultural activities on neighbouring lands and the surrounds. Modification to the existing Environmental Protection License will set limits on site emissions including dust, noise and water quality to protect the surrounding environment.

The subject land which extends slightly into the C2 zone along its western edge. As shown in the aerial overlay to the zoning boundary, the area affected is minor (estimated at less than 1ha) and is mostly cleared. Following completion of the quarrying activities, rehabilitation of the site will ensure that the ecological values of this affected land are gradually restored.

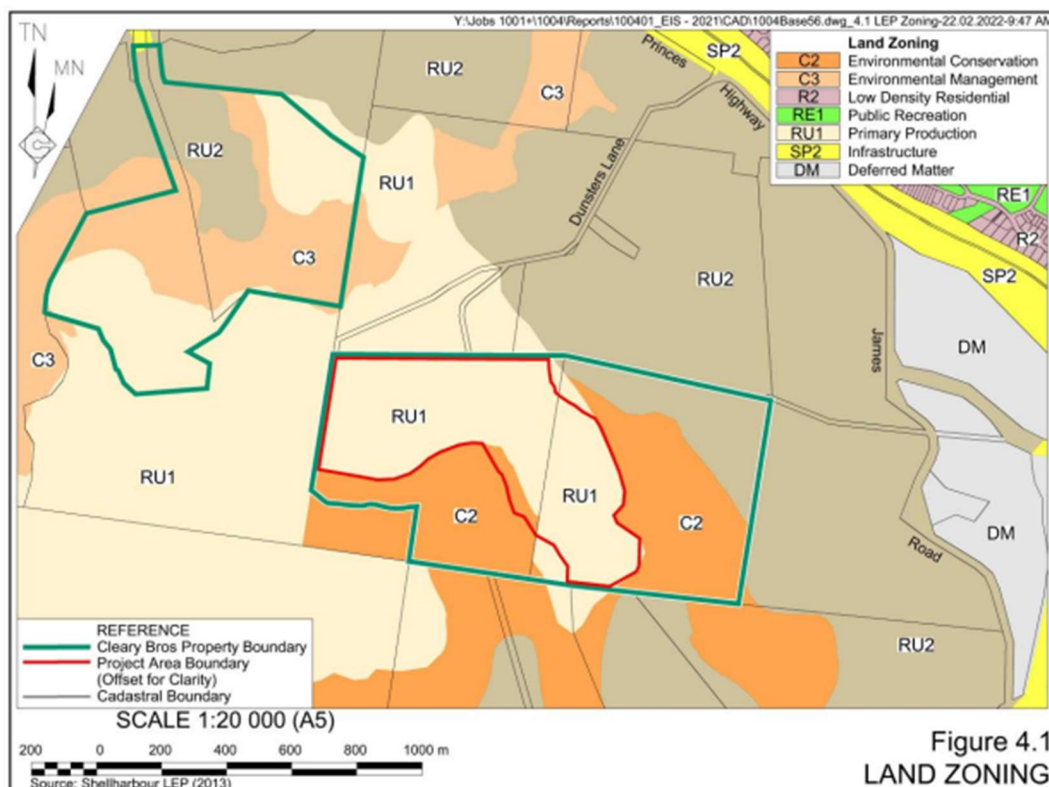


Figure 1 - LEP 2013 Zoning Map

State Environmental Planning Policy (Resources and Energy) 2021 Clause 2.9 makes extractive industries permissible with consent in the C2 Environmental Conservation zone

1.2 Consideration of Shellharbour Development Control Plan 2013

Chapter 34 – Visual Landscape Character sets provisions for visual assessment within the RU1 Primary Production Zone. In considering these provisions, the Visual Impact Assessment (VIA) submitted as part of the Environmental Impact Study (EIS) identifies visual mitigation measures including extending existing the northern side amenity barrier by 170m east, plus a 500m long tree screen extending south along the eastern side of Stage 7. These measures are demonstrated in the VIA to provide screening which will increase in its effectiveness as the planted trees reach established height and canopy spread.

2 Environmental Impacts

2.1 Noise & Blasting:

Proposed blasting is identified as maximum 1 blast / week between 9am – 5pm Mon – Fri. This is within the approved limit set by the existing Environmental Protection Licence (EPL)-299: *condition L3.3: Blasting must be limited to one blast each day.*

Dynamite is placed in drilled holes below the surface level and ignited in rapid sequence to limit the peak volume / vibration and duration of the blast period.

Noise levels at Figtree Hill – existing noise barrier (berm) to be extended 150m east along northern boundary. Visual impact of the noise barrier extension detailed in section 2.7 below.

The updated Noise and Blast Management Plan is required to be included in the EIS to ensure that full assessment can be undertaken as part of the determination process.

2.2 Air Quality

EPL-299: condition M2.2 – Air monitoring requirements requires sampling to be taken on a monthly basis. Maintaining this is suggested in Chapter 6.2.3.2 – Air Quality Environment of the EIS.

Given the growth in housing in the surrounds and expansion of the quarry, it is suggested that the frequency of sampling be increased to weekly sampling.

Dust gauge locations are shown within the EIS – Chapter 6.2. An additional dust gauge is also considered justifiable on the eastern side of Stage 7 to measure potential dust spread during winter when dryer south-westerly winds are more prevalent, which may blow dust into residential area of Flinders.

Air Quality Management Plan is to be updated as part of the proposal and not as condition of consent as suggested to allow complete assessment and review to be completed.

2.3 Stormwater Discharge:

The submitted information states that

“Mitigation measures would be used to ensure no pollution of surface water resources beyond the Project Area”.

No details of the mitigation measures have been provided as part of the EIS and need to be included for assessment. The site forms part of Minnamurra River catchment and stormwater discharges from site is required to be treated to level that protects or enhances water quality of the river.

The quarry acts as a large dam with peak rainfalls likely to result in peak sedimentation and discharges of water, hence adequacy of treatment measures is critical and questioned.

Table 3.4 identifies ‘rare’ use of dewatering pump during peak rainfall periods (including 2022 events) but no information is provided regarding where this water is discharged to or how it is treated. Details of treatment measures and where water is discharged to is required as part of the updated Water Management Plan.

The submitted information provided the water quality monitoring data for Dec 2020 for WC1 and WC2. Water quality monitoring is to be carried out biannually and therefore Council request the biannual data to ensure that the water quality had not been deteriorated since 2009.

Water discharged from the quarry to creek needs to fulfil the triggering values of different water quality parameters as per the water quality guidelines prepared by the Australian and New Zealand Environment and Conservation Council (ANZECC) & Agriculture and Resource Management Council of Australia and New Zealand (ARMCANZ).

2.4 Biodiversity

Impacts to biodiversity will result from the clearing occurring as part of Albion Park Quarry – Stage 7. A Biodiversity Development Assessment Report (BDAR) has been prepared to assess the biodiversity impacts. A range of targeted survey was conducted by the proponents' representative ecological consultants. Of note, the project will remove 7.6 ha of native vegetation. Specifically, it will:

- Remove 4.69 ha of the Critically Endangered (State BC Act and Commonwealth EPBC Act) Illawarra Subtropical Rainforest – in the form of PCT 1300 Whalebone Tree – Native Quince dry subtropical rainforest on dry fertile slopes, southern Sydney Bioregion.
- Remove 2.92 ha of the Endangered *Melaleuca armillaris* Tall Shrubland (State BC Act) – in the form of PCT 720 Bracelet Honey-myrtle – Australian Indigo dry shrubland on volcanics, southern Sydney Basin Bioregion.
- Remove 0.15 ha of *Cynanchum elegans* (White-flowered Wax Plant) habitat including 1 individual.
- Remove 2172 mature individuals of *Zieria granulata* (Illawarra Zieria) (4521 individuals to be removed including juveniles).
- Remove foraging habitat for numerous fauna species and breeding habitat for hollow-dwelling microbats in the form of five habitat bearing trees containing eight hollows.

Avoidance has been considered via avoiding a smaller area of better condition vegetation which contains similar vegetation (Illawarra Subtropical Rainforest) and Illawarra Zieria habitat.

The vegetation to be impacted is in varying condition due to current and historic disturbances.

Offsets have been calculated for the above entities in accordance with the BAM.

- PCT 1300 – Illawarra Subtropical Rainforest – 74 credits
- PCT 720 - *Melaleuca armillaris* Tall Shrubland – 27 credits
- *Cynanchum elegans* (White-flowered Wax Plant) – 4 credits
- *Zieria granulata* (Illawarra Zieria) – 4344 credits

The ongoing operation of the sand extraction process could have further potential biodiversity impacts unless properly managed. Mitigation measures that have been proposed and are to be implemented are summarised below:

- Fencing off areas of native vegetation
- Stockpiling topsoil for use in rehabilitation
- Dust management and monitoring
- Staff awareness training for environmental features

- Preparation and implementation of a Vegetation Management Plan (VMP) for areas within a 50m radius of the project area boundary.
- Sediment and erosion control
- Pre-clearance inspections of hollow bearing trees and felling supervision to ensure a sensitive approach to managing risks to any residing fauna
- Preparation of a Biodiversity Management Plan summarising the above and providing procedures for monitoring and reporting rehabilitation outcomes.

Zieria granulata (Illawarra Zieria) Concerns

The proposal will impact 2172 individuals of *Zieria granulata* (Illawarra Zieria) (more specifically, 4521 individuals but only 2172 were considered mature). 4344 credits are required to offset these impacts. The BDAR justifies the use of recording mature plants for offsetting only. This may have resulted in a miscalculation of the total number of plants to be impacted. Offsets are calculated off 2172 mature plants, as opposed to the 4521 total plants recorded. The 2005 *Z. granulata* recovery plan stated that it was estimated there were only 8000 mature individuals at the time. The count at the Subject Land is therefore a considerable portion of the total known population.

The vast majority of *Z. granulata* plants occur on freehold land that is zoned for extractive industry or rural land uses. The conservation of *Z. granulata* populations within these areas is highly important for the conservation of the species as a whole. 73% of plants are situated on private land. This demonstrates the need to protect *Z. granulata* populations on private land in order to conserve the species. The Subject Land may contain one of the largest populations of the species within a single landholding.

Z. granulata suffer from low levels of genetic diversity. The removal of a large portion of a population could have a downstream effect on surrounding populations/communities. Species in fragmented communities are more likely to experience reduced gene flow, when compared with populations inhabiting intact communities, and therefore, may be more likely to produce non-viable seed.

Seed set is highly variable for *Z. granulata*; if the population at the Albion Park Quarry Site is readily setting seed and successfully reproducing (as may be indicated by the high number of immature plants) this would suggest this population is in good condition and may be an important population for the species.

Concerns exist regarding the offset ability for *Z. granulata*. It is currently understood that the BCT is already looking to source 2940 credits via their credit offer portal. The addition of another 4344 credits to be sourced will result in 7284 credits required for the species. It is a real risk that these credits may never be created. It is requested that the proponent either:

- Establishes a Stewardship Site within their land to provide at least some of the required credits
- Facilitates the establishment of a Stewardship Site elsewhere that contains *Z. granulata*.

The method of paying to the Biodiversity Conservation Fund is concerning as there is no way to be confident that any credits for *Z. granulata* will be generated. Unless the BCT can provide evidence that real credits are available, the two above options are recommended. The staging of the proposal allows for suitable lead time to ensure credits exist and this evidence should be made clear prior to impacts occurring.

Avoidance Commentary

The location of the *Cynanchum elegans* is at the southern extent of the proposed works. It appears that this individual could be retained should the impact area be adjusted at its southern extent by approximately 10m. The *Cynanchum elegans* is also sited alongside numerous *Zieria granulata* which would also be retained should the project boundary be moved less than 10m north.

Consideration of reducing the southern extraction boundary should be undertaken. If it is not possible to reduce the impact in this area, justification must be provided.

Given the regional significance of the Melaleuca armillaris Shrubland (MAS) EEC in the Illawarra area, and the ongoing pressures associated with fragmentation and deterioration of condition, far greater weight should be placed on the value of this vegetation community and its retention, rehabilitation and restoration. The proposal in its current form will remove about 2% (2.92 ha) of the total remaining extent of MAS within the surrounding 10,000 ha circle. This is a considerable area. Only 8 ha is currently under protection. MAS is limited in its remaining distribution. DPIE is pressed to strongly consider the risk for a Serious and Irreversible Impact (SAIL) to MAS. Any additional and appropriate measures that will minimise the impact should be considered. Potential avoidance of the mapped high condition MAS should be revisited. This area also contains *Z. granulata* and the *Cynanchum elegans* further highlighting the need to consider reducing the southern extraction boundary.



General Comments

- The proposal is not in accordance with the objectives of the SCC LEP 2013 Clause 6.5 Environmentally Sensitive Land or the E2 Zoning Clause 2.8.
- The Biodiversity Management Plan (BMP) should include a Translocation Plan, monitoring program and identify any research opportunities, with a specific focus on *Z. granulata*. Although translocation is not considered the best method of conservation, it may be necessary when 'all other management options are deemed inappropriate or have failed'. There has been some translocation success recorded in *Zieria prostrata*, where sites had a 10-50% survival rate. Seed heads are to be collected where appropriate as an additional ex-situ conservation measure.
- All revegetation must utilise species associated with the two TECs being impacted and be implemented in accordance with a VMP which provides details of suitable species. Measures must be implemented including propagation of *Zieria granulata* as well as translocation to areas within the quarry's retained vegetation.
- Preparation and implementation of a VMP for areas adjacent to the impact zone is considered suitable to protect retained vegetation. The VMP must be approved by Council prior to construction works commencing.
- Installation of nest boxes must occur at a ratio of 2 to 1. A nest box monitoring plan should be implemented for the life of the expansion works.

2.5 Flooding

Council does not have flood information for this site. The submitted information has shown that the peak flows in different sub-catchments (Cat A to Cat J) and locations (Loc 1 to Loc 10) will be decreased due to the proposed quarry extension work.

Council require access to the model and/or data showing all calculations related to flow for the existing scenario and proposed scenario.

2.6 Heritage:

2.6.1 Aboriginal heritage

The submitted Aboriginal Cultural Heritage Assessment report does not recommend obtaining an Aboriginal Heritage Impact Permit (AHIP). This is questioned given the extent of additional clearing that and excavation for Stage 7.

In terms of the engagement, it is important to ensure that Aboriginal community organisations have been involved. None have been identified in the community engagement stakeholders list. Council has noted that Illawarra Local Aboriginal Land Council (ILALC) did not respond or provide any feedback for this proposed expansion. ILALC are under new leadership and, Council considers it pertinent for the applicant to reach out for consultation again.

Noted that the site was identified to have a high level of cultural value and a moderate level of aesthetic value. Expansion of nearby mining operations has raised objections from the local Aboriginal community in limiting the expansion of mining in this area due to the impact it has on the cultural value of the site and surrounding region. Council requires information on the potential impact this mining has on the Minnamurra River and surrounding catchment areas.

More thorough engagement with the Aboriginal community is required. Including having Aboriginal representation on the Community Consultative Committee so that values and concerns of Country can be considered more appropriately.

It is understood that section 4.41 of the EP&A Act includes Aboriginal Heritage Impact Permits in the list of approvals that do not apply for SSD projects. It is therefore relevant to include an unidentified finds protocol with relevant stop work process.

2.6.2 European Heritage

The existing property located within the subject site of stage 7 is a heritage item listed in Schedule 5 of Shellharbour Local Environmental Plan 2013 of local significance described as follows:

“Belmont”, stone walls, figs and coral tree avenue 207 Dunsters, Lane Croom Lot 1, DP 858245 Local I209

The subject property is in the vicinity of several heritage items listed in Schedule 5 of Shellharbour Local Environmental Plan 2013 described below and as shown on figure 2 below.

- The Hill Farm Complex 195 Dunsters Lane Croom Local I022
- “Kyawana” 265 Dunsters Lane, Croom Local I281
- Bravella site fig trees, 144 James Road, Croom Local I177
- “Kurrawong”, trees, stone walls and silo 126 James Road, Croom Local I024
- “St Ives” and fig trees 2 James Road Croom Local I025

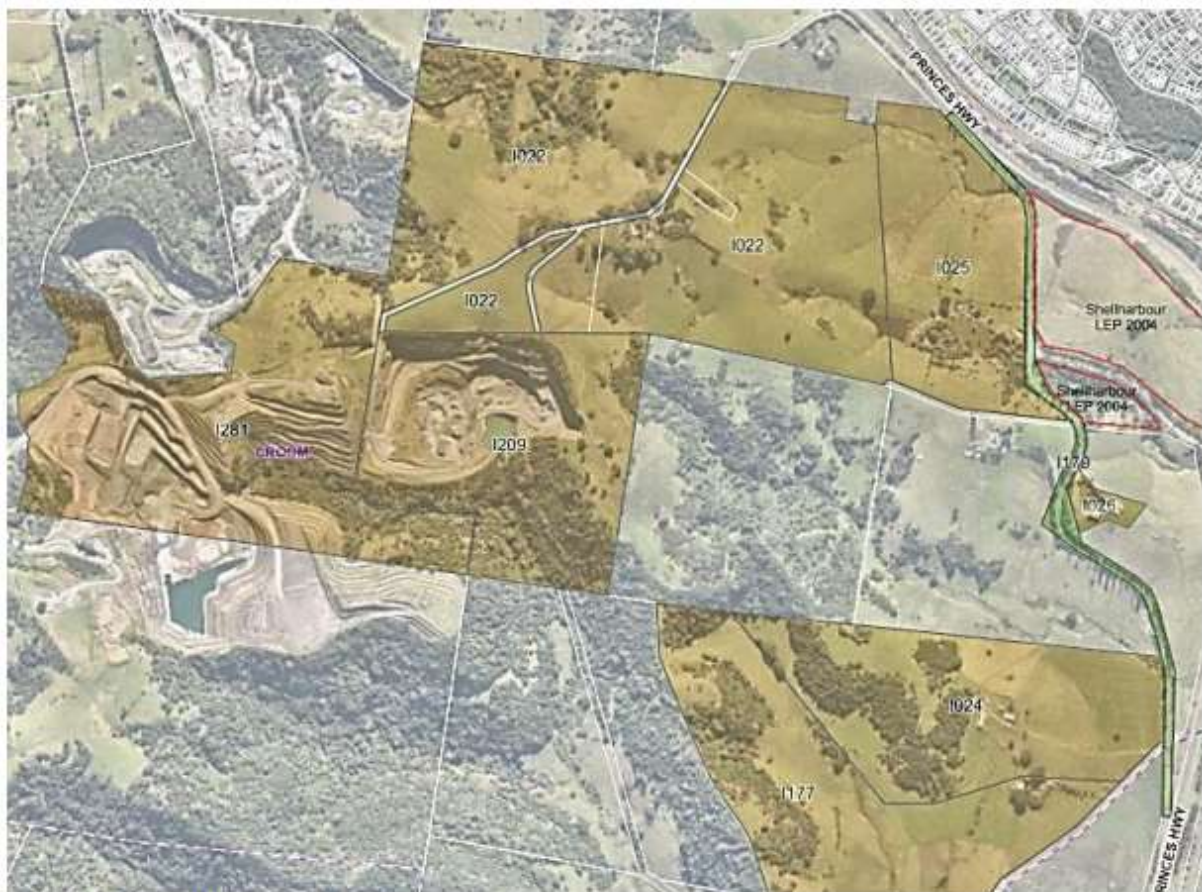


Figure 2 - Heritage Items Location Map

This part of Shellharbour is a cultural landscape where the individual heritage items are connected by views, topography and historical associations. The setting of this cultural

landscape is the location above the coastal plain within the backdrop of the Illawarra Escarpment. Individual heritage items cannot be considered in isolation of this cultural landscape. The statement of significance for each heritage item demonstrates the important interrelationships between these items that together comprise the cultural landscape.

It is proposed to demolish 'Belmont'. The heritage impact assessment determined that the demolition of Belmont was permissible from a heritage perspective based upon the findings of a structural integrity report submitted. The report states:

The purpose of this report is to detail the assessment of the existing structure as measured against the current Australian Standards and provide commentary on the suitability of the structure for future use.

Measuring the structure against current codes is problematic for buildings such as Belmont that were not constructed according to these codes. When assessing older buildings constructed prior to the introduction of the codes a performance-based approach is more useful. The report is dated 5 November 2018 and states that the Belmont building is in a severe state of dilapidation. A dilapidation report dated April 2018 by Design 5 Architects did not identify "severe dilapidation". Only 8 out of 88 photographs described any damaged fabric. The current condition has not been assessed. As the heritage impact assessment conclusion is based upon the structural assessment it is essential that an up-to-date structural assessment is prepared. The assessment should be prepared by structural engineers familiar with using performance criteria to assess heritage buildings.

2.5.3 Impact upon cultural landscape.

The heritage impact assessment has provided an analysis of the impact upon building fabric and archaeological potential. There are numerous heritage items in the vicinity as discussed above, which together create an important cultural landscape which tells the early history of Shellharbour and has aesthetic values in the context of the Illawarra Escarpment.

The extension to the quarry will expand the existing incision into the landscape which will have a physical impact upon the cultural landscape. Council is concerned that the proposed mitigation measures together with the impact of excavation is not in keeping with the history and character of the cultural landscape. The mitigation measures, excavation, vehicle movements, noise and dust will be detrimental to the integrity of the heritage items and their cultural landscape.

The heritage significance of heritage item I209 will be lost due to loss of all significant fabric. The setting and view of heritage item I022 will be adversely impacted by the proposal. The heritage significance of the Croom and Dunmore cultural landscape as defined by heritage items I209, I022, I281, I177, I024 and I025 will not be conserved or protected by the proposed development.

Council recommends that Heritage Management Plan is updated as part of the EIS and not subject to condition to allow suitable assessment and review to be carried out.

2.7 Visual Impact

Reference is made to the Visual Impact Assessment, Figure 2. Recommended visual mitigation measures include extending existing northern side amenity barrier by 170m east, plus a 500m long screen along the eastern side of Stage 7.

Section 3.12.6.1 & .2 of the EIS discuss rehabilitation including amenity barrier and 3m wide terraces. Council raises concern that at this narrow width, monitoring, maintenance and watering may be an issue. Confirmation of how this will be carried out is required.

Visual impacts on the nearby school (Shellharbour Anglican College) and some surrounding residents also need to be considered as to whether this expansion will be visible from the new Shellharbour Hospital site in Dunmore.

Council recommends that timing for delivery of landscaped amenity barriers and maintenance as conditions of consent if the expansion is supported.

2.8 Traffic & Transport

It is noted that 900,000Tpa extraction limit does not change as approved under LEC mod. consent 10639-2005. Therefore no increase in production rate and no increase in traffic from site. The extension of quarry operations will result in approximately 30+ years of works at the site which will have long term traffic impacts.

It is acknowledged that general traffic flow along the East West Link will increase with the growth of the Shellharbour area, together with the bike lanes. Council requests that a condition of consent that stipulates the quarry access road and the East West Link road surface is regularly cleaned to maintain delineation and reduce the risk of slippery road surface, especially in the bike lanes

Council is currently in discussion with TfNSW regarding the street lighting along the East West Link, it is recommended that the applicant is required to provide street lighting from the site to the East West Link as part of the proposed extension.

2.9 Waste

As a quarry it is noted that minimal waste is generated from extraction of rock material from the site, with all rock extracted then crushed on site for delivery to market. Residual material is natural and may be recycled on-site as fill following completion of each stage.

2.10 Bushfire

The Project Area is within land mapped as Bushfire Prone Land. As State Significant Development, a bushfire assessment is not required nor is concurrence required from the NSW Rural Fire Service. Notwithstanding, in considering bushfire risk, the determining authority need to be satisfied that the proposal will not:

- increase risk of bushfire attack to the site;
- hinder emergency egress from the site, or emergency access to the site;
- affect water supply for purposes of bushfire fighting, noting supply being available from the water sumps at the base of each pit.

3 Social Impact Assessment

3.1 Economic

The proposal will continue to support local employment opportunities for a large number of residents, providing benefits to these families in the Shellharbour Local Government Area.

Cleary Bros also supports local infrastructure projects, which have a positive impact on the Shellharbour community.

The proposal will maintain the existing extraction rate / production of 900,000 tonnes / year, thereby maintaining employment for all existing quarry staff.

The EIS states that not proceeding with Stage 7 would result in the quarry being depleted of material to extract by 2026, whereas approval would allow operations to continue for 30 years, followed by site rehabilitation.

The Project would provide a total of 219 jobs and \$90M in output, \$36M in value-added, \$18M in gross wages annually.

3.2 Crime Prevention Through Design

Council considers it important to consider access control into the site, for example locks, bars and alarms. This is particularly important as there is very limited passive surveillance and it may be attractive to vandals as it is isolated.

3.3 Hazards

No change is sought to the approved activity on-site or the project boundary. Compliance with safety regulations are the responsibility of the quarry operator within the site and staff working within the site and travelling to / from the site.

With no increase in frequency of blasting, the demand for dynamite supplies (dangerous goods) will not increase, thereby resulting in no increase in risk to traffic safety caused by transporting these to the site.

4 Rehabilitation

The submitted information states that the applicant will:

“Prepare and implement a Biodiversity Management Plan detailing the biodiversity mitigation and management measures required at the Quarry. This plan would include procedures for the monitoring of rehabilitation outcomes and describe the implementation of the proposed staged biodiversity offsets described in Section 3.13.4.”

This is a critical commitment. It is recommended that provision of a Biodiversity Management Plan be a condition of consent required for submission prior to commencement of works. Further details are requested confirming the applicants legal commitments to rehabilitating the site – whether in the EPL or a Deed of Agreement with the NSW Government.

5 Council recommendations

1. Air monitoring sampling to be taken on a weekly basis
2. An additional dust gauge on the western side of Stage 7
3. More thorough engagement with the Aboriginal community
4. Timing for delivery and maintenance of landscaped amenity barriers
5. Management Plans noted as being updated subject to consent need to be updated as part of the proposal and/or prior to commencement of works
6. Water quality monitoring carried out biannually
7. Details of mitigation measures for water discharge
8. Details of rehabilitation commitments and how they are to be enforced
9. Street lighting strategy from the site to the East West Link be provided

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10. Cleaning maintenance plan required for Quarry Access Road and adjoining East West link, including bike lanes.
11. Response to the general comments made at Section 2.4

Please contact me should you require any further information or wish to discuss the above.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Ben Stewart'.

Ben Stewart
Acting Chief Executive Officer