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22 October 2021

Carl Dumpleton
Team Leader – Resource Assessments
Department of Planning, Industry and Environment
12 Darcy Street
PARRAMATTA NSW 2150

Dear Carl,

Re: Hitchcock Road Quarry – MOD1 Request for Information

Further to the Department's request for information and correspondence from yourself dated 15 October 2021, we provide the following additional information.

1. Buffer Zone

As discussed with the Department, extraction was always anticipated within the 10m buffer zone with Lot 2 DP 555184 (Lot 2). However, during the submissions stage for existing approval, Council raised concerns with the setbacks provided. The March 2008 Response to Submission (RTS) proposed revised setbacks, however, no setback was proposed with Lot 2 (see attached Figure 3.2 from the 2008 RTS). This was because a previous approval had been issued by the Land and Environment Court in 1998 for extraction within Lot 2. However, the landowner at that time planned to submit a separate proposal to Council in lieu of the 1998 approval.

Despite this, agreement was not reached with Council in relation to the proposed setbacks and the (then) Department of Planning noted the following in their January 2009 Assessment Report.

"Baulkham Hills Shire Council (Council) raised a number of matters in relation to setbacks of the extraction area from adjoining properties and roads. Council requested that all setbacks comply with the provisions of Baulkham Hills Development Control Plan Part D, Section 6, Extractive Industries, September 2007 (DCP). In Council's opinion, PF Formation's claim that setbacks are not required to Lot 2 DP 555184 may not be valid as Council has received no application for sand extraction in respect of that property."

As a result of PF Formation and Council being unable to come to agreement on this matter, Project Approval 06_0104 was issued with the following requirement in Schedule 3 Condition 2.

2. Notwithstanding the layout plans in Appendix 2, the Proponent shall not undertake extraction within:

(b) 10 metres of the property boundary of Lot 2 DP 555184, unless sand extraction has commenced on that lot, and extraction in this buffer has been agreed by the Director-General

Since grant of the Project Approval, PF Formation has purchased Lot 2 and commenced sand extraction in accordance with Land and Environment Court issued DA 96/077 (see attached). As such, PF Formation seeks agreement from the Director-General (now Planning Secretary) for extraction within the buffer zone in accordance with the existing conditions of consent rather than through the current modification application.

In seeking agreement, it is noted that a section of existing vegetation is not proposed to be extracted and agreement is not sought for this area. This area is identified in an updated version of Figure 2 from the June 2020 Statement of Environmental Effects (see attached) and has been defined as an area of existing vegetation to be retained in the final land use. Whilst PF Formation believe that they are approved to extract part or all of this vegetation, it is recognised that retention of the vegetation will have ecological benefit and will not cause any significant impact upon ongoing extraction operations.

It is respectfully requested that this matter be resolve prior to finalisation of the MOD1 application.

2. Statement of Commitments

We have further reviewed the Statement of Commitments and provide the attached updated Statement of Commitments in response to the Department's feedback. We trust that the minor adjustments fully address the Department's feedback.

3. Conditions of Consent for Imported Material

The draft Conditions of Consent *Schedule 3 Condition 35* includes the following note.

"Note: Importation of material is only approved where an applicable Resource Recovery Order and Exemption, issued in accordance with Clauses 91 and 92 of the Protection of the Environment Operations (Waste) Regulation 2014 (or its latest amendment), is in place and which allows the material to be received to the development Site and either processed or applied to land."

We agree and support this note. However, it was requested that this alternatively or additionally be reflected directly in the wording of the condition in the same or similar manner as the note to remove any uncertainty.

We note that this matter has created some confusion and have had various discussions and correspondence with various Departmental officers regarding this matter. To summarise the main points of these discussions, the Resource Recovery Exemptions and Orders are issued for a specific purpose (e.g. application to land or for recovery as an extractive product) and outline testing, management and documentation requirements, all of which is auditable by EPA under the Protection of the Environment Operations (POEO) legislation and, with appropriate wording in the development consent (such as above), can be auditable through the independent audit process.

If there was a concern that a material may not be suitable for application to land (for example) it is understood that an exemption and order would not be issued by EPA. Furthermore, if a special / specific exemption is applied for, appropriate justification, material classification and testing must all be included as part of that process under the POEO legislation. The EPA's guideline document for this process is a useful reference (<https://www.epa.nsw.gov.au/-/media/epa/corporate-site/resources/wastegrants/rre-exempt-fill.pdf?la=en&hash=8ED9ABCB85F2F6656D9808240BE6F95EBBBFF24D>).

As orders and exemptions are not static with new and updated orders and exemptions issued over time, the modification application does not include specific details of the material types or a set list of orders and exemptions. Rather, the application seeks the Project Approval to allow for receipt of any material that has an applicable order and exemption which allows for that material to be either processed as a saleable product or applied to land for the purpose of creating the final landform at the Hitchcock Road Sand Project.

Notably, the EPA already include conditions within Environment Protection Licences for other sites which, rather than restricting imported material to either VENM or ENM, provide for importation of any material with an applicable resource recover order and exemption. An example of such a condition is reproduced below.

L3 Waste

L3.1 The licensee must not cause, permit or allow any waste to be received at the premises, except the wastes expressly referred to in the column titled "Waste" and meeting the definition, if any, in the column titled "Description" in the table below.

Any waste received at the premises must only be used for the activities referred to in relation to that waste in the column titled "Activity" in the table below.

Any waste received at the premises is subject to those limits or conditions, if any, referred to in relation to that waste contained in the column titled "Other Limits" in the table below.

This condition does not limit any other conditions in this licence.

Code	Waste	Description	Activity	Other Limits
NA	General or Specific exempted waste	Waste that meets all the requirements of a resource recovery order/exemption under Clause 92 of the Protection of the Environment Operations (Waste) Regulation 2014	As specified in each particular resource recovery exemption	NA

Given that this matter involves cross jurisdictional legislation and processes, we would be more than happy to further discuss this with DPIE and EPA.

4. Limits for Importation of Material

Whilst we believe that the operations are self-limiting on the volume of material that can practicably be imported, as requested, it is proposed that an upper limit of 250 000tpa of imported material be conditioned. This would provide for peak years of importation and would readily be accommodated within the existing transportation limits.

We trust the above information is satisfactory for the finalisation of the MOD1 application. However, if you would like any further information or would like to discuss any matter, please don't hesitate to contact Mr Scott Hollamby of R.W. Corkery & Co (0437 858 511) or myself (0418 439 923).

Yours sincerely



Joshua Graham
Managing Director

Encls: 2008 RTS – Figure 3.2
DA 96/077
SoEE – Updated Figure 2
Updated Statement of Commitments