

ASSESSMENT REPORT

Lynwood Quarry Independent Environmental Audit and AEMR Modification (DA 128-5-2005 Mod 3)

1 BACKGROUND

Holcim (Australia) Pty Ltd (Holcim) owns the Lynwood Quarry, located approximately 3 kilometres (km) west of Marulan and approximately 27 km northeast of Goulburn (see Figure 1). On 21 December 2005, the then Minister for Planning granted development consent for the construction and operation of the Lynwood Quarry. The development consent was subsequently modified in April 2009 to reduce the western extent of the approved quarry footprint and alter the layout of site infrastructure. The development consent was further modified in March 2011 to reconfigure site infrastructure, increase the allowed movements of heavy vehicles during construction and alter construction access routes.



Figure 1: Quarry Location

The modified consent allows the extraction of 5 million tonnes per annum (Mtpa) of hard rock and transportation of a maximum of 1.5 Mtpa of quarry products via road, with the remaining product being transported via rail, to domestic markets. The consent is due to lapse in 2038. The quarry is partially constructed and is expected to commence operations in 2013. A plan depicting the approved quarry layout is provided in Figure 2 below.

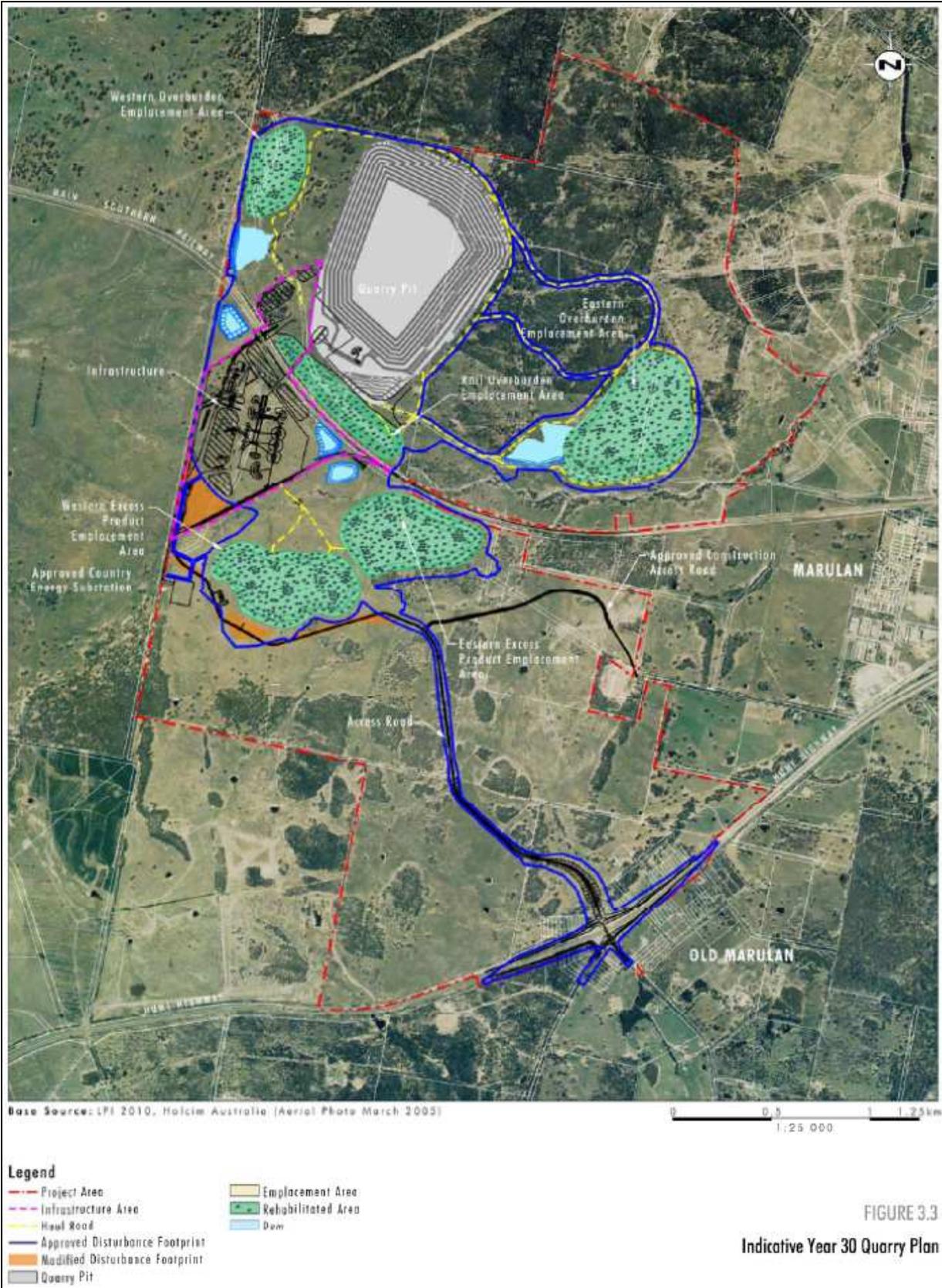


Figure 2: Approved Quarry Layout

2 PROPOSED MODIFICATION

On 17 June 2011, Holcim applied to modify its development consent under section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act). The proposed modification involves varying the date for submission of the first Annual Environmental Management Report (AEMR) and the date for commissioning the first Independent Environmental Audit (IEA) for the development. The key reason for the proposed modification is so the AEMR and IEA can more fully capture the overall scope of on-site construction activity, since construction activity did not commence until November 2010.

3 STATUTORY CONTEXT

3.1 Consent Authority

The Minister was the consent authority for the original development application and is therefore the approval authority for the modification application. However, the Director, Mining and Industry Projects may determine the application under the former Minister's delegation of 25 January 2010. The Minister's delegation of 28 May 2011 confirmed that this delegation would continue to operate in circumstances where the local council has not objected to the proposal, less than 25 public submissions in the nature of objections had been received, and where there had been no reportable political donations, which is the present case. Consequently, the Director, Mining and Industry can determine the application.

3.2 Modification

Under clause 8J(8)(c) of the *Environmental Planning and Assessment Regulation 2000*, section 75W of the EP&A Act applies to any modification of a development application for State significant development validly lodged before 1 August 2005. DA 128-5-2005 was lodged prior to 1 August 2005 (although it was determined on 21 December 2005); and it must therefore be modified under section 75W of the EP&A Act. Consequently, section 75W of the EP&A Act is the appropriate statutory provision under which the modification application is to be determined.

The proposed modification involves two changes to the consent - variations to the date for the submission of the first AEMR and for the commissioning of the first IEA. As these changes would have minor implications for the development and negligible effects on the approved quarrying operations and resultant environmental impacts, the Department is satisfied that they can appropriately be characterised as a modification to the original consent, and that the application may be determined under section 75W of the EP&A Act.

4 CONSULTATION

Under section 75W, the Department is not required to undertake consultation or exhibit the modification application. Due to the minor nature of the proposed modification, the modification request was not exhibited. However, the modification application was publicised on the Department's website, via the site's Major Project Register. No public submissions were received on the modification request. The Department also referred the application to Goulburn Mulwaree Council, which did not object to the proposed modification.

5 ASSESSMENT

The proposed modification involves varying the date for the submission of the first AEMR and the date of commissioning the first IEA for the development.

5.1 Annual Environmental Management Report

The original consent (condition 6 of schedule 5) requires Holcim to submit the first AEMR to the Director-General and relevant agencies within 12 months of the date of the original consent (which was 21 December 2005) and annually thereafter. Holcim has not complied with this condition over the past 5 years. Its key reason for this is that there has been no construction activity to report against. Now that construction has begun, Holcim has proposed that the first AEMR should be submitted before the end of 2011, and cover the first eight months of significant construction activity (to end June 2011). Holcim has further proposed that the following AEMRs should cover activities undertaken during its financial year (July to June), rather than 12-month periods tied to the actual date of consent.

Under the consent, the AEMR is required to include such things as a description of the works carried out in the last 12 months and those that will be carried out in the next 12 months, a summary of the complaints received during the previous year, monitoring results over the previous year, and an analysis of these results against the relevant impact assessment criteria/limits in the consent and the predictions in the development's environmental impact statement. Since construction activity only commenced on the site in November 2010, no substantial information relating to complaints, monitoring results and non-compliances can have arisen over the last 5 years.

The consent includes other conditions which refer to the AEMR. Conditions 4(c), 53(d) and 58(b) in schedule 3 require noise management and minimisation, waste management and minimisation and annual production data to be reported in the AEMR, respectively. As no development-related activity was undertaken for nearly 5 years, there has been no need to manage and minimise noise and waste and no available production data to report.

Condition 25(b) of schedule 3 also refers to the AEMR, requiring the results of annual Water Management Plan (WMP) reviews for the development to be reported in each AEMR, including ground and surface water monitoring results, the details of the review for each sub-plan of the WMP and also measures undertaken/proposed to address any identified issues. This information has been included in the revised WMP provided to the Department following approval of Mod 2 (relating to site infrastructure configuration). The revised WMP incorporates the required information for the last 5 years and the Department is therefore satisfied that the requirements of condition 25(b) have been effectively addressed through the revised WMP.

While the Department is of the view that failure to lodge an AEMR for each of the five years since consent was granted in December 2005 is a technical non-compliance by Holcim, it accepts that no environmental harm has resulted. Further, the Department notes that this 5-year delay in beginning construction was not considered to be a likely scenario during its original assessment, and that consent conditions were drafted in the expectation that construction would be begun shortly after consent was granted.

The delay in submission of an AEMR has had negligible implications for the proper management of the development, and the Department accepts that the proposed modification is reasonable.

5.2 Independent Environmental Audit

The original consent (condition 7 of schedule 5) also requires Holcim to commission an IEA within 3 years of the original date of consent, and every 5 years thereafter. Holcim has proposed that the first IEA is commissioned before the end of 2011, with its timing designed to capture all significant construction activities, and that the next IEA should take place in 2016.

The IEA is required to undertake such things as assess the environmental performance of the development and its effects on the surrounding environment, assess whether the development is complying with relevant standards, performance measures and statutory requirements, and recommend measures or actions to improve the environmental performance of the development and/or any strategy, plan or program required under the consent. Since no development-related activity was undertaken on the site until November 2010, an IEA to assess the development's compliance with relevant standards, performance measures, statutory requirements and its environmental performance and effects on the surrounding environment would have been of very little benefit and no practical application.

While the Department is of the view that failure to commission the first IEA within three years of the original date of consent is a technical non-compliance by Holcim, it accepts that no environmental harm has resulted. The delay has had negligible implications for management of the development's environmental performance, and the Department accepts that the proposed modification is generally reasonable.

However, the Department has recommended that the second IEA be commissioned by the end of 2014 instead of Holcim's proposal for the end of 2016, to better reflect the initial intention of condition 7 of schedule 5. This was that the first IEA would cover the 18-24 month period of construction activity and 12-18 months of operation (rather than a 12-14 month portion of the construction period, with no operational audit until after three years of operations). Holcim's revised development schedule sets out that construction would be completed by the end of 2013 and that operation would commence early in 2014. In light of this schedule, the Department's view is that the second IEA should be commissioned by the end of 2014, to fulfil the original intention of condition 7 of schedule 5. After this audit, the Department agrees that the period between audits can be extended to five years.

6 CONCLUSION

The Department has assessed the proposed modification in accordance with the relevant requirements of the EP&A Act, including the objects of the EP&A Act and the principles of ecologically sustainable development and accepts that Holcim's delays in submitting the first AEMR and commissioning the first IEA for the development has had negligible implications for the proper management and regulation of the development. The Department considers that revised conditions of consent to provide an alternative timetable for the submission of the first AEMR and the first IEA are justified, in the circumstances, but has proposed an additional audit three years after the first audit proposed by Holcim.

7 RECOMMENDED CONDITIONS

The Department has prepared recommended modified conditions to the consent to require the submission of the first AEMR by the end of September 2011, and the commissioning of the first IEA by the end of 2011 and the second by the end of 2014. Holcim has reviewed and accepted these conditions.

8 RECOMMENDATION

It is RECOMMENDED that the Director, Mining and Industry Projects, as delegate of the Minister:

- **consider** the findings and recommendations of this report;
- **determine** that the proposed modification is within the scope of section 75W of the EP&A Act;
- **approve** the proposed modification under section 75W of the EP&A Act; and
- **sign** the attached Notice of Modification (Tag A).


Howard Reed
19.8.11
Manager, Mining Projects


David Kitto
19/8/11
Director, Mining and Industry Projects