Preliminary Environmental Assessment

South Coast Concrete Crushing and Recycling Pty Ltd

ABN: 76 095 243 584

Lot 464, Deposited Plan 1058778

Prepared by:

PLANNING
BUILDING
HERITAGE
LANDSCAPE
URBAN DESIGN
CITY PLAN SERVICES

and

R.W. CORKERY & CO. PTY. LIMITED

South Coast Concrete Crushing and Recycling Pty Ltd

ABN: 76 095 243 584

Preliminary Environmental Assessment

for the

Continuation and Expansion of Extractive Operations at the Nowra Brickworks Quarry, South Nowra

Lot 464, Deposited Plan 1058778

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CITY PLAN SERVICES

R. W. CORKERY & CO. PTY. LIMITED

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1 INTRODUCTION

This *Preliminary Environmental Assessment* has been prepared by City Plan Services Pty Limited and R.W. Corkery & Co. Pty. Limited on behalf of Abib Pty Ltd and South Coast Concrete Crushing and Recycling Pty Ltd ("*The Proponent*") in respect to their proposal to continue to undertake extractive operations within Lot 464, DP1058778, Princes Highway, South Nowra, also known as the "*Nowra Brickworks Quarry*" (**Figure 1**).

The preparation of this *Preliminary Environmental Assessment* follows confirmation from the Director-General, as delegate for the Minister for Planning, that, under Clause 6(1) of *State Environmental Planning Policy (Major Projects) 2005*, the subject proposal constitutes development as set out in Schedule 1 of the Major Projects SEPP, and is therefore declared to be "*a project*" to which Part 3A of the *Environmental Planning and Assessment Act 1979* applies (refer **Appendix A**).

The subject site comprises two adjoining areas, comprising part of Mineral Lease (ML) 5087 and ML6322 which for the purposes of this document are referred to as the "*Project Site*" (**Figure 2**). Specifically, the works proposed involve the continuation of extractive operations within ML5087 and the recommencement and expansion of extractive operations within ML6322.

In accordance with the requirements of the letter of confirmation from the Department of Planning dated 10 April 2007, this *Preliminary Environmental Assessment* addresses the following issues.

- Background on the existing operations and the Project Site.
- An outline of the project.
- Details of the permissibility and relevant statutory controls.
- An overview of the local area/land uses surrounding the Project Site.
- An overview of the environmental issues (including identification and consideration of the key issues).
- The outcome from preliminary community consultation.

The purpose of this *Preliminary Environmental Assessment* is to inform the relevant government agencies of the project outline and scope and assist with the preparation of the Director-General's Requirements under Section 75F of the *Environmental Planning and Assessment Act 1979*.

2 THE PROJECT TEAM

This *Preliminary Environmental Assessment* has been prepared by City Plan Services Pty Limited and R.W. Corkery & Co. Pty Limited.

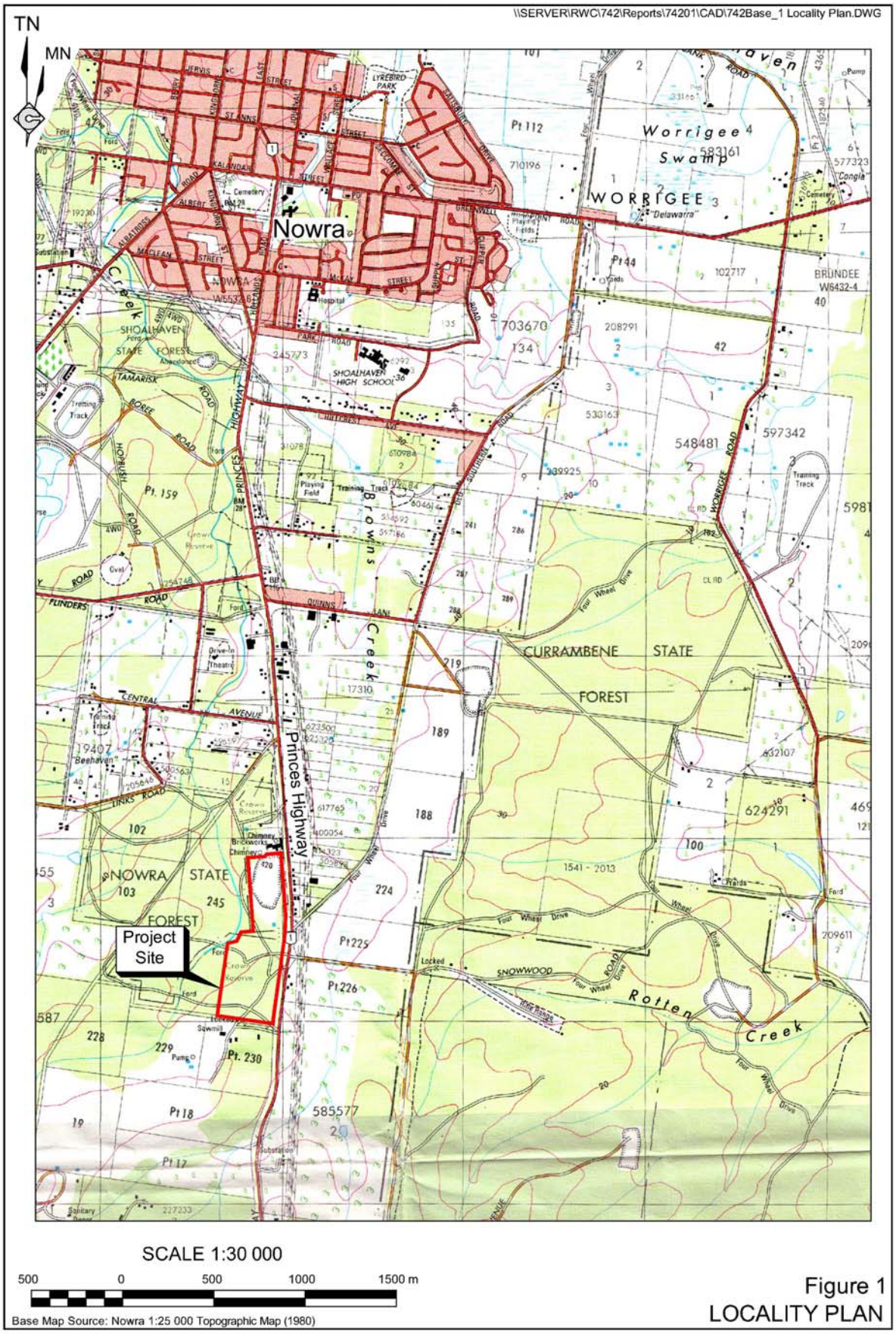

Figure 1
LOCALITY PLAN

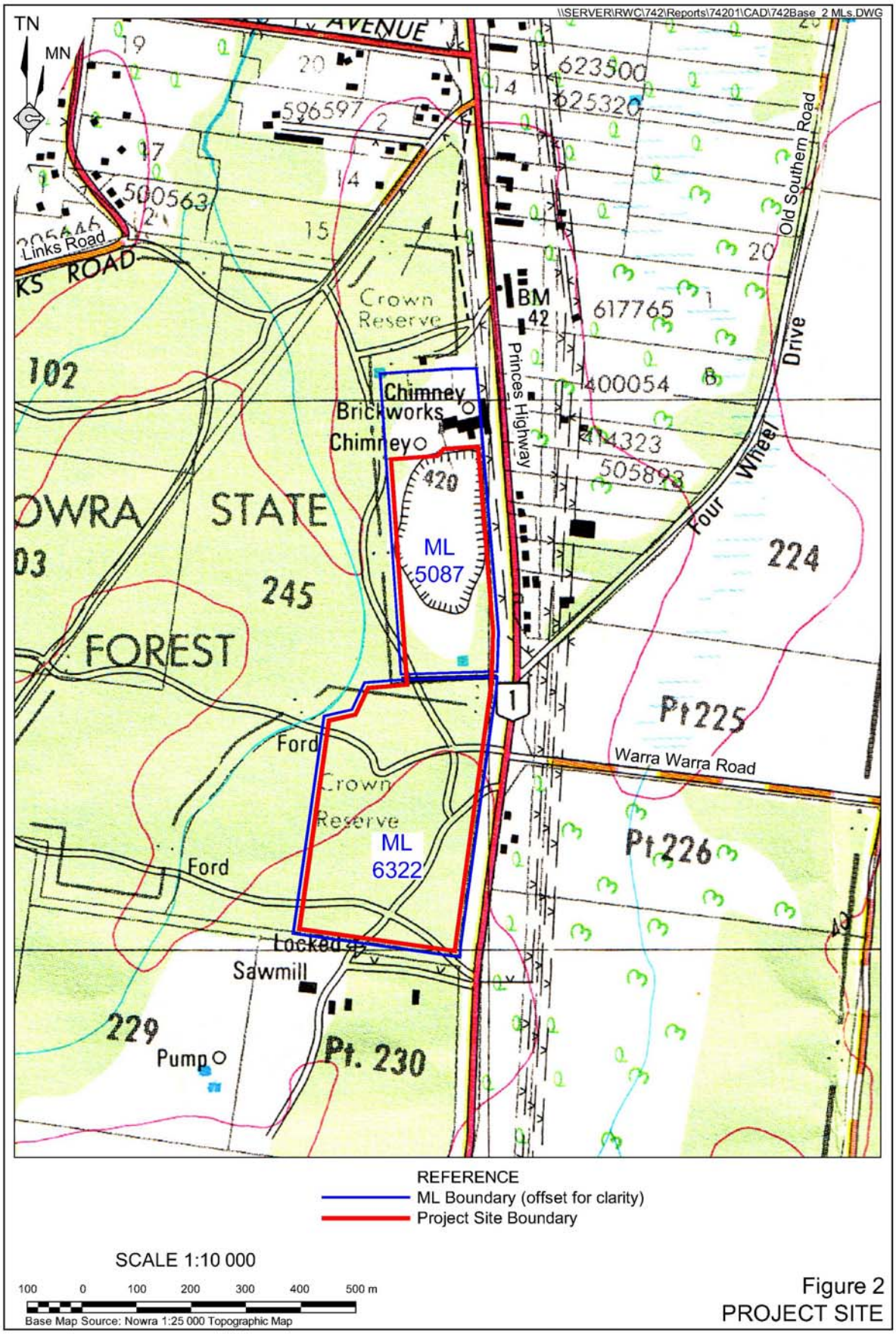

Figure 2
PROJECT SITE

City Plan Services Pty Limited has undertaken the initial preparation of this document and supervision of the Specialist Consultants engaged to review the relevant environmental issues related to the Project.

R.W. Corkery & Co. Pty Limited has provided specialist technical advice, undertaken the quarry design, prepared the Project Outline section of this *Preliminary Environmental Assessment* and drafted the figures presented in this document.

A range of Specialist Consultants have been engaged to review the relevant environmental issues related to the Project. These Specialist Consultants are as follows.

- Douglas Partners (geology and resource delineation).
- Martens and Associates Pty Ltd (hydrology).
- Gaia Research Pty Ltd (ecology).
- Heggies Pty Ltd (air quality and noise).
- John Coady Consulting (traffic).
- Rob Paton (Aboriginal heritage).

3 THE PROJECT SITE AND SURROUNDINGS

The Project Site is located at South Nowra, approximately 5km south of the Nowra CBD, on the western side of the Princes Highway, and falls within the administrative area of Shoalhaven Council.

The Project Site comprises part Lot 464, DP 10568778 and incorporates two mineral leases, namely ML5087 (part) and ML6322. The location of the Project Site and the mineral leases are illustrated on **Figure 2**.

For identification purposes a survey plan, prepared by Surveyor Ivan Wady is attached at **Appendix B**. This plan details the boundaries of the Project Site and in particular the geographical relationship between ML5087 and ML6322. The area of ML5087 is approximately 10ha and ML6322 comprising approximately 14ha.

Figure 3 illustrates the land uses surrounding the Project Site. These land uses include:

- a saw mill;
- vacant crown land, proposed to be used for the purpose of a correctional facility;
- a brickworks;
- existing and proposed industrial development; and
- existing and proposed rural residential development.

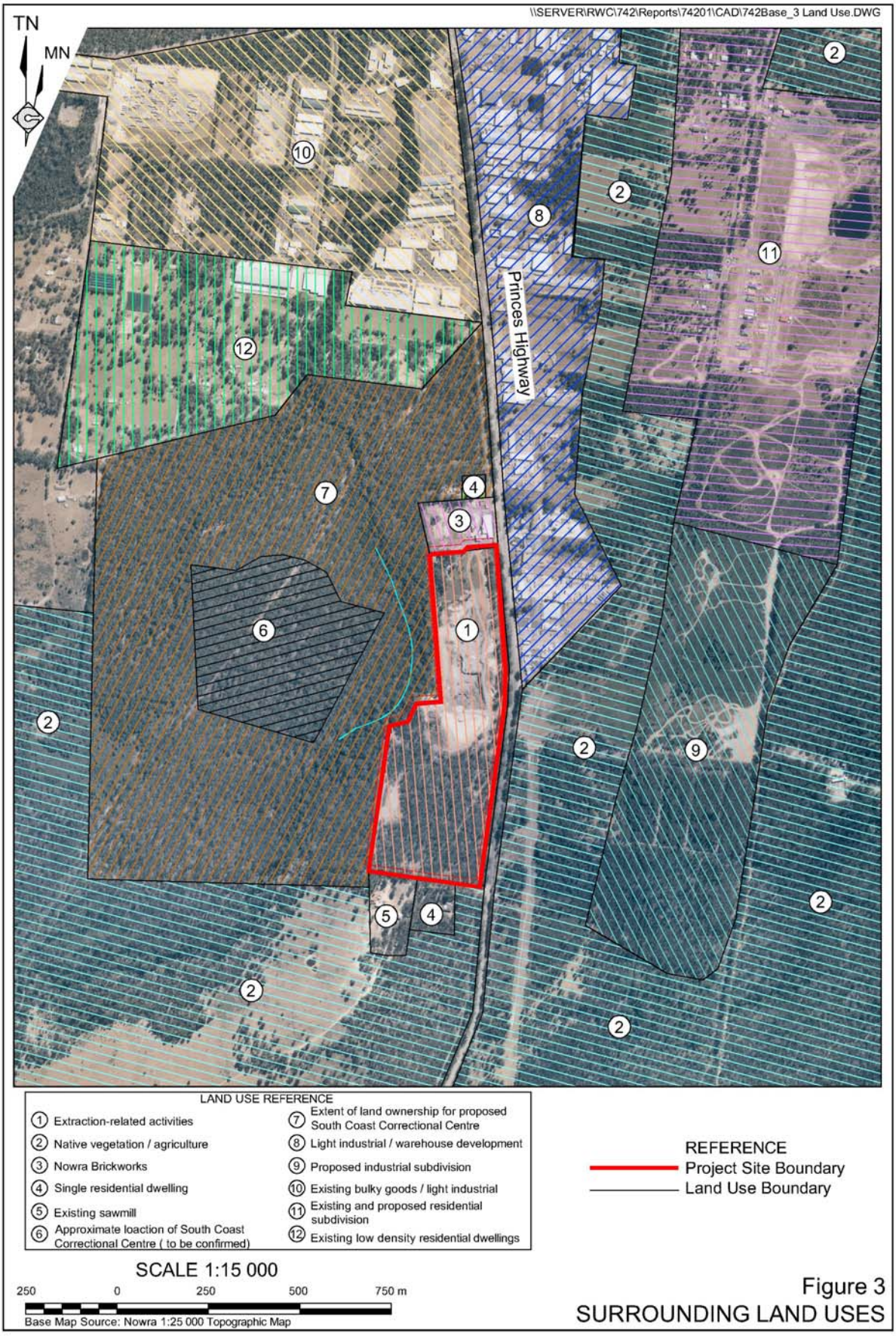

Figure 3
SURROUNDING LAND USES

Photo 1 - ML5087 Looking North

Photo 2 - Extractive Operations on ML5087

Photo 3- ML5087 Looking South

Photo 4 - Weighbridge and Offices

Photo 5- Access through ML6322

Photo 6- Existing Bunds on ML6322

Land uses within the Project Site include:

- extraction-related activities;
- water storage;
- visual and acoustic bunds; and
- native vegetation.

The primary products produced by the existing extractive operation are gravels used for road maintenance and construction purposes. These products are used for major road and infrastructure projects throughout the Shoalhaven area. White and brown shale is also sold for general control filling and local farm use.

4 BACKGROUND & HISTORY TO THE PROPOSALS

Abib Pty Ltd is the holder of both ML5087 and ML6322. South Coast Concrete Crushing and Recycling Pty Ltd SCCCR has operated the extractive operations within both ML5087 and ML6322 since the Mineral Leases were acquired from the previous operator in 2002.

ML5087 was granted on or about 8 January 1948 and ML6322 was granted on or about 8 March 1972. Both leases have been subsequently renewed and have expiry dates of 8 January 2019 and 8 March 2020 respectively.

The Proponent was a Respondent to proceedings brought in the Land and Environment Court of New South Wales by three competitors, Normans Plant Hire, Tomerong Quarry and South Coast Resources Pty Ltd. These proceedings commenced in October 2005 and sought a declaration that the Proponent's extractive operations on both ML5087 and ML6322 were unlawful in so far as these activities were undertaken without development consent.

The matter was subject to a preliminary hearing dated 5 July 2000 and has now been the subject of a formal Judgment dated 24 November 2006 by His Honour Justice Lloyd. For information, a copy of this Judgment has been attached to this submission at **Appendix C**.

In summary, His Honour considered that the current operations on ML5087 are lawful.

In the case of ML6322, His Honour found that extraction-related activities were undertaken without development consent. As the original development consent granted on 24 September 1971 for the carrying out of an extractive industry had lapsed prior to the commencement of the *Mining Act 1973*, the carrying out of mining operations under ML6322 requires development consent. Extraction-related activities within ML6322 are therefore not an approved activity and have been discontinued.

As a result of recent changes to the *Mining Act 1992*, the existing operations on ML5087 will require approval under the *Environmental Planning & Assessment Act 1979* by the end of 2007. Therefore, through discussions with the Department of Planning, it was agreed that the continuation and expansion of extractive operations from within ML5087 and ML6322 would be included within this application.

5 PROJECT OUTLINE

5.1 Introduction and Objectives

The Proponent is seeking planning approval for the continued use and expansion of the existing operations at the Nowra Brickworks Quarry. The principal objectives of the Project centre upon the following.

- Ensuring continued long-term, economically viable access to shale resources within the Project Site for the production of a range of high quality general and specialised products for construction, road maintenance and agricultural purposes.
- Undertaking the activities associated with extraction, blending, processing, transportation, placement and rehabilitation operations in a manner that avoids or minimises the impact(s) of these activities upon the environment within and surrounding the Project Site.
- Allowing for the continued recycling of construction, concrete and other similar waste materials for blending and re-use in a number of the products produced by the Proponent.
- Providing for the recycling and placement of virgin excavated natural material (VENM) within the extraction area.
- Undertaking progressive rehabilitation of the areas disturbed by the proposed activities to establish a final landform which mimics the landform within Project Site prior to the commencement of extraction-related activities.

5.2 Project Overview

5.2.1 Project Site Layout

Figure 4 presents the following principal component areas within the Project Site.

- The existing extraction area covering approximately 1.64ha. The floor of the existing extraction area has an elevation of approximately 31m AHD.
- An expanded extraction area covering approximately 15ha. The extraction area would incorporate.
    - a perimeter batter (with a slope of typically 1:3 (V:H)) in weathered, soft rock material from the surface to a depth of approximately 3m;
    - a small perimeter bench at the base of the soft rock material with a width of approximately 2m;
    - a series of near vertical faces with heights of between 10 and 12m, separated by 5m wide benches; and
    - a relatively flat quarry floor with an elevation of approximately 19m AHD.
- A water storage facility to store surface water runoff from the disturbed section(s) of the Project Site for use onsite and possible for use by adjoining land users.

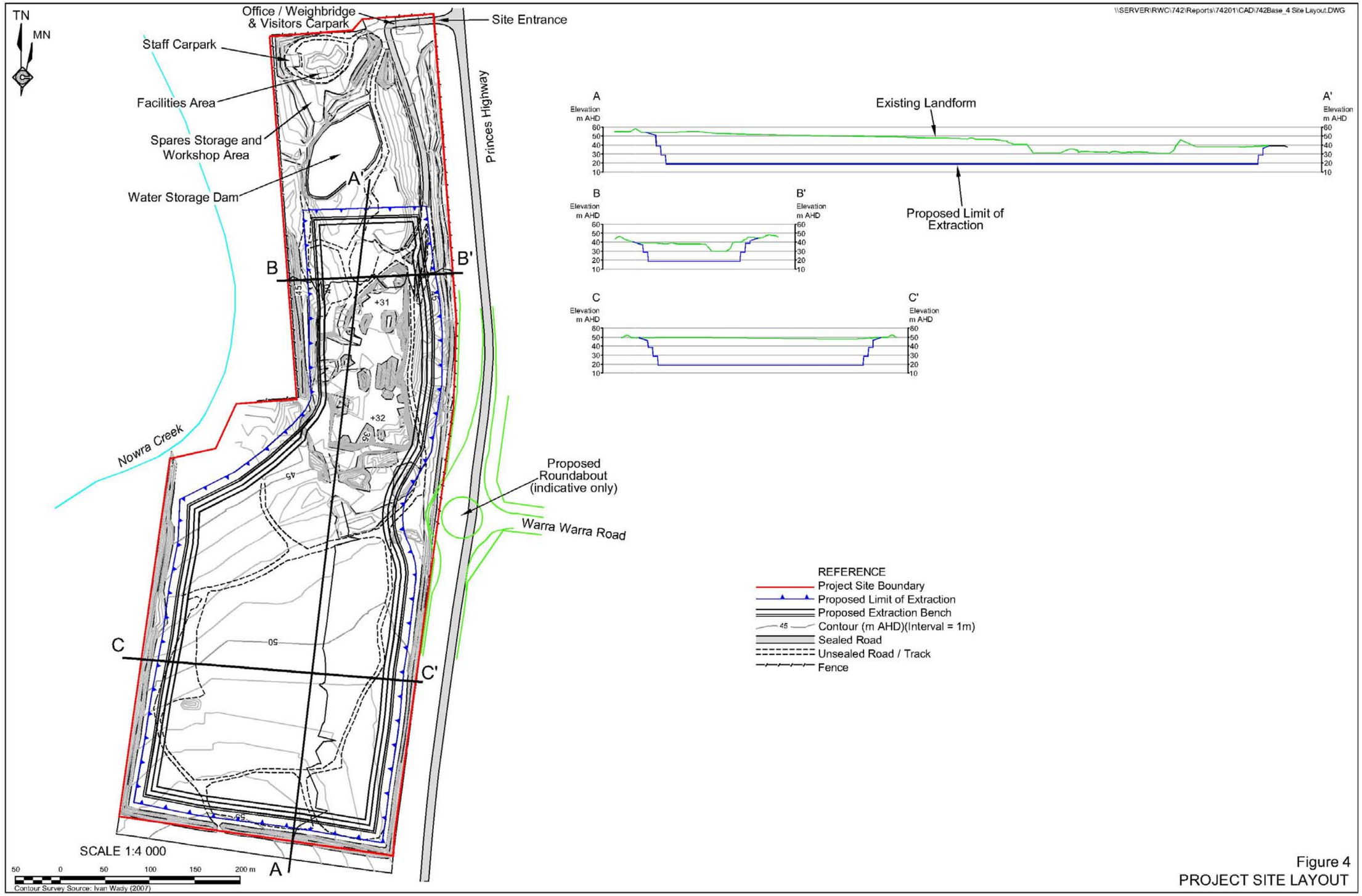

Figure 4
PROJECT SITE LAYOUT

- A facilities area incorporating ablutions facilities.
- A staff carpark.
- A spares storage and workshop area.
- An office, weighbridge and visitor's carpark.
- A site access road that would be sealed from the boundary of the extraction area to the intersection of the site access road and the Princes Highway.

The processing plant would be a mobile plant and would be regularly relocated around the floor of the extraction area.

5.2.2 Extraction Operations

The boundaries of the extraction area would be set back:

- approximately 5m from the base of the existing visual and acoustic bunds adjacent to the perimeter of the Project Site; and
- approximately 15m from the realigned eastern boundary of the Project Site following completion of the design of the proposed roundabout at the intersection of the Princess Highway and Warra Warra Road.

The boundaries of the extraction area in the vicinity of Nowra Creek are yet to be determined precisely. The boundary in this area will be a minimum of 40m from any watercourse defined under the *Rivers and Foreshores Improvement Act 1948*.

Extraction would be undertaken in a staged manner with operations progressing from north to south as indicated on **Figure 5**. Each year, the Proponent would identify the area needed for the following 12 months of operations and, should it be necessary, clear vegetation and topsoil from that area. The required area would be marked out prior to being cleared and stripped of topsoil.

All vegetation in the area to be cleared would be felled by bulldozer and used immediately for rehabilitation-related activities or stockpiled for later use during rehabilitation. After clearing the vegetation, topsoil and subsoil would be stripped. This material would also either be stockpiled or used immediately for progressive rehabilitation purposes.

Once the underlying weathered shale material is exposed, it would ripped and pushed using a bulldozer or removed by excavator to a depth where the material becomes too hard to be extracted using this method. The weathered shale material would be pushed up into stockpiles and processed or sold as a fill material.

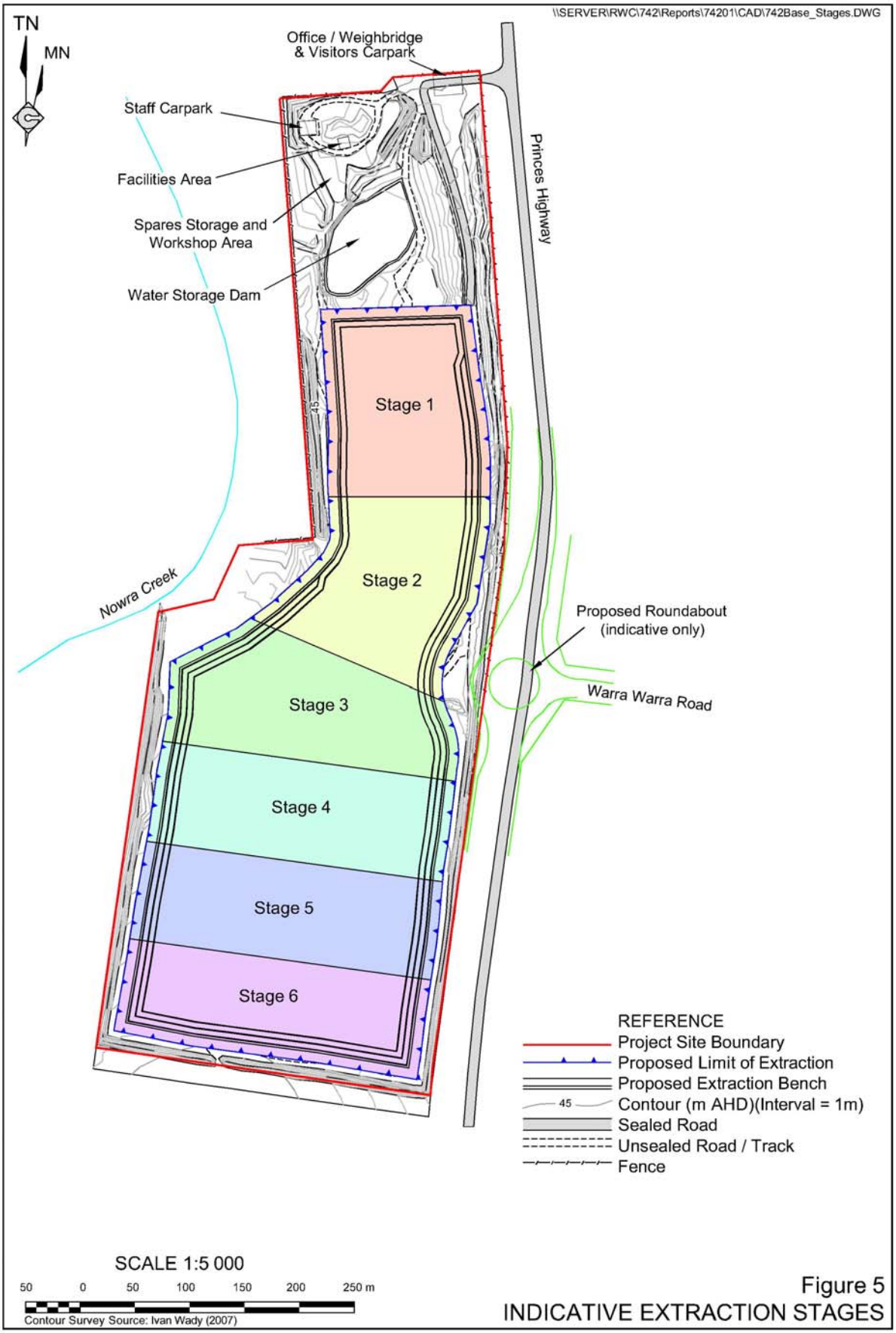

Figure 5
INDICATIVE EXTRACTION STAGES

Where the material becomes too hard to be excavated by ripping and excavation, it is proposed to utilise drill and blast methods. Based upon experience to date, the transition from ripping/pushing to drilling/blasting is anticipated to occur between 3m to 4m below natural surface. All blasts would be designed by a qualified and experienced blasting contractor to:

- achieve the required degree of fragmentation;
- satisfy all environmental criteria;
- contain all blast flyrock within the nominated blast envelope; and
- ensure that there is no requirement to close the Princes Highway during blasting.

Typically, each blast would continue to break between approximately 12 000 bank cubic metres (bcm) and 15 000bcm of rock. It is anticipated that in order to produce an average of 300 000t of products per year between 8 and 10 blasts would be initiated each year. For a maximum production level of 500 000t per year, up to approximately 18 blasts would be required annually.

The extraction rate would vary depending on the demand for quarry products and the availability of suitable materials for recycling and blending with the extracted materials.

5.2.3 Material Importation, Recycling and Placement

At present, approximately 55 000t of material suitable for recycling or blending with material extracted within the Project Site is imported to the Project Site annually. This material includes a small proportion of selected construction and concrete wastes and waste bitumen; with the majority of this material purchased from other quarry operations. All of the imported building and concrete waste material and waste bitumen is reprocessed and blended with material produced within the Project Site to produce saleable products.

The proposed continued and expanded operations would continue to import selected construction and concrete waste material, waste bitumen and quarry products from other quarries for blending with the materials produced within the Project Site to produce saleable products. The annual quantity of these materials that would be imported has yet to be determined and will be detailed in the *Environmental Assessment*.

In addition, the Proponent proposes to import upto 200 000t of VENM per year. A proportion of this material would be reprocessed and blended with other materials to produce a saleable product. The remainder would be placed in completed sections of the extraction area to establish a final landform that mimics the pre-extraction landform within the Project Site. The procedures for certification, verification, placement and compaction of this material have yet to be determined and will be detailed in the *Environmental Assessment*. The procedures will, as a minimum, meet the requirements of the relevant guidelines and focus upon ensuring no inappropriate material is accepted or placed on site.

5.2.4 Sequence of Extraction and Backfilling

The extraction operations will be undertaken broadly in accordance with the sequence shown in **Figure 5.** The active extraction area would typically progress from north to south. Indicatively, the weathered or soft shale material would be extracted from the southern-most section of the active extraction area, with fresh or hard shale material extracted from the central section of the active extraction area. Where extraction and processing-related activities have been completed and final quarry faces have been achieved, VENM material would be progressively placed and compacted. VENM placement would typically occur in the northern-most section of the active extraction area.

5.2.5 Processing and Stockpiling Operations

The current processing operations utilise a mobile crushing plant comprising:

- two jaw crushers;
- one cone crusher;
- two screening plants; and
- associated conveyors and stackers.

It is the Proponent's intention to continue to use this plant with updated similar components during the proposed continued and expanded operation of the quarry.

The plant would invariably be located within the active extraction area. In order to provide sufficient working clearance under the crusher for material build-up, the crushing plant would continue to be positioned on a pad of previously extracted material approximately 1m above the extraction floor. The mobile crushing plant would be relocated within the active extraction area as and when required to ensure that transportation distances between the active section of the extraction area and the processing area are not excessive and are sufficient to allow safe operation of both the extraction-related and processing-related equipment.

The mobile crushing plant would continue to be fitted with dust suppression equipment to limit the generation of airborne dust.

Any stockpiles likely to contribute to substantial dust lift-off would be watered with sprinklers or a water cart. A water cart with at least 8 000L capacity would continue to be used as required to limit the generation of airborne dust.

5.2.6 Production Levels

The Proponent proposes that the average production level for the Project would be approximately 300 000t per year. The maximum production level would be approximately 500 000t per year.

At present, approximately 30% of production from the Nowra Brickworks Quarry comprises recycled, selected construction and concrete waste material and waste bitumen and / or imported quarry products. Approximately 70% of production comprises material extracted within the Project Site.

At the proposed average production level of approximately 300 000t per year, approximately 210 000t per year of shale material would be extracted from within the extraction area. At the proposed maximum production level of approximately 500 000t per year, approximately 350 000t per year of shale material would be extracted from the extraction area.

5.2.7 Transportation Operations

The site access road from the intersection with the Princes Highway and intersection between the site access road on the Princes Highway to the limit of the extraction area would be sealed to limit the tracking of material onto the Princes Highway and reduce truck body noise.

In addition, the adequacy of the site entrance will be assessed by the transportation Specialist Consultant.

The site access road within the limits of the extraction area would generally be located as close as practicable to the eastern face of the extraction area. The access ramp from the existing ground surface to the stockpiling area within the extraction area would be constructed of backfilled material.

Materials within the extraction area would be transported by front end loader, off road dump trucks and / or road registered trucks.

Imported materials would be transported to site and products would be transported from site using road registered rigid trucks, truck and dog trailers, semi-trailer tippers or B-Double trucks. Approximately 40% of the materials transported to and from the Project Site would be transported in vehicles controlled by the Proponent, with the remainder transported by independent transport contractors or other operators.

The Proponent estimates that the average size of loads leaving the Project Site would continue to be approximately 30t. As a result, at an average production rate of 300 000t per year, the average number of heavy vehicle movements per day transporting from the Project Site would be approximately 74 (37 loads). At a maximum production rate of 500 000t per year, the average number of heavy vehicle movements per day transporting product from the Project Site would be approximately 120 (60 loads).

At present, the vast majority of material imported to the Project Site is transported as backloads. The proportion of imported material that will continue to be transported to the Project Site as backloads is yet to be precisely determined, however, is expected to remain at close to 100%. As a result, importation of materials to the Project Site is not anticipated to significantly add to the above vehicle movements. The exact proportion of imported material to be transported to the Project Site as backloads will be specified in the *Environmental Assessment*.

5.2.8 Hours of Operation and Project Life

5.2.8.1 Hours of Operation

The proposed continued and expanded Nowra Brickworks Quarry would operate between the following hours.

- Extraction, processing and VENM backfilling-related activities.
  - 7.00am to 6.00pm, Monday to Friday.
  - 7.00am to 4.00pm, Saturday
- Product dispatch.
  - 7.00am to 6.00pm, Monday to Saturday. Unladen trucks would arrive at the Project Site after 6.00am and may return to the Project Site until 8.00pm.
- Maintenance-related activities.
  - 6.00am to 10.00pm, Monday to Friday.
  - 6.00am to 6.00pm, Saturday.

The quarry would not operate on Sundays or Public Holidays.

5.2.8.2 Project Life

The volume of the proposed extraction area is approximately 2.6 million cubic metres. At an annual average production rate of 300 000t, the proposed extraction area will provide sufficient material for approximately 30 years.

5.2.9 Final Landform, Final Land Use and Rehabilitation

5.2.9.1 Final Landform

The Proponent proposes to establish a final landform that mimics the landform within the Project Site prior to the commencement of extraction-related activities. The indicative final landform is presented in **Figure 6**.

5.2.9.2 Final Land Use

The Proponent has not determined the final land use for the Project Site. The final land use will be determined in consultation with the Department of Lands during the preparation of the *Environmental Assessment*.

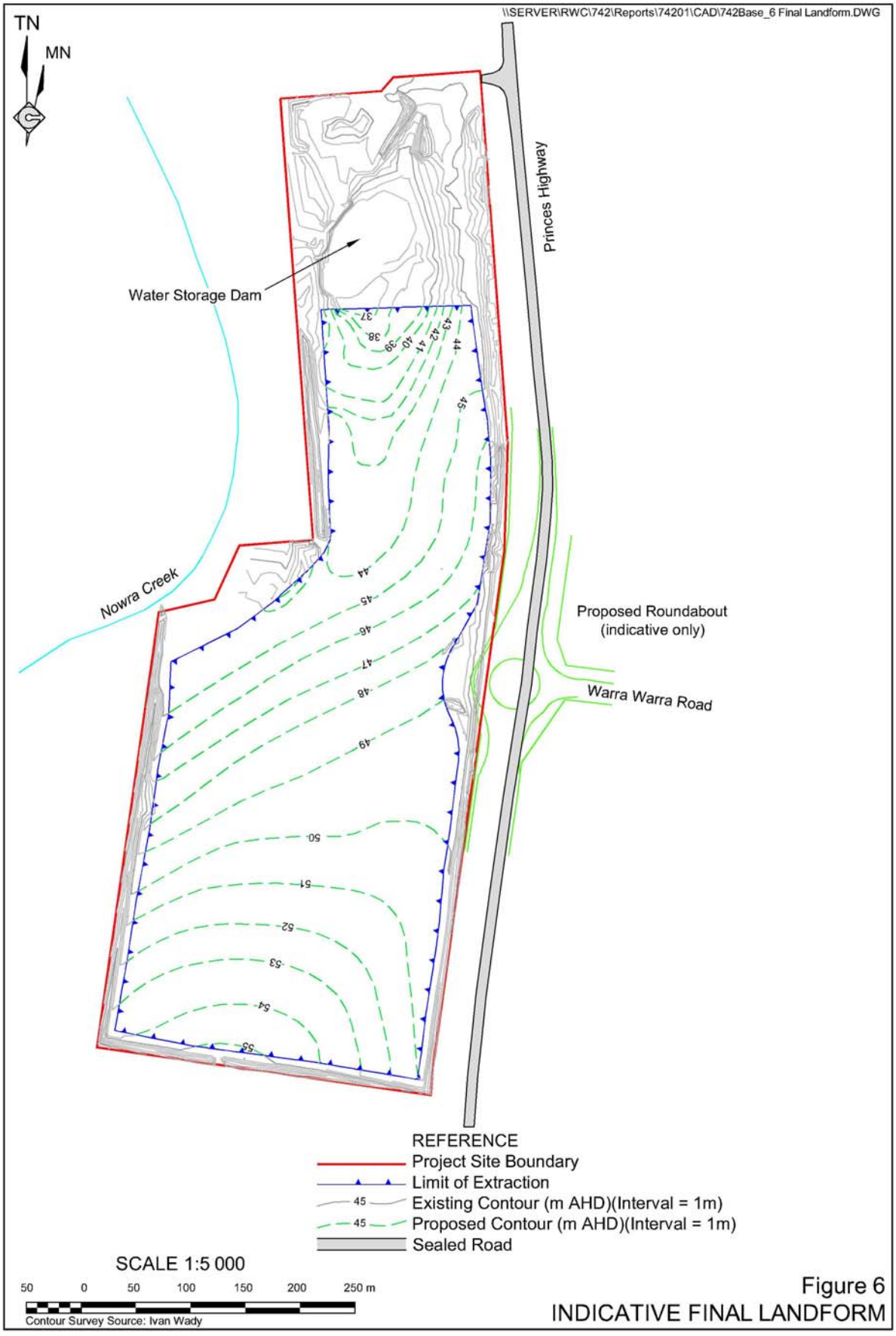

Figure 6
INDICATIVE FINAL LANDFORM

5.2.9.3 Rehabilitation

Detailed rehabilitation plans have yet to be prepared. These plans will depend on the final land use determined for the Project Site. The conceptual rehabilitation plans described below assume the final land use will be native vegetation conservation.

Rehabilitation activities will be undertaken progressively as backfilling operations are completed within sections of the extraction area. Conceptually, rehabilitation activities will include the following.

- Shaping of the final landform to form a stable, moderately undulating ground surface that mimics the topography of the Project Site prior to the commencement of extraction related activities.
- Construction of appropriate sediment control structures, including contour banks, silt-stop fences and sediment containment dams.
- Spreading of subsoil and topsoil material, including, where appropriate, pushing down of the perimeter bunds.
- Scarifying the rehabilitation area to produce an even but "roughened" surface to assist with the retention of seeds and absorption incident rainfall.
- Sowing of seeds of an appropriate mix of species using an appropriate sowing method. The species mix and sowing method would be determined during preparation of the *Environmental Assessment*.
- Ongoing monitoring and remediation (where required) of rehabilitated areas.

6 STATUTORY CONTEXT

The Project Site is located within the administrative boundaries of Shoalhaven City Council. In terms of zoning, both ML5087 and ML6322 are zoned a mixture of 1B (*Rural 'B' (Arterial and Main Road Protection) Zone*) and 1F (*Rural 'F' (Forest) Zone*). It is relevant to note that the use of the Project Site for extractive industries is permissible in the zone with consent.

Schedule 1 of State Environmental Planning Policy (Major Projects) 2005 sets out the projects which should be assessed under which Part 3A of the EP & A Act 1979. Within Schedule 1, Group 2 is of relevance to this application and relates to "*mining, petroleum production, extractive industries and related industries".*

Part 7 (1) of the Major Projects SEPP relates specifically to mining and states that

7 "Extractive industries

(1) Development for the purpose of extractive industry that:

(a) Extracts more than 200,000 tonnes of extractive materials per year."

The proposal involves extractive operations with an output of approximately 300,000 tonnes per annum. It is therefore considered that the application should be assessed under the provisions of Part 3A of the Environmental Planning and Assessment Act and the Major Projects SEPP.

In addition to the above, the following planning provisions have been identified as relating to the project for the continuation of extractive operations. The project will be assessed against the relevant requirements of these instruments as part of the Environmental Assessment.

- Environmental Planning and Assessment Act, 1979;
- Environmental Planning and Assessment Regulation 2000;
- SEPP 2005 – Major Projects;
- SEPP No.33 – Hazardous and Offensive Development;
- SEPP Mining, Petroleum, Production and Extractive Industries 2007;
- Shoalhaven Local Environmental Plan 1985; and
- Protection of the Environment Operations Act 1997.

The project's compliance with these relevant planning provisions is addressed in the following sections.

Environmental Planning and Assessment Act 1979 and Regulation 2000

The *Environmental Planning and Assessment Act 1979* (EP&A Act) and the *Environmental Planning and Assessment Regulation 2000* provide a statutory planning framework for environmental planning in New South Wales.

Part 3A of the EP&A Act took effect on 1 August 2005 and provides an assessment and approvals process for major infrastructure and other projects for which the Minister for Planning is the approval authority.

The provisions of Part 3A apply to major projects where the Minister has made a declaration relating to the specific development or a class of development to which that project belongs. The Minister may declare a development to be a major project in a State Environmental Planning Policy (SEPP) or in an order published by the Minister in the Government Gazette.

The project is defined as a major project in SEPP (Major Projects) 2005. A project approval under Section 75J of the EP&A Act is being sought for the proposed extractive operations.

State Environmental Planning Policies

State Environmental Planning Policy (Major Projects) 2005 (SEPP (Major Projects)) identifies development to which Part 3A of the EP&A Act applies. This Policy establishes the Minister for Planning as the consent authority for any development classified as a 'major project'. Clause 6(1) of SEPP (Major Projects) identifies Part 3A projects as development that, in the opinion of the Minister for Planning, is development of a kind described in either Schedule 1, 2 or 3 of the policy.

Schedule 1 of the policy includes development for the purposes of extractive industry that:

> *'(a) extracts more than 200,000 tonnes of extractive materials per year, or*
>
> *(b) extracts from a total resource (the subject of the development application) of more than 5 million tonnes, or*
>
> *(c) extracts from an environmentally sensitive area of State significance.'*

The proposed extractive operations within ML5087 and ML6322 will enable up to 250,000 tonnes of material to continue to be extracted per year. Consequently, as confirmed by the Department of Planning (letter dated 10 April 2007), the proposal is classified as a major project and the application for project approval will be assessed under Part 3A of the EP&A Act.

State Environmental Planning Policy No. 33 – Hazardous and Offensive Development

State Environmental Planning Policy No. 33 – Hazardous and Offensive Development (SEPP 33) provides definitions for 'hazardous industry', 'hazardous storage establishments', 'offensive industry' and 'offensive storage establishments'. The definitions enable decisions to approve or refuse a development to be based on the merit of a proposal. The consent authority must consider the specifics of the proposal, the location and intensity of the proposed activity to determine whether the proposed development may be classified as 'potentially hazardous' or 'potentially offensive' as defined in the Policy. SEPP 33 may apply to the proposal and will be considered during the assessment process.

State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007

State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries 2007) sets out a number of policies in relation to the proper management and development of extractive mineral resource industries so as to enable the orderly and economic use of land and to establish appropriate planning controls to ensure that extractive industries are ecologically and sustainably developed and managed. The SEPP provides a definition for 'extractive material' to include sand, gravel, clay, soil, rock and stone and therefore applies to the project. The SEPP sets out a number of matters for consideration in Part 3 against which proposals for extractive industries will be assessed by the consent authority. An assessment of the proposal against this SEPP will be undertaken as part of the assessment process.

LOCAL PLANNING INSTRUMENTS

Shoalhaven Local Environmental Plan 1985

The Shoalhaven Local Environmental Plan 1985 (LEP 1985) is the principal local environmental planning instrument applying to the Project Site. The site is largely zoned "*Zone No. 1(b) (Rural 'B' (Arterial and Main Road Protection) Zone)*" with a small portion of the site classified as "*Zone No. 1(f) (Rural 'F' (Forest) Zone)*". The objectives of this zone are as follows:

*"**Clause 9 - Zone No. 1(b) (Rural B (Arterial and Main Road Protection) Zone)***

1. Objectives of zone

The objectives are:

(a) to minimise the direct and accumulative impact of development of the efficiency and safety of existing or proposed main and arterial roads

(b) to promote a high level of scenic quality adjacent to existing or proposed main or arterial roads; and

(c) to encourage, where possible, the use of existing or proposed side roads as an alternative to direct vehicular access to an existing or proposed main or arterial road".

The proposal is consistent with these objectives.

Extractive industries, such as this proposal, are permissible within the 1(b) Rural B zone with development consent.

Protection of the Environment Operations Act 1997

An environment protection licence (No. 11765) under the *Protection of the Environment Operations Act 1990* (POEO Act) is held for the ML5087 and ML6322 Quarry. This license will require modification to include the proposed extractive area.

Section 75V(1)(e) of the EP&A Act specifies that an environment protection licence under the POEO Act cannot be refused if it is necessary for the carrying out of an approved project under Part 3A of the EP&A Act and is substantially consistent with the approval.

7 CONSULTATION

Consultation undertaken in relation to the project, to date, has included liaison with adjoining land owners.

A Planning Focus Meeting is to be held on-site on 23rd August 2007 and representatives from the following government agencies were invited to attend by the Department of Planning.

- Shoalhaven City Council.
- Department of Planning.
- Department of Lands.
- Department of Commerce.
- Department of Environment and Climate Change.
- Department of Water and Energy.
- Road and Traffic Authority.

The usual procedure of the Department of Planning is to request written comments on issues that should be addressed in the *Environmental Assessment* from these authorities following the Planning Focus Meeting. The Department will take into account any comments received in preparing the Director-General's requirements for the *Environmental Assessment*.

Once the *Environmental Assessment* is submitted for the test of adequacy, the Director-General will seek advice from relevant government agencies and Council to determine if the *Environmental Assessment* adequately addresses the matters in the Director-General's requirements and if the information is adequate prior to being made publicly available.

The *Environmental Assessment* will be made publicly available in accordance with the procedures outlined in Part 3A of the EP&A Act 1979.

8 OVERVIEW OF THE KEY ISSUES

8.1 Introduction

The project application will require the preparation of an *Environmental Assessment* assessing the key potential impacts. The following key issues will be addressed in the environmental assessment process.

- Hydrology.
- Noise.
- Air quality.
- Geology.
- Traffic and transportation.
- Visual impact.
- Flora and fauna.
- Aboriginal and Heritage.
- Site Rehabilitation and final land use.

The Specialist Consultants identified in Section 2 of this document have undertaken preliminary environmental studies and have provided information related to the likely impacts of the Project on the environment within and surrounding the Project Site. It is noted that the purpose of these preliminary studies was to identify potential environmental constraints upon the Project and potential residual environmental impacts. Each of these Specialist Consultants will be undertaking additional studies during the preparation of the *Environmental Assessment*.

8.2 Hydrology

8.2.1 Introduction

Martens and Associates Pty Ltd undertook the preliminary hydrological investigations for the Project. These investigations documented the existing surface water and groundwater regimes and included an assessment of the following.

- The broad parameters governing the existing site hydrological and hydrogeological regime.
- The existing site surface water management regime.
- An assessment of the likely impacts of the proposed development on local groundwater and surface water resources.
- The existing local surface water bodies that may be affected by the Project.
- Areas where further investigation is likely to be required to adequately determine the likely residual Project-related impacts on the surface and groundwater resources within and surrounding the Project Site.

8.2.2 Surface Water Resources

The preliminary studies note that until August 2007, all internal surface drainage water was drained to a sump located at the lowest point within the existing area of excavation. From here, collected water was pumped to an upper sedimentation pond where sedimentation assisted in removal of course and suspended sediment.

Recently, however, this filtration pond has been removed and is no longer used for the collection of surface water, with a 25 - 30 KL concrete tank currently being constructed to collect and store runoff. This tank will also be used as a local water supply for dust suppression within the Project Site.

8.2.3 Groundwater

The preliminary studies suggest that the Project Site is underlain by a relatively shallow unconfined aquifer at approximately 10m to 13m below ground level. The current depth of excavation, this is approximately 0.5m above the existing groundwater level and explains the lack of groundwater flow into the current area of excavation on the Project Site.

The preliminary piezometric surface indicates that groundwater within the aquifer flows to the northwest, with a piezometric gradient of approximately 0.038/m/m.

Preliminary piezometric surface modelling of the aquifer suggests that the creek bed invert of Nowra Creek, located immediately to the west of the Project Site, is likely to be approximately 10m above the existing aquifer. As a result, impacts upon the groundwater resources surrounding the Project Site are not likely to adversely affect the surface water resources within Nowra Creek. This will be confirmed through further testing undertaken as part of the *Environmental Assessment*.

In addition to the above, it is likely that a shallower ephemeral aquifer exists in the region close to Nowra Creek above the unconfined aquifer described above. This aquifer is probably recharged by incident rainfall and is likely to be semi permeable. Further investigation of this body will be undertaken as part of the *Environmental Assessment*.

8.2.4 Preliminary Impact Assessment of Proposed Operations

8.2.4.1 Surface Water Resources

Detailed surface water management measures have yet to be determined. However, indicatively, surface water flows from all areas of disturbance, including the extraction area and areas undergoing land preparation and rehabilitation-related activities, would be directed to the extraction area. As a result no potentially sediment-laden water would flow to Nowra Creek. Surface water flows to Nowra Creek may be reduced as a result of the Project.

8.2.4.2 Groundwater Resources

The preliminary findings conclude that increased surface flows to the area of excavation are likely to increase local groundwater recharge rates. Furthermore, increased groundwater recharge in the excavation area suggests that proposed mining operations may increase the area which may potentially act as a source of groundwater contamination and may result in a modification of local groundwater flow gradients. If appropriate, mitigation measures to ensure that groundwater contamination will not occur will be outlined within the Environmental Assessment.

Further assessment of this issue will be undertaken during preparation of the *Environmental Assessment* to confirm the significance of this impact.

8.2.5 Suitability of the Proposal and Additional Investigations

On the basis of the preliminary investigations, Martens and Associates Pty Ltd consider that the extension of extractive operations into ML6322 and continuation of operations within ML5087 is likely to be able to proceed in such a way that impacts on surface water and groundwater resources can be controlled and appropriately managed. However, further investigations will be required before these controls can be fully determined. The following investigations will be undertaken during preparation of the *Environmental Assessment*.

8.2.5.1 Surface Water

- A water balance model will be prepared covering surface water flows. This will consider the likely impact of flow losses to Nowra creek in terms of riparian corridor health and river flow characteristics.
- A flood assessment may need to be conducted for Nowra Creek to determine the likely impact on flood hydrology of the Project.

- A stormwater management plan will be prepared. This will document stormwater flows within the site and determine compliance with relevant stormwater quantity and quality objectives that the Shoalhaven Council and other relevant government agencies may require.

8.2.5.2 Groundwater

- A more detailed field assessment of local groundwater conditions will be carried out. This will includes the installation of a number of additional monitoring piezometers and detailed monitoring of all piezometers. In addition, a number of longer duration pump tests will be undertaken to provide a more accurate assessment of aquifer hydraulic properties. Existing groundwater quality samples will be collected to determine existing groundwater quality.
- A groundwater impact assessment will be prepared based on the preliminary investigations and the additional information provided in (a) above. The study will address likely seasonal fluctuations in groundwater, expected changes in groundwater level associated with changes to recharge conditions, likely water quality impacts and provide recommendations for remedial works. Comment will also be provided on the likely impacts on groundwater dependent ecosystems.

8.3 Noise

The preliminary noise assessment involved a site inspection, measurements of sound power levels produced by current plant and an ambient survey at the nearest residences. A detailed assessment of the likely noise-related impacts will be undertaken during preparation of the *Environmental Assessment*.

The project specific noise criteria will be derived from the results of this noise monitoring in accordance with the Industrial Noise Policy and the Environment Protection Authority's Environmental Noise Control Manual.

A number of operational scenarios for the Project will be developed as part of the *Environmental Assessment* and the operational noise level contours calculated to determine the likely residual noise-related impact of the Project, taking into account proposed noise mitigation measures.

Based on a review of the ambient survey, and single point receiver calculations to the nearest residences the following preliminary findings were attained:

- Assessment Background Level (ABL) or LA90 background noise levels without the plant operational were found to be controlled by distant traffic. The ABL determined in the absence of contribution from the existing quarry were 39 dBA at the receiver to the northwest (on Links Road) and 46 dBA at the receiver to the northeast (on Old Southern Road) (**Figure 2**). The corresponding intrusive noise criteria (ABL + 5 dBA), via reference to the Industrial Noise Policy (INP), are 44 dBA and 51 dBA respectively.

- Based on measurements of the mobile plant (crushers and screens) and the front end loader and excavator, on-site noise levels were predicted at the nearest residences for the current operations. These predictions, under non adverse daytime conditions, are as follows.
  - 19 dBA at Links Road
  - 26 dBA at old Southern Road
  - 27 dBA at 260 Princes Hwy (residence to the south)

Note that this modelling did not include the operation of haul trucks.

As a result, preliminary predicted quarry noise contributions for the current operations levels comply with the INP design criteria.

It is relevant to note that the nearest residence to the Project Site is located immediately south of ML6322. To this end, the Proponent will have an agreement in place with the owner of this residence to ensure that noise-related impacts at this residence are within those specified by the Industrial Noise Policy.

8.4 Air Quality

A preliminary air quality assessment has been undertaken by Heggies Pty Ltd to determine the likely impact of the Project on air quality in the vicinity of the Project Site.

The preliminary assessment was conducted in accordance with Department of Environment and Climate Change guidelines. It involved an analysis of the existing conditions at the site, including site meteorology, local ambient air quality and local terrain to provide a baseline against which the impacts of the proposed extension will be assessed as part of the *Environmental Assessment*.

There are a number of sources of atmospheric dust in close proximity to the Project Site which contribute to the existing air quality. These sources include certain industrial operations and diffuse sources.

Based on historical data it was found that elevated airborne dust concentrations of particulates with a diameter less than 10µm (PM_{10}) occur in the vicinity of the Project Site but that such concentrations are within air quality limits.

In terms of wind, the preliminary findings conclude that the wind field is dominated by two main wind components, namely northwesterly to westerly wind and southerly to south-southwesterly winds. This indicates that receptors situated to the east, southeast and north of the Project Site are most likely to be impacted by Project-related dust emissions.

From the preliminary assessment it was concluded that crushing operations and vehicle entrainment from unpaved road sections represent potentially the largest sources of routine emissions, with blasting operations comprising a significant but intermittent source. Materials handling and wind entrainment were estimated to be more minor sources.

Wet suppression currently represents the main type of dust mitigation measure implemented at the quarry. Given the current frequency and intensity of watering evident at the Project Site, control efficiencies are expected to be in excess of 70% for roads and greater than 60% for crushing operations.

On the basis of the preliminary investigations, Heggies Pty Ltd consider that the extension of extractive operations into ML6322 and continuation of operations within ML5087 is likely to be able to proceed in such a way so that dust generation and the impact potential of current operations can be being sufficiently controlled through dust mitigation measures.

The following proposed air quality management measures will be assessed during preparation of the *Environmental Assessment.*

- Reducing water spray interruptions
- Installation of a grizzly at the main gate to reduce material being tracked onto the Princes Highway from the site
- Consideration of paving or stabilising road shoulder areas in the immediate vicinity of the main gate to further reduce the potential for track on. (It is noted that this occurs as a result of both quarry-related and other vehicle activity.)

In addition, three dust deposition monitors will be installed during the preparation of the Environmental Assessment to track dustfall rates associated with the existing quarry operations. Given the existence of other sources of emission in the area and the screening by trees between the existing quarry and various of the receptor sites, these monitors will be placed on-site rather than at neighbouring receptor sites.

Finally, the air quality assessment will model the likely project-related air quality impacts at receptor sites surrounding the Project Site based on the existing air quality environment and a number of operating scenarios.

8.5 Geology

Douglas Partners have undertaken preliminary investigations into the geology of ML5087 and ML6322. These investigations have taken the form of three rotary percussion holes, one (Bore hole 1) through the base of the existing quarry and two others, (Bore holes 2 and 3) drilled on the eastern and southern boundaries of ML6322. Refer to **Figure 7** for the location of the boreholes.

8.5.1 Results of the Geological Inspection and Drilling

From the initial investigations, it is clear that the current quarry face comprises dark blue-grey, high strength, slightly sandy siltstone. The siltstone is generally massive with a number of near horizontal, white, calcareous siltstone layers. Jointing is generally widely spaced and comprises two sets of steeply dipping joints, trending slightly east of north and south of east.

Borehole 1, drilled through the base of the quarry to a depth of 12 m, and intersected high strength, dark grey to black siltstone with the chip returns being wet below a depth of 4 m.

Boreholes 2 and 3 were drilled to depths of 28m each. Borehole 2, drilled adjacent to the eastern Project Site boundary and intersected weathered, low to medium strength siltstone down to a depth of 8m before passing into fresh, very high strength siltstone to a depth of 18m. At a depth of 18m the siltstone became high to very high strength.

Borehole 3, drilled on the southern boundary of the Project Site, also intersected 8 m of weathered, very low to low strength siltstone before passing into fresh, medium to high strength siltstone to a depth of 18m. Between 18m and – 22m the siltstone was medium strength, increasing to high strength below a depth of 22m.

8.6 Traffic and Transport

A detailed traffic impact assessment and road safety audit is currently being undertaken by John Coady Consulting The traffic impact assessment will be completed in accordance with the requirements of the RTA's Guide *to Traffic Generating Developments*. A road safety audit of the existing intersection of the access route and the Princes Highway will be completed in accordance with the AUSTROADS *Road Safety Audit* manual.

The assessment will consider potential impacts of the proposed development on the existing road network and safety for road users and, if necessary, recommend improvements or alterations to the local road system to accommodate the development or ameliorate existing traffic problems.

8.7 Flora and Fauna

Preliminary investigations have been undertaken by Gaia Research Pty Ltd into the existing flora and fauna on the Project Site and the impact of the proposal on this flora and fauna. The preliminary assessment suggests that, a significant percentage of the original native vegetation has been removed during previous clearing operations. Furthermore, the preliminary investigations revealed that no endangered ecological communities or flora species listed under the *Threatened Species Conservation Act (1995)* were located on the Project Site.

From the initial investigations no evidence was found of Koala, Yellow-bellied Glider, Powerful Owl, Masked Owl, Gang Gang Cockatoo, Glossy Black Cockatoo, Square-tailed Kite, Australasian Bittern, Black Bittern, Regent Honeyeater, Pouched Greenhood Orchid, Leafless Tongue Orchid or Nowra Heath Myrtle on the Project Site.

On the basis of the preliminary investigations, Gaia Research Pty Ltd consider that the Project is likely to be able to proceed in a manner that the impact on flora and fauna can be being sufficiently managed through appropriate mitigation measures such that the likely flora and fauna-related impacts will not be significant..

As part of the flora and fauna assessment, further assessment in relation to threatened species of fauna and flora listed under the *Threatened Species Conservation Act 1995* and *Environment Protection and Biodiversity Conservation Act 1999* to determine whether there is likely to be a significant impact on threatened species or their habitat.

8.8 Visual Impact

A visual assessment of proposed extractive operations extension will be carried out during preparation of the *Environmental Assessment*. This assessment will include a description of the existing visual amenity, details of significant or recognised scenic landscapes, a description of views towards the quarry area from nearby residences and public vantage points and the visual impacts of the proposal. Measures to reduce visual impacts will also be outlined.

8.9 Aboriginal Heritage

The impact of the proposed quarry extension on Aboriginal and non indigenous cultural heritage is being assessed by Rob Paton.

The initial results of the cultural heritage investigations suggest that the proposed quarry extension will not have a significant impact on items of Aboriginal or non-indigenous cultural heritage.

9 CONCLUSION

In summary, the key issues that will require detailed investigation as part of the environmental assessment process are considered to be:

- Hydrology;
- Noise;
- Air quality;
- Geology;
- Traffic and transport;
- Visual impact;
- Flora and fauna; and
- Aboriginal and Heritage.

On behalf of the Proponent, the Director-General's requirements are formally sought for the Project.

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Appendices

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Appendix A Correspondence from Department of Planning Dated 16 April 2007

Appendix B Survey Plan of Project Site

Appendix C Land and Environment Court Judgement Dated 24 November 2006

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APPENDIX A

Correspondence from Department of Planning dated 16 April 2007

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NSW GOVERNMENT
Department of Planning

Contact: Michael Young
Phone: 02 9228 6437
Fax: 02 9228 6466
Email: michael.young@planning.nsw.gov.au
Our ref: S07/00306

Mr Chris Outtersides
City Plan Services
Level 1
364 Kent Street
SYDNEY NSW 2000

RECEIVED
16 APR 2007
BY:

Dear Mr Outtersides

Brickworks Quarry

I refer to your recent correspondence about the proposed extractive industries operations on the site known as the Brickworks Quarry, near Nowra in the Shoalhaven local government area.

I wish to advise you that the Director-General, as delegate of the Minister for Planning, has formed an opinion under clause 6(1) of *State Environmental Planning Policy (Major Projects) 2005,* that the proposal is development referred to in Schedule 1 of the Major Projects SEPP, and is declared to be a project to which Part 3A of the *Environmental Planning and Assessment Act, 1979* applies.

To progress the proposal, the proponent would need to prepare and submit a Preliminary Assessment on the project to the Department. The Preliminary Assessment should include:

- background information on the existing operations and the site;
- a detailed description of the project;
- details of the permissibility and relevant statutory controls; and
- an overview of the environmental issues (including identification and consideration of the key issues).

The Preliminary Assessment of the project would form the basis on which the Department consults with public authorities and prepares the Director-General's requirements for the preparation of the Environmental Assessment of the project It is recommended that the proponent discuss with the Department the timing for lodgement of the project application and Preliminary Assessment of the project.

If you have any enquiries about the above, please contact me on (02) 9228 6437.

Yours sincerely

10/4/07

Michael Young
Environmental Planning Officer
Major Development Assessment

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APPENDIX B

Survey Plan of Project Site

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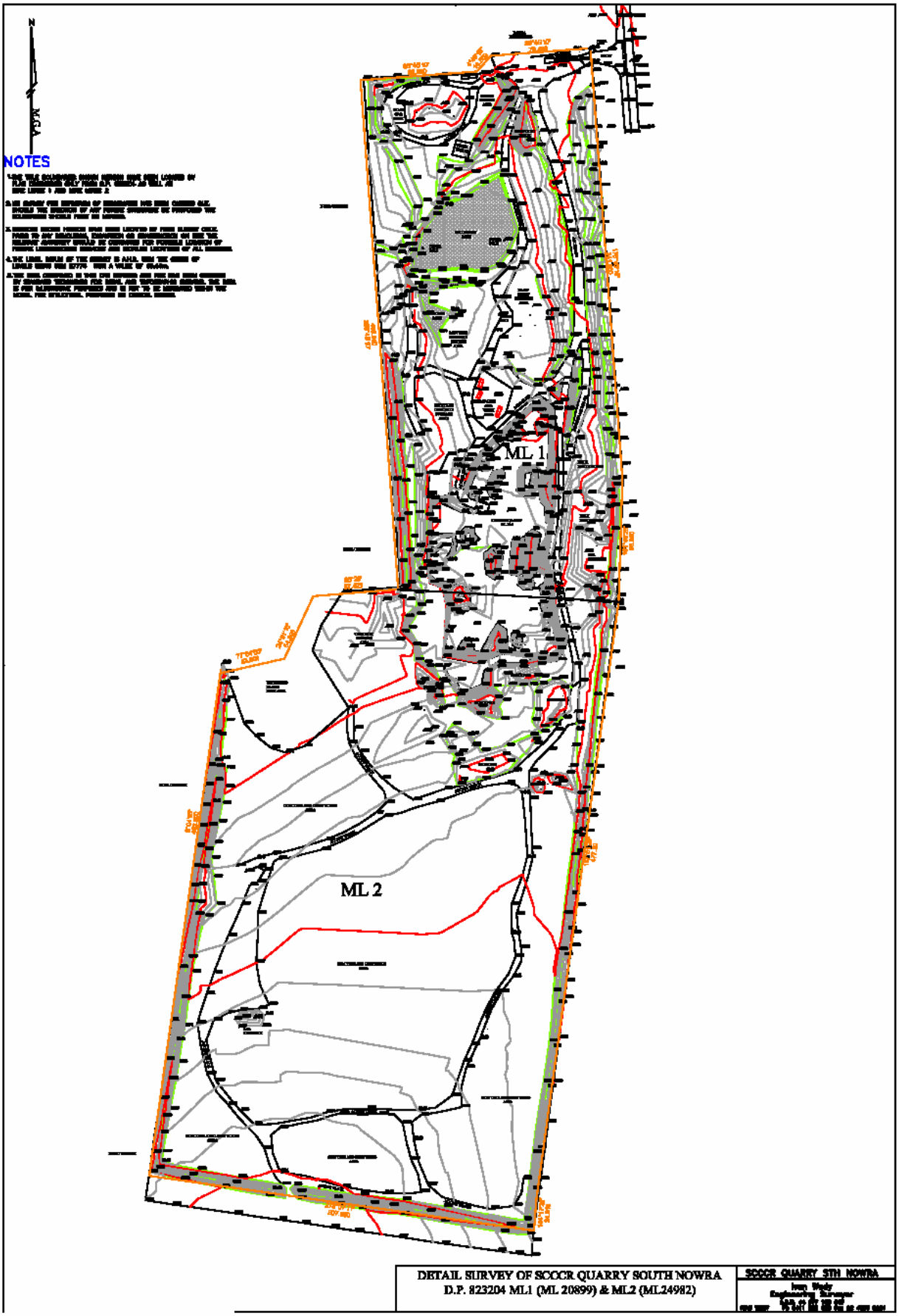
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DETAIL SURVEY OF SCCCR QUARRY SOUTH NOWRA
D.P. 823204 ML1 (ML 20899) & ML2 (ML24982)
SCCCR QUARRY STH NOWRA

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APPENDIX C

Land and Environment Court Judgement dated 24 November 2006

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In the Land and Environment Court of New South Wales

No. 41194 of 2005

NORMANS PLANT HIRE PTY LIMITED
ACN 080 105 791

TOMERONG QUARRY PTY LIMITED
ACN 000 437 669

SOUTH COAST RESOURCES PTY LIMITED
ACN 101 879 430

Applicants

SOUTH COAST CONCRETE CRUSHING & RECYCLING PTY LIMITED
ACN 095 243 584

First Respondent

ABIB PTY LIMITED
ACN 078 883 806

Second Respondent

Order

The Court orders that:

(1) A declaration that the carrying out of development consisting of the conduct of a quarry for shale on land at South Nowra comprised within Mineral Lease 6322 ("ML2") requires development consent.

(2) A declaration that no development consent has been given authorising the carrying out of that development on ML2.

(3) An order that the first respondent be restrained from carrying out development consisting of the conduct of a quarry for shale on ML2 until and unless development consent has been given for the same.

(4) An order that the second respondent be restrained from causing, suffering or permitting the carrying out of development consisting of the conduct of a quarry for shale on ML2 until and unless development consent has been given for the same.

(5) Orders (3) and (4) above are postponed for four weeks from the date of these orders.

(6) The question of costs is reserved.

(7) The exhibits may be returned.

Ordered: 24 November 2006

THE SEAL OF THE LAND AND ENVIRONMENT COURT NEW SOUTH WALES

Registrar

Land and Environment Court
of New South Wales

CITATION:	Normans Plant Hire Pty Limited & (2) Ors) v South Coast Concrete Crushing & Recycling Pty Limited & Anor (No. 2) [2006] NSWLEC 734
PARTIES:	APPLICANTS: Normans Plant Hire Pty Limited ACN 080 105 791 Tomerong Quarry Pty Limited ACN 000 437 669 South Coast Resources Pty Limited ACN 101 879 430 FIRST RESPONDENT: South Coast Concrete Crushing & Recycling Pty Limited ACN 096 243 534 SECOND RESPONDENT: Abib Pty Limited ACN 078 883 806
FILE NUMBER(S):	41194 of 2005
CORAM:	Lloyd J
KEY ISSUES:	Injunctions and Declarations :- restraint of quarrying unless and until development consent granted – postponement of operation of injunction – no development application yet made – discretion – upholding integrated co-ordinated nature of planning law – designated development – third party rights – potential for environmental harm – potential for off-site impacts – contractual commitments can still be met if activities confined – disruption to mining operations – public interest in the orderly development and use of land – parties commercial competitors – no mere technical breach Mines and Minerals: – mining lease – existing mine – immunity from planning controls under Mining Act 1992 – immunities not applying where development consent has lapsed
LEGISLATION CITED:	Environmental Planning and Assessment Act 1979 s 124
CASES CITED:	GPT Re Ltd v Wollongong City Council (No. 2) [2006] NSWLEC 401; Normans Plant Hire Pty Ltd v South Coast Concrete Crushing &

Recycling Pty Ltd [2006] NSWLEC 390;
Warringah Shire Council v Sedevcic (1987) 10 NSWLR 335

DATES OF HEARING: 13/11/2006

DATE OF JUDGMENT: 24/11/2006

LEGAL REPRESENTATIVES:

APPLICANTS:
J A Ayling SC
SOLICITORS:
Kemps & Gwynde

RESPONDENTS:
I J Hemmings (barrister)
SOLICITORS:
Anacs Business Lawyers

IN THE LAND AND ENVIRONMENT COURT OF NEW SOUTH WALES

Lloyd J

Friday, 24 November 2006

LEC No. 41194 of 2005

NORMANS PLANT HIRE PTY LIMITED & (2) ORS v SOUTH COAST CONSRETE CRUSHING & RECYCLING PTY LIMITED & ANOR (NO. 2) [2006] NSWLEC 734

JUDGMENT

1 HIS HONOUR: The first respondent, South Coast Crushing & Recycling Pty Limited, occupies land at South Nowra in the City of Shoalhaven, being part of lot 464 in deposited plan 1058778. The second respondent, Abib Pty Limited, is the holder of two mineral leases from the Minister for Mineral Resources, being Mineral Lease 5087 (known in these proceedings as "ML1") and Mineral Lease 6322 (known in these proceedings as "ML2"). ML1 authorises the extraction of "*brick clay and clay shale*" and ML2 authorises the extraction of "*brick clay*" on a different part of the land.

2 In a judgment delivered on 5 July 2006 I found that the mining operations under ML1 are lawful. I also found that mining operations under ML2 are unlawful because a development consent which had been granted on 24 September 1971 for the carrying out of an extractive industry had lapsed prior to the commencement of the *Mining Act 1973* and accordingly, there being no other extant consent on foot for such use, the carrying out of mining operations under ML2 is unlawful: *Normans Plant Hire Pty Ltd v South Coast Concrete Crushing & Recycling Pty Ltd* [2006] NSWLEC 390.

3 The question for determination is how the Court should now exercise its discretion under s 124 of the *Environmental Planning and Assessment Act 1979* ("the *EP&A Act*"). The applicants, Normans Plant Hire Pty Limited, Tomerong Quarry Pty Limited and South Coast Resources Pty Limited, trade competitors of the respondents, seek an injunction to restrain the respondents from carrying out any quarrying under ML2 unless and until a development consent has been granted for that purpose. The respondents ask the Court to postpone the operation of any injunction so as to enable a development application to be made and determined.

The relevant facts

4 ML1 was granted on or about 8 January 1948 and was subsequently renewed from time to time. ML2 was granted on or about 8 March 1972 and it has also been renewed from time to time, most recently on 2 March 2000. It will expire on 8 March 2020. On 20 December 2002 both leases were transferred to the second respondent. Both leases are adjoining and are apparently worked concurrently.

5 The second respondent acquired the two mining leases from Nowra Brickworks (NSW) Pty Ltd because of the strong shale reserves. As I understand it, the first respondent is an associated company of the second respondent and is the entity which is actually carrying out the mining on both mining leases. The number of the first respondent's employees fluctuates between 18 and 21. The majority of those employees are apprentices who are also undertaking formal study through the TAFE organisation. It also has a supplier list of mechanics, equipment hire, and general service organisations totalling 117 companies, and it has a contractor list of 227. Mining operations are conducted on ML1 and ML2 on a daily basis simultaneously, and there are units operating on both faces simultaneously. According to Mr J B Green, who is the sole director

of both respondents, the operations of the respondents are vital for ongoing projects in the Nowra area and these projects, whether road construction or building projects, provide significant employment in the area.

6 The respondents have, since my previous judgment, engaged City Plan Services Pty Ltd to prepare a development application. Although my judgment was delivered on 5 July 2006, it was not until 8 September 2006 that City Plan Services was engaged. According to Mr A Smith, the planning director of City Plan Services, the recent departure of key planning staff has meant that little work has been done to prepare a development application. Indeed, Mr Smith has not yet inspected the site. And since the development is classified as a designated development, requiring the preparation of an environmental impact statement, it is self-evident that it will be some time before a development application will be ready to be made.

7 Mr Green states that mining operations can continue on ML1 and use can be made of current stockpiles on both ML1 and ML2 (which will run out in January 2007). However, if extraction of material were to be restricted to ML1, it will involve disruption to the overall operations because of the need to re-arrange the infrastructure, such as the need to relocate the stationary plant and the concrete stockpiles, to remove and re-establish the haul roads and remove areas that have been rehabilitated. All this would, of course, involve considerable additional expenditure. For example, the cost of moving plant and concrete stockpiles is said to be about $150,000. Significant work would be needed to move the current location of the tailing pond and wetland area, involving significant environmental degradation.

8 If, however, mining operations are allowed to continue on ML2, it will not be necessary for any of this to occur.

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The parties' submissions

9 Mr J A Ayling SC, appearing for the applicants, relies upon the public interest in the orderly development and use of land. Mr Ayling submits that unless this is done: (i) equal justice may not be secured; (ii) damage to the environment may be done without proper environmental controls; (iii) although there are conditions attached to the mining lease they relate to mining operations on the site and not to external environmental impacts such as traffic; (iv) the breach of the *EP&A Act* is not merely technical; and (v) Mr Green's evidence shows that it is possible for the respondents to meet their contractual obligations from stockpiled material and from working within ML1. Mr Ayling further submits that although the applicants are commercial competitors of the respondents, that fact is not sufficient to deny them the relief that they seek (referring to *GPT Re Ltd v Wollongong City Council (No. 2)* [2006] NSWLEC 401).

10 Mr I J Hemmings, appearing for the respondents, relies upon the following submissions: (i) the present operations are subject to environmental controls by the conditions of the mining lease and the conditions of the environmental protection licence issued by the Environment Protection Authority; (ii) as to the former, the conditions require the approval of a mining operations plan and annual environmental reports, and rehabilitation of the area on completion of operations; (iii) a mine safety management plan is also in place; (iv) the respondents purchased a business in 2003 that had been in operation for many years and they had no reason to believe that any part of the operations were unlawful; (v) since my judgment of 5 July 2006 the respondents have co-operated with the council and have accepted the need for a development application and they will abide by any decision on the development application; (vi) there is no evidence of environmental harm, nor harm to the general amenity of the surrounding area; and (vii) the respondents would suffer hardship, noted in par [7] above, if they were to be restrained from operating within ML2.

Conclusion

11 The respondents accept the fact that they require a development consent and that, unless they have such a consent then mining operations on ML2 must cease. The issue for determination is whether the respondents should be allowed to continue their present mining operations on ML2 pending the preparation, lodgement, consideration and final determination of the development application.

12 The difficulty with this is that the development for which consent is to be sought is classified as designated development. This in turn requires the preparation of an environmental impact statement which must accompany the development application. The respondents suggest that this can be done by 13 February 2007. Having regard, however, to the evidence of Mr Smith, I have a real doubt as to whether an environmental impact statement can be prepared by the suggested date. After lodging the development application, it must be exhibited with the environmental impact statement for 60 days to afford third parties the right to make submissions. After the determination of the development application there may be appeals to the Court – either by the applicant for consent or by third party objectors. The whole process is likely to take many months.

13 The principles which govern the exercise of the Court's discretion are settled. They are conveniently set out by Kirby P in his well known judgment in *Warringah Shire Council v Sedevcic* (1987) 10 NSWLR 335. I refer, in particular, to his Honour's reference to "*a legislative purpose of upholding, in the normal case, the integrated and co-ordinated nature of planning law*" (at 340):

> Unless this is done, equal justice may not be secured. Private advantage may be won by a particular individual which others cannot enjoy. Damage may be done to the environment which it is

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> the purpose of the orderly enforcement of environmental law to avoid.

14 In a similar vein are the following comments by Kirby P (also at 340):

> But the obvious intention of the Act is that, normally, those concerned in development and use of the environment will comply with the terms of the legislation. Otherwise, if unlawful exceptions and exemptions became a frequent occurrence, condoned by the exercise of the discretion under s 124, the equal and orderly enforcement of the Act could be undermined. A sense of inequity could then be felt by those who complied with the requirements of the Act or who failed to secure the favourable exercise of the discretion under s 124.

15 I accept the respondents' submission that the present mining operations are subject to controls by the conditions of the mining lease, the mining operations plan and the conditions of the environment protection licence.

16 Against these considerations, however, is the fact that this is designated development, which gives third parties the right to have an input into the development control process; the conditions under which the mine operates relate to the conduct of operations on the site and not off-site; and the potential for off-site impacts is plain – such as noise, blasting, dust generation and heavy vehicle traffic. Moreover, it is possible for the respondents to meet their contractual commitments by confining their activities to ML1, albeit at some inconvenience and expense. These considerations together with the lengthy time before there will be a final determination of the proposed development application, persuade me that the respondents must be restrained from operating within ML2.

17 The fact that the applicants are commercial competitors of the respondents is a relevant consideration: *GPT Re Ltd v Wollongong City Council (No.2)* [2006] NSWLEC 401. If this were a mere technical breach then I would have been inclined to give this fact more weight. This is not, however, a mere technical breach. The fact that there is potential for environmental harm, coupled with the fact that this is designated

development, suggests that there is a wider public interest in securing observance of the law in this instance.

18 The proceedings were commenced on 6 October 2005 and have proceeded at a somewhat leisurely pace for this Court. Accordingly, the orders will be postponed for four weeks to enable an orderly withdrawal of operations from ML2.

Orders

19 The formal orders of the Court are:

(1) A declaration that the carrying out of development consisting of the conduct of a quarry for shale on land at South Nowra comprised within Mineral Lease 6322 ("ML2") requires development consent.

(2) A declaration that no development consent has been given authorising the carrying out of that development on ML2.

(3) An order that the first respondent be restrained from carrying out development consisting of the conduct of a quarry for shale on ML2 until and unless development consent has been given for the same.

(4) An order that the second respondent be restrained from causing, suffering or permitting the carrying out of development consisting of the conduct of a quarry for shale on ML2 until and unless development consent has been given for the same.

(5) Orders (3) and (4) above are postponed for four weeks from the date of these orders.

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(6) The question of costs is reserved.

(7) The exhibits may be returned.

I hereby certify that the preceding 19 paragraphs are a true copy of the reasons for judgment herein of the Honourable Mr Justice D H Lloyd.

Associate

Dated: 24 November 2006

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