



Our Ref: MR:KL: 11819
28 February 2018

The Secretary
NSW Department of Planning & Environment
GPO Box 39
SYDNEY NSW 2001

Dear Sir / Madam

**RE: SECTION 75W MODIFICATION APPLICATION (MOD 4) – PROPOSED MINOR INCREASE
TO APPROVED DISTURBANCE AREA
PART 3A PROJECT APPROVAL 09_0175 FOR THE KARUAH EAST QUARRY
VARIOUS LOTS BLUE ROCK CLOSE, KARUAH**

1. INTRODUCTION

This Section 75W modification application has been prepared on behalf of Karuah East Quarry Pty Ltd and seeks to modify Project Approval 09_0175 which was granted by the Planning Assessment Commission on 17 June 2014. The key features of the Project Approval include:

- Quarrying operation is permitted on the site until 31 December 2034;
- The extraction (excluding overburden), processing and transport of quarry products is limited to 1.5 million tonnes in any calendar year;
- Hours of operation are specified in Schedule 2 Condition 7 and apply to quarrying operations, construction activities and maintenance activities; and
- Conditions apply to manage / mitigate potential impacts associated with a range of environmental conditions including noise; blasting; air quality; soil and water; transport; biodiversity; heritage; emergency and hazards management and waste.

Construction works are well advanced and quarrying activity has recently commenced.

The proposal is minor in nature and seeks to amend the Project Approval to expand the area of disturbance of the Karuah East Quarry by 1.195ha. Following detailed design it has been identified that the proposed minor extension will allow for increased operational efficiency, improved operational safety and improved environmental management. The area proposed to facilitate the expansion is heavily disturbed and is devoid of any significant vegetation.

The details of the proposal are confirmed in Section 3.0 of this letter.

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The Project Approval as it relates to extraction rates, quarrying, processing and rehabilitation will not be affected by the proposed development.

It is noted that a separate modification application is currently being assessed by the NSW DPE (MOD 1). It is requested that the MOD 1 application continue to be progressed as a separate matter.

It is also requested that any other modification applications be assessed separately to this application.

2. ENVIRONMENTAL PLANNING & ASSESSMENT ACT 1979

This application to extend the development footprint by 1.195ha is lodged in accordance with Section 75W of the EP&A Act 1979. Section 75W of the EP&A Act 1979 remains applicable under the transitional provisions identified in Schedule 6A of the EP&A Act 1979.

On 1st October 2011, Part 3A of the EP&A Act 1979 was repealed by the *Environmental Planning & Assessment (Part 3A Repeal) Act 2011 No. 22*. Despite this, Part 3A continues to apply to the development based on the transitional provisions identified in Schedule 6A of the EP&A Act 1979 as follows:

'Schedule 6A Transitional Arrangements – Repeal of Part 3A'

'2 Transitional Part 3A projects

- (1) *The following are, subject to this Schedule, transitional Part 3A projects:*
- (a) *an approved project (whether approved before or after the repeal of Part 3A),*

Clause 3 of Schedule 6A of the EP&A Act 1979 states that the provisions of any State Environmental Planning Policy (SEPP) or other instrument implemented under Part 3A continue to apply in respect of a transitional Part 3A project:

'3 Continuation of Part 3A—transitional Part 3A projects

- (1) *Part 3A of this Act (as in force immediately before the repeal of that Part and as modified under this Schedule after that repeal) continues to apply to and in respect of a transitional Part 3A project'*
- (2) *For that purpose:*
- (a) *any State environmental planning policy or other instrument made under or for the purposes of Part 3A, as in force on the repeal of that Part and as amended after that repeal, continues to apply to and in respect of a transitional Part 3A project,'*

Based on the above legislation, it is established that the proposal (minor increase to the approved disturbance area of the approved Karuah East Quarry) can be assessed as a Section 75W application. Section 75W of the EP&A Act 1979 is addressed further below.

75W Modification of Minister's approval

In this section:

Minister's approval means an approval to carry out a project under this Part, and includes an approval of a concept plan.

modification of approval means changing the terms of a Minister's approval, including:

- (a) revoking or varying a condition of the approval or imposing an additional condition of the approval, and*
- (b) changing the terms of any determination made by the Minister under Division 3 in connection with the approval.*

(2) The proponent may request the Minister to modify the Minister's approval for a project. The Minister's approval for a modification is not required if the project as modified will be consistent with the existing approval under this Part.

(3) The request for the Minister's approval is to be lodged with the Director-General. The Director-General may notify the proponent of environmental assessment requirements with respect to the proposed modification that the proponent must comply with before the matter will be considered by the Minister.

(4) The Minister may modify the approval (with or without conditions) or disapprove of the modification.

(5) The proponent of a project to which section 75K applies who is dissatisfied with the determination of a request under this section with respect to the project (or with the failure of the Minister to determine the request within 40 days after it is made) may, within the time prescribed by the regulations, appeal to the Court. The Court may determine any such appeal.

(6) Subsection (5) does not apply to a request to modify:

- (a) an approval granted by or as directed by the Court on appeal, or*
- (b) a determination made by the Minister under Division 3 in connection with the approval of a concept plan.*

(7) This section does not limit the circumstances in which the Minister may modify a determination made by the Minister under Division 3 in connection with the approval of a concept plan

No provisions of Section 75W prohibit or restrict the proposed modification to the approval. It is considered that the proposed modification remains consistent with this section of the EP&A Act 1979.

3. PROPOSED MODIFICATION

The proposed modification is minor in nature and seeks consent to expand the approved area of disturbance (31.63ha) by an additional 1.195ha which will result in a new total disturbance area of 32.82ha. The proposal represents less than a 4% increase in disturbance area when compared with the existing project approval.

The proposed additional disturbance area is shown in orange in Figures 1 and 2 below.

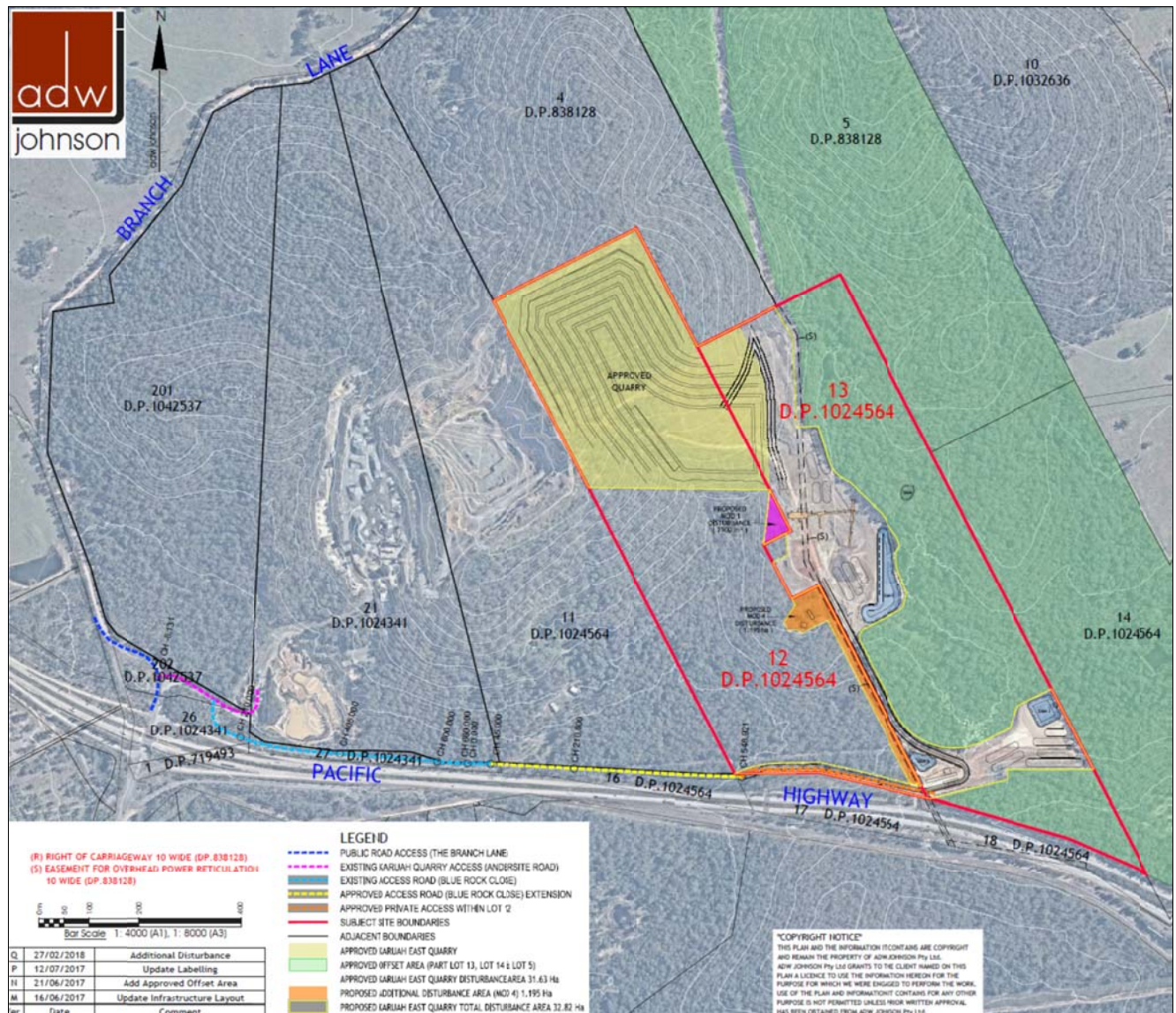


Figure 1 – Proposed Additional Area of Disturbance (in orange) and its Relationship to the Approved Quarry.



Figure 2 – Proposed MOD 4 Additional Area of Disturbance (in orange).

The proposed additional disturbance area is heavily disturbed and devoid of any significant vegetation. The proposed additional disturbance area includes a strip of land adjacent to the north south internal quarry haulage road that extends from the south eastern corner of Lot 12, along the eastern boundary of Lot 12 and around the existing dwelling on Lot 12. The additional disturbance area extends in part through a redundant electricity easement which extends through Lots 12 and 13. Nominal vegetation clearing will be required.

The additional disturbance area will be utilised as follows:

- It will allow water management along the north south internal haulage road to be significantly improved. It will provide sufficient space to allow establishment of a clean and dirty water diversion system into the haul road design which will direct dirty water to Dam 2 for treatment and clean water into the adjoining areas of retained vegetation. The location of Dam 2 is shown in Figure 2;
- It will allow for the narrow north south internal haulage road to be widened between the plant and southern stockpile area. Widening of the internal haulage road will substantially improve operational safety, in particular for passing vehicles; and
- Additional area will be made available adjacent to the existing dwelling on Lot 12 for product stockpiling. This location is in close proximity to the crushing plant and establishment of a stockpiling area in this location will result in improved operational efficiencies through reduced haulage distance (ie. less material being transported to the southern stockpile area). This will also generate the benefit of less noise and dust impact, with haulage trucks being refined in a smaller area of the quarry, further separated from residential receivers to the east and south.

The additional disturbance area will be gravel sealed to be consistent with other internal roads and disturbance areas within the approved quarry.

The Project Approval as it relates to extraction rates, quarrying, processing and rehabilitation will not be affected by the proposed development.

3.1 Proposed Amendments to Project Approval (09_0175)

The proposed amendments to the Project Approval conditions to facilitate the proposed additional disturbance area are as follows: (where a whole condition is stated, refer to the underlined section for suggested amendment):

- Schedule 2, Administrative Conditions. Condition 2 to be updated to reference this Section 75W Modification dated 28/02/2018 prepared by ADW Johnson.
- Appendix 6, Statement of Commitment 1.0. Proposed rewording as follows:
'1.0 Plans, Documents & Approvals'
The proposed development will be completed in accordance with the submitted plans and descriptions of the proposed development in the Environmental Assessment

Report (31 January 2013), the Preferred Project Report (30 July 2013) and any Modifications to the Project Approval.

If there is an inconsistency between the documents, the most recent document shall prevail to the extent of the inconsistency.

4. ENVIRONMENTAL ASSESSMENT

Significant Environmental Assessment of the Karuah East Quarry lands was undertaken as part of the approved Environmental Assessment (January 2013), Preferred Project Report (July 2013) and MOD 1 Environmental Assessment (January 2018) and accordingly there is a high level of understanding of all environmental considerations relative to the site and surrounding area.

The proposal will have a positive environmental outcome noting the following:

- It will allow for improved surface water management associated with the north south internal haulage road between the crushing plant and southern stockpile area. The additional disturbance area will allow for the establishment of a clean and dirty water management system utilising Dam 2 (for dirty water catchment and treatment) and surrounding undisturbed areas for clean runoff;
- Improved operational efficiency will be achieved, noting that an additional stockpiling area will be located in close proximity to the crushing plant. This will result in reduced internal haulage vehicle movements and movements will also be refined to a smaller area of the quarry which will have the benefit of reduced air quality impact and noise impact;
- The existing internal north south haul road between the plant and southern stockpile area is narrow. Providing additional area for this internal road to be widened will improve safety, particularly for passing vehicles; and
- Each of the above can be achieved by extending the footprint of the quarry onto a small area (1.195ha) of highly disturbed land that is devoid of any significant vegetation.

Notwithstanding the above, KEQ Pty Ltd intend to submit an Environmental Assessment specifically to address the proposed additional disturbance area as an addendum to this Section 75W application.

It is anticipated that the Environmental Assessment will address the following items and include input from a specialist where required:

- Flora and Fauna;
- Surface Water Management;
- Noise Impact;
- Air Quality Impact;
- Visual impact;
- Aboriginal Archaeology; and
- Rehabilitation.

Given the minor nature of the proposal it is not considered necessary that Secretary's Environmental Assessment Requirements (SEARs) be issued. If the NSW DPE has any specific

commentary for EA inputs in addition to the above, the proponent welcomes such commentary for consideration.

Compliance with all relevant legislation as identified in the approved Environmental Assessment Report (January 2013) and Preferred Project Report (July 2013) remains applicable to proposed modification. Additional commentary will be provided in the EA where appropriate, however it is expected that there is no legislative matter precludes the proposed development.

Details of consultation specifically relevant to the proposed modification will also be confirmed in the EA. The proponent intends to liaise with the Federal Department of the Environment and Energy to determine if a modification to EPBC approval 2014/7282 is necessary. Given the minor nature of the proposal and the heavily disturbed condition of the proposed expansion area, it is considered unlikely that a modification to EPBC 2014/7282 is necessary. The proponent intends to undertake this consultation separately to the modification proposal process (as there is no statutory requirement requiring concurrent consideration). Notwithstanding, the proponent is aware that if an amendment to EPBC Approval 2014/7282 is necessary, that no works are to be undertaken within the proposed expansion area until EPBC approval has been granted.

The proponent will also brief the Karuah East Quarry Community Consultative Committee established as part of the Project Approval on the proposed modification.

5. LANDOWNERS CONSENT

The lands subject to Project Approval 09_0175 is described in the table below.

Table 1: Key Project Details

Description of Subject Land		
	Lot and Deposited Plan	Land Owner
Quarry and Operations	Lot 12 DP 1024564	Branch Land Pty Ltd
	Lot 13 DP 1024564	Hilton Ross Gurgeon and Beverley Clare Gurgeon
Quarry Access	Lot 202 DP 1042537	Roads and Maritime Services
	Lot 26 DP 1024341	Roads and Maritime Services
	Lot 27 DP 1024341	Roads and Maritime Services
	Lot 16 DP 1024564	Roads and Maritime Services
	Lot 17 DP 1024564	Roads and Maritime Services

Landowners consent for this modification application will be obtained from all landowners identified in the above table and issued to the NSW DPE under separate cover.

6. CONCLUSION

This application is made under Section 75W of the Environmental Planning and Assessment Act 1979 and seeks to amend existing Project Approval 09_0175 for the Karuah East Quarry.

The proposed modification is minor in nature will remain entirely consistent with the current Project Approval for the Karuah East Quarry.

The amendment seeks to slightly expand the approved area of disturbance (31.63ha) by an additional 1.195ha, on the western side of the north south internal haulage road between the crushing plant and southern stockpile area. The resulting new disturbance total area of disturbance of the Karuah East Quarry will be 32.82ha. This represents less than a 4% increase in disturbance area when compared with the existing approval.

The proposed additional area of disturbance is highly disturbed and devoid of any significant vegetation due to the location of a redundant electricity easement and an existing dwelling on Lot 12.

During detailed quarry design undertaken since the Project Approval, it has been identified that the additional disturbance area will allow for improved environmental management, operational efficiencies and safety, in particular by providing for improved stormwater management associated with the north south internal haul road, reduced internal haulage movements as a result of an additional stockpile area closer to the crushing plant and a wider haulage road. The proposed modification will enable this to occur.

The proposed amendment is satisfactory with regard to environmental impacts and this will be confirmed in an Environmental Assessment to be lodged as an addendum to this letter. Approved Environmental Performance Conditions will remain applicable.

Overall it is considered that the proposed amendment to Project Approval 09_0175 to increase the disturbance area of the Karuah East Quarry footprint by 1.195ha is a suitable development and will result in improved environmental management, operational efficiency and safety.

If you wish to discuss this matter please do not hesitate to contact me on 49785100 or mathewr@adwjohnson.com.au.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'M. Radnidge'.

Mat Radnidge
Senior Town Planner
ADW Johnson
Hunter Office

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Encl:

Appendix A
Appendix B

Approved Development Plans (MP 09_0175)
Proposed Modification to Approved Site Layout



Appendix A
Approved Development Plans (MP 09_0175)



Appendix B
Proposed Modification to Approved Site Layout