



Karuah East Quarry Project

Section 75W Modification
Assessment
(MP 09_0175 MOD 2)

December 2018

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Cover photo

Tetralitea juncea (Black-eyed Susan)

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Executive Summary

Karuah East Quarry Pty Limited (KEQ) operates the Karuah East Quarry Project (Karuah East), located approximately 5.5 kilometres northeast of Karuah township in the MidCoast local government area.

KEQ applied to modify its project approval to increase Karuah East's disturbance area by 1.133 hectares (ha), including 0.57 ha of native vegetation, to 33.01 ha.

The modification would facilitate improved access and workplace safety within the quarry by widening its existing haul road. KEQ also intends to improve its management of sediment laden-water generated from the haul road.

The Department requested expert advice from agencies and invited comments from the community during the application's exhibition period from 21 September to 5 October 2018. No submissions were received from the community. Six agencies provided expert advice regarding the proposal and none raised objections.

The Department identified that the key issues relating to the proposed modification are biodiversity, air quality and Aboriginal cultural heritage. These issues have been carefully considered in the assessment and the Department considers that the modification is approvable. Further, the Department considers that the project, as modified, would continue to operate in a manner that does not adversely impact the environment or the community.



1. Introduction

Karuah East Quarry Pty Limited (KEQ) operates the Karuah East Project (Karuah East), located approximately 5.5 kilometres northeast of Karuah township in the MidCoast local government area (LGA) (see **Figure 1**).

Karuah East operates separately from the adjoining Karuah Hard Rock Quarry owned by an associated entity (Hunter Quarries) which was established under a Council consent in 1997. Karuah Hard Rock Quarry currently operates under a project approval granted in 2005 that allows quarrying operations until 2027.

In June 2014, KEQ was granted project approval for Karuah East (MP 09_0175). This approval allows KEQ to extract, process and transport up to 1.5 million tonnes of quarry projects per year for up to 20 years. In April 2018, KEQ was granted approval to modify its project approval to clear an additional 0.25 hectares (ha) of native vegetation. The additional disturbance area increased KEQ's biodiversity offset requirements from 129.32 to 130.36 ha.

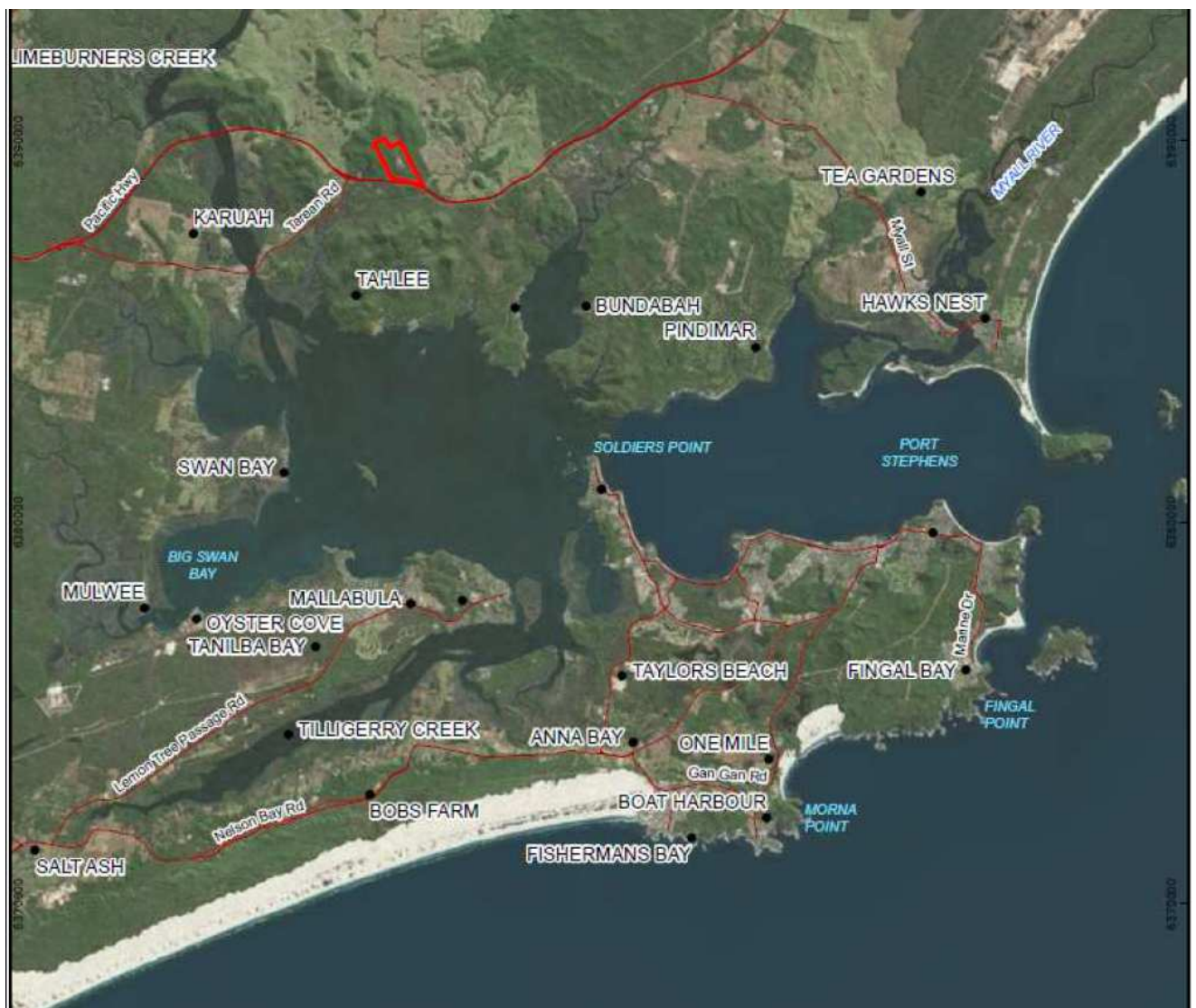


Figure 1 | Location of Karuah East Quarry Project (shown by bold red outline)



2. Proposed Modification

On 28 February 2018, KEQ lodged a modification application for MP 09_0175 under section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act). The proposal seeks to increase Karuah East's disturbance area by an additional 1.133 ha. The additional disturbance area includes 0.57 ha of native vegetation, as shown in **Figures 2 and 3**.

The proposed modification would not change Karuah East's:

- life of quarry operations, which is approved until 31 December 2034;
- extraction limit of 1.5 million tonnes per calendar year;
- quarrying, construction and maintenance operating hours;
- noise and air quality assessment criteria; and
- requirements to undertake progressive rehabilitation.

The modification application is supported by an Environmental Assessment (EA) and accompanying documentation (see **Appendix A**).

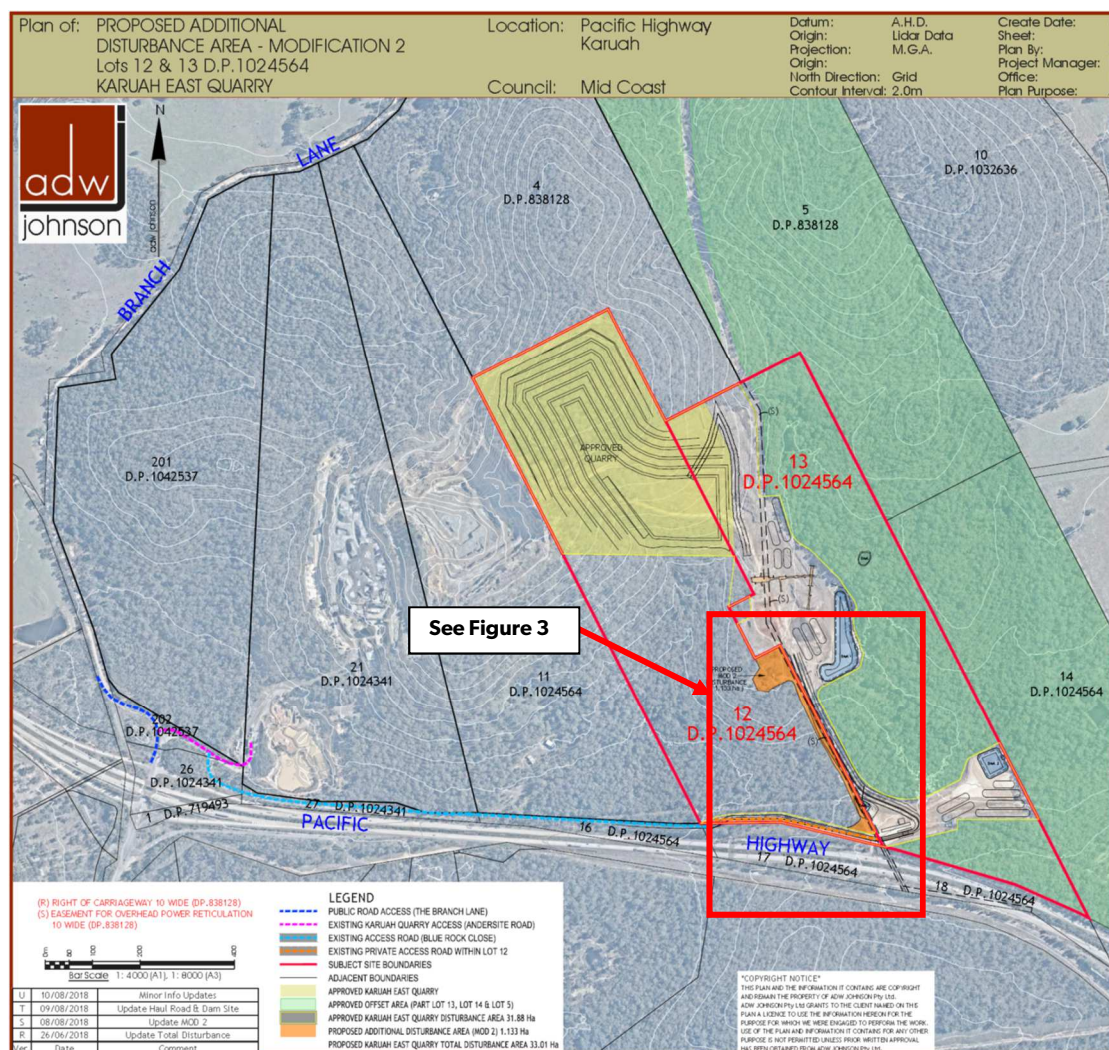


Figure 2: | Proposed modification

KEQ stated that the increased disturbance area would improve surface water management by enabling upgraded dirty water catchment and diversion infrastructure to be installed. The modification would also improve operational safety and increase efficiency along the haul road and site access. The new disturbance area would constitute approximately 3.6% of the total disturbance area of Karuah East.



Figure 3: | Detail of modification site (additional disturbance area shown in orange)



3. Statutory Context

3.1 Section 75W

MP 09_0175 was approved on 17 June 2014 under Part 3A of the EP&A Act. The project is a transitional Part 3A project under Schedule 2 of the *EP&A (Savings, Transitional and Other Provisions) Regulation 2017*. The power to modify transitional Part 3A projects under section 75W of the EP&A Act, as in force immediately before its repeal on 1 October 2011, has recently been discontinued. However, because the request for this modification was made before the 'cut-off date' of 1 March 2018, the provisions of Schedule 2 (clause 3) of this Regulation continue to apply and the application must be dealt with under the former section 75W of the EP&A Act.

The proposed modification is of a minor nature. Consequently, the Department is satisfied that the proposal is within the scope of section 75W and may be determined accordingly.

3.2 Approval Authority

The Minister for Planning is the approval authority for the application. However, under the Minister's delegation of 17 October 2017, the Director, Resource Assessments may determine the application, as less than 25 objections from the public were received, MidCoast Council did not object to the proposed modification and KEQ had not reported any political donations.

3.3 Environmental Planning Instruments

The following environmental planning instruments (EPIs) apply to the project:

- *State Environmental Planning Policy (State and Regional Development) 2011;*
- *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007;*
- *State Environmental Planning Policy No. 33 (Hazardous and Offensive Development);*
- *State Environmental Planning Policy No. 44 (Koala Habitat Protection);*
- *State Environmental Planning Policy No. 55 (Remediation of Land);*
- *State Environmental Planning Policy (Infrastructure) 2007;* and
- *Great Lakes Local Environmental Plan 2014.*

The Department has considered the modification against the relevant provisions of these EPIs. The Department is satisfied that the modification is permissible and can be undertaken in a manner that is generally consistent with the aims, objectives and provisions of these EPIs.

3.4 Objects of the EP&A Act

The Minister or delegate must consider the objects of the EP&A Act when making decisions under the Act. The objects of the EP&A Act changed on 1 March 2018. The Department has assessed the proposed modification against the current objects of the EP&A Act. The objects of most relevance to the decision of whether or not to approve the proposed modification are found in section 1.3 of the EP&A Act. They are:

- Object 1.3(a): *to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources;*
- Object 1.3(b): *to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment;*
- Object 1.3(c): *to promote the orderly and economic use and development of land;*

- Object 1.3(e): *to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats;*
- Object 1.3(f): *to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage); and*
- Object 1.3(j): *to provide increased opportunity for community participation in environmental planning and assessment.*

The Department is satisfied that the proposed modification encourages the proper management and development of resources (Object 1.3(a)) and the promotion of the orderly and economic use of land (Object 1.3(c)), since the modification:

- involves a permissible land use on the subject land;
- would be carried out within the existing quarry site; and
- would maintain socio-economic benefits to the community of NSW.

The Department has considered the principles of ecologically sustainable development (ESD, Object 1.3(b)) in its assessment of the proposed modification. The Department has also noted KEQ's consideration of these matters in the EA for the original application and considers that quarrying operations, as modified, would remain consistent with the principles of ESD. The Department's assessment has sought to integrate all significant environmental, social and economic considerations.

Consideration of the protection of the environment and heritage (Objects 1.3(e) and(f)) is provided in **Section 5** of this report. The Department believes that the modification, as proposed, has been designed to minimise potential environmental and heritage impacts where practicable, including avoidance of direct disturbance to threatened biodiversity and Aboriginal cultural heritage. The modification would also improve management of sediment-laden surface water.

The Department exhibited the modification application and made the accompanying EA publicly available (Object 1.3(j)). No public or special interest group submissions were received.

3.5 Other Licences

KEQ currently holds an Environment Protection Licence (EPL 20611) issued under the *Protection of the Environment Operations Act 1997* for its extractive industry activities. The EPA advised that KEQ's EPL would not need to be amended as a result of the proposed modification.



4. Engagement

4.1 Departmental Engagement

Clause 118 of the *Environmental Planning & Assessment Regulation 2000* (EP&A Regulation) requires the Planning Secretary to make the modification application publicly available. Therefore, the Department placed a public exhibition notice in the Port Stephens Examiner on 20 September 2018 and publicly exhibited the application and supporting documents from Friday 21 September until Friday 5 October 2018:

- on the Department's website;
- at MidCoast Council's district office in Stroud; and
- at the Nature Conservation Council's office in Sydney.

The Department sought expert advice from the Environment Protection Authority (EPA), the Department of Industry – Crown Lands and Water Division (Dol – Water), Hunter Local Land Services (LLS), the Office of Environment and Heritage (OEH), the Department’s Division of Resources and Geoscience (DRG), the Roads and Maritime Services (RMS) and MidCoast Council (Council). Port Stephens Council was also informed of the proposal due to the proximity of Karuah East to the Port Stephens LGA boundary.

The Department is satisfied that the notification process met the requirements of the EP&A Act and the EP&A Regulation.

No public submissions were received.

4.2 Proponent’s Engagement

KEQ raised its intention to lodge a range of modification applications under section 75W of the Act with Karuah East’s Community Consultative Committee (CCC) at its meeting of 5 March 2018. These modifications included additional site disturbance, amendments to project approval conditions and deletion of noise attenuation measures and conditions. Several concerns were raised particularly about the removal of noise attenuation measures.

On 3 September 2018, the CCC was updated on the status of the pending modifications. Further explanation of each modification was provided to the CCC. The CCC did not raise any specific concerns about the current modification application.

4.3 Agency Advice

The Department received expert advice from six agencies (see **Appendix B**).

RMS advised that it had no concerns about the proposal and informed the Department of several current restrictions on the use of land relating to site access. The Department requested KEQ address these matters in its response to submissions report (RTS) (see **Section 4.4**). RMS recommended several conditions for inclusion in the project approval.

OEH advised that it was satisfied with the biodiversity assessment undertaken for the 0.57 ha of native vegetation proposed to be cleared. OEH also advised that the vegetation did not match any Plant Community Type under the Biodiversity Assessment Method, and that the vegetation was highly disturbed and had limited biodiversity value. OEH concluded that no further assessment was required and there would be no need to for KEQ to provide any additional biodiversity offset.

Additionally, there may be a risk of Aboriginal objects being present in the proposed disturbance area. OEH recommended that KEQ undertake the proposed works in accordance with a due diligence assessment, rather than preparing an Aboriginal cultural heritage assessment.

EPA advised that, while the EA demonstrated that Dam 2 was adequately sized to accommodate additional surface water from the proposal area, KEQ’s EPL 20611 specifies that total suspended solids in water must be below 40 mg/L prior to discharge. EPA advised the Department to ensure KEQ could achieve these discharge levels prior to determining the modification. The Department requested KEQ to address this matter in its RTS (see **Section 4.4**).

MidCoast Council did not object to the proposed modification. It considered that *“there is not likely to be significant or unreasonable ecological impacts”* and that *“although minor (these) are being addressed by way of mitigation measures”*. In respect of engineering aspects of the proposal, Council considered that *“no objections are raised to the proposed modification work in (an) engineering point of view”*.

DRG, Dol – Water and **Port Stephens Council** did not object to the proposed modification in their respective advice.

4.4 Response to Submissions

On the 25 October 2018, KEQ submitted its RTS to address issues raised by agencies, particularly EPA and RMS (see **Appendix C**). Each agency was provided an opportunity to review the RTS and provide additional advice.



5. Assessment

In assessing the merits of the proposal, the Department has considered the:

- EA and RTS;
- expert advice from government agencies;
- existing conditions of approval;
- relevant EPIs, policies and guidelines, and
- requirements of the EP&A Act, including the objects of the Act.

The Department considers that the key issues resulting from the modification are biodiversity and Aboriginal cultural heritage.

5.1 Biodiversity

The proposal to increase Karuah East's disturbance area by 1.133 ha includes clearance of 0.57 ha of native vegetation. The EA addressed the potential biodiversity impacts by stating that this vegetation is highly disturbed, does not contain any threatened species and had no biodiversity value. The Flora and Fauna Impact Assessment (FFIA) supported this conclusion.

The FFIA considered impacts on threatened flora and fauna likely to occur on the quarry site. Field surveys had previously identified the threatened flora species *Tetradlea juncea* (Black eyed Susan), *Asperula asthenes* (Trailing Woodruff), and *Grevillea parviflora* subsp. *parviflora* (Small - flower Grevillea). Targeted field surveys for these species were conducted on 8 July 2018 and for *Corybas dowlingii* (Red Helmet Orchid) and *Diuris praecox* (Rough Doubletail), as potential habitat for these species occurs within the modification site (see **Figure 3**).

One species identified within the modification site is listed as vulnerable under both the *Biodiversity Conservation Act 2017* and the Commonwealth's *Environment Protection and Biodiversity Conservation Act 1999*. *Macadamia integrifolia* (Macadamia Nut) was identified within the modification site. It was deemed to have limited biodiversity value as this species is located in a house garden and does not naturally occur on site.

Following its review of the EA and supporting information, OEH concluded that that the vegetation proposed to be cleared "*represents highly disturbed vegetation which is of limited habitat value*". OEH was satisfied with the biodiversity assessment and that the vegetation clearance did not trigger any need for biodiversity offsetting.

The Department accepts the findings contained in KEQ's FFIA and the conclusions provided in OEH's expert advice. Following review of the existing project approval conditions, the Department is satisfied that the project, as modified, would not cause increased impacts on biodiversity values.

5.2 Aboriginal Cultural Heritage

Due to the potential presence of Aboriginal objects in the modification disturbance area, KEQ commissioned a due diligence report (DDR). This included a search of OEH's Aboriginal Heritage Information Management System (AHIMS) for known Aboriginal objects, reviewing previous archaeological assessments for Karuah East and visual inspection of the modification site in accordance with Karuah East's approved Heritage Management Plan.

The AHIMS search did not identify any Aboriginal objects in the modification site. The inspection of the modification area revealed a high degree of ground disturbance as it contains a dwelling, access haul road and redundant electricity easement. A site inspection in 2011 did not identify any Aboriginal objects or areas of Aboriginal sensitivity, results which were confirmed by another site inspection in July 2018. The DDR concluded that potential risk of harm to Aboriginal objects in the modification area was low.

OEH identified that the Aboriginal heritage assessment in the EA included a DDR in lieu of preparing an Aboriginal cultural heritage assessment report. OEH advised KEQ to consider the risk associated with undertaking the modification in accordance with a due diligence assessment rather than an Aboriginal cultural heritage assessment. KEQ’s response assessed this risk to be “low”.

Following its review of KEQ’s RTS, OEH indicated that activities within the proposed extended disturbance area should be conducted in accordance with a site Heritage Management Plan that provides a protocol for the management of unexpected Aboriginal finds and that the Registered Aboriginal Parties would have the opportunity to monitor initial ground disturbance.

The existing Heritage Management Plan for Karuah East already contains the provisions requested by OEH. In addition, conditions of approval also require all management plans to be reviewed within three months of the project approval being modified, and if necessary, then revised. This would ensure that the Heritage Management Plan would apply to the extended disturbance area.

The modification area is small in comparison to the existing quarry and heavily disturbed. The Department is satisfied that the likelihood of Aboriginal archaeology being present is low. The Department has reviewed the existing approval conditions and requirements for the preparation and implementation of a Heritage Management Plan and is satisfied that Aboriginal heritage would be appropriately managed under the existing conditions of approval and the updated management plan.

5.3 Other Issues

Other impacts associated with the modification are considered to be negligible. **Table 1** summarises the Department’s assessment of these impacts.

Table 1| Other issues

| Issue | Impact and consideration | Recommendation |
|---------------|---|--|
| Surface Water | <ul style="list-style-type: none">There is potential for increased sediment-laden run-off during construction.The additional exposed area could lead to increased sediment-laden run-off during operations.KEQ’s EA includes erosion and sediment controls for construction and operational phases of the quarry.There are no outstanding concerns from agencies.Current conditions require KEQ to prepare and implement a Water Management Plan (WMP), which includes an Erosion and Sediment Control Plan (ESCP).The WMP and ESCP are required to be reviewed, and if necessary, updated following approval of any modification. | <ul style="list-style-type: none">No changes to conditions are required. |

| | | |
|-----------------------|---|--|
| Noise | <ul style="list-style-type: none"> • The construction phase of the modification could lead to an increase in noise. • The project approval requires the preparation and implementation of a Noise Management Plan prior to the commencement of construction activities. • No concerns were raised about construction noise by EPA. • Existing conditions and management plan requirements remain appropriate. | <ul style="list-style-type: none"> • No changes to conditions are required. |
| Air Quality | <ul style="list-style-type: none"> • The modification exposes an additional 1.133 ha to dust generation. • KEQ's project approval contains PM_{2.5}, PM₁₀ and total suspended particulate (TSP) criteria that would not alter as a result of the proposed modification. • Existing dust control measures included in KEQ's Air Quality Management Plan (AQMP) remain suitable for the modification. | <ul style="list-style-type: none"> • No changes to conditions are required |
| Rehabilitation | <ul style="list-style-type: none"> • The modification includes additional vegetation clearance and site disturbance. • The project, as modified, would be required to achieve the currently-approved rehabilitation objectives. • KEQ's project approval also requires the preparation and implementation of a Landscape and Rehabilitation Management Plan (LRMP). • The LRMP is required to be reviewed and, if necessary, updated following the approval of any modification. • The project approval conditions, as modified, remains suitable. | <ul style="list-style-type: none"> • No changes to conditions are required. |



6. Evaluation

The Department has assessed the merits of the proposed modification in accordance with the requirements of the EP&A Act. The modification application and accompanying information demonstrate that increasing the disturbance area of Karuah East would not impact on biodiversity values, would pose a low risk to Aboriginal cultural heritage and would not adversely impact the environment or the community.

The small increase in impacts can be well-managed by existing conditions of approval and updated site management plans. The proposed modification would improve road access to Karuah East, improve safety for trucks as they pass each other on the access road and assist in the management of surface run-off. The Department considers that this modification is in the public interest and can be approved.

A notice of modification (see **Appendix D**) and a consolidated version of the Karuah East Quarry project approval (see **Appendix E**), as proposed to be modified, have been prepared.

KEQ has accepted the proposed modified conditions of approval.



7. Recommendation

It is recommended that the Director, Resource Assessments, as delegate of the Minister for Planning:

- **considers** the findings and recommendations of this report;
- **accepts and adopts** all of the findings and recommendations in this report as the reasons for making the decision to grant approval to the application;
- **agrees** with the key reasons for approval listed in the draft notice of modification;
- **grants approval** for the application MP 09_0175 MOD 2, subject to the conditions in the attached notice of modification; and
- **signs** the attached notice of modification (see **Appendix D**).

Recommended by:




19/12/18

Anthony Barnes

Environmental Assessment Officer
Resource Assessments

Recommended by:



19/12/18

Colin Phillips

Team Leader
Resource Assessments



8. Determination

The recommendation is: **Adopted / Not adopted by:**



Howard Reed

Director
Resource Assessments

19.12.18



Appendices

Appendix A – Environmental Assessment

http://www.majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=9155

Appendix B – Submissions

http://www.majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=9155

Appendix C – Response to Submissions

http://www.majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=9155

Appendix D – Notice of Modification

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Appendix E – Consolidated Approval

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