

Our Reference: PR10704

20 July 2021

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NSW Planning, Industry & Environment
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Menangle Quarry – DA 85/2865 MOD 2 (Conveyor Removal)

Council refers to the Notice of Exhibition dated 30 June 2012¹ and granted extension until the 19 July 2021, including an email informing Council of the modification for ...*the removal of reference to a conveyor and to allow material to be transported between the extraction area and the processing area wholly by truck.*"

The application states that the *"Proposed modification would not change the quarry layout or require the construction of any additional tracks or infrastructure and the quarry would remain substantially the same as approved."*

In summary:

- a) Allow the transportation of material between the extraction and processing areas via off-road haul trucks
- b) Remove the requirement for the installation and use of the conveyor from the approval

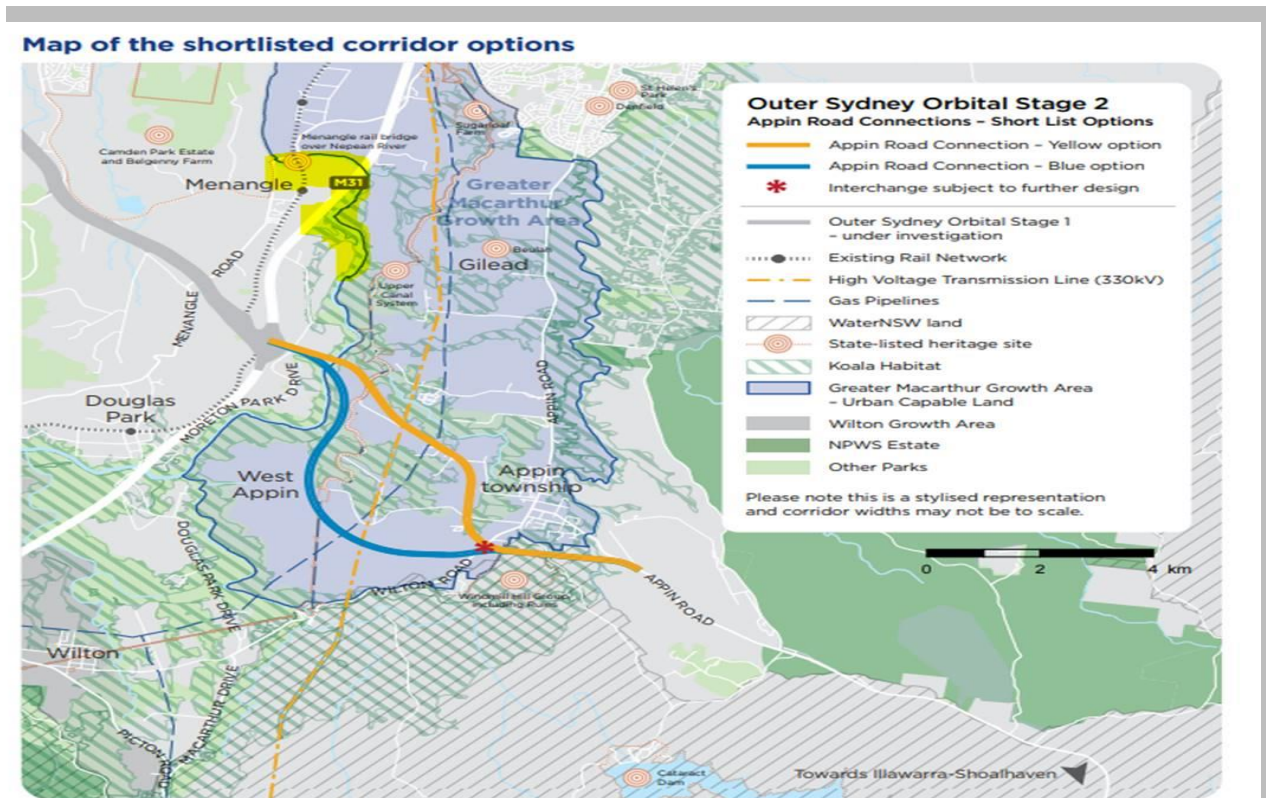
Council would like to provide comments associated to the proposed changes to ensure that the continued activity is consistent with the current development approval and maintains protection of the existing and surrounding natural environment together with any development potential for surrounding properties.

After reviewing the submitted information posted on the Dept.'s web site, various Council Departments have provided the following comments as outlined below;

Council's Sustainable Growth Team

Greater Macarthur – the subject site is located on the western side of the Nepean River. Notwithstanding that the subject site is located outside of the declared growth area boundary, the planning principles for urban growth should be preserved without any potential future impact imposed on the adjacent locality by unforeseen detrimental environmental factors.

Proposed Outer Sydney Orbital – the proposed OSO2 corridors as exhibited at the end of 2020 display the connection point with OSO1 as being south of the Menangle Township and north of Douglas Park, therefore not the immediate proximity of the subject site. Refer to the map extract below from OSO2 exhibition with the approximate location of the quarry site highlighted. **To this end, this modification should be confirmed and assessed by the relevant team at TfNSW.**



Environmental Assessment

Council also referred the Modification application to Council's Environmental Assessment Planner who has provided the following detailed comments.

This Memorandum provides comments from an environmental perspective on the following documents in regard to the Modification Application associated with aspects of the operation of the Menangle Quarry:

- Covering Modification Report
- Biodiversity Development Assessment Report (BDAR)
- Biodiversity Rehabilitation Management Plan (Note: Comments have been provided on a draft document that the Department of Planning, Industry and Environment (DPIE) has advised is currently the subject of consultation with Government Agencies and is yet to be finalised).

The stated environmental benefits of the modification in terms of the removal of a conveyor belt that facilitates the rehabilitation of previously extracted areas adjacent to the Nepean River is agreed with in principle. However, the following identified issues are viewed as requiring addressing prior to the approval of the Modification Application

- The Report and BDAR is viewed as not considering the inclusion of *"lop or otherwise remove a substantial part of the vegetation"* within the definition in Section 1.5 of the Biodiversity Conservation Act 2016 in reaching the conclusion that *"No vegetation clearing will be required as a result of the proposed modification"*.
- The Report and BDAR has not considered Clause 7.4 regarding the Natural Resource Water Layer within Council's Local Environment Plan 2011 given this layer applies to land covered by the Modification Application.
- The provision of precise comments regarding potential impacts of the proposed upgrading of the existing track to a standard suitable for trucks is not possible based on the statement *"that the design is currently the subject of discussions with Government Agencies" including Transport for NSW.*

This Memo provides requested comments, amendments and recommended conditions in regard to the environmentally related aspects of the submitted documents. The amendments and conditions are summarised at the end of these comments.

GENERAL COMMENTS

Comments on the modification approval

It is understood that approval is being sought to modify applicable conditions in the approval issued to remove reference to a conveyor and to allow material to be transported between the extraction area and the processing area wholly by truck, utilising an existing track. It is also understood based on statements within the Modification Report that the applicant is currently discussing aspects of the design with Transport NSW to ensure compliance with the under passage of the upgraded track with two existing railway bridges. The absence of a completed design presents difficulty in providing comment on any adverse impacts to the adjacent Nepean River.

It is recommended the submission provide in-principle support to the works proposed by the Modification Application subject to a review of the adequacy of the completed design by the Dept.

Consistency with the Council's Local Environment Plan 2011

The Modification Report is acknowledged as referring to the relevance of Local Environmental Plan 2011 and a number of clauses (Clause 2.3 and 5.1). However, it does not contain any reference to Clause 7.3 "Water Protection" which is viewed as necessary given the application of the Natural Resources Water Layer to land covered by the Modification Application.

It is consequently recommended that the applicant address and outline the potential impacts from the development on the land covered by this layer. This is necessary to enable State/Council to adequately carry out its responsibilities under Clause 7.3(a) of the LEP ...*"Before determining a development application for development on land to which this clause applies, the consent authority must consider any adverse impact of the proposed development on (amongst other matters), the water quality of receiving waters"*.

It is recommended that the applicant addresses satisfactorily all issues raised in Council's submission prior to the commencement of any work.

Identification of direct and indirect impacts

(i) Assessment and intended management of direct potential impacts

The conclusion that there is no native vegetation clearance involved associated with the Modification Application is disagreed with as follows:

- The statement within the BDAR that there will be no vegetation removal associated with the installation of the conveyor belt is agreed with in principle. However, Section 6.6.3 of the Report is noted to state in this regard "any ongoing vegetation trimming will not remove more than 10 percent of the tree's foliage".
- Recent advice received from the EES in this regard states 'clear vegetation' in Section 1.5 of the Biodiversity Conservation Act 2016 (BC Act) includes "*cut down, fell, uproot, kill, poison, ringbark, burn*" or "*otherwise destroy the vegetation, or lop or otherwise remove a substantial part of the vegetation*". Note, this section of the Act does not differentiate between native and non-native vegetation.
- There is therefore the potential for the proposed pruning to involve the clearance of vegetation (native and exotic), based on Section 1.5 of the Biodiversity Conservation Act 2016.

In relation to this matter, any pruning of native vegetation (based on the definition in Section 60b of the Local Land Services Act 2013 requires consideration by Biodiversity Development Assessment

Reports based on the Biodiversity Assessment Methodology, (as discussed below on the submitted BDAR). The amending of the Modification Report to quantify any removal of native vegetation as part of the establishment and maintenance of the access road is consequently viewed as being warranted.

It is therefore recommended that the applicant address and provide an accurate quantification as possible on the amount of native vegetation to be removed from pruning operations during the construction and maintenance of the access road in accordance with Section 1.5 of the BC Act.

Note: This can be requested to occur as part of any recommended condition, (by requiring the amendment of the Report to address all issues prior to commencement of works).

(ii) Assessment and intended management of indirect potential impacts

The indirect impacts relating to largely to weed infestations and sediment loss and erosion with potential impacts to the adjoining Nepean River associated are acknowledged as being low due to the absence of construction activity for the access road. However as above, Council is required to consider these impacts as part of its responsibilities under Clause 7.3 of the LEP due to the presence of the Natural Resource Water Layer.

In addition, previous correspondence from Council's Team Leader Environmental Services dated 30TH November 2020 stated that impacts to aquatic ecology were not referenced in the main environmental assessment report and expressed the assumption that impacts to aquatic ecology have been adequately assessed and minimised. It is noted that that these impacts are not identified and described in the referred Modification Report. In relation to this matter, Council would expect that the application be consistent with Council's Integrated Water Policy that has as its key objective *"the delivery of an integrated water solution for Wollondilly that protects the pristine waterways, endangered species, maintains and improves the condition of waterways, in the context of a growing population and changing land use"*.

The Report is noted to state in relation to this matter *"The increase in the use of the tracks has the potential to lead to erosion or sedimentation. This will be managed and mitigated through the provisions outlined in Table 7.10 of the Soil and Water Management Plan (EMM 2020c) and will prevent any biodiversity impacts away from the road"*. Adequacy comments over this statement cannot be provided given the understanding (based on consultation with DPIE), that this Soil and Plan is yet to be finalised. It has however that this matter can be responded through by conditions without the completed Plan given the very low level of surface disturbance for the upgrading of the existing track and associated impact to the adjacent Nepean River involved.

THE FOLLOWING CONDITIONS ARE CONSEQUENTLY PROVIDED IN RELATION TO THIS MATTER

- **The Development must be carried out in accordance with the Soil and Water Management Plan as approved by DPIE and consulted government agencies.**
- **The Soil and Water Management Plan must contain demonstrated consistency with Council's Integrated Water Policy and Clause 7.4 Water Protection in the Wollondilly Local Environmental Plan 2011 as well as a consideration of potential impacts of the development on aquatic ecology.**
- **The Plan must be provided to Wollondilly Shire Council not less than 14 days prior to the commencement of any works to allow for verification of this consistency.**

The Report is noted to conclude in relation to this matter that "the proposed modification will not result in any new significant biophysical, social or economic impacts and the quarry impacts can continue to be managed in accordance with the Approval and the quarry's Environmental Management System (EMM 2021a). The Court Order (dated 10 September 2020) and associated

Environmental Systems are viewed as sufficient in terms of providing an adequate framework for the management of indirect impacts. However, this viewpoint is subject to the demonstrate consistency of the Soil and Water Plan with the recommended conditions provided above given the importance of this document in implementing related conditions of the Court Order

PART B: ADEQUACY OF THE BIODIVERSITY DEVELOPMENT ASSESSMENT REPORT

1) Statutory issues associated with a modification application

The Threatened Species Conservation Act 1995 was repealed following the introduction of the Biodiversity Conservation Act on 25th November 2017. The statement in the Rehabilitation Report that *“the Menangle Quarry Extension was originally assessed under the TSC Act, so the repealed TSC Act has been used in developing the biodiversity offset package to compensate for clearing in the Stage 8 area”* is agreed with in principle. However, additional impacts directly attributed to the Modification Application associated with the original application require assessment under the Biodiversity Conservation Act. The comments below are provided within this context.

2) Application of the Biodiversity Offset Scheme by the Biodiversity Development Assessment Report

The BDAR has correctly considered the implications of the Biodiversity Offset Scheme within the Biodiversity Conservation Act 2016 given that the application has been lodged subsequent to the introduction of this Scheme in the Wollondilly LGA. However, the conclusions of the BDAR that the Biodiversity Values Map or the Native Vegetation Clearance Threshold triggers for this scheme are not activated are not supported based on the definition of vegetation clearance in Section 1.5 of this Act referred to above.

Requested amendment to the BDAR

The BDAR be required to be adjusted as follows prior to the approval of the Modification Application:

- The identification of direct impacts associated with pruning based on Section 8 of the Biodiversity Assessment Methodology 2020.
- The application of the Biodiversity Assessment Methodology calculator to identify any credit retirement requirements associated with direct impacts.

3) Consistency of the Biodiversity Development Assessment Report with the Biodiversity Assessment Method

The submitted BDAR is largely consistent with the Biodiversity Assessment Method and associated Biodiversity Assessment Method Operational Manual. However, the following inconsistencies have been identified:

- The BDAR requires amendment to recognise that pruning satisfies definition as definition as clearing and application of the BAM calculator to identify any credit retirement applications as above.
- The undertaking of targeted surveys for threatened aquatic species adjacent to the site during the preparation of the BDAR was viewed as appropriate given the potential for impacts associated with the proposed development. This viewpoint is based on Section 2.4 of the Biodiversity Assessment Methodology, which states *“All indirect impacts to native vegetation and threatened species (and their habitat) within or beyond the development footprint must be identified”*. The requirement for such surveys as a condition of consent is however appropriate given the low level of this impact.

Adequacy of the provided Biodiversity Rehabilitation Management Plan

It is understood that the referred Plan is currently the subject of consultation with applicable government agencies and is yet to be finalised based on DPIE advice. The intended scope and approach for rehabilitation works are broadly supported (subject to the inclusion of advice received from this consultation).

The referred document is considered to have similarities with the Soil and Water Plan within terms of identifying and managing impacts to the adjacent river and its associated aquatic ecology. Within this context, the applying of conditions recommended above in regard to the Soil and Water Plan is viewed as appropriate for the Biodiversity Rehabilitation Management Plan.

**** SUMMARY OF REQUESTED AMENDMENTS AND CONDITIONS**

Main Modification Report

It is recommended that Department adopt an approach of requesting the inclusion of a condition in the approval that would require the provision of an Amended Modification Report that addresses satisfactorily all issues raised in Council's submission concerning the rehabilitation works adjacent to the Nepean River.

Biodiversity Development Assessment Report

Amendment prior to approval of the development

The BDAR be required to be adjusted as follows prior to the approval of the Modification Application:

- The identification of direct impacts associated with pruning based on Section 8 of the Biodiversity Assessment Methodology 2020. This needs to include an identification as accurately as possible over the area of native vegetation based on Section 60b of the Local Land Services Act 2013 present within the development footprint of the access road.
- The application of the Biodiversity Assessment Methodology calculator to identify any credit retirement requirements associated with direct impacts.

Recommended condition

- The undertaking of targeted surveys for threatened aquatic species adjacent to the site as required by Section 2.4 of the Biodiversity Assessment Methodology by a suitably qualified person must occur not less than fourteen days prior to the commencement of works.

Soil and Water Plan

- The Development must be carried out in accordance with the Soil and Water Management Plan as approved by DPIE and consulted government agencies.
- The Soil and Water Management Plan must contain demonstrated consistency with Council's Integrated Water Policy and Clause 7.4 Water Protection in the Wollondilly Local Environmental Plan as well as a consideration of potential impacts of the development on aquatic ecology.

The Plan must be provided to Wollondilly Shire Council not less than 14 days prior to the commencement of any works to allow for verification of this consistency.

Biodiversity Rehabilitation Management Plan

- The Development must be carried out in accordance with the Soil and Water Management Plan as approved by DPIE and consulted government agencies.
- The Soil and Water Management Plan must contain demonstrated consistency with Council's Integrated Water Policy and Clause 7.4 Water Protection in the Wollondilly Local Environmental Plan as well as a consideration of potential impacts of the development on aquatic ecology and its rehabilitation.

** In addition to the above comments, Council's Team leader - Environmental Health has recommended the following conditions.

- The submitted noise verification monitoring shall be carried out in accordance with "Noise Management Plan Menangle Sand and Soil Quarry prepared for Menangle Sand and Soil Pty Ltd", Ref: J190166 RP29, v6 Final, Prepared by EMM Consulting and dated 4 March 2021,
- The air quality monitoring shall be carried out in accordance with "Air Quality Management Plan Menangle Quarry Extension 15 Menangle Road Menangle prepared for Menangle Sand and Soil Pty Limited", Ref: J190166 RP30 Final version, prepared by EMM Consulting and dated 12 April 2021.

To this end, Council requests that the NSW Planning, Industry & Environment seriously consider Council comments, recommended conditions and actions to move forward on this modification application. Finally, the applicant should be held accountable for all current conditions of the original development consent and those recommended by Council to ensure compliance and current best practise.

Should you wish to seek further clarification on Council's submission please contact Council's Team Leader Development Assessment, Michael Buckley.

Yours Sincerely

Digitally Signed: Michael Buckley Development Assessment Team Leader Tuesday, 20 July 2021 10:51:27 AM Development Services
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