5th April 2021

For the attention:
Liam Jukes
Senior Planner – Major Assessment
City Development Branch
Council of City of Gold Coast

Dear **Liam Jukes,**

Objection submission COM/2019/81 -

Incorrect proposed use of dedicated 'Ancillary Operations' area (Within Lot 467)

Please accept this objection as it highlights that the development application is seeking to utilise areas of 'Lot 467' as part of the quarry footprint when it is already predefined as 'Ancillary operations' as per the current approval and original Rezoning agreement, dated 17th March 1992.

Development application omitted 'Ancillary operations'

It is noted that the total area of 'Lot 467' on RP845775, the 'Extractive Industry area' is 70.8 hectares in total as defined in the City Plan (Attachment A1).

The currently 'claimed' approved operational area, as defined in the development application, is 56.02 hectares (reproduced in Attachment A2). This is verified in the Main application 'Introduction' (Attachment A3). However, these claims are, I believe, a gross exaggeration as the extractive footprint is less than half the claimed approval being only 23.77 hectares approx. as shown in the annotated Plan of Development: '362-010' (which was also the 'Third Schedule ' in the Original Rezoning agreement) reproduced in Attachment A4.

Please note the 'Third Schedule' appears to have been negligently omitted from the development application submitted copy of the original rezoning agreement and replaced with a relatively innocuous map that was in fact the Fourth Schedule with the title 'FOURTH SCHEDULE' removed (Attachment A5). The original copy is shown in Attachment A6. This has been discussed in other objections so I will not dwell on this other than to say I believe this was a fraudulent misdirection that placed the Council planners, the SARA Referral team and members of the public at a distinct disadvantage by withholding key information about the current approved buffer status of protected areas that this DA sought, I believe, illegitimately to include as extractive footprint at the time of SARA referral and Public Notification.

Recent access, via a Right To Information (RTI inquiry) to 'Plan 362-010' now shows us an area of 11.83 hectare has a defined status of 'Ancillary operations' as can be seen in 'Plan 362-010' (Attachment A4). This was, I believe, culpably not revealed in the development application.

Intent of the 'Ancillary operations' area

It can be clearly seen that the Ancillary operation area is completely separate to the extractive footprint as clearly defined in 'Plan 362-010' (Attachment A4).

The intent of this area, as stated in the original rezoning agreement: 'Proposed zone, (Recital B and Clause 1.14)' is a special facilities area (Ancillary purposes to extractive industry including processing, plant, stockpiling, magazines, water storage, workshops, stores, weighbridge and offices, decantation, ponds, dams, access in accordance with Plan of development No. 362-010). Clearly it is not part of the extractive footprint but an ancillary operations area to it. This is further demonstrated in 'Section I' of the Rezoning Agreement reproduced in Attachment A7.

Therefore, I believe, the applicant cannot simply disregard these defined areas as they wish and include them as part of the proposed extraction footprint as they have attempted in the proposed development application.

Rezoning approval Conditions

Under the Queensland Planning Act 2016, Chapter 8, Part 2, Division 7, Section 137, 'Rezoning approval conditions', it states: *"(2) If a person wants to change a rezoning condition, the person must make a change application under this Act as if the rezoning condition had been imposed by the local government as assessment manager"* (reproduced in Attachment B1).

Therefore, to change this area to an extension to the extractive footprint would require a change application under this act. However, I do not see that reducing clearly defined buffers, that were established for clear reasons at the inception of the quarry from residential homes and suburban areas would be an appropriate use of this act.

Conclusion

It would seem that the clear intent in the original Rezoning Agreement was to provide defined areas within Lot 467 (Formerly Lot 3 and Lot 463) in order to protect the quarry extractive footprint and ancillary operations and the surrounding sensitive receptors.

It would therefore seem completely unfair, and contra to the Council clear requirements and original intent to now permit an increase in extractive footprint against the clear intentions of the original rezoning agreement. Especially since the Council has actively encouraged the extensive suburban development around the quarry since the quarries inception.

It would seem the Council were content to encourage urban development within the 1000m separation area knowing the quarry was destined to close on 15th February 2022. Therefore, to now permit an extensive expansion for the proposed one hundred plus years would seem very conflicting and inappropriate given the suburban location it now finds itself amidst.

By permitting the use of this 'Ancillary operations' area, as further extractive footprint as per the development application requirements, would not only yet further compromise the separation buffer for residents but would also reduce the visual amenity and personal amenity for the surrounding residents and users of the Maudsland Road also (Contra to City Pan Extractive Industry Code 9.3.8). It would also mean the existing ancillary operations will have no suitable location to co-exist within the extractive area.

It is now up to the Councils Assessment Team to ensure these express conditions and requirements, setup in the original Rezoning agreement and its constituent parts (i.e. Deed of Novation, David Kershaw agreement etc), are carefully considered with respect to this current development application as it would seem they were originally to ensure suitable buffers were in place. And, it should be remembered these buffers where the absolute minimum and far less separation than the Council originally wanted. Now, to permit reduction in these buffers yet further, to a fraction of the currently agreed buffers, would seem somewhat reckless and an endangerment to public health and welfare.

Thank you in anticipation,

Kind regards

Tony Potter

* Disclaimer. Please note my findings are believed correct and are to the best of my ability. However, there may be errors and assumptions I have made that are incorrect. I do not believe this to be the case, but, realise with the vast amounted of submitted data from the applicant, errors and assumptions on my part may occur. Hopefully this is not the case, but please accept my apologises if this is so. Thank you.

Attachment A1 - Lot 467 (the "Extractive Industry Area:" is 70.8 ha

City Plan property report

Property address	33 Maudsland Road Oxenford 4210
Lot and plan	Lot 467 on RP845775
Area	708000m^2
Division	2 (view divisional contact details)

City Plan content (access the City Plan)

Applicable mapping content		Related City Plan content
Zone	Extractive industry, Extractive industry indicative buffer	Extractive industry zone code Levels of assessment: • Material change of use • Reconfiguring a lot • Building work • Operational work
	Extractive industry	Extractive industry zone code Levels of assessment: • Material change of use • Reconfiguring a lot • Building work • Operational work

Attachment A2 - Existing Approval is 56.02 ha (Main Application, Section 2, page 19)

Legend:
Site Boundary
Cadastral Boundary
Approved Quarry Boundary
Proposed Quarry Boundary

Category	Current Approval	Proposed Areas
Green Zone	28.01 Ha	84.78 Ha
Operational Area	56.02 Ha	66.62 Ha
TOTAL	84.03 Ha	151.40 Ha

Note : Approximate as per the 1992 Rezoning Agreement

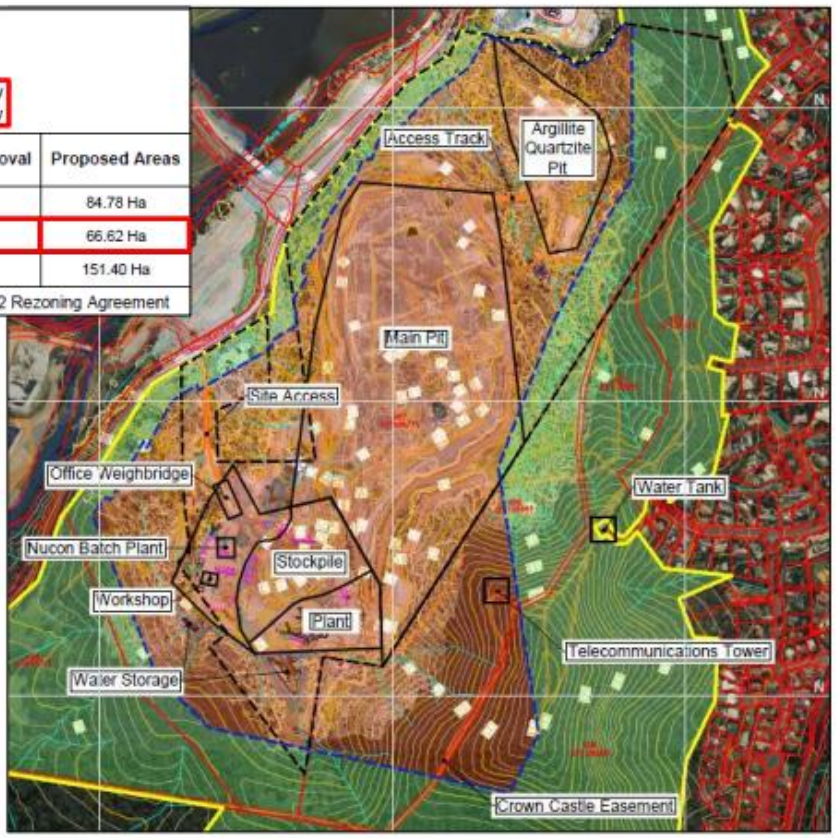
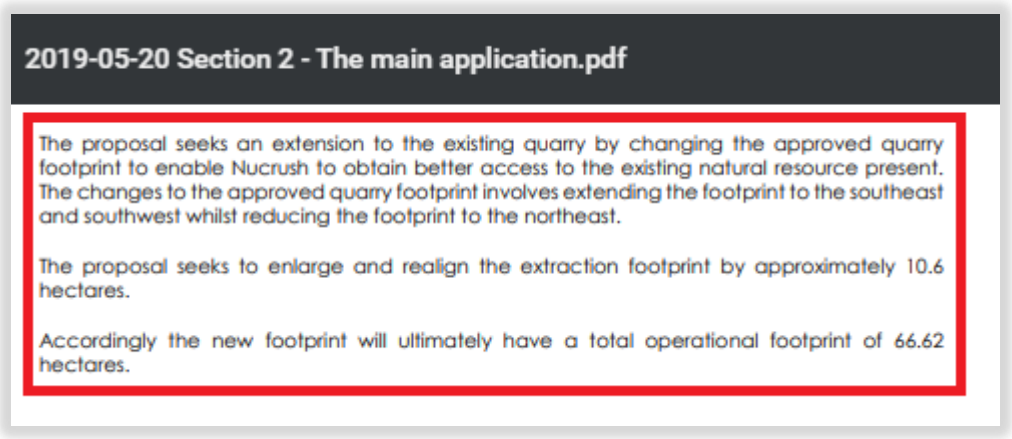


Figure 3 – Comparison mapping to support approval and proposed quarry boundary

Attachment A3 - Existing Approval is 56.02 ha (Main Application, Introduction, page 9)



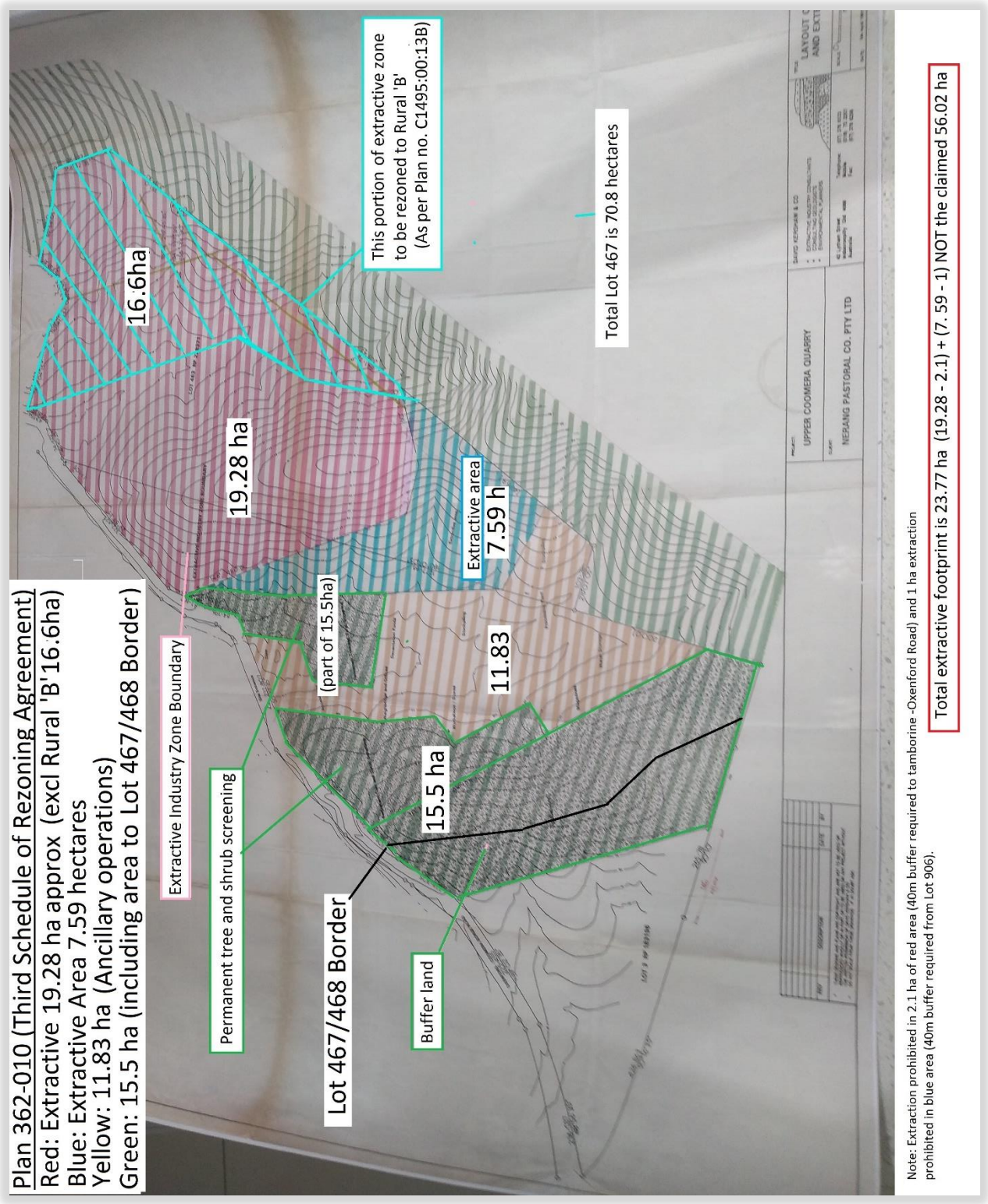
2019-05-20 Section 2 - The main application.pdf

The proposal seeks an extension to the existing quarry by changing the approved quarry footprint to enable Nucrush to obtain better access to the existing natural resource present. The changes to the approved quarry footprint involves extending the footprint to the southeast and southwest whilst reducing the footprint to the northeast.

The proposal seeks to enlarge and realign the extraction footprint by approximately 10.6 hectares.

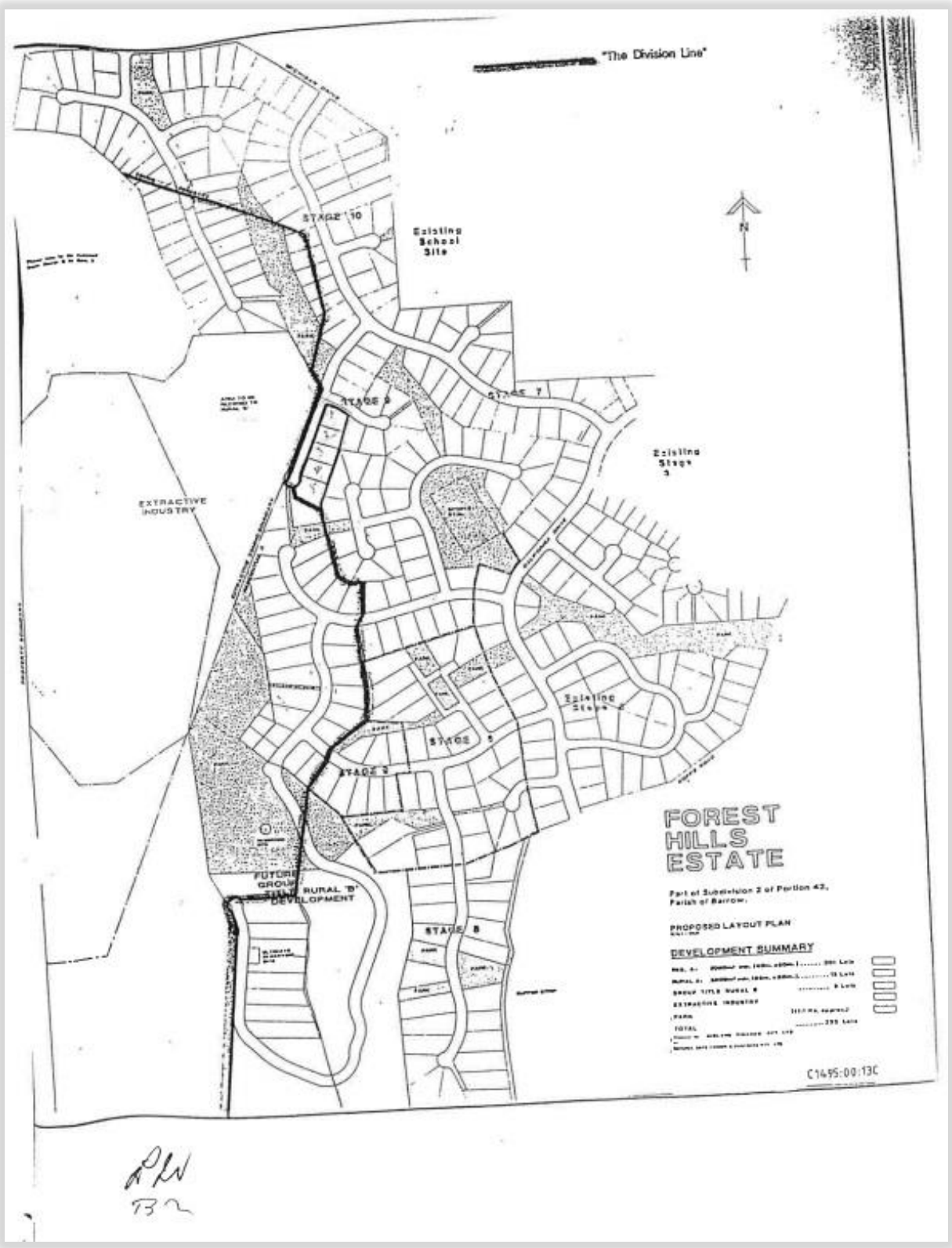
Accordingly the new footprint will ultimately have a total operational footprint of 66.62 hectares.

Attachment A4 - Plan 362-010 (Third Schedule of Rezoning agreement)



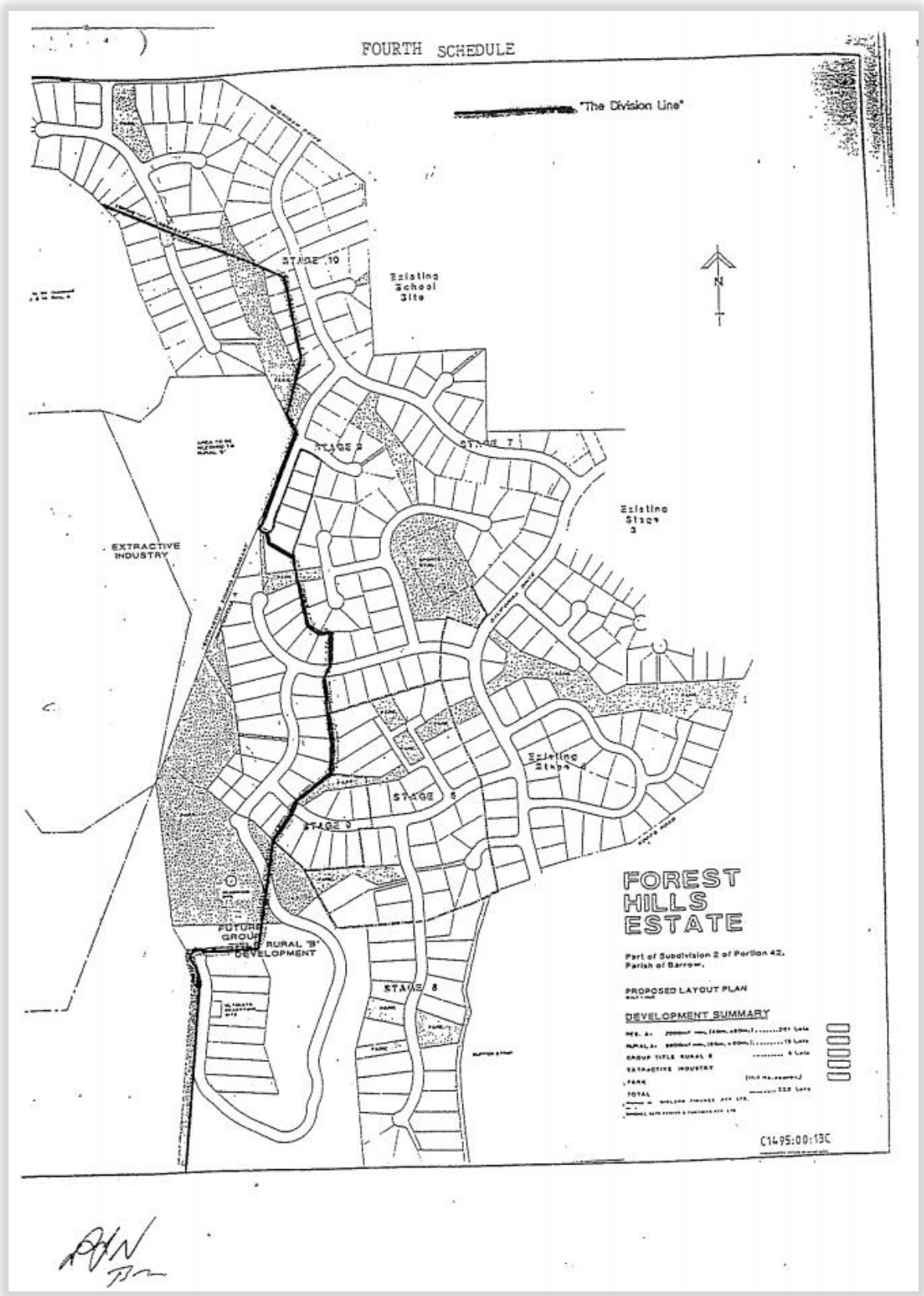
Attachment A5 - Fourth Schedule of Rezoning agreement altered to seemingly appear as Third Schedule'

Note title "FOURTH SCHEDULE' has been removed. Original shown in Attachment A6 below.



Attachment A6 - Fourth Schedule of Rezoning agreement

(note title: “FOURTH SCHEDULE’ has not been removed in correct version)



Attachment A7 - 'Section I' of Rezoning agreement

Original Rezoning agreement from Doc 5.pdf

H. The Applicant is also the registered proprietor of the land presently zoned Extractive Industry contiguous to the north of the subject land, described as part of Lot 463 on Registered Plan No. 228373 and part of Lot 3 on Registered Plan No. 183196, and, is coloured pink on the said Plan of Development.

I. Plan of Development No. 362-010 dated 5th April, 1991 comprising the Third Schedule is to be the Plan of Development for the whole area zoned Extractive Industry and Special Facilities (Ancillary Purposes to Extractive Industry including Processing, Plant, Stockpiling, Magazines, Water Storage, Workshops, Stores, Weighbridge and Offices, Decantation Ponds, Dams, Access, Permanent Tree and Shrub Screening) now owned by the Applicant (hereinafter referred to as "the Extractive Industry Area").

J. It is the intent of the parties, and is hereby agreed, that the whole Extractive Industry Area is to be operated as one comprehensive quarry operation, and that this Deed is intended to regulate the orderly development and operation of that quarry. The conditions of approval appearing in the Second Schedule are to be equally and severally applicable to both the land the subject of the said Amended Application, and the land presently zoned Extractive Industry, namely the whole of the Extractive Industry Area.

Attachment B1 - Rezoning agreement as if applied by Assessment Manager

legislation.qld.gov.au/view/html/inforce/current/act-2016-025#sec.50

Queensland Government
Queensland Legislation

Planning Act 2016

Reprint current from 1 October 2020 to date

Chapter 8 > Part 2 > Division 7 > Section 317

317 Rezoning approval conditions

(1) This section applies to the following conditions (a ***rezoning condition***)—

(a) a condition decided under the repealed LGP&E Act, section 2.19(3)(a);

(b) a condition of an approval given under the repealed LGP&E Act, section 4.4(5).

(2) If a person wants to change a rezoning condition, the person must make a change application under this Act as if the rezoning condition had been imposed by the local government as assessment manager.

(3) A development approval applies instead of a rezoning condition, to the extent of any inconsistency.