23rd May 2021

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

For the attention:
Phillip Zappala
Supervising Planner – Major Assessment
City Development Branch
Council of City of Gold Coast

Dear Liam Jukes and Phillip Zappala,

Objection submission COM/2019/81 -

Council procedures, SARA re-referral and Public Notification requirements - continued.

Further to my objection: 'Council procedures, SARA re-referral and Public Notification requirements', dated 23rd February 2021 (which I note is yet to appear on PDonline despite a three month time lapse).

Please accept this objection as it highlights, I believe, that the DA Rules for this development application are continuing to not be followed appropriately by Council officers.

Unfortunately, it would seem my earlier concerns, raised in the earlier objection have been neither acknowledged nor addressed and therefore I feel compelled to reiterate these concerns at what appears to be failings within your department with regards to following the DA Rules process appropriately.

It is noted that this DA has now entered Part 6 of the DA Rules i.e. *'Changes to a development application and referral agency responses'*. However, I note the PDonline has yet again failed to be updated and is still in *'Part 5: Decision'* stage (Attachment A1) which I believe is incorrect as, I believe, no decision can be made whilst this DA is in the *'Part 6: Changes to a development application and referral agency responses'* stage. Therefore, this is misleading.

I also note the *'Work flow / Events'* on PDonline fails to indicate the amended SARA Referral stage information as per the SARA response dated 14th May 2021. This is also highly misleading.

Public Notification

I must yet again draw your attention to the DA Rules: *'Part 6: Section Changes to a development application and referral agency responses'*, Section 26.2(b), which states: *"If part 4 [Public Notification] had started or ended for the original application when the change was made, public notification must be undertaken again unless the assessment manager is satisfied the change would not likely to attract a submission objecting to the thing comprising the change, if public notification were to apply to the change"*. As you are fully aware, at least two objections (11th and 12th March 2021) concerning the subsequent changes have, to my knowledge, been raised since these changes were made public via

PDonline yet the Council Planning office seem in denial. I also note, despite my request to inform SARA of the true extent of the changes since SARA original approval, and Public Notification back in November 2019, your office has, unfortunately, failed to do this instead, I quote (from the Council Planning email addressed to SARA from Mr Zappala, dated 28th April 2021): *"The applicant has described the change as follows: "The change involves no longer proposing quarrying activity in Lot 906. Accordingly, the quarry footprint is reduced from 64.7 hectares to 54.93 hectares." In accordance with Section 25.1(b) and 26.2(b), Council officers advise that the change does not affect the development assessment process and the application will not be required to be re-notified. Officers are satisfied the changes made are not changes that would likely attract as submission objecting to the thing comprising the change, if public notification were to apply to the change"* which, in my opinion, is culpably trivialising the true extent of the two hundred and eighty three pages of submitted changes made public in February 2021.

As the Council Planning department would have been very aware, not only does this not correctly describe the true extent of the changes submitted within the two hundred and eighty three pages of updates, but it was also sent over six weeks after objections were submitted re the proposed changes. Therefore, this Council statement to SARA is, I believe, culpably incorrect and highly misleading.

I am truly horrified that the Council Planning email sent to SARA, regarding this highly important development application, affecting hundreds, maybe thousands, of local residents, appears to trivialise the extent of the changes and, I believe, is actively trying to downplay the true extent of the submitted changes, by stating: ***"Officers are satisfied the changes made are not changes that would likely attract a submission objecting to the thing comprising the change, if public notification were to apply to the change"*** when it is clear that they had already received submissions objecting to: ***"the thing comprising the change"*** (i.e. visual amenity of the landscape and also additional concerns re truck and car parking and visual and safety concerns regarding this new information that had not been revealed up until these February 2021 changes were submitted).

It would seem Council officers are prepared to ignore the DA Rules in order to prevent a re-Public Notification as per the applicants wishes which stated: *"It is our view, that given the change involves a reduction in the quarry footprint, that the change would not likely attract a submission objecting to the change. Accordingly, there is no need for public notification to be repeated"* (Letter to Council planning department from applicant dated 18th Feb 2021). However, it is clear that the applicants two hundred and eighty three pages of submitted changes (in their own omission not a minor change) is clearly way more than the claimed: "*reduction in the quarry footprint"* and it is clear their claim: *"the change would not likely attract a submission objecting to the change*" is wholly incorrect as proven by at least two objections already submitted concerning these changes.

It is, I believe, diabolical that the Council is prepared to seemingly operate in cahoots with the applicant and to prevent local residents from making *'Properly made submissions'* on these subsequent changes as is their legal right and as clearly specified within the DA Rules Section 26.2(b).

To simply ignore the true extent of the two hundred and eighty three pages of submitted changes (including but not limited to: visual amenity and updated truck and car parking and access details) and instead is content to accept the applicants claims that these two hundred and eighty three pages are only concerned with a singular change, namely: *"The change involves no longer proposing quarrying activity in Lot 906"* is, I believe, highly culpable.

Also, please remember, many, many changes since public notification closed eighteen months ago have already been ignored despite many of these, in my opinion, not being minor changes and being re-notifiable, I believe, as per DA Rules Section 26.2(b) states.

Please note, in any subsequent Court Case, should I believe it proves necessary, I reserve the right to highlight the Council implementations of the 'DA Rules' process that I believe is at the distinct disadvantage of the local affected residents who are being denied their chance to make a legally made properly made submission on ALL these subsequent changes, which include, but are not limited to: Changed visual amenity (not shown in submitted changes), added truck/car parking and access route information, which is both highly visible from beyond the quarry boundary and serious safety concerns, including truck and/or boulders crashing on to the Tamborine-Oxenford and Maudsland Road which is below the new access road (as revealed within the 283 pages of latest changes) that are within approx 40m of these busy public roads for a distance of approximately 650 m, along the western flank of the proposed extractive footprint, which is a landslide area as clearly marked in the Council City Plan.

I believe ignoring the submitted objections pertaining directly to these latest changes is clearly ignoring DA Rules: *'Part 6: Section Changes to a development application and referral agency responses'*, Section 26.2(b) which states:, *"If part 4 [Public Notification] had started or ended for the original application when the change was made, public notification must be undertaken again unless the assessment manager is satisfied the change would not likely to attract a submission objecting to the thing comprising the change, if public notification were to apply to the change"* and Council actions on this matter are both ill-advised and culpably incorrect, especially when the officer making this judgement was, I believe, fully aware that already at least two submissions: *"objecting to the thing comprising the change"* have been lodged with Council six weeks before, what I see as, this highly misleading email that was subsequently sent to SARA on behalf of the Council Planning department.

DA Rules Part 6, Section 27 Effect of other Changes

Just to be quite clear, Part 6, Section 27.3 of the DA Rules states: *"If public notification applied to the original application and the change under section 27.1 was made during part 4 or after part 4 had ended* ***then part 4 must start again from its beginning, unless the assessment manager is satisfied the change would not be likely to attract a submission objecting to the thing comprising the change, if public notification were to apply to the change****"*. Clearly, at least two submissions (to my knowledge) objecting to "*the thing comprising the change"* received within two weeks of the changes being made public, confirm these changes SHOULD have triggered a public notification as the assessment manager should clearly NOT have been: *"satisfied the change would not likely to attract a submission*". However, the assessment manager quoting the following: *"Officers are satisfied the changes made are not changes that would likely attract a submission objecting to the thing comprising the change, if public notification were to apply to the change"* to SARA, over six weeks after the objections had been filed, is, in my opinion, culpable, highly questionable and highly misleading.

Have Council Planning Officers denied members of the public their legal right to make a properly made submission?

It is sad that it appears the Council Planning department have culpably denied members of the public their legal right to make a properly made submission based on the many changes since the original public notification period ended over eighteen months ago.

With so much new information coming to light over the intervening time (much through a Right To Information enquiry which took many months of waiting whilst the RTI team prepared the information) it would seem absolutely astonishing that the public are being denied their legal right to make a properly made submissions on these new facts.

Especially when so much of this highly important, it would seem, was culpably omitted or surreptitiously hidden, for instance omitted plan: 'C1495:00:13B' revealing the true extent of the protected development area, known as Rural 'B' area (reproduced in attachment A2, close up in Attachment A3 and annotated in A4).

Also, doctored plans such as the 'Third Schedule' of the Rezoning agreement (Attachment B1, annotated in B2) culpably, it would seem, removed and replaced with the relatively innocuous 'Fourth Schedule' (Attachment B3). Thus, it would seem, attempting to suppress information pertaining to the 'Buffer Land' and 'Permanent trees and shrub screening' areas that are part of the current approval (highlighted in attachment B1).

And, what would seem, the highly culpable attempt to deceive Council Planners, SARA and members of the public, by showing the 'Protected development' (Rural 'B') area, which is clearly within the extractive industry zone, Lot 467 (as shown in attachment C1) incorrectly identified as in the completely separate 'Open space' Lot 468 (Attachment C2). For clarification Attachment C3 is an annotated version with the actual position for the Rural 'B' area shown, along with the seemingly highly culpable position in the 'Open space' Lot 468 to the southwest of the extractive industry zone (Lot 467). Also, the 'Buffer land' and 'Permanent Trees and Shrub Screening' areas (15.5 ha) are also highlighted in dark blue. It would seem to me that the 40m buffer land highlighted on the western flank (two small red areas on the western flank in attachment C3) were included as part of the *"Existing Buffer and Rural B Area (30.03 ha)"* to make up the shortfall between the actual Rural 'B' area and the smaller area of Lot 467. This red area is obviously part of the currently *"Approved Disturbance Area"* (as shown in Plan 362-010, attachment B2), however, it would seem to have been surreptitiously re-labelled in Attachment C2/C3 to make up the shortfall between the Rural 'B' area (16.6ha) and Lot 468 (13.23ha).

Attachment C3 also clearly shows how members of the public were, it would seem, misled at the time of original public notification into believing 7.36 ha within the prohibited development area (Rural 'B') was approved extractive footprint that was being magnanimously released for the benefit of local residents and the local environment in the area as it is labelled as: *"Previously approved Area, however, proposed to be left undisturbed (7.36ha)"* (Attachment C3). However, this is clearly part of the protected development area, as highlighted in the omitted Plan: 'C1495:00:13B' (reproduced in attachment A2, A3 and A4). In fact, local residents in this area (notably Emerson Way), where I believe canvassed prior to public notification, on behalf of the applicant, and were warned that objecting to the proposed development application would mean they extractive footprint could be virtually up to their backyard instead of 150 metres or so from their properties (as opposed to the 400 metres current approval would actually allow but not divulged by the canvassers). Clearly it would seem, local

residents were furnished with misleading information, only revealed by the subsequent RTI enquiry, revealing the intent of the prohibited development (Rural 'B') area for the life of the quarry.

Note, for clarification Lot 467 (the extractive zone and KRA) and the open space Lot 468 are identified in the City Interactive Map in attachment C4).

Attachment C3 also highlights how the development application includes the prohibited development area (Rural 'B') as part of its: *"Approved Disturbance Area (56.02 ha)"*. This area is definitely not part of the *"Approved Disturbance Area"* as clearly stated in the 1992 Rezoning Agreement and as shown in 'C1495:00:13B' (reproduced in attachment A2, A3 and A4). Also, this claimed *"Approved Disturbance Area (56.02 ha)" includes 15.5 ha of 'Buffer Land'* and *'Permanent Trees and shrub screening'* as shown in Plan 362-010 (reproduced in attachment B2). It would seem, the *"Approved Disturbances Area"* is not 56.02 ha, as claimed, but is less than half of this at approximately 23.77 ha (as shown in attachment B2). Again, I believe, seriously and culpably misleading Council Planners, the SARA referral agency and members of the public as to the scale of the proposed development application and the current approval.

I would also like to remind Council Planners that, it would appear, they themselves were unaware of the true extent of the development application over a year into this development application as highlighted in the applicants Information Response dated 26th June 2020 (reproduced in attachment D1), when the Council had requested the following information:

1. The Life of the quarry under the current approval? (until 15th February 2022)
2. Life of the quarry under the proposed expansion? (one hundred plus years attachment D2)
3. Amount of material that could be extracted as a result of the planned expansion?
4. An estimate of the amount of material that will be extracted between RL5m and RL-125m (or the ultimate depth of the pit if this has changed)?

Which, I believe, is in direct response to objections I raised prior to this. These are all highly important facts that I believe should have been clear prior to Public notification and, I believe, members of the public are entitled to make a properly made submission based on the applicants 'Information Response' as clearly the development application should not at this stage have been in the *'Part 5: Decision'* stage with outstanding Council 'Information Requests'. Please note the Council's 'Information Request' pertaining to this 'Information Response' (dated 26th June 2020) appears to be negligently omitted from PDonline. Is this because the Council were fully aware that the development application, should not have been in the *'Part 5: Decision'* stage (as it has been since November 2019) but clearly should have been in the *'Part 3: Information Request'* stage (Attachment A1)? It would seem another serious breach in the DA Rules.

Conclusion

It has been very disturbing to find the information displayed on PDonline for this particular development application is not a true reflection for what has been going on. For example, I note, according to PDonline, this development application has been in ''*'Part 5: Decision'* stage, since officially notification that Public notification had completed on 25th November 2019. This is despite many Council 'Information requests' and applicant 'Information Responses' ensuring that the development application should have been in the: *'Part 3: Information Request'* stage for much of the last eighteen months.

It is also noted the Council 'Information requests' and applicants 'Information Responses' are culpably, I believe, completely absent from the workflow events page and predominately absent from the PDonline workflow and attachments section, resulting in many major and minor changes to this development application clearly indicating it should not have been in the *'Part 5: Decision'* Stage throughout the last eighteen months, but should have been in the: *'Part 3: Information Request'* stage instead, followed by *'Part 4: Public notification'* once the Council had all their 'Information Requests' satisfied.

It is further noted that, given the SARA response on 14th May 2021, that it is clearly not in the *'Part 5: Decision'* Stage, but is currently, I believe, in the *'Part 6: Changes to a development application and referral agency responses'* stage whilst a response from SARA is outstanding.

Given the sheer number of changes and the extent of these changes (and the errors and omissions subsequently uncovered) since Public Notification completed in November 2019, a 'Re-Public Notification period, I believe, would and should have been appropriate, as per the DA Rules require.

Thus, I believe, it is truly abhorrent, that Council Planners, given yet another ideal opportunity with the latest major changes released in February 2021, chose, it would seem, to ignore the DA Rules and not permit a 'Re-Public Notification' as was surely required.

This whole application appears to be a shambles and I look to you to ensure the missing information from the PDonline workflow and the missing files in PDonline attachments section are entered correctly and this development application subsequently proceeds, with a re-public notification, as it should and as per the Planning Regulations require.

Unfortunately, I find the Council Planning office's actions highly concerning re this development application. This is emphasised in the apparent trivialisation of the significant changes since SARA original approval (letter from Mr Zappala dated 28th April 2021 to SARA), which completely ignores my earlier request to inform SARA of the extent of the significant changes and the errors and omissions subsequently uncovered within the DA (as per my objection: 'SARA Approval based on seemingly culpably incorrect information', dated 5th April 2021, submitted over three weeks before Mr Zappala's email to SARA). I therefore find this Council email to SARA highly misleading and lacking crucial detail, designed, it would seem, to prevent a SARA re-referral as is surely required. And, for instance, given the safety analysis aspects that I have highlighted that are missing from the Traffic Impact Assessment, to not highlight these subsequent findings to SARA is, I believe, highly negligent. Also, the noise, blasting and dust analysis objections that I have submitted to your department, I believe, shows yet more glaring inadequacies in the submitted DA, that I wholeheartedly believe are effecting the safety and welfare of local residents and their families and also maybe damaging their properties (maybe structural) and also affecting the local wildlife far more than claimed. To not advise SARA of my findings, I believe, is also culpably negligent and at the clear detriment and safety of local residents

(who have also been denied their right to a further public notification based on the significantly changed application since public notification closed).

Finally, I note, many of my objections (as per the one mentioned above) are failing to be filed on PDonline (dating back over three months). I hope their absence from PDonline does not mean they are not being given due consideration, especially given the Councils apparent culpable failure to instigate a new public notification for this development application as it would seem was clearly required.

Thank you in anticipation,

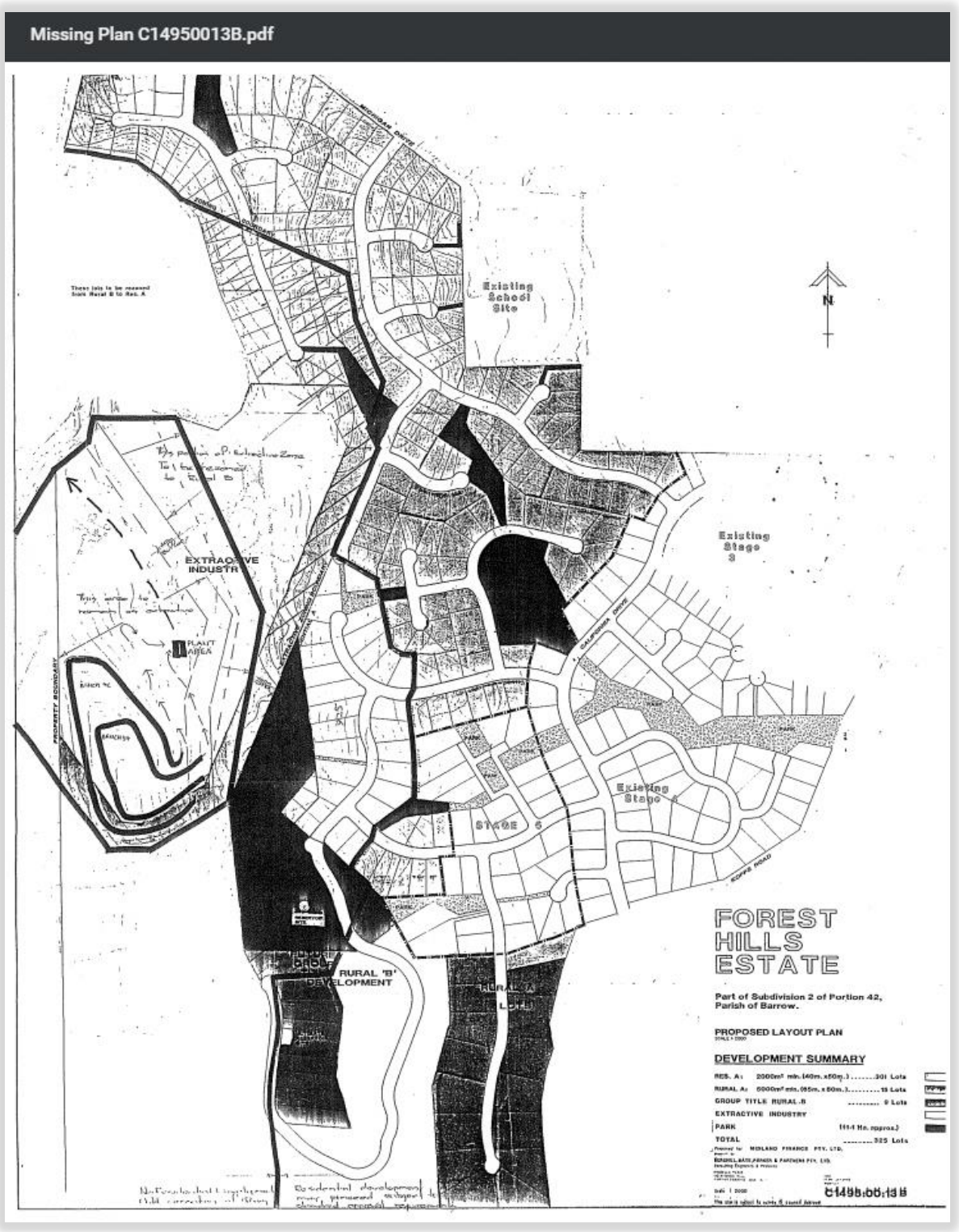
Kind regards

Tony Potter

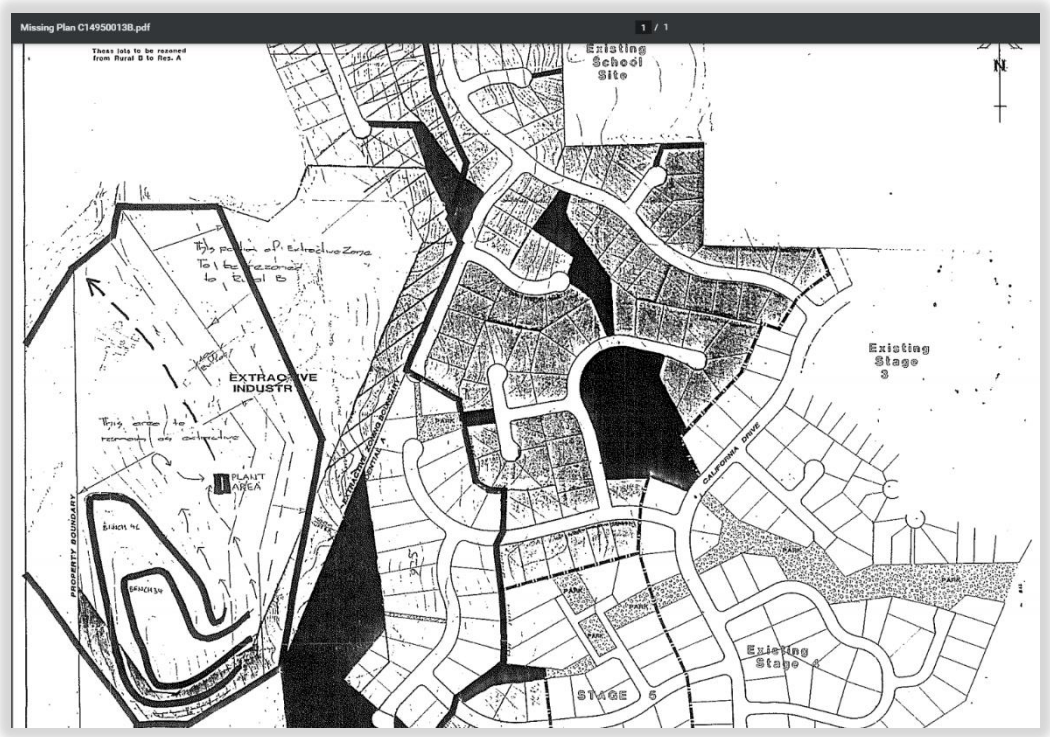
* Disclaimer. Please note my findings are believed correct and are to the best of my ability. However, there may be errors and assumptions I have made that are incorrect. I do not believe this to be the case, but, realise with the vast amounted of submitted data from the applicant, errors and assumptions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

Attachment A1 - DA Rules

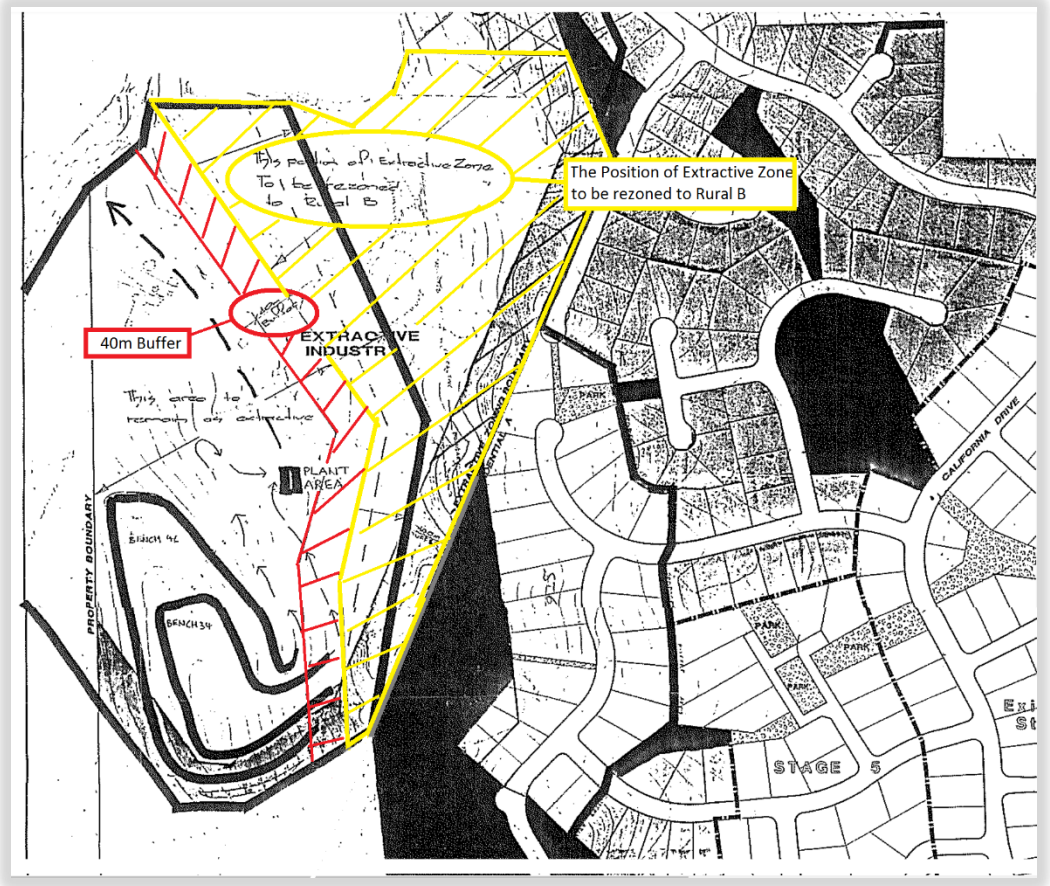
Attachment A2 - Plan C1495:00:13B



Attachment A3 - Plan C1495:00:13B (Showing close-up of Rural 'B' area)

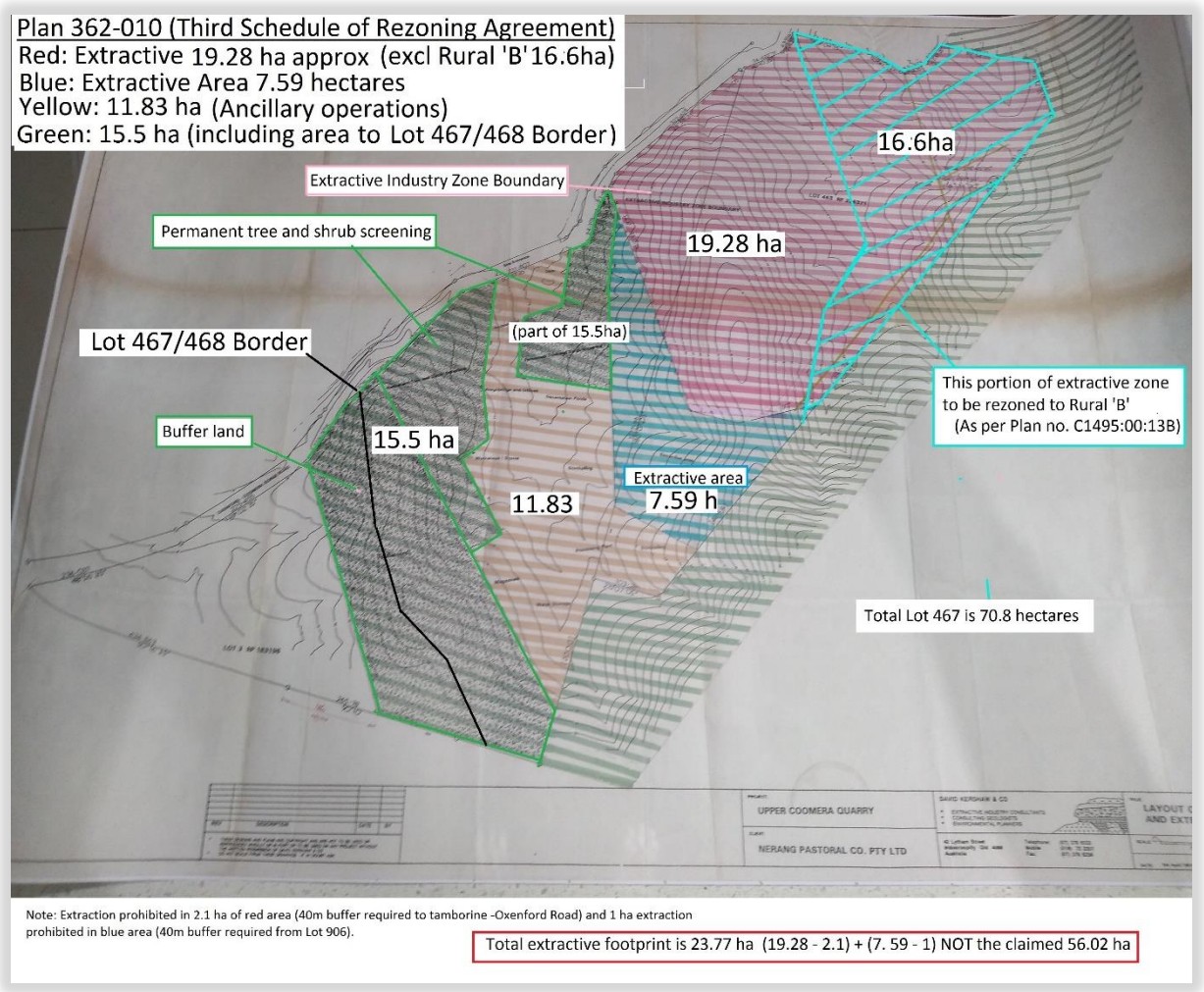


Attachment A4 - Plan C1495:00:13B (Showing annotated close-up of Rural 'B' area)

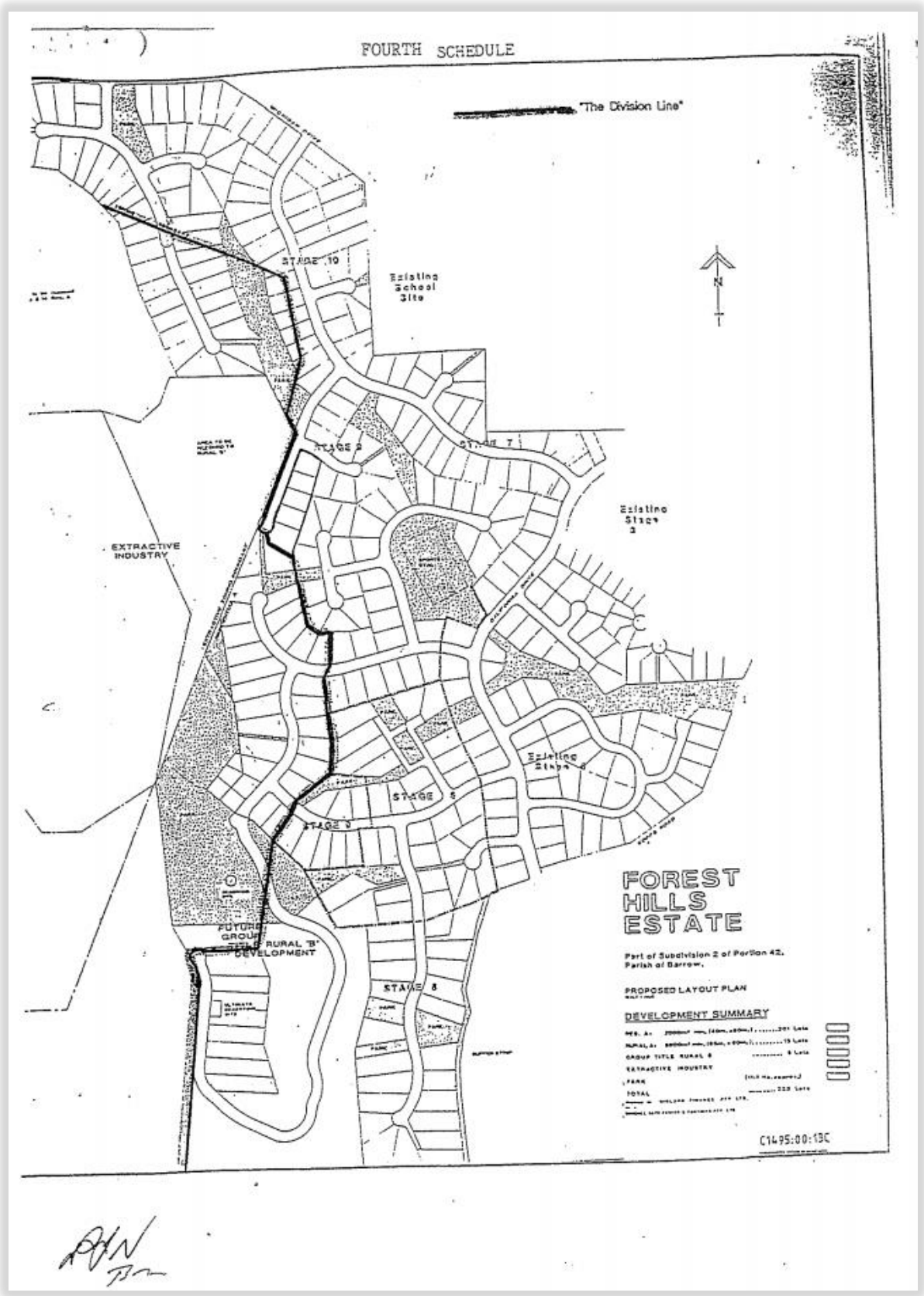


Attachment B1 - Plan 362-010 (Third Schedule of Rezoning Agreement)

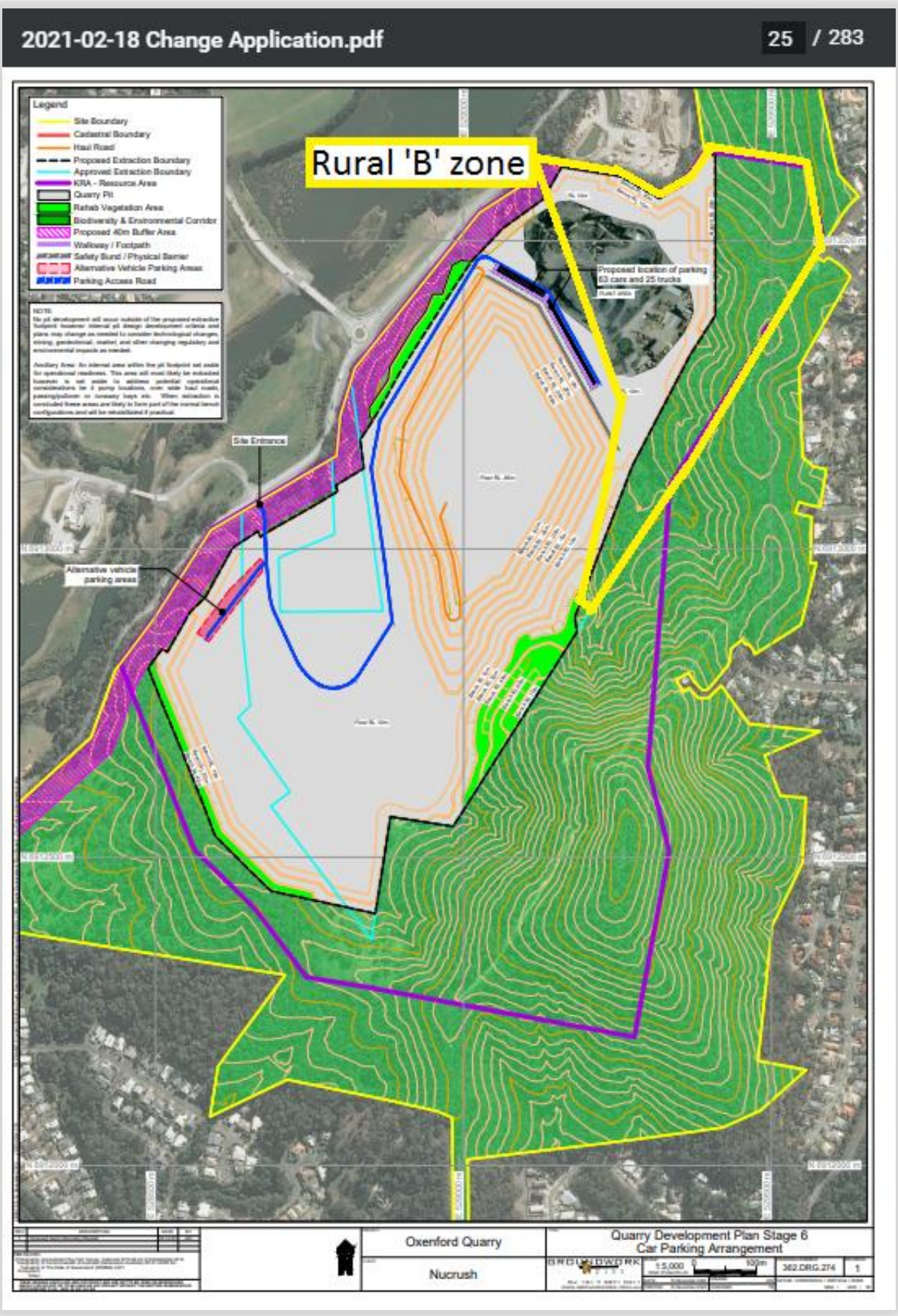
Attachment B2 - Plan 362-010 (Third Schedule of Rezoning Agreement) - annotated



Attachment B3 - 'Fourth Schedule' of Rezoning Agreement) - annotated



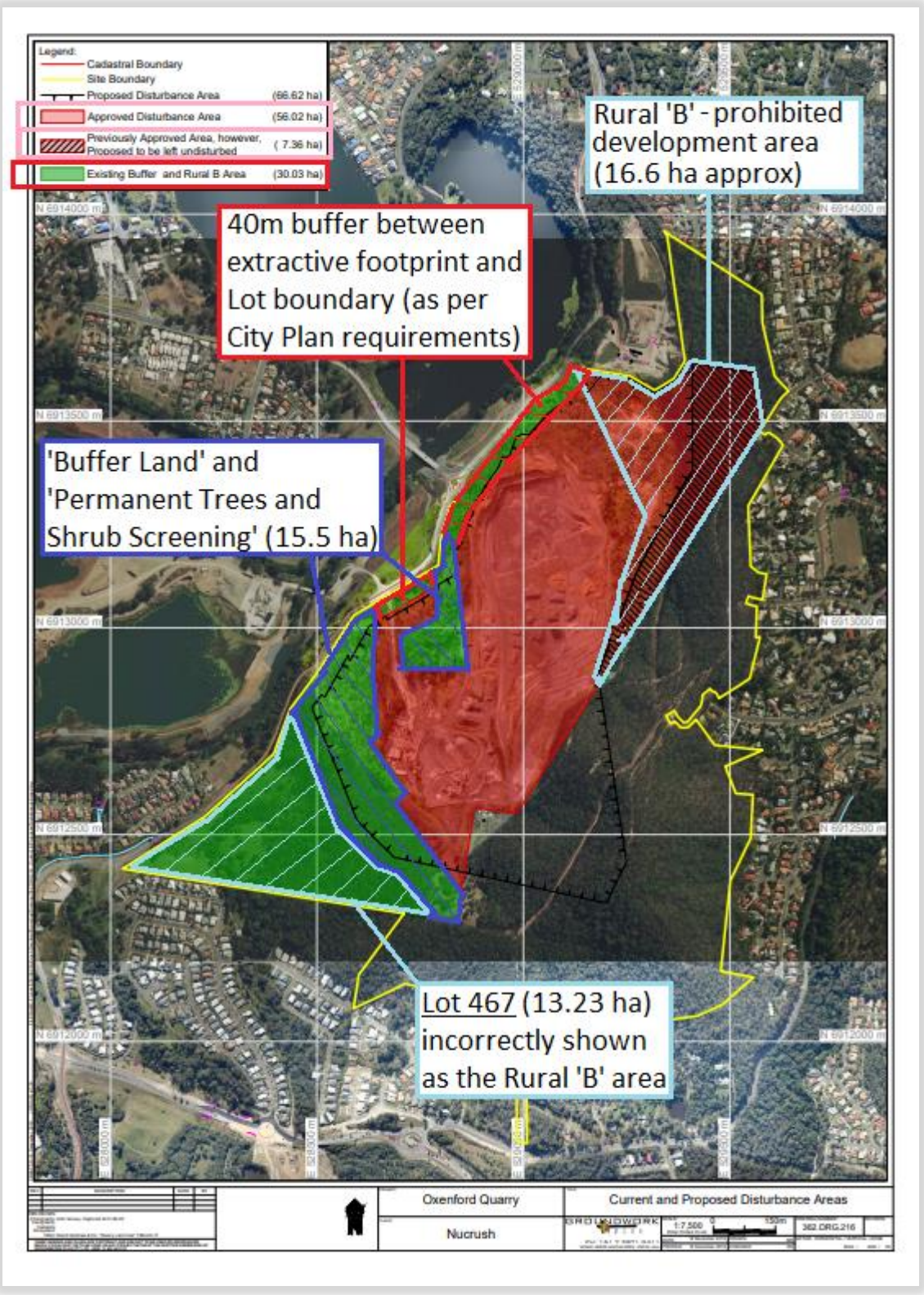
Attachment C1 - Approximate location of 'Prohibited development' (Rural 'B') area within Lot 467



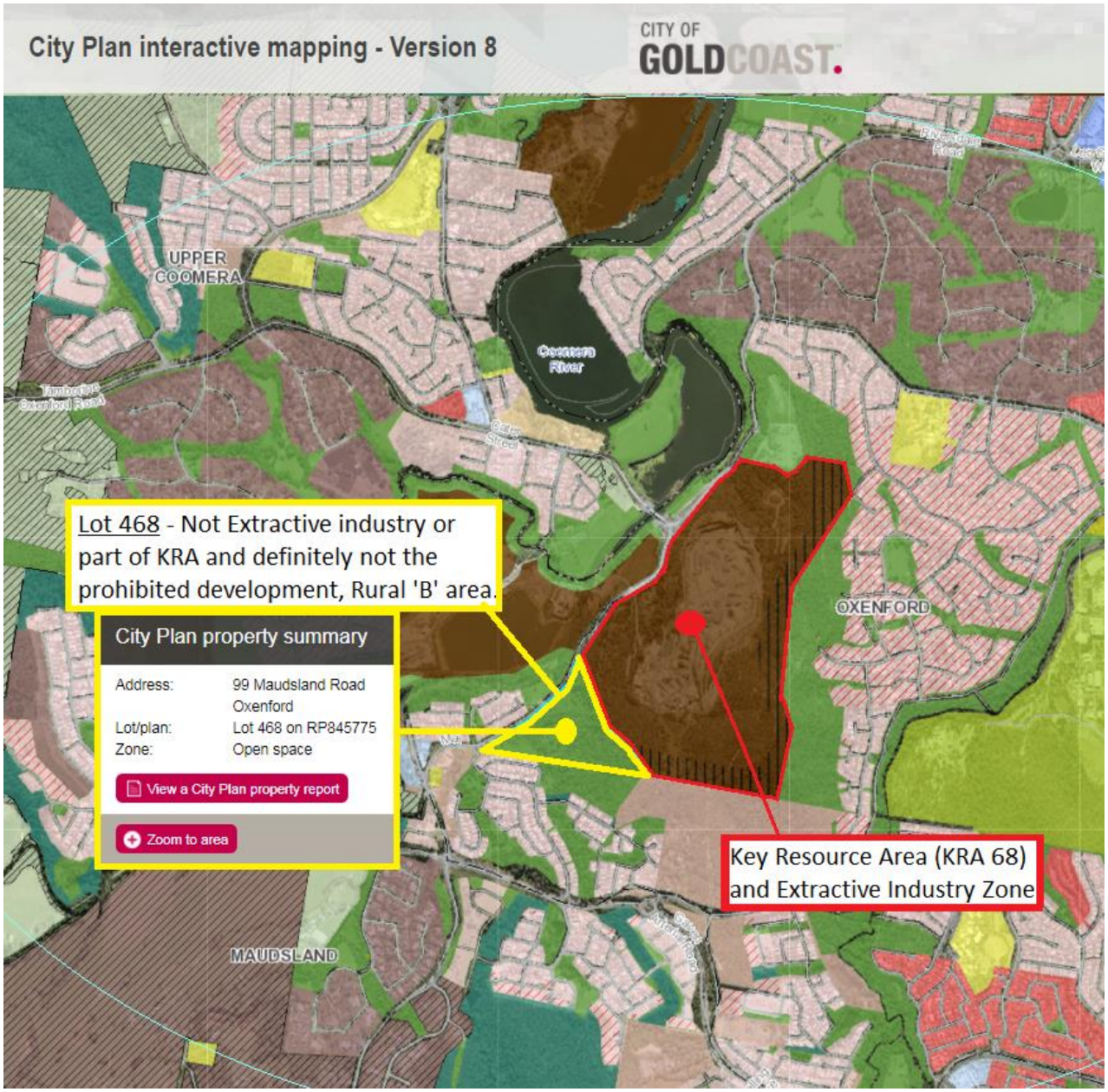
Attachment C2 - Submitted document apparently showing Rural 'B' moved to Open Space Lot 468

Attachment C3 - Submitted document apparently showing Rural 'B' moved to Open Space Lot 468

(Annotated version of attachment C2)



Attachment C4 - Open Space Lot 468 in relation to the Extractive Industry Zone (and KRA)



Attachment D1 - Confirmation of Council Information Request dated prior 26th June 2020

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To:	Michael Cooper & Declan Mackle	**From:**	Rod Huntley
Cc	Bede Emmett		
Email:	MichaelC@nucrush.com.au declan.mackle@nucrush.com.au bede@planitconsulting.com.au	**Date:**	26 June 2020
Re:	Response to GCCC Questions 1 to 4	**Our Ref.:**	362_230_019

Question 1
Confirm the life of the quarry under the current approval?

Answer 1
The life of the quarry under the current approval expires in 2022.

Question 2
What will be the life of the quarry under the proposed expansion?

Answer 2
Based on the proposed extraction footprint stages 1 to 9 inclusive, the project life will be in the region of 100 years although this will depend upon a range of factors including market demand, product requirements, per capita growth rates, levels of economic activity and infrastructure projects demands. It is worth noting that for the bulk of this project life the operation will be at lower depths in the extraction area which will not be visible to the public.

Question 3
Is it possible to provide an estimate of the amount of additional material that will be won over the life of the quarry as a result of the expansion i.e.. the expanded area, width, height and depth will produce an additional ???? tonnes?

Answer 3
In estimating the volume of material likely to be extracted if the new approval is granted, context is needed as the new design of the quarry excluded a significant portion of the currently approved extractive area from the proposed footprint for the reasons outlined in response 2. When considering relevant stakeholders and the extent of the current approval it was noted that extraction could develop very close to the nearest neighbours in the northeast of site and this was not considered ideal. In short, one approved extractive area is being excluded in the proposed new extractive footprint i.e. the northeast corner of site, while a new area has been proposed for inclusion in the extractive footprint, i.e. the area below the southeast ridgeline. The total change of this volume is approximately 65 million tonnes, with the bulk of this material being well below any line of sight into the quarry. While this volume is provided as per question 3, critically it does not consider the quality of the material being extracted and it is reiterated that without access to the material below the southeast ridgeline many of the niche products which are currently supplied to Council, DTMR, and to the construction industry will not be able to be produced.

Question 4
An estimate of the amount of material that will be extracted between RL5m and RL-125m (or the ultimate depth of the pit if this has changed).

Answer 4
Multiple permutation on pits design have been considered and one was erroneously issued to Council with incorrect labelling. The proposed final floor level for this project is -95m RL while a rainwater sump does extract deeper than this to harvest and control water in the base of the pit which currently occurs on site. (Note that while this question relates to the amount of material that will be extracted below RL5 this answer excludes all resource material above RL 5). Approximately 65 million tonnes exist between 5RL and the floor of the pit as shown on the Stage 9 quarry plan.

Should you require any further information please do not hesitate to contact me.

Kind Regards

Rod Huntley

Attachment D2 - Proposed life of quarry

The extraction will be staged over the life of the quarry operation, which is likely to continue for approximately 100 years. The staging sequence for pit development and, hence, subsequent rehabilitation, will be dependent on resource demand and cannot be forecast accurately for the life of the quarry. Estimated (subject to change) stage timing for the development of the pit is as follows:

- Stage 1 - Year 0 to 19 (including development of the five eastern highwall benches from Year 0 to 7.2).
- Stage 2 - Year 19 to 25.
- Stage 3 - Year 25 to 30.
- Stage 4 - Year 30 to 34.
- Stage 5 - Year 34 to 37.
- Stage 6 - Year 37 to 40.
- Stage 7 - Year 40 to 96.
- Stage 8 - Year 96 to 100+.
- Stage 9 - Year 100+.
- Stage 10 – Rehabilitated.

Development of the five eastern highwall benches will be substantially completed during Stage 1[1], based on the following indicative timings:

- Bench 1 - Year 0 to 0.8.
- Bench 2 - Year 0.8 to 2.1.
- Bench 3 - Year 2.1 to 4.3.
- Bench 4 - Year 4.3 to 7.2.
- Bench 5 - Year 7.2.

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[1] Note that, while **Appendix A** shows the development of the five eastern highwall benches occurring during Stages 1-5, respectively, all five benches will substantially be developed during Stage 1 (i.e. from year 0 to year 7.2). The development footprint associated with each bench is shown on a separate Stage plan for ease of reference.