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 -

"Prohibited Development" within Lot 467 (Formerly Lot 463)

Please accept this objection as it highlights that the development application is apparently seeking to utilise an area of Lot 467 for the repositioning of the ancillary operations from 'Stage 6' onwards into an area that has been seemingly expressly forbidden from this purpose.

'Lot 467' is an area made up of the former area of 'Lot 463' and 'Lot 3' as shown in Attachment A1.

From 'Stage 6' onwards the applicant is proposing moving the plant area from the former 'Lot 3' area to an area within the former 'Lot 463' (See Attachments A2 and A3). However, this was seemingly expressly forbidden in the contract of sale when the applicant purchased 'Lot 463'.

This is highlighted in the 1997 court case: '[1997] QLC 102' when the judge said: *"Clause 37.1 of the contract [of sale for Lot 463] acknowledges that the vendor [Midland Credit] wishes to develop the "Estate land" to the east and the purchaser [Nerang Pastoral / aka Nucrush] undertakes not to apply for the consent of the local authority to allow crushing and processing activities to be carried out on the land which is the subject of the sale [Sale 1, Lot 463]. It will be recalled that the purchaser, the appellant company, had already acquired land which is the subject of Sale 2 [Lot 3] which adjoins the Sale 1 land [Lot 463], and part of that land would be available for such processing activities subject to the consent of the local authority. Alternatively, a rezoning of part of the Sale 2 [Lot 3] to the "Special Facilities" zone would allow processing on that land; and such a rezoning did subsequently take place"* (reproduced in Attachment A4).

Thus, it can be clearly seen that Nerang Pastoral, when it purchased 'Lot 463', agreed not to apply for consent of the local authority to allow crushing and processing activities to be carried out within this area in the future to allow development of the adjacent "Estate Land". However, this development application now seeks to ignore this express requirement and move the processing area here during 'Stage 6' of their development. Clearly this is not permissible.

'Section P' of the Original Rezoning Agreement states: *"(a) the Council consenting to the amendment of the application by including additional land and by altering the proposed internal layout of the Extractive Industry and its ancillary uses to reduce the impact of the whole extractive Industry Area on the adjoining residential areas"* and *"(b) the Council consenting to the appeal being allowed on the basis of the Amended Application"* and *"(c) The desire of both parties to ensure that the development of the whole Extractive Industry Area proceeds and is carried out in an orderly and controlled manner so as to minimise any possible conflict in use between the Extractive Industry Area and the adjoin and*

surrounding residential areas". This clearly emphasises that compromises were made in establishing the layout of the quarry and to therefore ignore these agreed requirements, at the clear detriment of the "Estate land" and its subsequent residential development would seem wholly unreasonable and indefensible.

Section 50 of the Planning Act 2016 states: *"A development application may not be made for prohibited development"* (Attachment B1).

I believe this development application cannot be accepted as it is proposing "Prohibited development" by way of Crushing, screening etc. within an area of the former 'Lot 463', now part of 'Lot 467', that the applicant expressly agreed not to do at the time of purchase.

Thank you in anticipation,

Kind regards

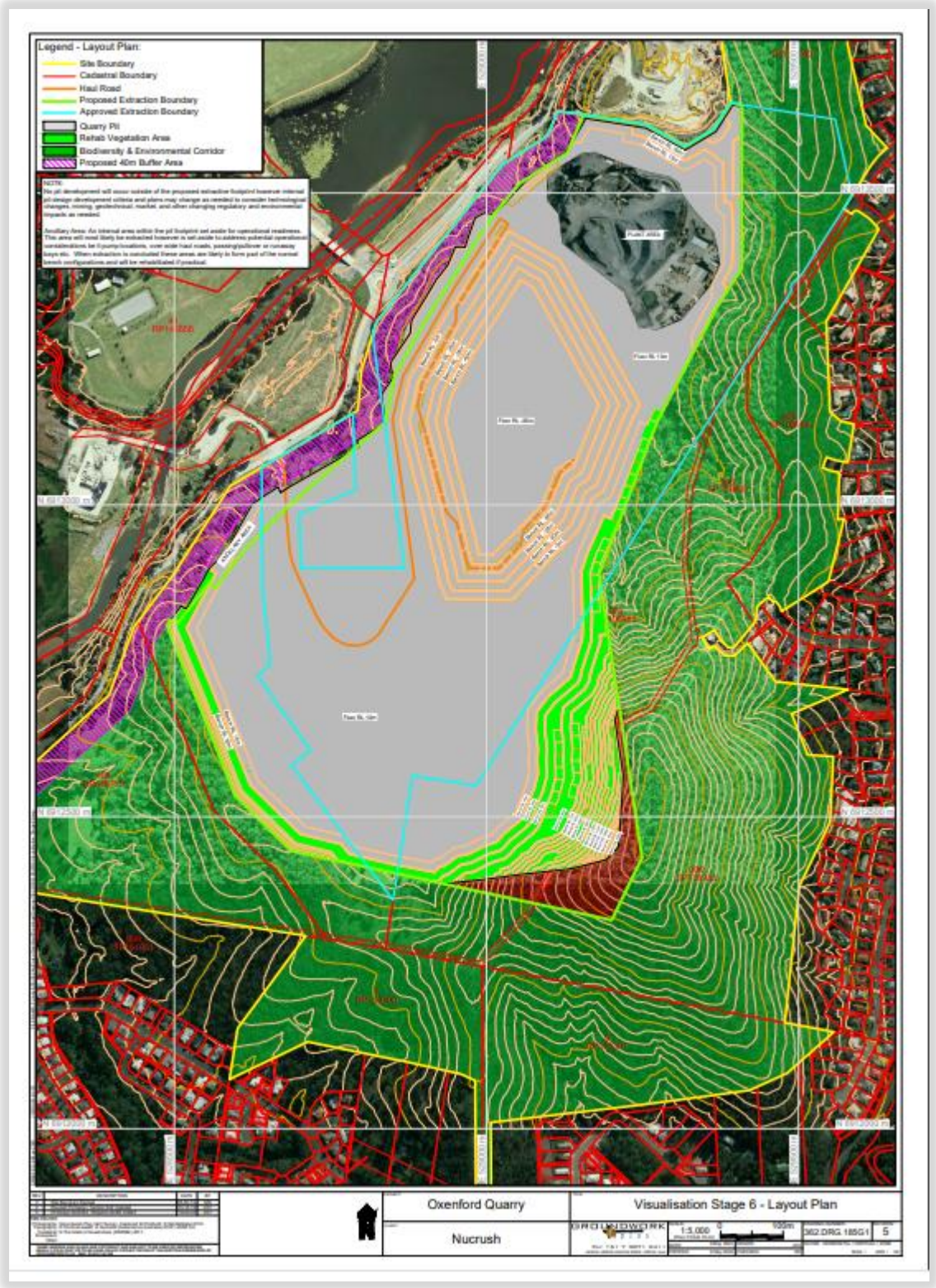
Tony Potter

* 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.

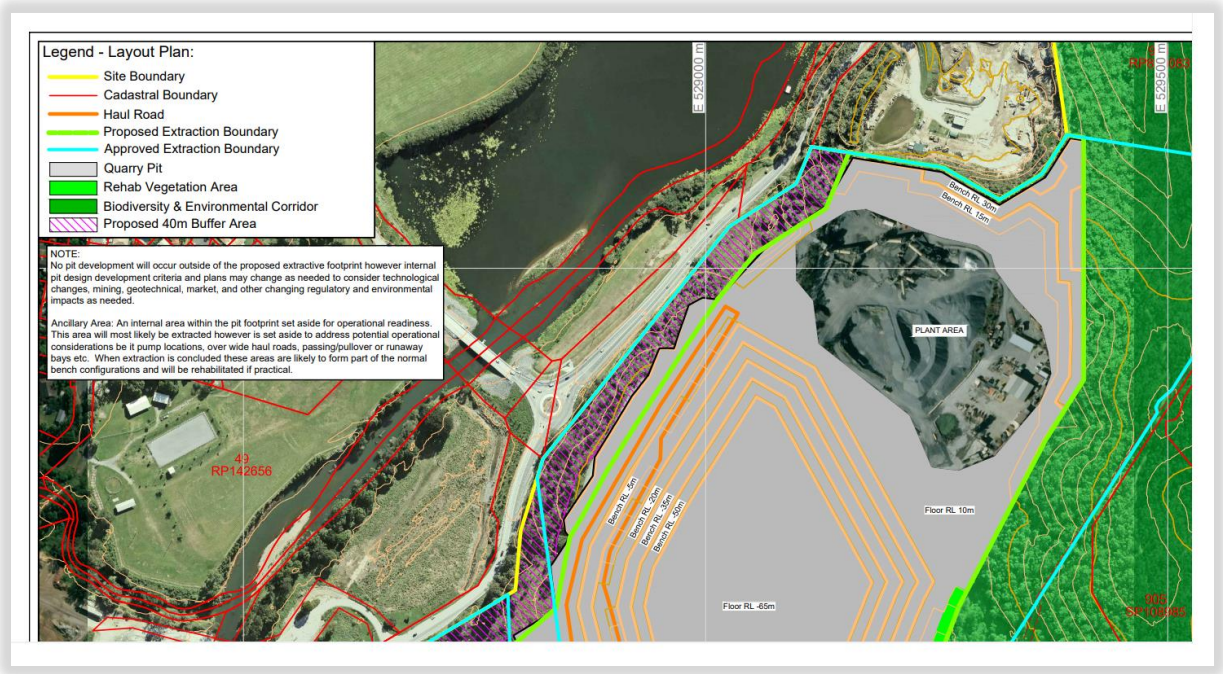
Attachment A1 - Lot 463

Note Lot 467 (70.8ha) is derived from Lot 463 plus the yellow area of Lot 3 (33.22ha) and green area to west of Lot 463
and balance of Lot 3 (13.32ha) became open space Lot 468.

Attachment A2 - Proposed position of plant area Stage 6 (Plant area in Lot 463)



Attachment A3 - Close up of proposed position of plant area Stage 6 (Plant area in Lot 463)



Attachment A4 - Clause 37.1 of contract of sale - No Crushing or Prcessing activities in Lot 463

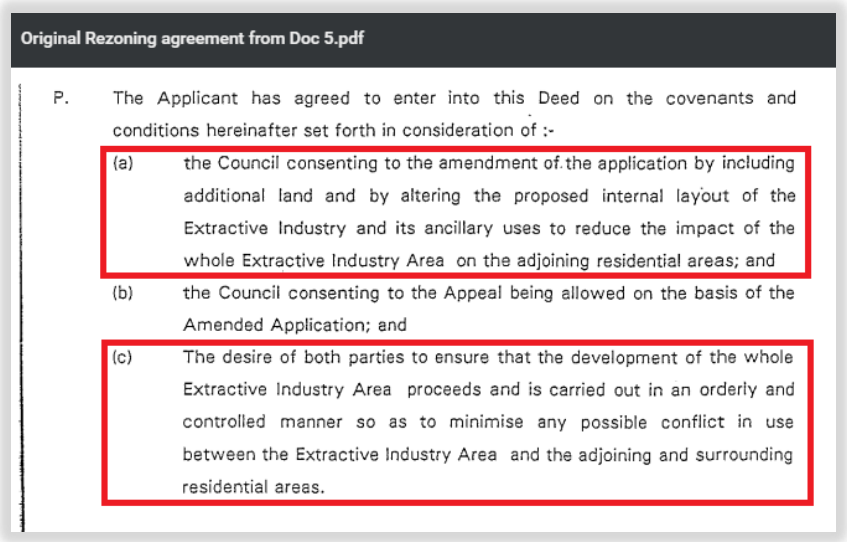
The purchase of the Sale 1 land was a rather complicated matter. The contract of sale contained certain conditions to which my attention was drawn. I note first of all that the sale land did not exist as a separate title at the time of contract, but had to be subdivided from a larger parcel. The contract was conditional upon the granting of an exemption to the provisions of the *Land Sales Act* 1984 which would otherwise apply to the sale of land a part of another title, and reference was made in the contract to a plan attached to the contract where the land to be purchased was "delineated in red". Unfortunately, the photocopy did not reveal the red colouration though, from the evidence I heard, it appears that the purchase was concerned with what subsequently became described as Lot 463 on Registered Plan 228373, that is the land the subject of Sale 1.

Special Condition 36.1 of the contract binds the purchaser to certain obligations expressed in a letter attached to the contract. That letter, dated 19 October 1988, was apparently sent from the solicitors for the vendor to the solicitors for the local authority setting out the terms of a settlement of an appeal brought before the Planning and Environment Court by the vendor following a subdivision application relating to the parent parcel from which the Sale 1 land was to be subdivided.

Clause 36.2 of the contract of sale provides that the purchaser will develop the land being purchased, in the way set out in "David Kershaw's Report", a report dated 20 July 1988. I understand that Mr Kershaw is a geologist.

Clause 37.1 of the contract acknowledges that the vendor wishes to develop the "estate land" to the east and that the purchaser undertakes not to apply for the consent of the local authority to allow crushing and processing activities to be carried out on the land which is the subject of the sale. It will be recalled that the purchaser, the appellant company, had already acquired the land which is the subject of Sale 2 which adjoins the Sale 1 land, and part of that land would be available for such processing activities subject to the consent of the local authority. Alternatively, a rezoning of part of the Sale 2 land to the "Special Facilities" zone would allow processing on that land: and such a rezoning did subsequently take place. Clause 38 of the contract acknowledges that the Sale 2 land may be put to such a processing use and relaxes the inhibition imposed by Clause 37.1 to the extent of allowing processing to extend into the Sale 1 land to a line specified as contour RL 35.

Attachment A5 - Section P of Original Rezoning agreement (dated 17th March 1992)



Original Rezoning agreement from Doc 5.pdf

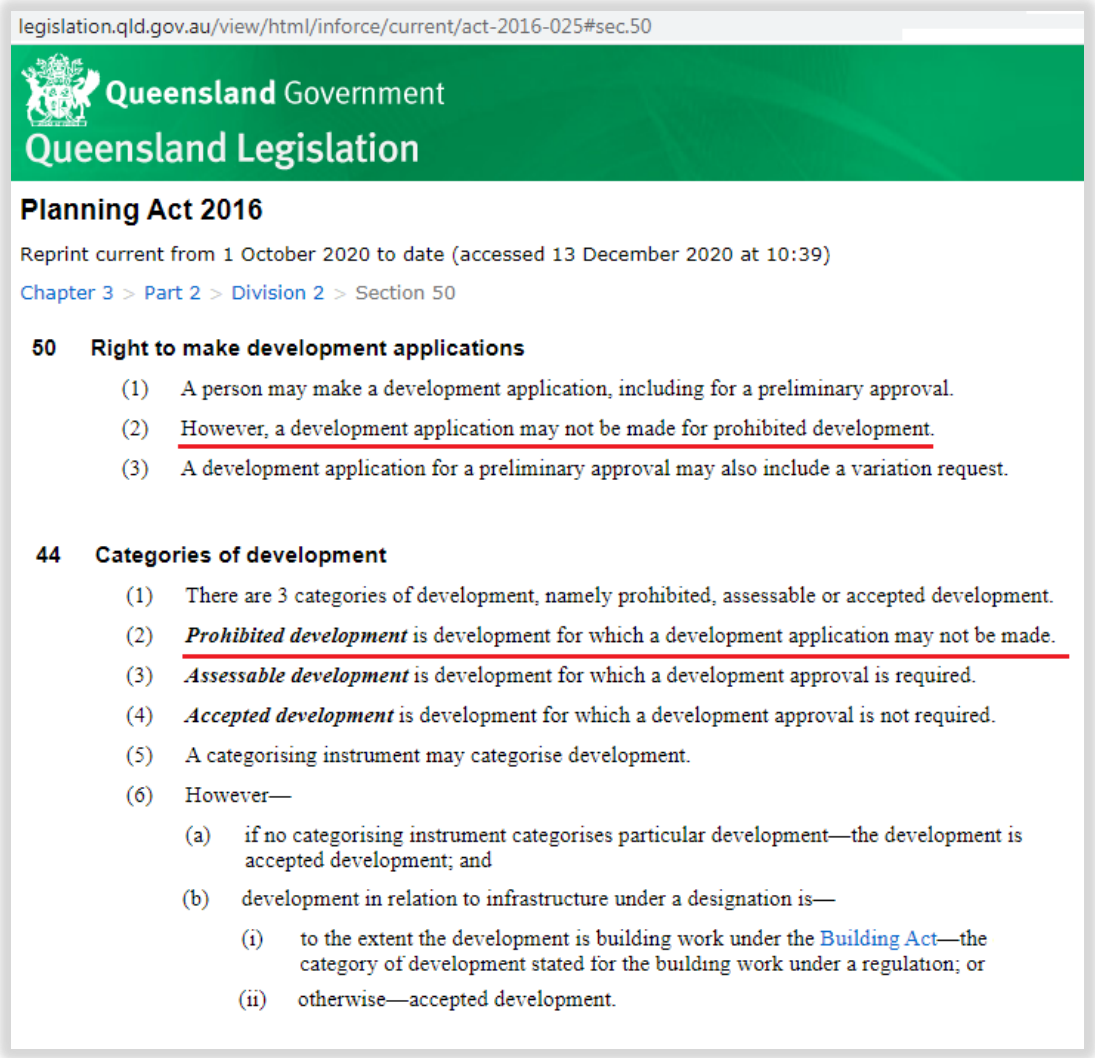
P. The Applicant has agreed to enter into this Deed on the covenants and conditions hereinafter set forth in consideration of :-

(a) the Council consenting to the amendment of the application by including additional land and by altering the proposed internal layout of the Extractive Industry and its ancillary uses to reduce the impact of the whole Extractive Industry Area on the adjoining residential areas; and

(b) the Council consenting to the Appeal being allowed on the basis of the Amended Application; and

(c) The desire of both parties to ensure that the development of the whole Extractive Industry Area proceeds and is carried out in an orderly and controlled manner so as to minimise any possible conflict in use between the Extractive Industry Area and the adjoining and surrounding residential areas.

Attachment B1 - Planning Act 2016, Development Application may not be made for prohibited development



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 (accessed 13 December 2020 at 10:39)

Chapter 3 > Part 2 > Division 2 > Section 50

50 Right to make development applications

(1) A person may make a development application, including for a preliminary approval.

(2) However, a development application may not be made for prohibited development.

(3) A development application for a preliminary approval may also include a variation request.

44 Categories of development

(1) There are 3 categories of development, namely prohibited, assessable or accepted development.

(2) ***Prohibited development*** is development for which a development application may not be made.

(3) ***Assessable development*** is development for which a development approval is required.

(4) ***Accepted development*** is development for which a development approval is not required.

(5) A categorising instrument may categorise development.

(6) However—

(a) if no categorising instrument categorises particular development—the development is accepted development; and

(b) development in relation to infrastructure under a designation is—

(i) to the extent the development is building work under the Building Act—the category of development stated for the building work under a regulation; or

(ii) otherwise—accepted development.