

8th May 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 -

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

Further to my objection dated 23rd February 2021 re Council procedures, SARA re-referral and Public Notification requirements.

I note the submitted letter dated 7th April 2021 from PlanIt consulting to you confirms this latest change is not a minor change (Attachment A1).

I also note the applicant advises you that no public notification is required because: *“The assessment manager can readily and reasonably conclude that a reduction in the quarry footprint is a change that would not be likely to attract a submission objecting to the change, given that the change will result in reduced impacts”* (Attachment A2). However, this ignores the aspect that the changes submitted in February 2021 **does not just include:** *“a reduction in the quarry footprint”* as claimed.

Here are some of the other changes:

Updated Benching in northeast corner

There has been a significant change in the northeast corner which will affect the residents in the northeast. Add the time of public notification it was shown that the merger from environmentally significant land (biodiversity and priority species) to extractive footprint would be a gradual process as shown in the ‘Visualisation Stage 1 - Layout Plan’, revision 3 (reproduced in attachment B1). However, the latest changes (now at revision 8) now reveal it will be (from the 50m peak) dangerous 15 m bench drops from 45m to 30m to 15m (reproduced in attachment B2).

I am sure residents, less than 200 metres of this location will be horrified of the safety implications if a child or the infirm or a pet were to fall foul of this dramatic drop at these locations. Especially as there would seem to be no safety fence (either now or planned as part of this DA) to stop the unwary entering the quarry at this location.

I am especially concerned for the wildlife in the area, given the connectivity corridor to the Nerang State forest in this area is proposed to be just 150 metres, of the added danger of 15 m drops would seem untenable and unable to support the existing wildlife in the area as claimed.

I believe local residents should be entitled to make a properly made submission based on these new changes to the proposal since the original public notification period ended.

Updated Benching in north adjoining 241 Tamborine-Oxenford Road (Open space Lot not owned by applicant)

There has been a significant change in the northern boundary, since public notification, which will potentially affect owners (and future owners and visitors) of the open space Lot known as '241 Tamborine-Oxenford Road' (which is not owned and/or operated by the applicant).

At the time of public notification it was shown that the merger from this open space to extractive footprint would be a gradual process (Attachment B1). However, the latest changes now seem to reveal it will be dangerous 15 m bench drop(s) on the boundary of this property (Attachment B2).

I believe the owner(s) of this Lot may well be concerned at these subsequent changes that have been, it would seem, seamlessly submitted at this late stage. This is especially concerning as it is already contra to the clear requirements of City Plan 9.3.8, Acceptable Outcome AO3.1 which states: *"Extraction or processing activities are not conducted within 40m of the boundary of the site"* (Attachment B3) whereas this is zero metres from their boundary. I believe the owners (and any potential future owners) of this site are entitled to make a properly made submission based on these changes to the DA proposal since public notification closed.

Updated 40 m Buffer Area adjoin in Tamborine-Oxenford Road

In the original development application it implies the 40m buffer area (as required by City Plan, Extractive Industry code, 9.3.8) is not impinged by the Stage 1 proposed extractive footprint along the Tamborine-Oxenford road (Attachment C1). However, in the February 2021 submitted drawing this required 40m buffer area is shown as clearly compromised (Attachment C2).

Please note, City Plan Extractive Industry code, 9.3.8 Performance Outcome PO3 states: *"Extractive industry developments are screened or located in areas of least visual impact and minimise views of any significant infrastructure and visually obtrusive development from major roads and surrounding residential areas"* and Acceptable Outcome AO3.1 states: *"Extraction or processing activities are not conducted within 40m of the boundary of the site"* (Attachment B3).

I find the original submission misleading as it clearly shows, at the time of public notification, the 'Proposed 40m buffer' is not compromised. However, this latest submission shows it is. I believe local residents should be entitled to their say on this new information that is not only clearly contra to the City Plan requirements but will also be highly viewable from the Tamborine-Oxenford Road, The John Muntz Bridge opposite and I would have thought from elevated views from the Tamborine Mountain road.

Over and above the visual amenity I am concerned that the dust emanating from this area and any blasting in this area could have health and safety implications on passing cars, buses, bikes and pedestrians that could easily be within 40 m of the extractive footprint.

Also, City Plan Extractive Industry code, 9.3.8 Performance Outcome PO4 states: *"Development protects the visual character and amenity of the area by ensuring ridgelines are retained as a natural feature and buffer"* and Acceptable Outcome AO4 states: *"Development is located at least 40m away from any ridgeline, as measured horizontally from the ridge peak"* (Attachment B3). This submission (Attachment C2) clearly shows the ridgeline will be compromised at this location adjoining the Tamborine-Oxenford road.

Rehabilitation

In the original development application submission the 'Visualisation Stage 8- Layout Plan' (Revision 3) shows the area to the north is rehabilitated seemingly to shroud views of the plant processing area and the Concrete Production / Batching facility (Attachment D1). Whereas in the latest submission the area is no longer rehabilitated at this stage (Attachment D2).

Also, from Stage 6 through to Stage 9 (Year 37 to 100 plus years - see attachment D3), it would seem there is no rehabilitation planned for the elevated benching in the southeast despite it being highly visible from beyond the extractive boundary including the adjacent Maudsland Road.

This is contra to City Plan Extractive Industry code, 9.3.8 Performance Outcome PO3 which states: *"Extractive industry developments are screened or located in areas of least visual impact and minimise views of any significant infrastructure and visually obtrusive development from major roads and surrounding residential areas"* (Attachment B3). Therefore, it would be thought rehabilitation would have been highly important in these locations as it is clearly contra to City Plan requirements.

In fact, despite of a reduced extractive footprint since the latest changes, it would seem far less rehabilitation is actually planned throughout the life of the quarry. However, we are unable to make a properly made submission based on this information.

Updated Truck and Car Parking Information

The latest submission dated 18th February 2021 includes updated truck and car parking information that was not available at the time of the original public notification. Members of the public would have been unaware of this proposal before. They may wish to express concern that the: 'Proposed location of parking 63 cars and 25 trucks' will be visible from the Tamborine - Oxenford Road. Similarly, local residents may be concerned: 'Alternative vehicle parking areas' is visible from the Maudsland Road as shown in the newly submitted: 'Quarry Development Plan Stage 7 Car Parking Arrangement' (attachment E1).

Likewise, the newly revealed 'Access Road' running parallel to both the Maudsland Road and the Tamborine - Oxenford Road will I am sure be of concern to many local residents due to its elevated position above the Tamborine-Oxenford Road and Maudsland Road that it appears will be highly visible which is contra to City Plan 9.3.8. Performance Outcome PO3: *"Extractive Industry developments are screened or located in areas of least visual impact and minimise views of any significant infrastructure and visually obtrusive development from major roads and surrounding residential areas"* and Performance Outcome PO4: *"Development protects the visual character and amenity of the area by ensuring ridgelines are retained as a natural feature and buffer"* and Acceptable Outcome AO4 states: *"Development is located at least 40m away from any ridgeline, as measured horizontally from the ridge peak"* (Attachment B3).

I am also sure that local residents and Council planners alike will be concerned that the 'Proposed location of parking 63 cars and 25 trucks' impinges on their already defined 'Plant area' (Attachment E1) and there is no apparent entry and exit for the concrete plant and insufficient turning circles provided bearing in mind the high volume of haulage trucks and concrete trucks and front end loaders, etc. using this area. Further, any entrance/exit that may be subsequently squeezed in for the Concrete Plant will have to juggle access with the front end loaders, haulage vehicles, etc. that are operating the Plant area (crushers, screening, etc.). There appears to be insufficient room for the proposed

truck and car parking in this area. And, I note, there is no updated Traffic Impact assessment to explain these proposals/changes as is, I believe, clearly required.

It is noted there is apparently no physical restraint for trucks, cars, pedestrians and/or cyclists using the newly released access road to stop them accidentally crashing down the embankment on to the Tamborine-Oxenford road or Maudsland Road (Attachment E1). Similarly, there is no physical restraints to prevent users of this access road from, in the event of an accident, tumbling down the 15 metre drop into the extractive footprint (Attachment E1). It would seem the safety implications of this, seemingly afterthought, have not been considered. I personally would like to make a properly based submission based on the lack of safety in this area. However, this is not permitted despite these significant updates arriving since public notification closed.

Members of the public may wish to question the pedestrian/cycle access arrangements and disability access too, and the on-site required facilities, as is required for a development application of this nature, based on these newly submitted information.

It is my opinion that local residents should be entitled to their right to make a properly made submission on these amended aspects of the development application.

Visual Impact

The Visual Impact document submitted (Section 4.4, Visual Impact Assessment, prepared by insight) is now clearly and indisputably out of date despite, I believe, Council requests for updated visual impacts. The lack of proper submitted visual impact is depriving local residents who will be affected by the visual amenity of this development application, on a daily basis, of the chance to see how the changes will affect their aspect. And, of course depriving them of their chance to make a properly made submission on this amended aspect of the development application if they so wish.

Development application infers, I believe incorrectly, that it is a net saving of environmentally significant areas

I note the newly released 'Figure 7 - Distances to Residences' (no revision number included or date provided) contains what I believe to be highly misleading information (reproduced in attachment F1, close up in attachment F2).

Firstly it infers the Current Approval is a Total of 84.03 ha based on it states: *"Approximate as per the 1992 Rezoning agreement"*. This, would seem to be based on the Lot size of Lot 467, the currently approved Lot (70.8ha) and bizarrely includes Lot 468 in the southwest corner (13.23ha) but excludes all other lots owned by Nucrush but included in the 'Proposed Areas' Total. This is highly misleading.

Then, it states the Operational zone is 56.02ha which gives a remaining 14.78 ha (70.8-56.02), which I assume is the green area labelled 'Buffer Land' and 'Permanent trees and shrub screening' as shown in Third Schedule of the Rezoning agreement (Attachment F3). Please note, as discussed before, this 'Third Schedule' was, I believe, culpably removed from the submitted copy of the Rezoning agreement and only came to light late last year as part of a 'Right To Information' (RTI) enquiry.

Therefore, the claimed 'Operational Area' also contains the prohibited development area, Rural 'B' (16.6 ha) and the Ancillary operations area (11.83 ha) giving, I believe, a resultant extractive footprint of approximately 27.59 ha (56.02 operational area - 16.6 Rural 'B' - 11.83 Ancillary operations). From

this must be subtracted the prohibited development areas within 40m of the boundary. Which finally gives an approximate 23.77 ha of Extractive Footprint currently approved for extraction (as shown in attachment F3).

It is noted in the 'Total' column (in Attachment F2) the current approval is for the currently approved Lot 467 (albeit with various zoning requirements such as Extractive area, Ancillary operations, etc.) and the completely irrelevant Lot 468. Whereas in the proposed areas it now includes all the lots surrounding the quarry owned by the applicant. A bizarre and misleading comparison!

This presented table in Attachment F2 shows, I believe, a very biased slant on the Current approved areas and the proposed areas that should be fully understood by planning officers.

I believe, the current approved 'Extractive footprint' is approximately 23.77 ha and the 'Ancillary operations' is 11.83 ha giving a resultant 'Operational area' of 35.6 ha which is far less than the claimed 56.02 ha.

The proposal is for a total of 54.93 ha of extractive footprint (including ancillary operations).

This gives a net loss of 19.33 ha (54.93 - 35.6) of environmentally significant (biodiversity and priority species) and koala habitat.

I find it particularly concerning that this newly released document tries to infer the 'Green zone' has increased by 68.46 ha (from a claimed 28.01 ha currently to 96.47 ha proposed) when it is, I believe, clear to see there is actually a net loss of 19.33 ha of environmentally significant (biodiversity and priority species) and koala habitat.

I hope the Gold Coast City Planners are fully aware of this, I believe, clear misdirection.

Changes since Public Notification

It should also be noted that in the original submitted DA the 'Visualisation Stage 1 - Layout Plan' is: 'Revision 3' (dated 5th Feb 2019), whereas this latest submitted copy is 'Revision 8' (dated 13th Nov 2020). It would appear this plan has been updated five times since public notification. What were the mods for revision 6 on 18th March 2020 for instance? Which revisions were submitted to the Gold Coast Council? Were these not public notifiable?

Similarly, 'Visualisation Stage 7 - Layout Plan' at the time of public notification was 'Revision 3' (dated 6th Feb 2019), whereas this latest submitted copy is 'Revision 8' (dated 10th Nov 2020). Again, which revisions were submitted to the Gold Coast Council? Were they not public notifiable?

This is but two of many modified documents since public notification. Modifications which have gone far beyond the removal of Lot 906 as claimed. Yet the applicants claim: *"The assessment manager can readily and reasonably conclude that a reduction in the quarry footprint is a change that would not be likely to attract a submission objecting to the change, given that the change will result in reduced impacts"* (Attachment A2). Further, Mr Phillip Zappala, Supervising Planner Major Assessment, states in his communication with SARA (28th April 2021): *"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 a submission objecting to the change, if public notification were to apply to the change"*. However, this, I believe, clearly belies the true extent of the changes since original public notification.

I further note that the applicant states: *"It is open for the assessment manager to reasonably conclude that the changes would not likely attract a submission objecting to the thing comprising the change"* and *"Accordingly there is no need for public notification to be repeated"*. However, I believe this to be incorrect as there is to my knowledge already one local resident who has objected to these changes. This was filed within PDonline on 12th March 2021. In which the objector states (amongst many things): *"I notice that a car park has been added in the new plans, likely to be visible from outside the site. This is another significant change to the DA and another reason a new DA should be submitted"*.

I also submitted an objection (via my local councillor William Owen-Jones on 13th March 2021) re the recently released information re: Truck parking / Car parking believed to be visible from outside the extraction area which I believe to be contra to City Plan requirements 9.3.8.3. Visual Amenity, Performance Outcomes PO3 which states: *"Extractive Industry developments are screened or located in areas of least visual impact and minimise views of any significant infrastructure and visually obtrusive development from major roads and surrounding residential areas"* as the proposed truck and car parking will be clearly viewable from both the Tamborine-Oxenford Road (main truck and car parking area) and the alternative parking area (Maudsland Road) at different stages of the development. And I note this has yet to appear on PDonline.

Therefore, there are at least two submissions to my knowledge that clearly nullifies the applicant's statement: *"It is open for the assessment manager to reasonably conclude that the changes would not likely attract a submission objecting to the thing comprising the change"* and *"Accordingly there is no need for public notification to be repeated"*. That, in my opinion, choosing to focus on the reduced footprint and it would seem completely ignoring other significant changes that have been included.

How many other local residents would like to voice their opinions on these changes but are not being given the opportunity to make a properly made submission as is their legal right?

I hope the assessment manager will take this on board and insist on a re-public notification as is surely required.

I would also like to bring to your attention that at the time of Mr Zappala's communication with SARA (28th April 2021) at least two objections had been raised, over six weeks prior, which the Council Planning team should be well aware of. Therefore, Mr Zappala's statement: *"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 a submission objecting to the thing compromising the change, if public notification were to apply to the change"* I find to be highly questionable and is clearly denying the public their right to make a properly made submission based on the many, many, subsequent changes (both major and minor) since the first public notification eighteen months ago.

Subsequent Public Notification required?

Perusing the 'Development Assessment Rules' ('da-rules-guidance.pdf'), under the planning Act 2016, Section 68, Version 1.1, it states under Part 6, Section 26.2 (b): *"if part 4 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 be likely to attract a submission objecting to the thing comprising the change, if public notification were to apply to the change"* (Attachment

G1). Well as can clearly be seen these changes have warranted a submission objecting to these changes.

There were also significant changes back in June 2020 as shown in the submitted letter, dated 16th June 2020, from Nick McGowan from Insight Design and Assessment Services (InsightDAS), who are the authors of the submitted Visual Impact Assessment, states: “Nucrush had submitted a significant change to the proposed quarry footprint”.

As the more recent changes are highly significant with a major change in extraction footprint which will obviously be ‘impact assessable’ and the designation and planned use of Lots covered by this development application is changing, I would assume this will have a large impact on a number of the aspects of the original application including, but not limited to:

- a). Noise and Dust assessment, prepared by MWA Environmental;
- b). Stormwater Management Plan, prepared by BMT
- c). Traffic Impact Assessment, prepared by Rytenskild Traffic Engineering
- d). Visual Impact Assessment, prepared by insight;
- e). Environmental Management Plan, prepared by Groundwork Plus;
- f). Blast Impacts Report, prepared by Blastotechnology;
- g). Ecological Assessment, prepared by BAAM Ecological Consultants.
- h). Groundwater Impact Assessment, prepared by AGE Consultants.
- i). Geological Summary, prepared by Groundwork Plus.

All of the above reports I would assume will require significant updates to reflect the major change that has been submitted. However, I note many of these affected documents have not been re submitted and are therefore outdated.

Also, the newly submitted Ecological Assessment, version 5, dated 3rd December 2020 is incorrect by now claiming in their Introduction: “The proposed Extraction Area involves changing the approved footprint by extending it to the south-west whilst reducing the footprint to the north-east”. The claimed: “reducing the footprint to the north-east” is a misnomer ignoring the fact that this area is a protected area with development prohibited referred to as: “This portion of extractive zone to be rezoned to Rural ‘B’ ” (Council Development plan: C1495:00:13B, reproduced in attachment K4). I am sure members of the public should be allowed comments on this change also.

The newly submitted “Proposed Rehabilitation Areas” (p18), dated 3rd December 2020, are also newly presented. I am sure local residents are entitled to a say in the final plans for the area too.

Over the intervening eighteen months, since the ‘Public notification period’ in November 2019, there will be a significant number of new residents to the area who will be affected and also residents unaware of the original DA and residents highly concerned about the information that has come to light since the original public notification period ended. These people may well wish to raise concerns and it would seem wrong to deny them the chance to. By not permitting a ‘Public Notification period’

for a highly modified/changed development application of this nature would be denying them their right to a 'third-party appeal' and their appeal rights under Schedule 1, should they choose to do so.

Note Schedule 1: Substantially different development (in DA Rules), clearly shows this is a substantially different development e.g. '(c) dramatically changes the built form in terms of scale' or '(d) changes the ability of the proposed development to operate as intended' or '(g) introduces new impacts' or '(h) removes an incentive or offset component' etc. (Schedule 1 reproduced in Attachment G2).

It is noted that for a "Change in response to information request, further advice or a submission" the DA rules state: *"The DA Rules state that the process does not stop as a result of this type of change. However, part 4 may be required, or required again, and an additional referral to be referred and assessed in accordance with part 2"*. Given this is the scenario for the current major impact assessable modification it would seem we have indeed returned to Part 2 (Referral) or at the very least Part 3 (Information request). Which for a development application such as this would seem imperative to repeat Part 4 (Public Notification) also.

This is also confirmed under *"Effect of a change that is about a matter raised in a submission, information request or further advice"* (Attachment G3). I also assume this is not to be treated as to the *"Effect of other changes"* (Attachment G4). As it is, I believe, a matter raised in a submission, information request or further advice. Notwithstanding the DA rules clearly states a further public notification period is required 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"* (Attachment G1). Given the expected major impact to the environment and the existing calculated offsets by the SARA referral, that I assume will be subject of re-analysis as part of the required SARA re-referral, I cannot see how it can be assumed no public submission will be forthcoming. And, given the major changes expected to be implemented, removing the right under Schedule 1 of the rights to appeal for submitters would, I believe, be a culpable injustice.

Environmental Authority EA0002207 is now incorrect

The Environmental Authority EA0002207, issued on 1st April 2020, written to align with this new proposed development application is incorrect.

Agency Interest: Land, Schedule D, condition D8, Table 3 refers to the incorrect 'Location of impact' and 'Maximum extent in hectares' for "Matter of National Environmental significance (Attachment H1) e.g. Koala, Lot 906 and Lot 467, maximum extent in hectares: 18 ha this is incorrect. And Grey-headed Flying Fox, Lot 906 and Lot 467, maximum extent in hectares: 18ha.

Also the Essential Habitat for the Koala, Glossy Black-Cockatoo, Grater Glider, Red Goshawk and Short-beaked Echidna is also specified with an incorrect 'Location of impact' and 'Maximum extent of hectares' in every case (Attachment H1).

This is as a result of the change in extractive footprint submitted to Council, on or about, 16th June 2020, resulting in amended *"Maximum extent in hectares"* for Table 3. and the more recent extensive changes submitted on 18th February 2021.

It is interesting to note, despite a significant change in extractive footprint, this was not re-referred to SARA, as is I believe required, back in June 2020, which should have seen the Environmental Authority updated appropriately.

Section 26.2(b) of the Development Assessment Rules 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 be likely to attract a submission objecting to the thing comprising the change, if public notification were to apply to the change"*. Additionally, as Schedule 1 (Substantially Different Development) of the DA Rules states: *"An assessment manager or responsible entity may determine that the change is a minor change to a development application where - amongst other criteria - a minor change is a change that would not result in 'substantially different' development" and "In determining whether the proposed change would result in a substantially different development, the assessment manager or referral agency must consider the individual circumstances of the development, in the context of the changed proposed" and "A change may be considered to result in a substantially different development if any of the following apply: '(c) dramatically changes the built form in terms of scale' or '(d) changes the ability of the proposed development to operate as intended' or '(g) introduces new impacts' or '(h) removes an incentive or offset component' "*. It would seem all this criteria applies in this particular case making these combined changes very much greater than what can be defined as a 'minor change'.

Why were these significant changes not re-referred to SARA and not subjected to public notification as would seem appropriate?

Environment Protection and Biodiversity Conservation (EPBC) act - referral 2018/8356

Similarly, these extensive change since the initial development application was submitted will have a great effect on the EPBC referral that has been applied for (Attachment H2). Why has the EPBC also not been re-referred to reflect the changes made to the development application?

Changing or withdrawing development applications under the Queensland Planning Act 2016

Under the planning Act 2016, Chapter 3, Part 2, Division 2, Section 52 'Changing or withdrawing development applications' subsection (2c) states: *"the change may not include prohibited development"* and subsection (3) further states: *"If the change is a minor change, the change does not affect the development process"* (Attachment J1).

Changes made to this development application, since public notification completed (25th November 2019) and SARA approval was given (3rd April 2020), I believe, include both prohibited development and extensive changes (many of which cannot be classified as minor). The development assessment process has thus been affected as per the Planning Act 2016, Section 52. Therefore, I am shocked that PDonline is still indicating that this DA is in Part 5, "The Decision" Stage despite these extensive changes (including prohibited development). I believe an additional 'Public Notification' and re-referral to SARA is essential, under the Planning Act 2016 before a decision can be made

Publicly notifying certain development applications under the Queensland Planning Act 2016

Under the planning Act 2016, Chapter 3, Part 2, Division2, Section 53 'Publicly notifying certain development applications' states: *"(1) An applicant must give notice of development application if (a)*

any part of the application requires impact assessment; or (b) the application includes a variance request. ... (3) However, the assessment manager may assess and decide a development application even if some of the requirements of the development assessment rules about the notice have not been complied with, if the assessment manager considers any noncompliance has not (a) adversely affected the public's awareness of the existence and nature of the application; or (b) restricted the public's opportunity to make properly made submissions about the application".

At the time of public notification, the applicant had supplied a copy of the original rezoning agreement of 17th March 1992 that has been found subsequently to have, I believe, been fraudulently misrepresented to remove the Third Schedule (Plan 362-010) which contained important information re prohibited development (buffer land etc), as reproduced in Attachment K1, and was seemingly replaced with a relatively innocuous map which was the modified 'Fourth Schedule' (with title removed) as shown in Attachment K2 (apparently modified copy) and K3 (original version). Please note the signature also appears to have been changed.

The public, when making their submissions, clearly did not have the information to hand that the DA was applying for prohibited development in the areas of 'Buffer Land' and 'Permanent tree and shrub screening' as highlighted in the removed Third Schedule (Plan 362-010). Therefore this: *"restricted the public's opportunity to make properly made submissions about the application"* as they were not provided with sufficient information about the current land use and its current approval restrictions that is buffering their homes from the impact of the quarry that the applicant seeks to now encroach.

Also, the highly relevant 'Deed of Novation' (dated 12th September 1989), the geologist, David Kershaw's report (dated 20th July 1988) and the plan 'C1495:00:13B' of the quarry, highlighting the area to be rezoned as Rural 'B' (reproduced in Attachment K4, close up in Attachment K5 and annotated copy in Attachment K6) were all highly important parts of the current approval but were, in my opinion, culpably omitted from the DA. Thus, again this *"restricted the public's opportunity to make properly made submissions about the application"*. Therefore, this highly important, thoroughly relevant information, should be made available prior to the next public notification period in order that affected local residents know the true extent of the current approval and the protected areas within.

Conclusion

There are many, many changes submitted since public notification closed. Some of which I have referred to above. These are clearly far from minor changes therefore it would seem the Assessment Manager has no option other than to insist on a re-public notification as per DA Rules stipulate. i.e. 26.2(b): *"if part 4 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 be likely to attract a submission objecting to the thing comprising the change, if public notification were to apply to the change"*. Given the extent of the changes since public notification finished on 25th November 2019 it would seem public notification is clearly required.

I further note DA Rules 26.3 states: *"If a change to the application causes additional referral requirements the application, including the change, must be referred to the relevant referral agency"*

for the additional requirements under part 2". There can be no doubt the extent of the changes and the number of changes requires re referral back to SARA. Therefore it is particularly disappointing that Mr Phillip Zappala's email to SARA, dated the 28th April, simply quotes the applicants: *"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"* which belies the true extent and significance of the changes. Also Mr Zappala states: *"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 attract a submission objecting to the thing comprising the change, if public notification were to apply to the change"*. However, Council planners should have been aware, there were at least two objections that were based on changes submitted and made public on PDonline in February 2021 submitted over six weeks before this email was sent to SARA. It would therefore seem SARA are being advised by council not to refer this development application when evidence would suggest this is incorrect.

I am also very disappointed that my requests to Council Planning department to inform SARA of what I believe, are significant errors and/or omissions and highly influencing factors re the approval of this development application that I have uncovered since SARA approval and I do not believe SARA were not aware of, were clearly ignored. Instead the Council email to SARA (dated 28th April 2021), I believe, down plays the true extent of the changes in an apparent effort to ensure SARA do not re-refer this development application. One must wonder why this apparent bias on behalf of the applicant.

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 amount of submitted data from the applicant, errors and assumptions on my part may occur. Hopefully this is not the case, but please accept my apologies if this is so. Thank you.

Attachment A1 - PlanIt Letter to Council Part 1

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Our Reference: J5567
Your Reference: COM/2019/81 7 April 2021

Chief Executive Officer
City Development Branch
Gold Coast City Council
PO Box 5042
GOLD COAST MAIL CENTRE QLD 9729

Attention: Liam Jukes

Dear Liam,

RESPONSE TO INFORMATION REQUEST

COUNCIL REFERENCE: COM/2019/81
PROPERTY ADDRESS: 33 MAUDSLAND ROAD, 99 MAUDSLAND ROAD, LOT 905 WIMBLEDON WAY, LOT 906 WIMBLEDON WAY, 4 YALLAROI ROAD, 6 YALLAROI ROAD, 1 ROCHE COURT AND LOT 901 EMERSON WAY, OXFORD QLD 4210
REAL PROPERTY DESCRIPTION: LOT 906 SP108985, BAL LOT 467 RP845775, PT1 LOT 467 RP845775, LOT 468 RP845775, LOT 7 RP153300, LOT 8 RP153301, LOT 901 RP883083, LOT 464 RP228385, LOT 905 SP108985

I refer to your email of 8 March 2021 and advise as follows.

PLANNING ASSESSMENT

1. Minor change vs other change – I note the correspondence received infers the proposed change is not a minor change but is a change to the application made in response to further advice (environmental matters). We agree the change is made in response to further advice however it is unclear on whether the applicant views the change as an 'other change' or 'minor change'. Could you please provide some further clarification on this? If the applicant considers the change as a minor change, a response against the substantially different test is requested.

RESPONSE

It is noted that section 26.1 of the DA rules states:

26.1 For a change that is not a minor change, the development assessment process does not stop if the assessment manager is satisfied the change—

(a) only deals with a matter raised in a properly made submission for the application; or

(b) is in response to an information request for the application; or

(c) is in response to further advice provided by an assessing authority about the application

The change to application lodged on the 18 February 2021 was a change that falls within the scope of section 26(1)(c) of the DA rules because it was in response to further advice provided by the assessment manager.

It is noted that Council accepts that the change was in response to further advice from the assessment manager.

Section 26.1 of the DA rules applies when a change is not a minor change. It follows that the assessment manager is not being asked to treat the change as a minor change and a consideration of the substantially different development test is not required.

2. Public notification requirements – Officers are currently reviewing the proposed changes that have been made to the application since it was originally notified to the public, including the formal change to the application submitted on 18 February 2021. To assist me with understanding the progression of the application since it was notified, could you please provide a chronology of further information requests (please attach all relevant correspondence from Council) and resultant changes, made up and until the change application was submitted. I also request you provide additional justification regarding why the changes that have been made should not require the application to be re-notified

The application was publicly notified from 1 November 2019 to 22 November 2019. Since the completion of the public notification council has, on a number of occasions, sought further advice.

I provide the following chronology in respect to further information requested from council and our subsequent responses.

- 7 February 2020 – email from GCCC advising of peer review assessment of visual report.
- 20 March 2020 email from PlanIt to GCCC with draft response to further advice.
- 2 July 2020 email to GCCC responding to further advice regarding visual report.
- 31 August 2020 GCCC email Council officers agree that the change deals with a matter raised in a properly made submission.
- 13 October 2020 email from GCCC requesting further information relating to carparking.
- 16 October 2020 email to GCCC in response to further information request.
- 2 November 2020 email from GCCC requesting reduction of quarrying in south east corner of site.
- 18 February 2021 formal change application made in response to further advice from council.

Copies of the above correspondence is included as Attachment 1.

Renotification of the development application would not be required where section 26.2(b) of the DA rules applies, namely where *"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."*

In the current circumstances, the change involves a reduction in the quarry footprint. The assessment manager can readily and reasonably conclude that a reduction in the quarry footprint is a change that would not be likely to attract a submission objecting to the change, given that the change will result in reduced impacts. Indeed, it would be difficult to ascertain any circumstance in which a submitter would make a submission objecting to the reduction of a proposed quarry footprint. Additionally, in relation to the additional clarification provided with respect to carparking, this change is in response to further advice and is innocuous given the substantive buffers proposed.

It is open for the assessment manager to reasonably conclude that the changes would not likely attract a submission objecting to the thing comprising the change.

Accordingly, there is no need for public notification to be repeated.

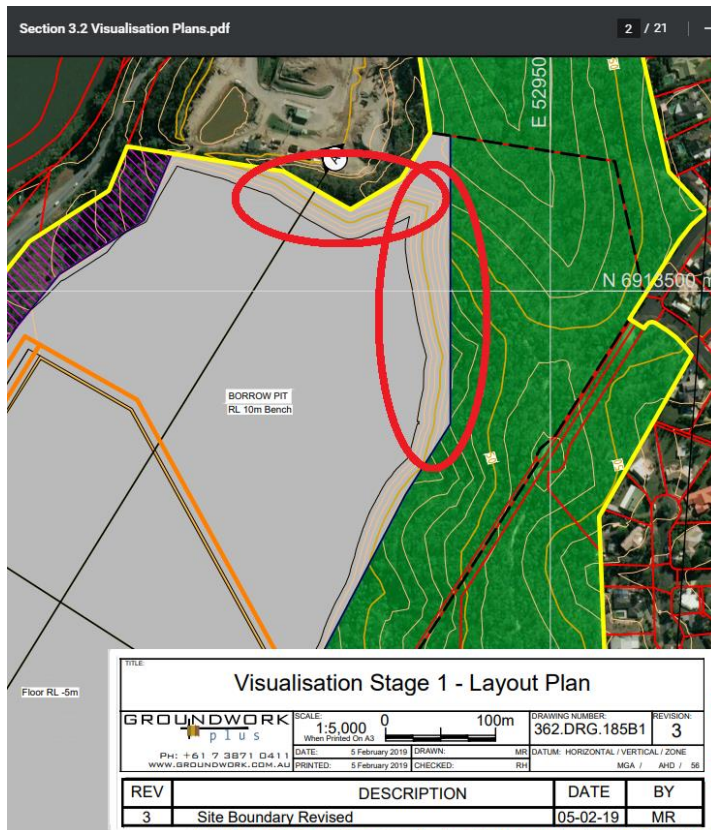
Should you have any further questions relating to this matter, please don't hesitate to contact the undersigned on telephone number (07) 5526 1500.

Yours Sincerely,

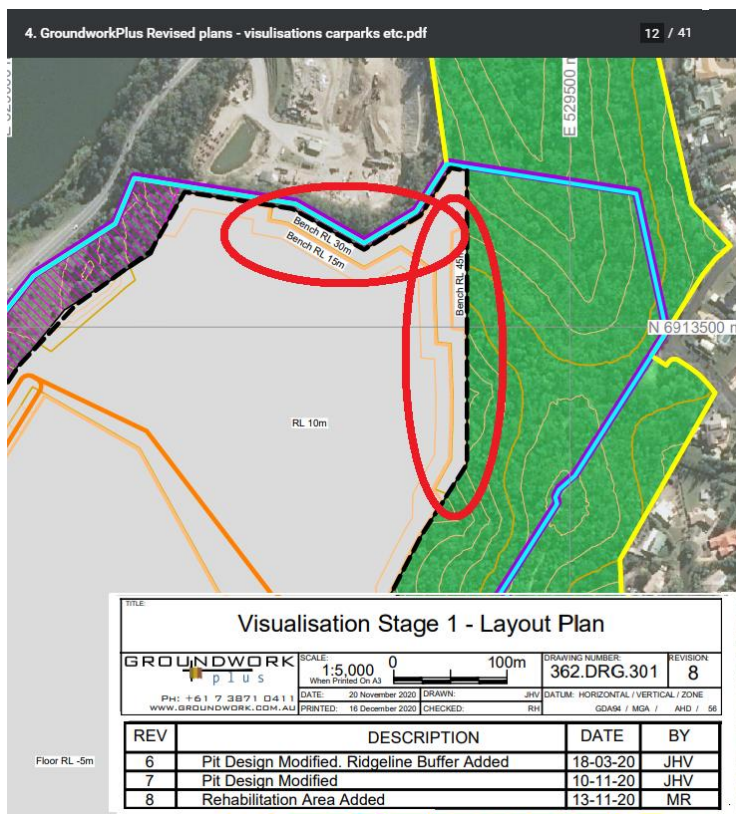


Bede Emmett
Director

Attachment B1 - Original DA - Stage 1 NE gradual merger from environmentally significant to extractive footprint



Attachment B2 - Latest Changes - Stage 1 NE 15 metre bench drops



Part 9.3.8 Extractive industry code

2 / 4

PART B - ASSESSABLE DEVELOPMENT BENCHMARKS

Table 9.3.8-1: Extractive industry development code – for assessable development

Performance outcomes	Acceptable outcomes
Visual amenity	
PO3 Extractive industry developments are screened or located in areas of least visual impact and minimise views of any significant infrastructure and visually obtrusive development from major roads and surrounding residential areas.	AO3.1 Extraction or processing activities are not conducted within 40m of any boundary of the site. AO3.2 Views of significant infrastructure and visually obtrusive development including quarry floors, benches and faces, are screened from the road frontage, major road corridors and adjoining residential areas.
PO4 Development protects the visual character and amenity of the area by ensuring ridgelines are retained as a natural feature and buffer.	AO4 Development is located at least 40m away from any ridgeline, as measured horizontally from the ridge peak.

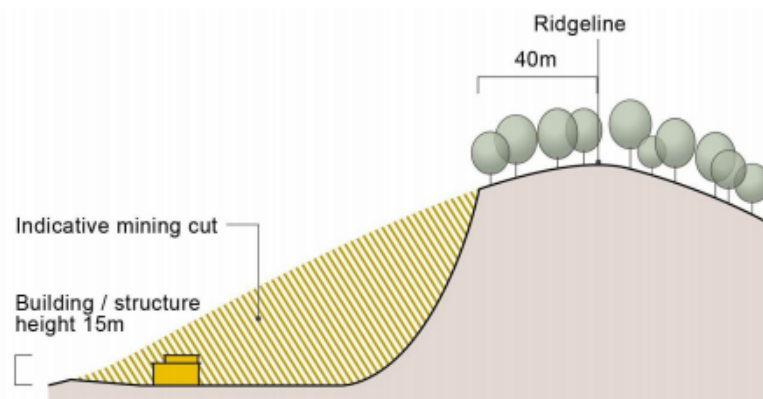
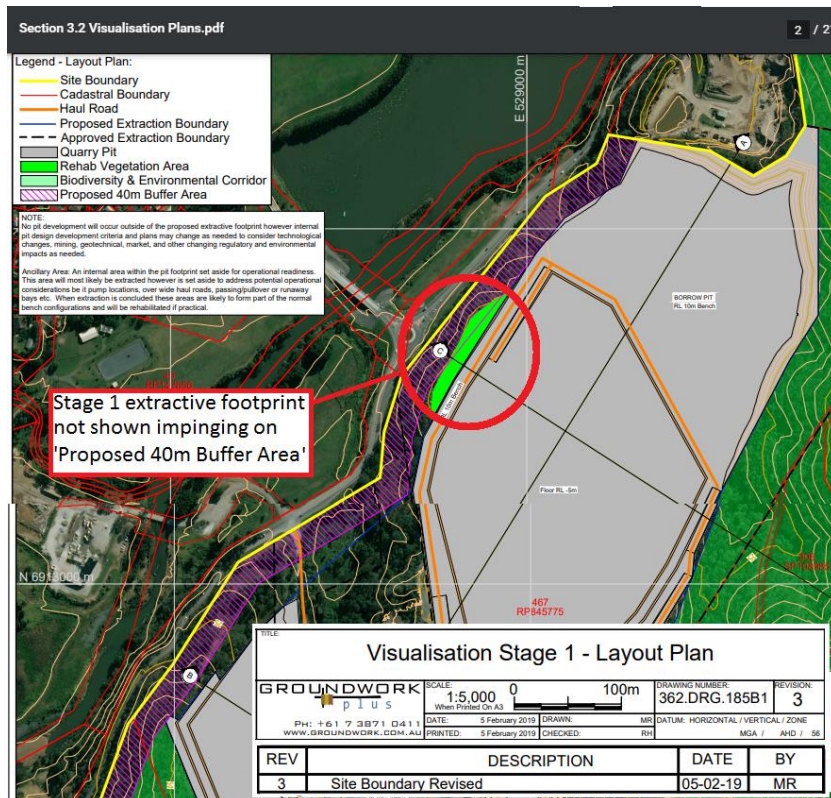
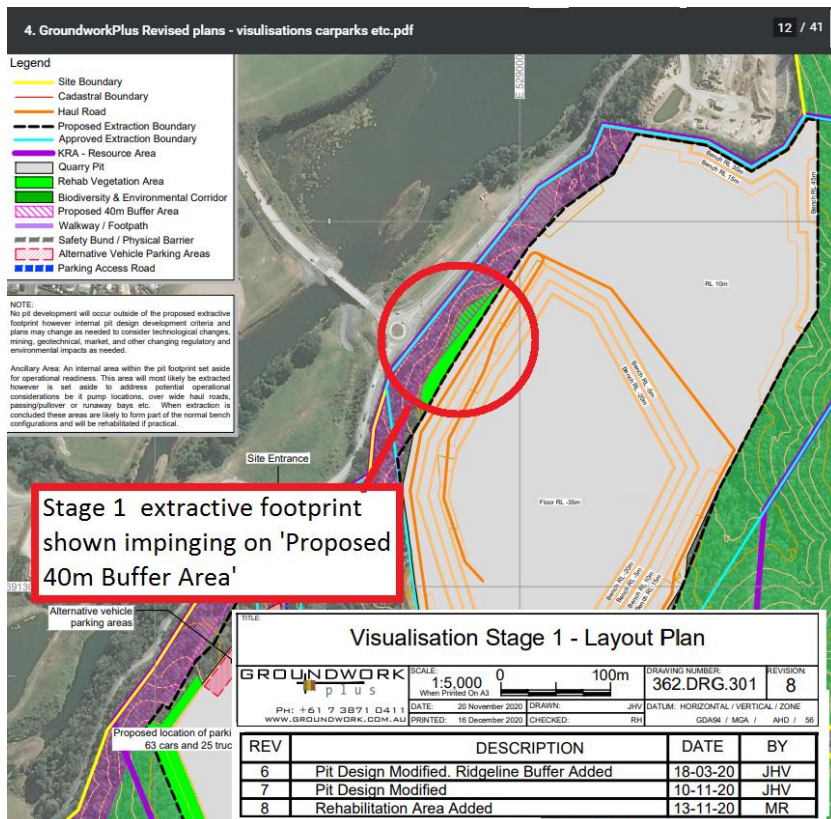
**Figure 9.3.8-1**

Illustration showing Extractive industry development is located at least 40m away from the top of the ridgeline, as measured horizontally from the ridge peak.

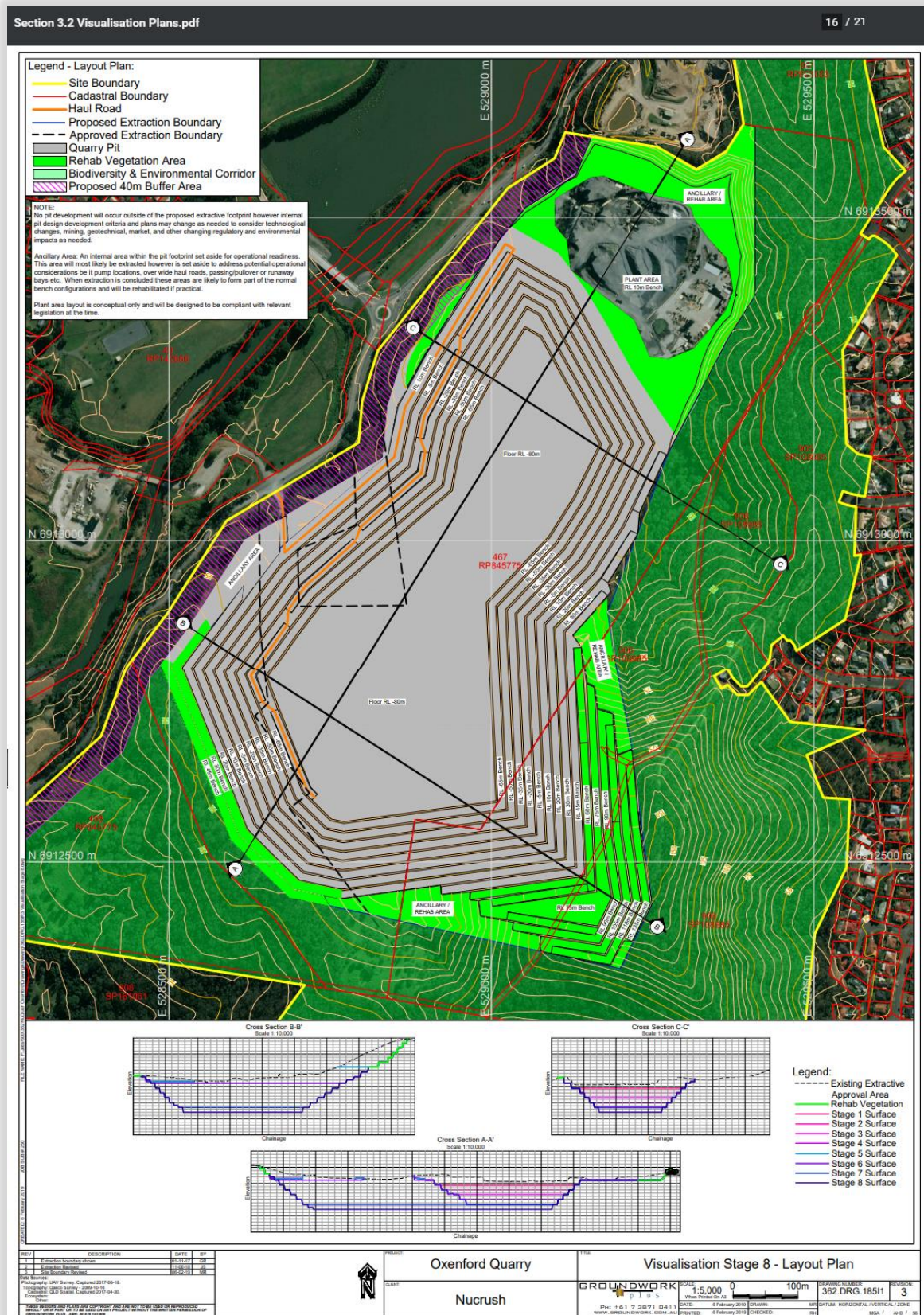
Attachment C1 - Original DA - Stage 1 - 'Proposed 40m Buffer' from Tamborine-Oxenford Road shown as NOT compromised



Attachment C2 - Latest changes - Stage 1 - 'Proposed 40m Buffer' from Tamborine-Oxenford Road shown as compromised



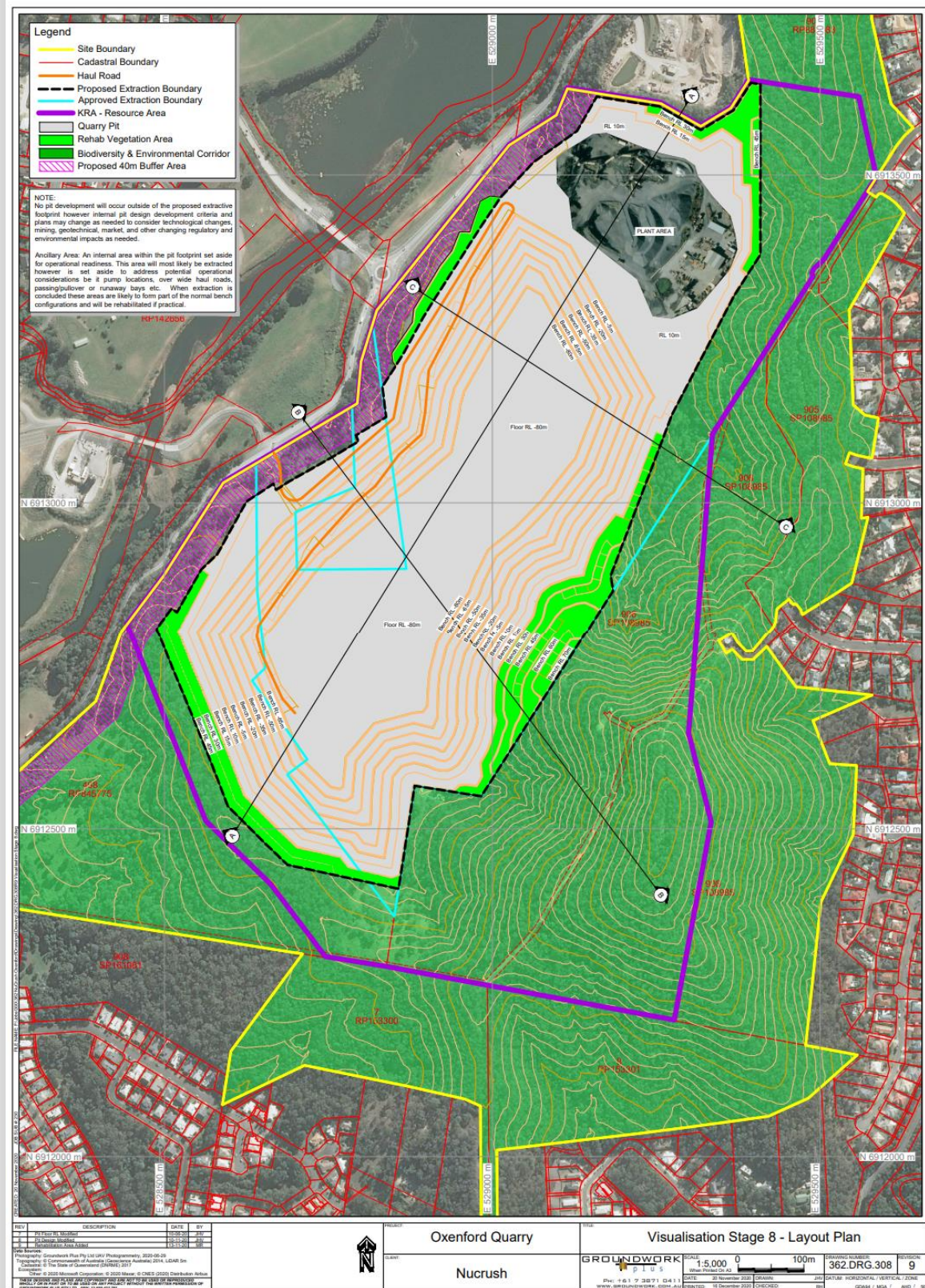
Attachment D1 - Original DA - Stage 8 - Rehabilitated around plant area and concrete production facility



Attachment D2 - Latest changes - Stage 8 - No rehabilitation in the north

GroundworkPlus Revised plans - visualisations carparks etc.pdf

37 / 41



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:

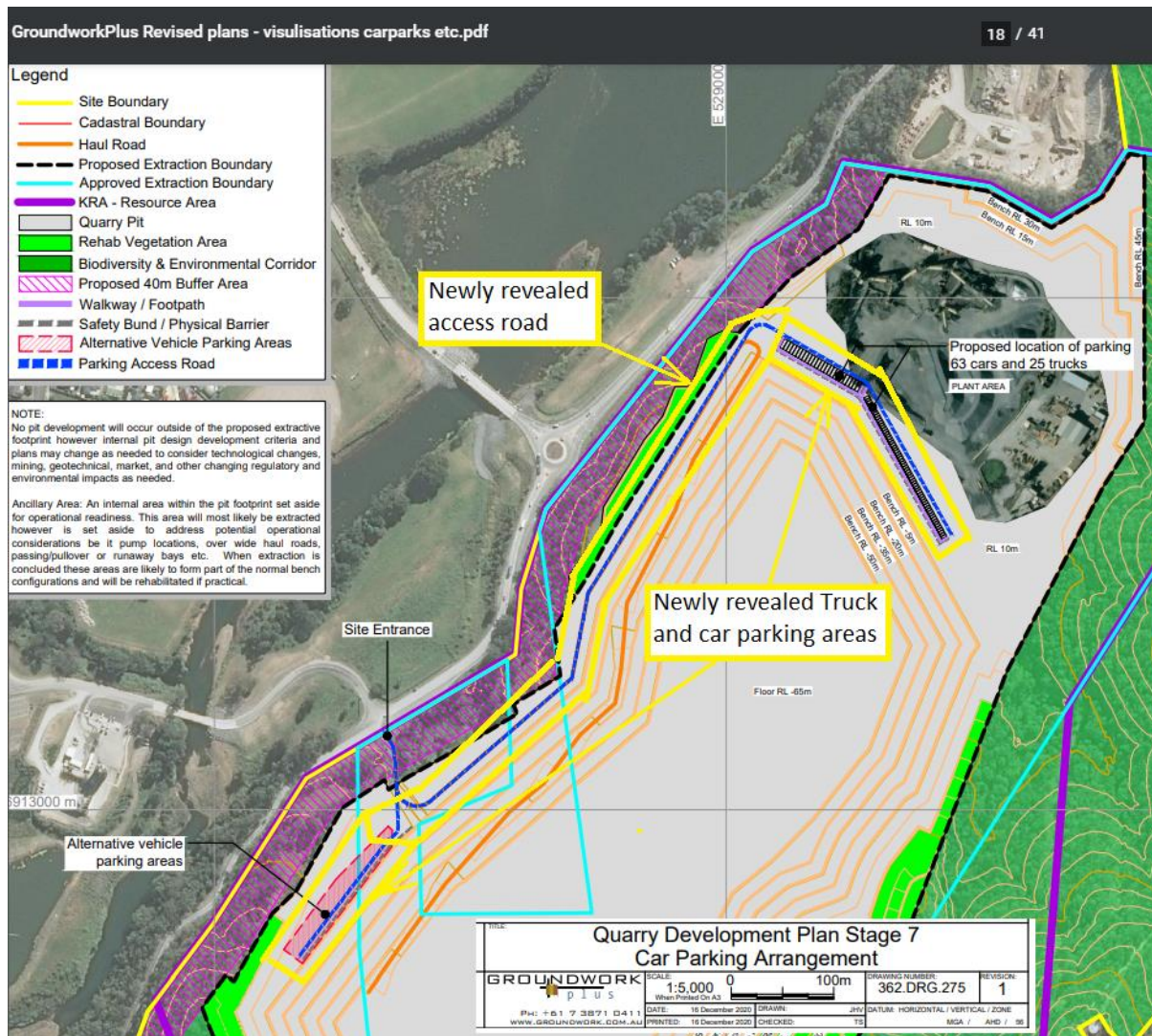
- Stage 1 - Year 0 to 19 (including development of the five eastern highwall benches from Year 0 to 7.2).
- Stage 2 - Year 19 to 25.
- Stage 3 - Year 25 to 30.
- Stage 4 - Year 30 to 34.
- Stage 5 - Year 34 to 37.
- Stage 6 - Year 37 to 40.
- Stage 7 - Year 40 to 96.
- Stage 8 - Year 96 to 100+.
- Stage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

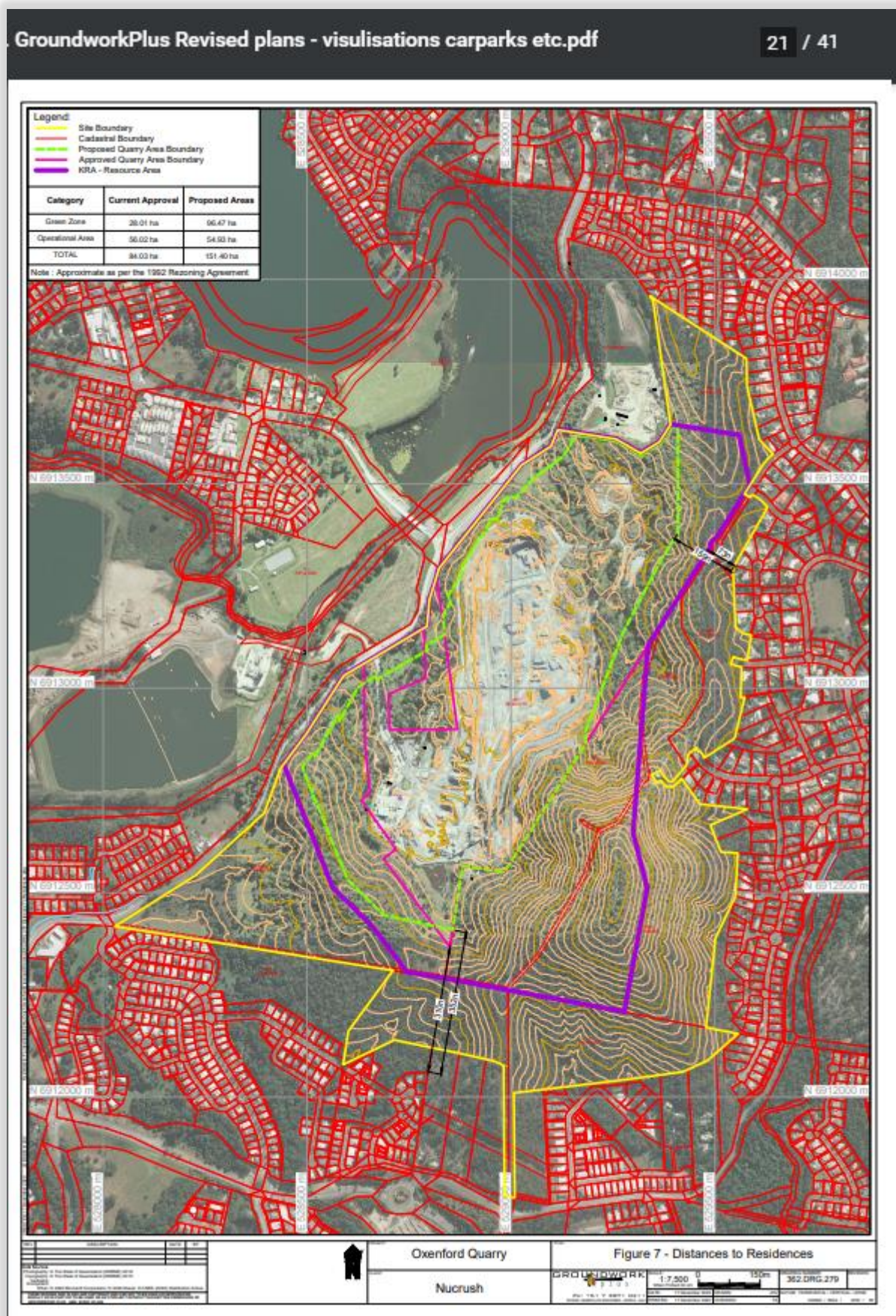
Development of the five eastern highwall benches will be substantially completed during Stage 1¹, based on the following indicative timings:

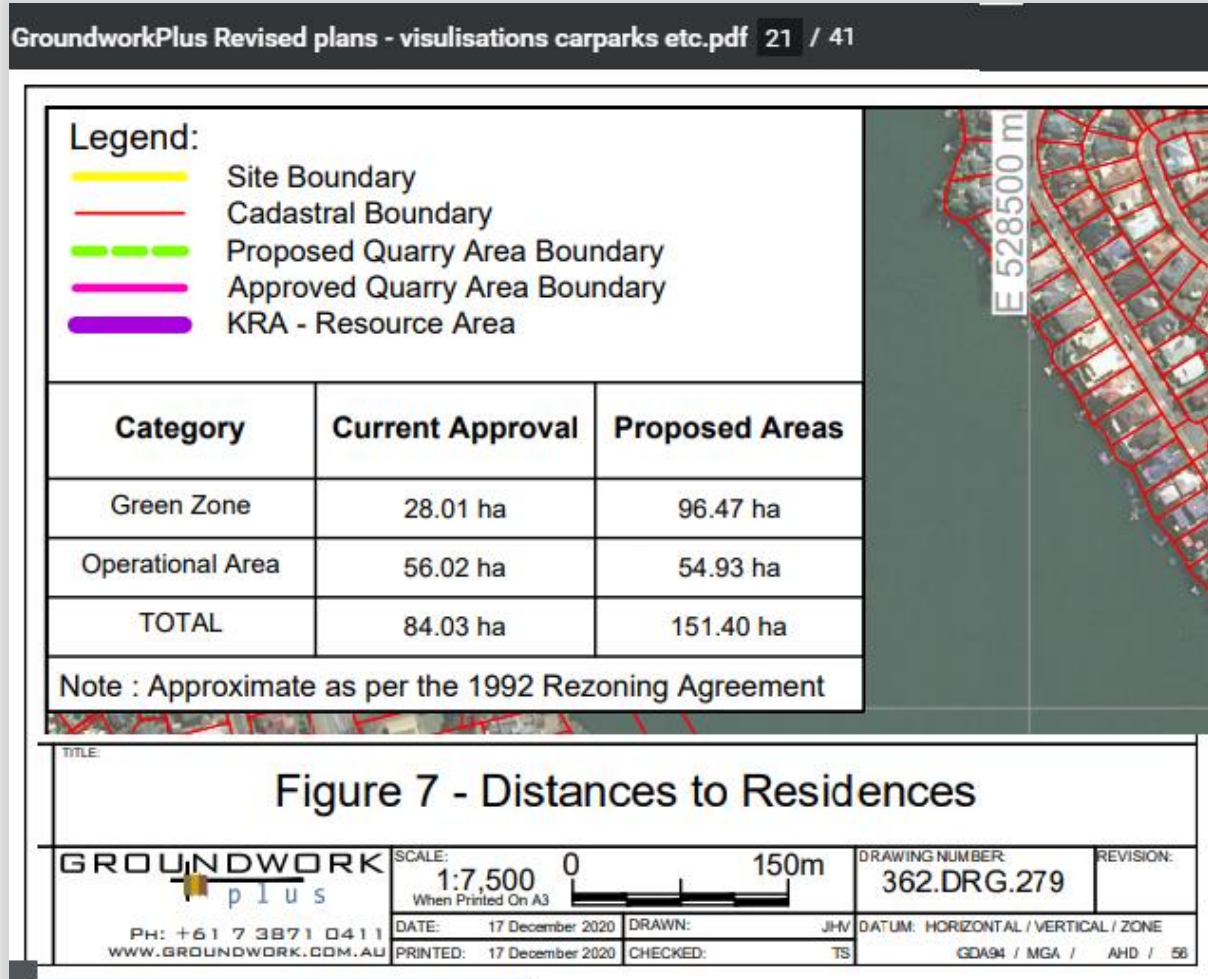
- Bench 1 - Year 0 to 0.8.
- Bench 2 - Year 0.8 to 2.1.
- Bench 3 - Year 2.1 to 4.3.
- Bench 4 - Year 4.3 to 7.2.
- Bench 5 - Year 7.2.

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.

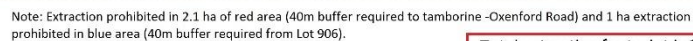
Attachment E1 - Newly released Access road and Truck and car parking information







Plan 362-010 (Third Schedule of Rezoning Agreement)
 Red: Extractive 19.28 ha approx (excl Rural 'B' 16.6ha)
 Blue: Extractive Area 7.59 hectares
 Yellow: 11.83 ha (Ancillary operations)
 Green: 15.5 ha (including area to Lot 467/468 Border)



Page 23 of 32

Attachment G1 - DA Rules - Section 26.2 - Public Notification

26.2. Where part 4 applies to the changed application—

- (a) if part 4 did not apply to the original application—
 - (i) the assessment manager must give the applicant a confirmation notice within 10 days after the day the assessment manager receives notice of the change and part 4 must be undertaken for the changed application in accordance with section 16.4; and
 - (ii) the assessment manager cannot decide the application until part 4 has ended.
- (b) if part 4 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 be likely to attract a submission objecting to the thing comprising the change, if public notification were to apply to the change.
- (c) if public notification is required under 26.2(b), the assessment manager must give notice to the applicant within 5 days of receiving notice about the change, advising that public notification is required and public notification for the changed application must be undertaken in accordance with section 16.4.

Attachment G2 - DA Rules - Schedule 1 - Substantially Different development

Schedule 1: Substantially different development

1. An assessment manager or responsible entity may determine that the change is a minor change²⁵ to a development application or development approval, where – amongst other criteria – a minor change is a change that would not result in 'substantially different' development.
2. An assessment manager or responsible entity must determine if the proposed change would result in substantially different development for a change—
 - (a) made to a proposed development application the subject of a response given under section 57(3) of the Act and a properly made application;
 - (b) made to a development application in accordance with part 6;
 - (c) made to a development approval after the appeal period.²⁶
3. In determining whether the proposed change would result in substantially different development, the assessment manager or referral agency must consider the individual circumstances of the development, in the context of the change proposed.
4. A change may be considered to result in a substantially different development if any of the following apply to the proposed change:
 - (a) involves a new use; or
 - (b) results in the application applying to a new parcel of land; or
 - (c) dramatically changes the built form in terms of scale, bulk and appearance; or
 - (d) changes the ability of the proposed development to operate as intended;²⁷ or
 - (e) removes a component that is integral to the operation of the development; or
 - (f) significantly impacts on traffic flow and the transport network, such as increasing traffic to the site; or
 - (g) introduces new impacts or increase the severity of known impacts; or
 - (h) removes an incentive or offset component that would have balanced a negative impact of the development; or
 - (i) impacts on infrastructure provisions.

²⁵ For a definition of minor change, see schedule 2 of the Act.

²⁶ For changing development approvals, see chapter 3, part 5, division 2, subdivision 2 of the Act.

²⁷ For example, reducing the size of a retail complex may reduce the capacity of the complex to service the intended catchment.

Attachment G3 - DA Rules guidance - Effects of a change

Effect of a change that is about a matter raised in a submission, information request or further advice

- Where the assessment manager is satisfied the changed application is not a minor change but is a change that is about a matter raised in a submission, information request or further advice, this change does not stop the development assessment process. However, if as a result of the change:
 - additional referral is required: this must be undertaken in accordance with this section and part 2
 - public notification is required: this must be undertaken in accordance with this section and part 4.
- Where public notification has already been undertaken for the development application, or was underway when the change was made, public notification is required to be undertaken again – 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.
- If the change results in the triggering of additional referral requirements for the development application, the applicant is required to refer the application to these entities in accordance with part 2. However, for this referral, the period under section 5.1 of the DA Rules is taken to start on the day the applicant received advice about the change under section 25.1(b). A confirmation notice is not required to be given to the referral agency in this instance.
- If re-notification, and/or referral, is required as a result of the changed application, and the assessment manager's decision period has already commenced, the assessment manager cannot decide the application and the decision period restarts in accordance with section 23.2(c).

Attachment G4 - DA Rules guidance - Effects of other changes

Effect of other changes

- Where the assessment manager is satisfied the changed application is neither a minor change nor a change that is about a matter raised in a submission, information request or further advice, this is an 'other' change. This change has the effect of restarting the development assessment process from the beginning of the confirmation period, where the remainder of the development assessment process is to be undertaken again from that point.
- The assessment manager must ensure the application including the change can still be considered a properly made application in accordance with section 51. If the application is no longer properly made, an action notice may be issued to remedy this.
- The only exception to this process may relate to public notification, where the DA Rules provide the assessment manager with the ability to determine – if public notification has already taken place or was underway when the change was made – whether re-notification is required. This should be identified in the assessment manager's confirmation notice or notice given under section 26.2(c).

Attachment H1 - Environmental Authority EA0002207

apps.des.qld.gov.au/env-authorities/pdf/ea0002207.pdf

Environmental Authority relating to ea0002207 LOT 906/sp108985; LOT 905/SP108985; L... 9 / 18

D8


Significant residual impacts on prescribed environmental matters are not authorised under this environmental authority of the *Environmental Offsets Act 2014* unless the impact is specified in *Table 3: Significant residual impacts to prescribed environmental matters** below.

Table 3: Significant residual impacts to prescribed environmental matters*

Prescribed environmental matter	Location of impact	Maximum extent in hectares
Matter of National Environmental Significance		
Koala** (<i>Phascolarctos cinereus</i>) Vulnerable – <i>Environment Protection and Biodiversity Conservation Act 1999</i>	Lot 906 on SP108985 Lot 467 on RP845775	18 ha
Grey-headed Flying-fox** (<i>Pteropus poliocephalus</i>) Vulnerable – <i>Environment Protection and Biodiversity Conservation Act 1999</i>	Lot 906 on SP108985 Lot 467 on RP845775	18 ha
Essential habitat		
Koala** (<i>Phascolarctos cinereus</i>) Vulnerable – <i>Nature Conservation Act 1992</i>	Lot 906 on SP108985 Lot 467 on RP845775	12.08 ha
Glossy Black-Cockatoo (<i>Calyptorhynchus lathami</i>) Vulnerable – <i>Nature Conservation Act 1992</i>	Lot 906 on SP108985 Lot 467 on RP845775	11.91 ha
Greater Glider** (<i>Petauroides volans</i>) Vulnerable – <i>Nature Conservation Act 1992</i>	Lot 906 on SP108985 Lot 467 on RP845775	12.08 ha
Red Goshawk** (<i>Erythrorhynchus radiates</i>) Endangered – <i>Nature Conservation Act 1992</i>	Lot 906 on SP108985 Lot 467 on RP845775	12.08 ha
Short-beaked Echidna (<i>Tachyglossus aculeatus</i>)	Lot 906 on SP108985 Lot 467 on RP845775	12.08 ha

Attachment H2 - Environment Protection and Biodiversity Conservation (EPBC) Referral Ref no. 2018/8356

epbcnotices.environment.gov.au/referralslist/

 **Australian Government**
Department of Agriculture,
Water and the Environment

EPBC Act - Public notices


Referrals list | Public notices - referrals | Invitations to comment | Exemption notices | Exemption notices - Cetacean permits | Public Notifications - Cetacean permits | Strategic Assessment Notices | Wildlife

Reference No.	Title of referral	Valid Date	Stage	Status
2018/8356	NUCRUSH PTY. LTD./Mining/Lots 467 & 468 RP845775, 901 RP883083, 905 & 906 SP108985, 7 RP153300, 8 RP15331, 464 RP 228385/Queensland/Oxenford quarry extractive boundary realignment, Oxenford, Qld	19/12/2018	Further Information Request	Further Information Requested

Filter by Referral Number
Filter by Title
nucrush

Attachment J1 - Planning Act 2016, Section 52 Changing or withdrawing development applications

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 52](#)

52 Changing or withdrawing development applications

- (1) An applicant may change or withdraw a development application, before the application is decided, by a notice given to the assessment manager and, for a withdrawn application, any referral agency.
- (2) However—
 - (a) if the change is, or includes, a change of applicant, the notice may be given by the person who proposes to become the applicant if the notice is accompanied by the consent of the current applicant; and
 - (b) [section 51\(2\)](#) applies for making the change as though the change were an application if—
 - (i) the applicant no longer owns the premises or the change is to include premises that the applicant does not own; and
 - (ii) were the application to be remade with the change, [section 51\(2\)](#) would apply to the application; and
 - (c) the change may not include prohibited development.
- (3) If the change is a minor change, the change does not affect the development assessment process.

Attachment J2 - Planning Act 2016, Section 53 Publicly notifying certain development applications

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 53](#)

53 Publicly notifying certain development applications

- (1) An applicant must give notice of a development application if—
 - (a) any part of the application requires impact assessment; or
 - (b) the application includes a variation request.
- (2) The notice must be given in the way or ways stated in the development assessment rules.
- (3) However, the assessment manager may assess and decide a development application even if some of the requirements of the development assessment rules about the notice have not been complied with, if the assessment manager considers any noncompliance has not—
 - (a) adversely affected the public's awareness of the existence and nature of the application; or
 - (b) restricted the public's opportunity to make properly made submissions about the application.

Attachment K1 - Third Schedule of Original Rezoning Agreement (Plan 362-010)

Please note this map, highlighting prohibited development areas, was removed from the DA submitted copy of the Rezoning agreement (the current approval) and replaced with the innocuous map as shown in Attachment K2 below.

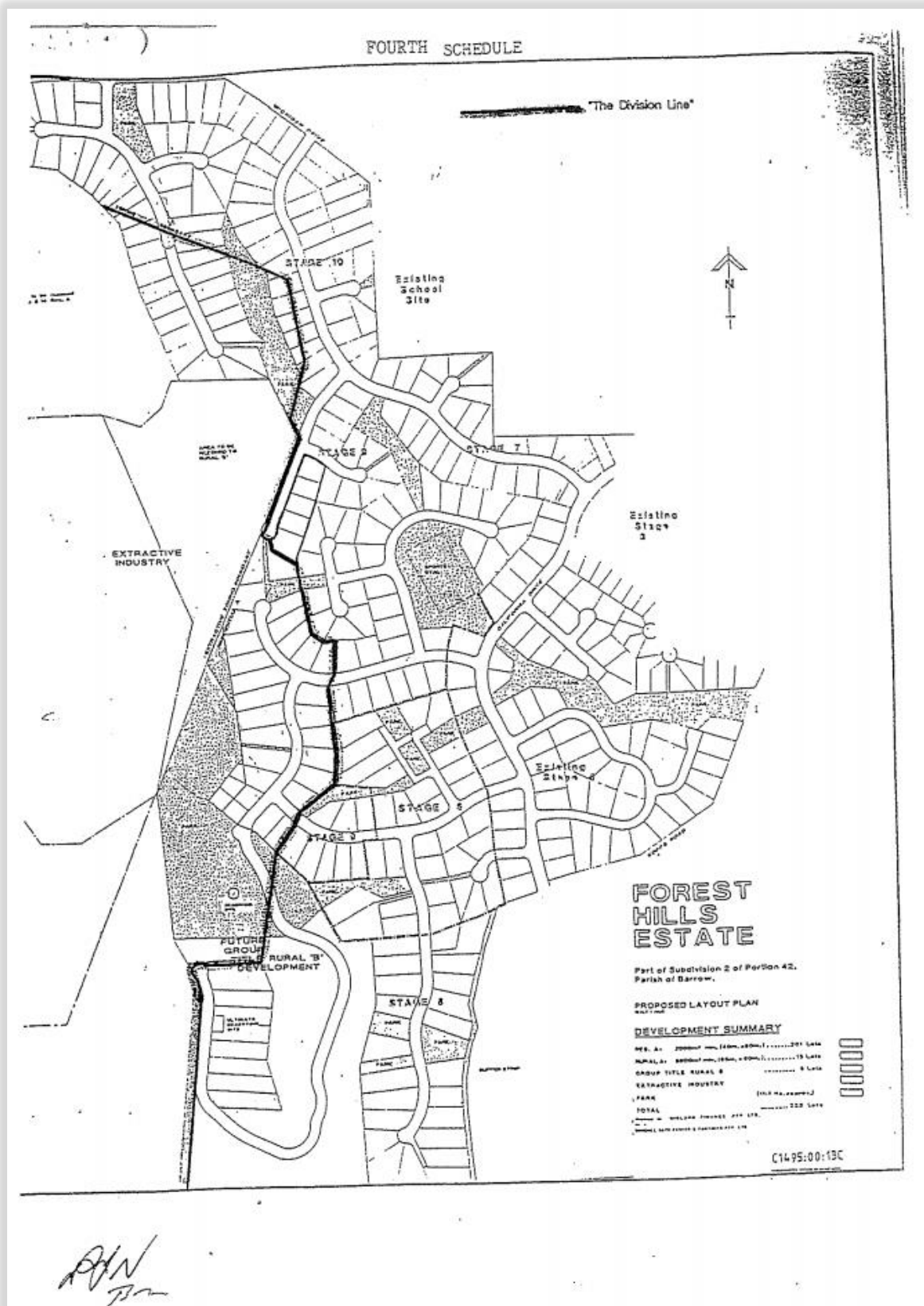


Note this is actually the 'Fourth Schedule' of the rezoning agreement with the title "FOURTH SCHEDULE" removed to hide its true origin. Original shown in Attachment K3 below.



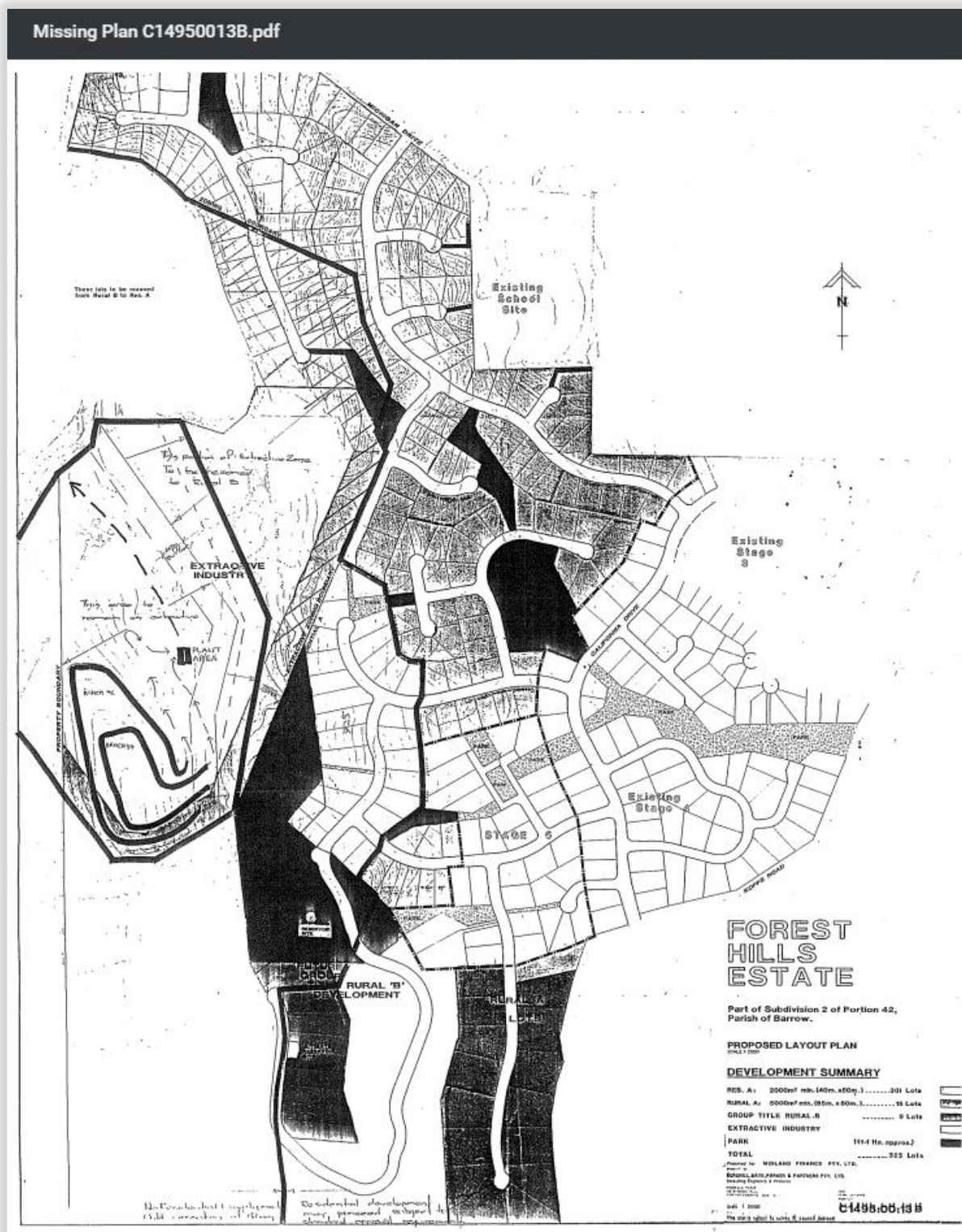
Attachment K3 - 'Fourth Schedule' of Original Rezoning agreement

Please note the title "FOURTH SCHEDULE" in the correct, unaltered, version as opposed to the modified version where it has been removed (Attachment K2).

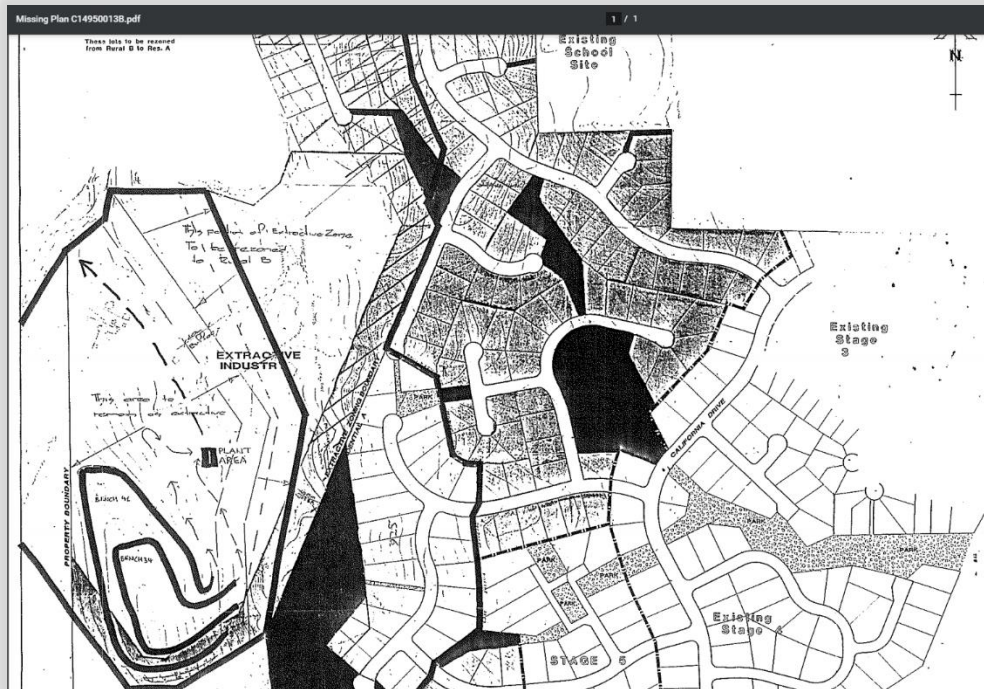


Attachment K4 - Plan C1495:00:13B (part of current approval) showing "The Portion of extractive zone to be rezoned to Rural 'B' " that was omitted from development application

Note close up of the Rural 'B' area is shown in below in Attachment K5.



Attachment K5 - Part of Plan C1495:00:13B (close up of "The Portion of extractive zone to be rezoned to Rural 'B' ")



Attachment K6 - Part of Plan C1495:00:13B (annotated copy of close up of "The Portion of extractive zone to be rezoned to Rural 'B' ")

