

12th 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 -

Concrete Production Plant within Extractive Industry Zone - continued.

Please accept this objection as it further discusses (in addition to my objection dated 6th April 2021) the legality and operating procedures of the Concrete Production / Batching facility within the Extractive Industry zone as required as part of development application COM/2019/81.

Over and above all my findings that convince me that a Concrete production / batching facility is not permissible within an extractive industry the State Planning Policy (July 2017) states: *“Resource/processing area of a KRA - means the extent of the extractive resource and any existing or future processing operations. Note: The extraction of extractive materials can include ripping, blasting or dredging; the processing of extractive materials can include crushing screening, washing, blending or grading and waste water treatment; and associated activities can include storage, rehabilitation, loading, transportation, administration, and maintenance facilities”* (Attachment A1).

The above quote can in no way, I believe, be construed to permit a Concrete production / batching facility within a Key Resource Area.

Definition under the Planning Scheme when development approval was given

It would seem that when the concrete production / batching facility was granted permission to operate by the Council that it was contra to the clear requirements of the Extractive Industry both then and now.

When the permission was granted in 1994 the definition for Extractive Industry (as per the Albertshire Planning Scheme) was: *“Extractive Industry - Any premises used or intended for use for the purpose of carrying on an industry involving extraction, storage, loading or cartage of sand, gravel, soil, rock, stone or similar substances from land. The term does not include crushing, screening, washing or other treatment process, or manufacture of products from such substances, or a mine under the Mining Act 1968-1983”* (Attachment A2).

ERA 16 - Extractive and Screening Activities

Our Councillor, William Owen-Jones, when asked about the legality of the Concrete Production / batching facility reported: *“The advice from City Officers, when specifically asked about the current operations of the Batching plant, at 33 Maudsland Road, is as follows: “Operation of an ERA16*

(Extractive and Screening Activities) is not devolved to local Government under the Environmental Protection Act 1994. As such, any concerns relating to the operation should be directed to the Department of Environment and Science (DES)” ... The batching plant and quarrying operations are ERA16 operations regulated by the DES”.

However this, I believe, is incorrect. ERA 16 Operations are site specific and in this case only ‘ERA 16(2) - extractive industries, other than dredging’ and ‘ERA 16(3) - Screening’ is applicable (Attachment B1).

As specified in the Environmental Authority EA0002207, ERA 16(2) permits the extraction of up to 1,000,000 tonnes per annum; and ERA 16(3) permits the screening of the 1,000,000 tonnes per annum (Attachment B2). It does not, however, cover the *“The batching plant”* as claimed, as it is, I believe, obvious it is NOT part of *“ERA16 operations regulated by the DES”*.

It would seem that under the Environmentally Relevant Activities (ERA), Concrete Production / Batching facility is not part of ERA 16. But, still needs planning, building and development approval with Council.

Council Approval

Since my last objection dated 6th April 2021 re Concrete production / batching on site I have been furnished with documents inferring the Concrete Plant was given approval (albeit as I see incorrectly in 1994).

Location of Concrete Production / Batching facility

I see the development application has not proposed officially moving the Concrete Production facility as part of the development application (having virtually ignored its existence within the DA it would seem). Can a development application even be considered when a major on-site Concrete plant does not appear to have the required planning and further, proposes moving this facility, however, has not included this as part of the current development application over and above a few visualisations submitted with the concrete plant, surreptitiously moved it would seem, to the top northeast corner (Attachment C1 - close up view is shown in Attachment C2). The existing location of the Concrete Production / Batching facility is shown in Attachment C3.

As a side note, please note the current Concrete Production / Batching facility (Attachment C3) appears to be currently compromising the ‘Buffer land’ to the southwest already.

Concrete Manufacturing Production

It should be pointed out that it is, I believe, not permissible to operate a concrete plant on this land as it does not have the appropriate approval. The current approved area for extractive Industry, as defined in the original rezoning agreement dated 17th March 1992, is Lot 463. Which has areas zoned for extractive industry (extractive footprint) and ancillary areas. The Concrete manufacturing and production facility is located in this ancillary area which is designated as: ‘Special Facilities’. This area is, to quote from Rezoning agreement, defined as: *“Special Facilities (Ancillary Purposes to Extractive Industry including Processing, Plant, Stockpiling, Magazines, Water Storage, Workshops, Stores,*

Weighbridge and Offices, Decantation Ponds, Dams, Access, Permanent Tree and Shrub Screening)". It does not, it would seem, include the facility to operate a concrete plant in this area.

Just to clarify the 'Processing plant' includes recovery operations such as extraction of metal ores and minerals from the mined rock. Concentrating or separating the metal ore is the goal of a processing plant. IT IS NOT, it would seem, the on-site production of concrete.

The ancillary purposes areas defined use is clearly not for a concrete manufacturing production area as it is not, I believe, an operation that is: "*Ancillary Purposes to Extractive Industry*" but it is, I believe, a 'high impact industry' or 'medium impact industry' and is certainly not an ancillary purpose to Extractive Industry.

It is no doubt highly convenient and a financial benefit for Nucrush to have an on-site concrete production facility however it would seem the Extractive Industry zoning of the site prevents this. Thus, it would appear to have no legal standing in this current location.

Just to clarify, 'Extractive Industry' at the time this development application for the Concrete production / batching facility was approved by Council was defined as: "*Any premises used or intended for use for the purpose of carrying on an industry involving extraction, storage, loading or cartage of sand, gravel, soil, rock, stone or similar substances from land. The term does not include crushing, screening, washing or other treatment process, or manufacture of products from such substances, or a mine under the mining act 1968-1983*".

Therefore, the 'Special Facilities' area, or 'ancillary purposes' area i.e. Crushing, screening, etc. cannot be performed in the same location as the 'Extractive Industry'. Likewise, the manufacture of products from such substance i.e. concrete cannot be performed in either the 'Special Facilities' or the 'Extractable Industry' area. This would seem a MAJOR stumbling block in the proposed development application that has extractive industry and special facilities (or ancillary purposes) completely entangled which seems to be completely add odds with the definition of extractive industry.

It is, I believe, simply not permissible to operate an on-site concrete manufacturing / production / batching facility within this ancillary operations area or within any part of an Extractive Industry zone.

Similarly, it would seem it is not permissible for ancillary operations area and any part of an Extractive Industry zone to coexist either.

Conclusion

I have yet to see any evidence that a Concrete Production / Batching facility is permitted, or was ever legally permitted, within the Oxenford quarry Extractive Industry Zone. However, I have seen plenty of evidence that it is not.

Notwithstanding, the operating hours of this production facility are not comparable with the Extractive Industry Zone in which it resides. It should be remembered the hours of 7am to 6pm are to *"to minimise nuisance to adjoining and surrounding development"* (City Plan, Extractive Industry Code, 9.3.8, attachment D1) Therefore, this would seem completely incompatible to allow an on-site facility to begin processing at 4am or 5am within the quarry. Is this why the Concrete Production / Batching facility is predominantly missing from the development application? Or, is it because the Extractive Industry zone prevents a concrete production facility from even being legally located here?

However, it cannot be ignored that the development application proposal intends to move the Concrete Production facility to a prohibited development area (Rural 'B') which is going to be within 200 metres of existing homes. It will be operating from 4am (summer) or 5am (winter). This surely cannot be permitted and is clearly contra to City Plan 9.3.8 Extractive Industry Code 9.3.8 Hours of Operation, Performance Outcome PO6 (Attachment D1) i.e. *"Activity undertaken on site are conducted within appropriate hours to minimise nuisance to adjoining and surrounding development"*. And, the Acceptable Outcome AO6.1 states: 7am-6pm weekdays and 8am-midday Saturdays.

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.

Policy.pdf

State Planning Policy

Part F

July 2017

Glossary

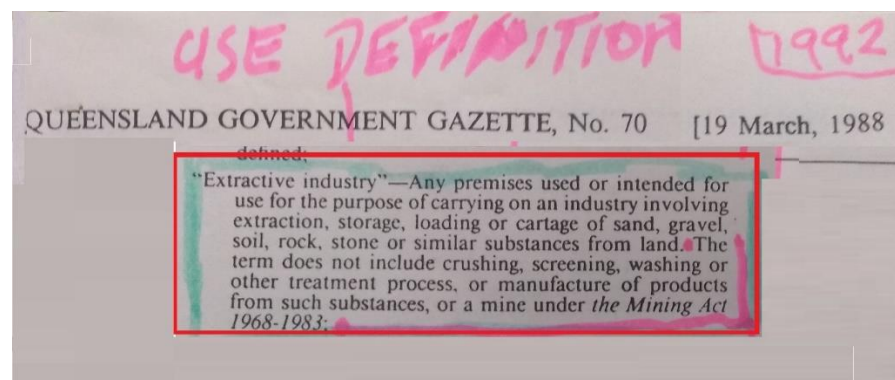
Key resource area (KRA) means an identified location that contains extractive resources of state or regional significance as shown on the SPP IMS. A KRA includes the following:

- the resource/processing area
- the separation area
- the transport route
- the transport route separation area.

Resource/processing area of a KRA means the extent of the extractive resource and any existing or future processing operations.

Note: The extraction of extractive materials can include ripping, blasting or dredging; the processing of extractive materials can include crushing, screening, washing, blending or grading and waste water treatment; and associated activities can include storage, rehabilitation, loading, transportation, administration, and maintenance facilities.

State Planning Policy page 73



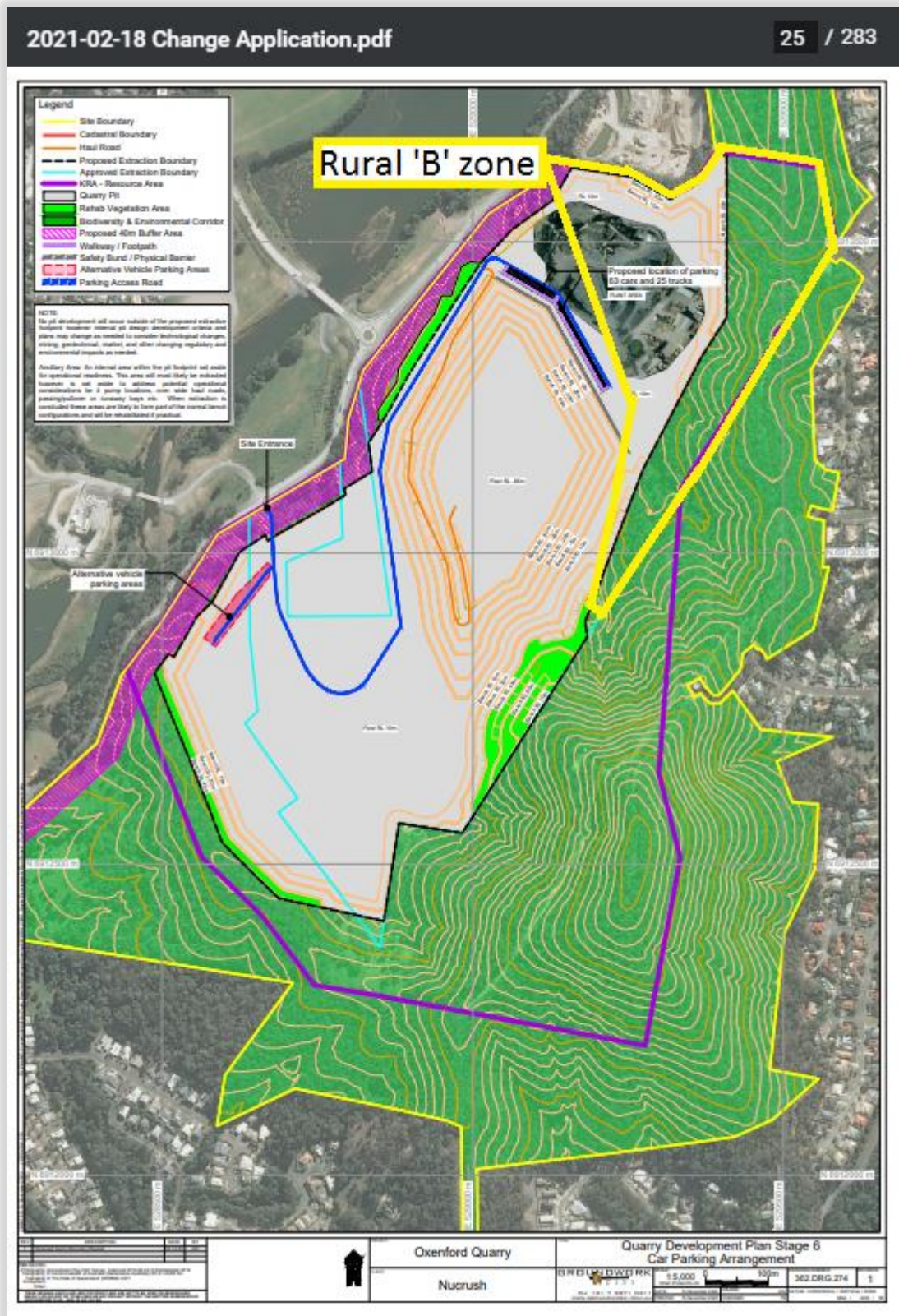
Attachment B1 - EA 0002207 - ERA 16(2) and ERA 16(3)

Environmental authority EA0002207	
This environmental authority is issued by the administering authority under Chapter 5 of the Environmental Protection Act 1994.	
Environmental authority takes effect on the date the development approval COM/2019/81 takes place.	
Environmental authority holder(s)	
Name(s)	Registered address
NUCRUSH PTY. LTD.	19 Hart Street UPPER COOMERA QLD 4209
Environmentally relevant activity and location details	
Environmentally relevant activity/activities	Location(s)
ERA 16 - Extraction and Screening 2: Extracting, other than by dredging, in a year, the following quantity of material (b) more than 100,000t but not more than 1,000,000t	Lot 464 on RP228385 LOT 906 on sp108985 LOT 467 on RP845775 LOT 7 on RP153300 LOT 8 on RP153301 LOT 901 on RP883083 LOT 905 on SP108985 Lot 468 on RP845775
ERA 16 - Extraction and Screening 3: Screening, in a year, the following quantity of material (b) more than 100,000t but not more than 1,000,000t	Lot 464 on RP228385 LOT 906 on sp108985 LOT 467 on RP845775 LOT 7 on RP153300 LOT 8 on RP153301

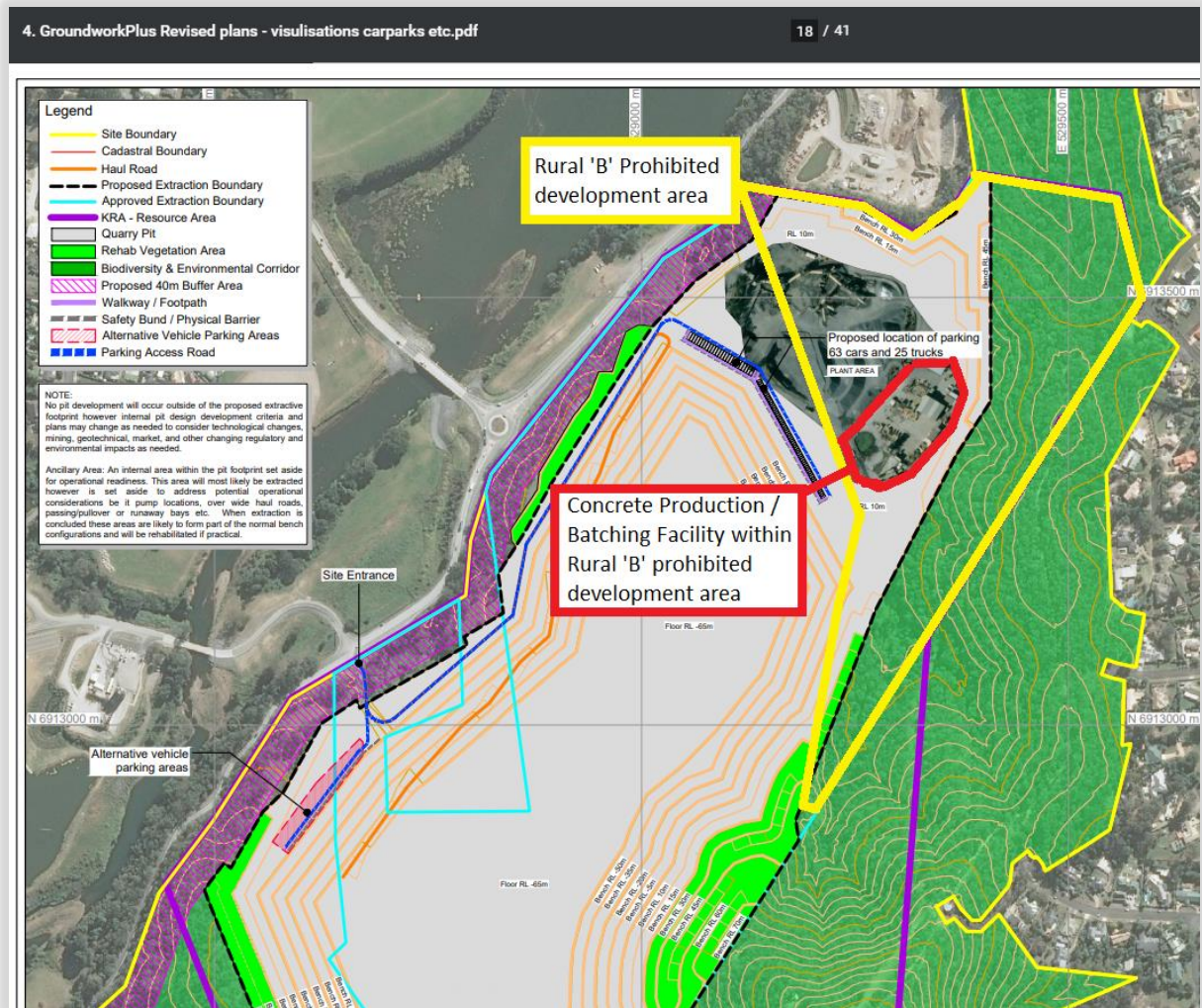
Attachment B2 - EA 0002207 - ERA 16(2) and ERA 16(3)

Environmental authority EA0002207	
Conditions of Environmental Authority	
Agency interest: General Schedule A	
Condition	Condition
A1	Any activity operating under this environmental authority must not be conducted contrary to any of the following limitations: <ol style="list-style-type: none"> The amount of material extracted from the site must not exceed 1,000,000 tonnes per year. Activities associated with: <div style="border: 1px solid red; padding: 5px;"> <ol style="list-style-type: none"> ERA 16 threshold (2)(b) extracting, greater than 100,000 tonnes, but not more than 1,000,000 tonnes, of material per annum, and ERA 16 threshold (3)(b) screening, greater than 100,000 tonnes, but not more than 1,000,000 tonnes, of material per annum. </div> The extraction void must not exceed a maximum depth of -95m AHD. All activities must be in accordance with Appendix A – Oxenford Quarry Site Layout.

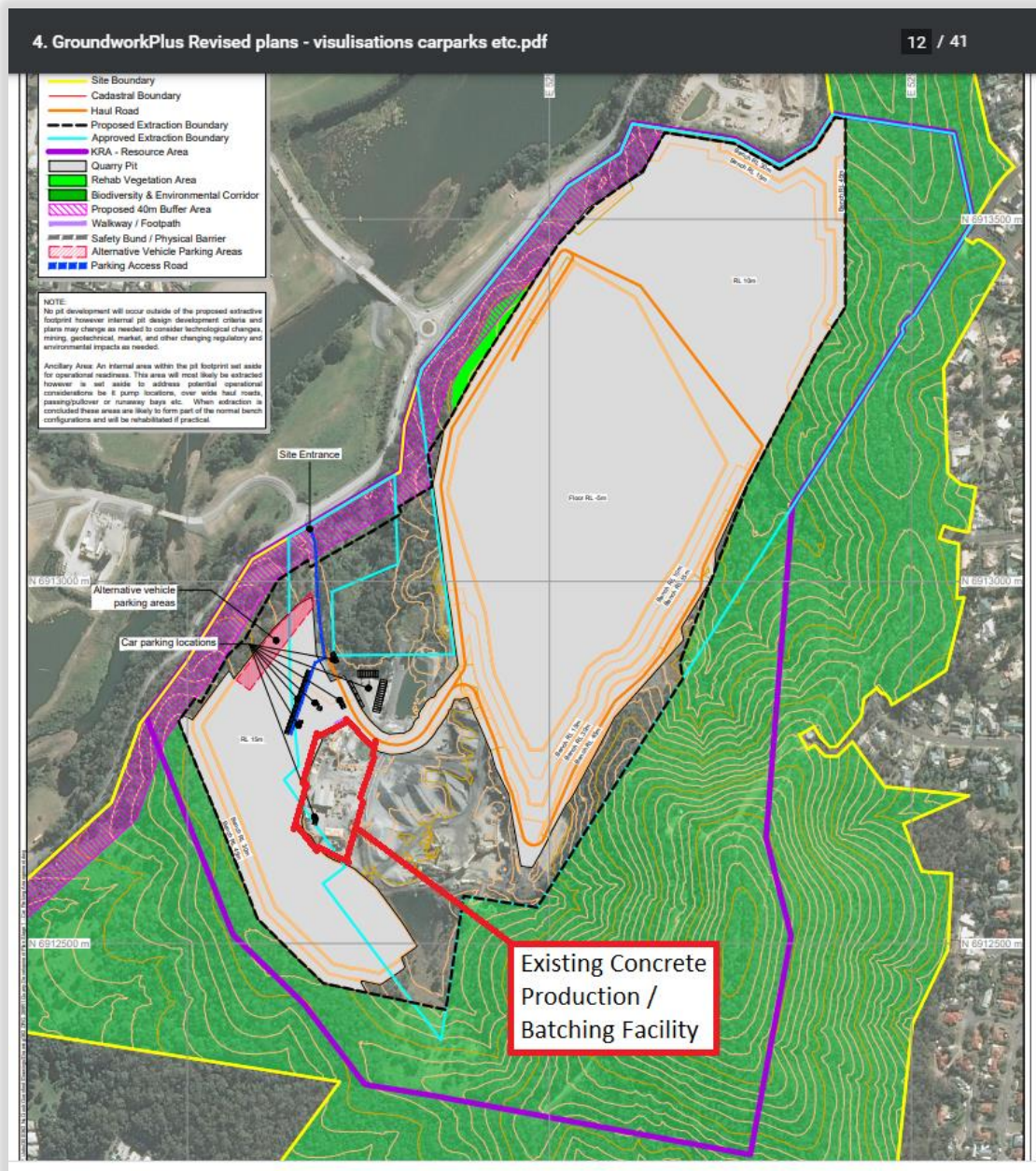
Attachment C1 - Apparent surreptitious placement of Concrete Production / batching facility in northeast corner (within the prohibited development area known as Rural B')



Attachment C2 - Close up of - Apparent surreptitious placement of Concrete Production / batching facility in northeast corner (within the prohibited development area known as Rural B')



Attachment C3 - Existing location of Concrete Production / batching facility in southwest corner (note southwest corner of plant compromising the buffer land)



Attachment D1 - City Plan Extractive Industry Code 9.3.8

City Plan							
9.3.8 Extractive industry code							
PART B - ASSESSABLE DEVELOPMENT BENCHMARKS							
Table 9.3.8-1: Extractive industry development code – for assessable development							
Performance outcomes	Acceptable outcomes						
Hours of operation							
PO6 Activities undertaken on site are conducted within appropriate hours to minimise nuisance to adjoining and surrounding development.	A06.1 Extracting, crushing and screening operations, loading of materials and maintenance occur only within the following hours: <table> <tr> <td>Monday to Friday</td><td>7.00am – 6.00pm</td></tr> <tr> <td>Saturday</td><td>8.00am – 12 noon</td></tr> <tr> <td>Sunday and public holidays</td><td>nil</td></tr> </table> A06.2 Blasting and explosions are conducted between the hours of 9am and 5pm Monday to Friday excluding public holidays.	Monday to Friday	7.00am – 6.00pm	Saturday	8.00am – 12 noon	Sunday and public holidays	nil
Monday to Friday	7.00am – 6.00pm						
Saturday	8.00am – 12 noon						
Sunday and public holidays	nil						