6th April 2021

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

Dear **Liam Jukes,**

Objection submission COM/2019/81 - Incorrect proposed use of dedicated 'Buffer Land' and 'Permanent trees and shrub screening' areas (Within Lot 467)

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

Development application omitted "Buffer Land" and "Permanent trees and shrub screening"

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

The currently 'claimed' approved operational area, as defined in the development application, is 56.02 hectares (reproduced in Attachment A2). This is verified in the Main application 'Introduction' (Attachment A3).

The difference is 14.78 hectares (70.8 - 56.02). This 14.78 hectares has been negligently and culpably, in my opinion, omitted from the development application due to its defined status of "Buffer Land" and "Permanent trees and shrub screening" as can be seen in the 'Third Schedule ' (or Plan 362-010) in the Original Rezoning agreement, reproduced and annotated in Attachment A4).

Note the 'Third Schedule' was negligently, in my opiion, omitted from the development application submitted copy of the original rezoning agreement and replaced with a relatively innocuous map that was in fact the Fourth Schedule with the title 'FOURTH SCHEDULE' removed (Attachment A5). The original copy is shown in Attachment A6. This has been discussed in another objection (dated 28th October 2020) so I will not dwell on this other than to say I believe this was a culpable misdirection that placed the Council planners, the SARA Referral team and members of the public at a distinct disadvantage by withholding key information about the current approved buffer status of protected areas that this DA sought, I believe, illegitimately to include as extractive footprint at the time of SARA referral and Public Notification.

This missing 14.78 ha is further discussed in a Court case in 1997 where it is referred to as "Buffer Areas - Development Prohibited"

This missing 14.78 hectares is also discussed in the court case of Nerang Pastoral Co Pty Ltd v Chief Executive Department of Natural Resources, in the Brisbane Land Court on 3rd July 1997 and filed as: '[1997] QLC 102'.

In this case, when discussing the size of the quarry it was quoted by the judge: "Mr Kelaher [the Nucrush valuer] said that there were 45.52 ha classified as "Extractive Industry and Special Uses", 13.23 ha "Rural B", 10.5 ha "Extractive - Development Prohibited" **and 14.78 ha as "Buffer Areas - Development Prohibited"** (Attachment A7).

From this it is clear to see the omitted 14.78 hectare of Lot 467 is defined as: "Buffer Areas - Development Prohibited". These areas are shown in an annotated diagram in Attachment A8.

It is the same 14.78 ha in the 'Third Schedule' (or 'Plan 362-010') that is referred to as: "Buffer Land" and "Permanent trees and shrub screening".

It is therefore clear that Nucrush, at the time of the submission of this development application, appeared to be fully aware of the status of these areas that they agreed at the quarries inception back in 1992. However, it would appear, sought to hide this information by removing the 'Third Schedule' from their submitted copy of the current approval (by way of the original rezoning agreement) that revealed this valuable buffer land information. It appears to culpably hide this highly important and relevant information from Council Planners, SARA Referral team and affected local residents.

Intent of the "Buffer Land" and "Permanent trees and shrub screening" area

It can be clearly seen that two areas in the southwest corner of Lot 467 and an area to the west have been reserved for use as a protected area e.g. 'Buffer land' and 'Permanent tree and shrub screening' as show in Attachment A4.

If you superimpose these 'Buffer land' and 'Permanent tree and shrub screening' area onto the City Plan Contour map it is very clear to see the intent was, I believe, to screen the quarry and the Ancillary purposes area from the road and also surrounding residents as these buffer areas are elevated areas (as shown in contour map Attachment B1).

Therefore, to utilise a significant proportion of these protected areas, as proposed, as part of the extractive footprint is, I believe, clearly against the City Plan Extractive Industry Code 9.3.8.3 Acceptable Outcome AO3.2 which states: *"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"* (Attachment B2).

I firmly believe this proposal, to utilise these 'Buffer land' and 'Permanent tree and shrub screening' areas, would permit: *"Views of significant infrastructure and visually obtrusive development including quarry floors, benches and faces"* and they would be no longer: *"screened from the road frontage, major road corridors".* As is required by Extractive Industry Code 9.3.8.3 AO3.2. It should be realised that the submitted extract of City Plan 9.3.8.3, within the 'Main Application' (page 160 of 354) of the development application, to the question: "Does the proposal meet the acceptable outcome [AO3.2]?" replies: "*COMPLIES PER CURRENT ONSITE CONDITIONS*". This reply, I believe, is misleading and incorrect.

Also, the proposals appear to not comply with Acceptable Outcome AO4 either. Acceptable Outcome AO4 states: "*Development is located at least 40m away from any ridgeline, as measured horizontally from the ridge peak"*. However, by superimposing the contour map, shown in Attachment B1, and the proposed quarry boundary, shown in Attachment A8, it is clear to see the proposed extractive footprint will fail Acceptable Outcome AO4 as the proposed extractive footprint in the southwest corner appears to be at the ridge peak and not *"at least 40m away from any ridgeline, as measured horizontally from the ridge peak"*, as required. However, the applicants reply to Acceptable Outcome AO4: "*Development is located at least 40m away from any ridgeline, as measured horizontally from the ridge peak"* appears to be incorrect again by stating: *"COMPLIES"* (Attachment B2).

The applicant now wishes to disregard these 'Buffer Land' and 'Permanent trees and shrub screening' areas and include them as part of his extraction footprint (Attachment A8). These buffers were agreed at the quarries inception and cannot be used, I believe, for any purposes other than as per their original contractual agreement for the life of the quarry. These buffer areas were negotiated and agreed at the quarries inception and maintained a buffer from local residents and the major roads adjoining it. It would seem inconceivable to now, especially considering the increased residential community in the area, to allow the applicant to completely disregard these protected areas. And, it would seem is also contra to City Plan Extractive Industry Zone 9.3.8.3. clear requirements.

Rezoning approval Conditions

Under the Queensland Planning Act 2016, Chapter 8, Part 2, Division 7, Section 137, 'Rezoning approval conditions', it states: *"(2) If a person wants to change a rezoning condition, the person must make a change application under this Act as if the rezoning condition had been imposed by the local government as assessment manager"* (reproduced in Attachment C1).

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

Conclusion

It would seem that the clear intent in the original Rezoning Agreement was to provide a separation buffer in the southwest corner and western side of Lot 467 to protect the residential homes in this area to adverse impacts from quarrying activity and the elevated levels of this area we would assume a degree of visual amenity also. These defined buffer areas would also supress views of the quarry and its ancillary operations from the Maudsland Road. These measures would also help subdue noise and dust in the area.

It would therefore seem completely unfair, and contra to the Council clear requirements and original intent to now permit further reduction in this separation area and allow the extractive footprint to reduce the current separation buffer from the closest home in this south-western area who are

currently approximately 820 meters from the extractive footprint down to a mere 300 metres (e.g. the home at 100 Maudsland Road and/or 47 Barrs Avenue, etc).

By permitting the use of these 'Buffer land' and 'Permanent tree and shrub screening' areas, as per the development application proposals, would not only yet further compromise the separation buffers but would also reduce the visual amenity and personal amenity for the surrounding residents and users of the Maudsland Road also which, I believe, is contra to the City Plan Extractive Industry Code 9.3.8.3. Acceptable Outcome AO3.2 which states: *"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"* and Acceptable Outcome AO4 which states: "*Development is located at least 40m away from any ridgeline, as measured horizontally from the ridge peak"*.

It should not be necessary to highlight the DES guidelines for separation buffers from blasting quarries is a required 1000m, similarly the "Blast Exclusion Zone" is also required to be 1000m. Further, the original agreement was for a minimum 350 metres (based on the David Kershaw report dated 20th July 1988 and being part of the requirements of the original Rezoning agreement and part and parcel of the Deed of Novation dated 17th September 1989). Therefore, to now reduce this buffer yet further to a fraction of this, I believe, would be contra to the Original agreement and would compromise the agreed 'Buffer land' and 'Permanent tree and shrub screening' areas and is thus, I believe, not permissible.

It is now up to the councils Assessment Manager to ensure these express conditions and requirements, setup in the original Rezoning agreement and its constituent parts (i.e. Deed of Novation, David Kershaw agreement etc) are considered with respect to this current development application.

It should also be noted that at the time this quarry was established back in 1992 there would, I believe, have been a 1000m separation buffer from residents to the southwest and west. However, in the intervening years, roads such as: Barrs Avenue, Appollo Place, Cobb and Co Drive, Bakers Ridge Drive, Mugello Drive, Bahkeeta Street, etc (to name but a few) have all been subsequently populated as residential housing areas in this particular area and with the clear and lawful permission of the Gold Coast Council. All of the residents of these properties are all now well within the required 1000m separation buffer (and 1000m 'Blast Exclusion Zone') and this development application is proposing reducing these extractive footprint buffers significantly for residents within this area. However, ALL these residents are legally entitled to feel secure and not at risk from the health impacts, blast impacts, noise and dust associated with living on the doorstep of a major quarry that could be affecting their Personal amenity in the privacy of their homes and backyards on a daily basis.

Therefore, it is highly pertinent what the judge said in the Brisbane Land Court on 3rd July 1997: "I was not informed of any statutory requirement for an operating quarry to have land set aside to buffer the operations from other land, in particular from residential land, however, there was general agreement between the parties that if sufficient buffer land was not available, encroaching development may bring about an early cessation of quarrying and processing activities where the quarry is located in the path of encroaching residential development. Dust, noise from trucks and machinery and the carrying out of explosions constitute substantial nuisances to residential areas nearby and generate concern and consequent pressure on the local authority to discontinue the quarry use when opportunity presents".

This would seem the ideal opportunity to discontinue the quarry, as the judge mooted, as it has clearly outgrown its current extractive footprint and the lawful urban encroachment has clearly expanded dramatically into the quarries required separation buffer in the intervening years and it is therefore highly unsuitable for the planned expansion and extension for one hundred plus years at this location within the middle of a suburban area, surrounded by hundreds of homes, with thousands of residents, all within the required 1000m separation buffer.

Thank you in anticipation,

Kind regards

Tony Potter

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

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

City Plan property report

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

City Plan content (access the City Plan)

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

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

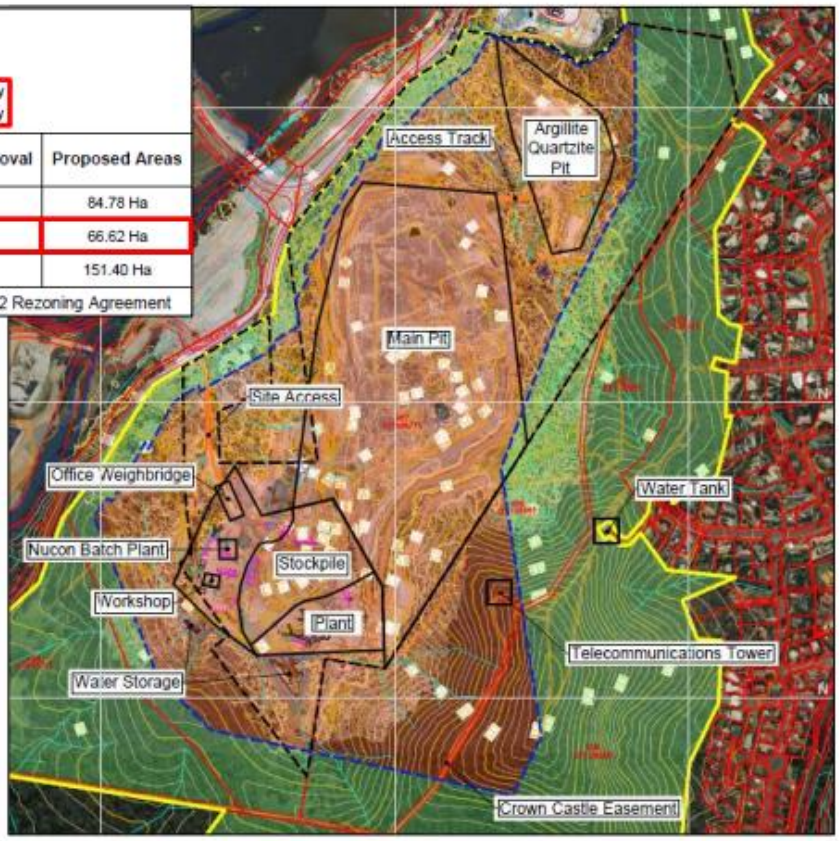
2019-05-20 Section 2 - The main application.pdf 19 / 354

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

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

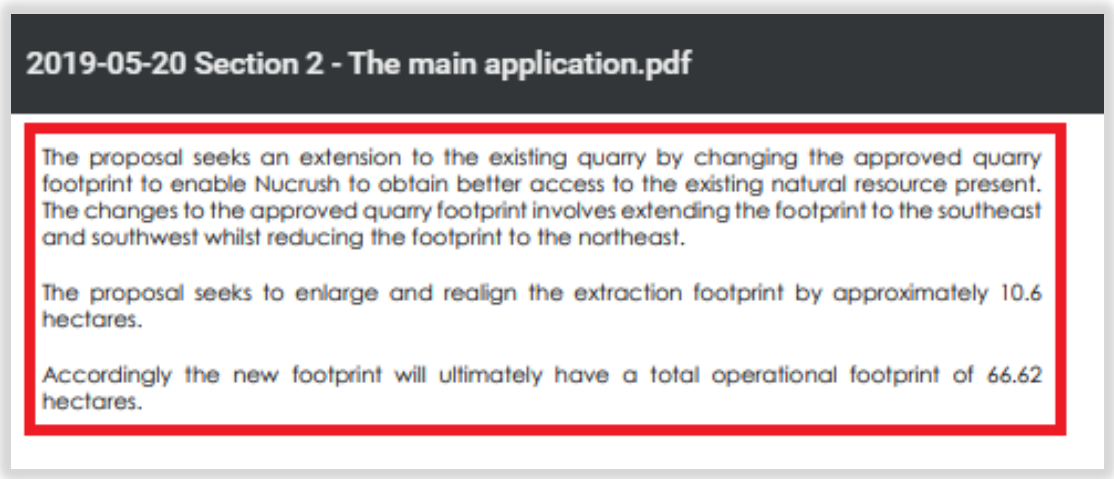
Note : Approximate as per the 1992 Rezoning Agreement

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



www.planitconsulting.com.au | Job No. J5567 Page 16 of 62

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



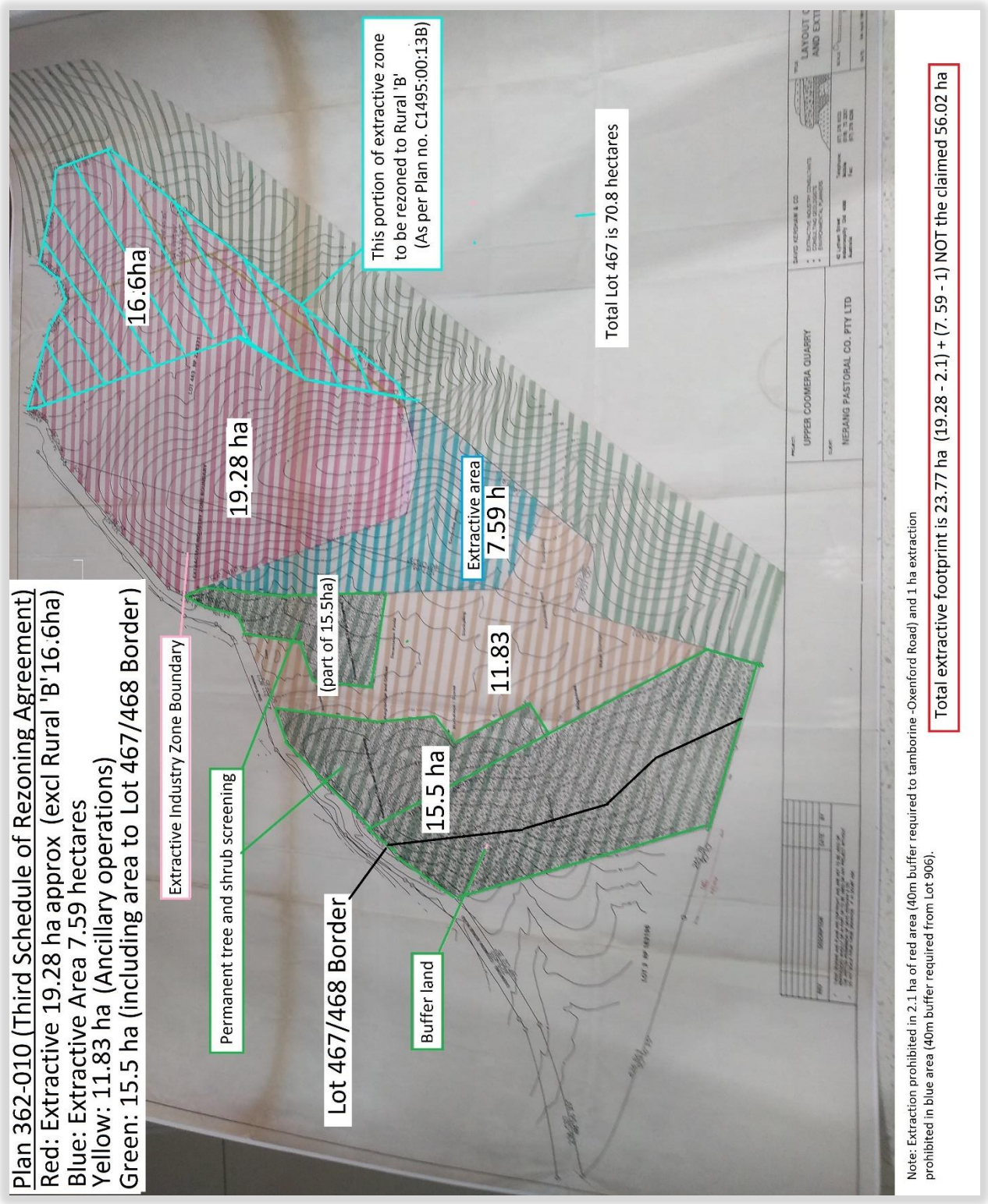
2019-05-20 Section 2 - The main application.pdf

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

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

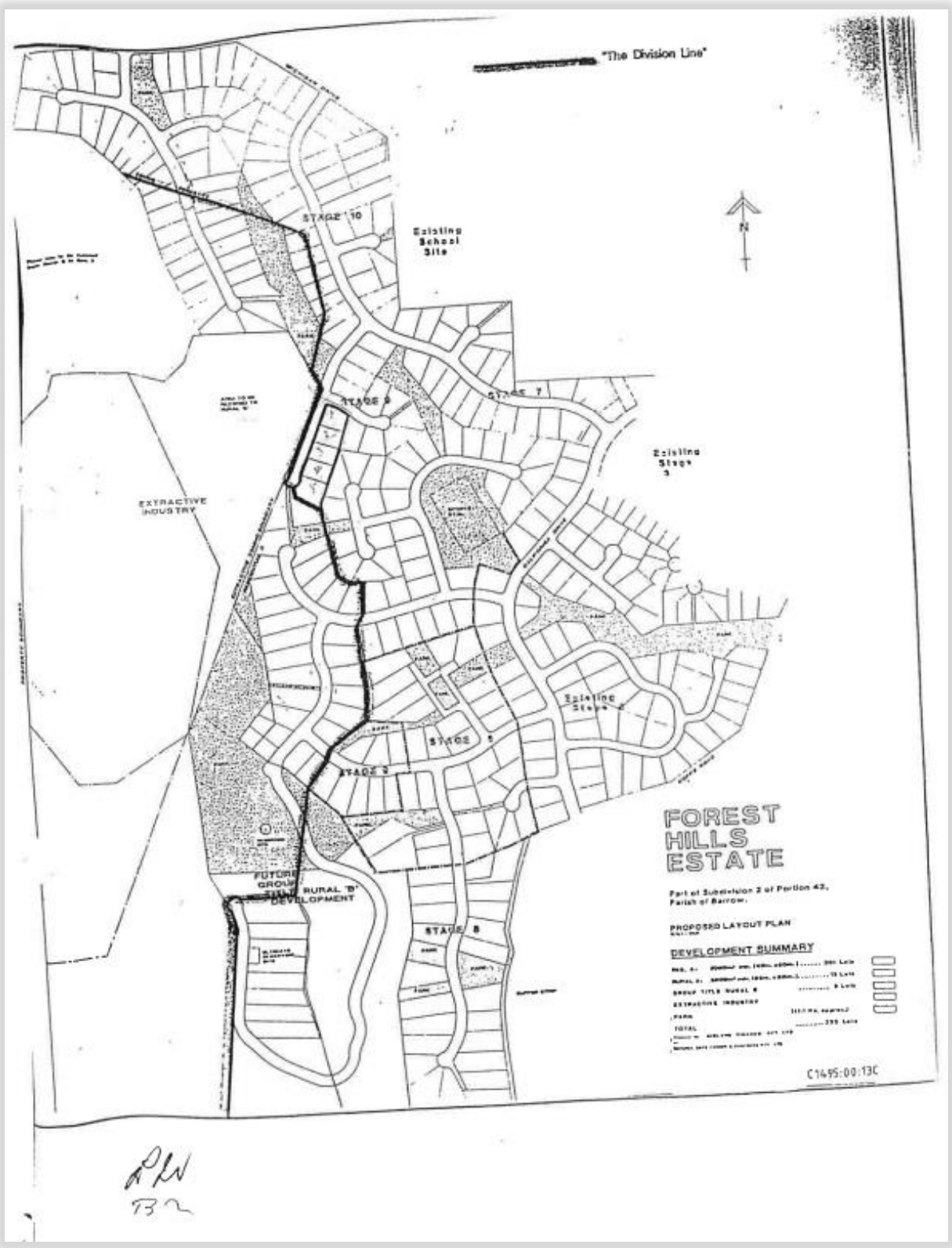
Accordingly the new footprint will ultimately have a total operational footprint of 66.62 hectares.

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



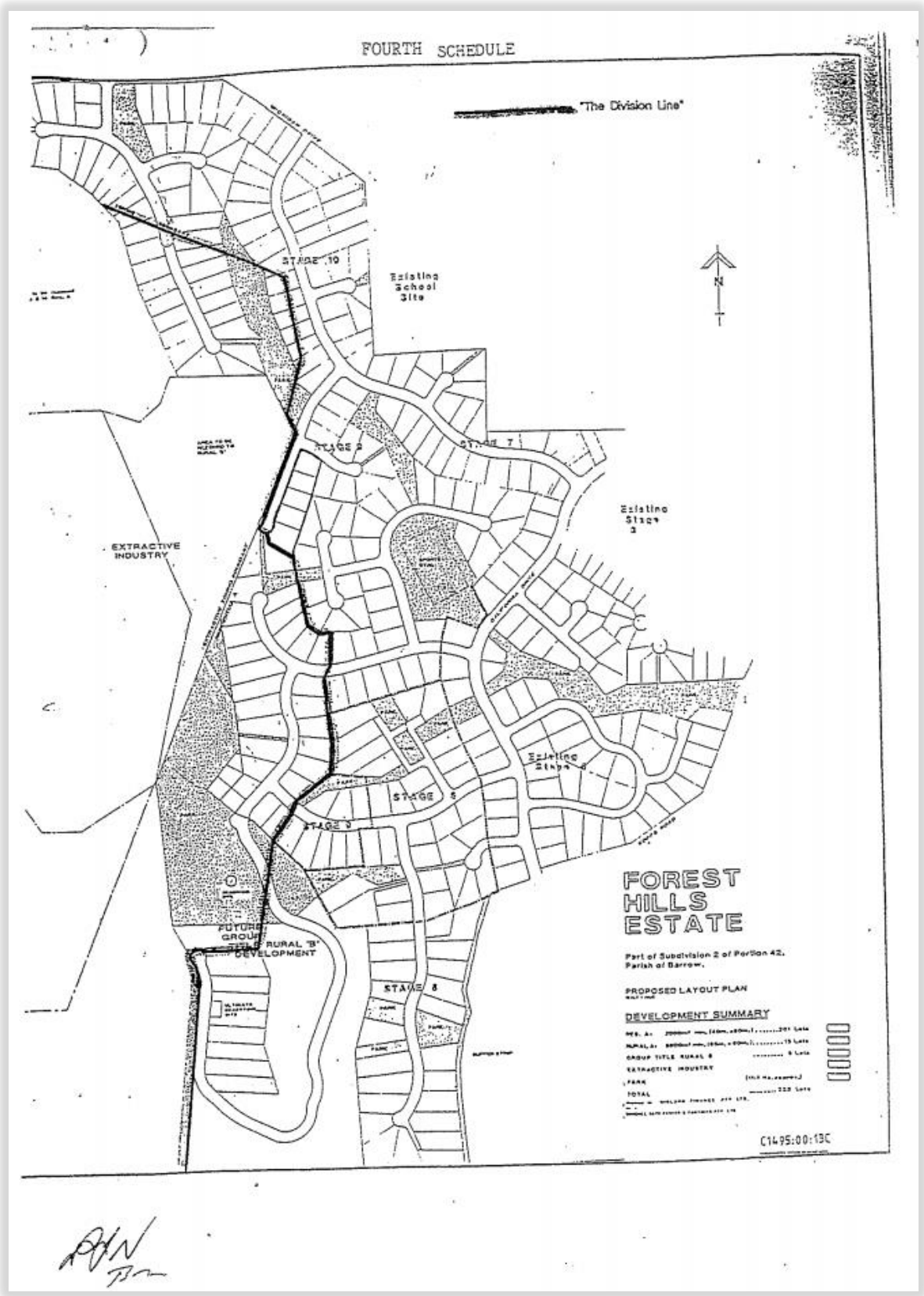
Attachment A5 - Fourth Schedule of Rezoning agreement altered to seemingly appear as Third Schedule'

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



Attachment A6 - Fourth Schedule of Rezoning agreement

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



Attachment A7 - Confirmation by Nucrush valuer that the 14.78 ha is "Buffer Areas - Development Prohibited"

Mr Grennan included an area of 39.8 ha under the description "Buffer Ancillary Purposes" which was made up of 26.6 ha approximately, zoned "Special Facilities", and 13.2 ha approximately, zoned "Rural B", leaving an area of 44.2 ha classified as "Extractive Industry". Mr Kelaher said that there were 45.52 ha classified as "Extractive Industry and Special Uses", 13.23 ha "Rural B", 10.5 ha "Extractive - Development Prohibited" and 14.78 ha as "Buffer Areas - Development Prohibited". Although there is a similarity in area if one is to combine the classifications identified by Mr Kelaher, and the parties appeared to agree that the areas were too similar to raise any issue on the point, I am left with some uncertainty as to whether each of the valuers was, in arriving at their classifications, speaking of the same parts of the "combined site". Nevertheless, I will proceed on the basis of the areas as identified by Mr Grennan as he has allowed slightly less as being classified as "Extractive Industry".

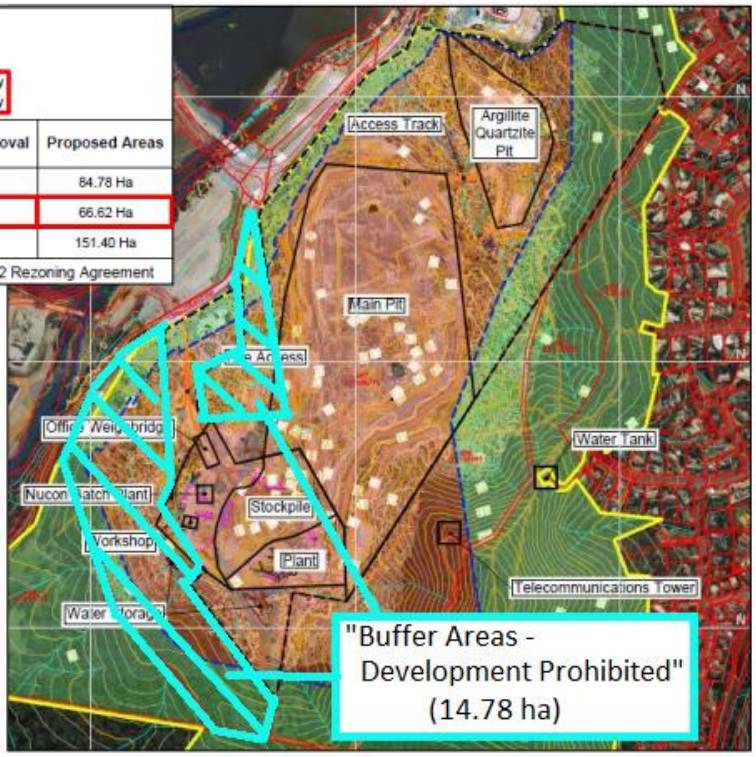
Attachment A8 - Buffer Areas - Development Prohibited Highlighted (14.78ha)

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

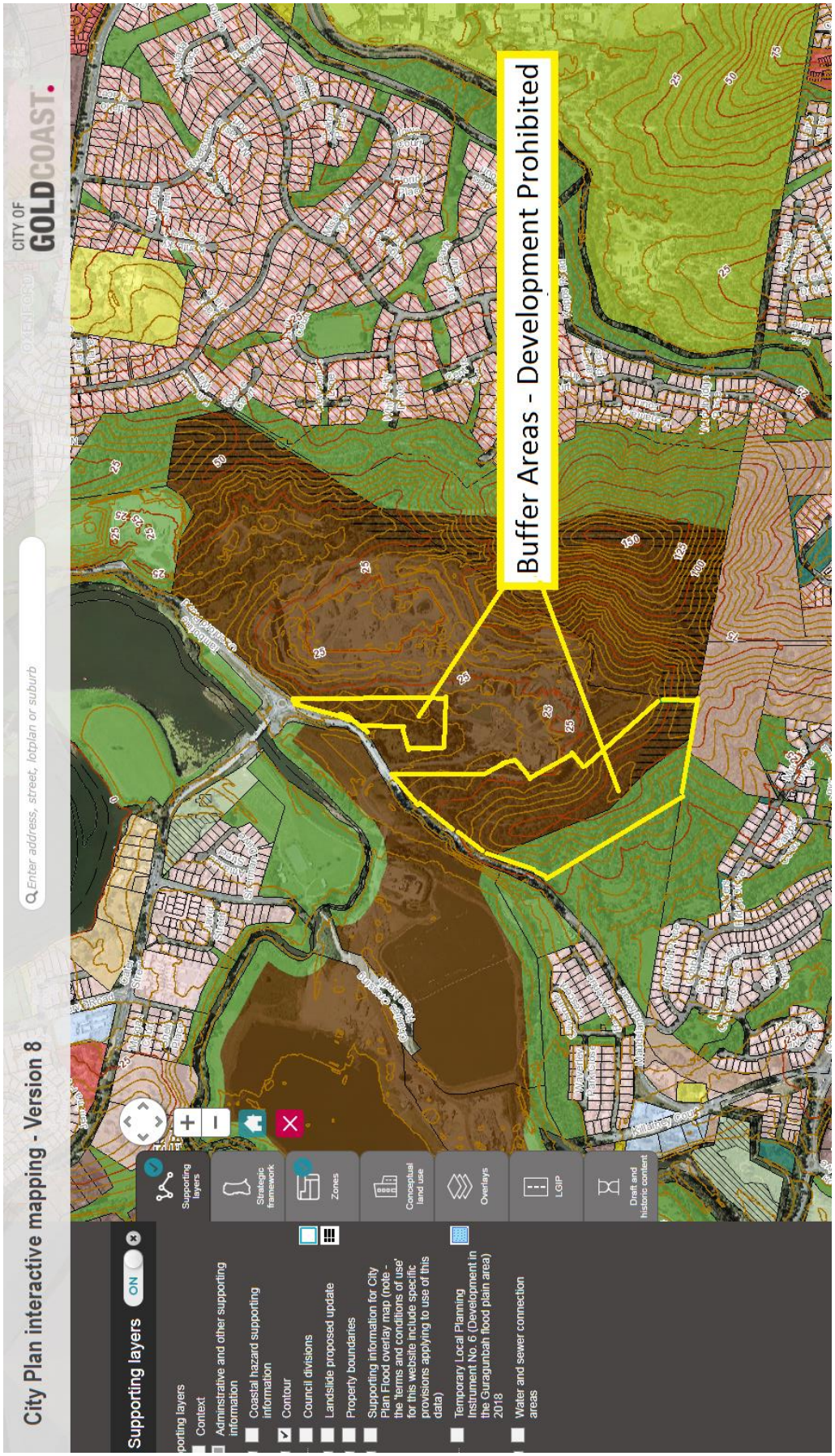
Category	Current Approval	Proposed Areas
Green Zone	28.01 Ha	84.78 Ha
Operational Area	56.02 Ha	66.62 Ha
TOTAL	84.03 Ha	151.40 Ha

Note : Approximate as per the 1992 Rezoning Agreement

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



Attachment B1 - 'Buffer Area - Development Prohibited' reproduced on City Plan Contour Map



Attachment B2 - Submitted reply to City Plan Part 9.3.8. Extractive Industry Code

9.3.8.3 Specific benchmarks for assessment

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

Performance outcomes	Acceptable outcomes	Does the proposal meet the acceptable outcome? If not, justify how the proposal meets either the performance outcome or overall outcome
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.	**COMPLIES PER CURRENT ONSITE CONDITIONS**
	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.	**COMPLIES PER CURRENT ONSITE CONDITIONS**
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.	**COMPLIES**

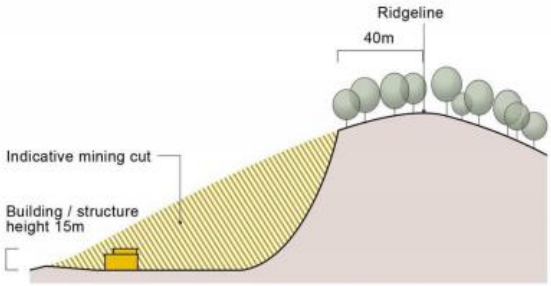


Figure 9.3.8-1
Illustration showing Extractive industry development is located at least 40m away from the top of the ridgeline, as measured horizontally from the ridge peak.

Attachment C1 - Rezoning agreement as if applied by Assessment Manager

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

Queensland Government
Queensland Legislation

Planning Act 2016

Reprint current from 1 October 2020 to date

Chapter 8 > Part 2 > Division 7 > Section 317

317 Rezoning approval conditions

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

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

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

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

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