

11th March 2021

For the attention:

Kristian Pakula

Development Compliance Officer
Development Compliance (Planning)
Council of City of Gold Coast

And, for the attention:

Phillip Zappala

Senior Planner – Major Assessment
City Development Branch
Council of City of Gold Coast

Dear **Kristian Pakula and Phillip Zappala,**

Objection submission COM/2019/81 and ongoing Non-compliance issues at
Nucrush quarry, 33 Maudsland Road, Oxenford

Further to non-compliance issues with Nucrush quarry raised before and as yet, I believe, not satisfactorily addressed by the Gold Coast Council.

How are these no compliance issues investigations coming along? Operating Hours, Visibility outside quarry border, Concrete Production not permitted in Extractive Industry Zone etc.

I have just received confirmation from the DES Director General, Jamie Merrick, that, to quote: *"the conditions in the Rezoning Agreement (RA) dated 17 March 1992 are a Deed of Agreement between the Council of the City of Gold Coast (CoGC) and Nucrush Pty Ltd. As such, the department [DES] has no role in ensuring compliance with any RA conditions as this is a matter for CoGC"*. Therefore, it is clear that the City of Gold Coast Council cannot simply say the issues raised are beyond the remit of the Gold Coast Council and continuously pass the buck to the DES as has been my personal experience.

Here is an overview of the on-going non-compliance issues as I see it:

Operating Hours

As you are aware City Plan 9.3.8, Extractive Industry Code operating hours are 7am to 6pm for Extractive Industry Zones, such as Lot 467 (the Nucrush quarry). Therefore the start time of 4am as per the on-site 'High Impact Industry' Concrete Manufacturing and Production facility is currently operating is contra to the Gold Coast Council Rules and regulations.

And, the Rezoning agreement (Section 16) clearly states: *"16. The permitted hours of operation for the proposed development are restricted to the following:- 16.1 the hours of operations are to be those provided for in the Town Planning Scheme"*.

This seems a pretty clear contractual obligation. So why is this not being enforced by the Gold Coast Council?



Visibility external to site

The visibility 'Section 13' of the Rezoning Agreement states: *"The method of quarrying is to be from east to west and designed to keep all quarry faces hidden from view by persons external to the subject site (other than persons occupying elevated properties and from whom it is impossible to hide the operations under any design)"*.

It is also contra to City Plan guideline 3.5.5.1 specific Outcomes (8): *"does not scare vegetated ridgelines and elevated land when viewed from outside resource area"*:

View from Old Tamborine Road, Oxenford



This is the view from Old Tamborine Road, Oxenford, even though this might not be an offensive view for you personally Kristian, as you indicated in your telephone conversation, it is for many local residents who see it as an ongoing reminder of the ever present and expanding quarry and the dust (including respirable crystalline silica) that emanates from it. Maybe this is why the original condition was in the Rezoning Agreement and is also in the City Plan?

Further, to save future argument, I hardly think that an elevation of 15m above the Coomera River, where I took the picture from, can be classified as *"persons occupying elevated properties and from whom it is impossible to hide the operations under any design"*. This is clearly not an elevated location. Homes are barely above the river level here.

A clear breach of the 'Rezoning Agreement' (Section 13) and 'City Plan guideline 3.5.5.1 specific outcomes (8)'.

Why has this still not been satisfactorily addressed despite my initial concerns way back in November 2019?

Concrete Manufacturing Production

The Concrete manufacturing and production facility is located in an area 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)"*.

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 the on-site production of concrete.

The ancillary purposes area is defined in the 'Third Schedule' of the 'Rezoning Agreement' and also 'Plan 362-010'. The concrete manufacturing, production and batching facility is located within this area which is contra to the current approval as defined in the Rezoning agreement and the Mining act.

The ancillary purposes areas defined use is clearly not for a concrete manufacturing production area as it is not an operation that is: *"Ancillary Purposes to Extractive Industry"* but it is, as council will be aware, a 'high impact industry' and is 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, the Mining Act 1968-1983 'Extractive Industry' is 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 'Extractible Industry' area.

It is 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.

Conclusion

Here are three, as I see it, clear breaches of the rezoning agreement and the Gold Coast City Plan also.

Please advise why these issues have not been enforced or at the very least operations suspended (in the case of visibility) at the Nucrush quarry?

Please, also enter this as an objection against the Nucrush quarry development application (COM/2019/81) as I see these apparent breaches of compliance as a clear sign of what is to come in the future should this Quarry be permitted to operate after the current closure date of 15th February 2022. To be perfectly clear, it is my strong belief that the quarry will not hesitate to continue operating in a non-compliant manner and the Gold Coast Council will simply chose to ignore any non-compliance issues. Instead choosing to shoulder the responsibility to the DES who will similarly shoulder it back to council, resulting in no enforcement whatsoever, as is the current untenable position that has been unfortunately witnessed much to the detriment to the local residents and the local environment.

Thank you in anticipation,

Kind regards

Tony Potter