

5th April 2021

For the attention:

Liam Jukes

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

Dear **Liam Jukes**,

Objection submission COM/2019/81 -

SARA Approval based on seemingly culpably incorrect information

Please accept this objection as it highlights that this development application process is, I believe, culpably compromised by the seemingly incorrect information supplied to SARA that they have incorrectly based their approval on.

SARA Approval was based on assumption that 'extraction area' was only increasing by 18% (not a nearly threefold increase)

During my correspondence with Mr Rob Lawrence, the Deputy Director-General of the DES, re the SARA approval, he confirmed their approval was based on quote: **"The previous approved extraction area was approximately 55.4ha in size ... making the current approval of 66ha an expansion of 10.6 ha"** (reproduced in Attachment A1). However, this I believe, is vastly incorrect. The actual approved extraction area is far, far lower at 23.77 ha approx (as derived from 'Third Schedule' of the Rezoning agreement, see attachment A2). Therefore instead of the 10.6 ha increase (or 18% increase) it is in fact an increase of 42.23 ha (or an almost threefold increase).

Unfortunately, this 'Third schedule' of the rezoning agreement was, I believe, culpably removed from the development application submitted copy of the original rezoning agreement and replaced with an innocuous map (was the 'Fourth Schedule' of the Rezoning agreement). Therefore, the true extent of the previously approved extraction area was hidden and the applicants vastly inflated claim of 56.02 hectares was, it appears, mistakenly accepted as correct by the SARA referral team.

The submitted 'Third Schedule' (Plan 362-010) of the rezoning that was negligently omitted from the development application is reproduced in Attachment A2 (with annotations). It was replaced with a relatively innocuous map that was in fact the Fourth Schedule with the title 'FOURTH SCHEDULE' removed (Attachment A3). The original copy is shown in Attachment A4. This would seem a fraudulent misdirection.

However, it does explain why the SARA referral team were under the misapprehension that the extractive area was only increasing by 18% and not the approximately threefold increase it is actually proposing.

SARA Approval was further based on assumption that the additional 10.6 hectares was a straight exchange for an already approved areas in the northeast corner for a more lucrative corners in the southeast and southwest

Approximately 16.6 hectares of area to the north and northeast should have been Rezoned by the applicant as Rural 'B' (as shown in Attachment A2). The status of this area of land is verified in 'Plan C1495:00:13B', an inherent part of their current approval but negligently, in my opinion, also omitted from the development application. The Rural 'B' area is labelled on this document as: *"The Portion of Extractive Zone to be rezoned as Rural 'B' "* (reproduced in Attachment B1). This is shown in close-up in attachment B2 and annotated in B3 for clarity. Unfortunately, the applicant failed to rezone this area as promised. However, despite the apparent negligent actions of the applicant, the clear intent of this remains in force.

As per confirmation in transcripts from the court case: Nerang Pastoral Co Pty Ltd v Chief Executive, Department of Natural Resources Court Case Appeal against unimproved valuation: '[1997] QLC 102' where the judge said to the effect: *"Abutting the quarantined land to its West is part of the sale land "north-east corner" has an area of 10.5ha which the letter says will be the subject to an application for rezoning from its "Extractive Industry" zone to Rural B". The intent appears to be one of extending the buffer area beyond that provided by the "quarantined land". The party bound by an undertaking to apply to rezone the land in the northeast corner of the sale land is effectively saying that neither quarrying activity not processing will be carried out in that part of the land"*.

(Note the judge in this case indicated the Rural 'B' is an area of 10.5 hectares. However, I believe this is incorrect assumption and this is based on the smaller area identified in Attachment A3 identifying an earlier extractive footprint. The Rural 'B' area was subsequently defined as a result of the David Kershaw report, who was a geologist, who attempted to establish relative harmony between the proposed residential development to the east and the quarry to the west, the result is clearly shown in Attachments B1, B2 and B3) which is approximately 16.6 hectares).

It is particularly sad to see that in the Main application the applicant sought to exchange an area of this protected Rural 'B' land that it claims as extractive area in exchange for more lucrative land in the southeast and southwest (Attachment C1).

The map of the area, reproduced in attachment C2, taken from the Main application, shows the claimed approved quarry footprint includes all the Rural 'B' area with no reference made to it.

In fact, the applicant incongruously claims that this DA is highly beneficial for the native fauna and local wildlife and the local residents in the north east by releasing the area in the northeast in exchange for areas in the southeast and southwest (Attachment C3). However, it would seem abundantly clear, this northeast area is not negotiable as it is a part of the Rural 'B' protected area and is thus not part of the extractive footprint and therefore the 'claimed' approved footprint in Attachment C2 is, in my opinion, highly and culpably incorrect and thoroughly misleading.

Thus, SARA, at the time of the referral and subsequent approval, were under the clearly mistaken believe that the quarry 'realignment' (as it was referred to, see Attachment D1) of the extractive footprint was actually beneficial for the local environment. Clearly this was not so.

SARA Approval was further based on assumption that Lot 906 was not quarantined land

SARA approval was also based on the mistaken believe that an approximate 10 hectares of Lot 906 (Southeast corner) was part of the KRA and suitable for extractive industry, as advised by the applicant.

However, it would seem the applicant failed to divulge the “quarantined land” status of this area and thus SARA were led incorrectly to believe this was an appropriate extractive area also (despite its environmental significant biodiversity and priority species City Plan overlay status).

The applicant as of the 18th February 2021 update has now removed Lot 906 from their proposal. However, it is very much still part of the SARA approval. This needs to be amended.

SARA Approval was further based on assumption that areas designated as “Buffer Land” and “Permanent trees or shrub planting” were extractive areas

I believe SARA approval was also based on the mistaken believe that an area of 15.5 hectares the southwest and west (labelled as “Buffer land” and “Permanent tree and shrub screening” on the missing Third Schedule, reproduced in Attachment A2) were also part of the extractive area and not designated buffer areas for the life of the quarry.

Conclusion

The SARA approval was given with at least four fundamental incorrect assumptions:

- 1). Led to believe the extractive area was only increasing by 18%, not a threefold increase.
- 2). It was led to believe the realignment of the extractive footprint was beneficial to the local environment in the northeast. When in fact the area the applicant claimed to be relinquishing was never available as extractive area as clearly shown above.
- 3). It was not informed of the ‘Quarantined Land’ status of Lot 906.
- 4). It was also led to believe that protected areas (‘Buffer Land’ and ‘Permanent trees or shrub planting’) to the southwest and west were extractive area also.

Given these significant points that were, in my opinion, culpably hidden from SARA it would seem imperative to either override the SARA approval or at the very least re-refer the development application based on the correct information.

However, given the significant changes that are impact assessable since the SARA approval over a year ago (April 2020) it would seem SARA will be entitled to a re-referral based on these subsequent changes since its approval anyway.

Hopefully, the information I have provided will also help SARA to make the correct decision based on the correct information re current approved size and approved footprint and not based on the culpably incorrect information that the applicant has so far submitted (and importantly omitted).

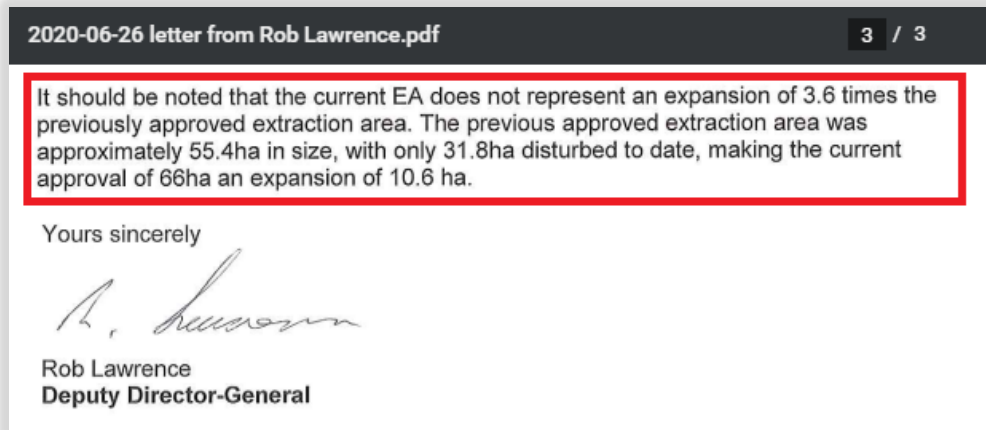
Thank you in anticipation,

Kind regards

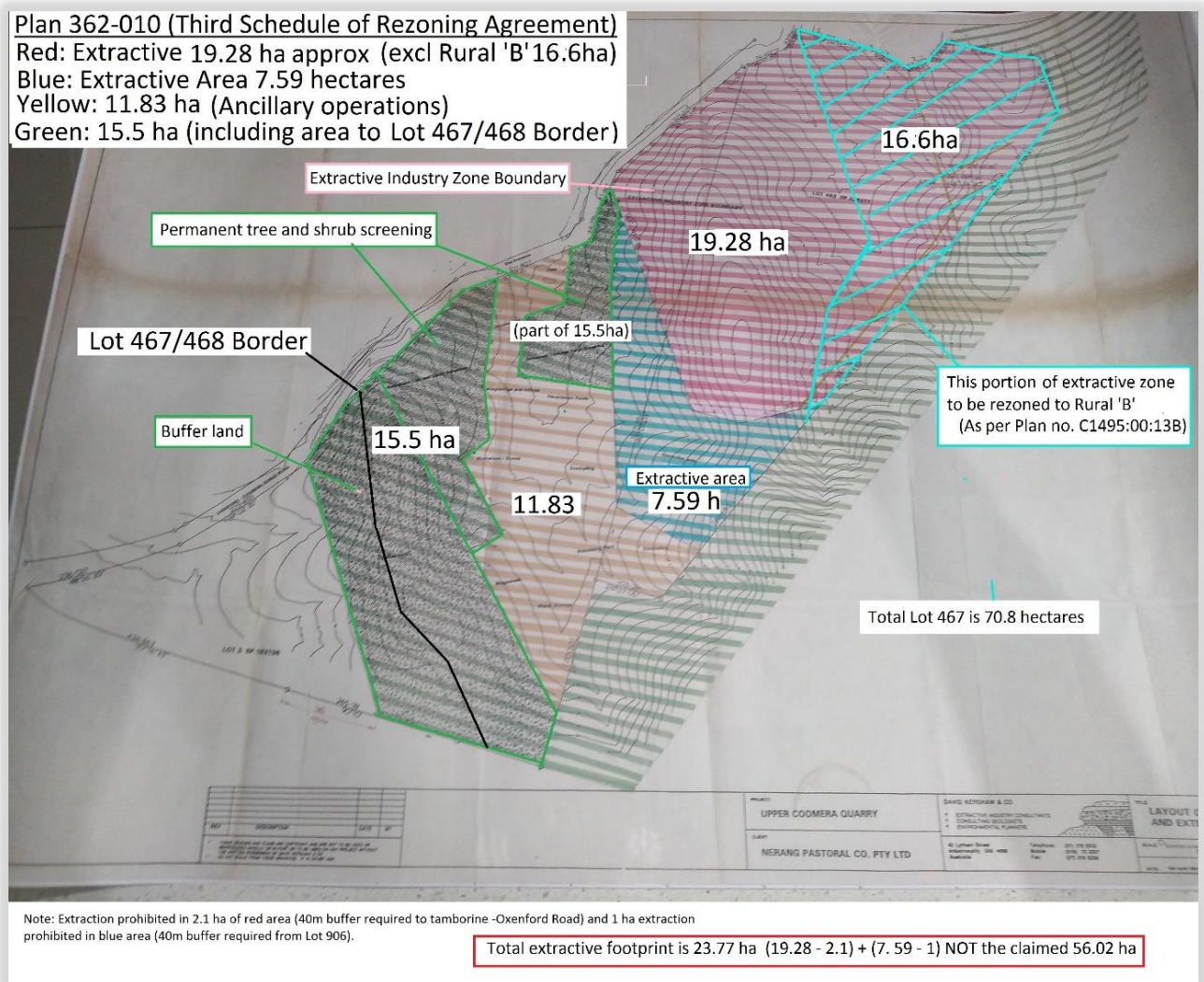
Tony Potter

* 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.

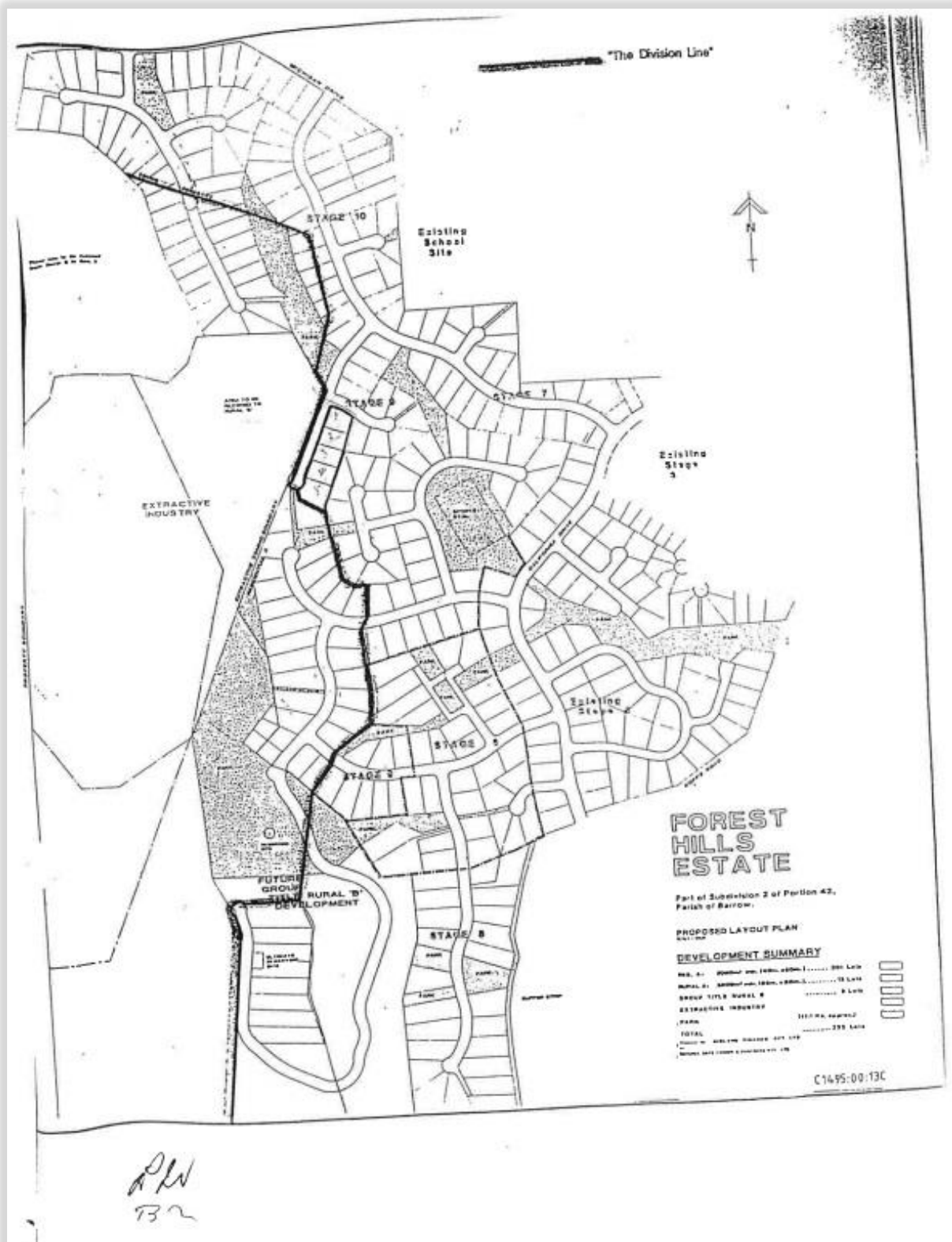
Attachment A1 - Deputy Director-General of DES assures me the approved extraction area is approximately 55.4 ha



Attachment A2 - Annotated Third Schedule of Rezoning agreement (Plan 2362-010) showing extractive area is 23.77ha approximately

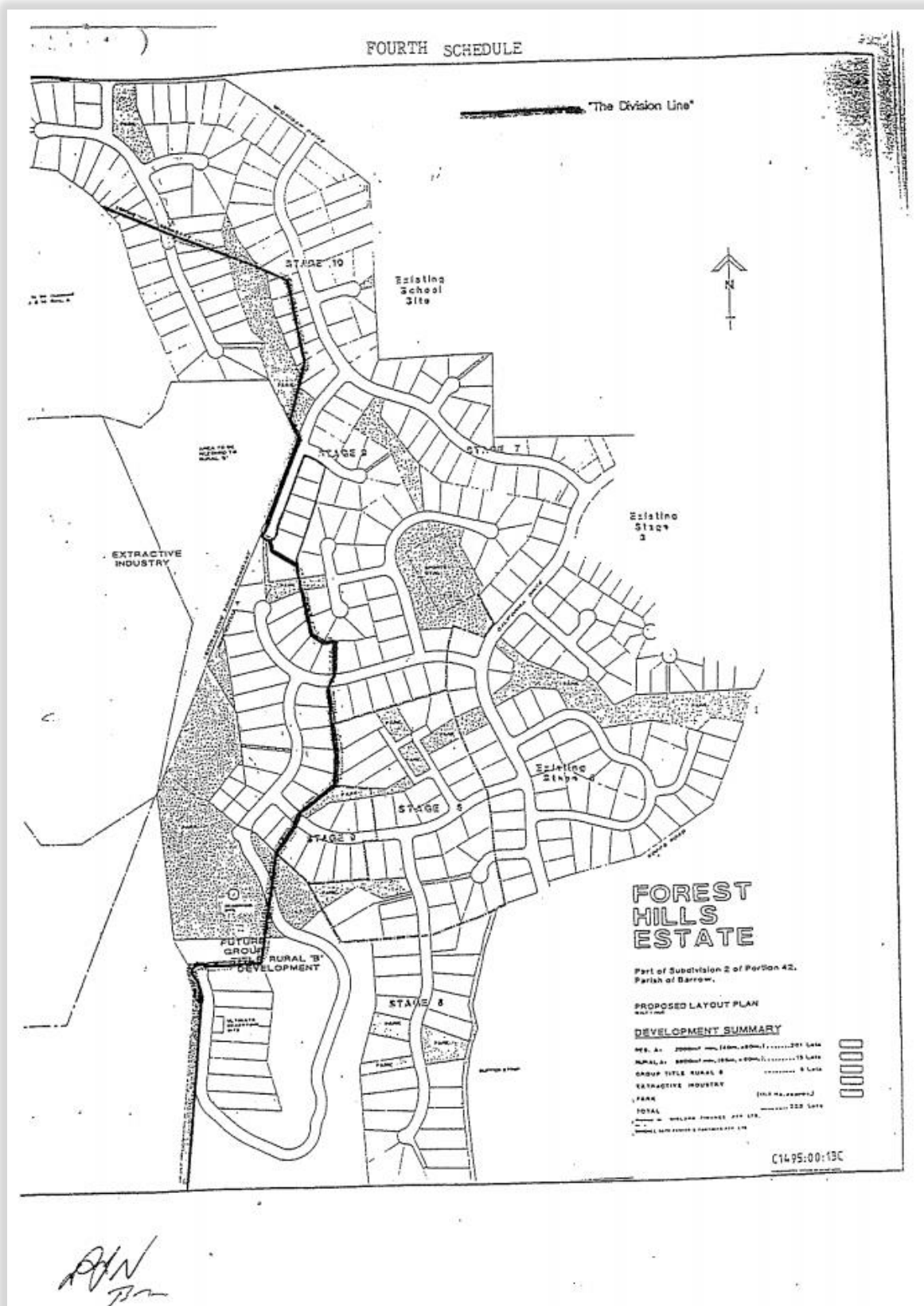


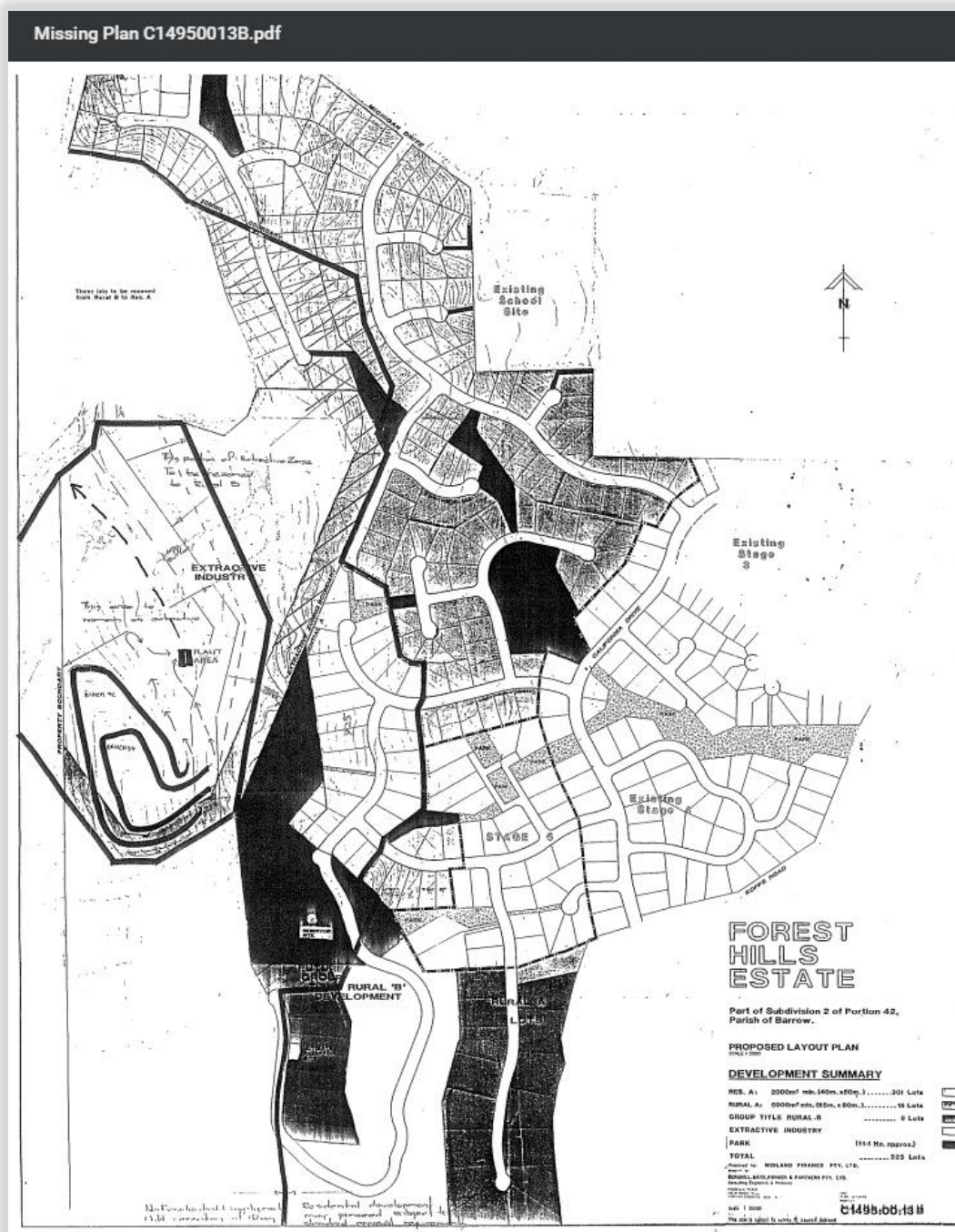
Note title "FOURTH SCHEDULE" has been removed. Original shown in Attachment A5 below.



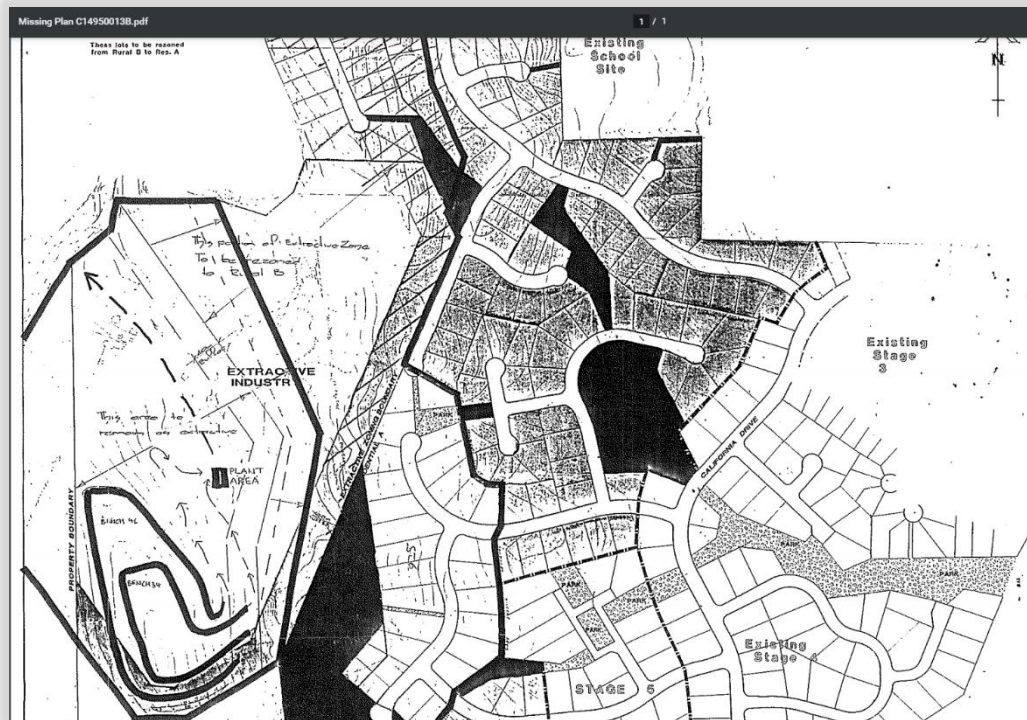
Attachment A4 - Original version of Fourth Schedule of Rezoning agreement

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

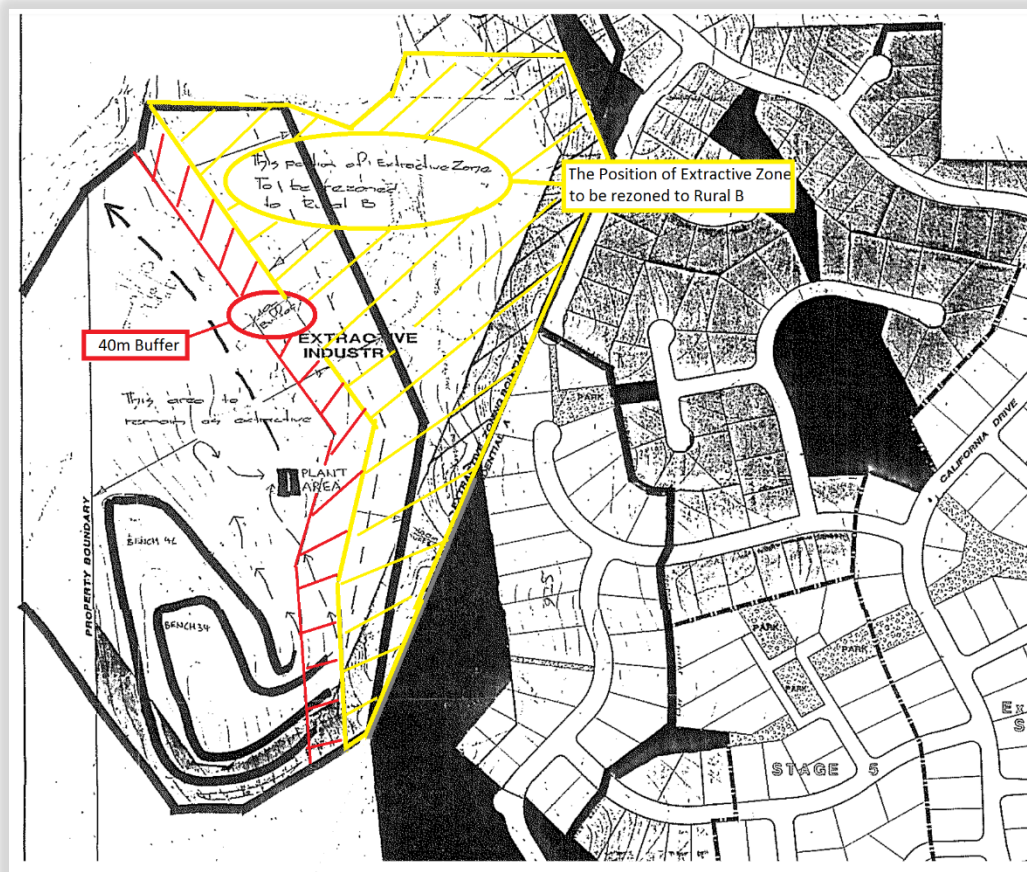




Attachment B2 - Plan C1495:00:13B (Showing close-up of Rural 'B' area)




Attachment B3 - Plan C1495:00:13B (Showing annotated close-up of Rural 'B' area)



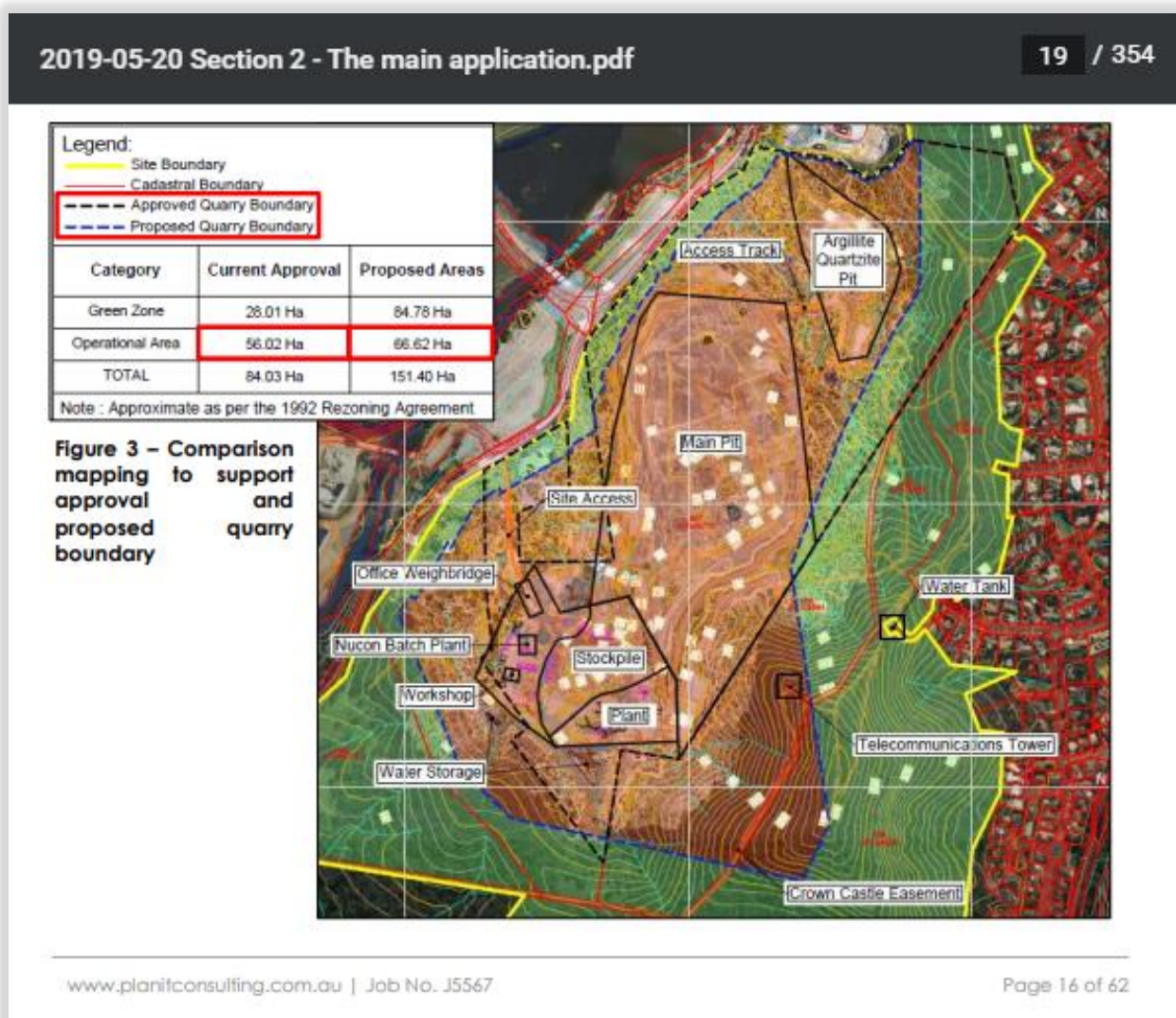
2019-05-20 Section 2 - The main application.pdf
9 / 354

Development Application – Town Planning Report
 Material Change of Use for Extractive Industry (Quarry) and
 Material Change of Use for Concurrence Environmentally Relevant Activity
 (Extractive and Screening Activities)
 Oxenford Quarry
 Nucrush c/- Planit Consulting Pty Ltd
 www.planitconsulting.com.au



1 Introduction

Planit Consulting Pty Ltd has been engaged by Nucrush Pty Ltd to prepare a development application for a development permit for a material change of use for an extension to the existing approved footprint and the duration of an existing lawful Extractive Industry (Quarry) at Oxenford. The changes to the approved quarry footprint involves extending the footprint to the southeast and southwest whilst reducing the footprint to the northeast.



Attachment C3 - Applicant claims to be helping native vegetation and local wildlife by not quarrying an illegal area

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

27 / 354

The currently approved extraction area boundary would have resulted in the removal of native vegetation and extraction of quarry materials up to the edge of adjacent residential area towards the north-east of the site. This would have created a barrier to the movement of native fauna seeking to traverse these habitats, either blocking their passage entirely or forcing them into the adjacent residential area with an increase in threats.

Attachment D1 - DA claims only a 10.6 hectare increase in footprint

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.