

8th June 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 -

Proposed extractive footprint in southwest and west is prohibited
for at least eight independent reasons

Please accept this objection as it highlights that the Nucrush quarry's proposed extractive footprint to the southwest and west is not permitted, I believe, for at least eight separate reasons.

Under the current approval (that expires on 15th Feb 2022) the extractive footprint can go no closer to homes in the south/southwest than 940 metres. The development application proposes to reduce this drastically to 380 metres approx which will have a significant impact on local residents in this area.

This development application also proposes extending the quarry footprint to within 40 metres of the Maudsland road that will expose the inner workings of the quarry, benches, faces, etc. due to the flat topography of the area at various points along the Maudsland Road.

However, there are many reasons why I believe the quarry should not be able to do this.

Reason 1 - The area is protected for the life of the quarry

Firstly, this development application is attempting to include, as part of their extractive footprint, prohibited development areas (as defined in their current approval) of approximately 15.5 ha which is referred to as '*Buffer Land*' and '*Permanent Trees and shrub screening*' in the 'Rezoning agreement', which is believed to be protected for the life of the quarry (as shown in 'Third Schedule of the Rezoning agreement', annotated copy reproduced in Attachment A1).

Please note this highly important document was, I believe, culpably removed and replaced in the submitted copy of the 'Rezoning agreement' as part of the development application in, what would seem was, a clear attempt to mislead Council Planners, SARA Referral, DES and members of the public as to the true extent of the current approval and protected development areas. Only a subsequent, very drawn out Right To Information (RTI) enquiry to the Council eventually exposed this apparent misrepresentation of the current approval late last year.

The Council and the quarry owners it would seem, at the quarry's inception, agreed to these areas to protect quarry encroachment on residential areas to the southwest of the quarry and also to ensure that the quarry operation was not visible from external to the site e.g. The Maudsland Road.

This development application intends to renege on these protected areas that, I believe, are protected for the life of the quarry and I further believe are enforceable by a court of law.

Reason 2 - City Plan, Extractive Industry development Code, 9.3.8, Acceptable Outcome AO4

The second reason this is unacceptable is because the City Plan for 'Extractive Industry development Code' for 'Visual amenity' the 'Acceptable Outcome AO4' states: *"Development is located at least 40 m away from any ridgeline, as measured horizontally from the ridge peak"*. The development application proposals will see the extractive footprint, in this area, engulfing part of the ridge top as shown in map below:



As per Council's information request dated 28th October 2019, in which concerns were raised as to the visual amenity aspect of extending the quarry pit to the ridge top, the applicant resubmitted aspects of the DA with amended details and claimed: *"By redesigning the quarry pit to include a 40 metre separation distance from the ridgelines, Nucrush has satisfied Acceptable Outcome AO4 in the Extractive Industry Code"* (letter dated 16th June 2020 - See Attachment B1). However, it is abundantly clear it did not address Acceptable Outcome A04 in this particular area as the intended extractive footprint cuts right through the peak of the ridgeline.

Reason 3 - City Plan, Extractive Industry development Code, 9.3.8, Acceptable Outcome AO3.2

The third reason this is unacceptable is because the City Plan for 'Extractive Industry development Code' for 'Visual amenity' the '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"*.

Also, extending the extractive footprint to within 40 metres of the Maudsland Road, as per the development application, and engulfing the *'Permanent Trees and Shrub screening'* protected area will give clear views of the quarry operation, including benches and faces from residential areas and

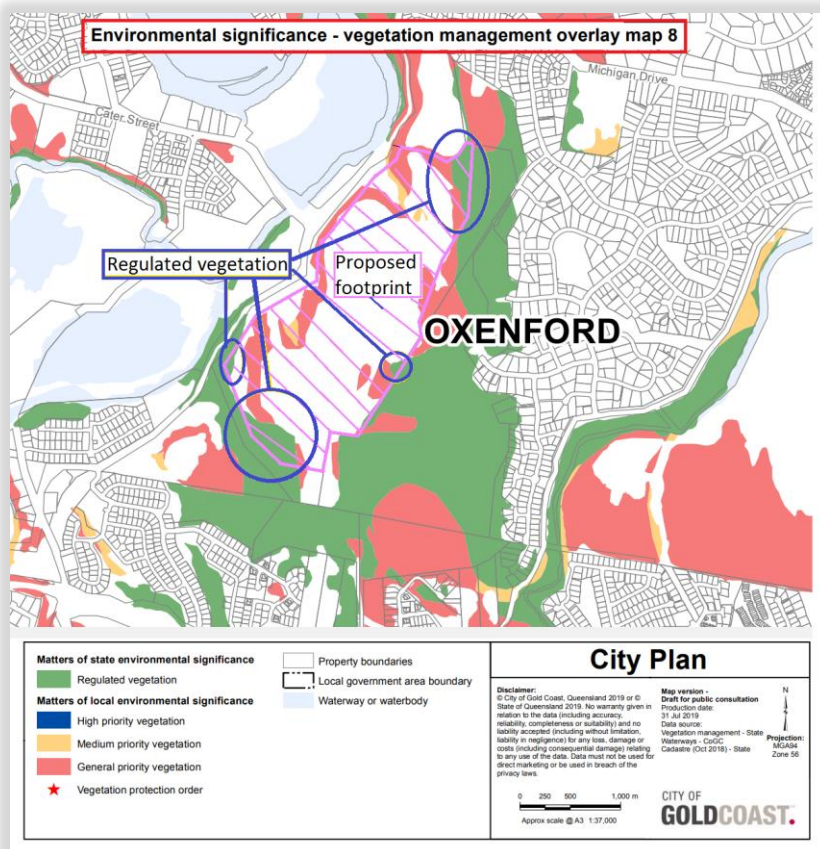
public areas such as John Muntz Bridge, Tamborine-Oxenford Road, Maudsland Road and Sherman Drive, Upper Coomera (Attachment D1 and D2) which is clearly contra to PO3 which states: *“Extractive Industry developments are screened or located in areas of least visual impact and minimise views of any significant infrastructure and visually obtrusive development from major roads and surrounding residential areas”*

Further, the ‘Acceptable Outcome AO3.2’ 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”*. Clearly the destruction of the prohibited development area labelled as *‘Permanent trees and shrub screening’* on the Third Schedule (Attachment A1) would contravene this Acceptable Outcome and provide an unrestricted view into the quarry, revealing its inner workings, benches and faces completely at odds with the Gold Coast City Plan acceptable outcome.

The expected highly compromised views from the Tamborine Mountain and surrounding areas are reproduced in Attachment D3.

Reason 4 - City Plan, Environmental Significance Overlay Code 8.2.6.3, AO1

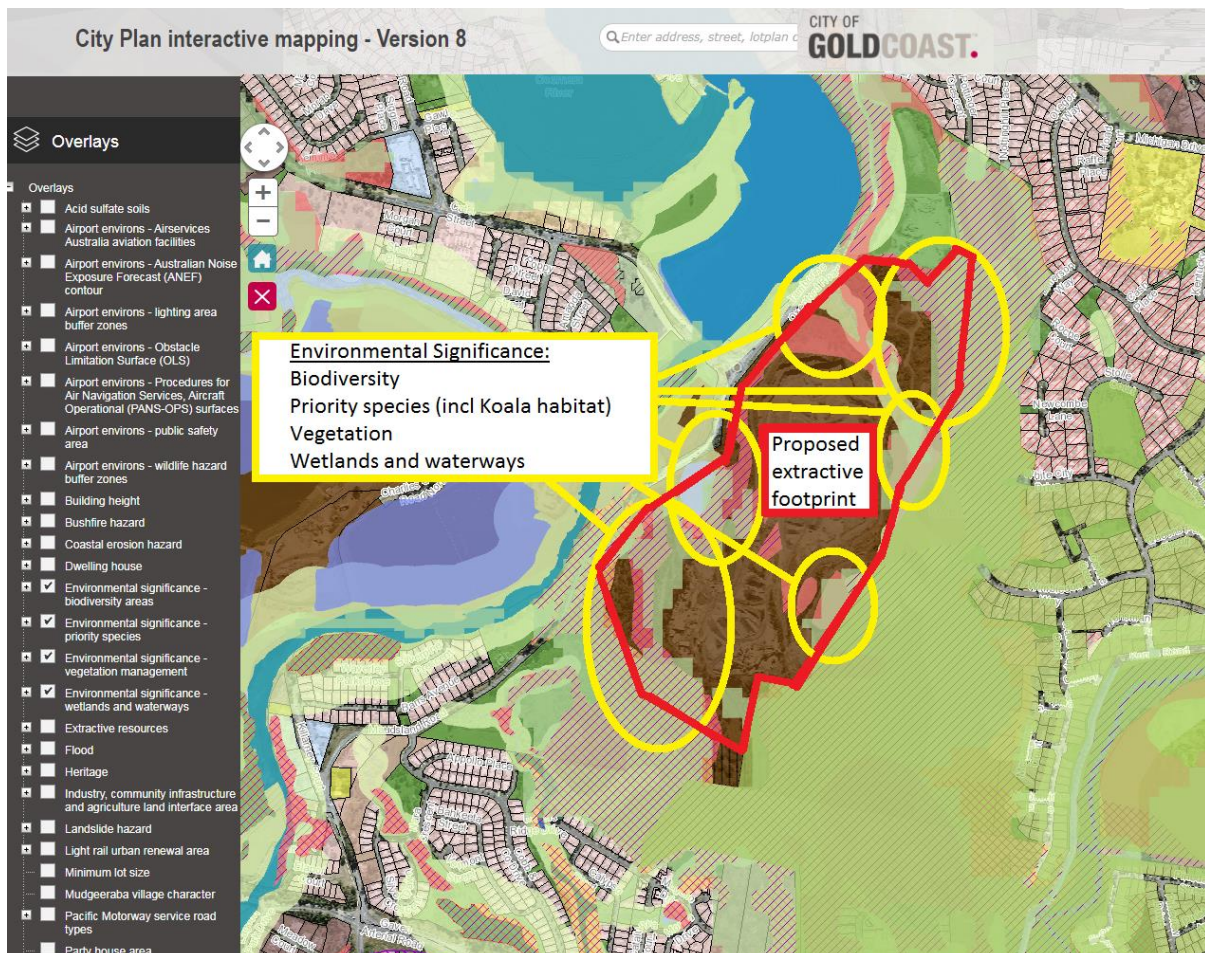
The fourth reason this is unacceptable is because the City Plan Environmental significance overlay code (8.2.6.3), Ecological site assessment, Acceptable Outcome AO1 states: *“Proposed works do not impact on: (a) areas identified on Environmental significance - vegetation management overlay map”*. However, the proposed extractive footprint engulfs protected areas:



Reason 5 - City Plan, Environmental Significance Overlay Code 8.2.6.2, PO2

The fifth reason this is unacceptable is because the City Plan Environmental significance overlay code (8.2.6.3), Biodiversity areas, Performance Outcome PO2 states: *“Development does not impact on Protected Areas as identified on the Environmental significance - biodiversity areas overlay map”*.

This development application is clearly attempting to contravene this clear City Plan requirement as shown in the City Plan map below:



Reason 6 - Key Resource Area (KRA) Status

It has been noted that City Planners are, in my opinion, overly relying on the KRA status of Lot 467 (and formerly Lot 906, the 'Quarantined land' lot) in an apparent attempt to justify the proposed Nucrush extractive footprint that is clearly in direct contravention with the current approval by way of the *'Rezoning agreement'* which has clearly marked prohibited development areas for the life of the quarry. For example: *'Buffer Land'*, *'Permanent trees and shrub Screening'* and *'Rural B'* for instance.

I believe, City Planners may rely on this KRA status to justify the destruction of the *'Buffer Land'* and *'Permanent trees and shrub screening'* areas (as they have, I believe incorrectly, tried to do with the prohibited development area in the northeast prohibited development area known as *"Rural 'B' "*). However, it should be remembered, as stated by the Queensland government, that the: *"Identification of a site as a Key Resource Area (KRA) and inclusion in the State Planning Policy (SPP) does not in any way authorise the extraction of the resource nor give anyone the right to establish or operate a quarry"* (Attachment C1).

And, as the Judge said in *'Robertson DCJ, Neilsens Quality Gravels Pty Ltd v Brisbane County Council'*: *"I think Council's submission to the effect that the designation of the site KRA60 by SPP02/07 'merely protects the land from encroachment by inappropriate development and preserves access to it', understates the importance of this fact in the assessment process. It goes further in its terms, but does not 'guarantee' an approval which will be subject to impact assessment against the relevant planning scheme provisions"*.

Further, in the State Planning Policy (2017) A Key Resource Area (KRA) merely means: *"an identified location that contains extractive resources of state or regional significance"* (Attachment C2).

It is, I believe, far from a God given right to extract this area as Council Planners should be aware. Just as it has become apparent that the Key Resource area within Lot 906 (Quarantined Land Lot) is also protected for the life of the quarry.

And, if the Council Planners are in any doubt as to the legality of the proposed extractive footprint it should be noted that: *"An identified KRA is made up of four components as shown in Table 2 and Figure 2"* (Attachment C3). These components are:

- *Resource/processing area*
- *Separation area*
- *Transport route*
- *Transport route separation area*

As per my Key Resource Area objection (dated 7th June 2021) it is clear both the *"Separation area"* and the *"Transport route separation area"* have both been fatally compromised by massive subsequent development, legally sanctioned and encouraged by the Gold Coast Council, making this a highly populated residential area, and thus effectively sterilising this KRA for the foreseeable future.

In fact it would clearly seem the quarry has outgrown its current location as stated in the judges' comments from the Appeals Land Court, Brisbane, when the Nerang Pastoral Co Pty Ltd appealed against an unimproved valuation - Valuation of Land Act 1944: *'Nerang Pastoral Co Pty Ltd v Chief Executive of Natural Resources (formerly Department of Lands)'* on 3rd July 1997 (*'[1997] QLC 102'*), where the judge said: *"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"*. I believe 'encroaching development' describes this development application appropriately and this must be reason enough for timely cessation on 15th February 2022, as currently scheduled.

Reason 7 - City Plan Extractive Resources Overlay code 8.2.7 Performance Outcome PO2 Separation Area and 100m Transport route separation area (b) Visual Amenity

City Plan Extractive Resources Overlay code 8.2.7 Performance Outcome PO2, Separation Area and 100m Transport route separation area (b) states: *“Development where located within the Separation Area and 100m Transport Route Separation Area ... is orientated away from a Resource Area / Processing area to minimise views/limit visual impact of Extractive industry”*. I do not believe the subsequent granting of a development application that will clearly compromise the visual amenity of the already built homes should be permitted as it is a clear local residents should be safe in the knowledge that City Plan requirement 9.3.8.3 Visual Amenity 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”* would be applied as a result of permission been given by the Gold Coast Council for their homes to be built.

Reason 8 - City Plan Extractive Resources Overlay code 8.2.7 Performance Outcome PO2 Separation Area and 100m Transport route separation area (c) Separation Buffer

City Plan Extractive Resources Overlay code 8.2.7 Performance Outcome PO2, Separation Area and 100m Transport route separation area (c) states *“Development where located within the Separation Area and 100m Transport Route Separation Area: ... ensures an appropriately sized buffer between sensitive land uses, the resource/processing area and the transportation route of the KRA”*. I do not believe the subsequent granting of a development application, that will clearly further compromise these already highly compromised separation buffer, of these legally built homes should be permitted as it is a clear local residents should be safe in the knowledge that City Plan requirement 9.3.8.3 Extractive Industry Management Plan PO1 which states: *“Extractive Industry activities are located, operated and staged in a way that: (a) minimise[s] environmental impacts on site and surrounding areas”* and *“(b) prevents significant adverse amenity impacts on existing sensitive land uses or residential zoned land”* will be applicable throughout the life of their approval.

Conclusion

It is clear to see there are at least eight reasons this Nucrush development application should be rejected just in this area to the southwest and west of the site.

I hope the City of Gold Coast Council will not renege on their original agreements at the quarry's inception re: *‘Buffer Land’* and *‘Permanent Tree and shrub screening’* (and *‘Rural ‘B’*) areas.

I further hope the City of Gold Coast Council will not ignore the clear requirements of its own City Plan.

It is, I believe, abundantly clear that the KRA status of this area does not in any way justify ignoring the clear requirements of the Gold Coast City Plan. Nor does it permit, I believe, the overruling of the Current approval requirements, established at the quarry's inception for the life of the quarry especially when it is realised the KRA Status has been further compromised by development even within its highly engineered excuse for a separation buffer as shown in the State Planning Policy

Guidelines (Attachment E1). Also, the SPP "*Separation Area*" description is fundamentally inaccurate and denies the large amount of residential development around the KRA and its very close proximity and further attempts to convince the reader that urban areas are "*Rural Land*" in an apparent attempt to justify its clear non-compliance (Attachment E2). This is fully discussed in my 'Key Resource Area 68 (KRA68) has been compromised objection, dated 7th June 2021.

I believe this objection clearly shows how this development application cannot be permitted to include this area to the southwest and west as part of its proposed extractive footprint for a number of clear and independent reasons.

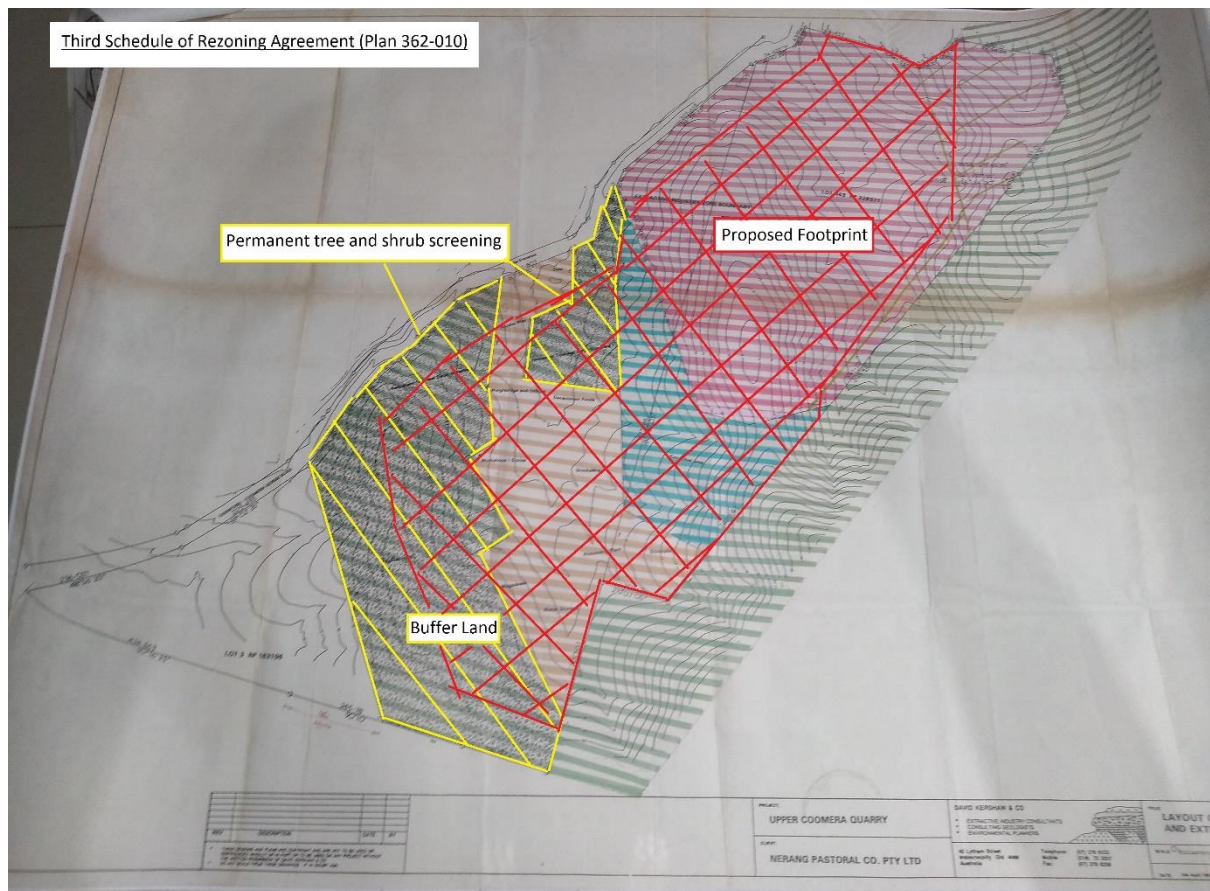
Thank you in anticipation,

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 - Annotated 'Third Schedule' of 'Rezoning Agreement' and/or 'Plan 362-010' - showing 'Buffer Land' and 'Permanent tree and shrub screening' areas



16/06/2020



Nucrush Quarries
PO Box 179,
Oxenford, QLD 4210

admin@insightdas.com.au
www.insightdas.com.au
07 5593 0948

Attn: Mr Michael Cooper
P: (07) 5573 8000
M: 0402 443 633
E: michaelc@nucrush.com.au

Dear Mr Cooper

Provision of Further Information – Proposed Extension to the Existing Oxenford Quarry

INTRODUCTION

- 1 In May 2019, InsightDAS prepared a Visual Impact Assessment for the proposed extension to the existing Oxenford quarry (the proposed development). We subsequently prepared a Response to Council's Information Request, dated 28/10/2019, and a Response to the 2nd Peer Review, dated 25/03/2020.
- 2 On 02/04/2020 Nucrush representatives and a number of the consultant team members met (by teleconference) with Council officers and consultant Ms Suzie Rawlinson (who had undertaken the previous peer reviews on behalf of Council) to discuss changes to the proposed development by Nucrush that were described in the Response to the 2nd Peer Review. Nucrush had submitted a significant change to the proposed quarry footprint so that the edge of the quarry pit would be at least 40 metres from the main ridges (both the primary ridge, and the secondary ridge extending through the south-eastern part of the site).
- 3 This change to the original footprint was proposed by Nucrush in an effort to address the concerns raised by Council Officers and their consultant relating to visual amenity in the south-east of the quarry. Nucrush advised at the meeting that this change would result in excess of 17 million tonnes of rock not being extracted from the resource, reducing the longevity of the deposit.
- 4 By redesigning the quarry pit to include a 40 metre separation distance from the ridgelines, Nucrush has satisfied Acceptable Outcome A04 in the Extractive Industry Use Code. In the teleconference meeting of 02/04/2020 Council indicated that, along with the split bench design for the high-wall, the changes addressed the remainder of Council's concerns relating to visual impacts, pending the provision of further information relating to project staging and timeframes, the width of the split benches, the relocation of the transmission line through the south-east corner of the site, and the rehabilitation strategy. Council also requested an updated version of the visualisations that were provided with the Response to Council's Information Request. This letter provides the further information sought by Council.

Attachment C1 - Identification of a Key Resource Area does not authorise extraction and/or development approvals

business.qld.gov.au/industries/mining-energy-water/resources/quarries/key-resource-areas/development-approvals

 **Queensland Government**

Business Queensland

Development approvals in Key Resource Areas

Quarries and other extractive industries

Identification of a site as a Key Resource Area (KRA) and inclusion in the State Planning Policy (SPP) does not in any way authorise the extraction of the resource nor give anyone the right to establish or operate a quarry. The SPP is designed to maintain access to resources so they can be approved under the development assessment process when they are needed.

Attachment C2 - State Planning Policy - Part F Key Resource Area (KRA)

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

spp-guidance-mining-and-extractive-resources-july-2017.pdf

An identified KRA is made up of four components, as shown in Table 2 and Figure 2.

Table 2: KRA components

Component	Detail
Resource/ processing area	<p>The extent of the extractive resource and any operational areas associated with the extraction and processing of the resource.</p> <p>The boundary of the area is defined by the potential for extractive industry activities, and includes the resource area where blasting and other primary extraction would take place.</p> <p>The area can include adjacent areas where other extractive activities (such as crushing, screening and stockpiling) may occur.</p>
Separation area	<p>The separation area is the area surrounding the resource/processing area required to maintain separation from people who may be affected by residual impacts such as noise, dust and ground vibrations of existing or future extractive operations in the resource/processing area.</p> <p><u>The minimum distance is 200 metres for resources that do not require blasting or crushing to extract (sand, gravel and clay) and 1,000 metres for hard rock resources where blasting and crushing of material is required.</u></p> <p>An extractive resource might extend beyond the boundary of the resource/processing area and, where this occurs, an extractive industry could take place in the separation area, provided that the function of the separation area is not compromised.</p> <p>In some cases the separation area may be less than the minimum distances in consideration of local features such as topography or existing development commitments for incompatible land uses.</p>
Transport route	<p>The shortest practical route used to transport extracted resources to market.</p> <p>The transport route is a road or a rail link from the boundary of the resource/processing area to a major road or railway.</p>
Transport route separation area	<p>The area surrounding the transport route needed to maintain separation of people from undesirable levels of noise, dust and ground vibration produced as residual impacts from the transportation of extractive material. The distance is measured 100m from the centre line of the indicated transport route for a KRA.</p>

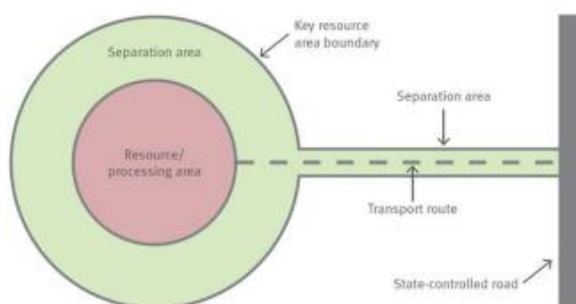


Figure 2: Components of KRAs

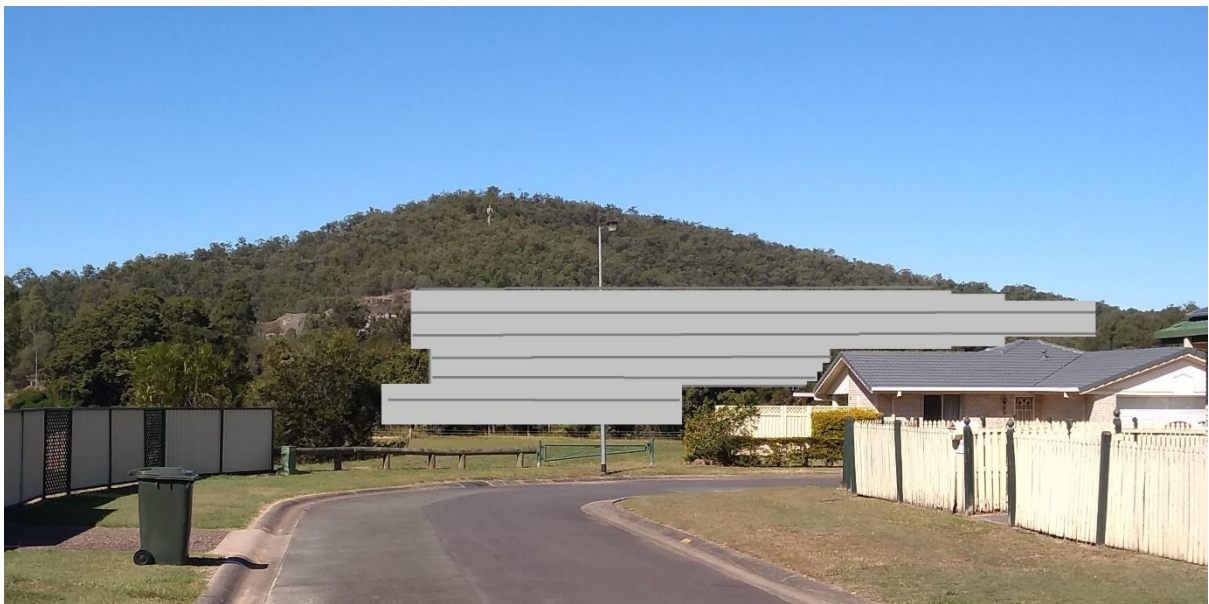
Attachment D1 - Sherman Drive, Upper Comara looking east to quarry

Unrestricted by any topographical features view into the quarry's inner workings

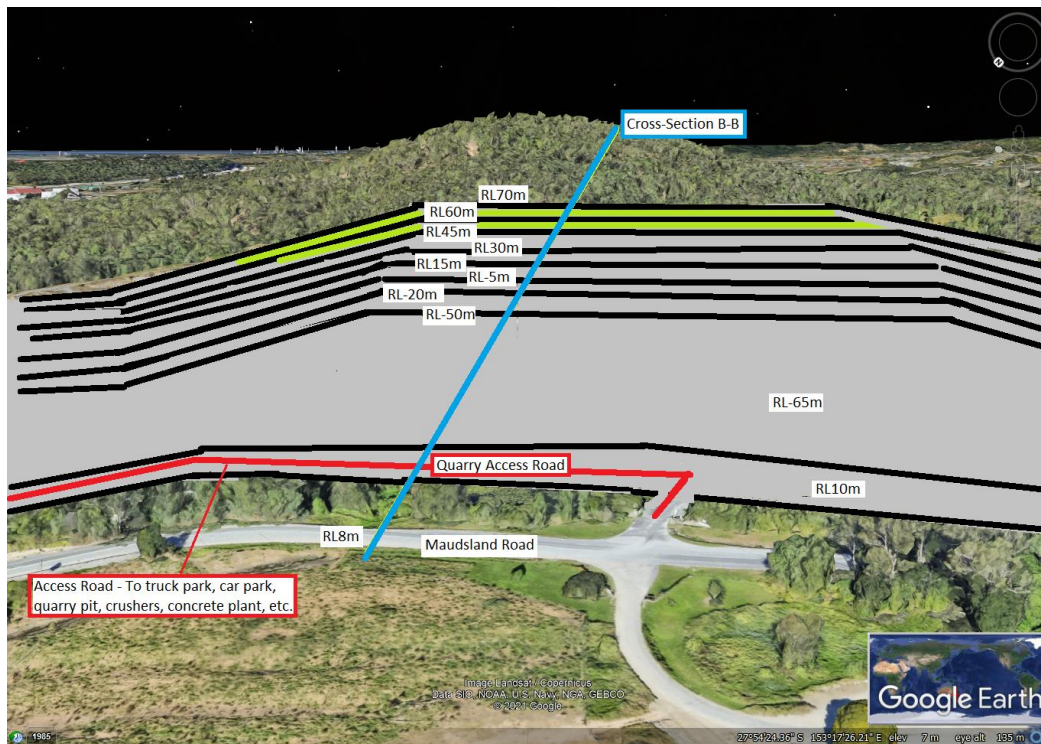


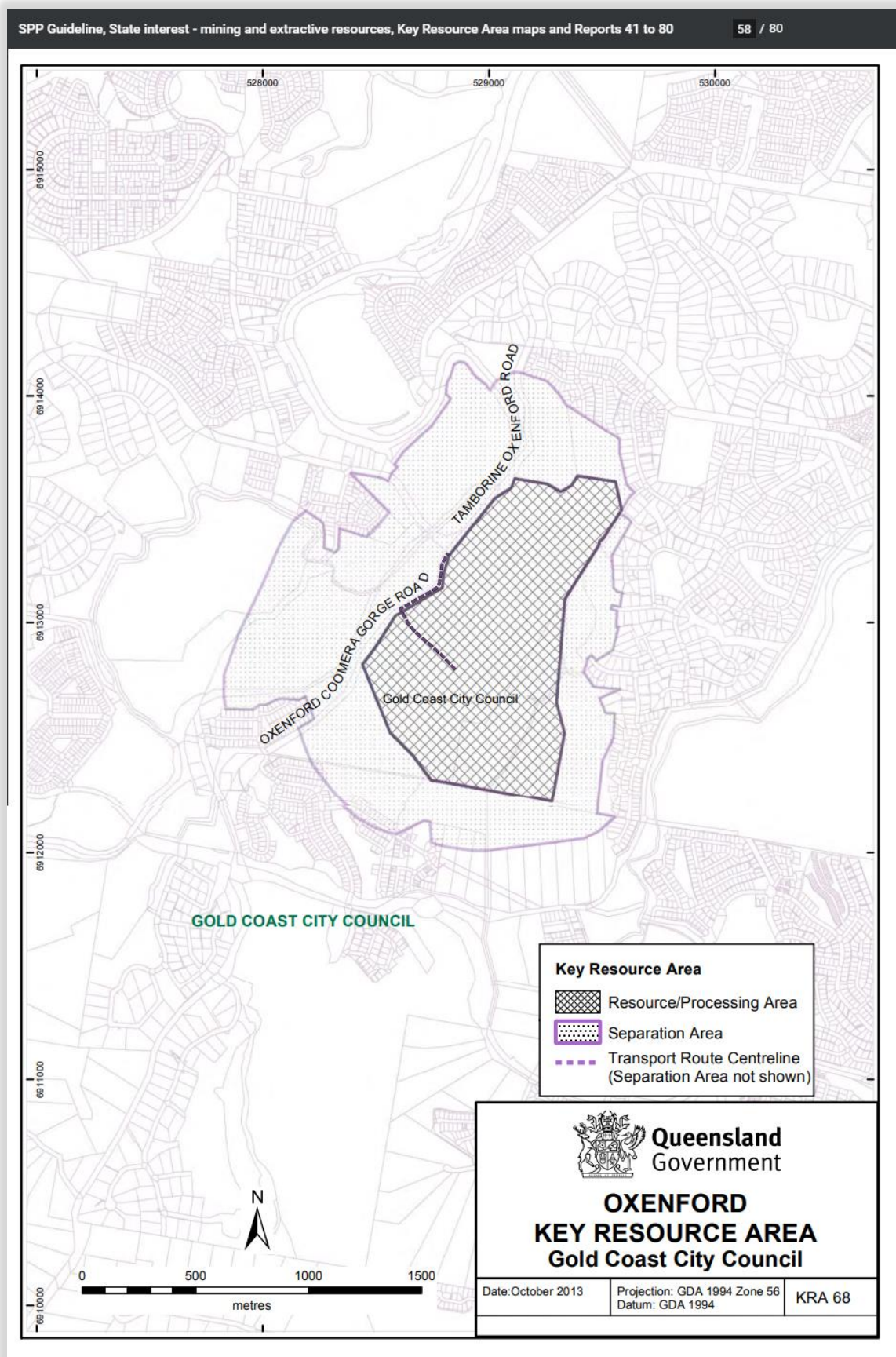
Attachment D2 - Sherman Drive, Upper Comara looking east to quarry

The believed extent of the affected view when the proposed expansion is progressing



Attachment D3 - Expected views looking east from Tamborine Mountain side





OXENFORD KEY RESOURCE AREA – KRA 68

LOCAL GOVERNMENT AREA: Gold Coast City Council

LOCATION:

The resource is located in northwestern Gold Coast, about 3 kilometres southwest of Oxenford (see map KRA 68).

EXTRACTIVE RESOURCE: Quarry Rock

EXTRACTIVE RESOURCE DESCRIPTION:

The resource consists of greywacke that forms steep ridges southeast of the Tamborine – Oxenford Road.

A major quarry is located between two of the steeper ridges southeast of the intersection of the Tamborine – Oxenford Road and Oxenford – Coomera Gorge Road. This quarry supplies a wide range of crushed rock products.

SIGNIFICANCE:

The remaining resource is sufficient for 30 to 40 years supply, and it is conveniently situated to supply the Gold Coast urban area and the southern Brisbane region markets. Large deposits of greywacke occur south of the existing quarry.

SEPARATION AREA:

On the western and northern sides of the ridge where the face and operations are visible from surrounding Rural land, the full 1000 metres separation distance is adopted. On the northwestern side, the boundary is constrained by the limit of the urban blocks along Oxenford – Coomera Gorge Road on the south side of the Coomera River.

On the northeast, the boundary follows the edge of the urban blocks around to the eastern side of the ridge. On the eastern and southern sides, the distance is constrained by urban zones. It increases progressively to the southeast corner to a maximum of 700 metres over rural land. It is set at 500 metres over the northern part of small rural lots along Bakers Ridge Drive, as the quarry face will be hidden by the ridge of forested land. To the south and southwest, retention by the quarry operator of urban-zoned land as open space permits a separation distance of over 500 metres from the crushing plant.

TRANSPORT ROUTE:

The products are transported directly onto Oxenford – Coomera Gorge Road, then east along the Tamborine – Oxenford Road to the Pacific Motorway. The majority of the rock is transported to the Gold Coast, but some is transported to southern parts of Brisbane and Logan City.