

Mr Stephen Barry
Planning Director - Independent Planning Commission
Via email: steve.barry@ipcn.nsw.gov.au

18 January 2024

Deep Creek Quarry Project (SSD-11591659)
Response to Request for Advice - Recommended Conditions of Consent

Dear Mr Barry

I refer to your letter dated 16 January 2024, seeking the Department's advice on the proposed conditions of consent for the Deep Creek Quarry Project (project) for consideration of the NSW Independent Planning Commission (Commission), should it approve the project.

As requested by the Commission, the Department has considered workability, enforceability and any potential unintended consequences of the proposed conditions. The Department's response to the proposed conditions is presented in the table in **Attachment A**.

If you have any questions, please contact me on (02) 8275 1374 or jessie.evans@dpie.nsw.gov.au.

Yours sincerely,



Jessie Evans
Director Energy and Resource Assessments

Department of Planning, Housing and Infrastructure

Attachment A

Table 1: Department's response to the Commission's proposed conditions for the Deep Creek Quarry Project (SSD-11591659)

Commission's proposed condition / comment	Department's response
<p><u>Proposed condition:</u> A11 <i>The Applicant must not transport quarry products from the site until the completion of works to upgrade the Limeburners Creek Bridge.</i></p>	<p>The Department proposes to amend the condition to refer to the specific bridge replacement works in Council's Delivery Program / Operational Plan. The Department notes the replacement of Limeburners Creek Bridge is scheduled for completion in early 2024.</p> <p>Suggested changes to the condition are as follows: A11 <i>The Applicant must not transport quarry products from the site until the completion of the Limeburners Creek Bridge replacement works identified in Council's Delivery Program 2022-2026 / Operational Plan 2023-24.</i></p>
<p><u>Proposed condition:</u> A14 <i>The Applicant must ensure that:</i> ... b) <i>vehicle movements along Forest Glen Road do not exceed</i> <i>(i) a once off, 8 heavy vehicles travelling to and from the site during construction; and</i> <i>(ii) 12 light vehicles accessing the site per day until the quarry access road is operational.</i> ...</p>	<p>Delete 'a once off' from condition A14 (b) (i), as it is redundant.</p>
<p><u>Proposed condition:</u> A20 <i>Within 6 months from the date of commencement of development, a CCC must be established for the development in accordance with the Department's Community Consultative Committee Guidelines: State Significant Projects (2023) and after consultation with Council on its experience with similar CCCs.</i></p>	<p>Suggested rephrasing: A20. <i>Within 6 months from the date of commencement of development, a CCC must be established for the development in consultation with Council and in accordance with the Department's Community Consultative Committee Guidelines: State Significant Projects (2023)</i></p>
<p><u>Proposed conditions:</u> <i>Noise Operating Conditions</i> B4 <i>The Applicant must:</i> a) <i>take all reasonable steps to minimise all noise from construction, operational and road transport activities, including low frequency noise and other audible characteristics;</i></p>	<p>The Department does not consider real-time noise monitoring necessary for the following reasons:</p> <ul style="list-style-type: none"> the majority of operations would be undertaken during the least-sensitive daytime period; the Noise Impact Assessment in the EIS predicted no greater than 'negligible' noise impacts under the Voluntary Land Acquisition and Mitigation Policy (NSW Government, 2018);

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<p>b) <i>operate a comprehensive noise management system commensurate with the risk of impact to ensure compliance with the relevant conditions of this consent;</i></p> <p>c) <i>take all reasonable steps to minimise the noise impacts of the development during noise-enhancing meteorological conditions;</i></p> <p>d) <i>carry out real time noise monitoring to determine whether the development is complying with the relevant conditions of this consent; and</i></p> <p>e) <i>assess the real time noise monitoring data, and modify or stop operations on the site to ensure compliance with the relevant conditions of this consent.</i></p> <p><i>Noise Management Plan</i></p> <p><i>B5. The Applicant must prepare a Noise Management Plan for the development. This plan must:</i></p> <p><i>f) be prepared by a suitably qualified and experienced person/s;</i></p> <p><i>g) describe the measures to be implemented to ensure:</i></p> <p><i>(iii) compliance with the noise criteria and operating conditions in this consent; and</i></p> <p><i>(iv) best practice management is being employed;</i></p> <p><i>h) include a monitoring program that:</i></p> <p><i>(i) is undertaken by a suitably qualified and experienced person/s;</i></p> <p><i>(ii) uses attended real time monitoring to evaluate the performance of the development;</i></p> <p><i>(iii) monitors noise at the nearest and/or most affected residences existing at the date of this consent;</i></p> <p><i>(iv) adequately supports the noise management system; and</i></p> <p><i>(v) includes a protocol for identifying any noise-related exceedance, incident or non-compliance and for notifying the Department and relevant stakeholders of these events.</i></p> <p><u>Comment:</u> The Commission's intention in this change is to ensure that the information available to the community is as contemporaneous as reasonably possible. The Commission proposes to establish access to real time noise monitoring</p>	<ul style="list-style-type: none"> • only two sensitive receivers would experience 'negligible' noise impacts; <p>However, should the Commission choose to include a real-time noise monitoring condition, the Department recommends that the requirement for attended monitoring is retained. Attended monitoring is typically used as a compliance monitoring and evaluation tool, and real-time monitoring is typically more of a noise management tool. In the event the Commission decides to include a requirement for real-time noise monitoring, Conditions B4 and B5 have been updated to reflect more workable real-time noise monitoring requirements. Notwithstanding these optional changes to conditions B4(b) and B5, the Department recommends the conditions remain unchanged from the Department's originally recommended conditions. Further, the Department notes the Commission's intention to ensure that the information available to the community is as contemporaneous as reasonably possible. The Department understands that real-time noise monitoring data often requires appropriate analysis to identify project-related contributions to the acoustic environment. Accordingly, the Department recommends that, should real-time monitoring be required, any publication of contemporaneous real-time data should not be undertaken without appropriate analysis and reporting by a suitability qualified and experienced acoustic expert.</p> <p>The Department's optional changes to conditions B4 and B5 are as follows:</p> <p><i>Noise Operating Conditions</i></p> <p><i>B4. The Applicant must:</i></p> <p><i>a) take all reasonable steps to minimise all noise from construction, operational and road transport activities, including low frequency noise and other audible characteristics;</i></p> <p><i>b) operate a comprehensive noise management system commensurate with the risk of impact, using a combination of predictive meteorological forecasting and real-time noise monitoring data to guide the day to day planning of quarrying operations, and the implementation of proactive and reactive noise mitigation measures, to ensure compliance with the relevant conditions of this consent;</i></p>

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<p>for transparency and increased public confidence in the Applicant's management of noise.</p>	<p>c) <i>take all reasonable steps to minimise the noise impacts of the development during noise-enhancing meteorological conditions;</i></p> <p>d) <i>carry out regular attended noise monitoring(at least every three months, unless otherwise agreed with the Planning Secretary) to determine whether the development is complying with the relevant conditions of this consent; and</i></p> <p>e) <i>regularly assess noise monitoring data, and modify or stop operations on the site to ensure compliance with the relevant conditions of this consent.</i></p> <p><i>Noise Management Plan</i></p> <p>B5. <i>The Applicant must prepare a Noise Management Plan for the development. This plan must:</i></p> <p>a) <i>be prepared by a suitably qualified and experienced person/s;</i></p> <p>b) <i>describe the measures to be implemented to ensure:</i></p> <p style="padding-left: 20px;"><i>(i) compliance with the noise criteria and operating conditions in this consent; and</i></p> <p style="padding-left: 20px;"><i>(ii) best practice management is being employed;</i></p> <p>c) <i>include a monitoring program that:</i></p> <p style="padding-left: 20px;"><i>(i) (is undertaken by a suitably qualified and experienced person/s;</i></p> <p style="padding-left: 20px;"><i>(ii) uses attended and supplementary real-time monitoring to evaluate the performance of the development;</i></p> <p style="padding-left: 20px;"><i>(iii) includes a program to calibrate and validate the real-time noise monitoring results with the attended monitoring results over time;</i></p> <p style="padding-left: 20px;"><i>(iv) monitors noise at the nearest and/or most affected residences existing at the date of this consent;</i></p> <p style="padding-left: 20px;"><i>(v) adequately supports the noise management system;</i></p> <p style="padding-left: 20px;"><i>(vi) includes a protocol for identifying any noise-related exceedance, incident or non-compliance and for notifying the Department and relevant stakeholders of these events; and include a program for the regular reporting of noise monitoring data on the Applicant's website.</i></p>

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<p><u>Comment:</u> The Commission would like to know the reason why DPHI did not recommend the Applicant to prepare an air quality management plan as a condition of consent.</p>	<p>The Department is seeking to minimise post-approval tasks for low risk environmental aspects, where practicable. The Department considers that the air quality operating conditions and performance criteria are adequate for ensuring the air quality impacts of the project are acceptable. Notwithstanding this, the Department supports the Commission's proposed inclusion of a requirement to establish a protocol within the Environmental Management Strategy required under Condition D1(d)(i) for the regular reporting of air quality monitoring results.</p>
<p><u>Comment:</u> It is the Commission's understanding that respirable silica and diesel emissions are subject to and incorporated in the air quality criteria in Table 4 and will be detected by the existing recommended air quality monitoring system. Is this correct?</p>	<p>Respirable silica and diesel particulates are components of the PM 2.5 criterion. The Department notes there is no NSW-based impact assessment criterion for respirable silica. Consequently, the Air Quality Impact Assessment (AQIA) for the project compared predicted dust levels from the proposed quarry against standards from other regulators such as Safe Work Australia and the Victorian EPA. In all cases, the criteria were predicted to be easily met. The AQIA conservatively assumed that if 80% of all PM2.5 created by the quarry was respirable silica, the highest annual average concentration at a neighbouring residence not associated with the quarry would be <0.08 µg/m³. The Department agrees with the conclusion in the AQIA that the levels of respirable silica exposure at surrounding dwellings are likely to be well-below any level of concern.</p>
<p><u>Proposed condition:</u> B21. The Applicant must: ... d) carry out routine air quality monitoring in accordance with the Approved Methods for Sampling and Analysis of Air Pollutants in New South Wales (EPA, 2022), no less frequently than every month to determine whether the development is complying with the relevant conditions in this consent; and ...</p>	<p>The Department recommends this condition is reworded as follows: B21. The Applicant must: ... d) carry out routine air quality monitoring in accordance with the Approved Methods for Sampling and Analysis of Air Pollutants in New South Wales (EPA, 2022), no less frequently than every month (unless otherwise agreed with the Planning Secretary) to determine whether the development is complying with the relevant conditions in this consent; and ...</p>

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<p><u>Proposed condition:</u> <i>Monitoring of Product Transport</i> B34. <i>The Applicant must keep accurate records of all truck movements to and from the site (i.e. arrivals and dispatches) (including hourly truck movements) and publish a summary of these records on its website every 6 months.</i></p>	<p>Given the condition relates to monitoring of product transport, the Department recommends the following change to the condition: B34. <i>The Applicant must keep accurate records of all quarry product truck movements to and from the site (i.e. arrivals and dispatches) (including hourly truck movements) and publish a summary of these records on its website every 6 months.</i></p>
<p><u>Proposed condition:</u> <i>Traffic Management Plan</i> B38. <i>The Applicant must prepare a Traffic Management Plan for the development. This plan must:</i></p> <ol style="list-style-type: none"> a) <i>be prepared by suitably qualified and experienced person/s;</i> b) <i>be prepared in consultation with TfNSW, Council and Port Stephens Council;</i> c) <i>include details of:</i> <ol style="list-style-type: none"> (i) <i>construction related traffic management measures;</i> (ii) <i>all transport routes and traffic types to be used for development-related traffic, including identification of bridge load restrictions and the route to be used by heavy vehicles as detailed in the EIS;</i> (iii) <i>processes in place for the control of truck movements entering and exiting the site, including during peak holiday periods;</i> (iv) <i>measures to mitigate the impact of heavy vehicle movements on the performance of The Bucketts Way and Pacific Highway intersection, including during peak holiday periods; and</i> (v) <i>measures to be implemented to:</i> <ul style="list-style-type: none"> • <i>ensure compliance with the traffic operating conditions and other traffic related conditions of this consent;</i> • <i>manage the traffic impacts from contractors and subcontractors;</i> • <i>minimise traffic safety issues and disruption to local road users, including minimising potential for conflict with school bus operations;</i> 	<p>The Department does not object to the proposed changes to the condition.</p>

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<ul style="list-style-type: none"> • minimise the transmission of dust and tracking of material onto the surface of public roads from vehicles exiting the site; • monitor driver behaviour; and • participate in transport management investigations initiated by Council or Port Stephens Council; <p>d) include a Drivers' Code of Conduct that includes procedures to ensure that drivers:</p> <ul style="list-style-type: none"> (i) adhere to posted speed limits or other required travelling speeds; (ii) adhere to designated transport routes and travel times; and (iii) implement safe and quiet driving practices, including restriction on the use of compression braking; and (iv) minimise noise, pollution and queueing by not arriving early to the site. <p>e) describe the measures to be put in place to ensure compliance with the Drivers' Code of Conduct.</p>	
<p><u>Proposed condition:</u></p> <p>B44. The Applicant must retire the biodiversity credits specified in Table 5 prior to commencing vegetation clearing. The retirement of credits must be carried out in consultation with BCD and in accordance with the Biodiversity Offset Scheme of the BC Act¹. To the extent possible and if permissible under the BC Act, the required species and ecosystems credits must be retired:</p> <ul style="list-style-type: none"> a) Within the wider project locality (within a 20-kilometre radius of the subject land); and b) In a manner that expands the area of conserved land around existing public or private conservation areas and/or within lands of identified wildlife connectivity. <p>...</p>	<p>DPE and BCD's assessment was based on the proposed biodiversity offset strategy presented by the applicant in the EIS, inclusive of the two identified biodiversity stewardship sites. The offset strategy was considered acceptable. Introducing additional requirements that are inconsistent with the assessed offset strategy may make it difficult for the offset strategy to be implemented in accordance with the conditions of consent and Biodiversity Offset Scheme of the BC Act.</p> <p>Accordingly, the Department recommends the deletion of B44 (a) and (b) as follows:</p> <p>B44. The Applicant must retire the biodiversity credits specified in Table 5 prior to commencing vegetation clearing. The retirement of credits must be carried out in consultation with BCD and in accordance with the Biodiversity Offset Scheme of the BC Act.¹</p> <p>....</p>

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<p><u>Proposed condition:</u> B45. <i>Prior to the commencement of native vegetation clearing, the Applicant must:</i></p> <ul style="list-style-type: none"> a) <i>plant a minimum of 900 preferred Phascolarctos cinereus (Koala) feed trees within its landholding and within or adjacent to land along the Deep Creek riparian corridor, ensuring feed trees are properly established and maintained, and replaced if lost; and</i> b) <i>erect nest boxes in retained vegetation at a ratio of one nest box for each tree hollow removed by the development.</i> 	<p>The Department does not object to the proposed changes to the condition.</p>
<p><u>Proposed condition:</u> B47. <i>The Applicant must make suitable arrangements to provide long-term security and management funding for the Biodiversity Stewardship Site identified in B46 and any others incorporated in the future in accordance with the Biodiversity Offset Scheme of the BC Act, to the satisfaction of the Planning Secretary and BCD.</i></p>	<p>The Department does not object to the proposed changes to the condition.</p>
<p><u>Proposed condition:</u> B48. <i>Prior to the commencement of operations, the Applicant must finalise and report to the Secretary on any arrangements relating to the potential acquisition of the additional Biodiversity Stewardship Site as set out in the Response to Submissions Report, to the satisfaction of the Secretary.</i></p>	<p>The Department recommends this condition is deleted. Establishment of biodiversity stewardship sites under biodiversity stewardship agreements is managed by the NSW Biodiversity Conservation Trust, not the Planning Secretary. The Department does not consider that reporting on arrangements relating to the potential acquisition of the additional Biodiversity Stewardship Site identified in the Response to Submissions Report would improve biodiversity outcomes.</p>
<p><u>Proposed condition:</u> B49. <i>The Applicant must prepare a Biodiversity Management Plan for the development. This plan must:</i></p> <p>...</p> <p>d) <i>include:</i></p> <p>....</p> <p>(iv) <i>a Koala Plan of Management to mitigate impacts on the Koala, which includes measures relating to compensatory feed tree planting, fauna movement structures, onsite speed limits and signage. The Plan shall guide the actions that conserve a viable local population of the Koala on the site</i></p>	<p>Suggest rewording: B49. <i>The Applicant must prepare a Biodiversity Management Plan for the development. This plan must:</i></p> <p>...</p> <p>a) <i>include:</i></p> <p>....</p> <p>(iv) <i>a Koala Plan of Management to mitigate impacts on the Koala, which includes measures to promote the conservation of the local Koala population, compensatory feed tree planting, fauna movement structures, onsite speed limits and signage.</i></p> <p>...</p>

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<p>and adjacent biodiversity stewardship land; ...</p>	
<p><u>Proposed condition:</u> B49. The Applicant must prepare a Biodiversity Management Plan for the development. This plan must: ... f) set out activities and responsibilities associated with the clearing of vegetation and habitat for the development, including but not limited to: defining the limits of clearing, establishing ecological supervision and reporting requirements, hollow-bearing tree management activities, and the protocols and processes to be deployed during all the clearing activities.</p>	<p>The Department recommends condition B49 (f) is deleted and the relevant additional requirements of this condition are incorporated into condition B49(e) as follows: ... e) include a detailed description of the measures to be implemented on the site to: (i) manage the clearing of vegetation and habitat, including defining the limits of clearing, undertaking pre-clearance surveys, and supervising and reporting of clearing activities; (ii) enhance the quality of existing vegetation, vegetation connectivity and fauna habitat, including through the assisted regeneration and/or targeted revegetation of appropriate canopy, sub-canopy, understorey and ground strata; (iii) maximise the salvage of resources within the approved disturbance area, including tree hollows, vegetative and soil resources, for beneficial reuse on site, including fauna habitat enhancement; (iv) minimise impacts on tree hollows where reasonable and feasible; (v) minimise impacts on fauna; (vi) manage potential indirect impacts on threatened plant and animal species; ...</p>
<p><u>Proposed condition:</u> Environmental Management Strategy D1. An Environmental Management Strategy must be prepared for the development. This strategy must: a) provide the strategic framework for environmental management of the development; b) identify the statutory approvals that apply to the development;</p>	<p>The Department does not object to the proposed change to the condition.</p>

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<p>c) <i>set out the role, responsibility, authority and accountability of all key personnel involved in the environmental management of the development;</i></p> <p>d) <i>set out the procedures to be implemented to:</i></p> <p style="padding-left: 20px;">(i) <i>keep the local community and relevant agencies informed about the operation and environmental performance of the development, including reporting on the results of the air quality monitoring as detailed in condition B21(d) at appropriate intervals but no less frequently than every month;</i></p> <p style="padding-left: 20px;">(ii) <i>receive record, handle and respond to complaints;</i></p> <p style="padding-left: 20px;">(iii) <i>resolve any disputes that may arise during the course of the development;</i></p> <p style="padding-left: 20px;">(iv) <i>respond to any non-compliance and any incident;</i></p> <p style="padding-left: 20px;">(v) <i>respond to emergencies; and</i></p> <p>e) <i>include:</i></p> <p style="padding-left: 20px;">(i) <i>references to any strategies, plans and programs approved under the conditions of this consent; and</i></p> <p style="padding-left: 20px;">(ii) <i>a clear plan depicting all the monitoring to be carried out under the conditions of this consent.</i></p>	
<p><u>Proposed condition:</u> ACCESS TO INFORMATION</p> <p>D15. <i>Before the commencement of construction until the completion of all rehabilitation required under this consent, the Applicant must:</i></p> <p style="padding-left: 20px;">a) <i>make the following information and documents (as they are obtained, approved or as otherwise stipulated within the conditions of this consent) publicly available on its website:</i></p> <p style="padding-left: 20px;">...</p> <p style="padding-left: 20px;">b) <i>keep such information up to date, to the satisfaction of the Planning Secretary; and.</i></p> <p style="padding-left: 20px;">c) <i>make the Applicant's website known to assessed sensitive receivers (those set out in the EIS), including a summary of website contents as set out in condition D15(a).</i></p>	<p>The Department recommends the following change to this condition:</p> <p>ACCESS TO INFORMATION</p> <p>D15. <i>Before the commencement of construction until the completion of all rehabilitation required under this consent, the Applicant must:</i></p> <p style="padding-left: 20px;">a) <i>make the following information and documents (as they are obtained, approved or as otherwise stipulated within the conditions of this consent) publicly available on its website:</i></p> <p style="padding-left: 20px;">...</p> <p style="padding-left: 20px;">b) <i>keep such information up to date, to the satisfaction of the Planning Secretary; and</i></p> <p style="padding-left: 20px;">c) <i>notify the occupants of the dwellings identified as an 'Existing Receptor' on the figure in Appendix 3 that the information listed above in condition D15(a) can be found on the Applicant's website.</i></p>

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N/a	<p>The Department also recommends that the agency names referenced in the Definitions and abbreviated elsewhere in the consent are updated to reflect the recent Machinery of Government changes, as follows:</p> <ul style="list-style-type: none"> • Biodiversity Conservation Division within the Department (BCD) = Biodiversity Conservation and Science Group of NSW Department of Climate Change, Energy, the Environment and Water (BCS of NSW DCCEEW); • Commonwealth Department of Climate Change, Energy, the Environment and Water (DCCEEW) = Australian Government Department of Climate Change, Energy, the Environment and Water (AG DCCEEW); • Department of Planning and Environment (Department) = Department of Planning, Housing and Infrastructure (Department); • Heritage NSW = Heritage NSW, within the NSW Department of Climate Change, Energy, the Environment and Water (Heritage NSW); • Water Group within the Department (DPE Water) = NSW Department of Climate Change, Energy the Environment and Water – Water Group (NSW DCCEEW – Water Group).