



Bentley Quarry Modification

Statement of Environmental Effects

R & S Contracting Pty Ltd

19 April 2024

→ The Power of Commitment



| Project name | | Bentley Quarry | | | | |
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Contents

| | |
|---|-----------|
| 1. Introduction | 1 |
| 1.1 Purpose of this SEE | 1 |
| 1.2 Scope and limitations | 1 |
| 2. Proposed modifications | 3 |
| 2.1 Staging of extraction | 3 |
| 2.2 Removal of the limitation on truck movements | 3 |
| 3. Planning considerations | 4 |
| 3.1 NSW Environmental Planning and Assessment Act 1979 | 4 |
| 3.1.1 Assessment under Part 4 of the EP&A Act 1979 | 4 |
| 3.2 Environmental Planning and Assessment Regulation 2021 | 8 |
| 3.2.1 Clause 100 | 8 |
| 3.2.2 Clause 275 | 8 |
| 3.2.3 Schedule 3 Part 2 - Designated Development | 9 |
| 3.3 Richmond Valley Local Environmental Plan 2012 | 12 |
| 3.4 Richmond Valley Development Control Plan 2021 | 13 |
| 3.5 Other State legislation | 13 |
| 3.5.1 Water Management Act 2000 | 13 |
| 3.6 Commonwealth legislation | 13 |
| 3.7 Summary of approvals required | 13 |
| 4. Environmental assessment | 14 |
| 4.1 Overview | 14 |
| 4.2 Risk rating | 14 |
| 4.3 Risk assessment | 15 |
| 5. Conclusion | 19 |

Table index

| | | |
|-----------|---|----|
| Table 3.1 | Section 4.55(2) considerations | 4 |
| Table 3.2 | S4.55(2) Comparative Analysis | 6 |
| Table 3.3 | Section 4.15 of the EP&A Act - Matters for consideration | 7 |
| Table 3.4 | Clause 48 Matters | 11 |
| Table 4.1 | Impact priority matrix | 14 |
| Table 4.2 | Results of risk assessment and prioritisation of environmental issues | 15 |

Figure index

| | | |
|------------|---------------|---|
| Figure 1.1 | Site location | 2 |
|------------|---------------|---|

Appendices

Appendix A Quarry plans

1. Introduction

R & S Contracting Pty Ltd (R & S Contracting) owns and operates a hard rock quarry (Bentley Quarry). It is located at Lot 2 DP 1196757, 1465 Bentley Road, Bentley, in the Richmond Valley local government area (Figure 1.1). R & S Contracting are proposing to modify the development consent (DA2022/0107) to change the staging of extraction and remove the limitation on truck movements at peak school bus drop off and pick up times.

1.1 Purpose of this SEE

This Statement of Environmental Effects (SEE) has been prepared to accompany the application to modify Development Consent DA2022/0107. The SEE has been prepared to address the matters for consideration under section 4.55(2) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) and consider the provisions of other relevant Acts and environmental planning instruments. It assesses the potential environmental impacts of the proposed modification and recommends mitigation measures to minimise impacts and protect the environment where possible.

The SEE is structured as follows:

- Section 1 – provides an introduction and the location of the modification.
- Section 2 – describes the modification.
- Section 3 – assesses the modification against the requirements of relevant legislation and environmental planning instruments.
- Section 4 – provides an assessment of the potential impacts of the modification on the environment.
- Section 5 – provides a justification for the modification and a conclusion to the SEE.

1.2 Scope and limitations

This report has been prepared by GHD for R&S Contracting Pty Ltd and may only be used and relied on by R & S Contracting Pty Ltd for the purpose agreed between GHD and R&S Contracting Pty Ltd as set out in Section 1.1 of this report.

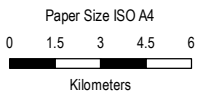
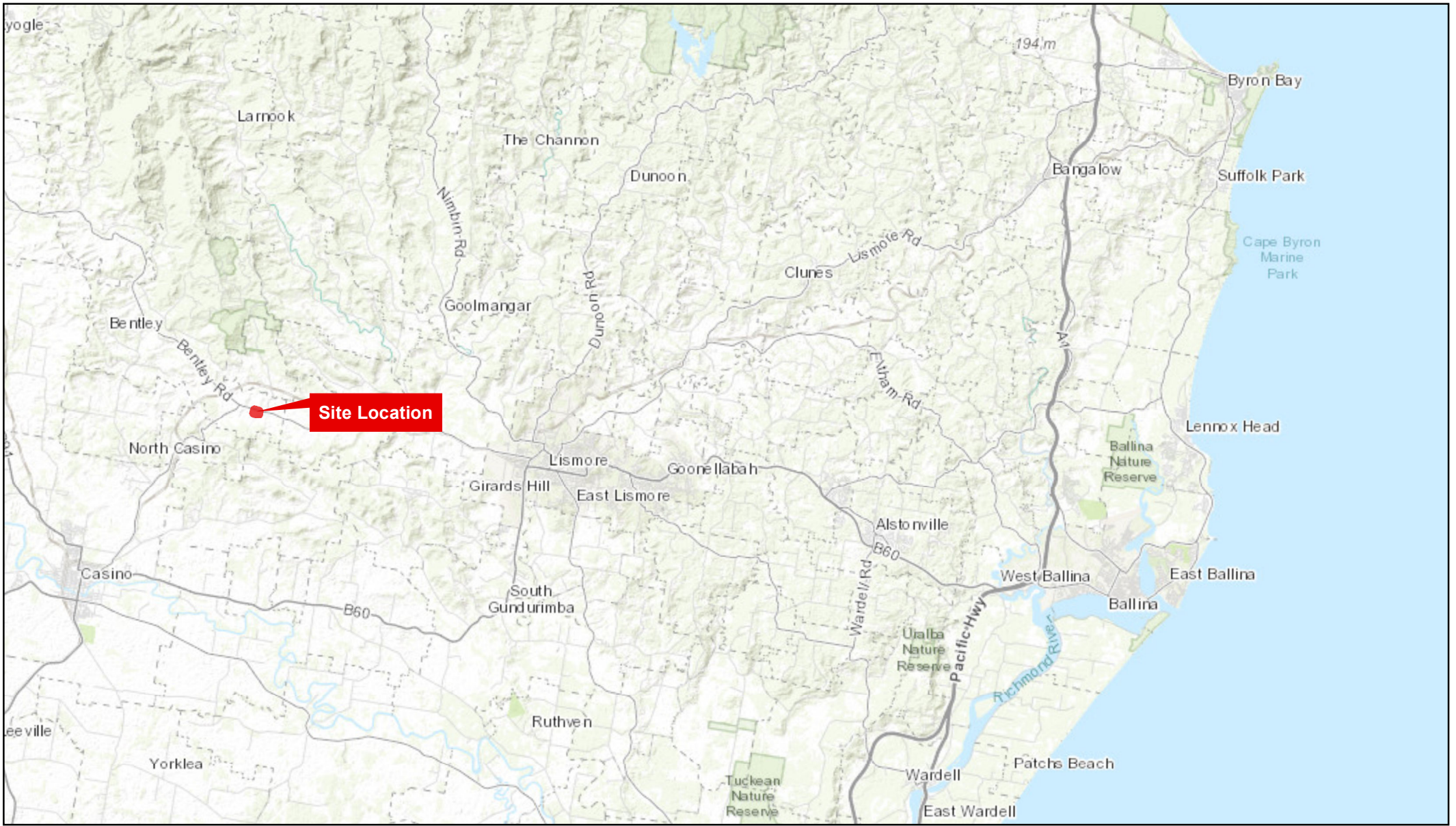
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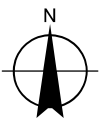
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Map Projection: Transverse Mercator
 Horizontal Datum: GDA 1994
 Grid: GDA 1994 MGA Zone 56



Bentley Quarry

Site Location

Project No. 12547851
 Revision No. -
 Date 14/04/2021

FIGURE 1-1

N:\AU\Sydney\GIS\Admin\Temp\Foddy\1254758\112547581_002_Locality.mxd
 Print date: 20 Apr 2021 - 12:29

Data source: Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), (c) OpenStreetMap contributors, and the GIS User Community. Created by: dschmidt

2. Proposed modifications

2.1 Staging of extraction

The extraction sequence originally proposed in the Environmental Impact Statement (EIS) (GHD 2020) and reproduced in the Environmental Management Strategy (EMS) (GHD 2024) describes a sequential progression of extraction from Stage 1 to Stage 4. Stage 1 and Stage 2 encompasses expanding the quarry to its southern extent. Stage 3 involves lowering the northern half of the quarry, followed by lowering the southern half for Stage 4.

Further investigation has revealed more desirable material is located at a depth below the proposed level of Stages 1 and 2. It is therefore proposed to change how extraction is progressed. It is now proposed to have a two stage approach, with Stage 1 encompassing the clearing and lowering of the northern half of the quarry, and Stage 2 would involve the progression of the extraction to the southern extent of the quarry. This would allow more desirable material to be extracted earlier in the project's lifespan. The final pit area and depth would remain the same as that approved in the current development consent.

The modified quarry plans are provided in Appendix A.

If this proposed modification is approved, the development would be substantially the same because there is no change to the fundamental characteristics of the approved development. The area, depth and quantity of material to be extracted would remain the same, it is just the sequence of the activity that is proposed to change.

2.2 Removal of the limitation on truck movements

The modification proposes that the limitation on truck movements at peak school pick up and drop off times be removed. The modification would involve the removal of Condition 60(b)(ii) from the development consent. Condition 60(b)(ii) inhibits haulage to and from the quarry for two separate hours each day and as such should be deleted for the following reasons:

- Is unreasonable because other quarries in the area use Bentley Road without any such limitations. The restriction therefore limits Bentley Quarry's trade which is both unreasonable and unequitable.
- Interrupts the efficiency of the operation.
- Is difficult to enforce because Bentley Quarry do not have control of all trucks that transport material from the quarry.
- School buses do not operate on Bentley Road for the full hour in the morning and afternoon.
- It is potentially a greater hazard having seven trucks waiting for an hour and then all leaving the site at the one time.
- At peak production the quarry would only generate a maximum of 3% of the peak daily traffic on Bentley Road.
- All vehicles would follow the NSW road traffic rules that are designed to protect the safety of all road users at all times.

In addition, the following measures would be enforced via the Drivers Code of Conduct:

- Haulage during the above times will be minimised.
- Truck drivers are to be particularly cautious during the above times.
- The Quarry Manager will notify all truck drivers by UHF when buses are operating on the haulage routes and instruct heavy vehicle operators to be cautious.
- Heavy vehicles are to remain 500 m behind school buses and if the bus stops, slow to 40km before overtaking the bus.
- Be vigilant for school kids waiting by the side of the road and slow to 40km before passing them.

If this proposed modification is approved, the development would be substantially the same because it is an operational change, there would be no additional impact. The EIS assessed the impacts associated with trucks operating without any stoppages, so the impacts of this modification would be consistent with those assessed in the EIS.

3. Planning considerations

3.1 NSW Environmental Planning and Assessment Act 1979

The EP&A Act provides the statutory basis for planning and environmental assessment in NSW. All development is assessed in accordance with the provisions of the EP&A Act and the *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation). The EP&A Act institutes a system for environmental planning and assessment, including approvals and environmental impact assessment for proposed developments. The EP&A Act contains several relevant parts that impose requirements for planning approval. Part 4 is relevant to the proposed modification because it provides controls for development that requires development consent.

3.1.1 Assessment under Part 4 of the EP&A Act 1979

Development Consent DA2022/0107 was issued by Council on 16 December 2022. Section 4.55(2) of the EP&A Act outlines the circumstances where a consent authority can modify a consent. The relevant sections are provided in Table 3.1.

Table 3.1 Section 4.55(2) considerations

| Section 4.55(2) Matters for consideration | Comment |
|--|---|
| (a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and | The development would be substantially the same if the proposed modifications are approved because: <ul style="list-style-type: none"> – The footprint of the extraction and quantity of material extracted will stay the same. – The removal of the truck movement restrictions does not change the scope of project activity as the proposed total extraction rate and transport volume remains unchanged. Refer to Section 2 and below for more details. |
| (b) it has consulted with the relevant Minister, public authority, or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and | Council will consult any relevant authorities in relation to the proposed modification. |
| (c) it has notified the application in accordance with: <ul style="list-style-type: none"> (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and | The proposed modification would need to be notified in accordance with Council's notification policy. |
| (d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be. | Any submissions received by Council can be addressed by this report. |

The consent authority must be satisfied that the proposed modified development is 'substantially the same development' as the originally approved development. The test for the development to be 'substantially the same', is a legal threshold test that must be met before a merit assessment is undertaken.

The focus in this test is on the development. The comparison is made between the proposed development, and the development consent as granted (cf *Scrap Realty v Botany Bay City Council* [2008] NSWLEC 333 at [16]). The result of the comparative test must be that the modified development is essentially or materially the same as the approved development. (cf *Moto Developments (No 2) v North Sydney Council* [1999] NSWLEC 280 at [55] (Moto Projects); *Vacik v Penrith City Council* [1992] NSWLEC 8). In Moto Projects, Bignold J described the following test in determining the threshold question:

The requisite factual finding obviously requires a comparison between the development, as currently approved, and the development as proposed to be modified. The result of the comparison must be a finding that the modified development is "essentially or materially" the same as the (currently) approved development.

The comparative task does not merely involve a comparison of the physical features or components of the development as currently approved and modified where that comparative exercise is undertaken in some type of sterile vacuum. Rather, the comparison involves an appreciation, qualitative, as well as quantitative, of the developments being compared in their proper contexts (including the circumstances in which the development consent was granted).

Talbot J addressed the question of "substantially the same development" in *Wolgan Action Group Incorporated v Lithgow City Council* (2001):

"In Vacik Pty Limited v Penrith City Council (Stein J, NSWLEC, 18 February 1992, unreported), Stein J adopted a meaning for "substantially" where used in the earlier s 102(1)(a) of the EP&A Act as "essentially or materially or having the same essence". In North Sydney Council v Michael Standley & Associates Pty Ltd (1998) 97 LGERA 433 at 440, Mason P expressly agreed with the view taken by Stein JA. Mason P also said, at p 439, that in the context of s 102 the verb modify meant "to alter without radical transformation" (see Sydney City Council v Ilenace Pty Ltd (1984) 3 NSWLR 414 at 421)". In Standley Stein JA also reiterated the view he expressed in Vacik.

Based on a review of various Land and Environment Court decisions, including those outlined above, the following principles apply when undertaking the substantially the same test:

- The comparative analysis is holistic or general in nature (as opposed to detailed in nature).
- The key question is whether the development is essentially or materially the same as the approved development at a macro level.
- Where impacts (either positive or negative) are minor, the proposed modified development is more likely to be considered essentially or materially the same as the approved development.
- Consideration of the scale of any physical changes to the development, as well as changes to the use of the land are relevant.
- Both a qualitative and quantitative comparison is a requisite undertaking. Notwithstanding, differences in qualitative and quantitative effects do not strictly equate to a material change in the character of the development (cf *Davi Development v Leichardt Council* [2007] NSWLEC 106). Still, where individual changes are significant, the proposed modified development may still be substantially the same (cf *Tyagrah Holdings v Byron Bay Shire Council* [2008] NSWLEC 1420 at [12]).

To assist Council in undertaking a comparative analysis, Table 3.2 below provides a quantitative comparison of the proposed modifications against the relevant conditions of Development Consent DA 2022/0107. As expressed previously and demonstrated by Table 3.2, the quantitative differences between the approved development and proposed modifications are minimal. Most aspects and arguably the main aspects of the approved development are not changed.

Table 3.2 S4.55(2) Comparative Analysis

| Key features of original DA2022/0107 | Proposed MOD |
|---|---|
| Annual rate of extraction – 300,000 tonnes | No change |
| Area of extraction | No change but there is a change to the extraction stages within the approved footprint |
| Total extraction 1,266,000 tonnes | No change |
| Extraction depth RL49m | No change |
| Process a maximum of 2,000 tonnes per day | No change |
| A maximum of 70 trucks per day and 7 per hour | No change |
| Hours of operation | No change |
| Noise criteria | No change |
| Vibration criteria | No change |
| Blasting frequency | No change |
| Air criteria | No change |
| Restriction of trucks during peak school drop off and pick up hours | Proposed to remove this condition, which would add up to 7 trucks/14 movements during the peak school drop off and pick up hours. |

To assist Council in undertaking a comparative analysis, a qualitative comparison of the proposed modifications against Development Consent DA2022/0107 is provided below:

- Noise – Removing the restriction on truck movements may result in a minor increase to noise during the morning and afternoon hour restriction under the approved project but the change would be negligible and still within the relevant criteria at all sensitive receivers, as assessed in the Noise and Vibration Impact Assessment (GHD 2022) prepared for the EIS.
- Vibration – vibration is not expected to change at any sensitive receiver and be within the Development Consent and EPL vibration criteria, as assessed in the Noise and Vibration Impact Assessment (GHD 2022) prepared for the EIS.
- Air quality - As the proposal would not alter the number of trucks (other than during school bus times) or volume of material processed, the air quality and greenhouse gas emissions, as a result of the proposed modifications, would be substantially the same.
- Traffic – Some additional traffic would be generated during the peak school drop off and pick up times but this would only increase vehicle movements on Bentley Road by about 3% and is consistent with what was assessed in the Traffic Impact Assessment (TIA) (GHD 2022) prepared for the EIS.
- Water- Water would be managed in the same way as that approved under Development Consent DA2022/0107.
- Biodiversity – The impact to biodiversity is expected to be the same as the approved project, although the clearing of the existing larger trees would be delayed because they are located within the new Stage 2 area.
- Heritage – Similar to biodiversity, the heritage impacts are expected to be the same as the approved project and potentially delayed because the new Stage 2 area is likely to remain undisturbed for longer than the original Stage 2 area.

Further details on the impacts of the proposed modification are provided in Section 3.2.

Having regard to the quantitative and qualitative comparison between the originally approved development with the proposed modified development, it is submitted that the threshold question is satisfied on the basis that:

- The development remains ‘substantially the same’ in terms of the development footprint.
- The development as approved has the singular purpose of extractive industry which remains unchanged, and thus the land use remains unchanged (refer to Hunter Development Brokerage Pty Limited trading as HDB Town Planning and Design v Singleton Council [2022] NSWLEC 64 where Justice Duggan considers the purpose of a development in relation to the substantially the same test).

- The power to modify a development consent, is one to be regarded as beneficial and facultative (*North Sydney Council v Michael Standley & Associates Pty Ltd* (1998) 43 NSWLR 468 at 475). There is an implied shift in the persuasive burden to the Council to demonstrate why the proposed modification should not be regarded as appropriate (*TL & TL Tradings Pty Ltd v Parramatta City Council* [2016] NSWLEC 150 at [84] – [85]). No additional long term adverse impacts are likely to arise.

Accordingly, it is submitted that the proposed modifications will not represent a radical transformation of the originally approved development and that the proposed modification to the consent will represent substantially the same development as the development for which the consent was originally granted.

Section 4.55(3) of the EP&A Act requires a consent authority to also consider matters referred to in Section 4.15(1) of the EP&A Act. Table 3.3 provides a summary of matters listed under section 4.15(1) and a reference to where they are addressed.

Table 3.3 Section 4.15 of the EP&A Act - Matters for consideration

| Matters for consideration - general | Report section |
|--|--|
| (a) The provisions of: | |
| (i) Any environmental planning instrument | Section 3.3 |
| (ii) Any proposed environmental planning instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved) | Not applicable |
| (iii) Any development control plan | Section 3.4 |
| (iii) Any planning agreement that has been entered into under section 7.4 or any draft planning agreement that a developer has offered to enter into under section 7.4 | Not applicable |
| (iv) The regulations (to the extent that they prescribe matters for the purposes of this paragraph), that apply to the land to which the development application relates | Not applicable |
| (v) Any coastal zone management plan (within the meaning of the Coastal Protection Act 1979) that apply to the land to which the development application relates | Not applicable |
| (b) The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality | Section 3.2 |
| (c) The suitability of the site for the development | The suitability of the site has been demonstrated through the granting of development consent DA2022/0107. |
| (d) Any submissions made in accordance with this Act or the regulations | Any submissions received by Council can be addressed by the information contained within this report. |
| (e) The public interest | The proposed modification are in the public interest as it would improve the functionality of the quarry and allow access to better quality extractive resources sooner, that could be used on local projects. |

3.2 Environmental Planning and Assessment Regulation 2021

3.2.1 Clause 100

Pursuant to Clause 100 of the *Environmental Planning and Assessment Regulation 2021* (EP&A Regulation) the following information is required to be supplied as part of the proposed modification:

- (1) *a modification application must contain the following information—*
 - (a) *the name and address of the applicant*
 - (b) *a description of the development that will be carried out under the development consent*
 - (c) *the address and folio identifier of the land on which the development will be carried out*
 - (d) *a description of the modification to the development consent, including the name, number and date of plans that have changed, to enable the consent authority to compare the development with the development originally approved*
 - (e) *whether the modification is intended to—*
 - (i) *merely correct a minor error, misdescription or miscalculation, or*
 - (ii) *have another effect specified in the modification application*
 - (f) *a description of the expected impacts of the modification*
 - (g) *an undertaking that the modified development will remain substantially the same as the development originally approved*
 - (h) *for a modification application that is accompanied by a biodiversity development assessment report— the biodiversity credits information*
 - (i) *if the applicant is not the owner of the land—a statement that the owner consents to the making of the modification application*
 - (j) *whether the modification application is being made to—*
 - (i) *the Court under the Act, section 4.55, or*
 - (ii) *the consent authority under the Act, section 4.56.*

The above information has been presented in this report to satisfy Clause 100 of the EP&A Regulation.

3.2.2 Clause 275

Clause 275 sets out functions exercisable by Council on behalf of a regional panel. Clause 275 states:

- (1) *The determination of an application to modify a development consent under the Act, section 4.55 is prescribed as a function of a Sydney district or regional planning panel that must be exercised on behalf of the panel by the council of the area, except as provided by subsection (2).*
- (2) *A council must not determine an application to modify a development consent under the Act, section 4.55(2) on behalf of a Sydney district or regional planning panel if the application is of a kind specified in the Instruction on Functions Exercisable by Council on Behalf of Sydney District or Regional Planning Panels—Applications to Modify Development Consents published on the NSW planning portal on 30 June 2020.*

The 'Instruction on Functions Exercisable by Council on Behalf of Sydney District or Regional Planning Panels—Applications to Modify Development Consents' published on the NSW planning portal on 30 June 2020 states that a Council is not to determine an application under section 4.55(2) of the Act to modify a development consent granted by a regional panel if the application:

- Proposes amendments to a condition of development consent recommended in the council assessment report but which was amended by the panel, or
- Proposes amendments to a condition of development consent that was not included in the council assessment report but which was added by the panel, or
- Meets the criteria relating to conflict of interest, contentious development or departure from development standards set out in Schedule 1 to this instruction.

Schedule 1 states:

1. Conflict of interest - Development for which the applicant or landowner is: (a) the Council, (b) a Councillor, (c) a member of Council staff who is principally involved in the exercise of Council's functions under the Environmental Planning and Assessment Act 1979, (d) a member of Parliament (either the Parliament of New South Wales or Parliament of the Commonwealth), or (e) a relative (within the meaning of the Local Government Act 1993) of a person referred to in (b) to (d).
2. Contentious development - Development that is the subject of 10 or more unique submissions by way of objection. A unique submission means a submission which is in substance unique, distinctive or unlike any other submission. It does not mean a petition or any submission that contains the same or substantially the same text. Separate unique submissions may be made in relation to the same issue. One individual, or one household, could potentially submit multiple unique submissions.
3. Departure from development standards - Development that contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

The modification proposes amendments to a condition of consent that was not included in the council assessment report but which was added by the panel under Development Consent DA2022/0107 and is likely to be considered a contentious development and as such the Northern Regional Planning Panel will need to exercise its functions and determine the application.

3.2.3 Schedule 3 Part 2 - Designated Development

Clause 26, Part 2 of Schedule 3

The EP&A Regulation provides direction in relation to designated development and the requirements for assessment. Clause 26 within Part 2 of Schedule 3 of the EP&A Regulation is relevant to the proposal. It states that the following is designated development:

26 Extractive industries

(1) Development for the purposes of an extractive industry facility is designated development if the facility obtains or processes for sale, or reuse, more than 30,000 cubic metres of extractive material per year.

(2) Development for the purposes of an extractive industry facility is designated development if the facility disturbs or will disturb a total surface area of more than 2 hectares of land by—

(a) clearing or excavating, or

(b) constructing dams, ponds, drains, roads or conveyors, or

(c) storing or depositing overburden, extractive material or tailings.

(3) Development for the purposes of an extractive industry facility is designated development if the facility is located—

(a) in or within 40 metres of a natural waterbody or environmentally sensitive area of State significance, or

(b) in or within 100 metres of a wetland, or

(c) within 200 metres of a coastline, or

- (d) *in an area of contaminated soil or acid sulfate soil, or*
 - (e) *on land that slopes at more than 18 degrees to the horizontal, or*
 - (f) *if the facility involves blasting—within 1,000 metres of a residential zone or within 500 metres of a dwelling not associated with the development, or*
 - (g) *within 500 metres of the site of another extractive industry facility that has operated during the last 5 years.*
- (4) *This section does not apply to the following—*
- (a) *an extractive industry facility on land to which State Environmental Planning Policy (Precincts—Western Parkland City) 2021, Chapter 5 applies,*
 - (b) *an extractive industry facility on land in the Western Division, within the meaning of the Crown Land Management Act 2016,*
 - (c) *maintenance dredging involving the removal of less than 1,000 cubic metres of alluvial material from oyster leases, sediment ponds or dams, artificial wetland or deltas formed at stormwater outlets, drains or the junction of creeks with rivers, if—*
 - (i) *the extracted material does not include contaminated soil or acid sulfate soil, and*
 - (ii) *dredging operations do not remove any seagrass or native vegetation, and*
 - (iii) *there has been no other dredging within 500 metres during the past 5 years,*
 - (d) *an extractive industry facility that—*
 - (i) *is operated in accordance with a plan of management that complies with subsection (5), and*
 - (ii) *involves the removal of less than 1,000 cubic metres of extractive material from a potential extraction site specified in the plan of management,*
 - (e) *the excavation of contaminated soil for treatment at another site,*
 - (f) *an artificial waterbody, contaminated soil treatment works, turf farm or waste management facility or works, specifically referred to elsewhere in this Schedule,*
 - (g) *an artificial waterbody located on relevant irrigation land,*
 - (h) *maintenance dredging of alluvial material from oyster leases and adjacent areas in Wallis Lake, if the dredging is undertaken in accordance with the document entitled Protocol for Wallis Lake Oyster Lease Maintenance Dredging approved by the Planning Secretary and published in the Gazette, as amended by the Planning Secretary from time to time by publication of an amended Protocol in the Gazette,*
 - (i) *the removal of sandstone, whether or not the extracted material is reused or resold, for the provision of car parking or plant or storage associated with development on land in the Stage 1 Bays West Precinct within the meaning of State Environmental Planning Policy (Precincts—Eastern Harbour City) 2021, Appendix 8.*
- (5) *A plan of management must be—*
- (a) *prepared in accordance with guidelines approved by the Planning Secretary, and*
 - (b) *approved by a public authority, and*
 - (c) *adopted by the consent authority, and*
 - (d) *reviewed by the consent authority every 5 years.*
- (6) *In this section—*
- extractive industry facility means a building or place at which—*
- (a) *extractive materials are obtained by methods including excavating, dredging, tunnelling or quarrying, or*

(b) extractive materials are stored, stockpiled or processed by methods including washing, crushing, sawing or separating.

plan of management means a plan for a river, estuary, land or water that considers the cumulative impacts, bank and channel stability, flooding, ecology and hydrology of the area to which the plan applies.

Pursuant to Clause 26, the quarry is deemed designated development. However, the provisions of Clause 48 Part 3 of Schedule 3 of the EP&A Regulation are relevant.

Part 3 of Schedule 3 - Are alterations or additions designated development?

Clause 48, Part 3 of Schedule 3 of the EP&A Regulation states that alterations and additions are not considered designated development, if, in the opinion of the consent authority, the alterations or additions do not significantly increase the environmental impacts of the total development (that is the development together with the additions or alterations) compared with the existing or approved development. Clause 48 states:

48 Alterations or additions to existing or approved development

(1) Development involving alterations or additions to development, whether existing or approved, is not designated development if, in the consent authority's opinion, the alterations or additions do not significantly increase the environmental impacts of the existing or approved development.

(2) In forming its opinion, a consent authority must consider the following—

(a) the impact of the existing development, including the following—

(i) previous environmental management performance, including compliance with the conditions of any consents, licences, leases or authorisations by a public authority and compliance with any relevant codes of practice,

(ii) rehabilitation or restoration of any disturbed land,

(iii) the number and nature of all past changes and their cumulative effects,

(b) the likely impact of the proposed alterations or additions, including the following—

(i) the scale, character or nature of the proposal in relation to the development,

(ii) the existing vegetation, air, noise and water quality, scenic character and special features of the land on which the development is, or will be, carried out and the surrounding locality,

(iii) the degree to which the potential environmental impacts can be predicted with adequate certainty,

(iv) the capacity of the receiving environment to accommodate changes in environmental impacts,

(c) proposals to mitigate the environmental impacts and manage residual risk,

(d) proposals to facilitate compliance with relevant standards, codes of practice or guidelines published by the Department or other public authorities.

The provisions of Clause 48 are addressed in Table 3.4 below.

Table 3.4 Clause 48 Matters

| Clause 48 Matters | | Comments |
|---|---|---|
| (a) the impact of the existing development, including the following | (i) previous environmental management performance, including compliance with the conditions of any consents, licences, leases or authorisations by a public authority and compliance with any relevant codes of practice, | The quarry has only been operating for a short period, with no compliance issues and all conditions of consent required to be satisfied prior to operation have been satisfied. |
| | ii) rehabilitation or restoration of any disturbed land, | Not applicable, no rehabilitation has occurred to date. |

| Clause 48 Matters | | Comments |
|---|--|---|
| | (iii) the number and nature of all past changes and their cumulative effects, | No changes have occurred to date. |
| b) the likely impact of the proposed alterations or additions, including the following | (i) the scale, character or nature of the proposal in relation to the development, | The proposed modifications do not change the scale, character or nature of the development. |
| | (ii) the existing vegetation, air, noise and water quality, scenic character and special features of the land on which the development is, or will be, carried out and the surrounding locality, | The modifications are not expected to result in significant impacts on the surrounding residents, environment, or locality. |
| | (iii) the degree to which the potential environmental impacts can be predicted with adequate certainty, | The potential environmental impacts associated with the proposed modification including noise and traffic impacts, have been analysed with adequate certainty through assessment against relevant guidelines and standards adopted by relevant agencies to accurately identify and determine the extent of those potential impacts. |
| | (iv) the capacity of the receiving environment to accommodate changes in environmental impacts, | The site is situated in a relatively isolated location with sufficient separation from sensitive land uses to minimise the potential for land use conflict. |
| (c) proposals to mitigate the environmental impacts and manage residual risk | | A series of mitigation measures have been identified to minimise the potential impacts of the quarry. |
| (d) proposals to facilitate compliance with relevant standards, codes of practice or guidelines published by the Department or other public authorities | | The quarry is already subject to a stringent EPL and development consent conditions. It is anticipated that the EPL and relevant consent conditions would be modified to reflect the proposed modification. |

The proposed alterations and additions do not significantly increase the environmental impacts of the total development when compared with the existing approved development.

The proposed modification remains substantially the same development within the meaning of s4.55(2)(a) of the EP&A Act (refer Section 3.1). The proposal as modified retains the essential character and material essence of the existing approved development. The modification will allow for a continuation of the existing land use, and will not materially change the functioning of the quarry having regard to inputs, outputs and impacts.

To assist in this assessment, Section 4 of this report contains a detailed analysis of the potential impacts of the proposal.

3.3 Richmond Valley Local Environmental Plan 2012

The primary planning instrument for the site and proposed modification is the *Richmond Valley Local Environmental Plan 2012* (LEP). In accordance with the LEP, the subject site is zoned RU1 Primary Production. Under the provisions of zone RU1, development for the purpose of extractive industries is permissible with development consent. The proposed modifications do not change the use of the approved extractive industry and therefore is a permissible use.

3.4 Richmond Valley Development Control Plan 2021

Richmond Valley Development Control Plan 2021 (DCP) contains detailed guidelines and planning controls applying to all development within the LGA. The DCP contains limited details in relation to extractive industries but as the proposed modifications are considered to be substantially the same as the approved extractive industry, it is considered to be consistent with the DCP.

3.5 Other State legislation

The only other NSW legislation considered relevant to the proposed modification is the *Water Management Act 2000* (WM Act), as discussed below.

3.5.1 Water Management Act 2000

This Act regulates the taking, interception, storage and use of surface water and groundwater within areas subject to water sharing plans. The Water Impact Assessment (GHD 2022) indicated the development may intercept groundwater during Stages 3 and 4. The proposed modification would mean the groundwater would be intercepted earlier than the approved development but otherwise the impacts would be consistent. The Water Impact Assessment (GHD 2022) indicated that groundwater impacts would be negligible and are unlikely to require a licence under the Water Management Act.

3.6 Commonwealth legislation

Matters of national significance would not be impacted by the proposed modification and as such the provisions of the *Environment Protection and Biodiversity Conservation Act 1999* are not relevant.

3.7 Summary of approvals required

As the project is classified as 'regional development' by Schedule 7 of the *State Environmental Planning Policy (State and Regional Development) 2001* the modifications would need to be advertised and assessed by Council and determined by the Northern Regional Planning Panel (Northern RPP) under Part 4 of the EP&A Act.

4. Environmental assessment

4.1 Overview

This section provides the results of the identification and prioritisation of issues. The analysis was undertaken in the form of a preliminary, desktop level risk assessment, to broadly assess the potential environmental risks that may arise as a result of the modification. The preliminary environmental risk assessment identifies and ranks potential environmental risks with the aim of identifying potential impacts for detailed assessment.

The outcome of the assessment was used to inform the scope of further work and detailed investigations.

4.2 Risk rating

Based on the assessment of likelihood and consequence, a foreseeable impact/risk can be assigned a risk rating. This enables higher rating risks to be identified early in the process for the purpose of focusing the environmental assessment process. The matrix shown in Table 4.1 was used to prioritise potential environmental risks as either category A, B or C.

Table 4.1 Impact priority matrix

| | Consequence | | |
|------------|-------------|------------|------------|
| Likelihood | 3 Higher | 2 Medium | 1 Lower |
| 3 Higher | Category A | Category A | Category B |
| 2 Medium | Category A | Category B | Category C |
| 1 Lower | Category B | Category C | Category C |

Category A issues were considered the highest priority and were the main focus of the environmental impact assessment.

In general, the following was applied when scoping requirements for the environmental impact assessment:

- Category A issues – require detailed specialist investigations and field work, and were the highest priority to enable identification of appropriate management and mitigation options.
- Category B issues – desirable to undertake further investigations as part of the environmental assessment to address some uncertainties.
- Category C issues – may not require detailed specialist investigations, particularly where identifiable management/mitigation guidelines exist, only broad or desktop investigations were undertaken.

4.3 Risk assessment

Table 4.2 Results of risk assessment and prioritisation of environmental issues

| Issue | Potential key risks | Likelihood | Consequence | Priority category | Comment/response |
|----------------|---|------------|-------------|-------------------|--|
| Land resources | Staging – Overall, the proposed modification is not expected to alter the impact on land resources compared to the approved development. However, it would modify the progression of the disturbance/extraction. | Medium | Lower | C | The proposed modified staging would not alter the overall extent or depth of the proposed quarry. The proposed staging would mean that land is disturbed and cleared later in the project's lifespan. The proposed Stage 1 would see the northern half of the proposed quarry extraction extend to a greater depth, earlier in the lifetime of the project than the approved development. This would see the southern of the quarry cleared later than proposed in the original consent. No further assessment or mitigation is considered necessary. |
| | Truck restrictions – Removing the restriction on the movement of trucks would not impact on land resources. | | | | |
| Water | Staging - The proposed modification would have the potential to impact on groundwater sooner than the current consent. This would increase the duration of any groundwater impact. | Medium | Lower | C | The proposed modified staging would involve lowering the quarry floor earlier in the project. It is expected that groundwater would be encountered during the proposed Stage 1. However, the Water Impact Assessment (GHD 2021) indicated the impact would be negligible and would not require a licence. Quarterly groundwater monitoring is included in the Environmental Management Strategy (EMS) (GHD 2024) to monitor the impacts. No further assessment or mitigation is considered necessary. |
| | Truck restrictions – Removing the restriction on the movement of trucks would not impact on water. | | | | |

| Issue | Potential key risks | Likelihood | Consequence | Priority category | Comment/response |
|--|---|------------|-------------|-------------------|---|
| Noise and vibration | Staging – The proposed modifications would not impact on noise and have minimal impact on vibration. Due to the quarry being deeper earlier, there would be better shielding of the noise from the operations. | Lower | Lower | C | Changing the staging is likely to reduce the noise and vibration impacts on sensitive receivers earlier than if the quarry was developed as approved. No further assessment or mitigation is considered necessary. |
| | Truck restrictions – Removing the restriction on the movement of trucks would have minimal impact on noise and vibration. | | | | |
| Air quality and greenhouse gas emissions | Staging – The proposed modification would expect to have a minimal positive impact on dust suppression. This is associated with earlier deepening of the quarry. | Lower | Lower | C | The proposed staging modification would involve lowering the proposed quarry sooner. This would increase the height of the quarry pit walls earlier than the approved design, which may reduce the amount of dust escaping into the local atmosphere. The dust suppression measures described in the EMS would still apply. The proposal to remove the restriction on truck movements are not expected to change the impact on local air pollution compared to the approved development. No further assessment or mitigation is considered necessary. |
| | Truck restrictions – Removing the restriction on the movement of trucks would have minimal impact on local air quality. | | | | |
| Biodiversity | Staging – The proposed staging may have a minor positive impact on biodiversity by delaying the clearing of the mature trees within the quarry footprint. Otherwise there would be no change to the impact. | Lower | Lower | C | The proposed modification would not alter the footprint of the current operation, however, it would delay the clearing of the mature trees within the quarry footprint. The impacts are expected to be substantially the same or a slight improvement and can be managed by the existing management measures. No further assessment or mitigation is considered necessary. |
| | Truck restrictions - The proposed modification is not expected to alter the impact on biodiversity compared to the approved development. | | | | |

| Issue | Potential key risks | Likelihood | Consequence | Priority category | Comment/response |
|--------------------|---|------------|-------------|-------------------|---|
| Traffic and access | Staging - The proposed modification would not alter the traffic and access impacts. | Medium | Lower | C | <p>The proposed removal of the truck movement restrictions during peak school pick up and drop off times would not significantly increase the total traffic on Bentley Road during these periods. As assessed in the Traffic Impact Assessment (TIA) (GHD 2022) prepared for the EIS, this increase is within the capacity of the road.</p> <p>It is also expected to have minimal impact on safety because all trucks would follow the road rules and implement the additional mitigation measures specified in Section 2.2 and the Drivers Code of Conduct.</p> <p>No further assessment or mitigation is considered necessary.</p> |
| | Truck restrictions – Removing the restriction on the movement of trucks would add traffic to Bentley Road during peak school pick up and drop off times. Given the total traffic on Bentley Road during these times, this would have minimal impact. | | | | |
| Heritage | Staging – The proposed staging may have a minor positive impact on heritage by delaying the disturbance of the original Stage 2 area. | Lower | Lower | C | <p>The proposed modification would not alter the footprint of the current operation, however, it would delay the disturbance of the original Stage 2 area. The impacts are therefore expected to be substantially the same or a slight improvement and can be managed by the existing management measures.</p> <p>No further assessment or mitigation is considered necessary.</p> |
| | Truck restrictions - The proposed modification is not expected to alter the impact on heritage compared to the approved development. | | | | |
| Visual amenity | Staging – The proposed modification would change the visual progression of the proposed quarry during the proposed Stage 1. This could have a minor improvement to the visual impact because the area disturbed would be less for longer. | Lower | Lower | C | <p>The proposed modified staging would mean that the southern half of the proposed quarry would not be cleared until later in the project's life. It would therefore have a somewhat smaller impact to visual amenity. In the EMS, visual bunds and vegetation to the east, south, west would provide visual screening from extraction operations.</p> <p>No further assessment or mitigation is considered necessary.</p> |
| | Truck restrictions – Removing the restriction on the movement of trucks would only have minimal impact on visual amenity of Bentley Road during peak school pick up and drop off times. | | | | |

| Issue | Potential key risks | Likelihood | Consequence | Priority category | Comment/response |
|-------------------|---|------------|-------------|-------------------|--|
| Waste management | The proposed modifications are not expected to alter the impact on waste compared to the approved development. | Lower | Lower | C | No further assessment or mitigation is considered necessary. |
| Hazards and risks | The proposed modifications are not expected to alter the hazards or risks compared to the original development. | Lower | Lower | C | No further assessment or mitigation is considered necessary. |
| Socio-economic | Staging - The proposed modification may improve the impact on socio-economics due to potential reduced noise and visual impacts. | Lower | Lower | C | The reduced area of disturbance for longer and associated improvement to visual amenity as well as the reduced noise impacts, may reduce the socio-economic impacts. No further assessment or mitigation is considered necessary. |
| | Truck restrictions – Removing the restrictions on truck movement may impact on the public's perception of safety. | Medium | Lower | C | Removing the restrictions on trucks would be a concern to some in the community but trucks regularly use Bentley Road during school hours without incident. The safety of trucks using the road was considered in the TIA prepared for the EIS, which was independently reviewed by EMM and neither indicated safety as a concern during school hours. All trucks would follow the road rules and implement the additional mitigation measures specified in Section 2.2 and the Driver's Code of Conduct. No further assessment or mitigation is considered necessary. |

5. Conclusion

The proposed modification of DA2022/0107 - Bentley Quarry at Lot 2 DP 1196757, 1465 Bentley Road, Bentley involves changing the staging of extraction and removing the current limitation on truck movements at peak school bus drop off and pick up times.

This SEE has assessed the potential environmental impacts of the project, considering both negative and positive impacts, and recommended management and mitigation measures to protect the environment, where required. Based on this, the proposed modifications are considered substantially the same as the approved development with minimal environmental or community impacts.

The site is therefore suitable for the proposed modifications for the following reasons:

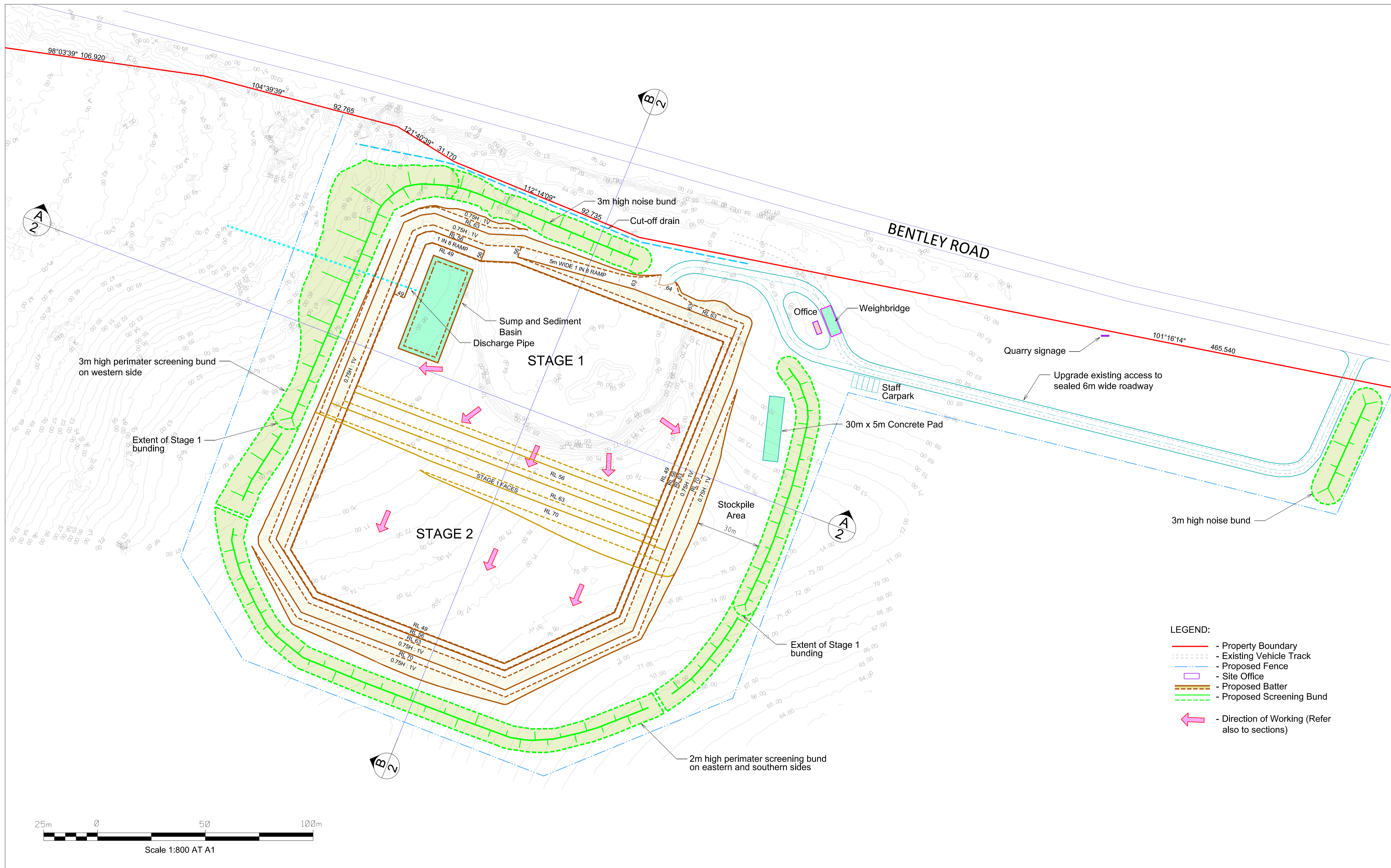
- The modifications would have minimal environmental impact compared to the approved development.
- The site is currently used as a quarry, so the proposed modifications would continue this activity without any additional impacts.

As it has been demonstrated that the proposed modifications would have minimal environmental impact, is substantially the same as the original approval, is suitable for the site and is in the public interest, it is considered Council should support the proposal in accordance with this SEE.

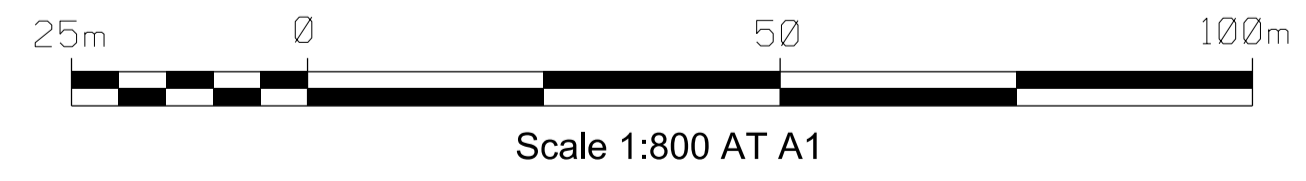
Appendices

Appendix A

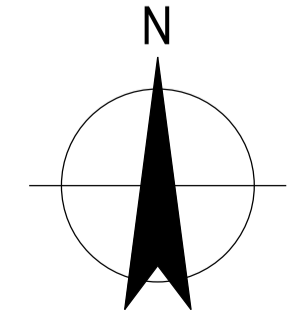
Quarry plans



- LEGEND:**
- - Property Boundary
 - - - - Existing Vehicle Track
 - - Proposed Fence
 - Site Office
 - Proposed Batter
 - Proposed Screening Bund
 - ← - Direction of Working (Refer also to sections)



| Rev | Description | Checked | Approved | Date |
|----------|--------------|---------|----------|------|
| Author | S. Verhellen | | | |
| Designer | Design Check | | | |



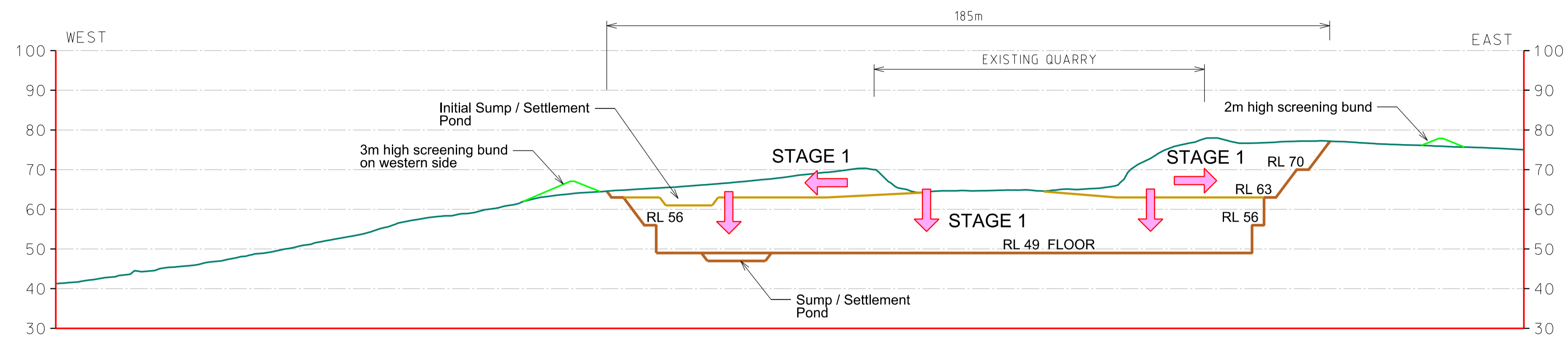
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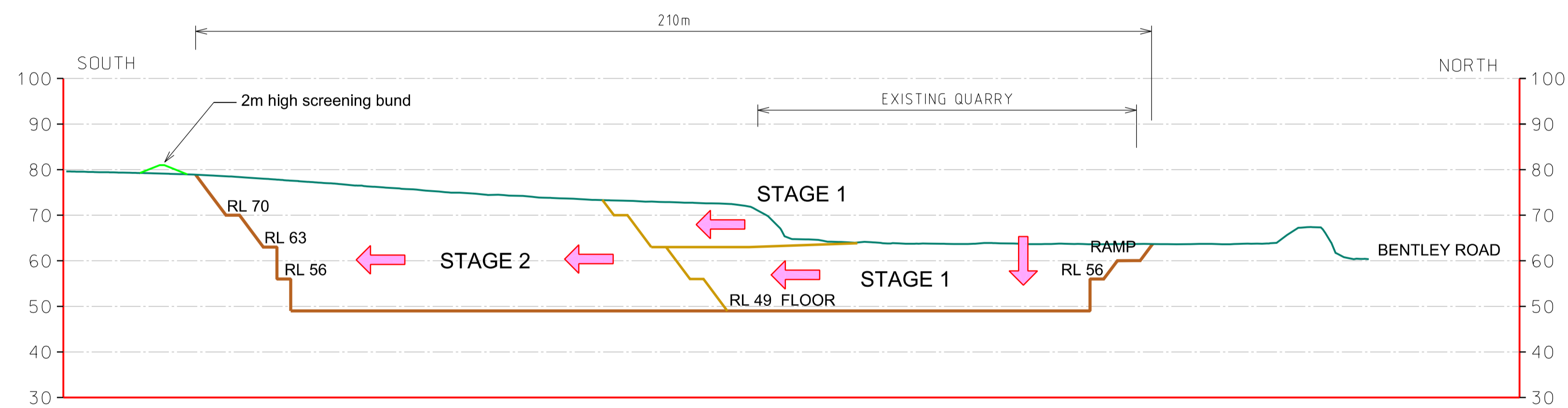
Client **R & S CONTRACTING Pty Ltd**
 Project **BENTLEY QUARRY**
 Status

Drawing Title **PROPOSED QUARRY PLAN**
 Drawing No. **22-12547851-001**
 Status Code

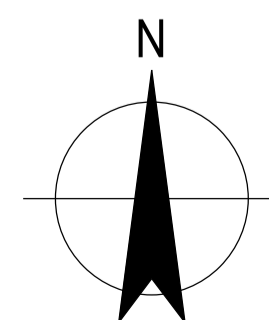
Size **A1**
 Rev



SECTION A - A



SECTION B - B



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Project No.

Client **R & S CONTRACTING Pty Ltd**
 Project **BENTLEY QUARRY**

Drawing Title **PROPOSED QUARRY SECTIONS**

Size **A1**

| Rev | Description | Checked | Approved | Date |
|----------|--------------|----------|----------|------|
| Author | S. Verhellen | Drafting | Check | |
| Designer | | Design | Check | |

Status

Status Code

Drawing No. **22-12547851-002**

Rev



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