



KEMPSEY  
Shire Council

## PLANNING VOTES OF THE ORDINARY MEETING OF KEMPSEY SHIRE COUNCIL

Tuesday 16<sup>th</sup> December 2008 commencing at 9.01am.

Councillor Walker declared an interest in the following item for the reason that he is the owner of the property in the report and retired from the Chamber.

DSDS9	APPLICATION TO MODIFY CONSENT FILE: T4-97-78 (T6-06-85) KJA {Folio No. 387908}
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### SUMMARY:

Reporting that Council has received an application to modify a consent issued in respect to an application that was previously the subject of Court Orders.

### SECTION 375A OF LOCAL GOVERNMENT ACT REQUIRES THAT A DIVISION BE CALLED IN RESPECT TO THIS REPORT

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2008. 871

RESOLVED:

*Moved: Cl. Saul  
Seconded: Cl. Hayes*

That the application to modify Development Consent T4-97-78 under section 96(a) of the Environmental Planning and Assessment Act 1979 be approved subject to the following conditions:-

#### Amended Conditions

- 1 Prior to commencement of extraction the applicant shall satisfy Council that suitable and binding arrangements for the construction and use and maintenance of the haul road between Lot 5 DP 1018286 and Belmore River Road, have been made including but not limited to:
  - (a) Construction of a road in accordance with conditions 12 and 20, between Belmore River Road and Lot 5 DP 1018286, County of Macquarie Parish of Kinchela.
  - (b) Construction of the intersection of the haul road with Belmore River Road in accordance with the requirements of AUSTRROADS Type A Figure 5.16 Simple Left-Turn Treatments in Rural Areas (Desirable Treatments), modified to reflect the requirements of condition 24 of this consent. Detailed plans are to be prepared in consultation with Council's Director of Sustainable Development Services and submitted to Council prior to commencement

of any work with all works to be carried out strictly in accordance with such plans.

- 2 The rehabilitation of the 75m<sup>2</sup> of SEPP 14 Wetlands shall consist of establishing the dominant plant communities to initiate the ecological processes to generate the correct ecological conditions, prior to commencement of construction or operation of the quarry.
- 3 The rehabilitation process shall consist of transplanting plants from the immediate area to cover the entire rehabilitation area.
- 4 Monitoring shall be undertaken by Council or a Council approved ecologist at the completion of the following intervals:
  - (a) Inspections within one (1) month of the proponent advising completion of transplanting to check the correct species have been planted. Photos are to be taken to record the monitoring and to enable comparison over time.
  - (b) At 3, 6 and 12 months intervals from date of the completion of transplanting, to ensure plants have remained viable and replace where necessary. The monitoring can be discontinued after 12 months if the process has been successful if not the process must be repeated.
- 5 If a person other than a Council Officer undertakes the monitoring, a letter is to be provided to Council within 14 days of inspection accompanying photos demonstrating the status of the rehabilitation.

**Existing Conditions (as modified)**

- 6 The development referred to in this applicant is to be carried out substantially in accordance with the approved Environmental Impact Statement (including amended Environmental Impact Statement) prepared by Town Planning Consultants and Drafting Services Pty Ltd dated 29<sup>th</sup> May 1997.
- 7 The amount of material extracted and transported is not to exceed 20,000 cubic meters per annum.
- 8 Submissions of written advice of the date on which it is intended to commence operations following compliance with all relevant conditions of this consent.
- 9 Submission of a Plan of Management generally in accordance with the draft Plan described in the approved Environmental Impact Statement (EIS) and which may vary from time to time depending on the results of monitoring, subject to inclusion of the following:-

**A. MONITORING**

The Plan of Management is to provide for monitoring in accordance with the following program to ensure compliance with

all criteria prescribed by relevant condition of this consent. The results of such monitoring shall form the basis of proposed performance criteria and are to be reported to Council as specified by this consent. Clearing the extraction activities shall not commence in each successive extraction cell until such time as Kempsey. Clearing and extraction activities shall not commence in each successive extraction cell until such time as Kempsey Shire Council has provided its written advice that all relevant performance criteria have been met.

**(a) Noise**

- (i) Details of the proposed means of monitoring the effects of noise on adjoining residences are to be included.**
- (ii) Monitoring is to be carried out by a suitably qualified acoustic consultant. The results of monitoring are to be reported to Council three (3) months from the nominated date of commencement, except as requested by Kempsey Shire Council following receipt of any complaints which, in the opinion of Council, are justified.**

**(b) Dust**

- (i) The Plan of Management is to provide for monitoring of dust upon receipt of a written request from Kempsey Shire Council in the event complaints are received which, in the opinion of Council, are justified.**
- (ii) Any subsequent monitoring is to be undertaken by suitably qualified persons.**
- (iii) The results of any subsequent monitoring shall be provided to Kempsey Shire Council within thirty (30) days of receipt of a written request from Council.**

**(c) Surface Water Quality**

The Plan of Management is to provide for visual inspection of the required sediment control pond indicating any evidence of discharge.

**(d) Groundwater**

- (i) The Plan of Management is to include details of the means of monitoring ground water levels. Such means are to be employed prior to commencement of any work.**
- (ii) Monitoring is to be carried out by a suitably qualified person. The results of monitoring are to be reported to Council three months from the nominated date of commencement, thereafter on a quarterly basis for the first twelve months, thence annually within**

fourteen (14) days of the anniversary of the date of commencement.

**B. SEDIMENT CONTROL**

- (a) Details providing for the construction of sediment control pond to be constructed at the lowest point of the land. The pond is to be designed to cater for the 1 in 10 year storm event identified by "Australian Rainfall and Runoff" and in accordance with "Managing Urban Stormwater 1998".
- (b) All works are to be located at least 30 metres from the designated wetland area.
- (c) Discharge from the pond is not to exceed 30 mg/L of non-filtrable residue.
- (d) The Plan is to provide details of the means proposed for de-silting the required settlement pond.

**C. LANDSCAPING / REHABILITATION**

- (a) Details of the means of stabilising proposed topsoil stockpiles.
- (b) A detailed contingency for controlling the emergence of weed species.

**D. BUSHFIRE MANAGEMENT**

The Plan of Management is to incorporate a Bushfire Management Strategy prepared in consultation with Council's Fire Control Officer and having regard for the need to retain all cleared vegetation required to protect threatened species.

**E. METHOD OF EXTRACTION**

- (a) The Plan of Management is to specify extraction levels to Australian Height Datum. The plan is to include details of the control measures intended to ensure that extraction levels will be met and remain at least 1 metre above the water table as defined in the EIS and by ongoing monitoring. The Plan of Management is to provide for a check survey to be carried out upon completion of extraction within each cell confirming compliance with design levels.
- (b) The extraction cells are to be clearly marked with prominent stakes at all times.

**F. IMPACTS ON THREATENED SPECIES**

The Plan of Management is to include the means of achieving all recommendations contained in the ecological

assessments included in the approved EIS. In addition, the plan is to provide for the placement of meeting boxes suitable for use by Squirrel Gliders.

**G. CHECK LIST**

The Plan of Management is to contain a check list including all management procedures and conditions of this consent to be included in proposed reporting prior to commencement of clearing for each successive extraction cell.

- 9 The operator is to employ such measures as are necessary to achieve the following noise criteria at any adjoining residence not associated with the operation of the quarry:-
  - (a) Noise from extraction activities is not to exceed the existing L90 ground noise level by more than 5dB(A) as defined in the EIS and by ongoing monitoring.
  - (b) Noise associated with the transportation of material by road (including return of empty trucks) is not to exceed 50dB(A)Leq 24 hr.
- 10 The hours of operation of all activities are to be restricted to between 7.00 am and 6.00 pm Monday to Friday and 7.00 am to 12 noon Saturday.
- 11 The operator is to employ such measures as are necessary to achieve the following criteria in respect to dust generated by the proposed development:-
  - (a) The maximum annual atmospheric particulate concentration level is not to exceed 90 micrograms per cubic metre (annual average).
  - (b) The annual average deposition of dust at adjoining residences is not to exceed 2 grams per metre squared per month above existing levels as determined by any required monitoring.
- 12 The internal access road from Belmore River Road to the quarry is to be upgraded to gravel paved standard and maintained free of potholes at all times. All works to be carried out in accordance with such plans prior to commencement of extraction activities.
- 13 The intersection of the access road with Belmore River Road is to be upgraded in accordance with the requirements of AUSTROADS applicable to anticipated traffic generation. Details plans are to be prepared in consultation with Council's Director Environmental Services and submitted to Council prior to commencement of any work with all works to be carried out in accordance with such plans prior to commencement of extraction activities.
- 14 The erection of truck warning signs either side of the intersection of the access road with Belmore River Road. The

applicant is to liaise with Council concerning the type and proposed location of such signs, prior to placement. Such signs are to be placed prior to commencement of extraction activities.

- 15 A truck speed limit of 30 km/h shall apply along the full length of the access road. In this regard it will be necessary to erect suitable truck speed limit signs along the haul route. Details of signage are to be provided to Council and the signs are to be erected prior to commencement of extraction activities.
- 16 Erection of a sign in a suitable location on the internal haul road advising exiting drivers of school bus times and advising caution. Details are to be provided in consultation with Council's Director Environmental Services and the sign is to be erected prior to commencement of the extraction activities.
- 17 A water tanker or trailer is to be provided and the access road and manoeuvring areas are to be kept damp at all times, so as to minimise potential for dust.
- 18 Submission of detailed plans for the storage of fuel in strict compliance with Australian Standard 1940-1993 and construction of such storage in accordance with the plans prior to commencement of any work.
- 19 From the nominated date of commencement of the quarry, the operator shall pay a cash contribution to Council at the rate of \$1 per cubic metre of material extracted and transported from the land with the following provisions to apply:-
  - (a) Submission of a return to Council relating to the amount of material in cubic metres extracted and transported from the land within a period of twelve (12) months from the nominated date of extraction and thereafter within each twelve (12) month period, expiring on the anniversary of the nominated date of commencement. Such return is to be submitted within fourteen days of the anniversary of the nominated date of commencement in each year and is to be in the form of a Statutory Declaration given by the owner or operator (or if the owner or operator is a Corporation, by a Director of that Corporation) and is to include:-
    - (i) Copies of all invoices and Company records relating to the amount extracted.
    - (ii) A detailed topographic survey by a registered surveyor indicating surface levels of the extraction areas immediately prior to the anniversary of the date of commencement each year, including a calculation of the amount extracted in the preceding twelve (12) months. Such calculation is to be made by suitably qualified engineer or surveyor.
  - (b) Payment of the contribution is to be made within thirty (30) days of Council's written notification of the amount of the contribution payable following submission of the required returns. Any payments received after the

specified periods shall accrue interest at a daily rate equivalent to 10% per annum.

- (c) The contribution rate shall be subject to indexation in accordance with the "Price Index of Materials Used in Building Other Than House Building", as published by the Australian Bureau of Statistics or other approved system of indexation as may be adopted by Council from time to time.
- (d) Council shall have the right to request and inspect all relevant records at any time, subject to prior written notice being provided by Council.

This condition has been imposed in accordance with Council's Section 94 Rural Roads Developer Contribution Plan 1999. The Plan may be inspected at Council's offices, corner Elbow and Tozer Streets, West Kempsey.

- 20 Detailed engineering plans for the haul road from the subject land via Lots 1, 2, 4 and 7 DP1018286 to Belmore River Road are to be prepared in consultation with Council, indicating pavement depths and drainage structures having regard to intended loadings with all works to be carried out in accordance with such plans as endorsed by Council, prior to commencement of extraction activities.
- 21 Submission of written advice from the DECC confirming that all requirements have been complied with before commencement of any works.
- 22 The applicant is to arrange for a person to be nominated by Kempsey Local Aboriginal Land Council to be present whilst topsoil is being removed in each successive extraction cell. In this regard, the written advice of Kempsey Local Aboriginal Land Council confirming such arrangements is to be submitted prior to commencement of any works.
- 23 All trucks, whether empty or loaded, are to access the site from South West Rocks via Gladstone thence via Belmore River Road to the internal haul road. This consent does not allow the use of Belmore River Road south of the intersection with the haul road, or any roads connecting thereto.
- 24 The toilet in the existing dwelling is to be available for use by any persons operating the quarry. (Note: This may require upgrading of the existing septic system).
- 25 Creation of a Right of Way being a minimum of 10 metre wide in favour of Lot 5 DP1018286 covering the route of the private access road through Lots 1,2 4 and 7 DP1018286 via Belmore River Road to Lot 5 DP1018286.

A Division on this decision resulted in the following votes.

F = Voted For  
A = Voted Against

Bowell	F	Campbell	F	Green	F	Gribbin	A	Hayes	F	Saul	F
Snowsill	F	Sproule	F								

DSDS10

BUILDING AND DEVELOPMENT  
FILE: 329 RBP

**SUMMARY:**

Reporting that the following applications have been approved:

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2008. 872

**RESOLVED:**

*Moved: Cl. Hayes  
Seconded: Cl. Green*

**That the information be noted.**

**A Division on this decision resulted in the following votes.**

**F = Voted For**

**A = Voted Against**

Bowell	F	Campbell	F	Green	F	Gribbin	F	Hayes	F	Saul	F
Snowsill	F	Sproule	F								

**Councillor Walker returned to the Chamber.**