



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

20 March 2012 commencing at 9.01am

**1.1 Draft Comprehensive Kempsey Standard Local Environmental Plan (Draft KLEP 2012)**  
**File: T5-06-03 {Folio No. 472614}**

1211	RBP
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**SUMMARY**

Reporting on progress of the Draft Comprehensive Kempsey Standard Local Environmental Plan (Draft KLEP 2012).

**2012. 74 RESOLVED:**

*Moved: Cl. **Bowell**  
 Seconded: Cl. **Sproule***

**That Council endorse the revised Draft Comprehensive KLEP 2012 and forward it to the Department of Planning and Infrastructure requesting a certificate to publicly exhibit the plan under section 65 (repealed) of the *Environmental Planning and Assessment Act 1979*.**

**A Division resulted in the following votes.**

**F = Voted For  
 A = Voted Against**

<b>Bowell</b>	<b>F</b>	<b>Campbell</b>	<b>F</b>	<b>Green</b>	<b>F</b>	<b>Gribbin</b>	<b>F</b>	<b>Saul</b>	<b>F</b>
<b>Snowsill</b>	<b>F</b>	<b>Sproule</b>	<b>F</b>						

**1.2 Modification to Approved Hard Rock Quarry to Change the Extraction Areas**  
**File: T4-95-104 (T6-12-1) {Folio No. 472615}**

1411	RBP
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**SUMMARY**

Reporting that Council has received a section 96(2) modification application proposing to make changes to the extraction area footprint and depth for the approved quarry in Kundabung for which an objection has been received.

Applicant: Hurd Haulage Pty Ltd  
 Subject Property: Lot 1 DP710232, No 49 Yarrabee Road,

Zone: Kundabung  
1(a1) – Rural "A1" Zone

**2012. 75 RESOLVED:**

*Moved: Cl. Bowell  
Seconded: Cl. Green*

**A That Development Application T4-95-104 (T6-12-1) be approved subject to the following conditions:**

- 1 The Development referred to in this application is to be carried out substantially in accordance with the approved Environmental Impact Statement (prepared by ERM Mitchell McCotter Pty Ltd, dated May 1995) as amended and modified by any conditions of this consent.**

**Reason:**

**To confirm the details of the application as submitted by the applicant and as approved by council.**

- 2 All operations are to cease and rehabilitation works completed within 25 years of the date of this consent. Separate development consent will be required to recommence operations after that time.**

**Reason:**

**To confirm the details of the application as submitted by the applicant and as approved by council.**

- 3 Submission of detailed engineering plans, duly endorsed by the Roads and Traffic Authority, prior to commencement of any works, incorporating the following:-**

- a) Sealing of Yarrabee Road from the Pacific Highway to 30 metres within the property;**
- b) The road reserve is to be fixed by survey and all works contained within the road reserve;**
- c) Upgrading of the junction of the Pacific Highway and Yarrabee Road to AUSTRROADS "Fid 5.16 – Desirable Treatment" Part 5 DTP – Intersections at Grade to improve turning radius for heavy vehicles.**

**All works are to be carried out in accordance with the plans and completed prior to transportation of any material from the site.**

**Reason:**

**Section 90(l)(j) and (i) – To specify council's requirements, having regard to the potential traffic generated by the development and the capacity of the existing road system.**

- 4 All works are to be carried out in accordance with the recommendations contained on page 7.5 of the Fauna Impact Statement contained within the EIS. In this regard, it will be necessary to submit a report prepared by a recognised Ecological Consultant 3 months from the date of**

commencement of works, indicating that all recommended measures have been undertaken. Thereafter, a report prepared by the Consultant is to be submitted to Council within each 12 month period from the date of commencement, indicating the results of the proposed monitoring program indicating the effects of noise, blasting and traffic movements on native fauna. The report shall, if necessary, include recommendations for the ongoing management of the quarry which shall be employed by the operator.

**Reason:**

**Section 90(1)(c2) – To minimise the impact of the proposal on native fauna in the locality.**

- 5 A Building Application is to be submitted and all work is to be in accordance with the requirements of the Building Code of Australia and the Local Government (Approvals) Regulation 1993.**

**Reason:**

**Section 90(1)(e) – To ensure work conforms with legislative requirements in respect to building.**

- 6 Submission of a detailed Plan of Management, prior to commencement of any works, duly endorsed by the Environment Protection Authority and Department of Land and Water Conservation (Soil Conservation), incorporating the following and any other requirements of the respective departments.**

## **A MONITORING**

### **(a) Noise**

- (i) Details of the proposed means of monitoring the effects of noise on adjoining residences not associated with the operation of the quarry. Such means to ensure that noise levels meet the criteria prescribed in relevant conditions of this consent.**
- (ii) Monitoring of blasting is to include every blast for the first 3 months from commencement of blasting, then quarterly for the following 12 months. Thereafter, monitoring shall occur every 6 months except as directed by Council or the Environment Protection Authority.**
- (iii) Monitoring of operational noise shall be carried out at adequate frequency as determined by the Environmental Protection Authority.**
- (iv) Monitoring of operational noise is to be carried out in accordance with the relevant Australian Standard by a person with suitable related qualifications and who is a member of a suitable accreditation body. Prior notice of the nominated person is to be submitted for Council's agreement. The results of the monitoring are to be reported to**

Council each 3 months from the date of commencement for the first 12 months and thereafter each 12 months.

**(b) Dust**

- (i) Details of the proposed means of monitoring the effects of dust on adjoining residences. Such means to ensure that dust levels meet the criteria prescribed in relevant conditions of this consent.**
- (ii) Placement of sufficient dust monitors on the subject land and adjoining lands (with the consent of owners) as determined by the Environment Protection Authority.**
- (iii) Monitoring is to be carried out in accordance with the relevant Australian Standard by a person with suitable related qualifications and who is a member of a suitable accreditation body. Prior notice of the nominated person is to be submitted for Council's agreement. The results of dust monitoring are to be submitted to Council each 3 months for the first 12 months from commencement of operations and thereafter each 12 months.**
- (iv) Details of the means of monitoring the effects of dust on high voltage electricity insulators and details of the means of inspecting the cleaning insulators, duly endorsed by Pacific Power are to be submitted.**
- (v) Details of proposed crushing and screening dust suppression measures.**

**(c) Water Quality**

- (i) Details of the proposed means of monitoring the quality of water at the point of discharge from the proposed sediment control dams and any other points as directed by the Environment Protection Authority.**
- (ii) Monitoring shall be carried out at adequate frequency as determined by the Environment Protection Authority. Monitoring is to be carried out in accordance with the relevant Australian Standard by a person with suitable related qualifications and who is a member of a suitable accreditation body. Prior notice of the nominated person is to be submitted for Council's agreement. The results of monitoring are to be submitted to Council on a quarterly basis for the first twelve months from the date of commencement and each twelve months thereafter.**

**B SEDIMENT CONTROL DAMS/ EROSION CONTROL**

- (a) Submission of detailed plans of the design and construction of proposed sediment control dams.
- (b) The plans are to include details of the water balance calculations.
- (c) Details of proposed erosion control measures during construction and for on-going operations.

**C LANDSCAPING/ REHABILITATION**

- (a) A detailed rehabilitation plan providing for re-establishment of endemic species.
- (b) Details of the species and proposed means of establishing the compensatory habitat area. In this regard, it will be necessary to consult with the National Parks and Wildlife Service. Written advice from the Service should be submitted with the plan.
- (c) Details of the proposed means of maintaining the landscaped bunds and compensatory habitat, including proposed means of controlling weeds and stock.

**Reason:**

**Section 90(1)(b) – To ensure that the development will not have any harmful environmental effects.**

- 7 Blasting is to be confined to between 9.00am and 3.00pm Monday to Friday except where an emergency situation occurs which delays a loaded shot being fired. In the event that a shot is loaded but cannot be fired during these hours, the Council will be notified forthwith and will be furnished with a written report documenting the reasons within a period of seven days,**

**Reason:**

**Section 90(1)(o) – To ensure the development will not adversely affect the amenity of the neighbourhood.**

- 8 The loading and shunting of rail cars is to be restricted to between 7.00am and 6.00pm Monday to Friday. This condition shall not apply while dwellings on Lot 2 DP710232 and Lot 5 DP246716 are owned and occupied in association with the quarry.**

**Reason:**

**Section 90(1)(o) – To ensure the development will not adversely affect the amenity of the neighbourhood.**

- 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 quarrying and associated activities, (excluding blasting and transportation) is not to exceed the existing L90 Background Noise Level by more than 5 dB as defined in the EIS and by ongoing monitoring.
- (b) Noise associated with transportation of material by road (including return of empty trucks) is not to exceed any 50 dB(A)Leq, 25 hr.
- (c) Noise associated with loading at the rail siding is not to exceed the existing L90 Background Noise Level by more than 5 dB as described in the EIS and by ongoing monitoring.
- (d) Noise resulting from blasting is not to exceed 115 dB(Lin).
- (e) Ground vibration from blasting is not to exceed 5mm per second.

**Reason:**

**Section 90(1)(o) – To ensure the development will not adversely affect the amenity of the neighbourhood.**

**10 If the results of the required monitoring program indicate that the prescribed noise/vibration criteria are not met or that dust exceeds acceptable limits, and Council and the Environmental Protection Authority are of the opinion that no practical means can be employed to meet the criteria, the quarry proprietor shall:-**

- (a) Upon receipt of a request from the owners of Lot 5 DP246716 (A E Hawke) and Lot 2 DP710232 (J E Berne) purchase such property;
- (b) Pay not less than market value, having regard to the existing use of the land immediately prior to the date of development consent as if it were unaffected by the proposed development;
- (c) Pay reasonable compensation for the cost of disturbance and relocation; and
- (d) Pay reasonable costs, if any, of the claimant in respect of expenses for legal advice and representation and expert witnesses in determining the value of the property and the terms of acquisition.

**Where agreement as to acquisition details cannot be reached between quarry proprietor and any relevant landholder within 6 months of the date of the applicant having received a request to purchase:-**

- (a) Either party may refer the matter to Kempsey Shire Council who shall arrange through the President of the Australian Institute of Valuers for an independent valuation of the relevant property to be undertaken in order to determine current market value as if the land was not affected by the proposed development and reasonable costs and compensation referred to above;
- (b) The quarry proprietor shall bear costs of the valuation arranged by the Kempsey Shire Council;
- (c) Following receipt of advice of such valuation, the quarry proprietor shall offer to purchase the relevant property at a price of not less than the said valuation;
- (d) If, after receipt of advice of such valuation, the quarry proprietors offer to purchase a property has not been accepted by the relevant landowner/s within six months of the date of such offer, the quarry proprietor's obligations pursuant to this condition shall cease.

- 11 The hours of operation for drilling of material are to be restricted to between 7.00 a.m. and 6.00 p.m. Monday to Friday and 7.00 a.m. and 2.00 p.m. Saturday. Other quarry activities (other than blasting) are allowed between the hours of 6.00 a.m. and 6.00 p.m. Monday to Friday and 6.00 a.m. and 2.00 p.m. Saturday under normal operating conditions, and activities other than drilling, blasting and primary crushing are allowed outside those hours at time of high market demand.

Reason:

Section 90(1)(o) – To ensure the development will not adversely affect the amenity of the neighbourhood.

- 12 The applicant shall meet the full costs of installing water filtration equipment for all water collected from roof areas at the residences identified as the Hawke and Berne residences in the approved EIS. This condition will not apply if the respective properties are purchased and occupied in conjunction with quarrying activities.

Reason:

Section 90(1)(o) – To ensure the development will not adversely affect the amenity of the neighbourhood.

- 13 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) at adjoining residences.

(b) The annual average deposition of dust at adjoining residences is not to exceed 2 gram/m<sup>2</sup> month above existing levels as determined by required monitoring.

Reason:

Section 90(1)(o) – To ensure that access is adequate to serve the development.

14 Compliance with the requirements of the Environment Protection Authority. Details of any necessary approvals are to be submitted to Council, prior to commencement of any works.

Reason:

To ensure all statutory approvals have been gained prior to commencement of works.

15 Compliance with the requirements of the National Parks and Wildlife Service. Details of any necessary approvals are to be submitted to Council, prior to commencement of any works.

Reason:

To ensure all statutory approvals have been gained prior to commencement of works.

16 All access and visual bunding works are to be relocated clear of the Crown Road Reserve.

Reason:

To confirm details of the application as submitted by the applicant and as approved by Council.

17 Submission of a satisfactory Fire Management Plan, prepared in consultation with State Forests and Council's Bushfire Control Officer, prior to commencement of any works.

Reason:

Section 90(1)(g) – To ensure adequate provision has been made to minimise any risks associated with bushfire in the area.

18 The proposed rail siding is to be located in accordance with Option A contained in the approved EIS.

Reason:

To confirm the details of the application as submitted by the applicant and as approved by Council and to minimise any adverse impact on the amenity of adjoining residences.

19 The placement of a sign at the intersection of Yarrabee Road and the Pacific Highway indicating the location of the quarry. In this regard, it will be necessary to gain approval from the Roads and Traffic Authority, prior to placement of such signs.

Reason:

Section 90(1)(q) – To ensure signposting to the site is adequate.



- 20 Feral animal traps are to be placed in consultation with the Kempsey Rural Lands Protection Board and National Parks and Wildlife Service and managed in accordance with their respective requirements throughout the clearing phases of operation.

Reason:

Section 90(1)(c2) – To minimise the impact of the proposal on native fauna.

- 21 The erection of a man-proof fence along the entire length of the common boundary with the adjoining State Forest. The fence is to be of a type which does not involve the use of barbed wire. Suitable warning signs at 40m intervals are to be placed on the fence facing the State Forest.

Reason:

Section 90(1)(r.) – To ensure adequate provision has been made to protect public safety and Section 90(1)(c2) – to minimise any adverse effect on endangered fauna.

- 22 A truck speed limit of 30 km/h shall apply between the Yarrabee Road/Pacific Highway intersection and the quarry site. In this regard, it will be necessary to erect suitable truck speed limit signs at either end and in the middle of the access route.

Reason:

Section 90(1)(c2) – To limit the impact of the proposal on fauna.

- 23 A water tanker or trailer is to be provided and the internal accessway and maneuvering areas are to be kept damp at all times, so as to minimise potential for dust.

Reason:

Section 90(1)(o) – To ensure the development will not adversely affect the amenity of the neighbourhood.

- 24 The erection of two truck warning signs at either side of the access point on the Pacific Highway. In this regard, it will be necessary to seek approval from the Roads and Traffic Authority.

Reason:

Section 90(1)(r) – To ensure that adequate provision is being made to protect users of the Pacific Highway.

- 25 Submission of detailed plans for the fuel storage area, indicating compliance with Australian Standard 1940-1948, prior to commencement of any works.

Reason:

Section 90(1)(b) – To ensure that the development will not have any harmful environmental effects.

- 26 The following safety measures are to be employed in relation to proposed blasting activities:-

- (a) A quarry employee is to be located at each end of the right of way and linked by two-way radio to the blast controller for the duration of blasting activities. The employees are to be supplied with signs indicating that vehicles are to stop pending blasting.
- (b) All residents of dwellings serviced by the right-of-way are to be contacted not less than 6 hours after each blast.
- (c) Signs are to be erected along the right-of-carriageway providing a minimum 24 hours notice of proposed blast times.

**Reason:**

**Section 90(1)(r.) – To ensure that adequate provision has been made for public safety.**

- 27** A written notice is to be served on all residences within 2 kilometres of the quarry, not less than 48 hours prior to blasting, indicating proposed blast times.

**Reason:**

**Section 90(1)(o) – To ensure the development will not adversely affect the amenity of the neighbourhood.**

- 28** The visual bunds proposed along the quarry access road and to the north of the rail siding as described in Section 8.4.3 and Figure 4.1 of the EIS will only be required to be constructed of any existing or future dwelling house which benefits by and depends for its access upon the right-of-carriageway through Lot 1 DP710232 is not owned and occupied in association with the quarry.

**Reason:**

**To confirm the details of the application as submitted by the applicant and as approved by Council.**

- 29** The noise mitigation measures referred to in Section 5.8.4 of the EIS need not be implemented while dwellings on both Lot 2 DP710232 and Lot 5 DP246716 are owned and occupied in association with the quarry, unless noise monitoring required by Condition 7 demonstrates that noise level criteria prescribed in relevant Conditions of this consent are not being met. If the prescribed criteria are not being achieved, the mitigation measures referred to in Section 8.5.4 of the EIS, or such other measures as approved by the Council shall be implemented by the quarry management to ensure the prescribed criteria are achieved.

**Reason:**

**To confirm the details of the application as submitted by the applicant and as approved by council.**

**PRIOR TO ANY WORKS OCCURRING WITHIN THE AREA MARKED ON THE PLAN AS 'PROPOSED DISTURBANCE OUTSIDE OF APPROVED EXTRACTION AREA'**

- 30 A minimum of 75 nesting boxes suitable for accommodating microbats are to be installed within the area of existing habitat within the koala habitat compensation area.

**Habitat Compensation Measures**

- 31 Loss of koala habitat must be compensated via the securement of a corresponding measure of land that equates to no less than two times the total area to be affected by vegetation removal, as per the approved 'Compensation Area Plan'.
- 32 The area to be secured as compensation must comprise no more than half existing preferred koala habitat. The remaining area must comprise cleared or partially cleared land for revegetation purposes.
- 33 Cleared, or partially cleared land for revegetation purposes must be planted out with a species mix to establish a vegetation community (including an appropriate understorey, midstorey and overstorey) equivalent to the area being disturbed. The proportion of preferred koala feed trees in the vegetation community must be equivalent to that being disturbed, or 15%, whichever is the larger. Half of all replanted preferred koala feed trees must be Tallowwood. The timing of the revegetation is to be in accordance with the Vegetation Management Plan attached to the Section 88B Instrument required by conditions of this consent.
- 34 A Section 88B Instrument placing a restriction on the title of Lot 5 DP246716, benefitting Lot 1 DP710232, is to be in place to protect the approved "Koala Compensation Area" in perpetuity, prior to any works commencing within the area marked on the approved plan as "Proposed disturbance outside of the approved extraction area." The restrictive covenant must include, to the satisfaction of Council, a Vegetation Management Plan, that specifies details of:
- a) Pre-vegetation forest cover and composition;
  - b) Post-revegetation forest cover and composition targets;
  - c) The species to be planted (all should be endemic natives not horticultural hybrids), number of trees/plants to be planted, location and density of replanted vegetation;
  - d) Preferred Koala Feed Tree seedlings must be of a minimum size and maturity to best ensure survival. Any loss of seedlings within the agreed maintenance period must be replaced by the owner of the land;
  - e) Details of the sourcing of all seedlings (demonstrating local seedstock has been used);
  - f) Bush regeneration methods, timeframes and objectives;
  - g) A schedule of management, monitoring and maintenance activities to ensure establishment and

- ongoing protection and management of replanted vegetation;
- h) The length of proposed monitoring and management periods, the timing of key milestones and reporting requirements;
- i) Provisions for planting mortality replacements; and
- j) Responsible parties for undertaking and funding all works and activities included in the plan.

All costs associated with enacting the restrictive covenant on title, including funding and maintenance of the revegetation component, must be borne by the applicant.

**Fauna protection measures pre-tree clearing and during tree-clearing**

- 35 All personnel involved in the clearing and construction works are to be informed of the relevant ecological management measures during the site induction.
- 36 Equipment is to be carefully cleaned and maintained on a regular basis in such a manner as to minimise the spread of weeds into or throughout the site or surrounding area.
- 37 Prior to the commencement of the clearing and construction works, the extent of the extraction footprint and clearing areas is to be clearly marked in the field. No works are to extend beyond the extraction area footprint.
- 38 Native vegetation is to be retained to the maximum extent possible.
- 39 During vegetation clearing, vegetation is not to be directionally fallen into adjacent cleared areas in order to prevent damage of adjacent vegetation.
- 40 After the initial vegetation clearing, self-supporting fences are to be established along the interface of the area to be cleared and adjacent forest vegetation.
- 41 Access for machinery and workers is to be formally defined within the construction footprint. Care must be taken at all times to avoid traversing areas outside the defined footprint.
- 42 No barbed wire is to be used in any temporary fencing in order to reduce the risk of entanglement of local fauna.
- 43 An ecological pre-clearing survey is to be undertaken within the site by a qualified ecologist immediately prior to the commencement of any vegetation clearing. The primary aim of this survey is to inspect the habitats within and adjoining the clearing areas of any fauna (particularly threatened species), including arboreal searches for koalas, terrestrial searches amongst logs and areas of dense vegetation for ground-dwelling species, etc., in order to minimise the risk of direct mortality or injury during vegetation clearing. Any small ground dwelling fauna is to be captured by the ecologist and appropriately relocated into suitable habitat areas greater

than 50m from the area to be cleared. If arboreal fauna are detected, a 10m construction buffer area is to be established around non-threatened fauna, while a 30m construction buffer area is to be established around significant fauna (e.g. koalas) until the animal voluntarily moves on. If significant non-mobile fauna or significant habitat features are identified (e.g. raptor nest), the Department of Environment Climate Change and Water is to be contacted immediately and appropriate measures are to be implemented prior to commencement of any significant clearing works.

- 44 All attempts are to be made to retain hollow-bearing trees. If removal of these trees is necessary, they must be removed in accordance with the following procedure:
- Following completion of the inspection immediately prior to clearing, non-hollow bearing trees are to be removed first. Hollow bearing trees may be removed no less than 24 hours after the removal of adjacent hollow bearing trees. The aim of this recommendation is to make the hollow-bearing trees less desirable for hollow-obligated fauna.
  - The hollow-bearing trees must be subject to a den watch the night immediately prior to removal. The aim of this recommendation is to identify any roosting/denning/nesting fauna likely to be utilizing the subject hollows at the time of removal and if further actions to minimise disturbance are required.
  - Hollow bearing trees may only be removed when a suitably qualified ecologist is present. They are to be cleared using the following procedures where possible and in accordance with Occupational Health and Safety requirements.
  - The subject hollow bearing tree is to be gently “bumped” three times over a minimum 5 minute period (minimum 1 minute pause between bumps). The aim of this procedure is to encourage nesting/denning/roosting hollow dependent fauna to disperse. If fauna are identified, the “bumping” is to continue for a minimum 5 minute period where no fauna are detected evacuating the tree.
  - The subject tree may be felled after waiting a minimum period of 1 minute after the final bump. The tree is to be felled slowly (e.g. using an excavator to dig around the roots then gently push the tree over).
  - Felling of the hollow bearing trees is to occur during February/March, if practical, to avoid the peak maternity periods of most potentially nesting/denning locally recorded threatened fauna species.
  - Once fallen, the suitable qualified ecologist is to inspect the hollows and capture and appropriately relocate any detected fauna, as well as record any detected fauna mortality.
  - The tree is to be left at the felled site for at least 24 hours after being fallen. The ecologist is to advise if the trees are suitable for recycling as a hollows log. If so, the fallen tree is to be placed within forested areas, at least 50m from the construction footprint. If the tree is not suitable, it may be disposed of with the other cleared vegetation.

- Should injured fauna be found on the site, local wildlife care groups and/or local veterinarians are to be contacted immediately and arrangements made for the immediate welfare of the animal.

- 45 At the direction of the ecologist, a proportion of the existing logs located within the areas to be cleared are to be pushed to the edges of the habitat to be retained. In addition, at the direction of the ecologist, a proportion of the felled trees are to be pushed into areas of habitat to be retained to increase habitat quality for ground dwelling fauna.

**DURING ANY WORKS OCCURRING WITHIN THE AREA MARKED ON THE PLAN AS 'PROPOSED DISTURBANCE OUTSIDE OF APPROVED EXTRACTION AREA'**

**Aboriginal Cultural Objects**

- 46 If Aboriginal cultural objects are uncovered due to clearing activities, all works are to halt in the immediate area to prevent any further impacts to the object/s. A suitably qualified archaeologist and Aboriginal community representatives are to be contacted to determine the significance of the object/s. The site is to be registered in the AHIMS (managed by OEH) and the management outcome for the site included in the information provided to AHIMS.

If human remains are located during the clearing activities within the proposed extension of the southern pit, all works must halt in the immediate area to prevent further impacts to the remains. The NSW Police, the Aboriginal community and OEH would be notified. If the remains are found to be of Aboriginal origin and the police consider the site not an investigation site for criminal activities, OEH are to be contacted and notified of the situation. Works are not to resume in the designated area until approval in writing is provided by OEH. In the event a criminal investigation ensues, works are to not resume in the designated area until approval in writing has been received from NSW Police and OEH.

All reasonable efforts are to be made to avoid impact to Aboriginal cultural heritage values at all stages of the development works. If impacts are unavoidable, mitigation measures are to be negotiated with the Aboriginal community and OEH.

**Revegetation**

- 47 Once the gravel extraction is completed from the approved extended extraction areas of the quarry, revegetation of the site is to occur in accordance with Section 2.8 of the Statement of Environmental Effects dated November 2011.

**ADVICE**

Comments from NSW Department of Primary Industries – Office of Water

In anticipation of an application for a license under the *Water Act 1912*, the NSW Office of Water have advised that the following information will be required to be provided on receipt of the license application.

- 1 The report states that a groundwater licence will be sought for extraction below the approved 20m AHD. However, NOW advises that a groundwater licence should be sought for the intersection of groundwater whether it be intersected under the current Council approval or not, ie also if encountered above 20m AHD.
- 2 Further information is required to identify impacts on the nearby creek to the south of the site. It is identified that:
  - Page 27 – the creek is at a level of 10-14m AHD;
  - Page 30 – slug tests indicate an almost immediate recovery for wells 1 & 2;
  - The final level of the southern pit being 8m AHD resulting in a potential 6m head fall between the creek and pit floor with the subsequent potential for dewatering the creek as displayed during the recovery of wells 1 & 2; and
  - Groundwater contours provided in the report indicate groundwater migration towards the creek.
- 3 Further information is required on the permeability of the quarry rock. All information has been displayed relating to a very low permeability. However, well 1, which is fully screened in quarry material with overlying alluvium sealed off (contrary to that documented in the report) displays an almost immediate recovery during the slug test.
- 4 Any further investigation into the permeability of the quarry rock should lead to the refinement of the potential volume of dewatering required.
- 5 App2 page 11 refers to semi confining clays being present at the site. This contradicts p30 of the report suggesting the overlying alluvium is resulting in significant recharge during slug tests.
- 6 Further information is required on the presence of the artesian conditions at the site with respect to:
  - Impacts of mining on the confining layer;
  - Potential impacts on the southern creek;
  - Increases in volumes required to be dewatered considering that current calculations have been made assuming the system is unconfined.
- 7 Further justification is needed on the assumption that the northern pit lies well above the regional water table. It is noted that there will be up to 50m of vertical depth of material taken out. Cross sections provided in App2 figures 10 and 11 indicate conceptual groundwater levels of the final floor in an area where water tables would continue to rise beyond the extent of the cross section boundary and therefore beyond the height of the quarry floor.

- 8 It is recommended that should any further monitoring bores be installed, their construction be such that the groundwater from the overlying alluvium be sealed off.
- 9 All bores should be licenced through NSW Office of Water.
- 10 Any future monitoring bore should be licenced prior to their installation.

**B That the objectors be advised of Council's decision.**

**A Division resulted in the following votes.**

**F = Voted For**

**A = Voted Against**

<b>Bowell</b>	<b>F</b>	<b>Campbell</b>	<b>F</b>	<b>Green</b>	<b>F</b>	<b>Gribbin</b>	<b>F</b>	<b>Saul</b>	<b>F</b>
<b>Snowsill</b>	<b>F</b>	<b>Sproule</b>	<b>A</b>						

**1.3 Proposed Secondary Dwelling**  
**File: T6-11-385 {Folio No. 472618}**

1411	RBP
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**SUMMARY**

Reporting that Council has received a development application for the purpose of a secondary dwelling utilising the existing dwelling, for which objections have been received.

Applicant: Carol Cavanagh c/- Hadlow Design Service  
 Subject Property: Lot 164 DP790979, 86 Mitchell Street, South West Rocks  
 Zone: 2(b1) – Residential B1 Zone

**2012. 76 RESOLVED:**

*Moved: Cl. Saul*  
*Seconded: Cl. Gribbin*

**A That Development Application T6-11-385 be approved subject to the following conditions:**

**PARAMETERS OF THIS CONSENT**

- 1 **Development is to be in accordance with approved plans**  
**The development is to be implemented in accordance with the plans and supporting documents set out in the following table except where modified by any conditions of this consent.**

Plan No./ Supporting Document	Version	Prepared by	Dated
Proposed Second Dwelling, Plans and Elevations (File Reference:	-	Hadlow Design Services	22/12/11



Plan No./ Supporting Document	Version	Prepared by	Dated
51940-21DA)			
BASIX Certificate No. 410501S	-	Hadlow Design Services	22/12/11

In the event of any inconsistency between conditions of this development consent and the plans/supporting documents referred to above, the conditions of this development consent prevail.

The approved plans and supporting documents endorsed with the Council stamp and authorised signature must be kept on site at all times while work is being undertaken.

**2 Compliance with Building Code of Australia and insurance requirements under Home Building Act 1989**

All building work must be carried out in accordance with the requirements of the Building Code of Australia as in force on the date the application for the relevant construction certificate or complying development certificate was made.

In the case of residential building work for which the *Home Building Act 1989* requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.

This condition does not apply to:

- a) To the extent to which an exemption is on force under clause 187 or 188 of the *Environmental Planning and Assessment Regulation 2000* (EPAR), subject to the terms of any condition or requirement referred to in clause 187(6) or 188(4) of the EPAR, or
- b) To the erection of a temporary building.

**4 This consent does not permit commencement of any works  
This consent does not permit commencement of any site works. Works are not to commence until such time as a Construction Certificate has been obtained and the appointment of a Principal Certifying Authority.**

**5 Limitation on Floor Area of Secondary Dwelling  
The floor area of the secondary dwelling must be no greater than 60m<sup>2</sup>. For the purposes of this condition, the floor area is to be taken as the area within the outer face of the external walls of the dwelling and beneath the roof of any patio of verandah.**

**THE FOLLOWING CONDITIONS MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF ANY CONSTRUCTION CERTIFICATE FOR THE SITE**

**6 Engineer's Details  
Prior to the issue of any Construction Certificate engineer's details for all proposed works, including footings, foundations, reinforced concrete slab, structural components, details of cut**

and fill, retaining walls, driveways, etc. shall be provided to the Principal Certifying Authority (PCA) for approval. All engineer's details must be prepared by an appropriately qualified, experienced and practicing Engineer in accordance with Council's *Development Control Plan No. 36*. All engineer's details must be approved as part of the Construction Certificate.

- 7 **Water and Sewerage Section 68 approval required**  
An approval under Section 68 of the *Local Government Act 1993* to carry out water supply work and sewerage work shall be obtained from Council for any and all sewerage or water reticulation works and provided to the Principal Certifying Authority (PCA) prior to the issue of any Construction Certificate.

- 8 **Stormwater drainage approval required**  
Prior to the issue of any Construction Certificate engineer's details for a stormwater drainage system designed to direct all stormwater to a Council approved stormwater drainage system to prevent discharge runoff onto adjoining land shall be submitted to Principal Certifying Authority (PCA) for approval. The drainage system shall be designed for 1 in 5 year storm event. This system must be designed in accordance with AS/NZS 3500.3:2003 - *Plumbing and drainage, Part 3: Stormwater drainage*, and Council's Adopted Engineering Standard. All piped drainage lines over adjoining land shall be located within drainage easements. All such engineer's details shall be approved as part of the Construction Certificate.

If any works are required within the road reserve or walkway an approval under Section 68 of the *Local Government Act 1993* to carry out stormwater drainage work shall be obtained from Council and provided to the Principal Certifying Authority (PCA) prior to the issue of a Construction Certificate. Engineering plans and specifications are to be submitted in triplicate and must include details in accordance with Appendix C of AS/NZS 3500.3:2003 - *Plumbing and drainage, Part 3: Stormwater drainage*, and Council's Adopted Engineering Standard. All costs are the responsibility of the proponent.

- 9 **Compliance with BASIX Certificate**  
The Principal Certifying Authority (PCA) is to ensure that the proposed development is constructed in accordance with the requirements of BASIX Certificate 410501S, dated 22 December 2011. The plans submitted for approval with the Construction Certificate must include all of the BASIX Certificate commitments indicated in this certificate.

Where changes to the development are proposed that may affect the water, thermal comfort or energy commitments, a new BASIX Certificate may be required.

- 10 **Long Service Levy to be paid**  
Prior to the issue of any Construction Certificate a Long Service Levy shall be paid to the Long Service Payments Corporation. The amount payable is currently based on 0.35%

of the cost of the work. This is a State Government Levy and is subject to change without notice. The requirements of the State Government supersede this condition.

This payment may be made at Council's Customer Service Centre. Cheques shall be made payable to Kempsey Shire Council.

- 11 Contribution to be paid towards provision or improvement of amenities and services prior to the issue of a Construction Certificate

The particulars of contributions levied pursuant to Section 94 of the Act are set out in the following table:

The specific public amenity or service in respect of which the condition is imposed	The contributions plan under which the condition is imposed	Date of contributions plan
Community Services	South West Rocks Section 94 Contribution Plan	Feb 2008
Open Space & Bushland	South West Rocks Section 94 Contribution Plan	Feb 2008
Traffic & Transport Management	South West Rocks Section 94 Contribution Plan	Feb 2008
Public Domain Improvement	South West Rocks Section 94 Contribution Plan	Feb 2008
Stormwater Management	South West Rocks Section 94 Contribution Plan	Feb 2008
Other Services	South West Rocks Section 94 Contribution Plan	Feb 2008
Plan, Studies & Management	South West Rocks Section 94 Contribution Plan	Feb 2008
Project Administration	Section 94 Project Administration	10 Aug 2007

The above plans may be viewed during office hours at the Council Offices located at 22 Tozer Street, West Kempsey.

Contributions set out in the following Schedule are to be paid to Council prior to the issue of any Construction Certificate for the development. The following contributions are current at the date of this consent. The contributions payable will be adjusted in accordance with the relevant plan and the amount payable will be calculated on the basis of the contribution rates that are applicable at the time of the payment. The contribution rates for specific dates are available from Council offices during office hours. Payments will only be accepted by cash or bank cheque.

Schedule of Contributions pursuant to Section 94 of the Environmental Planning and Assessment Act 1979:

Public Amenity or Service	Unit type	No. of Units	Contribution Rate (Amount per Unit)	Contribution Levied	Date until which Contribution rate is applicable	Office Use Only receipting Codes
Community Services – Library	Increase in Occupation Rate	1.3	\$321	\$416.70	30 June 2011	AYC1
Community Services – MPB	Increase in Occupation Rate	1.3	\$393	\$511.21	30 June 2011	AYC2
Open Space Acquisitions	Increase in Occupation Rate	1.3	\$383	\$498.24	30 June 2011	AYC3
Open Space Increased Capacity	Increase in Occupation Rate	1.3	\$1,237	\$1,607.94	30 June 2011	AYC4
Bushland	Increase in Occupation Rate	1.3	\$27	\$35.31	30 June 2011	AYC5
Traffic and Transport Management	Increase in Occupation Rate	1.3	\$1,164	\$1,513.44	30 June 2011	AYC6
Public Domain Improvements	Increase in Occupation Rate	1.3	\$165	\$214.46	30 June 2011	AYC7
Stormwater Management	Increase in Occupation Rate	1.3	\$1,118	\$1,453.77	30 June 2011	AYC8
Support Services – Bushfire	Increase in Occupation Rate	1.3	\$31	\$40.48	30 June 2011	AYC9
Support Services – Surf Life Savings	Increase in Occupation Rate	1.3	\$38	\$49.62	30 June 2011	AYC10
Plan Studies	Increase in Occupation Rate	1.3	\$65	\$85.12	30 June 2011	AYC11
Sub-total				\$6,426.29		
S94 Administration	6% of total Section 94 charge applicable			\$385.58		AY
TOTAL				\$6,811.86		

**12 Certificate of Compliance**

Prior to the issue of any Construction Certificate a Certificate of Compliance pursuant of Section 305 of the *Water Management Act 2000* shall be obtained from Council and provided to the Principal Certifying Authority (PCA).

Please refer to the Advice section of consent for additional information on water and sewer works and contributions.

**13 External Finishes**

Details of external finishes of the secondary dwelling are to be submitted and approved by Council prior to the issue of any Construction Certificate. The details of external finishes, including material and colour, are to demonstrate visual compatibility with the existing house on the site.

**THE FOLLOWING CONDITIONS MUST BE COMPLIED WITH PRIOR TO ANY BUILDING OR CONSTRUCTION WORKS COMMENCING**

**14 Date of commencement**

Council shall be notified of the commencement of works not less than two (2) days prior to any works commencing. The

two (2) day notification to Council shall be in writing and specify the date of commencement.

**15 Public liability insurance required**

Prior to any building, construction or demolition works commencing evidence shall be provided to the Principal Certifying Authority (PCA) of public liability insurance cover for a minimum of \$20 million. Council shall be nominated as an interested party on the policy.

**16 Site construction sign required**

A sign or signs must be erected before the commencement of the work in a prominent position at the frontage to the site:

- a) Showing the name, address and telephone number of the principal certifying authority for the work;
- b) Showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours; and
- c) Stating that unauthorised entry to the work site is prohibited.

The sign is to be maintained while building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

This condition does not apply in relation to building work, subdivision work or demolition work that is carried out inside an existing building that does not affect the external walls of the building.

No sign is to have an area in excess of one (1)m<sup>2</sup>.

**17 Notification of Home Building Act 1989 requirements**

Residential building work within the meaning of the *Home Building Act 1989* must not be carried out unless the principal certifying authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:

- (a) In the case of work for which a principal contractor is required to be appointed:
  - (i) The name and licence number of the principal contractor; and
  - (ii) The name of the insurer by which the work is insured under Part 6 of that Act.
- (b) In the case of work to be done by an owner-builder:
  - (i) The name of the owner-builder; and
  - (ii) Of the owner-builder is required to hold an owner-builder permit under the Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the above information becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the updated information.

This condition does not apply in relation to Crown development that is certified, in accordance with Section 109R of the Act, to comply with the technical provisions of the State's building laws.

**18 Erosion & sediment measures in accordance with Council's Guidelines**

All erosion and sedimentation controls shall be in place in accordance with Council's guidelines prior to the commencement of any works.

**19 Toilet facilities**

Toilet facilities shall be provided or made available at or in the vicinity of the work site at a rate of one toilet for every 20 persons or part of 20 persons employed at the site. Each toilet provided shall be a flushing toilet connected to Council's sewer infrastructure, or to an approved temporary water closet.

**THE FOLLOWING CONDITIONS MUST BE COMPLIED WITH DURING CONSTRUCTION**

**20 Construction times**

Construction works must not unreasonably interfere with the amenity of the neighbourhood. In particular construction noise, when audible on adjoining residential premises, can only occur:

- a) Monday to Friday, from 7am to 6pm.
- b) Saturday, from 8am to 1pm.

No construction work is to take place on Sundays or Public Holidays.

**21 Limiting construction noise**

Construction noise is to be limited as follows:

- a) For construction periods of four (4) week and under, the L10 noise level measured over a period of not less than fifteen (15) minutes when the construction site is in operation must not exceed the background level by more than 20dB(A).
- b) For construction periods greater than four (4) weeks and not exceeding twenty-six (26) weeks, the L10 noise level measured over a period of not less than fifteen (15) minutes when the construction site is in operation, must not exceed the background level by more than 10 dB(A).

**22 Construction dust suppression**

All necessary works are to be undertaken to control dust pollution from the site.

These works must include, but are not limited to:

- a) Restricting topsoil removal;
  - b) Regularly and lightly watering dust prone areas (note: prevent excess watering as it can cause damage and erosion);
  - c) Alter or cease construction works during periods of high wind.
- 23 Builders rubbish to be contained on site  
All builders rubbish is to be contained on site in a 'Builders Skip' or an enclosure. Building materials are to be delivered directly onto the property. Footpaths, road reserves and public reserves are to be maintained clear of rubbish, building materials and all other items.
- 24 Plumbing Standards and requirements  
All Plumbing, Water Supply and Sewerage Works are to be installed and operated in accordance with the *Local Government Act 1993*, the NSW Code of Practice for Plumbing and Drainage and AS/NZS 3500 Parts 0-5, the approved plans (any notations on those plans) and the approved specifications.
- 25 Maintenance of sediment and erosion control measures in accordance with Council's Guidelines  
Sediment and erosion control measures in accordance with Council's Guidelines must be maintained at all times until the site has been stabilised by permanent vegetation cover or hard surface.
- 26 Support for neighbouring buildings  
If any excavation extends below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation to be made:
- a) Must preserve and protect the adjoining building from damage;
  - b) If necessary, must underpin and support the building in an approved manner; and
  - c) Must, at least seven (7) days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.

The owner of the adjoining allotment of land, public road or any other public place is not to be held liable for any part of the cost of work carried out, whether carried out on the

allotment of land being excavated or on the public road, any other public place or the adjoining allotment of land.

- 27 **Public liability insurance to be maintained**  
The public liability insurance cover required by this consent shall be maintained for the duration of the period of all works and during any maintenance period.

**THE FOLLOWING CONDITIONS MUST BE COMPLIED WITH PRIOR TO OCCUPATION OF THE BUILDING**

- 28 **Sewer, water and stormwater to be connected**  
Prior to the issue of any Occupation Certificate written evidence from Council shall be submitted to the Principal Certifying Authority (PCA) demonstrating that Council is satisfied that all water, sewer and stormwater works required by all relevant approvals under Section 68 of the *Local Government Act 1993* have been completed in full. Council shall not issue such written evidence until such time as all required water, sewer and stormwater works have been completed in full in accordance with relevant approvals under Section 68 of the *Local Government Act 1993* and all accompanying approved plans and details, to the satisfaction of Council.
- 29 **BASIX Certificate commitments required to be completed**  
Prior to the issue of any Occupation Certificate all BASIX commitments shown on the following certificates, plans and specification shall be completed in full:
- a) The BASIX Certificate 410501S, dated 22 December 2011, and the associated plans and specifications approved as part of the Construction Certificate.
- 30 **Rectification of any damages**  
Prior to the issue of any Occupation Certificate written evidence from Council shall be submitted to the Principal Certifying Authority (PCA) demonstrating that Council is satisfied that all infrastructure is maintained/repaired to pre-development conditions and that no further work is to be carried out that may result in damage to Council's roads, footpaths, services, etc. Council shall not issue such written evidence until such time as evidence has been provided to Council indicating the pre development condition of the surrounding public land and infrastructure. Such evidence must include photographs. The proponent will be held responsible for the repair of any damage to roads, kerb and gutters, footpaths, driveway crossovers or other assets caused as a result of construction works under this consent.
- 31 **Works to be completed**  
Prior to the issue of any Occupation Certificate all of the works shown on the plans and granted by this consent, including any other consent that is necessary for the completion of this development, and any rectification works to damaged Council land or infrastructure, have been completed in full and approved by the Principal Certifying Authority (PCA) and any other relevant consent authority/s.



- 32 Paving of Visitor Lawn Parking Space**  
Grass-crete or a similar product is to be laid in the lawned visitor parking space shown on the approved plans, to provide a surface that is durable for car parking purposes and allows grass to continue growing.

**THE FOLLOWING CONDITIONS MUST BE COMPLIED WITH  
AT ALL TIMES**

- 33 Retention of existing landscaping**  
Landscaping within the front boundary setback and along the rear boundary is to be retained and maintained in perpetuity. In addition, all landscaped areas shall be maintained in a neat and tidy manner in perpetuity.
- 34 Car parking bays shall be maintained and reserved for car parking**  
All car parking bays shown on the approved plans shall be maintained and reserved for car parking in perpetuity.
- 35 Garage**  
The existing garage on the site is not to be used for habitable purposes, at any time.

**ADVICE**

Certain additional approvals and action required by the applicant  
Certain additional approvals and action required by the by you prior to and during construction works. The *Environmental Planning and Assessment Act 1979* require you to:

- a) Obtain a Construction Certificate prior to the commencement of any works. An application may be lodged with Council, or you may apply to a private accredited certifier for a Construction Certificate. An accredited certifier must obtain Council's approval to certain conditions of this development consent, where indicated before issuing the Construction Certificate;
- b) Nominate a Principal Certifying Authority (PCA) which may be either Council or a private accredited certifier and notify Council of that appointment. You cannot lawfully commence works without complying with this requirement;
- c) Give Council at least two (2) days notice of your intention to commence the erection of a building before commencing construction works. You cannot lawfully commence works without complying with this requirement; and
- d) Obtain an Occupation Certificate before commencing occupation or commencing to use the building or on the completion of other works including the erection of a sign. You cannot lawfully commence occupation or the use of a building without complying with this requirement.

**Certificate of Compliance**

Prior to the issue of any Construction Certificate a Certificate of Compliance pursuant of Section 305 of the *Water Management Act 2000* shall be submitted to the Principal Certifying Authority (PCA).

A Certificate of Compliance shall be issued by Council when all contributions are paid in full and all infrastructure necessary to service the development has been completed in full.

Contributions set out in the following table are to be paid to Council prior to the issue of any Certificate of Compliance. Contributions are levied in accordance with Council’s Kempsey Shire Council Macleay Water DSP for Water dated July 2006. The Plans may be viewed during office hours at Council’s Offices.

The contributions payable will be adjusted in accordance with relevant plan and the amount payable will be calculated on the basis of the contribution rates that are applicable at the time of payment. Payments will only be accepted by cash or bank cheque.

The Certificate of Compliance under Section 306 of the *Water Management Act 2000*, identifying payment of the contributions, is to be provided to the Principal Certifying Authority (PCA) prior to the issue of any Construction Certificate.

Public Service	No. of Equivalent Tenements	Contribution Rate (Amount per ET)	Contribution Levied	Date until which Contribution rate is applicable
Water	0.2 ET	\$8,658.00	\$1,731.60	30 June 2012
Sewer	0.5 ET	\$7,304.00	\$3,652.00	30 June 2012
<b>TOTAL</b>			<b>\$5,383.60</b>	

**Future Subdivision Prohibited**

Clause 24 of State Environmental Planning Policy (Affordable Rental Housing) 2009 states that: *A consent authority must not consent to a development application that would result in any subdivision of a lot on which development for the purposes of a secondary dwelling has been carried out under this Division.*

**Right of Appeal**

If you are dissatisfied with this decision, Section 97 of the *Environmental Planning and Assessment Act 1979* gives you the right to appeal to the Land and Environment Court within six (6) months after the date on which you receive this Notice.

You are further advised that pursuant to Section 82A of the *Environmental Planning and Assessment Act 1979*, a request may be made to review a determination at any time within six (6) months of the date of notification. This right of review does not apply in respect to designated development, integrated development or an application by the Crown.

**B** That the objectors be advised of Council’s decision.

**A** Division resulted in the following votes.

**F** = Voted For

**A** = Voted Against

<b>Bowell</b>	<b>F</b>	<b>Campbell</b>	<b>F</b>	<b>Green</b>	<b>F</b>	<b>Gribbin</b>	<b>F</b>	<b>Saul</b>	<b>F</b>
<b>Snowsill</b>	<b>F</b>	<b>Sproule</b>	<b>F</b>						