

# REGIONAL ▶ QUARRIES

## BYLONG QUARRY

Modification Report



JULY 10, 2023  
REGIONAL GROUP  
20L Sheraton Road Dubbo

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# 1 Introduction

## 1.1 Application for modification of a consent

Reference is made to the Development Consent No. DA0330/2012 (the development consent) issued to Mudgee Dolomite and Lime by Mid-Western Regional Council on 17<sup>th</sup> February 2014 for the Bylong Quarry, located at 8346 Bylong Valley Way, Bylong, NSW, 2849 (**Quarry**) being described as Lot 53, 55 and 66 DP755420 and Lot 1 DP1150843 (refer **Attachment 1 – Development Consent DA0330**) (the Site).

This modification application is made pursuant to Section 4.55 (1A) of the *Environmental Planning and Assessment Act 1979* (the Act) seeking amendment to the approved plans and make several administrative clarifications to existing conditions. The landowner of the site is Brian Murdoch. Landowners consent for this application is attached in appendix A.

Regional Quarries Australia Pty Limited (ACN 602 653 029) (**RQA**) (**the applicant**) who have recently commenced operations at the Quarry. An initial review of the approval and the status of activities at the Quarry identified an opportunity to modify the approved area of disturbance to achieve better environmental outcomes and sustaining the lifecycle of the Quarry for the approved duration of the land use.

## 1.2 Strategic Context

Since consent was granted in 2014, basalt resources in this location have become increasingly important as the region further develops, industries transform and new emerge. The following table provides summary of how the project contributes towards achievement of objectives detailed in the Central West Orana Regional Plan 2022.

<b>Central West and Orana Regional Plan – Achievement of Strategic objectives</b>	
<b>Part 1 Region Shaping investment</b>	Response
<b>Objective 2</b> Support the State’s transition to Net Zero by 2050 and deliver the Central–West Orana Renewable Energy Zone ( <b>REZ</b> )	The Site is a source of high-quality construction materials for the projects within the REZ and will therefore support the State’s transition to Net Zero by 2050.
<b>Objective 3</b> Sustainably manage extractive resource land and grow the critical minerals sector	The Site is managed sustainably, with no change proposed to post-quarrying land use outcome. Therefore, the Site is a source of high-quality construction materials that contribute to the growth of construction activities in the region.
<b>Objective 4</b> Leverage inter-regional transport connections	The Site is a source of high-quality construction materials which are required to support the construction, upgrade and maintenance of transport infrastructure connections throughout the surrounding regions.

<b>Part 2 Sustainable and resilient place</b>	
<b>Objective 5</b> Identify, protect and connect important environmental assets	The proposed modification reduces approved impacts to the environment.
<b>Objective 9</b> Ensure site selection and design embraces and respects the region's landscapes, character and cultural heritage	Continued operation of the Site avoids the need for the establishment of greenfield sites to provide construction materials to the market. The modification seeks to redistribute operational areas of the Quarry to reduce impact on the environment.
<b>Part 3 People, Centres, housing and communities</b>	
<b>Objective 17</b> Coordinate smart and resilient utility infrastructure	Through the efficient supply of construction materials from local and nearby sources such as this site, smart and resilient utility infrastructure can be further developed in the region.
<b>Part 4 Prosperity, Productivity and innovation</b>	
<b>Objective 18</b> Leverage existing industries and employment areas and support new and innovative economic enterprises	The proposed modification enables the efficient operation of the Site to continue which will support diversity in employment opportunities in the rural area mostly dominated by agriculture.
<b>Objective 19</b> Protect agricultural production values and promote agricultural innovation, sustainability and value-add opportunities.	The proposed modification enables the efficient operation of the Site to continue which will protect agricultural values by avoiding the need to establish new greenfield quarries elsewhere in the region.
<b>Objective 20</b> Protect and leverage the existing and future road, rail and air transport networks and infrastructure	The proposed modification enables the efficient operation of the Site to continue ensuring that a supply of high-quality construction materials is available for the long term for the construction, upgrade and maintenance of road, rail and air transport networks and infrastructure.
<b>Objective 23</b> Supporting Aboriginal aspirations through land use planning	The continued operation of the Site has the ability to provide materials that support the delivery of indigenous support programs such as the <i>Roads to Home</i> initiative. All cultural heritage artefacts identified at the site will continue to be preserved.

Table 1.

### 1.3 Existing approvals

The site has been in operation as a quarry for over 80 years as detailed in the Environmental Impact Statement prepared for DA0330/2012. The site has a history of providing railway ballast for nearby railway line construction and also for the local council and has had an approval dating back to the 1980's. Previous applications have clarified the ongoing use of the site and the relevant intensity of the use of the site.

Development Consent for the site DA 0330/2012, was originally granted on 17th February 2014 and has been modified a number of times as follows;

- MI0020/2016 - Minor modifications to consent - 9 May 2017
- M0002/2017 - Addition of condition 1a and amendment to condition 96 - 22 October 2018
- MI0005/2019 – Inclusion of concrete batching plant - 30 October 2018

In late 2022 RQA have taken over the operation of the Quarry that has included the transfer of existing Environmental Protection License (**EPL 20985**) to the current operations.

## 2 Approved Operations

The current consent approves the site to operate until 2034 at a maximum rate of 199,000 tonnes per annum, enabling total extraction of approximately 3,980,000 tonnes over the approved 20-year life. The consent, as modified, approves a co-located concrete batching plant with an annual production capacity of up to 30,000 tonnes.

## 3 Description of Modification

RQA took over the operation of the site in late 2022 and undertook a review of the current state of operations. That review indicated that the approved 20-year operational life is unlikely to be sustained due to larger volumes of overburden encountered than originally anticipated and the topography within the approved extraction location is unlikely to achieve the approved 20m Quarry face using the approved floor level, resulting in a reduced total volume of construction materials extracted from the site. It is also understood that the extraction area was already established in a different location than the approved plans prior to consent being granted by Council in 2014.

Similarly, the review found that key operational areas of the site are approved in isolation, in some cases without operational access connections. While creation of access is permissible without consent within this land use zone, plans should be updated to reflect the operational needs of the site and its infrastructure. As such minor changes proposed to the site's layout include the following.

Redistributing the extraction area to the north of the current workings to gain height from the approved pit floor level. The redistribution would also shift the extraction area away from the direction of Dry Creek where extraction has been approved within 20m of the riparian area. The area to the north was previously assess as containing exotic grasslands and contains roads required to conduct environmental works and monitoring and access operational areas.

Stockpiling areas to the north of the Quarry face would also be increased to reflect the increase in volume of materials to be stockpiled that was not originally anticipated. The roads required to access this area for taking spoil from extraction area to the stockpiles.

The processing and product sales area to be increased to reflect the stockpile volume requirements of the site and also facilitate adequate and safe working areas for quarry plant and equipment between stockpiles and other site infrastructure. Areas surrounding the product stockpile areas would be increased to facilitate safe loading and turning areas for road registered haulage trucks to be able to enter the sales area, load product and turn around to exit the site safely in a forward gear.

The benefits of the proposed changes include improved operational efficiencies over the remaining lifecycle, reducing environmental impact. Overall, redistributing the areas of disturbance are summarised as follows;

- Avoiding previously approved areas that are within 40m of a watercourse (Dry Creek) and associated vegetation within the riparian zone.

- To the greatest extent possible, focusing the modified area of disturbance to those areas of the site previously assessed as containing exotic grasslands.
- Stockpiles areas providing adequate space for volume of materials and screening of operations from public road.
- Operational requirements of the site reflected in a consolidated infrastructure plan.

Table 2. below provides a summary of the proposed changes sought under this modification.

<b>Item</b>	<b>Currently approved</b>	<b>Proposed Modification</b>
<b>Lots</b>	Lot 53 DP755420 Lot 55 DP755420 Lot 66 DP755420	Inclusion of Lot 1 DP1150843 (being a former Crown road with an area of 1.07ha.)
<b>Quarry life</b>	2034 (20-year life cycle)	No change
<b>Production</b>	Up to 199,000 tpa Concrete 30,000 tpa	Continuation of the maximum 199,000 No Change Removal of averaging description.
<b>Disturbance area</b>	Extraction areas - 11.64 Ha Stockpile areas - 3.2 Ha Concrete batch plant - 0.29 Ha  <b>Total approved 15.13 Ha</b>	Extraction areas - 7.48 Ha Stockpile areas and Concrete Batch Plant - 7.03 Ha  <b>Total disturbance area - 17.54 Ha</b>
<b>Transport</b>	Max Quarry and CBP 94 per day Operating the Quarry 42 per day	No change
<b>Site Access</b>	From Bylong Valley Way	No change
<b>Hours of operation</b>	Quarry 0700-1700 Mon Fri 0700-1400 Sat No work sun public hols  Concrete Batch Plants 0700-1700 7 days per week	No change
<b>Employees</b>	11	No change
<b>Depth</b>	346m AHD	No change
<b>Rehabilitation</b>	Return to rural land use activities	No change

Table 2. Changes under the proposal.

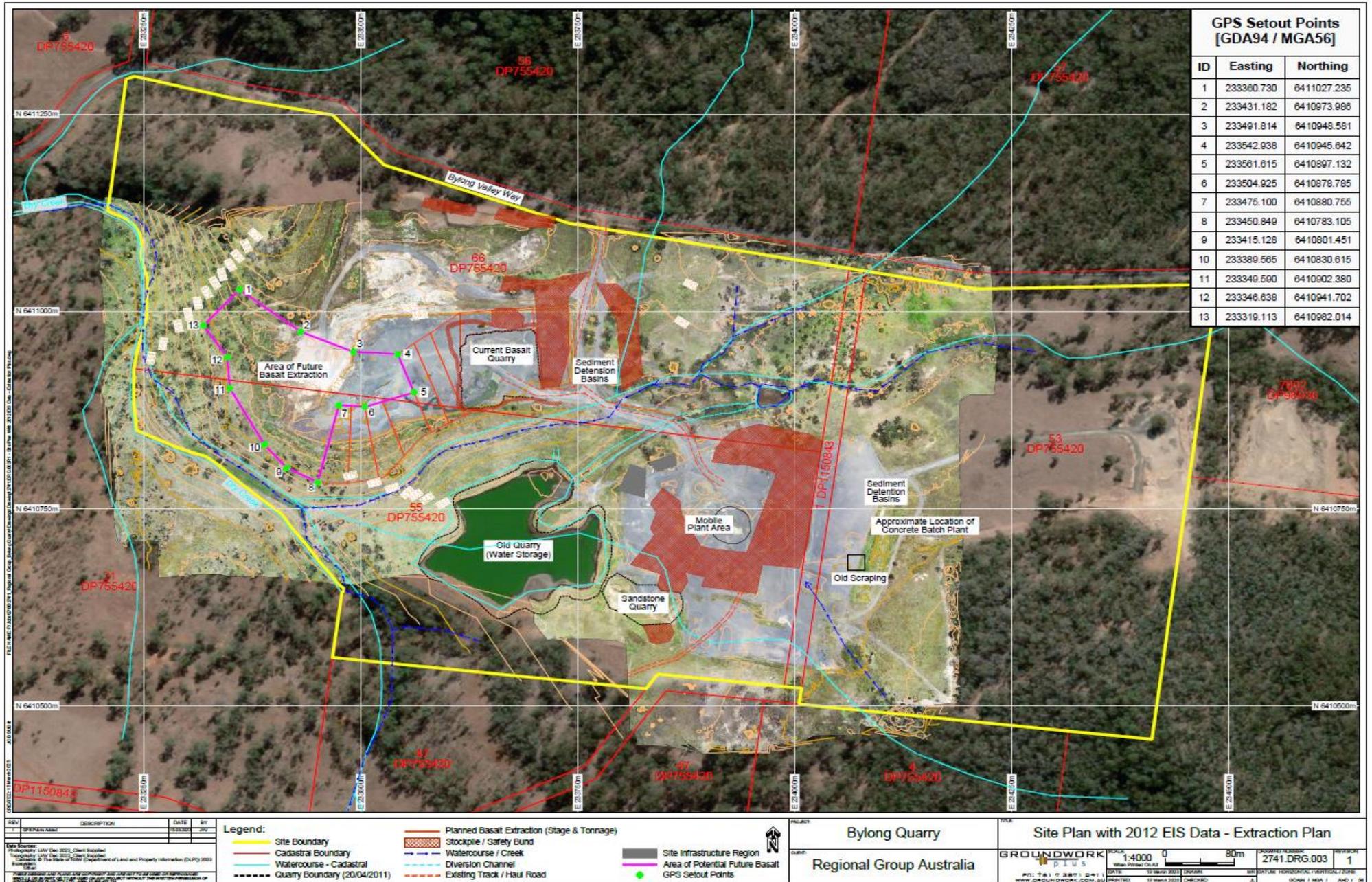


Figure 1. current approved footprint

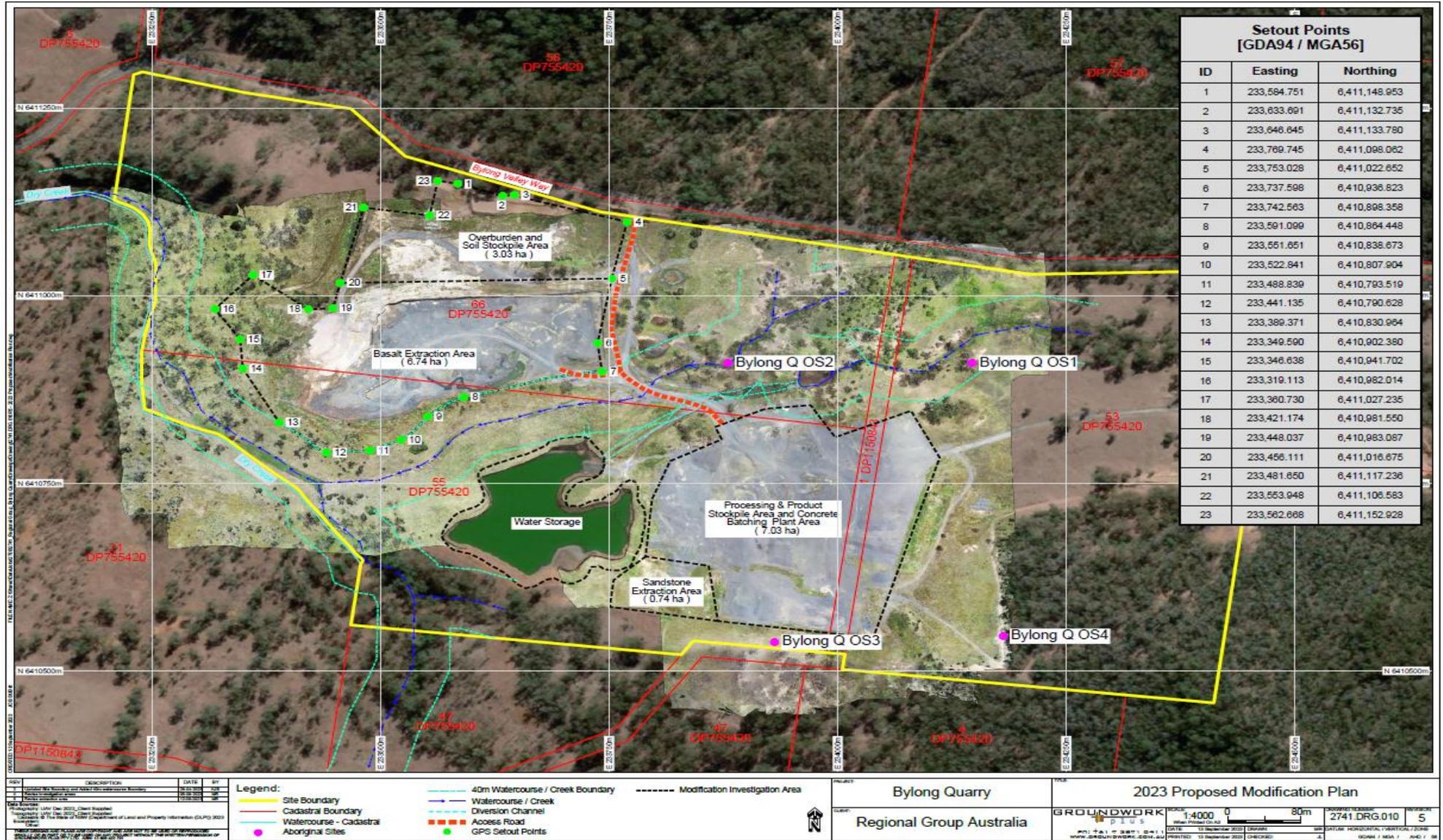


Figure 2. Proposed plan of modification



Figure 3. Current quarry face



Figure 4. Extraction area to extend and additional stockpiling area.

## 4 Statutory Context

This assessment report has been prepared with consideration of the Section 4.55 of the Environmental Planning and Assessment Act to assist Mid-Western Regional Council in the assessment of the application.

A detailed justification of the proposed modification against relevant criteria is provided in Section 5 of this report which is made pursuant to s4.55(1A) of the Act demonstrating the proposed modification has minimal environmental impact.

Also pursuant to s4.55(1A) the proposed modification is deemed to be substantially the same development based on the following;

- No net increase to overall production capacity
- No increase to the current approved 20-year lifecycle
- No change to hours of operation
- No change to the severity of external impacts of the site to the surrounding community
- Minor changes to the approved areas of the site that support the operation.
- Minor change (re addition of Lot 1 DP 1150843 to the land that is subject to the development consent)

Overall, the proposed redesign of the operational footprints enables the Quarry to continue further towards the approved lifecycle with less environmental impact.

Lot 1 DP 1150843 is a former Crown road, closed and transferred to the former owners of the Quarry. Lot 1 represents only a small proportion of the total area of the Quarry. The modification of the consent to include Lot 1 is permissible as a modification of the development consent. In this regard, the decision of the Land and Environment Court in *Scrap Realty Pty Ltd v Botany Bay City Council* [2008] NSWLEC 333 (19 December 2008), Preston CJ of LEC, is applicable. That decision confirmed the power of a consent authority to modify a consent by the addition of land to the land initially nominated in the development consent.

## 5 Assessment of Impacts

Environmental Aspects	Summary of impact
Noise and vibration	Minimal – Nearest residences to the operations are approximately 3.5km to the North-West and 4.5km to the East. No sensitive receptors exist to the North or South. The proposed modification seeks to extend operational areas slightly that are unlikely to result in new or additional noise impacts sensitive receptors as they are proposed behind the areas where impacts have been previously modelled that are further shielded by the quarry face and material stockpiles. Noise limits at these sensitive receivers would continue to be complied with. A noise prediction calculator has been used to compare results from the original EIS and concludes the same findings that noise criteria can still be complied with. Noise monitoring continues to occur at the site to comply with the sites EPL. The modification also proposes a change to the sites noise criteria as per Table 4. Proposed changes to conditions are also being updated via an EPL amendment with the EPA.
Air Quality and odour	Minimal – Nearest residences to the operations are approximately 3500m to the east and 4000m to the west at the outer limits of the current approved areas. There are no sensitive receptors to the north. The proposed modification extends the area of disturbance to the

Environmental Aspects	Summary of impact
	north. This is unlikely to result in new or additional air quality and odour impacts to the nearest sensitive receptors compared to the approved development. Dust monitoring continues to occur on a regular basis at the site to comply with the EPL.
Soil and water	Minimal – Land capability remains the same over the site and will be rehabilitated prior to closure. Therefore, the proposed modification is unlikely to result in new or additional soil and water quality impacts compared to the approved development.
Biodiversity	Minimal – Areas of the proposed modification were previously assessed in the original approval as containing exotic grassland dominated by non-native weed species. At the request of Council, a further assessment of these areas has been undertaken that has confirmed that the proposal is unlikely to result in new or additional biodiversity impacts (see Attachment A).
Heritage	Minimal – the proposed changes to the approved area of disturbance do not impact the four aboriginal cultural heritage sites identified at the Site. Therefore, the proposed modification is unlikely to result in new or additional heritage impacts compared to the approved development.
Traffic and Transport	Minimal – the proposed modification does not include any change to the aspects of the development which result in traffic and transport impacts. For example, there is no change proposed to the annual extraction volume, hours of operation or truck movements. Therefore, the proposed modification is unlikely to result in new or additional traffic and transport impacts compared to the approved development.
Hazards and risks	The proposed modification does not alter the type, nature or quantity of hazards or how they are managed. Therefore, the proposed modification is unlikely to result in new or additional hazards or risks compared to the approved development.
Visual	The approved development was designed to minimise visibility from the road and was not visible from the nearest sensitive receptors to the east and west. The proposed modification includes changes to the area of disturbance such as the extraction area extending to the north. The proposed changes will not increase the visibility of the Quarry from the road. Therefore, the proposed modification is unlikely to result in new or additional visual amenity impacts compared to the approved development.
Social	Negligible – the proposed modification would not impact the way of life for the surrounding community compared to the approved development because there will be no change to the noise, air quality, water, visual amenity, or traffic impacts associated with the development.
Cumulative	None, there are no additional cumulative impacts as the proposed development is substantially the same and there are no other nearby extractive industries.
Rehabilitation	Minimal – All disturbed areas of the site would be rehabilitated prior to closure of the Quarry and would achieve the same rehabilitation outcome (suitable for rural uses including cattle grazing) as the approved development.

Table 3. Assessment of impacts

## 6 Justification – Substantially the Same

Section 4.55(1A) of the Act outlines that a consent authority may modify the development consent if:

- (a) *it is satisfied that the proposed modification is of minimal environmental impact, and*
- (b) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (c) *it has notified the application in accordance with—*
  - (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*
- (d) *it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

In relation to the matter of 'substantially the same', application of the phrase 'substantially the same' has been a matter of some consideration by the Court. *Moto Projects (No2) Pty Ltd v North Sydney Council* (1999 NSWLEC 280, 17 December 1999) identified the relevant test and stated, '*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 context (including the circumstances in which the development consent was granted).*'

With respect to the definition of 'substantially', the Court held, in the case of *Vacik Pty Ltd v Penrith Council* (unreported 24 February 1992, Stein J), that substantially means, '*essentially or materially or having the same essence*'. With respect to the definition of 'materially', the Macquarie Concise Dictionary defines material to mean, amongst other things, '*of such significance to be likely to influence the determination of a cause.*'

The law concerning modifications to consents has developed since *Vacik Pty Limited v Penrith City Council* [1992] NSWLEC 8 (**Vacik**) and *Moto Projects (No 2) Pty Ltd V North Sydney Council* [1999] NSWLEC 280 (**Moto Projects**).

Courts have applied numerous interpretations to the concept of 'substantially the same development'. In addition to the interpretations in *Vacik* and *Moto Projects*, these interpretations include:

- a) the word 'modify' has been held to mean 'to alter without radical transformation': *Sydney City Council v Ilenace Pty Ltd* (1984) 3 NSWLR 414 at 421;
- b) where a 'new component' of development (such as subdivision) is sought to be introduced via a modification application, this may result in an '*overall development that was different in its essence from the development for which consent was granted*': *Young v Parramatta City Council* [2006] NSWLEC 116; and

c) if a modification is sought that comprises of many individual changes which, individually, may not render the development as constructed a different development, the cumulative impact of the alterations must be considered: *Austcorp No 459 Pty Ltd v Baulkham Hills Shire Council* [2002] NSWLEC 90.

However, recently, in *Arrage v Inner West Council* [2019] NSWLEC 85 (**Arrage**), Preston CJ cautioned, against placing too much attention on the characterisation of the statutory test by Bignold J in *Moto Projects* to the distraction of focusing on the words of section 4.55(2)(a) itself.

In *Arrage*, Preston CJ, referring specifically to the principles identified in earlier cases including *Moto Projects*, held that while identifying and undertaking a comparative analysis of the material and essential features of the originally approved and modified developments: *'... is one way, probably in most cases the most instructive way, to identify whether the modified development is substantially the same development as the originally approved development, but it is not the only way to ascertain whether the modified development is substantially (in the sense of essentially or materially) the same development as the originally approved development. For example, comparison could be made of the consequences, such as the environmental impacts, of carrying out the modified development compared to the originally approved development'*.

In other words, the principles identified in earlier case law, while instructive, do not replace the plain meaning of the statutory test, which is that the consent authority considering a proposed modification must be satisfied that the original and modified developments are 'substantially the same' having regard to all relevant planning and environmental considerations.

Department of Planning and Environment (**DPE**) provide the following guidance about demonstrating whether a proposal is 'substantially the same development' in 'Modifying an Approved Project, Draft Environmental Impact Assessment Guidance Series, June 2017':

*"Substantially" means "essentially or materially" or "having the same essence."*

- *A development can still be substantially the same even if the development as modified involves land that was not the subject of the original consent (provided that the consent authority is satisfied that the proposal is substantially the same).*
- *If the development as modified, involves an "additional and distinct land use", it is not substantially the same development. Notwithstanding the above, development as modified would not necessarily be substantially the same solely because it was for precisely the same use as that for which consent was originally granted.*
- *To determine whether something is "substantially the same" requires a comparative task between the whole development as originally approved and the development as proposed to be modified.*
- *In order for the proposal to be "substantially the same", the comparative task must:*
  - *result in a finding that the modified development is "essentially or materially" the same*
  - appreciate the qualitative and quantitative differences in their proper context in addition to the physical difference, consider the environmental impacts of proposed Modification Applications to approved developments.*
- *The results of the comparative task "does not eclipse or cause to be eclipsed a particular feature of the development, particularly if that feature is found to be important, material or essential."*

DPE provide guidance on undertaking the 'comparative task':

*'A proponent should consider the following elements of the proposed project change when undertaking a comparison:*

- *development size, scale and footprint*
- *intensity including rates of production*
- *primary, secondary and ancillary use*
- *project life and hours of operation*
- *extent, duration and severity of impacts.*

*The updated project description will assist in carrying out a comparative analysis because it highlights any changes in key elements of the development.'*

Having considered the above, the following comparative assessment is provided.

### 6.1 Development size, scale and footprint

The size and scale (that is the annual extraction volume) of the Quarry is not proposed to change because of the proposed modification. Changes to footprint (that is the extraction and stockpiling areas) are proposed to enable the site to function based on the original parameters of the approval. Additional area being added are based on adequate operational areas to cater for access and material volumes required to operate the site at its current scale. These minor changes are designed to avoid areas of biodiversity value.

### 6.2 Intensity including rates of production

The rate of production of the Quarry would not increase above the currently approved 199,000 tonnes per annum. No further changes to the concrete batching plant approved over the site is proposed. Therefore, there is no change to the intensity of the use of the site.

### 6.3 Primary, secondary and ancillary use

The primary use of the Site is and will remain extractive industry and the co-location of a concrete batching plant. These compatible industrial land-uses will continue as currently approved over the site.

### 6.4 Project life and hours of operation

As described in earlier sections of this report, the 20-year project life is compromised however by redistributing the pit location to higher topography the Quarry will increase likelihood of achieving the approved project life. Expanding the stockpile areas would enable the safe storage of materials to be used in rehabilitation of the final landform. There would be no changes to the currently approved operational hours of the site.

### 6.5 Extent, duration and severity of impacts

The Quarry is subject to an EPL administered by the EPA. This EPL regulates the operation of the Quarry to ensure environmental harm and nuisance is avoided and risks are appropriately managed. As all the environmental impacts associated with the Quarry operation will remain unchanged, the proposed modification is of minimal environmental impact. Therefore, as the operation will continue to comply with the EPL there will be no additional impact to public amenity.

## 6.6 Substantially the same

Having considered the above comparative assessment and the guidance provided by case law and other documents, the proposed modification is substantially the same as approved on the basis that the development size, scale, intensity, use, project life, hours of operation, duration and severity of impacts do not substantially change. Overall, the outcome of the modification would enable the approved land use to continue towards the approved 20-year duration without any increase to intensity and with minimal impact to the environmental. The operations would become more functional to suit the parameters originally proposed in the approval.

## 7 Assessment – Section 4.55(3) of the Act

Clause 3 of s4.55 of the Act states that:

*"In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified".*

Section 4.15(1) of the Act states that:

### ***"Matters for consideration"—general***

*In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application—*

*a) the provisions of—*

*(i) any environmental planning instrument, and*

*(ii) any proposed 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 Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*

*(iii) any development control plan, and*

*(iii a) 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, and*

*(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph),*

*(v) (Repealed) that apply to the land to which the development application relates,*

*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,*

*c) the suitability of the site for the development,*

*d) any submissions made in accordance with this Act or the regulations,*

*e) the public interest."*

This section of the Statement of Environmental Effects considers the proposal assessed against the relevant provisions identified in s4.15(1) of the Act.

### 7.1 Section 4.15(1)(b) of the Act

Section 4.15(1)(b) of the Act states that in determining a development application, a consent authority is to take into consideration, *'the likely impacts of that development, including impacts on both the natural and built environments, and social and economic impacts in the locality'*. As outlined above, the proposal would not significantly increase the impact of the development on the natural and built environment and social and economic impacts in the locality.

## 7.2 Section 4.15(1)(c) of the Act

Section 4.15(1)(c) of the Act states that in determining a development application, a consent authority is to take into consideration, *'the suitability of the site for the development'*. It is evident by the long-term operation of the Quarry that the Site is suitable for the continued operation of an extractive industry and achieving the use for the approved duration.

## 7.3 Section 4.15(1)(d) of the Act

Section 4.15(1)(d) of the Act states that in determining a development application, a consent authority is to take into consideration, *'any submissions made in accordance with this Act or the regulations'*. This is a matter for Council to consider during the assessment of this application.

## 7.4 Section 4.15(1)(e) of the Act

Section 4.15 (1)(e) of the Act states that in determining a development application, a consent authority is to take into consideration, *'the public interest'*. Quarried products are used in the building and construction industries and are essential components for providing shelter and infrastructure. In Australia, the trend has been for annual production of quarried products to increase in response to population growth which drives development and infrastructure projects.

Every Australian requires 7 tonnes of stone, sand and gravel every year to build the roads, houses and other infrastructure they need. To build the average new house we use about 110 tonnes of construction aggregates and 53m<sup>3</sup> of concrete. To build one kilometre of a two-lane highway requires about 14,000 tonnes of construction aggregates.

Extractive industries are a significant contributor to the material needs of local and regional communities and to economic activity and development. Extractive resources are site specific, limited in occurrence by geological conditions and are finite. Because they are high-volume, low-cost materials, they need to be located close to the communities that use them as the cost of transport to the end user contributes greatly to the overall cost of the delivered product. Extractive resources underpin all urban and infrastructure development and make a major contribution to ongoing economic growth through direct and indirect employment opportunities.

The continued operation of the Quarry with material extracted from the Site to produce a range of Quarry products is in the public interest as continuing the use at the current site reduces the impact of obtaining the required construction materials from alternative new greenfield sites within the region.

## 7.5 Section 4.15(1)(a)(iv) of the Act

Clause s4.15(1)(a)(iv) of the Act states that in determining a development application, a consent authority is to take into consideration the following, *'(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph)*.

The Quarry was originally assessed as 'designated development' under the Act. At that time the *Environmental Planning and Assessment Regulation 2000 (2000 Regulation)* was in force and effect. The 2000 Regulation was subsequently repealed and has been replaced by the *Environmental Planning and Assessment Regulation 2021 (2021 Regulation)*.

The modification application proposes changes to a development approved as designated development. However, the Council is not considering a development application, which might attract the operation of clause 48 in Schedule 3 to the 2021 SEPP. Clause 48 regulates development applications proposing alterations or additions to an approved development. In the present case, the Council is considering a modification application. Having regard to the decision of the Land and Environment Court in *Concrite Quarries Pty Ltd v Wingecarribee Shire Council* [2000] NSWLEC 97 (4 May 2000), Lloyd J, Schedule 3 to the 2021 Regulation has no application to this assessment.

Notwithstanding the matters noted above, RQA understands that the Quarry has been previously operated by a range of operators including Mid-Western Council. With the recent occupation by RQA the environmental management performance has remained at a high level.

The Quarry will continue to operate pursuant to the existing development consent and EPL and has not yet reached terminal benches and therefore progressive rehabilitation of the disturbed areas has not yet commenced. The scale, character and nature of the proposal and the existing character and features of the land have been addressed in the comparative assessment within this application.

The potential environmental impacts can be predicted with reasonable certainty based on the long-term operation of the Quarry. No additional environmental impacts are anticipated because of the modification, therefore it is anticipated that the receiving environment is sufficient to accommodate the ongoing operation of the Quarry. The Quarry is operated pursuant to an EPL that includes conditions regulating environmental performance such as noise, air quality, waste, water quality and blasting impacts.

## 8 Other Relevant Legislation, Regulations and Planning Instruments

### 8.1 Protection of the Environment Operations Act 1997

The Site is operated pursuant to an EPL. Conditions of the EPL regulate noise, vibration, air and water emissions. It is understood that the EPA will be consulted as part of the assessment of the proposed modification which may result in changes to the conditions of the EPL. It is also noted that the EPL currently authorises the Site to operate at up to 100,000tpa. Therefore, an amendment of the EPL will be required to align it with the scale authorised by the development consent. As described in table 4 below the noise criteria for the site is not consistent with the noise policy for industry and will therefore be updated as required.

### 8.2 Biodiversity Conservation Act 2016

The proposed modification proposes changes to the approved areas of disturbance. However, the proposed areas to be changed were previously assessed as containing exotic grasslands. Following a pre-lodgement meeting with Council it was requested that an ecological study was completed to determine any impacts to these areas. The study has concluded that no new or additional impacts on biodiversity values are anticipated.

### 8.3 State Environmental Planning Policy (Resources and Energy) 2021

*State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007 (2007 SEPP)* was a relevant environmental planning instrument (EPI) for the then proposed development, when the development consent was granted in 2014.

The 2007 SEPP has now been replaced by *State Environmental Planning Policy (Resources and Energy) 2021 (2021 SEPP)*.

Chapter 2 of the 2021 SEPP deals with mining, petroleum production and extractive industries. Section 2.1 identifies the aims of the Chapter, which may be summarised as the provision, facilitation and promotion of the development of significant mineral, petroleum and extractive material resources.

Part 2.3 of the 2021 SEPP identifies the matters to be considered by a consent authority when a development application is submitted. However, in the present case, the Council is considering an application to modify a consent that was granted when 2007 SEPP was in force and effect.

Nonetheless, the applicant notes that the existing and approved use of land in the vicinity of the Quarry are rural activities and dwellings. The rural village of Bylong is located approximately 5km to West of the Site. The proposed modification is unlikely to have any impact on the surrounding land uses based on the comparative assessment above. Therefore, the proposed modification is unlikely to result in the development becoming incompatible with the surrounding land uses. Therefore, the proposed modification is unlikely to have a significant impact on the surrounding land uses and is unlikely to result in the Quarry becoming incompatible with those land uses. The proposed modification would enable the continuation of this approved land use rather the hard rock resources needing to be sourced from alternative greenfield sites.

#### 8.4 Local Environmental Plan

The Mid-Western Local Environmental Plan 2011 is the relevant Local Environmental Plan (**LEP**). The Quarry is located within the RU1 land zone of the LEP. The objectives of the RU1 Primary Production Zone are:

- To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.
- To encourage diversity in primary industry enterprises and systems appropriate for the area.
- To minimise the fragmentation and alienation of resource lands.
- To minimise conflict between land uses within this zone and land uses within adjoining zones.

As the proposed modification does not change the approved land use or increase the associated impacts to the community, it remains consistent with the aims of the LEP and the objectives of the RU1 land zone.

## 9 Conclusion

This application for modification is pursuant to clause s4.55(1A) of the Act. The application seeks to amend the layout of the site infrastructure plan and conditions of development consent detailed in table 4. The proposed modification does not alter the approved land-use or operational parameter of the quarry or concrete batch plant use. The Quarry will continue to comply with the operating conditions specified in the EPL and therefore will not result in additional impacts to public amenity or the environment.

The proposed modification has been assessed against the relevant environmental instruments and is considered to remain consistent with the intent, purpose and aim of the documents forming the approval and that the modified development would remain substantially the same as approved.

The table below outlines proposed changes to the conditions because of the proposed modification.

Condition No.	Current wording	Reason for update
1.	<p>Development is to be carried out generally in accordance with: Environmental Impact Statement by Wells Environmental Services dated April 2012;</p> <ul style="list-style-type: none"> <li>• Addendum Letter dated 13th February 2013 from Kleinfelder ecobiological</li> <li>• Revised surface water management assessment report by Minespex undated Submitted with Addendum letter by Kleinfelder ecobiological;</li> <li>• Minespex Specified Measures Report of November 2012</li> <li>• Minespex CAA Report dated December 2012</li> <li>• Insite Civil Engineering Plans issued 7th December 2012</li> </ul>	Plans reference would need to change
12	<p>Except as expressly provided by these general terms of approval, work and activities must be carried out in accordance with the proposal contained in:</p> <p>The development application DA0330/2012 submitted to Mid-Western Regional Council on 7th of May 2012 and</p> <p>The Bylong Quarry Expansion and Concrete batching Plant Bylong Environmental Impact Statement prepared by Wells Environmental Services (April 2012) (Amended by MI0005/2019)</p>	As per above
20	<p>The EIS indicates that the NSW Noise Policy for Industry adopts an RBL of 30 dB(A), however this would only be applicable for nighttime periods. As the quarry operates during the daytime only the RBL for the daytime operations would be 35 dB(A) making the site criteria 40 dB(A) as per the extract of the policy below.</p> <p><i>Where the rating background noise level is found to be less than 30 dB(A) for the evening and night periods, then it is set to 30 dB(A); where it is found to be less than 35 dB(A) for the daytime period, then it is set to 35 dB(A).</i></p>	Clarification of noise criteria
87	<p>Quarry production rates are permitted up to 199,000 tonnes per annum (tpa) subject to an average of 50,000 tpa for basalt and 2,000 tpa for the life of the Quarry.</p>	Clarification of production capacity
89	<p>This consent is limited to a period of twenty (20) years.</p>	Clarification that this is the operational life excluding the completion of rehabilitation
91	<p>Prior to the commencement of operations, the applicant is to obtain a Mining Lease from the relevant State Government Department and is to strictly adhere to the conditions of the lease.</p>	This condition should be deleted. The hard rock

		Quarry is not a mine and does not require a mining lease.
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Table 4. Proposed conditions to be updated based on modification.

Attachment A. Ecological verification report