



MEETING NOTICE

COMMITTEE	PLANNING ENVIRONMENT AND DEVELOPMENT COMMITTEE MEETING
DIRECTORATE	Planning and Environmental Services
DATE	4 December 2019
TIME	4:00pm
VENUE	Council Chambers Council Administration Building 63 Elgin Street, Gunnedah NSW 2380
ATTACHMENTS	Director Planning and Environmental Services Report

AGENDA

1. Present/Apologies
2. Declarations of Interest
In accordance with Council's Code of Meeting Practice and specifically Section 451 of the Local Government Act, 1993 declarations of interest are required by Councillors and designated staff attending the meeting.
3. Report of the Director Planning and Environmental Services
 - 3.1 Development Application 2019/078 – Change of Use of Part /Building from Storage to Business Premises – Lot 8 DP666019 – 38 Elgin Street, Gunnedah..... 3
 - 3.2 Section 4.55(1A) Application to Modify a Development Consent NO 2012/185.003 Modification to Voluntary Planning Agreement (VPA) – Lot 22 DP1216060 and Lot 2 DP865898 – 334 Pownall Road, Mullaley and 'Beulah' 259 Barber Road, Marys Mount..... 15

Andrew Johns
DIRECTOR PLANNING AND ENVIRONMENTAL SERVICES

Apologies to: 02 6740 2116

The ordinary, extraordinary and committee open meetings of Council will be audio recorded for minute-taking purposes and may be broadcast live over the internet.

*** Local Government Act 1993 – Definition of Closed Meeting Items**

10A Which parts of a meeting can be closed to the public?

- (1) A council, or a committee of the council of which all the members are councillors, may close to the public so much of its meeting as comprises:
- (a) the discussion of any of the matters listed in subclause (2), or
 - (b) the receipt or discussion of any of the information so listed.
- (2) The matters and information are the following:
- (a) personnel matters concerning particular individuals (other than councillors),
 - (b) the personal hardship of any resident or ratepayer,
 - (c) information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business,
 - (d) commercial information of a confidential nature that would, if disclosed:
 - (i) prejudice the commercial position of the person who supplied it, or
 - (ii) confer a commercial advantage on a competitor of the council, or
 - (iii) reveal a trade secret,
 - (e) information that would, if disclosed, prejudice the maintenance of law,
 - (f) matters affecting the security of the council, councillors, council staff or council property,
 - (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege,
 - (h) information concerning the nature and location of a place or an item of Aboriginal significance on community land.
 - (i) alleged contraventions of any code of conduct requirements applicable under section 440.

VISION

TO BE A FOCUSED COMMUNITY VALUING GUNNEDAH'S IDENTITY AND QUALITY LIFESTYLE.

MISSION

TO PROMOTE, ENHANCE AND SUSTAIN THE QUALITY OF LIFE IN GUNNEDAH SHIRE THROUGH BALANCED ECONOMIC, ENVIRONMENTAL AND SOCIAL MANAGEMENT IN PARTNERSHIP WITH THE PEOPLE.

ORGANISATIONAL VALUES

In partnership with the community:

- 1. EQUITY***
- 2. INTEGRITY***
- 3. LEADERSHIP***
- 4. OPENNESS & ACCOUNTABILITY***
- 5. CUSTOMER SATISFACTION***
- 6. COMMITMENT TO SAFETY***
- 7. EFFICIENT & EFFECTIVE USE OF RESOURCES***

Director Planning and Environmental Services Report

ITEM 1	Development Application No. 2019/078 – Change of Use of part building from storage to business premises – Lot 8 DP666019 – 38 Elgin Street, Gunnedah
MEETING	Planning, Environment and Development Committee – 4 December 2019
DIRECTORATE	Planning and Environmental Services
AUTHOR	Acting Manager Development and Planning
POLICY	Nil
LEGAL	Environmental Planning and Assessment Act, 1979 Gunnedah Local Environmental Plan, 2012 Gunnedah Development Control Plan, 2012
FINANCIAL	Nil
STRATEGIC LINK	Community Strategic Plan 2.4.5 Implement and advocate for planning strategies and systems that are streamlined to foster and encourage the establishment of new business. Operational Plan 2.4.5.1 Provide efficient and effective application, assessment and certification services in accordance with relevant legislation policy and regulation.
ATTACHMENTS	Nil

OFFICER'S RECOMMENDATIONS:

1. That the Development Application No. 2019/078, for the Change of use of part of building from storage to business premises, at Lot 8 DP666019 – 38 Elgin Street, Gunnedah be approved subject to the following conditions of consent:

A. THAT DEVELOPMENT CONSENT BE GRANTED SUBJECT TO THE FOLLOWING CONDITIONS:

- A1.** The proposed development shall be carried out generally in accordance with the details set out in the following:
- Development Application form lodged 30 October 2019;
 - Statement of Environmental Effects, prepared by Stewart Surveys Pty Ltd, dated 29 October 2019; and
 - Submitted plans:
 - Prepared by Stewart Surveys Pty Ltd, dated 25 October 2019, Ref: 5254, Site Plan;
 - Prepared by Stewart Surveys Pty Ltd, dated 25 October 2019, Ref: 5254, Floor Plan;

except as otherwise provided by the conditions of consent.

Reason: To ensure compliance with application and plans.

B. PRESCRIBED CONDITIONS

Note: The following conditions are prescribed conditions and may or may not relate directly to this development.

- B1. Compliance with Building Code of Australia and insurance requirements under the Home Building Act 1989**

(cf clauses 78 and 78A of EP&A Regulation 1994)

- (1) For the purposes of section 4.17 (11) of the Act, the following conditions are prescribed in relation to a development consent for development that involves any building work:
 - (a) that the work must be carried out in accordance with the requirements of the Building Code of Australia,
 - (b) 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.
- (1A) For the purposes of section 4.17 (11) of the Act, it is prescribed as a condition of a development consent for a temporary structure that is used as an entertainment venue, that the temporary structure must comply with Part B1 and NSW Part H102 of Volume One of the Building Code of Australia.
- (2) This clause does not apply:
 - (a) to the extent to which an exemption is in force under clause 187 or 188, subject to the terms of any condition or requirement referred to in clause 187 (6) or 188 (4), or
 - (b) to the erection of a temporary building, other than a temporary structure to which subclause (1A) applies.
- (3) In this clause, a reference to the Building Code of Australia is a reference to that Code as in force on the date the application is made for the relevant:
 - (a) development consent, in the case of a temporary structure that is an entertainment venue, or
 - (b) construction certificate, in every other case.

Note. There are no relevant provisions in the Building Code of Australia in respect of temporary structures that are not entertainment venues.

Reason: To ensure compliance with the statutory requirements.

B2. Erection of signs

- (1) For the purposes of section 4.17 (11) of the Act, the requirements of subclauses (2) and (3) are prescribed as conditions of a development consent for development that involves any building work, subdivision work or demolition work.
- (2) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (a) showing the name, address and telephone number of the principal certifying authority for the work, and
 - (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.

- (3) Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (4) This clause 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.
- (5) This clause does not apply in relation to Crown building work that is certified, in accordance with section 6.28 of the Act, to comply with the technical provisions of the State's building laws.
- (6) This clause applies to a development consent granted before 1 July 2004 only if the building work, subdivision work or demolition work involved had not been commenced by that date.

Note. Principal certifying authorities and principal contractors must also ensure that signs required by this clause are erected and maintained (see clause 227A which currently imposes a maximum penalty of \$1,100).

Reason: To ensure compliance with the statutory requirements.

C. PRIOR TO COMMENCEMENT OF BUILDING WORKS

- C1.** Prior to work commencing appropriate measures are to be implemented in relation to erosion and sediment control. Such measures are to be maintained during the construction of the development in accordance with Council's Gunnedah Development Control Plan 2012.

Reason: To ensure erosion and sediment control on the development site.

D. GENERAL

- D1.** Excavated material from the lot is not to be placed on or used to alter the level of Council's footpath, with no earth batters are to extend beyond the property boundary line.

Reason: Implementation of Council policy.

- D2.** Any damage caused to kerb, guttering and/or footpath during building operations, shall be rectified by the developer in accordance with Council's Driveway crossing standards and specifications.

Reason: To ensure the integrity of Council's road infrastructure is maintained in an acceptable standard.

Access - Urban

- D3.** The vehicle access from Barber Street is to be upgraded in accordance with the approved site plan prepared by Stewart Surveys Pty Ltd, dated 25/10/2019, Ref: 5254. The upgrade of the vehicle access will require the construction of a concrete driveway across the footpath in accordance with Council's standards and specifications. A copy of the concrete crossover specification sheet can be downloaded or viewed on Council's website at: <http://www.gunnedah.nsw.gov.au>

- a) Before commencement of this work, construction levels are to be obtained from Council's Infrastructure Services. A security bond being half of the estimated cost of the construction work is to be lodged with Council, before work on the driveway is commenced.
- b) Upon the satisfactory completion of the driveway by the developer, the security bond will be released.

Note: Council promotes a nominal cross-fall across the footpath from the kerb top to the boundary line of 2-3%. Internal driveway grades shall be in accordance with AS 2890 – 2004. Council's Infrastructure Services can be contacted on 02 6740 2130.

Reason: To implement Council's policy.

- D4.** Onsite car parking accommodation shall be provided for a minimum of four (4) vehicles in accordance with the approved site plan prepared by Stewart Surveys Pty Ltd, dated 25/10/2019, Ref: 5254, to ensure the provision of adequate on-site parking facilities commensurate with the demand likely to be generated by the proposed development. Such being set out generally in accordance with the details indicated on the submitted plans, except as otherwise provided by the conditions of this consent.

Reason: To ensure compliance with Council's requirements.

Traffic and Parking

- D5.** All internal driveways, parking areas, loading bays and vehicular turning areas are to be constructed with a base course of adequate depth to suit design traffic, being hard sealed with either bitumen seal, asphaltic concrete, concrete or interlocking pavers or other alternative product which has been approved by Council. Parking areas must comply with AS 2890 – *Parking Facilities* and Council's Engineering Guidelines for Subdivisions and Developments, 2013.

Reason: To ensure compliance with relevant Australian Standards and to facilitate the use of vehicular access and parking facilities.

Outdoor Lighting

- D6.** Outdoor lighting is to comply with AS/NZS 11583.1 *Pedestrian Area (Category P) Lighting* and AS4282 *Control of Obtrusive Effects of Outdoor Light*.

Reason: To ensure compliance.

E. DURING CONSTRUCTION WORKS

E1. Inspections by the Principal Certifying Authority – Mandatory Critical Stage Inspections

48 hours prior to the covering of the following works, the Principal Certifying Authority appointed pursuant to Section 4.18(2) of the Environmental Planning and Assessment Act 1979 shall be notified that works are ready for inspection. (Note: Inspection in **bold type** are mandatory critical stage inspections under the Act and **MUST** be carried out by the Principal Certifying Authority. If these inspections are not carried out by the Principal Certifying Authority an Occupation Certificate cannot be issued).

- (a) **Piers (if any) prior to pouring of concrete**
- (b) **Footing trenches with reinforcement prior to pouring of concrete**
- (c) **Concrete slab formwork with reinforcement prior to pouring of concrete**

- (d) **Structural framework including roof members. When completed prior to the fixing of any internal sheeting**
- (e) **Wet area, damp proofing and flashing before lining**
- (f) Foundation material before installation of the swimming pool or laying of any bedding material
- (g) Works in relation to road reserves, footpath, kerb and gutter, road shoulder and drainage within public lands or road reserves
- (h) **Bearers and joist inspection, including tie down requirements and ant capping. When completed and prior to the laying of the floor**
- (i) Insitu concrete formwork (excluding paving) with reinforcement prior to pouring of concrete
- (j) **Final inspection prior to use of the building**

The above listed works may not be covered until approval is obtained from the Principal Certifying Authority or his/her duly appointed delegate.

Reason: To ensure compliance before, during and after construction.

- E2.** A stamped copy of the development consent, the approved plans and specifications are to be kept at the construction site at all times during the construction period.

Reason: To ensure compliance with approved application and plans.

Walls

- E3.** The internal walls of the premises must be constructed to provide a smooth, even, and impervious surface that is capable of being easily cleaned.

Reason: To ensure an acceptable standard of public health is provided.

Floor

- E4.** The floor construction must be finished in a smooth, non-slip, impervious material that is capable of being easily cleaned.

Reason: To ensure an acceptable standard of public health is provided.

Gaps/Joints

- E5.** All gaps, open joints, cracks and crevices within the walls and floors which may allow dust, hair, lint and other refuse to collect must be sealed in all walls and floors to enable easy cleaning.

Reason: To ensure an acceptable standard of public health is provided.

Handbasin

- E6.** A hand basin must be installed in the treatment or work area. The basin must be serviced with hot and cold water through a single outlet and fitted with a tap set that can be operated effectively hands free (i.e. a mixer tap which can be turned off with the elbow).

The hand basin must be provided with an adequate supply of soap and disposable hand towels from a dispenser at all times. This basin must be separate from the equipment wash basin.

Reason: To ensure an acceptable standard of public health is provided.

Equipment Wash Sinks

- E7.** A wash sink of adequate capacity must be provided to clean and rinse all equipment and implements. The sinks must be serviced with hot and cold water through a single outlet in addition to the hand basin.

Reason: To ensure an acceptable standard of public health is provided.

Equipment General

- E8.** The premises must be properly equipped with single use towels or an automatic hand dryer, disposable gloves, clean linen and gowns or aprons that are appropriate for the skin procedures carried out at the premises and a waste disposal bin.

Reason: To ensure an acceptable standard of public health is provided.

Surface Material

- E9.** All surfaces of chairs and treatment beds must be finished in a smooth impervious material that is capable of being easily cleaned.

Reason: To ensure an acceptable standard of public health is provided.

- E10.** Any damage caused to kerb, guttering and/or footpath during building operations, shall be rectified by the developer in accordance with Council's Driveway crossing standards and specifications.

Reason: To ensure the integrity of Council's road infrastructure is maintained in an acceptable standard.

- E11.** Work on the development shall be limited to the following hours to prevent unreasonable disturbance to the amenity of the area:-

Monday to Friday - 7.00am to 5.00pm;
 Saturday - 8.00am to 1.00pm if audible on other residential premises, otherwise 7.00am to 5.00pm;
 No work to be carried out on Sunday or Public Holidays.

Note: The builder shall be responsible to instruct and control sub-contractors regarding the hours of work.

Council will exercise its powers under the Protection of the Environment Operations Act, 1997, in the event that the building operations cause noise to emanate from the property on Sundays or Public Holidays or otherwise than between the hours detailed above.

Reason: To ensure amenity of the neighbourhood is maintained.

F. PRIOR TO THE OCCUPATION OF THE BUILDING

- F1.** Occupation of the building is not to occur until all work has been completed, the conditions of consent satisfied and an Occupation Certificate issued by the Principal Certifying Authority.

Reason: To meet statutory requirements.

- F2.** Prior to issue of an Occupation Certificate all statutory fire safety measures listed in the fire safety schedule (attached to the Construction Certificate) are to be installed in accordance with the standards detailed and the owner of the property shall provide a fire safety certificate for each statutory fire safety measure to the Principal Certifying Authority.

Reason: To ensure compliance and fire safety of building.

- F3.** Prior to operations commencing, the premises must be inspected and approved by a Council Environmental Health Officer.

Reason: To ensure an acceptable standard of public health is provided.

G. CONTINUED OPERATIONS

- G1.** All nail technicians that carry out skin penetration procedures, must be registered with Gunnedah Shire Council.

The premises must comply with the Public Health Act 2010 and Public Health (Skin Penetration) Regulation 2012.

Reason: To ensure compliance with statutory requirements.

- G2.** All practices and procedures carried out within a skin penetration premises must comply with the Public Health Act 2010, Public Health (Skin Penetration) Regulation 2012, Guidelines on Skin Penetration and the Skin Penetration – Code of Best Practice 2001.

Reason: To ensure compliance with statutory requirements.

Sterilisation

- G3.** If reusable skin penetration equipment/utensils are used an approved autoclave must be provided and operated in accordance with Australian Standard (AS) 4815:2001 “Office-based health care facilities – cleaning, disinfection and sterilisation of re-usable medical and surgical instruments and equipment and maintenance of the associated environment”.

The autoclave must be tested, serviced regularly and calibrated at least once a year by a qualified service technician. Details and documents of the services must be provided and available at all times at the premises.

Sterilisation procedures must comply with Section 5 of the “Skin Penetration – Code of Best Practice 2001”

Reason: To ensure an acceptable standard of public health is provided.

Sharps and Clinical Waste

- G4.** Sharps and Clinical Waste must be placed into a sharps container immediately after use. A yellow sharps container must be approved by Australian Standards and comply with the appropriate Australian Standard (AS 4261:1994 or AS 4031:1992). The sharps container must be collected and disposed of appropriately by a licensed waste transporter and treatment facility.

Reason: To ensure an acceptable standard of public health is provided.

- G5.** The owner of the building shall submit to Council at least once in each period of twelve (12) months following the building’s completion, an Annual Fire Safety Statement with respect to each essential fire safety measure associated with the building.

Reason: To ensure compliance and fire safety of the building.

- G6.** The sealing to all vehicular parking, manoeuvring and loading areas is to be maintained at all times.

Reason: To ensure maintenance of car parking areas.

Operating Hours

- G7.** The development operating hours are limited to the operation of the premises between the following hours:

- Monday – Wednesday: 9:00am until 6:00pm
- Thursday: 9:00am until 9:00pm
- Friday – Saturday: 9:00am until 6:00pm

Reason: To ensure compliance with application and plans.

PURPOSE

This Development Application is being referred to Council for determination as the development application includes a request for the variation to a development standard contained within the Gunnedah Development Control Plan 2012.

Applicant: Marnie Schillert
 C/- Stewart Surveys Pty Ltd,
 Owner: Ursula Schinnagel,
 Property Description: Lot 8 DP 666019,
 38 Elgin Street, Gunnedah

Proposed Development

The development proposes to change the use of part of the building which has historically been approved for storage to support the adjoining business premises. The development will change the use of this space to also be permitted for use as a business premises.



Figure 1 – Site Location

COMMENTARY

Issues

4.15(1)(a)(i) the provisions of any environmental planning instrument

Gunnedah LEP, 2012

The development site is zoned B4 Mixed Use, under the provisions of the Gunnedah Local Environmental Plan, 2012 (GLEP 2012) and Business Premises are permitted with consent within this land zone. The following GLEP 2012 clauses are applicable to assessment of this development:

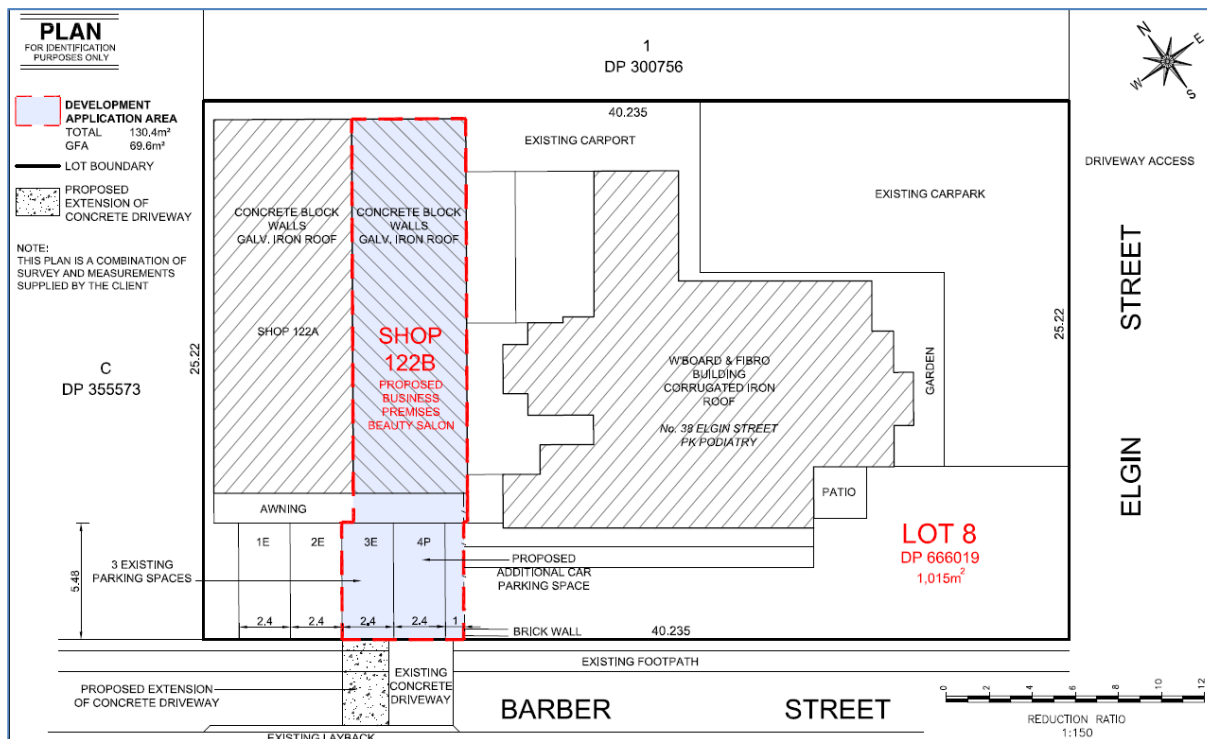


Figure 2 – Site Plan

4.4 – Floor Space Ratio

The development will not result in an increase in floor area within the existing development. The development site has a maximum Floor Space Ratio (FSR) of 1.5:1. As there will be no increase in building area the development will not result in an exceedance of the site FSR.

6.5 – Essential Services

The development site has provision of existing services connected to the site. The development does not have any obligation for the provision of additional service connections and the development will not result in any impediment to access of the site from Barber Street or Elgin Street.

State Environmental Planning Policies (SEPPs)

State Environmental Planning Policy No. 44 – Koala Habitat Protection (SEPP 44)

SEPP 44 does not apply to this development as the site has an area of less than 1 hectare.

State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55)

The proposed development will result in a change of use of a portion of the site. A search of Council’s records and a review of the Statement of Environmental Effects did not identify any historical use of the site that could potentially have led to contamination of the sites soil profile. The proposed works are not expected to increase the potential risk of site contamination onsite or within the immediate area surrounding the site.

State Environmental Planning Policy No. 64 – Advertising and Signage

The development proposes to install a business identification sign as part of the proposed development. The signage will be positioned on the front façade above the business entry and will be secured to the fascia. The sign will not protrude above the building façade, or protrude above the building roofline and will have a surface area of 2m². The signage does not propose any illumination. All signage is compatible with the size and scale of the existing building and will not detract or impair structural features of the building including consideration of the adjoining heritage items that are located directly across from the development site. Hence, the development is regarded as being compliant with SEPP 64, Schedule 1.

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017

The development site is located within the B4 Mixed Use zone, which is identified within this SEPP as being a land zoning to which this SEPP applies. The development does not propose the removal of any trees as part of the development proposal. The change of use will occur to an existing building only, with no proposed building works and the identified onsite parking provision for the development is already cleared. Hence, the development does not require the submission of a Biodiversity Assessment Report.

4.15(1)(a)(iii) provisions of any development control plan**Gunnedah Development Control Plan 2012 (Gunnedah DCP)****1.7.1 – Notified Development Applications**

The development application is requesting a variation to an adopted development standard to enable consideration for onsite parking spaces to be accessed from Barber Street without the ability to enter and exit in a forward direction. Hence, the application was required to be notified to adjoining land holders. The development application was notified to adjoining land holders for a period of 14 days. Council did not receive any submissions during the exhibition period.

3.1 – Building Setbacks

The development will not result in any changes to the building setbacks. There will not be any alterations conducted to the building.

3.2 – Height

The development site does not have any specific height limitation. The development does not result in an exceedance of the site specific floor space ratio. Refer to Clause 4.4 assessment previously through this report.

3.3 – Design

The development does not propose the amendment to the facade of the building facing Barber Street. There are no plant room, air conditioner units or ducting proposed along the front façade.

3.5 – Utilities and Services

The development does not propose any additions to the building or demand for additional Council utilities or services.

3.6 – Traffic and Access

The development has access from Barber Street to provide access to the proposed onsite parking area dedicated for the purposes of customer and staff parking for this site. The existing access has a constructed kerb layback within the kerb along Barber Street. However, there is no concrete between the kerb and the constructed concrete pedestrian footpath. The vehicle access is to be upgraded along the entire vehicle access to ensure that a suitable access is provided from Barber Street to the onsite parking area.

The position and layout of the onsite parking area does not allow for vehicles to enter and exit the site in a forward direction as the site constrains and position of proposed parking spaces prohibit vehicle manoeuvring within the site. The existing parking layout provides for 3 existing parking spaces accessed directly from Barber Street, illustrated in Figure 3 as paces 1E, 2E and 3E. The prohibiting of vehicle reversing directly onto Council’s public road network reduces potential for vehicle collisions. As the site has provision of 3 existing parking spaces the provision of an additional space does not introduce a new element of risk as vehicle reversing onto the road already occurs. The distance of the access point from intersections or any other high volume traffic generating development is great enough that the variation of Council’s standard in this circumstance is considered to be acceptable.

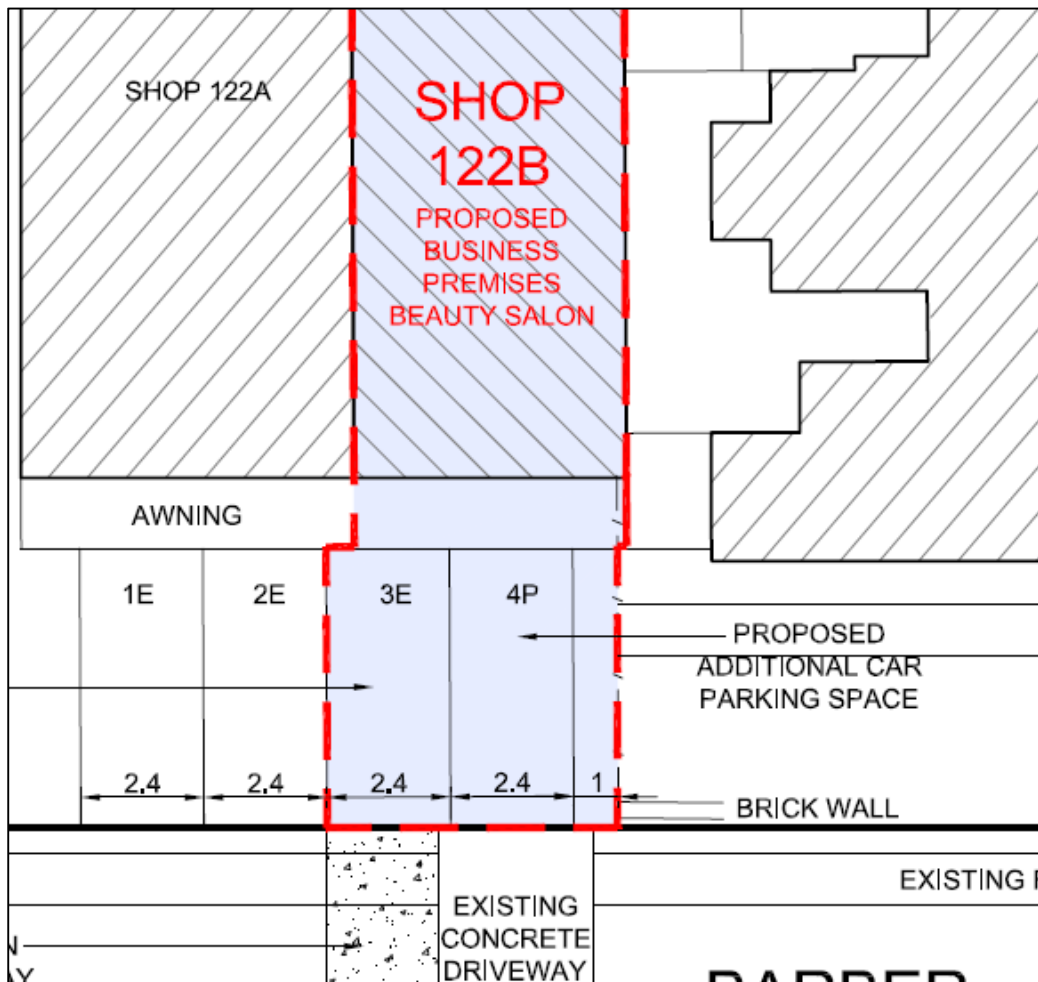


Figure 3 – Snapshot vehicle parking spaces

3.7 – Parking

The area for the change of use will be 69.6m², with the previous use of this area of the building being for storage and requiring 1 onsite parking spaces. The new land use will be Business Premises. Business premises require provision of 1 parking space per 40m² of gross floor area. The parking demand for this development is 2 onsite parking spaces. As the previous use required one parking space, the retention of this space for the new use will require one additional space. The proposed parking layout identifies the provision of this one additional space marked as 4P on Figure 3.

3.8 – Landscaping

This development does not require the provision of more than 10 onsite parking spaces. Hence, no landscaping is required. Existing landscaping will be retained.

3.9 – Outdoor Lighting

The development does not propose any new external lighting. Any lighting within the property is to comply with *AS/NZS 11583.1 Pedestrian Area (Category P) Lighting* and *AS4282 Control of Obtrusive Effects of Outdoor Light*.

3.10 – Outdoor Signage

The development will install one new fascia sign that will be a business identification sign illustrating the name and logo of the proposed business to occupy the building. The signage will not be illuminated and will not require a timer to reduce lighting spill. The sign complies with the requirements of Schedule 1 of SEPP 64. See SEPP 64 assessment previously through this report.

4.15(1)(b) the likely environmental impacts on the natural and built environments and social and economic impacts in the locality

Context and Setting

The development site contains two existing structures with one containing a medical practice and the subject development building, which is separated into a business premises and storage. The development proposal will change the use to create two separate business premises within this building. The development site is located within the B4 Business area of Gunnedah to the southeast of the CBD. The surrounding allotments contain residential dwellings, multiple dwelling units, business premises and a place of public worship. The development is considered to be consistent with the land use currently undertaken onsite, the development within the surrounding area and the objectives of the land zone.

Access, Transport and Traffic

The development site has frontage to Barber Street and Elgin Street. The development will result in a minor increase in vehicle movements to that of the current development. The position of existing parking provided for the medical practice to the proposed Carparking area will not conflict between the separate land uses onsite.

The surrounding road network is bitumen constructed with kerb and guttering along each road frontage. No upgrade works are required for the surrounding road network as the current formation of Barber Street and Elgin Street are suitable for the resulting traffic levels within the immediate road network.

Waste

Council's kerb side collection is available within the surrounding locality. Each of the lot frontages will have adequate area for the placement of bins for collection. The developer is to ensure that the site disposes operational waste to an appropriately licensed waste management facility.

Noise

The development is expected to operate during day time period, with the exception of extension of trading hours on Thursday which will see the business trade until 9pm. No trading will occur on a Sunday, protecting the amenity of the surrounding area. The development is not expected to generate excessive noise levels as no external plant or machinery is proposed that could potentially impact on the adjoining properties. It is considered that the development will not result in any noise impacts. A condition will be imposed identifying the specific business trading hours to ensure that they are adhered to.

Social & Economic impact in the locality

The development is expected to have a positive social and economic impacts on the Gunnedah area with an additional business premises being created within close proximity to the Central Business District, creating additional employment opportunities.

S4.15(1)(c) Suitability of the Site

The development site is considered to be suitable for the development. The site is not identified as being bushfire or flood prone land. The development does not contain any items of heritage significance that may be impacted by the development. The development is compatible with the existing land use within the surrounding area. Hence, it is regarded that the development site is suitable for the development.

4.15(1)(d) any submissions made in accordance with this Act or the regulations

The Development Application was notified to adjoining land holders for a period of 14 days. Council did not receive any submissions or objections during the exhibition period.

4.15(1)(e) the public interest

The development was not regarded as being integrated or designated development and did not require referral to any external Federal or State Government agencies. There are no relevant planning studies, strategies or management plans that are applicable to the proposed development.

Conclusion

The Development Application is seeking consent for the change of use of part of the building from storage to business premises. The application has been assessed under the provisions of the *Environmental Planning and Assessment Act 1979*. The evaluation of this Development Application has concluded that the proposed development is compliant with the legislative requirements for this development.

As per the recommendation of this report, it is concluded that Development Application No. 2019/078, at 38 Elgin Street, Lot 8 DP 666019, should be approved subject conditions.

ITEM 2 **Section 4.55(1A) Application to Modify a Development Consent No. 2012/185.003 – Modification to Voluntary Planning Agreement (VPA) – Lot 22 DP1216060 and Lot 2 DP865898 – 334 Pownall Road, Mullaley and ‘Beulah’ 259 Barker Road, Marys Mount**

MEETING	Planning, Environment and Development Committee – 4 December 2019
DIRECTORATE	Planning and Environmental Services
AUTHOR	Acting Manager Development and Planning
POLICY	Nil
LEGAL	Environmental Planning and Assessment Act, 1979 Gunnedah Local Environmental Plan, 2012 Gunnedah Development Control Plan, 2012
FINANCIAL	Nil
STRATEGIC LINK	Community Strategic Plan 1.5.4 Implement and maintain developer contribution plans which require appropriate contributions for development impacts upon infrastructure so as not to unfairly burden existing ratepayers or future developers. Operational Plan 1.5.4.1 Lobby for improvements to the planning system that support Council’s objectives and identify funding opportunities for local services and facilities through developer contributions, voluntary planning agreements and government grants.
ATTACHMENTS	1. Draft Voluntary Planning Agreement

OFFICER'S RECOMMENDATIONS:

1. That Council endorse the General Manager and a Councillor to execute the Voluntary Planning Agreement, as exhibited;
2. That the S4.55(1A) Application to Modify a Development Consent No. 2012/185.003, for the alteration to the endorsed Voluntary Planning Agreement (VPA) relating to the approved extractive industry, at Lot 22 DP 1216060 – 334 Pownall Road, Mullaley and Lot 2 DP 865898 – 'Beulah' 259 Barker Road, Marys Mount be approved subject to the deletion of condition A5 and the insertion of condition A5a, as follows:

A. General Conditions**A1. Deleted****A1a.** The development shall be carried out in accordance with the details set out in the following

- Development Application form lodged 18/12/2012;
- Environmental Impact Statement (including Executive Summary, Volume 1, Volume 2 and Appendix), prepared by Stewart Surveys Pty Ltd, dated 13/12/2012;
- Amendment to Environmental Impact Statement, prepared by Stewart Surveys Pty Ltd, dated 17/05/2012;
- Traffic Impact Assessment (Revision 5), prepared by Ardill Payne & Partners, dated May 2013; and
- Amendment to Application, prepared and submitted by Stewart Surveys Pty Ltd, dated 17/04/2014, including the additional information prepared by Spectrum Acoustics (Noise and Vibration Consultants), dated 17/04/2014, and accompanying plans (Proposed Quarry Site Plan, drawing number 4122_quarry design, dated 11/04/2014, Sheet 2 of 3, Issue G and Haulage Operations to Cease at School Bus Times, both prepared by Stewart Surveys Pty Ltd); and
- Biodiversity Impact Assessment Report, prepared by Niche Environment and Heritage, dated August 2015,

except as otherwise provided by the conditions of consent.

Reason: To ensure compliance with application and plans.

Advisory Note: The Flora and Fauna Impact Assessment, Compensatory Habitat Assessment and Blackjack Mountain Offset Site Management Plan have been assessed in the application submitted under the provisions of the Environment Protection and Biodiversity Conservation Act, 1999.

- A2.** To confirm and clarify the terms of this approval, consent is given for the following
- Extraction of Material of no more than 120,000 bank cubic metres (which equates to 360,000 tonnes) per annum;
 - Maximum number of truck movements (includes loaded and unloaded) per day - 120 (with no more than 496 truck movements in any one week (Monday-Sunday));
 - Period of Extraction of Material of no more than 22 years from the commencement date of extraction operations; and
 - Rehabilitation of the site.

Note. The quarry operator is required to inform Council of the commencement date of extraction operations approved under this consent. Council will then provide written confirmation of the lapsing date for quarry operations under this development consent.

Reason: To ensure compliance with application and plans.

A3. To confirm and clarify the terms used in this approval, the following definitions are provided:

- *Extraction Operations* means the removal of overburden, the extraction, processing, handling, storage and transportation of extracted material both on and off site in relation to this consent.

Note: All conditions under Section D – ‘Prior to Operations’ shall be completed prior to the commencement of *Extraction Operations*.

Reason: To ensure compliance with application and plans.

Surrender of Existing Development Consent

A4. At the commencement date of *extraction operations* (as defined in Condition A3) and approved under this development consent, the owner of Lot 161 DP 755508, “Burleith”, 334 Pownall Road, Mullaley shall, in writing, surrender all previous development consents which relate to extractive industries on the subject land.

Reason: To ensure compliance with application and plans.

A5. Deleted

Voluntary Planning Agreement

A5a. The developer is to enter into and comply with the planning agreement under Section 93F of the Environmental Planning and Assessment Act, 1979, being the Voluntary Planning Agreement, signed by Council on 5 December 2019 between Gunnedah Quarry Products Pty Ltd and Gunnedah Shire Council, as agreed to by Gunnedah Shire Council (date of meeting 4 December 2019), in relation to the carrying of the development the subject of this consent. The planning agreement shall be executed by both parties prior to the commencement of any work or action associated with this development consent.

Reason: To ensure compliance with submitted agreement.

A6. Deleted

A6a. All costs, including but not limited to, the assessment of submitted documentation for approval and reporting and required site inspections associated with the implementation and monitoring of the Koala Plan of Management shall be borne by the development.

Reason: To ensure that all costs associated with the Koala Plan of Management are borne by the developer.

A7. Deleted

B. Road Construction

B1. Prior to the commencement of each stage (as identified in Figure 5 Road works Staging Plan contained within the Traffic Impact Assessment (Revision 5), prepared by Ardill Payne & Partners, dated May 2013) and component of road works on a Council public

road, construction plans and specifications shall be submitted to and approved by Council. All works are to be designed in accordance with Council's Engineering Guidelines for Subdivisions and Developments, Version 2.0, dated August 2013. The design of all works is to be related to the adjoining infrastructure.

Reason: To ensure compliance with Council's requirements.

- B2.** Prior to the commencement of road works at the Kamilaroi Highway and Goolhi Road intersection, a detailed set of construction plans shall be provided to and approved by the Roads and Maritime Services. A copy of the construction plans shall also be provided to Council.

Reason: To ensure compliance with Council's and Roads and Maritime Services' requirements.

- B3.** Erosion and sediment control facilities must be installed and maintained for the duration of the road works, to avoid damage to the environment during road work construction. The plan and specification for these facilities are considered an integral part of the development and must be approved with the road work construction plans. The approved erosion and sediment control measures are to be maintained throughout the construction of the development.

Reason: To ensure that adequate control measures are installed.

- B4.** All road works undertaken by contractors (ie. other than Council) on Council's roads and assets shall be inspected by Council to ensure that the works are undertaken in accordance with Council's Engineering Guidelines for Subdivisions and Developments, Version 2.0, dated August 2013. An inspection fee is applicable for each time Council is required to inspect the works in accordance with Condition G1 and shall be paid prior the commencement of road works.

Reason: To ensure compliance.

- B5.** The contractors engaged to undertake works on Council's roads or assets must maintain public liability insurance cover to the minimum value of \$20 million. The policy shall specifically indemnify Council from all claims arising from the execution of such works. Documentary evidence of the currency of the policy shall be provided to the Council prior to commencement of work and upon request, during the progress of the work.

Reason: To ensure compliance.

C. Prior to Extraction Operations

Road Construction

- C1.** Prior to the commencement of the extraction operations, the construction of auxiliary left acceleration lanes (AUL) and channelized right turn treatment (CHR) intersection at the Goolhi Road and Kamilaroi Highway intersection shall be constructed. All road works are to be designed and constructed in accordance with the applicable Austroads Guidelines and Australian Standards with reference to the Roads and Maritime Services Supplements for Austroads/Australian Standards and to the satisfaction of Council's Director of Infrastructure Services.

Reason: To enable haulage vehicles to safely enter the classified road.

Koala Plan of Management

C2. A Compensatory Vegetation Management Plan (VMP) shall be prepared for the site by a suitably qualified person and submitted to Council for approval prior to the commencement of extraction operations. A copy of the approved plan is to be submitted to the Department of Planning and Environment for information within 7 days of it being approved. The VMP will include a detailed works program for all revegetation and rehabilitation works that addresses:

- Timing, budget and bonding of works;
- Aims, key performance indicators, deliverables and allocated responsibilities;
- Contingency plans for issues such as lack of local seed stock, drought, plague, fire, stock grazing, feral animal grazing;
- Tree loss and replanting; and
- Method of tree planting and source of seed stock.

All plantings are to be bonded with an amount equal to the cost of the works. The approved plan shall be implemented in accordance with that plan.

Reason: To ensure compliance with approved of Koala Plan of Management.

C3. A Monitoring and Reporting Plan shall be prepared by a suitably qualified person and submitted to the Council for approval and approved prior to the commencement of extraction operations. The plan must cover the entire development timeframe for revegetation works and address koala activity and mortality issues. A copy of the approved plan is to be submitted to the Department of Planning and Environment for information. The Monitoring and Reporting plan shall be implemented in accordance with that plan. An annual report shall also be submitted to Council (with a copy to the Department) for the first 10 years of the project, then every three years after that and/or at the end of a stage, that addresses revegetation work outcomes, ameliorative measures undertaken, koala activity and koala mortalities.

Reason: To ensure compliance with approved of Koala Plan of Management.

C4. A Traffic Management Plan detailing the proposed signage and speed limits for the internal haul route and proposed code of conduct for employees and truck operators, shall be prepared by a suitably qualified person and submitted to Council for approval and approved prior to the commencement of extraction operations. A copy of the approved plan is to be submitted to the Department of Planning and Environment. The approved plan shall be implemented in accordance with that plan.

Reason: To ensure compliance with approved of Koala Plan of Management.

Traffic Management & Parking Control

C5. A Driver Code of Conduct for the transportation of materials on public roads, shall be developed for all heavy vehicle drivers that access the development site (including haulage and delivery vehicles) and shall be submitted to Council for approval and approved prior to commencement of any extraction operations on site. All drivers will be required to sign a register of acceptance to the Driver Code of Conduct. The Driver Code of Conduct shall include the following (but not limited to) School Bus Operating Procedure (signed by Paul Hawkins – Hawkins Bus Service on 19/08/2013 and Paul Hope on 13/08/2013), driver behaviour, compliance with road rules and safety, minimising noise and dust emissions, inform drivers of all known safety considerations along the haul route (including school bus routes and timetables, school zones, concealed driveways, seasonal haulage operations, wet weather safety and any other known local hazards) and ensuring all loads are covered before leaving the quarry site.

The code must include enforceable sanctions (to the satisfaction of the Council) for any person who fails to abide by the code. The Approved Code of Conduct shall be strictly adhered to and implemented during the transportation of any material on public roads.

Reason: To ensure compliance with submitted documentation.

- C6.** A bus pick-up/set-down area on Goolhi Road, west of Marys Mount Road intersection, shall be constructed to the satisfaction of the Council prior to the commencement of extraction operations. The location of the bus pick-up/set-down area is to be determined in consultation with Council. The pick-up/set-down area shall be constructed in accordance with Austroads Guidelines – Guide to Road Design Part 3: Geometric Design with reference to Roads and Maritime Services' supplements.

Reason: To ensure compliance with submitted documentation.

- C7.** Warning signs shall be erected to the satisfaction of the Council within the vicinity of the quarry entrance off Barker Road, to advise motorists of additional truck movements in the area. The location of the signage shall be determined in consultation with Council. Signage is to be supplied and installed in accordance with Australian Standard 1742 and relevant Roads and Maritime Services' supplements to Australian Standard 1742.

Reason: To ensure compliance with submitted documentation.

- C8.** The pavement of the internal haulage road shall be upgraded and bitumen sealed from the stockpile area to the quarry entrance off Barker Road. A detailed set of construction plans shall be provided to and approved by Council, prior to the commencement of road works. The bitumen seal shall be maintained in a good safe and trafficable condition to the satisfaction of the Council for the life of the development.

Reason: To ensure compliance with submitted documentation and for dust suppression.

- C9.** Onsite car parking accommodation shall be provided for a minimum of eight (8) vehicles, to ensure the provision of adequate on-site parking facilities commensurate with the demand likely to be generated by the proposed development. The car parking area shall be constructed of all weather material and shall be clearly signposted. An adequate parking area shall be provided for delivery and heavy vehicles.

Reason: To ensure adequate on site car parking is provided.

Soil Management

- C10.** A Soil Management Plan is to be prepared and approved by Council, which includes the availability and suitability of top soil and subsoil, a soil balance for rehabilitation purposes and stock piling location and management plan. The Plan shall also include details of erosion and sediment control and final void management. The approved plan shall be implemented in accordance with that plan.

Reason: To ensure compliance with application and plans.

Identification of Extraction Boundary

C11. The 'limit of extraction' boundary (as identified on the Proposed Quarry Site Plan, prepared by Stewart Surveys Pty Ltd, dated 25 March 2013, Ref: 4122_quarry design Issue F) shall be clearly marked out with durable pegs or other markers prior to the commencement of extraction operations. The identification marks shall in place remain for the life of the development, with all operators being made aware of the boundary markers and the limits of the extraction boundary.

Reason: To ensure compliance with application and plans.

Other Approvals

C12. Prior to the commencement of the construction of Dam B, consultation with the NSW Office of Water shall be undertaken regarding the Harvestable Rights Dam Policy requirements and all required approvals shall be obtained.

Reason: To ensure compliance with application and plans.

C13. Prior to the use of water from the existing bore for the development, consultation with the NSW Office of Water shall be undertaken regarding the existing bore licence requirements.

Reason: To ensure compliance with application and plans.

Surface Water Management

C14. The recommendations of the Surface Water Study and Sediment and Surface Water Management Report, prepared by Northwest Project Pty Ltd, dated 30 April 2013, shall be implemented to the satisfaction of Council, with all construction works to be completed prior to the commencement of the extraction operations.

Reason: To ensure compliance with application and plans.

C15. Prior to the commencement of the extraction operations, supporting documentation is to be submitted to Council (for approval) to demonstrate that Dam A will be of sufficient size to cater for a 1% Annual Exceedance Probability event.

Reason: To ensure that storage dam is of adequate size and to prevent earthwork failure.

Archaeology

C16. The recommendations of the Archaeological Survey (prepared by Patrick Gaynor, dated October 2012) shall be implemented to the satisfaction of Council, with all construction works (including the fencing of the scar tree) to be completed prior to the commencement of the extraction operations.

Reason: To ensure compliance with application and plans.

Bushfire Protection

C17. Prior to the commencement of the extraction operations, a Bushfire Protection Plan shall be prepared and approved by Council. The Plan shall be prepared in accordance with the NSW Rural Fire Service "Planning for Bushfire Protection, 2006" and shall be implemented prior to the commencement of the extraction operations.

Reason: To ensure compliance with application and plans.

Complaints Register

C18. The operator of the quarry shall nominate a contact person and telephone number for the benefit of adjoining neighbours and establish a complaints register that includes records of nature, time and date of complaint, climatic conditions such as wind direction and speed and the action taken to address complaint. The register shall be made available to Council upon request.

The developer shall notify all residents within a 5.0 kilometre distance of the boundary of the development site in writing of the contact details and associated information and that they may contact the quarry operator to complain about the operation of the quarry.

Reason: To ensure amenity of area.

D. During Extraction Operations**Extraction Operation Hours**

- D1.** The extraction operation hours are limited to the following:
- Monday to Friday – 7.00am to 6.00pm (Australian Eastern Daylight Time)
 - Monday to Friday – 7.00am to 5.00pm (Australian Eastern Standard Time)
 - Saturday – 8.00am to 3.00pm
 - Sunday and Public Holidays – closed.

Reason: To ensure compliance with application and plans.

Haulage

D2. Haulage operations shall cease when the school bus is travelling along the identified sections of the haul route as illustrated on the submitted plan - Haulage Operations to Cease at School Bus Times, prepared by Stewart Surveys Pty Ltd, at the following times on school days:

- Marys Mount Road to Quia Road – 7.50am-8.10am and 3.50pm-4.10pm;
- Emerald Hill to Quia Road – 7.50am-8.10am and 3.50pm-4.10pm; and
- Quia Road to Gunnedah – 8.00am-8.30am and 3.30pm-4.00pm.

Note: Should a school bus operating time or the bus route change, an amendment to the above time and/or route shall be submitted to and approved by Council prior to any change in haulage operations.

Reason: To ensure compliance with submitted documentation.

- D3.** All haulage operations are to be limited to the following routes:
- 75% of truck movements shall be via Barker Road – Marys Mount Road – Goolhi Road – Kamilaroi Highway (at Emerald Hill); and
 - 25% of truck movements shall be via Barker Road – Marys Mount Road – Goolhi Road – Quia Road – Blackjack Road – Oxley Highway (west of Gunnedah).

A record of movements shall be kept, noting the direction, date, and type of haulage vehicle utilised. The record of movements shall be submitted to Council every 12 months. The register shall also be made available to Council upon request.

Note: There shall be no haulage of material extracted from the development site on any other public road, without an amendment to this development consent.

Reason: To ensure compliance with application and plans.

- D4.** The haulage of material shall be undertaken in the following heavy vehicles:
- 75% of heavy vehicles used shall be truck and dog (capacity of 32 tonnes);

- 20% of heavy vehicles used shall be single semi-trailers (capacity of 27 tonnes); and
- 5% of heavy vehicles used shall be B-doubles (capacity of 38 tonnes).

Reason: To ensure compliance with application and plans.

- D5.** The haulage of material along Blackjack Road shall not be undertaken during the three (3) days of the Ag-Quip Field Days.

Reason: To ensure compliance with application and plans.

Koala Surveys

- D6.** Target surveys for koalas are to be undertaken by an ecologist, who is experienced and qualified in such surveys, within the 24 hours immediately prior to tree clearing.

Reason: To ensure compliance with approved Koala Plan of Management.

Groundwater

- D7.** The quarry operator shall conduct bi-annual water testing of open water storages to ensure that groundwater penetration has not occurred. The testing shall be undertaken by a NATA accredited laboratory. The results are to be forwarded to Council. The first of such tests shall be conducted within 6 months of the commencement of extraction operations.

Reason: To ensure compliance with application and plans.

- D8.** Should groundwater be intercepted at any stage during extraction operations, all works are to cease immediately and Council and the NSW Office of Water are to be notified immediately. No works will be permitted to recommence without the written authorisation of the NSW Office of Water.

Reason: To ensure compliance with application and plans.

Documentation

- D9.** A copy of all the approved documents related to this consent, shall be kept on site at all times and shall be made available upon inspection by Council or an authorised government agency.

Reason: To ensure all documents are available on inspection.

- D10.** A copy of the Annual Return required in the General Terms of Approval shall be provided to Council in addition to the requirements of the Environment Protection Authority.

Reason: To ensure compliance with application and plans.

Dust

- D11.** To minimise the potential for dust nuisance generated by the development, the Best Practice Mitigation Measures outlined in the Air Quality Impact Assessment (prepared by Pacific Environment Limited, dated 12 December 2012, Job No. 7338) and amended Air Quality Impact Assessment (prepared by Pacific Environment Limited, dated 9 May 2013, Job No. 7338) shall be implemented during the extraction operations.

Reason: To ensure compliance with application and plans.

Sediment and Water Control

D12. The recommended monitoring, reporting and corrective action noted in the Sediment and Surface Water Management, prepared by Northwest Project Pty Ltd, dated 30 April 2013 shall be implemented during the extraction operations.

Reason: To ensure compliance with application and plans.

Electricity Relocation

D13. Prior to the relocation of the overhead electricity line on the property boundary, consultation with the adjoining property owner of Lot 182 DP 755508 ("Verona", 125 Pownall Road, Mullaley) is to be undertaken with regard to the location of new line.

Reason: To ensure compliance with application and plans.

Blasting and Fly-rock Management

D12. The fly-rock management actions outlined in the additional information prepared by Spectrum Acoustics (Noise and Vibration Consultants), dated 17/04/2014 shall be implemented during any blasting event.

Reason: To ensure compliance with submitted documentation.

E. During Road Works Construction

E1. The construction of road works shall be limited to the following hours to prevent unreasonable disturbance to the amenity of the area:-

Monday to Friday: 7.00am to 5.00pm;

Saturday: 8.00am to 1.00pm if audible on other residential premises, otherwise 7.00am to 5.00pm;

No work to be carried out on Sunday or Public Holidays if it is audible on the residential premises.

The developer shall be responsible to instruct and control his sub-contractors regarding the hours of work. Council will exercise its powers under the Protection of the Environment Operations Act 1997, in the event that the construction operations cause noise to emanate from the property on Sundays or Public Holidays or otherwise than between the hours detailed above.

Reason: To ensure compliance with Council's requirements.

F. Inspection of Road Works***Inspections by Council***

F1. Council shall be notified, 48 hours prior, by the contractor that the following works are ready for inspection:

- (a) Pavement – In accordance with RMS QA Specification R71 Appendix C1 Schedule of Hold Points
- (b) Seal – In accordance with RMS QA Spec R107 Appendix C1 Schedule of Hold Points

Reason: To ensure compliance before, during and after construction.

G. Completion of Road Works

- G1.** One set of approved construction drawings shall be amended to show the “work-as-executed”. These drawings in both hard copy and electronic form shall be provided to Council within three (3) months of completion of each stage of the road works. The drawings are required to ensure that adequate records are maintained of community infrastructure. The drawing shall be certified by a registered surveyor or a Chartered Professional Civil Engineer. An electronic copy of the “work-as-executed” in dwg format shall also be provided to Council with the drawings.

Reason: To ensure compliance with Council’s requirements.

H. Completion of Extractive Industry Operations

- H1.** At the completion of operations, as determined by Council, the quarry operator will commission the completion of a Contamination Assessment Report for the site. Any recommended remediation actions are to be completed by the quarry operator and shall be identified within the report.

Reason: To ensure compliance with Council’s requirements.

I. General Terms of Approval – Environment Protection Authority

- I1.** The development shall be carried out in accordance with the General Terms of Approval issued by the Environmental Protection Authority, attached in Annexure A to this consent.

Reason: To ensure compliance.

J. BioBanking Statement

- J1.** Deleted.

PURPOSE

This report is seeking Council’s authority to execute the Voluntary Planning Agreement (VPA) associated with Development Consent No. 2012/185.003.

This Application to Modify a Development Consent is also being referred to Council for determination as the original determination was approved by the Northern Joint Regional Planning Panel and determination of a S4.55(1A) modification to the consent is to be made by Council.

Applicant:	Brendan MacKellar C/- Stewart Surveys Pty Ltd,
Owner:	Gunnedah Quarry Products Pty Ltd and B J, T C and M R Lee,
Property Description:	Lot 22 DP1216060 and Lot 2 DP865898, 334 Pownall Road, Mullaley and ‘Beulah’ 259 Barker Road, Marys Mount

Proposed Development

The Application to Modify a Development Consent proposes to amend and endorse an amended Voluntary Planning Agreement (VPA).

BACKGROUND

Development Application No. 2012/185 was approved by the Northern Joint Regional Planning Panel on the 3 May 2014 for the operation of an Extractive Industry with an extraction limit of 360,000 tonnes per annum over a 23 year life including 1 year for rehabilitation.

Council endorsed the execution of the amended VPA at the July 2014 Ordinary Meeting.

Council issued a Notice of Breach of Obligation to Gunnedah Quarry Products on 03 October 2018, giving the developer 60 days to complete all outstanding works. The developer's legal representative responded on 04 December 2018, denying any breach. A Notice of Dispute was lodged by the developer's legal representative on 06 December 2018. Council staff met with the developer and representatives on 20 December 2018, as requested by the developer.

As part of this Application to Modify a Development Consent Council received an amended VPA. The subject Modification of Consent application was reported to the 2019 April Ordinary meeting, where Council resolved not to support the draft amendment to the VPA.

After discussions with the developer and amendments to the Draft VPA, Council later endorsed (Resolution No. 17.06/19, 19 June 2019) the exhibition of the Draft VPA. Council exhibited the draft VPA for a period of 30 days, closing 18 November 2019. Council did not receive any submissions or objections to the modification or Draft VPA.

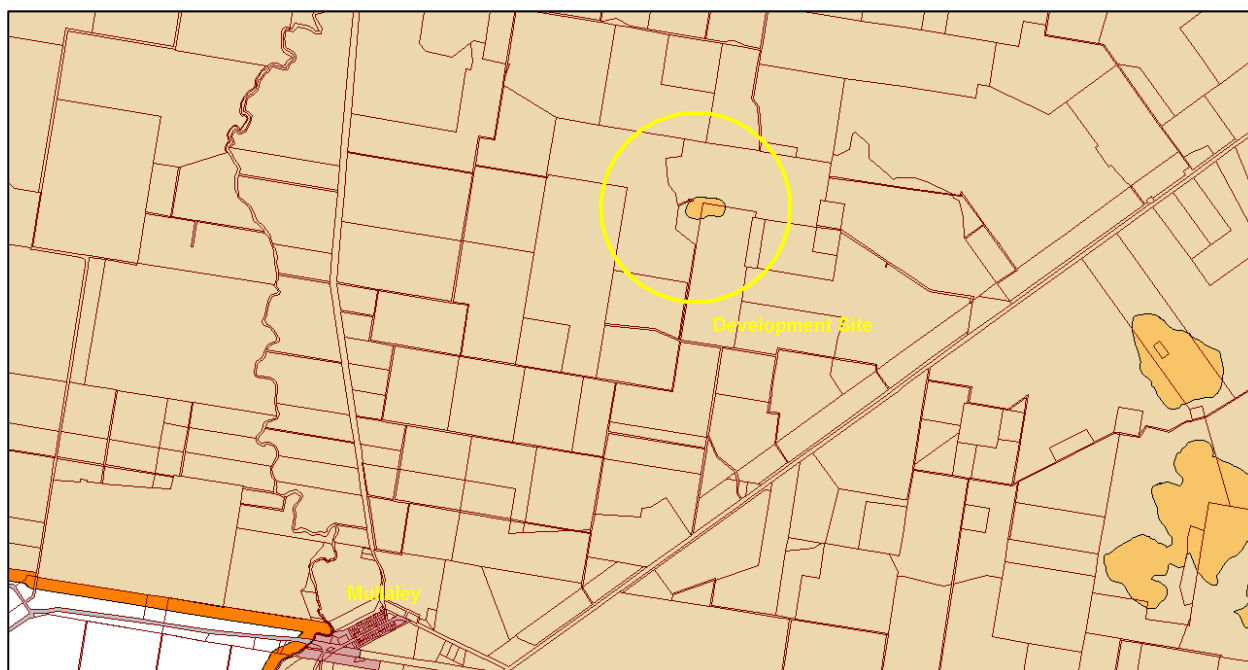


Figure 1 – Site Location

COMMENTARY

Issues

4.15(1)(a)(i) the provisions of any environmental planning instrument

The development site is zoned RU1 Primary Production, under the provisions of the Gunnedah Local Environmental Plan 2012 (GLEP 2012), and an extractive industry is still a permitted land use within the land zoning.

The original development approval was issued under the EPA Act 1979 and was deemed to comply with the Gunnedah Local Environmental Plan 2012 (Gunnedah LEP 2012) and any other Environmental Planning Instrument, at the time the development application was approved. The modification to development conditions to refer to the most recent endorsed VPA does not result in the development proposal being amended in such a way that it will contradict any Environmental Planning Instrument that was applicable to the original development.

4.15(1)(a)(iii) provisions of any development control plan

Gunnedah Development Control Plan 2012 (Gunnedah DCP)

1.7 – Consultation

The modification of consent and draft VPA were notified to adjoining land holders for a period of 30 days. The modification was exhibited with the Namoi Valley Independent on the 17, 22 and 24 of November 2019. A copy of the exhibition was also made available at Council's administration building and on Council's website for public review. Council did not receive any submissions or objections to the development modification or the draft VPA that was exhibited.

4.15(1)(b) the likely environmental impacts on the natural and built environments and social and economic impacts in the locality

Access, Transport and Traffic

The modification will allow for the variation to the draft VPA to amend the timeframes for the completion of the former Year 2 and 3 works to Marys Mount Road identified as being required by the original development assessment and determination. This Application to Modify a Development Consent does not propose any changes to vehicle traffic, haulage routes or volumes of extraction. This report includes the endorsement of this Draft VPA to updated references within conditions of development consent. The amendments to the VPA will include:

- *Amend the definitions of Year 1 and 2 and delete the definition of Year 3*

Comment: The works identified in Year 3 are now proposed to be undertaken with the works identified in Year 2. Hence, the proposal includes a change to the definition of Year 2 and removal of the definition for Year 3. The works that have been completed in Year 1 refer to the date of execution of the VPA. Therefore, the definition of Year 1 refers to the actual dates of completion.

- *Amendment to Clause 7.2 to update the proposal for only two stages – being Year 1 and Year 2*

Comment: This is further clarifying the proposed definition changes to include only the two stages.

- *Amendment to Clause 7.2.5 – amendment to works identified in Year 2*

Comment: The proposal outlines the combination of the works previously identified in Year 2 and Year 3.

- *Removal of Clause 7.2.6 – works identified in Year 3 and confirmation of the continued maintenance of the gravel section of Marys Mount Road*

Comment: Consistent with the amendments to Clause 7.2.5 and confirmation of the existing agreement to continue to maintain the gravel sections of road.

S4.15(1)(c) Suitability of the Site

The site was assessed for suitability during the assessment of the initial development determination and was determined to be suitable for the development. The requested amendment to the development proposal does not result in the development being further impacted by flooding, bushfire, heritage or vegetation clearing. The modification proposal is consistent with the existing land use. Hence, it is regarded that the development site is suitable for the requested amendments to the development proposal.

4.15(1)(d) any submissions made in accordance with this Act or the regulations

The Application to Modify a Development Consent was notified to adjoining land holders for a period of 30 days. The application was also advertised in accordance with Clause 80 of the *Environmental Planning and Assessment Regulation 2000*. Council did not receive any submissions or objections during the exhibition period.

4.15(1)(e) the public interest

The development is identified as being designated and integrated development. The Application to Modify a Development Consent was notified and advertised in accordance with the legislative requirements. Council notified the Environmental Protection Authority as an Integrated referral body. No response was received during the referral period.

Conclusion

The report is seeking Council's endorsement for Council's General Manager and one Councillor to execute the Voluntary Planning Agreement, as exhibited and Council consent for the Application to Modify Development Consent No. 2012/185.003 for the alteration to the endorsed Voluntary Planning Agreement (VPA) by updating condition references to the VPA. The application has been assessed under the provisions of the *Environmental Planning and Assessment Act 1979*. The evaluation of this Application to Modify a Development Consent has concluded that the proposed development is compliant with the legislative requirements for this development.

As per the recommendation of this report, it is recommended that Council endorse the draft amendment to the VPA and it is concluded that the Application to Modify Development Consent No. 2012/185.003, at 334 Pownall Road, Mullaley, Lot 22 DP 1216060 and 'Beulah' 259 Barker Road, Marys Mount, Lot 2 DP 865898, to delete condition A5 and insert condition A5a, should be approved.

Andrew Johns
DIRECTOR PLANNING AND ENVIRONMENTAL SERVICES

