

Amendment Delegate's Report

Application No: 1996/8311417/A

Application Type: Development Only

Received: 18-Sep-2019

The Applicant:

Name: Beveridge Williams

Address: PO Box 61, Malvern VIC 3144

The Proposal:

Proposal: Quarry & extractive industries - amend what the permit allows, conditions and endorsed plans

The Land:

Land Address: 150 Fish Creek Quarry Road Fish Creek VIC 3959

Land Description: Existing land title particulars - PC165852B, CA PT50, CA PT48 Parish of Doomburrim

Amended land title particulars – Lot 2 PS814439R

Assessment:

By: Tim Berger

Zone and Overlays:

Public Use Zone - Local Government

Environmental Significance Overlay - Schedule 2

Environmental Significance Overlay - Schedule 5

Bushfire Management Overlay

Proposal summary

The application seeks approval for the expansion of an existing quarrying operation at 150 Fish Creek Quarry Road, Fish Creek, by way of an amendment to Planning Permit 1996/8311417 under Section 72 of the *Planning and Environment Act 1987*. The subject site is irregular in shape, with a total area of 24.13ha. The site is generally unimproved, save for the existing quarrying operations on the land. Beyond the immediate area of the extraction pit, the site is largely covered by native vegetation.

The proposed expansion will see the existing extraction area extend in an easterly – north easterly direction, as depicted in the site plan below.

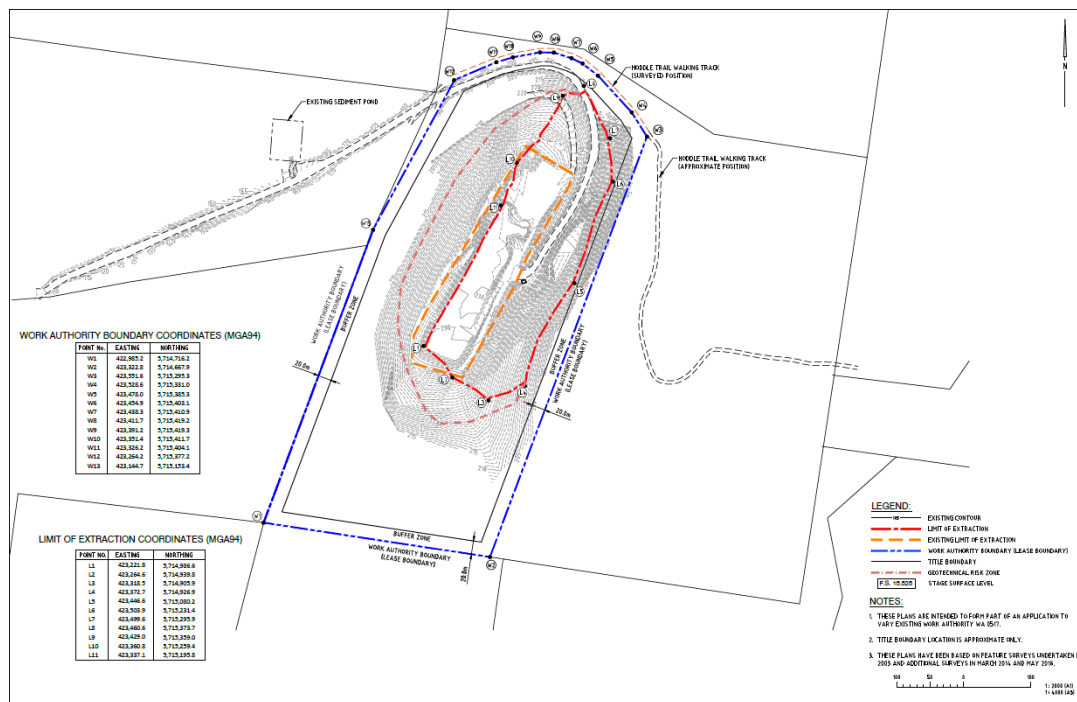


Image 1: Site Plan showing the existing and proposed extraction limits (orange and red respectively) and the Works Approval boundary (blue). Source: Application Documents.

The accompanying documentation indicates that production from the site is in the range of 60,000 tonnes per annum, with estimated resource volumes in situ such that the site will not be exhausted for a significant time period. Quarrying activity is proposed to occur utilising existing earthmoving equipment located on the site (although equipment may change as required).

Pursuant to Section 77TD(1) of the *Mineral Resources (Sustainable Development) Act 1990*, an endorsed variation to a work plan has been provided to the Responsible Authority. As part of the work plan approvals process, the Department of Jobs, Precincts and Regions (DJPR) and the Department of Environment, Land, Water and Planning (DELWP) have assessed the extent of vegetation removal to occur as part of the expansion activity. Conditions included on the endorsed work plan variation indicate that native vegetation will be removed to facilitate the expansion. As permission has been granted under the MRSD Act subject to compliance with the conditions of the work plan variation, no planning permission is required to remove native vegetation under the South Gippsland Planning Scheme (Clause 52.17-7).

Site and surrounding area

The subject site (Lot 2 PS814439R, Parish of Doomburrim, County of Buln Buln), known commonly as 150 Fish Creek Quarry Road, Fish Creek, is a 24.13ha lot located approximately 3.5 kilometres south-east of the Fish Creek township. An existing Work Authority (WA517) provides regulation to the activities on the land, in addition to existing Planning Permit 1996/8311417 issued under the provisions of the former Shire of South Gippsland Planning Scheme in September 1996.

The surrounding area comprises a combination of rural-residential and agricultural properties. The area immediately surrounding the subject land is characterised predominantly by grazing and dairying activities.

Agricultural activities in the surrounding area are generally grazing animal activities, with dairying and beef production being a common use of larger lots. The subject land is located at a high point of the area (although the quarrying activity is not visible from most vantage points due to the vegetation cover and location in the Hoddle Range). The closest dwelling to the new extraction limit would be located approximately 550 metres to the south-south west.



Image 2: Aerial image of subject site and surrounds. Source: GIS 2020 Aerial Photos.

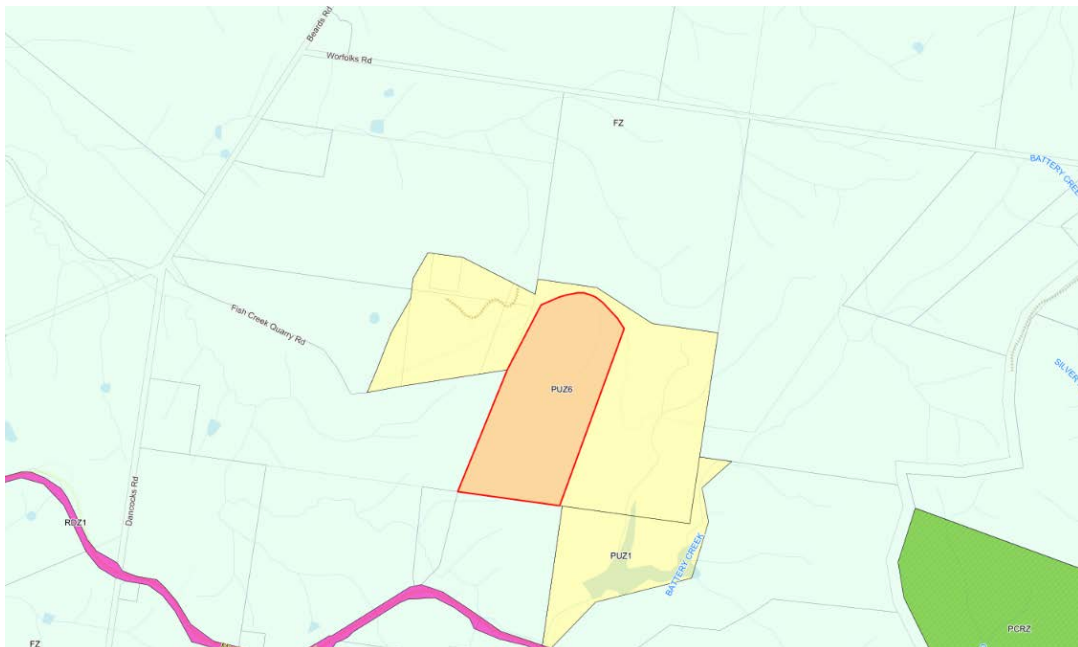


Image 3: Allotment view of subject site and surrounds overlaid with planning zones. Source: GIS 2020.

General Assessment:**What did the original permit or previously amended permit approve and is the permit still valid?**

Planning Permit 1996/9311417 was issued on 4 September 1996 and authorised the use of the land (being PC165852B, CA48 and CA50 Parish of Doomburrim) for extractive industry in accordance with the endorsed plans. The permit was amended on 17 January 2008 to increase the extraction (Work Authority) area by way of amending the endorsed plans.

The permit provides that it will expire if the use is discontinued for two (2) years or for periods totalling two (2) years. This has not occurred and therefore the permit is still valid.

What are the specific changes being sought and can the proposal be considered under Section 72?

The proposed changes can be summarised as follows:

- Alteration to the land title particulars to reflect a subdivision of the original site (new title particulars being Lot 2 PS814439R Parish of Doomburrim);
- Increase in the extraction area of the site in line with an amended endorsed work plan; and
- Associated amendments to Planning Permit conditions.

Are there any additional permit requirements triggered by the amendment, including any new planning controls / policies introduced to the Planning Scheme since the current permit was issued? If so, does the new proposal comply?

The original permit was issued under the provisions of the former Shire of South Gippsland Planning Scheme, which differ from those in the current new format planning schemes. As the proposal is increasing in area, new development triggers arise in any event, as detailed below:

Development

Clause 36.01-2 – A permit is required to construct a building or construct or carry out works associated with a use in Section 2 of Clause 36.01-1.

Overlays

Clause 42.01-2 – A permit is required to construct a building or construct or carry out works and to remove, destroy or lop any vegetation, including dead vegetation. This does not apply if a schedule to this overlay specifically states that a permit is not required. The Schedule to this overlay does not contain a relevant exemption for earthworks to undertake an extractive industry activity.

The header clause of the Environmental Significance Overlay (Clause 42.01-3) exempts a permit for vegetation removal for *‘Vegetation that is to be removed, destroyed or lopped to the minimum extent necessary to enable the carrying out of Stone extraction in accordance with a work plan approved under the Mineral Resources (Sustainable Development) Act 1990 and authorised by a work authority granted under that Act’*. Permission for vegetation removal has been granted pursuant to the MRSD Act and is shown on the statutorily endorsed work plan and conditions. As such, no planning permit is required for the vegetation removal shown on the submitted plans.

Particular provisions

Clause 52.08-1 – A permit is required to use and develop land for earth and energy resources industry. This does not apply if the proposal complies with Section 77T of the *Mineral Resources (Sustainable Development) Act 1990*. This section requires the preparation of an Environmental Effects Statement (EES) pursuant to the *Environmental Effects Act 1978*. No such statement has been prepared; consequently, a permit is required pursuant to this clause.

Clause 52.17 – Native vegetation

Particular provisions that are relevant but do not trigger a permit

Clause 52.09 – An application for extractive industry must be accompanied by a work plan that has received statutory endorsement under Section 77TD of the *Mineral Resources (Sustainable Development) Act 1990*. The endorsed work plan and associated documents have been provided.

Is the land within a Special Water Supply Catchment Area listed in Schedule 5 of the *Catchment and Land Protection Act 1994*?

The land is within the Battery Creek (Fish Creek) Water Supply Catchment (ID no: 95) as proclaimed by the Victoria Government Gazette (No. G45 18 November 1987).

Is an Aboriginal Cultural Heritage Management Plan required?

Regulation 51 of the *Aboriginal Heritage Regulations 2018* ('the Regulations') states (*inter alia*):

Activities requiring earth resource authorisations

An activity is a high impact activity if it is an activity—

- (a) for which an earth resource authorisation is required before the activity may be carried out; and*
- (b) that would result in significant ground disturbance.*

Regulation 58(2) of the Regulations states (*inter alia*):

The use of land for an extractive industry is a high impact activity if a statutory authorisation is required to use the land for the extractive industry.

A small sliver of the subject land is within an area of Cultural Heritage Sensitivity, as it is located within 200 metres of Battery Creek (Regulation 26) as depicted on the images below:

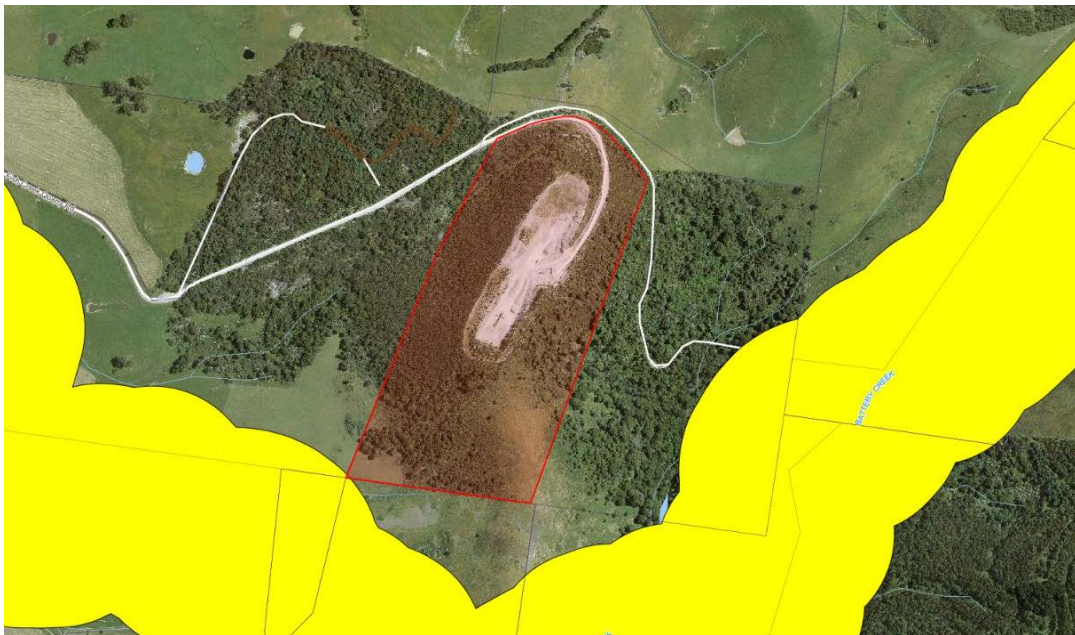


Image 4: Areas of Aboriginal Cultural Heritage Sensitivity (yellow). Source: GIS 2020 and ACHRIS mapping.

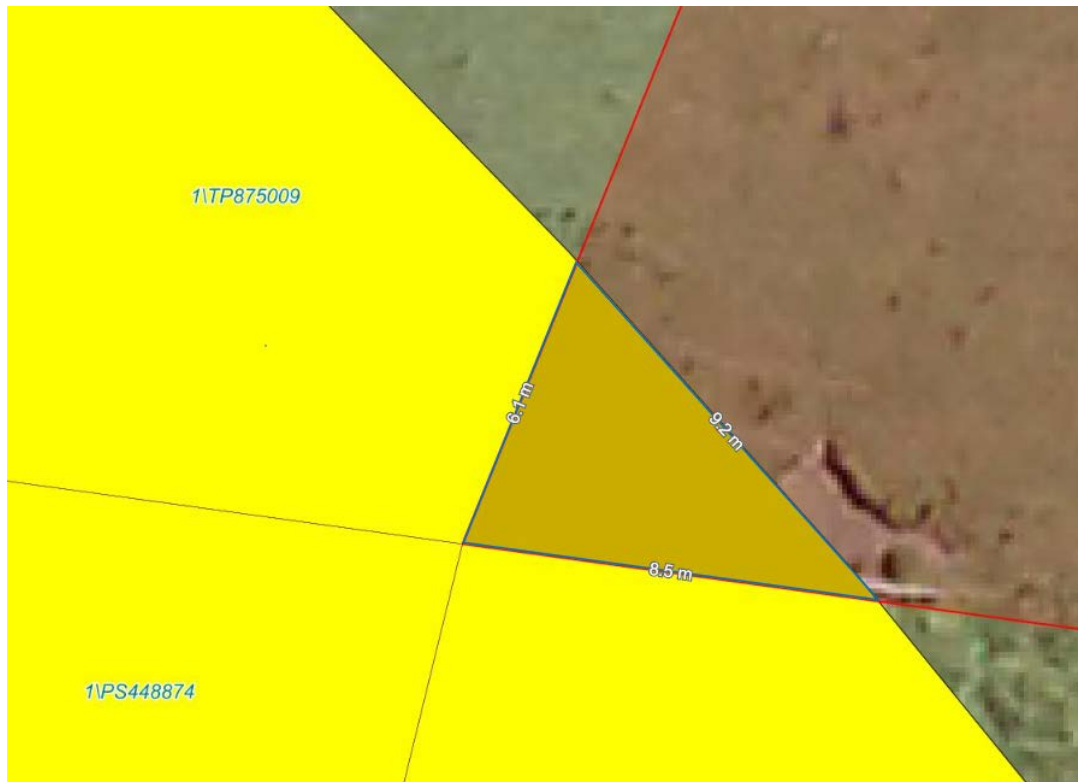


Image 5: Portion of subject site within an area of Aboriginal Cultural Sensitivity. Source: GIS 2020 and ACHRIS mapping.

In accordance with Regulation 51, the extraction activity will not result in significant ground disturbance in this area, and as such is not a high impact activity in the area to which a Cultural Heritage Management Plan may be required.

In accordance with Regulation 58(2), the use of the land for extractive industry is authorised by Planning Permit 1996/8311417, with no further statutory authorisation required in relation to land use. As such, no requirement for a Cultural Heritage Management Plan arises under this section.

As such, it is considered that a CHMP is not required.

Section 52(1) of the *Aboriginal Heritage Act 2006* provides that a Statutory Authorisation must not be granted for the activity if a CHMP is required, unless a CHMP has been approved and the proposal is consistent with the approved plan. Given that a statutory authorisation has already been issued for the proposal under the provisions of the *Mineral Resources (Sustainable Development) Act 1990*, the relevant provisions of the Regulations have also been considered by the Department of Jobs, Precincts and Regions in issuing their approval of the Work Plan Variation.

Was the application referred under Section 55 or 57C?

Section 55 of the *Planning and Environment Act 1987* and Clause 66 of the South Gippsland Planning Scheme specify referral requirements for use and development applications within South Gippsland Shire.

Pursuant to Clauses 52.08-3 and 52.09-3 of the Scheme, these requirements do not apply to an application for stone extraction where the proposal (as depicted in the work plan variation) has been referred pursuant to Section 77TE of the *Mineral Resources (Sustainable Development) Act 1990*. Council may, in its discretion refer applications to authorities under Section 52 of the *Planning and Environment Act 1987*, even if a statutory referral under Section 55 of the Act is no longer necessary.

As a result of the MRSD Act referral process, the following Section 55 referrals were required:

Authority	Which Clause? Determining or Recommending?	Date received and response
Department of Jobs, Precincts and Regions (Earth Resources Regulation)	66.02-8 Stone extraction – Secretary to the Department administering the <i>Mineral Resources (Sustainable Development) Act 1990</i> - Determining	Awaiting response
South Gippsland Water	66.02-5 Special water supply catchment - Determining	Conditional consent. Response dated 10 December 2019 .

Were there any non-statutory or internal referrals?

The following non-statutory and internal referrals were undertaken:

Authority	Which Clause / Overlay / Why?	Date received and response
Country Fire Authority	Extractive industry within BMO	Conditional consent. Response dated 5 December 2019 .
Environment Protection Authority	Existing conditions on permit and noise/air quality impacts	No response received
SGSC Engineering	Access, stormwater and review of technical engineering detail	Conditional consent. Response dated 20 December 2019 .
West Gippsland CMA	Consideration of impact on waterways	Consent, no conditions. Response dated 27 November 2019

Is there a registered restrictive covenant or a Section 173 Agreement on the title? If so, does the proposal comply with the restriction or Section 173 Agreement?

No.

Is Further Information Required pursuant to Section 54?

No further information was required.

Does the amendment application require notice under Section 52 or 57B of the Act? If yes, to whom? And if not, why?

The application was notified to adjoining and adjacent owners and occupiers and a copy of the application was placed on Council's website.

Were there any objections or submissions to the amendment?

Eleven (11) objections to the application have been received at the time of writing. Checked on 14 August 2020.

Key issues raised in the objections include:

- Visual impacts/impacts on scenic qualities of the area;
- Reduction in attractiveness of the Mt Hoddle walking track;
- Expansion of the quarry and associated impacts affecting tourism development in the area;

- Continuing noise impacts and heavy vehicle movements on the local road network;
- Native vegetation impacts (both historical and as a result of the proposed expansion);
- Impacts on the Fish Creek water supply;
- Air quality impacts (dust, silica) emanating from the site and associated risks of silicosis;
- Landslide/erosion risks;
- Council contempt for previous court order associated with access track;
- Increased maintenance on Fish Creek Quarry Road and other local roads;
- Risk/liability of rehabilitation falling on Council/ratepayers;
- Council's decision to not close the site in 2018 being misinformed;
- Poor quality material extracted from the site which could be replaced by material extracted elsewhere;
- Poor management by the quarry operators and lack of confidence in future management of the site if the expansion is approved;
- Closure of the Hoddle Mountain Trail for an unknown period;
- Limited notification/publicity of application;
- Decision should not be rushed through due to COVID-19 pandemic;
- Site has passed its limited lifespan and should cease;
- Site/operation should have a definitive time limit placed on it;
- Scepticism of the proposed community engagement plan;
- Weed control; and
- Effects of blasting on cattle;

A number of requests have also been included in the objections, including:

- Increased public notification (up to 5km from the site) so that more people may be informed and comment;
- Full hydrological study of the impacts of current and future works at the site;
- Independent geological survey to assess stability of the land;
- Independent survey of the flora and fauna of the site and adjacent area;
- Independent survey of the old tip sites (including by the EPA), including possible rehabilitation of same;
- Full cultural heritage assessment of the site;
- Council led management plan for the site, including:
 - Rehabilitation of current and future works;
 - Vegetation offsets in relation to existing access track;
 - Weed control; and
 - Rehabilitation bonds reviewed by a mining consultant.

These objections are considered and responded to in the assessment section of this report.

Is the amendment acceptable having regard to the relevant permit triggers and decision guidelines of the Planning Scheme and relevant considerations under Section 60 of the *Planning and Environment Act 1987*?

Council must make a determination with regards to the key issues of this application, and whether on balance the proposal represents sustainable development and achieves a net community benefit. Clause 71.02-3 on integrated decision making relevantly states:

Planning authorities and responsible authorities should endeavour to integrate the range of policies relevant to the issues to be determined and balance conflicting objectives in favour of net community benefit and sustainable development for the benefit of present and future generations.

However, in bushfire affected areas, planning authorities and responsible authorities must prioritise the protection of human life over all other policy considerations.

An assessment against the relevant provisions of the South Gippsland Planning Scheme is provided below:

Zoning and planning context

As noted earlier in this assessment, the site is located within the Public Use Zone 6 (Local Government). The purpose of the zone is:

- *To implement the Municipal Planning Strategy and the Planning Policy Framework.*
- *To recognise public land use for public utility and community services and facilities.*
- *To provide for associated uses that are consistent with the intent of the public land reservation or purpose.*

The decision guidelines of the PUZ6 require the Responsible Authority to consider, as appropriate:

- *The Municipal Planning Strategy and the Planning Policy Framework.*
- *The comments of any Minister or public land manager having responsibility for the care or management of the land or adjacent land.*
- *Whether the development is appropriately located and designed, including in accordance with any relevant use, design or siting guidelines.*

The zoning of the subject land reflects the public ownership of the site by Council, with the decision guidelines of the zone providing minimal guidance in informing assessment of such an application. In terms of the Municipal Planning Strategy and the Planning Policy Framework, policy recognises the need for extractive industries and provides support to their operation and expansion in appropriate areas¹.

Relevant to this application is that the considerations are limited to the physical development/works occurring, as the use is approved under the existing Planning Permit. The development is located around the existing extractive area, providing for its ongoing operation as the current staging areas become exhausted. Vegetation removal is required for the expansion, however as permission for vegetation removal has been granted through assessment of the Work Plan Variation, no Planning Permit is required for vegetation removal pursuant to Clause 52.17-7 of the Scheme.

Beyond the subject land, all land in the immediate area is contained within the Farming Zone. Various clauses of the Planning Policy Framework relate to the use and development of agricultural land². At their highest level, these policies have objectives of protecting agricultural land and encouraging sustainable agricultural land use. Similar policies are encapsulated in Council's Municipal Strategic Statement (MSS)³. Agricultural activities in the surrounding area generally comprise of grazing animal production and dairying activity. These activities are often operated across a multitude of lots (tenements) including both freehold and leasehold land. The proposed expansion continues to provide buffers to such activities and does not result in the removal of productive agricultural land, effectively managing this interface.

Overlays applicable to the land

¹ Eg. Clause 14.03-1S, Clause 21.08-2

² Eg. Clause 14.01-1S, Clause 14.01-1R and Clause 14.01-2S

³ Eg. Clause 21.08-1, Clause 21.10-3

The subject land is wholly covered by Schedules 2 and 5 to the Environmental Significance Overlay; relating to water supply catchment areas under Schedule 5 of the *Catchment and Land Protection Act 1994* and erosion management respectively. A permit is triggered for works under both these schedules. The site is also located within the Bushfire Management Overlay; however, no permit is triggered for extractive industry under this clause.

Schedule 2 to the Environmental Significance Overlay requires the Responsible Authority to consider, as appropriate:

- *The likely impacts of the proposed development on water quality and quantity in the water supply catchment.*
- *The potential cumulative impact of development on the quality and quantity of water in the water supply catchment over extended periods of time.*
- *Whether new development proposals will lead to an increase in the amount of nutrients, pathogens or other pollutants reaching streams, surface water bodies and groundwater.*
- *Whether subdivision and intensive farming activities in water supply catchments, especially in the lower areas of water supply catchments near takeoff points are appropriate.*
- *Any relevant catchment management plan, policy, strategy or Ministerial Direction, including the Ministerial Guideline for Planning Permit Applications in Open Potable Water Supply Catchment Areas or any superseding document.*

The decision guidelines of this clause reference the Ministerial Guideline for Planning Permit Applications in Open Potable Water Supply Catchment Areas (DSE, 2012) (**Guideline**). The Guideline is only applicable to applications for dwellings and subdivision, and as such is not called into play as part of this application. The application was referred to South Gippsland Water as the relevant Water Authority for management of the Fish Creek (Battery Creek) water supply, who did not object to the granting of an amended permit. Conditions imposed through the Work Plan Conditions and any amended permit issued can appropriately manage water quality issues.

Schedule 5 to the Environmental Significance Overlay requires the Responsible Authority to consider, as appropriate:

- *The purpose of the overlay.*
- *The following publications:*
 - *Background document Environment Guidelines for Major Construction Sites (Environment Protection Authority, February 1996).*
 - *Construction Techniques for Sediment Pollution Control (Environment Protection Authority, May 1991)*
 - *Background document Control of Erosion on Construction sites (Soil Conservation Authority).*
 - *Background document Your Dam, an Asset or a Liability (Department of Conservation and Natural Resources).*
- *Any proposed measures to minimise the extent of soil disturbance and runoff.*
- *The need to stabilise disturbed areas by engineering works or vegetation.*
- *Whether the land is capable of providing a building envelope, which is not subject to high or severe erosion problem.*
- *Whether the proposed buildings or works are likely to cause erosion or landslide.*
- *Whether the proposed access and servicing of the site or the building envelope is likely to result in erosion or landslide.*
- *Any Land Capability Report Guidelines prepared by the Department of Natural Resources and Environment, Centre for Land Protection Resource.*

- *The views of the Department of Natural Resources and Environment in respect to:*
 - *Subdivision applications of greater than four lots or any subdivision application which may have adverse environmental effects.*
 - *Applications which immediately abut Crown Land.*
 - *Applications, which in the opinion of the responsible authority may cause or otherwise cause erosion, land degradation or affect land stability on either the subject land or on adjoining land.*

It is inevitable that extractive industry will result in ground disturbance, which will require appropriate management measures to be implemented. The Work Plan Variation conditions and approved plans provide a number of geotechnical plans for the proposed new staging, where consideration of erosion has been assessed by Earth Resources and determined to be acceptable. Council adopts the assessment and plans approved by the Earth Resources Regulator and considers that erosion and land stability can be managed appropriately on the site.

Relevant Particular Provisions

Clause 52.09 is relevant to this application, and requires the Responsible Authority to consider, as appropriate:

- *The effect of the proposed extractive industry on any native flora and fauna on and near the land.*
- *The impact of the proposed extractive industry on sites of cultural and historic significance, including any effects on Aboriginal places.*
- *The effect of the proposed extractive industry on the natural and cultural landscape of the surrounding land and the locality generally.*
- *The ability of the proposed extractive industry to contain any emissions within the boundaries of the land in accordance with relevant legislation.*
- *The effect of vehicular traffic, noise, blasting, dust and vibration on the amenity of the surrounding area.*
- *The ability to rehabilitate the affected land to a form or for a use which is compatible with the natural systems or visual appearance of the surrounding area.*
- *The ability to rehabilitate the land so it can be used for a purpose or purposes beneficial to the community.*
- *The effect of the proposed extractive industry on groundwater quality and the impact on any affected water uses.*
- *The impact of the proposed extractive industry on surface drainage and surface water quality.*
- *Any proposed provisions, conditions or requirements in a work plan that has received statutory endorsement under the Mineral Resources (Sustainable Development) Act 1990.*

A number of these matters are regulated by the approved Work Plan and provisions of the *Mineral Resources (Sustainable Development) Act 1990*; however, remain decision guidelines of the Scheme as not all extractive industries require Work Plans under that Act.

Evident through the submitted documentation is that there will be impacts on native flora as a consequence of required native vegetation removal. The vegetation removal has been assessed by the Earth Resources Regulator in conjunction with the Department of Environment, Land, Water and Planning (DELWP), with specific conditions placed on the Work Plan Variation with regards to flora and fauna management and offsetting of vegetation to be removed; resulting in no permit being required for vegetation removal under the Scheme. Council adopts the assessment of flora and fauna undertaken by Earth Resources and DELWP and considers that on balance, the benefit derived from the extraction of the

resources from this site and requirement for vegetation to be offset is greater than the disbenefit from the loss of specific vegetation from this proposal.

Significant stands of native vegetation remain unaffected by this proposal, and importantly provide screening of the activity, particularly from Meeniyan-Promontory Road and properties adjoining this road. While there will be views of the activity from particular elevations and aspects, this is broadly consistent with visual impacts from the existing extraction area and is not of such consequence as to warrant refusal of the application (while the site could be considered to have scenic qualities, it is not included in a specific planning control to this effect such as a Significant Landscape Overlay or Design and Development Overlay).

In terms of land rehabilitation, blasting and emissions, these matters are regulated by Earth Resources under the *Mineral Resources (Sustainable Development) Act 1990* and approved Work Plan. The site is well buffered from nearby sensitive land uses by retained vegetation, with blasting to occur sporadically and with prior notice. Rehabilitation is provided for by the approved Work Plan, with rehabilitation bonds and plans required.

On balance, the proposal responds positively to the matters required to be considered under this Clause. The permit is to be amended to include reference to Vegetation Removal, all conditions pertaining to the removal form part of the Work Plan Variation.

Concerns raised through objections and responses

Eleven (11) objections to the application have been received. A summary of each concern raised and response are provided below:

Objection	Response
Visual impacts/impacts on scenic qualities of the area.	While the proposed expansion may be visible from certain aspects, significant screening from Meeniyan-Promontory Road and nearby properties is provided by existing vegetation stands, such that these impacts are not unreasonable.
Reduction in attractiveness of the Mt Hoddle walking track	While the proposal may result in some visual impacts from aspects of the track near the quarry, the expansion is adjacent to the existing extraction activity and the possible cumulative visual impact to the trail is not excessive.
Expansion of the quarry and associated impacts will affect tourism development in the area	While there may be some visual impacts from certain aspects, the development is adjacent to the existing extraction area and will not dominate the area.
Continuing noise impacts and heavy vehicle movements on the local road network	The application seeks to expand the life of the activity rather than the intensity. While this will inevitably mean that heavy vehicles will continue to utilise the local road network and associated noise from the operation, this is not an unacceptable planning outcome.
Native vegetation impacts (both historical and as a result of the proposed expansion)	The removal of native vegetation is exempt by Clause 52.17-7 of the Scheme, having been considered under the Work Plan Variation process. Historical vegetation removal is not relevant to the consideration of this application.
Impacts on the Fish Creek water supply	The application was referred to South Gippsland Water as the relevant manager of the water resource, who did not object to the proposal.
Air quality impacts (dust, silica)	The proposal is required to comply with relevant EPA

emanating from the site and associated risks of silicosis	standards relating to air emissions, specifically State Environment Protection Policy – Air Quality Management (SEPP-AQM). The proposal provides buffer distances in accordance with SEPP-AQM and relevant Planning Policy.
Landslide/erosion risks	The application and work plan have included detail of proposed extraction activity, including batter slopes and overburden storage. Erosion and landslide risks are appropriately considered and managed through the application and conditions imposed through the Work Plan.
Council contempt for previous court order associated with access track	Previous Court orders referenced do not relate to this application, and do not preclude consideration and determination of this application. Contempt with an order of a Court can be pursued through appropriate channels, if this is required.
Increased maintenance on Fish Creek Quarry Road and other local roads	The extraction activity is not proposed to intensify in activity, rather to prolong the life of the activity. The maintenance requirements of Fish Creek Quarry Road will be unchanged as a result.
Risk/liability of rehabilitation falling on Council/ratepayers	Rehabilitation bonds and plans are required through the <i>Mineral Resources (Sustainable Development) Act 1990</i> . Failure to comply with these rehabilitation plans may result in action being taken against the operator, however it must be assumed that the operator will comply with all obligations of their approval/s, and speculation as to potential non-compliance is not a basis to refuse this application.
Council's decision to not close the site in 2018 being misinformed	This is a separate issue to that before Council in this application. Council as landowner of the site can make decisions regarding the land independent of any Planning Permit that may be approved (Planning Permits apply to land and not to a particular operator).
Poor quality material extracted from the site which could be replaced by material extracted elsewhere	The availability of other or 'better' material elsewhere does not preclude consideration of this application. The applicant is entitled to make application to expand this extraction activity, with the Responsible Authority required to assess this against the provisions of the Scheme.
Poor management by the quarry operators and lack of confidence in future management of the site if the expansion is approved	The operators are required to comply with the conditions of any approval by Council and other regulatory authorities. Failure to comply with conditions of a permit or Work Authority can result in severe penalties, including cancellation of a permit or Work Authority. Council cannot refuse the application on the basis that an operator may not comply.
Closure of the Hoddle Mountain Trail for an unknown period	Trail closures will be required for blasting activities; however, these will be notified by the operator in advance and will not be regular occurrences.
Limited notification/publicity of application	The application has been notified in accordance with Section 52 of the <i>Planning and Environment Act 1987</i> and the South Gippsland Planning Scheme. The application has also been made available on Council's website, with 11 objections received.
Decision should not be rushed through due to COVID-19 pandemic	The application for a permit has by no means been 'rushed through', with all statutory steps being followed. The

	application has been with Council for a number of months, allowing ample time for appropriate assessment of the application based on its merits.
Site has passed its limited lifespan and should cease	The existing extraction area is nearly exhausted, leading to this application to continue the life of the activity. This can be sought and considered in accordance with the Scheme.
Site/operation should have a definitive time limit placed on it	Pursuant to Clause 52.09-5 of the Scheme, Council cannot impose a fixed timeframe for extractive industry except in limited circumstances that do not apply here.
Scepticism of the proposed community engagement plan	The community engagement plan forms part of the documents considered by Earth Resources Regulation (ERR) and compliance with this plan is regulated by them. While the scepticism of the objector is noted, this is not determinative of this application (There is no requirement for a community engagement plan under the Scheme).
Weed control	The operator is required to conform with all land management obligations arising from the <i>Catchment and Land Protection Act 1994</i> . Control of weeds is not a relevant planning consideration in considering the expansion of an existing quarry.
Effects of blasting on cattle	All blasting to occur from the site will be undertaken in accordance with the approved Work Plan and ERR regulations. This will include the giving of notice of impending blasting to nearby properties, who can then take appropriate steps with regard to stock management.

A number of requests have also been included in the objections, which are responded to below:

Request	Comment
Increased public notification (up to 5km from the site) so that more people may be informed and comment	Public notification has been directed and conducted in accordance with the requirements of the <i>Planning and Environment Act 1987</i> and the South Gippsland Planning Scheme. This includes provision of documents on Council's website which are publicly assessable. There is no justifiable need to require direct notification at such a distance, well beyond the requirements of the Act and Scheme.
Full hydrological study of the impacts of current and future works at the site	These matters are regulated by ERR under the <i>Mineral Resources (Sustainable Development) Act 1990</i> . There is no reasonable basis in assessing this application for the Responsible Authority to require the applicant to undertake such a study.
Independent geological survey to assess stability of the land	Geological matters have been considered by ERR, including provision of a number of plans detailing geotechnical matters. These plans have been approved by ERR and there is no reason for the Responsible Authority to require additional geotechnical surveying beyond that approved by ERR.
Independent survey of the flora and fauna of the site and adjacent area	Vegetation impacts have been assessed by ERR and DELWP, with conditions contained within the Work Plan Variation Specific Conditions regarding flora and fauna surveys and plans. No Planning Permit is required for native vegetation removal for this application under Clause 52.17-7, and as such

	there is no basis to require further information of the nature requested by the submitter.
Independent survey of the old tip sites (including by the EPA), including possible rehabilitation of same	The application was referred to the EPA for comment, with no concerns raised. The proposed extraction area is not considered to raise issues with respect to old tip sites.
Full cultural heritage assessment of the site	Cultural Heritage requirements are regulated by the <i>Aboriginal Heritage Act 2006</i> and <i>Aboriginal Heritage Regulations 2018</i> . There is no basis to require a full cultural heritage assessment of the site beyond the provisions of those Acts and Regulations.
Council led management plan for the site, including: <ul style="list-style-type: none"> o Rehabilitation of current and future works; o Vegetation offsets in relation to existing access track; o Weed control; and o Rehabilitation bonds reviewed by a mining consultant. 	All approvals for the site require the operator to prepare and conform to various plans and requirements, including rehabilitation and offsets. There is no need for a Council led management plan to be prepared – Council will continue to be responsible for the administration and enforcement of the South Gippsland Planning Scheme and Planning Permit.

Are there any conditions that either need to be amended, deleted or added to ensure that the amendment is acceptable and so that conditions are consistent?

Conditions required by referral authorities will be included in any Amended Planning Permit issued for the land. Conditions to be included from:

- Country Fire Authority – New conditions
- South Gippsland Water – Amend existing conditions at Condition 2
- Engineering Department – Amend existing conditions at Condition 3 and renumber conditions.

Additionally, it is recommended to include the following conditions:

- *The extractive industry hereby approved by this planning permit must not commence until:*
 - a) An Approved Work Plan is issued pursuant to Section 77G of the Mineral Resources Sustainable Development Act ('the Act') 1990;*
 - b) and a Work Authority is issued pursuant to 77I of the Act.*
- *The use and development must at all times be in accordance with any work plan approved under the Mineral Resources (Sustainable Development) Act 1990.*

The addition of these conditions aligns the permit with the Extractive Industry and Resources Planning Practice Note 89.

Changes to Existing Conditions:

Condition 2 – South Gippsland Regional Water Authority – conditions to be amended to include the Authority's new requirements.

There are no other changes to the existing conditions which continue to remain appropriate.

Conclusion and Recommendation:

Council has considered the matters under Section 60 of the *Planning & Environment Act 1987*, and considers that the proposed amendment is appropriate having regard to the relevant matters and can be managed through appropriate conditions.

It is therefore recommended that a Notice of Decision to Amend a Permit be issued and the following actions taken:

1. Amend what the permit allows to include vegetation removal;
2. Referral authority conditions to be included in the Amended Permit;
3. Update the land to which the permit relates to reflect new land title particulars;
4. Previous plans superseded and new plans endorsed; and
5. Insert the following table in to the Notice of Decision to Amend a Planning Permit

WHAT AMENDMENT IS BEING MADE TO THE PERMIT?

Date of Amendment	Details
DATE	<p>This Permit has been amended in accordance with Section 72 of the <i>Planning and Environment Act 1987</i> having regard to the following:</p> <ul style="list-style-type: none"> • Amend what the permit allows to include vegetation removal • Amend Land Title Detail to include to reflect new land title particulars – Lot 2 on PS814439R • Amend what the permit allows to include native vegetation removal • Supersede previously endorsed plans • Endorsed Plans (WA517) • Insert conditions 4-7
17 January 2008	<p>This Permit has been amended in accordance with Section 72 of the <i>Planning and Environment Act 1987</i> having regard to the following:</p> <ul style="list-style-type: none"> • Variation to Plans <ol style="list-style-type: none"> i. Plans amended to increase Work Authority area

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This Permit Allows

The land to be used as an extractive industry in accordance with the endorsed plans.

Proposed Conditions:

1. Environment Protection Authority
 1. All used areas of the quarry must be revegetated within 12 months of being worked.
 2. Erosion control measures outlined in the EPA Publication 275 titled "Construction Techniques for Sediment Pollution Control" must be implemented in the drains serving the access road to the quarry.
 3. Any water flowing from the site must be treated to meet the emission limits for waste discharges to water outlined in Schedule E of the State Environment Protection Policy (Waters of Victoria)
 4. Dust emitted from the site must not achieve a dust level of greater than 4 grams per square metre per month at the nearest residence.
 5. Noise levels from the use of the subject land shall not exceed noise levels at the nearest residence of above 45dB(A).
2. South Gippsland Regional Water Authority
 1. The operation of the quarry shall in no way affect the quality of the water obtained from within the catchment.
 2. The proposed development shall be in accordance with the work plan Dated March 2019 Prepared by Beveridge Williams or any Work Authority endorsed under the *Extractive Industries Development Act 1995*.
3. South Gippsland Shire Council
 1. The layout of the site and all works as shown on the endorsed plans and the working proposal submitted shall not be altered or modified expect with the written consent of the Responsible Authority in consultation with the Department of Energy and Minerals.
 2. Within 6 months of the date of issue of the extractive industry licence the applicant shall submit detailed landscaping and reclamation plans to the satisfaction of the Responsible Authority showing the type, location, number and other details of vegetation to be planted, proposed reclamation techniques and the staging details. The plan shall be accompanied by a report detailing the objectives of the landscaping, methods to be used in the establishment and maintenance of the landscaping and on-going rehabilitation. The plans, when satisfactory to the Responsible Authority, shall be endorsed and shall form part of this permit.

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3. The applicant shall be responsible for the maintenance of Beards Road and Quarry Road to the point of entry to the subject land. The maintenance works are to be to the satisfaction of the Responsible Authority. Any request by the Responsible Authority to carry out maintenance works are to be attended to within 24 hours.
 4. Adequate measures must be taken to ensure that mud and clay are not deposited on public roads from the wheels and undercarriage of vehicles leaving the licensed area. If so directed a wheel cleaning device shall be constructed and maintained in an operable condition to the satisfaction of the Responsible Authority.
 5. The amenity of the area must not be detrimentally affected by the use through the:
 - 3.5.1 Appearance of any buildings, works or plant/equipment.
 - 3.5.2 Emission of noise, vibration, dust, fumes, waste water, waste materials or otherwise.
 6. Except with the written consent of the Responsible Authority, the days and hours of operation shall only be 6.00a.m. to 6.00p.m. Monday to Saturday. There shall be no operations or use of the land on Sundays or Public Holidays.
 7. The entire site shall at all times be kept in a neat or tidy conditions to the satisfaction of the Responsible Authority.
 8. This permit will expire if one of the following circumstances applies:
 - 3.8.1 The use is not started within two years of the date of the extractive licence.
 - 3.8.2 The use is discontinued for two years or for periods totalling two years.

The Responsible Authority may extend the periods referred to in 8 if a request is made in writing before the permit expires or within three months afterwards.
4. Unless stated otherwise, the following works must be undertaken by the applicant, for Beards Rd and Quarry Rd, from Foster Rd to the Quarry entrance, to the satisfaction of the Responsible Authority.
- a) Within 12 months of commencing quarry operations as authorized by the Work Plan Variation 517 (WA517) approved under the Mineral Resources (Sustainable Development) Act 1990 dated 12/2/2020 the applicant must undertake a maintenance reseal of the existing sealed road. Any identified pavement soft spots shall be rectified prior to the re-seal.
 - b) Every 5 years during the operation of the quarry, or as agreed in writing by the Responsible Authority, the applicant shall carry out a maintenance reseal including any repairs deemed necessary.
 - c) The applicant shall undertake regular maintenance and cleaning of the table drain and shoulders.
 - d) Prior to undertaking any of the above works the applicant shall seek the advice and written approval of the appropriate Council Engineer.
 - e) All work must be carried out to the satisfaction of the South Gippsland Shire Council.

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5. Country Fire Authority

- a) The development of a (documented) risk management process, prepared to the satisfaction of CFA, that identifies risks and their effective management, including specific consideration of fire risk. Risk mitigation is to include:
 - The provision of fire breaks around the entire site perimeter and procedures for their ongoing maintenance;
 - The provision of at least two emergency vehicle access points into the facility, and emergency vehicle access within the site, including to fire water sources;
 - The provision of an adequate supply of fire water based on credible worst-case emergency scenarios;
 - The provision of fit-for-purpose fire protection systems and equipment, and procedures for their maintenance/servicing;
 - Regular vegetation management throughout the site;
 - Vehicle and equipment maintenance procedures that ensure any identified faults or non-compliances are recorded and addressed;
 - Compliant, safe storage and handling of dangerous goods (including diesel fuel, oil and lubricants); and
 - Procedures for limiting activities on Total Fire Ban days (e.g., hot works).
- b) The development of an Emergency Management Plan (or updating of existing plan), to the satisfaction of CFA, that identifies and details emergency management structures, responsibilities, procedures and training, informed by the risk management process.

The Emergency Management Plan is to include:

- Procedures for responding to fire emergencies, including bushfire;
 - Procedures for the containment/management of spills and leaks of dangerous goods and hazardous chemicals;
 - Details of emergency resources on-site (fire water tanks, water carts, hydrants, PPE, emergency warning systems, first aid facilities, etc.);
 - Provision for containment/management of fire water runoff; and
 - Training requirements for site personnel in emergency procedures, and the use of fire protection systems and equipment.
- c) The development of a Fire Readiness and Response Plan, prepared to the satisfaction of CFA.

CFA's expectation is that the required documents are prepared and submitted to CFA's State Infrastructure and Dangerous Goods Unit within 60 days of the permit amendment being granted.

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6. The extractive industry hereby approved by this planning permit must not commence until:
 - a) An Approved Work Plan is issued pursuant to Section 77G of the Mineral Resources Sustainable Development Act ('the Act') 1990;
 - b) and a Work Authority is issued pursuant to 77I of the Act.
7. The use and development must at all times be in accordance with any work plan approved under the Mineral Resources (Sustainable Development) Act 1990.

WHAT AMENDMENT IS BEING MADE TO THE PERMIT?

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