



Tumbulgum Community Association
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Mr Troy Green
General Manager
Tweed Shire Council
PO Box 816
Murwillumbah NSW 2487

11 July 2018

Dear Troy

Attention: Denise Galle

Re: DA 04/0162.03

The Tumbulgum Community Association (TCA) wishes to now advise the Council that we have received further advice from the Environmental Defenders Office (EDO) in conjunction with other expert advice relating to the application listed above.

The following includes a summary of this advice.

Definitional Change

Changes to Condition 2 of the DA 04/0162 have not been sought within the current application. On discussion, the EDO confirms that we are correct in our interpretation of the consent as being 'bulked' and not 'in situ or banked'. There is nothing ambiguous being applied here, which is further evidenced by the clear chain of documents verified by the EDO as linked to this application and attached.

On advice, the TCA again requests that the Council desist from reference to the term 'banked' or 'insitu' when speaking about allowable extraction limits. To do otherwise would be incorrect and would lead to a substantial error in law.

Any attempt to significantly increase the currently permitted annual extraction rate by way of variation to the definition of material from bulked to in situ (60%) is **NOT** only misleading, it is **NOT** a minor change and should **NOT** be treated as such.

Retrospective approval for non-compliance

The specific request in DA04/0162.03 for changes to Condition 3 seeks retrospective approval for two (2) years of excessive truck movements.

Any support for this application would be seen to regularise non-compliance and, in effect, authorise future breaches.

The TCA is strongly of the view that granting such approval encourages Hy-Tec Industries (Queensland) Pty Ltd in future breaches, given their existing track record of breaches.

Other proposed changes contained in Condition 3

The TCA supports other proposed changes to Condition 3.

- *“The applicant is to liaise with Council in finding a suitable location for a traffic counter at the quarry.*
- *The traffic counter is to be installed at the applicant’s expense within 4 months of DA04/0162.03 being determined.”*

We do however request a change the following paragraph:

“The quarry is to forward quarterly reports to Council demonstrating the traffic counter data, demonstrating a comparison of the traffic counter data with the weighbridge data, explanatory notes to interpret the data and demonstrating the likely level of compliance in any given quarter based on future projections.”

to instead read:

*“The quarry is to forward ~~quarterly~~ **monthly** reports to Council demonstrating the **daily** traffic counter data, demonstrating a comparison of the traffic counter data with the weighbridge data, explanatory notes to interpret the data and demonstrating the likely level of compliance in any given quarter based on future projections.*

- ***The reports are to be made available to the community.”***

and an additional part be added stating:

“Rules be established for the operation of the traffic counter, including penalties for the days it is not operational (including provision to close the quarry on days the counter is non-operational).”

The TCA expects that the operators of the quarry will comply with conditions of the development consent. We also expect that the Council will have a robust monitoring system and the conditions of the consent will be fully enforced.

It should not be up to the community to ensure action is taken where breaches of the development consent are identified. However, should the consent authority fail in its duty, the TCA reserves the right to seek remedy and restraint in protecting the interests of the community, including to the Land and Environment Court.

Jenny Kidd
President
Tumbulgum Community Association Inc
0431 989 477

CC Councillor K Milne, Mayor

Attachment x 1

North Tumbulgum Quarry - DA 04/0162 Document History

Date	Document Title	General																																										
April 1998	<p>Environmental Impact Statement (EIS) for Reedy Creek Quarry by The GeoLINK Group Pty Ltd</p>	<p>At page 20 <i>“3.2 General Description of Proposal.</i> <i>Development Consent is sought for the continued use of and lateral northward expansion of the Reedy Creek Quarry over the next twenty (20) year period to permit the maximum extraction of about 3,800,000 m³.</i> <i>... “Development is proposed to be undertaken in three (3) distinct stages. Those stages are summarised as follows: -</i></p> <p><i>Exhibit 3.1 – Development Stages</i></p> <table border="1" data-bbox="512 584 1177 707"> <thead> <tr> <th>Stage</th> <th>Estimated Extraction</th> <th>Timing Estimate</th> </tr> </thead> <tbody> <tr> <td>1.Southern Sector</td> <td>1,564,675 m3</td> <td>8 years</td> </tr> <tr> <td>2 Mid Sector</td> <td>973,661 m3</td> <td>5 years</td> </tr> <tr> <td>3.Northern Sector</td> <td>1,261,664 m3</td> <td>7 years</td> </tr> </tbody> </table> <p>At page 22 <i>“3.3 Stage 1</i> <i>Extraction Work Production</i></p> <table border="1" data-bbox="512 887 1139 947"> <thead> <tr> <th>Surface Area</th> <th>Total Material *</th> <th>Time Frame</th> </tr> </thead> <tbody> <tr> <td>3.0 ha</td> <td>1,564,675 m3</td> <td>8 years</td> </tr> </tbody> </table> <p><i>*adjusted for bulking effect”</i></p> <p><i>3.4 Stage 2</i> <i>Extraction Work Production</i></p> <table border="1" data-bbox="512 1099 1139 1160"> <thead> <tr> <th>Surface Area</th> <th>Total Material *</th> <th>Time Frame</th> </tr> </thead> <tbody> <tr> <td>1.7 ha</td> <td>973,661 m3</td> <td>5 years</td> </tr> </tbody> </table> <p><i>*adjusted for bulking effect</i></p> <p>At page 26 <i>“Stage 3</i> <i>Extraction Work Production</i></p> <table border="1" data-bbox="512 1346 1139 1406"> <thead> <tr> <th>Surface Area</th> <th>Total Material *</th> <th>Time Frame</th> </tr> </thead> <tbody> <tr> <td>1.8 ha</td> <td>1,261,664 m3</td> <td>7 years</td> </tr> </tbody> </table> <p><i>*adjusted for bulking effect”</i></p> <p>At page 61 <i>“4.9.3 Future Traffic Conditions</i> <i>Production at the quarry is proposed to increase from 16,000m3 to 200,000m3 per annum. At this production level it is envisaged that the capacity of the trucks used for transportation will be of 20m3. Forecast of truck movements for 200,000m3 annum production are set out in exhibit 4.20.</i></p> <table border="1" data-bbox="512 1731 1177 1854"> <thead> <tr> <th></th> <th>1994</th> <th>Proposed Future Extraction</th> </tr> </thead> <tbody> <tr> <td>Production/yr (m3)</td> <td>16,000</td> <td>200,000</td> </tr> <tr> <td>Trucks/yr</td> <td>1,600</td> <td>10,000</td> </tr> <tr> <td>Trucks/day</td> <td>5</td> <td>32</td> </tr> </tbody> </table> <p><i>Note 1994 Based on 10m3 truck capacity</i> <i>Future extraction based on 20m3 truck capacity</i> <i>All figures based on 6 day working week “</i></p>	Stage	Estimated Extraction	Timing Estimate	1.Southern Sector	1,564,675 m3	8 years	2 Mid Sector	973,661 m3	5 years	3.Northern Sector	1,261,664 m3	7 years	Surface Area	Total Material *	Time Frame	3.0 ha	1,564,675 m3	8 years	Surface Area	Total Material *	Time Frame	1.7 ha	973,661 m3	5 years	Surface Area	Total Material *	Time Frame	1.8 ha	1,261,664 m3	7 years		1994	Proposed Future Extraction	Production/yr (m3)	16,000	200,000	Trucks/yr	1,600	10,000	Trucks/day	5	32
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Date	Document Title	General
May 2000	Notification of Approval DA 170/1500 Notice No 98/174 - Application for Expansion of Reedy Creek Quarry Determined on 15 Dec 1999.	At page 2 <i>Schedule B General</i> <i>"1. The development is to be completed generally in accordance with the Environmental Impact Statement prepared by the GeoLINK Group Pty Ltd dated April 1998 and the approved "Rehabilitation and Environmental Management Plan"</i>
Dec 2001	Rehabilitation and Environmental Management Plan (REMP) for Reedy Creek Quarry prepared by JGA.	At page 1 <i>"1.3 This REMP is complementary to, and is to be read in conjunction with, a REMP prepared by Ian Kelly, Principal Scientist (IGC & Associates Pty Ltd) and M. W. Allan & Associates, Consulting Civil Engineers (REMP I - March 2001). It also draws on the assessment, conclusions and recommendations contained in the EIS and SIS".</i>
Feb 2004	Statement of Environmental Effects (S.E.E.) Feb Document and 2 letters by JGA 30 July 2004 8 Oct 2004	At page 6 <i>3.0 Proposal</i> <i>"The proposed expanded and amalgamated quarry would operate generally within the parameters of contained in the approved Reedy Creek Rehabilitation and Environmental Management Plan (REMP)".</i> <i>"The maximum extraction rate would be 200,000 m3 per annum with an average of 195,000 m3 per annum in a 3 year period."</i>
Nov 2004	DA04/0162 Development Consent for Amalgamation of Reedy Creek, Sanderson's and Pollard's Quarries.	At Page 2 <i>SCHEDULE B</i> <i>GENERAL</i> <i>"1. The development shall be completed in accordance with the Statement of Environmental Effects prepared by Jim Glazebrook & Associates Pty Ltd (JGA) dated February 2004, further information as per the JGA letter of 30 July 2004 as later amended by their letter of 8 October 2004, and the approved "Rehabilitation and Environmental Management Plan" approved from time to time by the Director Development Services, except where varied by the following conditions."</i> <i>"2. The maximum annual rate of extraction in any 12 month period is 200,000m3. The maximum average rate of extraction is 195,000 m3 over any 3 year period."</i>
Dec 2004	Rehabilitation and Environmental Management Plan (REMP) for Reedy Creek Quarry prepared by Jim Glazebrook & Assoc. Pty Ltd (JGA)	At page 1 <i>"1.0 Introduction</i> <i>1.2 includes:</i> <i>This REMP is prepared in accordance with the requirements of the consent and the provisions of the Statement of Environmental Effects".</i>