



TWEED
SHIRE COUNCIL

Mayor: Cr K Milne

Councillors: P Allsop
R Byrnes (Deputy Mayor)
C Cherry
R Cooper
J Owen
W Polglase

LATE Agenda

**Planning Committee Meeting
Thursday 5 July 2018**

held at
Harvard Room, Tweed Heads Administration Building, Brett Street, Tweed Heads
commencing at 5.30pm

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 - Section 4.15 Evaluation

(1) **Matters for consideration—general**

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

- (a) the provisions of:
 - (i) any environmental planning instrument, and
 - (ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and
 - (iii) any development control plan, and
 - (iiia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and
 - (iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), and
 - (v) any coastal zone management plan (within the meaning of the *Coastal Protection Act 1979*),
that apply to the land to which the development application relates,
- (b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,
- (c) the suitability of the site for the development,
- (d) any submissions made in accordance with this Act or the regulations, (e) the public interest.

Note. See section 75P(2)(a) for circumstances in which determination of development application to be generally consistent with approved concept plan for a project under Part 3A.

(2) **Compliance with non-discretionary development standards—development other than complying development.**

If an environmental planning instrument or a regulation contains non-discretionary development standards and development, not being complying development, the subject of a development application complies with those standards, the consent authority:

- (a) is not entitled to take those standards into further consideration in determining the development application, and
- (b) must not refuse the application on the ground that the development does not comply with those standards, and
- (c) must not impose a condition of consent that has the same, or substantially the same, effect as those standards but is more onerous than those standards,

and the discretion of the consent authority under this section and section 4.16 is limited accordingly.

(3) If an environmental planning instrument or a regulation contains non-discretionary development standards and development the subject of a development application does not comply with those standards:

- (a) subsection (2) does not apply and the discretion of the consent authority under this section and section 4.16 is not limited as referred to in that subsection, and
- (b) a provision of an environmental planning instrument that allows flexibility in the application of a development standard may be applied to the non-discretionary development standard.

Note. The application of non-discretionary development standards to complying development is dealt with in section 4.28 (3) and (4).

(3A) **Development control plans**

If a development control plan contains provisions that relate to the development that is the subject of a development application, the consent authority:

- (a) if those provisions set standards with respect to an aspect of the development and the development application complies with those standards—is not to require more onerous standards with respect to that aspect of the development, and
- (b) if those provisions set standards with respect to an aspect of the development and the development application does not comply with those standards—is to be flexible in applying those provisions and allow reasonable alternative solutions that achieve the objects of those standards for dealing with that aspect of the development, and
- (c) may consider those provisions only in connection with the assessment of that development application.

In this subsection, **standards** include performance criteria.

(4) **Consent where an accreditation is in force**

A consent authority must not refuse to grant consent to development on the ground that any building product or system relating to the development does not comply with a requirement of the *Building Code of Australia* if the building product or system is accredited in respect of that requirement in accordance with the regulations.

- (5) A consent authority and an employee of a consent authority do not incur any liability as a consequence of acting in accordance with subsection (4).

(6) **Definitions**

In this section:

- (a) reference to development extends to include a reference to the building, work, use or land proposed to be erected, carried out, undertaken or subdivided, respectively, pursuant to the grant of consent to a development application, and
- (b) **non-discretionary development standards** means development standards that are identified in an environmental planning instrument or a regulation as non-discretionary development standards.

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Items for Consideration of the Planning Committee:

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LATE ITEMS

LATE REPORTS FROM THE DIRECTOR PLANNING AND REGULATION

8 LATE [PR-PC] Dunloe Park Sand Quarry Mod 2 - TSC Submission to the Department of Planning & Environment (DA08/1247)

SUBMITTED BY: Development Assessment and Compliance

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Making decisions with you
We're in this together

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

2	Making decisions with you
2.1	Built Environment
2.1.2	Development Assessment - To assess development applications lodged with Council to achieve quality land use outcomes and to assist people to understand the development process.

ROLE: **Provider**

SUMMARY OF REPORT:

This report has been prepared to provide Council with an overview of a recommended submission in relation to the proposed modifications to the approved Dunloe Park Sand Quarry at Pottsville Road, Pottsville (MP06_0030) for Holcim (Australia) Pty Ltd.

Dunloe Park Sand Quarry has a current application (Mod 2) with the Department of Planning & Environment (the Department), whereby it is proposed to increase the number of truck movements to and from the site, to provide flexibility for any spike in demand in the quarry's sand products.

The current approval (DA06_0030 Mod 1) limits the extraction of sand to an annual total of 300,000 tonnes per annum. Mod 2 does not seek to increase the yearly extraction rate. Rather it seeks to increase the peak truck movement to and from the site to provide flexibility in supplying demand.

The Dunloe Park Sand Quarry is currently allowed to operate four trucks per hour (eight truck movements in / out). The proposed Mod would increase this to 12 trucks per hour (24 truck movements in / out), travelling from the quarry site, along Pottsville Road, onto Cudgera Creek Road, before entering the Pacific Motorway. Based on the approved hours of operation, the proposed modification would result in an increase from 80 truck movements to 120 truck movements per day, Monday to Friday and an increase from 40 truck movements per day to 60 truck movements on Saturdays.

In the event that the proponent has such a peak demand that they reach their annual extraction limit of 300,000 tonnes prior to the year's end, they will not be permitted to operate until the anniversary date is reached, whereby they can then lawfully proceed with further extraction and truck movements.

A number of preliminary submissions have been provided to the Department by Council officers since August 2017, which were in turn forwarded to the proponent to respond to. Such concerns related to traffic (sight distances), vegetation removal (in response to Council's sight distance concerns), S7.11 road contributions, impact upon koalas and overall amenity impact from the proposed increase in truck movements.

Although the proponent agreed to a variety of road improvement measures supported by Council (which resulted in no vegetation removal), Council officers remained concerned about a number of other issues. Subsequently, a draft submission (refer to **Attachment 1**) was prepared to identify the remaining concerns for the Department's consideration and ultimate determination. Whilst highlighting the remaining concerns, no formal objection to Mod 2 was raised by Council officers in the draft submission.

The Department has been provided with a copy of the draft submission and has been advised that the submission is preliminary and needs to be presented to the Councillors for consideration. In seeking any additional comments or Councillors informal acceptance of the draft submission in its current state, The Mayor Councillor Milne and Councillor Cherry requested that the matter be called up to the next Planning Committee meeting, each noting an objection to the proposed modification to MP06_0030.

The intention of this report is to seek Council's endorsement of the attached draft submission or seek Council resolution to amend the submission to incorporate the Mayor's and Councillor Cherry objections, noting that a formal objection will trigger the referral of the proposed modification by the Department to the Independent Planning Committee (IPC) for determination.

RECOMMENDATION:

That:

- 1. Council endorse the comments contained within this report and the draft submission in Attachment 1 of this report; and**
- 2. The endorsed submission be forwarded to the Department of Planning and Environment with regard to the proposed modifications of the Dunloe Park Sand Quarry Approval (MP06_0030 Mod 2).**

REPORT:

BACKGROUND:

Development consent for the existing sand quarry was initially granted by the Minister for Planning in November 2008 (under Project Approval 06_0030), which involved the staged extraction of sand via dredging methods from two separate dredge ponds totalling 56.7 hectares in area (as shown in Figure 1 below).



Figure 1: Approved Project Layout under MP06_0030

The Approval allowed for dredged sand to be processed on site at a rate of up to 300,000 tonnes per year, with all sand products transported to market by road via a sealed haulage road to Pottsville Road. The total sand resource available on the site is approximately 7.8 million tonnes, and the quarry would have a life of 26 years.

The Approval applied a comprehensive set of conditions which included site rehabilitation and environmental management requirements, with the approved Rehabilitation Staging Plan shown below in Figure 2.



Figure 2: Approved Rehabilitation Staging

In August 2009, the Department approved a modification of the original approval. Mod 1 related to a 10m x 24m machinery shed to house mobile plant equipment within the quarry boundary, as shown in Figure 3 below.

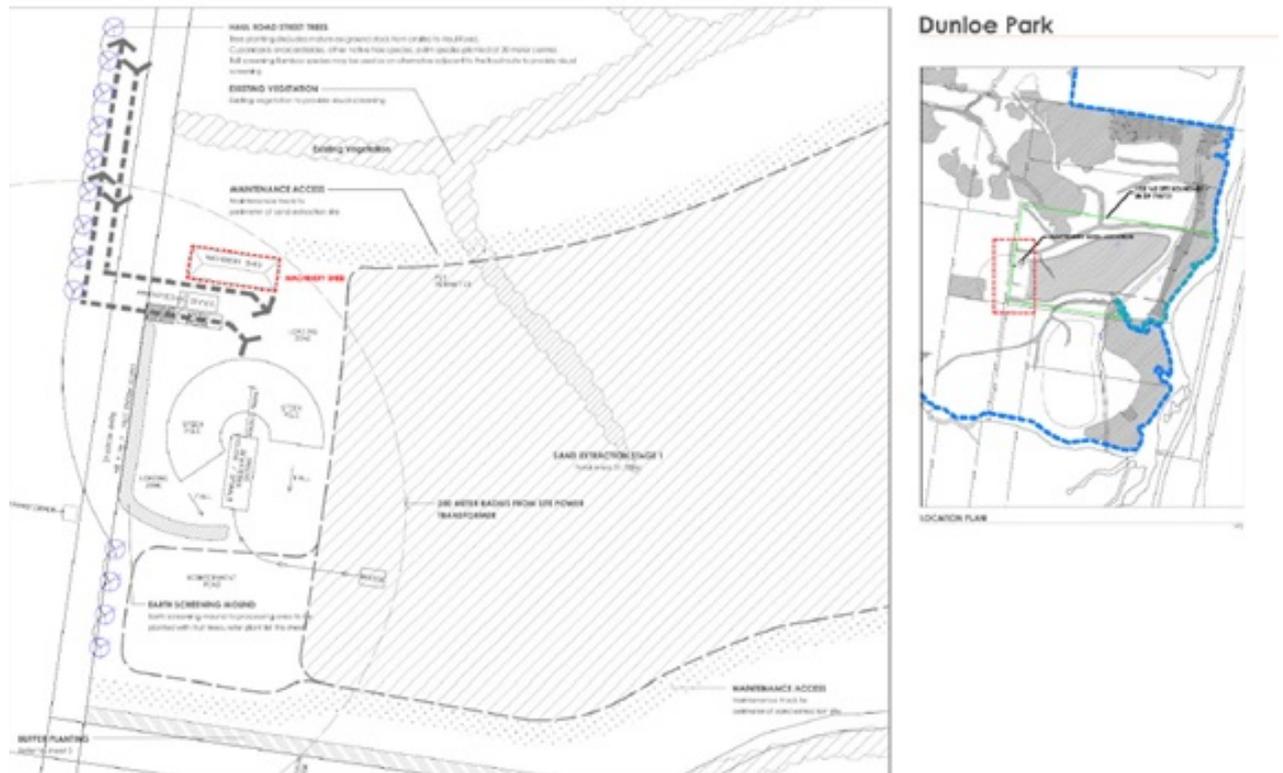


Figure 3: Approved Machinery Shed Location (MP06_0030 Mod 1)

PROPOSAL:

The Department’s original approval of MP06_0030 limited the extraction of sand to an annual total of 300,000 tonnes per annum and a maximum of four trucks per hour (eight truck movements in / out).

Mod 2 seeks to increase the peak truck movements to provide flexibility in the quarry being able to meet spikes in demand without increasing the approved (“capped”) annual extraction rate of 300,000 tonnes.

The proposed modification seeks to increase the hourly truck movements from the eight trucks per hour to a maximum of 24 truck movements (in and out) per hour. Based on the approved hours of operation, the proposed modification would result in an increase from 80 truck movements to 120 truck movements per day, Monday to Friday and an increase from 40 truck movements per day to 60 truck movements on Saturdays.

It is considered that the originally approved truck rate of 4 per hour was based on the quarry operating on a yearly basis of 50 weeks, with truckloads of approximately 30 tonnes. It should be noted that if the proponent was to operate at a maximum rate under the proposed Mod to meet a spike in demand, the increase in truck movements over the approved hours of 10 hours per day (Monday to Friday) and five hours on Saturdays would effectively exhaust the annual maximum 300,000 tonnes of sand extraction in 13 weeks.

Although it is highly unlikely that such demand would occur (with the proponent identifying a typical spike only during morning periods), such a scenario would see the quarry having to cease production after only 13 weeks and not recommence operations until the yearly anniversary date has been reached.

The approved truck route remains unchanged, with the trucks traveling through the site to its intersection with Pottsville Road, north to Cudgera Creek Road, before heading west and entering the Pacific Motorway (as shown in Figure 4 below).

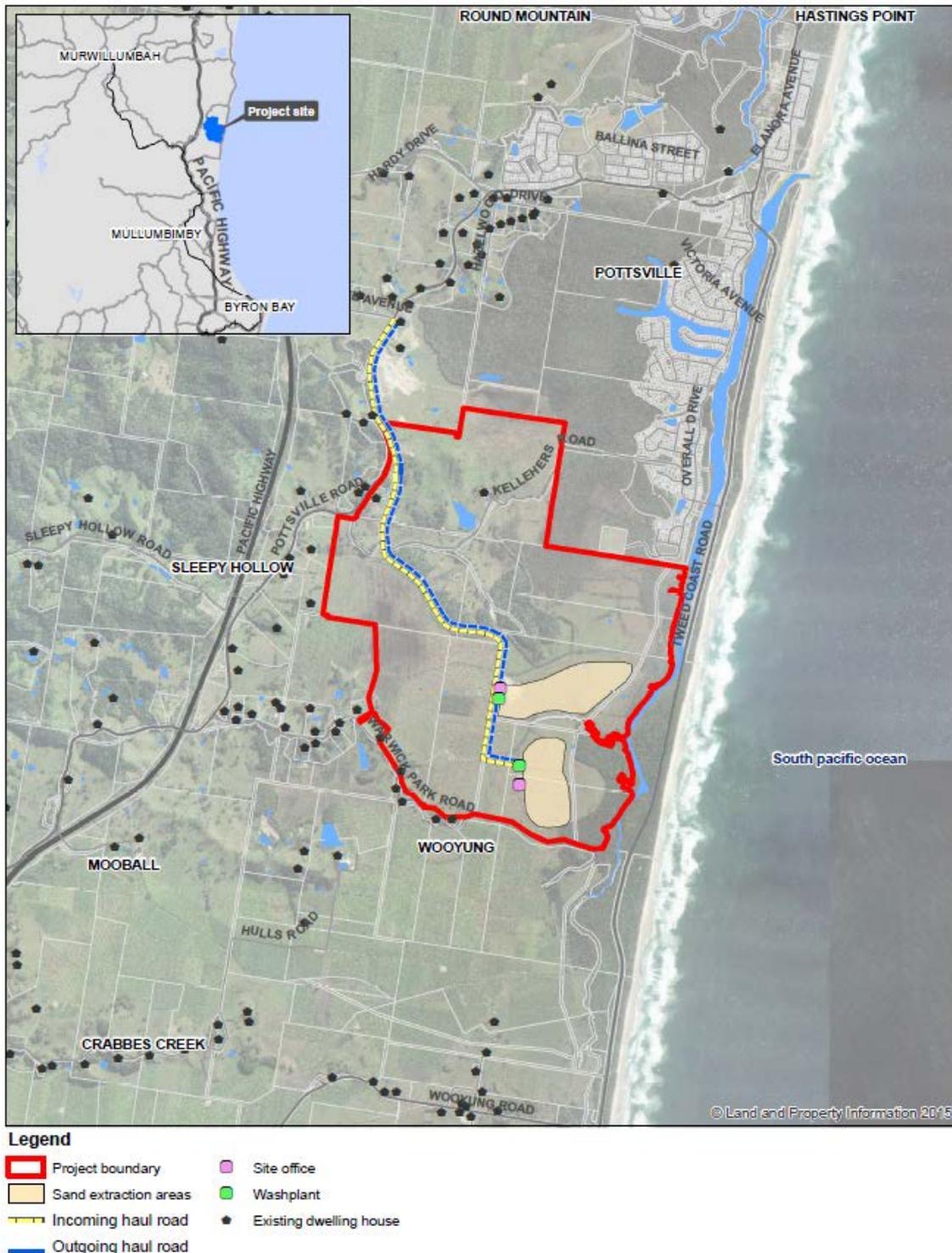


Figure 4 – Site Location & Truck Route

Tweed Shire Council was originally invited to make a submission to the Department in relation to the proposed development (Mod 2) in July 2017. Council's initial response in August 2017 was in relation to traffic concerns (i.e. sight distance) at the site's intersection with Pottsville Road.

Having undertaken an independent Road Safety Audit (RSA), the proponent submitted a Response to Submissions in November 2017. To address the sight distance concerns raised by Council, the RSA recommended the removal of vegetation along Pottsville Road in close proximity to the site's access road.

In February 2018, Council officers informally raised concerns with the proposed development in terms of the proposed removal of vegetation along Pottsville Road and the lack of environmental assessment particularly in regard to the site's location being of significance to the endangered Tweed-Brunswick koala population. The Department was advised that the site is also within a Key Linkage Area of the Tweed Coast Comprehensive Koala Plan of Management with potential implications for koala connectivity and road mortality.

In March 2018, the proponent submitted a Response to RSA, which proposed a number of options to address traffic concerns which had been raised by Council and the Roads & Maritime Services (RMS). The Response incorporated a number of road improvement treatments, one of which negated the removal of vegetation from Pottsville Road.

Council officers issued a formal submission to the Department (dated 30 April 2018 - refer to **Attachment 2**) in response to the proponent's Response to the RSA. The submission highlighted that the proponent's RSA (which proposed tree clearing) was not supported. Rather, the officer's submission supported the proponent's Response with regard to road improvement works. Additional signage was also recommended, all of which would need approval from Council through a S138 application.

Council's 30 April submission also noted that additional TRCP contributions should be applied to the proposed additional peak truck movements (highlighting that the original consent did not apply heavy haulage rates on an annual basis as requested by Council). In addition, Council officers reiterated concerns to the Department (initially raised in February 2018) with regard to ecological impacts associated with the development. Amenity impacts were also raised as a concern.

The proponent provided a response to Council's comments on 15 June 2018. In terms of traffic, the proponent: agreed to the proposed condition by Council in terms of the recommended road improvements; confirmed that such road improvements will not require vegetation removal; and acknowledged that a s138 approval from Council is required for such road works. The proponent did not agree with Council's stance on S94 contributions, highlighting that the heavy haulage fee of \$47,250 had been paid. With regard to Council's ecological concerns, the proponent did not address any of the issues raised by Council officers and suggested that the KPOM has no effect as it does not come under SEPP 44 provisions. In terms of Council's concerns over amenity impact, the proponent suggested that the application had adequately addressed these issues and that appropriate management strategies are in place.

With a very limited time frame to prepare a final submission for the Department, Council officers prepared a draft submission (**Attachment 1**) to highlight the remaining concerns from an officer level. The following is a summary of the comments within the draft submission:

Traffic – the proponent has agreed to the proposed condition by Council in terms of the recommended road improvements and has confirmed that such road improvements

will not require vegetation removal. The proponent has also acknowledged that a s138 approval is required for such road works. No further traffic issues are raised.

S7.11 Contributions – the proponent has disputed the application of additional TRCP contributions as a result of the increase in peak truck movements. Whilst the proponent has paid the heavy haulage fee of \$47,250 that was applied to the original consent, it has been highlighted to the Department that such fee should have been an ongoing annual fee. Heavy haulage fees are no longer applied under the TRCP. Rather, TRCP is now applied to the trip rates generated by a development. It should be noted that Mod 2 does not propose to change the cap for extraction (that being 300,000 tonnes per annum). However, it is proposing to increase the peak truck rate (to give the proponent flexibility for periods of high demand) from 8 trips per hour (in and out) to that of 24 trips per hour. The additional TRCP has been calculated at one-off fee of \$173,480 at today's rate. The Department has been requested to review the ability to apply the recommended TRCP based on the increase in peak truck movements.

Ecological Concerns – although the proponent is no longer proposing removal of vegetation along Pottsville Road, Council officers have raised concerns with the Department with regard to potential impacts of the additional truck movement and the proponent's disregard for the KPOM as a mechanism to achieve the objectives of the TLEP.

Amenity Impact – as was noted in Council's previous submission, concerns are raised with regard to potential amenity impacts associated with the increase in peak truck movements from a general road user perspective and local residential amenity.

The Department has been provided with a copy of the draft submission and advised that the draft needs to be presented to the Councillors for endorsement. It should be noted that the Department picked up an error in the draft submission with regards to the increase in truck movements (as discussed in the ecological comments). The draft makes reference to a 300% increase, when the correct figure should be a 200% increase. This error will be amended when the final submission is forwarded to the Department.

In seeking any additional comments or acceptance of the draft submission in its current state, the Mayor and Councillor Cherry raised objections in relation to the issues raised by Council officers.

The intention of this report is to seek Council's endorsement of the attached draft submission (which would allow the Department to determine the modification), or seek Council resolution to amend the submission to incorporate the Mayor's and Councillor Cherry's formal objections (noting that a formal objection will trigger the referral of the proposed modification to the IPC for determination).

OPTIONS:

1. Council endorses the wording of the Draft Submission to the Department of Planning & Environment for Dunloe Park Sand Quarry Mod 2, which will then be forwarded to the Department as a final submission; or

2. Council endorses the wording of the Draft Submission, subject to any additional objections raised by the Mayor and Councillor Cherry being incorporated into the final submission to be forwarded to the Department of Planning & Environment; or
3. Council resolves to not support the proposed modifications of the Dunloe Park Sand Quarry Approval (Mod 2).

Council officers recommend Option 1.

CONCLUSION:

The proposed modifications are considered to raise a number of issues relating to S7.11 contributions, ecological concerns and amenity impacts, which are considered to require further consideration by the Department of Planning & Environment.

It is envisaged that once the Department has received Council's final submission, they will finalise their assessment with either a determination of Mod 2 (under delegation) or an assessment report with recommended conditions for the IPC to consider and determine.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1. Draft Submission dated 22 June 2018 (ECM 5386652)

Attachment 2. Council officer submission dated 30 April 2018 (ECM 5386654)

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