



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 7 June 2018**

held at
Council Chambers, Murwillumbah Civic & Cultural Centre, Tumbulgum Road, Murwillumbah
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

REPORTS FROM THE DIRECTOR PLANNING AND REGULATION

10 LATE [PR-PC] Tweed Sand Quarry Mod 1 - TSC Submission to Department of Planning and Environment (DA05/0905.01)

SUBMITTED BY: Development Assessment and Compliance

mhm



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: **Leader**

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 Tweed Sand Quarry at Crescent Street, Chinderah (DA 152-5-2005) for Hanson Construction Materials Pty Ltd.

Tweed Sand Quarry has a current application (Mod 1) with the Department of Planning & Environment (the Department), whereby it is proposed to increase the rate of extraction from the existing sand quarry. This in turn will increase the number of truck movements to and from the site.

The current approval (DA 152-5-2005) limits the extraction of sand to an annual total of 150,000m³. Mod 1 seeks to increase the yearly extraction rate to that 265,000m³ (or approximately 500,000 tonnes).

The Tweed Sand Quarry is currently allowed to operate 10 trucks per hour (20 truck movements in /out). The Mod would increase this to 18 trucks per hour (36 truck movements in /out), travelling from the quarry site, along Altona Road, onto Crescent Street and then onto Tweed Coast Road.

Tweed Shire Council has been invited to make a submission to the Department in relation to the proposed development. Following a review of the proposal, Council officers issued preliminary comments to the Department on 17 May 2018 in relation to the Mod 1 proposal (refer to Attachment 1).

Council officers have been liaising with the Department in relation to both this application and the Mod for the adjoining Cudgen Lakes Sand Quarry, to ensure a fair and reasonable requirement is placed on both approvals in relation to road upgrade requirements. The attached preliminary submission relates only to the Tweed Sand Quarry Mod 1 proposal.

Whilst preparing Council's submission, the Department issued a set of revised draft conditions (refer to Attachment 2), which have been addressed in Council's preliminary submission. There are several concerns raised by Council officers in relation to traffic (upgrade of Altona Road and upgrade of the Crescent Street intersection with Tweed Coast Road) and rehabilitation matters, with the attached preliminary submission considered to clearly set out Council's concerns and objections.

The Department have been advised that the attached submission is preliminary and needs to be presented to the Councillors for consideration. In seeking any additional comments or Councillors informal acceptance of the preliminary submission in its current state, the Mayor raised a further objection in relation to impacts upon safety, amenity and economic values.

The intention of this report is to seek Council's endorsement of the attached preliminary submission or seek Council resolution to amend the submission to incorporate the Mayor's additional objection.

RECOMMENDATION:

That:

- 1. Council endorses the comments contained within this report and the preliminary 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 Tweed Sand Quarry Approval (DA 152-6-2005 Mod 1).**

REPORT:

Development consent for Phase 1 of the existing sand quarry was initially granted by Council in 1983 (under T4/2562), which included establishment of a turf farm and brickies loam pit on the site. Approximately 11.6ha of the 77.2 ha site was subject to sand extraction between 1989 and 2000.

In 2001, Council granted consent for Phase 2 of the development (under 0041/2001DA), which incorporated a 6.8ha expansion of the sand quarry, as well as establishment of a recreational fishing facility within the waterbody created by the dredge quarry operation.

The proponent then proposed the development of Phases 3, 4 and 5 of the sand quarry, which incorporated the following (and as shown in Figure 1 below):

- extracting a total of approximately 8.7 million cubic metres of sand, including:
 - Phase 3 - additional sand extraction from the existing Phase 1 pond to a depth of approximately 20 metres below natural ground surface, for an estimated sand resource of 812,590 cubic metres;
 - Phase 4 - expansion of the extraction area to the west of Phase 1 and 3, for an estimated sand resource of 3,640,760 cubic metres; and
 - Phase 5 - expansion of the extraction area to the north of Phase 2 and 4 areas, for an estimated sand resource of 4,238,820 cubic metres;
- extracting at a rate of approximately 150,000 cubic metres per annum;
- operating the sand quarry for 58 years; and
- progressively rehabilitating the quarry to form a lake area for ongoing use as a recreational fishing facility.

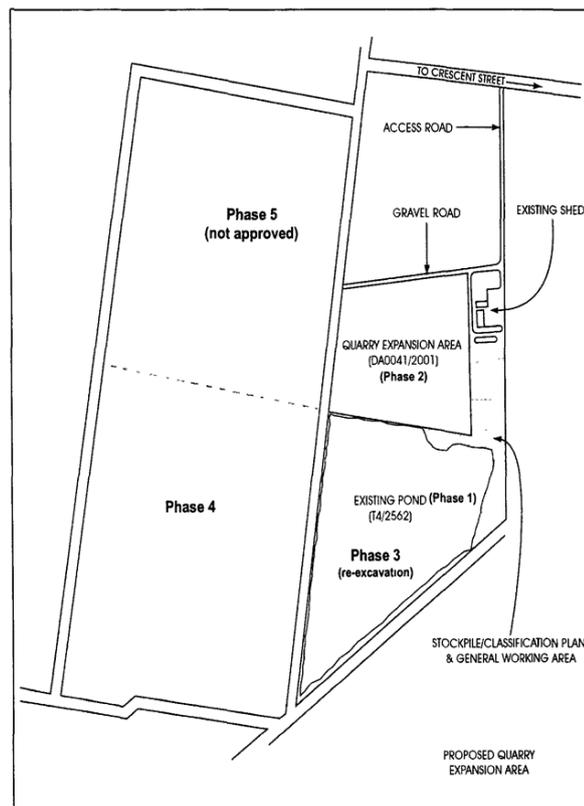


Figure 1 – Approved Sand Quarry Layout under DA 152-6-2005

The Tweed Sand Quarry application (then known as the *P. Quinane Sand Quarry Extension*) DA 152-6-2005 was approved by Minister for Planning on 11 August 2006, subject to a set of conditions which included limiting the quarry expansion to Phases 3 and 4 only (reducing the duration of the quarry to 30 years), as well as site rehabilitation and environmental management requirements.

PROPOSAL:

The Department's original approval of DA 152-6-2005 limits the extraction of sand to an annual total of 150,000m³ and a maximum of 10 trucks per hour (20 truck movements in / out).

Mod 1 seeks to increase the yearly extraction rate to that 265,000m³ (or approximately 500,000 tonnes), which would increase truck movements to 18 trucks per hour (36 truck movements in /out), travelling from the quarry site, along Altona Road, onto Crescent Street and then onto Tweed Coast Road (as shown in Figure 2 below).

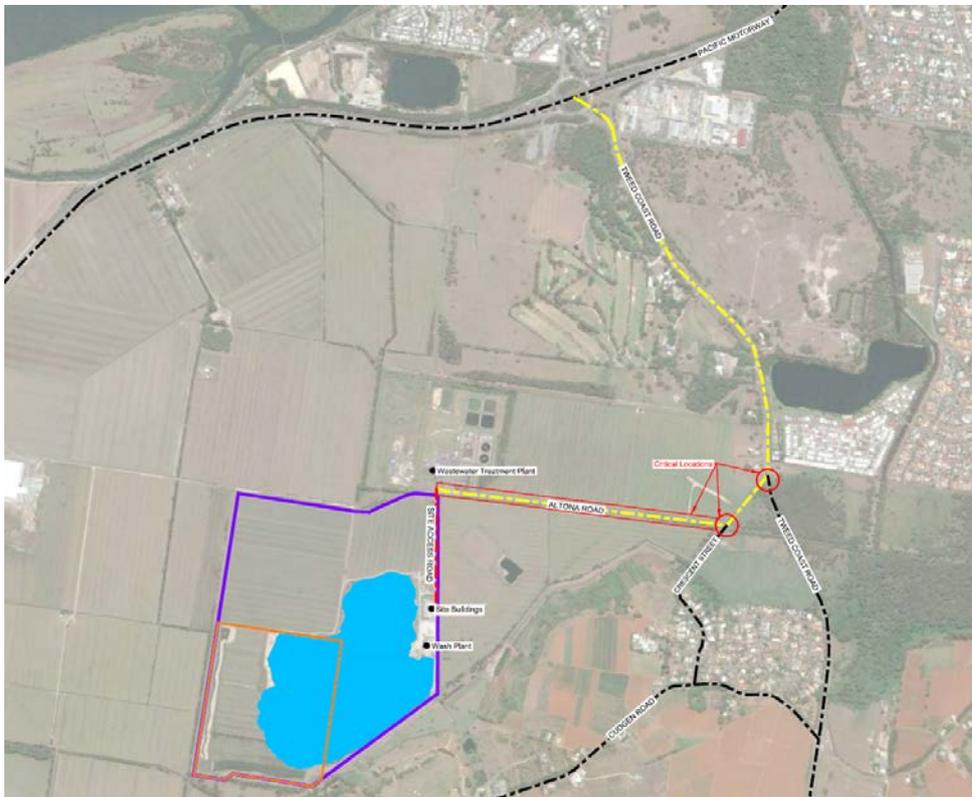


Figure 2 – Site Location & Truck Route

Council officers have been liaising with the Department in relation to both this application and the Mod for the adjoining Cudgen Lakes Sand Quarry. The Department is assessing each modification separately, but will likely apply similar conditions of consent with regard to road upgrade requirements to ensure that the approvals are fair and equitable for both parties. This report and submission relates only to the Tweed Sand Quarry.

Whilst preparing Council's submission for the Tweed Sand Quarry Mod 1, the Department issued a set of revised draft conditions (refer to Attachment 2), which have been addressed in Council's preliminary submission. There are several concerns raised by Council officers in relation to traffic (upgrade of Altona Road and upgrade of the Crescent Street intersection with Tweed Coast Road) and rehabilitation matters, with the attached preliminary submission considered to clearly set out Council's concerns and objections.

Due to time constraints in responding to the Department's requests for comments, the Preliminary Submission was issued to the Department prior to seeking endorsement from Councillors. In seeking any additional comments or acceptance of the preliminary submission in its current state, the Mayor raised a further objection in relation to impacts upon safety, amenity and economic values, as follows:

"I would like to suggest that Council makes it clear that we do not support this application for the following reasons:

The inappropriateness of allowing such intensive use of large trucks on Tweed Coast Rd in this populated residential and iconic coastal tourist area that will invariably reduce both safety and amenity, and impact on the economic values of the area as well as its attractiveness in regard to the low key coastal village aspirations and the green belt clearly identified as the preferred scale and intensity of development by the community through numerous strategic planning documents over many years".

The intention of this report is to seek Council's endorsement of the attached preliminary submission or seek Council resolution to amend the submission to incorporate The Mayor's additional objection.

OPTIONS:

1. Council endorses the wording of the Preliminary Submission to the Department of Planning & Environment for Tweed Sand Quarry Mod 1, which will then be forwarded to the Department as a final submission; or
2. Council endorses the wording of the Preliminary Submission, subject to the additional objection raised by the Mayor 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 Tweed Sand Quarry Approval (Mod 1).

Council officers recommend Option 1.

CONCLUSION:

The proposed modifications are considered to raise a number of issues relating to upgrades of roads / traffic safety and rehabilitation requirements, which are considered to require further consideration by the Department of Planning & Environment and the proponent.

The Department have advised that they are in the process of amending the draft conditions of consent in such a way that addresses the concerns of Council, yet still provides a level of fairness in terms of the requirements for both this application and the adjoining Cudgen Lakes Sand Quarry Mod.

It is envisaged that once the Department has received Council's final submission, they will endeavour to meet with the proponents of both modification applications to draft a set of conditions that will be considered acceptable by all parties. At which point, Council will be provided with an opportunity to comment again.

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:

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| Attachment 1. | Preliminary comments to the Department on 17 May 2018 in relation to the Mod 1 proposal (ECM 5326641) |
| Attachment 2. | Draft Conditions (ECM 5322982) |
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