

**NOTICE TO APPLICANT OF DETERMINATION OF APPLICATION  
CONSOLIDATED DEVELOPMENT CONSENT  
Environmental Planning and Assessment Act, 1979  
DA95/3205**

**(Incorporating the unnumbered modification dated 30 June 1997, DS01/1222 and DS13/1445)**

**TO:**

Mr Terry Wetherall  
TCW Consulting Pty Ltd  
45 Eastern Ave  
MANGERTON NSW 2500

**being the applicant for DS13/1445 relating to:**

Lots 2 DP 865094, 135 Wogamia Road, LONGREACH NSW 2540

**(as modified by DS13/1445)**

**APPROVED USE AND / OR DEVELOPMENT:**

Sand and soil quarry and processing, stockpiling, distribution of sand, soil and associated materials and composting of materials

**(as modified by DS13/1445)**

**SECTION 96 MODIFICATION:**

Section 96 (2): To:

1. Amend the description of development to include "composting of materials";
2. Delete lot 1 DP 865095 from the property description;
3. Amend conditions 3(b) and 3(c) to vary the volumes of extracted material and imported material.

**DETERMINATION DATE:**

**26 July 1996**

**MODIFICATION DATE (DS13/1445):**

**TBA**

Pursuant to the Section 81 of the Act, notice is hereby given that the above application has been determined by granting consent, subject to the conditions listed below.

*This is a s96 modification determination – it does not constitute a new development consent – it incorporates the modified conditions into the original development consent for ease of interpretation.*

**CONSENT TO OPERATE FROM:**

**26 July 1996**

**CONSENT TO LAPSE ON:**

**26 July 2021**

**DETAILS OF CONDITIONS:**

The conditions of consent and reasons for such conditions are set out as follows:

**GENERAL CONDITIONS**

1. This consent relates to the continued operation of the existing sand and soil quarry on Lot 2 DP 865094, 135 Wogamia Road, Longreach, pursuant to State Environmental Planning Policy No. 37 and to the processing, stockpiling, distribution of sand, soil and associated materials and composting of materials as illustrated on the submitted plans and documentation contained in the application referred to as DA95/3205. Specifically:
  - a) The development shall be carried out in accordance with the submitted plans contained within the Statement of Environmental Effects and with the following plans and documents submitted with section 96 application DS13/1445, as set out in the table below, except where modified by other conditions of this consent:

<b>Document</b>	<b>Ref No</b>	<b>Author</b>	<b>Date</b>
Application letter	Project #1312	TCW Consulting Pty Ltd	2 December 2013
Odour Audit	Q2004L.01	The Odour Unit	27 February 2015
Flood Study Report	CRPT – 20131629-01B	Jones Nicholson Consulting Engineers	2 February 2015
Summary Report – Water Management Situation	NA	Organic Resource Consultancy	July 2015
Civil Design Composting Yard and Leachate Treatment Plan	131629: C15:1	Jones Nicholson Consulting Engineers	December 2014
Civil Design Composting Yard Access Road Longitudinal Section	131629: C16:1	Jones Nicholson Consulting Engineers	December 2014
Civil Design Swale 1 Longitudinal Section	131629: C17:1	Jones Nicholson Consulting Engineers	December 2014
Civil Design Swale 2 Longitudinal Section	131629: C18:1	Jones Nicholson Consulting Engineers	December 2014
Environmental Noise Compliance Assessment	5557-2.1R	Day Design Pty Ltd	5 August 2015
Traffic Impact Analysis	CRPT-20131629.03A	Jones Nicholson Consulting Engineers	25 June 2015
Report on Groundwater Investigation	78696.0	Douglas Partners Pty Ltd	2 June 2015
Letter from Applicant re types and tonnages of imported	Project #1312	TCW Consulting Pty Ltd	26 April 2016

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material			
Leachate and Surface Water Management Plan – Executive Summary	Final V2	MRA Consulting Group	17 June 2016
Leachate and Surface Water Management Plan	CES160205-MRA-AB	Consulting Earth Scientists Pty Ltd	17 June 2016

- a) Any alteration to the abovementioned plans and/or documentation shall be submitted for the approval of the Development Services Manager prior to submission of the Building Application. NO works, other than those approved under this consent, shall be carried out without first having obtained Council's written consent.

**(Condition No. 1 amended by the unnumbered Modification approved on 30 June 1997)  
(Condition further amended by DS13/1445)**

#### **DURATION OF CONSENT**

2. In accordance with the aims and objectives of State Environmental Planning Policy No. 37 and having regard to the projected life of the Quarry as indicated in Section 1 of the Statement of Environmental Effects:
- a) The winning of material from the Quarry and the processing, stockpiling and distribution of sand, soil and associated materials shall cease after 25 years from the date of consent (i.e. 26 July, 2021) unless otherwise approved to be extended.
- b) Any outstanding rehabilitation work at 26 July 2021 shall be completed in accordance with an approved rehabilitation plan and as directed by Council notwithstanding that further extraction of material shall be prohibited.

#### **REQUIREMENTS OF STATE ENVIRONMENTAL PLANNING POLICY NO. 37 (SEPP 37) – CONTINUING MINES AND EXTRACTIVE INDUSTRIES**

3. In accordance with the provisions of Clause 20 of SEPP 37, Council has determined that the quarry is not Designated Development for the purposes of the Policy therefore, the following requirements shall be met:
- a) the extraction area and volume of material to be extracted shall be limited to that indicated in the submitted Statement of Environmental Effects;
- b) the maximum volume of extracted material shall be limited to 15,000 tonnes per annum. The operator shall submit to Council at 2 yearly intervals a record of the quantity of material extracted from the subject site;
- c) the volume of material imported to the site for use in the stockpiling, composting, mixing and distribution operation shall be limited to 35,000 tonnes per annum and shall be limited to the types and tonnages of materials referred to in the applicant's letter dated 26 April 2016 identified in the Table in Condition 1. Any variation to these types and tonnages will require Council's written consent. The operator shall submit to Council at 12 monthly intervals a record of the types and tonnages of material imported to the site;
- d) within 12 months of the date of this consent, the operator shall submit to Council for approval a detailed quarry extraction plan illustrating the 5 x 5 Yearly Staging of

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extractions, volumetric analysis, cross-sectional profiles and progressive rehabilitation proposals covering the 25 year period of quarry operations. Each extraction stage shall not commence until the previous stage extraction has been exhausted and rehabilitation of the previous stage is nearing completion.

- e) The operation shall be managed and implemented in such a manner so as to minimise the extent of exposed areas at any one time. The applicant shall demonstrate the progressive adherence to this requirement by the submission of a Survey Plan with the Biennial Environmental Management Plan (i.e. See Condition No. 15 (b)).

**(Condition 3 (b) and 3 (c) amended by DS13/1445)**

**VISUAL AND SCENIC IMPACT**

- 4. In order to minimise the visual impact of the quarry and to protect and enhance the visual amenity of adjoining properties, it is essential that vegetated buffers be established and maintained generally in accordance with proposals outlines in the Statement of Environmental Effects (Landscape Plan – Appendix B). In addition, the following shall be incorporated in the Landscape Plan:
  - a) To reduce the visual impact of the stockpile and quarry area upon the item of the environmental heritage, Wogamia House and Riversdale, landscape screening shall include plantings along the north-western, northern and eastern sides of the stockpile area and excavation pit, and along the western edge of the access road.
  - b) Details of tree and shrub plantings to be incorporated at each stage of the rehabilitation plan.
- 5. A detailed Landscape Plan shall be submitted to Council for approval within 6 months from the date of consent showing details as required by the previous condition. The plan shall be prepared by a recognised consultant and shall incorporate predominantly local native plant species and shall include a variety of short lived, fast growing native trees and shrubs so that adequate landscape screening is achieved in the short to medium term.
- 6. Landscaping shall be:
  - a) Carried out and completed in accordance with the approved Landscape Plan within 12 months from the date of consent, and shall be maintained to the satisfaction of Council at all times.
  - b) Adequately protected from grazing by stock and rabbits. Details of protection measures to be undertaken shall be indicated on the Landscape Plan for approval.

**ENVIRONMENTAL IMPACT**

- 7. To ensure that minimal environmental impact occurs from the activities associated with the quarry:
  - a) A comprehensive Soil & Water Management and Rehabilitation Plan shall be prepared for the quarry site. The plan shall be approved by the Department of Land and Water Conservation (Soil Conservation Division) and submitted to Council within 6 months from the date of consent.

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The plan shall include but not be limited to: erosion and sediment control of the site, topsoil stripping, stockpiling, respreading for final rehabilitation, progressive rehabilitation of the site in stages including batter grades, berms, drainage and stabilisation, runoff diversion and treatment, haul road erosion and sediment protection and stabilisation and sediment control ponds.

- b) The quarry and stockpile area must drain into the quarry sediment pond. Perimeter diversion banks may be required to achieve this result for the whole specified area. Details including site levels shall be provided with the Soil and Water Management and Rehabilitation Plan for approval.
- c) All works associated with the Soil and Water Management and Rehabilitation Plan shall be completed within 12 months from the date of consent or as otherwise indicated in the plan to be approved.
- d) All operational and rehabilitation works shall be undertaken in accordance with the Statement of Environmental Effects and the Soil and Water Management and Rehabilitation Plan as approved by the Department of Land and Water Conservation.
- e) Adequate topsoil shall be stockpiled, vegetated and protected from erosion, for re-use in the progressive rehabilitation of the site, and shall not be re-sold. Details of the volume and location of the topsoil stockpile shall be indicated in the Soil and Water Management and Rehabilitation Plan, while landscape stabilisation of the topsoil stockpile shall be indicated in the Landscape Plan to be submitted for Council approval.
- f) The applicant shall undertake monitoring of the water quality, at 2 year intervals, of the Quarry Sedimentation Pond and the groundwater of the immediately adjacent rural land at approximately the limits of the proposed Year 25 extraction area to ensure that groundwater quality is not adversely affected by infiltration from the Quarry Sedimentation Pond. Water quality shall be monitored for pH, EC, TN and TP.

## **FLOODING**

- 8. To minimise the impact upon equipment and property during a major flood, the applicant shall prepare and submit to Council for approval within 6 months from the date of consent a Flood Management Plan, detailing measures to be implemented and practices to occur to protect or remove equipment and property from the area during a major flood. This may include practices such as ensuring that stockpile and processing areas are on high ground and protected by bund walls, or that processing machinery is mobile and able to be moved quickly to higher ground and the like.

## **FUEL STORAGE AND MANAGEMENT**

- 9. The applicant shall submit to Council for approval within 6 months from date of consent a Fuel Storage Management Plan indicating where fuels are stored on site, and what emergency plans shall be followed in the event of a fuel spill to control the spill, prevent it from entering the river system, and to rehabilitate the area.

## **AMENITY**

- 10. Hours of operation of the quarry and stockpile processing operations shall be limited to 6:30am to 6:00pm Monday to Friday and 6:30am to 4:00pm on Saturdays. The only operations which will be permitted on Sundays and Public Holidays will be limited to the

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removal of soil from extraction areas to the process area and loading operations. These operations will be limited to a maximum of ten (10) Sundays or Public Holidays per calendar year. Loading will be permitted on a further 25 Sundays or Public Holidays between the hours of 1:00pm and 4:00pm. In this regard, a record is to be kept of all such operations on Sundays and Public Holidays and such records will be available for inspection by Council staff on request. A copy of these records will also be required to be submitted as part of the Environmental Management Plan as required by Condition No. 15(b) of this consent.

**Note:** *Having regard to the provisions of the modified Condition No. 1 of the consent, the hours for Sunday and Public Holiday operations involving the removal of soil from extraction areas will be limited to 9:00am to 4:00pm as outlined in your letter dated 10 March 1997 which supported your application.*

**(Condition No. 10 amended by the unnumbered Modification approved on 30 June 1997)**

11. Hours of operation of truck haulage to and from the site associated with the quarry, processing and distribution activities shall be limited to 6:00am to 6:00pm Monday to Friday, and 6:00am to 4:00pm on Saturdays.

Furthermore, substantially reduced truck movements, that is a maximum of **twenty (20)** heavy vehicle movements per week, will be permitted between 6:00pm and 10:00pm Monday to Saturday and 8:00am to 6:00pm Sunday and Public Holidays. **A maximum of a further five (5)** may be between 10:00pm and 6:00am but none between 10:00pm and 8:00am on a Saturday evening or the night preceding a Public Holiday. In this regard, a record is to be kept of all such vehicle movements within these hours and such a record will be made available for council staff on request. A copy of these records will also be required to be submitted as part of the Environmental Management Plan as required by Condition No. 15(b) of this consent.

**(Condition 11 amended by the unnumbered Modification approved on 30 June 1997)**

12. Noise from the quarry and mixing operations shall not exceed 5dBA above the background noise level measured at the nearest affected residence when the noise is most likely to be offensive. The operator shall comply with the provisions of the Noise Control Act and comply with any requirements of Council officers relating thereto as may arise from time to time.
13. To control dust, stockpiles of fine materials likely to be blown away shall be kept moist and/or covered, and the applicant shall take all necessary actions (as directed by Council) to prevent dust nuisance occurring as a result of quarrying, stockpiling and mixing, or road haulage operations.
14. In order to mitigate dust impacts from trucks, the operator shall instruct his truck drivers not to exceed 40km per hour whilst travelling on unsealed sections of Wogamia Road.

**ENVIRONMENTAL MANAGEMENT PLAN**

15. To ensure that the terms of this consent and State Environmental Planning Policy No. 37 are complied with:
- a) The perimeter of the total area to be worked for the 25 year life of the quarry shall be surveyed and marked with substantial size fence posts for easy recognition in the field. A copy of the Survey Plan shall be submitted to Council for information within six (6) months from the date of consent.

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- b) An Environmental Management Plan, including a plan prepared by a Registered Surveyor, shall be submitted to Council at 2 yearly intervals for the life of this consent with the first report being submitted within 2 years from the date of consent, indicating the extent of the quarry excavation at the time of the report, rehabilitated areas, the quantity of excavated material during the preceding 2 years, the quantity of material hauled to and the quantity of materials hauled from the site during the preceding 2 years, details regarding the continued compliance with the approved Soil and Water Management and Site Rehabilitation Plan and the results of water quality testing of the Quarry Sedimentation Pond and nearby groundwater regarding the continued compliance with the requirements of Condition No. 7(f).
- c) To ensure that progressive rehabilitation and landscaping works are being undertaken as recommended in the Statement of Environmental Effects and as required by the Soil and Water Management and Rehabilitation Plan, the operator of the quarry shall contact Council for an inspection when such works are progressively completed.

### **ARTEFACTS/RELICS**

- 16. The applicant shall ensure that the National Parks and Wildlife Service is contacted and given an opportunity to have an officer present at all times that the quarry area is extended laterally, in order to monitor the removal of topsoil in the area presently used for the cultivation of stock feed in relation to the potential for aboriginal relics, and particularly burials, to be present.
- 17. In accordance with the requirements of the National Parks and Wildlife Act 1974, should any material suspected of being an Aboriginal archaeological relic be unearthed during extractive operations, work at that location shall cease immediately and the Southern Zone Archaeologist of the National Parks and Wildlife Service shall be notified to arrange for an inspection and assessment of the material.

### **ROAD WORKS AND HAULAGE**

- 18. (a) As the junction of Longreach and Yalwal Roads is considered by the Roads & Traffic Authority to be a substantial "Type A" junction as there is no shoulder widening directly opposite Longreach Road, the applicant shall, in conjunction with Council's Works Programme, relocate the existing sighting screen and provide road shoulder widening in Yalwal Road at the intersection in accordance with AUSTRROADS Guidelines.
- (b) Alternatively the applicants pay to Council the sum of \$15,000.00 which Council will receive, as full and property discharge of the performance of the applicant's obligations under this condition.

#### **(Condition 18 amended by DS01/1222)**

- 19. As haulage to and from this site involves a gravel road of limited width and capacity:
  - a) The maximum daily haulage volume must not exceed 1000 tonnes per day, including imported material;
  - b) The combined total of incoming and outgoing heavy vehicle movements must not exceed 8000 movements per annum;
  - c) Heavy vehicle movements along Wogamia Road must not exceed one heavy vehicle at a time in any direction;
  - d) a record must be kept of all vehicle movements and haulage volumes. The record must

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be made available to council staff on request. A copy of this record must be submitted as part of the Environmental Management Plan as required by Condition No. 15(b) of this consent.

**(Condition 19 amended by DS13/1445)**

#### **ROADWORKS AT LONGREACH ROAD/ WOGAMIA ROAD INTERSECTION**

20. The applicant shall, in accordance with the recommendation of the Traffic Impact Assessment, reinstate the left turn pavement edge from Longreach Road into Wogamia Road and undertake stormwater drainage improvements to reduce the rate of pavement degradation and ongoing maintenance issues at this intersection. The applicant shall submit design plans for Council's approval that are in accordance with Council's Engineering Design and Specification Development Control Plan 100. This work shall be completed in accordance with the approved plans and specifications within 12 months of the date of the approval of DS 13/1445.

21. Prior to undertaking works within the road reserve, the developer must obtain the consent of Council under Section 138 of the Roads Act, 1993. The developer shall submit the following to Council for approval **before commencing any works**:

- Detailed plans
- Specifications
- Pavement design; and
- Traffic control plan (which must comply with the RTA's manual – "*Traffic Control at Work Sites*")
- Insurance details

Where any works are carried out on or adjacent to a public road, adequate protection shall be provided for the travelling and pedestrian public. Warning and protective devices shall be provided which comply with the provisions of AS 1742.3 – 1966 Traffic Control Devices for Works on Roads.

#### **OFFENSIVE ODOUR**

22. The applicant must conduct operations at the site, and the transport of materials to and from the site, such that offensive odours are not caused.

**(Condition 20, 21 and 22 added by DS13/1445)**

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Attachment B Lot 2 DP 865094, 135 Wogamia Road, Longreach – site subject to DS13/1445



Note: The boundaries of Lot 2 are shown in orange. The quarry and composting site is in the lower right section of the site.

**DEVELOPMENT ASSESSMENT REPORT  
S79C Environmental Planning & Assessment Act 1979**

<b>Application number:</b>	DS13/1445
<b>Existing consent:</b>	DA 95/3205 - Sand and soil quarry and processing, stockpiling, distribution of sand, soil and associated material
<b>Proposed modification:</b>	<ol style="list-style-type: none"> <li>1. Amend the description of development to include “composting of materials”</li> <li>2. Delete lot 1 DP 865095 from the property description;</li> <li>3. Amend conditions 3 (b) and 3 (c)</li> </ol>
<b>Property:</b>	Lots 1 and 2 DP865094 154 and 135 Wogamia Rd, Longreach
<b>Applicant:</b>	Terry Wetherall of TCW Consulting Pty Ltd
<b>Date of Receipt:</b>	3 December 2013
<b>Notification period:</b>	<ul style="list-style-type: none"> <li>• 4 to 19 December 2014</li> <li>• 21 September to 6 October 2015</li> </ul>
<b>Submissions:</b>	Six (6)

## 1. Proposal

This application is to modify the existing consent, as described above, by:

- amending the description of development to include “composting of materials”;
- deleting lot 1 DP 865095 from the property description;
- amending condition 3 (b) reduce the maximum volume of material to be extracted from the site to 15,000 tonnes per annum (from 20,000 tonnes per annum);
- amending condition 3 (c) to increase the maximum volume of material to be imported to the site to 35,000 tonnes per annum (from 16,500 tonnes per annum).

The modification request seeks to align the existing consent with the current and proposed business activities. The applicant asserts that composting of materials has always been part of the activities conducted on site since the original approval under DA 95/3205. This is further elaborated on below.

The changes in volumes of extracted and imported material also relate to current and proposed changes to the nature of the business, where composting of organic material is assuming a larger part of the operations.

## 2. Background/History

This site has a long history with the following milestones of relevance:

- a. Soil extraction from the site is understood to have commenced in 1974;
- b. DA 95/3205 for the existing quarry and related activities was lodged under SEPP 37 (Continuing Extractive Industries) in 1995 and approved on 26 July 1996;
- c. The consent was modified on 30 June 1997 by an unnumbered application (to increase operating hours);
- d. The consent was modified again on 26 September 2003 by DS01/1222 (to amend conditions 18 and 19 relating to roadworks);
- e. DA15/1259 for construction of a bund wall for flood protection purposes was approved by Council on 25 August 2015.

### 3. Subject site and surrounds

The land subject to the development consent is lots 1 and 2 DP865094, however the development is located on lot 2 which is also known as 135 Wogamia Rd. The comments below therefore relate to lot 2, which is shown outlined in orange on the figure below.



The subject site:

- is zoned RU1 Primary Production under Shoalhaven Local Environmental Plan 2014;
- has a total area of 67.18 ha, of which approximately 15 ha is occupied by the

- quarrying and processing activities;
- is 50 – 80 metres from the bank of the Shoalhaven River and is separated from that by a narrow strip of Crown Land;
- is flood prone to some extent;
- is surrounded by land used for dairy farming, rural residential and nature reserve purposes;
- is subject to Environmental Protection Act (EPA) Licence No. 11542 and is monitored by the NSW EPA which is the Appropriate Regulatory Authority under the Protection of the Environment Operations (POEO) Act 1997.

#### 4. Statutory considerations

##### i. Section 96 EPA Act 1979

This application was lodged as a s.96 (1) application, which requires Council to be satisfied that the proposed modification is of minimal environmental impact. Council has however effectively dealt with this application under s.96 (2), which has similar considerations but which does not require that the development be of minimal environmental impact.

Importantly, in either case, Council must be satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all). Council staff have given deep consideration to this question and have taken into account in this consideration the following legal advices:

- RMB Lawyers, on behalf of the applicant (ref. D13/323302);
- Lindsay Taylor Lawyers, obtained by Council (D14/112938).

Perhaps predictably, the advice provided on behalf of the applicant argued strongly that the development as modified would be substantially the same as the original approved development. The advice from Council's lawyers was highly qualified and centred on the extent of additional environmental impact that would arise from the modified development, but nonetheless leant towards dealing with the application as a s.96 modification.

The important issues in addressing this question are considered to be:

- **Whether composting was a part of the original development.** In this regard it is noted that composting, and the importation of organic materials for composting, is referred to in the Statement of Environmental Effects (SEE) submitted with the original 1995 application (ref. D14/74685 – SEE – SEPP 37 – Sand and Soil Quarry). Council also supplied a letter dated 11 February 1997 (ref. D14/74685 – “Letter – Meeting with Council staff 11-2-97) confirming that the development consent for DA 95/3205 included composting.
- **Increase in the scale of the operation.** Relevant measures here include the amount of materials imported and exported from the site and the volume of truck

movements. The general picture is that the overall scale of operations is not dramatically increasing, but rather the balance of imported and extracted material is shifting in line with customer demand and availability of inputs. It is stated that the volume of truck movements will remain within the limits established under the original consent.

- **Changes in the nature of imported materials.** A listing of compost feedstocks was provided in the SEE submitted with the original DA. This list comprises generally **non-putrescible** organic materials. The applicant has confirmed that imported materials still comply with this definition and that importation of **putrescible** organic materials is not contemplated or sought in the s.96 application.
- **Increase in overall environmental impact.** Potential types of environmental impact attributable to a modified development include traffic impacts (including noise) arising from increased heavy vehicle movements; odour arising from raw materials and the composting process; pollution of groundwater by leachate from the compost materials; and noise from activities on site. Following consideration of various reports submitted with the application it is considered that any increase in environmental impact is likely to be minor and will be ameliorated by the implementation of the recommendations of those reports.
- **Whether the application should be treated as designated development.** The clear advice from Council's legal advisors is that this question does not arise if the application is regarded as a modification under section 96.

Based on the legal advice, information submitted with the application and research by Council's planning staff, it is considered that Council can be satisfied that the development is substantially the same as the original approved development and should therefore proceed to assess and determine the application as a modification pursuant to s.96.

## ii) Legal title description

One aspect of the requested modification is the removal of lot 1 DP 865095 from the description of land to which the development consent applies. The applicant has explained that the inclusion of Lot 1 in the original consent (being land now owned by R, GR, DW and CJ Cochrane and operating as a dairy farm operated by Cochrane Wogamia Dairy Pty Ltd) was due to soil used in the business occasionally being sourced from a pit on that land. This no longer occurs and accordingly the applicant submits that the reference to lot 1 can and should be removed from the consent. This change is supported.

The following State & Regional Environment Planning Policies (SEPPs & REPPs), Environmental Planning Instruments (LEPs), Development Control Plans (DCPs), Council Codes and Policies are relevant to this development application:

- State Environmental Planning Policy No 55 - Remediation of Land;

- State Environmental Planning Policy (Infrastructure) 2007;
- Shoalhaven Local Environmental Plan 2014
- Chapter G9 of Shoalhaven Development Control Plan 2014; and
- Shoalhaven Contribution Plan 2010.

Additional information on the proposal's compliance with the above documents is detailed in Section 6 (Statement of Compliance/Assessment) of this report.

### Applicant's submission

The applicant has submitted the following plans, reports and documents in support of the application:

Document	Ref No	Author	Date
Application letter	Project #1312	TCW Consulting Pty Ltd	2 December 2013
Odour Audit	Q2004L.01	The Odour Unit	27 February 2015
Flood Study Report	CRPT – 20131629-01B	Jones Nicholson Consulting Engineers	2 February 2015
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## 5. Statement of compliance /assessment

Following an assessment of the application having regard to the Matters for Consideration under Section 79C (1) of the Environmental Planning and Assessment Act 1979, the following matters are considered important to this application.

a) **Any planning instrument, draft instrument, DCPs and regulations that apply to the land**

i. State Environmental Planning Policy No 55 – Remediation of Land: There is no evidence of contamination on the site or in its documented history as held by Council. The land is not identified as potentially contaminated land in Council's GIS mapping system.

ii. State Environmental Planning Policy (Infrastructure) 2007:

As outlined below, clauses 120 and 121 make the composting activity aspect of the development permissible with consent.

iii. Shoalhaven Local Environmental Plan 2014: Land Use Table: That part of the subject site on which the development is carried out is zoned RU1 Primary Production under SLEP 2014. The development is described as *extractive industry* and *resource recovery facility*. In the RU1 zone, extractive industry is a permitted use, while resource recovery facility is an innominate use and is therefore prohibited. However, clauses 120 and 121 of SEPP (Infrastructure) 2007 provide that a resource recovery facility may be carried out with consent in prescribed zones which include RU1 Primary Production. Consequently, the development is permissible with consent.

*Clause 4.3*: There is no height overlay on the subject site so a maximum height of 11 metres applies. There are no buildings existing or proposed that exceed this height.

*Clause 5.10 Heritage conservation*: The development is arguably within the vicinity of two heritage items: "Wogamia" homestead (Item No. 215) and "Bundanon" homestead, outbuildings and landscape (Item No.252). Wogamia Homestead is 340m distant from the site and Bundanon 1.2km and out of line of site due to intervening topography. With the existing and proposed tree planting around the perimeter bund it is considered that there will be no adverse impact to the heritage significance of either item.

*Clause 7.1 Acid sulfate soils*: The land is identified as Class 5. There is no lowering of the water table involved in the development so this clause does not apply.

*Clause 7.3 Flood planning:* The land is flood prone and a flood study has been submitted with the application which finds that the flood protection levee approved under DA15/1259 addresses the considerations set out in clause 7.3 (3).

*Clause 7.6 Riparian land and watercourses:* The land is separated from the Shoalhaven River by a strip of Crown Reserve which generally is in excess of 50 m. Consequently the considerations in clause 7.6 do not apply. It is noted that the development does not draw any water from the Shoalhaven River.

*Clause 7.8 Scenic protection:* The land is identified as scenic protection area SCP2. The public places from which the site is potentially visible are the Shoalhaven River and Wogamia Rd. The construction of the bund wall around the development and its progressive planting with trees is considered to minimise any visual impact. Due to sightlines, variations in elevation and shoreline vegetation, the development site is not generally visible from the Shoalhaven River.

- iv. Chapter G9 of Shoalhaven DCP 2014 – Flood prone land: The land is flood prone. The requirements of Chapter G9 have been addressed by the flood study submitted with the application and the flood protection levee approved under DA15/1259.
- v. Shoalhaven Contributions Plan 2010: Due to the nature of the development and the absence of an increase over approved haulage volumes, there are no contributions to be levied on this application.

**b) likely impact of that development on the natural and built environment and social and economic impacts in the locality.**

- i. Context and setting: The proposed modified use involves an increase in the amount of organic materials being brought to the site, composted and mixed with soil and sand before being exported from the site. While the process is industrial in character, its scale and the nature of the materials means that it is consistent with the context and setting. This will be enhanced by ensuring that the imported materials are non-putrescible organics and that recommendations of the Odour Study and Noise Report are implemented, along with the ongoing landscaping of the flood protection bund surrounding the site.
- ii. Economic impacts: The site is part of Soilco's network of sites that process organic materials into a range of soil enhancing and nursery products. Significant employment and income arises from the conduct of this enterprise.
- iii. Noise: Noise management is an aspect of the EPA licence applying to the site.



The Noise Report by Day Design Pty Ltd contains measures which will be referenced in any approval and will help to minimise noise impacts. Off site noise impacts are created by heavy vehicles accessing the site and these are managed by limiting the number of vehicles operating outside of normal business hours and by communicating with and managing the behaviour of drivers. Overall the noise impact of the development is considered to be capable of being managed so that the impact on nearby residents is kept to an acceptable level.

- iv. Sediment and erosion control: The site drains internally to the quarry void and so there are no off-site impacts. Good practices are in place to minimise sediment transport and soil erosion.
- v. Social impacts: Approval will have positive social impacts in terms of continuation of employment and enhanced processing of organic materials that may otherwise be disposed of to landfill.
- vi. Threatened species: The site is highly disturbed and the proposal is not considered to present any additional impact to threatened species. The development footprint will remain the same, additional planting of native trees and shrubs will be planted, and water quality in the quarry void will be maintained or improved by the implementation of better water management on site including the construction of the leachate pond. Consequently any habitat values will be improved by the modification.
- vii. Traffic and access: Broadly speaking, the modification is not likely to result in a significant increase in heavy vehicle movements over what was originally approved. A Traffic Impact Study has been submitted in support of the application. There is strong concordance between the findings of this report, the comments of Council's Traffic and Transport Engineer, and submissions by local residents in support of requiring an upgrade to pavement and drainage at the Wogamia Rd/Longreach Rd intersection. Conditions are recommended to require the Wogamia Rd/Longreach Rd intersection upgrade, to limit the maximum heavy vehicle trip numbers to the level proposed in the Traffic Impact Study, and to enforce the current good practice of ensuring that only one heavy vehicle uses Wogamia Rd at any one time.
- viii. Vegetation impact: Additional planting of native trees and shrubs will occur as planting continues on the flood protection bund that surrounds the site. Prior to commencement of extraction in 1974, the site was a grassed paddock, so change in vegetation cover since that time have been positive.
- ix. Visual scenic impact: This has been assessed above under clauses 5.10 and 7.8 of Shoalhaven LEP 2014 and is regarded as acceptable.

**c) the suitability of the site for the development**

The site is located in a relatively unsettled rural area and has been used for similar purposes for some decades, with the original approval dating from 1997. The site has been made more suitable by the flood protection bund approved under DA 15/1259. The road access is marginally suitable and it appears that amenity impacts on adjoining residents can be appropriately managed. In an overall sense, therefore, the site is considered to be suitable for the development.

**d) any submissions made in accordance with the Act or the regulations**

In accordance with Council’s “Community Consultation Policy”, the proposal was notified on two occasions. Ten (10) adjoining and adjacent land owners were notified on the first occasion, from 4 to 19 December 2014. Six (6) submissions were received in response to this notification. One was from the owners of the neighbouring dairy farm expressing support of the application. One was from the directors of the applicant company, advising that they had received many unsolicited letters and emails of support. Two of the submissions advised they were not objections but raised concern with the potential for increased heavy vehicle movements. The remaining two submissions were by way of objection and raised a number of issues of concern. Council also received representations from the Environmental Defender’s Office (EDO) on behalf of one of the nearby owners, although this submission was received outside of the notification period. The second notification period was from 21 September to 6 October 2015, following the receipt of additional information on traffic, noise, flooding and odour. No submissions were received by Council during the second notification period. The issues raised during the first notification period are summarized below, along with the assessing officer’s comments.

<b>Issue</b>	<b>Comment</b>
In support of application	Noted
Concerned about the impact of additional heavy vehicle traffic, on costs that may be incurred by Council for increased road maintenance. Asked if Council has to meet this extra cost or if applicant may be required to contribute.	The Traffic Impact Study finds that the proposal will result in an additional 1.8 vehicles per day over existing volumes, which finding is supported by Council’s Transport and Traffic Section. It is noted, however, that this level of traffic is within the levels approved as part of the original development consent.
Additional truck movements may worsen erosion at the intersection of Wogamia Rd with Longreach Rd. Combined with narrowness of intersection of Wogamia Rd and Longreach Rd trucks often have to	The need for this work is supported by the applicant’s traffic consultant and by Council’s Traffic and Transport and Asset sections, and is the subject of a recommended condition.

<p>travel in the centre of Longreach Rd or wheels go off the pavement breaking up the edge of the road. Additional traffic may result in increased noise and increased danger to other road users</p>	
<p>No line marking or centre reflectors on Longreach Rd – a hazard at times of fog.</p>	<p>This work is for the consideration of Council's Asset Section in terms of warrant and budget priorities.</p>
<p>Two submissions requested a traffic study to document likely traffic volumes.</p>	<p>A traffic impact study has been submitted</p>
<p>Applicant should lodge a fresh application as composting is not covered by the existing consent.</p>	<p>Composting is included in the original consent – see discussion in Section 4 (Statutory Considerations) above.</p>
<p>Increase in composting may lead to possible contamination of the Shoalhaven River</p>	<p>All runoff is collected internally. Construction of a leachate pond and better management of water flows on site are proposed as part of this application and to meet EPA licence requirements. Groundwater testing is required as a condition of EPA licence.</p>
<p>Application should be treated as designated development</p>	<p>Advice from Council's legal advisors is that if the application is assessed as a modification under s.96 then it cannot also be treated as designated development. It is noted, however, that the range of supplementary reports are similar to that which would be required in the case of an application for designated development.</p>
<p>Zoning may not permit the composting aspect of the proposal</p>	<p>SEPP (Infrastructure) 2007 explicitly permits "<i>waste or resource recovery</i>" in the RU1 zone.</p>
<p>Increase in composting may lead to additional odour problems. Previous composting activities have resulted in strong offensive odours being experienced by nearby residents.</p>	<p>EPA has required the applicant to participate in a Pollution Reduction Program which included the commissioning of an Odour Report. No recent complaints about odour have been received and the implementation of the Odour Report's recommendations should be effective in eliminating or greatly minimizing future odour problems. It is noted that the emission of offensive odours is NOT permitted under the site's EPA</p>

Request that Wogamia Rd be widened, upgraded and sealed to improve its capacity and safety with regard to the large number of heavy vehicles	licence. Current and projected traffic movements do not support a major upgrade of Wogamia Rd. Repair of pavement and upgrading of drainage at intersection with Longreach Rd is recommended. Conditions are recommended to limit heavy vehicle movements and to ensure that only one heavy vehicle uses Wogamia Rd at any one time.
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e) **the public interest**

The development supplies soil materials to a wide range of businesses and individuals and provides employment. On the input side it processes and recycles organic materials that might otherwise find their way into landfill. Provided that impacts on adjoining residents and on Council's road infrastructure can be minimised, the proposal is considered to be in the public interest.

**6. Referrals (Internal/External):**

EPA: Council has received several statements of advice from the EPA, which is the appropriate regulatory authority and licences the site under the POEO Act 1997. The most recent and comprehensive of these (dated 18 December 2015, ref. D15/376507) made reference to issues that had been addressed including groundwater monitoring, leachate management, irrigation from the quarry void, noise and odour reports. In relation to DA matters it recommended that Council seek the following from the applicant:

- an updated water management plan;
- a list of types and tonnages of imported materials in line with the definitions provided in Schedule 1 of the POEO Act 1997.

This information has since been supplied by the applicant and is proposed to be referenced in any notice of determination that may be issued, making compliance with the details and measures in each document a requirement of the approval.

In relation to the types and tonnages of imported materials (refer to applicant's letter at D16/122812) it is noted that, as well as the previous Category 1 and 2 organics, the applicant proposes to import up to 12,500 tonnes of what it describes as "processed organics". It explains that this "consists of a combination of garden waste, wood waste and food waste that have been pasteurised at Soilco's Kembla Grange facility prior to delivery off site". This aspect was referred to NSW EPA given that it was that agency's suggestion to obtain this information from the applicant with a view

to standardising the description of imported materials in accordance with the definitions contained in the POEO Act.

The EPA advised (see letter at D16/179059) that while most of the materials are defined in Schedule 1 of the POEO Act, the “pasteurised organics” are not clearly defined in the Act. Consequently the EPA advises that Council would need to determine how the material is defined in any consent.

The suggestion to redefine imported materials into the categories of Schedule 1 was originally suggested by EPA to aid in aligning the description of materials in the development consent with those in the EPA’s licence. That is to say it is a matter of administrative convenience, not environmental significance.

The “pasteurised organics” should be relatively odour-free as the material will have been processed and composted before being brought onto site. Food waste in its uncomposted form is highly putrescible and is not suited for the open air composting process used at the development site. However after composting it should be similar to the finished product that is produced on the site.

The main risk of permitting this material to be imported to the site would arise from it being incompletely composted or otherwise giving rise to offensive odours either on site or while being transported to the site. It is noted that there have also been previous examples of complaints about offensive odour in respect of imported materials while enroute to the site.

For these reasons it is recommended that a condition be imposed to prohibit the emission of offensive odours not only at the site but while materials are being transported to and from the site. While the Environment Protection licence specifically prohibits the emission of offensive odours, it may be in the future that either the site does not require licensing or that the license may not provide this limitation. The consent must therefore stand on its own in addressing what is arguably one of the major impacts that may arise from this development.

NSW DPI – Office of Water: advised that a “controlled activity approval” is not required as the proposal is not occurring on waterfront land. Also advised that there are no water licences in force and that if Soilco is using water for what is regarded as an industrial purpose then it should contact NSW Office of Water to seek approval for such use.

Traffic and Transport (Internal): Advised as follows (refer D15/277675):

*Thank you for the opportunity to comment on the abovementioned application. The following comments are made by Assets & Works Group (Traffic & Transport Unit) based on the ‘reason for referral’.*

*The information as contained within the applicant's Traffic Impact Assessment (TIA) has been reviewed.*

*It is noted that the proposal will generate minimal additional truck movements per day (ie approx. 1.8 movements per day). As such it is considered that current intersections are in accordance with the BAL / BAR requirements as outlined in Austroads Guide to Road Design - Part 3.*

*The current management procedures utilised by the applicant to control the movement of heavy vehicles on Wogamia Road are to be reinforced and the applicant is to ensure that these measure are maintained.*

*However, and in accordance with the recommendation of the TIA the applicant is required to reinstate the left turn pavement edge from Longreach Road into Wogamia Road. In addition, the applicant should undertake stormwater drainage improvements to reduce the rate of pavement degradation and ongoing maintenance issues at this intersection.*

*The above requirement should be referred to the Roads Assets Manager for determination of specifications for the required road and stormwater upgrade works."*

Council's Road Asset Manager subsequently referred planning assessment staff to Council's Engineering Design and Specification Development Control Plan 100 for geometric and pavement design details for the road and stormwater upgrade at the Wogamia Rd/Longreach Rd intersection (refer D15/317723).

Natural Resources and Floodplain: Advised that, as the reduction in excavated material is occurring on the inside of the bunding/levee, it does not change flood flows/levels outside of the bunded area and therefore the amended development still meets the requirements of Chapter G9 of the Shoalhaven DCP (refer D15/277682).

Environmental Health Officer: Advised as follows (refer D15/277689):

*"Thank you for the opportunity to comment on some of the latest submissions accompanying this application.*

*You will be aware that the Appropriate Regulatory Authority for environmental matters associated with this development is the NSW Environment Protection Authority as they are licenced premises under the POEO Act. As such the concurrence of the EPA is required in considering this application. However, the following reports as submitted appear to address the relevant issues and employ sound methodology:*

- *Organic Resource Consultancy 2015 – surface and ground water design by Soilco Pty Ltd;*
- *Independent Odour Audit February 2014 (composting facility), The Odour Unit;*
- *Environmental Noise Assessment by Day Design 5 August 2015."*

The Leachate and Surface Water Management Plan lodged by the applicant on 17 June 2016 was referred to the Environmental Health Officer on 20 June 2016 for any

further comments.

## 7. Delegations

As the original development application and the two previous modifications were determined by Council it is appropriate and consistent with good governance that this s.96 application also be determined by Council.

## 8. Options

Options available to Council are to either:

- approve the proposed modification; or
- refuse the proposed modification.

## 9. Conclusion

In summary, the applicant has sought the following modification to the consent:

- amending the description of development to include “composting of materials”;
- deleting lot 1 DP 865095 from the property description;
- amending condition 3 (b) reduce the maximum volume of material to be extracted from the site to 15,000 tonnes per annum (from 20,000 tonnes per annum);
- amending condition 3 9 (c) to increase the maximum volume of material to be imported to the site to 35,000 tonnes per annum (from 16,500 tonnes per annum).

This application has been assessed having regard to the Matters for Consideration under Section 79C of the Environmental Planning and Assessment Act 1979. Following a detailed assessment it is **recommended** that **DS13/1445** be **approved** subject to the conditions set out in **Attachment 1**.

**John Clague**  
**Consultant Town Planner**

**Date**

**ATTACHMENT 1**

Development Consent 95/3205 is modified by:

**1. Amending the description of the land to which the consent applies to read as follows:**

Lot 1 DP 865094, 135 Wogamia Rd, Longreach NSW

**2. Amending the description of development to read as follows:**

“Sand and soil quarry and processing, stockpiling, distribution of sand, soil and associated materials and composting of materials”.

**3. Amending Condition 1 to read as follows:**

This consent relates to the continued operation of the existing sand and soil quarry on Lot 2 DP 865094, 135 Wogamia Road, Longreach, pursuant to State Environmental Planning Policy No. 37 and to the processing, stockpiling, distribution of sand, soil and associated materials and composting of materials as illustrated on the submitted plans and documentation contained in the application referred to as DA95/3205. Specifically:

- a) The development shall be carried out in accordance with the submitted plans contained within the Statement of Environmental Effects and with the following plans and documents submitted with section 96 application DS13/1445, as set out in the table below, except where modified by other conditions of this consent:

<b>Document</b>	<b>Ref No</b>	<b>Author</b>	<b>Date</b>
Application letter	Project #1312	TCW Consulting Pty Ltd	2 December 2013
Odour Audit	Q2004L.01	The Odour Unit	27 February 2015
Flood Study Report	CRPT – 20131629-01B	Jones Nicholson Consulting Engineers	2 February 2015
Summary Report – Water Management Situation	NA	Organic Resource Consultancy	July 2015
Civil Design Composting Yard and Leachate Treatment Plan	131629: C15:1	Jones Nicholson Consulting Engineers	December 2014
Civil Design Composting Yard Access Road Longitudinal Section	131629: C16:1	Jones Nicholson Consulting Engineers	December 2014
Civil Design Swale 1 Longitudinal Section	131629: C17:1	Jones Nicholson Consulting Engineers	December 2014
Civil Design Swale 2 Longitudinal Section	131629: C18:1	Jones Nicholson Consulting Engineers	December 2014
Environmental Noise Compliance Assessment	5557-2.1R	Day Design Pty Ltd	5 August 2015
Traffic Impact Analysis	CRPT-	Jones Nicholson	25 June 2015



	20131629.03A	Consulting Engineers	
Report on Groundwater Investigation	78696.0	Douglas Partners Pty Ltd	2 June 2015
Letter from Applicant re types and tonnages of imported material	Project #1312	TCW Consulting Pty Ltd	26 April 2016
Leachate and Surface Water Management Plan – Executive Summary	Final V2	MRA Consulting Group	17 June 2016
Leachate and Surface Water Management Plan	CES160205-MRA-AB	Consulting Earth Scientists Pty Ltd	17 June 2016

**4. Amending Condition 3 (b) to read as follows:**

(b) the maximum volume of extracted material shall be limited to 15,000 tonnes per annum. The operator shall submit to Council at 2 yearly intervals a record of the quantity of material extracted from the subject site;

**5. Amending Condition 3 (c) to read as follows:**

(c) the volume of material imported to the site for use in the stockpiling, composting, mixing and distribution operation shall be limited to 35,000 tonnes per annum and shall be limited to the types and tonnages of materials referred to in the applicant's letter dated 26 April 2016 identified in the Table in Condition 1. Any variation to these types and tonnages will require Council's written consent. The operator shall submit to Council at 12 monthly intervals a record of the types and tonnages of material imported to the site;

**6. Replacing Condition 19 with the following condition:**

19. As haulage to and from this site involves a gravel road of limited width and capacity:

- a) The maximum daily haulage volume must not exceed 1000 tonnes per day, including imported material;
- b) The combined total of incoming and outgoing heavy vehicle movements must not exceed 8000 movements per annum;
- c) Heavy vehicle movements along Wogamia Road must not exceed one heavy vehicle at a time in any direction;
- d) a record must be kept of all vehicle movements and haulage volumes. The record must be made available to council staff on request. A copy of this record must be submitted as part of the Environmental Management Plan as required by Condition No. 15(b) of this consent.

**7. Adding Conditions 20, 21 and 22 as follows:**

**ROADWORKS AT LONGREACH ROAD/ WOGAMIA ROAD INTERSECTION**

20. The applicant shall, in accordance with the recommendation of the Traffic Impact Assessment, reinstate the left turn pavement edge from Longreach Road into Wogamia Road and undertake

stormwater drainage improvements to reduce the rate of pavement degradation and ongoing maintenance issues at this intersection. The applicant shall submit design plans for Council's approval that are in accordance with Council's Engineering Design and Specification Development Control Plan 100. This work shall be completed in accordance with the approved plans and specifications within 12 months of the date of the approval of DS 13/1445.

21. Prior to undertaking works within the road reserve, the developer must obtain the consent of Council under Section 138 of the Roads Act, 1993. The developer shall submit the following to Council for approval **before commencing any works**:

- Detailed plans
- Specifications
- Pavement design; and
- Traffic control plan (which must comply with the RTA's manual – "*Traffic Control at Work Sites*")
- Insurance details

Where any works are carried out on or adjacent to a public road, adequate protection shall be provided for the travelling and pedestrian public. Warning and protective devices shall be provided which comply with the provisions of AS 1742.3 – 1966 Traffic Control Devices for Works on Roads.

#### **OFFENSIVE ODOUR**

22. The applicant must conduct operations at the site, and the transport of materials to and from the site, such that offensive odours are not caused.