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26 October 2023

## ADVERTISED PLAN

The Hon. Sonya Kilkenny MP  
Minister for Planning  
Level 16, 8 Nicholson Street  
East Melbourne VIC 3002  
By email: [development.approvals@delwp.vic.gov.au](mailto:development.approvals@delwp.vic.gov.au)

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Dear Minister

**Request for Permit Amendment  
Planning Permit No. 120388-1  
1381-1395 Bass Highway Grantville**

We act for Dandy Premix Quarries Pty Ltd, the occupier of the above land and permit holder in relation to the above planning permit.

- 1 We have been instructed to make an application to you (**the Minister**) seeking to delete Condition 2(a) from Planning Permit No. 120388-1 (**the Permit**), pursuant to section 971 of the *Planning & Environment Act 1987* (**the Act**).
- 2 The following sets out the background and reasons for the requested amendment.

### **Background**

#### The Subject Land

- 3 Our client is the occupier of land at 1381-1395 Bass Highway Grantville (**the Subject Land**) and the operator of an existing sand quarry (**the Quarry**) currently established on the Subject Land and operating under Work Authority 1488 (**WA1488**). Our client is also a person entitled to use and develop the Subject Land under the Permit.
- 4 The Subject Land includes the following lots:
  - 4.1 Lot 2 on Plan of Subdivision 300991J, contained within Certificate of Title Volume 10031 and Folio 148;

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- 4.2 Lot 4 on Plan of Subdivision 604744H, contained within Certificate of Title Volume 11044 and Folio 475;
- 4.3 Lot 5 on Plan of Subdivision 604744H, contained within Certificate of Title Volume 11044 and Folio 476;
- 4.4 Lot 1 on Title Plan 515206V, contained within Certificate of Title Volume 8869 and Folio 053 (CA 174A) in part;
- 4.5 Lot 1 on Title Plan 398939V, contained within Certificate of Title Volume 5390 and Folio 819 (CA 174) in part; and
- 4.6 Crown Allotment 176B on Title Plan 267029V, contained within Certificate of Title Volume 7824 and Folio 032, in part.
- 5 A copy of the relevant certificates of title and plans of subdivision for all six lots are contained in [Attachment 1](#). All six lots are encumbered by Section 173 Agreements and these are also contained in [Attachment 1](#).

## The Permit

- 6 The Permit was issued on 7 August 2013 by Bass Coast Shire Council (**Council**), and permitted the use of the Subject Land for 'sand extraction and associated processing and associated buildings and works, and the creation of access to a road in a Transport Zone'. A copy of the original Permit is contained in [Attachment 2](#). A copy of the endorsed site plan is contained in [Attachment 3](#).
- 7 The extractive industry use allowed by the permit operates under WA1488, which was granted by the delegate of the Minister for the Department of State Development Business and Innovation under the *Mineral Resources (Sustainable Development) Act 1990 (MRSDA)* on 3 September 2013. A copy of the current approved WA1488 and work plan is contained in [Attachment 4](#).
- 8 In order to secure the Quarry's on-going operations, an amendment to the Permit was lodged with Bass Coast Shire Council in July 2020 for approval to access an additional 30,000,000 tonnes of sand (**the Quarry Expansion**). This application was called in by the Minister for Planning in November 2020.
- 9 On 29 May 2020, prior to the lodgement of the planning amendment application with Council, a variation to WA1488 to allow for the Quarry Expansion under the MRSDA was endorsed by the Earth Resources Regulation branch of the then-Department of Jobs, Precincts and Regions (**ERR**). A copy of the endorsed work plan variation is contained in [Attachment 5](#).
- 10 On 19 April 2022, the Minister determined to amend Permit subject to conditions. This followed the consideration of the proposal by Planning Panels Victoria, who on 11 June 2021 recommended the Minister approve the amendment, subject to conditions. A copy of the amended Permit is contained in [Attachment 6](#).

## The Permit and Aboriginal cultural heritage

- 11 Condition 2(a) was offered by our client as part of a package of additional permit conditions (including condition 48 and 49) to address concerns raised by the Bunurong Land Council Aboriginal Corporation (**BLCAC**) in July 2021, following the Panel hearing and prior to the

amended Permit being issued. The BLCAC concerns related to changes in the mapping of areas of Aboriginal cultural heritage sensitivity (ACHS) which had occurred since the grant of the Permit in 2013.

12 Condition 2(a) required all plans for the Quarry Expansion to be amended in accordance with the Modified Boundaries Plan prepared by BCA Consultants (**the Modified Boundaries Plan**) to exclude the additional area that was mapped as being in an area of ACHS as a consequence of the purported change to the RAMSAR boundary. Condition 2(a) of the Permit states:

2. *Prior to the expansion of the use commencing, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and two copies must be provided. The plans must be amended as follows:*

a. *all plans to be endorsed under this permit must be modified to the extent necessary to reflect the revised work authority boundary and reduced extraction boundary as shown on the Modified Boundaries Plan prepared by BCA Consulting (Figure 1, Reference A4 – 2131:0, dated 19 November 2021).*

.....

13 A copy of the Modified Boundaries Plan is contained in [Attachment 7](#).

14 Conditions 48 and 49 were also included to address the BLCAC concerns and prevent the Quarry expansion from being used upon before the Voluntary CHMP is approved by the BLCAC. Condition 49 also requires the expanded Quarry to be operated in accordance with the recommendations of the approved CHMP. Condition 48 and 49 state:

48. *Before any work as indicated by the proposed use and development authorised by the amended permit may commence, the permit holder must submit to the Responsible Authority a Cultural Heritage Management Plan in respect of the proposed use and development of the land which has been approved by the Registered Aboriginal Party and complies with Part 4 of the Aboriginal Cultural Heritage Act 2006 and Part 3 of the Aboriginal Cultural Heritage Regulations 2018 (note: this condition does not prevent the installation of new plant and equipment and associated works or buildings, provided that such activities are limited to the existing hardstand area on the subject land).*

49. *The use of the land must at all times be managed in accordance with any measures set out in the approved Cultural Heritage Management Plan, to the satisfaction of the Responsible Authority.*

15 These conditions were offered by our client notwithstanding:

15.1 The Quarry access road has already been constructed in this area and has been in use since 2014 and is not required to change for the Quarry Expansion.

15.2 The plans currently endorsed under the Permit (contained in [Attachment 3](#)) allow for extraction in this area regardless of the Quarry Expansion. Our client can lawfully disturb and extract sand in this area now.

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- 15.3 Our client's reserved position that the Western Port Ramsar wetland boundary, as declared under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth), remains at least 290 metres from the title boundary of the Subject Land and that the Quarry Expansion will not be located in an area of ACHS. This view was supported by legal advice prepared by Stuart Morris KC, which is contained in [Attachment 8](#).

## The CHMP

- 16 Since June 2022, our client's cultural heritage advisors have undertaken investigations on the Subject Land and consultations with the BLCAC towards the preparation and approval of a voluntary CHMP.
- 17 Our client received a preliminary approval under CHMP 19084 in January 2023 for a smaller area located in the western section of the Quarry. CHMP 19181 (**the CHMP**) was subsequently prepared for the entire Quarry Expansion (as originally proposed) and the Subject Land. A copy of the current version (11 August 2023) of the CHMP is contained in [Attachment 9](#).
- 18 Importantly, the 'activity area' for the CHMP includes the entire area of the Quarry Expansion as originally proposed. This was to ensure that the entire Quarry Expansion area was investigated and assessed and covered by the CHMP so that condition 2(a) could be removed and the original boundaries of the Quarry Expansion reinstated.

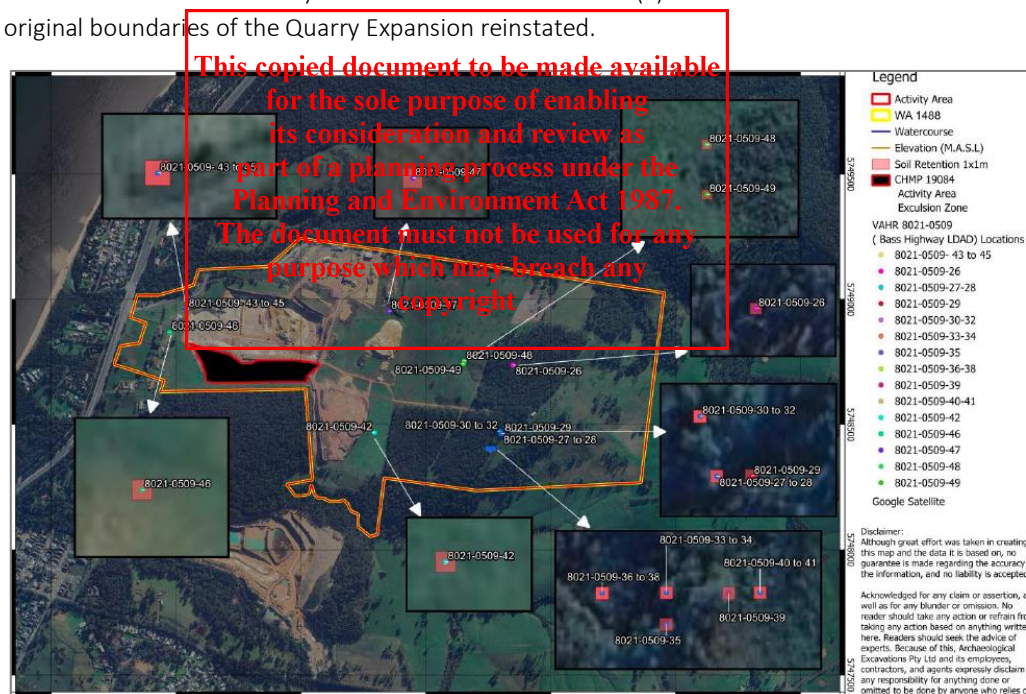


Figure 1: Excerpt of CHMP (page 6).

- 19 The CHMP was completed and originally submitted to the BLCAC on 17 May 2023. This submission resulted in minor changes being requested by the BLCAC, who requested that the CHMP be withdrawn and not re-submitted until the changes were made.
- 20 The CHMP was re-submitted to the BLCAC on 11 August 2023. Unfortunately, the BLCAC have requested further minor changes to the CHMP and again requested that it be withdrawn and not re-submitted for approval until these changes have been made. A copy of the BLCAC's letter

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is contained in [Attachment 10](#). The requested changes were addition to those requested by the BLCAC in response to a previous submission of the CHMP in May 2023.

- 21 Relevantly, the CHMP as drafted does not contain any conditions or recommendations that require the Quarry Expansion to be modified in any way in the affected area by the Modified Boundaries Plan. The recent changes requested also do not seek any substantive changes to the key findings or conditions of the CHMP.
- 22 Due to BLCAC internal matters, our client has been advised that the BLCAC do not have capacity to meet to discuss the latest requested changes until November 2023.
- 23 The above delays mean that it is likely that the CHMP will not be approved until 2024, despite having been completed and submitted for approval on 11 August 2023.

## Request for deletion of condition 2(a)

24 It is submitted that the request to delete condition 2(a) is appropriate for the following reasons:

- 24.1 The condition is unnecessary to ensure the BLCAC's cultural heritage concerns are addressed. Conditions 48 and 49 will, in any event, ensure that the Quarry Expansion cannot commence until the CHMP is approved by the BLCAC and that the Quarry Expansion is carried out in accordance with any conditions of the approved CHMP.
- 24.2 The area that was to be excluded by the Modified Boundaries Plan, is included in the 'activity area' specified for the CHMP and was investigated as part of this assessment. The CHMP does not require any changes to the design of the Quarry Expansion as originally applied for and there is no need to exclude the ACHS area from the Quarry Expansion through the Modified Boundaries Plan.
- 24.3 Condition 2(a) was imposed after the Panel hearing and was not part of the original proposal or hearing process. Its sole purpose was to address the BLCAC's concerns that were raised following the Panel hearing. Our client has completed the CHMP which, subject to minor modifications, is likely to be approved by the BLCAC.
- 24.4 The deletion of condition 2(a) will allow our client to finalise the numerous plans that must be endorsed under the Permit before the Quarry Expansion can commence. Before these plans can be finalised certainty is needed in relation to the boundaries of the Quarry Expansion. If condition 2(a) is deleted, these plans could be submitted and approved by Council in anticipation of the CHMP being approved. This will avoid considerable delays that might otherwise be suffered if our client is required to wait until the CHMP is approved.
- 24.5 Removal of the need to modify the boundaries of the Quarry Expansion will also reduce complexity and delays for the work plan approval process under the MRSDA. This will allow the statutorily endorsed Work Plan to progress as originally proposed concurrently with the approval of other documents under the Permit.
- 24.6 The Quarry urgently requires access to the additional sand resource that will be available under the Quarry Expansion. Substantial preparations, including the commissioning of plant and equipment and other preparatory works, must also be completed to enable this to occur. The deletion of condition 2(a) will enable these

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works to occur earlier and reduce the risk the of the Quarry's sand resources being exhausted prior to the Quarry Expansion commencing.

**The need for notice**

- 25 For the reasons set out below, we submit that the amendment proposal to delete Condition 2(a) does not require the giving of notice pursuant to section 52(1)(a) and (d) of the Act:
  - 25.1 Condition 2(a) was imposed after the Panel hearing and was not part of the original proposal or hearing process. Its sole purpose was to address the BLCAC's concerns that were raised following the Panel hearing. Our client is currently seeking the BLCAC's views on the deletion of condition 2(a) to confirm whether it is supported.
  - 25.2 While condition 2(a) reduced the extent of the Quarry Expansion, it does not affect the Quarry operations as originally approved in 2013, which allows for extraction operations in the affected area. Our client can lawfully commence extraction operations in this area under the current endorsed plan (see [Attachment 3](#)). The deletion of condition 2(a) will not result in any material difference in relation to the potential impacts of the Quarry Expansion given what is already allowed under the Permit.

**Conclusion**

- 26 For the reasons set out above, it is submitted that Condition 2(a) is no longer necessary and should be deleted.
- 27 It is respectfully requested that the Minister approve the amendment application.

**Application to amend the Permit**

- 28 We enclose the following for filing:
  - 28.1 A completed digital application to amend a permit form.
  - 28.2 Attachments referred to above.
- 29 We kindly request that the Minister issue an invoice for this application to be paid by the Applicant.

Please do not hesitate to contact us on 9853 5000 if you have any queries regarding this letter.

Yours faithfully



Andrew Natoli  
Director  
Equipe Lawyers

Encl.

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