

8.1 **Ballina Sands Quarry - Annual Extraction Limits**

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**Delivery Program**      Development Services

**Objective**              To provide information about the extraction of material from the Ballina Sands Quarry, Newrybar Swamp Road, Kinvara.

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**Background**

Sand extraction activity associated with the Ballina Sands Quarry, located at 91 Newrybar Swamp Road Kinvara, was originally reported to the November 2017 Ordinary Council meeting. At that meeting, Council resolved as follows:

1. *That Council acknowledges community concerns that the Ballina Sands Quarry may have been extracting limits beyond its development consent conditions.*
2. *That Council receives a report on what actions are available to address any over extraction that may have taken place.*
3. *That Council officers inspect the site and report back to Council as a matter of urgency on the amount of material that is being stockpiled on site and any potential environmental issues that this could have on the surrounding area and North Creek.*

A copy of the November 2017 report is contained in Attachment 1.

This report and the associated confidential report later in this agenda seek to address point two of the resolution.

With respect to point three of the resolution, an inspection of the Ballina Sands Quarry was conducted on Friday 8 December 2017.

It was confirmed that there were a number of stockpiles within the subject premises. However, the majority of these stockpiles were as a result of the stripping of overburden and topsoil. This material is being stored within the site in accordance with the approved Plan of Management and the approved Vegetation Management Plan as part of development consent DA 2013/162.

The Overview of Quarrying Operations within the approved Plan of Management provides for the stripping of stockpiles for use in minor site filling and earthen acoustic and visual mounds.

These stockpiles of topsoil contain decayed vegetation matter and other properties which provide for self-seeding vegetation coverage, which assists in preventing windborne pollution from the site.

There have been recent works within the quarrying area of operations, which have exposed some of the previously vegetated topsoil stockpiles.

These works have been undertaken by the quarry operator to provide for extended earthen acoustic and visual mounds to cover the upcoming quarrying extensions into the western most area of the quarry.

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The topsoil stockpiles are highly visible, but it is anticipated that vegetation growth will occur in the short term which will reduce this impact. The stockpiles are currently being monitored by Council staff and the quarry operators for the potential for windborne pollution.

Extracted sands from the quarrying pits are generally much lighter in colour and stockpiles of this material appear to be kept at a lower level to the surrounding acoustic and visual mounds.

Council staff have also inspected the stormwater disposal ponds, which were approved as part of the quarry consent.

These pits are located at the northern end of the quarrying area and discharge into the cane drain, which subsequently discharges into North Creek.

At the time of the inspection and after a major rain event, there was approximately 1.2 metres of head space between the current water level and the discharge point within the disposal ponds.

Under the provisions of the EPA Licence, the quarry operators are permitted to discharge from the site when the rain threshold is reached. Condition L1.2 of the EPA Licence states:

*L1.2 Rainfall runoff from all disturbed areas of the premises arising from up to 82.5 mm (up to 5 day event duration) must, prior to discharge from the premises, be captured and treated to the standard set out in condition L2 below.*

A review of the available records indicates that the quarry has not discharged any water from the disposal ponds into the surrounding waterways. This is due to the methodology employed in the extraction of sands as part of quarrying operations, which allows for water to be pumped between the disposal ponds and the quarrying areas, to minimise runoff from the quarry site.

The quarry is surrounded by earthen bunding as outlined in the approved Plan of Management to assist in the prevention of pollution runoff from the site. This bunding has a minimum height of 1 metre above the quarry operating level, and at the lower points of the quarrying operation level, extends to over two metres in height.

The majority of these bunds are vegetated in line with the approved Plan of Management and Vegetation Management Plan.

Council staff did identify some minor non-compliances with the storage of fuels and fluids in contravention of condition 20 of the development consent.

The existing fuel storage tank provided within the subject quarry is in accordance with the requirements of condition 20 and the Australian Standard 1940-2004 "The storage and handling of flammable and combustible liquids".

This fuel system is designed to contain any failure or rupturing of the fuel tank itself. There is no Council identified concern with this fuel storage.

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The remaining associated fuels and liquids were placed within a shipping container. Some, but not all of these fluids are being stored within a bunded area within the shipping container.

The potential for a spill of these fuels and oils to flow into the adjoining disposal ponds is minimal however it would result in contamination of the surrounding soils.

Therefore, staff have required that this potential issue be addressed as a matter of urgency, given that the quarry is an EPA Licensed Quarry and condition O4.10 of the EPA Licence states:

*O4.10 All liquid chemicals, fuels and oils must be stored in tanks or containers inside suitable bund(s). Bunds are to be designed, constructed and maintained in accordance with AS1940-2004 Storage and Handling of Flammable and Combustible Liquids.*

On 14 December 2017, Council formally wrote to the quarry operators seeking a written response to the allegations of over-extraction within the Quarry.

On 19 March 2014, the Joint Regional Planning Panel issued approval number 2013NTH007 for development application DA 2013/162 for the proposed development of an "Extraction Industry (Sand Quarry) within the subject premises.

Included within this approval were Conditions 40, 43 and 44 which state:

**40 Extraction rate**

*The annual rate of extraction shall not exceed 80,000 cubic metres. Details of the actual extraction rates are to be submitted to Council on a quarterly basis (3 monthly). Prior formal development consent is to be obtained from Council for any proposed extraction in excess of this amount. (Emphasis Added)*

**43 Contributions**

*A contribution shall be paid for any material exported from the site in accordance with the Ballina Shire Heavy Haulage Contributions Plan current at the time of payment. The payments are to be paid on a quarterly basis within one month of the end of the quarter. The quarters shall comprise 1 January – 31 March, 1 April – 30 June, 1 July – 30 September, 1 October – 31 December unless otherwise notified by Council. NOTE: at the time of consent this requires a payment of 0.345c per tonne of material hauled from the site. The levy is to be increased annually in accordance with the Consumer Price Index for Sydney.*

**44 Remittance form**

*A "remittance form" as issued by Council shall be submitted to Council for each quarter either accompanying the required payment or as a "nil" return. The information required includes the applicable quarter, quantities of material, tonnage rate, contribution payment and the like and be certified by a company officer. (Emphasis Added)*

Based on the figures outlined in the November 2017 Ordinary Council meeting report, Council was of the view that Ballina Sands Pty Ltd may have exceeded the annual extraction limits as outlined in condition 40 of development consent DA 2013/162.

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The following table provides for the figures as provided to Ballina Sands Pty Ltd in Council's letter of 14 December 2017:

Period	1 April 2015 to 31 March 2016 (Operating Year One)	1 January 2016 to 31 December 2016 (Calendar Year One)	1 July 2015 to 30 June 2016 (Financial Year One)	1 April 2016 to 31 March 2017 (Operating Year Two)	1 July 2016 to 30 June 2017 (Financial Year Two)	1 January 2017 to 31 December 2017 (Calendar Year Two)*
<b>Tonnage to Cubic Metres Extracted (1.3)</b>	88,337.53 cubic metres	174,704.8 cubic metres	121,278.08 cubic metres	210,195.22 cubic metres	156,840.85 cubic metres	103,528.62 cubic metres *
<b>Breach</b>	Yes	Yes	Yes	Yes	Yes	Yes *
<b>Tonnage to Cubic Metres Extracted (1.4)</b>	82,028.64 tonnes cubic metres	162,225.89 cubic metres	112,618.15 cubic metres	195,181.28 cubic metres	145,637.93 cubic metres	96,133.72 cubic metres *
<b>Breach</b>	Yes	Yes	Yes	Yes	Yes	Yes *
<b>Tonnage to Cubic Metres Extracted (1.9)</b>	60,442.15 cubic metres	118,683.59 cubic metres	82,981.79 cubic metres	143,817.78 cubic metres	107,312.16 cubic metres	70,835.37 cubic metres *
<b>Breach</b>	No	Yes	Yes	Yes	Yes	No *

\* *Figures only include up to and including quarter 3, 2017. October to December 2017 figures not included.*

Council also sought a written response to the returns as provided by Ballina Sands Pty Ltd, which only indicated the "tonnage extracted", but do not report on the "details of the actual extraction rates to be submitted to Council on a quarterly basis".

Council requested that the written response was provided by Thursday 25 January 2018.

On 2 January 2018, Council received written representations from Michelle McCartney, Solicitor of McCartney Young Lawyers, in which an extension was requested until "the end of February 2018" to provide a written response and that:

*"Our client concedes that it has not supplied and has never been asked for the quarterly extraction reports by condition 40 of the consent".*

In various pieces of correspondence Council has been provided with differing density multipliers for the sand being extracted.

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These figures include:

- 1.5 tonnes per cubic metre (page 30 of the EIS accompanying the original development application);
- 1.9 tonnes per cubic metre (engineering assessment dated 18 April 2017);
- 2.25 tonnes per cubic metre (verbal representations to Council at the November 2017 Ordinary Council Meeting); and
- 2.12 tonnes per cubic metre (attachment to McCartney Young Lawyers letter dated 18 December 2017).

Following the receipt of a written response from McCartney Young Lawyers, an inspection of the Ballina Sands Quarry was undertaken in April 2018 by Council staff and officers of the Compliance Team, NSW Department of Planning and Environment.

At the April 2018 inspection, no pollution matters were identified that required immediate action.

However, following the inspection further assessment of matters associated with the extraction of sand from the site have been undertaken.

Details of Council's investigations and associated legal advice that has been sought are further discussed in the confidential report.

**Key Issues**

- Volume of sand extraction and compliance

**Information**

An overview of the circumstances associated with this matter is set out in the Background Section of this report.

A separate confidential report is provided later in this agenda in relation to the outcomes of the investigation into this matter and options to address the findings of the investigation.

**Sustainability Considerations**

- **Environment**

Adherence to the applicable conditions of development consent regarding sand extraction volumes seeks to ensure that the development is commensurate with the intended scope of the development and the associated impact mitigation measures that are to be undertaken. This relates to environmental, social and economic considerations.

- **Social**

As above.

- **Economic**

As above.

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**Legal / Resource / Financial Implications**

CH Law has provided legal advice and staff have been acting in accordance with this advice. Legal implications associated with this matter are the subject of the separate confidential report.

**Consultation**

Information in this report has been provided in open Council as the information is a matter of public record.

Council staff have undertaken investigations in relation to the extraction of sand from the quarry and sought legal advice in relation to this matter.

**Options**

The primary purpose of this report is to provide an open Council overview of the basis for the confidential report. The recommendation is for the noting of the report on this basis.

**RECOMMENDATION**

That Council notes the contents of this report, which provides an introduction to the confidential report addressing sand extraction and compliance with the conditions of consent for DA 2013/162 from the Ballina Sands Quarry located at Newrybar Swamp Road Kinvara.

**Attachment(s)**

1. Ballina Sands Quarry - Report to November 2017 Ordinary Council meeting