

Planning and Development (Approval of Application – DA-201936482 Mugga Quarry Overburden Expansion Project) Notice 2020

Notifiable instrument NI 2020-139

made under the

Planning and Development Act 2007, s 170 (Notice of approval of application)

1 Name of instrument

This instrument is the *Planning and Development (Approval of Application – DA-201936482 Mugga Quarry Overburden Expansion Project) Notice 2020*.

2 Impact track development approval

On 12 February 2020, pursuant to section 162(1)(b) of the *Planning and Development Act 2007* (the **Act**), a delegate of the planning and land authority approved, subject to conditions, in the impact track, development application DA-201936482 for the creation of a new permanent overburden bund and temporary emplacement area to store quarried and weathered rock material at Block 2031, Jerrabomberra. The development application was lodged on 11 December 2019. The approval took effect on 13 February 2020.

The approval of development application DA-201936482 is in the schedule.

3 Inspection of the development application and approval

The development application and approval may be inspected at the Access Canberra service centre at 16 Challis Street, Dickson on Monday to Friday between 8:30am and 4:30pm.

Brett Phillips
Delegate of the planning and land authority
5 March 2020



ACT
Government

Environment and Planning

Notice of decision

Under Part 7 of the *Planning and Development Act 2007*

Impact track

DA NO: 201936482		DATE LODGED: 11 December 2019
DATE OF DECISION: 12 February 2020		
BLOCK: 2031	SECTION: 0	SUBURB: JERRABOMBERRA
STREET NO AND NAME: Mugga Lane		
APPLICANT: EMM Consulting		
LESSEE: Boral Resources (Country) Pty Ltd		

THE DECISION

This application was lodged in the Impact track. Pursuant to section 113 of the *Planning and Development Act 2007*, the application must be assessed according to the provisions relevant to impact track applications.

I, Brad Maxwell, delegate of the planning and land authority, pursuant to section 162 of the Act, hereby **approve subject to conditions** the proposal for:

- The creation of a new permanent overburden bund and temporary emplacement area to store quarried and weathered rock material, including excavation, the removal of native vegetation, stockpiling of soil and rock and other associated works.

in accordance with the plans, drawings and other documents and items submitted with the application approval and endorsed as forming part of this approval.

This decision is subject to the conditions of approval at **PART 1** being satisfied.

PART 2 sets out the Reasons for the Decision

PART 3 relates to Public Notification, Entity Advice and Commonwealth Advice.

ATTACHMENT 1 contains administrative information relating to the determination.

DELEGATE

Brad Maxwell
Delegate of the planning and land authority
Environment and Planning Directorate
12 February 2020

CONTACT OFFICER

Kristy Moyle
Phone: (02) 6205 6928
Email: Kristy.moyle@act.gov.au

PART 1

CONDITIONS OF APPROVAL

This application is approved subject to the following conditions being satisfied. Some conditions of approval will require attention before the approved drawings will be released by the planning and land authority (the Authority), others before work commences or before the completion of building work.

A. ADMINISTRATIVE / PROCESS CONDITIONS

N/A

B. PRIOR TO CONSTRUCTION AND/OR DEMOLITION

B1. NOTICE OF COMMENCEMENT

- a. The approval holder must give the Authority a minimum of seven working days' notice before commencement of any works. Notice is to be provided in writing to the contact officer on this decision.

B2. CONSTRUCTION ENVIRONMENTAL MANAGEMENT PLAN (CEMP)

- (a) A CEMP must be submitted to (by email: EPDImpact@act.gov.au) and approved by the planning and land authority prior to the commencement of any work on the site. The CEMP must include the following:
 - A site-specific unexpected finds protocol (UFP) prepared by a suitably qualified environmental consultant to manage any heritage places or objects identified during development of the site (see advisory note E1 for additional details);
 - A Tree Management Plan that clearly shows the trees that are to be removed and which trees are hollow-bearing;
 - A Rehabilitation/Restoration Plan detailing:
 - The recovery and re-use of the hollows from felled trees;
 - The plant species that will be used to rehabilitate the project area;
 - The rate of plantings / seeding;
 - The amount of time that soil / overburden will be exposed before restoration occurs;
 - The rehabilitation cover targets, including the provision of clump plantings so that the disturbance area is able to be rehabilitated back to small woodland bird habitat.
 - A Weed Management Plan to reduce the risk of weed infestation;
 - Erosion and sediment control measures.

NOTE: The CEMP may contain plans and management strategies listed elsewhere within the conditions of approval. Where these plans can be integrated into the CEMP, it must be clearly identified to which condition of approval the plan or management strategy applies.

NOTE: Approved plans will not be dispatched until the CEMP has been approved by the planning and land authority.

B3. EVOENERGY ELECTRICITY AND ICON WATER

- (a) All matters raised by Evoenergy Electricity and Icon Water must be addressed accordingly (refer to Part 3 of this Decision and attached conditional statements of compliance).

B4. ENVIRONMENT PROTECTION AUTHORITY

- (a) Pursuant to an Environmental Authorisation issued by the Environment Protection Authority (EPA) under the *Environment Protection Act 1997*, an Environmental Management Plan (EMP) must be revised and approved by the Environment Protection Authority (EPA) prior to works commencing on site.
- (b) The revision to the EMP must include:
 - (i) Details of the catchment area and the capacity of the sediment basins and must be in accordance with the *Environment Protection Guidelines for Construction and Land Development in the ACT, March 2011*.
 - (ii) Guidance to employees and contractors on the environmental management and mitigation measures that will be implemented.

C. DURING CONSTRUCTION AND/OR DEMOLITION

C1. GENERAL

- (a) All works must be in accordance with the endorsed plans and CEMP as required in part B of this document.

C2. ENVIRONMENT PROTECTION AUTHORITY (EPA)

- (a) No soil is to be disposed from the site without EPA approval.
- (b) All soil subject to disposal from the site must be assessed in accordance with *EPA Information Sheet 4 – Requirements for the reuse and disposal of contaminated soil in the ACT*.
- (c) All works must be carried out in accordance with the *Environment Protection Guidelines for Construction and Land Development in the ACT, March 2011*, available at www.environment.act.gov.au or by calling the Environment Protection Authority Planning Liaison on 6207 5642.

C3. TREE PROTECTION

- (a) The loss of hollow bearing trees must be minimised wherever possible and felling of trees must occur outside the spring woodland bird breeding season.
- (b) Trunks and large branches from trees felled to be placed amongst the remaining woodland on the lease area.

C4. EMERGENCY SERVICES – ACT FIRE AND RESCUE (ACTF&R)

- (a) All roads and driveways for the development site are to be suitably constructed to allow the access and egress of fire fighting vehicles, crews and equipment.
- (b) ACTF&R pumpers require a minimum turning circle of 18 metres and weigh 14 tonnes. The dimensions of an ACTF&R urban pumper is 2.5m wide, 8.1m long and 3.2m high.
- (c) All emergency access gates are to be fitted with standard Fire Brigade locks.

D. POST CONSTRUCTION AND/OR DEMOLITION

N/A

E. ADVISORY NOTES

This application is approved with the following advisory notes. It is recommended that careful consideration be given to advisory notes prior to commencing work.

E1. ACT HERITAGE COUNCIL

- (a) Should heritage places or objects be unexpectedly encountered during works, works at that locality should cease to allow for heritage assessment and management (in accordance with Section 75 of the *Heritage Act 2004*) and the discovery should be reported to the Council within five working days (in accordance with Section 51 of The *Heritage Act 2004*).

E2. ENVIRONMENT PROTECTION AUTHORITY

- (b) All excavations that collect rainwater are considered as a sediment control pond and must not discharge unless the sediment level is less than 60mg/litre. If the sediment level is greater, then prior to discharge, the pond must be dosed with either Alum or Gypsum and allowed to settle until the sediment is less than 60 mg/litre.

E3. EPBC ACT APPROVAL

- (a) A separate approval has been issued by the Commonwealth Department of the Environment and Energy under sections 130(1) and 133(1) of the *Environment Protection and Biodiversity Conservation Act 1999 (Cth.)*. This approval has effect until 31 March 2039 and is subject to conditions as set out in their approval letter, dated 10 July 2019 (Ref: EPBC 2018 / 8151).

PART 2 REASONS FOR THE DECISION

The application was approved because it was found to meet the relevant rules and criteria of the Territory Plan and section 120 of the *Planning and Development Act 2007*.

EVIDENCE

The following evidence formed part of the assessment of this application:

Application No.	DA-201936482
File No.	1-2019/35984
The Territory Plan zone	NUZ1 – Broadacre
The Development Codes	Non-Urban Zones Development Code
The Precinct Codes	Jerrabomberra District Precinct Map and Code
Current Crown Lease	Volume 2028 Folio 22
Legislative requirements	Sections 128 and 129 of the <i>Planning and Development Act 2007</i>
Representations	None
Entity advice	ACT Health - Health Protection Service, Conservator of Flora and Fauna, Environmental Protection Authority, Emergency Services Agency, ACT Heritage Council, Evoenergy Electricity, Evoenergy Gas (Jemena), Icon Water, National Capital Authority and Transport Canberra and City Services
Advice from the Commonwealth Minister	Approval was granted by the Department of the Environment and Energy on 10 July 2019 (EPBC 2018/8151).

On 30 January 2020 the proposed decision was referred to the Commonwealth Minister responsible for administering the *Environment Protection and Biodiversity Conservation Act 1999* (Cwlth) for 10 working days.

Advice was received on 11 February 2020. The decision was found to be not inconsistent with the approval granted for the same project under the *Environment Protection and Biodiversity Conservation Act 1999* on 10 July 2019.

PART 3 - PUBLIC NOTIFICATION, ENTITY ADVICE & COMMONWEALTH ADVICE

PUBLIC NOTIFICATION

Pursuant to Division 7.3.4 of the *Planning and Development Act 2007*, the application was publicly notified from 16 December 2019 to 15 January 2020. No written representations were received during public notification.

ENTITY ADVICE

Pursuant to Division 7.3.3 of the Act, the application was referred to entities on 11 December 2019 and advice was received. Where an entity requested conditions to be imposed on this development, those conditions have been incorporated into Part A of this Decision. A summary of entity comments can be found below. The referral entities' comments are as follows:

ACT HEALTH – HEALTH PROTECTION SERVICE (HPS)

On 18 December 2019 advice was received from the HPS on behalf of ACT Health in relation to the proposal. The advice states that HPS comments provided during the Environmental Impact Statement (EIS) process have been addressed in this DA and that there are no remaining public health concerns.

No further action is required in relation to HPS comments.

CONSERVATOR OF FLORA AND FAUNA

On 12 December 2019 advice was received from the Conservator of Flora and Fauna in relation to the proposal. The advice states:

The Office of the Conservator of Flora and Fauna have done multiple inspections of this site and provided comments several times. The area and degree of disturbance is as expected and agreed.

What I would like to comment on and which doesn't seem to be included in the current documents is a landscape or restoration plan detailing the species that will be utilised, the rate of plantings/seeding, weed control commitments and detailing the amount of time that soil/overburden will be exposed before restoration occurs.

Matters raised have been incorporated as either conditions of approval or advice. The proposed decision is consistent with the advice received from the Conservator of Flora and Fauna.

ACT HERITAGE COUNCIL

On 9 January 2020 advice was received from the Conservator of Flora and Fauna in relation to the proposal. The advice states:

A review of the submitted documents for the current DA indicates that the works proposed under this DA are within the area investigated and salvaged under the previous processes listed above.

Accordingly, the Council concludes that the works proposed under this DA will not damage heritage places and no further approvals under the Act are required prior to commencement.

The Council notes, however, that the area may contain other places not discovered in previous studies, and for this recommends that the Construction environment Management Plan (CEMP) for the project include an unexpected finds protocol.

Should the ACT planning and Land Authority approve this development application, the Council requests that the following is identified as an approval condition in the Notice of Decision:

- The CEMP shall include the requirement that should heritage places or objects be unexpectedly encountered during works, works at that locality should cease to allow for heritage assessment and management (in accordance with Section 75 of the Heritage Act, 204) and the discovery should be reported to the Council within five working days (in accordance with Section 51 of the Heritage Act, 2004).

Matters raised by the ACT Heritage Council have been incorporated in the conditions of approval.

EMERGENCY SERVICES AGENCY

On 14 January 2020 advice was received from the Emergency Services Agency in relation to the proposal. The advice states that the proposal is supported and provides the following information from ACT Fire and Rescue (ACTF&R):

Fire Station Response Area:

The location of the proposed development indicates that ACTF&R will be able to provide operational response to the area and its surrounds.

Fire Brigade Access:

Pumper:

All roads and driveways for the development site are to be suitably constructed to allow the access and egress of fire fighting vehicles, crews and equipment.

ACTF&R pumpers require a minimum turning circle of 18 metres and weigh 14 tonne. The dimensions of an ACTF&R urban pumper is 2.5m wide, 8.1m long and 3.2m high.

All emergency access gates are to be fitted with standard Fire Brigade locks.

Matters raised by the ESA have been incorporated as conditions.

ENVIRONMENTAL PROTECTION AUTHORITY

On 9 January 2020 advice was received from the Environmental Protection Authority in relation to the proposal. The advice states:

The Environment Protection Authority (EPA) supports the DA subject to the following conditions of approval being included in the Notice of Decision and enforceable under the Planning & Development Act, 2007.

Activities on the site are subject to an Environmental Authorisation issued by the EPA under the Environment Protection Act 1997. The EA includes the requirement for an Environmental Management Plan (EMP). The EMP must be revised and approved by the EPA prior to works commencing on site. The revision to the EMP must provide details of the catchment area and the capacity of the sediment basins and must be in accordance with the Environment Protection Guidelines for Construction and Land Development in the ACT, March 2011.

All soil subject to disposal from the site must be assessed in accordance with EPA Information Sheet 4 - Requirements for the reuse and disposal of contaminated soil in the ACT.

No soil is to be disposed from site without EPA approval.

All works must be carried out in accordance with "Environment Protection Guidelines for Construction and Land Development in the ACT, March 2011", available at

www.environment.act.gov.au or by calling the Environment Protection Authority Planning Liaison on 6207 5642.

Advice for the applicant:

All excavations that collect rainwater are considered as a sediment control pond and must not discharge unless the sediment level is less than 60mg/litre. If the sediment level is greater, then prior to discharge, the pond must be dosed with either Alum or Gypsum and allowed to settle until the sediment is less than 60 mg/litre.

Matters raised by the EPA have been incorporated as conditions of approval and as advisory notes.

EVOENERGY ELECTRICITY

On 2 January 2020 advice was received from the Evoenergy Electricity in relation to the proposal. The advice the application is complies with Evoenergy's Electricity Network requirements, subject to compliance with the following conditions:

A Minimum of 1.0M clearance is required within the block boundary for the proposed or existing Meter Box.

Development is to comply with minimum 1.5m machinery access clear of obstacles and vegetation to assets within the block.

Development is to comply with minimum clearances to overhead conductors and poles. Ref Evoenergy Drawing 3811-004

Development is to comply with minimum separation requirements to underground assets. Ref Evoenergy Drawing 3832-018

Proponent is required to submit an "Application for Electricity Network Connection or Alteration form" to network.connectionapplication@evoenergy.com.au (available on

Evoenergy website) prior to commencement of any development activity to negotiate the connection of new and/or relocation of existing electricity assets.

The location of the proposed or existing Point of Entry/ Meter Box is to comply with Evoenergy's Service and Installation rules.

These conditions must be addressed in accordance with this decision, this has been incorporated as a condition of approval.

EVOENERGY GAS

On 12 December 2019 advice was received from Evoenergy Gas in relation to the proposal. The advices states there are no gas network assets within the vicinity of the development and no gas approval is required.

No further action is required in relation to Evoenergy Gas comments.

ICON WATER

On 18 December 2019 advice was received from Icon Water in relation to the proposal. Icon Water provides the following conditions of Acceptance:

Icon Water assets shall be protected for the duration of the construction works from short term load shedding from construction machinery or vibration and groundwater ingress or infiltration. Any damage to Icon assets resulting from the construction works shall be

repaired by Icon Water at the contractors expense. Access to Icon's assets including sewer structures, manholes, hydrants and valves is to be maintained for the duration of the construction works.

These conditions must be addressed in accordance with this decision, this has been incorporated as a condition of approval.

NATIONAL CAPITAL AUTHORITY (NCA)

On 23 December 2019 advice was received from the NCA in relation to the proposal. The advice states that the site is not subject to special requirements in the National Capital Plan and the NCA has no comment to provide.

No further action is required in relation to NCA comments.

TRANSPORT CANBERRA AND CITY SERVICES

On 9 January 2020 advice was received from Transport Canberra and City Services in relation to the proposal. The advice states that TCCS supports the proposal.

No further action is required in relation to TCCS comments.

COMMONWEALTH ADVICE

The proposal was assessed under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* for likely significant impacts on matters of national environmental significance (EPBC 2018/8151). On 10 July 2019, a delegate of the Commonwealth Minister approved the proposal subject to conditions (refer Attachment 2).

Pursuant to section 127A of the Act, on 30 January 2020 the proposed decision was referred to the Commonwealth Minister responsible for administering the *Environment Protection and Biodiversity Conservation Act 1999* (Cwlth) as it was likely to have a significant adverse environmental impact on a matter protected by the Commonwealth.

Advice was received on 11 February 2020. The advice states the following:

I note the proposed decision to approve the Mugga Quarry Overburden Expansion project under the ACT Planning and Development Act 2007. I have reviewed the project area plan and draft notice of decision including conditions relevant to nationally protected matters and can confirm that the proposed decision by the ACT government to approve the project is not inconsistent with the approval granted for the same project under the Environment Protection and Biodiversity Conservation Act 1999 on 10 July 2019. I have no further comments to add.

The advice confirms that this decision is consistent with advice received from the Commonwealth Minister.