



APPROVAL

Brandy Hill rock quarry extension, Seaham, Port Stephens, NSW (EPBC 2015/7453)

This decision is made under sections 130(1) and 133(1) of the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)*. Note that section 134(1A) of the **EPBC Act** applies to this approval, which provides in general terms that if the approval holder authorises another person to undertake any part of the action, the approval holder must take all reasonable steps to ensure that the other person is informed of any conditions attached to this approval, and that the other person complies with any such condition.

Details

Person to whom the approval is granted (approval holder)	Hanson Construction Materials Pty Ltd
ACN or ABN of approval holder	ACN: 009 679 734
Action	To expand a hard rock quarry and construct and operate additional infrastructure on Brandy Hill, approximately 3.5 kilometres west of Seaham and 175 kilometres north of Sydney [See EPBC Act referral 2015/7453].

Approval decision

My decision on whether or not to approve the taking of the action for the purposes of the controlling provision for the action is as follows.

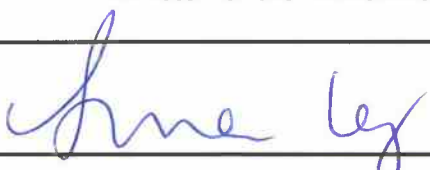
Controlling Provisions

Listed Threatened Species and Communities	
Section 18	Approve
Section 18A	Approve

Period for which the approval has effect

This approval has effect until 31 December 2055

Decision-maker

Name and position	The Hon Sussan Ley MP Minister for the Environment
Signature	
Date of decision	27/10/20

Conditions of approval

This approval is subject to the conditions under the EPBC Act as set out in ANNEXURE A.

ANNEXURE A – CONDITIONS OF APPROVAL

Part A – Conditions specific to the action

Listed threatened species

1. The approval holder must comply with **State development consent** conditions B48, B49, B50, B51, B52 and B53.
2. To minimise the impacts of the action on **protected matters** the approval holder must not **clear** within the **project area** more than the following specified amounts:
 - a) 51.63 hectares of habitat for the **Koala***,
 - b) 53.79 hectares of Grey-headed Flying-fox (*Pteropus poliocephalus*), Spot-tailed Quoll, Spotted-tail Quoll, Tiger Quoll (southeastern mainland population) (*Dasyurus maculatus maculatus* (SE mainland population)), Swift Parrot (*Lathamus discolor*) and Regent Honeyeater (*Anthochaera phrygia*) habitat*.

***Note:** Habitat for the Koala, Grey-headed Flying-fox, Spotted-tail Quoll, Swift Parrot, and Regent Honeyeater is based on the NSW plant community types (PCTs) as mapped in **Annexure 1**.

Koala Protection

3. No **Koalas** are to be killed or injured in the **project area** as a direct result of **clearing** in the **project area**.
4. Prior to clearing **Stage 1**, the approval holder must submit to the **Minister** for approval a **Koala Protection Plan**. The **Koala Protection Plan** is to address clearing for the **Stages** of the action and must include, but not be limited to:
 - a) A targeted pre-clearance survey undertaken by a **suitably qualified person/s** to inform the likely presence of **Koalas** during clearing for **Stages**.
 - b) A site assessment to be undertaken on the day of clearing by a **suitably qualified person/s** to identify if any **Koalas** are present in the trees to be removed.
 - c) If **Koalas** are observed within the area to be cleared, a 25 metre buffer must be maintained around the tree where **Koalas** are present, and an uncleared corridor must be left for **Koalas** to leave towards habitat outside of the area to be cleared.
 - d) Measures which are consistent with best practice, that will be undertaken if, following implementation of condition 4c, **Koalas** have not left the area to be cleared within three days.

Clearing must not commence for **Stage 1** until the **Koala Protection Plan** has been approved. The approved **Koala Protection Plan** must be implemented.

5. Within 12 months of the date of this approval, the approval holder must submit a **Koala habitat replanting and protection plan** (Habitat Plan) for the **Minister's** approval. The Habitat Plan must include, but not be limited to:
 - a) Measures for natural regeneration and replanting of at least 73.8 ha of the area to the south of the existing Quarry (marked as Planting Area 1 to Area 5 in **Annexure 2**) to establish **Koala** habitat.
 - b) A list of the native flora species to be applied in replanting activities. Replanting must include preferred **Koala** habitat trees and aim to recreate plant community types in those areas which are to be regenerated and revegetated that is consistent with remnant plant community types.
 - c) A schedule for planting, maintenance and completion of each Planting Area (specified in **Annexure 2**). Replanting of the area marked as Planting Area 1 must commence within 12 months of approval of the Habitat Plan.

- d) Measures for the management and maintenance of the Planting Areas in **Annexure 2**, including, the control of pests, weeds and bushfire preparation and mitigation measures.
- e) The retention of east-west **Koala** habitat connectivity through a 100 metre vegetated buffer north of the amenity bund (amenity bund is defined in the figures at Appendix 2 of the **State development consent**) until such time as a **suitably qualified person/s** has submitted to the **Minister** confirmation that the Planting Areas would support **Koala** use and the **Minister** has approved this confirmation.
- f) Measures for the long-term monitoring of Koala utilisation in the Planting Areas.
- g) Measures for the ongoing protection of the Planting Areas.

Clearing must not commence for **Stage 1** until the Habitat Plan has been approved. The approved Habitat Plan must be implemented.

Part B – Standard administrative conditions

Notification of date of commencement of the action

- 6. The approval holder must notify the **Department** in writing of the date of **commencement of the action** within 10 **business days** after the date of **commencement of the action**.
- 7. If the **commencement of the action** does not occur within 5 years from the date of this approval, then the approval holder must not **commence the action** without the prior written agreement of the **Minister**.

Compliance records

- 8. The approval holder must maintain accurate and complete **compliance records**.
- 9. If the **Department** makes a request in writing, the approval holder must provide electronic copies of **compliance records** to the **Department** within the timeframe specified in the request.

Note: **Compliance records** may be subject to audit by the **Department** or an independent auditor in accordance with section 458 of the **EPBC Act**, and or used to verify compliance with the conditions. Summaries of the result of an audit may be published on the **Department's** website or through the general media.

Preparation and publication of plans

- 10. The approval holder must:
 - a. submit **plans** electronically to the **Department** for approval by the **Minister**;
 - b. publish each **plan** on the **website** within 20 **business days** of the date the **plan** is approved by the **Minister** or of the date a revised action management plan is submitted to the **Minister** or the **Department**, unless otherwise agreed to in writing by the **Minister**;
 - c. exclude or redact **sensitive ecological data** from **plans** published on the **website** or provided to a member of the public; and
 - d. keep **plans** published on the **website** until the end date of this approval.
- 11. The approval holder must ensure that any **monitoring data** (including **sensitive ecological data**), surveys, maps, and other spatial and metadata required conditions of this approval, is prepared in accordance with the **Department's Guidelines for biological survey and mapped data** (2018) and submitted electronically to the **Department** in accordance with the requirements of the **plans** at conditions 4 and 5.

Annual compliance reporting

- 12. The approval holder must prepare a **compliance report** addressing compliance with each of the conditions of this approval, including implementation of the commitments made in any management plans and strategies required under the **State development consent** conditions B48,

B49, B50, B51, B52 and B53, for each 12 month period following the date of **commencement of the action**, or otherwise in accordance with an annual date that has been agreed to in writing by the **Minister**. The approval holder must:

- a. publish each **compliance report** on the **website** within 60 **business days** following the relevant 12 month period;
- b. notify the **Department** by email with evidence that a **compliance report** has been published on the **website** and provide the weblink for the **compliance report** within five **business days** of the date of publication;
- c. keep all **compliance reports** publicly available on the **website** until this approval expires;
- d. exclude or redact **sensitive ecological data** from **compliance reports** published on the **website**; and
- e. where any **sensitive ecological data** has been excluded from the version published, submit the full **compliance report** to the **Department** within five **business days** of publication.

Note: Compliance reports may be published on the **Department's** website.

Reporting non-compliance

13. The approval holder must notify the **Department** in writing of any: **incident**; non-compliance with these conditions or with **State development consent** conditions B48, B49, B50, B51, B52 and B53; or non-compliance with the commitments made in **plans**. The notification must be given as soon as practicable, and no later than two **business days** after becoming aware of the **incident** or non-compliance. The notification must specify:
 - a. any condition which is or may be in breach;
 - b. a short description of the **incident** and/or non-compliance; and
 - c. the location (including co-ordinates), date, and time of the **incident** and/or non-compliance. In the event the exact information cannot be provided, provide the best information available.
14. The approval holder must provide to the **Department** the details of any **incident** or non-compliance with the conditions or commitments made in **plans** as soon as practicable and no later than 10 **business days** after becoming aware of the **incident** or non-compliance, specifying:
 - a. any corrective action or investigation which the approval holder has already taken or intends to take in the immediate future;
 - b. the potential impacts of the **incident** or non-compliance; and
 - c. the method and timing of any remedial action that will be undertaken by the approval holder.

Independent audit

15. The approval holder must ensure that **independent audits** of compliance with these conditions are conducted as requested in writing by the **Minister**.
16. For each **independent audit**, the approval holder must:
 - a. provide the name and qualifications of the independent auditor and the draft audit criteria to the **Department**;
 - b. only commence the **independent audit** once the audit criteria have been approved in writing by the **Department**; and
 - c. submit an audit report to the **Department** within the timeframe specified in the approved audit criteria.

17. The approval holder must publish the audit report on the **website** within 10 **business days** of receiving the **Department's** approval of the audit report and keep the audit report published on the **website** until the end date of this approval.

Revision of action management plans

18. The approval holder may, at any time, apply to the **Minister** for a variation to an action management plan approved by the **Minister** under conditions 4 and 5, or as subsequently revised in accordance with these conditions, by submitting an application in accordance with the requirements of section 143A of the **EPBC Act**. If the **Minister** approves a revised action management plan (RAMP) then, from the date specified, the approval holder must implement the RAMP in place of the previous action management plan.
19. The approval holder may choose to revise an action management plan approved by the **Minister** under conditions 4 and 5, or as subsequently revised in accordance with these conditions, without submitting it for approval under section 143A of the **EPBC Act**, if the taking of the action in accordance with the RAMP would not be likely to have a **new or increased impact**.
20. If the approval holder makes the choice under condition 19 to revise an action management plan without submitting it for approval, the approval holder must:
- a. notify the **Department** in writing that the approved action management plan has been revised and provide the **Department** with:
 - i. an electronic copy of the RAMP;
 - ii. an electronic copy of the RAMP marked up with track changes to show the differences between the approved action management plan and the RAMP;
 - iii. an explanation of the differences between the approved action management plan and the RAMP;
 - iv. the reasons the approval holder considers that taking the action in accordance with the RAMP would not be likely to have a **new or increased impact**; and
 - v. written notice of the date on which the approval holder will implement the RAMP (RAMP implementation date), being at least 20 **business days** after the date of providing notice of the revision of the action management plan, or a date agreed to in writing with the **Department**.
 - b. subject to condition 22, implement the RAMP from the RAMP implementation date.
21. The approval holder may revoke their choice to implement a RAMP under condition 19 at any time by giving written notice to the **Department**. If the approval holder revokes the choice under condition 19, the approval holder must implement the action management plan in force immediately prior to the revision undertaken under condition 19.
22. If the **Minister** gives a notice to the approval holder that the **Minister** is satisfied that the taking of the action in accordance with the RAMP would be likely to have a **new or increased impact**, then:
- a. condition 19 does not apply, or ceases to apply, in relation to the RAMP; and
 - b. the approval holder must implement the action management plan specified by the **Minister** in the notice.
23. At the time of giving the notice under condition 22, the **Minister** may also notify that for a specified period of time, condition 19 does not apply for one or more specified action management plans.

Note: conditions 19, 20, 21 and 22 are not intended to limit the operation of section 143A of the **EPBC Act** which allows the approval holder to submit a revised action management plan, at any time, to the **Minister** for approval.

Completion of the action

24. Within 30 days after the **completion of the action**, the approval holder must notify the **Department** in writing and provide **completion data**.

Changes to State development consent

25. The approval holder must notify the **Department** in writing of any proposed change to the **State development consent** conditions referred to in these conditions within 10 **business days** of formally proposing a change or becoming aware of any proposed change.
26. The approval holder must notify the **Department** in writing of any change to the conditions of the **State development consent** referred to in these conditions, within 10 **business days** of a change to conditions being finalised.

Part C - Definitions

In these conditions, except where contrary intention is expressed, the following definitions are used:

Business day means a day that is not a Saturday, a Sunday or a public holiday in the state or territory of the action.

Clear/ing means the cutting down, felling, thinning, logging, removing, killing, destroying, poisoning, ringbarking, uprooting or burning of vegetation within the **project area**.

Commencement of the action means the first instance of any specified activity associated with the action including **clearing** and **construction**. **Commencement of the action** does not include minor physical disturbance necessary to:

- i. All physical works to enable quarrying operations to be carried out;
- ii. install signage and/or temporary fencing to prevent unapproved use of the **project area**;
- iii. protect environmental and property assets from fire, weeds and pests, including erection of temporary fencing, and use of existing surface access tracks;
- iv. install temporary site facilities for persons undertaking pre-commencement activities so long as these are located where they have no impact on the **protected matters**.

Completion data means an environmental report and spatial data clearly detailing how the conditions of this approval have been met. The **Department's** preferred spatial data format is **shapefile**.

Completion of the action means all specified activities associated with the action have permanently ceased.

Compliance records means all documentation or other material in whatever form required to demonstrate compliance with the conditions of approval in the approval holder's possession or that are within the approval holder's power to obtain lawfully.

Compliance reports means written reports:

- i. providing accurate and complete details of compliance, **incidents**, and non-compliance with the conditions and the **plans**;
- ii. consistent with the **Department's Annual Compliance Report Guidelines (2014)**;
- iii. include a **shapefile** of any clearance of any **protected matters**, or their habitat, undertaken within the relevant 12 month period; and
- iv. annexing a schedule of all **plans** prepared and in existence in relation to the conditions during the relevant 12 month period.

Construction means the erection of a building or structure that is or is to be fixed to the ground and wholly or partially fabricated on-site; the alteration, maintenance, repair or demolition of any building or structure; preliminary site preparation work which involves breaking of the ground (including pile driving); the laying of pipes and other prefabricated materials in the ground, and any associated excavation work; but excluding the installation of temporary fences and signage.

Department means the Australian Government agency responsible for administering the **EPBC Act**.

EPBC Act means the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

Incident means any event which has the potential to, or does, impact on one or more **protected matter(s)**.

Independent audit: means an audit conducted by an independent and **suitably qualified person** as detailed in the *Environment Protection and Biodiversity Conservation Act 1999 Independent Audit and Audit Report Guidelines* (2019).

Koala means the **EPBC Act** listed species - Koala (combined populations of Queensland, New South Wales and the Australian Capital Territory) (*Phascolarctos cinereus* (combined populations of Qld, NSW and the ACT)).

Minister means the Australian Government Minister administering the **EPBC Act** including any delegate thereof.

New or increased impact means a new or increased environmental impact or risk relating to any **protected matter**, when compared to the likely impact of implementing the action management plan that has been approved by the **Minister** under conditions 4 and 5, including any subsequent revisions approved by the **Minister**, as outlined in the *Guidance on 'New or Increased Impact' relating to changes to approved management plans under EPBC Act environmental approvals* (2017) available from <http://www.environment.gov.au/epbc/publications/new-increased-impact-guidance>.

Plan(s) means any of the documents required to be prepared, approved by the **Minister**, implemented by the approval holder and/or published on the **website** in accordance with these conditions (includes action management plans and/or strategies).

Project area means the area mapped as the "Project area" in Annexure 1.

Protected matter(s) means a matter protected under a controlling provision in Part 3 of the **EPBC Act** for which this approval has effect.

Sensitive ecological data means data as defined in the Australian Government Department of the Environment (2016) *Sensitive Ecological Data – Access and Management Policy V1.0*.

Shapefile means location and attribute information of the action provided in an Esri shapefile format. Shapefiles must contain '.shp', '.shx', '.dbf' files and a '.prj' file that specifies the projection/geographic coordinate system used. Shapefiles must also include an '.xml' metadata file that describes the shapefile for discovery and identification purposes.

Stages 1-5 means the stages defined in the figures at Appendix 2 of the **State development consent**.

State development consent means the Development Consent issued by the Independent Planning Commission of New South Wales for application number SSD-5899 dated 16 July 2020.

Suitably qualified person means a person who has professional qualifications, training, skills and/or experience related to the nominated subject matter and can give authoritative independent assessment, advice and analysis on performance relative to the subject matter using the relevant protocols, standards, methods and/or literature.

Website means a set of related web pages located under a single domain name attributed to the approval holder and available to the public.

