

# DEVELOPMENT ASSESSMENT REPORT – DA128/12, PROPOSED SUBDIVISION LOT 1 DP523434, OAKLEY FOREST ROAD, MARRANGAROO NSW 2790

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## 1. PROPOSAL

Council is in receipt of a Development Application 128/12 from SJ & LT Anderson for a three lot subdivision of two allotments at 7000m<sup>2</sup> and one allotment at 7848m<sup>2</sup> at Lot 1 in DP 523434, Oakley Forest Road, Marrangaroo NSW 2790. The property is currently vacant with scattered vegetation, abutting Oakley Forest Road and the Lithgow Golf Course.



## 2. SUMMARY

To assess and recommend determination of DA XX/XX Recommendation will be for approval subject to conditions/refusal

## 3. LOCATION OF THE PROPOSAL

Legal Description : Lot 1 DP 523434  
Property Address : Oakley Forest Road, Marrangaroo

**4. ZONING:** The land is zoned 2(a) Residential in accordance with Lithgow City Local Environmental Plan 1994.

**5. PERMISSIBILITY:** The development being a subdivision is considered permissible under Lithgow City Council's Local Environmental Plan 1994 2(a) Residential zone, subject to development consent.

### **5.1 POLICY IMPLICATIONS (OTHER THAN DCP's)**

There is no policy implication of this development.

### **5.2 FINANCIAL IMPLICATIONS (eg Section 94)**

There is no financial implication of this development.

### **5.3 LEGAL IMPLICATIONS**

#### **Conveyancing Act 1919**

There is currently an easement under 88B (easement) of the Act for power lines on the allotment. This easement will not change as part of this proposal and will be placed on any subdivision linen plans. Additionally, the Sydney Catchment Authority has requested a number of covenants be imposed under Section 88E of this act. These covenants relate to stormwater runoff, stormwater structures, water tanks and future dwellings. Further, conditions will be imposed from Council regarding covenant for restricting allotment to one dwelling and the requirement for noise reduction measures in construction. Accordingly, these conditions would be included in any consent.

#### **Environmental Protection and Biodiversity Conservation Act 1991**

No federally listed Threatened Species or Endangered Ecological Community is required to be cleared as a result of this application. Accordingly, there are no legal implications of this act on the proposed development.

#### **Heritage Act 1977**

There are no legal implications of this act on the proposed development.

#### **Local Government Act 1993**

There are no legal implications of this act on the proposed development.

#### **Mine Subsidence Compensation Act 1961**

There are no legal implications of this act on the proposed development.

#### **Mining Act 1992**

There are no legal implications of this act on the proposed development.

#### **National Parks and Wildlife Act 1974**

There are no legal implications of this act on the proposed development.

#### **Native Vegetation Act 2003**

No native vegetation is required to be cleared as a result of this application. Accordingly, there are no legal implications of this act on the proposed development.

#### **Protection of the Environment Operations Act 1997**

There are no legal implications of this act on the proposed development.

#### **Roads Act 1993**

There are no legal implications of this act on the proposed development.

### **Rural Fires Act 1997**

The development is considered to be integrated under this act (via Section 91 of the EP & A Act 1979). Accordingly the approval of the Rural Fire Service is required prior to Council being in a position to determine the application. Approval from the Rural Fire Service has been obtained and is discussed later in this report under “submissions made in accordance with the act”.

### **Strata Schemes Management Act 1994**

There are no legal implications of this act on the proposed development.

### **Threatened Species Conservation Act 1995**

No state listed Threatened Species or Endangered Ecological Community is required to be cleared as a result of this application. Accordingly, there are no legal implications of this act on the proposed development.

### **Water Management Act 2000**

There are no legal implications of this act on the proposed development.

### **Environmental Planning and Assessment Act 1979**

In determining a development application, a consent authority is required to take into consideration the matters of relevance under Section 79C of the *Environmental Planning and Assessment Act 1979*. These matters for consideration are as follows:

#### 5.3.1 Any Environmental Planning Instruments

#### ***Lithgow City Local Environmental Plan 1994***

LEP 1994 – Compliance Check		
	<b>Clause</b>	<b>Compliance</b>
<b>9</b>	2(a) zoning table	Yes
<b>21</b>	Notification of certain development and development in Residential and Village Zones	Yes
<b>30</b>	Land subject to bushfire hazards	Yes

#### **Comment:**

The development is providing for housing and will allow for single dwellings on larger residential allotments. The addition of two allotments is not perceived to impact on provisions of public amenities or services and is compatible with other development of the area. The allotment is adjacent to a strip of housing and is considered to be of a similar nature. The proposed subdivision of land is consistent with the above zone objectives and deemed suitable for the proposal. A geotechnical report has been submitted to Council and it is found to be satisfactory that disposal of domestic waste water is feasible within the boundaries of the allotment.

#### ***State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011***

SEPP(Sydney Drinking Water Catchment) 2011 – Compliance Check		
	<b>Clause</b>	<b>Compliance</b>
<b>10</b>	Development consent cannot be granted unless neutral or beneficial effect on water quality	Yes
<b>11</b>	Development that needs concurrence of the Chief Executive	Yes

**Comment:** The application being an unsewered subdivision required concurrence of the Sydney Catchment Authority under the SEPP to assess if the proposal would have a neutral or beneficial effect on water quality. The recommendations from this referral are detailed further in this report under 'submissions made in accordance with the Act'. It is considered that the proposal complies with the SEPP with recommendations to be imposed if it is to be approved.

#### ***State Environmental Planning Policy 44 – Koala Habitat Protection***

SEPP 44 is applicable to site given that it exceeds 1ha in size and is located within the Lithgow Local Government Area to which the SEPP applies.

Part 2 of the SEPP requires Council to consider whether the land the subject of the application retains potential and subsequently core koala habitat.

The SEPP provides the following definitions:

**core koala habitat** means an area of land with a resident population of koalas, evidenced by attributes such as breeding females (that is, females with young) and recent sightings of and historical records of a population.

**potential koala habitat** means areas of native vegetation where the trees of the types listed in Schedule 2 constitute at least 15% of the total number of trees in the upper or lower strata of the tree component.

Many of the trees listed within Schedule 2 of the SEPP are common within the Lithgow Local Government area, however core koala habitat within this area is rare, with only 12 koala sightings ever reported on private land within the LGA. The nearest to the subject sight being over 4kms away.

Clause 17 of the SEPP states that Council's must take into consideration the guidelines that are relevant to the exercise of the function.

The Draft SEPP 44 Guidelines (1996) by NPWS allows the following courses of action:

#### **4. Facilitation of certain development proposals**

*Having undertaken a review of existing information and some preliminary site investigations, an applicant may, with the written agreement of the consent authority and following advice from the NPWS, adopt one of the following courses of action.*

- (i) Conclude that an area does not contain koala habitat by virtue of its nature or location (for example, the site is devoid of trees or located in the centre of a CBD) and that there is no need to proceed further with the SEPP 44 assessment.*
- (ii) Conclude that the proposed development, by its nature, would not alter the situation presently existing on the site for koalas and koala habitat (for example, minor extension to a dwelling).*

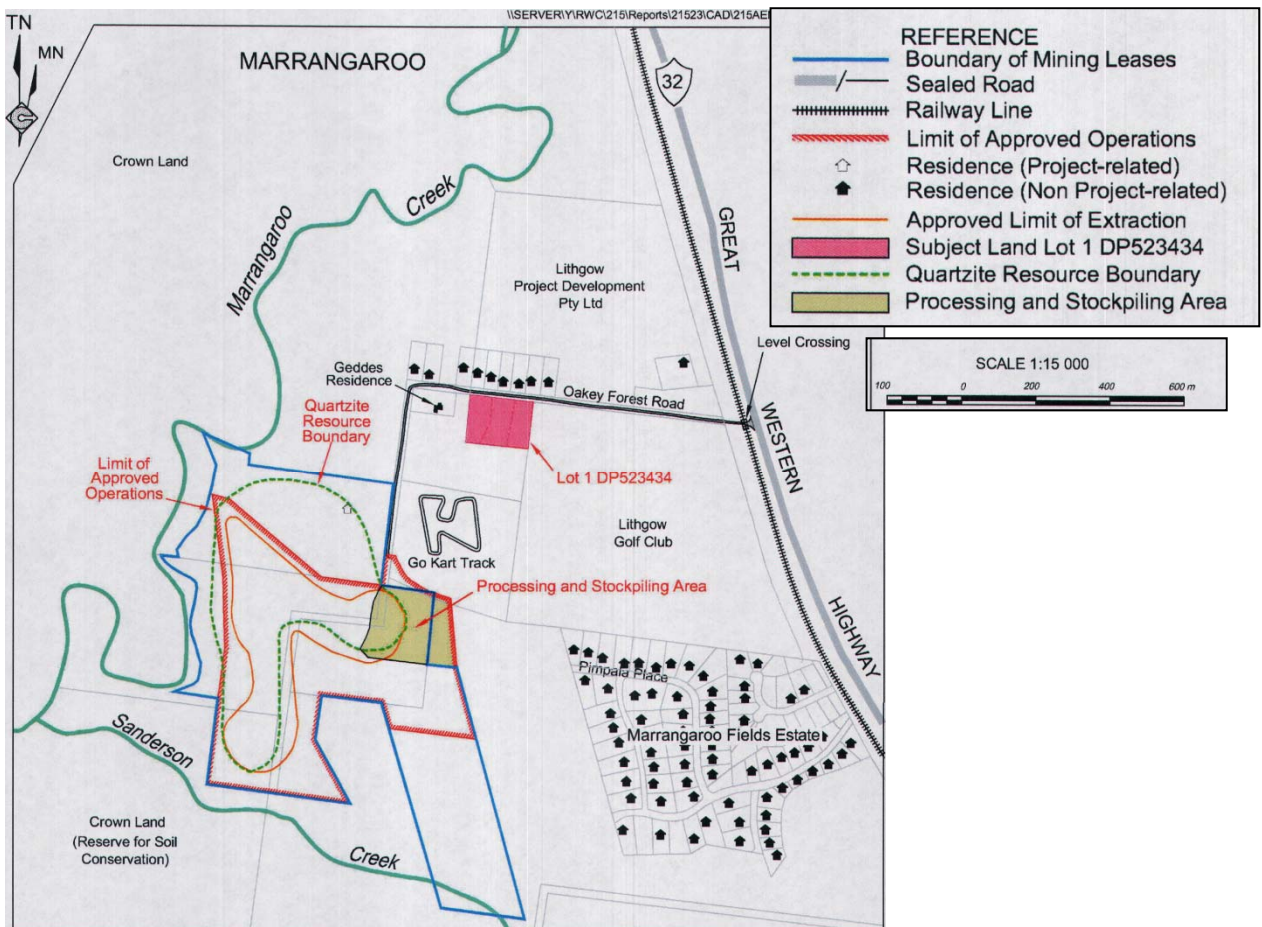
#### **Comment:**

Given that no trees are to be removed as part of the development, and the section of the subject site relevant to the application is devoid of native vegetation it is considered unnecessary to proceed further with SEPP 44 assessment.

**State Environmental Planning Policy (Mining, Petroleum and Extractive Industries) 2007**

SEPP(Sydney Drinking Water Catchment) 2011 – Compliance Check		
Clause		Compliance
13	Compatibility of proposed development with mining, petroleum production or extractive industry	Yes

**Comment:** The proposed development is within the vicinity of an extractive industry for Quartzite by a company known as Metromix, with the available resource being shown on the following map. The existing uses around the area include recreational, residential and rural land uses. The proposal would be included in the area around the recreational and residential land uses. It is considered that the applicant is aware of the extent to which the quarry could ever expand to and that an amended subdivision plan including building envelopes was provided, that the applicant has sufficiently dealt with Clause 13. The area that the subdivision is taking place currently has a number of dwellings directly across the road and one on the corner of the Oakey Forest Road to the West (closer to the quarry) and therefore, it would not significantly impact the operation of the quarry. However, the applicant has provided a revised subdivision plan showing building envelopes outside a 400m buffer zone from the maximum area of extraction for the quarry. Therefore, the applicant adequately shows that the development is expected to have minimal increased impacts on the quarry compared to existing and is minimised by the buffer area and covenants for noise mitigation. Under Clause 13 Council does not consider an increase of 2 allotments to impede on the operation of the quarry currently or into the future.



5.3.2 Any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority

There is no draft environmental planning instrument but the Lithgow City Land Use Strategy 2010-2030 (LUS) proposes that the zoning for this land be changed in the future Local Environmental Plan to a private recreational zoning. This would therefore make a residential subdivision prohibited for this property if accepted in the new LEP as this zoning. It is considered that given the plan is only a strategy and not a Draft LEP at this stage, that the assessment of the Development Application should be undertaken only under current planning instruments.

5.3.3 Any Development Control Plan

**Guidelines for Civil Engineering Design and Construction**

Guidelines – Compliance Check	
Clause	Compliance
1.0 General	Yes
2.0 Roads	Yes
3.0 Stormwater Drainage	Yes
4.0 Environment	Yes
5.0 Traffic Management	Yes

**Comment:** The proposed development will be conditioned to include connections for telecommunications and electricity to each allotment complying with the general requirements. The proposal has been assessed by the Council Engineers regarding the driveway and stormwater requirements along with SCA requirements for stormwater also. Sediment and erosion issues will be controlled by conditions of consent and traffic management will be assessed by the Council Engineers. It is considered that the development with recommended conditions of consent will comply with the above guide.

5.3.4 Any planning agreement that has been entered into under Section 93F, or any draft planning agreement that a developer has offered to enter into under Section 93F?

No.

5.3.5 Any matters prescribed by the regulations that apply to the land

There are no demolition works, rebuilding or extension of the building is proposed as part of this application and therefore no regulations apply to the land.

5.3.6 The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

**Adjoining Landuse:**

the surrounding development is typical of residential developments directly adjacent to the property and is surrounded by vacant land to the west and south and Lithgow Golf Course to the east. The scale of the proposal is very similar to surrounding development with the allotments being larger residential blocks. The proposal is consistent with the surrounding land uses being for larger residential allotments.

**Services:**

The proposal is for three allotments within the 2(a) Residential zoning under the Lithgow Local Environmental Plan 1994 (LEP) with connections to septic systems for onsite effluent management. A subdivision in the 2(a) residential zone is usually required to be connected to all services, including sewer. The applicant has requested that this requirement be waived in this instance due to the high cost of providing sewer to such a small subdivision that creates only two additional allotments which are significantly larger than required for standard residential allotments. Geotechnical reports have been provided to show that onsite effluent management systems can be retained within each allotment.

It is considered that given the location of the proposal and that the surrounding development is allotments with dwellings connected to septic systems, that the requirement for sewer may be imposed once sewer is available to the area. Therefore, allowing the subdivision to be accepted without connection to reticulated sewer services at this time. A covenant could be placed on each allotment requiring that they be connected to sewer once it becomes available, or should any further subdivision of the land occur. All other services will be connected to each block, including water, telecommunications and electricity.

**Context and Setting:**

The proposed development will be located within a small established residential area and will have minimal impact on the context and setting of the area. The development is larger allotments within a residential area to correspond with existing allotment sizes and onsite wastewater management system requirements.

**Access:** Access for each allotment will be via a Council owned sealed road known as Oakey Forest Road. Given that the subdivision is only for an additional two allotments, the increased traffic on this sealed road would have minimal impacts to traffic generation or degrading of the road. It is considered that the development will provide sufficient access for the proposal.

**Other Land Resources:**

Other land resources in the area include the quartzite quarry to the west of the proposal. The applicant has provided a subdivision plan indicating building envelopes outside a 400m area from the maximum extraction area that could potentially be undertaken by the quarry. Council considers that a maximum of three residences on these new allotments would not significantly impact the quarry operations currently or into the future. Restrictions to only allow one dwelling per allotment will be imposed to the development to minimise the impact and additionally due to no reticulated sewer services being supplied to the allotments. It is considered that this proposal will not significantly impact on future residents or on the potential operations of the quarry.

**Noise and Vibration:**

Given that the proposal is close to the Lithgow Go Karting Track and the Metromix Quarry, there is potential conflict regarding noise for the proposed development. It has been indicated by the applicant that noise abatement will be in the form of positive covenants as part of the subdivision under 88B & 88E of the Conveyancing Act 1919. Therefore, any dwelling to be placed on the land would be required to have building materials such as double glazed windows, noise restricting fencing and special noise suppression building materials.



This proposal will be conditioned by Council to ensure that this is undertaken for the development to Council satisfaction and control. Further, given this proposal, it is not expected that any requirements for a noise mitigation mound on the land or adjoining properties would be required. It is considered that noise issues further outside the 400m buffer area would already be required to be dealt with, due to existing dwellings within this area. It is considered that the quarry would be required to comply with noise and blasting restriction regardless of this development proposal for any future extraction approvals further north of existing. This is due to the existing ten residences on Oakey Forest Road, with any compulsory acquisition being a last resort for impact mitigation measures in any extractive industry.

Therefore, given the proposed mitigation measures through covenants and conditions to restrict each block to one dwelling, the proposal is considered satisfactory regarding noise and vibration.

#### 5.3.7 The Suitability of the site for the development

The surrounding land uses are for residential and recreational pursuits with the size and nature of the development consistent with those in the surrounding area. The site is considered to be suitable for the proposed development with appropriate conditions of consent. The proposal is compatible with the objectives of the zone and is considered to have minimal impact on the surrounding residential amenity as discussed.

#### 5.3.8 Any submissions made in accordance with this Act or the Regulations

##### **AUTHORITY SUBMISSIONS**

The proposal was sent to the Rural Fire Service (RFS), The Sydney Catchment Authority (SCA), Department of Trade & Investment, Councils Engineers and Council's Sewer & Water Officer for commenting with recommendations outlined below.

##### **Rural Fire Service**

I refer to your letter dated 31 August 2012 seeking general terms of approval for the above Integrated Development in accordance with Section 91 of the 'Environmental Planning and Assessment Act 1979'.

This response is to be deemed a bush fire safety authority as required under section 100B of the 'Rural Fires Act 1997' and is issued subject to the following numbered conditions:

##### **General Advice – consent authority to note**

This approval is for the subdivision of the land only. Any further development application for class 1, 2 & 3 buildings as identified by the 'Building Code of Australia' may be subject to separate application under section 79BA of the EP & A Act and address the requirements of 'Planning for Bush Fire Protection 2006'.

##### **Sydney Catchment Authority**

##### **Original Advice- 21 September 2012**

The subject property, which has been inspected by the Sydney Catchment Authority (SCA), is located within the Warragamba catchment which forms part of Sydney's water supply.



The following documents have been considered in the assessment of the application:

- the Statement of Environmental Effects (dated 27 July 2012) and the Proposed Subdivision Plan (dated 28 July 2012) both prepared by Steve Anderson, and
- On-site Effluent Management Studies for proposed Lots 201, 202 and 203 prepared by Envirowest Consulting Pty Ltd (all dated 28 February 2012).

It is noted that the lot layout used in the wastewater management reports is inconsistent with the lot layout of the proposed Subdivision Plan prepared by Steve Anderson. It is also noted that the size of the effluent disposal areas in the wastewater reports has been based on a rainwater tank water supply whereas the site is connected to a reticulated water supply. This will necessitate larger effluent disposal areas for each lot. Further the application documents did not propose any stormwater management for future dwellings on the proposed lots. The SCA has included standard stormwater management conditions for future dwellings on peri-urban lots. The SCA has discussed this matter with the applicant who has no issues with such requirements.

Based on the SCA's site inspection and the information provided, the proposed development has been assessed by the SCA as being able to achieve a neutral or beneficial effect on water quality provided appropriate conditions are included in any development consent and are subsequently implemented. The Chief Executive would therefore concur with Council granting consent to the application, subject to the following conditions:

#### **General**

1. The lot layout and staging of the subdivision shall be as shown on the Proposed Subdivision Plan prepared by Steve Anderson (dated 28/07/2012). Any revised lot layout or staging of the subdivision shall be agreed to by the Sydney Catchment Authority.

*Reason for Condition 1 - The Sydney Catchment Authority has based its assessment under State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011 on this version of the subdivision.*

#### **Wastewater Management**

2. There shall be a public positive covenant under Section 88E of the *Conveyancing Act 1919*, the prescribed authority being the Sydney Catchment Authority, placed over each lot requiring that absorption-only methods are not to be used for effluent disposal.

*Reason for Condition 2 - To ensure that an appropriate on-site wastewater management system can be sited on each lot given the soil constraints so as to have a sustainable neutral or beneficial effect on water quality over the longer term.*

#### **Stormwater Management**

3. There shall be a public positive covenant under Section 88E of the *Conveyancing Act 1919*, the prescribed authority being the Sydney Catchment Authority, placed over all proposed lots requiring that:
  - a raingarden be located and installed on the lot so as to capture and treat all stormwater runoff from the lot, and which incorporates the following specific requirements and specifications:
    - a design consistent with Chapter 6 of *WSUD Engineering Procedures: Stormwater* (Melbourne Water 2005)
    - have a minimum filter area of five square metres

- have a filter media consisting of a clean sandy loam with a median particle diameter of 0.5 mm and an orthophosphate content of less than 40 mg/kg
- have a minimum filter depth above the underdrain of 400 mm
- have an extended detention depth above the filter of 150 mm
- be planted with appropriate deep-rooted moisture-tolerant vegetation (grass is not appropriate vegetation)
- all overflow and underdrain discharge from the raingarden shall be directed to either to street stormwater drainage system or stabilised grassed surface with energy dissipater at the outlet, and
- the raingarden be retained, protected and maintained and no development to take place within one metre of the structure once constructed.

### **Rainwater Tanks**

4. There shall be a public positive covenant under Section 88E of the *Conveyancing Act 1919*, the prescribed authority being the Sydney Catchment Authority, placed over all proposed lots requiring that all future dwellings incorporate a rainwater collection and reuse system with the following specific requirements or specifications:
  - rainwater tanks with a minimum total capacity of 10,000 litres above any volume required for mains top-up
  - roofs and gutters designed so as to maximise the capture of rainwater in the rainwater tanks, and
  - rainwater tanks plumbed to toilets, laundry and other internal and external areas for non-potable use including use for gardens.

*Reason for Conditions 3 & 4 - To ensure stormwater runoff from the future dwellings and associated infrastructure is appropriately designed and managed so as to ensure an overall and sustainable neutral or beneficial impact on water quality over the longer term.*

### **Construction Activities**

5. Effective erosion and sediment controls shall be installed prior to any construction activity including earthworks for the future dwelling site access. The controls shall prevent sediment or contaminated water leaving the construction site or entering roadside swale or stormwater system, and shall be regularly maintained and retained until works have been completed and groundcover established.

*Reason for Condition 5 – To manage adverse environmental and water quality impacts during the construction phase of the development so as to minimise the risk of erosion, sedimentation and pollution within or from the site during this phase.*

### **Subsequent Development Applications**

Any subsequent applications for dwellings and/or other developments on the proposed lots will be subject to the provisions of the *State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011* (the SEPP) and will need to be assessed according to the Neutral or Beneficial Effect (NorBE) test in relation to the potential effect of the development on water quality.

Under Clause 11 of the SEPP, Council must provide the SCA with a copy of its determination of the application within 10 days of the determination. The SCA also requests that Council provide it with a copy of the final approved Plan of Subdivision.

### **Revised Advice for amended Geotechnical Reports- 16 January 2013**

I refer to your letter received 11 January 2013 providing amended wastewater reports for the proposed 3-lot peri-urban subdivision and requesting any amendments to the Sydney Catchment Authority's (SCA) original concurrence advice provided to Council on 21 September 2012.

The amended On-site Effluent Management Studies for proposed Lot 201, 202 and 203 prepared by Envirowest Consulting Pty Ltd (dated 12 December 2012) along with previously provided documentation have been considered in the assessment of the application.

The SCA notes that there are still inconsistencies between the numbering and layout used in the amended wastewater reports for proposed Lots 201, 202 and 203 prepared by Envirowest Consulting Pty Ltd, and the numbering and lot layout shown on subdivision Plan prepared by Steve Anderson. The amendments to the wastewater reports for the proposed lots will not alter the SCA's original conditions of concurrence provided to Council in its advice letter dated 21 September 2012.

Based on the SCA's site inspection and the information provided, the proposed development has been assessed by the SCA as being able to achieve a neutral or beneficial effect on water quality provided appropriate conditions are included in any development consent and are subsequently implemented. The Chief Executive would therefore concur with Council granting consent to the application, subject to the SCA's previously provided concurrence requirements (advice letter dated 21 September 2012) are included in the consent.

### **Department of Trade & Investment**

MRB has concerns regarding the proposed location in respect to the Marrangaroo Quartzite Quarry operated by Metromix Pty Ltd. This operation is included in the Mineral Resource Audit which was recently completed for the Lithgow LGA, a copy of which was forwarded to Council in May 2012. This was conducted in accordance to Section 117(2) Direction 1.3 – Mining, Petroleum Production and Extractive Industries under the *Environmental Planning and Assessment Act 1979*. In reference to the Mineral Resource Audit, the subdivision area is located within a Transition Area of the Marrangaroo Quartzite Quarry. This quarry uses blasting techniques to produce quartzite (silica) for metallurgical use in steel-making and as hard rock aggregate. It is held under titles PLLs584, 602, MLs1522, 4635, 4636, 6388, MPL 221.

Consequently, the development consent process needs to consider any impacts the quarry operations may have on future development. In order for the development to proceed, the consent authority must be satisfied that the subdivision would not be subject to significant impacts (such as noise, vibration, dust and heavy vehicular movements) from the quarrying operation. The proponent would also need to demonstrate that the presence of the subdivision and any associated development would not restrict extraction operations of the quarry.

**Comment:** The development has been adequately assessed under the *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007*. It is considered that given the minor nature of the development, the proposed buffer area and the proposed covenants for any dwelling construction, that the proposal will have minimal effect on the operation of the quarry currently or in the future.

### **Council's Engineers**

1. Vehicular access is to be provided to each block off Oakey Forest Road, with a minimum entry splay of 6.0 metres in width, tapering back into a minimum 4.0 metre wide internal access road. The access driveways shall have a minimum of 150mm of DGB-20 road base applied and compacted providing a smooth transitional surface, and are to be (2) two-coat bitumen sealed (14/7mm pre-coated aggregate) from the edge of Oakey Forest Road to the Property boundary or alternatively concreted.
2. A minimum 450mm diameter pipe is to be installed at all access driveways, with headwalls attached on each side of the piped culvert in order to drain stormwater. The pipes are to be of a reinforced concrete standard with precast headwalls, with a minimum cover of 300mm (class 4). The pipes and headwalls are to be formed in such a way as to not obstruct the flow of water through the existing table drain.
3. A minimum 160m sight distance for entering and exiting access driveways shall be required. If the removal of trees and vegetation is required to increase site distance, the applicant shall seek approval from Council. The removal of such vegetation will be at the developers full cost.

### **Council's Sewer & Water Officer**

I refer to the abovementioned development application in regards to your referral dated 10 August 2012 and provide the following comments.

- Reticulated water supply is available

Therefore, there is no objection to the proposal given the following conditions of consent:

1. The developer must obtain written Section 68 approval from Council for the connection and installation of water services and meters, this will be required prior to the start of Construction. The Section 68 application requires the submission of all detailed engineering drawings/design, specifications and any applicable supporting information for the proposed works.

### **PUBLIC SUBMISSIONS**

The proposal was also sent to adjoining neighbours and placed on public display in Councils Administration Building for a period of 14 days in which two submissions were received and summarised below.

- 1) *That there is insufficient detail regarding noise abatement in regards to the existing go-kart track;*

### **Applicant Comment:**

New dwellings on the proposed lots will have a positive covenant restriction to assist noise abatement from the go-kart activities. The covenant will be in the form of building measures such as double glazed windows, noise restriction fencing and house building materials. The proposal does not include construction of noise bunds and any such construction would be outside this development application.

**Council Comment:**

It has been indicated by the applicant that noise abatement will be in the form of positive covenants as part of the subdivision under 88B of the Conveyancing Act 191. Therefore, any dwelling to be placed on the land would be required to have building materials such as double glazed windows, noise restricting fencing and special noise suppression building materials. This proposal will be conditioned by Council to ensure that this is undertaken for the development to Council satisfaction and control. Further, given this proposal it is not proposed to impose any requirements for a noise mitigation mound on the land or adjoining properties.

- 2) *That insufficient details have been provided for assessment regarding a Compatibility Statement under Clause 13 of the State Environmental Planning Policy (Mining, Petroleum Production and Extractive industries) 2007. For example there is no evidence given to explain the statement that 'there is probably not much chance of the quarry extending northwards'.*

**Applicant Comment:**

The map supplied by Metromix shows the extent of the resource boundary and the Quartzite Resource Boundary that extends north. However it is shown by this map that the quarry would not extend further than the resource available in the area.

**Council Comment:**

It is considered that the applicant is aware of the extent to which the quarry could ever expand to and that an amended subdivision plan including building envelopes was provided, that the applicant has sufficiently dealt with Clause 13. The area that the subdivision is taking place currently has a number of dwellings directly across the road and one on the corner of the Oakey Forest Road to the West (closer to the quarry) and therefore, it would not significantly impact the operation of the quarry. However, the applicant has provided a revised subdivision plan showing building envelopes outside a 400m buffer zone from the maximum area of extraction for the quarry. Therefore, the applicant adequately shows that the development is expected to have minimal increased impacts on the quarry compared to existing and is minimised by the buffer area and covenants for noise mitigation. Under Clause 13 Council does not consider an increase of 2 allotments to impede on the operation of the quarry currently or into the future.

- 3) *The current quarry operation has been operating for 100 years with still substantial quantities of quartzite occurring outside the currently approved quarry area (see attached map). It is likely that further approvals could be sought to continue quarrying this extractive resource which would be impacted by these additional residents.*

**Applicant Comment:**

The supplied map shows the extent in which the quarry would extend to extract the resource (to the north); therefore, from this boundary it is proposed to place a 400 metre buffer area as shown in the building envelopes for the development. This will allow a sufficient buffer area from the extent of extraction for the quarry lifetime and minimising impact to the quarry.

**Council Comment:**

As previously stated the applicant has provided an amended subdivision plan indicating building envelopes outside a 400m area from the maximum extraction area that could potentially be undertaken by the quarry. Council considers that a maximum of three residences on these new allotments would not significantly impact the quarry operations currently or into the future.

- 4) *That it was never intended that the standard of sealed road provided on Oakey Forest Road would allow for further subdivision along this road and potentially placing further restrictions upon the operation of the quarry.*

**Applicant Comment:**

The three lot subdivision would generate a minor increase in traffic with the impact on existing road surface being minimal. Truck usage from the quarry would still be the major contributor to the degrading of the current Oakey Forest Road.

**Council Comment:**

Given that the subdivision is only for an additional two allotments, the increased traffic on this sealed road would have minimal impacts to traffic generation or degrading of the road. It is considered that this concern is minimal and that the extra residents would not impact further on the operation of the quarry.

- 5) *The existing quarry has planned quarrying operations based on compliance for noise and blasting activities at a distance of 420m from the closest residence. The subdivision (assuming dual occupancy as the worst case scenario) is to be constructed at distances closed to either approved or proposed limit of extraction than other dwellings. The outcome would be quite restricting to the quarry and may lead to the quarry having to purchase the subject land and residences which impacts the economic viability of any extension. It is noted that no building envelopes have been nominated on the subdivision plan to clarify where future dwellings would be located.*

**Applicant Comment:**

As previously stated, implementation of the minimum 400m buffer area from the quarry's maximum extraction area (Resource Boundary) still allows a large area for a building envelope on each block. It is considered that the buildings can occur with minimal restrictions on the operation of the quarry.

**Council Comment:**

As part of this development, restrictions to only one house per allotment will be imposed to the development to minimise the impact and additionally due to no reticulated sewer services being supplied to the allotments. As a result, the maximum number of houses for the development would be three with each being 400m outside the area of extraction by the quarry. It is considered that noise issues further outside this area would already be required to be dealt with, due to other existing dwellings being well within this area. It is considered that the quarry would be required to comply with noise and blasting restriction regardless of this development proposal for any future extraction approvals further north of existing extraction. This is due to the existing ten residences on Oakey Forest Road, with any compulsory acquisition being a last resort for impact mitigation measures in any extractive industry.

- 6) *The statement lodged with the application refers to the buffer zone of 400m as a 'tool', but is important to ensure that extractive industries do not adversely impact on residential properties. It is noted that the existing buffer zone to the Marrangaroo Fields is at the very minimum distance of 350m with the activities closest to this being stockpiles etc. This does not generate the same noise or vibration levels as extractive operations that could potential move further north due to the resource availability (see attached map). The subdivision proposed would intrude into the 400m buffer zone and significantly impact on the current and future operations of the quarry.*

**Applicant Comment:**

The building envelope plan shows that buildings would be outside an area of 400m buffer area from the resource boundary area and therefore, should not restrict the operation of the quarry.

**Council Comment:**

As previously noted the development has been revised to include building envelopes outside the 400m buffer proposal area which will minimise any impact on current and future extraction of the quarry. It is considered that this proposal will significantly minimise any potential impact on future residents and on the potential operations of the quarry.

- 7) *The noise mitigation measure of a bund is appropriate; however, the applicant should provide technical data identifying the location, height etc, of the bund to ensure that noise levels from both noise sources will still satisfy criteria nominated in the Industrial Noise Policy.*

**Applicant Comment:**

The covenants proposed for noise abatement on each of the allotments should allow for issues of noise to be minimised. It is not proposed to construct the noise mounds as part of this proposal and may form a separate application at a later date. Additionally, noise from the quarry impacting the allotments is not guaranteed given that there is no impact due to no northward extraction being approved at this stage, and may never be approved.

**Council Comment:**

It is considered that the bund is not required as part of this development and that covenants would be more appropriate on the construction of the dwellings on these allotments. If the bund was to be undertaken in the future, it would be completed under a separate application and is no longer considered as part of this application.

**5.3.9 The public interest**

There has been no issues raised from the public regarding planning issues other than discussed.



## 6. DISCUSSION AND CONCLUSIONS

It is considered that the applicant and the proposed conditions of consent will minimise concerns raised by the submissions. The proposal generally complies with the relevant provisions of the applicable Environmental Planning Instruments. The proposal is not considered likely to have any significant negative impacts upon the environment or upon the amenity of the locality. As such it is recommended that development consent is issued subject to the conditions outlined below.

## 7. ATTACHMENTS

Schedule A- Conditions of consent.

## 8. RECOMMENDATION

**THAT** development application DA128/12 is approved subject to conditions set out in Schedule A.

Report prepared by:.....Supervisor:.....

Dated:.....Dated:.....

### REASONS FOR CONDITIONS

The conditions in Schedule A have been imposed for the following reasons:

- To ensure compliance with the terms of the relevant Planning Instruments
- To ensure no injury is caused to the existing and likely future amenity of the neighbourhood
- Due to the circumstances of the case and the public interest.
- To ensure that adequate road and drainage works are provided.
- To ensure the structural integrity of the development.
- To ensure the protection of the health and safety of the occupants of the development.
- To protect the environment.
- To prevent, minimise, and/or offset adverse environmental impacts.
- To ensure lots are adequately serviced.
- To ensure there is no unacceptable impact on the water quality.
- To ensure compliance with the requirements of the Rural Fire Services.
- To ensure adequate soil conservation and protect against movement of soil and sediments.

## **Schedule A- Conditions of Consent (Consent Authority) and General Terms of Approval (Integrated Approval Body)**

**Please Note:** It should be understood that this consent in no way relieves the owner or applicant from any obligation under any covenant affecting the land.

### **ADMINISTRATIVE CONDITIONS**

1. That the development be carried out in accordance with the application, Statement of Environmental Effects, accompanying information, plans listed in the approval and any further information provided during the process unless otherwise amended by the following conditions.
2. That a Subdivision Certificate Application be lodged with evidence of completion of all conditions of consent to Council for finalisation.
3. That the subdivision release fee, Registered Surveyors Plans (original & 11 copies) along with associated 88B instrument, be submitted to Council for finalisation following the compliance with all conditions of this consent.

### ***Rural Fire Service***

4. This approval is for the subdivision of the land only. Any further development application for class 1, 2 & 3 buildings as identified by the 'Building Code of Australia' may be subject to separate application under section 79BA of the EP & A Act and address the requirements of 'Planning for Bush Fire Protection 2006'.

### **PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE**

#### ***Amenity***

5. The Council's Environment & Development Department should be contacted to arrange the appropriate rural address numbers to be allocated to the subdivision.
6. The applicant shall ensure that during the construction works all measures are taken to eliminate/suppress any dust nuisance emanating from the site.

#### ***Utilities***

7. The applicant shall consult with an Authorised Telecommunications and Electricity for the provision of telephone and electricity services to each allotment. Confirmation of connection to each allotment and a plan is to be lodged with Lithgow City Council prior to the release of a final Subdivision Certificate.
8. The developer must obtain written Section 68 approval from Council for the connection and installation of water services and meters. The Section 68 application requires the submission of all detailed engineering drawings/design, specifications and any applicable supporting information for the proposed works.
9. Separate water services are to be provided to each allotment. A Work as Executed plan (WAE) will be required to be submitted to council prior to the release of the linen plan, outlining the following:
  - Service meter location
  - Allotment number that meter is assigned
  - Serial number of water meter

10. The applicant is to arrange for the purchase and installation of water meters to the subdivision by Council through a Work at Owners Cost arrangement prior to the release of a Subdivision Certificate. These meters are to be held by Council until a water connection fee is paid as part of Development Application for a new dwelling, when Council will install the meter. Such arrangement is to be made clear to any purchasers of the proposed allotments.

### **Environmental Protection**

11. All soil erosion and sediment controls shall be in place prior to the commencement of construction works. All erosion controls must remain in place until all construction work is finalised and suitable vegetation has been established. The developer will be required to remove and dispose of the sedimentation and erosion devices at the conclusion of suitable vegetation establishment at his/her full cost.
12. There shall be a public positive covenant under Section 88E of the *Conveyancing Act 1919*, with the prescribed authority being Lithgow City Council, placed over all proposed lots requiring:
  - That only one single dwelling will be permitted on each allotment;
  - That reticulated sewer service connections will be required for any future subdivisions and is at the cost of that developer.
  - That if reticulated sewer services become available within close proximity of the allotments, each allotment will require connection to these services only if indicated by Lithgow City Council and at full cost of the current owner.
13. There shall be a public positive covenant under Section 88E of the *Conveyancing Act 1919*, with the prescribed authority being Lithgow City Council, placed over all proposed lots indicating the proposed noise mitigation measures during construction including double glazed windows, noise restricting fencing and building materials. The exact wording of this covenant will be proposed by the applicant (specific details) and agreed to by Council prior to subdivision release.
14. There shall be a public positive covenant under Section 88E of the *Conveyancing Act 1919*, with the prescribed authority being Lithgow City Council, placed over proposed Lots 201 & 202 indicating building envelopes outside a buffer area of 400m from the quartzite resource boundary as indicated on revised Subdivision Plan by Steve Anderson (dated 21.01.2013).

### **Engineering Requirements**

15. Vehicular access is to be provided to each block off Oakey Forest Road, with a minimum entry splay of 6.0 metres in width, tapering back into a minimum 4.0 metre wide internal access road. The access driveways shall have a minimum of 150mm of DGB-20 road base applied and compacted providing a smooth transitional surface, and are to be (2) two-coat bitumen sealed (14/7mm pre-coated aggregate) from the edge of Oakey Forest Road to the Property boundary or alternatively concreted.
16. A minimum 450mm diameter pipe is to be installed at all access driveways, with headwalls attached on each side of the piped culvert in order to drain stormwater. The pipes are to be of a reinforced concrete standard with precast headwalls, with a minimum cover of 300mm (class 4). The pipes and headwalls are to be formed in such a way as to not obstruct the flow of water through the existing table drain.
17. A minimum 160m sight distance for entering and exiting access driveways shall be required. If the removal of trees and vegetation is required to increase site distance, the applicant shall seek approval from Council. The removal of such vegetation will be at the developers full cost.

### **SYDNEY CATCHMENT AUTHORITY REQUIREMENTS**

### **General**

18. The lot layout and staging of the subdivision shall be as shown on the Proposed Subdivision Plan prepared by Steve Anderson (dated 28/07/2012). Any revised lot layout or staging of the subdivision shall be agreed to by the Sydney Catchment Authority.

### **Wastewater Management**

19. There shall be a public positive covenant under Section 88E of the *Conveyancing Act 1919*, the prescribed authority being the Sydney Catchment Authority, placed over each lot requiring that absorption-only methods are not to be used for effluent disposal.

### **Stormwater Management**

20. There shall be a public positive covenant under Section 88E of the *Conveyancing Act 1919*, the prescribed authority being the Sydney Catchment Authority, placed over all proposed lots requiring that:
- a raingarden be located and installed on the lot so as to capture and treat all stormwater runoff from the lot, and which incorporates the following specific requirements and specifications:
    - a design consistent with Chapter 6 of *WSUD Engineering Procedures: Stormwater* (Melbourne Water 2005)
    - have a minimum filter area of five square metres
    - have a filter media consisting of a clean sandy loam with a median particle diameter of 0.5 mm and an orthophosphate content of less than 40 mg/kg
    - have a minimum filter depth above the underdrain of 400 mm
    - have an extended detention depth above the filter of 150 mm
    - be planted with appropriate deep-rooted moisture-tolerant vegetation (grass is not appropriate vegetation)
    - all overflow and underdrain discharge from the raingarden shall be directed to either to street stormwater drainage system or stabilised grassed surface with energy dissipater at the outlet, and
  - the raingarden be retained, protected and maintained and no development to take place within one metre of the structure once constructed.

### **Rainwater Tanks**

21. There shall be a public positive covenant under Section 88E of the *Conveyancing Act 1919*, the prescribed authority being the Sydney Catchment Authority, placed over all proposed lots requiring that all future dwellings incorporate a rainwater collection and reuse system with the following specific requirements or specifications:
- rainwater tanks with a minimum total capacity of 10,000 litres above any volume required for mains top-up
  - roofs and gutters designed so as to maximise the capture of rainwater in the rainwater tanks, and
  - rainwater tanks plumbed to toilets, laundry and other internal and external areas for non-potable use including use for gardens.

### **Construction Activities**

22. Effective erosion and sediment controls shall be installed prior to any construction activity including earthworks for the future dwelling site access. The controls shall prevent sediment or contaminated water leaving the construction site or entering roadside swale or stormwater system, and shall be regularly maintained and retained until works have been completed and groundcover established.

## **ADVISORY NOTES**

### ***Catchment Management Authority Clearing Approvals***

AN1. It is advised that any clearing of native vegetation outside of this Development Application may require the approval of the Hawkesbury Nepean Catchment Management Authority.

### ***Threatened Species***

AN2. No Threatened Species or Endangered Ecological Community listed under the Threatened Species Conversation Act 1995, the Environment Protection and Biodiversity Conservation Act 1999 or the associated Regulations are to be cleared as result of this Approval. This includes for fencing or accessways.

Attachment 2- DA128/12- Subdivision Plan

**SKETCH SHOWING PROPOSED SUBDIVISION  
OF LOT 1 D.P. 523434**

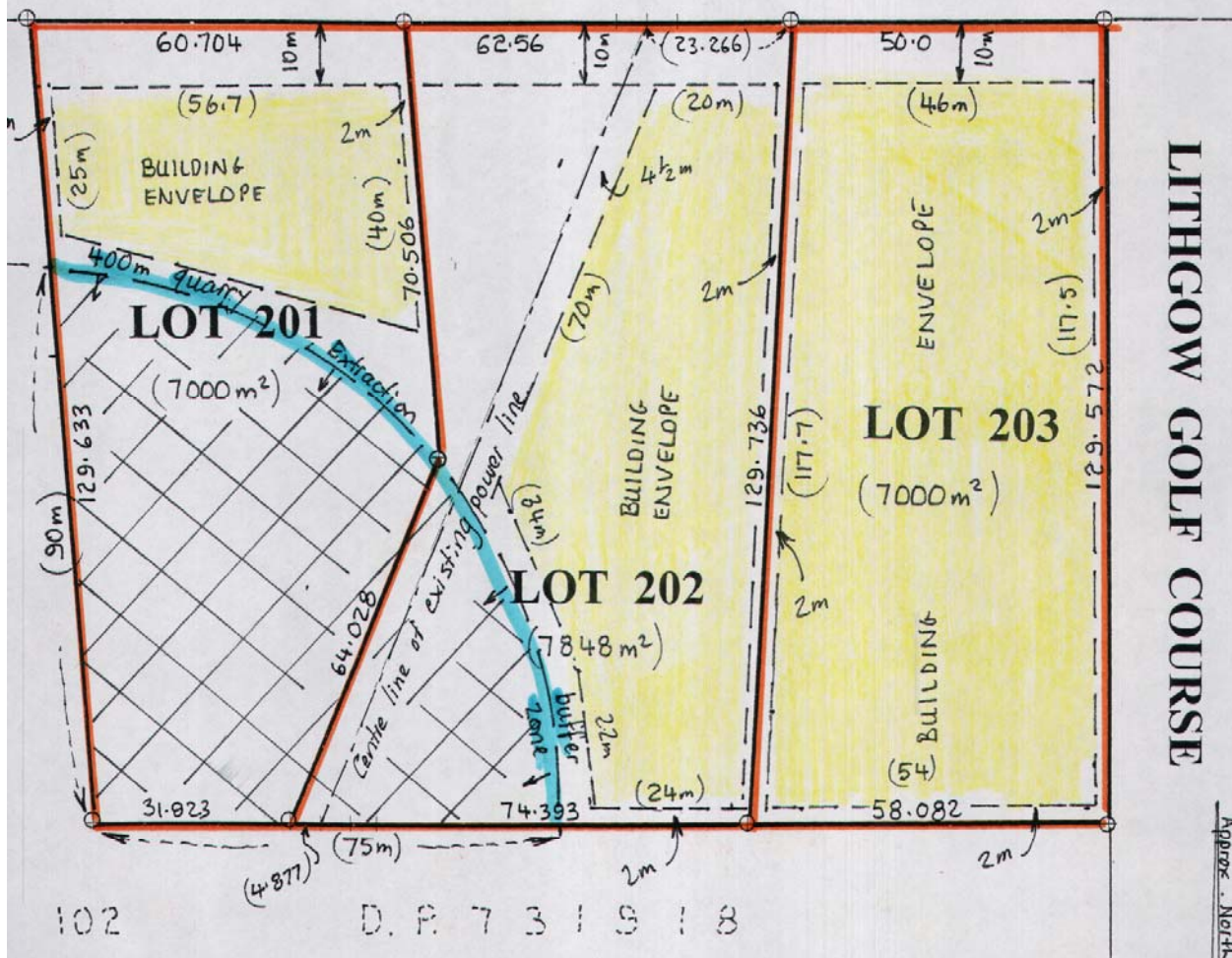
**Locality:** Oakey Forest Road Marrangaroo

**Scale:** 1:1000

\* PROPOSED BUILDING ENVELOPES  
ARE COLOURED YELLOW.

**OAKLEY FOREST ROAD**

**LITHGOW GOLF COURSE**



\*\*\* Refer to important notes over page \*\*\*

Prepared By: S. Anderson

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21/01/2013 A. J. Anderson.

Steven J. Anderson—Registered land Surveyor Dated: 28/07/2012



# Attachment 3- DA128/12- Metromix Quartzite Resource Boundary

