

DEVELOPMENT ASSESSMENT REPORT - DA143/13 - PROPOSED SUBDIVISION 1 LOT INTO 3, 90 OAKLEY FOREST ROAD MARRANGAROO NSW 2790

1. PROPOSAL

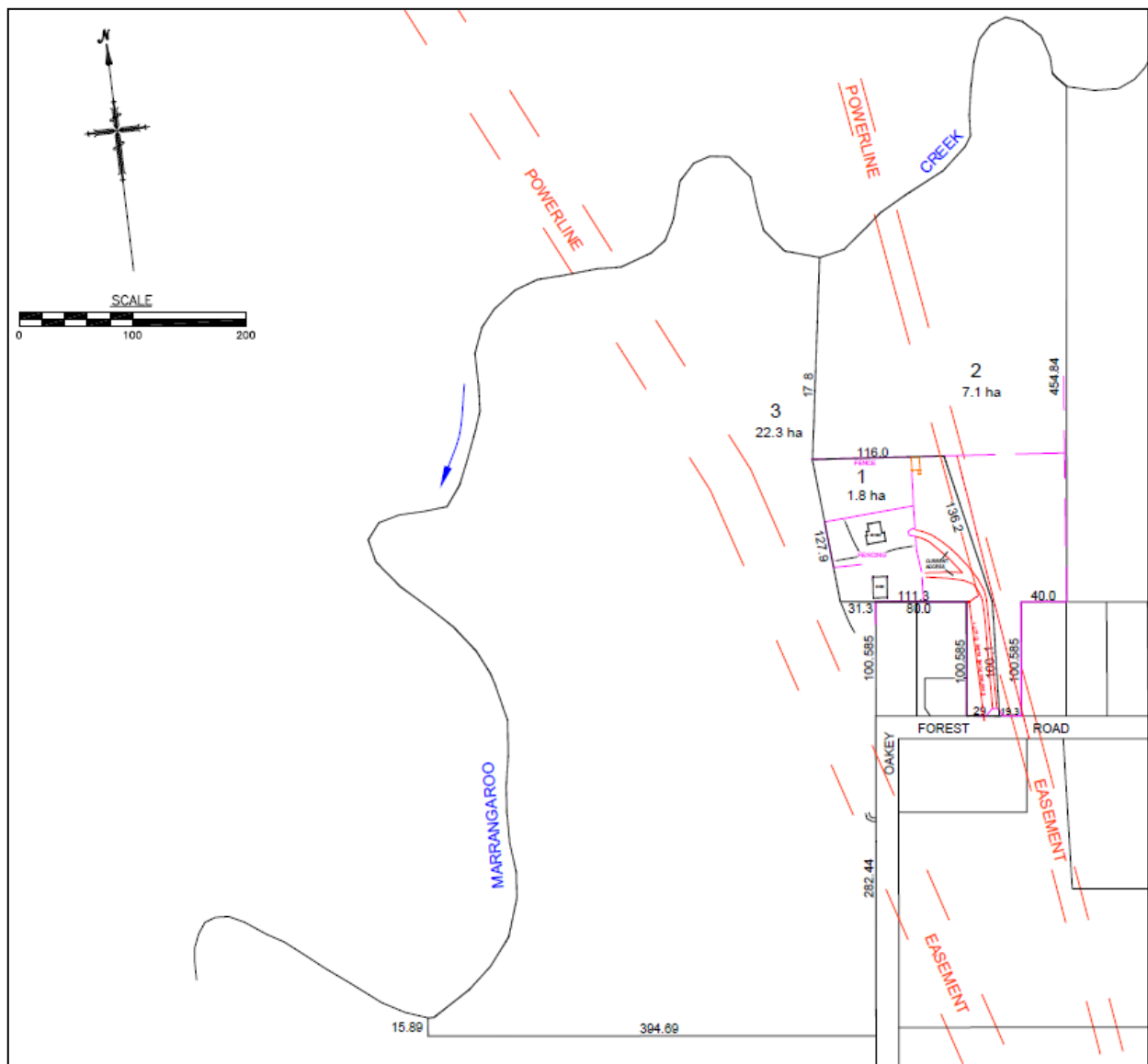
Council is in receipt of a Development Application DA143/13 Craven Elliston & Hayes for a subdivision 1 lot into 3 on land known as Lot 11 DP 737488, 90 Oakley Forest Road Marrangaroo NSW 2790.

Original Proposal:

The original development proposed a subdivision into three lots as follows: Lot 1 being 5270m² with the existing house, Lot 2 of 8.3ha and Lot 3 of 22.3ha each with building entitlements and access from Oakley Forest Road. However, over the assessment of the application the proposal required changing to allow the inclusion of the existing effluent disposal system on proposed Lot 1 to be entirely within the allotment boundaries.

Amended Proposal:

The development now proposes a subdivision into the following; Lot 1 of 1.8ha with the existing house, Lot 2 of 7.1ha and Lot 3 of 22.3ha each with building entitlements and access from Oakley Forest Road as shown below:



2. SUMMARY

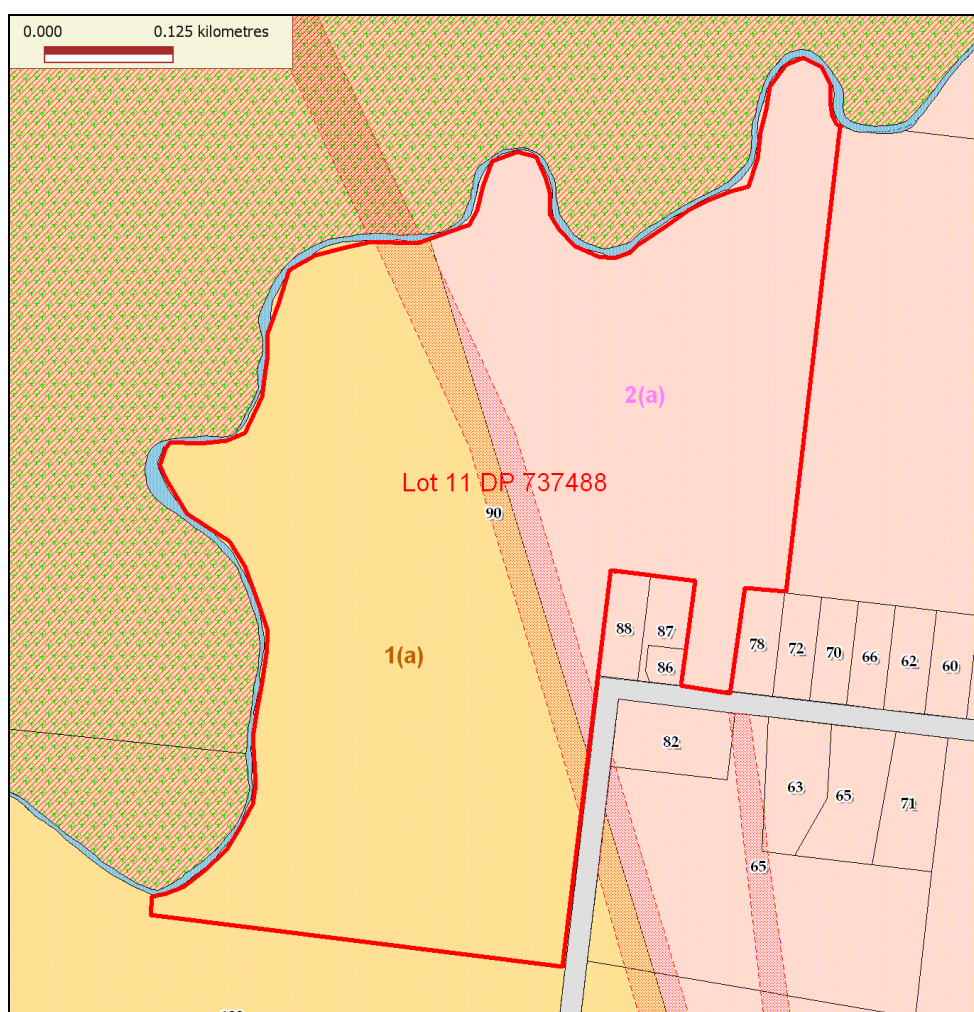
To assess and recommend determination of DA143/13. Recommendation will be for approval subject to conditions.

3. LOCATION OF THE PROPOSAL

Legal Description : Lot 11 DP 737488

Property Address : 90 OAKY FOREST ROAD MARRANGAROO NSW 2790

4. ZONING: The land is zoned 1(a) Rural (General) and 2(a) Residential in accordance with Council's current planning instrument, being Lithgow City Local Environmental Plan (LEP) 1994 as shown below:



5. PERMISSIBILITY: The subdivision is not considered permissible under Lithgow City Council's Local Environmental Plan 1994 Clause 12, as it does not meet the minimum lot sizes for proposed Lot 3 being 40ha. Lots 1 & 2 are considered permissible under Clause 9 and 12 of the LEP.

A SEPP 1 Objection is being sought as part of this application, however, the Planning and Infrastructure Varying Development Standards Guidelines August 2011, states:

Concurrence of the Director-General to vary development standards

Councils may assume the Director-General's concurrence under SEPP 1 in relation to these applications but only if:

- (i)*
- (ii) That allotment has an area equal to or greater than 90 percent of the minimum area specified in the development standard.*

Therefore, the development requires referral to the Department of Planning for concurrence given Lot 3 is undersized with a variation of 44.25%.

5.1 POLICY IMPLICATIONS (OTHER THAN DCP's)

Nil.

5.2 FINANCIAL IMPLICATIONS (eg Section 94)

Nil.

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 covenant be imposed under Section 88E of this act. These covenants relate to future dwellings. Further, conditions will be imposed from Council regarding covenant for restricting allotment to one dwelling and the requirement for noise reduction measures. 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.

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.

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. The Rural Fire Service has provided no objection to the proposal subject to conditions of consent which meets the requirements of this Act.

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.

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

Given the proposal was submitted prior to gazettal of LEP2014, this proposal is to be given determinative weight under the current LEP applicable at the day of lodgement being LEP1994. The assessment under this LEP is below:

LEP 1994 – Compliance Check		
Clause		Compliance
9	1(a) zoning table	Yes
9	2 (a) zoning table	Yes
11	General Considerations for development in rural zones	Yes
12	Subdivision in Zone 1(a)	No
30	Land subject to bushfire hazards	Yes

Comment: The proposal meets the objectives of zone 1(a) as the land is not proposed to change as a result in relation to its ongoing use. The development is adjoining an established residential area and given the size of the proposal is not expected to impact on the valuable deposits of resources and can be dealt with through conditions of consent. Proposed Lot 3 can still be used for agricultural pursuits and is not considered to be causing ongoing fragmentation given existing Lot 11 DP 737488 is undersized for the zoning at current.

The development will be adequately serviced and not impact on existing infrastructure as onsite provisions will be required for each allotment. The proposal meets the objectives of zone 2(a) as it is allowing for a variety of housing types and is compatible with surrounding residential use in the area. The present use of the land is for residential and some grazing, with these uses not expected to change as a result of the subdivision. The subdivision itself is minimal as it is an additional 2 allotments only in an established residential area.

However, the proposal does not meet the requirements under Clause 12 as proposed Lot 3 will be under the required size of 40ha as it is proposed to be 22.3ha. A SEPP 1 objection has been sought as discussed further below, seeking a variation to Clause 12(2) by 44.25%. It is considered that given Lot 11 DP 737488 is already undersized and contains existing residential zoning that this land will be unchanged in relation to the existing uses and effects on agricultural viability.

The land is subject to bushfire with the Rural Fire Service not objecting to the proposal subject to conditions of consent, it is considered Clause 30 is complied with.

State Environmental Planning Policy No 1—Development Standards

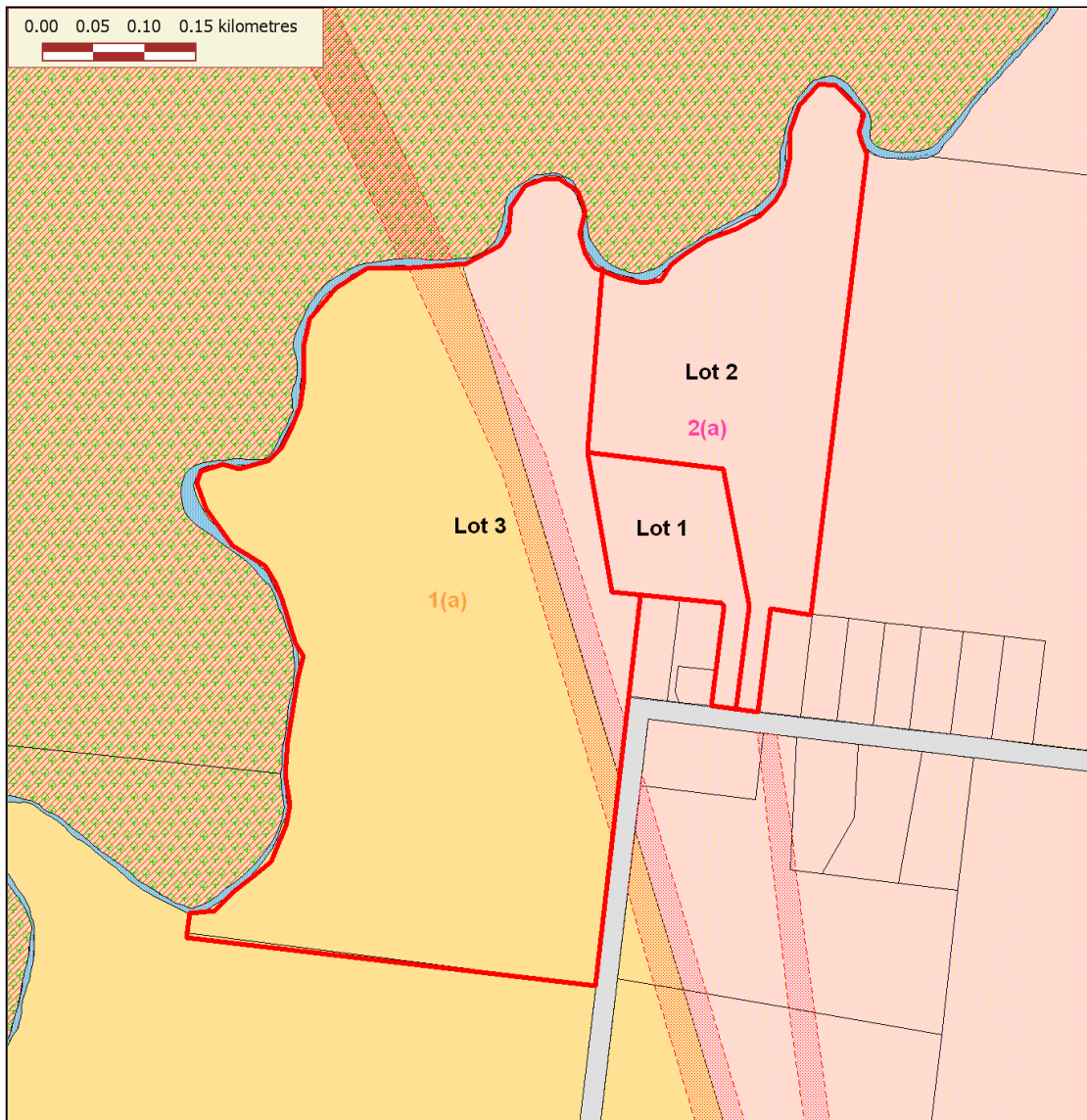
SEPP No 1—Development Standards – Compliance Check		
Clause		Compliance
3	Aims, objectives etc	Yes
6	Making of applications	Yes
8	Concurrence	Yes

The applicant has submitted a SEPP1 objection under this Planning Instrument in relation to proposed Lot 3, which will not comply with the provisions of Lithgow City Local Environmental Plan 1994 Clause 12(2) as below:

12 Subdivision in Zone No 1 (a) **(2) Creation of "40 hectare allotments"**

The Council may consent to a subdivision of land within Zone No 1 (a) if each allotment to be created by the subdivision will have an area of not less than 40 hectares.

The proposed Lot 3 will be 22.3ha, which is a variation to the 40ha minimum of 44.25%. However, the current Lot 11 DP 737488 is already undersized (31.16ha) and also contains a dual zoning with the 2(a) Residential zone. This is shown in the below map:



The proposed building envelope (which will be placed as a positive covenant prior to Subdivision Certificate release) is proposed within the residential zoning of the land for Lot 3. This dwelling could currently be proposed as a dual occupancy and would meet the requirements of the LEP. Additionally, to minimise over development of the site and potential impacts on the ongoing operations of the existing quartzite quarry, the lots will be further restricted by only allowing possibility of one dwelling per lot.

The area zoned 1(a) as part of Lot 3 is not changing in size as it is currently part of Lot 11 DP 737488. The land being divided off this existing lot are proposed Lots 1 and 2 which have a 2(a) Residential zoning with no restriction on minimum lot size for subdivision. Proposed Lot 3 will still contain some 2(a) Residential zoning and is therefore not a subdivision within the 1(a) Rural (General) zoning given this lot is the residual land.

It is considered that given Lot 11 DP 737488 is already undersized and contains existing residential zoning that this land will be unchanged in relation to the existing uses and effects on agricultural viability.

However, the SEPP 1 Objection being sought as part of this application requires concurrence of the Director- General as per the Planning and Infrastructure Varying Development Standards Guidelines August 2011, which states:

Concurrence of the Director-General to vary development standards

Councils may assume the Director-General's concurrence under SEPP 1 in relation to these applications but only if:

(iii)

(iv) That allotment has an area equal to or greater than 90 percent of the minimum area specified in the development standard.

Therefore, the development requires referral to the Department of Planning for concurrence given Lot 3 is undersized with a variation of more than 10%. 10%. This referral will be undertaken if the proposal is to be supported by Council.

State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011

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

Comment: The proposal required the concurrence of the Sydney Catchment Authority (Water NSW) as part of the assessment process in relation to this SEPP. Water NSW provided an assessment and supported the application subject to conditions of consent. It is considered that the development can have a neutral or beneficial on water quality as per the requirements of the SEPP.

State Environmental Planning Policy (Rural Lands) 2008

SEPP (Rural Lands) 2008 – Compliance Check	
Clause	Compliance
8 Rural Subdivision Principles	No
9 Rural Subdivision for Agricultural Purposes	NA
10 Matters to be considered in determining development applications for rural subdivisions or rural dwellings	No

Comment: The development is creating one allotment under the minimum allotment size to separate two residential allotments. It is considered that the subdivision is not causing further fragmentation, as the size of the rural zoning is not changing, given Lot 3 is the residual land. Lot 11 DP 737488 is already undersized and this proposed subdivision does not change that or increase fragmentation within rural areas, as the area is mixed between residential and rural land uses. It is considered that the development meets the requirements of the SEPP.

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.

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 2 kms 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:

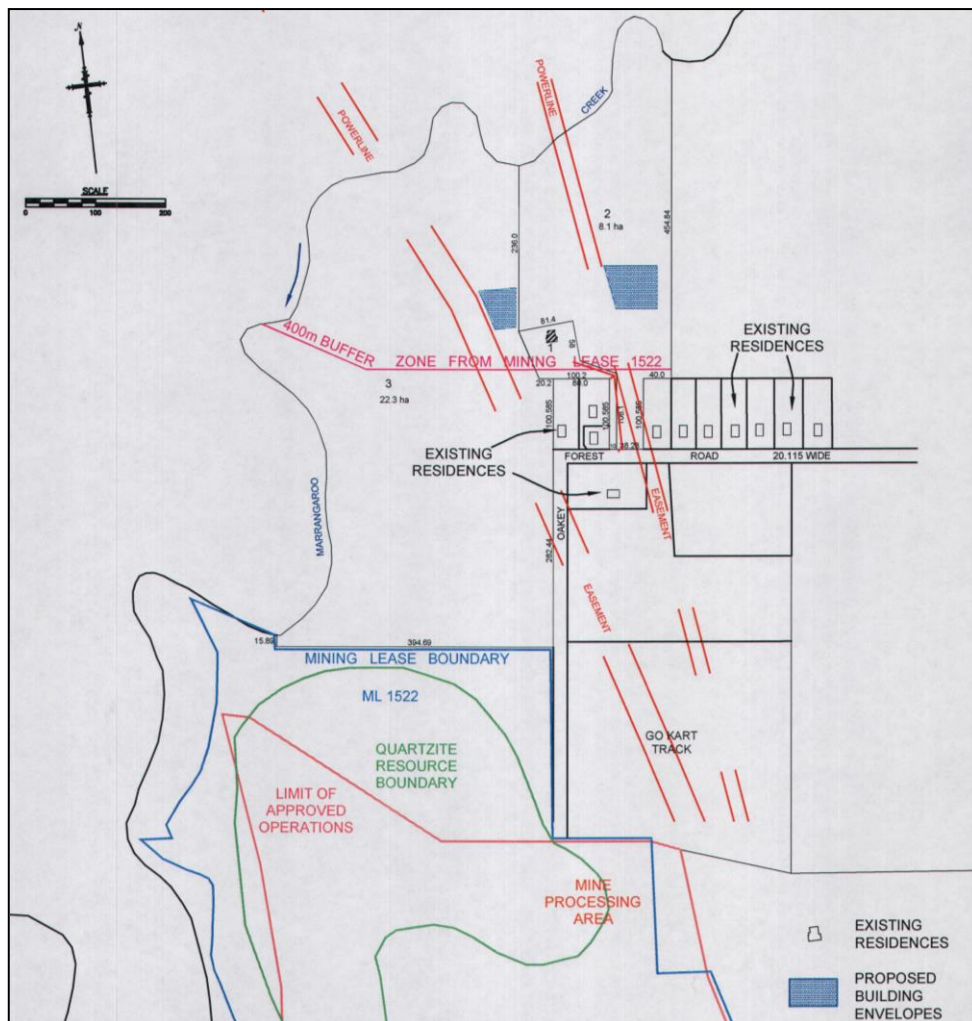
Given that no trees are to be removed as part of the development, and the section of the subject site relevant to the application is devoid of native vegetation it is considered unnecessary to proceed further with SEPP 44 assessment.

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

SEPP (Mining, Petroleum Production and Extractive Industries) 2007	
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 rural 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 building envelopes are provided, that the applicant has sufficiently dealt with Clause 13.

The area that the subdivision is taking place currently has a number of dwellings closer to the quarry and therefore, it would not significantly impact the operation of the quarry. 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.



There is a substantial rise in topography between the proposed building envelopes and the northern boundary of Mining Lease 1522. This provides a natural buffer between the land uses.

The following conditions are proposed to minimise impacts under this SEPP:

- 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 subdivision indicating building envelopes be located as per Cavern, Elliston & Hayes (Lithgow) Pty Ltd, Drawing No.4.4607-003 (dated 20/06/2013) for Lots 2 and 3.
- 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.
- 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 for a dwelling including double glazed windows, noise restricting fencing and building materials. The exact wording of this covenant will be proposed by the applicant and agreed to by Council prior to subdivision release.

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

The Lithgow Local Environmental Plan 2014 was the Draft Lithgow Environmental Plan 2013 at the time of lodgement of this application and therefore is not given determinative weight, however is assessed as follows:

LEP 2014 – Compliance Check		
	Clause	Compliance
Part 2	E4 Environmental Living zoning table	Yes
4.1	Minimum Subdivision lot size	No
7.4	Terrestrial biodiversity	Yes
7.5	Groundwater Vulnerability	Yes
7.6	Riparian land and watercourses	Yes
7.7	Sensitive lands	Yes
7.10	Essential Services	Yes

The proposed subdivision is within an E4 Environmental Living zone and is expected to have low impact on ecological, scientific or aesthetic features. The proposal will not create unreasonable or uneconomical demands for provisions of public infrastructure amenities or services and will have a neutral or beneficial effect on water quality.

The minimum allotment size as per the Lot Size Map is 40ha, in which this subdivision cannot meet the requirements for any of the proposed allotments. The proposal does not create cost to the community and is promoting development of appropriately sized lots in relation to the existing uses of the land. In relation to terrestrial biodiversity and sensitive lands, it is considered that there is minimal impact in relation to the creation of two allotments. The groundwater vulnerability has been assessed as per requirements of SEPP (Sydney Drinking Water catchment) 2011 and considered that the development would be of little impacts.

The development does not propose any works or development that would impact the riparian corridor given the building envelopes proposed. Lastly the development will comply with 7.10 as all essential services would be achievable on the lots with electricity, access and telecommunication required at subdivision stage.

It is considered that other than Clause 4.1 the development complies with LEP2014. However, the development will be assessed under LEP1994 and through a SEPP1 objection.

5.3.3 Any Development Control Plan

Nil.

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?

Nil.

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.

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 rural and residential developments, with some recreational development nearby. The scale of the proposal is very similar to surrounding development and is considered compatible.

Services:

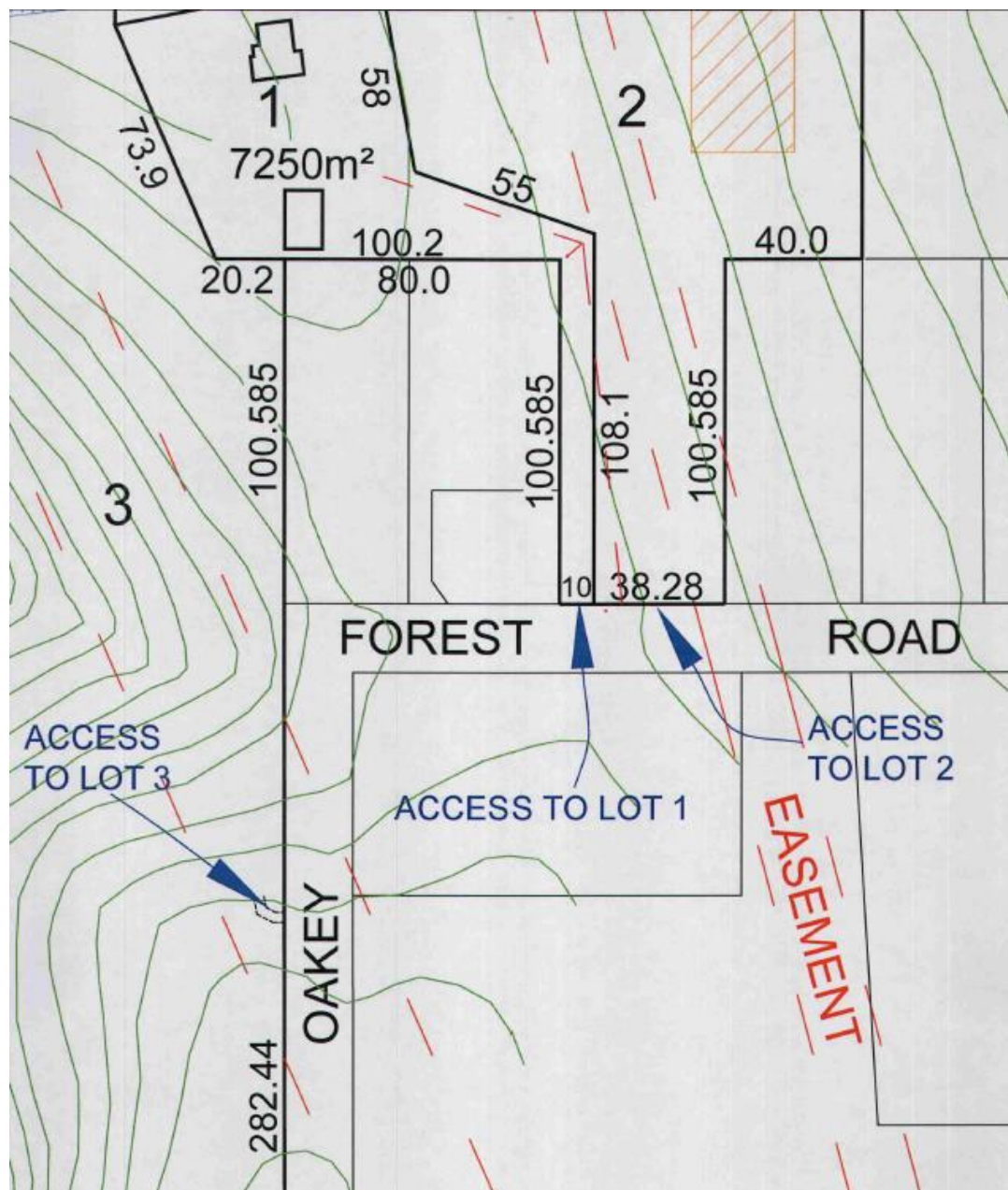
The development will have access to reticulated water which is required prior to the subdivision release. Additionally, provisions for electricity and telecommunications will be required prior to subdivision release. Therefore, with the justification that effluent disposal can be adequately supplied on each allotment, the development will be adequately serviced.

Context and Setting:

The proposed development will be located within an established rural and residential area and will have no major impact on the context and setting of the area. Impacts will be minimised through conditions of consent on the development in relation to proximity to the existing quarry. The development has been designed to complement existing features of similar development in the area.

Access, Transport and Traffic:

The creation of two allotments is minimal increase in traffic for the area along Oakey Forest Road. The addition of two accesses in accordance with Council guidelines again will have little impact to the surrounding developments or Oakey Forest Road. Each lot will have individual access from Oakey Forest Rod as shown below and with conditions of consent these driveways will provide adequate access.



Heritage:

There is no known heritage item located on or in the vicinity of the site.

Soils:

The proposed development will have no significant impact on soils. There is no reason to believe the site would be affected by acid sulphate soil or contamination problems.

Noise and Vibration:

There is nearby sources of noise or vibration from the Metromix Quarry who undertake blasting techniques for extraction. As a result Council has assessed the potential of impact and formulated the following conditions of consent minimise these issues:

- 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 subdivision indicating building envelopes be located as per Cavern, Elliston & Hayes (Lithgow) Pty Ltd, Drawing No.4.4607-003 (dated 20/06/2013) for Lots 2 and 3.
- 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;
- 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 for a dwelling including double glazed windows, noise restricting fencing and building materials. The exact wording of this covenant will be proposed by the applicant and agreed to by Council prior to subdivision release.

Effluent Disposal:

The original proposed subdivision did not consider the location of the existing effluent disposal for the existing dwelling on proposed Lot 1. As a result of further studies it was found that proposed Lot 1 need to be increased to ensure the entire effluent disposal system could be adequately retained within Lot 1. With the additional report that covered proposed Lots 2 & 3 the development has proved that onsite effluent disposal can be adequately maintained on each allotment.

Natural Hazards:

The site is within the bushfire prone, therefore the application was referred to the Rural Fire Service to assess with no objections subject to conditions of consent.

Social and Economic Impact:

As the proposed development will be generally in keeping with the provisions of the planning instruments and is reasonably compatible with other similar development in the locality, it is considered not to have a social or economic impact. This will be further minimised through conditions of consent to ensure impacts to the quarry and from the quarry are minimised for this proposal.

5.3.7 The Suitability of the site for the development

Although the proposal does not meet the requirements for minimum lot size for subdivision, it is considered that given the above assessment that the site is suitable for the development. The proposal is for the creation of two additional allotments within an established residential area and with restrictive conditions will have minimal impact to the surrounding landuses.

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

The proposal was sent to the Rural Fire Service (RFS), Trade & Investment-Resource and Energy, Water NSW and Councils Engineers for commenting with recommendations detailed below. The proposal was also sent to adjoining neighbours and placed on public display in Councils Administration Building for a period of 14 days with two submissions received.

RURAL FIRE SERVICE

I refer to your letter dated 13 January 2015 seeking general terms of approval for the above Integrated Development in accordance with Clause 55(1) of the Environmental Planning and Assessment Regulation 2000.

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:

Asset Protection Zones

The intent of measures is to provide sufficient space and maintain reduced fuel loads so as to ensure radiant heat levels of buildings are below critical limits and to prevent direct flame contact with a building. To achieve this, the following conditions shall apply:

1. At the issue of subdivision certificate and in perpetuity the distance between the dwelling and property boundary on the western, southern and eastern elevations and 50 metres on the northern elevation shall be managed as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.
2. At the issue of subdivision certificate the entire area proposed as a building envelope on Lot 2 and 3 as depicted on Craven, Elliston & Hayes (Lithgow) Pty Ltd drawing referenced, DWG No. 4.4607-003 dated, 20/6/13 shall be managed as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones' until such time further development is undertaken.

Water and Utilities

The intent of measures is to provide adequate services of water for the protection of buildings during and after the passage of a bush fire, and to locate gas and electricity so as not to contribute to the risk of fire to a building. To achieve this, the following conditions shall apply:

3. In recognition that no reticulated water supply exists for Lot 1, a 20000 litre water supply shall be provided for fire fighting purposes.
4. A hardened ground surface for truck access is to be supplied up to and within 4 metres of the water source.
5. A 65mm metal Storz outlet with a gate or ball valve shall be provided.
6. The gate or ball valve, pipes and tank penetration are adequate for full 50mm inner diameter water flow through the Storz fitting and are metal.
7. All associated fittings to the tank shall be noncombustible.
8. An 'SWS' marker shall be obtained from the local NSW Rural Fire Service and positioned for ease of identification by brigade personnel and other users of the SWS. In this regard:
 - a) Markers must be fixed in a suitable location so as to be highly visible; and
 - b) Markers should be positioned adjacent to the most appropriate access for the static water supply.

Access

The intent of measures for property access is to provide safe access to/from the public road system for fire fighters providing property protection during a bush fire and for occupants faced with evacuation. To achieve this, the following conditions shall apply:

9. The property access road for Lot 1 shall be upgraded to comply with section 4.1.3 (2) of 'Planning for Bush Fire Protection 2006'.

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'.

This letter is in response to a further assessment of the application submitted and supersedes our previous general terms of approval dated 13 August 2013.

TRADE & INVESTMENT- RESOURCE AND ENERGY

Although a referral to DTIRIS was not required, Council understands the importance of the existing quartzite quarry which is within the area of this proposal. The response in relation to the subdivision is as below:

Thank you for the opportunity to provide advice on the above proposal. This is a response from the NSW Department of Trade & Investment (DTIRIS) – Mineral Resources Branch (MRB). The Department of Primary Industries, incorporating advice from Agriculture, Fisheries and Forests NSW may respond separately.

MRB has serious concerns regarding the location of the proposed subdivision and any intensification of residential development adjacent to the Marrangaroo Quartzite Quarry. The Marrangaroo Quartzite Quarry, operated by Metromix Pty. Ltd. was included in the recently completed state-wide Mineral Resource Audit. A copy of the data for the Lithgow LGA was forwarded to Council in May 2012. The audit 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 (formerly referred to as a 'buffer' zone) of the Marrangaroo Quartzite Quarry. The quarry uses blasting techniques to extract the rock which is primarily used as aggregate in the building and construction industries. The quarry site is held under titles PLLs584, 602, MLs1522, 4635, 4636, 6388 and MPL 221.

The Marrangaroo Quartzite Quarry has been in operation since 1912 and up until the 1970s, was considered an extremely important source of metallurgical grade silica for use in the iron and steel industry in New South Wales. The quarry is now an important regional source of hard rock aggregate used in concrete, road base and rail ballast. The quartzite, because of its colour, has also been used as decorative stone. The various quarry products are marketed throughout the Central West, Blue Mountains and western Sydney Suburbs.

The area surrounding the quarry has had a history of land use pressure from residential development dating back to the early 1980s when the Premiers Department requested advice from NSW Geological Survey concerning the significance of the quartzite quarries at Marrangaroo and the implications of a possible premature closure of the operations should residential development be allowed on adjacent land.

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: It is considered that the subdivision would not have any additional impact on the quarry given the existing residential uses closer to the quarry to date. Additionally, the land could currently have a dual occupancy proposed which would be an addition of one dwelling; however, the subdivision will allow the addition of two dwellings only, with restrictive conditions of consent. There is a relatively large buffer between the building envelopes and the existing quartzite resource boundary which will help minimise impact to the quarry and to the residential uses of the land. It is considered that with additional conditions of consent the impact of the quarry of the proposed new dwellings can be minimised further.

WATER NSW

I refer to your letter received 14 January 2015 requesting the concurrence of the Chief Executive under State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011 with a proposal for an amendment to an approved subdivision plan. The amendment is for a boundary adjustment for the proposed Lot 1 in order to wholly contain the existing effluent management system (septic tank and absorption trench) within the Lot.

The subject property, which has been re-inspected by Water NSW is located within the Warragamba catchment which forms part of Sydney's water supply.

The amended Wastewater Assessment Report prepared by Blue Mountains Geological and Environmental Services Pty Ltd (dated December 2014), and the Proposed Subdivision Diagram Showing Lot 1 Amendments (Drawing No. 4.4607-003e) prepared by Craven, Elliston & Hayes (Lithgow) Pty Ltd (dated 28 November 2014) have been considered in the assessment of the application.

It is noted that Blue Mountains Geological and Environmental Services Pty Ltd indicate in their report dated December 2014 (Ref No. 141202), that the existing septic tank and absorption trench received an Approval to Operate (ATO) from Council. However, a conversation with Jessica Heath from Council on 21 January 2015 indicated there has not been ATO issued for the system. Council therefore may require either an upgrade or complete replacement of the wastewater management system. Water NSW requests to be advised of the outcome and requests that the information provided in the former Sydney Catchment Authority's advice (dated 22 August 2013) in relation to any upgrade or replacement of the system be incorporated.

Based on Water NSW's site inspection and the information provided including that previously provided, the proposed amendment has been assessed by Water NSW 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 therefore does not object to the modification subject to the following conditions being imposed. This advice replaces the former Sydney Catchment Authority's previous concurrence advice to Council (dated 22 August 2013).

General

1. The layout of Lots 1 & 2 shall be as shown on the Proposed Subdivision Diagram Showing Lot 1 Amendments prepared by Craven, Elliston and Hayes (Lithgow) Pty Ltd (Drawing No 4.4607-003e; dated 28 November 2014) and the layout of Lot 3 shall be as shown on the Plan of Subdivision prepared by Craven, Elliston and Hayes Pty Ltd (Drawing No 4.4607-002; dated 20 June 2013). No revised lot layout or staging of the subdivision that will impact on water quality, shall be permitted without the agreement of Water NSW.

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

Wastewater

2. The existing wastewater management system (or any upgrade or replacement of the system) shall be operated and maintained in accordance with the recommendations in the wastewater report prepared by Blue Mountains Geological and Environmental Services Pty Ltd (dated December 2014), and Designing and Installing On-Site Wastewater Systems (Sydney Catchment Authority, 2012), but with the following specific requirements and modifications:
 - all wastewater generated from the existing dwelling shall be wholly contained within the proposed Lot 1 boundary
 - the trench shall be protected from animals and vehicles
 - all run-on, and stormwater collected from roofs, access roads and other hard surface areas shall be diverted away from the absorption trench area by means of a stabilised bund or drain with provision for energy dissipation at the outlet to prevent scouring or erosion.

3. Water NSW is to be advised of the outcome regarding Council's requirements for any upgrade or replacement of the existing wastewater management system located on proposed Lot 1, and when an Approval to Operate is issued.

Reason for Condition 2 & 3 - To ensure that the existing on-site wastewater management system located on proposed Lot 1 is properly operated and managed so as to have a sustainable neutral or beneficial effect on water quality over the longer term.

Existing Driveway

4. The existing driveway on proposed Lot 1 shall be stabilised consistent with the guidelines Environmental Practice Manual of Rural Sealed and Unsealed Roads (ARRB Transport Research Ltd., 2002) and Council's engineering standards, and shall also incorporate the requirements identified in the following conditions:
 - have vegetated swales, as appropriate, for their entire length with appropriately spaced cross drains, level spreaders, sills or mitre drains that divert water onto a stable surface capable of accepting concentrated water flow and providing for efficient sediment trapping and energy dissipation
 - all swales, batters and verges associated with the existing driveway shall be vegetated and stabilised with bitumen and jute matting or equivalent as soon as possible after construction, and
 - all drainage works associated with the existing driveway must be wholly included in the road reserve or have suitably defined easements.

Reason for Condition 4 - To ensure the existing driveway and associated drainage works and water quality control measures are appropriately designed and managed so as to ensure an overall and sustainable neutral or beneficial impact on water quality over the longer term.

Implementation of Subdivision Conditions

5. Condition 4 above shall be complied with prior to the issuance of a subdivision certificate for the development.

Reason for Condition 5 – To ensure there is an overall and sustainable neutral or beneficial impact on water quality during all phases of the proposed development.

Construction Activities

6. An Erosion and Sediment Control Plan is required for all works proposed or required as part of the subdivision, in particular the driveway. The Plan shall be prepared by a person with knowledge and experience in the preparation of such plans and shall meet the requirements outlined in Chapter 2 of NSW Landcom's Soils and Construction : Managing Urban Stormwater (2004) manual - the "Blue Book" and be to the satisfaction of Council.
7. Effective erosion and sediment controls shall be installed prior to any construction activity including earthworks for the driveway. The controls must prevent sediment leaving construction area and entering natural drainage lines or stormwater drains, and shall be regularly maintained and retained until works have been completed and groundcover established.

Reason for Conditions 6 & 7 – 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.

Future Dwellings

8. There shall be a public positive covenant under Section 88E of the *Conveyancing Act, 1919*, the prescribed authority being Water NSW, placed over proposed Lots 2 and 3 requiring that future dwellings have an effluent management system designed, installed and maintained as specified in the wastewater report prepared by Blue Mountains Geological and Environmental Services Pty Ltd (Ref No. 121204, dated December 2012), and Designing and Installing On-Site Wastewater Systems (Sydney Catchment Authority, 2012).

Reason for Condition 8 - To ensure that an appropriate on-site wastewater management system can be sited on each lot so as to have an overall and sustainable neutral or beneficial impact on water quality.

Subsequent Development Applications

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

COUNCILS ENGINEERS

1. The proposed access driveways off Oakey Forest Road are to provide a minimum entry splay of 6 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 porrecopated aggregate) from the edge of Oakey Forest Road to the Property boundary or alternatively concreted.
2. The access driveway to all proposed lots are to have a minimum 160m sight distance in both directions along intersection public road.
3. A fully certified traffic control plan and road works signage will be required where machinery may obstruct traffic on Oakey Forest Road whilst construction work is being undertaken on access driveways. A traffic control plan and certification of fully qualified contractors/persons will be required to be submitted to Council prior to any work commencing on the shoulder of Oakey Forest Road. Failure to comply may result in Work Cover Intervention and may also include Council to stop all work immediately until such time as the developer complies with the suitable traffic management procedures.

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 with two submissions received and are summarised below:

1. That the future owner of the land should not be allowed to dig up areas which would significantly affect neighbours in relation to dust.
2. That ongoing maintenance of around adjoining properties be continued in relation to vegetation control.

3. That restriction on further development should be put on so that there is no further impact to the operation of the quarry. And include the following:
 - That windows and living areas (including patios) don't face south due to impacts from the neighbouring quarry.
 - That areas close to the quarry be restricted from further development.
 - That a covenant be imposed restricting the location of the dwellings away from the quarry.
 - That a single access road from all allotments be required from Oakey Forest road.

Comment:

1. Any future development of the lots would be subject to further applications to Council and at this time would be assessed, including potential impacts to adjoining landowners. Given there is no proposal to do works other than access, this issue will be considered for future applications on the land.
2. Vegetation control should be ongoing regardless of this application. Any issues should be can be dealt with under Vegetation Orders and is not a subject to be assessed as part of this subdivision.
3. The development is proposed to be restricted through conditions of consent that only allows one dwelling per lot and the use of noise mitigating measures on the 88B instrument associated to the subdivision of the land. The building envelopes as proposed by the applicant will also be imposed as positive covenants on the land to allow dwellings on the site which are further away from the quarry compared to existing residential dwellings. The development access has been assessed by Council engineers in relation to potential traffic impacts. It is considered that the accesses being separate will be adequate if they meet Council requirements. A Construction Certificate will be required for these driveway access points prior to any works commencing. No restrictions will be imposed requiring one access combining all three allotments.

5.3.9 The public interest

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

6. DISCUSSION AND CONCLUSIONS

The proposal is considered to generally comply 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 DA143/13 is approved subject to conditions set out in Schedule A.

Report prepared by: Jessica Heath

Supervisor: Paul Cashel

Signed:.....

Signed:.....

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 access, parking and loading arrangements will be made to satisfy the demands created by 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 to Council for approval.
3. That the subdivision release fee, Registered Surveyors Plans (original & 11 copies) along with associated 88B instrument if applicable, be submitted to Council for finalisation following the compliance with all conditions of this consent.

Amenity

4. The Council's Environment and Development Department should be contacted to arrange the appropriate rural address numbers to be allocated to the subdivision.

Utilities

5. The applicant shall consult with authorised telecommunications and electricity authorities for the provision of telephone and electricity services to each allotment. Confirmation of connection or 'Notification of Arrangement' for the subdivision be lodged with Lithgow City Council prior to the release of the Subdivision Certificate.
6. 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.

Environmental Protection

7. Prior to the issue of the Subdivision Certificate, Council is to be provided with a report from the Upper Macquarie County Council indicating:
 - Noxious plants are under adequate management; or
 - Noxious plant management has been undertaken and adequate control measures are in place; or
 - Noxious plants are not a concern for the property.
8. 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.

9. 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 for a dwelling including double glazed windows, elevation design of verendah and living spaces (i.e. south), noise restricting fencing and building materials. The exact wording of this covenant will be proposed by the applicant and agreed to by Council prior to subdivision release.
10. 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 subdivision indicating building envelopes be located as per Cavern, Elliston & Hayes (Lithgow) Pty Ltd, Drawing No.4.4607-003 (dated 20/06/2013) for Lots 2 and 3.

Engineering Requirements

11. The proposed access driveways off Oakey Forest Road are to provide a minimum entry splay of 6 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.
12. The access driveway to all proposed lots are to have a minimum 160m sight distance in both directions along intersection public road.
13. A fully certified traffic control plan and road works signage will be required where machinery may obstruct traffic on Oakey Forest Road whilst construction work is being undertaken on access driveways. A traffic control plan and certification of fully qualified contractors/persons will be required to be submitted to Council prior to any work commencing on the shoulder of Oakey Forest Road. Failure to comply may result in Work Cover Intervention and may also include Council to stop all work immediately until such time as the developer complies with the suitable traffic management procedures.

RURAL FIRE SERVICE REQUIREMENTS

Asset Protection Zones

14. At the issue of subdivision certificate and in perpetuity the distance between the dwelling and property boundary on the western, southern and eastern elevations and 50 metres on the northern elevation shall be managed as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.
15. At the issue of subdivision certificate the entire area proposed as a building envelope on Lot 2 and 3 as depicted on Craven, Elliston & Hayes (Lithgow) Pty Ltd drawing referenced, DWG No. 4.4607-003 dated, 20/6/13 shall be managed as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones' until such time further development is undertaken.

Water and Utilities

16. In recognition that no reticulated water supply exists for Lot 1, a 20000 litre water supply shall be provided for fire fighting purposes.

17. A hardened ground surface for truck access is to be supplied up to and within 4 metres of the water source.
18. A 65mm metal Storz outlet with a gate or ball valve shall be provided.
19. The gate or ball valve, pipes and tank penetration are adequate for full 50mm inner diameter water flow through the Storz fitting and are metal.
20. All associated fittings to the tank shall be noncombustible.
21. An 'SWS' marker shall be obtained from the local NSW Rural Fire Service and positioned for ease of identification by brigade personnel and other users of the SWS. In this regard:
 - a) Markers must be fixed in a suitable location so as to be highly visible; and
 - b) Markers should be positioned adjacent to the most appropriate access for the static water supply.

Access

22. The property access road for Lot 1 shall be upgraded to comply with section 4.1.3 (2) of 'Planning for Bush Fire Protection 2006'.

WATER NSW REQUIREMENTS

General

23. The layout of Lots 1 & 2 shall be as shown on the Proposed Subdivision Diagram Showing Lot 1 Amendments prepared by Craven, Elliston and Hayes (Lithgow) Pty Ltd (Drawing No 4.4607-003e; dated 28 November 2014) and the layout of Lot 3 shall be as shown on the Plan of Subdivision prepared by Craven, Elliston and Hayes Pty Ltd (Drawing No 4.4607-002; dated 20 June 2013). No revised lot layout or staging of the subdivision that will impact on water quality, shall be permitted without the agreement of Water NSW.
24. The existing wastewater management system (or any upgrade or replacement of the system) shall be operated and maintained in accordance with the recommendations in the wastewater report prepared by Blue Mountains Geological and Environmental Services Pty Ltd (dated December 2014), and Designing and Installing On-Site Wastewater Systems (Sydney Catchment Authority, 2012), but with the following specific requirements and modifications:
 - all wastewater generated from the existing dwelling shall be wholly contained within the proposed Lot 1 boundary
 - the trench shall be protected from animals and vehicles
 - all run-on, and stormwater collected from roofs, access roads and other hard surface areas shall be diverted away from the absorption trench area by means of a stabilised bund or drain with provision for energy dissipation at the outlet to prevent scouring or erosion.
25. Water NSW is to be advised of the outcome regarding Council's requirements for any upgrade or replacement of the existing wastewater management system located on proposed Lot 1, and when an Approval to Operate is issued.

Existing Driveway

26. The existing driveway on proposed Lot 1 shall be stabilised consistent with the guidelines Environmental Practice Manual of Rural Sealed and Unsealed Roads (ARRB Transport Research Ltd., 2002) and Council's engineering standards, and shall also incorporate the requirements identified in the following conditions:

- have vegetated swales, as appropriate, for their entire length with appropriately spaced cross drains, level spreaders, sills or mitre drains that divert water onto a stable surface capable of accepting concentrated water flow and providing for efficient sediment trapping and energy dissipation
- all swales, batters and verges associated with the existing driveway shall be vegetated and stabilised with bitumen and jute matting or equivalent as soon as possible after construction, and
- all drainage works associated with the existing driveway must be wholly included in the road reserve or have suitably defined easements.

Implementation of Subdivision Conditions

27. Condition 26 above shall be complied with prior to the issuance of a subdivision certificate for the development.

Construction Activities

28. An Erosion and Sediment Control Plan is required for all works proposed or required as part of the subdivision, in particular the driveway. The Plan shall be prepared by a person with knowledge and experience in the preparation of such plans and shall meet the requirements outlined in Chapter 2 of NSW Landcom's Soils and Construction : Managing Urban Stormwater (2004) manual - the "Blue Book" and be to the satisfaction of Council.
29. Effective erosion and sediment controls shall be installed prior to any construction activity including earthworks for the driveway. The controls must prevent sediment leaving construction area and entering natural drainage lines or stormwater drains, and shall be regularly maintained and retained until works have been completed and groundcover established.

Future Dwellings

30. There shall be a public positive covenant under Section 88E of the *Conveyancing Act, 1919*, the prescribed authority being Water NSW, placed over proposed Lots 2 and 3 requiring that future dwellings have an effluent management system designed, installed and maintained as specified in the wastewater report prepared by Blue Mountains Geological and Environmental Services Pty Ltd (Ref No. 121204, dated December 2012), and Designing and Installing On-Site Wastewater Systems (Sydney Catchment Authority, 2012).

ADVISORY NOTES

Construction Certificate

AN1. Prior to any subdivision works, the developer is to obtain a Construction Certificate for all civil works.

Future Dwellings on Bushfire Prone Land

AN2. 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'.

Catchment Management Authority Clearing Approvals

AN3. Any native vegetation clearing may require approval from the Catchment Management Authority. Please contact the Catchment Management Authority prior to undertaking any native vegetation clearing.

Threatened Species

AN4. No Threatened Species or Endangered Ecological Community listed under the Threatened Species Conservation 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