

File Ref: 19/047

29 March 2022

The General Manager
Muswellbrook Shire Council
PO Box 122
Muswellbrook NSW 2333**Attention: Alisa Evans****S4.55 Modification to Consent DA 410/1994**

This application has been prepared by HDB Town Planning and Design on behalf of *Rosebrook Sand and Gravel Pty Ltd* to lodge an s4.55 application for *DA 410/1994* for the property at Lot 72 DP 1199484.

This application seeks to extend the operation of Dalswinton Quarry by one (1) year i.e., to 13 November 2023. The proposed amendments do not change the nature of the approved development and as such the application is submitted as a modification involving minimal environmental impact to the consent pursuant to s4.55 (1A) of the *Environmental Planning & Assessment Act 1979* (the Act).

The application has been prepared in accordance with s4.55 of the *Environmental Planning and Assessment Act* and Clause 115 of Environmental Planning & Assessment Regulation 2000 for an application to modify development consents.

Rosebrook owns and operates Dalswinton Quarry under DA410/1994, which allows sand and gravel extraction on the site until 13 November 2022.

The site is identified as Lot 72 DP1199484, 511 Dalswinton Road, Dalswinton.

Rosebrook have submitted a State Significant Development (SSD) Application to allow the quarry to expand and continue operating for a further 25 years. The EIS for the application was on Public Exhibition from 15 December 2021 to 2 February 2022. During the exhibition, the general public, organisations, and various local and state agencies were invited to make submissions. The proponent is currently in the process of addressing the submissions which will be submitted to the Department before 9 May 2022. The processing of the application may take some time as it involves various Government Agencies.

The existing approval (DA 410/1995) will expire at the end of this year (13 November 2022), the proponent is seeking an interim extension to allow the continued use of the land until the SSD application is assessed and determined.

It is understood that our client Mr Colin Jackson has discussed this with the council already.

S4.55 Modification

This application is made under s4.55 (1A). It is considered that the application meets the requirements of s4.55 (1A) as follows:

This application is made under s4.55 (1A) of the Act.

(1A) Modifications involving minimal environmental impact A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if—

- (a) it is satisfied that the proposed modification is of minimal environmental impact, and*
- (b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (c) it has notified the application in accordance with—*
 - (i) the regulations, if the regulations so require, or*
 - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

Subsections (1), (2) and (5) do not apply to such a modification.

The proposed extension to the life of the quarry is not intended to change any aspect other than the timeframe by which the proponents have the right to operate. The operational conditions and environmental management requirements will remain the same.

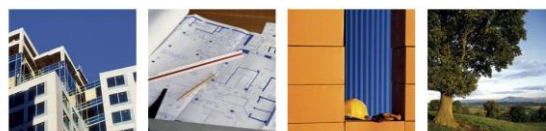
As such it is considered that an application to modify the consent in respect to the operational life will not adversely impact the environment, and is substantially the same development for which the consent was originally granted and before that consent was originally granted was modified.

Application Information

The following is provided in accordance with Clause 115 of Environmental Planning & Assessment Regulation 2000.

Name and address of the applicant

Rosebrook Sand and Gravel Pty Ltd
 C/o HDB Town Planning & Design
 P O Box 40
 Maitland NSW 2320



Description of the development to be carried out under the consent (as previously modified)

DA 410/1994 provides for Extractive Industry to operate until 13 November 2022, approved by Council on 28 August 2019.

Address and formal particulars of title of the land on which the development is to be carried out

Address: Lot 72 DP 1199484, 511 Dalswinton Road, Dalswinton
 Local Government: Muswellbrook Shire Council
 Locality: Dalswinton
 Zone: RU1 Primary Production

Description of the proposed modification to the development consent

The proposal seeks to modify the existing consent to extend the operation of the existing quarry until 13 November 2023.

To affect the proposed amendment, it is requested that the following changes be made to **Condition 1** of the consent:

Existing Condition 1:

1. This approval is limited to a period of twenty-seven (27) years from the date of consent. The applicant shall on or before 13 November 2022:

- a) remove all extraction-related machinery, storage facilities and amenities, and*
- b) reshape, stabilise and rehabilitate the site to the satisfaction of the Council, the Department of Primary Industry (Water) and the Department of Planning, Industry and Environment (DPIE), or their successor, at its own expense.*

If the applicant defaults in respect of this condition, Council may, in addition to or alternative to any other rights and remedies available to it, but without any obligation to do so:

- enter on the subject land with its own workmen and/or contractors and carry out such works, and*
- recover the costs and expenses of so doing from the applicant either directly or pursuant to the term of the said guarantee and surety.*

Proposed Condition 1:

1. This approval is limited to a period of twenty-eight (28) years from the date of consent. The applicant shall on or before 13 November 2023:

- a) remove all extraction-related machinery, storage facilities and amenities, and
- b) reshape, stabilise and rehabilitate the site to the satisfaction of the Council, the Department of Primary Industry (Water) and the Department of Planning, Industry and Environment (DPIE), or their successor, at its own expense.

If the applicant defaults in respect of this condition, Council may, in addition to or alternative to any other rights and remedies available to it, but without any obligation to do so:

- enter on the subject land with its own workmen and/or contractors and carry out such works, and
- recover the costs and expenses of so doing from the applicant either directly or pursuant to the term of the said guarantee and surety.

Description of expected impacts of the proposed modification

The proposed modification of the consent is only to increase the operational time of the existing development by one (1) year to allow sufficient time to have the SSD determined for the upgrade to the site. No variation is sought regarding the area of excavation or the total volume of material to be removed. Therefore the proposed amendment will not impact traffic movements or any other aspects of the development. No additional impacts are expected due to the proposed modification.

Therefore the development (as to be modified) will remain substantially the same as the development that was previously approved.

Assessment of proposed modification

Section 4.55 of the Act requires that an assessment under Section 4.15(1) must be undertaken. The following provides an assessment of the proposed modification against the provisions as outlined in Section 4.15(1).

Muswellbrook Local Environmental Plan 2009

The proposed amendment is consistent with the provisions of this instrument.

Draft Environmental Planning Instruments

There are no proposed, or draft, planning instruments that are known to affect the site or the application.

Muswellbrook Development Control Plan 2009

As the modification relates to an extension of the operational life of the existing quarry/mining operation, there are no relevant requirements within the DCP applicable to it.

Any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4

There are no planning agreements and/or draft planning agreements that are known to affect the site or the application.

The regulations (to the extent that they prescribe matters for the purposes of this paragraph)

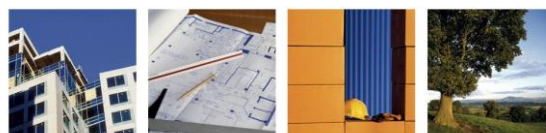
There are no specific regulations that affect the site or the application.

The suitability of the site for the development

The proposed changes do not affect the permissibility of the existing use.

Any submissions made in accordance with this Act or the regulations

Any submission received as a result of the proposal will be considered.



The public interest

The public interest is served by retaining a permissible development that has operated without incident for over two decades. The employed staff and the extracted materials provide key economic benefits to the local community.

As such the continued use of the site is considered to serve the public interest.

Owner's Consent

The owner has consented to the lodgment of the Modification.

Consent Authority

This application is being submitted to Muswellbrook Shire Council for approval under s4.55(1A) of the Act.

Conclusions

The modification to the consent as outlined above clearly indicates the development is essentially the same as previously proposed and no additional impacts are anticipated from the proposed amendment.

Any assessment of the proposal has been undertaken in accordance with s4.15(1) which demonstrates that the modification meets the relevant planning requirements.

Muswellbrook Shire Council is therefore requested to grant consent to this s4.55 amendment to DA 410/1994, as requested.

Yours sincerely

HDB Town Planning & Design



APRAJITA GUPTA

Town Planner