15 February 2018

Mr Howard Reed
Director
Resource Assessments
NSW Department of Planning & Environment
Level 22, 320 Pitt Street
SYDNEY NSW 2000

Sent by email to:
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melissa.anderson@planning.nsw.gov.au

Attention: Ms Melissa Anderson

Dear Howard

Re: Teralba Quarry – Response to Submission for the Proposed Modification to Project Approval 10_0183

Thank you for providing the submissions prepared by the Office of Environment and Heritage (OEH) and Lake Macquarie City Council (Council) following their review of the *Environmental Assessment* for the proposed modification to the wording of conditions relating to biodiversity offsetting in Project Approval (PA) 01_0183 for the Teralba Quarry. The following provides a brief response prepared on behalf of Metromix Pry Ltd (Metromix) to the comments provided by both agencies.

Office of Environment and Heritage

Metromix is generally supportive of the comments provided by OEH and notes that OEH has agreed with the assessed credit obligations. To that end, Metromix agrees with the proposed wording to Condition 52 of Schedule 3 of PA 01_0183 recommended by OEH. It is noted that the OEH is yet to confirm details of the transitional arrangements for credits calculated for biobanking to the new biodiversity stewardship agreements. As the credit calculation refers to the number of credits as calculated by the BioBanking Assessment Methodology, if the credits are retired from a registered biobank site, the credit numbers will be equivalent. However, if the credits are retired from a Biodiversity Stewardship Site, it is assumed that a conversion factor will need to be applied to the number of credits to be retired. In addition, the existing approved offset area has been assessed under the BBAM confirming that this land is suitable for a BioBanking Site to offset the residual impacts to biodiversity resulting from the Teralba Quarry Extension Project. These matters would be confirmed, and a strategy developed in consultation with OEH during preparation of the Biodiversity Offset Strategy.

It is noted that the wording recommended by OEH for Condition 53 of Schedule 3 of PA 01_0183 requires that Metromix must have retired all ecosystem and species credits by 31 December 2018. It is Metromix's intention to include a staged approach to offsetting in the Biodiversity Offset Strategy, whereby planned extraction would be divided into stages and the offsetting obligations

relating to each stage would be satisfied before Metromix could proceed to the next stage of extraction. No vegetation in the subsequent stage would be removed until the offsetting obligations for that stage have been satisfied. **Figure A** displays indicative staging for offsetting. Final stage boundaries and calculations of the credits required for each stage would be included in the Biodiversity Offset Strategy.

It is therefore proposed that the wording for Condition 53 of Schedule 3 of PA 01_0183 be modified as follows.
By 31 December 2018, or as agreed to by the Secretary, the applicant must implement the Biodiversity Offset Strategy in accordance with the Biodiversity Offset Scheme of the Biodiversity Conservation Act 2016, to the satisfaction of the Secretary.

The proposed wording for Condition 53 provided above is considered appropriate as compliance with this condition requires Metromix to implement the Biodiversity Offset Strategy prepared to the satisfaction of DPE and OEH (as per the wording of Condition 52 of Schedule 3 of PA 01_0183) rather than setting a 'hard' deadline for retirement of biodiversity credits. The phrase 'to the satisfaction of the Secretary' has also been added to this condition, indicating that the Secretary of DPE would ultimately approve the actions to be implemented.

A staged approach to satisfying biodiversity offsetting obligations has previously been accepted for other State significant extractive industry operations such as the Lynwood Quarry (see Condition 48A of Schedule 3 of DA 128-5-2005). This approach is considered acceptable for the following reasons.

1. Extraction activities in each stage could not commence until the offsetting obligations had been satisfied. This will incentivise Metromix to retire biodiversity credits in a timely manner.
2. Metromix would be required to leave the vegetation in situ until offsetting obligations have been satisfied for that area. This has benefits for use of this vegetation by native fauna for roosting and foraging activities in the short term.
3. This approach would not change the offsetting obligations or the ultimate achievement of in perpetuity conservation of the areas over which the credits apply.

As the Department is aware, extraction operations have commenced in Stage 1 of the Southern Extension Area (see **Figure A**) and satisfying offsetting obligations in this area would be a priority for Metromix following approval of the Biodiversity Offsetting Strategy.

Uncertainty around the wording of conditions, including 'hard' deadlines, and the changes to legislation concerning biodiversity offsetting have led to the delays experienced to date for Metromix to satisfy the offsetting obligations of the Teralba Quarry Extension Project. It is considered that the wording recommended above for Condition 53 of Schedule 3 of PA 01_0183 permits Metromix the flexibility to progressively satisfy offsetting obligations using the most suitable mechanism available at the time that these credits need to be retired. Should any future amendments to the biodiversity offsetting legislation occur that would impact the Quarry, it is also considered preferable that updates to offsetting for the Quarry be managed through approval of an updated Biodiversity Offset Strategy rather than requiring PA 01_0183 to be further modified.

Lake Macquarie City Council

Metromix has reviewed the submission prepared by Council and acknowledge its concerns regarding preservation of a native vegetation corridor in the vicinity of the Quarry. In considering the Council submission it should be noted that the approach proposed to satisfy the biodiversity offsetting obligations of the Teralba Quarry Extension Project is consistent with the New South Wales legislation and guidelines regarding biodiversity offsetting and has the support of OEH.

If a land-based offset is not the preferred option to satisfy Metromix's offsetting requirements, it does not follow that the land originally proposed for the offset area would be disturbed and the native flora and habitat values of the vegetation corridor would be lost. Any application to remove this vegetation would be subject to a development application or would be managed under *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017* and/or Council's Development Control Plan. It is also noted that this land is zoned E2 – Environmental Conservation and any application to change the zoning would be required to satisfy Council's strategic approach to biodiversity planning outlined in the *Biodiversity Planning Policy and Guidelines for (LEP) Rezoning Proposals (2015)*.

Should the land no longer be required for offsetting purposes, any lease agreement with the land owner would be cancelled at the conclusion of the lease term and obligations for ongoing management of the land would be passed to the landowner. In this scenario, the landowner may decide to establish a Biodiversity Stewardship Site over the land. Metromix acknowledges that should credits be purchased on the market to satisfy offsetting obligations; these credits may not be for land within the Lake Macquarie local government area. However, in consideration of this request from Council, Metromix would give preference, where appropriate, to credits sourced from within the local government area where these credits are available.

Council's request that the biodiversity offset area be secured for conservation purposes in perpetuity would effectively require a doubling of offsetting obligations for the Teralba Quarry Extension Project. This request is considered unreasonable and not consistent with the *Biodiversity Conservation Act 2016*.

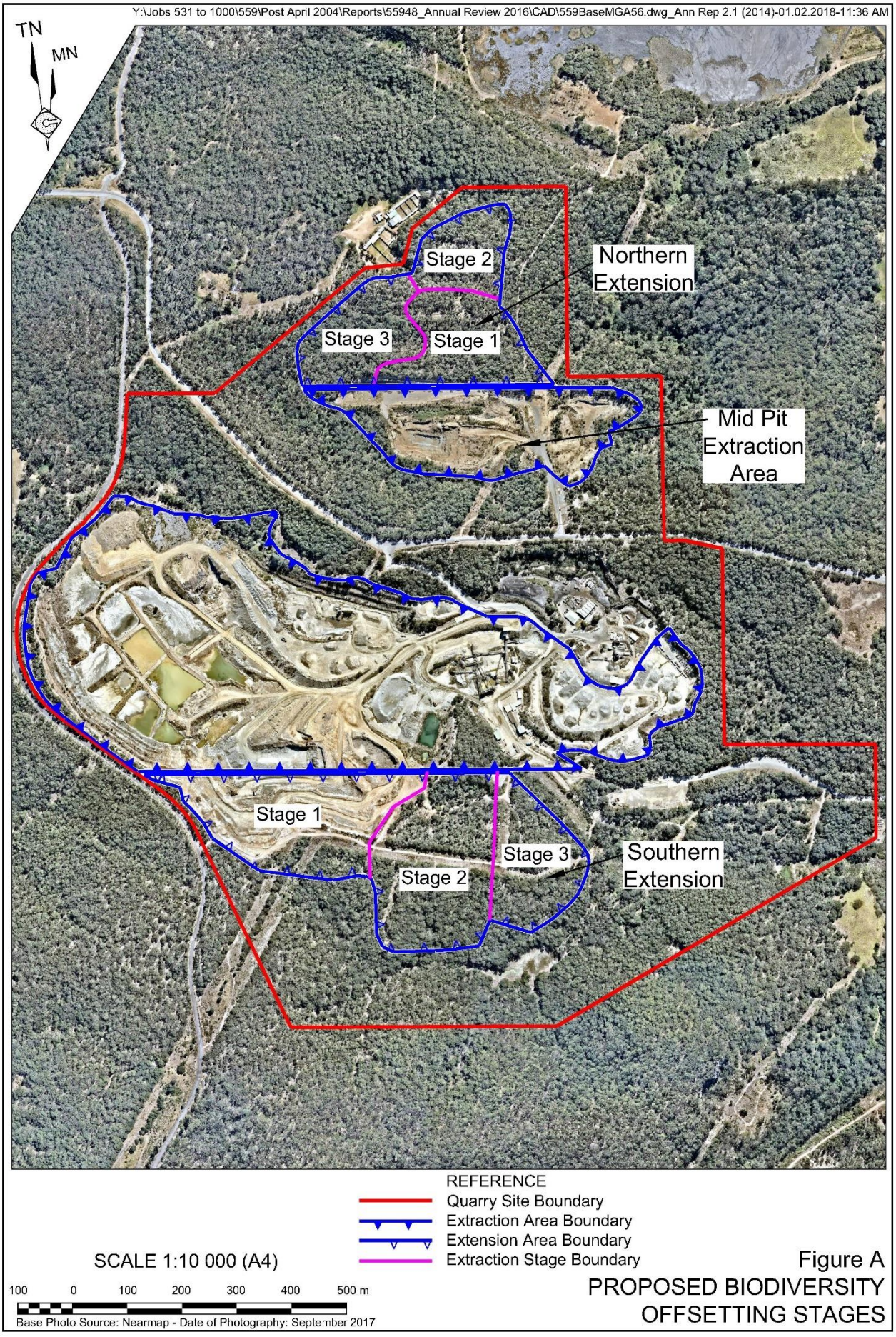
It is noted that the referral decision (EPBC 20111/5988 – dated 11 July 2011) under the *Environmental Protection and Biodiversity Conservation Act 1999* determined that the Teralba Quarry Extension was not a controlled action, provided it was undertaken in a particular manner. This included a requirement to retain 118ha of vegetation for conservation within the proposed offset area. It is understood that the referral decision is not a matter for DPE to consider in its assessment of the proposed modification, however Metromix is consulting with the Federal Department of the Environment and Energy regarding the referral decision, in light of the proposed modification to offsetting arrangements under the *Biodiversity Conservation Act 2016*.

I trust the above satisfies the questions raised from the submissions provided by the OEH and Council. Please feel free to contact me in the RWC Brooklyn office or Bill Sanderson of Metromix with any additional queries.

Yours sincerely

Nick Warren
Senior Environmental Consultant

Attached: Figure A – Proposed Biodiversity Offsetting Stages
Copy: Metromix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TN
MN
Stage 2
Northern Extension
Stage 3
Stage 1
Mid Pit Extraction Area
Stage 1
Stage 3
Southern Extension
Stage 2
REFERENCE
Quarry Site Boundary
Extraction Area Boundary
Extension Area Boundary
Extraction Stage Boundary
SCALE 1:10 000 (A4)
100 0 100 200 300 400 500 m
Base Photo Source: Nearmap - Date of Photography: September 2017
Figure A
PROPOSED BIODIVERSITY OFFSETTING STAGES