

QUARRY DEVELOPMENT ALERT

Draft NSW Planning Bill to make it difficult to modify quarry approvals in future



Our earlier quarry bulletins discussed the benefits of using Section 96 modifications to incrementally expand your quarry operation. Examples of some of our successful s.96 quarry approvals:

- Increasing quarry production, from 300,000 to 499,000 tonnes pa.
- Increasing the depth of extraction by 50 metres.
- Increasing maximum daily truck numbers, from 67 to 250 trucks/day.
- Increasing the quarry footprint.

The advantages of using s.96 modification for quarries include:

- Existing consent is protected.
- No appeal rights by objectors.
- Less costly than a DA.
- Approvals typically obtained within a few months of lodgement.

The new NSW Planning Bill, released in January 2017, is likely to change all of this, and not for the better.

One of the NSW Government reforms to the State's planning legislation will be that modifications to existing quarry approvals will not be permitted to 'regularise' unlawful quarry works already completed.

Currently it is possible to modify existing development consents for quarries, even in cases where the actual development may not have strictly complied with the various consent conditions.

For example; this would include not strictly following the quarry staging plans as per the original DA plans, or not strictly complying with one or more of the numerous consent conditions typically attached to a quarry approval.

If a quarry is fully compliant then modification applications can still be made (and approved), but under a stricter assessment regime.

Also of concern, local council may institute legal proceedings against a quarry operator for any apparent breaches under the NSW planning legislation.

When will this draft planning legislation become law?

We are reliably informed that the new Planning Bill is expected to be passed by NSW Parliament as early as April 2017 and come into effect as early as September 2017.

What should you do?

If any element of your approved quarry does not strictly comply with the original development consent you have between now and about September 2017 to obtain a s.96 approval to regularise your approved quarry operations. If you don't you will have to lodge DAs in future if you wish to expand your quarry.

Steps to take

1. Undertake a review/audit of your quarry consent conditions and plans etc. accompanying the consent, and check for non-compliances. **NOTE:** you must strictly comply with each and every condition of the consent.
2. If non-compliances are found, lodge a s.96 application to in order to 'regularise' these non-compliances and obtain approval before the Bill takes effect.

(NOTE: This quarry alert does not purport to be legal advice. Please obtain your own independent legal advice)

IF YOU HAVE ANY QUERIES OR REQUIRE HELP PLEASE CONTACT:

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