



7 August 2025

Jessie Evans  
Director, Resources and Energy Assessments  
Department of Planning, Housing and Infrastructure  
4 Parramatta Square, 12 Darcy Street,  
PARRAMATTA NSW 2150

Via email: [REDACTED]

Dear Jessie,

## Bombo Quarry Precinct | Ministerial Call-In | Permissibility

### Introduction

Following our recent discussions including our meeting of 9 July 2025, we write in response to the Department of Planning, Housing and Infrastructure (**DPHI**) request to provide further information on the permissibility of the Bombo Quarry Precinct proposal and ability for a consent authority to approve the proposed 'earthworks' for site rehabilitation (**the proposal**). The proposal is the subject of a Ministerial Call-In Request that is currently before the DPHI.

The enclosed information is supplementary to and expands upon the Ministerial Call-In Request prepared by Urbis dated May 2025.

### The Bombo Quarry Precinct

The principal landowners of the Bombo Quarry Precinct (**the Precinct**), being Transport Asset Manager (**TAM**), and Boral (**the landowners**), have been reviewing the potential post quarry end use for the Precinct.

The Precinct has been identified as a significant mixed-use growth area in numerous State and local strategic planning documents, such as the Illawarra Shoalhaven Regional Plan 2041, and the Kiama Local Strategic Planning Statement 2020 (**Kiama LSPS**). Kiama's LSPS nominates the Precinct to support circa 2,000 residential dwellings, while also potentially delivering commercial, tourism and employment land uses once quarrying activities have ceased.

The support for the Precinct, and its significant role in unlocking supply and growth locally and for the greater benefit of the Illawarra Shoalhaven Region has been elevated under Kiama Council's recently endorsed Local Housing Strategy on 15 July 2025. The Precinct is identified as *Tier 4 – Strategically identified land* under Councils housing supply pipeline categorisation. The Local Housing Strategy states that Precinct is a *...long recognised regionally significant site with potential reuse for urban development following closure of quarrying activities and site remediation*.

There is a clear and logical nexus between the final envisaged uses of the site, and the proposed earthworks works required to establish a suitable landform for development. Without site rehabilitation through the earthworks program to deliver a suitable landform the objectives set out in the Illawarra Shoalhaven Regional Plan 2041, the Kiama LSPS 2020 and the Kiama Local Housing Strategy, July 2025 cannot be met.

A Community and Stakeholder Engagement Strategy has been prepared and is being implemented by the landowners. . Extensive face to face and webinar engagement sessions with the local community, neighbour land owners and elected members have been carried out, and will continue. These sessions have canvassed both the earthworks proposal as well as the planned rezoning to deliver the master planned mixed use community in the Precinct. There is full community awareness and Council support for the pursuit of a State Significant Development Application pathway for the proposed earthworks. Refer to Appendix B of the Ministerial Call-In for a copy of Council's supporting Letter.

## Existing Development Consent(s)

The current quarry operations (extractive industry) are being carried out in the Precinct under the terms of two separate deemed development consents. Both development consents remain operational across the land(s) to which the Ministerial Call-In relates.

The development consents are:

- **Transport Asset Management (TAM)** – Development Consent via Government Gazette of the State of NSW (Sydney, NSW: 1901 -2001), dated Friday 7 March 1947 (No.34), page 543 (operating under EPL 79)
- **Boral** – Development Consent DA 10.1971.97.2 (operating under EPL 313).

The proposal the subject of the Ministerial Call-In request does not seek a change of land use under either of the listed approvals nor will it influence the timing of the program for the cessation of the current lawful uses within the Precinct.

## Key Permissibility Considerations

We have been requested to further expand upon the discussion in the Ministerial Call-In Request in relation to permissibility of the earthworks proposal. We understand that this has been requested to provide clarity on the scope of the earthworks proposal and the available planning approval pathways prior to a decision being made on the Ministerial Call-In request for what we say is a proposal that is permissible and should be deemed to be State significant development (**SSD**).

To provide the clarity sought we step through what we consider to be the relevant statutory planning provisions which frame the permissibility and planning approval pathway for the earthworks proposal.

The purpose of the proposed earthworks is to rehabilitate the land within the Precinct to a beneficial state that is not provided for under the existing planning approvals which apply to the land and the extraction activities. In summary:

1. The work(s) for which we are seeking development consent for is categorised as *earthworks*.

2. The existing planning approvals for extractive industries do not provide for the undertaking of earthworks to the extent required to reset the post excavation landform so that the land can support future post quarrying uses across the Precinct.
3. Clause 6.2 under Kiama Local Environmental Plan 2011 triggers the requirement for development consent for earthworks.
4. Earthworks, as advised in the Department of Planning Practice Note PN 11-003 is a defined term that is **not** to be used/nominated in Land Use Tables.
5. The proposed earthworks development application **does not** seek to change the existing approved use of the land(s).
6. The development application for works, in the form of earthworks, **does not** seek to modify the existing development consents for extractive industries that apply to the land.
7. The scale of the proposed earthworks cannot be carried out without development consent.

The following discussion steps through the proposed planning approval pathway.

## Environmental Planning and Assessment Act 1979

Clause 1.5 of the Environmental Planning and Assessment Act 1979 (**EP&A Act**) defines 'development' as follows (our **emphasis** added):

- a. *the use of land,*
- b. *the subdivision of land,*
- c. *the erection of a building,*
- d. *the carrying out of a work,*
- e. *the demolition of a building or work,*
- f. ***any other act, matter or thing that may be controlled by an environmental planning instrument.***

While it could be reasonably argued that 'earthworks' could be considered as the carrying out of a work, the better and more direct interpretation is that earthworks are an act or matter that is controlled by an environmental planning instrument. In this regard clause 6.2 of the Kiama Local Environmental Plan 2011 (**KLEP**) details the requirements to obtain development consent to carryout earthworks and identifies the matters that the consent authority must consider before granting a development consent to such earthworks.

Further, we note that section 4.2 of the EP&A Act states that:

*If an environmental planning instrument provides that specified development may not be carried out except with development consent, a person must not carry the development out on land to which the provision applies unless—*

- a. *such a consent has been obtained and is in force, and*

*b. the development is carried out in accordance with the consent and the instrument.*

It is clear that 'earthworks' as defined under the applicable environmental planning instrument (KLEP) is 'development' that requires consent for the purposes of the EP&A Act. The proposed earthworks, as described in our Ministerial Call-In Request have not been approved under the terms of the existing planning approvals and requires development consent in accordance with clause 6.2 of the KLEP.

## Kiama Local Environmental Plan 2011

KLEP defines *earthworks* as follows:

- *earthworks means excavation or filling.*

Further, KLEP defines excavation and filling as follows:

- *excavation means the removal of soil or rock, whether moved to another part of the same site or to another site, but does not include garden landscaping that does not significantly alter the shape, natural form or drainage of the land.*
- *fill means the depositing of soil, rock or other similar extractive material obtained from the same or another site, but does not include—*
  - (a) the depositing of topsoil or feature rock imported to the site that is intended for use in garden landscaping, turf or garden bed establishment or top dressing of lawns and that does not significantly alter the shape, natural form or drainage of the land, or*
  - (b) the use of land as a waste disposal facility.*

The earthworks proposal as described in the Ministerial Call-In, under Section 5.1 of the Ministerial Call-In request..

The proposed earthworks will involve the relocation of soil or rock within the precinct as well as the importation and depositing of soil, rock or other material obtained from another site to the Precinct to deliver a land form that can support post quarrying uses, as well as environmental, access and water quality outcomes. While a master plan has been prepared as a concept to guide the earthworks the earthworks are not dependant on, or determinative of the land uses depicted in the master plan.

Clause 6.2 of the KLEP states:

*(2) Development consent is required for earthworks unless—*

- (a) the earthworks are exempt development under this Plan or another applicable environmental planning instrument, or*
- (b) the earthworks are ancillary to other development for which development consent has been given.*

KLEP does not provide an exemption from the need to obtain development consent for earthworks and the proposed earthworks are not considered to be ancillary to the existing quarry activities.

## Other Environmental Planning Instruments

Subdivision 15 of Part 2 of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP)*, identifies earthworks that satisfy certain development standards as exempt development. The the scale of earthworks proposed at the Precinct exceed the nominated development standards for earthworks and could not be facilitated as exempt development. The Codes SEPP also identifies earthworks associated with nominated land uses that could be undertaken as complying development. These provisions are not relevant to the earthworks proposed within the Precinct.

## In summary

The proposed earthworks are development for the purposes of the EP&A Act that is permissible and requires development consent.

The existing extractive industry operations can continue and wind down under the terms of the current approval's, concurrent with the proposed earthworks to be undertaken in a staged fashion and the existing approvals remain valid and unchanged. The provisions of the EP&A Act and KLEP work together to provide the planning pathway for the preparation and assessment and approval of a development application for earthworks undertaken independent of any future development and land uses within the Precinct. The proposed earthworks are development for the purposes of the EP&A Act and an act that is controlled under the KLEP for which development consent is required and can be lawfully granted.

We trust that the enclosed additional detail is of assistance to the DPHI, and that the Bombo Quarry Precinct Ministerial Call-In can progress in a timely manner to the Independent Planning Commission for consideration.

Please do not hesitate to contact Adrian Villella, Director on [REDACTED] or the undersigned should you wish to discuss the above

Kind regards,

A large black rectangular redaction box covering the signature of Clare Brown.

Clare Brown  
Partner

A black rectangular redaction box covering contact information, likely a phone number and email address.

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