



## **DUNGOG SHIRE COUNCIL**

### **SUBMISSION TO STATE SIGNIFICANT DEVELOPMENT 6612**

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Dungog Shire Council has received an Environmental Impact Statement (EIS) prepared By Monteath & Powys on behalf of Buttai Gravel Pty Ltd, which is part of the Daracon Group, for the proposed consolidation and expansion of Martins Creek Quarry. The development has been lodged as a State Significant Application with the NSW Department of Planning and Environment, who will be the consent authority for the application.

Council Officers have previously provided input to the Department in relation to the Secretary's requirements for the preparation of the Environmental Impact Study (EIS) and have also participated in various community consultation processes to date.

As part of the EIS preparation the proponents sought and received Secretary's Environmental Assessment Requirements (SEARs), which have been amended throughout the process. Dungog Shire Council was consulted and had input prior to the issue of the SEARs.

The SEARs identified that the following key issues needed to be addressed in the EIS:

- Traffic and transport
- Blasting and vibration
- Air quality
- Noise
- Water quality and quantity
- Land capacity and conflicts
- Biodiversity
- Heritage
- Visual impacts
- Greenhouse gas assessment
- Hazards including bushfire risks & handling of dangerous goods
- Social and economic assessment
- Rehabilitation.

Dungog Shire Council lodged Class 4 proceedings in the Land and Environment Court on 31 March 2015 seeking to restrain the operators of Martins Creek Quarry from operating outside the terms of their development consents, as well as disputing the validity of the relevant EPL.

Dungog Shire Council acknowledges that Martins Creek Quarry does present a valuable natural resource and does not object to its operation in some form as long as the scale of those operations have had an appropriate environmental assessment and the operations do not significantly impact on the rural/residential amenity of residents residing in close proximity to the Quarry itself or along the transport Haulage routes. The Martins Creek and Paterson communities have over the past 10 years had their amenity and in some cases health negatively effected by excessive truck movements and the resultant impacts.

In the Departments consideration of the current SSD application it is suggested that it may be beneficial to review the Draft Environmental Reports prepared for the previous Part 3A application on behalf of Railcorp in 2007. This application was never subsequently lodged as it was determined that the environmental impacts would be too significant. Council is willing to provide this information under separate cover due to the size of the files

Dungog Shire Council has reviewed the Environmental Impact Statement attached to the above listed State Significant Application and advise that it believes the EIS is fundamentally flawed in its construction and does not adequately investigate, quantify or assess the increased environmental impacts likely to be experienced as a result of the proposed expansion over and above the existing lawful development (300,000 tonnes). The EIS looks to state/justify the existing level of operations and then suggest the expansion will only marginally increase the levels currently experienced as a result of the unlawful development.

The SSD application form describes the development in the following manner '*The proposal involves the extraction of 1.5 million tonnes of material per annum, comprising of andesite hard rock, expansion into new extraction areas and the consolidation of existing operations and approvals*'. As specified earlier the existing approvals are currently in dispute and it is Councils view that this matter needs to be determined as the EIS is predicated on the position that the existing operations are lawful and environmentally acceptable, neither of which is correct.

The format of this submission is to address some general points in the main EIS document but primarily to provide comments on the relevant appendices given that they inform the bulk of the EIS findings. The submission has been prepared by Dungog Shire Council Senior staff, unfortunately due to scheduling constraints the elected representatives were unable to adopt the submission prior to lodgement however it will be provided to them for their endorsement at the December 2016 Council meeting, the outcome of which will be forwarded to the Department for your information.

### **Environmental Impact Statement – Ownership arrangements**

The EIS acknowledges that at this time the application includes a road which is part Council owned road and part Crown Road. The applicant has indicated they propose to acquire the road prior to determination of the application and if this is not possible to obtain owners consent. Council has objected to the closure of the road at this time so purchase is unlikely in the short to medium term. Council will consider any request for owners consent however the outcome of the request cannot be guaranteed. This road reserve is fundamental to the new access arrangements proposed in the EIS as a means to mitigate the current and increased impacts proposed from the Quarry expansion. Unless ownership of this road reserve is secured or owners consent obtained then DPE has no means of determining the application in its current form.

### **Existing Operations**

Council does not agree that the contents of paragraphs 2.5 to 2.9 of the EIS are accurate.

The Council disputes that the current operations are being conducted lawfully in accordance with the consents and to this intent has commenced Class 4 proceedings in the Land and Environment Court seeking declarations and restraining orders against the current operators to control and limit the current operations taking place on the site.

Whilst these matters are separate to the EIS the application is seeking approval for consolidation/regularisation of the existing quarrying operations and a further expansion of the quarry, the baseline for the actual quantum of the expansion and the resultant environmental impacts can only realistically be identified once the Class 4 matter is determined and the lawful extraction rate and the terms /conditions governing the existing operations are established.

Annexed to this submission is a copy of Council's Summons (Figure 1) and Council's Points of Claim (Figure 2), which more fully set out the Council's contentions in relation to the current operations of the Quarry. Annexure 'A' is information about extraction tonnages as at the relevant dates provided by Railcorp previously when they were seeking acknowledgement of existing use rights.

### **Processing**

As is evident in Council's Points of Claim there is dispute over the lawfulness of the following substantial activities occurring on site presently these include:-

- Pre-coated sealing aggregates production
- Manufactured and Modified Road base production utilising the Pugmill
- Washed Coarse Manufactured Sand.

Should these activities be determined to be unlawful then more information will be required outlining the nature of those processes and greater consideration will have to be given to the environmental consequences of each processing activity.

### **Amended Hours of Operation**

Given the feedback from the community over the past 10 years and also the outcomes articulated in the acoustic assessment report, Council is of the view that the extended operating hours has the potential to increase the negative impacts already being experienced in the Martins Creek and Paterson Communities. This issue will be expanded upon by Council's noise consultant in the supplementary report.

### **Quarry Expansion**

In this section the applicant claims that "*the previous approvals over the site permitted that clearing of the undisturbed areas on Lots 5 & 6 DP242210 (within the West Pit)*" Council contends that this statement is incorrect the previous approvals only permitted clearing within the area defined in the 1991 EIS. The only clearing permitted on Lot 6 DP242210 was for a haul road.

### **Appendix B - Summary of existing operations and Approvals for Martins Creek Quarry**

The Council disputes the "*Summary of Existing Operations and Approvals for Martins Creek Quarry*" contained in Appendix 'B' of the EIS and without being exhaustive disputes the following:

- a. that Lot 1 DP1006375 and Lot 1 DP204377 have continuing use rights to be used either for quarrying purposes or for screening, crushing, stockpiling and processing of quarried material. If there is any continuing use rights attached to any part of the above described land (which is not admitted by Council), Council contends that any

such continuing use rights are limited to small portion of the land, namely that part of Lot 1 DP1006375 that was formally contained in Lot 2 DP524511.

- b. Council disputes the assertion contained in paragraph b of Appendix 'B' to the EIS and briefly (without being exhaustive) Council contends that the Consent for use of Lot 6 DP244210 does not permit the extraction of extractive material (quarry products) from the land but only permits the use of that land for a haul road in the location shown in Plan 2 in the 1991 EIS accompanying that Application.

Council further contends that the 1991 EIS did not contain any assessment of the likely impacts on the environment of quarry activities now being carried out on Lot 6 and did not identify any measures to mitigate the likely impacts on the environment occasioned by the carrying out of extractive activities on Lot 6.

Council further contends that the Consent was for an "*extractive industry being a quarry winning materially primarily for railway ballast*". Railway ballast represents only 10%, or thereabouts, of the product of current operations of the quarry and therefore to the extent that primary railway ballast is not being produced from the quarry means that the current operations are outside the ambit of the 1991 Consent and are unlawful.

Council further contends that the use of Lot 6 for the extraction of extractive material is unlawful.

Council further contends that the 1991 EIS is incorporated into the 1991 Consent by necessary implication and as the EIS proposes environmental safeguards those environmental safeguards are incorporated into the Consent and include the following, which have been breached: -

- i. Only a total 10 hectares was proposed for the quarry, **with only 5 hectares being occupied by the actual quarry and 5 hectares by the haul road.**
- ii. Railway ballast is not the primary product produced on lot 5 & 6 but only constitutes a secondary non-main product and is therefore in contravention of the Consent.
- iii. At present, approximately 90% to 95% of the extracted product is delivered by road, whereas the EIS proposed that no more than 30% of the extracted product would be delivered by road and the current operation is in contravention of the Consent
- iv. The EIS proposed that the majority of the quarry product would be delivered by rail, whereas the majority of the quarry product is being delivered by road contrary to the Consent.
- v. The EIS proposed that no more than 80,000 tonnes of quarry product per annum would be transported by road, whereas at present approximately 900,000 tonnes of quarry product is being transported by road contrary to the EIS.
- vi. EIS proposed that the amount of quarry product that would be extracted would be in the region of 300,000 tonnes, whereas at present over 900,000 tonnes is being extracted contrary to the provisions of the EIS and the consent.
- vii. The EIS proposed that the transportation of the quarry product would involve an average of 24 truck movements a day where at present truck movements exceed on average 220 a day and at peak times up to 582 truck movements per day.

## **Contravention of Condition 1 of the 1991 Consent**

Condition 1 of the 1991 Consent required the development to be conducted in such a manner as not to interfere with the amenity of the neighbourhood in respect of noise, vibration, smell, dust, waste water, waste product or otherwise. The current transportation arrangements and other arrangements and the excessive extraction and transportation of quarry product is interfering with the amenity of the neighbourhood (as is admitted by the proponent in the 2016 EIS) in respect of noise, dust, vibration, traffic congestion and traffic danger.

Condition 6 of the 1991 Consent prohibited the beneficiary of the Consent from permitting the transport of more than 30% of the quarry product by road. A proper construction of this condition requires reference to Section 3.9 of the EIS, which effectively prohibited the beneficiary from transporting more than 30% of the annual product of 265,000 tonnes per annum – namely no more than 85,500 tonnes per annum was to be transported by road. At present, almost 1,000,000 tonnes are being transported by road in contravention of this condition.

Council contends that there is a pug mill on Lot 1 DP204377, which has not been approved by the Council and is therefore unlawful.

Council contends that the manufacturing sand processing plant and associated facility have been erected on Lot 5 or been installed and used on Lot 5 DP242210, for which no consent has ever been granted.

Council contends that on that part of Lot 1 DP1006375 (that did not comprise the former Lot 2 DP524511) is being used to store and stockpile aggregate of various sizes for which no consent has ever been granted.

Council contends that Lot 1 DP1006375 has a precoat plant installed on it for which no development consent exists.

Council contends that the Environment Protection Licence held by the Second Respondent, being EPL 1378 dated 2 April 2007 is invalid, as it was granted by the EPA pursuant to a Licence Variation where such Variation had not been the subject of an environmental assessment and public consultation as required under the *POEO Act (Section 58(6))*.

- c. In relation to Lot 42 DP815628, Council contends that this Consent expired on 31 October 2006, as it was a condition of the Consent that no extraction was to take place after that date unless an extension had been granted. No such extension has been granted and any extraction taking place/or proposed on Lot 42 is unlawful.
- d. In relation to alleged consent on Lot 6 DP244210 (DA171/95/5) Council contends that this development never commenced and accordingly the Consent has expired by effluxion of time and no Consent exists for the installation or use of any crushing plant or associated infrastructure on Lot 6.
- e. In relation to Lot 1 DP1006375 Council contends that this consent was for the operation of a fixed tertiary crushing equipment and was limited to the amount of material crushed on that part of former Lot 2 DP 524511 as is now incorporated into

Lot 1 DP1006375 as at 17 September 1999. Council contends that this limitation meant that no more than 244,934 tonnes could be processed in any one year and certainly does not permit the crushing of approximately 1,000,000 tonnes as is currently occurring.

In the circumstances, to the extent that the applicant contends that the current operations are lawful, Council disputes this contention and submits that any assessment of the application should be made on the basis that no more than 85,000 tonnes per annum (24 truckloads per day) are permitted to be transported by road and that should form the basis of Environmental assessment, including the assessment of noise and traffic and other environmental assessments.

It is Council's contention that the EIS is substantially flawed, as the bulk of the environmental assessment is based on a false assumption that the intensity of the current operations is in accordance with consents or continuing use rights where this assumption is disputed.

To a large extent the 2016 EIS ignores the 1991 EIS and consents and focuses on assessing the additional environmental impact expected from the new expanded proposal on the basis that the current activities are lawful and in compliance with the Consents. Council and the affected communities have clearly articulated that the current level of operations have significant detrimental impacts hence the reason the Class 4 proceedings were commenced. The 2016 EIS should have assessed the impact of the proposed activities as compared to the lawfully approved operations as constrained by the 1991 EIS and any continuing use rights (which is not admitted) relating to processing at the scale of the operations as at 5 February 1986 (advised by the previous owner Railcorp to be 244,934 tonnes per annum or 20,482 tonnes per any 4 week period).

It is Council's contention that any reliance on the EIS as currently exhibited would be flawed and could lead to a significant error, as the base line for the measurement of the increased environmental impact of the proposal should be the lawfully permitted activities and not the current operation (which council contends is unlawful).

The EIS in the circumstances is misleading to a substantial extent.

#### **Appendix F - Air Quality Assessment**

The air quality Assessment Report details existing air quality as a result of the current Quarry and models the proposed expansion. It also models greenhouse gas generation from transport vehicles. Council does not have specialist staff who can verify the assumptions used in the modelling nor the methodology and would rely on the NSW EPA to analyse the report fully in this respect.

The Report however does not assess the impacts of road dust or diesel emissions on the residents of Paterson or Bolwarra (and other residential communities adjacent to transport routes).

Council has previously flagged community concern in relation to road dust from heavy vehicles hauling product along public roads from Martins Creek quarry and this has not been addressed. Whilst the proposal purports to represent only a small increase in traffic movements over the "existing operations" Council contends that the existing situation vastly exceeds that which is permissible under current consents and that these impacts have never been considered. Accordingly, Council would respectfully request that the impacts of road

dust (property aesthetics) and diesel omissions generated by the transport of quarry products along the various transport routes be addressed as requested in the SEARS by a number of the government agencies.

### **Appendix G - Water Quality Assessment**

The Water quality Impact Assessment was prepared by JM Environmental (Sept 2016) and consists of a water balance statement, calculations of the sizes of retention dams and statements about the water quality of any overflows or authorised discharges to waterways. The report appears to be scientifically sound although the Environmental Services Department does not have the internal expertise to critically review the engineering modelling and methodology.

As the discharge of waste waters is controlled under an EPL, the EPA is the responsible authority and it would be expected that the EPA would critically assess the Water Quality report.

### **Appendix H- Traffic Impact Assessment**

From a traffic and transport perspective the application is predicated on the increase from current production levels to the new level of 1.5 million tonnes per annum, rather than the increase from actual approved production levels to 1.5 million tonnes per annum.

Once this baseline is determined, the traffic and transport components of the EIS and associated reports will then need to be reassessed to determine potential impacts between the approved production levels and the new proposed production levels.

Notwithstanding this, other critical issues that either have not been addressed, not fully addressed, not agreed to by the writer of this report (Manager Infrastructure and Assets) or that require further information include:-

- Increased deterioration of Council's Road Networks - up to 84% of all Class 9 Heavy Vehicles on Dungog Road south of the quarry will be generated by this development;
- Reduction in current pavement design lives;
- Increases in pavement rehabilitation costs due to increased traffic loadings;
- Insufficient detail and apparent underestimation of costs for Capital Works at intersections as identified by the applicant;
- Sight distance may be an issue at the proposed intersection of the internal haul route with Dungog Road;
- Lack of information with respect to calculation of haul road contributions and inadequate haul road contributions;
- Several sections of the haul route (including Maitland Road in Paterson and Gresford Road) have extremely poor surface conditions which will require immediate rehabilitation / reconstruction;
- Increased use of Over-Dimension Haul Route has not been identified within the reports;
- Inadequate responses to a number of road access and safety concerns including:-
  - Grace Avenue/Station Street/Rail Crossing - This intersection has been identified by both Council and the ARTC as requiring safety upgrades. Lack of available funding from both parties is the only reason works have not been undertaken. Whilst this intersection and crossing is projected to be abandoned

- within two (2) years as far as being part of the identified haul route is concerned, no consideration is given to interim measures;
- Paterson Rail Crossing - Congestion on the northern side of the crossing is already problematic with respect to the blind crest on the approach to the crossing. The need for advanced warning for a closed rail crossing has not been adequately addressed;
- Gostwyck Bridge Single Lane - Whilst the RMS have identified that the bridge can meet load standards, the alignment and lack of sight distance for traffic to "Give Way" is an ongoing concern;
- Pavement Widths - Some sections of the identified haul routes have insufficient pavement widths for the design traffic loadings. Rehabilitation costs identified within the reports do not allow for required width increases;
- Clear Zones - There is insufficient shoulder widths and clear zones on considerable lengths of the identified haul routes. Rehabilitation costs identified within the reports do not allow for required shoulder increases or clear zone creation;
- Overtaking Areas - Whilst the reports identify the lack of suitable overtaking areas, no consideration is made to provide such;
- Flood Free Access - The main haul route through Paterson has three (3) identified areas where flooding occurs. Alternate flood free access or quarry processes in times of flood have not been addressed;

The EIS makes reference to two other matters including a proposed Voluntary Planning Agreement for road assets and an internal policy and Code of Conduct for drivers (including sub-contractors). However no detail is available at this stage.

It is noted that the DPE has advised that they no longer favour Draft Voluntary Planning Agreements as a result Council has been required to prepare an amendment to their existing Section 94 Plan to insert an appropriate heavy haulage contribution rate. The amendment to the Plan will be exhibited in the near future it is requested that the DPE have regard to the contributions nominated in the Draft Plan or await its adoption prior to finalising any determination.

### **Traffic Appendices Review and Commentary**

The following provides specific commentary and identifies issues with respect to various reports provided by the applicant in respect of the traffic and transport issues.

## **TRAFFIC IMPACT ASSESSMENT - SECA SOLUTIONS REPORT - AUGUST 2016**

### **SUMMARY**

1. It is the opinion of the writer that the basis for the report is flawed as relevant calculations are made based on a current production level of 900,000 tonnes - this is not a position that is accepted by Council;
2. Consideration of the overall impact of the quarry operations and proposed increases in production is diminished by utilising this contentious baseline production level;
3. The report fails to adequately address all road safety concerns identified by Council;
4. Some statements and assumptions are erroneous with respect to Council's position regarding current and proposed works for the proposed haul routes;

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## **Report Commentary:-**

The EIS is supported by a Traffic and Access Assessment prepared by SECA Solution Pty Ltd. Information from this assessment that is relevant to the Dungog LGA relates primarily to the haulage routes. It is proposed that the majority of extracted material will be removed from the site via road haulage due to operational restrictions associated with the use of the existing rail siding and rail network. Currently approximately 50,000 tonnes per annum are transported by rail and this is not proposed to change with the expanded operations.

Based on 1,500,000 tonne production, 5.5 days per week haulage for 50 weeks of the year and 32.5t payloads, the quarry would generate an average of 168 truckloads per day Monday to Friday (336 two-way) and up to 84 truckloads (168 two-way) on a Saturday. Average *weekly* truck movements will therefore be 924 (1,848 two-way). This does not, however, take into account the normal peaks and troughs in demand associated with the industry. It also does not take into account the expected haulage of other resources (flyash, quarry equipment, etc) into the quarry.

The report identifies that market demands require the majority of product to leave the quarry early in the day for delivery ie between 5.30am – 8.00am. Truck movements would be expected to then drop off significantly after 11.00am and further again after 3.00pm. Typically there are expected to be 40 outbound trucks from the site per hour for the first three or more hours due to operational limitations within the quarry. These peak times conflict with morning peak times for commuter traffic and school buses.

### **1. Introduction**

The report is based upon the following:-

- Current production of 900,000 tonnes per annum;
- Increased production to 1,500,000 tonnes per annum;
- Train haulage of 50,000 tonnes per annum (3.3%);
- Road haulage of 1,450,000 tonnes per annum (96.7%);
- Truck payloads of 32.5 tonnes;

### **2. Existing Traffic Conditions**

The report identifies the major haul route as being MR101 through from Grace Avenue to Bolwarra. The report has the following issues identified:-

- Lack of consideration given to sight distance for laden trucks coming on to Gostwyck Bridge (single lane timber bridge);
- Omission of 100km/hr zone on Gresford Road;
- Highlights the need for vehicle entering the King/Duke Street intersection in Paterson *“to slow down and large vehicles e.g. semi-trailer or truck and dog combination are required to use all of the provided road pavement width to complete the turn within their lane”*.
- Highlights the lack of shoulders and formed verges along the haulage route;
- Highlights the number of accesses to private rural holdings;
- Highlights that there are no overtaking lanes provided along the route;
- Only limited reference is made to the haulage of over-dimension vehicles along MR301 and MR101. These include over width and overmass vehicles which cannot access via Gostwyck Bridge. At present these movements are occurring at a rate of more than one per month;

### **Traffic Flows**

- The current report identifies tube counters being installed in the week beginning 17<sup>th</sup> July 2015 over a minimum period of 7 days. The initial report identified that *“the traffic counts were taken over seven days commencing from Thursday 16<sup>th</sup> July 2015”*.
  - This is a very small period to be extrapolating annual figures from;
  - There are some relatively small inconsistencies between the Seca figures obtained and Council data. Council data is, however, 12 months older than the Seca data but was taken over a two month period;
- There is no traffic data for Station Street nor Grace Avenue. It is understood that the purpose of the SMEC Report is to quantify pavement maintenance issues as a result of proposed increases in production. Therefore, the lack of simultaneous traffic data for Grace Avenue and Dungog Road north of Grace Avenue renders the report unusable for calculation of total traffic attributable to Quarry operations and the overall maintenance increases as a result of all quarry production;

### **Road Safety**

The report identifies a number of safety concerns which have not been adequately addressed. These include:-

- Station Street/Grace Avenue intersection conflict with rail crossing. The report identifies (p24) that the *“ARTC has prepared plan for upgrade but no timeframe for works”*. This is contradicted later in the report (p52) which states that *“the railway crossing on Grace Avenue has been reviewed by ARTC and they have no plans to upgrade this crossing”*. In actual fact, this intersection was identified by the ARTC in 2012 as a safety concern. The ARTC expended significant funds on survey, design and estimating for the proposed rail crossing upgrade which included boom gates, etc. The reason the works did not proceed is that the ARTC had significantly underestimated the cost of the works and therefore requested Council fund the shortfall. As Council did not have any funds allocated for the works, the project was not undertaken.
- One-way bridge operation on Dungog Road at Gostwyck Bridge. The report has identified that the *“RMS has stated that the current bridge can continue to operate as one-way”*. Council's issue is not with the capacity of the bridge (which is the RMS concern) but the lack of sight distance to the north and the increased potential for road accidents as a result of increased heavy vehicle movements.
- Bus Routes and Associated Facilities. The report identifies that there are local school bus routes in operation along the haul route but *“there are no bus stops within the general locality of the subject site”*. There are, however, a number of areas along the haul route where school buses pick-up and drop-off children at individual residences. These drop off areas are not necessarily clear of the through traffic lanes. Increased heavy vehicle movements will create increased safety concerns for these drop-off points.
- On-street Parking Provision - Whilst the issue of on-street parking adjacent to the site has been identified, the report does not consider the loss of on-street parking within the Paterson Business Area as a result of the proposed intersection modification works at King and Duke Street.

### 3. Proposed Development

- Only limited reference is made to the haulage of over-dimension vehicles along MR301 and MR101. These include over width and overmass vehicles which cannot access via Gostwyck Bridge. At present these movements are occurring at a rate of more than one per month;
- The report correctly identifies that visibility to the right for drivers exiting Station Street is impacted upon by the vertical alignment of the road over the rail crossing. The report then states that the visibility has been assessed as greater than 100m in both directions. This seems contradictory and may be based on *“the raised seating position for drivers of trucks”* which should not be considered under the standards.
- The level crossings in Martins Creek and Paterson are continually referred to as only causing minor traffic delays as *“there is a limited train service in this location”*. The rail crossings are, in fact, on the main northern rail line and as such service 5 local commuter trains (10 movements), 6 XPT services (6 movements) and numerous coal and freight services.
- No reference is made to the lack of sight distance on the northern side of the Paterson level crossing nor the conflict that may occur due to queueing vehicles at that location.

### 4. Transportation Analysis

- The report identifies the use of 10-15kt per annum of flyash. On average, 12,500t of flyash is imported to the site per annum. Based on 32.5t per load, this would generate a further 385 laden and 385 unladen truck movements per annum.
- Predicted Traffic Volumes - The report identifies that only 86.2% (p42) of material is exported along the Dungog Road, Gresford Road (Paterson), Tocal Road Haul Route. As there will not be an increase in export by rail, it is assumed all increases as a result of the proposed expansion will be along the major haul route. This would equate to approximately 91.7% of all product exported. Therefore, based on Dungog Shire Council data from 2014, the following table indicates the overall increases in heavy vehicles on the various haul roads south of Martins Creek Quarry and the effect quarry production has on traffic volumes:-

| Total Martins Creek Quarry Output per annum | Road Haulage based on 91.7% by Haul Routes | Laden Truck Movements per annum* | Unladen Truck Movements per annum* | Total Heavy Vehicle Movements per annum* |
|---|--|----------------------------------|------------------------------------|--|
| 100,000                                     | 91,700                                     | 2822                             | 2822                               | 5643                                     |
| 200,000                                     | 183,400                                    | 5643                             | 5643                               | 11286                                    |
| 300,000                                     | 275,100                                    | 8465                             | 8465                               | 16929                                    |
| 400,000                                     | 366,800                                    | 11286                            | 11286                              | 22572                                    |
| 500,000                                     | 458,500                                    | 14108                            | 14108                              | 28215                                    |
| 600,000                                     | 550,200                                    | 16929                            | 16929                              | 33858                                    |
| 700,000                                     | 641,900                                    | 19751                            | 19751                              | 39502                                    |
| 800,000                                     | 733,600                                    | 22572                            | 22572                              | 45145                                    |
| 900,000                                     | 825,300                                    | 25394                            | 25394                              | 50788                                    |
| 1,000,000                                   | 917,000                                    | 28215                            | 28215                              | 56431                                    |
| 1,100,000                                   | 1,008,700                                  | 31037                            | 31037                              | 62074                                    |
| 1,200,000                                   | 1,100,400                                  | 33858                            | 33858                              | 67717                                    |

|           |           |       |       |       |
|-----------|-----------|-------|-------|-------|
| 1,300,000 | 1,192,100 | 36680 | 36680 | 73360 |
| 1,400,000 | 1,283,800 | 39502 | 39502 | 79003 |
| 1,500,000 | 1,375,500 | 42323 | 42323 | 84646 |

- The following table identifies the amount of Class 9 and above traffic at Site 1 attributable to the Martins Creek Quarry Operations based on the following data and/or assumptions:-
  - Council's 2014 data - traffic counts taken simultaneously on Grace Avenue and Dungog Road (immediately north and immediately south of Grace Avenue);
  - AADT of 1079 on Dungog Road south of Grace Avenue (as recorded by Council Traffic Counters 2014) including a count of 131 for Class 9 and above on Dungog Road south of Grace Avenue;
  - AADT of 401 on Grace Avenue (as recorded by Council Traffic Counters 2014) including a count of 41 for Class 9 and Above - Non Martins Creek Quarry Trucks (as interpolated from Council Traffic Counters 2014);
  - Due to the load limited bridge in Martins Creek, all Class 9 and above vehicles on Grace Avenue were assumed to be generated as a result of the quarry operations;
  - As there will not be an increase in export by rail, Council's position is that the increase in production is to service the lower Hunter Growth Market and that all increases as a result of the proposed expansion will be along the major haul routes. At full production, this would equate to approximately 91.7% of all product being transported along these routes;

| Total Martins Creek Quarry Output per annum | Road Haulage based on 91.7% by Haul Routes | Total Heavy Vehicle Movements per annum due to Martins Creek Quarry | Total Heavy Vehicle Movements per day due to Martins Creek Quarry* | Percentage Increase of Class 9 and above on Dungog Road due to Martins Creek Quarry |
|---|--|---|--|---|
| 100,000                                     | 91,700                                     | 5,643   | 15   | 38%   |
| 200,000                                     | 183,400                                    | 11,286  | 31   | 75%   |
| 300,000                                     | 275,100                                    | 16,929  | 46   | 113%  |
| 400,000                                     | 366,800                                    | 22,572  | 62   | 151%  |
| 500,000                                     | 458,500                                    | 28,215  | 77   | 189%  |
| 600,000                                     | 550,200                                    | 33,858  | 93   | 226%  |
| 700,000                                     | 641,900                                    | 39,502  | 108  | 264%  |
| 800,000                                     | 733,600                                    | 45,145  | 124  | 302%  |
| 900,000                                     | 825,300                                    | 50,788  | 139  | 339%  |
| 1,000,000                                   | 917,000                                    | 56,431  | 155  | 377%  |
| 1,100,000                                   | 1,008,700                                  | 62,074  | 170  | 415%  |
| 1,200,000                                   | 1,100,400                                  | 67,717  | 186  | 453%  |
| 1,300,000                                   | 1,192,100                                  | 73,360  | 201  | 490%  |
| 1,400,000                                   | 1,283,800                                  | 79,003  | 216  | 528%  |
| 1,500,000                                   | 1,375,500                                  | 84,646  | 232  | 566%  |

\* Extrapolated over 365 days for AADT purposes. Does not take into consideration peak volumes.

- The above table gives indications of actual increases in Class 9 and above vehicles as a result of the Martins Creek Quarry Operations. Council would contend that the basis for the increase being founded on the “current” production of 900,000 tonnes is highly contentious and not agreed to by Council.

## 5. Improvement Analysis

Again a number of issues have been identified within the report without satisfactory response. These include:-

- Station Street/Grace Avenue intersection conflict with rail crossing. The report identifies (p24) that the *“ARTC has prepared plan for upgrade but no timeframe for works”*. This is contradicted later in the report (p52) which states that *“the railway crossing on Grace Avenue has been reviewed by ARTC and they have no plans to upgrade this crossing”*. In actual fact, this intersection was identified by the ARTC in 2012 as a safety concern. The ARTC expended significant funds on survey, design and estimating for the proposed rail crossing upgrade which included boom gates, etc. The reason the works did not proceed is that the ARTC had significantly underestimated the cost of the works and therefore requested Council fund the shortfall. As Council did not have any funds allocated for the works, the project was not undertaken.
- One-way bridge operation on Dungog Road at Gostwyck Bridge. The report has identified that the *“RMS has stated that the current bridge can continue to operate as one-way”*. It is also noted in the report that *“the RMS has stated that the bridge on Dungog Road is adequate and they have no plans to upgrade or replace the bridge”*. This statement is erroneous as the RMS are continuing the upgrade that has been ongoing for the past 4 years. The bridge will not be replaced as it is heritage listed. Again, Council’s issue is not with the capacity of the bridge (which is the RMS concern) but the lack of sight distance to the north and the increased potential for road accidents as a result of increased heavy vehicle movements.
- Lack of road shoulders - not addressed.
- Existing Pavement Issues - not addressed.
- Prince Street/Duke Street Intersection - The poor road alignment (horizontal and vertical) and narrow pavement widths have not been addressed.
- Other Improvements - Given the time that Buttai Gravel has occupied the site and the quantum of materials exported (approximately 4 Million tonnes) that no further works have been put forward for consideration.

## 6. Summary

The summary, as per the report, fails to identify the quantum of the issues surrounding the full quarry operations and the increased damage to the network as the result of such. The baseline of 900,000 tonnes is highly contentious and the matter of other legal proceedings.

Further the report fails to adequately address all safety concerns along the route.

The summary also indicates that *“the road authority has not noted any particular areas of concern with regard to road safety and have no plans to upgrade any of the existing road network in the locality of the site or along the two key access routes”*. Again this is a misleading statement. Council has:-

- Identified a number of key safety concerns which are mentioned throughout the report;
- Identified within both its Delivery Programme and Operational Plans, works along MR101 subject to funding availability;
- Identified and received funding for three (3) separate Black Spot projects along the proposed haul routes;
- Undertaken pavement widening and upgrade works at the Maitland LGA Boundary. These works also included widening of the pavement, guardrail installation, the use of a painted median and a reduction in the speed limit to address safety and speeding concerns at this location;
- Further works planned for MR101 at the proposed new haul road intersection scheduled for 2019/2020.

The Traffic Impact Assessment also fails to take into consideration the issue of the major haul route being flood prone in at least three (3) separate locations within the Dungog LGA. These areas have all been cut on average once per annum over the past 10 years. During the catastrophic April 2015 event, Martins Creek Quarry was called upon to provide rail ballast for emergency railway maintenance. This required use of the haul routes whilst they were still inundated by flood waters. This has had a longer term detrimental effect on these roads and alternate flood free access needs to be considered as part of this process.

## **MARTINS CREEK QUARRY - REPORT ON ENGINEERING & TRANSPORT ACOR CONSULTANTS - MAY 2016**

### **SUMMARY**

1. The report basically identifies and summarises some of the issues brought forward by various Councils and other Government Agencies. It does provide summarised responses to some issues but moreover redirects the reader to other appropriate documentation.
2. Identifies that *“a new development site access to Dungog Road is proposed to be constructed within 2 years”* but also states that *“upgrade of the Station Street/Grace Avenue intersection and associated upgrade of the rail crossing will (therefore) not be required”*. The report does not identify how the increased haulage traffic and intersection/rail crossing issues will be addressed during this 2 year period;
3. The report lists considerably more issues that have been identified by Dungog Shire Council than were addressed in the previous Seca Solution Report.

\*\*\*\*\*

### **Report Commentary:-**

Given that the report is more of a summary of issues to provide further reference to other documentation, no further comment is warranted.

## MARTINS CREEK QUARRY HAUL ROUTES

### ANALYSIS OF FUTURE PAVEMENT MAINTENANCE REQUIREMENTS RESULTING FROM A PROPOSED INCREASE IN QUARRY TRUCK TRAFFIC

SMEC AUSTRALIA - NOVEMBER 2015

#### SUMMARY

1. It is the opinion of the writer that the basis for the report is flawed as relevant calculations are made based on a current production level of 906,500 tonnes - this is not a position that is accepted by Council;
2. Whilst it is understood that modelling has been undertaken utilising SMEC's Pavement Management System which utilises International Standards, condition ratings are only "indicators" of pavement condition.
3. There is insufficient evidence within the report (ie. Works Programmes, rehabilitation requirements and methodologies, reseal frequencies, existing pavement characteristics, etc) to either quantify or justify the predictions as regards 25 year funding requirements for both current and predicted traffic (again these figures are based on the contentious 906,500t baseline);
4. There are assumptions being made with respect to pavement material qualities, geotechnical issues, etc;
5. The report does not give consideration to extra works required for pavement widening for increased pavement life and traffic safety;
6. Due to the report being based on maintaining "road pavements at their current condition level" for the next 25 years there is no consideration made for service level increases or improvements that would be expected to pavement conditions especially in the village of Paterson and narrow sections of Dungog Road and Gresford Road;
7. The projected annual funding increase of \$36,135 (\$2,737/km or \$0.07/tonne carried) does not adequately address the overall effect of Class 9 Heavy vehicles on the haul route as a result of the full Martins Creek Quarry Operations (ie on Dungog Road, the proposed quarry operations will contribute 84% of all Class 9 Heavy Vehicles to that section of the Road Network);

\*\*\*\*\*

#### Commentary

**1.1 Background** - The premise of an "additional 43 loaded trucks per day" is based on the following:-

- Current production of 906,500 tonnes;
  - Why is 906,500 tonnes assumed as the basis for this study?
  - What approvals are in place for the 906,500 tonnes?
- Increased production to 1,500,000 tonnes;
- Assumed that only 85.4% of the increase will be hauled along "Routes A and B while the balance of the material (14.6%) is transported through other routes or by train";
  - What justification is available that 14.6% of existing haulage does not utilise all or part of the haul routes A and B?
  - What justification is available to indicate that increased production will be hauled as per existing haulage percentages?
  - Why does this conflict with the Seca Solution Report?
- Payloads of 32.5 tonnes;

- Equivalent Standard Axle Loads (ESA) - Laden Trucks 7.13 ESA's - Unladen Trucks 1.1 ESA's

Other points to note:-

- The calculation of 43 laden trucks per day (average) is correct as far as cumulative effect on pavement condition. It should be noted, however, from a "road usage" perspective, the quarry only operates 5.5 days per week, therefore the actual increase on haulage days is 55 laden trucks (average weekday haulage).

### 1.3 Summary of results of analysis

Table 1.3 Future funding requirements for pavements (includes Northbound and Southbound lanes)

General issues as regards the tabled information:-

- Again, all of the figures are based on the increase from 906,500 tonnes to 1,500,000 tonnes. Therefore the figures obtained, based on SMEC's pavement management system, will only take into account the predicted increase NOT the overall increase in construction and maintenance costs due to all of the Martins Creek Quarry haulage requirements;
- The basis of the modelling is "to predict the cost of the road maintenance that would be required to maintain the roads at the similar condition to the 2015 starting condition over a 25 year period";
  - Council is planning major rehabilitation works on a number of sections of road (Tocal Road, Maitland Road).
    - What "Level of Service" and design life was utilised for the calculations for pavement rehabilitation?;
    - There are sections of Dungog Road and Gresford Road where pavement widths are less than satisfactory. "As is" modelling would not take into account shoulder widening considerations to ensure predicted pavement lives for rehabilitation are achieved?;
    - What considerations were made for the Urban section of Paterson as regards widths and processes for rehabilitation?;
    - It is assumed figures in Table 6.2 are averaged and "peak" costs for rehabilitation are spread over a number of years. For example, Council has allocated \$1.34M for a 440m length of Maitland Road alone. No figure of this magnitude is identified in Table 6.2;
    - There is no actual Works Programme provided in the report for a reader to quantify the assumptions made;
- It is noted that Maitland Council's Unit Rates for treatment have been utilised (Section 6.2) for all 3 Council's calculations. Further, the report also notes that "Maitland Roads tend to be in better condition and have stronger pavements as compared to the Dungog and Port Stephens Roads";
  - It is assumed that the adjusted structural number is utilised, amongst other things, as a basis to determine pavement requirements for rehabilitation works. There is no defined detail in the report as to the correlation between this number and rehabilitation works required or assumptions made for pavement depths;
  - In addition to the above, what factors have been applied to the unit rates from Maitland Council to compensate for the probability of increased pavement thicknesses works required to rehabilitate these poorer pavements?;



- What is the methodology utilised by Maitland as regards the rehabilitation calculation (flexible pavements, overlay depths, stabilisations, seal types, etc)?

### 3.1 Haulage routes

- It is contended by the applicant that only 85.4% of the increase will be hauled along “Routes A and B while the balance of the material (14.6%) is transported through other routes or by train”. This is slightly inconsistent with the Seca Solution Report (upon which part of this SMEC Report is based) which identifies that 86.2% (p42) of material is exported along the Dungog Road, Gresford Road (Paterson), Tocal Road Haul Route. As there will not be an increase in export by rail, Council’s position is that the increase in production is to service the lower Hunter Growth Market and that all increases as a result of the proposed expansion will be along the major haul routes. At full production, this would equate to approximately 91.7% of all product being transported along these routes. Therefore, based on Dungog Shire Council data from 2014, the following table indicates the overall increases in heavy vehicles on the various haul roads south of Martins Creek Quarry and the effect quarry production has on traffic volumes:-

| Total Martins Creek Quarry Output per annum | Road Haulage based on 91.7% by Haul Routes | Laden Truck Movements per annum* | Unladen Truck Movements per annum* | Total Heavy Vehicle Movements per annum* |
|---|--|----------------------------------|------------------------------------|--|
| 100,000                                     | 91,700                                     | 2822                             | 2822                               | 5643                                     |
| 200,000                                     | 183,400                                    | 5643                             | 5643                               | 11286                                    |
| 300,000                                     | 275,100                                    | 8465                             | 8465                               | 16929                                    |
| 400,000                                     | 366,800                                    | 11286                            | 11286                              | 22572                                    |
| 500,000                                     | 458,500                                    | 14108                            | 14108                              | 28215                                    |
| 600,000                                     | 550,200                                    | 16929                            | 16929                              | 33858                                    |
| 700,000                                     | 641,900                                    | 19751                            | 19751                              | 39502                                    |
| 800,000                                     | 733,600                                    | 22572                            | 22572                              | 45145                                    |
| 900,000                                     | 825,300                                    | 25394                            | 25394                              | 50788                                    |
| 1,000,000                                   | 917,000                                    | 28215                            | 28215                              | 56431                                    |
| 1,100,000                                   | 1,008,700                                  | 31037                            | 31037                              | 62074                                    |
| 1,200,000                                   | 1,100,400                                  | 33858                            | 33858                              | 67717                                    |
| 1,300,000                                   | 1,192,100                                  | 36680                            | 36680                              | 73360                                    |
| 1,400,000                                   | 1,283,800                                  | 39502                            | 39502                              | 79003                                    |
| 1,500,000                                   | 1,375,500                                  | 42323                            | 42323                              | 84646                                    |

### 3.3 Current Traffic Volumes

- “The traffic counts were taken over seven days commencing from Thursday 16<sup>th</sup> July 2015”.
  - This is a very small period to be extrapolating annual figures from;
  - There are some relatively small inconsistencies between the SMEC figures obtained and Council data. Council data is, however, 12 months older than the SMEC data but was taken over a two month period;
  - There appears to be minor inconsistencies in the table 3.4 as regards Total AADT as a result of Class 9 increases.

- There is no traffic data for Station Street nor Grace Avenue. It is understood that the purpose of the SMEC Report is to quantify pavement maintenance issues as a result of proposed increases in production. Therefore, the lack of simultaneous traffic data for Grace Avenue and Dungog Road north of Grace Avenue renders the report unusable for calculation of total traffic attributable to Quarry operations and the overall maintenance increases as a result of all quarry production;
- The following table identifies the amount of Class 9 and above traffic at Site 1 attributable to the Martins Creek Quarry Operations based on the following data and/or assumptions:-
  - Council's 2014 data - traffic counts taken simultaneously on Grace Avenue and Dungog Road (immediately north and immediately south of Grace Avenue);
  - AADT of 1079 on Dungog Road south of Grace Avenue (as recorded by Council Traffic Counters 2014) including a count of 131 for Class 9 and above on Dungog Road south of Grace Avenue;
  - AADT of 401 on Grace Avenue (as recorded by Council Traffic Counters 2014) including a count of 41 for Class 9 and Above - Non Martins Creek Quarry Trucks (as interpolated from Council Traffic Counters 2014);
  - Due to the load limited bridge in Martins Creek, all Class 9 and above vehicles on Grace Avenue were assumed to be generated as a result of the quarry operations;
  - As there will not be an increase in export by rail, Council's position is that the increase in production is to service the lower Hunter Growth Market and that all increases as a result of the proposed expansion will be along the major haul routes. At full production, this would equate to approximately 91.7% of all product being transported along these routes;

| Total Martins Creek Quarry Output per annum | Road Haulage based on 91.7% by Haul Routes | Total Heavy Vehicle Movements per annum due to Martins Creek Quarry | Total Heavy Vehicle Movements per day due to Martins Creek Quarry* | Percentage Increase of Class 9 and above on Dungog Road due to Martins Creek Quarry |
|---|--|---|--|---|
| 100,000                                     | 91,700                                     | 5,643   | 15   | 38%   |
| 200,000                                     | 183,400                                    | 11,286  | 31   | 75%   |
| 300,000                                     | 275,100                                    | 16,929  | 46   | 113%  |
| 400,000                                     | 366,800                                    | 22,572  | 62   | 151%  |
| 500,000                                     | 458,500                                    | 28,215  | 77   | 189%  |
| 600,000                                     | 550,200                                    | 33,858  | 93   | 226%  |
| 700,000                                     | 641,900                                    | 39,502  | 108  | 264%  |
| 800,000                                     | 733,600                                    | 45,145  | 124  | 302%  |
| 900,000                                     | 825,300                                    | 50,788  | 139  | 339%  |
| 1,000,000                                   | 917,000                                    | 56,431  | 155  | 377%  |
| 1,100,000                                   | 1,008,700                                  | 62,074  | 170  | 415%  |
| 1,200,000                                   | 1,100,400                                  | 67,717  | 186  | 453%  |
| 1,300,000                                   | 1,192,100                                  | 73,360  | 201  | 490%  |
| 1,400,000                                   | 1,283,800                                  | 79,003  | 216  | 528%  |
| 1,500,000                                   | 1,375,500                                  | 84,646  | 232  | 566%  |

\* Extrapolated over 365 days for AADT purposes. Does not take into consideration peak volumes.

- The above table gives indications of actual increases in Class 9 and above vehicles as a result of the Martins Creek Quarry Operations. Council would contend that the basis for the increase being founded on the “current” production of 906,500 tonnes is highly contentious and not agreed to by Council. Therefore the increase in road maintenance required per tonne carried identified in Section 1.3 may need to be re-evaluated relative to an agreed current or approved production basis.

**BUDGET ESTIMATE REPORT FOR:  
PROPOSED CAPITAL EXPENDITURE WORKS  
MARTINS CREEK QUARRY - VASEY CONSULTING - 6 MAY 2016**

**SUMMARY**

1. The proposed new entry works off Dungog Road may have issues with respect to:-
  - a. Available Sight Distance; and
  - b. Timing of the works (proposed for two years) and how any proposed increases are addressed in the interim period;
2. The proposed intersection works at Dungog Road and Gresford Road have been undervalued due to lack of existing pavement widths at the location. The actual cost is expected to be some \$250,000 more than identified within the report;
3. The proposed intersection works at King and Duke Street may have issues with respect to:-
  - a. Property Acquisition
  - b. Heritage
  - c. The pavement identified for the widening is inconsistent with the existing pavement
  - d. Pedestrian / truck movement conflicts
  - e. Loss of On-Street Parking in the Paterson Business Area.
4. With contingencies, design and acquisition costs, it is likely that the overall cost of the projects within the Dungog LGA could be as much as \$500,000 more than the estimates provided.

\*\*\*\*\*

**Commentary:-**

Vasey Consulting was engaged by the applicant to provide budget estimates for Capital Expenditure Works identified by the applicant as part of the expansion proposal.

Within the Dungog LGA, the road related works included:-

- Gresford & Dungog Road - Intersection Works
- Duke Street/King Street Paterson - Intersection Median Works
- Martins Creek Rail Bridge & Associated Works

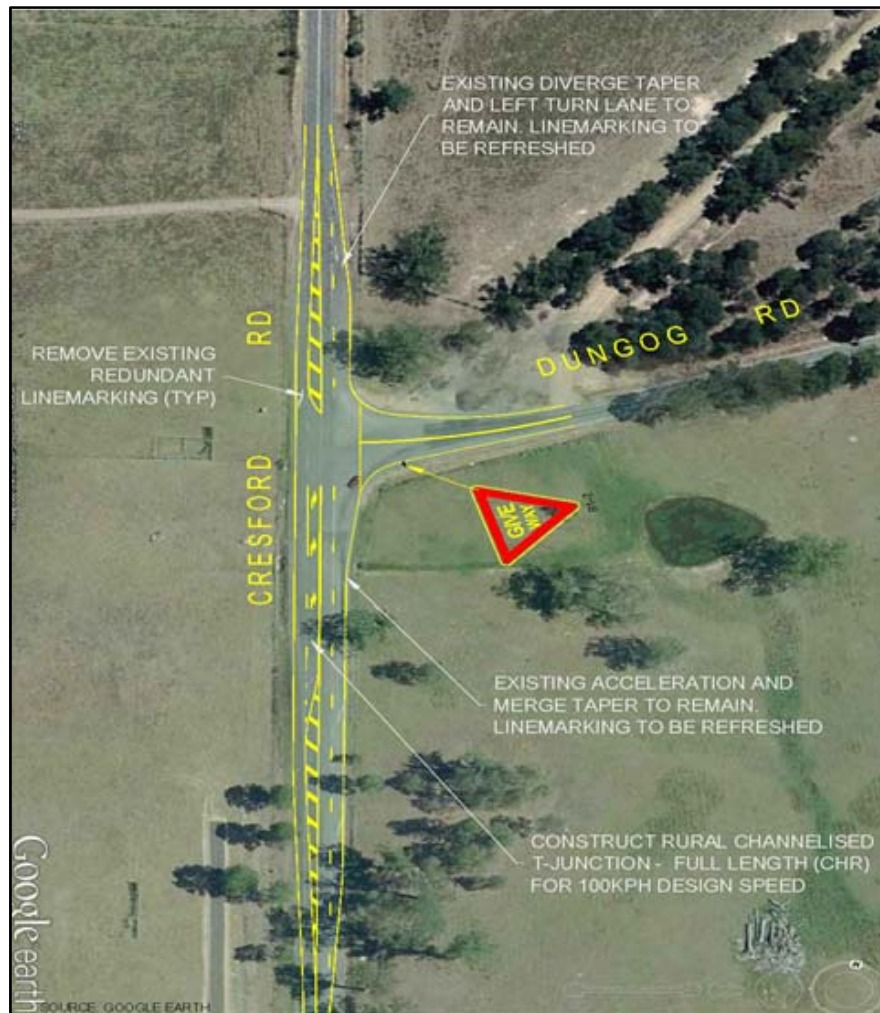
Vasey Consulting has utilised information supplied by Stuart Murray from Site R&D Pty Ltd and drawings provided by ACOR.

## COMMENTS/ISSUES

Whilst full designs have not been provided, the following comments/issues have been identified with respect to the proposals:-

- **Gresford Road & Dungog Road Intersection**

The works identified are shown in the diagram below:-



The works identified are predominantly linemarking works. However, the existing intersection does not have sufficient pavement width to construct the proposed Full Length Channelised Right Turn (CHR) Intersection for a 100km/hr traffic zone. The identified works do not meet the required standards for:-

- Overall Design - Length of through lane not to standard
- Tapers - Length of Tapers on through lane not to standard
- Shoulders - Existing pavement does not have sufficient width for shoulder requirements
- Acceleration Lane - The length of the acceleration lane for southbound vehicles out of Dungog Road is not to standard
- Deceleration Lane - The length of the deceleration lane for left turn vehicles out of Gresford Road is not to standard

Vasey Consulting Estimate:-

\$ 50,607.40

Estimate for above items not included in the Vasey Consulting Estimate\*:-\$250,000.00

**Overall Estimate for Works Gresford Road & Dungog Road Intersection:-\$300,607.40**

\* Note:- There is possible conflict with Telecommunications and Property Boundaries which would only be identified at the full design stage. The above costs do not make any allowances for such conflicts.

- **Duke Street/King Street Paterson - Intersection Median Works**

The works identified are shown in the diagram below:-



The works identified include pavement works and blister, kerb and footpath construction. The proposed works raise the following issues:-

- Property Acquisition - No allowance made for Property Acquisition requirements identified on the plan. There may also be heritage issues to deal with
- Pavement - Inconsistent pavement type has been identified in the proposal. The existing road is deep lift asphalt, whilst the design has allowed for a flexible pavement design
- Pedestrian / truck movement conflicts - The increased speed capacity of the intersection for heavy vehicle movements poses a conflict with the high pedestrian area
- On-Street Parking - Loss of approximately seven (7) on-street car parking spaces in the Paterson Business Area. This equates to 50% of available parking in this particular area



Vasey Consulting Estimate:-

\$116,179.07

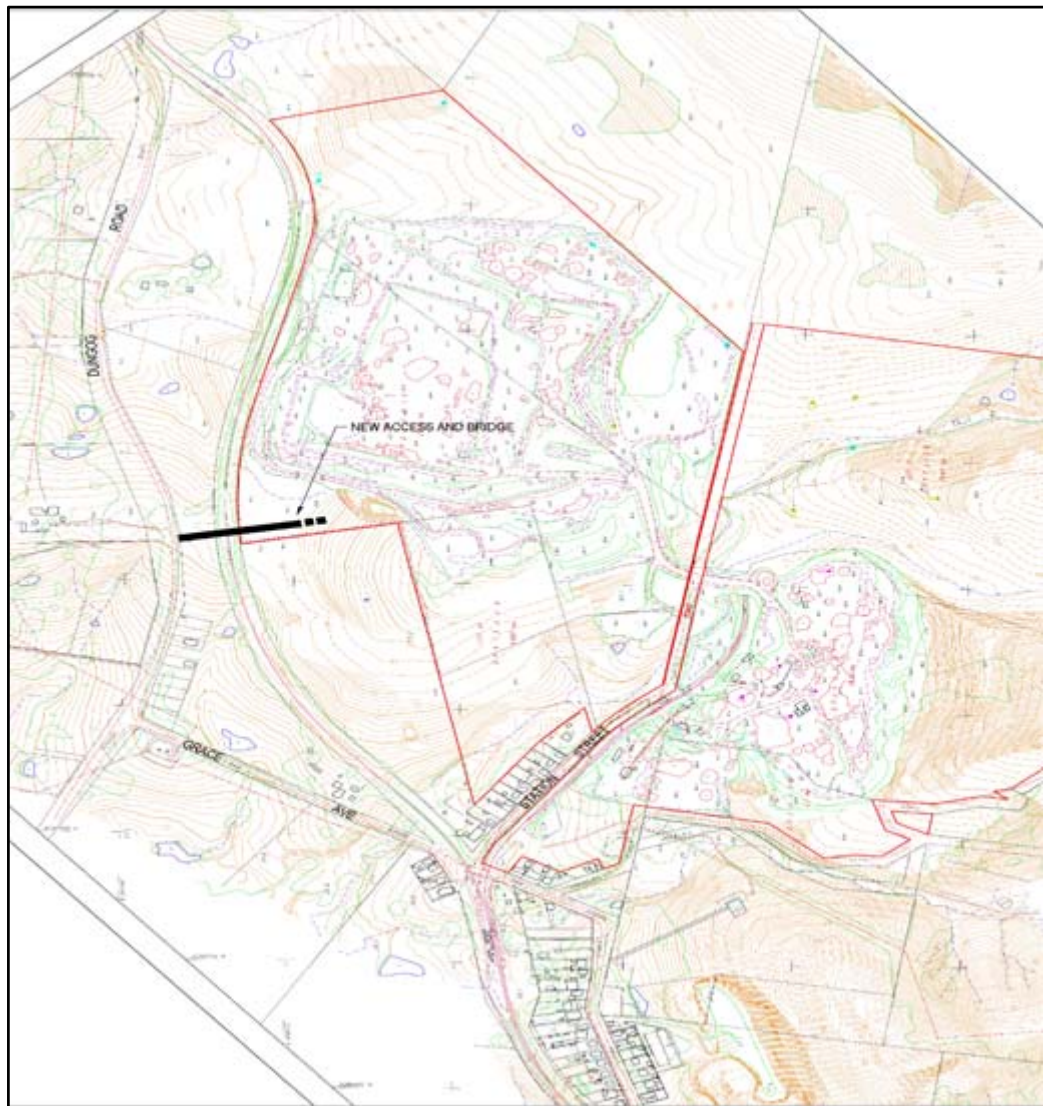
Estimate for above items not included in the Vasey Consulting Estimate\*:- \$ 80,000.00

**Overall Estimate for Works Gresford Road & Dungog Road Intersection:- \$206,179.07**

\* Note:- Estimated property acquisition costs included. There is also possible conflict with Telecommunications services which would only be identified at the full design stage. The above costs do not make any allowances for such conflicts.

### **Martins Creek Rail Bridge & Associated Works**

The works identified are shown in the diagram below:-



The plan does not fully identify the works proposed. The section of works relevant for Council are the intersection works. From the estimate provided by Vasey Consulting, it is understood that a Channelised Right Turn (CHR) Intersection is proposed. Based on this information, the following possible issues are identified:-

- Sight Distance - Whilst actual location is not able to be determined accurately off the above plan, sight distance to the north may be sub-standard at the proposed location for an 80km/hr zone

|   |                          |
|---|--------------------------|
| Vasey Consulting Estimate (new intersection only):-                       | \$273,311.53             |
| Estimate for above items not included in the Vasey Consulting Estimate*:- | <u>\$ Unknown</u>        |
| <b>Overall Estimate for New Intersection Works:-</b>                      | <b><u>\$ Unknown</u></b> |

\* Note:- There is possible conflict with Telecommunications services which would only be identified at the full design stage. The above costs do not make any allowances for such conflicts.

### **Appendix I - Acoustic assessment**

The noise impacts both within the project area and generated offsite eg on the road network, are a major source of concern to Council and residents.

Council does not have specialist staff who can verify the assumptions used in the acoustic modelling nor whether the methodology utilised is appropriate. Due to the critical nature of this aspect of the application Council has engaged a recognised Acoustic Consultant to critically review the Acoustic Assessment which forms part of the EIS. Preliminary comments from the consultant indicate that he has significant concerns about the adequacy and efficacy of the assessment. Detailed comments will be provided separately as soon as they become available but these will fall outside the stated exhibition period. It is noted that Department of Planning and Environment officer Mr Howard Reed advised Council that supplementary targeted submissions would be accepted within reasonable timeframes, Council has been advised that the supplementary report will be completed by 16 December 2016.

It is worth noting however that the concept of the application for the proposed expansion is based upon noise levels that already give rise to significant exceedances of appropriate noise criteria (due to the unlawful operations), upon which then the applicant seeks to create a further increase under EPA policies based upon the existing excessive noise.

No contemplation or consideration has been given to what the noise levels would be if the quarry was operating in accordance with the 1991 Development consent and related EIS (that stated full compliance with the general background + 5 dB(A) limit at residential receivers).

It appears the application proposes that the operation of the quarry will continue to generate noise emission levels that breach the EPA criteria for some considerable time.

In the absence of the detailed submission Council wishes to register the strongest concern that the Acoustic Assessment Report is fundamentally flawed as it is reliant on the existing level of operations being lawful in order to justify the increase in non compliant noise levels as a result of the Quarry expansion

### **Appendix 5 - Environmental Management Plan**

The EMP is labelled as part of the applicants "integrated management system" and has appendices that contain amongst other things –

- Stormwater Management Control Plan
- Site Dewatering and Water Treatment Procedure

- Greenhouse Gas Management Plan
- Pollution Incident Response Plan.

Whilst the overall plan seems to be a satisfactory representation of the environmental management of the existing quarry operation, the overarching document was last reviewed on 8<sup>th</sup> January 2016, with some of the sub plans not having been reviewed for many years.

The problem with this is that there has been other work completed and submitted with the EIS which has proposed various actions or plans in relation to environmental management of the site - and these are not referenced in the EMP. The reports that may have relevance and should be referred to in the EMP (but are not) include –

- Noise assessment report ( RCA)
- Biodiversity Assessment Report which includes a proposed Flora and Fauna Management Plan, and Site Rehabilitation Plan which contain procedures for land clearing.
- Air Quality Assessment Report- which contains initiatives aimed at mitigating air pollution from the site and beyond.

It would be expected that the Environmental Management Plan lodged with the EIS would reflect the ongoing environmental management of the site into the future. Should the application be determined then a condition of consent requiring the EMP to be amended to include the sub consultant report recommendations should be included.

#### **Appendix K - Geological assessment**

It is worth noting in section 1.2 Previous Geological Assessments the report references the following Exploration Programs 1968, 1984 and 2006. VGT Pty Ltd have either not been provided with the results of the Geological investigations undertaken by C. L. Adamson in December 1979 and which was referenced as Appendix 3 to the EIS prepared by D.P. James in July 1990 for the proposed Railway Ballast Quarry or they have determined not to include them for whatever reason. VGT have plotted the location and outcome of the respective bore holes from each previous investigation.

It is Councils view that the omission of the December 1979 investigation results is deliberate and purposeful as the Report and the respective Plan 1 identified as S.R.A Proposed Quarry Extension Martins Creek clearly shows the location of the 5 Investigation Boreholes on Lot 5 DP 242210 and the extent of proved and probable reserves all of which are contained on Lot 5 DP 242210.

The applicant is fully aware of this report and its contents as it forms the basis of a number of Points of Claim in the Class 4 proceedings primarily that no Development consent has been granted for extraction of material on Lot 6 DP 242210

A geologists report has been tabled with Dungog Shire Council which disputes the reserve tonnages claimed in the EIS document. This issue if correct could significantly alter the development as proposed i.e. staging, rehabilitation, socio economic impacts etc. Council requests that the geotechnical assessment be checked by a suitably qualified independent professional with experience in reserves assessment.



## **Appendix L - Biodiversity Assessment Report**

A substantial body of work has been presented in relation to the Biodiversity Assessment including –

- Biodiversity assessment report
- Flora and Fauna Management Plan
- Assessment of Significance
- Site Rehabilitation Plan
- Preliminary Biodiversity Offset Strategy

It should be noted that Council does not enjoy the services of an ecologist and it was not considered that the time available to comment nor Councils resource constraints would afford the luxury of referring the Biodiversity Assessment to a third party (eg Hunter Council's Environment Division) for comment on Councils behalf.

Council acknowledges that the Biodiversity Assessment Report has identified a number of Threatened Plant Communities and two Threatened Species (Slatey Red Gum and Koala) which will be impacted by the proposal and require Biodiversity Offsets. It is noted that the impacted area used for the calculation of offsets does not include the cleared lands and rehabilitation areas of the existing operation (Page 37 of Biodiversity Assessment report), whereas the EIS states that one of the purposes of the proposal is to consolidate existing operations where the consent requirements by their own admission is unclear. Council contends that no development consent exists for the quarrying activities undertaken on Lot 6 DP244210 and this is a Point of claim in the current action in the Land and Environment Court.

The environmental assessment in respect of flora and fauna clearly highlights the dilemma of the unresolved consents, Council would contend that if there is an intention to consolidate the existing operation, along with the proposal for expansion, then the Biodiversity offsets applicable to the proposal as a whole should be calculated taking into account, at a minimum, the addition of the quarried area on Lot 6 DP244210.

It is clear from the 1991 EIS and subsequent Council reports that no environmental assessment was ever undertaken for the removal of vegetation on Lot 6 other than for a haul road and as a result no environmental mitigation measures put in place for the loss of that vegetation. The applicant should not be able to rely on authorised activities to avoid their environmental responsibilities. Should the Class 4 proceedings determine that Lot 6 was cleared unlawfully then it would be incumbent on the Department of Planning and Environment to take that decision into account and assess the loss of that vegetation/habitat. Given the detailed level of flora and fauna survey undertaken on the site to date and the access to detailed photogrammetry, a specialist would be able to estimate the type and extent of vegetation lost within the unlawfully cleared area and whether it altered any of the conclusions in the Biodiversity Assessment Report.

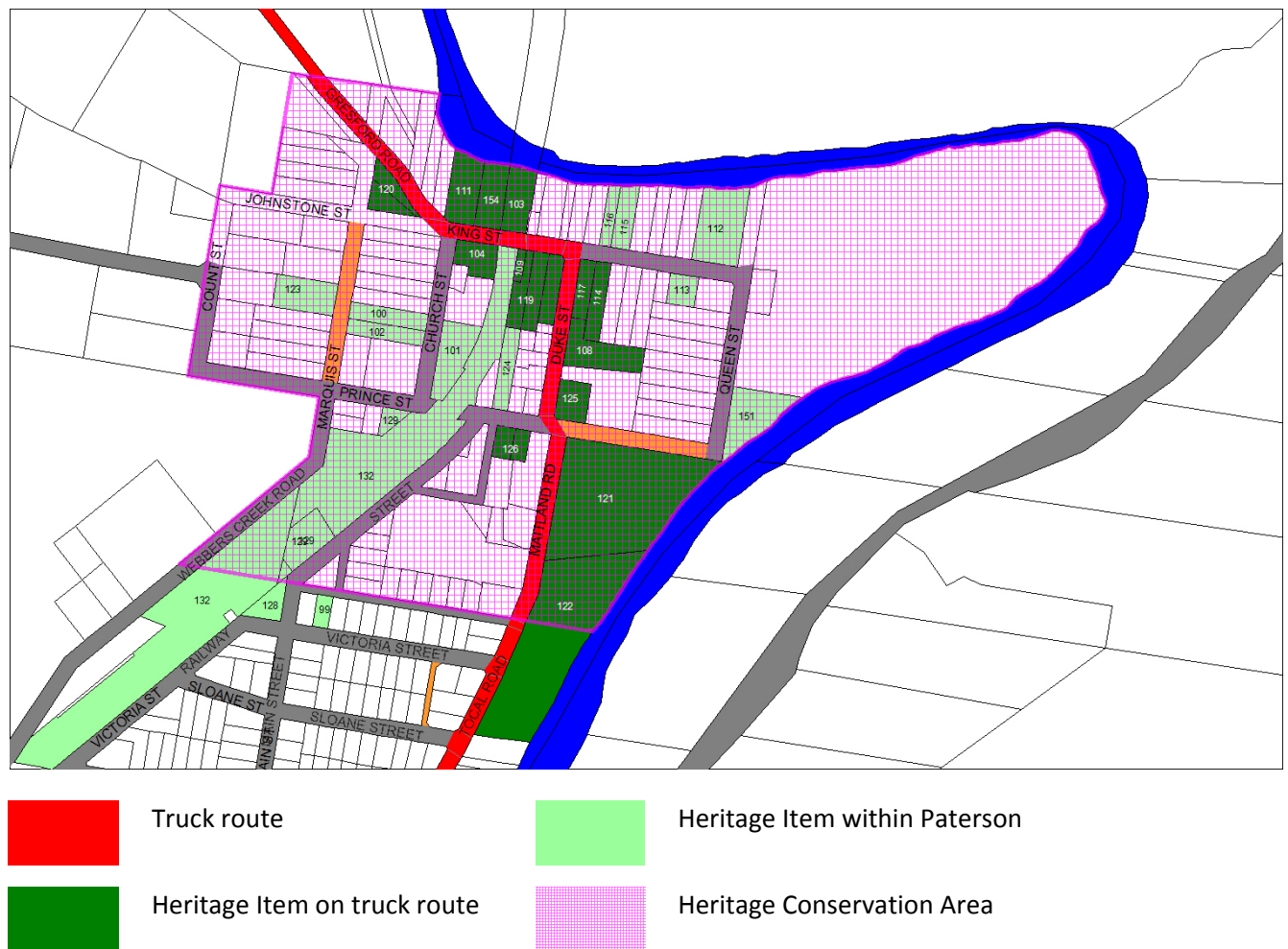
If the vegetation lost within the quarried area isn't included in the environmental assessment and the calculation of offsets, Council would consider that the level of assessment and resultant offsets falls short of what is required under the relevant legislation.

## **Appendix M – Historical Heritage Assessment**

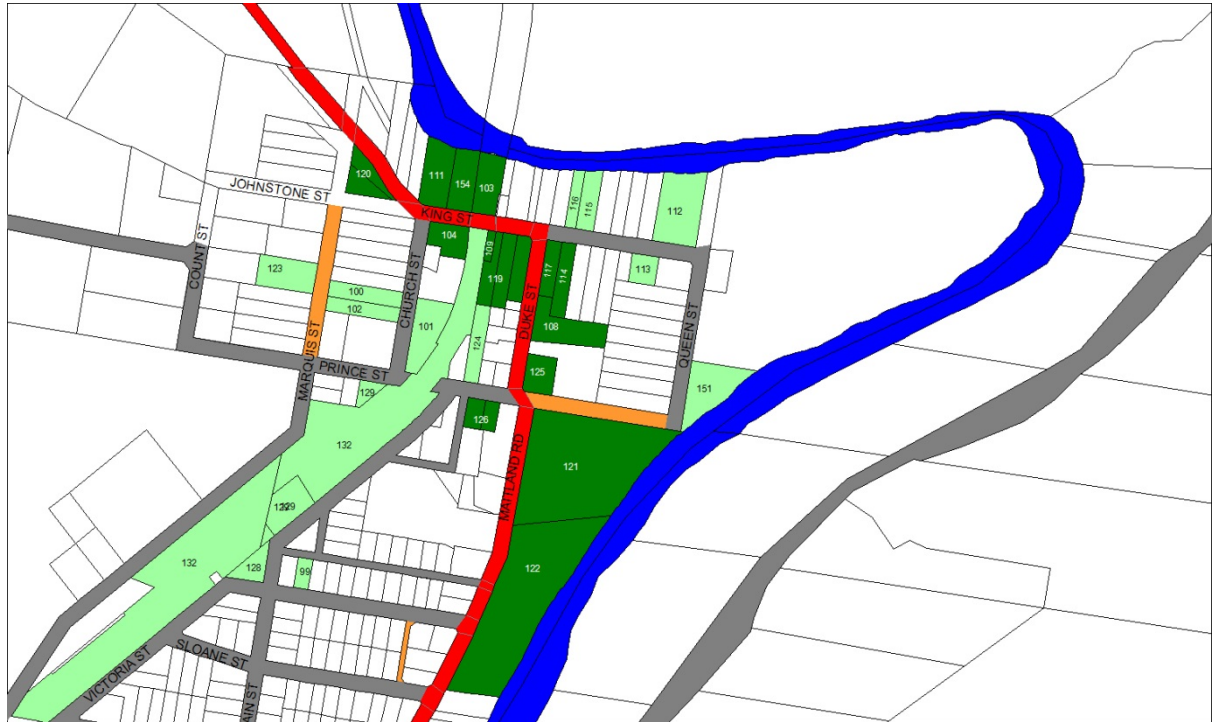
Generally Council is in agreement with the findings of this report however it is considered deficient in that the development proposes physical works and increased truck movements through the Historical village of Paterson which is an adopted Heritage Conservation Area under Dungog LEP 2014. In addition there are a number of specifically listed heritage items of local significance in King and Duke Streets and there has been no consideration given as to the potential impact the development may have on the historical significance of the village or the individual listed Heritage items. This is particularly the case for the Post Office and the B & B Building which are located on the intersection of Duke and King Street and road works are proposed which will physically impact them.

Map showing Paterson Conservation Area – Hatched Pink

### ***Paterson Township Heritage Conservation Area and Heritage Items.***



Refer to appendix 2 – Map showing location of individual listed heritage items. Dark green represents those Heritage Items located directly adjacent to the transport route with light green delineating other Heritage items in close proximity.



#### Heritage Item Names:

- 103 Paterson Railway Bridge
- 104 Former Courthouse
- 108 St Paul's Church, hall and cemetery
- 109 Former School of Arts
- 111 St Anne's Church and cemetery
- 114 Union Shed
- 117 Former CBC Bank
- 119 Court House Hotel
- 120 Former Bakery
- 121 Corn staddle
- 122 House Glen Ayr
- 125 Former Rectary
- 126 Former Commercial Hotel
- 154 Fig Trees

## **Appendix N- Aboriginal Cultural Heritage Assessment**

This report notes that two previously identified Items 38-4-0218 and 38-4-2014 no longer exist. This is reflective of the damage that has occurred to the environment as a result of the Quarry operators operating outside the terms of their existing approvals.

## **Appendix O - Social & Economic Assessment**

Consultants have used Figure 6.10 within their report twice, the first use reflects hospitalisations within the Hunter New England health district. The second Figure 6.10 refers to emergency department presentations and the statistics reflect the number of presentations at smaller hospitals which for Dungog totalled some 2,625 presentations at Dungog emergency department for 2013/14.

The Dungog hospital operates under the Hunter New England Health “spoke & hub model” with Maitland Public Hospital being the primary reference point. Only a limited number of patients are effectively transferred to John Hunter generally as a consequence of road trauma.

The Census analysis refers to the statistical area being the census collector district which represents the village of Martins Creek but also the surrounding rural residential developments to the west and south of Martins Creek.

In the context of medical reference 7.2 (page 37) the report cites the ambulance station at Dungog and also in nearby Stroud, whilst Dungog may be the primary response station Stroud is a further 28 Km’s which is easily a further 20 minutes away from Dungog, additional assistance would come from Maitland.

Table 7.1 Page 38 the list of selected social and recreational infrastructure servicing Martins Creek, there is only one GP service in Dungog being the Dungog Medical practice not two as reported, the second practice is at Clarence Town. The Dungog Showground is mentioned but not the Gresford Showground, a childcare service does operate in Dungog but is not mentioned.

A school bus service is provided not only to Dungog High School for students from Paterson and Martins Creek, but also a service to the Schools of Maitland with very limited designated bus stops along each haulage route, increased truck movements will place the students at greater risk. The Cityrail service is the only public transport service available to residents of Martins Creek and Paterson it is available 5 times a day Mon-Fri with three services on the weekend. Sporting fields are also available at Vacy, Paterson & Gresford as there is only one public sportsground in Dungog itself contrary to the report on Page 37.

Under 7.4 there is also a public school at Paterson not just the pre-school as mentioned. In the context of social assessment no commentary has been provided that relates to the connectedness or social fabric/community and the cumulative impacts upon such through increased truck movements. No commentary has been provided surrounding the detrimental impact upon the social health of the communities, let alone the health and well-being of the residents that reside within the transport corridors.

In the context of the economic assessment, the consultants seem to flip between the local and regional context too easily, the proposed establishment of 155 new jobs is a fallacy on the basis that at table 8.10 Potential Construction Phase Employment, estimates total project duration over the 7 stages totals 94 weeks spread over 30 years. If you then discount stages

1 (b), 2, 3 as they are only potential projects you eliminate a further 53 jobs and 26 weeks from the entire project.

Example 1. In the concluding remarks Page 63 the comments refer back the creation of 31-36 additional jobs during the operation of the quarry at full capacity. It then goes on to say that it is expected that given the suppliers and contractors currently used as predominantly **local** (i.e. Hunter Region) that the flow on effects will generally be contained in the region.

The consultant has not identified how many employees of the quarry reside in the Dungog LGA to reflect the emphasis they are placing on the local job creation and the value add to the local economy, whilst they predict that the quarry would contribute \$20 Mil per annum to the economy and \$4.8Mil to the gross regional product for the Dungog LGA. Again it is not the local economy, there is no modelling to reflect the relevant inflows to the local economy. The principals of the companies involved are not residents of the Dungog LGA and considering the size of the associated companies it should have been very easy to ascertain the number of local residents that are directly employed at the quarry.

The commentary in relation to occupation (Page 43) within the Martins Creek statistical area also needs to be analysed in the context that Dungog Shire is a net exporter of jobs with some 3,636 people employed of which 1,591 are employed locally, labourers account for 11.72% (426) and machinery operators/drivers 9.76% (355), the consultants identify that compared to nearby localities there is a higher number employed in these fields in the Martins Creek SSA however the reality is labourers accounting for 8.6% (15) and machinery operators/drivers 9.8% (17) accordingly the Martins Creek area is lower in these categories not higher as inferred by the consultant.

The small business community of Paterson will be seriously threatened from increased truck movements as there is limited parking within the Paterson village near the main shopping area, there is no mention of the potential impact upon the local economy as a consequence of increased truck movements, there is the real threat of more economic leakage with people not shopping locally and with the transport works proposed a reduction in the number of car-parking spaces.

Accordingly this report has been developed concentrating on regional influences and ignoring the local consequences and lacks detailed analysis of the social and economic impacts on the local community.

## **Conclusion**

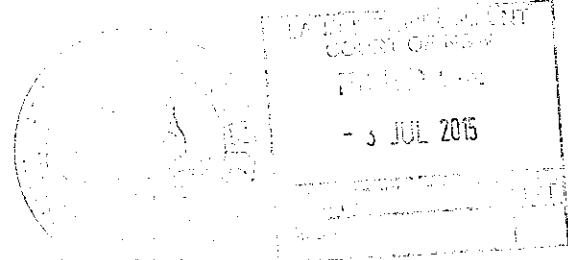
Dungog Shire Councils position is that the EIS as exhibited is substantially deficient in its current form as it does not accurately investigate and quantify the increased environmental impacts which result from the full Martins Creek Quarry Expansion. The SSD application seeks to consolidate approvals and regularise existing operations which are currently in dispute, the Class 4 proceedings need to be finalised to enable the DPE to determine the adequacy and relevance of the EIS and enable a proper consideration of the SSD application pursuant to the appropriate legislation.

Should the Department form a view that it is in a position to determine the SSD application in the affirmative then Council respectfully requests that the DPE engage further with Dungog Shire Council prior to finalising any conditions of consent including any environmental management and monitoring regime.

A handwritten signature in black ink, appearing to read 'Deasey', with a stylized flourish at the end.

Craig Deasey PSM  
GENERAL MANAGER

# **FIGURE 1 - SUMMONS**



**AMENDED SUMMONS PURSUANT TO ORDER OF THE COURT**

**DATED** 3/7/ **2015** *J Sheehan*

**COURT DETAILS**

|             |   |
|-------------|---|
| Court       | Land and Environment Court of New South Wales |
| Class       | 4   |
| Case number | 15/40287                                      |

**TITLE OF PROCEEDINGS**

|                       |  |
|-----------------------|--|
| Applicant             | <b>DUNGOG SHIRE COUNCIL</b>                                  |
| First respondent      | <b>HUNTER INDUSTRIAL RENTAL EQUIPMENT PTY LTD</b>            |
| Number of respondents | 3<br>Refer to Party Details at rear for full list of parties |

**FILING DETAILS**

|                                |   |
|--------------------------------|---|
| Filed for                      | <b>DUNGOG SHIRE COUNCIL</b> , applicant |
| Legal representative           | Robin Mallik<br>Mallik Rees Lawyers     |
| Legal representative reference | PCN: 4050 Ref: RM:312296                |
| Contact name and telephone     | Robin Mallik Tel. 02 4990 1266          |
| Contact email                  | rob@mallikrees.com.au                   |

**HEARING DETAILS**

This summons is listed at

**TYPE OF CLAIM**

Environmental law - civil enforcement (Pt 8.4 Protection of the Environment (Operations) Act 1997) and Planning Law civil enforcement (s 123 Environmental Planning and Assessment Act) 1979)



|                       |
|-----------------------|
| <b>RELIEF CLAIMED</b> |
|-----------------------|

The Plaintiff seeks the following relief:

***Development on Lots 5 & 6 in DP 242210 and Lot 42 DP 815628***

- 1 A declaration that development consent No. DA/171/90/79 granted by the applicant on 7 March 1991 (**1991 Consent**) with respect to the carrying out of development on land comprising Lot 5 in DP 242210 (**Lot 5**) and Lot 6 in DP 242210 (**Lot 6**) does not permit the said land to be used for the purposes of extractive industry otherwise than for the winning of material primarily for railway ballast.
- 2 A declaration that the first and second respondents, by themselves, their servants, agents and assigns, are using Lot 5 and 6 for the purposes of an extractive industry, otherwise than for the winning of material primarily for railway ballast, without development consent in contravention of section 76A(1)(a) of the *Environmental Planning and Assessment Act 1979*.
- 3 An order that the first and second respondents, by themselves their servants agents or assigns, be restrained from using lots 5 and 6 for the purposes of an extractive industry, otherwise than for the winning of material primarily for railway ballast, unless and until authorised to do so by development consent duly granted under the *Environmental Planning and Assessment Act*.
- 4 A declaration that any further extraction of material from Lots 5 and 6 and Lot 42 DP 815628 (**Lot 42**) is prohibited until development consent has been duly granted under the *Environmental Planning and Assessment Act 1979* for the further extraction of extracted material from those lots.
- 5 An order that the First and Second Respondents be restrained from extracting any further material from Lots 5 and 6 and Lot 42 unless and until they are authorised to do so by a development consent duly granted under the *Environmental Planning and Assessment Act*
- 6 A declaration that the 1991 Consent does not permit the carrying out of any extractive operations on Lot 6.
- 7 An order that the first and second respondents, by themselves their servants agents or assigns, be restrained from carrying out extractive operations on Lot 6 unless and until authorised to do so by development consent duly granted under the *Environmental Planning and Assessment Act 1979*.
- 8 A declaration that the 1991 Consent permits the carrying out of extractive operations on Lot 5, only within the area and to the depth identified on the drawing entitled "*Plan*

2, Proposed Quarry, Lots 5 & 6 DP 242210" (Plan 2) which formed part of the Environment Impact Statement dated July 1990 prepared by D.P. James for the State Rail Authority of NSW, which accompanied the application for the 1991 Consent.

- 9 An order that the first and second respondents, by themselves their servants agents or assigns, be restrained from carrying out extractive operations on Lot 5 otherwise than in accordance with the limitations as to area and depth identified on Plan 2, unless and until authorised to do so by development consent duly granted under the *Environmental Planning and Assessment Act 1979*.
- 10 An order that the first and second respondents by themselves, their servants, agents and assigns, be restrained from extracting more than 300,000 tonnes per annum from the land comprising Lot 5 unless and until authorised to do so by a development consent duly granted under the *Environmental Planning and Assessment Act 1979*.
- 11 A declaration that the First and Second Respondents are transporting by road more than 30% of the lawful annual production of the quarry material from Lots 5 and 6 contrary to condition 6 of the 1991 Development Consent
- 12 An order that the first and second respondents by themselves, their servants, agents and assigns, be restrained from permitting the transport by road of more than 30% of the lawful annual production of the quarried material from Lot 5 and Lot 6, unless and until authorised to do so by development consent duly granted under the *Environmental Planning and Assessment Act 1979*.
- 13 A declaration that the First and Second Respondents are transporting more than twelve (12) truckloads per day of quarry products obtained from Lots 5 and 6 by road contrary to the 1991 Development Consent
- 14 An order that the first and second respondents by themselves, their servants, agents and assigns, be restrained from permitting the transport by road of more than 12 truckloads of quarry products per day obtained from Lot 5 and Lot 6, unless and until authorised to do so by a development consent duly granted under the *Environmental Planning and Assessment Act 1979*.
- 15 A declaration that the First and Second Respondents are transporting more than 80,000 tonnes per annum of the quarried material obtained from Lot 5 and Lot 6, by road contrary to the 1991 Consent.
- 16 An order that the first and second respondents by themselves, their servants, agents and assigns, be restrained from permitting the transport by road of more than 80,000 tonnes per annum of the quarried material obtained from Lot 5 and Lot 6, unless and

until authorised to do so by development consent duly granted under the *Environmental Planning and Assessment Act*.

**Development on Lot 1 in DP 1006375 and on Lot 1 in DP 2043667/204377**

- 17 A declaration that the development being carried out by the first and second respondents, by themselves, their servants, agents or assigns, on that part of Lot 1 DP 1006375 that formerly comprised lot 2 DP DP524511, being the crushing and stockpiling of quarried material, constitutes an enlargement, expansion or intensification of the use of the said land for the purpose of a crushing plant as at 5 February 1986, contrary to section 109(2) of the *Environment Planning and Assessment Act* 1979.
- 18 An order restraining the first and second respondents by themselves, their servants, agents and assigns, from carrying out on that part of Lot 1 DP 1006375 that formerly comprised lot 2 DP 524511 the crushing or stockpiling of more than 449,000 tonnes of bulk quarried material (310,000 tonnes of saleable product) per annum unless and until authorised to do so by development consent duly granted under the *Environmental Planning and Assessment Act*.
- 19 A declaration that the first and second respondents, by themselves, their servants, agents and assigns, are using that part of Lot 1 DP 1006375 that does not comprise the land formerly known as Lot 2 DP 524511 for the deposition, storing stockpiling and transportation of extracted material without development consent in contravention of section 76A(1)(a) of the *Environmental Planning and Assessment Act* 1979
- 20 An order restraining the first and second respondents by themselves, their servants, agents and assigns, using that part of Lot 1 DP 1006375 that does not comprise the land formerly known as Lot 2 DP 524511 for the deposition, storing, stockpiling or transportation of extracted material on the said land unless and until authorised to do so by development consent duly granted under the *Environmental Planning and Assessment Act* 1979.
- 21 A declaration that the development being the installation and use of a Pug Mill and associated silos and tanks and associate infrastructure and the stockpiling of extracted material and fly ash by the first and second respondents on Lot 1 DP204377 is being carried out without development consent in contravention of section 76A(1)(a) of the *Environmental Planning and Assessment Act* 1979
- 22 An order that the first and second respondents remove the Pug Mill and associated silos and tanks and associate infrastructure and the stockpiled extracted material and

fly ash from Lot 1 DP204377 and cease using the said land for the purpose of stockpiling or processing extracted material and fly ash.

- 23 A declaration that the development being the installation and use of a Pre Coat Plant by the first and second respondents on Lot 1 DP1006375 is being carried out without development consent in contravention of section 76A(1)(a) of the *Environmental Planning and Assessment Act 1979*.
- 24 An order that the first and second respondents remove the Pre Coat plant from Lot 1 DP1006375 and cease using the said land for the purpose of operating a Pre Coat plant unless and until authorised to do so by development consent duly granted under the *Environmental Planning and Assessment Act 1979*.

**Use Of Lot 5 DP 250820242210**

- 25 A declaration that the development being the installation and use of a Manufactured Sand processing plant and two mobile crushing plants by the first and second respondents on Lot 5 DP 230820242210 is being carried out without development consent in contravention of section 76A(1)(a) of the *Environmental Planning and Assessment Act 1979*.
- 26 An order that the first and second respondents remove the Manufactured Sand processing plant and two mobile crushing plants from Lot 5 DP250820242210 and cease using the said land for the manufacture of sand or the crushing of extracted material unless and until authorised to do so by development consent duly granted under the *Environmental Planning and Assessment Act 1979*.

***Invalid variation of Environment Protection Licence No. 1378 granted under the Protection of the Environment Operations Act 1997***

- 27 A declaration that the purported variation made by the third respondent under section 58 of the *Protection of the Environment Operations Act 1997* to Environment Protection Licence No. 1378, being a licence currently held by the second respondent and formerly held by Rail Corporation New South Wales, by way of Notice of Variation No. 1071585, dated 2 April 2007, is invalid and of no effect.
- 28 An order restraining the first second and second respondents from carrying out the scheduled activity the subject of Environment Protection Licence No. 1378 (as varied) at any scale exceeding 500,000 tonnes per annum, unless and until authorised to do by an environment protection licence duly granted under the *Protection of the Environment Operations Act 1997*.

## **GROUND S FOR SEEKING THE RELIEF**

The applicant seeks the said relief on the grounds set out in the Points of Claim filed with this Summons.

|   |
|---|
| <p><b>SIGNATURE OF LEGAL REPRESENTATIVE</b></p> |
|---|

This summons does not require a certificate under section 347 of the Legal Profession Act 2004.

I have advised the applicant that court fees may be payable during these proceedings. These fees may include a hearing allocation fee.

Signature

Capacity

Date of signature

Solicitor on record

3 / 7 / 2015

## NOTICE TO RESPONDENT

If your solicitor, barrister or you do not attend the hearing, the court may give judgment or make orders against you in your absence. The judgment may be for the relief claimed in the summons and for the Applicant's costs for bringing these proceedings.

Before you can appear before the court you must file at the court an appearance in the approved form.

## HOW TO RESPOND

**Please read this summons very carefully. If you have any trouble understanding it or require assistance on how to respond to the claim you should get legal advice as soon as possible.**

You can get further information about what you need to do to respond to the summons from:

- A legal practitioner.
- LawAccess NSW on 1300 888 529 or at [www.lawaccess.nsw.gov.au](http://www.lawaccess.nsw.gov.au).
- The court registry for limited procedural information.

Court forms are available on the UCPR website at [www.lawlink.nsw.gov.au/ucpr](http://www.lawlink.nsw.gov.au/ucpr) or at any NSW court registry.

## REGISTRY ADDRESS

Street address Level 4, 225 Macquarie Street, Windeyer Chambers, Sydney

Postal address GPO Box 3565, Sydney NSW 2001

Telephone (02) 9113 8200

|                      |
|----------------------|
| <b>PARTY DETAILS</b> |
|----------------------|

**PARTIES TO THE PROCEEDINGS****Applicant**

DUNGOG SHIRE COUNCIL  
applicant

**Respondents**

HUNTER INDUSTRIAL RENTAL EQUIPMENT  
PTY LTD

first respondent

BUTTAI GRAVEL PTY LTD

second respondent

ENVIRONMENT PROTECTION AUTHORITY  
third respondent

|  |
|--|
| <b>FURTHER DETAILS ABOUT APPLICANT</b> |
|--|

**Applicant:**

|         |                             |
|---------|-----------------------------|
| Name    | <b>DUNGOG SHIRE COUNCIL</b> |
| Address | 198 Dowling Street, Dungog  |

**Legal representative for applicant:**

|                               |  |
|-------------------------------|--|
| Name                          | Robin Mallik   |
| Practising certificate number | 4050   |
| Firm                          | Mallik Rees Lawyers  |
| Address                       | 141 Vincent Street<br>Cessnock NSW 2325                          |
| DX address                    | DX 21504 CESSNOCK  |
| Telephone                     | 02 4990 1266   |
| Fax                           | 02 4990 7844   |
| Email                         | <a href="mailto:rob@mallikrees.com.au">rob@mallikrees.com.au</a> |
| Electronic service address    | Not applicable   |

|                                  |
|----------------------------------|
| <b>DETAILS ABOUT RESPONDENTS</b> |
|----------------------------------|

**First Respondent:**

Name **HUNTER INDUSTRIAL RENTAL EQUIPMENT PTY LTD**

Address **11-17 James Street, Wallsend NSW 2287**

**Second respondent:**

Name **BUTTAI GRAVEL PTY LTD**

Address **11-17 James Street, Wallsend NSW 2287**

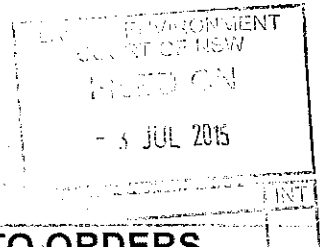
**Third respondent:**

Name **ENVIRONMENT PROTECTION AUTHORITY**

Address **Level 14, 59-61 Goulbourn Street, Sydney NSW 2000**



## **FIGURE 2 – POINTS OF CLAIM**



**AMENDED APPLICANT'S POINTS OF CLAIM PURSUANT TO ORDERS  
OF THE COURT 26 JUNE 2015** *g shuha J*

**COURT DETAILS**

|             |   |
|-------------|---|
| Court       | Land and Environment Court of New South Wales |
| Class       | 4   |
| Case number | 15/40287                                      |

**TITLE OF PROCEEDINGS**

|                   |   |
|-------------------|---|
| Applicant         | <b>DUNGOG SHIRE COUNCIL</b>                       |
| First Respondent  | <b>HUNTER INDUSTRIAL RENTAL EQUIPMENT PTY LTD</b> |
| Second Respondent | <b>BUTTAI GRAVEL PTY LTD</b>                      |
| Third Respondent  | <b>ENVIRONMENT PROTECTION AUTHORITY</b>           |

**FILING DETAILS**

|                                |  |
|--------------------------------|--|
| Filed for                      | <b>DUNGOG SHIRE COUNCIL</b> , applicant                          |
| Legal representative           | ROBIN PETER MALLIK<br>Mallik Rees Lawyers                        |
| Legal representative reference | PCN: 4040 Ref: RM:312296   |
| Contact name and telephone     | Robin Mallik Tel. 02 4990 1266                                   |
| Contact email                  | <a href="mailto:rob@mallikrees.com.au">rob@mallikrees.com.au</a> |

**APPLICANT'S POINTS OF CLAIM**

***The parties***

1. The Applicant is the council for the local government area of the Shire of Dungog constituted under the *Local Government Act* 1993 and is entitled to sue and be sued.
2. The First Respondent is an Australian company entitled to sue and be sued under its corporate name and style.
3. The Second Respondent is an Australian company entitled to sue and be sued under its corporate name and style.
4. The Third Respondent is a body corporate constituted under the *Protection of the Environment Administration Act* 1991.

***Leases granted to the First Respondent***

5. The First Respondent is the lessee of land comprising Lot 42 in DP 815628 and Lot 6 in DP242210 under a lease from the owner of that land, Nodekeda Pty Limited.

6. The First Respondent is the lessee of land comprising Lot 1 in DP 1006375, Lot 21 in DP 773220, Lot 1 in DP 204377, Lot 4 in DP 249026, Lot 6 in DP 249026 and Lot 5 in DP 242210 under a lease from the owner of that land, Noel Francis Mitchell.
7. Nodeketa Pty Limited has informed the Applicant that it does not wish to take part in these proceedings.

Particulars

Correspondence comprising Mallik Rees Lawyers' letter of 20 November 2014 to Nodeketa Pty Ltd and Nodeketa Pty Ltd's letter of 2 December 2014 to Mallik Rees Lawyers.

8. Noel Francis Mitchell has informed the Applicant that he does not wish to take part in these proceedings.

Particulars

Correspondence comprising Mallik Rees Lawyers' letter of 20 November 2014 to Noel Mitchell and Noel Mitchell's letter of 2 December 2014 to Mallik Rees Lawyers.

***The 1990 Development Application and the accompanying EIS***

4.9. On or about 15 August 1990, the State Rail Authority of New South Wales made a development application No. 171/90/79 (**Development Application**) to the Applicant under Part 4 of the *Environmental Planning and Assessment Act 1979 (EP&A Act)* seeking consent for a proposed development described in the Development Application form as "*Quarry for Railway Balast [sic]*" on Lot 5 and 6 in DP 242210 (respectively, **Lot 5 and Lot 6**).

2.10. The Development Application, in the section identified as "Location of Proposed Development", nominated the "Area of Land" as "*ca. 10 ha*".

3.11. The development the subject of the Development Application was "designated development" within the meaning of the EP&A Act such that the Development Application was required to be accompanied by an environmental impact statement pursuant to section 77(3)(d) of the EP&A Act.

4.12. The Development Application was accompanied by an Environmental Impact Statement dated 26 July 1990 entitled "*Environmental Impact Statement for proposed Railway Ballast Quarry at Martins Creek in the Shire of Dungog, prepared for the State Rail Authority of N.S.W. by D. P. James, July 1990*" (**EIS**).

5.13. The EIS formed part of the Development Application.

***Representations made in the EIS***

6.14. The EIS represents the objectives of the development as being:

1] to establish a rail ballast quarry adjacent to the existing Martins Creek quarry,

~~2] to supply raw material for processing at the existing quarry plant,~~

3] to maintain the existing Martins Creek quarry infrastructure,

4] to ensure the supply of rail ballast for the safe and efficient operation of the rail system,

5] to carry out the development in an environmentally sensitive manner.

Particulars

EIS at p 7, Section 1.3

7-15. The EIS contains representations that the development was proposed to establish a replacement supply of quality rail ballast material and that the main product from the proposed quarry would be rail ballast produced in accordance with the SRA specification at Appendix 4 to the EIS.

Particulars

EIS at p 15, Section 3.1 and at p 17, under the heading "Products"

8-16. The EIS contains representations that the area of the proposed development totals about 10 hectares, of which the proposed quarry would occupy about 5 hectares and another 5 hectares would be required for a haul road.

Particulars

EIS at p 5, Section 1.2 and at p 51, Soil and Water Management Assessment, "Introduction", second paragraph.

9-17. The EIS contains a representation that the document entitled "*Plan 2, Proposed Quarry, Lots 5 & 6 DP242210*" (**Plan 2**), which formed part of the EIS, shows the locations of the proposed quarry, haul road and details of the quarry faces and benches.

Particulars

EIS at p 15, Section 3.1

10-18. Plan 2 shows the proposed quarry as being located on Lot 5, not on Lot 6.

11-19. Plan 2 shows the proposed haul road, but not the quarry, as being located on Lot 6.

12-20. The EIS contains representations that the quarry will be developed in an approximately 5 hectare area on Lot 5, in the location shown on Plan 2 and that the quarry face would start at the north or northeast of the location of the quarry depicted on Plan 2 and excavation would progress to the south or south west with the active faces open to the east and north.

Particulars

EIS at p 15, Section 3.1 and the appended Noise Impact Assessment at both p 49, first sentence and the sentence commencing with the last word on p 49 and going over to p 50.

13-21. In the premises, it was represented in the EIS that the proposed quarry was to be in a specific location on Lot 5 (as shown on Plan 2) and was not proposed to be located on any part of Lot 6.

14-22. The EIS contains a representation that the proposed level of quarry floor was RL 40.

Particulars

Plan 2 and p 15, Section 3.1

15-23. The EIS contains a representation that the estimated annual production of the quarry would be between 250,000 and 300,000 tonnes per annum.

Particulars

EIS at p 5, Section 1.2

16-24. The EIS contains a representation that the estimated reserves of 3,500,000 tonnes were sufficient for more than 10 years extraction and necessarily also contains the representation that annual production would be less than 350,000 tonnes.

Particulars

EIS at p 5, Section 1.2

17-25. The EIS stated that truck movements had been estimated on the basis that 30% of the annual production of 265,000 tonnes of all product would be removed by road.

Particulars

EIS at pp 19, first sentence

18-26. In the premises, it was represented in the EIS that annual production would be 265,000 tonnes.

19-27. Alternatively, in the premises, it was represented in the EIS that annual production would not exceed 300,000 tonnes.

20-28. The EIS does not contain any assessment of the likely impact on the environment of any rate of production from the quarry exceeding 300,000 tonnes per annum.

21-29. The EIS contains a representation that 70% of the extracted product from the proposed quarry would be transported by rail and the balance by road.

Particulars

EIS at p 5, Section 1.2 and at pp 18 - 19, section 3.9,

22-30. The EIS contains a representation that about 12 truckloads (24 truck movements per day) would be required to remove 80,000 tonnes per annum.

Particulars

EIS at p 5, Section 1.2

23-31. The EIS contains representations that traffic impacts from the development would not change from the existing situation and the traffic impact is expected to be slight and that the level of truck movements would remain at the then existing level of about 24 movements per day.

Particulars

EIS at p 21, Section 4.7

***The EIS did not describe or assess proposed quarrying (extraction) on Lot 6***

24-32. The EIS does not describe the proposed development as involving quarrying of the land on Lot 6, but, in so far as concerned Lot 6, only describes and assesses the construction of a haul road in the location on Lot 6 shown on Plan 2.

25-33. The EIS does not contain any assessment of the likely impact on the environment of the carrying out of quarrying (extractive activities) on Lot 6.

26-34. The EIS does not identify any measures proposed to mitigate any likely impacts on the environment occasioned by the carrying out of quarrying (extractive activities) on Lot 6.

***The 1991 Consent and the use of land which it does, and does not, approve***

27-35. On or about 7 March 1991, in determination of the Development Application, the Applicant granted conditional development consent to the State Rail Authority of New South Wales for the carrying out of development on Lot 5 and Lot 6 for the purpose of an "extractive industry, being a quarry winning material primarily for railway ballast" (**1991 Consent**).

Particulars

Notice of Determination addressed to Mr Peter Handel, Quarries Business Manager, State Rail Authority of NSW, dated 7<sup>th</sup> March 1991, DA 171/90/79

28-36. On 11 April 1995 the 1991 Consent was amended by way of modification under s 102 of the EP&A Act (hereinafter, references to the "**1991 Consent**" are references to that consent as amended pursuant to the said modification).

29-37. The 1991 Consent approved the use of the land comprising Lot 5 and Lot 6 for the purpose of a particular type of quarry, namely a quarry winning material primarily for

railway ballast and did not approve the use of Lot 5 or Lot 6 for the purpose of any type of quarry other than one winning material primarily for railway ballast.

***The use of the land for a quarry which has not been approved under the EP&A Act***

30.38. No development consent has been granted permitting the use of Lot 5 or Lot 6 for the purpose of any type of quarry other than one winning material primarily for railway ballast.

31.39. In contravention of s 76A(1)(a) of the EP&A Act, the First and Second Respondents have used, and are using, Lot 5 and Lot 6 for a purpose for which development consent under the EP&A Act has not been granted, namely for the purpose of a quarry winning material which is not primarily for railway ballast, but which is primarily for product other than railway ballast.

***The unlawful quarrying on Lot 6***

32.40. By reason of the matters pleaded in [8]—[1316] – [21] and [24]—[2632] – [34] above, the 1991 Consent, did not approve the carrying out of extractive operations on Lot 6, but approved only the construction and use of a haul road on Lot 6 to be used for the purpose of transporting material to and from the quarry on Lot 5.

33.41. In contravention of s 76A(1)(a) of the EP&A Act, the First and Second Respondents have used, and are using, Lot 6 for a purpose for which development consent under the EP&A Act has not been granted, namely for the purpose of extractive operations, as distinct from for the purpose of a haul road.

***The incorporation of the EIS into the 1991 Consent by necessary implication***

34.42. Condition 7(b) of the 1991 Consent requires the beneficiary of the consent to ensure that all environmental safeguards proposed for the development and required by the consent and other statutory approvals are in force.

35.43. The “environmental safeguards proposed for the development” referred to in condition 7(b) of the 1991 Consent can be identified only by reference to the EIS, being the only document in which the environmental safeguards are proposed for the development.

36.44. In the premises, the EIS is incorporated into the 1991 Consent by necessary implication.

37.45. Alternatively, in the premises, the environmental safeguards proposed for the development in the EIS are incorporated into the 1991 Consent by necessary implication.

38.46. Further and in the alternative, the EIS is incorporated into the 1991 Consent by necessary implication because the use of the phrase “railway ballast” in the description

of the approved development, in order to be understood, requires reference to the EIS, and, in particular, to the ballast specifications at Appendix 4 of the EIS.

39.47. Further and in the alternative, the EIS is incorporated into the 1991 Consent by necessary implication because the requirement in Condition 6 of the Consent, and, in particular, the meaning of the phrase "30% of the quarry products" in order to be understood, requires reference to Section 3.9 of the EIS, which makes it clear that the reference to "30% of the quarry products" means "30% of the annual production of 265,000 tonnes".

***Breaches of Condition 7(b) of the 1991 Consent***

40.48. An environmental safeguard proposed for the development within the meaning of condition 7(b) of the 1991 Consent is that the annual production would be limited to a quantum that would not exceed 300,000 tonnes per annum.

41.49. In contravention of condition 7(b) of the 1991 Consent, the First and Second Respondents are extracting material such that the production has exceeded, and continues to exceed, 300,000 tonnes per annum.

42.50. An environmental safeguard proposed for the development within the meaning of condition 7(b) of the 1991 Consent is that the main product to be extracted from the proposed quarry would be railway ballast produced in accordance with the SRA specification at Appendix 4 to the EIS.

43.51. In contravention of condition 7(b) of the 1991 Consent, the First and Second Respondents are using the quarry such that railway ballast is not the main product extracted from the quarry, but constitutes only a secondary (non-main) product in the context of the greater extraction of other products from the quarry.

44.52. An environmental safeguard proposed for the development within the meaning of condition 7(b) of the 1991 Consent is that 70% of the extracted product would be delivered by rail and no more than 30% of the extracted product would be delivered by road.

45.53. In contravention of condition 7(b) of the 1991 Consent, the First and Second Respondent are using the quarry such that most of the extracted product is being delivered, not by rail, but by road, thereby causing significantly more truck movements associated with the quarry than would otherwise be occurring.

46.54. A further environmental safeguard proposed for the development within the meaning of condition 7(b) of the 1991 Consent is that only twelve (12) truckloads of quarry products



were to be transported by road per day, constituting 24 truck movements per day in total.

47-55. In contravention of condition 7(b) of the 1991 Consent, the First and Second Respondent have caused, and are causing, daily truck movements to exceed 24 truck movements per day.

48-56. A further environmental safeguard proposed for the development within the meaning of condition 7(b) of the 1991 Consent is that no more than 80,000 tonnes of quarry product per annum (based on 50 weeks at 5.5 days per week with an average load of 23 tonnes) would be be trucked out of the quarry.

49-57. In contravention of condition 7(b) of the 1991 Consent, the First and Second Respondent have caused and are causing a quantity of quarry product exceeding 80,000 tonnes per annum (based on 50 weeks at 5.5 days per week with an average load of 23 tonnes) to be trucked out of the quarry.

50-58. A further environmental safeguard proposed for the development within the meaning of condition 7(b) of the 1991 Consent is that the extractive operation of the quarry would only be carried out on Lot 5 only in the location shown on Plan 2, and not elsewhere on Lot 5, and not on Lot 6 at all.

51-59. In contravention of condition 7(b) of the 1991 Consent, the First and Second Respondent have caused, and are causing, extractive operation (the winning of quarried material) to be carried out on locations on Lot 5 outside of the location of the quarry depicted on Plan 2.

52-60. An environmental safeguard, proposed for the development within the meaning of condition 7(b) of the 1991 Consent is that Lot 6 would only be used for the purpose of the construction (and use) of a haul road 20 metres wide as depicted in Plan 2.

53-61. By reason of either or both of the matters pleaded in [5058] and [5260] above, the First and Second Respondent have caused, and are causing, extractive operation (the winning of material) to be carried out on Lot 6 in contravention of condition 7(b) of the 1991 Consent.

54-62. An environmental safeguard proposed for the development within the meaning of condition 7(b) of the 1991 Consent is that the area of the proposed development would total about 10 hectares, of which the proposed quarry would occupy about 5 hectares and another 5 hectares would be required for haul road

55-63. In contravention of condition 7(b) of the 1991 Consent, the First and Second Respondent have caused the total area of the development to significantly exceed 10 hectares.

Particulars

Approximately 32.7 ha of land on Lot 5 & 6 has been used for the quarrying of extracted material and Approximately 5 ha for the haul road.

56-64. In contravention of condition 7(b) of the 1991 Consent, the First and Second Respondent have caused the quarry to occupy an area which significantly exceeds 5 hectares.

Particulars

The quarry on Lot 5 & 6 occupies approximately 32.7 ha of land

***Contravention of Condition 1 of the 1991 Consent***

57-65. Condition 1 of the 1991 Consent requires the development to be conducted in such a manner as not to interfere with the amenity of the neighbourhood in respect of noise, vibration, smell, dust, waste, water, waste products or otherwise.

58-66. In contravention of Condition 1 of the 1991 Consent, the First and Second Respondents are conducting the development in a manner which is interfering with the amenity of the neighbourhood in respect of noise, dust, vibration, traffic congestion and traffic dangers caused by excessive heavy truck movements to and from the quarry.

***Contravention of Condition 6 of the 1991 Consent***

59-67. Condition 6 of the Consent prohibits the beneficiary of the 1991 Consent from permitting "the transport of more than 30% of the quarry products by road without further specific approval of Council".

60-68. Condition 6 of the Consent, when properly construed by reference to Section 3.9 of the EIS, prohibits the beneficiary of the 1991 Consent from permitting the transport by road per annum of more than 30% of the annual production of 265,000 tonnes (i.e., 85,500 tonnes per annum) of quarry products.

61-69. The applicant has not granted any further specific approval within the meaning of Condition 6.

62-70. In contravention of Condition 6, the First and Second Respondents have permitted and are continuing to permit the transport of more than 30% of the quarry products by road without the further specific approval of Council.

### ***Consequences of the pleaded contraventions of the 1991 Consent***

63-71. In carrying out development on Lots 5 and 6 otherwise than in accordance with the 1991 Consent, as pleaded above, the First and Second Respondents are carrying out development unlawfully in that they are carrying out the development contrary to s 76A(1)(b) of the EP&A Act.

64-72. One result of said contraventions, is that there are heavy truck movements associated with the carrying out of the development which grossly exceed what has been assessed and approved under the EP&A Act and these excessive truck movements are causing damage to local roads and interfering with the amenity of persons residing in the village of Paterson and persons residing close to or adjacent to the haul route used by the First and Second respondent to transport quarry products by road from the land.

### ***Processing and Stockpiling of Extractive Materials on Lots 1***

65-73. A railway siding exists on Lot 1 DP 1006375.

66-74. Located on Lot 1 DP1006375 is certain machinery used by the First and Second Respondents for the processing of extractive materials obtained from Lots 5 and 6,

67-75. The State Rail Authority of New South Wales was previously the registered proprietor of Lot 1 DP1006375 and Lot 1 DP2043667DP204377.

68-76. In 1988 the State Rail Authority of NSW claimed that it had a right to use Lot 2 DP524511 (part Lot 1 DP 1006375) for the purpose of extracting rock and gravel and the purpose of processing extractive materials and stockpiling the materials so processed pursuant to the provisions of Part 4 Division 10 of the EP&A Act.

69-77. The use of Lot 2 DP524511 for the purpose of the extraction of gravel and rock ceased in about March 1992 and has never recommenced.

70-78. The use of Lot 2 DP524511 for the purpose of the extraction of gravel and rock is deemed to have been abandoned pursuant to s 109 (3) of EP&A Act.

71-79. On 4 February 1986, when Section 107(2) and 109(2) of the EP&A Act came into force, the level of production by processing of saleable product on Lot 2 DP524511 was substantially lower than the level of production in subsequent years, including to the present.

72-80. The development carried out on Lot 2 DP524511 has not been registered pursuant to *Part 3 of State Environmental Planning Policy Number 37 – Continued Mines and Extractive Industries*,

~~73.81.~~ No development consent under the EP&A Act has been granted in respect of Lot 2 DP 524511 for the carrying out of development for the purpose of an processing any extracted material or for the purpose of an extractive industry, with the exception of a Development Consent in 1999 for the installation of more modern tertiary crushing plant which was did not authorise any increase in the level of production or production capacity of the development on the Lot 2 DP524511.

~~74.82.~~ In the period since 5 February 1986, the level of processing of saleable product on Lot 2 DP524511 has exceeded the level of processing of saleable product on 5 February 1986 and continues to do so.

~~75.83.~~ In the premises, the use by the First and Second Respondents of Lot 2 DP 524511 constitutes an unlawful enlargement, expansion or intensification of any otherwise permissible continuing use of that land.

~~76.84.~~ As a result of the unlawful intensification and expansion of any continuing use that might apply to Lot 2 DP 524511 damage has been caused and is being caused to the Applicant's roads due to the great volume of heavy traffic generated by the activities of the First and Second respondent in conducting the developments on the Quarry Site and the Processing Site.

~~77.85.~~ Further the unlawful intensification and expansion of any continuing use right that might otherwise be said to apply to Lot 2 DP 524511 has contributed to the excessive movement of heavy vehicles through the village to Patterson, interfering with the amenity of persons residing in or resorting to the village of Paterson and surrounding areas.

#### ***Unlawful use of Lot 1 DP204377***

~~78.86.~~ A Pug Mill and associated silos and tanks have been installed on Lot 1 DP204377 and are being used for the purpose of conducting mixing and binder delivery operations on the land including the mixing of various material (including cement, fly ash and extracted material) to create various products.

~~79.87.~~ A large amount of processed extracted material and fly ash has been deposited and is stockpiled on Lot 1 DP204377.

~~80.88.~~ The installation and operation of the Pug Mill and the deposition and stockpiling of processed extracted material and fly ash on Lot 1 DP 204377 is permissible only with development consent.

81-89. No Development Consent has been granted for the installation operation of the Pug Mill or for the deposition and stockpiling of processed extracted material or fly ash on Lot 1 DP 204377 .

82-90. The installation and use of the Pug Mill and associated silos and tanks on Lot 1 DP204377 is unlawful, being contrary to the prohibition in s 76A(1)(a) of the *Environmental Planning and Assessment Act*.

83-91. The use of Lot 1 DP204377 for the deposition and stockpiling of extracted material and fly ash is unlawful, being contrary to the prohibition in s 76A(1)(a) of the *Environmental Planning and Assessment Act*.

***Unlawful development being carried out on Lot 5 DP250820DP242210***

84-92. A Manufactured Sand processing plant and associated facilities have been installed and are used on Lot 5 DP250820DP242210.

85-93. Two mobile processing plants (crushing) have been located on Lot 5 DP250820DP242210 and are being used for the purpose of crushing and processing extracted material.

86-94. The installation or use of a Manufactured Sand processing plant and associated facilities and the use of the two mobile processing plants (crushing) on Lot 5 DP250820DP242210 requires Development Consent.

87-95. No Development Consent has been granted for the installation or use of the Manufactured Sand processing plant and associated facilities or for use of the two mobile processing plants (crushing) on Lot 5 DP250820DP242210.

88-96. The installation and use of the Manufactured Sand processing plant and associated facilities and the use of the two mobile processing plants (crushing) on Lot 5 DP250820DP242210 is unlawful being contrary to the prohibition in s 76A(1)(a) of the *Environmental Planning and Assessment Act*.

***Unlawful use of that part of Lot 1 DP1006375 that did not comprise the former Lot 2 DPDP524511***

89-97. Processed excavated material in the nature of aggregate of various size are deposited stored and stockpiled on that part of Lot 1 DP1006375 that did not comprise the former Lot 2 DP 524511 and are transported from the land by truck from time to time.

90-98. The deposition, storage and stockpiling of processed excavated material on that part of Lot 1 DP DP1006375 that did not comprise the former lot 2 DP524511 and the transportation of the material from the land is permissible only with development consent.

91-99. No development consent has been granted for the deposition, storage, stockpiling of any material on that part of Lot 1 DP1006375 that did not comprise the former Lot 2 DP524511 or for the transportation of any material from the said land.

92-100. The use of that part of Lot 1 DP1006375 that did not comprise the former Lot 2 DP 524511 for the purpose of the deposition, storage and stockpiling of processed excavated material or for the transportation of any material from the said land is unlawful, being contrary to the prohibition in s 76A(1)(a) of the *Environmental Planning and Assessment Act*.

#### ***Unlawful use of Lot 1 DP1006375***

93-101. A Precoat Plant has been installed and is currently being used on Lot 1 DP1006375.

94-102. The installation and use of a Precoat Plant is permissible only with development consent.

95-103. No development consent has been granted for the installation or use of the Precoat Plant on Lot 1 DP1006375.

96-104. The installation and use of the Precoat Plant on Lot 1 DP1006375 is unlawful, being contrary to the prohibition in s 76A(1)(a) of the *Environmental Planning and Assessment Act*.

#### ***The Environment Protection Licence held by the Second Respondent***

97-105. The Second Respondent is the holder of environment protection licence (number 1378) issued by the Third Respondent under the *Protection of the Environment Operations Act 1997 (POEO Act)* with respect to the carrying out of "Crushing Grinding or Separating Works" and "Extractive Industries" on land comprising Lot 1 in DP 1006375, Lot 21 in DP 773220, Lot 1 in DP 204377 (**Environment Protection Licence**).

98-106. At all material times prior to 2 April 2007, the Environment Protection Licence provided that the scale at which the scheduled activities of "crushing, grinding or separating works" and "extractive industries" could be carried out must not exceed 500,000 tonnes per annum.

#### **Particulars**

Condition A1.2 of the Environment Protection Licence

#### ***The unlawful variation to the Environment Protection Licence in April 2007***

99.107. On or about 22 December 2006, the Rail Corporation of New South Wales made an application to the Third Respondent to vary the Environment Protection Licence so as to increase the scale at which the scheduled activities of "crushing grinding or separating works" and "extractive industries" could be carried out from the then-existing maximum of 500,000 tonnes per annum to a maximum of 2,000,000 tonnes per annum.

Particulars

Amendment to the table forming part of Condition A1.2 of the Environment Protection Licence

400.108. On or about 2 April 2007 the Third Respondent purported to grant a variation to the Environment Protection Licence so as to increase the scale at which the scheduled activities of "crushing grinding or separating works" and "extractive industries" could be carried out from the then-existing maximum of 500,000 tonnes per annum to a maximum of 2,000,000 tonnes per annum (the **Licence Variation**).

Particulars

Notice of Variation of Licence No. 1378 dated 2 April 2007

401.109. Pursuant to s. 58(6) of the POEO Act, the Third Respondent is required to invite and consider public submissions before varying an environment protection licence granted under that Act, if the variation will authorise a significant increase in the environmental impact of the activity authorised or controlled by the licence and the proposed variation has not, for any reason, been the subject of environmental assessment and public consultation under the EP&A Act.

402.110. The Licence Variation purported to authorise a significant increase in the environmental impact of the activity authorised or controlled by the Environment Protection Licence by reason of it increasing the scale at which the scheduled activities of "crushing grinding or separating works" and "extractive industries" could be carried out from a maximum of 500,000 tonnes per annum to a maximum of 2,000,000 tonnes per annum.

403.111. At the time the Licence Variation was granted by the Third Respondent the proposed variation had not been the subject of environmental assessment and public consultation under the EP&A Act.

404.112. The Third Respondent in contravention of it's obligation under s. 58(6) of the POEO Act did not invite or consider public submissions before granting the variation to the Environmental Protection Licence.

405-113. In the premises, the Third Respondent, in purporting to exercise its power to grant the Licence Variation, did not comply with the conditions precedent to the exercise of that power which are prescribed in s 58(6) of the POEO Act.

406-114. Further, and in the alternative, pursuant to s 50(2) of the POEO Act, an environment protection licence that relates to "controlled development", as defined in s 50(1) of the Act, must not be granted or varied (other than on the initiative of the EPA), unless development consent has been granted for the controlled development.

407-115. The extraction of material from the subject quarry at a rate of up to 2,000,000 tonnes per annum constitutes "controlled development" within the meaning of section 50 of the POEO Act.

408-116. At the time the Licence Variation was granted by the Third Respondent, development consent had not been granted for the extraction of material from the subject quarry at a rate of up to 2,000,000 tonnes per annum.

409-117. The Licence Variation was not made "on the initiative of the EPA" within the meaning of s 50(2) of the POEO Act.

410-118. In the premises, the Third Respondent, in purporting to exercise its power to grant the Licence Variation, did so in contravention of s 50(2) of the POEO Act.

411-119. By reason of the matters pleaded in paragraphs [97-105] to [410-118] above, the Licence Variation, to the extent that it purports to permit an increase in the scale at which the scheduled activities of "crushing, grinding or separating works" and "extractive industries" could be carried out on the land the subject of the Environment Protection Licence from a maximum of 500,000 tonnes per annum to a maximum of 2,000,000 tonnes per annum, is invalid and of no effect.

***Entitlement to the relief claimed in the Summons***

412-120. In the premises, the Applicant is entitled to the relief sought in the Summons.

SIGNATURE

Signature of legal representative

Capacity

Date of signature

Solicitor on record

31/03 / 2015



# **ANNEXURE ‘A’**

