

15 January 2025

Carl Dumbleton
NSW Department of Planning, Housing and
Infrastructure

Via NSW Planning Portal

Dear Mr Dumbleton

Submission Re: State Significant Development Application No. SSD-65146459 - Marulan Quarry

Our ref: 10035/NEI826-00001

We act for Neighbours of Winfarthing Inc and make this submission on its behalf.

Our client has several concerns about State Significant Development Application No. SSD-65146459 - Marulan Quarry (**Application**), which proposes a hard rock quarry including processing area, internal haul roads, importation of materials, and upgrades to the Hume Highway (**Proposed Development**) at Lot 3 & 4 DP247199 and Lot 7001 DP1025585 (**Site**). Our client's concerns are set out below in sections 2 – 8 of this letter. In summary, they include:

1. traffic, access and safety,
2. noise,
3. dust,
4. blasting,
5. biodiversity,
6. community consultation, and
7. lack of owners' consent.

We have referred to the following documents in this submission:

- (a) Marulan Quarry Scoping Report by GHD dated 23 November 2023 (**Scoping Report**),
- (b) Secretary's Environmental Assessment Requirements for the Proposed Development issued on 21 December 2023 (**SEARs**),
- (c) Marulan Quarry Environmental Impact Statement prepared by GHD dated 12 November 2024 (**EIS**);
 - Appendix D to the EIS: Stakeholder Engagement – 2024 Community Engagement Report by Global Quarries Australia Pty Ltd (**Stakeholder Engagement Report**),
 - Appendix I to the EIS: Biodiversity Development Assessment Report by GHD dated 5 November 2024 (**BDAR**),

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- Appendix K to the EIS: Noise and Vibration Impact Assessment by GHD dated 8 November 2024 (**Noise Assessment**),
 - Appendix M to the EIS: Traffic Study by GHD dated 6 November 2024 (**Traffic Assessment**),
 - Appendix S to the EIS: Health Risk Assessment by GHD dated 6 November 2024 (**Health Assessment**),
- (d) '*Significant Impact Guidelines 1.1 - Matters of National Environmental Significance*' by the Commonwealth Department of the Environment dated 2013 (**EPBC Act Significant Impact Guidelines**), and
- (e) *Community Consultative Committee Guidelines: State Significant Projects*, NSW Department of Planning, Housing and Infrastructure, June 2023 (**CCC Guidelines**).

1. Background

- 1.1 The design of the Proposed Development has been progressively developed since around 2019.
- 1.2 On 13 May 2019, amended Secretary's Environmental Assessment Requirements for an original development application for the quarry (SSD-9750) were issued.
- 1.3 A Community Consultative Committee (**Former CCC**) was established as part of the original development application and 11 meetings were held over the period of November 2019 – June 2023.
- 1.4 The original application SSD-9750 was withdrawn prior to the expiry of the SEARs on 30 June 2023.
- 1.5 The Scoping Report was lodged with the Department as part of a new state significant development application for the project.
- 1.6 The SEARs were issued on 21 December 2023.

2. Traffic, access and safety

Access arrangements

- 2.1 The new access arrangements for the Proposed Development (which we are instructed were only made publicly available in September 2024) provide that only light vehicles may cross the median crossing on the Hume Highway at Winfarthing Road and that quarry trucks will access the Site from a newly constructed left hand turn into the Site located 900m to the east of Winfarthing Road and will be required to exit the Site onto Winfarthing Road and a left only turn onto the Hume Highway. This effectively means that quarry trucks and heavy vehicles will not be able to turn right onto the Hume Highway out of the Site or Winfarthing Road. Prior to this, and as detailed in the Scoping Report, it was proposed that heavy vehicles would enter and exit the Proposed Development via a new entrance on the Hume Highway to be constructed 900m to the east of Winfarthing Road.
- 2.2 The impact of this arrangement is that any heavy vehicles needing to access the Site or Winfarthing Road will:

- (a) if travelling from Goulburn (in the west), be required to travel an extra 16 km (return) to the Marulan South interchange then return to enter from the East, or
 - (b) if travelling from Marulan (in the east), be required to travel an extra 44 km (return) to the Goulburn South interchange before they can make a U turn to travel back east from their starting destination.
- 2.3 The recently proposed access arrangements are of concern to our client, who has members that are residents or operate business out of Winfarthing Road. Their concerns are as follows:
- (a) There will be an increase in delivery charges for residents and businesses.
 - (b) Residents' caravans will be unable to utilise the median crossing.
 - (c) Businesses that operate from Winfarthing Road that utilise heavy vehicles will need to travel these further distances.
- 2.4 It is unclear from the EIS whether the restrictions on heavy vehicles will also apply to residents. In our client's view, the Proposed Development should enable residents of Winfarthing Road and local heavy vehicles to turn right out of Winfarthing Road onto the Hume Highway (that is, to maintain the current arrangements).

Bus stop

- 2.5 A new bus stop location is proposed for the school bus to Goulburn.
- 2.6 The current arrangements for the bus are that it collects children from the Winfarthing Rd intersection on the Hume Highway in the morning and drops children off at the Rampion Hills Road intersection on the Hume Highway in the afternoon. Children who reside on the opposite side of the pick-up/drop-off location are driven across the Winfarthing Road or Rampion Hills Road median strips by their parents.
- 2.7 The Traffic Assessment does not consider the impact of the estimated 5 trucks per hour exiting Winfarthing Road during peak times or the impact of the six-month construction period for the intersection upgrade on the school bus operations.
- 2.8 Further, the Proponent proposes that the bus conducts a U-turn on a blind corner of Winfarthing Road at a dangerous location (required to accommodate the new bus location).
- 2.9 Our client is not aware of any consultation that the Proponent has undertaken with the operator of the school bus service and is concerned the operator will not agree to the proposed changes. Further, our client is concerned that the Proponent has used the new proposed bus stop location as justification for the project, however, has not properly considered the impacts of moving the location of the bus stop (which in practicality does not benefit the residents) or the impact of the Proposed Development on the operation of the school bus.
- 2.10 It is our client's view that the bus stop should remain in its current location at the intersection of Winfarthing Road on the Hume Highway and that appropriate safety measures be put in place to ensure there is no conflict with the acceleration lane out of the intersection (which may require an upgrade to the bus stop).

Safety concerns

- 2.11 Our client is of the view that the Site is not suitable for the Proposed Development due to issues with access, traffic and resulting safety concerns. The area around Winfarthing Road is

signposted as a black spot zone and to be dangerous due to the flat, high-speed nature of the Hume Highway in this location.

- 2.12 Section 3.2 of the Traffic Assessment notes that crash data has been taken from 500m east and west of the Winfarthing Road intersection. This does not consider the proposed new left turn into the site located approximately 900m east of Winfarthing Road, or the length of the proposed left-out acceleration lane (approximately 800m). Our client is of the view that the Traffic Assessment should be amended to include crash data within at least 1.5km east and west of the Winfarthing Road intersection to enable proper assessment of the proposed access arrangements. This would ensure the Narambulla Bridge is included within the crash data considered. This is a particularly dangerous area of the Hume Highway, with a serious crash occurring there as recently as 7 January 2025 (link: <https://www.abc.net.au/news/2025-01-07/hume-highway-crash-near-goulburn/104792092>). The dangerousness of this area would be exacerbated by the Proposed Development as it will introduce heavy vehicles slowing down on this stretch of road to prepare to enter the Site in an area where other heavy vehicles are speeding up to reach the signposted 110km speed limit in order to travel up the 4.5% hill towards Winfarthing Road.

- 2.13 The Traffic Assessment relies on data from a one-day survey conducted on 1 November 2018, and states:

These were assumed to reflect current traffic conditions as historical traffic growth trends on Hume Highway, sourced from Roads and Maritime Services' Traffic Volume Viewer at Station Id – T0274-PR, identified that traffic has generally declined since 2018 pre-COVID 19 pandemic.

- 2.14 The below table shows traffic data taken from T0274-PR and indicates that traffic volume has increased since 2018:

	2018	2019	2023	2024
Northbound	10,722 (7.39%*)	10,632 (8.43%)	11,597 (10.07%)	11,529 (12.30%)
Southbound	10,679 (7.53%)	10,620 (7.38%)	11,342 (10.52%)	12,724 (16.53%)
Combined	21,401 (7.46%)	21,252 (7.86%)	22,939 (10.29%)	24,253 (14.52%)

* indicates heavy vehicle percentage

- 2.15 Our client is concerned that the data relied upon for the Traffic Assessment is not accurate and accordingly the results and conclusions made in the assessment cannot be relied upon. The table above indicates an increase in traffic since 2018 that includes an increase in the proportion of heavy vehicles.
- 2.16 Our client is of the view that the Proponent should be required to update its Traffic Assessment to rely on current traffic data.
- 2.17 Lastly, it is not clear from the EIS whether the proposed acceleration lane will have street lighting installed. Our client is of the view that, if the Application is approved, lighting of the acceleration lane (similar to the Marulan South intersection) should be included as a condition of consent.

3. Noise

Construction noise impacts

- 3.1 The construction phase of the project will generate a significant amount of noise for the nearby residential properties (demonstrated in section 6.4 of the EIS). Our client is concerned that the Proponent will carry out construction work in the periods known as Out-of-Hours Work (**OOHW**) given vague language in the EIS such as 'the following activities have justification to be undertaken outside the recommended construction hours...Works for which it can be demonstrated that there is a need to operate outside the recommended standard hours' (EIS page 95). Our client is of the view that:
- (a) prior to determination of the Application, the Proponent should be required to provide further information about any construction work it anticipates will be undertaken during OOHW, and
 - (b) should the Application be approved, construction work should take place within the standard construction hours, other than any emergency work required.

Ongoing noise impacts

- 3.2 The ongoing noise impacts of the Proposed Development are of greater concern to our client.
- 3.3 The EIS states that two sensitive receivers (R01 and R03) are predicted to experience 'intrusive noise levels' during several operational scenarios. Our client is of the view that this demonstrates that the Site is not suitable for the Proposed Development.
- 3.4 The 37 rural residential properties on Winfarthing Road have entitlements to build secondary dwellings on those lots. As part of the Noise Assessment, the sensitive receivers were located at the site of any existing dwelling on those lots (or 'the most-affected point on or within the residential property boundary – EIS page 95), not at a location on those lots closest to the Proposed Quarry (see Figure 2.1 in the EIS). Accordingly, the noise implications for other parts of those lots has not been accurately assessed with the implication that owners of those lots will likely have the development potential of their land limited by the quarry operations. Further, there are 10 additional dwellings within 3km of the Proposed Development which the Proponent has failed to include in its noise assessment.
- 3.5 The proposed quarry operating hours on a Saturday (8am – 6pm) go beyond the standard construction noise hours of 8am – 1pm. Our client is of the view that, should the Application be approved, the quarry operating hours should be limited to 8am – 1pm on a Saturday, with no operation to take place on Sundays or public holidays (as is proposed).

4. Dust & Silica

- 4.1 Our client is concerned about the impact of dust from the proposed quarry operations. Table 5.1 of the Health Assessment indicates the quarry operations will result in an increase in air quality particulates at all sensitive receivers. We are instructed that all of the neighbouring residences rely on rain/tank water and many have solar panels and vegetable gardens/orchards that will be susceptible to increased dust, and that there are community concerns about the health impacts of increased dust particulates in the air.
- 4.2 Our client is concerned about the potential impacts of silica (including silicosis) from the quarry operations on neighbouring residents (in particular, the potential impacts on residents with underlying health conditions and on children who will wait nearby the Site to catch the bus every day to school) since an air quality management plan for the Proposed Development has not yet been developed for review.
- 4.3 The Health Assessment notes that 'information on the crystalline silica content of the ambient dust in the vicinity of the project area was not available at the time of reporting'. Our client

considers the Proponent has had ample time to conduct air quality monitoring for silicosis given the 5+ year timeframe over which the project has developed and should be required to conduct sampling to determine the baseline data prior to determination of the Application, rather than assume the baseline level.

- 4.4 Further, our client is of the view that an air quality management plan should be developed for review prior to the Application being determined and should adopt the following recommendation from the Health Assessment (page 22):

The GHD (2024) AQIA recommends that the construction air quality management plan for the project include air quality monitoring and it is recommended that dust samples collected in association with this monitoring are subject to laboratory analysis for crystalline silica, to verify actual RCS exposures [sic].

5. Blasting

- 5.1 The EIS provides that a blasting management plan will be determined after approval. Our client is of the view that a blasting management plan should be prepared prior to determination of the Application as there are potentially significant impacts from the blasting that should be considered prior to determination and the community should be given the opportunity to review such a plan given the significance of the impacts.
- 5.2 Parts of Winfarthing Road and some rural residential lots are located within 300-400m of the blasting site. The EIS notes that flyrock can travel up to 271 metres (page 103). Accordingly, there is a risk that the exclusion zone will include parts of Winfarthing Road and neighbouring residential lots. If this was to occur, it would prevent people from entering or leaving Winfarthing Road (since it is a dead-end road) and prevent people from accessing parts of their property for the residential and commercial purposes for which they are approved. In our client's view, this is an unacceptable impact and demonstrates that the Site is not suitable for the Proposed Development.
- 5.3 Section 2.17 of *State Environmental Planning Policy (Resources and Energy) 2021* requires the consent authority to consider the existing and approved uses of land in the vicinity of the development. The Site is adjacent to several rural residential properties and agricultural lots that farm animals.
- 5.4 The EIS states:
- ‘Prior to blasting activities, the blasting area and blasting exclusion zone should be monitored for the presence of fauna with the potential to [sic] impacted by blasting. All located animals are to be cleared from the impact area prior to the commencement of blasting.’
- 5.5 Without knowing the extent of the blasting exclusion zone it is difficult to understand the practical ramifications of this recommendation. However, it is unlikely that monitoring of adjoining rural properties within the exclusion zone and removal of any grazing animals and/or native fauna species, will be a practical solution.

6. Biodiversity

- 6.1 Our client is concerned that the impact of the Proposed Development on biodiversity has not been adequately assessed and that the Proposed Development will have an unacceptable impact on the biodiversity of the Site and surrounding area.
- 6.2 The BDAR indicates that the study area aligns closely with the Site boundary. The study area did not include surrounding areas of largely undeveloped rural/agricultural land (all of which is

zoned C3 Environmental Management under the *Goulburn Mulwaree Local Environmental Plan 2009 (GWLEP)*), which are likely inhabited by similar flora and fauna species, many of which are native and listed as threatened under either the *Biodiversity Conservation Act 2016 (NSW) (BC Act)* or *Environment Protection and Biodiversity Conservation Act 1999 (Cth) (EPBC Act)*. The EIS indicates that the Proposed Development will have offsite impacts including noise, vibration, dust and water quality, all of which are likely to impact on the native fauna, including threatened species, that inhabit the surrounding area. It is our client's view that these surrounding areas should have been surveyed and studied to enable proper assessment of the impact of the Proposed Development on biodiversity.

Avoid and Minimise

- 6.3 Figure 2.2 of the EIS (and Figure 7.1 of the BDAR) shows the progression of the design of the Proposed Quarry since 2019. The BDAR relies on the originally considered extraction footprint of 10.6ha compared to the current 7.8ha proposal to satisfy the 'avoid & minimise' requirement legislated under the BC Act. However, the figures demonstrate that the overall footprint of the Proposed Development (the **Disturbance Area**) has increased in size and scale to include a larger processing area in the northeast corner of the Site. Significantly, the Disturbance Area will now directly sever the Southeast and Tablelands Regional Plan Corridor (Figure 8.1 of the BDAR) and the EIS notes that 'the project would create a gap in native vegetation cover and create barriers to fauna movement' (page 74). This demonstrates that the Proposed Development will have significant impacts on threatened fauna in the broader area and that in effect no steps have been taken to meet the 'avoid & minimise' requirement.
- 6.4 The Proposed Development will require the removal of all hollow bearing trees (**HBTs**) within the Disturbance Area. It is unclear from the EIS and BDAR how many HBTs are proposed to be removed (they reference only 'numerous' or 'high number'). The BDAR recognises that HBTs provide suitable habitat for several threatened species that are known to or are likely to occur on the Site (for example, the Southern Myotis and the Spotted Tail Quoll) and in the surrounding area. Further, the BDAR does not include any plans to offset the loss of HBTs with suitable nest boxes.
- 6.5 The Proponent has not prepared a draft biodiversity management plan or vegetation management plan and the EIS and BDAR lack sufficient detail to establish that the avoid and minimise hierarchy has been adequately addressed. It is our client's view that the Application should be refused on this basis.

Unacceptable impact on the Koala

- 6.6 The EPBC Act Significant Impact Assessment for the Koala (Appendix E to the BDAR) concludes that the project 'may result in a significant impact on the Koala'.
- 6.7 It is our client's view that the Significant Impact Assessment significantly downplays the impact of the Proposed Development on the Koala and that it is highly likely that the Proposed Development will have a significant impact on the Koala, warranting refusal of the Application. For example, the Significant Impact Assessment incorrectly assesses the impact of the Proposed Development on the breeding cycle of the 'population as a whole' (that is, the species), rather than on 'a population' (that is, the local population), which is required under the EPBC Act Significant Impact Guidelines. Accordingly, the assessment cannot be relied upon.
- 6.8 Although the surveys undertaken for the BDAR did not result in any sightings of the Koala within the Site, it notes that there is a moderate likelihood of the Koala being present, due to

the presence of seven koala food tree species. We are also instructed that koalas are regularly sighted in the surrounding area by residents including members of our client. Accordingly, our client is of the view that it is unacceptable that no species credits are required for the Koala under the BAM.

7. Owners' consent

- 7.1 The project site includes two privately owned Lots 3 and 4 in DP 247199 and Lot 7001 DP 1025585 (**Lot 7001**), which is currently owned by Crown Land, but is subject to an undetermined Aboriginal Land Rights Claim.
- 7.2 The EIS states that details of the negotiations and landowners' consent is provided in Appendix F, however Appendix F has not been provided on the Planning Portal for review.
- 7.3 The Application cannot be approved without landowners' consent for all lots that comprise the Site.
- 7.4 Further, the consent of the Minister administering the *Crown Lands Management Act 2016* is required under section 2.23 of that Act. The Land and Environment Court has determined that a decision to grant development consent in the absence of the Minister's consent involved jurisdictional error and the consent authority had no power to grant the development consent (*Save Bungendore Park v Minister for Education and Early Learning* [2023] NSWLEC 140).
- 7.5 In addition, while the Aboriginal Land Claim has not been determined, the Aboriginal Land Council will have an equitable interest in the land on the basis that the statutory scheme under the *Aboriginal Land Rights Act 1983* requires the Minister to grant a claim if the land is 'claimable Crown Land'. The Court of Appeal has confirmed that a Land Council obtains a right to have land transferred to it when it lodges a claim (*New South Wales Aboriginal Land Council v The Minister Administering the Crown Lands Consolidation Act and the Western Land Act (1988)* 14 NSWLR 685). In those circumstances, development consent should not be granted without the consent of the Pejar Aboriginal Land Council, which is entitled to have Lot 7001 vested in it if the land is 'claimable Crown Land'.

8. Community Consultation

Community engagement process

- 8.1 The SEARs require consultation with affected landowners and community groups (among other stakeholders).
- 8.2 Table 5.1 of the EIS lists the key stakeholder groups that 'have been or will be engaged with' in relation to the project, which includes our client. We are instructed that, despite numerous attempts to meet with the Proponent since 2019, the Proponent has failed to meet with the executive committee of Neighbours of Winfarthing.
- 8.3 As mentioned in paragraph 2.1, we are instructed that the current access arrangements for the Site were only made publicly available in September 2024. Accordingly, our client's concerns about this change in the development cannot have been adequately identified in the EIS documentation or addressed.

Community Consultative Committee

- 8.4 The SEARs require the Proponent to establish and operate a Community Consultative Committee (**CCC**) in accordance with the CCC Guidelines.
- 8.5 Given the CCC Guidelines were updated in June 2023 and the SEARs were issued on 21 December 2023, any CCC for the Proposed Development must be established and operated

in accordance with the June 2023 version of the CCC Guidelines to satisfy this requirement of the SEARs.

- 8.6 The Proponent has not complied with the requirements of section 6 of the CCC Guidelines concerning publication of information. Our client is concerned about this lack of transparency and that the issues raised by the Former CCC have not been properly identified in the EIS or addressed by the Proponent. In our client's view, the EIS and Stakeholder Engagement Report do not accurately identify or address the issues raised by the Former CCC, which is a requirement of the SEARs.
- 8.7 Further, we are instructed that the Proponent's project website has not been kept up to date with developments in the project design and does not contain any information about the current Application, making it difficult for our client and community members to obtain current and accurate information about the project.
- 8.8 For the above reasons, the EIS does not meet the requirements for Engagement set out in the SEARs.

Requirement to establish new CCC

- 8.9 If the Application is approved, our client is of the view that the Proponent should be required to establish and operate a new CCC in accordance with the CCC Guidelines that should operate throughout the planning, construction and initial operation phases (at a minimum). Our client is not aware of any proposal by the Proponent to establish a new CCC but would welcome the opportunity to have a representative on any future CCC.

We look forward to receiving further updates about the status of the Application.

Yours faithfully



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