

Bungonia Progress Association Inc.

Attention: Director Mining and Industry Projects
Development Assessment Systems and Approvals
Department of Planning and Infrastructure
GPO Box 39
SYDNEY NSW 2001

SUBMISSION IN RESPONSE TO ARDMORE PARK QUARRY MODIFICATION (MP 07 0155 Mod 2)

The Bungonia Progress Association Inc. objects to the proposed modification for the following reasons:

1. Sec 75W of the Environmental Planning & Assessment Act does not correctly apply to this proposal
2. The proposed haulage route in the modification is inadequate and the social and environmental impacts have not been properly assessed in this EA or at all in the Part 3A approval.
3. Similarly, the impact on the amenity of the residents along the haulage route has not been assessed.
4. The local road network proposed by Multiquip for its unfettered use is frequently narrow with many narrow culverts; poor sight lines; broken edges; no line marking; poor pavement conditions with frequent pot holes; narrow bridges with load limits, subject to flooding; bull dust; stones etc. Further, the actual widths stated in the EA are disputed by many locals who have measured the width of these roads and culverts.
5. The entry/egress is dangerous to other road users.
6. The entry/egress of frequent heavy vehicles is likely to cause the deterioration of the historic "Larbert Tree".
7. Lumley Road has at least 14 km of narrow dirt road and is entirely unsuitable for regular movement of heavy vehicles.

There are many other reasons to object but the Bungonia Progress Association will only argue the above points and leave others to submit objections on other grounds.

Section 75W of the EPA Act.

The Ardmore Park Quarry was approved on 20th Sept 2009 by the then Minister of Planning. It was approved subject to a number of conditions set out in Schedules 2 to 5 of the approval. Under the "definitions" set out in the approval "Stage 1 road upgrade works", "Stage 2 road upgrade works" and "Stage 3 road upgrade works" were detailed. These can be seen on page 3 of the approval. This staging refers to works along the designated haulage route of Oallen Ford Road, a Bungonia by pass, Mountain Ash Road and Jerrara Road.

Further into the approval in Schedule 3 sub section 25 the allowable daily truck movements exiting the quarry are restricted to the road upgrade staging. For example, no truck movements are allowed until the Stage 1 works are complete; truck movements are restricted to 20 truck movements until Stage 2 works are complete.

It is clear in the Part 3A approval that the quarrying operations are tied to the haul route and its staging. This point is reinforced in *CEAL Limited v Minister for Planning & Ors*(2007) (10245 of 2006) where Jagot J states at "Position of the Minister and Council":

"The quarry was interdependent with the haul route ..."

There can be no dispute the actual quarrying operations in the mining of hard rock and sand and its subsequent distribution via the road haulage route were the focus of the approval in Project Application 07_0155. They are unarguably linked. There is no mention of an additional haul route elsewhere and no study of its impacts. The approval related to the designated haul route and the quarry.

In the L&E Court proceedings only the Oallen Ford Road, Mt. Ash Road and Jerrara Road haul route were a discussed in detail. In the Part 3A approval, only the designated haul route was mentioned and no impact assessment was presented for any alternative route.

Section 75W of the Environmental Planning & Assessment Act (1979) regulates changes to a major project approval issued under Part 3A. It was legislated by the current government after Part 3A was abolished, to allow for minor changes to already approved projects under Part 3A. Presumably the sort of minor changes envisaged would be incremental changes to aspects already assessed under the EIS of the original approval.

Therefore it follows that the modification has to be **consistent** with the original project approval and it must have limited environmental and/or other consequences beyond those which had been the subject of assessment of the original approval. Sec 75W can only operate under these conditions and it is not open to a developer to try to modify a development outside of these conditions.

In the case of this modification there is no consistency with the original approval and it has far reaching impacts beyond the Part 3A approval. Multiquip are seeking to turn left at the quarry exit (rather than right onto the approved haulage route) and use all local roads described on a 1:250,000 map of the area covering some 3000 square kilometres. Of these roads, only Oallen Ford Road was the subject of kind of scrutiny in the EIS; none of the now affected residents, landowners and businesses had the opportunity to participate in earlier proceedings.

It is not an appropriate use of Sec 75W in this case. This section more logically applies where a development requires an incremental increase in previously assessed parameters that influence, for example, output. In *Barrick Australia Ltd v Williams* ((2009) NSWCA 275) the operator of the Lake Cowal Gold Mine wanted to modify mine operations by extracting 53 million tonnes more ore; increasing employee numbers; extending mine life and increasing infrastructure. All aspects of the original EIS was relevant to the proposed modification. This is the sort of circumstance where sec.75W applies. It does not apply to a completely new haul route as is the case with this application. In the Lake Cowal case the earlier EIS was applicable to the new conditions created by the 75W modification. That is NOT the case here. Here Multiquip is trying to get access to a completely different haul route which was not considered in the original approval. It is not an incremental change - it is totally different. There is no way this modification could be rightly deemed to be consistent with the Sept 2009 approval.

The Environmental Assessment, currently on exhibition dismisses the impacts of the proposed modification of the new haul route on the people living along the haul route and those who use these roads based on inadequate and conflicting data. It contains limited and selective traffic counts and new material which was not present in the earlier EIS. Clearly this information was not part of the data supplied by Multiquip in connection with the original approval.

But significantly under sec 75W there should be no need to present fresh evidence or impact studies as any modification should rely on earlier evidence submitted to Planning for consideration in the successful approval. This apparent need to submit new data is not in accord with the Lake Cowal case where it was found that consistency to the Part 3A approval with only minor environmental consequences were the conditions where sec75W worked. How can the current modification satisfy the latter criteria if fresh data is required? We submit that this apparent need for extra data etc. demonstrates the modification sits outside of how sec.75W operates and represents a radical transformation of the approved project.

The Bungonia Progress Association submits that sec.75W of the Environmental Planning and Assessment Act 1979 is inappropriate for this modification. Whilst s75W gives the Minister of Planning broad power to deal with a modification this power is clearly constrained where, as is the case here, the modification has impacts not assessed in the original approval; is not consistent with that approval (remember Jagots J comments on the "interdependence" of the quarrying operation and the transport route) and where the modification has significant environmental and other impacts not subject to earlier assessment which is the case here with the new transport route.

On this basis alone the modification fails. It is not legal.

Haulage Route

This modification will affect all people who live near and use the local roads including the Windellama School. These are country roads; they are not wide; sight lines and alignment are often sub standard; road edges are more often than not broken; pavement condition is often poor, etc. None of this was considered let alone evaluated in the original Part 3A approval and given scant consideration in the EA assessment accompanying the modification application.

Justification

There is no commercial need for another source of sand or road base in the district. The district is well served by a number of long established companies. Refer, for example, to the Divall quarries advertisement adjacent to the article referred to below.

Refer to the *Goulburn Post* article (Appendix 2) in the EA where Mr Steve Mikosic states he will deliver product for "driveways or building". Was this mentioned in any EA and how is this State Significant? It has been questioned whether this was ever a State Significant project. Refer to comments made by Jagot J at 70:

" ... the resources on the (Ardmore Park) site,... (are) unlikely to be of major significance to the Sydney construction market"

If the Part 3A approval was of doubtful State Significance this modification is certainly not State Significant. It is not consistent with the original approval. The transport route through Windellama and beyond was NOT considered in the original proposal and this includes the left turn at the quarry entrance. This is a dangerous turn affecting traffic on both Oallen Ford Road and Lumley Road at their intersection and also impacts on the historically significant Larbert tree at the entrance to Ardmore Park. The modification goes well beyond the original approval assessment and has significant environmental and other consequences over and above the original approval.

Multiquip have had a number of attempts to use the Oallen Ford Road, Mountain Ash Road and Jerrara Road without carrying out the works detailed in Stage 1 of the approval. Recently we understand they lodged and then withdrew a DA from Goulburn Mulwaree Council which attempted to get the operation going by doing minimal work on a section of Jerrara Road and the Bypass.

Consultation

There have been two very well attended acrimonious meetings between Steve and Jason Mikosic arranged by the Bungonia Progress Association Inc. The Mikosics stormed out of the last meeting after close questioning from a number of residents on very relevant topics to do with their reluctance to get on with the road upgrades prior to commencing quarry operations.

There has been no community consultation regarding this modification. The claims in the EA seem to rely on a notice put up in Johnnos shop which is a business little used by those residents affected by the proposed haul route.

Management of Investigations

Under Management of Investigations on page 6 states, amongst others

"Information within this document has been provided by Multiquip, specifically Mr Jason Mikosic, (B.Tech Mgt) General Manager of Multiquip Quarries and Steve Mikosic, the Managing Director of the same company"

The resulting EA does not meet the standards of independent, thorough objective material which has considered all aspects of the proposal. Science based research is evidence based, and ultimately require data to be reproducible by any other party. Data, such as traffic counts are of interest in the EA. They seem to be based on very short time periods where the actual count was measured and the locations of the counters appear to capture data not representative of full usage of the road. These counts need to be carried out by another independent party to cover all relevant roads.

Access to Hume Highway

Multiquip appears reluctant to carry out the Bungonia By pass and road upgrades required under the approval conditions before commencement of quarrying operations. This modification is a back door way of getting started. The local roads network Multiquip propose using, allow access to the Hume Highway, where Multiquip will not be bound by any restriction put on daily truck movements. Refer again to the *Goulburn Post* article:

"Under the current approval I can't turn left out of our (the quarry's) driveway and I'm seeking to do that" he told the Post.

But he conceded the amount of material could increase as Multiquip was supplying to sub contractors working on the Gullen Range wind farm on Kialla Rd. "

This statement contradicts Corkery's statement in the EA that only 20,000T of material would be transported via these local roads and the balance of 380,000T would go via the approved haulage route. Mr Mikosic states unambiguously that he may increase the off take if the Gullen Range wind farm requires the product. Who is telling the truth?

The Bungonia community has been continually disappointed at the gap between the words and actions of Multiquip. The discrepancy here between Mr Steve Mikosic intentions as per the *Goulburn Post* article and the written statement in the EA by Corkery is an example and should be noted. We thank Mr Corkery for including the article in the EA.

The Bungonia Progress Association believe if the modification is approved Multiquip will not restrict movements to the approved number of trucks per day. We believe Multiquip will run the number of trucks to fill the orders they receive and ignore approval conditions. Planning have no means of checking. It is not the job of locals to police the development. Where approval exceedences have occurred in other developments in NSW it has been difficult for Planning to control the developer.

In the L&E Court proceedings there was some discussion at point 63 recognising that any vehicle, including a quarry truck, has a right to pass and repass along a public road. Jagot J states:

"The existence of this right does not mean that traffic generated by a particular development, and its potential environmental impacts, are irrelevant under s 79C(1) (of the EP&A)"

This means that Multiquip's right to run trucks along public roads is NOT unconditional and the impacts including social and environmental need to be considered.

In this case Multiquip intend running trucks through the settlement of Windellama and to pass its school. The school is located on the higher side of the road and the playing fields on the other. This means frequent quarry trucks passing through as children cross the road.

Many of these roads are sub standard for frequent heavy vehicle use which will be generated by Ardmore Park. They are narrow and there are many narrow culverts; poor sight lines; broken edges; no line marking; poor pavement conditions with pot holes; bridges with load limits, etc. Further the actual widths stated in the EA are disputed by many locals who have measured the width of these roads and culverts. The road report needs to be revised by an independent expert appointed by Planning.

It is an entirely different situation to have the occasional heavy vehicle carrying sheep or cattle along these roads to the situation where Multiquip intend to use the roads 6 days a week for transport of sand and rock. Mr Mikosic has said in a public meeting at Bungonia that he has a right to run his trucks "up and down" Bungonia. This right is clearly not unconditional and in this case where he wants to develop a haulage route turning left out of the quarry the right does not exist. A full study of all impacts needs to be carried out. The EA as presented is an inadequate document in this regard.

This modification is nothing more than another attempt by Multiquip to get around the requirement to upgrade the proposed haulage routes approved nearly 4 years ago. The local road network Multiquip proposes using is unsuitable.

Entry / Egress from Ardmore Park

The entry / egress as detailed in the EA is dangerous. Vehicles traveling along Lumley Road in particular will be at risk of collision. At this point Lumley road needs to be realigned so that it is at right angles to Oallen Ford Road.

Many accidents have occurred at this location. A head on accident (attended by Police) occurred at the proposed quarry entry some two years ago. The road is not sufficiently wide to allow safe turning of a truck and dog.

All these roads are 100km/h roads. The sightline does not allow the time for a vehicle approaching a turning truck to slow down and stop. This will become an accident blackspot.

Larbert Tree

Trucks running over the root zone of the Larbert Tree will cause its slow deterioration. Please refer to the submission by Mrs Moira MacGinity. This tree is of very great local significance. It's a very old tree. It is claimed to be a meeting spot for Aboriginals prior to white settlement and was used for many years by early settlers as a mail collection point. It was located either on or close to the Great South Road. The community does not want to lose this living link to the past. Bungonia was for many years one of the most outlying areas of settlement and this tree features in the history of Bungonia and early European settlement.

Lumley Road

This road is narrow and unsealed from Jacqua Creek for approximately 14 km. Parts are subject to flooding. It has pot holes; sections of bull dust; narrow causeways; wandering goats, sheep and cattle as well as kangaroos and wombats and is tough enough to drive along now without the added complication of having to pass frequent heavy vehicles with the attendant dust clouds, stones etc. thrown up when passing.

This road is entirely unsuitable for a heavy vehicle haulage route.

Conclusion

The Modification is not a true modification under Sec 75W but needs to be a new Development Application establishing a local quarry as it is inconsistent with the original application and is therefore outside the scope of Sec 75W modifications. The social and environmental impacts of the proposed haul route have not been properly assessed in this EA and not at all in the Part 3A Approval dated September 2009. Any adverse social impacts and traffic hazards created by heavy vehicles on these rural roads, especially ones used by school, community, tourist buses and other road users outweighs any perceived economic benefits.

Thus this Modification is not in the public interest and should be denied and NSW Planning must abide by the Approval conditions of September 2009.

Bill Dobbie
Hon. President
Bungonia Progress Association Inc

Margo Crossley
Hon. Secretary
Bungonia Progress Association Inc.