

Bilbie Dan

SOLICITORS AND ATTORNEYS

Bilbie Dan Pty Limited ACN: 115 020 196 As Trustee For The Bilbie Dan Unit Trust ABN: 73 288 682 015

(Incorporating Church & Youll Solicitors)

phone: (02) 4929 5511 fax: (02) 4929 6309

Our Ref:
RFB:MP:31239

Email: robert@bilbiedan.com.au

Your Ref:

6 March 2017

The Proper Officer
Department of Planning and The Environment
GPO Box 39
SYDNEY NSW 2001

Dear Sir / Madam

Re: EAGLETON HARD ROCK QUARRY – LOT 2 DP 1108702

I refer to the above, and note the content of the State Significant Development Application, prepared by JBA Urban Planning Consultants, currently on exhibition with the Department of Planning and Environment.

I further note that:-

1. The proposed quarry, if approved, will extract and process up to 600,000 tonnes of hard rock reserve per annum to be transported by truck along roads to market. The proposal incorporates the construction and operation of a 30 year quarry area of approximately 30ha, which includes a processing, sales and administrative areas.
2. The application includes:
 - 2.1 Clearing vegetation on a staged basis;
 - 2.2 Improvements to public roads and right of carriageway to support trucks;
 - 2.3 On-site infrastructure to support quarry activities, including internal roads, a new bridge over Six Mile Creek, administration and processing area, and water containment structures

(the "Proposal").

I act for Italia Road Holdings Pty Ltd, the owner of the property located at Lot 2 DP 1158962 and Lot 1 DP 245116, being 45 and 49 Italia Road, Balickera, (the "Affected

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Land”) which is the property presently burdened by the right of carriageway upon which access to the proposed Eagleton Quarry site relies (the “Right of Carriageway”).

The Proposal incorrectly and misleadingly, implies the MG Car Club is the current owner of the Affected Land. My client is the current owner. The MG Car Club’s race track has no relevance to the Proposal from my client’s perspective. Of relevance are the conditions imposed on my client in the consent recently granted to its proposed use of the Affected Land more particularly detailed below.

I note the proposed quarry site is approximately 30 ha in area, and generally is located on the part of Lot 2 DP 1108702 to the west of Seven Mile Creek, which divides that parcel of land into north and south parcels and adjoins Barleigh Ranch Way, Eagleton (also known as Kilaloha Lane).

Barley Ranch Way is a public road, owned by Port Stephens Council and the NSW Government, that has never been formally constructed. It continues as a paper road to the east where it connects with the Pacific Highway and **offers a sensible, viable and realistic alternative route of direct access, without the need to traverse my client’s property, to the proposed Eagleton Quarry.**

As the owner of the property burdened by the Right of Carriageway, my client has an obvious interest in the progress of the Proposal through the application process, and in particular any conditions which might be imposed on any development consent which is ultimately granted. This is particularly the case in the context of the consent recently granted to my client and its proposed use of the Affected Land and the numerous conditions imposed on my client, related to that proposed and now approved use (“Client’s Consent”).

Of particular relevance were conditions related to:-

1. Construction of a sealed race track on the Affected Land be determined by reference to a Noise Management Plan, required by the consent;
2. A requirement that the development not generate “offensive noise” on nearby residential properties, as defined in the Protection of the Environment Operations Act;
3. The imposition of numerous traffic, access and road conditions, such as:-
 - a. A requirement that the intersection of the access road to the subject development and Italia Road to be constructed to a type AUR/AUL intersection with provision to be made for on-road cyclists through the intersection;
 - b. Street lighting requirements at the intersection of the access road and Italia Road in accordance with Australian Standard AS 1158; and
 - c. Heavy duty vehicle crossing that has a width to cater for heavy rigid vehicles and their turning paths in accordance with Australian Standard 2890 and constructed with 200mm thick concrete reinforced with 1 layer of SL72 steel fabric top and bottom;

4. Numerous conditions imposed by the HWC and NOW with regard to water management in particular;
5. A requirement that all property access roads comply with section 4.1.3(2) of Planning and Bushfire Protection 2006.

Critically, all of the conditions imposed on my Client's Consent, were imposed within a framework, and in consideration of, the existing development approval's (and actual levels of operation) on all adjoining sites and developments.

At the time of the approval of my Client's Consent it is understood the Development Application for the abovementioned *Landscape Yard* permitted a level of tonnage sales of compost and related materials that equated to no more than eight (8) truck movements per week. Separately, Port Stephens Council's Application Assessment Report used the amount of ten (10) truck movements per day in calculating the section 94 contribution payable.

The Proposal contemplates the extraction and processing of up to 600,000 tonnes of rock per annum, to be transported by truck, along local roads to market. In real terms that equates to about 18,750 heavy vehicle movements per year, 510 trucks per week travelling the Right of Carriageway for a total of 1,020 truck movements, or up to 85 trucks per day travelling on the Right of Carriageway for a total of 170 truck movements. The Proposal indicates access to the proposed quarry site will continue to be via Barleigh Ranch Way and the Right of Carriageway.

The Proposal acknowledges that the project would require an upgrade to the intersection between the Right of Carriageway and Italia Road and that one aspect of the proposal would involve the upgrade of this intersection to a Major Access Driveway type intersection, designed to provide for heavy road vehicles and articulated vehicles.

The Proposal states that *the proposed sealed surface will be constructed to the relevant Port Stephens Council local road standards for a private rural road.*

With respect to the content of the Environmental Impact Statement prepared by JBA Urban Planning Consultants, if the Proposal is to be approved, much more work will be required, at the cost of the developers behind the Proposal, to the Right of Carriageway than is presently contemplated particularly in a framework where:-

1. Loading and dispatching of sales trucks is contemplated as occurring between 5:00am and 10:00pm Monday to Friday and then from 6:00am to 12:00pm on Saturdays;
2. It is estimated 18,750 heavy vehicles per annum will be required to haul product off site. Additionally sales staff, fuel delivery trucks and contractors vehicles would create additional traffic flow.
3. It could reasonably be expected, taken from the report prepared by JBA Urban Planning, that about 510 trucks per week equating to 1,020 movements per week, or up to 85 trucks per day (equating to 170 movements per day) could be required to access the site, all via the Right of Carriageway.

A much more sensible and economic option, with significant longer term benefits for all interested parties, would be for the Proposal to be amended to incorporate the extension, upgrade and use of Barley Ranch Way, Eagleton, from the Pacific Highway to the entry point of the proposed quarry. The EIS notes this option has been considered by the Applicant, in consultation with RMS, but ultimately determined by the Applicant as not worth pursuing. The Applicant further notes, "given the ongoing suitability of the existing access arrangements via Italia Road and the right of carriageway, and the complications associated with creating a new at grade intersection on the Pacific Highway, it was determined that the most suitable access arrangement was to use this existing route via the right of carriageway".

The existing right of way is not suitable for the Proposal.

The existing right of way is indeed the only present legal access to the Applicant's site.

The existing right of way does not sit on the easement.

The most suitable arrangement is to continue the road reserved for Burleigh Ranch Way eastward to connect to the Pacific Highway. It is noted this option has not been fully explored with RMS by the Applicant.

The Applicant's statement that "Consultation with the owner of the land has confirmed that there is no constraint to the use of the right of carriageway for providing access to the proposed Eagleton Quarry, subject to appropriate improvement work being implemented" is not correct.

Any use of the right of way will involve commercial negotiation of many issues, which are yet to be resolved, on any level, to my client's satisfaction, in addition to all of the other matter set out in this correspondence that the Applicant should be required to address.

I hereby put all interested parties on notice that, in the event the following matters are not properly considered, without limitation to my clients' ability to subsequently rely on additional items that should also have been considered, in any consideration and potential approval of the Proposal, I reserve my client's right to take any action it might subsequently deem necessary in the event it suffers loss, cost or damage as a result of any approval. Those matters are:-

1. The requirements presently imposed on my Client's Consent and the impact of the Proposal on them;
2. The framework and factual circumstances that existed at the time of the granting of my Client's Consent;
3. Any impact or the ability of my client to comply with the requirements of my Client's Consent, and then any resulting loss, cost or damage it may suffer in the event further works are required to work already undertaken on the Affected Land;

4. The total impact of existing and proposed development traffic on the Right of Carriageway, state and any other affected road network, for a thirty year horizon arising from the Proposal;
5. The volume and distribution of traffic generated by the Proposal, including the maximum daily peak movements generated by periodic haulage campaigns;
6. Intersection sight distances at key intersections along the primary haulage route;
7. The adequacy of the existing unsealed Right of Carriageway;
8. Existing and proposed access conditions;
9. Any details of improvements for road intersections along the identified haulage route/s in accordance with Austroads Guidelines;
10. Any proposed traffic management for construction and operational phases of the Proposal;
11. The impact of the Proposal on public transport and consideration for alternative transport modes such as cyclists and pedestrians;
12. The impacts of road traffic noise and dust generation along the identified haulage route;
13. Details of any proposed Road Maintenance Contribution Plans;
14. Consideration for Clause 16 of the State *Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries)* 2007 regarding:-
 - a. Truck Management Plan;
 - b. Code of Conduct for Haulage Operators;
 - c. Road Safety Assessment of Key Haulage Routes;
15. The imposition of speed limits of trucks travelling on the Right of Carriageway;
16. The need for testing to ensure any proposed improvement of the Right of Carriageway is capable of handling the increased heavy vehicle movements;
17. The need for accurate predictions of the additional road traffic generated by the construction and operation of the Proposal, including a description of the types of vehicles likely to be used for transportation of quarry products, the public roads in the Port Stephens local government area likely to be used and the times during which those roads will be used;
18. The need for a detailed assessment of potential traffic impacts on the capacity, condition, safety and efficiency of the Right of Carriageway, local and State road network having regard to the requirements of RMS and Council;

19. The need for a detailed description of the measures or works that would be used and/or implemented to upgrade, maintain and/or improve the capacity, efficiency and safety of the road network used by the Proposal;
20. Whether the increase in the number of slow moving vehicles, and as a result through moving vehicles having to slow down excessively in order to change lanes on the Pacific Highway, has the potential to create additional, warranted, safety concerns, and how these concerns could potentially be alleviated.
21. Identification and description of all reasonable options to reduce transport of quarry products on local roads, **including extension and construction of the existing Barley Ranch Way to the existing Pacific Highway, with overpass onto the southern directed lane**, and a detailed assessment of any such option where feasible.

The above are obviously all matters related to planning considerations, and specifically any contemplated approval of the Proposal.

Separately, as the owner of the Affected Land, and the grantor of the Right of Carriageway, my client will also in the fullness of time be considering its rights generally by any party regarding any proposed increase or change in use of the Right of Carriageway which creates an obligation or need to repair or maintain the Right of Carriageway, or which separately results in such a substantial increase in the use of the Right of Carriageway, that is of such a magnitude, that the rights of my client, as the servient tenement holder, can be regarded as having been unreasonably interfered with.

In this regard, the terms of the right of carriageway should be noted by all interested parties, together with the actual location of the easement on the Affected Land. All of these matters will potentially become relevant in the fullness of time. My client reserves all of its rights in this regard.

Yours faithfully
BILBIE DAN