

Marulan Residents Action Group Inc.

1 May 2019

Department of Planning & Environment
GPO Box 39
SYDNEY NSW 2001

Attention: Ms Lauren Evans by email: lauren.evans@planning.nsw.gov.au

Copy to: Mr Howard Reed by email: howard.reed@planning.nsw.gov.au

Copy to: Goulburn Mulwaree Council by email: council@goulburn.nsw.gov.au

Dear Ms Evans

RE: Marulan South Limestone Mine SSD-7009

Formal letter of objection

This is a formal letter of objection to the above referenced development application (**application**). It is being sent by the Marulan Residents Action Group Inc., (**MRAG**) an incorporated association formed by and on behalf residents of the Marulan and Tallong area.

Effect of the application

The application has wide reaching detrimental effect on:

1. property owners and residents of Marulan and Tallong and those communities as a whole;
2. the properties within those areas which rely on the water from Tallong Dam and all tributaries and waterways from it (including but not limited to Barber's Creek); and
3. the native flora and fauna which exist in and are supported by the ecosystems that have lived and thrived for generations in and around Tallong Dam, Barber's Creek and the waterways which depend on them.

Absence of consultation and notification

Despite the impact of the application on the community, the applicant has not sought to involve or consult with the community in respect of its application.

The notification period commenced on 3 April 2019 and closes on 1 May 2019, a period of only 28 days. We feel both the notification period and the number of people notified are inadequate:

1. the application is for a proposal of substantial scale, consistent with the State significant basis on which approval for it is sought. The documents accompanying it are voluminous and complex. They are also extremely difficult to access on the relevant website. Reviewing them takes an enormous amount of time. The public deserves an appropriate opportunity to properly assess and review the application and accompanying documents;
2. the notification period coincided with school holidays, the Easter break and Anzac Day. As a result a high proportion of the few members of the public who were notified of it were not present or available to assess it. Most of them did not learn of it until literally several days ago;
3. the vast majority of property owners who would be affected by this application, were it to be approved, have not even been notified about it. Over 98% of the people contacted by MRAG over the last several days whose properties and amenity is directly affected by it were not even aware of the application's existence. MRAG itself only became aware of the application on 25 April 2019.

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For these reasons the proposal should be renotified. MRAG has no doubt that proper notification to those affected would result in a large number of public submissions given the enormous impact the proposal would have on the community.

MRAG considers the failure to notify the many residents who are directly affected by the application will result in fewer objections and submissions than would otherwise have been received.

Equally, we are concerned that will lead to the erroneous conclusion that residents and the community are not particularly concerned with the application, rather than the correct conclusion which is that the vast majority simply did not know of its existence.

In that regard MRAG is already in possession of third party objections from members of the public which validate that concern. In only 5 or so business days since MRAG's engagement with the community over 50 such objections have been received by the Department and copied to MRAG.

Reasons for objection

Given the absence of consultation and notification and the timing issues noted above MRAG reserves its right to make further submissions.

At this time MRAG objects to the above application for the following reasons.

Lack of capacity

1. The application proposes construction of a 118ML dam, to be filled and maintained from Tallong Dam. Tallong Dam only has an 85ML capacity. Further, that is its maximum capacity when it is completely full; which it usually is not given our region is prone to drought and has been in drought or near drought conditions for many years.

As a matter of basic arithmetic this simply does not work: if Boral were granted permission for its storage dam it would need to drain Tallong Dam 1.4 times over to even fill, let alone maintain, a new storage dam.

Community reliance and devastating consequences

2. That would have devastating consequences for the Tallong and Marulan community. Our properties and community rely on Tallong Dam and Barber's Creek for water usage and services like irrigation as well as essential emergency rural fire resources and other purposes such as water storage for domestic and general use.

Water is an essential resource for our community. We rely on Tallong Dam and Barber's Creek as a key supplier of it. Even properties which do not directly rely on Tallong Dam or Barber's Creek for water supply and emergency fire fighting resources have watercourses which run through them and which support valuable natural ecosystems and native plant and wildlife. Draining Tallong Dam would result in Barber's Creek and all linked watercourses running dry, which would destroy those ecosystems and wildlife.

The consequences of this proposal being permitted would be catastrophic. Those consequences are not limited only to substantial economic damage to the primarily agricultural community in which Boral's operations are located but also in the form of severe and irreparable environmental and social damage to all properties which rely on or are connected to the Tallong Dam water supply, including but not limited to Barber's Creek. The proposal if approved would result in a severe community-wide diminution in amenity in an otherwise vibrant, scenic community.

Irreparable damage

3. Even if Boral were to fill its proposed storage dam gradually from its pipeline, the difference in capacity means that filling and maintaining a 118ML storage dam from an 85ML (and often less in times of drought) resource would have devastating consequences for Tallong Dam. It would leave Tallong Dam irreparably damaged and would destroy it as a resource for the community.

No need

4. To make this matter worse, Boral doesn't need the water:
 - (i) its own application already acknowledges the dam it wants to build is for "water **storage**", not for use as part of any actual operational need;
 - (ii) Boral already has a pipeline from Tallong Dam and pump stations on public land in Tallong which provide it with a direct and uninterrupted supply of water as and when it is needed;
 - (iii) in addition to that pipeline and the Tallong pump stations, Boral has a range of existing water supply sites and facilities on its own property which are already in place and which it uses to service its operational needs.

The lack of need to which we refer is acknowledged in the documentation lodged by Boral accompanying its application. The environmental impact statement (**EIS**) offered in support of the application consistently refers to the proposed new facility as a "water storage dam" and does not suggest that there is any operational necessity for the resource, or that the current facilities which Boral has (including but not limited to its pipeline) are not adequate as they are.

We note that this lack of need is also confirmed by Boral's own reporting: the ***Peppertree Quarry Annual Environmental Management Report for the calendar year 1 January 2017 to 31 December 2017*** states the following:

" 12 1.1.3 Water Licences...as in previous years the Quarry's main dam provided the required operational water supply during the reporting period and no extraction from this bore was necessary."

That report confirms that Boral's operational needs have consistently been met for years by its existing dam infrastructure without any need even to draw on bore water supply let alone to construct the new water storage dam referred to in the application.

The application is not premised on need. Were it to be approved it should not be on the basis of allowing any impact on Tallong Dam, Barber's Creek and the local community.

No entitlement

5. Boral is not entitled to take the water in Tallong Dam, a public resource and asset, and deprive the community of it. It has no such entitlement under its lease with the State Rail Authority of New South Wales or anywhere else.

Even if Boral had attempted to establish a need to store such a vast body of water – which, as indicated above, it has not – that does not entitle it to appropriate for its own private benefit a public resource, depriving the entire community of that resource.

Public asset

6. The water in Tallong Dam is a public asset, not Boral's private asset.

If Boral were given the permission sought as per the statement in the EIS which indicates its mine demand will be satisfied by water fed from Tallong Dam via its pipeline it would amount to a de facto privatisation of a public community asset. It would also place the New South Wales Government in the position of acting in complicity with a for profit private enterprise to strip a valuable public asset from the community to which it belongs and the public which owns it.

Community recreational use and value

7. In addition to the devastating consequences to the community of this proposal detailed above, the community uses Tallong Dam as a recreational and scenic resource: it is a beautiful natural environment which is accessible to the public. It is used for swimming, kayaking and canoeing, family picnics and leisure activities.

Pollution and loss of amenity

8. The application seeks a massive increase in mining operations as well as overburden area. As the project matures, in merely 11 years, it is evident that the overburden area will have grown to a surface area which materially exceeds the actual pit mining area with the following results:

(i) *Noise pollution*

The mine will produce even higher levels of noise than it does at present.

Noise pollution from Boral's operations is already heard in Tallong and Marulan beyond the northern side of Highland Way. Adding to those operations in the substantial way envisaged and sought in Boral's application will only further exacerbate residents' discomfort and lack of amenity resulting from excessive noise, including regular explosive blasting.

We note in this regard that Boral has not proposed any remedial or mitigating action, for example by the planting and maintenance of rows of well advanced and mature trees to form a natural buffer against noise.

Existing operations have already breached EPA requirements on permissible noise levels. This application if approved will only add to those occurrences in both frequency and scale.

(ii) *Air and colloidal pollution*

The proposed massively increased overburden areas, each of which is proposed to be placed in the direction of neighbouring properties and communities, will produce vastly more air pollution.

Overburden areas store waste and debris from the pit mining operations. They are by definition particulate in composition and prone to airborne distribution to neighbouring properties and the wider community.

Boral's existing operations have already breached EPA requirements on the permissible levels of particulate and colloidal air pollution. If approved this application will only add to the frequency and scale of those occurrences.

Further, the proposed increases to the overburden areas are so massive that it would be very difficult to control dust and air pollution arising from them by spraying or other means: the area appears simply too large for such measures to be applied effectively.

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(iii) Visual and light pollution

Visual and light pollution will be similarly increased to the detriment of residents and the community as the direct result of each of:

- (a) the substantially increased scale of operation;
- (b) the addition of new pit areas to the north of the site;
- (c) the addition of enormous new overburden areas north, northwest and west of the site;
- (d) the 24 hours per day scheduled operations and the lighting necessary to enable that to occur; and
- (e) the frequent use of explosives and other extractive techniques which result in billowing clouds of dust and other colloidal pollutants being released with regularity from the site.

None of these consequences of the expansion proposed in the application are in any way consistent with the RU1 zoning of the site.

(iv) Increased traffic congestion and ancillary pollution

The enormously increased proposed truck and related transport which the application states will result from the proposal only adds to increased traffic congestion, ancillary pollution and diminution of resident and community amenity.

Up to 133 laden trucks per day plus regular rail consignments to move up to 4 million tonnes of limestone per year and 200,000 tonnes of shale per year is hardly going to improve noise, congestion and pollution – both vehicular and in the form of dust from the loads actually transported.

Cumulative result

The cumulative result of each of these pollutant effects of the application is a corresponding diminution in resident and community amenity and enjoyment to the extent that we consider it would irreparably damage the character of the area.

Again, the applicant operates in a scenic rural community in one of the most highly valued and historic areas of country New South Wales. Its existing business is not without issue, as referred to in the paragraphs following. Residents should not be asked to accept an expansion to those operations of the size and scale of the current application given those issues and the matters detailed above.

Residents do not accept the detrimental impact expansion proposed in the application will have on resident amenity through these pollution issues and all of the other matters raised as grounds of objection in this letter.

Prior conduct and current media investigations raising additional concerns

MRAG's concerns in relation to pollution are heightened rather than mitigated by issues regarding environmental contamination and current concerns reported only this month by national media which have been put to Boral and which Boral has refused to answer. Please refer to the following report from the SBS program *The Feed*, an award winning source of independent investigative journalism:

<https://www.sbs.com.au/news/the-feed/exclusive-pictures-show-toxic-dust-cloud-coming-from-a-nsw-quarry>

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The report relates specifically to both water supply and airborne pollutants and raises serious concerns about both the detriment to the community from both and the manner in which these matters are being handled by Boral's current operations and management.

This report and the concerns it states are highly relevant to any consideration of the expansion of Boral's current operations and our objection incorporates those matters by reference.

The need for a transparent, independent and thorough environmental audit

The above concerns form a proper basis for the Department to require a full and independent environmental audit of Boral's present operations before consideration is given to the application.

That audit should:

- (i) be required by the Department as part of the further information required from the applicant;
- (ii) contain terms of reference set and/or approved by the Department;
- (iii) adopt terms of reference which ensure that reporting is to the Department and an appropriate community representative; and
- (iv) be made available to the public at the same time it is provided to both Boral and the Department.

Heritage

9. As indicated above, the Marulan and Tallong community is a quiet and scenic one located in one of the most recognised and valued agricultural and country tourist areas of New South Wales. It is host to a range of heritage features and sites of special historical significance including the townships themselves.

The application effectively ignores the heritage value of the area and seeks approval for massively increased mining operations which are totally out of character with the peaceful rural community in which they are proposed to occur.

The application cannot reasonably be reviewed simply as an application for the expansion of an existing business: the proposed works contained in the application are of such significance and scale that the application is more properly and appropriately viewed as one for the construction of an entirely new enterprise. The application and the works proposed under it are inconsistent with the character of the area and its heritage value.

Applicable zoning objectives

10. The application is contrary to each and every objective applicable to the RU1 zone.

In this regard we note and adopt the entirety of Section G. of the letter from Tomasy Planning of 26 April 2019 to the Department of Planning and that content is incorporated by reference and repeated here.

Lack of merit

11. For all of the reasons articulated in the above objections, MRAG considers that the application not only does not have merit but that it is not defensible on a merits based analysis.

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Conclusion

It has been only a short time since MRAG has become aware of the application. Despite the limited time available MRAG has taken independent professional advice regarding the application and has engaged with a wide range of residents about it.

Our view is that the application at it presently stands is fundamentally flawed.

The application was:

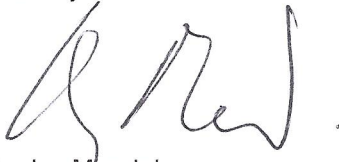
- (a) submitted without consultation with neighbouring landowners or the community;
- (b) notified when many people were absent as detailed above; and
- (c) not notified to the vast majority of people affected by it.

The community has a right to expect to have been properly consulted and to have had the application properly discussed and explained before it was lodged

Water is a valuable commodity, particularly in our region, and it needs to be protected as a resource. That is in addition to the other bases of objection stated above.

The application should be rejected.

Sincerely



Charles Mendel
Chairman
MRAG



Ross Cameron
Deputy Chairman
MRAG

Postscript

This objection has by necessity been formulated by reference to the materials lodged by Boral in its application including associated documents such as the Boral environmental impact statement.

Since becoming aware of the application MRAG has engaged with the community to ensure residents are aware of it and the proposal to use the Boral pipeline from Tallong Dam to supply demand for Boral's mine as stated in the EIS. Boral is aware of the community concern surrounding that proposal. A representative of Boral contacted a representative of MRAG on the evening of 30 April 2019. During that conversation the Boral representative stated that they did not think that was actually what Boral wanted to do. When they were referred to the relevant section of the EIS the Boral representative said they would go back internally to discuss and clarify.

MRAG would be delighted if Boral were to clarify its position by acting to amend its application to include **a concrete and binding commitment that, contrary to the present application and the statement contained in the EIS, Boral will not be drawing water from Tallong Dam via its pipeline to fill or maintain the dam it proposed to build** and that the dam it proposes to build would instead be filled and maintained only from the natural watercourse that we all use. That would remove a major area of concern for residents and would see Boral's existing water use from Tallong Dam maintained at present levels and eventually decreased as its new resource comes on line. We would wish also as part of that amendment to see commitments to reduction of that use accordingly over time and to have the above commitments form part of any conditions of consent for any approval issued.

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MRAG is in consultation with Boral to progress this. In the meantime MRAG and residents need to make decisions on the basis of the application as it stands. It is on that basis that this objection is therefore made.

MRAG would welcome this aspect of our objections being resolved by Boral amending its application as outlined above by giving that binding assurance and commitment to the community.

- * MRAG has made no reportable political donations during the last two years.
- * MRAG's address for all communications is the email address from which this letter has been transmitted.
- * MRAG is a non-profit entity dedicated solely to the best interests of its community and the protection of all within it and devoid of racial, religious, ethnic or sexual affiliation or bias.