

Date: 24 November, 2015

The Director
Department of Planning and Environment
G P O Box 39
SYDNEY NSW 2001

ATTENTION: Director - Resource Assessments
Mr Thomas WATT, A/Senior Planning Officer, Resource Assessments

Dear sir,

Re: Application: SSD 6624
described as "Sly's Quarry Expansion Project"
Applicant: Newman Quarrying Pty Ltd
Location: Jacky Bulbin Road, Tabbimoble Creek, NSW

Thank you for the opportunity to make a submission on this proposed development.

We are the joint owners of land adjacent to and immediately to the west of the proposed development. The identifiers for our land are Portion 56, Parish Gibberagee;
or CT: Volume: 15093 Folio: 100; or DP: 56/755615

We object to the nature of the proposed development in respect to:

- expansion of the maximum permitted extraction rate;
- expansion of the operating area of the quarry, and
- extension of operating hours of the quarry.

We do not object to the closing and rehabilitation of the areas known as Site B & Site C. Rehabilitation of Site C is long overdue.¹

Community consultation:

Community consultation is stated to be a requirement of the SSD process, including with nearby landholders.

We are the owners of land directly adjacent to the area known as Site C. Our land is immediately to the west and south west of the existing rock quarry operation.

We have for some years had an intention to build a residence on this land and that is just now finally coming to fruition.

Our proposed house site overlooks the quarry, that is, we can see the quarry face from there. The expansion of the quarry working area will have a direct effect on our visual amenity. The levels of noise expected to be generated are unreasonable.

At no time have we been contacted by any officer of Newman Quarrying Pty Ltd, nor from the planning consultant, seeking any form of 'community consultation'.

There are several places within the EIS where, Mr B Luffman, the consultant who has prepared it claims that consultation has taken place with us as "nearest landholder".² These claims are false.

1 See attachment 1 herewith. .

2. 1. The SEARS document attached to the EIS indicates under the heading Consultation on Page 4 that "...you must consult with ...affected landholders." The use of the word 'must' makes it clear that this requirement is neither optional nor discretionary.

2. EIS Main Report Item Executive Summary under heading 'Consultation' on page 4

3. EIS Main Report at Item 4.1 in the 2nd paragraph

In particular at Item 4.3 of the EIS Main Report under the heading 'Community Consultation' Mr Luffman states:

"The two neighbours to the east and the nearest neighbour to the west have been consulted. During the consultation, the residents were shown a copy of the plans for proposed quarry, a description of the proposal and the preliminary results of the detailed assessments.

"The only concern raised was the increase in the number of trucks, the speed of the trucks and the maintenance of Tullymorgan-Jackybulbin Road. The neighbour to the west did not want to complete the Community Consultation Record because they were tenants. They did not raise any concerns regarding the proposal."

We are the owners of the land immediately to the west and south west of the quarry. Our land is on both the north and south sides of the Jacky Bulbin Road and yet we knew that we had been neither contacted nor consulted as to our views. Nor were we "...shown a copy of the plans for proposed quarry, a description of the proposal and the preliminary results of the detailed assessments."

We noted the claim, "The neighbour to the west did not want to complete the Community Consultation Record because they were tenants" There are no tenants on our property. We think in all likelihood the persons referred to were tenants on the land formerly owned by Mr G Casanova (deceased) being a location two blocks further west from our place and about 1 kilometre further west along the Jacky Bulbin Road, from our entrance drive.

Clearly the interviewer seeking to make this consultation cannot have taken any sensible steps to determine that he was interviewing the "nearest neighbour". And yet the Department of Planning & Environment was readily able to contact us recently in writing, to notify us of the pending application.

Consultants have an important obligation in preparing an EIS, not to mislead the consent authority, in this case the Minister, and not to make misrepresentations in their reports.

If in fact the consultant is referring to the tenants referred to above, then the difference in location is significant. It is not a small error. Especially since he then relies on data collected at this place for assessment of noise and air quality and incorrectly attributes to the "nearest affected landholder".

We consider this to be a most serious failure. We consider that the EIS should not be further considered by the Minister, until at least such time as all these matters are corrected by way of an amended EIS along with recalculation of noise and air measurements, and new blast over-pressure calculations.³

Hours of Operation:

The hours of operation were first settled by the Land and Environment Court in *Newman Quarrying Pty Ltd v Jackybulbin Progress Association* on 29 January 1999 and set out in paragraph 20 of the Conditions of Consent, which states:

"20. The hours of operation of the quarry and of truck movements are restricted to 7.00 am to 5.00 pm Mondays to Fridays and 7.00 am to 1.00 pm Saturdays. No quarry operations or truck movements to occur on Sundays or Public Holidays...."

This decision was made after having in December 1998 heard evidence from both parties and following some negotiation between the parties. It appears to us that the decision at that time resulted in a fair and reasonable balance of the interests of all parties.

³ We note that this contrasts markedly with the process used at the 'Coraki Quarry' where a similar SSD proposal is currently under consideration by the Department of Planning. That application describes how every single nearby resident was contacted and interviewed at length by that applicant to canvas their views and address their concerns.

Importantly in his judgment on 29 January 1999 Commissioner Hoffman stated:

"...there was evidence that the maximum capacity sought was 100,000 tonnes per annum from each site, and that the normal operations was expected to be much lower at about 20,000 tonnes per annum each. If this proved to be correct the existing disturbance to the occupants would be greatly reduced. This would be assisted by the control on hours of operation of the quarries. The hours of operation would become very important in the control of nuisance should the quarries ever reach full capacity."⁴ (our emphasis)

The hours of operation were later varied by the Court on 17 July 2000. We were not notified of that application prior to the decision and did not hear about it until well after. That is, the decision did not properly comply with the requirements of procedural fairness. The decision made was that condition 20 be deleted and a fresh condition 20 be inserted, namely:

"20. The hours of operation of any activities of the quarry be restricted to 7.00 am to 6.00 pm Mondays to Fridays and 7.00 am to 4.30 pm Saturdays. Truck movements are to be restricted to 7.00am to 5.00 pm Mondays to Fridays and 7.00am to 1.00 pm Saturdays."

Note that the condition restricting activity on public holidays was excluded.

As a result there is now just one day per week of relative quiet in the vicinity of the quarry, not even on long weekends can we always expect with certainty to have relief.

The present proposal as set out in EIS Main Report at Item 2.7 is that the hours of operation be:

"Weekdays - 6.30 am to 6.00 pm

Saturdays - 6.30am to 4.00 pm

Sundays or public holidays: No work

*Excavation, crushing or loading would not commence until after 7am. Blasting would only occur on weekdays between the hours of 10am and 4pm."*⁵

The problems we see with this proposal is that in winter at 6.30am it is still dark and it is also dark in winter after about 5.00pm. So the effect of this is to permit noise to be emitted from the quarry before dawn in the form of truck movements, and also permits machinery motors to be started, and similar activities. We believe that it is not reasonable that we will have our sleep disturbed at this hour on a regular basis.

We are aware from prior experience that trucking contractors seek to transport as many loads per day as possible to maximise their returns. As a result there have been instances where trucks have been queued waiting at the quarry entry at well before opening time, with their engines running and seeking loading immediately upon opening of the gates. Also instances where trucks arrive close to closing time seeking loading so that the loading period extends well past the quarry closing time. This is not reasonable. We are aware that during the recent high level of activity relating to work on the Pacific Highway Devil's Pulpit Bypass there were numerous instances where the quarry was operated outside the permitted hours.

We wish the wording to be altered to make it clear that no activity is to be permitted prior to 7.00am on any day, including that haulage vehicles are not permitted to enter the quarry before 7.00am

Nor that any, excavation, crushing or loading of vehicles is permitted after 5.00 pm on weekdays or after 1.00 pm on Saturdays.

We consider it is neither reasonable nor necessary that the quarry should be permitted to operate past 1.00pm on Saturdays.

Noise:

The level of noise from the quarry at the present time, and in recent years, is intermittent

⁴ See last paragraph of page 20 of the judgment: Newman Quarrying Pty Ltd v Jackybulbin Progress Association, L & E Court 1998

⁵ See also Item 3.4 of the Traffic Impact Assessment

but clearly audible at a level significantly above background levels, and to a degree that it interferes with our peaceful enjoyment of our land.

This is both due to haulage operations but more especially from the use of earthmoving machinery which is clearly audible to us whenever it is in use.

If the expansion is approved we expect that the noise from the earthmoving machinery will be not intermittent but continuous during quarry hours.

We note that the quarry excavation when viewed from above is generally in the form of an amphitheatre in shape. The open end faces in the direction of the hill on which our proposed house site is situated. From inspection of Central Mapping Authority 1:25000 maps⁶ our house site is shown to be at about 100 metres AHD. We suspect the shape may amplify the level of noise in our direction.

The applicant claims in EIS Main Report at Executive Summary under the sub heading Noise states that sensitive receivers had been identified, the nearest being 1.5 kms from the site and that "...recommended limits would be achieved" and that " ...the blasting guidelines should be met at all receivers."

Inspection of Figure 1 in EIS Appendix D - Noise Assessment shows that the receiver presumably referred to as being 1.5 kms from the quarry site appears in fact to be more than 1 km west of our entrance drive and sheltered behind a ridge on our western boundary that rises to about 120 metres AHD.

No request was made to us for measuring instruments to be placed on our property and from inspection of Figure 1 none appear to have been placed there.

So, it appears that no data has been collected to measure the actual noise effects on our property.

Inspection of Table 5.2 and Figures 4 to 9 in EIS Appendix D - Noise Assessment leads us to conclude that even without direct measurements, that noise levels may well far exceed the requirement to be no greater than 5 dB above background levels at the property boundary.

The applicant has provided some limited information on noise mitigation measures which appear to mainly consist of use of screens, being either earth mounds, stacked shipping containers or purpose built screens. Assuming that machinery of various types is intended to be used on the 10 metre benches or ledges, it is not clear how these screening devices could be used or even be practicable to erect or put in place at the various levels.

This is particularly so in the Stage 3 expansion on the northern side of the existing area where it is expected that the 10 metre high benches will rise in steps to between about 100 Metre AHD and 125 Metres AHD. We note this is at a similar height to our house site which is at about 100 metres AHD. Nor is it indicated what other mitigation measures might be used in lieu.

We cannot tell whether it is a reasonable inference that, with mitigation measures, noise levels at our house site might be reduced.

It is false to say as at item 7.2.2 of EIS Main Report that "The site has a proven record of minimal impact on adjacent landholders and the environment." Excessive noise levels from the quarry have interfered with our enjoyment of our property for many years now. We oppose this interference with the use of our land.

We have heard the detonation of blasts at the quarry on numerous instances over the

6 CMA map: Banyabba 9539-3-N

years but have never been given any prior verbal or written notification of any blasting operation by the quarry operator.

Past failure to comply with conditions of consent:

Item 1. We note that, for almost 15 years now, the applicant has been demonstrably in breach of consent conditions in respect of Site C including in regard to sizes of potholing operations, protection of larger mature trees and the requirements for rehabilitation of pothole areas. These conditions were inserted by the Court to ensure protection of specific flora and fauna.

The extent and degree of the failure by the quarry operator to comply with those consent conditions was disclosed by Precision Industries Pty Ltd, who were the applicants in 2014 for amendment of the Clarence Valley LEP to permit use of part of the land on site C as an explosives depot and explosives manufacturing facility. The relevant part of a letter of objection lodged by us with Clarence Valley Council gives the details and is included in Appendix 1, attached herewith.

That application was withdrawn by the applicant's representative in December 2014 and the withdrawal received and noted by Clarence Valley Council at their ordinary meeting on 17 February 2015. The reasons for the withdrawal were not stated.

We note favourably that the quarry operator has now taken steps to rehabilitate site C and is intending to close future operations there, which we welcome.

Item 2. In Table 2.1 of the EIS - Main Report the applicant has provided figures for annual extraction rates at site A over a period of years. This was apparently with the intention of establishing levels of demand to justify the proposed expansions at the quarry. The majority of the amounts shown are far in excess of the permitted maximum rate of 100,000 tonnes per annum which was a condition imposed by the Land and Environment Court decision of 29 January 1999. We note that the average extraction rate was represented to the Court as likely to be around 20,000 tonnes per annum, but there were no orders relating to that amount.

From 2004 to 2013 the rates of extraction are without exception above the permitted level and for seven of those years are considerably excessive. In 2006 at 176,000 tonnes; 2007 at 183,000 and later in 2011 to 2013 at 287,000; 324,000 and 215,000 tonnes respectively. (the figures are rounded by us to nearest 1000 tonnes)

One could accept perhaps that if the over-extractions were minor, say for one year at 104,000 tonnes and were followed by an appropriate adjustment the following year that it was merely a matter of a forgivable inadvertence.

This is evidence of repeated excess extraction, and by more than 2 or 3 times the permitted amounts in some years. The scale of over-extraction is such that it cannot have been unintentional. Again, this history does not give reassurance that the applicant will comply with similar conditions in the future.

It is clearly wrong that the applicant has operated at these rates of extraction for years, and wrong to then argue, as he does, that the unlawful level of activity is evidence of a demand for quarry material to justify expansion. It would be surely wrong to grant a benefit to an applicant who bases his application on a history of unlawful activity.

Heavy Traffic volumes

The applicant contends that there are no significant traffic safety issues arising from the proposal.

This is contrary to our experience. The list of issues include:

1. Vehicle conflicts: We note that during periods in which the quarry might be operating at an output of 4,000 tonnes per day that it is calculated that would involve 125 return trips by a 32 tonne truck and dog trailer combination, or 250 haulage movements per day. That equates to a haulage movement every 2.8 minutes if the hours are 7.00am to 6.00pm. This will dramatically increase the likelihood of conflicts at the quarry gate between passing vehicles and haulage vehicles leaving the quarry. It is our experience that in such instances some drivers of haulage vehicles leaving the quarry are reluctant to give way to vehicles travelling east along the Jacky Bulbin Road. In addition, residents have complained about the speed that heavy vehicles leave the quarry. One mentioned to me that he raised this with Clarence Valley Council and that he suggested that a wheel wash just inside the gate would be a practical solution as it would slow down the vehicles at that crucial point and also eliminate the issue of dust on the Jacky Bulbin Road.

We do understand that the trucks are heavily laden and that it takes effort for a driver to change through several gears to get back up to speed, but we also understand that haulage trucks leaving through the quarry gate are required to give way to vehicles passing the gate. Even if only a small, percentage of truck drivers are reluctant to comply with the Road Rules, this creates a serious potential danger at this point.

2. Dust on road surface: From time to time over the past years of operation of the quarry quantities of dust and fine particulate matter, from time to time, accumulate on the road surface of the Jacky Bulbin Road near the gate. We have heard reports from other residents along the Jacky Bulbin Road to the west that this dust etc can become hazardous particularly if it is wet, causing vehicles to slide and drift around the corner just east of the quarry entrance. On one occasion we experienced this when driving east along the road. Fortunately, there were no other vehicles nearby at the time.

One resident told us last year that he has made several complaints to Clarence Valley Council concerning the danger from accumulated dust but stated words to the effect that 'it is no use, they never do anything.' I am not sure whether the word 'they' referred to Council or to the quarry operator.

3. Local Transport of School Children by parents: One woman who regularly drives her children to the pick-up point for the school bus at the intersection of the Jacky Bulbin Road and the Pacific Highway has told me that she has had several near misses with trucks as they are leaving the quarry and has fears for the safety of her children. She commented that it seems 'might is right'.

A resident with whom we spoke last week told us there had been no consultation with him regarding transport conflicts between haulage vehicles and vehicles driven by parents with school children travelling to the school bus pick-up point at the intersection with the Pacific Highway. Two landholders indicated to us that they were actually unaware that there was a proposal to expand the operation of the quarry.

We realise that to a large extent that the conduct of truck drivers in their driving is not an issue for which the quarry operator is directly accountable, given that the truck operators are said to be independent contractors. We note that the EIS - Traffic Impact Assessment states that the quarry operator provides a "Code of Conduct" for truck contractors, which is fine as far as it goes. However this level of response does not address the problem. What is required is practical solutions.

Proposed Traffic Solutions:

We suggest that a requirement be made for the quarry operator to construct and install preferably both speed humps and a wheel wash just inside the quarry gate as an effective solution for the problems.

We also suggest that the speed limit on the Jacky Bulbin Road between the quarry gate and the Pacific Highway be reduced from the present speed of 100 kph. We do not know what speed is appropriate, but suggest perhaps 60 or 70 kph, however the posted speed would be a matter for Roads and Maritime Services to consider.

Ambit claim:

We suggest that this present application is in the nature of an opportunistic ambit claim.

Rather than seeking an increase in permitted working area and extraction volumes that has a direct relationship to the objective need for material for the highway upgrade and for the expected period that the highway upgrade will take, which we understand to be about 5 years, perhaps 7 years with construction overruns, the applicant is instead seeking an increase in extraction volumes for an indefinite period and continuing until the expanded area is exhausted, which he has indicated may be perhaps 30 to 40 years.⁷

While the applicant has indicated that production volumes are expected to fall at the end of the highway upgrade,⁸ the application seeks notwithstanding to retain the entitlement to produce at those exceptional levels beyond the end of the construction of the highway upgrade.

The result of this for us, is that whilst to some degree, we would be prepared, for the greater good, to accept a need to suffer some level of inconvenience from noise and haulage traffic volumes, to achieve an improved and safer road network for the wider community, if the period of inconvenience was to be strictly limited to the construction phase of the new highway. What we are rather being asked to do, is to suffer that same high degree of inconvenience repeatedly and indefinitely into the future, possibly for decades, and in the absence of any sensible explanation provided to justify it.

We say that is unreasonable.

This contrasts with the SSD application for the Coraki Quarry by Quarry Solutions Pty Ltd, which unarguably will provide a superior quality of material, and which is leased to that applicant by Richmond Valley Council, thus providing a valuable source of revenue to that local government body. The Coraki Quarry application is seeking approval for an output of 1 million tonnes per year for 7 years, that is, to cover the 5 year period of the work on the Pacific Highway upgrade, prudently allowing an extra 2 years for any overrun of the completion date.

Visual amenity:

The existing quarry is on the lower slopes of Mount Doubleduke. Mount Doubleduke is a significant local geographical landmark rising above the nearby escarpment which runs north roughly parallel with the Pacific Highway. The top of Mount Doubleduke is 229 metres AHD and is visible as far as Iluka about 20 kms away, Yamba, about 25 kms, Evans Head at about 30 kms and Whiporie on the Summerland Way to the west about 25 kms.

The proposed expansion in Stage 3 to the north will rise as high as 125 metres AHD. The assertions made by the applicant under the heading "Visual Amenity" in the Executive

⁷ See Item 2.6.2 Project Life in EIS - Main Report

⁸ See again Item 2.6.2 Project Life in EIS - Main Report

Summary in EIS - Main Report, are dismissive of the true significance of this local feature.

We consider it would be a loss to the scenic nature of the area if the quarry were permitted to expand so close to the top of Mount Doubleduke. The proposed expansion is on the western and south western flank of the Mountain.

In the past the Clarence Valley Tourism Centre has promoted a scenic drive for visitors to the region from Ashby via Tullymorgan to Jacky Bulbin Road and back to the Pacific Highway. The result of the proposed expansion when fully developed in the later part of stage 3 will appear as a scar on the face of the mountain that is likely to be clearly visible to motorists passing by, and we think visible for many miles distant to the west and south-west. Mount Doubleduke can be seen from as far as the Summerland Way north of Whiporie about 30 kms to the west. The likely diminution of scenic amenity is in direct conflict with such a large proposed expansion.

It will also have a direct effect on the visual amenity of our land in particular from most of the higher ridge lines.

Environment and Habitat:

The applicant has provided no evidence in the EIS of the effect of continuous operations and resulting noise on the native wildlife in the vicinity of the quarry, nor of the impact of higher traffic volumes on wildlife attempting to cross the Jackybulbin Road between the Quarry entrance and its junction with the existing Pacific Highway intersection. Nor has the applicant considered the value of mitigation measures such as wildlife crossings etc.

Proposed conditions:

We object to the proposed expansion of the quarry as a whole.

However, if the Minister considers that the proposed expansion can be part approved it is our contention that the Minister should refuse that part of the application referred to as Stages 2 & 3 relating to expansion of the area of the quarry to the northern side of the existing working.

Grounds:

1. This part of the proposed area of expansion rises to a height of between approximately 80 to 125 Metres AHD which being much higher than the balance of the quarry area is likely to have a very significant effect on the scenic and visual amenity of the area. It will appear as a scar on the face of the mountain that will be visible to motorists passing by and we think visible for many miles distant. Mount Doubleduke can be seen from as far as the Summerland Way north of Whiporie about 30 kms to the west. In the past the Clarence Valley Tourism Centre has promoted the drive from Ashby via Tullymorgan to Jacky Bulbin Road and back to the Pacific Highway as a scenic drive for visitors to the area. The scenic use is in direct conflict with the large proposed expansion of the quarry.
2. Quarrying operations as high as 100 to 125 metres AHD on the side of the mountain are likely to have extreme consequences for us as nearby landholders in terms of the noise generation from that height, and be far less amenable to noise mitigation measures, at that height.
3. We note that the part of the proposed Stage 2 & 3 expansion to the north of the present quarry area is where the majority of the identified locations of the endangered species *Hibbertia marginata* have been shown to exist. See Figure 3 in EIS Appendix F - Ecology Assessment. Exclusion of this area from the development would eliminate the majority of the area of *Hibbertia marginata* from immediate risk.
4. It appears the volumes of extractable material in the balance of the proposed stages 2 and 3 on the southern side of the present workings will be sufficient to adequately supply

the requirements for the Pacific Highway upgrade. Table 2.1 in EIS - Main Report shows:

Stage 1 (previously approved)	6.9 Ha	2,300,000 tonnes
Stage 2 (south)	3.0 Ha	1,200,000 tonnes
Stage 3 (south)	3.2 Ha	<u>1,040,000 tonnes</u>
Total:		4,540,000 tonnes

The applicant states that the estimate for the whole of the Woolgoolga to Ballina highway upgrade is for some 4 million tonnes of materials from local quarries, that is, including various other local quarries along that whole distance. It is clear therefore that Sly's quarry would still have sufficient material to cover their part of the project.

Suggested Conditions:

As mentioned previously we have real concerns about compliance with and enforcement of any conditions that might be imposed if the development application is granted.

However, we believe that that in order to address public safety and other issues that consideration must be given to imposing the following suggested conditions, if the Minister should decide that the application is to be granted, either in whole or in part.

1. That the expansion of the extraction rate be limited to the period of construction work on the Pacific Highway upgrade, namely until the expected date of completion in the year 2020.

2. That the hours of operation of the quarry to be as previously ordered by the Land & Environment Court, namely:

The hours of operation of the quarry and of truck movements are restricted to:

- 7.00 am to 5.00 pm Mondays to Fridays, and
- 7.00 am to 1.00 pm Saturdays.
- Haulage vehicles shall not be permitted to enter the quarry before 7.00am on any day.
- No operation of machinery, excavation work, crushing, or loading of haulage vehicles is permitted before 7.00 am nor after 5.00 pm on weekdays or after 1.00 pm on Saturdays.
- No quarry operations or truck movements are to occur on Sundays or Public Holidays.
- Blasting operations are to be confined to 10.00 am to 3.00pm on weekdays.

3. That truck movements and/or parking of haulage trucks on the Jacky Bulbin Road either adjacent to the quarry entrance, or anywhere between the quarry entrance and the Pacific Highway and/or on the turning areas and slip lanes adjacent to the intersection of the Jacky Bulbin Road and the Pacific Highway is prohibited prior to 7.00am and after 5.00pm

4. That suitable signage informing truck drivers and operators of the parking restrictions and truck movement restrictions be installed on the Jacky Bulbin Road adjacent to the Quarry entrance on the Jackybulbin Road and near the intersection with the Pacific Highway.

5. That the quarry operator be required to contribute to repairs and maintenance of the sealed section of the Jacky Bulbin Road between the quarry entrance and its intersection with the Pacific Highway.

6. That the quarry operator is to ensure that dust and fine particle matter does not cover the sealed section of the Jacky Bulbin Road, in particular, adjacent to the entrance to the quarry.

7. That the quarry operator be required to construct and install two speed humps on the quarry internal road and close adjacent to the entry gate of the quarry to control speed of vehicles exiting the quarry.

8. For the purpose of control of wheel dust from heavy vehicles being deposited on the public road, that the quarry operator be required to construct and instal, operate and maintain, a wheel wash for heavy vehicles, with a suitable bund area surrounding to control loss of water from splashing. This might be installed just inside the quarry gate near the Jacky Bulbin Road and may be suitable to be integrated with the speed humps in item 6. The wheel wash should be constructed in such a way that heavy vehicle operators exiting the quarry cannot avoid passing through the wash area.

9. That seven (7) days prior to any blast, verbal or written notification of the date and time of blasting shall be given by the quarry operator to owners and/or occupants of all properties within 2 kilometres of the quarry. Further notification to road users by way of warning signage is to be provided at the quarry entrance at least 48 hours prior. Such signage to be visible and sufficient in size to be read by any passing road user from either direction. A system of flashing warning lights is to be installed near the quarry entrance to warn passing road users and heavy haulage drivers of the imminent detonation of a blast.

Thank you for your consideration of these matters.

Yours

Geoffrey J Hill

Patricia C Buckland

Appendix 1

Excerpt from our letter of objection to Application for Amendment of Clarence Valley LEP to permit an explosives depot and explosives manufacturing facility at Site C of Newman Quarry, Jacky Bulbin Road.

We include this excerpt as explanatory to our concern arising from the historical failure to comply with conditions for protection of flora and fauna.

"Development Consent for Site C by Land & Environment Court

The operator of the quarry was granted development consent by the Land & Environment Court on 29 January 1999. As with the other sites A & B the consent to what is called Site C was with conditions. Among those conditions were the requirement set out in paragraph 4 (o) of the Schedule that:

"For Site C (pot-holing operation)...the 1 hectare area to be exposed to (sand) quarrying at any one time shall be **nominated**. Where there will be, during the course of any one year, a transition from one 1 hectare area to another then the two shall be **nominated**, together with a target closure date for one and an opening date for the other. An annual flora and fauna report for the **nominated** and surveyed area(s) is (are) to be prepared. This report will contain detailed descriptions of the vegetation to be removed including an analysis of the number of old growth trees (trees with a diameter at breast height of 550mm or greater) to be retained. This number of old growth trees must be at least 85% of the number currently present. Old growth trees to be retained must be permanently marked for identification purposes during clearing operations.

... Habitat trees once identified are to be left with a restrictive buffer preventing any disturbance to this area. Appropriate sized buffers are to be determined prior to finalisation of the Plan of Management." (nb: underlining inserted by us for emphasis)

"It is clear from inspection of the aerial photograph/plans attached and from the narrative content of the currently proposed Application that the quarry operator has failed to meet the development consent conditions:

- The proposed dimensions for the chain wire fence are now increased to 260 metres x 200 metres. That area alone amounts to 4.9 hectares (increased from 3.52 ha). The size of the cleared area beyond the proposed chain wire fence is not stated exactly in the application. There is reference to a distance of 20 metres minimum around the leased area. What is clear from inspection of the irregular shape of the edges of the vegetation in the aerial photos is that in several directions the distance is much greater than 20 metres.
- From inspection of the aerial photos we estimate the area of the largest clearing on Site C proposed to be used for the explosives storage facility now to be 7.2 ha, let us say, at least 6.5 hectares. This is more than six times the permitted area of one 'pothole'. To the east of this clearing there is another large cleared area which we estimate to be over 2 hectares with a further 5 smaller separate areas in close proximity.
- The present applicant stated at in his previous DA 2013/0212 at Clause 6.5.1.2 of the SEE at item (h) "Within the eastern side of the edepot (sic ?) the only vegetation consists of two 'old growth' eucalypt trees retained throughout the quarrying phase. The trees are located at a considerable distance to remaining vegetation and have no undergrowth." The applicant in the Mike Sviki's Planning report now states on page 15 under the heading "Bushfire Hazards" that there are "...approximately seven large "old growth" trees..." It is not explained how the anomaly of two trees transitioning into seven trees occurred in less than one year, nor what is meant by "approximately". Surely accurately counting so small a number of items is not so difficult and is not required to be approximated particularly when it was part of the Land & Environment Courts decision that such trees were to be subject to an "annual flora and fauna report for the nominated and surveyed areas...." and "This report will contain detailed descriptions of the vegetation to be

removed including an analysis of the number of old growth trees (trees with diameter at breast height of 550mm or greater) to be retained."

"These conditions were not imposed on the quarry operator by the Court. They were freely agreed to by the quarry operator under terms of settlement prepared by his own legal advisors.

That there are only 7 large trees left in a more than 6 ha area appears to be further strong evidence of the failure of the quarry operator to maintain 85% or more of the existing trees over Site C. That there is stated to be no undergrowth around those trees appears to be evidence of failure of the requirement for the each tree to be left with a restrictive buffer as required by the Court orders.

"In his judgment Commissioner Hoffman of the Land & Environment Court at page 24 and page 25 summing up concerning Site C and Potholes:

"It was established to the Court's satisfaction by the flora and fauna evidence that opening up 1 hectare of bush at a time, and the retention of 85% of all old growth trees as potential habitat, roosts or dens, would not prejudice the home range of any threatened species. Rehabilitation and revegetation with local flora would be a continuous process on areas where quarrying was completed. Exhibit 'E', the draft Management Plan and exhibit 'B' the Environment Impact Statement and exhibit 'D' the Flora and Fauna Assessment indicated that in the first 5 year period Areas 2, 3 and 4 in Site C would be excavated. Progress updates would be submitted to Council annually showing amongst other matters, survey of portions quarried and portions to be quarried in the following year, existing vegetation surveys, trees to be retained and trees to be removed, results of habitat surveys (including nocturnal surveys of fauna), rehabilitation carried out during the current year and success rate, and further revegetation proposed, water quality monitoring for the calendar year prior to the update report, validation of erosion control measures, sedimentation ponds, storm water control and water quality controls and proposals for the coming year.

"The evidence showed that this "pot hole" method of extraction, enabled a slow transition to occur within the bushland habitat of the identified threatened species.

"This was important, to ensure that the home range of the most sensitive of the species was not reduced to an unacceptable level; and, that on-site activity levels did not reach a level which in itself would alienate fauna from their habitat."

"We have quoted from the judgment at length to demonstrate firstly the dismissive nature of the comments by the applicant in his discussion of flora and fauna in the only real documentation on environmental matters that we have, namely the previous DA 2013/0212 Statement of Environmental Effects. Secondly that the area of sand quarrying activity was required to be limited at any one time to an area far less than that which the operator in fact has now revealed to have occurred; that rehabilitation of pot holes was required to commence immediately and as a continuing process once the pot hole was exhausted of material; and that a vast majority of old growth trees as habitat for fauna was required to be retained. It is patent now that the operator has failed to do so in respect of all these matters and possibly other matters.

"It would appear therefore on the face of it, that either the operator of the quarry, or the Council, or both, are in contempt of Court on a number of grounds. If that is true, then it is a very serious matter indeed. "

Appendix 2

Minor Issues

Cyclists and pedestrians:

It is incorrect to say at Item 2.6.2 of the Traffic Impact Assessment

"There is no provision for Cyclists on Tullymorgan-Jacky Bulbin Road."

The Jacky Bulbin Road is a public road. It is provided for the use of all road users, including cyclists and is available to be used by cyclists at all times. We have on occasion seen cyclists on the Jacky Bulbin Road.

Again the similar assertion in Item 2.6.3 is also incorrect. Pedestrians are not prohibited from use of the Jacky Bulbin Road.

Other sources of Quarried Materials:

Contrary to what the applicant claims at Item 2.4 of EIS - Main Report where it is stated "...which is one of the only quarries within the region between Woodburn and Harwood." there are in fact other quarries able to supply material for the sector of the highway upgrade the between Harwood and Woodburn, namely:

- Lewis's Quarry at Ashby, a very large quarry indeed, which supplies crushed sandstone as road base and other quarry materials to RMS and Clarence Valley Council as well as private buyers and contractors.
- Coraki Quarry: A well established quarry run by Richmond Valley Council supplying a much higher quality material, namely graded "blue metal" quarried from deposits of basalt. There is a current application before the Department of Planning by Quarry Solutions Pty Ltd, a company who has leased a so far unused part of this quarry entitlement from that Council and who are seeking approval as State Significant Development, to supply 1 million tonnes annually of high quality material for a period of 7 years, specifically to address demand from the Pacific Highway upgrade. The amount of material available from this source would itself alone appear to satisfy the whole of the projected requirements for this sector of the highway upgrade.
- There are also two other quarries east of the highway in this sector, one near New Italy and the other on Serendipity Road but we have no knowledge of the quality or suitability of their material or of their interest in supplying this demand.

History of Use of Site A:

The site of the proposed expansion has not been used since the 1950's as asserted by the applicant in Item 1.2 of the EIS - Main Report. Other parts of the former landholdings of Geoff and Lyn Sly may have been used from that time, but not this site. We know this from personal knowledge. We have owned our property adjacent to the site since 1976. The site the subject of this present application was opened in early 1985, no earlier, consequent on a upgrade to the Pacific Highway north and south of Tabbimoble Creek bridge which was being constructed at that time.

We mention this not because it has any real importance in itself at this time, but as it is an example of another misrepresentation in the SSD application and its supporting EIS.