

SUBMISSION ON SSD 6612

Introduction

The amended development application made by Buttai Gravel Pty Ltd (the 'ADA') seeks consent for the excavation and transportation of quarry material from Martins Creek for reasons that can be shortly summarised: that there are economic benefits, there will be minimisation of harm to the environment when carrying out those activities, and that it is in the public interest to give consent.

This submission objects to the proposal as it will not minimise harm or be in the public interest to grant consent to the ADA for the following reasons.

A. The Environmental Planning and Assessment Act 1979

The ADA is to be assessed having regard to, inter alia, the objects of the EPA Act in section 1.3

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,
- (c) to promote the orderly and economic use and development of land,
- (d) to promote the delivery and maintenance of affordable housing,
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),
- (g) to promote good design and amenity of the built environment,
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,
- (j) to provide increased opportunity for community participation in environmental planning and assessment.

Section 1.4 defines "**environment**"

"environment includes all aspects of the surroundings of humans, whether affecting any human as an individual or in his or her social groupings."

Specifically, the assessment of the ADA requires consideration of the likely effects of a proposal upon the social welfare of a community, its occupants and the environment in which they live. Evidence of the likely effects based on recent experience will be more persuasive than mechanical assessment and prediction.

B. The NSW Court of Appeal proceedings ([2019] NSWCA 147 - 20 June 2019)

This case concerned the legality of quarrying operations at the Martins Creek Quarry.

Buttai Gravel Pty Limited, the quarry operator and also the applicant in this ADA, was a party to those proceedings.

The Court

- (i) found the operations at the quarry not to have been *“primarily for the designated purpose since being acquired by the appellants in 2012.”* (per Basten JA Judgement at 104).
- (ii) recognised that the movement of quarry trucks evidenced in those proceedings at 201) was the greatest single environmental impact:

“It is apparent from the evidence that the greatest single environmental impact of the quarry was the level of truck movements involved in carting rock from the quarry to customers... the maximum throughput permitted by the current “operational characteristics of the quarry” allowed 40 trucks loading and exiting the site per hour: that is a possible throughput of a truck every 90 seconds.” (per Basten JA at J 201 and emphasis added).

- (iii) reiterated that finding:

“As Basten JA points out, the greatest single environmental impact of the quarry is the level of truck movements involved in transporting quarry products to customers.” (Preston CJ of LEC at J 341).

Basten JA at 201 calculated the truck impact as *“...a truck every 90 seconds”*.

Yet that is **exactly** what the applicant seeks in this ADA.

It follows, as night follows day, that the greatest single impact of the quarry will be the cartage of product by road on the nominated haulage route through the heritage valued town of Paterson and locations beyond to East Maitland. The reasons for this conclusion are evident from the following analysis.

C. QUARRY PRODUCT HAULAGE

(i) The Martins Creek Quarry Trucks

From reading p.8 of the TIA, the writer understands that the applicant seeks consent for the transport of 500,000 tonnes of quarry product to occur each year for 25 years as follows:

1. A maximum of 140 loaded product trucks/280 movements for 50 M-F week days in a (calendar) year, 7am – 6pm.

2. For the remaining 205 days in the M-F week, there will be a maximum of 100 loaded trucks/200 movements 7am – 6pm.
3. However, for 50 days of all those week days, there will be a maximum of 20 loaded product trucks/40 movements per hour between 7am-3pm.
4. And for the remaining 205 days in the year, there will be a maximum of 15 loaded product trucks/30 movements per hour between 3pm -6pm.
5. Route : the quarry via Station Street, Grace Avenue, Dungog Road, Gresford Road, Tocal Road, Paterson Road, Flat Road, Pitnacree Road, Melbourne Street, New England Highway.
6. Maximum of 10 unladen Daracon trucks to return to the quarry between 6pm and 7pm for loading on the following day.
7. No Quarry Trucks through Paterson prior to 6.45 am Monday to Friday.

Comment

If Buttai is granted consent on its terms, movements of Martins Creek quarry trucks will occur Monday to Friday

- **as to 3. above:**

40 movements an hour past any point lying on the primary route **every 90 seconds.**

- **as to 4. above:**

30 movements an hour past any point lying on the primary route **every 2 minutes.**

- at any time between 7am and 7pm through the residential and business areas of Paterson, Bolwarra Heights, Bolwarra and East Maitland, with school and preschool establishments on or near the route;
- with the maximum 280 daily laden movements likely within period of 7am-3pm absent any 3pm – 6pm laden movements. In other words, over that 8 hour period 40 movements per hour will be permissible.

(ii) Hanson's Brandy Hill Quarry Conditions of Development Consent for SSD 5899:

A12. *Truck movements at the site (ie either arrival or dispatch) must not exceed:*

- (i) 24 movements between 6:00 am and 7:00 am;*
- (ii) 60 movements per hour between 7:00 am and 6:00 pm;*
- (iii) 10 movements per hour between 6:00 pm and 10:00 pm, on up to 20 evenings per calendar year; and*
- (iv) 600 movements per calendar day;*

Note: Truck movements to and from the site are also controlled by the operating hours specified in condition A13 and provisions in condition B41.

A13. *Hours of Operation.*

The Applicant must comply with the operating hours set out in Table 1.

Table 1: Operating hours Activity Permissible Hours Construction work

- 7 am to 6 pm Monday to Friday
- 7 am to 5pm Saturday
- At no time on Sundays or public holidays

Product loading and dispatch

- 6 am to 6 pm Monday to Friday
- 6 pm to 10 pm Monday to Friday on 20 days per calendar year
- 6 am to 6 pm Saturday
- At no time on Sundays or public holidays

(iii) **The IPC Hearing of Hanson’s Brandy Hill Quarry’s Development Application**

When informing the IPC about the proportion of quarry trucks that travelled Clarence Town Road west from the Quarry at Brandy Hill, Hanson’s Mr, Andrew Driver said

“The other 25 per cent of our deliveries head west along Clarence Town Road, over the Dunmore Bridge, along Paterson Road and into Newcastle Street, and then from there they can head upto Maitland” (Driver 29 June 2020, p4 Transcript 24-26).

Unfortunately the members of the **IPC did not** go over the Dunmore Bridge at Woodville, to Bolwarra Heights and beyond. (Statement of Reasons, Section 4.2 para.27) even though at least one submission (mine) described the established development along that route.

(iv) **The Combined Truck Movements of Martins Creek Quarry and Brandy Hill Quarry between 7am and 6pm Monday to Friday along part of the Primary Haul Route: Bolwarra Heights – East Maitland**

Scenario 1. Martins Creek Quarry: 40 movements per hour for 50 days of the year

+

Brandy Hill Quarry: 15 movements per hour (after allowing for Mr. Driver’s 2020 assessment of 25% westward bound trucks ex quarry which may be more or less over the duration of the consent, depending on product demand).

Total movements **55 each hour or one movement every 69 seconds**

Scenario 2. Martins Creek Quarry 30 movements per hour for 300 days of the year

+

Brandy Hill Quarry 15 movements per hour (after allowing for Mr. Driver’s year 2020 assessment of 25% westward bound trucks ex quarry which may be more or less over the duration of the consent, depending on product demand).

Total movements **45 each hour or one movement every 80 seconds**

Note: the movements in a period of time e.g. one movement of a quarry truck every 80 seconds, is not necessarily the real outcome, since at the day of writing this the writer experienced on Clarence Town Road, Woodville 4 quarry truck and dogs ex Brandy Hill Quarry, 3 of which were Hanson's, within a period of 3 minutes down the road to the Dunmore Bridge and south to East Maitland no doubt.

(v) **The SECA Martins Creek Quarry Revised Project Traffic and Access Assessment**

At page 13: *Melbourne Street between Flat Road and the New England Highway –*

This road forms part of the State Road network and provides two lanes of travel in both directions, with additional turn lanes at the key intersections. It connects with Flat Road and the New England Highway via 4-way traffic signals. There is kerb side parking permitted along the majority of its length together with footpaths to both sides. It operates under the posted speed limit of 60 km/h.

In fact, at the Melbourne Street/Pitnacree Road/Lawes Street intersection there are not two lanes of travel in that direction south towards the New England Highway until Riley Street intersection is reached. There is only one (see photo below) and this single lane is a major contributor to the intersection failures, especially in peak hours. In the last 3 weeks, a member of this writer's family has waited 20 minutes in Pitnacree Road to turn right into Melbourne Street in the morning peak; and this writer has waited 15 minutes there. Trucks going in the same direction have contributed to the blocking of the intersection. The photo shows a truck turning from Pitnacree/Flat Road into the one lane in Melbourne Street.



At page 25: *These surveys were completed during the intersection count surveys in February 2015 and in May 2018. Observations show that in the morning peak in particular, the queue back from the traffic lights at the New England Highway and Melbourne Street intersection*

extends beyond the traffic signals at Pitnacree Road / Lawes Street which creates significant delays and congestion for traffic on Melbourne Street. This is created by the high volume of traffic using the New England Highway in this location. Whilst the Hunter Expressway has provided some relief along this road corridor, the local demands along the New England Highway in this location remain high, hence the delays and queues created at this signal-controlled intersection. The Sidra modelling demonstrates that these traffic signals are currently operating at a level of service of F which based upon TfNSW Guidelines indicates the intersection control is failing and creates unacceptable delays and congestion.

At page 54: The signal-controlled intersections at Pitnacree Road / Melbourne Street / Lawes Street and Melbourne Street / New England Highway are both currently operating close to capacity, with considerable delays and congestion on some approaches. From the results, the intersection of the New England Highway and Melbourne Street suffers from delays and congestion during both the morning and afternoon peak periods.

At page 64: As part of the Revised Project, it is proposed to have a primary haulage route via Flat Road and Melbourne Street to connect with the New England Highway, thus removing most trucks from the routes via Lorn and Brandy Hill which have been historically used for the quarry site. Whilst improving the road environment through Lorn and Brandy Hill, this will impact upon the operation and capacity of the signal-controlled intersection of Pitnacree Road and Melbourne Street as well as the New England Highway with Melbourne Street.

However the Assessment, in part, relied upon data then current at the time but its use, having regard to the 3 year qualification, now is questionable at page 54 viz:

As part of the updated assessment, the current traffic flows at the above intersections were surveyed during the typical morning and afternoon peak periods. The surveys were completed on Tuesday 8th May and Thursday 10th May 2018. This data is considered valid, as it is less than 3 years old and the extent of background growth in traffic will be low over 2 years. A summary of the results of these surveys is provided in Appendix B to this report.

....

The intersections have been modelled for the following scenarios:

- *2018 Operation with no quarry trucks (AM/PM).*
- *2018 Operation with IEMP movements.*
- *2020 Revised Project's operation with revised quarry movements"*

The predictions may well be outdated and it is noted that there are no predictions beyond 2030. Yet the proposal is for a 25 year term.

D. Social impacts of the Martins Creek Quarry ADA

The summary of key findings in the Final ADA and RTS paper is at RPEA 6.276:

“ The SIA engagement process found that there was a perception in the local community that the health and wellbeing of proximal landholders was being impacted by the Revised Project in a number of different ways, including a a result of physical environment (safe water, clean air, safe houses) and psychosocial actors e.g. stress and anxiety...

“Potential impacts to social amenity as a result of traffic and truck movements, are perceived by stakeholders to impact on their way of life, their health and well-being, and their access to and use of surroundings. While stress and frustration alone do not constitute mental illness, they affect quality of life, and for individuals with an existing vulnerability to mental health issues, are added stressors. Regular sleep disturbance is also known to affect health.”

The summary then proceeds to express the opinion that the **“project design changes and associated proposed mitigation measures... may result in some relief from that stress being felt; however it is also acknowledged and it will take some time for community confidence to be demonstrated... and that community concerns may persist regardless...”**.

Experiencing **“some relief”** is not good enough.

I have already referred to the Court of Appeal’s view of the frequency of truck movements under the previous activities of the quarry operator/applicant.

The MCQuarry singular and combined MCQuarry and BHQuarry frequencies of truck movements are unacceptable by any standard, expert or ordinary. The many submissions from the public in the proximate communities who will be negatively affected by the proposal, show clearly that adverse social impacts have in the past and will in the future (should this ADA receive consent on the applicant’s terms) predominate in the community and for 25 years there will be the disturbing intensity of the continual passage of quarry trucks to and from the quarry past residential and commercial places.

Embodied in residents’ and business proprietors’ concerns is the complete lack of control they and the affected communities will have over operations that interfere with their comfort and repose. The consequential harmful effects upon the amenity and health of those persons in the vicinity of the haul route, are unacceptable. Codes of Conduct and Community Consultation Committees give false hope and no comfort to communities when the proponent has conditions of consent it is entitled to act upon.

Rhetorically, who would want to experience in or outside their homes or at their workplace the repetitive presence of passing trucks with their noise, vibration and exhaust emissions. I’m sure no reader of this submission would unless they were sited at least half a kilometre from the source. The writer lives 40m from Clarence Town Road and the passing of quarry trucks at 80kph is noticeable and regularly causes disturbance to my well-being. Common sense dictates the unacceptability of the volumes of trucks proposed for 25 years and no expert management or predictions could allay or assuage the fears and concerns of the apprehensive public.

In **Gloucester Resources Limited v. Minister for Planning [2019] NSWLEC 7**, a case involving a proposal for a coal mine in the vicinity of Gloucester township, an environment very similar to Martins Creek and Paterson, Preston CJ said

270. *The Social Impact Assessment Guideline (Department of Planning and Environment, 2017), to be used in assessing the social impacts of State significant mining, petroleum and extractive industry development, describes a social impact as “a consequence experienced by people due to changes associated with a State significant resource project” (p 5). The Guideline lists nine key categories in which social impacts may occur: way of life; community; access to and use of infrastructure, services and facilities; culture; health and wellbeing; surroundings; personal and property rights; decision-making systems; and fears and aspirations (p 5). The Guideline states:*

“As a guide, social impacts can involve changes to people’s:

- **way of life**, including:

- o how people live, for example, how they get around, access to adequate housing*

- o how people work, for example, access to adequate employment, working conditions and/or practices*

- o how people play, for example, access to recreation activities*

- o how people interact with one another on a daily basis*

- **community**, including its composition, cohesion, character, how it functions and sense of place

- **access to and use of infrastructure, services and facilities**, whether provided by local, state, or federal governments, or by for-profit or not-for-profit organisations or volunteer groups

- **culture**, including shared beliefs, customs, values and stories, and connections to land, places, and buildings (including Aboriginal culture and connection to country)

- **health and wellbeing**, including physical and mental health

- **surroundings**, including access to and use of ecosystem services, public safety and security, access to and use of the natural and built environment, and its aesthetic value and/or amenity

- **personal and property rights**, including whether their economic livelihoods are affected, and whether they experience personal disadvantage or have their civil liberties affected

- **decision-making systems**, particularly the extent to which they can have a say in decisions that affect their lives, and have access to complaint, remedy and grievance mechanisms

- **fears and aspirations** related to one or a combination of the above, or about the future of their community.”

And at

274. *Social impacts need not only be actual, they can also be perceived. The Guideline gives an example:*

“For instance, when a community or individual perceives resource project-induced changes as detrimental and unable to be suitably managed or controlled, stress may result. This is more likely to occur when the change event is perceived as being harmful, threatening or challenging; and the community or person perceives that they do not have the resources, coping strategies and/or support available to manage or influence the disruptions caused by the event.”

The entire community submissions made to your Department by adversely affected persons strongly evidence the negative impacts of the existing and proposed operations. They can be

classified as actual, lived and perceived experiences. They exhibit a realistic perception of the proposed development and embrace the requisite “*characteristics of the extent, duration, severity and sensitivity of the impact*” (at 275). The proposal will impact on people’s sense of place, and the character and amenity of the nearby villages and towns on the haulage route must not be sacrificed for profit or a tailored public interest criterion.

The sense of place and community amenity need to be preserved and protected and not overrun and destroyed by operations for rock haulage, Mondays to Fridays 6.30am – 7pm for 25 years.

E. State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007

The relevant provisions for this submission are clauses 12 and 16

Clause 12 Compatibility of proposed mine, petroleum production or extractive industry with other land uses

Before determining an application for consent for development for the purposes of mining, petroleum production or extractive industry, the consent authority must—

(a) consider—

(i) the existing uses and approved uses of land in the vicinity of the development, and

ii) whether or not the development is likely to have a significant impact on the uses that, in the opinion of the consent authority having regard to land use trends, are likely to be the preferred uses of land in the vicinity of the development, and

(iii) any ways in which the development may be incompatible with any of those existing, approved or likely preferred uses, and

(b) evaluate and compare the respective public benefits of the development and the land uses referred to in paragraph (a)(i) and (ii), and

c) evaluate any measures proposed by the applicant to avoid or minimise any incompatibility, as referred to in paragraph (a)(iii).

As to clause 12:

Preston CJ in **Gloucester Resources** considered “*the vicinity of the development*”

58. Subclause 12(a) of the Mining SEPP refers to land uses “*in the vicinity of the development*”. The parties’ planners, Mr Ryan for GRL and Mr Darroch for the Minister, agreed that from a planning perspective, the “*vicinity*” of the development extends beyond the land directly abutting the site of the Rocky Hill Coal Project. Determining the uses of land in the vicinity involves consideration of not only the proximity or nearness in space of the uses of land to the proposed mine, but also visual considerations and “*demographic and*

geographic features of the area” (Abley v Yankalilla District Council (1979) 22 SASR 147 at 152-153; (1979) 58 LGRA 234 at 239-240).

59. *The planners agreed that the area in the “vicinity” of the proposed mine is generally described in Mr Ryan’s evidence (at [14] and Figure 1) as extending, in the north, to the north of the town of Gloucester; in the south, to the south of the Stratford Mine Complex; in the east, to the Mograni Range; and in the west, to the rise of the Bucketts Range. The planners agreed that the Forbesdale, Avon River and Thunderbolt rural residential estates and the town of Gloucester were included within this area of the vicinity.*
60. *Mr Ryan stated that identification of the “vicinity” of a development, in a planning context, turns on the question of “what land is potentially open to experiencing some impact from a particular development?” Thus the areas that lie within the “vicinity” of a given mining proposal will turn on the nature and extent of the potential impacts of that proposal. Mr Darroch generally agreed with this approach but did not consider that the operational measures implemented to mitigate the impacts of the development may affect how one views its “vicinity”; that is, the sphere of potential impacts.*
61. *Mr Darroch further observed that one should not take a static approach to the land uses in the “vicinity” of the proposed Rocky Hill Site as “the occupants and visitors to the valley are never fixed in any area”.*
- ...
79. *The planners agreed, and I find, that the likely preferred uses, having regard to the land use trends in the vicinity of the Rocky Hill Coal Project, include: agri-business and agriculture; rural dwellings and farm stays; large lot residential dwelling houses; tourism accommodation and tourism operators, including agri-tourism; and residential and non-residential uses associated with the Gloucester township.*

The preferred uses in the vicinity of Martins Creek Quarry are very similar to Gloucester’s and it is respectfully submitted that such uses will be severely adversely impacted by a consent to this development application on the terms sought. Simply put, there will be incompatibility with the existing and approved uses in the vicinity of the quarry.

As to Clause 16 Transport

Relevantly

- (1) *Before granting consent for development for the purposes of mining or extractive industry that involves the transport of materials, the consent authority must consider whether or not the consent should be issued subject to conditions that do any one or more of the following—*
- (a) *require that some or all of the transport of materials in connection with the development is not to be by public road,*
- (b) *limit or preclude truck movements, in connection with the development, that occur on roads in residential areas or on roads near to schools,*
- (c) *require the preparation and implementation, in relation to the development, of a code of conduct relating to the transport of materials on public roads.*

Clause 16(1)(b) is important and self-explanatory. It empowers the consent authority to limit the movements of quarry traffic on the public roads on the primary haulage route because that traffic will pass residential precincts and nearby schools. I have heard concerns expressed by parents waiting to pick up children from the school bus arriving at Paterson in the afternoon that their children have wait until the road is clear for their parents to safely cross Duke Street to pick them up. Quarry truck add to the melee.

However clause 16(1)(a) is most important in the current circumstances given the consent authority can require the whole of the quarry product by carried by rail and so limit the transport of product so that the social impacts disappear. The subject quarry has a rail siding from which it is proposed to move a little more than half of the quarry's proposed output.

It will be recalled that the unamended SSDA sought an output of 1.5mtpa over 30 years.

Now the ADA seeks a reduced output of 1.1.mtpa over 25 years, split 500,000 tpa by road and 600,000 tpa by rail.

Buttai (Daracon) says

6.3.4.3 Operational Transport via Rail

The Revised Project seeks to transport up to 500,000 tpa via road with the remaining product transported via rail. If the market permits, Daracon is committed to increasing the quantity of quarry product by rail, up to a maximum of 1.1 Mtpa. Quarry products will be transported via rail in response to market demands. There is direct rail access from the quarry onto the Main Northern railway line where the trains are directed by the ARTC Control Centre at Broadmeadow. Currently, the quarry is constrained by available train paths on the network and train loading hours which limits movements to one train per day. To alleviate some these constraints Daracon is seeking approval to load trains 24 hours per day and to construct an extension of the existing rail spur within the East Pit (refer to Figure 2.1), to enable the loading of trains, typically either 400 or 600 m in length (although train lengths vary). The rail spur will be extended by approximately 360 m and is planned to be constructed by the end of Year 4 of the Revised Project. (emphasis added).

There is an obvious solution to the product transport issue: bluntly put: get a product dump site near the New England Highway and transport the product by rail to that site for distribution.

Such an approach would negate any road traffic impact on the villages and towns in the vicinity of the quarry and its suggested haul route, and so eliminate community concerns on quarry traffic. Additionally money proposed to be spent on a bridge over the main railway line at Matins Creek could be spent acquiring or leasing the dump site.

There is no information of what, if any, investigations have been made by Buttai, Daracon or their associated companies to establish a rail depot at Maitland (Telarah) and/or Hexham, both locations being adjacent to the New England Highway, central to whatever direction the Buttai product needs to go, and run trains from the quarry and deposit the product there to await distribution to its customers by truck.

Appendix N to the ADA -the *Plateway Rail Logistics Report* - does not deal with this important alternative although it helpfully explains

3.2.1 North Coast Line Capacity

The usage of the North Coast Line between Martins Creek and Telarah is low compared with ARTC's simplified capacity calculation which implies a practical capacity of 72 trains per day (or three trains per hour). However, all of the passenger services (and the majority of freight services) operate in between 04:00 – 20:00 with particular congestion in the morning and afternoon passenger peaks. The availability of train paths for quarry material is severely restricted during this time as the local passenger services connect with the XPT at Dungog blocking out over an hour around each XPT services. Based on the current timetable, it is possible for Martins Creek Quarry to load two trains during the period from 20:00 to 05:00 and one during the period 09:00 to 15:00, indicating that the quarry has a capacity of three trains per day if loading during the night is permitted. A fourth train could be accommodated if the train length was short and the shunting time at Martins Creek reduced by the use of additional ground staff.

The exclusive use of the rail route Martins Creek Quarry to West Maitland/Telarah of 3 trains per day is essentially the better solution. This conclusion is reinforced by the ADA that advises

- In Table 2.1 train loading will take place 24/7 with” *Potential extension of internal rail siding*” and “*(Revised rail spur footprint following further design options).*”
- in “*Maintain the ability to transport quarry material via rail*”

2.8.3: ‘Currently, the quarry is constrained by available train paths on the network and train loading hours which limits movements to one train per day. To alleviate some these constraints Daracon is seeking approval to load trains 24 hours per day and to construct an extension of the existing rail spur within the East Pit (refer to Figure 2.1), to enable the loading of trains, typically either 400 or 600 m in length (although train lengths vary). The rail spur will be extended by approximately 360 m and is planned to be constructed by the end of Year 4 of the Revised Project. Rail wagons will be loaded by front end loader or other train loading equipment. The proposed changes to the rail spur will enable the full range of quarry products produced by the quarry, not just rail ballast, to be loaded onto trains. A rail dispatch rate of 600,000 tpa equates to an average 6 to 8 trains per week depending on train length. While campaign dispatch by ARTC is regular, demand that can be met by rail transportation will vary for the construction materials market. Rail loading is proposed for 24 hours per day to allow for up to 3 trains per 24 hour period to be dispatched to cater for demand.’

Significantly, the result is

1. a rail dispatch rate of 600,000 tpa equates to an average 6 to 8 trains per week depending on train length;
2. then the dispatch by rail of 1.1mtpa requires an average of 11 to 15 trains per week;
3. and when Rail loading is proposed for 24 hours per day to allow for up to 3 trains per 24 hour period to be dispatched to cater for demand"
4. then the loading of 11- 15 trains per week should take, at the most, 5 days.

The 'transport by rail' focus in the ADA is on supplying the Sydney markets and seems to be the principal thrust of the proponent's approach to the rail transport issue; but the failure to seize the opportunity establish a local rail facility to deposit and distribute the quarry product locally is not offered given the communities' public concern about road transport. There are numerous rail sidings in the West Maitland – Telarah railway precinct and the establishment or use of another seems more than a reasonable path to follow.

The Discarded(?) Haul Route 2 through Brandy Hill:

1. On the one hand the Table 2.1 in the ADA advises

2016 DA: *"Route 2 - Martins Creek Quarry via Station Street, Grace Avenue, Dungog Road, Gresford Road, Butterwick Road, Clarence Town Road, Brandy Hill Drive, Seaham Road.*

The ADA: *No change.*

2. On the other hand at ADA 2.8.1

Haulage Route: The Revised Project is seeking approval to haul product on the road network via the primary haulage route 1 (described in Table 2.6 and Figure 2.13). Other local roads may be used as required to service local projects on a campaign basis

It would seem that the Brandy Hill route is proposed be used as needed and without having the classification of "Haul Route 2."

F. Heritage

By cl.5.10 and Schedule 5 in the Dungog LEP Paterson Village is listed as being in a Heritage Conservation Area of local significance.

Clause 5.10

(5) **Heritage assessment** The consent authority may, before granting consent to any development—

- (a) on land on which a heritage item is located, or
- (b) on land that is within a heritage conservation area, or
- (c) on land that is within the vicinity of land referred to in paragraph (a) or (b),

require a heritage management document to be prepared that assesses the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item or heritage conservation area concerned.

(6) **Heritage conservation management plans** The consent authority may require, after considering the heritage significance of a heritage item and the extent of change proposed to it, the submission of a heritage conservation management plan before granting consent under this clause.

The public roads in the conservation area satisfy the requirement in (b) and it is respectfully suggested that a heritage management plan be provided before any roadworks commence if it is intended by the consent authority this development receive consent. Within that plan the specifications and consent authority's requirements for the disturbance and replacement of physical structures can be established.

The effect of the continual quarry truck presence impacts on the heritage character of Paterson and goes beyond expert visual and physical assessment. It extends to the character and amenity of the Paterson Village as perceived by people within the village, either resident or visiting, and is to be assessed under section 4.15 of the EPA Act.

G. The Koala and Brush-tailed Phascogale

A significant threat to the koala is anthropogenic and involves habitat destruction and fragmentation. Similarly the brush-tailed Phascogale also identified on site.

The ADA comprises an area of 127.80 ha of which 66.05 ha will be disturbed including an area of native vegetation of 21.13 ha containing habitat.

Conacher Consulting's comprehensive Biodiversity Assessment Report submitted with the ADA (Appendix J) states

State Environmental Planning Policy (Koala Habitat Protection) 2020 SEPP (Koala Habitat Protection) 2020 applies to rural zoned land in the Dungog LGA. The SEPP aims to encourage the conservation and management of areas of natural vegetation that provide habitat for koalas. While, the SEPP only applies to development applications to be approved by a local Council, that is it does not apply to SSD applications, it provides definitions for potential and core koala habitat that have been applied in this assessment.

*Potential koala habitat is defined as native vegetation supporting at least 15% koala feed trees. One Schedule 2 Koala Feed Tree Species, *Eucalyptus tereticornis* (Forest Red Gum) is present within the Proposed Disturbance Area. This species constitutes 20% of the trees present within the upper strata of the tree component within Plot U2 mapped in Figure 3.2. The site therefore contains areas of Potential Koala Habitat, in accordance with this SEPP.*

In keeping with SEPP 2020, the site is also likely to contain Core Koala Habitat as a resident population of the Koala is considered to be present, as evidenced by recent sightings and historical records of a Koala population (refer to Figure 4.8).

While the requirements of this SEPP do not apply, as the proposal is a State Significant Development Application, should the project be approved, it is recommended that a Management Plan be prepared to provide measures for the management of Koalas on site, in keeping with the intent of the SEPP. (p100).

A federal panel of threatened species experts has recommended the koala's status be upgraded to endangered in this State and others. Koala populations in NSW have declined between 33% and 61% since 2001 and at least 6,400 were killed in the recent bushfires. Koalas could be extinct in NSW by 2050 unless urgent action is taken. The panel will provide its final advice to the federal environment minister by 30 October this year. (Source: AAP 18 June 2021).

The legislative provisions relating to the protection and conservation of the koala and other vulnerable, threatened or endangered species, is, in this writer's view, now in complete disarray from political causes. So much so that the species urgently needs to be reclassified as endangered. The removal of habitat is unacceptable and ought not be dealt with by bio-banking credits

H. Noise, dust, vibration

Vibration, dust and noise generated at the quarry and by continual passage of quarry trucks to and from the quarry in the townships and villages, and the consequential adverse effects upon the amenity and health of persons in the vicinity and the residential and business areas on the primary (now only) haul route, are unacceptable. The ADA's Noise Impact Assessment relies on data from truck movements in the period of the quarry operations found by the Court of Appeal to have been not operated primarily for the designated purpose since 2012, and should be rejected. No measurements for predictive purposes will remove people's real lived experiences.

I. Economic considerations in the proposal

The Ernst Young Economic Assessment - Appendix E to the ADA.

The relevant parts for this submission are

- at pp 3-4 Introduction

EY was commissioned by Umwelt (Australia) Pty Limited (Umwelt) to undertake an Economic Impact Assessment (EIA) of the Revised Project. This EIA is based on a Cost Benefit Analysis (CBA) and local effects analysis (LEA) prepared under the framework established in the Guidelines for the economic assessment of mining and coal seam gas proposals (the Guidelines) released by the New South Wales (NSW) Government in December 2015.⁴ The CBA requires an assessment of the potential net benefits that accrue to the proponent, government, workers and suppliers of the Revised Project. This EIA was prepared by EY to inform the Revised Project's Amended Development Application and Response to Submissions (ADA and RTS).

In addition, the Guidelines require an estimate of the potential costs generated by the Revised Project. These costs may include residual public infrastructure costs and environmental, social and transport-related costs. To estimate the environmental, social and transport-related costs, the analysis has had regard to the Technical Notes supporting the guidelines for the Economic Assessment of Mining and Coal Seam Gas Proposals.

- 2.1 Based on this data, the Revised Project is estimated to generate \$28.3 million in potential profit in NPV terms. These are deemed to be central case assumptions, and subject to sensitivity analysis.
- 2.5 Potential net benefits
Consistent with the Guidelines, the CBA is based on comparing the net direct and indirect benefits and subtracting the indirect costs of the Revised Project compared against the baseline scenario or the Approved operations where the Revised Project does not occur. The results are summarised in Table 13. Based on the CBA methodology outlined in the Guidelines, and information provided by Daracon and specialist studies, the Revised Project is estimated to provide a potential net benefit to NSW. This net benefit is estimated to be \$58 million in NPV terms. This is comprised of \$19 million in NPV terms and \$39 million in NPV terms in potential direct and indirect benefits respectively. The incremental indirect costs of the Revised Project are estimated to be \$500.

These amounts cover the whole of the 25 year term and are not annual figures. In terms of the current economic climate they are minimal and do not justify a consent under that head.

Furthermore, the EY Report assesses the sales revenue for the term at \$m 539.3 and operating costs at \$m 423.1. The balance is \$m116.2 over 25 years or \$m4.65 in a year averaged out. Presumably the operating costs are in part distributed to the customers and government.

Although the introduction to the EY report stated that the “costs” may include social costs and to “estimate the... social costs”, I am unable to find any such costing in terms of the social impacts discussed herein. The EY assessment as far as I can see, does not concern itself with costing the impacts on the social fabric of the communities affected by the quarry’s operations.

J. Conclusion

The social and economic welfare of the community, and a better environment will not be promoted by the grant of a consent to this amended development application that seeks excavation and sale of the State’s natural resources.

The impact upon the people and communities in the vicinity of the quarry will be extremely drastic and make the town of Paterson uninviting and unliveable.

The social impacts and the destruction of vulnerable species habitat will not be remedied, removed or mitigated by the proposal. When all the information submitted in this matter is weighed, the public interest is best served by a refusal of the ADA.

The decision in **Gloucester Resources Limited v. Minister for Planning [2019] NSWLEC 7** is worthy of recall. His Honour Preston CJ stated

686. *However, the fact that the coal resource is in the location of the Gloucester valley does not mean that the resource there must be exploited, regardless of the adverse impacts of doing so. A development that seeks to take advantage of a natural resource must, of course, be located where the natural resource is located. But not every natural resource needs to be exploited.*

687. *A dam can only be located on a river, but not every river needs to be dammed. The environmental and social impacts of a particular dam may be sufficiently serious as to justify refusal of the dam. The proposed hydroelectric dam on the Gordon River in south western Tasmania (later inscribed on the World Heritage List) is an example of a dam with unacceptable environmental and social impacts (considered in the Tasmanian Dams Case, Commonwealth v Tasmania (1983) 158 CLR 1.)*

688. *Seaside residential development can only be built at the seaside, but not every seaside development is acceptable to be approved.*

The asserted benefits of the exploitation of the natural resource are not superior to the serious social consequences caused by that exploitation, given that there are 7 other quarries in the close region providing extracted material resources for important projects.

Addendum:

In matters of this type I understand that in the event that the consent authority should be against my submission and determine that a consent should be granted, I respectfully suggest that the material terms be consistent with

1. The lands the subject of the development application may be excavated for the winning of rock and transport of that rock product.
2. The term of this consent is 10 years.
3. Until the extension of the rail link in the Quarry is completed, the applicant is to operate the quarry on the terms of the 2019 Interim Environmental Management Plan that is Annexure A to the judgment of Duggan J dated 23 September 2019 with the following amendments:
 - i. Paragraph 3 is amended by changing the number 20 to 10.
 - ii. No trucks for Martins Creek Quarry purposes shall pass through Paterson before 6.45 am Monday to Friday.
4. The applicant shall complete the extension of the rail link in the Quarry within 4 years from the date hereof and advise the Director, Department of Planning Infrastructure and Environment in writing of that completion immediately after completion has occurred.
5. Upon receipt of that advice by the Director, the Director shall notify the applicant that the conditions of consent referred to in paragraph 3 above no longer operate and the quantity of quarry product of 1.1mpa shall from that date commence to be transported by rail and no transport of the quarry product shall be by road, except when the NSW Government declares a state of emergency and only then for the duration of that declaration and with the consent of Dungog Council.
6. et seq: are other usual terms for a consent of this nature should follow.

Those are my submissions.

Peter Rees

30 June 2021