

SUBMISSION ON SSD 6612

Introduction

The amended development application made by Buttai Gravel Pty Ltd (the 'ADA') seeks consent for the expanded excavation and transportation of quarry material from the Martins Creek Quarry.

I object to the ADA and my brief reasons follow, although limited by avoiding reference to the detailed reports of consultants submitted by the applicant for its ADA that prohibit reliance on their reports without their consent, are specified as 'Commercial in Confidence', or in other ways affect the use of their reports by others.

A. The Environmental Planning and Assessment Act 1979

I have assessed the ADA 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 others
- (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, it mandates here the consideration of the likely impacts 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 are more persuasive than mechanical

assessment against guidelines. Exceptional circumstances as in this ADA warrant consideration without complete dependence on guidelines.

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

This decision concerned the legality of quarrying operations at the Martins Creek Quarry, but I do not refer to it to discuss that legality but to merely appraise the Commission of the judicial dicta on the impact of the truck traffic and its effects.

Buttai Gravel Pty Limited, the applicant in this ADA, was the second appellant in 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 trucks’ impact as “...a truck every 90 seconds”.

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

As night follows day, 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.

C. QUARRY PRODUCT HAULAGE

(i) The Martins Creek Quarry Trucks

The writer understands that the applicant seeks consent for the truck transport of 500,000

tonnes of quarry product to occur each year for 25 years as follows:

If Buttai is granted consent on its terms, movements of Martins Creek quarry trucks will occur Monday to Friday at various intervals such that there can be

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

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

through the residential and business areas of Paterson, Bolwarra Heights, Bolwarra and East Maitland, with school and preschool establishments on or near the route.

(ii) Compare the Brandy Hill Quarry Truck Conditions of 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.

When informing the IPC Hearing 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 to East Maitland. (Statement of Reasons, Section 4.2 para.27) even though at least one submission described the established development along that route.

(iii) 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

Either Scenario 1 where the combination results in

Martins Creek Quarry: 40 movements per hour

+

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

Or Scenario 2.

Martins Creek Quarry 30 movements per hour

+

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

Truck movements in a period of time, e.g. one movement of a quarry truck every 80 seconds, is not necessarily the real outcome, since this the writer has frequently experienced quarry trucks of every description in what can only be described as a conga line.

Comment on Project Traffic at East Maitland

At the Melbourne Street/Pitnacree Road/Lawes Street intersection there is only one lane of travel (see photo below) into Melbourne Street from Pitnacree Road (on the primary haulage route) and this single lane is a major contributor to the intersection failures, especially in peak hours. For example in June 2021, a member of this writer's family 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 Google photo shows a truck turning from Pitnacree/Flat Road into the one lane in Melbourne Street. The proposed truck haulage from Martins Creek Quarry will compound the chaos in peak periods.



D. Social impacts of the Martins Creek Quarry ADA

The Commission in its public hearings on 7 and 8 November 2022 listened to these impacts.

I have already referred to the Court of Appeal's view of the frequency of truck movements. The MCQuarry singular, and cumulative MCQuarry and BHQuarry truck movements are unacceptable by any standard, expert or ordinary, to the public.

The many submissions from the negatively impacted public show what the adverse social impacts have been in the past and, if this ADA receives consent, will be for 25 years caused by the continual passage of quarry trucks to and from the quarry past residential and commercial uses.

Implicit in residents' and business proprietors' concerns is the complete lack of control they and their 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. The so-called mitigated ADA is mainly one of reduced output over a reduced term, and codes of conduct, community consultation committees and monetary contributions may well give false hope and added distress to the affected communities. Whatever the development, the conditions of consent will prevail.

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? Simply not one of us. Common sense dictates there should be a rejection of 25 years of truck traffic here and no expert predictions will ever allay or assuage the fears and concerns of a reasonably minded but naturally apprehensive public.

Gloucester Resources Limited v. Minister for Planning [2019] NSWLEC 7 is the leading judicial decision on social impact. It involved a proposal for a coal mine in the vicinity of Gloucester township, an environment very similar to Martins Creek village and Paterson township. Its principles are applicable to the determination of the ADA.

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.”

Commissioners, the submissions made to you by adversely affected people strongly evidence the negative impacts of the existing and proposed operations. They can be classified as actual, lived and perceived experiences in relation to the existing truck traffic, and those people exhibit a realistic perception of the consequential impacts 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.

The sense of place and community amenity need to be preserved and protected and not overrun and destroyed by the proposed transport by road of product from Martins Creek Quarry.

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

I have considered the provisions of clauses 12 and 16 of this SEPP to arrive at my conclusion.

As to SEPP 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).

I have also considered again **Gloucester Resources** where Preston CJ dealt with “*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.*

Given the preferred uses in the vicinity of Martins Creek Quarry, there will be substantial incompatibility with the existing and approved uses in that vicinity if a consent is granted to this ADA.

As to SEPP 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 self-explanatory. It empowers the consent authority to **preclude** the movements of quarry traffic on the public roads on the haulage route because that traffic will pass residential precincts and nearby schools. The Commission has heard/read about the concerns expressed by parents waiting to pick up children from the school bus arriving at Paterson in the afternoon and that their children have wait until the road is clear for their parents to safely cross Duke Street to pick them up. Quarry trucks will compound the melee.

It will be recalled that the unamended SSSA 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.

There is an obvious solution to the product transport issue: bluntly put: the applicant should continue to search for and obtain a product dump site near the New England Highway and transport the product by rail to that site for distribution. That approach would negate any road traffic impact on the villages and towns in the vicinity of the quarry and its primary 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 Martins Creek could be spent acquiring or leasing the dump site.

A rail depot at or near Maitland and/or Hexham, both locations being adjacent to the New England Highway, and central to whatever direction the Buttai product needs to go, and using trains from the quarry to deposit the product there to await distribution to its customers by truck, would remove most of the social impacts predicted by the public to this ADA.

The Discarded Haul Route 2 through Brandy Hill:

It is wide open for the former Brandy Hill Haul Route 2 to be used as needed for deliveries.

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 effect of the proposed continual quarry truck traffic will impact on the heritage character of Paterson and goes a little 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 also to be assessed under section 4.15 Evaluation 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.

Koalas could be extinct in NSW by 2050 unless urgent action is taken. Although the Federal Government reclassified the koala as endangered in February this year, the NSW approach is, in this writer's view, in limbo from political causes. The removal of habitat is unacceptable and should 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. No measurements for predictive purposes will remove people's fears and concerns.

I. Economic considerations in the ADA

If it be that the economic considerations involve an evaluation of the revenue generated -v- the operational costs over the 25 year term then should that evaluation include a costing of the impacts on the social fabric of the communities affected by the quarry's operations?

J. The Recommended Conditions of Consent authored by the Department

My oral submissions to the Commission on 8 November 2022 dealt with these.

K. Conclusion

The expanded operations at and from the Martins Creek Quarry site will destroy the social and the economic well-being of communities and environment in its vicinity.

The destruction of Koala and Brush-tailed Phascogale habitat will not be remedied, removed or mitigated by the proposal.

A consideration of the legislative provisions referred to above and the decision in **Gloucester Resources Limited v. Minister for Planning [2019] NSWLEC 7** has reinforced my view about the importance of refusing consent to an application for state significant development where there will be unmitigated significant harm to the public in the vicinity of the development.

The asserted benefits of the proposed expanded exploitation of the natural resource at Martins Creek Quarry in the ways propounded by the ADA with or without the Department's Recommended Conditions of Consent are insignificant given the serious, significant and unmitigated harm that will be caused to the public and the environment by that exploitation.

I respectfully submit that the public interest is best served by a refusal of this ADA.