

19th June 2020

Office of the Independent Planning Commission NSW  
Level 3, 201 Elizabeth Street  
SYDNEY NSW 2000

Transmitted via IPC online submission portal

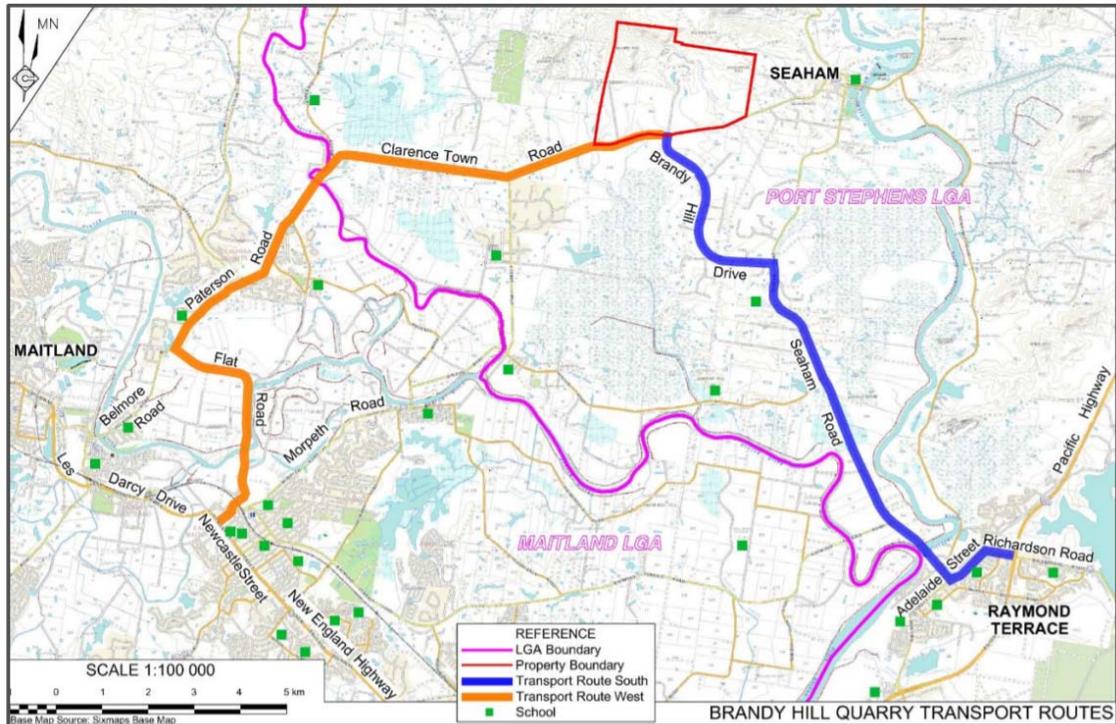
Brandy Hill Quarry Expansion – SSDA Application No 5899

Attention: Commissioners Duncan AM, Tuor and OConnor

Dear Commissioners

1. Further to my presentation to you all at the Public Meeting held on Friday 12<sup>th</sup> of June 2020, I write to make additional written submission in relation to the above referenced SSDA application. I have highlighted my requests to the Commission throughout this letter in bold italics. I have also attached my presentation from the Public Meeting for your reference in Appendix 1.
2. As I understand it according to s2.9 of the Environment Planning and Assessment Act (EPA Act) the Independent Planning Commission (IPC) will be performing the functions of the consent authority for the above referenced SSDA application.
3. I write to object its current form the State Significant development application by Hanson Construction Materials Pty Ltd (Hanson – the proponent) and its accompanying Environmental Impact Statement (EIS) prepared by the proponent and exhibited between 10 March until 9 April 2017. In particular, I set out in my submission below a number of concerns which I have with the EIS, the Response to Submission Report (RTS) and the Department of Planning's Assessment Report (PAR) and ***request that relevant principles of case law be adopted in the decision making process by the Commission.***
4. I understand the Proposal seeks approval to expand the existing extraction area, including clearing 55 hectares of vegetation, extracting up to 1.5 million tonnes of hard rock material per annum increasing the hours of operation for processing material and transport of processed material into the night-time period. I understand the haulage routes proposed to be used for the transport of product under the Proposal are those in Figure 1 below.

**Figure 1 – BHQ Haulage Routes**



## Introduction

5. The proposed expansion of Brandy Hill Quarry (BHQ) as presented within the EIS, RTS and PAR will seriously and adversely impact upon the amenity of multiple communities within the Maitland and Port Stephens Local Government areas.
6. These areas are made up of thriving urban and rural communities that have significant built and natural environmental values and in their own right are activity centres, meeting places, residential populations and above all place in which people love to live.
7. These communities are valued by residents and visitors alike for their rural amenity, character, ambience, scenery, natural beauty and as areas where the pleasure of neighbourhoods and outdoor surrounds can be enjoyed.
8. My concerns and indeed the concerns of many of the objectors to the Proposal regarding the serious and adverse impacts are not based upon unfounded fears or perceived outcomes from a proposed development. These concerns are based on residents within impacted communities already having endured and experienced the impacts from current operations. These current operations are limited in scale by consent conditions and Environmental Protection Licence limits. As I have laid out below there are serious doubts and concerns in regard to the lawfulness of the Proponents claims in regard to the existing baseline of operations used within the current EIS, RTS and PAR.

9. I am not advocating for the closure of BHQ. Rather I acknowledge the importance of high volume low value construction materials won from quarry facilities as a commodity for the construction sector and for the broader benefit of the state in regard to construction of infrastructure. I am however advocating for a more moderate scale of operation (at the site and along the haulage routes) that is reasonably capped to enable the co-existence of residents and the quarry alike as has been historically the case.
10. I have included extracts from the existing 1983 development consent conditions issued by the current consent authority Port Stephens Council in Appendix 2 of this letter. The consent was based upon a development application and an Environmental Impact Statement. As I understand it, development consents are public documents that operate in rem for the benefit of successors in title and should be construed without reference to extrinsic material, however there is authority (*Quarry Products (Newcastle) Pty Limited and Allandale Blue Metal Pty Limited v Roads and Maritime Services (No.3) [2012] NSWLEC 57*) that confirms the principles as to when it is appropriate to reference extrinsic material accompanying the development application necessary for the purpose of interpreting the consent. As is the case here with BHQ, the 1983 consent alone is not capable of proper interpretation because crucial details such as the size and location of the quarry, operating hours and scale were absent from the development consent and application. When one reads the 1983 EIS which contains this information required to understand the development, the reader learns that the existing approved operations and EIS assessed the impacts of a 400,000tpa extraction facility operating in daylight hours Monday to Saturday 6am to 6pm with a peak transport impact of 67 laden truck dispatches per day (refer to Appendix 2). Relevantly the changes to the Environment Protection Licence (EPL) in 2011 that purported to increase the approved scale at the site from 400,000 to 700,000tpa was done contrary to s.58 of the Protection of the Environment Operations Act 1997 without further environmental impact assessment nor the invitation or consideration of public submissions. There is serious doubt in regard to the lawfulness of the 2011 EPL variation and the ambit claim by the Proponent to a "24hr per day limitless" consent. The claims of the Proponent in regard to the current lawful parameters are also disputed in Port Stephens Council correspondence to the Department of Planning dated 8<sup>th</sup> of November 2018.
11. The consent conditions issued in 1983 were issued over the development in order to protect the environmental values of the area and preserve amenity of impacted and neighbouring residents.
12. I submit to the Commission that the facility be required to operate on a more reasonable scale than that asserted within the EIS, RTS and DAR and that it continues to co-exist within the communities that surround the site and the haulage routes. The facility should operate in a manner and with modern consent conditions such that the local amenity of residents adjacent to the Site and haulage route is preserved. I have included in Appendix 3 Hunter Expressway Traffic Flows from October 2016 and note the Proposal seeks approval for heavy vehicle movements from the Site at hourly rates equivalent to the Hunter Expressway volumes through rural and residential communities.
13. I submit that the Proposal as exhibited fails to acknowledge key issues around noise, dust and vibration emissions from the Site and impacts of the trucking of product

from the site along the haul routes. Other than offering an updated driver code of conduct the Proposal lacks any amelioration of impacts already experienced and is therefore an incompatible land use development as detailed in my submission below.

### Summary of Concerns

- Numerous environmental assessments within the EIS and RTS have incorrectly incorporated the current operations impacts that result from in excess of 67 laden truck movements per day and quarry operations prior to 6am and after 6pm within base line environmental assessments. ***I request the Commission to require the Proponent to revise the EIS and RTS to record base line data, such that the existing impacts are documented to be no greater than those approved via the 1983 consent issued by Port Stephens Council i.e. 400,000 tonne per annum extraction, 67 laden trucks per day, 6am to 6pm Monday to Saturday.***
- The impacts from current operations both onsite and offsite are significant and in some cases intolerable for many residents as is gleaned when one reads the public submission lodged during the EIS exhibition period. I have included a number of those pertinent comments attesting to the existing impacts to residents from existing operations within slide 12, 13, 14, 15 and 16 of Appendix 1. These impacts have been wilfully ignored by the Proponent and their consultants within the EIS and RTS. ***I request the Commission require the Proponent to address these existing unmitigated impacts within a revised EIS/RTS submission prior to the Commission determining the Proposal***
- The Proposal does not satisfy the objectives of RU2 rural landscape zoning the land upon which the developed is proposed. The Proposal does not satisfy and is in conflict with the zoning objectives of land immediately adjoining the Proposal area being R5 Large Lot Residential. Furthermore, the Proposal does not satisfy and is in conflict with the zoning objectives of land immediately impacted by the proposed haulage routes being R5 Large Lot Residential of Brandy Hill. ***I respectfully submit that the operation that is of the magnitude and scale presently and that which is proposed within the EIS, RTS and PAR be refused by the Commission.***

### Decision Making Process

14. In making a determination of the Proposal the Minister's power under section 4.38 and 4.15 of the Environment Planning and Assessment Act (EPA Act) is to grant or refuse an application and requires the consideration of the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality;

- Her Honour Justice Jagot, in CEAL Limited v Minister for Planning & ors [2007] [67] stated that “Amenity has consistently been described as a wide and flexible concept, embracing such matters as the character of a place and the attributes of place which a community values as important contributors to its character” ***I request the Commission to consider the impacts on amenity of the Proposal be included as relevant matters within the decision making process.***
- His Honour Justice Preston, the Chief Judge, identified the nature of the decision-making process under section 79C [now 4.15] as involving the resolution of a polycentric problem. His Honour explained this “as involving a complex network of relationships, with interacting points of influence. Each decision made communicates itself to other centres of decision, changing the conditions, so that a new basis must be found for the next decision”

15. As I understand it, the Commission in making their decision to grant or refuse the proposal must identify the relevant matters to be considered, find the facts that relate to the relevant matters, then determine how much weight to give each of the relevant matters and then finally, to balance the weighted matters to arrive at a managerial decision”. ***I request the Commission to adopt the approach described by his Honour Justice Preston and ask significant weighting to be given in favour of the communities whose amenity, values and characters (as defined by Jagot above) will be impacted upon by the Proposal.***

### **Conflicting Land Use & Planning Objectives**

16. The EIS, RTS and PAR gives little consideration to the Port Stephens Local Environmental Plan 2013 (LEP). The planning for the areas of Brandy Hill, Seaham, Raymond Terrace etc are embodied within this LEP. When read in its entirety it is clear that the LEP is intended to promote development that cultivates a sense of place that promotes community wellbeing and quality of life, that protects and enhances the natural environmental assets and to conserve and respect the heritage and cultural values of the natural and built environment. Section 4.15 of the EPA Act requires consideration to be given to relevant planning instruments and I am of the understanding the LEP is one such instrument. Clause 2.3 (2) of the LEP states that the consent authority must have regard to the objectives for development in a zone when determining a development application in respect of land within the zone.

17. The land upon which the development is proposed is zoned RU2. The objectives of the of RU2 Rural Landscape Zone are;

- To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.
- To maintain the rural landscape character of the land.
- To provide for a range of compatible land uses, including extensive agriculture.

18. The Proposal is inconsistent with a number of these objectives listed above
19. In *CEAL Limited v Minister for Planning & ors* [2007] her Honour Justice Jagot stated [60] that Zone objectives have a broader function than the operation of provisions [of the relevant clause] of the LEP. Local environmental plans are intended to contain coherent schemes regulating land use planning within a defined area. Most local environmental plans use zones to identify the development permissible with and without consent and prohibited on land within the area. The impacts of development can, and often do, cross zoning boundaries. She went on to state in regards to the matter that “One impact of the proposed development is that Monday to Saturday between the hours of 7.00am to 6.00pm, 52 weeks of the year, excluding public holidays, an additional 48 heavy vehicles (being a truck and three axle dog trailer) will pass along King Street, Bungonia, when the quarry is fully operational. Whether or not that impact is appropriate necessarily requires consideration of the planning scheme embodied by the LEP.”
20. The land upon which the development will impact upon via the proposed haulage routes and via offsite impacts from industrial noise, blasting and dust are zoned R5 and RU5.
21. The objectives of R5 Large Lot Residential Zone are;
- To provide residential housing in a rural setting while preserving, and minimising impacts on, environmentally sensitive locations and scenic quality.
  - To ensure that large residential lots do not hinder the proper and orderly development of urban areas in the future.
  - To ensure that development in the area does not unreasonably increase the demand for public services or public facilities.
  - To minimise conflict between land uses within this zone and land uses within adjoining zones.
22. The Proposal is inconsistent with a number of these objectives listed above and ***I request the Commission to give consideration to these objectives and the planning scheme embodied within the LEP in the decision making process. Specifically, during the decision making process I request the Commission to consider the appropriateness of the impacts (past, present and future) having regard to the LEP.***

## Noise

23. As detailed in my presentation, noise generated by quarry trucks is unfortunately unique due to the empty vibration of aggregate bins. Other factors affect the type of noise generated by quarry heavy haulage including the use of contractor vehicles during peak periods of haulage. These contractor vehicles are wide ranging in age and specification and often result in higher than normal noise generation with the addition of aftermarket exhausts or older bins and/or noise emission standard

engines. The noise generated by quarry traffic makes is distinct from other infrequent heavy vehicles such as milk tankers or chicken feed trucks. The noise generated by quarry traffic also is distinct from other general traffic noise. The individual noise events of quarry traffic passing by is recorded in the revised Noise Impact Assessment Report (NIA) page 25, it is noted that quarry truck noise events range between 72 and 83dB LMAX. ***Specifically, during the decision making process I request the Commission to consider the appropriateness of the noise impacts (past, present and future) that are being imposed upon residents outside the hours of 6pm to 6am.***

24. As the Commission has heard during the public meeting the noise environment in Brandy Hill area is one of rural serenity. The Commission heard from residents who discussed their love of gardening, the outdoors, the sound of birds or crickets. These comments are supported by the comments made during attended noise monitoring at page 24 of the NIA which notes background noise consisting of birds chirping, domestic activity noise, insects noise, wind in trees and dogs barking.
25. The Commission also heard from residents who during summer, sleep with their windows open in the evenings to afford their families and households some relief from the heat. This approach to evenings and periods of sleep in rural tranquil areas is a common across many rural households. As I understand it the RNP makes assumptions during noise modelling impacts that residents dwellings windows are closed. In reality this is not the case so the modelled impacts reflected in the NIA are consequently greatly understated when compared to the real world setting. ***I request the Commission to require the Proponent to revise the NIA to reflect likely night time impacts (i.e. between 10pm and 7am) to rural residents who commonly leave doors and windows open in the evenings for the purposes of air flow and to allow "the outside in" of their rural tranquillity.***
26. The Commission ought to be made aware that the NSW Road Noise Policy (RNP) modelling standards have been developed for urban environments and urban traffic flows. The models that NIA are required to use assume steady state traffic flow. The Models do not make any provision for heavy laden vehicle acceleration or deceleration. The models do not make any provision for empty bin vibration over uneven or damaged road surfaces and they make no provision for rural areas where traffic flow is (as is the case at Brandy Hill Drive) segmented by periods of no traffic and relative tranquillity. It is important for the Commission to be made aware that these facts regarding RNP model assumptions have been accepted in evidence and affidavits regarding other quarry operations impacts disputed in the NSW Land & Environment Court.
27. The unfortunate reality of the noise impacts contrary to the assertions made in the NIA and the apparent compliance with the RNP is reflected factually in resident's submissions. *"we wake early each morning to the sound of quarry truck engines and their trailers bouncing along the road"* and *"Noise is always an issue with this quarry, especially due to trucks driving to the quarry during 'closed' hours. We have lost sleep due to loud trucks"*

28. Impacted residents are reminded day in and day out that Brandy Hill Quarry exists. Residents are reminded day in and day out that a haulage road is segmenting their neighbourhood by the monotonous effect of heavy haulage vehicles sporadically transiting often in convoy through their suburb. ***Specifically, during the decision making process I request the Commission to read and give weight to resident's actual/current noise and amenity impacts detailed in resident's submissions during the EIS exhibition period***

29. I also note that the EPA Road Noise Policy requires NIA's to consider noise impacts to places of worship and public open spaces. I note two operational churches (Raymond Terrace Community Church on Richardson Road Raymond Terrace and Uniting Church Bolwarra on Paterson Road Bolwarra) and three public open spaces (Bolwarra Heights Scenic Lookout, Kings Park Raymond Terrace and Raymond Terrace Dog Exercise Park) are located along the haulage route. ***In accordance with the RNP I request the Commission to require the proponent to complete noise impact assessments on the above listed places of worship and public open spaces.***

30. In addition to the issues highlighted above the NIA contains a number of fundamental flaws that I submit must be addressed before the Commission can properly make a determination on the Proposal. According to a note on page 48 of the revised NIA the modelling used to assess future traffic noise generated by the expansion has used a modelled truck speed limit of 60km/hr along Brandy Hill Drive. The Commission must understand that Brandy Hill Drive is an 80km/hr speed limited road not 60km/hr. Although the NIA states in section 7.2.4 that Hanson intends to reduce truck noise by reducing the speed limit along Brandy Hill Drive this has not been confirmed by the RMS. Unless sign posted speeds are reduced any speed limit reduction proposed by Hanson would purely be a voluntary reduction where drivers are asked to drive 20km below the sign posted speed limit. According to recent CCC meeting comments this 20km/hr reduction is problematic causing frustration to other road users stuck behind quarry trucks driving abnormally slowly. The "voluntary" reduction in speed could also be considered a violation of Australian Road Rules Regulation 125 which states inter alia;

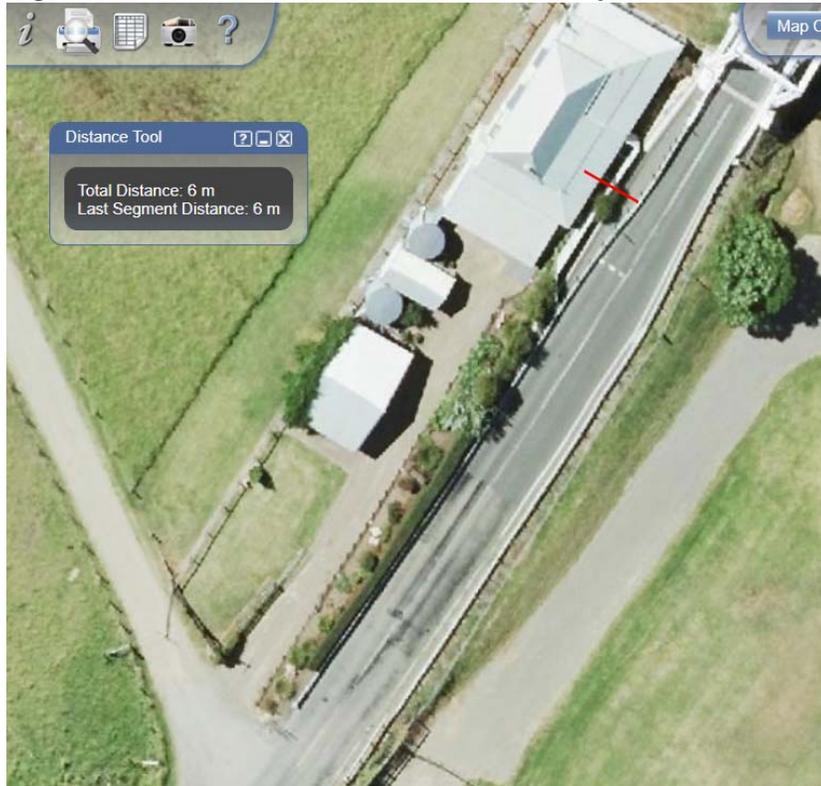
(1) *A driver must not unreasonably obstruct the path of another driver or a pedestrian.*

The slow driving of quarry vehicles has the potential to cause currently unassessed traffic safety issues with other road users becoming frustrated. Anecdotal evidence suggests there is an increase in dangerous passing manoeuvres around quarry trucks across double white lines and occasions of road rage incidents directed towards quarry truck drivers. ***To enable a true and realistic assessment of the road noise impacts during the determination of the Proposal I request the Commission to require the Proponent to revise the noise impact assessment using the sign posted speed limit along Brandy Hill Drive in truck noise models.***

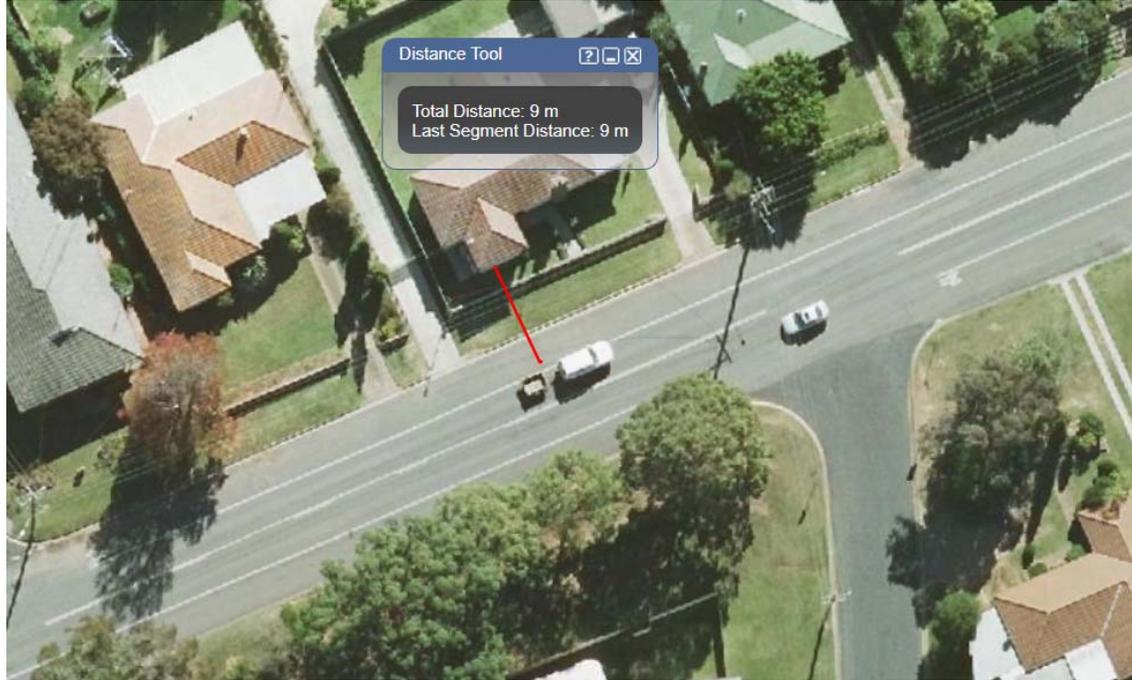
31. Although the Proponent claims that only 25% of the truck traffic will utilize the secondary haulage route through Woodville, Largs, Bolwarra Heights and Maitland no NIA has been made of any residences along that route. I am of the understanding

that the purported 75% 25% split is based upon project demand, meaning if a project in the Maitland area required more than 25% of the daily laden truck limit of product then the Proponent would send a greatly higher proportion of trucks along that route. Importantly as can be seen in figure 2 and 3 below resident facades to the roadway are as low as 6 and 9 meters respectively.

**Figure 2 – distance of residence from roadway on Paterson Road Woodville**



**Figure 3 – distance of residence from roadway on Paterson Road Bolwarra**



The NIA has considered the cumulative impact of Martins Creek Quarry traffic along Brandy Hill Drive, but the NIA has failed to assess the cumulative noise impact of quarry haulage traffic along Paterson/Tocal/Flat Road. **To enable a true and realistic assessment of the road noise impacts during the determination of the Proposal and ensure compliance with the Secretaries Requirements (SEARs) I request the Commission to require the Proponent to revise the noise impact assessment to includes assessment of noise impacts to residents located in Woodville, Largs, Bolwarra Heights, Lorn and Maitland. I would also ask that the cumulative impacts of BHQ and Martins Creek Quarry traffic be assessed along the secondary Woodville-Flat Road route.**

### **Transport Route Alternatives**

- 32.** The Proposal has failed to adequately assess the option of transport of product from BHQ to market utilizing alternate routes. No assessment has been made as to the feasibility of constructing either a public or private bypass road around Brandy Hill suburb. Figure 4 provides an indicate route with potential that would provide mitigation of impacts to several hundred Brandy Hill residents. As has been demonstrated in Multiquip's Bungonia Quarry where a 6km private bypass road was constructed to avoid the residential area of Bungonia and in Lynwood Quarry where a private road and \$34million Hume Highway interchange was constructed to avoid Marulan residential area there are proven and specific "reasonable and feasible" measures in New South Wales based modern quarries where haulage bypass routes have been constructed to mitigate impacts on the amenity of residents. **To enable a complete assessment and determination of alternate Reasonable and Feasible options to mitigate transport impacts on the residing communities the Commission must require the Proponent to perform a Brandy Hill Bypass Options Assessment.**

**Figure 4 – Potential Bypass Route around Brandy Hill Suburb**



### **Social Impacts Assessment**

33. The proponents Social Impact Assessment (SIA) fails to address social impact assessment objectives and guidelines set out in the NSW Department of Planning's 2017 guideline. The SIA has opted to group residents submissions in to two groups. Those who are happy to live with the quarry and those who are not and want the quarry closed. This categorization is unfortunately misleading. The SIA also opts to focus on the miss understanding the community has with the perception of impacts

resulting from 24/7 operation of the quarry being sought under the Proposal. The fact is when one reads submissions the impacts are already occurring, and the facility is not operating 24/7 yet. The impacts are real not perceived.

34. The SIA has failed to include the population and communities of other impacted areas choosing only to focus on Brandy Hill. What assessment has been made of the Social Impacts on Raymond Terrace impacted residents, Nelsons Plains residents, Woodville residents, Largs residents, Bolwarra residents and East Maitland residents? None.
35. According to the Departments SIA Guidelines on Page 42; *In relation to the evaluation of social risk, the definitions and scale assigned to each of the likelihood and consequence categories need to be relevant.* The BHQ SIA has failed to include the risk assessment matrix used to determine Low, Medium and High risk categories referenced in Table 1 of the SIA. It is not possible for the reader to determine what the context or relevance is of a High or Medium risk as determined by the SIA author. Is a High risk a fatality? Or is a High risk someone deciding to sell their property because it is unliveable in a social context? Or is a High risk someone not sleeping between 5am and 7am in the morning? The SIA component of the EIS should explain and justify the logic, evidence and assumptions used to complete the evaluation for each negative social impact presently the SIA does not do this.
36. A comprehensive SIA should outline the key issues of concern associated with the proposed development across different stakeholder groups – the assessment does not clearly demonstrate the engagement with specific stakeholder groups and community residents to identify their issues of concern and relevance in the assessment and how such issues may vary across different stakeholder groups. For example:
  - How many landholders in proximity to the quarry are concerned about noise or air quality?
  - Who in the community is currently already impacted by truck movements, how is this impacting their way of life already and what will extending the hours of operation do to their households in the future?
  - Where do local school students access schools and bus services – how will truck movements affect student and resident mobility patterns? How will the construction of bus bays prior to the construction of footpaths effect their mobility patterns?
  - How is the sense of community of the rural areas impacted by the presence of the project (at the proposed larger scale)? While local residents have lived with the presence of the quarry for many years, the increased scale and size has the potential to impact community sustainability.
  - How will the proposed increase in scale effect child day care centre pickup/drop offs on both Clarencetown Road and Paterson Road Bolwarra?
37. Unfortunately, the outputs of the SIA and the PAR documents have sought to integrate and then “by default” resolve social aspects of the traffic noise and dust impacts through apparent technical compliance of those specific impacts. This approach inadvertently means the actual impact to social fabric, amenity, sense of

place has been ignored and not addressed particularly when entire suburbs have been ignored by the SIA research. The mitigations proposed in the SIA are administrative and weak at best “Manage Heavy Vehicles” and “Maintain Existing Routes to avoid Spread”, “Continuous Community Involvement”, “Driver Awareness” and “Formalize a CCC”. These mitigations choose to ignore existing impacts let alone future impacts of 5am to 10pm transport. **To enable a complete assessment and determination of social impacts (existing and future) in relation to all impacted areas the Commission must require the Proponent to revise the SIA taking into account the above comments.**

## Amenity Impacts

38. The term social amenity is variously defined as something that contributes individually to physical and material comfort, a feeling of personal wellbeing, attractiveness, peace of mind, pleasurable social experience and collectively as a sense of community or belonging.
39. The proposed development, as described in the EIS and RTS fail to take account of the social, environmental and cultural structures of Raymond Terrace, Nelsons Plains, Bolwarra Heights, Brandy Hill, Largs areas.
40. In CEAL Limited v Minister for Planning & ors [2007] her Honour Justice Jagot refused an application for a quarry on the basis that the proposed haul route through Bungonia village would undermine important aspects of the amenity of the village and thus an important part of the planning scheme embodied in the LEP.
41. Her Honour Justice Jagot in CEAL said at [67];

*I accept that a consent authority should have regard and give weight to published guidelines providing objective criteria to facilitate assessment of issues arising in land use planning decisions. Nevertheless, insofar as this submission might have suggested that considering the performance of the development against the available objective criteria exhausted the assessment under s 79C (1), I do not accept it. For example, the ECRTN [Now the NSW EPA Road Noise Policy] does not cover all types of likely impact or all aspects of amenity. Insofar as it deals with one aspect of amenity (road traffic noise), the ECRTN applies generally throughout NSW. The Council's settlement strategy refers to the environmental criteria not being compromised, but that is quite different from the notion that compliance with the ECRTN exhausts the necessary or appropriate consideration under s 79C (1). Finally, the ECRTN does not have statutory force*

42. Whilst the proponent appears to have completed an assessment on road noise and the impact of this in accordance with the EPA Road Noise Policy (RNP), albeit with errors and deficiencies detailed above, it is clear that the proponent has not assessed all types of likely impact or all aspects of amenity.
43. The Proponent has failed to more deeply assess impacts on amenity choosing only to address and resolve these in the prescribed technical studies. Notably the

Departments of PAR states “*incremental impact on the amenity of the local community may higher than would otherwise be the case...* further “*The Department also notes that the quarry is located in a rural residential setting and that frequent haulage during the evening and night periods would significant impact local amenity. On this basis, the Department considers that the project should predominantly remain a daytime operation.* However, this comment in the PAR is contradicted by a draft condition proposing to allow truck movements prior to 7am and well into the dark of night (until 10pm). ***I request the Commission to assess all likely impacts and all aspects of amenity that the impacted community so value. I also request the Commission to consider the impacts on amenity of the Proposal be included as relevant matters within the decision making process giving substantial weight to the resident’s whose properties will be impacted upon for 30 years.***

**Conclusion**

44. I submit that the Proposal should be refused on the grounds that;
- a. The EIS/RTS has failed to address the SEARs requirements.
  - b. The EIS/RTS has failed to document and assess all potential environmental impacts arising from the proposal including those in Woodville, Raymond Terrace, Bolwarra and Largs.
  - c. The EIS/RTS has utilized an erroneous environmental baseline (700,000tpa and 24hr operations) the legal basis for which is in questions and disputed by the current consent authority
45. Should the Commission, contrary to my submissions, be inclined to grant consent to the development application I respectfully suggest the following conditions to be incorporated into any new consent over the site;

<b>Proposed Conditions</b>	<b>Reason</b>
Operating hours onsite be limited to 6am to 6pm Monday to Saturday and nil operations Sunday	<ol style="list-style-type: none"> <li>1. To preserve the amenity of residents who surround the facility and who reside along the haulage routes</li> <li>2. To mitigate early morning and late evening sleep impacts currently experienced by residents who live along the haulage routes</li> <li>3. To consolidate existing conditions imposed in the 1983 consent into the new approval</li> </ol>
That haulage spilt of 75% to 25% across both routes be mandated as a consent condition	<ol style="list-style-type: none"> <li>1. To provide certainty of impacts for residents across both routes</li> </ol>
That an existing limit of 700,000tpa limit be maintained until all road safety upgrades (footpaths, intersection improvements, bus bays etc) are fully constructed	<ol style="list-style-type: none"> <li>1. To ensure acceptable safety outcomes to the community</li> </ol>

<p>That a maximum of 85 truckloads of product per day be transported by road from the facility</p>	<ol style="list-style-type: none"> <li>1. To preserve the amenity of residents who surround the facility and haulage routes</li> <li>2. To ensure alignment of conditions with other modern quarry facilities (such as Gunlake, Teralba and Bungonia quarries) whose haul routes also impact upon residences</li> </ol>
<p>That fully enclosed processing facilities and improved dust suppression measures be mandated commensurate with modern processing facilities located within urban areas\</p>	<ol style="list-style-type: none"> <li>1. For improved noise and air impact outcomes for impacted residents</li> </ol>
<p>Averaged monthly and weekly limits on production and sales</p>	<ol style="list-style-type: none"> <li>1. To ensure (like Gunlake Quarry conditions) there is a smoothing of peaks and troughs and to provide residence with certainty that there will be no “peaks” causing untenable impacts on a weekly, monthly and annual basis</li> </ol>

The Commission may require the Proponent to address each of the matters listed within this document and attachments in a revised EIS/RTS. This ought to be re exhibited to allow effected residents in Raymond Terrace (along the amended haulage route) opportunity to comment. However, it is reasonably open for the Commission to refuse the application due to the failure of the proponent to address significant issues in the EIS/RTS. In the unfortunate event that the Commission chooses to ultimately consent to the application I request the Commission to action my requests throughout this letter and incorporate the conditions in the consent I have referred to and outlined in this submission.

Yours Faithfully

## Appendix 1 IPC Public Meeting Presentation

Project - SSD 5899

IPC Meeting 12<sup>th</sup> June 2020



# Agenda of this Presentation

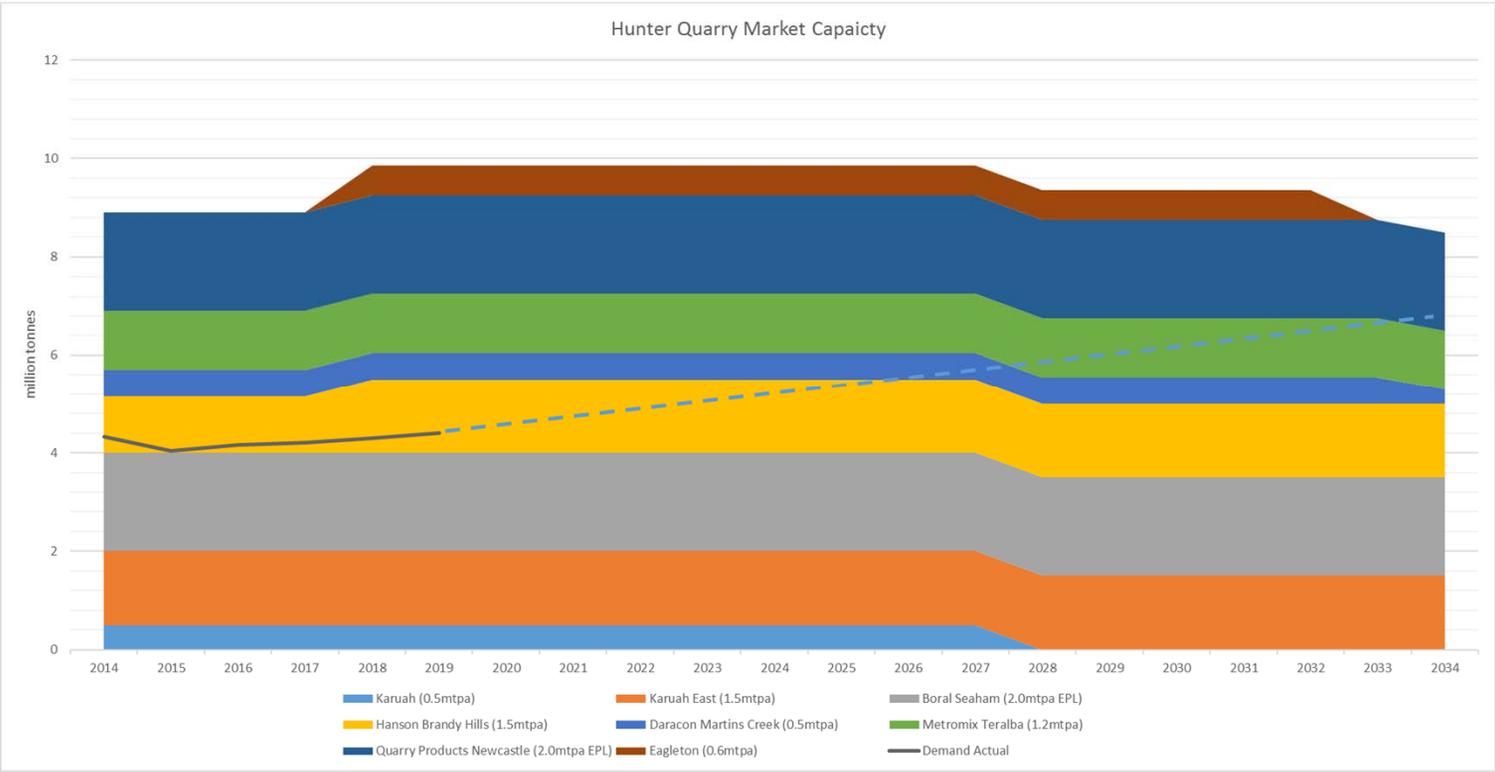
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1. Provide a review of regional quarrying operations in the Hunter market and the associated supply/demand curve
2. Provide an overview of approved, modern large scale, NSW quarries and their haulage routes in relation to state arterial highways
3. Provide a summary of proven and specific reasonable and feasible mitigations used by other modern quarrying operations in New South Wales
4. Highlight to the commissioners existing impacts currently being ignored by Hanson and bring to the attention of the Commissioners a broader concept of Amenity Impacts supported by caselaw that the Commissioners ought consider in their decision making process
5. Highlight significant deficiencies in the EIS and RTS
6. My requests to the Commissioners

# Hunter Quarry Market



# Hunter Quarry Market Capacity



# Modern Quarries in Southern Highlands

Two day field trip to Marulan Goulburn Area

Visited 4 modern quarry facilities

Aim of trip was to document “what is reasonable and feasible” and view “best practice”

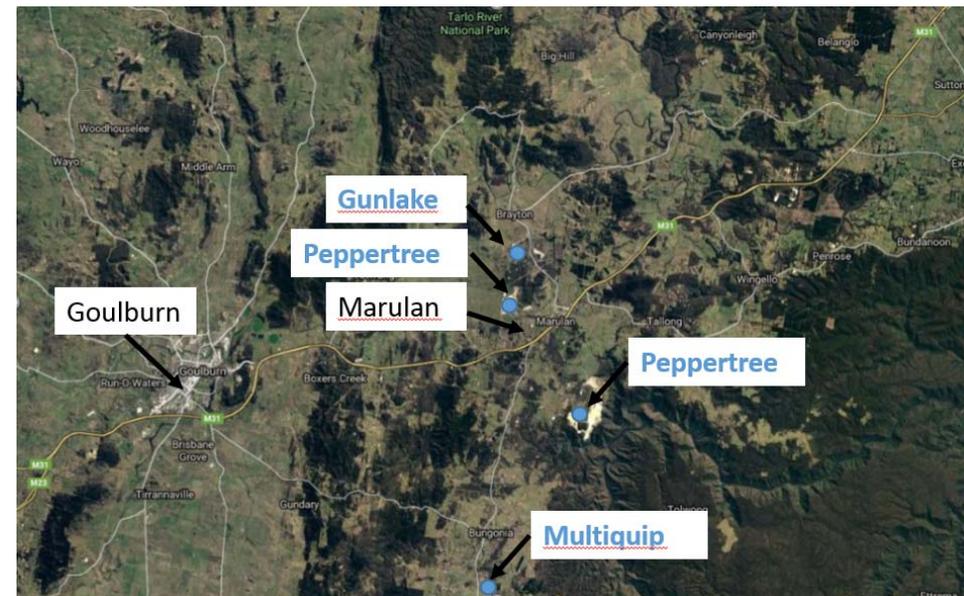
Boral (3.5MMtpa) - rail transport of product

Holcim (4.0MMtpa) - rail & road transport of product

Gunlake (2.0MMtpa) - road transport only of product

Multiquip (0.6MMtpa) - soon to operate utilizing road haulage

Ops scale, resource size and value all similar to BHQ



# Modern Quarries in Southern Highlands

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\$34M road transport interchange on to Hume Hwy (Holcim)

6km Private Bypass Road constructed around rural/residential (Multiquip)

22km Road (8m width-Ausroads standards) upgrades to Jerrara Rd (Multiquip)

Rail loading Facilities (Boral & Holcim)

\$30M to \$125M Rail infrastructure CAPEX (Boral & Holcim)

Regional distribution / Rail offloading facilities in Syd (Boral & Holcim)

\$50K pa community investment fund (Holcim)

\$50K pa engagement/sponsorship fund (Holcim)

Restrictions on road transport times/numbers (Gunlake & Multiquip)

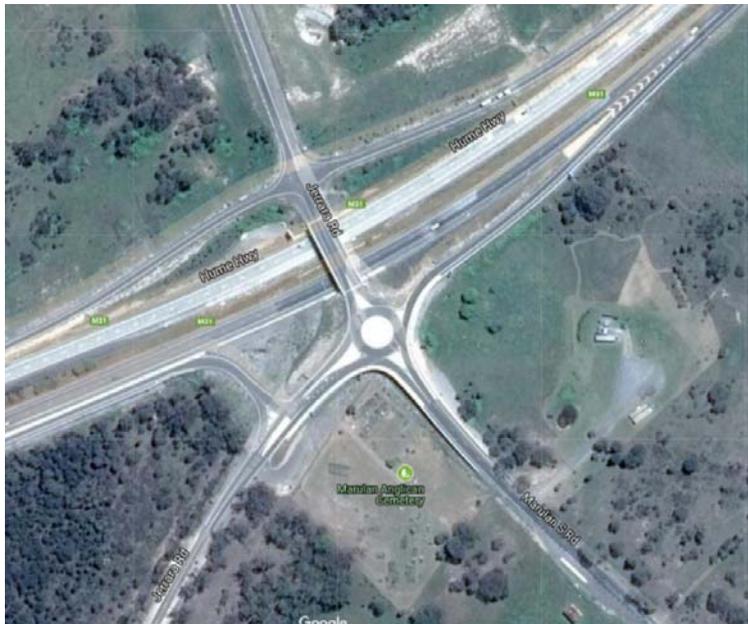
# Modern Quarries in Southern Highlands

Holcim Lynwood Quarry – Fully enclosed crushing (primary, secondary and tertiary)



# Modern Quarries in Southern Highlands

Holcim Lynwood Quarry – \$34M interchanged onto Hume Highway



# Modern Quarries in Southern Highlands

Boral Peppertree Quarry – in pit crushing, silo storage of aggregate, 100% rail



# Modern Quarries in Southern Highlands

Multiquip Bungonia Quarry – 6km private Bypass Road around village of Bungonia



# Modern Quarries in Southern Highlands

Holcim Regional Distribution Centre (RDC) located at Rooty Hill Sydney

Rail off loading

30,000tonnes of storage

Distribution to projects via truck/dog



# Existing & Current BHQ Impacts are Real. They are Not Perceived or Feared

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*“I have found the trucks already to be quite relentless.” - Brandy Hill Dr Resident*

*“As i sit here writing this at 6.56 am i can here the trucks going up and down” - Brandy Hill Dr Resident*

*“Our household wakes at around 5- 5.30am each morning because of the trucks travelling to the quarry. The sleep deprivation is affecting us already at this current level. The bedrooms are located at the street end unfortunately. Earplugs are used, windows shut...” - Brandy Hills Resident*

*“I stopped walking on Brandy Hill Drive over 2 years ago because of the trucks and the danger. I only walk around our property now. Many residents walked each day, and often stopped to chat to neighbours. Christmas get together and impromptu chats in our driveways where the norm, but this no longer is possible with the amount of trucks travelling Brandy Hill. Lifestyle has been greatly affected.” Brandy Hills Resident*

# Existing & Current BHQ Impacts are Real. They are Not Perceived or Feared

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*“I have noise issues, trucks under load moving south have to come up the incline under full power. Empty trucks travelling north travelling in excess of 90km/hr the noise from these empty trucks can be heard 1.5km away” - Brandy Hill Dr Resident*

*“we currently deal with truck convoys on a regular basis and increasing this will make it impossible at times to turn on or off Brandy Hill drive” - Brandy Hill Dr Resident*

*“No one who lives here does so to deal with excessive noise and traffic, this is a semi rural environment and needs to be kept this way.” - Brandy Hill Dr Resident*

*“I have multiple sclerosis and already have problems with fatigue, amongst other problems, without the additional noise that will be created by all these extra trucks. My neurologist has stated that if I fail to have good rest it will send my Ms back into a downward spiral and could lead to my rapid deterioration” - Brandy Hill Dr Resident*

# Existing & Current BHQ Impacts are Real. They are Not Perceived or Feared

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*“This morning (29th March 2017), a quarry truck veered across the double-white lines when passing a stationary bus at a `stop' along Brandy Hill Drive, as I was approaching from the other direction in my car, causing me to veer left towards the edge of the road.” - Brandy Hill Dr Resident*

*“The proposed higher volume of quarry trucks, will make daylight hours far more intrusively noisy, especially on weekends, however it is night time that really worries me. At night, the Brandy Hill residential area is almost `dead quiet'. This peaceful ambience will be totally destroyed by the obnoxious noise of quarry trucks all through the night.” - Brandy Hill Dr Resident*

*“We put up with noise from 5am in the morning to 7pm at night - not withstanding Saturdays from 5am to 3pm. Surely as we put up with this operation, are we not entitled to be able to sleep without excess noise from Trucks. An increase to these Truck movements from early mornings with empty Trucks rattling before 5am would be an intolerable situation and any increase would be unbearable.” - Brandy Hill Dr Resident*

# Existing & Current BHQ Impacts are Real. They are Not Perceived or Feared

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*“At present it's bad enough with the trucks that are operating day after day.... the Quarry's present hours seem to be reasonable enough. The area has been degraded already, safety, lifestyle and the peace and quiet of this beautiful location , which drew many of its residents here in the first place, has been changed so much over time, degraded by the constancy and noise impacts of the trucks going by, the pollution, and road safety issues.” - Brandy Hill Dr Resident*

*“Noise is always an issue with this quarry, especially due to trucks driving to the quarry during 'closed' hours. We have lost sleep due to loud trucks” – Brandy Hills Resident*

*“while there are some economic benefits associated with the mine expansion, they cannot compensate for the loss of sense of place entailed in the desolation of a whole locality and the quality of lives people living within the zone of affectation and along the trucking route. The judgement of Justice Preston in the Land and Environment Court in the Bulga case set a precedent for the inclusion of sense of place in all subsequent cases where development impacts are obviously negatively affecting social amenity. - Duns Creek Resident*

# Existing & Current BHQ Impacts are Real. They are Not Perceived or Feared

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*“Although we don't live directly on Brandy Hill Drive, we wake early each morning to the sound of quarry truck engines and their trailers bouncing along the road.” - Brandy Hills Resident*

*“The noise from current traffic flows impact greatly on the wellbeing of my family and I with interrupted sleep at night and early morning from as early as 4.45am. Even with doors, windows and shutters closed the rumble of trucks and general traffic noise impact immensely on the use and amenity of our property.” - Brandy Hills Resident*

# Amenity Impacts from Trucks

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Noise of quarry trucks is unfortunately unique due to the vibration of empty bins

Impacted residents can tell the difference between quarry truck noise and say for example a milk tanker.

Physical presence of trucks at more than one per minute (often in convoy) causes physical delineation of the neighbourhood, it makes it difficult if not impossible for residents to move from one side of the haul road to the other.

*In CEAL Limited v Minister for Planning & ors [2007] her Honour Justice Jagot held; I accept that a consent authority should have regard and give weight to published guidelines providing objective criteria to facilitate assessment of issues arising in land use planning decisions. Nevertheless, insofar as this submission might have suggested that considering the performance of the development against the available objective criteria exhausted the assessment under s 79C (1), I do not accept it. For example, the ECRTN [Now the NSW EPA Road Noise Policy] does not cover all types of likely impact or all aspects of amenity*

# City of Sydney Construction Hours

In response to Mr Farquars comments about City of Sydney the Construction Hours. No where does it state the hours are intended to afford quarries to operate from 5am to 10pm. The construction hour restrictions are in place to afford the residents of the City of Sydney amenity of the city between 7pm and 7am.

Residents
Waste and recycling
Animals
Trees
<b>Report local issues</b>
<b>Noise</b>
Construction sites
Dogs barking
Garbage and bottle collections
Licensed venues and commercial premises
Fireworks
Cars and other vehicles
Neighbourhood noise
Major works, transport and events
Illegal dumping
Abandoned vehicles
Illegal parking
Bill posters



## Noise restrictions apply

The construction industry can be noisy but developers must take 'feasible' and 'reasonable' work practice measures to minimise noise from construction sites.

Noise restrictions are set out in a **code of practice** and only apply to the city centre. Developers must hire a qualified acoustic consultant to state how they will comply with noise restrictions as part of the development application process.

All potentially noisy work in the city centre must be carried out from 7am to 7pm on weekdays and 7am to 5pm on Saturdays. Construction in all other parts of the local area must take place from 7.30am to 5.30pm Monday to Friday, and 7.30am to 3.30pm on Saturday.

In certain instances, these hours may be modified where the **contractor has consulted the City**.

The developer must have a procedure in place to deal with complaints, so concerns can be investigated and resolved whenever they are raised. Contact details for a suitable, readily available representative must be displayed at the site and neighbouring properties.

The developer needs to keep a log detailing noise complaints and any action taken. This information can be requested by the City's environmental health officers as part of an investigation into noise complaints.

If you require further information please refer to the **fact sheet and code of practice**, or please contact us if a developer or contractor is not responding or properly dealing with complaints.

To keep improving our city, we're reviewing the code and plan to update it in the future.

## Contacts

# RTS, SIA, NIA Deficient and Erroneous

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SIA and RTS make misleadingly claims that the impacts from current baseline operations are a continuation of BAU and the expansion project will cause no significant increases to existing impacts on a daily basis. This is false because the hours being sought approval for are increasing to 5am to 10pm and the annual extraction limit on an annual basis is circa 100% increase in scale meaning in any given year there is likely to be twice as many peaks as there are at current extraction levels.

SIA and RTS misleadingly claim mitigations in technical assessments will bring social impacts down from a high to a medium

The NIA has incorrectly used a 60km/hr speed limit for quarry trucks in the noise modelling. The actual speed limit on Brandy Hill Dr is 80km/hr.

The NIA has omitted any assessment of noise impacts to residents in Woodville, Largs and Bolwarra whose residences façade distance is significantly less than those in Brandy Hill Dr model assumption

The SIA and RTS has failed to assess the impacts to residents of Woodville, Largs and Bolwarra. Explaining away the impact that only 25% of haulage will be along that route. However the Proponent has failed to make any commitment on limiting truck numbers along that route.

The route change made by Hanson in consultation with PSC through Raymond Terrace are a significant project change. The Raymond Terrace residents down stream of that change have not been informed of that change nor have they been afforded the opportunity to inspect the EIS or make submissions in relation to that change in accordance with s.5.8(s) of the EPA Act.

# Concepts of Amenity & the Commissioners Decision Making Process

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Her Honour Justice Jagot, in *CEAL Limited v Minister for Planning & ors* [2007] [67] stated that *“Amenity has consistently been described as a wide and flexible concept, embracing such matters as the character of a place and the attributes of place which a community values as important contributors to its character”*

His Honour Justice Preston, the Chief Judge, in *Bulga Milbrodale Progress Association Inc v Minister for Planning and Infrastructure and Warkworth Mining Limited* [2013], identified the nature of the decision-making process under section 79C as involving the resolution of a polycentric problem. His Honour explained this *“as involving a complex network of relationships, with interacting points of influence. Each decision made communicates itself to other centres of decision, changing the conditions, so that a new basis must be found for the next decision”*

# Conflicting Landuse & Planning Objectives

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In CEAL Limited v Minister for Planning & ors [2007] her Honour Justice Jagot stated [60] that Zone objectives have a broader function than the operation of provisions [of the relevant clause] of the LEP. Local environmental plans are intended to contain coherent schemes regulating land use planning within a defined area. Most local environmental plans use zones to identify the development permissible with and without consent and prohibited on land within the area. The impacts of development can, and often do, cross zoning boundaries. She went on to state in regards to the matter that “One impact of the proposed development is that Monday to Saturday between the hours of 7.00am to 6.00pm, 52 weeks of the year, excluding public holidays, an additional 48 heavy vehicles (being a truck and three axle dog trailer) will pass along King Street, Bungonia, when the quarry is fully operational. Whether or not that impact is appropriate necessarily requires consideration of the planning scheme embodied by the LEP.”

According to the SEPP for Extractive Industries the Port Stephens LEP 2013 is a relevant planning instrument to be considered;

The R5 Rural Residential Large Lot zone Objective is to provide residential housing in a rural setting while **preserving**, and minimizing impacts on, environmentally sensitive locations and **scenic quality**

**The Proposal is inconsistent with a number of these objectives listed above**

# Requests to the Commissioners

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Given the short comings of the proponents work to date (as outlined above) It is reasonably open for the Commissioners to refuse consent to the application per s.4.16 of the EPA Act. I request that the Commissioners refuse this consent.

If the Commissioners determines not to refuse consent, then prior to making any approval determination I make the following requests to enable to the Commissioners to make a full and detailed assessment;

1. the Proponent ought to be required to revise the SIA to include interviews, impacts and assessments of Largs, Bolwarra and Raymond Terrace residents currently excluded from the assessment. The SIA should also be revised to clearly define existing community impacts and future impacts based on
2. the Proponent ought to be required to revise the NIA to assess the impacts of the sign posted speed limits along Brandy Hill Drive
3. The Proponent ought to be required to revise the NIA to include assessments of impacts to Largs residents located (façade distance) ~10-15m from the proposed haulage route 2, and Woodville residents located (façade distance) ~5m from the proposed haulage route 2

# Requests to the Commissioners ctd

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4. The Proponent ought be required to provide detailed analysis on further Reasonable and Feasible options that would enable the targeted tonnage per annum but that would also enable the mitigation of operational hours down to 6am to 6pm. Including but not limited to; a) use of a regional distribution centre for the orderly staging of project material as done by Holcim and Boral RDC's b) increasing storage/silo/bunker capacity at concrete plants to eliminate need for night time movements of trucks c) Perform options analysis to identify feasibility of routes that could be constructed to by pass the rural residential centre of Brandy Hill

5. The Proponent and the Department of Planning ought be required to re-exhibit the EIS to afford resident of the route change and opportunity to inspect and comment on the proposal that will now potentially impact them for 30 years

6. As I understand it, the Commission in making their decision to grant or refuse the proposal must identify the relevant matters to be considered, find the facts that relate to the relevant matters, then determine how much weight to give each of the relevant matters and then finally, to balance the weighted matters to arrive at a managerial decision". We request the Minister to adopt the approach described by his Honour Justice Preston and ask significant weighting be given in favour of the communities whose amenity, values and characters are already being impacted upon by BHQ current operations and will be further impacted upon by the BHQ Expansion Proposal

# Closing

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If the resource needs to be exploited at the scale proposed by Hanson then appropriate capital expenditure is required to mitigate impacts on the local communities.

If the CAPEX return on investment required for those reasonable and feasible mitigations as demonstrated in other modern NSW Quarries does not meet Hanson's corporate ROI hurdles then the resource must remain in the ground.

***Gloucester Resources Limited v Minister for Planning [2019] NSWLEC 7 Preston:***

*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.)*

Appendix 2 Existing Consent Exerts

1983 Development Application Exert.

<b>APPLICANT</b>	
HUNTER VALLEY MINING CORPORATION PTY LTD	name
"DALMORE PARK"	address
NEW ENGLAND HIGHWAY, LOCHINVAR,	
2321	postcode, 30 7254
	phone
please note the rateable owner of the land must sign this page.	
<b>DESCRIPTION OF DEVELOPMENT</b>	
EXTRACTIVE INDUSTRY - A HARD ROCK	
QUARRY AND PROCESSING PLANT	
N/A	materials to be used on external walls
N/A	roofing material
N/A	if a subdivision then no. of lots created
SEE ENVIRONMENTAL IMPACT STATEMENT	length of road created

1983 Development Consent Condition Exert:

- 4) The applicant is to undertake all those environmental protection measures outlined in the Environmental Impact Statement prepared by Resource Planning and shall ensure that every effort is taken to minimise any adverse impact upon the existing environment.

1983 EIS Exert:

*The Company proposes to quarry rhyodacite from a low ridge flanking the eastern slopes of Brandy Hill and to process the stone in an adjacent plant. Initially up to 100,000 tonnes of material will be extracted annually rising to about 400,000 in 10-15 years. Reserves are sufficient for a long-term operation of at least 30 years.*

*Operations will be conducted during daylight hours 6am to 6pm Monday to Saturday and will provide permanent full-time employment for up to 11 persons together with up to 10 subcontractor positions.*

## Appendix 3 Hunter Expressway Traffic Flows

**M15 Hunter Expressway (HEX1) Data**

24/03/2015 - 30/10/2016 | All Days | 00:00 - 24:00 | All Vehicles | Westbound

Yearly Views | **Monthly Views** | Weekly Table | Raw Data Table

				10	03:00	04:00	05:00	06:00	07:00	08:00	09:00	10:00	11:00	12:00	13:00	14:00	15:00
2016	October	Westbound	All Vehicles		62	222	643	608	576	581	557	544	564	554	550	577	623
2016	October	Westbound	Heavy Vehicles		24	46	87	105	93	87	80	80	77	73	70	65	64