

[REDACTED]

From: Neil & Margarete [REDACTED]
Sent: Saturday, 13 June 2020 12:16 PM
To: IPCN Enquiries Mailbox
Cc: Helen Mulcahy
Subject: Presentation to IPC Video Meeting on Brandy Hill Quarry - Neil Ritchie
Attachments: Speech To IPC - Neil.docx

Dear IPC Commissioners,
Please find attached the full text that I used for my online presentation yesterday.

Further to my strong recommendation that the quarry's weighbridge records be investigated to determine the current profile of loads from the quarry so that an informed assessment of the current Level 1/Level 2 mix can be made based on fact, I also recommend that you obtain the weighbridge records from the Mount White vehicle checking station, to gain an independent understanding of Hanson's current vehicles and their gross masses on the Sydney route.

Admittedly, that will include vehicles from both Hanson's Kulnura and Brandy Hill quarries, but it will give categorical evidence of whether none, some or all of their vehicles on the Sydney route, are loaded above GML limits and become PBS Level 2.

While "Amenity" has been a key factor in both the DPIE's recommendations and yesterday's speakers, SAFETY, must always be the overriding goal. The shared pathway is all about getting foot traffic, prams and bicycles off the road and the bus bays get stopped buses off of the road.

PSC has admitted that haul route to Raymond Terrace does not meet the NSW guidelines for PBS Level 2 vehicles, which are all about ensuring the safety of these vehicles and other road users, due their compromised steering accuracy, braking and manoeuvrability. If the weighbridge records show that any quarry vehicles are currently loaded to Level 2, or if there is any expectation that the number of Level 2 vehicles will increase over the life of this consent, then Hanson and via the chain of responsibility, the consent authorities, must ensure that this project does not compromise road safety for the life of this project. The road, intersections and private entrance must then be upgraded to comply with PBS Level 2 standards, as a mandatory prerequisite for this project.

Thank you for considering these matters in your determination.

Neil Ritchie (BHSAG)

- My name is Neil Ritchie, a foundation member of BHSAG and member of VOWW. I am also a member of MCQAG and the CCC's for both BH and Martins Creek quarries. I was the IT Manager of Australian Tube Mills for 20 yrs before retiring. In my career, we strove to be better than Industry best practice, in safety as well as every other business process. Best practice or lack of it is a focus of my presentation today. Thank you for allowing me to address you.
- BHSAG committee members try to represent the local community, but we are also all directly impacted by the quarry. Those impacts depend on where we live and what we do there. Our perception of those impacts also varies with how they affect us individually. So as we each make our submissions today, we are all wearing two hats: BHSAG representing the community using the input we have received, and ourselves. The key issues raised in submissions closely matched BHSAG surveys from 2015, so I will focus on those matters. 24/7, noise, safety and the environment. I live on BHD and ride a bike and walk for exercise, so my personal concerns are sleep disturbance and pedestrian, cyclist and bus and traffic safety associated with quarry truck movements.
- The residents' comments that you will hear regarding the adverse effects of the planned operations outside of "daytime", are not hypothetical, imagined or envisioned. They are real and lived experiences due Hanson's historical and ongoing operations outside of the current consent times. This is despite many complaints to Hanson and PSC over the years. We also endured the cumulative impact of Martins Creek Quarry trucks, when that quarry was also breaching its consent conditions. The scale of night time operations that Hanson wants would simply multiply the scale of harm that we have already experienced. Those concerns have increased over time, because Hanson has never embraced "Best Practice" for the sake of the community amenity and character, and has only ever sought to address minimum standards when pushing their 24/7 agenda in the interests of their market share and profitability.

I will now outline what the BHSAG speakers will cover:

1. I Will: 1 **Highlight the true number of residents impacted by this quarry,** which are very understated in the EIS.
 - **2 Give evidence that most vehicles hauling from the quarry are PBS L2 vehicles, which has been entirely suppressed by Hanson and therefore overlooked in this determination, along with the facts that the haulage**

routes do not meet the minimum standards for these vehicles with the existing volume of daily traffic. Further, the lack of any commitment to upgrade the roads, intersections and private entrance seem to offer sufficient grounds to reject this project, unless they are addressed.

- **3 Identify where the Department’s recommendations are welcomed, but also where they don’t go far enough to protect the area’s character and amenity.**
 - **4 Cover some similar cases and the IPC and LEC rulings that are relevant to BHQ.**
 - **5 Explain why Hanson’s ongoing quest for 24/7 must be given little weight by the IPC, other than noting the adverse impacts on community and the proposed environmental harm arising from the over 400km round trip for road haulage to Sydney and back.**
2. Chantal Parslow-Redman will speak for residents living in line of sight and within earshot of the quarry.
 1. James Moore will provide his expert analysis of potential quarry output, if they operated with best practices within the daytime period.
 2. And Margarete Ritchie will speak about what “amenity” means to us and what we would lose if Hanson got their way.

Firstly, What are the true number of residents impacted by this quarry?

Sections 3.1.2 and 6.1.5 of the assessment report refer to Figure 6 on page 5 stating “*over 40 residences within 1 km of the quarry boundary and more than 50 residences located along Brandy Hill Drive.*” which understates the actual figures. Not 40 but 69 residences within 1km. Not 50 but 82 driveways along BHD alone while also ignoring the additional 21 driveways along Seaham road to the floodplain, and the greater population in the 10 side streets in BH and Nelsons plains! The total population directly affected by haulage on the primary route along BHD and Seaham Rd from the 2016 census data is:

(State-suburb/Urban-Centre):

Brandy Hill **856/685**

Nelsons Plains 362/

TOTAL 1218/1047

Seaham, which spans from the township to Giles Rd is primarily affected by quarrying, adds another 1007/419. Therefore, the TOTAL census population within **4km of the quarry and along the primary haul route is in the order of 2225.**

Peter Rees will cover the second haul route toward Maitland, and the population along that route.

Hanson told Margarete and me directly at a CCC meeting, that as individuals we don't count. Fortunately, the DPIE has recognised that the amenity and character of our community of individuals do count, and has made many recommendations to preserve them, and our wellbeing. We implore you to uphold those recommendations given we are larger community than the EIS data indicates, and go even further than the Department to preserve this areas' amenity.

2. **L2 Trucks on council roads.**

BHSAG sent a letter dated 29th May to the IPC, outlining issues with the use of PSB L2 trucks on haulage routes that do not meet NSW minimum standards for road lane and shoulder widths, and intersection acceleration lanes and private entrance design rules that are applicable for these vehicles on roads with AADT counts exceeding 1500, which applies to both BHD and CTR.

MCC has responded to those issues, and clearly understands the regulations. MCC has confirmed that the haul route via Maitland can be used, but all vehicles must comply with GMLs for general access roads including the Dunmore Bridge at Woodville. A truck and dog with 4 axles has the highest GML of 50.5t. That road and the bridge have a 50.5t maximum limit, as do all other general access roads. So the clear ruling by MCC on the proposed Maitland route is that all trucks must not exceed their GML, and the maximum GML is 50.5T for only 7 axle T&D combinations, as others are much less.

Vehicles that are under their GML in order to use general access roads are defined as PBS Level 1.

So before I turn to PSC's response on these matters, I will further explain that GMLs, are usually significantly less than the truck configuration's legal maximum gross combination mass. ie the maximum legal gross weight as measured on a weighbridge. For example, a 3-axle truck and 4-axle dog, usually has an allowable maximum combination mass of 57.5 T, an additional 7 tonne of payload over the corresponding GML, and 3-3 T&D have

maximum legal GCM which is between 5 and 10 T over the GML. So the vehicles that could use the Maitland route must be only partly loaded and 5-10 t short of a full load.

Any vehicle loaded higher than its GML, is classified as a PBS Level 2 and must only use roads approved for that classification. That is because the handling and braking of vehicles is compromised at loads above GML and roads of a higher standard are required to accommodate them safely.

So that was a long explanation of why I can say MCC is happy, providing only PBS level 1 vehicles use that route, and no PBS L2 vehicles. The same could also be said about any other general access route into MC's LGA such as via Wallalong/Hinton/Morpeth, or in PSC area.

Now an undeniable economic fact is that transport costs per/tonne/km are minimised by loading trucks to the maximum allowable gross mass. On general access roads, that is the GML. On Level-2 routes (also commonly called B-Double routes), transport operators will always load trucks to the maximum allowed GCM. Now BHD was deemed a B-Double route some years ago, to allow a couple of grain trucks a week to deliver to farms at Woodville.

So I put these questions to Hanson regarding route 2:

- Has Hanson been cognisant that only level 1 vehicles can use that (and other local) route, and factored that into the estimate that 25% of trucks would use that route?
- Is that restriction covered in the DCC?
- If answered N to either of the above, what actions has Hanson taken to prevent breeches of the regulations?

And finally, before I turn to PSC's response, residents on BHD observe the traffic daily, and the gravel trucks from BHQ are almost all 3-axle trucks with 3 or 4 axle dogs. The 4 axle dogs are becoming very common. Yesterday I observed 4 out of 5 gravel trucks had 4-axle dogs. Now I admit that no trucks have ever showed me their weighbridge tickets, but I think any reasonable person would assume that on a B-Double route, they would all be loaded to the maximum to minimise costs.

Which leads me to the PSC response: " *It is Council's understanding that the quarry trucks are predominantly truck & dog configuration which is a Level 1 classification – not Level 2 as indicated in the letter.*"

As the rest of PSC's response is based on that "understanding" without any supporting

evidence, I submit to you that it must be totally disregarded. A simple check of weighbridge records will determine which of PSC's "understanding" or residents observations, is the truth

Council should not be making unsubstantiated assumptions as to the vehicles configurations and associated mass limits of those vehicles when assessing a Development Application (DA), and or when determining potential conditions of consent for a quarry extension. A more appropriate and accurate approach would be an assessment of recent weigh bridge records generated by the quarry, and a forecast of how the vehicle mix is expected to change over the life of the project. This would determine the number of vehicles currently operating at and projected to operate at level 2 mass limits on Brandy Hill Drive. PSC admits that *"These assets include roads that do not meet the current desirable guideline lane/shoulder width. It is correct that Brandy Hill Drive does not meet the current desirable guidelines for geometry in a number of places..."* and continues *"In such cases, a risk assessment should be undertaken considering all factors which would contribute to the safe operation of a Scheme vehicle and its interaction with other users."* Has PSC performed that risk assessment for the proposed expansion, based on the expected volumes of L2 trucks? Was a risk assessment done in 2011 when Hanson had the EPA increase tonnage to 700KTPA? I expect not, as they don't believe there are any L2 trucks here! That proper risk assessment must be done before PSC can make valid recommendations to the IPC regarding transport.

As this quarry is the primary generator of L2 traffic on Brandy Hill Drive and proposes to significantly increase this traffic(90%+), it is recommended that the quarry cause to bring this road, at its cost, to the required standards before any further increase of L2 vehicle traffic is permitted.

PSC's response regarding the quarry entrance *"Intersections - The entry lane requirements quoted refers to acceleration lanes and is not relevant in this case as the intersection is a cross-intersection with stop control"*. That ignores the stated expectation that on average, 25% of loads will turn right from the quarry onto CTR, while the returning empty vehicles will turn left into the quarry. So again, PSC's response is not based on accepted fact.

With the significant increase in L2 vehicle traffic proposed by the quarry it is recommended that as a minimum council investigate potential intersection upgrades for Brandy Hill Drive at the intersections of both Seaham Rd and Clarence Town Road, including the consideration of improved signage and delineation, dedicated turning lanes, deceleration

and acceleration lanes and or lane separation to enhance safety. It is further recommended that the Quarry be required to install a driveway access at the intersection of Clarence Town Rd, which meets the minimum standard for commercial accesses as defined in provision 3.4 of Australian Standard AS2890.2. (Major Access Driveways catering for heavy vehicles and articulated vehicles). Provision of a fit for purpose driveway access would provide significant improvements to safety at that location.

PSC would be derelict in its duty of care to residents, truck drivers and other road users, if it does not undertake a proper assessment based on fact, and does not employ every means available to it to bring freight routes up to the required standards. Accordingly, we ask council, as a priority, to review all aspects of the traffic issues outlined including a more accurate assessment of the actual current traffic generated by the quarry and any increase in heavy vehicle traffic proposed under the development amendment.

Based on our understanding of the regulations, supported by the LEC rulings in the Gunlake quarry consent, we don't understand how consent could be given for this quarry's ongoing operation, without a commitment from the proponent to cover the costs of upgrading all of the designated haulage roads and intersections to meet the minimum standards. The hard shoulders of much of the roads do not meet the rules and neither do the private entrance and intersection at the quarry gate and the BHD/Seaham Road intersection.

3. What are the Department's reasonable recommendations, and shortcomings

- The departments conclusion *"On this basis, the Department considers that the project should predominantly remain a daytime operation"*, is valid, but the proposed exceptions go too far beyond the daytime period. We oppose extending despatch earlier than the current consent's 6am start and allowing any crushing from past 6pm. We do support full acoustic and dust enclosure of all crushing equipment from stage 1, and before any increase in tonnage. These are reasonable limitations applied elsewhere for quarries in residential areas.

The dawn and dusk periods are also when wildlife is most active crossing the roads, so limiting haulage in these periods benefits our native animals.

- The proposed VPA mentions the bus bays and pathway we have requested, but the funding is partly a sham and totally inadequate, especially in the absence of any costing or timing by PSC. Hanson has not offered ANY additional funding for the bus bays, just pay \$120,000 as an advance haulage levy payment to then be used as a credit to avoid paying haulage levies in the future. That is a pittance for 6 bus bays, and the timing is also too open ended. The offer for the pathway is likely to be less than 50% of the expected cost, which a council officer suggested could be \$3-4M at a

CCC meeting! Bus bays might be built first, but when, and without a pathway for school children and parents to get to the buses and wait in safety, they will be less than a half solution.

The VPA with PSC was a gross disappointment in two respects. A previous quarry manager who has been moved on, suggested to me that Hanson could provide a much higher % of the pathway costs, and pointed out that Hanson's business is supplying gravel and concrete, and isn't that what pathways are made with!

The Department has recommended that existing product transport volumes (ie 700,000 tpa) are retained until the proposed bus bays are constructed. We argue that production should remain below a limit until the bus bays and pathway are completed, as only then will the safety of pedestrians, cyclists and bus users be adequately addressed. Have you seen the 3 cuttings with narrow lanes and no shoulders, and the two causeways? Would you walk or cycle in these pinch point sections? We also argue that the limit be 400,000tpa, as that was the last production figure that was approved through an EIS with public exhibition and agency scrutiny. It is our belief that the EPA's increase to 700ktpa in 2011 used exactly the same process as the Martins Creek Quarry, which the LEC ruled as illegal in the case Dungog shire council vs Hunter Industrial Rental Equipment. Martins Creek quarry has closed until Daracon's SSDA results in a new consent. I am a member of the MCQ CC, and it is on record that Daracon have dropped the route via CTR and BHD from the project plan. Presumably due to the cost of upgrading the road and intersections to AusRoad standards. The point for CTR/BHD/Seaham rd, is that "cumulative impact" is no longer an issue for the foreseeable future, but that hands BHQ the sole crown for heavy vehicles in our area.

Why should Hanson be the principle contributor to the safety infrastructure? Well, even though the BHD AADT counts exceed 1500, the average daily number of heavy vehicles that are not BHQ trucks is less than 20. BHD is not a radial arterial road as is Seaham Rd from Raymond Terrace or CTR from Maitland. It is primarily a commuter route. The justification for the quarry making a substantial contribution toward safety infrastructure is that the proposed numbers of BHQ trucks already are and will be an even greater majority of heavy vehicles after expansion. BHQ trucks, at the maximum of 600 /day would be to 97% of all heavy vehicles, and at the average of 340 trucks/day would be 94%.

Compare Hanson's offering of half a pathway, to the southern highlands, where:

- \$34M road transport interchange on to Hume Hwy by Holcim
- 6km Private Bypass Road around rural/residential Bungonia and 22km Road (8m width-Ausroadsstandards) upgrades to JerraraRd by Multiquip

- \$50K pa community investment fund and \$50K pa engagement/sponsorship fund (Holcim)
- Restrictions on road transport times/numbers until upgrades were completed (Gunlake & Multiquip). Note the restrictions applied even though other parties were responsible for the new infrastructure.

BHSAG believe that the bus bays, pathway and road and intersection improvements are not part of the VPA, but are made mandatory prerequisites by the IPC.

- Agree with B40, 41: If the project is approved:
 - Loads must be covered, but there must be an additional requirement to ensure all loose gravel is removed from outside surfaces to minimise gravel scattered on roads, resulting in windscreen damage and a safety hazard, as per the consent conditions for the Gunlake quarry. Hanson historically pays lip service to this matter. A car windscreen repairman told me as I was getting another screen replaced, that he has attended most properties in Brandy Hill! It is a windscreen damage hot spot!
 - No arrivals before 7am! Sleep disturbance before 7am is terrible.
 - *Agree with Signage* on all trucks for easy identification, for compliance with COC.
 - Agree with a self-imposed speed limit of 60kph. They already did a trial we liked the results.
 - A Drivers code of conduct. Helps, but doesn't stop the renegades with noisy exhausts, clanging truck bodies, lead feet and raucous engine brakes which they love to use contrary to signs.
- The executive summary recommends the enclosure of all fixed processing equipment and partial enclosure of the mobile crusher from Stage 1. That is a given, but this must achieve a target dB reduction through appropriate acoustic and dust enclosures. The annual tonnage to must be restricted to 400,000 until the noise attenuation is achieved.

4. Precedents relevant to BHQ.

The southern highlands Gunlake, Lynwood, and Ardmore quarries do not transport through any residential area like BHQ, but only because they built by-pass roads and upgraded the existing local haulage roads to meet the standards. Surely the conditions applied to them for road haulage standards should equally apply to BHQ.

Gunlake received temporary approval for only for 10 years of road haulage, and is required to get an independent study of the total costs of the environmental impacts of road vs connecting into the rail network, due to the health and environmental impacts

of diesel particulates and greenhouse gas emissions from road haulage. I expect the IPC and EPA should be even more concerned with Hanson's proposal for transporting quarry product 50% further by road to Sydney. Hanson's letter of 14th May says *"The lead time from Brandy Hill Quarry into Sydney is around two hours and it makes sense both economically and sustainably to conduct this trucking outside of normal peak hours to generate the best use of the broader road network."* Like in many real estate advertisements, the phrase "only 2 hours from Sydney" is often used, but the reality is quite different.

The closest Hanson batching plant in Sydney is at Thornleigh, 165km via the proposed haul route, and my GPS says a minimum of 2 hours 5 minutes. Hanson has a plant at Hoxton Park which is 215km and 2 hr 40 minutes minimum and more typical of Hanson's other Sydney batching plant distances. If there was concern about road haulage emissions from Gunlake to Sydney, then there must be greater concern for Brandy Hill to Sydney where the distance is 50% greater.

The Lynwood, Peppertree and potentially Gunlake quarries, have a very different logistics model from BHQ; By using cheaper and more environmentally friendly rail to distribution centres, the lead time for getting trucks from the distribution centres to batching plants and construction sites is very short. I am simply pointing out that Hanson's business model is not the only one, and certainly far from being environmentally friendly.

The other quarry in our area that has a SSDA in progress is Martins Creek. It also proposed road transport through the residential area of Paterson (census urban population of 330), and two routes; Tocal Road to Maitland and BHD to Raymond Terrace. Three relevant points on MCQ:

- The proponent, Daracon, never sought for 24/7 processing or road haulage.
- Daracon eventually recognised that their private entrance, various intersections and sections of road did not meet the standards for L2 trucks, and has presented detailed proposals for upgrading all of these assets, even though they will not be undertaking their construction.
- Finally, the other very relevant precedent is that Daracon also got legal advice that the EPA could increase the output licence, and ignore all of the conditions in the original 1990 EIS and DSC consent. The EPA increase and Daracon's exceeding the

EIS conditions were ruled illegal and invalid in the LEC and High court.

After GIPAs on PSC, EPA and interviews with the EPA officer that issued both increases, it is my strong view that the same process was used by Hanson and the EPA in 2011 to almost double output from 400 to 700,000tpa, and that Hanson's legal advice is that they can currently operate 24/7 by simply ignoring the 1983 EIS, which the courts have ruled to be illegal. The key point about 24/7 is that Hanson has not produced, because they cannot, any document proving they were explicitly granted 24/7 by PSC. I suspect their legal advice was simply that PSC wouldn't have the balls to take them to court, and in that they were right.

5. Finally from me, give minimal weight to Hanson ongoing push for 24/7. The DPIE appears to have dismissed it. Road freight over that distance to Sydney is not environmentally sustainable. You ought not show any favour that would hand them market advantage over other suppliers in that market. As the DPIE noted, very few quarries in NSW have 24/7. Other quarries have quite different business models to cover NSW demand and that of the Sydney region. Model which are much more environmentally friendly. Hanson's argument is that their market share (and profit) outweighs the harm that will be befall our community, must be dismissed.

The quarry has already had three different owners. If Hanson doesn't want to operate the quarry with the conditions recommended by the Department or yourselves, there will be other operators who do.

In Summary

- We believe that the concealment of the use of L2 vehicle on inadequate local roads, and the lack of any commitment to upgrade those roads and intersections and the private entrance to meet standards, for safety, gives sufficient grounds alone for you to reject this project. (refer recent PAC determinations and LEC case law precedents).
- The Department's conclusion "*On this basis, the Department considers that the project should predominantly remain a daytime operation*" is essential to preserve the character and amenity of our rural residential area. We had hoped for only "daytime" period operation, and though a number of restrictions were recommended, they should restrict all activities to "daytime".
- The information made available to you understates the number of properties within 1km, on the primary haul route, and the population surrounding the quarry and primary haul route. The true numbers reinforce the above.

- Bus bays and a shared Pathway are necessary for the safety and amenity of pedestrians, cyclists and bus users (and have been since production exceeded 400,000tpa). These must be mandated for completion before production can exceed 400,000 tpa. The VPA funding offer is a sham and inadequate, and so is the timing. These items must be removed from the VPA and made mandatory prerequisites before the project can proceed, as for southern highlands quarry consents.

That completes my presentation.

Thank you commissioners for listening.

From: Neil & Margarete [REDACTED]
Sent: Friday, 19 June 2020 10:37 AM
To: IPCN Enquiries Mailbox
Cc: Neil and Margarete Ritchie
Subject: Submission on Brandy Hill Quarry Re Level 2 trucks and 24/7
Attachments: Hunter_20062019 Summary.pdf

Follow Up Flag: Follow up
Flag Status: Completed

Dear Commissioners,

I have two additional items of information available to the public that support my concerns:

1. Hanson are, and obviously intend to continue, operating trucks loaded to their maximum limits, which are well above the General Mass Limits (GML) and therefore put them into the Level 2 classification. The haulage routes are far from meeting the safety standards required for level 2 vehicles, as admitted by PSC, so trucks are being operated unsafely and against regulations.
2. A new document outlines why Hanson regards the current consent as unlimited: This specific argument has been invalidated by the NSW High Court in the Martins Creek Quarry case.

Level 2 Trucks

In the transcript of your meeting with DPE, P16 line 40, it states:

"If you look at, you know, some of the figures they provide in terms of the – the types of loads a truck would carry, like, to big projects – is about 33 tonnes per truck."

The "33 tonnes per truck" is strong evidence that the trucks currently operate at Level 2 classification. A rigid truck alone typically has a tare (empty) weight of 12 tonnes and a dog about 8, making the average unloaded vehicle mass 20 tonnes. Add the average payload of 33 tonne gives 53 tonne, which is well above the highest GMLs of 50.5 tonne.

Many rigid trucks are have no dog and a payload of only ~12 tonnes, further lowering the average, so there must be many trucks carrying the maximum 57.5 tonne to arrive at an average of 33 tonne. As stated in my full submission, a simple check of the quarry and RMS Mount White weighbridge records will categorically answer this issue.

Our concern is that trucks will get even larger over the life of the quarry, and without roads being of a commensurate standard, the disregard for the safety of all concerned also becomes greater.

Further on this point, I have grave concern that the 33 tonne average also indicates that the trucks using the route to Maitland also flout the 50.5 tonne limit on the Woodville bridge and Paterson Road. If the 25% of trucks using this route were loaded to GML, the average load would be under 33 tonne.

Hanson's claim for 24/7

Hanson's claim for 24/7 has always been based on "legal advice", which they have never produced at CCC meetings. A March 2020 article in the QUARRY MAGAZINE gives insight into what that legal advice was. See:

<https://www.quarrymagazine.com/2020/03/19/brandy-hill-on-the-menu-for-hanson/?fbclid=IwAR0AxvtS7E8Y7GwGo2zM9XQyMrXXfPPxIMIONxpakFUGVTujky4aiy5zKV8>

which says "Hanson's preliminary environmental assessment states that Port Stephens Council's original approval, issued on 22 December, 1983, did not set production limits, hours of operation or transport movement limits."

That is also what the EPA told me was their justification at the time for increasing the extraction limit for both the Martins Creek and Brandy Hill quarries, without a full EIS. That legal tactic was ruled illegal in the Martins Creek court case, and also that *“The development application form provided that the full description of the development could be included in the separate information provided in the EIS”*..

Refer to the attached summary and full High Court ruling:

<https://www.caselaw.nsw.gov.au/decision/5d086cb8e4b02a5a800c1a89>

Particularly section A where many conditions listed in the EIS and not the Council consent, were enforced, and section B which: *“Set aside the determination of the Environment Protection Authority set out in the Notice of Variation No 1071585, dated 2 April 2007, varying EPL 1378 to permit the extraction of between 500,000 tpa and 2 million tpa from the land.”*

Conclusions

Hanson’s EIS and RTS are silent on the matter of Level 2 trucks using local council roads that are on record as not meeting the appropriate standards. Without an undertaking to address this matter of safety, the project must be rejected.

Hanson article in the Quarry magazine, propagates the myth that EIS conditions can be ignored if the council consent *“did not set production limits, hours of operation or transport movement limits”*. That argument has been ruled invalid by the NSW High Court.

Hanson continue to push this argument and encourage other quarries to flout conditions specified in EISs that are not explicit in council consent documents. This practice must be stopped, and the Commission must disregard Hanson’s claim for 24/7 operations.

Thank you for considering this additional material in your determination.

Neil Ritchie (BHSAG)



Judgment Summary
Supreme Court
New South Wales
Court of Appeal

Hunter Industrial Rental Equipment Pty Ltd v Dungog Shire Council [2019]
NSWCA 147

Basten JA, Gleeson JA, Preston CJ of LEC

The Court of Appeal has substantially dismissed an appeal by the operators of the Martins Creek Quarry, finding that the quarrying operation exceeded its authorisation under the development consent.

From around 1915, the State Rail Authority (“SRA”) operated the Martins Creek Quarry, near the town of Paterson in the Hunter Valley region. When, in about 1991, the andesite rock was fully exploited, the SRA obtained a further area of land, known as the “western land”. The quarry constituted a designated development for which an environmental impact statement (“EIS”) was required. The SRA sought consent to operate a quarry on the western land primarily for obtaining railway ballast. The respondent Council granted consent subject to a number of conditions. A plan and an EIS submitted with the development application indicated that the quarrying would take place on a particular lot. After extraction, processing of the rock extracted was to occur on the adjoining eastern land, being the site of the old quarry. In 2007 the SRA (then RailCorp) obtained a variation of an environment protection licence (“EPL”) granted by the Environment Protection Authority (“EPA”), permitting the extraction of 2 million tonnes per annum, an increase from 500,000.

In 2012, the appellants acquired and commenced to operate the quarry. Thereafter, the Council claimed that the quarrying operation was no longer primarily for obtaining railway ballast. The Council also claimed the area of land used for quarrying, the volume of material extracted and the number of trucks driving through Paterson exceeded the scope of the development for which consent had been granted.

The Council initiated proceedings in the Land and Environment Court seeking declarations and injunctive relief. The primary judge found that the appellants were extracting rock other than primarily for railway ballast, quarrying beyond the area to which the consent applied, dispatching a greater percentage of material by road than was allowable and impermissibly processing rock on the western land. The judge also found that the variation to the EPL by the EPA was invalid as the relevant statutory provisions had not been complied with. Orders were made to that effect, but a conditional stay was granted. The appellants sought to challenge these findings on appeal.

The Court found that there was a valid, conditional development consent in force which was not negated by the existence of existing use rights. The scope and nature of the development subject to the consent was able to be construed with reference to the

This summary has been prepared for general information only. It is not intended to be a substitute for the judgment of the Court or to be used in any later consideration of the Court’s judgment.

development application and EIS. The Court upheld the key findings of the primary judge, concluding that the purpose for which rock was extracted, area of the quarry and proportion of material transported by road were in breach of the consent. The variation to the EPL was also found to be invalid as the relevant statutory provisions had not been complied with. However, the Court found that the primary judge erred in making orders implicitly based on a constraint on the volume of material which could be extracted from the quarry.

Subject to variation of the form of the declarations and injunctions, the appeal was dismissed. The Court rejected the challenge to the exercise of the discretion of the primary judge in respect of the conditional stay.