

## **Independent Planning Commission**

### **Personal Commentary on Department of Planning and Applicant Further Submissions December 2022**

#### **Martins Creek Quarry SSD-6612**

##### **Opening Comments by The Department Page 1**

In our opinion, the commentary in paragraph 6 of the Department's response lacks relevance. It does NOT reflect the actual development consent conditions nor reflect community consultations and the outcomes thereof. In addition, anything would have been better than the extremely adverse situation that existed prior with Daracon operating unlawfully, completely at odds with those conditions. Of course there would be fewer complaints in a reduced trucking regime. This is not to say that the reduced regime was satisfactory. In our opinion, undue weight to the Applicant's side of the picture has been given.

Regarding the revised proposal from the Applicant, we do ask is it valid at this stage of the process?

In any event, we do not consider that the proposal satisfactorily meets the issues raised through Community consultation, including the well documented adverse effects of trucking noise along the haulage route. The mathematics change but the same basic issues remain.

##### **Question 1**

In our opinion, there is no hard evidence to support the Department's and Applicant's position. The fact is that the market was quite well supplied after Daracon was forced to operate lawfully after the Land and Environment Court decision in *Dungog Shire Council v Buttai Gravel*. There is NO evidence whatsoever that there was, or is likely to be a supply shortage of Martins Creek quarry material.

##### **Question 2**

In our opinion, Daracon has not adequately shown that significant rail transport would result in a non viable operation. Fact is that Daracon does not prefer to do this as it would add some cost to the product. Their chosen model seems to be to offer low cost product in relation to competitors. They have known about the restrictions to mining and transport since they did their due diligence into the viability of taking out the lease. Now there is objection to the proposal that the majority of product should be transported by rail at some additional cost. The Applicant seemingly has an expectation that this additional cost should be borne by the community along the haul route instead of by itself. This additional cost itself does not make the quarry non viable. It merely changes the profit expectations unless they can demonstrate another value proposition to their customers.

##### **Question 3**

Much has been made by the Department and Applicant about the virtues and advantages of "Modern/Contemporary project approval/conditions". The main ones being:

1. certainty to all stakeholders
2. clear operating parameters and contemporary controls.

The Land and Environment Court in *Dungog Council v Buttai Gravel* had no problem interpreting the existing regime with what was certain and required by Daracon.

As far as controls are concerned, those proposed by the Department and Applicant are weak in terms of effectiveness and scope. How can a consultative committee and voluntary code of conduct be considered a serious step forward, particularly given past behaviour by the Applicant?

In relation to CEAL, we submit that these are the relevant factors to be taken into account:

1. Each case to be treated on merits (this is merely a long standing principle)
2. Both situations are actually quite similar, notwithstanding the opposite view by the Applicant, in that:
  - a. CEAL was greenfield BUT the proposed Martins Creek operation is virtually greenfield. This is because the Applicant wants to change the entire nature of the mining and operation (compared to the State Rail run rail ballast operation) and the terms of Dungog Council conditions for Development Application.
  - b. Both Bungonia and Paterson are villages but the latter is bigger with impacts of the same nature but to a larger scale. The amenity expectations of people living in the village are rightfully different than those living in or next to a planning zone allowing industrial etc. functions. To say, as the Applicant and Department do, that similar noise was experienced in the past is not relevant. What is relevant is the actual noise that is expected from the frequency of heavy vehicle traffic, both in the short and longer terms. Also, what vehicle types will be involved. Not all heavy vehicles are the same. Even if it was relevant, there is ample evidence from residents of significant disruption to lives caused by heavy vehicle movements. This aspect, apparently, has not been fully embraced by the Applicant or the Department.
  - c. The road upgrades mentioned by the Applicant in relation to Martins Creek do not have any effect whatsoever on the overall truck transport route. They are basically within and adjacent to the quarry precinct.
  - d. The activities proposed as part of the quarry are dependent on an adequate and appropriate haul route being provided to enable the extracted resources to be conveyed to market. The trucking route is entirely unfit for the purpose of extensive road transport, regardless of whether this a new operation like Ardmore Park or otherwise. Previous evidence has heard details of what activities are carried out along the route, the type of road conditions involved and the residential and rural nature of the environment. As before, the Applicant wants to change the nature of Martins Creek Quarry entirely.

The conclusion by the Applicant that the project will not result in unacceptable noise impact along the haul route is, in our opinion, false. Both the Applicant and Department are fully aware of the impacts from reporting of lived experiences over many years.

Further the Applicant's opinion "that the number of truck movements, the haulage route and people living along the haulage route, has no bearing or relevance on the assessment of the application", is plainly not supported by the requirements of the legislation and various planning instruments. The principle being applied in Ceal is a basic foundation to achieving some reasonable balance between the Community's needs and the Applicant's wants for business expansion.

**Question 4**

In our opinion, this has not addressed the question in an adequate manner. The responses adds nothing to the original submissions of the Applicant and Department. The Contemporary Consent provisions do not address modern assessments of noise impact upon current and future generations.

**Question 5**

In our opinion, the responses add nothing to submissions already made.

The understanding and acceptance of the consequences of a high level of truck movements by the Community is not apparently shared by the Department or Applicant.

The Social Impact Management Plan should already be in place PRIOR to any implementation of this project.

**Question 6**

The Department and Applicant have no evidence that commercial viability of businesses along the haulage route will not be affected.

**Question 7**

The responses add little or nothing to submissions already made.

There has been no risk assessments completed in accord with industry project management standards. That is, assessments made of various things happening along the entire haulage route and the consequences occurring should those things happen.

**Question 8**

The Applicant should be treated no differently to any other organisation or person seeking development consent.

**Question 9**

No comment.

In summary, we believe that the Applicant and Department have not responded adequately to the questions raised. An opportunity to be leaders in sustainable development has been left wanting.

Thank you for the opportunity to provide personal commentary on these issues.