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Ref: SSDA1: 23/78

30 January 2023

Independent Planning Commission NSW
Suite 15.02, Level 15, 135 King Street
SYDNEY NSW 2000

Dear Sir/Madam

RE: MARTINS CREEK QUARRY PROJECT (SSD-6612)

Reference is made to the questions raised by the Commission seeking additional information from the Department of Planning and Environment (DPE) and the Applicant regarding the Martins Creek Quarry Project. Council staff have reviewed the additional information and understand that the proposed changes include:

- Annual Road Haulage – Reduced from 500,000 t/pa to 450,000 t/pa – a 10% reduction;
- Daily Road Haulage Limits – Reduced from 280 movements (peak) / 200 movements (nominal) to 160 movements (max) per day – a 43% and 20% reduction respectively;
- Hourly Road Haulage Limits – Reduced from 40 movements (07:00 to 15:00) and 30 movements (15:00 to 18:00) Monday to Friday to 24 movements (07:00 to 15:00) and 18 movements (15:00 to 18:00) Monday to Friday – a 40% reduction

While any reductions in road haulage are favourable, the above amendments do not fundamentally change the matters outlined in Council's previous submissions.

The following comments are made in relation to the additional information provided by the DPE and the Applicant in response to each of the nine questions raised by the Commission:

Question 1: Table 3-2 of the Department's Assessment Report identifies six other approved hard rock quarries within the Hunter Region that could provide significant volumes of quarry material to the regional market and which also have more direct access to the State Road network. Given the impacts of increased truck movements associated with the proposed Martins Creek Quarry project along the local road network why is this project essential to meet regional market demand?

- The additional information in the DPE response fails to address this question and instead lists the number of State Significant Development Applications in the system for hard rock quarries within the Hunter Valley.
- The DPE refers only to anecdotal evidence provided by the Applicant in relation to material shortage. The Applicant has made an unsupported assertion that the region is dependent on product from Martins Creek.

- Council has submitted to the NSW Government inquiry that Main Road (MR) 101 should be re-classified as a State road, although this has not occurred and there is no indication that it will. The proposed primary haulage route within the Dungog LGA is comprised wholly of local roads.

Question 2: If the Commission grants consent to the Application, and considering the proposed works to be undertaken to the rail siding, are there reasons why it should not impose a condition requiring a greater portion of product (recommended condition A15) to be transported by rail? If so, what are these reasons?

- Evidence is lacking in relation to the conclusion that there is no available rail unloading facility and Council is concerned that the DPE has accepted the Applicants assertion without more investigation/consideration.
- The DPE response largely ignores the impact of road haulage on the community, placing greater emphasis on the feasibility of rail transport rather than the social impacts of road haulage.
- The coal industry has adjusted to having all product being transported by rail or conveyor.
- Infrastructure associated with the quarry should be provided upfront, not delayed by approximately 2 to 4 years as indicated in the Applicant's response.
- The Applicant's references to the Interim Environmental Management Plan (IEMP) are inappropriate. For context, the IEMP was put in place whilst Class 4 proceedings were underway in the Land and Environment Court with respect to unlawful operations at the quarry. The IEMP was for a limited period of time and there was no environmental impact assessment or community consultation carried out in association with the IEMP. It therefore should not be relied upon as an acceptable benchmark for heavy haulage.

Question 3: The Commission notes the judgment of *CEAL Limited v Minister for Planning & Ors [2007] NSWLEC 3021*, in which the Court refused consent to a proposed sand and hard rock quarry at Ardmore Park. The Commission appreciates that all development applications should be treated on their merits. However, the Commission notes the reasoning adopted by the Court in that judgment with reference to the number of truck movements, the haulage route and people living along the haulage route. What is the Applicant's view as to whether the Commission should or should not adopt the reasoning adopted by the Court in that judgment – and why?

- The DPE has an obligation to respond to this question and assist the Commission, which it has failed to do.
- The response by the Applicant is misleading.
- As is pointed out by the Applicant's solicitors, McCullough Robertson, at paragraph 7 of its advice –
"It is a well-established planning law principle that each development is to be considered and assessed on its own merit. Whilst the IPC has acknowledged this principle in its Request, it would be erroneous for the IPC to give consideration to the CEAL Decision in its assessment of the Application."
- The Applicant has used Teralba Quarry and Brandy Hill Quarry as examples of two quarries that utilise local road networks. However, Council understands that existing rail facilities are not available at these quarries and as stated by the applicant, each development is to be considered and assessed on its own merit.

Question 4: Submissions presented to the Commission note that given the predicted frequency of truck movements and the characteristics of the towns and residential development along the proposed haul route, the development could result in long-term adverse impacts on the amenity and character of these communities. Noting the 25-year life of the proposal, how have intergenerational factors been measured and what are the probable outcomes of these impacts over the life of the project?

- The DPE response has not clearly identified how intergenerational factors have been measured.
- The DPE response appears to put greater weight on the economic benefits of the proposal rather than the social impacts.
- The responses of the DPE and the Applicant seem to be predicated on the application being an application to modify an existing consent rather than being considered as a new development consent application for a quarry.
- Previous comments are re-iterated that MR101 is currently part of Council's local road network.
- Council has previously submitted a peer review of the social impact assessment and economic impact assessment as undertaken by Judith Stubbs and Associates in September 2021. The peer review identified significant flaws in social impact assessment and found that the findings and conclusions should not be relied upon.
- The Applicants response asserts that the proposed road haulage would be deemed acceptable based on the lived experience of residents during the period when RailCorp operated the quarry. However public submissions and presentations at the public meeting present a differing view.

Question 5: How do the recommended conditions ensure that those most directly impacted by road transport are targeted by the proposed mitigation measures, including but not limited to social impact mitigation measures? What measures are in place for continuous improvement of mitigation measures over the life of the project?

- The DPE response recognises existing road safety issues along the proposed haulage route, although the recommended conditions of consent would permit road haulage prior to these safety being rectified. Council reiterates prior comments that road upgrades should be completed prior to any road haulage of quarry products.
- As previously addressed, Council submitted a peer review of the social impact assessment as undertaken by Judith Stubbs and Associates in September 2021.

Question 6: Submissions to the Commission identified a risk that the ongoing haulage of quarry products by road could affect the commercial viability of businesses along the primary haulage route including in and around Paterson. What evidence is there that this will not occur?

- The responses from the DPE and the Applicant ignore the impact of road transport prior to the construction of all infrastructure considered necessary for the development.
- There is inadequate consideration of the impact of road haulage on businesses particularly given the 25 year life span of the quarry.

Question 7: In reference to paragraph 94 of the Department's Assessment Report, how was the conclusion reached that the impacts of the increased road haulage associated with the Application on road users, including cyclists, school bus passengers, and pedestrians, present an acceptable level of risk?

- This question highlights the need for all road infrastructure to be in place prior to the operation of the quarry.
- The DPE acknowledges that the road conditions do not strictly conform with current Austroads guidelines. If consent is granted, road upgrades must be completed prior to any road haulage of quarry products to address these road safety risks.
- The information provided by the Applicant in relation to contributing towards a pedestrian crossing within Paterson is irrelevant. As addressed in the Applicant's submission, the pedestrian crossing would not meet the necessary criteria and would not gain support from Transport for NSW.
- It should be noted that Council has not agreed to enter into a VPA with the Applicant for the proposed development.

Question 8: If the Commission grants consent to the Application, are there reasons why it should not impose a condition requiring the proposed road upgrades and transport mitigation measures to be in place prior to the commencement of any increase in road haulage of quarry product?

- The Applicant seeks to rely on the IEMP. As previously addressed within this submission, references made to the haulage limits set under the IEMP are considered immaterial as the IEMP was facilitated through the Land and Environment Court for a limited period of time when the lawfulness and parameters surrounding the operation of the quarry were pending a Court Judgement.
- The necessary infrastructure must be in place prior to the operation of the quarry as is typical in the majority of development consents. If this state significant development is granted consent to proceed without the required road and infrastructure upgrades in place, the impact is directly to the local road network funded by Council's ratepayers. Local ratepayers must not be burdened with the cost of infrastructure required by a state significant development.
- The Applicant's justification that 'greater quantities have been transported in the past' is inappropriate as such quantities were outside the lawful operating parameters of the existing quarry. There is no valid justification as to why road upgrades and transport mitigation measures should not be provided up front.
- The DPE has acknowledged that the road conditions do not strictly conform with current Austroads guidelines and this should be rectified prior to any road haulage associated with a new development consent.

Question 9: When servicing local projects, trucks will utilise other local roads outside the primary haul route. How are local projects defined? What portion of total proposed product hauled by road would this comprise, and how will this be monitored and reported?

- Given that the majority of quarry products would be sold to regional and state markets rather than local markets, further consideration should be given to increasing the percentage of rail haulage rather than road haulage.
- Should consent be granted, Council supports the proposal that there be consultation with respect to "local deliveries".

In conclusion, Council maintains its position that if consent is granted then all product should be transported by rail. However, if the IPC is not supportive of this position then all proposed road upgrades and infrastructure must be in place prior to the operation of the quarry. Local ratepayers must not be burdened with the cost and impacts of state significant development on the local roads.

I trust that the above comments will be of assistance to you, although should you require any further information, please contact Trevor Ryan, Director Planning and Environment on (02) 4995 7777.

Yours Faithfully



Gareth Curtis
GENERAL MANAGER



John Connors
MAYOR