

Martins Creek Quarry Speech by Peter Rees

Background

I retired a number of years ago as an accredited specialist in local government and planning law and had advised local government and others for about 35 years. I have also served on several Joint Regional Planning Panels. And a CCC.

I am not here to give legal advice (indeed I cannot and would not), but rather to inform the Commission how I came to the conclusion that the submitted SSD 6612 should not receive consent.

My interest in this matter arises from

1. Being a resident on a Brandy Hill Quarry Truck route for about 20 years and cannot converse in the front yard when a quarry truck passes because of its noise.
2. Learning of the fears, concerns and perceptions of people about their future health, loss of amenity and character of their neighbourhood should SSD 6612 to expand the quarry, excavate and transport quarry materials through townships and beyond be approved and trying to help them prevent their suffering.

Because of time constraints I can deal only with the significant issue of **social impact of quarry traffic, which on its own, would be sufficient to ground a refusal.**

This issue has many facets and I will deal with them as best I can, and in so doing hopefully assist the Commission with a framework in which to determine the SDD on this issue.

REASONS

MITIGATION

In the Department's Merit Review of the Social Impact Assessment is the following

1.3 Summary of impacts and recommended consent conditions

The SIA has identified the following impacts to be the most significant when mitigated:

- ***Loss of social amenity associated directly with trucks and traffic movements, and flow-on increases in noise, changes to air quality,***

impacts on local road infrastructure and potential for interactions i.e. community safety.

- ***Loss of social amenity associated directly with onsite quarry operations, such as air quality, noise, blasting and vibration.***
- ***Loss of the sense of community including rural amenity, character of the locality and how people go about their lives.***
- ***Loss of trust in people's decision-making processes.***
- ***Concerns around property damage and property prices.***
- ***Health, wellbeing, and associated mental health impacts.***

Should the Project be recommended for approval, ensuring mitigation measures are implemented via consent conditions will be critical.

Development of a Social Impact Management Plan (SIMP) with collaboration from identified stakeholders and representative community members should form the basis of the consent condition.

The mitigation and enhancement strategies proposed to address significant social impacts are

- set out in Umwelt Para 6.13.6 ADA and
- comprised in a Recommended Condition of Consent including a SIMP that absorbs such strategies.

and are aspirational and seek to assuage concerns, for example, by monitoring and community engagement, sponsorship and making monetary contributions to the Council and community.

Mitigation strategies will do little to remove or reduce the social impacts.

I rhetorically ask: how can consent conditions imposing those strategies, when implemented, deprive an applicant of a lawfully granted right to operate under a consent or require a modification of a consent to satisfy any outcome of a strategy-induced community engagement?

TWO OF THE MITIGATION STRATEGIES IN THE RECOMMENDED CONDITIONS

FIRSTLY,

Conditions **A10 –A19** include the frequency of quarry truck movements over **25 years**

Relevantly, condition **A13** - the frequency of quarry truck movements

*A13. Total truck movements **at the site** (i.e. arrivals and dispatches) must not exceed:*

- (a) 40 movements per hour between 7:00 am and 3:00 pm;*
- (b) 30 movements per hour between 3:00 pm and 6:00 pm; and*
- (c) 280 movements per day on up to 50 days per year, otherwise 200 movements per day.*

Note: Truck movements to and from the site are also controlled by the operating hours specified in condition A16.)

SO AT THE SITE,

- a. **there can be 40 truck movements every 90 seconds in any hour between 7am – 3pm**
- b. **for the remaining 3pm – 6pm, 30 such movements every 2 minutes in any hour**

N.B.: AT THE SITE - NOT ON THE ROADS where the time intervals may be more or less....

And of course 20 unladen trucks to the quarry 6pm-7pm.

And the quantity of 280/for 50 days and 200 for the remaining days overshadows all.

Applying a smidgen of common sense to those specifications, not the ticking of guideline compliance boxes, the frequency of those truck at movements at whatever intervals, dictates that those whose people whose home or business address is on or who use the narrow quarry truck route in various ways particularly in the Town e.g. to shop, drop off / pick up kids, will be significantly and substantially impacted upon by the repetitive noise, vibration and exhaust generated by those **frequent** passing truck movements.

SECONDLY

Condition B40

Another proposed mitigation of the impact of quarry traffic movements through the Town is this condition that requires, in essence, the Heritage Town of Paterson to be changed to accommodate the Proposal by, amongst other things, the modification of the intersection of Duke and King Streets, that will involve the loss of car parking spaces outside the PO with the eventual installation of a camera monitoring station, radar variable road signs and so on in and about the Township.

No wonder the residents fear **a loss of sense of place**. This LOSS was a matter that was extensively dealt with in

Gloucester Resources Limited v. The Minister 2019 NSW LEC 7

8 February 2019.

While the Gloucester application was for a coal mine and this is for quarry expansion, this SSDA is on all fours with the social impacts of the Gloucester one because each would suffer severe irremediable social impacts in the event of a consent.

At 371-2 Preston CJ said

371. *I have explored, and have found substantiated, the residents' concerns about the Project's impacts on people's way of life, community, culture, and health and wellbeing. The Project will substantially affect the surroundings and people's sense of place.*

372. *These social impacts can also be seen to be impacts on the amenity of the place. The concept of the amenity of a place or locality is wide and flexible. Some aspects of amenity are practical and tangible. Examples include the traffic, noise, nuisance, appearance and way of life in the locality. Other aspects of amenity are intangible and subjective. They include the standard or class of the locality and the reasonable expectations of residents in the locality: Broad v Brisbane City Council [1986] 2 Qd R 317 at 320.*

LEGISLATION I considered to bring on board **social impact**.

There are 2 legs.

The FIRST LEG: EP&A Act

An Object of the EP&A Act that has not been met is s. 1.3 (b)

“(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision- making about environmental planning and assessment.”

s. 1.4 of that Act defines **ecologically sustainable development** has the same meaning it has in section 6(2) of the *Protection of the Environment Administration Act 1991*.

That POEA Act relevantly, in turn says

(2) For the purposes of subsection (1) (a), ecologically sustainable development requires the effective integration of social, economic and environmental considerations in decision-making processes. Ecologically sustainable development can be achieved through the implementation of the following principles and programs—

(a) the precautionary principle—namely, that if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

In the application of the precautionary principle, public and private decisions should be guided by—

(i) careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment, and

(ii) an assessment of the risk-weighted consequences of various options,

(b) inter-generational equity—namely, that the present generation should ensure that the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations,

(c) conservation of biological diversity and ecological integrity—namely, that conservation of biological diversity and ecological integrity should be a fundamental consideration,

Another social impact is the ***distributive inequity*** that would result if the Proposal is approved

Back to **Preston CJ** in **Gloucester Resources** which I do deal with at some length (emphases added)

At

398 A further social impact, revealed in the other types of social impact discussed earlier, is the distributive injustice or inequity that would result from approval of the Rocky Hill Coal Project. **Distributive**

justice concerns the just distribution of environmental benefits and environmental burdens of economic activity. Distributive justice is promoted by giving substantive rights to members of the community of justice to share in environmental benefits (such as clean air, water and land, a quiet acoustic environment, scenic landscapes and a healthy ecology) and to prevent, mitigate, remediate or be compensated for environmental burdens (such as air, water, land and noise pollution and loss of amenity, scenic landscapes, biological diversity or ecological integrity). Issues of distributive justice not only apply within generations (intra-generational equity) but also extend across generations (inter-generational equity).

- 399 ***The principle of intra-generational equity provides that people within the present generation have equal rights to benefit from the exploitation of natural resources as well as from the enjoyment of a clean and healthy environment: Telstra v Hornsby Shire Council at [117].*** *The principle of inter-generational equity provides that the present generation should ensure that the health, diversity and productivity of the environment are maintained or enhanced for future generations (see s 6(2)(b) of the Protection of the Environment Administration Act 1991): Bulga Milbrodale Progress Association Inc v Minister for Planning and Infrastructure and Warkworth Mining Limited (2013) 194 LGERA 347; [2013] NSWLEC 48 at [486], [492].*

To explain that, One of the expert planners on the Gloucester case was Dr Lawrence, to whom HH referred at 401

401. *“Dr Lawrence considered that the Project would cause distributive inequity:*

"The majority of the economic benefits of the Project will primarily go to the people who do not live in the Gloucester Township: they will go to the mining company and their shareholders by way of global flows of capital to the suppliers of the mine (presumably based in urban centres such as Newcastle), to DIDO workers living outside of Gloucester, and to the NSW Government (and the broader population of NSW) by way of revenue. The local economic benefits of the Project will be limited to those local business and local people who may benefit from local contracts and local employment, which as I note above, will be limited. In other words, the economic good from the Project will primarily be distributed to people outside of Gloucester, any local benefits will be short-term, spanning the 19 years of the life of the mine.

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Dr Askland concurred with Dr Lawrence:

"I concur with RL's [Rebecca Lawrence's] statement above. The distributional inequity of the Project cannot be mitigated by the recommended mitigation measures and the local community will carry a disproportionate cost.

*CJ Preston: 406 : I find that the Rocky Hill Coal Project will raise issues of distributive equity, both intra-generational equity and inter-generational equity, as Dr Lawrence and Dr Askland have explained. **The burdens of the Project, the various negative environmental, social and economic impacts, will be distributed to people in geographical proximity to the Project.** The physical impacts of the Project, such as the high visual impact and the particulate, noise and light pollution, will be experienced by people in geographical proximity to the Project. As Dr Askland observed: "There is a distinct inequity embedded in the development. It exposes a particular part of the local population - those within the estates in close proximity to the mine site – to distinct impact which is not accounted for" (Askland report, [12]). These physical impacts in turn trigger social impacts on these people.*

421 ..., I find that the Project will have significant negative social impacts on people's way of life; community; access to and use of infrastructure, services and facilities; culture; health and wellbeing; surroundings; and fears and aspirations. The Project will also cause distributive inequity. I find that, although the Project has the potential to generate some positive social benefits, including from the local economy and employment, these benefits will be outweighed by the significant negative social impacts that the Project will cause. The significant net negative social impacts are a justification for refusing consent to the Project.

The same circumstances apply here. The social and environmental harms of the Project will be experienced by the People of Martins Creek, and the residential and commercial areas of Paterson, Bolwarra and East Maitland.

I could not find in the Department's material anything that shows that how the impacts and benefits of the Proposal are likely to be distributed across time, geographically and amongst different groups of people in those localities?

Where does the SIA engage adequately with critical issues of distributive equity?

In Umwelt's 5.0 Response to Interest Group Submissions

"The Economic Impact Assessment indicates that the revised Project is estimated to provide a net benefit to NSW, including the local community."(p102)

What is that "net benefit to the local community?" Most of the economic benefits will go elsewhere, outside Paterson, outside the vicinity.

And what happened to "distributive equity? "

At p 4 of the SIA Merit Review, the Department has seemingly deferred that matter to the Applicant who it says must prepare a SIMP and

1. provide evidence that the local community and stakeholders are mutually satisfied with the mitigation measures and monitoring plan as detailed in the SIMP and
2. align with the following principles as defined in the DPIE SIA guideline (2021).

YET when we look at its recommended condition B5, nothing at all about that.

THE SECOND LEG OF LEGISLATION enabling a refusal

SEPP (Resources and Energy) 2021

Two clauses

2.17 Compatibility of proposed mine, petroleum production or extractive industry with other land uses

Before determining an application for consent for development for the purposes of mining, petroleum production or extractive industry, the consent authority must—

(a) consider—

(i) the existing uses and approved uses of land in the vicinity of the development, and

(ii) whether or not the development is likely to have a significant impact on the uses that, in the opinion of the consent authority having regard to land use trends, are likely to be the preferred uses of land in the vicinity of the development, and

(iii) any ways in which the development may be incompatible with any of those existing, approved or likely preferred uses, and

(b) evaluate and compare the respective public benefits of the development and the land uses referred to in paragraph (a)(i) and (ii), and

(c) evaluate any measures proposed by the applicant to avoid or minimise any incompatibility, as referred to in paragraph (a)(iii).

Note that in the Gloucester decision the planners were in agreement at “vicinity of the development” in the clause 12(a) of the SEPP Mining in

a planning context turned on the question of “what land is potentially open to experiencing some impact from a particular development [60].

If land in the vicinity is so described, then again, within the ambit of the SEPP the Commission’s consideration of particular social impacts of the Proposal go well beyond the adjoining or proximate lands to the site of the quarry. And

Umwelt’s Response to Interest Group Submission at p101:

“As outlined in the ADA Report, the land surrounding the quarry and along the haul route is primarily small villages, rural residential and small rural holdings... Other than potential noise impacts which may be managed through management, and mitigation or agreements, the Revised Project is not expected to have a significant impact on surrounding land uses.”

AND

Clause 2.22 Transport

- (1) Before granting consent for development for the purposes of mining or extractive industry that involves the transport of materials, the consent authority must consider whether or not the consent should be issued subject to conditions that do any one or more of the following—
 - (a) **require that some or all of the transport of materials in connection with the development is not to be by public road,**
(Not: I think it would be beneficial if the Commission was informed by the applicant about what were the respective trips and tonnages that left the quarry by train and road for, say, the last 2 financial years)
 - (b) **limit or preclude truck movements, in connection with the development, that occur on roads in residential areas or on roads near to schools,**
 - (c) not relevant...(code of conduct)
- (2) not relevant...

IN SUMMARY

I respectfully submit that when those legislative provisions and judicial decision are applied to the social impacts that you have read and listened to, the result is that it is in the public interest to prevent the disintegration of communities and their amenity by the proposed quarry truck traffic, and the SSID warrants refusal of consent.

THE DEPARTMENT'S RECOMMENDED CONDITIONS

Finally, I comment upon the Draft Conditions.

The Consent conditions recommended by the Department, should the Commission be minded to approve the Proposal, are unsound.

For example,

- Clause A2 requires, amongst other things, the development to be carried out in accordance with the EIS but the definition of "EIS" concludes "...and **any** additional information provided by the Applicant in support of the Amended Development Application: Really? Unspecified documents. Not good enough.
- When did parts of an Amended Development Application become EISs?
- Appendix 1: Schedule of land: A search for Lot 8 DP1273949 in the <https://maps.six.nsw.gov.au/> shows "No results." Does the lot exist?
- The Terms of Consent give powers to the Planning Secretary. There exists a possibility that the Planning Secretary may vary a condition of consent that should properly been the subject of an application to amend the consent with public scrutiny. eg. A30 and A31

A31. Staging Combining and Updating Strategies, Plans or Programs

"If the planning Secretary Agrees, a strategy, plan or program may be staged or updated without consultation being undertaken with all parties required to be consulted in the relevant condition in this consent."

- Most importantly, there is a failure to specify a transport route **at all** in the conditions. One should not have to scramble through the truckload of documents to see where the products can be transported. The route should be specified with precision and also if it be the case that loads on roads go elsewhere ("locally") then a radius centred on the Quarry should be specified (eg 20 klms). At the moment all roads lead to and away from the quarry.
- The conditions of consent are substantially founded on a plethora of preparation of management plans to the Satisfaction or Approval of the Planning Secretary who may waive some of the stipulated requirements if unnecessary or unwarranted

B7 Noise Management Plan

B24 Air Quality Management Plan

B35 Water Management Plan

B44 Traffic Management Plan

B51 Aboriginal Cultural Heritage Management Plan

B57 Biodiversity and Rehabilitation Management Plan

B66 Social Impact Management Plan

D1 Environmental Management Strategy

It is disappointing that the Department did not ask for such Management Plans at the outset to enable the public's and Commission's scrutiny. Even if it is and has been Departmental Policy and has been used in prior SSDAs, why is the submission of such plans postponed?

The recommended Conditions from the Department are unsatisfactory.

Conclusion

On 5 October 2022 the Department advised your Chair, Prof O'Kane, that

"On balance the department considers the benefits of the Project outweigh its residual costs and that the Project is in the public interest and is acceptable, subject to the recommended conditions of consent."

So the social impacts are "a residual cost"? And the Project is "in the public interest?"

I beg to differ.

I respectfully submit that given the quantity and quality of submissions from affected residents, business proprietors and others objecting to the SSD, together with the legislation and judicial guidance in Gloucester Resources, it is well open for the Commission to find that,

- (i) the perceptions and fears of the objectors and others, are reasonable.
- (ii) the SSD application, if approved, is likely to adversely affect local residents and business proprietors' health, way of life, community and well-being.
- (iii) The SSD application, if approved, is likely to have a major impact on the amenity of both the locality and the vicinity of the quarry; and
- (iv) on balance, and in the public interest, the SSD application should NOT receive consent.