

Commissioner Wilson

NSW Independent Planning Commission

Lv 15

135 Kings Street

Sydney NSW 2000

31 January 2023

Via Email

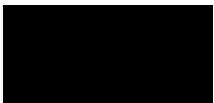
RE: OBJECTING SUBMISSION - Martins Creek Railway Ballast Quarry SSD6612 (the Proposal)

Dear Chair

Please find enclosed our further submission in regard to the new material exhibited between 23 December and 31 January 2023.

Thank you for the opportunity to comment.

Yours Faithfully



James Ashton MCQAG Secretary

Contents

Introduction	2
Revised Operating Parameters	3
Question 1	7
Question 2	9
Question 3	11
Question 4	15
Question 5	17
Question 6	20
Question 7	22
Question 8	24
Question 9	25
Conclusion	25
References	27
Appendix A – Correspondence with IPC	28
Appendix B - Revised Parameters vs Historical Tonnages	29
Appendix C	30
Appendix D – Statutory Declaration	31
Appendix E – Example Business Impacts from Past Unlawful Operational	33

Introduction

1. We refer to SSDA6612 (**the Proposal**) and the IPC Statement dated 23 December 2022 advising that public submissions have been re-opened in relation to new material. We understand the new material relates to the Letter from Department Planning & Environment dated 19 December 2022 (**the DPIE Response**) and Attachment A being additional information appended to the DPIE Response from the Applicant (**the Daracon Response**).
2. As detailed in the Martins Creek Quarry Action Group submission dated 22nd November 2022 (**MCQAG 2022 Submission**) we understand via SSDA6612 that the applicant is seeking authorization for a change of use of the subject lands involving at a species level a change in use from an extractive industry for the purposes of railway ballast production to an extractive industry primarily for the purposes of the extraction, processing and sales of general construction aggregates. We understand the application also involves areas of land (Lot 6) where previously the Applicant and prior operators of the Site have performed clearing, extraction and removal of EPBC threatened species and cultural heritage artefacts contrary to the EP&A Act with no approval.
3. We detail below significant concerns in relation to the new material contained within the DPIE and Daracon Responses.
4. In spite of the minor concessions made within the Daracon Response our group maintains unequivocal objection to the Proposal, specifically because the DPIE and Daracon Responses do not resolve or address the issues and impacts detailed within the MCQAG 2022 Submission that subject to an approval will (and have previously during unlawful operations) impact upon our membership who reside around the Site and who reside along the proposed haulage route. With reference to Appendix B, the intensity of proposed operations and haulage on a hourly, daily, weekly, monthly and annual scale are unacceptable and intolerable to our financial membership. Furthermore, if approved in its current form the development will cause unacceptable social impacts. These will occur as a result of individual and cumulative impacts emanating from the Site and the proposed haulage route, it will be almost certain that there will be a substantial deterioration to amongst other things; the sense of community, rural character, Paterson village activity centre function, road safety, rural amenity, health and social fabric (as reported lived experiences state) across a widespread area from Martins Creek, Vacy, Paterson, Tocal, Mindarriba, Bolwarra Heights, Bolwarra, Brandy Hill and East Maitland affecting many people for 25 years resulting in a 'major 'magnitude impact and a 'very high or extreme 'residual social risk ranking ([1](#)). Our position is confirmed by expert witnesses in Social Impacts.
5. We understand from recent discussions and email confirmation (see appendix A) with IPC's Steve Barry that in spite of this exhibition of new material, the submissions made and issues raised during the November 2022 exhibition will still remain under consideration by the Panel. Furthermore we understand from this discussion that non-submission by individuals during this January 2023 exhibition

period will not be taken by the Panel as to infer some type of acceptance or support for the proposal.

Revised Operating Parameters

6. The Daracon Response offers up to the Panel revised operating parameters being 450,000tpa by road, 160 truck movements per day and 24 truck movements per hour through and along residential roads, village activity centres and urban residential areas. At par 4 page 1 of the DPIE Response the DPIE states *The Department understands that further reductions in road haulage numbers have become more viable for Daracon since the Department finalised its assessment report, largely due to increased supply constraints and associated changes in the construction material market.*
7. It is unclear to the reader and therefore the Panel what exactly has changed in the construction material market since the DPIE completed their assessment report dated October 2022. MCQAG committee is not aware of any material changes since October 2022 that the Applicant now uses to excuse a further modification in proposed parameters. We rhetorically ask which government department did the DPIE seek confirmation on this statement in providing this advice to the Panel. The answer is they did not.
8. Whilst it is not relevant to the deliberations of the Panel's determination process MCQAG wishes to place on the public record that the Applicant and Umwelt have treated the SSSDA process, and the community involved in this process with utter contempt. Whilst our committee appreciates the opportunity to provide yet further comment on this new material our financial members and indeed the wider impacted community are confused, exhausted, distressed and deeply concerned by the new material. It is death by a thousand cuts.
9. The Applicant has had since 2015 to consider and offer up relevant and appropriate mitigations to the lived experiences as detailed in complaint records, court affidavits, stakeholder interviews, public meetings (2007, 2014, 2016 and 2022), Collaborative assessment forums and the many thousands of public objecting submissions. In 2015 attendees of the so-called community consultation committee were advised that 1,500,000 tpa by road was the only commercially viable scale for the Proposal.
10. The Applicant and their advisors can only be viewed to be offering up these new concessions at the eleventh hour in the hope of providing the Panel with something "Approval able". This offering comes with no material description or analysis on how the changes might affect or improve the likely impacts relating to industrial noise, road noise, air quality, road safety traffic improvements, likely social impacts, economic impacts nor cumulative impacts associated with the proposal.
11. Without the above granularity and detailed analysis the Panel is no wiser on what those concessions mean in terms of likely impacts. **We say respectfully they do not offer any detailed analysis on those aspects or impacts because based on lived experiences the changes in parameters do not materially affect the likely impacts as detailed in the lived experiences of residents.**

12. With reference to Appendix B of this document, the concessions offered up do not change the industrial scale and intensity of operations at the Site. If approved our financial members will unacceptably incur individual and cumulative impacts as a result of blasting, vibration, extraction, transport, crushing, stockpiling, dust emissions and sales of product at the Site. The operations of which are proposed to occur literally up to the Site boundaries of the Western lands, unlike any other approved extractive industry of the proposed scale in New South Wales, **with no buffer zones to rural residential communities (2)**.
13. The concessions offered up do not change the road safety issues detailed in the MCQAG 2022 Submission (3). If approved there will be 28,000 truck movements per annum and many hundreds upon hundreds of movements per week of class 9 truck and dog trucks along the route on a weekly basis. There will be no improvement to road safety outcomes, there will be no improvement to the unacceptable interactions of pedestrians and other road users within village activity centres and urban areas.
14. The concessions offered up do not change the likely social impacts, the rural and village amenity and social fabric of our community will be irreversibly changed, a number of families will be still displaced from our community under VLAMP triggers, visitors and residents alike will be required to "put up" with convoys of trucks imposing upon heritage precinct areas from 7am to 6pm Monday to Friday and if perfectly spaced (highly unlikely) at 2.5 minute intervals and the haul route (and historic rural villages and urban residential areas) will be physically split in two by the physical presence of class 9 quarry trucks day in and day out for 25 years.
15. The DPIE state at page 1 par 6 that *The Department is aware that the revised peak daily and hourly road haulage rates (80 laden trucks per day and 12 laden trucks per hour respectively) are less than the peak road haulage rates previously agreed to by Dungog Shire Council (DSC) under the recent interim arrangements that were in place between February and September 2019 (90 laden trucks per day and 20 laden trucks per hour). The Department also understands that fewer community complaints were experienced under the previous interim arrangements when compared to historical operations at higher rates of road haulage.*
16. The Panel ought to be made aware that the Interim Environmental Management Plan (IEMP) referenced in the DPIE Response above was only ever put in place by the Courts as a temporary measure whilst Court proceedings ran their course. The IEMP was never agreed to by Dungog Shire Council as DPIE incorrectly states above, in actual fact Dungog Shire Council strongly opposed the IEMP as detailed in **Dungog Shire Council v Hunter Industrial Rental Equipment Pty Ltd (No 2) [2018] NSWLEC 153** His Honour Justice Molesworth at par 850 noted *the Applicant Council rejected the Company Respondents' proposed IEMP and said that it was beset with uncertainties and difficulties.* His Honour went on to detail the complete context of the application of the IEMP during the Court proceedings at par 890 *As for the IEMP in the short term, it is seen as a very interim measure, in essence accepted by the Court on the basis that something is better than nothing. The Court accepts the Applicant Council's submissions regarding the IEMP (summarised at [850] in this judgment) – essentially that the document is far from acceptable, let alone ideal.*

17. In regards to the claims by the DPIE at page 1 par 6 that there were fewer community complaints when compared to historical operations, this statement is misleading and false. It implies that the DPIE is providing some type of weighting or tacit recommendation based on past unlawful operations. We rhetorically ask what analysis has the DPIE made of complaint records. The DPIE ought be required to provide this analysis to the Panel and the community if it is being relied upon to justify the likely impacts of the development. The records we hold show complaints being reported against trucking, air quality, noise impacts and blasting vibration from as far back as 1998.
18. The Daracon Response pages 5 through 8 sets out a number of subjective justifications to suggest to the DPIE and the Panel that the proposed further reduction of road haulage rates be acceptable. The Applicant makes reference to on page 7 par 3 to **Dungog Shire Council v Hunter Industrial Rental Equipment Pty Limited [2019] NSWLEC 132**. In that case Her Honour Justice Duggan was asked by notice of motion to extend the stay to enable the unlawful operations to continue at the Site for a further 12 months, in the case Her Honour dismissed the notice of motion and in her considerations she noted (emphasis added):

*46 The nature and scope of the use that is lawful on the land has been determined by the Court of Appeal. What the Respondents propose as an interim use during the period of any stay is beyond the scope of that lawful use. The use as circumscribed by the IEMP 2019 or as proposed in the SSDA are uses that are permissible with consent pursuant to the EP & A Act. That Act sets out an appropriate mechanism for the proper consideration of such uses. **Neither the IEMP 2019 use or the SSDA use have yet been the subject of that assessment regime.***

*47 Further, the quarrying process by its inherent nature is destructive. **To permit it to continue largely uncontrolled (except for the limited matters addressed in the IEMP 2019) is to allow the destructive process to continue without a consideration as to (inter alia): the appropriateness of the depth of extraction; the conditions upon which such extraction should take place; or the effects of that extraction on all of the relevant matters that are required by s 4.15 of the EP & A Act to be examined.** These are precisely the factors that the determination of an application as anticipated by the EP & A Act would allow.*

19. **We respectfully request that the Panel disregard the repeated reference to the IEMP as some type of tacit justification to give the impression that the proposed haulage rates are now acceptable. As detailed in her Honour's considerations above the appropriate mechanism for proper consideration of the permissibility of a proposed new use(s) ought be pursuant to the EP&A Act.**
20. The Daracon Response pages 7 and 8 makes **partial** references to Court transcripts of cross examination of lay witnesses to imply that those residents ought now be satisfied by the proposed further revised road haulage rates. We enclose a Statutory Declaration in Appendix D that further clarifies lay witnesses accounts and statements referred to in the Daracon Response.

21. Notably His Honour in **Dungog Shire Council v Hunter Industrial Rental Equipment Pty Ltd (No 2) [2018] NSWLEC 153** also referred to the more complete questioning and answers of Ms Buttsworth in His Honours decision:

"102 It was suggested to Ms Buttsworth that when she moved to Paterson she was aware of and accepted that she would experience impacts from the operations of the Martins Creek Quarry. In re-examination she denied that the level of impact currently being experienced was acceptable to her. The following question and answer was given (T 354.26-354.35):

Q. When I asked you a question earlier on you told the Court, in effect, although you accepted that noise from trucks and vehicles would be part of your daily life, you didn't accept that the level of noise from the number of truck movements that you're experiencing, as described in your affidavit, would be part of your daily life?

A. That's correct.

Q. Do you accept that that level of noise from truck movements should be part of your daily life?

A. No, I do not.'

22. The Daracon Response on page 8 par 3 notes *that Dungog Shire Council also had an agreement in place with RailCorp to transport up to 550,000 tpa in the years 2010 – 2012, just prior to Daracon taking operation of the quarry.* What the Applicant does not disclose to the DPIE nor the Panel in making this statement is that that agreement was made on the understanding that Railcorp were imminently closing down and disposing of the quarry and that the agreement was made between the parties to avoid the Court proceedings commenced by Dungog Shire Council against Railcorp for the unlawful operations from commencing.
23. The Daracon Response at page 8 par 4 makes various suggestions that the issues raised at public meeting relate to lived experiences during 2012 and 2017. It is not clear which public meeting the applicant is referring too. The Panel would be aware that community concerns and objections have been raised in Public meetings as far back as 2007. In addition complaints about trucking numbers and those impacts have been reported since as early as 1998. The Applicant makes a broad brush statement that *the road haulage limits now proposed are within the range that have been considered acceptable by residents on the haul route under previous operations.* This statement is made without any supporting evidence, what interview records from residents is the Applicant relying on to make this suggestion? What revised analysis of impacts is the applicant relying on to assert the suggestion that the impacts and issues reported in now thousands of objections dating from 2007 through to present have been resolved to support this claim. ***The fact is there is no evidence or factual data to support the suggestion and we respectfully suggest that the Panel ought give this suggestion little weight or consideration in making a determination.***

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?

24. The DPIE Response to this question fails to even answer the question. The DPIE also fails to seek the necessary government advice from relevant agencies and relies solely upon the commercial interests and statements made by the Applicant to inform its response to this question.
25. MCQAG is led to believe from sources at Transport for NSW Procurement Department that there is no such known shortage of product for state road infrastructure projects in the New South Wales market. Furthermore, the DPIE and Transport for NSW is in receipt of confidential government advice relating to the construction aggregates market in NSW dated May 2016 regarding the supply chain of NSW Construction Materials, why is it that the DPIE have not made reference to this information or any more recently dated strategic studies to properly inform its recommendation and response to the Panel?
26. MCQAG rhetorically asks why throughout it's whole of government assessment did DPIE not seek advice from Geological Survey or NSW Department of Trade and Investment who is the keeper of annual returns from extractive industries within the state in respect of annual production/sales and likely regional supply and demand capacity/forecasts. Geological Survey also is the custodian of the NSW Minerals Resource Audit which we understand is published to inform planning policy and planning decisions in this State. **We respectfully request that the Panel question the credibility of the information supplied to the DPIE by the Applicant and that the DPIE response to this questions is essentially un answered.**
27. The Daracon Response at page 14 par 3 states *To clarify, the proposed haul route for the Revised Project utilises the existing road network which has historically been utilised for product transportation from the quarry.* The applicant's statement in this paragraph is misleading to the Panel, what the Applicant fails to articulate is that between 2003 and 2019 the transport of product from the Site was being performed unlawfully in breach of the EP&A Act;
 - Being of a product not primarily railway ballast
 - Being rock from Lot 6 excavated without consent
 - With greatly more than 30% of the product by road the Applicant (and Railcorp before them) in breach of condition 6 of the 1991 consent and at
 - At a scale greatly more than permitted under EPL1378

28. The Daracon Response at page 14 par 3 goes on to say. *The characterisation of MR101 as a 'local road' is not considered appropriate.* We note that Transport for NSW Schedule of Classified Roads and Unclassified Regional Roads lists MR101 as a Regional Road (4). The schedule further details that Regional roads perform an intermediate function between local roads and state arterial roads also that *Regional and Local Roads are administered, managed and financed by local councils Transport provides financial assistance to councils for the management of Regional Roads.* We note also that Station Street and Grave Avenue being part of the proposed primary haulage route in year 1 to 4 of the development are **most definitely local minor roads.**
29. The Daracon Response at page 14 par 3 states that *In a previous application for the reclassification of MR 101 to a State Road, Dungog Shire Council referred to MR 101 an essential link between the quarry and the New England Highway in support of railways, roads and industry in the Hunter Region.* Unfortunately the author is attempting to mis lead the Panel and the DPIE with this reference, we advise the Panel that that Dungog Shire Council submission in 2014 was made in the context of the lawfully approved use and purpose of the Site, being in the context of a Railway Ballast Quarry, transporting not greatly 30% of product by Road and whose 1990 EIS assessed the impacts of 24 truck movements per day along the haulage route (5).
30. Concerningly the Daracon Response at page 14 par 4 goes on to state that *Further, it is noted that two of the quarries listed in Table 3-2 in the Department's Assessment Report rely on road haulage on local roads, being Brandy Hill Quarry and Teralba Quarry. Neither quarry has direct access to the State Road network and also transport product through residential areas in order to access State Roads.* What the Daracon Response fails to disclose is that Brandy Hill Quarry was required to construct a bypass road (Brandy Hill Drive (6)) around Seaham as a condition of consent to mitigate the impacts of Seaham Village. Interestingly Seaham Village is also serviced by a regional road being MR301, there was never any assertion that the impacts of Brandy Hill Quarry ought be acceptable to the residents of Seaham because the carriage way (MPR301) is expected to perform the intermediate function of a regional road. The Panel would recall on their site visit that along Brandy Hill Drive, the dwelling setbacks from the road reserve are in some cases some hundreds of meters away from the carriageway compared to set back distances of only 3 to 5 meters of dwellings in the Historic Village of Paterson. The Daracon Response also fails to highlight that the residential Eastern Haulage route used at Teralba Quarry is a secondary route, the primary haulage route is a ~6km direct connection to the M1 Motorway and this is reflected in Teralba Quarry annual reports (7) which disclose that the hourly limit of truck movements eastward is 8 per hour and the actual number that occurred averaged to be approximately 3 with many days in each month incurring zero movements along the eastward (residential/Teralba Village) route.

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?

31. The DPIE states at page 4 par 1 *The Department considers Daracon has adequately demonstrated that rail transportation of quarry products is severely constrained.*
32. The DPIE continues in par 2 to state that the Plateway Study 2021 indicates that *the use of rail transport within the quarry's primary market area (i.e. the Hunter Region) is limited by:*
- lack of suitable rail unloading facilities at product destinations;*
 - the large number of product destinations and types;*
 - short haulage distances; and*
 - several competing quarries using the road system as a more commercially viable and flexible supply to service the same markets.*
33. When one actually reads the Plateway Study it is confirmed that rail network use was between 27 to 32 train movements today and the network had a system capacity of 72 movements per day available. The study also reported at Table 19 a summary of the sites available for the establishment of a rail offloading, notably there were three sites with no significant environmental constraints and with the potential access availability from the site owners. The analysis of sites in tables 9 to 18 of the plateway report also detailed the minimum throughput required at each offloading site and the corresponding rail haulage rate that added between \$3 and \$10 per tonne to product cost prior to trucking costs to the end user.
34. The DPIE response seems to suggest that the reasons for not imposing greater proportion of product by rails is that the current rail balance is constrained by market demand and network constraints. It appears that the DPIE and Applicant are seeking to have it both ways. On one hand in response to the IPC Question No.1 above the aggregate produced at Martins Creek is highly sought after and incredibly unique when compared with other local supplies. On the other hand according to the DPIE and Plateway Study the *use of rail transport is limited by several competing quarries using the road system as a more commercially viable and flexible supply to service the same markets.* **We respectfully submit to the Panel, how can this be? If the resource is so constrained and sought after, and the location of the resource is so remotely located from arterial road transport routes surely it is incumbent on the end user to pay the full life cycle price of the product in order for that resource to be exploited in accordance with ESD principles.**
35. ***We respectfully submit, and notwithstanding the unacceptable impacts that prevail over our financial members who surround the Site, that if the Panel are persuaded to approved the development that the Panel should impose a greater proportion to be transported by rail in any new consent such that the current road haulage limit of 150,000tpa that exists under the current consent remain intact.***

36. The Daracon Response at page 16 par 2 notes *If this limit was to be consistent with the currently approved 150,000 t road haulage limit, the rail spur extension would be delayed by approximately 2 to 4 years. As such, Daracon would be unable to maximise rail haulage for that period of time.* We note that the Applicant is choosing to constrain its thinking on how the material could be extracted, processed and stock piled onsite to enable the expeditious construction of a rail siding extension. On the Site visit the Panel would recall the vast areas of disturbed land that would be feasibly able to accommodate stock piling of either processed or un processed material necessary to have been excavated to accommodate rail siding extension with or without the ability to transport more than 150,000 tonnes of railway ballast offsite prior to taking up the new consent.
37. Relevantly our group contends that all aspects relating to safety matters ought to be drafted wholly within the consent as a pre requisite condition to be in place prior to the taking up of the new use and purpose. We understand that precedent has been set in other extractive industries where matters relating to safety have been shifted from draft VPA's and moved into conditions of consent to be explicit. Furthermore, as an analogy, Lynwood Quarry did not have the luxury of transporting product through the village of Marulan prior to the construction of a private bypass road and highway interchange. Bungonia Quarry did not have the luxury of transporting product (other than product used for the infrastructure upgrades themselves) until 23km of Jerrara Road had been brought wholly to comply with Ausroad standards and Brandy Hill Quarry is not able to take up its new consent at that site until necessary footpath and bus shelter upgrades have been completed.
- 38. If the Panel is persuaded to grant an approval to the application, then consent for the new use (shifting from an extractive industry for the purpose of railway ballast production, to a new extractive industry for the purpose of general construction aggregates production), then the applicant ought not be able to take that new use up until ALL matters relating to public safety and proposed environmental mitigations are put in place.**

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?

39. We note that the DPIE has referred to the Daracon Response to this question, we ask, why in relation to an assessment and determination matter would the DPIE not seek and provide their own advice on this question to the Panel. We note that the Daracon Response has relied upon external advice we assume that has been commissioned under commercial terms.
40. We are advised that it would be improper to adopt the specific reasoning detailed in the above referenced case. However we are advised that it is reasonable for the Panel to give consideration to CEAL in so far as it explores the particular material facts of that case and provides reasoning and legal principles that guided or had bearing on that exercise.
41. MCQAG respectfully submits that the Panel ought give consideration to the number of trucks hourly, daily, weekly, monthly and annually proposed by the Applicant, we also submit that the Panel ought give consideration to the proposed haulage route and the residents objections and impacts that the Panel has heard during the Public Meeting in 2022 and within written November 2022 submissions by residents. We also respectfully submit that the Panel should give due consideration for the facts and observations made of the haulage route and the residential communities that the route would traverse. Furthermore we would respectfully ask that the Panel include within the material facts and characteristics of this application; the physical attributes of the Historic Paterson Village Activity Centre; the physical attributes witnessed during that visit of pedestrian movements; of the physical attributes of visitors and residents alike enjoying the outdoor road side dining at the CBC Café and B&B; and the physical attributes of the on street parking; the physical attributes of the intermittent light vehicle traffic flow observed along the route; the amenity attributes and rural ambience; the noise in the trees and the general vibrancy and pleasantness of the village amenity.
42. **MCQAG respectfully submits to the Panel that once the established and determined facts are laid out (including but not limited to those detailed above) it is completely reasonable to arrive at a similar conclusion as in CEAL.**
43. The Daracon Response at page 17 has taken the liberty to detail to the Panel what they say are the key aspects that differentiate it from the CEAL decision with MCQAG's contentions are highlighted in bold:

- The CEAL Decision was a greenfield site whereas the Project is a brownfield development pertaining to a quarry that has been in operation for more than 100 years. **The reference to the operation of Martins Creek Quarry for more than 100 years must be acknowledged in the context that it has operated only as a railway undertaking with lawful impacts contained relevantly constrained within the Site itself.**
- Bungonia, the village relevant to the CEAL Decision, is comparatively different to Paterson village in terms of population, and context in relation to MR 101 and the Main Northern Rail Line and amenity. **That is correct, the Historic Village of Paterson is significantly different, MCQAG committee have visited Bungonia, unlike Bungonia, Paterson is an activity centre, it is a connected village with a full commercial precinct frequented by residents and visitors, Paterson comparably has many more pedestrians, residents and users of the village activity centre.**
- The applicable planning scheme, including the objectives of the zone, are different to those referred to in the CEAL decision. **The planning scheme objectives are different but as a material fact the planning scheme objectives for Paterson are completely relevant particularly the objective *To enhance the character, including the cultural and built heritage, of each village* which we say the Proposal is at odds with.**
- The adequacy and appropriateness of the proposed haul route, including the assessment of alternative haul routes. **Based on MCQAG's tour of Bungonia the adequacy of the haul route is not worlds apart from Paterson Village, as detailed in Dungog Shire Council submissions several parts of the road network don't comply with Ausroad standards. It is very similar in nature so far as Dungog Shire Council roads including MR101 are constructed to rural road standards. It is not possible to determine what assessment of alternative haul routes have been made by the Applicant in the case of MCQ because no detailed assessment has been provided other than to rule out in simplistic terms any possible bypass.**
- Road noise levels would be entirely new and disruptive to the 'quiet ambience' and overall character of the existing Bungonia village whereas the quarry is well established and the Project will not result in unacceptable noise impact along the haul route. **In making this statement the Applicant seeks to mis lead the Panel. As detailed in the MCQAG 2022 Submission the proposed new use at the Site (being a much larger extractive industry for the primary purposes of construction aggregate production and sales) will result in new noise being generated, this noise be it the instantaneous noise from multiple hundreds upon hundreds of trucks per week transiting the haul route or whether it be new industrial noise that emanates from the site to process 1.1Mtpa of product will be unacceptable to many and will emerge from the relevant tranquillity of the background environmental noise that the Panel witnessed during their site visit. The Panel can recall on their Site visit in both**

Historic Paterson Village and surrounding stops around the Site itself the Panel's attention was drawn to the relative rural tranquillity and amenity, this we say is the base line noise environment against which assessment of noise impacts should be determined.

- **The CEAL Decision arose following the Minister for Planning having refused the development application. The Department, who has undertaken its own assessment of the Project, has recommended its approval. MCQAG contends that the DPIE Assessment is erroneous. As detailed in the MCQAG 2022 Submission there is significant errors and omissions in the assessment and therefore whether or not the Department has recommended approval in this case is irrelevant.**

44. The Daracon Response at page 18 refers to the analogy of two other quarries in this state that utilize local roads to access the state highways. The Daracon Response details below two bullet points of suggested comparison, we have inserted our comment and rebuttal in bold:

Teralba Quarry uses a number of local roads, including Rhondda Road and York Street, Teralba. Approximately 4 km of Rhondda Road used by Teralba Quarry includes steep winding sections of local road. **The Applicant fails to highlight that Teralba Quarry has two approved Haul Routes. The Western Haul Route is the Primary haul route that enables trucks to move directly to the M1 Freeway, this Western route does not transit residential areas, nor does it transit a village activity centre. Furthermore, as detailed above the Eastern Haul Route through the village of Teralba is essentially for "local sales" of product into the Lake Macquarie Council area. As detailed above the annual returns (7) for this route indicate that it is used infrequently between 1 to 5 movements per hour on any given day and any given month.**

Brandy Hill Quarry has two primary haul routes that traverse the rural residential areas, using a number of local roads, including Brandy Hill Road and Clarencetown Road, in addition to sharing a portion of haul route with Martins Creek Quarry. Brandy Hill Quarry travels between 11 km (Clarencetown Road) and 15 km (Brandy Hill Road) on local roads before reaching a State Road or Highway. The Brandy Hill Road route passes through rural residential precincts of Brandy Hill and Nelsons Plains and the small village of Woodville, which would be more akin to Bungonia than Paterson Village. **As detailed in earlier sections of this submission, the Applicant fails to highlight the fact that Brandy Hill Drive was a carriage way specifically constructed as a condition of approval to bypass Seaham Village, the setbacks of properties have been specifically prescribed to be in some cases hundreds of meters set back from the carriageway for this reason. The applicant refers to Woodville as a small village, in fact Woodville consists of a petrol station with off street parking and 6 private residences, it cannot be considered a historic village activity centre nor can it be considered a quiet rural village like Bungonia as it is situated loosely within the urban sprawl of Maitland City Council Hinterland.**

The Daracon Response at page 18 par 2 states that *The above case studies in relation to Brandy Hill Quarry and Teralba Quarry demonstrate that it is not uncommon for quarry developments to be located in close proximity to rural villages and communities and consequently it is inevitable that these quarry developments will need to haul product on the local road network through these villages and rural residential areas. In this regard, whilst the haul route for Martins Creek Quarry has been utilised for many decades, road haulage from Martins Creek Quarry is not a new impact to communities located along the haul route*

45. In making the above statement the Applicant has failed to clearly articulate the relative scale of the authorized movements through villages that Teralba and Brandy Hill are authorized to make, furthermore the Applicant has failed to articulate the historical scale of truck movements that have lawfully been authorized to occur from Martins Creek Quarry. The fact is 1991 Consent that was granted over the Martins Creek Quarry Railway Ballast site only ever assessed the impacts of 24 truck movements per day from the Site. Furthermore the environmental impacts emanating from the current use at the Site are further constrained and limited by the species purpose (i.e. for railway ballast) and road transportation impacts of product were further constrained and limited by condition 6 that authorized only 30% of the railway ballast be transported by road from the Site.

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?

46. The DPIE Response to this question does not actually provide an answer, the DPIE is unable to articulate within the response how the intergeneration factors have been measured and what the probable outcomes of the impacts will be over the life of the project. The DPIE is unable to describe in its response what the factors were that were measured and what the probably outcomes will be of those factors and impacts over the life of the project. In a peculiarly detour the DPIE Response goes on at page 5 par 5 to state that *Historically, the quarry has operated without certainty of its environmental, social and economic management obligations, or its social licence to operate. The Department considers that a contemporary SSD consent for the quarry would provide an opportunity to address this uncertainty by clearly defining the development's operating parameters and enabling holistic, contemporary environmental performance standards and management practices to be applied during the construction, operation and closure phases of the Project.* In the first instance the DPIE's assertions in this paragraph are erroneous and mis leading. The quarry operated without certainty historically because Railcorp and then Daracon chose to wilfully operate the facility contrary to the lawful consent conditions that applied Site. The Panel should be under no mis understanding that now that the operations have been restrained and the operator of the Site is now complying with the court orders and the lawful consents, there is absolutely no uncertainty about the existing developments operating parameters. The use of this justification to respond to questions on intergenerational factors is peculiar and unhelpful.
47. The DPIE concludes page 5 par 5 stating: *In the absence of such a contemporary consent, the intergenerational impacts associated with the operation and closure of the existing quarry would remain uncertain.* This statement is simply untrue, in the absence of a new consent the 1991 consent and EPL1378 remain valid until such time as the resource is exhausted, the intergeneration impacts associated with the current lawful operation and subsequent closure have not been defined or detailed. The impacted community would likely say under the current approved operations that there will be no inequity and the scale and nature of the current approved use and purpose would enable the continued co-existence of the operation quite sustainably within the local community and for the benefit of future generations.
48. The Daracon Response on intergenerational factors begins by attempting to paint the region an existing extractive industry region with only small villages and rural holdings affected by an existing haul route. The response then goes on to describe the SIA documentation of the values of the local area, at page 20 par 6 the Applicant claims *Based on consultation feedback and residents' testimony, the 'lived experience' during the Railcorp road haulage was acceptable.* This is simply un true and does not reflect the complaints between 2003 to 2010 to Railcorp as detailed in

the MCQAG 2022 Submission. The Daracon Response continues at page 20 par 7 stating *there would be minimal change to amenity beyond what has been previously experienced by the residents along the haul route during RailCorp operations.* This statement again is completely mis leading what is a more appropriate reflection is that an approval of the further revised haulage scale will result in a return to trucking mayhem and complaint, impacts and road safety issues that the community has complained of between 2003 to 2019 period. The Daracon Response goes on to suggest that a suite management and mitigations will improve the impacts, fundamentally there is nothing material that can be done to mitigate the physical presence of 160 trucks per day for 25 years, they will be there if evenly spaced every 2-1/2 minutes.

49. The Daracon Response then goes on to miss quote residents, claiming that the scale of Railcorp operations were acceptable, the author does not refer to which year of RailCorp's generally unlawful operations were acceptable. Moreover the statutory declaration and further reading of lay witnesses submissions both in the Court decision and within their specific personal submission in this planning process glean that the new normal in terms of rural and village amenity of the area with the ballast quarry operating lawfully is now even more important to preserve and protect than it otherwise was when Railcorp was operating unlawfully for so many years.
50. At page 21 par 4 the Daracon Response *Throughout the assessment process for the Project, the community indicated that the haulage rates prior to Daracon securing the licence to the quarry had been acceptable. As outlined in Section 2.3, these levels were deemed acceptable by residents' Court testimony.* No such evidence is provided to support the assertion that RailCorp's unlawful scale and operations were acceptable. We say the statement is factually mis leading. Furthermore, the Court Testimony was provided in full to the Panel, when the Panel has the opportunity read the Testimony in full along with Affidavits the Panel will become aware that for many of the lay witnesses involved in the trial that the impacts of unlawful operations has been endured to a greater and lesser extent, unacceptably for many in the community. The Panel and the DPIE should also then be further referred to those resident's recent submissions as since the operations have been brought into lawful scale and use the new level of pleasantness for many means reverting back to the old levels of Railcorp operations is completely unacceptable. We refer to the Railcorp Record of Public Meeting Email documenting those complaints alongside EPA complaint records dating back to 1998 contained within MCQAG 2022 Submission.
51. The Daracon Response at page par 2 states *Daracon has committed to a reduction in truck movements in the period between 3.00pm and 6.00pm Monday to Friday in recognition that Paterson village generally has more activity in that period.* Up until this point in time in the planning process, no reference has been made by the Applicant to the Paterson Village Activity Centre, moreover no reference has been made to its function and the likely impacts to it from the proposal. We rhetorically ask on what basis has the Applicant suddenly decided to state that reductions in truck movements between 3 and 6 pm are offered in recognition that Paterson is more active in that period. We respectfully submit that the Paterson Activity Centre Function is busy from 9am to 6pm Monday to Friday and generally 8am to 1pm

on Saturdays. The Applicant provides no factual evidence to support this “more active period” claim. The Panel would recall on the Site visit to the Historic Village and Activity Centre of Paterson that the street was full of customer and visitor cars parked on the carriage way, the Panel witnessed and had it pointed out the movement of pedestrians, the connected ness of visitors and residents and the village amenity. The Panel would recall the eateries literally overflowing with customers. We respectfully submit that the Panel ought to deduce factually that the village is busy with residents and visitors at any time of the day.

52. The Panel ought be made aware that the only reason the Applicant is offering up a 3 to 6pm reduction in truck numbers is because inherently quarry sales cease after 3pm because road construction and customer demand falls off then. This is factually reflected in the hourly truck counts contained in the Applicants traffic survey data.
53. As detailed in the MCQAG 2022 Submission the applicant has not accounted for the short term and long term external environmental impacts of the Proposal and without taking these costs into account it is not possible for intergenerational factors to be measured. How many families will be displaced under VLAMP, the Applicant and DPIE are silent on this. What is the likely reduction in business turnover and the reduction in visitation anticipated to be assuming an approval is granted, the Applicant and the DPIE are silent on this. What is the likely reduction in health and wellbeing to those who will be directly impact, what will be the anticipated reductions in property values with 160 movements per day for 25 years be? All of these factors have been avoided or ignored by both the DPIE and the Applicant to date.
54. **Having regard to the reduced trucking haulage rates in the Daracon Response, we respectfully submit to the Panel as we did in our MCQAG 2022 Submission that an approval of the Proposal in its current form, will result in:**
- **A deterioration of the health, diversity and productivity of the impacted environment both for the current generation and future generations,**
 - **The generator of the pollution and impacts will NOT have to bear the full cost of containment, avoidance or abatement, and**
 - **The users of the goods and services emanating from the development if approved will NOT be paying the full life cycle cost of the goods**

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?

55. Contrary to the DPIE and applicant's assertions, MCQAG contends that the DPIE Response, the Daracon Response and the Project documentation and commitments to date do not adequately address the likely road transport impacts that would result from the proposal. Furthermore MCQAG contends that the mitigations fail to target those most affected. The Panel would recall that the DPIE and Applicant have been asked this question two times in recent meetings and have been unable to respond. The DPIE Response to this question goes on to recite draft conditions of consent noting at page 5 par 3 that the DPIE states *These hours have been specified to minimise traffic and amenity impacts along the primary haulage route and to avoid potential heavy vehicle interactions with cyclists and pedestrians on weekends, particularly within Paterson.* MCQAG notes that constraints on operating hours of the project are set to mitigate traffic impacts to cyclists and pedestrians in Paterson, we ask what about pedestrian and cyclist interactions on Monday to Friday and those interactions that occur outside of Paterson along the haul route?
56. The DPIE Response then goes on to profess that road upgrades will be completed in accordance with Ausroad guidelines, the DPIE remains silent on the residual latent conditions of the road network post approval outside of the three traffic intersection upgrades proposed. The DPIE is silent on the Goswyck Single Lane Bridge which does not comply with Ausroad standards. The DPIE is silent on the unacceptable interactions that will occur between 160 trucks per day and the many hundreds of pedestrian movements within the Historic Paterson Village Activity Centre. The DPIE is silent on the other latent road safety issues pointed out to the Commission by Maitland City Council, Dungog Shire Council and MCQAG's 2022 Submissions.
57. The Daracon Response goes on to further recite proposed traffic mitigations and draft conditions of consent, the response does not detail in any substance how these targets those who are most affected.
- no road haulage of quarry products on Saturdays (or Sundays and public holidays) or between 24 December and 1 January, inclusive. **How does this mitigation target a resident who works from home Monday to Friday 48 weeks of the year who was during unlawful operations most affected by the hour upon hour movement of trucks past his or her home office window – the answer it does not.**
 - no quarry trucks through Paterson prior to 6.45am Monday to Friday. **How does this mitigation target a resident and families who reside in Bolwarra Heights, Bolwarra, Lorn and East Maitland who will be woken much earlier than 6:45am as trucks transit the route to hold at waiting bays outside of Paterson for the curfew to lift. The answer is it does not. Furthermore how does this mitigate the impacts to residents and families in Paterson who for 5 of 7 days per week must lie and bed and listen (and then be shaken out of bed) to the arrival of convoys of class 9 quarry trucks at 6:45am EVERY MORNING except for two weeks in December. The answer is it does not.**
58. At Page 26 par the Daracon Response goes on recite B44 draft condition of consent with references to the TMP and Driver Code of Conduct. The recital is littered with wishy washy words "minimize" "manage" "avoid" "participate" and "trial". These

commitments and conditions are not measurable, auditable nor are they enforceable. They provide no certainty to the most directly affected residents moreover the Daracon Response does not detail whom of the most affected cohort of residents will benefit from the proposed TMP and DCC detail. We suggest the reason for this is the most affected residents of the 160 truck movements per day will be most adversely affected by the physical presences of that scale of trucking operation with and without any TMP or DCC. We rhetorically ask how do any of the mitigations detailed in the Daracon Response remedy impacts to residents who for 25 years will woken at 6:45am five days per week with the unique acoustic signature of dozens of quarry truck movements heading towards their homes and villages; how will the residents who work from home and have his/her telephone conversations interrupted by every passing class 9 quarry truck be targeted by the mitigation? How will the resident who can no longer peacefully enjoy the amenity of their outdoor environment to drink tea or read the paper and enjoy the pleasantness of their rural amenity be targeted when they based on lived experiences are forced to remain inside their dwellings during quarry haulage times? How will the residents who can no longer invite visitors to stay at their dwellings out of utter embarrassment of being woken at 6:45am by a barrage of trucks? How does the resident who works night shift and is woken with broken sleep during the day due to 160 movements of class 9 vehicles and how are residents and visitors targeted who consciously acknowledge how un pleasant the locality now is with so many truck movements occurring that now prevent residents from feeling connect to their neighbours, their surrounds due to physical presence. How do the mitigations target customers and visitors who will be forced to make the choice on whether to stop in Paterson to shop and visit, in doing so taking their life into their own hands as they deal with a class 9 truck every 2-1/2minutes. **The answer to all of these questions is the mitigations described in the draft conditions of consent and within the DPIE and Daracon Responses do not target these scenarios (and many others) at all.**

59. The Daracon Response goes on to reference B65 SIMP this document is proposed to be developed AFTER the proposal is approved. MCQAG's position is the information being gathered ought to have been gathered, distilled and communicated to the Panel as part of the assessment process, the horse will have bolted if the contents of the SIMP is required to be produced after the fact.
60. Concerningly the primary response to the Panel in respect of social impacts is the proposed implementation of the SIMP and an adaptive management of adverse social impacts. What are these adverse social impacts likely to be? And what will the adaptive management approaches entail? Is the Applicant implying that if someone in Paterson Village contends that the social impacts of the "approved" 160 movements per day is making their life un bearable to live that the Applicant would propose to reduce transport operations to benefit the impacted resident?
61. **MCQAG respectfully submits that those most impacted by transport impacts of the application if approved will not be sufficiently targeted by the proposed mitigation measures. The supposed impacts based on lived experiences will result in unacceptable impact to amongst other things residents well being, to road safety, to rural and village amenity and this**

position is supported by MCQAG's expert witnesses opinions on Social Impacts, Noise and Traffic Engineering.

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?

62. The DPIE Response claims once again that past trucking rates associated with past unlawful use and purposes at the site as some type of tacit justification and the seem to suggest that the retrospective analysis of this likely impact in respect of the proposal is appropriate. We say it is not.
63. The Daracon Response has opted to troll through 2016 submissions to make reference to weekend tourism. However since the operations at the Site have been restrained to lawful operations only it is MCQAG's opinion that tourism and visitation has now substantially increased during the week day periods in addition to the visitation that occurs on weekends. The Panel can respectfully deduce this to be a matter of fact and would recall on their Site visit seeing customers and visitors scattered throughout the main street during their weekday mid-morning visit of the Historic Village Activity Centre of Paterson.
64. The Daracon Response to the questions of business viability goes on to make references to various submissions from business owners and concerned residents. Importantly we say it is necessary to differentiate between loss of viability (which suggests closure) due to an approval of the proposal versus loss of revenue, reduction in staffing and overall business down turn due to an approval of the Proposal. Daracon confirms at page 31 par 2 stating that *it has not collected business revenue or patronage data from businesses*. It is not determinable from the DPIE Response or the Daracon Response what the empirical affects will be on businesses if an approval is granted they instead rely on adaptive management after the fact. We say this approach is contrary to the EP&A Act s.41.5 that requires consideration of the likely impacts. Business downturn and in some cases non viability will be a consequence and impact of the Proposal if it is approved. We attach in Appendix E examples of the lived experiences and reviews of visitors and patronage during unlawful operations as an example of "what will come for businesses" in the Historic Village and Activity Centre of Paterson if an approval is granted.
65. Astonishingly the Daracon Response suggests the Local Services Provision Framework will incorporate a business survey which sets baseline for existing commercial context. We ask why wasn't this done as part of the EIS? And is the Applicant seriously suggesting that they will be willing to adjust their operations and scale further if repeated complaints and impacts to businesses as part of adaptive/reactive mitigations?

66. **MCQAG submits to the Panel that it is reasonably open for the Panel to deduce from the evidence before it and from the evidence it witnessed first hand that 160 class 9 truck movements each day through the centre of the Historic Paterson Village Activity Centre will unacceptably impact business activity and indeed the customers patronage of those business if an approval of the Proposal was granted that affect will result in a down turn in trade, a choice of customers to take their transactions to Maitland where parking and shopping precinct access does not involve taking ones life into ones hands amongst 160 daily class 9 quarry truck movements. The choices made by residents and visitors to shop elsewhere will likely impact business turnover for some it may quite likely affect their ongoing viability.**

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?

67. In the DPIE Response, admissions are made that network safety is satisfactory but notes a "few exceptions". The DPIE goes on un surprisingly again to substantiate its position about the latent un satisfactory safety conditions highlighted in the road safety audit as being satisfactory because there have been no incidents relating to the past unlawful operations at the Site. Once again we state this approach to be completely unacceptable and inaccurate.
68. In the first instance the Road Safety Audit has omitted a significant number of other road safety issues that have been previously documented in MCQAG Submission from 2016, 2021 and 2022. The Road Safety Audit and presumably the DPIE's own assessment of road safety issues has omitted any reference to the other road safety issues detailed in our historical submissions, there is no acknowledgement of the interaction of pedestrians in Paterson Village, there is no acknowledgment of the un sheltered turning lane and blind corner at the corner of Prince and Duke Street Paterson, there is no reference to the blind corner and unsheltered turning lane at Queen Street and Gresford Road, there is no reference to the limited site lines on the approach to the Northern rail line crossing in Paterson, nor reference to the limited pavement width and on street parking requirements for users of Paterson Village activity centre. There is no reference to the unsheltered turning lane at Tocal College nor the interactions of many thousands of visitors and students that frequent that facility throughout the year. There is no reference to the Tocal Teacher who was involved in a fatal accident whilst cycling to the college with a class 9 quarry truck in 2008. There is no reference to the non Ausroad standard pavement widths of Tocal Road Bolwarra Heights nor the interaction of residents and students who walk along the grass verges to reach schools and shops. There is on reference to the requirement for school buses to stop wholly within the carriage way in a 100km/hr zone to pick up and drop off school children along the proposed haulage route and there is no reference to the intersection issues at Paterson Road and Hunter Glenn Estate.
69. The DPIE Response and indeed the DPIE Assessment Report seems to have ignored the submissions of the Local Road Authority on this matter. Dungog Shire Council officers have placed on the public record the latent safety issues relating to the proposal that they have ongoing concerns with. It is deeply concerning that the DPIE in conducting a whole of government assessment has chosen to exclude any advice on this matter from either Transport for NSW nor the Local Government Road Authorities.
70. The DPIE Response states that the *existing footpaths and pedestrian crossings or those proposed by councils would allow for the safe movement of pedestrians in these urban centres*. We ask what works exactly is the DPIE referring too and what

of the safety conditions for pedestrian movements prior to those proposed upgrades?

71. The DPIE Response confusingly refers to the Driver Code of Conduct as the ultimate mitigation and control to manage pedestrians, cyclists and school bus passengers. The DPIE states that the 40km/hr speed limit in the Village of Paterson will reduce those risks but it is divulged in the Daracon Response that 40km/hr speed limit is a "Voluntary Trail". How can a key mitigation to pedestrian, cyclist and bus passenger safety be voluntary and how can it possibly be offered up on a trial basis only. Furthermore what of the pedestrian, cyclists and school bus passenger safety issues relating to the Proposal that occur outside of Paterson. There is no reference to proposed mitigations in Bolwarra Heights, Bolwarra or East Maitland.
72. The closing statement from DPIE on this questions suggests that the DPIE has made its own assessment without advice from the road authorities (TfNSW, DSC and MCC) on whether risks to road safety from the Proposal can be managed. The DPIE fails to disclose to the Panel whether or not the proposal will result in an acceptable level of risk choosing to use the words instead that "risks to road safety can be acceptably managed" it is not clear on whose opinion is being relied upon and what the actual residual risk level is likely to be managed down too, is the residual risk low, medium or high?
73. The DPIE Response, the DPIE Assessment Report and Daracon's own TIA have ignored the documented incident and accidents reported throughout this planning process. There is no response to the jack knifing of a class 9 quarry truck within the main street of Paterson, there is no response to the three documented side swiping's of residents and visitors vehicles from Daracon and Contractor Class 9 trucks, there is no response to the two reported loss of load incidents one occurring in the main street of Paterson the other occurring where school children would otherwise have been waiting for buses and there are no responses to the numerous complaints in relation to class 9 quarry truck driver behaviour including one resident being physically assaulted in the main street of Paterson by a Martins Creek Quarry class 9 truck driver.
74. The Daracon Response at page 33 par 3 states that *The TIA indicates that the Revised Project is not expected to adversely impact on public transport, or the safety of pedestrians and cyclists using the primary haul route* MCQAG respectfully submits that when the Panel makes an impartial assessment of the facts and the public submissions and considers these with the physical observations made during the Site visit , we respectfully submit that is more than reasonable to deduce that this statement is grossly erroneous and in fact the addition of some 28,000 class 9 quarry trucks on to that road way annually for 25 years will result in unacceptable levels of risks to pedestrians accessing and utilizing activity centres, to cyclist who frequent the area on weekdays, to school children and school bus drop off zones during morning peak operations, to bus drop off zones nominated informally along the entire haulage route with parents, to other road users expected to interact with that order of magnitude number of class 9 vehicles across non Ausroad standard single lane bridges and with respect to all of the latent un addressed road safety issues

raised in the MCQAG 2022 Submission and also those raised and left unaddressed within the Dungog Shire Council's historical submissions.

75. **MCQAG respectfully contends that in the hierarchy of risk management controls, reliance on an administratively weak TMP and Drivers Code of Conduct document to manage and mitigate some of the most concerning impacts from the development is highly abnormal and unusual. These administrative controls fall outside of the conditions of consent, they provide no certainty to the impacted community and will be difficult if not impossible to enforce and control as lived experiences have shown. Therefore we respectfully contend that the likely road safety risks from the proposal in its current form, if approved, will result in an unacceptable level of road safety risk that if approved will primarily be borne by the local impacted communities.**

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?

76. Once again Daracon Response refers to RailCorp's past unlawful operations as being a tacit approval or justification for the status quo going forward. We noted earlier in this document that Dungog Shire Council did not approve any IEMP, these were enforced solely by the Courts as an interim measure whilst proceedings ran their course. Furthermore, Dungog Shire Councils agreement with Railcorp was made on the understanding that Railcorp were to close and dispose of the quarry and that agreement was made to prevent Dungog Shire Council Court proceedings from continuing.
77. MCQAG's submission in relation to the question is YES there are reasons. Notwithstanding the fact that MCQAG's position is that the Proposal should not be granted consent. If the Panel is erroneously persuaded to grant an approval of the development being a change in use and purpose at a species level from a ballast quarry to a construction aggregates quarry, then, with respect we are of the understanding that it is usual practice for matters relating to road and public safety to be implemented and/or constructed prior to the Applicant being entitled to take up the new use or new scale.
78. We respectfully submit that it would be reasonable for the Panel to deduce that the increase in class 9 movements along the haulage route from 9375 movements of railway ballast per annum to 28,125 movements per annum of general construction aggregates will most definitely have an impact on road safety along the entire proposed haulage route, it would be reasonable to deduce this from the submissions from Maitland and Dungog Shire Council's being local road authorities along the proposed haulage route, it would also be reasonable to deduce this from the impacted residents accounts of road safety issues within public submissions received in November 2022. It would also be reasonable to deduce this fact from

the Panel's own firsthand viewing of the haulage route, the activity centre function and from viewing firsthand the near miss at the intersection of Tocal and Paterson Road Bolwarra Heights when an unladen quarry truck emergency braked and nearly collided with a turning light vehicle.

79. The approach to impose conditions of consent requiring proposed upgrades and transport mitigations to be in place before commencing increased road haulage was applied to Brandy Hill Quarry Expansion SSD5899 as detailed in that IPC statement of reasons (8) and we say respectfully that approach should be applied in this case.

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?

80. Notwithstanding that MCQAG's position is that the Proposal should not receive consent. The Panel heard from the Director of Daracon on the Site tour that their definition of local delivery is anyone willing to pay for their product. The Daracon Response provides no enlightenment on what scale of local delivery is acceptable in terms of likely impacts with respect to the road network being utilized for those deliveries nor the impacted communities along those routes in fact the ADA and the DPIE AR has never assessed what those likely impacts could possibly be.
81. MCQAG notes an analogy at Bass Point Quarry Modification No.4 which sought DPIE approval for the modification of the approved transport route from this quarry to enable supply of 10,000 tonne of product to a single local project delivery. If it is acceptable for Hanson to be expected to complete relevant and appropriate impact assessments of a local delivery route as and when required either prior to the supply or as part of a wider project SSDA why is it not acceptable for Daracon to do the same?

Conclusion

82. As detailed in the MCQAG 2022 Submission, and in spite of the minor changes to road trucking rates. The Proposal as exhibited is quite simply still an unacceptable and incompatible land use development.
- a) the Proposal incorporates unlawful operations in background environmental data where that data was acquired prior to the Proponent complying with lawful consent conditions and in this round of new information the DPIE Response is littered with reference to past unlawful scale of operations as tacit justification for what is proposed going forward;
 - b) the Proposal fails to address or properly assess and mitigate the amenity impacts furthermore the mitigations detailed in the Daracon Response do

not specifically or properly target those residents who will be most affected by the proposal;

- c) the Proposal will result in unacceptable road safety outcomes, in particular, having regard to Gostwyck Single Lane timber bridge, the Activity Centre function of Paterson and school bus pick up and drop off location along the proposed haulage route. The DPIE and Daracon Response continues to ignore the road safety issues raised by MCQAG and members of the impacted community;
- d) the Proposal will result in unacceptable impacts to our members who reside immediately around the Site in relation to the cumulative impacts of new industrial noise, blasting, air quality and rural amenity;
- e) the Proposal fails to address all of the requests and details contained within the SEARs and Mr Reed's Letter requesting Response to Submissions dated 2nd December 2016;
- f) the lived experiences show, that the new emerging noise impacts from the development will result in unacceptable social impacts;
- g) the noise impact assessment contains numerous errors and inaccuracies that result in misleading assertions and an underestimate of the noise impacts being presented to the DPIE and Panel;
- h) numerous reasonable and feasible mitigations have either been ignored, omitted or 'slotted in without commitment' as a future aim or work in progress or as being voluntary or on a trial basis.
- i) there will be an unacceptable loss of significant threatened species and threatened species habitat;
- j) the economic impact assessment and local impact assessment make no provision for the indirect and direct costs of the Proposal on the impacted community and therefore the intergenerational factors have not been measured nor have the probable outcomes of these factors been adequately described to inform the Panel
- k) the SIA is grossly in error and in any case, the Proposal parameters will still result in unacceptable 'Very High' and 'Extreme' residual social impacts affecting many people across a wide area for up to 25 years duration. Conversely the proposed mitigations will not actually target or benefit those who will be directly affected by the Proposal if an approval was to be granted.

We would respectfully submit once again, in spite of the minor amendments to trucking haulage rates that **when all the facts and opinions** are weighed by the Commission then, having regard to those statutory provisions and particularly the public interest, SSDA 6612 should not receive consent. Our grounds for refusal are set out in MCQAG Submission 2022 page 51.

References

- 1 Dr Askland and Dr Askew, Expert Review of SSDA6612, 2021
- 2 Martins Creek Quarry Action Group, Analysis of Equivalent Quarries in NSW, 2022
- 3 Martins Creek Quarry Action Group, Traffic Impacts, 2022
- 4 Transport for NSW, Schedule of Classified Roads, 2022
- 5 Railcorp, Environmental Impact Statement for proposed MCQ Railway Ballast Quarry, 1990
- 6 Brandy Hill Quarry, Conditions of Consent Exert, 1983
- 7 Metromix, Teralba Quarry Annual Report Appendices, 2021
- 8 Independent Planning Commission, Brandy Hill Quarry Statement of Reasons, 2020

Appendix A – Correspondence with IPC


Steve Barry [redacted]
To: You Thu 19/01/2023 4:54 PM

Thanks [redacted]

Your notes are consistent with our discussion – in particular, the Panel will continue to consider all previous submissions.

Regards,

Stephen Barry | Planning Director
Office of the Independent Planning Commission
Suite 15.02 Level 15 135 King Street Sydney NSW 2001


New South Wales Government
Independent Planning Commission

Discussion [redacted] Thu 19/01/2023 4:50 PM

[redacted] To: Steve Barry

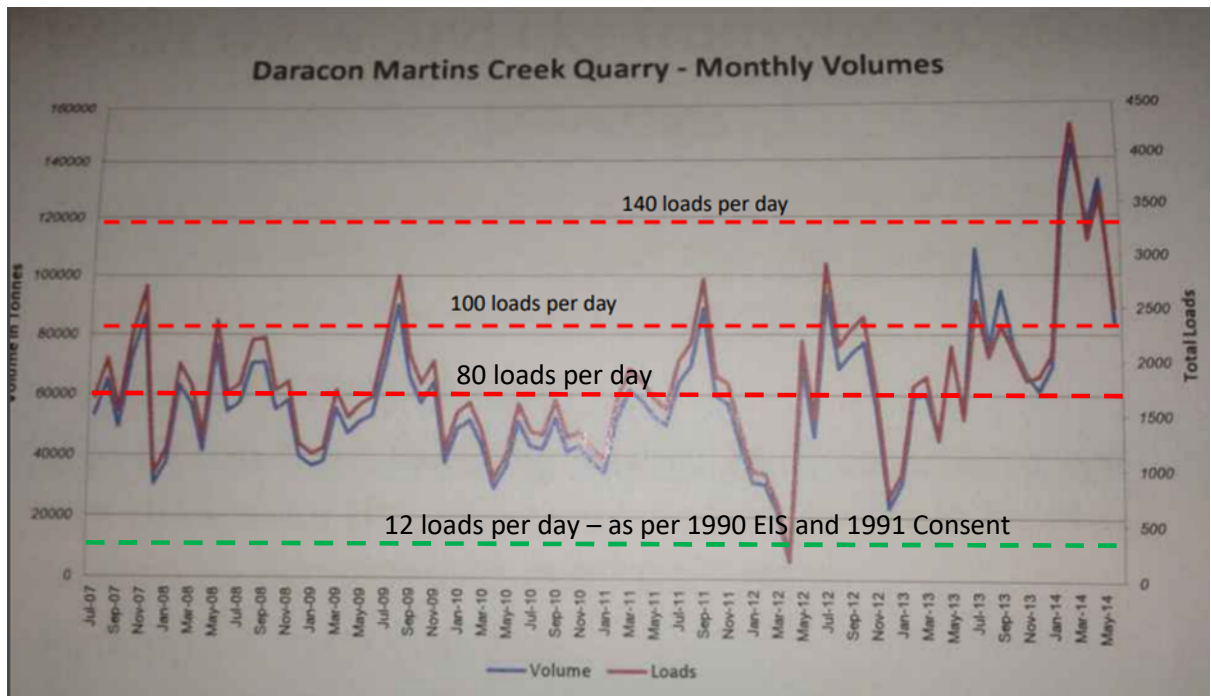
Hi Steve

Just confirming my understanding of our discussion last week 13/1/23 on the telephone:

1. You confirmed; all November 2022 public submissions and issues raised will remain under consideration by the Panel in spite of this new round of public exhibition occurring;
2. lodging a submission by an individual or group in this round does not eliminate what has been previously stated or lodged by the submitter in November 2022;
3. if an objector doesn't make an objection in this current public submission period, the issues and concerns previously raised will still remain, i.e. non submission this month will not be taken by the IPC as to infer some type of acceptance of the proposal more generally by the objector.
4. I noted to you that we are being approached by numerous concerned and confused residents (mainly in respect of the above questions) and expressing their distress around the now nine years of consultation/exhibitions etc.
5. I noted to you that MCQAG Committee intend to lodge a comprehensive submission in regards to the new material being exhibited before the closing date.

Regards
[redacted]

Appendix B - Revised Parameters vs Historical Tonnages



Appendix C

Not used

Appendix D – Statutory Declaration

Statutory Declaration OATHS ACT 1900, NSW, EIGHTH SCHEDULE

I, Frederic Ashton , do solemnly and sincerely declare that
[name of declarant]

I have been made aware that some of my answers and some answers from other lay witnesses to questions whilst being cross examined during Land & Environment Court proceedings *Dungog Shire Council v Hunter Industrial Rental Equipment Pty Ltd (No 2) [2018] NSWLEC 153*. have been partially referred to in Umwelt's Independent Planning Commission – Additional Information Report dated December 2022.

I note that the reference to the questions and answers taken from those proceeding's transcripts are out of context and mis leading.

Specifically my answer that *"My understanding at the time from the conversation with Terry Cavanagh was in the order of magnitude of 450,000 tonne per annum, was to do with the existing use rights was what Terry had told me."* Should be further explained to provide better context to readers. Importantly is that: I understood and accepted the scale of operations described above in my oral answer only in so far, that I was led to believe from Terry Kavanagh that the operations were approved by council to extract 450,000 tonnes of material and once processed would result in 300,000 of saleable product of which only 30% could be transported by road, and that the approval to do so was based upon an EIS that assessed the impacts of 24 truck movements per day from the site, and in regards to the question that in moving to the area in 2010 that I accepted noise from trucks would be part of my life I answered yes, but only in the context of the above further explained parameters that I had been informed of from Mr Kavanagh and of which I had witnessed whilst visiting the property prior to purchase in the afternoon visits to Paterson.

Furthermore in relation to the partial quotation of Mr McNally's in the above referenced Umwelt Report, his partial answer to questioning has been transposed from hearing transcripts, it is noted that Mr McNally states "20 to 30 loaded trucks per hour, which means 60 truck movements an hour within, is within the bounds of reason".

I confirm at the time of the hearing and after hearing Mr McNally's answers under cross examination, myself and a number of other residents who were in court queried him as to whether his reference to that number of movements was correct he replied to myself and others at the time *"did I really say that I was really nervous and couldn't think clearly, I most definitely didn't intend to state that level of intensity on an hourly or daily basis to be acceptable to my self or my household"*

and I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Oaths Act 1900.

Declared at: SYDNEY NSW 2000 on 31 JANUARY 2023
[place] [date]

[Signature]
[signature of declarant]

in the presence of an authorised witness, who states:

I, SNIGDHA DEY, a PHARMACIST
[name of authorised witness] [qualification of authorised witness]

certify the following matters concerning the making of this statutory declaration by the person who made it: [* please cross out any text that does not apply]

1. ~~*I saw the face of the person OR I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had a special justification¹ for not removing the covering, and~~

2. ~~I have known the person for at least 12 months OR~~ I have confirmed the person's identity using an identification document and the document I relied on was DRIVERS LICENCE
[describe identification document relied on]

[Signature]
[signature of authorised witness]

31/01/2023
[date]

Metcentre Pharmacy
Shop 39 Metcentre
273 George St
SYDNEY 2000
Ph/Fax 9247 2045

Appendix E – Example Business Impacts from Past Unlawful Operational



Noisiest b and b ever

"If you want a night's rest do not stay here. We did for 4 nights and between trains and trucks the noise was dreadful"

[Read more](#) ▼

Date of stay: August 2012



BEAUTIFUL ACCOMMODATION BUT!

"Comfortable accommodation and food is fine in beautiful historic building. Location on weekdays for noise is TERRIBLE(trucks) - you can forget sleeping in! We were made to enter and exit via the backdoor"

[Read more](#) ▼

Date of stay: April 2010



Comfortable but noisy in the morning

"We stayed here over a Sunday night as it was near to Tocal Homestead, where we were guests at a wedding. It was clean and comfortable, and the coffee and breakfast were ok (taking into account we were in Paterson, not Melbourne). But take your earplugs: the train and large trucks were noisy early on Monday morning."

[Read more](#) ▼

Date of stay: March 2017