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9 December 2014

Our Ref: 80707-NCS/Church Hill:ww:jw:581375

The Regoinal Panels Secretariat
Joint Regional Planning Panel
GPO Box 39
SYDNEY NSW 2001

Attention: Lisa Foley

By email: lisa.foley@planning.nsw.gov.au

Dear *Ms Foley,*

Re: NSW Quarry Services and Kempsey Shire Council
Property: Lot 1 DP 914805, Lots 14
and 16, DP 1157615 and Lots 186, 187, 189 DP 754400, Crescent Head Road, Kempsey
known as Church Hill Quarry

Greetings.

I act for NSW Quarry Services Pty Ltd ("**NSWQ**") the applicant in a development application to operate the above quarry.

On Thursday, 12 December 2014 at Kempsey the Joint Regional Planning Panel ("**JRPP**") will deal with the above development application.

The consultant, Tony Blue acting for the assessment manager, Kempsey Shire Council ("**KSC**"), has provided to us proposed conditions of consent to the development application under the heading of his business name, Blueprint Planning Consultants.

We received these conditions late Friday afternoon last.

There are a number of matters that NSWQ would like the JRPP to consider in their consideration of the proposed conditions.

Modification of quarry footprint and access road location

This is considered in paragraph A2. NSWQ has proposed to Tony Blue that the footprint not be modified but that the extraction area be as described in paragraph A2(a). The reason for

this is the need for stockpiling areas. This comes about by the changes to the specifications laid down by RMS for materials for road building which is the primary purpose of this quarry. The testing of the materials takes a period of 28 days and during this period the stockpiles of 4,000 tonnes each, approximately, have to be stored within the quarry extremities, hence the need for this space.

NSWQ suggests that paragraph A2(a) should read as follows…

> *"The quarry extraction area shall exclude any land within 150m of any existing residence and within 50m of the northern boundary of lots 186 and 187, DP754400k, and"*

This would obviate the issue that arises in relation to the "internal access road", which is set out in paragraph A2(b).

The Environmental Protection Authority ("**EPA**") and every other Council that the writer has dealt with in respect of quarries, requires all quarry activities including the **"internal"** access road to be within the extremities of the quarry, hence the word "internal" in its description.

If the present conditions prevail, the *"internal access road"* will be external to the extremities of the quarry.

Paragraph A2(c) raises the same issue, in that it is normal, in fact highly unusual to the point where I have never seen this before, that the car parking, weighbridge and site facilities should be inside the quarry footprint.

There is another reason for having this inside the quarry footprint, and that is a practical one. The Mines Department requires the nomination of a quarry manager who is entirely responsible for all OH&S issues in respect of everything to do with the operation of the quarry. The Mines Department regulations apply to the quarry which is what is inside the quarry extremity.

I would be very surprised if the Mines Department was at all happy that part of the quarry operation is outside of the quarry extremities, and thus outside of the control of the quarry manager, who is in turn required to exercise the caution required in managing a quarry because of its dangerous nature, which in turn is managed and controlled by officers of that department.

Paragraph A2(d) requires a Construction Management Plan for the construction of the access road to the quarry. Unfortunately there is no definition in the conditions as to what is or is not the access road, and with respect to the author of these conditions, the internal access roads change consistently as the quarry develops.

When I get to condition B1, I will make suggestions as to how this should be dealt with, with better definition.

Haulage volume and route

Paragraph A8 states that the haulage route for *"material"* will be *"along Crescent Head Road and left in Macleay Valley Way"*.

NSWQ brought to the attention of Mr Blue that KSC will look to this quarry for its material to upgrade its roads within its LGA, using the royalty generated from the operation of this quarry, as KSC is the owner of the land upon which the quarry is situate.

The haul route set out in paragraph A8 relates only to material being supplied to the upgrade of the Pacific Highway and material being supplied to KSC which is to be delivered to the west of the quarry. The material supplied to the upgrade of the Pacific Highway will be the great majority of the material won and hauled from this quarry. However there may be material supplied to KSC that needs to be taken east along Crescent Head Road.

Accordingly I suggest that paragraph A8 should read as follows…

> *"The haul route for material being supplied by the quarry to the upgrade of the Pacific Highway, shall be along Crescent Head Road, and left into Macleay Valley Way."*

Construction management plan

There is no need for a construction management plan for the relocation of the site access road and reduced quarry footprint.

This issue has been dealt with by officers of the EPA who came to the conclusion that the construction of the access road to the quarry will not require a construction management plan as it is actually a part of the quarry operation, if the footprint of the quarry is left untouched and the access road is within the extremities of the quarry, and on the basis that only that part of the access road from the intersection of Crescent Head Road to the present gate to the quarry needs sealing.

There will be a need for engineering design details and construction methods for the construction of the intersection of the access road and Crescent Head Road. However this is dealt with elsewhere.

Issues in relation to sediment and erosion control, noise and dust management, are carefully considered and addressed in the environmental management plan ("**EMP**").

Further because this quarry is to be operated in excess of 30,000 tonnes extraction per annum, there is a requirement that the operator holds an EPA licence to do so, and this licence includes a very strict regime for the measurement, control and management of sediment, erosion, noise and dust management.

Bluntly the construction management plan is unnecessary and duplicitous.

NSWQ proposes that paragraph B1 be deleted from the conditions.

Vegetation protection works

There seems to be some confusion in the conditions as to the manner in which this quarry is to be operated, notwithstanding clear statements made in the environmental impact statement as to how that would occur.

Paragraph B4 appears to envisage a transitional period where quarry operations are to be undertaken whilst there is "existing vegetation" which is not embraced by that vegetation that is left, after clearing.

Paragraph B11 under the heading *"limit of quarry operations"* clearly states, and requires that the limit of the quarry footprint as identified in the approved quarry plan, shall be clearly marked on site. NSWQ must ensure that all contractors and employees on site are made aware of the boundary markers that clearly mark out the extremities of the quarry.

It is not the intention of NSWQ to commence operation of the quarry (except for one exception that I will deal with in relation to paragraph C9), unless and until all of the pre-conditions have been completed in relation to paragraphs B2, B3, B4, B7, B8 and B9.

What NSWQ intends to do is to prepare the whole of the quarry for future works by setting up the habitat offset and dealing with all issues relevant thereto and then commence works.

There will be interim period where there is vegetation in place which is later to be removed by the operation of the quarry. All conditions will be satisfied, allowing for all vegetation to be removed before operations commence (except those relating to paragraph C9).

B4 should be deleted from the conditions.

Road works

Paragraph B7(a), with respect, lacks an understanding of the application of the BAL specifications.

NSWQ proposes that B7(a) should have the words *"including sealing the northern gravel shoulder"* deleted from that paragraph.

Initial environmental management works

Paragraph B12(a) should be deleted for the reasons set out in respect of paragraph B4 above under the heading *"Vegetation protection works"*.

Site rehabilitation sinking fund

As I have indicated to you previously KSC is the owner of the land upon which this quarry is situate. Accordingly in order to make the development application NSWQ and KSC entered into a lease with a profit a prendre as its annexure, to allow NSWQ to make the application and to operate the quarry should the development application be successful.

That profit a prendre provides that NSWQ is to pay a royalty to KSC, and a road maintenance contribution of no more than .23c per tonne of material won and hauled from the quarry. If there is to be any further contribution for any reason by NSWQ in relation to this project, then that contribution is that of KSC from the royalty paid.

I note in paragraph C28, under the heading *"Contributions – road maintenance levy"* that NSWQ is required to make a contribution of .19c per tonne for that levy, thus leaving a "margin" of .4c per tonne which can be contributed by NSWQ to the sinking fund.

Any further contribution to that fund must be made by KSC under the terms of the profit a prendre.

Consequently as KSC will be the major contribution to any rehabilitation fund, it should satisfy itself as to what the sinking fund should be if that fund is to be in excess of .4c per tonne.

In respect of other quarries that I have dealt with, a normal contribution is .20c per tonne to the sinking fund. If this be the case then NSWQ would contribute .4c per tonne and from the royalty paid to it, KSC would contribute .16c per tonne.

I suggest that paragraph B15 be as follows…

> *"The developer shall establish in conjunction with Kempsey Shire Council a rehabilitation sinking fund to ensure funds are set aside over the life of the quarry to implement the site rehabilitation plan. Proof of the establishment of the sinking fund is to be provided prior to commencement of operations. The developer shall contribute $0.04 per tonne to that sinking fund. Kempsey Shire Council shall establish the sufficiency of the funds to implement the site rehabilitation plan and will contribute the balance of the funds to that sinking fund."*

<u>Air quality</u>

Paragraph C5(a) requires attention through lack of definition.

The access road should be defined as that part of the road from the intersection of the access road to Crescent Head Road to the current position of the gate and when the weighbridge is installed to the weighbridge. All roads past the weighbridge will be impermanent and change persistently with the development of the quarry.

I suggest that paragraph C5(a) read as follows…

> "*(a) Bitumen seal the access road to the quarry, in accordance with the current Austroad Design Guide and industry standards, beginning at the intersection of that access road with Crescent Head Road to the gate presently in place at the quarry and when the weighbridge has been installed, to that weighbridge and at the time the weighbridge is installed."*

Paragraph C5(b) embraces the method by which the internal "*haul truck routes*" are to be dealt with by the use of water sprays.

Paragraph C6(b) requires attention as read literally, it means that if there is one report of a dust emission revealing an exceedance then the land owner may require NSWQ to purchase the land owner's property.

I propose that paragraph C6(b) be amended as follows…

> *"Purchase the owner's land, but only if the conditions set out in paragraph C11 are first satisfied."*

I propose that paragraphs C8(b) has the same changes made to it as paragraph C6(b), for the same reasons.

Blasting impacts

Paragraph C9(c) is from the point of view of NSWQ unnecessary having regard to what appears in the report of Dr. John Heilig.

In this regard NSWQ proposed to Tony Blue in an email dated 24 October 2014, document number (580050), a copy of which is **attached**, how blasting should be dealt with by following the proposals put by Dr Heilig and then adding to those proposals by reducing the impact of blasting as set out in that email.

If, however, the members of the JRPP are minded to follow the condition set out in paragraph C9(c) rather than the recommendations made by Dr Heilig as adjusted by the writer in my email of 24 October 2014 to extend a more conservative approach than that of Dr Heilig then NSWQ would like to undertake the test blasts referred to in paragraph C9(c) prior to the commencement of operations.

Accordingly if the members of the JRPP are minded to follow the condition set out in paragraph C9(c) NSWQ would ask that this paragraph be commenced as follows…

> *"(c) Prior to the commencement of operations under this consent and to any blasting for quarrying purposes, a series of single hole blast trials shall be completed…"*

This would allow NSWQ to commence the testing process envisaged by paragraph C9(c) and monitor the results therefrom and provide them to Dr Heilig so that if required modifications to his model could be undertaken quickly and efficiently, thus not delaying the commencement of the operation of the quarry.

Environmental Performance Conditions: Acquisition Upon Request

NSWQ proposes that paragraph C11(b) be amended such that the word, "*substantially*" is included in that paragraph on line 3 after the word, "*exceeded*."

Further, it would seem most inappropriate that if there was an exceedance which was caused by an event or circumstance which could be rectified and was rectified by NSWQ immediately, or if the event or circumstance causing the exceedance was unique and out of the control of NSWQ, that such an exercise could form part of the history creating the trigger.

Accordingly NSWQ proposes that C11(b) should have added to it the following…

> *"Where the exceedance was caused by an event or circumstance which was rectified the operator, immediately the operator was aware of that exceedance or an exceedance was by a unique circumstance or one that was out of the control of NSWQ, such an exceedance would not form part of an exceedance upon which the owner could rely."*

Further it would seem that the operator should be given a "*bedding in time*", that is, a period of three (3) months, where an exceedance in that three (3) month period should not be counted as it should be regarded as a testing period. This is the manner in which the EPA deals with these matters, in that, it requires monitoring of noise, dust and blasting for the period of the first three months in order to measure actuals against the modelling.

Accordingly NSWQ proposes a further extension to paragraph C11(b) as follows…

> *"Where the exceedance occurred within three (3) months of commencement of operations and the operator upon becoming aware of the exceedance corrected so, such exceedance would not form part of an exceedance upon which the owner could rely."*

With respect to the author not enough consideration has been given as to what could or could not occur to influence the exceedance, and what role NSWQ would play in rectifying, or being involved with that exceedance.

It would seem to NSWQ that the draft, in its current form is incorrect and in its philosophy much too rigid in that it does not allow for circumstances out of the control of NSWQ, nor does it allow for any reaction of NSWQ in rectification.

Finally, the draft does not give any attention whatsoever to the degree of exceedance, or the role that officers of the EPA play in monitoring the day to day operations of a quarry and the very onerous civil and criminal sanctions that can be brought to bear upon the operator of a quarry not complying with the criteria of operations set out in the EPA Licence.

For example, a simple failure on the part of a quarry operator in completing an annual return incorrectly attracts criminal sanctions by way of a fine in excess of $1 million, with a fine of all directors of the quarry operator of $250,000.

Again in respect of paragraph C11(c), the basis of calculating the current market value, NSWQ proposes is inappropriate.

The quarry has been in place for a substantial number of years and accordingly a proposition that the "market value" should be as if the property the subject of the purchase is *"unaffected by the development the subject of this consent"*, is inappropriate as the quarry is a permissible use of the land.

NSWQ proposes that paragraph C11(c)(i) should read…

> *"The current market value of the land owners' interest in the land at the date of the written request shall be that value taking into consideration the existence of the quarry, however, shall not take into consideration the impact upon that valuation by the increase in operation of the quarry by the current operator."*

In this regard I bring to the attention of the members of the JRPP correspondence provided to Tony Blue by Robert Scott who is an officer of Kempsey Shire Council which is referred to under the heading 2.4 EIS and Supporting Documents on page 10 of the Assessment Report and Recommendation. The document is described as "Response to draft conditions restricting haulage trucks during school bus movements on haulage route by Director of Infrastructure Services Kempsey Shire Council dated 2 December 2014.

That response also included responding to a number of other issues that the author of that response considered necessary from the point of view of the Council. This included a criticism of the method by which the valuation of the property was to be defined.

I propose that the members of the JRPP afford themselves of a copy of this response as it provides a balanced view from the point of view of a senior Council officer of conditions set out in this development approval.

Contributions – Road Maintenance Levy

Paragraph C28(a)(i) does not embrace the exclusion of the price clients of the operator will pay for the materials won and hauled from the quarry and the word "*extracted*" is inappropriate as quite rightly, paragraph C28 applies the road maintenance levy to "*material extracted and transported from the land*" as being the criteria for the calculation of the levy.

NSWQ proposes that at the foot of paragraph C28 the following be included…

> *"(e) Nothing in paragraph C28 requires the operator to provide information about the price paid by clients of the operator for the purchase of materials won, hauled and/or blended from the quarry, which information is commercially confidential."*

Sinking fund for site rehabilitation

Paragraph C29(b) loses sight of the fact that the only obligation that NSWQ has to the sinking fund is a contribution of $0.04 per tonne won and hauled from the quarry and no more in accordance with the terms and conditions of the profit a prendre.

Any other contribution to the sinking fund is that of Kempsey Shire Council.

Conclusion

I have advised the Secretariat that I will be at the meeting on Thursday 11 December 2014, representing NSWQ and available for questioning or contribution in respect of any of the matters raised here and will represent NSWQ in addressing any appropriate objection made at that meeting by a member of the public.

I look forward to meeting with members of the JRPP on site on Thursday.

Yours faithfully,

Warren Wells

Encls.

1. Copy of email to Tony Blue 24.10.14 (580050)

Season's Greetings

Please note that our office will close at 12.00 noon on Tuesday, 23 December 2014 and we will re-open at 9.00am on Monday, 12 January 2015. We hope you have a safe and happy holiday.