



File No: NTH11/00033

The General Manager
Clarence Valley Council
Locked Bag 23
GRAFTON NSW 2460

Attention: Patrick Ridgeway

Dear Sir

**DA MOD2016/0028 Sheridan's Hard Rock Quarry Increase in Permitted Daily Truck Numbers 242
Faheys and Bulgins Road, Hernani**

I refer to your email of 9 September 2016 regarding increasing daily truck numbers hauling from Sheridan's Quarry at Hernani. The Roads and Maritime Services response of 27 July 2017 to the previous modification remains unchanged.

Roles and Responsibilities

The key interests for Roads and Maritime Services are the safety and efficiency of the road network, traffic management, the integrity of infrastructure assets and the integration of land use and transport

Waterfall Way is a classified (State) road. In accordance with Section 7 of the *Roads Act 1993* Clarence Valley Council is the Roads Authority for this road and all other public roads in the subject area. Roads and Maritime is the Roads Authority for Freeways and has responsibilities for freeways and classified roads in accordance with the Act.

Under *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007* Roads and Maritime is given the opportunity to review and provide comment on the application.

Roads and Maritime Response

While the proposed increase in truck numbers hauling from Sheridan's Quarry will be within the operational capacity of the Waterfall Way, Council will need to satisfy its self that local roads connecting the quarry to the Waterfall Way are of a sufficient standard to accommodate the additional truck movements.

Consideration should be given to include a condition requiring a Code of Conduct relating to the increased truck movements as referred to under the SEPP. It is suggested that the code address, but not be limited to;

- a. A map of preliminary haulage routes highlighting critical locations.
- b. Procedures and/or safety initiatives specific to residential areas and school zones.
- c. Format of an induction process for new operators and regular toolbox meetings.
- d. A complaints resolution and disciplinary procedure.
- e. Any community consultation measures to address busy haulage periods.

Roads and Maritime Services

Upon determination of the application it would be appreciated if Council could forward a copy of the Notice of Determination for our records. If you have any further enquiries regarding the above comments please do not hesitate to contact Liz Smith on 6640 1362 or via email at: development.northern@rms.nsw.gov.au

Yours faithfully



21 September 2016

for Monica Sirol
Network and Safety Manager, Northern Region



Our Reference: DOC16/474769
Contact: Scott Ensbey

The General Manager
Clarence Valley Council
Locked Bag 23
GRAFTON NSW 2460

22 SEP 2016

Attention: Pat Ridgeway

Dear Pat

Development Application MOD2016/0035: Modification of DA2014/0098 (Increase of permitted daily truck numbers), 242 Fahey's & Bulgin's Road Hernani NSW.

I refer to the above proposal referred to the Environment Protection Authority (EPA) for comment on 24 August 2016. The EPA has reviewed the proposal and provides the following advice, noting that the EPA's regulation of the activities from the quarry is limited to the activities conducted within the quarry premises, bound by Environment Protection Licence No 20077.

The proposal to increase haulage from the quarry to 66 loaded trucks per weekday and 36 loaded trucks per Saturday is approximately a 230% increase on the current limit of 20 trucks per day. This increase has the potential to impact on the amenity of local residents along the haulage route, including the Waterfall Way.

The following modelling assumptions are used in the Traffic Noise Impact Assessment referred to by the proponent in the Statement of Environmental Effects:

- a) The modelling appears to be based on loaded trucks travelling no more than 15km/h with no breaking permitted past receivers 1 and 2. It is questioned how realistic this scenario actually is, and how these restrictions will be enforced;
- b) The selection of only 2 receivers on the immediate haul route (Cornels Rd and Fahey's Rd) where quarry traffic is the primary noise source does not appear to adequately represent the acoustic environment on other roads to be impacted by the proposal. This is particularly pertinent noting that trucks will be travelling far in excess of 15km/h and required to break heavily and frequently given the local terrain traversed by other haul routes. The EPA recommends that additional justification be provided as to why additional receivers on regular haul routes were not considered. If this cannot be adequately justified, the selection of additional and appropriately located receivers should be required, and Traffic Noise Impact Assessment updated. The proponent should refer to the 'NSW Road Noise Policy, Appendix B – Measurements and preparing a noise assessment report' (DECCW, 2011).
- c) With the issues outlined in a) and b) aside, the modelling suggests that up to 6 loaded trucks per hour would be possible, whilst still complying with road noise criteria. Whilst it is not made clear in the noise report, it is assumed that six loaded trucks per hour is at or near the upper limit of movements before the acceptable road noise criteria of 55 dB(A) is exceeded.

This issue alone appears to leave little to no margin for any discrepancy between modelled and actual noise levels or model error, and may result in unacceptable noise impacts on the community.

The EPA recommends that the proponent be asked to address these concerns, and/or that Council factor them into its planning determination. This is particularly important given the history of community concern with regard to the haulage of quarry trucks along the Waterfall Way (including the township of Bellinghen).

If you have any questions regarding this matter, please contact Scott Ensbey of the EPA's Grafton office on 66402522.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Graeme Budd', with a long horizontal flourish extending to the right.

Graeme Budd
Head, Environmental Management Unit – North Coast
Environment Protection Authority



Office of
Environment
& Heritage

Our Ref: DOC16/454919
Your Ref: s96 Mod DA2014/0098

General Manager
Clarence Valley Council
Locked Bag 23
Grafton NSW 2460

Attention: Mr Patrick Ridgway

Dear Mr Greensill

Re: s96(2) Modification to DA2014/0098 Sheridans Hard Rock Quarry – 242 Faheys & Bilgins Road, Hernani (increase to permitted maximum daily truck movements)

Thank you for your email dated 6 September 2016 seeking comments from the Office of Environment and Heritage (OEH) on the proposed modification to the Sheridans Hard Rock Quarry approval. I appreciate the opportunity to provide input.

The OEH has statutory responsibilities relating to biodiversity (including threatened species, populations, ecological communities, or their habitats), Aboriginal and historic heritage, National Parks and Wildlife Service estate, flooding and estuary management.

We have reviewed the documents provided and understand that the modification seeks to increase the permissible maximum haulage truck movements per day only. As there is no variation proposed for direct quarry operations such as the area of impact or volumes extracted, the OEH has no concerns about the proposed modification.

If you have any further questions about this issue, Ms Rachel Binskin, Regional Operations Officer, Regional Operations, OEH, can be contacted on 6659 8247 or at rachel.binskin@environment.nsw.gov.au.

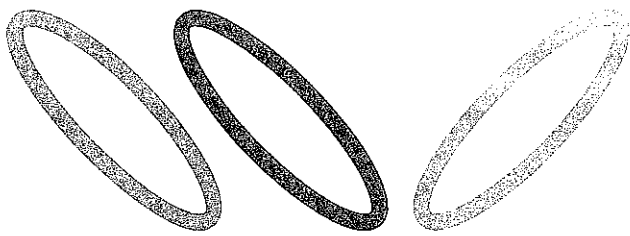
Yours sincerely

Dimitri Young 22 September 2016

DIMITRI YOUNG
Senior Team Leader Planning, North East Region
Regional Operations

Contact officer: RACHEL BINSKIN
6659 8247

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Tel: (02) 6659 8200 Fax: (02) 6659 8281
ABN 30 841 387 271
www.environment.nsw.gov.au



20 October 2016

Reference: GD14/0098 ECM: 1787164
Contact: Patrick Ridgway

Gary Peacock
Outline Planning Consultants Pty Ltd
Suite 18 Pittwater Business Park
5 Vuko Place
WARRIEWOOD NSW 2102

Additional Information Required

Application No: MOD2016/0035
Development Proposal: Modification of DA2014/0098 (increase permitted daily truck numbers)
Property Address: 242 Faheys & Bulgins Road HERNANI NSW 2453
Legal Description: Lot 62 DP 752807 & Lot 63 DP 752807

I refer to your Application, which was received by Council on 17 August 2016.

Further to the preliminary assessment of the Application certain information necessary to make a determination is required.

There has been insufficient Road Impact Assessment conducted along the haul route. The existing development delivers 20 loaded and 20 unloaded trucks per day. A truck and dog commercial vehicle generally have a total weight of 48 tonnes with 33 tonnes payload.

The submitted TIA (Traffic Impact Assessment) utilised the data used in the previous TIA; The data was taken in 2010 and no intersection assessments have been conducted to quantify the impact of the proposal. According to the previous Traffic Impact Assessment the following parameters have been provided:-

Existing

Background Traffic	= 27 vpd (vehicles per day)
Haul Traffic	= 40 vpd
Staff Movement	= 15 vpd
Miscellaneous movements	= 5 vpd
Total	= 87 vpd

Proposed

Background Traffic	= 27 vpd
Haul Traffic	= 132 vpd
Staff Movement	= 15 vpd
Miscellaneous movements	= 5 vpd
Total	= 179 vpd

ESA (Equivalent Standard Axles) Calculation

Existing

AADT	= 87 vpd
Commercial Vehicle	= $40/87 \times 100 = 46\%$
ESA:CV ratio	= 1.3 (derived from DTMR Pavement Design
Manual) Existing ESA	= $87 \text{ vpd} \times 46\% \times 365 \text{ days/year} \times 1.3$
	= <u>18,989.49 ESA/year</u>

Proposed

AADT	= 179 vpd
Commercial Vehicle	= $132/179 \times 100 = 74\%$
ESA:CV ratio	= 1.3 (derived from DTMR Pavement Design
Manual) Existing ESA	= $179 \text{ vpd} \times 74\% \times 365 \text{ days/year} \times 1.3$
	= <u>62,852.27 ESA/year</u>

There is an increase of 43,862.78 ESA/year or 231% increase onto the haul route.

Accordingly, Council, pursuant to Clause 54 of the Environmental Planning and Assessment Regulation 2000 requests that the following information be provided within 21 days of the date of this letter:

The applicant is to amend the submitted Traffic Impact Assessment to include:

- *a road pavement impact assessment (RIA) along the haul route, and*
- *an intersection analysis of the Bald Hills Road and Waterfall Way intersection utilising the current data.*

The TIA including the RIA must generally be in accordance with RMS Guide to Traffic Generating Development and AUSTROADS Guide to Traffic Management Part 12: Traffic Impacts of Development.

Should the information not be provided within the specified period, it will be taken that the information will not be provided and Council will determine the application.

You may submit a written request to Council to extend the period to provide the information if there are good reasons why further time is required.

If you require further information please contact Pat Ridgway of Council's Environment, Development and Regulated Services section on 66450288 between 8.30 am and 11.00 am.

Yours faithfully,



Pat Ridgway
Senior Development Planner



Outline

Outline Planning Consultants Pty Ltd
Project Managers
Planning Consultants

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26 October 2016

General Manager
Clarence Valley Council
Locked Bag 23
GRAFTON NSW 2460

Council Ref: MOD2016/0035
(Modification of DA 2014/0098)

By email

Attention: Mr Patrick Ridgway, Senior Development Planner
Mr Clem Rhoden, Manager Environment, Development & Regulated Services

Dear Sir,

**RESPONSE TO SUBMISSIONS: MOD 2016/0035, SHERIDAN'S HARD ROCK QUARRY Pt. LOT 62 & 63
IN DEPOSITED PLAN 752807, No.242 FAHEYS & BULGINS ROAD, HERNANI NSW**

Outline Planning Consultants Pty Ltd acts for Sheridan's Hard Rock Quarry Pty Ltd, who operate the above quarry. Following exhibition of the above s.96 modification application Council has received a number of submissions and have kindly furnished our firm with copies of these submissions. Our clients have requested that we write to Council, to clarify some of the concerns and issues raised in those submissions.

Our response to submissions received to the exhibited MOD2016/0035 is set out in the following.

1.0 Response to Submissions by Government Agencies

Copies of the following submissions made by government agencies have been furnished by Council:

- EPA Grafton office in a letter to Council dated 22 September 2016.
- Roads and Maritime Services (RMS) Grafton office in a letter to Council dated 21 September 2016.
- Office of Environment & Heritage (OEH) Coffs Harbour office in a letter to Council dated 22 September 2016.

1.1 OEH Submission

Noted. As stated in their letter, "the OEH has no concerns about the proposed modification."





1.2 RMS Submission

The main points, as stated in their letter dated 21 September 2016, relate to the following:

- The "proposed increase in truck numbers will be within the operational capacity of the Waterfall Way."
- "...Council will need to satisfy itself that the local roads connecting to the quarry to the Waterfall Way are of sufficient standard to accommodate the additional truck movements."
- "Consideration should be given to include a condition requiring a Code of Conduct relating to the increased truck movements referred to under the SEPP." This Code of Conduct relates to the haulage of quarry product along the haul route.

The first dot point, confirming that the proposed increase in truck numbers is within the operational capacity of the Waterfall Way is noted.

As regards the second dot point above, the assessments by RoadNet in their report dated March 2014, accompanying the 2014 EIS, and the more recent report dated June 2016 by Streetwise Pty Ltd, accompanying the s.96 application, confirm that the local road system has the capacity to accommodate the increase in daily traffic volumes proposed.

The RoadNet Traffic Report assessed the capacity of the haulage route, and found it had adequate capacity and standard of construction to cater for any future increase in haulage truck movements, finding that the haul route from the quarry to Waterfall Way had an overall capacity of at least 150 vehicles per day, and a resultant spare capacity available for up to an additional 63 vehicles per day. The Streetwise report finds that the Austroads guidelines indicate the existing road formation of the haul route from the quarry back to the Waterfall Way can cater for up to 500 vehicles per day.

This capacity is now likely to be more given that three (3) new passing bays have been constructed along the haul route, the work completed in October 2016.

The Streetwise report reports concludes:

*"In conclusion, the operator is seeking to **occasionally** increase haulage truck movements to a maximum of 66 loaded movements per day to meet peak demands. The number of times the maximum truck volumes can be generated is restricted by the current annual production limit of 198,000 tonnes per annum.*

Based on this assessment it is concluded that the traffic impacts of the proposed S.96 amendment are acceptable. StreetWise therefore recommends that the proposed occasional increase in haulage truck movements (to 66 loaded trucks per day) should be allowed to proceed on traffic engineering grounds."

Reiterating the above, during any one year of quarry production the maximum number of haulage vehicles using the approved haul route-east or west of the Waterfall Way intersection will not change- the quarry will continue to be limited to a production limit of 198,000 tonnes of quarry rock per annum.





If approved, what the s.96 application will achieve is increased flexibility in the daily number of haul vehicles using the approved haul route.

As regards the third dot point above, the Sheridan's Hard Rock Quarry already have in place a code of conduct for drivers using the haul route. Refer to copy attached.

Assuming that the proposed modification is approved, it is expected quarry truck drivers on the haulage route would continue to experience good levels of service, as the daily traffic volumes with the modification would remain within the available capacity.

In summary, the modification would result in no significant impacts on the performance, efficiency and safety of the road network.

1.3 EPA Submission

The EPA rightly points out that the proposed daily increase in quarry truck numbers is significant. However, it does not logically follow that such an increase "has the potential to impact on the amenity of local residents along the haul route, including the Waterfall Way.", as contended by the EPA in their letter dated 22 September 2016. This is because:

- The traffic assessments by both RoadNet and by Streetwise have both assessed the impact of the proposed increased daily traffic flows on the haul route and found that satisfactory impacts will ensue; in terms of performance, efficiency or safety of the road network.
- No change is sought in the total number of quarry trucks using the haul route over any one year. The modification sought only seeks to build flexibility into the consent in order to allow greater daily truck flows during periods of peak demand for quarry product. At other non-peak times there will be a lesser number of trucks using the haul route on any given day.
- The EPA's contention that there will be the potential for resultant adverse amenity impacts for residents living along the haul route from the quarry entry back to Waterfall Way is not supported by the facts. The potential for traffic noise impacts was assessed by VIPAC in their report dated February 2014, this report prepared in support of the 2014 EIS. As summarised in VIPAC's advice dated 11 May 2016:

"In addition to the assessment of the traffic noise impact associated with the 20 loaded trucks per day operating from the quarry, Vipac also undertook an assessment to determine the maximum number of loaded trucks per hour that could travel along the haul route and maintain noise emissions at the nearest noise sensitive receptors (located in proximity to the quarry site), within the Road Noise Policy limit criteria.

It was determined that a maximum of up to 6 loaded trucks per hour could travel along the haul road without exceeding the Road Noise Policy noise limit at the nearest neighbouring noise sensitive receptors located along Fahey's & Bulgins Road, taking into account the improved sections of the road with the sealed sections of the road passing the nearest noise sensitive receptors. This equated to a total of 66 loaded trucks based on the permitted operating hours for the quarry of 07:00hrs to 18:00hrs Monday to Friday and 07:00hrs to 13:00hrs on Saturdays, in accordance with the Conditions of Consent for the quarry."





■ There is no potential for any significant additional adverse amenity impacts along Waterfall Way based on the operational capacity of Waterfall Way to absorb such a periodic increase in daily truck numbers. The RMS, in their advice dated 22 September 2016, state that the "proposed increase in truck numbers will be within the operational capacity of the Waterfall Way." [our emphasis]

■ Similarly, there is little potential for significant additional adverse amenity impacts along Waterfall Way based on background traffic flows that pass through populated areas.

Firstly, approximately 75% of all quarry product from Sheridan's Hard Rock Quarry is trucked to the west through thinly populated rural areas. The remaining 25% services the Dorrigo Plateau (eg. local council road works) and to areas further to the east.

In terms of impacts on Waterfall Way to the east, reliance is placed on the most recent RMS AADT traffic data on Waterfall Way at Dorrigo (east of Hernani) of 2,095 vehicles per day, 8.6% of this traffic being heavy traffic (ie.180 heavy trucks per day). [NOTE: Refer to our advice to Clarence Valley Council dated 22 May 2014 for further particulars].

Worst case, even ignoring this 75/25 split in traffic flows, an additional peak traffic of 46 trucks per day would not significantly increase the daily levels of light and heavy vehicles on Waterfall Way. In terms of overall traffic, particularly during the period when products are being transported for the Pacific Highway upgrade, the product truck movements on Waterfall Way would represent only a 2.1% increase in total traffic flows. Allowing for the known split in quarry traffic flows from Sheridan's Hard Rock Quarry, this increase is likely to be far less than that figure.

Heavy truck traffic already travels through the townships of Bellingen and Dorrigo under existing conditions. Sheridan's Hard Rock Quarry has a quarry truck driver Code of Conduct already in place. It ensures that drivers use the haul route in a responsible manner, including adherence to existing speed restrictions and respect for all road users generally, including equestrian, cyclists, local residents, local commercial traffic, tourist, motorcyclists, walkers and emergency services. All truck drivers are required to hold a Heavy Vehicle Drivers license and are required to operate their heavy vehicle in a safe, professional and courteous manner.

■ The increase in daily truck numbers proposed will not have the potential for adverse amenity impacts along Waterfall Way during weekends. Condition 13A of the existing Development Consent provides for a prohibition on laden quarry truck movements on Waterfall Way east of Maynards Plains Road on Saturdays, except in emergencies. No change is sought to this current restriction.

This prohibition on quarry truck traffic from Sheridan's hard Rock Quarry using this part of Waterfall Way effectively applies on any Saturday, Sunday or public holiday will continue to apply.

Importantly, the Section 96 modification application does not seek to alter or to change this current restriction, thus ensuring that amenity along this part of Waterfall Way on weekends and public holidays continues to be protected.





2.0 Response to Submissions by Others

Council has provided copies of six individual objections to the proposed modification. The substantive basis for these objections may be summarised as follows:

- Concerns with additional quarry truck traffic through the main streets of Dorrigo and Bellingen.
- Concerns over monitoring/policing of quarry truck traffic and quarry activities.
- Concerns over rationale for increased quarry truck numbers.
- Concerns regarding noise generated by quarry truck traffic.
- Concerns regarding the ability of Waterfall Way to accommodate the quarry truck traffic proposed- advice sought from the RMS.

Another submission made the assertion that:

"Significant new information has come to light since the original application, notably the causal link between increased truck movement and material from the quarry and the mortality of the Bellinger River Snapping Turtle."

The above assertion is not supported by the facts.

Refer to report by Moloney, Britton & Matthews entitled "Bellinger River Snapping Turtle Mortality Event: Epidemiology Report" NSW Department of Primary Industries published October 2015, the Primefact report entitled "Keep a 'clean' routine: Bellinger River Snapping Turtle mortality" by NSW Department of Primary Industries published October 2015, and NSW Government Meeting record entitled "Bellinger River Turtle Deaths" Public information Session Monday 30 November 2015. All of these reports conclude that the cause of turtle deaths was due to a virus. There was no mention of any "...causal link between increased truck movement and material from the quarry and the mortality of the Bellinger River Snapping Turtle." In fact, the latter document referred to above concluded that the NSW Government was "Confident [that the new virus] is the causal agent for the disease in the Bellinger River Snapping Turtles." (source: advice of Dr Karrie Rose, Australian Registry of Wildlife Health, on behalf of NSW Government at the above public meeting).

Another submission relied on what we are instructed is a misquote of a statement made by our client, Mr Graham Sheridan, as presented in the 31 August edition of the local Bellingen newspaper, the Bellingen Courier Sun. This misquote should not be relied upon as a basis for any objection.

Another submission appeared to confuse Sheridan's Hard Rock Quarry with the nearby EMS Dorrigo Quarry. The submission stated, inter alia:

"The Nambucca to Urunga bypass project, which the community was advised was the primary reason for the original DA, has now been completed. We believe that there is no longer a requirement for such large volumes of quarry materials."





The EMS Dorrigo Quarry obtained consent from Bellingen Shire Council to provide up to 120,000 cubic metres (about 300,000 tonnes) per annum to supply quarry material to the Nambucca Heads to Urunga NH2U Pacific Highway upgrade project and 47,000 cubic metres (or about 120,000 tonnes) "in all other circumstances" (Bellingen Council consent condition 3 of DA2013/DA-00030, issued October 2013).

No such restrictions apply to the operation of Sheridan's Hard Rock Quarry. It has consent to produce up to 198,000 tonnes of quarry product per annum.

2.1 Concerns with traffic through Bellingen & Dorrigo, rationale for increased quarry truck numbers

A number of submissions expressed concern about the potential for increased quarry truck traffic travelling through the townships of Bellingen and Dorrigo and/or queried the rationale for the need for increased truck numbers. The submissions incorrectly assume that all of the increased quarry truck traffic proposed will run through Bellingen and Dorrigo townships. This assumption is at odds with the current situation applying. To clarify:

- No change is sought in the total number of quarry trucks using the haul route over any one year. As was emphasised in the Streetwise report accompanying the modification application, the proposal seeks approval to **occasionally** increase haulage truck numbers to a maximum of 66 loaded loads per day in order to meet customers needs at times of peak demand for quarry product. This number is a maximum only, not an average number. At other times, quarry truck numbers will be much less than that figure, outside of these periods of peak demand for quarry product.

- The number of trucks that can be generated is restricted by the current annual production limit of 198,000 tonnes per annum. No increase in quarry production or numbers of quarry trucks generated per annum is sought in this modification application.

- For some years now the majority of quarry product (by tonnage) are transported by truck to markets to the west, not to the east. This was discussed in our SEE report accompanying the modification application. Nowadays, about 75% of all quarry trucks travel to markets to the west. If this trend continues there will be a correspondingly low probability of any noticeable increased levels of quarry truck traffic running through these towns or east along Waterfall Way if this modification is approved.

Refer also to Section 1.3 above for a further detailed response to the above.

2.2 Concerns with monitoring of quarry truck numbers, quarry production

Concerns were expressed about how quarry truck numbers would be monitored, including a restriction on use of Waterfall Way down the escarpment on Saturdays. Relating to the latter, we are instructed that the quarry operator has abided by this restriction from the time of the issue of the 2014 consent. The monitoring and enforcement of consents is a responsibility of Clarence Valley Council. The 2014 consent also requires that the quarry operator furnish regular annual report/updates to Council on the performance of the quarry in complying with all consent conditions.





2.3 Concerns regarding noise generated by quarry truck traffic

The potential for traffic noise impacts was satisfactorily assessed by VIPAC in their report dated February 2014, this report prepared in support of the 2014 EIS. As summarised in VIPAC's advice dated 11 May 2016 in regard to the s.96 modification, VIPAC concluded that acceptable noise impacts will ensue as a result of the proposed periodic increase in truck numbers along the rural haul route back to Waterfall Way.

Refer also to Section 1.3 above for a further discussion.

2.4 Capacity of Waterfall Way to accommodate truck traffic

Concern was expressed regarding the capacity of Waterfall Way to accommodate the truck numbers sought.

Firstly, it is relevant to note that the Waterfall Way is an unconditional 4.6m high vehicle route; an approved unconditional B-double route west of Dome Road, Dorrigo, and east of Short Cut Road, Raleigh; and an approved conditional B-double route west of Short Cut Road, Raleigh, and east of Darkwood Road, Thora. Registered vehicles complying with the above are permitted to drive along Waterfall Way.

Secondly, the RMS has plans to undertaken further upgrades to the Waterfall way, including the installation of pull-over zones on Dorrigo Mountain, as well as road upgrades along various sections of the road over time (source: NSW Transport Roads & Maritime Services "*Waterfall Way Pacific Highway to Dorrigo Road Safety Review*" dated September 2014 and Section 2.2 of NSW Transport Roads & Maritime Services "*Waterfall Way Action Plan Nambucca Heads to Urunga Pacific Highway upgrade*" dated May 2015).

Thirdly, it is perhaps relevant to note that the RMS (or Bellingen Council) had no such concerns relating to the EMS Quarry at Dorrigo, which was approved by Bellingen Shire Council in 2013 to haul up to about 300,000 tonnes per annum of quarry product to service the Nambucca Heads to Urunga NH2U Pacific Highway upgrade project. This is also reflected in the NSW Transport Roads & Maritime Services "*Waterfall Way Action Plan Nambucca Heads to Urunga Pacific Highway upgrade*" dated May 2015. Section 1.2 of this report identifies the need for about 20% of all quarry product required for the Nambucca Heads to Urunga Pacific Highway upgrade, equivalent to about 280,000 tonnes, to be sourced from the EMS Dorrigo Quarry. The Action Plan focuses on various tools available to manage driver behaviour along the haul route. In this regard Sheridan's Hard Rock Quarry already have in place a code of conduct for drivers using the haul route (copy attached).

Fourthly, the RMS in their submission advised that the proposed increase in truck numbers is within the operational capacity of the Waterfall Way. Refer to Section 1.2 above for details.





*Response to Submissions MOD2016/0035: Section 96
Application MOD 2016/0035 Sheridan's Hard Rock Quarry
No.242 Faheys & Bulgins Road, Hernani, NSW*

We trust that the above satisfactorily addresses the issues raised in the submissions made to the exhibited s.96 modification proposal.

If you have any queries please do not hesitate to contact the writer.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Gary Peacock'.

GARY PEACOCK (BTP UNSW)
DIRECTOR



Outline Planning Consultants
Town Planners & Project Managers



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28 October 2016

General Manager
Clarence Valley Council
Locked Bag 23
GRAFTON NSW 2460

Council Ref: DA 2014/0098

By email

Attention: Mr Patrick Ridgway, Senior Development Planner

Dear Sir,

COUNCIL REQUEST FOR ADDITIONAL INFORMATION, s.96 APPLICATION SHERIDAN'S HARD ROCK QUARRY, No.242 FAHEYS & BULGINS ROAD, HERNANI NSW

Outline Planning Consultants Pty Ltd acts for Sheridan's Hard Rock Quarry Pty Ltd, who operate an existing, Council-approved quarry on Lot 62 & 63 in Deposited Plan 752807, No. 242 Faheys & Bulgins Road, at Hernani, west of Dorrigo. I refer to your email dated 21 October 2016 and Council's letter dated 20 October 2016 attached, seeking further additional information.

The request for additional information appears to stem from an assessment by Council's Development Engineer that concludes that there will be a claimed "increase of 43,862.78 ESA/year or 231% increase onto the haul route" arising from the s.96 application. Based on this (erroneous) assumption, the quarry would be transporting $198,000 + 231\% \times 198,000$ tonnes per annum = 655,363 tonnes per annum of quarry material. In fact, this is simply not the case. This conclusion is based on the erroneous assumption that the quarry operation, as proposed to be modified, will be generating an average of 66 quarry loads per day. A more careful reading of the s.96 application, as submitted, will show that this is clearly not the case, as clarified in the following.

Your attention is drawn to the following salient points:

1. No change is proposed in ESAs over any one year- the total number of quarry trucks generated being limited by the limit on annual production i.e. 198,000 tonnes per annum (which will not change). The s.96 modification merely seeks to increase the peak number of quarry trucks on any one day in order to meet periodic peak demand for quarry products and to provide for more flexibility in truck numbers during these peak times. However, there is no change proposed in the number of quarry trucks (or total ESAs) travelling along the haul route in any one year. Our SEE report and the Streetwise traffic reports make this abundantly clear. Council's Development Engineer has misread or misunderstood our reports (and the proposed s.96 modification) in this regard.
2. Similarly, and as to the intersection, this was also previously assessed and found to be capable of accommodating the traffic flows proposed. [NOTE: The intersection was built to RMS specifications, to a higher standard than that required by Council] The proposed minor increase in local road volumes will not change the intersection layout required- refer also to advice by Streetwise, to be sent under separate cover.



Quarry Update: Sheridan's Hard Rock Quarry No.242 Faheys
& Bulgins Road, Hernani, NSW

3. Council's letter states that it seeks the information relying on clause 54 of the EP&A Regulation 2000, which applies to development applications lodged. Leaving that aside, and in any case, Council is no doubt aware that any request for information that may be sought under clause 54 of the EP&A Regulation is also linked to the provisions of clause 109 of the EP&A Regulation which stops time running under clause 113 of the EP&A Regulation for a nominated time while the request for additional information remains unanswered- more commonly known as "stop the clock".

Clause 109(2) allows such a request if the relevant request is made within 25 days of lodgement of any application. The s.96 application was lodged with Council on 17 August 2016, some 63 days ago. [NOTE: this period is even longer having regard for the fact that the same s.96 application was lodged on 29 June 2016 and was not withdrawn until 55 days later- again, without any comments from Council engineering about perceived increases in ESAs per annum arising from the application] As such, Council's request for additional information would appear to have been made outside of the statutory 25 days, thus falling outside of the scope of it's power under clauses 54 and 109 of the EP&A Regulation to request additional information and to activate the relevant "stop the clock" provisions.

Moreover, and related to the above, we believe that Council has had more than ample time to identify all relevant issues, and question the procedural fairness in Council now seeking additional advice and documentation at this late juncture in the DA process. In coming to this conclusion we rely on the authority contained in the recent decision of the NSW Court of appeal in *Warkworth Mining Limited v Bulga Milbrodale Progress Association Inc* [2014] NSWCA 105 at paras [35], [37], [39] and [40].

Section 79C(1)(b) and (c) of the EP&A Act 1979 requires an engagement by Council with the subject matter in the s.96 application so that likely impacts can be properly understood and assessed: *Weal v Bathurst City Council* [2000] NSWCA 88; (2000); and *Centro Properties Limited v Hurstville City Council* [2004] NSWLEC 401.

From the above, it is concluded that Council's Development Engineer has not properly understood the nature of the proposed s.96 modification. The s.96 application seeks no change to truck numbers (and ESAs) over any one year- the total number of trucks limited by the restriction on total production permitted at the quarry ie. 198,000 tonnes per annum. No increase is sought in this level of annual quarry production.

Accordingly, having regard for the above, please be advised that no further particulars will be provided (or are, in fact, required to be provided) to Council on the above traffic issue raised by Council engineering.

Now that this matter has now been clarified as set out in the above, we request that Council now assess the s.96 application as proposed without further delay.

If you have any queries please do not hesitate to contact the writer direct on telephone: 02 9262 3511.

Yours sincerely

GARY PEACOCK (BTP UNSW)
DIRECTOR



Outline Planning Consultants
Town Planners & Project Managers