

From: Patrick Ridgway
Sent: Friday, 5 October 2018 4:45 PM
To: Planning Panels Mailbox
Cc: Kim Holt; David Morrison; Des Schroder (Clarence Council)
Subject: 2016NTH022 - Clarence Valley Council & Applicant Response re: DA2014/0098 Sheridans Quarry MOD2016/0035

Hi Kim,

Please find attached a copy of Council's submission to the Applicant dated 3 October 2018 and the Applicant's response dated 5 October 2018.

The matter is now referred to the Panel for electronic determination.

Council relies on its former submissions and recommendations in the matter and seeks adoption of the conditions of consent as outlined in its letter of 3 October 2018.

A copy of the email correspondence from Bellingen Shire Council is attached.

In response to the matters raised in the Applicants response the following points are made:

- The offer to enter into a VPA was made in relation to the application to modify the consent and has been negotiated in connection with the assessment of that application, consistent with the Panels Reasons for Deferral of 15 December 2016 in regard to road conditions and safety. It is Council's position that the VPA cannot and should not be executed until the application to modify the consent, Council's reference MOD2016/0035, has been determined. I have discussed this position with the Director Environment Planning and Community and the General Manager who are in agreement. Following the determination of the matter by the JRPP Council will be able to meet and formally execute the VPA document. (The Applicant has been advised of Council's position).
- The special festivals and events in proposed condition 13C has not specified dates as the event dates will vary each year. It is not anticipated that the event durations will change dramatically, if at all and that the condition as worded can be validly applied and not uncertain as to be confusing.
- The EMS quarry referred was a temporary approval and the quarry is no longer active.
- When an application is made to modify a consent the application must be evaluated as required by s4.55(3) and relevant matters referred to in s4.15 must be considered. It is submitted that the Consent Authority has power to impose conditions in respect of consent to a modification application after considering all matters relevant to original consent and the proposed modification. When considering such an application the Consent Authority can consider relevant elements of the proposal and if it perceives a need to, may impose a new condition. (Reference: *1643 Pittwater Road Pty Ltd v Pittwater Council* [2004] NSWLEC 685. (51 – 54)). It is Council's submission that the proposed conditions 38 & 38A are reasonable and relevant and consistent with the Newberry Principles.
- In regard to monitoring there are two considerations, being monitoring of quarry output and monitoring of quarry truck movements. These are both matters relevant to the ongoing operation of the quarry and address concerns of both Council and the Bellingen Shire

Community and can be reasonably imposed to address these concerns and ensure compliance with the consent, as modified.

- Council's position in regard to requiring a Roads Act Approval have not changed.

Myself and other Council staff are happy to provide further discussion, clarification or comments that the Panel may have.

Regards,

Patrick Ridgway

Senior Development Planner

Clarence Valley Council

Locked Bag 23 GRAFTON NSW 2460

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From: Daniel Bennett
Sent: Friday, 28 September 2018 9:01 AM
To: Patrick Ridgway
Cc: Matthew Hutchings; Matt Fanning (Bellingen Council)
Subject: Bellingen Shire Council comment on proposed conditions 13C & 38A for Sheridan Hard Rock Quarry Hernani Modification MOD2016/0035

Hi Patrick

Council considers that the proposed Condition 13C reasonably addresses the concern with truck movements associated with the listed festivals, noting the existing prohibitions on truck movements on weekends and the fact that the existing consent already allows 20 laden truck movements east along Waterfall Way.

Council considers that the proposed Condition 38A is sufficient to monitor truck movements.

Thankyou for the opportunity to provide comment.

Regards, Daniel



Daniel Bennett
Senior Strategic Planner
Land Use Services
www.bellingen.nsw.gov.au

From: Patrick Ridgway
Sent: Friday, 14 September 2018 10:39 AM
To: Daniel Bennett
Cc: Scott Lenton
Subject: RE: Sheridan Hard Rock Quarry Hernani Modification MOD2016/0035

Hi Daniel,

Please see comments in regard to proposed draft conditions for notice of determination of amendment to DA2014/0098.

Further to the four specific events that you mentioned, I note that the submission from Friends of the Waterfall Way also recommended the Bellingen Agricultural Show weekend in May and the Dorrigo Show weekend in November.

In considering the running of all these six events there seem to be 16 week days during or on either side of the events, usually a Friday or a Monday for events occurring over weekends. It is noted that Camp Creative runs for a week in January, with weekends either side.

I note that no Sheridans Quarry traffic will occur on weekends or public holidays through Bellingen or Dorrigo as per the operating days of the quarry.

The consent as approved currently allows for a maximum of 20 laden trucks on these week days, the submission from FOWW suggests that the peak traffic be kept to this threshold during and on the day before and after the events. This is considered to be a reasonable recommendation given that it was advised by the Applicant that most of Sheridan's Quarry product is transported to the west and not down Waterfall Way. If this is supported the following condition 13C is proposed:

13C. A maximum of 20 laden trucks is permitted east of the intersection of Waterfall Way and Maynards Plains Road on week days during or on either side the running of the six following events:

- Camp Creative,
- Bellingen Readers & Writers Festival,
- Bellingen Winter Music Festival,
- Dorrigo Folk & Bluegrass Festival,
- Bellingen Agricultural Show, and
- Dorrigo Show.

The applicant is to provide evidence that this requirement has been met in the Annual Update of the plan of Management.

Further to the agreement of proposed condition 38, to have and maintain on-board weighing systems installed on all front end loaders, excavators and all other loading machinery as a monitoring measure, it is proposed that monitoring equipment also be installed to monitor truck movements at the quarry exit point. The following condition is proposed:

38A. Monitoring equipment is to be installed and maintained at on the quarry exit point to monitor truck movements on a daily basis.

The data is to be provided to Council every three (3) months from approval of the application to modify the consent under MOD2016/0035.

Your feedback on this would be appreciated.

Patrick Ridgway
Senior Development Planner
Clarence Valley Council
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www.clarence.nsw.gov.au



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From: Patrick Ridgway
Sent: Wednesday, 12 September 2018 3:59 PM
To: 'Daniel Bennett'
Subject: RE: Sheridan Hard Rock Quarry Hernani Modification

Hi Daniel,

Attached is a copy of the only submission received during the exhibition of the Voluntary Planning Agreement for the Maintenance of the Haul Route – Sheridan's Quarry – Faheys Bulgins Road – Cornell's Road – Bald Hills Road, following the Record of Deferral of the JRPP meeting on 25 July 2018. The exhibition period closed on 10 September 2018.

I will be looking to make a response to the applicant soon so any comments from Bellingen Council would be appreciated.

Regards,

From: Daniel Bennett
Sent: Monday, 3 September 2018 1:34 PM
To: Patrick Ridgway
Subject: RE: Sheridan Hard Rock Quarry Hernani Modification

Hi Patrick

Thanks for the email. I am liaising with our engineers in respect of this and will let you know.

Regards, Daniel



Daniel Bennett
Senior Strategic Planner
Land Use Services
www.bellingen.nsw.gov.au

From: Patrick Ridgway
Sent: Thursday, 30 August 2018 4:05 PM
To: Daniel Bennett
Cc: Nigel Sutton; David Morrison; Scott Lenton
Subject: Sheridan Hard Rock Quarry Hernani Modification

Hi Daniel,

Thanks for the discussion the other day.

Further to the JRPP meeting and deferral of the application on 25 July 2018 the Panel requested that Council consult with the applicant in regard 'potential for management of traffic impacts of the proposal on regular special events in Bellingen, as advised by Bellingen Shire'.

Condition 11 of the consent provides that the hours of operation of the quarry are limited to between 7.00 am to 6.00 pm Monday to Friday and 7.00 am to 1.00 pm Saturdays.

Condition 13 prohibits quarrying on Sundays or Statutory Public Holidays – except for emergency purposes.

Condition 13A prohibits haulage of quarry product east of the intersection of Waterfall Way and Maynards Plains Road on Saturdays – except for emergency purposes.

You noted that there were four specific events that Bellingen Shire would have most concern with being:

- Camp Creative (held this year Monday 8 January – Friday 12 January)
- Bellingen Readers & Writers Festival (held June Long Weekend)
- Bellingen Winter Music Festival (held this year Thursday 12- Sunday 15 July 2018), and
- Dorrigo Folk & Bluegrass Festival (held this year on Saturday 27- Monday 29 October).

Are you able to provide any suggestions or advice as to how the traffic impacts could be better managed on days during and around these or other special events that could possibly be included into the current approval.

One suggestion is that the applicant provide evidence to Clarence Valley Council in the Annual Update of the plan of Management that it has consulted with Bellingen Shire Council in regard to anticipated haulage of products through Bellingen and Dorrigo prior to the events.

Your time and comments in regard to this matter are appreciated.

Regards,

Patrick Ridgway
Senior Development Planner
Clarence Valley Council
Locked Bag 23 GRAFTON NSW 2460
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3 October 2018

Reference: GD14/0098 MOD2016/0035
Contact: Pat Ridgway

Gary Peacock
Outline Planning Consultants Pty Ltd
Suite 18 Pittwater Business Park
5 Vuko Place
WARRIEWOOD NSW 2102
By email: gpeacock@outline.com.au

Dear Sir,

RE: VPA and JRPP Meeting and Reasons for Deferral

Application No: MOD2016/0035 (JRPP REF: 2016NTH022)
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

Further to the Joint Regional Planning Panel's Record of Deferral on 25 July 2018 the following submission and comments are provided following the exhibition of the proposed Voluntary Planning Agreement and response to the Panel's Reasons for Deferral.

Your submission dated 8 August 2018 has been considered in this response. Council is now in a position to make a final submission to the Joint Regional Planning Panel (the JRPP) for a determination of the application to modify the consent. Council requests that if you have any further submissions in regard to the Panels Reasons for Deferral that they be provided within 14 days of the date of this letter.

Comments to the reasons for Deferral

(a) Exhibition of the draft Voluntary Planning Agreement (VPA)

The exhibition period for the proposed VPA concluded on 10 September 2018. An advertisement was placed in the Bellingen Courier Sun and Don Dorrigio Gazette Wednesday 8 August and Daily Examiner on 11 August 2018.

One submission was received during the exhibition which has been considered in regard to the proposed VPA.

(b)(i) Potential for management of traffic impacts on special events in Bellingen Shire Council area

In discussions with Bellingen Shire Council it was advised that there are six specific events that Bellingen Shire Council and the Bellingen community would have most concern with being:

- Camp Creative (held this year Monday 8 January – Friday 12 January)

- Bellingen Readers & Writers Festival (held June Long Weekend)
- Bellingen Winter Music Festival (held this year Thursday 12- Sunday 15 July), and
- Dorrigo Folk & Bluegrass Festival (held this year on Saturday 27- Monday 29 October).
- Bellingen Agricultural Show weekend in May
- Dorrigo Show weekend in November

In considering the running of these six events there are only 16 week days during or on either side of the six events, usually a Friday or a Monday for events occurring over weekends. Camp Creative runs for a week in January.

It is noted that there will be no quarry traffic from Sheridans Quarry on weekends or public holidays through Bellingen or Dorrigo as per the operating days of the quarry's current consent.

The consent currently allows for a maximum of 20 laden trucks on week days and it is recommended that peak traffic be kept to this threshold on the days during, immediately before and immediately after the events. This is considered to be a reasonable recommendation given that you have advised that most of Sheridan's Quarry product is transported to the west and not down Waterfall Way and Sheridan's quarry will only be partly inconvenienced over 16 days of the calendar year.

Bellingen Shire Council have advised that they consider that proposed Condition 13C (see below) reasonably addresses the concern with truck movements associated with the listed festivals and events, noting the existing prohibitions on truck movements on weekends and the fact that the existing consent already allows 20 laden truck movements east along Waterfall Way.

Following the consultation with Bellingen Shire Council the following condition 13C is proposed:

- 13C. A maximum of 20 laden trucks is permitted east of the intersection of Waterfall Way and Maynards Plains Road on week days during or on either side the running of the six following events:
- Camp Creative,
 - Bellingen Readers & Writers Festival,
 - Bellingen Winter Music Festival,
 - Dorrigo Folk & Bluegrass Festival,
 - Bellingen Agricultural Show, and
 - Dorrigo Show.

The applicant is to provide evidence that this requirement has been met in the Annual Update of the plan of Management.

Arrangements for monitoring quarry truck movements

This is a concern that the Panel has raised at both of the Panel meetings.

Further to the agreement of proposed condition 38, to have and maintain on-board weighing systems installed on all front end loaders, excavators and all other loading machinery, it is proposed that monitoring equipment be installed at the quarry exit point to monitor truck movements. The following condition is proposed:

- 38A. Monitoring equipment is to be installed and maintained at the quarry gate / property exit point on Faheys and Bulgins Road to monitor truck movements on a daily basis.

Details of proposed truck monitoring equipment is to be submitted to Council for approval prior to its installation.

The monitoring equipment is to be installed prior to commencement of quarry operations as amended under the application to modify the consent under MOD2016/0035

Traffic count data from the monitoring equipment is to be provided to Council every three (3) months from approval of the application to modify the consent under MOD2016/0035.

Bellingen Shire Council has also advised that it considers that the proposed Condition 38A is sufficient to monitor truck movements.

Potential overlap between the Draft VPA and provisions of the *Roads Act 1993*.

You are advised that Council's reasons for a condition relating to a Roads Act Approval have not changed.

Under the previous 'Deed – Security for maintenance works' a *Roads Act 1993* approval was required. I note that the Deed only applied to a portion of the haul route where unauthorised road works had been undertaken. The Deed expired on 14 December 2017.

As the roads authority, Council owes a duty of care to users of roads where there is a power given to Council by a statute such as the Roads Act to carry out work or repair such a road.

Although Section 138 of the *Roads Act 1993* allows Council to consent to another party to carry out road work on or over a public road it does not release Council of its obligations and liabilities as road authority.

Under Section 138, Subsection 138(5) provides that '*This Section applies despite the provisions of any other Act or law to the contrary, but does not apply to anything done under the provisions of the Pipelines Act 1967 or under any other provision of an Act that expressly excludes the operation of this section*'.

The VPA is made under the *Environmental Planning and Assessment Act 1979* and it is Council's opinion that and an approval under the *Roads Act 1993* is not assumed under the VPA.

As such Condition 40 is proposed as follows:

40. Approval pursuant to Section 138 of the *Roads Act 1993* to carry out works required by the development consent on or within the public road reserve is to be obtained from Clarence Valley Council.

A Section 138 Roads Act application must be accompanied with a traffic management plan and erosion and sediment control plan.

A copy of the proposed draft conditions are attached as a schedule to this letter.

Council's records indicate that only an advertising fee has been paid for the initial advertising of the draft VPA; an amount of \$459.00 was paid on 4 December 2017. Council requires the cost of preparing the Voluntary Planning Agreement and further advertising costs to be reimbursed to Council as follows:

- Voluntary Planning Agreement Preparation fee: \$551.35
- Advertising fee Daily Examiner: \$470.00
- Advertising Bellingher Courier Sun: \$395.01
- Advertising Don Dorriggo Gazette: \$198.00

Reference to Councils fees and charges is provided and a copy of booking details and tax invoice provided.

These fees are to be paid prior to the matter being referred back to the Panel for determination.

If you require further information please contact me on 6645 0288.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'P. Ridgway', with a long horizontal stroke extending to the right.

Pat Ridgway
Senior Development Planner

Schedule of Draft Conditions MOD2016/0035 – Application to modify Notice of Determination issued under DA2014/0098

A. Modify Condition 1 as follows:

1. The development being completed in conformity with the Environmental Planning & Assessment Act 1979, the Regulations thereunder, the Building Code of Australia and being generally in accordance with the following documents and plans:
 - 'Hard Rock Quarry: Statement of Environmental Effects', dated March 2014, prepared by Outline Planning Consultants Pty. Limited; including
 - Flora & Fauna Assessment by BushfireSafe (Australia) Pty Ltd, February 2014
 - Noise Impact Assessment by Vicpac Engineers & Scientists, dated 18 February 2014
 - Aboriginal Objects Due Diligence Assessment Report, BushfireSafe (Australia) Pty Ltd, dated February 2014
 - Traffic & Transport Assessment by RoadNet, dated March 2014
 - ~~Erosion and Sediment Management Plan prepared by RoadNet, dated 8 October 2010,~~
 - The report entitled Statement of Environmental Effects accompanying a s4.55 Application to Clarence Valley Council Sheridan's Hard Rock Quarry Pty Ltd Pt. Lot 62 & 63 in Deposited Plan 752807 No. 242 Faheys & Bulgins Road Hernani, NSW, prepared by Outline Planning Consultants Pty Ltd and dated June 2016; with attachments:
 - Acoustic advice from consultants V IPAC dated 11 May 2016 Ref : 29N-12-0122-GCO-473113-0;
 - Dust advice from consultants VIPAC dated 23 June 2016 Ref: 29N-12-0122-GCO-399163-0;
 - Advice from traffic consultants Streetwise Pty Ltd to Clarence valley Council dated 22 June 2016;
 - Traffic Impact Assessment report prepared by traffic consultants Streetwise Pty Ltd dated 15 June 2016.
 - The applicant's submission dated 9 June 2017,

or where modified by any conditions of this consent.

Insert new conditions of consent as follows:

- 13B. A maximum of 66 loaded quarry trucks within the approved hours of operation Monday - Friday and a maximum of 36 loaded quarry trucks within the approved hours of operation on Saturdays are permitted to travel along the approved haul route.

- 13C. A maximum of 20 laden trucks is permitted east of the intersection of Waterfall Way and Maynards Plains Road on week days during or on either side the running of the six following events:

- Camp Creative,
- Bellingin Readers & Writers Festival,
- Bellingin Winter Music Festival,
- Dorriggo Folk & Bluegrass Festival,
- Bellingin Agricultural Show, and
- Dorriggo Show

The applicant is to provide evidence that this requirement has been met in the Annual Update of the plan of Management.

36. Pursuant to section 4.16 of the Environmental Planning and Assessment Act 1979 (EP&A Act), the applicant is to execute and deliver to the Council the Planning Agreement, in accordance with Subdivision 2, Division 6 of Part 4 of the EP&A Act, which the applicant has offered to enter into following the resolution Clarence Valley Council Item 14.048/18 on 15 May 2018.
37. The quarry is to operate in accordance with the Sheridan's Hard Rock Quarry Driver Code of Conduct and Traffic Management Plan dated February 2018. The Code of Conduct is to be regularly reviewed with the submission of the annual updated Plan of Management required under this consent.
38. The quarry is to have and maintain on-board weighing systems installed on all front end loaders, excavators and all other loading machinery in order to keep accurate records of extraction rates annual. The stored weighing data is to be provided to Council every three (3) months from approval of the application to modify the consent under MOD2016/0035.
- 38A. Monitoring equipment is to be installed and maintained at the quarry gate / property exit point on Faheys and Bulgins Road to monitor truck movements on a daily basis.

Details of proposed truck monitoring equipment is to be submitted to Council for approval prior to its installation.

The monitoring equipment is to be installed prior to commencement of quarry operations as amended under the application to modify the consent under MOD2016/0035.

Traffic count data from the monitoring equipment is to be provided to Council every three (3) months from approval of the application to modify the consent under MOD2016/0035.

39. An annual independent road audit of the road condition of the haul route is to be undertaken by a suitably qualified consultant, agreed to by both the quarry operator and Council, at full cost to the quarry operator. The independent road audit report is to be submitted to both Council with the annual update of the Plan of Management.

40. Approval pursuant to Section 138 of the *Roads Act 1993* to carry out works required by the development consent on or within the public road reserve is to be obtained from Clarence Valley Council.

A Section 138 Roads Act application must be accompanied with a traffic management plan and erosion and sediment control plan.

41. Prior to the commencement of works inside the road reserve the applicant is required to submit the following to Council
- Notice of Commencement, 48 hours before commencement.
 - Notification to the residents affected by the works, one (1) week before commencement.
42. Upon the completion of any periodic maintenance works certification of the works from the supervising professional must be submitted to Council.



Outline Planning Consultants Pty Ltd
Project Managers
Planning Consultants

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Warriewood NSW 2102
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5 October 2018

General Manager
Clarence Valley Council
Locked Bag 23
GRAFTON NSW 2460

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

By email

Attention: Patrick Ridgway, Senior Development Planner

Dear Sir,

**RESPONSE TO COUNCIL'S PROPOSED CONDITIONS OF MODIFICATION APPROVAL
SHERIDAN'S HARD ROCK QUARRY, FAHEYS & BULGINS ROAD, HERNANI, NSW**

Outline Planning Consultants Pty Ltd acts on behalf of Sheridan's Hard Rock Quarry, the proponent. Reference is made to Council's letter to our firm dated 3 October 2018, regarding Council's final position on the modification application in regard to outstanding matters as raised at the Northern Joint Regional Planning Panel on 25 July 2018. Our response is set out in the following.

1.0 Voluntary Planning Agreement Ready to be Signed

The revised Voluntary Planning Agreement (VPA), incorporating the changes as resolved by Council at its meeting held 15 May 2018, was duly exhibited in accordance with the relevant requirements of the EP&A Act 1979 from 8 August 2018 to 10 September 2018. Only one submission was received, from one or more individuals from Bellingen who reiterated their objection to the modification application but did not raise any objection *per se* to the exhibited VPA.

As such, no further amendments to the VPA are required and it is now ready for execution between the parties.

Please contact our firm to arrange a mutually agreeable date and time for the parties to formally execute the above VPA.

2.0 Proposed Condition- Bellingen "Special Events"

At the Northern Joint Regional Planning Panel held on 25 July 2018 the councils of Bellingen and Clarence valley were requested by the Chair to prepare a suitably worded condition of consent requiring Bellingen Shire Council to notify Sheridan's Hard Rock Quarry of any special events.

It was made clear at the above JRPP meeting by the Chair, Mr Garry West, that it would not be reasonable for Bellingen Shire Council to attempt to limit quarry truck movements during these events- the primary aim being to alert the proponent of these events being held.

We are in full agreement with the Chair's approach on this matter.

Notwithstanding the above, Bellingen Shire Council, in concert with Clarence Valley Council, have, instead, opted to seek to apply even further restrictions on quarry truck movements during the holding of certain nominated “special events” in proposed Condition 13C. This proposed (modified) condition of consent reads as follows:

“13C. A maximum of 20 laden trucks is permitted east of the intersection of Waterfall Way and Maynards Plains Road on week days during or on either side the running of the six following events:

- *Camp Creative,*
- *Bellingen Readers & Writers Festival,*
- *Bellingen Winter Music Festival,*
- *Dorrigo Folk & Bluegrass Festival,*
- *Bellingen Agricultural Show, and*
- *Dorrigo Show.*

The applicant is to provide evidence that this requirement has been met in the Annual Update of the plan of Management.”

The six (6) “special events” nominated comprise:

■ Camp Creative (8-12 January). Allowing for one day either side of this event a total of 7 days of restricted quarry truck movements would be involved.

■ Bellingen Readers & Writers festival (held June long weekend- 3 days). Allowing for one day either side of this event a total of 5 days of restricted quarry truck movements would be involved, involving one Friday and a Tuesday.

■ Bellingen Winter Music Festival (held this year Thursday 12- Sunday 15 July). Allowing for one day either side of this event a total of 7 days of restricted quarry truck movements would be involved.

■ Dorriggo Folk & Bluegrass Festival (held this year Saturday 27-Monday 29 October). Allowing for one day either side of this event a total of 5 days of restricted quarry truck movements would be involved, including one Friday, a Monday and a Tuesday.

■ Bellingen Agricultural Show (weekend in May). Allowing for one day either side of this event a total of 4 days of restricted quarry truck movements would be involved, including a Friday and a Monday.

■ Dorriggo Show (weekend in November). Allowing for one day either side of this event a total of 4 days of restricted quarry truck movements would be involved, including a Friday and a Monday.

Proposed Condition 13C refers to the events themselves, but no dates are nominated. Conceivably, the duration of these “special events” could be extended beyond that now existing, thus having the consequence that there could be even further restrictions on quarry truck movements in the future. Moreover, there is no finality or precision expressed in terms of the duration of these restrictions or to the duration of the “shoulder” periods- the proposed condition only referring to “during or on either side of” the six (6) “special events” nominated.

On this point, the Courts have found that the concept of finality is integral to the development consent process. Conditions cannot be vague or uncertain if they leave open the possibility of there being a significantly different development.

The Court of Appeal considered the appropriate approach to construction of development consents in *Westfield Management Limited v Perpetual Trustee Company Limited & Anor* [2006] NSWCA 245. In so doing, the Court emphasised the need to construe conditions to achieve validity and avoid uncertainty.

This view has also been reflected in later decisions of the Land & Environment Court including the decision of Preston CJ in *Ulan Coal Mines v Minister for Planning* [2008] NSWLEC 185.

Proposed condition 13C offends the requirement for certainty (that is, the principle of finality) and on this ground alone should be rejected. The vague reference in this proposed condition to the words “during or on either side of”, without any clarity in terms of what days may ultimately be affected, merely confirms this conclusion.

Proposed Condition 13C is clearly at odds with the decision by Bellingen Shire Council to approve on 10 October 2013 a major expansion of the EMS quarry at Dorrigo (2013/DA-0030). This approved project involved a significant increase in quarry truck traffic being permitted to travel down from the Dorrigo Plateau along Waterfall Way and through the township of Bellingen, ostensibly to service the Pacific Highway upgrade. Up to 400 movements per week were allowed in the consent 2013/DA-0030. Notably, this Bellingen Shire Council consent placed:

- No limits on quarry truck movements along Waterfall Way on Saturdays- unlike the current consent for Sheridan’s hard Rock Quarry, consent condition No. 13A stopping the movement of quarry trucks along Waterfall Way east of the Maynards plains Road intersection on Saturdays.

- No limits on quarry truck movements along Waterfall Way during any Bellingen “special events”.

There is established case law regarding the imposition of development consent conditions, particularly relevant to the above proposed condition 13C. In practice, the principles used as a test to verify the validity of conditions imposed by a local council arise from the House of Lords judgement in *Newbury District Council v Secretary of State for the Environment (1981)*. It contains the following three principles when considering the reasonableness of imposing conditions on consents:

- It must be imposed for a planning purpose.
- It must fairly and reasonably relate to the development for which permission is being given.
- It must be reasonable.

In this case, the proposed condition 13C is considered to be unreasonable, unprecedented, unwarranted and problematic. Moreover, the requirement for the imposition of proposed condition 13C does not strictly arise as a consequence of the proposed quarry modification. It is noteworthy that Council’s dated 3 October 2018 provides no reasons as to why such restrictions on quarry truck traffic during these “special events” are required or warranted.

The decision to impose such a restriction is without precedent and is clearly odds with the advice provided by the Northern JRPP Chair, Mr Garry West, on this matter at the meeting held on 25 July 2018.

Proposed condition 13C is not supported on traffic or planning grounds.

- A Driver Code of Conduct has been prepared, which addresses issues of traffic safety and the movement of truck traffic along Waterfall Way through the townships of Dorrigo and Bellingen.
- Numerous traffic assessments have been prepared which find that acceptable impacts will ensue. These findings are supported by investigations of the haul route as well as the functioning of the intersection of the haul route with Waterfall Way.
- Importantly, the Grafton office of the RMS supports the proposal and the Driver Code of Conduct. No requirements have been imposed by the RMS in terms of the need for restrictions on quarry truck movement during the “special events” nominated.

In these circumstances, having regard for the above, the proposed condition 13C should not be included in any final approval, as modified.

Instead, a condition requiring Bellinghen Shire Council to notify the proponent about any impending “special event” may be more appropriate. However, such a condition would be best left for Bellinghen and Clarence Valley councils to draft, if indeed they continue to see some utility or value in providing such a notice to the proponent.

3.0 Proposed Condition- Monitoring of Trucks

Outline Planning Consultants have written to Clarence Valley Council in correspondence dated 18 April 2017 regarding a negotiated outcome to the issue of appropriate monitoring and compliance arrangements for quarry truck traffic. Patrick Ridgway, Senior Development Planner, has since responded to this correspondence in an email dated 1 June 2017, where it was indicated that Council would be happy to consider the on-board weighing method currently employed in the quarry, in order to accurately monitor quarry production.

In summary, this system utilises an on-board weighing system on front end loaders and excavators employed at the quarry. This system also ensures loading each truck to the correct capacity to optimise efficiency and to ensure quarry trucks do not leave the site overloaded. This system is typically used in quarries that do not have on-site weigh-bridges. The on-board computer forming a part of this weighing system allows the operator to see individual bucket readings, together with weight totals. Operators can simply download the stored weighing data to a supplied flash-drive/USB stick which will format the data to open directly with a spreadsheet software program. This allows management to create a permanent record of the weighing data as well as use it to analyse further control operations. Accurate records can also be kept regarding the time and date of loading of all quarry haulage vehicles, an effective way of monitoring quarry truck movements generated by the quarry.

It is also relevant to note that Bellinghen Shire Council, a major customer of Sheridan’s Hard Rock Quarry, accepts this weighing system for the purposes of calculating payments for quarry products purchased from the quarry.

This practice of recording weights by machines with scales is also recognised by the JRPP and Council, reflected in the consent granted 20 January 2015 to the hard rock quarry at Nymboida (DA2014/0024), Condition 19(l) which states:

“l) All quarry trucks existing the site shall do so via a weigh-bridge to be installed prior to commencement or quarrying activities, or all trucks are to be loaded by a machine with scales to enable accurate records of loads.”

At present the above records are provided to Council on an annual basis. Sheridan’s Hard Rock Quarry are happy to accede to providing this data to Council every 3 months. The above condition could be included in any subsequent Section 96 approval granted by the JRPP/ Council.

Council’s proposed Condition 38A seeks the installation of monitoring equipment at the quarry gate, to monitor quarry truck movements on a daily basis. No reasons are given as to why such additional monitoring of quarry truck traffic is required over and above that already in place on the quarry site. Proposed Condition 38A is considered to be onerous and unreasonable, for the following reasons:

- The current system of monitoring quarry truck traffic is more than adequate. Council can readily access this data upon demand. As such, further monitoring measures are unwarranted and are a duplication of (satisfactory) monitoring measures already in place at the quarry.
- Council has the statutory power to police any apparent breaches of any consent and to take the appropriate enforcement action where any breach has been found.

■ Council is considered to be the more appropriate body to undertake traffic counts, if there are any concerns about truck traffic volumes. Council has undertaken its own random traffic counts along a part of the haul route at Hernani in October 2015, with no exceedance in quarry truck traffic found.

■ Importantly, none of the other approved quarries in the Clarence Valley LGA are understood to have any similar requirement for the undertaking of traffic counts along the haul route eg. Greensills quarry, at Nymboida (JRPP 2014NTH001), and Kungala quarry (JRPP2013NTH027). As such, proposed Condition 38A is also considered to be unprecedented and problematic.

4.0 Clarification: Roads Act 1993

In advice to Council dated 8 August 2018 Outline Planning Consultants have provided clarification regarding the Roads Act 1993 and need for approval under this Act for any roadworks on the haul route. Council's advice appears to be at odds with the case law cited in our advice to Council dated 8 August 2018. It is also noted that Council has not attempted to contradict this case law.

Outline Planning Consultants are of the view that Condition 40 should, instead, acknowledge that a Roads Act approval should be assumed to have been granted once the VPA takes effect. Accordingly, the following wording can then be added to last sentence of proposed condition 36 (which refers to the Planning Agreement) in the following terms:

"Approval pursuant to Section 138 of the Roads Act 1993 is granted to the carrying out of the road works as set down in the adopted Planning Agreement."

In the alternative, only one Roads Act approval be sought for all works contemplated by the VPA, with generic traffic management plan and erosion and sediment control plans provided to cover the range of roadworks contemplated by the VPA. [NOTE: To require a multitude of Roads Act approvals- in particular for maintenance roadworks- would be unreasonable and problematic, and would frustrate the intent of the VPA.] Outline Planning Consultants are instructed that the outstanding fees, as detailed in Council's dated 3 October 2018, will be paid within the next few working days.

5.0 Summary

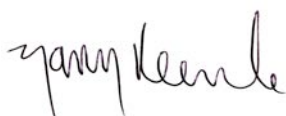
For the reasons as detailed above Council's proposed conditions 13C and 38A are considered to be manifestly unreasonable and offend one or more of the three *Newbury* tests. Proposed Condition 13C does not clearly relate to the development.

Moreover, proposed Condition 13C and proposed Condition 38A are also considered to be unprecedented, unwarranted and problematic that no reasonable planning authority could impose. As such, both proposed conditions of consent should not be included in any final modification approval.

Outline Planning Consultants are of firmly of the view that no formal application under the *Roads Act 1993* is required for the road works as described in the VPA.

Trusting that the above clarifies the matters raised by Council in its letter dated 3 October 2018. Should you have any queries please do not hesitate to contact the writer.

Yours sincerely



GARY PEACOCK, DIRECTOR