

DETERMINATION AND STATEMENT OF REASONS

HUNTER AND CENTRAL COAST JOINT REGIONAL PLANNING PANEL

DATE OF DETERMINATION	14 September 2017
PANEL MEMBERS	Jason Perica (Chair), Kara Krason, Abigail Goldberg, Ken Greenwald
APOLOGIES	None
DECLARATIONS OF INTEREST	Michael Leavey declared a non-pecuniary interest, as he had dealings with the applicant and immediate neighbour as a consultant to the Council.

Public meeting held at Erina Centre, 620 Terrigal Drive, Erina, on 14 September 2017, opened at 4:00 pm and closed at 6.40 pm.

MATTER DETERMINED

2017HCC007 – Central Coast – Section 96 Modification to DA42409/2012 at 620 Wisemans Ferry Road, Somersby, relating to a quarry (AS DESCRIBED IN SCHEDULE 1)

PANEL CONSIDERATION AND DECISION

The Panel considered: the matters listed at Item 6, the material listed at Item 7 and the material presented at meetings and the matters observed at site inspections listed at item 8 in Schedule 1.

The Panel determined to refuse the development application as described in Schedule 1 pursuant to section 96 of the *Environmental Planning and Assessment Act 1979*.

The Panel adjourned during the meeting to deliberate on the matter and formulate a resolution.

The decision was unanimous.

REASONS FOR THE DECISION

The Panel generally agreed with the balancing of environmental assessment and technical matters as outlined in the Council assessment report. However, it was noted that the number of truck movements in a four (4) week period to comply with Condition 4.2 of the current DA consent did not necessarily relate to the construction of the full length of the surrounding bund walls, but rather to those parts that need to comply with acoustic targets within that condition. Nonetheless, the onus for quantifying and detailing this, and presenting it in an appropriate planning format that meets regulatory objectives, was with the applicant, who had not done so, despite opportunities given.

Critically, the applicant had failed to quantify baseline data of the soil to be used from within the site for the bund walls and what change, if any, was proposed as a result of the change in the type of imported material. The modification proposal originally involved movement of the southern bund wall to the north to avoid removal of trees. Conceptually, this has merit. However, this aspect of the proposal did not contain the requisite details, and was withdrawn from the proposal. At the Panel meeting, the applicant advised of an openness and desire to continue with this aspect. However, this would require additional technical details, reports plans, re-exhibition and Council analysis, none of which was reasonably imminent nor certain.

It is clear in the Environmental Impact Statement with the approved DA, which was approved via Condition 1.2 and formed part off the consent, that material from within the site was intended to be used with the bund wall and the remainder being from outside the site. However, the key fact of what quantum of soil was and is to be used from the site was not able to be quantified by the applicant during the assessment,

while even at the meeting a range of differing figures were verbally provided to the Panel by the applicant. Any changes in the quantity of soil to be sourced from within the site and imported to the site for the purpose of constructing the bund walls must be assessed in terms of any associated environmental impacts, including but not limited to, potential changes in the number of truck movements and any associated impacts on the local and broader traffic network, acoustic impacts and air quality impacts.

It is noted there are a number of conditions precedent to commencing work on site requiring further details, to be approved by Council, including Conditions 4.2, 4.7 and 5.1-5.2. Given the planning, acoustic, operational and other technical information required to establish the baseline facts of material to be used from within the site, there is sense for the applicant to be addressing these matters in parallel with a Section 96 application, although that is not mandatory. Also, from a practical viewpoint, if the truck movements to import soil are not sensibly able to be completed in a 4 week period, a submission could be made by the applicant for condition 4.2 to be reconsidered, however this would again require technical data, including acoustic verification, plans and a professionally prepared assessment report.

In terms of the importation of VENM as opposed to VENM and ENM (assuming the quantum was the same), this was not in principle a critical issue for Council staff, nor the Panel, subject to appropriate verified independent testing and screening. However, further detail would be needed regarding the proposed composition and material to ensure the impact as well as the intended landscaped outcome of bund walls was achieved in any revision of material, particularly close to residents.



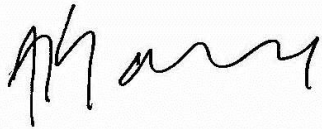

The Panel considered deferral, however due to the likely time, process, and uncertainty for this option, it was not favoured.

TERMS OF REFUSAL

The Section 96AA application was refused for the following reasons:

There was insufficient information and analysis to enable completion of the assessment and determination of the proposed modification in relation to:

- (a) The lack of detail regarding the change, if any, of material to be used from within the site and that to be imported for the perimeter bund walls;
- (b) The associated traffic movements related to (a) above;
- (c) Depending on the quantum of change, the associated environmental impacts and whether the proposal would be able to be assessed under Section 96 of the EPA Act 1979, having regard to Clauses 35 and 36 of the associated Regulation 2000; and
- (d) The methods to ensure appropriate landscaping of the perimeter walls arising from any intended change in material.

PANEL MEMBERS	
 Jason Perica (Chair)	 Kara Krason
 Abigail Goldberg	 Ken Greenwald

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	2017HCC007 – Central Coast – DA42409/2012
2	PROPOSED DEVELOPMENT	INTEGRATED/ DESIGNATED Sand Quarry Section 96 (AA) - Allow the Importation of Excavated Natural Material for use in construction of noise bunds
3	STREET ADDRESS	620 Wisemans Road, Somersby
4	APPLICANT/OWNER	Down To Earth Geotechnical & Environmental / Lawson Quarries Pty Ltd & M Haugh
5	TYPE OF REGIONAL DEVELOPMENT	Designated development - extractive industry
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> Environmental planning instruments: <ul style="list-style-type: none"> State Environmental Planning Policy (State and Regional Development) 2011 Sydney Regional Environment Plan (SREP) No 8 (Central Coast Plateau Areas) Sydney Regional Environment Plan (SREP) No 9 – Extractive Industry (No 2-1995) Sydney Regional Environment Plan (SREP) No 20 – Hawkesbury-Nepean River (No – 1997) State Environmental Planning Policy (SEPP) No 55 – Remediation of Land Gosford Local Environment Plan 2014 Development control plans: <ul style="list-style-type: none"> Gosford Development Control Plan 2013 Protection of the Environment Operations Act 1997 Roads Act 1997 Rural Fires Act Water Management Act 2000 Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i> The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality The suitability of the site for the development Submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations The public interest, including the principles of ecologically sustainable development
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> Council assessment report: Received by the Secretariat on 24 August 2017, dated 14 September 2017 Written submissions during public exhibition: 128 during first round notification period, 64 during second round notification period. Verbal submissions at the public meeting: <ul style="list-style-type: none"> Object – Kim Wilson, Nicholas Wilson, Tony Pickup, Russell Lynch, Lynn Cowie, Rachel Harris on behalf of Narara Ecovillage Cooperative On behalf of the applicant – Mark Haugh, Laurence Steteri
8	MEETINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> Briefing meeting 25 May 2017 Site Inspection (with prior DA): 18 July 2013 Final briefing meeting to discuss council's recommendation, 14 September 2017 at 12:15 pm. Attendees: <ul style="list-style-type: none"> <u>Panel members</u>: Jason Perica (Chair), Kara Krason, Abigail Goldberg, Ken Greenwald <u>Council assessment staff</u>: Robert Eyre, Tanya O'Brien
9	COUNCIL RECOMMENDATION	Refusal
10	DRAFT CONDITIONS	Attached to the council assessment report