

DETERMINATION AND STATEMENT OF REASONS

WESTERN REGIONAL PLANNING PANEL

DATE OF DETERMINATION	6 April 2020
PANEL MEMBERS	Garry Fielding (Chair), Andrew Hutton, John Brockhoff, Andrew Muir, Stephen Lesslie
APOLOGIES	Sandra Hutton
DECLARATIONS OF INTEREST	Cllr Stephen Lesslie (Lithgow City Council) and Andrew Muir (Director Economic Development and Environment, Lithgow City Council) both made a declaration that they have excused themselves from any council discussions on this application. Panel Chair determined that this did not preclude them from participating on the Panel.

Public meeting held via teleconference on 6 April 2020, opened at 4pm and closed at 5.35pm.

MATTER DETERMINED

2018WES020 – Lithgow – DA294/18 at Lot 23 DP75161 Sandham Road Dargan for rehabilitation and revegetation of the former Bell 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 briefings and the matters observed at site inspections listed at item 8 in Schedule 1.

Development application

The panel determined to refuse the development application pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979*.

The decision was unanimous.

REASONS FOR THE DECISION

1. The Environment Protection Authority has concluded that the SEARS (1105) requirements have not been satisfied and that the proposal will have unacceptable environmental impacts on the adjoining Blue Mountains National Park and the Wollangambe and Colo River systems.
2. The Environment Protection Authority considers, based on its submissions to Council, that the proposal will have unacceptable environmental impacts on the Greater Blue Mountains World Heritage Area, arising from the following:
 - i. it is likely that some of the soil leachates will adversely alter the natural characteristics and ionic balance of water draining into the Greater Blue Mountains World Heritage Area and the Colo River, Greater Blue Mountains World Heritage Area (GBMWH).
 - ii. proposed discharges into a tributary of the Wollangambe River were identified that would impact on a swamp located on the tributary approximately 200m downstream of where the discharge is proposed. The tributary (and its connected swamp) is proposed to receive pumped out water from the quarry pits, any leachate from the material that is emplaced in the pits and overland flow once the area is rehabilitated. The tributary and swamp are in the GBMWH.
 - iii. The Biodiversity Impact Assessment identified the Prickly Tea-tree – sedge wet heath swamp below the quarry discharge location as a Newnes Plateau Shrub Swamp (EEC under the TSC Act) and Temperate Highland Peat Swamps on Sandstone (EEC under the EPBC Act).
 - iv. The existence of the swamp in the headwaters of the drainage line downstream of Bell Quarry strongly suggests that there is a groundwater source which helps support/maintain the swamp in this location.
 - v. The Water Resources Assessment Section of the EIS has not clearly defined the downstream swamp as a Groundwater Dependent Ecosystem (GDE); it has not assessed the level of

groundwater dependence for the swamp and the likely pathways (e.g. disruption of groundwater connections, reduction in groundwater quality) by which the project might impact on the swamp; and it does not consider issues surrounding water discharge rates or their effect on geomorphic stability for the swamp. It has therefore not appropriately assessed the risk the project will have on the THPS swamp.

- vi. The dewatering of the quarry voids is likely to present a significant potential to destabilise sediments in the downstream swamp. If an erosional nick-point is established in the swamp, it could lead to the loss of the swamp in its entirety through erosion and gullyng.
3. The proposed development will not be consistent with the objectives of the E3 Environmental Management zone under the Lithgow LEP 2014 due to the adverse environmental impacts to the GBMWhA arising from the dewatering of the former quarry voids and importation of fill to the site as detailed by the EPA in its submissions, contrary to s4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979.
4. The proposed development fails to satisfy the requirements of Clause 7.1 Earthworks (1) of the Lithgow LEP 2014 in that the proposal will have a detrimental impact on environmental functions and processes, contrary to s4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979.
5. The proposed development fails to satisfy the provisions under Clause 7.1 Earthworks (3) (a), (c), (d), (e) and (g) of the Lithgow LEP 2014 given the adverse environmental impacts on the GBMWhA and the Wollangambe and Colo Rivers arising from the dewatering of the site and the importation of fill to the site, contrary to s4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979.
6. The proposed development fails to satisfy the requirements of Clause 7.4 Terrestrial Biodiversity of the Lithgow LEP 2014 given the comprehensive assessment of likely environmental impacts of the proposed development detailed by the EPA in its submissions, contrary to s4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979.
7. The proposed development fails to satisfy the requirements under Clause 7.7 Sensitive Lands of the Lithgow LEP 2014 given the comprehensive assessment of likely environmental impacts of the proposed development detailed by the EPA in its submissions, contrary to s4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979.
8. The proposed development will have unacceptable environmental and amenity impacts arising from the activity associated with the importation of fill to the former quarry site, contrary to s4.15(1)(b) of the Environmental Planning and Assessment Act 1979.
9. The scope of the likely adverse environmental impacts on the GBMWhA and Wollangambe and Colo Rivers arising from the proposed development indicates that the site is not suitable for the proposed use, contrary to s4.15(1)(c) of the Environmental Planning and Assessment Act 1979.
10. The site is acknowledged as stable and its condition is manageable in its current form. As a result, the public interest justification of the proposal as a necessary rehabilitation project is not compelling.
11. The notification of the Designated Development application attracted submissions from relevant Government agencies, local government, special interest groups and individuals. A total of 470 submissions of objection, excluding duplicates, were received by Council including 321 individual submissions and 149 form letters, expressing concerns in relation to:
 - Adverse environmental impacts on Greater Blue Mountains World Heritage Area;
 - Impacts of the importation of the fill on groundwater;
 - Impacts of dewatering on Blue Mountains National Park;
 - Potential contamination of Wollongambe and Colo Rivers, including domestic water supply from Colo River;
 - Spraying of water to mitigate dust and washdown of trucks will flow into Wollangambe River, part of the Hawkesbury-Nepean Catchment;
 - Loss of water source in quarry will increase bushfire risk for local communities and restrict RFS aircraft capabilities to fight local fires;
 - Traffic impacts on Bells Line of Road and Great Western Highway, in particular in Mt Victoria from additional heavy truck movements;

- Existing condition and width of Sandham Road unable to safely accommodate heavy truck movements, particularly in respect to the school bus, pedestrians, cyclists and local resident vehicle movements and needs to be upgraded if the proposal is approved;
- Intersection of Sandham Road and Bells Line of Road has poor sight lines and needs to be improved;
- Potential for queuing of trucks in Sandham Road and Bells Line of Road prior to 7.00am opening of facility; and
- Amenity impacts on Sandham Road residences with dust, noise and public safety.

Accordingly, approval of the designated development application would not be in the public interest having regard to s4.15(1)(e) of the Environmental Planning and Assessment Act 1979.



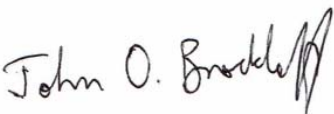


CONDITIONS

Not applicable

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the panel considered written submissions made during public exhibition and heard from all those wishing to address the panel. The panel notes that issues of concern included:

- Adverse environmental impacts on Blue Mountains National Park, Greater Blue Mountains World Heritage Area and Wollangambe and Colo River systems from the importation of VENM and ENM fill;
- Adverse impacts on groundwater dependent ecosystem, being the prickly tea tree - sedge wet heath swamp, which is listed as an endangered ecological community under Threatened Species Conservation Act 1997;
- Adverse impacts on ground water dependent ecosystem, being the temperate highland peat swamp on sandstone, which is listed as an endangered ecological community under the Commonwealth Environment Protection and Biodiversity Conservation Act 1999;
- Adverse environmental and erosion impacts on Blue Mountains National Park associated with the dewatering of the Bell Quarry voids;
- Impact of heavy vehicle traffic movements on Bells Line of Road, Great Western Highway and Sandham Road;
- Public safety and amenity impacts to residents and users of Sandham Road, including noise and dust;
- Existing condition and width of Sandham Road and its unsuitability to safely accommodate the projected 74 daily movements of 42.5 tonne trucks transporting fill to the site; and
- Loss of static water source for aerial firefighting purposes.

PANEL MEMBERS	
 Garry Fielding (Chair)	 Andrew Hutton
 John Brockhoff	 Andrew Muir
 Stephen Lesslie	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	2018WES020 – Lithgow – DA294/18
2	PROPOSED DEVELOPMENT	The proposal seeks approval to import approximately 1.2 million cubic metres (approximately 2.2 million tonnes) of VENM and ENM fill to the site of the former Bell Quarry on Sandham Road Dargan, including the de-watering of the existing voids and rehabilitation and revegetation of the site to approximate original topography. The project has an estimated life of 15 years with hours of operation of 7.00am to 6.00pm Monday to Friday and 7.00am to 1.00pm Saturday.
3	STREET ADDRESS	Lot 23 DP75161 Sandham Road Dargan
4	APPLICANT/OWNER	Applicant – Bell Quarry Rehabilitation Project Pty Ltd Owner – Chalouhi Rural Pty Ltd
5	TYPE OF REGIONAL DEVELOPMENT	Designated development - waste management facility or works
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> Environmental planning instruments: <ul style="list-style-type: none"> State Environmental Planning Policy No.44 – Koala Protection State Environmental Planning Policy (Infrastructure) 2007 State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries)2007 State Environmental Planning Policy No.33 – Mining, Petroleum Production and Extractive Industries) 2007 State Environmental Planning Policy No.55 – Remediation of Land State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011 Lithgow Local Environmental Plan 2014 Draft environmental planning instruments: Nil Development control plans: Nil Planning agreements: Nil Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>: Nil Coastal zone management plan: Nil 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 Any 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: 5 March 2020 Written submissions during public exhibition: 848 Written submissions in response to council assessment: 12 Verbal submissions at the public meeting: <ul style="list-style-type: none"> In objection – Kim Barrett on behalf of Blue Mountains Council, Kaye Whitbread on behalf of Bell Quarry Working Group, Cllr Kerry Brown, Janine Theol, Sean Butler, Keith Muir, Morgan Boehringer, Megan Lawrence, Ian Muir, Morgan Burnside Council assessment officer -Kerry Nash (consultant planner for council) On behalf of the applicant – Karl Rosen, Anthony Dixon
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> Site inspection: 2 April 2020 <ul style="list-style-type: none"> <u>Panel members</u>: Garry Fielding (Chair), Andrew Hutton, John Brockhoff

		<p><i>Note, panel member Stephen Lesslie undertook a site visit independently and panel member Andrew Muir had previously visited the site.</i></p> <ul style="list-style-type: none"> ○ <u>Council assessment staff</u>: Kerry Nash (consultant planning for council). ● Final briefing to discuss council's recommendation, 6 April 2020 at 2.45pm. Attendees: <ul style="list-style-type: none"> ○ <u>Panel members</u>: Garry Fielding (Chair), Andrew Hutton, John Brockhoff, Andrew Muir, Stephen Lesslie ○ <u>Council assessment staff</u>: Kerry Nash (consultant planning for council), Paul Cashel, Jessica Ramsden
9	COUNCIL RECOMMENDATION	Refusal
10	DRAFT CONDITIONS	Not provided