



Vincent Street  
CESSNOCK 2325

11 February 2008

To All Councillors

You are hereby notified that the next Meeting of the Corporate and Regulatory Services Committee will be held in the Council Chambers, on Wednesday, 20 February 2008 immediately following the conclusion of the Strategic and Community Services Committee Meeting, for the purpose of transacting the undermentioned business.

**B R MORTOMORE  
GENERAL MANAGER**

**AGENDA:**

PAGE NO.

**(1) APOLOGIES.**

**(2) CONFIRMATION OF MINUTES.**

Minutes of the Corporate and Regulatory Services Committee  
Meeting held on 6 February 2008

**(3) DEFERRED BUSINESS.**

115/2007	8/2007/365/1 – Off John Renshaw Drive, Blackhill	2
116/2007	5/1995/80124/3 – Buttai Quarry Amendment	20

**(4) OFFICERS' REPORTS.**

**ACTING DIRECTOR CORPORATE & REGULATORY SERVICES**

6/2008	Investments	30
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**(5) QUESTIONS WITHOUT NOTICE.**

## **DEFERRED BUSINESS**

### **ACTING DIRECTOR CORPORATE & REGULATORY SERVICES REPORT NO. 115/2007**

**DEVELOPMENT APPLICATION NO:** 8/2007/365/1  
**APPLICANT/OWNER:** COUNTY PROPERTY HOLDINGS PTY LTD  
**PROPERTY:** LOT 75, DP 755260 OFF JOHN RENSHAW DRIVE, BLACKHILL  
**AREA:** 128.5 HECTARES  
**ZONING:** RURAL 1(A)  
**PROPOSAL:** USE OF EXISTING ROAD TO HAUL GRAVEL ASSOCIATED WITH REHABILITATION OF QUARRY

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Senior Planning Assessment Officer, Mr Rod Sandell, reports:

#### **SUMMARY:**

Application has been received to use an existing road off John Renshaw Drive to haul gravel from the Benwerrin quarry. The proposal is associated with the rehabilitation of the quarry. The proposal represents designated development and the accompanying Environmental Impact Statement and rehabilitation plan have been advertised in accordance with the Act with an extension for submissions being granted until 9 November 2007.

A total of twenty three (23) submissions have been received from local residents objecting to the application. The submissions have been considered in the following report.

Both the subject site and that of the adjoining site (Lot 76) which is also subject of a report to Council (and now also owned by the applicant company) have an associated and close history and should be read in conjunction with each other.

The application has been recommended for approval.

#### **PROPOSAL:**

The applicant has advised that the proposal involves the use of an existing road to haul gravel associated with the rehabilitation of a quarry operating from the subject site. The haul route is also to be used for the transport of additives used in a blending process to stabilise gravel for use as roadbase external to the site.

The application has been accompanied by a Rehabilitation Plan. Part of the rehabilitation process will involve "benching" the existing quarry face. The Rehabilitation Plan indicates that benches will be established at approximately 12 metre levels, commencing at the quarry floor level. The benching process will involve the extraction of quality gravel material from the quarry face. The applicant has further advised that "*gravel material to be removed from the quarry will be from **benching operations only** associated with the proposed quarry rehabilitation and the proposal **does not** seek to expand the quarry or the base of the quarry wall.*"

Additional details of the proposal include:-

- a) Daromin Engineering Pty Ltd estimates that there is approximately 350,000m<sup>3</sup> of gravel and overburden to be removed from the site as a result of the rehabilitation process.
- b) Based on the extraction of approximately 70,000m<sup>3</sup> per year, it is anticipated that the time frame would be in the order of 5 -7 years depending on demand.
- c) Drilling and blasting will be used to fragment fresh rock. Blasting is to occur between the hours of 9.00am and 3.00pm twice per week
- d) Machinery to be used in the extraction operation include a pug mill, a Cat 330 hydraulic excavator, a Cat966/972 front end loader, a mobile drilling rig, an hydraulic rock breaker, a mobile primary and secondary crusher, a water cart, a dump truck and a grader, scraper and Cat D7/D9 bulldozer for part time use.
- e) Truck movements associated with the quarry operation during peak demand periods are envisaged to be a maximum of 60 loads/day or 120 truck trips/day for material transportation.
- f) Hours of operation of the proposed quarry and haul route will be between 7.00am and 6.00pm Monday to Saturday.

**BACKGROUND:**

The subject land has been used intermittently since 1949 for coal mining activities and in more recent years as an open gravel quarry. The Buchanan Borehole Colliery was established on the site in 1947 and mining ceased in 1956.

Development Consent for a gravel quarry and service roads (Development Application No. D74/73/3) was granted by Council on 2 March 1973. The consent contained a requirement that stated, *provided that the area which is being quarried is reinstated to the satisfaction of Council when the quarrying operations are completed.* Access to the quarry was approved through Lots 41, 42 and 94 and then via Lings Road through to John Renshaw Drive.

A new application for consent (Development Application No. D74/74/44) for an open cut coal mine on Lot 75 was granted approval by Council on 4 September 1980. The Department of Mineral Resources notified owners on 20 January 1994 that Coal lease no. 207 in respect to coal mining operations at the Benwerrin mine site had been cancelled.

The access route now proposed to be used in the present application is via Old Buttai Road which was originally surveyed and dedicated to the public on 9 January 1974. The remaining portion of the access road is a Crown Road reserve.

Council's records indicate that the access route may have been used prior to this time to haul coal from Lot 75. The access route has been used at times since 1974 to haul both gravel and coal from Lot 75 however no formal agreement to haul gravel has become evident. Further, such access was located through Lot 74 prior to its subdivision in 1997 and only partly within the Crown Road reserve.

**RECENT HISTORY**

In October/November 2005 Council received complaints that the present owner/operator had undertaken roadworks within the Crown reserve road immediately to the west of the two dwellings on Lots 741 and 742 DP 876393 and other earthworks within the quarry. The roadworks extended the gravel road construction from the access to the two dwellings to the northern boundary of Lot 75 thus providing access to that lot. In addition, earthworks had been undertaken above the highwall in the south-eastern corner of the site so that the new earthworks could be clearly seen from John Renshaw Drive.

The owner/operator subsequently agreed to cease further work on the site and to enter into discussions/negotiations with Council officers on the further development of the subject site and the quarry development on the adjoining Lot 76. This application and an amendment to the quarry development on Lot 76 are as a result of those discussions/negotiations.

**SITE DESCRIPTION:**

The subject site is located off John Renshaw Drive and then via Old Buttai Road. It is situated approximately 10 kilometres south of East Maitland and 2.5 kilometres south of John Renshaw Drive and on the western side of Lings Road.

Lot 76 has an area of approximately 128.5 hectares and remains as a vacant site with a large open gravel quarry and several dams located towards the eastern side of the site. Some evidence is also available on the site of previous coal mining activity although rehabilitation work on the site has been undertaken by the Department of Mineral Resources. The site has been substantially degraded due the mining and quarrying activities that have occurred on the site since the 1940's.

**PUBLIC EXHIBITION:**

The proposed designated development was advertised for an initial period of thirty (30) days from 22 September 2007 until 23 October 2007. This period was extended during the exhibition period until 9 November 2007. A total of twenty three (23) submissions were received from residents of the Blackhill area.

A submission was received from the two (2) community groups involved (The Black Hill Environment Protection Group and The Buttai Community Development Group) together with submissions from the owners of Lots 741 and 742 who are most affected by the proposal. In summary the local community's' objections have been based on the following seven (7) themes:-

- 1) The current application is completely misleading as it contains a number of inaccuracies and omissions including:-
  - a) The Executive Summary states that *"the proposal involves the use of an existing road to haul gravel.....* This statement is incorrect as there is no "existing haul road for gravel.
  - b) The application pretends that there is a fully operational quarry on Lot 75 when in fact the quarry has been abandoned since the late 1980's.
  - c) No reference is made in the application to the relationship between the approved quarry on Lot 76 and the proposal given that both sites are owned by the same or related companies.
  - d) No quarry products exist on Lot 75 and the approved haulage route is no longer available. Access has been illegally provided to Lot 75 and previous rehabilitation work undertaken relates to coal extraction activities.

- 2) All aspects of the development need to be considered together not the haulage route in isolation and a full environmental assessment for rehabilitation on Lot 75 is needed.
- 3) The proposed haulage route is illegal, inequitable, dangerous and unacceptable for the two (2) owners and families of Lots 741 and 742 who purchased these properties in good faith.
- 4) The application is misrepresented as a “rehabilitation project” due to the amount of material to be removed from the site and the number of truck movements involved.
- 5) The cumulative impact of the proposal with other nearby quarry and mining developments including the approved gravel quarry on Lot 76 have not been considered.
- 6) Inadequate community consultation has been undertaken by the developer.
- 7) It is not possible to satisfactorily monitor the environmental impacts arising from two quarries operating beside one another under different consents and therefore standards.

These matters will be addressed in the following report.

### **STATUTORY CONTEXT**

The proposal represents “designated development” under Schedule 3, Part 2, Clause 35 of the EP & A Regulations, 2000. The establishment of an alternative haulage route results in a significant increase in the environmental impacts of the development compared to the approved development. These impacts include the proposed location of the haul road in close proximity to two (2) dwellings which will potentially increase environmental impacts including noise, dust and vibration for the residents of those dwellings and the construction of an intersection of the haul road with John Renshaw Drive, a classified State Road.

### **PLANNING ASSESSMENT:**

All *heads of consideration* detailed under Section 79C of the Environmental Planning and Assessment Act, 1979, as amended, have been taken into consideration in the assessment of this application with the following matters of particular relevance:

#### **a) The Provisions of any Environmental Planning Instrument**

##### **State Environmental Planning Policy No. 11 – Traffic Generating Developments**

The applicant has submitted a Traffic Impact Assessment for the proposal in accordance with the above policy for consideration by the Local Traffic Committee and Roads and Traffic Authority (RTA). The Local Traffic Committee has recommended dust abatement sealing works be undertaken along the haulage route and the RTA require an upgrading of the intersection of Old Buttai Road with John Renshaw drive.

##### **State Environmental Planning Policy No. 44 – Koala Habitat Protection**

The proposed development does not seek to clear any significant vegetation and therefore no Koala habitat will be affected by the proposal.

**Hunter Regional Environmental Plan, 1989.**

The primary objective of this plan is to *'promote the balanced development of the region, the improvement of its urban and rural environments and the orderly and economic development and optimum use of its land and other resources, consistent with conservation of natural and man made features and so as to meet the needs and aspirations of the community.'* (Clause 2)

This objective proposes to regulate activities to ensure that reserves of coal, other mineral resources and low cost extractive resources such as sand, gravel, clay and the like are developed to their full potential.

Clause 39 of the Plan provides the following objectives in relation to planning strategies concerning extractive materials:-

- a) manage the coal and other mineral resources and extractive materials of the region in a co-ordinated manner so as to ensure that adverse impacts on the environment and the population likely to be affected are minimised;
- b) ensure that development proposals for land containing coal and other mineral resources and extractive materials are assessed in relation to the potential problems of rendering those resources unavailable; and
- c) ensure that the transportation of coal and other mineral resources and extractive materials has minimal adverse impact on the community.

The Plan also identifies the following development control matters that Council's should consider when determining applications for extractive industries (Clause 41) :-

- a) the conservation value of the land concerned and apply conditions which are relevant to the appropriate past mining and extractive land use.
- b) Consult with offices of relevant State Government departments to determine appropriate post-mining or extraction land uses.
- c) Ensure the progressive rehabilitation of the extracted area.
- d) Minimise the extent and impact of the final landform.
- e) Minimise any adverse effect of the proposal on groundwater and surface water quality.
- f) Review any likely impacts on air quality and the acoustical environment.
- g) Be satisfied that an environmentally acceptable mode of transport is available.

The Plan also identifies in a map (Map 4(a)) that the Blackhill area is one area of the Lower Hunter containing an important road base material resource.

The objectives and principles contained within the Hunter Regional Environmental Plan, 1989 and as referred to above have been considered in the following report.

### **Cessnock Local Environmental Plan 1989**

The subject land is zoned No. 1(a) – Rural “A” Zone and the relevant objective of this zone is (e) *to ensure that the type and intensity of development is appropriate in relation to:-*

- i) the rural capability and suitability of the land;*
- ii) the preservation of the agricultural, mineral and extractive production potential of the land;*
- iii) the rural environment (including scenic resources); and*
- iv) the costs of providing public services and amenities.*

The objectives and principles contained within the Cessnock Local Environmental Plan, 1989 and as referred to above have also been considered in the following report.

#### **b) The Provisions of any Development Control Plan**

The application has been considered under the Cessnock Development Control Plan (DCP) 2006 –Part C – General Guidelines Chapter 4 – Land Use Conflict and Buffer Zones.

The Plan identifies quarries as a Category C activity and recommends a minimum self-contained buffer distance of 1000 metres from Category A land uses ie dwelling houses. The plan identifies potential conflicts between these land uses as noise, dust, vibration, blast over-pressure fly-rock from blasting and disruption and contamination of ground and surface waters.

The nearest dwellings are located in excess of 1,000 metres from the existing quarry wall where the quarry operation will occur. A direct impact in terms of dust and noise and vibration however will occur for those residents of Lots 741 and 742 due to the transport to and from the site of quarry product and materials being transported to the site. The dwellings are located approximately 40 and 60 metres from the haul route however they will be adversely affected by the proposal. In order to mitigate this impact the applicant has advised that a sealed section of the haul route will be constructed in front of these dwellings.

The Plan suggests one method of reducing conflict between land uses is the compulsory acquisition of affected properties through conditions of consent.

#### **c) The Likely Impacts of that Development**

##### **Context and Setting**

The proposed development involves an application for the approval of an alternative haulage route to that originally approved for the quarry development in 1973. Although Council’s records indicate that the operation of the quarry ceased in 1993 consent for the quarry remains valid as the notion of an abandonment of an approved land use is not recognised.

The establishment of an alternative route for the gravel quarry is to take place in conjunction with the rehabilitation of the quarry. The rehabilitation plan submitted provides some information on the areas proposed to be remediated and these include the existing quarry face, the quarry floor, old haul roads, ramps and buffers.

### **Access, Transport and Traffic**

The proposed haul road consists of a gravel road approximately 2 kilometres in length passing over relatively flat terrain. From the quarry site the Crown Reserve road travels in a northerly direction for approximately 800 metres before joining Old Buttai Road. The road then turns sharply to the west and intersects John Renshaw Drive after approximately 1.15 kilometres.

In addition to the proximity of the haul road to the two (2) dwellings located on the road objection has also been received from local residents that the applicant within the EIS has provided inaccuracies concerning the proposed haul route. These are summarised as the haul route:-

- i) has been constructed illegally and without approval from the relevant authorities
- ii) that owing to a discontinuity in the Crown Reserve Road no legal access is available to Lot 75 from this road
- iii) that the access from Lot 75 along the Crown Reserve Road was located within Lot 74
- iv) the road has never been used as a gravel haul road.

In relation to these matters it should be noted that the access road had been constructed as a gravel road to provide access to the two (2) dwellings on Lots 741 and 742 as a result of a subdivision of Lot 74 DP 755260 in 1997 Council Ref. DA 150/595/44).

The remaining portion of the road (approximately 120 metres) to Lot 75 along the Crown Reserve road together with some upgrading of the road was undertaken without the consent of the Department of Lands.

The Department has been consulted and the EIS referred for comment. The Department has advised that following the subdivision referred to above *“the transfer of the Crown road to Council pursuant to Section 151 of the Roads Act 1993 is scheduled to be undertaken shortly”*. The Department further states, *“This places Council in a position to consider, determine and fulfil any obligations (past and future) under the Roads Act and the EP& AAct. It is also consistent with the transfer protocols established with Council.”*

The discontinuity referred to by local residents has also been investigated and a title search over Lot 75 has revealed that a right-of-carriageway exists over Lot 1 DP 780462 in favour of Lot 75 and thereby providing access to the subject land.

The final points made by local residents have been investigated and from Council's records it would appear that the road was used with Council approval to haul coal from Lot 75 (hence the deceleration lane on John Renshaw Drive) and only involved access through Lot 74. While no formal approval to haul gravel along the haul road is evident it would seem reasonable to assume that as both coal and gravel were available on the site then this access to a main road may have been used to transport both products. The applicant states that the present owner who became the operator of the gravel quarry in the 1980's used this haul route for a number of years albeit without a formal approval.



In conjunction with the application the applicant completed a Traffic Impact Assessment in relation to the use of the haul road which recommended that the following works be required:-

1. The construction of a dust abatement seal on the quarry access road from the quarry entrance gate for a distance of 250 metres towards Old Buttai Road.
2. The construction of a type AUR (right turn auxiliary lane) intersection at the Old Buttai Road/John Renshaw drive intersection in accordance with Austroads/RTA requirements.
3. Selective under scrubbing at the quarry access road/Old Buttai Road to improve sight distance to the east along Old Buttai Road.

Both the Roads and Traffic Authority and the Local Traffic Committee have considered the EIS and have raised no objection to the application subject to the imposition of appropriate conditions.

### **Noise, Dust and Vibration**

The proposed development has the potential to impact on the amenity of those residents in dwellings on Lot 741 and 742 and to a lesser extent to those on other rural properties in the locality. All dwellings in the area are in excess of 1 kilometre from the quarry face. However it is the times of the quarry's operation and the size and frequency of vehicles hauling material to and from the subject site which will have the most adverse impact on the existing residents in terms of noise, dust and vibration.

The proposed hours of operation of the quarry are from 7.00am to 6.00pm Monday to Saturday. The applicant has stated that truck movements will take place between the hours of 7.00am and 6.00pm and average 120 per day (60 loads) which equates to one movement every 5.5 minutes.

The applicant has advised that both the owners of Lot 741 (Stevenson's) and Lot 742 (Wheldon's) have been consulted in relation to the proposal. The Stephenson's were not supportive of the proposal due to the number of truck movements and loss of amenity to be experienced and requested additional roadworks along the haulage route if the application was to proceed. The Wheldon's were consulted and advised that in general they did not object to the proposal but also asked for additional roadworks to be undertaken on the haul route and for additional security measures to be implemented as the unauthorised provision of access into Lot 75 had resulted in antisocial behaviour in the area.

The applicant has conducted both an air quality assessment and noise assessment with respect to the nearest dwellings on Lots 741 and 742 and other dwellings in the locality in order to assess the impact of noise and dust from the use of the haul road. The following mitigation measures have been combined to ensure that there are no exceedences of acceptable levels for noise to the dwellings under the NSW Industrial Noise Policy (INP) or for particulate (dust) under the EPA criteria set down in the Approved Methods for the Modelling and Assessment of Air Pollutants NSW ( DEC 2005):-

**1. Primary Mitigation Recommendation**

A sealed section of haulage route extending from 100 metres north of Lots 741 and 742 DP 876393 (and along the western boundary of Lots 741 and 742 DP 876393 (approximately 280 metres) to 100 metres south from the subject sites' northern boundary is required to be constructed.

**2. Secondary Mitigation Recommendation**

- \* a 40 km/hour speed zone be applied to the sealed section of the haul route. (as both families have young children)
- \* signage displaying 'limit noise' and/or 'limit compression braking' is erected near the existing dwellings.
- \* effective organisation is implemented when entering and exiting the site so that trucks are not unnecessarily idling near the existing dwellings.

As the proposed transportation of materials to and from the site will have such a profound impact on the amenity of those persons residing in dwellings on Lots 741 and 742 it is proposed that in addition to the mitigation measures outlined that the owners be given the opportunity for their properties to be compulsorily acquired by the quarry owner through conditions of consent.

**Safety and Security**

The owners of Lot 42 have raised concerns about the antisocial behaviour of persons who have gained access to the quarry. In this regard the owners of the quarry will be required to put in place appropriate measures to ensure that this does not occur particularly outside the times that the quarry is operating.

**Social Impact**

The proposed development is considered to have a positive social benefit by providing an opportunity for the rehabilitation of Lot 75 which has been left in a degraded state following its use for coal mining and as a gravel quarry site since the 1940's.

Aspects of the proposal have the potential to have an adverse impact on the health and safety of the local community. However, it is considered that the exposure to such potential is for a limited duration only and that the mitigation measures proposed by the applicant together with those imposed by Council as conditions of any consent to be issued will minimise any adverse impact that may arise.

## **Economic Impact**

The subject site contains only a limited amount of gravel reserve due to the increasing depth of overburden covering the gravel and the fact that the gravel deposit dips to the south-east at an angle of approximately 5%. The economic viability of completing the extraction of the remaining reserves remains marginal but may in other ways be of value to the owner of the reserve.

The formal approval of a gravel haul route from Lot 75 to John Renshaw Drive will provide the owner and operator of the quarry with several positive economic outcomes with the most obvious being an efficient means of transporting any remaining product from the quarry to external clients.

## **Visual Impact**

As stated above in October/November 2005 Council received complaints that the present owner/operator of the quarry was undertaking earthworks in the south-eastern corner of the quarry. These earthworks were clearly visible from John Renshaw Drive and are located in the area proposed to be rehabilitated.

The EIS and Rehabilitation Plan submitted by the applicant do not address the issue of the visual impact of the rehabilitation of the highwall. The use of plant tubestock on 12 metre high benches will mean that the visual scarring of the highwall will be evident for a number of years before the plantings can be established to provide a vegetation screen.

It is noted from the consent granted to the quarry that *“the area which is being quarried is reinstated to the satisfaction of Council.....”*. In other words under the consent for the quarry Council must be satisfied with the works proposed under the rehabilitation plan. In this regard the applicant should be required to restrict the height of benches given that other quarry developments have been required to adopt bench heights of seven (7) metres (Woodbury’s Blackhill Quarry) and ten (10) metres (Darracon quarry on Lot 76 adjoining). Further details are also required from the applicant in this regard as well as further details of the quarry floor rehabilitation. As the applicant has suggested a program of progressive rehabilitation this should be linked to the progressive extraction of material from the quarry.

## **Cumulative Impacts**

The subject site contains a gravel quarry with limited remaining reserves. The site adjoins Lot 76 on which a new quarry is presently being established for a twenty (20) year term. The two quarries are held in the same ownership and are therefore likely to be operated in conjunction with one another rather than operate independently. The cumulative impact of these quarry developments are therefore likely to be minimised due to their common ownership and operation.

## **CONCLUSION:**

The proposal involves the establishment of an alternative access to an approved gravel quarry on Lot 75. The consent for the quarry was issued in 1973 and remains valid. The only condition of the consent was that the site be reinstated to the satisfaction of Council. The Rehabilitation Plan submitted requires further amendment prior to its approval by Council.

The applicant has sought Council's consent to establish an alternative haul route for the quarry in conjunction with the rehabilitation of the quarry. Only material associated with the rehabilitation (benching) of the quarry will be removed from the quarry. Any consent issued with respect to the alternative haulage route will contain only those conditions relating to the establishment of the alternative haul road and its use.

The establishment of the proposed alternative haul route will have a significant impact on the amenity of residents of Lots 741 and 742 in DP 876393 and although the applicant has proposed a number of measures to mitigate that impact it is considered of such significance that they should be provided with the opportunity to have their properties acquired by the quarry owner/operator should they wish this to occur. The establishment of the proposed haulage route is unlikely to have a significant impact on the amenity of other residents in the locality.

**RECOMMENDATION** that:-

- A) Development Application No. 8/2007/365/1 for the establishment of an alternative access to the approved quarry on Lot 75, DP 755260 Off John Renshaw Drive Blackhill be approved subject to compliance with the following conditions of consent:-**

### **SCHEDULE 1**

#### **TERMS OF CONSENT**

##### **General**

1. The proposed development shall be carried out strictly in accordance with the details set out on the application form, and the Environmental Impact Statement dated August 2007, and Noise & Air Assessments from Insite dated February 2007 and March 2007 respectively and any other information submitted in support of the application, except as modified by the conditions of this consent.

**Note:** Any proposal to modify the terms or conditions of this consent, whilst still maintaining substantially the same development to that approved, will require the submission of a formal application under Section 96 of the Environmental Planning and Assessment Act 1979 for Council's consideration. If amendments to the design result in the development not remaining substantially the same as that approved by this consent, a new development Application will have to be submitted to Council.

##### **Reason**

*To confirm and clarify the terms of Council's approval.*

2. The intersection of John Renshaw Drive and Old Buttai Road to be upgraded to a Type 'AUR' right turn treatment (designed in accordance with the RTA's Road Design Guide and the relevant Austroads guidelines) prior to the commencement of any quarrying on the site. Such intersection works shall be undertaken at full cost to the developer.

**Note 1** - The applicant will be required to enter into a Works Authorisation Deed with the RTA. In this regard the applicant is required to submit detailed design plans and all relevant additional information, as may be required in the RTA's Works Authorisation Deed documentation, for each specific change to state road network for the RTA's assessment and final decision concerning the work.

**Note 2** - The conditions of consent set by Council do not guarantee the RTA's final consent to the specific road work, traffic control facilities and other structures works on the classified road network. The RTA must provide a final consent for each specific change to the state road network prior to the commencement of any work.

Reason

*To ensure that a safe and efficient means of access is available to and from the quarry site via the State Road prior to the commencement of quarrying/rehabilitation activities.*

3. All gravel material to be transported from the quarry shall be from benching operations only associated with the proposed quarry rehabilitation and no further expansion of the quarry is to be undertaken.

Reason

*To confirm the terms of consent.*

4. a) The applicant shall:-
  - (i) within twenty eight (28) days of the date of this consent, serve upon the owners of Lot 741 and Lot 742 DP 876393 adjoining the subject land a copy of this condition.
  - (ii) Upon receipt of a request to purchase within six (6) months from the commencement of commercial operation of the quarry from the owners of Lot 741 and Lot 742 DP 876393 purchase the property.
  - (iii) Pay not less than market value having regard to the existing use of the land immediately prior to the date of development consent and as if unaffected by the proposed development.
  - (iv) Pay reasonable costs, if any, of the claimant in respect of expenses for legal advice and representation and expert witnesses in determining the value of the property and the terms of acquisition.
- b) Where agreement as to acquisition details cannot be reached between the applicant and the relevant land owner within 6 months of the date of the applicant having received a request to purchase, then:-
  - (i) either party may refer the matter to the Council who shall arrange through the President of the Australian Institute of Valuers for an independent valuation of the relevant property to be undertaken in order to determine current market value as of the land was not affected by the proposed development, and reasonable costs and compensation referred to in (a) (iv) and (v) above;

- (ii) the applicant shall bear the costs of the valuation arranged by the Council'
- (iii) following receipt of advice of such valuation, the applicant shall offer to purchase the relevant property at a price of not less than the said valuation.

Should the applicant's offer to purchase under part (iii) not be accepted by the relevant landowner within 6 months of the date of such offer, the applicant's obligations pursuant to this condition shall cease in respect of the land subject of that offer.

Reason

*To provide the owners of Lots 741 and 742 DP 876393 with an opportunity for their properties to be compulsorily acquired by the owner of the quarry should they wish for this to occur.*

Access, Car parking and Loading Arrangements

- 5. All access crossings and driveways shall be maintained in good order for the life of the development.

Reason

*To ensure that a safe adequate all-weather access is available to the development.*

**PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE**

Access, Car Parking & Loading Arrangements

- 6. The registered proprietors shall reconstruct the existing all-weather access road from the property boundary to the quarry site to a Category "B" standard with a 6m wide carriageway and 1m wide road shoulders and a dust abatement seal for the first 150m from the property boundary in accordance with Council's 'Engineering Requirements for Development' Pt 4.5.13 (available at Council offices). Full details shall be submitted to and approved by Council prior to release of the Construction Certificate for the Haul Road.

Reason

*To ensure the provision of safe, adequately defined and properly constructed means of vehicular access from the road to the development.*

7. The registered proprietors of the land shall construct the following works within Old Buttai Road from John Renshaw Drive to the intersection of the Crown Road in accordance with Council's 'Engineering Requirements for Development' and set out on a set of plans, four (4) copies of which are to be submitted to and approved by council's Development Services Manager prior to the release of the Construction Certificate for the Haul Road.
- (a) Construct and gravel road pavement with 6m wide carriageway and 1m wide road shoulders
  - (b) Place two (2) coat hot bitumen seal 6m wide for the first 200m from John Renshaw Drive.
  - (c) An 80km/h speed limit is to be posted.
  - (d) Construct drainage works

Full engineering pavement design in accordance with ARRB Special Report No. 41 is to be submitted for assessment.

Reason

*To ensure that adequate and safe all-weather access is available to the development.*

8. The registered proprietors of the land shall construct the following within the Crown Road extending from the subject property boundary north for a distance of 380 metres (being the combined frontage of Lot 741 and 742 and 100 metres north of Lot 741) in accordance with Council's policy "Road standards for Crown Road Transfers" and Council's 'Engineering Requirements for Development' and set out on a set of plans, four (4) copies of which are to be submitted to and approved by council's Development Services Manager prior to the release of the Construction Certificate for the Haul Road.
- (a) Construct and gravel 320mm road base with a 6m wide carriageway and 1m wide road shoulders
  - (b) Place two (2) coat bitumen seal 6m wide for the full length.
  - (c) Selective under scrubbing works to improve sight distance at the Quarry Road/ Old Buttai Road intersection.
  - (d) Signage displaying "limit noise" and/or "limit compression braking" being erected near the existing dwellings on lot 741 and 742 DP 876393 adjacent to the entrance to the quarry.
  - (e) Construct drainage works
  - (f) Signage for an enforceable 40km/hour speed zone on the sealed sections of the haulage route in the vicinity of Lots 741 and 742 DP 876393.

Reason

*To ensure that adequate and safe all-weather access is available to the development.*

9. All driveways, access corridors and car parking areas are to be designed in accordance with AS2890.1 & 2 - Parking Facilities. The car parking areas shall be constructed with a base course of adequate depth to suit design traffic loadings with an all weather surface treatment, graded and drained in accordance with Council's 'Engineering Requirements for Development'.

Reason

*To ensure the orderly and efficient use of on-site parking facilities and ensure that adequate provision is made on-site for the loading and unloading of goods.*

Drainage and Flooding

10. Any alterations to existing surface levels on the site shall be undertaken in such a manner as to ensure that no additional surface water is drained onto or impounded on adjoining properties. Full details of existing and proposed surface levels shall be submitted to and approved by Council prior to release of the Construction Certificate.

Reason

*To ensure that such alterations to surface levels do not disrupt existing stormwater flows in the vicinity.*

Site Works

11. A construction management plan shall be submitted with the application for the Construction Certificate. The management plan shall include:

- (a) Details of sedimentation and erosion control
- (b) Details of provision of truck and machinery wash down areas. **Note:** All trucks and machinery must be free from all foreign material where such material is likely to cause pollution.
- (c) Details of dust mitigation on construction sites and access roads
- (d) Location and phone number of the site office
- (e) Details regarding provision of areas set aside for the stockpiling of:
  - (i) Topsoil
  - (ii) Raw materials such as sand, soil, mulch and the like
  - (iii) Details regarding the provision of facilities for workers associated with the development.

**Note:** All protection and control of earthworks shall be carried out in accordance with Council's "Engineering Requirements for Development", Department of Conservation and Land Management's 'Urban Erosion and Sediment Control' requirements and the Department of Housing 'Soil and Water Management for Urban Developments'.

Reason

*To reduce the environmental impact on the site during the construction period.*

**DURING CONSTRUCTION**

General

12. The registered proprietor of the land shall be responsible for all costs incurred in the necessary relocation of any services affected by the required construction works. Council and other service authorities should be contacted for specific requirements prior to commencement of any works.

Reason

*To ensure that any required alterations to utility infrastructure are undertaken to acceptable standards at the developer's cost.*



Site Works

13. All reasonable measures shall be taken to protect all other vegetation on the site from damage during construction. All useable trees and shrubs shall be salvaged for re-use, either in log form, or as woodchip mulch for erosion control or site rehabilitation.

Reason

*To protect the landscape and scenic quality of the locality, to maintain ground surface stability and to ensure sensitive management of vegetation and other natural resources.*

14. The control of erosion and the prevention of silt discharge into drainage systems and waterways will be necessary in accordance with Council's "Engineering Requirements for Development", Department of Conservation and Land Management's 'Urban Erosion and Sediment Control' requirements and the Department of Housing 'Soil and Water Management for Urban Developments'. Erosion control measures are to be implemented prior to the commencement of any earthworks and shall be maintained until satisfactory completion and restoration of site earthworks, including revegetation of all exposed areas.

Reason

*To ensure protection of the environment by minimising erosion and sediment.*

Scheduling of Inspections

15. The applicant is to advise Subdivision and Engineering Co-Ordinator at least 48 hours prior to commencement of any construction works on site or associated with the site, together with the approved contractor's name and address.

Reason

*To enable orderly scheduling of inspections.*

**PRIOR TO OCCUPATION & OPERATION**

16. Prior to the issue of an Occupation Certificate the applicant shall provide Council with a Compliance Certificate which confirms that the Haul Road and associated works have been constructed strictly in accordance with the provisions of the Development Consent and Construction Certificate.

Reason

*To ensure that Haul Road works have been constructed in accordance with the Development Consent and Construction Certificate*

17. The registered proprietor of the land shall prepare a Plan of Management for the maintenance of the Haul Road to minimise noise, dust nuisance, soil erosion and all other relevant environmental matters. The Plan of Management shall set out the operational parameters for the inspection and maintenance requirements and time intervals for such inspection and maintenance. The plan shall be submitted to and approved by Council for approval prior to the issue of an Occupation Certificate.

Reason

*To ensure the on-going maintenance and operation of the on-site stormwater detention facilities in accordance with the approved design.*

**ADVICE**

1. The applicant shall lodge payment of fees and contributions as follows:-

Based on a road length of approximately 730 metres. Final bond amounts will be levied on accurate dimensions contained within the engineering plans.

- (i) Road fees - engineering plan checking and supervision of \$5,208.00.
- (ii) A performance bond of a minimum of \$1000 or 5% of the contract construction costs, whichever is greater (transferable).
- (iii) A road maintenance bond of a minimum of \$1000 or 5% of the contract construction costs, whichever is greater (refundable).

It will be necessary for the applicant to submit evidence of the contract price of all construction works in order for Council to assess accurate bond amounts. If no contract price is submitted, Council will estimate the value of construction works.

The fees and bonds shall be payable prior to release of the Construction Certificate for the Civil Works shall be in accordance with Council's adopted fees and charges current at the time of payment.

Reason

*To meet costs associated with the approval of engineering plans and inspection of construction works.*

- B) Having regard to the requirement under the original consent for the gravel quarry (Development Application No. D74/73/3 dated 2<sup>nd</sup> March 1973) for the reinstatement of the site to the satisfaction of Council the applicant be advised that Council will require the submission of a revised Rehabilitation Plan for its consideration incorporating the following amendments prior to its acceptance of the Plan:-**
- a) **The Rehabilitation Plan to address the visual impact of the quarry when viewed from John Renshaw Drive.**
  - b) **A reduction in the height of the proposed benching of the quarry face or justification as to why a height of 12 metres for the benching is considered appropriate having regard to bench heights approved for similar quarries in the Cessnock Local Government area.**
  - c) **The proposed program of progressive rehabilitation intended for the quarry to be linked to the progressive extraction and production of gravel materials from the quarry.**
  - d) **Further details being provided of the quarry floor rehabilitation.**
- C) A Liaison Committee comprising Ward D Councillors the Mayor and appropriate Council officers be established to monitor progress of the operation of the haul road and rehabilitation of the quarry and shall meet on a bi-yearly basis or as determined by Council.**

To: **The General Manager**  
Corporate & Regulatory Services  
Committee - 12 December 2007

**D FITZGERALD**  
**ACTING DIRECTOR CORPORATE &**  
**REGULATORY SERVICES**  
25 November 2007

**MOTION**      **Moved:**      Councillor Smith      **Seconded:**      Councillor Davey  
797 (12/12/2007)

**RECOMMENDED** that Development Application No. 8/2007/365/1 for the establishment of an alternative access to the approved quarry on Lot 75, DP 755260 Off John Renshaw Drive Blackhill be **DEFERRED** until the next meeting of Council, due to the report being the subject of an address to Council earlier in the evening.

**CARRIED**

**MOVED**      **Moved:**      Councillor Besoff      **Seconded:**      Councillor Smith  
806 (23/1/2008)

**RECOMMENDED** that Development Application No. 8/2007/365/1 for the establishment of an alternative access to the approved quarry on Lot 75, DP 755260 Off John Renshaw Drive Black Hill be **DEFERRED** to allow Council Officers to facilitate consultation with the residents concerned together with the developer and arrange a site inspection.

**CARRIED**

**Please note that due the size of the enclosure document for this deferred report it is not contained within this meetings enclosure documents as they have previously been issued on 2 occasions. They are available on Council's website for those who wish to access.**

**ACTING DIRECTOR CORPORATE & REGULATORY SERVICES**  
**REPORT NO. 116/2007**

**DEVELOPMENT APPLICATION NO:** 5/1995/80124/3  
**APPLICANT:** DAROMIN ENGINEERING PTY LTD  
**OWNER:** DAROMIN ENGINEERING PTY LTD  
**PROPERTY:** LOTS 76, 77 & 84 DP 755260, LOTS 1 & 2 DP 34957, LOT 3 DP 809377 AND LAND IN DP 977069 LINGS ROAD AND GEORGE BOOTH DRIVE BLACKHILL  
**AREA:** 131 HECTARES (LOT 76 ONLY)  
**ZONING:** RURAL 1(A)  
**PROPOSAL:** APPLICATION TO AMEND DEVELOPMENT CONSENT 118/695/124

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Senior Planning Assessment Officer, Mr Rod Sandell, reports:

**SUMMARY:**

Application has been received for an amendment to the consent for Development Application No. 118/695/124 granted by the Land & Environment Court on 28 August 1997. The amendment seeks approval to modify or remove several conditions of the consent relating to the provision of a seventy (70) metre buffer between the subject land and Lot 75 immediately adjoining to the west. The basis on which the amendment is made is that the applicant/owner has now acquired Lot 75 and an adjoining Lot 42 and therefore the buffer is no longer required.

The application represents an amendment to a designated development and was advertised in accordance with the Act. A total of twenty nine (29) submissions were received from local residents in the area objecting to the proposed development.

It is considered that the proposal which involves a minor extension to the approved quarry area will be unlikely to have any significant increase in environmental consequences. The application is therefore recommended for approval.

**PROPOSAL:**

The applicant/owners of the subject land have advised that they have received written approval from Land and Property Information to compile a plan of consolidation for Lots 75 and 76. The applicant therefore requests the following amendments to the consent:-

- modification to Conditions 1; and
- a minor extension of the approved quarry area (1.2 hectare area of the buffer)

The amendment to Condition 1(imposed by Council and enforced by Court) involves the following:

- removes the 70 metre buffer to boundary of Lot 75 (maintained for all other boundaries to the site),
- allows construction and operation of the quarry to encroach below the 100 metre contour line only on the current boundary with Lot 75.

A request for the deletion of Condition 13A (imposed by the Land & Environment Court), which requires that the boundary between 75 and 76 be surveyed and pegged for the life of the development has been withdrawn.

**BACKGROUND:**

The original application for the development of a gravel quarry on Lot 76 was lodged with Council in August 1990 via Development Application No. 118/690/165. Consent to the proposal was granted by Council on 24 August 1993 but was subject to an appeal in the Land and Environment Court. The application was deemed to be refused by the Court as it was considered by the Court that among other issues the haul route via Lings Road was unacceptable.

Development Application 118/695/124 was made on 9 June 1995 and maintained the same quarry plan as that previously consented to by Council but indicated that the haul route from the quarry would be located to the south following an existing fire trail and public road reserve until it intersected with George Booth Drive.

During consideration of this application, reference to a buffer was first discussed in the Council report 151/1996 (11 December 1996). In relation to the impact on Lot 75 from blasting (flyrock) the report states:

*“In the absence of an existing buffer zone, a condition requiring purchase of Portion 75 will be imposed should the owner wish to take advantage of it. From Council’s point of view, the conditions able to be imposed, and the relative importance of the resource to the community as a whole, mean that this is the only fair way to address what is an imposition on one particular landowner “.*

The report acknowledged a need for a buffer to Lot 75 but did not specifically mention Lot 42 or any other lots. This report did not include a condition requiring a buffer, but imposed a condition requiring the owners of Lot 76 to purchase Lot 75 should the owners of 75 wish.

Following consideration of this report, Council resolved that the matter be “deferred pending the receipt of legal advice and further clarification”.

On 19 March 1997 the DA was reported back to Council (Council report 24/1997).

In relation to buffer zones. The report stated that the properties most affected are Lot 75 and, to a lesser extent Lot 42. An assertion from the owner of Lot 42 that this property was being “ignored” in terms of the quarries impact (and associated requirement to purchase) was not accepted by Council officers. In the 1996 report no other properties were identified as needing to be purchased, however the report states that the “*impact on each Lot including Lot 42 has been addressed through the assessment of Section 90 heads of consideration and acceptable limits according to advice received from Statutory Authorities*”.

Discussions were held with the Buttai Community Group and Black Hill Environment Protection Group and a submission from this group was annexed to the Council report. These groups were given the opportunity to review the proposed conditions of consent and provide comment.

In regard to the 70 metre buffer the groups “*welcomed the inclusion of a buffer zone and endorse the comments made on page 2 of ESR 24/1997*”, which in part state that the 70 metre clear buffer zone, in which no activity takes place between the quarry and the surrounding lots/portions, would help address residents concerns. The report further states:

*“it also keeps quarrying operations an adequate distance from the existing high wall and maintains a natural wall of material and vegetation which will assist in visually and acoustically screening the proposal from adjacent properties.”*

The submission also requested that Lot 42 be included within Condition 12 which required the owners of the quarry to purchase Lot 75. Condition 12 was amended to include Lot 42. Condition 1 also imposed a 70 metre buffer zone to any adjoining lot or portion. The consent was issued to the applicant on 7 April 1997.

### **1997 Appeal to Land & Environment Court**

An Appeal was lodged by Beanie and Myrtle Jones (then owners of Lot 75) with the Land & Environment Court on 21 May 1997, against Council's decision to grant consent to the quarry. This appeal was resolved on 28 August 1997 by consent orders and resulted in an amendment to Condition 13 and the introduction of a new Condition 13A. The underlying intent of the appeal and resultant conditions was that the owners of Lot 75, 40 and 42 could have the opportunity to comment on the quarry operation plan before Council approved it.

### **SITE DESCRIPTION:**

The subject site consists of a principle lot (Lot 76) having an area of 131 hectares together with a number of lots owned by Coal and Allied through which access to George Booth Drive has been constructed. Lot 76 is rectangular in shape and the approved quarry site is located on an elongated ridge or spur running in a south-west to north-east direction. The maximum elevation of the ridgeline is 120m AHD rising up from a height of approximately 50 AHD. The land is predominantly covered in an open Eucalypt forest on moderate to very steep slopes.

### **PUBLIC EXHIBITION:**

The proposed amendment to the designated development was advertised for an initial period of thirty (30) days from 22 September 2007 until 23 October 2007. This period was extended during the exhibition period until 9 November 2007. A total of twenty nine (29) submissions were received from residents of the Blackhill area.

A submission was received from the two (2) community groups involved (The Black Hill Environment Protection Group and The Buttai Community Development Group) together with submissions from other owners of properties in the locality. In summary the local community's' objections have been based around the following nine (9) themes:-

- 1) The application is based on false information and fails to address our previous concerns.
- 2) The modification is not "substantially the same development" as that approved by Council and the Land & Environment Court and should not be considered under the provisions of s.96AA of the EP & A Act.
- 3) The purpose of Condition 13A is misrepresented (which is essentially: "keeping the bastards honest) and this condition should be retained.
- 4) No justification is provided for this Modification and Council should not consider supporting the proposed amendments to conditions based on the information provided by the applicant.
- 5) Consolidation of Lots 75 and 76 would allow the operation of a "super-quarry", the impact of which has never been addressed. If the consolidation occurs, it would require a new comprehensive Environmental Assessment and the development of a single, integrated Environmental Management Plan.
- 6) The land owner has consistently shown non-compliance with the existing conditions of consent and we have concerns about ongoing compliance.

- 7) Other local and regional changes have occurred that justify tightening rather than loosening the conditions of consent.
- 8) Consideration of Clause 36 of Schedule 3 of the EP & A Regulation 2000.
- 9) Issues raised in Community Groups' March 15 objection that have not been adequately addressed.

These matters will be addressed in the following report.

### **STATUTORY CONTEXT**

The proposed development involves alterations to a designated development consent under Section 96(2) of the EP & A Act 1979. In order for Council to consider the application under this provision it must be satisfied that the alterations are “*substantially the same development*”. This matter has been investigated having regard to the concerns raised by local residents and it has been concluded that it is appropriate to consider the application under Section 96(2) of the Act.

In addition, Council must also determine under Schedule 3 Part 2 of the EP&A Regulations 2000 whether the alterations are designated development: Schedule 3 provides that if the consent authority is of the opinion that the alterations and additions do not significantly increase the environmental impacts of the total development compared with the approved development, the application is not designated development.

In forming its opinion as to whether or not development is designated development, a consent authority is to consider:

- (a) the impact of the existing development having regard to factors including:
  - (i) previous environmental management performance, including compliance with the conditions of any consents, licences, leases or authorisations by a public authority and compliance with any relevant codes of practice, and
  - (ii) rehabilitation or restoration of any disturbed land, and
  - (iii) the number and nature of all past changes and their cumulative effects, and
- (b) the likely impact of the proposed alterations or additions having regard to factors including:
  - (i) the scale, character or nature of the proposal in relation to the development, and
  - (ii) the existing vegetation, air, noise and water quality, scenic character and special features of the land on which the development is or is to be carried out and the surrounding locality, and
  - (iii) the degree to which the potential environmental impacts can be predicted with adequate certainty, and
  - (iv) the capacity of the receiving environment to accommodate changes in environmental impacts, and
- (c) any proposals:
  - (i) to mitigate the environmental impacts and manage any residual risk, and
  - (ii) to facilitate compliance with relevant standards, codes of practice or guidelines published by the Department or other public authorities.

## **Comments**

In relation to the matters raised above the following points are made:-

- a) The applicant company is well recognised in the field of road building and earthwork constructions and has owned and operated a number of gravel quarries in the Lake Macquarie area eg at Belmont, Boolaroo and Fennell Bay most of which have been rehabilitated. The company presently operates from the Stockrington quarry in Council's area and has done so for a number of years without complaint.

The company has commenced the initial stages of quarrying on Lot 76 and Council has recently conducted an audit of the consent conditions relating to the quarry's operation. The audit identified a number of conditions of consent that were outstanding and many of these have now been addressed by the company. Council is seeking the ongoing cooperation of the company to ensure compliance with the consent conditions as the quarry is further developed to the stage where it is transporting its gravel product to external clients.

- b) The proposed removal of the buffer area adjoining Lot 75 results in an additional area of 1.2 hectares being cleared and used for quarry compared to the eleven (11) hectare approved quarry site on Lot 76 ie approximately 10%. On the adjoining Lot 75 the area previously developed for quarrying is approximately 46 hectares.

The potential environmental impacts of the quarrying of the additional 1.2 hectares can be predicted with some certainty as these impacts were appropriately assessed for the approved quarry and considered to comply with acceptable noise, dust, vibration and other limits suggested by Statutory Authorities. Any requirement to seek a comprehensive review of the environmental studies previously undertaken for the quarry is considered to be unwarranted and unreasonable having regard to the scale of the proposed addition to the quarry and its likely impact when compared to that of the overall development.

- c) Approval of the additional 1.2 hectare quarry area would be subject to the conditions of the existing consent which contains conditions to mitigate the environmental impacts, manage any residual risk, and facilitate compliance with relevant standards set down by the appropriate authorities. It is appreciated that the application may involve minor amendments to management systems that have been proposed. For example the removal of the buffer will aid water management by providing more room for sediment structures and minor revisions to the water management plan would be required.

While it is considered that the proposed amendments to the consent do not significantly increase the environmental impacts of the total development compared with the approved development, given the history of the site, the community interest in the amendment and the significant neighbour objection previously received it was considered appropriate for the notification period to be extended in line with that required for designated development to ensure interested parties had adequate opportunity to review the amendments and provide their comments to Council.



**PLANNING ASSESSMENT:**

All *heads of consideration* detailed under Section 79C of the Environmental Planning and Assessment Act, 1979, as amended, have been taken into consideration in the assessment of this application with the following matters of particular relevance:

**b) The Provisions of any Environmental Planning Instrument**

**Hunter Regional Environmental Plan, 1989.**

The primary objective of this plan is to *'promote the balanced development of the region, the improvement of its urban and rural environments and the orderly and economic development and optimum use of its land and other resources, consistent with conservation of natural and man made features and so as to meet the needs and aspirations of the community.'* (Clause 2)

This objective proposes to regulate activities to ensure that reserves of coal, other mineral resources and low cost extractive resources such as sand, gravel, clay and the like are developed to their full potential.

Clause 39 of the Plan provides the following objectives in relation to planning strategies concerning extractive materials:-

- d) manage the coal and other mineral resources and extractive materials of the region in a co-ordinated manner so as to ensure that adverse impacts on the environment and the population likely to be affected are minimised;
- e) ensure that development proposals for land containing coal and other mineral resources and extractive materials are assessed in relation to the potential problems of rendering those resources unavailable; and
- f) ensure that the transportation of coal and other mineral resources and extractive materials has minimal adverse impact on the community.

The Plan also identifies the following development control matters that Council's should consider when determining applications for extractive industries (Clause 41) :-

- h) the conservation value of the land concerned and apply conditions which are relevant to the appropriate past mining and extractive land use.
- i) Consult with offices of relevant State Government departments to determine appropriate post-mining or extraction land uses.
- j) Ensure the progressive rehabilitation of the extracted area.
- k) Minimise the extent and impact of the final landform.
- l) Minimise any adverse effect of the proposal on groundwater and surface water quality.
- m) Review any likely impacts on air quality and the acoustical environment.
- n) Be satisfied that an environmentally acceptable mode of transport is available.

The Plan also identifies in a map (Map 4(a)) that the Blackhill area is one area of the Lower Hunter containing an important road base material resource.

The objectives and principles contained within the Hunter Regional Environmental Plan, 1989 and as referred to above have been considered in the following report.

### **Cessnock Local Environmental Plan 1989**

The subject land is zoned No. 1(a) – Rural “A” Zone and the relevant objective of this zone is (e) *to ensure that the type and intensity of development is appropriate in relation to:-*

- v) *the rural capability and suitability of the land;*
- vi) *the preservation of the agricultural, mineral and extractive production potential of the land;*
- vii) *the rural environment (including scenic resources); and*
- viii) *the costs of providing public services and amenities.*

The objectives and principles contained within the Cessnock Local Environmental Plan, 1989 and as referred to above have also been considered in the following report.

#### **b) The Provisions of any Development Control Plan**

The application has been considered under the Cessnock Development Control Plan (DCP) 2006 –Part C – General Guidelines Chapter 4 – Land Use Conflict and Buffer Zones.

The Plan identifies quarries as a Category C activity and recommends a minimum self-contained buffer distance of 1000 metres from Category A land uses ie dwelling houses. The plan identifies potential conflicts between these land uses as noise, dust, vibration, blast over-pressure fly-rock from blasting and disruption and contamination of ground and surface waters.

The nearest dwellings are located in excess of 1,000 metres from the reduced buffer area under the Section 96 application. Given the existing setback to the new dwellings is outside the 1,000 metre buffer zone, it is likely that the impact on these dwelling will be within acceptable limits.

Having regard to the proposed modification with reference to the above matters, it is considered that the removal of the buffer for approximately 150 metres adjacent to the boundary of Lot 75 will not result in a significant increase in the environmental impacts of the development. It is appreciated that this will involve the removal of the 100 metre contour restriction in this locality.

#### **c) The Likely Impacts of that Development**

##### **Context and Setting**

The 70 metre buffer was imposed on the development as a condition of consent and was in addition to conditions requiring satisfaction of acceptable noise, dust, vibration and other limits suggested by Statutory Authorities and imposed through conditions. The maintenance of the buffer to all adjoining boundaries apart from Lot 75 should maintain the intent of the original condition which was to assist in visually and acoustically screening the proposal from adjacent properties.

However, since the original quarry consent was issued in 1997, Council has granted consent to at least three (3) dwelling houses to the north and northwest of the subject site. These dwellings are located at Lot 42 (Brooks DA 2005/663 replacing an existing dwelling), Lot 141 (Stevenson DA1999/1019 & 2005/10) and Lot 142 (Weldon DA2000/1044).

All three (3) dwellings are located over 1,000 metres from the reduced buffer area proposed under the s96 application and therefore it is likely that the environmental impacts on these dwellings in terms of noise, dust and vibration will be within acceptable limits .

### **Visual Impact**

The applicant has undertaken a visual analysis of the area where the additional 1.2 hectares will be quarried in order to assess any visual impact of the addition from adjoining properties or public roads such as John Renshaw Drive. The visual scarring in evidence from John Renshaw Drive is associated with the quarry development on Lot 75 and this area will be subject to rehabilitation under Development Consent No. 8/2007/365/1 presently before Council. It is concluded that the additional area to be quarried will be unlikely to cause additional impacts on the visual amenity of the surrounding rural landscape.

### **Fauna and Flora**

The application for additional quarry area has been considered for its impact on flora and fauna under the Environment Protection and Biodiversity Conservation Act 1999 and a Seven (7) Part Test has been conducted under the Threatened Species Conservation Act 1995. The site has also been investigated of potential and core Koala habitat in accordance with State Environmental Planning Policy No.44 – Koala Habitat Protection. No endangered ecological communities were identified within the site and no threatened flora species were identified on site. Four (4) threatened fauna species were recorded in the surrounding land during previous investigations and while it was concluded that the impact to potential local populations of threatened species would not be significant several mitigation measures were proposed to reduce ecological impacts.

### **CONCLUSION:**

The present application represents an amendment to a designated development and has been advertised in accordance with the Act as designated development to enable local residents the opportunity to comment on the application. Substantial objection has been received from the local community seeking a comprehensive review of the environmental impacts of the proposed amendment involving the removal of a portion of the 70 metre buffer between the approved quarry and the boundary with Lot 75. Having regard to the scale and nature of the additional area to be quarried together with the detailed assessment that was undertaken for the original quarry development it is considered that this is not warranted.

The amended application has adequately been assessed and it is considered that the proposal which involves a minor extension to the approved quarry area will be unlikely to result in any significant increase in environmental consequences for the natural environment or for local residents.

**RECOMMENDATION** that Council grant consent pursuant to Section 96 of the Environmental Planning and Assessment Act, 1979 to the following modifications to Development Consent No. 118/695/124/3 for the gravel quarry, haulage route and associated works on Lots 76, 77 and 84 DP 755260, Lots 1 and 2 DP 34957, Lot 3 DP 809377 and land in DP 977069 Lings Road and George Booth Drive, Buttai.

**Condition 1**

*'The development is to be carried out generally in accordance with the proposal set out in the Environmental Impact Statement, the Addendum Report dated March 1996, the Archaeological Survey dated July, 1996 and the document titled "Response to Issues Raised by Cessnock City Council" dated September 1996, provided by E.R.M. Mitchell McCotter Pty. Ltd., and as modified by the following conditions of consent.*

*At no time during construction or operation of the quarry is it to encroach and closer than 70 metres to the common boundary of any adjoining lot or portion or the 100m contour line where it exceeds that distance. This separation distance is to be indicated in the detailed quarry plan to be submitted to Council, and is to remain clear of any development other than dams for control of runoff water, sedimentation control structures and the like. Initial plant and amenities are also not to be located within this 70 metre buffer. A quarry operation plan identifying this buffer zone is to be submitted to Council for approval as set out in Condition 13.'*

**Proposed modification to Condition 1**

'The development is to be carried out generally in accordance with the proposal set out in the Environmental Impact Statement, the Addendum Report dated March 1996, the Archaeological Survey dated July, 1996, the document titled "Response to Issues Raised by Cessnock City Council" dated September 1996, provided by E.R.M. Mitchell McCotter Pty. Ltd., and the details of the Section 96 Modification contained within the Buttai Quarry – Section 96 Modification document prepared by ERM dated June 2007 and as modified by the following conditions of consent.'

At no time during construction or operation of the quarry is it to encroach and closer than 70 metres to the common boundary of any adjoining lot or portion. This buffer does not apply to the boundary with the existing Lot 75.

At no time during construction or operation of the quarry is it to encroach below the 100m contour line except on the current boundary with Lot 75. This separation distance is to be indicated in the detailed quarry plan to be submitted to Council, and is to remain clear of any development other than dams for control of runoff water, sedimentation control structures and the like. Initial plant and amenities are also not to be located within this 70 metre buffer. A quarry operation plan identifying this buffer zone is to be submitted to Council for approval as set out in Condition 13.'

To: **The General Manager**  
Corporate & Regulatory Services  
Committee - 12 December 2007

**D FITZGERALD**  
**ACTING DIRECTOR CORPORATE &**  
**REGULATORY SERVICES**  
28th November 2007

**MOTION**                    **Moved:**        Councillor Smith                    **Seconded:**        Councillor Davey  
797 (12/12/2007)

**RECOMMENDED** that Development Application No. 5/1995/80124/3 for the modifications to Development Consent No. 118/695/124/3 for the gravel quarry, haulage route and associated works on Lots 76, 77 and 84 DP 755260, Lots 1 and 2 DP 34957, Lot 3 DP 809377 and land in DP 977069 Lings Road and George Booth Drive Buttai be **DEFERRED** until the next meeting of Council, due to the report being the subject of an address to Council earlier in the evening.

**CARRIED**

**MOVED**                    **Moved:**        Councillor Besoff                    **Seconded:**        Councillor Smith  
806 (23/1/2008)

**RECOMMENDED** that Development Application No. 5/1995/80124/3 for the modifications to Development Consent No. 118/695/124/3 for the gravel quarry, haulage route and associated works on Lots 76, 77 and 84 DP 755260, Lots 1 and 2 DP 34957, Lot 3 DP 809377 and land in DP 977069 Lings Road and George Booth Drive Buttai be **DEFERRED** to allow Council Officers to facilitate consultation with the residents concerned together with the developer and arrange a site inspection.

**CARRIED**

**Please note that due the size of the enclosure document for this deferred report it is not contained within this meetings enclosure documents as they have previously been issued on 2 occasions. They are available on Council's website for those who wish to access.**

## OFFICER'S REPORTS

### ACTING DIRECTOR CORPORATE & REGULATORY SERVICES REPORT NO. 6/2008

**SUBJECT: INVESTMENTS**

Financial & Administrative Services Manager, Mr Robert Maginnity, reports:

Details of investments held by Council as at 31 January 2008 are set out below:

Inv. No.	Amount \$'000	Instrument	Term	Coupon Date	Maturity Date	Interest Rate %	Interest to Date \$	Form Held With
	2,335	CASH						Commonwealth Bank of Australia
1001n	500	FRN	92	27/02/2008	27/11/2008	8.98%	7,996	Greater Building Society
1010n	500	FRN	91	17/03/2008	15/12/2008	9.03%	5,566	Wide Bay Capricorn Bldg Society
1020n	1,000	CDO	92	5/02/2008	5/05/2008	9.07%	21,607	Credit Suisse First Boston Int.
1029n	1,500	CDO	92	5/02/2008	5/05/2008	9.07%	32,410	Credit Suisse First Boston Int.
1057l	1,000	FRN	91	12/03/2008	12/03/2008	10.09%	13,822	Savings & Loans Credit Union
1069l	2,000	CDO	92	8/04/2008	8/10/2011	9.12%	11,998	RIMsec
1102h	500	AN	91	17/03/2008	16/12/2010	7.50%	0	Commonwealth Bank of Australia
1125	500	MF	526	29/02/2008	N/A	1.51%	10,281	RIMsec
1126d	500	AN	92	6/02/2008	6/11/2011	9.25%	10,897	Commonwealth Bank of Australia
1132e	500	CDO	91	20/03/2008	20/12/2009	8.30%	4,774	JP Morgan Chase Bank
1133a	1,000	ELD	364	22/12/2008	20/12/2009	7.87%	8,191	Commonwealth Bank of Australia
1138	500	ELD	366	5/03/2008	5/10/2010	3.33%	15,145	Commonwealth Bank of Australia
1142c	1,000	CDO	91	20/03/2008	20/03/2011	8.60%	9,892	Lehman Brothers
1143a	500	ELD	365	30/06/2008	30/03/2013	9.60%	28,142	ANZ Banking Group
1146b	1,000	CDO	91	20/03/2008	20/06/2010	8.30%	9,549	Merill Lynch International
1147	500	ELD	366	5/06/2008	7/10/2010	7.31%	24,033	Commonwealth Bank of Australia
1149c	500	TD	84	17/04/2008	17/04/2008	7.37%	707	Newcastle Permanent Building Society
1150c	500	TD	84	10/04/2008	10/04/2008	7.31%	1,402	Newcastle Permanent Building Society
1159a	500	TD	91	24/04/2008	24/04/2008	7.38%	708	Illawarra Mutual Building Society
1161	500	TD	50	20/03/2008	20/03/2008	7.33%	100	Illawarra Mutual Building Society
1162	500	TD	57	27/03/2008	27/03/2008	7.36%	101	Newcastle Permanent Building Society
1163	1,000	TD	64	3/04/2008	3/04/2008	7.23%	198	National Australia Bank
1164	500	TD	71	10/04/2008	10/04/2008	7.70%	105	Maitland Mutual Building Society
1165	500	TD	78	17/04/2008	17/04/2008	7.43%	102	Illawarra Mutual Building Society
1166	500	TD	85	24/04/2008	24/04/2008	7.46%	102	Newcastle Permanent Building Society
1167	1,000	TD	92	1/05/2008	1/05/2008	7.70%	211	Maitland Mutual Building Society
	<u>21,335</u>						<u>218,039</u>	

**Glossary**

AN	-	Accrual Note
CDO	-	Collateralised Debt Object
CP	-	Commercial Paper
ELD	-	Equity Linked Deposit
FRN	-	Floating Rate Note
MF	-	Managed Fund
TD	-	Term Deposit

Weighted Average Return on Portfolio (Year to Date)	7.49%
Average 90 day BBSW (Year to Date)	6.96%

Interest on investments matured so far in 2007/08	534,952
Interest on above investments	<u>218,039</u>
	<u>752,991</u>

N.B. This amount includes investment returns on Section 94 and Waste Services Funds.

<b>Percentage</b> <b>Financial Institution Summary</b>	<b>Amount Held</b>	
	<b>\$'000</b>	<b>of Total</b>
Commonwealth Bank of Australia	5,335	25.01%
Credit Suisse First Boston Int.	2,500	11.72%
RIMsec	2,500	11.72%
Newcastle Permanent Building Society	2,000	9.37%
Maitland Mutual Building Society	1,500	7.03%
Illawarra Mutual Building Society	1,500	7.03%
Lehman Brothers	1,000	4.69%
Merill Lynch International	1,000	4.69%
Savings & Loans Credit Union	1,000	4.69%
National Australia Bank	1,000	4.69%
ANZ Banking Group	500	2.34%
Greater Building Society	500	2.34%
JP Morgan Chase Bank	500	2.34%
Wide Bay Capricorn Bldg Society	<u>500</u>	<u>2.34%</u>
	<u>21,335</u>	<u>100.00%</u>

<b>Instrument</b>	<b>Amount Held</b> <b>\$'000</b>	<b>Percentage</b> <b>of Total</b>
Cash	2,335	10.95%
CDO	7,000	32.81%
FRN	2,000	9.37%
TD	6,000	28.12%
ELD	2,500	11.72%
AN	1,000	4.69%
MF	<u>500</u>	<u>2.34%</u>
	<u>21,335</u>	<u>100.00%</u>

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I hereby certify that this report is produced in accordance with Clause 212 of the Local Government (General) Regulation 2005 and all investments have been made in accordance with the Local Government Act 1993, the Local Government (General) Regulation 2005 and Council's investment policies.

Robert Maginnity  
Responsible Accounting Officer

**RECOMMENDATION** that the information be noted.

To: **The General Manager**  
Corporate & Regulatory Services  
Committee – 20 February 2008

**D FITZGERALD**  
**ACTING DIRECTOR CORPORATE &**  
**REGULATORY SERVICES**  
8 February 2008