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8th June 2012

The General Manager
Port Macquarie-Hastings Council
PO Box 84
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Dear Sir

Re: DA 1994/0468: Modification to Development Consent – Temporarily Increase Quarry Extraction Limits – Lot: 1 DP: 1107705, Ocean Drive, Bonny Hills

At the outset the BHPA advises that all but one of our committee have a conflict of interest regarding this Application, living on or in close proximity to Ocean Drive. To this end we have designated Penny Marshall, a committee member who is a resident of Bonny View estate (less affected by this development) to oversee the drafting of our submission which has been informed by the views and concerns of the community.

The BHPA also recognises that Council, as the consent authority for this application, has a significant conflict of interest, being a major purchaser of products from the quarry. However, we have confidence that sound governance mechanisms will be employed to ensure that any such conflict is minimised.

1. Objection

We object to this application on the following grounds, each of which we will expand upon:

- a. The impacts of the current operation of trucks through Bonny Hills on residents are already well beyond what is reasonable for the community to bear, despite what the Applicant states in their application.
- b. We do not believe that the proposed expansion can be achieved without a significant increase in the current impacts on the community, again despite what the Applicant maintains in their application.

2. Legalities of Application, Assessment and Decision

After looking at a similar application and process in the Ballina Shire, we understand that there may be a question regarding the legalities of the Application and the power to approve it as a Modification, rather than as a New Application.

It can only be dealt with as a modification under section 96 of the EPA Act 1979 where it is considered that the development is **substantively the same**. The key question is whether an increase of 60 *percent* in extraction rate (in addition to a previous Modification Application to substantially increase the depth and the life of the quarry), can be regarded as substantively the same. See footnote¹.

Council needs to be certain that any decision it makes is a legal decision, in that the Application is, at law, one for modification only and does not require a more thorough environmental assessment, by way of a rigorously updated environmental impact statement.

3. Community views

The community's views and concerns form the basis of this BHPA submission. These concerns were enunciated at a public meeting which was convened on 17th April 2012 by Bonny Hills Progress Association in association with Hy-Tec, and addressed by the Applicant and their consultants. Whilst these views and concerns have been summarised in the Application, in general they have been addressed quite glibly. Further, a number of the analyses and summaries of data in the Application have been naïve, bearing little relationship to the impacts observed by residents 'on the ground'.

The Application deals extensively with amelioration of potential impacts within the precincts of the quarry itself and it is fair to say that residents have expressed few concerns about the operation of the quarry *per se*.

The majority of concerns are related to the impacts of truck traffic emanating from the quarry and travelling through the Bonny Hills village. The description and amelioration of these impacts are very poorly treated in the report, almost as if they are not an issue currently.

¹ The Environmental Defender's Office has advised that in relation to the case of *Jandra Blue Metal Quarries Pty Ltd v Rainbow Flat Quarry Environment Committee* [1988] NSWLEC 86, the Court held that the extraction rates were an essential characteristic of the development as originally assessed and consented to.

Independent legal advice provided to Ballina Shire Council was that the leading case in determining the question about being "substantively the same" is *Moto Projects (NO. 2) Pty Ltd v North Sydney Council* [1999] NSWLEC280 in which Justice Bignold identified the relevant test.

To reiterate the community concerns regarding current truck traffic are included in the table below:

Issue	Perception of severity	Comment
Noise	High	Particularly 6 to 7am, but also throughout the day, and much greater with empty trucks on the many sections of rough road through BH
Vibration	Medium	Severity related to proximity to Ocean Drive
Dust and emissions	Low/Medium	Impact mainly on traffic following trucks and on houses along Ocean Drive
Increased degradation of roads	High	Ocean Drive is already rated as very poor between the quarry and Houston Mitchell Drive, and the latter is mostly inadequate as the Applicant states.
Pedestrian safety	High	Particularly at crossings adjacent to bus stops and the 'top shop'
Impacts on traffic flows	High	Particularly at peak traffic times and with trucks 'tailgating'
Increased potential for vehicular/bicycle accidents	Medium/High	Inadequate narrow nature of the roads is a serious problem
Decreased value of property	High	For those owning property in proximity to Ocean Drive this is a serious issue
Poor monitoring by Hy-Tec of truck driver behaviour	Medium	Perceived lack of control over the behaviour of some subcontractors is an issue
Impact on Village Atmosphere	High	The Village Atmosphere, the very reason why people come to live in and visit a place like Bonny Hills is seen to be severely compromised .

Further to this the description of 5 years (which the Applicant states is 2 years, an undefined gap and then another 3 years) as being 'temporary' by the Applicant is not viewed in the same way by residents. This period is seen as being a very long time, particularly by older residents where this can represent a significant proportion of their remaining life span. On top of this, there is no guarantee that an application for an extension would not be requested subsequently.

From the tone of the Application it is clear that the perceptions of residents and those of the Applicant differ markedly in relation to current and likely future impacts on the community. This is in part because the Application's main focus is on quarry impacts, but residents' primary focus is on truck traffic impacts. Given this and differences in what is indicated in the Application as 'acceptable' and what is registered or perceived to be the case by residents eg in relation to noise, and projected truck numbers per day, there is a lack of trust in the community regarding Hy-Tec's assurances.

Residents are saying: **"It is not acceptable now without considering any increase in quarry output"**.

4. Treatment of the data versus observations

a. Truck numbers

The applicants claim that an average of 20 laden trucks per day (includes single dump trucks, semi-trailers and trailers with dogs) at an average of 25 tonnes per load is currently the case. The claim is that the average will not change in future due to the use of larger trucks (35 tonne average), but depending on demand this could be up to 57 laden trucks per day.

The BHPA doubt these claims and the low levels of impact projected for reasons that will be explained. We will also demonstrate that average truck movements are deceptive – it is the variation in truck numbers within and between days and weeks that better indicates the impacts on the Bonny Hills community.

Impacts on the community are likely to be greater:

- i. When trucks are empty (noise and road damage)
- ii. When trucks are full (road damage and potential traffic hazard)
- iii. Early in the morning (noise)
- iv. When traffic flows are highest on Ocean Drive (8am to 4pm) and when school traffic is greatest (8 to 9am; 3 to 4pm)
- v. In fine weather when demand is greatest – this is when time lost during wet weather is made up and truck numbers increase dramatically.

In relation to point (iv) above the intra-day dynamics of truck movements to and from the quarry and to their destination are important to note. Trucks start coming to the quarry (empty) soon after 6am and begin leaving the quarry loaded for their destination (currently believed to include Kempsey) at 6:30am. Our observations are that the first truck out returns to the quarry at about 8:30am, indicating a turnaround time of around 2.5 hours.

During the day from 6am until about 3:45pm² there is scope for 4 ‘waves’ of trucks coming from and returning to the quarry through Bonny Hills. The first wave coincides with low traffic numbers but contributes to early morning disturbance of sleeping residents. The next three waves coincide with high traffic volumes and school traffic with more buses and pedestrians in the mix. The first and last waves are rather more distinct (starting and ending with zero trucks on the road respectively) while the middle two are less distinct with trucks coming and going continuously.

We have carried out spot checks on the number of truck movements during the period from 9 – 18 May to get a more reliable sense of the variation in hourly movements of trucks both within and between days. These dates coincided with a period of fine weather. (Note that smaller ‘tip trucks’ were not included in our counts).

Counts were at the upper end of the range reported by the applicants, but in this case occurring day after day. Based on counts of trucks leaving the quarry first thing in the morning, up to 20 trucks were observed to be operating daily. If these trucks were in operation all day with 4 return trips, then it can be projected that total movements through Bonny Hills would be in the vicinity of 160 per day. Spot checks at other times of day seem to confirm that the daily totals are large

² Few trucks appear to operate after 3:35pm although trucks have been observed returning as late as 5:40pm (18/5/12)

and independent whole day counts by a resident on 22 and 23 May confirmed this with counts of 170 and 158 large truck movements respectively.

These counts indicate that already we have more daily movements at 'peak' than that projected by the company (114) with a 60% increase in output.

Hourly counts were highest during the first and last periods of the day (first and last loads) running as high as 26 truck movements per hour – one every 2 to 3 minutes. These periods coincide with residents trying to sleep, and high volumes of other traffic, respectively. The numbers of movements demonstrate that the company has to 'make hay while the sun shines' as this is the only time when additional demand can be absorbed. *Ipsa facto* there is no latitude to do this in wet weather so the burden has to be concentrated in a reduced period of fine weather days throughout the year. There is a distinct correlation between the truck movements used by the Applicant for January and February 2012 and rainfall registered at Port Macquarie Airport. The high rainfall registered during this period led to truck numbers which do not reflect typical day to day truck movements.

Both BHPA and Bonny Hills residents recognise the importance of the quarry resource to the LGA and the enhancement of the Pacific Highway. However it should be apparent that the high impact days, just as Bonny Hills residents have experienced during the fine weather in May 2012 are, on any reasonable reckoning an unacceptable burden for Bonny Hills residents to bear on behalf of the broader community.

These prolonged periods of high truck movements are well above the averages approved by Council based on earlier Development/Modification Applications.

It is imperative that Council examine Hy-Tec's weigh-bridge log records for May to validate our counts of truck movements through Bonny Hills during this period.³ It is also important to point out that the Hy-Tec figures are only for trucks leaving the quarry and that the truck movements through Bonny Hills are, in general, double this figure (a small number of trucks enter the quarry from the south).

This leads onto the claim by the Applicant that there will be no more trucks on the road because all trucks will carry an average of an additional ten tonnes in future.

Exactly how this will be achieved is not explained – we understand that Hy-Tec has 6 trucks (owned, not leased) and the rest are owned by sub-contractors. It is unlikely that the owner's trucks will be turned over rapidly – perhaps one new one in the short term is suggested – which leaves the sub-contractors' trucks as the main possibility. The evidence has not been provided that contractors have the scope to provide an average of 35 tonnes per truck in the time frame available, particularly given the numbers of trucks that will be required daily during peak periods (estimated to be 20 to 25 total).

³ Twenty different truck numbers were identified by one resident on 17/05/12 indicating that at least 20 trucks were operating on that day. Counts taken by another resident early am on 10 May, a day when we had no counts, were far in excess of that number.

b. Traffic volumes

The main points to make here are that:

- Recent traffic volumes on Ocean Drive are very much influenced by the parlous state of this road and the amount of road works and adjacent developments (Area 14) being undertaken. This would have been the case when counts were taken earlier this year (Annexe J) and helps to explain why more southern travellers could be taking the Pacific Highway from Kew to get to Port Macquarie.
- Traffic volumes on Ocean Drive can be expected to increase as Area 14 developments come on stream – possibly beginning within 12 months with the sale of blocks in the Manufactured Homes Estate?

c. Noise

The quandary here is why the perceptions of residents differ so markedly from the claims of the Applicant. The BHPA believes that the Applicant's main concern was registering dust and noise from the quarry itself. At least one of the sensors was placed at the rear of a house away from Ocean Drive with a clear line of sight to the quarry.

From residents' perspective the equation is simple:

empty trucks + constant truck traffic 6am to 4pm + bad roads = constant untenable noise.

The "Noise Guide for Local Government" (2010) published by the Department of Environment, Climate Change and Water NSW, notes that noise can be offensive in 3 ways:

- Audibility
- Duration
- Inherently offensive characteristics

Therefore, a test for volume alone is only dealing with one element of offensive noise. To this end an 'Offensive noise test - checklist of considerations' is provided in Noise Guide for Local Government (2010):

1. Is the noise loud in an absolute sense? Is it loud relative to other noise in the area [called 'Intrusive noise']?
2. Does the noise include characteristics that make it particularly irritating?
3. Does the noise occur at times when people expect to enjoy peace and quiet?
4. Is the noise atypical for the area?
5. Does the noise occur often?
6. Are a number of people affected by the noise?

The answer to all of these questions is undoubtedly YES for the many residents living in close proximity to Ocean Drive in Bonny Hills.

Whatever the reason, this leads to the conclusion that objective measurement and subjective perception can be two quite different things – a well-known phenomenon (wind farms are an excellent example of this). But perception is the reality.⁴

⁴ Something for Hy-Tec to consider is that perceived impacts can be influenced by the extent to which those affected consider their concerns are being recognised and remedied.

d. State of the road through Bonny Hills

The Application gives considerable attention to the state of Houston Mitchell Drive but is virtually silent on the state of the road between the quarry and Houston Mitchell Drive making little mention of it or of the many intersections along Ocean Drive between these two points - indicating little empathy for the plight of road users along this section of road which goes through the village of Bonny Hills.

Sections of Ocean Drive are some of the worst in the Council area, being narrow and very uneven. Bicycle users and pedestrians alike take their lives into their own hands when they traverse these sections, some of which are also poorly sighted. Heavy truck traffic not only adds to the danger but adds to the road degradation when compared to smaller vehicles. The sheer volumes of quarry truck movements described above for peak times must have considerable impacts but there is little recognition of this or of sharing responsibility for the maintenance of the road in the Application.

On the 23rd May 2012 PMHC adopted the Road Network Risk Management Policy - a risk management approach to hazard identification, inspections, assessment and prioritisation of roads/transport assets maintenance based on the Statewide Mutual Best Practice Guidelines.

We request that Council apply this methodology in assessing the state of Ocean Drive through Bonny Hills and in so doing consider the interaction between road condition and truck traffic as it relates to impacts on rate of degradation of the road surface and the noise emanating from large truck traffic.

e. Decreased property values

The BHPA has been made aware of examples where buyers have been dissuaded from buying property in close proximity to Ocean Drive when they observed the amount of truck traffic; that such properties are becoming more difficult to 'move'; and that rental property is suffering decreased patronage. This comes as no surprise, but there is little empathy for these socio economic impacts of the quarry operation in the Application.

f. Pedestrian Safety

Whilst the Application states that "There are no perceived impacts on pedestrian traffic in the location as the quarry is not a pedestrian generator", the impact on pedestrian safety in the Bonny Hills village is completely ignored. This is yet another example of where the Application does not address the impact the trucks travelling to and from the quarry have on the community. The areas of high pedestrian activity around the 'top shop', the skate and caravan parks and Beach Street are already of major concern and the Applicant appears to have made no attempt to recognise or address these concerns.

4. Possible solutions

- a. The only scenario under which the Bonny Hills community would not object to an expansion of quarry output would be if the truck traffic were diverted around the back of the village onto the already planned bypass.

This might, at first glance, seem unachievable but with a life time for a profitable quarry business of at least 15 years by our calculation⁵, the material on hand to build the road base, and given that the route for the proposed Bonny Hills bypass has already been identified by Council this solution is obvious and would benefit all parties.

- b. Options which would not permit an increase but which would ameliorate the current impacts of trucks travelling through Bonny Hills include:
 - i. A complete restructure of Ocean Drive through Bonny Hills – this was done for the Pacific Highway through Ballina (before the current by-pass) with considerable effect. A deeper foundation and a thick hot-mix cover virtually eliminated truck noise and vibration for adjacent houses. This would be high cost and out of the reach of Council without considerable input from Hy-Tec or other agencies.
 - ii. Eliminate truck traffic from 6 to 7am and reduce it throughout the rest of the day via fewer larger trucks.
 - iii. Source at least some material from alternative quarries which are known to exist in reasonable proximity to the major demand points. Shandyng of other material with that from the high quality product from Grant's Head quarry may be part of this solution.

5. The bottom lines

- a. No increase in output from the quarry unless the bypass route can be constructed around Bonny Hills.
- b. Reduce current impacts on Bonny Hills residents.

6. Summary and conclusions

- a. The severity of the impacts of the current operation of Grant's Head quarry on Bonny Hills residents is not appreciated by the Applicant. This is reflected in the cursory manner with which the Applicant deals with most of the concerns raised by residents, and a general reticence to accept responsibility for obvious impacts.
- b. With this in mind the community want to see amelioration of these impacts as the first priority before they would entertain the possibility of an expansion with likely further impacts.

⁵ 3 million tonnes total at 200,000 tones extracted *per annum*; a lifetime to 2037 is mentioned in the 2008 modification Application

c. Hy-Tec needs to become a more responsible and participatory corporate citizen. Residents have seen little evidence to date of serious largess in directly sharing in the responsibility and remediation of impacts on the community. Building the community's trust should be a high priority for Hy-Tec given its interdependency with Bonny Hills.

7. Recommendations

a. That Council does not approve an increase in the output of the Hy-Tec quarry at Grant's Head unless trucks travel around Bonny Hills via the already designated, but not constructed, bypass.

b. That Council negotiates with Hy-Tec to instigate measures to ameliorate the already considerable impacts of its operations on the Bonny Hills community.

c. That an independent, objective assessment be conducted of the impacts on the community by the current operation of the quarry to better inform the remedial actions required as part of (b) above.

d. Council needs to be certain that any decision it makes is a legal decision in that the Application is, at law, one for modification only.

Yours sincerely,

Roger Barlow
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Penny Marshall
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cc: Leslie Williams
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