

19.4 BARRO GROUP PTY LTD V REDLAND CITY COUNCIL (PLANNING AND ENVIRONMENT COURT APPEAL 1506/2018)

Objective Reference:

Authorising Officer: Louise Rusan, General Manager Community & Customer Services

Responsible Officer: Stephen Hill, Acting Group Manager City Planning & Assessment

Report Author: Christy Englezakis, Senior Appeals Planner

Attachments:

1. Amendment Application Review
2. Resolution 2019/229
3. Resolution 2019/127
4. Issues in Dispute

The Council is satisfied that, pursuant to Section 275(1) of the *Local Government Regulation 2012*, the information to be received, discussed or considered in relation to this agenda item is:

(f) *starting or defending legal proceedings involving the local government.*

PURPOSE

This report details the outcome of the Change Application made by Barro Group Pty Ltd (Barro), in respect of its quarry operations at Mount Cotton, and sets out officer and expert analysis of the changes, to inform the provision of instructions by Redland City Council (Council) for the progress of the appeal.

BACKGROUND

At the General Meeting of 19 June 2019, officers advised Council that the Minister for State Development, Manufacturing, Infrastructure and Planning (the Minister) had not made a decision on the change application submitted by Barro on 15 March 2019. It was also noted that Barro's amendment application for the Environmental Authority (EA), made to the Department of Environment and Science (DES) on 18 March 2019, had been approved. The EA was amended generally in accordance with the recommendations of the Noise and Air Quality Joint Expert Report (JER) (**Attachment 1**), although there were a number of minor, outstanding matters.

In anticipation of the review of the matter by the Planning and Environment Court (the Court) on 21 June 2019 and the potential for it to be set down for a hearing, Council resolved in part, to instruct its solicitors to seek a further review to allow additional time for the Minister to make a decision (**Attachment 2**). The solicitors were also instructed to identify any remaining issues in dispute, in consultation with Council's counsel and expert witnesses in the event the court did decide to progress to a hearing. This was to be based on a review of the amended EA and recommendations of the JERs, in the absence of a decision on the change application.

ISSUES

Change application

On 20 June 2019, the Minister notified Council that the change application had been approved. Barro submitted the change application on the basis that the purpose of the amendments was to incorporate the additional conditions recommended by the JERs. Table 1 details the requested changes, Council's response and the outcome of the change application, as decided by the Minister.

Table 1: Change application

APPROVED PLANS AND DOCUMENTS	
Condition	
1	<p><i>Barro's request</i></p> <p>Barro requested that the approved plans and documents list be updated to include new plans showing additional noise barriers and mounds, as recommended in the JER, to address potential noise impacts and concerns about overland flow.</p> <p>It was further requested that the list be updated to reflect the most current versions of the approved plans, which were revised by Barro and approved by Council in 2017.</p>
	<p><i>Council's response</i></p> <p>Council supported the amendment of Condition 1, as proposed by Barro.</p>
	<p>OUTCOME</p> <p>The list of approved plans and documents has been amended in accordance with Barro's request, as supported by Council, and now reflects the plans approved by Council in 2017.</p>

ACOUSTIC	
Condition	
10	<p>Barro's request</p> <p>This condition set out the noise limits for the operation and maintenance of the quarry. Barro sought the deletion of this condition, as it duplicates condition N1 of the EA.</p> <p>Council's response</p> <p>Council objected to the deletion of this condition and requested that the existing requirements be amended to reflect all of the recommendations made in the JER, including:</p> <ul style="list-style-type: none"> • Inclusion of early morning maintenance monitoring • Reduction in the early morning noise limits for noise sensitive land uses to the south-east and east/north-east. <p>Additional to the requirements of the JER, Council sought that noise measurements be taken at the nearest sensitive receptor.</p> <p>Council also requested that, should the Minister decide to remove this condition to avoid duplication with the EA, that this not occur until, and if, condition N1 of the EA was amended to reflect the recommendations of the JER.</p> <p>OUTCOME</p> <p>Condition 10 has been deleted in accordance with Barro's request, on the basis that the DES is the appropriate authority to undertake compliance and enforcement action for operational noise.</p> <p>Condition N1 of the EA was amended in accordance with Barro's request to include early morning maintenance monitoring and in accordance with Council's request to include a reduction in the early morning noise limits for noise sensitive land uses to the south-east and east/north-east.</p>
11	<p>Barro's request</p> <p>Barro sought to reduce the maximum sound power level for rock drilling, in accordance with the JER.</p> <p>Council's response</p> <p>Council supported the amendment of condition 11, as proposed by Barro.</p> <p>OUTCOME</p> <p>The condition has been amended, reducing the maximum sound power level for rock drilling from 111dBA to 110.1dBA, in accordance with the recommendation of the JER.</p>
12	<p>Barro's request</p> <p>Barro requested that noise limits be monitored in accordance with the requirements set out in the EA, not the development approval.</p> <p>Council's response</p> <p>Consistent with condition 10, above, Council objected to the deletion of any reference to noise limits and any related condition from the development approval, unless condition N1 of the EA was amended to reflect the recommendations of the JER.</p>

ACOUSTIC	
Condition	
	<p>OUTCOME</p> <p>Condition 12, has been deleted as demonstrating compliance with the noise criteria is a condition of the EA.</p>
12A and 12B	<p>Barro's request</p> <p>Barro proposed the inclusion of new conditions 12A and 12B to reflect the construction and operational requirements of the acoustic barriers and mounds noted in condition 1, above.</p> <p>Council's response</p> <p>Council supported the inclusion of these conditions, however sought the addition of the following, further conditions:</p> <ul style="list-style-type: none"> • 12C - requiring the submission of post-construction certification of the infrastructure to confirm that the required noise limits are achieved; and • 12D - requiring the submission to, and approval by, Council of a Construction Noise Management Plan.
	<p>OUTCOME</p> <p>New Condition 12A and 12B have been included, in accordance with the recommendations of the JER and Barro's request.</p> <p>Council's request for additional Conditions, 12C and 12D, was also largely met, which means Barro is required to submit to Council a Construction Noise Management Plan and post-construction certification of the acoustic barriers and mounds. The condition does not however, require Council to approve the Construction Noise Management Plan, only facilitates the later verification of its correct implementation, if necessary.</p>

AIR QUALITY	
Condition	
13	<p>Barro's request</p> <p>Barro sought the inclusion of additional measures to control dust and manage air quality, including the maintenance of spare parts on site and enclosure of the conveyor, in accordance with the recommendations of the JER.</p>
	<p>Council's response</p> <p>Council supported the amendment of condition 13, as proposed by Barro.</p>
	<p>OUTCOME</p> <p>Condition 13 was amended in accordance with Barro's request, and as supported by Council.</p>

AIR QUALITY	
Condition	
14	<p>Barro's request</p> <p>In order to assist in managing dust on the site in accordance with the JER, Barro sought to make this condition more detailed in respect of the weather station requirements.</p> <p>Council's response</p> <p>Council generally supported the amendment of condition 14, as proposed by Barro, however requested additional changes to provide further certainty with respect to timing.</p>
	<p>OUTCOME</p> <p>Condition 14 was amended in accordance with Barro's request.</p> <p>The additional change requested by Council with respect to timing was not included in the amended condition. This means there is no clear timeframe for the installation of the weather station.</p>
15 - 21	<p>Barro's request</p> <p>Conditions 15 – 21 relate to noise from blasting activities. Barro requested that they be deleted from the development approval, as they are duplicated in the EA.</p> <p>Council's response</p> <p>Council objected to the deletion of these conditions.</p>
	<p>OUTCOME</p> <p>These conditions have been removed in accordance with Barro's request, as the DES is considered the appropriate authority to undertake compliance and enforcement action for operational noise.</p> <p>Note that the deleted Conditions 15 – 21 are consistent with conditions N7 - N14 of the EA, which means these matters will be regulated under the EA.</p>

SCHEDULES	
Schedule 3	<p>Barro's request</p> <p>Barro sought the deletion of Schedule 3 from the development approval, as the conditions are reflected in the EA.</p> <p>Schedule 3 sets out the conditions of approval for the ERAs.</p> <p>Council's response</p> <p>Council objected to the removal of Schedule 3, until such a time as the development approval and EA reflect the agreed position in the JERs. This means that Council would support the deletion of Schedule 3 if the EA is amended generally in accordance with the Council's request to the DES.</p>
	<p>OUTCOME</p> <p>The Schedule 3 conditions have been removed on the basis that they are redundant; the relevant conditions were converted into EA conditions, which have now been amended generally in accordance with the JER. A copy of the amended EA has been included as the new Schedule 3.</p>

SCHEDULES	
Schedule 4 Condition 1	Barro's request Barro did not request any amendments to schedule 4, which specifies the conditions of approval set by the Department of Transport and Main Roads (DTMR).
	Council's response Council requested that the upgrade to vehicular access be undertaken in accordance with the recommendations of the JER, to require Barro to undertake a detailed assessment of sight distances. Further, if adequate sight distances are unachievable, right turn egress from the site should be prohibited for passenger and/or heavy vehicles, as appropriate.
	OUTCOME No changes have been made to Condition 1; this means it has not been amended as per Council's request for additional assessment/mitigation in accordance with the JER.

In all aspects except traffic and minor matters relating to air quality and noise impacts, the Minister has amended the development approval for the quarry generally in accordance with the recommendations of the JERs. The additional measures requested by Council (**Attachment 3**) were not adopted by the Minister.

At the Court review on 21 June 2019, both Barro and Council requested that the Court make orders providing additional time for the parties to consider the decision of the Minister on the change application. The Court agreed and made orders requiring the parties to consider their position in the appeal. Council was required to consider whether it would continue to contend for a refusal of the extension application and if so, whether it abandons any of its Reasons for Refusal.

Reasons for Refusal

In accordance with Council's resolution to identify the remaining issues in dispute and the order made by the Court that Council consider its Reasons for Refusal and subsequent position in the appeal, officers and Council's legal team have undertaken a review of the grounds on which Council refused the extension application. The officer's assessment is summarised in **Attachment 4**.

Noise and Air Quality

Council refused the extension application on these grounds as it considered Barro had failed to demonstrate it could adequately mitigate the impacts of the quarry operations on the health and amenity of the surrounding sensitive receptors. It was also considered that the use was incompatible with the surrounding rural environment and could not thus maintain or enhance the rural residential amenity of the surrounding area.

Expert Advice

Council's Noise and Air Quality expert [REDACTED] considers that the final conditions attached to the EA and development approval represent a significant improvement in terms of the management of potential noise and air quality impacts. Specifically, the conditions now include:

- More stringent noise criteria for sensitive receptors to the south-east and east/north-east (up to 5 db(A) lower for the early morning period and slightly more stringent criteria for sensitive receptors to the south (1 db(A) lower for the early morning period);

- Continuous noise monitoring at a position to the west, a summary of the results of which must be provided to Council annually, noting exceedances and investigation and rectification actions;
- The construction and certification of additional barriers/mounds providing further noise attenuation for properties to the west;
- Reduced noise limit for the rock drill;
- Preparation and submission to DES of a Construction Noise Management Plan;
- Inclusion of health-based air quality objectives for PM_{2.5} and silica (as PM_{2.5}), and a requirement for PM_{2.5} monitoring (in addition to other dust parameters);
- Maintenance of spare parts on-site for dust control plant and equipment;
- Enclosure of the conveyor, from the secondary crusher to the main processing area, to minimise dust emissions from this source;
- Installation and continuous operation of a weather station to assist in dust management;
- Requirements for haul route and stockpile watering to minimise dust;
- Preparation and submission to Council of an Air Quality Management Plan, which must be reviewed and updated annually to ensure amenity criteria are being achieved and to incorporate best practice management measures;
- Completion of an annual air quality performance audit by an appropriately qualified person and its submission to DES, inclusive of all air monitoring data for the 12 month period.

Following the decision by DES to amend the EA, [REDACTED] concluded that there were only minor outstanding issues in respect of air quality and noise impacts. [REDACTED] has identified the following two matters that remain inconsistent with the JER:

1. The condition requiring the preparation and submission of the Air Quality Management Plan to Council (condition A3 of the EA) does not require the document to be approved, only submitted. The condition recommended by the experts in the JER specified that the plan be “...developed and submitted to the administering authority for approval prior to commencement of the use.”
2. The averaging time for intermittent noise sources, one hour, conflicts with the recommendation of the JER, which sets a minimum time of 15 minutes. This also reflects the statutory requirement established under the *Environmental Protection Regulation 2008*.

In [REDACTED] opinion, there are alternate means by which to address these outstanding issues and, when considered in the context of the overall changes, they are not sufficient reasons to warrant refusal of the extension application on grounds of noise and air quality. Alternate mechanisms to address any outstanding issues are discussed below.

[REDACTED] also considered the additional measures requested by Council and has concluded as follows:

1. **Conditions 10 and N1 – amend to ensure testing is undertaken at the nearest sensitive receptor to the west, south, south-east and north/north-east.**

Condition N4 requires preparation of a Noise Management Plan (NMP). The NMP includes a requirement to define monitoring requirements. Whilst only one monitoring position to the west of the quarry is specifically identified for continuous noise monitoring in the EA conditions, in [REDACTED] experience, a NMP would include requirements for noise monitoring to

represent all potentially affected groups of receptors around an operation. The monitoring would not generally be completed continuously (which is required for the position to the west), but may take the form of samples over a period of a few hours or days to assess the risk of impact. Additional monitoring would then be completed if the initial short-term sampling indicated a potential for exceedance of the criteria defined in condition N1.

2. Condition A4 – amend to include real time monitoring that is published.

To [REDACTED] knowledge, requirements to provide access to real time, live monitoring data is restricted to projects identified as having the potential to cause exceedance of air quality goals. The air quality modelling as presented in the JER identified that full compliance with the air quality health and nuisance goals is predicted for the quarry operations with a significant margin.

3. Condition A5 – amend to ensure that the ambient dust noise monitoring program is published.

As the dust monitoring program must be submitted to DES, it would then become accessible under the *Right to Information Act 2009*.

Outstanding Issues

Based on [REDACTED] experience in similar matters, [REDACTED] considers that there is scope for the following outstanding issues to be addressed by way of correspondence with the DES:

- Approval of the Air Quality Management Plan and Ambient Dust Monitoring Program – the requirement for these documents to be submitted to the administering authority may in itself infer an expectation that approval or comment could be provided, should Council or the DES find them to be inadequate. It may, however, be beneficial for Council to write to the DES and request that these documents be provided for review and comment. Council should also request that the DES review the documents and require Barro to amend them as required by either authority;
- Averaging time for intermittent noise – it is recommended that Council alert the DES that this condition is inconsistent with the JER and *Environmental Protection Regulation 2008*;
- Specific monitoring location to the west – although the Noise Monitoring Plan is likely to identify and document suitable noise monitoring locations, the terrain to the west of the quarry is complex and a noise monitoring location could be nominated that does not adequately represent the most affected receiver. It would be appropriate for Council to draw to the attention of the DES the issues associated with the selection of a western noise monitoring position;
- Conditions 10 and N1 – to provide greater certainty in respect of noise monitoring, Council could request that the NMP include annual monitoring in all directions for a representative period of time. This request should identify that monitoring be completed during the winter months when background noise levels are typically lowest;
- Condition A4 – it is considered a reasonable expectation of Council and the community that air quality monitoring data would be made available and Council could thus request the DES provide copies of the data when submitted by Barro;
- Condition A5 – Council may request that the DES provide copies of the air quality data when it is submitted by Barro.

Traffic

The principal objection on traffic grounds was the potential impact of changed traffic conditions on pedestrian and vehicular safety, which Council contended was not appropriately considered by the existing traffic study. On this basis, Barro could not demonstrate that such impacts could be appropriately mitigated.

Expert Advice

In the JER of Traffic Engineers, the experts agreed that, as part of the detailed design works for the quarry extension, a detailed assessment of sight distances would need to be undertaken to ensure safe operation of the site access. It was further agreed that, should the appropriate sight distances not be achievable, that right turn egress from the site be prohibited for passenger/heavy vehicles, subject to the finding of the assessment.

██████████ Council's Traffic and Transport expert, considers that, whilst the amendment requested by Council is important, the condition in its current form is not so inadequate as to prevent the recommendations of the JER being implemented, for the following reasons:

1. It is highly likely that the required work will be completed as part of the detailed design process, which will be undertaken by an expert engineer. In ██████████ opinion, an assessment of sight distances will likely be necessary to inform the upgrade of the quarry access
2. The impacts concern a State-controlled road, which requires Barro to obtain additional approvals, In particular, approval is required under section 33 of the *Transport Infrastructure Act 1994* to carry out works on a State-controlled road. This means the DTMR will review the detailed design and proposed program of works, and may also impose further conditions. ██████████ has advised that the State review and approval process is comprehensive, however noted there is no role for Council within this process.

Subsequently, ██████████ is of the opinion that there is nothing arising from the decision by the Minister not to amend Condition 1 of Schedule 4 of the development approval that enables Council to maintain its Reasons for Refusal with respect to Traffic.

Community Expectations

The basis of Council's objection on this ground are that new members of the Mount Cotton community would not be aware of the existing development approval and to extend the operational life of the quarry would be inconsistent with community expectations in a rural environment.

Expert Advice

██████████ Council's Town Planning expert, maintains the position expressed in the JER of Town Planning Experts. That is, ██████████ is of the opinion that:

- Reasonable community expectations are informed by the planning scheme and it is relevant that the Redland City Plan continues to designate the site under the Extractive Resources Overlay, continuing the designation under the [repealed] Redlands Planning Scheme; and
- It is appropriate that the quarry be required to operate in accordance with contemporary best practice standards and subject to the strengthening of relevant conditions, as agreed by the Noise and Air Quality and Traffic experts, the proposed development is consistent with both planning instruments.

Tourism

Council considered that the extension would adversely impact upon, and limit the future enhancement of, nature-based tourism, recreation and associated employment and economic opportunities. However, in responding to requests from Barro for further and better particulars in respect of this ground, the relevant issues have been confined to the amenity impacts of the quarry on tourism activities.

Expert Advice

In the noise and air quality JER, the experts agreed that the adopted air quality criteria currently defined in the State legislation apply to all sensitive uses and are applicable for the protection of health and amenity for tourism uses.

The planning experts also addressed impacts on tourism opportunities, noting that both existing and approved tourist accommodation and businesses are outside of the quarry buffer area identified on the Key Resource Areas maps, or are located far enough away that the proposed quarry extension will not have any significant bearing on future tourism potential.

Summary

Both the officer's and expert's analyses indicate that there are no remaining issues in dispute of sufficient substance on which Council may rely should it elect to proceed to a hearing.

Progress of the appeal

In accordance with the orders set down by the Court on 21 June 2019, Council was required to advise Barro whether it would continue to contend for refusal of the extension application, and on what grounds, by 5 July 2019. Council had resolved on 19 June 2019 to instruct its officers to narrow the issues in dispute in the appeal in anticipation of such orders, however this resolution was made without the benefit of a decision by the Minister on the change application.

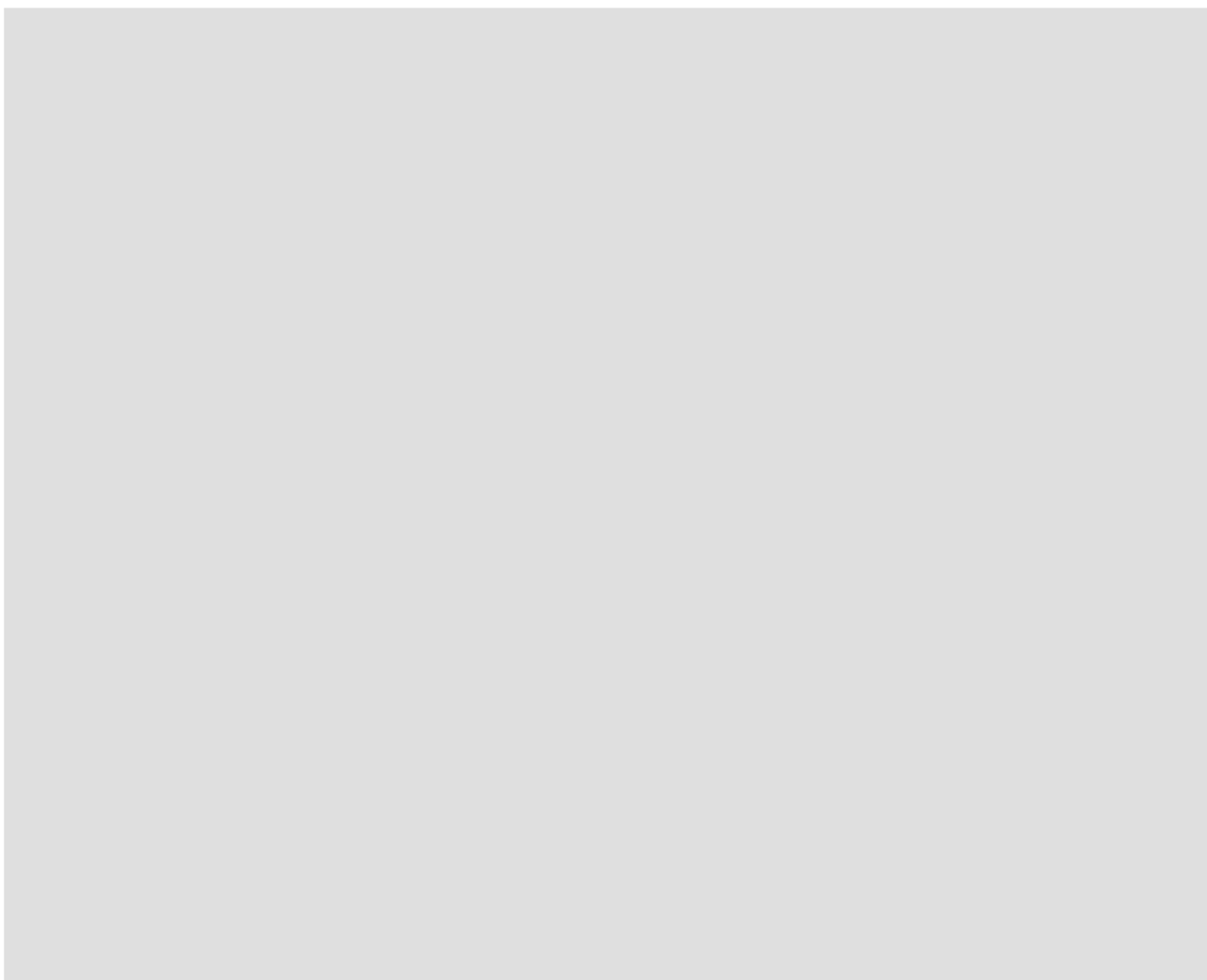
Subsequent to receiving the Minister's decision, the Council's delegate decided that it was appropriate to take the matter back to the next General Meeting of Council on 17 July 2019, so that the Council could consider the issues in dispute in their entirety to determine whether to continue to maintain its refusal of the extension application. On that basis, on 5 July 2019 correspondence was sent to Barro's solicitor notifying them that Council still contends for refusal of the extension application, retaining all of the Reasons for Refusal.

Other correspondence

Following his decision, the Minister wrote to Council to provide further information in respect of the reasons for approving the change application. Relevantly, the Minister stated the decision was made on the merits of the application before him, in particular, the increased noise and air quality requirements. The Minister further noted that, since the original development approval for the quarry had been given, the State Government had increased statutory measures to protect vegetation and was in the process of implementing new controls to protect koalas. The Minister confirmed that the decision on the change application should not be interpreted as support for Barro in the current appeal concerning the extension application.

On 1 July 2019, Council received correspondence from the State Member for Springwood, Mick De Brenni MP, which raised a number of concerns about the quarry and the current appeal. Mr De Brenni's comments, [REDACTED] highlight concerns about impacts on local residents, vegetation and traffic.

A response to this correspondence is being coordinated by the General Counsel.



STRATEGIC IMPLICATIONS

Legislative Requirements

There is no provision made under the *Planning Act 2016* for Council to appeal the decision of the Minister.

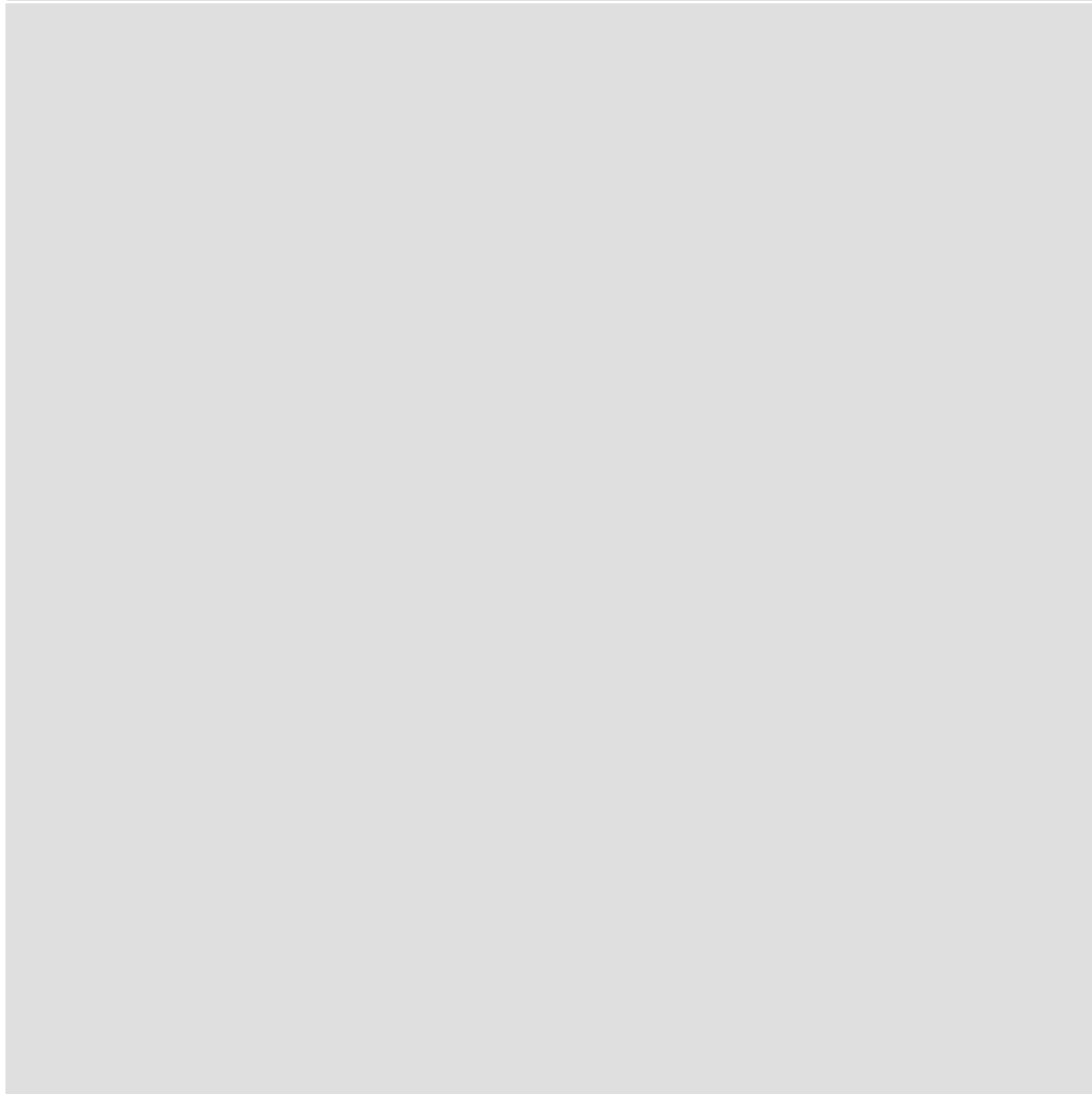
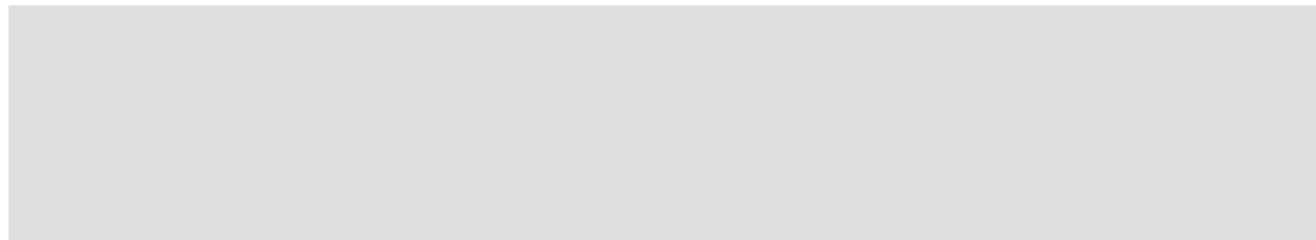
Under the Order made by the Court on 21 June 2019, by 5 July 2019 Council was required to notify Barro as to whether it continues to contend for refusal of the extension application and whether it abandons any of its Reasons for Refusal. Barro is required to advise Council by 19 July 2019, whether it abandons any of its Grounds of Appeal. The matter is listed for further review on 25 July 2019.

Risk Management

As the change application has now been decided and the parties have had sufficient time to consider their position, it is highly likely the Court will set down dates for a hearing at the next review, should the parties have not resolved the matter.

Financial

Should the Court exercise its discretion to make an adverse cost orders against Council, it means Council would be liable for costs either on the 'standard' or 'indemnity' basis.

**People**

Not applicable.

Environmental

The amended development approval imposes higher environmental standards on the quarry operations, consistent with contemporary best practice and generally in accordance with the relevant recommendations of the JERs. The conditions imposed through the change application

process also provide for the necessary upgrades to infrastructure and procedures to achieve the environmental standards set under the EA.

Social

The incorporation of best practice conditions into the development approval, which complement the standards set by the EA, will provide for improved noise and air quality outcomes for the Mount Cotton community, and will mitigate any potential impacts for nearby residents.

Alignment with Council's Policy and Plans

The quarry operations are consistent with the planning intent under Redland City Plan and the repealed Redlands Planning Scheme. Under the conditions of the amended development approval and EA, it will also better align with the environmental and social outcomes of Council's planning instruments.

CONSULTATION

Consulted	Consultation Date	Comments/Actions
Legal Services (Council)	Ongoing	<ul style="list-style-type: none"> • Provided legal and costs advice and facilitated advice from experts, solicitors and Counsel
Counsel	Ongoing	<ul style="list-style-type: none"> • Provided advice as to prospects and interpretation of the Minister's and DES's decisions
Solicitor (Corrs Chambers Westgarth)	March 2019	<ul style="list-style-type: none"> • Provided advice with respect to costs risks
Air, Noise and Environment expert	Ongoing	<ul style="list-style-type: none"> • Provided analysis and advice regarding the outcome of the EA and change application • [REDACTED]
Town Planning expert	June 2019	<ul style="list-style-type: none"> • Provided analysis and advice regarding the outcome of the change application • [REDACTED]
Traffic expert	June 2019	<ul style="list-style-type: none"> • Provided analysis and advice regarding the outcome of the change application • [REDACTED]

OPTIONS

Option One

That Council resolves as follows:

1. To instruct its solicitors to take all necessary steps to settle the appeal by:
 - a. notifying Barro and informing the Court that Council no longer contends for refusal of the extension application; and

- b. agreeing to Court orders that:
 - i. allow the appeal;
 - ii. approve the extension application; and
 - iii. require the parties to bear their own costs.
- 2. To instruct its officers to write to:
 - a. the DES, in respect of the following outstanding issues:
 - i. approval of the Air Quality Management Plan and Ambient Dust Monitoring Program;
 - ii. consistency of the averaging time for intermittent noise with the JER and *Environmental Protection Regulation 2008*;
 - iii. condition N2 of the EA – to ensure an appropriate noise monitoring location to the west of the quarry is nominated through the NMP required under condition N4 of the EA;
 - iv. condition N1 of the EA - request that the NMP include annual monitoring in all directions for a representative period of time; and
 - v. conditions A4 and A5 of the EA - request copies of air quality data when submitted by Barro;
 - b. the DTMR, requesting that in its assessment of the detailed design for the quarry vehicular access upgrade, it considers the requirement for the assessment of sight distances.
- 3. That this report and attachments 1 and 4 remain confidential until the conclusion of the appeal, subject to maintaining the confidentiality of legally privileged and commercial in confidence information.

Option Two

That Council resolves as follows:

- 1. To instruct its solicitors to prepare the appeal for a hearing; and
- 2. That this report and attachments 1 and 4 remain confidential until the conclusion of the appeal, subject to maintaining the confidentiality of legally privileged and commercial in confidence information.

OFFICER'S RECOMMENDATION

That Council resolves as follows:

1. To instruct its solicitors to take all necessary steps to settle the appeal by:
 - a. notifying Barro and informing the Court that Council no longer contends for refusal of the extension application; and
 - b. agreeing to Court orders that:
 - i. allow the appeal;
 - ii. approve the extension application; and
 - iii. require the parties to bear their own costs.
2. To instruct its officers to write to:
 - a. the DES, in respect of the following outstanding issues:
 - i. approval of the Air Quality Management Plan and Ambient Dust Monitoring Program;
 - ii. consistency of the averaging time for intermittent noise with the JER and *Environmental Protection Regulation 2008*;
 - iii. condition N2 of the EA – to ensure an appropriate noise monitoring location to the west of the quarry is nominated through the NMP required under condition N4 of the EA;
 - iv. condition N1 of the EA - requesting that the NMP include annual monitoring in all directions for a representative period of time; and
 - v. conditions A4 and A5 of the EA - requesting copies of air quality data when submitted by Barro;
 - b. the DTMR, requesting that in its assessment of the detailed design for the quarry vehicular access upgrade, it considers the requirement for the assessment of sight distances.
3. That this report and attachments 1 and 4 remain confidential until the conclusion of the appeal, subject to maintaining the confidentiality of legally privileged and commercial in confidence information.

ENVIRONMENTAL AUTHORITY

AIR	
Condition	
A1	<p>Barro's request Barro sought to remove 'commercial places' from those locations potentially affected by odours, dust or airborne contaminants.</p> <p>Council's response Council requested that additional text be included to capture the health impacts of odours, dust or airborne contaminants, in addition to environmental nuisance.</p>
	<p>OUTCOME Barro's requested amendment was not made.</p> <p>Whilst Council's request was not made within this condition, the dust criteria defined by the DES for the new condition A2 (referenced below) include nuisance and health limits, which if exceeded, require abatement measures to be implemented under condition A7. Thus, although a requirement to address health impacts is not explicit in Condition A1, it is addressed by the changes made to Condition 2.</p>
A2	<p>Barro's request Barro requested that Condition A2, relating to dust deposition monitoring, be deleted from the EA.</p> <p>Council's response Council supported the deletion of A2 if specific amendments, to incorporate additional monitoring requirements, were made to condition A3.</p>
	<p>OUTCOME Conditions A2 and A3 were replaced by a new Condition A2, which includes Council's requested inclusions/amendments for PM_{TSP}, PM₁₀, PM_{2.5}, dust and silica, and relevant monitoring methods. This is in addition to the nuisance and health limits imposed by the DES.</p>
A3 and A4	<p>Barro's request Barro requested amendments to the Air Quality Management Plan (AQMP), in accordance with the JER.</p> <p>Council's response Council requested that real time monitoring be required under the AQMP, and that the monitoring results be made publicly available. This request is an additional measure and not a recommendation of the JER.</p>
	<p>OUTCOME The condition was updated in accordance with Barro's request and thus reflects the recommendations in the JER. Council's additional amendments were not included.</p> <p>The DES has imposed additional requirements for Barro to:</p> <ul style="list-style-type: none"> • Submit an analysis of monitoring results against performance standards and management actions and measures; and • Make changes to plant, equipment and procedures to improve air quality monitoring and reduce non-compliance.

AIR	
Condition	
A5	<p>Barro's request Barro requested that the Ambient Dust Monitoring Program form part of the AQMP.</p> <p>Council's response Council sought the inclusion of parameters in accordance with the JER and also requested additional monitoring infrastructure, real time monitoring and that the results of the dust monitoring program be publically available. These latter items are additional measures and not recommendations of the JER.</p>
	<p>OUTCOME The Ambient Dust Monitoring program now includes PM_{TSP}, PM₁₀, PM_{2.5}, dust deposition and crystalline PM_{2.5} silica. The request for inclusion of a PM_{2.5} monitoring station was also met. This is an important and beneficial addition to the conditions package from a health risk perspective.</p> <p>Real time monitoring and public availability of results, as requested by Council, were not included.</p>
A6	<p>No changes were requested by either Barro or Council.</p> <p>The DES has amended the condition to reflect changes made to preceding conditions of the EA.</p>
A7	<p>No changes were requested by either Barro or Council.</p> <p>The DES updated the condition to reflect changes made to preceding conditions, in accordance with Council's request for monitoring of all pollutants and dust criteria.</p>
A8	<p>No changes were requested by either Barro or Council.</p> <p>The DES has amended the condition, removing the requirement for a dust model validation study after 12 months and the subsequent 28 day reporting timeframe. Monitoring results must now be provided "on request".</p>
ACOUSTIC	
Condition	
N1	<p>Barro's request Barro requested the inclusion of early morning maintenance monitoring in accordance with the JER.</p> <p>Council's response Council sought the inclusion of the reduced noise limits and an additional measure requiring noise monitoring to be undertaken at the nearest sensitive receptor.</p>
	<p>OUTCOME The condition has been amended as per Barro's request and therefore complies with the JER.</p> <p>Council's additional request that monitoring occur at the nearest sensitive receptor has not been included.</p>

ACOUSTIC	
Condition	
N2	<p>Barro's request Barro sought changes to noise monitoring in accordance with the JER.</p> <p>Council's response Council requested that the condition specify a requirement for the continuous noise monitoring to be undertaken at one location to the west of the quarry, representative of 451 West Mount Cotton Road (Mr Maloney's residence). This was in addition to the recommendations of the JER.</p>
	<p>OUTCOME The condition has been amended in accordance with Barro's request, and is thus consistent with the JER. Council's requested amendment to specify the monitoring location was not made.</p>
N3	<p>The DES has established a new condition N3, which specifies a requirement for additional noise monitoring upon request by DES. This was previously included in condition N2. The condition requires additional noise monitoring where there has been a complaint of noise nuisance.</p> <p>The DES has also included a requirement for the measurement and assessment of low frequency noise against relevant criteria.</p>
N4 and N5	<p>Barro's request Barro requested that conditions about a Noise Management Plan be included in the EA, as recommended in the JER.</p> <p>Council's response Council supported Barro's request.</p>
	<p>OUTCOME Conditions N4 and N5 have been included in accordance with the request by Barro and Council, and are thus consistent with the JER.</p>
N7	<p>No changes were requested by Barro or Council and the DES did not amend the condition. However, the averaging time for intermittent noise sources is not in accordance with the JER (per Paragraph 41, N4) or s 70 of the <i>Environmental Protection (Noise) Policy 2008</i>, which recommend a minimum sample time of 15 minutes.</p>
N6, N8 – N14	<p>No further changes were recommended in the JER, or requested by Barro or Council.</p> <p>DES has maintained the existing conditions accordingly.</p>

19.4 BARRO GROUP PTY LTD V REDLAND CITY COUNCIL (PLANNING & ENVIRONMENT COURT APPEAL 1506/18)**OFFICER'S RECOMMENDATION/COUNCIL RESOLUTION 2019/229**

Moved by: Cr Tracey Huges

Seconded by: Cr Peter Mitchell

That Council resolves as follows:

1. To instruct its solicitors to oppose the setting down of the matter for a hearing and instead seek a further review date to allow for the Minister to make a decision.
 - a. Should the Court be minded to delay a hearing and set a further review date:
 - i. instruct its officers to further correspond with the Minister in respect of deciding the change application.
 - ii. instruct its solicitors to identify the remaining issues in dispute in consultation with Council's legal team and expert witnesses.
 - b. Should the Court be minded to set down dates for a hearing, instruct its solicitors to identify the remaining issues in dispute in consultation with Council's legal team and expert witnesses, and prepare the appeal for a hearing.
2. That this report and attachments 2 and 3 remain confidential until the conclusion of the appeal, subject to maintaining the confidentiality of legally privileged and commercial in confidence information.

CARRIED 10/0

Crs Karen Williams, Wendy Boglary, Peter Mitchell, Paul Gollè, Lance Hewlett, Julie Talty, Murray Elliott, Tracey Huges, Paul Gleeson and Paul Bishop voted FOR the motion.

Cr Mark Edwards was absent from the meeting.

19.3 BARRO GROUP PTY LTD V REDLAND CITY COUNCIL - PLANNING & ENVIRONMENT APPEAL 1506 OF 2018**OFFICER'S RECOMMENDATION**

That Council resolves to:

1. provide a response notice to the Minister and Barro, stating it objects to the change for the reasons outlined in the draft response notice (attachment 4); and
2. maintain this report and attachment 2, as confidential until the conclusion of the appeal, subject to maintaining the confidentiality of legally privileged and commercial in confidence information.

COUNTER MOTION**COUNCIL RESOLUTION 2019/127**

Moved by: Cr Julie Talty

Seconded by: Cr Wendy Boglary

That Council resolves to:

1. provide a response notice to the Minister and Barro, stating it objects to the change for the reasons outlined in the draft response notice attachment 4 (as amended); and subject to the following amendments:

Condition 10 and N1 – Amend to ensure testing is taken at the nearest sensitive receptor to the west, south, south-east and east/north east.

Condition A5 – Amend to ensure that the ambient dust noise monitoring program is published.

Condition A4 – Amend to include real time monitoring that is published.

2. maintain this report and attachment 2, as confidential until the conclusion of the appeal, subject to maintaining the confidentiality of legally privileged and commercial in confidence information.

CARRIED 11/0

Crs Karen Williams, Wendy Boglary, Peter Mitchell, Paul Gollè, Lance Hewlett, Mark Edwards, Julie Talty, Murray Elliott, Tracey Huges, Paul Gleeson and Paul Bishop voted FOR the motion.

ISSUES IN DISPUTE

Noise and Air Quality
Redlands Planning Scheme
<p>Reasons for Refusal</p> <p><u>Parts 3.1.4(1) (j) and 3.1.7(g) Desired Environmental Outcomes</u></p> <p>Buffers to industrial and rural uses; siting and design measures to mitigate impacts; protect natural economic resources in the rural zone where consistent with environmental, landscape and amenity values</p> <p><u>Rural Non-Urban Zone code Overall Outcomes 2(a)(i)(f) and 2(c)(i)(e); Specific Outcomes S3.3, 3.4 and 3.5</u></p> <p>Protection from incompatible uses; noise, air and traffic impacts avoided or mitigated to a level compatible with the rural environment</p> <p><u>Extractive Industry Use Code Overall Outcome 2(a)(iv); Specific Outcomes S2.2, 2.3 and 2.5</u></p> <p>Buffer and mitigate impacts on sensitive receiving environments; noise from excavation, crushing, loading, screening, and blasting is mitigated; materials transport minimises dust</p>
(Draft) Redland City Plan
<p>Reasons for Refusal</p> <p><u>Strategic Framework sections 3.2.4, 3.2.5, 3.4.1.10(10), 3.4.1.11(2), 3.6.1.1(2) and 3.6.1.5(1) and (2)</u></p> <p>Protect the environment and scenic landscapes; protect people and the environment from risks created by hazardous activities; minimise development impacts on small rural lifestyle lots; extractive activities minimise offsite impacts; minimise exposure of people and property to hazards; adequate separation from, and minimisation of impacts on, sensitive receptors</p> <p><u>Rural Zone code Purpose sections 6.2.21.2(1) and 6.2.21.2(2)(h); Performance Outcomes PO7 and PO9</u></p> <p>Provide for a wide range of primary production activities whilst protecting natural resources and significant environmental and landscape values; other enterprises are established only where they will not adversely impact urban areas; development does not impact on the residential amenity of urban lots</p> <p><u>Extractive Industry Use code Purpose sections 9.2.1.2(1) and (2)(a)(iii) and Performance Outcome PO3</u></p> <p>Manage the impacts of extractive industry; minimise/mitigate impacts on safety and amenity; incorporates measures to minimise impacts of air, noise and light emissions</p>

Noise and Air Quality

Analysis

- The JERs set out the best practice noise and air quality levels the experts agree are compatible with the rural environment, which minimise impacts on sensitive receptors and protect the natural environmental, landscape and amenity values of the surrounding rural landscape
- The EA and amended development approval incorporate all recommendations of the JER in respect of air quality impacts and most of the recommendations in respect of acoustic impacts. The remaining inconsistencies are:
 - Requirement for approval of the AQMP; and
 - Incorrect averaging time for intermittent noise (this an error only, that can be corrected by DES, and is not an issue in dispute)
- The additional measures sought by Council exceed the standard set by the JER and were not incorporated into the EA or amended development approval

Community Expectations

Redlands Planning Scheme

Grounds for Refusal

Parts 3.1.4(1) (j) and 3.1.7(g) Desired Environmental Outcomes

Buffers to industrial and rural uses; siting and design measures to mitigate impacts; protect natural economic resources in the rural zone where consistent with environmental, landscape and amenity values

(Draft) Redland City Plan

Grounds for Refusal

Strategic Framework sections 3.2.4, 3.2.5, 3.4.1.10(10), 3.4.1.11(2), 3.6.1.1(2) and 3.6.1.5(1) and (2)

Protect the environment and scenic landscapes; protect people and the environment from risks created by hazardous activities; minimise development impacts on small rural lifestyle lots; extractive activities minimise offsite impacts; minimise exposure of people and property to hazards; adequate separation from, and minimisation of impacts on, sensitive receptors

Tourism
Redlands Planning Scheme
<p>Grounds for Refusal</p> <p><u>Parts 3.1.7(d) Desired Environmental Outcome No. 6 – Economic Development</u></p> <p>Promote tourism and ecotourism based on the natural environment</p> <p><u>Rural Non-Urban Zone code Overall Outcomes 2(a)(i)(c) and 2(a)(i)(e)</u></p> <p>Uses encourage enjoyment of the natural environment, tourism and recreation; generate employment and economic activity from tourism</p>
(Draft) Redlands City Plan
<p>Grounds for Refusal</p> <p><u>Strategic Framework section 3.4.1.10(9)</u></p> <p>Large scale, high impact industries minimise impacts on tourist and recreational facilities on rural land</p>
<p><i>Analysis</i></p> <p>Tourism was refined to grounds of amenity and the reduced impacts, as a result of the increased standards imposed under the change and amendment applications, will improve the amenity of the surrounding environment and minimise impacts on any existing or future tourism uses.</p> <p>CONCLUSION:</p> <p>The relevant grounds of refusal cannot be maintained as the impacts of the quarry on any existing or future tourism use are/will be mitigated by the increased standards for noise and air quality. These increased standards are consistent with best practice and generally in accordance with the recommendations of the JER.</p>

Traffic
Redlands Planning Scheme
<p>Grounds for Refusal</p> <p><u>Rural Non-Urban Zone code Overall Outcome 2(a)(i)(e); Specific Outcome S3.5</u></p> <p>Minimise impacts associated with light, noise, air and light (conducive to a rural environment); traffic movement compatible with the rural environment</p> <p><u>Extractive Industry Use Code Overall Outcome 2(a)(vi); Specific Outcomes S2.5 and 2.6</u></p> <p>Minimise adverse impacts on traffic networks; materials transport minimise dust nuisance; site vehicle access is adequate and does not impact traffic networks</p> <p><u>Infrastructure Works Code Overall Outcome 2(a); Specific Outcome S7</u></p> <p>Safety and design of road infrastructure; maintain or improve the safe and efficient operation of roads</p>
(Draft) Redlands City Plan
<p>Grounds for Refusal</p> <p><u>Strategic Framework sections 3.2.5, 3.2.6, 3.4.1.11(2) and (6), 3.7.1.1(4), (5) and (7), 3.7.1.3(6) and (11)</u></p> <p>Avoid unacceptable risks to community health and safety; efficient, effective and safe road infrastructure; manage offsite impacts; high level of safety, convenience and accessibility for pedestrians and cyclists</p> <p><u>Transport, Servicing, Access and Parking code Purpose, sections 9.4.5.2(1) and 9.4.5.2(2); Performance Outcomes PO3, PO17 and PO18</u></p> <p>Ensure traffic movements are appropriately managed; safety and efficiency of traffic; maintain or improve safe and efficient transport networks, having regard for sight distance, access points, overall function of the roads; access is restricted to optimise safety and efficiency; avoid obstruction of external traffic operations</p>
<p>Analysis</p> <p>Barro did not request any amendments to the conditions of approval set by the Department of Transport and Main Roads, despite the JER recommending that an upgrade to vehicular access be undertaken, based on a detailed assessment of sight distances. Right turn egress from the site was to be prohibited for passenger and/or heavy vehicles if adequate site distance could not be achieved.</p> <p>CONCLUSION:</p> <p>Officers relied on the advice provided by Council's traffic expert following his review of the amended development approval. An amendment to the wording of this condition was considered desirable, however not essential. As it is a technical matter, it may be addressed directly with the Department of Transport and Main Roads. It is therefore an insufficient basis on which to maintain refusal.</p>