

19.5 BARRO GROUP PTY LTD V REDLAND CITY COUNCIL (PLANNING & ENVIRONMENT COURT APPEAL 1506/18)

Objective Reference:

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

Responsible Officer: Kim Sweeper, Acting Group Manager City Planning and Assessment

Report Author: Christy Englezakis, Senior Appeals Planner

Attachments:

1. Council Resolution 2019/127
2. Review of Change and Amendment Applications - Confidential
3. Review - Grounds for Refusal - Confidential

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 provides an update on the abovementioned appeal and sets out relevant considerations so Council can provide instructions in the progress of the appeal.

BACKGROUND

On 3 April 2019, Redland City Council (**Council**) resolved to provide an Affected Entity Response Notice (**response notice**) to the Minister of the Department of State Development, Manufacturing, Infrastructure and Planning (**the Minister**), in respect of the Change Application made by Barro Group Pty Ltd (**Barro**) on 15 March 2019, for its quarry operations at Mount Cotton (**Attachment 1**). Officers submitted the response notice on 5 April 2019.

Barro also made an amendment application to the Department of Environment and Science (**DES**) on 18 March 2019, to amend the relevant environmental authority (**EA**). Council subsequently submitted a request to DES on 5 April 2019, asking that the EA be amended consistent with the relevant changes sought by Council in its response notice to the change application.

ISSUES

Since Council submitted its response notice to the Minister and request to the DES, the following have occurred:

- Barro's amendment application was approved by the DES; and
- The change application has not yet been decided by the Minister.

Amendment Application

The DES decided Barro's amendment application on 12 April 2019, with immediate effect. Council officers have reviewed the amended EA and note the following:

- The DES has incorporated the majority of the recommendations made in the noise and air quality Joint Expert Report (**JER**);

- The DES has also imposed some additional requirements, such as:
 - an auditing process, which requires improvements to plant, equipment and management measures where non-compliance occurs, and to ensure these measures remain contemporaneous with best practice; and
 - the inclusion of monitoring of low frequency noise; and
- Council's request for **additional measures** (as per Resolution 2019/127 [**Attachment 1**]), beyond those recommended in the JER, have not been included. Thus, whilst Barro's monitoring obligations have increased in some respects, the air quality monitoring program is not required to be conducted in real time, nor is Barro obligated to make monitoring results publicly available.

A summary of the amendments requested by Barro in the change and amendment applications, and Council's response, are set out in **Attachment 2**.

Change Application

The Minister's decision in respect of the change application was due on 23 May 2019. No decision was forthcoming at this time. Despite repeated enquiries by Council officers to the Minister's office, to establish when a decision may be made, it appears a revised decision date has not been set. The reason/s why a decision has not been made are unclear.

Section 81 of the *Planning Act 2016* sets out how the Minister must assess and decide a minor change application. Under s 81(6), a decision must be made within 25 days of receiving the application, unless the applicant and responsible entity agree to an extension (s 81(7)).

Progress of the Appeal

The next review in this matter is scheduled for 21 June 2019 and it is possible that the Planning and Environment Court (**the Court**) will set down dates for a hearing. Given the uncertainty arising from the Minister's delay in making a decision, the Court may schedule a hearing to progress the matter. Council can either agree to, or oppose, the scheduling of hearing dates.

Matters for Consideration by the Court

In considering whether to set down the matter for hearing, the Court may rely on the following:

- The issue before the Court is the Extension Application; a decision in respect of the extension application is not dependent on, although is directly related to, a decision by the Minister on the change application:
 - Note that, under section 87 of the *Planning Act 2016*, the Court may consider any matter that it considers relevant, including the change and amendment applications;
- Barro has acted in accordance with the Court Order made on 21 February 2019; that is, it made a change application in respect of the conditions of the development approval for the quarry operations by 15 March 2019 and provided a copy to Council:
 - That the Minister has not yet made a decision and the outcome of the change application is unknown, is beyond Barro's control;

- The changes proposed are generally in accordance with the recommendations made in the JERs and thus substantially address Council's grounds for refusal;
- In addition to making the change application, Barro requested amendments to the EA, also generally in accordance with the JERs
 - Currently, the development permit and EA are in conflict as the EA establishes higher standards for noise and air monitoring. Should a decision on the change application not be made, the higher standard under the EA will continue to apply;
- Barro's commercial interests are affected by undue delay in the resolution of the appeal.

Should Council wish to oppose the setting down of the appeal for a hearing it may rely on the following points:

- A decision on the change application would assist both parties to properly assess their position in the appeal:
 - There are some discrepancies between the amended EA and the change application and if the change application is approved in accordance with Barro's requests, additional environmental standards and improvements would be applied, for example, a reduced sound level for rock drilling and enclosure of a conveyor;
 - A decision by the Minister will enable the parties to determine if there are residual issues in dispute that must be resolved by the Court, or that the issues have been addressed through the change application and EA, thereby allowing the parties to settle the appeal; and
- The issues in the appeal are of significant importance to Council and the community, as demonstrated by correspondence to the Minister and Director-General throughout the course of the appeal.

any attempt by Council to oppose a hearing will likely fail, as the Court would seek to avoid further delay in circumstances where the Minister has not made a decision within the statutory timeframe and has failed to respond to enquiries by both parties as to when a decision might be forthcoming.

However, Barro has indicated that it will seek alternative orders at the review on 21 June 2019, generally in accordance with the following:

- In light of the DES decision on the amendment application (and any potential decision by the Minister on the change application), requiring Council to advise Barro whether it intends to continue to contend for refusal of the extension application and the grounds on which it will rely; and
- A further review date shortly thereafter to set the appeal down for a hearing should Council continue to contend for refusal.

Should Council resolve to oppose any intention by the Court to schedule the appeal for a hearing, this will likely be supported by Barro at the review and may convince the Court to delay a hearing, if only for a short period.

Issues in Dispute

Should the Court set down the appeal for a hearing, or make alternative orders as per Barro's intended request, Council will be required to narrow its grounds for refusal. This will enable Council

to identify those issues that remain in dispute and present a reasonable and relevant defence at a hearing, or assess whether it is in Council's interest to resolve the appeal.

Council's reasons for refusal against the extension application encompass the following matters:

1. Community expectations

Council opposes the extension application as, in the seven years since the quarry development was publicly notified, Mount Cotton has grown considerably and there have been many changes in home ownership. Subsequently, many members of the community would not be aware of the development approval. It further argues that to extend the operational life of the quarry, which is in close proximity to rural residential dwellings, would be inconsistent with community expectations.

2. Noise and air quality

Council considers that Barro has failed to demonstrate that the quarry can operate in a manner that is compatible with the rural environment of Mount Cotton, or protect the health and amenity of sensitive receptors. In particular, Council contends that the construction and operation of the quarry will cause environmental nuisance and that the noise criteria applied by Barro is inadequate.

3. Tourism

Council considers that the proposed extension will adversely impact upon, and limit, the future enhancement of surrounding economic and tourism opportunities.

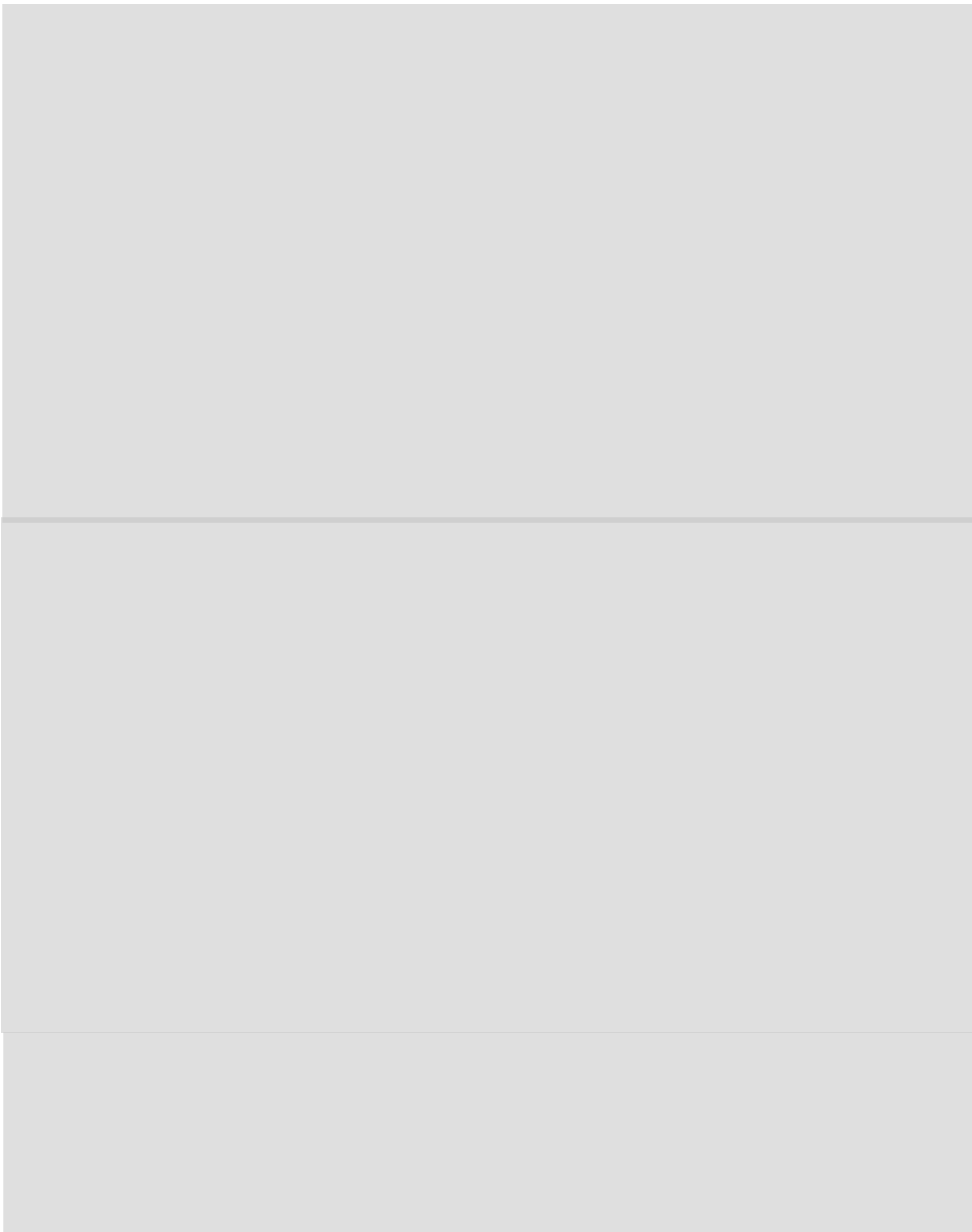
4. Traffic

The extension application is opposed on the basis that it will have a significant impact on Mount Cotton Road, affecting pedestrian and vehicular safety. It is considered that Barro's existing traffic study is outdated and does not consider current traffic conditions or guidelines.

The JERs and amended EA assist in identifying those issues that remain in dispute between the parties. The outcomes of the JER process may be summarised as follows:

- Noise and Air Quality – the experts agreed that the Development Permit should be amended to update conditions as agreed by the experts;
- Traffic – the experts agreed that the Development Permit should be amended to require a detailed assessment of sight distances to ensure safe site access and egress;
- Town Planning – the experts agreed that:
 - There were no grounds to refuse the extension application on a strategic planning basis;
 - Reasonable community expectations are informed by the planning scheme, which identifies the site on the Extractive Resources overlay; and
 - It is appropriate that the Development Permit be updated to reflect those best practice methods and modifications as recommended by the noise and air quality experts and the amendment recommended by the traffic engineering experts.

Attachment 3 sets out the specific planning scheme provisions on which Council's reasons for refusal are based and the officers' analysis of the continuing relevance of these grounds.



STRATEGIC IMPLICATIONS

Legislative Requirements

Council has no appeal rights under the *Planning Act 2016* or the *Environmental Protection Act 1994*, against a decision of the Minister on the change application and the outcome of the amendment application, as decided by DES.

The appeal is listed for review on 21 June 2019. Under the most recent Order made by the Planning and Environment Court, Council is required to notify Barro whether it will continue to contend for refusal of the extension application, and if so, on what grounds.

Risk Management

There is a real risk that the delay by the Minister in making a decision may be indefinite, and subsequently, a very real risk that the Court will schedule hearing dates to ensure the appeal is resolved expeditiously. Although Council may oppose this, there is no certainty that the Court will have regard for this position. It is possible, therefore, that the matter will proceed to trial without a decision on the change application.

It is possible that the Court will delay scheduling a hearing and set a further review date in anticipation of a decision by the Minister. Any such delay is unlikely to be indefinite (it could be as little as one month) and should a decision not be forthcoming, the Court is likely to set hearing dates at the next review.

Financial

People

Not applicable.

Environmental

The amendments made by the DES to the EA impose a higher environmental standard on the quarry operations than that under the previous EA or development approval. These are generally in accordance with the recommendations of the JERs, however did not incorporate the additional measures sought by Council.

Should the Minister make a decision on the change application and impose a higher standard than that in the EA, the higher environmental standard will apply. The Minister may or may not choose to impose Council's additional measures at their discretion; there is no statutory or legal requirement to do so.

Social

The amended EA provides for improved noise and air quality outcomes for the Mount Cotton community. Without a decision in respect of the change application however, the additional noise mitigation measures that Barro has included in the change application may not be achieved.

Alignment with Council's Policy and Plans

As a result of the amendments made to the EA, the quarry operation better aligns with Council's planning instruments and relevant provisions in respect of community expectations, noise and air quality, and tourism.

CONSULTATION

Consulted	Consultation Date	Comments/Actions
Legal Services (Council)	Ongoing	<ul style="list-style-type: none"> • Provided updated legal advice and facilitated advice from experts, external solicitors and Counsel
Counsel	Ongoing	<ul style="list-style-type: none"> • Provided updated advice on prospects in the appeal
Solicitor (external)	March 2019	<ul style="list-style-type: none"> • Provided advice on costs risks to Council
Air, Noise and Environment Expert	Ongoing	<ul style="list-style-type: none"> ▪ Reviewed the Minister's and DES's decision, and provided advice with respect to its consistency with the JER

OPTIONS**Option One**

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.

Option Two

That Council resolves as follows:

1. To instruct its solicitors to agree to the setting down of the matter for a hearing.
2. To 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.
3. 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.

OFFICER'S RECOMMENDATION

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.

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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.

CHANGE APPLICATION¹

APPROVED PLANS AND DOCUMENTS	
Condition	
1	<p>Barro's request</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>Council's response</p> <p>Council supported the amendment of Condition 1, as proposed by Barro.</p>
	<p>OUTCOME</p>

NOISE	
Condition	
10	<p>Barro's request</p> <p>This condition sets 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><u>Note:</u> In its EA amendment application, Barro did request the inclusion of early morning maintenance monitoring, in accordance with the JER.</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"> • The inclusion of early morning maintenance monitoring • A reduction in the early morning noise limits for sensitive land 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>Were the Minister to remove this condition to avoid duplication with the EA, Council requested that this not occur until, and if, condition N1 of the EA was amended to reflect the recommendations of the JER.</p>

¹ Note that the 'Outcome' section of the table for the Change Application is generally incomplete. This is because the change application has not yet been decided, therefore the outcome is unknown. Where text is included in the 'Outcome' section of this table, it provides information relevant to a condition of the development approval, arising from the amended EA.

NOISE	
Condition	
	<p>OUTCOME</p> <p>Condition N1 of the EA was amended in accordance with Barro's request to include early morning maintenance monitoring. DES rejected Council's further request that monitoring occur at the nearest sensitive receptor.</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>
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>
	<p>OUTCOME</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, and approval by Council, of a Construction Noise Management Plan.

NOISE	
Condition	
	OUTCOME

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.</p>
	<p>Council's response</p> <p>Council supported the amendment of condition 13, as proposed by Barro.</p>
	OUTCOME
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 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>
	OUTCOME
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>It is noted that conditions 15 – 21 of the development approval are consistent with conditions N7 and N8 of the EA.</p>

SCHEDULES**Schedule 3*****Barro's request***

Barro sought the deletion of Schedule 3 from the development approval, as the conditions are reflected in the EA.

Schedule 3 sets out the conditions of approval for the ERA.

Council's response

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 (5 April 2019).

OUTCOME

DES did amend the relevant air quality conditions of the EA generally in accordance with the changes requested by Council. However, noise conditions were not amended wholly in accordance with the JER and/or Council's request:

- **Noise monitoring is not required to be undertaken at a location that is representative of 451 Mount Cotton Road, as requested by Council (this was not a recommendation of the JER).**

**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.

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

ENVIRONMENTAL AUTHORITY

AIR	
Condition	
A1	<p>Barro's request</p> <p>Barro sought to remove 'commercial places' from those locations potentially affected by odours, dust or airborne contaminants.</p>
	<p>Council's response</p> <p>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</p> <p>Neither Barro's nor Council's requested amendments were made. However, the dust criteria defined by 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, it is addressed under the changes made by DES.</p>
A2	<p>Barro's request</p> <p>Barro requested that condition A2, relating to dust deposition monitoring, be deleted from the EA.</p>
	<p>Council's response</p> <p>Council supported the deletion of A2 if specific amendments, to incorporate additional monitoring requirements, were made to condition A3.</p>
	<p>OUTCOME</p> <p>Conditions A2 and A3 were replaced by a new A2, which includes Council's requested inclusions/amendments for PM_{TSP}, PM₁₀, PM_{2.5}, dust and silica, and relevant monitoring methods.</p>
A3 and A4	<p>Barro's request</p> <p>Barro requested amendments to the Air Quality Management Plan (AQMP), in accordance with the JER.</p>
	<p>Council's response</p> <p>Council requested that real time monitoring be required under the AQMP, and that the monitoring results be made publicly available.</p>

AIR	
Condition	
	<p>OUTCOME</p> <p>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>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 • Recommend changes to plant, equipment and procedures to improve air quality monitoring and reduce non-compliance.
A5	<p>Barro's request</p> <p>Barro requested that the Ambient Dust Monitoring Program form part of the AQMP.</p> <p>Council's response</p> <p>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.</p>
	<p>OUTCOME</p> <p>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>DES has amended the condition to reflect changes made to preceding conditions of the EA.</p>
A7	<p>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>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</p> <p>Barro requested the inclusion of early morning maintenance monitoring in accordance with the JER.</p> <p>Council's response</p> <p>Council sought the inclusion of the reduced noise limits and an additional requirement for noise monitoring to be undertaken at the nearest sensitive receptor.</p>
	<p>OUTCOME</p> <p>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>
N2	<p>Barro's request</p> <p>Barro sought changes to noise monitoring in accordance with the JER.</p> <p>Council's response</p> <p>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).</p>
	<p>OUTCOME</p> <p>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>DES have established a new condition N3, which reflects the requirement for additional noise monitoring upon request by DES, which was previously included in condition N2. The condition requires additional noise monitoring where there has been a complaint of noise nuisance.</p> <p>DES has amended the condition to include a requirement for the measurement and assessment of low frequency noise against relevant criteria.</p>
N4 and N5	<p>Barro's request</p> <p>Barro requested that conditions about a Noise Management Plan be included in the EA, as recommended in the JER.</p> <p>Council's response</p> <p>Council supported Barro's request.</p>

ACOUSTIC	
Condition	
	<p>OUTCOME</p> <p>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	No changes were requested by Barro or Council and 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) of s 70 of the <i>Environmental Protection (Noise) Policy 2008</i> , which recommend a minimum sample time of 15 minutes.
N6, N8 – N14	No further changes were recommended in the JER, or requested by Barro or Council. DES has maintained the existing conditions accordingly.

ANALYSIS – GROUNDS FOR REFUSAL

Noise and Air Quality
Redlands Planning Scheme
Grounds for Refusal <u>Parts 3.1.4(1) (j) and 3.1.7(g) Desired Environmental Outcomes</u> 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 <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> Protection from incompatible uses; noise, air and traffic impacts avoided or mitigated to a level compatible with the rural environment <u>Extractive Industry Use Code Overall Outcome 2(a)(iv); Specific Outcomes S2.2, 2.3 and 2.5</u> Buffer and mitigate impacts on sensitive receiving environments; noise from excavation, crushing, loading, screening, and blasting is mitigated; materials transport minimises dust
(Draft) Redlands City Plan
Grounds for Refusal <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> 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 <u>Rural Zone code Purpose sections 6.2.21.2(1) and 6.2.21.2(2)(h); Performance Outcomes PO7 and PO9</u> 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 <u>Extractive Industry Use code Purpose sections 9.2.1.2(1) and (2)(a)(iii) and Performance Outcome PO3</u> Manage the impacts of extractive industry; minimise/mitigate impacts on safety and amenity; incorporates measures to minimise impacts of air, noise and light emissions

Noise and Air Quality

Redlands Planning Scheme

Analysis

- The JERs set out the 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 incorporates the recommendations of the JER in respect of noise and air impacts, including siting and design measures (acoustic barriers and mounds) and other measures to mitigate impacts on sensitive receiving environments
- The additional measures sought by Council exceed the standard set by the JER and Barro is not obligated, under the Court Orders, to include these

CONCLUSION:

Most of the recommendations of the JER have been incorporated into the amended EA and/or have been included by Barro in its change application. Although the change application has not been decided, it will be difficult for Council to maintain these grounds for refusal as:

- **The conditions under the EA reflect best practice mitigation measures**
- **DES has amended the EA within its jurisdiction and area of expertise, and there is no further realistic opportunity for the conditions to be amended within the context of the appeal**

Counsel advises that further detailed advice should be sought from Council's noise and air quality expert as to whether, absent any further changes to the EA or development permit, there remains a sufficient basis to support a refusal of the extension application. Officers have sought relevant instructions from Council in this regard.

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) Redlands 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

Analysis

The agreed position of the experts is that there is no strategic planning basis to refuse the extension application, as reasonable community expectations are informed by the planning scheme, which nominates the site on the Extractive Resources overlay.

CONCLUSION:

Council cannot maintain these grounds as the planning scheme envisages the quarry use in this location, thus informing community expectations. Subsequently, there is no expert town planning evidence that supports the continuing refusal of the extension application on either strategic planning or reasonable community expectation grounds.

Tourism
Redlands Planning Scheme
<p>Grounds for Refusal</p> <p><u>Parts 3.1.7(d) Desired Environmental Outcome No. 6 – Economic Development</u> Promote tourism and ecotourism based on the natural environment <u>Rural Non-Urban Zone code Overall Outcomes 2(a)(i)(c) and 2(a)(i)(e)</u> 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> Large scale, high impact industries minimise impacts on tourist and recreational facilities on rural land</p>
<p><i>Analysis</i></p> <p>Reduced impacts as a result of the change and amendment applications do not alter the underlying use, which is not a tourism or ecotourism use. It is noted, however, that the planning scheme supports the quarry use in this location, despite any potential conflict with surrounding uses. The proposed changes and amendments to the EA will reduce impacts on the surrounding rural landscape, including any tourism or ecotourism uses.</p> <p>CONCLUSION:</p> <p>The relevant grounds of refusal cannot be maintained, as the planning scheme and City Plan support the quarry use in this location by identifying it as a Key Resource Area within the Extractive Resources overlay. Further, the impacts of the use on any existing or future tourism use are/will be mitigated by the increased standards for noise and air quality, which are in generally in accordance with the recommendations of the JER.</p>

Traffic

Redlands Planning Scheme

Grounds for Refusal

Rural Non-Urban Zone code Overall Outcome 2(ac)(i)(e); Specific Outcome S3.5

Minimise impacts associated with light, noise, air and light (conducive to a rural environment); traffic movement compatible with the rural environment

Extractive Industry Use Code Overall Outcome 2(a)(vi); Specific Outcomes S2.5 and 2.6

Minimise adverse impacts on traffic networks; materials transport minimise dust nuisance; site vehicle access is adequate and does not impact traffic networks

Infrastructure Works Code Overall Outcome 2(a); Specific Outcome S7

Safety and design of road infrastructure; maintain or improve the safe and efficient operation of roads

(Draft) Redlands City Plan

Grounds for Refusal

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)

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

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

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

Analysis

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.

CONCLUSION:

Although Barro did not request this amendment, it is unlikely to be sufficient to maintain the refusal of the extension application. Further advice in this respect should be obtained from Council's traffic expert and Officers have sought relevant instructions from Council in this regard.