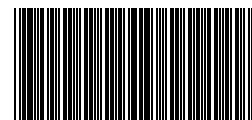




Filed: 30 September 2022 5:39 PM



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Statement of Facts

COURT DETAILS

Court	Land and Environment Court of NSW
Division	Class 1
Registry	Land and Environment Court Sydney
Case number	2021/00091361

TITLE OF PROCEEDINGS

First Applicant	Bell Quarry Rehabilitation Project Pty Ltd
First Respondent	Lithgow City Council ABN 59986092492
Second Respondent	Blue Mountains City Council

FILING DETAILS

Filed for	Bell Quarry Rehabilitation Project Pty Ltd, Applicant 1
Legal representative	Kirston Gerathy
Legal representative reference	
Telephone	0293348628
Your reference	KMG:KRM:981456

ATTACHMENT DETAILS

In accordance with Part 3 of the UCPR, this coversheet confirms that both the Lodge Document, along with any other documents listed below, were filed by the Court.

Statement of Facts (Amended Statement of Agreed Facts - 30.09.2022.pdf)

[attach.]

Form A (version 2)

AMENDED STATEMENT OF AGREED FACTS**COURT DETAILS**

Court	Land and Environment Court of New South Wales
Class	1
Case number	2021/00091361

TITLE OF PROCEEDINGS

Applicant	Bell Quarry Rehabilitation Project Pty Ltd
First Respondent	Lithgow City Council
Second Respondent	Blue Mountains City Council

FILING DETAILS

Filed for	Bell Quarry Rehabilitation Project Pty Ltd
Legal representative	Kirston Gerathy HWL Ebsworth Lawyers
Legal representative reference	PCN: 22570 Ref: KGM:KRM:981456
Contact name and telephone	Kara Meziniec Tel. +61 2 9334 8737
Contact email	kmeziniec@hwle.com.au

Amended Statement of Agreed Facts

The proposal

1. The proceedings are an appeal against the Western Joint Regional Planning Panel's refusal of development application number 294/18 (**DA**) which seeks consent for the rehabilitation of the former sandstone quarry known as Bell Quarry (**Quarry**). The DA is for designated development and is regionally significant development under the *State Environmental Planning Policy (Planning Systems) 2021*.
2. The Quarry operations were primarily carried out on Lot 23 in DP 751631 (**Lot 23**). Extraction during the Quarry operations extended into:
 - (a) lots 7031 and 7032 in DP 1066257 (State of NSW);
 - (b) part of the unmade paper road comprised in Vol 1956 Fol 183 Sandham Road (**the Paper Road**) (Lithgow City Council (**LCC**)); and
 - (c) lot 22 in Deposited Plan 751631 (**Lot 22**) (State of NSW under the care, control and management of National Parks and Wildlife Service).
3. This land is within the Lithgow Local Government Area (**LGA**) and is affected by the Lithgow Local Environmental Plan (**the LLEP**).
4. The DA seeks consent to rehabilitate the entire Quarry footprint including lots 7031 and 7032 DP 1066257 and the Paper Road (**Proposed Development**). The DA does not seek consent for works on Lot 22. Those works will be the subject of a separate application under Part 5 of the *Environmental Planning and Assessment Act 1979* (**the EPA Act**).
5. The haul route for the Quarry as proposed in the DA is Sandham Road, the Darling Causeway, Bells Line of Road (east and west of Sandham Road), Chifley Road and the Great Western Highway (see pp 106-108 Environmental Impact Statement August 2018 (**Original EIS**)).

Ownership of Sandham Road.

6. Sandham Road is located in both the Lithgow City Council (**LCC**) and Blue Mountains City Council (**BMCC**) LGAs. It has been partially constructed outside the cadastral road corridor, with the location and approximate length of the deviations from that corridor identified below:

Title reference	Owner	Length of Deviation	Roads Authority (for public road only)	Zoning	Comments
22/751631	State of NSW vested in the care, control and management of National Parks and Wildlife Service),	c. 120m-165m (inside and outside curve)	LCC	C1	Located within Blue Mountains National Park.
20/751631	State of NSW vested in the care, control and management of National Parks and Wildlife Service),	c. 40m-80m (inside and outside curve)	LCC	C1	Located within Blue Mountains National Park.
21/751631	State of NSW vested in the care, control and management of National Parks and Wildlife Service),	c. 40m-70m (inside and outside curve)	LCC	C1	Located within Blue Mountains National Park.
163/664383	██████████	120m	LCC	C3	
31/751631	State of NSW vested in the care, control and management of National Parks and Wildlife Service),	c. 120m	LCC	C1	Located within Blue Mountains National Park.
33/751631	State of NSW vested in the care, control and management of National Parks and Wildlife Service),	c. 500m	LCC	C1	Located within Blue Mountains National Park.
162/751631 (Lot 162)	██████████	c. 60m-110m (inside and outside curve)	The Crown	E3	██████████ does not consent to the use of Lot 162 for the purposes of a road to serve the Proposed Development see Tab 16A .
17/751631	In the name of ██████████	c. 5m-10m (inside and outside curve)	The Crown	RE1	Crown land since it was resumed as severed land in 1937. The part of this lot highlighted pink on Vol 1351 Fol 227 was declared public road 2 April 1907 - Tab 19

7. LCC is the roads authority under the Roads Act 1993 (**the Roads Act**) for the part of Sandham Road located in its LGA. The part of Sandham Road which is located in the BMCC LGA is either:
 - (a) a Crown Road for its full length; or
 - (b) a Crown Road for most of its length, with a short section of Council-owned road.
- 7A. Crown Lands has advised that it requires all sections of Sandham Road to be transferred to BMCC if the development proceeds. BMCC has not to date been requested by the Crown or by any other party to consent to any such transfer or to make any submissions to Crown Lands in relation to that requirement.
8. Lot 23 has direct frontage to Sandham Road. The road does not deviate from its cadastral boundaries for the entire length of the frontage to Lot 23.
9. There is an existing driveway access on Lot 23 which traverses Lot 22 to access Sandham Road. The existing driveway is identified in the Application as the access and egress point for the proposed development.
10. The access point is proposed to be re-constructed and located wholly within lot 22 as part of Stage 1 of the development. From stage 2 there will be direct access to Sandham Road.
11. Crown Lands have granted owner's consent to the making of the DA.

Assessment of the DA

12. The DA was lodged on 27 November 2018. The DA was referred to various public authorities on 9 January 2019 including NSW Department of Primary Industries - Lands (Crown Lands) and BMCC. Both Crown Lands and BMCC provided responses. The DA was refused on 6 April 2020.

The proceedings

13. The appeal was filed on 1 April 2021.
14. On 21 July 2021 Lithgow City Council (**LCC**) filed its statement of facts and contentions (**LCC SOFAC**). On 14 September 2021 the Applicant offered to LCC to enter into a voluntary planning agreement for contributions for identified works upgrading parts of Sandham Road (essentially for passing bays) within one kilometre of the junction with Bells Line of Road. The parts of Sandham Road

identified by the Applicant in its offer are located in the BMCC LGA. The offer formed part of the amendments to the DA for which leave was granted on 25 November 2021.

15. On 15 September 2021 LCC and the Applicant participated in a section 34 conciliation conference. The parties were unable to resolve the issues in dispute and the section 34 conciliation conference was terminated on that day.
16. On 25 November 2021 the Applicant was granted leave to amend the DA. The amendments sought to address the matters contended in the LCC SOFAC.
17. The amendments included:
 - (a) integration of the Roads Act 1993 approvals applications made to LCC.
 - (b) internalisation of the access to the site as part of Stage 1 of the Proposed Development; and
 - (c) an offer to LCC of a planning agreement to contribute to the costs of identified upgrade works and ongoing maintenance of Sandham Road.
18. The amendments to the DA were exhibited from 17 December 2021 to 8 February 2022. BMCC made an objection to the Amended DA.
19. The Amended DA was also referred to LCC's development engineer.
20. On 11 February 2022, LCC filed its amended statement of facts and contentions (**LCC ASOFAC**).
21. On 11 February 2022 BMCC filed and served a motion for joinder to the proceedings (**Joinder Motion**).
22. On 16 February 2022 the solicitor for BMCC served on the Applicant's solicitors an affidavit in support of the Joinder Motion of Katherine Hawken dated 16 February 2022 (**Hawken Affidavit**).
23. On 3 March 2022 Moore J granted leave for BMCC to be joined as a party to the proceedings. The hearing dates of 1, 5, 6, 7 and 8 April 2022 were vacated. His Honour also set down the matter for directions on 2 May 2022 to enable the Applicant to carry out survey works and investigations in response to the matters raised in the Hawken Affidavit.
24. BMCC filed its Statement of Facts and Contentions on 19 April 2022 (**BMCC SOFC**).

25. The proceedings were subsequently further adjourned until 23 May 2022, 20 June 2022 and 12 July 2022 to provide the Applicant further time to investigate matters referred to in the BMCC SOFC.
26. On 19 July 2022, orders were made for the Applicant to file a Notice of Motion by 27 July 2022 and for that motion to be returnable on 29 July 2022. The Motion was subsequently made returnable on 10 August 2022.

Deviations

27. The deviations are not benefited by any registered easements.
28. Where Sandham Road deviates over land owned by the State of NSW, it is not a Crown Road because it has not been declared a Crown Road.
29. Any Crown Land over which Sandham Road deviates, must be managed in accordance with the *Crown Land Management Act 2016* and any plans of management made under that Act.
30. Any land over which Sandham Road deviates that is within a national park reserved under the *National Parks and Wildlife Act 1974 (NPW Act)* must be dealt with in accordance with the NPW Act and relevantly sections 151A, 151B, 153C and 188C.
31. Those parts of constructed Sandham Road that deviate over privately owned land are not a public road.