

# DEVELOPMENT ASSESSMENT REPORT – CONSTRUCTION OF DWELLING – 173 TITANIA ROAD, OBERON

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## PROPOSAL

Council is in receipt of Development Application 10.2011.1.1 (**Attachment 1**) for the construction of a proposed dwelling on Lot 12 in DP: 603429, 173 Titania Road, Oberon.

The proposed development consists of the construction of a four bedroom dwelling on an established cleared section of land within lot 12 in DP: 603429 which consists of 32.5 hectares of vacant land. The land subject to the application has been identified as Class 4 and 5 Non-Prime crop and Pasture land and has a land capability class of Six (6) and as such is not identified as being environmentally sensitive in accordance with the definition in the Oberon local Environmental Plan, 1998.

The dwelling is proposed to be sited within 390m of the existing quarry as approved by the Land and Environment Court Decision, and within 270m of the proposed expansion to the white granite quarry (as per **Attachment 2**). The Statement of Environmental effects submitted in support of the Development Application indicates the presence of a Knoll on Lot 12 which, according to their assessment, provides topographic shielding to the dwelling from noise impacts associated to the quarry.

The design of the proposed dwelling incorporates construction principal to achieve noise attenuation such as double glazing and Hebel power panel which have been indicated by the consultant to provide "*sufficient acoustic attenuation*" within the proposed dwelling. (**Attachment 1**)

The dwelling proposed in Development Application 10.2011.1.1 is in the same location as previously assessed by Development Application 23/09 and as such is subject to the same planning constraints identified through the determination of that particular Development Application. Accordingly the dwelling site is within:

- The 500m buffer of the existing extractive industry as defined by Oberon's Development Control Plan, 2001 (**Attachment 3**); and
- The dwelling is proposed to be constructed on an identified mineral resource area (**Attachment 5**); and
- The development site is adjoining an existing quarry that is subject to a Part 3A assessment from the Department of Planning and Infrastructure as a Major Project which if approved will result in a potential increased extraction of 25,000 tonnes per annum to 250,000 tonnes per annum over thirty years.

It must be stated however that additional information relating to the current development application has been provided justifying support for the development in the location proposed, and has provided additional information specifically relating to design and noise supporting the application in its current form.

The application is for a proposed dwelling located within 390m of an existing white granite quarry, 270m from the proposed extraction/quarry expansion area (as per **Attachment 2**), and 300m from the proposed stock piling area. The quarry is currently owned by Mudgee Stone Company, which excavates the mineral resource Alaskite. Consequently the proposed dwelling site is within Councils 500m buffer zone to an existing extractive industry.

The existing white granite quarry is currently subject to a Part 3A application with the Department of Planning and Infrastructure to progressively increase production to a maximum level of 250 000tpa. The Part 3A Application, at the time of preparing this report, is yet to be determined by the Department of Planning and Infrastructure.

The Environmental Assessment (EA) submitted with the Part 3A Application indicates there will be potentially adverse impacts upon Lot 12 from the proposed expansion in terms of noise impacts, over blast pressure from rock blasting and dust. However, it is acknowledged that the existing site operation would currently impact upon the proposed dwelling site.

In order to determine the application the applicant will also require a variation to clause A2.6 of Oberon's Development Control Plan, 2001 as the location of the proposed dwelling is within the 500 metre buffer zone of the existing extractive industry, which is indicated in **Attachment 3**.

## **SUMMARY**

To assess and recommend determination of DA 10.2011.1.1 Recommendation will be for approval subject to conditions.

## **HISTORY**

Lots 12 (subject of the application) and Lot 13 (now known as lot 2 in DP: 1089826), currently owned by Mudgee Stone Company, were created as concessional lots under the Oberon Interim Development Order No.1 for the purpose of dwellings and, as such, a dwelling is permissible under clause 18 of Oberon Local Environmental Plan 1998 (OLEP 1998).

On the 23<sup>rd</sup> June 2003, Development Application 110/03 was lodged with Council for a "*Dwelling Entitlement*" by the owner at the time, Luss Pty Ltd. Lot 12 at the time of assessment was part of a substantial original holding and Development Application 110/03 was one of three development applications (DA 110/03, DA 75/05 and DA 76/05) submitted for "*Dwelling Entitlements*" by Luss Pty Ltd on other lots forming the original holding. Development Application 110/03 was subsequently approved on the 8<sup>th</sup> August 2003 with six conditions of Development Consent.

Of particular interest is Condition 3 of DA110/03 'Location and Design of Dwelling' which required that the location and design of a dwelling on the land shall take into account the presence or potential presence, and the impacts or potential impacts, of any proposed or existing quarry operations on the adjoining land. This condition was imposed due to the fact that Council was at the same time assessing Development Application 126/03 for a Granite Quarry (Mudgee Stone Company) on the adjoining land, Lot 13 (now known as lot 2 in DP: 1089826).

Development Application 126/03 was subsequently refused by council on the 9<sup>th</sup> March, 2004. That decision was overturned by appeal of the applicant to the Land and Environment Court on 22 December, 2004.

On the 14<sup>th</sup> August 2008 Council staff received Development Application 23/09 for a proposed dwelling on Lot 12, which was referred to Council for determination in accordance with Clause H.3.10.1, as a submission has been received by way of objection from the

Mudgee Stone Company. Council determined at its 17 February, 2009 Ordinary Meeting to refuse the application for the following reasons:-

*"That*

- 1. Development Application 23/09 to construct a dwelling on Site 3 on Lot 12 in DP 603429, 173 Titania Road, Oberon be refused until such time as the proponents can provide to Council the following:-
  - a) An independent noise assessment prepared by an approved Acoustic Consultant, identifying the appropriate noise contour in relation to proposed Site 3, and*
  - b) Architectural plans of a proposed future dwelling showing noise attenuation construction methods.*
  - c) Documentary evidence that all other outstanding issues as identified in Staff Report A3 to Council's 17 February 2009 Ordinary Meeting have been addressed by the proponents to the satisfaction of Development Department staff.**
- 2. If the proponents resubmit a Development Application within 12 months of the date of refusal of Development Application 23/09, that all appropriate Development Application Fees be waived."*

The notice of determination (and the "planning" reasons for the refusal) were as follows:

***"That Development Application 23/09 Construction of a Dwelling at Lot 12 in DP: 603429, 173 Titania Road, Oberon is refused for the following reasons:***

- 1. Council is not satisfied that the development complies with the objectives of the Rural 1(a) Zone in the Oberon Local Environmental Plan 1998;*
- 2. The application does not disclose information which enables Council to form the opinion that the carrying out of the development is consistent with the objectives of the Oberon Local Environmental Plan 1998;*
- 3. The application does not disclose sufficient information that enables Council to take properly into consideration the effect of carrying out of the proposed development on the future recovery from known prospective areas of minerals. State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007 – Clause 13.*
- 4. Council cannot be satisfied that the location of the dwelling is suitable for the development, having regard to adjoining land use and in particular the existing and future operations of the quarry in the locality.*
- 5. The proposed dwelling is located within the 500m buffer zone of the Oberon White Granite Quarry, contrary to clause A.2.6 of Development Control Plan 2001."*

The applicant has submitted Development Application 10.2011.1.1 for the construction of a proposed dwelling in the same location as that determined by Development Application 23/09.

## **LOCATION OF THE PROPOSAL**

Legal Description :	Lot 12 DP 603429
Property Address :	173 Titania Road, Oberon.

**ZONING:** The land is zoned General Rural 1(a) in accordance with Oberon Local Environmental Plan 1998.

## PERMISSIBILITY:

The development is defined as a Dwelling/House which is not defined in Clause 6 of Councils current LEP. However, Clause 5 of OLEP 1998 indicates as follows:

### 5 Adoption of Model Provisions

The [Environmental Planning and Assessment Model Provisions 1980](#) are adopted for the purposes of this plan except for:

- (a) the definitions of **agriculture**, **arterial road**, **commercial premises**, **forestry** and **map** in clause 4 (1), and
- (b) clauses 15, 29, 31, 32 (c), 33 and 34.

As such, in accordance with the model provisions as dwelling-house is defined as follows:

**dwelling-house** means a building containing 1 but not more than 1 *dwelling*.

A **dwelling** means a room or suite or suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile.

Therefore, the development is permissible in the zone subject an application being considered and approved under Clause 18(1)(a)(iv) being an allotment created under Development Application 110/03.

Clause 18 is provided below for information.

### 18 Dwelling-houses in Zone No 1 (a)

(1) A person must not erect a dwelling-house on vacant land within Zone No 1 (a) unless:

(a) the land comprises:

(i) an original holding that has not been subdivided (unless only under [State Environmental Planning Policy No 4—Development Without Consent](#)), or

(ii) the largest part, portion, lot or aggregation of them, remaining from an original holding following the excision of a part, portion or lot from the original holding, or

(iii) (Repealed)

(iv) an allotment in a subdivision for the purpose of a dwelling where consent for the subdivision was granted before the appointed day and which has not lapsed, and

(b) the dwelling is not erected within, or within 100 metres of the high water mark of, a water body listed in Schedule 1 and:

(i) is not less than 150 metres from the boundary of any adjoining lot which is being used for an agricultural activity, if that lot is prime crop and pasture land, unless a buffer between the dwelling and the boundary of that lot is provided

in accordance with the provisions of *Development Control Plan No 4—Part B, Subdivisions*, or

(ii) is not less than 50 metres from the boundary of any adjoining lot that is not prime crop and pasture land, unless a buffer is provided between the dwelling and the boundary of that lot in accordance with the provisions of *Development Control Plan No 4—Part B, Subdivisions*, and

(c) septic effluent disposal from the dwelling is not within 200 metres of the high water mark of a water body listed in Schedule 1, unless geotechnical and hydrogeomorphological reports satisfy the Council that the land can sustain safe disposal within this area.

(2) In this clause, ***vacant land*** means land on which no dwelling-house is erected.

### **POLICY IMPLICATIONS (OTHER THAN DCP's)**

In accordance with Part H3.10.1 of the DCP, the Development Application is submitted to Council for determination for the following reasons:

- As a submission has been received by way of Objection; and
- A variation to clause A2.6 of Oberon's Development Control Plan, 2001 is required in order to determine the Development Application as the location of the proposed dwelling is within the 500 metre buffer zone of the existing extractive industry.

### **FINANCIAL IMPLICATIONS (eg Section 94)**

Nil.

### **LEGAL IMPLICATIONS**

#### **Any Environmental Planning Instrument**

##### Local Environmental Plan

The Oberon Local Environmental Plan, within the aims and objectives, requires Council to:

#### **2 Aims, objectives etc**

The general aims of this plan are:

- (a) to recognise and promote the Oberon local government area as a desirable and viable place to visit and in which to live and to invest, and
- (b) to encourage the proper management, development and conservation of natural and built resources within the Oberon local government area by protecting, enhancing or conserving:
  - (i) prime crop and pasture land, and
  - (ii) timber, minerals, soil, water and other natural resources, and
  - (iii) areas of significance for nature conservation, and

- (iv) areas of high scenic or recreational value, and
  - (v) places and buildings of heritage significance, including archaeological and Aboriginal relics and places, and
  - (vi) water catchment areas, and
- (c) to replace planning controls, as they applied to rural land before this plan commenced, with a local environmental plan to help facilitate growth and development of the Oberon local government area in a manner which is consistent with the aims stated in paragraphs (a) and (b) and which:
- (i) minimises the cost to the community of fragmented and isolated development of rural land, and
  - (ii) facilitates the efficient and effective delivery of amenities and services, and
  - (iii) facilitates a range of residential and employment opportunities in accordance with demand, and
  - (iv) facilitates farm adjustments, and
- (d) to encourage tourism in the Oberon local government area in a manner which is consistent with the aims stated in paragraphs (a) and (b), and
- (e) to encourage agriculture (including forestry) and protect the agricultural base of the Oberon local government area.

## **Zone No 1 (a) (Rural 'A' Zone)**

### **1 Objectives of Zone**

The objectives of this zone are to promote the proper management and utilisation of resources by:

- (a) protecting, enhancing and conserving:
  - (i) agricultural land in a manner which sustains its efficient and effective agricultural production potential, and
  - (ii) soil stability, by controlling and locating development in accordance with land capability, and
  - (iii) forests of existing and potential commercial value for timber production, and
  - (iv) valuable deposits of minerals, coal, petroleum and extractive materials, by controlling the location of development in order to ensure the efficient extraction of those deposits, and
  - (v) trees and other vegetation in environmentally sensitive areas where the conservation of the vegetation is likely to control land degradation or is significant to scenic amenity or the natural wildlife habitat, and
  - (vi) water resources, including groundwater, for use in the public interest, preventing the pollution of water supply catchments and water storage, and
  - (vii) areas of significance for nature conservation, including areas with rare plants, wetlands and significant habitats, and

- (viii) items of archaeological or heritage significance, including Aboriginal relics and places, and
- (b) preventing the unjustified development of prime crop and pasture land for purposes other than agriculture, and
- (c) facilitating farm adjustments, and
- (d) minimising the cost to the community of:
  - (i) fragmented and isolated development of rural land, and
  - (ii) providing, extending and maintaining public amenities and services, and
- (e) providing land for rural small holdings development and for other non-agricultural uses in accordance with demand for that development and in a manner which has the least adverse impact on prime crop and pasture land, and
- (f) controlling and locating dwelling-house development to provide buffers from adjoining agricultural land in order to provide adequate environmental safeguards to the inhabitants and not prejudice future agricultural activity in the near vicinity.

## 2 Without Development Consent

Development for the purpose of:

agriculture (other than building work and intensive livestock keeping establishments); forestry.

## 3 Only with Development Consent

Development not included in item 2 or 4.

## 4 Prohibited

Development for the purpose of:

bulk stores; commercial premises; motor showrooms; residential flat buildings; sales rooms or showrooms; shops (other than general stores).

Part 3 Special Provisions of OLEP Clause 10 – “*General considerations for development within rural zones*”, indicates:

*“(1) The Council must not consent to development on land within Zone No 1 (a), 1 (c) or 1 (e) unless it has taken into consideration, if relevant, the effect of the carrying out of the proposed development on:*

*(c) The future recovery from known or prospective areas of valuable deposits of minerals, coal, petroleum, sand, gravel or other extractive minerals,..”*

However subclause three applies in this instance (given the nature of the application) that indicates as follows:

(3) Subclause (1) does not apply to development, being:

- (a) an addition to a building or work, or
- (b) development ancillary to a land use for the purpose of which development may be carried out without the consent of the Council, or

**(c) the erection of a dwelling-house on an allotment of land created for the purpose of a dwelling-house in accordance with this plan.**

As such, given Subclause 3 of Clause 10, the requirements associated with the erection of a dwelling and the potential impacts of conflicting landuses are not considered for an application for a dwelling/house within the 1(a) zone for which a dwelling can be lawfully erected.

### Regional Environmental Plans

There are no Regional Environmental Plans relating to the proposed development site.

### State Environmental Planning Policies

The State Environmental Planning Policy (SEPP) relevant to the proposal are:

- SEPP 44 – Koala Habitat Protection.

The Statement of Environmental Effects states that there was no indication of koala populations or habitat species.

- SEPP (Rural Lands) 2008. Part 2 Rural Planning Principles.

Clause 7 Rural Planning Principles requires the following:

- the promotion and protection of opportunities for current and potential productive and sustainable economic activities in rural areas,
- in planning for rural lands, to balance the social, economic and environmental interests of the community,
- the identification and protection of natural resources, having regard to maintaining biodiversity, the protection of native vegetation, the importance of water resources and avoiding constrained land.

Furthermore Clause 10 highlights matters to be considered by Council in determining Development Applications for rural dwellings:

### **Matters to be considered in determining development applications for rural subdivisions or rural dwellings**

- (1) This clause applies to land in a rural zone, a rural residential zone or an environment protection zone.
- (2) A consent authority must take into account the matters specified in subclause (3) when considering whether to grant consent to development on land to which this clause applies for any of the following purposes:
  - (a) subdivision of land proposed to be used for the purposes of a dwelling,
  - (b) erection of a dwelling.
- (3) The following matters are to be taken into account:
  - (a) the existing uses and approved uses of land in the vicinity of the development,
  - (b) whether or not the development is likely to have a significant impact on land uses that, in the opinion of the consent authority, are likely to be preferred and the predominant land uses in the vicinity of the development,



- (c) whether or not the development is likely to be incompatible with a use referred to in paragraph (a) or (b),
- (d) if the land is not situated within a rural residential zone, whether or not the development is likely to be incompatible with a use on land within an adjoining rural residential zone,
- (e) any measures proposed by the applicant to avoid or minimise any incompatibility referred to in paragraph (c) or (d).

It is considered that in terms of the current SEPP conditions of consent could be implemented to minimise this impact in accordance with Clause 10(3)e of the SEPP. Further, the key aims of the SEPP are to protect agricultural land, which in this instance is not relevant to the current application.

- SEPP (*Mining, Petroleum Production and Extractive Industries*) 2007

Clause 13, requires Council to consider the impacts of the proposed dwelling on the mineral resource which includes current or future extraction.

*"(1) This clause applies to an application for consent for development on land that is, immediately before the application is determined:*

*(a) In the vicinity of an existing mine, petroleum production facility or extractive industry...*

*(2) Before determining an application to which this clause applies, the consent authority must:*

*(a) Consider:*

*(i) the existing uses and approved uses of land in the vicinity of the development, and*

*(ii) whether or not the development is likely to have a significant impact on current or future extraction or recovery of minerals, petroleum or extractive materials (including by limiting access to, or impeding assessment of, those resources), and*

*(iii) any ways in which the development may be incompatible with any of those existing or approved uses or that current or future extraction or recovery, and*

*(b) evaluate and compare the respective public benefits of the development and the uses, extraction and recovery referred to in paragraph (a) (i) and (ii), and*

*(c) evaluate any measures proposed by the applicant to avoid or minimise any incompatibility, as referred to in paragraph (a) (iii)."*

In the assessment of the Development Application, Council must therefore consider the existing quarry as approved and also the proposed expansion of the white granite quarry which is currently under assessment by the Department of Planning and Infrastructure.

Council Officer discussions with Mr Garry Burton, geologist, with the Department of Industry and Investment (Minerals Division) indicated that the current 117 Direction (pursuant to Section 117(2) of the Environmental Planning and Assessment Act 1979 which directs Councils to exercise functions in relation to the preparation of a draft local environmental plan) for the Oberon Local Government Area are currently being reviewed and in fact the Alaskite resource indicated (to the west) on the plan provided to Council, may now be considered as a buffer or transitional zone. As such it can be considered that the resource is less than originally identified.

This mapping variation, does not however, remove Councils requirement for consideration of the abovementioned Mining SEPP. Mr Burton explained to staff that although Lot 12 is not within the Alaskite resource it is within the identified transition zone which aims to prevent "incompatible" development within 500 metres of the mineral resource. Accordingly the

Department of Industry and Investment would prefer not to see any approved development within the transition area that is incompatible with the quarrying or mining of the resource. A dwelling is considered to be *potentially* incompatible by the Department. However as part of the assessment of any application Council must consider ways any development can 'fit' within the fabric of the locality. As part of the SEE the applicant has indicated that they propose to undertake mitigation techniques to limit the affect of the existing quarry on their proposed residence. This includes acoustic walling (hebel based), bund shielding and architectural principles to reduce the impact of the quarry on the proposed development. Similarly, any application by the quarry would need to highlight how their operations would be undertaken to minimise the impact of their development on adjoining landowners.

The Mining SEPP requires Council to consider the impact of the proposed dwelling on the future extraction of minerals. So the question needs to be asked – Does the granting of consent for a dwelling on a significant impact on current or future extraction or recovery of minerals?

The SOE by Umwelt on behalf of Webb states in respect to their justification for a dwelling on a significant resource that the "*location of a dwelling on lot 12 as proposed does not mean that the underlying Alaskite resource would be sterilised for the future as the house could be demolished at some time in the future if the landowners decided to exploit the Alaskite resource..*".

The future of the resource would substantially be based upon any landowners 'want' to relinquish his land for the purpose of this extractive resource. Thus, it is considered that the application in its current state would not sterilise the future resource located within the vicinity of the land as any application would need to highlight appropriate actions to be put in place to minimise impact.

In terms of compatibility it is not considered that a dwelling/house is not compatible with the existing operations as other dwelling/houses have been approved in the vicinity of the quarry.

Interestingly, under Clause 12 of the SEPP equal responsibility is placed upon mining and extractive industry applications to consider the same principles as those placed on adjoining development under Clause 13.

### **Any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority**

Currently Councils Draft Land Use Strategy (LUS) has been placed on exhibition with closing dates for submissions being 3 January 2012.

The proposed development is located within the current Section 117 directions which have been identified within the draft LUS. This has been previously discussed within the report.

### **Any Development Control Plan**

Is the proposal consistent with the DCP? If not, is a variance warranted and has it been justified?

Councils Development Control Plan 2001 currently applies to the land.

In this instance it has been reviewed for the performance of the buffer distances. The objectives of the LEP are supported by the DCP and the buffer distance is consistent with the policies of the Department of Industry and Investment (Minerals Division). The separation of incompatible land uses such as residential and quarrying by buffers is a traditional and conventional planning technique. Council could reasonably expect that the Court would support the application of the provisions of the DCP.

*Stockland v Manly* also recognised that "consistency in decision making must be a fundamental objective of those who make administrative decisions. That objective is assisted by the adoption of development control plans and the making of decisions in individual cases which are consistent with them. If this is done, those with an interest in the site under consideration or who may be affected by any development of it have an opportunity to make decisions in relation to their own property which is informed by an appreciation of the likely future development of nearby property." The buffer distances in Oberon DCP 2001 have given the certainty and consistency for the decision making of the landowners of both the quarry and the subject site since the adoption of the DCP in 2001.

Accordingly the proposal has been assessed against the provisions of Part A.2.6 of Oberon Development Control Plan, 2001 which requires that to minimise land use conflict and to avoid undue interference with the living amenity of residence, a 500 metre buffer is to be provided between the footprint of the quarry/extractive industry and the dwelling site.

Provision A.2.6.f states:

*In order to minimise landuse conflicts and avoid undue interference with the living amenity of residents, residential development shall be located so as to ensure the following minimum buffer areas around intensive agriculture establishments, the Oberon Industrial area, quarries, sewerage treatment plants and the other existing landuses with a nuisance potential.*

*In the current application the following buffers apply:*

*Extractive Industries – 500m (from footprint of operations and is to be provided wholly within the proponents land or by appropriate lease over the buffer area. Council may consider less stringent conditions based on partial use and/or annual production volume having regard for public benefit).*

In the instance of the current application under Part A.2.6 the proposed dwelling will be located 390m from the existing quarry and 270m from the proposed expansion. Under the current provisions of the DCP although the proposed development lies within the 500m buffer zone, conversely the current quarrying operations do not retain the known buffer within the boundaries of the allotment associated with the approved quarrying operations.

In order for the Development Application to be determined Council must grant a variation to this clause of the DCP.

To put this decision into perspective Council staff have assessed the buffer zone, the area of identified mineral resource and the noise contour and can identify the following:

- No dwellings have been approved within the 500m (DCP required) buffer zone since its adoption; the only dwelling existing inside the buffer is that of Mr M and Mrs J Armstrong. An excised lot was approved in 2005 in consultation with the quarry

owner; however the dwelling location is actually approximately 1 km away from the extraction site at the time of determination. (applicant: Australian Feldspar P/L); and

- One dwelling has been approved, under staff delegation, within the identified Alaskite mineral resource area and 35 dB(A) noise contour as indicated by the initial Environmental Assessment

This Development Consent 10.2009.212.1 was able to be favourably determined by staff as the original objection by the Mudgee Stone Company was removed due to the applicant's willingness to negotiate with the Mudgee Stone Company.

The consent was granted with a signed deed agreement between the Mudgee Stone Company and current land owner. The deed agreement will also be lodged as a positive covenant on the title of the property in the benefit of Council. The applicant also relocated the dwelling from its original proposed position and incorporated Acoustic Attenuation measures into the construction of the dwelling as recommended by the applicant's acoustic consultant. These requirements were included as conditions of development consent.

The dwelling is currently under construction and will be sited approximately 520 metres from the proposed expansion and 420m from the proposed stock pile area. The dwelling is located outside the 500m buffer zone of the quarry which has been confirmed by survey however is located within the buffer zone when considering the stock pile area. *(Please refer to **Attachment 3** which also includes a detail of surrounding land ownership)*

The Statement of Environmental Effects prepared by Umwelt on behalf of Mr and Mrs Webb states that the quarry operations can be carried out in a way that does not unduly interfere with the living amenity at the proposed dwelling site. The information provided by the EA in support of Mudgee Stone Quarries proposed expansion does not support this statement as the quarry operations do and will impact upon Lot 12 and the Part 3A proposal will not "cure" the impact upon amenity. Interestingly the EA states that the Oberon White Granite Quarry will not be complying with the buffer requirements of the Oberon Development Control Plan. This consideration can be considered somewhat contradictory given planning consideration for their objection is based upon non-compliance with the DCP.

**Any planning agreement that has been entered into under Section 93F, or any draft planning agreement that a developer has offered to enter into under Section 93F?**

Nil.

**Any matters prescribed by the regulations that apply to the land**

Refer to clause 92, 93, & 94 of the Regulation. If a DA for demolition, the provisions of AS 2601-1991; The Demolition of Structures. Fire Safety considerations – DA that does not seek the rebuilding, alteration, enlargement or extension of the building. Consent Authority may require buildings to be upgraded – DA comprising the rebuilding, alteration enlargement or extension, take into consideration whether it is appropriate to require the building to be brought into conformity with the BCA.

Councils Health and Building Manager has assessed the application and has provided the following comment.

Please find attached the conditions of consent that would be required to be incorporated into any Development Consent for the proposed dwelling.

Please note that in order to comply with section 79BA of the EP&A 1979 that both the APZ calculator and construction assessor supplied with the application were used to determine the dwelling must be built to Bushfire Attack Level 29 (BAL 29).

I clarified that BAL 29 is the correct construction level by also inputting the data into the RFS online calculator and assessor.

The letter from the RFS that was also supplied by the applicant was not necessarily relied upon as it was from a referral of a previously referred dwelling on the property.

The RFS are not required to be notified as the proposed construction is not Flame Zone as per Planning for Bushfire Protection and as such Council can proceed to determine the bushfire risk.

The conditions are as follows:

### **Approved Plans**

The development is to be carried out in accordance with the approved stamped plans, except as otherwise provided by the conditions of this determination (Note:- modifications to the approved plans will require the lodgement and consideration by Council of a modification pursuant to Section 96 of the Environmental Planning and Assessment Act).

*Reason:-* to confirm and clarify the terms of Council's approval.

### **Construction Certificate**

A Construction Certificate is required for the dwelling, prior to the commencement of any site or building works. This certificate can be issued either by Council as the consent authority or by an accredited certifier. In addition to the Site Plan, Floor Plan, Elevations the following specific documentation is to be lodged with the construction certificate;

- Concrete slab design prepared by a practising structural engineer,
- Building specifications,
- A window rating in accordance with AS 2047 needs to be specified for all windows.
- Wall and roof framing details including; sizing, tie down, lintel specifications, bracing details and locations,
- Certification that wall and roof frames of the dwelling can withstand a ground snow load of 2.0kpa,
- Certification that wall and roof frames can withstand a design wind speed of N2 (W40),
- Bushfire Attack Level- 29 construction details for the dwelling in accordance with AS3959,

*Reason:-* To comply with the Environmental Planning and Assessment Act 1979.

### **Home Owners Warranty Insurance or Owner Builder Permit**

A copy the builders Home Owners Warranty Insurance or Owner Builders Permit shall be submitted to the Principal Certifying Authority before any building work authorised to be carried out by the consent commences on the dwelling.

*Reason:-* To comply with Clause 98 of the Environmental Planning and Assessment Regulation 2000 which prescribes that, in the case of residential building work for which the Home Building Act 1989 requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force.

### **Section 68 Approval**

Prior to the commencement of works onsite an approval to under section 68 of the Local Government Act 1993 for the operation of an onsite waste water system shall be obtained from Council. In this regard the following is required;

- Completed application form.
- Payment of fees in accordance with the management plan.
- Geotechnical report from a practising geotechnical engineer for a 4 bedroom dwelling.
- Septic tank specifications.

*Reason:-* To ensure compliance with section 68 of the Local Government Act 1993 and AS1547.2000.

### **Notice of Commencement**

At least two (2) days prior to the commencement of building works, the applicant is required to submit to Council the attached "Notice of Commencement of Building or Subdivision Works and Appointment of Principal Certifying Authority".

*Reason:-* To meet the requirements of Section 81A of the Environmental Planning and Assessment Act 1979.

### **Sediment Control**

To contain soil and sediment on the property, controls are to be implemented prior to clearing of the site vegetation and the commencement of site works. This will include the installation of a sediment fence with returned ends across the low side of the site so that all water flows through. These shall be maintained at no less than 70% capacity at all times. Drains, gutters, roadways etc., shall be kept clean and free of sediment. Soil erosion fences shall remain and must be maintained until all disturbed areas are restored by turfing, paving, revegetation.

*Reason:-* to prevent the movement of soil and sediment in accordance with the blue book.

### **Builders Toilets**

Prior to the commencement of works, temporary toilet facilities shall be provided on site for the use of builders or tradespersons during the construction works.

*Reason:-* To ensure adequate standard of amenities are available to workers on site.

### **Stormwater disposal**

That the rainwater drains are connected to water storage tank/s which are located in a position that will not create a nuisance to the building or adjoining properties. The overflow pipe is to be discharged away from buildings and absorption trenches to the satisfaction of Council.

*Reason:-* To ensure compliance with BASIX and that stormwater is disposed of correctly.

### **Surface water**

That seepage and surface waters are collected and diverted clear of the dwelling site by a drainage system to the satisfaction of Council.

*Reason:-* To prevent surface water damage to the dwelling.

### **Site Identification**

A sign is to be erected in a prominent position at the entrance of the work site, stating that unauthorised access is prohibited, and showing the name and contact phone number of the person or company in charge of construction on the site.

*Reason:-* To identify the site and builder, and prevent unauthorised access.

### **Copy of Approval On Site**

A copy of the development consent and approved plans and specifications shall be kept on site at all times.

*Reason:-* To ensure a copy of the approval is available for builders/tradespersons on site.

### **Durable Termite Notice**

A durable notice must be permanently fixed to the building in a prominent location, such as the electricity meter box, indicating method of termite risk management, date of installation of the system, life expectancy of chemical barrier (if used) and installer's recommendations of frequency of inspections.

*Reason:-* To comply with Part 3.1.3.2 of the Building Code of Australia and to inform future owners of the building.

### **Smoke Alarm Certificate**

A certificate of installation prepared by the licensed electrician shall be submitted to Council upon installation of the smoke alarms.

*Reason:-* To ensure compliance with Part 3.7.2 of the Building Code of Australia.

### **External colours**

That external cladding and roofing of the dwelling are of a natural tone, non-reflective condition.

*Reason:-* To ensure the dwelling blends into the surrounding environment.

### **Frame and Truss Details**

Manufacturers specifications for wall and roof framing including; tie down, fixing, lintel and bracing details shall be submitted to Council **7 days prior** to the frame inspection. The details shall specify member sizes and spacings , roof pitch, fixing details, wind loading, name and address of manufacturer etc.

*Reason:-* To ensure roof trusses are suitably designed for the local conditions.

### **Compliance with the Requirements of BASIX**

All building works associated to this development consent must be carried out in accordance with the nominated BASIX commitments

Furthermore in order to determine compliance with the BASIX requirements evidence to the satisfaction of councils Development Control Officer is to be submitted and deemed appropriate prior to occupation.

Note: the attached BASIX certification form is to be completed and returned to Council with the request to occupy the building.

*Reason:-* To ensure all BASIX commitments are complied with prior to occupation of the dwelling

### **Water Supply**

The dwelling is to be provided with a minimum 50,000 litre domestic water supply, and any additional water requirements detailed in condition 18.

*Reason:-* To ensure compliance with the BASIX certificate.

### **Compliance with Planning for Bushfire Protection, 2006 and Australian Standard AS3959**

The following bush fire protection measures are to be implemented in accordance with Planning for Bushfire Protection and Compliance with the BAL-29 as detailed in AS3959-2009.

#### **Asset Protection Zone**

- A 20m Asset Protection Zone, consisting of a 35m Inner Protection Area (IPA) and 10m Outer Protection Area (OPA), is to be provided and maintained.

#### **Water and Utilities**

- The water source shall be made available or located within the inner protection area (IPA) and away from the structure.
- A hardened ground surface for truck access is to be supplied up to and within 4 metres for the water source.
- A 65mm metal Storz outlet with a gate or ball valve shall be provided.
- In recognition that no reticulated water supply exists, a static 20,000 litre water supply shall be provided for fire fighting purposes.
- Above ground tanks are manufactured of concrete or metal and raised tanks are to have their stands protected. Plastic tanks shall not be used.
- The gate or ball valve, pipes and tank penetration are adequate for full 50mm inner diameter water flow through the Storz fitting and are metal.
- All associated fittings to the tank shall be non combustible.
- Pumps are to be shielded from the direct impacts of bush fire.
- A minimum 5hp of 3kW petrol or diesel powered pump shall be made available to the water supply. A 19mm (internal diameter) fire hose and reel shall be connected to the pump.
- An 'SWS' marker shall be obtained from the local NSW Rural Fire Service and positioned for ease of identification by brigade personnel and other users of the SWS. In this regard:
  - Markers must be fixed in a suitable location so as to be highly visible; and
  - Markers should be positioned adjacent to the most appropriate access for the static water supply.
- Gas cylinders kept close to the building shall have release valves directed away from the building. Connection to and from gas cylinders are to be metal.



Polymer sheathed flexible gas supply lines to gas meters adjacent to buildings are not to be used.

### Access

- Property access roads shall comply with section 4.1.3 (2) of 'Planning for Bush Fire Protection 2006'. In this regard;
  - 4m width.
  - Passing bays every 200m, 20m long by 2m wide.
  - Loop road around the dwelling or a turning circle with minimum 12m outer radius.

### Design and Construction

New construction shall comply with Australian Standard AS3959-1999 'Construction of buildings in bush fire-prone areas' BAL 29. In this regard

- External doors are to be sealed with draft excluders or weather strips to prevent the entry of embers.
- External wall cladding to be non combustible (brick, hebel panel, fibrous cement etc) and sarked on the outside of the frame.
- All external gaps shall be covered, sealed or overlapped.
- Windows and doors to be made from non combustible materials or bushfire resisting timber.
- Windows shall be;
  - Completely protected by bushfire shutters, **or**
  - Toughened glass with minimum 5mm thick, and
  - The open able portion screened with aluminium gauze screens (any glass within 400mm of the ground or surface less than 18<sup>0</sup> must be screened externally with an aluminium gauze screens).
- External doors and door frames must be protected by;
  - Completely protected by bushfire shutters, **or**
  - Completely protected by aluminium gauze screens, **or**
  - Doors and door frames shall be;
    - Non combustible, or
    - Solid core door having a minimum thickness of 35mm for the first 400mm, or
    - A door including a hollow core door protected aluminium gauze screens, or
    - A fully framed glazed door in which framing is made from non – combustible materials
    - Toughened glass with minimum 6mm thick
    - Any glass within 400mm of the ground or surface less than 18<sup>0</sup> must be screened externally with an aluminium gauze screens.
    - Must be tight fitting.
    - Have weather strips and draught excluders.
- If the dwelling contains a garage, the Garage Door must non combustible and be ember proofed with no gap greater than 3mm.
- The roofs valleys and gutters must be protected by metal mesh with an opening size of not more than 5mm.
- Roofs must be fully sarked with no gaps greater than 3mm.
- Veranda, carport and awing roofs and the support structure must be;
  - Non combustible material, or
  - Bushfire resisting timber, or

- Timber rafters lined on the underside with fibre cement sheeting 6mm in thickness
- Eaves shall be;
  - Lined with fibre cement sheeting, minimum 4.5mm thickness, or
  - Bushfire resisting timber, and
  - No gaps greater than 3mm
- All above surface service pipes must be non combustible (not plastic).

### **Landscaping**

Landscaping to the site is to comply with the principles of Appendix 5 of 'Planning for Bush Fire Protection 2006'.

*Reason:-* To meet the requirements of; section 79BA the Environmental Planning and Assessment Act 1979, the NSW Rural Fire Service Planning for Bushfire Protection Guidelines and the Oberon Development Plan 2001 in relation to the protection of life and property against the threat of bushfire.

### **PRESCRIBED CONDITIONS OF CONSENT**

**The following conditions are known as "Prescribed Conditions" and are required by the Environmental Planning and Assessment Regulation 2000 to be imposed as part of any development consent whether or not they are relevant to the development approved under this consent. Please do not hesitate to contact staff in Council's Development Department who will be happy to advise you as to whether or not the conditions are relevant to your consent.**

1. All building work must be carried out in accordance with the requirements of the Building Code of Australia (as in force on the date the application for the relevant construction certificate or complying development certificate was made).

*Reason:-* So that the development complies with the requirements imposed under Clause 98 of the Environmental Planning and Assessment Regulation 2000.

2. In the case of residential building work for which the Home Building Act 1989 requires there to be a contract of insurance in force in accordance with Part 6 of the Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.

*Reason:-* So that the development complies with the requirements imposed under Clause 98 of the Environmental Planning and Assessment Regulation 2000.

3. Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:
  - in the case of work for which a principal contractor is required to be appointed:
    - (i) the name and licence number of the principal contractor, and
    - (ii) the name of the insurer by which the work is insured under Part 6 of the Act,

- in the case of work to be done by an owner-builder:
  - (i) the name of the owner-builder, and
  - (ii) if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

*Reason:*- So that the development complies with the requirements imposed under Clause 98B of the Environmental Planning and Assessment Regulation 2000.

4. A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
  - showing the name, address and telephone number of the principal certifying authority for the work, and
  - showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
  - stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work is being carried out and must be removed when the work has been completed.

**NOTE:** This condition does not apply to building work that is carried out inside an existing building that does not affect the external walls of the building.

*Reason:*-So that the development complies with the requirements imposed under Clause 98A of the Environmental Planning and Assessment Regulation 2000.

5. Any development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
  - i. protect and support the adjoining premises from possible damage from the excavation, and
  - ii. where necessary, underpin the adjoining premises to prevent any such damage.

NOTE: The condition referred to in sub clause (1) does not apply if the person having the benefit of the development consent owns the adjoining land or the owner of the adjoining land has given consent in writing to that condition not applying.

*Reason:*-So that the development complies with the requirements imposed under Clause 98E of the Environmental Planning and Assessment Regulation 2000.

**The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality**

*The Adjoining Conflicting Land Use:*

The Oberon White Granite quarry currently operates under Development Consent 126/03 for the operation of a 1.4 hectare quarry with a maximum annual production level of 25 000 tonnes per year. The granite is currently extracted using a combination of an excavator and drill and blast methods and the existing development consent provides for up to two blasts per year. The blasted rock is then loaded into a mobile crushing and screening plant and operates approximately two or three times a year with each campaign consisting of 14 to 30 days duration. The site is approved to operate Monday to Friday, 7am to 5pm and Saturday and Sunday, 8am to 5pm.

The proposed expansion consist of progressively increasing the quarry production to a maximum level of 250 000tpa and would operate over a period of 30 years recovering up to 5 million tonnes of weathered and fresh granite. The granite would be extracted using a combination of free dig and drill and blast methods, requiring 12 production blasts per year and a number of smaller development blasts.

As part of the current application the applicant has acknowledged the existence of the current quarry operations has proposed mitigation devices for the development that will minimise the impact of the quarry operations on the proposed development. Of significant concern to Council previously was noise impacts of the quarry operations on the development however as part of the application the applicant has provided an acoustic report undertaken by Umwelt who in their summary indicates as follows:

To be in accordance with the requirements of the NSW Industrial Noise Policy (DECC 2000) the day time noise impact from the Oberon White Granite Quarry on a dwelling at the proposed site on Lot 12 in DP 603429, 173 Titania Road, Oberon:

- Should theoretically not exceed the rated daytime background noise level by more than 5dB or exceed that acceptable daytime noise level of 50dB(A)
- Could, based on the extract from Section 2.1 of NSW Industrial Noise Policy (DECC 2000) exceed the Intrusiveness Criteria by more than 1 to 2 dB but not exceed the acceptable daytime amenity noise level of 50dB(A)
- Precedence has been set where a sole industrial noise source has been allowed to operate to the full measure of the amenity criteria; and
- Can be subject of a private agreement between the quarry operator and the private residence

Further, within the SEE and based on information provided to the applicant by the quarry operator it was indicated that worse case noise levels at the proposed dwelling site on Lot 12 will be 1 to 2dBA above the Intrusiveness Criteria of 35dBA at years 1 and 20 respectively with operations in between these times not expected to exceed 35dBA.

The applicant goes on to indicate preventative acoustic measures that the quarry operator could implement to reduce noise impact however in this instance Council is assessing the application for the dwelling not the quarry operations. The objector has queried this statement within the submissions.

#### Acoustic Noise Mitigation devices proposed

As part of the application the applicant has proposed the incorporation of simple noise attenuation measures into the proposed dwelling design that will reduce potential noise

impacts from the quarry and improve the amenity for the occupants of the dwelling. These have been incorporated into the design for the dwelling and include:

- Location and orientation of the dwelling to minimise earthworks and optimise the noise attenuation capacity of the intervening landform
- Constructing the building from hebel brick
- Using double-glazing or 6.38mm laminated glass in windows to attenuate noise propagated from the quarry

Incorporation of these measures is considered to address all the feasible noise controls that could be incorporated into a dwelling at the proposed location. Noise assessment indicates that no further special noise attenuation measures are required for the proposed dwelling.

## Noise

The EA for the quarry expansion states in respect to the impact of noise on Lot 12 that “*Operational noise levels are predicted to exceed noise criteria on more than 25% of an adjoining vacant land holding (Lot12 in DP: 603429). The proponent is committed to undertake ongoing monitoring to verify the predicted exceedences and, if required, enter into an agreement with the land holder to acquire the landholding*”. Please note Figure 4.11, 4.12 and 4.14 (**attachment 6**). The EA for the proposed expansion is available for review with prior notice to staff.

Consideration needs to be made to the fact that EA has been carried out assuming, correctly or incorrectly, that Lot 12 is vacant and at the time of drafting the report Oberon Council had refused DA 23/09 due to its incompatibility with the quarry operations.

The EA states that “*..There are several viable building envelopes within the landholding which are suitable for a dwelling and would not receive a noise level above 35dB(A) under any of the modelled conditions*”. The land owners however do not consider that there are any other suitable locations on the property for a dwelling. This was also a major impasse during the determination of the previous development Application (23/09). However during the assessment of DA 23/09 no additional information had been provided by the applicant to give appropriate assessment justification.

During the period for public submissions regarding the proposed expansion of the quarry (to the Department of Planning and Infrastructure), Umwelt, on behalf of the land owner, made an objection and indicated that the acoustic report by Spectrum Acoustics’ (as part of the EA) was incorrect as it did not address the topographical features of the site in its modelling of the site and state “*..Hugh and Sue Webb’s use of Lot 12 should not be sterilised or adversely impacted by the quarry operations*” and “*there are numerous errors and inaccuracies in the information provided in the EA for the expansion of the Oberon White Granite Quarry and appropriate mitigation measures for the quarry operation have not been addressed or considered. These errors and omissions have significant bearing on Oberon Councils consideration of the Development Application for the dwelling on Lot 12. As a result Oberon Council is left in a position of trying to ensure that a significant resource is appropriately utilised and not sterilised while also trying to ensure that adjoining land uses are not unnecessarily sterilised or adversely impacted.*”

The suggestion that the extraction of the resource will be “sterilised” is the wrong test. The test is whether it is likely to have a significant impact upon the current and future extraction.

However, Umwelt in the Statement of Environmental Effects (SEE) for the proposed dwelling state that by incorporating noise attenuation measures in to the construction of the dwelling the impacts of noise can be reduced. The SEE also recommends the installation of an acoustic bund wall and the relocation of the access on the quarry site will reduce both operational and traffic noise on lot 12. Council staff however cannot enforce or impose such conditions onto the quarry in order to protect the proposed development and to justify its inappropriate location. This would need to be addressed by the relevant assessment authority having carriage of the Quarry extension application.

Mudgee Stone Company in their objection to the Development Application 10.2011.1.1 state that they commissioned Spectrum Acoustics to assess the effect of the knoll on “*received noise at the proposed dwelling under a selection of scenarios*”. However, despite this shielding Mudgee Stone Company conclude that “*noise exceedences would still occur under some scenarios during prevailing and adverse weather conditions*”.

Due to these findings and the reluctance to relocate the proposed dwelling Mudgee Stone Company have declined to commission further noise modelling.

In response to the objection by Mudgee Stone, Umwelt have stated that the noise modelling by the Mudgee Stone Company is still inaccurate and the actual exceedences predicted result in a maximum of 3.4dB(A), which according to Department of Planning and Infrastructure is a moderate exceedance.

Council staff have identified that the SEE report by Umwelt relies upon mitigation measures by the applicant to bring the impact of the adjoining land use within acceptable bounds.

### Blasting

Mudgee Stone Company in their submission indicates that the SEE submitted to council does not address the potential effects of blasting and indicate that the anticipated vibration and over pressure levels would be:

- At a dwelling distance from the quarry of 380m – 1.48mm/s and 117.5 dB(A); and
- At a dwelling distance from the quarry of 270m – 2.56mm/s and 121 dB(A). The acceptable criteria is 115 dB(A).

Mudgee Stone Company indicates that the knoll “*is unlikely to provide any significant reduction to overpressure*”. Umwelt in their response state that the Mudgee Stone

Company could incorporate mitigation measures into the blast design to reduce potential blasting and vibration impacts at the proposed dwelling site.

Again staff are not in a position to require additional mitigation measures to be incorporated into the operations at the white granite quarry. However, as part of the quarry operation development weight needs to be given to the potential for a dwelling to be located within the vicinity of the existing quarry. However at this time, the determination has not been made for the proposed Part 3A expansion to the quarry, and Council staff cannot review or predict any conditions of Development Consent.

Department of Planning and Infrastructure are aware of Development Application 10.2011.1.1 and cannot advise Council Staff if the Mudgee Stone Company will be required to specifically address the impacts of the proposed expansion on Mr and Mrs Webb's proposed dwelling.

#### Dust

In respect to proposed air quality the EA states that cumulative off site suspended and deposited dust levels will impact upon the proposed development, "*..It is predicted that the criteria would not be exceeded on more than 25% of the adjoining vacant land holding..*". As can be seen in figure 4.16 (**Attachment 8**) the dust will impact upon the proposed dwelling. The SEE submitted, by Umwelt, to Council does not address the impact of dust, however as part of the current quarry operations mitigation measures are required for all quarrying activity.

#### Potential future development of Oberon Alaskite:

Mudgee Stone Company in their objection state in relation to the potential extraction of Alaskite that although they don't have any plans in the "*foreseeable future*" to extend the extraction area any logical extension would be north towards the stockpile area. Its considered that the proposed dwelling location would "*present constraints not only to the proposed quarry operations but also to potential future operations*".

Accordingly, Council must, in accordance with the SEPP (*Mining, Petroleum Production and Extractive Industries*), consider the impact of future extraction in the assessment of this Development Application.

The applicant has indicated that the approval of a dwelling on the land would not sterilize the resource as in the future the dwelling could be removed to allow adequate access to the resource.

#### Effluent Disposal

Appropriate information has been supplied indicating that effluent can be contained within the boundaries of the allotment utilising two different methods of disposal. Should development consent be considered then conditions of consent can be implemented requiring appropriate applications to be undertaken for the construction of either of the provided systems.

### **The Suitability of the site for the development**

In assessing the current application it must be understood that the applicant for development consent takes the locality as he finds it. The NSW Court of Appeal held in Inghams Enterprises Pty Ltd v Kira Holdings Pty Ltd (1996) 90 LGERA 68 that in determining a Development Application it is not the council's function to seek to resolve conflicts or to be concerned with the prospect that the adjoining landholder could or should be expected to make adjustments to its land use to accommodate the new development. In that case an application for residential subdivision was likely to be adversely effected by the existing lawful chicken farm by noise, dust and smell and it was identified that there was an inherent land use conflict. It was not for council to consider what Inghams might do to limit the impact nor what authorities might require it to do under controlling legislation. The Development Application for the residential subdivision was to be considered on its merits having regard to the likely adverse impact from the existing lawful but incompatible land use.

The submissions made by the Mudgee Stone Company and the applicant's subsequent response, as discussed above, have been carefully considered by staff. In addition to the original objection R.W.Corkery and Co. Pty Limited, acting on behalf of the Mudgee Stone Company (also the consultant for the preparation of the Part 3A Project Application to Department of Planning and Infrastructure), have reviewed the submissions made by both Council and Mr and Mrs Webb to the proposed expansion and have provided Council with an extract of their response to Department of Planning and Infrastructure for inclusion to the staff report (**Attachment 9**), and states:

*"Although Mudgee Stone Company does not believe that the proposed extension will result in significant environmental harm, it is agreed that, despite implementation of reasonable and feasible mitigation measures, noise levels received at the dwelling location as proposed by Mr and Mrs Webb would be unlikely to meet acceptable noise criteria at all times."*

However, given Inghams Enterprises Pty Ltd v Kira Holdings Pty Ltd (1996) 90 LGERA 68 the current operations undertaken at the quarry would not significantly impact on the proposed development. It is the current application in front of the NSW Department of Planning and Infrastructure (DPI) that is considered contentious. As such, given the above the application given the current circumstance would be considered suitable for the site.

Further, the SEE for the proposed dwelling describes its location as the only "*truly feasible*" location. Mudgee Stone Company in their objection reject this statement and indicate that they believe there are other suitable sites on lot 12, and state: "*The concern raised within the SOEE of site 4 being located within 250m of other residences is not understood when the proposed dwelling location is within 270m of proposed quarry operations*".

This issue is of course subjective, and officers concur that alternative dwelling sites could be considered however, this has not been forthcoming by the applicant and it is held that the proposal given the additional information received and proposed mitigation devices proposed to be included on the applicants land provide for justification that the land is suitable for the site.

**Any submissions made in accordance with this Act or the Regulations**



If relevant, consider public and authority submissions. Do submissions relate to valid Planning issues?

During the assessment of the application the proposal was notified to the Mudgee Stone Company as an adjoining landowner due to the potential for land use conflict accordance with the requirements of Part H3.3 of Development Control Plan (DCP), 2001. On the 18 March, 2011 a submission was received objecting to the application on the following grounds: (**Attachment 4**)

- Distance of Dwelling to Quarry activities – the SEE fails to adequately address proximity of the proposed development to proposed further development proposed by Mudgee Stone
- Background noise level and noise criteria – background noise levels proposed by the applicant are not accurate and require clarification
- Noise modelling and potentially received noise – the SEE states that the predicted worse case noise levels at the proposed dwelling site on Lot 12 will be 1 to 2dBA above the Intrusiveness Criteria of 35dBA at years 1 and 20 respectively with operations in between these times not expected to exceed 35dBA. This is a highly misleading statement as noise between these periods would also likely exceed 35dBA at the proposed dwelling location under certain conditions and during certain activities. In particular, the SEE fails to include predicted noise levels for year 5 quarry operations with the operation of a rock hammer which were 38.dBA. this information was provided to the applicant
- Suggested additional mitigation measures at the quarry – during the preparation of the noise assessment for the quarry, additional mitigation measures were considered including the potential use of temporary bunding and other said devices. These measures were investigated and found not to be feasible and unlikely to be effective
- Compliance with acceptable noise criteria – the applicant fails to assess the noise criteria as required by the DECCW outside the dwelling. Therefore despite the noise measures to the house to reduce the noise levels internally, without a formal agreement or similar legal measure, the operations of the quarry would still be legally non compliant
- Failure to consider blasting – the applicant in the SEE fails to consider potential for over-pressure from proposed blasting within the EA which at times could be over the accepted 115dBA
- Location of the dwelling – Mudgee Stone fails to be convinced that the proposed site is the only 'truly feasible' location for the dwelling to be considered. Several other suitable sites were identified. In particular, Mudgee Stone feel that site 4 within the southwest part of Lot 12 would provide a more suitable site for the dwelling. The concern raised within the SEE of site 4 being located within 250m of other residences is not understood when the proposed dwelling location is within 270m of the proposed quarry operations, and although subjective Mudgee Stone is of the opinion that better views are accessible from site 4
- Potential future development of Oberon Alaskite - Mudgee Stone in their objection state in relation to the potential extraction of Alaskite that although they don't have any plans in the "*foreseeable future*" to extend the extraction area any logical extension would be north towards the stockpile area. Its considered that the proposed dwelling location would "*present constraints not only to the proposed quarry operations but also to potential future operations*".
- Inaccuracies within the SEE – it is considered that the SEE has inaccuracies which are considered below:
  - Section 3.1 states that 'the proposed development can be undertaken without adversely impacting on the future ability to extract known gravel resources'. This

incorrectly implies that the Oberon White Granite Quarry is a gravel quarry and that the Oberon Alaskite is in fact competent hard rock requiring blasting and crushing to obtain a suitable product. This was identified during our previous submission to DA 23/09 together with the need to consider the effects of blasting.

- The size of the proposed extraction area at the Oberon White Granite Quarry is 6ha not 40ha as mentioned within Section 3.3 of the SEE.

In a further submission received by the consultants for the objector it is stated that it is accepted that Lot 12 has a dwelling entitlement, being an allotment approved for a dwelling under DA 110/03 Condition 3 'requires that **the location** and design of a dwelling on the land shall take into account the presence or potential presence and the impacts or potential impacts, of any proposed or existing quarry operations on the adjoining lands'.

Upon investigation of the condition the location and **design** of any potential dwelling were to be equally considered. As part of the current application it is considered that this condition through the design of the building and the mitigation devices proposed is adequate given the current operations on adjoining land.

### **The public interest**

Apart from the information provided above there is no further public interest measures assessed as part of this application.

## **DISCUSSION AND CONCLUSIONS**

Given the nature and contention raised as part of this and previous applications officers have considered all information provided and sought to assess the application based upon all information provided. It was considered through both the objector and the applicant that an external agreement could be entered into prior to determination of the application however in information received prior to the determination it was found that these negotiations had broken down and Council was requested to determine the application by the applicant.

In late correspondence received on behalf of the objector it was considered that Mudgee Stone was still willing to broker an agreement however indicated that Council should mediate the process, given the requirements under the Local Government Charter. It is considered at officer level that Council should not include itself in any 'outside' third party agreement as its role in this instance is to assess and determine the application which is currently in front of it.

## **ATTACHMENTS**

- |              |  |
|--------------|--|
| Attachment 1 | Statement of Environmental Effects for the Proposed Development.                                     |
| Attachment 2 | Proposed expansion of the Mudgee Stone Quarry – Subject to determination of the Part 3A Application. |
| Attachment 3 | 500m buffer zone from the existing Oberon White Granite Quarry.                                      |
| Attachment 4 | Submission from the Mudgee Stone Company objecting to the proposed development.                      |

Attachment 5	Identified Alaskite mineral resource area. Source: Mudgee Stone Company's Environmental Assessment.
Attachment 6	Applicants (Umwelt) response to the objection by the Mudgee Stone Company.
Attachment 7	Figure 4.11, 4.12, 4.14 of the Environmental Assessment - Noise
Attachment 8	Figure 4.16 of the Environmental Assessment - Dust
Attachment 9	R. W. Corkery and CO. Pty Limited response to the Part 3A submissions for the Quarry expansion.

## **RECOMMENDATION**

**THAT** the information is received and Council approve the application subject to the following conditions:

### **Administrative Conditions**

1. The development is to be carried out in accordance with the approved stamped plans prepared by Umwelt Environmental Consultants , dated January 2011, and additional information supplied 10 August 2011 by Umwelt Environmental Consultants except as otherwise provided by the conditions of this determination (Note:- modifications to the approved plans will require the lodgment and consideration by Council of a modification pursuant to Section 96 of the Environmental Planning and Assessment Act).

Reason:- to confirm and clarify the terms of Council's approval.

### **Building Code of Australia Compliance**

2. That all development is carried out in accordance with the Building Code of Australia.

Reason – To comply with relevant statutory requirements

### **Construction Certificate**

3. A Construction Certificate is required for the dwelling, prior to the commencement of any site or building works. This certificate can be issued either by Council as the consent authority or by an accredited certifier. In addition to the Site Plan, Floor Plan, Elevations the following specific documentation is to be lodged with the construction certificate;
  - Concrete slab design prepared by a practising structural engineer,
  - Building specifications,
  - A window rating in accordance with AS 2047 needs to be specified for all windows.
  - Wall and roof framing details including; sizing, tie down, lintel specifications, bracing details and locations,
  - Certification that wall and roof frames of the dwelling can withstand a ground snow load of 2.0kpa,
  - Certification that wall and roof frames can withstand a design wind speed of N2 (W40),

- Bushfire Attack Level- 29 construction details for the dwelling in accordance with AS3959,

*Reason:-* To comply with the Environmental Planning and Assessment Act 1979.

### **Home Owners Warranty Insurance or Owner Builder Permit**

4. A copy the builders Home Owners Warranty Insurance or Owner Builders Permit shall be submitted to the Principal Certifying Authority before any building work authorised to be carried out by the consent commences on the dwelling.

*Reason:-* To comply with Clause 98 of the Environmental Planning and Assessment Regulation 2000 which prescribes that, in the case of residential building work for which the Home Building Act 1989 requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force.

### **Section 68 Approval**

5. Prior to the commencement of works onsite an approval to under section 68 of the Local Government Act 1993 for the operation of an onsite waste water system shall be obtained from Council. In this regard the following is required;
  - Completed application form.
  - Payment of fees in accordance with the management plan.
  - Geotechnical report from a practising geotechnical engineer for a 4 bedroom dwelling.
  - Septic tank specifications.

*Reason:-* To ensure compliance with section 68 of the Local Government Act 1993 and AS1547.2000.

### **Notice of Commencement**

6. At least two (2) days prior to the commencement of building works, the applicant is required to submit to Council the attached "Notice of Commencement of Building or Subdivision Works and Appointment of Principal Certifying Authority".

*Reason:-* To meet the requirements of Section 81A of the Environmental Planning and Assessment Act 1979.

### **Sediment Control**

7. To contain soil and sediment on the property, controls are to be implemented prior to clearing of the site vegetation and the commencement of site works. This will include the installation of a sediment fence with returned ends across the low side of the site so that all water flows through. These shall be maintained at no less than 70% capacity at all times. Drains, gutters, roadways etc., shall be kept clean and free of sediment. Soil erosion fences shall remain and must be maintained until all disturbed areas are restored by turfing, paving, revegetation.

*Reason:-* to prevent the movement of soil and sediment in accordance with the blue book.

### **Builders Toilets**

8. Prior to the commencement of works, temporary toilet facilities shall be provided on site for the use of builders or tradespersons during the construction works.

*Reason:-* To ensure adequate standard of amenities are available to workers on site.

### **Stormwater disposal**

9. That the rainwater drains are connected to water storage tank/s which are located in a position that will not create a nuisance to the building or adjoining properties. The overflow pipe is to be discharged away from buildings and absorption trenches to the satisfaction of Council.

*Reason:-* To ensure compliance with BASIX and that stormwater is disposed of correctly.

### **Surface water**

10. That seepage and surface waters are collected and diverted clear of the dwelling site by a drainage system to the satisfaction of Council.

*Reason:-* To prevent surface water damage to the dwelling.

### **Site Identification**

11. A sign is to be erected in a prominent position at the entrance of the work site, stating that unauthorised access is prohibited, and showing the name and contact phone number of the person or company in charge of construction on the site.

*Reason:-* To identify the site and builder, and prevent unauthorised access.

### **Copy of Approval On Site**

12. A copy of the development consent and approved plans and specifications shall be kept on site at all times.

*Reason:-* To ensure a copy of the approval is available for builders/tradespersons on site.

### **Durable Termite Notice**

13. A durable notice must be permanently fixed to the building in a prominent location, such as the electricity meter box, indicating method of termite risk management, date of installation of the system, life expectancy of chemical barrier (if used) and installer's recommendations of frequency of inspections.

*Reason:-* To comply with Part 3.1.3.2 of the Building Code of Australia and to inform future owners of the building.

### **Smoke Alarm Certificate**

14. A certificate of installation prepared by the licensed electrician shall be submitted to Council upon installation of the smoke alarms.

*Reason:-* To ensure compliance with Part 3.7.2 of the Building Code of Australia.

### **External colours**

15. That external cladding and roofing of the dwelling are of a natural tone, non-reflective condition.

*Reason:-* To ensure the dwelling blends into the surrounding environment.

### **Frame and Truss Details**

16. Manufacturers specifications for wall and roof framing including; tie down, fixing, lintel and bracing details shall be submitted to Council **7 days prior** to the frame

inspection. The details shall specify member sizes and spacings , roof pitch, fixing details, wind loading, name and address of manufacturer etc.

*Reason:-* To ensure roof trusses are suitably designed for the local conditions.

### **Compliance with the Requirements of BASIX**

17. All building works associated to this development consent must be carried out in accordance with the nominated BASIX commitments

Furthermore in order to determine compliance with the BASIX requirements evidence to the satisfaction of councils Development Control Officer is to be submitted and deemed appropriate prior to occupation.

Note: the attached BASIX certification form is to be completed and returned to Council with the request to occupy the building.

*Reason:-* To ensure all BASIX commitments are complied with prior to occupation of the dwelling

### **Water Supply**

18. The dwelling is to be provided with a minimum 50,000 litre domestic water supply, and any additional water requirements detailed in condition 18.

*Reason:-* To ensure compliance with the BASIX certificate.

### **Compliance with Planning for Bushfire Protection, 2006 and Australian Standard AS3959**

19. The following bush fire protection measures are to be implemented in accordance with Planning for Bushfire Protection and Compliance with the BAL-29 as detailed in AS3959-2009.

#### **Asset Protection Zone**

- A 20m Asset Protection Zone, consisting of a 35m Inner Protection Area (IPA) and 10m Outer Protection Area (OPA), is to be provided and maintained.

#### **Water and Utilities**

- The water source shall be made available or located within the inner protection area (IPA) and away from the structure.
- A hardened ground surface for truck access is to be supplied up to and within 4 metres for the water source.
- A 65mm metal Storz outlet with a gate or ball valve shall be provided.
- In recognition that no reticulated water supply exists, a static 20,000 litre water supply shall be provided for fire fighting purposes.
- Above ground tanks are manufactured of concrete or metal and raised tanks are to have their stands protected. Plastic tanks shall not be used.
- The gate or ball valve, pipes and tank penetration are adequate for full 50mm inner diameter water flow through the Storz fitting and are metal.
- All associated fittings to the tank shall be non combustible.
- Pumps are to be shielded from the direct impacts of bush fire.
- A minimum 5hp of 3kW petrol or diesel powered pump shall be made available to the water supply. A 19mm (internal diameter) fire hose and reel shall be connected to the pump.

- An 'SWS' marker shall be obtained from the local NSW Rural Fire Service and positioned for ease of identification by brigade personnel and other users of the SWS. In this regard:
- Markers must be fixed in a suitable location so as to be highly visible; and
- Markers should be positioned adjacent to the most appropriate access for the static water supply.
- Gas cylinders kept close to the building shall have release valves directed away from the building. Connection to and from gas cylinders are to be metal. Polymer sheathed flexible gas supply lines to gas meters adjacent to buildings are not to be used.

### Access

- Property access roads shall comply with section 4.1.3 (2) of 'Planning for Bush Fire Protection 2006'. In this regard;
  - 4m width.
  - Passing bays every 200m, 20m long by 2m wide.
  - Loop road around the dwelling or a turning circle with minimum 12m outer radius.

### Design and Construction

20. New construction shall comply with Australian Standard AS3959-1999 'Construction of buildings in bush fire-prone areas' BAL 29. In this regard

- External doors are to be sealed with draft excluders or weather strips to prevent the entry of embers.
- External wall cladding to be non combustible (brick, hebel panel, fibrous cement etc) and sarked on the outside of the frame.
- All external gaps shall be covered, sealed or overlapped.
- Windows and doors to be made from non combustible materials or bushfire resisting timber.
- Windows shall be;
  - Completely protected by bushfire shutters, **or**
  - Toughened glass with minimum 5mm thick, and
  - The open able portion screened with aluminium gauze screens (any glass within 400mm of the ground or surface less than 18<sup>0</sup> must be screened externally with an aluminium gauze screens).
- External doors and door frames must be protected by;
  - Completely protected by bushfire shutters, **or**
  - Completely protected by aluminium gauze screens, **or**
  - Doors and door frames shall be;
    - Non combustible, or
    - Solid core door having a minimum thickness of 35mm for the first 400mm, or
    - A door including a hollow core door protected aluminium gauze screens, or
    - A fully framed glazed door in which framing is made from non – combustible materials
    - Toughened glass with minimum 6mm thick
    - Any glass within 400mm of the ground or surface less than 18<sup>0</sup> must be screened externally with an aluminium gauze screens.
    - Must be tight fitting.
    - Have weather strips and draught excluders.

- If the dwelling contains a garage, the Garage Door must non combustible and be ember proofed with no gap greater than 3mm.
- The roofs valleys and gutters must be protected by metal mesh with an opening size of not more than 5mm.
- Roofs must be fully sarked with no gaps greater than 3mm.
- Veranda, carport and awing roofs and the support structure must be;
  - Non combustible material, or
  - Bushfire resisting timber, or
  - Timber rafters lined on the underside with fibre cement sheeting 6mm in thickness
- Eaves shall be;
  - Lined with fibre cement sheeting, minimum 4.5mm thickness, or
  - Bushfire resisting timber, and
  - No gaps greater than 3mm
- All above surface service pipes must be non combustible (not plastic).

### **Landscaping**

21. Landscaping to the site is to comply with the principles of Appendix 5 of 'Planning for Bush Fire Protection 2006'.

*Reason:-* To meet the requirements of; section 79BA the Environmental Planning and Assessment Act 1979, the NSW Rural Fire Service Planning for Bushfire Protection Guidelines and the Oberon Development Plan 2001 in relation to the protection of life and property against the threat of bushfire.

### **PRESCRIBED CONDITIONS OF CONSENT**

**The following conditions are known as "Prescribed Conditions" and are required by the Environmental Planning and Assessment Regulation 2000 to be imposed as part of any development consent whether or not they are relevant to the development approved under this consent. Please do not hesitate to contact staff in Council's Development Department who will be happy to advise you as to whether or not the conditions are relevant to your consent.**

22. All building work must be carried out in accordance with the requirements of the Building Code of Australia (as in force on the date the application for the relevant construction certificate or complying development certificate was made).

*Reason:-* So that the development complies with the requirements imposed under Clause 98 of the Environmental Planning and Assessment Regulation 2000.

23. In the case of residential building work for which the Home Building Act 1989 requires there to be a contract of insurance in force in accordance with Part 6 of the Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.

*Reason:-* So that the development complies with the requirements imposed under Clause 98 of the Environmental Planning and Assessment Regulation 2000.

24. Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the principal certifying authority for the development to



which the work relates (not being the council) has given the council written notice of the following information:

in the case of work for which a principal contractor is required to be appointed:

- (i) the name and licence number of the principal contractor, and
- (ii) the name of the insurer by which the work is insured under Part 6 of the Act,

in the case of work to be done by an owner-builder:

- (i) the name of the owner-builder, and
- (ii) if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

*Reason:-* So that the development complies with the requirements imposed under Clause 98B of the Environmental Planning and Assessment Regulation 2000.

25. A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

- showing the name, address and telephone number of the principal certifying authority for the work, and
- showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
- stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work is being carried out and must be removed when the work has been completed.

**NOTE:** This condition does not apply to building work that is carried out inside an existing building that does not affect the external walls of the building.

*Reason:-* So that the development complies with the requirements imposed under Clause 98A of the Environmental Planning and Assessment Regulation 2000.

26. Any development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:

- iii. protect and support the adjoining premises from possible damage from the excavation, and
- iv. where necessary, underpin the adjoining premises to prevent any such damage.

NOTE: The condition referred to in sub clause (1) does not apply if the person having the benefit of the development consent owns the adjoining land or the owner of the adjoining land has given consent in writing to that condition not applying.

*Reason:-* So that the development complies with the requirements imposed under Clause 98E of the Environmental Planning and Assessment Regulation 2000.

## **Landscaping**

27. A landscaping plan is to be provided to Council for approval outlining landscaping mechanisms proposed to be incorporated into the development to minimize the

effect of the current quarry operations on the development. This plan is to include proposed landscaping buffers and bunds proposed to minimize impacts.

Reason:- so that the development does not reduce the amenity of the area.

**Amenity**

28. The premises are to be maintained in a clean and tidy condition at all times.

Reason:- so that the development does not reduce the amenity of the area.

Report prepared by:..... Supervisor:.....

Dated:..... Dated:.....