

PLANNING AND ENVIRONMENT COURT

JUDGE RACKEMANN

No 965 of 2007

GUY PETER RAUCHLE

Appellant

and

GATTON SHIRE COUNCIL

Respondent

and

MOUNT SYLVIA DIATOMITE PTY LTD

First Co-Respondent

and

DEPARTMENT OF ENVIRONMENTAL
PROTECTION AGENCY

Second Co-Respondent

and

DEPARTMENT OF MAIN ROADS

Co-Respondent by
election

BRISBANE

..DATE 09/10/2007

ORDER

HIS HONOUR: In this matter Mr Rauchle appealed against the approval of an application by the first co-respondent. The matter of whether there should be an approval or a refusal was heard and I delivered reasons, in which I indicated that the appeal would be dismissed in due course, but adjourned the further hearing so that the matter of amended conditions could be considered.

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The first co-respondent produced a proposed amended set of conditions, to which Mr Rauchle responded in a three page typed document. The matter was then adjourned to today for a consideration of the matters raised by Mr Rauchle in relation to the conditions. I will deal with the matters in turn, in accordance with the list from Mr Rauchle's document.

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The first three paragraphs of that document relate to the position of the crusher on the subject site. The first co-respondent wishes to have the crusher located as per figure 6100B. That is consistent with the plan upon which the trial was conducted. That plan was figure 6100A and showed the area to be occupied by the extractive industry. The difference between figure 6100A and 6100B is, relevantly, that in 6100B there is an express reference to the crusher location.

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Prior to the trial an affidavit had been sworn in the proceedings by Mr Brown, a well-known and experienced acoustic engineer, who had referred to the selection and placement of both the earthmoving equipment and crusher plant on the western side of the mining lease as being appropriate and,

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indeed, ameliorative. I do not consider that figure 6100B would represent anything other than a minor change.

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Mr Rauchle pointed out that the negotiated decision notice of the council had required the crusher to be located at a different location, at the eastern side of the mining lease. He suggested that since the negotiated decision notice expressly provided that the negotiated conditions were subject to the crusher plant being situated at that different location, the applicant should lose the benefit it obtained by successfully negotiating changes to other conditions, if it is to depart from the crushing plant location indicated in the negotiated decision notice.

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At a factual level however, he was unable to persuade me that there was any good reason why a shift in the crusher location, back to the position as now shown on 6100B, should lead to a consequential loss of the benefit of other changes that the appellant had obtained by negotiating amendments to other conditions. In particular, there was a reference to the negotiated decision notice having reduced the area upon which a certain bond was calculated and there was no basis demonstrated as to why the moving of the crusher location should lead to any different outcome with respect to the amount of the bond. I am not prepared to accede to Mr Rauchle's submissions in relation to this matter.

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HIS HONOUR: The next issue raised by Mr Rauchle is related to the construction of the internal haul exit route shown on the proposal plans. He points out that there is no provision as to when that will be provided.

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The internal haul exit route is designed not so much for traffic reasons but for protection of noise amenity. In particular, Mr Brown, in his affidavit which was sworn on the 6th of July 2007 said, amongst other things, that "The construction of the new exit haul route...is expected to adequately control the noise from trucks existing the site."

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In his submissions, Mr Haydon pointed to other controls on noise provided for in the conditions and suggested that it may be that the exit haul route becomes unnecessary if, once the operation is up and running, it can be demonstrated that the proposal is operating satisfactorily from a noise perspective without it. However, on the evidence as it now stands from Mr Brown, it seems to me that the construction of the exit haul route was an appropriate and sensible proposal which was put forward to better provide for the control of noise and it having been proposed by the appellants, I am not persuaded that it is something which should be deferred to a later time.

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Accordingly I will require that the conditions be worded in such a way as to require the construction of that internal haul exit route prior to commencement.

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HIS HONOUR: The next issue raised by Mr Rauchle relates to the use of Chalk Mine Road prior to it's ultimate upgrade. The conditions of approval require an upgrading of Chalk Mine Road and the conditions of the negotiated decision notice required that upgrade to occur before the use was to commence. The appellant wishes to have that condition altered, so that it can use the road in the interim, subject to doing some interim works to ensure that the traffic operates satisfactorily during that interim phase. Mr Rauchle points out two things. He says that, first of all, that may constitute more than minor change to the application the subject of the appeal and secondly, that if any such interim use were to be permitted then it should be for a limited time.

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As to the first of those points, I accept Mr Haydon's submission that this is not a change to the application or the proposal at all. What it involves is a alteration to the conditions with respect to the use of the external road network. The proposal itself, which is to occur on the subject site, is not to alter by reference to these conditions in any event.

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While acknowledging that there was a submission in relation to dust from the increased use of the road, it seems to me that any interim use, for a contained period, of one of the external roads does not, in the context of the application considered as a whole, represent something that would be more than minor in any event.

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In relation to the question of putting a time limit on the interim use, that is a point which is accepted by the other parties. The issue is as to what date should be set as a date beyond which the use can not continue unless the ultimate works are in place. The Council's material suggests that the road will be finished by the end of June. A date should be set which allows some leeway for unforeseen circumstances and Mr Rauchle accepts the reasonableness of the adoption of a day at the end of July and so I will adopt the date of the 31st of July 2008.

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HIS HONOUR: The next issues raised by Mr Rauchle are related to the standard of the interim works to be constructed on Chalk Mine Road. His issues really related to an earlier proposal by Mr Lee as to what would be required. Mr Holland, the traffic engineer for the applicant, frankly acknowledged that he didn't see that as being entirely satisfactory and has suggested something of a greater standard, which is now reflected in a draft condition 25. That would require, in the interim period, Chalk Mine Road, to be widened to a width of 6.5 metres on the straights and 7.5 metres at horizontal curves. I accept Mr Holland's evidence that that would be an appropriate standard and, with that standard, would allow for passing, such that Mr Rauchle's previous concern about limited locations for passing bays no longer becomes a difficulty.

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There was some dispute between Mr Lee and Mr Holland in relation to what speed limit should apply along Chalk Mine Road in its interim upgraded form. Mr Lee is prepared to accept the higher standard suggested by Mr Holland, but would prefer to keep a lower speed limit of 40 kilometres per hour. Mr Holland's evidence is that the speed environment, once the road is upgraded, will be 60 kilometres per hour.

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Of course, the speed limit which applies to Chalk Mine Road after the interim upgrade will be a matter for the Council as the local road authority and it may exercise its powers to post the speed limit as it chooses. From the Court's perspective, all it can do would be to set a condition which required the vehicles associated with the subject use to drive at a speed not exceeding a certain speed limit or the posted speed limit, whichever is the lesser - that is, it could not authorise vehicles to travel at anything above the posted speed limit, but it could put on a condition constraining those vehicles using the subject site from driving at speed above a nominated limit.

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In view of the evidence of Mr Holland, I think it is appropriate that the condition nominate 60 kilometres per hour as a speed limit or, as I say, the posted speed limit - whichever is the lesser. In that way, if the Council is of the view, as the road authority, that the speed limit should be 40 kilometres an hour, it is perfectly at liberty to post such a speed limit, which will then have to be complied with.

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HIS HONOUR: The next issue of Mr Rauchle's relates to that part of Mount Sylvia Road which is currently being upgraded by the Department of Main Roads. The Department has let a contract, so that it is the council which is doing the works under the direction of the DMR. The council has submitted a traffic management plan to DMR for the project and the works are being conducted, it would appear, subject to that traffic management plan. Mr Rauchle is not satisfied about the management of the roadworks. He has suggested there should be some further condition which would have the result of ensuring that vehicles from the mine don't use the road unless there are people on the road supervising at the time. He suggested there are a number of other ways in which conditions could be worded.

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In support of his point he swore an affidavit in which he exhibited a copy of a photograph of a section of the road which is currently being upgraded, with the suggestion being that it's somewhat narrow, clear of a certain drop off. This was put to Mr Holland who was unable to offer any opinion about the safety of the situation in the absence of any measurements as to width.

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Mr Rauchle's affidavit also speaks about reports he received from his wife and his neighbour about having to take evasive action with oncoming traffic. He also reports on certain other observations. None of the comments of his affidavit,

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however, satisfy me that there are problems associated with the upgrading of Mount Sylvia Road and the operation of the traffic management plan which would mean that the use of the haul route during that upgrading by the further heavy vehicles associated with this approval would be inappropriate. Of course, there are trucks which may use the haul route in any event, associated with the mine in its pre-approval state.

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I am satisfied that the evidence that there is a traffic management plan in place combined with the evidence that the DMR conducts regular inspections of the project is a satisfactory safeguard that the appropriate road authorities will manage the roadworks in such a way as to make it not inappropriate for the route to be used by heavy vehicles during the construction phase. Accordingly I am not prepared to impose a further condition in that regard.

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HIS HONOUR: Mr Rauchle's next point was that the Site Based Management Plan in its previous draft will have to be amended in its final form to reflect developments which have occurred in the course of the hearing. Mr Haydon accepts that. The conditions simply speak about the preparation of a Site Based Management Plan. That, no doubt, contemplates a plan which relates to the development as approved. There is no need to alter the conditions to take account of Mr Rauchle's observations.

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HIS HONOUR: Mr Rauchle's final concern related to the standard of works for the ultimate upgrading of Chalk Mine Road. The standard which the appellant is prepared to accept, based upon Mr Holland's evidence, is a 7.5 metre formation with a four metre seal, which is indeed in excess of the standard that had been required previously by the council. I am satisfied that that would be an appropriate standard.

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Mr Rauchle pointed to references in some standards to a 4.5 metre seal. Mr Holland explained that only 3.5 metres was necessary in terms of providing for the vehicles. The extra width is a matter which relates to minimising the extent of edge wear and therefore maintenance. The council is prepared to accept a four metre seal and the consequences that might flow from having that seal rather than a wider seal. In the circumstances I do not see any compelling reason to require a greater seal than that which is provided for in the proposed condition.

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Mr Rauchle suggested that this created some inconsistency with condition 23 which otherwise requires roadworks to be constructed in accordance with certain standards. That can be overcome by inserting, at the beginning of that condition the words, "Save as otherwise provided herein".

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A final matter in relation to this condition is that the condition contained a sentence which gave an estimate of the

costs which will have to be met by the applicant. That estimate was on the basis of the previous standard suggested by council. The costs will be greater with the standard which is now suggested. That sentence was a matter of communication only. The condition otherwise requires that the applicant pay the costs of the works to the council. In the circumstances I will delete the sentence which referred to the quantification of the cost.

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HIS HONOUR: I will simply make order as per amended draft initialled by me and placed on the papers.

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