

PLANNING AND ENVIRONMENT COURT OF QUEENSLAND

CITATION: *Barro Group Pty Ltd v Sunshine Coast Regional Council*
[2021] QPEC 18

PARTIES: **BARRO GROUP PTY LTD (ACN 005 105 724)**
(appellant)

v

SUNSHINE COAST REGIONAL COUNCIL
(respondent)

FILE NO/S: 1257 of 2019

DIVISION: Planning and Environment Court

PROCEEDING: Applicant appeal against refusal

ORIGINATING COURT: Planning and Environment Court of Queensland, Brisbane

DELIVERED ON: 23 March 2021

DELIVERED AT: Brisbane

HEARING DATE: 14, 17, 18, 19, 20, 21, 24, 25, 26 and 28 August 2020

JUDGE: Williamson QC DCJ

ORDER: **1. The appeal is dismissed.**

2. The respondent's decision to refuse the appellant's development application, communicated by way of decision notice dated 4 April 2019, is confirmed.

CATCHWORDS: PLANNING AND ENVIRONMENT – APPEAL – appeal against decision to refuse a development application to re-start and materially increase the scale and intensity of an extractive use – where land designated a key resource area and locally significant extractive resource area in the respondent's planning scheme – whether safe vehicle access to the site demonstrated – whether the development application should be refused for traffic safety reasons – whether the proposed haul route will have unacceptable impacts on character and amenity – whether there is a town planning and community need – whether the requirement to clear approximately 15 hectares of vegetation to carry out the material change of use warrants refusal – whether the development application complies with the respondent's planning scheme – whether the development application should be approved or refused in the exercise of the discretion under s 60(3) of the *Planning Act 2016*.

LEGISLATION: *Planning Act 2016*, ss 45, 59 and 60
Planning & Environment Court Act 2016, ss 10 and 45

CASES:	<i>Abeleda & Anor v Brisbane City Council & Anor</i> [2020] QCA 257 <i>Ashvan Investments Unit Trust v Brisbane City Council & Ors</i> [2019] QPELR 793 <i>Brisbane City Council v YQ Property Pty Ltd</i> [2020] QCA 253 <i>Clarke and Storrer v Noosa Shire Council</i> [1989] QPLR 261 <i>Comiskey Group (a firm) v Moreton Bay Regional Council & Ors</i> [2012] QPELR 168 <i>Duncanson Brittian (Quarries) Pty Ltd v Brisbane City Council & Ors</i> [1986] QPLR 330 <i>Kentucky Fried Chicken Pty Ltd v Gantidis</i> (1979) 140 CLR 675 <i>Makita (Australia) Pty Ltd v Sprowles</i> (2001) 52 NSWLR 705 <i>McPherson v Caloundra City Council</i> [1990] QPLR 272 <i>Metroplex Management Pty Ltd v Brisbane City Council & Ors</i> [2010] QPELR 270 <i>SDW Projects Pty Ltd v Gold Coast City Council</i> [2007] QPELR 24 <i>Sellars Holdings Ltd v Pine Rivers Shire Council</i> [1988] QPLR 12 <i>Sincere International Group Pty Ltd v Council of the City of Gold Coast</i> [2019] QPELR 247 <i>Wilhelm v Logan City Council & Ors</i> [2020] QCA 273
COUNSEL:	Mr B Job QC and Mr J Ware for the appellant Mr C Hughes QC and Mr M Batty for the respondent
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Introduction

- [1] On 28 March 2019, Council refused the appellant's (**Barro**) impact assessable development application seeking approval to re-start, and materially increase the scale and intensity of a use involving the extraction of hard rock and sandstone on land situated at Beerburrum-Woodford Road, Beerburrum.¹ This is an appeal against that decision. It is for Barro to establish the appeal should be upheld.²

The issues to be determined

- [2] Barro's development application is impact assessable. It is common ground that the statutory assessment and decision-making framework applicable to it is prescribed by the *Planning Act 2016 (PA)*. The assessment required under that Act starts from a strong position favouring approval.
- [3] Geology and feasibility of quarrying are, as this court has held, fundamental matters for the assessment of an extractive industry.³ Here, Barro has demonstrated there is a proven and valuable resource on the land in the order of 15 million tonnes, assuming a minimum quarry development scenario.⁴ The resource includes hard rock of high quality. It was agreed by the geologists that the resource is strong, durable and capable of producing high quality aggregates and road base materials for use in concrete, asphalt and road construction.⁵ These are not the only applications for the proven resource. The resource also includes sandstone, which is suitable for a range of applications. They include construction sand, binder additive to road base and engineered fill.⁶ There was no suggestion the winning of the quarryable material here, for the range of identified applications, was attended with any feasibility concerns.
- [4] That Barro has established there is a proven resource, which can be feasibly and viably extracted, is a matter of town planning importance favouring approval. This is because the resource is of significant value to the community. As has been recognised by this court, it is in the community's interest that a proven deposit of quarryable material of high quality be availed of wherever possible.⁷ The rationale for this is two-fold, namely: (1) a proven deposit of quarryable material is an essential resource (for construction and infrastructure) in finite supply and of significant economic value;⁸ and (2) quarries can only locate where sufficient quality resources exist and are economically viable to extract.⁹ There is no reason here to doubt that winning the resource is in the community's interest having regard to these very matters.

¹ Ex.1.49.

² s 45(1)(a), *Planning and Environment Court Act 2016*.

³ *Sellars Holdings Ltd v Pine Rivers Shire Council* [1988] QPLR 12, 16-17.

⁴ Ex.5.06, para 267.

⁵ Ex.5.02, para 105.

⁶ Ex.5.02, para 109.

⁷ *Duncanson Brittian (Quarries) Pty Ltd v Brisbane City Council & Ors* [1986] QPLR 330, 349-350; *Sellars Holdings* (Supra), at 15.

⁸ State Planning Policy (Ex. 12.02, p.23) and Ex. 5.08, para 20 and 62.

⁹ Ex.5.08, para 62.

- [5] The value of the resource in this case is enhanced by reason that, if approved, its exploitation will increase choice and competition for those seeking access to hard rock resources. It is part of the town planning process to endeavour to provide, on a public or community basis, for that choice.¹⁰ The additional choice and competition the resource would provide occurs in circumstances where it will be well located to serve areas of future demand, which is not anticipated to abate. Demand is anticipated from future residential development areas on the Sunshine Coast, particularly major development areas at the southern end of Council's local government area and the northern part of the adjoining local government area.¹¹ Areas of future demand are within 30 to 60 kilometres of the land. Proximity of this kind to areas of future demand was described by Mr Brown, in economic terms, as '*the ideal outcome*'.¹²
- [6] Proximity of proven resources to target markets is a matter of planning importance given there is a well understood relationship between transportation distances and the end cost of quarried products to the community. The evidence establishes that extractive resources are high volume, low cost products sensitive to transportation costs. The costs average around 30 to 40% of the delivered cost, depending on distance and the relative value of the quarried material. It is for this reason quarries generally seek to establish as close as the resource will allow to target markets.
- [7] Where good proximity is achieved between a proven resource and areas of demand, advantages flow to customers and, in turn, the community; it sounds in shorter travel distances, which yield shorter delivery times and lower delivery costs. The costs include what the economic experts described as '*transport-related externality costs*', which are indirect and difficult to quantify with precision. They are associated with fuel burn/emissions, road wear and tear, and traffic safety. The cost reduction for the community is achieved as a consequence of less heavy vehicle kilometres travelled on public roads.¹³ Irrespective of whether the costs saved by the community are direct, or indirect, they are savings nonetheless, and a public benefit. Here, the potential cost savings reinforce the importance of the resource to the community.
- [8] The need for, and significant value (to the community) of proven resources that are located proximate to target markets is an important planning consideration. This is reflected in contemporary planning controls. By way of example, Part D of the State Planning Policy, April 2016¹⁴ deals with '*state interests and plan making policies*'. Mining and extractive resources are identified as a state interest. The explanation given for the state interest in resources includes the following:¹⁵

“The resource industry is a key driver of the Queensland economy and the state's largest export earner. It is a diverse industry that supports the needs of other industries and the community through the supply of valuable commodities...”

¹⁰ *McPherson v Caloundra City Council* [1990] QPLR 272, 279, citing *Tod v Maroochy Shire Council* [1981] QPLR 110 and *Indooroopilly Golf Club v Brisbane City Council* [1982] QPLR 13, 34.

¹¹ Ex.5.08, para 42.

¹² T4-54, Line 6-7.

¹³ Ex.5.06, para 210-212.

¹⁴ Ex.12.02.

¹⁵ Ex.12.02, p.23.

...The supply of extractive resources such as sand, gravel, rock, clay and soil is essential to the health of the construction industry and the delivery of infrastructure. Given the high-volume, low-value nature of extractive resource products, it is generally necessary to source extractive resources close to markets...”

- [9] Council’s planning scheme, Sunshine Coast Planning Scheme 2014 (Version 7), identifies natural resources in the local government area that are of state interest. The document also identifies locally significant extractive resources. Forward planning decisions relevant to resources of state and/or local interest are set out in the Strategic framework of the planning scheme.
- [10] Strategic framework map SFM 7 identifies, in a conceptual way, areas which include key extractive resource areas (**KRA**) and locally significant extractive resource areas. Both areas are intended to remain available for use.¹⁶ The land the subject of the development application is a KRA and a locally significant extractive resource area.
- [11] Save for one exception,¹⁷ s 3.9.6.1(c) of the Strategic framework makes plain that it is intended for new extractive industries to be located only on land identified as a KRA or locally significant extractive resource. The new uses are intended to facilitate, inter alia, the capacity for non-renewable natural resources to be supplied from local sources.¹⁸ The community benefit in doing so is identified in s 3.9.1(b) of the Strategic framework, which states, in part:

“Natural resources continue to make a significant contribution to the regional economy and the wellbeing of the community by retaining the capacity of the Sunshine Coast to meet a significant proportion of its own needs in terms of:-

...
(iii) the supply of base materials for construction and infrastructure.”

- [12] The policy direction articulated in the Strategic framework is implemented through detailed lower order provisions of the planning scheme. Those provisions include zone codes. Here, the zoning of the land compliments the Strategic framework designations. It is included in the Rural zone where an extractive industry is a potentially ‘*consistent use*’.¹⁹ This provides positive support for the use in the zone, but it is not unqualified; any new extractive industry in the zone must, inter alia, avoid or appropriately manage adverse environmental and amenity impacts.²⁰ It is this qualification that underlies Council’s opposition to this appeal.
- [13] Given the matters canvassed in paragraphs [2] to [12], there can be little doubt about the importance of the proven resource to the community. This is a significant matter in the exercise of the planning discretion, however, as Council correctly contends, is not determinative of the appeal.

¹⁶ s 3.9.6.1(a).

¹⁷ Which does not apply in the circumstances here.

¹⁸ s 3.9.1(a)(ii).

¹⁹ s 6.2.19(2)(v).

²⁰ s 6.2.19(2)(b).

- [14] Council contends an extractive industry use is one that has the potential to create significant conflict with, and serious impacts for, development in the locality. With this in mind, Council further contends that Barro has failed to demonstrate that specific impacts of the proposed development can be avoided or effectively managed.²¹ This is said to result in a refusal of the application despite the importance of the resource. Such an outcome appears to be envisaged by s 3.9 of the Strategic framework, which includes the following statements:

“Key Concepts

...

- (4) *Recognition that some natural resources may not be suitable for exploitation due to their location and their potential for adverse environmental or amenity impacts.”*

And:

- “(c) Those natural resources which are not suitable to be exploited due to the potential for significant adverse amenity or environmental impacts on existing or proposed communities remain undeveloped.”²²*

- [15] The reasons said to warrant refusal of Barro’s development application do not take issue with on-site noise and dust impacts. Nor is it suggested that on-site development activities will cause adverse visual impacts. This is a fair position for Council to adopt. The evidence comfortably establishes that impacts of this kind can be conditioned, and do not warrant refusal. This is, in large measure, due to: (1) the proposed development being surrounded on all sides by a pine forest; and (2) the separation of the proposed use from existing residential uses. The nearest residential use is about 1.2 kilometres to the north-west of the resource.
- [16] In opposing the appeal, Council contends there are three specific impacts that call for the refusal of the proposed development. It is alleged Barro has not demonstrated the proposed development can effectively mitigate, or be conditioned to effectively mitigate/manage:²³
- (a) the impact of the development on the safe and efficient operation of the road network (site access);
 - (b) the impact of the proposed haul route on the amenity and character of adjoining development; and
 - (c) the impact of the development on the ecological values of the land.
- [17] In addition to the above, Council also contends there is no need, at this time, for the proposed development. The absence of need is relied upon to submit that the impacts of the proposed development are not overcome, or justified, by the existence of a town planning or community need for the resource.
- [18] Barro joins issue with Council’s case.

²¹ s 3.9.1(f).

²² Strategic outcome for the natural resources theme, s 3.9.1(c).

²³ Ex.15.02, para 3.

- [19] I will now turn to deal with the refusal issues raised by Council. Before doing so directly, it is necessary to set out some background.

The land and surrounding locality

- [20] The land the subject of the development application is described as part of Lot 589 on FTY1876. Lot 589 forms part of the Beerburrum West State Forrest. It is 2,851 ha in size²⁴ and has frontage to Beerburrum-Woodford Road.
- [21] The development application seeks approval to make a material change of use in respect of 23.47 ha of Lot 589.²⁵ The development site is irregular in shape, and is located towards the centre of Lot 589, about 405 metres south of the Beerburrum-Woodford Road frontage (**the site**).²⁶ An internal unsealed forestry track provides access to the site from Beerburrum-Woodford Road.
- [22] The site has historically been used for extraction purposes. There are two identifiable extraction pits, which can be observed in historical aerial photography;²⁷ one for gravel and one for sandstone. The evidence suggests the extracted resource was used to upgrade State forestry tracks and surrounding roads.²⁸
- [23] The extent of disturbance associated with past extraction activities can be seen in a number of aerial photographs dating back to 1953.²⁹ Today, the disturbance footprint is in the order of 8.02 ha.³⁰ The balance of the site, approximately 15 ha, is vegetated. Relevant mapping indicates it is remnant vegetation comprising RE12.5.3, with a small area of RE12.8.20. The former is ‘*endangered*’ and the latter is ‘*of concern*’ for the purposes of the *Vegetation Management Act 1997*.³¹
- [24] The site is surrounded by a forestry road network and areas of pine plantation.³² Native vegetation associated with Beerburrum Creek and its tributaries are located to the south, east and north of the site. This vegetation provides ecological corridors connecting the site with the local landscape and surrounding bushland.³³
- [25] The nearest residential dwellings to the site are located approximately 1.2 km to the east and south-east of the site.³⁴
- [26] Beerburrum-Woodford Road is a state controlled road. It is designated a ‘b-double’ route and has a posted speed limit of 100 km/hr.³⁵ The carriageway is sealed, typically in the order of 6.3 metres wide.³⁶

²⁴ Ex.5.01, p.6, para 7.

²⁵ Ex.3.01, p.5, Development Summary.

²⁶ Depicted at ex. 8.05, p.4, Figure 2.1 and ex. 3.01, p.4.

²⁷ Gray: T3-8, Line 37 to 40.

²⁸ Ex.5.10, p.4, para 3.

²⁹ Ex.5.01, pp.7-8.

³⁰ Ex. 3.01, p. 5, Development Summary – ‘*Operational Area (existing)*’ plus ‘*Internal Access Road*’.

³¹ Ex. 5.01, p.9, para 16.

³² Ex.5.01, p.10, para 17.

³³ Ex.5.01, p.10, para 17.

³⁴ Ex.5.10, p.7, para 23.

³⁵ Ex.5.10, p.7, para 21.

³⁶ Ex.5.09, p.8, para 59.

- [27] Traffic survey data suggests the two-way traffic volume on Beerburrum-Woodford Road is in the order of 1,242 vehicles per day. Of that total, 174 (14%) are classified as ‘*heavy vehicles*’.³⁷
- [28] Beerburrum-Woodford Road intersects with Beerburrum Road about 2 kilometres to the east of the site. The latter is a state controlled road intersecting with Steve Irwin Way further to the east. It is also designated a ‘*High Vehicle Detour*’ road for south-bound vehicles travelling along Steve Irwin Way.³⁸
- [29] Beerburrum Road passes through the Beerburrum township, which presents as a long-established ‘*main street*’ in a small rural town. Mr Buckley described the existing character of this area as ‘*small scale*’ and conveying a ‘*very low key village*’.³⁹ The character was said to be influenced by: (1) small scale land use and ‘*movement elements*’ and (2) the age and historical substance of buildings and mature trees. Mr Buckley identified a number of special features that accentuate this character, one of which is the separation of the township from Steve Irwin Way. It was pointed out that this separation has the desirable consequence of avoiding major north-south arterial traffic travelling through the township, which has a low level of daily traffic movements.⁴⁰ Mr Buckley’s evidence about Beerburrum township is made good having regard to a number of visual aids before the court. I also had the benefit of a site inspection with counsel to appreciate the visual aids in context.

The proposed material change of use

- [30] Barro’s development application seeks approval to permit the extraction of trachyte and sandstone from two existing pits on the site. The operational footprint for the development will be in the order of 22.8ha.⁴¹ Facilities associated with the extraction of hard rock are proposed. They include a site office, amenities building and weighbridge.
- [31] Extraction will generally occur in a progressive fashion from west to east. That process will involve:⁴² (1) clearing vegetation and stripping topsoil/overburden via mechanical means; (2) drilling and blasting exposed underlying rock to create quarry benches approximately 12 metres in width and 15 metres in height;⁴³ (3) transportation of extracted raw material from the quarry face to a crushing and screening plant/stockpile area located in the north-west corner of the site;⁴⁴ (4) crushing and screening of raw material using mobile or fixed plant; and (5) stockpiling final product for transportation off-site.
- [32] The extraction area will be progressively rehabilitated, where practicable. This will involve the shaping and stabilising of quarry benches as they reach their final form in line with the sequence of extraction.

³⁷ Ex.11.23A.

³⁸ Ex.5.10, p.7, para 21.

³⁹ Ex.5.10, p.9, para 35(d).

⁴⁰ Ex.5.10, p.10, para 35(f).

⁴¹ Ex.3.01, p.5, Development Summary – aggregate of existing and proposed ‘*Operational Area*’.

⁴² Ex.5.10, p.11, para 44.

⁴³ Ex.5.10, p.4, para 3.

⁴⁴ Ex.3.01, p.5.

- [33] The final landform of the quarry is intended to comprise benches and a pit floor that have been stabilised and planted with native vegetation.⁴⁵
- [34] The operating hours for the use will be limited to 6:00am to 6:00pm Monday to Friday, and 7:00am to 1:00pm Saturday. The use is not intended to operate on Sunday or public holidays.
- [35] The development application did not seek approval for a maximum annual extraction rate. The town planning joint report records this was intentional. Barro anticipated that the level of extraction will fluctuate throughout the life of the quarry, and operational flexibility was sought to respond to market demand and external forces.⁴⁶ This position did however alter during the hearing. It was indicated through Barro's general manager, Mr Ridoutt, that a condition of approval limiting the maximum tonnage of quarry material hauled from the site in any rolling 12 month period to 1 million tonnes would be accepted.⁴⁷ The application is to be assessed and decided on the basis that such a condition would be imposed.
- [36] Vehicle access to the site is obtained via an existing unsealed forestry track intersecting with Beerburrum-Woodford Road. It was agreed between the traffic experts that the access will need to be upgraded and, for safety reasons, the internal track will need to be sealed for a distance of about 50 metres.⁴⁸ The form of the access was an issue in dispute between the parties. Barro did not, through its traffic expert, seek to advance a design solution. It contended the design is a matter for conditions, rather than a matter going to approval/refusal.
- [37] The proposed haul route requires heavy vehicles to obtain access to the Motorway via the existing forestry track, Beerburrum-Woodford, Beerburrum Road and Steve Irwin Way. If approved, this route would facilitate large trucks hauling extracted material: (1) along the '*main street*' of Beerburrum township; and (2) past a small number of existing residential properties. At an extraction rate of 1,000,000 tonnes per annum, the proposed development will generate significant vehicle movements along the haul route. It will equate to one quarry truck every three minutes either going to, or from, the site.
- [38] The development application was subject to impact assessment. The public notification process attracted 182 properly made submissions.⁴⁹ Of that total, 85 submissions supported the proposal, 3 were neutral and the balance opposed an approval.⁵⁰
- [39] The development application was referred to the Chief executive as a referral agency. On 3 July 2018, the Chief executive gave a response.⁵¹ It required any approval to be granted subject to four conditions set out therein.

⁴⁵ Ex.5.10, p.12, para 46.

⁴⁶ Ex.5.10, p.11, paragraph 40.

⁴⁷ Ex.7.01, para 59 and confirmed in Ex.15.01, para 12.

⁴⁸ Ex.5.09, p.5, paras 40 and 41.

⁴⁹ Ex.5.10, p.13, para 52.

⁵⁰ Ex.5.10, p.13, para 52.

⁵¹ Ex.1.50.

- [40] Condition 1 requires the payment of a monetary contribution, calculated per tonne of material, for protecting and maintaining the safety and efficiency of the state controlled road network. Condition 2 requires road upgrade works to be carried out on the northern leg of the Beerburrum Road/Beerburrum-Woodford intersection. Condition 4 is in the following terms:

“Enter into an agreed delivery arrangement to deliver an environmental offset in accordance with the Environmental Offsets Act 2014 to counterbalance the significant residual impacts on the matters of state environmental significance being:

- (a) 15 hectares of regulated vegetation that is ‘endangered’ regional ecosystem 12.5.3; and*
- (b) 0.30 hectares of regulated vegetation that is ‘of concern’ regional ecosystem 12.8.20; and*
- (c) 15 hectares of regulated vegetation that is essential habitat for vulnerable wildlife – Koala (*Phascolarctos cinereus*).”*

The statutory assessment and decision-making framework

- [41] The statutory assessment and decision-making framework for this appeal is prescribed by the PA. It requires the application to be assessed in accordance with, inter alia, s 45, and decided in accordance with ss 59(3) and 60.
- [42] The statutory framework is to be approached consistent with three recent Court of Appeal decisions, namely *Brisbane City Council v YQ Property Pty Ltd* [2020] QCA 253, *Abeleda & Anor v Brisbane City Council & Anor* [2020] QCA 257 and *Wilhelm v Logan City Council & Anor* [2020] QCA 273. Taken collectively, they confirm much of what was said in *Ashvan Investments Unit Trust v Brisbane City Council & Ors* [2019] QPELR 793. The parties argued the appeal before me on the footing that *Ashvan* was correctly decided.
- [43] I pause to observe in passing that *YQ Property* confirms the ultimate decision called for when making an impact assessment under ss 45 and 60 of the PA is a ‘*broad evaluative judgment*’.⁵² *Abeleda* also confirms, inter alia, that: (1) in contrast to its statutory predecessor, the discretion conferred by s 60(3) of the PA admits of more flexibility to approve an application in the face of non-compliance with a planning scheme; and (2) the exercise of the discretion is subject to three requirements, including that it be based upon the assessment carried out under s 45 of the PA.⁵³
- [44] The clear words of s 45(5)(a)(i) of the PA mandate that Barro’s development application must be assessed against the applicable assessment benchmarks. The primary assessment benchmark for this appeal is the planning scheme. The agreed list of issues identify a number of alleged non-compliances with the planning scheme, including the Strategic framework; the Biodiversity, waterways and wetlands overlay code; the Extractive industry code; the Rural zone code; and the Transport and parking code.

⁵² *YQ Property*, per Henry J at [59].

⁵³ *Abeleda*, per Mullins JA at [53] and [58].

- [45] I will now turn directly to deal with the three issues relied upon by Council to warrant refusal of the development application. Relevant planning scheme provisions are considered in the context of each issue.

Traffic

- [46] Access to the extraction area is proposed via an existing unsealed forestry track. As I have already observed, the track intersects with Beerburrum-Woodford Road. Council contends it has not been demonstrated that vehicle access to and from this road is safe and adequate.⁵⁴
- [47] Barro and Council each relied upon a traffic engineer to examine the safety and adequacy of the site access. Mr Trevilyan was called by Barro. Mr Douglas was called by Council. They participated in a joint meeting and prepared further statements of evidence. The material reveals there are two matters of disagreement that engage public safety considerations, namely:
- (a) whether it has been demonstrated the access will have appropriate geometry to allow for safe operation; and
 - (b) whether a sufficient sight distance will be achieved to ensure the safe operation of the access.
- [48] With respect to the issue of geometry, Barro did not advance a concept design of the access for consideration. Rather, to discharge its onus, Barro relied upon ‘*swept path diagrams*’ prepared by Mr Trevilyan.⁵⁵ The diagrams, which are rudimentary, depict the path of travel for the largest truck anticipated for quarry operations, namely a b-double truck.⁵⁶ It is executing a turning movement into, and out of, the existing forestry track. The diagrams were attached to an addendum statement of evidence prepared by Mr Trevilyan, which was served on Council after the hearing commenced. Mr Trevilyan relies upon the diagrams to demonstrate there is sufficient space to accommodate the largest anticipated vehicle turning into, and out of, the site.⁵⁷
- [49] Mr Trevilyan was directed to the swept path diagrams in his oral evidence and asked to identify the ‘*intent behind providing this information*’.⁵⁸ In response, he acknowledged that a geometry issue had been raised by Mr Douglas, and considered it was reasonable to demonstrate: (1) ‘*proof of concept*’; and (2) that the works are ‘*deliverable*’.⁵⁹ In this context, Mr Trevilyan said the swept path diagrams were not design plans, but demonstrate ‘*what a b-double would do under a number of circumstances*’.⁶⁰

⁵⁴ Ex.15.02. para 78.

⁵⁵ Ex.11.23, pp. 24-25.

⁵⁶ Comprising a prime mover and two trailers with a combined length of 25 metres.

⁵⁷ Ex.11.23, para 21.

⁵⁸ T7-12, L45 to 46.

⁵⁹ T7-12, L46 to T7-13, L5.

⁶⁰ T7-13, L6-7.

- [50] Having regard to the swept path diagrams, coupled with Mr Trevilyan's explanation, I am satisfied that a b-double truck could turn from either direction on Beerburrum-Woodford Road into the site, utilising a width of 11.8 metres.⁶¹ I am also satisfied that a b-double truck could turn from the site onto Beerburrum-Woodford Road, in either direction, utilising a width of 13.5 metres.⁶² It was Mr Trevilyan's evidence that these dimensions can be accommodated by the access to the site, which is 16 metres wide.⁶³ I also accept this evidence.
- [51] Three shortcomings can be identified with Mr Trevilyan's swept path diagrams: (1) the diagrams do not demonstrate whether the truck turning movements would be impeded by road upgrade works discussed and recommended in the traffic joint report - the upgrade includes a 'BAL⁶⁴ treatment', and may require a 'BAR⁶⁵ treatment';⁶⁶ (2) the swept path diagram for the truck leaving the site and turning east demonstrates the movement cannot be completed within the existing sealed carriageway of Beerburrum-Woodford Road, even where the turning movement commences from the western edge of the access; and (3) the diagrams demonstrate that the width of the access is insufficient to accommodate two large vehicles at one time, meaning it is too narrow to permit two trucks to simultaneously enter and exit the site.
- [52] Mr Trevilyan fairly acknowledged the above shortcomings. In response to items (1) and (2), he said these are matters that would need to be carefully considered in the detailed design process and did not undermine his intent to demonstrate a deliverable proof concept. To respond to item (3), Mr Trevilyan made the following recommendation:⁶⁷
- "... I would also recommend that the ... drivers of the B-doubles or any vehicle leaving the site, most notably the B-doubles, should be instructed and required to not commence a right turn out of the site at the same moment that another B-double is entering the site, because it is plausible that a motorcyclist, for example, maybe following that B-double and choose to overtake, and that would be a scenario ... that's not a good outcome ... so my advice would be that the driver's code of conduct of the truck drivers leaving the site should include, in the event when you're egressing the site, another quarry truck is entering the site, you must hold position until that entering movement has been completed, just as an additional safety element..."*
- [53] Mr Douglas conceded that the swept path diagrams contained in Mr Trevilyan's addendum report demonstrate a b-double truck, approaching from either the east or west, can turn into and out of the site within the existing road reserve.⁶⁸ He was, however, strident in his view that the diagrams failed to demonstrate appropriate access geometry.

⁶¹ T7-13, L11 to 13.

⁶² T7-13, L16 to 22.

⁶³ T7-13, L10.

⁶⁴ A basic left turn treatment from Beerburrum-Woodford Road to the site access.

⁶⁵ A basic right turn treatment from Beerburrum-Woodford Road to the site access.

⁶⁶ Ex.5.09, p.5, para 43 and p.7, para 52 a).

⁶⁷ T7-13, L47 to T7-14, L11.

⁶⁸ T7-49, L30 to 40.

- [54] In support of his opinion, Mr Douglas pointed out that which is self-evident; the diagrams do not purport to be a design concept for the intersection upgrade.⁶⁹ This, as I understood his evidence, had the effect that the diagrams do not demonstrate appropriate geometry. In this regard, Mr Douglas said:⁷⁰

“what I’m saying is, there is no geometry here. This is just a swept path ...But that’s not overlaid on what I could call ...a working concept that actually has the appropriate distances and dimensions, deceleration lane lengths, Q-storage in the right turn pocket, all of those things, which haven’t been done. And if you look at the egress, you actually see that the swept path of the B-double coming out actually runs off the edge of the pavement on the opposite side and drives on the dirt shoulder interface to the other side. Clearly that’s not acceptable. Clearly that needs to be designed as a proper intersection...”

- [55] Central to Mr Douglas’ opinion is an expectation that a concept design of the access would be produced to consider matters of safety and efficient operation. In his view, it is a design of this character that demonstrates whether appropriate access geometry could be achieved in the circumstances. This purpose is not achieved by swept path diagrams.

- [56] It was put to Mr Douglas that the swept path diagrams demonstrate that the safe and efficient operation of the access for b-double trucks will require management measures to be implemented.⁷¹ Mr Douglas agreed, but made two points in response. He said: (1) there is no traffic engineering reason why an inferior solution such as this should be accepted in circumstances where the site is a ‘*greenfield site*’, and there is room to provide a design solution that does not require management measures;⁷² and (2) the recommended management measures, in his experience, are a ‘*barely workable solution*’, unsafe and unsustainable in the long term.

- [57] With respect to item (2) above, Mr Douglas was highly critical of an access solution that relies upon two-way radio communication while a vehicle exiting the land is propped waiting for another vehicle to enter. Mr Douglas said this solution may be acceptable for the construction phase of the project, but inappropriate for the life of the use. His reasoning for this was articulated in the following passages of his oral evidence:⁷³

“I don’t think it can be managed in the long-term. I think ... it will give rise to errors and mistakes where there will be people whose radios don’t work, or people who are in other vehicles, because we’ve got a whole range of other vehicles that could be coming here. There could [be] mobile crushers, all sorts of things. You’ve got to make sure everyone involved has the radio, is on the same wavelength, knows the movements, you can do that for a concentrated construction phase, but I wouldn’t be propagating that for something that’s got a life of 20 years. It’s...likely to fail at some point over that time.”

⁶⁹ T7-50, L4 to 10.

⁷⁰ T7-51, L8 to 18.

⁷¹ T7-51, L25 to 27.

⁷² T7-51, L27 to 40.

⁷³ T7-52, L26 to 34.

And:⁷⁴

“... *I wouldn't be seeking to rely on it. I'm not quite understanding why we wouldn't have an intersection built here once and do it properly, rather than create an unsafe intersection that's got management layers. Bear in mind, the onsite supervisor isn't standing at the intersection either, they're back in the quarry presumably, so it's all done by radio. So it's all done by checking in with drivers on where they are and where they're approaching.*”

- [58] It was submitted on behalf of Barro that access geometry is not a reason for refusal and can, in any event, be addressed by way of ‘*an appropriate, relatively routine condition*’.⁷⁵ This submission is founded upon Mr Trevilyan's evidence. Alternatively, it is founded upon two concessions attributed to Mr Douglas.
- [59] Dealing with Mr Trevilyan's evidence first, I was not persuaded his opinion should be accepted in relation to access geometry. The evidence was not supported by a design that demonstrated, to use his words, a deliverable proof of concept. The absence of such a design was, unfortunately, not explained. Added to this, I was not persuaded, having regard to Mr Douglas' evidence, that swept path diagrams are an appropriate substitute. The diagrams exhibit a number of shortcomings, which are discussed in paragraph [51]. Those shortcomings were not satisfactorily resolved by the matters referred to in paragraph [52]. As Mr Douglas' evidence makes clear, the shortcomings cannot be lightly brushed aside and are not resolved through the implementation of management measures recommended by Mr Trevilyan. Indeed, I have little confidence the management measures recommended by Mr Trevilyan are appropriate for the reasons given by Mr Douglas (set out in paragraph [57]).
- [60] I also do not accept it was sufficient for Barro to contend that the design of the access is a matter for conditions. It did so in reliance upon Mr Douglas' view that he could readily foresee an engineering design solution. However, such a contention ignores that Council has put in issue, as a reason for refusal, the design of the access. More particularly, Council has alleged non-compliance with Performance outcome PO2 of the Transport and parking code in the planning scheme, which is relevant to the design and operation of the access. The provision requires the ‘*design*’ of the site access to achieve specified objectives; one objective is that the design be ‘*safe, convenient and legible*’.
- [61] What level of detail is required to assess compliance with PO2?
- [62] The level of detail required to assess and decide a development application will often depend upon the matters a decision maker is called upon to assess in granting or withholding approval.⁷⁶ Here, the information should be sufficient for a judgment to be made about whether the site access will comply, or can be conditioned to comply with, inter alia PO2. I am not satisfied the information before me is sufficient to assess compliance in either respect.

⁷⁴ T7-52, L43 to T7-53, L2.

⁷⁵ Ex.15.01, para 116.

⁷⁶ *SDW Projects Pty Ltd v Gold Coast City Council* [2007] QPELR 24 at [24].

[63] That there is insufficient information to demonstrate satisfactory access geometry here is unfortunate. The issue was raised by Mr Douglas in the traffic joint report. It was not responded to until well into the hearing. The response, to be found in Mr Trevilyan's evidence, is unconvincing. I am also unpersuaded the point is appropriately addressed by Barro's reliance upon Mr Douglas' evidence. The relevant submission in this regard, with footnotes omitted, was as follows:⁷⁷

“In any event, Mr Douglas indicated he was satisfied an appropriate access could be designed, and that there were no insurmountable constraints to solving any issues associated with this.”

[64] This submission is founded upon two passages of the transcript,⁷⁸ which I have reviewed.

[65] I do not accept that the two passages in the transcript establish, individually or collectively, that Mr Douglas conceded the geometry of the access is a matter for conditions. Read objectively, his evidence establishes that an appropriate access could be designed. He does not identify, with precision, the design. Nor did he suggest the design can be deferred to conditions of approval. The reason for this, as I understood his evidence, was for reasons of public safety. His underlying traffic concern being that the safe and efficient operation of the access is important, given Beerburrum-Woodford Road has a posted speed limit of 100 km/hr. Consistent with Mr Douglas' evidence, I accept that the design of the access is an issue that should be resolved with a degree of certainty before the development is approved. Such an outcome may seem conservative and cautious. That may be so, but caution is appropriate where matters of public safety are involved.

[66] Whilst Barro invited me to accept the concessions attributed to Mr Douglas above, I pause to observe that Barro also submitted, with equal force, that the same evidence should be treated with 'caution'. More particularly, Mr Job QC and Mr Ware submitted Mr Douglas' evidence should be treated with caution because he was unfair, unduly critical and negative towards Mr Trevilyan. In this vein, it was submitted Mr Douglas demonstrated a tendency to deride the work of his professional counterpart without foundation.

[67] I cannot accept this submission.

[68] It is true to say that Mr Douglas was critical of Mr Trevilyan's work. It is equally true that, at times, Mr Douglas' criticisms were expressed in strong terms. I did not however apprehend this was intended to be professionally discourteous. Nor do I regard this as being inconsistent with Mr Douglas' duty to the court. In my view, the strong criticisms expressed by Mr Douglas were borne of frustration, and no doubt his concern that a public safety issue was not given the level of consideration it required and deserved. That frustration, and concern, was the product of: (1) the unexplained absence of a conceptual design for the site access; (2) the suggestion that a series of swept path diagrams could be treated as a substitute for a conceptual design for the access; and (3) Barro's reliance upon an unsatisfactory and inferior access arrangement that involved unsustainable 'management measures'.

⁷⁷ Ex.15.01, para 116.

⁷⁸ T7-50, L15-42 and T7-54, L17-22.

- [69] Mr Douglas' frustration was, in my view, well founded given the traffic safety issue being examined and the absence of a conceptual design.
- [70] Given the above, I am not persuaded Barro has demonstrated the site access will have, or can be conditioned to have, appropriate geometry required for safe and efficient operation.
- [71] I will now turn to deal with the sight distance issue. This is a reference to the available safe intersection sight distance (SISD) between a vehicle travelling on the carriageway of Beerburrum-Woodford Road and a stationary vehicle propped at the access to the land waiting to execute a turning movement onto the road. The available sight distance is considered to determine whether there is sufficient time, and distance, for the vehicle travelling on the carriageway to see, and safely react, to a turning vehicle, if the circumstances require.⁷⁹
- [72] The traffic engineers measured the available sight distance to the west and east of the proposed access.⁸⁰ The former is in the order of 250 metres. The latter is in the order of 150 metres.
- [73] The available sight distance to the east is constrained by a combination of three factors, namely: (1) a change in the horizontal alignment of the road, resulting in a dog-leg; (2) a change in the vertical alignment of the road, which crests at a location coincident with the change in horizontal alignment (dog-leg); and (3) the existence of vegetation parallel to the road reserve that impedes a driver's line of sight to the access from a point preceding the change in horizontal and vertical alignment of the road.
- [74] Mr Trevilyan and Mr Douglas agreed the sight distance available to the west of the access is sufficient. However, they disagreed about the required distance to the east. Mr Trevilyan said a distance of about 150 metres was '*fit for purpose*'.⁸¹ Mr Douglas said a minimum distance of 248 metres was required.⁸²
- [75] The opinions expressed by Mr Trevilyan and Mr Douglas about the required sight distance were informed by a number of underlying assumptions. The assumptions made arise out of the following considerations:
- (a) whether the access is to be treated as a driveway, or intersection?
 - (b) what is the reaction time (measured in seconds) to be assumed for the driver of the vehicle on the carriageway of Beerburrum-Woodford Road?
 - (c) what design speed is to be adopted for Beerburrum-Woodford Road?
 - (d) whether it is appropriate to rely upon existing crash data to assess the suitability of sight distances; and
 - (e) whether a 'flashing sign' installed at the change in horizontal and vertical road alignment alerting drivers to the presence of trucks is sufficient to justify a sight distance of about 150 metres?

⁷⁹ T7-46, L18 to 25 and T7-29, L42 to 43.

⁸⁰ Ex.5.09, p.6, para 47.

⁸¹ Ex.5.09, para 50.

⁸² T7-42, L23.

- [76] As I understood the evidence, there was little disagreement between Mr Trevilyan and Mr Douglas in relation to the question posed in sub-paragraph (b). They each applied a reaction time of two seconds. This reaction time was considered to be appropriate, provided a condition was imposed requiring the ‘*flashing sign*’, referred to in sub-paragraph (e), to be installed at about the change in horizontal and vertical alignment of Beerburrum-Woodford Road.
- [77] Mr Trevilyan and Mr Douglas otherwise disagreed about the answers to the questions posed in sub-paragraphs (a), (c), (d) and (e) above.
- [78] In relation to sub-paragraph (a), Mr Trevilyan assumed the site access is to be treated as a driveway.⁸³ This was because it is the intersection of an access to private property and a road. It is not the intersection of two roads. This was expanded upon by Mr Trevilyan in his evidence-in-chief, where he said:⁸⁴

“...this...is an access driveway to...private property,...it is not...an intersection...And the reason being [that] the vehicles turning in and out of them more routinely are quite familiar with the driveway whereas an intersection..[is available] for the general public to use and, therefore, the users...can be often less familiar with the intersection...”

- [79] On the footing the site access is to be treated as a driveway, Mr Trevilyan assessed the suitability of the available sight distance by reference to Figure 3.2 in the Australian Standard described as AS/NZS2890.1:2004. The Standard was not in evidence before me. I was however informed by Mr Trevilyan that Figure 3.2 applies to sight distances at an access driveway.
- [80] Assuming a design speed of 93.8 km/hr, I was informed by Mr Trevilyan that Figure 3.2 of the Standard suggests a sight distance of 141 metres is appropriate.⁸⁵ Having regard to this assessment, Mr Trevilyan was satisfied the sight distance of 150 metres to the east of the access was satisfactory.
- [81] To buttress his opinion, Mr Trevilyan examined the available sight distance by reference to Part 4A of the Austroads Guide to road design.⁸⁶ Again, assuming the access is a driveway, Mr Trevilyan assessed the available sight distance by reference to s 3.4 of the Guide. The Guide was not in evidence before me. Paragraph 46 of the traffic joint report includes the following quotation relied upon by Mr Trevilyan, which is said to be extracted from s 3.4 of Part 4A of the Guide:

“The criteria above often cannot be obtained at accesses on roadways with tighter horizontal and vertical alignments, or vegetation. For new roads comprising such geometry, minimum sight distances at accesses should comply with the following:

- *minimum gap sight distance in Section 3.2.3...”*

⁸³ T7-28, L20 to 21.

⁸⁴ T7-12.

⁸⁵ Ex. 5.09, para 49.

⁸⁶ Ex. 5.09, p.6, para 46.

- [82] After quoting from s 3.4 of the Guide, the following opinion was attributed to Mr Trevilyan in the joint report:⁸⁷

“Adopting this approach for the subject scenario (interpreting “new roads” to reasonably incorporate the situation of upgrading the subject access driveway), the required minimum gap sight distance (MGSD) for the proposed site access (with a critical gap acceptable time of 5 sec and design speed of 100 km/h {noting the measured designed speed of less than 100 km/h proximate to the site access – ‘Appendix 4’ of Appendix F}) is 139m. The sight distances available from the site access to the west is ~250m and to the east is ~150m, and therefore the MGSD is more than satisfied.”

- [83] Mr Douglas did not accept the site access should be treated as a driveway. It was his opinion that the access should be treated as an intersection for the following reasons:⁸⁸

“...It can be ...an intersection between a private road and a public road. There’s nothing to say that you can’t have an intersection formed with a private road...if you read all of the references to driveway and the relevant guidelines and standards, they basically relate to a concrete apron turned out for the purposes of vehicles entering and exiting, which is a lesser standard than an intersection where the [pavement] will continue through, rather than concrete contrasting with bitumen. I think in this case, we need to have this as an intersection because we’ve got large trucks quite frequently. In fact, more trucks turning out of this side road, for want of a better term, than we do going through on Beerburrum-Woodford Road under the million tonne per annum scenario. Something like double the amount of trucks are turning in and out as they’re going through. I think that needs to be a fully bitumen sealed intersection as opposed to a driveway, which is effectively a [concrete] apron butting up to the edge of the [pavement].... Once you’re needing to do those things, you’re really building an intersection, so it should be treated as an intersection...The driveway is designed for low speed turning, and intersection is designed for a high speed turning, which we need here because of the limited sight lines and the fact we’re dealing with heavily laden quarry trucks...”

- [84] Is the access a driveway or intersection?

⁸⁷ Ex.5.09, p.6, para 47.

⁸⁸ T7-56, L18 to T7-57, L10.

- [85] This question is not an easy one to resolve in the circumstances of this case. It is complicated by reason that Barro did not tender a copy of the Australian Standard, nor the Austroads Guide to design, both of which were relied upon by Mr Trevilyan to examine the adequacy of the available sight distance. It is unknown whether these documents define the terms driveway or intersection. It is unknown whether the documents distinguish a driveway from an intersection, and for what reasons. This, as a consequence, means an underlying and essential assumption for Mr Trevilyan's opinion cannot be properly tested.⁸⁹ That the opinion cannot be tested means I am not persuaded that⁹⁰ "*Mr Trevilyan's approach correctly identifies the difference between an intersection and an access and he applies the appropriate standards for an access*" and that "*those standards are met*".
- [86] In the absence of the Australian Standard and Austroads Guide to design referred to by Mr Trevilyan, I am inclined to accept Mr Douglas' opinion that the access should be treated as an intersection. It accords with ordinary experience, namely that a private driveway or road intersecting with a public road can create an '*intersection*'. There are everyday examples that make good Mr Douglas' opinion. An access arrangement for a large sub-regional retail facility is one such example. It is not uncommon for development of this kind to include internal roads that intersect with public roads, and that intersection is signalised. In that example, the internal road is one of a number of legs of the intersection, rather than a driveway.
- [87] Putting examples to one side, what is of greater significance, in my view, is that the access here will need to be constructed to a standard higher than a driveway. This is a consequence of the nature, and number, of traffic movements turning into and out of the site. That the access will be constructed to a standard higher than a driveway is a compelling reason to accept Mr Douglas' evidence.
- [88] An assessment of the sufficiency of an available sight distance requires an assumption to be made about, inter alia, the design speed for Beerburrum-Woodford Road. It was uncontroversial that this road has a posted speed limit of 100 km/hr and, as a matter of general practice, traffic engineers start with a design speed that is 10% above the posted speed limit. Both Mr Douglas and Mr Trevilyan adopted a lesser design speed in this case.
- [89] Mr Douglas assumed a design speed of 100 km/hr. He did so having regard to traffic counts undertaken in 2017, which reveal an 85th percentile speed for the road in the order of 94 km/hr. As a factor of safety, Mr Douglas rounded the survey speed up to 100 km/hr. Mr Trevilyan, adopted the 85th percentile speed of 94 km/hr as the design speed. He did not round the survey speed up to include a factor of safety.
- [90] Mr Trevilyan's assumption as to the adopted design speed changed during the hearing. In an addendum statement, he adopted a design speed of 81 km/hr. This speed was derived from a survey carried out by a consultant at Mr Trevilyan's direction. The survey was conducted after the exchange of expert reports. It was not the subject of any discussion with Mr Douglas prior to the preparation of the addendum statement. The consultant who carried out the survey was not called to give evidence to prove the methodology adopted or the results.

⁸⁹ *Makita (Australia) Pty Ltd v Spowles* (2001) 52 NSWLR 705, [71].

⁹⁰ Ex.15.01, para 123.

- [91] Mr Douglas did not accept the additional survey data was sufficient to adopt a design speed of 81 km/hr. In his oral evidence, he pointed out: (1) the identified location of the radar gun measuring traffic speed for the survey was inappropriate because it would likely return a favourable result, i.e. a reduced design speed; (2) the size of the ‘*statistical sample*’ obtained for the survey was insufficient; (3) whilst accepting the survey was undertaken by a reputable firm, he was hesitant to accept its accuracy in the absence of more detail regarding the survey methodology; and (4) one week of ‘tube counts’ was the appropriate statistical sample required to vary the assumption made about the design speed given the clear disparity between the survey considered in the joint report (which yielded a design speed of 94 km/hr) and the survey undertaken at Mr Trevilyan’s direction.
- [92] I accept Mr Douglas’ criticisms of the additional survey material are valid. The criticisms undermine its use in determining a safe sight distance for the access to the land. As a consequence, I give the additional traffic speed survey no weight. I would also add that I am not persuaded the survey should be given weight because of: (1) its late delivery in the hearing; and (2) the absence of an explanation as to why the survey was carried out after the completion of the joint report and further statements of evidence.
- [93] Given the posted speed limit for Beerburrum-Woodford Road, and given the nature (including laden b-double trucks) and number of traffic movements proposed in and out of the site access, I am persuaded that a conservative view should be adopted for the design speed assumed to assess the safe sight distance. This is the approach adopted by Mr Douglas.
- [94] As part of his analysis, Mr Trevilyan referred to available crash data to examine the safety of the access to the land. I accept data of this kind is relevant and, as Mr Trevilyan did, can be called in aid to inform an assessment of the safe sight distance. Here, that data revealed there was no relevant crash history. Mr Trevilyan said this was an indicator suggesting the existing sight distance to the east of the access was sufficient, and safe.
- [95] This can be accepted, but only to a point.
- [96] The existing access is used by forestry vehicles to travel to pine plantations. Whilst the vehicles utilising the access include heavy vehicles, the nature and number of vehicles doing so is not comparable to the proposed development. Indeed, it was not suggested the forestry activity on the land, and associated vehicle numbers utilising the access will approach one heavy vehicle every three minutes (entering or leaving the site). This difference in utilisation was a point made by Mr Douglas. In his view, the difference is a material one and impacts on the utility of the crash data for examining the safety of the sight distance to the east. I accept his evidence. The crash data does not permit a like-for-like comparison. As a consequence, the crash data does not, in and of itself, establish that a sight distance of about 150 metres will be acceptable, and safe, assuming the proposed development is approved.

- [97] The final assumption informing the sight distance analysis related to the allowance, if any, that is made for a flashing sign installed to warn drivers of the presence of heavy vehicles entering and leaving the road. I can accept without hesitation that the recommendation to install the sign is an appropriate one and should be taken into account in the assessment of the safe sight distance.
- [98] With knowledge of the flashing sign, Mr Douglas reduced the assumed reaction time for drivers travelling along Beerburrum-Woodford Road from 2.5 to 2 seconds. Mr Trevilyan did the same. That is how the sign is accommodated in the assessment. It is, however, another matter to suggest that the existence of the sign supports Mr Trevilyan's view that a safe sight distance is in the order of 150 metres. In isolation, I do not accept the sign establishes such a view is correct. The sign is but one of a number of factors to be taken into account in the assessment.
- [99] For the reasons given in paragraphs [71] to [98], I accept that the approach to be adopted in relation to the assessment of a safe sight distance for the proposed access is that consistent with Mr Douglas' evidence. His assessment requires a sight distance of 248 metres to be achieved to the east. This distance cannot be achieved absent considerable earthworks and the clearing of vegetation along the edge of the road reserve.
- [100] The position I have reached in relation to the design of the access, and safe sight distance leads me to accept the following submission made by Council. It submits the following reason warrants refusal of Barro's application in its own right:⁹¹

“Barro has not demonstrated that the traffic engineering impacts of the proposed development would be acceptable.”

- [101] Should the application be refused for this reason alone?
- [102] This question, in my view, is resolved in the affirmative. The design of the access and provision of a safe sight distance go to matters of public safety. The significance of which comes into sharp focus once it is appreciated that: (1) the posted speed limit for Beerburrum-Woodford road is 100 km/hr; and (2) the nature of traffic generated by the proposal will involve a significant increase in heavy vehicular traffic on that road. Impacts on public safety are important town planning considerations. That the impacts have not been satisfactorily resolved calls for refusal of the application in its own right.
- [103] That the development application should be refused for traffic safety reasons is supported by the Transport and parking code, which forms part of the planning scheme and applies to the proposed development. Two particular provisions of the code are relevant, namely:⁹²

“(2) The purpose of the Transport and parking code will be achieved through the following overall outcomes:-

...

(c) transport infrastructure is designed and constructed to acceptable standards and operates in a safe and efficient manner

⁹¹ Ex. 15.02, para 77.

⁹² s 9.4.8.2(2) and s 9.4.8.3, Table 9.4.8.3.1.

And:

Vehicle Access and Manoeuvring			
PO4	<p><i>Vehicle access to, from, and within the extractive industry site is provided so as to:-</i></p> <p>(a) <i>be adequate for the type and volume of traffic to be generated;</i></p> <p>(b) <i>not create or worsen any traffic hazard;</i></p> <p>(c) <i>ensure disturbance to surrounding land uses is minor and that impacts from emissions are minimised; and;</i></p> <p>(d) <i>ensure no tracking of sediment or material onto the road network results from the transport of materials associated with the haulage of extractive resources.</i></p>	<p>AO4.1</p> <p>AO4.2</p> <p>AO4.3</p> <p>AO4.4</p>	<p><i>The proposed transport route to the site is along sealed roads and does not require heavy vehicles to traverse residential or rural residential streets classified as collector streets or local streets.</i></p> <p><i>All driveways and manoeuvring areas between the site entrance and the site office and all wash down areas and works depot area are sealed.</i></p> <p><i>Driveways have a minimum width of 9 metres measured at the property alignment/road frontage and are located not less than 9 metres from any other driveway.</i></p> <p><i>A wheel wash down area is provided near the driveway entrance of the site to any transport route.</i></p>

(emphasis added)

[106] Barro submits that compliance is achieved with overall outcome 2(d) and PO4 above. I accept this submission. The former provision (and AO4.1) speaks of ‘*transport routes*’, which are defined, inter alia, as a route shown on an Extractive Resources Areas overlay map. The transport route shown on the relevant overlay map is the existing unsealed forestry track on the land, connecting the extraction pits to Beerburrum-Woodford Road.

[107] The transport route, as defined, is internal to the site. It allows extracted material to be transported to a state controlled road without passing other development. Subject to parts of the track being widened and sealed as recommended by the traffic engineers, the function of that track will not be adversely impacted by the proposed development. In this way compliance has been demonstrated with overall outcome 2(d) and AO4.1. I am also satisfied that compliance can be conditioned with AO4.2 to AO4.4 inclusive.

- [108] Assuming compliance is demonstrated with all of the overall outcomes of the Extractive industry code, and in turn, compliance with all of the code is achieved, this does not offset, or make good, the non-compliances identified with the Transport and parking code. Compliance is achieved (in terms of access) with the Extractive industry code without having to come to grips with the specific requirements of PO2(d) of the Transport and parking code. This provision requires access arrangements to be considered beyond the ‘*transport route*’ as defined, which is the internal unsealed forestry track.
- [109] Mr Job QC and Mr Ware advanced the proposition that the traffic engineering issues could, despite the above, be resolved in one of two ways: (1) through conditions imposed on any approval; or alternatively (2) the proceeding could be adjourned to allow further evidence to be led in relation to unresolved traffic issues.
- [110] As to the first of the two propositions, I do not accept there is sufficient information to approve the application subject to conditions dealing with traffic impacts. I would add there is an additional layer of difficulty beyond the sufficiency of information. I was not persuaded that conditions could, in fact, be readily crafted to achieve an access compliant with the planning scheme. As Mr Douglas’ evidence revealed, the design solution necessary to achieve such an outcome is problematic:⁹⁴

“...it could be quite tricky in this instant, ... because the 248 metre point is at a lower level on the road than where the quarry access intersection will be, so there will have to be some benching that will be lower than the actual road pavement, to create the sight line through, and there would just need to be some ... careful checks. I’ve had to do this a few times and it’s quite a complicated three-dimensional exercise to make sure you can do it. It’s ... probably more a case of working out the extent of clearing and benching you need, and you’ve got to do that for different eye heights, so for car drivers and truck drivers ... and all that, so ... it won’t be as elegant as a thin line here. It will [be] a thin line ..., plus benching, plus effectively creating a bit of a canyon to see through.”

- [111] On balance, the design of the access and provision of an appropriate sight distance should, in my view, be resolved in conceptual form before an approval is granted. The underlying need to do so is clear enough having regard to the following passage of Mr Douglas’ oral evidence:⁹⁵

“... this is not a 60 kilometre an hour piece of road. If we get this wrong, people are moving fast. So, we shouldn’t be comprising the design speed based on the survey, and also accepting, effectively, a minimum gap sight distance is all we’re providing. We’re not giving the motorists on Beerburrum-Woodford Road adequate time to do anything other than see the truck come out, ... well, not even observe it. Just react and pull to a stop before...they hit the trailer. That’s all we’re giving them. Now that’s day in, day out, quarry truck after quarry truck, car after car. The truck driver can’t see that car coming when they commit to turning out. They’re further than that around the corner, but ... if it coincides that this car just coming around the corner as the truck commits, that truck’s not going to be

⁹⁴ T7-45, L9 to 23.

⁹⁵ T7-59, L25 to 41.

out of the way in five and half seconds. So, the motorist is then having to back off quite substantially if the truck is going to take eight, nine, [ten, twelve] seconds to get out. Every motorist who comes around that corner who sees a truck will have to back off and potentially break almost to a stop to let the truck out, and I don't think that's what we would be doing in a modern world where there's no brick wall on a corner boundary that's preventing us from doing anything..."

- [112] With respect to the second proposition advanced by Mr Job QC and Mr Ware, I was reminded in submissions that this court in *Metroplex Management Pty Ltd v Brisbane City Council & Ors* [2010] QPELR 270 and *Comiskey Group (a firm) v Moreton Bay Regional Council & Ors* [2012] QPELR 168 adopted a course whereby an applicant was permitted to lead further evidence about traffic issues after the delivery of reasons for judgment dealing with the question of approval or refusal. That was the course Barro invited me to take if I was not satisfied the traffic issues could be resolved satisfactorily by way of conditions.
- [113] I accept such a course was adopted in the decisions referred to above. As the final result in *Comiskey* however demonstrates, there is no guarantee it is a course that will yield the desired result for a developer and may have the unfortunate consequence of protracting the time and cost associated with litigation for all parties. A decision that has the potential to protract litigation, resulting in additional expense for the parties, is not, in my view, one to be made lightly given s 10(1) of the *Planning & Environment Court Act 2016*.
- [114] It is unnecessary to dwell upon this matter in the circumstances here because I am not inclined to permit Barro to lead further evidence in relation to traffic issues. The evidence, if led and accepted, would not alter the outcome of the appeal. As these reasons for judgment make clear, the traffic issues are not the only reasons that warrant refusal of the application. Amenity, character and ecological impacts also warrant refusal of the application. Those impacts, taken in combination, are of such significance as to prevail over the value of the proven resource to the community, and call for refusal of the application.

Suitability of the proposed haul route

- [115] The proposed development relies upon heavy vehicles (trucks) to haul extracted material from the site and through the road network to target markets. To manage the impacts of this unavoidable aspect of the use, a specific haul route has been identified. Council contends the haul route is unsuitable given the potential for adverse impacts on adjoining development, including the Beerburrum township, which cannot be avoided or mitigated to an acceptable level.

[116] The relevance, and importance, of this reason for refusal in the exercise of the planning discretion is confirmed by two strategic outcomes in the Strategic framework of the planning scheme. The strategic outcomes are directed towards the desirable planning balance to be achieved between, on the one hand, the foreseeable and adverse impacts of extractive industries, as against the recognised economic benefits the community derives (directly or indirectly) from the exploitation of a locally significant resource, such as that here.⁹⁶

[117] Strategic outcome 3.9.1(c) provides:⁹⁷

*“Those natural resources which are not suitable to be exploited due to the potential for **significant** adverse amenity or environmental impacts on existing or proposed communities remain undeveloped.”* (emphasis added)

[118] Strategic outcome 3.9.1(f) provides:⁹⁸

*“The potential for exploitation of natural resources to result in adverse environmental and **amenity impacts** is effectively **mitigated** so as to **protect** the environment and **amenity of the Sunshine Coast.**”* (emphasis added)

[119] There is consistency between Strategic outcome 3.9.1(f) and the Rural zone code. Overall outcome (2)(b) of the zone code states:⁹⁹

“more intensive rural activities including...extractive industry may also be established in the zone provided that adverse...amenity impacts are avoided or appropriately managed;”

[120] The proposed haul route would traverse Beerburrum-Woodford Road and Beerburrum Road, six days per week. In travelling these roads, trucks would pass in the order of 15 houses and through the ‘*main street*’ of Beerburrum township. The main street is developed with a school, café, Post Office, mechanic, service station and park. For the reasons given in paragraph [29], I accept it is an attractive main street with a high standard of amenity. Its appeal to residents, visitors and tourists alike is readily understandable.

[121] It is Council’s case that the proposed haul route will have an unacceptable impact on the character and amenity of the locality, particularly the township of Beerburrum. The impact is said to be the product of the number, and visual presence, of heavy vehicles utilising the haul route. Council makes the point that the haul route is not designated in the planning scheme for this purpose. I accept the planning scheme does not designate the proposed haul route through the town a quarry haul route as it has done in other locations for resources of state and local significance.

⁹⁶ The economic benefit is recognised in s 3.9, Key concepts (1) and (2) and s 3.9.1(b) of the Strategic framework in the planning scheme: Ex 4.11, p.62.

⁹⁷ Ex.4.11, p.62.

⁹⁸ Ex.4.11, p.62.

⁹⁹ Ex.4.19, p.80.

- [122] An examination of this issue starts from the position there is agreement as to the number of vehicle movements generated by the proposed development along the haul route. This agreement, in turn, leads to a further agreement about the change, in numerical terms, to the overall volume of traffic in, and along, the proposed haul route. The accepted position is set out in Mr Trevilyan's evidence.
- [123] In his addendum statement,¹⁰⁰ Mr Trevilyan tabulated a two-way traffic analysis for the pre and post development scenario in the years 2017 and 2027. The tabulation indicates that a total of 1,242 vehicles per day utilise Beerburrum-Woodford Road (in 2017), of which 174 were characterised as '*heavy vehicles*'. The same tabulation also indicates that this volume would increase if the proposed development was approved. Assuming the 2017 traffic counts are adjusted to reflect the proposal operating at a capacity of one million tonnes per annum, the total number of vehicles in the road network would equate to 1,465 vehicles per day, of which 398 are characterised as '*heavy vehicles*'. Adopting the pre and post development estimates for comparison reveals the proposed development would increase the number of heavy vehicles in the road network by 127.7%.
- [124] Council did not suggest Mr Trevilyan's assessment of traffic generation for the proposal should be rejected. The assessment was, however, explored in cross-examination by Mr Batty. The cross-examination skilfully exposed that the assessment of '*heavy vehicles*', and relative increases expressed in percentage terms, was more nuanced than it first appears.
- [125] Mr Trevilyan confirmed in cross-examination that the descriptor '*heavy vehicles*' captures a wide range of vehicle types and sizes. The descriptor is to be treated as a reference to vehicle classes 3 to 13, which, in practical terms, captures body trucks up to, and including, road trains. Mr Trevilyan confirmed that the proposed development will increase the number of class 8, 9 and 10¹⁰¹ vehicles on the road network. The increase would be in the order of 3 to 4 times that which presently exists.¹⁰² Unsurprisingly, Mr Trevilyan agreed this increase would be '*substantial*'.¹⁰³
- [126] Submissions made to Council during the public notification process emphasised the increase in the number of heavy vehicles as a basis for objection. The number of truck movements generated by the development were described in many submissions as '*ridiculously high*'.¹⁰⁴ A similar sentiment can be discerned from lay witness statements tendered during the hearing.¹⁰⁵ The lay witnesses also described, in clear terms, the impact they anticipated would follow as a consequence of an approval. The anticipated impact on the character and amenity of the locality, including the main street of Beerburrum, by reason of the truck movements, was said to be significant and adverse.

¹⁰⁰ Ex.11.23, page 10.

¹⁰¹ Ex.11.23, page 8, Five Axle Articulated vehicle, Six Axle Articulated vehicle, B double.

¹⁰² T7-21, L22 to 39.

¹⁰³ T7-21, L44 to 45.

¹⁰⁴ For example, Ex. 10.01, p.1 and 53.

¹⁰⁵ Ex.9.01, p.2, para 18 to 22; p.7, para; p.11, para 22-23; p.16, para 12; p.19, para 10; p.22, para 7, p.25, para 21-22; p.28, para 12-16; p.32, para 16; p.34, para 13; p.36, para 5; p.39, para 15; p.45, para 33.

- [127] It was submitted on behalf of Barro that the quarry trucks traversing the haul route did not warrant refusal of the application because the impacts would be mitigated to an acceptable degree. Three factors were relied upon to make good on this point, namely: (1) the choice of haul route, which passed only a modest number of existing dwellings; (2) the hours of operation and use of the proposed haul route; and (3) the measures employed (and conditioned) as part of any approval (such as tarping of loads) to mitigate impacts.
- [128] Bound up in this aspect of Barro's case is the reliance it places upon two things. First, Mr King's evidence. Second, the proposition that the haul route is consistent with 'reasonable expectations' derived from, inter alia, an objective reading of the planning scheme.
- [129] Mr King examined the proposed development in terms of noise and dust emissions. The specific impacts examined by him included those associated with on, and off-site, activities. I am satisfied Mr King's evidence establishes that on-site activities will not give rise to any unacceptable dust or noise impacts, provided the activities are conditioned in the manner he recommends. Mr King's analysis of off-site impacts, principally noise impacts associated with the proposed haul route, is a different matter.
- [130] At paragraph 60 of his statement of evidence, Mr King expressed the following opinion:¹⁰⁶
- "Noise and dust from haulage traffic will not result in adverse amenity impacts due to both the low volume of traffic the proposed quarry will generate when compared to existing traffic volumes and the ability to contain dust from hauled products".*
- [131] I am satisfied this opinion, in so far as it relates to dust emissions, should be accepted.
- [132] As to noise impacts, the opinion expressed by Mr King is founded upon a calculation to determine the change in noise level attributable to the increase in traffic numbers on the road network. In general terms, a change in noise level of 3 dBA, in Mr King's opinion, is barely perceptible and, as a consequence, was used as benchmark to examine the acceptability of any increase in the noise level.
- [133] Based on Mr King's calculations, and the results tabulated in his statement of evidence, he was satisfied the increase in noise levels by reason of traffic movements to and from the proposed development would not be unacceptable. He said this was because he calculated the one-hour road traffic noise level on Beerburrum-Woodford Road west of the intersection with Beerburrum Road and concluded it would increase no more than 0.8 dBA.¹⁰⁷ The increase was described as 'far less' than the 3 dBA change required for a detectable change in noise level.¹⁰⁸

¹⁰⁶ Ex.6.07, p.15.

¹⁰⁷ Ex.6.07, p.13, para 46.

¹⁰⁸ Ex.6.07, p.13, para 47.

- [134] In cross-examination, Mr King's analysis was demonstrated by Mr Batty to be based upon an erroneous assumption. Mr King made assumptions about the volume of traffic generated by the proposal. This information was provided to him by another expert. It was riddled with arithmetic errors, and patently unreliable.
- [135] Mr King took the opportunity to correct his calculations.¹⁰⁹ After doing so, he informed the court that Table 2 of his statement of evidence was to be disregarded. A replacement table was prepared and attached to an addendum statement of evidence, dated 21 August 2020.
- [136] The replacement table prepared by Mr King suggests the change in noise level associated with increased vehicle numbers will exceed 3 dBA in six one-hour average periods during the weekday. The maximum increase is 3.6 dBA. Mr King did not regard this as unacceptable because:¹¹⁰ (1) road traffic noise is assessed in terms of L_{10} (18 hour) and the maximum change in level for this criterion was calculated to be less than 3 dBA; and (2) the resulting noise level does not exceed 63 dBA L_{10} (18 hour), which is commonly used by local authorities and the Department of Transport and Main Roads in Queensland as the road traffic noise criterion for the assessment of noise impacts.
- [137] To his credit, Mr King readily accepted that significant corrections were required to his statement of evidence. This did not however cause him to alter the conclusion as stated in s 6 of that report. He held firm that the increase in vehicle numbers from the proposed development would not give rise to unacceptable noise impacts for uses adjoining the haul route. Barro invites me to accept Mr King's evidence who, as is correctly pointed out, is the only expert witness to give evidence in relation to noise impacts.
- [138] Council contends to the contrary. It was submitted on its behalf that Mr King's evidence should not be accepted, nor be considered sufficient to discharge the onus because, inter alia: (1) the court's confidence in Mr King's evidence would be materially undermined given the extent of error identified in his assessment; and (2) Mr King's assessment is based upon an examination of average production rates and does not consider peak production levels.¹¹¹
- [139] I accept the extent of the error exposed in Mr King's statement of evidence was troubling, but, in fairness to him, the error was not of his making. The error was attributable to assumptions made by him about traffic generation, informed by data provided by another expert. When the erroneous assumptions were corrected, Mr King reconsidered his opinion. His explanation in oral evidence for not changing his overall opinion was clear and persuasive. When appreciated in this light, the error identified in Mr King's evidence does not undermine the confidence the court can have in his evidence, as corrected.

¹⁰⁹ Ex.11.13.

¹¹⁰ Ex.11.13, para 7 and p.2.

¹¹¹ Ex.15.02, para 126.

- [140] It does not however follow that Mr King's evidence discharges the onus in relation to noise impacts. As Mr Batty exposed in cross-examination, Mr King's evidence only goes part of the way. In cross-examination, Mr King confirmed that his assessment of the increase in noise levels assumed an average production rate for the proposed use. He also confirmed that the assessment did not consider levels of production that exceed the average. That production may exceed the assumed average was confirmed by Mr Trevilyan. Based on his experience, Mr Trevilyan agreed that at times of peak demand, the proposed development is likely to operate at higher than average levels, as demand rises. This increase in demand, and its impact in terms of noise has not been modelled, or examined, by Mr King. As a consequence, the evidence falls short of establishing that the noise impacts from the use of the haul route will be acceptable having regard to an empirical noise assessment.
- [141] An assessment of amenity and character impacts does not start and finish with Mr King's evidence. Council, in my view, correctly points to the need to examine such impacts from a broader perspective. This is supported by a large body of authority, which recognises that the concept of amenity is a broad one and not examined solely by reference to empirical standards. The assessment of impacts on amenity, as a consequence, involves an examination of intangible considerations (such as character and sense of place), where questions of degree, judgment and impression intrude.
- [142] Whilst the examination of the potential impacts of development on amenity involves matters of degree, impression and judgment, the exercise is not carried out by reference to some amorphous notion that takes its meaning from those who seek to maintain the status quo. Rather, such an assessment is informed by a range of considerations, including an objective reading of the adopted planning controls to ascertain what, if any, reasonable expectation there should be about the type and intensity of development intended for any given locality.
- [143] Barro submits the haul route will not give rise to unacceptable amenity impacts in the broader sense because it is consistent with reasonable expectations. The relevant expectation is said to be derived from a range of considerations. In this regard, Barro submitted there are seven matters, taken in combination, that establish the proposed haul route is within reasonable expectations. The matters relied upon are:
- (a) the description of the KRA147 on the land, which provides that access to the broader road network is via Beerburrum-Woodford Road passing through a small residential area onto Beerburrum Road to the east – this was said to be consistent with the proposed haul route, leading to higher order roads accessed through the township of Beerburrum;
 - (b) Beerburrum-Woodford Road and Beerburrum Road are designated b-double routes;
 - (c) Beerburrum Road is designated in the planning scheme as a '*freight route*', which provides for, and expressly contemplates, the activity of haulage;
 - (d) Beerburrum-Woodford Road and Beerburrum Road are fairly described as major road corridors;

- (e) Beerburrum Road is a high vehicle detour road, consistent with its designation as a freight route for haulage;
- (f) Beerburrum Road is a state controlled road; and
- (g) there is no restriction identified in the planning scheme for either road being used as a haul route in association with an extractive industry on the land, where a resource of state and local significance is designated.

[144] I accept each of the above matters are relevant to ‘*reasonable expectations*’. They are not, however, determinative.

[145] As against the above, Council contends there is no reasonable expectation the proposed haul route would be used for that purpose. In this regard, it points out that:

- (a) the historical use of the land creates no expectation the proposed haul route will be utilised for an extractive industry use at the frequency and intensity proposed;
- (b) no planning document designates the haul route proposed by Barro, meaning there is no expectation it will be used for a haul route for an extractive industry;
- (c) the provisions of the State planning policy with respect to KRA147 do not support the haul route as proposed and, in fact, encourages alternative routes;
- (d) Beerburrum-Woodford Road and Beerburrum Road are identified as scenic routes under the planning scheme, which is inconsistent with their use as a haul route;
- (e) the part of Beerburrum Road that passes through the centre of the township (past the existing school) is designated in the planning scheme as a primary streetscape treatment area, which is inconsistent with its use as a haul route; and
- (f) the use of the proposed haul route is inconsistent with designation of a gateway/entry point as depicted in Figure 7.2.1A of the planning scheme for the intersection of Beerburrum-Woodford Road, Beerburrum Road and the bridge over the existing rail line.

[146] On balance, there should be an expectation that the proposed haul route may be utilised for such a purpose in association with the extraction of the proven resource from the land. This expectation is derived primarily from a combination of: (1) the planning scheme and KRA mapping (and associated verbiage); (2) the zoning of the land; (3) the historical use of the land; (4) the absence of any express discouragement in the planning scheme for the proposed haul route; and (5) the designation of Beerburrum-Woodford Road and Beerburrum Road as freight routes. This is not however a complete answer to the matters raised by Council.

- [147] The central question, as is regularly the case in this court, is one of degree.¹¹² The question is: whether there is an expectation that the frequency of traffic movements proposed on the haul route should be reasonably anticipated having regard to the adopted planning controls, and other factors to which I have referred. Council correctly submits there is no such expectation.
- [148] The proposed development, on any objective view, would increase heavy vehicle numbers along Beerburrum-Woodford Road and Beerburrum Road, resulting in one quarry truck every three minutes, assuming one million tonnes per annum is extracted. As the evidence also established, these numbers could be higher in the event there is a campaign undertaken to meet a short-term spike in demand for hard rock resources. In circumstances where there is an absence of encouragement in the planning scheme for the proposed haul route, I cannot accept this frequency of heavy vehicles ought be anticipated as a reasonable expectation.
- [149] That the use of the haul route to the frequency proposed is outside reasonable expectations, is not of itself a reason for refusal. It is necessary to consider whether this results in any unacceptable amenity and character impacts. As the planning scheme provisions set out in paragraphs [118] and [119] reveal, this is to be assessed in the context that amenity impacts are anticipated, but are avoided where practicable, or appropriately managed.
- [150] Beerburrum comprises 180 residential lots, a small school and a small local town. The visual aids, coupled with the evidence of Mr Powell and Mr McGowan, comfortably make good that it is an attractive township with a pleasant sense of place. It has a relaxed rural character and identity. The evidence also establishes that the area is a popular destination for various outdoor recreational opportunities including hiking and bike riding. This evidence is consistent with the findings I have made in paragraph [29].
- [151] The proposed haul route travels through the centre of the attractive township. It would utilise that route, assuming a peak production rate of one million tonnes per annum, at a rate of 20 quarry truck trips per hour (one quarry truck every three minutes). To see a truck, or number of trucks in the environment that I have described will not of itself be unacceptable because Beerburrum Road already accommodates heavy vehicle traffic. However, one quarry truck every three minutes is a very different proposition. The impact would be appreciable and represent an adverse disturbance to the character and sense of place enjoyed in the main street of Beerburrum. The impact will not, as the planning scheme contemplates, be avoided. Nor will it be sufficiently mitigated/managed by conditions of approval to demonstrate compliance with the planning scheme provisions set out in paragraphs [118] and [119].

¹¹² *Clarke and Storrer v Noosa Shire Council* [1989] QPLR 261, 263, Line G.

- [152] The adverse impact of the proposed haul route on the character and amenity of the township of Beerburrum was identified in properly made submissions received by Council. It was also identified in lay witness statements before the court. The point was well made. It was also a matter referred to by Mr Buckley. More particularly, he was asked in his oral evidence to identify the impact of the haul route on the amenity of Beerburrum. In response, he said:¹¹³

*“...the amenity will be made up of...the physical space and the sense of enclosure, parts of it with the trees...to introduce that level of traffic **fundamentally changes...the nature of the way the town operates** in terms of...the connections that the community would have with the school and...the small array of retail and business outlets that are there...but they all must be impacted, at least, in terms of being confronted with traffic of that substance in terms of safety and just manoeuvrability through the town, but also the very presence of it. So it’s introduced noise, just introduces a volume of cars... – in this case trucks that are quite foreign, if you like, to the...nature that’s experienced now.”* (emphasis added)

- [153] Mr Buckley expressed the opinion that the level of traffic resulting from the proposed haul route would fundamentally change the way the township operates. He clarified what he meant by this later in his evidence as follows:¹¹⁴

“...if you just think about some of the things that people might do on a daily basis. So the school drop-off and perhaps crossing the road to get a coffee, what the staff might do from the school, to go and get a sandwich across the road or to the service station, all those little trips that people would do are...at the morning and afternoon peak [and] would be...substantially different in terms of the ability to do them...in terms of crossing the road, whether by car or foot. So that ...in my view, something quite different to this low-key character that Mr Schomburgk and I spoke of...I’ve only been there...officially three times for the site, but you can’t help but notice it’s easy to cross the road, you know, ...I’ve noticed people going to the trail head off the train. It’s an amble across the road, whereas now it would be something that may be controlled, but certainly in terms of the impacts and the enjoyment of the space it will be something completely different.”

- [154] I accept Mr Buckley’s evidence. The evidence establishes that the increase in truck movements on the road network attributable to the proposed development will have a significant adverse impact on the character and amenity of the main street of Beerburrum.

¹¹³ T8-30, L5 to 18.

¹¹⁴ T8-32, L34 to T8-33, L5.

- [155] Against the background of the above, I accept that the proposed haul route, in general terms, can be regarded as an appropriate one. It is a route that: (1) aligns with the underlying road classification; (2) limits, to the greatest extent possible, the number of residential properties passed or affected by road noise;¹¹⁵ and (3) permits convenient access to the Motorway, which, in turn, facilitates convenient access to target markets for the resource. The difficulty is that the route does not avoid the main street of Beerburum, which is a significant constraint. Any impact of the heavy vehicles on the amenity and character of that street must be mitigated/managed to an acceptable degree.
- [156] The intensity of vehicle movements on the haul route will be too great to mitigate/manage adverse amenity and character impacts to an acceptable degree. I am satisfied this is the case even allowing for the ability to impose conditions that are directed towards the mitigation of such impacts. I would also add that this difficulty is only compounded once it is appreciated that Mr King's evidence falls short of demonstrating, from an empirical perspective, that the impact of noise on uses adjoining the haul route will be acceptable during peak production (paragraph [140]).
- [157] Given the above, it has not been demonstrated that the impacts of the proposed haul route on character and amenity will be sufficiently mitigated/managed to demonstrate compliance with the planning scheme. The failure to do so represents a valid reason to refuse the development application.

Ecological constraints

- [158] The proposed development, if approved, would result in the clearing of 15.3 hectares of remnant vegetation, comprising predominantly endangered RE12.5.3, and a small area of concern being RE12.8.20.¹¹⁶ This vegetation provides habitat resources for a diversity of fauna species, including old growth hollow bearing trees.¹¹⁷ It also contributes to green space connections within the landscape, allowing native fauna to persist within the site and to move through the broader landscape.¹¹⁸
- [159] Once these features of the site are acknowledged, it is not difficult to conclude that, at a site-specific level, the clearing of 15.3 hectares of vegetation would result in a significant environmental impact. This is consistent with a point of agreement reached between two ecologists. Dr Watson and Mr Delaney agreed:¹¹⁹

“Overall, the ecological impacts of the proposed development at the Site-specific level would be significant and would fundamentally alter the nature of the existing landscape and native wildlife habitats contained therein.”

- [160] Should the application be refused having regard to this site-specific impact?

¹¹⁵ Established by the assessment of alternative haul routes traversed in Mr Trevilyan's evidence.

¹¹⁶ Ex.5.01, p.9, para 16.

¹¹⁷ Ex.5.01, p.11, para 23.

¹¹⁸ Ex.5.01, p.12, para 24.

¹¹⁹ Ex.5.01, p.21, para 54.

- [161] It has been said by this court that an owner of land is entitled to use that land as he or she wishes and is under no obligation to consider conservation of the existing environment. This statement is, like many general propositions, subject to an important qualification – the right to use land is always subject to the requirements of adopted planning controls. Where planning controls require the conservation of the environment at the expense of private property rights, such controls are to be closely examined.¹²⁰
- [162] There are a number of layers within the planning scheme dealing with ecological issues and the interrelationship with the development potential of land affected by such issues.
- [163] The Strategic framework is contained in Part 3 of the planning scheme. It sets the policy direction for the planning scheme area and forms the basis for ensuring ‘*appropriate development occurs within*’ that area.¹²¹ For the purposes of articulating the policy direction, the Strategic framework comprises a number of components, including maps.¹²² Strategic framework map SFM5 (Natural environment elements) reveals there are five natural areas or values recognised as ‘*Ecologically Important Areas*’. The areas and values are ‘*Core Habitat Areas*’, ‘*Connecting Habitat Areas*’, ‘*Natural Wetlands*’, ‘*Natural Waterbodies*’ and ‘*Natural Waterways*’. The site, save for that part historically used for extractive purposes, is mapped as ‘*Connecting Habitat Areas*’.¹²³ Note 3 to the mapping defines this area as follows:

“Defined as all other remnant and regrowth vegetation not within a Core Habitat Area and may comprise:

- *Habitat areas less than 50 hectares in size;*
- *Fragmented and isolated patches of vegetation/habitat greater than 1 hectare in size;*
- *A group of loosely aggregated, but proximal, small habitat fragments in natural or near natural condition; and*
- *Groups of habitat fragments within discrete physical regions such as catchments, landform elements that were not identified as Core Habitat Areas.”*

- [164] Strategic framework map SFM5 is cited in s 3.7.2.1 of the planning scheme. This provision contains specific outcomes for the Strategic framework applying to Element 1, ‘*Natural habitats and biodiversity*’. The substance of the provision reflects a deliberate planning policy adopted by Council, as the local planning authority, about ‘*ecologically important areas*’. In particular, s 3.7.2.1(a) states:

*“Development is located, designed, constructed and operated to avoid, as far as practicable, or where avoidance is not practicable, minimise and mitigate, adverse impacts on the ecologically important areas identified conceptually on **Strategic Framework Map SFM 5 (Natural environment elements)** which include remnant and regrowth native vegetation, riparian areas and natural waterways, wetlands and water bodies.”*

¹²⁰ *Sincere International Group Pty Ltd v Council of the City of Gold Coast* [2018] QPEC 53: [2019] QPELR 247, [58].

¹²¹ s 3.1(1).

¹²² s 3.1(2)(f).

¹²³ Ex.5.01, p.15, Figure 8.

- [165] The policy articulated in relation to ‘*ecologically important areas*’ contemplates one of two approaches to the location/design/construction and operation of development in such areas; avoidance, as far as practicable, or, where avoidance is not practicable, minimisation, and mitigation. The circumstances here engage the second of these alternatives because, as was agreed by Dr Watson and Mr Delaney, adverse ecological impacts cannot be avoided if the proven resource is to be extracted from the site.¹²⁴
- [166] The policy direction articulated in the Strategic framework with respect to ‘*ecologically important areas*’ is implemented, in part, through the Biodiversity, waterways and wetlands overlay code (**overlay code**). The overlay code applies to the site, which is mapped for the purposes of the overlay as ‘*native vegetation area*’.¹²⁵ The purpose of the overlay code is to, inter alia, ‘*ensure ecologically important areas are protected, rehabilitated and enhanced*’.¹²⁶ This is said to be achieved through a number of overall outcomes, including:¹²⁷
- “(a) *development protects and enhances ecologically important areas and ecological connectivity;*
- ...
- (d) *development is located, designed and managed to avoid or minimise adverse direct or indirect impacts on ecological systems and processes;*
- (e) *development avoids or minimises adverse impacts on koalas and koala habitat; and ...”*
- [167] Barro relied upon the evidence of Mr Delaney to establish the proposed development will, if approved, minimise or mitigate adverse impacts on environmentally important areas of the site. He identified five strategies that ‘*could be implemented*’.¹²⁸ Four of the strategies are: (1) staged clearing of vegetation so that existing habitat resources are retained until an operational requirement arises to clear; (2) vegetation clearing occurs in a manner that minimises risk of harm to fauna; (3) controls are implemented to avoid degradation of downstream aquatic ecosystems; and (4) a requirement for progressive rehabilitation.
- [168] It was pointed out that the Environmental authority granted for the proposed development is conditioned to mitigate ecological impacts as recommended by Mr Delaney.¹²⁹

¹²⁴ Ex.5.01, p.23, para 61 and p.38, para 80.

¹²⁵ Ex.5.01, p.16, figure 9a.

¹²⁶ s 8.2.3.2(1).

¹²⁷ s 8.2.3.2(2).

¹²⁸ Ex.5.01, p.23, para 63.

¹²⁹ Ex.15.01, p.24, para 90.

[169] I accept that the strategies recommended by Mr Delaney are directed towards the minimisation and mitigation of adverse environmental impacts. I am however reluctant to accept that the strategies will achieve this stated purpose. In this regard, Dr Watson pointed out¹³⁰ that the recommendations will ‘*provide a negligible advancement towards mitigating ecological impacts*’. As I understood his evidence, this was because the recommendations made by Mr Delaney cannot overcome the basic proposition that the maintenance of native vegetation is inconsistent with winning the proven resource for the community’s benefit. Removing the vegetation in a staged manner, coupled with ‘*progressive rehabilitation*’, will not alter this position. Nor will it minimise/mitigate the impacts of the development on the environment to an acceptable degree.

[170] As a consequence, I am persuaded an approval would be inconsistent with the planning scheme, in particular s 3.7.2.1(a) of the Strategic framework and overall outcomes (a) and (d) of the overlay code. I consider this finding is reinforced by a relevant concession.

[171] Barro concedes¹³¹ the proposed development does not comply with two performance outcomes in Table 8.2.3.3.2 of the overlay code, namely PO1 and PO2, which respectively state, in part:

“Development protects the physical and ecological integrity and biodiversity of ecologically important areas through protection and retention of:-

(a) existing terrestrial habitat areas; and...”

And:

“Development on or adjacent to land containing an ecologically important area is designed and constructed to:-

(a) prevent any direct or indirect impacts on the ecologically important area;

(b) enhance and restore the ecologically important area; ...”

[172] That there is a departure or inconsistency with the planning scheme in this respect does not mark the end of the ecological issue. Section 3.7.2.1(c) of the Strategic framework anticipates that ecologically important areas may be disturbed or diminished by development where two preconditions are met. The provision states (footnote omitted):

“(c) Ecologically important areas are not disturbed or diminished by development except where:-

(i) on the balance of social, economic and environmental considerations, it is demonstrated that the development is in the interests of the community; and

(ii) any adverse impacts incurred are compensated by the provision of a biodiversity offset that results in a net gain and

¹³⁰ Ex.5.01, p.23, para 66 b).

¹³¹ Ex.15.01, para 103.

enhancement to the overall habitat values of the Sunshine Coast.”

[173] Section 3.7.2.1(c)(i) requires three considerations to be balanced, namely social, economic and environmental considerations. The purpose of the balancing exercise is to determine whether the development ‘*is in the interests of the community*’. The test is expressed in very general terms, conferring significant flexibility to the assessment manager when deciding the fate of a development application reliant upon the provision to support approval.

[174] Matters informing whether development is in the interests of the community are identified in a footnote to the above provision. The footnote, which does not purport to contain an exhaustive list of considerations, states:

“Note – in determining whether development has satisfied these criteria Council may consider such matters as:-

- (a) whether alternative options are reasonably available;*
- (b) the size, type and condition of the ecologically important area affected;*
- (c) the extent to which the ecologically important area has significant hydrological, biodiversity, landscape or character values;*
- (d) the extent to which a biodiversity offset can reasonably compensate for the loss of the ecologically important area; and*
- (e) whether the development proposed is reasonably anticipated by and consistent with the planning scheme.”*

[175] There are, in my view, a number of matters of significant weight that favour the community interest test being resolved in favour of the proposed development. The considerations are largely set out in paragraphs [3] to [12]. In simple terms, those paragraphs of these reasons for judgment explain why I am comfortably satisfied the extraction of the proven resource here is in the community’s interest.

[176] As I have said, the proven resource is a valuable one that can be viably and feasibly extracted. It is well located in the road network, proximate to locations within the local government area where future growth (and consequential demand for the resource) is directed. The economic evidence also establishes that the proposed development would provide choice and competition to the market in circumstances where:

- (a) the cost of natural resources to the community is strongly influenced by transportation distances;
- (b) the Sunshine Coast Regional Council area is a significant importer of hard rock resources for construction and infrastructure; and
- (c) the average pricing for hard rock quarry products in the Sunshine Coast Regional Council area is elevated in comparison to other local government areas.¹³²

¹³² Ex.5.06, p.42, Section 11.1.

[177] The differential in pricing referred to in (c) above was explained by Mr Cooper. It was his opinion that this was due to the combination of two things: (1) the major supplier of product in the local government area being an importer with higher transport costs than local suppliers, and (2) local suppliers pricing at a level that is competitive with the cost of imported product, rather than the cost of locally sourced material carrying a lesser transportation cost. In this regard, Mr Cooper said:¹³³

“...based on your experience, what do you think the explanation for that price differential is?---Well, your Honour, it’s because, certainly, in the period since Boral Coolum Quarry closed which was about 2012, which was when the pricing was closer together, the replacement for that 700,000 tonnes per year that was lost at that period of time has come from another Boral site, Moy Pocket, which was discussed earlier. Now, that site is much further away. In fact, it’s...barely outside Sunshine Coast Regional Council boundary. It’s in the very southern part of Gympie Regional Council....So its cartage distance...is further. It’s...also the dominant supply site into the Sunshine Coast locality so it would follow that their delivered cost is going to be, perhaps, higher...and that might be reflected in the quarry gate cost of the quarries that are located within Sunshine Coast...”

[178] I accept Mr Cooper’s evidence. It forms part of a broader evidentiary picture establishing there is an economic need and consequential community benefit associated with the exploitation of the proven locally significant resource.

[179] I would also add the following four matters to the list of considerations that I regard as relevant to, and of significant weight in, the balancing exercise required for the community interest test. First, there is no suggestion that an approval would result in adverse economic impacts¹³⁴ for the Sunshine Coast Regional Council local government area. Second, the development is well separated from adjoining sensitive land uses, resulting in an absence of unacceptable noise and dust impacts from on-site activities. Third, there is no suggestion that on-site quarrying activities will result in unacceptable visual impacts. Fourth, from an environmental perspective, the value of the vegetation to be cleared to win the proven resource is ecologically important at a site level, but comparatively less so when considered in context.

[180] Mr Delaney, the ecologist called by Barro, described the vegetation on the land as a relatively small and poorly connected patch of native forest, comprised of an ecosystem well represented in the surrounding landscape. He said it was not strategically located in respect of an important ecological corridor. Nor is it a koala priority area. The evidence about the extent of koala activity on the land was underwhelming.

[181] Each of the above matters, which I accept, are consistent with the proposition that the ecological loss on a site level would be significant, but in the broader context, comparatively small. This view is reinforced once it is appreciated that:

¹³³ T2-44, L16 to 30.

¹³⁴ In the sense discussed in *Kentucky Fried Chicken Pty Ltd v Gantidis* (1979) 140 CLR 675, namely an approval would not yield, in time, a net loss in available services and facilities.

- (a) extensive areas of open forest vegetation fauna habitat, equivalent to that which occurs within the site, would continue to persist within the locality if an approval was granted and acted upon;
- (b) extensive areas of remnant open forest vegetation would remain in the locality and contain a diversity of old growth hollow bearing trees that would be available for use by local populations of hollow dependant fauna species in the event the application was approved and the vegetation cleared; and
- (c) a pattern of vegetation clearing would not result in the fragmentation of existing forest corridors providing connections between disjunctive patches of open forest vegetation and fauna habitat.

[182] As I have already said, the above matters are strong indicators that the social, economic and environmental considerations demonstrate the development is in the interests of the community for the purposes of s 3.7.2.1(c)(i) of the Strategic framework. They are not however decisive in this case.

[183] I am unable, in the present circumstances, to conclude the community interest test is answered in favour of the development because there is an unresolved traffic safety issue and the development, by reason of its proposed haul route, will have unacceptable impacts on character and amenity. Had these issues been resolved favourably to Barro, I can indicate I would have concluded that compliance with s 3.7.2.1(c)(i) was comfortably demonstrated.

[184] Council's case in relation to s 3.7.2.1(c)(i) of the planning scheme involved a submission that the court should examine a significant body of economic evidence before concluding there is a planning need at this time for the proven resource to be extracted. The evidence included the identification of a '*trade area*'; existing and projected population figures; consumption rates for hard rock products; and the identification of competing resources (existing and approved).

[185] Whilst the issue of need is relevant to the community interest test, I am unable to accept this particular case called for a detailed examination of economic need in the manner contended by Council. A broader analysis was called for, which examined the proven locally significant resource against the background of the planning scheme. In that context, the proven resource is acknowledged along with its importance, in a town planning sense, to the community.

[186] Once the resource is considered in this context, coupled with the recognised community benefits that flow to the community from its extraction (discussed in paragraphs [3] to [12]), it is not difficult to conclude a need has been comfortably demonstrated in favour of the proposed development. The weight of that need is to be found in its local importance and consequential benefits to the local community, which are discussed above. That weight is not diminished by reason that the proven resource could be imported into the local government area through existing quarry facilities. The evidence establishes that the importation of quarry material into this local government area has resulted in higher than average prices. It is not in the community's interest to prolong circumstances that facilitate the status quo in this regard.

- [187] Turning to s 3.7.2.1(c)(ii) of the Strategic framework, the provision requires the following question to be examined: Can the adverse impacts on the ecologically important area be compensated by the provision of a biodiversity offset that results in a net gain and enhancement to the overall habitat values of the Sunshine Coast?
- [188] To demonstrate compliance with this provision of the planning scheme, Barro relies upon the condition imposed in the concurrence agency response for the development application. The relevant condition is set out at paragraph [40]. It was submitted the condition, if complied with, would secure an offset area of 61.2 hectares, assuming the required regulation vegetation and Koala offsets could be co-located, and the offset satisfied the standard 1:4 ratio.¹³⁵ This position was supported by Mr Delaney. A review of his evidence, in particular paragraphs (49) to (58) of a further statement of evidence,¹³⁶ reveals Mr Delaney holds a high measure of confidence that an offset could be delivered that achieves a net ecological benefit.
- [189] Barro also relied upon the evidence of Dr Watson in this regard. The following submission was made in relation to his evidence:¹³⁷

“Dr Watson was supportive of the offset. He recognised that offsets are a generally accepted and standard approach applied to compensate for the loss of ecological values, and that if the proposal was approved, a suitable offsets arrangement would need to be conditioned. Further, he agreed that the achievement of a net gain can be determined at a later stage if necessary. He added that the offset could be considered as a mitigation measure with the scale and suitability of an offset being determined at a later stage. He agreed that an offset could be developed that generated a net environmental benefit within a short timeframe, and the management in finding of an offset can be conditioned.”

- [190] The concurrence agency condition, coupled with the evidence of Mr Delaney and Dr Watson suggests that an environmental offset arrangement may be achieved, and conditioned, as part of an approval. This evidence does not however satisfy me that an offset can be conditioned to comply with s 3.7.2.1(c)(ii) of the Strategic framework. Nor does it satisfy me that it is safe to assume an ecological net gain and enhancement is readily achievable.
- [191] The planning provision the subject of consideration requires adverse impacts of the vegetation clearing to be compensated in a way that results in a net gain and enhancement to the overall habitat values of the Sunshine Coast. The terms of the concurrence agency condition do not require such a test to be met. The evidence of Mr Delaney and Dr Watson did satisfy me that this gap was readily bridged. In my view, the ecological evidence establishes no more than that the assessment of any specific net gain or enhancement could be deferred until after an approval has issued.

¹³⁵ Ex.15.01, para 92.

¹³⁶ Ex.6.01.

¹³⁷ Ex.15.01, para 93.

[192] I do not accept it is appropriate in this case to defer the determination of compliance with s 3.7.2.1(c)(ii) of the Strategic framework until after an approval has issued. The reason for this was well articulated by Mr Buckley. In his oral evidence he said:¹³⁸

“...But there’s an element of piecemeal about this...you can’t, in my view, if you’re trying to rely on a provision that leaves the door open for an offset to say “don’t worry about that, it’s all okay, we’ll sort that out,” one would have thought because of the importance of ecological protection established by the scheme and state planning policy that there would be some certainty about that before the application’s approved...”

And

“...as a matter of planning practice, if you are relying on some other land to prove the bona fides of the use, there must be some certainty ...that you have access to it and, two, that it can be delivered. And, in this case, three, that it can be delivered in a way that achieves a net gain... What I’m saying is in the absence of knowing about where and how and why and how much that it’s really ephemeral to the planning assessment.”

And

“...it would be... a leap of faith to say, “We will offset the loss of the vegetation with some area.” We don’t know where, we don’t know how much. Is it going to be in the Sunshine Coast area, in the local government area? How much of the land? How can they prove the net gain? What if the offset options they bring forward don’t meet the net gain test? Then the approval’s worth nothing, isn’t it?”

[193] Mr Buckley’s evidence has much to commend to it. It is consistent with my view that, in this case, it would be inappropriate to examine compliance with s 3.7.2.1(c)(ii) of the Strategic framework without, at the very least, a conceptual framework for the proposed offset. Such a framework is necessary to determine whether it is realistic to assume a net gain, and enhancement, can be delivered to the overall habitat values of the Sunshine Coast. This framework is required because: (1) I have little confidence the concurrence agency condition can be assumed to deliver a result that achieves compliance with the planning scheme; and (2) to assume compliance can be achieved is, as Mr Buckley said, a leap of faith. I am not satisfied the evidence establishes that it is safe to make such a leap in the circumstances of this case.

[194] The notion of an ‘offset’ is also dealt with in the overlay code. Performance outcome PO3 in Table 8.2.3.3.2 states:

“Where the clearing of native vegetation cannot practicably be avoided, development:-

- (a) minimises adverse impacts on ecological values to the greatest extent practicable;*
- (b) provides a biodiversity offset for the area that is adversely affected by the development that:-*

¹³⁸ T8-48, L41 to 46 and T8-49, L3 to 14, L28 to 32.

- (i) results in a net environmental benefit within a short timeframe;*
- (ii) is located on the development site, another site that has a nexus with the development site or a site that is within a rehabilitation focus area;*
- (iii) is supported by appropriate management and funding arrangements to ensure the ongoing viability of the offset; and*
- (iv) is not used for material or commercial gain.”*

- [195] The state of the evidence leaves me unpersuaded the development can be conditioned to achieve compliance with sub-paragraph (b)(i) and (ii) of PO3 above.
- [196] For the above reasons, I am not satisfied Barro has addressed the ecological impacts of the proposed development in a manner that demonstrates compliance with the planning scheme. This is significant given the planning scheme includes a test to determine whether ecologically important areas may be removed or diminished despite its importance. The failure to demonstrate this test is satisfied warrants refusal of the development application. It is a matter of significant weight in the exercise of the planning discretion.

Exercise of the discretion

- [197] The need to provide for appropriately located hard rock resources that can be viably and feasibly extracted is an important planning issue. Here, there is such a proven resource. The importance of the proven resource, in a planning sense, is recognised in the planning scheme. That same document also recognises that an extraction use has the potential to cause serious adverse impacts that should be considered, and avoided, or if not, appropriately mitigated.
- [198] Council contends it has not been demonstrated that three impacts of the proposed development will be avoided, or managed/mitigated in the manner anticipated by the planning scheme. The impacts relate to: (1) site access; (2) amenity and character impacts from the haul route; and (3) ecological impacts.
- [199] For the reasons given above, Barro has failed to establish that the site access will be safe and appropriate for the proposed development. An issue of this kind, involving public safety considerations, is one that calls for refusal of the application in its own right.
- [200] A refusal also follows from my findings with respect to the amenity and character impacts from the proposed haul route and ecological impacts. In simple terms, this is because I am not satisfied the public interest in winning the proven resource should prevail in the face of: (1) the adverse amenity, character and ecological impacts identified; and (2) non-compliance with the planning scheme that follows by reason of these impacts.

- [201] In saying this, I am conscious that in some circumstances, impacts on a few are often seen as acceptable when the greater community good involves access to a proven hard rock resource that: (1) is well located; and (2) can be extracted viably and feasibly. This is however not such a case. The significance of the impacts, taken in combination, outweigh the substantial public benefit associated with the winning of the proven resource.
- [202] Barro identified a number of matters said to warrant approval of the development application. They are set out at paragraphs [333] – [341] of its written submissions. In summary terms, the matters are as follows:
- (a) the site is very well located for a quarry given its location within a large state forest surrounded by intervening pine forest screening, and direct access to higher order roads;
 - (b) the site has been used for a hard rock and sandstone extraction activity for many years, and the proposed development seeks to restart, and increase, the intensity of the use;
 - (c) the proposal will provide economic benefits to the locality and the region, particularly where the planning scheme seeks economic benefits to be derived from local sources such as here;
 - (d) the ecological values present on the land are at the lower end of the scale of ecological significance in the planning scheme;
 - (e) the State's assessment of an approval of the proposed development is relevant – it considers the impacts on ecology associated with the proposed development are appropriate and a net conservation benefit could be achieved; and
 - (f) the development is consistent with the purpose of the Act in that it promotes the sustainable use of a non-renewable resource, encourages investment, economic resilience and economic diversity, seeks the supply of infrastructure in a co-ordinated, efficient and orderly way, and contemplates avoiding, if practicable, or otherwise minimising, adverse environmental effects of development.
- [203] I accept each of the above matters are made out, save for sub-paragraphs (e) and (f). The matters I accept, support approval.
- [204] I accept sub-paragraphs (e) and (f) are relevant to the exercise of the discretion. The difficulty arises by reason that each contention assumes it has been established that ecological impacts of the development are acceptable, or the net ecological benefit sought by the planning scheme can be conditioned and deferred for later assessment. For the reasons given above, I do not accept this has been established.
- [205] On balance, the matters relied upon by Barro in support of approval fall well short of persuading me that an approval should follow in circumstances where a traffic safety issue is unresolved, and known impacts of the use will not be avoided, or managed/mitigated in the manner anticipated by the planning scheme. Put simply, an approval does not withstand scrutiny against the planning scheme.
- [206] Barro has not discharged the onus.

[207] The appeal will be dismissed.

[208] Council's decision to refuse the development application will be confirmed.

Disposition of the appeal

[209] It is adjudged that:

1. The appeal is dismissed.
2. The respondent's decision to refuse the appellant's development application, communicated by way of decision notice dated 4 April 2019, is confirmed.