

16 July 2013

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BY EMAIL denis.wallace@sunshinecoast.qld.gov.au

Mr Denis Wallace
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Dear Mr Wallace

Quarry Management Plan for Kin Kin Quarry TPC 1899

We refer to your letter dated 28 May 2013 to the attention of Mr Robert Snowden, The Neilsen Group, confirming that the amended Kin Kin Quarry Management Plan (dated February 2013) (**the QMP**) was approved in part at Council's Ordinary Meeting of 23 May 2013. We confirm we act on behalf of The Neilsen Group (**Neilsens**).

Neilsens thanks the Council for its consideration of the QMP.

We are concerned however, as advised in our letter to the Council dated 14 September 2012, that the Council does not have power to approve the QMP in part or to require that it be amended. The Council is required to act reasonably in considering whether to approve or refuse a QMP submitted to it for approval, and so acting must then approve or refuse the plan as submitted.

We understand that the Council's own legal advice has confirmed that it cannot limit the development approval nor impose new conditions.

Nonetheless, Neilsens would prefer to continue to work with the Council to address the issues raised by the Council and achieve the outcomes sought.

Accordingly, we are instructed to raise only one issue arising from the Council's resolution to amend Section 2.7 of the QMP and the Road Transport Protocol. We understand the Council's intention in relation to the proposed amendment. However, the wording of the proposed amendment leads to confusion and is, in our view, unenforceable.

The development approval does not restrict the haul routes for the Kin Kin Quarry and as the Court recently made clear, Neilsens is constrained only by the conditions of approval.

However, Neilsens confirms that the primary haul route will continue to be Pomona Kin Kin Road. However, Pomona Kin Kin Road is not suitable for all deliveries and local roads will need to be used for deliveries where that road does not give reasonably convenient access for particular deliveries.

Neilsens objective is to minimise use of the local road network, while ensuring efficient delivery of materials.

We therefore propose a more appropriate wording for your requested amendment as follows:

"Section 2.7 and the Road Transport Protocol be revised to specify that the primary haul route is Pomona Kin Kin Road, with the use of the local road network by Neilsens minimised so far as reasonably practicable."

Please advise within 60 days of the date of this correspondence if Council would accept Section 2.7 of the QMP and the Road Transport Protocol revised as we propose.

If this matter cannot be resolved within this timeframe, we anticipate that our client will instruct us to apply to the Court for a declaration that the Council has no power to amend the QMP.

Further, we are instructed that it has come to the attention of Neilsens that the Council on 20 June 2013 voted unanimously to *"defer any actions regarding the possible upgrade of Sheppersons Lane, Kin Kin prior to the establishment of the New Noosa Council in January 2014"*.

We note that on 31 January 2012, the Council resolved to accept conditionally and notify Neilsens of the acceptance of its offer of equal contribution by Neilsens and the Council for the upgrade of Sheppersons Lane.

Given the effect of the Council's resolution on 20 June 2013 is that the Council has withdrawn its acceptance of that offer, Neilsens has no choice but to withdraw the offer and use the funds allocated to that project elsewhere in its operations.

As the Council has identified in its agenda of 24 January 2012, *"Sheppersons Lane is a narrow poorly formed gravel road"*, and the Council *"is lawfully unable to condition reconstruction of Sheppersons Lane"*. Further, *"there are risks to the safety of local road users and residents on Sheppersons Lane should the project not go ahead due to the increase in traffic volumes of heavy vehicles hauling materials along the existing narrow, poorly formed laneway. Without the width of 2 traffic lanes, local road users may be forced off the road more frequently due to the increased material production output planned for the quarry and the resultant truck volumes."*

Additional gravel road maintenance costs will result if heavy quarry trucks are forced to use Sheppersons Lane without a proper structural pavement and bitumen seal."

We are instructed that Neilsens offer to contribute to the upgrade of Sheppersons Lane was to address the issues identified above by the Council. Despite this, Sheppersons Lane provides the immediate access to the Kin Kin Quarry and as such Neilsens will be required to use it in its current state.

Yours faithfully

MINTER ELLISON

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