

Agenda

Special Meeting of Council

Tallangatta Memorial Hall

Tuesday 25 November 2014

This information is available in alternative formats on request

<p style="text-align: center;">AGENDA FOR THE SPECIAL MEETING OF COUNCIL TO BE HELD AT THE TALLANGATTA MEMORIAL HALL, TOWONG STREET, TALLANGATTA ON TUESDAY 25 NOVEMBER 2014 COMMENCING AT 10.00 AM.</p>

TABLE OF CONTENTS

1	Opening Prayer.....	3
2	Councillor and Officer presence at the meeting.....	3
3	Apologies and granting of leave of absence	3
4	Declaration of pecuniary interest and/or conflict	3
5	Open Forum.....	3
6	Land-use Planning	4
6.1	Earth and Energy Resources Industry - Stone extraction - Use and Development of a Quarry (266300, 2014/049)	4

1 Opening Prayer

"Almighty God, we ask that you be present at this meeting to assist us in our service to the Community through Local Government.

We pray that our decisions will be wise and taken with goodwill and clear conscience.

Amen."

2 Councillor and Officer presence at the meeting

3 Apologies and granting of leave of absence

4 Declaration of pecuniary interest and/or conflict

For the purpose of this section, Councillors must disclose the nature of the conflict of interest in accordance with s79(2) of the Local Government Act.

5 Open Forum

6 Land-use Planning

6.1 Earth and Energy Resources Industry - Stone extraction - Use and Development of a Quarry (266300, 2014/049)

Disclosure of Interests (S.80C):

This report was prepared by Mr Ron Mildren of Living Streets Designs Pty Ltd on behalf of Council.

At the time of preparation of the report, Mr Ron Mildren and Living Streets Designs Pty Ltd had no direct or indirect interest in any matter to which the report or advice relates.

Proposal:

Earth and Energy Resources Industry - Stone extraction - Use and Development of a Quarry.

The application form describes the proposal as *"Use and Development of the Land for Stone Extraction (Expansion of the existing 'Hurst Quarry' in accordance with the attached report and plans)"*

Although the application form refers to both 'use' and 'development', in order to seek clarity, the reference to an existing quarry has been challenged with the applicant, in particular the apparent claim of 'existing use rights'. In response, the applicant provided that there is no intent to claim 'existing use rights' for a commercial quarry but does claim existing use rights for a farm quarry.

Irrespective, given the references to the quarry existing in the reports supporting the application, the matter of existing use rights will be addressed in more detail later in this report.

Given the above the proposal is assessed in this report as being for both 'use' and 'development' of the land for stone extraction – quarry.

The development will entail removal of a small number of trees however the Table of Exemptions at Clause 52.17-7 provides exemption for **Stone extraction** to enable the carrying out of Stone extraction in accordance with a work plan approved under the Mineral Resources (Sustainable Development) Act 1990 and authorised by a work authority granted under that Act.

There is a draft Work Authority (WA1526) and draft Work Plan approved for the proposal which therefore provides an exemption from the need for a planning permit for removal of native vegetation.

The application report describes the proposal as being in accordance with the endorsed draft work plan under the Mineral Resources (Sustainable Development) Act 1990. The report further describes the proposal as establishment of the WA1526 boundary over proposed stages one and two areas. Additionally it describes the quarry establishment works, including native vegetation removal works (8 trees), earth works (overburden removal and stockpiling, drainage line establishment, access track forming, hard stand and processing area forming, and sediment and capacity increase works), and quarry perimeter and vegetation buffer fencing works.

The report goes on to provide that the proposal has the following operational parameters:

- WA1526 boundary area of approximately 9.2 hectares
- The extraction area of approximately 5.6 hectare
- Vegetation buffer of 20 metres
- Extraction quantity of 50,000 tonnes per year or 29,500 cubic metres per year with the first three years of operation estimated to be 20,000 tonnes per year
- Quarry life of approximately 20 years
- The hours of operation of the quarry are to be between 7.00 am and 6.00 pm Monday to Friday excluding public holidays and 7:00 am to 1.00 pm Saturdays. These are hours are not to be confused with operating hours associated with agricultural operations on the property
- Blasting frequency of average once every six months
- Blasting hours are to be between 9.00 am and 3.00 pm Monday to Friday excluding public holidays
- A maximum of four employees on site at any one time
- Traffic
 - The maximum estimated heavy vehicle traffic generation of two vehicles per hour (this is interpreted as being four vehicle movements; two vehicles in and two vehicles out)
 - 50km/h heavy vehicle speed restriction along Hardy's Road and 10km/h within the Quarry site. *(These speed restrictions are being nominated by the proponent and are not statutory requirements on Hardy's Road at present. VicRoads will be required to be consulted if Council proposes to change speed restrictions).*
 - Approximately 75% of destination markets will require trucks to travel west along the Murray Valley highway and approximately 25% will travel east along the Murray Valley highway after departing Hardy's Road.

Property: CA 25, Section 12, Parish of Tangambalanga, being 328 Hardy's Road, Tallangatta.

Applicant: Blueprint Planning, of 3/576 Kiewa Street, Albury

Owner: Reginald Eric Hurst and Florence Clarinda Annie Hurst (as nominated by the applicant and verified on the Title Search dated 21 August 2014.)

Zoning: Rural Activity Zone (RAZ)

Overlays: Wildfire Management Overlay (WMO)

Permit Trigger:

Pursuant to Clause 35.08-1 (Table of Uses) any use listed in Clause 62.01 is a Section 1 use (no permit required) within the Rural Activity Zone subject to meeting the requirements of Clause 62.01.

Clause 62.01 specifies that a permit is not required for the use of land for earth and energy resources industry if the conditions of Clause 52.08 are met.

Clause 52.08 specifies that a permit is required to use and develop land for earth and energy resources industry unless the table to Clause 52.08-1 specifically states that a permit is not required. The Table to Clause 52.08-1 provides that no permit is required for Stone Extraction provided that the proposal complies with Section 77T of the Mineral Resources (Sustainable Development) Act 1990.

Section 77T of the Mineral Resources (Sustainable Development) Act 1990 provides that:

"77T Environment Effects Statement

If under a planning scheme a permit is required to be obtained for carrying out an extractive industry on the land covered by an extractive industry work authority in accordance with that work authority, the holder of the work authority is not required to obtain a permit if—

- (a) an Environment Effects Statement has been prepared under the **Environment Effects Act 1978** on the work proposed to be done under the work authority; and*
- (b) an assessment of that Statement by the Minister administering the **Environment Effects Act 1978** has been submitted to the Minister; and*
- (c) the work authority was granted by the Minister following the Minister's consideration of that assessment."*

In this case a Work Authority (WA1526) has been obtained. However a Statement of Environmental Effects has not been prepared under the **Environment Effects Act 1978**. Therefore, consequent of not meeting the S77T of the Mineral Resources

(Sustainable Development) Act 1990 requirements, the proposed Stone Extraction use becomes an innominate use under section 2 (permit required) of the Table to Clause 35.08-1 (Rural Activity Zone).

Clause 35.08-4 of the Rural Activity Zone provides that a permit is required to construct a building or construct or carry out works for a use in Section 2 of Clause 35.08-1.

Therefore a planning permit is required for a Stone Extraction use and development as proposed.

Current Use:

The land is currently used for general agriculture - cattle grazing. However on the application form the applicant has stated that the land is used as a "Farm Quarry". That description is contested and is addressed in detail in considering existing use rights below.

Consideration of Existing Use Rights

The question of existing use rights in this matter comprises a number of separate, cumulative and aggregated aspects and lines of assessment, all of which lead to a reasonable conclusion that there is no existing use right associated with Stone Extraction on the subject land.

At the simplest and least technical level the physical existence of works that could constitute a stone quarry on the subject land needs to be established. In this regard there is a very small landscape scar at the top of the 'switchback' in the road at the base of the proposed quarry site. Clearly soil disturbance has occurred at this site however what has generated the disturbance is inconclusive. There is also limited evidence as to when this disturbance may have occurred. The soil disturbance is shallow and on visual inspection appears to be very minor, appearing generally to be less than a metre in depth (*from 0 at the north to less than 1m at the south of the area*). It is conceivable that such works formed part of the original farm road construction activity as the area is very close to the switchback and corner of the road and parts of the area have vegetation regrowth evident.

Prima facie the landscape scar would appear to be associated with works for agriculture, being an ancillary use associated with the agricultural use of the land. The subject land being CA 25 contains a length of farm road in the order of 2km which may have required some construction and maintenance material that may have been obtained from the site. Under these circumstances the landscape scar would not be regarded as a quarry or stone extraction use for the purposes of the Minerals (Sustainable Development) Act 1990 in the same manner as road

construction works for a cutting or fill exercise would not be defined as a quarry or stone extraction use.

In this case the road has been constructed principally for agricultural access and is therefore works for and ancillary to agriculture. Therefore existing use rights associated with any use beyond the establishment and perhaps maintenance of the farm road cannot be established. Indeed evidence suggests that even if a relevant non-ancillary secondary use was established (*and it is not accepted that a non-ancillary secondary use has been established*) it has lapsed consequent of not having been continuously used. On inspection of the site the landscape scar area appeared not to have been disturbed for some time and a review of aerial photography indicates no change over at least the past 3 years.

Despite assertions in the report in support of the application, existing use rights have not been justified or established in the information provided for any form of extractive industry beyond works ancillary to agriculture.

Works ancillary to agriculture are limited in their definition by the need to continue to be directly associated and required as a consequence of the agricultural use. Despite the reference in the application form to the current use of the subject land being a "Farm Quarry" the evidence on site does not support that contention and indeed the principal current use would appear to be agricultural.

Whilst it is accepted that ancillary uses do not require a permit and are effectively not subject to lapsing due to lack of continuous use unless the principal use lapses, this does not establish a use (in this case a stone extraction use) separate to the agricultural use. Therefore the subject application does not relate to expansion of a farm quarry as whilst the activity is ancillary to agriculture it would not require a permit and if it is changing to a different use such as stone extraction for commercial quarry operation then a permit is required for a separate and new use.

Use of the term 'Farm Quarry' by the applicant seeks to suggest that a category of 'quarry' or 'stone extraction' exists that is different to that described or defined under the planning scheme and that it establishes a use from which an expansion may be launched. It is considered that 'works for agriculture' or activity ancillary to agriculture does not establish a category that may be defined separately as a farm quarry and indeed does not establish an extractive industry for any purposes under the planning scheme. Therefore no existing use rights apply in this matter. If the extraction of stone has been undertaken it is on the basis only of being an ancillary activity to agriculture and therefore limited to the agricultural requirements for stone within the subject Lot.

This application is clearly for 'Use and Development of the land for Stone Extraction' as a new use and development of the subject land. It has no relationship with an existing use of the land beyond works for agriculture.

DESCRIPTION OF PROPOSAL

Site Description

The subject land is located on the upper southern end of Hardy's Road, Tallangatta. The subject land is in an elevated generally cleared farming land area nearing the top of the relatively small valley comprising Washaway Creek.

The actual Quarry site is approximately 4km in a direct line from Tallangatta Township and approximately 1.3km from the nearest edge of the Rural Living Zone based on Hardy's Road. The subject land is in a direct line of sight from at least the west end of Tallangatta Township and most lots contained in the Hardy's Road Rural Living subdivision area would also have a direct line of sight to the subject land. The site can be seen from Lake Hume.

The subject land comprises approximately 120.2ha in one Crown Allotment with an irregular shape. The area of the draft Work Authority approval site is approximately 9.2ha with the extraction area approximately 5.6ha.

HISTORY AND COMMUNITY CONSULTATION:

The application for planning permit was registered on 1 September 2014.

Public Notice pursuant to Section 52 of the Planning and Environment Act was first given on the 2 September 2014 by letter to adjoining and nearby land owners, followed by a notice in the Tallangatta Herald and Border Mail newspapers. The application was also forwarded to VicRoads as VicRoads are a S55 referral authority.

A number of submissions referred to not having received notice prior to notice under the Planning and Environment Act 1987. There is no requirement for public notice of application for a Work Authority however preparation of a Work Plan under that Work Authority generates a need for a public communication plan to operate during the set up and life of a Stone Extraction site.

At the time of preparation of this report a total of 70 submissions in objection and 1 submission in support had been received in response to the public notice.

A schedule of submitters is attached at Appendix 1

The grounds of objection are summarised as:

- Bought block for the rural lifestyle
- Increased trucks on Hardy's Road and on Murray Valley Highway increasing danger and inconvenience
- Increased dust
- Increased noise
- Fewer visitors and new residents to the Tallangatta community
- Environmental and landscape damage
- Disturbance and adverse amenity impacts on Hardy's Road residents
- Adverse effects from blasting and heavy machinery usage and transportation
- Danger from trucks on Hardy's Road and entering and exiting the Murray Valley Highway
- Adverse impacts on flora and fauna, particularly native birds
- Adverse impacts on Washaway Creek
- Having a quarry in such a prominently visible location will have an adverse effect on the quality and image of the area, particularly in marketing the Shire as 'Pure'
- Hardy's Road is entirely inadequately constructed to carry heavy vehicles
- Will result in higher Rates to cover the additional road maintenance costs
- The quarry is inconsistent with the planned Rural Living Development in the area
- Will result in substantial devaluation of Rural Living properties
- Should not be allowed to destroy farming land for a quarry
- Quarry will diminish the local clean and quiet lifestyle
- Hardy's Road intersection is dangerous and will be more so with quarry traffic
- Very poor planning to encourage rural living development then allow quarry trucks to traverse through the area on a road inadequate to cope with quarry trucks even if no residents.
- No community engagement prior to lodging planning application when the project proposal has been known for about a year prior. Lots would not have been purchased if the quarry proposal was made public earlier
- Dust will significantly impact on rainwater storage quality which is the only source of potable water to the Rural Living lots
- Hardy's Road is not within the legal road reserve
- The view of the hills from Lake Hume is a valued asset to tourism
- No other lifestyle land available in the Tallangatta area and a Quarry would be entirely inconsistent with lifestyle living objectives
- Quarry may pose a fire hazard
- Proposal is inconsistent with Towong PS Amendment C14
- The quarry will be a breeding place for weeds

- The proposed quarry does not enjoy existing use rights therefore it is erroneous to describe the proposal as an expansion of an existing quarry. This is important in dealing with potential impacts and assessment of existing conditions affecting local nearby land holders
- The existence of a draft Works Approval (WA1526) is not, as implied in the Blueprint Planning Report, a *fait accompli* justifying the grant of a planning permit
- The application and supporting report as submitted is flawed in that it tends to assume that the approval under the Mineral Resources (Sustainable Development) Act 1990 virtually guarantees planning approval
- Considerations under the Planning and Environment Act address a differing set of issues to those in consideration of approval of a Works Authority
- The application fails to consider off site amenity and safety impacts as a consequence of the access to the proposal being through a Rural Living area
- The report supporting the application fails to make reference to the 'Bay Creek' rural living estate and refers only to the subject land being in a rural area
- The report supporting the application fails to address specific policy at Clause 21.03 which refers to rural residential development at the Hardy's Road area
- The Traffic Impact Assessment Report (TIAR) submitted with the application also inadequately considers the existence of the rural residential area through which quarry trucks will have to travel
- The TIAR submitted with the application also appears not to consider that sections of Hardy's Road carriageway are located outside the Road Reserve
- Additionally the TIAR provides no commentary in respect to an existing cattle grid, areas of unfenced roadway and existing and likely future road surface conditions
- The bushfire assessment requirements under Clause 52.47-2 are not adequately met
- Clause 65.01 response is deficient in terms of the effects upon amenity in the rural living area particularly and the wider area generally
- Hardy's Road has several narrow and blind corners unsuitable for trucks at any speed
- Quarry trucks are known to ignore speed limits
- Even at the truck movement rates proposed there would be more trucks using Hardy's Road than cars. Quarry vehicles will be the main Hardy's Road user when viewed in terms of numbers of tyres on the road
- Council never mentioned an intention for a quarry on Hardy's Road at any time during conversations relating to land purchase in the Bay Creek Estate

- No economic benefit to the Tallangatta community. The quarry will be owned by a company operating outside Towong Shire who will take the profits from the sale of the resource out of the Shire, who will most likely employ people from outside the Shire and who will likely sell most of the product to buyers outside of the Shire
- Approval of the quarry will result in financial ruin for families who have purchased lots in the rural living area of Hardy's Road
- Hundreds of thousands of dollars have been spent in compliance with the Towong Planning Scheme to develop a rural living estate at Hardy's Road. The Council has spent additional sums in dealing with relevant justifications and procedures to have the land rezoned. The establishment of a quarry in the upper area of Hardy's Road with the associated volume of heavy vehicle movements along Hardy's Road through the rural living area will mean that all the planning and expenditure will be wasted.

The submission in support is summarised as:

- The proposed quarry will be beneficial to Tallangatta providing a different material to the Georges Creek quarry
- It will be locally owned bringing another business into the Tallangatta area
- The quarry will have less disturbance in the Hardy's Road area than the Georges Creek quarry has in that area
- The Murray Valley Highway is already quite heavily used by log trucks and milk tankers therefore any increase in traffic caused by the quarry would be minimal in overall effect
- The proposal will bring employment.

REFERRALS

Clause 52.09 (Stone Extraction and Extractive Industry Interest Areas) Clause 52.09-4 Referral Requirements

Before deciding on any applications to use and develop land for stone extraction the Responsible Authority must refer the application to the referral authorities specified under Section 55 of the *Planning and Environment Act 1987*.

Unless the referral authority is the Roads Corporation, the referral requirements of Clause 52.09-4 do not apply to an application to use and develop land for stone extraction if a copy of the Work Plan or a variation to an approved Work Plan was previously referred to the referral authority listed in Clause 66 under section 77TE of the *Mineral Resources (Sustainable Development) Act 1990*.

Information submitted with the application provides a list of referrals under S55 of the Planning and Environment Act 1987 which were undertaken as part of the Works Authority approval process. VicRoads are not included on the list but in response to a S52 notice VicRoads have asserted that they are a S55 referral. Therefore the application has only been forwarded to VicRoads pursuant to Clause 52.09-4.

Mineral Resources (Sustainable Development) Act 1990

There are a number of parts of the Mineral Resources (Sustainable Development) Act 1990 that interrelate with the provisions of the Planning and Environment Act 1987.

Division 4 of the Mineral Resources (Sustainable Development) Act 1990 refers to **Planning requirements** and specifically **S77R** establishes **Powers to amend planning schemes** to:

- (a) set out policies relating to extractive industries; or
- (b) enable the carrying out of an extractive industry on land with a planning permit; or
- (c) specify the Minister administering this Act or any other person or body as a referral authority for any application for a planning permit to carry out an extractive industry.

Provisions generally at a State level have been included in the planning scheme in accord with S77R in respect to Extractive Industry.

In effect these provisions enable inclusion of planning policy and matters to be considered in respect to the use or development of land for an extractive industry within a planning scheme. These policies and matters are generally in addition to matters that may be considered as part of a Works Authority or Work Plan under the Mineral Resources (Sustainable Development) Act 1990.

This is also in addition to other policy and matters that may be contained in a planning scheme and which are not specifically associated with extractive industry but which may be triggered by or have an effect on an extractive industry application.

Catchment and Land Protection Act 1994

The subject land is within a Special Water Supply Catchment listed in Schedule 5 and established under S27 of the Catchment and Land Protection Act 1994.

Clause 66.02-5 in respect to referrals under the Planning Scheme provides that any application for a permit for works within a Special Water Supply Catchment must be referred to GMW. This provision is however overridden by Clause 52.09 and S77TE of the Mineral Resources (Sustainable Development) Act 1990 in those circumstances where (*in this case*) GMW was consulted during the Work Plan and Works Authority approval process. GMW was consulted during this process therefore a specific referral under the planning application is not required and indeed would have no statutory force.

PLANNING AND ENVIRONMENT ACT 1987

Section 60 sets out matters that Council must consider before deciding on an application. Below are the matters to be considered under S60 in italics and a response to each.

(a) the relevant planning scheme;

This report considers the provisions of the relevant Towong Planning Scheme.

(b) the objectives of planning in Victoria;

The objectives of planning in Victoria are (*as in italics with Roman numerals*)—

- i. to provide for the fair, orderly, economic and sustainable use, and development of land;*

This proposal raises a number of issues in respect to provision of fair, orderly, economic and sustainable use and development of land, most of which are considered separately in other parts of this report in terms of the individual merits.

This proposal raises issues of conflict and inconsistencies between uses. It raises questions of impacts upon strategic and policy positions in respect one area of land by a land use and development proposal on a nearby land area. It raises matters of equity and fairness. It raises issues of rights of one land use to traverse and adversely affect another land use. It is likely to contribute to the creation of future land use uncertainties whereby the use and development upon one parcel of land produces a land use outcome that is both counter and detrimental to the long-term and preferred strategic planning and policy position for area.

Council has spent considerable time and resources via Towong Planning Scheme Amendment C14 identifying and establishing a rural residential location in proximity to Tallangatta Township. One landholder has taken up the opportunity created by the strategic and policy position of Council and has expended a considerable sum in developing the land. A number of the lots created have been sold, some already have dwellings constructed and others are at earlier stages however Lots have been sold at reasonable market prices for a lifestyle and development standard established under Council strategic plans and policy.

The establishment of a Stone Extraction activity (Quarry) on nearby land and the introduction of a considerable number of heavy vehicles to traverse the rural residential main access road if not in reality establishes a perception of significantly reduced residential and lifestyle amenity. In economics and commercial markets, as in politics, perception has a very significant influence on decision making.

Under the circumstances and as part of the overall weighting of deliberations, Council must consider whether the proposal constitutes a situation of fairness and orderly use and development of land.

In addition Council must also take account of economic and sustainable use and development of land. In terms of economics, in this situation where the two uses are adversely impacted by each other in various ways, it becomes a question of net community economic benefit and respective use economic costs.

There is also a question of sustainability of the rural residential development as a consequence of the presence of a Quarry which at least has an impact upon perceptions that in turn can reasonably be expected to have an adverse impact on land sales and prices leading to an unsustainable development position in a location that has been specifically established and promoted by Council as a rural living area. This is also a question of fairness.

On the other hand, the quarry will provide an additional source of road making and associated use material and may potentially create jobs. It brings another industry activity to Tallangatta.

The question then is which proposal offers the better net community benefit. In this matter, although there is an uncertainty factor regarding the intensity of activity of the Quarry, the prospect for its future expansion and the demand for its product, based on the proposal generally as submitted there would seem to be a genuine longer term economic and social benefit accrued from the rural residential development. Generally the introduction of new families into the local community will have a positive economic flow on and social affect as the families go about their lives in the Tallangatta community. As the rural residential area develops and grows, the economic and social benefits will grow.

On the other hand the Quarry will be owned by people resident outside Towong Shire. It is anticipated that the Quarry will be staffed, at least for the early years unless demand exceeds that anticipated, by current employees and that the majority of product from the Quarry will be sold for use outside of Tallangatta and Towong Shire. Therefore most of the potential benefits would flow away from the local community.

A case may be raised to suggest that both the Quarry and the rural residential development can co-exist. Perhaps conditions may be able to be placed on a permit that seeks to ameliorate the adverse impacts. However in economic terms the existence of the quarry and the quarry trucks in an area that previously offered a significantly higher lifestyle amenity with no trucks perhaps other than a very occasional cattle truck and no noise and no heavy vehicle dust and considerably less risk to children and others who might use Hardy's Road, suggests that the attractiveness, amenity value and economic value of the rural residential estate would be substantially diminished.

In the circumstances of this case, with the local Rural Living Zoned land being the only opportunity for rural residential development currently available in the Tallangatta area and substantial environmental limitations for zoning of other locations consequent of Lake Hume and the Special Water Supply Catchment controls, it would be a loss to the community if the current rural residential development is diminished or lost.

On balance the net local community benefit favours supporting the rural residential development. The establishment of the Quarry on balance would result in an unfair and disorderly use and development of land in the Hardy's Road area and adversely impact on the economic and sustainable use of the rural living land.

ii. to provide for the protection of natural and man-made resources and the maintenance of ecological processes and genetic diversity;

Despite objectors raising concerns over adverse environmental outcomes there is insufficient evidence to support a contention that the proposal will adversely impact upon the protection of natural and man-made resources and the maintenance of ecological processes and genetic diversity.

The Work Authority application was required to be considered by DEPI and NECMA. DEPI included conditions in respect to native vegetation removal (8 trees) and NECMA had no requirement for conditions.

iii. to secure a pleasant, efficient and safe working, living and recreational environment for all Victorians and visitors to Victoria;

When considering the affect that the proposed quarry may have in terms of securing a pleasant, efficient and safe working, living and recreational environment for all Victorians and visitors to Victoria this proposal would be miniscule in overall outcomes.

In terms of the affect upon securing a pleasant, efficient and safe living and recreational environment for residents and prospective residents of the Hardy's Road rural living area the outcome is quite different. Currently there are no quarry trucks on Hardy's Road, the road pavement is adequate for domestic and the very occasional farm vehicles, dust is minimal and noise very low.

The approval of a stone extraction use and development will introduce these things into the Hardy's Road living environment. The question is to what extent this affects the values that determine what constitutes securing a pleasant, efficient and safe living and recreational environment for residents and whether or not approval of the proposal would fail to secure a pleasant, efficient and safe living and recreational environment for residents of Hardy's Road area. This is of heightened and particular relevance given the strategic and policy planning work done to encourage rural living development in the Hardy's Road location.

- iv. to conserve and enhance those buildings, areas or other places which are of scientific, aesthetic, architectural or historical interest, or otherwise of special cultural value;*

There are no known areas of scientific, aesthetic, architectural or historical interest, or otherwise of special cultural value that warrant conservation or enhancement.

- v. to protect public utilities and other assets and enable the orderly provision and co-ordination of public utilities and other facilities for the benefit of the community;*

Council has identified road assets that would be expected to be adversely impacted by approval of the proposed stone extraction activity. Hardy's Road is a very low standard pavement, constructed and maintained to a level generally capable of accommodating domestic vehicles and the occasional farm truck. The pavement is not designed or adequate to accommodate the level of truck movements proposed to accommodate the quarry.

In addition to the road pavement Hardy's Road has a number of areas where the road alignment is not contained within the road reserve and several places where the alignment is considered inadequate for frequent regular use by trucks.

Very considerable road construction works will be required to address these matters.

- vi. to facilitate development in accordance with the objectives set out in paragraphs (a), (b), (c), (d) and (e);*

Whilst it is understood that this sub-section sets up a presumption of support for development proposals in the first instance it is also recognised that where the objectives in sub-sections (a), (b), (c), (d) and (e) are not met on merit then that presumption is lost.

vii. *to balance the present and future interests of all Victorians.*

In the circumstances of this case the relevant Victorians with an interest in the matter are land owners deriving access via Hardy's Road, land owners and occupiers abutting the subject land, the developers of the Hardy's Road rural living estate, existing home owners in the estate, Lot purchasers in the estate, the owners and operators of the quarry and those persons who derive benefit from the production of the quarry.

The quarry is not comprised of stone material that is particularly difficult to find. The material is generally reasonably widespread. This site happens to be on land owned for many years by the Hurst family and is therefore well suited to their purposes given that it contains an adequate quality resource.

Given that the stone resource is reasonably widely available then there is no compelling reason suggesting that there are no potential alternative sources of the material.

Given the paucity of suitable rural living sites within Towong Shire and the apparently ubiquitous nature of the stone resource to be extracted it could be argued that the long term community interests are best served by affording support for the rural living area and making a decision consistent with the stated ambitions of the Municipal Strategic Statement.

So the question is about balancing the present and future interests of all Victorians and in this case in particular those affected by the Quarry proposal.

(c) all objections and other submissions received and which have not been withdrawn;

A total of 71 submissions have been received and which have been summarised previously in this report.

(d) any decision and comments of a referral authority which it has received;

With the exception of VicRoads all referral authorities were engaged as part of the draft Work Authority process and had the opportunity to impose conditions as part of the Work Authority under the Minerals Resources (Sustainable Development) Act 1990.

VicRoads claim that they are a S55 referral authority who is required to be referred to in relation to the proposal in addition to the Work Authority process referrals.

VicRoads have responded with the following:

Section 55 – No objection subject to conditions

“Further to our letter dated 18 September 2014 requiring a condition to be placed on any Planning Permit or Notice of Decision to be issued, VicRoads request that the conditions contained within this correspondence supersede the previous conditions.

The application is for Stone Extraction.

VicRoads notes that the application was referred under Section 52 of the Planning and Environment Act 1987; however we have determined under Clause 66.02-8 of the Towong Planning Scheme that this is a Section 55 referral. The current average daily vehicle movement on Hardy’s Road is 63 and the proposed development will result in an additional 44 vehicle movements a day which is >10% increase.

VicRoads notes while the proposed development is not without some merit, there are a number of deficiencies as follows:

- The Traffic Impact Assessment Report (TIAR) submitted with the application does not adequately address mitigating measures to ensure safe intersection site distance, especially for slow moving truck turning right onto Murray Valley Highway from Hardy’s Road.*
- The existing road widening at the Hardy’s Road and Murray Valley Highway intersection does not currently meet a Basic Left Turn (BAL) or Basic Right Turn (BAR).*
- Since initially responding to the application further investigation has been undertaken and therefore we request our conditions be updated as per below.*

If Council regards the proposed development favourably, VicRoads would require that the following conditions be included in any Notice of Decision to issue a Planning Permit or Planning Permit:

Planning Permit Condition:

- 1. Prior to the commencement of the use the intersection of Hardy’s Road and Murray Valley Highway, the following works must be completed to the satisfaction of and at no cost to the Roads Corporation:*
 - 1. Basic Left Turn Treatment (BAL)*
 - 2. Basic Right Turn treatment (BAR)*
 - 3. Tree lopping/removal to improve Safe Intersection Sight Distance*
 - 4. Vehicle activated advance truck warning sign on the western approach.*

(e) *any significant effects which the responsible authority considers the use or development may have on the environment or which the responsible authority considers the environment may have on the use or development. "*

The proposed Quarry site is located in a reasonably prominent elevated position generally visible from Tallangatta Township, most of the Hardy's Road rural living area and from Lake Hume. The Quarry can reasonably be expected to result in a considerable scar on the distant landscape.

(f) *any significant social effects and economic effects which the responsible authority considers the use or development may have.*

The proposed Quarry can be expected to have a social effect upon the landowners within the Hardy's Road rural living area. The social and lifestyle expectations for the area have been set quite high and there can reasonably be anticipated diminishment of amenity and social interactions either directly or indirectly from activities associated with and consequent of the proposed quarry. A simple example is the changed traffic conditions will change the way Hardy's Road may be used particularly in respect to children and pedestrian activity. Parents would be unlikely to allow children to (for example) ride bikes to a nearby friend or ride bikes to catch the school bus. People will be less likely to walk on or nearby to Hardy's Road if they have to contend with dust and/or heavy vehicle traffic dangers.

The most likely result will be a change in the socio-economic and demographic makeup of the Hardy's Road rural living area consequent of the changed circumstances whether those changed circumstances are perceived or actual. This is then reasonably anticipated to have a change on the social fabric of the rural living area.

In terms of translation of this to economic effects, the probability is that if Lots can still be sold within the rural living environment they will be sold at considerably lower prices and this may result in considerably lower standards of development.

Not only does this change the social and economic circumstances of the living environment but it also has a negative impact upon the costs and incomes generated to the developer given that the development has not been completely sold. In these circumstances where the Rural Living Zone has been promoted by the Council and the Council has undertaken considerable strategic and policy planning work to facilitate the rural living development, then the social and economic effects on the developer are valid matters for consideration.

(1A) Before deciding on an application, the responsible authority, if the circumstances appear to so require, may consider—

(b) the approved regional strategy plan under Part 3A;

The Hume Regional Growth Plan was adopted by the Minister for Planning mid 2014 and has been incorporated into the Towong Planning Scheme within the State Planning Policy Framework (SPPF).

Hume Regional Growth Plan

Clause 11.3 refers to energy and the earth resources and provides that earth resources, in the form of minerals and quarry products, make a valuable economic and social contribution to the Hume region. Opportunities to take further advantage of earth resources could support the diversification of the regional economy. Planning for these activities needs to continue to consider environmental and community values and access to markets. Opportunities to develop extractive industries should be further explored, supported and managed.

The Hume Regional Growth Plan acknowledges that extractive industry interest areas occur within the region and that the region contains areas of known future interest to the extractive industry. Areas are based on suitable geological occurrence and also take into account existing local government planning schemes. The proposed Hardy's Road site is not known to be a recognised Extractive Industry Area of Interest.

Clause 13.3 of the Hume Regional Growth Plan refers to other settlement directions and recognises that parts of the Hume region are attractive for rural residential uses. The plan provides that a consistent approach to planning for rural residential uses is needed to ensure the location of these uses considers regional assets, such as agricultural land or natural resources, sustainable settlement patterns (including the cost of providing and maintaining services and infrastructure). The plan provides that sufficient areas of appropriately zoned land should be provided in strategic locations to help reduce development pressure on agricultural areas and accommodate a range of lot sizes.

The Hume Regional Growth Plan under part D in reference to the regional economy provides that in areas identified as strategic agricultural land, planning should avoid encroachment from rural residential settlement and other land uses that are non-complementary to agriculture and planning should direct proposals for settlement in these areas to existing centres and townships.

The regional economy can also benefit from establishment of Stone Extraction activities under the appropriate circumstances.

The Hume Regional Growth Plan under part D in reference to living in the region provides that planning for rural residential use should ensure:

- it is located where it will not impact adversely on regional assets, such as agricultural land, landscapes and the natural environment

- It has a sustainable settlement pattern
- There are sufficient areas of rural residential zoned land in strategic locations to help reduce development pressures on agricultural land
- There are a range of lot sizes to meet differing needs

The Hume Regional Growth Plan, under part E in reference to living in the region and focussing growth and development to maximise the strengths of existing settlements, identifies how gaps can be addressed by planning for rural residential development. This part also provides some guidance in respect to planning for rural residential use and establishes that consideration should include:

- Providing land within a regular commuting distance to a major regional centre
- providing safe and easy transport and access
- Consolidating existing rural settlement patterns
- Visual and physical linkages to areas with high amenity such as lakes, Rivers and national and State parks
- Avoiding areas of landscape significance ensuring protection of strategic views and vistas
- Avoiding areas of environmental significance
- access to infrastructure such as power and sustainable water supply
- Avoiding areas subject to natural hazards such as bush fire and flood risk
- Minimising potential conflict with other rural land uses

The Hardy's Road rural living zoning has been derived and established generally in accordance with the requirements set out under the Hume Regional Growth Plan.

Specific matters incorporated into the planning scheme in respect to the Hume Regional Growth Plan are addressed under the SPPF heading later in this report.

TOWONG PLANNING SCHEME

State Planning Policy Framework (SPPF):

Clause 11.10 Hume regional growth

The Hume Regional Growth Plan implementation under the planning scheme identifies four component areas being:

- a) A Diversified Economy
- b) Environmental Assets
- c) Planning for Growth
- d) Infrastructure

Clause 11.10-1 A diversified economy

Towong Shire has few opportunities to diversify its economy beyond agriculture, tourism, forestry and earth resources. The area around Hardy's Road is one of very few locations in the Tallangatta area where the environmental conditions, proximity to town services and facilities, access to markets and where there will be no adverse impact upon agricultural land creates an opportunity for an alternative economic growth capacity.

The Hume Regional Growth Plan over the region recognises stone extraction and other earth resources as opportunities for diversification of the economy. Towong Shire has a good number of earth resource locations both currently operating and of historical and future interest. In essence earth resources in Towong Shire are not particularly representative of opportunities for diversification. That does not diminish the opportunity for earth resources generally to expand and contribute to the economic growth within Towong Shire. In this matter the determination in respect to economic diversification is generally in regard to whether the rural living opportunity in the Hardy's Road location is a more beneficial diversification versus establishment of a quarry. There is also likely to be a position that will claim that both can coexist. On balance this assessment is of the view that coexistence is not likely to happen without one or the other activity being seriously compromised.

Council has expended considerable resources in firstly identifying this area then justifying the planning scheme amendment and then promoting the opportunity to enhance growth in the Tallangatta local economy and to support and enhance the use of local services and infrastructure. The work has been done by Council. The first development is effectively undertaken with the first stages Lots either sold or in the market.

The Hume Regional Growth Plan supports this type of initiative.

The Hume Regional Growth Plan also supports planning and providing the availability of construction materials locally and to consider measures to facilitate and manage their extraction and encourages planning for rural areas by considering the location of earth resources, their potential for future extraction and how to minimise impact on sensitive uses and the environment.

The subject land has not been identified in any known previous work to identify stone resources of limited availability and in strategic planning has not been considered to be a stone resource site. The stone material at the subject land is not a rare commodity in the Tallangatta district and indeed is considered to be reasonably widespread. Therefore it has not been raised as a location of earth resources with

potential for future extraction or potential impact on sensitive uses and the local environment when planning for the rural living area.

The Hume Regional Growth Plan provides that planning should maintain and develop buffers around mining and quarrying activities to manage potential land use conflicts. In this case the planning for the rural living development has been done prior to any knowledge of a proposal for a quarry. Furthermore in this case the buffer between the quarry and the rural residential use is not the major concern. The principal impact and concern is the quarry traffic traversing through the rural residential estate via an entirely inadequate road.

The main point here is that there had been no identification of a stone resource on the subject land and no knowledge of a proposal to establish the quarry during the process of assessment of the rural living area. The appropriate investigations and enquiries were made and there is no evidence that the particular stone resource is of significance. Indeed the evidence suggests that the stone resource is very widely available within the Tallangatta district.

Clause 11.10-2 Environmental assets

It is accepted that the relevant authorities responsible for licencing, authorising and regulation of the mining and extractive industries have in draft form approved a Work Authority which would, subject to obtaining a planning permit, allow the quarry works to proceed within this environment.

It is unknown as to whether or not those relevant authorities considered or indeed are required to consider the Hume Regional Growth Plan. However in determining the application for planning permit Council is obliged to consider the Hume Regional Growth Plan and one of the considerations is *"to protect environmental and heritage assets, and maximise the regional benefit from them, while managing exposure to natural hazards and planning for the potential impacts of climate change."*

In essence the Hume Regional Growth Plan seeks to conserve water and manage waterways and storage as key environmental, social and economic assets. It further seeks to protect the Murray River corridor as a key environmental (scenic, biodiversity, riverine), cultural and economic asset.

In the circumstances of this case clearly the authorities responsible for approving the Work Authority have considered that either there are no adverse impacts within the environment or that any adverse impacts will be reasonable and acceptable or perhaps acceptable subject to conditions.

Nonetheless, amongst other things, Council is still required to consider the matters listed in the Hume Regional Growth Plan. Council's resources and expertise in this regard is very limited and guidance from the decisions made in considering the Work Authority will be integral to Council's decision. There is no evidence at hand to support an alternative position to that delivered under the Work Authority in regard to the environmental impacts referred to under this component of the Hume Regional Growth Plan.

Clause 11.10-3 Planning for growth

The principal objective under the Hume Regional Growth Plan in regard to planning for growth is to focus growth and development to maximise the strength of existing settlements.

Council has undertaken considerable work in identifying land suitable for rural living development that focuses on the strengths of Tallangatta Township. The Hume Regional Growth Plan expresses support for the development to foster the sustainability of small rural settlements. The Hardy's Road rural living area is such a development.

Clause 11.10-4 Infrastructure

The development of a quarry generally is not regarded as development of a component of infrastructure but rather a resource contributing to the development of infrastructure.

In this case considerable infrastructure has been installed within the Hardy's Road rural living area which may be put at risk should the quarry proceed in its present proposed form.

Therefore in consideration of the matters to be addressed generally under the Hume Regional Growth Plan consideration of protection of existing infrastructure is an important component of the decision-making process.

Clause 13.04 Noise and air

Clause 13.04-1 Noise abatement

The objective of this Clause is *"to assist the control of noise effects on sensitive land uses"* and the principal strategy to achieve this is to *"ensure that development is not prejudiced and community amenity is not reduced by noise emissions, using a range of building design, urban design and land use separation techniques as appropriate to the land use functions and character of the area."*

In this matter, unless dwellings receive approval for development outside of the Rural Living Zone and closer to the proposed quarry site, noise from the quarry operations within the area of the work authority are generally shown to be within standards of acceptable noise for coexistence of the two uses. However noise generated from vehicle movements along the Hardy's Road although anticipated to be within established standards for road noise, the remote and very quiet nature of the Hardy's Road rural living area means that the impact of any noise is likely to be exacerbated.

Mechanisms for abatement of truck noise in respect to the Hardy's Road location are difficult to find, apart from physical noise attenuation works as part of dwelling construction. This does not help attenuation of noise in outdoor areas and the principal purpose of a Rural Living Zone is to provide for outdoor living on larger lots. Therefore the impact of truck noise, although within established standards that are generally designed for circumstances other than rural living, would nevertheless diminish the very quiet rural amenity.

It must be noted that the proposal will likely meet the technical requirements however this does not help deal with the perceptions and realities of amenity impacts in an area intended to be of very high quality rural living environment. The accepted standard generally applies an average noise reading over the day which in the circumstances of the amenity impacts in this situation will likely be unacceptable and may influence the perceptions if not the realities of noise in the locality and, included with perceived safety concerns, will effectively deter people from developing within the Rural Living Zone.

Irrespective of the above assessment the council is bound by the policy guidelines requirement that it must consider the Interim Guidelines for Control of Noise from Industry in Country Victoria (Environment Protection Authority 1989) and A Guide to the Reduction of Traffic Noise (VicRoads 2003).

The Interim Guidelines for Control of Noise from Industry in Country Victoria (Environment Protection Authority 1989) specify where background sound levels are very low (ie. less than 25 dB (A) at night or 30 dB(A) during the day or evening period) the minimum limits for noise from industry should be:

Day	Evening	Night
45 dB(A)	37 dB(A)	32 dB(A)

(Measured at residential premises)

The acoustic report submitted with the application determines that noise generated from the stone extraction will be generally consistent with the above standards.

A Guide to the Reduction of Traffic Noise (VicRoads 2003) is essentially a document that provides information on how to build to limit noise and after the event noise attenuation structures and practices. This policy is of little relevance in this matter.

Clause 13.04-2 Air quality

The objective for this Clause is *"to assist the protection and improvement of air quality"* and the principal strategy to achieve this is to *"ensure that wherever possible, that there is suitable separation between land uses that reduce amenity and sensitive land uses"*.

Hardy's Road is a gravel pavement which will produce significant dust from quarry trucks and it is reasonable to anticipate that such dust will have adverse health and amenity impacts on the Rural Living Zone residents. Furthermore dust is detrimental to rainwater collection and storage in tanks which is a requirement in the Hardy's Road rural living area.

In this instance, satisfactorily addressing the heavy vehicle dust problem would require finding an alternative access road for the quarry trucks or the sealing of Hardy's Road.

Clause 13.05 Bushfire

Clause 13.05-1 Bushfire planning strategies and principles

In summary this Clause requires planning to be undertaken with regard to protection of life and property from damage from Bushfire. The proposal should be assessed against the risk to life, property and community infrastructure from Bushfire have a regional, municipal and local scale. This Clause refers to the Bushfire Management Overlay and Clause 52.47 – 2.

This Clause provides that consideration needs to be given to the location, design and construction of new development and the implementation of bush fire protection measures. It further provides that development should not proceed unless the risk to life and property from bushfire can be reduced to an acceptable level.

The dominant purpose derived from this Clause relates to residential development however it also refers to other use and development including industry.

Clause 14.02 Water

14.02-1 Catchment planning and management

The objective of this Clause is *"to assist the protection and, where possible, restoration of catchments, waterways, water bodies, groundwater, and the marine environment"* and the principal strategies relevant to this matter are to:

- *"protect water catchments and water supply facilities to ensure the continued availability of clean, high-quality drinking water."*

- *Consider the impacts of catchment management on downstream water quality.*
- *Ensure that works at or near waterways provide for the protection and enhancement of the environmental qualities of waterways and their in stream uses.*

NECMA was consulted as part of the Work Authority approval process and did not oppose the Work Authority approval or request conditions of approval. It is therefore assumed that the proposal is compliant.

Clause 14.03 Resource Exploration and Extraction

The objective of this Clause is *“to encourage exploration and extraction of natural resources in accordance with acceptable environmental standards and to provide a planning approval process that is consistent with the relevant legislation”* and the principal strategies (as relevant) to achieve this objective are:

- *Protect the opportunity for exploration and extraction of natural resources where this is consistent with overall planning considerations and application of acceptable environmental practice.*
- *Provide for the long term protection of natural resources in Victoria.*
- *Planning schemes must not impose conditions on the use or development of land that is inconsistent with the Mineral Resources (Sustainable Development) Act 1990,*
- *Planning permit applications should clearly define buffer areas appropriate to the nature of the proposed extractive uses, which are to be owned or controlled by the proponent of an extractive industry.*
- *Buffer areas between extractive activities and sensitive land uses should be determined on the following considerations:*
 - *Appropriate limits on effects can be met at the sensitive locations using practical and readily available technology.*
 - *Whether a change of land use in the vicinity of the extractive industry is proposed.*
 - *Use of land within the buffer areas is not limited by adverse effects created by the extractive activities.*
 - *Performance standards identified under the relevant legislation.*
 - *Types of activities within land zoned for public use.”*

Apart from point 1 above the presumption is favourable to the extractive industries. However point number one very clearly establishes a responsibility under the planning scheme that consideration is given to overall planning matters and acceptable environmental practice.

In this matter the provision of buffers between the extractive industry site and surrounding land uses is of little consequence given that the work authority area is entirely within a large area of land owned by the proponent. The subject land is in the order of 120 hectares and the stone extraction area under the work authority is less than 10 hectares.

In terms of relevant overall planning considerations and in context with this Clause, there is about 1% of the shire that is zoned and suitable for rural living use whereas the type of resource material being sought under the proposal is widespread and very widely found in many other areas.

15.03-2 Aboriginal cultural heritage

The applicant provided a completed aboriginal cultural heritage questionnaire which indicates that a Cultural Heritage Management Plan is not required. A review of the aboriginal cultural heritage mapping of sensitive areas indicates that part of the subject land is covered by a sensitive area being within 200 metres of a waterway however the actual Work Authority site which is the area of relevance in respect to the aboriginal cultural heritage is outside of that sensitive area. Therefore no further assessment is required in respect to aboriginal cultural heritage.

Local Planning Policy Framework (LPPF):

Clause 21 Municipal Strategic Statement

The Towong Planning Scheme recognises changes that are occurring in land use across the western parts of the shire. Much of the land within the western part of the shire is relatively low grade in terms of agricultural productivity and agricultural land quality. Some of these areas are suited to rural living and the area is increasingly coming under pressure from people seeking a rural residential lifestyle, with a high proportion of residents in this area commuting to Albury Wodonga. Some of the western parts of the Towong Shire are becoming peri urban and the Planning Scheme MSS has recognized and responded to these changes:

'Peri Urban' Towong

Most of the reduction in total farm holding is taking place within SLA 'A' where there is greatest pressure for genuine land use change. The pace of this change has increased substantially since 2001 and has seen a profound contraction of agriculture from western parts of the Shire.

It is evident that there will remain pressure for land use change of rural lands within the 'peri urban' sphere of Albury/Wodonga, and the higher land values in these areas driven mainly by lifestyle farmers and people paying a higher price for the amenity of the landscape will make increasing operational scale difficult for any remaining farm enterprises. In these highly attractive and scenic areas of the Shire, particularly in the Lake Hume environs close to Albury/Wodonga the market has indicated its strong

preference for rural living, restricting the capacity of agricultural businesses to increase scale to maintain competitiveness.

Most of the western Towong Shire where rural residential development has become the dominant land use offers commuting times of less than 40 minutes to Albury and Wodonga. In particular, the Bethanga peninsular is closer to the central business districts of Albury and Wodonga, than established commuter towns of Barnawartha, Chiltern, Howlong, Rutherglen, Yackandandah, Beechworth and Kiewa-Tangambalanga.

Therefore there is genuine demand for rural living development. The issue is finding locations that are acceptable based on parameters and criteria for assessment of land for suitability for rural living development. There are few areas that meet all criteria and there are many areas that might be desirable but which fail environmental tests.

The Hardy's Road rural living area is one of a very few areas that have suitability for the purpose in proximity to the Tallangatta settlement area.

Clause 21.02-4 Settlement:

Considerable effort has been put into justifying and establishing appropriate rural living areas within Towong Shire. The settlement vision for the shire articulates a clear set of objectives and outcomes.

The vision for Towong seeks to encourage different settlement outcomes in a variety of locations across the Shire that can contribute to the environmental, social and economic wellbeing of the Shire. It seeks to offer land use planning recommendations that build on the specific character and desired future profile of each town, with a view of establishing a network of settlements that support each other in their service base and offer a variety and choice of lifestyle opportunities.

This vision is well considered and is consistent and compliant with the SPPF policies, strategies and objectives.

The vision for future settlement with Towong Shire is one that:

- caters for future growth of townships and settlements in an orderly manner;*
- gives preference to the residential development of land without environmental constraints;*
- takes advantage of existing infrastructure and promotes infrastructure efficiencies;*
- employs sustainable development principles;*
- ensures protection of high quality agricultural land;*
- locates future development having regard to:*

- *identified market preferences;*
- *access to physical and social services;*

Clause 21.02-5 Rural Land Use Planning

The rural land use planning vision for Towong Shire is one that facilitates and promotes rural land use diversity. The imperative for Towong Shire to diversify its economy is apparent and the Planning Scheme should not impede efforts to achieve this pursuit of economic diversification.

Opportunities for economic diversification are different in different places and circumstances. The opportunities for economic diversification within Towong Shire are related to rural residential development whereas in other places the opportunities may be within agriculture, industry and tourism. Towong Shire has taken advantage of the opportunities regarding agriculture, industry and tourism and is seeking to diversify the economy by taking advantage of the opportunities presented by the close proximity to Albury Wodonga. The Hardy's Road rural living development is close to Tallangatta township infrastructure and services. The Hardy's Road rural living area is a very good economic development opportunity to provide long term support and population growth necessary to sustain the local Tallangatta community.

21.03 SETTLEMENT

Rural Residential Development

The retreat of traditional agriculture as a land use from the western Towong Shire landscape has been significant, sustained and appears inexorable. It is clear that there is progressive shift away from traditional full time farming and associated production-based land uses to a new multi-functional land use pattern with residents that commute to the nearby urban centre for employment. Much of western Towong Shire is closer to the central business districts of Albury and Wodonga than other key commuter centres and affords excellent scope for additional rural living opportunities.

The Towong Shire Settlement Strategy (2010) represents a study of the future needs for residential and rural based living in the Towong Shire. The Strategy identifies residential and rural living opportunities within the Shire and recommends the provision of additional residential and rural living opportunities adjacent to existing towns and further rural living opportunities, particularly in the western part of the Shire.

The planning scheme and strategic work underpinning it is solid in approach to rural living development and is supportive of the requirements and constraints that establish a rural living location.

Clause 21.03-3

This Clause provides that *Towong Shire seeks to establish a strategic approach to future settlement across the municipality that acknowledges and provides for different residential market segments including (as relevant):*

- *Rural residential type lots on the margin of existing townships and settlements and within proximity of urban facilities and services.*

Towong seeks to encourage different settlement outcomes across the Shire that can contribute to the environmental, social and economic wellbeing of the Shire. To achieve this outcome the key objectives of settlement planning within Towong Shire are to (as relevant):

- *Cater for future growth of townships and settlements in an orderly and coordinated manner;*
- *Cater for the changing demography of settlements;*
- *Cater for changing residential market preferences;*
- *Provide additional rural living opportunities;*
- *Formalise within the planning scheme existing settlements particularly areas of existing rural residential development;*
- *Avoid important environmental values and constraints;*
- *Enhance residential amenity;*
- *Protect natural values and consider existing environmental values, constraints and risks at re-zoning stage;*
- *Protect significant cultural heritage;*
- *Promote infrastructure efficiencies; and*
- *Protect high quality agricultural land.*

The Hardy's Road rural living area has been selected based on the above criteria and has been subject to a rigorous evaluation process before and through the planning scheme amendment process.

Clause 21.03-4 Strategies and Implementation

Rural Living

Clause 21.03-4 refers to strategies and implementation for rural living and provides that *it is anticipated that provision of additional rural living opportunities will have positive social and economic benefits for each of the specific areas nominated and the Shire in general.*

Rural living strategic actions:

- *The application of Rural Living Zone to areas indicated for rezoning by the Towong Shire Settlement Strategy (2010), including (as relevant):*
 - Areas adjacent to:*
 - *Tallangatta*

In each instance the rezoning of land is to occur in areas characterised by the following:

- *Proximity to existing settlements;*
- *Existing supporting infrastructure;*
- *Absence of environmental hazards;*
- *Absence of strategically important agricultural land;*
- *Rural residential use of the land the prevailing dominant land use.*

Other strategic actions:

- *Deployment of the Development Plan Overlay to areas to be rezoned to facilitate the orderly development of these areas.*
- *Deployment of the Design Development Overlay in areas to be rezoned to ensure quality built form outcomes.*
- *Application of Clause 22.07 Rural Living Local Planning Policy to all rural living proposals.*
- *Application of the Towong Shire Rural Living Development Guidelines to all rural living proposals.*

General Strategic Actions

Clause 21.03-4 also refers to general strategic actions which (as relevant) provide for:

- Implementation of the recommendations of the Towong Shire Settlement Strategy (2010), in particular the provision of additional rural living opportunities adjacent to existing towns and in the western part of the Shire.
- Implementation of the recommendations of the Towong Shire Rural Land Use Study.

Clause 21.04-7 Farmland of strategic significance

Clause 21.04-7 is referred to in the context of this application because it establishes the bona fides under the planning scheme in respect to protection of good quality agricultural land and that the establishment of rural living areas such as Hardy's Road are well considered planning decisions.

Clause 21.04-7 provides that:

Because of the significance of agriculture to the Shire's economy, there is a need to protect high quality agricultural land that contributes most to food production. It is accepted that high quality agricultural land has an inherent advantage over other land from a productivity point of view and is a resource that is more adaptable for a range of different farming enterprises. As a consequence, such lands are considered the best to retain in agricultural use. This is clearly illustrated by much of the Towong agricultural output being produced by a relatively small part of the overall rural landscape. It is estimated that around 40% of agricultural output is produced from around 6% of the freehold rural land and approximately 50% of freehold rural land

produces 90% of agricultural output. The remaining half of freehold rural land only produces around 10% of agricultural output.

Areas of the Towong rural landscape identified as being of high quality for the purpose of agriculture are an important resource that will continue to underwrite the economy of the Shire and indirectly contribute to the overall economic well-being of the broader Towong community. As a consequence, it is the intention of the Towong Planning Scheme to guard against the conversion of prime agricultural land to non-agricultural uses, and to take a long-term perspective toward its management and protection so as to ensure intergenerational equity with respect to the allocation of the resource.

Having adopted a spatially differentiated planning approach based on land capability the planning scheme articulates the importance of those parts of the rural landscape that contribute most to the overall Shire 'farm gate' output, and in these areas agriculture and food production has primacy. Such an approach also allows flexibility and discretion in those parts of the rural landscape that are substantially less economically important from a rural production perspective, thereby assisting in the aspirations of increased economic diversity and population growth through enabling other uses such as in this case rural living and stone extraction in those areas suited to the purpose. In this case the apparent conflict is between the stone extraction and the rural living uses in an area generally not considered of high agricultural quality.

Clause 21.04-7 also makes reference to the Towong Shire west end proximity to Albury Wodonga and the peri urban landscape issues and effect consequent of that proximity.

Clause 21.05 Economy

The Towong Shire economy is fundamentally underpinned by agriculture, tourism, forestry and earth resources. The overwhelming contribution to the economic fabric of the shire is agriculture hence the strategic intention to protect high quality agricultural land.

In order to grow the economy, diversification beyond agriculture, tourism, forestry and earth resources is necessary and the proximity of the Towong Shire to Albury Wodonga creates an opportunity for residential growth.

Clause 21.05-2 establishes (as relevant) some of the key planning issues associated with the economic development of the Shire as being:

- *the need for greater economic diversification.*
- *the retreat of agriculture from the western part of Towong Shire, particularly within the Statistical Local Area 'A'.*
- *the need for greater cultural diversity and a broader range of cultural activities.*

- *Protection of important landscapes and natural environment.*
- *Protection of high quality agricultural land.*

Clause 21.05-3 establishes amongst other things an objective to “*encourage additional residential and rural living opportunities*”

Clause 21.05-4 establishes strategies in respect to rural land use planning and provides that:

“Alternative land uses should be able to be considered on their merits particularly when they can increase the net benefit to the broader community, both now and into the future. In this way rural does not necessarily mean agricultural. The vision and strategic position of the Municipal Strategic Statement supports a rural land use planning framework within the Shire that recognises and responds to a multifunctional landscape in order to cater for desired rural land use planning outcomes in different areas of the Shire.”

This approach recognises three main functional landscapes:

- 1. Production Towong** – *this includes areas of farmland of strategic significance containing high quality agricultural land where agriculture and food production has primacy and where protection of agricultural land is paramount.*
- 2. Transitional Towong** - *being agricultural land of low to moderate quality where diverse land use planning outcomes are encouraged including deploying a zoning approach that encourages increased planning discretion and enabling consideration of a diverse range of land uses together with a merits based minimum subdivision size.*
- 3. ‘Peri Urban’ Towong** - *being land essentially located to the north west of the Shire within the 40min travel / commute contour of nearby Albury – Wodonga where rural residential development is to be encouraged and where there is an absence of high quality agricultural land.*

The above both recognises the existing conditions and establishes a policy position with respect to taking advantage of the economic opportunities drawn from those existing conditions. This approach leads to the identification of strategic actions to promote economic growth including provision of additional rural living opportunities in the western part of the shire and adjacent to existing towns.

Zone Provisions

The subject land is located within the Rural Activity Zone (RAZ) and other land in the general proximity is zoned Public Conservation and Resource Zone (PCRZ) and Rural Living Zone (RLZ2) Schedule Two.

Rural Activity Zone

Clause 35.08 refers to the Rural Activity Zone and establishes the purpose of the zone as set out in italics below:

- *To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.*

Considered in isolation and without the existence of the Rural Living Zone on Hardy's Road, the proposal on the subject land could sustain a reasonable argument to support the application in terms of the SPPF provisions.

The specific provisions relevant to this matter within the SPPF have been referred to previously in this report under specific heading. In the context of this matter the SPPF has two roles being to provide higher level strategic policy input and to provide enabling provisions within which more detailed and specific application of VPP content and the implementation of local policy can be undertaken.

At the SPPF level matters described and contained within this report as relevant to the proposed stone extraction use and development are essentially about determining whether there is conflict between land uses, which land use should have priority in the SPPF context and whether or not conditional approvals may be appropriate to ameliorate the conflict. This needs to be considered in light of the LPPF, MSS, zone provisions and local policy.

In this case there are broad level strategic and very specific planning controls and provisions that establish a sound planning policy position supporting the establishment of rural living development on Hardy's Road. There is also broad level strategic and some more specific planning controls and provisions that support establishment of a stone extraction use and development on the subject land. The question to be resolved in the first instance is whether these two uses in the circumstances of this case, based on merit, are in such conflict that one cannot proceed without significant material and adverse effects upon the other.

If the decision is that the impacts will result in an irreconcilable conflict then a determination is necessary as to which use and development might take priority.

If the decision is that the two uses can coexist with conditions of approval that ameliorate issues of conflict then a decision must be made as to what provisions are available under which the conditions may be applied to reach the appropriate outcome.

In summary there is strong argument to suggest that the impacts and consequences of approval of the stone extraction use and development upon the existing Rural Living Zone area of use and development will be substantial and likely result in a very significant change in the least or the failure of the Rural Living Zone use and development at worst.

Rural living brings with it a generally very clear set of objectives in respect to lifestyle and environmental conditions. People who purchase in Rural Living Zone areas are generally very particular in their desires and are usually people who do not want to live in areas with the normal urban trappings and environments including being exposed to high levels of noise and vehicular dust. People who choose rural living areas also seek a high level of safety particularly in respect to road traffic in their local environment.

Although there may be other matters of lesser or greater concern to individuals the principal issue of irreconcilable conflict in this matter is the need for heavy vehicles generated by the quarry to traverse through the very local Hardy's Road which is a principal local road within the Rural Living Zone.

The only real mechanism of diminishment of the heavy vehicle noise in the context of this matter is not to generate the noise in proximity of the Rural Living Zone in the first place. Construction methods may be applied to each dwelling to limit noise within the dwellings however this is an additional cost burden upon homeowners that is generated by no action of their own and furthermore such mechanisms will not diminish noise in the outdoor areas. The effect in any assessment is a diminishment of rural living amenity of some considerable consequence.

The Rural Living Zone has been created after considerable effort by Council and through following the strategic planning processes that start with the SPPF. Council has established sound strategic planning policy through the cascade of requirements under the Victoria Planning Provisions and the Planning and Environment Act 1987.

There is very sound economic argument supporting the Rural Living Zone in the Hardy's Road location as it will support the community services and infrastructure of Tallangatta Township whilst meeting market opportunities for growth.

The Hume Regional Growth Plan supports the council objectives and strategies in respect to economic diversification through the establishment of appropriate areas for rural living that can capitalise on the commuter opportunities generated by Albury Wodonga.

In terms of the broader considerations of the stone extraction use and development under the SPPF, LPPF, MSS and local planning policies the argument seems clear.

Although the stone extraction use and development may be expected to contribute to the Hume regional economy it is unlikely to have anywhere near the economic impacts supporting Tallangatta Township that would be derived from population growth and development within the Rural Living Zone based on Hardy's Road.

Employment expected to be generated on the stone extraction site is anticipated to be a maximum of four persons and it is likely those persons will be residents from outside the municipality.

The scale and size of the quarry as proposed is also likely to attract interest by other quarry operators of a larger scale who might pursue other operational conditions such as 24 hour operations and greater daily yields resulting in increased heavy traffic in Hardy's Road. Once the quarry is established it will be very difficult to resist such expansions particularly if they occur on an incremental basis. Although these are issues that may not specifically be considered in determining this application because they are different to the proposal being made they are matters which will be taken into account by potential purchasers in the Rural Living Zone and will have an impact on the future of the Rural Living Zone use and development.

Rural living development in appropriate locations has been identified in the planning scheme and in the Hume Regional Growth Plan as an opportunity for economic diversification within Towong Shire. In terms of the SPPF, LPPF, MSS and local policy considerations this, in association with the more specific issues raised throughout this report, are considered adequate components in support of a decision to refuse the application for stone extraction.

- *To provide for the use of land for agriculture.*

The subject land is currently used for agriculture and the proposed stone extraction use and development area will result in a diminishment of the area of land available for use for agriculture.

- *To provide for other uses and development, in appropriate locations, which are compatible with agriculture and the environmental and landscape characteristics of the area.*

Although perhaps a relatively minor consideration in the overall consideration components, the proposed stone extraction area will create a scar on the landscape when viewed from Lake Hume, from Tallangatta Township and more particularly from the land contained within the Rural Living Zoned based on Hardy's Road.

This location is considered to be inappropriate for the establishment of a stone extraction area of the size and scale proposed consequent of its visual impacts in the environment and of its consequential impacts on the Rural Living Zone based on Hardy's Road.

- *To ensure that use and development does not adversely affect surrounding land uses.*

There is no question that the proposed stone extraction use and development will have an adverse effect upon the Rural Living Zone based on Hardy's Road.

- *To provide for the use and development of land for the specific purposes identified in a schedule to this zone.*

The specific purposes identified in the schedule to the rural activity zone within the Towong Planning Scheme are established as being:

- *To provide for a range of land use and development that does not adversely affect surrounding uses.*

Clearly the proposed stone extraction use and development is a use that will adversely affect nearby uses.

- *To recognise the need to strengthen and diversify the economic base of the Shire.*

One of the purposes of the Hardy's Road Rural Living Zone is to strengthen and diversify the economic base of the shire and in particular Tallangatta Township. Approval of the proposed stone extraction use and development will unquestionably have an adverse impact upon the Hardy's Road Rural Living Zone use and development.

- *To provide a flexible approach to the consideration of land use and development proposals to off-set the adverse effects of economic restructuring and climate change on the agricultural sector.*

The Hardy's Road Rural Living Zone has been generated after considerable effort by Council in order to generate another source of economic growth to offset the effects of agricultural and other economic restructuring within the broader agricultural sector. The Hardy's Road Rural Living Zone is anticipated as generating a considerably greater and more sustainable economic growth than will be achieved by the stone extraction use and development. In other circumstances flexibility under this Clause may have supported the establishment of the stone extraction use and development but in the circumstances of this case where such development is in direct conflict with the already established and part developed Rural Living Zone and decision under this Clause clearly needs to fall in favour of the existing Rural Living Zone.

- *To encourage opportunities that contribute to population stability and growth in the Shire.*

The proposed stone extraction use and development will have minimal if any direct contribution to the growth or stability of population. The expectation is

that the four anticipated employees that the proposal will generate will be existing employees, most probably from outside the municipality.

○ *To recognise the natural beauty and "pure" image of the Shire.*

Towong Shire has expended considerable effort over many years to brand the municipality as being of natural beauty and pure in nature. That image has been a significant component in the marketing of the Rural Living Zone and subsequent development at Hardy's Road. It is a significant part of the marketing of the shire into Albury Wodonga. It is also a significant part of the marketing of the shire within the tourism industry drawing patrons from a much wider area than the Hume region and indeed internationally.

The proposed stone extraction use and development as indicated by the number of objections received to the application has had a significant effect on the perceptions of the community in respect to maintaining the natural beauty and pure image. The impacts of quarry trucks passing through the Rural Living Zone and the scar on the landscape will have an adverse impact upon the perceptions and reality of the natural beauty and pure image.

▪ *To protect and enhance natural resources and the biodiversity of the area.*

The landscape within the Tallangatta area and particularly within the vista from Lake Hume is an important natural resource. The creation of a quarry within that landscape will diminish the quality of the landscape. Although submissions received raised issues of bird watching within the area of the proposed quarry there is no evidence beyond that to suggest that the proposal would unreasonably impact upon biodiversity of the area.

▪ *To encourage use and development of land based on comprehensive and sustainable land management practices and infrastructure provision.*

Council has undertaken considerable and comprehensive work to establish the Rural Living Zone based on Hardy's Road with a view to establishment of sound and sustainable land management. The information supporting the application for the stone extraction use and development indicates that the proposed quarry would also be operated generally in a sustainable manner with sound land management practices.

However the concern would be that if the stone extraction use and development work was to proceed then the Rural Living Zone could be expected to encounter significant impacts in terms of the quality of use and development and land management practices.

General issues

The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.

The SPPF has been considered previously in this report and the proposal is generally compliant with SPPF provisions.

Any Regional Catchment Strategy and associated plan applying to the land.

There are no known specific matters in reference to the subject site. NECMA are a non-statutory referral. The application for Work Authority was referred to NECMA and the planning application is exempt from further referral to NECMA. It is assumed that NECMA has considered and responded with any relevant catchment management requirements.

The capability of the land to accommodate the proposed use or development, including the disposal of effluent.

The proponents have stated that there will be no effluent disposal requirements on site. This may lead to issues in respect to other things such as OH and S and staff amenities however the application must be considered as submitted.

How the use or development relates to sustainable land management.

Given the on-going Work Plan requirements, the proposal as submitted is considered to be generally consistent with sustainable land management practices typically associated with the use and development of the land for the purpose of stone extraction.

Whether the site is suitable for the use and development and whether the proposal is compatible with adjoining and nearby land uses.

This report indicates that the proposal is not compatible with the nearby Rural Living Zone use and development.

The site in isolation may be suitable for the use and development however when viewed in context of impacts upon nearby land uses the proposal is unsuitable for the site.

Agricultural issues

Whether the use or development will support and enhance agricultural production.

The proposal will result in the loss of agricultural land over the area of the Work Authority however it is not anticipated to have significant impacts on other agricultural land. Agricultural uses on land through which Hardy's Road traverses may have some impact in respect to the fact that the road is not fenced and stock may be put at risk from quarry vehicles.

The potential for the use or development to limit the operation and expansion of adjoining and nearby agricultural uses.

Apart from potential quarry vehicle impacts on stock on that part of the Hardy's Road which is unfenced, the proposal is not envisaged as having a discernible effect upon the operation or expansion of agricultural production.

Environmental issues

The impact of the proposal on the natural physical features and resources of the area, in particular on soil and water quality.

As part of the work authority approval process the application was referred to the various authorities responsible for environmental considerations such as soil and water quality and these authorities have requested that conditions be placed on the Work Plan to address these issues.

The impact of the use or development on the flora, fauna and landscape features of the locality.

Flora and fauna considerations were undertaken as part of the referral processes under the work authority application. In terms of landscape impact the proposal will result in a scar which will be visible from a number of areas and in that context will have a detrimental effect.

Design and siting issues

The impact of the siting on the natural environment, major roads, vistas and water features and the measures to be undertaken to minimise any adverse impacts.

The proposed stone extraction use and development will have an impact on the landscape through the creation of a scar within the vista as seen from Lake Hume, Tallangatta and the rural residential area based on Hardy's Road. The proponents referred to landscape screening and the existence of some trees which will shield visibility to a small extent at the front of the quarry site. However once established the screening is unlikely to have a significant impact upon the open face of the quarry.

Whether the use or development will require traffic management measures.

A Traffic Impact Assessment Report (TIAR) was submitted by the proponents with the application for planning permit. An assessment of that report suggests some shortcomings in its assessment of the circumstances and requirements generated by the proposed use and development.

The traffic impact assessment report submitted by the proponents concludes that:

- The minor increase in the predicted AM and PM peak traffic generated by the proposed development (2 truck and trailer peak hour movements) will have a negligible impact on the existing operations of the intersection of the Murray Valley highway and Hardy's Road.

- The existing Rural Basic Right-turn Treatment (BAR) and turning radii at Hardy's Road will allow for the safe operation of turning heavy vehicles at the intersection of Murray Valley highway and Hardy's Road.
- The safe intersection sight distance is restricted on the westbound approach to the intersection of Murray Valley highway and Hardy's Road. The removal of tree branches and or trees or the installation of stop signs in Hardy's Road will improve the safety of turning to traffic.
- That the quarry operations will have negligible impact on the access and operations of the Tallangatta waste transfer station, because the operating hours of the transfer station parked outside the peak traffic flow times on the Murray Valley highway.
- Regular maintenance of Hardy's Road is required to maintain a safe level of operation for local traffic and quarry haul vehicles.
- A sign posted 50 KPH speed limit on Hardy's Road will ensure safety and minimise the impact of heavy vehicles.

The report further recommends:

- That the Towong Shire Council be consulted to allow the removal of tree branches and or trees to improve the west bound sight distance and safety of turning traffic from Hardy's Road. Alternatively if tree removal or pruning is not possible that stop signs be installed on Hardy's Road.
- The Towong Shire Council installs a 50 KPH speed limit on Hardy's Road.

The Council Technical Services division review of the Traffic Impact Assessment Report submitted by the proponent has generated the following comments:

- Contrary to the proponents TIAR, the road conditions for that part of Hardy's Road that traverses through the rural living area is entirely inadequate to support heavy vehicles and domestic vehicles in an appropriate and safe manner.
- Hardy's Road traverses through the rural living area which is unsealed and will create considerable dust.
- A number of places in Hardy's Road are of insufficient width to cater for two way truck movements through the curves within Hardy's Road.
- A number of areas of Hardy's Road are located outside the Road Reserve.
- The intersection at the Murray Valley highway is inadequate to accommodate heavy vehicles associated with the quarry. Upgrading of turning lanes at the very least will be necessary.

- The sight lines for trucks on the highway west approach to the Hardy's Road intersection may not be adequate and are unlikely to comply with Austroads visibility criteria.
- Hardy's Road is not compliant with the delineation system in accordance with AS 1742.2.
- Parts of Hardy's Road are not fenced to exclude stock from the cartage route.

VicRoads in the S55 referral response identified the following deficiencies in the proposal:

- The Traffic Impact Assessment Report (TIAR) submitted with the application does not adequately address mitigating measures to ensure safe intersection site distance, especially for slow moving truck turning right onto Murray Valley Highway from Hardy's Road.
- The existing road widening at the Hardy's Road and Murray Valley Highway intersection does not currently meet a Basic Left Turn (BAL) or Basic Right Turn (BAR).
- Since initially responding to the application further investigation has been undertaken and therefore we request our conditions be updated as per below.

If a Permit is granted the following conditions must be included:

1. Prior to the commencement of the use the intersection of Hardy's Road and Murray Valley Highway, the following works must be completed to the satisfaction of and at no cost to the Roads Corporation:
 1. Basic Left Turn Treatment (BAL)
 2. Basic Right Turn treatment (BAR)
 3. Tree lopping/removal to improve Safe Intersection Sight Distance
 4. Vehicle activated advance truck warning sign on the western approach.

There is no question that traffic management measures well above those suggested by the proponents will be required as described above at the very least.

Proponent report in support of the Application

The report submitted in support of the application in a number of places quotes matters from the planning scheme but does not talk to those matters in a manner that describes how the proposal meets those requirements.

Further the report states that the quarry will not be able to be seen from Lake Hume or from dwellings nearby or beyond in Tallangatta township. An assessment of this indicates that many more places will be able to see the quarry albeit at several kilometres distance. The site can be seen from most lots contained in the Hardy's Road rural living subdivision. There may be some variation in degree.

It is also interesting to note in the proponents report the number of times reference is made to an existing quarry on the subject land. Similarly the proponent report refers to dwellings ancillary to agriculture within the vicinity and that the proposal will not have an effect on dwellings that are ancillary to agriculture. The concept of the potential for a dwelling to be ancillary to agriculture to current knowledge has only failed when tested at VCAT as such a dwelling would not require a permit and that has not been accepted. Furthermore there are no known provisions that would discriminate against dwellings that might be ancillary to agriculture and dwellings that are not.

The proponents report consistently refers to the Work Authority 1526 as presenting evidence of compliance with various planning matters drawn from the planning scheme. It is correct that some matters will have been considered under the work authority process in a manner adequate to have met matters raised under the planning scheme, it is also correct to conclude that some matters considered under the work authority process will overlap with matters to be considered under the planning process. However there are also many matters that must be addressed under planning requirements which stand alone and in theory have the capability of determining an outcome different to that obtained in the Work Authority process.

The proponents report appears to conclude that matters pertaining to the development which are the majority of issues to be addressed in respect to the Work Authority, take precedence over use considerations under the planning scheme. This is not to say that there are no development considerations under the planning scheme. The planning scheme application for permit process has at least equal standing to the Work Authority process in terms of the decision-making process overall and whether the quarry receives final approval. Approval of a draft Work Authority does not guarantee the grant of a planning permit.

The proponents report gives only cursory attention to the existence of the Rural Living Zone on Hardy's Road and entirely inadequately addresses the planning issues that are raised in respect to conflict between the two uses and the impact that the wider stone extraction activities might have on the rural residential amenity and environment and the potential impact that the rural living use and lifestyle expectations may have on the operation of the stone extraction activities. The report makes little reference to the economic diversification benefits from the nearby rural living area in context with the potential impacts of the stone extraction.

Overlay Provisions

Clause 44.06 Bushfire Management Overlay

The subject land is part covered by the Bushfire Management Overlay. The overlay requires that a permit be obtained to construct or carry out works associated with the nominated uses including industrial uses. Stone extraction is classified as an Earth and Energy Resources Industry.

Clause 44.06-2 refers to Clause 52.47 and provides that an application to construct or carry out works must meet requirements of Clause 52.47 unless a schedule to this overlay specifies different approved measures or additional alternative measures and decision guidelines to those set out in Clause 52.47. There is no schedule to Clause 44.06. Therefore Clause 52.47 applies.

If a decision is made to grant a permit then the following conditions must be included on the permit:

"The bushfire mitigation measures forming part of this permit or shown on the endorsed plans, including those relating to construction standards, defensible space, water supply and access, must be maintained to the satisfaction of the responsible authority on a continuing basis. This condition continues to have force and effect after the development authorised by this permit has been completed."

Clause 44.06-4 provides for referral of applications and requires that an application must be referred under S55 of the Act unless a schedule specifies otherwise. However the provisions of the Mineral Resources (Sustainable Development) Act 1990 in respect to referral applies and the referral undertaken in accord with the Work Authority process is deemed adequate with no further referral. The CFA were consulted as part of the Work Authority approval process.

Particular Provisions

Clause 52.08 EARTH AND ENERGY RESOURCES INDUSTRY

The purpose of Clause 52.08 is:

- *To encourage land to be used and developed for exploration and extraction of earth and energy resources in accordance with acceptable environmental standards.*
- *To ensure that mineral extraction, geothermal energy extraction, greenhouse gas sequestration and petroleum extraction are not prohibited land uses.*
- *To ensure that planning controls for the use and development of land for the exploration and extraction of earth and energy resources are consistent with other legislation governing these land uses.*

This report indicates that the proposed stone extraction use and development, largely consequent of its impacts on nearby land, does not adequately meet planning requirements that generally relate to the acceptable environmental amenity standards.

The planning controls being applied in this matter are consistent with other legislation affecting the proposal for stone extraction.

Clause 52.08-1 Permit Requirement

The issues of permit requirement in respect to Clause 52.08 have been addressed previously in this report.

Referral of applications under this Clause has also been addressed previously in this report.

Clause 52.09 Stone Extraction and Extractive Industry Interest Areas

The subject land is not within an Extractive Industry Interest Area.

The purpose of Clause 52.09 is:

- *To ensure that use and development of land for stone extraction does not adversely affect the environment or amenity of the area during or after extraction.*

This report clearly indicates that the proposed stone extraction use and development, consequent largely of the access and egress being through a Rural Living Zoned area, will adversely affect the environment and amenity of the rural living area. On balance the adverse effects on the environment and amenity of the area are considered to be of such significance and of such a nature that creates a clear conflict of uses that consideration may be given to a refusal of the planning application.

- *To ensure that excavated areas can be appropriately rehabilitated.*

The proponent's rehabilitation plan is subject to consideration and approval under the Work Authority.

- *To ensure that sand and stone resources, which may be required by the community for future use, are protected from inappropriate development.*

The best available advice at the present time suggests that the type of material to be extracted from the subject land is not unique to the site and indeed is relatively widely available in many other locations. Therefore there is no necessity to protect the resource for future use. Furthermore as a consequence of the resource been widely available there is no reason derived from conservation or scarcity of the resource to support a need to undertake the extractive industry at this location.

This Clause applies to the use and development of land for stone extraction and it also applies to the use and development of land within 500 metres of stone extraction.

Clause 52.09-3 provides application requirements and indicates the information that must accompany an application for planning permit. The applicant has provided the specified information including a copy of the Work Plan, a copy of the written notice of statutory endorsement and conditions specified under section 77 TD (3) all under the MRSD Act 1990.

VicRoads is the only S55 referral authority to be forwarded the application beyond the referrals undertaken in the Work Authority approval process.

Clause 52.09-5 establishes decision guidelines and provides that before deciding on an application responsible authority (as relevant) must consider:

- *The effect of the proposed stone extraction on any native flora and fauna on and near the land.*

A submission in objection referred to bird watching on the subject land and the alleged existence of a high number of native species. However the subject land is largely cleared of trees and the Department of Environment and Primary Industries have not raised conditions in respect to flora and fauna other than conditions relating to the removal of native vegetation.

- *The impact of the stone extraction operations on sites of cultural and historic significance, including any effects on Aboriginal places.*

Refer to earlier statements in this report in respect to aboriginal cultural heritage.

- *The effect of the stone extraction operation on the natural and cultural landscape of the surrounding land and the locality generally.*

This report has addressed the operation of the stone extraction on the natural landscape and its effects on landscape amenity associated with the rural living area based on Hardy's Road. In summary the proposal is in conflict with the rural living land use and development.

- *The ability of the stone extraction operation to contain any resultant industrial emissions within the boundaries of the subject land in accordance with the Regulations associated with the Mineral Resources (Sustainable Development) Act 1990 and other relevant regulations.*

Prima facie there are no reasons to believe that the stone extraction operation cannot contain industrial emissions within the boundaries of the subject land.

- *The effect of vehicular traffic, noise, blasting, dust and vibration on the amenity of the surrounding area.*

The effect of vehicle traffic, noise and dust will have the single most detrimental impact consequent of the proposed stone extraction use and development. The need for traffic from the stone extraction operation to traverse through the rural living area is of significant concern and is anticipated as producing a conflict of land use which is unlikely to be able to be ameliorated or remedied by conditions or actions which may be undertaken by the proponents. Given the significance of the rural living area and the effort which Council has expended in achieving the rezoning and the recent development in an effort to diversify the economy within the Tallangatta area and the anticipated impact whether perceived or real on the future of the rural living area, there is good justification to protect the rural living development from adverse amenity impacts.

- *The ability to rehabilitate the affected land to a form or for a use which is compatible with the natural systems or visual appearance of the surrounding area.*

It is unlikely that the finished area after stone extraction has been completed will be able to be converted to a beneficial use consequent of the nature of the site and the proposed works in extracting the stone.

- *The ability to rehabilitate the land so it can be used for a purpose or purposes beneficial to the community.*

It is unlikely that the finished area after stone extraction has been completed will be able to be completely rehabilitated consequent of the elevated nature of the site and the way the quarry will be cut into the hillside. The scar is likely to be seen from some distance and will be an enduring and unsightly feature of the landscape, impacting on the attractiveness of the nearby rural living area.

- *The effect of the proposed stone extraction on groundwater and quality and the impact on any affected water uses.*

Based on the responses by the referral authorities there is no reason to expect the proposal to adversely impact groundwater quality or other water uses.

- *The impact of the proposed stone extraction on surface drainage and surface water quality.*

The proposal includes upgrade of an existing dam on the property as a drainage retention facility and proposes to expand the size of the existing farm dam. Based on the information submitted and contained in the Work Authority there is no reason to suggest that the proposal will have an adverse impact on surface drainage or surface water quality.

- *Any proposed provisions, conditions or requirements in a work plan that has received statutory endorsement issued under the Mineral Resources (Sustainable Development) Act 1990.*

In this matter it is not so much the provisions, conditions or requirements in the work plan as the things that have been omitted or stated as not being required. Although it may not be a requirement for inclusion in the work plan, the draft approved work plan does not include a requirement for works to upgrade infrastructure external to the site to support the proposal, in particular the obvious need to upgrade Hardy's Road.

The work plan refers to undertaking works on the internal access road however the stated conditions appear to be silent in terms of controlling these works.

The draft work plan makes a clear statement in anticipation of traffic noise being generated as a consequence of heavy vehicle movements through Hardy's Road however the response is that it will simply comply with the appropriate criteria. There is no consideration or assessment as to what the impact might be in terms of noise levels even if they comply with appropriate criteria. Compliance with the generic criteria is assumed and that all relevant standards are met.

Generally the Works Plan does not adequately consider the offsite amenity and planning issues and generally focusses upon those issues within the works authority area.

Clause 52.09-7 Requirements for the use and development of land for Stone extraction

The planning scheme specifies certain requirements in relation to setbacks, screen planting and parking areas.

Boundary setback

Except with a permit, no alteration may be made to the natural condition or topography of the land within 20 metres of the boundary of the land. This does not apply to driveways, drains, bund walls or landscaping.

Screen planting

Shrubs and trees must be planted and maintained to screen activity on the site to the satisfaction of the responsible authority.

Parking areas

Parking areas must be provided for employees' cars and all vehicles used on the site to the satisfaction of the responsible authority.

Clause 52.47 Planning for Bushfire

The purpose of Clause 52.47 and is:

- *To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.*
- *To ensure that the development of land prioritises the protection of human life and strengthens community resilience to bushfire.*
- *To ensure that the location, design and construction of development appropriately responds to the bushfire hazard.*
- *To ensure development is only permitted where the risk to life, property and community infrastructure from bushfire can be reduced to an acceptable level.*
- *To specify location, design and construction measures for a single dwelling that reduces the bushfire risk to life and property to an acceptable level.*

In the context of this proposal for stone extraction the risks from Bushfire are considered minimal. The subject land is largely open cleared land although bush land exists at a distance either side of the proposal site. The principal access and egress is from and to the north however the land to the north is largely cleared farmland.

There is no proposal for a dwelling as part of the development.

Clause 52.47-2 is applicable to the application and provides that the provisions of this Clause contain:

- **Objectives.** *An objective describes the outcome that must be achieved in a completed development.*
- **Approved measures (AM).** *An approved measure meets the objective.*
- **Alternative measures (AltM).** *An alternative measure may be considered where the responsible authority is satisfied that the objective can be met. The responsible authority may consider other unspecified alternative measures.*
- **Decision guidelines.** *The decision guidelines set out the matters that the responsible authority must consider before deciding on an application, including whether any proposed alternative measure is appropriate.*

Application requirements

Unless a schedule to Clause 44.06 – Bushfire Management Overlay specifies a different requirement, an application must be accompanied by:

- A **bushfire hazard site assessment** including a plan that describes the bushfire hazard within 150 metres of the proposed development. The description of the hazard must be prepared in accordance with Sections 2.2.3 to 2.2.5 of AS3959:2009 Construction of buildings in bushfire prone areas (Standards Australia) excluding paragraph (a) of section 2.2.3.2. Photographs or other techniques may be used to assist in describing the bushfire hazard.
- A **bushfire hazard landscape assessment** including a plan that describes the bushfire hazard of the general locality more than 150 metres from the site. Photographs or other techniques may be used to assist in describing the bushfire hazard. This requirement does not apply to a dwelling that includes all of the approved measures specified in Clause 52.47-1.
- A **bushfire management statement** describing how the proposed development responds to the requirements in this Clause and Clause 44.06. If the application proposes an alternative measure, the bushfire management statement must explain how the alternative measure meets the relevant objective.

If in the opinion of the responsible authority any part of these requirements is not relevant to the assessment of an application, the responsible authority may waive, vary or reduce the requirement.

The applicants have not provided a Bushfire Hazard Site Assessment, a Bushfire Hazard Landscape Assessment or a Bushfire Management Statement with the application for planning permit. However the application for Work Authority was referred to the CFA and furthermore the Work Plan refers to dealing with Bushfire issues. The CFA have placed a condition on the Work Plan.

The principal purpose of the Bushfire provisions is to protect life and property. The controls have principally been placed to deal with residential issues where people are permanently resident in a location with Bushfire risk.

This application relates to the establishment of a quarry which will result in bared earth for almost the entire application site and the proposal is that people will only be at the site generally during working hours.

The application cannot be formally referred to the CFA again given the referral requirements associated with the Work Authority process and the MRSD Act 1990

relationship with the P and E Act 1987 and the limitation on subsequent referral other than to VicRoads.

Therefore under the circumstances the requirement for submitting a Bushfire Hazard Site Assessment, a Bushfire Hazard Landscape Assessment or a Bushfire Management Statement should be waived in accordance with Clause 52.47-2 provisions.

Clause 65.01 – Decision Guidelines

It is noted that as provided under Clause 65.01 although a permit can be granted this does not imply that a permit should or will be granted. The responsible authority must decide whether the proposal will produce acceptable outcomes in terms of the Decision Guidelines of Clause 65.01. In making a determination on this application, Council must consider, (as appropriate):

- *The matters set out in Section 60 of the Act.*

The relevant matters set out in Section 60 of the Act have been addressed previously in this report.

- *The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.*

The SPPF, LPPF, MSS and local policies have been considered previously in this report.

- *The purpose of the zone, overlay or other provision.*

The purpose of the zone, overlay or other provisions have been addressed previously in this report.

- *The orderly planning of the area.*

This report throughout raises issues of orderly planning for the area generally and takes account of various policy objectives with particular reference to the rural living land based on Hardy's Road area and the conflict between this use and the consequential activities on Hardy's Road through the heavy vehicle movements.

- *The effect on the amenity of the area.*

This report considers at length those issues pertaining to amenity of the area with particular reference to the rural living area based on Hardy's Road and the conflict in land use consequent of quarry traffic that will traverse the rural living area. This report suggests that the impacts on the amenity of the rural residential area create a conflict of land use sufficient to warrant a refusal of the proposed stone extraction use and development.

- *The proximity of the land to any public land.*

The site has a corner connection to crown land located to the south east.

- *Factors likely to cause or contribute to land degradation, salinity or reduce water quality.*

The issues associated with land degradation, salinity and water quality have been dealt with by the appropriate authorities as a part of the Work Authority approval process.

- *Whether the proposed development is designed to maintain or improve the quality of stormwater within and exiting the site.*

The issues associated with stormwater quality have been dealt with by the appropriate authorities as part of the Work Authority approval process.

- *The extent and character of native vegetation and the likelihood of its destruction.*

The issues of native vegetation removal have been addressed by the relevant authorities as part of the Work Authority approval process.

- *Whether native vegetation is to be or can be protected, planted or allowed to regenerate.*

Offset planting has been required as part of the approval of native vegetation removal under the Work Authority approval process.

- *The degree of flood, erosion or fire hazard associated with the location of the land and the use, development or management of the land so as to minimise any such hazard.*

The subject land is not in a flood area and is not anticipated to be subject to erosion. There is no particularly identified fire hazard associated with the location beyond part coverage of the BMO.

CONCLUSION:

On the basis that the evidence shows that there is an irreconcilable conflict between rural residential use based on Hardy's Road and the stone extraction use and given the amount of strategic planning work that Council has undertaken to establish the Rural Living Zone, then there is justification for refusal of the application for stone extraction.

However if the two uses are not mutually exclusive and those matters of adverse impact by the proposed stone extraction use and development upon the rural residential use and development can be ameliorated or adequately diminished through the use and application of conditions of permit then Council may be obliged to grant a permit with those conditions. In this case there seems little likelihood that granting a permit with conditions will adequately diminish the adverse amenity impacts to a level that will ensure the continuation of development within the Hardy's Road rural living area. In these matters perception is as much reality as reality itself and people seeking rural living environments are very particular about their amenity. It is one of the principal reasons for choosing a rural living lifestyle.

Contrary to the numerous mentions of an existing quarry in the reports supporting the application, there is no existing use right associated with stone extraction on the subject land.

At no place in the applicant submissions is there a reference to any form of substantive upgrade of Hardy's Road. The information provided in support of the application clearly infers that the development can proceed with no material works being undertaken on Hardy's Road. It would seem that the proposal is not envisaged as generating impacts on the road or on adjacent properties. This report considers that significant upgrades will be required if Hardy's Road is to be capable of carrying the additional heavy vehicles generated by the stone extraction activities. The reports submitted with the application suggest that a speed limit should be imposed on Hardy's Road of 50KMH and that will solve safety and amenity impacts.

The proposal describes anticipated increases in traffic but concludes that such increases are insignificant and will have no material detriment. The assessing officer considers that a significant adverse effect on the amenity of the rural living area located on Hardy's Road will be incurred and that heavy vehicle quarry traffic will adversely impact on amenity and public safety in the Hardy's Road rural living area.

Clearly VicRoads support the Council technical services division views in respect to road and intersection upgrade requirements. VicRoads are of such concern that they consider that there is a need for installation of warning devices at the intersection of the Murray Valley highway and Hardy's Road if the proposal is to proceed.

Generally throughout the report submitted in support of the application there is a lack of attention to responses to the provisions of the planning scheme, particularly in respect to the LPPF and MSS. Many matters throughout the planning scheme are raised or nominated as relevant provisions to be addressed only to be met with a response that makes a generic statement that the proposal is compliant but without justification or reason provided.

The report in support of the application is also scant in its recognition of the existence of the Rural Living Zone based around Hardy's Road and as a consequence therefore is inadequate in addressing the relevant parts of the SPPF, LPPF and MSS.

The traffic impact assessment report submitted by the proponent is also scant in addressing the Traffic relationships between the proposed use and development and the existing Rural Living Zone area.

The report submitted in support of the application fails to give any discussion in respect to economic issues and in particular the matters raised in the planning scheme in relation to economic diversification and long term benefits to local community and more broadly to overall net community benefit.

The information submitted with the application did not include matters required to be provided in accordance with the Bushfire planning provisions however these matters can be waived as requirements subject to a Council decision accordingly. Bushfire issues were considered as part of the Work Authority process and the CFA were a referral authority for the Work Authority process. Council would not have been in a position to refer the additional bushfire requirements to the CFA under S55 in any event. In this case it is considered appropriate to waive the requirements as provided for under the planning scheme.

There are many things in this application that suggest a substantial conflict between the proposed stone extraction use and development and the existing rural living development. Not least of which is raised in terms of fair and orderly planning and planning in the best interests of all Victorians. In this case, the weight of evidence favours supporting the Rural Living Zone use and development.

In this case considerable effort has been placed into generating a rural living development based on Hardy's Road and there is clear evidence to support a view that development of a stone extraction activity will have a substantial adverse impact both in reality and perception.

Indeed in this case most conditions that might be applied could only go part way to maintaining the existing levels of amenity. The measures most likely to maintain some of the amenity would require operations or inclusions within dwellings for soundproofing and perhaps dust proofing which would add cost to the dwelling with no burden imposed upon the stone extraction enterprise which is the source of the required additional works. That surely does not provide for a fair planning outcome in these circumstances. Furthermore the purpose of living in a rural living estate is for open areas and outdoor living. There are few measures that can be taken to

ameliorate the impacts on outdoor living. Therefore in this context there is at least to some extent a mutual exclusivity between the two uses.

The Rural Living Zone is consistent with the planning scheme and development within the zone has a 'fairness and orderly planning right to continue and to generally expect the levels of amenity originally anticipated and currently enjoyed. The Rural Living Zone is also supported by the Hume Regional Growth Plan.

The Planning Scheme and the Hume Regional Growth Plan provide that a consistent approach to planning for rural residential use is needed to ensure the location of these uses considers regional assets, such as agricultural land and natural resources, sustainable settlement patterns (including the cost of providing and maintaining services and infrastructure) and natural hazards, such as bushfire and flood. Sufficient areas of appropriately zoned land should be provided in strategic locations to help reduce development pressure on agricultural areas and accommodate a range of lot sizes.

The Hardy's Road area is one such location that has been put through a rigorous process including an Independent Panel as part of the planning scheme amendment process and determined as most appropriate for rural living. The proposed stone extraction use and development will have a significant adverse impact upon this rural living area. Given the history and work undertaken to create the Hardy's Road rural living area there is good strategic and statutory planning justification to seek to protect it.

The stone resource is not included in an Extractive Industry Area of Interest.

In terms of relevant overall planning considerations and in context with this the planning scheme, there is about 1% of the shire that is zoned and suitable for rural living use whereas the type of resource material being sought under the proposal is widely found in many other areas.

It is therefore concluded that on the basis of merit under the provisions of the Planning and Environment Act 1987, the Mineral Resources (Sustainable Development) Act 1990 and the Towong Planning Scheme the application for planning permit for stone extraction on the subject land should be refused.

RECOMMENDATION:

THAT THE REQUIREMENT FOR SUBMITTING A BUSHFIRE HAZARD SITE ASSESSMENT, A BUSHFIRE HAZARD LANDSCAPE ASSESSMENT AND A BUSHFIRE MANAGEMENT STATEMENT BE WAIVED IN ACCORDANCE WITH CLAUSE 52.47-2 AND THAT COUNCIL HAVING CAUSED NOTICE OF PLANNING APPLICATION NO. 2014/049 TO BE GIVEN UNDER SECTION 52 OF THE PLANNING AND ENVIRONMENT ACT 1987 AND HAVING CONSIDERED ALL THE MATTERS REQUIRED UNDER SECTION 60 OF THE PLANNING AND ENVIRONMENT ACT 1987 DECIDES TO ISSUE A NOTICE OF REFUSAL TO GRANT A PERMIT UNDER THE RELEVANT PROVISIONS OF THE TOWONG PLANNING SCHEME IN RESPECT TO THE LAND KNOWN AND DESCRIBED AS CA 25, SECTION 12, PARISH OF TANGAMBALANGA (TP319088), FOR THE USE AND DEVELOPMENT OF THE LAND FOR THE PURPOSES OF AN EARTH AND ENERGY RESOURCES INDUSTRY- STONE EXTRACTION FOR THE FOLLOWING REASONS:

- 1. THE PROPOSED STONE EXTRACTION USE AND DEVELOPMENT ON THE SUBJECT LAND IS INCONSISTENT WITH THE PROVISIONS OF THE SPPF, LPPF, MSS AND LOCAL POLICY.**
- 2. THE STONE EXTRACTION USE AND DEVELOPMENT PROPOSAL AS SUBMITTED INADEQUATELY CONSIDERS ACCESS AND EGRESS TO THE SUBJECT LAND.**
- 3. THE STONE EXTRACTION USE AND DEVELOPMENT PROPOSAL WILL RESULT IN UNREASONABLE ADVERSE AMENITY EFFECTS ON NEARBY LAND.**
- 4. THE STONE EXTRACTION USE AND DEVELOPMENT PROPOSAL WILL RESULT IN UNACCEPTABLE ADVERSE IMPACTS ON SAFETY WITHIN THE RURAL LIVING ZONE LAND BASED AROUND HARDY'S ROAD.**
- 5. THERE IS INADEQUATE NET COMMUNITY BENEFIT DERIVED FROM THE PROPOSED STONE EXTRACTION USE AND DEVELOPMENT WHEN COMPARED TO THE POTENTIAL NET COMMUNITY BENEFIT FROM THE HARDY'S ROAD RURAL LIVING AREA.**
- 6. THE PROPOSED STONE EXTRACTION USE AND DEVELOPMENT WILL HAVE AN ADVERSE IMPACT UPON THE ECONOMIC DIVERSIFICATION AND POPULATION GROWTH OPPORTUNITIES PRESENTED BY THE RURAL RESIDENTIAL ZONE BASED ON HARDY'S ROAD.**
- 7. THE PROPOSAL AS SUBMITTED WILL PLACE A SIGNIFICANT ADDITIONAL FINANCIAL BURDEN ON COUNCIL, PARTICULARLY IN RELATION TO INFRASTRUCTURE IMPROVEMENTS AND MAINTENANCE.**