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Statement of Facts and Contentions

COURT DETAILS

Court	Land and Environment Court of NSW
Division	Class 1
Registry	Land and Environment Court Sydney
Case number	2025/00021165

TITLE OF PROCEEDINGS

First Applicant	Save Balickera Incorporated
First Respondent	The Independent Planning Commission of NSW
Second Respondent	Australian Resource Development Group Pty Limited

FILING DETAILS

Filed for	Save Balickera Incorporated,Applicant 1
Legal representative	ANNA JANE KERR
Legal representative reference	
Telephone	
Your reference	AK:Stone Ridge

ATTACHMENT DETAILS

In accordance with Part 3 of the UCPR, this coversheet confirms that both the Lodge Document, along with any other documents listed below, were filed by the Court.

Statement of Facts and Contentions (SoFaC 7 March FINAL.pdf)

[attach.]

Form A (version 2)
#UCPR [enter UCPR rule] #LECR [enter LECR rule]

Statement of Facts and Contentions

COURT DETAILS	
Court	Land and Environment Court of New South Wales
Class	1
Case number	25/21165

TITLE OF PROCEEDINGS	
Applicant	Save Balickera Incorporated
First respondent	Independent Planning Commission ('IPC')
Second respondent	Australian Resource Development Group Pty Ltd ('ARDG')

FILING DETAILS	
Filed for	Applicant
Legal representative	Anna Kerr, Solicitor
Legal representative reference	Stone Ridge
Contact name and telephone	Anna Kerr 0402 467476
Contact email	kerrsolicitor@proton.me

PART A FACTS

The Development

1 The proposed Stone Ridge Quarry ('the Project') is a State Significant Development (SSD 10432) in Wallaroo State Forest at Balickera in the Port Stephens Hinterland ('the Site').

2 The Site encompasses approximately 139 hectares within Wallaroo State Forest and involves clearing almost 70 hectares of native vegetation, impacting threatened fauna species including koalas, squirrel gliders and brushtail phasogales.

3 The proposed quarry is on land adjoining the Balickera Canal, within the drinking water catchment for Grahamstown Dam, the Hunter region's largest drinking water reservoir.

4 The Site is located on Italia Road, Balickera directly across the road from Boral's existing Seaham Quarry in respect to which there is a current SSD application to deepen, expand and extend its operations. There is also another SSD application recently approved (but on appeal by the developer) for Eagleton Quarry, which is on land adjoining Seaham Quarry.

5 All three developments propose to rely on the at grade intersection of Italia Road and the Pacific Highway.

Approval Details

6 During the public exhibition period the Department of Planning received 162 submissions, of which 139 objected to the submission. As there were more than 50 unique public submissions, the matter was referred to the First Respondent as the declared consent authority under section 4.5(a) pf the EP&A Act and section 2.7(1) pf the Planning Systems SEPP.

7 Following a public meeting on 14 November 2024, the First Respondent made a decision on 16 December 2024 to grant the Second Respondent development consent for 30 years, with conditions.

8 The development has been assessed as a controlled action under the *Environment Protection and Biodiversity Conservation Act* 1999 ('EPBC Act') and must be assessed under the bilateral agreement between the Commonwealth and State Governments.

Objector Status

9 Save Balickera Inc. appeals the decision as an objector, having submitted a letter of objection dated 13 July 2023 through the Department of Planning Portal during the exhibition period. Save Balickera Inc. also submitted further objections to the First Respondent in person at the public meeting and in writing dated 21 November 2024.

PART B CONTENTIONS

These contentions fall under 2 headings that should require or cause the Court to refuse this development application:

A. Negative Impacts on Biodiversity Conservation

B. Failure to comply with Zone Objectives

A. NEGATIVE IMPACTS ON BIODIVERSITY CONSERVATION

Cumulative Impacts on Biodiversity Conservation

1 The BDAR report provided in the Stone Ridge EIS has inadequately assessed the impacts on biodiversity. The cumulative impacts of the development will be significantly greater than those suggested in the BDAR and development consent should be refused because of those impacts.

Particulars

2 The Stone Ridge Quarry proposal is one of ten hard rock quarries either approved or proposed in a concentrated area, centred on a locality including Balickera, Karuah, Seaham, Eagleton, Limeburners Creek, Booral and Martins Creek. The 'Cumulative Impact Assessment Guidelines for State Significant Projects' (DPIE, 2022) are part of the NSW Government Rapid Assessment Framework introduced in 2021, aimed at improving the assessment of state significant projects in NSW. The Stone Ridge Quarry EIS makes a very limited cumulative assessment including nearby Eagleton and Boral Seaham Quarries and the statutory BDAR makes no cumulative assessment.

3 A proper and full assessment of the impacts of each proposal requires an assessment of existing and accumulating impacts in the local area so that a precise baseline is established. This is especially important with regard to the cumulative high number of daily truck movements and the cumulative impact of these on koalas and other native wildlife via roadkill and vehicle strike. Only then may the BC

Act hierarchy of avoid, minimise and offset be properly and effectively applied to impacts.

4 If all ten quarry proposals were considered together as a cumulative proposition for the local area and the same hierarchy of avoid, minimise and offset be applied it is likely that greenfield quarry proposals like that of Stone Ridge would likely be rejected in favour of proposals where quarries are sited on degraded cleared land and are therefore genuinely avoiding biodiversity impacts. Such planning outcomes would be consistent with the proposed reforms to the BC Act.

5 No cumulative impact assessment has been undertaken by the proponent, under the Cumulative Impact Assessment Guidelines for State Significant Projects (DPIE, 2022). 68.02ha of native vegetation is to be cleared within Wallaroo State Forest in the greenfield Stony Ridge Quarry proposal compared to 32.03 ha in the greenfield Eagleton Quarry Project (approved) and 26.74 hectares of native vegetation in the (existing quarry) Boral Seaham proposal. This comparatively high level of native vegetation and habitat loss within public land in the Stone Ridge Quarry proposal is unacceptable and warrants rejection on that basis alone so that such a loss can be avoided. Avoidance of loss has been established as paramount under NSW case law.

Failure to adequately avoid and minimise harm to Bat Populations

6 The Stone Ridge Quarry blasting impacts on the resident threatened microchiropteran bat populations in the Balickera canal have not been properly assessed and nor has an impact assessment been undertaken in consideration of the cumulative blasting impacts of the nearby Boral Seaham and Eagleton Quarries.

Particulars

7 The Stone Ridge Quarry BDAR relies on a blasting subconsultant analysis who is not an ecologist and uses a blasting vibration threshold obtained from a 2015 Western Australian bat study. There is no evidence that this study is at all relevant to the species present in Balickera canal.

8 The blasting consultant report points to the anecdotal observed tolerance of blasting by native species such as kangaroos as evidence that blasting is tolerated by native wildlife. However, bat species are known to be sensitive to both noise and vibration and this includes the three species of micro bat recorded in Balickera canal with Southern Myotis known to abandon pups due to stress associated with noise and vibrations.

9 The establishment of a monitoring program is mentioned so that any impacts can be found and then mitigated.

A. There is no evidence that the impacts can be mitigated in any meaningful way if the development is to be carried out.

B. The details of any theoretical monitoring program should be detailed within the BDAR given its importance to mitigate impacts on bat species present in Balickera canal. It is essential to know that the canal entrances are monitored in real time so that work can be stopped immediately should micro bats be observed leaving the canal roost in large numbers during the day or in response to a quarry associated activity.

10 Given blasting occurs in the nearby Boral Seaham Quarry monitoring of the effects of blasting on micro bat species using Balickera canal could have already begun and informed the BDAR with relevant study data rather than relying on assumptions, supposition and broad comparisons. This would have allowed a baseline of vibration and noise from both blasting and truck passage to be established and a quantification of what is already tolerated by the resident micro bat populations and an understanding of their behavioural changes or response to blasting and vibration regimes via thermal cameras placed within the canal. Given that blasting activities associated with the Stone Ridge proposal may overlap with the adjacent Boral's Seaham Quarry and proposed Eagleton's Quarry the existing baseline vibration and noise in Balickera canal needs to be quantified as does the cumulative impacts of all three quarries.

11 While the Stone Ridge Quarry BDAR and Blasting sub-report recommend that ongoing liaison and interaction between quarries is developed to avoid the possibility of concurrent blasts. This should not be left up to the respective quarries to voluntarily develop and implement on their own. This needs to be overseen by an independent body and the agreement between the quarries negotiated prior to approvals (and later set out in the conditions of approval if approved) for quarries so that there is an acceptable level of certainty with regard to how these impacts will be managed given the potential catastrophic outcome for resident threatened micro bat species.

12 Balickera canal is a significant location for microchiropteran bats, with three of the species roosting there listed as 'Vulnerable' under the NSW Biodiversity Conservation Act 2016 (BC Act). It is home to one of the most substantial roost sites in NSW for the Little Bent-winged Bat (Miniopterus australis). It also supports 2% of the Southern Myotis (Myotis macropus) population, providing roosting and

breeding habitat and is also used by the Large Bent-winged Bat (Miniopterus orianae oceanensis) (ELA 2021).

13 The lack of detail as to how the risks to the three Vulnerable micro bat species roosting in Balickera canal will be managed creates uncertainty such that the risk is unacceptable. This is because the potential outcome for these micro bat species is so catastrophic. For the breeding population of threatened Southern Myotis this risk is the abandonment of a generation of young and the abandonment of a breeding roost or being forced to find another breeding roost that may or may not be within the environmental parameters of a breeding roost and the possible loss of another generation of young. Abandonment of roost by adults during daytime would be a catastrophic event.

14 For the threatened species Little Bent-winged Bat and Large Bent-winged Bat, for which the canal represents roost habitat only, there is the risk of roost abandonment. Should this occur during daylight it would be potentially catastrophic for these populations. Roost abandonment at night would be slightly less catastrophic however these populations would be forced to find another roost that meets their highly specific roost requirements. The level of uncertainty regarding impacts and mitigation strategies warrants the application of the precautionary principle especially so as the worst-case outcomes for these populations are so catastrophic.

Serious and irreversible impacts on Koala Population

15 The Stone Ridge Quarry impacts on the endangered Koala via the projected truck movements on the M1 Pacific Highway haulage route have not been assessed.

Particulars

16 An impact assessment has not been undertaken in consideration of the cumulative impacts of all nearby quarry and urban expansion projects (both current and planned) with respect to the BC Act (2017) and the EPBC Act (1999). This oversight is likely to result in long-term irreversible effects on the local koala population. [see s 6.15 of the Biodiversity Conservation Act 2016].

17 Mortality by vehicle strike is a significant threat to Koalas and is particularly prevalent along transportation routes which occur in proximity to Koala habitat (DAWE 2022). While the Eagleton Quarry and Boral Seaham Quarry are stated as considered in cumulative traffic assessment reports these are with respect to traffic planning and not biodiversity impacts.

18 In 2020, the NSW Government DPIE estimated 3500 koalas were killed by vehicles on NSW roads between 1980 and 2018, and that Port Stephens was among four LGA's with the highest number of koalas killed on roads during Spring season. These numbers killed are likely an underestimate because many koalas injured or killed by vehicles are unlikely to be reported. Given the controversy in the local community around some of these quarry developments it is unlikely that quarry truck drivers would report any Koala road kills.

19 An analysis of Bionet Koala records over the proposed haulage route for Stone Ridge, Eagleton and Boral Quarries (Italia Road to Southern Karuah exit) extended to the northern Karuah exit on the M1 Pacific Highway so that the hard rock quarries located there are also included shows twenty-four Koala road kills at five relevant clusters.

20 The cumulative impacts of the ten new or expanding quarries in the Lower Hunter are estimated to generate up to 5000 truck movements per day on the rural roads leading to and including the Pacific Highway between Raymond Terrace and Karuah (HCEC 2024). This must be considered within the context of continually increasing traffic volumes.

21 MidCoast and Port Stephens Councils together with NSW and Federal MPs have acknowledged the need for the intersections at Bucketts Way and Medowie Road to be upgraded to interchanges so that safety concerns at current traffic levels are addressed but also to cater for future (non-quarry) regional development. These intersections, as they currently are, represent a significant risk for Koala vehicle strike as evidenced by the roadkill clusters.

22 The haulage route as proposed by Stone Ridge Quarry and used by other quarries is not fit for purpose, never designed for this volume of truck movements, with the current Medowie Road, Bucketts Way and Italia Road intersections unsuitable and dangerous for the current level of road users and wildlife. Both the northern and southern Karuah interchanges are old infrastructure and also unfit for the purpose of high-volume industrial quarry truck movements together with urban residential traffic and holiday traffic.

23 The wildlife exclusion fencing at these Tarean Road interchanges is old, dilapidated in places and is incomplete along the haulage route proposed.

24 The Stone Ridge Quarry BDAR uses the 2002 Port Stephens Council CKPoM koala habitat mapping which is considered outdated data. Most of the proposed Stone Ridge Quarry site (and that of the Port Stephens LGA west of the M1 Pacific

Highway) is mapped as Marginal Habitat with some smaller patches of Preferred Koala Habitat by this mapping. However, the canopy tree species recorded on the proposed quarry site include seven known Koala feed trees including the primary Koala feed tree species Forest Red Gum (*Eucalyptus tereticornis*).

25 Just across Italia Road, Boral found twenty four out of thirty-one sites surveyed by Koala detection dog showed evidence of Koalas. The NSW Department of Planning, Industry and Environment (DPIE 2019) Koala Habitat Suitability Model mapping undertaken as part of the NSW Koala Strategy shows the Stone Ridge Quarry site as having mid to high Koala Habitat probability. Validation of this dataset in the Northern Rivers region of NSW by Dr Jo Green found it to have a high level of accuracy. The NSW Koala Habitat Information Database resource offers the best available spatial data on koala distribution, koala preferred trees and koala sightings for NSW. A BDAR is expected under law to use the best available datasets.

26 Just across Italia Road, Boral found twenty four out of thirty-one sites surveyed by Koala detection dog showed evidence of Koalas. In 2023 Dr Ryan Witt (wildlife conservation scientist) undertook a thermal drone survey of Wallaroo SF and detected a low-density koala population. Dr Witt has also undertaken broader thermal drone surveys across the Port Stephens LGA and these surveys show for the entire landscape to the west of the highway a low-density Koala population is present. Dr Witt has also evaluated the health of a nearby, but connected population, and it showed a high level of chlamydia. This is a stressor on this population of Koalas and is often symptomatic of other environmental stresses koalas are experiencing such as habitat loss.

27 The long-term viability of Koala populations can be particularly sensitive to slight changes in mortality rates. For example, Phillips et al. (2007) concluded, based on a population viability analysis, that a small increase in the mortality rate of 2–3 % (as a function of total population size) from road mortality would lead to population decline in an otherwise demographically stable Koala population in south-eastern Queensland.

28 For the low-density population of Koalas occurring west of the M1 Pacific Highway (and the likely low-density population occurring within 6 kilometres east of the M1 Pacific Highway from Karuah to Raymond Terrace) just one or two Koala mortalities from vehicle strike per year may lead to a population decline. Where the Koala impacted is a female this may have an even more profound effect on the viability of a population, disrupting the breeding cycle of a population.

29 Mature males are increasingly at risk as they have larger home ranges and increased mobility during the breeding season. Young males typically disperse more frequently and over larger distances than their female counterparts and the removal of subadult males by vehicle strike has the potential to critically disrupt geneflow.

30 Preece (2007), who modelled threats to koalas in SE Queensland, concluded that urban koala populations will not be able to withstand the high rates of anthropogenic mortality, such as roadkill, in addition to natural mortality with the result being localised extinctions. If a koala population is already under severe stress, then the addition of extra major stressors (e.g. clearing of habitat for multiple quarry developments, corridor/movement routes disrupted and elevated vehicle strike arising from increased truck movements) may significantly contribute to the catastrophic decline of that local population.

31 The Stone Ridge Quarry BDAR stated that no koala breeding activity has been observed within the quarry Development Footprint and it is therefore considered that the Project is not likely to disrupt the breeding cycle of a population of this species. However, it is not known if Koalas breed within the project area and disturbance footprint. They certainly do in the broader area from Raymond Terrace to Karuah either side of the M1 Pacific Highway as female Koalas with joeys have been recorded. This area alongside the proposed haulage route will be impacted by increased truck movements both from the Stone Ridge Quarry proposal but also the cumulative truck movements of all quarries in this area and likely to increase the incidence of Koala roadkill. This has the potential to disrupt the breeding cycle of this population of Endangered koala. This has not been evaluated nor the impact of increased vehicle strike for the Koala along the haulage route (including Italia Road and M1) in the EPBC referral regarding the Commonwealth MNES significant impact on the Koala prepared by the Stone Ridge Quarry consultants. In this respect the Stone Ridge Quarry EPBC referral is flawed and incomplete.

32 Koalas are an endangered species in Australia, with vehicle strike a key threatening process and one that can quickly disrupt a low-density population. Koala populations are not only affected directly by vehicle strike, but also by the fragmentation effect that roads have on habitat. Roads can have a significant barrier effect for wildlife, resulting in increased fragmentation of both habitat and populations. Habitat fragmentation forces koalas to travel more frequently to sustain themselves, therefore increasing the risks of vehicle strike or dog attack while on the ground. It is imperative that regional wildlife movement solutions, around and

across roads, are appropriately planned and implemented ahead of time (i.e., during initial construction/developmental expansion), if they are to serve as effective mitigation for remaining local koala populations.

33 The Stone Ridge Quarry BDAR and EIS contain no such mitigation strategies for vehicle strike and habitat fragmentation impacts arising from their proposal as well as cumulative impacts. The Stone Ridge BDAR provides only the following mitigation strategy for koala vehicle strike on Italia Road: *the implementation of a driver code of conduct which will include a reduced speed limit for trucks travelling to and from the quarry and limitation of hours of operation to daylight hours*. This should be regarded as completely inadequate and not a genuine mitigation strategy.

34 The current understanding of the Port Stephens Koala population is that there are two different population types:

Eastern – An urbanised population utilising wetland-based habitats with smaller home ranges.

Western – Utilising forest and open woodland habitats with larger home ranges.

Port Stephens Koala Population represents an Area of Regional Koala Significance (ARKS) under NSW Koala Strategy.

The following threats to this population have been identified as increasing: bushfire, disease, vehicle strike, habitat removal and modification. Significant population declines have been reported by scientists and carers. It is also understood that local offsets & appropriate mitigation are critical for local populations.

35 The $1.5 million Koala Vehicle Strike Mitigation Project, funded by and delivered in partnership with the NSW Koala Strategy aims to reduce Koala fatalities along one of the worst Koala vehicle-strike locations in NSW (Port Stephens Drive), whilst maintaining or improving connectivity. This project has delivered:

- 4 km of Koala-proof fencing
- 850m of retrofitted Koala-proof fencing to existing fencing
- 1 x 20m Koala underpass
- 3 x Koala grids
- Koala escape structures

36 Any approval of this application should at least be conditional i) on provision of a fauna underpass and fauna fencing to direct the fauna into it and away from quarry activity and ii) funding of a wildlife rescue service for the area.

37 For the low-density Western Port Stephens Koala population it is essential that both the individual and cumulative impacts of the multiple quarry developments are clearly quantified especially those of habitat loss, connectivity loss and increased vehicle strike risk as there is a serious risk of further declines, local population collapse and extinction. The Stone Ridge Quarry proposal avoids none of these impacts and the mitigations offered are severely lacking, in part no doubt due to the proposal impacts on the koala population not being fully assessed and that a cumulative impact assessment is lacking.

38 The proposal is not in alignment and consistent with the Port Stephens Council Koala projects currently underway, the NSW Koala Strategy and broader assessments to understand Koala movements and corridors.

39 The Stone Ridge proposal has undertaken no broader analysis or study to understand Koala movements in the local area. Habitat loss of 68.02 hectares and impacts on connectivity arising from the Stone Ridge proposal together with cumulative impacts arising from other quarry and urban development proposals have not been assessed with regard to the potential for the project to further impede gene flow from Koalas south of Italia Road to the Kings Hill population and the impact that this is likely to have into the future.

40 The primary connection for the King Hill Koala population is the land bridge over the Balickera Canal. Koalas moving Northeast and south west across habitat either side of Italia Road will be forced to move in habitat closer to the M1 Pacific Highway due to the location of the proposed Stone Ridge Quarry. Cumulative and direct impacts on the Western Koala population are potentially significant. The Stone Ridge proposal should thoroughly evaluate the broader impacts on the region's biodiversity, especially as other developments are currently under assessment. Consideration of the proposed footprint and cumulative effects on the region's biodiversity is essential. Cumulative and direct impacts on the Koala population could be substantial.

General negative impacts on Biodiversity

41 The Stone Ridge proposal is within State Forest, an area of climate refugia which presently hosts habitat for threatened species including the Koala, Squirrel Glider and Brush-tailed Phascogale.

Particulars

42 With a direct impact footprint of 68.2 hectares this will reduce bushland connectivity in both an identified Regional Biodiversity Corridor, and an area of three overlapping Climate Corridors mapped as essential to the survival of threatened species to escape the effects of climate change.

43 The Stone Ridge proposal will increase disturbance impacts and increase pinch points along the Balickera Tunnel land bridge. This is detrimental to the movement of a wide range of fauna including threatened species such as the Koala, Brush-tailed Phascogale and Squirrel Glider. Appropriate mitigation measures such as: the construction of a new section of land bridge over the Balickera Canal to facilitate fauna movement (particularly to the south-east of the tunnel portal), Fauna underpass at Italia Road, Glider bridges or poles, signage and road markings for koala crossings to enhance driver awareness and mitigate impacts and an enforceable lower speed limit on Italia Road have not been provided in the Stone Ridge proposal.

44 Wallaroo State Forest was last logged in 1986 and is increasing in structural diversity and habitat value year by year for a suite of species including the threatened Koala, Brush-tailed Phascogale and Squirrel Glider recorded on site. It also provides habitat for a substantial population of the threatened Rustyhood orchid. Wallaroo State Forest provides important habitat as well as ecosystem services such as clean water and carbon storage which are vital in a climate crisis.

45 The location of the proposed Stone Ridge quarry means that there will be a large hole of approximately 650m wide by 1200m long within a corridor of approximately 2500 width along the western side of the M1 Pacific Highway. This significantly comprises this corridors functionality.

46 The location of the footprint will also compromise the entire surrounding forest of Wallaroo State Forest through the indirect impact of dust accumulation and other edge effects including weed invasion resulting from the placement of a large, cleared hole, 650m x 1200m within otherwise intact, maturing forest.

47 The Stone Ridge proposal lacks adequate monitoring and additional offsetting for uncertain impacts, such as changes to vegetation structure and composition resulting from groundwater drawdown, hydrological impacts and habitat suitability reduction from blasting, vibration and dust accumulation. Comprehensive baseline surveys of vegetation condition, Rustyhood Orchid, Koala, Squirrel Glider and Brush-tailed Phascogale populations are required before commencement of works

and ongoing for the life of the development however this has not been provided for in the proposal.

48 No Stewardship site proposal on adjoining lands within Wallaroo State Forest has been put forward by the proponent. Therefore, no certainty is provided for the protection of adjoining habitat and habitat connectivity which would potentially adequately offset the project locally and mitigate some of its impacts. This should be considered a significant issue with this proposal and any other quarry proposal.

49 The establishment of the offset Stewardship site or lodgment of the Biodiversity Stewardship Site Assessment Report (BSSAR) should occur simultaneously with the BDAR lodgement. This would prevent quarry proponents from later contesting conditions of consent in court post development approval and ensure there is local habitat conservation to offset proposals.

50 Alternatively, the nomination of the proposed Stewardship site within the local area in the development application phase would allow this to be included in the conditions of consent for projects and also provide the public with some certainty that local biodiversity is protected from further development. To ensure such conditions of consent are undertaken they could be secured by a bond arrangement equivalent to the cost of to the cost of purchase and establishment of a BSSAR offset property.

B. FAILURE TO COMPLY WITH ZONE OBJECTIVES

Objectives of RU3 Forestry Zoning

51 The Site is located within the RU3 Forestry Zone pursuant to the Port Stephens LEP 2013. The objectives of the zone are:

- To enable development for forestry purposes.
- To enable other development that is compatible with forestry land uses.

52 The zoning provides for uses authorised under the *Forestry Act* 2012, without consent. In addition, the following are permitted with consent: Aquaculture; Dwelling houses; Environmental protection works; Flood mitigation works. Any other development is prohibited.

53 Clause 7.8 of the Port Stephens LEP 2013 is also designed to protect the drinking water catchment within which the Site falls. The Site is 300 metres from the open Balickera Canal which feeds into the Grahamstown Dam, which is the reservoir for drinking water for the Hunter Region.

54 Section 2.9(3) of the SEPP Resources and Energy, which prevails over LEP provisions, provides that an extractive industry may be carried out, with consent, on land on which development for purposes of 'agriculture' is permissible.

55 At paragraph 24 of the Reasons for the Decision, the First Respondent determines that because 'aquaculture' is allowed in the RU3 Forestry Zone and is a type of 'agriculture', then by extension extractive industry is also permissible. Even if this reasoning is technically correct, the location of a major quarry is clearly inconsistent with the RU3 Forestry Zone's objectives.

Project Inconsistent with zone objectives

56 The Project provides for a quarry on a commercial scale and duration exceeding any existing quarry operation within NSW State Forestry. The proposed quarry conflicts with the Forestry Corporation's mandate to apply sustainable timber practices to Wallaroo State Forest as required by section 10(1)(e) of the *Forestry Act* 2012.

57 The clearance of native hardwood forestry to make way for commercial extractive industry is a significant change in the management of Wallaroo State Forest and has not been made via a proposed amendment to a Plan of Management or publicised as provided for by Part 3 Division 3 of the *Forestry Act* 2012.

58 This Project is also inconsistent with the other objectives set out in section 10 of the *Forestry Act* 2012, specifically that Forestry Corporation should conduct its operations in compliance with the principles of ecologically sustainable development and that it should have regard to the interests of the community in which it operates. Section 10(2) requires that these objectives are to be given equal weight with the requirement to run a 'successful business.'

The Project's complete reliance upon diesel to power all its operations and the Site's lack of connection to mains water supply and sewerage, as confirmed in correspondence by Hunter Water, is also incompatible with these objectives and the area's zoning.

Forest Materials Licence cannot exceed 5 years

59 Section 42 of the *Forestry Act,* which is relied upon by the Second Respondent in their application, allows for a Forest Materials License ('FML') that a) *must not exceed 5 years without the prior written approval of the Minister, and (b) must not, in any event, exceed 20 years*. Development consent condition A7, in providing for quarrying operations for a period of 30 years, is inconsistent with the constraints imposed on Forest Materials Licenses by section 42(2)(b) of the *Forestry Act*.

60 The prior written approval of the minister, as required by section 42(2)(a), has not been made publicly available. The First Respondent does not refer to it, nor rely on it, in their Reasons for Decision.

There is no clearance licence

61 There is also no indication that the Second Respondent has a clearance license pursuant to section 43 of the *Forestry Act*, although the Project necessitates clearing almost 70 hectares of native hardwood forestry.

Forest Materials License insufficient to authorise proposed project

62 The Project involves installation of on-site processing plant and equipment, a weighbridge and associated administrative buildings which all constitute 'non-forestry uses', and are incompatible with the zoning of the site and unable to be authorised by an FML alone.

63 A FML can authorise the taking of forest materials but cannot authorise the industrial processing of forest materials on forestry land. Material processing is an independent activity which is not permitted under a FML under the *Forestry Act.* The Court should not grant development consent to a development which cannot be carried out. The site is not suitable for the development (s.4.15(c) EP&A Act).

A Forest Permit cannot be issued

64 The Project makes no reference to a permit under section 60 of the *Forestry Act,* which is required to authorise non-forestry uses, such as commercial activities. Nor does the Project meet the requirements for the issue of a section 60 permit. This quarry is not a development for forestry purposes and nor is it compatible with forestry land uses. Further, the proposal will result in a net loss of timber available for forestry operations (s.601A(d) Forestry Act 2012).

Project falls within an Environmentally Significant Area and no licence may be issued over this area

65 Furthermore, section 39(5) of the *Forestry Act* states: *Subject to the regulations, a licence does not authorise the taking of timber or forest products on or from land that is identified in an integrated forestry operations approval as an environmentally significant area.* This provision applies to all licences which may be issued by the corporation.

66 As from at least 6 December 2024 the site falls within the Coastal Integrated Forestry Operations Approval (Coastal IFOA). The document Coastal Integrated Forestry Operations Approval – Conditions makes provision for Environmentally

Significant Areas (ESAs; see at p.19). Threatened ecological communities are identified as a Category 1 ESA in the Coastal IFOA.

67 Protocol 39 to the Coastal IFOA defines TEC to have the same meaning as in the *Biodiversity Conservation Act* 2016. That Act defines threatened ecological community in s.1.6 as follows:

"threatened ecological community means a critically endangered ecological community, an endangered ecological community or a vulnerable ecological community listed in Schedule 2."

68 Schedule 2 Part 2 lists two TECs which are found on the development site: "River-Flat Eucalypt Forest on Coastal Floodplains of the New South Wales North Coast, Sydney Basin and South East Corner Bioregions (as described in the determination of the Scientific Committee under Division 5 of Part 2 of the TSC Act) Subtropical Coastal Floodplain Forest of the New South Wales North Coast Bioregion (as described in the determination of the Scientific Committee under Division 5 of Part 2 of the TSC Act)".

69 The Updated BDAR prepared by Umwelt which forms part of the Application before the Court identified and mapped the location of these two TECs on the subject land. The land the subject of the development application for the quarry is heavily timbered. There is no other way of carrying out the development which is proposed other than to take or clear the timber within the development footprint. "Timber" is defined under the Forestry Act to include trees of any age or description, whether growing or dead.

70 Accordingly, a Forest Timber Licence or a Clearing Licence will also be required under the Forestry Act in order to authorise the taking or clearing of the timber before any construction of the development or extraction of the resource can take place.

71 However, as noted above, s.39(5) provides that a licence does not authorise the taking of timber or forest products on or from land that is a Threatened Ecological Community. The only exception is that provided in the Forestry Regulation 2022, Regulation 11, which relates to the grant of a licence to an Aboriginal person for the purposes of carrying out a traditional Aboriginal cultural activity and is not relevant for the purposes of this application.

72 The development as proposed cannot be carried out by reason of the protections against clearing TECs contained in the Forestry Act. The Court should not grant development consent for a proposal which is unlawful under the *Forestry Act* and

cannot be granted the necessary licences to carry out the development. The site is unsuitable for the development as proposed due to these constraints. TECs are protected under the *Forestry Act*.

73 It is noted that in the Assessment Report provided by the Department of Planning, and relied upon by the First Respondent, it is asserted:

Under Section 4.41 of the EP&A Act, several approvals are integrated into the SSD approval process and consequently are not required to be separately obtained for the Project. These include: . . .authorisation to take forest materials under the Forestry Act 2012. (Page 9, Section 4.2, paragraph 16.)

74 An examination of section 4.41 indicates this is inaccurate advice and should not have been relied upon by the First Respondent. The IPC in its reasons accepted this advice without question: see at para 29.

75 In view of the above considerations, consent should not be granted as it cannot ever be lawfully implemented because the developer will not be able to obtain the necessary FML or clearance licenses over the area due to the presence of threatened ecological communities (TECs) and other constraints.

76 If the Applicant wished to proceed, significant amendments would need to be made to the development application including:

• relocation of the access road to avoid taking or clearing of timber along the route of the access road.

• excision of the area of River-Flat Eucalypt Forest on Coastal Floodplains marked green along the watercourse in the east of the site together with sufficient buffer to protect that area of TEC from impacts of the development, including edge effects and impacts from changes to the water table.

77 These amendments are so significant and the environmental impacts so different that it would require major redesign and assessment of the new design. The Court should not entertain such an amendment in the proceedings.

RELIEF SOUGHT

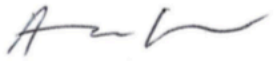
78 The objector respectfully requests the following relief:

- That the First Respondent's approval of the Stone Ridge Quarry be revoked, or

- Alternatively, the project site be amended to avoid all TECs and additional conditions be imposed on the development to mitigate the negative impacts on the environment and the community.

SIGNATURE

Signature



Anna Kerr, Save Balickera Inc.

Date of signature: 7 March 2025