



## Land and Environment Court New South Wales

Case Name:	Woolcott Group Pty Limited v Rostry Pty Limited & Anor
Medium Neutral Citation:	TBA
Hearing Date(s):	29, 30 October, 2, 3, 5, 6, 9 and 21 November 2015
Date of Orders:	4 March 2016
Date of Decision:	4 March 2016
Jurisdiction:	Class 1
Before:	Dixon C
Decision:	See paragraph at [264]
Catchwords:	APPEAL - designated development – five poultry broiler farms – s 98 objector appeal — biodiversity – contamination by live bird feathers of lucerne crops – conflict between the primary industry of lucerne production and poultry production – contrary to the zone objective- unacceptable environmental impacts; unacceptable increase in the number of truck movements through the town of Manilla especially B double trucks from the farms to the processing plant along designated state road - amenity impacts for the residents residing along the haul road to the processing plant - truck noise and dust
Legislation Cited:	Environmental Planning and Assessment Act 1979 Environmental Planning and Assessment Regulation 2000 Protection of the Environment Operations Act 1997 Land and Environment Court Act 1979 Roads Act 1993 Water Management Act 2000 Stock Food Regulations 2010 Tamworth Local Environmental Plan 2010 Tamworth Regional Council Development Control Plan 2010 New England North-West Strategic Land Use Plan 2012 Namoi Catchment Action Plan

Manilla Matters Program – Community Strategic Plan  
2006  
Road Transport (Mass, Loading and Access)  
Regulation 1996.

Cases Cited:

CEAL Limited v Minister for Planning & Ors [2007]  
NSWLEC 302  
Telstra Corp Ltd V Hornsby Shire Council [2006]  
NSWLEC 133  
Benclutch Pty Limited v Liverpool City Council [2012]  
NSWLEC 1284  
Hoxton Park Residents Action Group Inc v Liverpool  
City Council [2001] NSWCA 349  
Australian Leisure and Hospitality Group Pty Ltd v  
Manly Council (No 4) [2009] NSWLEC 226; (2009)  
172 LGERA 1  
Milne v Minister for Planning [No2] [2007] NSWLEC  
66  
Goldberg V Waverley Council [2007] NSWLEC 259

Texts Cited:

The Route Assessment Guidelines for Restricted  
Access Vehicles (2002)  
New South Wales Route Assessment Guide for  
Restricted Access Vehicles – Publication No: RMS  
12.450 (30 October 2012)  
NSW Roads and Traffic Authority Practice Note 3  
(NSW Roads and Traffic Authority 2008a)  
Best Practices Management for Meat Chicken  
Production in NSW – Manual 1  
The National Farm Biosecurity Manual for Chicken  
Growers (ACMF, 2010)  
Best Practice Management for Meat Chicken  
Production in New South Wales – Manual 2  
Operation Manual

Category:

Principal judgment

Parties:

Woolcott Group Pty Limited (Applicant)  
Rostry Pty Limited (First Respondent)  
Tamworth Regional Council (Second Respondent)

Representation:

Counsel:  
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Tom Howard SC with James Smith (First  
Respondent)  
Rob Mallik (solicitor) (Second Respondent)

Solicitors:  
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Mallik Rees Lawyers (Second Respondent)

File Number(s): 10605 of 2014  
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## **JUDGMENT**

### **The appeals – the parties**

- 1 These appeals concern whether development consent should be granted for the establishment and operation of five poultry (broiler) farms and associated activities on a rural property known as Strathfield (Strathfield), located about 11 kilometres north of the rural township of Manilla and approximately 40 kilometres north-west of the regional city of Tamworth in New South Wales (the site).
- 2 They were commenced pursuant to s 98 of the *Environment Planning and Assessment Act 1979* (the EPA Act) by an objector, Woolcott Pty Limited (Woolcott) which is dissatisfied with Tamworth Regional Council's decision on 16 July 2014 to grant approval to the development applications (DA 0273/2014, DA 0274/2014, DA 0275/2014, DA 0276/2014 and D80277/2014) (the DAs) made by the developer, Rostry Pty Limited (Rostry).

### *The Applicant (objector)*

- 3 The objector is the registered proprietor of a rural property called "Yarrenbool Farm" (Yarrenbool), which is located close to the site at 570 Namoi River Road Manilla. Mr Robert Moore, its sole director, lodged a formal objection to the DAs by letter to the Council dated 27 February 2014.
- 4 Mr Moore grows lucerne on Yarrenbool for sale as remnant stock feed. The lucerne paddocks are located adjacent to the Namoi River and within the first 10 kilometres of travel from Strathfield to the processing plant in Tamworth. Given the intensity of the proposed broiler pick-up trips along Namoi River Road, Mr Moore is concerned that feathers from the trucks will contaminate his lucerne paddocks and cause significant economic loss of productive land, future income and sunk investment (Exhibit R15 p8). He contends that the effect of "feather-drop" will cause a distinct conflict between the primary industry of lucerne production and poultry production - contrary to the zone objective. Apart from issues of biosecurity, Woolcott contends that the

development will generate several other unacceptable amenity impacts for residents along the haul road as well as unacceptable environmental impacts.

- 5 The objector submits that the Court should refuse the DAs because the site is fundamentally unsuitable for broiler farms of this scale due to the impacts they will cause.

*The developer*

- 6 The developer, Rostry, is a wholly owned subsidiary of Baiada Poultry Pty Limited (Baiada), which is the largest privately owned producer of poultry meat in Australia. Baiada supplies approximately 35% of the national poultry demand - which equates to around 5 million birds per week. The New South Wales operations (including the Tamworth region) accounts for 33% of Baiada's total production volume. With a capital investment in the order of \$150 million, the Tamworth poultry industry presently generates \$107 million of annual economic activity, and directly employs over 750 people. The poultry meat cluster within the Tamworth region is one of the largest economic and employment contributors to the region's economy and social infrastructure (Environmental Impact Statements (EIS) prepared by PSA Consulting lodged with the DAs (Bundle at Tab 9 p122)).
- 7 According to the Australian Bureau of Agricultural and Resource Economics and Science (ABARES) the demand for poultry products in the Australian marketplace is projected to continue to rise. To meet this increasing demand, Baiada contends it needs to increase the number of broiler farms in New South Wales by about 150 with a larger proportion to be sourced in the Tamworth region. It submits that without Baiada's contribution to meeting this demand there is likely to be a significant shortfall of poultry in Australia. In response to that demand, the EIS records that Baiada intends to substantially increase its capital expenditure in the region over the next five years by about \$250 million and complete the Oakburn processing plant and supporting infrastructure (including growing farms, fertile egg production farms and

hatchery facilities). The expenditure is expected to generate an additional 600 full time positions within the region.

- 8 The Strathfield site is described by the developer as one of a small number of properties within the Tamworth region which satisfy the broiler farm site requirements and the crucial locational factors necessary to support a poultry farm operation. As this combination of factors is only present in a handful of areas across New South Wales, this means that the long-term protection and support of the poultry industry in Tamworth is vitally important.
- 9 Rostry contends on its evidence that the Strathfield site is ideal, and that any potential negative impacts generated by the development can be sufficiently mitigated or managed to a level commensurate with the expected function of an agricultural operation in an existing rural area EIS (Bundle at Tab 9 folio 239-241). In those circumstances it submits that the objector's appeals should be dismissed and that conditional development consent should be granted for each of the five development applications.

*The Council*

- 10 The Tamworth Regional Council, as the local consent authority, is joined to these proceedings as the Second Respondent.
- 11 The Council has provided the Court with access to all relevant Council files and assisted in the notification of the hearing and the coordination of the local residents' evidence and representation and participation at the hearing in Tamworth and Sydney (Exhibit 2R).
- 12 The Council has also provided a written response to the parties' draft conditions (letter dated 13 November 2015 forwarded at my direction after the close of the hearing - which the parties as expected have elected not to respond too).

## Background

- 13 The five adjacent poultry broiler farms which make up the Strathfield site are located on Crow Mountain Road and Namoi River Road about 4.2 kilometres west of the Namoi River. The property has an area in excess of 1,600 hectares and covers 22 property titles. The property identifiers are detailed on Appendix A.
- 14 There are significant variations in the topography over Strathfield. The land generally rises from the flatter section to the east, steepening as it rises to the Nandewar Ranges ridgeline on the western edge of the site. The property is punctuated by an intermittent creek which runs parallel to Byrnes Gap Road and drains the site to the west.
- 15 Baiada purchased the site on 4 July 2014. At the time, the site was used for agricultural activities, including low intensity cropping (pastures) and cattle grazing. The surrounding uses are typically rural and the area is characterised by a range of agricultural activities including livestock grazing and cropping.
- 16 Both Strathfield and Yarrenbool are located within the RUI Primary Production Zone under the *Tamworth Local Environmental Plan 2010* (LEP 2010). The proposed poultry farming operation falls within the definition of "intensive livestock agriculture" under the LEP, and is permissible with consent in the RUI Zone.
- 17 The objectives of the RU1 Primary Production Zone are reproduced below:

### Zone RU1 Primary Production

#### 1 Objectives of zone

- To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.
- To encourage diversity in primary industry enterprises and systems appropriate for the area.
- To minimise the fragmentation and alienation of resource lands.
- To minimise conflict between land uses within this zone and land uses within adjoining zones.
- To permit subdivision only where it is considered by the Council to be necessary to maintain or increase agricultural production.

- To restrict the establishment of inappropriate traffic generating uses along main road frontages.
- To ensure sound management of land which has an extractive or mining industry potential and to ensure that development does not adversely affect the extractive industry.
- To permit development for purposes where it can be demonstrated that suitable land or premises are not available elsewhere.

18 They include the objectives to minimise conflict between land uses within the zone and land uses within adjoining zones and to encourage diversity in primary industry enterprises and systems appropriate for the area. The objector believes the development is contrary to these zone objectives. I will deal with this matter at a later time.

19 The Manilla township along the haul road route is variously zoned R1 General Residential and RU4 Primary Production Small Lots under the LEP.

20 Also relevant in my assessment of these applications under the EPA Act are the relevant provision of the *Tamworth Regional Council Development Control Plan 2010*, the *New England North-West Strategic Land Use Plan 2012* and the *Namoi Catchment Action Plan* and a plan called *Manilla Matters Program – Community Strategic Plan 2006* (the Manilla Matters Plan). (Although, the Court notes the parties' traffic and planning experts raise no particular issue with compliance with the Manilla Matters Plan. The document has no statutory force and, at its highest, is relied upon by the objector as offering some assistance in understanding the public interest and social impact of the proposal as it lists the "goals and objectives of the community in relation to its economic and social future" (Exhibit 19 OWS at [3.85]).

21 As noted, each of the DAs is accompanied by an EIS (as required by s 78A (8) (a) of the EPA Act) because the proposed use is designated development within the meaning of s 77A of the EPA Act. It is defined as a "livestock intensive industry" pursuant to clause 21 (4) of Schedule 3 (clause 21(4) (a)) of the *Environmental Planning and Assessment Regulation 2000* (the Regulations).

22 The developments are also integrated development under the EPA Act and, as such, separate approvals are required under the *Roads Act 1993* (the Roads Act) for the water supply to cross beneath the Namoi River Road and other works on public roads (Exhibit R41), the *Water Management Act 2000* (the Water Management Act) for any necessary controlled works approval, and the *Protection of the Environment Operation Act 1997* (the POEO Act) for an environmental protection licence.

23 At the time of the hearing, the Environment Protection Authority (EPA) had issued its general terms of approval (GTA), and the RMS had provided some comments and recommendations in respect of the applications. Some of the RMS' recommendations are reflected in Rostry's proposed conditions of consent e.g. certain road upgrade works along the haul road (Exhibit R29).

24 As the DAs did not seek consent as integrated development for the approval of roadworks under s 138 of the Roads Act, the Court has no jurisdiction to deal with these matters (Exhibit R 19 Vol 1, Tab 8 folio 70). These matters will need to be the subject of a separate application to the Council - as reflected in the terms of the consents.

#### **The detail for each farm**

25 As was explained to me by Ms Dickson, Baiada's National Environmental Manager, each DA provides for a poultry broiler farm which will comprise:

- (i) 14 tunnel-ventilated, fully closed, climate-controlled broiler sheds;
- (ii) A maximum of 42,000 birds per shed giving a maximum bird population of 588,000 birds on each farm;
- (iii) Approximately 5.5 production cycles per year; and
- (iv) Ancillary supporting infrastructure, including caretaker residences, an office, an ancillary maintenance shed, water pipes, pumps, tanks,

water-storage dam and other related infrastructure and access driveways. A number of vegetative buffers are also proposed.

- 26 The 14 tunnel-ventilated sheds will be erected on each farm in two parallel rows of seven. Each shed will be 160 metres long, 18 metres wide and has a height of 4.75 metres. The 14 poultry sheds will be constructed on a concrete slab, and comprise coolroom insulated sandwich panels (two metal faces with a fully insulated core) and non-reflective Colorbond walls and roof, in muted colours that are consistent with surrounding development (EIS in respect of each application: Exhibits 9, R19, Vol 1, 6 and 7).
- 27 Collectively, the 70 sheds will have a capacity to accommodate 2.94 million birds at any one time.
- 28 There are approximately 5.5 growing cycles per annum at 9.45 weeks (66 days) per cycle. Each cycle comprises an eight-week (56 day) growing period followed by a 1.45-week (10-day) cleanout, sanitisation and restock program. Rostry proposes some flexibility in the ownership and management of each of the farms in that they will be allowed to be owned, leased or contracted to Baiada (Vol 2 Tab 24 page 5, item 6 – Exhibit R 19).
- 29 It is proposed that each of the farms will take delivery of broiler chicks, grow them and then likely supply broiler chickens for processing at the existing Out Street processing plant (operated by Rostry's parent company at Out Street Tamworth) until the new Oakburn processing plant located on the Oxley Highway, approximately 11 kilometres north-west of the Tamworth CBD, is operational, at which time the Out street processing plant is to be decommissioned for this use.

#### **Which processing plant or plants will the Strathfield farms utilise?**

- 30 The objector believes that the potential for Strathfield to utilise the two processing plants owned by Baiada is a concern and submits that there is no sure way of containing the processing in the way suggested by Rostry. Should both plants be available for processing from the farms, it is submitted that

there will be opportunity for the growing of more birds than approved on each farm.

- 31 However, this submission is not supported by any objective evidence and is at odds with the expressed intention of the developer and its application to the Court.
- 32 In short, I have no basis upon which to assume that Rostry will operate the farms other than in accord with its development application and the terms of any consent granted. The fact is that Baiada holds development consent for the new Oakburn processing facility (and rendering plant) and Baiada's executives have instructed Ms Dickson and its traffic expert, Mr Hollyoak that the company intends to operate Strathfield using the one processing plant at Oakburn once fully operational - not both.
- 33 Baiada's Managing Director, Mr Simon Camilleri, has given the same undertaking to the Court in his letter dated 9 November 2015 (Exhibit R42) which states:

Baiada Poultry Pty Limited (Baiada) confirms by this letter that once the Oakburn processing facility has been constructed and is fully commissioned and operating, then it is Baiada's intention to decommission and shut down the Out Street processing plant as it is commercially unviable to operate both facilities in parallel.

- 34 The Oakburn processing plant will have a maximum processing capacity of one-million birds per week. This equates to 200,000 birds per day for a five-day processing week; or approximately 166,667 birds per six-day processing week; or approximately 143,000 birds for a seven-day processing week. The Oakburn facility, when fully operational, has the capacity to accommodate the processing of all of the birds from the Strathfield farms. Mr Hollyoak's assessment of the applications proceeds on this basis. He articulates this in his statement:

The Farms will supply a single processor (regardless of whether the Farms are sold, leased or licensed) which is owned and operated by Baiada. This underpins the assumption that there will be co-ordination of poultry numbers and scheduling between the 5 Farms, which is organised by Baiada.

(Exhibit R 5 at 2.2.2 -2.3.4).

35 So there can be doubt I wish to make clear that I have assessed these applications on the basis that the birds grown at Strathfield will be hauled by trucks to one single processing plant - whether it is Out Street or Oakburn – but not both or at some time in the future another processor in the same location. In short, the farms will only ever supply a single processor (regardless of whether the farms are sold, leased or licensed), as it happens the two processors in the area are presently owned and operated by Baiada. A condition reflecting the undertaking of the company to this effect needs to be drafted and imposed on the consents. The condition will state that the farms will utilise one processor only at all times. While I accept the objector's submission that there is no legal obligation to close Outstreet and there is no evidence that the Oakburn capacity will not be increased in the future the relevance of such submissions eludes me.

36 The Court is required to assess the application based on the actual evidence not hypotheticals. Rostry seeks consent for the farms to utilise one processing plant located on a particular haul route.

37 However, as the Oakburn processing plant is not yet operational I need to consider the impacts of the developments on two bases: Scenario 1 - that the birds from Strathfield will be hauled to the future processing plant on the Oxley Highway (Lot 100 on DP197471) (the Oakburn plant), and the interim Scenario 2 – that the birds from Strathfield will be hauled to the current processing capacity of the existing facility at Out Street Tamworth.

38 Relevantly, as I said the central issue is that in the both instances the same haul route from the farms to Tamworth will be utilised to access one processing plant whoever owns it at the time. A condition requiring this aspect of the development applied for is in my view clearly within power.

## **The terms of operation of the farms**

39 The five farms are proposed to operate 24 hours a day, seven days a week. The grown bird collection and transportation will typically occur during the hours of 6.30 pm and 6.00 am (Tab 9, folio 130, [4.8] – Exhibit R19). Ms Dickson, the National Environmental Manager for Rostry, gave oral evidence that:

- (a) Truck drivers will leave the depot and arrive at the first farm for the evening at around 6.30 pm (Transcript date 2, page 146, lines 15 to 30);
- (b) "Bird catchers" working crews are typically dispatched around 5.00 pm to prepare birds for transport; and
- (c) The birds are received at the processing plant typically between 8.00 am and 9.00 am the following day (Transcript date 2, page 146, lines 35 to 50)
- (d) The broiler pick-ups will occur on 220 nights of the year. At a loading of 6500 birds per truck across 220 nights, 11-12 trucks per night would transport all of the 16.7 million birds the farms, collectively, are capable of producing over a year.

## **Council's determination**

40 Following notification of the DAs from 20 January 2014 to 3 March 2014 and an assessment of the applications, the Council determined the five designated development applications by the grant of consent subject to conditions at the Ordinary Council Meeting on 8 July 2014.

41 The same conditions were imposed on each consent, with the exception of Farms 2, 3 and 5 which were subject to Conditions 19, 20 and 19 respectively, which require compliance with the additional conditions imposed by the GTA issued by the EPA on 6 May 2014.

42 The EPA GTA for Farms 2, 3 and 5 requires the livestock limits where initially only seven sheds are stocked (each containing 42,000 birds in each shed), subject to approval for further stocking of the remainder after Condition L6.4 of the GTA is satisfied.

43 The conditions of consent proposed by Rostry are based on the Council's conditions but adapted to address amendments such as the relocation of the dams and the further evidence. The objector's draft conditions are different again. They rely on several deferred commencement conditions.

#### **The other objectors (local residents)**

44 There are a large number of local residents who oppose the farms. I have considered their written submissions which were lodged with the Council in response to the notification of the DAs and this appeal hearing (Exhibits 2R1, 2R2 and 2R3). I have also considered the oral evidence of the 16 local people who gave evidence at the hearing in the Tamworth Courthouse and the additional evidence received in Sydney via the telephone from two residents of Barraba Street, Mr Dutton and Mr Tobin.

45 Generally, the local residents are concerned about the impacts of the farms on the Namoi River and the local water supply, road safety along the haul road, the amenity impacts of B-double trucks at night, truck noise during the day and night, health issues from dust and feathers and general amenity. To a large extent, their concerns overlap with the contentions raised by the objector and therefore have been dealt with by the expert evidence. As to be expected where there is overlap of issues I have considered the lay evidence of the local residents in light of the extensive expert evidence before the Court.

#### **Expert Evidence**

46 The Court has received some 22 expert reports in these proceedings, in addition to the material in the DAs and accompanying EIS.

47 Where necessary, the parties' experts have engaged in joint conferencing and prepared joint reports and given concurrent oral evidence to the Court.

48 Joint reports were received from:

- Mr Cooper (Rostry) and Dr Tonin in relation to acoustics (Exhibit R14)
- Mr Hollyoak and Mr Ireland (Rostry) and Mr Coady (objector) in relation to traffic, road safety issues and town planning (Exhibit R17)
- Dr Robertson (Rostry) and Mr Travers (objector) in relation to ecological issues (Exhibit R16).

49 Additional joint reports were tendered during the hearing prepared by:

- Mr Welchman (Rostry ) and Mr Omerod (objector) in relation to odour and air quality (Exhibit R13)
- Dr Matthew, Dr Anderson and Mr Sutherland (Rostry) and Dr Martens (objector) in relation to water supply (surface and groundwater), stormwater and soil issues (Exhibit R11)
- Mr Scott (Rostry ) and Dr Arzey (objector) in relation to contamination by bird feathers
- Mr Hack (Rostry) and Mr Leyson (objector) in relation to economic impacts (Exhibit R15).

### **The contentions**

50 Fortunately, the joint conferencing by the parties' experts has reduced the number of contentions. Of the 44 contentions initially raised in the objector's Amended Statement of Facts and Contentions (ASOFC - Exhibit F) a large number have been withdrawn or satisfied by further evidence or dealt with by way of condition.

51 Annexure A of the objector's written submissions (OWS) sets out the contentions not pressed and the contentions which may be dealt with by way of condition it needs to be read with the document headed "Contentions no longer pressed by the Applicant" filed at the commencement of the hearing . For the purposes of my consideration, I believe the central issues can be distilled into the following main topics:

- (i) Preliminary matters – adequacy of Council's notification of the haul road, and the alternative site investigation undertaken by Rostry;
- (ii) Traffic safety issues associated with queuing at the Manilla Bridge;
- (iii) Acoustic impacts from trucks at night/early morning along the designated B-double haulage road;
- (iv) Bio- security – the impact of fugitive feathers escaping from trucks transporting live birds and the economic impact and viability of the growing of lucerne crops on Yarrenbool; and separation distances;
- (v) Unacceptable environmental impacts - water, ecology;
- (vi) Public interest – local objectors' concerns, including the economic benefit of the development for the Tamworth region.

### **(i) Preliminary matters – jurisdiction**

52 The first matter I need to address is the objector's assertion that there has been no real analysis of alternate sites undertaken in the EIS in accordance with the Director's requirements.

#### *Analysis of alternate sites*

53 Rostry's Consultant Town Planner, David Ireland, prepared the analysis of the project alternatives contained within the EIS submitted with the DAs (Vol 1, Tab 9 - Exhibit R19) in response to the Director's requirements. His findings

are summarised in an assessment table entitled "Table 40: Proposal Alternatives" (Exhibit R19 at folio 339).

54 Mr Ireland's analysis starts with an explanation as to why there is a poultry meat cluster within the Tamworth region and then reasons why any new broiler farms need to be located within that same region.

55 The report concludes that the poultry meat cluster in the Tamworth region is the result of a number of crucial locational factors which are only present in a handful of areas across New South Wales. They are:

- Access to large quantities of locally grown grain (particularly wheat and canola);
- Strategic location proximate to key New South Wales markets (Sydney) and south-east Queensland and direct access to the state road;
- Ideal land types for the construction of suitable shedding for poultry production;
- The region offers ideal climate in terms of temperature and humidity for poultry;
- Access to guaranteed and high quality water sources including bore water, dams, rivers and reticulated networks;
- Suitable site for location of poultry farms away from sensitive receptors and population centres; and
- Support from existing major investment infrastructure covering all facets of the integrated business.

56 Mr Ireland states that the Tamworth region poultry cluster ideally meets all of the above locational requirements because it contains the following entities.

- Poultry hatcheries;
- Farms for the production of fertile eggs;
- Farms for growing of birds for the production of meat;
- Farms for the production of table eggs;
- Processing plant (abattoir);
- Waste treatment facilities;
- Protein recovery plant;
- Feed mills, grain silos and grain storage areas;
- Grain farms (contracted and independent);
- Administrative centres;
- Direct retail outlets;
- Dedicated livestock research centres.

57 In addition to the locational requirements, Mr Ireland states that the nominated site must also have the requisite physical characteristics to ensure its suitability for the operation. The broiler farm site requirements are also listed in the EIS. They are:

- Be free from environmental (significant flora or fauna or threatened ecological communities) and physical constraints (steep gradient, unsuitable geology, flooding and other natural hazards);
- Have adequate water supply from riverine extraction, groundwater town water, dams or a combination of sources;

- Suitable road access allowing for the movement of heavy vehicles and staff to and from the site;
- Be located as close as possible to the feed mill (in Tamworth) and within a grain-growing region to minimise transport costs associated with feed haulage;
- Have suitable separation distances to other poultry farms, intensive livestock operations and other land uses which may introduce a bio security risk;
- Located in proximity to a population centre which can provide employees and accommodation to support the operation;
- Have suitable separation distances to surrounding residents to ensure no odour impacts; and
- Be available for purchase at a price which makes the operation financially viable.

58 Mr Ireland is of the opinion that the Strathfield site satisfies **all** of the listed locational criteria and the broiler farm site requirements and that there are no viable alternatives to the proposed development site.

59 After analysis Mr Ireland concludes that no other identified site in the region can accommodate the maximum number of birds that can be produced on Strathfield to a level consistent with the capacity of the land and also meet the selection and locational criteria. Despite actively pursuing additional sites which exhibit these characteristics (because the five Strathfield farms provide only 47% of the necessary broiler capacity needed in the Tamworth region), Mr Ireland reports that Baiada has not been able to locate an alternate site suitable for the scale of development proposed and which has the potential to satisfactorily mitigate or manage any potential adverse impacts. Nor is it feasible to expand existing sites. Mr Ireland is of the opinion that the

expansion of existing farms, while providing minor opportunities to accommodate additional broiler capacity, is not a viable alternative to the development of a greenfield site such as the proposed Strathfield farms to accommodate the bulk of the projected growth.

*Finding - analysis of alternate sites*

- 60 The fact that Mr Ireland has not been able to nominate an alternative development site does not mean that there has been no proper analysis or search for an alternative site. The evidence is that despite a search there is no other identified site in the region.
- 61 This is not a case where the objector put forward an alternative site which has been ignored by Rostry. Rather, this is a case where the evidence is that there is no viable alternative for this development despite a thorough and documented search.
- 62 Accordingly, I accept Mr Ireland's evidence and I am satisfied that the Director's requirements for alternative site analysis have been met.

*Adequacy of notification of the proposal*

- 63 The second matter concerns the assertion that there was a failure on the part of the Council to properly notify the DAs to residents along the entire length of the haul road. I am referring to contention 19(b) of the objector's Amended Statement of Facts and Contentions (ASOFC) and the objector's submission at [3.243–3.254 of (OWS)]. Contention 19(b) states:

The development application (including the EIS) was not publicly notified in accordance with section 79(1) (b) of the Act as residents along the whole of the proposed transport routes were not notified of the proposal.

- 64 The objector contends that the notification process has been inadequate and that the concerns of these residents are not before the Court and therefore a proper assessment is not able to be carried out.

65 The relevant public notification requirements for a designated development are set out in s 79 of the EPA Act. Subsection (1)(b)(ii) requires the consent authority to give written notice, **if practicable**, of the application to "such other persons as appeared to it to own or occupy land, the use or enjoyment of which, in its opinion, may be detrimentally affected if the designated development is carried out" (at [3.2.45] of its OWS).

66 The objector contends that the traffic generated by the development along the haul road is significant and substantial, with impacts on adjoining landowners ranging from moderate to extreme. It submits that there may be a detrimental effect on the enjoyment of those lands; therefore, if the Court accepts that it is "practicable" to notify those landowners then the application cannot be approved until such time as that notification has occurred.

67 While conceding that the notification of the property owners adjoining the proposed haulage route between Strathfield and the existing and proposed rendering plants would be extensive, the objector maintains that it is not "impracticable" and should have been carried out by the Council. It submits that the Council need only have sent out a letter to each affected property and invited inspection of DAs' documents. As this is a "hearing *de novo*", the objector contends that it is reasonable that the concerns of persons affected by the proposal should be before the Court and considered in the Court's assessment of the applications (s 98 of the EPA Act and s 39(3) of the *Land and Environment Court Act 1979* (the Court Act)).

68 The Council disagrees. It submits that the notification of landowners along the entire 40-kilometre length of the haul road is not "practicable" and, therefore, there is no requirement to carry out such notification under s 79 of the EPA Act. In any event it submits the extensive public notification undertaken is more than compliant with the requirements under the EPA Act.

69 In support of this submission, the Council relies on the affidavit evidence of its Senior Development Assessment Manager, Amanda Elizabeth Faulkner, dated 20 November 2015 which sets out a chronology of the public

notification of the DAs undertaken by the Council. Relevantly, as Ms Faulkner's affidavit is not contradicted by any other party, I accept that the information in the affidavit (exhibit R8) is correct and accurately records the public consultation and notification carried out by the Council before and after lodgement of the DAs.

- 70 The exhibit to the affidavit is a large bundle of documents (the bundle) comprising pre-DA communications received by the Council from interested residents prior to the lodgement of the DAs and copies of documents which Ms Faulkner believes were forwarded by the developer's planner to various residents and property owners on 31 July 2013 inviting public consultation and feedback prior to the lodgement of the development application.
- 71 Included in the bundle are copies of the press releases issued by the Council, and a newspaper article resulting from that press release inviting community members to register their interest and receive notification of the public exhibition period when the application is publically exhibited. There are also copies of articles published in the Manilla Press and the Northern Daily Leader and media releases about the development, including a statement made by Baiada giving advance notice to the residents of Manilla of the proposed development.
- 72 The affidavit records that on 17 January 2014 the Council's Team Leader Development Assessment, Ms Lucy Walker, arranged to be sent to persons who had registered an interest about the development an e-mail advising of the exhibition period for the application from 20 January 2014 until 3 March 2014. In that e-mail the recipient is also advised how to access the applications online at the Council's website or invited to attend in person at specified locations in Tamworth and Manilla to inspect the application where Council's planners would be available to assist with any enquiries about the applications. Ms Walker apparently sent this e-mail to Catherine Clifford from (ABC Radio Tamworth), Kerrin Thomas (ABC Tamworth) and other registered local residents, including Matthew Fletcher who resides along the haul road in

Arthur Street and was the community spokesperson for the Namoi River Community Group at the Tamworth Court hearing.

- 73 The affidavit records that each of the sites exhibited a notice of the proposed development, and that the Council sent a letter notifying adjoining landowners to the Strathfield site (except for Mr Fernance) of the lodgement of the original DAs. The Council also notified the DAs in the local newspapers.
- 74 In addition, the Council's Development Assessment Planner attended the Manilla branch office between 10.00 am and 3.00 pm on 22 January and 5 February to assist with any enquiries about the proposal. The affidavit annexes notes of the meeting and records the names of the residents who attended. Some of those residents addressed the Court at the hearing in Tamworth. Council issued a further media release on 25 February 2014 regarding a further informal session on 28 February 2014. The news release was published in the Manilla Express on 27 February 2014.
- 75 The Namoi River Community Group (Bob Wales) responded with its own media release on 25 February regarding the information session and this was published in the Manilla Express.
- 76 Forty members of the community are recorded as attending the information session on 28 February 2014 held at the Manilla Mechanics Institute between 1.00 and 4.00 pm. Council staff, representatives from Baiada and staff from the New South Wales EPA and New South Wales Department of Primary Industries also attended.
- 77 A further information session was notified and held on 28 April 2014 at the Manilla Town Hall. The Council held a session between 9.00 am and 3.00 pm and another session was held by Baiada, which was a one-to-one consultation. On 8 May the Council forwarded an e-mail to parties who had made submissions, advising them that the Council had received amended information in response to a request from the NSW Office of Water, the EPA and New South Wales Office of the Environment and Heritage. An amended

Traffic Impact Assessment, dwelling plans and elevations were received. The e-mail advised that the amended information was available on the Council's website.

78 On 12 June 2014 the Council sent a letter to all persons who had made submissions advising that the Council had received GTA from the Office of Water. The GTA were available on the Council's website.

79 In addition to the above, the Council also notified this hearing to all those who had earlier made submissions in respect of the DAs, including the residents whose properties front the haul road of Barraba Street Manilla. The correspondence sent to the Barraba Street residents during the hearing included information detailing a breakdown of the trips to and from the farms per cycle, per annum and per day (Exhibit 2 R9).

80 Mr Tobin and Mr Dutton of Barraba Street responded to the Council's notification and the invitation to address the hearing. They gave evidence by telephone and said that they were concerned about the safety of children who currently play on their quiet, rural street, the noise - day and night - from the trucks, glare from headlights on the trucks, dust and feathers drifting onto their properties and a general loss of their existing residential amenity.

81 Mr Tobin, whose family home is built very close to the corner at 53 Barraba Street, understands road construction. He said that the RAV road and intersection proximate to his property (which is part of the haul route) needs to be widened to ensure safe turning by large trucks irrespective of the development – it is problematic corner. However, it will be made more unsafe by the increased truck traffic anticipated by the development. While he accepts that he may choose to shut bedroom windows fronting the road at night, or opt for the air-conditioning offered by the developer, he believes that this development will cause an unacceptable loss of amenity to his family's existing quiet, rural lifestyle. For example, the noise will impact upon his enjoyment of his barbecue area and other outdoor family activities.

82 Mr Dutton told me that the local school bus is operated from his property at 52 Barraba Street. He employs a driver to take the bus from his land along Namoi River Road and surrounding streets to collect the school children from the local area and deliver them to school in Manilla. When school finishes the bus drops them home along the same route. In the past, Mr Dutton drove the bus and, based on that experience, he told me that the roads are narrow in the immediate area of the development and that there are safety concerns associated with large trucks turning and passing on the narrow, rural roads more generally. He also told me that the school bus currently stops at unmarked intervals along the pick-up/drop-off route as there is no designated off-road area. The situation, he said, is presently unsafe, passing of vehicles is difficult and the problems will be exacerbated with more large vehicles using the area. The Court heard, also, evidence from Jennifer Brown, a retired school teacher, who is concerned about the noise impacts on children; learning in the classrooms fronting the haul route, as well as the safety of children of Manilla Central School who regularly cross the haul route to access a split campus. Another local resident, Judith McNamara, raised concerns about directing traffic through Manilla. She was of the opinion that this would result in conflicts between large transport vehicles and the local residents of Manilla and their access to community facilities such as schools, the town's pool, the long day-care centre and the children's playground.

83 Glare from headlights on the B-doubles and increased noise and dust allergies, asthma were also a concern for some of the residents whose properties front the haul road.

84 As the Court travelled along the haul road at the commencement of the hearing with the parties' lawyers and experts I can confidently say that I generally appreciate the location of the objector's homes and the distances between the haul roads their residences, the cemetery, the school, childcare centre and other businesses. At that time I had opportunity to observe the existing daytime amenity of the area along the haul road and understand the evidence about the existing nighttime amenity. I believe I fully appreciate the matters raised by objectors like Shane and Judy McNamara of 44 Namoi

Road who expressed a concern in their written submission and oral evidence about an increase in heavy vehicle traffic on a minor rural road and the impact on the school, daycare centre, entertainment and recreational venues and businesses along the proposed route of the haul road. I have watched the two short videos tendered by Mr Fletcher depicting loaded B-double trucks travelling along the haul road outside his property in Manilla and appreciate his concerns expressed in the Court at Tamworth, both on a personal level and as a representative of the Manilla Community Group. I understand that Mr Fletcher, and some of the other local objectors, are critical of the Council's notification processes and the developer's efforts to communicate with the locals. I have read all of the written submissions and the transcript of the oral evidence received in Court. The resident's concerns are summarised in the objector's written submissions (OWS) at p27.

*Finding - Adequacy of notification of the proposal*

- 85 Having regard to all of the information before the Court as outlined, I cannot agree with the assertion that there was a failure on the part of the Council to properly notify the DAs to residents along the entire length of the haul road.
- 86 In circumstances where the DAs have had a high media profile (as was evident in the local papers and local television on the day the Court arrived in town) and notified in the manner deposed by Ms Faulkner, it is difficult to imagine how anyone residing along the haul road, or in the region for that matter, did not know that the DAs had been lodged and that Council was inviting submissions from the public and offering assistance in accessing information about the developments. The evidence also suggests that the developer was active in communicating with the Council and locals at the pre-DA stage and after lodgement. While the information about the number of trucks on the haul road and other matters has been refined by the provision of further information through the hearing process the obligation under the Act is to notify the application lodged in accord with s 79(1) (b) (ii).
- 87 In my assessment the Council has complied with this obligation.

88 For the reasons stated, I find that it would not have been practicable for the Council to notify every resident along the entire length of the 40-kilometre haul road in the way suggested by the objector. Having reached that conclusion, I am satisfied on the evidence that the Council has adequately notified the development in accordance with s 79 and, in particular, subs (1)(b)(ii) of the EPA Act:

...to such persons as appear to it to own or occupy land, the use or enjoyment of which in its opinion may be detrimentally affected if designated development is carried out.

89 Furthermore, any suggestion that the Court does not understand the impacts of the development for the residents/property owners along the entire haul road and is unable to carry out a proper assessment under s 79 of the EPA Act and s 39 of the Court Act is not supported by the evidence.

#### *The haul road*

90 The application proposes a haul route through Manilla and the villages of Attunga and Hallsville whether the processing of the Strathfield birds takes place at the Out Street or Oakburn plants.

91 The haul road will carry the B-double trucks and other rigid vehicles and light vehicles generated by the farms along the following roads:

#### **Strathfield to Manilla**

- Crow Mountain Road (within the site) (unsealed)
- Strathfield Road (unsealed)
- Namoi River Road (sealed)
- Arthur Street (north of Barraba Street) (sealed)
- Barraba Street (sealed)

- Manilla Street (Fossickers Way) (sealed)
- Market Street (sealed) and
- Arthur Street (south of Market Street) (sealed)

**Manilla to Tamworth (preferred route)**

- Manilla Road (south of Manilla)
- Jewry Street Tamworth
- Ebsworth Street
- Plain Street
- Denison Street
- Bridge Street
- Out Street (to the processing plant)
- Gunnedah Road (Oakburn rendering plant)

92 Rostry also proposes alternative routes in the event of emergency where access to the nominated haul route is prevented:

**Emergency Route A**

- Strathfield Road (unsealed)
- Crow Mountain Road (unsealed)
- Burns Gap Road (unsealed)
- Buena Vista Road (sealed)

- Manilla Street (Fossickers Way) (sealed)

**Emergency Route B**

- Strathfield Road (unsealed)
- Crow Mountain Road (unsealed)
- Namoi River Road (sealed)
- Arthur Street (sealed)
- Barraba Street (sealed)
- Manilla Street (Fossickers Way) (sealed)

93 Relevantly, the proposed haulage route travels along a gazetted restricted access vehicles (RAV) route - apart from a section of Crow Mountain Road which is presently not dedicated to the RAV route and will necessarily require an application to the RMS for such approval. (It is proposed that this be conditional on any consent in terms similar to Condition 38 originally imposed on Farm 1 (Exhibit R29)).

94 The evidence is that the MR63, on which the Manilla Bridge is situated, has long been a gazetted RAV route, but that the route from MR63 to the farms was gazetted in 2012.

*A Restricted access vehicles (RAV) route*

95 Restricted access vehicles (which includes B-double trucks) operate according to national regulations which are implemented in New South Wales under the *Road Transport (Mass, Loading and Access) Regulation 1996*. This regulation establishes the regime for the Minister of Roads to specify areas and routes on which RAV can travel. *The Route Assessment Guidelines for Restricted Access Vehicles (2002)* (which was the relevant guideline in force at the time the subject route was gazetted) contains the procedures and

assessment criteria for the Minister's delegate to select routes and areas which are suitable for RAV.

96 Appendix 3 of the guidelines sets out the assessment criteria for proposed B-double routes. At ss A3.2.1 and A3.2.2, the guidelines require an assessment of routes passing through noise-sensitive areas and the consideration of the views of the local community balanced against economic, road safety, traffic management and other technical issues. Additionally, Appendix 3 provides for assessments in relation to dimensional capacity, road safety, traffic management and structural capacity of the proposed route. Section 5.3 of the guidelines states:

The Regional Freight Route Co -ordinator is to con -ordinate the preparation of an impact statement as part of the route assessment. The impact statement is to address safety, technical, economic and environmental issues, along with any community concerns.

97 There is no evidence before the Court to suggest that in designating the roads for a B-double truck, the Authority has not complied with the relevant guidelines, although I understand that the assessment of the gazetted RAV route from MR63 to the farms was undertaken on an expectation that there would be "...minimal use by RAVs generally" (Tamworth Regional Council Traffic Committee Report May 2010 - Exhibit 2R8), and after further assessment of the projected number of truck movements along the haul road by the parties' traffic experts (Exhibit R15 Annexure D) it is now clear that this will not be the case.

*The maximum number of B-double trucks generated by the development*

98 Based on assumptions derived from the operational evidence given by Ms Dickson, the traffic experts accept the number of *truck movements* on a busy night of broiler pick-ups from the Strathfield farms to the Oakburn facility is likely to be in the order of 22-24 movements within the acoustic night-time for 220 nights per year. (Exhibit R17 Table B1 at page 6). This equates to a maximum of 11 to 12 trucks. However, Mr Coady questioned the reliability of the operational parameters as stated by Ms Dickson in her oral and written

evidence on the basis that there was a potential for overlap of the farm activities (Exhibit R8). And, while Baiada does not accept that this will occur very often (if at all) it agrees that if the cycles were to overlap, there would be necessarily an increase in B double truck movements and a decrease in the number of nights of the year that they occur. That said, Mr Hollyoak told the Court that there could be a possible overlap between periods of the 10 day clean out/ and sanitation/restock period for each farm and the 4 week (2 nights per week in weeks 5-8) broiler collections for each farm in the 5.5 cycles per year although he believed this would be infrequent. Nevertheless, these opportunities were further assessed and the position is outlined in Appendix C to the traffic joint report.

99 The reason why the developer says that overlap is unlikely is because Baiada strictly controls co-ordination of the farm activities. As Ms Dickson explained to the Court this is necessary because the farms will be part of the integrated production and transport systems for Baiada's Tamworth operations, no matter what ownership structure for each farm exists at the time. Accordingly, co-ordination of the truck movements across the five farms is in the best interests of the farmers and Baiada to ensure consistent and timely supply of poultry to the processing plant to meet demand. Given the inputs (supply of poultry feed, day old chicks) and the processing activities of the farms are controlled by Baiada, Ms Dickson's evidence is that it is virtually impossible that a farm would be able to operate outside of Baiada's integrated transport system. As such, Baiada submits that all haulage traffic will be directed by Baiada and therefore able to be controlled.

100 Accordingly to Ms Dickson the operational factors which influence the number of trucks are: (a) the demands of the market; and (b) the processing capacity of the plant.

101 Having regard to those operational factors the traffic experts derived a maximum number of B double trucks based on the operational limitations of the processing plants namely: the maximum number of B double movements on any one night for the Oakburn processing plant would be 48 movements

and for the current capacity of the Outstreet processing plant 24 movements assuming no overlap.

- 102 In order to ensure that the B-double truck numbers do not exceed the maximum number the developer has agreed to the imposition of a condition in each of the consents which would restrict the maximum number of B-double broiler pick-up movements during the acoustic nighttime period from 10.00 pm till 7.00 am to a maximum of 48 movements (which equates to a maximum of 24 trucks).
- 103 While Mr Coady is of the opinion that a maximum of 24 vehicles along certain parts of the haul road is still too much (Transcript D4, page 349 at [10]) he accepts that the imposition of the condition on the consents will provide some certainty for residents about truck numbers and ensure some degree of improved amenity at night for the residents of the properties along that haul route. Mr Hollyoak agrees – although he believes the truck numbers during the acoustic night time will not reach the maximum provided for in the condition and are more likely to be the 12 B-double trucks as anticipated by Ms Dickson's evidence.

*A Transport Management Plan which includes a Heavy Vehicle Operator Code of Conduct*

- 104 In addition to the restriction of truck numbers at night along the haul road Mr Hollyoak also supports the formulation and implementation of a Transport Management Plan which includes a Heavy Vehicle Operator Code of Conduct (the Plan) imposing a speed restriction for the length of Barraba Street and a code of conduct for Strathfield truck drivers (including contractors) requiring compliance with the speed limit. He is of the opinion that this would reduce the emission of noise as compared with what would be emitted if the trucks were merely to observe the ordinary road speed limits. He also suggests that the Plan require that the Strathfield truck drivers limit the use of air brakes in urban areas and along the haul road from Strathfield to South of Manilla. A traffic management plan was also recommended by the RMS in their letter to the Council dated 21 February 2014 (annexed to Exhibit N).

105 Baiada's draft Condition 16 of Exhibit R29 adopts these recommendations. The condition requires the preparation of the Plan prior to construction with a provision that requires drivers not to exceed 60mk/h along Namoi River Road between the cemetery and Arthur Street, and at or below a speed of 20 kilometres per hour along Barraba Street between Arthur Street and Fossicker's Way. The proposed condition also requires that the Plan include a phone number or email address for members of the public to use to lodge complaints in relation to heavy vehicles; and a complaint register to be maintained of all such complaints made, and actions taken as a result of the complaints, to be provided to the Council quarterly.

106 Additionally, Baiada has agreed to restrict B-double truck movements between school hours of 8.00 and 9.30 am and 2.30 and 4.30 pm on school days, and offers acoustic treatment of individual dwellings along the haulage road between Manilla Historical Cemetery on the Namoi River Road and Fossickers Way (MR63) the front façade of which is located within 70 metres of the haulage road; and the installation of air-conditioning units of an appropriate size for any bedroom window.

*Mr Tobin's property*

107 As referred to earlier, Mr Tobin family home is located about 20m from the tight Barraba/Arthur Street intersection of the RAV road, and I accept his residential nighttime amenity is likely to be adversely impacted by the increased B-double traffic generated by the proposed development. And, while Mr Tobin appreciates that the upgrade works proposed to this intersection will address the safety/engineering issues for trucks turning in this section of the RAV road the upgrade works do not address his other amenity concerns at detailed at [81]. He maintains his objection to the development given the close proximity of his family home to the haul road. Based on the evidence before me I accept that his corner property is perhaps the most affected by the development's truck movements.

108 Baiada has responded to Mr Tobin's evidence with an offer (on terms) to purchase his land at 53 Barraba Street, Manilla, if desired (condition 1 on separate tender included with Exhibit R29). Although, Baiada maintains that this offer of purchase is not necessary in order for the Court to form that view that the impacts are satisfactorily mitigated by the other proposed conditions of consent it makes the offer just the same.

109 In the circumstances, I think the condition is appropriate given the likely impacts of the increase in traffic including B double truck movements day night on his family's residential amenity in light of its proximity to the intersection. These impacts, in my assessment, are not satisfactorily addressed by the other mitigation measures proposed in the application.

*The RMS's involvement*

110 As discussed already the RMS has been consulted in the preparation of the DAs since August 2013, and its comments and recommendations have informed the content of the EIS and the draft conditions of the consent in this appeal.

111 For example, as recommended by the RMS, the applications address the current "Guide to Traffic Generating Developments", and are supported by a road safety audit prepared by Road Net dated 10 June 2014. The audit report has assessed part of Namoi River Road and Buena Vista Road and recommended a number of roadworks to the haul route (and the emergency routes) to improve the safety of the road network, noting that the works are prioritised as low to high (Exhibit 19Vol 4, Tab 30, folio 3187 -3212). The RMS has reviewed the audit report and provided comments to the Council in its letter dated 21 February 2014 (Exhibit N). These matters have been the subject of further discussions between the Council and Baiada's experts and resulted in the preparation of additional traffic evidence (Exhibit R19).

*The parties' traffic evidence*

112 The traffic evidence before the Court is extensive. It extends to a peer review by Mr Hollyoak of the RoadNet Safety Audit report and the RMS 'comments about that report and further traffic surveys and reports from Mr Coady and PSA Consultants.

113 Before I deal further with the topic of traffic I need to acknowledge the qualifications and experience of Mr Hollyoak with respect to road design and road safety. In short he is a IPWEA/RTA Level 3 Road Safety Auditor with over 30 years' experience in major road projects. His experience and qualifications is detailed in his CV which is attached to his statement of evidence (exhibit R5). Relevantly, Mr Coady does not hold the same road safety qualifications or experience. Therefore, I consider Mr Hollyoak is well placed to advise the Court in respect of the road safety issues in this case, and for that reason I have attributed significant weight to his evidence.

114 With respect to road safety Mr Hollyoak has identified particular upgrade works which he considers are necessary to the haul road route (including Byrnes Gap Road in order that it is passable by B-doubles in the event of that road's use in an emergency (Exhibit R37)). The identified works however do not incorporate all of the upgrade road works listed in the RoadNet Safety Audit report for the emergency road. This is because Mr Hollyoak is of the opinion that not all of the works are necessary because that route will only be used in an emergency event (possibly once every few years). Notwithstanding this, he does identify two works to improve the emergency route. The first improvement is a recommendation to widen the four boundary fence gate openings on the property by about 300 millimetres, and the second is to fill the "dip" in the roadway about 2.1 kilometres west of the intersection of Byrnes Gap Road to provide a more even grade. Baiada has agreed to carry out these road upgrade works in accordance with its proposed conditions prior to commencement of the operation of any poultry sheds.

115 Mr Hollyoak also recommends further guidance be provided at the bends of the haul road to ensure safety. To that end he has suggested the provision of advisory speed signs, chevron alignment markers, road alignment marker posts etc along the haul road. In making these recommendations however Mr Hollyoak has told the Court that these advisory signs are needed, irrespective of the development, and would normally be carried out after appropriate survey by the Council. His evidence is that appropriate guidance on bends is a common problem on rural roads.

116 The complete list of the upgrade works recommended by Mr Hollyoak to the haul roads is contained within exhibit R41. They are also identified in Rostry's draft conditions of consent (exhibit R 29 -condition 15).

117 The works include:

- A guardrail culvert to be constructed on the Namoi River Road, 7.35 kilometres north of the Manilla Road/Barraba Street intersection,
- Another at 10.30 kilometres north of Manilla Street/Barraba Street to improve safety on that turn (Condition 15(iv));
- The removal of a tree at chainage 4.85 kilometres along the Namoi River Road to improve sight distance (Condition 15(iii));
- Widening at Barraba Street/Arthur Street/Namoi River Road intersection to allow for a legal swept path movement of a RAV and to allow two heavy vehicles to pass each other (Condition 15(i));
- Lighting and signage at Crow Mountain Road/Namoi River Road intersection (Condition 15(v));

- Removal of existing or replacement of cattle grids on all roads within Strathfield( conditions 15 (vi);
- Engineering assessment of the structural capacity and width (for road safety purposes) of the culvert on Crow Mountain Road (100m south of intersection with Byrnes Gap Road )and if deficiencies with the capacity of the culvert are identified it will be replaced(Condition 15(vii);
- The construction of a school bus stopping area and kiss-n-ride drop-off and pick-up zone at the Crow Mountain Road/Namoi River Road intersection aimed at improving the safety of children alighting or waiting for the school bus (Exhibit R29 Condition 15(ii)).

118 Some of the road works require separate applications/approvals from other authorities such as the RMS for the gazettal of a section of Crow Mountain Road as a RAV route, and the Council approval of the roadworks under s138 of the Roads Act. (I note that the RMS will oversee these works through the Works Authorisation Deed (WAD) process). As stated earlier the need for these additional approvals from the council for the road works arises because the DAs lodged did not did seek to have roadworks assessed as "integrated development" under s 138 of the Roads Act, and therefore the Court is not in a position to approve these works as part of these proceedings: *Goldberg v Waverley Council* [2007] NSWLEC 259. That said, the requirement for further approvals after the issue of development consent is not novel in circumstances where the Court has had opportunity to understand the nature of the works the subject of the further approvals.

119 Provided the Court is satisfied on the evidence that the proposed haul route (and emergency routes) are capable of being made safe based on the evidence about the identified further works, and can provide appropriate access to the development then there can be no suggestion that the Court has not adequately assessed the application under s 79C. In this case there is extensive written and oral expert evidence about these matters. In short, the experts agree that ultimately the entire haul route will only travel along a

gazetted RAV route. This means that the route has been designated as a B-double route and has been considered to be safe and suitable for B-double traffic by the RMS, irrespective of this development. In fact, the only condition that the RMS has placed on the RAV route is that B-doubles do not pass each other on the Manilla Bridge. In the circumstances I must assume that the issues concerning the suitability of the route for B-doubles trucks have been properly assessed under the relevant statutory processes.

- 120 Over and above that, the proposed RAV haul route has been assessed for the purposes of this development. It has been the subject of a road safety audit by RoadNet (which has been reviewed and commented on by the RMS) and subsequently reported on and peer reviewed by Mr Hollyoak.
- 121 In carrying out his final assessment for the Court Mr Hollyoak has reconsidered his initial traffic assessment (Exhibit R5), having regard to the final agreed maximum number of B-double truck movements able to be processed, and has taken into account the Tamworth Regional Local Traffic Committee report dated 9 June 2010 (Exhibit 2R6) which is based on an assessment that there would be minimal use of the haul route by RAVs generally.
- 122 Whilst acknowledging that, from a policy perspective, if a roads authority designates a route as a B-double route it can be expected that the route should be safe for B-double traffic Mr Hollyoak does not stop there in his assessment of the present applications. Rather, he has undertaken a review of the haul roads from the farms to and through the Manilla township with a view to identifying issues of potential road safety, and as a result he has recommended several upgrades to ensure that operationally the roads can properly accommodate the vehicle movements contemplated by the farms. His recommendations in fact endorse a number of the improvements itemised in the RoadNet Safety Audit Report (also recommended by the RMS) which the developer agrees to carry out – but not all of them.

123 As already noted at [115] Mr Hollyoak does not recommend the works for the emergency route outlined in items 33, 34 and 35 of the RoadNet Safety Audit Report because in his assessment they are not necessary given the likely infrequent use of the emergency routes (Exhibit R37). Although, he does endorse some other works to this emergency route (Exhibit R37).

124 The objector is critical of Mr Hollyoak's resistance to some of the proposed emergency works suggested by the RoadNet Safety Audit report. It submits that in making his assessment about the adequacy of the emergency routes he has adopted double standards and abandoned his earlier evidence that "*...road safety audits have nothing to do with frequency of use, merely safety matters*" (OWS at p52 at [3.260]).

125 I do not accept this submission based on my understanding of Mr Hollyoak's evidence which in my assessment is entirely consistent. Firstly, he accepts that the RoadNet safety audit report identifies certain upgrade works for the alternative route to address safety matters. The identification of those matters is not based on use but safety. However, that does not mean that each of the itemised works has the same safety priority for every development. Each itemised work needs to be assessed having regard to the context of the development and prioritised accordingly. This is exactly what Mr Hollyoak has done for the purposes of his evidence. After assessment, based on his extensive experience and particular expertise with road safety, Mr Hollyoak has prioritised the itemised works and concluded that those items (at [124]) are unnecessary for the purposes of this development based on the infrequent use of the road (once every few years).

126 I accept his informed assessment and for that reason I am satisfied that the road upgrade works detailed in the conditions recommended by Mr Hollyoak will ensure the safety of the designated haul route and emergency routes for this development. In any event, they are assessed by Mr Hollyoak as minor works (eg localised widening on bends and signage), which will not have any significant environmental impact. While Mr Hollyoak is not an ecologist based on his extensive experience with road construction and safety upgrade works

to existing roads I accept that he has some understanding of the impacts of roadworks on the natural environment. Therefore, his opinion about the nature of the works and their potential for environmental impact is of some relevance particularly when it accords with the expert opinion of Dr Roberson - who is an ecologist with extensive also experience of the environmental impacts of road upgrade works.

127 Based on his inspection of the site and his familiarity with the area of the proposed works Dr Robertson is of the opinion that they will not cause any unacceptable environmental impacts. They are in his assessment minor upgrade road works (see at [118]). Although Dr Robertson told me at the time of his evidence that he has not inspected every culvert along the haul road he has inspected the site and is familiar with the area of the proposed works having travelled the haul route. In the circumstances I am satisfied that Dr Robertson is in a position to give an informed expert opinion to the Court about the environmental impacts of the minor works proposed in this case. In essence Dr Robertson's evidence is that the proposed conditions will ensure appropriate ecological assessment before the work is undertaken. The conditions refer to the need for relevant approvals from the RMS and the Office of Water at a later time but before the works are undertaken. According to Dr Robertson this is normal practice. The appropriate ecological assessments will be made at the time of the assessment of the relevant approvals. I accept Dr Robertson's ecological evidence based on his extensive qualifications and experience in supervising and assessing the environmental impacts of both minor and major road upgrade works over many years (I deal further with this issue when I discuss the ecological issues at a later time).

#### **(ii) Traffic safety issues associated with queuing at the Manilla Bridge**

128 Given that the objector and the residents have raised particular concern about the capacity of the Manilla Bridge to safely accommodate the increase in B-double trucks, it is appropriate to deal with this issue separately. Generally, they fear an accident is likely to occur as truck drivers to and from the

development will not appreciate the limitations of the bridge which the locals understand and accommodate each day. They are also concerned about an increase in queuing to cross the bridge at times when B double truck is passing.

- 129 Although the Manilla Bridge does not accord with current design standards, it forms part of the Manilla Road/Fossickers Way State Road route for the crossing of the Namoi River just north of the Manilla town centre. The bridge is part of the proclaimed Tamworth-Warialda Road B-double route. It currently accommodates, on average, 2,224 vehicles per day, including 21 B-double trucks. According to the traffic studies in the daytime, between the hours of 7.00 am and 7.00 pm, bidirectional traffic flows on the bridge are 1,972 VPD including 16 B-doubles (Exhibit N).
- 130 The evidence is that the approach to the bridge is more than half a kilometre long (570 metres) and it has a narrow carriageway some five to six-and-a-half metres wide. The constraint imposed by the narrow carriageway is recognised by the condition imposed by the RMS on the Tamworth-Warialda Road B-double route that there will be "no more than one heavy vehicle at a time on the bridge at Manilla". I understand that the locals have lived with this constraint on the use of their bridge without major incident for many years however, they have told the Court it is inconvenient and frustrating. At times vehicles (including the school bus) have been caught out half way across the bridge and have been required to back off the bridge to allow a larger vehicle to pass first. Given the constraints of this historic and narrow Manilla Bridge which will not accommodate trucks passing at the same time, the traffic experts have agreed that, to avoid conflict, vehicles will need to queue on either side of the Manilla Bridge to await the passing of a truck (B-double).
- 131 Mr Coady is of the opinion that the increased wait time is likely to exacerbate the current frustration experienced by drivers waiting for another vehicle to cross the bridge. And, if the additional traffic generated by this development (up to five B-double trucks per hour) is realised, then waiting drivers may attempt to cross the bridge in a more anxious and uncalculated way and this

will result in more frequent collisions of vehicles. Mr Coady said that he has observed cars waiting some distance from the entry to the bridge and if that practice continues and the queuing starts from that point (which is identified in the photograph taken by Mr Hollyoak in his Statement of Evidence (Exhibit R5)); he is of the opinion that this will increase the potential for conflict.

132 Table C7 of the joint report (Exhibit R17) sets out the conflict analysis of the traffic experts. Mr Hollyoak's evidence is that there is likely to be a 3-4% increase in conflict generated by the proposed increase in B-doubles. This is based on a bridge distance in the order of 400 metres (300 metres being the bridge and 50 metres either side being the lead-up to the bridge) and the proposed increase in B-doubles as anticipated by this development over an hourly timeframe. In Mr Hollyoak's opinion a 3-4% increase in risk is not a significant increase and from a safety audit perspective does not present an unacceptable risk. In short, it is not a basis for the refusal of this development.

133 Even accepting Mr Coady's evidence that vehicles presently queue some distance from the bridge entry (at a point 570 metres distant), and that this will increase the risk of conflict in the order of 4-5%, Mr Hollyoak is of the opinion that this is a marginal difference. Based on his expertise as a traffic safety expert, Mr Hollyoak is firmly of the view that the traffic generated by the proposal, including B-double trucks will not cause an unacceptable safety risk to motorists using the Manilla Bridge; he believes that the Manilla Bridge is safe for the proposed traffic generated by this development.

134 The Court observed the operation of the Manilla Bridge from both approaches on the site inspection and appreciates the queuing of traffic on each approach as required. Mr Hollyoak's evidence about the suitability of the bridge for the B double trucks generated by this development is based on a conflict analysis of its current use both day and night (Exhibit 5) and a consideration of the agreed number of additional B double trucks from the farms generally at nighttime .

135 The objector submits that given the uncertainty of the traffic generation from the proposal the analysis undertaken by Mr Hollyoak is unhelpful. It relies on Mr Coady's evidence that, notwithstanding the classification as a State road, the bridge is totally unsuitable to accommodate the additional B double traffic demand generated by the proposal and for that reason the applications should be refused. After careful consideration of all of the evidence including that of the residents I accept Mr Hollyoak's expert opinion on this issue based on his traffic safety qualifications and experience (as outlined earlier). Mr Coady does not have the same qualification in respect of road safety.

136 With respect to the fears expressed by the residents of the frontage properties, both as pedestrians walking on the public road and damage to their property as a consequence of traffic/truck accidents, Mr Hollyoak says that their fears are unfounded. In his expert assessment there is no valid reason to believe that the proposed maximum of nine vehicle trips per peak hour along an existing B-double route will result in any adverse safety conditions for pedestrians. Nor is there any evidence to support the view that the increase in B-double activity (generally at night-time) will have a significant effect on pedestrian ability to cross roads or road safety generally.

137 The evidence is that the development will not generate any increase in truck traffic in the Manilla town centre because the trucks will be required to travel to and from the farms along the designated haul route. While there may be some slight increase in car activity as a result of employees stopping to buy provisions etc, Mr Hollyoak expects this to be a modest increase which will be unlikely to affect the traffic capacity or pedestrian safety within the town (Revised Traffic Impact Assessment dated 17 April 2014, exhibit 19, tab 25 folio 2953).

138 Accordingly, I can see no basis on the evidence before me to refuse the applications because of traffic safety issues associated with queuing at the Manilla Bridge generated by the development.

**(iii) Coady's evidence in respect of the farm impacts of traffic on residential amenity**

139 Apart from being a traffic expert Mr Coady is also a town planner. In that capacity Mr Coady has carried out an assessment of the development's traffic impacts on the residential amenity of residences along the haul route. His reasoning is outlined in his Statement of Evidence (Exhibit N) and his conclusions are detailed in the table at page 38.

140 In carrying out his assessment, Mr Coady has had regard to the *New South Wales Route Assessment Guide for Restricted Access Vehicles – Publication No: RMS 12.450* (30 October 2012) and he has adapted the risk evaluation process outlined in that document to classify the problem as either LOW, MODERATE, or EXTREME.

141 The impacts he has considered are listed as dot-points on page 38 of this report. His analysis involves a consideration of each impact having regard to the land use and the type of development on the land: either residential rural, more dense residential, together with the amount of traffic (particularly B-doubles) travelling on that road, and the proximity of the road to the residences.

142 Before I consider his conclusions, I must acknowledge that Mr Coady holds no qualifications in acoustic matters. Therefore, as Mr Howard submits, his evidence about the impacts of the noise of trucks on the residents along the haul route needs to be disregarded in circumstances where there is extensive acoustic expert evidence before the Court (which I will deal with in due course).

143 In relation to the other impacts listed in Mr Coady's statement, he concedes that there is some overlap in the criteria and agrees that they are not weighted risks. Upon closer examination of the exercise undertaken by Mr Coady, I must accept the submission of Mr Howard that, without any working documentation to supplement the material in his statement, it is difficult to

understand how he has objectively derived a rating for the particular impact which can provide me with any reliable foundation.

144 In the ultimate Mr Coady's evidence is that increasing the number of trucks will have unacceptable impacts on the properties along the haul road. Unfortunately, under cross-examination, Mr Coady was not able to tell me which particular residence would be most impacted, nor how or why, and instead referred me back to his table and offered the comment "...that the quieter the road within the rural amenity of the area the more likely the impact".

145 Despite the limitations of Mr Coady's planning assessment, I am confident that the Court has sufficient reliable and comprehensive evidence about the proposed truck movements to assess the development's impacts on the residents of the haul road as required by s79C. In the main that evidence is derived from the affidavit of Ms Dickson which provides a carefully calculated and quite precise summary of what type of vehicles will travel to and from the farms, the operational purposes which those vehicle movements serve and the number and total of each of the categories of vehicle movements per farm every 9.5 week production cycle and per all of the farms cumulatively over the production cycle and per annum (Annexure A to exhibit R8, a table entitled Total Traffic Generation Summary). There is nothing conservative about these figures and in so far as they pertain to broiler transport at night time they are based on the conservative assumption that the trucks will carry 6500 birds. The range of truck loadings is between just under 6000 birds per truck for the largest broilers (50 -60 days old) and up to almost 10,000 birds per truck for the smallest birds (32 -36 days old). For ease of reference I set out (again) Ms Dickson's evidence about the movements of B doubles during the night time period:

(a) The maximum number of B doubles truck movements that would be feasible on the assumption that Oakburn plant was operative (and that Outstreet does not operate contemporaneously) and that all birds capable of being processed at that plant in a night

are all picked up from Strathfield farms ( and NONE from any of the other 22 farms currently operating in the district) would be 48 truck movements per night;(exhibit R8 at [36]-[38]);

(b) In practice Ms Dickson told the Court however, that it is not likely that all birds on any night would be picked up from the Strathfield farms and it is much more likely that there will be far fewer B double truck movements from the Strathfield farms on any given night in which birds are being picked up from any of those farms (exhibit R8 at [39]-[40]).

146 The traffic experts accept those figures and ultimately agreed that on a busy night the broiler pickups from the farms is likely to be in the order of 22 -24 movements or 11 or 12 trucks (exhibit R17 ,p2 at [2.1] plus Table B1 at p6). With that in mind I accept the oral and written evidence of Mr Tobin and Mr Dutton and the other local residents that there will be a demonstrable impact on the existing amenity of some of the residents who reside along the haul road particularly during the acoustic night. Generally, they will experience, depending on their position along the route, a change to their present amenity and at times adverse impacts caused by additional truck noise, glare, dust and traffic. In acknowledging the increase in truck movements I appreciate that the residents currently experience some truck traffic in the day along the RAV route. While Mr Coady did not record any B double trucks during his survey of Barraba Street as Mr Ireland's statement of evidence discloses Mr Hollyoak evidence does (Exhibit R7 p2). The Table 2,4 of Mr Hollyoak's statement (Exhibit R5)) records that the existing average weekday traffic flows at Barraba Street on the day of survey were 86 vehicles per day, including 16 heavy vehicles (including 7 articulated or B doubles ) Of these, none were recorded between 10pm and 7am. The existing average weekday traffic flows at Namoi River Road (East of Arthur Street) was 288 vehicles per day including 61 heavy vehicles (including 11 articulated or B doubles trucks of which 4 heavy vehicles were recorded between 10pm and 7am.

147 As already noted the Tamworth Warialda Road (Manilla Road or State Road 63) has been classified under the Roads Act as a Main Road. Consistent with Mr Coady's evidence Mr Ireland's states in his report that Main Roads are intended to function as the primary network for the movement of goods and people throughout the state. Relevantly, the proposed haulage route along Tamworth Warialda Road is identified as a RAV route which services vehicles up to 25m B doubles , conditional on no more than one heavy vehicle at a time on the Namoi River bridge.

148 The reasonableness of the objector and the local residents expectations to maintain their existing amenity within the designated urban and rural areas, as the objector submits, needs to be assessed within the context set by the planning scheme. Section 79C(1)(b) of the EPA Act requires the Court consider, where relevant, the provisions of :

- (i) any environmental planning instrument, and
- (ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and
- (iii) any development control plan, and
- (iv) any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and
- (v) any coastal zone management plan (within the meaning of the Coastal Protection Act 1979),  
that apply to the land to which the development application relates,
- (b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,
- (c) the suitability of the site for the development,
- (d) any submissions made in accordance with this Act or the regulations,
- (e) the public interest.

149 With respect to the above, Mr Ireland and Mr Coady agree that the haul route passes through a number of zones under the LEP which at times have competing objectives (Exhibit R19, Vol 9, Tab 91 folios 7079–7089). I appreciate the different zones and the existing nature of the development along the haul route because I travelled the route and observed large rural

properties proximate to Strathfield, smaller rural/hobby farms/properties, single residences, businesses, schools, a medical centre, the cemetery and recreation areas. I believe that I have a general understanding of the existing amenity of the area based on my observations and the evidence of the local residents. In particular, I appreciate the fact that the haul route is a designated B-double route which presently has very light B-double traffic along certain areas of that route. In fact, based on Mr Coady's traffic counts, there were no B-doubles counted in the period along Namoi River Road or Barraba Street Manilla in the night period.

150 That said, I accept that an aim of the LEP, as set out in cl 1.2(2) (b), is:

To allow flexibility in the planning framework so as to encourage orderly, economic and equitable development while safeguarding the community's interests and residential amenity."

151 And, as the objector submits, this can be interpreted as encouraging investment and business opportunities where the community's interests and residential amenity is safeguarded. However, safeguarding does not mean "no change" - particularly where the development is permissible and when the evidence is that the impacts can be acceptably managed and/or mitigated. The proposed use in this case will generate both investment and business opportunities for the town and the region. This is clear from the EIS and the evidence generally. This outcome is obviously in the community's interests. The Tamworth Regional Strategy, while having no legislative force, which was prepared to inform the LEP, assists the Court understand the importance of agriculture for Attunga, particularly cattle, sheep and poultry farms (Exhibit 19, Vol 9, Tab 80, folio 6584). Similarly, the Manilla Matters – Community Strategic Plan assists the Court in its weighing up of the public interest and social impact of the proposal. The strategy encourages "Economic development – developing and strengthening local business and developing opportunities for new businesses/industries to provide a sustainable economic base."

152 If approved, it is stated that the development will provide jobs and generate revenue at both a state, regional and local level because the farms are interdependent with other local businesses. These economic benefits are relevant and need to be considered in the Court's overall assessment together with the other impacts on the community and, in particular, the residents situated along the haul road that, I accept, will experience change and a loss of their existing amenity.

153 Putting aside the acoustic impacts along the haul road and Mr Tobin's concerns in respect of his property situated on the corner block of Barraba Street, there is no expert town-planning evidence provided by Mr Coady or anyone else which supports a refusal of these applications on the basis of impacts on residential amenity along the haul road or the character of the Manilla township. As Mr Ireland explains in his evidence, transient truck movements on a gazetted B-double route in a principally rural area (except for Barraba Street which is zoned residential) will not fundamentally change the character of Manilla township or the localities within the townships on which the haul route would be located, particularly as no vehicles, including B-double trucks generated by the development, are required to pass through the historic town.

154 Accepting as I do that the most adversely affected residents on the haul route are those between the Manilla Historical Cemetery, on Namoi River Road and Fossicker's Way, and the properties along Barraba Street, between Namoi River Road and Fossicker's Way, the evidence is that the proposed conditions will acceptably mitigate and/or manage those adverse impacts and that any change to these residents' existing amenity after a weighted assessment of all relevant matters under s 79C is not a basis to refuse the development.

155 Ultimately, each case must turn on its own facts and it is often unhelpful and entirely irrelevant to compare one decision of the Court with another as the objector invites me to do in this case. For example, the Court's particular determination in *CEAL Limited v Minister for Planning & Ors* [2007] NSWLEC 302) that 24 B double trucks was too many in an application for a quarry - in

an entirely different local government area - has no particular relevance to the case at hand about a poultry farms operation (AWS at page 28 at [3.101-3.103]). Although matters of legal principle can be relevant and in fact CEAL offers useful comment in that regard as referred to at [150] below.

156 I accept that the likely impacts of development (s 79C(1)(b)) include impacts on amenity and that these extend to the character of a place and the attributes of a place which a community values as important contributors to its character: *New Century Developments Pty Ltd v Baulkham Hills Shire Council* (2003)127 LGERA 303 at [53]to[64] per Lloyd J and *Telstra Corp Ltd v Hornsby Shire Council* (2006) 146 LGERA 10 at [190] to [208] per Preston CJ.

157 However, after a consideration of the evidence of the local objectors as expressed orally and in writing in the context of the expert planning evidence, I cannot accept that it is reasonable to assume that a designated B-double route will only ever service one livestock haulage operator (Exhibit 2R6) and that the intensity of the haul road which has been historically low must remain unchanged and, if intensified, that the character of the town of Manilla will change. The character of Manilla, which the local objectors describe in their evidence, is made up of rural and rural/residential and non-residential uses. The proposed development is a permissible rural use on the land. As Mr Ireland states in his evidence the character of Manilla is an aggregate of qualities and is not static. It is comprised of physical space occupied by town which is developed over time and will continue to change and develop in the future.

158 The township is bisected by Tamworth – Warialda Road (State Road 63) which has a historic presence in its location and has continually functioned as an important route for goods, people and services to, from and through Manilla. As Mr Ireland explained to the Court an approval of the development and use of the RAV route does not of itself change the character of the town of Manilla. As Rostry submits, it is the impacts of the development which the residents believe or fear will change the character of Manilla.

159 The impacts of the proposed development on the Manilla residents need to be assessed within the context of the LEP and the other relevant planning controls for the area - which I have considered. The passing of the trucks along public roads to reach the processing plant from the permissible development is a consequence of the permissible use, and any impacts generated by that use outside the site need to be assessed under s 79C. However, impacts outside the site generated by a use are not unusual. The impacts of development can, and often do, cross zone boundaries. Whether the impacts of any development are acceptable or not depends upon balancing all relevant factors contained in s 79C (1) and the particular evidence before the Court: *CEAL* at [60] per Jagot J. The extent of the obligation under s 79C (1) to consider the likely impacts of the development is dictated by the consent authority's view (Court) about the extent of the impacts.

160 The likely impacts, for the local residents, are summarised in the objector's written submission at page 24 at 3.91 and after careful consideration of the likely impacts I am satisfied that the mitigation/management measures proposed in this application, and generally summarised in Rostry's written submission dated 6 November 2015 at [87], satisfactorily address the likely impacts.

**(iii) Acoustic impacts from trucks at night/early morning along the designated B-double haulage road**

161 A repeated concern expressed by the residents' evidence is truck noise, day and night, along the haul road. The evidence about that issue is set out below.

162 A particular consequence of this development is the impact on the occupants of the houses located on Namoi River Road, west (south/west) of the cemetery, and on of Barraba Street, between Arthur Street and Fossicker's Way (also known as Manilla Road), which forms part of a section of Main Road 63 (MR 63) who, the experts agree, will experience up to a maximum of 22 B-double trucks during the acoustic night period between 10.00 pm and 7.00 am for up to 220 nights per annum.

163 Some of these residents are concerned about traffic noise and sleep disturbance at night.

164 According to the objector's submissions, the real dispute between the parties in relation to acoustic impacts at night is:

- (a) Whether there is any requirement to assess sleep disturbance events caused by traffic from a proposed development along a haul road; and
- (b) Whether the traffic generation from the proposal will cause sleep disturbance events to residents along the haul road and, if so, whether those impacts are reasonable in the circumstances.

165 Both Dr Tonin and Mr Cooper agree that the New South Wales Environment Protection Authority Road Noise Policy (RNP) applies to the development (Acoustic Joint Report Exhibit R14 at [12]).

166 They also accept that the RNP provides guidance on assessment of traffic-generating noise, including in relation to any potential for sleep disturbance.

167 The document is structured in the following way:

- The scope and application of the RNP is set out in Section 2.1.
- Section 2 sets out the "Assessment Criteria" which are the criteria intended to be satisfied upon assessment.
- Section 3 addresses how noise assessment criteria are to be applied.
- Section 4 deals with mitigation and management of road traffic noise; and
- Section 5 deals with "Other road traffic issues".

168 The issue of sleep disturbance is considered in the "Other road traffic noise issues" in Section 5 of the RNP, which falls outside the section of the RNP which identifies the noise assessment criteria. Therefore, the noise assessment criteria in the RNP do not include sleep disturbance criteria.

169 That said the primary purpose of the RNP is set out in Part 1.2. The section states "...this document is to provide assessment criteria for road traffic noise based on protecting amenity and wellbeing".

170 The acoustic experts agree that the noise assessment criteria at Part 2.3 of the RNP applies, and that the proposal meets the criteria in Table 3 which is measured by reference to LA eq (15 hour) (day time) and LA eq (9 hour) (night time) values.

171 Both Dr Tonin and Mr Cooper agree that Table 5 of Dr Tonin's evidence shows there is compliance with the RNP criteria for that range of B-double truck movement scenarios (Exhibit R14, page 3 at [13]). On that basis, I accept that there is a reasonable degree of protection of the amenity and wellbeing of the occupants of the subject houses which, as noted, is the primary purpose of the RNP.

172 However, Dr Tonin does not believe that the assessment process ends there. He is of the opinion that it is appropriate to assess if the noise levels of the B-doubles during the nighttime period will create sleep disturbance to residents living along the haul route.

173 Initially, Dr Tonin assessed sleep disturbance by reference to the EPA Industrial Noise Policy (INP) but, when challenged about this in cross-examination, he accepted that the INP makes clear in its introductory section that it is not a policy that is appropriate to use for developments that generate road traffic noise. Ultimately, he argued that it was appropriate to rely on the research of Mathias Basner (Basner) (Exhibit M, page 15) and the NSW *Roads and Traffic Authority Practice Note 3 (NSW Roads and Traffic Authority*

2008a) (RTA Practice Note 3) protocol for assessing and reporting maximum noise levels and the potential for sleep disturbance.

174 It is necessary to go outside the RNP because, as it recognises in Part 5.4, the RNP does not provide particular indicators for sleep disturbance. The section states:

Triggers and effects of sleep disturbance from exposure to intermittent noise from road traffic are still being studied and that there is insufficient evidence to set new indicators for potential sleep disturbance due to road noise traffic.

175 However, as Rostry submits, a consideration of sleep disturbance outside of the framework of the Section 2 assessment criteria must be tempered by a recognition of the fact (as is clear from Part 5.4 of the RNP), that the EPA has expressly refrained from setting any criteria for a good reason, namely, the ongoing uncertainty in determining whether, how and in what way a person's sleep is disturbed by road noise. As stated in *Telstra Corp Ltd V Hornsby Shire Council* [2006] NSWLEC 133 at [98]-[99], per Preston CJ:

It is not appropriate for a Court to set aside or disregard such as authoritative and scientifically credible standard as the Australian Standard RPS3; Nor is it appropriate for a Court to pioneer standards of its own. The creation of new standard is the responsibility of other authorities with special expertise, such as ARPANSA.

176 While these remarks are pertinent, I am not suggesting that the Court should ignore the potential for sleep disturbance in its assessment of this development under s 79C but, rather, in carrying out such an assessment in respect of road noise generated by the development, a primary focus must be directed to whether the noise assessment criteria in Part 2 of the RNP are likely to be achieved.

177 The evidence of both acoustic experts on that issue is that the RNP criteria are complied with by this development.

*Applying the RTA Practice note 3 on sleep disturbance*

178 As noted, the RTA Practice Note 3 identifies a protocol for RTA road projects and provides that intermittent noise from vehicles will produce noise peaks (maximum levels) 15dBA louder than the LA eq (1 hour) and if those maximum sound levels are 65dBA or higher, as measured at the façade of the receptor, then there should be reporting of that in order to rank and prioritise design options and noise mitigation measures (Exhibit 36, page 91-94).

179 The 65dBA level is derived from an accepted position that “maximum internal noise levels below 50-55dB(A) are unlikely to awaken people asleep” (Part 5.4 RNP). It is typically accepted that the level of sound within a room with an open window will be 10dBA below the level of sound at the outside of the façade. Therefore, the protocol adopts a sound level of 55dBA within a bedroom as being the level which triggers reporting and consideration of mitigation measures’ strategies because of potential sleep disturbance.

180 Despite the terms of the protocol, Dr Tonin has decided to adopt, in this case, a maximum level of 45dBA (based on Basner’s research level) as being the level at which the Court should assume that there is significant potential for sleep disturbance. (Mr Cooper drew the Court’s attention to the fact that, in an earlier case of *Benclutch Pty Limited v Liverpool City Council* [2012] NSWLEC 1284; he took a different approach because he said he was not aware of the Basner research at that time - albeit the facts were different.)

181 Dr Tonin’s assessment of the LA maximum noise levels is set out at pages 9-19 of Exhibit R14.

182 In summary, if one adopts the protocol of the RTA Practice Note 3, then the movement of trucks past the houses in the lower end of Namoi River Road and in Barraba Street during the nighttime hours of 10.00 pm till 7.00 am may be expected to reach levels of 65dBA at the outside road-facing facades of some of the houses in the lower part of Namoi River Road and in Barraba Street, as is identified in the Acoustic Experts Joint Report (Exhibit R14 , Figures 2 to 7 inclusive at pages 11, 13 and 15-18).

183 If no noise mitigation measures were to be introduced, this would then be expected to have the consequence that, assuming open bedroom windows, some of the bedrooms in those houses facing the road would experience peak sound levels at the moment when a B-double truck travels past at or above 55dBA level, being the level at or below which most people will not awaken from their sleep, according to the results of research referred to in Part 5.4 of the RNP.

184 In order to achieve the ENMM Practice Note 3 criterion of 65 LA max at 44 Namoi River Road, eastbound trucks would need to travel at approximately 20 kilometres per hour. The existing background level is 37 LA eq.

185 At Barraba Street, assuming all trucks were in perfect condition, even trucks travelling at 20 kilometres per hour would exceed the ENMM criterion of 65 LA max and, if Dr Tonin's criterion of 55 LA max is adopted, it is submitted that, regardless of compliance, there will be significant change to the existing background noise level which he measured at 45 LA eq (9 hour) in Barraba Street.

186 Noise levels at 238 Fossicker's Way and 46 Market Street will be 77 LA max and 76 LA max, respectively, which will also be above the 65 LA max criterion.

187 When compared to the 55 LA max (external façade) criterion for sleep disturbance, the exceedances are further again.

188 The fact that the levels outlined above were recorded does not mean that the development should not proceed. Mr Cooper and Dr Tonin both agree that it is appropriate to consider whether there are any reasonable mitigation measures that could be implemented to reduce the sleep disturbance criteria. Accepting that the proposal before the Court is distinct from an RMS upgrade which seeks to install infrastructure for public benefit whilst mitigating private impacts, I consider the mitigation measures offered by way of condition (to

which I have earlier referred and are detailed in the draft conditions proposed by the developer) appropriate in this case.

- 189 They include the offer to purchase the Tobin property because his property is uniquely affected by the development (given its location - on a corner site and the intersection and with turning trucks).
- 190 The objector and Mr Tobin were critical of the use of artificial ventilation systems in their bedrooms, and the introduction of a speed limit of 20 Kilometres in Barraba Street to mitigate the impacts of road noise in the night. They believe that the imposition of these measures represents an unreasonable impost on their existing residential amenity and that driver compliance with the proposed speed restrictions is unrealistic. Despite their views I am told that the RMS regularly recommends ventilation of bedrooms, and the introduction of a transport management plan and/or the adoption of a code of conduct for drivers to regulate behaviour on public roads to mitigate acoustic impacts. Dr Tonin concedes that he has endorsed such measures in the past. Mr Cooper believes that they have some value in mitigating acoustic impacts. The RMS, in fact had earlier recommended a transport management plan and code of driver behaviour as acoustic mitigation measures in its correspondence to the Council in this case.
- 191 In the circumstances I cannot accept, on the evidence including the views of the acoustic experts that the mitigation measures proposed by the conditions are entirely unrealistic or futile as the objector submits. The haul road is an approved route for B-doubles, and the RMS has had regard to the amenity impacts of such vehicles on the residents along the whole route in its assessment process before gazettal of the RAV route MR63 on which the Manilla bridge is situated and more recently from MR63 to the farms. The developer has agreed to the imposition of a condition which limits the number of B-double truck movements to a maximum of 48 movements during the acoustic nighttime despite the evidence of Ms Dickson that 48 movements is very much a maximum and is not likely to be realised. As stated Rostry intends to load 6,500 birds per truck over a period of 220 nights. The truck

movements during busy broiler pick-up periods are likely to be significantly lower than 48 movements and are more likely to be in the vicinity of about 22 movements per night – 11-12 trucks. If it was to be 48 truck movements then that would be all birds picked up over 103 nights.

192 Having regard to the above I am satisfied that the movement of trucks during the acoustic nighttime when the broilers are picked up from Strathfield will not have an unacceptable acoustic impact upon the residents along the designated B-double haulage route. I also accept, subject to the proposed conditions, that the trucks will be unlikely to cause sleep disturbance to the occupants of the houses in the lower end of Namoi River Road and in Barraba Street based on the evidence as summarised in parties' submissions.

#### **(iv) Biosecurity**

193 There are two contentions concerning biosecurity, one of which also involves alleged unacceptable economic impact on the objector.

194 The first contention is that the feathers from the trucks transporting the broilers will contaminate the three lucerne pivots on the objector's property, Yarrenbool, and this will mean that the lucerne crop grown will be contaminated by "restricted animal material" as defined in cl 3 of the *Stock Food Regulations 2010* (the SF Regulations) and, therefore, be unable to be sold or used by the objector, thereby occasioning economic impact on the objector (contention 9).

195 The second biosecurity contention is that there is an insufficient separation distance proposed between the farms (contention 17).

*Feathers from the trucks transporting the broilers will contaminate the three lucerne pivots on the objector's property, Yarrenbool*

196 Feathers from bird carcasses (dead birds) are "restricted animal material" for the purposes of cl 3 of the SF Regulations.

197 "Ruminant" is defined under the SF Regulations as "an animal that has a rumen, and includes an animal belonging to any of the following classes of animal, namely, cattle, sheep, goats and deer".

198 Section 7 of the SF Regulations provides that the regulations may prescribe the proportion or amount of foreign ingredient permitted in stock feed. Relevantly, cl 11 and Schedule 1, Part 1 to the SF Regulations provides that there is "nil" tolerance for restricted animal material in stock food for ruminants.

199 Mr Moore now maintains, based on a letter from the DPI (Exhibit S), that the feathers from carcasses of birds are restricted animal matter and that lucerne contaminated by such feathers cannot be fed to ruminant stock. His earlier affidavit (Exhibit O) and oral evidence was different. Mr Moore's initial evidence to the Court was that he had been advised from DPI that **any** feather from a broiler landing on his lucerne precluded him from labelling his lucerne as "not containing restricted animal matter". He now seems to agree with Rostry that feathers from live broilers pose no threat to his lucerne crop sales as ruminant stock feed.

200 The issue, therefore, is now about feathers from dead carcasses landing on his lucerne crops.

201 As noted earlier, Mr Moore's property, Yarrenbool, is located adjacent to Namoi River Road and within the first 10 kilometres of travel from Strathfield to the processing plant. Mr Moore's evidence is that he supplies 80% of the lucerne hay grown on his property, Yarrenbool, for ruminant stock feed.

202 Depending on scheduling, the farms will introduce between 22 and 48 B-double trips to pick up grown birds each night (Table B1, Joint Report of Coady, Hollyoak and Ireland (Exhibit R17)).

203 The Court observed video footage taken by Mr Fletcher showing poultry broiler trucks dropping a few feathers as they transport broilers past his home

(oral evidence of Matthew Fletcher on 26 October 2015 and video (Exhibit 2R3)).

204 The report to the Council on the DAs dated 8 July 2014 states that "it is generally accepted that the most significant pollution from feathers is likely to be within with (sic) 10 kilometres of the farm" (Exhibit 19, Vol 5, Tab 36 folio 3372).

205 As Mr Moore bales hay at night, he submits that he has no way of knowing whether the feathers that escape the open trucks are from live birds or dead carcasses. And, given the intensity of the broiler pick-up trips at night along the Namoi River Road, he is of the opinion that it is likely that feathers from dead broilers will contaminate his lucerne paddocks. As a result, he will not be able to discern whether the feathers are from dead or live birds and therefore cannot make the declaration required by s 6A of the SF Regulations and sell his lucerne as ruminant stock feed.

206 The Court received evidence from two biosecurity experts, Dr Arzey and Dr Scott, about the feather-drop issue.

207 Accepting that birds do die in transit between broiler farm and processor, Dr Arzey estimated that the mortality rate of birds in transit is approximately 0-1%. On that basis, the objector submits that this equates to a maximum of 16,170 dead birds per annum in transit past his property.

208 Ms Dickson did not have any record of any statistics about birds dying in transit but conceded a few might. Relevantly, she also has no record of any complaint received by the company about feather-drop by trucks along any haulage routes.

209 While the objector accepts that materials like hay are excluded from the definition of manufactured stockfeed in cl 7 of the SF Regulations, it submits that the SF Regulations do not permit any level of contamination of stock food by restricted animal material (Exhibit R12 page 4). Furthermore, it maintains

that the letter from the DPI relied upon by the Council in its assessment of the application failed to take into account the requirements of the SF Regulations.

- 210 As Rostry has not explained in its evidence how the company might mitigate this problem, the objector contends that it is left facing an economic loss as it is not able to sell that material for ruminant stock feed. Based on the evidence of its economic expert, Mr Leyson, the objector submits the economic impacts of an approval of the farms for Yarrenbool are significant and include loss of productive land, future income and sunk investment. In short, the type of economic loss envisaged in *Alphatex Australia v The Hills Shire Council (No 2)* [2009] NSWLEC 1126; and *Kentucky Fried Chicken v Gantidis* [1979] HCA 20; (1079) 140 CLR 675 at [17].
- 211 As Strathfield and Yarrenbool are both located in the RU1 Primary production zone, the objector contends that the effect of the feather-drop will cause a distinct conflict between the primary industry of lucerne production and poultry production. This result is at odds with the objectives of the zone, which include “minimise conflict between land uses within the zone and land uses within adjoining zones”. The objector submits that the impacts of the farms’ poultry operations on existing lucerne production at Yarrenbool, and then livestock properties owned by John Allen and Lynette McCarthy, must weight in the balance for a refusal of the applications.
- 212 Rostry submits that this feather issue is devoid of merit. The evidence is that Mr Moore’s property has in the past used chicken manure as fertiliser and no evidence has come forward to suggest that this has precluded selling his lucerne as stock feed for ruminants. The Court observed birds’ nests in the rafters of his hayshed and, when cross-examined about this, Mr Moore gave evidence that wild birds would be excluded as the wild birds are naturally purified by the sun and did not pose a threat to his selling of lucerne (Transcript 302 line 45 to Transcript 303 line 11).
- 213 Despite the objector’s submissions as summarised above, I must record that Mr Moore’s oral evidence in Court was quite unsatisfactory as it did not

demonstrate any reasonable belief that feathers coming from the trucks transporting birds from the proposed farms along the Namoi River Road would contaminate the lucerne and prevent him from declaring the lucerne to be free of restricted animal material. In fact, Mr Moore's contradictory evidence to the Court concerning his inquiry of the DPI before the production of Exhibit S - and his denial of any knowledge about the receipt of chicken manure at Yarrenbool for periods between April, May and June 2010 and July and August of 2011 from a supplier which had charged his company and been paid a total of \$30,173 (Exhibit R30) seems somewhat disingenuous. The exchange between Rostry's counsel, Mr Howard, and Mr Moore is recorded in Rostry's written submissions with references to the transcript which I recall vividly and need not repeat in this judgment.

214 Based on the evidence, I find it highly improbable that feathers from dead carcasses of broilers travelling on the haul route will find their way onto the three lucerne pivots on Yarrenbool and result in an economic loss for Mr Moore's company. The DPI has not taken this position. Moreover, Dr Scott, in his statement (Exhibit R6 at page 6,) concludes that:

There is no objective reason why Yarrenbool or 'North Cuerindi' cannot be used for lucerne production for ruminant livestock feed as a result of any potential contamination of bird feathers in the hay/fodder...

Based on studies by Chinivasagam et al (2010) of dispersion of particulate material (dust) from controlled environment tunnel ventilation sheds, which involves forced expulsion of air, and extensive field experience, it is considered highly unlikely that a significant level of feathers will blow into the fields adjoining the transport route as a consequence of the passive displacement of feathers from moving vehicle. These field observations include at operating broiler farms, at broiler farms during cleanout, on transport routes and finally at processing plants.

Section 2.16 of the Best Practice Management for Meat Chicken Production in NSW Manual - 2 outlines best management practice recommendations in regard to Managing Traffic. Those best management practice recommendations are commonly implemented by industry and responsible authorities. It is noted that the focus of those recommendations is on vehicle noise, as amenity issues related to feathers and dust from transport vehicles are uncommon.

The proponent for the Strathfield broiler site (and its parent company, Baiada) currently implements the recommendations contained in the [Manual] throughout its national operations.

215 Having regard to the above, I am satisfied that there is no satisfactory evidence to support the proposition that the proposed use will conflict with adjoining land uses contrary to zone objectives. I prefer Dr Scott's expert evidence on the issue of feathers to that of Dr Arzey's because of his extensive experience with the Australian poultry industry, as outlined in his statement. Accordingly, I find that there is insufficient evidentiary foundation to support a finding that an approval of the applications should be refused on this basis.

*Insufficient separation distance proposed between the farms*

216 As noted, the second biosecurity contention is that there is an insufficient separation distance proposed between the farms. The issue is particularised in the objector's written submissions at page 33.

217 The first concern is in respect of the separation distances between the farms and neighbouring farms.

218 Part 3 of the *Best Practices Management for Meat Chicken Production in NSW – Manual 1* (the Manual) provide guidance for farm locations. Clause 3.2.5 of the Manual states that the bioseparation distance can be reduced through appropriate farm-siting and management. The best practice management recommendations in the Manual are to locate new poultry farms at a minimum distance of 1000 metres to other intensive poultry farms and 500 metres when there are extenuating circumstances, such as farms with a common owner or farms supplying the same processor. (In this case it is accepted that the farms may meet the "extenuating circumstances" definition in the Manual.)

219 In any event the DAs provide for a separation distance which is generally compliant with the recommendation in the Manual at just under one kilometre. And, if the sheds are moved slightly in response to the additional flooding information required by Dr Martens, the shift in location, if any, will be minimal and is likely to be a rising of the height of the shed.

220 The objector's expert, Dr Arzey, is critical of the industry standard separation distance of one kilometre established by the DPI. He believes it is based on economic considerations rather than biosecurity issues. In his assessment the separation distances should be based on the scope of airborne disease when considering the scale of the development, as any outbreak will cause a significant economic impact and also impact on the community during the clean-up period.

221 For that reason Dr Arzey believes that the separation distances for the farms in this case should be at least three kilometres (Exhibit L pages 14-16) and, as there is insufficient information about how a mass mortality event will be managed, he is of the opinion that the applications should not be approved.

222 Dr Scott, the developer's expert, takes a different position. In his assessment a mass mortality event would be managed in accordance with AUSVETPLAN and the EAD and need not be further addressed by these applications. With respect to separation distances, Dr Scott supports the applications because they follow the relevant guidelines and recommendations in the Manual.

223 In short, they adopt best practice for meat poultry production in New South Wales. According to Dr Scott:

...the nature of husbandry of broilers in controlled environment shedding has enabled established broiler complexes in various locations to perform with favourable outcomes provided that available best practice is implemented"

(Exhibit R6 p31)

224 Dr Scott accepts that the Baiada Group (which will control the operation) currently operates in New South Wales and nationally in compliance with the best practices in the Manual (Section 3.2.5) which includes reference to *The National Farm Biosecurity Manual for Chicken Growers* (ACMF, 2010) and separation distances. And, as the company has adopted the same industry standard for best practice in the operation of the proposed farms, Dr Scott is of the opinion that the applications are acceptable. Again, because of his particular expertise, I prefer Dr Scott's expert evidence on this issue to that

given by Dr Arzey. Accordingly, in my assessment I have no reason to find that the separation distances proposed in the present applications are unacceptable.

### **Water and soil**

225 In addition to the extensive material in the EIS and associated documentation (RWS 6 November 2015 page 3 at [3]), Rostry's experts have also responded to the objector's Statement of Facts and Contentions in Reply (SOFACR) (Exhibit F) and Dr Martens' evidence (Exhibit J) by carrying out further assessments in respect of the water and soil impacts of the farms. The further assessments are discussed in the Statements of Evidence prepared by Dr Matthews, Mr Sutherland and Mr Anderson (Exhibit R10).

226 As a result of a new daily water balance model (including modelling some 122 years of water usage and balance) (Exhibit R10 Appendix 6) the experts prepared :

- A new stormwater management plan addressing:
  - (a) A new MUSIC water quality model
  - (b) Water quality grab samples
  - (c) Revised sediment and erosion controls measures
- A new site soil survey comprising:
  - (d) Three-day filed testing and subsurface exploration
  - (e) 73 new Emerson Aggregate laboratory tests
  - (f) Extensive soil mapping and assessment
  - (g) Soil sampling at 18 locations with boreholes to 4.2 metres

- (h) Field soil salinity testing at soil sampling locations
- New groundwater pump test information (Exhibit R10 Appendix 7):
  - (i) Installation of further monitoring groundwater observation bores
  - (j) Supplementary 48-hour groundwater pump testing
  - (k) Groundwater yield modelling
  - (l) Groundwater quality test data
  - (m) Revised (reduced) groundwater yield estimates
- Additional flood modelling covering (Exhibit R10 line 410-425):
  - (n) A new Watershed Bounded Network Model (WBNM) flood model
  - (o) Flow calculations for various parts of the site
- Development improvements including:
  - (p) Relocation and resizing of the five 50-megalitre storages
  - (q) Additional drainage works around each of the farm sites
  - (r) Inclusion of a rainwater harvesting system
  - (s) Rerouting of some existing constructed watercourse as part of historical soil conservation works
  - (t) A range of soil erosion control maintenance works

- Effluent disposal details for the residences, including area estimates for effluent disposal fields (Exhibit R10 at lines 1585-1620).

227 Following the above additional information, the parties' experts prepared a further joint report - Joint Statement of the Water Engineering Experts (Exhibit 11) - in which they agreed that the relevant contentions were resolved subject to the production of a further conceptual plan for surface water infrastructure (Exhibit 11 at [8]). This plan is now before the Court (Exhibit 31).

228 The detailed specifications of the surface water infrastructure will also be submitted at the time of the "water supply works approval" is sought from the NSW Office of Water under s 90 of the Water Management Act as identified in the GTA (Exhibit 19 Tab 28) which are included in condition 20 of Exhibit R29.

229 All of the recommended conditions agreed by the water experts in the Joint Water Report have also been incorporated into Rostry's proposed conditions of consent (Exhibit R29 conditions 13, 13A, 13B, 14, 25A, 26, 26A, 28A, 40A, 41A and 53 as summarised in [87] of RWS dated 6 November 2015).

230 The evidence is that there is an adequate and reliable supply of water for the development (Transcript 517 line 45, Transcript 518 line 7 and Exhibit R11 page 3 "Agreement point 3") and, if groundwater is required, a groundwater licence has been obtained for 1,000 megalitres, although the evidence is that only 13 megalitres will be required (Transcript 533 line 8).

231 Despite his agreement in the Joint Report (Exhibit R11), Dr Martens, during concurrent evidence, raised issue with the sufficiency of the flood model in the EIS (although he did not elevate this concern to a level which suggested he believed that the development should be refused on this basis).

232 The developer maintains that the existing flood model is adequate as it identifies the flood extent of the natural watercourse and "maps the worst possible flood footprint", and it is "appropriate for a conceptual assessment" (Exhibit R10 line 403). Despite that, a further WBNN was undertaken and it

also concluded that the proposed farms and associated infrastructure is flooding-free (RWS at page 6 at [10]).

233 Ultimately, as Mr Sutherland told the Court, the issue raised by Dr Martens about the survey relates to the level of detail necessary. In Mr Sutherland's assessment, the site survey undertaken over approximately 1,900 hectares of the site, and completed to an accuracy level of +/- 150 millimetres, together with Dr Matthews' site assessment of the soil conservation measures, is enough to underpin the developer's position that the farms are sited correctly (Appendix A RWS dated 6 November 2015).

234 Despite Mr Sutherland's opinion, the experts agreed, in the Joint Water Report, to complete further 2D modelling prior to the issue of a construction certificate for the purposes of accurately setting the floor levels of the farm sheds in response to the claim by the objector that further flood modelling was required to confirm the capacity of the relocated waterways to convey overland flows.

235 The evidence is that the location of the farm sheds was signed off by Dr Martens in the Joint Water Report as "not appearing to be affected by flooding" (Exhibit R11 at [5.3]). Within the context of the 1,900-hectare site, I accept that the homesteads are located close to the farms and the same conclusion could be drawn for them. In any event, Mr Sutherland's evidence is that any minor change in location required at the construction certificate stage (ie more like raising the height of the building than moving it) can be accommodated as the development footprint only represents 5% of the site (Transcript 545 line 25).

236 After a careful consideration of the parties' submissions, I am satisfied on the evidence of Dr Matthews, Mr Sutherland, Mr Anderson and Dr Martens (as stated in the joint report) that there is sufficient information before the Court to understand the impact of flooding on the development and that the additional 2D modelling and detailed site survey provided for in condition 14 will identify precisely the finished floor level of the farm sheds.

*Deferral of essential aspects of the development including: on site detention basins, wastewater and dam size and locations, road upgrade works*

237 The objector contends that the application is lacking in detail in respect of several matters. In short, it submits that the applicant is deferring essential detail and thereby precluding a proper assessment under s79C of the EPA Act. I wish to deal with these issues now and collectively although I am conscious that I may be repeating some matters already addressed under another heading for a different purpose.

238 With respect to on site water disposal Dr Martens again changed his agreed position during concurrent evidence. He told the Court that he now requires the location of the on-site water disposal system to be detailed. Dr Martens did not require that level of detail at the time he signed the joint report (Exhibit R11 page 6 “Agreement point 3 and 54”).

239 Having regard to this issue, including Mr Sutherland’s oral evidence in response to Dr Martens’ changed position, I am satisfied that any additional detail that is required about the on-site disposal system is not needed for the purpose of assessing the impacts of the development under s79C, but rather to inform the design and engineering specifications as is appropriate prior to the issue of a construction certificate.

240 Similarly, I do not agree with the objector’s submission, based on Mr Travers’ evidence, that the deferral of the road upgrades is inappropriate because the Court is unable to undertake a proper assessment of the potential environmental impacts of the road or understand matters affecting the way the development is constructed as is required by s 79C of the EPA Act. In making this submission the objector relies on the reasoning of the Court of Appeal in *Hoxton Park Residents Action Group Inc v Liverpool City Council* [2011] NSWCA 349; 81NSWLR 638 at [49], [54]-[56]. In that case, the Court found that s 79C required that all impacts external to the land on which the development occurred are properly considered, even where there is a parallel assessment process, to ensure that the cumulative impacts (of the two developments in that case) did not escape assessment.

241 The facts of the *Hoxton Park* case are very different to the case at hand. It concerned the development of a new school which required the construction of a bridge across a public reserve and waterway. The bridge, however, was to be constructed on a public reserve and did not require development consent. Therefore, the bridge was not part of the school development application. The Court of Appeal proceedings dealt with two issues. The first was a challenge to the validity of the notice published by the Council, in the absence of which time did not commence to run for commencement of proceedings challenging the validity of the development consent. The second issue was whether the Council's failure to consider the impacts of the construction of the bridge when considering the school development application was an error because those impacts fell within the phrase "likely impacts of that development" in s 70C(1)(b). The bridge was generated by the development in that case and, therefore, was relevant to the Council's s 79C assessment.

242 Accepting that the roadworks in the present case are responsive to the development, I am satisfied that the likely impacts of these minor road works have been adequately considered by the evidence of the experts, including the ecologists, for the purposes of s 79C of the EPA Act and, where necessary, are dealt with by the developer's draft conditions. The applicant does not seek to defer the assessment of works such to preclude the Court from exercising its function under s79C. The fact that the roadworks will also be the subject of separate applications and assessments under the Roads Act is, as the objector submits, irrelevant to the exercise of the Court's assessment under s 79C in these proceeding at [78] per Preston CJ in *Australian Leisure and Hospitality Group Pty Ltd v Manly Council (No 4)* [2009] NSWLEC 226; (2009) 172 LGERA 1.

243 As my earlier discussion indicates Dr Robertson did not know the exact location of the new road drainage culverts to be constructed on the Namoi River Road, and on the Crow Mountain Road, at the time of giving his evidence. However, he has inspected the site and is familiar with those parts of the site and the haul road/ emergency routes in which these activities are to

be carried out. He has recommended an ecological assessment of the works when details are finalised and an overarching EMP is required by the conditions of consent. That said, Dr Robertson is of the expert opinion that the proposed works "...can be designed and constructed without causing significant ecological impact" (Exhibit 16, page 6). Dr Robertson has reached the same conclusion after assessment of the impacts of the construction of the pumping devices and associated infrastructure at the extraction points from the Namoi River. Again, Dr Robertson believes these can be constructed and operated in a way that will not significantly impact the Namoi River ecology which he has inspected and assessed. I accept Dr Robertson's expert opinion about these matters. He has extensive qualifications and experiences with various road upgrade works, including upgrades proposed in this case which include revised culverts, the erection of road signage, road widening, the filling of dips in roads etc. His company, Cumberland Ecology, has worked on many road projects, including the M2 upgrade. In explaining his experience with these matters, Dr Robertson told the Court:

We have done small roads and various sized culverts. ... So I'm aware of the array of issues that you need to have regard to in ecology when for example you're replacing a culvert on a road. The sort of things that come up that might be of issue; sometimes you can have threatened bat species living in the culverts. You've got to have regard to the vegetation surrounding the area that is to be disturbed in order to have the culvert replaced or upgraded. By and large, and I think almost without exception in all the years that we've been working on these sorts of things, there hasn't been significant impacts as a result of that.

There have been smaller, manageable impacts on the vast majority of situations where we've had to be called in to investigate say upgrading a road culvert etc. it's been really minimal ecological impacts. We have due diligence look at the area that works done there's no significant impact.

... But what I am saying is based on experience and given that it's not a new road going through uncleared habitats, existing roads where there'll be revised culverts or upgraded culverts, I believe that such works can be designed and constructed without causing significant ecological impact using the meaning of the EPA act for "significant".

244 Having regard to the above, I do not accept the objector's assertion, based on Mr Travers' evidence, that the required road upgrades involve a real potential for material environmental impacts. There is no evidence to support such a submission. Rather, when teased out in cross examination Mr Travers

principle concern relates to timing. Mr Travers said that the replacement of culverts, signage and road widening should only proceed after ecological assessment. I agree. So too does Rostry and that is exactly what the proposed conditions require. They refer to the requisite approvals from the RMS, the council and Office of Water at a later time and before the works are carried out. They include a requirement for the employment of a qualified ecologist to carry out relevant inspections for fauna before the removal of the single tree proposed to be removed to improve sight lines on the haul road after requisite approval (condition 15A exhibit R29). The Court appreciates the competing views of Dr Robertson's and Dr Travers' about the likely impacts of the upgrade works and the pump infrastructure and the timing for ecological inspection and in its assessment under s 79C (1) of the EPA Act, and has taken these matters into account and finds that these issues are appropriately handled by the proposed conditions.

245 With respect to Dr Martin's concern about the lack of detail of the location of the water pipes and the size of the pumps within the waterfront land he ultimately agreed that this was a matter for the Office of Water to assess and determine whether the design is substantially the same as what the GTAs envisaged. He was more concerned to understand the location of the pipes and infrastructure outside the area controlled by the Office of Water. – and that is why he required the concept plan (Transcript D6 p516 at [40]). However, after careful consideration of the evidence of Mr Sutherland about this issue I am satisfied that the Court has sufficient information before it in relation to the water supply network to assess the 5 pipes from the river to the farms located alongside the historical water pipe to the site to issue the consents and after the water licences are in place the next stage of the detailed design can be prepared and approved by the Office of Water and any other relevant authority. Importantly, the main issue about the water security for this development ( which was the principle concern for the objector) is resolved by the agreement of the experts.

## **Ecology (contentions 10 and 16)**

246 The objector also contends that the proposal will have an unacceptable impact on the highly modified EEC on the site, and will unreasonably contaminate stormwater runoff leaving the site which will impact on downstream waters.

247 To avoid this, Mr Travers' gave evidence that there should be a comprehensive Environmental Management Plan (EMP) finalised before any consent is issued, including in relation to the construction of the water extraction infrastructure, to ensure that there is no unacceptable environmental impact (including on the platypus or the Bell's River turtle). Mr Travers' primary concern about the impact on the Grassy Woodland EECs, however, was largely addressed by Dr Robertson's draft Biodiversity Management Plan (Exhibit H pages 3-6).

248 Separating the issues out, I will deal with stormwater runoff first.

249 It seems that Mr Travers' concern about polluted stormwater runoff from poultry litter was based on a premise that at the end of the 9.5-week cycle the poultry litter would be used or stored on the site and make its way by surface water to the watercourses and then downstream to the Namoi River .

250 This is not the case. As explained by Ms Dickson, the developer intends to remove all of the poultry litter from the site at the end of the 9.5-week cycle in covered trucks (Exhibit R8 at [53]). The poultry sheds will also be constructed on individual level concrete slabs with a block-work bund wall on each side, and 100-millimetre bund outside each shed entrance, to ensure no interaction with external water movement (roof water and stormwater) (condition 13 Exhibit R29). After appreciating these features of the development, Mr Travers' agreed with Dr Robertson that the clean out of the sheds and transfer of waste to a proper place was well managed (Exhibit R16 page 2 para 4). On that basis, I am satisfied that there will be no stormwater pollution issue from this source, as initially feared by Mr Travers, entering the waterways on the property and flowing into the Namoi River.

251 The Gilbert & Sutherland Soil and Water Management Plan (Exhibit R32) (which must be complied with as a condition of each consent) includes careful and detailed mitigation measures to prevent nutrient-laden runoff flowing into the waterways. It includes a proposal to install detention and bioretention basins to ensure that any nutrients in runoff will not pollute downstream waterways. The water experts believe that waste from the farms can be managed satisfactorily without significant risk either on site or downstream. Dr Robertson is satisfied with the measures proposed in the joint report. I also accept their expert evidence as detailed and agreed in the joint report, and have confidence that there will be no unacceptable impact on the waterways and river.

#### **Should an EMP be required as precondition to the grant of consent?**

252 The experts agree that the poultry farm operation should be governed by an overarching EMP which includes component parts of various environmental plans, the transport management plan, the *Best Practice Management for Meat Chicken Production in New South Wales – Manual 2* and an *Operation Manual*. At this stage, Dr Robertson has prepared a draft Biodiversity Management Plan which will be integrated into the overarching EMP.

253 The developer accepts a condition of consent requiring the preparation of the overarching EMP document prior to the issue of the construction certificate (draft condition 28A of Exhibit R29).

254 The debate then concerned whether the EMP should be finalised before the grant of consent rather than required by a condition. Dr Robertson supports a conditional approval (Exhibit R16, page 5 at [6]) because the EMP needs to be consistent with the final form of the environmental protection licences issued for the scheduled activities. The farms cannot operate until the occupier holds an environment protection licence (POEO Act – s 48) and the Water Management Act approvals to be issued by the NSW Office of Water. In short, it is sensible to finish the EMP after receiving those details as they often go to the management of waste and water and it would be good to

incorporate them in the EMP (D6 page 606 at [15]). In Dr Robertson's experience the EMP is frequently a condition of approval.

255 While Mr Travers agrees that the other approvals need to be consistent with the overarching EMP, he believes it should be a two-stage process:

First of all get the EMP right in regard to macro and micro issues subject to the provision of any EMP agreements and of course controlled activity agreement.

(D6 Transcript p606 at [1])

256 Given Dr Robertson's particular qualifications and experience with these matters, I prefer his evidence about the timing of the EMP. At the end of the day, the evidence is that the site is presently extensively cleared and modified. It has had minimum environmental management despite areas of EEC present (such as the White Box Yellow Box, Blakeley's Red Gum Grassy Woodlands and the Derived Native Grasslands) and there is nothing in place to impede polluted farm runoff from flowing directly through to the Namoi River. In the event that the development is approved I am satisfied, on the evidence as outlined above, that there will be active and integrated soil and water management systems in place to prevent polluted runoff and, subject to landscape buffers and fencing, the woodland areas and other EECs will be demonstrably improved.

## Conclusion

257 According to Baiada, there is a need for 150 broiler farms to be developed in the Tamworth region to service the growing demand for poultry products in Australia. The necessary integrated infrastructure is available in Tamworth and the locational characteristics provide efficient access to markets and inputs such as grain. This combination of factors is only present in a handful of areas of New South Wales; therefore, the long-term protection of the poultry industry in Tamworth is vitally important. There has been consideration of alternative sites, including alternate haulage routes, in compliance with the

Director's requirements. However, the evidence is that the Strathfield site satisfies the locational and broiler farm site requirements.

258 The proposed use is permissible, with consent, on the land and the site is accessible by a designated B-double route. The NSW Office of Water has given GTAs (Exhibit 19) which are incorporated as conditions of consent (proposed condition 20 Exhibit R29) and, subject to the issue of a supply works' approval based on the further conceptual plan for surface water infrastructure in (Exhibit 31), the parties' water experts have essentially agreed that all relevant contentions about water are resolved (Exhibit R11 at [8]).

259 The contention of the objector concerning economic impact and the evidence in support of that contention is as Rostry submits based on the premise that the feathers from the birds in transport would contaminate the Yarrenbool lucerne crops and render the lucerne un -saleable. For the reasons outlined this contention is not made out on the evidence.

260 In the ultimate the objector and the local residents' concerns about the intensity of the operation and its unacceptable impacts, must be weighed up after a consideration of the expert evidence – which is extensive. While the B-double truck movements (particularly along Namoi River Road and Barraba Street at night) are a new impact, the increased noise meets the numerical requirements of the RNP. A number of mitigation measures are proposed as conditions of consent and I am satisfied that they will ameliorate those impacts to an acceptable level. The applications are based on an operational program which is likely to introduce 12 B-double trucks during the acoustic night over 220 nights per annum. This impact will represent a change for the residents in the properties who occupy this RAV route and the town. However, the mere fact of change does not in this case indicate inappropriateness. In *CEAL* at [69] per Jagot J, the Court referred to the decision of *Milne v Minister for Planning [No2] [2007] NSWLEC 66* wherein it was observed that the parameters for assessing the propriety or otherwise of change could not be

"personal values or idiosyncratic perceptions" which would be the antithesis of environmental planning as contemplated by the EPA Act, specifically:

...the making of development control decisions in a strategic planning context established by publicly available criteria, determined by planning authorities as part of a process in which the public has had extensive opportunities to participate"

(at [26] - [27]).

261 The same principles apply where the change in question involves amenity rather than social and economic relations.

262 After an assessment of consequences of the development and the concept of amenity as expressed by the local residents about their sense of place, its character and the attributes which they value as important - as required by s 79C(1)(b) - together with the evidence and relevant planning framework and the economic benefits as well, I have decided the available information warrants substantial weight being placed on the development's ability to satisfy an identified need of general importance to the poultry industry in the region and nationally. In forming that view I am satisfied on the evidence that the concerns of objector and local resident about odour, road safety, noise, dust, water, ecology, and biosecurity are satisfactorily addressed by the conditions of consent proposed by the developer which are supported by the Council (exhibit R29). In my assessment there is no need for the deferred commencement conditions proposed by the objector because the developer's conditions require deferred matters such as road works (condition 15) etc. to be completed prior to commencement of operation of the farms or where relevant to be completed prior to construction certificate or prior to engineering approval or under other statutory processes.

263 With respect to the draft condition which offers, on terms, for Rostry to purchase Mr Tobin's property at 53 Barraba Street, I think it should be included because the evidence demonstrates that there are particular impacts for this corner block as a result of the increase in B-double truck movements

which are not satisfactorily mitigated or managed by the terms of the proposed conditions.

264 For the reasons stated I am satisfied that the proposed development is acceptable on its merits after assessment under the heads of consideration in s 79C of the EPA Act. Accordingly, the Court orders the Council to prepare the conditions of the consents, based on the developer's proposed conditions (Exhibit R29), and in accord with my reasons for judgment. Those draft conditions should be served on each party within 14 days and if not agreed then I will consider that draft along with any submissions in writing from any party directed to a contested condition. Following my consideration of the conditions of the consents, I propose to hand down final orders approving of the development applications.



**Susan Dixon**  
**Commissioner of the Court**

## **Appendix A**

Farm 1 is described as Lots 90 and 117 DP 752204, Lots 1 and 2 DP 1078254 and part Lot 1 DP 377811. These properties have a total area of 217.9 hectares

Farm 2 is described as Lot Part Lots 68 and 117 DP 752204, part Lots 1 and 2 DP 1078254, part Lot 148 DP 752201, Lot 2 DP 815004, Lot 95 DP 752204 and Lot 129 DP 752201. These properties have a total area of 405 hectares.

Farm 3 is described as Lot 2 DP 228907, part Lot 136 DP 752201, part Lot 68 DP 752204, part Lot 137 DP 752201 and Lot 138 DP 752201. These properties have a total area of 246.9 hectares.

Farm 4 is described as Lots 135, 136, 137, 138 and 148 DP 752201, Lot 121 DP 752201 and Lot 122 DP 664644. These properties have a total area of 648.1 hectares.

Farm 5 is described as Lot 1 DP377811, and Lot 122 DP664644. These properties have a total area of 392.33 hectares.