



**muswellbrook
shire council**

Muswellbrook Shire Council

**EXTRA ORDINARY COUNCIL
MEETING**

**SUPPLEMENTARY BUSINESS PAPER
16 JULY 2018**



Order of Business

ITEM	SUBJECT	PAGE NO
6	CORPORATE AND COMMUNITY SERVICES	3
6.4	MT PLEASANT MODIFICATION 3 SUBMISSION	3
7	ADJOURNMENT INTO CLOSED COUNCIL	14
8.3	Contingency allocation towards Contract No. 1401012 (MSC 2010-2011-0032-C2) <i>Item 8.3 is classified CONFIDENTIAL under the provisions of Section 10A(2)(c) of the local government act 1993, as it deals with information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business, and Council considers that discussion of the matter in an open meeting would be, on balance, contrary to the public interest.</i>	

6 CORPORATE AND COMMUNITY SERVICES

6.4 MT PLEASANT MODIFICATION 3 SUBMISSION

Attachments:	A. Mt Pleasant Mod 3 - IPC Submissions
Responsible Officer:	Fiona Plesman - General Manager
Author:	Joshua Brown - Co-ordinator Executive Services
Community Plan Issue:	<i>Collaborative and responsive community leadership that meets the expectations and anticipates the needs of the community</i>
Community Plan Goal:	<i>Enhanced collaboration with Council's community and stakeholders to ensure Council and its elected arm is best placed to make decisions in the best interest of the community.</i>
Community Plan Strategy:	<i>Implement and maintain a diverse range of communication channels between Council and community stakeholders..</i>

PURPOSE

To report the making of submissions to the NSW Independent Planning Commission (IPC) for ratification with respect to the proposed Mt Pleasant Modification 3 Application.

OFFICER'S RECOMMENDATION

Council endorse the submissions to the NSW Independent Planning Commission with respect to the proposed Mt Pleasant Coal Mine Modification 3 Application.

Moved: _____ **Seconded:** _____

BACKGROUND

MACH Energy Australia Pty Ltd has lodged a Development Application with the NSW Department of Planning and Environment for a Modification of the Mt Pleasant Coal Mine Consent to extend the eastern emplacement to the east and extend the duration of the Consent to December 2026. The Department has referred the determination of the Application to the NSW Independent Planning Commission.

CONSULTATION

General Manager

Planning Lawyer

CONSULTATION WITH COUNCILLOR SPOKESPERSON

Councillors were briefed on the proposed content of the submission on Tuesday, 10 July 2018 following the Ordinary Council meeting and a copy of the draft submissions were circulated for comment prior to submission.

REPORT

Council was invited to present submissions to the NSW Independent Planning Commission in relation to the proposed Modification to the Mt Pleasant Coal Mine consent, which was due on 11 July 2018

following Council's meeting with the Commissioners on 4 July 2018. A draft document of submissions was prepared and circulated to Councillors for comment prior to lodgement. A copy of the final submission is attached for endorsement.

OPTIONS

Councillors may determine to not endorse the submission.

CONCLUSION

It is recommended that Council endorse the submissions to the IPC.

SOCIAL IMPLICATIONS

The submissions canvass a number of issues that will assist in address a number of the impacts likely to be associated with the proposal.

FINANCIAL IMPLICATIONS

No known financial implications.

POLICY IMPLICATIONS

No known policy implications.

STATUTORY IMPLICATIONS

No known statutory implications.

LEGAL IMPLICATIONS

No known legal implications.

OPERATIONAL PLAN IMPLICATIONS

Recommendation is consistent with the 2018/19 Operational Plan: 11.1.2 Review new and modified consent applications approved by DP&E to ensure they are consistent with Council's Mining Policy

RISK MANAGEMENT IMPLICATIONS

No known risk management implications.



10 July 2018

**Attention: Commissioners
Independent Planning Commission
Level 3, 201 Elizabeth Street
SYDNEY NSW 2000**

Dear Commissioners,

Mt Pleasant Coal Mine Modification 3 – Written Submissions

Council refers to the above matter and to the meeting between the Independent Planning Commission (IPC) and Muswellbrook Shire Council representatives on 3 July 2018.

Council wishes to thank the members of the IPC and staff for their time on that date and for the opportunity to make the written submissions herein.

1. Extension of Mine Life in the Absence of a New State-Significant Development Application

- 1.1 The Applicant seeks to modify the conditions of a development application (DA 92/97) originally granted in 1999. Council notes that the Environmental Impact Statement, which formed the basis on which the consent was originally granted, was prepared in 1997.
- 1.2 Council submits that, when the development application was granted development consent, other mining operations within the Muswellbrook Local Government Area (LGA) were not contemplated. Such operations include the Mt Arthur consolidation extension and expansion, the Bengalla expansion and extension and the Mangoola mine expansion and extension. It also contemplated mining operations that were approved and were idled prematurely – such as the Dartbrook operation.
- 1.3 There is almost no similarity between the original project approval and the modified consolidated consent and extension now sought by Mt Pleasant. That part of the project that relates to an extension of the existing project approval should, for that reason, be refused and the applicant should seek that part of the project application by fresh SSD application.
- 1.4 In the alternative, Council submits that the IPC should impose a pre-condition to the consent to the effect that should the Applicant not submit a fresh SSD application within two (2) years (as the application has informally undertaken to do) the development consent lapses.

Muswellbrook Shire Council ABN 86 864 180 944

Address all communications to The General Manager Mail PO Box 122 Muswellbrook NSW 2333 Phone 02 6549 3700
Fax 02 6549 3701 Email council@muswellbrook.nsw.gov.au Web www.muswellbrook.nsw.gov.au

2. Thomas Mitchell Drive Contributions Study

- 2.1 The draft conditions proposed by the Department include a condition with respect to the use of the community's local road, Thomas Mitchell Drive. That condition essentially requires the Applicant to make the contribution required to be made in Council's Contributions Study (as amended). There is, however, no present requirement for Mt Pleasant to make any contribution under that Study.
- 2.2 That is because the Contributions Study, referred to in the consent, was predicated on the basis it would need to be reviewed if Mt Pleasant proceeded or if any of the assumptions of the plan significantly changed. One such significant change has already occurred in that the Drayton South mine has not proceeded as proposed.
- 2.3 In Council's submission, road impacts, both safety and financial impacts, are a fundamental part of the assessment process. In Council's submission it is not appropriate for the IPC to delegate the making of that assessment as an afterthought. The safety of mineworkers and the community on roads impacted upon by the development should be front and centre of the approvals process.
- 2.4 Council notes that the Contributions Study is presently underfunded as a result of the decision in relation to Drayton South by approximately \$1,450,000. Council has provided bridging finance of approximately \$450,000 to underwrite part of the expected mining contributions because of the need to construct the road in discrete stages.
- 2.5 It is Council's submission that, as a result of the foregoing, the Contributions Study must be reviewed and that the Applicant must bear the reasonable cost of such review.
- 2.6 To this end, Council proposes that a new condition of consent be inserted in the event that the IPC is minded to grant consent to the application notwithstanding the inadequacy of the present assessment insofar as traffic impact is concerned. The proposed condition is set out in the Minute.

3. Mining Affected Road Network Strategy

- 3.1 Council respectfully submits that the proposed conditions of consent and the Environmental Assessment Report do not consider Council's Mining Affected Roads - Road Network Plan (the **Plan**).
- 3.2 Condition 38(c) of the conditions of consent refer to "Council's Western Roads Strategy".
- 3.3 The Western Roads Strategy has been superseded by the Plan. The Western Roads Strategy underpinned almost all the traffic management arrangements originally assessed for the mine site. Key aspects of the Plan involve the Mt Pleasant mine.
- 3.4 The Applicant should pay for the Plan to be reviewed and for any upgrades necessitated by its impact on Council's roads infrastructure.

- 3.5 Council submits that it would be unreasonable for the broader community to bear the cost of road maintenance, repair and upgrade due to the Applicant's impact on the same in the course of its operation of the mine.
- 3.6 For these reasons, Council submits that the IPC include a condition to the effect of that proposed in the Minute.
- 4. Rehabilitation Standards & Objectives**
- 4.1 Council submits that the consent conditions as currently drafted provide the Department with total discretion as to the Applicant's rehabilitation of the site.
- 4.2 Council relies on conditions 53-56 inclusive in that regard which impose obligations on the Applicant to rehabilitate the site in accordance with broad objectives and to prepare and implement a rehabilitation strategy and rehabilitation management plan to the satisfaction of the Department. The clauses refer to the satisfaction of the Secretary or the DRG.
- 4.3 Consequently, the conditions of consent are silent as to the standards the Applicant must meet in order to acquit its rehabilitation obligations.
- 4.4 Council submits that this would be extraordinary and is without precedent. It essentially relegates important issues around long-term rehabilitation and remediation to being second-class considerations. In Council's submission, the Parliament intended matters concerning environmental impacts, including remediation and rehabilitation, to be given equal weight to economic and social considerations. In Council's view, the IPC should set minimum standards consistent with best practice which might be improved upon in subordinate documents – including the Rehabilitation Strategy.
- 4.5 The town of Muswellbrook is the largest town in Australia to be entirely surrounded by mining operations – most of them large scale open cut operations. Final landforms and voids will impact the community in perpetuity and as such, are of particular significance to the community, its identity, its liveability, and its amenity. Council objects to the condition as presently proposed and notes it would be a remarkable departure from past best practice and set a troubling precedent for the future.
- 4.6 Council considers that, on the basis of the above, the IPC should set at least minimum standards and objectives and that improved design principles need to be included as a component of the revised consent to provide clarity to the community and with adequate detail should assessment against compliance be needed in the future.
- 4.7 To these ends, Council submits that the conditions of consent proposed in the Minute be included by the IPC if it assesses the application in the affirmative.

Definition of Natural Micro-Relief

- 4.8 The insertion of a definition of the term "natural micro-relief" is central to Council's proposed submissions and conditions of consent in respect of the rehabilitation standards and objectives of the development.

- 4.9 Council respectfully submits that, in the absence of a definition of the term "natural micro-relief", there is significant scope for ambiguity as to the measures that must be taken and the standards required to be met by the Applicant for it to discharge its obligations. That ambiguity has given and, in Council's submission, will continue to give, rise to litigation between Council, mining operations and the State Government.
- 4.10 A definition of the term "natural micro-relief" is essential for certainty and for assessing compliance with the relevant conditions of consent and enforcing compliance with same if necessary.
- 4.11 Consequently, Council proposes that the definition proposed in the Minute be inserted into the conditions of consent should the IPC grant approval for the development.

5. Air Quality & Dust

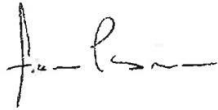
- 5.1 It is Council's submission that this project, if approved, will have significant impacts on the air quality of the LGA.
- 5.2 The key distinguishing feature of the proposed development in respect of other mines in the Muswellbrook Shire is that Mt Pleasant is located in the wind corridor directly upwind of the Muswellbrook township. Council joins in the submission from the Department of Health with respect to these issues.
- 5.3 As you are aware, there are generally conditions in mining consents requiring that all feasible and reasonable mitigation and avoidance measures are taken to ensure that dust emissions from the development do not exceed particular levels. These levels are typically averaged over a 24 hour period. Such a condition appears at condition 20 of the proposed conditions of consent to the development.
- 5.4 Council's view is that the 24 hour averaging period has the unintended consequence of obscuring issues of elevated dust levels at night as a result of surface temperature inversions. Council submits that the result of these inversions is to trap dust emitted from this and other mining developments in the Shire for sustained periods which, taken in isolation, are above the relevant standards or putative standards.
- 5.5 This causes the level of dust in the air to increase substantially at night, which is in turn obscured by the lower levels of dust in the air during the day. Consequently, the average over a 24 hour period does not result in a technical exceedance.
- 5.6 In the past, Council has submitted that air quality conditions of consent be predicated upon the differing levels of concentration of particulate matter in the air during the day and night respectively.
- 5.7 However, Council acknowledges that there is arguably insufficient empirical evidence as to the effect on human health of exposure to elevated levels of dust at night.
- 5.8 In light of this, Council submits that the IPC, if it is minded to approve the application, include a condition of consent which requires the applicant to

provide, at its cost, a study into the effects to human health of exposure to night-time dust levels in the Upper Hunter. Council's proposed condition of consent in this regard is set out in the Minute.

- 5.9 This research is essential to improving the understanding of the consequences to human health, particularly respiratory and cardiovascular health, of exposure to night-time dust levels generated by mining. This research will inform efforts to promote the health of members of the community.

Your consideration of Council's submission and proposed conditions of consent is appreciated.

Yours faithfully



Fiona Plesman
GENERAL MANAGER

**MT PLEASANT COAL MINE MODIFICATION 3****APPLICATION NUMBER: DA 92/97 MOD 3**

MINUTE OF PROPOSED AMENDMENTS

DEFINITIONS

<u>Natural micro-relief</u>	<u>Engineered micro-relief that emulates pre-mining small-scale topography variation encountered on surrounding pre-mining disturbance landforms.</u>
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**SCHEDULE 3
ENVIRONMENTAL CONDITIONS – GENERAL****Air Quality Operating Conditions**

- "22. The Applicant must:
- (a) implement best practice air quality management, including all reasonable and feasible measures to minimise the odour, fume and dust emissions of the development;
 - (b) minimise visible air pollution generated by the development;
 - (c) minimise, where reasonable and feasible, the extent of potential dust generating surfaces exposed on the site at any given point in time;
 - (d) minimise the air quality impacts of the development during adverse meteorological conditions and extraordinary events (see Noted above under Tables 8-10);
 - (e) regularly assess the real-time air quality monitoring and meteorological forecasting data and relocate, modify and/or stop operations on site to ensure compliance with the relevant conditions of this consent; and
 - (f) co-ordinate the air quality management on site with the air quality management at nearby mines (including the Bengalla mine) to minimise cumulative air quality impacts from the mines,
 - (g) Utilise fixed and mobile cameras to monitor and manage visible air pollution.
- to the satisfaction of the Secretary."

Air Quality and Greenhouse Gas Management Plan

- "23. The Applicant must prepare an Air Quality and Greenhouse Gas Management Plan for the development to the satisfaction of the Secretary. This plan must:
- (a) be submitted to the Secretary for approval prior to carrying out any development on site;
 - (b) describe the measures that would be implemented to ensure compliance with the relevant conditions of this consent, including a real-time air quality management system that employs reactive and proactive mitigation measures;
 - (c) include an air quality monitoring program that:
 - uses a combination of real-time monitors and supplementary monitors to evaluate the performance of the development;
 - includes PM2.5 monitoring (although this obligation could be satisfied by the regional air quality monitoring network if sufficient justification is provided);
 - includes a protocol for determining exceedances of the relevant conditions of this consent; and
 - (d) include a protocol that has been prepared in consultation with the owners of nearby mines to minimise the cumulative air quality impacts of the mines.
 - (e) include a real time Air Quality Monitor on the north western perimeter of the mine site.

The Applicant must implement the approved management plan as approved from time to time by the Secretary."

"Dust Study

- 24A. Within twelve (12) months after the date on which consent is granted, the Applicant will, at its sole expense, fund a study (such study to be conducted by an appropriately qualified professional selected by the Chief Executive Officer of the Hunter New England Area Health Service) into the effects on human health of exposure to night-time dust levels in the Upper Hunter. The study must include:
- (a) as large a sample size of the population of the Singleton and Muswellbrook Shire local government area townships as reasonably necessary to produce statistically relevant results;
 - (b) a comparison of emissions of particulate matter for the duration of the study clearly displaying averages of daytime and night-time dust levels;
 - (c) a detailed report and analysis of the effects to human health, particularly respiratory and cardiovascular health, of exposure to night-time dust levels; to the satisfaction of the Chief Executive Officer of the Hunter New England Area Health Service."

Thomas Mitchell Drive

- "41AA. The Applicant must pay the reasonable costs incurred by Council in reviewing the Thomas Mitchell Drive Contributions Study as it relates to or is impacted upon by the development."

Review of the Mining Affected Road Network Plan and Contributions

- "41B. The Applicant must pay the reasonable costs incurred by Council in:
- (a) Reviewing the Mining Affected Road Network Plan as it relates to or is impacted upon by the project;

- (b) Designing a link road, in accordance with Council's Mining Affected Road Network Strategy from Denman Road to the New England Highway north of Muswellbrook.

41C. The Applicant pay the contribution, reasonably assessed to be payable pursuant to the Council's Resourcing Strategy for the Funding of Mining Affected Roads as amended from time to time or other funding or resource strategy approved by Council from time-to-time, for the construction, renewal, upgrade or maintenance of road infrastructure."

Rehabilitation Strategy

54. Prior to commencing any development on the site, the Applicant must prepare a Rehabilitation Strategy for the development to the satisfaction of the Secretary. This strategy must:

- (a) be prepared in consultation with relevant stakeholders, including DRG, DoI Water, Council and the CCC;
- (b) investigate options for the future use of the site upon the completion of mining and detail the measures to achieve and test these outcomes;
- (c) describe and justify the proposed rehabilitation strategy for the site; and
- (d) define the rehabilitation objectives for the area, as well as the proposed completion criteria for this rehabilitation.
- (e) include plans for progressive rehabilitation and final landforms across the whole of the site with both macro-relief and natural micro-relief, and in sufficient detail in the descriptions to guide enforcement implementation requirements;
- (f) include an outline of the closure objectives of the site and details of the measures by which the objectives will be progressively implemented to maximise early relinquishment of land no longer needed for mining purposes; and
- (g) include an outline of the available and preferred options for a final void(s) for both the end of the Consent period and for the probable end of mine life. The outline must include details on void shape, depth and volume and the measures by which the design will minimise the size and volume of voids and optimise shape and the viable land use options for the final void(s) post mine closure.

The Applicant must implement the approved strategy as approved from time to time by the Secretary.

Closure Plan

54A. The Applicant shall prepare a Closure Plan to the satisfaction of the Secretary. The plan must:

- (a) be prepared in consultation with Council;
- (b) provide indicative post-mining land uses proposed for the mining land;
- (c) a plan showing the topographic features of the completed landforms;
- (d) provide a program that indicates what criteria will be used to assess land against for its early release for post-mining land uses;
- (e) provide an indicative time table for the early release of land for post-mining land uses;
- (f) provide an indication of potential employment generating developments that will be compatible with the completed landforms and sympathetic with existing

- developments and maximise, to the extent possible, the labour intensity of post-mining land uses;
- (g) describe what services are planned to be provided or available for the land, post-mining. This should include, but not limited to, the provision of:
- I. Access, with the indicative location of existing and new roads;
 - II. Water, power and phone supplies;
 - III. Fencing based on land capability;
 - IV. An indication of lot layout;
 - IV. An indication of future limitations of the land for buildings and other built structures; and
- (h) provide for regular reviews of the Closure Plan at reasonable intervals.

7 ADJOURNMENT INTO CLOSED COUNCIL

In accordance with the Local Government Act 1993, and the Local Government (General) Regulation 2005, in the opinion of the General manager, the following business is of a kind as referred to in Section 10A(2) of the Act, and should be dealt with in a Confidential Session of the Council meeting closed to the press and public.

RECOMMENDATION

That Council adjourn into Closed Session and members of the press and public be excluded from the meeting of the Closed Session, and access to the correspondence and reports relating to the items considered during the course of the Closed Session be withheld unless declassified by separate resolution. This action is taken in accordance with Section 10A(2) of the Local Government Act, 1993 as the items listed come within the following provisions:

8.3 Contingency allocation towards Contract No. 1401012 (MSC 2010-2011-0032-C2)

Item 8.3 is classified CONFIDENTIAL under the provisions of Section 10A(2)(c) of the local government act 1993, as it deals with information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business, and Council considers that discussion of the matter in an open meeting would be, on balance, contrary to the public interest.

Moved: _____ **Seconded:** _____