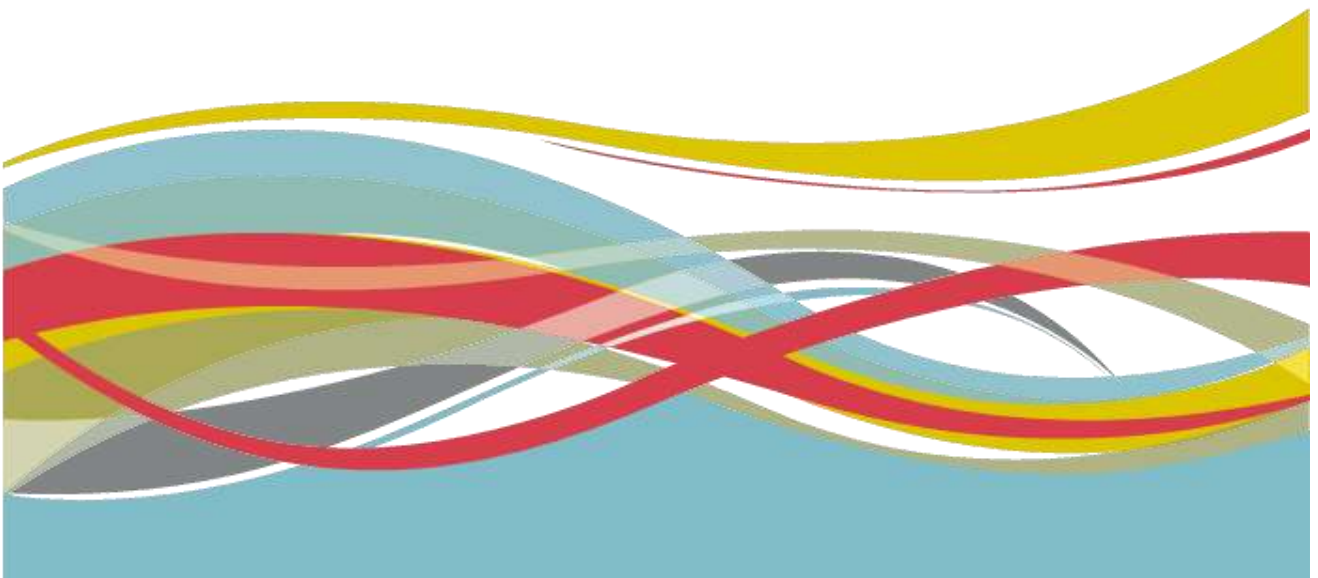




**muswellbrook  
shire council**

**Muswellbrook Shire Council**  
**EXTRA ORDINARY COUNCIL  
MEETING**

**BUSINESS PAPER**  
**8 SEPTEMBER 2020**



**EXTRA ORDINARY COUNCIL MEETING, 8 SEPTEMBER 2020**

MUSWELLBROOK SHIRE COUNCIL

P.O Box 122

MUSWELLBROOK

4 September, 2020

Councillors,

You are hereby requested to attend the Extra Ordinary Council Meeting to be held in the CHAMBERS, Administration Centre, Muswellbrook on **8 September, 2020** commencing at **6.00PM.**

Fiona Plesman  
**GENERAL MANAGER**

# Order of Business

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9.1	ECONOMIC DEVELOPMENT SERVICES <i>Item 9.1 is classified CONFIDENTIAL under the provisions of Section10A(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>	
9.2	PROPERTY PURCHASE <i>Item 9.2 is classified CONFIDENTIAL under the provisions of Section10A(2)(c) and 10A(2)(d)(l) 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 commercial information of a confidential nature that would, if disclosed prejudice the commercial position of the person who supplied it, and Council considers that discussion of the matter in an open meeting would be, on balance, contrary to the public interest.</i>	
9.3	EXECUTION OF \$4.9M FUTURE FUND LOAN <i>Item 9.3 is classified CONFIDENTIAL under the provisions of Section10A(2)(c) and 10A(2)(d)(l) 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 commercial information of a confidential nature that would, if disclosed prejudice the commercial position of the person who supplied it, and Council considers that discussion of the matter in an open meeting would be, on balance, contrary to the public interest.</i>	
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## MUSWELLBROOK SHIRE COUNCIL

# AGENDA

### **1 ACKNOWLEDGEMENT OF COUNTRY**

### **2 CIVIC PRAYER**

### **3 APOLOGIES AND LEAVE OF ABSENCE**

### **4 DISCLOSURE OF ANY PECUNIARY AND NON-PECUNIARY INTEREST**

Section 451 of the Local Government Act requires that if a councillor or member of a council or committee has a pecuniary interest in any matter before the council or committee, he/she must disclose the nature of the interest to the meeting as soon as practicable and must not be present at, or in sight of, the meeting, when the matter is being discussed, considered or voted on.

A pecuniary interest is an interest that a person has in a matter because of a reasonable likelihood or expectation of financial gain or loss (see sections 442 and 443 of the Local Government Act).

A non-pecuniary interest can arise as a result of a private or personal interest which does not involve a financial gain or loss to the councillor or staff member (eg friendship, membership of an association, or involvement or interest in an activity). A councillor must disclose the nature of the interest to the meeting as soon as practicable.

Council's Model Code of Conduct now recognises two forms of non-pecuniary conflict of interests:

- Significant
- Less than significant

A Councillor must make an assessment of the circumstances and determine if the conflict is significant.

If a Councillor determines that a non-pecuniary conflict of interests is less than significant and does not require further action, they must provide an explanation of why it is considered that the conflict does not require further action in the circumstances.

If the Councillor has disclosed the existence of a significant non-pecuniary conflict of interests at a meeting they must not be present at, or in sight of, the meeting, when the matter is being discussed, considered or voted on.

### **5 PUBLIC PARTICIPATION**

## 6 COMMUNITY INFRASTRUCTURE

### 6.1 EDDERTON ROAD CONSOLIDATED S 138 ROADS ACT, 1993 APPROVAL

<b>Attachments:</b>	<b>A. Edderton Road Stage 1 Amended Special Conditions and Schedule 31 August 2020</b>
<b>Responsible Officer:</b>	<b>Derek Finnigan - Deputy General Manager</b>
<b>Author:</b>	<b>Imelda Williams - Technical Officer - Traffic &amp; Roads</b>
<b>Community Plan Issue:</b>	<b><i>Our community's infrastructure is planned well, is safe and reliable and provides required levels of service</i></b>
<b>Community Plan Goal:</b>	<b><i>Facilitate investment in high quality community infrastructure necessary to a regional centre.</i></b>
<b>Community Plan Strategy:</b>	<b><i>Investigate and recommend appropriate management treatments for road safety and traffic management.</i></b>

#### PURPOSE

To request Council's consideration of the consolidation of s.138 Roads Act 1993 approvals to allow the new, realigned portion of Edderton Road to be opened to the public contemporaneously with the approval for Hunter Valley Energy Coal Pty Ltd (HVEC) to excavate the old portion of Edderton Road to meet the obligations of Council and HVEC under the Edderton Road Realignment Deed. (the Deed)

#### OFFICER'S RECOMMENDATION

##### Council:

1. **Delegates authorisation to the General Manager to grant consent to the consolidated s. 138 Roads Act 1993 Application generally in accordance with the Special Conditions attached to the report, for the dual purposes of:**
  - (a) **prohibiting access to the part of the existing alignment of Edderton Road (proposed closed road portion) to allow for the transition of traffic to the realigned Edderton Road; in conjunction with**
  - (b) **the approval for Hunter Valley Energy Coal Pty Ltd to excavate the Proposed Closed Road Portion in accordance with s.6.4 of the Deed.**

**Moved:** \_\_\_\_\_ **Seconded:** \_\_\_\_\_

#### BACKGROUND

The matter was reported to the 28 July Ordinary meeting of Council with the following resolution approved by Council:

*RESOLVED on the motion of Crs Scholes and Bowditch that:*

##### *Council resolves:*

1. *That it is satisfied that Practical Completion of the Edderton Road Stage 1 Works has been achieved;*
2. *In consultation with Transport for NSW, to grant approval for the newly constructed portion (temporary road portion) of Edderton Road to be opened for use by the general public;*
3. *To delegate to the General Manager to grant consent to the s.138 Roads Act 1993 application, generally in accordance with the Special Conditions attached to this report, to deny public access*

*to part of the existing alignment of Edderton Road (proposed closed road portion) to allow for the transition of traffic to the realigned Edderton Road; and*

4. *To propose the closure of the proposed closed road portion in accordance with Division 3 Part 4 of the Roads Act 1993 and to approve staff to proceed with the statutory road closure process, including advertising the proposed closure.*

## CONSULTATION

Aspects of this matter have been referred to Council through various reports on several previous occasions more specifically to 28 July 2020 Ordinary meeting of Council.

## CONSULTATION WITH COUNCILLOR SPOKESPERSON

Previously referred to Councillor Scholes & Councillor Woodruff.

## REPORT

The 28 July report to Council detailed that under the terms of the Edderton Road Realignment Deed, Council's acceptance that "Practical Completion" has been achieved has the following ramifications:

- Subject to Hunter Valley Energy Coal Pty Ltd (HVEC) complying with its obligations under the Deed to construct the Stage 1 Works to Practical Completion and to dedicate the realigned portion of Edderton Road, Muswellbrook Shire Council (MSC) acknowledges and agrees that HVEC has the right to excavate the Proposed Closed Road Portion on road closure in accordance with the existing approvals, including the Project Approval.
- MSC must progress the legal closure of the proposed road closed portion. Upon closure of same, MSC is required to transfer the closed road portion to HVEC.
- If the proposed closed road portion is not "legally" closed under the *Roads Act 1993* by the time HVEC needs to mine the proposed closed road portion in accordance with the Project Approval, then MSC agrees that:
  - (a) provided the Stage 1 Works are then completed to Practical Completion and the Stage 1 Road Dedication Plan has been registered, HVEC can excavate the surface and sub-stratum of the proposed closed road portion; and
  - (b) section 146 (1)(c) of the *Roads Act 1993* has effect, and MSC has no entitlement to any minerals that are mined by HVEC from or below the surface of the Proposed Closed Road Portion.

If HVEC exercises these rights:

- HVEC will carry out any excavation of the proposed closed road portion in accordance with all the relevant Approvals; and
- HVEC will indemnify and release MSC and keep MSC indemnified against and from all claims arising from any action or omission by HVEC or its employees, agents, invitees or contractors on or in respect of the Proposed Closed Road Portion prior to registration and transfer of the Proposed Closed Road Portion to HVEC.

In accordance with the provisions under the Deed, HVEC now wishes to exercise its rights and seek approval to be able to excavate the proposed closed road portion to enable it to carry out its approved mining activities under the Mt Arthur Project Approval. This approval will coincide with the opening of the realigned portion of Edderton Road. It is proposed to consolidate the approvals, rather than treat each one separately, so that the respective parties have certainty of the other party's commitment and obligations under the Deed.

Former Section 75v of the Environment Planning and Assessment Act 1979 obliges Council to grant any s.138 Roads Act 1993 permit necessary for an approved Major Project to be carried out. HVEC has

advised that the s.138 application to mine through the proposed closed portion of Edderton Road is both necessary for mining to be able to continue through that section of Edderton Road in accordance with the Project Approval, and appropriate for approval. It is also in Council's interest to have the new portion of Edderton Road open to the public, as it will provide an improved road for road users.

**OPTIONS**

Option 1: Consolidate the s.138 Roads Act 1993 approvals to allow for the opening of the realigned portion of Edderton Road (previously approved at the 28 July 2020 Ordinary Council meeting) simultaneously with the approval for the excavation of the proposed closed road portion generally in accordance with the Special Conditions attached to this report to allow for certainty for both parties.

Option 2: Separately approve the pending s.138 approval for the excavation of the proposed closed portion of Edderton Road.

**CONCLUSION**

It is recommended that Option 1 be the preferred option in this instance as the consolidated approval gives each party the certainty of the other party's commitment and obligations under the Deed.

**SOCIAL IMPLICATIONS**

Opening the new, realigned section of Edderton Road to the public will provide an improved road for road users.

**FINANCIAL IMPLICATIONS**

Council will recoup any costs through the s.138 *Roads Act 1993* fees outlined in the Special Conditions. All costs associated with the construction are the responsibility of Hunter Valley Energy Coal Pty Ltd.

**POLICY IMPLICATIONS**

The 'Review of the Mine Affected Roads Network Plan' was adopted by Council at the 26 May 2020 Ordinary Council meeting.

**STATUTORY IMPLICATIONS**

Any works undertaken within a road reserve require Roads Authority approval through the s.138 *Roads Act 1993* permit approval. Muswellbrook Shire Council is the Roads Authority for Edderton Road.

**LEGAL IMPLICATIONS**

Council is the Roads Authority under the Roads Act 1993 and is acting within its powers.

**OPERATIONAL PLAN IMPLICATIONS**

The submission of the report complies in principle with item 19.3.4 of the Operational Plan: 'Investigate and recommend appropriate management treatments for road safety and traffic management'.

**RISK MANAGEMENT IMPLICATIONS**

Hunter Valley Energy Coal Pty Ltd (HVEC) will indemnify and release Muswellbrook Shire Council (MSC) and keep MSC indemnified against and from all claims arising from any action or omission by HVEC or its employees, agents, invitees or contractors on or in respect of the Proposed Closed Road Portion prior to registration and transfer of the Proposed Closed Road Portion to HVEC.

## Schedule of Details

1. The Works	The works are the works within the Road Reserve of Edderton Road as detailed in the letter and application from Hunter Valley Energy Coal dated 7 November 2019. Council Doc ID 1125328	
2. The Site	Edderton Road Stage 1 and associated areas as shown in the above documents.	
3. Estimated Cost of the Works	\$ Bond not required	[Clause 6.1(e)]
4. Estimated Council Costs	Plan Approval \$ 3,200 (ex. GST) Construction Observation Traffic Control Plans \$ 570 (ex. GST) Final Acceptance (WAE review etc) \$ 500 (ex. GST)  Total \$4,270 (ex. GST)	[Clause 6.1(f)]
5. Defects Liability Period	12 Months	[Clause 8.4]
6. Consent Holder's Representative	Name.....Sarah Bailey..... Position..... NSW Approvals Principal HVEC ..... Mobile Phone.....0467 743 639..... Office Phone..... Email sarah.k.bailey@bhpbilliton.com. Facsimile.....	[Clause 14.3]
7. Council's Representative	Name.....Kellie Scholes..... Position.....Manager Roads Drainage & Technical Services..... Mobile Phone.....0407 252 142..... Office Phone.....02 6549 3756..... Email .....Kellie.scholes@muswellbrook.nsw.gov.au..... Facsimile.....02 93005774.....	[Clause 14.3]



**Special Conditions**

1. The works must not commence until MSC has advised the Consent Holder in writing that Practical Completion of Stage 1 works – in accordance with the Edderton Road Realignment Deed have been determined.
2. The Consent Holder is to advise Council's Technical Officer Works Quality on 0418 110 010 five (5) days prior to commencing work to confirm inspections prior to commencement.
3. The Consent Holder is to advise directly affected residents and property owners of the program of Works that may affect access etc. at least a week in advance, and incorporate reasonable access needs for those properties. The Consent Holder is to advise the general public of the Works by variable message board in the local area of the Works and advertisement in the local newspaper at least a week prior to site works.
4. The Variable Message Sign (VMS) should have the wording "Changed Traffic Conditions" "Side Road Closed" "Edderton Road xxxkm ahead" or similar depending on the direction of travel. The VMS should remain in place for a period of 6 weeks.
5. The Consent Holder must apply to Transport for NSW (formerly RMS) for a Right to Occupy Licence prior to any work being undertaken on Denman Road.
6. The occupation of the Road should be undertaken in a safe manner, with adequate dust control.
7. The Consent Holder shall check for other services and is responsible for any damage to services and Council Infrastructure. Dial before you dig 1100.
8. This Consent does not constitute approval of any environmental impacts and the Consent Holder is responsible for any such impacts and any approvals that may be required in relation to the Works.
9. The Consent Holder must ensure that mud and dust from the Works is not carried on to the Road. (It is suggested that a device (from the Soil management book) may be required to remove such materials prior to entering the roads. Note: If required a shake down device should be placed off the existing road so that the public did not need to travel on it.)
10. The Consent Holder is to advise Council's Technical Officer Works Quality on 0418 110 010 five (5) days prior to the commencement of any construction works for the access at chainage 4060 and provide Traffic Guidance Schemes, methodologies for construction and time frames.
11. The realigned portion of Edderton Road Stage 1 works must be opened for use by the public and fully operational prior to any works to commence on the excavation of the proposed closed portion of Edderton Road.
12. HVEC must provide Council with a program of works outlining the stages for the excavation of the proposed closed portion of Edderton Road including:
  - a. Advise Council in writing providing the details of the intended use of the road;
  - b. Provide Council with any Traffic Guidance Schemes to undertake the work as required;
  - c. Ensure that the occupation of the road is undertaken in a lawful and safe manner.

13. Condition 12 will be in place until such time as this portion of road is legally closed and transferred to HVEC or an additional s.138 Permit is approved in accordance with Clause 6.4 of the Edderton Road Realignment Deed dated 3 July 2018
14. HVEC will carry out any excavation of the proposed closed road portion in accordance with all the relevant Approvals; and
15. HVEC will indemnify and release MSC and keep MSC indemnified against and from all claims arising from any action or omission by HVEC or its employees, agents, invitees or contractors on or in respect of the Proposed Closed Road Portion prior to registration and transfer of the Proposed Closed Road Portion to HVEC.

## 7 CORPORATE AND COMMUNITY SERVICES

### 7.1 FINANCE REVIEW AND ADVISORY COMMITTEE

<b>Attachments:</b>	Nil
<b>Responsible Officer:</b>	Fiona Plesman - General Manager
<b>Author:</b>	Joshua Brown - Manager - Integrated Planning & Governance
<b>Community Plan Issue:</b>	<i>A Council that is well managed, efficient and properly resourced and that is responsive to its communities and stakeholders</i>
<b>Community Plan Goal:</b>	<i>Maintain a strong focus on financial discipline to enable Council to properly respond to the needs of the communities it serves.</i>
<b>Community Plan Strategy:</b>	<i>Appropriate matters are reported to Council in a timely manner in accordance with the Financial Control and Reporting Policy.</i>

#### PURPOSE

For Council to establish a standing Finance Review and Advisory Committee of Council.

#### OFFICER'S RECOMMENDATION

1. A Standing Finance Review and Advisory Committee of Council be formed;
2. The Committee's functions are to consider and make recommendations to Council relating to financial management matters referred to it by Council or the General Manager;
3. The Committee be constituted by the following:
  - Mayor; and
  - Deputy Mayor;
  - Councillor Spokesperson Finance, (Chair);
  - General Manager; and
  - Chief Financial Officer.
4. The General Manager may appoint members of staff to attend meetings of the Committee in an advisory capacity.

Moved: \_\_\_\_\_ Seconded: \_\_\_\_\_

#### BACKGROUND

The proposed establishment of the Finance Review and Advisory Committee will provide an enhanced level of accountability to and advice on Council's financial management.

#### CONSULTATION

General Manager

CFO

#### CONSULTATION WITH COUNCILLOR SPOKESPERSON

The councillor spokesperson on finance has been consulted on the proposal.

**REPORT**

It is proposed that the Finance Review and Advisory Committee will meet fortnightly and consider matters relating to financial management referred to it by Council or the General Manager. It is recommended that the Committee be constituted by councillor representatives and qualified staff members appointed by the General Manager.

**OPTIONS**

Council may determine not to establish the Committee as recommended.

**CONCLUSION**

It is recommended that the Finance Review and Advisory Committee be established.

**SOCIAL IMPLICATIONS**

No social implication identified.

**FINANCIAL IMPLICATIONS**

No financial implications are identified.

**POLICY IMPLICATIONS**

The establishment of the Committee will be subject to the Code of Meeting Practice.

**STATUTORY IMPLICATIONS**

No known statutory implications.

**LEGAL IMPLICATIONS**

No known legal implications.

**OPERATIONAL PLAN IMPLICATIONS**

Establishment of the Committee aligns with Council's Integrated Plans.

**RISK MANAGEMENT IMPLICATIONS**

The establishment of the Committee reduces Council's exposure to financial risk.

## 8 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**

**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:**

#### **9.1 ECONOMIC DEVELOPMENT SERVICES**

Item 9.1 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.

#### **9.2 PROPERTY PURCHASE**

Item 9.2 is classified CONFIDENTIAL under the provisions of Section 10A(2)(c) and 10A(2)(d)(i) 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 commercial information of a confidential nature that would, if disclosed prejudice the commercial position of the person who supplied it, and Council considers that discussion of the matter in an open meeting would be, on balance, contrary to the public interest.

#### **9.3 EXECUTION OF \$4.9M FUTURE FUND LOAN**

Item 9.3 is classified CONFIDENTIAL under the provisions of Section 10A(2)(c) and 10A(2)(d)(i) 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 commercial information of a confidential nature that would, if disclosed prejudice the commercial position of the person who supplied it, and Council considers that discussion of the matter in an open meeting would be, on balance, contrary to the public interest.

Moved: \_\_\_\_\_ Seconded: \_\_\_\_\_

## 9 CLOSED COUNCIL

**10 RESUMPTION OF OPEN COUNCIL**

**11 CLOSURE**