



**muswellbrook
shire council**

**Muswellbrook Shire Council
EXTRA ORDINARY COUNCIL
MEETING**

**SUPPLEMENTARY BUSINESS PAPER
11 FEBRUARY 2020**



Order of Business

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6 COMMUNITY INFRASTRUCTURE

6.5 EDDERTON ROAD SECTION 138 ROADS ACT APPROVAL - COMPLETION OF STAGE 1 WORKS.

Attachments:	A. Edderton Road Stage 1 Completion Works B. Draft Special Conditions
Responsible Officer:	Derek Finnigan - Director - Community Infrastructure
Author:	Imelda Williams - Technical Officer - Traffic & Roads Kellie Scholes - Manager - Roads, Drainage & Technical Services
Community Plan Issue:	<i>Our community's infrastructure is planned well, is safe and reliable and provides required levels of service</i>
Community Plan Goal:	<i>Facilitate investment in high quality community infrastructure necessary to a regional centre.</i>
Community Plan Strategy:	<i>Investigate and recommend appropriate management treatments for road safety and traffic management.</i>

PURPOSE

To recommend Council does not approve the s.138 Roads Act 1993 application to deny access to part of the existing alignment of Edderton Road.

RESPONSIBLE OFFICER'S RECOMMENDATION

Council does not approve the s138 Roads Act 1993 application to deny access to part of the existing alignment of Edderton Road, as it does not comply with the Road Closure Resolution adopted by Council on 12 February 2019.

Moved: _____ Seconded: _____

BACKGROUND

As set out in condition 47(d) of Hunter Valley Energy Coal's (HVEC) planning approval (PA09_0062), HVEC is required to realign Edderton Road and its intersection with Denman Road prior to mining within 200 metres of Edderton Road, to the satisfaction of Council and Roads & Maritime Services (RMS). This condition was imposed in HVEC's planning approval in 2010. The detailed designs for Stage 1 (realigned section) were reported to Council at the 9 April 2019 Ordinary Council Meeting. Council's resolution in relation to the report was:

19.3 EDDERTON ROAD DESIGN FOR STAGE 1 TEMPORARY ROAD PORTION CONSTRUCTION WORKS

PROCEDURAL MOTION

- 1 *RESOLVED on the motion of Crs Rush and Ward that:*

Authority be delegated to the General Manager to determine this matter.

The Works Authorisation Deed for the Denman Rd and Edderton Rd intersection was executed by RMS and HVEC on 17 June 2019.

The Edderton Road Relocation project has been planned in three main work areas:

1. Denman Road Intersection (subject to an RMS Works Authorisation Deed, Granted in June 2019 and nearing completion);
2. The main alignment from Chainage 40 to 4040 (subject to MSC approval, granted in May 2019 and nearing completion); and
3. Edderton Road Southern Tie-in s138 was approved at the 24 September 2019 Ordinary Council Meeting and is nearing completion. Council's resolution in relation to the report was:

19.1 EDDERTON ROAD REALIGNMENT SECTION 138 ROADS ACT, 1993 - APPROVAL FOR TIE IN WORKS

RESOLVED on the motion of Crs Rush and Woodruff that:

1. *Council delegate to the General Manager authority to sign the following Section 138 Roads Act 1993 approvals generally in accordance with the draft special conditions set out in attachment D in this report:*
 - (a) *for the tie in works proposed; and*
 - (b) *in accordance with the Stage 3 strategy notes detailed in the report.*
2. *The consent be provisional on a suitable form of security to the value of \$260,000 paid by the consent holder prior to the commencement of works.*
3. *As per the conditions outlined in 1 above, fees are to be paid, insurances provided, detailed design plans for the sidetrack and Traffic Control Plans are to be submitted and certified by a suitably qualified consultant and accepted by the General Manager.*
4. *It be expressed to the applicant that the issuing of the S138 approval does not guarantee that council will approve any future application for a road opening or road closure submitted by HVEC or its related entities.*

CONSULTATION

GHD Consultants (Design);

Robson Civil (Construction);

Roads Drainage and Technical Services Section;

Council's Corporate Lawyer.

CONSULTATION WITH COUNCILLOR SPOKESPERSON

A copy of the report has been forwarded to the Mayor, Councillor Rush, the Deputy Mayor, Councillor Scholes, and the Councillor Spokesperson for Infrastructure, Councillor Woodruff, for review.

REPORT

This report does not deal with the 'Legal Closure' of Edderton Road. The Legal Closure of Edderton Road will be the subject of a future report to Council. The subject of this report considers the removal of traffic for constructability purposes, and to facilitate the proposed future movement of traffic onto the new realigned portion of Edderton Road for efficiency and safety reasons.

Construction of Stage one (1) Works is scheduled to be completed in February-March 2020, and to

facilitate the transition of traffic onto the new alignment, Council has received an application from HVEC which proposes works to enable this transition to occur.

As part of the current construction, it has been necessary to establish a side track at the location of the tie in where the new alignment and existing alignment of Edderton Road coincide. The side track was necessary due to the elevation difference between the new temporary road portion construction and the existing section of Edderton Road. This difference is designed to be absorbed by the upgraded Stage 2 section of Edderton Road during its construction. The side track has now been in use for some time.

The new realigned portion of Edderton Road can only be used by the public, that is, opened to traffic, when the following occurs:

- the intersection of Edderton and Denman Road has been completed to the satisfaction of RMS and Council;
- the tie in section of the new and existing alignment of Edderton Road is completed to the satisfaction of Council;
- the realigned portion has been completed to the satisfaction of Council. This will be the subject of a further report to Council;
- the side track adjacent to the tie in portion is decommissioned; and
- the plan to dedicate the realigned portion of Edderton Road as a public road has been registered with the NSW Land Registry Services.

The transition and removal of traffic from the existing, approximately 4.2 km length, alignment of Edderton Road can be facilitated through a Section 138 *Road Act 1993* approval. The s138 approval is the subject of this report. Once traffic has been diverted onto the new alignment, access to the existing alignment by the public will no longer be possible due to the construction limitations outlined above, including the required removal of the side track. Also, the use of the existing portion of Edderton Road by the public will no longer be necessary as all lands adjoining the existing road are owned by HVEC. The removal of traffic will also facilitate the completion of the Stage 1 works.

The existing intersection of Edderton Road and Denman Road is proposed to be decommissioned as part of this approval in order to physically deny access to the public. Plans for this work are attached to the report and include the following provisions:

- public notification of proposed changed traffic conditions, including variable message boards and advertising;
- initial soft closure under traffic control to enable the transition of traffic to the new aligned temporary road section; and
- permanent decommissioning works at the existing intersection, which include removal of existing line marking, guideposts, road pavement, and signage, installation of new line marking, and fencing of the road boundary.

Transport NSW (RMS) will be consulted by the applicant prior to works being undertaken on Denman Road.

OPTIONS

Option 1: Approve the s.138 *Roads Act 1993* application to prevent the public from using the existing portion of Edderton Road once the realigned portion has been completed to the satisfaction of all parties as outlined in the report. Delegate to the General Manager authority to sign the

Section 138 consent for the works generally in accordance with the Special Conditions outlined in the attachment.

Option 2: Approve the s.138 *Roads Act 1993* application to prevent the public from using the existing portion of Edderton Road once the realigned portion has been completed to the satisfaction of all parties as outlined in the report. Delegate to the General Manager authority to sign the Section 138 consent for the works generally in accordance with any amended Special Conditions as required by Council.

Option 3: Not approve the s.138 *Roads Act 1993* application, as it does not comply with Council's adopted Road Closure Resolution.

CONCLUSION

As the requirements of the s.138 permit do not comply with Council's adopted Road Closure Resolution, it is recommended that the s. 138 permit is refused.

SOCIAL IMPLICATIONS

The necessity for the use of a side track during the period of construction has caused some delays and inconvenience to the road user. Opening the new, realigned section of Edderton Road to the public will provide an improved road surface 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 HVEC.

POLICY IMPLICATIONS

A Notice of Motion entitled 'Road Closure Resolution' was submitted to the 11 December 2018 Ordinary Meeting of Council. Council's resolution in relation to the Notice of Motion was:

'RESOLVED on the motion of Crs Rush and Scholes that:

Council delegate to the Development Assessment Committee the power to determine council's policy with respect to the subject matter of the motion.'

A report entitled 'Road Closure Resolution' was subsequently submitted to the 17 December 2018 meeting of the Development Assessment Committee. The committee's recommendation in relation to this matter was:

'RECOMMENDED on the motion of Crs Rush and Bailey that:

- 1. Without predetermining any particular application under Division 3 of Part 4 of the Roads Act 1993, Council adopts a general policy that significant alterations to the rural road network should not be resolved until after the adoption of a new Local Environment Plan – presently anticipated in May 2019.*
- 2. Review and finalisation of the Contributions Plan accompanying the Mine Affected Roads Strategy.'*

The minutes of 17 December 2018 meeting of the Development Assessment Committee were submitted to the 12 February 2019 Ordinary Meeting of Council through a report entitled 'Report of the Development Assessment Committee meeting held on Monday, 17 December 2018'. Council's resolution in relation to the report was:

'RESOLVED on the motion of Crs Woodruff and Foy that:

The Minutes of the Development Assessment Committee Meeting held on Monday 17 December 2018 be received and the recommendations contained therein ADOPTED.'

STATUTORY IMPLICATIONS

Any works undertaken within a road reserve require the roads authority approval through the S138 permit approval. 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.

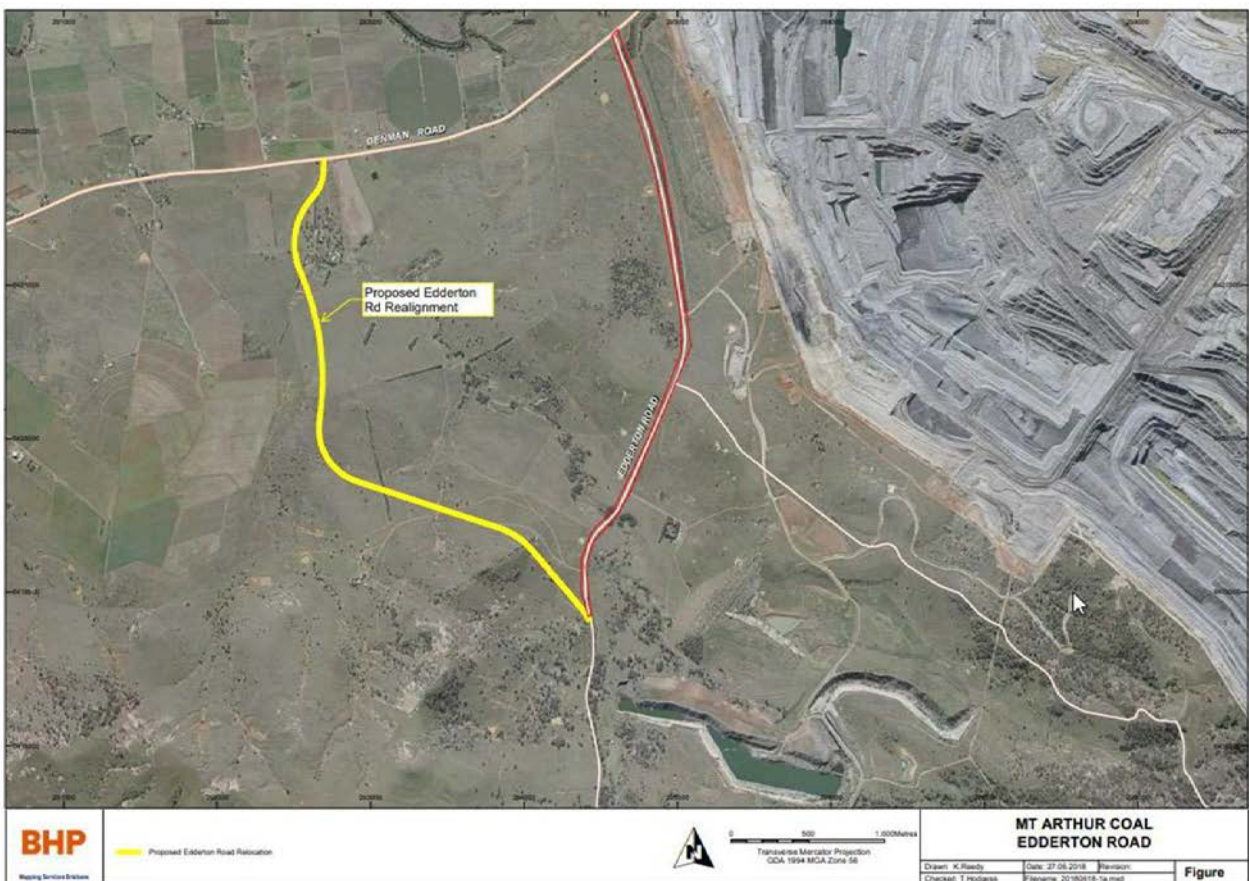
OPERATIONAL PLAN IMPLICATIONS

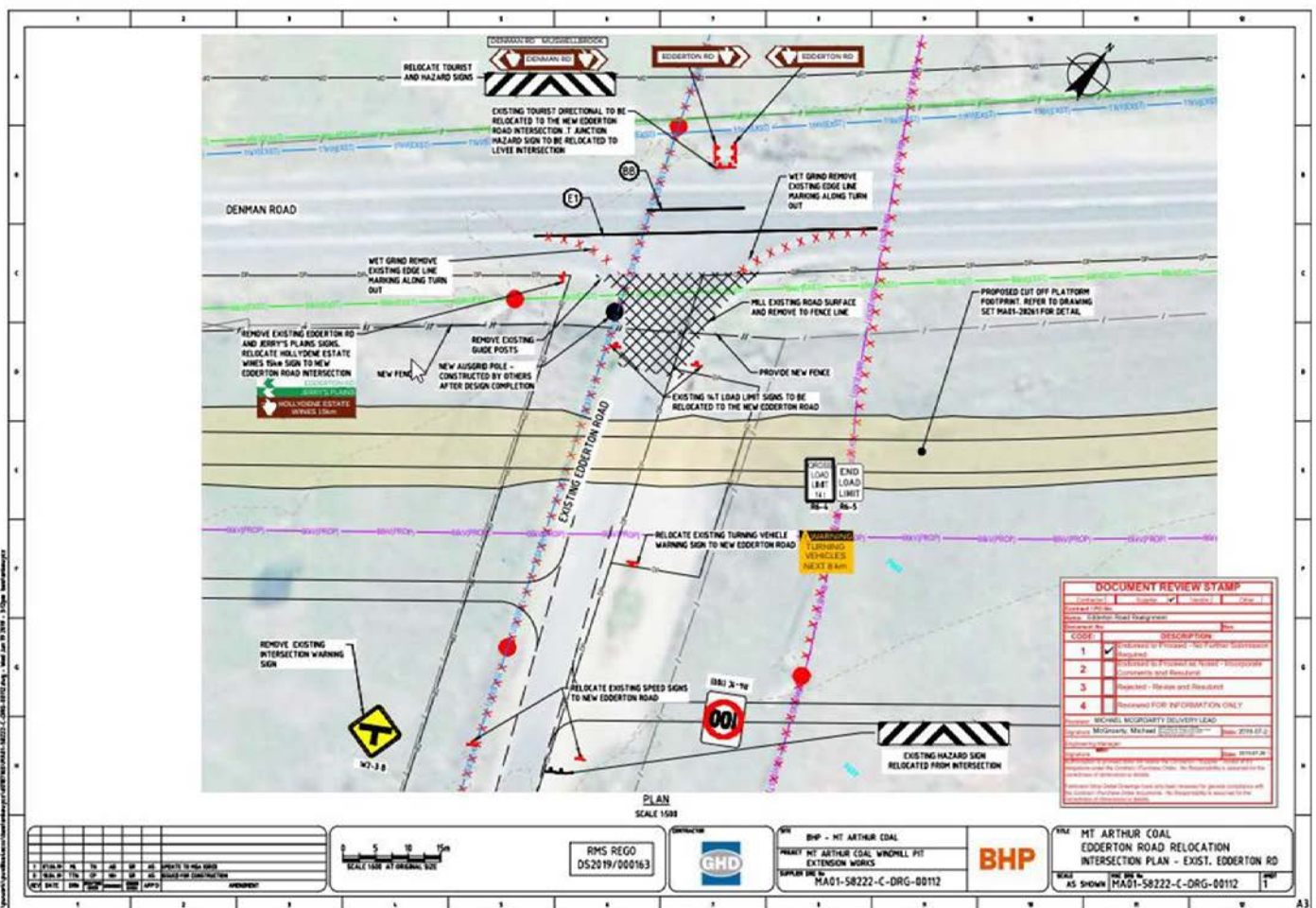
The submission of the report complies in principle with item 19.3.4 of the Operational Plan: 'Investigate and recommend appropriate management treatments for road safety and traffic management'.

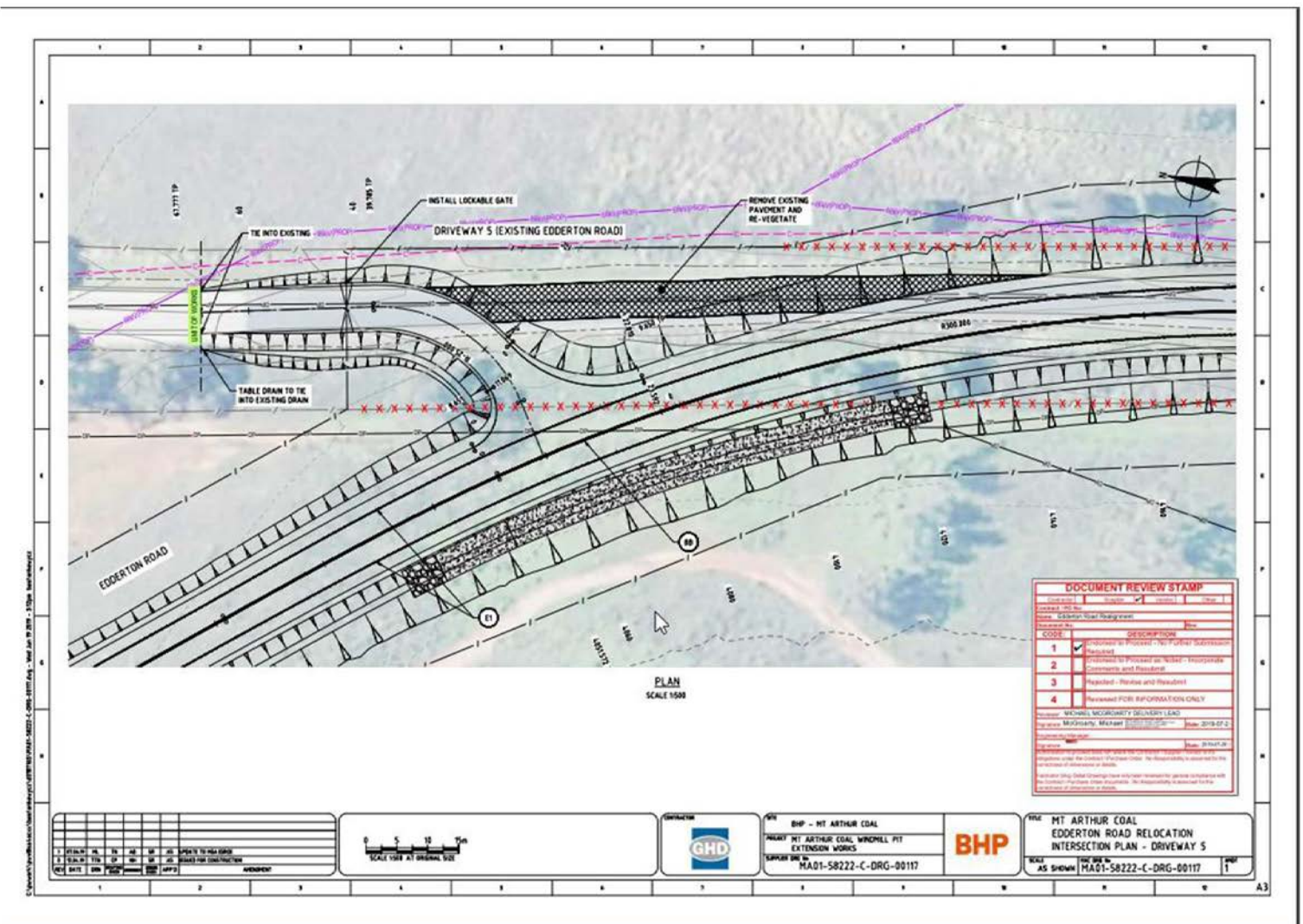
RISK MANAGEMENT IMPLICATIONS

The applicant under the General Conditions is to carry Insurance to indemnify council should any incident be identified related to the approval.

Proposed works









S138 Public Road Works and Structures Consent

Consent No

(A) Valid from:

To:
16 June 2020
(B) Granted to the following:

Name	Hunter Valley Energy Coal		
Address	Thomas Mitchell Drive Muswellbrook NSW 2333	Phone	0467743639
		Email	sarah.k.bailey@bhpbilliton.com
ABN			

(C) In respect of the following proposed Works:

DA/CDC number (if applicable)

PA09_0062 Mod 1.

Name and location of road to be affected

Edderton Road

Details of work/activity to be carried out

Details of proposed restoration works

- public notification of proposed changed traffic conditions, including variable message boards and advertising;
- initial soft closure under traffic control to enable the transition of traffic to the new aligned temporary road section; and
- permanent decommissioning works at the existing intersection, which include removal of existing line marking, guideposts, road pavement, and signage, installation of new line

▪ removal of existing line marking, guideposts, road pavement, and signage, installation of new line marking, and fencing of the road boundary.

Including the road reserve:

☒ Yes

☐ No

Plan attached and marked Annexure "A":

☐ Yes

☐ No

(D) The Council consents to the Applicant placing, installing or erecting the Works within or across the Road under the conditions contained in this Consent.

 The consent is granted under s138 of the *Roads Act* 1993.

 The Council is a public roads authority for the Road under s7(4)(b) of the *Roads Act* 1993 (NSW).

This Consent is subject to the conditions set out in the following pages and which are incorporated into this Consent:

- General Conditions annexed hereto;
- Additional General Conditions annexed hereto;
- Special Conditions annexed hereto.

The Special Conditions, Additional General Conditions and General Conditions have precedence in that order if there is any inconsistency between them.

Consented on behalf of Muswellbrook Shire Council by its duly authorised delegate	<input type="text"/>	<input type="text"/>	Office use only
	General Manager or delegate/ Manager Roads Drainage & Technical Services	Date	

Privacy notification

The personal information that Council is collecting from you is personal information for the purposes of the Privacy and Personal Information Protection Act 1998.

The intended recipients of the personal information may be:

- Officers within the Council
- Data service providers engaged by the Council from time to time
- Any other agent of the Council
- Financial institute involved in the process

The supply of the information by you is voluntary. If you cannot provide or do not wish to provide the information sought, the Council may be unable to process your application.

Council is collecting this personal information from you in order to provide Council approved services.

You may make application for access or amendment to information held by Council. You may also make a request that Council suppress your personal information from a public register. Council will consider any such application in accordance with the Act.

Address enquires concerning this matter to the Public Officer.

General Conditions

1. Definitions:

- 1.1. In the Consent and any memoranda annexed to the Consent the following words have the following meanings:

“Act” means *Roads Act 1993* (NSW)

“Business Hours” means the opening hours of Muswellbrook Shire Council Administration Centre;

“Claims” means any loss, damages, claims, demands, causes of action or suits of any kind;

“Consent Holder” is the person specified at (B) of the Consent;

“Consent Period” means the period specified at (A) of the Consent;

“Council” means Muswellbrook Shire Council;

“Council Officer” means the Muswellbrook Shire Council's nominated officer;

“Consent Fee” means the fee paid by the Consent Holder to Council for the administrative costs associated with the issue of the Consent and shown in the Specifications;

“Deed” means the Edderton Road Realignment Deed between Hunter Valley Energy Coal (HVEC) and Muswellbrook Shire Council (MSC) dated 3 July 2018

“Pipe work” means pipes, conduits, hoses, tubing, cables and wires;

“Plan” means the plan attached to the Consent and marked Annexure “A”;

“Restoration Fee” means a fee paid to Council in consideration for the Council restoring the Road surface after completion of the Work;

“Road” means the road described at (C) of the Consent.

“RMS” means Roads and Maritime Services;

“Service Conduit” means conduits used to run service wires and cables underground;

“Specifications” means Council's Technical Conditions 1151 and/or 1152, Council's CBD Specifications, and any other specifications contained in any Memoranda annexed to the Consent and listed at (D) of the Consent.

“Traffic Control Plan” is a plan to be submitted by the Contractor approved by Council in accordance with the RMS guidelines “Traffic Control at Work Sites”

“Traffic Management Plan” is a statement of how traffic, parking etc. will be managed on site.

“Works” means the plan of works described in the application, including any restoration whether by the Consent Holder or Council, and special instructions

2. Manner of Works

- 2.1. The Works must be conducted according to the Plan and the Specifications.

- 2.2. The Consent Holder must complete any backfilling of trenching works in accordance with Council's AusSpec #1 Specification 306 – "Road Openings and Restoration" – as stipulated in Technical conditions 1151 and/or 1152.
- 2.3. Where Works are undertaken in the CBD, the Consent Holder must meet the Council's CBD specifications, at the Consent Holder's expense.

3. Council Requirements

- 3.1. The Consent Holder must comply with all Council requirements in relation to the Works:
 - a) Contained in the Consent and Memoranda annexed to the Consent;
 - b) Contained in any notice in writing concerning the Works given to the Consent Holder by the Council; and
 - c) Any direction given to the Consent Holder by the Council.

4. Legislation

- 4.1. The Consent Holder must observe all requirements with respect to the Works imposed by any statute, regulation or ordinance or otherwise imposed by a statutory or other authority.

5. Term

- 5.1. The Works must not be carried out at any time other than during the Consent Period.

6. Proceed Continuously

- 6.1. The Consent Holder must carry out the Works as expeditiously and safely as practicable and proceed continuously until completion.

7. Layout of Work

- 7.1. All pipe work crossing the Road must be laid perpendicular to the direction of the Road unless otherwise consented to by Council and described in the Specifications or shown in the Plan.
- 7.2. The pavement surrounding any excavation of the Road must be neatly saw-cut prior to excavation.
- 7.3. The Consent Holder must ensure that any cut pavement maintains a neatly finished edge at all times.

8. Advise Council

- 8.1. The Consent Holder must give the Council a minimum of five working days' notice prior to when the Works is to commence.
- 8.2. The Consent Holder must notify Council as soon as the Work is completed if completion occurs during Business Hours.
- 8.3. The Consent Holder must notify Council during the next Business Hours if the Work is

completed outside of Business Hours.

9. Expense

- 9.1. The Works are carried out at the Consent Holder's expense.

10. Consent and Acknowledgement

- 10.1. The Consent must be signed for and on behalf of Council in order for consent to be granted.

11. Service Conduit

- 11.1. Any Service Conduit placed across the Road must have at least 400mm of fill cover in addition to the road pavement thickness.

12. Footpaths

- 12.1. Where any footpath is disturbed it must be restored to the original condition by the Consent Holder at the Consent Holder's cost.

13. Fee

- 13.1. The Consent is not valid unless the Consent Fee is paid.

14. Restoration Fees

- 14.1. Where Council is required to undertake Restoration works, determination of the Restoration Fees is governed by Section 67 of the *Local Government Act*.
- 14.2. Where a Restoration Fee is applicable the Consent Holder must pay the Restoration Fee:
- a) As soon as the Work is completed if completion occurs during Business Hours;
or
 - b) During the next Business Hours if the Work is completed outside of Business Hours.
- 14.3. If disturbance to the Road exceeds that shown on the Specifications, the Consent Holder must pay the additional cost to Council for restoration.

15. Indemnity and Insurance

- 15.1. The Consent Holder indemnifies and holds Council harmless against all Claims by any person arising in connection with any acts or performance of an obligation under this Consent.
- 15.2. Specific Indemnities: - Without limiting clause 15.1 the Consent Holder indemnifies and holds Council harmless against any Claim arising directly or indirectly out of the following:
- a) The construction and installation of the Works;
 - b) Conduct by the Consent Holder which amounts to a breach of any license, permit, approval or legislation;
 - c) Council granting consent to the Consent Holder to carry out the Works;
 - d) Failure to comply with any obligation of the Consent Holder under this Consent.
- 15.3. The Consent Holder must maintain a public liability insurance policy with an insurer

approved by Council with a limit for any one event of not less than twenty million dollars (\$20,000,000).

- 15.4. The insurance must be on terms to the reasonable satisfaction of Council and name Council as an insured party

16. Traffic Management Plan

- 16.1. The Consent Holder must ensure that a Traffic Management Plan is in place whilst the Work is being carried out.
- 16.2. The appropriate traffic control measures must be established at the Consent Holder's cost.
- 16.3. The traffic control measures must be in accordance with the approved Traffic Control Plan prepared under the current RMS Guidelines "Traffic Control at Work Sites".
- 16.4. The Consent Holder must not interrupt or otherwise disturb the traffic flow on the Road without the written consent of Council.

17. Responsibility for Restoration works

- 17.1. Where the Consent Holder is not able to meet the standards required, the Consent Holder can either contract the services of another provider that can – or apply to Council's Works Department for a quote, and for the work to be undertaken by Council at the Consent Holder's expense.
- 17.2. Where council is required to undertake the restoration works, the Consent Holder is responsible for the Works until Council's road maintenance service provider completes the standard road pavement restoration. Where the Consent Holder undertakes to do the restoration work themselves, then the Consent Holder is responsible until Council agrees to the standard of that restoration work.

18. Responsibility in the event of absence or emergency

- 18.1. In the Consent Holder's absence from the site of the Works, or in the event of any emergency, Council may take such action as it considers, in its absolute discretion, necessary to prevent:
- a) Loss of or damage to the whole or any part of the Works;
 - b) Loss or damage to the Road or any property adjacent to the Works; or
 - c) To prevent personal injury to any person.
- 18.2. Any such action (under sub-clause 18.1) is at the Consent Holder's expense.

19. Safety

- 19.1. The Consent Holder must carry out the Work with due regard to the safety and rights of the public.
- 19.2. In addition to clauses 2, 3 and 4 the Consent Holder must comply with the requirements of the NSW Work Cover Authority, the Department of Industrial Relations & Employment, and the Police Service of NSW.

20. Relocation

- 20.1. If it is necessary in the reasonable opinion of Council:

- a) To relocate or remove any portion of the Works; or
- b) Carry out any additional work for the safety and protection of the public,

the Consent Holder must relocate or carry out such removal or additional work as reasonably determined and directed by the Council.

- 20.2. Any such relocation and/or additional work required to be carried out is at the Consent Holder's expense.

21. Public Risk

- 21.1. Nothing in this consent shall be deemed to:

- a) Prejudice or affect the rights of the public to free passage upon or along the Road;
- b) Authorise any nuisance to, or permanent obstruction of, the Road or public places;
- c) Confer upon the Consent Holder exclusive right or title to that part of the Work within the boundaries of the Road, or
- d) In any way restrict or limit the powers of the Authority and the Council in respect of the Road.

22. Deemed Acknowledgement

- 22.1. Upon commencement by the Consent Holder of any part of the Work it shall be deemed that the Consent Holder has agreed with the Council to comply with the conditions of this consent.

23. Conditions for moving or grazing stock on Council roads

- 23.1. The Consent Holder is to comply with the following conditions if stock is being moved or grazed on Council roads at the site or near the site of the Works:
 - a) That stock warning signs as described in the *Local Land Act* 2013 indicating the presence of stock on the road shall be prominently displayed 200 metres before and after the section of road being used;
 - b) Stock signs must be displayed at all times when stock are on or adjacent to a roadway, and removed when stock are no longer present;
 - c) That the distance over which stock are being grazed does not exceed 2kms at any one time;
 - d) When stock are being moved along the road, warning signs shall be no further than 5kms apart;
 - e) That at least one person shall be attending the stock at all times;
 - f) That the stock may only be present on a public road during daylight hours.

Additional General Conditions

1. Definitions:

1.1. In this Memorandum the following words have the following meanings:

Defined terms - In addition to the meanings or values assigned in the Schedule of Details, in this document:

Approval means any consent, approval, authorisation, licence, registration, order, permission or concurrence required by law, including by a Legislative Requirement and any Council acceptance, condition or approval including those under this Consent, required for the commencement, execution or completion of the Works.

Authority means a Commonwealth, State or local government department, a Minister, body, instrumentality, trust or public authority in the exercise of a governmental regulatory function.

Business Day means any day not a Saturday, Sunday or public holiday in New South Wales, and also excluding Council Christmas closure for one (1) week in December.

Design Documents means a drawing, specification, document, calculation, software, sample, model, pattern and the like, required by this Consent or created for the construction of the Works.

Item means an item set out in the Schedule of Details.

Legislative Requirements includes an act, ordinance, regulation, by-law or order of a government or Authority, or an Approval of an Authority (including any condition or requirement under an Approval).

Management Plan means a detailed plan setting out how a nominated aspect of the carrying out of the Works will be managed and implemented to ensure the requirements of this Consent are met, and includes plans for Traffic Control, Traffic Management, Occupational Health and Safety, Quality, Inspection and Testing, and Environmental Management and the Construction Program.

Security has the meaning given in clause 6.1(e).

2. Consent Holder's Responsibilities

- 2.1. It is the Consent Holder's responsibility to maintain the Works in good condition with no cost to the Council during the service life.
- 2.2. The Council relies on the advice, skill and judgment of the Consent Holder and the Consent Holder's consultants and contractors in connection with:
 - a) the correctness and reliability of the Schedule information, emailed with the application and in accordance with clause 4 Stage 1 Works –, of the Edderton Road Realignment Deed.
 - b) the correctness and suitability of the Design Documents;
 - c) the performance of the Consent Holder's obligations under this Consent;
 - d) the fitness for purpose of the completed Works; and
 - e) the fitness for purpose of each item of plant and equipment used either in the construction of, or forming a part of, the Works.
- 2.3. The Council makes no representation or warranty as to the Works and assumes no duty of

care in respect of them or any information provided by the Council.

- 2.4. The Consent Holder must not carry out any modification of the Works without further approval from the Council.
- 2.5. It is Consent Holder's responsibility to conduct routine inspections of the Works during the service life and enter into a maintenance agreement with Council as required by the Consent.

3. Develop Documents and Management Plans

- 3.1. The Consent Holder must develop:
 - a) Design Documents required to construct the Works; and
 - b) Management Plans required by the Council; based on the Scope Drawing referred to in Item 1 and in accordance with RMS material and workmanship specifications; and especially the traffic management plan is to comply with the RMS Traffic Control at Work Sites manual.

4. Obtain Approvals

- 4.1. The Consent Holder must obtain:
 - a) all Approvals required for the design and construction of the Works; including Planning Approval, Local Government Act Section 68 approvals and any other approval required by law. Note: Planning and Section 68 approval are accepted as not required for Drainage in this case being approved under the DA and the Infrastructure SEPP. However, approvals remain the responsibility of the Consent Holder.
 - b) certification of all Design Documents by an independent engineer to the satisfaction of the Council; and
 - c) acceptance by the Council of the Design Documents, Management Plans.

5. Co-operation with Council

- 5.1. The Consent Holder must assist the Council to meet the Council's obligations under the Environmental Planning and Assessment Act 1979 (NSW) and other Legislative Requirements (including the requirement for the Council to make a final determination that the Works can proceed prior to acceptance of the Design Documents).
- 5.2. The Consent Holder must not without the Council's prior written approval make any modification to the Works or the Design Documents or Management Plans once approved by a Road or other Authority or after acceptance by the Council.
- 5.3. The Consent Holder must obtain the Council's prior written approval of proposed contractors and subcontractors and, to the extent required by the Council, must ensure that such contractors and subcontractors are:
 - a) suitably experienced in constructing similar works;
 - b) prequalified at a level and class appropriate for the work to be performed by them,
 - c) engaged by the Consent Holder under terms and conditions that ensure that the contractor will satisfy the Consent Holder's relevant obligations to the Council under this Consent.

6. Commencement of Works on Site

- 6.1. Pre-conditions - The Consent Holder must not commence construction of the Works, including bringing plant or materials onto the Site or implementing steps in a Management Plan, unless and until:
- a) it has complied with the Consent Holder's obligations under clauses 2 and 3 of this Memorandum;
 - b) it has taken out the insurances referred to in this Consent and provided evidence of those insurances to the satisfaction of the Council;
 - c) it has provided at least 10 Business Days prior notice of the proposed start date for the road occupancy at the Site, for approval by the Council;
 - d) it has agreed with the Council 's requirements for dedication and transfer of land necessary for the public road or the establishment of a suitable road reserve;
 - e) it has provided the Council with an unconditional bank guarantee in a form acceptable to the Council for 10% of the Estimated Cost of the Works set out in Item 3 of the Schedule (Security);
 - f) it has paid to the Council the amount nominated as Estimated Council Costs in Item 4 of the Schedule; and
 - g) the Council has completed any necessary environmental assessment and determined that the Works can proceed.

7. Construction of the Works

- 7.1. Consent Holder obligations - The Consent Holder must:
- a) implement the Works expeditiously, to the satisfaction of the Council and in accordance with the Construction Program, and control traffic in accordance with the Traffic Management Plan accepted by the Council;
 - b) at all times act in a lawful manner in respect of the Works;
 - c) allow people authorised by the Council access to the Site at all times and undertake any testing or permit examination of any documentation or tests of materials or workmanship that the Council requires;
 - d) obtain for the benefit of the Council all available product and work warranties from the Consent Holder's suppliers, contractors and subcontractors in respect of equipment and materials used in the Works or assign such benefit to the Council where the warranty is not in favour of the Council;
 - e) ensure that directions or other requirements of the Council given from time to time (including a direction to immediately stop work) are complied with;
 - f) ensure that a report is immediately sent to the Council's Representative of any injury to a person suffered in connection with the Works or while present at or adjacent to the Site and of any claims made pursuant to workers' compensation insurance and assist the Council to promptly investigate and monitor the incident; and

- g) ensure that all subcontractors and workers engaged by the Consent Holder in connection with the Works are fully paid money properly due and payable to them under relevant awards, contracts and enterprise agreements.

7.2. The Consent Holder must not without the Council's prior written approval, use explosives at the Site or in relation to any part of the Works.

7.3. Step in by Council

- a) If the Council determines it is necessary to maintain traffic flows or for public safety, or if the Consent Holder breaches any condition of this Consent or a Management Plan, the Council may take control of all or any part of the Site and/or the Works for whatever period it considers is appropriate.
- b) The Council may undertake remedial, protective, or traffic control work that it considers is urgently required and recover or set-off the cost under clause 9.

7.4. Principal Contractor

- a) The Consent Holder is, for the purposes of the *Work Health and Safety Act 2011* considered a person conducting businesses or undertakings involving management or control of workplaces. The person with management or control of a workplace must ensure, so far as is reasonably practicable, that the workplace, the means of entering and exiting the workplace and anything arising from the workplace are without risks to the health and safety of any person.
- b) The Consent Holder must comply with all aspects of the *Work Health and Safety Act 2011* and the Regulations.

8. Completion

8.1. Practical completion - The Consent Holder must:

- a) give the Council 10 Business Days' notice of the date on which it anticipates practical completion will be reached;
- b) when it is of the opinion that practical completion has been reached, provide further notice to the Council together with a report of practical completion which includes:
- c) necessary acceptances or Approvals by other Authorities; and
- d) test results, identification of further work required to finally complete the Works, and such other information as the Council requires to assess practical completion; and
- e) provide "as built" drawings to the Council, within 4 weeks of practical completion.

8.2. Council 's response - Following receipt of the documents referred to in clause 8.1(b), the Council will inspect the Works and notify the Consent Holder of the date on which the Council is satisfied that practical completion has been reached (Date of Completion), or the reasons why it is not satisfied.

8.3. A notice that the Council is satisfied practical completion has been reached will not constitute an admission by the Council of the Consent Holder's performance of its

obligations, or that that the Works comply with the requirements of this Permit.

- 8.4. Defect rectification - The Defects Liability Period commences on the Date of Completion. The Council may at any time before the end of the Defects Liability Period issue a list of defects or non-conforming work to the Consent Holder, and the Consent Holder must correct the items listed within the time frame nominated by the Council.
- 8.5. Final completion - At the end of the Defects Liability Period, the Consent Holder must notify the Council after the Works are finally complete (Final Completion Notice), which must include a statutory declaration in a form satisfactory to the Council (or such other documentation as the Council may require) that:
 - a) all contractors and workers engaged by the Consent Holder or a subcontractor in connection with the Works have been fully paid money, remuneration and other benefits properly due and payable to them; and
 - b) that relevant pay-roll tax and workers compensation premiums have been paid.
- 8.6. Maintenance -The Consent Holder shall maintain the works during the service life in satisfactory condition acceptable to Council in accordance with the consent conditions.
- 8.7. Following receipt of the Final Completion Notice), the Council may provide the Consent Holder with a statement:
 - a) showing the amount determined by the Council as owing by the Consent Holder to the Council (and attach an invoice for amounts not previously invoiced); and
 - b) setting out the balance of the Security still held by the Council.
- 8.8. The Council has no obligation to release the balance of the Security it holds until the Consent Holder has completed all its obligations under this Consent.

9. Costs and Payments

- 9.1. General - The Consent Holder must pay all of the Council's costs in connection with the Works and this Consent, including:
 - a) internal and external costs of reviewing documents or producing reports, obtaining or providing consents, Approvals or determinations and surveillance or administration;
 - b) legal costs associated with this Consent (including on termination), complying with Legislative Requirements or prosecuting or defending an action;
 - c) the cost of remedying a breach of this Consent by the Consent Holder or of taking emergency or special measures required by the Council.
- 9.2. **Adjustment of costs** - If the Council 's costs exceed the amount paid by the Consent Holder under clause 6.1(f), the Council may invoice the Consent Holder for the additional costs at any time and the Consent Holder must pay the full amount of the invoice within 10 Business Days from the date of the invoice.
- 9.3. To the extent that the Consent Holder does not comply with this clause, the Council may, without limiting other rights, call on the Security and set-off the amount owing against it.
- 9.4. **GST and other taxes** - The Consent Holder must pay all taxes (including GST, stamp duties, levies or government charges) in connection with this Consent and the Works. Costs

referred to in this Consent, unless specifically described as GST inclusive, do not include an amount on account of GST. If a supply made by the Council in connection with this Consent is subject to GST, the Consent Holder must pay the Council the amount payable for the supply plus an additional amount equal to the GST payable by the Council.

10. Termination

10.1. Termination - The Council may terminate this Consent:

- a) immediately by written notice if the Consent Holder breaches any provision of this Consent and does not rectify that breach within 10 Business Days of receiving written notice from the Council requesting it to do so; or
- b) without prior notice if:
 - the Consent Holder fails to pay within 10 Business Days of the due date, an amount due and payable to the Council under this Consent or for any other service supplied to the Consent Holder or its related bodies corporate by the Council; or
 - a receiver, liquidator, provisional liquidator or administrator is appointed over any of the Consent Holder's undertakings or assets, or if the Consent Holder enters into an arrangement with its creditors.

10.2. Effects of termination - Termination does not affect the Consent Holder's accrued responsibilities and obligations, nor does it affect any conditions which expressly or by implication are intended to operate after termination.

11. General

- 11.1. No Restriction on Rights - Nothing in this Consent is deemed to in any way restrict or limit the powers of the Council or other relevant Authority or fetter the Council in the exercise of its statutory functions and in the event such exercise is undertaken in accordance with the law.
- 11.2. Assignment - The Consent Holder must not assign or encumber any right, obligation or interest under this Permit without the written approval of the Council.
- 11.3. Notices - A party notifying or giving notice under this Consent must do so in writing sent by prepaid registered post or facsimile and the original by post to the other party's Representative nominated in the Schedule at the address or facsimile number specified on the first page of this Consent.

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 Hunter Valley Energy Coal dated 15 October 2019. Doc ID xx	
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 (GST inclusive)	[Clause 6.1(e)]
4. Estimated Council Costs	<p>Plan Approval \$ 1,200 (GST inclusive)</p> <p>Construction Observation</p> <p>Traffic Control Plans \$ 570 (GST inclusive)</p> <p>Final Acceptance (WAE review etc) \$ 500 (GST inclusive)</p> <p>Total \$2,270 (GST inclusive)</p>	[Clause 6.1(f)]
5. Defects Liability Period	12 Months	[Clause 8.4]
6. Consent Holder's Representative	<p>Name.....Sarah Bailey.....</p> <p>Position..... NSW Approvals Principal HVEC</p> <p>Mobile Phone.....0467 743 639.....</p> <p>Office Phone.....</p> <p>Email sarah.k.bailey@bhpbilliton.com.</p> <p>Facsimile.....</p>	[Clause 14.3]
7. Council's Representative	<p>Name.....Kellie Scholes.....</p> <p>Position.....Manager Roads Drainage & Technical Services.....</p> <p>Mobile Phone.....0407 252 142.....</p> <p>Office Phone.....02 6549 3756.....</p> <p>EmailKellie.scholes@muswellbrook.nsw.gov.au.....</p> <p>Facsimile.....02 93005774.....</p>	[Clause 14.3]

Special Conditions

1. The works must be commenced within six (6) months of the consent date.
2. The works must be completed by 1 September, 2020.
3. The Consent Holder is to advise Council's Engineering Officer Works Quality on 0418 110 010 five (5) days prior to commencing work to confirm inspections prior to commencement.
4. 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.
5. The Variable Message Sign should have the wording "Changed Traffic Conditions" "Side Road Closed" "Edderton Road xxkm ahead" or similar depending on the direction of travel.
6. 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.
7. The occupation of the Road should be undertaken in a safe manner, with adequate dust control.
8. The Consent Holder shall check for other services and is responsible for any damage to services and Council Infrastructure. Dial before you dig 1100.
9. 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.
10. 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.)

6.6 EDDERTON ROAD STAGE 2 UPGRADE SECTION 138 ROAD ACT 1993 APPROVAL.

Attachments:	A. Edderton Road Stage 2 Upgrade Design Plans B. 'draft' Consent and Conditions
Responsible Officer:	Derek Finnigan - Director - Community Infrastructure
Author:	Imelda Williams - Technical Officer - Traffic & Roads Kellie Scholes - Manager - Roads, Drainage & Technical Services
Community Plan Issue:	<i>Our community's infrastructure is planned well, is safe and reliable and provides required levels of service</i>
Community Plan Goal:	<i>Facilitate investment in high quality community infrastructure necessary to a regional centre.</i>
Community Plan Strategy:	<i>Investigate and recommend appropriate management treatments for road safety and traffic management.</i>

PURPOSE

To inform Council that a Section 138 Roads Act 1993 application for stage 2 upgrade works on Edderton Road has been received, and to request Council's approval or refusal of the Section 138 application.

RESPONSIBLE OFFICER'S RECOMMENDATION

Council does not approve the s138 Roads Act 1993 application for Edderton Road stage 2 upgrade works, as it does not comply with the Road Closure Resolution adopted by Council on 12 February 2019.

Moved: _____ **Seconded:** _____

BACKGROUND

Condition 47(e) of Hunter Valley Energy Coal's (HVEC) planning approval - 2010 (PA09_0062) requires HVEC to upgrade the intersection of Edderton Road (northern end of Stage 2) and the secondary site access road to the satisfaction of Council prior to using this access road for deliveries to the relocated explosives facility at this location.

Council has entered into a Deed of Agreement, the 'Edderton Road Realignment Deed' which includes provisions for Hunter Valley Energy Coal (HVEC) to undertake road upgrade works referred to as Stage 2 Works. The upgrade works will cover the section of Edderton road from the point where the realigned new road portion ties in with the existing alignment of Edderton Road heading south for a length of 1.75km, and will upgrade the existing road in terms of improved geometry, pavement strength and width (increasing the pavement width to 3.1m and shoulder width to 1.5m), improved drainage and safety for road users. These works are guided and proposed to be undertaken as outlined in Section 10 of the Edderton Road Realignment Deed (the Deed).

At the 29 October 2019 Ordinary Council Meeting, Council resolved to accept the Design Drawings for the Stage 2 upgrade work as satisfactory. In relation to the report, Council resolved as follows:

11.3 DESIGN FOR EDDERTON ROAD STAGE 2 UPGRADE WORKS

RESOLVED on the motion of Crs Ward and Ledlin that:

Council acknowledges receipt of the Edderton Road (Stage 2 Works – Upgrade Works) – Design Drawings Revision J and advise Hunter Valley Energy Coal that Council is satisfied with the plans.

Construction of the proposed Stage 2 upgrade works require approval under Section 138 *Roads Act* 1993, as the work will be carried out within the existing Edderton Road corridor.

CONSULTATION

Consultants GHD (Design);

Robson Civil (Construction);

Manager Roads, Drainage and Technical Services; and

Council's Ecologist.

CONSULTATION WITH COUNCILLOR SPOKESPERSON

A copy of the report has been forwarded to the Mayor, Councillor Rush, the Deputy Mayor, Councillor Scholes, and the Councillor Spokesperson for Infrastructure, Councillor Woodruff, for review.

REPORT

At the 29 October 2019 Ordinary Council Meeting, Council resolved that the detailed design drawings for Stage 2 works for the upgrade of Edderton Road, for a length of 1.75km south of the tie in point of the new realigned portion of the road, were satisfactory. The relevant design drawings accepted as satisfactory are appended to the report as Attachment A.

The proposed upgrade works have been designed to Austroads standards, and will result in significant improvements to road safety at this location. Data for this section of Edderton Rd shows a high crash cluster and therefore the proposed upgrade works are important for road users and the local community. The detailed design has been subject to a stage 3 Road Safety Audit with no non-conformances recorded.

As is consistent with most rural roads in NSW, the existing road alignment is not confined to the gazetted road corridor. As such, there will be further minor encroachment of the road outside of the existing gazetted road corridor as part of the upgrade works. The design has been modified as far as practicable (within Austroads limits) to ensure there is minimal impact on vegetation and minimal disturbance beyond the existing alignment. The maximum extent of the proposed upgrade works cannot be fenced in this location due to the potential impacts to heritage, threatened flora and fauna, that would be required as part of the fence construction.

The project is supported by a Review of Environmental Factors (REF) undertaken by Eco Logical Australia. Works will be undertaken in accordance with recommendations contained within this document. This study includes a Flora and Fauna assessment which identifies impacts within the site. There will be a need to remove approximately 32 trees to construct the upgrade of the road to the required standards in terms of geometry and width and to replace the seven (7) culverts. The assessment of this impact is covered in the REF. Wherever possible, removal of existing vegetation will be minimised.

The scope of works includes:

- reconstruction of the existing Edderton Road from tie in point of Stage 1- realigned portion for a distance of 1.75km south of the tie-in point;
 -
- earthworks;
 -
- replacement of 7 culverts;
 -

- road pavement widening;
 -
- installation of guardrail;
 -
- construction of the secondary access road intersection;
 -
- lighting of the intersection of the secondary access road; and
 -
- linemarking and signage.

HVEC advises that the works are proposed to commence in January 2020 for a duration of approximately eight (8) months.

OPTIONS

As the proposed works are related to mining activity, the authority to approve the S.138 (of the Roads Act 1993) application requires the approval of Council. Therefore, Council is requested to consider the application from the applicant to undertake works on a public road. It is considered that the following options may apply:

Option 1:

Approve the s.138 Roads Act 1993 application for Edderton Road Stage 2 Upgrade Works in accordance with the 'draft' Special Conditions attached to the report. Delegate to the General Manager authority to sign the Section 138 consent for the works in accordance with the Conditions outlined.

Option 2

Approve the s.138 Roads Act 1993 application for Edderton Road Stage 2 Upgrade Works generally in accordance with the 'draft' Special Conditions (attached to the report) with additional conditions nominated by Council. Delegate to the General Manager authority to sign the Section 138 consent for the works in accordance with the Conditions outlined.

Option 3: Not approve the s.138 Roads Act 1993 application, as it does not comply with the Road Closure Resolution adopted by Council 12 February 2019.

CONCLUSION

Council's Road Closure Resolution is the applicable Council policy document in relation to applications of this nature. As a result, it is recommended that Council does not approve the section 138 application for Edderton Road stage 2 upgrade works, as it does not comply with the Road Closure Resolution adopted by Council on 12 February 2019.

SOCIAL IMPLICATIONS

The additional upgrade of this 1.75km section of road, which ties into the realigned portion of Edderton Road, will provide a safer, improved road environment 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 HVEC.

POLICY IMPLICATIONS

A Notice of Motion entitled 'Road Closure Resolution' was submitted to the 11 December 2018 Ordinary Meeting of Council. Council's resolution in relation to the Notice of Motion was:

'RESOLVED on the motion of Crs Rush and Scholes that:

Council delegate to the Development Assessment Committee the power to determine council's policy with respect to the subject matter of the motion.'

A report entitled 'Road Closure Resolution' was subsequently submitted to the 17 December 2018 meeting of the Development Assessment Committee. The committee's recommendation in relation to this matter was:

'RECOMMENDED on the motion of Crs Rush and Bailey that:

- 1. Without predetermining any particular application under Division 3 of Part 4 of the Roads Act 1993, Council adopts a general policy that significant alterations to the rural road network should not be resolved until after the adoption of a new Local Environment Plan – presently anticipated in May 2019.*
- 2. Review and finalisation of the Contributions Plan accompanying the Mine Affected Roads Strategy.'*

The minutes of 17 December 2018 meeting of the Development Assessment Committee were submitted to the 12 February 2019 Ordinary Meeting of Council through a report entitled 'Report of the Development Assessment Committee meeting held on Monday, 17 December 2018'. Council's resolution in relation to the report was:

'RESOLVED on the motion of Crs Woodruff and Foy that:

The Minutes of the Development Assessment Committee Meeting held on Monday 17 December 2018 be received and the recommendations contained therein ADOPTED.'

STATUTORY IMPLICATIONS

Any works undertaken within a road reserve require Council approval through the S138 permit approval.

LEGAL IMPLICATIONS

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

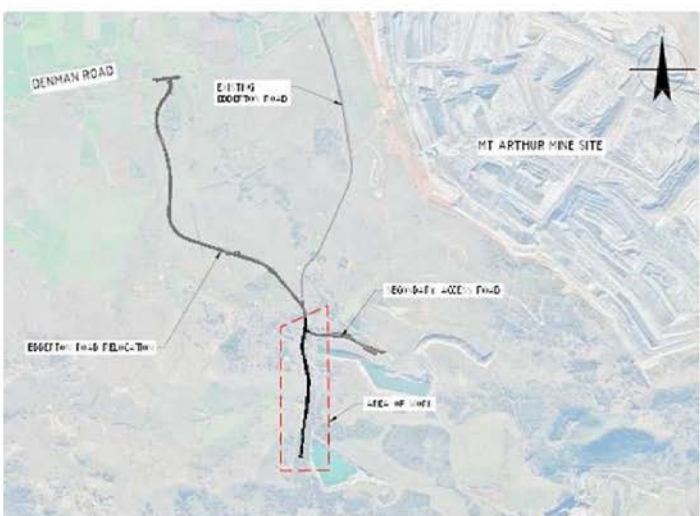
OPERATIONAL PLAN IMPLICATIONS

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

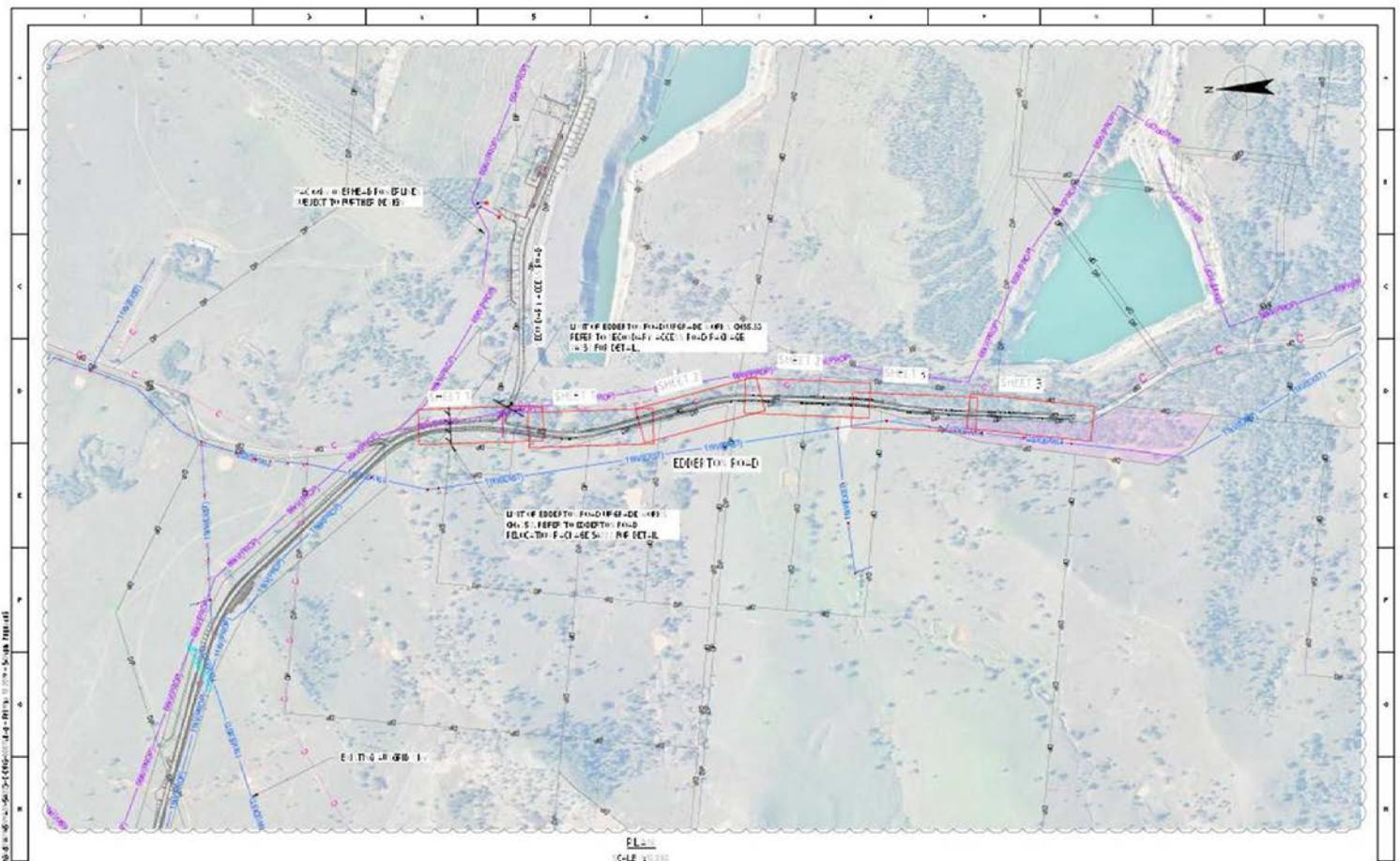
The applicant under the General Conditions is to carry Insurance to indemnify Council should any incident be identified related to the approval. Council will require a construction bond to be paid. Risks are managed by the use of qualified consultants required to submit and certify designs for works to be undertaken within Council's Road Reserves and Council staff acceptance of the designs and oversight of the construction. Works are required to comply with relevant standards, particularly RMS guidelines "Traffic Control at Work Sites".

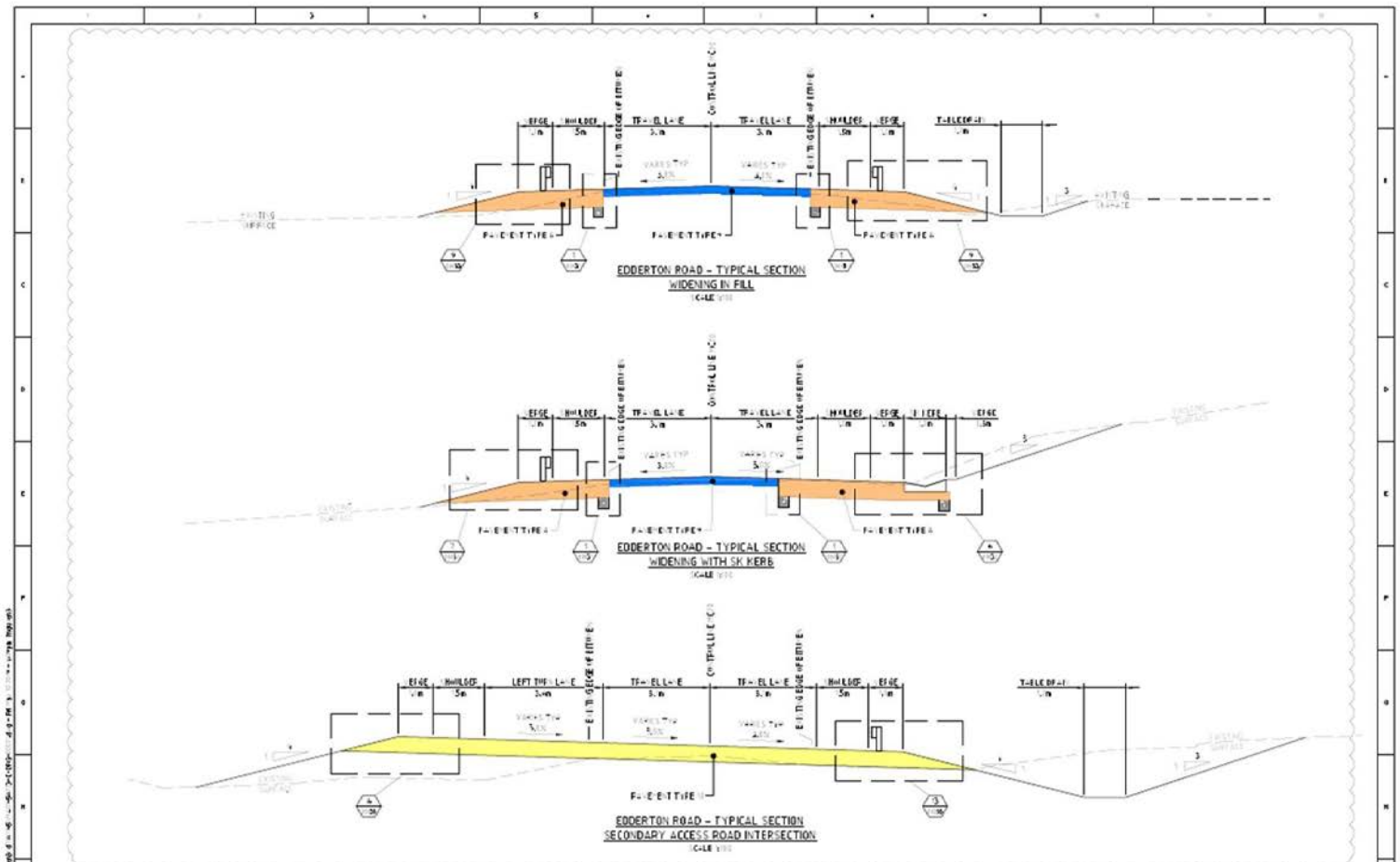
MT ARTHUR COAL WINDMILL PIT EXTENSION WORKS EDDERTON ROAD UPGRADE 58223

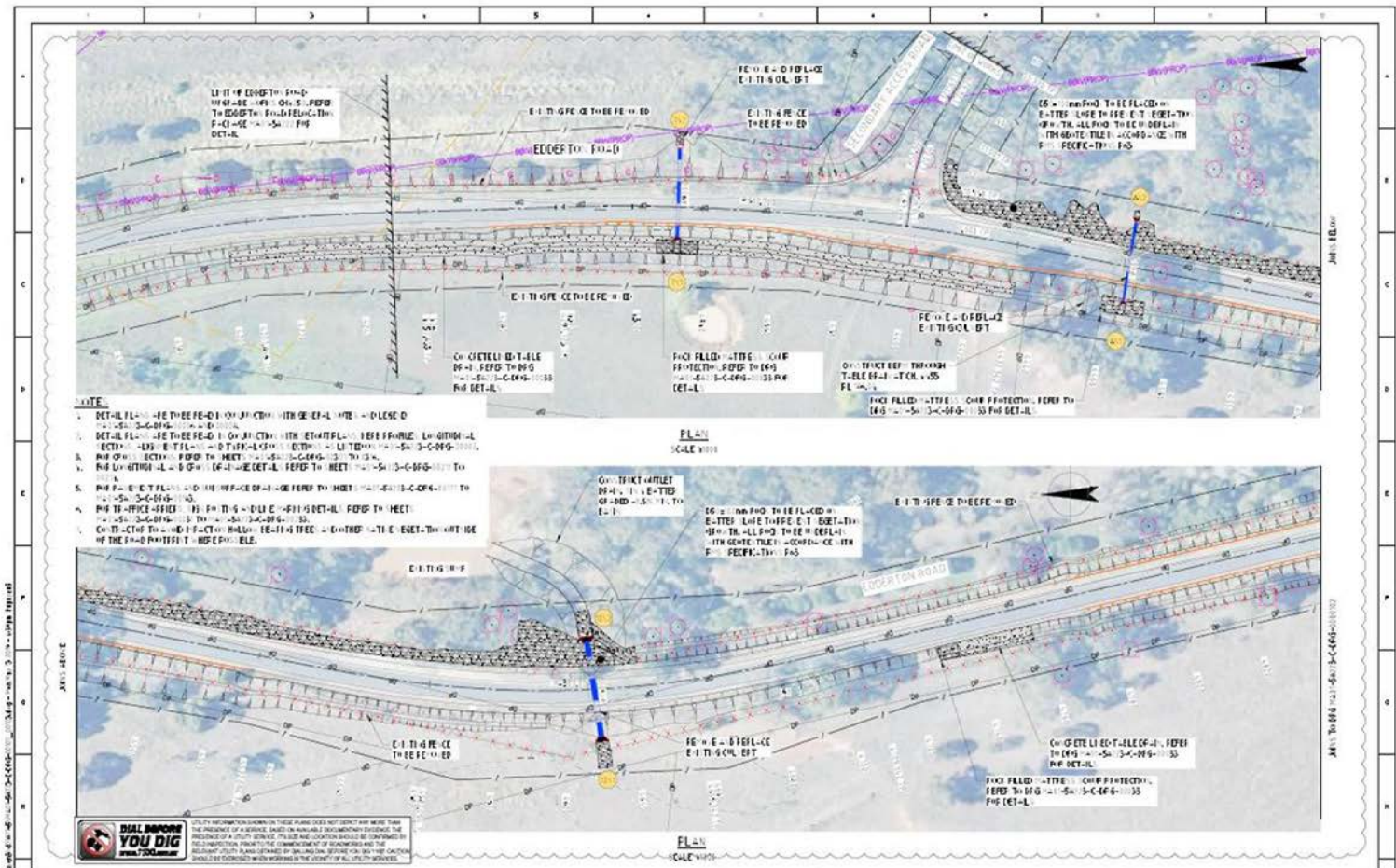


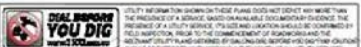
LOCALITY PLAN
SCALE 1:50,000



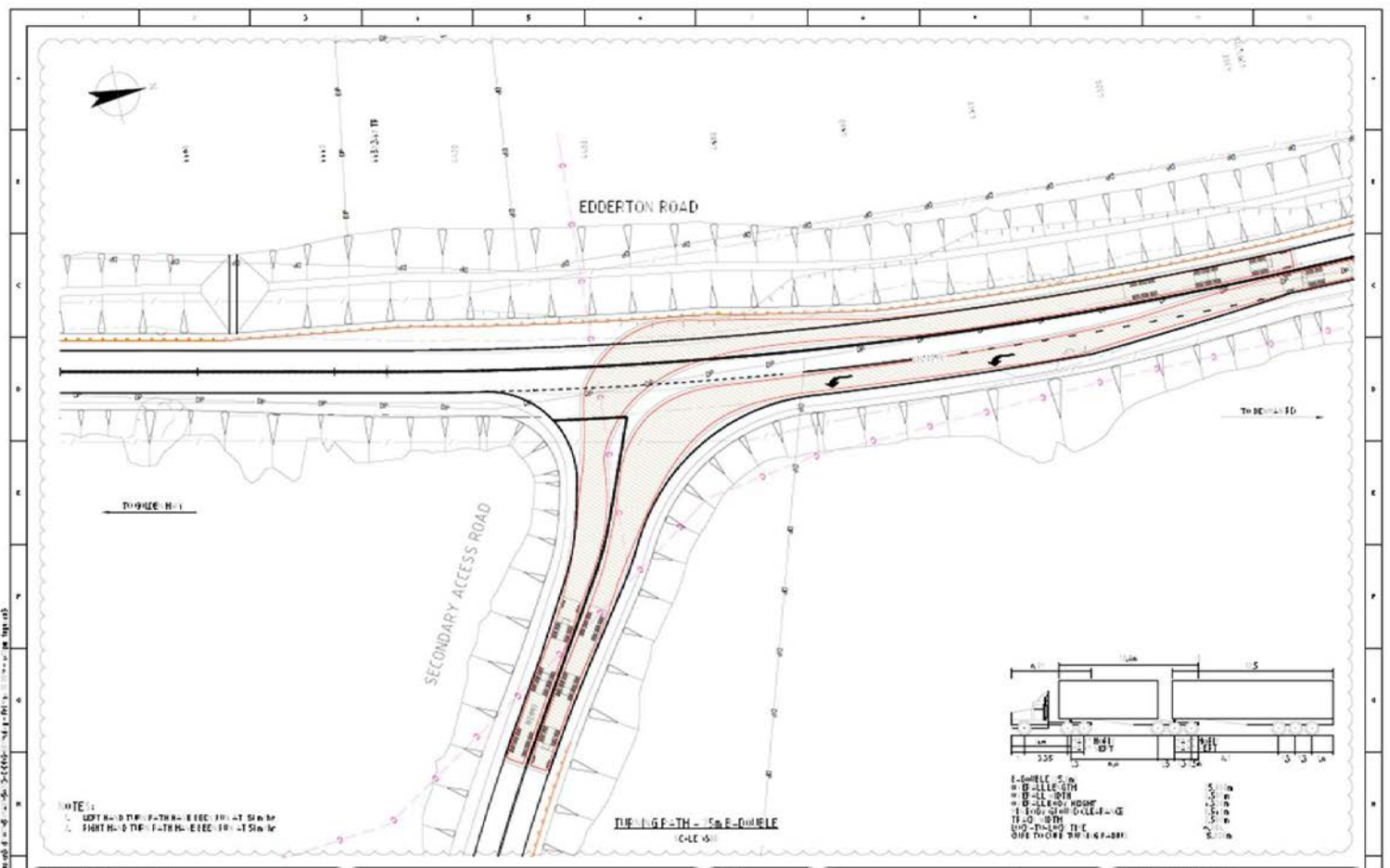


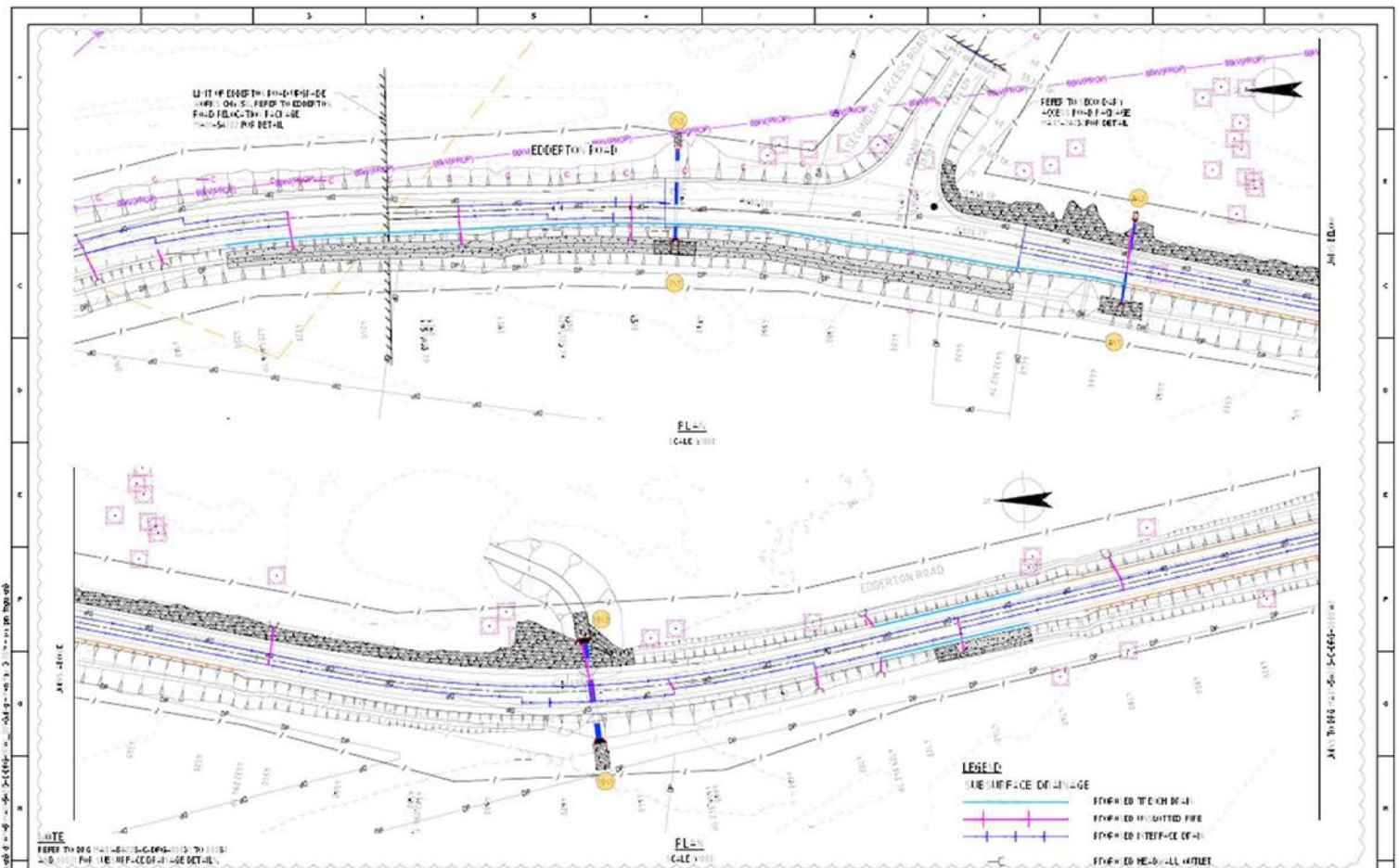


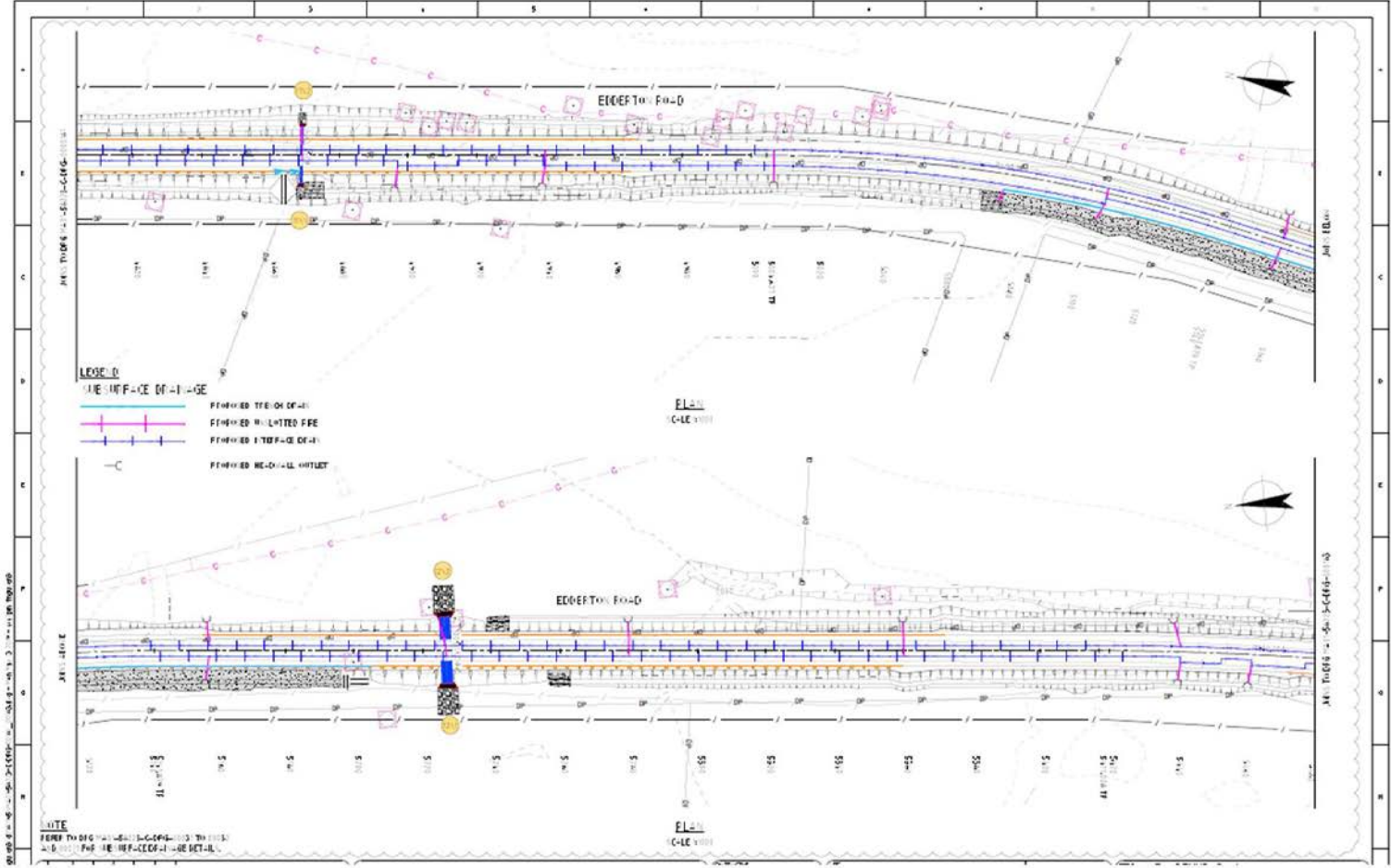


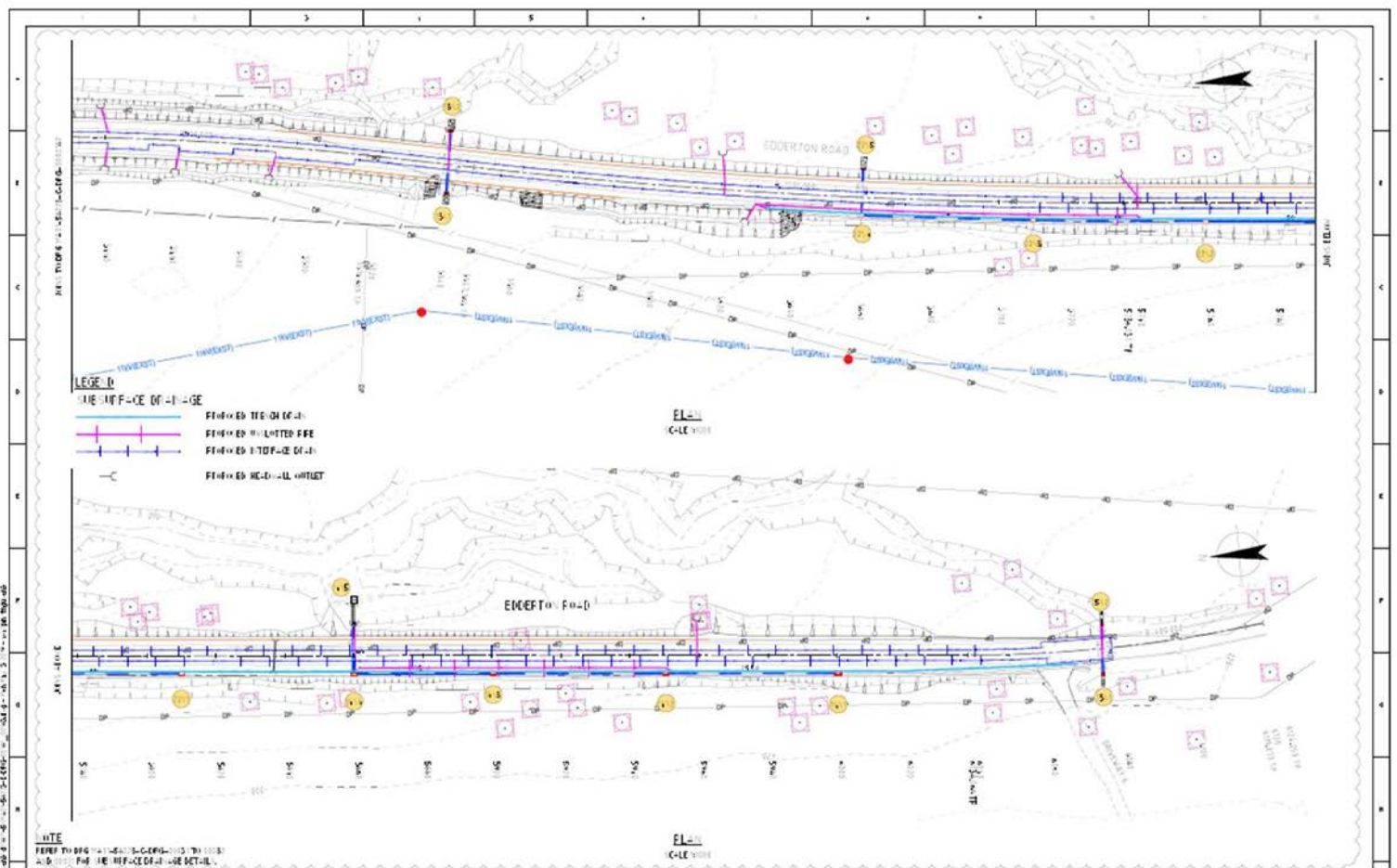














muswellbrook
shire council

Muswellbrook Shire Council ABN 86 864 180 944
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www.muswellbrook.nsw.gov.au

S138 Public Road Works and Structures Consent

Consent No

(A) Valid from:

To:

(B) Granted to the following:

Name	<input type="text"/>		
Address	<input type="text"/>	Phone	<input type="text"/>
		Email	<input type="text"/>
ABN	<input type="text"/>		

(C) In respect of the following proposed Works:

DA/CDC number (if applicable)	<input type="text"/>
Name and location of road to be affected	<input type="text"/>
Details of work/activity to be carried out	<input type="text"/>
Details of proposed restoration works	<input type="text"/>

Including the road reserve:

☐

Yes

☐

No

Plan attached and marked Annexure "A":

☐

Yes

☐

No

(D) The Council consents to the Applicant placing, installing or erecting the Works within or across the Road under the conditions contained in this Consent.

The consent is granted under s138 of the *Roads Act* 1993.

The Council is a public roads authority for the Road under s7(4)(b) of the *Roads Act* 1993 (NSW).

This Consent is subject to the conditions set out in the following pages and which are incorporated into this Consent:

- General Conditions annexed hereto;
- Additional General Conditions annexed hereto;
- Special Conditions annexed hereto.

The Special Conditions, Additional General Conditions and General Conditions have precedence in that order if there is any inconsistency between them.

Consented on behalf of Muswellbrook Shire Council by its duly authorised delegate	<input type="text"/>	<input type="text"/>	Office use only
	General Manager or delegate	Date	
	Manager Roads and Drainage & Technical Services		

Privacy notification

The personal information that Council is collecting from you is personal information for the purposes of the Privacy and Personal Information Protection Act 1998.

The intended recipients of the personal information may be:

- Officers within the Council
- Data service providers engaged by the Council from time to time
- Any other agent of the Council
- Financial institute involved in the process

The supply of the information by you is voluntary. If you cannot provide or do not wish to provide the information sought, the Council may be unable to process your application.

Council is collecting this personal information from you in order to provide Council approved services.

You may make application for access or amendment to information held by Council. You may also make a request that Council suppress your personal information from a public register. Council will consider any such application in accordance with the Act.

Address enquires concerning this matter to the Public Officer.

General Conditions

1. Definitions:

- 1.1. In the Consent and any memoranda annexed to the Consent the following words have the following meanings:

"Act" means *Roads Act 1993* (NSW)

"Business Hours" means the opening hours of Muswellbrook Shire Council Administration Centre;

"Claims" means any loss, damages, claims, demands, causes of action or suits of any kind;

"Consent Holder" is the person specified at (B) of the Consent;

"Consent Period" means the period specified at (A) of the Consent;

"Council" means Muswellbrook Shire Council;

"Council Officer" means the Muswellbrook Shire Council's nominated officer;

"Consent Fee" means the fee paid by the Consent Holder to Council for the administrative costs associated with the issue of the Consent and shown in the Specifications;

"Deed" means the Edderton Road Realignment Deed between Hunter Valley Energy Coal (HVEC) and Muswellbrook Shire Council (MSC) dated 3 July 2019.

"Pipe work" means pipes, conduits, hoses, tubing, cables and wires;

"Plan" means the plan attached to the Consent and marked Annexure "A";

"Restoration Fee" means a fee paid to Council in consideration for the Council restoring the Road surface after completion of the Work;

"Road" means the road described at (C) of the Consent.

"RMS" means Roads and Maritime Services;

"Service Conduit" means conduits used to run service wires and cables underground;

"Specifications" means Council's Technical Conditions 1151 and/or 1152, Council's CBD Specifications, and any other specifications contained in any Memoranda annexed to the Consent and listed at (D) of the Consent.

"Traffic Control Plan" is a plan to be submitted by the Contractor approved by Council in accordance with the RMS guidelines "Traffic Control at Work Sites"

"Traffic Management Plan" is a statement of how traffic, parking etc. will be managed on site.

"Works" means the plan of works described in the application, including any restoration whether by the Consent Holder or Council, and special instructions

2. Manner of Works

- 2.1. The Works must be conducted according to the Plan and the Specifications.
- 2.2. The Consent Holder must complete any backfilling of trenching works in accordance with Council's AusSpec #1 Specification 306 – "Road Openings and Restoration" – as stipulated in Technical conditions 1151 and/or 1152.
- 2.3. Where Works are undertaken in the CBD, the Consent Holder must meet the Council's CBD specifications, at the Consent Holder's expense.

Council Requirements

2.4. The Consent Holder must comply with all Council requirements in relation to the Works:

- a) Contained in the Consent and Memoranda annexed to the Consent;
- b) Contained in any notice in writing concerning the Works given to the Consent Holder by the Council; and
- c) Any direction given to the Consent Holder by the Council.

3. Legislation

3.1. The Consent Holder must observe all requirements with respect to the Works imposed by any statute, regulation or ordinance or otherwise imposed by a statutory or other authority.

4. Term

4.1. The Works must not be carried out at any time other than during the Consent Period.

5. Proceed Continuously

5.1. The Consent Holder must carry out the Works as expeditiously and safely as practicable and proceed continuously until completion.

6. Layout of Work

6.1. All pipe work crossing the Road must be laid perpendicular to the direction of the Road unless otherwise consented to by Council and described in the Specifications or shown in the Plan.

6.2. The pavement surrounding any excavation of the Road must be neatly saw-cut prior to excavation.

6.3. The Consent Holder must ensure that any cut pavement maintains a neatly finished edge at all times.

7. Advise Council

7.1. The Consent Holder must give the Council a minimum of five working days' notice prior to when the Works is to commence.

7.2. The Consent Holder must notify Council as soon as the Work is completed if completion occurs during Business Hours.

7.3. The Consent Holder must notify Council during the next Business Hours if the Work is completed outside of Business Hours.

8. Expense

8.1. The Works are carried out at the Consent Holder's expense.

9. Consent and Acknowledgement

9.1. The Consent must be signed for and on behalf of Council in order for consent to be granted.

10. Service Conduit

10.1. Any Service Conduit placed across the Road must have at least 400mm of fill cover in addition to the road pavement thickness.

11. Footpaths

- 11.1. Where any footpath is disturbed it must be restored to the original condition by the Consent Holder at the Consent Holder's cost.

12. Fee

- 12.1. The Consent is not valid unless the Consent Fee is paid.

13. Restoration Fees

- 13.1. Where Council is required to undertake Restoration works, determination of the Restoration Fees is governed by Section 67 of the *Local Government Act*.
- 13.2. Where a Restoration Fee is applicable the Consent Holder must pay the Restoration Fee:
- a) As soon as the Work is completed if completion occurs during Business Hours; or
 - b) During the next Business Hours if the Work is completed outside of Business Hours.
- 13.3. If disturbance to the Road exceeds that shown on the Specifications, the Consent Holder must pay the additional cost to Council for restoration.

14. Indemnity and Insurance

- 14.1. The Consent Holder indemnifies and holds Council harmless against all Claims by any person arising in connection with any acts or performance of an obligation under this Consent.
- 14.2. Specific Indemnities: - Without limiting clause 15.1 the Consent Holder indemnifies and holds Council harmless against any Claim arising directly or indirectly out of the following:
- a) The construction and installation of the Works;
 - b) Conduct by the Consent Holder which amounts to a breach of any license, permit, approval or legislation;
 - c) Council granting consent to the Consent Holder to carry out the Works;
 - d) Failure to comply with any obligation of the Consent Holder under this Consent.
- 14.3. The Consent Holder must maintain a public liability insurance policy with an insurer approved by Council with a limit for any one event of not less than twenty million dollars (\$20,000,000).
- 14.4. The insurance must be on terms to the reasonable satisfaction of Council and name Council as an insured party

15. Traffic Management Plan

- 15.1. The Consent Holder must ensure that a Traffic Management Plan is in place whilst the Work is being carried out.
- 15.2. The appropriate traffic control measures must be established at the Consent Holder's cost.
- 15.3. The traffic control measures must be in accordance with the approved Traffic Control Plan prepared under the current RMS Guidelines "Traffic Control at Work Sites".
- 15.4. The Consent Holder must not interrupt or otherwise disturb the traffic flow on the Road without the written consent of Council.

16. Responsibility for Restoration works

- 16.1. Where the Consent Holder is not able to meet the standards required, the Consent Holder can either contract the services of another provider that can – or apply to Council's Works Department for a quote, and for the work to be undertaken by Council at the Consent Holder's expense.
- 16.2. Where council is required to undertake the restoration works, the Consent Holder is responsible for the

Works until Council's road maintenance service provider completes the standard road pavement restoration. Where the Consent Holder undertakes to do the restoration work themselves, then the Consent Holder is responsible until Council agrees to the standard of that restoration work.

17. Responsibility in the event of absence or emergency

17.1. In the Consent Holder's absence from the site of the Works, or in the event of any emergency, Council may take such action as it considers, in its absolute discretion, necessary to prevent:

- a) Loss of or damage to the whole or any part of the Works;
- b) Loss or damage to the Road or any property adjacent to the Works; or
- c) To prevent personal injury to any person.

17.2. Any such action (under sub-clause 18.1) is at the Consent Holder's expense.

18. Safety

18.1. The Consent Holder must carry out the Work with due regard to the safety and rights of the public.

18.2. In addition to clauses 2, 3 and 4 the Consent Holder must comply with the requirements of the NSW Work Cover Authority, the Department of Industrial Relations & Employment, and the Police Service of NSW.

19. Relocation

19.1. If it is necessary in the reasonable opinion of Council:

- a) To relocate or remove any portion of the Works; or
- b) Carry out any additional work for the safety and protection of the public,

the Consent Holder must relocate or carry out such removal or additional work as reasonably determined and directed by the Council.

19.2. Any such relocation and/or additional work required to be carried out is at the Consent Holder's expense.

20. Public Risk

20.1. Nothing in this consent shall be deemed to:

- a) Prejudice or affect the rights of the public to free passage upon or along the Road;
- b) Authorise any nuisance to, or permanent obstruction of, the Road or public places;
- c) Confer upon the Consent Holder exclusive right or title to that part of the Work within the boundaries of the Road, or
- d) In any way restrict or limit the powers of the Authority and the Council in respect of the Road.

21. Deemed Acknowledgement

21.1. Upon commencement by the Consent Holder of any part of the Work it shall be deemed that the Consent Holder has agreed with the Council to comply with the conditions of this consent.

22. Conditions for moving or grazing stock on Council roads

22.1. The Consent Holder is to comply with the following conditions if stock is being moved or grazed on Council roads at the site or near the site of the Works:

- a) That stock warning signs as described in the *Local Land Act 2013* indicating the presence of stock on the road shall be prominently displayed 200 metres before and after the section of road being used;
- b) Stock signs must be displayed at all times when stock are on or adjacent to a roadway, and removed when stock are no longer present;
- c) That the distance over which stock are being grazed does not exceed 2kms at any one time;

- d) When stock are being moved along the road, warning signs shall be no further than 5kms apart;
- e) That at least one person shall be attending the stock at all times;
- f) That the stock may only be present on a public road during daylight hours.

Additional General Conditions**1. Definitions:**

1.1. In this Memorandum the following words have the following meanings:

Defined terms - In addition to the meanings or values assigned in the Schedule of Details, in this document:

Approval means any consent, approval, authorisation, licence, registration, order, permission or concurrence required by law, including by a Legislative Requirement and any Council acceptance, condition or approval including those under this Consent, required for the commencement, execution or completion of the Works.

Authority means a Commonwealth, State or local government department, a Minister, body, instrumentality, trust or public authority in the exercise of a governmental regulatory function.

Business Day means any day not a Saturday, Sunday or public holiday in New South Wales, and also excluding Council Christmas closure for one (1) week in December.

Design Documents means a drawing, specification, document, calculation, software, sample, model, pattern and the like, required by this Consent or created for the construction of the Works.

Item means an item set out in the Schedule of Details.

Legislative Requirements includes an act, ordinance, regulation, by-law or order of a government or Authority, or an Approval of an Authority (including any condition or requirement under an Approval).

Management Plan means a detailed plan setting out how a nominated aspect of the carrying out of the Works will be managed and implemented to ensure the requirements of this Consent are met, and includes plans for Traffic Control, Traffic Management, Occupational Health and Safety, Quality, Inspection and Testing, and Environmental Management and the Construction Program.

Security has the meaning given in clause 6.1(e).

2. Consent Holder's Responsibilities

- 2.1. It is the Consent Holder's responsibility to maintain the Works in good condition with no cost to the Council during the service life.
- 2.2. The Council relies on the advice, skill and judgment of the Consent Holder and the Consent Holder's consultants and contractors in connection with:
- a) the correctness and reliability of the Schedule information, emailed with the application and in accordance with clause 10 Stage 2 Works – Edderton Road upgrade, of the Edderton Road Realignment Deed.
 - b) the correctness and suitability of the endorsed Design Documents;
 - c) the performance of the Consent Holder's obligations under this Consent;
 - d) the fitness for purpose of the completed Works; and
 - e) the fitness for purpose of each item of plant and equipment used either in the construction of, or forming a part of, the Works.
- 2.3. The Council makes no representation or warranty as to the Works and assumes no duty of care in respect of them or any information provided by the Council.
- 2.4. The Consent Holder must not carry out any modification of the Works without further approval from the Council.
- 2.5. It is Consent Holder's responsibility to conduct routine inspections of the Works during the service life and enter into a maintenance agreement with Council as required by the Deed.

3. Develop Documents and Management Plans

3.1. The Consent Holder must develop:

- a) Design Documents required to construct the Works; and
- b) Management Plans required by the Council; based on the Scope Drawing referred to in Item 1 and in accordance with RMS material and workmanship specifications; and especially the traffic management plan is to comply with the RMS Traffic Control at Work Sites manual.

4. Obtain Approvals

4.1. The Consent Holder must obtain:

- a) all Approvals required for the design and construction of the Works; including Planning Approval, Local Government Act Section 68 approvals and any other approval required by law. Note: Planning and Section 68 approval are accepted as not required for Drainage in this case being approved under the DA and the Infrastructure SEPP. However, approvals remain the responsibility of the Consent Holder.
- b) certification of all Design Documents by an independent engineer to the satisfaction of the Council; and
- c) acceptance by the Council of the Design Documents, Management Plans.

5. Co-operation with Council

- 5.1. The Consent Holder must assist the Council to meet the Council's obligations under the Environmental Planning and Assessment Act 1979 (NSW) and other Legislative Requirements (including the requirement for the Council to make a final determination that the Works can proceed prior to acceptance of the Design Documents). Note: Current Design Documents are accepted.
- 5.2. The Consent Holder must not without the Council's prior written approval make any modification to the Works or the Design Documents or Management Plans once approved by an Authority or after acceptance by the Council.
- 5.3. The Consent Holder must obtain the Council's prior written approval of proposed contractors and subcontractors and, to the extent required by the Council, must ensure that such contractors and subcontractors are:
 - a) suitably experienced in constructing similar works;
 - b) prequalified at a level and class appropriate for the work to be performed by them,
 - c) engaged by the Consent Holder under terms and conditions that ensure that the contractor will satisfy the Consent Holder's relevant obligations to the Council under this Consent.

6. Commencement of Works on Site

- 6.1. Pre-conditions - The Consent Holder must not commence construction of the Works, including bringing plant or materials onto the Site or implementing steps in a Management Plan, unless and until:
 - a) it has complied with the Consent Holder's obligations under clauses 2 and 3 of this Memorandum;
 - b) it has taken out the insurances referred to in this Consent and provided evidence of those insurances to the satisfaction of the Council;
 - c) it has provided at least 10 Business Days prior notice of the proposed start date for the road occupancy at the Site, for approval by the Council;
 - d) it has agreed with the Council 's requirements for dedication and transfer of land necessary for the public road or the establishment of a suitable road reserve;

- e) it has provided the Council with an unconditional bank guarantee in a form acceptable to the Council for 10% of the Estimated Cost of the Works set out in Item 3 (Security);
- f) it has paid to the Council the amount nominated as Estimated Council Costs in Item 4; and
- g) the Council has completed any necessary environmental assessment and determined that the Works can proceed.

7. Construction of the Works

7.1. Consent Holder obligations - The Consent Holder must:

- a) implement the Works expeditiously, to the satisfaction of the Council and in accordance with the Construction Program, and control traffic in accordance with the Traffic Management Plan accepted by the Council;
- b) at all times act in a lawful manner in respect of the Works;
- c) allow people authorised by the Council access to the Site at all times and undertake any testing or permit examination of any documentation or tests of materials or workmanship that the Council requires;
- d) obtain for the benefit of the Council all available product and work warranties from the Consent Holder's suppliers, contractors and subcontractors in respect of equipment and materials used in the Works or assign such benefit to the Council where the warranty is not in favour of the Council;
- e) ensure that directions or other requirements of the Council given from time to time (including a direction to immediately stop work) are complied with;
- f) ensure that a report is immediately sent to the Council's Representative of any injury to a person suffered in connection with the Works or while present at or adjacent to the Site and of any claims made pursuant to workers' compensation insurance and assist the Council to promptly investigate and monitor the incident; and
- g) ensure that all subcontractors and workers engaged by the Consent Holder in connection with the Works are fully paid money properly due and payable to them under relevant awards, contracts and enterprise agreements.

7.2. The Consent Holder must not without the Council's prior written approval, use explosives at the Site or in relation to any part of the Works.

7.3. Step in by Council

- a) If the Council determines it is necessary to maintain traffic flows or for public safety, or if the Consent Holder breaches any condition of this Consent or a Management Plan, the Council may take control of all or any part of the Site and/or the Works for whatever period it considers is appropriate.
- b) The Council may undertake remedial, protective, or traffic control work that it considers is urgently required and recover or set-off the cost under clause 9.

7.4. Principal Contractor

- a) The Consent Holder is, for the purposes of the *Work Health and Safety Act 2011* considered a person conducting businesses or undertakings involving management or control of workplaces. The person with management or control of a workplace must ensure, so far as is reasonably practicable, that the workplace, the means of entering and exiting the workplace and anything arising from the workplace are without risks to the health and safety of any person.
- b) The Consent Holder must comply with all aspects of the *Work Health and Safety Act 2011* and the Regulations.

8. Completion**8.1. Practical completion - The Consent Holder must:**

- a) give the Council 10 Business Days' notice of the date on which it anticipates practical completion will be reached;
- b) when it is of the opinion that practical completion has been reached, provide further notice to the Council together with a report of practical completion which includes:
- c) necessary acceptances or Approvals by other Authorities; and
- d) all quality documents have been submitted including test results and a safety audit has been carried out and any recommendations have been implemented. Identification of all defects and further work required to finally complete the Works, and such other information as the Council requires to assess practical completion; and
- e) provide "as built" drawings to the Council, within 4 weeks of practical completion.

8.2. Council 's response - Following receipt of the documents referred to in clause 8.1(b), the Council will inspect the Works and notify the Consent Holder of the date on which the Council is satisfied that practical completion has been reached (Date of Completion), or the reasons why it is not satisfied.**8.3. A notice that the Council is satisfied practical completion has been reached will not constitute an admission by the Council of the Consent Holder's performance of its obligations, or that the Works comply with the requirements of this Permit.****8.4. Defect rectification - The Defects Liability Period commences on the Date of Completion. The Council may at any time before the end of the Defects Liability Period issue a list of defects or non-conforming work to the Consent Holder, and the Consent Holder must correct the items listed within the time frame nominated by the Council.****8.5. Final completion - At the end of the Defects Liability Period, the Consent Holder must notify the Council after the Works are finally complete (Final Completion Notice), which must include a statutory declaration in a form satisfactory to the Council (or such other documentation as the Council may require) that:**

- a) all contractors and workers engaged by the Consent Holder or a subcontractor in connection with the Works have been fully paid money, remuneration and other benefits properly due and payable to them; and
- b) that relevant pay-roll tax and workers compensation premiums have been paid.

8.6. Maintenance -The Consent Holder shall maintain the works during the service life in satisfactory condition acceptable to Council in accordance with the Deed and the endorsed Maintenance Management Plan.**8.7. Following receipt of the Final Completion Notice), the Council may provide the Consent Holder with a statement:**

- a) showing the amount determined by the Council as owing by the Consent Holder to the Council (and attach an invoice for amounts not previously invoiced); and
- b) setting out the balance of the Security still held by the Council.

8.8. The Council has no obligation to release the balance of the Security it holds until the Consent Holder has completed all its obligations under this Consent.

9. Costs and Payments

- 9.1. General - The Consent Holder must pay all of the Council's costs in connection with the Works and this Consent, including:
- a) internal and external costs of reviewing documents or producing reports, obtaining or providing consents, Approvals or determinations and surveillance or administration;
 - b) legal costs associated with this Consent (including on termination), complying with Legislative Requirements or prosecuting or defending an action;
 - c) the cost of remedying a breach of this Consent by the Consent Holder or of taking emergency or special measures required by the Council.
- 9.2. **Adjustment of costs** - If the Council's costs exceed the amount paid by the Consent Holder under clause 6.1(f), the Council may invoice the Consent Holder for the additional costs at any time and the Consent Holder must pay the full amount of the invoice within 10 Business Days from the date of the invoice.
- 9.3. To the extent that the Consent Holder does not comply with this clause, the Council may, without limiting other rights, call on the Security and set-off the amount owing against it.
- 9.4. **GST and other taxes** - The Consent Holder must pay all taxes (including GST, stamp duties, levies or government charges) in connection with this Consent and the Works. Costs referred to in this Consent, unless specifically described as GST inclusive, do not include an amount on account of GST. If a supply made by the Council in connection with this Consent is subject to GST, the Consent Holder must pay the Council the amount payable for the supply plus an additional amount equal to the GST payable by the Council.

10. Termination

- 10.1. Termination - The Council may terminate this Consent:
- a) immediately by written notice if the Consent Holder breaches any provision of this Consent and does not rectify that breach within 10 Business Days of receiving written notice from the Council requesting it to do so; or
 - b) without prior notice if:
 - the Consent Holder fails to pay within 10 Business Days of the due date, an amount due and payable to the Council under this Consent or for any other service supplied to the Consent Holder or its related bodies corporate by the Council; or
 - a receiver, liquidator, provisional liquidator or administrator is appointed over any of the Consent Holder's undertakings or assets, or if the Consent Holder enters into an arrangement with its creditors.
- 10.2. Effects of termination - Termination does not affect the Consent Holder's accrued responsibilities and obligations, nor does it affect any conditions which expressly or by implication are intended to operate after termination.

11. General

- 11.1. No Restriction on Rights - Nothing in this Consent is deemed to in any way restrict or limit the powers of the Council or other relevant Authority or fetter the Council in the exercise of its statutory functions and in the event such exercise is undertaken in accordance with the law.
- 11.2. Assignment - The Consent Holder must not assign or encumber any right, obligation or interest under this Permit without the written approval of the Council.
- 11.3. Notices - A party notifying or giving notice under this Consent must do so in writing sent by prepaid registered post or facsimile and the original by post to the other party's Representative nominated in the Schedule at the address or facsimile number specified on the first page of this Consent.

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 Hunter Valley Energy Coal dated 15 October 2019 and held by Council as Doc ID xx and the plans ID xx.	
2. The Site	Edderton Road Stage 2 Upgrade works and associated areas as shown in the above documents.	
3. Estimated Cost of the Works	\$ 4,973,854.00 (GST inclusive)	[Clause 6.1(e)]
4. Estimated Council Costs	Plan Approval \$ 3,135 (GST inclusive) Construction Observation Traffic Control Plans \$ 5,790 (GST inclusive) Final Acceptance (WAE review etc) \$ 7,137 (GST inclusive) Total \$16,062 (GST inclusive)	[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..... EmailKellie Scholes@muswellbrook.nsw.gov.au..... Facsimile.....02 65493701.....	[Clause 14.3]

Special Conditions

1. The works must be commenced within one month of the consent date.
2. The works must be completed by 1 October, 2020.
3. Not later than 7 days following completion of the works the applicant must apply for a Section 138 Permit for ongoing maintenance in accordance with Clause 11 of the Deed.
4. Unnamed unformed roads must be fenced where access is available from public roads in use and providing signing to council's satisfaction.
5. The Consent Holder is to advise Council's Engineering Officer Works Quality on 0418 110 010 three days prior to commencing work to confirm inspections prior to commencement.
6. 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.
7. The occupation of the Road should be undertaken in a safe manner, with adequate dust control.
8. The Consent Holder shall check for other services and is responsible for any damage to services and Council Infrastructure. Dial before you dig 1100.
9. 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.
10. 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.)
11. The Consent Holder is to advise Council's Ecologist seven(7) days prior to commencing vegetation removal to confirm inspections prior to commencement.
12. Vegetation removal must be timed to avoid the breeding seasons for local fauna species, including hollow-dependent species such as Squirrel Glider, and nest-building woodland birds;
13. • The boundary of vegetation nominated for removal must be clearly marked prior to any construction works commencing
14. • Areas of native vegetation beyond the subject site must be signposted as no-go-zones to avoid inadvertent direct impacts
15. • A pre-clearance survey to identify HBTs, nests and other key habitat features within the subject site must be undertaken.
16. • Hollow-bearing trees that are located within the 3m construction buffer must be retained where possible
17. • Clearing supervision must be undertaken by experienced and qualified ecologists / fauna spotter catchers for all HBTs and any other habitat features such as nests, possum dreys or culvert roosts etc.

18.
 - All fauna encountered during clearing must be released in adjacent suitable retained habitat if uninjured. Any injured fauna must be taken to a vet or specialist wildlife carer.
19.
 - A clearance supervision report must be prepared and provided to council following completion of vegetation removal and detail species encountered and their condition upon release, hollows removed, and non-compliances if they occur,
20.
 - Felled trees and hollows shall be used in offset / revegetation works in the immediate vicinity. A report must be provided to council demonstrating that this has occurred.
21.
 - All Hollows lost must be replaced at one nest box per hollow proposed for removal before any vegetation removal occurs. Nest boxes must match the size of hollow that was removed and of a type specifically designed for the threatened species known and likely to be impacted upon by the proposal. Nest boxes will be installed in the immediate vicinity of where they are removed from. A report will be provided to council showing the location and the type of each of nest boxes installed.
22.
 - Any seeding or planting in revegetation areas must use seed or stock from local provenance.
23. The subject site boundary must be clearly marked prior to any construction works
24. Council may require the Consent Holder to conduct safety audits and surveillance from time to time of the applicant's compliance with its health and safety obligations under this permit and all WHS Laws. If the Consent Holder is required to conduct an audit under this clause, it must do so with the time reasonably required by Council and promptly report to Council in writing on the outcome of the audit. Any corrective work or action which an audit or surveillance identifies as necessary to rectify any departure from the WHS Obligations must be undertaken by the Consent Holder at its expense and within a reasonable time, given the nature of the departure.
25. The Consent Holder must appoint a suitably qualified independent consulting engineer to perform Project Verifier services, being a person who:
 - Is independent of the Consent Holder, any consultant involved in preparation of the Design Documents, the contractor engaged by the Consent Holder to carry-out the works,
 - Is a Chartered Engineer registered with the Institute of Engineers Australia,
 - Is familiar with and experienced in using RMS's QA specifications and
 - Holds appropriate professional indemnity insurance.

7 CORPORATE AND COMMUNITY SERVICES

7.3 REPORT ON INVESTMENTS HELD AS AT 31 DECEMBER 2019.

Attachments:	A. Investment Portfolio and Cash as at 31 December 2019 B. Issuer Trading Limits as at 31 December 2019
Responsible Officer:	Fiona Plesman - General Manager
Author:	Natalia Cowley - Executive Manager - Office of the Chief Financial Officer
Community Plan Issue:	<i>A Council that is well managed, efficient and properly resourced and that is responsive to its communities and stakeholders</i>
Community Plan Goal:	<i>Maintain a strong focus on financial discipline to enable Council to properly respond to the needs of the communities it serves.</i>
Community Plan Strategy:	<i>Work towards the achievement of a sustainable Operating Budget result in the General Fund.</i>

PURPOSE

To present the list of financial investments currently held by Council in accordance with the Regulation.

OFFICER'S RECOMMENDATION

The information showing Council's investments as at 31 December 2019 be noted.

Moved: _____ Seconded: _____

REPORT

Clause 212 (1) of the Local Government (General) Regulation 2005, requires details of funds invested, as at the end of the preceding month, to be reported to an ordinary meeting of Council.

The funds, invested under Section 625 of the Local Government Act, as at 31 December 2019 are shown in the attachments.

COMMENT:

As at 31 December 2019, there are no individual or group portfolio trading limits that have been exceeded.

Council's weighted running yield is 1.97% for the month.

The Responsible Accounting Officer certifies that, apart from the above trading limit discrepancies, the investments listed have been made in accordance with the Act, the Regulations and Council's Investment Policy. This includes investments that have been made in accordance with Minister's Orders that have been subsequently amended. "Grandfathering" provisions still allow the holding of these investments. A detailed list of investments is attached.

Fixed Interest Security	ISIN	Face Value Original	Bond Factor	Face Value Current	Capital Price	Accrued Interest Price	Market Value	% Total Value	Running Yield	Weighted Running Yield
At Call Deposit										
Westpac Bus Prem At Call		3,011,239.80	1.00000000	3,011,239.80	100.000	0.000	3,011,239.80	5.24%	1.59%	
Westpac Muswellbrook Trading Acct At Call		100,000.00	1.00000000	100,000.00	100.000	0.000	100,000.00	0.17%	0.90%	
		3,111,239.80		3,111,239.80			3,111,239.80	5.41%		1.57%
Floating Rate Deposit										
ANZ 1.2 21 Jul 2022 2557DAY FRD		1,000,000.00	1.00000000	1,000,000.00	100.000	0.408	1,004,075.21	1.75%	2.09%	
		1,000,000.00		1,000,000.00			1,004,075.21	1.75%		2.09%
Floating Rate Note										
AMP 1.06 10 Sep 2021 FRN	AU3FN0044657	2,000,000.00	1.00000000	2,000,000.00	99.781	0.113	1,997,880.00	3.47%	1.96%	
Auswide 1.05 12 Feb 2020 FRN	AU3FN0040747	1,500,000.00	1.00000000	1,500,000.00	100.032	0.266	1,504,470.00	2.62%	1.98%	
Auswide 1.1 06 Nov 2020 FRN	AU3FN0045621	1,000,000.00	1.00000000	1,000,000.00	100.145	0.307	1,004,520.00	1.75%	2.04%	
BOQ 1.05 12 Feb 2020 FRN	AU3FN0026381	1,000,000.00	1.00000000	1,000,000.00	100.067	0.266	1,003,330.00	1.74%	1.98%	
BOQ 1.17 26 Oct 2020 FRN	AU3FN0033023	1,000,000.00	1.00000000	1,000,000.00	100.510	0.360	1,008,700.00	1.75%	2.06%	
BOQ 1.02 16 Nov 2021 FRN	AU3FN0039418	1,000,000.00	1.00000000	1,000,000.00	100.464	0.226	1,006,900.00	1.75%	1.92%	
BOQ 1.05 03 Feb 2023 FRN	AU3FN0040549	500,000.00	1.00000000	500,000.00	100.424	0.309	503,665.00	0.88%	1.98%	
BOQ 1.03 18 Jul 2024 FRN	AU3FN0049094	1,000,000.00	1.00000000	1,000,000.00	100.002	0.389	1,003,910.00	1.75%	1.92%	
BENAU 1.1 21 Feb 2020 FRN	AU3FN0033486	1,500,000.00	1.00000000	1,500,000.00	100.098	0.218	1,504,740.00	2.62%	1.98%	
BENAU 1.1 18 Aug 2020 FRN	AU3FN0028361	3,000,000.00	1.00000000	3,000,000.00	100.399	0.236	3,019,050.00	5.25%	1.99%	
BENAU 1.05 25 Jan 2023 FRN	AU3FN0040523	500,000.00	1.00000000	500,000.00	100.568	0.354	504,610.00	0.88%	1.93%	
CredSuis 1.15 29 Apr 2020 FRN	AU3FN0027314	1,000,000.00	1.00000000	1,000,000.00	100.244	0.352	1,005,960.00	1.75%	2.04%	
CredSuis 1.95 09 Mar 2021 FRN	AU3FN0030458	1,000,000.00	1.00000000	1,000,000.00	101.709	0.171	1,018,800.00	1.77%	2.84%	
CUA 1.3 20 Mar 2020 FRN	AU3FN0034963	750,000.00	1.00000000	750,000.00	100.199	0.067	751,995.00	1.31%	2.21%	
CUA 1.25 06 Sep 2021 FRN	AU3FN0044269	1,500,000.00	1.00000000	1,500,000.00	100.759	0.147	1,513,590.00	2.63%	2.13%	
CUA 1.12 24 Oct 2024 FRN	AU3FN0051033	1,500,000.00	1.00000000	1,500,000.00	100.092	0.373	1,506,975.00	2.62%	2.00%	
MACQ 1.1 03 Mar 2020 FRN	AU3FN0026605	750,000.00	1.00000000	750,000.00	100.115	0.152	752,002.50	1.31%	1.99%	
RACB 1.1 11 May 2020 FRN	AU3FN0042370	2,000,000.00	1.00000000	2,000,000.00	100.114	0.278	2,007,840.00	3.49%	2.03%	
ME Bank 1.25 06 Apr 2020 FRN	AU3FN0035333	500,000.00	1.00000000	500,000.00	100.167	0.481	503,240.00	0.88%	2.08%	
NPBS 1.35 07 Apr 2020 FRN	AU3FN0026969	1,000,000.00	1.00000000	1,000,000.00	100.222	0.504	1,007,260.00	1.75%	2.19%	
NPBS 1.4 06 Feb 2023 FRN	AU3FN0040606	500,000.00	1.00000000	500,000.00	100.874	0.353	506,135.00	0.88%	2.31%	
Qld Police 1.4 22 Mar 2021 FRN	AU3FN0041638	1,500,000.00	1.00000000	1,500,000.00	100.583	0.051	1,509,510.00	2.63%	2.32%	
Qld Police 1.5 14 Dec 2021 FRN	AU3FN0046389	750,000.00	1.00000000	750,000.00	101.111	0.098	759,067.50	1.32%	2.40%	
Qld Police 1.15 06 Dec 2022 FRN	AU3FN0052072	2,000,000.00	1.00000000	2,000,000.00	99.998	0.140	2,002,760.00	3.48%	2.04%	
RABOBK 1.05 11 Feb 2020 FRN	AU3FN0026373	1,000,000.00	1.00000000	1,000,000.00	100.094	0.271	1,003,650.00	1.75%	1.98%	
RABOBK 1.5 04 Mar 2021 FRN	AU3FN0030409	1,000,000.00	1.00000000	1,000,000.00	101.210	0.178	1,013,880.00	1.76%	2.40%	
SunBank 1.25 20 Oct 2020 FRN	AU3FN0029195	4,000,000.00	1.00000000	4,000,000.00	100.666	0.417	4,043,320.00	7.03%	2.11%	
		34,750,000.00		34,750,000.00			34,967,760.00	60.81%		2.09%
Term Deposit										

Fixed Interest Security	ISIN	Face Value Original	Bond Factor	Face Value Current	Capital Price	Accrued Interest Price	Market Value	% Total Value	Running Yield	Weighted Running Yield
AMP 2 26 Feb 2020 184DAY TD		2,000,000.00	1.00000000	2,000,000.00	100.000	0.696	2,013,917.80	3.50%	2.00%	
AMP 1.75 20 Apr 2020 182DAY TD		1,300,000.00	1.00000000	1,300,000.00	100.000	0.340	1,304,425.34	2.27%	1.75%	
BOQ 3.4 21 Jun 2021 1826DAY TD		1,000,000.00	1.00000000	1,000,000.00	100.000	1.798	1,017,978.08	1.77%	3.40%	
MACQ 1.6 02 Mar 2020 90DAY TD		3,500,000.00	1.00000000	3,500,000.00	100.000	0.123	3,504,295.90	6.09%	1.60%	
MYS 1.72 03 Feb 2020 91DAY TD		1,000,000.00	1.00000000	1,000,000.00	100.000	0.269	1,002,686.03	1.74%	1.72%	
MYS 1.77 03 Apr 2020 122DAY TD		2,500,000.00	1.00000000	2,500,000.00	100.000	0.136	2,503,394.53	4.35%	1.77%	
NAB 1.6 20 Jan 2020 91DAY TD		4,000,000.00	1.00000000	4,000,000.00	100.000	0.311	4,012,449.32	6.98%	1.60%	
P&NB 3.63 05 Jun 2020 1827DAY TD		1,000,000.00	1.00000000	1,000,000.00	100.000	2.193	1,021,930.68	1.78%	3.83%	
P&NB 3.53 21 Jun 2021 1826DAY TD		2,000,000.00	1.00000000	2,000,000.00	100.000	1.867	2,037,330.96	3.54%	3.53%	
		18,300,000.00		18,300,000.00			18,418,408.64	32.03%		2.12%
Fixed Interest Total		57,161,239.80		57,161,239.80			57,501,483.65	100.00%		1.97%

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Report Code: TBSP10/EXT-01.14
Report Description: Portfolio Valuation As At Date
Parameters:
Term Deposit Interest Included
Cash Excluded

1 Issuer Trading Limits

Issuer	Issuer Parent	Already Traded (with Issuer Group) Face Value Notional	Limit For Book or Trading Entity	Trading Limit	Trading Limit Type	Trading Limit Value	Trading Limit Used (%)	Trading Limit Available (%)	Trading Limit Available (Value)	Trading Limit Exceeded (%)	Trading Limit Exceeded (\$)
AMP Bank Ltd		5,300,000.00	Book	10.00	% of 57,161,239.80	5,716,123.98	93.00	7.00	416,124	0.00	0
ANZ Banking Group Ltd		1,000,000.00	Book	30.00	% of 57,161,239.80	17,148,371.94	6.00	94.00	16,148,372	0.00	0
Auswide Bank Limited		2,500,000.00	Book	10.00	% of 57,161,239.80	5,716,123.98	44.00	56.00	3,216,124	0.00	0
Bank of Queensland Ltd		5,500,000.00	Book	10.00	% of 57,161,239.80	5,716,123.98	96.00	4.00	216,124	0.00	0
Bendigo & Adelaide Bank Ltd		5,000,000.00	Book	10.00	% of 57,161,239.80	5,716,123.98	88.00	12.00	716,124	0.00	0
Credit Suisse Sydney		2,000,000.00	Book	20.00	% of 57,161,239.80	11,432,247.96	18.00	82.00	9,432,248	0.00	0
Credit Union Australia Ltd		3,750,000.00	Book	10.00	% of 57,161,239.80	5,716,123.98	66.00	34.00	1,986,124	0.00	0
Macquarie Bank		4,250,000.00	Book	20.00	% of 57,161,239.80	11,432,247.96	37.00	63.00	7,182,248	0.00	0
Members Banking Group Limited t/as RACQ Bank		2,000,000.00	Book	10.00	% of 57,161,239.80	5,716,123.98	35.00	65.00	3,716,124	0.00	0
Members Equity Bank Ltd		500,000.00	Book	10.00	% of 57,161,239.80	5,716,123.98	9.00	91.00	5,216,124	0.00	0
MyState Bank Ltd		3,500,000.00	Book	10.00	% of 57,161,239.80	5,716,123.98	61.00	39.00	2,216,124	0.00	0
National Australia Bank Ltd		4,000,000.00	Book	30.00	% of 57,161,239.80	17,148,371.94	23.00	77.00	13,148,372	0.00	0
Newcastle Permanent Building Society Ltd		1,500,000.00	Book	10.00	% of 57,161,239.80	5,716,123.98	26.00	74.00	4,216,124	0.00	0
P&N Bank Ltd		3,000,000.00	Book	10.00	% of 57,161,239.80	5,716,123.98	53.00	47.00	2,716,124	0.00	0
QPCU LTD t/a QBANK		4,250,000.00	Book	10.00	% of 57,161,239.80	5,716,123.98	74.00	26.00	1,466,124	0.00	0
Rabobank Nederland Australia Branch		2,000,000.00	Book	20.00	% of 57,161,239.80	11,432,247.96	18.00	82.00	9,432,248	0.00	0
Suncorp Bank		4,000,000.00	Book	20.00	% of 57,161,239.80	11,432,247.96	35.00	65.00	7,432,248	0.00	0
Westpac Banking Corporation Ltd		3,111,239.80	Book	30.00	% of 57,161,239.80	17,148,371.94	18.00	82.00	14,037,132	0.00	0
		57,161,239.80				160,051,471.44			102,890,232		0

2 Security Rating Group Trading Limits

Security Rating Group	Already Traded Face Value Notional	Limit For Book or Trading Entity	Trading Limit	Trading Limit Type	Trading Limit Value	Trading Limit Used (%)	Trading Limit Available (%)	Trading Limit Available (Value)	Trading Limit Exceeded (%)	Trading Limit Exceeded (\$)
AA+ to AA-	1,000,000.00	Book	100.00	% of 57,161,239.80	57,161,239.80	2.00	98.00	56,161,240	0.00	0
A+ to A-	6,000,000.00	Book	70.00	% of 57,161,239.80	40,012,867.86	15.00	85.00	34,012,868	0.00	0
A1+	7,111,239.80	Book	100.00	% of 57,161,239.80	57,161,239.80	12.00	88.00	50,050,000	0.00	0
A1	9,250,000.00	Book	70.00	% of 57,161,239.80	40,012,867.86	23.00	77.00	30,762,868	0.00	0
A2	22,050,000.00	Book	60.00	% of 57,161,239.80	34,296,743.88	64.00	36.00	12,246,744	0.00	0
BBB+ to BBB-	11,750,000.00	Book	60.00	% of 57,161,239.80	34,296,743.88	34.00	66.00	22,546,744	0.00	0
	57,161,239.80				262,941,703.08			205,780,464		0

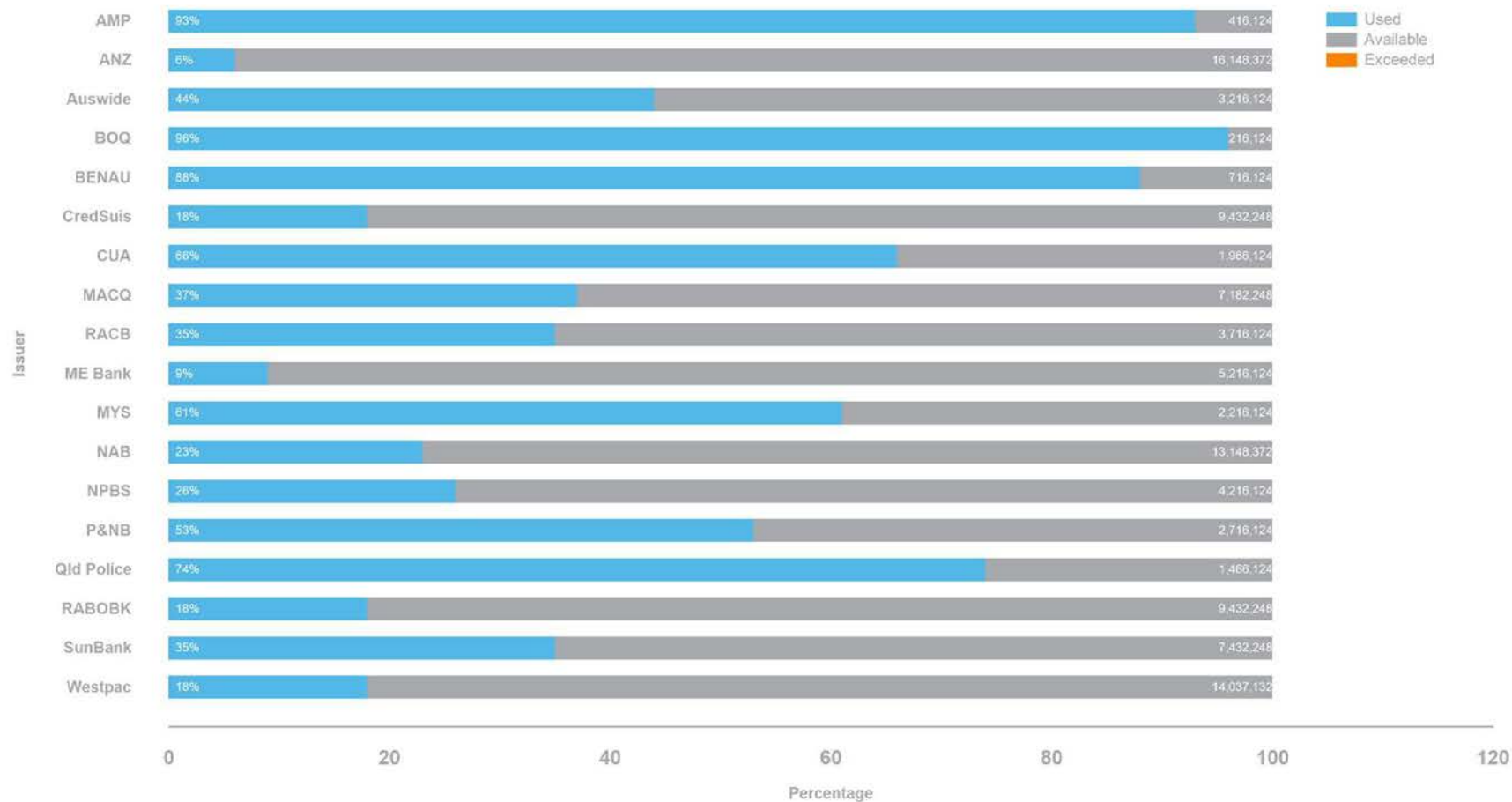
Notes

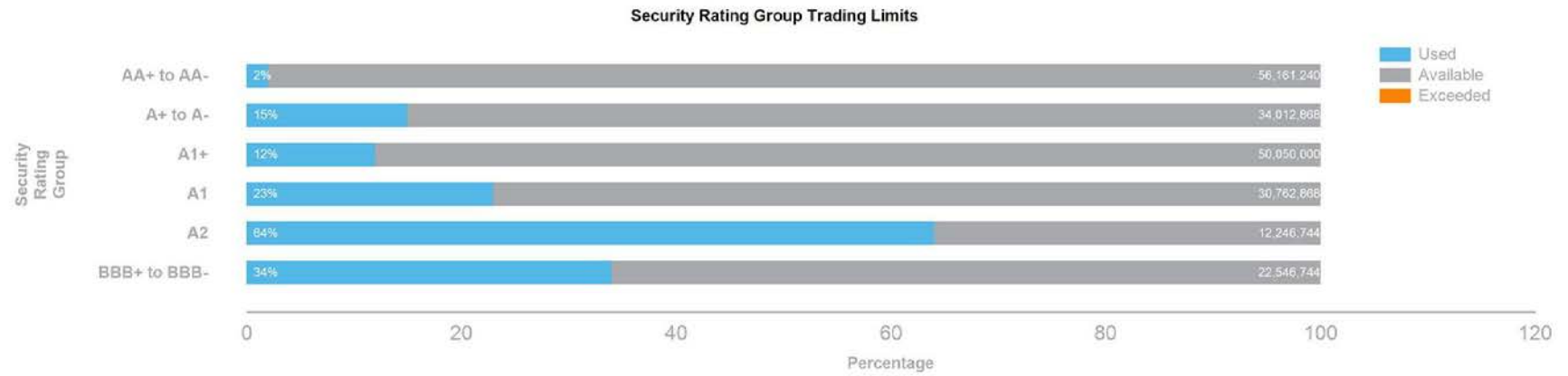
1. In instances where long securities have a term remaining which is less than 365 days, the issuer's short term rating is used instead of the security's (presumably long term) rating.

3 Term Group Trading Limits

Term Group	Already Traded Face Value Notional	Limit For Book or Trading Entity	Trading Limit	Trading Limit Type	Trading Limit Value	Trading Limit Used (%)	Trading Limit Available (%)	Trading Limit Available (Value)	Trading Limit Exceeded (%)	Trading Limit Exceeded (\$)
0-1 Year	38,411,239.80	Book	100.00	% of 57,161,239.80	57,161,239.80	67.00	33.00	18,750,000	0.00	0
1-3 Year	14,750,000.00	Book	100.00	% of 57,161,239.80	57,161,239.80	26.00	74.00	42,411,240	0.00	0
3-5 Year	4,000,000.00	Book	100.00	% of 57,161,239.80	57,161,239.80	7.00	93.00	53,161,240	0.00	0
	57,161,239.80				171,483,719.40			114,322,480		0

Issuer Trading Limits







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Report Code: TBSBP125EXT-00-01
Report Description: Trading Limit Performance As At Date
Parameters:
As At Scenario Date: 31 December 2019
Balance Date: 13 January 2020
Trading Entity: Muswellbrook Shire Council
Trading Book: Muswellbrook Shire Council
Report Mode: BalAndScenario
Using Face Value
Trading Entity and Book Limits
Effects of Parent/Child Issuers Ignored
Hide Zero Holdings