

Muswellbrook Shire Council

# ORDINARY COUNCIL MEETING

# **BUSINESS PAPER**

# **TUESDAY 20 DECEMBER 2022**





# MUSWELLBROOK SHIRE COUNCIL

P.O Box 122 MUSWELLBROOK 14 December, 2022

Councillors,

You are hereby requested to attend the Ordinary Council Meeting to be held in the Hall, 30 Ogilvie St, Denman NSW 2328 on **Tuesday 20 December 2022** commencing at 6:00 pm.

Derek Finnigan ACTING GENERAL MANAGER



# **Council Meetings**

# **Meeting Principles**

Council and committee meetings should be:

| Transparent: | Decisions are made in a way that is open and accountable.   |
|--------------|---|
| Informed:    | Decisions are made based on relevant, quality information.  |
| Inclusive:   | Decisions respect the diverse needs and interests of the local community.   |
| Principled:  | Decisions are informed by the principles prescribed under Chapter 3 of the Act.   |
| Trusted:     | The community has confidence that councillors and staff act ethically and make decisions in the interests of the whole community. |
| Respectful:  | Councillors, staff and meeting attendees treat each other with respect.   |
| Effective:   | Meetings are well organised, effectively run and skilfully chaired.   |
| Orderly:     | Councillors, staff and meeting attendees behave in a way that contributes to the orderly conduct of the meeting.                  |

# **Public Forums**

The council may hold a public forum prior to each ordinary meeting of the council for the purpose of hearing oral submissions from members of the public on items of business to be considered at the meeting. Public forums may also be held prior to extraordinary council meetings and meetings of committees of the council.

To speak at a public forum, a person must first make an application to the council in the approved form. Applications to speak at the public forum must be received by no later than 9.00 am two (2) days prior to the day of the meeting before the date on which the public forum is to be held, and must identify the item of business on the agenda of the council meeting the person wishes to speak on, and whether they wish to speak 'for' or 'against' the item.

Approved speakers at the public forum are to register with the council any written, visual or audio material to be presented in support of their address to the council at the public forum, and to identify any equipment needs no more than 3 days before the public forum. The general manager or their delegate may refuse to allow such material to be presented.

Each speaker will be allowed 2 minutes to address the council. This time is to be strictly enforced by the chairperson.



# **Declarations of Interest**

# Statement of Ethical Obligations

Councillors are reminded of their oath or affirmation of office, made under section 233A of the NSW Local Government Act 1993, to undertake the duties of the office of Councillor in the best interests of the people of Muswellbrook Shire and Muswellbrook Shire Council and to faithfully and impartially carry out the functions, powers, authorities and discretions vested in them, under the Local Government Act 1993 or any other Act, to the best of their ability and judgment. Pursuant to the provisions of the Muswellbrook Shire Council Code of Meeting Practice and the Muswellbrook Shire Council Code of Conduct, Councillors are reminded of their obligations to disclose and appropriately manage conflicts of interest.

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

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

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

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

- Significant
- Less than significant

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

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

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





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- 1. Acknowledgement of Country
- 2. Civic Prayer
- 3. Apologies and Applications for a Leave of Absence or Attendance by Audio Visual Link by Councillors

# 4. Confirmation of Minutes

Ordinary Council Meeting held on 22 November, 2022

# RECOMMENDATION

The Minutes of the Ordinary Council Meeting held on 22 November, 2022, a copy of which has been distributed to all members, be taken as read and confirmed as a true record.

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

# 5. Disclosure of any Pecuniary or Non-Pecuniary Interests

# 6. Mayoral Minute

Nil

# 7. Public Participation

# 8. Business Arising

Nil



# 9. Business (Specific Reports)

# 9.1. Planning and Environment

# 9.1.1. DA 2002-205 Muswellbrook Coal Extension of Time for Handling, Storage and Transport of Coal

| Attachments:             | <ol> <li>Attachment A - Assessment Report [9.1.1.1 - 12 pages]</li> <li>Attachment B - Draft Conditions DA-2002-205-MOD10<br/>[9.1.1.2 - 43 pages]</li> <li>Attachment C - Statement of Environmental Effects<br/>[9.1.1.3 - 34 pages]</li> <li>Attachment D - Submissions Report [9.1.1.4 - 3 pages]</li> </ol> |
|--------------------------|--|
| Responsible Officer:     | Sharon Pope - Director - Planning & Environment  |
| Author:                  | Theresa Folpp – Development Compliance Officer   |
| Community Plan Issue:    | 1 - Economic Prosperity  |
| Community Plan Goal:     | A dynamic Local economy with full employment for current<br>and future residents in a diverse range of high value<br>industries.   |
| Community Plan Strategy: | 1.1.1 - Facilitate the expansion of and establishment of new industries and business.  |
|                          | Not applicable   |

# **APPLICATION DETAILS**

| Applicant: | Muswellbrook Coal Company Limited             |
|------------|---|
| Owner:     | Idemitsu Australia Pty Limited                |
| Proposal:  | Section 4.55(1A) Modification of DA 2002/205  |
| Location:  | Various Lots, Muscle Creek Road, Muswellbrook |
|            |   |

Documents referred to in assessment not attached:

- Local Environmental Plan 2009
- Development Control Plan 2009

# PURPOSE

This report has been prepared to inform Council in determining a Section 4.55(1A) request to modify development consent DA 2002/205. The modification involves the extension of the time limited consent to enable the continuation of the transport, handling and storage of coal until 31 March 2023. The current consent issued by Council limits all mining activities, include coal handling and transport, from occurring after 31 December 2022.



The modification does not seek approval to extract coal beyond 31 December 2022 but seeks approval to continue to process and transport stockpiled coal from the site up to 31 March 2023.

The section 4.55(1A) modification application requires determination by Council as its determination is outside the function delegated to Council Officers.

# **OFFICER'S RECOMMENDATION**

Council approves the s4.55(1A) modification to Development Application No. 2002-2005, permit the handling, storage and transport of coal until 31 March 2023, subject to the recommended conditions of consent in Attachment B.

Moved: Seconded:

# REPORT

## **Description of Proposal**

Muswellbrook Coal Mine (MCM) is located approximately 2.5km to the north-east of the township of Muswellbrook. MCM is operated by Muswellbrook Coal Company (MCC), a wholly owned subsidiary of Idemitsu Australia Pty Limited.

Coal mining and coal processing at MCM will cease by 31 December 2022 in accordance with the current approval. However, due to exceptional circumstances such as unfavourable weather conditions and contractor issues, MCC is seeking to continue the handling and stockpiling (hereinafter referred to as "storage") of coal on site using existing infrastructure and transporting of coal off site until 31 March 2023 (see Attachment C).

The proposal involves the modification of Development Application No. 2002-205 in the following manner:

- Amend Condition No.4 for extension of handling, storage and transportation of coal to 31 March 2023, to allow MCC to remove the last remaining coal from the site and prepare the site for rehabilitation and decommissioning.
- Amend Condition No. 8 to clarify that storage, handling and transportation of coal will • continue to occur 24 hours a day, 7 days a week, consistent with existing approvals.
- Administrative updates to the Schedule of Lands to reflect amalgamation of lots. • There is no change to the development consent boundary.

No changes to mining timeframe are proposed, mining for coal will cease by 31 December 2022, possibly earlier.

No changes to rehabilitation are proposed, with rehabilitation to continue as per the Rehabilitation Management Plan regulated under the *Mining Act* 1992.

The current haulage fleet comprises four trucks, each completing 10 round trips per day. If the fleet is able to be increased, it will increase to eight trucks, each completing 10 round trips per day.

The workers required for the additional three months of coal haulage will be limited to the truck drivers, a loader operator, and associated support personnel.

### **Previous Approvals**

MCM was established in 1907 primarily via underground mining methods. In 1944, MCC developed open cut coal mining at MCM and was the first substantial open cut coal mine in Australia.

Whilst planning controls have not existed for most of the past 120 years, MCC has undertaken coal mining under numerous approvals since the need for approvals



commenced. In 2002, MCC lodged an application with Council for the extension of No.1 Open Cut. This application (DA 2002-205) was approved subject to conditions at the Council meeting in August 2003.

Since the granting of DA 2002-205, there have been several modifications, listed in Table 1.

| DA 2002-<br>205    | Modification Description  | Approved*         |  |  |
|--------------------|---|-------------------|--|--|
| Original           | Extension of Open Cut 1   | 11/08/2003        |  |  |
| Application<br>(1) |   |                   |  |  |
| MOD2               | <ul> <li>Enable washing of coal at preparation plant and<br/>blasting**</li> </ul>  | 13/12/2004        |  |  |
| MOD3               | <ul><li>Power line relocation and additions to workshop</li><li>Modify Condition 1.1</li></ul>  | 19/12/2005        |  |  |
| MOD4               |   |                   |  |  |
| MOD5               | <ul> <li>Extension of open cut mining onto land referred to as<br/>Area C</li> <li>Modify Condition 11.1</li> </ul>   | 20/12/2010        |  |  |
| MOD6               | <ul> <li>Revision to mining infrastructure building<br/>requirements and rehabilitation plan revision to permit<br/>continuation of mining for an additional five year</li> <li>Modify Conditions 1.1(a), 31, 33, 39, 45 and 58</li> </ul>                            | 29/10/2013        |  |  |
| MOD7               | <ul> <li>Continuation of mining operations for an additional five years</li> <li>Modify Conditions 1.1, 1.2 and 6.3.2. Addition of Conditions 59 and 60</li> </ul>  | 09/12/2013        |  |  |
| MOD8               | <ul> <li>Mining of additional areas and extension of mine life<br/>to 2022</li> <li>General revision of consent conditions</li> </ul>   | 26/10/2016        |  |  |
| MOD9               | <ul> <li>Accommodate changes from operation to<br/>rehabilitation and closure phases</li> <li>Align rehabilitation objectives with requirements under<br/><i>Mining Act 1992</i></li> <li>Provide flexibility for beneficial reuse of MCC<br/>landholdings</li> </ul> | Not<br>Determined |  |  |

# Table 1 – DA 2002-205 Approvals History

\*Approval dates consistent with Council's "Authority" Database and varies from approval dates shown in approvals documentation. MOD6 and MOD7 shown in date order in this table, inconsistent with Authority. \*\*Modification description obtained from MCC (Nov 2022)

The subject Application (MOD10) was received on 27/09/2022.

# ASSESSMENT SUMMARY

Council Officers have assessed the proposed modification against the relevant heads of consideration under Section 4.55 and Section 4.15 of the *Environmental Planning and Assessment Act 1979* (see Attachment A). Staff recommend that Council grant consent to the proposed modification subject to the recommended conditions of consent included in Attachment B. Key assessment considerations and findings have been included below to



## assist Council:

- The proposed modification has been considered against the relevant matters for consideration prescribed by Section 4.55 of the Environmental Planning and Assessment Act 1979. The Assessing Officer is satisfied that the proposed development is compatible with the relevant criteria for a modification application.
- The continuation of storage, handling and processing activities for the limited additional period proposed would have a negligible impact on environmental outcomes and would be of limited consequence to any Section 4.15 Assessment head of consideration.
- One (1) submission was received during the notification period raising issues related to the maintenance of Muscle Creek Road. A current condition of development consent requires Muswellbrook Coal to maintain Muscle Creek Road for the duration of the development. This would continue under the proposed modification and road maintenance will need to be carried out by MCC in accordance with their Road Maintenance Annual Plan.
- The proposed modification to the proposed development is in the public interest. It would:
  - Enable the removal of remaining coal stockpiled onsite in order to prepare the site for its decommissioning and rehabilitation phase. The alternative is that coal be returned to the pit with issues of combustion.
  - Support the continued employment of some operational employees.

# **COMMUNITY CONSULTATION**

The proposed development was notified between 14 October 2022 and 04 November 2022. One submission was received from the public in relation to the proposal. The submission raised the issue of maintenance of Muscle Creek Road drainage and table drains. It also requested Council to require a "full road rehabilitation" by MCC (see Attachment D).

In accordance with the MCC '*Road Maintenance Annual Plan*' (2020) (RMAP), MCC has an obligation to maintain the existing drainage along Muscle Creek Road between the mine entry and the New England Highway.

MCC has been undertaking fortnightly inspections of the road to identify works required. Council Officers also undertake fortnightly inspections of Muscle Creek Road in accordance with the Mine Affected Roads Strategy. Council Officers have observed that MCC regularly maintain the road pavement in a reasonable timeframe.

Prior to the road being handed back to Council, MCC will be required to complete the Handover Activities outlined in Section 11 of the RMAP. This process will include an assessment of the asset condition, including:

- estimation of the residual design life;
- a summary of defects recorded and repaired over the life of the RMAP;and
- transference of all records related to the maintenance.

Following completion of these activities, Council Officers will assess the types of work required by MCC to complete the handover process.

The timing of the above process will be determined through the modification process for MOD9 (see **Table 1**).

Council Officers consider that it is not in the best interests of the community to require MCC to undertake a full rehabilitation of the road as part of this modification as the road will incur further damage from its continued use until 31 March 2023 and its upgrade may cause disruptions to traffic movements during the works.



# **OPTIONS**

Council may:

- A. Grant development consent to the proposed modification subject to the recommended amended conditions of consent,
- B. Refuse modification to development consent to the proposed development and nominate reasons for refusal.

## LEGAL IMPLICATIONS

Where the applicant is dissatisfied with the determination of the development application, they have an opportunity under the provisions of *the Environmental Planning and Assessment Act 1979* to appeal that determination at the Land and Environment Court.

# CONCLUSION

The s4.55(1A) modification for DA 2002-205 has been reported to Council for determination of the application as Council staff do not have delegations to approve applications for mining operations. The application has been assessed by Council Officers in accordance with the relevant provisions of Section 4.55 and Section 4.15 of the *Environmental Planning and Assessment Act 1979*. It is recommended that Council grants approval to the modification in accordance with the conditions of consent outlined in Attachment B.

## SOCIAL IMPLICATIONS

The development as presented will not result in any specific social implications.

## s4.55(1A) & s \$.15 Assessment Report

| Property Address   | Lot: 82 DP 231202, Lot: 811 DP 534516, Pt: 1 DP 45525,<br>Lot: 681 DP 611756, Lot: 682 DP 611756, Lot: 1 DP<br>614842, Lot: 3 DP 571355, Lot: 101 DP 1148216 Muscle<br>Creek Road Muswellbrook |  |
|--|--|--|
| APPLICATION NO:  | 2002-205   |  |
| PROPOSAL:  | Modification to consent under s4.55(1a) - extension of coal haulage operations   |  |
| PLANS REF:   | No plan changes  |  |
| OWNER:   | Idemitsu Australia Pty Limited   |  |
| OWNER ADDRESS:   | GPO Box 301<br>BRISBANE QLD 4001   |  |
| APPLICANT:   | Muswellbrook Coal Company Pty Ltd  |  |
| ADDRESS:   | PO Box 123 Muswellbrook NSW 2333   |  |
| AUTHOR:  | Report of Ms Theresa Folpp   |  |
| DATE OF REPORT:  | 30 November 2022   |  |
| DATE LODGED:   | 29/09/2022   |  |
|  |  |  |
| SUMMARY  |  |  |
| ISSUES Section 4.55(1A) of the Environmental Planning and Assessment Act, 1979 |  |  |
| SUBMISSIONS  | One Submission   |  |
| RECOMMENDATION   | Approval subject to modified conditions  |  |

### 1.1. DESCRIPTION OF PROPOSAL

Coal mining and coal processing at Muswellbrook Coal Company (MCC) will cease by 31 December 2022 in accordance with the current approval. However, due to unforeseen circumstances such as unfavourable weather conditions and contractor issues, MCC is seeking to continue the handling and storage (i.e., stockpiling, hereinafter referred to as "storage") of coal on site and transporting of coal off site until 31 March 2023.

The proposal involves the modification of Development Application No. 2002-205 in the following manner:

- Amend Condition No.4 for extension of handling, storage and transportation of coal to 31 March 2023 from 31 December 2022, to allow MCC to remove the last of the remaining coal and to prepare the site for rehabilitation and decommissioning.
- Amend Condition No. 8 to clarify that storage, handling and transportation of coal will continue to occur 24 hours a day, 7 days a week, consistent with existing approvals.
- Administrative updates to the Schedule of Lands to reflect amalgamation of lots. There is no change to the development consent boundary.

Mining for coal will cease by 31 December 2022, possibly earlier.

No changes to rehabilitation are proposed i.e rehabilitation will continue as per the Rehabilitation Management Plan regulated under the *Mining Act 1992*.

Coal will be stored and handled at the nominated coal stockpile area (shown in Figure 2 of the *Muswellbrook Coal Mine DA 205-2002 Haulage Modification Report*' (September, 2022) (Modification Report). Coal will be transported to the Ravensworth Coal Terminal via the haul route shown in Figure 3 of the Modification Report.

The current haulage fleet comprises four trucks, each completing 10 round trips per day. If the fleet is to increase as expected, this will increase to eight trucks, each completing 10 round trips per day.

The workers required for the additional three months of coal haulage will be limited to the truck drivers, a loader operator, and associated support personnel.

### **1.2. RELEVANT HISTORY**

In 2002, MCC lodged an application with Council for the extension of No.1 Open Cut, comprising of extension A and B. This application (DA 2002-205) was approved subject to conditions at the August 2003 Council meeting.

Since the granting of DA 2002-205, there have been several modifications, listed in **Table 1**.

Table 1 – DA 2002-205 Approvals History

| DA 2002-205     | Modification Description                             | Approved*  |
|-----------------|--|------------|
| Original        | Extension of Open Cut 1                              | 11/08/2003 |
| Application (1) | <ul> <li>54 conditions imposed on consent</li> </ul> |            |

| DA 2002-205 | Modification Description  | Approved*  |
|-------------|---|------------|
| MOD2        | Enable washing of coal at preparation plant and<br>blasting**   | 13/12/2004 |
| MOD3        | <ul> <li>Power line relocation and additions to workshop</li> <li>Modify Condition 1.1</li> </ul>   | 19/12/2005 |
| MOD4        | <ul> <li>Relocation of office buildings, workshop and<br/>bath-house.</li> <li>Revise final landform</li> <li>Modify Condition 1.1 and 11.3</li> </ul>  | 15/07/2009 |
| MOD5        | <ul> <li>Extension of open cut mining onto land referred<br/>to as Area C</li> <li>Modify Condition 11.1</li> </ul>   | 20/12/2010 |
| MOD6        | <ul> <li>Revision to mining infrastructure building<br/>requirements and rehabilitation plan revision to<br/>permit continuation of mining for an additional<br/>five year</li> <li>Modify Conditions 1.1(a), 31, 33, 39, 45 and 58</li> </ul>                        | 29/10/2013 |
| MOD7        | <ul> <li>Continuation of mining operations for an additional five years</li> <li>Modify Conditions 1.1, 1.2 and 6.3.2. Addition of Conditions 59 and 60</li> </ul>  | 09/12/2013 |
| MOD8        | <ul> <li>Mining of additional areas and extension of<br/>mine life to 2022</li> <li>General revision of consent conditions</li> </ul>   | 26/10/2016 |
| MOD9        | <ul> <li>Accommodate changes from operation to<br/>rehabilitation and closure phases</li> <li>Align rehabilitation objectives with requirements<br/>under <i>Mining Act 1992</i></li> <li>Provide flexibility for beneficial reuse of MCC<br/>landholdings</li> </ul> | Pending    |

\*Approval dates consistent with Council's "Authority" Database and varies from approval dates shown in approvals documentation. MOD6 and MOD7 shown in date order in this table, inconsistent with Authority. \*\*Modification description obtained from MCC (Nov 2022)

The subject Application (MOD10) was received on 27/09/2022.

### 1.3. SUBMISSIONS

The Modification Report was placed on public exhibition from 14 October 2022 until 04 November 2022.

Adjoining property owners were notified during this period in accordance with the provisions of Council's Community Participation Plan.

The application was referred to Department of Regional NSW - Mining, Energy and Geoscience (MEG) and Resources Regulator, Department of Planning and Environment (DPE), DPE-Water, TfNSW, Rural Fire Service and Subsidence Advisory.

In response to the exhibition, Council Officers received one submission from the community and four submissions from government agencies (MEG, Resources Regulator, Subsidence Advisory and TfNSW). There were no submissions in the form of objections.

At the conclusion of the exhibition period, Council Officers forwarded the submissions to MCC for its consideration and response.

On the 17 November, MCC submitted a response to any issues raised in all submissions.

Key comments from the public submission and MCC's response are shown in

**Table 2** with emphasis added.
 **Table 2** also shows Council's Assessment of the issues raised in the public submission.

The Submissions Report also shows comments from government agencies.

| Ref | Submission Comment   | MCC Response  | Council Officer Assessment   |
|-----|--|---|--|
| 1   | We noted over the last 12 years there<br>has been regular re-sealing, patchwork<br>and "band-aid" maintenance to this<br>road. We are not privy to what<br>conditions of consent exist for the<br>maintenance of Muscle Creek Road<br>since the original approval pursuant to<br>DA 2002/205.  | <ul> <li>DA 205/2002 is available publicly on the Muswellbrook Coal website and includes the following condition in relation to maintenance of Muscle Creek Road:</li> <li>10. Section 138 Permit – Maintenance on Muscle Creek Road</li> <li>The section of Muscle Creek Road from the internal haul road to the New England Highway is to be maintained by the Applicant to the satisfaction of the road authority being Council and must be in a well maintained, safe and appropriate condition at the end of all mining operations. At the end of mining operations the Road must be in a well maintained, safe and appropriate condition prior to Council taking responsibility for ongoing maintenance.</li> <li>NB: The required maintenance standard is detailed in RMS Specification "QA Specification M3 Routine Services". The Applicant must obtain a Section 138 Consent under the Roads Act 1993 prior to any maintenance works being undertaken by the Applicant on Muscle Creek Road. The application for consent must include an assessment of the road's Subnetwork ranking and a Routine Maintenance Annual Plan (RMAP) and shall generally be granted for a year for minor maintenance activities. Major activities including renewal works will require a separate 138 Consent. A contact person must be nominated for all matters dealing with Council roads.</li> </ul> | The previous Section 138 approval expired 30 June<br>2022. Council Officers are in discussions with MCC<br>regarding the renewal of this approval.<br>The s138 approvals reference the 2020 RMAP and<br>MCC Specific M3 2020 which were approved by MSC<br>in 2021.<br>No changes to conditions recommended.   |
|     | Our concern now is the proper upgrade<br>of this section of Muscle Creek Road.<br>The previous "band-aid" maintenance<br>has never resolved the significant<br>drainage issues the road has. The<br>table drains on both side of the road<br>are not properly formed, have been<br>filled up with silt and material from<br>the truck haulage over several years,<br>as well as taking part of the<br>stormwater catchment upstream. | In accordance with the RMAP, MCC has an obligation to maintain the existing drainage along Muscle Creek Road between the mine entry and the New England Highway. MCC will review the drainage and, where issues are identified, undertake remedial action.  | <ul> <li>MCC are required to maintain a section of Muscle<br/>Creek Road between the entrance of MCC and the<br/>New England Highway in accordance with the RMAP.<br/>The RMAP outlines a number of work standard for<br/>drainage structures and table drains including:</li> <li>Pits, culverts and bridge scuppers must be clear<br/>of obstructions affecting water flow;</li> <li>Unsealed shoulders (including verge with rigid<br/>pavements) to be graded and maintained<br/>adequately to provide safe driving conditions;</li> </ul> |

| Ref | Submission Comment   | MCC Response  | Council Officer Assessment   |
|-----|--|---|--|
|     | What happens during lengthy rain<br>periods as well as significant storms, is<br>the road having several inundated<br>sections where the road virtually<br>becomes single laned. The inundated<br>sections are also existing in low spots<br>on the road pavement where the road<br>obviously has <b>sub-grade and/or</b><br><b>subbase issues causing</b><br><b>consolidation of the pavement</b> due to<br>ongoing heavy vehicle haulage over it.<br>This in turn causes "safety" concerns<br>for residential traffic. |   | and<br>• Removal of 95% of loose material.<br>MCC have been undertaking fortnightly inspections of<br>the road to identify works required (see <b>Table 3</b> in<br>relation to table drain / drainage requirements).<br>The 2021 Independent Audit stated that "maintenance<br>was undertaken including re-sheeting, resealing,<br>grass maintenance and road sweepings".<br>There has only been one complaint since 2005<br>relating to road condition and this was in 2009.<br>Council Officers undertake fortnightly inspections of<br>Muscle Creek Road in accordance with the Mine<br>Affected Roads Strategy and have done so for some<br>time. Council Officers have observed that MCC<br>regularly maintain the road pavement in a reasonable<br>timeframe. The latest inspection of Muscle Creek<br>Road was undertaken on 21/11/2022, for which a<br>number of observations were made. Council Officers<br>will undertake an inspection against the RMAP and<br>provide recommendations to MCC where required.<br>No changes to conditions recommended. |
|     | We would request that Muswellbrook<br>Council, as part of the conditions of<br>consent to this modification, instruct<br>Muswellbrook Coal Company Pty Ltd<br>to<br>undergo a full road rehabilitation<br>between its' entrance to Muscle Creek<br>Road to its' intersection with the New<br>England Highway. This would include a<br>re-built down to the sub-grade to fix up<br>the pavement and address the<br>stormwater drainage issues in and<br>around the road.  | The proposed requirement is not feasible for the proposed<br>modification activities (i.e. extending storage, handling and<br>transport of coal for a maximum of three months).<br>MCC proposes to retain the current wording in Condition 10 of<br>DA 205/2002, which requires ongoing road maintenance to the<br>satisfaction of Council. | Prior to the road being handed back to Council, MCC<br>will be required to complete the Handover Activities<br>outlined in Section 11 of the RMAP. This process will<br>include an assessment of the asset condition,<br>including estimation of the residual design life; a<br>summary of defects recorded and repaired over the<br>life of the RMAP and transference of all records<br>related to the maintenance. Following completion of<br>these activities, Council Officers will assess the types<br>of work required by MCC to complete the handover<br>process.<br>The timing of the above process will be determined<br>through the modification process for MOD9 (see<br><b>Table 1</b> ).  |

| Ref | Submission Comment | MCC Response | Council Officer Assessment   |
|-----|--------------------|--------------|--|
|     |                    |              | Requiring MCC to complete a full upgrade to the road<br>as part of this modification is not considered to be in<br>the community's best interest as the road will incur<br>further damage from its continued use until 31 March<br>2023 and may cause disruptions to traffic during the<br>works |
|     |                    |              | For the above reasons, Council Officers propose to retain the current wording in Condition 10 of DA 205/2002, which requires ongoing road maintenance to the satisfaction of Council.  |

### Table 3 – MCC works in accordance with the Road Maintenance Annual Plan (2020)

| Code  | Activity Name             | Intervention Guidance   | MCC Inspection Schedule | MCC Comments   |
|-------|---------------------------|---|-------------------------|--|
| S-241 | Grade Shoulder            | <ul> <li>Poorly formed table drain or shoulder/verge<br/>crossfall affecting drainage, e.g. scoring,<br/>siltation or vegetation.</li> </ul>  | Every fortnight         | No treatment has occurred as<br>inspections haven't identified any<br>grading required                 |
| S-272 | Sweep Road Pavement       | <ul> <li>Loose gravel and other detritus particularly around intersections, side roads and crossovers.</li> <li>Loose material within drainage lines and kerb and guttering.</li> </ul>   | Every fortnight         | No treatment has occurred as<br>inspections haven't identified any<br>road sweeping required           |
| S-524 | Clean Drainage Structures | <ul> <li>Pipe/culvert flow is impeded by any obstruction (e.g. litter, debris) resulting in flow restriction &gt; 50% at the inlet, outlet or in the barrel or pit.</li> <li>Partially blocked bridge scuppers affecting effectiveness of deck drainage.</li> </ul> | Every fortnight         | There are no pipes or culvert<br>along the road.<br>Bridge scuppers are the<br>responsibility of ARTC. |

### 1.4. CONSIDERATION

Section 4.55(1A) of the Environmental Planning and Assessment Act 1979 enables a consent authority to modify a development consent upon application being sought by the applicant or any person entitled to act on the consent, provided that the consent authority:

- is satisfied that the development to which the consent as modified relates is of minimal environmental impact;
- is satisfied that the development to which the consent as modified relates is substantially the same development;
- has notified the application in accordance with the regulations and has considered any submissions made concerning the proposed modification; and
- in determining the application for modification, has taken into consideration such matters referred to under Section 4.15(1) as are relevant.

Therefore, Council's assessment of the application to modify the subject development consent must consider the following issues:

### 1.4.1. Is the proposed development of minimal environmental impact?

It is considered that the environmental impacts of the development will remain unchanged as the proposed modification does not involve any change to the mining operation or extraction area.

The environmental impacts of the existing mining operation have previously been assessed through Environmental Impact Statements prepared in respect of the original development application and subsequent modifications. It was determined that the environmental impacts of the development are reasonable and acceptable and can be managed through appropriate mitigation measures already in place.

The current operation was inspected in November 2021 by an independent auditor and a few non-compliances that required action were identified. Action has occurred as directed.

# 1.4.2. Is the proposed development as modified substantially the same development approved by the Council?

The proposed development as modified is substantially the same development as the nature, character, description and impacts of the development will remain unchanged. The use of the development will remain as "Mining Industry".

# 1.4.3. Whether the application required the concurrence of the relevant Minister, public authority or approval body and any comments submitted by these bodies?

The application was referred to the Department of Regional NSW (MEG and Resources Regulator) for concurrence. No material comments were provided by these bodies.

# 1.4.4. Whether any submissions were made concerning the proposed modification.

The notification of the proposed modification resulted in one public submission being received during the public exhibition period.

# 1.4.5. Any relevant considerations under Section 4.15(1) of the Environmental Planning and Assessment Act 1979.

Section 4.15(1)(e) the public interest.

It is considered that the proposal is not contrary to the public

interest.

### NSW Legislation

There is a number of applicable legislation that needs to be considered and referred to in the assessment of this application. The applicable legislation has been listed at the start of the report. The assessment has considered these pieces of legislation throughout the report in their relevant sections, however, the following legislation has not been discussed in detail elsewhere in the report.

| 1.5. ENVIRONMENTAL APPRAISAL   | CONSIDERED |
|--|------------|
| Statutory Controls   | YES        |
| Policy Controls  | YES        |
| Landscaping/Open Space Provision   | NO         |
| Traffic generation and Carparking provision  | NO         |
| Physical relationship to and impact upon adjo<br>development (Views, privacy, overshadowing, etc.)<br>YES, no issues | bining     |

All relevant S4.15 considerations of Environmental Planning and Assessment (Amendment) Act 1979 YES

### 1.6. DISCUSSION

The amendments to condition 2, 4 and 8 will allow for the continuation of storage, handling and transportation of coal for an existing mining operation. Mining will not be permitted after 31 December 2022. Rehabilitation activities will continue to occur as per the Rehabilitation Management Plan regulated under the *Mining Act 1992*.

1.7.

### 1.8. REFERRALS

The application was referred to Department of Regional NSW (MEG and Resources Regulator), Department of Planning (DPE), DPE-Water, TfNSW, Rural Fire Service and Subsidence Advisory for comments.

Four submissions were received from the following government agencies, but none provided material comments on the modification:

- Mining, Exploration and Geoscience (MEG);
- Resources Regulator;
- Subsidence Advisory; and
- Transport for NSW (TfNSW).

No comments were received from DPE, DPE-Water or RFS in relation to the modification.

### 1.9. CONCLUSION

The mine is long-standing project. The time extension for handling, storage and transportation of coal is assessed as having a minor economic benefit to the state. The proposal is consistent with the relevant planning policies and regulations.

### 1.10. RECOMMENDATION

That Council modify the consent dated 18 August 2003 in respect to an

extension of the time for handling, storage and transportation of coal of the mining industry at Muscle Creek Road to 31 March 2023.

### 1.11. DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

No disclosures of political donations or gifts have been made in relation to this application.

### 1.12. SOCIAL IMPLICATIONS

The development as presented will not result in any specific social implications for Council. Should the modification not be supported, there is the potential for impacts to the timing of rehabilitation.

### 1.13. FINANCIAL IMPLICATIONS

This development as presented has no direct financial impact upon Council's adopted budget or forward estimates.

### 1.14. OPERATIONAL PLAN IMPLICATIONS

This matter has no specific Operational Plan implications for Council.

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### **GENERAL CONDITIONS**

### 1. Obligation to minimise harm to the environment

The Applicant must implement all reasonable and feasible measures to prevent and/or minimise any material harm to the environment that may result from the construction, operation, rehabilitation and, where relevant, decommissioning of the development.

### 2. Adherence to terms of DA, EIS, etc.

The development must be carried out in accordance with the conditions of this consent and generally in accordance with:

- i. Modification Report prepared by IEMA dated September 2022
- ii. The accompanying SEE titled "Muswellbrook Coal Continuation Project, 1 & 2" by EMM dated April 2016.
- iii. "Muswellbrook Coal Continuation Project Response to Submissions" dated 20 July 2016.
- iv. the EIS titled "Muswellbrook Coal Company Limited, No. 1 Open Cut Extension Environmental Impact Statement 2002" dated July 2002, prepared by HLA-EnviroSciences Pty Limited and certified in accordance with Section 78A(8) of the EP&A Act;
- v. The accompanying Statement of Environmental Effects document by Hansen Bailey dated August 2010.

Where there is an inconsistency between two or more of the above documents, the most recent document prevails to the extent of that inconsistency. However, the conditions of this consent shall prevail to the extent of any inconsistency.

### 3. Compliance with documentation

The Applicant must comply with any reasonable requirement/s of Council arising from:

- Any reports, strategies, plans, programs, audits or correspondence that is submitted in accordance with this consent;
- Any reports, reviews or audits commissioned by Council or the Gas Health Study commissioned by the EPA regarding compliance with this consent; and
- The implementation of any actions or measures contained in these documents.

### 4. Period of Approval

The Applicant may out carry mining operations until 31 December 2022, with the exception of handling, storage and transportation of coal. Handling, storage and transportation of coal may be carried out until 31 March 2023.

**Note:** Under this consent, the Applicant is required to rehabilitate the site to the satisfaction of Council and the DRE. Consequently, this consent will continue to apply in all other respects other than the right to conduct mining operations until the rehabilitation of the site has been carried out satisfactorily.

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### 5. Project Commencement

The Applicant must:

- a) notify Council in writing of the date of commencement of the development under this consent; and
- b) certify that it has obtained all the necessary approvals required to commence the development.
- ensure that employees, contractors and sub-contractors are aware of, and comply with, the conditions of this consent relevant to their respective activities.

### 6. Dispute Resolution

In the event that the Applicant or a Government agency, other than integrated planning bodies, cannot agree on the specification or requirements applicable under this consent, the matter shall be referred by either party to Council or if not resolved, to the Minister for Planning, whose determination of the disagreement shall be final and binding on the parties.

### MINE MANAGEMENT

### 7. Limits on Production

Product coal from the development must not exceed 2.0 Mtpa (Million Tonnes per annum).

### 8. Hours of Operation

The maximum hours of operation at the development shall be as follows:

- Open Cut Mining up to 24 hours, 7 days
- Coal storage, handling and transportation, up to 24 hours, 7 days
- Blasting 9am-5pm Mondays to Fridays.

**Note:** Blasting hours may be extended outside these times where there is a demonstrated safety need and with the approval of Council.

### 9. Coal Haulage

All coal haulage access to the mining lease area is restricted to the Private Coal Haul Road, Muscle Creek Road and New England Highway.

### 10. Section 138 Permit – Maintenance on Muscle Creek Road

The section of Muscle Creek Road from the internal haul road to the New England Highway is to be maintained by the Applicant to the satisfaction of the road authority being Council and must be in a well maintained, safe and appropriate condition at the end of all mining operations. At the end of mining operations the Road must be in a well maintained, safe and appropriate condition prior to Council taking responsibility for ongoing maintenance.

NB: The required maintenance standard is detailed in RMS Specification "QA Specification M3 Routine Services".

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The Applicant must obtain a Section 138 Consent under the Roads Act 1993 prior to any maintenance works being undertaken by the Applicant on Muscle Creek Road. The application for consent must include an assessment of the road's Subnetwork ranking and a Routine Maintenance Annual Plan (RMAP) and shall generally be granted for a year for minor maintenance activities. Major activities including renewal works will require a separate 138 Consent. A contact person must be nominated for all matters dealing with Council roads.

### 11. Operation of Plant and Equipment

The Applicant must ensure that all plant and equipment used on site, or to monitor the performance of the development, is maintained and operated in a proper and efficient manner at all times.

### 12. Meteorological Monitoring

For the life of the development, or as otherwise agreed by Council the Applicant must ensure that there is a meteorological station located on site that:

- a) Complies with the requirements in the Approved Methods for Sampling of Air Pollutants in New South Wales guidelines; and
- b) Is capable of continuous real time measurement of temperature inversions in accordance of the Industrial Noise Policy or superseding document, unless a suitable alternative is approved by Council following consultation with the EPA.

The weather station must measure the following:

- Wind direction at 10 metres above the ground
- Wind speed at 10 metres above the ground
- Temperature at 2 metres above the ground
- Temperature at 10 metres above the ground
- Sigma theta at 10 metres above the ground
- Rainfall

All measurements are to be continuous and averaged over 15 minutes with the exception of rainfall that is averaged hourly.

### LAND AND SITE ENVIRONMENTAL MANAGEMENT

### 13. Appointment of Environmental Officer

- (a) The Applicant must ensure that a suitably qualified or experienced Environmental Officer, to the satisfaction of Council is available throughout the life of the mine. The Environmental Officer shall:
  - (i) be responsible for the co-ordination of the preparation of the Environmental Management Plan

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|            | (ii)     | be responsible for considering and advising on<br>the conditions of this consent and compliance w  | •                          |
|            | (iii)    | be responsible for establishing systems to recomplaints;   | eive and respond to        |
|            | (iv)     | facilitate an environmental induction and train persons involved with mining and rehabilitation  | 010                        |
|            | (v)      | take reasonable steps to avoid or minimise advise<br>impacts. The Environmental Officer shall advise<br>to issue instructions to stop work if a significant<br>the environment is likely to occur. | e the Mine Manager         |
| CC(        | C of the | nt must notify Council, DRE, MSB, EPA, OEH,<br>name and contact details of the Environment<br>that appointment.  |                            |

#### 14. Environmental Management Strategies and Plans

- (a) The Applicant must prepare an Environmental Management Strategy, providing a strategic context for the Environmental Management Plans. The Environmental Management Strategy must be prepared following consultation with the OEH, EPA, DRE, DPI Water and the CCC and to the satisfaction of Council.
- The Environmental Management Strategy must include, but not be limited (b) to:
  - (i) statutory and other obligations which the Applicant is required to fulfil during mining, including all approvals and consultations and agreements required from authorities and other stakeholders, and key legislation and policies;
  - (ii) definition of the role, responsibility, authority, accountability and reporting of personnel relevant to environmental management, including the Environmental Officer;
  - (iii) overall environmental management objectives and performance outcomes, during mining and decommissioning of the mine, for each of the key environmental elements for which management plans are required under this consent;
  - (iv) overall ecological and community objectives for the project, and a strategy for the restoration and management of the areas affected by Mining Operations, including elements such as wetlands and other habitat areas, creek lines and drainage channels, within the context of those objectives;
  - identification of cumulative environmental impacts and procedures (v) for dealing with these at each stage of the development;

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| (vi) | steps to be taken to ensure that all approvals, plans, and procedures are being complied with, namely procedures:         |
|------|---|
|      | <ul> <li>to receive, handle, respond to and record complaints;</li> <li>to respond to any non-compliances; and</li> </ul> |
|      | <ul> <li>to respond to emergencies.</li> </ul>  |

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(vii) processes for conflict resolution in relation to the environmental management of the project; and

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- (viii) documentation of the results of consultations undertaken in the development of the Environmental Management Strategy.
- (c) The Applicant must make copies of the Environmental Management Strategy available to EPA, OEH, DRE, MSB, DPI Water and the CCC and be placed on the Applicant's website following approval by Council.
- (d) The Applicant must prepare the following Environmental Management Plans and submit to Council for review at the times listed below, or at other times as agreed by Council, following approval of the Continuation Project Modification:

| Document  | Timeframes following approval date of Continuation Project |
|---|--|
| Environmental Management Strategy                           | 6 months   |
| Spontaneous Combustion Management Plan                      | 3 months   |
| Visual Amenity, Lighting and Landscaping<br>Management Plan | 6 months   |
| Bushfire Management Plan                                    | 12 months  |
| Mine Closure Plan   | 12 months  |
| Water Management Plan                                       | 6 months   |
| Rehabilitation Plan   | 6 months   |
| Rehabilitation Strategy                                     | 6 months   |
| Air Quality Management Plan                                 | 3 months   |
| Blasting/ Vibration Management Plan                         | 3 months   |
| Noise Management Plan                                       | 3 months   |

These Environmental Management Plans and strategies may also form part of the overall Site Environmental Management Plan.

(e) The Management Plans or Strategies are to be reviewed, and updated every three years or at other reasonable times as directed by Council, in consultation with the relevant government agencies. With the agreement of Council, the Applicant may prepare any revised plan or strategy without consultation with all parties under the applicable condition of this consent.

The review should consider contemporising environmental requirements or changes in technology/operational practices. Any changes which are proposed shall be made and approved in the same manner as the initial Environmental Management Plan or Strategy. The Management Plans or

DA 205/2002

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Strategies shall be made publicly available within two weeks of approval by Council.

The Applicant must implement the approved management plans as approved from time to time by Council.

### 15. Rehabilitation

- (a) The Applicant must rehabilitate the site to the satisfaction of the DRE.
- (b) Rehabilitation must be substantially consistent with the rehabilitation Objectives described in the SEE (EMM April 2016) Appendix B.
- (c) Rehabilitation must be in accordance with the Rehabilitation Plan.

| Rehabilitation Feature                                 | Objectives   |
|--|--|
| Mine site (as a whole of the disturbed land and water) | Safe, stable and non-polluting, fit for purpose of the intended post-mining land uses(s).  |
|  | Final landforms designed to incorporate natural micro-<br>relief and natural drainage lines, which, where<br>reasonable and feasible, further avoid straight run<br>drainage drop structures, to integrate with surrounding<br>landforms.                                  |
| Rehabilitation materials                               | Materials (including topsoils, substrates and seeds of<br>the disturbed areas) are recovered, appropriately<br>managed and used effectively as resources in the<br>rehabilitation.   |
| Landforms  | Final landforms sustain the intended land use for the post-mining domain(s).   |
|  | Final landforms are consistent with and complement<br>the topography of the surrounding region to minimise<br>the visual prominence of the final landforms in the<br>post mining landscape.  |
|  | Final landforms incorporate design relief patterns and principles for consistency with natural drainage.   |
| Final voids  | <ul> <li>Minimise to the greatest extent practicable:</li> <li>The size and depth of the final void</li> <li>The drainage catchment of the final void</li> <li>Any high wall instability risk</li> <li>Risk of flood interaction (flows in and out of the void)</li> </ul> |
|  | Maximise, to the greatest extent practicable,<br>integration of the final void landform with the natural<br>terrain features of the surrounding landscape.   |
| Water Quality  | Water retained on site should be fit for the intended land use(s) for the post-mining domain(s).   |
| Native flora and fauna habitat and corridors           | Size, locations and species of native tree lots and corridors are established to sustain biodiversity habitats.  |
|  | Species are selected that re-establish and complement regional and local diversity.  |
|  | The Native Vegetation Belt / Fauna Corridor links with<br>the existing vegetation near Bells Mountain and<br>Skelletar Ridge.  |
| Post-mining agricultural pursuits                      | The land capability classification for the relevant<br>nominated agricultural pursuit for each domain is   |

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|             |   | sustaining with the aim of being<br>ars of land use establishment<br>ation). |
|             |   | g - term sustainable grazing of<br>is achieved, including sloping            |

### 16. Progressive Rehabilitation

The Applicant must carry out all surface disturbance activities (e.g. pre-stripping in advance of mining) in a manner that, as far as is reasonably practicable, minimises potential for dust emissions and shall carry out rehabilitation of disturbed areas progressively, as soon as reasonably practicable, to the satisfaction of the Director, Environmental Sustainability, of DRE.

### 17. Rehabilitation Plan

The Applicant must prepare a Rehabilitation Plan to the satisfaction of the Director, Environmental Sustainability, DRE.

The Rehabilitation Plan must:

- a) Be consistent with the Rehabilitation Strategy;
- b) Be approved by the Director, Environmental Sustainability prior to carrying out any surface disturbance activities, on land subject of the Modification, unless otherwise agreed by Council.
- c) Be prepared in accordance with the DRE guidelines and in consultation with DRE, OEH, Council and the Community Consultative Committee;
- Incorporate and be consistent with the rehabilitation objectives of the SEE (EMM April 2016) and Appendix B of the SEE, and the Rehabilitation Strategy required by this consent;
- e) Integrate and build on, to the maximum extent practicable, the other management plans required under this consent;
- Address all aspects of mine closure and rehabilitation, including post mining land use domain, rehabilitation objectives, completion criteria and rehabilitation monitoring and management, and;
- g) Include the location of the proposed Muswellbrook Bypass on relevant plans by way of including the Bypass zoning boundary on the plans.

### 18. Rehabilitation Strategy

The Applicant must prepare a Rehabilitation Strategy for the Muswellbrook Coal Mine site to the satisfaction of Council. This strategy must:

(i) Provide for the establishment of habitat corridors as part of the final rehabilitated landform to replace areas of forest and woodland

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vegetation that are to be removed under the proposed mine plan. The strategy must outline the vegetation species selected for the corridor, the width and length of the corridor and how this corridor's specifications will facilitate the movement of the identified species planned for its use;

- ensure that any vegetated areas cleared for any future construction purposes and not utilised in the Mining Operations are restored at least to a condition as agreed to by consultation with relevant stakeholders;
- develop a plan for vegetation rehabilitation involving re-establishment of native species, especially groundcover species, in order to prevent erosion and future degeneration of the communities;
- (iv) ensure that all rehabilitated slopes are effectively and appropriately stabilised. Consider the use of native vegetation on the void slopes and pasture grasses on flatter areas to improve land use outcomes and minimise maintenance;
- (v) provide that a minimum of 23ha shall be re-forested utilising the following species that shall be sourced from local seed provinces; Grey-box, Bulloak, Narrowed-leaved Iron Bark and Grey Gum or an equivalent area of 23ha comprising of similar flora structural and floristic characteristics in green-offsets;
- (vi) outline and describe a stormwater drainage design for the mine site;
- (vii) explain the timeframe of rehabilitation, both in terms of topsoil remediation and for the lifespan of erosion and sediment control structures on the site;
- (viii) Where possible and if available, suitable timber cleared from the mine site is to be used to create stag trees for wildlife habitat in the rehabilitated areas, and;
- (ix) Include the location of the proposed Muswellbrook Bypass on relevant plans by way of including the Bypass zoning boundary on the plans.

The Applicant must implement the approved Strategy as approved from time to time by Council.

### 19. Closure Plan

The Applicant must prepare a Mine Closure Plan for the development to the satisfaction of Council, and carry out the development in accordance with this plan. The plan must:

- Be prepared in consultation with DRE and DPI Water;
- Provide a description of the known reasonable history of mining operations conducted within the consent boundary.

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- Provide detailed plans showing final landform and drainage detail;
- Define the objectives and criteria for mine closure, with the exception of rehabilitation objectives and criteria, which are defined in the Rehabilitation Plan;
- Provide a chart outlining the indicative timing and sequence of the closure project;
- Outline the process to make changes to management plans during and following closure and where the closure plan will supersede management plan requirements;
- Describe measures that would be implemented to minimise or manage the ongoing environmental effects of the development;
- Describe how the performance of these measures would be monitored over time;
- Describe the changes to the monitoring regime of the development following the cessation of mining; and
- Include the location of the proposed Muswellbrook Bypass on relevant plans by way of including the Bypass zoning boundary on the plans.

### 20. Restriction as to User – Vegetation Offset Area

A restriction as to user must be registered on the title of affected land for the purpose of creating a Vegetation Offset Area as indicated on Figure 1 'Proposed Offset Area' prepared by Hansen Bailey dated 12/10/10 Cad file: 06836A.dwg. Muswellbrook Council must be nominated as the sole authority empowered to vary or modify the restriction.

The terms of the restriction must include the following matters:

- a) Restriction against clearing.
- b) Restriction against use of land in any way inconsistent with the maintenance of the EEC on the land.
- c) Restrictions on livestock grazing on the land.
- d) Obligation to fence the land.
- e) Obligation to control noxious weeds and pests on the land.

A caveat acceptable to Muswellbrook Council, must be prepared and registered on the title of affected land, by Muswellbrook Coal Company at no cost to Council by 31 December 2018.

### 21. Archaeology and Cultural Heritage Management

Should the Applicant uncover artefacts during the construction/ development process, a Section 90 Aboriginal Heritage Impact Permit under the National Parks and Wildlife Act 1974 must be obtained from the Office of Environment and Heritage for any destruction, damage or harm (including removal) of any Aboriginal artefact or heritage site.

### 22. Visual Amenity, Lighting and Landscaping

The Applicant must address visual amenity and landscaping issues for the development area to address relevant visual and landscaping issues associated with the development.

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The Applicant must:

- implement all reasonable and feasible measures to mitigate visual and offsite lighting impacts of the project; and
- Install new external lighting associated with the development in accordance with relevant Australian Standards including Australian Standards AS4282 (INT) 1997 – Control of Obtrusive Effects of outdoor lighting.

The Applicant must prepare a Visual Amenity, Lighting and Landscaping Management Plan for the development to the satisfaction of Council, and carry out the development in accordance with this plan. The Plan must:

- Identify the privately owned residences that are likely to experience significant visual impact during the remainder of the project, and
- Describe (in general terms) any additional mitigation measures that are planned to be implemented to reduce the visibility of the mine from these properties.
- Describe (in general terms) the mitigation measures that are planned to minimise the visibility of fixed lighting and mobile lighting where possible from the mine on these properties.

Within 3 months of Council approving the Plan, the Applicant must advise all owners of privately- owned residences identified in the Plan as receiving significant visual impact, that they are entitled to additional appropriate mitigation measures to reduce the visibility of the mine from their properties.

Upon receiving a written request from an owner of a privately- owned residence identified in the Plan, or upon receiving a reasonable direction from Council regarding any other privately – owned residence, the Applicant must implement additional visual impact mitigation measures (such as landscaping treatments or vegetation screens) in consultation with the landowner, and to the satisfaction of Council.

These mitigation measures must be reasonable and feasible, and must be implemented in a reasonable time frame, to the satisfaction of Council.

If within 3 months of receiving this request from the owner, the Applicant and the owner cannot agree on the measures to be implemented, or there is a dispute about the implementation of these measures, then either party may refer the matter to Council for resolution.

**Note:** Except in exceptional circumstances, Council will not require additional visual impact mitigation to be undertaken for residences that are more than 3 kilometres from the mining pit and face and unrehabilitated overburden emplacements.

### 23. Bushfire Management Plan and other Fire Controls

The Applicant must:

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- (a) make available to the Rural Fire Service and emergency services when required, personnel, water carts and trucks in cases of bushfire on the mine site; and
- (b) prepare a Bushfire Management Plan for the development area to the satisfaction of Council and the Rural Fire Service.

### WATER MANAGEMENT AND MONITORING

### 24. Discharge

Unless an EPL or the EPA authorises otherwise, the Applicant must ensure that all surface water discharges from the site comply with the:

- (a) Discharge limits (both volume and quality) set for the development in the EPL and;
- (b) Relevant provisions of the POEO Act or *Protection of the Environment Operations (Hunter River Salinity Trading Scheme) Regulation 2002.*

### 25. Water Management Plan

The Applicant must prepare a Water Management Plan for the development to the satisfaction of Council, and carry out the development in accordance with this plan. The plan must be prepared in consultation with DPI Water and submitted to Council for approval and include:

- (a) A Site Water Balance that:
  - a. Includes details of:
    - i. Sources and security of water supply, including contingency planning for future reporting periods
    - ii. Water use and management on site;
    - iii. Any offsite water transfers and discharges;
    - iv. Reporting procedures, including the preparation of a site water balance for each AEMR reporting year; and
    - b. Investigates and implements all reasonable and feasible measures to minimise water use on site;
- (b) Surface Water Management Plan, that includes:
  - a. Detailed baseline (2016) data on surface water quality in the watercourses that could potentially be affected by the development
  - b. a description of the water management system on site, including the:
    - i. Clean water diversion systems;
    - ii. Erosion and sediment controls (mine water system); and
    - iii. Mine water management systems including water infusion for Spontaneous Combustion.

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- c. plans, including design objectives and performance criteria, for:
  - i. design and management of final voids;
  - ii. design and management for the emplacement of coal reject materials;
  - iii. reinstatement of drainage lines on the rehabilitated areas of the site; and
  - iv. control of any potential water pollution from the rehabilitated areas of the site;
- d. performance criteria for the following, including trigger levels for investigating any potential adverse impacts associated with the development:
  - i. surface water quality of Muscle Creek and Sandy Creek catchments; and
- e. a program to monitor and report on:
  - i. the effectiveness of the mine water management system; and
  - ii. surface water quality, in Muscle Creeks and Sandy Creeks, potentially affected by the development;
- f. a plan to respond to any exceedances of the performance criteria, and mitigate and/or offset any adverse surface water impacts of the development; and
- (c) Groundwater Management Plan, which includes:
  - a. baseline data on groundwater levels, and quality, of privately-owned registered groundwater bores within 2.5km of the development, that could be affected by the development;
  - b. groundwater assessment criteria, including trigger levels for investigating any potentially adverse groundwater impacts;
  - c. a program to monitor and report on:
    - i. ground water inflows to the open cut pits;
    - ii. the impacts of the development on:
      - 1. regional and local (including alluvial) aquifers;
      - 2. groundwater supply of privately registered groundwater bores;
    - iii. a plan to respond to any exceedances of the groundwater assessment criteria; and
    - iv. a program to validate the groundwater model for the development, including an independent review of the model with every Independent Environmental Audit, and compare the monitoring results with modelled predictions.

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#### 26. Waste and Wastewater Management,

- (a) The Applicant must:
  - implement all reasonable and feasible measures to minimise the waste generated by the development;
  - ensure that the waste generated by the development is appropriately stored, handled and disposed of; and
  - monitor and report on the effectiveness of the waste minimisation and management measures in the AEMR report.
- (b) The Applicant must reuse, recycle or dispose of all waste (including but not limited to solid waste, liquid waste and putrescible matter) from the site to the satisfaction of Council or EPA, as relevant.
- (c) Manage on-site sewage treatment and/or offsite disposal in accordance with the requirements of Council.

#### AIR QUALITY, BLAST, NOISE MANAGEMENT AND MONITORING

#### 27. Air Quality – Particulate Matter – Standards and Goals

The Applicant must ensure that all reasonable and feasible avoidance and mitigations measures are employed so that particulate matter emissions generated by the development do not cause exceedance of the relevant air quality criteria at an residence on privately owned land.

The relevant air quality criteria for the development are contained in Table 1 and Table 2, below.

 Table 1.
 Long Term Particulate Matter Criteria

| Pollutant                                     | Criterion                         |
|---|-----------------------------------|
| Particulate matter < 10µg (PM <sub>10</sub> ) | 30ug/m <sup>3</sup> (annual mean) |

 Table 2.
 Short Term Particulate Matter Criteria

| Pollutant                                    | Criterion              |
|--|------------------------|
| Particulate Matter <10µm (PM <sub>10</sub> ) | 50µg/m³ (24hr average) |

Note:

- Total impact (i.e. incremental increase in concentrations due to the development plus background concentrations due to all other sources);
- Excludes extraordinary events such as bushfires, prescribed burning, dust storms, sea fog, fire incidents, (but not Spontaneous Combustion within the mine) or any other activity agreed by Council

#### 28. Air Quality – Gas Content – Health Guidelines and Goals

The Applicant must use reasonable and feasible measures to manage the development so that the atmospheric gas emissions generated by the development do not cause exceedance of the relevant air quality criteria at any residence on privately owned land.

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The relevant atmospheric air quality criteria for the development are contained in Table 3 below.

Table 3. Atmospheric Gas Content Criteria

| Pollutant               | Criterion              |                       |
|-------------------------|------------------------|-----------------------|
| Sulphur dioxide (SO2)   | 80 ppb (24hr average)  | 200 ppb (1hr average) |
| Hydrogen Sulphide (H2S) | 100 ppb (24hr average) | 500 ppb (1hr average) |

Note:

- Total impact (i.e. incremental increase in concentrations due to the development plus background concentrations due to all other sources);
- Excludes extraordinary events such as bushfires, prescribed burning, dust storms, sea fog, fire incidents, (but not Spontaneous Combustion within the mine) or any other activity agreed by Council
- The need for the applicant to monitor its compliance with the requirements in Table 3, pursuant to the Air Quality Management Plan and condition 30A of this development consent be waived in the future depending on Council's consideration of the outcomes of the EPA's current Environmental Study and any changes would be by agreement with Council.

#### 29. Air Quality – Management

The Applicant must prepare a detailed Air Quality Management Plan for the development in consultation with the EPA, to the satisfaction of Council, and carry out the development in accordance with this plan.

This plan must include, but not be limited to the following matters:

- the identification of properties which may be affected by dust generated by the mine in excess of the criteria detailed above;
- specifications of the procedures for the dust monitoring program and atmospheric gas assessment for the management of the mine and for the purpose of undertaking independent investigations;
- (iii) outline the procedure to notify property owners and occupiers as identified by monitoring as likely to be affected by dust generated by the mine in excess of the criteria detailed above;
- (iv) mitigation measures to be employed to minimise dust and/or atmospheric gas emissions during the operation phase (this plan can refer to the Spontaneous Combustion Management Plan for atmospheric gas). This should include proactive/predictive and reactive mitigation measures to be employed to minimise dust and/or atmospheric gas emissions including visible dust emanating from the site;
- (v) the Applicant must ensure the prompt and effective rehabilitation of all disturbed areas of the application area following the completion of mining and associated activities in that area to minimise the generation of windblown dust;
- (vi) the use of the existing protocol for handling dust and atmospheric gas complaints that include recording, reporting and acting on complaints;

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- (vii) details of locations and frequency of existing monitoring;
- (viii) as far as practicable details of the interrelationships of this plan with the Air Quality Management Plans with other mining operations in the vicinity; and
- (ix) unsealed roads are to be managed to minimise the generation of fugitive dust.

#### 30. Air Quality – Monitoring – Dust

- (a) The Applicant must:
  - Operate in real time air quality monitors representative of residence on privately owned land to the north and south of the development. The locations of all the monitors must be identified in the Air Quality Management Plan as approved by Council.
  - (ii) monitor and report against criteria in Tables 1 and 2 for the monitors located to be representative of nearby residences on privately owned land in accordance with the Air Quality Management Plan. The results of this monitoring and reporting are to be incorporated into the AEMR;
  - (iii) Include in the AEMR a summary of the performance of the control measures and of the monitoring system against the criteria outlined in Tables 1 and 2. The assessment locations and the methodology of assessment is to be identified in the Air Quality Management Plan, and;
- (b) In the event that a landowner or occupier of a residence on privately owned land considers that dust from the development at his/her dwelling is in excess of the criteria detailed in Tables 1 or 2 of the consent, and Council is satisfied after adequate examination of the relevant facts, that an investigation is required, the Applicant must upon the receipt of a written request from Council:
  - consult with the landowner or occupant affected to determine his/her concerns;
  - (ii) commission an independent dust impact assessment at the privately owned residence, and provide a report to Council. Where elevated levels of dust in excess of the criteria in Tables 1 and 2 are identified, and the independent expert is of the opinion that the Applicant's activities have materially contributed to the exceedance, the independent dust assessment is to include suggested remedial actions;
  - (iii) modify the mining activity or take other steps in accordance with the Air Quality Management Plan, or independent dust assessment, if exceedances are demonstrated by the independent investigations,

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engaged by the Applicant, to materially result in part from the development related activity. This may include:

- introduction of additional controls, either of dust generation from individual sources on the site or on site operations, or modify operations to attempt to ensure that the dust criteria are achieved; and/or;
- negotiate, as far as reasonably practicable, an agreement with the landowner or provide such forms of benefit or amelioration of the impact of dust as may be agreed between the parties as providing acceptable compensation for the dust levels experienced.
- (iv) conduct follow up investigation(s) to the satisfaction of the Council, where necessary.

Note: Appendix E of the determination outlines the process for mitigation measures

- (c) If the independent dust investigations in sub-clause (b) above confirm that dust levels from the Project alone are in excess of the relevant criteria detailed in Tables 1 and 2 of the consent, and if the measures in sub-clause (b)(iii) (1) above do not reduce the dust levels, from the Project alone, below the criteria detailed in the consent, or if agreement in accordance with subclause (b)(iii) (2) above cannot be reached, the Applicant must at the written request of the owner acquire the relevant property. Acquisition shall be generally in accordance with the procedures set out in Condition 49 of this consent.
- (d) Further independent investigation(s) shall cease if Council is satisfied that the relevant criteria detailed in the consent are not being exceeded and are unlikely to be exceeded in the future.

#### 30A Air Quality – Monitoring – Gas

- (a) The Applicant must:
  - (i) Operate gas assessment equipment representative of non-mine owned residents to the north and south of the development. The locations of the atmospheric gas assessment equipment must be identified in the Air Quality Management Plan.
  - (ii) Include in the AEMR a summary of the performance of the control measures and of the monitoring system, Assess the Atmospheric Gas Content against the requirements outlined in Table 3. The assessment locations and the methodology of assessment is to be identified in the Air Quality Management Plan, and;
  - (iii) Should the results of the Atmospheric Gas Content criterion outlined in Table 3 be exceeded, the Applicant is to immediately advise Council.

(b) In the event that a landowner or occupier of a residence on privately owned land considers that atmospheric gas from the development at his/her dwelling is in excess of the criteria detailed in Table 3 of the consent, and Council is satisfied that an investigation is warranted, the Applicant must upon the receipt of a written request from Council:

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- (i) consult with the landowner or occupant affected to determine his/her concerns;
- (ii) commission a relevant expert, approved by Council, to conduct an independent atmospheric gas impact assessment at the residence, and provide a report to Council. Where levels of atmospheric gas in excess of the criteria in Table 3 are identified, and the independent expert is of the opinion that the Applicant's activities have caused the exceedances, the Applicant must:
  - a. modify the mining activity or take such other steps as are reasonably necessary to ensure that the Applicant operates so as not to cause or partly cause the criteria identified in Table 3 to be exceeded at the residence.
  - b. conduct follow up investigation(s) to the satisfaction of the Council, where necessary.

#### 31. Air Quality – Spontaneous Combustion

DA 205/2002

The Applicant must incorporate current best practice approaches to minimizing the occurrence of spontaneous combustion and managing any spontaneous combustion that occurs within the development area.

The Applicant must prepare a detailed Spontaneous Combustion Management Plan to the satisfaction of Council, and carry out the development in accordance with this plan. The plan must:

- a. Be endorsed by a suitably qualified expert/s whose appointment/s have been approved by Council;
- b. Describe what measures are to be undertaken to minimize the occurrence of spontaneous combustion. Should spontaneous combustion occur, describe what methods would be employed to extinguish, or reduce the size and duration of the outbreak. This is to include details of the times, areas, locations etc. that will trigger actions, and criteria provided to indicate success or further works being required.

The plan must break these activities up to be specific to the following areas:

- i. The highwall and existing known U/G mine workings in the No.1 pit,
- ii. The overburden/interburden removal and coal removal in the No.1 pit,

- iii. Active and recent emplacement areas within the No.1 pit,
- iv. The No.2 pit,
- v. Coal emplacement and storage areas,
- vi. Elsewhere within the mine disturbance area.
- c. Define what constitutes a spontaneous combustion incident, and includes a protocol for notifying Council and any other relevant stakeholders of spontaneous combustion incidents;
- d. Define what will trigger a review of the Spontaneous Combustion Management Plan. This is to include a Trigger Action Response Plan resulting from a spontaneous combustion incident that has as one of its outcomes a review of this Management Plan.

### **BLAST MANAGEMENT AND MONITORING**

#### 32. Blasting criteria and limits

(a) Time of blasting

Blasting operations on the premises must only take place between 9:00am and 5.00pm Monday to Friday inclusive, unless permission is granted by Council where special circumstances related to the safety of the mine requires a blast to be initiated outside these hours.

(b) Overpressure

The overpressure level from blasting operations on the premises must not:

- Exceed 115dB (Linear Peak) for more than 5% of the total number of blasts over a period of 12 months when measured at any residence on privately owned land or noise sensitive locations (such as a school or hospital); and
- Exceed 120dB (Linear Peak) at any time, when measured at any residence on privately owned land or noise sensitive location (such as a school or hospital).
- (c) Ground vibration (ppv)

Ground vibration peak particle velocity from the blasting operations at the premises must not:

- Exceed 5mm/s for more than 5% of the total number of blasts over a period of 12 months when measured at any residence on privately owned land or noise sensitive locations (such as a school or hospital); and
- Exceed 10mm/s at any time, when measured at any residence on privately owned land or noise sensitive location (such as a school or hospital)

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The overpressure and ground vibration limits above do not apply if the Applicant has a written agreement with the relevant owner(s) of these residences to generate higher blast levels, and Council has been advised in writing of the terms of the agreement. The blasting limits above do not apply to residences owned by the Applicant.

(d) Residences

The Applicant must investigate any blast ground vibration/air overpressure concerns associated with residential buildings which occur as a result of blasting at the mine in relation to the standards in the consent. Should such an investigation be necessary the Applicant shall advise Council the result of such investigation and any proposed preventive/remedial measures.

#### 33. Blasting/ Vibration Management

- (a) The Applicant must prepare and implement an updated Blast Management Plan, in consultation with EPA and DRE, to the satisfaction of Council. This plan must include, but not be limited to, the following matters:
  - (i) demonstration of consistency in compliance with blasting criteria at the existing mining operation
  - (ii) compliance blasting criteria;
  - (iii) mitigation measures, such as, adverse weather conditions;
  - (iv) monitoring methods and program in accordance with blast monitoring and inspection conditions;
  - (v) measures to be undertaken to demonstrate that the development is achieving best practice applicable to the development in minimising air blast overpressure, ground vibration levels, fumes and odours from blasting activities;
  - (vi) measures to protect underground utilities (eg: rising mains, subsurface telecommunication and electric cables, irrigation lines) and livestock on non-mine owned land;
  - (vii) measures to protect surface infrastructure where relevant, such as dams, rail infrastructure and power poles;
  - (viii) measures to consider the blasting activities from other neighbouring mines. This shall include details of the proposed measures to ensure that cumulative blast related impacts are managed, such as through consultation with the other mines to co-ordinate blasting activities;

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|             | (ix)                                 | procedures for the investigation of blast related<br>development, in consultation with other min<br>cumulative related impacts;   |  |
|             | (x)                                  | procedures for the notification of occupier residences prior to detonation of each blast;   | s of buildings and   |
|             | (xi)                                 | measures to ensure no damage by flyrock livestock and powerlines;   | to people, property,   |
|             | (xii)                                | location of blast monitors to assess blasting with and  | hin the development;   |
|             | (xiii)                               | when blasting is no longer required for thi<br>management plan will need to be revised to su<br>of Blast Monitoring (Cond. 34) and Blast<br>requirements listed in this consent.  | uspend requirements  |
| The A       | pplicar                              | nt must implement the approved Blast Manageme   | nt Plan.   |
|             | resider<br>Muswe<br>Counc<br>hotline | pplicant must, as a minimum, advise occupiences, unless otherwise requested by the occupiences, sandy Creek Road and other areas the future blasting events through a community in and the advertisement and promotion of the hother occupiences to the caller. | cupier, in the North<br>to the satisfaction of<br>nformation telephone |

(c) The Applicant must respond to complaints regarding blasting in accordance with its Environmental Management Strategy.

#### 34. Blast Monitoring

- (a) The Applicant must monitor ground vibration and air blast overpressure of all blasts at locations in accordance with the Blast Management Plan;
- (b) Ground vibration or airblast overpressure is to be monitored at the relevant noise sensitive sites (eg. Residences on privately owned land, hospitals, schools etc), selected in consultation with the EPA.
- (c) The Applicant must document the date, wind speed and direction, weather conditions, atmospheric conditions including cloud cover, location of blast and the quantity of explosive used for each blast.

# NOISE MANAGEMENT AND MONITORING

#### 35. Noise Control

Where temperature inversion conditions of Class F or higher are in place, as measured by the sites Meteorological Station, the following changes to the mining operations are to occur during the night time period:

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- i. Dozers are to be operated in first gear forward and reverse only (emergencies excepted)
- ii. The maximum of 3 haul trucks can be loaded and haul into the Open Cut No.2 at any one time.

#### 36. Relevant Noise Criteria for the development

 Table 4 Noise Limits (dB(A))

| Location             | Day             | Evening         | Night           |               |
|----------------------|-----------------|-----------------|-----------------|---------------|
|                      | LAeq(15 minute) | LAeq(15 minute) | LAeq(15 minute) | LA1(1 minute) |
| R1, R2, R3, R4, R17, | 35              | 35              | 35              | 45            |
| R26, R27, R28, R29,  |                 |                 |                 |               |
| R30, R31, R32, R33,  |                 |                 |                 |               |
| R34, R35, R37, R38,  |                 |                 |                 |               |
| R39.                 |                 |                 |                 |               |
| R5                   | 36              | 36              | 36              | 45            |
| R7                   | 38              | 38              | 38              | 45            |
| R11                  | 39              | 39              | 39              | 45            |
| R12                  | 39              | 39              | 39              | 45            |
| R13                  | 41              | 41              | 41              | 45            |
| R14                  | 38              | 38              | 38              | 45            |
| R15                  | 37              | 37              | 37              | 45            |
| R16                  | 36              | 36              | 36              | 45            |
| R18                  | 45              | 38              | 37              | 47            |
| R20                  | 45              | 38              | 37              | 47            |
| R21                  | 37              | 37              | 37              | 45            |
| R22                  | 39              | 39              | 39              | 45            |
| R23                  | 39              | 39              | 39              | 45            |
| R24                  | 40              | 40              | 40              | 45            |
| R25                  | 42              | 42              | 42              | 45            |
| R36                  | 38              | 38              | 38              | 45            |
| R40                  | 42              | 42              | 42              | 45            |
| R41                  | 42              | 42              | 42              | 45            |
| R42                  | 40              | 40              | 40              | 45            |

The limits in the noise table above do not apply if the Applicant has a written agreement with the relevant owner(s) of these residences to generate higher noise levels, and Council has been advised in writing of the terms of this agreement. The limits in the noise table above do not apply to residences owned by the Applicant.

#### 37. Noise Acquisition Criteria

The acquisition criteria for noise is defined by repeated demonstrated exceedance of the noise levels shown in Table 5 below:

| Location             | Day             | Evening         | Night           |
|----------------------|-----------------|-----------------|-----------------|
|                      | LAeq(15 minute) | LAeq(15 minute) | LAeq(15 minute) |
| R1, R2, R3, R4, R17, | 40              | 40              | 40              |
| R26, R27, R28, R29,  |                 |                 |                 |
| R30, R31, R32, R33,  |                 |                 |                 |
| R34, R35, R37, R38,  |                 |                 |                 |
| R39.                 |                 |                 |                 |
| R5                   | 41              | 41              | 41              |
| R7                   | 43              | 43              | 43              |
| R11                  | 44              | 44              | 44              |

 Table 5 Acquisition Noise Limits (dB(A))

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| R20 | 50 | 43 | 42 |
| R21 | 42 | 42 | 42 |
| R22 | 44 | 44 | 44 |
| R23 | 44 | 44 | 44 |
| R24 | 45 | 45 | 45 |
| R25 | 47 | 47 | 47 |
| R36 | 43 | 43 | 43 |
| R40 | 47 | 47 | 47 |
| R41 | 47 | 47 | 47 |
| R42 | 45 | 45 | 45 |

#### 38. Interpretation of Noise Levels

(a) For the purposes of the interpretation of noise levels detailed in the consent, refer to the following:

|                                  | Definition  |  |
|----------------------------------|---|--|
| Day                              | the period from 7am to 6pm Monday to<br>Saturday and 8am to 6pm Sundays and |  |
|                                  | ,                                     |  |
|                                  | Public Holidays   |  |
| Evening                          | the period from 6pm to 10pm   |  |
| Night                            | the period from 10pm to 7am Monday to                                       |  |
| Saturday and 10pm to 8am Sundays |   |  |
|                                  | Public Holidays   |  |

- (b) Noise from the project must be measured as outlined in the Project's Noise Management Plan. Monitoring locations identified in the Noise Management Plan are to be representative of the nearby residences.
- (c) Noise generated by the development must be measured in accordance with the relevant requirements of the NSW Industrial Noise Policy (as may be updated from time to time) or an equivalent NSW Government noise policy, and as amended by the details below:

#### Noise Compliance Assessment:

a) Applicable Meteorological Conditions

The noise criteria in Tables 4 & 5 are to apply under all meteorological conditions except for the following:

- i. Wind speeds greater than 3m/s at 10m above ground level; or
- ii. Stability category F temperature inversion conditions and wind speeds greater than 2 m/s at 10m above ground level; or
- iii. Stability category G temperature inversion conditions.

**Determination of Meteorological Conditions** 

Except for wind speed at microphone height, the data to be used for determining meteorological conditions must be that recorded by the meteorological station located on site.

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#### **Compliance monitoring**

- Attended monitoring must be used to evaluate compliance with the relevant conditions of this consent;
- During the period in which mining operations continue, this monitoring must be carried out at least 12 times a year, by an independent noise consultant, unless Council agrees otherwise;
- Unless otherwise agreed by Council, this monitoring must be carried out in accordance with the relevant requirements for reviewing performance set out in the NSW Industrial Noise Policy (as amended from time to time) or an equivalent NSW Government noise policy, in particularly the requirements relating to:
  - Monitoring locations for the collection of representative noise data;
  - Meteorological conditions during which collections of data is not appropriate;
  - Equipment used to collect noise data, and conformance with Australian Standards relevant to such equipment; and
  - Modifications to noise data collected, including for the exclusion of extraneous noise and/or penalties for modifying factors, apart from adjustments for:
    - i. Duration; or
    - ii. Low frequency noise, where it is demonstrated that the site contributed dBC dBA noise difference of greater than 15dBA is caused by distance attenuation only.

#### 39. Noise Management

The Applicant must prepare and implement a Noise Management Plan for the development, in consultation with EPA and to the satisfaction of Council. The plan must:

- (i) Demonstrate consistency in complying with noise criteria limits at the existing Applicants operation;
- (ii) Provide a diagram indicating the location of all noise monitoring locations;
- (iii) include details of the noise investigations conducted at monthly intervals (unless otherwise agreed by Council) by an independent noise consultant to evaluate, assess and report the La eq (15 minute) and La1(1 minute) noise emission levels due to the normal operations of the development;
- (iv) provide details regarding operating configuration, determining survey intervals, weather conditions and seasonal variations, selecting variations, locations, periods and times of measurements;

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|    |          |  |

- (v) detail management measures where the target noise level criteria of this consent are predicted to be exceeded, or are exceeded during Mining Operations. These measures must include but not be limited to:
  - \* The selection of representative monitoring locations within the community must be carried out in consultation with Council;
  - \* prompt response to any community issues of concern;
  - refinement of onsite noise mitigation measures and mine operating procedures where practical;
  - \* discussions with relevant property holders to assess concerns;
  - \* consideration of acoustical mitigation at receivers; and
  - \* consideration of negotiated agreements with property owners.
- (vi) outline measures to reduce the impact of intermittent, low frequency and tonal noise (including truck reversing alarms);
- (vii) survey and investigate noise reduction measures from plant and equipment annually, subject to noise monitoring results and/or complaints received, and report in the AEMR;
- (viii) specify the procedures for a noise monitoring program for the purpose of undertaking independent noise investigations;
- (ix) outline the procedure to notify property owners and occupiers likely to be affected by noise from the operations;
- maintain a protocol for handling noise complaints that include recording, reporting and acting on complaints, particularly where complaints are received and it is demonstrated noise levels are in excess of the criteria contained in this consent;
- (xi) as far as practicable, details of the interrelationship of this plan with the noise management plan for other mines in the vicinity; and
- (xii) accommodate for revised noise monitoring and management requirements once mining ceases and the closure and final rehabilitation process commences.

#### 40. Request for independent monitoring and acquisition

(a) Monitoring and Management

In the event that a landowner of a non-mine owned property considers that noise from the development, at their residence, is in excess of the noise level criteria listed in Table 4 (being an owner who has not earlier entered into an agreement with the applicant to exceed their noise levels) and Council is satisfied that an investigation is required, the Applicant must upon the receipt of a written request from Council:

(i) consult with the owner affected to determine their concerns;

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- (ii) make arrangements for, and bear the costs of, following consultation as far as reasonably practicable with other mine operations in the vicinity where necessary, appropriate independent noise investigations in accordance with the Noise Management Plan to the satisfaction of Council, to quantify the impact and determine the source of the effect and the contribution of the Project to the effect. The location, duration and timing of these noise assessments is to be in accordance with the Industrial Noise Policy or its replacement;
- (iii) modify the mining activity in accordance with a noise reduction plan prepared as part of the Noise Management Plan, if repeated exceedances are demonstrated by the investigation to result in part from the mine related activity. This must include:
  - \* introduction of additional controls, either on noise emission from individual sources on the site or on site operations or modification to operations, to ensure that the noise criteria detailed in Table 4 is achieved by reasonable and feasible measures, or;
  - \* seek agreement of the landowner, and in the case of cumulative impacts with the other relevant mines/ industrial operations in the area and the landowner, to provide such other forms of benefit or amelioration of the impacts of noise as may be agreed between the parties as providing acceptable compensation for the noise levels experienced.
- (iv) conduct follow up investigations to the satisfaction of Council, where necessary. If necessary, the follow up investigation should be conducted 3 months after the initial investigation to give the Applicant time to implement the recommended noise control.
- Note: Appendix E of the determination outlines the process for mitigation measures
- (b) Acquisition
  - (i) If the independent noise investigation(s) in (a) above confirms that the noise acquisition criteria detailed in Table 5 is being repeatedly exceeded by the development alone, and the measures detailed in the consent do not reduce the levels below this criteria, the Applicant must at the written request of the landowner acquire the relevant property. Acquisition shall be in accordance with the procedures set out in the consent.
  - (ii) If the independent noise investigations confirm that the noise acquisition criteria is being repeatedly exceeded as a result of cumulative impacts, including a contribution from the development, the Applicant must enter into consultation with neighbouring mines for the purchase of the affected property in accordance with the Acquisition procedure set out in the consent.

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- (c) If continued complaints and noise investigation confirm that the noise criteria is being exceeded as a result of the contribution from the development, but are less than the noise acquisition criteria, the Applicant must negotiate with the landowner until a resolution to the satisfaction of Council is reached.
- (d) If a landowner disputes any noise mitigation or other measures proposed by the Applicant in accordance with sub-clause (a) above, the matter shall be referred by either the Applicant or landowner to Council. Where possible the principles of the DP&E's Voluntary Land Acquisition and Mitigation Policy will apply. If the matter cannot be resolved within 21 days, the matter shall be referred to the Independent Dispute Resolution Process.
- (e) Further independent investigations shall cease if Council is satisfied that the relevant criterion in Condition 6.4.2 (a) is not being exceeded and are unlikely to be exceeded in the future.
- (f) The Applicant is to pay the full costs incurred in the monitoring, assessment, mitigation or acquisition costs to be implemented, if they apply.

#### **MONITORING/AUDITING**

#### 41. Third Party Monitoring/Auditing

Independent Environmental Auditing

(a) Every three years from the date of this consent until completion of activity in the application area, or as otherwise agreed by Council, the Applicant must conduct an environmental audit of the mining and infrastructure areas of the development.

Copies of the report shall be submitted by the Applicant to Council, EPA, DRE, OEH, DPI Water and the CCC within two weeks of the report's completion for comment.

- (b) The audit must:
  - i. assess compliance with the requirements of this consent, the EPL, mining leases and water licences;
  - ii. include consultation with Council, EPA, DRE and DPI Water.
  - iii. assess environmental performance of the development and whether it is complying with the management plans and the EMS;
  - iv. review the effectiveness of the environmental management of the mine, including any mitigation works;
  - v. be carried out at the Applicant's expense; and
  - vi. be conducted by a duly qualified independent person or team whose appointment has been endorsed by Council.

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- (c) Council may, after reviewing the report and considering any submission made by the relevant government agencies, CCC and Applicant on the report, notify the Applicant of any requirements with regard to any recommendations in the report. The Applicant shall comply with any reasonable requirements within such time as Council may require.
  - **Note:** Council may agree to a request from the Applicant that the Independent Environmental Audit requirement under this condition be integrated with similar audits required in accordance with other licenses and approvals applicable to MCC

#### REPORTING

#### 42. Annual Environmental Management Report (AEMR)

(a) The Applicant must, throughout the mining operations and for five years after the completion of mining in the application area (or as otherwise agreed by Council), prepare and submit an Annual Environmental Management Report (AEMR) to the satisfaction of Council and DRE.

The AEMR must review the performance of the mine against the Environmental Management Strategy and the relevant, management plans, the conditions of this consent, and other licences and approvals relating to the mine. To enable ready comparison with the predictions made in the EIS, diagrams and tables, the report must include, the following matters:

- a detailed compliance review of the performance of the project against conditions of this consent and statutory approvals. From this review a table will be provided in the AEMR report that identifies any noncompliances over the last year, and describes what actions were (or are being) taken to ensure compliance.
- (ii) assess the project against predictions made in the EIS and the terms and commitments in the documents listed in the consent.
- (iii) a review of the effectiveness of the environmental management of the mine in terms of EPA, DRE, DPI Water and Council requirements;
- (iv) review the results of environmental monitoring required under this consent or other approvals, including interpretations and discussion;
- (v) identification of trends in monitoring results;
- a listing of any variations obtained to approvals applicable to the DA area during the reporting year;
- (vii) the water budget for the year;
- (viii) a summary report on the yearly review of activities to manage spontaneous combustion throughout the reporting year;

(ix) production and employment levels and any changes from the previous reporting year;

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- (x) status of rehabilitation and revegetation works; and
- (xi) environmental management targets and strategies for the next year, taking into account identified trends in monitoring results.
- (b) In preparing the AEMR, the Applicant must:
  - (i) consult with Council;
  - (ii) comply with any reasonable requirements of Council or other relevant government agency; and
  - (iii) ensure that the first report is completed and submitted within 3 months of the end of the reporting year, or at a date determined by Council in consultation with the DRE.
- (c) The Applicant must ensure that copies of each AEMR are submitted to Council, DRE, DPI Water, EPA, OEH, and CCC, and made available for public information at Council within fourteen days of submission to these authorities.

## 43. Incident Reporting

The Applicant must notify Council and any other relevant agencies immediately of any environmental incident. Within 7 days of the date of the incident, the Applicant shall provide Council and any relevant agencies with a detailed report on the incident, and such further reports as may be reasonably requested.

## 44. Access to Information

Within 3 months of the approval of this Continuation Project Modification, the Applicant must:

- Make copies of the following publicly available on its website:
- The EIS and subsequent environmental assessments, as listed in the consent;
- Current statutory approvals for the development;
- Approved strategies and plans required under the conditions of this consent;
- A summary of the monitoring results of the development, reported in accordance with the specifications in any conditions of this consent, or any approved plans ;
- A complaints register, which is updated monthly;
- Minutes of the CCC meetings;
- The Annual Environmental Management Report (for the last 5 years);
- Any Independent Environmental Audit of the development, and the Applicant's response to the recommendations in any audit;
- Any other matter required and agreed with Council; and
- Keep this information up to date.

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#### COMMUNITY CONSULTATION

#### 45. Community Consultative Committee

The Applicant must:

- (a) (i) Maintain a CCC for the development. Selection of community representatives and the chairperson shall be in accordance with Council's Community Consultative Committee Guidelines.
  - (ii) Representatives from relevant government agencies or other individuals may be invited to attend meetings as required by the Chairperson. The Committee may make comments and recommendations about the preparation and implementation of environmental management plans, consider compliance with conditions of this consent and other matters relevant to the operation of the mine during the term of the consent. The Applicant shall ensure that the Committee has reasonable access to the necessary plans for such purposes. The Applicant shall consider the recommendations and comments of the Committee and provide a response to the Committee.
- (b) The Applicant must, at its own expense:
  - nominate two (2) company representatives to attend all meetings of the Committee;
  - provide to the Committee regular information on the progress of work and monitoring results;
  - (iii) promptly provide to the Committee such other information as the Chair of the Committee may reasonably request concerning the environmental performance of the development;
  - (iv) provide reasonable access for site inspections by the Committee; and
  - (v) provide meeting facilities for the Committee, and take minutes of Committee meetings. Draft minutes shall be available for public inspection at Council within 14 days of the meeting, or as agreed by the Committee.
- **NB**: The CCC is an advisory committee. The Council and other agencies are responsible for ensuring the Applicant complies with the consent.

#### 46. Complaint Handling Procedures

- (a) The Environmental Officer employed by the mine shall be responsible for:
  - establishing and maintaining a system for recording complaints with respect to mine operations on a dedicated and publicly advertised telephone line, 24 hours per day 7 days per week, entering complaints or comments in an up to date log book, or other suitable data base, and ensuring that an initial response is provided to the complainant within 24 hours;

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- (ii) providing a report of complaints received with respect to the operation of the mine, every 12 months throughout the life of the project to Council, EPA, DRE, and CCC, or as otherwise agreed by Council. A summary of this report shall be included in the AEMR.
- (iii) consulting with the environmental officer(s) employed by other mines in the vicinity to seek to co-ordinate a response to any complaints received regarding the operations of MCC and other mines.

#### **APPLICANT'S OBLIGATIONS**

#### 47. Area of Mitigation – Properties requiring Mitigation

Within one month of the date of the approval of the Continuation Project Modification the Applicant must:

- i. notify in writing the owners of any residences being listed in Table 6 below that they have the right to request the Applicant to ask for additional noise and/or air quality mitigation measures (as applicable) to be installed at their residence at any stage of the development until mining operations are completed on site.
- ii. send a copy of the NSW Health fact sheet entitled "Mine Dust and You" (as may be updated from time to time) to the owners and or existing tenants of any land where the predictions in the SEE (2016) identify that dust emissions generated by the development are likely to be greater than the relevant air quality criteria in this consent at any time during the life of the development.

#### Table 6 - Land subject to additional mitigation upon request

| Mitigation Basis | Characterisation of Impact | Land                    |
|------------------|----------------------------|-------------------------|
| Noise            | Moderate                   | 11,12,13,24,25,40,41,42 |
| Air Quality      | N/A                        | 25, 40                  |

#### Notes

To interpret the land referenced to in Table 6 see Appendix C of this consent.

Definitions of Moderate mitigation are given in the DPE's Voluntary Land Acquisition and Mitigation Policy.

Where the "Secretary" is referred to in the DP&E's Voluntary Land Acquisition and Mitigation Policy, it should be replaced with Council for the purposes outlined in the document and this consent.

Upon receiving a written request from the owner of any residence on the land in the table above, the Applicant must implement additional noise and/or air quality mitigation measures as required at or in the vicinity of the residence in consultation with the landowner. These measures must be consistent with measures outlined in the DPE's Voluntary Land Acquisition and Mitigation Policy. They must also be reasonable and feasible and proportionate with the level of predicted impact.

If within 3 months of receiving this request from the owner, the Applicant and the owner cannot agree on the measures to be implemented, or there is a dispute about the implementation of these measures, then either party may refer the matter to Council for resolution, which must then determine the dispute based on the principles outlined above.

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#### 48. Adaptive Management

The applicant must assess and manage development related risks to provide that there are no exceedances of criteria and/or performance measures in this consent. Any exceedances of these criteria and/or performance measures constitutes a breach of this consent and may be subject to penalty or offence provisions under the EP&A Act or EP&A Regulation.

Where any exceedances of these criteria and/or performance measures has occurred, the Applicant must, at the earliest opportunity:

- 1. Take all reasonable and feasible steps to measure that the exceedances ceases and does not recur;
- 2. Consider all reasonable and feasible options for remediation (where relevant) and submit a report to Council describing those options and any preferred remediation measures or other course of action; and
- 3. Implement remediation measures as agreed with Council.

## 49. Area of Affectation – Land Acquisition

- a) Within three (3) months of receiving a written request from a landowner with acquisition rights under Condition 30(c) or 40(b)(i) of this consent, the Applicant must make a binding written offer to the landowner based on:
  - the current market value of the owner's interest in the land at the date of the written request as if the land was unaffected by the Project the subject of this DA, having regard to:
    - the existing and permissible use of the land in accordance with the planning instruments in force at the date of the written request; and
    - the presence of improvements on the land and/or any Council approved building or structure which is substantially commenced at the date of the request and is due to be completed subsequent to that date, but excluding any improvements that have resulted from the implementation of noise and/or dust mitigation measures that have been paid for by the Applicant pursuant to this consent;
  - the owner's reasonable compensation for disturbance allowance and relocation costs within the Muswellbrook Local Government Area, or within such other nearby location as may be determined by Council in exceptional circumstances; and
  - (iii) the owner's reasonable costs for obtaining legal advice and expert witnesses for the purposes of determining the acquisition price of the land and the terms upon which it is to be acquired.

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- b) However, if the Applicant and landowner cannot agree on the acquisition price of the land and/or the terms upon which the land is to be acquired, then either party may refer to matter to Council for resolution.
  - (i) Upon receiving such a request, the Council shall request the President of the Australian Property Institute to appoint a qualified independent valuer or Fellow of the Institute, who shall determine, after consideration of any submissions from the owners and the Applicant, a fair and reasonable acquisition price for the land as described in sub-clause (b) and/or terms upon which it is to be acquired.
- c) The Applicant shall bear the costs of any survey assessment requested by the independent valuer, and the costs of determination referred to in sub clause (b).
- d) Upon receipt of a determination pursuant to sub-clause (b), the Applicant shall, within 14 days, offer in writing to acquire the relevant land at a price not less than the determination. Should the Applicant's offer to acquire not be accepted in writing by the owner within six (6) months of the date of such offer, the Applicant's obligations to purchase the property shall cease, unless the Council, acting reasonably, determines otherwise.
- e) In the event that the Applicant and the land owner agree that only part of the land is to be transferred to the Applicant, the Applicant shall pay all reasonable costs associated with applying for Council approval to any plan of subdivision and registration of the plan at the Office of the Registrar-General.
- f) The provisions of this condition do not apply to a land owner who is the holder of an authority under the Mining Act, 1992.
- g) Notwithstanding any other condition of this consent, the Applicant may, upon request of the landowner, acquire any property affected by the project during the course of this consent on terms agreed to between the Applicant and the landowner.
- Note: Appendix F of the determination sets out the process for land acquisition.

#### 50. Cumulative Impact Management

- (a) In the event that the cumulative impact of noise or dust contributed by the operation of the Project and any future mining activities/ industrial operations, at any residence on privately owned land in the vicinity of the operation, is in excess of the noise or dust acquisition criteria contained in these conditions of consent, the Applicant must endeavour, as far as reasonably practicable, to negotiate with the other companies and landowner to determine appropriate arrangements to reasonably contribute to the management of the identified cumulative impacts to the satisfaction of Council in proportion to their contributions to the impact.
- (b) If agreement cannot be reached from negotiations undertaken in accordance with subclause (a), then, with the agreement of the other

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contributing mines and future mining or industrial operations, the matter is to be referred to Council by either the Applicant or landowner. If the matter is not resolved within 21 days of the referral, the matter will be referred to an Independent Dispute Resolution Process as determined by Council, and resolved as determined by Council. The Independent Dispute Resolution Process shall determine the responsibilities of each of the mining and/or present or future companies in accordance with subclause (a) above and actions to be undertaken. The recommendation of the Independent Dispute Resolution Process shall be determined by Council.

(c) Prior to referral to the Independent Dispute Resolution process, the Applicant shall provide the Director-General a report detailing the Applicant's reasons for being unable to reach agreement with the other parties, and the reasons for the criteria exceedances with demonstration that the Project activities are not the sole cause of the exceedance.

#### Note:

- 1. The Applicant shall endeavour to enter into an agreement with other nearby mines/ industrial operations to address any potential cumulative management and joint acquisition requirements of this development consent;
- 2. The intent of this condition is to encourage mining companies to form a voluntary agreement regarding the management and acquisition of properties subject to cumulative impacts;
- 3. Council will be requiring joint acquisition requirements in all development consents where cumulative impacts are known to occur, and may potentially occur, as a result of mine or industrial related activities.

#### 51. Contributions to Council

Within 6 months of the date of the approval of Modification 8, unless Council agrees otherwise, the Applicant must enter into a VPA with Council in accordance with:

- Division 6 of Part 4 of the EP&A Act; and
- The terms of the Applicants offer in its letter to Council dated 30 September 2016.

#### FURTHER APPROVALS AND AGREEMENTS

#### 52. Building Code of Australia

The Applicant must ensure that all new buildings and structures, and any alterations or additions to existing buildings and structures, are constructed in accordance with the relevant requirements of the BCA and MSB.

#### Notes

Under Part 4A of the EP&A Act, the Applicant is required to obtain construction and occupation certificates (where applicable) for the proposed building works;

Part 8 of the EP&A regulation sets out requirements for the certification of the development; and The development is located in the Muswellbrook Mine Subsidence District, and under Section 15 of the Mine Subsidence Act 1961, the Applicant is required to obtain the MSB's approval before constructing any improvements on the site.

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## 53. Demolition of Structures

The Applicant shall ensure that all demolition work on site is carried out in accordance with AS 2601-2001: The Demolition of Structures, or its latest version.

# 54. Protection of Public Infrastructure

Unless the Applicant and the applicable authority agree otherwise, the Applicant must:

- (a) Repair, or pay the full costs associated with repairing, any public infrastructure that is damaged by the project; and
- (b) Relocate, or pay the full costs associated with relocating, any public infrastructure that needs to be relocated as a result of the project,

except where such works have been compensated through the Mining Act or the Mine Subsidence Compensation Act 1961, or to damage to roads caused as a result of general road usage.

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| Appendix A – So | chedule of land |
|-----------------|-----------------|
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| Schedule of Land |                     |                                    |  |
|------------------|---------------------|------------------------------------|--|
| Lot              | Deposited Plan (DP) | Owner                              |  |
| 681              | 611756              | Muswellbrook Coal Company<br>(MCC) |  |
| 682              | 611756              | MCC                                |  |
| 1                | 571355              | MCC                                |  |
| 1                | 723294              | MCC                                |  |
| 2                | 723294              | MCC                                |  |
| 97               | 752484              | MCC                                |  |
| 1                | 45525               | MCC                                |  |
| 82               | 231202              | MCC                                |  |
| 811              | 534516              | MCC                                |  |
| 58*              | 752484              | MCC                                |  |
| 59*              | 752484              | MCC                                |  |
| 60*              | 752484              | MCC                                |  |
| 62*              | 752484              | MCC                                |  |
| 61*              | 1113302             | MCC                                |  |
| 1*               | 1004305             | MCC                                |  |
| 70*              | 752484              | MCC                                |  |
| 71*              | 752484              | MCC                                |  |
| 1*               | 184481              | MCC                                |  |
| 98*              | 752484              | MCC                                |  |
| 3*               | 571355              | MCC                                |  |
| 1*               | 614842              | MCC                                |  |
| 2*               | 614842              | MCC                                |  |
| 39*              | 793463              | MCC                                |  |
| 1*               | 45194               | MCC                                |  |
| 5*               | 26760               | MCC                                |  |
| 6*               | 26760               | MCC                                |  |

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|-----------------|---------------------|----------------------------|
| Lot             | Deposited Plan (DP) | Owner                      |
| 20*             | 16352               | MCC                        |
| <del>102*</del> | <del>578075</del>   | MCC                        |
| <u>3*</u>       | <u>1220491</u>      | MCC                        |
| <u>4*</u>       | <u>1220491</u>      | MCC                        |
| 71*             | 629631              | MCC                        |
| 101*            | 1148216             | MCC                        |
| 1*              | 46760               | MCC                        |

Notes:

1. \*Part of block within DA Boundary

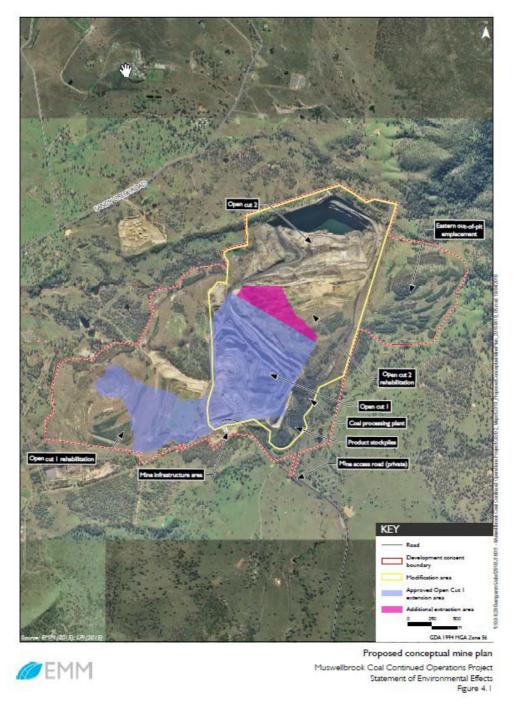
2. Schedule of Land applies to those areas of land within the DA Boundary

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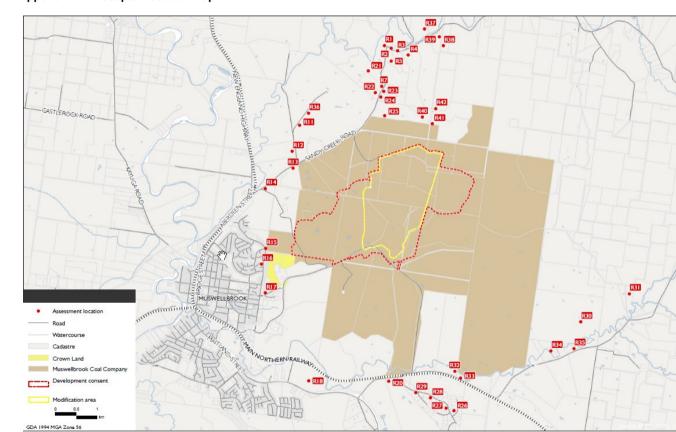
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Appendix C – Receptor location map

Land ownership and assessment locations

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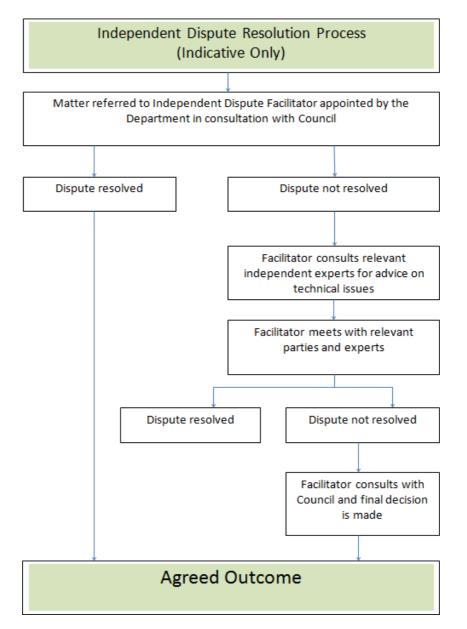
Attachment 9.1.1.2 Attachment B - Draft Conditions DA-2002-205-MOD10

| RECEPTOR<br>NO. | HOUSE_NO | STREET_NAME       | STREET_TYPE | SUBURB_NAME  | LOT_SECTION_DP          |
|-----------------|----------|-------------------|-------------|--------------|-------------------------|
| 1               |          | SANDY CREEK       | RD          | MUSWELLBROOK | LOT: 5 DP: 707890       |
| 3               |          | SANDY CREEK       | RD          | MUSWELLBROOK | LOT: 301 DP: 1026063    |
| 4               | 578      | SANDY CREEK       | RD          | MUSWELLBROOK | LOT: 5 DP: 802081       |
| 5               | 540      | SANDY CREEK       | RD          | MUSWELLBROOK | LOT: 165 DP: 633737     |
| 7               | 409      | SANDY CREEK       | RD          | MCCULLYS GAP | LOT: 2 DP: 593335       |
| 12              | 29       | ST HELIERS        | RD          | MUSWELLBROOK | ALT: A DP: 182336       |
| 13              | 120      | SANDY CREEK       | RD          | MUSWELLBROOK | LOT: 22 ALT: DP: 715655 |
| 14              | 30       | SANDY CREEK       | RD          | MUSWELLBROOK | LOT: 1391 DP: 590130    |
| 15              | 4        | COMMON            | RD          | MUSWELLBROOK | LOT: 217 DP: 752484     |
| 16              | 67A      | QUEEN             | ST          | MUSWELLBROOK | LOT: 5400 DP: 1167805   |
| 17              | 100      | QUEEN             | ST          | MUSWELLBROOK | LOT: 622 DP: 856333     |
| 18              | 8988     | NEW ENGLAND       | HWY         | MUSWELLBROOK | LOT: 8 DP: 1148932      |
| 20              | 90       | MUSCLE CREEK      | RD          | MUSWELLBROOK | LOT: 2 DP: 241406       |
| 21              | 527      | SANDY CREEK       | RD          | MUSWELLBROOK | LOT: 1 DP: 1089092      |
| 22              | 389      | SANDY CREEK       | RD          | MCCULLYS GAP | LOT: 151 DP: 571192     |
| 23              | 408      | SANDY CREEK       | RD          | MUSWELLBROOK | LOT: 163 DP: 597065     |
| 24              | 388      | SANDY CREEK       | RD          | MCCULLYS GAP | LOT: 1622 DP: 852356    |
| 25              | 360      | SANDY CREEK       | RD          | MCCULLYS GAP | LOT: 41 DP: 1112699     |
| 26              | 20       | TOP KNOT          | PL          | MUSWELLBROOK | LOT: 322 DP: 1105347    |
| 27              | 144      | WOODLAND<br>RIDGE | RD          | MUSCLE CREEK | LOT: 204 DP: 1078237    |
| 28              | 102      | WOODLAND<br>RIDGE | RD          | MUSCLE CREEK | LOT: 15 DP: 1044551     |
| 29              | 56       | WOODLAND<br>RIDGE | RD          | MUSCLE CREEK | LOT: 21 DP: 1044551     |
| 30              |          | MUSCLE CREEK      | RD          | MUSWELLBROOK | LOT: 4 DP: 136691       |
| 31              | 765      | MUSCLE CREEK      | RD          | MUSWELLBROOK | LOT: 100 DP: 1047374    |
| 32              | 261      | MUSCLE CREEK      | RD          | MUSWELLBROOK | LOT: 1 DP: 26760        |
| 33              |          | MUSCLE CREEK      | RD          | MUSWELLBROOK | LOT: 1 DP: 321983       |
| 34              | 549      | MUSCLE CREEK      | RD          | MUSWELLBROOK | LOT: 200 DP: 1179819    |
| 35              | 589      | MUSCLE CREEK      | RD          | MUSWELLBROOK | LOT: 1 DP: 335206       |
| 37              | 641      | SANDY CREEK       | RD          | MUSWELLBROOK | LOT: 302 DP: 1026063    |
| 38              |          | SANDY CREEK       | RD          | MUSWELLBROOK | LOT: 442 DP: 582226     |
| 39              | 660      | SANDY CREEK       | RD          | MUSWELLBROOK | LOT: 3 DP: 802081       |
| 40              | 376      | SANDY CREEK       | RD          | MCCULLYS GAP | LOT: 43 DP: 1112699     |
| 41              | 374      | SANDY CREEK       | RD          | MCCULLYS GAP | LOT: 44 DP: 1112699     |
| 42              |          | SANDY CREEK       | RD          | MCCULLYS GAP | LOT: 42 DP: 1112699     |
| 11 & 36         | 70       | ST HELIERS        | RD          | MUSWELLBROOK | LOT: 23 ALT: DP: 220328 |

# Appendix C – Receptor location details

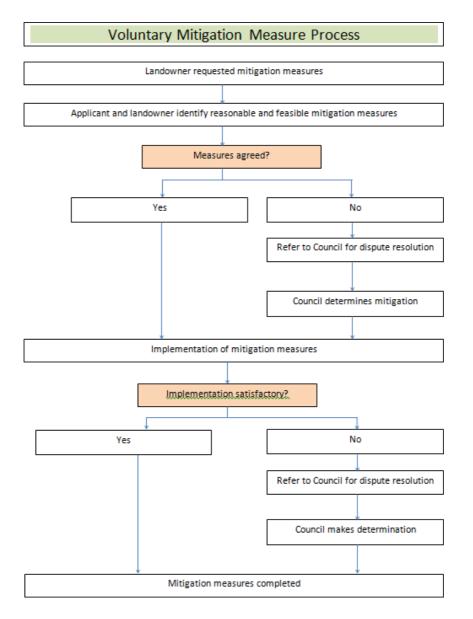
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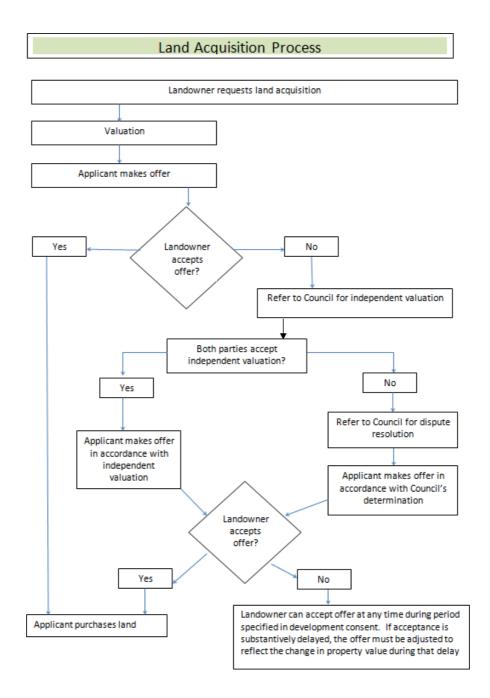
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## Appendix F – Land Acquisition Process



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It should be noted that this approval remains effective from the original date of consent, 11 August 2003.

Section 96 confers on an applicant who is dissatisfied with this determination a right of appeal to the Land and Environment Court under Section 96(6) of the Environmental Planning and Assessment Act 1979 (except in the case of State Significant Development). This appeal provision is pursuant to the Land and Environment Court Rules and is exercisable within sixty (60) days of the date of determination.

Should you require further information in relation to this matter, please contact me on 02 6549 3777.

# APPROVED AT COUNCIL MEETING HELD 26 OCTOBER 2016

Donna Watson Development Planner

M:Technical Services/Environmental/APPROVALS AND CONSENTS/DEVELOPMENT CONSENTS/DA 205-2002\_No.1 OC Extension - 1September/2003/DA 2002-205 Notice of Amended Determinations Mod 8 Final approved 2016.doc

Attachment 9.1.1.2 Attachment B - Draft Conditions DA-2002-205-MOD10



# **Muswellbrook Coal Mine** DA 205/2002 Modification Report



# PREPARED BY:



Integrated Environmental Management Australia Pty LTD

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# DISCLAIMER

This report has been prepared by Integrated Environmental Management Australia (IEMA) with all reasonable skill, care and diligence, and taking account of the timescale and resources allocated to it by agreement the Client. Information reported herein is based on the interpretation of data collected, which has been accepted in good faith as being accurate and valid.

This report is for the exclusive use of the Client. No warranties or guarantees are expressed or should be inferred by any third parties. This report may not be relied upon by other parties without written consent from IEMA.

IEMA disclaims any responsibility to the Client and others in respect of any matters outside the agreed scope of the work.

# **DOCUMENT CONTROL**

| Reference                                    | Date           | Prepared     | Authorised    |
|--|----------------|--------------|---------------|
| DA 205/2002 Modification Report              | September 2022 | Jill Johnson | Andrew Hutton |
| Final draft following client review          | September 2022 | Jill Johnson | Andrew Hutton |
| Final Report                                 | September 2022 | Jill Johnson | Andrew Hutton |
| Updated report following Council<br>feedback | September 2022 | Jill Johnson | Andrew Hutton |



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# 1. INTRODUCTION

This Modification Report has been prepared by Integrated Environmental Management Australia (IEMA) on behalf of Muswellbrook Coal Company Limited (MCC) to support an application to Muswellbrook Shire Council (MSC) to modify Development Consent DA 205/2002 (as modified) pursuant to Section 4.55(1A) of the NSW *Environmental Planning and Assessment Act 1979* (EP&A Act).

# 1.1. Background

Muswellbrook Coal Mine (MCM) is an open cut coal mine located 3 kilometres (km) north-east of the town of Muswellbrook, in the Muswellbrook Local Government Area (LGA) in New South Wales (NSW) as shown on **Figure 1**. MCM is operated by MCC, a wholly owned subsidiary of Idemitsu Australia Pty Limited (IA). IA has been operating in Australia since 1978 and is an Australian subsidiary of Japanese company Idemitsu Kosan Company Limited.

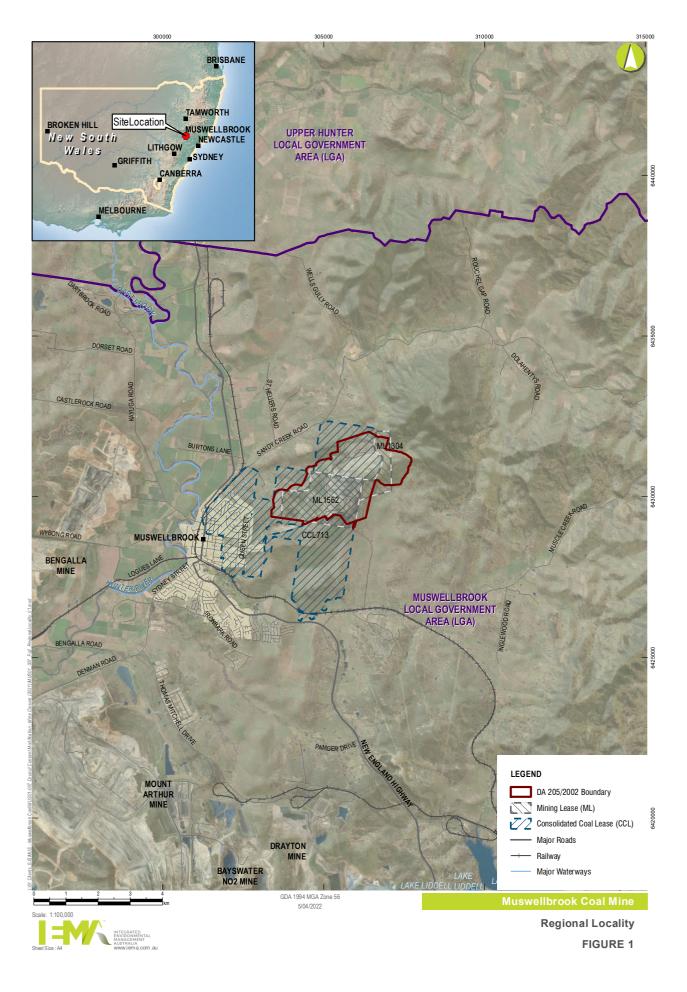
MCC has a long association with coal mining at Muswellbrook, with underground coal mining commencing in 1907 and open cut operations in 1944. Underground operations ceased in the late 1990s; however open cut mining continues.

On 1 September 2003, Development Consent for DA 205/2002 was granted by Muswellbrook Shire Council (MSC) to extend the former MCC No.1 Open Cut. The No.1 Open Cut Extension commenced operations in March 2005 and has a capacity to produce up to 2,000,000 tonnes coal per annum. This approval has subsequently been modified on several occasions with the latest modification granted in 2016 to allow mining in an area known as the "Continuation Project" and to extend the life of the mining operations to 2022. MCC also operates under a Rehabilitation Management Plan (RMP) and Environment Protection Licence (EPL) 656, which are available on the MCC website.

MCM operates as a truck and excavator multi-seam coal mine with a production limit of 2 million tonnes per annum. Coal is crushed and washed then stockpiled onsite (**Figure 2**) before being hauled to the Ravensworth Coal Terminal (RCT), where it is then transported by rail to the Port of Newcastle for export. The haulage route is shown in **Figure 3**.

Mining operations are approved to be carried out until 31 December 2022.









### 1.2. Overview of Modification

Coal mining and coal processing will cease by December 2022, however, MCC is seeking to continue the handling and storage (i.e., stockpiling, hereinafter referred to as "storage") of coal on site using existing infrastructure and transporting of coal off site until 31 March 2023. The key drivers for the modification of conditions are:

- Identification of additional coal the remaining coal resource has been found to be greater than what was modelled, and this coal would become sterilised if not mined by MCC prior to closure of the site.
- **Unseasonal weather** higher than average local and regional rainfall and associated flooding events along the rail network have resulted in disruptions and some delays in the mining, processing and transporting coal at the site.
- Equipment and labour shortages MCC's coal haulage contractor was unable to extend their haulage contract due to other commitments and during the transition to an alternate option, MCC has had difficulties sourcing haulage contractors with equivalent capacities, in terms of size of trucks and number of trucks. This has resulted in reduced coal haulage volumes.

Due to these unforeseen circumstances the Site is accommodating more stockpiled coal than anticipated. MCC has been unable to facilitate coal transportation at expected capacities because of weather and contractor issues. Accordingly, MCC expects that it cannot transport all coal offsite by the current December 2022 deadline under the current consent. In anticipation, MCC is seeking a short extension of time for coal handling and storage purposes only so that it can lawfully transport the coal offsite and prepare the site for its decommissioning and rehabilitation phase.

**Section** Error! Reference source not found. details the proposed changes to operations and the proposed changes to the development consent conditions.

Modification to Development Consent DA 205/2002 is sought under the provisions of 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) due to the minor nature of the changes and given the proposed modification is likely to have minimal environmental impact.

### 1.3. MSC Requirements

MCC met with Council on 8 September 2022 to advise that they were seeking to make a modification to DA 205/2002. Council requested that MCC provide them with a letter to outline the request. This letter was submitted to Council on the 12 September 2022. The matter was further discussed at Council's State Significant Development (SSD) Committee meeting on the 19 September 2022. At the meeting, MCC confirmed that extraction and processing of coal would be completed by 31 December 2022 (per the current consent) and that the modification applied to handling, storage and transport of coal only.

Council provided feedback to MCC in an email dated 21 September 2022 regarding this modification of DA 205/2002 including what aspects they would like to see addressed. Further feedback was provided by Council in an email dated 23 September 2022 regarding additional aspects to be included in the modification report.

The Modification Report was submitted via the Planning Portal on 27 September 2022 and MCC received a subsequent request from Council on 28 September 2022 to modify and resubmit the Modification Report.

**Table 1** includes a summary of the Council requirements and how they have been addressed in this

 Modification Report.



| MSC | Requirement  | Date of Request   | Where addressed   |
|-----|--|---|---|
| 1.  | Addresses Section 4.55 of the Environmental Planning and Assessment Act 1979;  | 21 September 2022   | This report addresses<br>Section 4.55 of the<br>Environmental Planning<br>and Assessment Act 1979 |
| 2.  | Is prepared generally in accordance with DPE's<br>'State significant development guidelines –<br>preparing a modification report' (Dec, 2021),<br>specifically noting Section 2.2;   | 21 September 2022   | This report has been<br>prepared to be generally<br>consistent with these<br>guidelines.          |
|     |  | No longer applicable. Refer<br>to MSC Requirements 9,<br>10 and 11 below. |   |
| 4.  | Demonstrates that the remaining activities can be<br>undertaken in the required timeframe (using<br>remaining product coal stockpile volumes,<br>number of truck movements / capacity and<br>number of employees required);  | 23 September 2022   | Section 3.2.  |
| 5.  | Clarifies whether the remaining activities will be<br>undertaken 24 hours a day, 7 days a week;  | 23 September 2022   | Section 3.2 and Appendix A.   |
| 6.  | Considers a commitment that maintenance<br>requirements for Muscle Creek Road under Cond<br>10 will continue as per the existing arrangements<br>with Council; and that any change to maintenance<br>arrangements will be addressed in a separate<br>modification currently in the planning process.   | 23 September 2022   | Section 3.2.  |
| 7.  | <ul> <li>Could you please also include two figures in the Modification Report showing:</li> <li>The location of the product coal storage areas at an appropriate scale, see attached for example scale; and</li> <li>Haulage Route to RCT (for completeness).</li> </ul>   | 23 September 2022   | Section 1.1   |
| 8.  | Also, please note that the Submissions Report for<br>the separate modification to "Realign<br>Rehabilitation Objectives" will need to incorporate<br>the captioned modification by either updating with<br>changes (if approved) or including as "proposed<br>changes subject to a separate modification",<br>depending on the submission timeline from MCC. | 23 September 2022   | Noted. To be addressed in<br>the separate "Realign<br>Rehabilitation Objectives"<br>modification. |
| 9.  | Leave the definition of Mining Operations as per<br>the approved definition i.e Includes the removal of<br>overburden and extraction, processing, handling,<br>storage and transportation of coal on site;   | 28 September 2022   | Proposal to amend<br>definition of Mining<br>Operations removed from<br>Modification Report.      |

### Table 1 – MSC Requirements for Modification of DA 205/2002



| MSC | Requirement   | Date of Request   | Where addressed  |
|-----|---|-------------------|--|
| 10. | Remove the proposed definition for "Coal Haulage";  | 28 September 2022 | Proposed inclusion of a definition for Coal Haulage removed from Modification Report.  |
| 11. | Update Condition 4 "Period of Approval" to read<br>generally as follows – 'The Applicant may carry<br>out mining operations until 31 December 2022,<br>with the exception of handling, storage and<br>transportation of coal. Handling, storage and<br>transportation of coal may be carried out until 31<br>March 2023.' | 28 September 2022 | Proposed modification to<br>condition wording updated<br>to align with Council's<br>request.   |
| 12. | Remove the change to Condition 10. The reference to "coal haulage" will also need to be removed from Section 3.2 (end of first paragraph).  | 28 September 2022 | Proposal to amend<br>condition 10 removed from<br>Modification Report.<br>Reference to coal haulage<br>removed from <b>Section 3.2</b> . |



# 2. STRATEGIC CONTEXT

As identified in **Section 1.2**, coal mining and coal processing will cease in December 2022, however, MCC is seeking to continue the handling and storage of coal on site using existing infrastructure and transporting of coal off site until 31 March 2023. The proposed modification is to account for delays caused by equipment/labour shortages and unseasonal weather as well as identification of additional coal resources. There will be no changes to approved mining operations, except for a three-month extension for coal storage, handling and transport of coal.



### 3. DESCRIPTIONS OF THE MODIFICATIONS

### 3.1. Proposed Changes to DA 205/2002 Conditions

The key drivers for modifications to conditions in DA 205/2002 have been identified as:

- Identification of additional coal the remaining coal resource has been found to be greater than what was modelled, and this coal would become sterilised if not mined by MCC prior to closure of the site.
- **Unseasonal weather** higher than average local and regional rainfall and associated flooding events along the rail network have resulted in disruptions and some delays in the mining, processing and transporting coal at the site.
- Equipment and labour shortages MCC's coal haulage contractor was unable to extend their haulage contract due to other commitments and during the transition to an alternate option, MCC has had difficulties sourcing haulage contractors with equivalent capacities, in terms of size of trucks and number of trucks. This has resulted in reduced coal haulage volumes.

Due to these unforeseen circumstances the Site is accommodating more stockpiled coal than anticipated. MCC has been unable to facilitate coal transportation at expected capacities because of weather and contractor issues. Accordingly, MCC expects that it cannot transport all coal offsite by the current December 2022 deadline under the current consent. In anticipation, MCC is seeking a short extension of time for coal handling and storage purposes only so that it can lawfully transport the coal offsite and prepare the site for its decommissioning and rehabilitation phase.

**Appendix A** details the proposed changes to the development consent conditions along with the reasoning and justification for the proposed changes.

### 3.2. Proposed Changes to Mining Operations

The site is currently approved to conduct mining operations until 31 December 2022. For the reasons noted in **Section 3.1**, the site requires a continuation of coal storage, handling and transport until 31 March 2023. Mining operations and coal processing will be completed by 31 December 2022, as per the current approval, and the proposed extension to coal storage, handling and transport will not affect the existing decommissioning and rehabilitation schedule for the site. Coal haulage operations will continue to be undertaken up to 24 hours a day, 7 days per week, as approved. The maintenance of Muscle Creek Road under Condition 10 of DA 205/2002 will continue as per approved arrangements with Council.

Based on the current haulage fleet, approximately 110,000 tonnes of product coal is expected to be stockpiled at the site at the end of December 2022 and it is anticipated that all coal will be hauled from site by the end of March 2023. Haulage capacity is expected to increase during this time which may vary this expected completion date.

The current haulage fleet comprises four trucks, each completing 10 round trips per day. If the fleet is to increase as expected, this will increase to eight trucks, each completing 10 round trips per day.

The workers required for the additional three months of coal haulage will be limited to the truck drivers, a loader operator, and associated support personnel.

Table 2 provides an overview of the modifications and a comparison with approved operations.

### 3.3. Modification Category

Modification to Development Consent DA 205/2002 is sought under the provisions of 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) due to the minor nature of the changes and given the proposed modification is likely to have minimal environmental impact.



| Aspect  | Approved Operations (2016)   | Modification   |  |  |
|---|--|--|--|--|
| Construction  | Construction   |  |  |  |
| Not applicable, no furthe   | r construction is proposed at MCM  |  |  |  |
| Operation   |  |  |  |  |
| Mine Life   | Completion of operations by 31 December 2022.  | Extension of coal storage, handling and transport until 31 March 2023. |  |  |
| Annual Production   | Up to 2 Mtpa of product coal.  | No change.   |  |  |
| Mining Method   | Open cut using an excavator and truck fleet.   | No change.   |  |  |
| Mining Footprint  | ning Footprint Mining with the approved extraction area. No change.                                  |  |  |  |
| Coal Processing       ROM coal is crushed on - site in the CCP. High ash coal is washed in the CPP. All product coal is stockpiled prior to transport off site.       No change.                        |  | No change.   |  |  |
| Coal Rejects         Belt press filter used at the CPP to treat fines. Coarse and fine reject material then stockpiled and trucked back to the open cut for disposal with overburden.         No change |  | No change.   |  |  |
| Overburden  | Overburden emplacement to occur sequentially in the voids of both Open Cut 1 and 2.                  | No change.   |  |  |
| Site Infrastructure   | MIA, coal crushing plant and CPP   | No change.   |  |  |
| Coal Transport  | Transport of product coal by road to RCT.  | No change.   |  |  |
| Site Access   | Access via Muscle Creek Road off the New England Highway and private access road into the mine site. | No change.   |  |  |

### Table 2 – Current Approved Operation and Proposed Modification to Operations



| Aspect                        | Approved Operations (2016)  |   |              | Modification  |
|-------------------------------|---|---|--------------|---|
| Hours of Operation            | Open cut mining up to 24 Hours a day, 7 days a week<br>Blasting 9am – 5pm Mondays to Fridays  |   |              | Inclusion of hours of operation for coal<br>storage, handling and transport. The coal<br>haulage hours of operation will continue up<br>to 24 hours a day, 7 days per week, as<br>approved. |
| Employee Numbers              | Up to 95 full -   | time equivalents (FTEs) with additional contractors   | as required. | No change.  |
| Rehabilitation                |   |   |              |   |
| Rehabilitation<br>Objectives  | Rehabilitation         Mine site (as a whole of the disturbed land and water)         Rehabilitation materials         Landforms         Final voids         Final voids         Water Quality         Native flora and fauna habitat and corridors         Post-mining agricultural pursuits | Objectives           Safe, stable and non-polluting, fit for purpose of the intended post-mining land uses(s).           Final landforms designed to incorporate natural micro-relief and natural drainage lines, which, where reasonable and feasible, further avoid straight run drainage drop structures, to integrate with surrounding landforms.           Materials (including topsoils, substrates and seeds of the disturbed areas) are recovered, appropriately managed and used effectively as resources in the rehabilitation.           Final landforms sustain the intended land use for the post-mining domain(s).           Final landforms sustain the intended land use for the post-mining domain(s).           Final landforms incorporate design relief patterns and principles for consistency with natural drainage.           Minimise to the greatest extent practicable:           • The size and depth of the final void           • The drainage catchment of the final void           • Any high wall instability risk           • Risk of flood interaction (flows in and out of the void)           Makinse, to the greatest extent practicable, integration of the final void landform with the natural learning domain(s).           Size, locations and species of native tree lots and corridors are established to sustain biodiversity habitats.           Species are selected that re-establish and complement regional and local diversity.           The Index of pability classification for the relevant nominated agricultural pursuit for e ach domain is established and self-sustaining with the aim of being achieved within S vears of land use e |              | No change.  |
| Progressive<br>Rehabilitation | Rehabilitation activities are generally undertaken on a progressive basis to achieve the approved rehabilitation objectives, final landform and final land use. Rehabilitation is undertaken in accordance with the approved Mining Operation Plan (MOP).                                     |   | No change.   |   |

DA 205/2002 Modification Report

| Aspect   | Approved Operations (2016)  | Modification |
|--|---|--------------|
| Rehabilitation<br>Plan/Strategy  | ······································  |              |
|  | In addition, a Rehabilitation Strategy is required to discuss the establishment of habitat corridors, re-<br>establishment of native species, stabilisation of slopes, re-foresting, stormwater drainage and<br>rehabilitation timeframes. The Rehabilitation Strategy has been prepared and submitted to MSC for<br>review and approval however to date it has not been approved by MSC. |              |
| Final Landform The approved conceptual final landform comprises shaped areas of overburden with the majority of slopes less than 10 degrees, steeper in localised areas of up to 14 degrees, excluding the final void batters which are slopes of up to 18 degrees. The maximum heights of the approved conceptual landform is reduced level (RL) 310 m in the Open Cut 2 rehabilitation area and RL 340 m in the eastern emplacement. |   | No change.   |
| Final Voids  | Two final voids in Open Cut 1 and 2.  | No change.   |
| Final Land Use   | The final land use includes a combination of approximately 50% pasture and 50% native vegetation with a vegetation corridor between Bells Mountain and Skelletar Ridge.   | No change.   |
| Environmental<br>Management  | MCC undertakes environmental management in accordance with an Environmental Management Strategy, which provides a strategic context for the approved Environmental Management Plans used at MCM.  | No change.   |
| Site Access  | Access via Muscle Creek Road off the New England Highway and private access road into the mine site.  | No change.   |
| Closure  |   |              |
| Closure Plan   | A Closure Plan is required that includes detailed plans showing final landform and drainage detail, objectives and criteria for mine closure, indicative timing and sequence of closure, changes required to management plans, measures to minimise or manage ongoing environmental impacts and the closure monitoring regime.  | No change.   |
|  | The Closure Plan has been prepared and submitted to MSC for review and approval however to date it has not been approved by MSC.  |              |

These proposed changes do not result in any changes to, or any additional environmental impacts beyond that currently approved. This is discussed further in **Section 6.** 



### 3.4. Substantially the Same Development

A development consent may be modified under Section 4.55 of the EP&A Act provided it is substantially the same development as the development for which consent was originally granted.

The EIS titled "Muswellbrook Coal Company Limited, No. 1 Open Cut Extension Environmental Impact Statement 2022" dated July 2002 and prepared by HLA-Envirosciences, which the original consent was granted for, identified that coal would be stored in numerous stockpiles with a capacity of 300,000t. The EIS further advised that coal would continue to be transported from the mine to the RCT utilising highway trucks of a 25t or 38t capacity and via the haulage route comprising the private coal haul road, Muscle Creek Road and the New England Highway. The EIS also noted the possibility of coal being transported to Macquarie Generation, which no longer occurs.

The proposed modification will maintain a coal stockpile capacity less than 300,000t and the coal will continue to be transported in the manner consistent with the original EIS, utilising road registered highway trucks and the same haulage route.

For these reasons, this modification has been demonstrated to be substantially the same development as that currently approved and has been prepared in accordance with the requirements of  $4.55 \ 1(A) - a$  modification involving minimal environmental impact.

This proposed modification and the originally approved development consent are substantially the same because:

- All aspects of the approved development will remain the same, except for continued coal haulage (storage, handling and transport) for an additional three months.
- The already approved impacts related to coal stockpiling and haulage will remain the same, other than the small increase in the duration of coal haulage activities.
- The extension to the duration of coal storage and haulage will not affect any other aspect of the site, including decommissioning and rehabilitation activities.

Several conditions require modification to allow the continuation of coal haulage until 31 March 2023. **Appendix A** details the proposed changes to the development consent conditions along with the reasoning and justification for the proposed changes.



# 4. STATUTORY CONTEXT

### 4.1. NSW Legislation

The applicable environmental planning approval process under NSW legislation and details of other NSW legislation relevant to the modification are included below.

### 4.1.1. Environmental Planning and Assessment Act 1979

On 1 September 2003, Development Consent for DA 205/2002 was granted by MSC to extend the former MCC No.1 Open Cut. This approval has subsequently been modified on several occasions with the latest modification pursuant to Section 96 of the EP&A Act 1979 granted in 2016.

In relation to this modification, Section 4.55 of the EP&A 1979 contains provisions relating to the modification of development consent. Specifically, subclause (1A) refers to modifications involving minimal environmental impact, and states:

(1A) <u>Modifications involving minimal environmental impact.</u> A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if--

(a) it is satisfied that the proposed modification is of minimal environmental impact, and

(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and

(c) it has notified the application in accordance with--

(i) the regulations, if the regulations so require, or

(ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and

(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be. Subsections (1), (2) and (5) do not apply to such a modification.

The nature of this modification is considered minor, as it does not radically transform the operations of the mine site, nor does it result in any additional environmental impacts. Accordingly, the modification meets both the 'minimal environmental impact' and 'substantially the same' tests and can therefore be assessed under Section 4.55(1A) of the EP&A Act.

### 4.1.2. NSW Environmental Planning and Assessment Regulation 2021

An application for modification of a development consent under Section 4.55 of the EP&A 1979 must contain the information stipulated in clause 100 of the EP&A Regulation. The required information and where it has been addressed in this report are detailed in **Table 3**.



| Requirement   | Where Addressed   |
|---|---|
| The name and address of the applicant.  | Muswellbrook Coal Company Limited   |
| A description of the development that will be carried out under the development consent   | Section Error! Reference source not found.  |
| The address and folio identifier of the land on which the development will be carried out   | An updated Schedule of Lands is attached<br>as <b>Appendix B</b><br>Note the change is administrative. Lot<br>102 DP578075 is the current Schedule of<br>land has been replaced by Lot 3 DP |
|   | 1220491 and Lot 4 DP1220491. There is<br>no change in development consent<br>boundary.  |
| A description of the modification to the development consent,<br>including the name, number and date of plans that have changed,        | Section Error! Reference source not found. and Appendix A   |
| to enable the consent authority to compare the development with<br>the development originally approved                                  | No change to mine footprint or layout   |
| Whether the modification is intended to—  | Section 3.3   |
| (i) merely correct a minor error, misdescription or miscalculation, or  |   |
| (ii) have another effect specified in the modification application,   |   |
| A description of the expected impacts of the modification   | Section 6   |
| An undertaking that the modified development will remain<br>substantially the same as the development originally approved               | Section 3.4   |
| For a modification application that is accompanied by a biodiversity development assessment report—the biodiversity credits information | Not applicable  |
| If the applicant is not the owner of the land—a statement that the owner consents to the making of the modification application         | Not applicable  |
| Whether the modification application is being made to—<br>(i) the Court under the Act, section 4.55, or                                 | Modification application is being made<br>under section 4.55 of the EP&A Act 1979   |
| (ii) the consent authority under the Act, section 4.56  |   |

#### Table 3 – EP&A Regulation Modification Requirements

### 4.1.3. Environmental Planning Instruments

#### State Environmental Planning Policy (Resource and Energy) 2021

The State Environmental Planning Policy (Resources and Energy) 2021 (RE SEPP) (formerly the State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007 (Mining SEPP)) aims to provide proper management and development of mineral, petroleum, and extractive material resources for the social and economic welfare of the State. Chapter 2 of the RE SEPP also aims to facilitate the orderly and economic use and development of land containing mineral, petroleum and extractive material resources, and establishes appropriate planning controls to encourage ecologically sustainable development (ESD).

Section 2.9 of the RE SEPP outlines mining activities which may be permitted with consent. Development for the purposes of mining is permissible by virtue of section 2.9(b) because the land was



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|---------------------------------|-----------|
| DA 205/2002 Modification Report | MUS01-008 |

subject to a mining lease under the *Mining Act 1992* prior to the commencement of this section (and the former clause under the Mining SEPP). Furthermore, this modification involves minimal change to approved operations wholly located within the existing development consent boundary.

#### State Environmental Planning Policy (Biodiversity and Conservation) 2021

Chapter 4 of the State Environmental Planning Policy (Biodiversity and Conservation) 2021 titled "Koala habitat protection 2021" encourages the proper conservation and management of areas of natural vegetation that provide habitat for koalas. The modification would not impact on vegetation that has the potential to provide habitat for koalas as no additional clearing is proposed.

#### State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 4 of the State Environmental Planning Policy (Resilience and Hazards) 2021 (**Resilience and Hazards SEPP**) (formerly State Environmental Planning Policy No 55 - Remediation of Land (SEPP 55)) provides a state - wide approach to the remediation of contaminated land for the purpose of minimising the risk to human health and the environment. Under section 4.6, prior to granting consent to the carrying out of any development on land a consent authority is required to give consideration as to whether land is contaminated and, if the land is contaminated, whether the land is suitable for the purpose of the development or whether remediation is required.

This modification will not result in any change to mining methods or coal processing, and no additional onsite infrastructure is proposed. Assessments are being conducted as part of detailed mine closure planning for MCM to identify any contamination associated with the currently approved operations.

### 4.1.4. Mining Act 1992

The NSW *Mining Act 1992* regulates the granting of mining leases and mining activities generally. The mining leases that apply to MCM are:

- CCL 713;
- ML 1304; and
- ML 1562.

MCC has an RMP in place for current operations, in accordance with the rehabilitation reforms undertaken by the NSW Resources Regulator. The RMP will be updated with details from this modification where required once approval has been granted.

#### 4.1.5. Protection of the Environment Operations Act 1997

The NSW Protection of the Environment Operations Act 1997 (POEO Act) is the principal environmental protection legislation in NSW and is administered by the EPA. MCM has an existing EPL (EPL 656) issued under the POEO Act. The EPL authorises coal works to a maximum scale of 2 Mt handled and mining for coal to a scale of less than 0.5 - 2 Mt produced.

No changes in production will occur as a result of this modification. MCC will continue operations under EPL 656.

#### 4.1.6. Water Management Act 2000 and Water Act 1912

The *NSW Water Act 1912* and *NSW Water Management Act 2000* (WM Act) regulate water resources and use and outline provisions for the licensing of water capture and use. MCC holds the following water licences for MCM:

- WAL39806;
- WAL41503; and



#### • WAL41521.

No alterations to surface water management infrastructure or management are proposed as part of this modification, and there will be no changes that would impact on groundwater.

### 4.1.7. Biodiversity Conservation Act 2016

The *Biodiversity Conservation Act 2016* aims to maintain a healthy, productive and resilient environment for the greatest well-being of the community, now and into the future, consistent with the principles of ecologically sustainable development.

The Act requires that any vulnerable, endangered, or critically endangered species, population or ecological community associated with a proposed development are identified. It also requires that acceptable recovery and management strategies are implemented if a project is likely to have a significant impact.

This modification will not have any impacts in this regard as no additional clearing is proposed.

#### 4.1.8. Muswellbrook Local Environment Plan 2009

MCM is subject to the Muswellbrook Local Environmental Plan 2009 (Muswellbrook LEP). Land within the development consent boundary is a combination of RU1 Primary Production, C3 Environmental Management and SP2 Infrastructure land use zones.

Whilst development for the purposes of "open cut mining" is a permissible form of development consent in the RU1 Primary Production zone, it is not expressly permissible under the other zones. The development is permissible by virtue of the RE SEPP provisions and also its existing approval.

### 4.2. Commonwealth Legislation

# 4.2.1. Commonwealth Environment Protection and Biodiversity Conservation Act 1999

The Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) aims to protect matters deemed to be of national environmental significance (MNES) that is:

- World heritage properties;
- Places listed on the National Heritage Register;
- Ramsar wetlands of international significance;
- Threatened flora and fauna species and ecological communities;
- Migratory species;
- Commonwealth marine areas;
- Nuclear actions (including uranium mining); and
- Actions of development for coal seam gas or large coal mining on water resources.

If an action (or proposal) would, or is likely to, have a significant impact on any MNES, it is deemed to be a controlled action and requires approval from the Commonwealth Environment Minister or the Minister's delegate. To determine whether a proposed action would or is likely to be a controlled action, an action may be referred to the Commonwealth Department of Climate Change, Energy, the Environment and Water.

The Statement of Environmental Effects (SoEE) (EMM 2016) concluded that MCC was unlikely to have a significant impact on MNES and a referral was not required. Due to the nature of this proposed modification, there remains no requirement to refer this modification.



# 5. STAKEHOLDER ENGAGEMENT

### 5.1. Regulator Consultation

MCC undertakes regular consultation with a range of regulators are part of day-to-day operations. The consultation undertaken in relation to this modification is summarised in **Table 4**.

| Date              | Government<br>Department | Method of<br>Consultation | Items Discussed  |
|-------------------|--------------------------|---------------------------|--|
| 8 September 2022  | MSC                      | Meeting                   | Initial discussions with MSC regarding development consent changes proposed by MCC.                                |
| 12 September 2022 | MSC                      | Letter                    | Provision of a letter outlining the proposed modification, as requested by MSC.                                    |
| 19 September 2022 | MSC                      | Meeting                   | Attendance at MSC's State Significant<br>Development Committee meeting.  |
| 21 September 2022 | MSC                      | Email                     | Email from MSC outlining their expectation of content in Modification Report (refer <b>Section 1.3</b> ).          |
| 23 September 2022 | MSC                      | Email                     | Email from MSC regarding additional aspects to be included in the Modification Report (refer <b>Section 1.3)</b> . |
| 28 September 2022 | MSC                      | Email                     | Email from MSC regarding revisions required to the Modification Report (refer <b>Section 1.3</b> .                 |

 Table 4 – Consultation Undertaken with Regulators for Proposed Modification

### 5.2. Community Consultation

MCC undertakes regular consultation through the Community Consultative Committee (CCC), through discussions with employees and the wider community members by operating a toll free 24-hour Environmental Contact Line (1800 600 205). The CCC is comprised of one Councillor, one council staff representative, four community representatives and two MCC representatives.

The CCC was made aware of the proposed modification on 22 September 2022 via the quarterly site update that was emailed to them.



# 6. ASSESSMENT OF IMPACTS

**Section 3.2** and **Table 2** of this report summarises the impacts of this modification compared with the currently approved operations under the development consent (as modified). The SoEE (EMM 2016) approved for the previous modification to DA 205/2002 for continuation of mining until 31 December 2022 addressed:

- The provisions of all relevant environmental planning instruments.
- The likely impacts of the development environmental, social and economic.
- The suitability of the site for the development; and
- The public interest.

The assessment of this proposed modification remains unchanged with respect to the above considerations given this modification:

- Does not propose any change of duration of mining operations, mining method or mining footprint;
- Does not propose any changes to coal processing, coal reject or overburden management, site infrastructure or coal transport method, with the exception being a minor increase in the duration of coal haulage for an additional 3 months;
- Does not propose any changes to the final landform or final land use; and
- Does not proposed any changes to the timing of rehabilitation activities.

On this basis, MCC will continue to manage the development under the existing Environmental Management Strategy (EMS) and Environmental Management Plans.

**Table 5** summarises the current management and mitigation measures employed at MCM to manage any environmental impacts.



### Table 5 – Assessment of Predicted Impacts

| Statement of Environmental Effects (EMM 2016) Predictions   | Current Management/Mitigation Measures  | Impacts/changes as a Result of this Modification   |
|---|---|--|
| Noise and Blasting  |   |  |
| Noise emissions for the 2016 modification were predicted to be<br>substantially the same at assessment locations for which noise<br>limits apply under DA 205/2002. Nosie levels were predicted to<br>only marginally exceed DA limits at four locations. Predicted<br>noise emission levels satisfied the relevant acquisition criteria<br>and sleep disturbance criteria at all assessment locations.<br>The frequency of attended noise monitoring would be increased<br>from twice a year to monthly.<br>The 2016 modification predicted that the blast emissions criteria<br>would continue to be met throughout the life of the modification. | MCC operate in accordance with the approved<br>Noise Management Plan, which details the<br>impact of noise from mining operations on the<br>environment and nearby residences which<br>includes the management of noise from<br>stockpiling and transportation of coal.<br>MCC manage blasting impacts in accordance with<br>the Blast Management Plan (BMP).<br>Noise, overpressure and vibration emissions from<br>mining operations at MCM typically satisfy the<br>relevant criteria at all monitoring locations. | No change.<br>The modification does not propose to change the<br>mining method, coal processing, overburden<br>management or coal transport methods already<br>approved at MCM therefore the noise profile and<br>vibration level associated with operations is not<br>predicted to change. Noise levels would generally be<br>expected to decrease following the cessation of<br>mining operations. |
| Air Quality and Greenhouse Gas (GHG)  |   |  |
| The 2016 modification was predicted to result in incremental exceedances of the 24 - hour average PM10 criterion at a single assessment location to the north of MCM. The cumulative impact assessment predicted impacts at two assessment locations on two to three additional days which correspond to days where background levels are already elevated.<br>Relocation of an existing monitor to the north of MCM (near R25) and installation of a new monitor to the south - southeast of MCM   | MCC operate in accordance with the approved Air<br>Quality Management Plan (AQMP).<br>The primary objective of air quality management<br>at MCC is to manage and minimise the impact of<br>dust from the operations on the environment and<br>nearby residences.  | No change.<br>The modification does not propose to change the<br>mining method, coal processing, overburden<br>management or coal transport methods already<br>approved at MCM therefore the air quality impacts<br>associated with operations are not predicted to<br>change. Air quality impacts would generally be<br>expected to decrease following the cessation of                             |
| <ul><li>are proposed to supplement the existing air quality monitoring network.</li><li>Existing blast fume management practices were expected to be adequate for continued operations under the modification.</li><li>Estimated annual average GHG emissions for the modification were predicted to be insignificant compared to total NSW and national GHG generation.</li></ul>  |   | mining operations.<br>The estimated annual average GHG emissions are<br>not anticipated to change. GHG emissions would<br>generally be expected to decrease as less vehicle<br>emissions would result from the cessation of mining<br>operations.  |



| Statement of Environmental Effects (EMM 2016) Predictions   | Current Management/Mitigation Measures  | Impacts/changes as a Result of this Modification   |  |  |  |
|---|---|--|--|--|--|
| Geochemistry  | Geochemistry  |  |  |  |  |
| The 2016 modification permitted the overburden emplacement to occur sequentially in the voids of both Open Cut 1 and 2. There were no changes proposed to the approved minimum and maximum RL of overburden emplacement as a result of the modification and spontaneous combustion was to continue to be managed in accordance with Spontaneous Combustion Management Plan and the MOP.   | MCC operates in accordance with the Spontaneous Combustion Management Plan and the MOP.   | No change.<br>The proposed modification will not change the<br>likelihood of spontaneous combustion at the site or<br>alter the management/mitigation measures.<br>The rehabilitation works to be executed as part of<br>mine closure will aim to further mitigate the likelihood<br>of spontaneous combustion by covering areas with a<br>suitable layer of inert material in accordance with the<br>Spontaneous Combustion Management Plan.  |  |  |  |
| Surface Water   | -   |  |  |  |  |
| All changes proposed as part of the modification would occur<br>within the catchments of Open Cut 1, Open Cut 2 and Dams 1<br>and 2. Surface water would continue to be managed in<br>accordance with the existing SWMP. With the exception of<br>relocating the existing raw water supply tanks (and associated<br>pipelines) and redistribution of the catchment areas between<br>Open Cut 1, Open Cut 2 and Dams 1 and 2 no significant<br>changes to the water management system would occur as part<br>of the modification.<br>No change to the existing water supply arrangements were<br>proposed. | MCC manage surface water impacts in<br>accordance with the Water Management Plan<br>(WMP).<br>MCC undertake a surface water monitoring<br>program that consists of monthly, quarterly and<br>annual monitoring. | No change.<br>The modification does not propose to change the<br>mining method, coal processing, overburden<br>management or coal transport methods already<br>approved at MCM therefore the surface water impacts<br>associated with operations are not predicted to<br>change.<br>There is no additional water management<br>infrastructure required, and some of the current<br>licenced features will be decommissioned and<br>removed at closure if not required for the post mining<br>land use. |  |  |  |



| Statement of Environmental Effects (EMM 2016) Predictions  | Current Management/Mitigation Measures   | Impacts/changes as a Result of this Modification  |  |  |
|--|--|---|--|--|
| Groundwater  |  |   |  |  |
| The groundwater assessment for the modification predicted that<br>the incremental groundwater impacts as a result of the<br>modification would be negligible. Groundwater inflows to MCM<br>under the modification were expected to be in the range of<br>previous predictions for approved operations. A maximum radius<br>of drawdown of approximately 1 km is estimated, which is<br>consistent with the monitoring data to date. | MCC manage groundwater impacts in<br>accordance with the Water Management Plan<br>(WMP).<br>MCC undertake a groundwater monitoring<br>program that consists of monthly and annual<br>monitoring.   | No change.<br>The modification will not result in a change to<br>groundwater impacts as no change to mining<br>footprint, void geometry, mining method or water<br>management infrastructure is proposed.<br>Any amendments to the water licencing requirements<br>during rehabilitation and closure will be assessed<br>during detailed closure planning for the site. |  |  |
| Heritage (Historic and Aboriginal)   |  |   |  |  |
| No impacts to historical or Aboriginal heritage were predicted as<br>part of the previous modification given the area where mining was<br>to be extended had been extensively disturbed as part of<br>historical mining operations.  | There is one known Aboriginal cultural site located<br>within the mine lease boundary, but outside of the<br>disturbance footprint.<br>There are no European Heritage sites located at<br>MCC that require ongoing management.<br>A ground disturbance permit is used whenever<br>any clearing is required outside of areas already<br>assessed. | No change.<br>The existing approved mine footprint will not be<br>altered by the modification.  |  |  |
| Biodiversity   |  |   |  |  |
| The 2016 modification was unlikely to significantly impact<br>biodiversity values as the expansion was located within a<br>rehabilitated area of MCM. While the modification would disturb<br>an area of partially completed rehabilitation, the modification area<br>would be progressively rehabilitated following mining in<br>accordance with the MOP.   | MCC manage impacts on flora and fauna in<br>accordance with the requirements of the approved<br>MOP.   | No change.<br>The modification does not intend any change to the<br>existing mine footprint therefore no additional clearing<br>is proposed.<br>The RMP has replaced the MOP and includes<br>management of biodiversity at the site.  |  |  |



| Statement of Environmental Effects (EMM 2016) Predictions   | Current Management/Mitigation Measures  | Impacts/changes as a Result of this Modification  |  |  |  |
|---|---|---|--|--|--|
| Visual  | -<br>Visual   |   |  |  |  |
| The 2016 modification predicted a negligible incremental visual impact on people living in, and travelling through, the area around MCM over and above currently approved operations, with existing views from receptor locations remaining substantially the same. | MCC operate in accordance with the Visual<br>Amenity, Lighting and Landscaping Management<br>Plan (VALLMP). | No change.<br>The modification does not include any change to<br>maximum height of the landform, any additional<br>mining expansion or increase in mining footprint<br>therefore the visual impact of the mine is predicted to<br>the same. |  |  |  |
| Bushfire  | Bushfire  |   |  |  |  |
| There was no bushfire assessment undertaken as part of the 2016 modification.   | Management of bushfire risks are undertaken in accordance with the Bushfire Management Plan (BFMP).         | No change.  |  |  |  |
| Waste   |   |   |  |  |  |
| There was no new waste streams predicted to be generated by<br>the 2016 modification therefore a waste assessment was not<br>undertaken.  | Waste streams are segregated and removed from site by a licensed waste contractors.                         | The extension of duration of coal haulage will not result in an increase of waste generation beyond what already occurs.  |  |  |  |



| Statement of Environmental Effects (EMM 2016) Predictions  | Current Management/Mitigation Measures  | Impacts/changes as a Result of this Modification  |
|--|---|---|
| Traffic and Transport  |   |   |
| There was no traffic impact assessment undertaken as part of the previous modification as volumes of product coal being transported offsite were not changed.  | Product coal is trucked off site via Muscle Creek<br>Road and the New England Highway to the<br>Ravensworth Coal Terminal (RCT) for train<br>loading. | The modification will not result in changes to the<br>approved total volumes of coal produced or<br>transported from MCM, and there is no change to<br>employee numbers. In fact, as the site approaches<br>closure, there will be a reduction in vehicles driving to<br>site as employee numbers are reduced and there is<br>less requirement for contractors or the delivery of<br>goods. |
|  |   | Product coal will continue to be trucked off site via<br>Muscle Creek Road and the New England Highway to<br>the Ravensworth Coal Terminal (RCT) for train<br>loading.  |
|  |   | Coal haulage activities will remain the same as is<br>currently undertaken (i.e. same stockpiling, handling<br>and transportation, including transport route and<br>hours of operation); however it is proposed that it will<br>extend for an extra three months from what is<br>currently approved.  |
|  |   | Road maintenance will continue as is currently agreed.  |
| Rehabilitation   |   |   |
| The 2016 modification stated that rehabilitation activities are<br>completed progressively, and include filling mined voids with<br>overburden material, planting a combination of pasture and<br>native trees so that vegetation is consistent with the local area,<br>establishment of a vegetation corridor, weed control and<br>rehabilitation monitoring. Rehabilitation aims to make the site<br>compatible with the surrounding land, and have safe and stable<br>final voids, in accordance with the approved MOP. | Rehabilitation has traditionally been carried out in accordance with an approved MOP, which was replaced with an RMP in mid-2022.                     | The modification will not impact on rehabilitation progression as currently outlined in the RMP.  |



### 7. JUSTIFICATION OF THE MODIFIED PROJECT

MCM is an existing mine which has successfully operated since 1907 and continues to do so within its existing mining authorities and development consent boundary. This modification includes the storage, handling and transport of coal from the site for an additional three months. No other aspect of the current approved mine is to change.

This modification does not require any change to mining footprint or area and is considered to be substantially the same development as that originally approved.

Several conditions require modification to allow the continuation of coal haulage until 31 March 2023. **Appendix A** details the proposed changes to the development consent conditions along with the reasoning and justification for the proposed changes.

#### **Precautionary Principle**

The precautionary principle, in summary, holds that if there are threats of serious or irreversible environmental damage, the lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

The environmental impacts of the development remain unchanged to those previously predicted in the previous modification (EMM 2016). The potential implications of the modification remain unchanged given the existing environmental management and mitigation measures in place at MCM and the minor nature of the modification.

#### Inter-generational Equity

The principle of inter - generational equity puts an onus on society to ensure that the health, diversity and productivity of the environment are maintained, or enhanced, for the benefit of current and future generations.

The modification has negligible potential to adversely affect the health, diversity or productivity of the environment and, therefore, would not adversely impact the current or future generations.

The existing environmental management and mitigation measures used by MCC minimise the risk of the modification resulting in a significant impact to the local environment and assist in ensuring that current and future generations can enjoy equal and equitable access to social, environmental and economic resources.

#### Conservation of Biological Diversity and Maintenance of Ecological Integrity

The modification does not pose a significant threat to local biological diversity or ecological integrity as there is no proposed change to mining footprint as part of the modification. Rehabilitation will be undertaken in accordance with the RMP.

#### Improved valuation and pricing of environmental resources

The cost associated with using or impacting upon an environmental resource is seen as a cost incurred to protect that resource.

MCC do not propose to increase the amount of coal mining, mining footprint or time period of mining at MCM. The modification will allow MCM to complete transport of the coal mined at the site.

For the above reasons, MCC submit that it would be in the public interest for MSC to grant the modification.

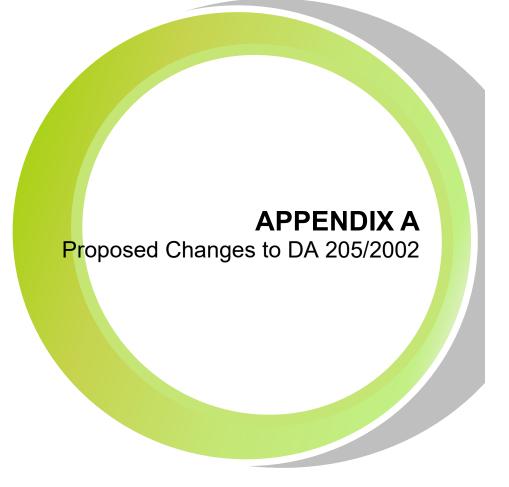


### 8. **REFERENCES**

- DPIE (2021a) State significant development guidelines preparing an environmental impact statement (Appendix B to the state significant development guidelines)
- DPIE (2021b) State significant development guidelines preparing a modification report (Appendix E to the state significant development guidelines)
- EMM (2016) Muswellbrook Coal Continuation Project, Statement of Environmental Effects
- HLA-Envirosciences Pty Ltd (2002) Muswellbrook Coal Company Limited, No 1 Open Cut Extension Environmental Impact Statement 2002
- MCC (2022) Rehabilitation Management Plan, CCL713 (Act 1973), ML1304 (Act 1992) AND ML1562 (Act 1992)







| Existing | g Condition   | Proposed Condition (text marked in RED shows the proposed changes)   | Reason                     |
|----------|---|--|----------------------------|
| General  | I Conditions  |  | ·                          |
| 2        | Adherence to Adherence to terms of DA, EIS, etc.         The development must be carried out in accordance with the conditions of this consent and generally in accordance with:         i. The accompanying SEE titled "Muswellbrook Coal Continuation Project, 1 & 2" by EMM dated April 2016.         ii. "Muswellbrook Coal Continuation Project Response to Submissions" dated 20 July 2016.         iii. the EIS titled "Muswellbrook Coal Company Limited, No. 1 Open Cut Extension Environmental Impact Statement 2002" dated July 2002, prepared by HLA-EnviroSciences Pty Limited and certified in accordance with Section 78A(8) of the EP&A Act;         iv. The accompanying Statement of Environmental Effects document by Hansen Bailey dated August 2010. | Adherence to Adherence to terms of DA, EIS, etc.<br>The development must be carried out in accordance with the conditions of this consent and<br>generally in accordance with:<br><u>i. Modification Report prepared by IEMA dated September 2022.</u><br><u>i ii</u> The accompanying SEE titled "Muswellbrook Coal Continuation Project, 1 & 2" by EMM dated<br>April 2016.<br><u>iii jii</u> "Muswellbrook Coal Continuation Project Response to Submissions" dated 20 July 2016.<br><u>iii. jv</u> the EIS titled "Muswellbrook Coal Company Limited, No. 1 Open Cut Extension Environmental<br>Impact Statement 2002" dated July 2002, prepared by HLA-EnviroSciences Pty Limited and<br>certified in accordance with Section 78A(8) of the EP&A Act; |                            |
|          | Where there is an inconsistency between two or more of the above documents, the most recent document prevails to the extent of that inconsistency. However, the conditions of this consent shall prevail to the extent of any inconsistency.  | <ul> <li>iv. <u>v</u> The accompanying Statement of Environmental Effects document by Hansen Bailey dated<br/>August 2010.</li> <li>Where there is an inconsistency between two or more of the above documents, the most recent<br/>document prevails to the extent of that inconsistency. However, the conditions of this consent shall<br/>prevail to the extent of any inconsistency.</li> </ul>  |                            |
| 4        | Period of Approval<br>The Applicant may out carry mining operations until 31 December 2022.<br>Note: Under this consent, the Applicant is required to rehabilitate the site to the satisfaction of<br>Council and the DRE. Consequently, this consent will continue to apply in all other respects other<br>than the right to conduct mining operations until the rehabilitation of the site has been carried out<br>satisfactorily.  | Period of Approval<br>The Applicant may carry out mining operations until 31 December 2022 <sub>7</sub> , with the exception of<br>handling, storage and transportation of coal. Handling, storage and transportation of coal may be<br>carried out until 31 March 2023.<br>Note: Under this consent, the Applicant is required to rehabilitate the site to the satisfaction of<br>Council and the DRE. Consequently, this consent will continue to apply in all other respects other<br>than the right to conduct mining operations until the rehabilitation of the site has been carried out<br>satisfactorily.  |                            |
| Mine Ma  | anagement   |  |                            |
| 8        | Hours of Operation         The maximum hours of operation at the development shall be as follows:         •       Open Cut Mining up to 24 hours, 7 days  | <ul> <li>Hours of Operation</li> <li>The maximum hours of operation at the development shall be as follows:</li> <li>Open Cut Mining up to 24 hours, 7 days</li> </ul>   | To extend a<br>and transpo |
|          |   |  | 1                          |

Coal storage, handling and transportation up to 24 hours, 7 days

Note: Blasting hours may be extended outside these times where there is a demonstrated safety need and with the approval of Council.

Blasting 9am-5pm Mondays to Fridays.

Blasting 9am-5pm Mondays to Fridays.

Note: Blasting hours may be extended outside these times where there is a demonstrated safety need and with the approval of Council.

| n  |
|--|
|  |
| Modification Report will become an<br>red document, outlining all proposed<br>es that will form part of this Modification<br>ation and therefore will need to be<br>ed in Condition 2. |
| end approval of coal handling, storage<br>insportation until 31 March 2023.  |
|  |
| end approval of coal handling, storage<br>insportation until 31 March 2023.  |

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| Lot | Deposited Plan (DP) | Owner                           |
|-----|---------------------|---------------------------------|
| 681 | 611756              | Muswellbrook Coal Company (MCC) |
| 682 | 611756              | MCC                             |
| 1   | 571355              | MCC                             |
| 1   | 723294              | МСС                             |
| 2   | 723294              | MCC                             |
| 97  | 752484              | MCC                             |
| 1   | 45525               | MCC                             |
| 82  | 231202              | MCC                             |
| 811 | 534516              | MCC                             |
| 58* | 752484              | MCC                             |
| 59* | 752484              | MCC                             |
| 60* | 752484              | MCC                             |
| 62* | 752484              | MCC                             |
| 61* | 1113302             | MCC                             |
| 1*  | 1004305             | MCC                             |
| 70* | 752484              | MCC                             |
| 71* | 752484              | MCC                             |
| 1*  | 184481              | MCC                             |
| 98* | 752484              | MCC                             |
| 3*  | 571355              | MCC                             |
| 1*  | 614842              | МСС                             |
| 2*  | 614842              | MCC                             |
| 39* | 793463              | МСС                             |
| 1*  | 45194               | MCC                             |

| Lot             | Deposited Plan (DP) | Owner |
|-----------------|---------------------|-------|
| 5*              | 26760               | MCC   |
| 6*              | 26760               | MCC   |
| 20*             | 16352               | MCC   |
| <del>102*</del> | <del>578075</del>   | MCC   |
| <u>3*</u>       | <u>1220491</u>      | MCC   |
| <u>4*</u>       | <u>1220491</u>      | MCC   |
| 71*             | 629631              | MCC   |
| 101*            | 1148216             | MCC   |
| 1*              | 46760               | MCC   |

Notes:

1. \*Part of block within DA Boundary

2. Schedule of Land applies to those areas of land within the DA Boundary

### **DEVELOPMENT CONSENT MOD10 EXTENSION OF TIME – RESPONSE TO SUBMISSIONS**

| Mining, Exploration & Geoscience (MEG) Submission         |              |
|---|--------------|
| MEG Comment   | MCC Response |
| MEG has reviewed the information supplied and raises      | Noted.       |
| no issues regarding the Modification. In relation to post |              |
| approval assessment considerations relating to mine       |              |
| subsidence and mine safety please refer to Attachment     |              |
| 'A' for NSW Resources Regulator advice                    |              |
| (RDOC22/217401).  |              |

### Mining, Exploration & Geoscience (MEG) Submission

### **Resources Regulator Submission**

| Resources Regulator Comment   | MCC Response  |
|---|---|
| The Resources Regulator has no further comment on   | Noted.  |
| the development application and will regulate the   |   |
| modification under the Rehabilitation Management  | The storage and handling of coal onsite is already  |
| Plan process.   | considered in the Rehabilitation Management Plan.   |
|   |   |
|   | Most of the haulage route is not subject to the     |
|   | Rehabilitation Management Plan process as it is not |
|   | located within mining tenements.                    |
| Limitations   | Noted.  |
| It should be noted that the Resources Regulator does  |   |
| not provide any endorsement of the proposed   |   |
| rehabilitation methodologies presented in the plans   |   |
| provided. Under the conditions of a mining  |   |
| authorisation granted under the Mining Act 1992, the  |   |
| Resources Regulator requires the holder to adopt a risk-                                    |   |
| based approach to achieving the required rehabilitation                                     |   |
| outcomes.   |   |
|   |   |
| The applicability of the controls to achieve effective and                                  |   |
| sustainable rehabilitation is to be determined based on                                     |   |
| site-specific risk assessments conducted by the   |   |
| authorisation holder.   |   |
|   |   |
| An authorisation holder may also be directed by the   |   |
| Resources Regulator to implement further risk control                                       |   |
| measures required to achieve effective rehabilitation                                       |   |
| outcomes during the life of the mine.   | Natad   |
| <b>Regulatory requirements if approved</b><br>The proponent will be required to comply with | Noted.  |
| rehabilitation requirements under the mining  | The storage and handling of coal onsite is already  |
| authorisations prior to the commencement of the   | considered in the Rehabilitation Management Plan.   |
| works associated with the proposal.   | considered in the Kenabilitation Management Plan.   |
|   | Most of the haulage route is not subject to the     |
| The Resources Regulator may undertake assessments   | Rehabilitation Management Plan process as it is not |
| of the mine operators' proposed mining activities under                                     | located within mining tenements.                    |
| the Work Health and Safety (Mines and Petroleum   | iocated within mining tenements.                    |
| Sites) Act 2013 and Regulation as well as other WHS   |   |
| regulatory obligations.   |   |
| Background  | Noted.  |
| The Mining Act Inspectorate within the Resources  |   |
| Regulator undertake risk-based compliance and   |   |
| negulator anacitake risk based compliance and   |   |

| Resources Regulator Comment                                  | MCC Response |
|--|--------------|
| enforcement activities in relation to obligations under      |              |
| the Mining Act 1992.   |              |
| This includes undertaking assessment and compliance          |              |
| activities in relation to mine rehabilitation activities and |              |
| determination of security deposits.                          |              |
| The Mine Safety Inspectorate within the Resources            |              |
| Regulator is responsible for ensuring the mine               |              |
| operators' compliance with the Work Health and Safety        |              |
| (WHS) legislation, in particular the effective               |              |
| management of risks associated with the principal            |              |
| hazards as specified in the Work Health and Safety           |              |
| (Mines and Petroleum Sites) Regulation 2014.                 |              |

### Subsidence Advisory Submission

| Subsidence Advisory Comment                          | MCC Response |
|--|--------------|
| As the proposed works do not involve construction of | Noted.       |
| any new surface development or infrastructure,       |              |
| Subsidence Advisory NSW do not have any objection to |              |
| the proposal.  |              |

### Transport for NSW Submission

| Transport for NSW Comment   | MCC Response |
|---|--------------|
| TfNSW key interests are the safety and efficiency of the transport network, the needs of our customers and the integration of land use and transport in accordance with Future Transport Strategy 2056.                                 | Noted.       |
| TfNSW has reviewed the information provided and<br>raises no objection to or requirements for the proposed<br>modification as it is considered there will be no<br>significant impact on the nearby classified (State) road<br>network. |              |

### **Public Submission**

| Public Submission Comment                                  | MCC Response  |
|--|---|
| We do not object to the ongoing haulage operations for     | Noted.  |
| Muswellbrook Coal Company Pty Ltd as it has been an        |   |
| imperative component of the business operations of         |   |
| the mine.  |   |
| As a resident that uses Muscle Creek Road at least 3 to    | Noted.  |
| 4 times per day as the sole access to and from our         |   |
| residential premises on Woodlands Ridge Estate, and        |   |
| have done so for the last 12 years, the state, safety, and |   |
| accessibility of Muscle Creek Road between its'            |   |
| intersection with the New England Highway to               |   |
| Woodlands Ridge Road is very important.                    |   |
| We noted over the last 12 years there has been regular     | DA 205/2002 is available publicly on the Muswellbrook |
| re-sealing, patchwork and "band-aid" maintenance to        | Coal website and includes the following condition in  |
| this road. We are not privy to what conditions of          | relation to maintenance of Muscle Creek Road:         |
| consent exist for the maintenance of Muscle Creek          |   |

| Public Submission Comment   | MCC Response   |
|---|--|
| Public Submission Comment<br>Road since the original approval pursuant to DA<br>2002/205.   | <ul> <li>10. Section 138 Permit – Maintenance on Muscle Creek<br/>Road</li> <li>The section of Muscle Creek Road from the internal haul<br/>road to the New England Highway is to be maintained by<br/>the Applicant to the satisfaction of the road authority<br/>being Council and must be in a well maintained, safe and<br/>appropriate condition at the end of all mining operations.<br/>At the end of mining operations the Road must be in a<br/>well maintained, safe and appropriate condition prior to<br/>Council taking responsibility for ongoing maintenance.</li> <li>NB: The required maintenance standard is detailed in RMS<br/>Specification "QA Specification M3 Routine Services".</li> <li>The Applicant must obtain a Section 138 Consent under<br/>the Roads Act 1993 prior to any maintenance works being<br/>undertaken by the Applicant on Muscle Creek Road. The<br/>application for consent must include an assessment of the<br/>road's Subnetwork ranking and a Routine Maintenance<br/>Annual Plan (RMAP) and shall generally be granted for a<br/>year for minor maintenance activities. Major activities</li> </ul> |
|   | including renewal works will require a separate 138<br>Consent. A contact person must be nominated for all<br>matters dealing with Council roads.<br>MCC operates in accordance with the requirements of<br>this condition.  |
| Our concern now is the proper upgrade of this section<br>of Muscle Creek Road. The previous "band-aid"<br>maintenance has never resolved the significant<br>drainage issues the road has. The table drains on both<br>side of the road are not properly formed, have been<br>filled up with silt and material from the truck haulage<br>over several years, as well as taking part of the<br>stormwater catchment upstream. What happens during<br>lengthy rain periods as well as significant storms, is the<br>road having several inundated sections where the road<br>virtually becomes single laned. The inundated sections<br>are also existing in low spots on the road pavement<br>where the road obviously has sub-grade and/or sub-<br>base issues causing consolidation of the pavement due<br>to ongoing heavy vehicle haulage over it. This in turn<br>causes "safety" concerns for residential traffic. | In accordance with the Routine Maintenance Annual<br>Plan, MCC has an obligation to maintain the existing<br>drainage along Muscle Creek Road between the mine<br>entry and the New England Highway. MCC will review<br>the drainage and, where issues are identified, undertake<br>remedial action.   |
| We would request that Muswellbrook Council, as part<br>of the conditions of consent to this modification,<br>instruct Muswellbrook Coal Company Pty Ltd to<br>undergo a full road rehabilitation between its' entrance<br>to Muscle Creek Road to its' intersection with the New<br>England Highway. This would include a re-built down to<br>the sub-grade to fix up the pavement and address the<br>stormwater drainage issues in and around the road.  | The proposed requirement is not feasible for the<br>proposed modification activities (i.e. extending storage,<br>handling and transport of coal for a maximum of three<br>months).<br>MCC proposes to retain the current wording in Condition<br>10 of DA 205/2002, which requires ongoing road<br>maintenance to the satisfaction of Council.   |



### ORDINARY COUNCIL AGENDA

#### 9.1.2. DA 2013/232 Section 4.55(1A) Modification - Northview Estate

| Attachments:             | <ol> <li>DA 2013 232 Section S4.55 Modification Assessment<br/>Report [9.1.2.1 - 4 pages]</li> <li>DA 2013 232 S4.55 Mod Recommended Conditions of<br/>Consent [9.1.2.2 - 14 pages]</li> <li>DA 2013-232 Proposed Park Plan [9.1.2.3 - 10 pages]</li> <li>DA 2013-232 - Statement of Environmental Effects -<br/>Applicant Submission [9.1.2.4 - 8 pages]</li> </ol> |
|--------------------------|--|
| Responsible Officer:     | Sharon Pope - Director - Planning & Environment  |
| Author:                  | Hamish McTaggart – Development Co-Ordinator  |
| Community Plan Issue:    | 1 - Economic Prosperity  |
| Community Plan Goal:     | A dynamic Local economy with full employment for current<br>and future residents in a diverse range of high value<br>industries.   |
| Community Plan Strategy: | 1.1.1 - Facilitate the expansion of and establishment of new industries and business.  |
|                          | 3.4.2.1 - Provide guidance material on Council's website to<br>help applicants for new development to prepare and<br>submit improved Statements of Environmental<br>Effect with their applications.  |

### PURPOSE

This report has been prepared to inform Council in its determination of a Section 4.55(1A) request to modify the development consent issued for DA 2013/232.

The approved DA involves a 99 Lot subdivision at Lot 58 DP 1276946 (212 – 216 Queen Street Muswellbrook).

### **OFFICER'S RECOMMENDATION**

Council approves the Section 4.55(1A) modification request for DA 2013/232 (ninety-nine lot subdivision of Lot 58 DP 1276946) subject to the recommended conditions of consent contained in Attachment B.

Moved:

Seconded:

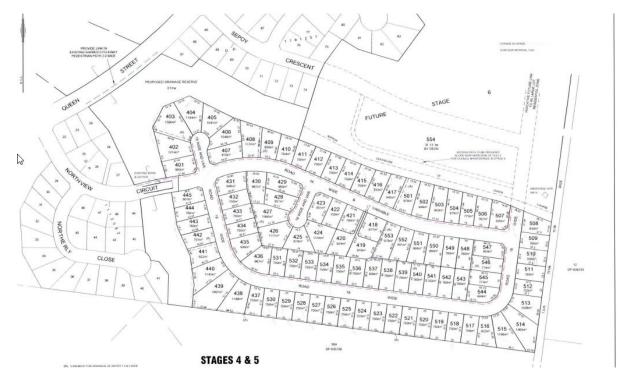
### DESCRIPTION OF THE APPROVED DEVELOPMENT

On 12 May 2014 Council granted development consent to the subdivision of Lot 58 DP 1276946 (212 – 216 Queen Street Muswellbrook) into ninety-nine (99) Lots (Northview Estate).

The subdivision is located on the northern part of the Muswellbrook township and accessed via Queen Street.

The approved subdivision was proposed to be carried out in two Stages. The stages were referred to as Stages 4 and 5 owning to their sequence in the subdivision in the wider Estate with 3 previous land releases approved and carried out under a different DA.





### A copy of the approved subdivision plan has been included below.

### **DESCRIPTION OF MODIFICATION**

The modifications being requested under the s4.55(1A) application involve the amendment of the proposed development by:

a. Adjusting Stage 5 to proceed in two sub-stages referred to throughout the application as Stage 5A and Stage 5B. Stage 5A would involve the release of 26 Lots and Stage 5B 27 Lots. The total lot yield in the approved subdivision would remain unchanged. The image below illustrates the proposed Staging.



- b. The inclusion of a design for the delivery of a 'community park' which was required by Council as a condition of consent in the initial development consent.
- c. Adjusting the timing of the delivery of the Community Park to account for the updated Staging Plan. The consent currently requires the completion of the park with Stage 5, the applicant has proposed its delivery with the completion of Stage 5B.
- d. Amending developer contributions payable related to public open space. The consent currently requires both the delivery of a park and the payment of developer contributions for public open space.

See Attachment C for detail on the Park design and Attachment D for the applicant's modification request.

Under the proposal the total Lot yield would remain at 99 with the delivery of Lots staged as follows:

- Stage 4: 45 Residential Lots + 1 residual development Lot
- Stage 5A 26 Residential Lots + 1 residual development Lot
- Stage 5B 27 Residential Lots + 1 residual development Lot
- Total99 Lots (98 Residential Lots + 1 Residual development Lot)

Council Officers were satisfied that the staging would not have any significant environmental consequence or alter the Section 4.15 Assessment outcomes from the original application.



### **COMMUNITY PARK DESIGN**

The initial development application for the subdivision of the site did not include any park or recreational open space. The review of Council records indicate Councillors raised an interest in having a park or other form of community open space be included in the development and Northview Estate.

Council's determination of the development application included two conditions of consent related to the delivery of a 'Community Park' with Stage 5 of the development. The related conditions of consent have been included below for Council's reference.

- 17. Community Park The location and design of a community park is to be submitted to and approved by Council prior to the release of the Subdivision Certificate for Stage 5.
- 46. The community park, identified in Condition No. 17, is to be constructed in accordance with the submitted plans and to the satisfaction of Council prior to the release of the Linen Plan for Stage 5.

Council Officers have been working with the proponent to give effect to these conditions, to identify a location for the park and come to agreement on the design parameters of the park.

This has culminated in the submission of this modification which seeks to confirm the design of the 'Community Park' as well as timing of its delivery. The applicant is proposing to deliver the park as part of Stage 5B of the development.

### **OVERALL PLAN**



Key (1) PI

The proposed location of the park has previously been reported to and endorsed by Council on land adjacent to Queen Street currently under the ownership of the developer.

The proposed park design has been considered and confirmed to be acceptable and within the scope of a 'community park' to be delivered in context with a development of this size and having regard to related guidelines (e.g., the NSW Government's Everyone Can Play Guidelines and small/local parks considered comparable within scale and service area in the Muswellbrook Township).

The acceptability of the final proposed park design was considered by Council's Community Infrastructure Chief Engineer, Property and Place Technical Officer – Recreation and Property and Development Coordinator – Planning and Development.

With regards to Section 4.55 and Section 4.15 assessment matters the endorsement of the proposed park design is considered to be in accordance with the approved development noting Council's related conditions of consent and will resolve any ambiguity around the scope of the 'community park' the proponent is required to provide as part of the carrying out of the development. Accordingly, Council Assessment Officers are satisfied that the



proposed development may be modified to remove condition 17 and replace it with an updated condition which is specific in the scope of the 'community park' to be delivered as part of the development which reflects the plans submitted.

#### **SECTION 7.11 CONTRIBUTIONS**

The development consent issued by Council requiring the applicant to provide both of the:

- 1. Design and deliver a 'Community Park' to the satisfaction of Council; and
- 2. Payment of Development Contributions (currently s 7.11 Contributions) to Council for the delivery and management of public open space by Council.

In negotiations related to the delivery of the park the proponent has objected to the payment of a developer contribution toward open space.

The proponent has costed the delivery of the park at approximately **\$250,000** (this costing does not include the value of the land). The value of development contributions to be paid for stage 5 of the development under Council's 2022-23 fees and charges are valued at **\$112,015.50**.

The purpose of s7.11 is to off-set the future demands on Council infrastructure, including public open space and parks, arising from development. By providing a community park as part of this development the proponent would be accommodating demand.

Having regard to the provisions of s7.11 of the *Environmental Assessment Act 1979* Council Officers consider that the delivery of a community park to a value in the vicinity of \$250,000 would be a reasonable contribution toward community and public open space for Stage 5 of the development. A decision to apply both a s7.11 financial contribution and the requirement to deliver a park is contrary to the principles of Council's Contributions Plan and the *Environmental Planning and Assessment Act 1979*, which allow for the dedication and development of a park (a material public benefit) in lieu of a monetary contribution.

Council staff support the requested amendment.

#### COMMUNITY PARK CONSTRUCTION TIMING AND BOND REQUIREMENT

The applicant has proposed that the delivery of the Community Park remains tied to the completion of the entirety of Stage 5, in line with the current consent.

While Council Officers have no objection to the timing of the park's delivery being in stage 5B, Officer's note that the proponent is seeking consideration of the discount of stage 5A development contributions in lieu of the delivery of the park. If the development does not proceed to stage 5B, Council should have a mechanism to enforce payment of contributions for stage 5A.

The proponent would like to address this issue with the provision of a bond to the value of \$24,000 with the stage 5A subdivision certificate. Council Officers have proposed a different amount of \$57,064.00, the contribution currently payable for stage 5A under Council's 2022-23 fees and charges. The final bond amount would be subject to Council's fees and charges at the time of payment.

#### **CONSULTATION**.

Negotiations related to the park design involved Council's:

Community Infrastructure Chief Engineer

Property and Place Recreation and Property Technical Officer

Property and Place Works Coordinator

Planning and Environment Development Coordinator







In relation to this application to modify the development consent issued for DA 2013/232 Council may:

- A. Adopt the recommendation to approve the proposed modification subject to the recommended conditions of consent.
- B. Approve the proposed modification of DA 2013/232 subject to different conditions of consent to those recommended
- C. Refuse the proposed modification. Should the modification be refused, the proponent would retain the opportunity to carry out the development under the consent previously issued by Council.

#### FINANCIAL IMPLICATIONS

The proponent is seeking to remove development contributions toward Public Open Space for stage 5 of the development. Other Section 7.11 Contributions related to roads and drainage would remain applicable.

The Section 7.11 Contributions related to open space for Stage 5 of the development would come to the value of **\$112,015.50** under Council's current fees and charges.

The value of the 'community park' to be delivered by the developer in lieu of these contributions has been costed in the vicinity of **\$250,000**.

The value of the in kind works and dedication of land for a community purpose would exceed the monetary value of the related monetary contribution were it to be applied.

#### LEGAL IMPLICATIONS

Where the applicant is dissatisfied with the determination of the development application, they have an opportunity under the provisions of the Environmental Planning and Assessment Act 1979 to appeal the determination at the Land and Environment Court.

Council Assessment Officers are of the view that it may be difficult to defend a decision to impose conditions requiring the payment of s7.11 contributions and the delivery of a public park.

#### CONCLUSION

The proposed modification has been assessed against the relevant provisions of Section 4.55 and Section 4.15 of the *Environmental Planning and Assessment Act 1979* (see Attachment A).

Council Officers recommend that the Section 4.55 modification be approved, and a Notice of Determination be issued to modify the conditions of consent as set-out in Attachment B.

#### SECTION 4.55 (1A) ASSESSMENT REPORT

| ADDRESS:        | Lot 58 DP 1276946  |
|-----------------|--|
|                 |  |
|                 | 212 – 216 Queen Street Muswellbrook  |
|                 |  |
| APPLICATION No: | 2013/232   |
|                 |  |
| PROPOSAL:       | S4.55(1A) Modification to delete and amend conditions, approve<br>landscape plan for community park layout and include a 5A and 5B<br>Staging Plan |
| OWNER:          | Tindale Group Pty Ltd  |
|                 |  |
| APPLICANT:      | Tindale Group Pty Ltd  |
|                 | C/- Mr Tom Goode   |
|                 | 173-185 Sussex Stret   |
|                 |  |
|                 |  |
|                 |  |
| AUTHOR:         | Mr H McTaggart   |
|                 |  |
| DATE LODGED:    | 02/11/2022   |
|                 |  |
| AMENDED:        | NA   |
|                 |  |
| DATE OF REPORT: | 2 December 2022  |

#### SUMMARY

SUBMISSIONS:

**RECOMMENDATION**: Approval subject to conditions

Nil

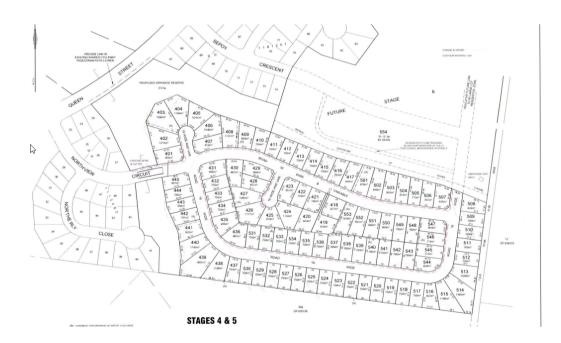
#### 1.0 SITE AND LOCALITY DESCRIPTION

The land subject to this modification application is Lot 58 DP 1276946 (212 - 216 Queen Street Muswellbrook). The land is identified in the image below.



The approved subdivision creates new residential lots on a portion of the site along with a residual lot with the opportunity for further subdivision and development.

The approved subdivision extends from Northview Circuit and can be seen in the image below.



#### 2.0 DESCRIPTION OF PROPOSAL

A s4.55(1A) application has been lodged with Council to modify the development consent issued for the subdivision of Lot 58 DP 1276946 (212 – 216 Queen Street Muswellbrook) into ninety-nine (99) lots.

The modification seeks to amend the proposed development by:

- Adjusting stage 5 to carry out the stage 5 Lot development in two sub-stages referred to throughout the application as stage 5A and stage 5B (note: stage 5 is in effect stage 2 of this development, the Stage appears to have been titled stage 5 in the initial application as 3 previous land releases were approved under a different DA).
- The inclusion of a design, landscape plan related to the delivery of a 'community park' which was required by Council as a condition of consent in its determination of the initial development application.
- Adjust the timing of the delivery of the Community Park to account for the updated staging plan. The consent currently requires the completion of the park with stage 5, the applicant has proposed its delivery with the completion of stage 5B.
- The amendment of developer contributions related to public open space. The consent currently requires both the delivery of a park and the payment of developer contributions for public open space.

#### 3.0 SECTION 4.55 CONSIDERATIONS

The application lodged with Council is a s4.55(1A) modification application. When considering whether to grant consent to a s4.55(1A) modification application a consent authority must take the following matters into consideration:

**4.55 (1)(a)** whether it is satisfied that the proposed modification is of minimal environmental impact.

#### Planning comment:

Council Officers are satisfied that the proposed modification would have minimal environmental impact in considering this issue and forming the related view Council Officers have noted:

- The proposed modification would not create additional lots or alter the approved lot layout.
- The proposed development would give effect to a requirement previously imposed on the development consent by Council related to the provision of a community park.
- The break-up of stage 5 into two sub-stages would have a negligible impact on the carrying out of the development.
- The lot size of all lots proposed will remain in accordance with the relevant Muswellbrook LEP 2009 minimum lot size of 600m<sup>2</sup>.
- **4.55 (1)(b)** whether it is satisfied that the development the consent as modified relates to is substantially the same development for which consent was originally granted.

#### Planning comment:

Council Officers are satisfied that the modification is substantially the same as the development for which consent was originally granted. In forming this position Council Officers have observed that:

- > The lot layout of the subdivision would remain unchanged under the proposed modification.
- The initial development was required to include a community park, which while not incorporated into the previous subdivision design was required as a condition of consent with that determination. The inclusion of a park design in

the subdivision is thereby considered to remain substantially the same as the development approved.

**4.55(2)(c)** Whether it has notified the development application in accordance with any requirements of the Regulations or a DCP.

Planning Comment:

The proposed modification was not considered to require public notification in accordance with Council's Community Participation Plan given that the proposal included no changes to the number of lots proposed or the approved layout.

**4.55(2)(d)** Matters raised by any submissions received through the notification of the development application.

<u>Planning Comment:</u> Notification of the proposed development was not required.

#### 4.0 ASSESSMENT

Section 4.55(3) requires a consent authority to have consideration to relevant Section 4.15 of the Environmental Planning and Assessment Act 1979 related to a particular modification being sought when determining such an application.

In considering this modification Council Officers noted that the relationship between the proposed changes and Section 4.15 assessment considerations did not tangibly alter the manner which the proposed development addressed relevant Section 4.15 assessment considerations. In forming this view Council Officers observed that the proposed changes (with the exception of the Staging adjustment) related to giving affect or adjusting requirements imposed as conditions of consent. While the modification to adjust the development staging would not alter the manner which the development addressed relevant heads of consideration and controls related to the layout of the subdivision.

#### 5.0 CONCLUSION

This s4.55(1A) modification has been assessed under the relevant provisions of the EP&A Act 1979 It is recommended that Council approve this s4.55 modification subject to the recommended conditions of consent.

#### DA 2013-232 – Recommended Modified Conditions of Consent

Council Officers recommend that development consent be granted subject to the modified conditions of consent below. For referenced amended conditions of consent are shown in red.

The Notice of determination issued in accordance with any related Council resolution would not include the red markup, and relevant red sections would be added or deleted as shown below.

#### IDENTIFICATION OF APPROVED PLANS

#### 1. Development in Accordance with Plans

The development being carried out in accordance with the development application and the drawings referenced below, and endorsed with Council's approval stamp, except where amended by the following conditions.

| Drawing No.            | Drawn by       | Drawing Date | Received      |
|------------------------|----------------|--------------|---------------|
| Plan of Stage 4 & 5    | Marshall Scott | 4 April 2014 | 22 April 2014 |
| Subdivision (including |                |              |               |
| location of footpaths) |                |              |               |

The modified Staging Plan submitted with the Section 4.55(1A) modification dated 2 November 2022, stamped with Council's approval stamp and referenced below. The Staging shown in this plan shall take precedence over the Staging shown in the plan referenced above

| Drawing No.              | Drawn by   | Drawing Date | Received   |
|--------------------------|------------|--------------|------------|
| 20-213 - Proposed Layout | RHM        | December     | 2 November |
| Plan                     | Consulting | 2021         | 2022       |
|                          | Engineers  |              |            |

The Northview Estate Place Space Plan submitted with the Section 4.55(1A) modification dated 2 November 2022, stamped with Council's approval stamp and referenced below.

| Drawing No.           | Drawn by     | Drawing Date | Received   |
|-----------------------|--------------|--------------|------------|
| Northview Estate Play | Studio 26    | 24 October   | 5 December |
| Space (Rev E)         | Urban Design | 2022         | 2022       |

#### 2. Development in Accordance with Documentation

The development is to be carried out generally in accordance with the following documents:

| Title                 |    | Written by   |       |          | Date           |
|-----------------------|----|--------------|-------|----------|----------------|
| Statement             | of | Marshall     | Scot  | t Pty    | September 2013 |
| Environmental Effects |    | Limited      |       | -        |                |
| Aboriginal Archaelogy |    | McCardle     |       | Cultural | September 2003 |
|                       |    | Heritage Pty | ∕ Ltd |          |                |

Note: Nothing in this consent authorises any site activities or civil works including, but not limited to earthworks, the installation of any utility service, excavation, filling of land, construction of any roads, pathways or retaining walls, undertaking landscaping works or riparian corridor rehabilitation, bushfire hazard management works, clearing of vegetation or the removal of topsoil without the prior approval of Council.

#### 3. Plans on Site

A copy of all stamped approved plans, specifications and documents (including the Construction Certificate if required for the work incorporating certification of conditions of approval) must be kept on site at all times so as to be readily available for perusal by any officer of Council or the Principal Certifying Authority.

ANCILLARY MATTERS TO BE ADDRESSED TO THE SATISFACTION OF COUNCIL PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE FOR EACH STAGE

#### 4. Construction Management Program

A Construction Management Program must be prepared and submitted to and approved in writing by the Council prior to the issue of any Construction Certificate for each stage. The program shall include such matters as:

- a) a Safe Work Method Statement;
- b) the proposed method of access to and egress from the site for construction vehicles, including access routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed;
- c) the proposed phases of construction works on the site, and the expected duration of each construction phase;
- d) the proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken;
- e) the proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process;
- the proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site;
- g) the proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period;
- h) the proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site;
- i) proposed protection for Council and adjoining properties;

All work and excavation, demolition or construction activities shall be undertaken in accordance with the approved Construction Management Program and any conditions attached to the approved plan. A copy of the approved Construction Management Plan, and any conditions imposed on that plan, shall be kept on the site at all times and made available to any officer of Council upon request.

ANCILLARY MATTERS TO BE COMPLETED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE

#### 5. Pedestrian/Cycleway

A concrete footpath shall be provided for each Stage of the subdivision at the cost of the applicant, in accordance with AUSPEC, Council's footpath policy and the approved plan.

#### 6. Muswellbrook Shire Water and Waste Division

A 'Notice of Requirements' under the Water Management Act 2000 must be obtained, prior to any Construction Certificate application for each stage, detailing water and sewer extensions to be built and charges to be paid by the applicant. Any charges identified in the 'Notice of Requirements' as requiring payment at construction certificate stage are to be paid prior to release of a Construction Certificate.

Details demonstrating compliance with any requirements for works by Muswellbrook Shire Council Water & Waste Department are to be provided with the Construction Certificate application for each stage.

The final compliance certificate must be submitted to the Principal Certifying Authority prior to release of the Subdivision Certificate for each stage.

#### 7. Design and Survey for Public Infrastructure

The applicant shall engage an appropriately qualified person to undertake the survey, design and preparation of plans for all works located within Council's property or all works that revert to Council's care and control upon completion of the development. The design plans are to be certified by an appropriately qualified and practising Civil Engineer to confirm compliance with appropriate Australian Standards and submitted to the Certifying Authority for approval with the Construction Certificate for each stage.

#### 8. Landscape Design Plan

A landscape design plan is to be submitted to and approved by Council with the Construction Certificate for each stage. The plan is to include botanical names, quantities, planted state of maturity of all proposed trees, shrubs and ground covers and to be in accordance with Council's requirements.

#### 9. Sediment Control

Where construction or excavation activity requires the disturbance of the soil surface and existing vegetation, details including plans and specifications shall be submitted to Council accompanying the Construction Certificate, which provide adequate measures for erosion and sediment control. As a minimum, control techniques are to be in accordance with Muswellbrook Shire Council's Guidelines on Erosion and Sediment Control, or a suitable and effective alternative method. The Control Plan shall incorporate and disclose:

- (a) all details to protect and drain the site during the construction processes;
- (b) all sediment control devices, barriers and the like;
- (c) sedimentation tanks, ponds or the like;
- (d) covering materials and methods;
- (e) a schedule and programme of the sequence of the sediment and erosion control works or devices to be installed and maintained.

Details from an appropriately qualified person showing that these design requirements have been met shall be submitted with the Construction Certificate and approved in writing by the Certifying Authority prior to issuing of the Construction Certificate for each stage.

#### 10. Stormwater Drainage – Subdivision or Major Development

Stormwater drainage and Kerb and Gutter shall be designed at the cost of the applicant in accordance with AUSPEC (Council's current specification is available on Council's website)

The Engineering Plans are to be certified as compliant with the above requirements by a qualified civil or hydraulic engineer and submitted for approval by the Certifying Authority with the Construction Certificate for each construction stage.

#### 11. Underground Electricity

All electricity provision to the site is to be designed in conjunction with Energy Australia so that it can be easily connected underground when the street supply is relocated underground. Details to be shown on plans submitted to the Certifying Authority and approved with the Construction Certificate for each stage.

#### 12. Geotechnical Investigation

A certificate prepared by an appropriately qualified Geotechnical Engineer shall be submitted to the Certifying Authority for approval with the Construction Certificate for each stage, certifying that the existing substrate on the site is capable of:

- a) withstanding the proposed loads to be imposed;
- b) withstanding the extent of the proposed excavation, including any recommendations for shoring works that may be required to ensure the stability of the excavation;
- c) providing protection and support of adjoining properties;
- d) the provision of appropriate subsoil drainage during and upon completion of construction works.

#### 13. Residential Utility Services

Any necessary alterations to, or relocations of, utility services must be carried out at no cost to the council or the relevant public authority.

#### 14. Road Design Criteria

The proposed public road shall be designed to include the eastern boundary road and include the intersection with Sepoy Crescent. Construction to include all internal roads and this eastern boundary road to the northern side of the water way north of lots 507 and 508.

#### 15. Road Surfacing – Cul de sac

The road surfacing of the cul-de-sacs shall be 40mm Asphalt Concrete (AC).

#### 16. Engineering Plans

The Engineering Plans are to be submitted for approval as follows:

- For works in existing road reserves a Section 138 Approval under the Roads Act 1993;
- Stormwater as a Section 68 approval under the Local Government Act 1993; and
- Internal works are approved with the Construction Certificate Application under the EP&A Act.

Road works, stormwater drainage, footpath/cycle ways, and kerb and gutter shall be designed at full cost to the consent holder and in accordance with Muswellbrook AUSPEC specifications as in force or amended at the time of design/construction, with the additional requirements required by this consent.

The design is to ensure a smooth connection to existing, or planned, adjoining infrastructure. The design shall extend a suitable distance (minimum 60m).

Engineering Plans for Stormwater must demonstrate management of stormwater flows from upstream areas as developed to the full extent possible as currently zoned and from the site to a legal point of discharge or approved discharge point.

Plans submitted for Construction Certificate must show all earth works required to provide suitable building sites and the methods to be used to establish lots as required by AUSPEC.

Note:

 All works are to be designed and constructed in accordance with the Muswellbrook DCP and referenced AUSPEC Design and Construction requirements with the additional requirements required by this consent. All roundabouts, culs-de-sac heads, and turning heads (if any) are to be designed and constructed with an Asphaltic Concrete (AC) surface treatment.

#### 17. Community Park

The location and design of a community park is to be submitted to and approved by Council prior to the release of the Construction Certificate for Stage 5.

The plans submitted with a Subdivision Works Certificate (Construction Certificate for Subdivision Works) for Stage 5B are to be accompanied with plans for a community park the design of which is to be in accordance with the Design Approved by the Northview Estate Place (Rev E) plan referenced in condition 1 of this Notice of Determination.

#### 18. Cycleway within Drainage Reserve

A shared footpath/cycleway, being a minimum width of 2m, is to be provided within the proposed drainage reserve located within Stage 5, at the full cost of the applicant and in accordance with AUSPEC and Council's footpath policy.

#### CONDITIONS THAT MUST BE ADDRESSED PRIOR TO COMMENCEMENT

#### 19. Public Liability Insurance

Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of \$10 million in relation to the occupation of, and

approved works within Council's road reserve or public land, as approved in this consent. The Policy is to note, and provide protection for Muswellbrook Shire Council, as an interested party and a copy of the Policy must be submitted to Council and the Principal Certifying Authority prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public land.

Note: Applications for hoarding permits, vehicular crossings etc will require evidence of insurance upon lodgement of the application.

#### 20. Sediment and Erosion Control

All required erosion and sedimentation techniques are to be properly installed prior to the commencement of any site works and maintained in a functional and effective condition throughout the construction activities until the site is stabilised.

#### 21. Site Facilities

- (a) If the development involves building work or demolition work, the work site must be fully enclosed by a temporary security fence (or hoarding) before work commences.
- (b) A minimum width of 1.2m must be provided between the work site and the edge of the roadway so as to facilitate the safe movement of pedestrians.
- (c) Any such hoarding or fence is to be removed when the work has been completed.
- (d) A garbage receptacle fitted with a tight fitting lid for the reception of all food scraps and papers from the work site must be provided prior to building work commencing and must be maintained and serviced for the duration of the work.
- (e) Toilet facilities must be provided on the work site at the rate of one toilet for every 20 persons or part of 20 persons employed at the work site.
- (f) Each toilet provided must:
  - be a standard flushing toilet, connected to a public sewer, or
  - if connection to a public sewer is not available, to an on-site effluent disposal system approved by the council, or
  - an approved temporary chemical closet.
- (g) The provision of toilet facilities must be completed before any other work is commenced.
- (h) A person having the benefit of this certificate who causes an excavation that extends below the level of the base of the footings of a building on an adjoining allotment of land must at their own expense and where necessary:
  - protect and support the building from damage, and
  - If necessary, underpin and support the building in accordance with the details prepared by a professional engineer.
- (i) A person having the benefit of this certificate who causes the excavation must, at least 7 days before commencing this work, give notice of intention to do so to the owner of the adjoining allotment of land and provide particulars of the proposed work.
- (j) Erosion and sediment controls must be provided in accordance with the details shown on the approved plans, prior to the disturbance of any soil on the work site.

#### 22. Site Sign

A sign must be erected in a prominent position on any work site on which work involved in the erection or demolition of a building is being carried out:

- (a) stating that unauthorised entry to the work site is prohibited;
- (b) showing the name of the principal contractor (or person in charge of the work site), and a telephone number at which that person may be contacted at any time for business purposes and outside working hours; and
- (c) showing the name, address and telephone number of the Principal Certifying Authority for the work.

Any such sign must be maintained while to building work or demolition work is being carried out, but must be removed when the work has been completed.

This condition does not apply to building works being carried out inside an existing building.

#### 23. Construction Certificate Requirement

No works shall commence on site until such time as a Section 138 Permit issued under the Roads Act, Section 68 Approval issued under the Local Government Act, a Construction Certificate issued under the Environmental Planning and Assessment Act, as appropriate, has been issued for either part or all of the works. If a certificate is issued for part of the works it must cover the works being undertaken onsite.

#### 24. Damage to Public Infrastructure

The applicant shall bear the cost of all restoration works to Council property damaged during the course of this development. The applicant shall submit in writing and/or photographic record, of any existing damage to Council property before commencement of work.

Note: This documentation will be used to resolve any dispute over damage to infrastructure. If no documentation is received prior to commencement of work it will be assumed that the infrastructure was undamaged and the applicant will be required to restore all damaged infrastructure at their expense.

#### 25. Proposed Street names

Preferred street names shall be submitted prior to lodging the application for a Subdivision Certificate for Council's consideration with the Engineering Drawings and shall be generally in accordance with the guidelines issues by the Geographical Names Board.

CONDITIONS THAT MUST BE COMPLIED WITH DURING CIVIL WORK

#### 26. Dust Emission and Air Quality

- (a) Materials must not be burnt on the site.
- (b) Vehicles entering and leaving the site with soil or fill material must be covered.
- (c) Dust suppression measures must be carried out to minimise wind-borne emissions in addition odour suppression measures must also be carried out where appropriate so as to prevent nuisance occurring at adjoining properties.

#### 27. Construction Hours

- (a) Subject to this clause, building construction is to be carried out during the following hours:
  - i. between Monday to Friday (inclusive)—7.00am to 5.00pm
  - ii. on a Saturday-7.00am to 4.00pm
- (b) Building construction must not be carried out on a Sunday or a public holidays.
- (c) Demolition works and excavation works must only be carried out between Monday to Friday (inclusive) between 8.00am and 5.00pm.
- (d) The builder and excavator must display, on-site, their 24 hour contact telephone numbers, which are to be clearly visible and legible from any public place adjoining the site.

#### 28. Mandatory Council Inspections

At the following stages of construction, an inspection is required by Council:

- (a) Sewer drains all pipes are to be correctly laid, suitably bedded and ready for backfilling. Suitable backfill material is to be available on site at the time of inspection
- (b) Council infrastructure
- (c) Connection to the Drainage Reserve

To arrange an inspection please contact Council's Environmental Service Department on (02) 6549 3745. Note: Inspection fees will be charged in accordance with Council's adopted fees and charges.

Note: Inspection fees must be paid prior to the issue of the Construction Certificate.

#### 29. Stockpiling of topsoil

The applicant must stockpile any topsoil that is removed during the construction phase of the subdivision for each stage. The topsoil is to be reused on site within open space areas and must have adequate dust suppression and sediment and erosion control measures in place at all times.

CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

#### 30. Impact on Amenity of Surrounding Area

The implementation and intensity of this development shall not adversely affect the amenity of the neighbourhood by reason of the emission of noises, noxious fumes, odours and waste.

CONDITIONS THAT MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF SUBDIVISION CERTIFICATE FOR EACH STAGE

#### 31. Minimum lot frontage – Subdivision

The applicant is to ensure all lots within the proposed subdivision will have a minimum lot frontage of 18m in accordance with Section 5.5.6 (ii) of the Muswellbrook Development Control Plan 2009.

#### 32. Development Contributions

A contribution pursuant to the provisions of Section 7.11 of the Environmental Planning and Assessment Act 1979, as specified under the Muswellbrook Shire Council Section 94 Contribution Plan for the services detailed in column A and, for the amount detailed in column B shall be made to Council.

| Column A                            | Column B  |         |              |
|-------------------------------------|-----------|---------|--------------|
| Stage 4                             | Amount    | Number  | Total        |
| -                                   |           | of Lots |              |
| Open Space and Community Facilities | \$1740.32 | 45      | \$78,314.40  |
| Roads and Drainage                  | \$938.02  | 45      | \$42,210.90  |
|                                     |           | TOTAL   | \$120,525.30 |

| Stage 5                             | Amount               | Number<br>of Lots | <del>Total</del>        |
|-------------------------------------|----------------------|-------------------|-------------------------|
| Open Space and Community Facilities | \$1740.32            | <del>53</del>     | \$ <del>92,236.96</del> |
| Roads and Drainage                  | \$ <del>938.02</del> | <del>53</del>     | \$49,715.06             |
| OVERALL TOTAL                       |                      |                   | \$141,952.02            |

| Stage 5A           | Amount     | Number<br>of Lots | Total    |
|--------------------|------------|-------------------|----------|
| Roads and Drainage | \$1,139.00 | 27                | \$30,753 |
|                    | OVERA      | ALL TOTAL         | \$30,753 |
|                    |            |                   |          |
| Stage 5B           | Amount     | Number<br>of Lots | Total    |
| Roads and Drainage | \$1,139.00 | 26                | \$29,614 |
|                    | OVERA      | LL TOTAL          | \$29,614 |

Note – Section 7.11 open space contributions have not been applied to Stage 5A or 5B of the development in lieu of the delivery of a Community Park in accordance with this development consent and related conditions of consent.

The contribution SHALL BE paid prior to the release of the Linen Plan of Subdivision for each stage, where applicable.

The above amount shall be adjusted for inflation by reference to the Consumer Price (All Ordinaries) Index applicable at the time of the payment of the contribution.

A copy of the Muswellbrook Shire Council Section 94 Contribution Plan can be viewed at the office of Council 157 Maitland Street, Muswellbrook.

#### 33. Final Water and Waste Compliance Certificate

The final compliance certificate for water supply and sewerage works is to be obtained from Muswellbrook Shire Council Water & Waste Department. A copy must be submitted to the Principal Certifying Authority prior to the release of a subdivision certificate for each stage.

#### 34. Services within Lots – Subdivision

Notification of arrangements to connect services and utilities to each LOT shall be provided to the Certifying Authority with the Subdivision certificate:-

- (a) telecommunication services
- (b) electrical reticulation

All adjustments to existing utility services made necessary by the development are to be undertaken by the developer at no cost to Council.

#### 35. Easement Registration

Where any drainage line or service conduit is to traverse any property other than that which it serves, an appropriate easement will be required. In this case, the applicant shall register an easement not less than 1200mm wide over the proposed drainage line or service concurrently with any subdivision registration.

The wording on the 88B Instrument is to make reference to the Council file where the Construction plans and the "Work-as- Executed", (as built), plans are held. Typical wording can be obtained from Council's "Specification for the Management of Stormwater" document.

#### 36. Addressing Numbering (Subdivisions)

Prior to issuing any Subdivision Certificate for the subdivision, the person acting upon this consent must apply to Muswellbrook Shire Council and receive written confirmation of the allocated street names and addresses (house number) and unit numbers for the building and any approved allotments within the completed project. These are the street names and numbers that will be recorded in Council records and must be displayed at the property in accordance with the provisions of AS/NZS 4819:2003 – Geographic information – Rural and urban addressing.

To assist Council when applying for street name and number allocations, a draft proposal for street naming and numbering within development should be submitted for concurrence to Council at an early stage of construction, as these numbers will be used to maintain Council's property and mapping database, and the proposed street names must be formally agreed and adopted by Council.

#### 37. Public Road Dedication

All formed roads are to be dedicated as public roads on the Subdivision Certificate and Linen Plan(s) of subdivision.

#### 38. Geotechnical Classification

At the conclusion of all earthworks, lots within each stage of construction shall be classified for residential building construction in accordance with AS 2870-1996 (as amended) at the cost of the applicant.

Building envelopes are to be identified on the Engineering Plans, lot classifications shall be based on test locations within the building envelopes. If cut and fill is carried out within such building envelopes as part of the construction of the subdivision, level pads for residential building construction are to be provided.

Lot classification tests shall be carried out after all cut and fill and compaction has been completed. Classification test results demonstrating compliance with the above

shall be provided to Council prior to release of the respective subdivision certificate for each construction stage.

#### **39.** Works as Executed plans

All civil works for each stage shall be completed to Council's satisfaction. On completion, "Works-as-Executed" (WAE) drawings are to be provided by the developer, to Council and accepted, prior to the release of the respective subdivision certificate. The drawings shall be in the form of a marked-up copy of each approved Construction Certified Engineering Plan, and also in marked-up digital CAD format compatible with Council's asset database system. Digital data requirements shall be confirmed with Council's Asset Manager prior to provision of the WAE drawings.

All WAE drawings shall be individually certified as compliant with the design requirements of this consent by an appropriately qualified engineer or registered surveyor.

Line sheets/junction sheets are to be provided by the developer for all access chamber lengths covered by the WAE sewer main drawings.

#### 40. Maintenance Bond

Prior to the release of the linen plan of subdivision for each construction stage the applicant or person acting upon this consent is to lodge a Maintenance Bond for all works that are nominated to revert to the care and control of Council, being a minimum of 5% of the total cost of subdivision construction works for each stage of the development. The bond shall be in place prior to the approval of any subdivision certificate and shall remain in place for a required maintenance period of six (6) months from the date of Council's endorsement of the relevant linen plan.

Council will accept a bank guarantee for the purpose of any bond imposed by these conditions of consent. Such bank guarantee shall be in a form acceptable to the Council.

Note: Upon the expiration of the 6 month maintenance period, the applicant may apply for release of the bond. Council may deduct from the bonded amount the cost of any maintenance work required to be undertaken by Council as a result of incomplete or substandard works or the like.

## 41. Inspection, Test, Witness and Hold Points During Construction – Subdivisions

The AUSPEC Construction Specifications (which must be complied during all civil construction works as in force or amended at the time of design/construction) contain a number of Witness Points (WPs), Test Points (ITPs), Witness Points (WPs) and Inspection Points (IPs) throughout the construction period which require reference to or the attendance of a Council Officer.

• All such points relevant to the scope of works for all civil infrastructure shall be assembled in a series of Inspection and Test Procedures (ITPs) and provided to Certifying Authority for approval with the Construction Certificate and prior to the commencement of construction.

• The ITPs and test results (subgrade compaction, road materials, road and Lot fill compactions, water and sewer commissioning, Benkelman beam tests, concrete compressive strength tests) shall be held on-site and copies of test results provided

to the Principal Certifying Authority as soon as they become available throughout the course of the construction. Defective materials and test results are to be rectified and tests repeated to the satisfaction of the Principal Certifying Authority.

#### 42. Electronic Plan Information

Requirements for the submission of electronic plans to Council

- (a) File format for drawings submitted is to be dxf.
- (b) Where possible the dxf is to be projected using real world co-ordinates.
- (c) Council's preferred projection is MGA94 using the GDA94 datum, zone 56 south. If a projection other than MGA94 is used then the details must be provided with the file and a justification needs to be provided as to why MGA94 wasn't used.
- (d) In the case where information is unable to be supplied in real world coordinates, then ground survey points (minimum 2) marked on the dxf, must be supplied so that the dxf can be transformed from non-earth to real world.
- (e) A text file listing the layers used and the themes placed on each layer is to be supplied.
- (f) Drawings must contain separate layers for each theme e.g. the layer containing contour lines should not contain outlines for trees or roads.

#### 43. Services

Each lot is to be provided with separate water, sewerage and drainage facilities and services. Where a service is to traverse an adjoining lot an easement is to be created. All sewer junctions are to be extended at least 500mm above the finished ground surface and capped for easy identification.

#### 44. Street Lighting

Street lighting is to be provided in accordance with Council's requirements prior to the release of the Subdivision Certificate for each Stage.

#### 45. Restrictions-as-to-user

The following restrictions are to be identified in the Section 88B Instrument which is submitted with the application for a Subdivision Certificate. The restrictions are to name Muswellbrook Shire Council as the sole authority empowered to release, vary or modify the same:

• Fencing at the rear of proposed lots 411 and 417 and proposed lots 501 to 508 is restricted to an open/ rural style fence so not to impede the overland flow of stormwater.

#### 46. Community Park

The community park, identified in Condition No. 17, is to be constructed in accordance with the submitted plans and to the satisfaction of Council prior to the release of the Linen Plan of Subdivision Certificate for Stage 5B.

#### 47. Cycleway within the Drainage Reserve

The shared footpath/cycleway located within the drainage reserve is to be completed prior to the release of the Linen Plan of Subdivision for Stage 5.

#### 48. Community Park Stage 5A Bond

Prior to the release of the Subdivision Certificate for Stage 5A of the development, the person acting with this consent is to provide Council with a bond calculated in accordance with the following.

The bond amount is to reflect the Section 7.11 (Section 94 Contributions) payable for Open Space and Community Facilities for Stage 5A of the development based on Council's fees and charges at the time of payment. These Section 7.11 Contributions are subject to increases with CPI. The bond amount would be subject to the same CPI increases.

Where the bond was paid within the 2022/2023 financial year the bond amount would be as a follows:

| Stage 5A                            | Amount     | Number<br>of Lots | Total       |
|-------------------------------------|------------|-------------------|-------------|
| Open Space and Community Facilities | \$2,113.50 | 27                | \$57,064.50 |

This bond is to be taken in lieu of the delivery of the Community Park in Stage 5A of the development, with the park's delivery proposed in Stage 5B.

The bond amount will be released with the construction and dedication of the Community Park in accordance with this consent. Should the park not be delivered, or the development not proceed the related bond will be forfeited to Council. Where the bond is forfeited to Council, the money shall be used by Council as a s7.11 Contribution for Open Space and Community Facilities.

#### ADVICE:

#### 1. Section 90 Permit

Should the applicant uncover artefacts during the construction/ development process, a Section 90 approval under the National Parks and Wildlife Act 1974 must be obtained from the Office of Environment and Heritage for any destruction, damage or harm (including removal) of any Aboriginal artefact or heritage site.

#### 2. Location of Services

Prior to construction work commencing you should ensure that all services have been clearly located and identified by contacting "Dial before you Dig" by telephoning 1100.

#### 3. Submission of Linen Plan of Subdivision

The submission of a final Linen Plan, eight (8) helio copies and an electronic copy thereof, together with any instrument creating an easement and restriction as to user pursuant to Section 88B of the Conveyancing Act.



## Northview Estate Play Space Queen Street

Queen Street formerly known as Lot 58 DP 1276946



m: 0413 782 764
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 w: www.studio26urbandesign.com

| Project Name   | Northv    |
|----------------|-----------|
| Project Number | 2022-07   |
| Client         | Tindale F |
|                |           |

| Revision | Date of issue | De  |
|----------|---------------|-----|
| A        | 24 March 2022 | Pla |
| В        | 30 March 2022 | Pla |
| С        | 01 April 2022 | Pla |
| D        | 31 May 2022   | Pla |
| E        | 24 Oct 2022   | Fin |
|          |               |     |
|          |               |     |
|          |               |     |
|          |               |     |

Studio 26 Urban Design acknowledges the Australian Aboriginal and Torres Strait Islander peoples of this nation. We acknowledge the Wonnarua and Gamilaroi people as the Traditional Owners and Custodians of the land within the Muswellbrook Local Government Area that this project is located within. We pay our respects to Aboriginal Elders, past and present. Studio 26 Urban Design is committed to honouring Australian Aboriginal and Torres Strait Islander peoples' unique cultural and spiritual relationships to the land, waters and seas and their rich contribution to society.



#### view Estate - Playground

Pty Ltd

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#### **STUDIO 26** URBAN DESIGN Northview Estate - Landscape Plan

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# THE PROJECT

Attachment 9.1.2.3 DA 2013-232 Proposed Park Plan



## **EXISTING LANDSCAPE FEATURES**



## **STUDIO 26** Northview Estate - Landscape Plan

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## **THE DESIGN**

#### **UNDERSTANDING THE SITE**

Northview Estate is a premium 99 residential subdivision located in North Muswellbrook which is only minutes from Muswellbrook town centre and in close proximity to Muswellbrook Pubic School and Pre-schools. Stage 4A of the development is currently sold out with a further 13 lots being sold for Stage 4B of the development.

The proposed Northview Estate Play Space will be incorporated into Northview Estate Stage 4.

#### **THE PROPOSAL**

The proposed design will enhance the park through the following measures:

- The design aims to be accessible for all to the site facilities.
- Increase vegetation management of the site, look for opportunities to work with Council and Land Care for perimeter planting opportunity.
- Enhance the open lawn space to encourage use of the park for active recreational activities.
- Create natural CPTED outcomes that decreases the antisocial behaviour.

#### THE DESIGN

The design for Northview Estate Play Space will create a diverse range of experiences for varying age groups. The activities accommodate a minimum of two elements with at least two or more types of play. The different types of play elements will cater for younger and school aged children.

The overall park design will include but not be limited to the following elements:

- Active play
- Creative or imaginative play
- Free play
- Quiet play
- Social play
- Shared cycle path
- Signage

Inclusion of a shade solution for the play space and surrounding areas within the proposed park. This may be in the form of shade structures or landscape options. Consideration of pedestrian circulation within the park that connect with existing pathways. The design will be inclusive and allow for access, involvement, engagement and safety for all abilities.

#### **PROPOSED AGE RANGE**

The playspace is required to meet the needs of a varied age range, the design will provide for at least two elements per play type and two or more play types.

- The proposed Play Equipment for a ages between 0-12 years includes the following:
- Toddler parent swings
- Play opportunities at a lower level
- Play equipment that encourages risk-taking
- Progression of skill/motor skill development including strength, coordination and balance
- Variety of play equipment
- Accessible play opportunities at a lower level

#### **STUDIO 26** URBAN DESIGN Northview Estate - Playground

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## **OVERALL PLAN**



#### **Northview Estate - Landscape Plan** STUDIO 26 URBAN DESIGN

#### **01** Planting to the boundary edge of the park

02 Open lawn area - For independent and ball play Proposed shade trees
 - Species could include Tuckeroos, Flame Trees and Jacarandas

O4 Proposed playground with shade sail structure and rubber softfall - 2.5m wide learn to ride track with signage and solar bollards provided for lighting purposes

- Custom Denny Structure - A0 - 1894
- 2 bay swing with accessible swing, toddler swing and strap swing

#### (05) Proposed picnic shelter with accessible picnic table

06 Proposed entry sign and pedestrian accessible footpath connecting Queen Street to the park Proposed Landcare Zone - Creation of green buffer and screen to the edge of embankment

### **08** Seating to the edge of the play area

- Rocker

 Boundary fence
 Aluminium 'timber appearance' rural fencing type Maintenance vehicle gate
 - 3.6m wide gate to allow plant access to maintain the drainage reserve



## **PLAY ELEMENTS**



Austek Play Equipment

#### **STUDIO 26 Northview Estate - Landscape Plan**

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## **FURNITURE SUITE**



Gossi - Furniture Suite

## **STUDIO 26** Northview Estate - Landscape Plan

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30 October 2022

The General Manager Muswellbrook Shire Council PO Box 122 Muswellbrook NSW 2333

[Att: Mr Hamish McTaggart, Development Coordinator Hamish.McTaggart@muswellbrook.nsw.gov.au]

Dear Hamish,

#### SECTION 4.55(1A) MODIFICATION APPLICATION (DA2013-232) Northview Estate – Proposed Park

This application has been prepared by Ethos Urban on behalf of Tindale Property, pursuant to section 4.55(IA) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) to modify Development Consent DA2013-232 for the Residential Subdivision DA 2013-232 that was approved by Council on 12 May 2014 for Stages 4 and 5 for a total of 98 lots.

DA Consent Condition 17 for the development states:

17. Community Park The location and design of a community park is to be submitted to and approved by Council prior to the release of the Subdivision Certificate for Stage 5.

The proposed modification seeks a number of amendments to the development, including:

- Inclusion of a new landscape plan and specifications as it relates to part of Lot 58, DP 1276946, Queen Street Muswellbrook.
- Amendment of Condition 32 as it relates to s7.11 developer contributions.

This application identifies the consent, describes the proposed modifications and provides an assessment of the relevant matters contained in section 4.55(IA) of the EP&A Act. This application is accompanied by:

- Landscape Plan and Schedule (Attachment A);
- Staging plan (Attachment B).

| 173 Sussex St, Sydney |       |          |
|-----------------------|-------|----------|
| (Gadigal              | Land) | NSW 2000 |

E. sydney@ethosurban.com W. ethosurban.com T. +61 2 9956 6962

ABN. 13 615 087 931



#### Consent proposed to be modified

Development Application DA2013-232 was granted approval by Muswellbrook Shire Council on 12/05/2014 for the *"subdivision of one (1) lot into ninety-nine (99) lots"*.

This modification will constitute the first amendment to DA2013-232.

#### Proposed modifications to the consent

The proposed modifications to consent for DA2013-232 are:

- Inclusion of a new landscape plan and specifications as it relates to part of Lot 58, DP 1276946, Queen Street Muswellbrook.
- Delete Condition 17 which requires the approval of the Community Park
- Amendment of Condition 32 as it relates to s7.11 developer contributions.

#### Plan Amendment: New Community Park

This modification includes a new landscape plan and specifications as it relates to part of Lot 58, DP 1276946, Queen Street Muswellbrook.

As agreed with Council, the Plan (refer Appendix A) and allied specifications includes the following:

- Deletion of toilet
- Deletion of CCTV cameras
- Inclusion of shade sale to the playground
- Inclusion of accessible access and footpath into the site
- Inclusion of bike path
- Inclusion of access gate to drainage reserve

This s4.55 Modification therefore seeks formal acceptance of the playground design.

The indicative costing allied to these items is provided in a full cost report as Appendix B to this submission and provides the following:

- a. playground equipment: \$50,600
- b. soft fall surfaces under play equipment: \$45,000
- c. kick about area \$2,425
- d. paving for ball games: \$9,620
- e. seating with shade: \$12,000
- f. landscaping: \$13,698
- g. general shade and lighting: as per Item 5
- h. Play areas fenced from balance of park to delineate use: \$16,200

The above costing does not consider the cost of land.

#### Modifications to conditions

The proposed modifications described above necessitate amendments to the consent conditions which are identified below. Words proposed to be deleted are shown in <del>red strike through</del> and words to be inserted are shown in **bold italics**.

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#### **Delete Condition 17**

DA Consent Condition 17 for the development states:

17. Community Park The location and design of a community park is to be submitted to and approved by Council prior to the release of the Subdivision Certificate for Stage 5.

We request this condition be deleted in its entirety.

#### Amend Condition 32

This modification also seeks the deletion of the condition regarding the Section 7.11 Contributions for the entirety of Stage 5 as it relates to open space and community facilities in lieu of the dedication and construction of the community park as required by the consent.

The section 7.11 contributions related t the open space and community facilities for stage 5 (totalling **\$112,0150)** will be waived in lieu of the construction and delivery of the park in accordance with the consent requirements.

#### New Condition - Development Staging

We request the insertion of a new plan into the consent supported by a condition outlining updated Staging of the project to deliver Stage 5A and 5B.

The park will be delivered and handed over to Council prior to the release of the final Occupation Certificate for Stage 5B.

Prior to the provision of a subdivision certificate for stage 5A the developer will pay a \$25,000 deposit bond.

The park construction works will need to be completed prior to the issuing of the Stage 5B Subdivision Certificate.

Please refer Attachment B for the staging plan.

#### Substantially the same development

Section 4.55(IA) of the EP&A Act states that a consent authority may modify a development consent if "it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all)".

The development, as proposed to be modified, is substantially the same development as that originally approved in that:

- The proposed modifications are minor and relate to refinements sought by conditions of consent, to enhance amenity in the area.
- The proposed modifications will only slightly change the approved consent, however, it is considered to be minor and negligible as it will improve the overall outcome of the development, particularly in relation to residential amenity and access to open space.
- The proposed modifications do not alter the key components of the approved development, being "Stages 4 and 5 for a total of 98 lots".
- The proposed modifications are minor and will not result in any additional environmental impacts.

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#### **Environmental assessment**

Section 4.55(1A) of the EP&A Act states that a consent authority may modify a development consent if "*it is satisfied that the proposed modification is of minimal environmental impact*". Under section 4.55(3) the consent Authority must also take into consideration the relevant matters to the application referred to in section 4.15(1) of the EP&A Act and the reasons given by the consent authority for the grant of the original consent.

The following assessment considers the relevant matters under section 4.15(1) and demonstrates that the development, as proposed to be modified, will be of minimal environmental impact.

#### Muswellbrook DCP

The Muswellbrook DCP (2009) Section 5 Subdivision outlines the requirements for 'Local, neighbourhood and district parks' noting that they:

"are to be created to provide landscaped areas for passive enjoyment and/or for informal recreation and nonorganised leisure. Parks are to be of varying sizes that respond to the topography, subdivision pattern and other open space elements."

Controls: for both local and neighbourhood parks requires that public open space to be provided within the proposed subdivision at a rate of 1.0ha per 1000 people (or part thereof) based on a dwelling occupancy rate of 2.63 persons per lot, in accordance with below.

| Local Public Open Space Development Standards |   |
|---|---|
| Area  | Area of 0.25 to 1.5ha. The number and distribution of these parks is to be  |
|   | such that 95% of residents are located within a 400m radius.                |
| Shape   | Length to width ratio shall not exceed 3:1, and a 20m buffer provided from  |
|   | active paly areas to residential boundaries                                 |
| Landform                                      | >80% of the area to have slopes <8%, with good drainage, grassed surfaces   |
|   | incorporating and landscaped elements/paved areas with soft fall            |
| Access  | Vehicular access from local roads for maintenance vehicles and readily      |
|   | accessible by pedestrians and bicycles                                      |
| Road frontage                                 | >50% of perimeter for casual surveillance                                   |
| Amenities                                     | Playground equipment, soft fall surfaces under play equipment, kick about   |
|   | area, paving for ball games, seating with shade, landscaping, drinking      |
|   | fountains, general shade and lighting. Play areas fenced from balance of    |
|   | park to delineate use. Toilet blocks if servicing greater than 1000 persons |
| Services                                      | Access to garbage collection, regular maintenance, water, electricity.      |

This modification is sought as:

- There is no definition of a community park.
- We take it to read that a 'community park' is one that is publicly accessible and for the community.
- The DCP predates the consent and refers only to local, neighbourhood and district parks
- The whole of the northview estate being c. 300 numbers of dwellings meets the Local Park Standards and does not meet the Neighbourhood Park requirement



#### Conclusion

The proposed application seeks consent for the detailed design of the local neighbourhood park identified as part of Lot 58, DP 1276946 on Queen St, Muswellbrook, as part of the Development Consent Conditions for DA 2013-232.

In addition we seek amendment and addition of some conditions of consent to enable this, as well as offsetting the costs that have been paid previously towards this form of open space.

To enable staged delivery of the precinct, a staging plan is also included in this modification.

In accordance with section 4.55(1A) of the EP&A Act, Council may modify the consent as:

- the consent, as proposed to be modified, is substantially the same development as that originally approved.
- The proposed modifications are minor in nature and will not have any substantial environmental impacts.
- The modifications comply with the LEP and DCP and relevant State Environmental Planning Policies.
- The modifications will result in greater amenity for the local community.

In light of the above, we recommend that the proposed modification is supported. We trust that this information is sufficient to enable a prompt assessment of the proposed modification request.

Yours sincerely,

Tom Goode Director tgoode@ethosurban.com

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#### Attachment A

Landscape Plan and Schedule

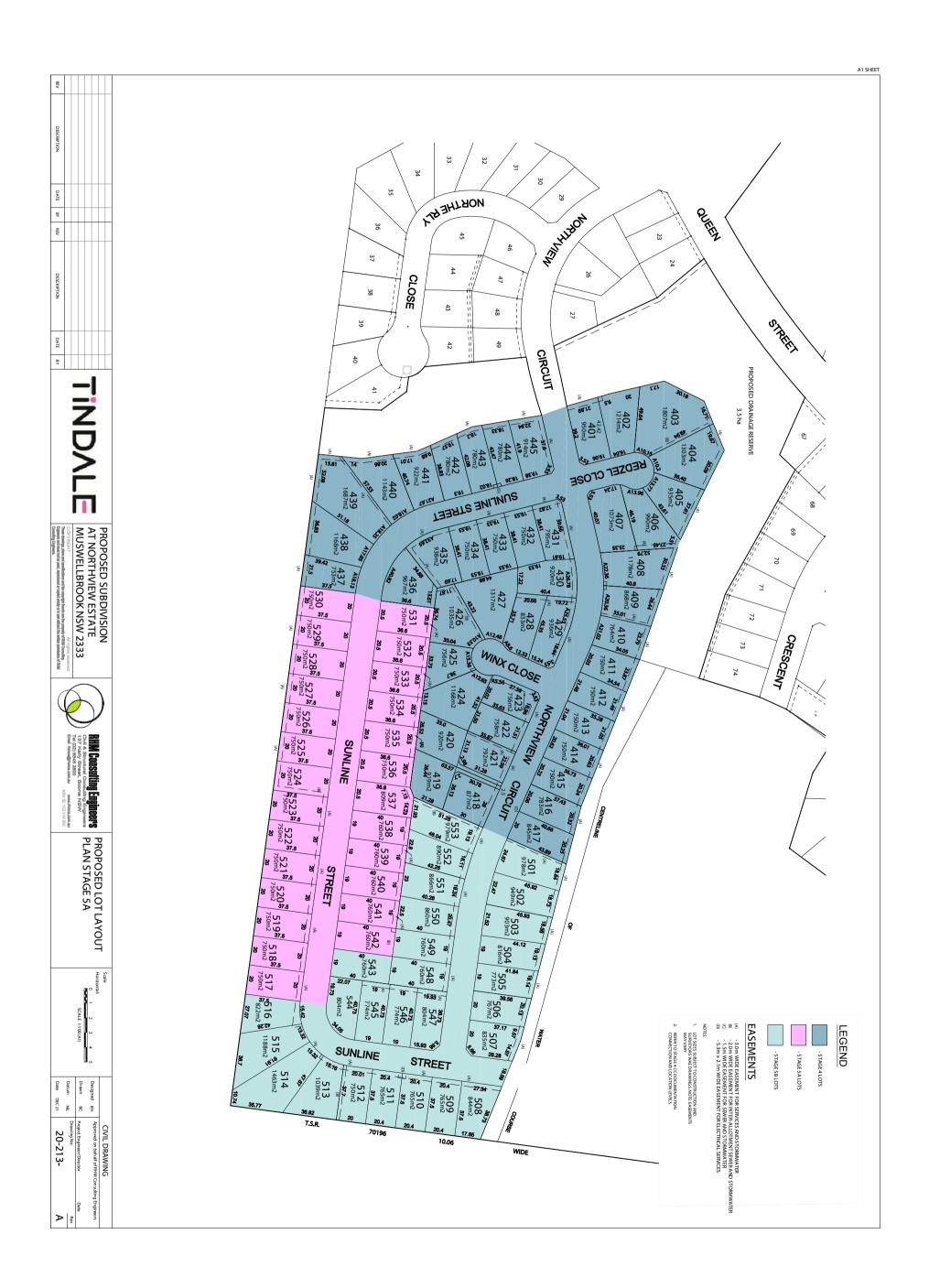
30 October 2022 | Footer1 | 6



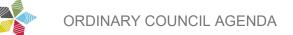
# Attachment B

Staging plan

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Attachment 9.1.2.4 DA 2013-232 - Statement of Environmental Effects - Applicant Submission



# 9.1.3. DA 2021-158 S8.2 Review - Change of Use to Health Services Facility

| Attachments:             | <ol> <li>DA 2021-158 Notice of Determination [9.1.3.1 - 10<br/>pages]</li> <li>24 May 2022 Council Report and Development<br/>Assessment [9.1.3.2 - 29 pages]</li> </ol> |  |  |
|--------------------------|--|--|--|
| Responsible Officer:     | Sharon Pope - Director - Planning & Environment  |  |  |
| Author:                  | Alisa Evans, Hamish McTaggart – Development Planner  |  |  |
| Community Plan Issue:    | 1 - Economic Prosperity  |  |  |
| Community Plan Goal:     | A dynamic Local economy with full employment for current<br>and future residents in a diverse range of high value<br>industries.   |  |  |
| Community Plan Strategy: | 1.2.1 - Facilitate the diversification of the Shire's economy<br>and support growth of existing industry and business<br>enterprise                                      |  |  |

# PURPOSE

A Section 8.3 review request has been lodged in respect to Council's Determination of DA 2021/158. The development involves the change of use of a dwelling to a Health Service Facility at 79 Brook Street Muswellbrook (Lot 19 DP 701287).

Where Council determined the initial development application the Section 8.3 review is also to be determined by Council.

# **OFFICER'S RECOMMENDATION**

Council determines the Section 8.3 review of DA 2021-158, being a change of use to a Health Service Facility at 79 Brook Street Muswellbrook (Lot 19 DP 701287) by confirming the previous determination for DA 2021-158 of granting development consent to the application subject to the conditions contained in Attachment A.

| Moved: | Seconded: |  |
|--------|-----------|--|
|        |           |  |

# BACKGROUND

On the 24 May 2022 Council determined DA 2021/158 for the change of use of a dwelling house to a Health Service Facility at 79 Brook Street Muswellbrook (Lot 19 DP 701287) subject to the conditions of consent contained in Attachment A.

The Notice of Determination included a requirement for the applicant to:

- submit a design for the construction of a 2m wide concrete footpath within the Sowerby Street Road Reserve to extend from the Sowerby/Brook Street intersection to the end of the of the site's Sowerby Street Road frontage; and
- construct the designed footpath.

See condition 5 and 22 of Attachment A.

Following the determination of the development the applicant lodged a Section 8.3 Review on the 13 July 2022.



The documentation and information about the proposed change of use, submitted with the Section 8.3 Review, was unchanged from the information submitted with the original development application. The applicant is seeking to have Conditions 5 and 22 reviewed and the requirement to construct the footpath removed.

To assist Council in considering the matter the Council and Section 4.15 Assessment related to the development is attached (Attachment B). Council Officer's assessment of the application remains unchanged.

This report and assessment recommended the conditions related to the design and construction of the footpath remain, as the proposed development does not comply with the off-street parking requirements of Council's Development Control Plan. The footpath construction was proposed as the development relies on on-street parking in the vicinity of the development site. This position was informed by referral comments from Council's Community Infrastructure Officers.

# CONSULTATION

The Section 8.3 application was not publicly notified.

The application was referred internally to Community and Infrastructure, who reconfirmed their previous comments and the requirement for the construction of the footpath without change.

# **OPTIONS**

Council may:

- A. Resolve to confirm its determination of DA 2021-158.
- B. Resolve to change its determination of DA 2021-158 by determining the development application subject to an amended set of conditions of consent.
- C. Resolve to change its determination of DA 2021-158 by refusing the development. In doing so Council would need to specify reasons for refusal.

# CONCLUSION

This Section 8.3 Review of DA 2021-158 has been reported to Council as a review of a development application previously determined by Council.

Council Officers have reviewed the previous assessment of the development and recommended that Council determine the Section 8.3 Review by confirming their previous determination of the development application.



Enquiries Please ask for Direct Our reference

Ms A J Evans 02 6549 3770 DA 2021/158

# MUSWELLBROOK SHIRE COUNCIL

# NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION Issued under the Environmental Planning and Assessment Act 1979 (Section 4.18)

| DEVELOPMENT APPLICATION: | 2021/158   |
|--------------------------|--|
| APPLICANT NAME:          | Ms L Wilson  |
| APPLICANT ADDRESS:       | 17 Russell Street<br>QUIRINDI NSW 2333   |
| LAND TO BE DEVELOPED:    | LOT: 19 DP: 701287<br>79 Brook Street MUSWELLBROOK   |
| PROPOSED DEVELOPMENT:    | Change of Use to Health Services Facility  |
| DETERMINATION MADE ON:   | 24 May 2022  |
| DETERMINATION:           | Consent granted subject to conditions described below.   |
| CONSENT TO OPERATE FROM: | 24 May 2022  |
| CONSENT TO LAPSE ON:     | 24 May 2027, if work has not commenced in accordance with Section 4.53(4) of the Environmental Planning and Assessment Act 1979. |
|                          |  |

Muswellbrook Shire Council ABN 86 864 180 944

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

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# IDENTIFICATION OF APPROVED PLANS

# 1. Approved Plans and Supporting Documents

The development being carried out in accordance with the development application and the drawings referenced below, and endorsed with Council's approval stamp, except where amended by the following conditions and any amendments in red.

| Drawning<br>No. | Revision<br>No. | Page No.      | Drawn by.           | Dated.     |
|-----------------|-----------------|---------------|---------------------|------------|
| 2106            | -               | 1, 3, 4 and 5 | Organic Home Design | 21/11/2021 |
| 2106            | 2               | 2             | Organic Home Design | 26/04/2022 |

# 2. Health Consulting Rooms

No more than one (1) health practitioner is permitted to operate from the premises, unless otherwise approved by Council in writing.

The employment of additional health consulting professionals would require the provision of additional car parking in accordance with the Muswellbrook Development Control Plan 2009.

```
OPERATIONAL CONDITIONS IMPOSED UNDER THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT AND REGULATIONS AND OTHER RELEVANT LEGISLATION
```

# 3. Building Code of Australia

All building work must be carried out in accordance with the provisions of the Building Code of Australia.

ANCILLARY MATTERS TO BE COMPLETED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE

# 4. Construction Certificate Requirement

No works shall commence on site until such time as a Construction Certificate has been issued for either part or all of the works. If a certificate is issued for part of the works it must cover the works being undertaken onsite.

# 5. Footpath Construction Requirement

Prior to the issue of a Construction Certificate the person acting with this consent is to submit to Council for approval a design for the construction of a 2m wide concrete footpath within the Sowerby Street Road Reserve from the Sowerby Street/Brook Street intersection for the frontage of the development site.

- 3 -

The footpath design should be prepared by a suitably qualified civil engineer and is to comply with the provisions of Council's Policy F/10 Footpath Kerb and Guttering.

For more information regarding Council's footpath and design requirements it is recommended that you contact Council's Manager Roads Drainage and Technical Services on 6549 3700.

# 6. Section 138 Permit

Prior to the issue of a Construction Certificate, or the carrying out of works within the road reserve related to the footpath construction, the person acting with this consent is to obtain a Section 138 permit from Council for all works within the road reserve.

For more information related to the Section 138 permit application please contact Council Community Infrastructure Officers on 65493700 or visit Council's website.

# 7. Off Street Car Parking

A total of two 2 off-street car-parking spaces, together with access driveways, shall be constructed, paved, line marked and signposted in accordance with the approved development plans, appropriate Australian Standards and industry best practice as appropriate. The plans shall also nominate the allocation of parking spaces for specific purposes as required by conditions of this consent. Detailed plans for the construction of these areas in accordance with this requirement shall be submitted to the Certifying Authority for approval with the Construction Certificate.

# CONDITIONS THAT MUST BE ADDRESSED PRIOR TO COMMENCEMENT

# 8. Sediment and Erosion Control

Adequate measures for erosion and sediment control shall be provided prior to commencing construction works. As a minimum, control techniques are to be in accordance with 'The Blue Book' published by Landcom provisions on Erosion and Sediment Control, or a suitable effective alternative method.

All required sedimentation control techniques are to be properly installed prior to the commencement of any site works and maintained in a functional and effective condition throughout the carrying out of the development.

# 9. Site Sign

A sign must be erected in a prominent position on any work site on which work involved in the erection or demolition of a building is being carried out:

(a) stating that unauthorised entry to the work site is prohibited;

- 4 -

- (b) showing the name of the principal contractor (or person in charge of the work site), and a telephone number at which that person may be contacted at any time for business purposes and outside working hours; and
- (c) showing the name, address and telephone number of the Principal Certifying Authority for the work.

Any such sign must be maintained while the building work or demolition work is being carried out but must be removed when the work has been completed.

This condition does not apply to building works being carried out inside an existing building.

# **10. Damage to Public Infrastructure**

The applicant shall bear the cost of all restoration works to Council property damaged during the course of this development. The applicant shall submit in writing and/or photographic record, of any existing damage to Council property before commencement of work.

Note: This documentation will be used to resolve any dispute over damage to infrastructure. If no documentation is received prior to commencement of work it will be assumed that the infrastructure was undamaged and the applicant will be required to restore all damaged infrastructure at their expense.

## 11. Site Facilities

- (a) If the development involves building work or demolition work, the work site must be fully enclosed by a temporary security fence (or hoarding) before work commences.
- (b) A minimum width of 1.2m must be provided between the work site and the edge of the roadway so as to facilitate the safe movement of pedestrians.
- (c) Any such hoarding or fence is to be removed when the work has been completed.
- (d) A garbage receptacle fitted with a tight-fitting lid for the reception of all food scraps and papers from the work site must be provided prior to building work commencing and must be maintained and serviced for the duration of the work.
- (e) Toilet facilities must be provided on the work site at the rate of one toilet for every 20 persons or part of 20 persons employed at the work site.
- (f) Each toilet provided must:
  - be a standard flushing toilet, connected to a public sewer, or
  - if connection to a public sewer is not available, to an on-site effluent disposal system approved by the council, or
  - an approved temporary chemical closet.
- (g) The provision of toilet facilities must be completed before any other work is commenced.
- (h) A person having the benefit of this certificate who causes an excavation that extends below the level of the base of the footings of a building on an adjoining allotment of land must at their own expense and where

necessary:

- protect and support the building from damage, and
- If necessary, underpin and support the building in accordance with the details prepared by a professional engineer.
- (i) A person having the benefit of this certificate who causes the excavation must, at least 7 days before commencing this work, give notice of intention to do so to the owner of the adjoining allotment of land and provide particulars of the proposed work.
- (j) Erosion and sediment controls must be provided in accordance with the details shown on the approved plans, prior to the disturbance of any soil on the work site.

# 12. Materials

In accordance with the provisions of the Muswellbrook Development Control Plan the external cladding of the building shall be constructed from non-reflective cladding. Zincalume or reflective white sheet metal cladding must not be used without the prior written approval from Council.

## 13. Vehicle Entry

Prior to commencing construction of the driveway/vehicle crossing/layback, within the road reserve, a permit for the work must be obtained from Council, under Section 138 of the Roads Act 1993.

Note: The driveway area is to be in accordance with Council's standard drawings for cross-overs and driveway construction with any driveway strips to be infilled.

### 14. Section 68 Local Government Act Approval

Prior to the commencement of any works the applicant is to obtain a Section 68 Local Government Act approval for all water supply, sewer and stormwater drainage works.

#### CONDITIONS THAT MUST BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

# **15. Construction Hours**

- (a) Subject to this clause, building construction is to be carried out during the following hours:
  - i. between Monday to Friday (inclusive)—7.00am to 6.00pm
  - ii. on a Saturday—8.00am to 1.00pm
- (b) Building construction must not be carried out on a Sunday or a public holidays.
- (c) Demolition works and excavation works must only be carried out between Monday to Friday (inclusive) between 8.00am and 5.00pm.
- (d) The builder and excavator must display, on-site, their 24 hour contact telephone numbers, which are to be clearly visible and legible from any public place adjoining the site.

# 16. Prohibition on Use of Pavements

Building materials and equipment must be stored wholly within the work site unless prior written approval has been obtained from Council. Equipment must not be operated on the footpath or roadway unless prior written approval has been obtained from council.

# 17. Excavation/Demolition

(a) All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with appropriate professional standards.

(b) All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.

(c) Demolition work must be undertaken in accordance with the provisions of AS2601- Demolition of Structures.

(d) The builder is to ensure that persons working on the site comply with the Safe Authority's requirements.

# 18. Erosion and Sediment Controls

The approved Sediment & Erosion controls shall be reinstated daily prior to workers leaving the site if modified at any time. Any sediment that escapes from the site shall be cleaned, collected and disposed of to Council's waste management facility or the sediment shall be returned to the site on a daily basis.

# **19. Site Waste Minimisation**

Throughout the carrying out of building works the person acting with this consent shall take reasonable steps to minimise waste from the carrying-out of the development in accordance with the following objections of Chapter 24 Waste Minimisation and Management of Council's Development Control Plan.

- Optimise adaptive reuse opportunities of existing building/structures
- · Maximise reuse and recycling of materials
- Minimise waste generation
- Ensure appropriate storage and collection of waste
- Minimise environmental impacts associated with waste management
- Avoid illegal dumping
- Promote improved project management.

# CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF THE OCCUPATION CERTIFICATE

# 20. Occupation

The building is not to be used or occupied until a final inspection has been carried out and an occupation certificate has been obtained from the Principal Certifying Authority.

# 21. Off-street Carparking

Prior to the issue of an Occupation Certificate, off-street car-parking spaces, together with access driveways, shall be constructed, paved, line marked and signposted in accordance with the approved development plans.

# 22. Footpath

Prior to the issue of an Occupation Certificate, a 2m wide concrete footpath is to be constructed within the Sowerby Street road reserve for the full frontage of the site.

Note: the works are to be approved under Section 138 of the Roads Act 1993.

#### 23. Clause 93 Considerations

Under clause 93 of the Environmental Planning & Assessment Regulation, the following fire safety/Building Code of Australia (BCA) works are to be undertaken with the construction certificate works and are to be completed prior to the issue of the Occupation Certificate:

- 1. The existing exit door that does not swing in the direction of egress are to be provided with hold open device which allow the door to be held in the open position in an emergency in accordance with D2.20 of the BCA.
- The door furniture of the required exit of the building is to be modified so that it is readily openable without a key by a single hand downward action or pushing action on a single device located between 900 mm and 1100 mm above the floor level in accordance with D2.21 of the BCA.
- 3. Portable fire extinguishers are to be provided throughout the health consultancy in accordance with AS 2444 and E1.6 of the BCA.

# 24. Fit-out to be in accordance with relevant legislation and standards

The premises, including the premise fit out, installation of all equipment, fixtures and fittings, must comply with the requirements of The Public Health Act, NSW Health.

# 25. Registration with Council

Prior to commencement of trade the business is to be registered with Council's Environmental Health Section.

The person acting with this consent is to provide Council's Environmental Health Officer of an itemised list of activities being undertaken on the premises.

# 26. Final inspection by Council's Environmental Health Officer required

A satisfactory final inspection is to be undertaken of the premises by Council's Environmental Health Officer. Council's Environmental Health Officer is to be given a minimum seventy-two (72) hours' notice to inspect the premises.

# CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

# 27. Stormwater Disposal

All stormwater from the development including all hard surfaces and overflows from any rainwater tanks is to be collected and disposed of via a connection to the stormwater system or a new stormwater line which conveys water to Sowerby Street.

Note: Prior to the carrying out of stormwater works the person carrying out those works must obtain the approval of Council for the works under Section 68 of the Local Government Act.

# 28. Traffic Movements

At all times traffic movements to and from the site shall occur in a forward direction.

# 29. Hours of Operation -

The business may be open for business only between the following hours:-

## Monday to Sunday 8:00am to 8:00pm

Upon expiry of the permitted hours, all business operations shall immediately cease, no person shall be permitted entry and all customers on the premises shall be required to leave within the following half hour.

# 30. Hygiene

The premises must be always kept in a clean and hygienic condition.

# **REASON FOR IMPOSITION OF CONDITIONS:**

The reason for the imposition of the following conditions is to ensure, to Council's satisfaction, the objects of the *Environmental Planning and Assessment Act* 1979 (as amended) are achieved:

(a) To encourage:

-9-

- The proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forest, minerals, water, cities, towns, and villages for the purpose of promoting the social and economic welfare of the community and a better environment;
- (ii) The promotion and co-ordination of the orderly and economic use of development of land;
- (iii) The protection, provision, and co-ordination of communication and utility services;
- (iv) The provision of land for public purposes;
- (v) The provision and co-ordination of community services and facilities;
- (vi) The protection of the environment, including the protection and conservation of native animals and plants including threatened species, populations, and ecological communities and their habitats;
- (vii) Ecologically Sustainable Development; and
- (viii) The provision and maintenance of affordable housing.
- (b) To promote the sharing of the responsibility for environmental planning between the different levels of government in the State.
- (c) To provide increased opportunity for public involvement and participation in environmental planning and assessment.

#### ADVICE:

- Where indicated by specific reference in a condition above, approval is also granted for Section 68 of the Local Government Act 1993 to carry out sewer drainage, water supply work and stormwater drainage.
- You are advised that changes to the external configuration of the building, changes to the site layout, density and unit configuration or internal changes to the proposed building or any changes to the proposed operation of a use **MAY** require the submission of a modification under Section 96 of the Environmental Planning & Assessment Act, 1979. Any such changes may need to be the subject of a separate Development Application.

Please bear this in mind before preparing documentation in support of a Construction Certificate application. Council staff would be pleased to assist in identifying such changes which may require the submission of a modification of a Development Application under Section 4.55 of the Environmental Planning & Assessment Act.

- This document is a development consent only and does not authorise construction or subdivision works to commence. Prior to commencing any building, subdivision or associated construction works, the following provisions of the Environmental Planning and Assessment Act 1979 (the 'Act') are to be complied with:
  - (i) A Construction Certificate is to be obtained in accordance with Section 6.7 of the Act.
  - (ii) A Principal Certifying Authority is to be appointed and Council is to be notified of the appointment in accordance with Section 6.6(1) of the Act.

- (iii) Council is to be notified at least two (2) days before the intention to commence building works, in accordance with Section 6.6(2) of the Act.
- The applicant may apply to the Council or an Accredited Certifier for the issuing of a Construction Certificate and to be the Principal Certifying Authority to monitor compliance with the approval and issue necessary documentary evidence or certificate/s.
- Failure to comply with any of the above requirements is an offence under the provisions of the Act and may result in enforcement action being taken by Council if these requirements are not complied with.

# RIGHT OF APPEAL:

DA 158/2021

Sections 8.2, 8.3, 8.4, 8.5 of the Environmental Planning and Assessment Act 1979 provide that the applicant may request the Council to review the determination. The request must be made in writing (or on the review application form) within six (6) months *after receipt of this Notice of Determination*, together with payment of the appropriate fees. It is recommended that the applicant discuss any request for a review of the determination with Council Officers before lodging such a request.

If you are dissatisfied with this decision, Section 8.7, 8.10 of the Environmental Planning and Assessment Act, 1979 give you the right to appeal to the Land and Environment Court within six (6) months after the date on which you receive this notice.

# APPROVED BY COUNCIL AT ORDINARY COUNCIL MEETING HELD 24 MAY 2022

Alisa Evans **Project Planner** 

Date: 20 June 2022

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#### DA 2021-158 - CHANGE OF USE - HEALTH CARE SERVICE - 79 10.5 **BROOK STREET, MUSWELLBROOK Responsible Officer:** Sharon Pope - Director - Environment and Planning Author: Alisa Evans - Projects Planner Support initiatives which reduce the community's impact on the Community Plan Issue: environment Community Plan Goal: Require all development proposals to avoid and mitigate against environmental impacts potential and facilitate improved environmental outcomes where possible. Require all development proposals to avoid and mitigate against Community Plan Strategy: potential environmental impacts and facilitate improved environmental outcomes where possible. Attachments: DA 2021-158 Section 4.15 Development Assessment Report Α. Β. DA 2021-158 Recommended Conditions of Consent C. DA 2021-158 Proposed Plans DA 2021-158 - Proposed Plans Marked up With Assessing D. Officer Notes Related to Off-street Parking

# PURPOSE

This report relates to the determination of DA 2021/158 for the change of use of the building at 79 Brook Street Muswellbrook to a heath service facility.

The application is report back to following its deferral at the 26 April 2022 Council Meeting to allow the consideration of an amended site and car park plan. After considering this information Council Officers have put forward an unchanged recommendation to Council.

The application was initially reported to Council for determination as the proposed development did not meet the minimum off-street car parking requirements of the Muswellbrook Development Control Plan 2009.

# RECOMMENDATION

Council grant development consent to Development Application 2021-158 for the change of use of the building located at 79 Brook Street, Muswellbrook (Lot 19 DP 701287) to a health service facility, subject the conditions in Attachment B.

| Moved: Second |                |                |                |
|---------------|----------------|----------------|----------------|
|               | Cr A. Barry    | Cr M. Bowditch | Cr D. Douglas  |
|               | Cr J. Drayton  | Cr L. Dunn     | Cr J. Lecky    |
|               | Cr R. Mahajan  | Cr D. Marshall | Cr G. McNeill  |
|               | Cr S. Reynolds | Cr R. Scholes  | Cr B. Woodruff |
| DECODIDE      |                |                |                |

# DESCRIPTION OF THE PROPOSED DEVELOPMENT

The application is seeking consent for a Change of Use to a Health Service Facility, new pedestrian access and car parking (see Attachment C). The site is currently occupied by a dwelling house, is zoned R1 General Residential and is situated within Muswellbrook Residential Heritage Conservation Area under Muswellbrook Local Environmental Plan 2009 (MLEP 2009).

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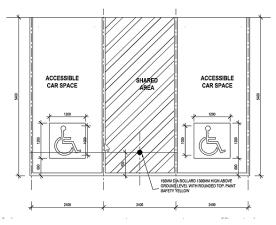
# ORDINARY MEETING AGENDA

# ASSESSMENT SUMMARY

Council Officers have assessed the development application under the relevant heads of consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979. A copy of the Section 4.15 Assessment is provided in Attachment A. The proposed development application complies with relevant requirements of the MLEP 2009.

Key findings of the section 4.15 assessment include:

- > The proposed development was considered against provision of MLEP 2009 and is permitted.
- The proposed development was considered against the provisions of relevant State Environmental Planning Policies (SEPP's) and there are no provisions which would prohibit the proposed development.
- The proposed development does not comply with the requirements of the Muswellbrook Development Control Plan 2009 (MDCP 2009) related to the provision of off-street car parking. A total of three (3) off-street car parking spaces were required while two (2) spaces can be provided once the width requirements of an accessible space are accounted for. When considering this non-compliance Council Officers have had regard to the related MDCP 2009 objectives and formed a view that the proposed development may be supported if the applicant improves the footpath connectivity between the site and Sowerby Street where there is on-street car parking. This would be achieved through the construction of a 2m wide concrete footpath. Conditions related to the design and construction of this footpath have been included in the recommended conditions of consent.
- Amended plans submitted by the applicant dated 26 April 2022 sought to establish that there was sufficient space on-site for the provision of three (3) off-street parking spaces. This has been reviewed by Council Officers who are of the view that there is not sufficient space to provide three (3) off-streetcar parking spaces where one of the spaces provided incorporates a shared zone required to support an accessible parking space and associated set-down area. The image below is taken from Australian Standard AS/NZS 2890.6-2009 off-street parking for people with disabilities and illustrates the shared zone set-down area requirements for accessible parking. The review of the updated plans by Council Engineers has informed the recommendation.



- With the exception of off-street parking the proposed development is compatible with all other requirements of the MDCP 2009.
- It is considered that the proposed development was unlikely to have any significant adverse environmental impacts.

# COMMUNITY CONSULTATION

The development proposal was notified from 4 January to 18 January 2022. No submissions were received.

# OPTIONS

The Council may:

- A) Grant development consent to the proposed development subject to the recommended conditions of consent this is the recommended option;
- B) Grant development consent to the proposed development subject to different conditions of consent; or
- C) Refuse development consent to the proposed development and nominate reasons for refusal.

# LEGAL IMPLICATIONS

Where the applicant is dissatisfied with the determination of the development application, they have an opportunity under the provisions of the Environmental Planning and Assessment Act 1979 to appeal that determination at the Land and Environment Court.

# CONCLUSION

DA 2021-158 has been reported to Council for determination as the development proposal is noncompliant with MDCP 2009. Staff recommend a condition requiring the installation of a section of concrete footpath along a portion on Sowerby Street to improve access to on-street parking as an alternative.

# DEVELOPMENT ASSESSMENT REPORT

Attached: Site Plan

# REPORT TO THE GENERAL MANAGER

| ADDRESS:         | LOT: 19 DP: 701287   |
|------------------|--|
| ADDICE00.        | 79 Brook Street MUSWELLBROOK                                       |
|                  | 79 DIOOK STIEET MOSWELEDROOK                                       |
|                  | 2004 450   |
| APPLICATION No:  | 2021-158   |
|                  |  |
| PROPOSAL:        | Change of Use to Health Services Facility- Health consulting rooms |
|                  |  |
|                  |  |
| OWNER:           | Mr R M Haynes & Ms S Marich  |
|                  |  |
| APPLICANT:       | Ms L Wilson  |
|                  | 17 Russell Street  |
|                  | QUIRINDI NSW 2333  |
|                  |  |
|                  |  |
|                  |  |
| AUTHOR:          | Ms A J Evans   |
|                  |  |
| DATE LODGED:     | 09/12/2021   |
|                  |  |
| AMENDED:         | 13/05/2022   |
|                  |  |
| ADD, INFO REC'D: | 26/04/2022   |
|                  |  |
| DATE OF REPORT:  | 8 May 2022   |
| DATE OF REFORT.  | U Way 2022   |

| SUMMARY         |                                |  |
|-----------------|--------------------------------|--|
| ISSUES:         | Carparking                     |  |
| SUBMISSIONS:    | 0                              |  |
| RECOMMENDATION: | Approval subject to conditions |  |

# 1.0 DESCRIPTION OF PROPOSAL

The proposal seeks approval for a change of use from a dwelling house to health service facility - health consulting rooms at 79 Brook Street Muswellbrook (Lot 19 DP 701287). The site is zoned R1 General Residential and is within Muswellbrook Residential Heritage Conservation Area under Muswellbrook Local Environmental Plan 2009 (MLEP 2009).

The existing dwelling house will have access ramps and doors installed to facilitate accessible entry to the premise. Minor demolition and tree removal will be required to accommodate the new works.

The existing garage will be utilised by the practitioner and new parking will be constructed at the rear through removal of the existing retaining wall and construction of a driveway from Sowerby Street.



Figure 1:Site aerial 79 Brook Street, Muswellbrook

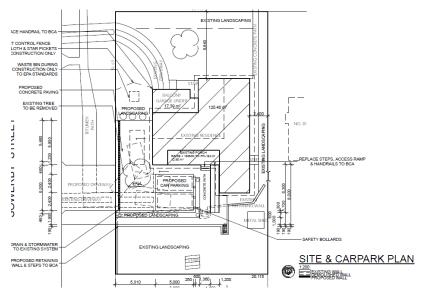


Figure 2 Proposed site and carpark

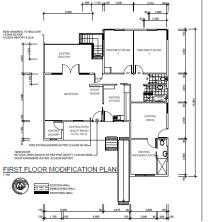


Figure 3 Floor Plan for proposed Health consulting rooms

# 1.2 Internal Referrals

The application was referred to Council's Building Section and Community Infrastructure. Both have recommended standard conditions of development consent should the application be approved.

\$

# 1.3 External Referrals

Not required

# 2.0 ASSESSMENT

#### Section 4.15 Matters for Consideration

#### Section 4.15(1)(a)(i) The provisions of any Environmental Planning Instrument (EPI)

The following EPIs, DCPs, Codes and Policies are relevant to this Application:

#### 1. <u>Muswellbrook Local Environmental Plan 2009 (MLEP 2009)</u>

#### Land Use Zone and Permitted Land Use

The development site is zoned R1 General Residential pursuant to MLEP 2009. The proposal is best defined as *health consulting rooms*, which is permitted with consent in the subject Zone.

#### Objectives of the R1 General Residential Zone

- To provide for the housing needs of the community.
- To provide for a variety of housing types and densities.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- · To enable sensitive infill development of other housing types.

• To allow people to carry out a reasonable range of activities from their homes, where such activities do not adversely affect the living environment of neighbours.

• To promote the principles of ecological sustainable development including energy and water efficient subdivision and housing design.

• To minimise the impact of non-residential uses and ensure these are in character and compatible with surrounding development.

• To ensure that development is carried out in a way that is compatible with the flood risk of the area.

The development proposal achieves the objectives of the Zone.

# Relevant Clauses applicable under the Muswellbrook Local Environmental Plan 2009

| Part 1 Preliminary                                      |   |
|---|---|
| 1.1 Name of Plan  | Muswellbrook Local Environmental Plan 2009  |
| 1.1AA Commencement                                      | The MLEP 2009 was gazette 17 April 2009.  |
| 1.6 Consent authority                                   | The consent authority for this development is<br>Muswellbrook Shire Council.  |
| Part 2 Permitted or prohibited development              |   |
| 2.2 Zoning of land to which Plan applies                | See above   |
| 2.3 Zone objectives and Land Use Table                  | See above   |
| 2.5 Additional permitted uses for particular land       | NA  |
| 2.6 Subdivision—consent requirements                    | NA  |
| Part 4 Principal development standards                  |   |
| 4.3 Height of buildings                                 | MLEP 2009 specifies a maximum building height of 8<br>m in relation to the land. The proposal does not<br>involve building works over 4m. |
| 4.4 Floor space ratio                                   | 1:2   |
| 4.5 Calculation of floor space ratio and site area      | complies  |
| 4.6 Exceptions to development standards                 | N/A   |
| Part 5 Miscellaneous provisions                         |   |
| 5.9AA Trees or vegetation not prescribed by development | NA  |

| control plan                       |   |
|------------------------------------|---|
| 5.10 Heritage conservation         | While the works are located within the Muswellbrook<br>Residential Heritage Conservation Area the works are<br>at the rear and are not impacting the overall heritage<br>significance of the area or any adjoining heritage<br>items. |
| 5.11 Bush fire hazard reduction    | NA  |
| Part 7 Additional local provisions |   |
| 7.1 Terrestrial biodiversity       | NA  |
| 7.6 Earthworks                     | The site will have a cut at the rear to accommodate<br>car parking. The retaining wall is with the property<br>boundaries and does not impact adjoining land.   |

# 2. <u>State Environmental Planning Policy</u>

The proposed development has been considered against relevant State Environmental Planning Policies. Council Officers are satisfied that the proposal is consistent with requirements of these environmental planning instruments.

# Section 4.15(1)(a)(ii) the provisions of any draft EPI.

There are no draft EPIs relevant to the subject Application.

#### Section 4.15(1)(a)(iii) the provisions of any development control plan

#### Section 3 – Site Analysis

It is considered that the documentation provided with the Development Application satisfies the provisions of Section 3 of the Muswellbrook DCP.

#### Section 6 – Residential Development

The proposed works are minor and are at the rear of the property and do not impact the current built form or the adjoining properties.

### Section 14 – Outdoor Signage

It is noted that no signage is proposed as part of the application. If any future signage will be require separate approval if it is not compliant with State Environmental Planning Policy Exempt and Complying Codes 2008.

### Section 15 – Heritage Conservation

The site is within the Muswellbrook Residential Heritage Conservation Area under MLEP 2009. The proposed works do not significantly alter the existing dwelling. The installation of the driveway and parking area is the most notable change to the streetscape along Sowerby Street. The works are consider to comply with the relevant sections of this chapter of the DCP.

# Section 16 - Car Parking and Access

The requirements of Section 16 of the Muswellbrook Development Control Plan related to the provision of off-street carparking for health consulting rooms are as follows have been included in the table below and considered in relation to the proposed development.

| Land use   | Land Use Requirement          | Required | Provided                    |
|------------|-------------------------------|----------|-----------------------------|
| Health     | 1 space per practitioner,     | 3        | 2 (one at rear for patients |
| Consulting | PLUS 1 space per employee,    |          | and the existing garage)    |
| Room       | PLUS 2 spaces for patients of |          |                             |
|            | each practitioner.            |          |                             |

Three parking spaces are required to service the development, while two would be provided under the proposed plans once the parking width requirements for an accessible parking space are accounted for.

While an accessible parking space is required, the Disability Access Report submitted with the application advises that the space does not need to be signposted.

Below is an extract from 'Disability Access Report, 79 Brook Street, Muswellbrook' prepared by Access Solutions NSW Pty Ltd.

#### **Accessible Car Parking**

There are less than 5 parking spaces and BCA D3.5 (d) states that a space for people with disability, "need not be identified with signage where there is a total of not more than 5 carparking spaces so as to restrict the use of the car parking space only for people with a disability."

The BCA requirement was reviewed by Council's Building Surveyor to confirm that the space must be constructed as per the accessible standard (AS).

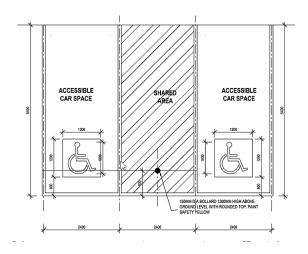
The inclusion of a parking space that conforms with the accessible parking width requirements would use space that could otherwise be used to provide a third car parking space and causes the development to be non-compliant with the DCP off-street car parking requirement. The applicant's SoEE notes to the availability of on-street car parking in the vicinity of the development site, in particular in Sowerby Street.

In line with advice from Council's engineers, the Assessing Officer has formed a view that the proposed development may be considered to be compatible with the DCP objectives and supported where connectivity improvements are made between the site and on-street parking. It is recommended that a condition be imposed requiring.

The upgrade/construction of a 2m wide concrete footpath within the Sowerby Street Road Reserve for the frontage of the development site.

An amended plan was submitted for considerations 26/04/2022 showing 2 car parks at the the rear. One was described as accessible.

The plans were reviewed by community and Infrastructure and the recommendation remains unchanged (the plans have been amended in red to reflect the comments).



# Figure 4: Example of Accessible parking design

#### Section 94A Contributions Plan 2009

No developer contribution will apply to the proposed development should the Application be approved as the proposed works are valued under \$100,000.

#### Section 4.15(1)(a)(iiia) the provisions of any planning agreement

There are no planning agreements relevant to the subject Application.

#### Section 4.15(1)(a)(iv) the provisions of the regulations

The Environmental Planning and Assessment Regulation 2022 applies to the development and the development complies.

#### Section 4.15(1)(a)(v) the provisions of any coastal zone management plan

This item is not relevant to the subject Application.

# Section 4.15(1)(b) the likely impacts of that development

Through the assessment of the development application Council Officers considered the likely impacts of the proposed development. These impacts are broadly commented on under previous headings of this report.

Council Officers are satisfied that the development is unlikely to have any significant adverse environmental impact that may substantiate the refusal of the proposed development.

#### Section 4.15(1)(c) the suitability of the site for the development

It is considered that the development is compatible with surrounding land uses and site characteristics, subject to consent conditions.

#### Section 4.15(1)(d) any submissions made

The application was notified for a period of fourteen days from *4 January 2022* to *18 January 2022*.

# Attachment A

No submissions were received during the notification period:

# Section 4.15(1)(e) the public interest.

It is considered that the proposal is not contrary to the public interest.

# 3.0 CONCLUSION

The application has been assessed in accordance with legislation. It is recommended the application be approved subject to conditions of consent.

Signed by:

|       | Alisa Evans     |
|-------|-----------------|
|       | Project Planner |
| Date: | 8 May 2022      |

Attachment A

#### IDENTIFICATION OF APPROVED PLANS

#### 1. Approved Plans and Supporting Documents

The development being carried out in accordance with the development application and the drawings referenced below, and endorsed with Council's approval stamp, except where amended by the following conditions and any amendments in red.

| Drawning<br>No. | Revision<br>No. | Page No.      | Drawn by.           | Dated.     |
|-----------------|-----------------|---------------|---------------------|------------|
| 2106            | -               | 1, 3, 4 and 5 | Organic Home Design | 21/11/2021 |
| 2106            | 2               | 2             | Organic Home Design | 26/04/2022 |

#### 2. Health Consulting Rooms

No more than one (1) health practitioner is permitted to operate from the premises, unless otherwise approved by Council in writing.

The employment of additional health consulting professionals would require the provision of additional car parking in accordance with the Muswellbrook Development Control Plan 2009.

OPERATIONAL CONDITIONS IMPOSED UNDER THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT AND REGULATIONS AND OTHER RELEVANT LEGISLATION

# 3. Building Code of Australia

All building work must be carried out in accordance with the provisions of the Building Code of Australia.

ANCILLARY MATTERS TO BE COMPLETED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE

#### 4. Construction Certificate Requirement

No works shall commence on site until such time as a Construction Certificate has been issued for either part or all of the works. If a certificate is issued for part of the works it must cover the works being undertaken onsite.

# 5. Footpath Construction Requirement

Prior to the issue of a Construction Certificate the person acting with this consent is to submit to Council for approval a design for the construction of a 2m wide concrete footpath within the Sowerby Street Road Reserve from the Sowerby Street/Brook Street intersection for the frontage of the development site.

The footpath design should be prepared to by a suitably qualified civil engineer and is to comply with the provisions of Council's Policy F/10 Footpath Kerb and Guttering.

For more information regarding Council's footpath and design requirements it is recommended that you contact Council's Manager Roads Drainage and Technical Services on 6549 3700.

#### 6. Section 138 Permit

Prior to the issue of a Construction Certificate, or the carrying out of works within the road reserve related to the footpath construction, the person acting with this consent is to obtain a Section 138 permit from Council for all works within the road reserve.

For more information related to the Section 138 permit application please contact Council Community Infrastructure Officers on 65493700 or visit Council's website.

## 7. Off Street Car Parking

A total two 2 off-street car-parking spaces, together with access driveways, shall be constructed, paved, line marked and signposted in accordance with the approved development plans, appropriate Australian Standards and industry best practice as appropriate. The plans shall also nominate the allocation of parking spaces for specific purposes as required by conditions of this consent. Detailed plans for the construction of these areas in accordance with this requirement shall be submitted to the Certifying Authority for approval with the Construction Certificate.

#### CONDITIONS THAT MUST BE ADDRESSED PRIOR TO COMMENCEMENT

# 8. Sediment and Erosion Control

Adequate measures for erosion and sediment control shall be provided prior to commencing construction works. As a minimum, control techniques are to be in accordance with 'The Blue Book' published by Landcom provisions on Erosion and Sediment Control, or a suitable effective alternative method.

All required sedimentation control techniques are to be properly installed prior to the commencement of any site works and maintained in a functional and effective condition throughout the carrying out the development.

# 9. Site Sign

A sign must be erected in a prominent position on any work site on which work involved in the erection or demolition of a building is being carried out:

- (a) stating that unauthorised entry to the work site is prohibited;
- (b) showing the name of the principal contractor (or person in charge of the work site), and a telephone number at which that person may be contacted at any time for business purposes and outside working hours; and
- (c) showing the name, address and telephone number of the Principal Certifying Authority for the work.

Any such sign must be maintained while to building work or demolition work is being carried out but must be removed when the work has been completed.

This condition does not apply to building works being carried out inside an existing building

#### **10. Damage to Public Infrastructure**

The applicant shall bear the cost of all restoration works to Council property damaged during the course of this development. The applicant shall submit in writing and/or photographic record, of any existing damage to Council property before commencement of work.

Note: This documentation will be used to resolve any dispute over damage to infrastructure. If no documentation is received prior to commencement of work it will be assumed that the infrastructure was undamaged and the applicant will be required to restore all damaged infrastructure at their expense.

#### 11. Site Facilities

- If the development involves building work or demolition work, the work site (a) must be fully enclosed by a temporary security fence (or hoarding) before work commences.
- (b) A minimum width of 1.2m must be provided between the work site and the edge of the roadway so as to facilitate the safe movement of pedestrians.
- Any such hoarding or fence is to be removed when the work has been (c) completed.
- (d) A garbage receptacle fitted with a tight-fitting lid for the reception of all food scraps and papers from the work site must be provided prior to building work commencing and must be maintained and serviced for the duration of the work
- Toilet facilities must be provided on the work site at the rate of one toilet for (e) every 20 persons or part of 20 persons employed at the work site. (f)
- Each toilet provided must:
  - be a standard flushing toilet, connected to a public sewer, or
    - if connection to a public sewer is not available, to an on-site effluent disposal system approved by the council, or
      - an approved temporary chemical closet.
- The provision of toilet facilities must be completed before any other work is (g) commenced.
- (h) A person having the benefit of this certificate who causes an excavation that extends below the level of the base of the footings of a building on an adjoining allotment of land must at their own expense and where necessary:
  - protect and support the building from damage, and
  - If necessary, underpin and support the building in accordance with the details prepared by a professional engineer.
- (i) A person having the benefit of this certificate who causes the excavation must, at least 7 days before commencing this work, give notice of intention to do so to the owner of the adjoining allotment of land and provide particulars of the proposed work.
- Erosion and sediment controls must be provided in accordance with the details (i) shown on the approved plans, prior to the disturbance of any soil on the work site.

#### 12. Materials

In accordance with the provisions of the Muswellbrook Development Control Plan the external cladding of the building shall be constructed from non-reflective cladding. Zincalume or reflective white sheet metal cladding is not be used without the prior written approval from Council.

# 13. Vehicle Entry

Prior to commencing construction of the driveway/vehicle crossing/layback, within the road reserve, a permit for the work must be obtained from Council, under Section 138 of the Roads Act 1993.

Note: The driveway area to be in accordance with Council's standard drawings for cross-overs and driveway construction with any driveway strips will be infilled.

#### 14. Section 68 Local Government Act Approval

Prior to the commencement of any works the applicant is to obtain a Section 68 Local Government Act approval for all water supply, sewer and stormwater drainage works.

#### CONDITIONS THAT MUST BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

#### **15. Construction Hours**

- (a) Subject to this clause, building construction is to be carried out during the following hours:
  - i. between Monday to Friday (inclusive)—7.00am to 6.00pm
  - ii. on a Saturday—8.00am to 1.00pm
- (b) Building construction must not be carried out on a Sunday or a public holidays.(c) Demolition works and excavation works must only be carried out between
- Monday to Friday (inclusive) between 8.00am and 5.00pm. (d) The builder and excavator must display, on-site, their 24 hour contact telephone
- (d) The builder and excavator must display, on-site, their 24 hour contact telephone numbers, which are to be clearly visible and legible from any public place adjoining the site.

# 16. Prohibition on Use of Pavements

Building materials and equipment must be stored wholly within the work site unless prior written approval has been obtained from Council. Equipment must not be operated on the footpath or roadway unless prior written approval has been obtained from council.

# 17. Excavation/Demolition

(a) All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with appropriate professional standards.

(b) All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.

(c) Demolition work must be undertaken in accordance with the provisions of AS2601- Demolition of Structures.

(d) The builder is to ensure that persons working on the site comply with the Safe Authority's requirements.

#### **18. Erosion and Sediment Controls**

The approved Sediment & Erosion controls shall be reinstated daily prior to workers leaving the site if modified at any time. Any sediment that escapes from the site shall be cleaned, collected and disposed of to Council's waste management facility or the sediment shall be returned to the site on a daily basis.

#### **19. Site Waste Minimisation**

Throughout the carrying out of building works the person acting with this consent shall take reasonable steps to minimise waste from the carrying-out of the development in accordance with the following objections of Chapter 24 Waste Minimisation and Management of Council's Development Control Plan.

- · Optimise adaptive reuse opportunities of existing building/structures
- Maximise reuse and recycling of materials
- Minimise waste generation
- Ensure appropriate storage and collection of waste
- Minimise environmental impacts associated with waste management
- Avoid illegal dumping
- Promote improved project management.

Conditions which must be complied with prior to the issue of the occupation certificate

#### 20. Occupation

The building is not to be used or occupied until a final inspection has been carried out and an occupation certificate has been obtained from the Principal Certifying Authority.

#### 21. Off-street Carparking

Prior to the issue of an Occupation Certificate, off-street car-parking spaces, together with access driveways, shall be constructed, paved, line marked and signposted in accordance with the approved development plans.

## 22. Footpath

Prior to the issue of an Occupation Certificate, a 2m wide concrete footpath is to be constructed within the Sowerby Street road reserve for the full frontage of the site.

Note: the works are to be approved under Section 138 of the Roads Act 1993.

#### 23. Clause 93 Considerations

Under clause 93 of the Environmental Planning & Assessment Regulation, the following fire safety/Building Code of Australia (BCA) works are to be undertaken with the construction certificate works and are to be completed prior to the issue of the Occupation Certificate:

- 1. The existing exit door that does not swing in the direction of egress are to be provided with hold open device which allow the door to be held in the open position in an emergency in accordance with D2.20 of the BCA.
- 2. The door furniture of the required exit of the building is to be modified so that it is readily openable without a key by a single hand downward action or pushing action on a single device located between 900 mm and 1100 mm above the floor level in accordance with D2.21 of the BCA.
- 3. Portable fire extinguishers are to be provided throughout the health consultancy in accordance with AS 2444 and E1.6 of the BCA.

#### 23. Fit-out to be in accordance with relevant legislation and standards

The premises, including the premise fit out, installation of all equipment, fixtures and fittings, must comply with the requirements of The Public Health Act, the NSW Health.

#### 24. Registration with Council

Prior to commencement of trade the business is to be registered with Council's Environmental Health Section.

The person acting with this consent is to provide Council's Environmental Health Officer of an itemised list of activities being undertaken on the premises.

#### 25. Final inspection by Council's Environmental Health Officer required

A satisfactory final inspection is to be undertaken of the premises by Council's Environmental Health Officer. Council's Environmental Health Officer is to be given a minimum seventy-two (72) hours' notice to inspect the premises.

#### CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

#### 26. Stormwater Disposal

All stormwater from the development including all hard surfaces and overflows from any rainwater tanks is to be collected and disposed of via a connection to the stormwater system or a new stormwater line which conveys water to Sowerby Street.

Note: Prior to the carrying out of stormwater works the person carrying out those works must obtain the approval of Council for the works under Section 68 of the Local Government Act.

#### 27. Traffic Movements

At all times traffic movements to and from the site shall occur in a forward direction.

#### 28. Hours of Operation -

The business may be open for business only between the following hours:-

#### Monday to Sunday 8:00am to 8:00pm

Upon expiry of the permitted hours, all business operations shall immediately cease, no person shall be permitted entry and all customers on the premises shall be required to leave within the following half hour.

#### 29. Hygiene

The premises must be always kept in a clean and hygienic condition.

#### REASON FOR IMPOSITION OF CONDITIONS:

The reason for the imposition of the following conditions is to ensure, to Council's satisfaction, the objects of the *Environmental Planning and Assessment Act 1979* (as amended) are achieved:

- (a) To encourage:
  - The proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forest, minerals, water, cities, towns, and villages for the purpose of promoting the social and economic welfare of the community and a better environment;
  - (ii) The promotion and co-ordination of the orderly and economic use of development of land;
  - (iii) The protection, provision, and co-ordination of communication and utility services;
  - (iv) The provision of land for public purposes;
  - (v) The provision and co-ordination of community services and facilities;
  - (vi) The protection of the environment, including the protection and conservation of native animals and plants including threatened species, populations, and ecological communities and their habitats;
  - (vii) Ecologically Sustainable Development; and
  - (viii) The provision and maintenance of affordable housing.
- (b) To promote the sharing of the responsibility for environmental planning between the different levels of government in the State.
- (c) To provide increased opportunity for public involvement and participation in environmental planning and assessment.

#### ADVICE:

- Where indicated by specific reference in a condition above, approval is also granted for Section 68 of the Local Government Act 1993 to carry out sewer drainage, water supply work and stormwater drainage.
- You are advised that changes to the external configuration of the building, changes to the site layout, density and unit configuration or internal changes to the proposed building or any changes to the proposed operation of a use MAY require the submission of a modification under Section 96 of the Environmental Planning & Assessment Act, 1979. Any such changes may need to be the subject of a separate Development Application.

Please bear this in mind before preparing documentation in support of a Construction Certificate application. Council staff would be pleased to assist in identifying such changes which may require the submission of a modification of a Development Application under Section 4.55 of the Environmental Planning & Assessment Act.

- This document is a development consent only and does not authorise construction or subdivision works to commence. Prior to commencing any building, subdivision or associated construction works, the following provisions of the Environmental Planning and Assessment Act 1979 (the 'Act') are to be complied with:
  - (i) A Construction Certificate is to be obtained in accordance with Section 6.7 of the Act.
  - (ii) A Principal Certifying Authority is to be appointed and Council is to be notified of the appointment in accordance with Section 6.6(1) of the Act.
  - Council is to be notified at least two (2) days before the intention to commence building works, in accordance with Section 6.6(2) of the Act.
- The applicant may apply to the Council or an Accredited Certifier for the issuing of a Construction Certificate and to be the Principal Certifying Authority to monitor compliance with the approval and issue necessary documentary evidence or certificate/s.
- Failure to comply with any of the above requirements is an offence under the provisions of the Act and may result in enforcement action being taken by Council if these requirements are not complied with.

#### **RIGHT OF APPEAL:**

Sections 8.2, 8.3, 8.4, 8.5 of the Environmental Planning and Assessment Act 1979 provide that the applicant may request the Council to review the determination. The request must be made in writing (or on the review application form) within six (6) months *after receipt of this Notice of Determination*, together with payment of the appropriate fees. It is recommended that the applicant discuss any request for a review of the determination with Council Officers before lodging such a request.

If you are dissatisfied with this decision, Section 8.7, 8.10 of the Environmental Planning and Assessment Act, 1979 give you the right to appeal to the Land and Environment Court within six (6) months after the date on which you receive this notice.



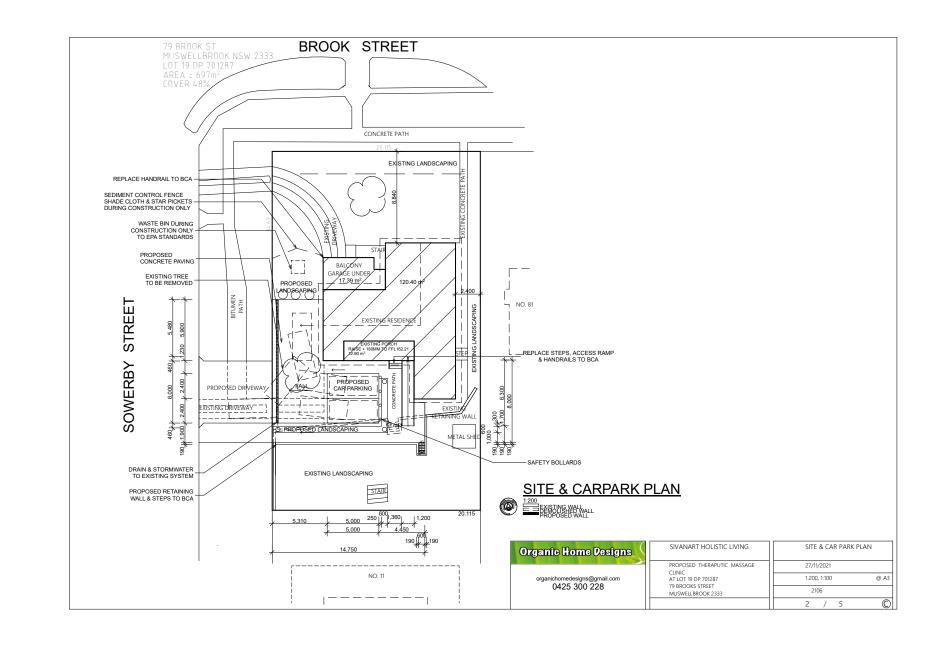
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Attachment C

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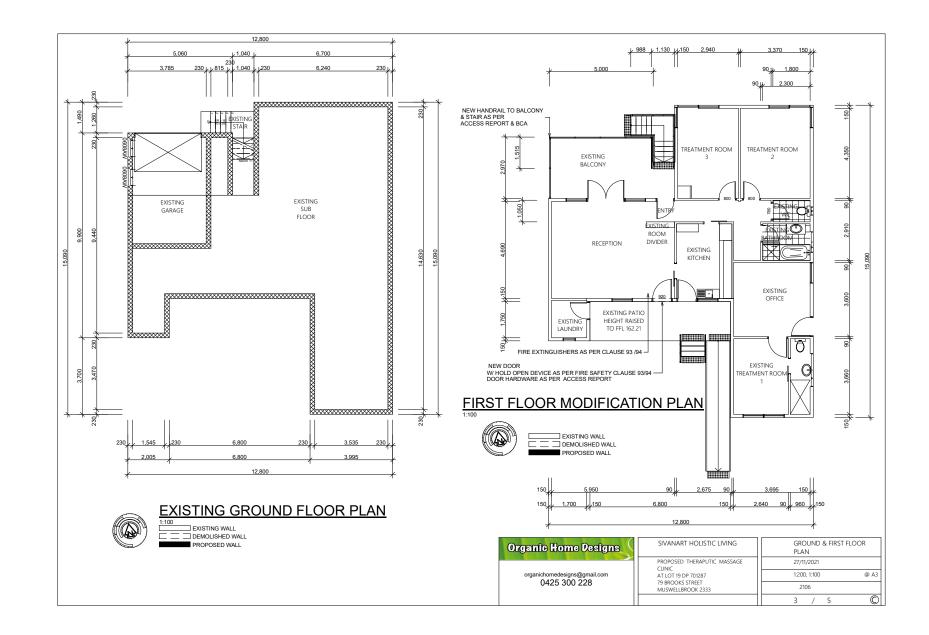


Attachment 9.1.3.2 24 May 2022 Council Report and Development Assessment

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DA 2021-158 Proposed Plans



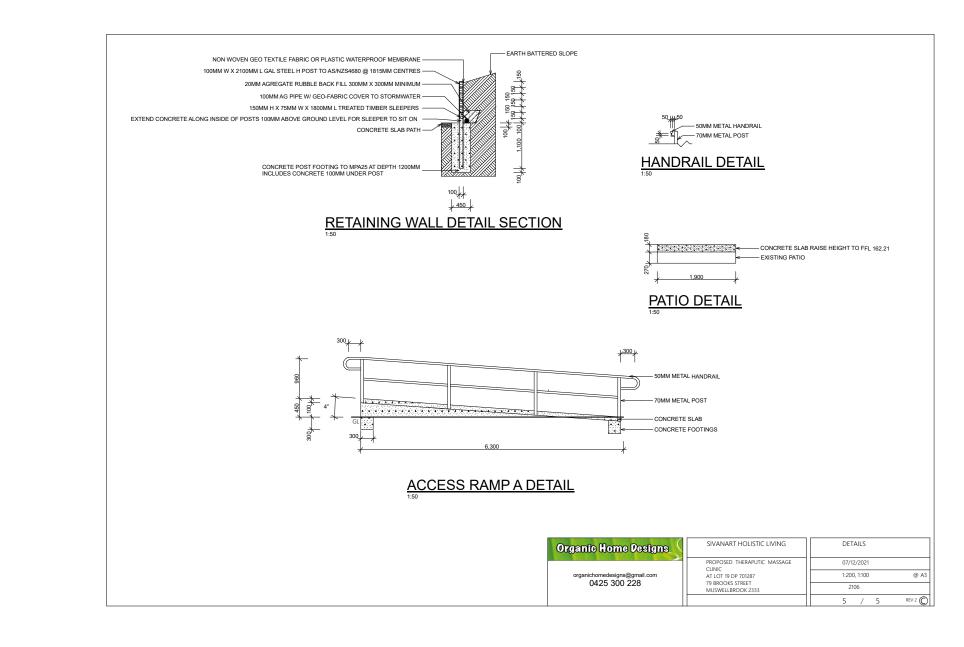
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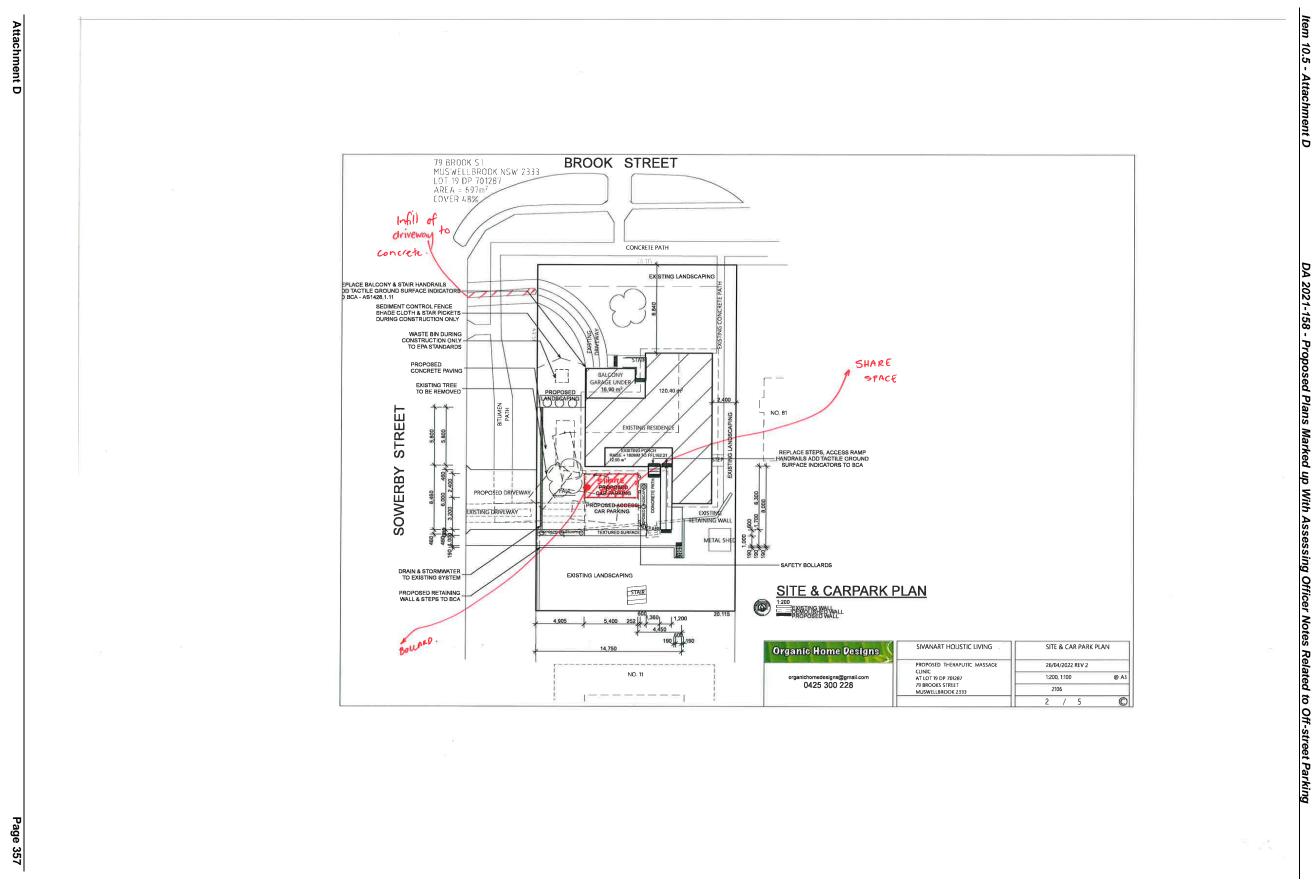
Item 10.5 - Attachment C

DA 2021-158 Proposed Plans

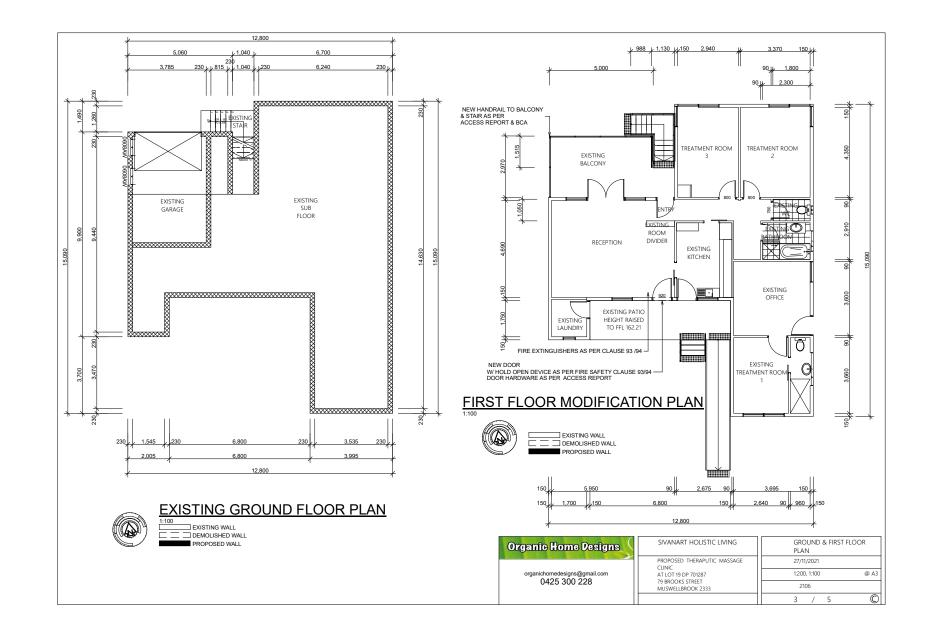


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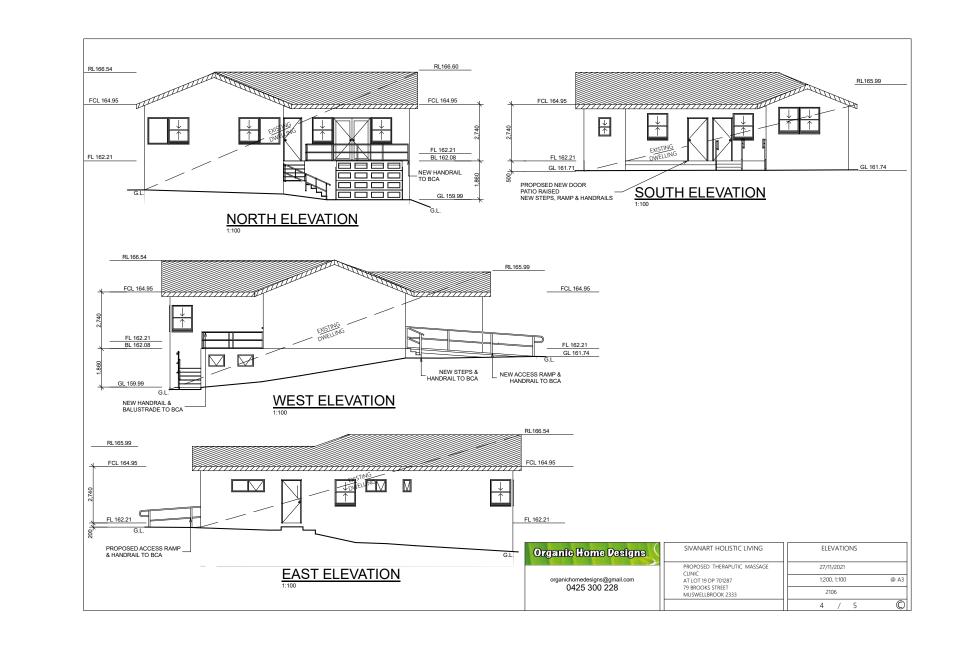




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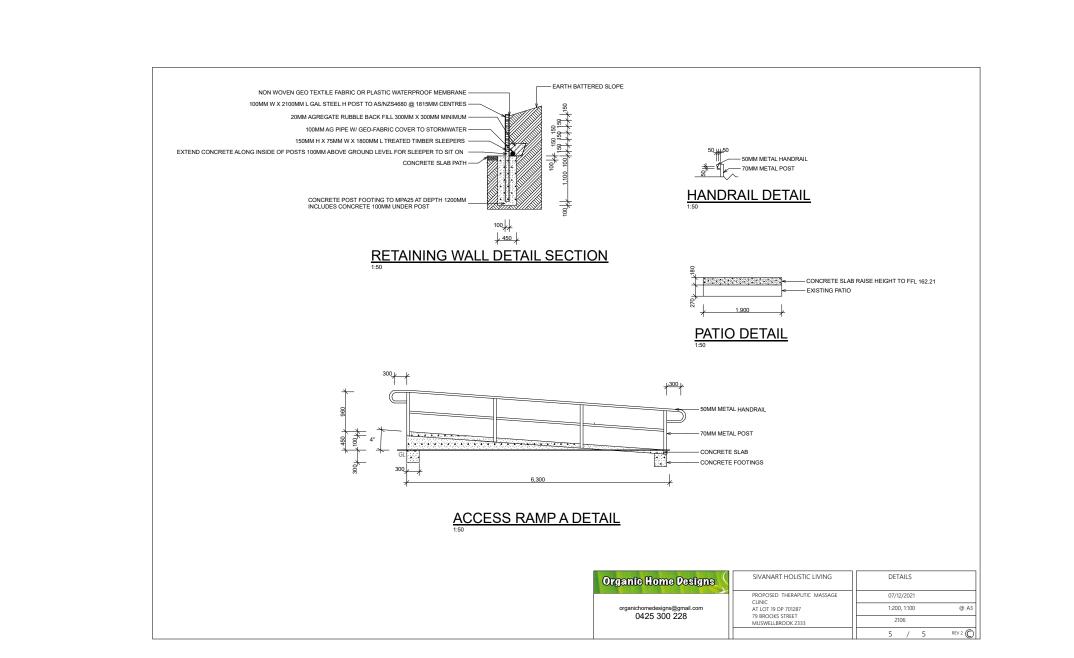


Attachment D

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# 9.1.4. Transfer of Crown Road to Council - Bernard Street

| Attachments:             | Nil  |
|--------------------------|--|
| Responsible Officer:     | Sharon Pope - Director - Planning & Environment  |
| Author:                  | Sharon Pope – Director - Planning & Environment  |
| Community Plan Issue:    | 5 - Community Infrastructure   |
| Community Plan Goal:     | Effective and efficient infrastructure that is appropriate to the needs of our community.                              |
| Community Plan Strategy: | 5.1.4 - Maintain and continually improve community infrastructure across the Shire.                                    |
|                          | 5.1.4.1 - Capital works programmes prioritised to<br>demonstrate continual improvement in<br>community infrastructure. |

## PURPOSE

To update Council on the to upgrade signs and parking associated with the Giant's Leap walking trail in Sandy Hollow and to consider a proposal to transfer Bernard Street, Sandy Hollow to Crown Lands to Council.

### **OFFICER'S RECOMMENDATION**

Council approves the commencement of necessary paperwork to transfer Bernard Street, Sandy Hollow from Crown Lands to Council.

Moved:

\_Seconded: \_\_\_\_\_

# BACKGROUND

At the Ordinary Council meeting on 27 September 2022 Council resolved to contribute funds from the Major Landcare Projects budget towards signage and improvements to the car park at the beginning of the Giant's Leap walking trail in Sandy Hollow.

# CONSULTATION

MANEX

Technical Officer – Water and Wastewater

### REPORT

The plan for this project is to erect signage to direct visitors to the start of the walking trail and to make some improvements to the surface of the parking area.

The walking trail is on Crown Land, and the construction standard of the trail is only suitable for a fit person. Sustainability staff have explored wording that may be appropriate for the signs to be erected at the start of the Giant's Leap Walking Trail. The sign will be designed to include a disclaimer and appropriate warnings similar to the sign shown below but will be designed to specifically suit Muswellbrook Shire.



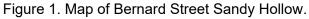




# **Road Ownership**

While completing research on approvals required for the placement of the signs etc., it has been discovered that Bernard Street in Sandy Hollow is a Crown road. Council has previously upgraded Bernard Street in Sandy Hollow to maintain access to Council's water storage infrastructure.







Discussions with Crown Land staff have indicated that the road should have been transferred to Council when the upgrades occurred. As a result of recent enquiries, we have received an email from the Crown Lands Division proposing to transfer the road.

There is a Guideline (administered by the NSW Department of Industry – Lands & Water) on the transfer of a Crown road to another road authority. These guidelines establish a set of principles that guide Crown road transfers to councils.

Crown roads are considered suitable for transfer to Council when a Crown road was constructed or is being maintained by Council. In this case the road has been upgraded to help access Council water storage infrastructure for maintenance purposes. No dwellings have access from the road.

# CONCLUSION

Walking trail signage for Giants Leap will be designed to inform people about the nature of the trail and to include an appropriate disclaimer regarding use.

A decision on whether to apply to transfer Bernard Street, Sandy Hollow from Crown Lands to Council is required before any further actions are taken.

# SOCIAL IMPLICATIONS

Increasing the community's access to walking paths, especially in a natural environment, improves health and recreation outcomes.

## **FINANCIAL IMPLICATIONS**

# Ongoing Operational and Maintenance Costs Implications Associated with Capital Project

### 1. Financial Implications – Capital

This work will be funded through the endorsed Major Landcare Projects budget.

# 2. Financial Implications – Operational

Work will be completed so that minimal maintenance will be required, similar to the Denman Lookout walking trail. As Council is already maintaining the road on an as needs basis, and it is a no through road with minor traffic volumes and few heavy vehicle movements, ongoing maintenance is expected to be minimal. The transfer of the road to Council will need to be reflected in the Asset Register.

### POLICY IMPLICATIONS

Nil

### LEGAL IMPLICATIONS

The transfer of the road would be undertaken in accordance with legislation and guidelines published by the NSW Department of Industry – Lands & Water to address legal requirements.

### **RISK MANAGEMENT IMPLICATIONS**

Signage will be designed to make the public aware that this walking trail is intended for a fit person.



#### Monthly Report to Council - Planning, Environment and Regulatory 9.1.5. Services

| Attachments:                | Nil  |
|-----------------------------|--|
| Responsible Officer:        | Sharon Pope - Director - Planning & Environment  |
| Author:                     | Tracy Ward, Michael Brady, Kelly Lynch – Sustainability<br>Officer (Mon - Thurs)   |
| Community Plan Issue:       | 6 - Community Leadership   |
| Community Plan Goal:        | Collaborative and responsive leadership that meets the expectations and anticipates the needs of the community.                                |
| Community Plan<br>Strategy: | 6.2.1 - Maintain a strong focus on financial discipline to<br>enable Council to properly respond to the needs of<br>the communities it serves. |

# **OFFICER'S RECOMMENDATION**

The information contained in this report be noted.

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

# REPORT

# PLANNING AND ENVIRONMENT

# Schedule 1: Development Applications Approved (01/11/2022-30/11/2022)

| DA No.   | DESCRIPTION   | PROPERTY                            | VALUE     |  |  |
|----------|---|-------------------------------------|-----------|--|--|
| 2022/51  | Inground Pool and Associated Barrier  | 2 Palace Street Denman              | \$50,940  |  |  |
| 2022/50  | Inground Pool and Associated Barrier  | 44 Top Knot Place<br>Muswellbrook   | \$65,701  |  |  |
| 2022/110 | Carport   | 18 Weemala Place<br>Muswellbrook    | \$12,541  |  |  |
| 2022/102 | Dwelling  | 16 Almond Street<br>Denman          | \$326,000 |  |  |
| 2022/82  | Ancillary Development - Shed  | 41 Stockyard Parade<br>Muswellbrook | \$42,500  |  |  |
| 2022/32  | Internal alterations, upgrade to access and amenities                                       | 2 Market Street<br>Muswellbrook     | \$50,000  |  |  |
| 1994/410 | S4.55 (1A) Modification - Request to<br>Extend Operational time of Existing<br>Development. | Dalswinton Road<br>Dalswinton       | \$0       |  |  |



| DA No.   | DESCRIPTION   | PROPERTY                                 | VALUE       |
|----------|---|--|-------------|
| 2002/342 | S4.55(2) Modification - Addition of<br>30,000tpa of Commercial and Demolition<br>Waste sorting and processing (brick, tile,<br>concrete, asphalt, glass). Recovered<br>materials to be used as a substitute to<br>quarry product for blending and concrete<br>batching.   | 8440 New England<br>Highway Muswellbrook | \$0         |
| 2018/54  | S4.55 (1A) Modification - Demolition of a<br>Commercial Building and the Construction<br>of a Two (2) Storey Building for Use as a<br>Tertiary Education Establishment and<br>Food and Drink Premises, Alterations and<br>Additions to the 'Loxton House', Heritage<br>Listed Item, Level 1 ancillary office.<br>Alterations and Additions to the<br>Muswellbrook Public Library and Ancillary<br>Works | 140 Bridge Street<br>Muswellbrook        | \$3,556,300 |
| 2021/30  | S4.55 (2) Modification - Permanent<br>Approval of 24 hour 7 day a week drive-<br>thru trading hours (the trading hours<br>referenced are currently approved for the<br>premises for a trial period)   | 83-89 Maitland Street<br>Muswellbrook    | \$0         |

# <u>TOTAL = 6</u>

# Schedule 2: Development Applications Currently Being Assessed

# As at 06/11/2022

| DA No.   | DESCRIPTION   | PROPERTY                                 | VALUE     |
|----------|---|--|-----------|
| 2002/205 | S4.55 (1A) Modification - Changes<br>in Rehabilitation Framework                                    | Muscle Creek Road Muscle<br>Creek        | \$0       |
| 2002/205 | S4.55(1A) - Extension of coal haulage operations  | Limestone Road<br>Muswellbrook           | \$0       |
| 2010/209 | Replacing the current septic tank<br>and seepage trench with a new<br>garden master aeration system | 470 Dalswinton Road<br>Dalswinton        | \$12,000  |
| 2012/184 | S4.55(1A) Modification of<br>Development Determination -<br>Condition 1                             | 31 Strathmore Road<br>Muswellbrook       | \$0       |
| 2013/232 | S4.55(1A) Modification-Subdivision<br>of One (1) Lot into Ninety Nine (99)                          | 212-216 Queen Street<br>Muswellbrook     | \$149,543 |
| 2017/18  | S4.55 (1A) Modification -<br>Modification to Outdoor Gaming<br>Area and Car Park Arrangement        | 15 Sydney Street<br>Muswellbrook         | \$0       |
| 2019/005 | S4.55 (1A) Modification - Revised<br>Caravan Park Site Layout                                       | 9080 New England Highway<br>Muswellbrook | \$0       |



| DA No.   | DESCRIPTION   | PROPERTY                                 | VALUE        |
|----------|---|--|--------------|
| 2019/53  | Subdivision of Two (2) Lots into<br>Seventy Five (75) Lots  | 9027 New England Highway<br>Muswellbrook | \$4,875,600  |
| 2020/7   | Additions and Alterations to existing Hotel   | 184 Bridge Street<br>Muswellbrook        | \$110,000    |
| 2020/43  | S4.55 (1A) Modification -<br>Modification of the Animal<br>Boarding Establishment and<br>Community Facility Stormwater<br>Drainage Infrastructure | 127-129 Sydney Street<br>Muswellbrook    | \$350,000    |
| 2020/83  | Subdivision of one lot (1) into three (3)   | 60-62 Palace Street Denman               | \$10,000     |
| 2020/102 | Hotel Accommodation (Royal<br>Hotel)  | 10 Ogilvie Street Denman                 | \$20,000     |
| 2021/35  | Community Centre Extension  | 5 Jersey Place Muswellbrook              | \$850,000    |
| 2021/45  | S4.55 (1A) Modification - Category<br>2 Rural Fire Service Shed   | 20 Dorset Road Kayuga                    | \$800,000    |
| 2021/58  | Organics Recycling Facility   | 252 Coal Road Muswellbrook               | \$3,850,000  |
| 2021/69  | S4.55 (1A) Modification- Ancillary<br>Development Shed  | 8 Kenilworth Street Denman               | \$0          |
| 2021/73  | Temporary use of the land for receival and dismantling of rail wagons with off-site disposal  | 18 Strathmore Road<br>Muswellbrook       | \$50,000     |
| 2021/125 | Self Storage Facility   | Turner Street Denman                     | \$3,555,527  |
| 2021/129 | Animal Boarding & Training Facility   | 1949 Martindale Road<br>Martindale       | \$33,338,800 |
| 2021/137 | Change Of Use to Educational<br>Facility  | 820 Rosemount Road<br>Denman             | \$0          |
| 2021/158 | S8.2 Review - Change of Use to<br>Health Services Facility  | 79 Brook Street Muswellbrook             | \$0          |
| 2022/5   | Storage Facility & Signage  | Victoria Street Muswellbrook             | \$1,304,330  |
| 2022/12  | S4.55 (1A) Modification Ancillary<br>Development - Shed   | 7 Bronte Crescent<br>Muswellbrook        | \$0          |
| 2022/21  | Single Storey Dwelling  | 25 Northerly Close<br>Muswellbrook       | \$396,515    |
| 2022/29  | Single Storey Dwelling  | 10 Babbler Crescent Muscle<br>Creek      | \$472,370    |
| 2022/30  | Steel Framed Deck 7 Internal Fit<br>Out   | 93a Hill Street Muswellbrook             | \$30,000     |
| 2022/38  | Change of use from Dwelling to Restaurant and Internal Fitout   | 43 Maitland Street<br>Muswellbrook       | \$98,000     |
| 2022/42  | Single Storey Dwelling and<br>Detached Secondary dwelling   | 62 Brentwood Street<br>Muswellbrook      | \$429,370    |



| DA No.   | DESCRIPTION   | PROPERTY                             | VALUE        |
|----------|---|--------------------------------------|--------------|
| 2022/45  | Manufactured Home and<br>Associated Structures  | 120 Yarraman Road<br>Muswellbrook    | \$417,100    |
| 2022/75  | Three (3) Lot Subdivision   | 18-22 Kenilworth Street<br>Denman    | \$15,000     |
| 2022/76  | Caravan Park, Two(2) Amenity<br>Blocks, New Driveway area and<br>Landscaping                    | 66 Palace Street Denman              | \$254,250    |
| 2022/80  | Remediation and Earthworks  | Coal Road Muswellbrook               | \$2,516,829  |
| 2022/81  | Single Storey Dwelling  | 15 Lou Fisher Place<br>Muswellbrook  | \$321,670    |
| 2022/87  | S4.55 (1A) Modification Single<br>Storey Dwelling   | 63 Stockyard Parade<br>Muswellbrook  | \$410,935    |
| 2022/89  | Single Story Dwelling with attached Garage  | 69 Stockyard Parade<br>Muswellbrook  | \$617,277    |
| 2022/92  | Subdivision of One (1) Lot into One<br>Hundred & Ninety Four (194)<br>Residential Lots          | Almond Street Denman                 | \$18,284,734 |
| 2022/95  | Staged Demolition of Existing<br>Buildings and Construction of New<br>Grandstand and Amenities. | 3 Wilkinson Avenue<br>Muswellbrook   | \$9,455,600  |
| 2022/97  | Ancillary Development - Shed  | 23 Adams Street<br>Muswellbrook      | \$13,000     |
| 2022/99  | Demolish Existing Garage and build New Garage   | 4 Hillview Avenue<br>Muswellbrook    | \$12,000     |
| 2022/100 | Dual occupancy  | 67a Queen Street<br>Muswellbrook     | \$540,000    |
| 2022/103 | Detached Garage with Awning   | 32 George Street<br>Muswellbrook     | \$28,605     |
| 2022/105 | Dwelling  | 20 Lou Fisher Place<br>Muswellbrook  | \$440,000    |
| 2022/107 | Single Storey Attached Dual<br>Occupancy & Two (2) Lot Strata<br>Subdivision                    | 48 Finnegan Crescent<br>Muswellbrook | \$702,182    |
| 2022/109 | Ancillary Development - Garage  | 9 Aberdeen Street<br>Muswellbrook    | \$73,507     |
| 2022/111 | Temporary Event (Charity Bike Show)   | 1-3 Ogilvie Street Denman            | \$0          |
| 2022/112 | Carport   | 59 Shiraz Street<br>Muswellbrook     | \$12,600     |
| 2022/114 | Dwelling- Single storey dwelling with attached garage   | 82 Babbler Crescent Muscle<br>Creek  | \$427,487    |
| 2022/115 | Shed  | 11 Jillaroo Way Muswellbrook         | \$63,000     |
| 2022/116 | Farm Building   | Golden Hwy Sandy Hollow              | \$29,000     |



| DA No.   | DESCRIPTION  | PROPERTY                                      | VALUE       |  |  |  |  |
|----------|--|---|-------------|--|--|--|--|
| 2022/117 | Inground Swimming Pool &<br>Associated Safety Barrier                  | 9 Sepoy Crescent<br>Muswellbrook              | \$43,620    |  |  |  |  |
| 2022/118 | Ancillary Development - Shed   | 7 Shaw Crescent<br>Muswellbrook               | \$48,300    |  |  |  |  |
| 2022/120 | Single Storey Dwelling   | 67 Stockyard Parade<br>Muswellbrook           | \$464,271   |  |  |  |  |
| 2022/121 | Construction of a single storey dual occupancy dwelling                | 12 Bimbadeen Drive<br>Muswellbrook            | \$675,000   |  |  |  |  |
| 2022/122 | Subdivision of One (1) Lot into Two<br>(2) Lots                        | 59 Tindale Street<br>Muswellbrook             | \$20,000    |  |  |  |  |
| 2022/123 | Single Storey Dwelling   | 59 Babbler Crescent Muscle<br>Creek           | \$520,385   |  |  |  |  |
| 2022/124 | Shed for Community Facility  | 17-19 Maitland Street<br>Muswellbrook         | \$182,720   |  |  |  |  |
| 2022/125 | Two Storey Dwelling  | 207 Ferndale Road Yarrawa                     | \$189,871   |  |  |  |  |
| 2022/126 | Ancillary Development - Shed   | 23 Pendula Way Denman                         | \$18,784    |  |  |  |  |
| 2022/127 | Ancillary Development - Shed   | 90-92 Palace Street Denman                    | \$19,800    |  |  |  |  |
| 2022/128 | Single Storey Dwelling   | 60 Stockyard Parade<br>Muswellbrook           | \$426,445   |  |  |  |  |
| 2022/129 | Home Based Hair & Beauty<br>Business                                   | 100 Yarrawa Deviation Rd<br>Yarrawa           | \$5,000     |  |  |  |  |
| 2022/130 | Detached Secondary Dwelling  | 13 Merton Street Denman                       | \$208,370   |  |  |  |  |
| 2022/131 | Ancillary Development - Shed   | 69 Stockyard Parade<br>Muswellbrook           | \$19,800    |  |  |  |  |
| 2022/132 | 68 (Sixty Eight) Lot Subdivision<br>and Child Care Cente               | 9036 New England Highway<br>Muswellbrook      | \$6,705,835 |  |  |  |  |
| 2022/133 | Retaining Wall   | 15 Lou Fisher Place<br>Muswellbrook           | \$15,000    |  |  |  |  |
| 2022/134 | Ancillary Development - Shed   | 17 Stockyard Parade<br>Muswellbrook           | \$20,000    |  |  |  |  |
| 2022/135 | Commercial Storage Shed  | 15 Strathmore Road<br>Muswellbrook            | \$35,000    |  |  |  |  |
| 2022/136 | Ancillary Development- Carport, concrete slab, retaining wall and tank | 65 Sowerby Street<br>Muswellbrook             | \$16,400    |  |  |  |  |
| 2022/137 | Inground Fibreglass Swimming<br>Pool and Associated Safety<br>Barriers | 5 Paxton Street Denman                        | \$36,905    |  |  |  |  |
| 2022/138 | Single Storey Dwelling with<br>Attached Garage                         | 24 Stockyard Parade<br>Muswellbrook           | \$570,795   |  |  |  |  |
| 2022/139 | Single Storey Dwelling with<br>Attached Garage                         | 17 Stockyard Parade \$466,616<br>Muswellbrook |             |  |  |  |  |



| DA No.   | DESCRIPTION   | PROPERTY                              | VALUE       |
|----------|---|---------------------------------------|-------------|
| 2022/140 | The proposed development<br>involves installing tyre recycling<br>equipment within an existing<br>warehouse on the site, and<br>ensuring the facility can adequately<br>store whole tyres and recycled<br>product on site | 12 Carramere Road<br>Muswellbrook     | \$2,200,000 |
| 2022/141 | Change of Use and Food and Drink Premises   | 19-29 Rutherford Road<br>Muswellbrook | \$11,000    |
| 2022/142 | Shed  | 1559 Golden Hwy Sandy<br>Hollow       | \$37,766    |
| 2022/143 | 16m x 10m x 4.5m Shed   | 9a Grey Gum Road Denman               | \$65,000    |
| 2022/114 | Construction of a Single Storey<br>Dwelling   | Kingfisher Court Muscle<br>Creek      | \$575,715   |
| 2022/145 | Approx 15m2 garage area will be<br>transformed into home hair salon<br>under exempt development. (Total<br>house area approx 150m2  | 47 Wanaruah Circuit<br>Muswellbrook   | \$12,000    |
| 2022/146 | Single Storey Dwelling with<br>Attached Garage  | 23 Stockyard Parade<br>Muswellbrook   | \$441,569   |



# 20.1.12 Inspect onsite wastewater sewerage systems to ensure they are installed and maintained in compliance with regulatory requirements.

|   | Nov | Dec | <b>Jan</b><br>22 | Feb | Mar | Apr | Мау | Jun | Jul | Aug | Sep | Oct | Nov |
|---|-----|-----|------------------|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|
| Applications<br>Received<br>(new<br>installation) | 0   | 0   | 0                | 0   | 3   | 0   | 0   | 0   | 0   | 3   | 2   | 0   | 2   |
| Applications<br>Approved<br>(new<br>installation) | 0   | 0   | 0                | 0   | 2   | 1   | 0   | 0   | 2   | 2   | 0   | 0   | 0   |
| Inspections (new system)                          | 0   | 0   | 3                | 0   | 2   | 0   | 1   | 0   | 0   | 0   | 0   | 0   | 2   |
| Inspections<br>(existing<br>system)               | 0   | 0   | 14               | 3   | 7   | 0   | 18  | 39  | 1   | 1   | 0   | 0   | 1   |

# On-site Wastewater Statistics - 13 Month Analysis (2021/2022)

24.1.5 Registration and inspection of regulated premises (caravan parks, food outlets, skin penetration premises, hairdressers, mortuaries, air handling systems) in accordance with regulatory requirements to ensure public health and safety is protected.

|  | Nov | Dec | Jan<br>22 | Feb | Mar | Apr | Мау | Jun | Jul | Aug | Sep | Oct | Nov |
|--|-----|-----|-----------|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|
| Applications<br>Received<br>(new businesses) | 0   | 0   | 0         | 1   | 1   | 0   | 0   | 1   | 3   | 3   | 7   | 1   | 1   |
| Inspections<br>(new businesses)              | 0   | 0   | 1         | 1   | 0   | 0   | 0   | 3   | 1   | 0   | 8   | 1   | 3   |
| Inspections<br>(existing<br>businesses)      | 0   | 0   | 11        | 16  | 10  | 1   | 12  | 13  | 0   | 0   | 0   | 0   | 5   |
| Reinspections                                | 0   | 0   | 0         | 1   | 2   | 1   | 0   | 0   | 0   | 0   | 0   | 0   | 0   |

# 4.1.1.1 Reduce the environmental impact of development on our community by carrying out regular inspection of building sites and monitoring waste.

Building Site Compliance Inspection Statistics – 13 Month Analysis (2021/2022)

| Nov    | Dec | Jan | Feb | Mar | Apr | Мау | Jun | Jul | Aug | Sep | Oct | Nov |
|--------|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|
| <br>21 |     | 22  |     |     | •   | -   |     |     | 0   | •   |     |     |



| Total Sites<br>Inspected            |  | 6 | 7 | 8 | 7 | 6 | 9 | 0 | 0 | 0 | 23 | 19 |
|-------------------------------------|--|---|---|---|---|---|---|---|---|---|----|----|
| Total non-compliant<br>and educated |  | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0  | 0  |
| Total compliance<br>after education |  | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 23 | 19 |
| Total Penalty<br>Notices Issued     |  | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0  | 0  |

# 14.1.11 Continue surveillance and regulation of illegal dumping on an ongoing basis through participation in the Hunter Central Coast Regional Illegal Dumping Squad

|  | <b>Nov</b><br>21 | Dec | Jan<br>22 | Feb | Mar | Apr | Мау | Jun | Jul | Aug | Sep | Oct | Nov |
|--|------------------|-----|-----------|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|
| Total<br>Investigations                                    |                  |     | 1         | 2   | 4   | 6   | 5   | 3   | 3   | 7   | 1   | 0   | 1   |
| Total Clean up by<br>Council -<br>insufficient<br>evidence |                  |     | 1         | 2   | 4   | 6   | 5   | 3   | 2   | 7   | 1   | 0   | 1   |
| Total Clean Up by<br>individual                            |                  |     | 0         | 0   | 0   | 0   | 0   | 0   | 1   | 0   | 0   | 0   | 0   |
| Total Penalty<br>Notices Issued                            |                  |     | 0         | 0   | 0   | 0   | 0   | 0   | 1   | 0   | 0   | 0   | 0   |
| Court Attendance<br>Notice Issued                          |                  |     | 0         | 0   | 0   | 0   | 0   | 0   | 0   | 0   | 0   | 0   | 0   |
| Still under investigation                                  |                  |     | 0         | 0   | 0   | 0   | 0   | 0   | 0   | 0   | 0   | 0   | 0   |

# 13 Month Analysis (2021/2022)

# 24.1.8 Ensure statutory requirements under the Private Swimming Pools Program (Swimming Pool Act 1992) are implemented.

|  | Nov | Dec | Jan<br>22 | Feb | Mar | Apr | Мау | Jun | Jul | Aug | Sep | Oct | Nov | Total |
|--|-----|-----|-----------|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-------|
| Application<br>s for<br>Compliance<br>Certs. | 5   | 8   | 5         | 6   | 1   | 1   | 7   | 3   | 1   | 5   | 3   | 3   | 5   | 59    |
| Initial<br>Inspection<br>s                   | 21  | 7   | 5         | 9   | 0   | 2   | 3   | 0   | 18  | 11  | 8   | 8   | 1   | 99    |
| Re-<br>inspections                           | 5   | 2   | 1         | 5   | 0   | 0   | 1   | 0   | 6   | 7   | 9   | 1   | 3   | 39    |

# <u>13</u> Month Analysis (2022-23) – as at 08/11/2022



| Total<br>compliance<br>inspections<br>(not inc.<br>finals for<br>OCs) | 26     | 9      | 6      | 14     | 0     | 2     | 4      | 0      | 24     | 18     | 17     | 9     | 4      | 138             |
|---|--------|--------|--------|--------|-------|-------|--------|--------|--------|--------|--------|-------|--------|-----------------|
| Complianc<br>e Certs /<br>Occ. Certs<br>issued                        | 6      | 4      | 6      | 9      | 0     | 4     | 4      | 1      | 5      | 13     | 7      | 2     | 3      | 63              |
| Fees<br>invoiced  | \$1495 | \$1422 | \$1509 | \$1100 | \$150 | \$150 | \$1400 | \$4986 | \$2845 | \$2486 | \$3863 | \$477 | \$1050 | \$ <u>23293</u> |

### Total Pools in Council's SPR = 971

(Note: 1106 records in SPR but 132 have been notified as demolished, 2 are Council's Public Pools and 1 is on Crown Land)

Compliance as at 30 June 2015 = 18.8%

Compliance as at 30 June 2016 = 44.3%

Compliance as at 30 June 2017 = 63.7%

Compliance as at 30 June 2018 = 65.7%

Compliance as at 30 June 2019 = 43.0%

Compliance as at 30 June 2020 = 26.7%

Compliance as at 30 June 2021 = 20.8%

Compliance as at 30 June 2022 = 23.7%

### Compliance as at 08 December 2022 = 25.85% (251 compliant out of 971 pools)

(Note: Certificate is valid for 3 years)

# Tourist/visitor accommodation or properties with pools where there are more than two dwellings

8 out of 8 sites have valid compliance certificates.

### Key Date - 29 April 2014:

• Tourist and visitor accommodation, or properties where there are more than 2 dwellings, must have a swimming pool inspection <u>at least once every 3 years</u>.

### Key Date – 29 April 2016 (originally 29 April 2014, then 29 April 2015):

• Pools on properties intended to be leased require valid Compliance Certificate. Pools on properties intended to be sold require a valid Compliance Certificate or Certificate of Non-Compliance.

### **SUSTAINABILTY**

### Bengalla Community Event

Muswellbrook Shire Council Sustainability staff joined with Warrior Disability Services to talk Sustainability and give away plants donated by Penguin Community Garden at the Benalla Community event. Thanks to Mayor Councillor Steve Reynolds and Garden member Ruth for visiting.





Sustainability Team Perform at Muswellbrook Public School

The Sustainability unit teamed up with Warrior Disability Services to educate students from Muswellbrook Public School about all things Sustainability including reducing waste, being water smart and energy efficient! Gene, Wilbur, Max, Reece and Sunny joined in on the fun.



# New walking path in Denman now open

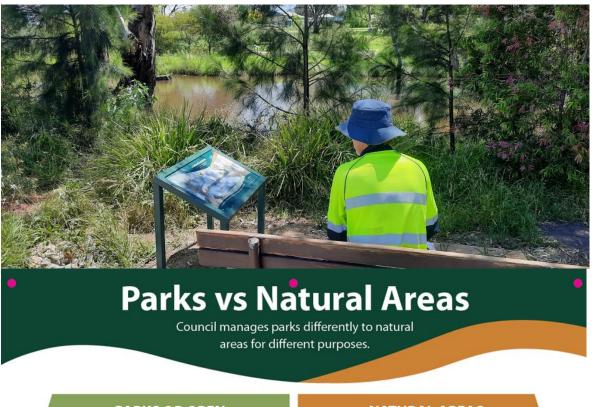
A new walking path in Denman, around the wetland area between Babbington and Macauley streets, is now open for residents and visitors alike.

The new path brings the nature experience to an urban environment and features educational signs and fun animal statues alongside the picturesque wetland.

For more than 10 years Muswellbrook Shire Council has been working with community



volunteers and 1st Denman Scouts, as part of National Tree Day, to enhance a natural area around the wetland.





# Survey on proposed change to waste collection service now open!

Muswellbrook Shire Council is running an online survey in preparation for the future introduction of a new Food Organics Garden Organics (FOGO) waste collection service.

The results of the survey will give Council an insight into the community's kerbside waste generation and disposal behaviours which will help to establish keys areas of concern to address in pre-FOGO focus groups.



# Muswellbrook Community Connect event.

Another Muswellbrook Community Connect event will be held on 23 November 2022. This will be an informal get-together to connect community members with each other to expand relationships and foster connections. We believe there are many opportunities for different community, school, sporting, business and government groups to work together to achieve positive outcomes for our community.



# Muswellbrook Girl Guides at the Sustainability Hub

Last week Muswellbrook Girl Guides participated in some fun activities at the Sustainability Hub. They had a tour, sowed some seeds and did some worm farming and composting. The Guides were so enthusiastic and willing to get their hands dirty.

# National Recycling Week

Sustainability staff helped to promote National Recycling Week, established by Planet Ark in 1996, is held every year during the second week of November (7th to 13th of November 2022).

This year, National Recycling Week explores the idea that Waste isn't Waste until it's Wasted. Join your community and get involved in events that will cover topics like how to give resources a second life, how to reduce the need for newly produced resources, and of course, recycling. This year, it is all about quality over quantity, it is not about recycling more, but recycling better. Reducing our waste not only keeps valuable materials out of landfill it also benefits the environment by reducing greenhouse gas emissions. Thinking that waste isn't waste until it's wasted also provides some valuable insight into how the recycling and resource management industry works in conjunction to your efforts.

# Muswellbrook High School Visit Sustainability Hub

Yesterday Muswellbrook High School students and teachers had a tour of the Sustainability Hub. They were shown around the garden, native bee hotels, aquaponics and native plant nursery. They also helped with the composting bins and met the worms in the worm farms.



# Sustainability at the Muswellbrook Regional Arts Centre

In their ongoing efforts to make things more sustainable, Muswellbrook Regional Arts Centre they have changed their catering and have switched from plastic to using individual serving trays made of thin pine shavings – made from renewable materials using sustainable forestry practices and 100% home compostable. This has now been composted at the Sustainability Hub. Great work to the Gallery staff for their efforts.



# Landcare Grants

Landcare Grants applications were accessed and reported to Council. Grants are for any project with environmental protection or environmental rehabilitation (e.g., weed removal, erosion control, planting native plants to stabilise the banks of watercourses, fencing off areas to restrict damage by hard hoofed animals etc) as the major objective. Grants are also for projects with environmental education as the major objective.

### Penguin Community Garden

The Sustainability Unit continues to support the Penguin Community Garden. Come to share knowledge and skills in gardening, worm farming and composting. Any skill, knowledge level and age welcome.

## Polly Farmer Visit the Sustainability Hub

The students and tutors from the Polly Farmer Foundation Follow the Dream program paid another visit to the Sustainability Hub. This time they sowed some seeds and help with the compost and worm farms.



# Sustainable Futures – Muswellbrook

The popularity of the Sustainable Futures – Muswellbrook Facebook page continues to grow. It has now received 1,573 page likes and 1,703 page followers. This page continues to be a great way for Council to engage with the community around a range of sustainability topics. This includes promoting the Community Recycling Centres, correct waste management practices, sewerage management, the Reuse Shop, soft plastic recycling, Sustainability Hub activities, reducing food waste, plastic free July, worm farms, composting, grant projects and more.

# **Rehabilitation of Muscle Creek Project**

Maintenance and weed control works have continued as part of the Rehabilitation of Muscle Creek Project. This has also involved preparing for erosion control and tree planting activities in September 2022 and March 2023. This project has been assisted by the NSW Government through its Environmental Trust.



# Muscle Creek – AGL Muscle Creek Walkway Project

Work continues for the development of 6 augmented reality (AR) experiences along the Muscle Creek walking loop. Maintenance work for the recently planted 1500 native seedlings continues. This work has many challenges as the steep slopes do not allow for mulch and makes getting water to plant roots more difficult.