

12 March 2024

SLR Ref No.: 630.031522.00001-L01-v.01-20240312

Attention: General Manager

Muswellbrook Shire Council
PO Box 122,
Muswellbrook NSW 2333

SLR Project No.: 630.031522.00001

Client Reference No.: 43-45 Enterprise Crescent, Muswellbrook – DA: 50/2019

RE: Statement of Environmental Effects

s4.55(1A) Modification to DA-50/2019

43-45 Enterprise Crescent, Muswellbrook NSW 2333

1.0 Introduction

SLR Consulting Australia Pty Ltd (SLR) acts on behalf of Newpave Asphalt Pty Ltd (Newpave) in lodging this Section 4.55(1A) modification application to Muswellbrook Shire Council (Council) to modify DA-50/2019. The proposal includes modification to the approved asphalt plant approved upon Lot 14 DP1119843, 43-45 Enterprise Crescent, Muswellbrook NSW 2333.

The proposed amendment to the approved DA-50/2019 includes a reduction in the overall size of the asphalt plant as detailed in the updated Architectural Plans. The updated Architectural Plans are included at **Appendix A**.

Section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) states that a consent authority may, on application, modify a development consent involving substantially the same development and minimal environmental impact. Further details on approval pathway are detailed in Section 5.1 of this SEE.

2.0 Site and Surrounds

The site is located at Enterprise Crescent Muswellbrook, within the Muswellbrook Shire Local Government Area (LGA). It is legally described as Lot 14 DP1119843, and is commonly known as 43-45 Enterprise Crescent, Muswellbrook NSW 2333. Access to the site is provided via separate ingress and egress driveways on Enterprise Crescent.

The site currently contains hardstand areas and generators associated with a previous asphalt plant. The site is located in the E4 General Industrial Zone within the Muswellbrook Local Environmental Plan (LEP) 2009. Land uses within the immediate vicinity of the site are predominantly industrial and agricultural in nature.

Refer to **Figure 1** and **Figure 2** for the existing site aerial and site cadastre.

Figure 1 Site Aerial (Nearmap) sourced: 12/03/2024



Figure 2 Site Cadastre (SIX Maps) sourced: 13/03/2024



3.0 Background

DA-50/2019 was approved on 17 December 2019 for the installation of an asphalt plant in conjunction with original DA 38/2019. Since obtaining this approval, Newpave have undertaken a redesign of the asphalt plant to reduce the size of the equipment required and thus reducing the impact on the site. The new design decreases the height and length of the main plant.

4.0 Proposed Modification

The purpose of this s4.55(1A) modification is to update Conditions 1 & 2 of DA-50/2019 to reflect the new plans with revised plant design.

Further, as part of the standard calibration process, the plant will produce 1000 tonnes of product that the owner intends to use to complete the road upgrades associated with the Roads Act Approval (required by Condition 7). To facilitate this, an Occupation Certificate would be required prior to the road upgrades being completed. Below we have included possible amendments for Conditions 22 & 25. However, we are open to Council suggestions on how best to facilitate this.

The aim is to facilitate the commencement of plant operations at the earliest opportunity, unimpeded by any delays in the implementation of the BAR upgrades. It is highlighted that the upgrades required to the intersection of Thomas Mitchell Drive and Enterprise Crescent will certainly be undertaken by the client. However, it is requested that Council collaborate to assist with a suitable arrangement that ensures operational activities are not impeded by delays in road upgrades.

Proposed updates to the existing Conditions are marked in red.

Condition 1 currently states:

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 | Revision | Drawn by | Drawing Date | Received |
|---------------------|----------|----------------------------|--------------|------------|
| Job No. 190699 A100 | 2 | MCP Consulting Engineering | 31/7/2019 | 24/09/2019 |
| Job No. 190699 A101 | 3 | MCP Consulting Engineering | 31/7/2019 | 24/09/2019 |
| Job No. 190699 A102 | 2 | MCP Consulting Engineering | 31/7/2019 | 24/09/2019 |
| Job No. 190699 A103 | 2 | MCP Consulting Engineering | 31/7/2019 | 24/09/2019 |
| Job No. 190699 A104 | 2 | MCP Consulting Engineering | 31/7/2019 | 24/09/2019 |
| Job No. 190699 A105 | 3 | MCP Consulting Engineering | 31/7/2019 | 24/09/2019 |
| Job No. 190699 A106 | 3 | MCP Consulting Engineering | 31/7/2019 | 24/09/2019 |
| Job No. 190699 A107 | 3 | MCP Consulting Engineering | 31/7/2019 | 24/09/2019 |
| Job No. 190699 A108 | 3 | MCP Consulting Engineering | 31/7/2019 | 24/09/2019 |



Condition 1 is proposed to state:

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 | Revision | Drawn by | Drawing Date | Received |
|---------------------|----------|----------------------------|--------------|----------------|
| Job No. 190699 A100 | 2 | MCP Consulting Engineering | 31/7/2019 | TBC by Council |
| Job No. 190699 A101 | 3 | MCP Consulting Engineering | 31/7/2019 | TBC by Council |
| Job No. 190699 A102 | 2 | MCP Consulting Engineering | 31/7/2019 | TBC by Council |
| Job No. 190699 A103 | 2 | MCP Consulting Engineering | 31/7/2019 | TBC by Council |
| Job No. 190699 C202 | 0 | MCP Consulting Engineering | 11/04/2024 | TBC by Council |
| Job No. 190699 C203 | 0 | MCP Consulting Engineering | 11/04/2024 | TBC by Council |
| Job No. 190699 A104 | 2 | MCP Consulting Engineering | 31/7/2019 | TBC by Council |
| Job No. 190699 A105 | 3 | MCP Consulting Engineering | 31/7/2019 | TBC by Council |
| Job No. 190699 A106 | 3 | MCP Consulting Engineering | 31/7/2019 | TBC by Council |
| Job No. 190699 A107 | 3 | MCP Consulting Engineering | 31/7/2019 | TBC by Council |
| Job No. 190699 A108 | 3 | MCP Consulting Engineering | 31/7/2019 | TBC by Council |

Condition 2 currently states:

2. Development in Accordance with Plans

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

| Title | Written by | Date |
|--------------------------------|---------------------|--------------|
| Environmental Impact Statement | ADW Johnson Ptd Ltd | 21 June 2019 |

Note: Nothing in this consent authorises any site activities or civil 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 before a Construction Certificate has been issued for the development.

Condition 2 is proposed to state:

2. Development in Accordance with Plans

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

| Title | Written by | Date |
|--------------------------------|---------------------|--------------|
| Environmental Impact Statement | ADW Johnson Ptd Ltd | 21 June 2019 |



| Title | Written by | Date |
|------------------------------------|------------|------------|
| Statement of Environmental Effects | SLR | 16/04/2024 |

Note: Nothing in this consent authorises any site activities or civil 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 before a Construction Certificate has been issued for the development.

Condition 7 currently states:

7. Vehicular Access way Design – Commercial and Industrial

Prior to the issue of a Construction Certificate, the applicant is to submit to a detailed design plan for the upgrade of the intersection between Thomas Mitchel Drive and Enterprise Crescent (south) for Council's approval. The design shall be in accordance with the requirements of Council's Community Infrastructure Department and be for the construction of a Basic Right Turn (BAR) at this intersection. Prior to the issue of a Construction Certificate the Certifying Authority is to be provided with evidence, demonstrating that an appropriate design has been approved by Council, in writing.

It will be necessary for the person acting with this consent to construct the required intersection as part of this development and a Section 138 Roads Act 1993 approval application must be lodged with Council for approval prior to the commencement of works related to its construction.

Any Section 138 application is to be accompanied by all construction documentation required by Council's Community Infrastructure Department.

Condition 7 is proposed to state:

7. Vehicular Access way Design – Commercial and Industrial

Prior to the issue of an Occupation Certificate, the applicant is to submit to a detailed design plan for the upgrade of the intersection between Thomas Mitchel Drive and Enterprise Crescent (south) for Council's approval. The design shall be in accordance with the requirements of Council's Community Infrastructure Department and be for the construction of a Basic Right Turn (BAR) at this intersection. Prior to the issue of an Occupation Certificate the Certifying Authority is to be provided with evidence, demonstrating that an appropriate design has been approved by Council, in writing.

It will be necessary for the person acting with this consent to construct the required intersection as part of this development and a Section 138 Roads Act 1993 approval application must be lodged with Council for approval prior to the commencement of works related to its construction.

Any Section 138 application is to be accompanied by all construction documentation required by Council's Community Infrastructure Department.

Condition 22 currently states:

22. Mandatory Council Inspections



At the following stages of construction, a satisfactory report from Council is to be obtained prior to works proceeding:

- (a) Sewer drains – all pipes are to be correctly laid, suitably bedded and ready to backfill. Suitable backfill material is to be available on site at the time of inspection.
- (b) Connection of stormwater drainage to easement– following installation and bedding of drainage lines and prior to backfilling
- (c) Driveway crossover of the footpath or nature strip:
 - prior to pouring concrete
 - Section 138 Roads Act Permit required prior to inspection being carried out.
- (d) Council infrastructure- at completion of works and prior to an Occupation Certificate inspection.

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 and must be paid prior to the issue of the Construction Certificate.

Condition 22 is proposed to state:

22. Mandatory Council Inspections

At the following stages of construction, a satisfactory report from Council is to be obtained prior to works proceeding:

- (a) Sewer drains – all pipes are to be correctly laid, suitably bedded and ready to backfill. Suitable backfill material is to be available on site at the time of inspection.
- (b) Connection of stormwater drainage to easement– following installation and bedding of drainage lines and prior to backfilling
- (c) Driveway crossover of the footpath or nature strip:
 - prior to pouring concrete
 - Section 138 Roads Act Permit required prior to inspection being carried out.

~~(d) Council infrastructure- at completion of works and prior to an Occupation Certificate inspection.~~

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 and must be paid prior to the issue of the Construction Certificate.

Condition 25 currently states:

25. Thomas Mitchell Drive/Enterprise Crescent Intersection Construction

Prior to the issue of an Occupation Certificate, the applicant is to construct a Basic Right Turn (BAR) upgrade to the intersection between Thomas Mitchell Drive and Enterprise Crescent (south) in accordance with the design plans prepared in accordance with the requirements of this consent and to the satisfaction of the Roads Authority (Muswellbrook Shire Council).



Condition 25 is proposed to state:

25. Thomas Mitchell Drive/Enterprise Crescent Intersection Construction

~~Prior to the issue of an Occupation Certificate,~~ the applicant is to construct a Basic Right Turn (BAR) upgrade to the intersection between Thomas Mitchell Drive and Enterprise Crescent (south) in accordance with the design plans prepared in accordance with the requirements of this consent and to the satisfaction of the Roads Authority (Muswellbrook Shire Council).



5.0 Relevant Legislation and Planning Controls

5.1 Environmental Planning and Assessment Act 1979

The appropriate approval path for the proposed modification is a s4.55(1A) under the EP&A Act.

(1A) Modifications involving minimal environmental impact 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 proposed amendment does not change the overall design, or land use of the development (as approved). The plant equipment will continue to operate the same as approved although physically the plant will be reduced in terms of height and length. There will be no change to the sites operational details including maximum output and staffing. Therefore, the proposal is substantially the same development for which consent was originally granted and of minimal environmental impact.

The proposed change to the approved application will not increase visual impact or environmental impact on the site so no additional consultation is considered necessary. As such the proposed modification can be considered s4.55(1A) under the EP&A Act.

5.2 Muswellbrook Local Environmental Plan 2009

The site is located within the Muswellbrook Shire LGA and is subject to the Muswellbrook LEP 2009. The site is zoned E4 General Industry under the LEP.

The proposed modification will not alter the approved land use, which remains permissible and consistent with the objectives of the E4 zone.

The proposed modification results in the approved development still being consistent with all other LEP clauses applicable to the site.



5.3 Muswellbrook Development Control Plan 2009

The Muswellbrook DCP 2009 applies to the site. The nature of the modifications proposed (reduction in height and scale) do not impact the compliance of the development with relevant DCP controls as assessed under the original application and do not warrant reassessment.

6.0 Environmental Assessment & Justification

The environmental assessment completed as part of DA-50/2019 still remains valid. No further impacts are anticipated.

6.1 Amendment to Plant Structure

The modification to DA: 50/2019 relates only to a slight reduction to the plant equipment. No other changes to site layout or other structures / infrastructure are proposed.

The figures below show the difference between what is currently approved and what is proposed with this application.

Figures 3 & 4 Approved Plant Elevations & Tower Isometric View

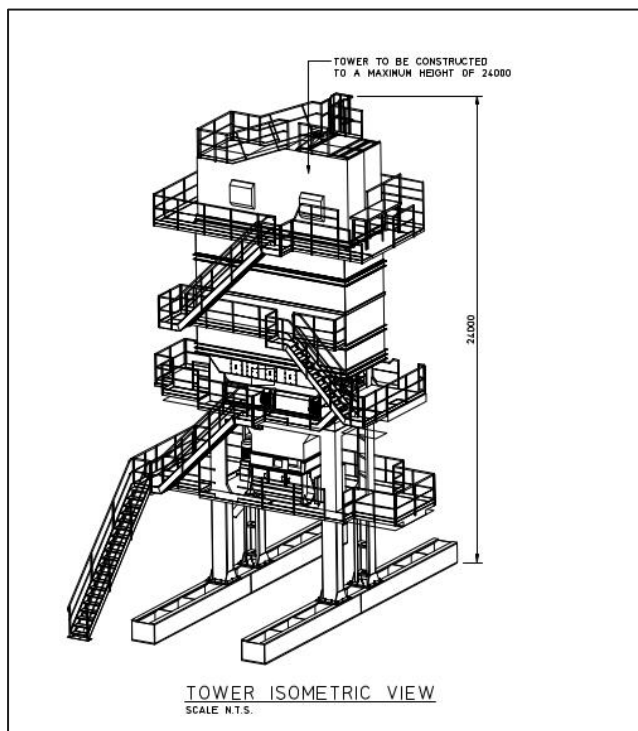
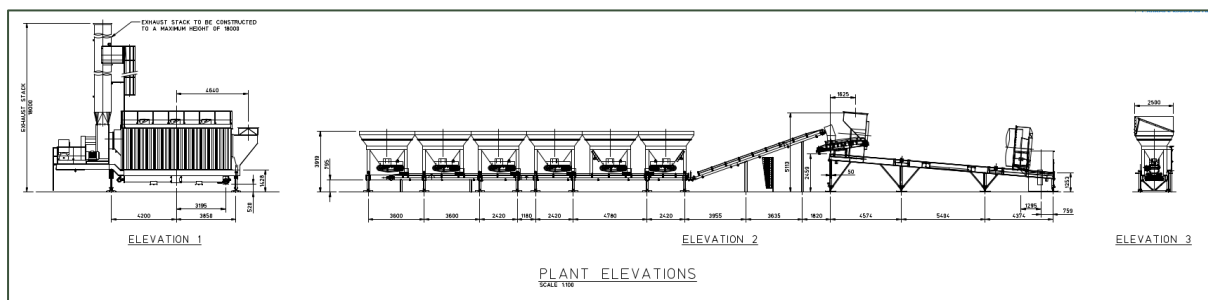
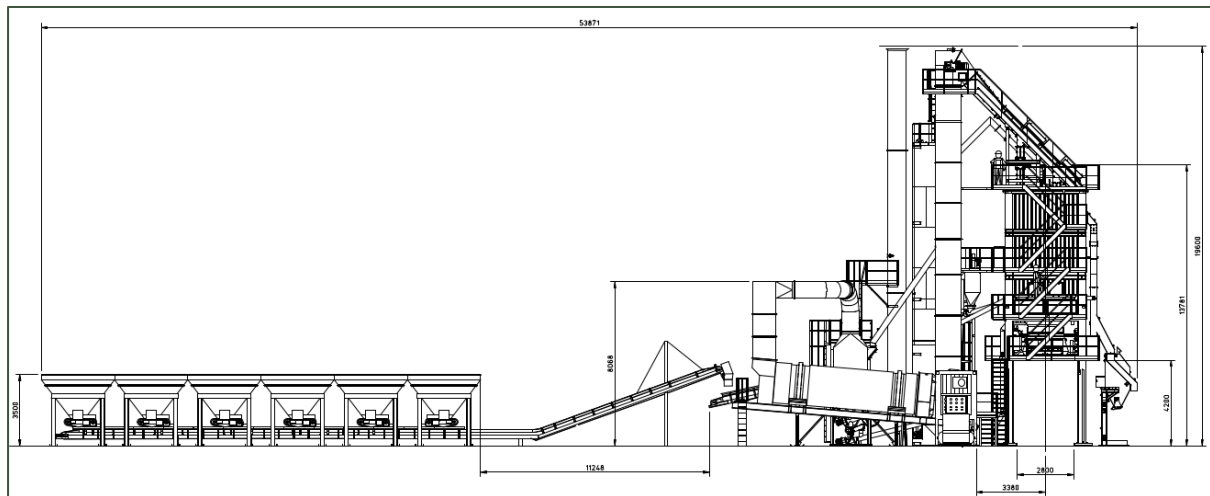


Figure 5 Proposed Plant Elevations



As shown above, the main differences between the two structures are:

- The overall maximum height of the structure has been reduced from 24m to 19.6m, a 4.4m reduction;
- The height of the hoppers has been reduced from 3.918m to 3.5m, a 0.418m reduction;
- The overall length of the plant has been reduced from 54.802 to 53.871m, a 0.931m reduction.

Even with this reduction in size to the structures it is still expected that the site will operate as per the original approval maintaining the same maximum output of materials and supporting the same number of employees.

This modification is substantially the same development with minimal environmental impact. The slight reduction in terms physical scale to the plant equipment will not have any significant impact on the site and surrounds. The modification does not include any further alterations or additions to the site as approved in DA-50/2019.



7.0 Conclusion

The minor amendments to the Development Plans and Conditions 1, 2, 7, 22 and 25 of DA-50/2019 is considered to have minimal environmental impact and will not change the approved design or land use(s) at the site. It is therefore considered a s4.55(1A) application under the EP&A Act 1979 is appropriate.

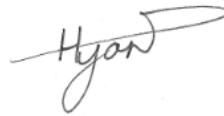
Given the absence of any significant adverse impacts resulting from the modification and consistency with all relevant planning legislation and Council policy, the proposed modification is considered to be worthy of Council's support.

Yours sincerely,

SLR Consulting Australia



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Appendix A Engineering Plans - MPC



Appendix A

Engineering Plans

MPC

