

12 February 2026

Jack Turner
Team Leader
Department of Planning, Housing and Infrastructure

Dear Mr Turner

Bengalla Open Cut Coal Mine (SSD-5170) Modification 8 – Muswellbrook Shire Council comments on Modification Report

Reference is made to the following:

- ‘*Bengalla Mine Modification 8 Modification Report*’ (Xenith, 2025) (Modification Report); and
- Request to provide comment on the Modification Report via the Major Projects Portal.

Bengalla Coal Mine is an existing open cut coal mining operation located 4 km west of Muswellbrook. The operation is managed by Bengalla Mining Company Pty Ltd (BMC) in accordance with Development Consent SSD-5170 granted under the (then) Division 4.1 of Part 4 of the *Environmental Planning and Assessment Act 1979* (EP&A Act). SSD-5170 (as modified) grants the continuation of open cut coal mining and associated activities at Bengalla until 28 February 2039.

Modification 8 (MOD8) seeks to adjust the disturbance footprint for the realignment of Bengalla Link Road (BLR) described in the ‘Continuation of Bengalla Mine Environmental Impact Statement’ (Bengalla EIS) (Hansen Bailey, 2013) to facilitate construction activities (the Modification). The Modification will require the disturbance of approximately 67.5 hectares (ha) of vegetation in addition to that already authorised under SSD-5170.

SSD-5170, as originally granted in 2015, anticipated that the BLR would need to be relocated in Year 15. At the time, BMC committed to designing and constructing the realigned section of the BLR in consultation with Muswellbrook Shire Council (MSC) and in accordance with relevant guidelines. It was identified that detailed design plans for the road alignment and intersection were necessary to reflect the traffic environment at the time of its construction. For that reason, Condition 34 of Schedule 3 of SSD-5170 was imposed which included a conceptual road design (within Appendix 8 of SSD-5170) but overall required the road to be designed and constructed to the satisfaction of MSC.

Council has reviewed the Modification Report and has provided [comments below](#).

Project Description

Council acknowledges that BMC has lodged MOD8 under the *Environmental Planning and Assessment Act 1979* (EP&A Act) to facilitate construction of the realigned BLR. Council also notes that Staff are concurrently drafting a Deed of Agreement (Deed) with BMC to address the commercial, operational, and administrative arrangements associated with these works.

1. Notwithstanding the preparation of the Deed, it is the preference of Council that the Modification supports and aligns with the Deed by describing, and where relevant illustrating (including figures suitable for incorporation into the development consent), the following key aspects of the proposed Modification. This will ensure transparency, regulatory clarity and avoid ambiguity between the approved development and the contractual arrangements that it will give effect to. While some of this information is referenced in Appendix H of the Modification Report, the level of detail provided is insufficient to clearly identify the scope of works and associated obligations.

- Road realignment/s.
- Road decommissioning.
- Road closures (including the unnamed roads shown in Figure 1).
- Roads identified for purchase and transfer.
- Changes to rights of way and rights of carriageway.
- Construction access points, construction affected public roads and prohibited roads.
- Roads to be maintained by BMC, including those currently maintained under existing arrangements, any new roads proposed to be maintained as part of the Modification, and the portion of the realigned BLR to be maintained by MACH Energy in accordance with Condition B103 of SSD-10418; and
- The location of third-party infrastructure, as described in Section 3 of the Modification Report.



Figure 1 – Unnamed roads (shown in red) to be purchased and closed by BMC

2. Council notes that Appendix H ‘*Bengalla Link Road Summary Design Report*’ (WSP, 2025) (Summary Design Report) has not been reviewed by Council’s engineers. Council further notes that the design will be reviewed and approved through the Detailed Design Report required under the Deed. The Summary Design Report does not fetter Council’s ability to request reasonable changes to the final road design.

Deed of Agreement

3. Table 4 of the Modification Report notes that during consultation, ‘MSC and TfNSW outlined requirements for a Deed of Agreement for the design and construction of the BLR’. Council’s preference is that commitment to a Deed of Agreement be explicitly reflected in the Modification Report and/or secured through a condition of development consent, to ensure it is enforceable and aligned with the approved development. Specifically, Council will require the following:
 - Preparation of a Detailed Design Report for the realigned BLR and realigned Roxburgh Road, to Council’s satisfaction.
 - All works to be undertaken by suitably qualified and experienced personnel and carried out under a Section 138 approval pursuant to the *Roads Act 1993*.
 - As part of the Section 138 approval, preparation of a Construction Traffic Management Plan and a Road Maintenance Management Plan (prepared in accordance with the Transport for NSW QA Specification M3 Routine Services) prior to commencement of construction and to Council’s satisfaction. For the avoidance of doubt, Council requires that BMC be responsible for the ongoing maintenance of all culverts beneath the realigned BLR and Roxburgh Road (where required) for the life of the mine. Where any culverts are located

beneath sections of road currently maintained by MACH Energy, the maintenance responsibilities for those culverts must be clearly identified and agreed to by MACH Energy;

- Preparation of pre- and post-construction dilapidation reports for all construction-affected public roads, prepared by a suitably qualified engineer, documenting the visible and structural condition of road pavements, stormwater drainage infrastructure, kerb and gutter, footpaths, and any other associated infrastructure, to Council's satisfaction. Any damage attributable to construction activities is to be repaired; and
- Completion of a pre-opening Road Safety Audit for the realigned BLR and realigned Roxburgh Road, identifying and addressing any road safety deficiencies to Council's satisfaction prior to the roads being opened to traffic.

Bengalla Link Road Bridge

4. Council currently holds a security deposit in relation to the bridge on the existing BLR. It is understood that the bridge was originally constructed to allow the rail loop (ML 1645, south of Wybong Road) for MACH Energy. In accordance with MACH Energy's development consent, the bridge was required to be decommissioned and removed; however, a subsequent commercial agreement was reached between MACH Energy and BMC to allow the structure to remain in place for BMC's continued use.

As the asset owner, prior to closure, MACH Energy must be consulted on the responsibilities of the removal (or otherwise) of the bridge.

Council will seek a condition of consent requiring that BMC not commence mining through the existing BLR until the road has been formally closed and all relevant requirements relating to the bridge and associated infrastructure have been addressed.

Closure of roads prior to mining

5. Council does not support mining through the existing BLR or the unnamed roads (see Figure 1) prior to formal closure, as the road/s remain a public asset for which Council retains statutory responsibilities. Allowing mining to occur before closure would create legal and safety risks and undermine Council's ability to enforce closure. Formal road closure is therefore required to occur prior to any mining activities affecting the existing BLR or unnamed roads.

Screening

6. Section 7 of the Modification Report states that, 'a 1.8 metre (m) Colorbond fence will be installed on the eastern side of the realigned BLR in the north where the potential for direct views of Bengalla operations has been identified'.

Council does not support the use of a Colorbond fence and considers that the proposed screening should be of a higher visual and design standard. Screening should be more consistent with expressway-style treatments and may incorporate Indigenous artwork or other contextually appropriate design elements to achieve a more acceptable and visually integrated outcome.

7. Furthermore, as this section of the road may be maintained by MACH Energy in accordance with Condition B103 of SSD-10418, any infrastructure requiring ongoing maintenance must be acceptable to MACH Energy and compatible with its maintenance responsibilities and procedures.
8. Council notes from Section 7 of the '*Visual Impact Assessment*' (Xenith, 2025) that 'As soon as practicable after completion of construction of the landform for the realigned BLR, BMC will conduct a further visual review and determine the need for additional screening measures. Where road alignment geometry results in vehicular sight lines being directly oriented toward Bengalla operations, mitigation will be implemented accordingly'. Any screening measures

proposed within the road corridor should be undertaken in consultation with Council and MACH Energy (where relevant). If physical screening is proposed, it should have contextually appropriate design elements to achieve a more acceptable and visually integrated outcome.

Discharges

9. Section 3.7.1 of the Summary Design Report states that 'Discharge flows from two dams approved to discharge as part of the Hunter River Salinity Trading Scheme were included in calculations where those flows pass under the relocated road'. Council requests further clarification on the specific locations where these discharge flows are proposed to pass beneath the road, including identification of the relevant drainage structures. Easements for these structures may be required.

Noise

10. Section 3.1 of the Modification Report states that the realigned BLR 'considers the current and future utility of the road in the context of other major project works, including use by oversized overmass (OSOM) vehicles associated with the NSW Renewable Energy Zone projects'. Community complaints post-road opening should be reviewed to ensure the design as constructed has adequately managed noise issues or whether additional noise mitigation measures are required to protect nearby private residences.
11. It is assumed that the noise acquisition rights applicable to Receiver 156 (identified as Receiver 156S in Appendix 4 of SSD-5170) would apply to operational noise associated with the Modification.
12. For completeness, Council requests confirmation as to whether Receiver 156E, shown in Appendix 4 of SSD-5170, is no longer a dwelling. If confirmed, Council recommends that this receiver be removed from the development consent to ensure the approved documentation remains accurate.

Mine Affected Roads

13. As stated in the '*Muswellbrook Mine Affected Roads Review*' (2020), the Muswellbrook community is concerned about the gradual shift of the road network because of mine related closures, citing increased travel times and loss of connectivity. Whilst Council acknowledges that the realigned BLR is approved, any future realignments of this road will need to consider the results and provide options contained within the Mine Affected Roads Strategy.

Planning Agreement

14. Section 2.6 of the Modification Report states that 'BMC are in consultation with MSC about proposed changes to the mechanism for the payment of Voluntary Planning Agreement (VPA) contributions, noting that any such changes may necessitate an amendment to the VPA and / or associated alternative Community Funding Deed with MSC'.

Council confirm that discussions are ongoing and remain positive.

Biodiversity

15. Council supports the commitment within Section 9.1.2.2 of the '*Biodiversity Development Assessment Report*' (Cumberland, 2025) (BDAR) that 'A Habitat Restoration Plan (for the Hunter Valley Delma) will be developed and will include methods for habitat restoration within adjoining habitats, on Bengalla owned land, and in mine rehabilitation'.

16. Council notes that a species management plan for Hunter Valley Delma, including proposed translocation requirements and habitat restoration measures, is identified in Section 6.3.5 of the Modification Report as a means of mitigating impacts to the species. Council considers that these mitigation measures could be further strengthened through minor road design changes that incorporates fauna connectivity measures, such as appropriately designed fauna underpasses, guided fencing, or the integration of fauna passage within drainage structures, to maintain movement pathways across the road corridor and reduce habitat fragmentation.
17. The BDAR and supporting calculations identified that a total of 1,780 ecosystem credits and 2,396 species credits are required to offset the biodiversity impacts of the Modification.

As is often the case with State Significant Development, biodiversity impacts are experienced within the Muswellbrook LGA while offsets are delivered elsewhere. Council strongly encourages BMC to pursue opportunities to address biodiversity impacts within the LGA.

Council supports the delivery of offsets via a Strategic Offset Delivery Agreement to realise outcomes identified in the recently published '*Hunter Conservation Strategy*' (DCCEEW, 2025), to ensure that offsetting is strategic, aligned with regional conservation priorities and where possible, realised within the Muswellbrook LGA.

Alternatively, Council supports the establishment of offset areas on the existing mine rehabilitation.

Council appreciates the opportunity to comment and would be pleased to provide additional information if requested. Should you need to discuss the above, please contact Theresa Folpp, Environmental Planning Officer, on 02 6549 3700 or email council@muswellbrook.nsw.gov.au

Yours faithfully



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