

DH:DH:1148-3#216

Mr A Ko  
Planning Officer/Resource Assessments  
NSW Department of Planning and Environment  
GPO Box 39  
SYDNEY NSW 2031

5<sup>th</sup> August

Dear Sir/Madam

**MODIFICATION TO THE APPIN EAST MINE SAFETY GAS MANAGEMENT PROJECT**

Thank you for the opportunity to provide comment on the Section 75W Modification Application to the Bulli Seam Operations No 08\_0150 for the construction of a pipeline as part of the Bulli Seam Project Gas Management Drainage Program (the Modification Application).

The Modification Application has direct relevance to Council as a consequence of the location of a significant portion of the pipeline on the road shoulder of a local road (Brooks Point Road). The resolutions of Council at its meeting on 21 March 2016 in relation to this matter that have been replicated in to a Deed of Agreement between Council and South 32 are presented in Attachment 1 for information of the DP&E. The Modification Application is largely consistent with these resolutions however the undertaking of the required full detailed survey of the road shoulder is viewed as not being completed.

The submitted documentation is considered to have broadly assessed direct and indirect impacts associated with the proposal as well as Council's traffic management requirements. However, a review identified requested amendments in regard to the mapping of vegetation communities, and the assessment and mitigation of potential impacts in regard to threatened species and the crossing of drainage lines. Comments regarding these matters as well as Council's resolutions and requested response by the DP&E is provided in the attached submission. In addition, recommendations are also provided on two components of the Deed of Agreement in regard to a detailed site survey and community consultation which are not considered to have been adequately completed.

The provision of a response from the Department of Planning and Environment to comments and requested amendments to the Modification Application outlined in this submission prior to the issuing of Determination would be appreciated.

Please contact Council's Environment Assessment Planner, David Henry, on (02) 4677 9687 or via e-mail [david.henry@wollondilly.nsw.gov.au](mailto:david.henry@wollondilly.nsw.gov.au) for any enquiries regarding issues raised in this submission

Yours faithfully



Brad Staggs  
Manager Environmental Services  
ENVIRONMENTAL SERVICES



## **SUBMISSION ON THE MODIFICATION APPLICATION**

The stated purpose of the Modification Application to *"support the safe and efficient extraction of coal"* and *"to optimise the underground extraction and utilisation of methane gas from the mine"* is acknowledged. The location of the pipeline is also acknowledged that the path of the proposed pipeline has been located to minimise disturbance to the natural, cultural and built environment.

Documents associated with the Modification Application have been reviewed by Council's Environmental, Traffic and Property Officers in terms of considered adequacy in the assessment and management of potential impacts as well as implications to Council's responsibilities. They have also been reviewed in terms of consistency with the Deed of Agreement between Council and Illawarra Coal executed on 16<sup>th</sup> May 2016. The following discussion provides comments on each component of the Application of relevance to Council's responsibilities and recommended response from the Department of Planning and Environment (DP&E) arising from this review.

### **1) General comments on the document and approach**

The legislative framework for the assessing and determination of the Application is acknowledged as being a matter for the DP&E. It is requested to be noted in this regard that Council has adopted a broad position that State Significant Development Applications should be assessed with the same rigour as Applications where Council is the Determining Authority.

It is noted that each section of the Application lists as a mitigation measure, the construction of a Construction Environmental Management Plan (CMEP). In this regard, the Department is requested to require that all recommendations outlined in subsequent sections of this submission be incorporated in the EMP where relevant. This is viewed as an appropriate mechanism for the implementation of mitigation measures identified by the Modification Application. The Department is requested to require that all recommendations contained in subsequent sections of this submission are incorporated into the CMEP where relevant.

### **2) Consistency of the Modification Application with the proposed Agreement between Illawarra Coal and Wollondilly Council**

The Modification Application is noted to state that *"Illawarra Coal will enter into an Agreement with Wollondilly Shire Council to enable the pipeline to be constructed and operated within the easement of Brooks Point Road"*. The Department is requested to note that this Agreement was executed on 16<sup>th</sup> May 2016. This Agreement cannot be provided for commercial-in-confidence reasons. However, Council's GIS/ Property and Administration Team Leader (Joanna Kraatz) can be contacted on (02) 4677 9527 for any enquiries.

The resolutions of Council at its meeting of 21 March 2016 which have been replicated within the Agreement are attached for the information of the Department. A number of these resolutions have been adequately completed as a consequence of the execution of the Agreement. However, the following provides comments and requested response by the Department in regard to two resolutions (and by extension) the Agreement which are viewed as not complete.

*Resolution 5 (in part): That the Deed of Agreement is to include amongst other matters, a requirement for a full detailed survey plan.*

*Resolution 3: That in the event that the survey of the identified location for the gas line goes into freehold land, that land being transferred from the NSW Department of Industry, NSW Trade and Investment (Crown Land) be declared as "Operational Land" upon acquisition.*

Council's Officer responsible for the execution of the Agreement has advised of her understanding that South 32 would carry out a survey to determine the precise location of the road reserve following approval of the Modification Application. **The Department is consequently requested to include an appropriate condition in the Determination which requires South 32 to comply with this aspect of the Agreement in consultation with Council by carrying out a detailed survey.**

*Resolution 5 (in part): The applicant to undertake comprehensive community comprehensive community consultation with potentially affected key stakeholders in Appin (surrounding properties, Appin residents and Appin road users) in consultation with Council's Community Engagement Team*

The DP&E is requested to note that the above resolution relates to concerns that Council shared with residents in the vicinity of Douglas Park over health, environmental and aesthetic impacts associated with the proposed expansion of the South 32 Gas Drainage Program at this locality. Council resolved at its **meeting of 21 September 2015** in relation to this matter:

- 1. That Council continue to monitor the Douglas Park Mine Gas Drainage and Power Plant Proposal by South 32 and that Council continue to engage with residents of Douglas Park regarding their concerns about the proposal.*
- 2. That Council throughout the process, advocate on behalf of the community, communicating their concerns to the consent authority, our state member, mining authority, and any other applicable minister/authority.*

This component of the Agreement is consistent with Council's endorsed position regarding engagement with the community and advocacy of concerns in relation to the Gas Drainage Program listed above. The undertaking and proposed community consultation in the Modification Application is viewed as having inconsistencies with requirements outlined in the Agreement. South 32 is noted to have provided further details for an expanded consultation program to Council's Acting Community Services Section Team Leader. This Officer has expressed the view that a Consultation Report from South 32 to review what consultation has already occurred in relation to the gas pipeline and the consistency of this consultation with Council's Community Engagement Policy is needed. **The DP&E is requested in this regard to require South 32 submit such a Strategy to Council prior to work commencing as well as incorporate the above component of the Agreement into the Determination for the gas pipeline.**

### **3) Assessment and management of potential impacts**

- (i) Road maintenance and traffic management issues*

(a) Maintenance of Brooks Point Road

The Modification Application is noted to state that a *"trench nominally 2 metres wide and 2 metres deep will be constructed by a large excavator on the road shoulder of Brooks Point Road"* (a Council owned road). It is further noted to state that the buried pipeline will have a nominal diameter of 1000mm (1 metre). Council's Traffic Section has indicated that the 1 metre clearance above the inserted pipeline would not provide any adverse implications for maintenance and any upgrading of this section of the road. **The Department is requested to contact Council's Manager Infrastructure Planning (Michael Nelson) however in the event of the depth of burying of the pipeline beneath the road (and associated road corridor) being less than 1 metre.**

(b) Traffic management issues

Council's Traffic Management Section has expressed broad satisfaction at the mitigation measures contained in Section 6.8 'Traffic and Accessibility' of the Modification Application. **The Department is requested to require in this regard that the Determination require the completion of each mitigation measure in consultation with Council as a condition of consent.**

(ii) Assessment of biodiversity values and impacts to these values

The accompanying Biodiversity Assessment is considered broadly consistent with the applicable legislative and policy framework. It is also acknowledged to be located to minimise disturbance to native vegetation consistent with the broad Avoid/Minimise/Minimise approach adopted by Council's Development Control Plan. However, the following provides comments and suggested amendments to the document following a review of the document by Council's Environment Assessment Planner:

(a) Vegetation communities

The identification of both the Critically Endangered Ecological Communities Cumberland Plain Woodland (CPW) and Shale/Sandstone Transition Forest (SSTF) occurring in close proximity to the proposed pipeline by mapping within the Biodiversity Assessment is agreed with. This identification is noted to reflect broadscale mapping utilised by Council in the assessment and determination of Development Applications.

It is considered in relation to this matter however the potential for indirect impacts on a section of the SSTF that is directly adjacent to the proposed location of the pipeline is not sufficiently assessed by the Modification Application. It is therefore recommended that the Study be amended as appropriate to recognise the potential for the construction of the pipeline and its ongoing maintenance on the section of the directly adjoining SSTF.

The application is noted to state that there will be a 10 metre construction corridor but that *"clearing of native vegetation will generally be restricted to the 2 metre wide trench corridor required for the pipeline"*. A review of vegetation mapping held by Council indicates that clearance up to 10 metres adjacent to the road shoulder would impact on a significant portion of the adjoining mapped SSTF community. It is considered in this regard that the extent of impact during the construction would extend beyond two metres although likely not up to 10 metres. It is therefore recommended that the Department

- Obtain clarification from the proponent on the precise extent of direct impact to adjoining vegetation during the construction of the pipeline prior to the issuing of the Determination.



- Incorporate mitigation measures contained in the Biodiversity Assessment Report as conditions in the Determination and also require details of their proposed implementation in the CMEP where applicable.
- Require the proponent to include additional measures in the CMEP that would accurately identify 'No Go' Areas in consultation with Council's Environmental Officers.

The Modification Application is further noted to include a mitigation measure in relation to this issue *"Any vegetation removal other than that detailed in this report should be subject to further assessment"*. The Department is requested to note this mitigation assessment is supported in principle and that such further assessment is considered warranted if the extent of direct impact during the construction of the pipeline is in excess of five metres. **The Department is further requested to provide Council with a copy of any such assessment.**

(b) Flora and fauna surveys

The extent and methodology of flora and fauna surveys are viewed as being broadly sufficient for the purposes of the Modification Application. The following comments are however provided based on the experiences of Council Staff in regard to developments within the vicinity of the proposed location:

- The Biodiversity Assessment is considered not to contain specific measures for the management of potential impacts of the proposal and its ongoing maintenance on any Cumberland Land Snail species present.
- The conclusion of the Biodiversity Assessment that *State Environmental Planning Policy 44* does not apply is agreed with. However, the DP&E requested to note that recent surveys by Council Officers with representatives from the NSW Office of Environment and Heritage identified a number of koalas in the vicinity of Appin in tree species not listed in SEPP 44.
- The mitigation measures contained in the Biodiversity Assessment Report, (includes the two –stage protocol for hollows), are supported and suitable for adaption as conditions that. However, this support is subject to the full extent of vegetation clearance associated with the pipeline being adequately assessed.

**It is recommended that the Department require the following to be detailed in the CMEP and required as condition of consent to address the above matters:**

- The undertaking of targeted surveys for threatened fauna species within the area of potential impact not more than 14 days prior to work commencing with particular emphasis on the Cumberland Land Snail and Koala.
- Any observed Cumberland Land Snails must be relocated to the vegetation community in which identified under the supervision of an ecologist with demonstrated detailed knowledge on this species. For example, any Cumberland Land Snails identified in CPW must be relocated into a nearby undisturbed section of CPW.

(c) Site rehabilitation

The Project Application is noted to include mitigation measures involving soil stockpiling/reinstatement as well as the use of *"spray grass or seed broadcasting techniques"*. This option is acceptable to Council provided a combination of local providence SSTF species is applied as part of the rehabilitation process. **The DP&E is consequently**

**requested to require the use of such species as a condition of consent in the Modification Application Determination.**

*(iii) Assessment and management of potential Impacts to water sources*

The mitigation measures outlined in Section 6.1 of the Modification Application are viewed as being broadly adequate for general sediment and erosion control and the construction of the bridge. This position is subject to any comments/recommendations provided by the NSW Department of Primary Industries for the management of these potential impacts during the construction and ongoing maintenance of the gas pipeline.

The Modification Application is noted to state in relation to this matter *"the receiving waters (potentially impacted) are ephemeral first and second order tributaries and the impacts are considered temporary and localised"*. Council Officers have concerns over this statement as it does not recognise the potential for downstream impacts during periods of flow in these tributaries. In addition, the proposed Mitigation Measures are considered to not contain any specific items to protect these drainage lines during the installation of the pipeline apart from potentially *"Prepare a Construction Environmental Management Plan"*. **The Department is therefore requested to require that the CMEP contain detailed measures that would prevent any downstream impacts as a consequence of the crossing of swales and drainage lines by the pipeline prior to the issuing of Determination.**

The Deed of Agreement (and associated Council resolution), requires the applicant to *"consult with Water NSW and to include details of the proposed water canal crossing in the CMEP"*. The adequacy of the addressing of this issue by the Modification Application is acknowledged as being a matter for Water NSW. **However, provision of the outcomes of such consultation would be appropriate to assist in the verification process for the adequate completion of this component of the Agreement.**

*(iv) Impacts to Aboriginal Heritage*

The adequacy of the assessment of Aboriginal Heritage values of the site and potential impacts of the proposed pipeline on these values as well as consistency with the applicable legislative and policy framework is viewed as being a matter for the NSW OEH. Council however has responsibilities to advocate on behalf of the local Aboriginal communities in the protection of Aboriginal heritage.

The Aboriginal Cultural Heritage Assessment would appear to contain sufficient modelling and survey work to obtain a broad understanding of the likely presence of Potential Sub-Surface Archaeological Deposits within the area of potential impact associated with the proposed gas pipeline. **It is however suggested the Department require that a suitably qualified archaeologist be present on site to accurately identify and recovered artefacts as a consequence of the conclusions of the Study not being verified by any excavation activity.**

*(v) Consideration of social and cumulative impacts*

The subject of the Modification Application involving the construction of a gas pipe-line is recognised as having negligible direct social impacts. It is considered however appropriate that the Modification assess cumulative social impacts associated with the utilisation of extracted gas at the power generation facilities or venting within the overall context of the Bulli Seam Project. The assessment within this broader context would have consistencies with Council's endorsed overall position on the Bulli Seam Mine Safety Gas Management Project outlined in a preceding section of this submission.

The assessment within a broader context is also considered to have consistencies with the proposed Social Impact Policy for State Significant Developments by the DP&E. Representatives of this Department at the Wollongong Workshop were noted to express the view that all social impacts must be considered by mining applications based on extensive community consultation.

In this regard, the DP&E is requested to require that South 32 expand the assessment of social impacts based on views it has received on the overall Mine Safety Gas Management Project. It is further requested to require specific consultation detailed in Council's resolution that is replicated in the Deed of Agreement with South 32.

#### **4) Concluding Statement**

The submitted documentation associated with the Modification Application for the construction of the gas pipeline has broadly considered direct and indirect associated impacts. However, a review identified requested amendments in regard to the mapping of vegetation communities, and the assessment and mitigation of potential impacts in regard to threatened species and the crossing of drainage lines. This submission has also contained recommendations in relation to considered outstanding items in the Deed of Agreement between Council and South 32 which was executed on 16<sup>th</sup> May 2016.



## WOLLONDILLY SHIRE COUNCIL

Minutes of the Ordinary Meeting of Wollondilly Shire Council held in the Council Chamber, 62-64 Menangle Street, Picton, on Monday 21 March 2016, commencing at 6.34pm

### Governance

- *The applicant to undertake comprehensive community consultation with potentially affected key stakeholders in Appin (surrounding properties, Appin residents and Appin road users) in consultation with Council's Community Engagement Team;*
  - *The applicant to submit a separate application under Section 138 of the Roads Act prior to works commencing.*
6. *That the Deed of Agreement shall not operate so as to fetter Council's statutory obligations or discretions as a consent authority and as the relevant roads authority.*
7. That the Mayor and General Manager be authorised to execute all documentation pertaining to this matter including those requiring the Common Seal of Council in accordance with the Local Government Act 1993 (NSW) S377(1)(h).

Governance

On being put to the meeting the motion was declared CARRIED.

Vote: Crs Law, Terry, M Banasik, Mitchell, Landow, Gibbs and Hannan

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### Governance

GO4      Proposed Agreement for Easement – Gas Pipeline at Brooks Point Road, Appin – Illawarra Coal  
10845      TRIM 8899

Items GO4 and GO5 were moved concurrently

36/2016      Resolved on the Motion of Crs Hannan and Terry:

1. That Council as the Roads Authority under the Roads Act 1993 (NSW) Section 7(4) & 7(5) agree in principle to enter into negotiations for a Deed of Agreement for an easement with Illawarra Coal (aka South 32) for the purpose of installing and operating a suction gas pipeline within Brooks Point Road Reserve from Appin Mine to the Power Station located at Northamptondale Road, Appin.
2. That the compensation for the total length of the proposed easement within the Brooks Point Road Reserve be \$46,500 plus GST subject to review and provision of an official registrable plan by Council's Valuer. That the security bond be determined at the time of negotiations.
3. That in the event that the survey of the identified location for the gas line goes into freehold land, that land being transferred from the NSW Department of Industry NSW Trade & Investment (Crown Land) be declared as "Operational Land" upon acquisition.
4. That all costs and disbursements to establish the agreement be borne by the applicant, including all reasonable legal costs and registration of documentation with Government Authorities.
5. *That the Deed of Agreement is to include amongst other matters, a requirement for:*
  - *A full detailed survey plan;*
  - *All necessary approvals and requirements of environmental legislation being obtained;*
  - *The applicant to consult with Water NSW and to include details of the proposed water canal crossing in the Construction Environmental Management Plan. (The proposed gas line traverses the Upper Water Canal which is under the control and ownership of Water NSW);*

Governance