

7 November 2019

**Joel Herbert**

Senior Planning Officer  
Resource Assessments - Planning Services  
Department of Planning and Environment  
GPO Box 39  
SYDNEY NSW 2001

Dear Joel

**RE: Bulga Optimisation Project (SSD 4960) – Modification 3**

I refer to your request via the Planning Portal to Singleton Council dated 20 September 2019 requesting comment from Council on the Bulga Optimisation Project – Modification 3. This letter forms Council's feedback in relation to that request.

**The Project**

The Bulga Optimisation Project – Modification 3 proposes to, amongst other things:

- extract an additional 63 million tonnes of run of mine coal
- extend the life of the existing operation by four (4) years, to 2038
- increase the disturbance area for the operation by approximately 20 hectares, including disturbance to endangered ecological communities,
- increase the overburden emplacement height by 10 metres, and in some cases 25 metres
- move the proposed final void approximately one kilometre to the south, and closer to agriculture and tourism land uses
- drawdown groundwater to create a hydraulic sink within the final void, which will removed approved groundwater seepage from Loders Creek, potentially reducing environmental and community water supply
- increase the depth of the final void by a further 60 metres, to approximately 320m
- a reduction in final void water quality, rendering it potentially unsuitable for viticultural or intensive agricultural purposes
- create land use conflicts with surrounding land uses, currently zoned RU4, where land use objectives include (amongst other things):
  - ensuring land use planning decisions recognise the Hunter Valley Wine Country and the adjoining environs of Broke-Fordwich as a major viticultural and tourist destination
  - encouraging and promoting diversity and employment opportunities in relation to primary industries, particularly those requiring smaller lots or that are more intensive in nature

- minimising conflict between land uses within the RU4 zone and land uses within adjoining zones

Council considers that the impacts of the proposed modification are significant in that the impacts borne by the community will be felt over a greater area and for a longer period of time than that approved under the Bulga Optimisation Project. The project is located within an internationally recognised viticultural and tourism region, which is continuing to grow. The impact of the proposed modification on this region, the potential for impacts to viticultural and tourism values, and the future growth of the wine and tourism area of Broke-Fordwich has not been adequately considered in the Statement of Environmental Effects.

Additionally, the proposed modification application does not consider the long term socio-economic impacts resulting from the loss of an additional 20 hectares of land, for which no single long term detailed final land use has been proposed.

### **Voluntary Planning Agreement**

The modification application does not consider whether a new or revised Voluntary Planning Agreement (**VPA**) should be negotiated with Singleton Council. In 2016 Council entered into a VPA with Bulga Coal on the basis that the approved project, and its associated impacts, would not result in any greater impact to the community than that approved under SSD 4960. With this modification application, the impacts of the proposed modification are greater in scale and duration than those originally approved in SSD 4960. The proposed modification will increase the duration of mining, reduce the availability of land for other land uses for a longer period of time and result in a significantly larger void, for which a detailed final land use has not been discussed.

Council has spent significant time reviewing the contributions made to the Singleton community by the mining industry and in November 2017, Council resolved to apply a 1% levy on capital investment value to all future mining voluntary planning agreements. The application of this levy is consistent with the provisions of Council's existing Development Contributions Plan, section 4.10, which states:

*Whether as a result of a Minister's consent or council consent, these contributions will take the form of monetary contributions or in-kind contributions and be determined through negotiation between the applicant and Council. The proposed contributions agreed between the applicant and Council will be detailed in a voluntary planning agreement in accordance with s93F of the Environmental Planning and Assessment Act 1979.*

Council is currently reviewing its Development Contributions Plan.

Further, Council intention is to create the Singleton Community and Economic Development Fund using VPA monies from mining and other major projects. The intent of this Fund is to preserve the capital and use investment returns to fund programs that will facilitate the future security, prosperity and wellbeing of our community. These programs would include undertaking investigations to understand the impact of mining on our community, research and development in projects that

build resilience and improve liveability of Singleton during and post mining. Council believes this approach allows the provision of a longer term view on the use of VPA funds.

The company has met with Council to discuss the potential to review and revise the existing Voluntary Planning Agreement. It is important to note that these discussions are preliminary and no agreement has been reached for this proposed modification. It is Council's view that the scale and duration of the proposed modification warrants consideration of a revised VPA, linked to the capital investment value of the project, as resolved by Council at the November 2017 Council Meeting. Council requests that no determination of the proposed modification be made until an in principle agreement on a revised VPA is reached with the Applicant.

## **Final Land Use**

The evaluation requirements for planning decisions are set out in section 4.15 of the *Environmental Planning and Assessment Act 1979*. This section requires, amongst other things, the consent authority to consider provisions of any environmental planning instrument (for which Council's Local Environmental Plan would constitute) and any document required for consultation under the Act, any Development Control Plan, any planning agreement and the public interest. Section 4.40 of the *Environmental Planning and Assessment Act 1979* applies section 4.15 to the determination of State Significant Development applications.

Additionally, clause 12 of the *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007* requires the consent authority to consider, amongst other things, the existing and approved uses of the land in the vicinity of the development, whether or not the development is likely to have a significant impact on those uses (whether current or future) and any ways that the proposed development could be incompatible with any existing, approved or likely preferred uses. The Statement of Environmental Effects does not recognise the importance of the surrounding land uses within the RU4 zone, and does not evaluate the impacts proposed by the modification against the land use objectives for adjacent zoning.

Given the statutory framework for consideration of long term, off site impacts to land use planning, and the broader public interest requirements, Council considers the current final land use options identified in Table 6.21 do not provide for a high level of post mining land use certainty. Council acknowledges that the approved post mining land use of woodland/open forest will cover a significant proportion of the post mining land use (2,500 hectares). However, as a temporary land user, it is incumbent on the applicant to identify one final land use for the remaining land post mining that is consistent with the broader regional and local strategic land use planning objectives and outcomes. The remaining land is identified on Figure 6.17 as '*areas with greatest potential for alternative land uses*'. It should be noted that the Applicant has not engaged with council in the development of any post mining final land use planning.

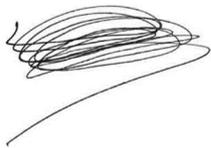
The current final land uses proposed do not consider the strategic alignment with local and adjacent existing and future land uses, and do not provide long term certainty to the community of a sustainable post mining land use. The proposed

modification cites a number of final land use options that could be considered at a point five (5) years from closure, some 15 years into the future. Council considers that this planning timeframe is too far into the future, and that detailed final land use planning should be included in the Statement of Environmental Effects. Further, the proposed modification does not include the cost-benefit to the community of the current approved operations, nor the proposed modification, and its final land uses, in the context of long term environmental and social impacts, as required by the current conditions of consent.

Council considers the development of a final land use strategy, ahead of proposed mining, is essential in ensuring that the final land use is achievable, consistent with surrounding land uses, does not compete across the LGA for land use outcomes and is adequately planned for and incorporated into the design of the mining operation. Council notes that the life of the mine is within current strategic land use planning timeframes, and, whilst there is a need for flexibility to allow for adequate consideration of a relevant final land use option, consistency with long term local and regional land use planning objectives is essential.

I would like to thank the Department for the opportunity to provide comment on the Bulga Optimisation Project – Modification 3. Should you have any questions or comments, please contact Mary-Anne Crawford, Manager Development and Environmental Services on 02 6578 7290.

Yours faithfully

A handwritten signature in black ink, appearing to be 'Mary-Anne Crawford', with a long, sweeping underline.

Mary-Anne Crawford  
**Manager Development and Environmental Services**