

Enquiries  
Please ask for  
Direct  
Our references  
Your reference

Steve McDonald  
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3 June 2013

**Mr Sam Haddad  
Director-General  
Department of Planning and Infrastructure  
GPO Box 39  
SYDNEY NSW 2001**

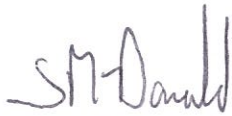
Dear Mr Haddad,

**RE: Mt Arthur Mining Complex Modification 1 - Extension of Mining (09\_0062)**

Please find enclosed a copy of Muswellbrook Shire Council's submission in response to the proposed Mt Arthur Mining Complex Modification 1 – Extension of Mining.

Your consideration of the matters raised would be appreciated. Council appreciates the opportunity to comment on the proposal.

Yours faithfully,



Steve McDonald  
**General Manager**

(jb)

## **Mount Arthur Coal Modification 1**

[Application pursuant to s75W of the  
*Environmental Planning and Assessment Act 1979*]

## **COUNCIL SUBMISSION**



**muswellbrook  
shire council**

24 May 2013

**Mount Arthur Coal - Modification 1 - Extensions of Mining**  
[Application pursuant to s75W of the  
*Environmental Planning and Assessment Act 1979*]

**The Application**

1. By Application Dated 7 February 2012 (the Application), Hunter Valley Energy Coal Pty Ltd (the Proponent) seeks, pursuant to the now repealed s75W of the Environmental Planning and Assessment Act 1979 (the Act), to modify the Mount Arthur Consolidated Mine Project (the Project). It is common ground that the Proponent is entitled to make the Application pursuant to that provision because of the effect of transition arrangements set out in Schedule 6A of the Act.
2. The Proponent sets out its modification in Part 5 of its Application as follows:
  1. Extension of open cut mining operations at Mt Arthur Coal for an additional operational life of approximately four (4) years;
  2. an open cut extension;
  3. associated overburden emplacement extension;
  4. rail loop duplication; and
  5. minor site infrastructure changes.

[lettering added for ease of reference]

**Submissions in summary form**

3. It is not reasonably open to the consent authority to determine that the Application falls within the jurisdictional power of section 75W.
4. The Project, taken individually and in aggregation with other proposals for road closures and road realignments will have a substantial impact on traffic efficiency in the local government area. Although the project will bring forward road safety improvements on Edderton Road, the short-term improvements to traffic safety do not ameliorate the permanent loss of traffic efficiency;
5. Council submits that *ad hoc* extensions by s75W variation, in circumstances of such rapid local industry growth, would effect a complete disengagement of the community from important considerations about the extent and cumulative impact of mining and is therefore contrary to the public interest.
6. The Project would contribute to particulate matter in the Upper Hunter air shed in circumstances where the air shed is at capacity insofar as the National guideline is concerned. The Project makes no sufficient attempt to manage dust with best practice techniques.



## **Council Policy**

7. In review of Council's policies in regard to coal mining land use and rehabilitation the following has been noted:
  - The final landform does not look natural;
  - The final landform includes three voids;
  - Revegetation plan does not meet Council's target of 70% high density tree planting; and
  - Final land use not defined.

## **Consultation**

8. Council had not been fully consulted on the modification. The Proponent and Council have been in lengthy and detailed discussions about the status of the Thomas Mitchell Drive Offsite Offset Area. On two occasions proposals for the additional offset land required for Condition 37 were shown to Council, however; at the time the now public, proposals were treated as highly confidential and that the business had not made any determination on how it was to finalise boundaries and make the proposals public. The second of these meetings was after the EA had been provided to the Department of Planning and Infrastructure.
9. It is noted that the additional land for Condition 37 has been an issue for a number of community groups including Council and it is disappointing to note that while it had been intended to be included in this Modification, it had not been subject to consultation prior to lodgement of the EA.

## **Justification**

10. It is understood that the proposal to emplace overburden in the conveyor corridor was not contemplated at the time of the 2009 Consolidation Application because of a power line that runs through the corridor. The alternative route for the power line could not be determined in 2009. The relocation of this power line is not identified in the application.
11. If the power line cannot be relocated then the ability to dump in the corridor area will not be possible.
12. Therefore the proposed final landform and rehabilitation strategy cannot be determined.

## **Thomas Mitchell Drive Offsite Offset Area (TMDOA)**

13. The TMDOA has been the subject of extensive discussions between Muswellbrook Shire Council, the Wanaruah Local Aboriginal Land Council, the Proponent, NSW Planning and Infrastructure and the Office of Environment and Heritage .

14. Those discussions relate to the need for Council to provide critical community infrastructure within the existing TMDOA. The infrastructure required includes:
  - (a) a trunk main for sewer reticulation of the Thomas Mitchel Drive Industrial Estate;
  - (b) Water Main from a proposed new water storage tower in the eastern areas of south Muswellbrook to maintain water supply to the industrial estate;
  - (c) a replacement Sewage Treatment Plant (STP) to facilitate population expansion within the town driven by mining related growth;
  - (d) existing and potential future upgraded stormwater outlets to the creek systems from the Industrial Estates and from urban estates either existing or future; and
  - (e) other infrastructure, including cycleways that may become necessary, following the completion of the South Muswellbrook Strategy Growth Corridor Structure Plan due in early 2014.
15. The trunk main and the Sewage Treatment Plant have been long standing matters that have been subject to discussion with the Proponent from as early as 2008.
16. The Part 3A Environmental Planning and Assessment Act 1979 Project Approval (09\_0062, Open Cut Expansion Project) ("**the Project Approval**") has proven to impact upon Council's ability to properly provide for infrastructure in this area. Negotiations for the provision of the sewer trunk main connecting the existing STP with the Thomas Mitchell Drive industrial estate remain unresolved, although Council is confident that resolution is imminent. It is noted that funds allocated by the NSW Government for this project may be lost without immediate resolution. This project has been objected to by the Wanaruah Local Aboriginal Land Council, which has relied upon the land's identification in the Project Approval as a Cultural Heritage Offset or specifically an Offset under the Cultural Heritage management sections of the existing Project Approval.
17. Appropriate consideration needs to be given to the boundary effects associated with urban, industrial, and infrastructure land uses.
18. Further impacts are likely to be raised through the specific terms of the long term security instrument, on which Council is not required to be consulted. It is noted that Council would support an amendment to the Project Approval entitling it to be consulted on these matters.

### **Road Closures**

19. While the Application refers to the "realignment" of Edderton Road, the Proponent does not, in fact, propose a realignment at all (a process which realigns the road with its road reserve) but rather a road closure



and the gazettal of a new road. The distinction is important because while an application under section 138 of the Roads Act 1993 (the Roads Act) must be applied consistently with any s75J approval pursuant to planning law, an Application under Part 4 of the Roads Act, for a road closure, does not. It is the subject of a separate consultative and statutory process. The Minister or the Planning Assessment Commission does not have power to prejudge an Application the Parliament intended as the subject of a separate administrative process.

20. Council notes that it will be the consent authority for any road closure and accordingly, does not propose to comment on the merit or otherwise of the proposal to close a section of Edderton Road. Council notes, however, that any approval by the Minister or the Planning Assessment Commission must:
  - (a) Have a pre-condition that the Road Act application for road closure be approved in substantially the same terms as any planning approval;
  - (b) Must not seek to prejudge that separate statutory exercise.
21. In the alternative, the Proponent may propose a mine plan in the event that Edderton Road does not close (in that regard, Council notes that consent has not been granted to close Edderton Road under the Proponents' 2009 Consolidation Project).

#### **Long term security**

22. Despite no specific reference to any particular long term security mechanism in either the Project Approval of the Biodiversity and Rehabilitation Management Plan, it is understood the Proponent is considering a Biodiversity Banking Agreement under Part 7A of the Threatened Species Conservation Act 1995.
23. Council is concerned that the long term security options should not exclude the potential for infrastructure in this area.
24. The land is currently traversed with numerous easements for power and stormwater as well as sewer and water easements required for Council's infrastructure. Management of the area needs to properly consider the ongoing requirements of these critical infrastructure assets. The very nature of the easements and their respective management requirements must be considered in the management plans for the area.
25. Council has been required to provide indicative plans (Figure 1) for various pipeline locations although these are subject to detailed alignment design due to as yet unknown capacity requirements, avoiding environmentally or archeologically sensitive areas yet to be determined as well as detailed ground survey not yet undertaken.

Therefore the accuracy of any proposed easement is difficult to determine at this time.

26. The long term security mechanism should provide for these eventualities and allow for the appropriate development of the town.

#### **Extension area and Growth Corridor**

27. Council has developed a Land Use Development Strategy to address anticipated pressures of development in the Shire. The Strategy has identified the need for a South Muswellbrook Growth Corridor. Council has approved the scope of a Structure Plan for this area at its March 2013 Council meeting and has received a Draft Residential and Rural Residential study in May 2013 identifying candidate areas for investigation of urban and rural developments in the corridor.

#### **Condition 37 Offsite Offset Area**

28. The Growth Corridor includes the proposed Condition 37 additional offset land. The additional land also abuts existing or potential residential developments.

#### **Land excised for Replacement Muswellbrook Sewerage Treatment Plant**

29. Council has been preparing concept design plans with the assistance of the Department of Public Works for the development of a replacement STP for Muswellbrook. During the course of these preparations, Council has been in close discussions with the Proponent, the Wanaruah Local Aboriginal Land Council, NSW Planning and Infrastructure, and the Office of Environment and Heritage.
30. Council is not in a position to provide the level of service in its STP capacity required for any further development, expansion or intensification of the coal mining industry within the Muswellbrook Local Government Area. This represents an absolute constraint on the approval of future State significant development proposals. Council has prepared a servicing plan to address capacity constraints within its STP infrastructure based on Council's population growth projections, which do not include any additional approvals of State significant development. Council has recently adjusted plans to bring forward the completion of the construction of the new STP to 2019/20 from 2021/22.
31. Council has identified the preferred site for its proposed STP located on RU1 zoned land that is currently subject to the Project Approval for Mt Arthur Coal, which conceptually designates the land as a Biodiversity Offset.



32. Council has provided plans that identify the land required for the STP (Figure 2 and Table 1) and request that the land be excised from the offset area to facilitate the development of the STP to accommodate mining related growth in the town.
33. It is noted this site is the only appropriate site available for the replacement STP, irrespective of its date of commissioning. The location has good access from the Thomas Mitchell Drive Industrial Estate, will be obscured from residential areas of Muswellbrook, and will maintain required buffer distance for odour impacts.
34. All other locations in the vicinity present considerable limitations in terms of access and visual amenity.
35. Council and the Proponent have received advice from NSW Planning and Infrastructure indicating that to proceed further with the development of the STP, a modification of the Mt Arthur Coal Project Approval is required.
36. NSW Planning and Infrastructure has advised that consideration of a request to modify the existing conditions of the Project Approval will be considered at the request of Council as part of this submission to the Mount Arthur Coal Modification 1 proposal.
37. Accordingly, Council requests a modification to the conditions of the Project Approval, as part of the Mt Arthur Coal Modification 1 application, insofar as they would excise that land identified in the Council's survey for the construction of the replacement STP and all associated infrastructure, including freehold land transfers and easements as required.
38. Council understands the Proponent has acquired 165 hectares in adjacent land parcels that include suitable biodiversity values. The Environmental Assessment (EA) submitted with the Mt Arthur Development Application associated with the Project Approval stated that, if part of the biodiversity offset land is required by Council, other offset land would need to be acquired. The Rehabilitation Management Strategy and the Biodiversity and Rehabilitation Management Plan re-state this commitment.



Figure 1 South Muswellbrook Growth Corridor and Infrastructure Planning

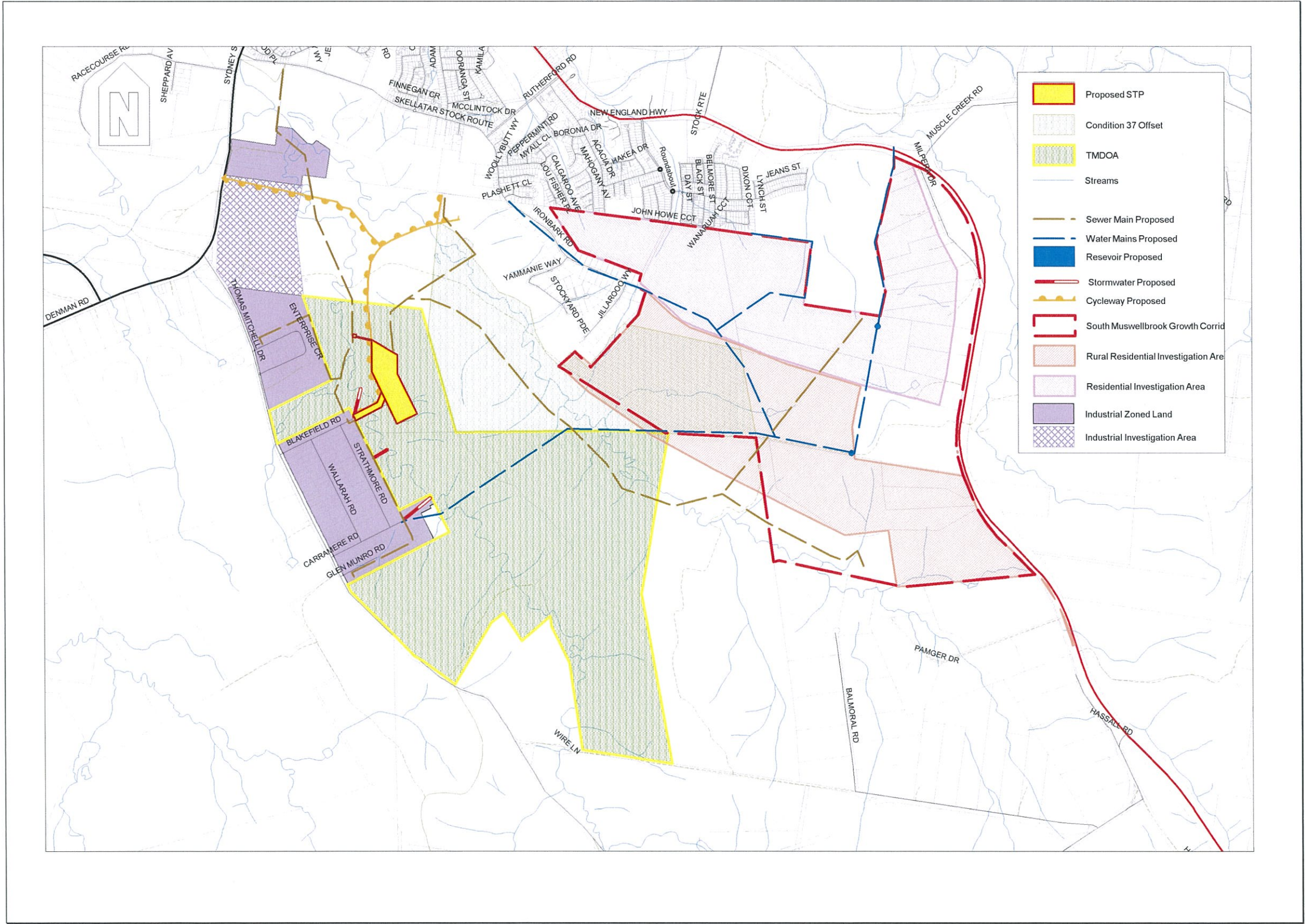




Figure 2 Land identified for Sewerage Treatment Plant

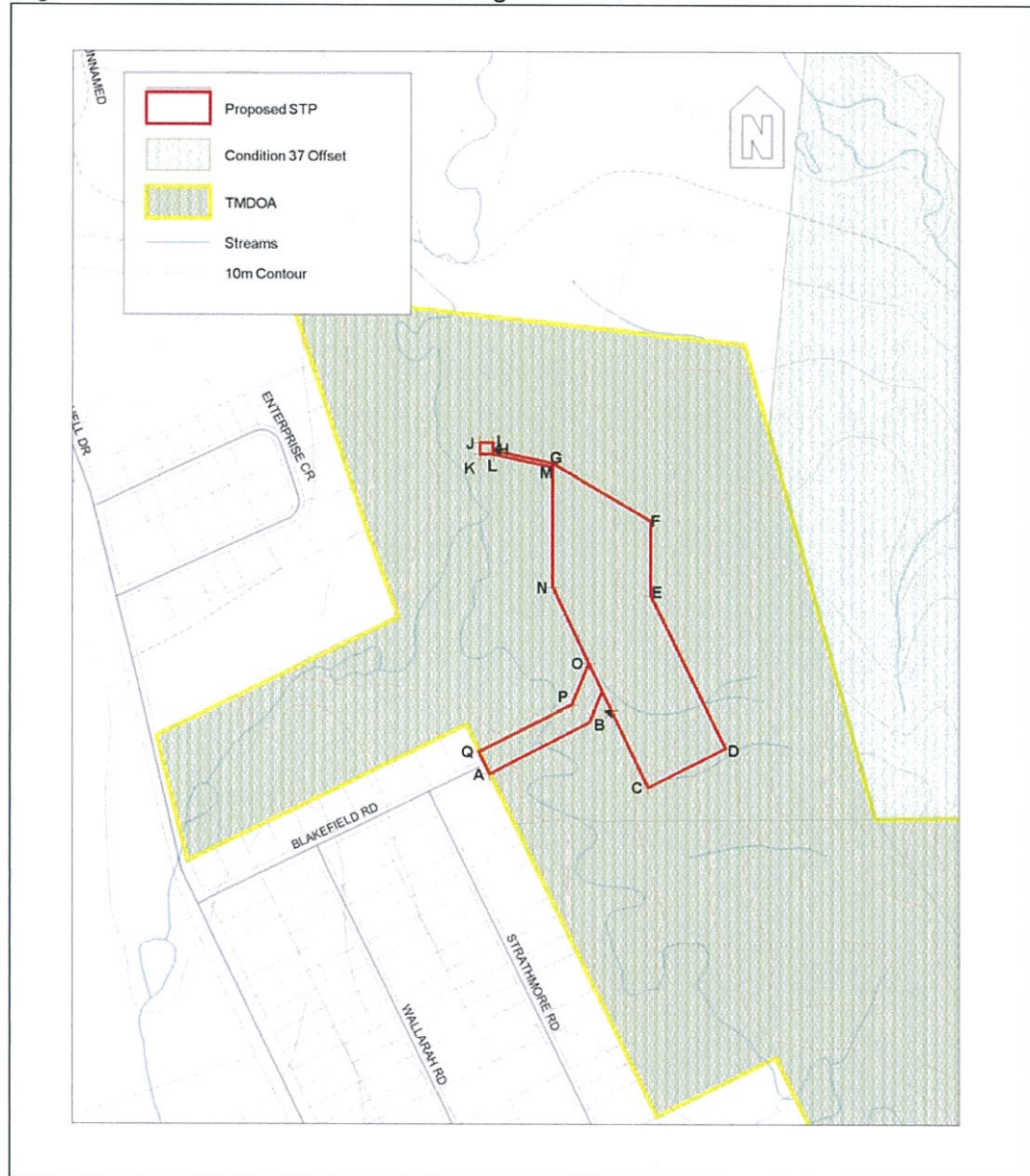




Table 1 Coordinates for land required for Sewerage Treatment Plant

Identifier	Eastings	Northings
A	300572.9	6423975
B	300818.9	6424102
C	300892.2	6423948
D	301048.9	6424027
E	300898.7	6424333
F	300898.4	6424483
G	300700.4	6424598
H	300579.5	6424624
I	300578.9	6424639
J	300553.4	6424639
K	300553.9	6424616
L	300579.8	6424616
M	300700.4	6424591
N	300700.5	6424350
O	300773.4	6424197
P	300738.8	6424114
Q	300551.1	6424020

Coordinates in MGA 94 Zone 56

**Note: coordinates sourced from GIS drawings of approximate site requirements and subject to final land survey.**

39. The TMDOA abuts the Thomas Mitchell Drive Industrial Estate. The adjoining land uses are considered to be highly incompatible with industrial processes, noise and lighting potential for vermin and weeds and or pesticides to affect the biodiversity area.
40. Hitherto undeveloped industrial land should not be limited by the potential to increase the fire risk to the adjoining industrial land from biodiversity enhancement: an Asset Protection Zone should be identified within the Proponent's land adjacent to industrial land holdings.
41. Further it is considered that a ten (10) metre buffer be established between the offset area and the industrial estate.

#### **Rail Loop**

42. The existing rail spur line and the rail loop are not necessarily wholly within the colliery holding. A precise survey of this boundary is not available at this time.
43. The Colliery Holding is also the Environmental Protection Licence (EPL) boundary. Where the rail line and/or loop is beyond the Colliery holding, it will not be included in the EPL. Therefore, Council becomes the Appropriate Regulatory Authority under the Protection of the

Environmental Operations Act 1997, as the rail spur itself is not a Scheduled Activity.

44. Therefore, Council seeks to ensure that noise, vibration, dust and lighting issues relating to the Spur are dealt with in the Project Approval to Council's satisfaction.
45. It has been a long standing matter on the rail corridor with respect to noise from idling trains. This has more recently been substantially addressed through the Joint Rail Loop Community Consultative Committee through undertakings from Mount Arthur and Drayton Mines. However Council requests that the consent recognises the role Council may play in regulating this area.
46. Council seeks the opportunity to discuss these matters further with the Proponent to ensure adequate controls are in place for train movements on the railway corridor.

### **Strategic Agricultural Land**

47. The proposal intersects the Biophysical Strategic Agricultural Land (BSAL); Equine Critical Industry Cluster (ECIC); and Viticulture Critical Industry Cluster (VCIC). While the proposal does not trigger the Gateway assessment provided for under the Upper Hunter Strategic Regional Land Use Plan, it is noted that an agricultural impact assessment has been undertaken by the Proponent.
48. Notably the ECIC and VCIC mapped land appear to be dismissed as a consequence of no current industry presence within the disturbance boundary.
49. The Agricultural Impact Statement indicates the project will re-instate grazing agricultural land within the Modification Disturbance area.
50. Council notes that in order to re-instate grazing agriculture the provision of access, water and other associated infrastructure will be required to allow for a profitable and sustainable agricultural enterprise to be carried out. The application does not include a detailed landform design identifying slope aspects, and grade or heights of land forms, all of which would be necessary to be compatible with viable grazing lands. It is not possible to determine if the allocation of pasture land or tree planting areas, would be consistent with Council's Land Use Development Strategy (coal mining component).

### **Highbrook Estate**

51. Figure 4-14 shows noise contours and indicates that Highbrook Estate (lot 1722 DP 829367 south of Highbrook Park) falls within 40-35dB contours. The application indicates that the land is held by Council. However this land was sold to a private developer in February 2013 and has development consent to develop 81 residential lots.



52. Noise assessment for this area must consider that the land is likely to be developed for residential purposes.

### **Roads**

53. Council will not support an access to the mine from Edderton Road, whether the road is on its present alignment or on another alignment.
54. Council opposes the relocation of the Explosives Magazine and Facilities being accessed from Edderton Road. The road is not suitable for the proposed traffic.
55. There appears to be no assessment of:
- (a) the construction traffic generated and traffic impacts of the widening of the rail bridge over Thomas Mitchel Drive;
  - (b) increase in traffic on Council's Edderton Road and RMS's Denman Road;
  - (c) the existing pavement condition of Edderton Road; or
  - (d) interaction of the construction traffic and the possible concurrent works being undertaken to upgrade Thomas Mitchel Drive.
56. The construction traffic estimated for the relocated explosives facility appears low.
57. Council continues to seek details of the types of heavy vehicles, equivalent standard axles (ESA) and estimated impact on pavement life.
58. Road upgrades should be to a greenfield standard to safely handle restricted access vehicles.
59. Council is developing a new policy relating to road closures relating to blasting. The closure of roads for this purpose shall be subject to the need for a Traffic Management Plan as set out in the road closure for blasting policy. This policy is likely to go on public exhibition shortly and companies will have the opportunity to comment. The policy should be in place by the time any Modification is determined and therefore any subsequent road closure management plan should be subject of the relevant Council policy at that time.

### **Blasting Policy**

60. In general, Council is concerned about the impacts of blasting on the community and it can be a significant source of complaints. Council is developing policy in this regard as well and intends to have details available for public exhibition shortly. In general the areas addressed by the proposed policy will include:

- (a) Appropriate use of meteorological modelling in predicting overpressure impacts;
- (b) Formalising communications between blasting operations to ensure suitable separation of blast schedules;
- (c) Public notification through Council's web page.

### **Final Land Form and Rehabilitation**

- 61. The Rehabilitation Strategy set out in the application has not provided a conceptual final land form and does not identify general slopes, grade and aspect, land form heights.
- 62. The revised Biodiversity Offset Strategy identifies that vegetation will be established over 34% of the total mine disturbance area. Council's policy supports 70% of rehabilitated areas to be high density tree planting of at least 15 trees per hectare. Tree density of the proposed rehabilitated ecosystems is not provided for assessment.
- 63. Council continues to request detailed landform analysis to demonstrate that the final landform is in keeping with the appearance of the natural landscape geomorphology.
- 64. In a meeting with NSW Planning and Infrastructure, the Proponent and Council in mid-2012, it was discussed that sub-domains should be established in the rehabilitation strategy to accommodate Council's rehabilitation policy objectives within the requirements of Mine Operation Plans (or Rehabilitation Environmental Management Plans as they were at the time). Sub-domains have not been developed.

### **Mining Rehabilitation Policy**

- 65. The Council's Land Use Development Strategy (coal mining component) shall be taken as part of Council's submission. The following items are highlighted for further details:

### **Final Landform to Look Natural**

- 66. The application does not include a conceptual final landform
- 67. Council's mining rehabilitation policy encourages research into best practice rehabilitation techniques particularly in this field of emplacement geomorphology to attain stable and natural looking landforms. While Council cannot, at this time, provide any guidance on how a more natural looking landscape can be achieved, it is critical that this type of information be developed quickly so that mining rehabilitation strategies and management plans may be better informed and developed.



## **Final Voids**

68. The proposed final landform in this modification includes three voids. The proposal is inconsistent with Council's policy on final voids.

## **Revegetation**

69. The conceptual final land form in the modification EA does not provide any information regarding vegetation rehabilitation. The 2007 EA includes the provision of vegetation corridors in keeping with the "Synoptic Plan". Council's mining rehabilitation policy seeks the commitment of 70% of the disturbed area to be rehabilitated to "high density tree planting", which is defined in the order of greater than 30 trees per hectare.
70. However, Council submits that the landscape rehabilitation should be determined from the integration of potential land uses considering the proximity to road access, utilities, water supply, surrounding land uses, slope, aspect, outlook or visibility and elevation. The analysis of these factors should result in a series of sub-domains that meet the strategic objectives set out in Council's Land Use Development Strategy.
71. It is proposed that following the completion of rehabilitation, when the completion criteria is met, that the land be rezoned to appropriate land use zones in the Muswellbrook Local Environment Plan.
72. Any land that may be proposed for RU1 should be characterised by:
- (a) having access to roads, water and utilities and the final land form must be of a suitable geomorphology to allow for functional association with adjacent high quality agricultural land; and
  - (b) infrastructure or utilities necessary to give effect to the land-uses contemplated by the plan.
73. All land rehabilitation plantings should provide for biodiversity connectivity – that is no more than 3km spacing between minimum patches sizes of 10 hectares and interstitial tree plantings at 60-80m spacing (3-4 trees per hectare).

## **Contributions**

74. Contributions in the period of extension should be made in parity with the contributions made by other mines and reflect industry/Council agreements on the resourcing of mine affected roads, workforce planning, childcare services planning and recreation planning.

## **Socio-economics**

75. The proponent suggests that the impacts of the extension of mining do not constitute any additional impacts. Council considers that the whilst the impacts of operations from 2023 to 2026 are an extension of operations from 2012 to 2022, they are certainly in addition to the impacts associated with what would be without this proposed modification, an otherwise non-operational mine.
76. The Proponent states that the Construction workforce of 240 people will be sourced from unemployed construction workers in the Upper Hunter and those who drive in and out on a daily basis from the Lower Hunter. This statement is unsubstantiated and the Proponent does not intend to make any assurances that this will be the case.
77. It is assumed that the decision to act on this modified Project Approval will be subject to numerous factors outside of the control or influence of the local unemployment rates. It is considered that all capital expenditure in the region is more than likely synchronised to the same economic drivers and therefore the availability of unemployed local workforce should not be relied upon.
78. Therefore the potential equally exists that the construction workforce will be made up of drive in drive out workers needing short term local accommodation and other socio-economic impacts.
79. The application highlights additional fleet requirements as a result of applying a more “conservative set of truck productivity assumptions.” There is an approximately 24% increase on the 2016 fleet requirements from the current approved project to the modification and a further 20% increase over the 2016 -2026 fleet predictions.
80. In particular there will be 46 additional pieces of mobile plant from 2022 to 2026 the period where it is stated that there will be no additional impacts.
81. It is considered that an increase in fleet brings with it at least a fourfold numerical increase in labour to account for four shifts of operators as well as servicing and maintenance staff.
82. Council continues to seek greater fidelity to predictions of labour requirements in projects so that it can adequately assess and plan for social impacts. It is understood that the NSW Trade and Investment is developing more rigorous forward labour planning tools and requirements for mining workforce planning.

## **Planning and regulatory capacity**

83. While not being the consent authority, Council makes on behalf of its community, comprehensive submissions as part of the approval process for all major developments – including recommending specific conditions of consent. Council’s submission is invited by reason of



statute and as consent authority for various attendant matters relating to the development.

84. The process is exhaustive of staff time. Council is not appropriately resourced to conduct the important task of evaluating complex and lengthy applications – particularly in the absence of cumulative data. Council receives no application fee to offset the cost of the assessment of mining applications and the direct cost of that process is therefore directly borne by the community.