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 DA 2002/205

MUSWELLBROOK SHIRE COUNCIL

NOTICE OF DETERMINATION OF AN APPLICATION TO MODIFY A DEVELOPMENT CONSENT UNDER SECTION 4.55 (1A) Issued under the Environmental Planning and Assessment Act 1979

DEVELOPMENT APPLICATION:	2002/205 (Mod 9)
APPLICANT NAME:	Muswellbrook Coal Company Pty Ltd
APPLICANT ADDRESS:	GPO Box 301 BRISBANE QLD 4001
LAND TO BE DEVELOPED:	Refer to Appendix A Lot Schedule
APPROVED DEVELOPMENT:	Open Cut Mine Extension

DATE OF ORIGINAL DETERMINATION: 11 August 2003

DATE OF SECTION 4.55 MODIFICATION DETERMINATION: 27 February 2024

DETERMINATION: Consent granted subject to conditions described below.

CONSENT TO OPERATE FROM: INS

CONSENT TO LAPSE ON: Not Applicable the development has commenced in accordance with Section 4.53(4) of the Environmental Planning and Assessment Act 1979.

(Note: while the development has commenced the consent is a time limited consent. Conditions of consent should be referred to for time limiting conditions).

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GLOSSARY OF TERMS	
Term	Definition
Agricultural Productivity	as defined by the Agricultural Suitability Classification System used by NSW Agriculture.
AEMR	Annual Environmental Management Report
BCA	Building Code of Australia (also known as the National Construction Code)
CCC	Community Consultative Committee
CCL 713	Consolidated Coal Lease 713 as amended or renewed.
Construction	Construction of associated surface facilities and infrastructure, such as dams, new access roads, culverts, level crossing etc
Council	Muswellbrook Shire Council
DA	Development Application
DA Area	Development Application area shown in Appendix B and Appendix G of this consent.
Development	The combined activities of Construction, Mining Operations and Rehabilitation, each as defined in the Glossary of Terms and the documents listed in Cond 2, as modified by the conditions of this consent.
EMP	Environmental Management Plan
EMS	Environmental Management Strategy
EP&A Act	Environmental Planning and Assessment Act 1979
EP&A Reg	Environmental Planning and Assessment Regulation 2000
EPL	Environmental Protection Licence
Environment	Components of the earth, including— (a) land, air and water, and (b) any layer of the atmosphere, and (c) any organic or inorganic matter and any living organism, and (d) human-made or modified structures and areas, and includes interacting natural ecosystems that include components referred to in paragraphs (a)–(c).
Feasible	Feasible relates to engineering considerations and what is practical to build or implement
Forward Program	Has the same meaning as in Clause 13(1), Schedule 8A of the <i>Mining Regulation 2016</i> (or any amended or equivalent future clause).
Incident	An occurrence or set of circumstances that causes or threatens to cause Material Harm and which may or may not be or cause a non-compliance.
Independent Dispute Resolution	defined in a flow chart where Muswellbrook Shire Council will appoint an independent dispute facilitator to deal with the matters of concern (refer to Appendix D)
LGA	Local Government Area
Material Harm	Is harm to the environment that: <ul style="list-style-type: none"> • Involves actual or potential harm to the health or safety of human beings or to the environment that is not trivial; or • Results in actual or potential loss or property damage of an amount, or amounts in aggregate, exceeding \$10,000 (such loss includes the reasonable costs and expenses that would be incurred in taking all reasonable and practicable

Term	Definition
	measures to prevent , mitigate or make good harm to the environment). This definition excludes “harm” that is authorised under either this consent or any other statutory approval.
MHRDC	Maximum Harvestable Rights Dam Capacity
MCC	Muswellbrook Coal Company Limited
Mining Operations	Includes the removal of overburden and extraction, processing, handling, storage and transportation of coal on site.
ML 1304	Mining Lease 1304 as amended or renewed.
ML 1562	Mining Lease 1562 as amended or renewed.
Mtpa	Million Tonnes per annum
Operations	Any work undertaken under this consent
POEO Act	Protection of the Environment Operations Act 1997
Privately owned land	Land that is not owned by the Crown or a mining company (or its subsidiaries)
Reasonable	Reasonable relates to the application of judgement in arriving at a decision, taking into account: mitigation benefits, cost of mitigation versus benefits provided, community views and the nature and extent of potential improvements.
Rehabilitation	Means the treatment or management of disturbed land or water for the purpose of establishing a safe and stable environment.
Rehabilitation Management Plan	A plan required to be prepared by the holder of a mining lease as a standard condition of a mining lease and as set out in clause 10, Schedule 8A of the <i>Mining Regulation 2016</i> (or any amended or equivalent future clause) including any amendments to that plan.
ROM	Run of Mine
Secretary	Secretary of the Department of Planning and Environment (or their delegate) or any equivalent body with the same or similar roles and responsibilities at the applicable time.
SEE	Statement of Environmental Effects
VPA	Voluntary Planning Agreement

Government Authorities		
DPHI	Department Planning, Housing and Infrastructure	Or the State Agency applicable at the time
DCCEEW	Department of Climate Change, Energy, the Environment and Water (NSW)	
RR	NSW Resources Regulator	
EPA	Environment Protection Authority	
SA	NSW Subsidence Advisory	
Council	Muswellbrook Shire Council	
NRAR	NSW Department of Natural Resources Access Regulator	
TfNSW	Transport for NSW	

Note: To assist with the explanation of the intent of certain conditions in this consent, a number of flow charts are provided in Appendices D-F, which illustrates the various processes contained in this consent.

SCHEDULE 1

SUMMARY OF MODIFIED CONDITIONS OF CONSENT

This Schedule summarizes the changes to the conditions of consent from those imposed on the original determination of this development application. This Schedule should not be relied on to identify the full details of the consent and is provided as a reference document only to assist a person reviewing or acting on this consent. The current conditions of consent are listed in full in Schedule 2.

Summary of changes:

- Condition 2 – Clarify obligations following acquisition of the land for the Muswellbrook Bypass within the development consent boundary;
- Condition 10 – Clarification of timing of Muscle Creek Road handover;
- Condition 14 – Update timing for submission of management plans to 'as required';
- Condition 15 – Update rehabilitation objectives;
- Condition 17 – Delete previous condition and update to reference Rehabilitation Management Plan required under the *Mining Act 1992*;
- Condition 18 – Update condition to ensure that rehabilitation obligations are captured in the development consent;
- Condition 19 – Update condition to remove duplication and include requirements related to social closure planning and final land use planning;
- Condition 19A – New condition relating to contaminated land;
- Condition 20 – Clarification for areas required to be fenced;
- Condition 23 – Update to contemporary bushfire condition by request of the NSW RFS;
- Condition 30, 33 and 35 – Clarify timing for cessation of air quality, blast and noise monitoring;
- Condition 30 – Delete the requirement for land acquisition due to dust;
- Condition 40 – Delete the requirement for land acquisition due to noise;
- Condition 41 – Clarify timing for Independent Environmental Auditing;
- Condition 47 – Delete condition as the mitigation requirements were only applicable during mining operations;
- Condition 49 – Remove the land acquisition condition;
- Several minor administrative amendments.

SCHEDULE 2
CONDITIONS OF CONSENT AS MODIFIED

GENERAL CONDITIONS

1. Obligation to minimise harm to the environment

The Applicant must implement all reasonable and feasible measures to prevent and/or minimise any material harm to the environment that may result from the construction, operation, rehabilitation and, where relevant, decommissioning of the development.

2. Adherence to terms of DA, EIS, etc.

- a) The development must be carried out in accordance with the conditions of this consent and generally in accordance with:
- i. Modification Report prepared by IEMA dated April 2022 submitted with the application for consent for the development, including the Applicant's response to submissions and additional information provided by the Applicant in support of the application.
 - ii. Modification Report Addendum prepared by IEMA dated September 2023 to realign the DA 205/2002 Development Consent boundary to be consistent with the Transport acquisition boundary and to exclude the bypass footprint from the MCM Development Consent area
 - iii. Modification Report prepared by IEMA dated September 2022
 - iv. The accompanying SEE titled "Muswellbrook Coal Continuation Project, 1 & 2" by EMM dated April 2016.
 - v. "Muswellbrook Coal Continuation Project Response to Submissions" dated 20 July 2016.
 - vi. the EIS titled "Muswellbrook Coal Company Limited, No. 1 Open Cut Extension Environmental Impact Statement 2002" dated July 2002, prepared by HLA-EnviroSciences Pty Limited and certified in accordance with Section 78A(8) of the EP&A Act;
 - vii. The accompanying Statement of Environmental Effects document by Hansen Bailey dated August 2010.

Where there is an inconsistency between two or more of the above documents, the most recent document prevails to the extent of that inconsistency. However, the conditions of this consent shall prevail to the extent of any inconsistency.

- b) Where land subject to this consent also forms part of the corridor of land (Bypass Land) that is subject to the Muswellbrook Bypass Part 5 Project Approval (Bypass Approval), on and from the date on which Transport for NSW becomes the registered proprietor of the Bypass Land:
- i. the conditions of the Bypass Approval shall apply to the Bypass Land to the exclusion of all conditions in this consent (except this condition); and
 - ii. the land the subject of this consent shall be that land shown within the revised development consent boundary for DA2002-205 in Appendix G to this consent.

Following TfNSW becoming the registered proprietor of the Bypass Land, the proponent shall provide to Council with a copy of the title search of the Bypass Land.

3. Compliance with documentation

The Applicant must comply with any reasonable requirement/s of Council arising from:

- Any reports, strategies, plans, programs, audits or correspondence that is submitted in accordance with this consent;
- Any reports, reviews or audits commissioned by Council or the Gas Health Study commissioned by the EPA regarding compliance with this consent; and
- The implementation of any actions or measures contained in these documents.

4. Period of Approval

The Applicant may carry mining operations until 31 December 2022, except handling, storage and transportation of coal. Handling, storage and transportation of coal may be carried out until 31 March 2023.

Note: Under this consent, the Applicant is required to decommission and rehabilitate the site and carry out other requirements in relation to mining operations. Consequently, this consent will continue to apply in all respects other than to permit the carrying out of mining operations until the rehabilitation of the site and other requirements have been carried out satisfactorily.

Mining operations and rehabilitation are also regulated under the *Mining Act 1992*.

5. Project Commencement

The Applicant must:

- a) notify Council in writing of the date of commencement of the development under this consent; and
- b) certify that it has obtained all the necessary approvals required to commence the development; and
- c) ensure that employees, contractors and sub-contractors are aware of, and comply with, the conditions of this consent relevant to their respective activities.

6. Dispute Resolution

In the event that the Applicant or a Government agency, other than integrated planning bodies, cannot agree on the specification or requirements applicable under this consent, the matter shall be referred by either party to Council or if not resolved, to the Minister for Planning, whose determination of the disagreement shall be final and binding on the parties.

MINE MANAGEMENT

7. Limits on Production

Product coal from the development must not exceed 2.0 Mtpa (Million Tonnes per annum).

8. Hours of Operation

The maximum hours of operation at the development shall be as follows:

- Open Cut Mining and Rehabilitation up to 24 hours, 7 days
- Coal storage, handling and transportation, up to 24 hours, 7 days
- Blasting 9am-5pm Mondays to Fridays.

Note: Blasting hours may be extended outside these times where there is a demonstrated safety

need and with the approval of Council.

9. Coal Haulage

All coal haulage access to the mining lease area is restricted to the Private Coal Haul Road, Muscle Creek Road and New England Highway.

10. Section 138 Permit – Maintenance on Muscle Creek Road

The section of Muscle Creek Road from the internal haul road to the New England Highway is to be maintained by the Applicant to the satisfaction of the road authority being Council and must be in a well maintained, safe and appropriate condition at the end of all coal haulage. At the end of coal haulage the Road must be in a well maintained, safe and appropriate condition prior to Council taking responsibility for ongoing maintenance.

NB: The required maintenance standard is detailed in RMS Specification "QA Specification M3 Routine Services".

The Applicant must obtain a Section 138 Consent under the Roads Act 1993 prior to any maintenance works being undertaken by the Applicant on Muscle Creek Road. The application for consent must include an assessment of the road's Subnetwork ranking and a Routine Maintenance Annual Plan (RMAP) and shall generally be granted for a year for minor maintenance activities. Major activities including renewal works will require a separate 138 Consent. A contact person must be nominated for all matters dealing with Council roads.

11. Operation of Plant and Equipment

The Applicant must ensure that all plant and equipment used on site, or to monitor the performance of the development, is maintained and operated in a proper and efficient manner at all times.

12. Meteorological Monitoring

For the life of the development, or as otherwise agreed by Council the Applicant must ensure that there is a meteorological station located on site that:

- a) Complies with the requirements in the Approved Methods for Sampling of Air Pollutants in New South Wales guidelines; and
- b) Is capable of continuous real time measurement of temperature inversions in accordance of the Industrial Noise Policy or superseding document, unless a suitable alternative is approved by Council following consultation with the EPA.

The weather station must measure the following:

- Wind direction at 10 metres above the ground
- Wind speed at 10 metres above the ground
- Temperature at 2 metres above the ground
- Temperature at 10 metres above the ground
- Sigma theta at 10 metres above the ground
- Rainfall

All measurements are to be continuous and averaged over 15 minutes with the exception of rainfall that is averaged hourly.

LAND AND SITE ENVIRONMENTAL MANAGEMENT**13. Appointment of Suitably Qualified or Experienced Person**

- (a) The Applicant must ensure that a suitably qualified or experienced person is available throughout the life of the Development. This person shall:
- (i) be responsible for the co-ordination of the preparation of the Environmental Management Plan;
 - (ii) be responsible for considering and advising on matters specified in the conditions of this consent and compliance with such matters;
 - (iii) be responsible for establishing systems to receive and respond to complaints;
 - (iv) facilitate an environmental induction and training program for all persons involved with mining and rehabilitation activities; and
 - (v) take reasonable steps to avoid or minimise adverse environmental impacts. This person shall advise the Mine Manager to issue instructions to stop work if a significant adverse impact on the environment is likely to occur.
- (b) The Applicant must notify Council of the name and contact details of the suitably qualified or experienced person and any changes to that appointment.

14. Environmental Management Strategies and Plans

- (a) The Applicant must prepare and implement an Environmental Management Strategy, providing a strategic context for the Environmental Management Plans. The Environmental Management Strategy must be prepared following consultation with the DPHI, EPA, DCCEEW and the CCC and be to the satisfaction of Council.
- (b) The Environmental Management Strategy must include, but not be limited to:
- (i) statutory and other obligations which the Applicant is required to fulfil during mining, including all approvals and consultations and agreements required from authorities and other stakeholders, and key legislation and policies;
 - (ii) definition of the role, responsibility, authority, accountability and reporting of personnel relevant to environmental management, including the Environmental Officer;
 - (iii) overall environmental management objectives and performance outcomes, during mining and decommissioning of the mine, for each of the key environmental elements for which management plans are required under this consent;
 - (iv) identification of cumulative environmental impacts and procedures for dealing with these at each stage of the development;
 - (v) steps to be taken to ensure that all approvals, plans, and procedures are being complied with, namely procedures:

- to receive, handle, respond to and record complaints;
 - to respond to any non-compliances; and
 - to respond to emergencies.
- (vi) processes for conflict resolution in relation to the environmental management of the project; and
- (vii) documentation of the results of consultations undertaken in the development of the Environmental Management Strategy.
- (c) The Applicant must make copies of the Environmental Management Strategy available to EPA, DPHI, SA, DCCEE and the CCC and be placed on the Applicant's website following approval by Council.
- (d) The following Environmental Management Plans apply to the development in accordance with the terms of the relevant conditions in the table below:

Environmental Management Plan	Condition
Environmental Management Strategy	14
Rehabilitation Management Plan	17
Mine Closure Plan	19
Visual Amenity, Lighting and Landscaping Management Plan	22
Fire Management Plan	23
Water Management Plan	25
Air Quality Management Plan	29
Spontaneous Combustion Management Plan	31
Blast Management Plan	33
Noise Management Plan	39

These Environmental Management Plans and strategies may also form part of the overall Site Environmental Management Plan.

- (e) Any amendment to the Environmental Management Strategy and Environmental Management Plans is to be prepared to the satisfaction of Council.
- (f) The Applicant is required to submit an amended Environmental Management Strategy and amended Environmental Management Plans (other than a Mine Closure Plan) for approval within six months of the date of this modification (MOD9).

Note: The Applicant may prepare and submit for approval an amended Environmental Management Strategy or an amended Environmental Management Plan at any time.

15. Rehabilitation

The Applicant shall rehabilitate the site in accordance with the conditions imposed on Mining Leases ML 1304, ML 1562 and CCL 713 or any other mining lease under the *Mining Act 1992* issued in respect of the development. This rehabilitation must be generally consistent conceptual final landform shown in Appendix H (unless approved by the General Manager), and must comply with the objectives in the Table below.

Rehabilitation Feature	Objectives
Mine site (as a whole of the disturbed land and water)	The final landform is stable for the long-term in terms of both geotechnical and erosional stability and does not present a risk of environmental harm downstream/downslope of the site or a safety risk to the public/stock/native fauna.
Removal of mining infrastructure	All infrastructure that is not to be used as part of the final land use is removed to ensure the site is safe and free of hazardous materials.
Retention of Infrastructure	<p>All infrastructure that is to remain as part of the final land use is safe, does not pose any hazard to the community.</p> <p>All infrastructure that is to remain as part of the final land use benefits from the relevant approvals (e.g development consent and / or licence/lease/binding agreement, etc).</p>
Contamination	There will be no residual soil contamination on site that is incompatible with the final land use(s) or that poses a threat of environmental harm or risk to public safety.
Landforms	<p>Final landforms sustain the intended land use for the post-mining domain(s).</p> <p>Final landforms are consistent with and complement the topography of the surrounding region to minimise the visual prominence of the final landforms in the post mining landscape.</p> <p>Incorporate drainage features that mimic natural topography and mitigate erosion, to the greatest extent practical.</p> <p>Residual waste materials stored on site (e.g coarse rejects and other wastes) will be appropriately contained so they do not pose any hazards or constraints for the intended final land use.</p>
Final voids	<p>Minimise to the greatest extent practicable:</p> <ul style="list-style-type: none"> • The size and depth of the final void • The drainage catchment of the final void • Any high wall instability risk • Risk of flood interaction (flows in and out of the void) <p>Maximise, to the greatest extent practicable, integration of the final void landform with the natural terrain features of the surrounding landscape.</p> <p>Void will not pose a risk to the public.</p>
Water Quality	<p>Water retained on site should be fit for the intended land use(s) for the post-mining domain(s).</p> <p>Any water management structures retained will be suitable for the preferred final land use.</p> <p>Runoff water quality from the mine site is similar to water quality of the receiving waters.</p>
Native flora and fauna habitat and corridors	<p>Size, locations and species of native tree lots and corridors are established to sustain biodiversity habitats.</p> <p>Species are selected that re-establish and complement regional and local diversity providing habitat for a range of flora and fauna species found in the proximity (including the Grey-crowned Babbler), with a specific emphasis on preserving and enhancing genetic diversity within each species, ensuring long term sustainability and resilience to environmental changes. Species will include:</p> <ul style="list-style-type: none"> • Grey Box;

Rehabilitation Feature	Objectives
	<ul style="list-style-type: none"> • Narrow-leaved Ironbark; and • Grey Gum. <p>A minimum of 23ha shall be reforested using the above species or an equivalent area of 23ha comprising similar floral structural and floristic characteristics in green offsets.</p> <p>A Habitat Corridor will be established across the site. The corridor will be located to achieve connectivity with established vegetation around the site whilst not prohibiting the potential beneficial reuse of the site.</p>
Post-mining land use and agricultural pursuits	<p>Levels of ecosystem function be established that demonstrate the rehabilitation is self-sustainable.</p> <p>The vegetation structure of the rehabilitation is recognisable as the target vegetation community commensurate with the preferred final land use.</p> <p>Re-establish agricultural land areas.</p> <p>Implement reasonable and feasible measures to rehabilitate agricultural land areas to LSC 6.</p>

16. Progressive Rehabilitation

The Applicant shall carry out rehabilitation of the site progressively, that is, as soon as reasonably practicable after disturbance. All reasonable and feasible measures must be taken to minimise the total area exposed for dust generation at any time. Interim dust management strategies shall be employed when areas prone to dust generation cannot yet be permanently rehabilitated.

Note: It is accepted that some parts of the site that are temporarily stabilised may be subject to further disturbance at some later stage of the development.

17. Rehabilitation Management Plan

The Applicant must prepare and implement a Rehabilitation Management Plan for the development in accordance with the provisions under the *Mining Act 1992*.

18. Rehabilitation Strategy

Rehabilitation must be undertaken generally consistent with the proposed rehabilitation activities described in the document/s listed in condition 2 as summarised in Appendix I.

19. Mine Closure Plan

Within six months of the date of this modification, the Applicant must prepare a Mine Closure Plan for the development to the satisfaction of Council and once approved by Council, implement the plan. The Mine Closure Plan must:

- a) Outline measures that were used to:
 - (i) Actively manage site closure to minimise adverse impacts for workers, contracting companies and the community; and
 - (ii) Assist workers where possible to maximise their future career options.
- b) Consider the report 'Identifying measures of success for a global best-practice thermal coal mine and thermal coal-fired power station closure' (UniSA, 2018), specifically the objectives, targets, indicators and measures outlined in Appendix A of the same report.
- c) Include a tabulated description of objectives, targets, indicators and measures

in a similar format to those presented in Appendix A of UniSA (2020) but tailored to the MCM.

- d) Include a final landuse strategy to investigate and identify potential post-mining beneficial land uses for the site i.e constraints and utility, including the final voids, that:
 - (i) Contribute to a sustainable future for the local community;
 - (ii) Utilise existing mining infrastructure where applicable;
 - (iii) Avoid disturbing self-sustaining native ecosystems, where practicable;
 - (iv) Provides a discussion on alternate post-mining land uses (where applicable) including a discussion on opportunities and restrictions on land, having regard to the Resources Regulator's *'Practical Guide Post Mining Land Use'* (2023).
- e) Include a Mine Closure Stakeholder Engagement Strategy
- f) Include an Approvals and Tenements Relinquishment Strategy

1. 19A

Contamination Report

Upon relinquishment of mining tenements, the Applicant must provide Council with a final contamination report for all areas within the development consent boundary that shows there is no residual soil contamination that is incompatible with the final land use(s).

20. Restriction as to User – Vegetation Offset Area

A restriction as to user must be registered on the title of affected land for the purpose of creating a Vegetation Offset Area as indicated on Figure 1 'Proposed Offset Area' prepared by Hansen Bailey dated 12/10/10 Cad file: 06836A.dwg. Muswellbrook Council must be nominated as the sole authority empowered to vary or modify the restriction.

The terms of the restriction must include the following matters:

- a) Restriction against clearing.
- b) Restriction against use of land in any way inconsistent with the maintenance of the EEC on the land.
- c) Restrictions on livestock grazing on the land.
- d) Obligation to fence the land.
- e) Obligation to control noxious weeds and pests on the land.

A covenant acceptable to Muswellbrook Council, must be prepared and registered on the title of affected land, by Muswellbrook Coal Company at no cost to Council by 31 December 2018.

The applicant shall install suitable fencing around the designated offset area. This fencing shall be designed to effectively prevent access of stock and need not necessarily follow the boundary of the land.

21. Archaeology and Cultural Heritage Management

Should the Applicant uncover artefacts during the construction/ development process, a Section 90 Aboriginal Heritage Impact Permit under the National Parks and Wildlife Act 1974 must be obtained from Heritage NSW for any destruction, damage or harm (including removal) of any Aboriginal artefact or heritage site.

22. Visual Amenity, Lighting and Landscaping

The Applicant must address visual amenity and landscaping issues for the development area to address relevant visual and landscaping issues associated with the development.

The Applicant must:

- implement all reasonable and feasible measures to mitigate visual and offsite lighting impacts of the project; and
- Install new external lighting associated with the development in accordance with relevant Australian Standards including Australian Standards AS4282 (INT) 1997 – Control of Obtrusive Effects of outdoor lighting.

The Applicant must prepare a Visual Amenity, Lighting and Landscaping Management Plan for the development to the satisfaction of Council, and carry out the development in accordance with this plan. The Plan must:

- Identify the privately - owned residences that are likely to experience significant visual impact during the remainder of the project, and
- Describe (in general terms) any additional mitigation measures that are planned to be implemented to reduce the visibility of the mine from these properties.
- Describe (in general terms) the mitigation measures that are planned to minimise the visibility of fixed lighting and mobile lighting where possible from the mine on these properties.

Within 3 months of Council approving the Plan, the Applicant must advise all owners of privately- owned residences identified in the Plan as receiving significant visual impact, that they are entitled to additional appropriate mitigation measures to reduce the visibility of the mine from their properties.

Upon receiving a written request from an owner of a privately- owned residence identified in the Plan, or upon receiving a reasonable direction from Council regarding any other privately – owned residence, the Applicant must implement additional visual impact mitigation measures (such as landscaping treatments or vegetation screens) in consultation with the landowner, and to the satisfaction of Council.

These mitigation measures must be reasonable and feasible, and must be implemented in a reasonable time frame, to the satisfaction of Council.

If within 3 months of receiving this request from the owner, the Applicant and the owner cannot agree on the measures to be implemented, or there is a dispute about the implementation of these measures, then either party may refer the matter to Council for resolution.

Note: Except in exceptional circumstances, Council will not require additional visual impact mitigation to be undertaken for residences that are more than 3 kilometres from the mining pit and face and unrehabilitated overburden emplacements.

23. Bushfire Management Plan and other Fire Controls

The Applicant must:

- (a) deleted
- (b) Within six months of this consent modification, the proponent shall prepare a Fire Management Plan (FMP) in consultation with NSW Rural Fire Service Hunter Valley Fire Control Centre.

The FMP shall be divided in mining operations and post operations fire management actions. The FMP shall include timelines for actions to be implemented (APZ, etc) The FMP shall address fire

fighting response to both structural (on-site) fires and vegetation (on & off site) fires impacting on the facility.

As a minimum, the FMP shall include:

- (i) 24-hour emergency contact details including alternative telephone contact;
- (ii) Site infrastructure plan;
- (iii) Fire fighting water supply plan that provides suitable fittings including operational access for fire fighting vehicles to connection points;
- (iv) Site access and internal road plan that includes designation for access by category 1 - 10 rural fire fighting vehicles;
- (v) Construction of a minimum 10 metre asset protection zones (APZ) around all permanent habitable/critical assets and infrastructure and their continued maintenance;
- (vi) Location of hazards (physical, chemical, and electrical) that will impact on the fire fighting operations and procedures to manage identified hazards during the fire fighting operations;
- (vii) Mitigation measures designed to prevent fire occurring within the site, and prevent fire escaping the site and developing into a bush/grass fire risk to the surrounding area; and
- (viii) Such additional matters as required by the NSW RFS District Office.

WATER MANAGEMENT AND MONITORING

24. Discharge and Water Supply

- a) The Applicant must comply with Section 120 of the Pollution of the Environment Operations Act 1997.
- b) The Applicant must report on water extracted from the site each year (direct and indirect) in the Annual Environmental Management Report, including water taken under each water licence.

Note: Under the Water Act 1912 and/or the Water Management Act 2000, the Applicant is required to obtain all necessary water licences for the development, including during rehabilitation and post mine closure.

25. Water Management Plan

The Applicant must prepare a Water Management Plan for the development to the satisfaction of Council and carry out the development in accordance with this plan. The plan must be prepared or reviewed by a suitably qualified person.

The plan must be prepared in consultation with DCCEEW and submitted to Council for approval and include:

- (a) A Site Water Balance that:
 - a. Includes details of:
 - i. Sources and security of water supply, including contingency planning for future reporting periods
 - ii. Water use and management on site;
 - iii. Any offsite water transfers and discharges;
 - iv. Reporting procedures, including the preparation of a site water balance for each AEMR reporting year; and
 - b. Investigates and implements all reasonable and feasible measures to minimise water use on site;

- (b) Surface Water Management Plan, that includes:
- a. Detailed baseline (2016) data on surface water quality in the watercourses that could potentially be affected by the development
 - b. a description of the water management system on site, including the:
 - i. Clean water diversion systems;
 - ii. Erosion and sediment controls (mine water system); and
 - iii. Mine water management systems including water infusion for Spontaneous Combustion.
 - c. plans, including design objectives and performance criteria, for:
 - i. design and management of final voids;
 - ii. design and management for the emplacement of coal reject materials;
 - iii. reinstatement of drainage lines on the rehabilitated areas of the site; and
 - iv. control of any potential water pollution from the rehabilitated areas of the site;
 - d. performance criteria for the following, including trigger levels for investigating any potential adverse impacts associated with the development:
 - i. surface water quality of Muscle Creek and Sandy Creek catchments; and
 - e. a program to monitor and report on:
 - i. the effectiveness of the mine water management system; and
 - ii. surface water quality, in Muscle Creeks and Sandy Creeks, potentially affected by the development;
 - f. a plan to respond to any exceedances of the performance criteria, and mitigate and/or offset any adverse surface water impacts of the development; and
- (c) Groundwater Management Plan, which includes:
- a. baseline data on groundwater levels, and quality, of privately-owned registered groundwater bores within 2.5km of the development, that could be affected by the development;
 - b. groundwater assessment criteria, including trigger levels for investigating any potentially adverse groundwater impacts;
 - c. a program to monitor and report on:
 - i. ground water inflows to the open cut pits;
 - ii. the impacts of the development on:
 1. regional and local (including alluvial) aquifers;
 2. groundwater supply of privately registered groundwater bores;
 - iii. a plan to respond to any exceedances of the groundwater

assessment criteria; and

- iv. a program to validate the groundwater model for the development, including an independent review of the model with every Independent Environmental Audit, and compare the monitoring results with modelled predictions.

26. Waste and Wastewater Management,

- (a) The Applicant must:
- implement all reasonable and feasible measures to minimise the waste generated by the development;
 - ensure that the waste generated by the development is appropriately stored, handled and disposed of; and
 - monitor and report on the effectiveness of the waste minimisation and management measures in the AEMR report.
- (b) The Applicant must reuse, recycle or dispose of all waste (including but not limited to solid waste, liquid waste and putrescible matter) from the site to the satisfaction of Council or EPA, as relevant.
- (c) Manage on-site sewage treatment and/or offsite disposal in accordance with the requirements of Council.

AIR QUALITY, BLAST, NOISE MANAGEMENT AND MONITORING

27. Air Quality – Particulate Matter – Standards and Goals

The Applicant must ensure that all reasonable and feasible avoidance and mitigations measures are employed so that particulate matter emissions generated by the development do not cause exceedance of the relevant air quality criteria at a residence on privately owned land.

The relevant air quality criteria for the development are contained in Table 1 and Table 2, below.

Table 1. *Long Term Particulate Matter Criteria*

Pollutant	Criterion
Particulate matter < 10µg (PM ₁₀)	30ug/m ³ (annual mean)

Table 2. *Short Term Particulate Matter Criteria*

Pollutant	Criterion
Particulate Matter <10µm (PM ₁₀)	50µg/m ³ (24hr average)

Note:

- Total impact (i.e. incremental increase in concentrations due to the development plus background concentrations due to all other sources);
- Excludes extraordinary events such as bushfires, prescribed burning, dust storms, sea fog, fire incidents, (but not Spontaneous Combustion within the mine) or any other activity agreed by Council

28. Air Quality – Gas Content – Health Guidelines and Goals

The Applicant must use reasonable and feasible measures to manage the development so that the atmospheric gas emissions generated by the development do not cause exceedance of the relevant air quality criteria at any residence on privately owned land.

The relevant atmospheric air quality criteria for the development are contained in Table 3 below.

Table 3. Atmospheric Gas Content Criteria

Pollutant	Criterion	
Sulphur dioxide (SO ₂)	20 ppb (24hr average)	100 ppb (1hr average)
Hydrogen Sulphide (H ₂ S)	100 ppb (24hr average)	500 ppb (1hr average)

Note:

- Total impact (i.e. incremental increase in concentrations due to the development plus background concentrations due to all other sources);
- Excludes extraordinary events such as bushfires, prescribed burning, dust storms, sea fog, fire incidents, (but not Spontaneous Combustion within the mine) or any other activity agreed by Council
- The need for the applicant to monitor its compliance with the requirements in Table 3, pursuant to the Air Quality Management Plan and condition 30A of this development consent be waived in the future depending on Council's consideration of the outcomes of the EPA's current Environmental Study and any changes would be by agreement with Council.

29. Air Quality – Management

The Applicant must prepare a detailed Air Quality Management Plan for the development in consultation with the EPA, to the satisfaction of Council, and carry out the development in accordance with this plan.

This plan must include, but not be limited to the following matters:

- (i) the identification of properties which may be affected by dust generated by the mine in excess of the criteria detailed above;
- (ii) specifications of the procedures for the dust monitoring program and atmospheric gas assessment for the management of the mine and for the purpose of undertaking independent investigations;
- (iii) outline the procedure to notify property owners and occupiers as identified by monitoring as likely to be affected by dust generated by the mine in excess of the criteria detailed above;
- (iv) mitigation measures to be employed to minimise dust and/or atmospheric gas emissions during the operation phase (this plan can refer to the Spontaneous Combustion Management Plan for atmospheric gas). This should include proactive/predictive and reactive mitigation measures to be employed to minimise dust and/or atmospheric gas emissions including visible dust emanating from the site;
- (v) the Applicant must ensure the prompt and effective rehabilitation of all disturbed areas of the application area following the completion of mining and associated activities in that area to minimise the generation of wind-blown dust;
- (vi) the use of the existing protocol for handling dust and atmospheric gas complaints that include recording, reporting and acting on complaints;
- (vii) details of locations and frequency of existing monitoring;
- (viii) as far as practicable details of the interrelationships of this plan with the Air Quality Management Plans with other mining operations in the vicinity; and
- (ix) unsealed roads are to be managed to minimise the generation of fugitive

dust.

30. Air Quality – Monitoring – Dust

- (a) The Applicant must:
- (i) Operate in real time air quality monitors representative of residence on privately owned land to the north and south of the development. The locations of all the monitors must be identified in the Air Quality Management Plan as approved by Council.
 - (ii) monitor and report against criteria in Tables 1 and 2 for the monitors located to be representative of nearby residences on privately owned land in accordance with the Air Quality Management Plan. The results of this monitoring and reporting are to be incorporated into the AEMR;
 - (iii) Include in the AEMR a summary of the performance of the control measures and of the monitoring system against the criteria outlined in Tables 1 and 2. The assessment locations and the methodology of assessment is to be identified in the Air Quality Management Plan, and;
- (b) In the event that a landowner or occupier of a residence on privately owned land considers that dust from the development at his/her dwelling is in excess of the criteria detailed in Tables 1 or 2 of the consent, and Council is satisfied after adequate examination of the relevant facts, that an investigation is required, the Applicant must upon the receipt of a written request from Council:
- (i) consult with the landowner or occupant affected to determine his/her concerns;
 - (ii) commission an independent dust impact assessment at the privately owned residence and provide a report to Council. Where elevated levels of dust in excess of the criteria in Tables 1 and 2 are identified, and the independent expert is of the opinion that the Applicant's activities have materially contributed to the exceedance, the independent dust assessment is to include suggested remedial actions;
 - (iii) modify the mining activity or take other steps in accordance with the Air Quality Management Plan, or independent dust assessment, if exceedances are demonstrated by the independent investigations, engaged by the Applicant, to materially result in part from the development related activity. This may include:
 - 1) introduction of additional controls, either of dust generation from individual sources on the site or on-site operations, or modify operations to attempt to ensure that the dust criteria are achieved; and/or;
 - 2) negotiate, as far as reasonably practicable, an agreement with the landowner or provide such forms of benefit or amelioration of the impact of dust as may be agreed between the parties as providing acceptable compensation for the dust levels experienced.
 - (iv) conduct follow-up investigation(s) to the satisfaction of the Council,

where necessary.

- (c) Further independent investigation(s) shall cease if Council is satisfied that the relevant criteria detailed in the consent are not being exceeded and are unlikely to be exceeded in the future.
- (d) This condition applies until the completion of Rehabilitation – land preparation, as defined in NSW Resources Regulator Form and Way Annual Rehabilitation Report and Forward Program for Large Mines.

2. 30A Air Quality – Monitoring – Gas

- (a) The Applicant must:
 - (i) Operate gas assessment equipment representative of non-mine owned residents to the north and south of the development. The locations of the atmospheric gas assessment equipment must be identified in the Air Quality Management Plan.
 - (ii) Include in the AEMR a summary of the performance of the control measures and of the monitoring system, Assess the Atmospheric Gas Content against the requirements outlined in Table 3. The assessment locations and the methodology of assessment is to be identified in the Air Quality Management Plan, and;
 - (iii) Should the results of the Atmospheric Gas Content criterion outlined in Table 3 be exceeded, the Applicant is to immediately advise Council.
- (b) If a landowner or occupier of a residence on privately owned land considers that atmospheric gas from the development at his/her dwelling is in excess of the criteria detailed in Table 3 of the consent, and Council is satisfied that an investigation is warranted, the Applicant must upon the receipt of a written request from Council:
 - (i) consult with the landowner or occupant affected to determine his/her concerns;
 - (ii) commission a relevant expert, approved by Council, to conduct an independent atmospheric gas impact assessment at the residence, and provide a report to Council. Where levels of atmospheric gas in excess of the criteria in Table 3 are identified, and the independent expert is of the opinion that the Applicant's activities have caused the exceedances, the Applicant must:
 - a. modify the mining activity or take such other steps as are reasonably necessary to ensure that the Applicant operates so as not to cause or partly cause the criteria identified in Table 3 to be exceeded at the residence.
 - b. conduct follow-up investigation(s) to the satisfaction of the Council, where necessary.

31. Air Quality – Spontaneous Combustion

The Applicant must incorporate current best practice approaches to minimizing the occurrence of spontaneous combustion and managing any spontaneous combustion that occurs within the development area.

The Applicant must prepare a detailed Spontaneous Combustion Management Plan to the satisfaction of Council and carry out the development in accordance with this plan. The plan must:

- a. Be prepared or reviewed by a suitably qualified expert/s;
- b. Describe what measures are to be undertaken to minimize the occurrence of spontaneous combustion. Should spontaneous combustion occur, describe what methods would be used to extinguish or reduce the outbreak's size and duration. This is to include details of the times, areas, locations etc. that will trigger actions, and criteria provided to indicate success or further works being required.

The plan must break these activities up to be specific to the following areas:

- i. Pit 1,
 - ii. Pit 2,
 - iii. Elsewhere within the mine disturbance area.
- c. Define what constitutes a spontaneous combustion incident, and includes a protocol for notifying Council and any other relevant stakeholders of spontaneous combustion incidents;
 - d. Define what will trigger a review of the Spontaneous Combustion Management Plan. This is to include a Trigger Action Response Plan resulting from a spontaneous combustion incident that has as one of its outcomes a review of this Management Plan.

BLAST MANAGEMENT AND MONITORING

32. Blasting criteria and limits

(a) Time of blasting

Blasting operations on the premises must only take place between 9:00am and 5.00pm Monday to Friday inclusive, unless permission is granted by Council where special circumstances related to the safety of the mine requires a blast to be initiated outside these hours.

(b) Overpressure

The overpressure level from blasting operations on the premises must not:

- (i) Exceed 115dB (Linear Peak) for more than 5% of the total number of blasts over a period of 12 months when measured at any residence on privately owned land or noise sensitive locations (such as a school or hospital); and
- (ii) Exceed 120dB (Linear Peak) at any time, when measured at any residence on privately owned land or noise sensitive location (such as a school or hospital).

(c) Ground vibration (ppv)

Ground vibration peak particle velocity from the blasting operations at the premises must not:

- (i) Exceed 5mm/s for more than 5% of the total number of blasts over a period of 12 months when measured at any residence on privately owned land or noise sensitive locations (such as a school or hospital); and
- (ii) Exceed 10mm/s at any time, when measured at any residence on privately owned land or noise sensitive location (such as a school or hospital)

The overpressure and ground vibration limits above do not apply if the Applicant has a written agreement with the relevant owner(s) of these residences to generate higher blast levels, and Council has been advised in writing of the terms of the agreement. The blasting limits above do not apply to residences owned by the Applicant.

(d) Residences

The Applicant must investigate any blast ground vibration/air overpressure concerns associated with residential buildings which occur as a result of blasting at the mine in relation to the standards in the consent. Should such an investigation be necessary the Applicant shall advise Council the result of such investigation and any proposed preventive/remedial measures.

33. Blasting/ Vibration Management

- (a) The Applicant must prepare and implement a Blast Management Plan, in consultation with EPA and RR, to the satisfaction of Council. This plan must include, but not be limited to, the following matters:
 - (i) demonstration of consistency in compliance with blasting criteria at the existing mining operation
 - (ii) compliance blasting criteria;
 - (iii) mitigation measures, such as, adverse weather conditions;
 - (iv) monitoring methods and program in accordance with blast monitoring and inspection conditions;
 - (v) measures to be undertaken to demonstrate that the development is achieving best practice applicable to the development in minimising air blast overpressure, ground vibration levels, fumes and odours from blasting activities;
 - (vi) measures to protect underground utilities (eg: rising mains, subsurface telecommunication and electric cables, irrigation lines) and livestock on non-mine owned land;
 - (vii) measures to protect surface infrastructure where relevant, such as dams, rail infrastructure and power poles;
 - (viii) measures to consider the blasting activities from other neighbouring mines. This shall include details of the proposed measures to ensure that cumulative blast related impacts are managed, such as through consultation with the other mines to co-ordinate blasting activities;
 - (ix) procedures for the investigation of blast related complaints from the

- development, in consultation with other mines in the event of cumulative related impacts;
- (x) procedures for the notification of occupiers of buildings and residences prior to detonation of each blast;
 - (xi) measures to ensure no damage by flyrock to people, property, livestock and powerlines; and
 - (xii) location of blast monitors to assess blasting within the development;
- (b) The Applicant must, as a minimum, advise occupiers of buildings and residences, unless otherwise requested by the occupier, in the North Muswellbrook, Sandy Creek Road and other areas to the satisfaction of Council of future blasting events through a community information telephone hotline and the advertisement and promotion of the hotline. The hotline shall be at no cost to the caller.
 - (c) The Applicant must respond to complaints regarding blasting in accordance with its Environmental Management Strategy.
 - (d) This condition applies until the completion of Rehabilitation – land preparation, as defined in NSW Resources Regulator Form and Way Annual Rehabilitation Report and Forward Program for Large Mines.

34. Blast Monitoring

- (a) The Applicant must monitor ground vibration and air blast overpressure of all blasts at locations in accordance with the Blast Management Plan;
- (b) Ground vibration or airblast overpressure is to be monitored at the relevant noise sensitive sites (eg. Residences on privately owned land, hospitals, schools etc), selected in consultation with the EPA.
- (c) The Applicant must document the date, wind speed and direction, weather conditions, atmospheric conditions including cloud cover, location of blast and the quantity of explosive used for each blast.

NOISE MANAGEMENT AND MONITORING

35. Noise Control

Where temperature inversion conditions of Class F or higher are in place, as measured by the sites Meteorological Station, the following changes to the mining operations are to occur during the night-time period:

- i. Dozers are to be operated in first gear forward and reverse only (emergencies excepted)
- ii. The maximum of 3 haul trucks can be loaded and haul into the Open Cut No.2 at any one time.

36. Relevant Noise Criteria for the development

Table 4 Noise Limits (dB(A))

Location	Day	Evening	Night	
	L _{Aeq} (15 minute)	L _{Aeq} (15 minute)	L _{Aeq} (15 minute)	L _{A1} (1 minute)
R1, R2, R3, R4, R17, R26, R27, R28, R29, R30, R31, R32, R33, R34, R35, R37, R38, R39.	35	35	35	45
R5	36	36	36	45
R7	38	38	38	45
R12	39	39	39	45
R13	41	41	41	45
R14	38	38	38	45
R15	37	37	37	45
R16	36	36	36	45
R18	45	38	37	47
R20	45	38	37	47
R21	37	37	37	45
R22	39	39	39	45
R23	39	39	39	45
R24	40	40	40	45
R25	42	42	42	45
R36	38	38	38	45
R40	42	42	42	45
R41	42	42	42	45
R42	40	40	40	45

The limits in the noise table above do not apply if the Applicant has a written agreement with the relevant owner(s) of these residences to generate higher noise levels, and Council has been advised in writing of the terms of this agreement. The limits in the noise table above do not apply to residences owned by the Applicant.

37. Noise Acquisition Criteria

The acquisition criteria for noise is defined by repeated demonstrated exceedance of the noise levels shown in Table 5 below:

Table 5 Acquisition Noise Limits (dB(A))

Location	Day	Evening	Night
	L _{Aeq} (15 minute)	L _{Aeq} (15 minute)	L _{Aeq} (15 minute)
R1, R2, R3, R4, R17, R26, R27, R28, R29, R30, R31, R32, R33, R34, R35, R37, R38, R39.	40	40	40
R5	41	41	41
R7	43	43	43
R11	44	44	44
R12	44	44	44
R13	46	46	46
R14	43	43	43
R15	42	42	42
R16	41	41	41
R18	50	43	42
R20	50	43	42
R21	42	42	42
R22	44	44	44
R23	44	44	44
R24	45	45	45
R25	47	47	47
R36	43	43	43

Location	Day	Evening	Night
	L _{Aeq} (15 minute)	L _{Aeq} (15 minute)	L _{Aeq} (15 minute)
R40	47	47	47
R41	47	47	47
R42	45	45	45

38. Interpretation of Noise Levels

- (a) For the purposes of the interpretation of noise levels detailed in the consent, refer to the following:

	Definition
Day	the period from 7am to 6pm Monday to Saturday and 8am to 6pm Sundays and Public Holidays
Evening	the period from 6pm to 10pm
Night	the period from 10pm to 7am Monday to Saturday and 10pm to 8am Sundays and Public Holidays

- (b) Noise from the project must be measured as outlined in the Project's Noise Management Plan. Monitoring locations identified in the Noise Management Plan are to be representative of the nearby residences.
- (c) Noise generated by the development must be measured in accordance with the relevant requirements of the NSW Industrial Noise Policy (as may be updated from time to time) or an equivalent NSW Government noise policy, and as amended by the details below:

Noise Compliance Assessment:

- a) Applicable Meteorological Conditions

The noise criteria in Tables 4 & 5 are to apply under all meteorological conditions except for the following:

- i. Wind speeds greater than 3m/s at 10m above ground level; or
- ii. Stability category F temperature inversion conditions and wind speeds greater than 2 m/s at 10m above ground level; or
- iii. Stability category G temperature inversion conditions.

Determination of Meteorological Conditions

Except for wind speed at microphone height, the data to be used for determining meteorological conditions must be recorded by the meteorological station located on site.

Compliance monitoring

- Attended monitoring must be used to evaluate compliance with the relevant conditions of this consent;
- During the period in which mining operations continue, this monitoring must be carried out at least 12 times a year, by an independent noise consultant, unless Council agrees otherwise;
- Unless otherwise agreed by Council, this monitoring must be carried out in accordance with the relevant requirements for reviewing performance set out in the NSW Industrial Noise Policy (as amended from time to time) or an equivalent NSW Government noise policy, in particularly the requirements relating to:

- Monitoring locations for the collection of representative noise data;
- Meteorological conditions during which collections of data is not appropriate;
- Equipment used to collect noise data, and conformance with Australian Standards relevant to such equipment; and
- Modifications to noise data collected, including for the exclusion of extraneous noise and/or penalties for modifying factors, apart from adjustments for:
 - i. Duration; or
 - ii. Low frequency noise, where it is demonstrated that the site contributed dBC – dBA noise difference of greater than 15dBA is caused by distance attenuation only.

39. Noise Management

The Applicant must prepare and implement a Noise Management Plan for the development, in consultation with EPA and to the satisfaction of Council. The plan must:

- (i) Demonstrate consistency in complying with noise criteria limits at the existing Applicants operation;
- (ii) Provide a diagram indicating the location of all noise monitoring locations;
- (iii) include details of the noise investigations conducted at monthly intervals (unless otherwise agreed by Council) by an independent noise consultant to evaluate, assess and report the La eq (15 minute) and La1(1 minute) noise emission levels due to the normal operations of the development;
- (iv) provide details regarding operating configuration, determining survey intervals, weather conditions and seasonal variations, selecting variations, locations, periods and times of measurements;
- (v) detail management measures where the target noise level criteria of this consent are predicted to be exceeded, or are exceeded during Mining Operations. These measures must include but not be limited to:
 - * The selection of representative monitoring locations within the community must be carried out in consultation with Council;
 - * prompt response to any community issues of concern;
 - * refinement of onsite noise mitigation measures and mine operating procedures where practical;
 - * discussions with relevant property holders to assess concerns;
 - * consideration of acoustical mitigation at receivers; and
 - * consideration of negotiated agreements with property owners.
- (vi) outline measures to reduce the impact of intermittent, low frequency and tonal noise (including truck reversing alarms);
- (vii) survey and investigate noise reduction measures from plant and equipment annually, subject to noise monitoring results and/or complaints received, and report in the AEMR;
- (viii) specify the procedures for a noise monitoring program for the purpose of undertaking independent noise investigations;
- (ix) outline the procedure to notify property owners and occupiers likely to be affected by noise from the operations;

- (x) maintain a protocol for handling noise complaints that include recording, reporting and acting on complaints, particularly where complaints are received, and it is demonstrated noise levels are in excess of the criteria contained in this consent;
- (xi) as far as practicable, details of the interrelationship of this plan with the noise management plan for other mines in the vicinity; and
- (xii) accommodate revised noise monitoring and management requirements once mining ceases and the closure and final rehabilitation process commences.
- (xiii) This condition applies until the completion of Rehabilitation – land preparation, as defined in NSW Resources Regulator Form and Way Annual Rehabilitation Report and Forward Program for Large Mines.

40. Request for independent monitoring and acquisition

(a) Monitoring and Management

In the event that a landowner of a non-mine owned property considers that noise from the development, at their residence, is in excess of the noise level criteria listed in Table 4 (being an owner who has not earlier entered into an agreement with the applicant to exceed their noise levels) and Council is satisfied that an investigation is required, the Applicant must upon the receipt of a written request from Council:

- (i) consult with the owner affected to determine their concerns;
- (ii) make arrangements for, and bear the costs of, following consultation as far as reasonably practicable with other mine operations in the vicinity where necessary, appropriate independent noise investigations in accordance with the Noise Management Plan to the satisfaction of Council, to quantify the impact and determine the source of the effect and the contribution of the Project to the effect. The location, duration and timing of these noise assessments is to be in accordance with the Industrial Noise Policy or its replacement;
- (iii) modify the mining activity in accordance with a noise reduction plan prepared as part of the Noise Management Plan, if repeated exceedances are demonstrated by the investigation to result in part from the mine related activity. This must include:
 - * introduction of additional controls, either on noise emission from individual sources on the site or on-site operations or modification to operations, to ensure that the noise criteria detailed in Table 4 is achieved by reasonable and feasible measures, or;
 - * seek agreement of the landowner, and in the case of cumulative impacts with the other relevant mines/ industrial operations in the area and the landowner, to provide such other forms of benefit or amelioration of the impacts of noise as may be agreed between the parties as providing acceptable compensation for the noise levels experienced.
- (iv) conduct follow-up investigations to the satisfaction of Council, where

necessary. If necessary, the follow up investigation should be conducted 3 months after the initial investigation to give the Applicant time to implement the recommended noise control.

MONITORING/AUDITING

41. Third Party Monitoring/Auditing

Independent Environmental Auditing

- (a) Every five years from the date of this modification (MOD9), or as otherwise agreed by Council, the Applicant must conduct an environmental audit of the development.

Copies of the report shall be submitted by the Applicant to Council, EPA, RR, DPHI, DCCEEW and the CCC within two weeks of the report's completion for comment.

- (b) The audit must:
- i. assess compliance with the requirements of this consent, the EPL, mining leases and water licences;
 - ii. include consultation with Council, EPA, RR and DCCEEW.
 - iii. assess environmental performance of the development and whether it is complying with the management plans and the EMS;
 - iv. review the effectiveness of the environmental management of the mine, including any mitigation works;
 - v. be carried out at the Applicant's expense; and
 - vi. be conducted by a duly qualified independent person or team whose appointment has been endorsed by Council.
- (c) Council may, after reviewing the report and considering any submission made by the relevant government agencies, CCC and Applicant on the report, notify the Applicant of any requirements with regard to any recommendations in the report. The Applicant shall comply with any reasonable requirements within such time as Council may require.

Note: Council may agree to a request from the Applicant that the Independent Environmental Audit requirement under this condition be integrated with similar audits required in accordance with other licenses and approvals applicable to MCC

REPORTING

42. Annual Environmental Management Report (AEMR)

- (a) The Applicant must, throughout the mining operations and for five years after the completion of mining in the application area (or as otherwise agreed by Council), prepare and submit an Annual Environmental Management Report (AEMR) to the satisfaction of Council.

The AEMR must review the performance of the mine against the Environmental Management Strategy and the relevant, management plans,

the conditions of this consent, and other licences and approvals relating to the mine. To enable ready comparison with the predictions made in the EIS, diagrams and tables, the report must include, the following matters:

- (i) a detailed compliance review of the performance of the project against conditions of this consent and statutory approvals. From this review a table will be provided in the AEMR report that identifies any non-compliances over the last year, and describes what actions were (or are being) taken to ensure compliance.
- (ii) assess the project against predictions made in the EIS and the terms and commitments in the documents listed in the consent.
- (iii) a review of the effectiveness of the environmental management of the mine in terms of EPA, DCCEEW and Council requirements;
- (iv) review the results of environmental monitoring required under this consent or other approvals, including interpretations and discussion ;
- (v) identification of trends in monitoring results;
- (vi) a listing of any variations obtained to approvals applicable to the DA area during the reporting year;
- (vii) the water budget for the year;
- (viii) a summary report on the yearly review of activities to manage spontaneous combustion throughout the reporting year;
- (ix) production and employment levels and any changes from the previous reporting year; and
- (x) environmental management targets and strategies for the next year, taking into account identified trends in monitoring results.

Note: In accordance with Schedule 8A under the Mining Regulation 2016, title holders are required to publish the Annual Rehabilitation Report and Forward Program on its website.

- (b) In preparing the AEMR, the Applicant must:
 - (i) consult with Council;
 - (ii) comply with any reasonable requirements of Council or other relevant government agency; and
 - (iii) ensure that the first report is completed and submitted within 3 months of the end of the reporting year, or at a date determined by Council in consultation with the DRE.
- (c) The Applicant must ensure that copies of each AEMR are submitted to Council, DCCEEW, EPA, DPFI, and CCC, and made available for public information at Council within fourteen days of submission to these authorities.

43. Incident Reporting

The Applicant must notify Council and any other relevant agencies immediately of any environmental incident. Within 7 days of the date of the incident, the Applicant

shall provide Council and any relevant agencies with a detailed report on the incident, and such further reports as may be reasonably requested.

44. Access to Information

Within 3 months of the approval of this Continuation Project Modification, the Applicant must:

- Make copies of the following publicly available on its website:
- The EIS and subsequent environmental assessments, as listed in the consent;
- Current statutory approvals for the development;
- Approved strategies and plans required under the conditions of this consent;
- A summary of the monitoring results of the development, reported in accordance with the specifications in any conditions of this consent, or any approved plans ;
- A complaints register, which is updated monthly;
- Minutes of the CCC meetings;
- The Annual Environmental Management Report (for the last 5 years);
- Any Independent Environmental Audit of the development, and the Applicant's response to the recommendations in any audit;
- Any other matter required and agreed with Council; and
- Keep this information up to date.

COMMUNITY CONSULTATION

45. Community Consultative Committee

The Applicant must:

- (a)
 - (i) Maintain a CCC for the development. Selection of community representatives and the chairperson shall be in accordance with Council's Community Consultative Committee Guidelines.
 - (ii) Representatives from relevant government agencies or other individuals may be invited to attend meetings as required by the Chairperson. The Committee may make comments and recommendations about the preparation and implementation of environmental management plans, consider compliance with conditions of this consent and other matters relevant to the operation of the mine during the term of the consent. The Applicant shall ensure that the Committee has reasonable access to the necessary plans for such purposes. The Applicant shall consider the recommendations and comments of the Committee and provide a response to the Committee.
- (b) The Applicant must, at its own expense:
 - (i) nominate two (2) company representatives to attend all meetings of the Committee;
 - (ii) provide to the Committee regular information on the progress of work and monitoring results;
 - (iii) promptly provide to the Committee such other information as the Chair of the Committee may reasonably request concerning the environmental performance of the development;
 - (iv) provide reasonable access for site inspections by the Committee; and
 - (v) provide meeting facilities for the Committee and take minutes of

Committee meetings. Draft minutes shall be available for public inspection at Council within 14 days of the meeting, or as agreed by the Committee.

NB: The CCC is an advisory committee. The Council and other agencies are responsible for ensuring the Applicant complies with the consent.

46. Complaint Handling Procedures

- (a) The Applicant shall:
- (i) manage complaints in accordance with the Environmental Management Strategy;
 - (ii) provide a report of complaints received with respect to the operation of the mine, every 12 months throughout the life of the project to Council, EPA, and CCC, or as otherwise agreed by Council. A summary of this report shall be included in the AEMR.
 - (iii) consult with other mines in the vicinity to seek to co-ordinate a response to any complaints received regarding the operations of MCC and other mines.

APPLICANT'S OBLIGATIONS

47. Area of Mitigation – Properties requiring Mitigation

This condition has been deleted.

48. Adaptive Management

The applicant must assess and manage development related risks to provide that there are no exceedances of criteria and/or performance measures in this consent. Any exceedances of these criteria and/or performance measures constitutes a breach of this consent and may be subject to penalty or offence provisions under the EP&A Act or EP&A Regulation.

Where any exceedances of these criteria and/or performance measures has occurred, the Applicant must, at the earliest opportunity:

1. Take all reasonable and feasible steps to measure that the exceedances ceases and does not recur;
2. Consider all reasonable and feasible options for remediation (where relevant) and submit a report to Council describing those options and any preferred remediation measures or other course of action; and
3. Implement remediation measures as agreed with Council.

49. Area of Affectation – Land Acquisition

This condition has been deleted.

50. Cumulative Impact Management

- (a) In the event that the cumulative impact of noise or dust contributed by the operation of the Project and any future mining activities/ industrial operations, at any residence on privately owned land in the vicinity of the

operation, is in excess of the noise or dust acquisition criteria contained in these conditions of consent, the Applicant must endeavour, as far as reasonably practicable, to negotiate with the other companies and landowner to determine appropriate arrangements to reasonably contribute to the management of the identified cumulative impacts to the satisfaction of Council in proportion to their contributions to the impact.

- (b) If agreement cannot be reached from negotiations undertaken in accordance with subclause (a), then, with the agreement of the other contributing mines and future mining or industrial operations, the matter is to be referred to Council by either the Applicant or landowner. If the matter is not resolved within 21 days of the referral, the matter will be referred to an Independent Dispute Resolution Process as determined by Council, and resolved as determined by Council. The Independent Dispute Resolution Process shall determine the responsibilities of each of the mining and/or present or future companies in accordance with subclause (a) above and actions to be undertaken. The recommendation of the Independent Dispute Resolution Process shall be determined by Council.
- (c) Prior to referral to the Independent Dispute Resolution process, the Applicant shall provide the Secretary a report detailing the Applicant's reasons for being unable to reach agreement with the other parties, and the reasons for the criteria exceedances with demonstration that the Project activities are not the sole cause of the exceedance.

Note:

1. The Applicant shall endeavour to enter into an agreement with other nearby mines/ industrial operations to address any potential cumulative management and joint acquisition requirements of this development consent;
2. The intent of this condition is to encourage mining companies to form a voluntary agreement regarding the management and acquisition of properties subject to cumulative impacts;
3. Council will be requiring joint acquisition requirements in all development consents where cumulative impacts are known to occur, and may potentially occur, as a result of mine or industrial related activities.

51. Contributions to Council

Within 6 months of the date of the approval of Modification 8, unless Council agrees otherwise, the Applicant must enter into a VPA with Council in accordance with:

- Division 6 of Part 4 of the EP&A Act; and
- The terms of the Applicants offer in its letter to Council dated 30 September 2016.

FURTHER APPROVALS AND AGREEMENTS

52. Building Code of Australia

The Applicant must ensure that all new buildings and structures, and any alterations or additions to existing buildings and structures, are constructed in accordance with the relevant requirements of the BCA and SA.

Notes

Under Part 4A of the EP&A Act, the Applicant is required to obtain construction and occupation certificates (where applicable) for the proposed building works;
Part 8 of the EP&A regulation sets out requirements for the certification of the development; and
The development is located in the Muswellbrook Mine Subsidence District, and under Section 15 of the Mine Subsidence Act 1961, the Applicant is required to obtain the SA's approval before constructing any improvements on the site.

53. Demolition of Structures

The Applicant shall ensure that all demolition work on site is carried out in accordance with *AS 2601-2001: The Demolition of Structures*, or its latest version.

54. Protection of Public Infrastructure

Unless the Applicant and the applicable authority agree otherwise, the Applicant must:

- (a) Repair, or pay the full costs associated with repairing, any public infrastructure that is damaged by the project; and
- (b) Relocate, or pay the full costs associated with relocating, any public infrastructure that needs to be relocated as a result of the project,

except where such works have been compensated through the Mining Act or the Mine Subsidence Compensation Act 1961, or to damage to roads caused as a result of general road usage.

Appendix A – Schedule of land

3. Schedule of Land

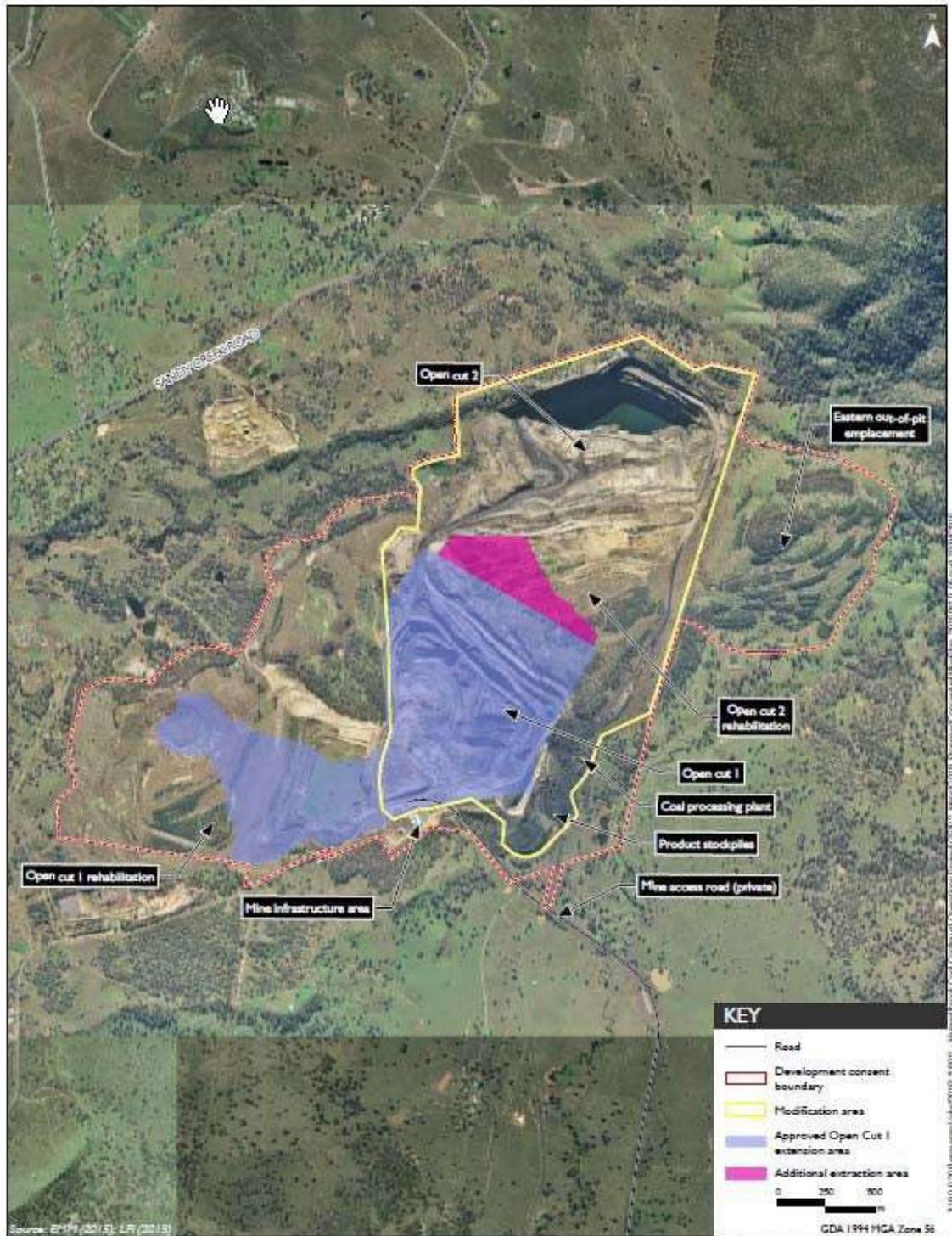
Lot	Deposited Plan (DP)	Owner
681	611756	Muswellbrook Coal Company (MCC)
682	611756	MCC
1	571355	MCC
1	723294	MCC
2	723294	MCC
97	752484	MCC
1	45525	MCC
82	231202	MCC
811	534516	MCC
58*	752484	MCC
59*	752484	MCC
60*	752484	MCC
62*	752484	MCC
61*	1113302	MCC
1*	1004305	MCC
70*	752484	MCC
71*	752484	MCC
1*	184481	MCC
98*	752484	MCC
3*	571355	MCC
1*	614842	MCC
2*	614842	MCC
39*	793463	MCC
1*	45194	MCC
6*	26760	MCC

Lot	Deposited Plan (DP)	Owner
20*	16352	MCC
3*	1220491	MCC
4*	1220491	MCC
5*	26760	MCC
71*	629631	MCC
101*	1148216	MCC
1*	46760	MCC

Notes:

1. *Part of block within DA Boundary
2. Schedule of Land applies to those areas of land within the DA Boundary
3. Blue text denotes changes to partial Lot and DP areas associated with the DA boundary for the Bypass Land

Appendix B – General Layout

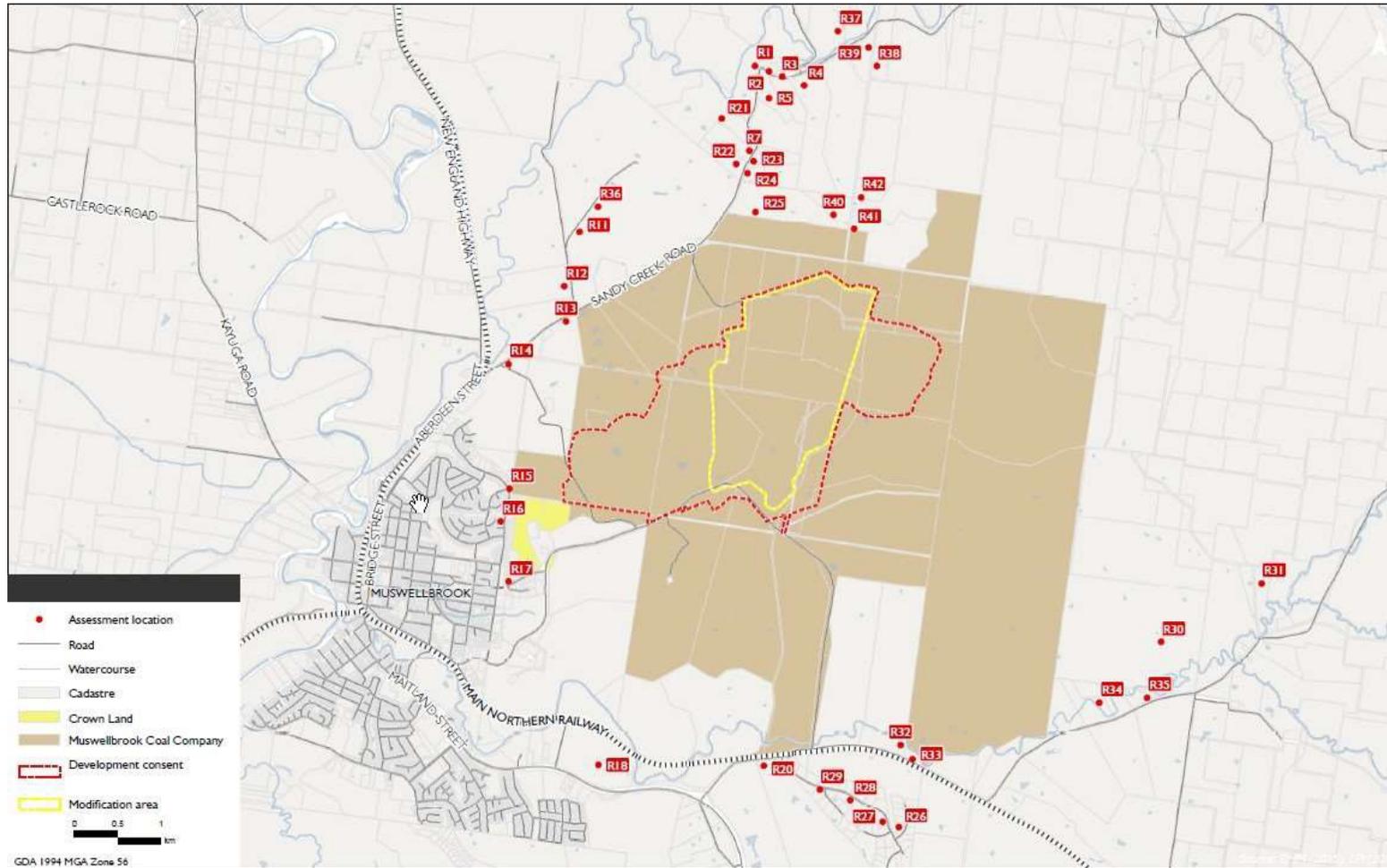


Proposed conceptual mine plan

Muswellbrook Coal Continued Operations Project
Statement of Environmental Effects
Figure 4.1



Appendix C – Receptor location map

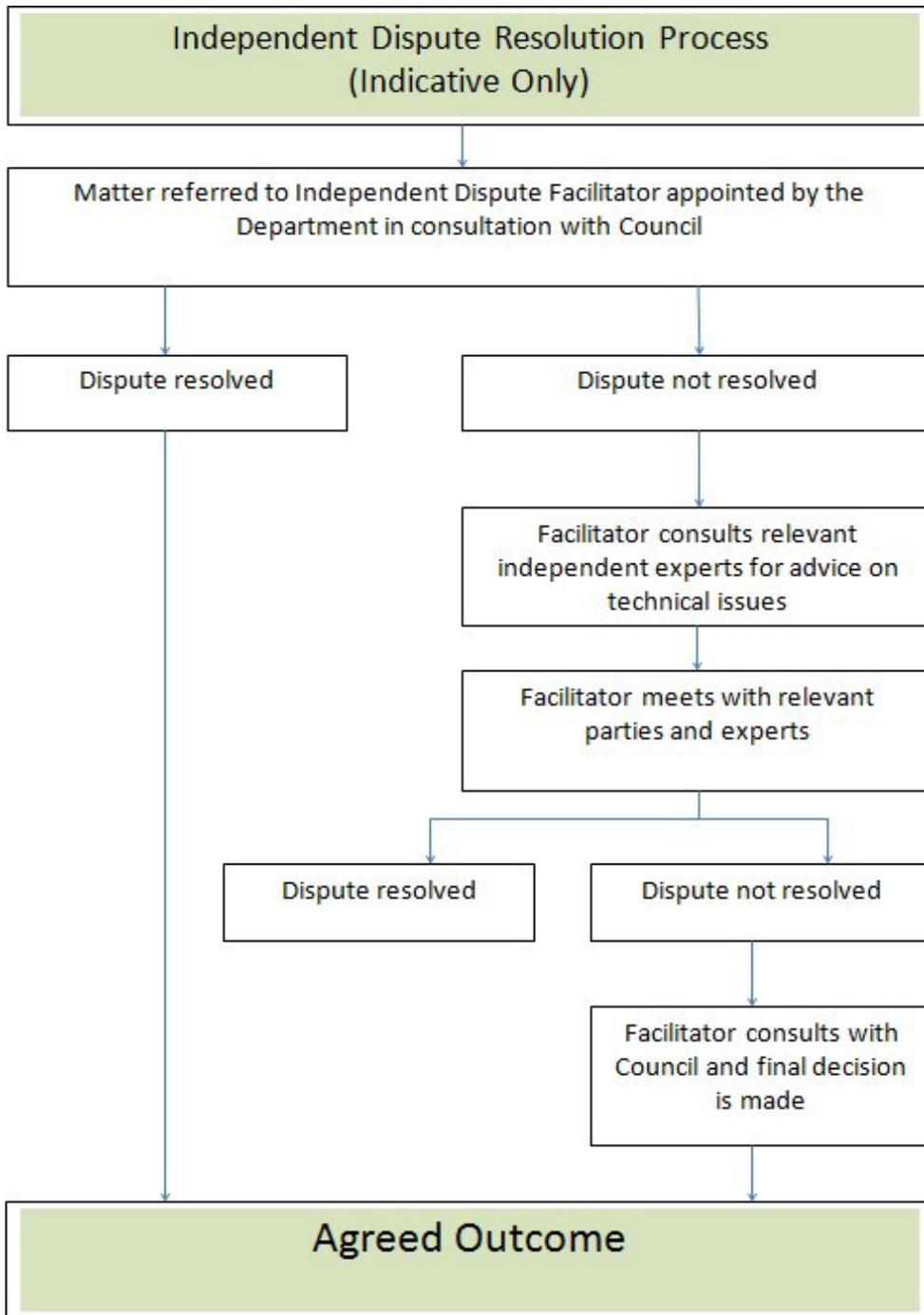


Land ownership and assessment locations

Appendix C – Receptor location details

RECEPTOR NO.	HOUSE_NO	STREET_NAME	STREET_TYPE	SUBURB_NAME	LOT_SECTION_DP
1		SANDY CREEK	RD	MUSWELLBROOK	LOT: 5 DP: 707890
3		SANDY CREEK	RD	MUSWELLBROOK	LOT: 301 DP: 1026063
4	578	SANDY CREEK	RD	MUSWELLBROOK	LOT: 5 DP: 802081
5	540	SANDY CREEK	RD	MUSWELLBROOK	LOT: 165 DP: 633737
7	409	SANDY CREEK	RD	MCCULLYS GAP	LOT: 2 DP: 593335
12	29	ST HELIERS	RD	MUSWELLBROOK	ALT: A DP: 182336
13	120	SANDY CREEK	RD	MUSWELLBROOK	LOT: 22 ALT: DP: 715655
14	30	SANDY CREEK	RD	MUSWELLBROOK	LOT: 1391 DP: 590130
15	4	COMMON	RD	MUSWELLBROOK	LOT: 217 DP: 752484
16	67A	QUEEN	ST	MUSWELLBROOK	LOT: 5400 DP: 1167805
17	100	QUEEN	ST	MUSWELLBROOK	LOT: 622 DP: 856333
18	8988	NEW ENGLAND	HWY	MUSWELLBROOK	LOT: 8 DP: 1148932
20	90	MUSCLE CREEK	RD	MUSWELLBROOK	LOT: 2 DP: 241406
21	527	SANDY CREEK	RD	MUSWELLBROOK	LOT: 1 DP: 1089092
22	389	SANDY CREEK	RD	MCCULLYS GAP	LOT: 151 DP: 571192
23	408	SANDY CREEK	RD	MUSWELLBROOK	LOT: 163 DP: 597065
24	388	SANDY CREEK	RD	MCCULLYS GAP	LOT: 1622 DP: 852356
25	360	SANDY CREEK	RD	MCCULLYS GAP	LOT: 41 DP: 1112699
26	20	TOP KNOT	PL	MUSWELLBROOK	LOT: 322 DP: 1105347
27	144	WOODLAND RIDGE	RD	MUSCLE CREEK	LOT: 204 DP: 1078237
28	102	WOODLAND RIDGE	RD	MUSCLE CREEK	LOT: 15 DP: 1044551
29	56	WOODLAND RIDGE	RD	MUSCLE CREEK	LOT: 21 DP: 1044551
30		MUSCLE CREEK	RD	MUSWELLBROOK	LOT: 4 DP: 136691
31	765	MUSCLE CREEK	RD	MUSWELLBROOK	LOT: 100 DP: 1047374
32	261	MUSCLE CREEK	RD	MUSWELLBROOK	LOT: 1 DP: 26760
33		MUSCLE CREEK	RD	MUSWELLBROOK	LOT: 1 DP: 321983
34	549	MUSCLE CREEK	RD	MUSWELLBROOK	LOT: 200 DP: 1179819
35	589	MUSCLE CREEK	RD	MUSWELLBROOK	LOT: 1 DP: 335206
37	641	SANDY CREEK	RD	MUSWELLBROOK	LOT: 302 DP: 1026063
38		SANDY CREEK	RD	MUSWELLBROOK	LOT: 442 DP: 582226
39	660	SANDY CREEK	RD	MUSWELLBROOK	LOT: 3 DP: 802081
40	376	SANDY CREEK	RD	MCCULLYS GAP	LOT: 43 DP: 1112699
41	374	SANDY CREEK	RD	MCCULLYS GAP	LOT: 44 DP: 1112699
42		SANDY CREEK	RD	MCCULLYS GAP	LOT: 42 DP: 1112699
11 & 36	70	ST HELIERS	RD	MUSWELLBROOK	LOT: 23 ALT: DP: 220328

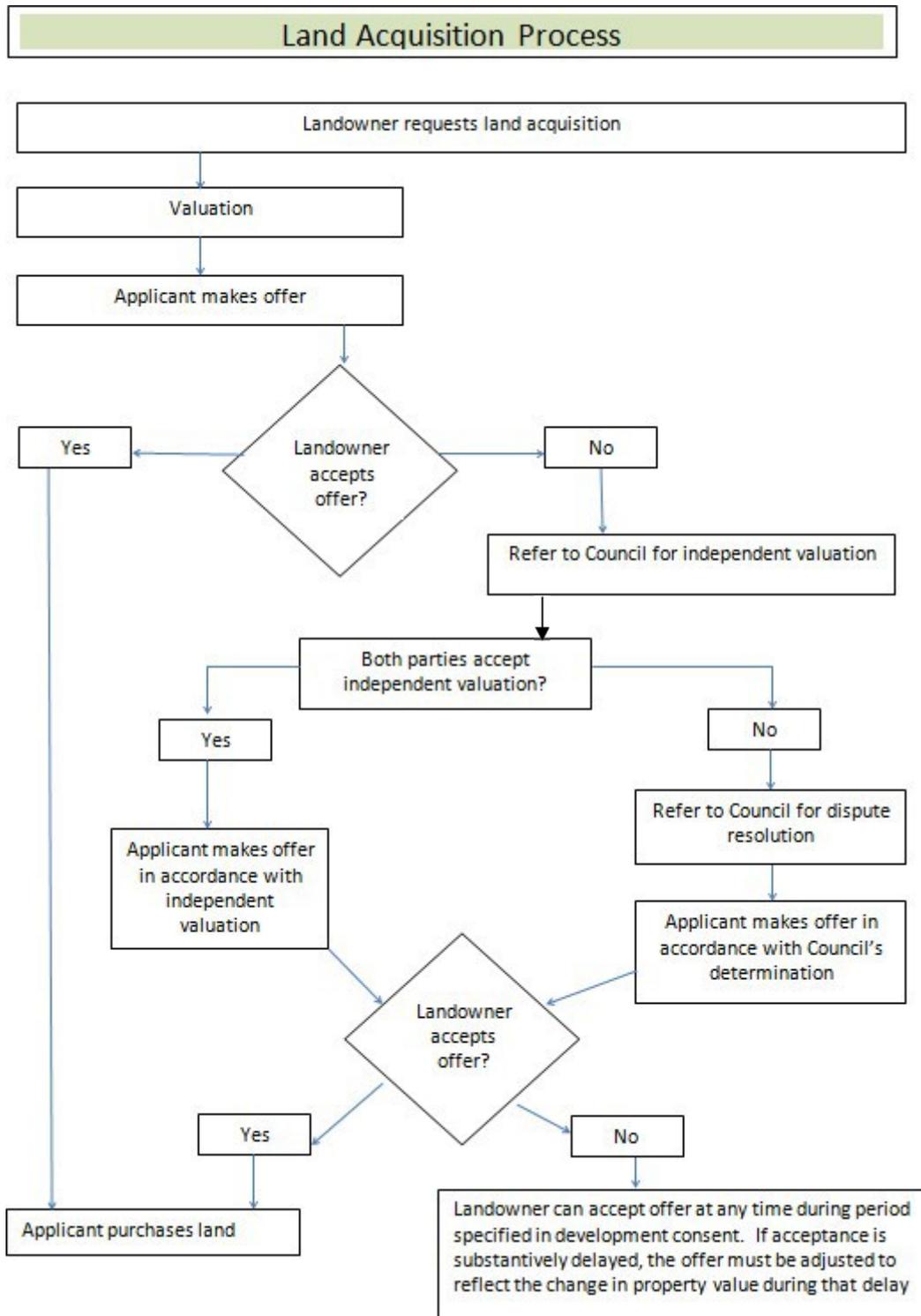
Appendix D – Dispute Resolution Process



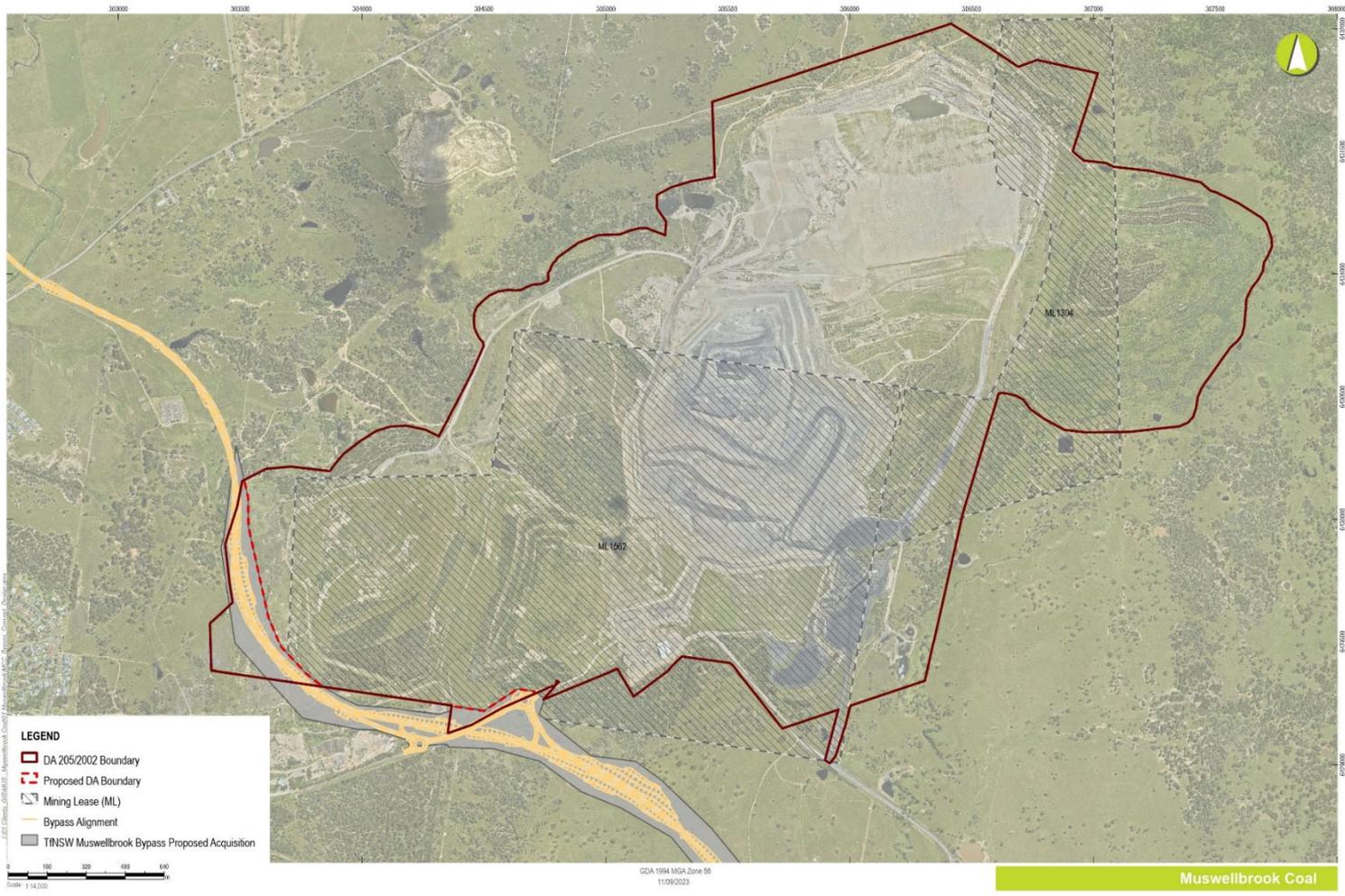
Appendix E – Voluntary Mitigation Measure Process

Deleted

Appendix F – Land Acquisition Process



Appendix G – DA 205/2002 Revised Development Consent Boundary and Bypass Land Overlay



LEGEND

- DA 205/2002 Boundary
- Proposed DA Boundary
- Mining Lease (ML)
- Bypass Alignment
- TRNSW Muswellbrook Bypass Proposed Acquisition

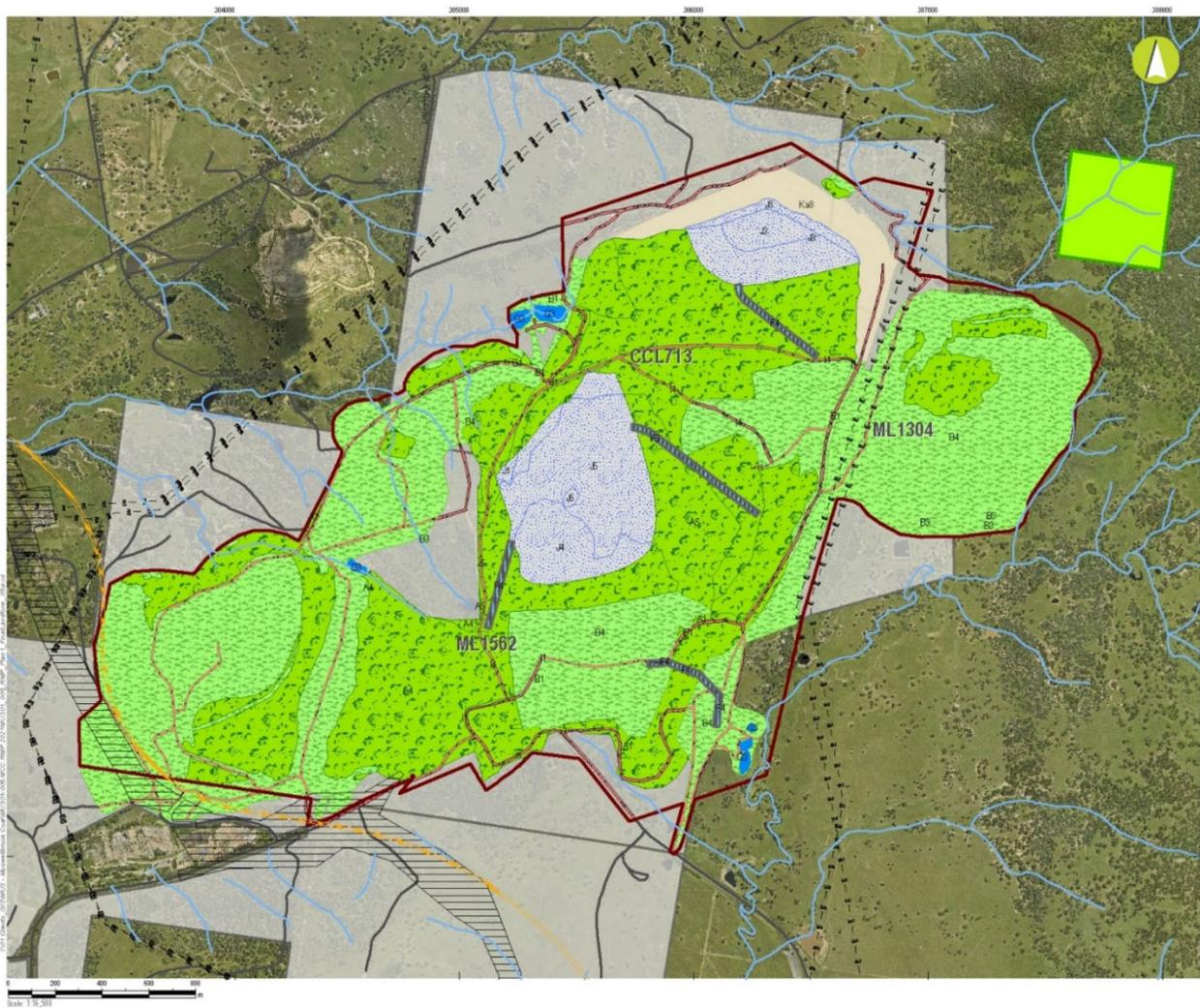
Scale: 1:14,000
GDA 1994 MGA Zone 58
11/09/2023



Proposed DA 205/2002 Boundary Modification

FIGURE 2

Appendix H – Rehabilitation Plan



- LEGEND**
- Project Approval Boundary
 - Road
 - Electricity Transmission Line
 - Waterways
 - Proposed Bypass
 - Biodiversity Offset Area
- Current Authorisations**
- Coal - Current Titles
- Land Zone**
- Bypass Zoning
- Final Landform Feature**
- Drop Structure
- Final Landuse Domain**
- Domain A: Native Ecosystem
 - Domain B: Agricultural – Grazing
 - Domain F: Water Management Areas
 - Domain G: Water Storage (Excluding Final Void)
 - Domain I: Infrastructure
 - Domain J: Final Void
 - Domain Other Ka8: Highwall

Muswellbrook Coal RMP 2022

Final Landform Features

PLAN 1

Mine name	Muswellbrook Coal
Plan name	Final Landform and Rehabilitation Plan
Year of anticipated relinquishment	2050
Data theme submission ID No.	2305
Spatial Reference	GDA 1984 MGA Zone 56
Plan date (date created)	25/6/2022



Source:

Appendix I – Rehabilitation Commitments (source: 2016 Rehabilitation and Closure Plan)

Ref	Commitment	Document Section
1	Maximum height of the landform is 340m RL in the eastern emplacement and 310m RL in Open Cut 2.	Section 2.1.2 and 2.2.2
2	One highwall will remain in the landform (in Open Cut 2).	Figure 2.8
3	The final landform includes two final voids.	Section 2.2 and Figure 2.8
4	The final void will be safe by, where appropriate, constructing a physical barrier to isolate the perimeter of the void to prevent human access and erection of suitable signs clearly stating the risk to public safety and prohibiting public access.	Section 5.3.2
5	The final voids are expected to remain a groundwater evaporative sink and should not contribute water to the groundwater system(s).	Section 4.5
6	Exposed coal seams and other carbonaceous materials on the void floor, pit walls will be capped and include at least 15 m of cover over the exposed seams.	Section 5.3.2
7	The final landuse of the site will consist of a combination of approximately 50% pasture and 50% native trees.	Section 4.7
8	To assist with habitat recreation tree hollows, stags and stumps, where practical, are relocated to areas adjacent to the mining operations that lack appropriate micro-habitat structures.	Section 7.6.1
9	A vertebrate monitoring program for highly mobile fauna species (ie bird and bat species) will be incorporated into the reference and rehabilitation sites.	Section 7.6.2
10	On-going management including weed and feral animal control, bushfire management and erosion and sediment control.	Section 5.4
11	Rehabilitation performance is compared to analogue sites as part of the rehabilitation monitoring program.	Section 7.8
12	Throughout closure activities MCC will continue to support feasible rehabilitation trials and research projects.	Section 7.8
13	MCC undertake a surface and groundwater monitoring program with sampling locations on site and surrounding the site. This program has been ongoing for many years and will continue post closure.	Section 7.9
14	MSC and DRE would be consulted regarding existing services and roads (including the private mine access road to Muscle Creek Road) prior to rehabilitation to determine whether these can be used for any potential future land use opportunities.	Section 5.4.1
15	After rehabilitation, the modification area would have an LSC of Class 6. Future land uses which are described for LSC Class 6 include: grazing – the final land use includes approximately 50% pasture, which would be suitable for grazing.	Section 4.6 SoEE (EMM, 2016)

REASON FOR IMPOSITION OF CONDITIONS:

The reason for the imposition of the following conditions is to ensure, to Council's satisfaction, the objects of the *Environmental Planning and Assessment Act 1979* (as amended) are achieved:

- (a) To encourage:

Muswellbrook Shire Council ABN 86 864 180 944

Address all communications to The General Manager Mail PO Box 122 Muswellbrook NSW 2333 Phone 02 6549 3700
Email council@muswellbrook.nsw.gov.au Web www.muswellbrook.nsw.gov.au

- (i) The proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forest, minerals, water, cities, towns, and villages for the purpose of promoting the social and economic welfare of the community and a better environment;
 - (ii) The promotion and co-ordination of the orderly and economic use of development of land;
 - (iii) The protection, provision, and co-ordination of communication and utility services;
 - (iv) The provision of land for public purposes;
 - (v) The provision and co-ordination of community services and facilities;
 - (vi) The protection of the environment, including the protection and conservation of native animals and plants including threatened species, populations, and ecological communities and their habitats;
 - (vii) Ecologically Sustainable Development; and
 - (viii) The provision and maintenance of affordable housing.
- (b) To promote the sharing of the responsibility for environmental planning between the different levels of government in the State.
- (c) To provide increased opportunity for public involvement and participation in environmental planning and assessment.

ADVICE:

- You are advised that changes to the external configuration of the building, changes to the site layout, density and unit configuration or internal changes to the proposed building or any changes to the proposed operation of a use **MAY** require the submission of a modification under Section 96 of the Environmental Planning & Assessment Act, 1979. Any such changes may need to be the subject of a separate Development Application.
Please bear this in mind before preparing documentation in support of a Construction Certificate application. Council staff would be pleased to assist in identifying such changes which may require the submission of a modification of a Development Application under Section 4.55 of the Environmental Planning & Assessment Act.
- This document is a development consent only and does not authorise construction or subdivision works to commence. Prior to commencing any building, subdivision or associated construction works, the following provisions of the Environmental Planning and Assessment Act 1979 (the 'Act') are to be complied with:
 - (i) A Construction Certificate is to be obtained in accordance with Section 6.7 of the Act.
 - (ii) A Principal Certifying Authority is to be appointed and Council is to be notified of the appointment in accordance with Section 6.6(1) of the Act.
 - (iii) Council is to be notified at least two (2) days before the intention to commence building works, in accordance with Section 6.6(2) of the Act.
- The applicant may apply to the Council or an Accredited Certifier for the issuing of a Construction Certificate and to be the Principal Certifying Authority to monitor compliance with the approval and issue necessary documentary evidence or certificate/s.

- Failure to comply with any of the above requirements is an offence under the provisions of the Act, and may result in enforcement action being taken by Council if these requirements are not complied with.

RIGHT OF APPEAL:

Sections 8.2, 8.3, 8.4, 8.5 of the Environmental Planning and Assessment Act 1979 provide that the applicant may request the Council to review the determination. The request must be made in writing (or on the review application form) within six (6) months *after receipt of this Notice of Determination*, together with payment of the appropriate fees. It is recommended that the applicant discuss any request for a review of the determination with Council Officers before lodging such a request.

If you are dissatisfied with this decision, Section 8.7, 8.10 of the Environmental Planning and Assessment Act, 1979 give you the right to appeal to the Land and Environment Court within six (6) months after the date on which you receive this notice.

APPROVED BY COUNCIL AND SIGNED ON BEHALF OF THE CONSENT AUTHORITY

Hamish McTaggart
Development Coordinator

Date: 15 March 2024