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2.0 PLANNING CONTEXT, APPROVALS AND CONSULTATION

Key points

- The proposed development is designated, local development, and as it does not involve more than \$20 million dollars investment, falls outside the scope of SEPP 34;
- The proposal is classified as local development pursuant to Section 76A(4) of the *Environmental Planning & Assessment Act 1979*. Muswellbrook Shire Council is the consent authority for the proposed No. 1 Open Cut Extension development application;
- The proposal has been developed in full accord with both regional and local environmental plans;
- Under the *Hunter Regional Environmental Plan 1989 – Heritage*, no items of significance have been identified; and
- Consultation with the local community, Muswellbrook Shire Council, Muswellbrook Coal Company Community Consultative Committee and other interested parties has been, and will continue to be, both extensive and ongoing.

2.1 Statutory Planning Approval Sought

The proponent seeks development consent pursuant to Part 4 of the *EP&A Act 1979* for the proposed No. 1 Open Cut Extension.

Schedule 3 of the *EP&A Regulation 2000* identifies open cut mines as “designated development”, where more than 500 t of coal or carbonaceous material are produced or processed per day. The proposed development output will be greater than 500 t of coal per day and, accordingly, the mine extension is considered designated development.

As the proposal is considered designated development, an EIS must accompany the development application. This document fulfils that need and meets the requirements of the *EP&A Act 1979* and its Regulation.

The proposed No. 1 Open Cut Extension will require the granting of a new coal lease. The proposal is not subject of a Ministerial Direction under Section 88A of the *EP&A Act 1979*. The proposed No. 1 Open Cut Extension will not require a capital investment of more than \$20 million, therefore the proposal falls outside the scope of State Environmental Planning Policy (SEPP) No. 34 – Major Employment Generating Industrial Development (see **Section 2.2**).

These considerations mean that the proposed mine extension does not represent State significant development as defined in Section 76A(7) of the *EP&A Act 1979*. The No. 1 Open Cut Extension proposal is classified as local development pursuant to Section 76A(4) of the *EP&A Act 1979*. MSC is the consent authority for the development application.

The proposal is an Integrated Development as defined in Section 91 of the *EP&A Act 1979*. Approvals will be required under the following legislation:

- *Mine Subsidence Compensation Act 1990* for approval to erect improvements within a mine subsidence district;
- *Protection of the Environment Operations Act 1997* for approval to operate a development listed in Schedule 1 of the *EP&A Act 1979*;
- *Water Act 1912* for a licence or permit to construct a work and to take water and use water and dispose of water for the use of occupiers of the land; and
- *National Parks and Wildlife Act 1974* for a Consent to Destroy an aboriginal site under section 90 of the *NP&W Act 1979*.

The relationship of the development proposal to other legislation is discussed in **Section 2.8** of this document.

2.2 State Environmental Planning Policies

The following SEPPs were considered in relationship to the proposal.

State Environmental Planning Policy No 11 – Traffic Generating Developments.

This SEPP ensures that the Roads and Traffic Authority (RTA) can make representation on development applications, that impact on traffic, prior to determination. Mining is listed in Schedule 1 to the Policy, which specifies the types of development that consent authorities must refer to the RTA.

State Environmental Planning Policy No. 34 - Major Employment Generating Industrial Development

This SEPP promotes the orderly and economic use and development of land across NSW. If a development proposal that is listed in Schedule 1 of the SEPP provides employment for more than 100 persons and requires more than \$20 million of capital expenditure, it falls within the scope of this SEPP. Such development becomes State significant development with the development application to be determined by the Minister for Planning. The proposed development does not involve capital expenditure of more than \$20 million, nor does it employ more than 100 persons, and as such this SEPP does not apply to the proposal.

State Environmental Planning Policy No. 44 - Koala Habitat Protection

This SEPP encourages the conservation and management of koala habitats, to ensure permanent free-living koala populations will be maintained over their present range. The policy applies to 107 local government areas (LGAs) including Muswellbrook Shire. Development cannot be approved in the areas

covered by the policy without a prior investigation of core koala habitat. SEPP 44 is considered in the flora and fauna assessment, which is presented in full as **Appendix F**.

State Environmental Planning Policy No. 45 - Permissibility of Mining

This SEPP covers mining on land, where an environmental planning instrument requires the consent authority to make a value judgement as to whether such development is permissible. The policy does not affect provisions in environmental planning instruments that have no relevance in determining whether or not mining is permitted on land - only those provisions that must be satisfied for mining to be permissible.

The environmental planning instrument applicable to the proposed development is the *Muswellbrook Local Environmental Plan (MLEP) 1985*. The provisions of this Local Environmental Plan (LEP) are fully discussed below in **Section 2.4**. However, there is no ambiguity as to the permissibility of mining on the land to which the proposal relates. As such the provisions of SEPP 45 do not apply to the proposed No. 1 Open Cut Extension.

2.3 Regional Environmental Plans

The proposal fully complies with two Regional Environmental Plans (REPs): the *Hunter Regional Environmental Plan 1989*, and the *Hunter Regional Environmental Plan – Heritage 1989*. How these apply to the proposed development is described below.

2.3.1 Hunter Regional Environmental Plan 1989

Part 6 of the *Hunter REP* pertaining to natural resources (particularly Division 1 - Mineral Resources and Extractive Materials) applies to the proposed development. The objectives of the *Hunter REP* pertaining to coal mining are contained in Clause 39 of the *Hunter REP* and are:

- (a) *Manage the coal and other mineral resources and extractive materials of the region in a co-ordinated manner so as to ensure that adverse impacts on the environment and the population likely to be affected are minimise;*
- (b) *Ensure that development proposals for land containing coal and other mineral resources and extractive materials are assessed in relation to the potential problems of rendering those resources unavailable; and,*
- (c) *Ensure that the transportation of coal and other mineral resources and extractive materials has minimal adverse impact on the community.*

Policies for control of development of mining or extraction are contained in Clause 41 of the *Hunter REP*. That clause states that consent authorities:

- (a) *Should consider the conservation value of the land concerned and apply conditions, which are relevant to the appropriate post-mining or extraction land use;*
- (b) *Should consult with officers of the Department of Water Resources in respect of extraction from riverbanks or channels to ensure that instability and erosion are avoided;*
- (c) *Should consult with officers of the Department, the Departments of Minerals and Energy, Lands (as appropriate) and Agriculture and Fisheries, the Soil Conservation Service and the Forestry Commission to determine appropriate post-mining or extraction land uses;*
- (d) *Should ensure the progressive rehabilitation of mined or extracted areas;*
- (e) *Should minimise the likelihood and extent of a final void and the impact of any final void, or facilitate other appropriate options for the use of any final void;*
- (f) *Should minimise any adverse effect of the proposed development on groundwater and surface water quality and flow characteristics;*
- (g) *Should consider any likely impacts on air quality and the acoustical environment;*
- (h) *Should be satisfied that an environmentally acceptable mode of transport is available;
and*
- (i) *Should have regard to any relevant Total Catchment Management strategies.*

All of the issues contained within Clause 41 of the *Hunter REP* that are relevant to the No. 1 Open Cut Extension proposal have been included within the Director-General's Requirements as to the form and content of this EIS. Accordingly, the relevant issues of Clause 41 are addressed in a systematic manner by assessments of the specialist studies and the information contained within the text of the EIS.

2.3.2 Hunter Regional Environmental Plan – Heritage 1989

This *Hunter REP – Heritage* aims to conserve the environmental heritage of the Hunter Region. It identifies some 1300 heritage items in a number of categories of significance. These categories are State significance, regional significance, local significance and items requiring further investigation. A number of heritage precincts in suburbs and towns have been identified.

The aims of the *Hunter REP – Heritage*, and the guidelines that the *Hunter REP – Heritage* provides to consent authorities in assessing development proposals (notably Clause 7 of the *Hunter REP – Heritage*),

are pertinent to this proposal, and are provided for reference below. The *Hunter REP – Heritage* also provides a framework for LEPs, and, as such, is useful context for the MLEP (see **Section 2.4**).

The aims of the *Hunter REP – Heritage* are:

- (c) *To conserve the environmental heritage (including the historic, scientific, cultural, social, archaeological, architectural, natural and aesthetic heritage) of the Hunter Region;*
- (d) *To promote the appreciation and understanding of the Hunter Region's distinctive variety of cultural heritage items and areas including significant buildings, structures, works, relics, towns, precincts and landscapes; and,*
- (e) *To encourage the conservation of the Region's historic townscapes which contain one or more buildings or places of heritage significance or which have a character and appearance that is desirable to conserve*

Clause 7 of the *Hunter REP – Heritage* states:

7(1) A person shall not, in respect of a building, work, relic, tree or place that is a heritage item -

- (a) Demolish or alter the building or work;*
 - (b) Damage or move the relic, including excavation for the purpose of exposing the relic;*
 - (c) Damage or despoil land on which the building, work or relic is situated or land which comprises the place;*
 - (d) Erect a building on or subdivide land on which the building, work or relic is situated or on the land which comprises the place; or*
 - (e) Damage any tree on land on which the building, work or relic is situated or on the land which comprises the place,*
- (2) The determining authority shall not grant consent to a development application made under subclause (1) unless it has made an assessment of -*
- (a) The significance of the item as a heritage item;*
 - (b) The extent to which the carrying out of the development in accordance with the consent would affect the heritage significance of the item and its site;*

- (c) *Whether the setting of the item, and in particular, whether any stylistic, horticultural or archaeological features of the setting should be retained;*
- (d) *Whether the item constitutes a danger to the users or occupiers of that item or to the public; and*
- (e) *Measures to be taken to conserve heritage items including any conservation plan prepared by the applicant.*

With respect to the subject proposal and the land to which it applies, no heritage items or conservation areas are identified by the *Hunter REP – Heritage*.

2.4 Muswellbrook Local Environmental Plan 1985

The *MLEP 1985* applies to all land within Muswellbrook Shire. The land covered by CCL 713 is zoned 7 (L2) and is the designated buffer lands around the town of Muswellbrook. Coal mining is permitted, with consent, in the 7 (L2) zone by virtue of clause 18(2) of the *MLEP 1985*, which states:

“Subject to subclause (3) and (4), the Council may consent to the carrying out of development on land within Zone No. 7 (L2) for –

- (a). *The purposes of underground or open cut mining pursuant to leases or authorisations within the meaning of the Coal Mining Act 1973, which at the appointed day were held in favour of the Muswellbrook Coal Company.”*

The “appointed day” is the day on which the *MLEP 1985* was gazetted and is 9th August 1985.

One of the purposes of the 7 (L2) zone is to make provision for rail and highway by-passes of the town of Muswellbrook. The route of the proposed by-pass of Muswellbrook by the New England Highway is yet to be determined. It is likely that the by-pass will be in close proximity to the proposed No. 1 Open Cut Extension. The timing of works for both of these projects and the selection of the preferred route of the by-pass will greatly influence the extent of interaction between the two projects. The selection of the preferred route of the by-pass will be closely monitored by MCC.

2.4.1 Proposed Subdivisions at North Muswellbrook

On 6 June 2002, MCC were notified of a proposed forty one lot rural residential subdivision of Lots 1 and 2 DP798186, Sandy Creek Road Muswellbrook. The proposed lots in range size from 0.45 to 2.5 ha and would be primarily serviced by an extension of Queen Street from North Muswellbrook to Sandy Creek Road.

MCC has responded to MSC by letter on 27 June 2002 stating that “MCC would like to minimise any possible conflicts between the proposed Subdivision and the proposed (No.1 Open Cut) Extension. To

achieve this, MCC would prefer to see a staged development of the proposed Subdivision, that is the south western half development first, and the north eastern half developed from 2006, after which noise and dust impacts are predicted to reduce as the Extension moves further away.” Copies of the correspondence referred to can be found in **Appendix B** Volume 2 of this EIS.

The information supplied with MSC’s letter of 6 June 2002 indicates that there is potential for a rezoning of further land to the east of the rural-residential subdivision. The rezoning proposed is from Zone 1 (c) Rural Small Holdings to Zone 2 (a) Residential and has not progressed to the development application stage. The land affected by the proposed and potential subdivisions is shown as “11” in the Land Ownership Plan that appears as **Figure ii** following the Executive Summary of this EIS. The potential impacts in terms of noise and air quality upon this land can be assessed from the contour lines that appear on the noise and air quality figures that appear in following sections of this EIS.

2.4.2 Woodland Ridge Subdivision

This rural residential subdivision is located to the south of Muscle Creek Road. As at the 21 June 2002, the new titles for the proposed subdivision had not been created by the Land Titles Office therefore they are not shown on the Land Ownership Plan (**Figure ii**). Construction of roads and provision of services for this subdivision are well advanced. The traffic interactions between those generated by future residents of the subdivision and the proposed No.1 Open Cut Extension are considered in **Appendix L** of this EIS. The lands of the Woodland Ridge Subdivision are shown as “27” in the Land Ownership Plan that appears as **Figure ii** following the Executive Summary. Worst case impacts on the lands of the Woodland Ridge Subdivision for matters such as noise and air quality can be ascertained by consideration of residences “20” and “21” as shown in **Figure 3.7**. Both of these residences are on, or close to, the northern boundary of the subdivision. Consequently they represent locations within the subdivision that will experience the greatest impact or potential impact from the operations of the proposed No.1 Open Cut Extension.

2.5 Upper Hunter Cumulative Impact Study and Action Strategy

This study considered the cumulative impact of various land uses and activities in the Upper Hunter. The Upper Hunter is made up of the Singleton, Muswellbrook, Scone, Merriwa and Murrurundi LGAs. The most important consequence of this study for this proposal and EIS was Strategic Action 3. This was:

Action 3 - Ensure cumulative impact considerations are taken into account in the issuing of Director-General's Requirements in the preparation of environmental impact statements by using the cumulative impact triggers, where appropriate, identified in the study.

As a response, the requirements issued by the Director-General have included the following section:

"xvi. Cumulative Issues

Issues to consider include:

- *Identification of other activities in the area which could act cumulatively with the development, having regard to noise, dust, visual impacts, blasting, water issues, traffic/rail impacts, and any loss of heritage items, vegetation or fauna habitat;*
- *Opportunities for coordinating mining activities of this proposal with other activities in the area to minimise cumulative impacts; and*
- *Proposed monitoring program integrated with other activities or at least consistent indicators and parameters."*

Action 6 - Prepare a landscape master plan for the area subject to mining, to co-ordinate landscaping between existing mines and for incorporation into Environmental Management Plans prepared for future mines, in order to lessen the visual impact of development during the construction and mining phases and ensure appropriate post mining rehabilitation.

To this end, the DMR in association with a number of other organisations, have developed a *Synoptic Plan for Integrated Landscapes for Coal Mine Rehabilitation*. The objectives and principles for integrated landscape design have been taken into account in the preparation of this proposal.

2.6 Consultation with Governmental Authorities and Aboriginal Groups

As per the *EP&A Act 1979* and *EP&A Regulation 2000*, the Director-General of planningNSW was consulted as to the contents of this EIS. The response appears as **Appendix A** to this EIS. Also enclosed, as a separate appendix is a checklist summarising the requirements and detailing where in the EIS any particular requirement has been addressed (refer to **Appendix C**).

Consultation has also taken place with the following authorities and Aboriginal Community organisations;

- Agriculture NSW;
- Department of Land and Water Conservation (DLWC);
- Department of Mineral Resources (DMR);
- planningNSW (previously known as Department of Urban Affairs and Planning);
- EnergyAustralia;
- Environment Australia;
- Environment Protection Authority (EPA);
- Hunter Rural Lands Protection Board;

- Mine Subsidence Board (MSB);
- Muswellbrook Shire Council (MSC);
- National Parks and Wildlife Service (NPWS);
- NSW Coal Compensation Board;
- NSW Fisheries;
- Roads and Traffic Authority (RTA);
- Telstra;
- Upper Hunter Wonnarua Council;
- Wonnarua Local Aboriginal Land Council;
- Wonnarua Nation Aboriginal Corporation; and
- Wonnarua Tribal Council.

All of the above groups were invited to attend a Planning Focus Meeting which was chaired by MSC. The Planning Focus Meeting was held at the Administration Centre of MSC on 14 November 2001. The minutes of this meeting were taken by MSC and are to be found in **Appendix B** in correspondence received from MSC. The format of the Planning Focus Meeting included a presentation of the project by MCC staff and a site visit to the area of the proposed No.1 Open Cut Extension, as well as the current infrastructure areas of MCC's operations. Responses to the questions of the participants were provided by MSC and MCC staff. An opportunity was given for all participants to indicate the areas that the EIS should investigate and report on. In effect the Planning Focus Meeting provided a scope of works for the production of this EIS. Subsequent to the Planning Focus Meeting consultation was undertaken with the Lower Hunter Wonnarua Council.

The responses from MSC and the NSW government agencies appear in **Appendix B**.

2.7 Community Consultation

MCC has maintained a close relationship with the Muswellbrook community since mining began in 1907. MCC acknowledges the importance of consulting with landowners and residents in the area. Therefore MCC has participated in the establishment of the MCCCCC to aid communication with the community. The Committee comprises representatives of the MSC (Chair), community, landowners, near neighbours

and MCC (Mine Manager and Environmental Officer). Meetings are held quarterly to discuss environmental performance, complaints and other environmental issues relevant at the time.

During the planning phase MCC have kept the Muswellbrook community involved in the following ways:

- Production of an informative newsletter distributed to every house in Muswellbrook;
- Convening of public meetings to promote the exchange of information and to brief residents on the proposal and the future of MCC's local operations;
- Information display at Muswellbrook Market Place;
- Door to door canvassing of streets in the North Muswellbrook area;
- Public site inspection;
- A Complaints Register; and
- A 24 hour telephone "hotline" provided to receive environmental enquiries;

Newsletters

A newsletter has been produced to inform the local community of the No. 1 Open Cut Extension proposal and contact details of MCC representatives that were available to discuss the proposal on a personal basis. The newsletter was distributed to all households in Muswellbrook. A copy of the newsletter appears in **Appendix M** of this EIS.

The newsletter contained the following information:

- Background and current operations at MCC;
- Brief outline and progress of the No. 1 Open Cut Extension proposal including impacts and benefits;
- Explanation of the community consultation process and opportunities for involvement; and,
- Contact details for MCC and the mine manager for questions to be asked.

It is anticipated an additional newsletter will be mailed to all Muswellbrook residences to update progress on the No.1 Open Cut Extension proposal.

Public Meetings

Two public information sessions were held to inform the community about the project. A public information session was held at the Muswellbrook RSL on 3 December, 2001. Approximately 30 people attended this meeting. A substantial proportion of the attendees resided in the North Muswellbrook area. The meeting provided information about the proposal and gave attendees the opportunity to ask questions. Group workshops were also held to identify the key issues to the participants and where further information would be helpful in an understanding of the project. Notes from the meeting were sent to all attendees.

A second community information session was held on 8 May, 2002. This session provided information requested from the first meeting's workshops and an update on information collected during the formulation of the EIS. Approximately 20 people attended this meeting. A Power Point presentation of over 70 slides provided information from the draft EIS. A handout which contained information presented electronically during the information session was supplied to all attendees. Notes from the meeting were sent to all attendees mailed to those who indicated they could not attend the meeting and given to people during individual meetings. A handout on the effects of blasting was also provided.

It is anticipated that a third public information session will be conducted to continue the process of providing the public with an opportunity to identify issues for which they require more information or are concerned. MCC has/will respond to the issues raised by the provision of information on proposed actions and an explanation as to why those actions have been selected as being an appropriate response.

Information Display

An information display was set up at Muswellbrook Market Place on 12 and 13 December, 2001. A representative from MCC was available to answer questions and offer information concerning the proposal. The information display communicated the No. 1 Open Cut Extension proposal via videos, Power Point presentation, aerial photographs, maps and plans.

Public Site Inspection

The site inspection was publicised and offered at the first public information session. A site inspection was held for the public on 13 December, 2001. Twelve people attended. The attendees boarded a bus, which then toured the existing No 1 Open Cut, mine facilities and followed the coal transport route along the private haul road. The public were shown areas of subsidence and MCC staff were aboard the bus to answer any questions. MCC have offered the opportunity of a further site inspection for those who were unable to attend the first inspection or who would like a further inspection.

Public Display of Draft EIS

The draft EIS was made available to the public for inspection at the Muswellbrook Library and the MCC offices.

Media Interviews and Press Releases

A number of media interviews and press releases have been provided to the local media, including ABC Radio and the Muswellbrook Chronicle.

Community Contact

Direct contact was made with local residents by way of doorknocking households in the North Muswellbrook and New England Highway areas on the following dates:

- 10, 12 and 13 December 2001;
- 23 and 30 April 2002; and
- 1 and 7 May 2002.

Contact details for MCC staff and information sheets were left with residents for those present and left in the letterbox of those not at home at the time.

Complaints Register and 24 Hour Hot Line

Enquiries and complaints from the public and government agencies are recorded, responded to promptly and used in developing and improving operational mining systems. **Section 4.9** outlines complaints received and action taken to address concerns.

General Contact with the Community

MCC has actively sought out members of the community who may have an interest in the project through asking people with which MCC has contact who else the company should contact and by conventional means of media. Through this process individual meetings have been held, and continue to occur, with residents of North Muswellbrook and other interested stakeholders.

Minewatch have been informed of the progress of the project.

MCC personnel have made themselves available to people who have requested information or wished to discuss the project. Telephone contact has also been made with people with an interest in the project. MCC is continuing to do this.

MCC have indicated they are willing to meet with anyone interested in the project to discuss the project, identify issues and discuss the proposed solutions and seek feedback from the community regarding the project and also how to improve the consultation process.

2.8 List of Approvals

Item 7 of Schedule 2 of the *EP&A Regulation 2000* requires an EIS to contain:

A list of any approvals that must be obtained under any other Act or law before the development or activity may lawfully be carried out.

The approvals sought for the No. 1 Open Cut Extension proposal are listed below.

Integrated Development Consent Approvals

1. Modification to the Environment Protection Licence (EPL) held by MCC under the *Protection of the Environment Operations Act 1997*;
2. Approval from the MSB under the *Mine Subsidence Compensation Act 1990* to alter or erect an improvement within the Muswellbrook Mine Subsidence District;
3. Consent to destroy or damage a relic or Aboriginal place from the NPWS under Section 90 of the *National Parks and Wildlife Act 1974*;
4. Licences for the inception of groundwater from the DLWC under Section 16 of the *Water Act 1912*; and
5. Development Consent from MSC under the *EP&A Act 1979* for the proposed mine extension.

Additional Approvals

1. Application to the Minister for Mineral Resources for new Mining Lease under the provision of the *Mining Act 1992*.

It is usual for the mining lease conditions to specify that the mine must prepare a revised Mining Operations Plan (MOP) in accordance with the DMR's guidelines and submit it to the DMR for its assessment.

2.9 Consideration of Section 79C of the EP&A Act 1979

General matters for consideration under section 79C of the *EP&A Act 1979* have been covered in previous sections of this EIS. The relevant sections and page numbers of the text relating to these matters are shown in **Table 2.1**.

TABLE 2.1 SECTION 79C – MATTERS FOR CONSIDERATION	
Section 79C Matters for Consideration	EIS Reference
(a) The provisions of:	
(i) Any environmental planning instrument;	Section 2
(ii) Any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority;	Section 2
(iii) Any development control plan; and,	Section 2
(iv) <i>The regulations (to the extent that they prescribe matters for the purposes of this paragraph), that apply to the land to which the development application relates.</i>	EIS formulated to conform to the Act and Regulations
(b) The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality;	Section 6
(c) The suitability of the site for the development;	Section 9
(d) Any submissions made in accordance with this Act or the regulations; and,	Any submissions will be reviewed by MSC
(e) The public interest.	Section 9