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Mr H A McTaggart  
02 6549 3860  
DA 2020/43(10)

**MUSWELLBROOK SHIRE COUNCIL**

**NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION  
Issued under the Environmental Planning  
and Assessment Act 1979 (Section 4.18)**

<b>DEVELOPMENT APPLICATION:</b>	<b>2002/205 (Mod 10)</b>
<b>APPLICANT NAME:</b>	Muswellbrook Coal Company Pty Ltd
<b>APPLICANT ADDRESS:</b>	Julie Thomas PO Box 123 MUSWELLBROOK, NSW 2333
<b>LAND TO BE DEVELOPED:</b>	Refer to Appendix A Lot Schedule
<b>PROPOSED DEVELOPMENT:</b>	Open Cut Mine Extension

**DATE OF ORIGINAL DETERMINATION:** 11 August 2003

**DATE OF SECTION 4.55 MODIFICATION  
DETERMINATION:** 20 December 2022

**DETERMINATION:** Consent granted subject to conditions described below.

**CONSENT TO OPERATE FROM:** 11 August 2003

**CONSENT TO LAPSE ON:** NA the development has commenced under the provisions of 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)

**DETAILS OF CONDITIONS:**

## SCHEDULE OF CONDITIONS

GLOSSARY OF TERMS.....	4
GENERAL CONDITIONS.....	6
1. OBLIGATION TO MINIMISE HARM TO THE ENVIRONMENT.....	6
2. ADHERENCE TO TERMS OF DA, EIS, ETC.....	6
3. COMPLIANCE WITH DOCUMENTATION.....	6
4. PERIOD OF APPROVAL.....	6
5. PROJECT COMMENCEMENT.....	7
6. DISPUTE RESOLUTION.....	7
MINE MANAGEMENT.....	7
7. LIMITS ON PRODUCTION.....	7
8. HOURS OF OPERATION.....	7
9. COAL HAULAGE.....	7
10. SECTION 138 PERMIT – MAINTENANCE ON MUSCLE CREEK ROAD.....	7
11. OPERATION OF PLANT AND EQUIPMENT.....	8
12. METEOROLOGICAL MONITORING.....	8
LAND AND SITE ENVIRONMENTAL MANAGEMENT.....	8
13. APPOINTMENT OF ENVIRONMENTAL OFFICER.....	8
14. ENVIRONMENTAL MANAGEMENT STRATEGIES AND PLANS.....	9
15. REHABILITATION.....	11
16. PROGRESSIVE REHABILITATION.....	12
17. REHABILITATION PLAN.....	12
THE REHABILITATION PLAN MUST:.....	12
18. REHABILITATION STRATEGY.....	12
19. CLOSURE PLAN.....	13
20. RESTRICTION AS TO USER – VEGETATION OFFSET AREA.....	14
21. ARCHAEOLOGY AND CULTURAL HERITAGE MANAGEMENT.....	14
22. VISUAL AMENITY, LIGHTING AND LANDSCAPING.....	14
23. BUSHFIRE MANAGEMENT PLAN AND OTHER FIRE CONTROLS.....	15
WATER MANAGEMENT AND MONITORING.....	16
24. DISCHARGE.....	16
25. WATER MANAGEMENT PLAN.....	16
26. WASTE AND WASTEWATER MANAGEMENT,.....	18
AIR QUALITY, BLAST, NOISE MANAGEMENT AND MONITORING.....	18
27. AIR QUALITY – PARTICULATE MATTER – STANDARDS AND GOALS.....	18
28. AIR QUALITY – GAS CONTENT – HEALTH GUIDELINES AND GOALS.....	18
29. AIR QUALITY – MANAGEMENT.....	19
30. AIR QUALITY – MONITORING – DUST.....	20
30A AIR QUALITY – MONITORING – GAS.....	21
31. AIR QUALITY – SPONTANEOUS COMBUSTION.....	22
BLAST MANAGEMENT AND MONITORING.....	23
32. BLASTING CRITERIA AND LIMITS.....	23
33. BLASTING/ VIBRATION MANAGEMENT.....	24
34. BLAST MONITORING.....	25
NOISE MANAGEMENT AND MONITORING.....	25
35. NOISE CONTROL.....	25
36. RELEVANT NOISE CRITERIA FOR THE DEVELOPMENT.....	26
37. NOISE ACQUISITION CRITERIA.....	26
38. INTERPRETATION OF NOISE LEVELS.....	27
NOISE COMPLIANCE ASSESSMENT:.....	27
39. NOISE MANAGEMENT.....	28
40. REQUEST FOR INDEPENDENT MONITORING AND ACQUISITION.....	29
MONITORING/AUDITING.....	31
41. THIRD PARTY MONITORING/AUDITING.....	31
REPORTING.....	32
42. ANNUAL ENVIRONMENTAL MANAGEMENT REPORT (AEMR).....	32
43. INCIDENT REPORTING.....	33

44. ACCESS TO INFORMATION.....	33
COMMUNITY CONSULTATION.....	34
45. COMMUNITY CONSULTATIVE COMMITTEE.....	34
46. COMPLAINT HANDLING PROCEDURES.....	34
APPLICANT’S OBLIGATIONS.....	35
47. AREA OF MITIGATION – PROPERTIES REQUIRING MITIGATION.....	35
48. ADAPTIVE MANAGEMENT.....	36
49. AREA OF AFFECTATION – LAND ACQUISITION.....	36
50. CUMULATIVE IMPACT MANAGEMENT.....	37
51. CONTRIBUTIONS TO COUNCIL.....	38
FURTHER APPROVALS AND AGREEMENTS.....	38
52. BUILDING CODE OF AUSTRALIA.....	38
53. DEMOLITION OF STRUCTURES.....	39
54. PROTECTION OF PUBLIC INFRASTRUCTURE.....	39
APPENDIX A – SCHEDULE OF LAND.....	40
APPENDIX B – GENERAL LAYOUT.....	41
APPENDIX C – RECEPTOR LOCATION MAP.....	42
APPENDIX C – RECEPTOR LOCATION DETAILS.....	43
APPENDIX D – DISPUTE RESOLUTION PROCESS.....	44
APPENDIX E – VOLUNTARY MITIGATION MEASURE PROCESS.....	45
APPENDIX F – LAND ACQUISITION PROCESS.....	46

<b>GLOSSARY OF TERMS</b>	
	<b>Definition</b>
<b>Agricultural Productivity</b>	as defined by the Agricultural Suitability Classification System used by NSW Agriculture.
<b>AEMR</b>	Annual Environmental Management Report
<b>BCA</b>	Building Code of Australia (also known as the National Construction Code)
<b>CCC</b>	Community Consultative Committee
<b>Construction</b>	Construction of associated surface facilities and infrastructure, such as dams, new access roads, culverts, level crossing etc
<b>Council</b>	Muswellbrook Shire Council
<b>DA</b>	Development Application
<b>DA area</b>	Development Application area Shown in Appendix B of this consent.
<b>EMP</b>	Environmental Management Plan
<b>EMS</b>	Environmental Management Strategy
<b>EP&amp;A Act</b>	Environmental Planning and Assessment Act 1979
<b>EP&amp;A Reg</b>	Environmental Planning and Assessment Regulation 2000
<b>EPL</b>	Environmental Protection Licence
<b>Feasible</b>	Feasible relates to engineering considerations and what is practical to build or implement
<b>Incident</b>	A set of circumstances that: <ul style="list-style-type: none"> <li>• Causes or threatens to cause material harm to the environment; and/or</li> <li>• Breaches or exceeds the limits or performance measures/criteria in this consent</li> </ul>
<b>Independent Dispute Resolution</b>	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)
<b>LGA</b>	Local Government Area
<b>Material harm to the environment</b>	Actual or potential harm to the health or safety of human beings or to ecosystems that is not trivial
<b>MHRDC</b>	Maximum Harvestable Rights Dam Capacity
<b>MCC</b>	Muswellbrook Coal Company Limited
<b>Mining Operations</b>	Includes the removal of overburden and extraction, processing, handling, storage and transportation of coal on site.
<b>Mtpa</b>	Million Tonnes per annum
<b>Operations</b>	Any work undertaken under this consent
<b>POEO Act</b>	Protection of the Environment Operations Act 1997
<b>Privately owned land</b>	Land that is not owned by the Crown or a mining company (or its subsidiaries)
<b>Reasonable</b>	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.
<b>Rehabilitation</b>	The restoration of land disturbed by the development to a good condition, and ensure it is safe, stable and non-polluting.
<b>ROM</b>	Run of Mine
<b>SEE</b>	Statement of Environmental Effects
<b>VPA</b>	Voluntary Planning Agreement

<b>Government Authorities</b>		
<b>DP&amp;E</b>	Department Planning and Environment	Or the State Agency applicable at the time
<b>DRE</b>	Department of Resources and Energy	
<b>EPA</b>	Environment Protection Authority	
<b>MSB</b>	Mine Subsidence Board	
<b>MSC</b>	Muswellbrook Shire Council	
<b>OEH</b>	Office of Environment and Heritage	
<b>DPI</b>	Department of Primary Industries	
<b>DPI Water</b>	Department of Primary Industries – Water	
<b>RMS</b>	Roads and Maritime Services	

Note: To assist with the explanation of the intent of certain conditions in this consent, a number of flow charts are provided in the attached Schedule A, which illustrates the various processes contained in this consent.

**SCHEDULE 1**  
**SUMMARY OF MODIFIED CONDITIONS OF CONSENT**

This Schedule includes a summary of 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, updated to reflect Section 4.55 Modification updated plans
- Condition 4, updated to reflect extension of time for coal handling, storage and transport to 31 March 2023.
- Condition 8, updated to reference operating hours for handling and transport.
- Appendix A modified to reflect current Lot and DP references.

**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.**

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 September 2022
- ii. The accompanying SEE titled "Muswellbrook Coal Continuation Project, 1 & 2" by EMM dated April 2016.
- iii. "Muswellbrook Coal Continuation Project Response to Submissions" dated 20 July 2016.
- iv. 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;
- v. 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.

**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 out carry mining operations until 31 December 2022, with the exception of 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 rehabilitate the site to the satisfaction of Council and the DRE. Consequently, this consent will continue to apply in all other respects other than the right to conduct mining operations until the rehabilitation of the site has been carried out satisfactorily.

## 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.
- 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 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 mining operations. At the end of mining operations 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 Environmental Officer**

- (a) The Applicant must ensure that a suitably qualified or experienced Environmental Officer, to the satisfaction of Council is available throughout the life of the mine. The Environmental Officer 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. The Environmental Officer 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, DRE, MSB, EPA, OEHL, DPI-Water and the CCC of the name and contact details of the Environmental Officer and any changes to that appointment.

#### **14. Environmental Management Strategies and Plans**

- (a) The Applicant must prepare an Environmental Management Strategy, providing a strategic context for the Environmental Management Plans. The Environmental Management Strategy must be prepared following consultation with the OEHL, EPA, DRE, DPI Water and the CCC and 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) overall ecological and community objectives for the project, and a strategy for the restoration and management of the areas affected by Mining Operations, including elements such as wetlands and other habitat areas, creek lines and drainage channels, within the context of those objectives;
  - (v) identification of cumulative environmental impacts and procedures for dealing with these at each stage of the development;

- (vi) 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.
- (vii) processes for conflict resolution in relation to the environmental management of the project; and
- (viii) 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, OEH, DRE, MSB, DPI Water and the CCC and be placed on the Applicant's website following approval by Council.
- (d) The Applicant must prepare the following Environmental Management Plans and submit to Council for review at the times listed below, or at other times as agreed by Council, following approval of the Continuation Project Modification:

Document	Timeframes following approval date of Continuation Project
Environmental Management Strategy	6 months
Spontaneous Combustion Management Plan	3 months
Visual Amenity, Lighting and Landscaping Management Plan	6 months
Bushfire Management Plan	12 months
Mine Closure Plan	12 months
Water Management Plan	6 months
Rehabilitation Plan	6 months
Rehabilitation Strategy	6 months
Air Quality Management Plan	3 months
Blasting/ Vibration Management Plan	3 months
Noise Management Plan	3 months

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

- (e) The Management Plans or Strategies are to be reviewed, and updated every three years or at other reasonable times as directed by Council, in consultation with the relevant government agencies. With the agreement of Council, the Applicant may prepare any revised plan or strategy without consultation with all parties under the applicable condition of this consent.

The review should consider contemporising environmental requirements or changes in technology/operational practices. Any changes which are proposed shall be made and approved in the same manner as the initial Environmental Management Plan or Strategy. The Management Plans or

Strategies shall be made publicly available within two weeks of approval by Council.

The Applicant must implement the approved management plans as approved from time to time by Council.

## 15. Rehabilitation

- (a) The Applicant must rehabilitate the site to the satisfaction of the DRE.
- (b) Rehabilitation must be substantially consistent with the rehabilitation Objectives described in the SEE (EMM April 2016) Appendix B.
- (c) Rehabilitation must be in accordance with the Rehabilitation Plan.

Rehabilitation Feature	Objectives
Mine site (as a whole of the disturbed land and water)	<p>Safe, stable and non-polluting, fit for purpose of the intended post-mining land uses(s).</p> <p>Final landforms designed to incorporate natural micro-relief and natural drainage lines, which, where reasonable and feasible, further avoid straight run drainage drop structures, to integrate with surrounding landforms.</p>
Rehabilitation materials	Materials (including topsoils, substrates and seeds of the disturbed areas) are recovered, appropriately managed and used effectively as resources in the rehabilitation.
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>Final landforms incorporate design relief patterns and principles for consistency with natural drainage.</p>
Final voids	<p>Minimise to the greatest extent practicable:</p> <ul style="list-style-type: none"> <li>• The size and depth of the final void</li> <li>• The drainage catchment of the final void</li> <li>• Any high wall instability risk</li> <li>• Risk of flood interaction (flows in and out of the void)</li> </ul> <p>Maximise, to the greatest extent practicable, integration of the final void landform with the natural terrain features of the surrounding landscape.</p>
Water Quality	Water retained on site should be fit for the intended land use(s) for the post-mining domain(s).
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.</p> <p>The Native Vegetation Belt / Fauna Corridor links with the existing vegetation near Bells Mountain and Skelletar Ridge.</p>
Post-mining agricultural pursuits	The land capability classification for the relevant nominated agricultural pursuit for each domain is

	<p>established and self -sustaining with the aim of being achieved within 5 years of land use establishment (first planting of vegetation).</p> <p>Demonstrate the long - term sustainable grazing of rehabilitated pasture is achieved, including sloping landforms.</p>
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## 16. Progressive Rehabilitation

The Applicant must carry out all surface disturbance activities (e.g. pre-stripping in advance of mining) in a manner that, as far as is reasonably practicable, minimises potential for dust emissions and shall carry out rehabilitation of disturbed areas progressively, as soon as reasonably practicable, to the satisfaction of the Director, Environmental Sustainability, of DRE.

## 17. Rehabilitation Plan

The Applicant must prepare a Rehabilitation Plan to the satisfaction of the Director, Environmental Sustainability, DRE.

The Rehabilitation Plan must:

- a) Be consistent with the Rehabilitation Strategy;
- b) Be approved by the Director, Environmental Sustainability prior to carrying out any surface disturbance activities, on land subject of the Modification, unless otherwise agreed by Council.
- c) Be prepared in accordance with the DRE guidelines and in consultation with DRE, OEH, Council and the Community Consultative Committee;
- d) Incorporate and be consistent with the rehabilitation objectives of the SEE (EMM April 2016) and Appendix B of the SEE, and the Rehabilitation Strategy required by this consent;
- e) Integrate and build on, to the maximum extent practicable, the other management plans required under this consent;
- f) Address all aspects of mine closure and rehabilitation, including post mining land use domain, rehabilitation objectives, completion criteria and rehabilitation monitoring and management, and;
- g) Include the location of the proposed Muswellbrook Bypass on relevant plans by way of including the Bypass zoning boundary on the plans.

## 18. Rehabilitation Strategy

The Applicant must prepare a Rehabilitation Strategy for the Muswellbrook Coal Mine site to the satisfaction of Council. This strategy must:

- (i) Provide for the establishment of habitat corridors as part of the final rehabilitated landform to replace areas of forest and woodland

vegetation that are to be removed under the proposed mine plan. The strategy must outline the vegetation species selected for the corridor, the width and length of the corridor and how this corridor's specifications will facilitate the movement of the identified species planned for its use;

- (ii) ensure that any vegetated areas cleared for any future construction purposes and not utilised in the Mining Operations are restored at least to a condition as agreed to by consultation with relevant stakeholders;
- (iii) develop a plan for vegetation rehabilitation involving re-establishment of native species, especially groundcover species, in order to prevent erosion and future degeneration of the communities;
- (iv) ensure that all rehabilitated slopes are effectively and appropriately stabilised. Consider the use of native vegetation on the void slopes and pasture grasses on flatter areas to improve land use outcomes and minimise maintenance;
- (v) provide that a minimum of 23ha shall be re-forested utilising the following species that shall be sourced from local seed provinces; Grey-box, Bulloak, Narrowed-leaved Iron Bark and Grey Gum or an equivalent area of 23ha comprising of similar flora structural and floristic characteristics in green-offsets;
- (vi) outline and describe a stormwater drainage design for the mine site;
- (vii) explain the timeframe of rehabilitation, both in terms of topsoil remediation and for the lifespan of erosion and sediment control structures on the site;
- (viii) Where possible and if available, suitable timber cleared from the mine site is to be used to create stag trees for wildlife habitat in the rehabilitated areas, and;
- (ix) Include the location of the proposed Muswellbrook Bypass on relevant plans by way of including the Bypass zoning boundary on the plans.

The Applicant must implement the approved Strategy as approved from time to time by Council.

## **19. Closure Plan**

The Applicant must prepare a Mine Closure Plan for the development to the satisfaction of Council, and carry out the development in accordance with this plan. The plan must:

- Be prepared in consultation with DRE and DPI Water;
- Provide a description of the known reasonable history of mining operations conducted within the consent boundary.

- Provide detailed plans showing final landform and drainage detail;
- Define the objectives and criteria for mine closure, with the exception of rehabilitation objectives and criteria, which are defined in the Rehabilitation Plan;
- Provide a chart outlining the indicative timing and sequence of the closure project;
- Outline the process to make changes to management plans during and following closure and where the closure plan will supersede management plan requirements;
- Describe measures that would be implemented to minimise or manage the ongoing environmental effects of the development;
- Describe how the performance of these measures would be monitored over time;
- Describe the changes to the monitoring regime of the development following the cessation of mining; and
- Include the location of the proposed Muswellbrook Bypass on relevant plans by way of including the Bypass zoning boundary on the plans.

## **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 caveat 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.

## **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 the Office of Environment and Heritage 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) make available to the Rural Fire Service and emergency services when required, personnel, water carts and trucks in cases of bushfire on the mine site; and
- (b) prepare a Bushfire Management Plan for the development area to the satisfaction of Council and the Rural Fire Service.

## WATER MANAGEMENT AND MONITORING

### 24. Discharge

Unless an EPL or the EPA authorises otherwise, the Applicant must ensure that all surface water discharges from the site comply with the:

- (a) Discharge limits (both volume and quality) set for the development in the EPL and;
- (b) Relevant provisions of the POEO Act or *Protection of the Environment Operations (Hunter River Salinity Trading Scheme) Regulation 2002*.

### 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 in consultation with DPI Water 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 <sub>10</sub> )	30ug/m <sup>3</sup> (annual mean)

**Table 2.** *Short Term Particulate Matter Criteria*

Pollutant	Criterion
Particulate Matter <10µm (PM <sub>10</sub> )	50µg/m <sup>3</sup> (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 <sub>2</sub> )	80 ppb (24hr average)	200 ppb (1hr average)
Hydrogen Sulphide (H <sub>2</sub> 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.

Note: Appendix E of the determination outlines the process for mitigation measures

- (c) If the independent dust investigations in sub-clause (b) above confirm that dust levels from the Project alone are in excess of the relevant criteria detailed in Tables 1 and 2 of the consent, and if the measures in sub-clause (b)(iii) (1) above do not reduce the dust levels, from the Project alone, below the criteria detailed in the consent, or if agreement in accordance with sub-clause (b)(iii) (2) above cannot be reached, the Applicant must at the written request of the owner acquire the relevant property. Acquisition shall be generally in accordance with the procedures set out in Condition 49 of this consent.
- (d) 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.

### **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) In the event that 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 endorsed by a suitably qualified expert/s whose appointment/s have been approved by Council;
- b. Describe what measures are to be undertaken to minimize the occurrence of spontaneous combustion. Should spontaneous combustion occur, describe what methods would be employed to extinguish, or reduce the size and duration of the outbreak. 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. The highwall and existing known U/G mine workings in the No.1 pit,
- ii. The overburden/interburden removal and coal removal in the No.1 pit,

- iii. Active and recent emplacement areas within the No.1 pit,
  - iv. The No.2 pit,
  - v. Coal emplacement and storage areas,
  - vi. 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 an updated Blast Management Plan, in consultation with EPA and DRE, 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;
- (xii) location of blast monitors to assess blasting within the development; and
- (xiii) when blasting is no longer required for this development, the management plan will need to be revised to suspend requirements of Blast Monitoring (Cond. 34) and Blast Management Plan requirements listed in this consent.

The Applicant must implement the approved Blast Management Plan.

- (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.

#### **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 <sub>Aeq</sub> (15 minute)	L <sub>Aeq</sub> (15 minute)	L <sub>Aeq</sub> (15 minute)	L <sub>A1</sub> (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
R11	39	39	39	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 <sub>Aeq</sub> (15 minute)	L <sub>Aeq</sub> (15 minute)	L <sub>Aeq</sub> (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
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 that 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 for revised noise monitoring and management requirements once mining ceases and the closure and final rehabilitation process commences.

#### **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.

Note: Appendix E of the determination outlines the process for mitigation measures

(b) Acquisition

- (i) If the independent noise investigation(s) in (a) above confirms that the noise acquisition criteria detailed in Table 5 is being repeatedly exceeded by the development alone, and the measures detailed in the consent do not reduce the levels below this criteria, the Applicant must at the written request of the landowner acquire the relevant property. Acquisition shall be in accordance with the procedures set out in the consent.
- (ii) If the independent noise investigations confirm that the noise acquisition criteria is being repeatedly exceeded as a result of cumulative impacts, including a contribution from the development, the Applicant must enter into consultation with neighbouring mines for the purchase of the affected property in accordance with the Acquisition procedure set out in the consent.

- (c) If continued complaints and noise investigation confirm that the noise criteria is being exceeded as a result of the contribution from the development, but are less than the noise acquisition criteria, the Applicant must negotiate with the landowner until a resolution to the satisfaction of Council is reached.
- (d) If a landowner disputes any noise mitigation or other measures proposed by the Applicant in accordance with sub-clause (a) above, the matter shall be referred by either the Applicant or landowner to Council. Where possible the principles of the DP&E's Voluntary Land Acquisition and Mitigation Policy will apply. If the matter cannot be resolved within 21 days, the matter shall be referred to the Independent Dispute Resolution Process.
- (e) Further independent investigations shall cease if Council is satisfied that the relevant criterion in Condition 6.4.2 (a) is not being exceeded and are unlikely to be exceeded in the future.
- (f) The Applicant is to pay the full costs incurred in the monitoring, assessment, mitigation or acquisition costs to be implemented, if they apply.

## MONITORING/AUDITING

### 41. Third Party Monitoring/Auditing

#### Independent Environmental Auditing

- (a) Every three years from the date of this consent until completion of activity in the application area, or as otherwise agreed by Council, the Applicant must conduct an environmental audit of the mining and infrastructure areas of the development.

Copies of the report shall be submitted by the Applicant to Council, EPA, DRE, OEH, DPI Water 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, DRE and DPI – Water.
  - 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 and DRE.

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, DRE, DPI Water 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;
  - (x) status of rehabilitation and revegetation works; and
  - (xi) environmental management targets and strategies for the next year, taking into account identified trends in monitoring results.
- (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, DRE, DPI Water, EPA, OEH, 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 Environmental Officer employed by the mine shall be responsible for:
  - (i) establishing and maintaining a system for recording complaints with respect to mine operations on a dedicated and publicly advertised telephone line, 24 hours per day 7 days per week, entering complaints or comments in an up to date log book, or other suitable data base, and ensuring that an initial response is provided to the complainant within 24 hours;

- (ii) providing 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, DRE, and CCC, or as otherwise agreed by Council. A summary of this report shall be included in the AEMR.
- (iii) consulting with the environmental officer(s) employed by 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

Within one month of the date of the approval of the Continuation Project Modification the Applicant must:

- i. notify in writing the owners of any residences being listed in Table 6 below that they have the right to request the Applicant to ask for additional noise and/or air quality mitigation measures (as applicable) to be installed at their residence at any stage of the development until mining operations are completed on site.
- ii. send a copy of the NSW Health fact sheet entitled "Mine Dust and You" (as may be updated from time to time) to the owners and or existing tenants of any land where the predictions in the SEE (2016) identify that dust emissions generated by the development are likely to be greater than the relevant air quality criteria in this consent at any time during the life of the development.

**Table 6 - Land subject to additional mitigation upon request**

Mitigation Basis	Characterisation of Impact	Land
Noise	Moderate	11, 12, 13, 24, 25, 40, 41, 42
Air Quality	N/A	25, 40

#### Notes

To interpret the land referenced to in Table 6 see Appendix C of this consent.

Definitions of Moderate mitigation are given in the DPE's Voluntary Land Acquisition and Mitigation Policy.

Where the "Secretary" is referred to in the DP&E's Voluntary Land Acquisition and Mitigation Policy, it should be replaced with Council for the purposes outlined in the document and this consent.

Upon receiving a written request from the owner of any residence on the land in the table above, the Applicant must implement additional noise and/or air quality mitigation measures as required at or in the vicinity of the residence in consultation with the landowner. These measures must be consistent with measures outlined in the DPE's Voluntary Land Acquisition and Mitigation Policy. They must also be reasonable and feasible and proportionate with the level of predicted impact.

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, which must then determine the dispute based on the principles outlined above.

#### **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 Affection – Land Acquisition**

- a) Within three (3) months of receiving a written request from a landowner with acquisition rights under Condition 30(c) or 40(b)(i) of this consent, the Applicant must make a binding written offer to the landowner based on:
  - (i) the current market value of the owner's interest in the land at the date of the written request as if the land was unaffected by the Project the subject of this DA, having regard to:
    - the existing and permissible use of the land in accordance with the planning instruments in force at the date of the written request; and
    - the presence of improvements on the land and/or any Council approved building or structure which is substantially commenced at the date of the request and is due to be completed subsequent to that date, but excluding any improvements that have resulted from the implementation of noise and/or dust mitigation measures that have been paid for by the Applicant pursuant to this consent;
  - (ii) the owner's reasonable compensation for disturbance allowance and relocation costs within the Muswellbrook Local Government Area, or within such other nearby location as may be determined by Council in exceptional circumstances; and
  - (iii) the owner's reasonable costs for obtaining legal advice and expert witnesses for the purposes of determining the acquisition price of the land and the terms upon which it is to be acquired.

- b) However, if the Applicant and landowner cannot agree on the acquisition price of the land and/or the terms upon which the land is to be acquired, then either party may refer to matter to Council for resolution.
  - (i) Upon receiving such a request, the Council shall request the President of the Australian Property Institute to appoint a qualified independent valuer or Fellow of the Institute, who shall determine, after consideration of any submissions from the owners and the Applicant, a fair and reasonable acquisition price for the land as described in sub-clause (b) and/or terms upon which it is to be acquired.
- c) The Applicant shall bear the costs of any survey assessment requested by the independent valuer, and the costs of determination referred to in sub clause (b).
- d) Upon receipt of a determination pursuant to sub-clause (b), the Applicant shall, within 14 days, offer in writing to acquire the relevant land at a price not less than the determination. Should the Applicant's offer to acquire not be accepted in writing by the owner within six (6) months of the date of such offer, the Applicant's obligations to purchase the property shall cease, unless the Council, acting reasonably, determines otherwise.
- e) In the event that the Applicant and the land owner agree that only part of the land is to be transferred to the Applicant, the Applicant shall pay all reasonable costs associated with applying for Council approval to any plan of subdivision and registration of the plan at the Office of the Registrar-General.
- f) The provisions of this condition do not apply to a land owner who is the holder of an authority under the Mining Act, 1992.
- g) Notwithstanding any other condition of this consent, the Applicant may, upon request of the landowner, acquire any property affected by the project during the course of this consent on terms agreed to between the Applicant and the landowner.

Note: Appendix F of the determination sets out the process for land acquisition.

## **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 Director-General 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 MSB.

**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 MSB'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****Schedule of Land**

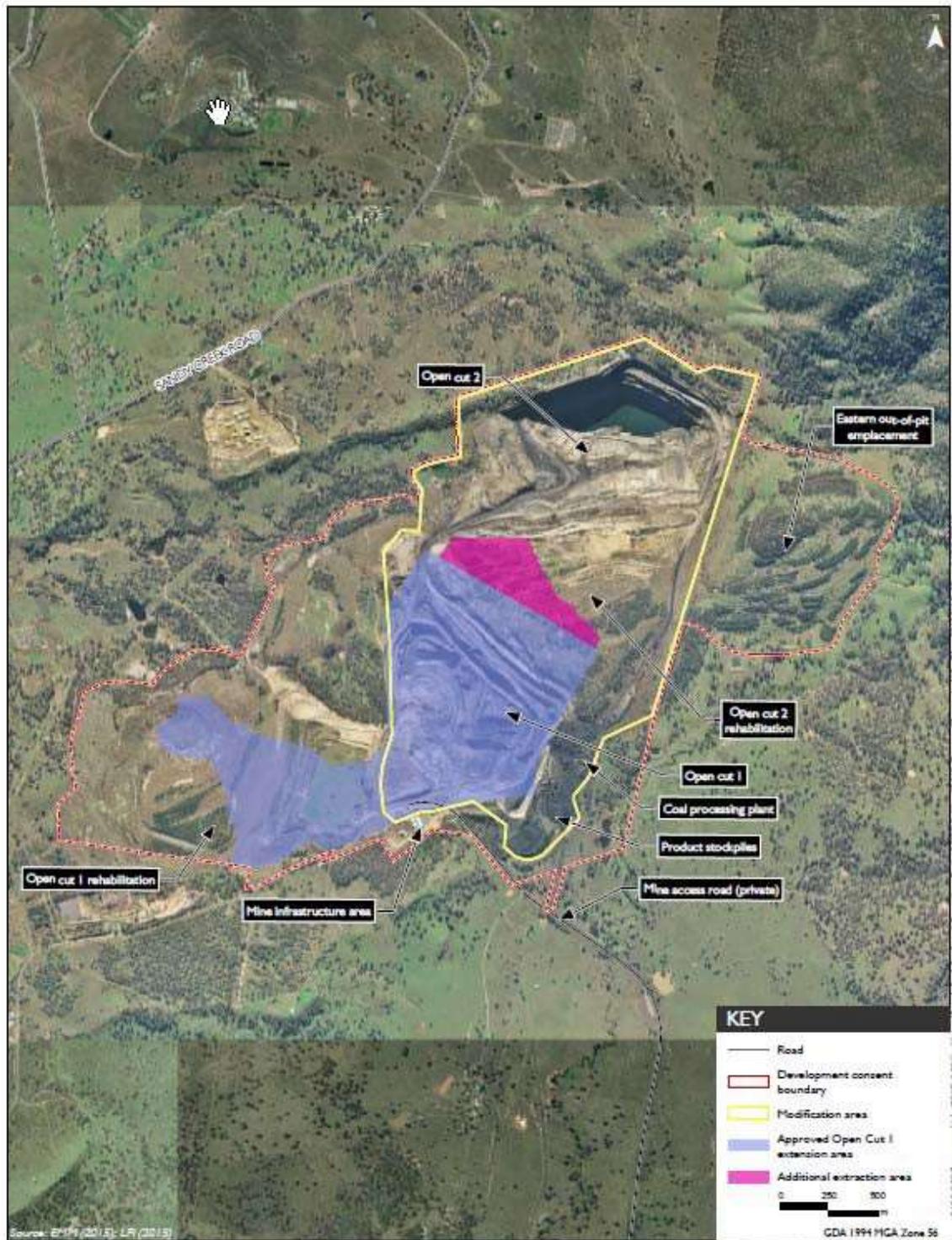
<b>Lot</b>	<b>Deposited Plan (DP)</b>	<b>Owner</b>
681	611756	Muswellbrook Coal Company (MCC)
682	611756	MCC
1	571355	MCC
1	723294	MCC
2	723294	MCC
97	752484	MCC
1	45525	MCC
82	231202	MCC
811	534516	MCC
58*	752484	MCC
59*	752484	MCC
60*	752484	MCC
62*	752484	MCC
61*	1113302	MCC
1*	1004305	MCC
70*	752484	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
5*	26760	MCC
6*	26760	MCC

<b>Lot</b>	<b>Deposited Plan (DP)</b>	<b>Owner</b>
20*	16352	MCC
402*	578075	MCC
<u>3*</u>	<u>1220491</u>	<u>MCC</u>
<u>4*</u>	<u>1220491</u>	<u>MCC</u>
71*	629631	MCC
101*	1148216	MCC
1*	46760	MCC

## Notes:

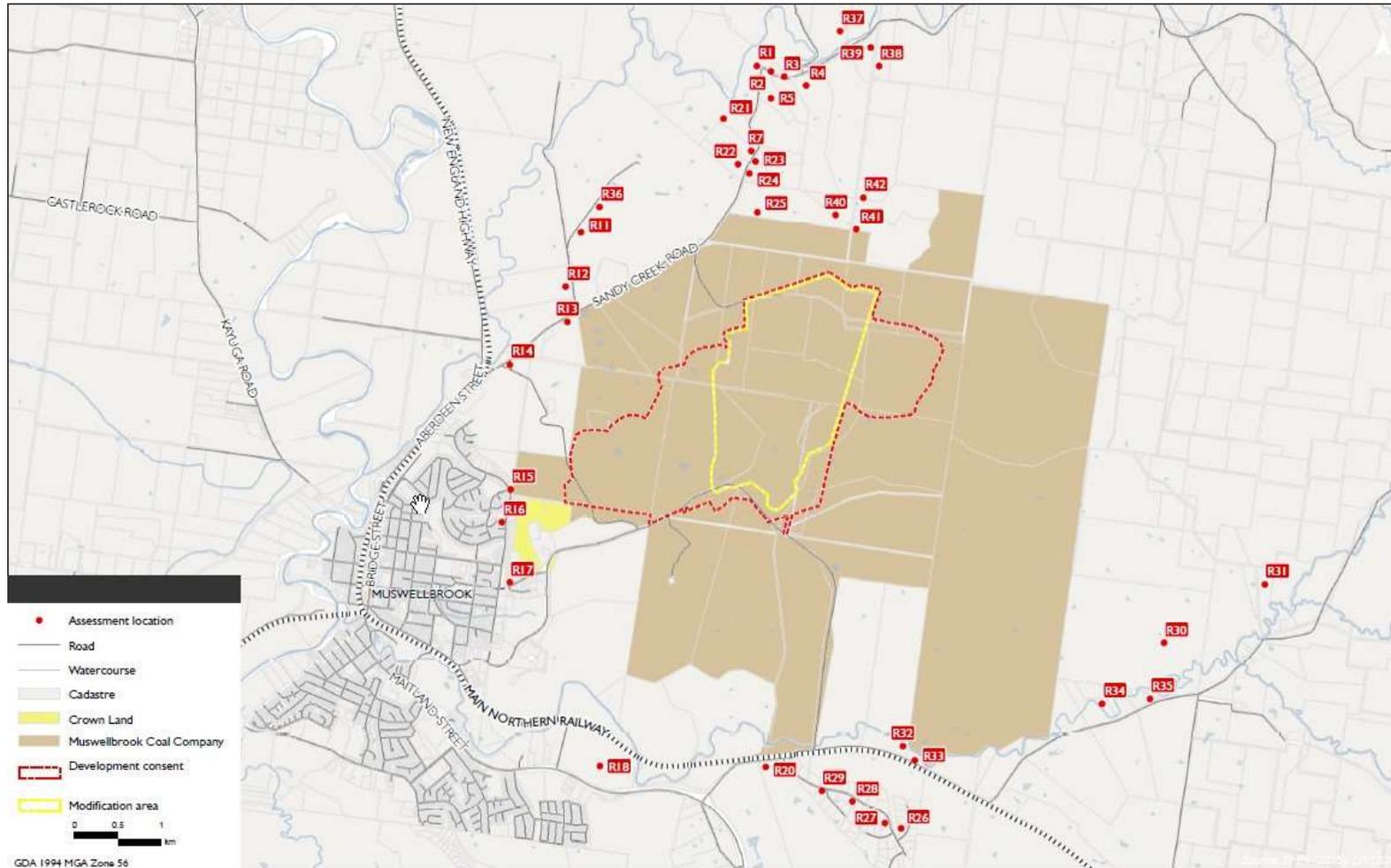
1. \*Part of block within DA Boundary
2. Schedule of Land applies to those areas of land within the DA Boundary

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

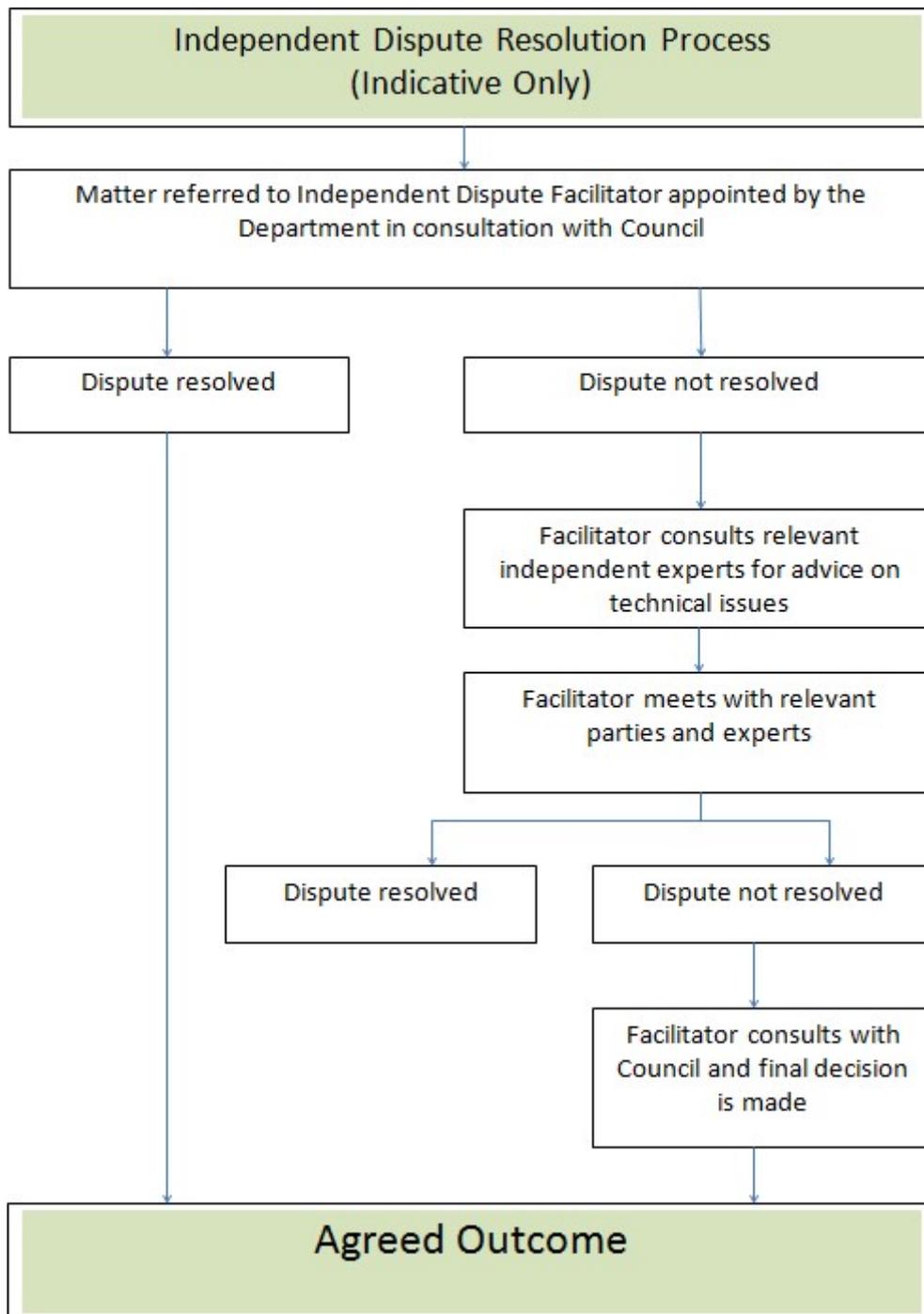


Land ownership and assessment locations

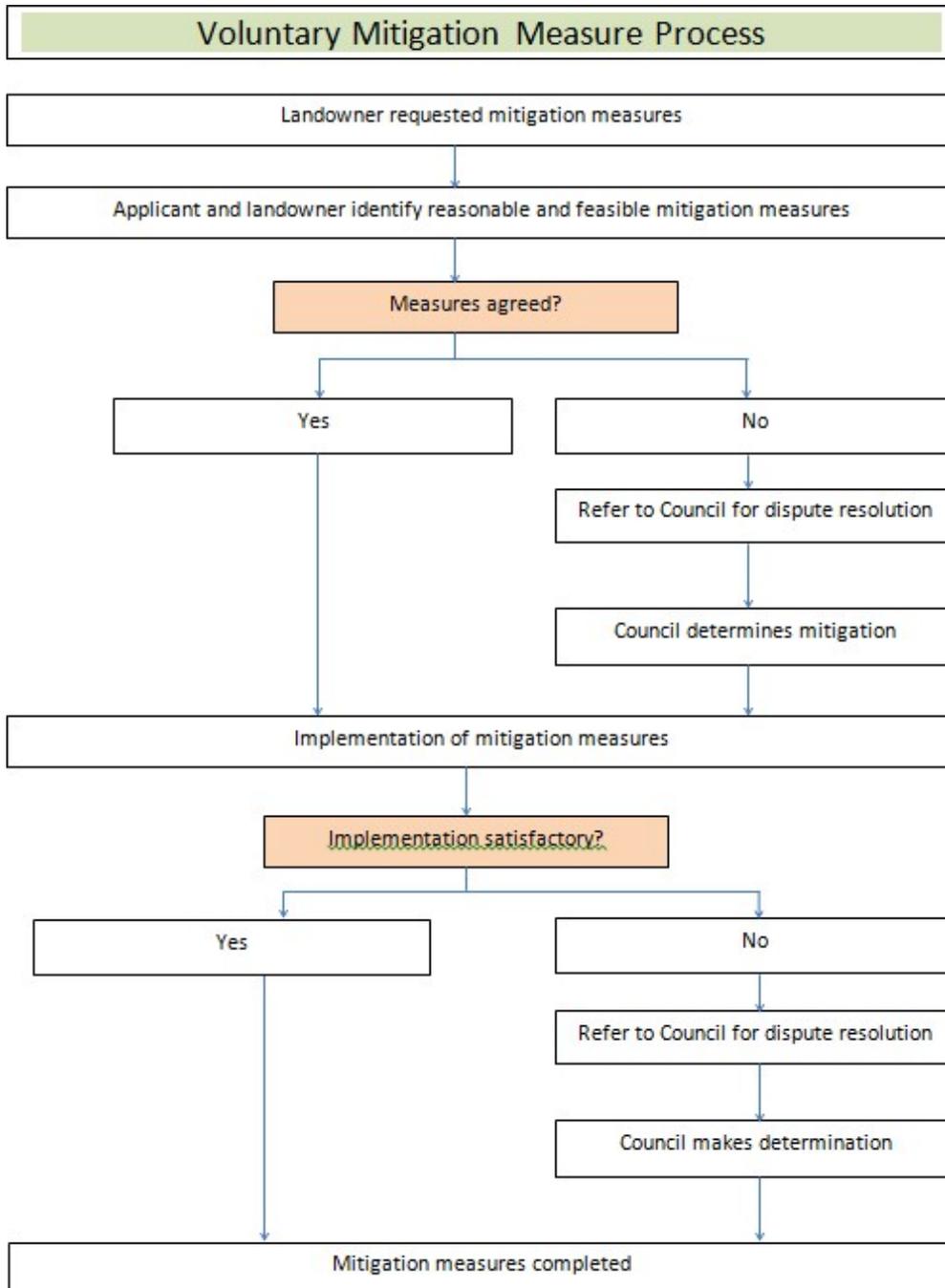
**Appendix C – Receptor location details**

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

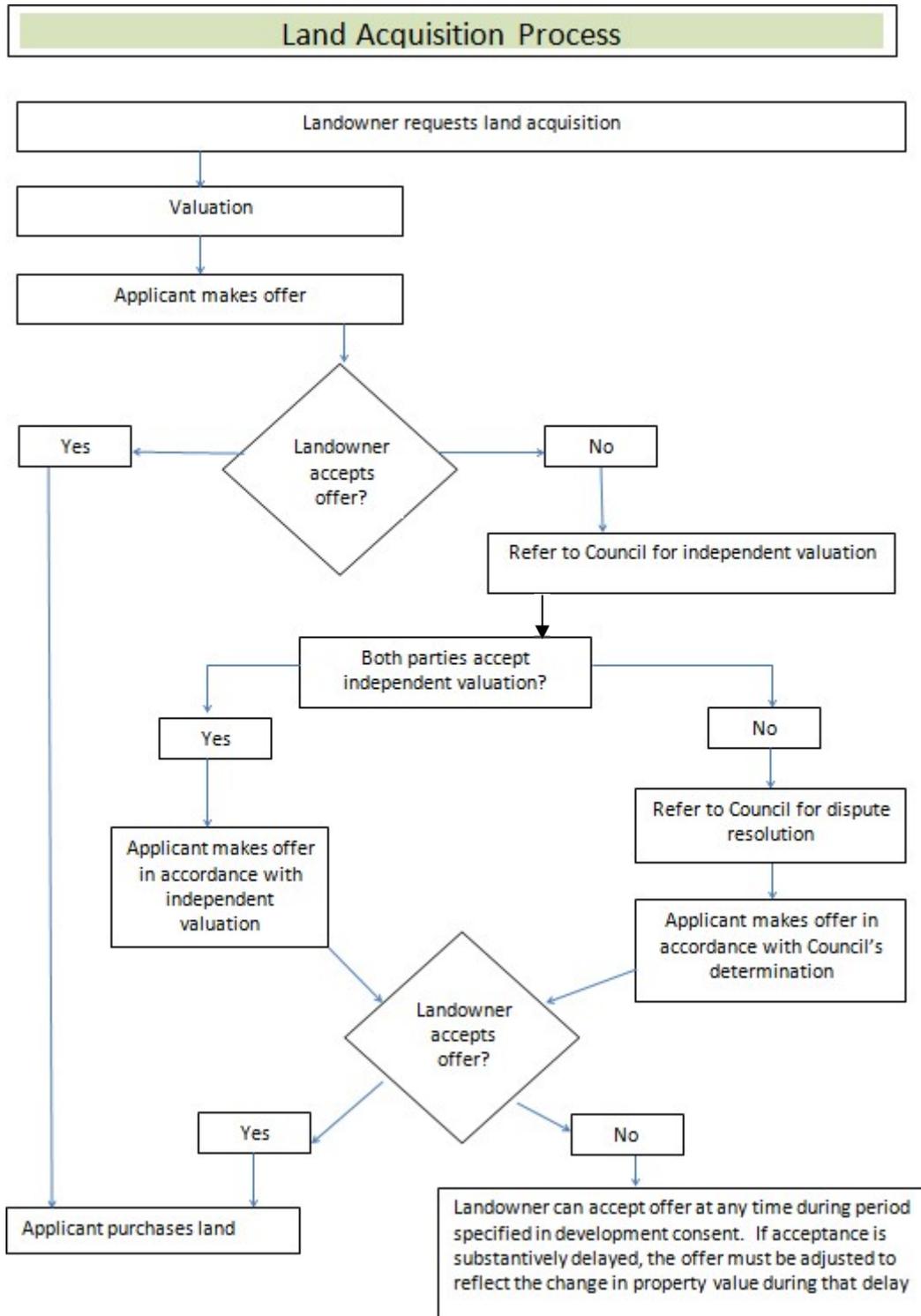
**Appendix D – Dispute Resolution Process**



**Appendix E – Voluntary Mitigation Measure Process**



**Appendix F – Land Acquisition Process**



It should be noted that this approval remains effective from the original date of consent, 11 August 2003.

Section 96 confers on an applicant who is dissatisfied with this determination a right of appeal to the Land and Environment Court under Section 96(6) of the Environmental Planning and Assessment Act 1979 (except in the case of State Significant Development). This appeal provision is pursuant to the Land and Environment Court Rules and is exercisable within sixty (60) days of the date of determination.

Should you require further information in relation to this matter, please contact me on 02 6549 3777.

**APPROVED BY COUNCIL AND SIGNED ON BEHALF OF THE CONSENT AUTHORITY**



Hamish McTaggart  
**Development Coordinator**  
22 December 2022