



Mr Steve Barry
Planning Director
Independent Planning Commission of NSW

Via email: [REDACTED]

Dear Mr Barry

**Hume Coal Project and Berrima Rail Project (SSD 7172 & SSD 7171)
Second Referral- Request for Information**

I refer to the Independent Planning Commission's (the Commission's) letter to the Department of Planning, Industry and Environment (the Department) dated 14 July 2021, concerning the assessment of the Hume Coal Project and Berrima Rail Project (the project).

The Commission has requested the Department's further consideration of a number of matters in relation to the project. The Commission's questions are reproduced below (in bold italics), along with the Department's responses.

- 1. In consideration of potential disruptions, please provide further information regarding the existing and proposed number of additional rail movements per day, the number of 'at grade' level rail crossings between the project site and the Port Kembla terminal and how the potential impacts of train movements were considered in the Department's assessment.***

The rail network between the site and Port Kembla is shown on **Figures 1 to 3** below, and comprises:

- the Berrima Branch Line (including the proposed extension);
- a short section of the Main Southern Rail Line between Berrima Junction and Moss Vale;
- Moss Vale to Unanderra Line; and
- Unanderra to Port Kembla Coal Terminal.

The Berrima Branch Line has a practical operating capacity of approximately 40 train movements per day (20 in each direction), and Hume Coal's assessment assumes that there are currently 26 train movements per day on the line (13 in each direction). In other words, the line is currently operating at approximately 65% of practical capacity.

Hume Coal notes that this figure is highly conservative, as current Berrima Branch Line movements typically average 8 train movements per day (4 in each direction), mainly associated with the Berrima Cement Works.

The project would generate up to 8 additional train movements per day on the network (4 in each direction), which would increase total movements on the Berrima Branch Line to approximately 34 train movements per day (17 in each direction). This cumulative total would represent approximately 77% of the practical operating capacity on the line. Similar capacity is available on the broader sections of the rail network to Port Kembla

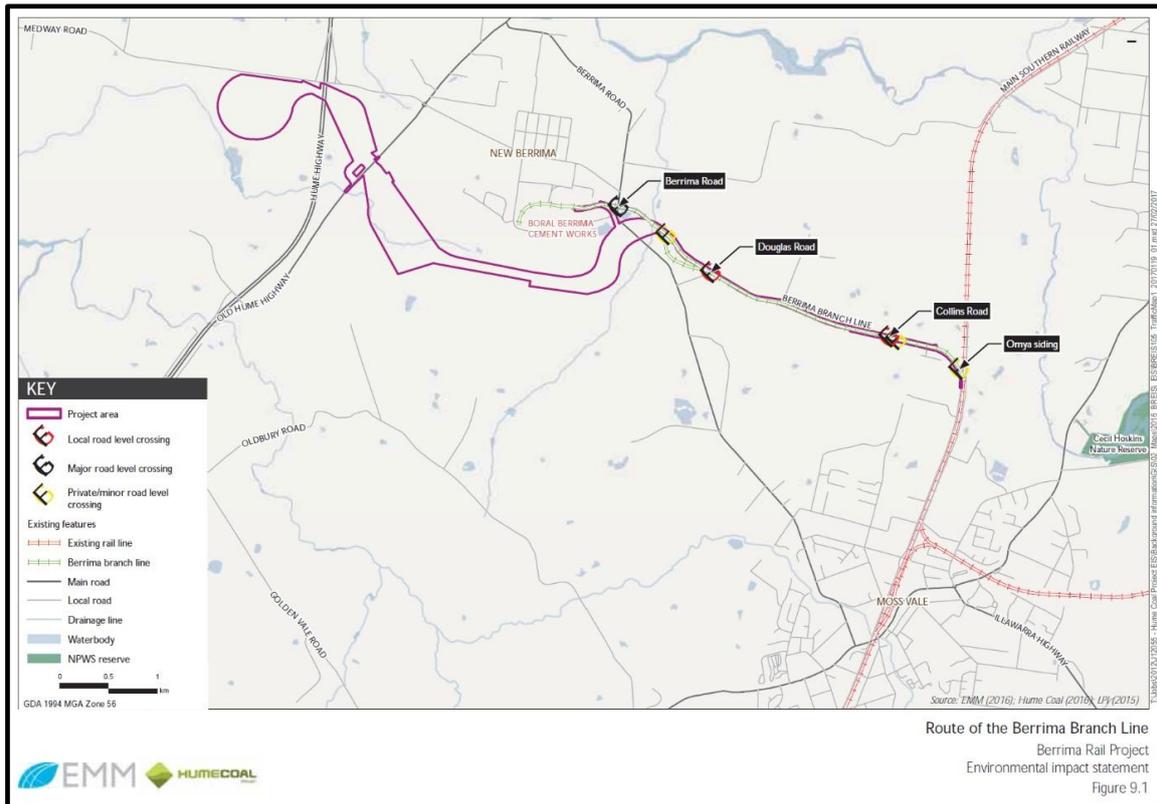


Figure 1: Rail Network – Berrima Branch Line

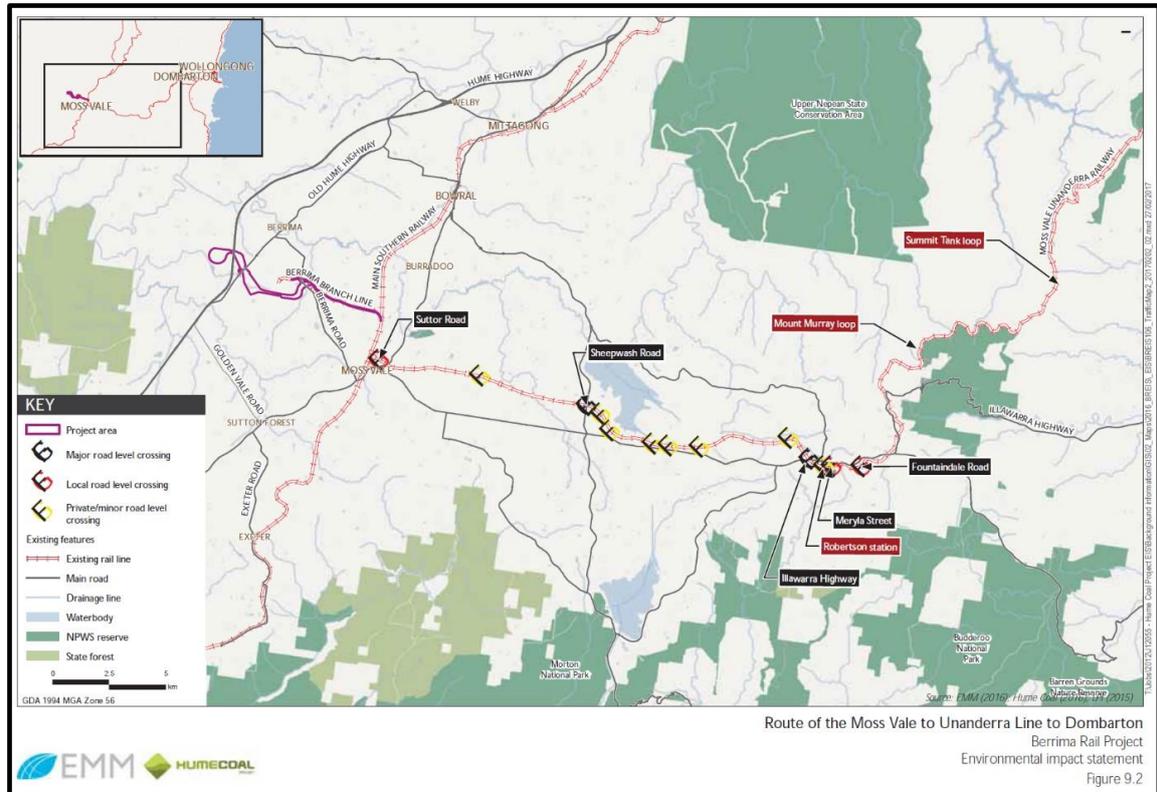


Figure 2: Rail Network – Moss Vale to Unanderra Line



Figure 3: Rail Network – to Port Kembla Coal Terminal

The rail network operator, ARTC, has not raised any significant concerns in relation to the project, noting that the project would support increased utilisation of the rail network, and that the capacity requirements would be accommodated within its infrastructure plans.

The EIS/RTS identifies 17 level crossings between the site and Port Kembla (see above figures), including one on Berrima Road near the Berrima Cement Works which is to be replaced by a grade separation including an overbridge, which is being constructed by Council.

Most of the other 16 level crossings are located on minor roads or private roads, and are located on the Berrima Branch Line and the Moss Vale to Unanderra sections of the route. Given the low road traffic volumes at these level crossings, no significant delays or impacts are expected.

However, there are 5 more significant level crossings on higher trafficked roads, including the level crossings at:

- Suttor Road at Moss Vale;
- Sheepwash Road at Glenquarry;
- Illawarra Road at Robertson;
- Meryla Street at Robertson; and
- Fountaindale Road at Robertson.

Hume Coal’s assessment notes that most of the train movements associated with the project would occur outside peak road use periods (ie. between 7:00 pm and 6:00 am), however it does acknowledge that two movements would likely occur near peak hours. These include one eastbound movement in the morning between 8:30 am and 9:00 am, and one westbound movement in the afternoon between 2:30 pm and 3:00 pm.

Hume Coal acknowledges that delays may occur at each of these 5 level crossings at these times, including through traffic on the Illawarra Highway. However, it reiterates that the additional train movements are well within the capacity of the network.

Hume Coal's EIS and the Department's Preliminary Assessment Report note that the project-related rail movements would result in additional delays of up to 24 minutes per day at the major road level crossings between Moss Vale and Robertson, with associated road safety risks. The Department's report acknowledges that these residual risks could be adequately managed through conditions.

Such conditions could include requirements to prepare detailed road and rail traffic management plans in consultation with rail network operators and emergency service providers, with provision for the undertaking of detailed level crossing safety audits, and implementation of any recommendations of the audits.

The Department does note that management of level crossings on the public network is the responsibility of the network operator, with level crossing upgrades administered by the Level Crossing Strategy Council (LCSC), which comprises an interagency group of regulatory bodies, network operators and emergency service providers. Upgrades are prioritised using the risk-based Australian Level Crossing Assessment Model (ALCAM) assessment system.

2. *In both DPIE's preliminary assessment report and final assessment reports, the Department states that the predicted drawdown impacts on the aquifer would be the most significant for any mining project that has been considered in NSW. Yet in its submission to the Commission, the Applicant stated that the impacts on groundwater were less than other mines taking into consideration peak annual inflow, drawdown, and recovery. Could the Department please confirm its groundwater concerns with reference to the Aquifer Interference Policy, the views of the Applicant, and with particular reference to the predicted groundwater impacts at the recently approved extension to the Tahmoor Mine?*

Hume Coal's comments that the impacts of the project on groundwater resources were similar or less than other mines taking into consideration peak annual inflow, drawdown, and recovery were raised during the assessment of the project, and is specifically addressed in the Department's Final Assessment Report (see para. 73 in the FAR).

As outlined in the Department's assessment report, the Department maintains that it is the number of affected landholders, the greenfield nature of the project area, the shallow nature of the mine and the aquifers, and the practicality of making good these impacts in a manner that is acceptable to landholders, that is the issue.

To expand, matters of peak inflows, drawdown and recovery must be taken into context of the project location and affected receivers and receiving environment. In this regard, a mining project with very large inflows and drawdowns, and long recovery time, may not result in significant groundwater impacts if it is located in a region with few groundwater users or other environmental constraints, and/or where the groundwater is not beneficially used.

On the other hand, a project with relatively small inflows and drawdown, and short recovery, may have significant impacts where it is located in a region of highly productive water use, many groundwater users, and/or significant environmental constraints.

As such, while the Hume Coal Project may have similar or less absolute impacts to other contemporary mining projects in relation to inflows, drawdown and recovery, it is not of key relevance to the Department's consideration of the merits of this project.

The project is predicted to have significant impacts on a highly productive groundwater aquifer as classified under the NSW Aquifer Interference Policy. In this regard, the project is predicted to result in drawdown exceeding the minimal harm considerations in the policy at up to 94 registered privately-owned groundwater bores based on Hume Coal's 67th percentile predictions, or up to 118 registered bores based on the 90th percentile predictions.

The Department's Final Assessment Report includes detailed consideration of these impacts compared to other contemporary NSW mining projects determined in recent years, including Tahmoor South (refer to Section 2.2.2 of the FAR, particularly from para 81).

This consideration is summarised in the following table, which is included in the assessment report.

Table 1 | Comparison of Predicted Number of Impacted Privately-Owned Bores

Coal Project	Coalfield	Determination Date	Determination ¹	No. Predicted Bores >2m Drawdown	Comments
Dendrobium Extension Project	Southern	5 Feb 21	Refused	0	Up to 5 bores affected in cumulative worst-case scenario, but no significant contribution from project
Maxwell Underground Project	Hunter	22 Dec 20	Approved	1	One bore predicted to be impacted with drawdown up to 2.3m, or 3.7m cumulatively. Two additional bores may be impacted cumulatively up to 3m, though likely to already be dry
Russell Vale Underground Extension Project	Southern	8 Dec 20	Approved	0	
Vickery Extension Project	Gunnedah	12 Aug 20	Approved	0	
Rix's Creek Extension Project	Hunter	12 Dec 19	Approved	0	
Bylong Coal Project	Western	18 Sep 19	Refused	0	
United Wambo Open Cut Project	Hunter	28 Aug 19	Approved	0	
Wallarah 2 Coal Project	Newcastle	16 Jan 18	Approved	0	
Rocky Hill Coal Project	Gloucester	14 Dec 17	Refused	0	
Wilpinjong Extension Project	Western	24 Apr 17	Approved	0	One publicly-owned bore on Wollar Public School predicted to be affected
Drayton Extension Project	Hunter	22 Feb 17	Refused	0	
Tahmoor South Coal Project	Southern	23 Apr 21	Approved	46	Historical database from previous mining indicates that only 20 bores are likely to require make-good

Note 1: None of the refused projects were refused due to impacts on privately-owned bores

As shown, most contemporary projects determined in recent years predict zero impacts on privately-owned bores, or where there is an impact, say in the case of the Maxwell project, the exceedance of the 2-metre drawdown threshold is relatively small.

The only other comparable project is the Tahmoor South Project. The Department has considered this in detail in its assessment report. As outlined in the report, there are a number of reasons to distinguish the potential drawdown impacts and associated make good requirements at Tahmoor South to the Hume Coal Project.

Firstly, the Tahmoor coal mine is located in an existing Mine Subsidence District, which was created in 1975 to provide adequate protections and compensation for impacts to damage to built infrastructure – including homes, infrastructure and groundwater bores. Some 83% of houses in the Tahmoor area were built after the declaration of the Mine Subsidence District, and there is a longstanding process for identifying and rectifying subsidence-related impacts in the district.

Secondly, the Tahmoor coal mine was first approved in the 1970s, which pre-dates the commencement of contemporary water legislation and Aquifer Interference Policy, including the requirement for make-good. As there was no policy requirement to consider ‘aquifer interference’ or ‘make good’, the potential impacts on groundwater bores was assessed differently when that mine was approved.

In contrast, historical coal mining in the Berrima region was generally small scale with the Berrima Colliery now in closure stage. There are no areas in this region that have been declared a Mine Subsidence District, and the region is now more widely known for its rural land uses, small-scale agriculture, scenic landscapes and tourism.

Thirdly, and importantly from an impact perspective, the two mines have different geology and hydrogeology. The hydrogeology in the Tahmoor South area is shown on **Figure 4** below.

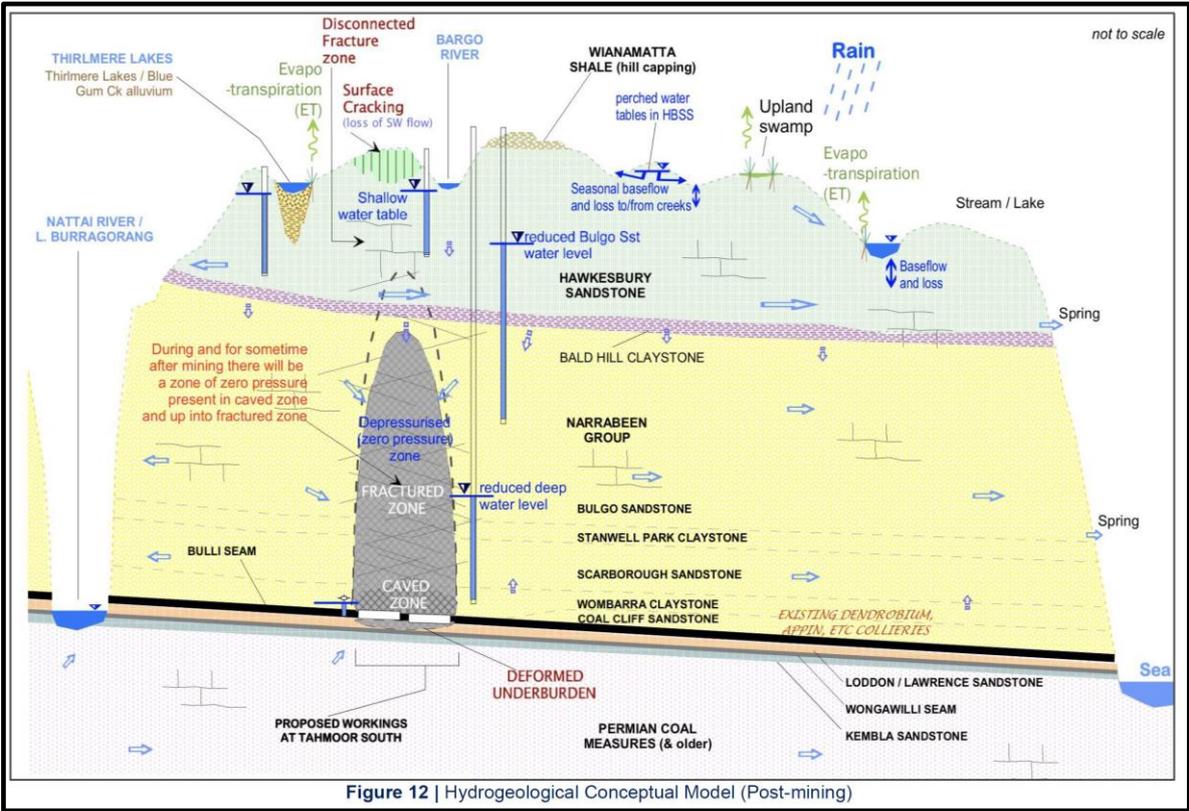


Figure 4: Conceptual Hydrogeology – Tahmoor South

The Tahmoor coal mine is much deeper than the proposed Hume project, with mining depths of 370-430 metres, and its project area comprises additional geological layers in addition to the Hawkesbury Sandstone, including a number of less permeable claystone and thick layers of sedimentary rock, known as the Narrabeen Group, which impede groundwater flow.

In the Hume Coal project area, the Hawkesbury Sandstone and the coal seam are only separated by a thin layer (between 0.1 to 4m) of shale. As shown on the **Figures 5 and 6**, the local geology is different to the rest of the Southern Coalfield, as the Narrabeen Group has been largely eroded out of the sequence. This creates a unique situation where the Hawkesbury Sandstone is close, or adjacent, to the coal seam. This is a major factor in the predicted high levels of groundwater drawdown.

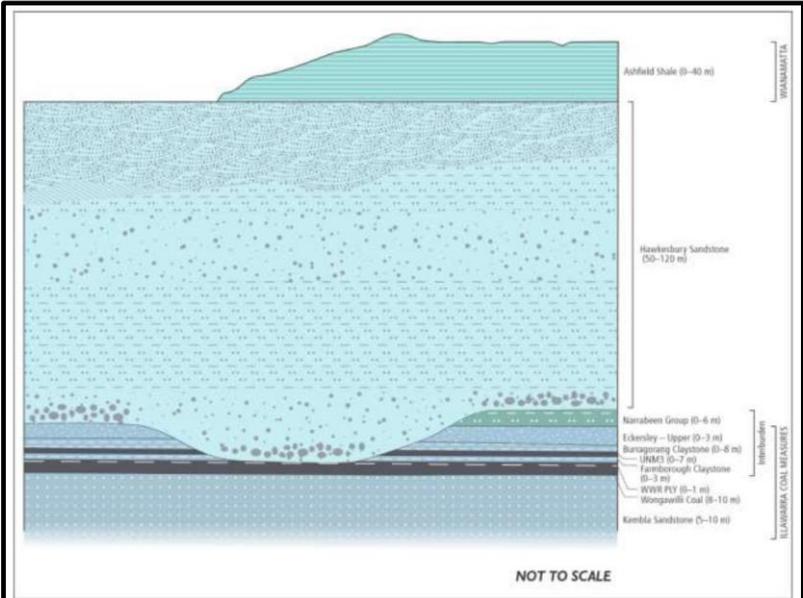


Figure 2.5 Conceptual diagram of the geological units in Hume Coal Project area

Figure 5: Conceptual Geology – Hume Coal Project Area

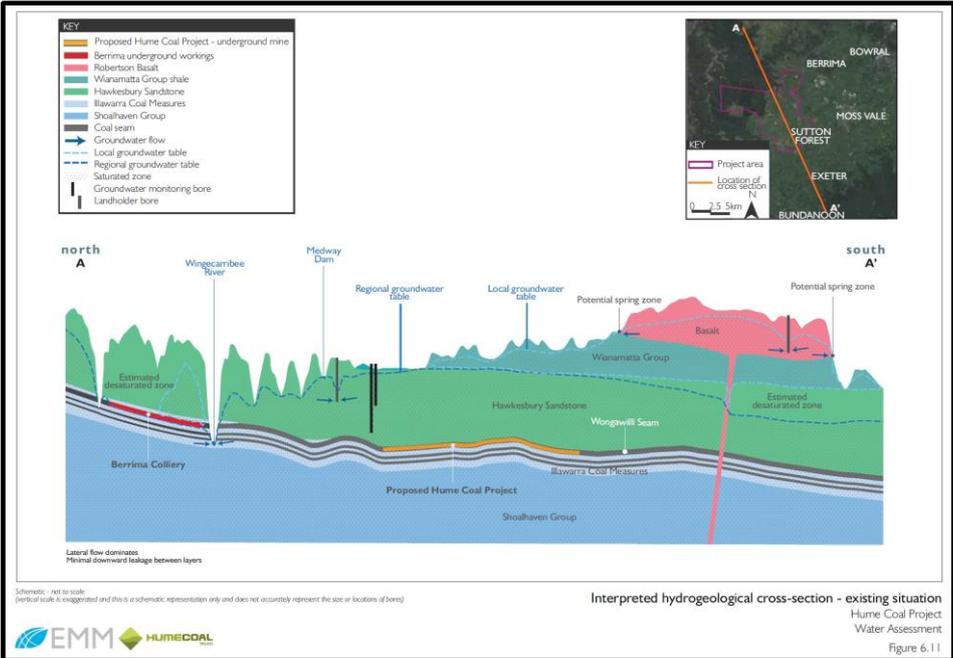


Figure 6: Conceptual Hydrogeology – Hume Coal Project Area

Fourthly, in relation to the predicted versus actual impacts, for Tahmoor South, the mining company has over 30 years of experience to draw on in assessing the potential drawdown impacts on surrounding groundwater bores and the need to 'make good'. Based on this experience, there is now an extensive historical database demonstrating that actual impacts have proven to be substantially less than predicted impacts.

In this regard, while the current Tahmoor groundwater model predicted that historical operations would have affected 72 bores, only 2 bores have required make good to date.

Finally, in relation to the make good predictions at Tahmoor, based on a detailed risk classification system developed from its previous experience, Tahmoor Coal estimates that only 20 bores are likely to require good provisions.

Hume Coal has stated this may prove to be the case for the Hume Coal Project as well – ie. that actual impacts will be less than predicted impacts – but unlike Tahmoor Coal it has not provided any evidence to support this claim.

As such, and given the different hydrogeology and much shallower mining, the Department is not able to infer any reduced likelihood of predicted impacts at the Hume Coal Project based on the experience at Tahmoor.

As such, the Department considers that predicted impacts on up to 94 bores based on 67th percentile predictions (or 118 bores at 90th percentile) should be considered as the likely impacts from the Hume Coal Project.

The Department's Water Group considers that these predictions should be seen as a minimum.

This is a significantly higher number than the likely impacts at Tahmoor South (ie. 20 bores likely, or up to 46 bores possible), and is also likely to cause greater impacts in the community given the local context and greenfield nature of the proposal.

Hume Coal has noted in its representations to the Commission that the Tahmoor South predictions are based on the 50th percentile predictions, whereas it has adopted the more conservative 67th percentile (and 90th percentile predictions).

In his review of the Tahmoor South proposal, the Department's independent groundwater expert, Hugh Middlemis¹, considered that the model and sensitivity analysis used for Tahmoor South was acceptable because the model conceptualisation is 'mature'. In this regard, the Tahmoor model is based on more than 20 years of investigations, the model results were consistent with the measured data from the mine, and the model displays good calibration. As such, Mr Middlemis agreed that the Tahmoor model was likely to present an overestimate of likely impacts.

The same conclusions cannot be made for the Hume Coal groundwater model, and as such the consideration of more conservative percentile predictions is reasonable.

Nonetheless, if the 50th percentile predictions were adopted for the Hume Coal Project, Hume Coal's assessment indicates that 84 privately-owned bores would be significantly affected. This is still considerably higher than the predictions for Tahmoor South.

¹ Mr Middlemis was engaged by the Department to undertake a separate review the Tahmoor South proposal.

3. How were the potential air quality impacts of windblown coal dust from the project site and the transport of product coal taken into consideration?

Potential air quality impacts of particulates and other relevant pollutants from the project site and coal transport were considered as part of the air quality assessments for the Hume Coal Project and the Berrima Rail Project.

As outlined in the Department's Preliminary Assessment Report, concentrations of particulate matter (TSP, PM₁₀ and PM_{2.5}), gaseous emissions (NO₂ and VOCs) and dust deposition levels are predicted to comply with applicable criteria at all sensitive receptors.

With regard to emissions from coal trains, Hume Coal's assessment indicates that pollutant levels at the site boundary of the Berrima Branch Line would be negligible, and well within the applicable criteria.

The Department acknowledges that Hume Coal has proposed a number of measures to minimise emissions associated with coal handling and transport, including covering of all coal wagons (both full and empty wagons), using latest generation locomotives, cladding conveyors and load out facilities, and underground emplacement of rejects.

The Department understands that concerns regarding the prevailing meteorological data have been raised by some stakeholders during the public hearings. This issue was also raised in the Commission's first public hearing, and formed one of the Commission's recommendations (Recommendation 12).

The Department has considered this in its Final Assessment Report. In summary, the Department and the EPA are satisfied that the meteorological data used in Hume Coal's air quality assessment is reasonable and conservative, and that the assessment indicates that air quality emissions associated with the project would comply with applicable criteria.

4. The Department indicated Hume Coal has offered to enter into a Voluntary Planning Agreement (VPA) with the Minister. Please confirm the status of this VPA, any information provided by Hume Coal to the Department and whether this information was publicly exhibited.

Details of the VPA offer are provided in the Department's Final Assessment Report. In this regard, Hume Coal made an offer to enter into a VPA for the project in a letter to the Minister dated 22 May 2017. The offer letter is provided in **Attachment A**.

The offer comprises an initial contribution of \$750,000, and an ongoing contribution of 5 cents per saleable tonne of coal, which amounts to around \$2.1 million over the project life. The contributions are proposed to be managed through the establishment of a Community Trust.

The Department notes that, contrary to usual practice, the VPA offer was made to the Minister rather than the local council, in this case Wingecarribee Shire Council. As outlined in the offer, this was because Council objects to the project, and informed Hume Coal early in the assessment process that it does not wish to enter into discussions in relation to the VPA. The Department understands that the VPA offer still stands.

The Department has not publicly exhibited the VPA offer, nor is it required to. Typically, for mining projects, VPAs are not executed prior to a determination being made and the Department would usually recommend a condition that the VPA be:

- entered into with the respective planning authority within a specified timeframe from the date of commencement of the development, and in accordance with the Division 7.1 of Part 7 of the *Environmental Planning and Assessment Act 1979* (EP&A Act); and
- in accordance with the Applicant's terms of offer.

That is the notification and public exhibition of the VPA under Part 7 of the EP&A Act would occur after determination.

Notwithstanding, as outlined above, details of the VPA offer are provided in the Department's assessment report, and the Department considered the offer as part of its assessment of the project. If the Commission does determine the project by way of approval, subject to a condition requiring the planning agreement to be entered into in accordance with the terms of the offer (or other terms), then public notice of the planning agreement would be required

5. *The Commission heard submissions raising concerns about the impact of the Project on the tourism, agriculture and food production industries in the region. Was a quantitative analysis undertaken with respect to the impact of the project on the tourism, agriculture and food production industries in the region?*

The project's impacts on other industries, including tourism and agriculture, were quantitatively assessed as part of Hume Coal's Economic Impact Assessment. Impacts on agriculture were further considered as part of the Agricultural Impact Statement (AIS) included in the EIS. Impacts on tourism were further assessed in a specialist report which accompanied Hume Coal's RTS. Impacts on other land uses and land users were also considered as part of the Social Impact Assessment (SIA) in the EIS.

With regard to agriculture and food production, the AIS indicates that the gross value of agricultural production in the Wingecarribee LGA was some \$44.8 million in 2011, which represents 0.38% of the gross value of agricultural production in NSW. The project is predicted to result in a relatively small loss of agricultural production in the LGA, amounting to \$2 million in net present value (NPV) over the life of the project.

These losses are related to the direct lost agricultural production associated with the mine's surface infrastructure area and other project-related infrastructure.

The Department accepts that direct impacts to agricultural production as a result of the surface infrastructure are relatively small. However, the project's impacts on groundwater supplies to agricultural land users in the groundwater affectation area could be of more significance. While Hume Coal argues that these impacts would be offset through its make good strategy, as outlined in the Final Assessment Report, the Department is not satisfied that this make good strategy is practical, and that it is likely to result in significant disruption and dispute for agricultural and other groundwater land users in the affectation area.

With regard to tourism, Hume Coal's study, undertaken by Judith Stubbs and Associates (JSA) as part of the RTS, estimates that there are around 1,510 jobs directly related to tourism in the Wingecarribee LGA, with around 196 direct tourism-related jobs in the Moss Vale and Berrima ABS statistical area. By comparison, the Hume Coal Project is predicted to provide 300 full time equivalent jobs.

JSA's assessment concludes that it is unlikely that the Hume Coal Project would have any significant adverse impacts on tourism, given the proposed location of the surface infrastructure area in relation to key tourism areas (eg. Berrima), and the existing co-location of heavy industrial uses and tourism uses in the Berrima locality. The conclusion is backed up by statistical analysis from other mining precincts in NSW and Australia that found no significant relationship between coal mining operations and impacts on tourism industries.

As outlined in the Final Assessment Report, the Department is generally satisfied that the employment and growth associated with the project is unlikely to cause significant adverse social impacts at the LGA level, including in terms of tourism. However, the Department does consider that the project would result in some significant localised impacts in the vicinity of the project area.

6. *Please elaborate on the Department's concerns regarding the emplacement of mine waste underground.*

The Final Assessment Report notes that the Department is satisfied that the temporary surface level reject emplacement process is reasonable, and acknowledges Hume Coal's commitment to underground emplacement of all coal rejects by the end of the project.

The Department has not raised significant concerns regarding the underground emplacement of rejects. However, it does note that any issues associated with the mine design associated with the novel pine feather mining method, which is raised as a concern in the Department's assessment, does have the potential to affect underground emplacement of water and rejects.

7. *A number of issues were raised in regard to the economics of the Project, in particular the sensitivity of the project's Net Present Value to potential reductions in resource recovery and the need to cost contingencies. Could the Department comment on these matters please?*

The Department's independent economics expert, Mr Andrew Tessler from BIS Oxford Economics (BISOE), considered a number of uncertainties associated with the inputs into the economic analysis, including resource recovery and 'volume risk'.

BISOE's analysis noted that one approach to dealing with issue would be to examine the 'financial break-even point' at which the NPV of the revenue from coal extraction falls below the NPV of costs. At a broader level, an 'economic break-even point' could examine at what point the economic benefits (eg. royalties, some taxes) fall below costs imposed on society.

However, such analysis is based on detailed financial information on project revenues and costs, which contains commercial-in-confidence information. Without this information, which has not been provided by Hume Coal, it is not possible to make a direct assessment of the financial or economic break-even points.

Nonetheless, BISOE provided what it termed a 'rough attempt' at an indirect assessment of volume risk. Based on production data provided by the Division of Resources and Geosciences (DRG) and other data, BISOE commented that the economic break-even point for the project might be reached at 222,000 tonnes per annum. The financial break-even point is expected to occur at volumes 'well above this point'.

BISOE pointed out a number of risks associated with the project that may affect production and ultimately royalties, including cost blowouts (which might be relevant if mining operations prove more complex than anticipated), long term thermal coal prices associated with environmental concerns, geopolitical and trade tensions, and the COVID-19 pandemic.

BISOE noted that although no production-specific sensitivity tests have been undertaken by Hume Coal, these are not specifically required by the guidelines, and some of the pricing sensitivity tests which are required could be seen as covering similar issues.

In this regard, the economic analysis does include sensitivity analysis using different coal process. As outlined in the Department's Final Assessment Report, the sensitivity analysis

indicates that coal prices would need to reduce by 65% over the life of the project before the net benefit to the project to NSW reduces to zero. This is considered unlikely.

The Department trusts that this information adequately addresses the Commission's questions. If you have any enquires in relation to this matter, please contact me on [REDACTED].

Yours sincerely



22/7/2021

Stephen O'Donoghue
Director Resource Assessments

Enc: Attachment A – Voluntary Planning Agreement details

6th September 2017

Mr Marcus Ray
Deputy Secretary
Planning Services
Department of Planning
GPO Box 39
SYDNEY NSW 2000

Dear Mr Ray,

RE: Offer from Hume Coal to the Minister for Planning to enter into a Voluntary Planning Agreement

I refer to your letter of 28 July 2017, regarding our offer of 22 May 2017, to the Minister to enter into a Voluntary Planning Agreement (VPA).

There are two material matters you raise:

- (a) On State Significant Developments (SSD) for mining it is usual for mining companies to enter into a VPA with the local Council, in this case, the Wingecarribee Shire Council (WSC).
- (b) That Council's formal correspondence on the VPA predates the lodgment of the development application, and that any discussion on a VPA was therefore premature.

Hume Coal VPA Offer to Minister for Planning.

Hume Coal appreciates it is the usual practice with other mining developments to enter VPA's with the local Council. However, it is administrative practice and not mandatory, particularly where a local Council is opposed to negotiating the terms of any VPA prior to determination by the *consent authority*.

The actions of WSC are contrary process for negotiating a VPA as defined in the Minister's Draft Practice Note.

Let me outline why, in the current circumstances, our VPA offer to the Minister is valid and appropriate for meeting requirements of the Environmental Planning and Assessment Act 1979 (Act).

- S93F (1) states a '*planning agreement is a voluntary agreement or other arrangement under this Division between a planning authority....and a person (Developer)'.....to 'pay a monetary a monetary contribution, or provide any other material public benefit, or any combination of them, to be used for or applied towards a public purpose'.*
- SSD determinations are made by the Minister (under delegation to the Planning Assessment Commission). The Minister is a *planning authority* for the purposes of an SSD project, irrespective of whether the SSD application is for mining or other SSD project. The Act makes no distinction between development types for the purpose of a VPA offer. Hume Coal has made a development application in accordance with s93F(1)(b) and an offer has been made to the Minister as a *planning authority*.
- In addition to the Minister being a *planning authority*, he is also the *consent authority* (under delegation).

In determining an SDD application, the *consent authority* has a mandatory requirement to consider heads of consideration under s79(C) of the Act, including Clause 79(C)(a) (iia); namely;

'any planning agreement that has been entered into under Section 93F, or any draft planning agreement that the developer has offered to enter into under section 93F'.

We contend the *consent authority* is required to consider the Hume Coal offer of 22 May 2017. Where a *planning authority*, local or otherwise, does not wish to enter a VPA, it does not remove the obligation for the *consent authority* to consider a VPA offer made in good faith.

Let me now turn to the last paragraph of your letter where you suggest:

'Now that Council has had the chance to consider both the development application and environmental impact statement for the project, I encourage you to approach Council again regarding a VPA for the project'.

WSC Attitude to a Hume Coal VPA

Hume Coal sought to enter VPA discussions with WSC, prior to lodging its development application, using the guidance of the Minister's Draft Practice Note.

As advised in our 22 May 2017 letter, WSC declined the offer to consider a VPA until after the determination of the application.

Since the Hume Coal VPA offer, WSC has again reaffirmed its position.

- On May 24, 2017, a Councillor posed a *formal question to WSC (Attachment A)*, 'about how VPA's are devised for the Department of Planning'. WSC responded with a nonsensical answer (*Attachment A*).
- At a formal WSC meeting on 14 June 2017, well after the DA lodgment, certain Councillors posed the following motion (*Attachment B*):

'That a briefing session be held for Councilors to consider preparing a Draft Planning Agreement for the proposed Hume Coal Project as indicated by the NSW Planning Department.'

The resolution was lost and the following motion was substituted and passed:

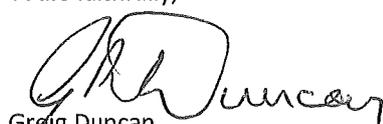
- '1. That Council wait until such time as the Planning Assessment Commission (PAC) make a final decision on Hume's Coal proposal.*
- 2. That if Council's submission is ignored by the PAC and approval be granted then Council considers an appropriate Planning Agreement'.*

WSC has no desire to deal with Hume Coal in good faith or in accordance with the procedures outlined in the Minister's Draft Practice Note. It also raises questions as to the extent of time and effort required by a developer to negotiate a 'voluntary' contribution where, on every occasion, the offer of a VPA is used as means to object to a development, rather than provide genuine delivery of community benefits, in the event consent is forthcoming.

Hume Coal maintains that the offer to the Minister is a valid VPA offer and our offer letter of 22 May 2017 is reaffirmed. We attach a Draft VPA agreement, containing the key VPA offer elements for consideration of the consent authority under s79(C). The original offer is found at (*Attachment C*) to the Draft VPA.

Hume Coal requests that the Minister for Planning accept the offer of a VPA in the good faith to allow proper consideration, ensuring community benefits are delivered, should the project receive approval.

Yours faithfully,



Greg Duncan
Project Director

AGENDA FOR THE ORDINARY MEETING OF COUNCIL
Wednesday 14 June 2017
QUESTIONS WITH NOTICE



19.2 Question with Notice 05/2017 - Voluntary Planning Agreements

Reference: 101/2, 5606
Report Author: Administration Officer
Authoriser: Group Manager Corporate and Community
Link to Delivery Program: Ensure systems and processes are in place to achieve mutual trust and collaboration

To: General Manager
From: Cllr Peter Nelson
Received: 29 May 2017

Subject: Voluntary Planning Agreements

Question:

Could the General Manager advise Council how Voluntary Planning Agreements are devised for the NSW Department of Planning.

Response:

As no Voluntary Planning Agreement, to Council's knowledge, has been prepared by the NSW Department of Planning and Environment directly associated with a development in Wingecarribee Shire, Council staff are unable to offer any advice.

RECOMMENDATION

THAT the information in relation to Question with Notice 05/2017 – Voluntary Planning Agreements - be noted.

AGENDA FOR THE ORDINARY MEETING OF COUNCIL

Wednesday 14 June 2017

NOTICES OF MOTION



20 NOTICES OF MOTION

20.1 Notice of Rescission of Resolution 3/2017 - Voluntary Planning Agreement for the Proposed Hume Coal Project

Reference: 100/5, 5305/11
 Report Author: Administration Officer
 Authoriser: Group Manager Corporate and Community
 Link to Delivery Program: Ensure systems and processes are in place to achieve mutual trust and collaboration

PURPOSE

Councillors Larry Whipper, Gordon Markwart and Ken Halstead have given notice that it is their intention to move at the next Ordinary Meeting of Council on 14 June 2017 that the following resolution from the Ordinary Meeting of Council held on 24 May 2017 be rescinded:

MN 220/17

***MOTION** moved by Cllr G M Turland and seconded by Cllr P W Nelson*

***THAT** a briefing session be held for Councillors to consider preparing a Draft Voluntary Planning Agreement for the proposed Hume Coal Project as indicated by the NSW Planning Department.*

Should the above motion of rescission be carried, we hereby give notice of our intention to move the following motion:

1. **THAT** Council wait until such time as the Planning Assessment Commission (PAC) make a final decision on Hume Coal's proposal.
2. **THAT** if Council's submission is ignored by the PAC and approval be granted, then Council considers an appropriate Planning Agreement.

RECOMMENDATION

Submitted for determination.

MINUTES OF THE ORDINARY MEETING OF COUNCIL

Wednesday 14 June 2017



MN 261/17

MOTION ARISING moved by Cllr L. A. C. Whipper and seconded by Deputy Mayor I. M. Scandrett

1. **THAT** Council wait until such time as the Planning Assessment Commission (PAC) make a final decision on Hume Coal's proposal.
2. **THAT** if Council's submission is ignored by the PAC and approval be granted, then Council considers an appropriate Planning Agreement.

MOTION ARISING PASSED

DRAFT
**Voluntary
Planning
Agreement**

**NSW Minister for Planning
Hume Coal Pty Ltd**

(Minister)

(Developer)

Voluntary Planning Agreement

Hume Coal Project

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Details

Date Parties

Name **Minister for Planning**
Short form name **Minister**
Notice Details GPO Box 39
SYDNEY NSW 2001
Attention: Secretary, Department of Planning

Name **Hume Coal Pty Ltd**
ABN 90070017784
Unit 7 & 8
9 Clarence Street, Moss Vale NSW 2577
Short form name **Developer**
Attention: Managing Director, Hume Coal Pty Ltd

Background

- A The Developer is proposing to establish an underground coal mine, mine infrastructure and railway in accordance with two State Significant Development (SSD) Applications 7171 and 7172 upon or below land identified in *Schedule 2* of this Agreement.
- B On 15 March 2017, the Developer lodged two Development Applications with the Department of Planning seeking Development Consent to carry out the Development, known as the Hume Coal and Berrima Rail Projects.
- C On 22 May 2017, the Developer issued a letter of Offer to enter into a Planning Agreement with the Minister in accordance with the terms set out in that letter found at *Schedule 3* of this Agreement.
- D By way of this Agreement, the Developer agrees to provide Development Contributions on the terms and conditions of this Agreement pursuant to section 93F of the Act.

Agreed terms

1. Defined terms & interpretation

1.1 Defined terms

The meaning of capitalised terms and the provisions relating to the interpretation of this Agreement are as follows:

Act means the *Environmental Planning and Assessment Act 1979* (NSW).

Agreement means this Planning Agreement including any schedules.

Approval means any consent, modification, certificate, licence, permit, approval or other requirement of any Authority having jurisdiction in connection with the activities contemplated by this Agreement.

Authority means any government, semi-governmental, statutory, administrative, fiscal or judicial body, department, commission, authority, tribunal or agency.

Business Day means any day except for a Saturday, Sunday, or bank or public holiday in Sydney.

Commencement Date means the day on which this Agreement comes into operation in accordance with clause 4.

Consent Authority has the same meaning as in section 4 of the Act.

Community Trust means a Community Trust defined in an offer to enter into a Voluntary Planning Agreement with the Minister dated 22 May 2017 attach as **Schedule 4**.

CPI means the All Groups Consumer Price Index applicable to Sydney published by the Australian Bureau of Statistics.

Department means the Department of Planning and Environment or any other Authority replacing it.

Development means the Hume Coal and Berrima Rail Projects as described in State Significant Development (SSD) applications 7171 and 7172 lodged with the Department of Planning on 15 March 2017.

Development Application has the same meaning as in section 4 of the Act.

Development Consent has the same meaning as in section 4 of the Act.

Development Contributions means the contributions as specified in clause 5.

Financial Year means each 12 month period during the Term commencing on 1 July each year and ending on 30 June each year.

GST has the same meaning as in the GST Law.

GST Law has the same meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of the GST.

Land means the land listed in **Schedule 2** by the Developer.

Law means:

- (a) the common law including principles of equity;

- (b) the requirements of all statutes, rules, ordinances, codes, regulations, proclamations and by-laws; and
- (c) any Approval, including any condition or requirement under it.

LPMA means the Land and Property Management Authority of NSW or any other Authority replacing it.

Mine has the same meaning as in the *Mining Act 1992 (NSW)*.

Mine Commencement Date means the date of commencement of construction of the Development in accordance any Approval.

Offer means the Developer's Offer to provide the Development Contributions as set out in its letter dated 26 June 2015 and found at Schedule 3 of this agreement.

Party means a party to this Agreement, including their successors and assigns.

Planning Agreement has the same meaning as in section 93C of the Act.

Register means the Torrens Title register maintained under the *Real Property Act 1900 (NSW)*.

Regulation means the *Environmental Planning and Assessment Regulation 2000 (NSW)*.

Term means from the Commencement Date until the cessation of coal production and loading of product tonnes onto trains as required by the conditions of the Development Consent for the Development on the Land and Other Land.

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1.2 Interpretation

In this Agreement, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this agreement, and a reference to this agreement includes any schedule or annexure;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to **A\$, \$A, dollar** or **\$** is to Australian currency;
- (f) a reference to time is to Sydney, Australia time;
- (g) a reference to a party is to a party to this agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (h) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (i) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (j) a word or expression defined in the Corporations Act has the meaning given to it in the Corporations Act;
- (k) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;
- (l) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (m) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (n) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this agreement or any part of it; and
- (o) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.

1.3 Headings

Headings are for ease of reference only and do not affect interpretation.

2. Planning Agreement under the Act

The Parties agree that this Agreement is a Planning Agreement governed by Subdivision 2 of Division 6 of Part 4 of the Act.

3. Application of this Agreement

This agreement applies to the Land and the Development.

4. Operation of this Agreement

This Agreement operates if:

- (a) Development Consent is granted by the Consent Authority for the Development on the Land; and
- (b) the Agreement is entered into as required by clause 25C(1) of the Regulation.

5. Development Contributions

- (a) Subject to this Agreement, the Developer is to establish a Community Trust on terms defined in the offer to the Minister dated 22 May 2017 and make the following Development Contributions in respect of the Development:
 - (i) Initial contribution to the Community Trust of \$750,000 upon commencement of construction of the Development in accordance with the payment terms of the Offer ; and
 - (ii) Payment of \$0.05 per tonne of saleable product coal transported by rail from the Development in the previous calendar year and payable within three months of the end of each calendar year for the Term.

6. Consultation with and Recognition of the Developer

- (a) The Developer acknowledges and agrees that it:
 - (i) consult with the Minister in relation to the public purpose(s) that the Development Contributions will be used for to ensure the provision of a material public benefit(s);
 - (ii) provide annual updates to the Minister in relation to the implementation and delivery of the purpose(s) for which the Development Contributions are distributed by the Community Trust.

7. Application of sections 94, 94A and 94EF of the Act

This Agreement excludes application of sections 94, 94A and 94EF of the Act to the Development.

8. Registration of this Agreement

8.1 Registration of this Agreement

The Developer must at its expense, procure the registration of this Agreement on the relevant folios of the Register held by the LPMA pertaining to the Land that it owns in accordance with section 93H of the Act as soon as reasonably practicable after the Agreement comes into operation and by no later than 40 Business Days after that date.

8.2 Release and discharge of this Agreement

The Minister agrees to do all things necessary, including the execution of any documents, to enable the

9. Dispute Resolution

9.1 No arbitration or court proceedings

If a dispute arises out of this agreement (**Dispute**), a Party must comply with this clause 9 before starting arbitration or court proceedings (except proceedings for interlocutory relief).

9.2 Notification

A Party claiming a Dispute has arisen must give the other Party to the Dispute notice setting out details of the Dispute.

9.3 Parties to resolve Dispute

During the 14 days after a notice is given under clause 9.2 (or longer period if the Parties to the Dispute agree in writing), each Party to the Dispute must use its reasonable efforts to resolve the Dispute. If the Parties cannot resolve the Dispute within that period, they must refer the Dispute to a mediator if one of them requests.

9.4 Mediation

- (a) If the Parties do not agree within 14 days of receipt of notice under clause 9.3 (or any further period agreed in writing by them), the Parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of New South Wales.
- (b) If the Parties do not agree on a mediator a party may at any time request the President of the Planning Institute (NSW Division) or the President of the NSW Law Society, whichever is the most appropriate, to select the mediator and determine the mediator's remuneration, which cost must be borne by the Parties equally.

9.5 Confidentiality

Any information or documents disclosed by a Party under this clause 9:

- (a) must be kept confidential; and
- (b) may only be used to attempt to resolve the Dispute.

9.6 Costs

Each Party to a Dispute must pay its own costs of complying with this clause 9. The Developer must pay the costs of any mediator.

9.7 Termination of process

- (a) A Party to a Dispute may terminate the dispute resolution process by giving notice to each other after it has complied with clauses 9.1 to 9.3.
- (b) Clauses 9.5 and 9.6 survive termination of the dispute resolution process.

9.8 Breach of this clause

If a Party to a Dispute breaches this clause 9, the other Party to the Dispute does not have to comply with those clauses in relation to the Dispute.

10. Enforcement

- (a) Without limiting any other remedies available to the Parties, this Agreement may be enforced by any Party in any Court of competent jurisdiction, subject to clause 9.

- (b) Nothing in this Agreement prevents:
 - (i) a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this agreement or any matter to which this Agreement relates; and
 - (ii) the Council from exercising any function under the Act or any other Act or Law relating to the enforcement of any aspect of this Agreement or any matter to which this Agreement relates.

11. Termination

- (a) This Agreement will terminate:
 - (i) on the declaration by a court of competent jurisdiction that the Development Consent for the Development on the Land is invalid; or
 - (ii) at the end of the Term.
- (b) In the event of termination of this Agreement, any funds that have been paid by the Developer as Development Contributions to the Community Trust prior to termination can continue to be expended in accordance with the terms of this Agreement.

12. Review of this Agreement

- (a) The Parties agree that this Agreement may be reviewed or modified and that any review or modification of this Agreement will be conducted in the circumstances and in the manner determined by the Parties.
- (b) No modification or review of this Agreement will be of any force or effect unless it is in writing and signed by the Parties to this Agreement.

13. Assignment

A Party must not assign, novate or otherwise transfer its rights and/or obligations under this Agreement unless the other Party has provided its prior written consent.

14. No fetter

14.1 Discretion

This Agreement is not intended to operate to fetter, in any manner, the exercise of any statutory power or discretion of the Minister, including but not limited to any statutory power or discretion of the Minister relating to the assessment and determination of any Development Application for the Development (all referred to in this Agreement as a **Discretion**).

14.2 No fetter

No provision of this agreement is intended to constitute any fetter on the exercise of any Discretion. If, contrary to the operation of this clause, any provision of this Agreement is held by a court of competent jurisdiction to constitute a fetter on any Discretion, the Parties agree:

- (a) they will take all practical steps, including the execution of any further documents to ensure the objective of this clause is substantially satisfied;
- (b) in the event that clause 14.2(a) cannot be achieved without giving rise to a fetter on the exercise of a Discretion, the relevant provision is to be severed and the remainder of this agreement has full force and effect; and

- (c) to endeavour to satisfy the common objectives of the Parties in relation to the provision of this Agreement, which is to be held to be a fetter to the extent that is possible, having regard to the relevant court judgment.

15. Notices

15.1 Notices

Subject to clause 15.2, any notice given under or in connection with this Agreement (**Notice**):

- (a) must be in writing and signed by a person duly authorised by the sender;
- (b) must be addressed as follows and delivered to the intended recipient by hand, by prepaid post or by fax at the address or fax number below, or at the address or fax number last notified by the intended recipient to the sender after the date of this Agreement:
- (i) The Minister for Planning
GPO Box 39
SYDNEY NSW 2001
Attention: Secretary, Department of Planning
 - (ii) Hume Coal Pty Ltd
Unit 7 & 8, 9 Clarence Street, Moss Vale NSW 257
Attention: Managing Director of Hume Coal Pty Ltd
- (c) is taken to be given and made:
- (i) in the case of hand delivery, when delivered;
 - (ii) in the case of delivery by post, three Business Days after the date of posting (if posted to an address in the same country) or seven Business Days after the date of posting (if posted to an address in another country); and
 - (iii) in the case of a fax, on production of a transmission report by the machine from which the fax was sent that indicates the fax was sent in its entirety to the recipient's fax number; and
- (d) if under clause 15.1(c) a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent, or later than 4pm (local time), it is taken to have been given or made at the start of business on the next Business Day in that place.

15.2 Notices sent by email

- (a) A Party may serve a Notice by email if the Notice:
- (i) includes a signature block specifying:
 - (A) the name of the person sending the Notice; and
 - (B) the sender's position within the relevant party;
 - (ii) states in the body of the message or the subject field that it is sent as a Notice under this Agreement;
 - (iii) contains an express statement that the person sending the Notice has the authority to serve a Notice under this Agreement;
 - (iv) is sent to the email address below or the email address last notified by the intended recipient to the sender:

- (A) Minister for Planning
Attention: [insert]
Email: [insert]
- (B) Hume Coal Pty Ltd
Attention: Managing Director, Hume Coal Pty Ltd
Email: info@humecoal.com.au

- (b) The recipient of a Notice served under this clause 15.2 must:
 - (i) promptly acknowledge receipt of the Notice; and
 - (ii) keep an electronic copy of the Notice,
- (c) Failure to comply with clause 15.2(b) does not invalidate service of a Notice under this clause.

15.3 Receipt of Notice sent by email

- (a) A Notice sent under clause 15.2 is taken to be given or made:
 - (i) when the sender receives an email acknowledgement from the recipient's information system showing the Notice has been delivered to the email address stated above;
 - (ii) when the Notice enters an information system controlled by the recipient; or
 - (iii) when the Notice is first opened or read by the recipient, whichever occurs first.
- (b) If under clause 15.3(a) a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent, or later than 4pm (local time), it will be taken to have been given or made at the start of business on the next Business Day in that place.

16. GST

16.1 Defined GST terms

In this clause 11, words and expressions which are not defined in this Agreement but which have a defined meaning in the GST Law have the same meaning as in the GST Law; and

16.2 GST to be added to amounts payable

If GST is payable on a taxable supply made under, by reference to or in connection with this Agreement, the party providing the consideration for that Taxable Supply must also pay the GST Amount as additional consideration. This clause does not apply to the extent that the consideration for the Taxable Supply is expressly agreed to be GST inclusive, unless otherwise expressly stated, prices or other sums payable or consideration to be provided under or in accordance with this Agreement are exclusive of GST.

16.3 Tax invoice

If a party is liable for GST on any payments made under this Agreement, the other party must issue a tax invoice (or an adjustment note) to the liable party for any GST payable under this agreement within seven days of a written request. The tax invoice (or adjustment note) must include the particulars required by the GST Law to obtain an input tax credit for that GST.

16.4 GST obligations to survive termination

This clause 11 will continue to apply after expiration of termination of this Agreement.

17. General

17.1 Relationship between Parties

- (a) Nothing in this Agreement:
 - (i) constitutes a partnership between the Parties; or
 - (ii) except as expressly provided, makes a Party an agent of another Party for any purpose.
- (b) A Party cannot in any way or for any purpose:
 - (i) bind another Party; or
 - (ii) contract in the name of another Party.
- (c) If a Party must fulfil an obligation and that Party is dependent on another Party, then that other Party must do each thing reasonably within its power to assist the other in the performance of that obligation.

17.2 Time for doing acts

- (a) If the time for doing any act or thing required to be done or a notice period specified in this Agreement expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.
- (b) If any act or thing required to be done is done after 5pm on the specified day, it is taken to have been done on the following Business Day.

17.3 Further assurances

Each Party must promptly execute all documents and do all other things reasonably necessary or desirable to give effect to the arrangements recorded in this Agreement.

17.4 Variation

A provision of this Agreement can only be varied by a later written document executed by or on behalf of all Parties.

17.5 Counterparts

This Agreement may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

17.6 Legal expenses

Each Party is to pay its own legal costs and disbursements in connection with the negotiation, preparation and execution of this Agreement.

17.7 Entire agreement

The contents of this Agreement constitute the entire agreement between the parties and supersede any prior negotiations, representations, understandings or arrangements made between the Parties regarding the subject matter of this Agreement, whether orally or in writing.

17.8 Invalidity

- (a) A word or provision must be read down if:
 - (i) this Agreement is void, voidable, or unenforceable if it is not read down;
 - (ii) this Agreement will not be void, voidable or unenforceable if it is read down; and

- (iii) the provision is capable of being read down.
- (b) A word or provision must be severed if:
 - (i) despite the operation of clause 17.8(a), the provision is void, voidable or unenforceable if it is not severed; and
 - (ii) this Agreement will be void, voidable or unenforceable if it is not severed.
- (c) The remainder of this Agreement has full effect even if clause 17.8(b)(i) or 17.8(b)(ii) applies.

17.9 Waiver

A right or remedy created by this Agreement cannot be waived except in writing signed by the Party entitled to that right. Delay by a Party in exercising a right or remedy does not constitute a waiver of that right or remedy, nor does a waiver (either wholly or in part) by a Party of a right operate as a subsequent waiver of the same right or of any other right of that Party.

17.10 Governing law and jurisdiction

- (a) The Laws applicable in New South Wales govern this Agreement.
- (b) The Parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

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Schedule 1 – Section 93F Requirements

Provision of the Act	This Agreement
Under section 93F(1), the Developer has:	
(a) sought a change to an environmental planning instrument.	(a) No
(b) made, or proposes to make, a development application.	(b) Yes
(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.	(c) No
Description of the land to which this document applies- (Section 93F(3)(a))	The whole of the Land defined in Schedule 2 of this Agreement.
Description of the development to which this document applies- (Section 93F(3)(b)(ii))	All of the Development as described in SSD applications 7171 and 7272 as approved by the Consent Authority.
The scope, timing and manner of delivery of Development Contributions required by this document - (Section 93F(3)(c))	See clause 5 of this Agreement.
Applicability of Section 94 of the Act - (Section 93F(3)(d))	The application of section 94 of the Act is wholly excluded in respect of all of the Development.
Applicability of Section 94A of the Act - (Section 93F(3)(d))	The application of section 94A of the Act is wholly excluded in respect of all of the Development.
Applicability of Section 94EF of the Act - (Section 93F(3)(d))	The application of section 94EF of the Act is wholly excluded in respect of all of the Development.
Mechanism for Dispute resolution - (Section 93F(3)(f))	See clause 9 of this Agreement.
Enforcement of this document - (Section 93F(3)(g))	See clause 10 of this Agreement.
Registration of this document (Section 93H)	See clause 8 of this Agreement.
No obligation to grant consent or exercise functions - (Section 93F(9))	See clause 14 of this Agreement.

Schedule 2 – Land to which this Agreement applies

SCHEDULE 2: LANDS TO WHICH THIS AGREEMENT APPLIES

HUME COAL PROJECT SCHEDULE OF LANDS		
Lot	DP	Address
64	751251	604 Belanglo Rd, Belanglo 2577
2	1009075	Evandale 11974 Hume Hwy, Sutton Forest 2577
3	11147	7832 Illawarra Hwy, Sutton Forest 2577
7	250743	Rosedale 7834 Illawarra Hwy, Sutton Forest 2577
21	262737	Carlisle Downs 7832 Illawarra Hwy, Sutton Forest 2577
20	262737	Carlisle Downs 7832 Illawarra Hwy, Sutton Forest 2577
	1004339	71 Carters Lane, Sutton Forest 2577
1	1009075	150 Belanglo Rd, Sutton Forest 2577
1	1028147	The Harp 2 Red Cow Lane, Sutton Forest 2577
1	1029524	Sutton Park 7604 Illawarra Hwy, Sutton Forest 2577
2	1029524	7562 Illawarra Hwy, Sutton Forest 2577
10	1040207	90 Carters Lane, Sutton Forest 2577
9	1040207	80 Carters Lane, Sutton Forest 2577
601	1041158	Sutton Park 7604 Illawarra Hwy, Sutton Forest 2577
11	1044116	Oldbury Farm 553 Oldbury Rd, Sutton Forest 2577
1	1046976	Oldbury Farm 553 Oldbury Rd, Sutton Forest 2577
1	1093425	180 Belanglo Rd, Belanglo 2577
2	1093425	Belanglo Rd, Belanglo 2577
671	1118901	7496 Illawarra Hwy, Sutton Forest 2577
672	1118901	7496 Illawarra Hwy, Sutton Forest 2577
1	112008	Sutton Park Illawarra Hwy, Sutton Forest 2577
11	1154387	Bindagundra 4 Red Cow Lane, Sutton Forest 2577
12	1154387	Sutton Park Illawarra Hwy, Sutton Forest 2577
3	1188	Sutton Park 7604 Illawarra Hwy, Sutton Forest 2577
4	1188	Sutton Downs 145 Golden Vale Rd, Sutton Forest 2577
5	1188	Sutton Park 7604 Illawarra Hwy, Sutton Forest 2577
1	124496	Cherry Tree Hill 12324 Hume Hwy, Sutton Forest 2577
1	130301	Bunya Hill 43 Golden Vale Rd, Sutton Forest 2577
1	160149	The Pines 7500 Illawarra Hwy, Sutton Forest 2577
1	160150	7498 Illawarra Hwy, Sutton Forest 2577
20	705790	Henley Downs 10 Coney Hatch Lane, Sutton Forest 2577
21	705790	Coney Hatch Lane, Sutton Forest 2577
1	711048	Highlander 627 Belanglo Rd, Belanglo 2577
2	711048	Silkwood 597 Belanglo Rd, Belanglo 2577

HUME COAL PROJECT SCHEDULE OF LANDS

Lot	DP	Address
3	711048	Belanglo 595 Belanglo Rd, Belanglo 2577
4	711048	541 Belanglo Rd, Belanglo 2577
5	711048	Meredith Park 493 Belanglo Rd, Belanglo 2577
1	718830	Janooka 184 Belanglo Rd, Belanglo 2577
1	744544	Comfort Hill 12588 Hume Hwy, Sutton Forest 2577
2	746773	156 Belanglo Rd, Belanglo 2577
47	751251	Top of The Mountain 633 Belanglo Rd, Belanglo 2577
48	751251	Top of The Mountain 633 Belanglo Rd, Belanglo 2577
66	751251	Top of The Mountain 633 Belanglo Rd, Belanglo 2577
1	783660	Sutton Farm 7530 Illawarra Hwy, Sutton Forest 2577
6	806772	Dablinvale 496 Golden Vale Rd, Sutton Forest 2577
7	806772	510 Golden Vale Rd, Sutton Forest 2577
2	806934	12587 Hume Hwy, Sutton Forest 2577
3	806934	Greenacres 12521 Hume Hwy, Sutton Forest 2577
	819179	One Acre Block 7490 Illawarra Hwy, Sutton Forest 2577
4	826337	Sutton Downs 145 Golden Vale Rd, Sutton Forest 2577
6	829835	371 Golden Vale Rd, Sutton Forest 2577
1	860654	Longford 630 Oldbury Rd, Sutton Forest 2577
2	860654	662 Oldbury Rd, Sutton Forest 2577
7	874965	Carolina 331 Golden Vale Rd, Sutton Forest 2577
2	875422	7750 Illawarra Hwy, Sutton Forest 2577
1	88227	Newbury Farm 7300 Illawarra Hwy, Sutton Forest 2577
8	883697	70 Golden Vale Rd, Sutton Forest 2577
1	995642	Bunya Hill 43 Golden Vale Rd, Sutton Forest 2577
101	751251	221 Belanglo Rd, Belanglo 2577
33	751251	Property address not found on Land & Property information online
1	162755	30 Coney Hatch Lane, Sutton Forest 2577
2	213223	Cherry Tree Hill 12324 Hume Hwy, Sutton Forest 2577
2	217937	Property address not found on Land & Property information online
3	244195	Tumulla 460 Golden Vale Rd, Sutton Forest 2577
4	244195	Villa Equinus 474 Golden Vale Rd, Sutton Forest 2577
5	244195	Eidolon 480 Golden Vale Rd, Sutton Forest 2577
1	249175	Araluen 399 Golden Vale Rd, Sutton Forest 2577
1	250746	Sutton Park 7604 Illawarra Hwy, Sutton Forest 2577
7	250746	Sutton Park 7604 Illawarra Hwy, Sutton Forest 2577
8	250746	Sutton Park 7604 Illawarra Hwy, Sutton Forest 2577
1	2553	Old Pig Farm 211 Belanglo Rd, Belanglo 2577
10	262736	Cherry Tree Hill 12324 Hume Hwy, Sutton Forest 2577
11	262736	Cherry Tree Hill 12324 Hume Hwy, Sutton Forest 2577
19	262737	Illawarra Hwy, Sutton Forest 2577
22	262737	Illawarra Hwy, Sutton Forest 2577
23	262737	Cherry Tree Hill 12324 Hume Hwy, Sutton Forest 2577

HUME COAL PROJECT SCHEDULE OF LANDS

Lot	DP	Address
29	262737	Property address not found on Land & Property information online
29	262738	Ravenswood 20 Kardinia Lane, Sutton Forest 2577
30	262738	Ravenswood 20 Kardinia Lane, Sutton Forest 2577
31	262738	Kardinia 61 Kardinia Lane, Sutton Forest 2577
16	2715	The Red Cow Farm 7480 Illawarra Hwy, Sutton Forest 2577
17	2715	The Red Cow Farm 7480 Illawarra Hwy, Sutton Forest 2577
1	549837	Sutton Park 7604 Illawarra Hwy, Sutton Forest 2577
1	605156	Illawarra Hwy, Sutton Forest 2577
10	705789	Glendale 51 Belanglo Rd, Sutton Forest 2577
12	705789	Glendale 51 Belanglo Rd, Sutton Forest 2577
11	705789	Property address not found on Land & Property information online
14	705789	Property address not found on Land & Property information online
17	705790	Araluen 63 Kardinia Lane, Sutton Forest 2577
18	705790	Temagog 515 Golden Vale Rd, Sutton Forest 2577
	751251	Property address not found on Land & Property information online
7141	1203892	430 Bunnigalore Rd, Belanglo 2577
100	751251	604 Belanglo Rd, Belanglo 2577
102	751251	Property address not found on Land & Property information online
105	751251	Property address not found on Land & Property information online
108	751251	Property address not found on Land & Property information online
113	751251	Property address not found on Land & Property information online
117	751251	Property address not found on Land & Property information online
172	751251	Property address not found on Land & Property information online
173	751251	Property address not found on Land & Property information online
31	751251	Property address not found on Land & Property information online
32	751251	Belanglo Rd, Belanglo 2577
60	751251	Property address not found on Land & Property information online
62	751251	Property address not found on Land & Property information online
63	751251	Property address not found on Land & Property information online
71	751251	Property address not found on Land & Property information online
87	751251	Property address not found on Land & Property information online
88	751251	Property address not found on Land & Property information online
97	751251	Property address not found on Land & Property information online
114	751251	Property address not found on Land & Property information online
2	1138694	Mereworth, 80 Mereworth Rd, Berrima 2577
200	839314	Mereworth, 80 Mereworth Rd, Berrima 2577
2	751251	Evandale 11974 Hume Hwy, Sutton Forest 2577
3	751251	Evandale 11974 Hume Hwy, Sutton Forest 2577
4	872238	339 Medway Rd, Medway 2577
2	217937	Property address not found on Land & Property information online

And

Geographical features within the Project Area include:		
Named watercourses	State Forest	
Belanglo Creek	Belanglo State Forest	Experiment Road
Blue Arm Creek	Roads	Golden Vale Road
Brethren Creek	Ashurst Road	High Swamp Road
Fire Dam Creek	Belanglo Road	Hume Highway/Hume Motorway
Knapsack Gully	Belanglo Creek Road	Kardinia Lane
Longacre Creek	Belanglo Firebreak Road	Knapsack Gully Road
Medway Rivulet	Belanglo Plateau Firetrail	Mereworth Road
Meredith Park Gully	Brethren Point Road	Old Hume Highway
Norris Creek	Bunnigalore Road	Old Pine Road
Oldbury Creek	Calling Coal Firetrail	Oldbury Road
Paynes Creek	Cherry Tree Road	Pinaster Pine Road
Planting Spade Creek	Coney Hatch Lane	Red Arm Creek Firetrail
Red Arm Creek	Cowlishaws Firetrail	Regeneration Road
Wells Creek	All Crown Public Roads within the Project Area	Rocklea Firetrail
	All Council Public Roads within the Project Area	Western Plantation Road

BERRIMA RAIL PROJECT SCHEDULE OF LANDS

Lot	DP
2	238719
5	238719
4	238719
3	238719
1	582277
1	715297
2	774598
3	1017008
1	1017008
2	1017008
1	1136734
2	1136734
3	1136734
2	1138694

Part of the Land in Deed Bk. 3883 No.717—see Sheet 7 of DP1136734

Geographical features

Named water courses

Oldbury Creek

Stony Creek

Rail line

Berrima Branch Line

Roads

Berrima Road

Carribee Road

Collins Road

Douglas Road

Hume Highway

Old Hume Highway

Schedule 3 – Offer to Minister for Planning to enter into a Voluntary
Planning Agreement (22 May 2017)

DRAFT



HUMECOAL
PROJECT

22nd May 2017

The Hon Anthony Roberts, M.P.,
Minister for Planning
Minister for Housing
Special Minister of State
52 Martin Place
SYDNEY NSW 2000

office@roberts.minister.nsw.gov.au.

cc: Secretary, Department of Planning
Mr David Kittó, NSW Department of Planning Major Projects

Hume Coal Project: Sutton Forest in Wingecarribee LGA:

Offer to Enter a Voluntary Planning Agreement

Dear Minister,

Hume Coal is progressing development approval of a low impact coal mine in the Wingecarribee Shire. The project EIS and application is currently on public display until the end of June 2017.

In accordance with s.93F of the *Environmental Planning and Assessment Act, 1979* Hume Coal desires to enter into a VPA with you and submits the attached offer for consideration.

The offer is comprised of the following parts:

1. Establishment of a Community Trust (Trust) similar to the Veolia Woodlawn Bioreactor Trust in the Goulburn Mulwarree Shire.
2. Initial contribution to the Trust of \$750,000 upon commencement of construction of the Hume Coal project.
3. Further contributions to the Trust based on 0.05 cents per saleable tonne of coal transported from the mine site in the previous calendar year. The indicative funding schedule is contained in the attached offer. The calculation of ongoing contributions is consistent with recent VPA's for other coal mines in NSW.
4. The shareholder of the corporate trustee will be Hume Coal, with three directors nominated by Hume Coal and three directors from the local community.

Hume Coal Pty Limited
ABN 90 070 017 784
Mail: PO Box 1226, Moss Vale NSW 2577
Office: Unit 7 – 8 Clarence House, 9 Clarence Street Moss Vale NSW 2577
Ph: +61 2 4869 8200 | E: info@humecoal.com.au | W: humecoal.com.au

Hume Coal is making this offer to you as that responsible planning authority in view of the Wingecarribee Shire Council (WSC) not wishing to enter into a discussion of the VPA (letter to Hume Coal 24 November 2016 attached). Also attached is a letter to WSC on the same matter.

We note the requirements of the Draft Practice Note: Planning Agreements (November 2016) and will ensure the Trust arrangement as proposed is consistent with those requirements.

A brief outline of the proposed structure of the proposed Community Trust is included for your information.

We look forward to concluding a satisfactory VPA to benefit the Wingecarribee community in accordance with the requirements of the Environmental Planning and Assessment Act 1979.

Yours faithfully,


Greg Duncan
Project Director



Community Trust Outline of the Proposed Structure

Entity structure

- Trust with a corporate trustee.

Trustee

- The shareholder of the corporate trustee is Hume Coal.
- The directors of the corporate trustee are made up with up to three directors from Hume Coal and up to three directors from the local community.
- The Chairperson is to be a Hume Coal employee. The chairperson has the casting vote.

Objects of the trust

- The trust is not for profit and must not pay money to the settlor, trustee or the donor or their related parties (as defined in Corporations Act).
- The trust's purpose is to gift funds to successful applicants (discussed below).
- Any funds that are not gifted in any calendar year (up to the maximum amount) may be rolled over for subsequent years.
- The maximum amount that the trust can gift in a calendar year is \$100,000 plus any funds rolled-over from prior years.
- There is no minimum amount that the trust must gift in a calendar year.

Eligible applicants

- The trust must gift funds to the following categories of projects only:

Category	Purpose	Guideline of Funding amount per grantee	Guideline of number of grantees per year
Category 1	Specific public infrastructure	\$50,000	1
Category 2	Specific public service	\$15,000	2
Category 3	General sponsorship of other not-for-profit organisations and individuals.	\$1,000	20

- The successful applicant (for individuals) must live or work in the Wingecarribee local government area.
- The successful applicant (for organisations) must be based in the Wingecarribee local government area or the project must benefit the community of the Wingecarribee local government area:
- The public service and public infrastructure includes (but is not limited to):
 - Public amenity; and
 - Conservation or enhancement of the natural environment.

Term

- The trust is to be set up prior to the commencement of the construction of the proposed underground coal mine.
- The trust is to be wound up at the cessation of coal extraction.
- Any trust funds remaining at the end of the mining operation is to be donated to a charity that is endorsed with a tax deductible gift recipient ("DGR") status that operates in the Wingecarribee local government area. If not, it is to be donated to any charity endorsed with a DGR status chosen by the directors.

Funding of the trust

- Hume Coal will make following gifts to the Trust:
 - \$750,000 upon commencement of construction of the underground coal mine; and
 - \$0.05 per saleable tonne of coal railed from the mine site last calendar year, up to a maximum of \$150,000 per calendar year. See attachment "A" for an indicative grants schedule.

Operation of the trust

- The trust is to advertise for applicants to its sponsorship program.
- Every six months the directors of the trustee are to meet to consider any applications and select successful applicants.
- Hume Coal to provide administrative, secretarial and accounting services to the trust.

Schedule A

Community Trust Indicative Funding Schedule

Year	-2	-1	1	2	3	4	5	6
Clean Coal Railed			26,293	854,085	1,986,487	2,616,881	1,794,339	2,514,843
Annual Funding (lump sum)	\$800,000	\$300,000	\$100,000	\$50,000				
Annual Funding (c/t)			\$1,315	\$42,704	\$99,324	\$130,844	\$89,717	\$125,742

Note: Year -2 is the commencement of construction.

Year	6	7	8	9	10	11	12	13
Clean Coal Railed	2,514,843	2,442,070	2,398,320	2,494,734	2,675,287	1,924,677	2,478,017	2,557,818
Annual Funding (lump sum)								
Annual Funding (c/t)	\$125,742	\$122,104	\$119,916	\$124,737	\$133,764	\$96,235	\$123,901	\$127,891

Year	14	15	16	17	18	19
Clean Coal Railed	2,599,374	2,035,202	1,722,722	2,631,865	2,278,490	1,797,816
Annual Funding (lump sum)						
Annual Funding (c/t)	\$129,969	\$101,760	\$86,136	\$131,593	\$113,925	\$89,891



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03 November 2016

Ms Ann Prendergast
General Manager
Wingecarribee Shire Council
68 Elizabeth Street
Moss Vale NSW 2577

By email: Elizabeth Johnson (elizabeth.johnson@wsc.nsw.gov.au)

Dear Ms Prendergast,

RE: PRESENTATION BY HUME COAL

Thank you for your letter dated 27 October 2016 inviting Hume Coal to make a presentation to Council on 23 November 2016.

The offer of a presentation is welcome however, the 23 November date is unsuitable due to a previous longstanding commitment involving company management.

I previously wrote to Council on 24 October 2016 offering a site presentation on Thursday, 01 December at Mereworth. We are yet to receive a response.

Notwithstanding the inability of Hume Coal to present to Council on 23 November, or Council being unable to attend a site visit on 01 December, we welcome the opportunity to make a presentation to Council at a mutually convenient time.

The relevance of such a presentation would be considerably enhanced once the development application and Environmental Impact Statement (EIS) is lodged with the NSW Government and placed on exhibition at various venues, including Council.

We are still hopeful of a more reasoned debate as to the facts, despite Council having a pre-determined position on coal mining well before a development application is lodged with the determining authority. Once the application and EIS is lodged and on exhibition, Council will then be in possession of all the information and be able to assess the proposal using professional planning and technical advice rather than endorsing or relying upon exaggerated scare tactics of anti-development activists.

In the meantime, however, Hume Coal and Council can engage in meaningful discussions towards the development of a Voluntary Planning Agreement (VPA). A VPA is a recognised planning mechanism for Hume Coal to provide community contributions to the Wingecarribee Shire over the life of the project, subject to project approval.

I propose we commence joint discussions on the following matters:

1. The form and nature of the VPA, either a contribution directly to Council or the establishment of a stand-alone Community Trust.
2. Parties to the VPA – Council; the Minister for Planning; or both.
3. Hume Coal's proposed VPA offer.

Hume Coal Pty Limited
ABN 90 070 017 784
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Office: Unit 7 – 8 Clarence House, 9 Clarence Street Moss Vale NSW 2577
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4. Relationship between Hume Coal's VPA offer and Council's current capital works programme, in particular, the Berrima Road Deviation (involving the removal of the Berrima Road level crossing).

I look forward to progressing VPA discussions with Council and making a presentation to all Councillors at a mutually agreeable time and place.

Yours Sincerely,

Greg Duncan

Project Director

POSCO's Hume Coal Project

Hume Coal Pty Limited
ABN 90 070 017 784

Mail: PO Box 1226, Moss Vale NSW 2577

Office: Unit 7 - B Clarence House, 9 Clarence Street Moss Vale NSW 2577
T: +61 2 4869 8200 | E: info@humecoal.com.au | W: humecoal.com.au

Wingecarribee - A Coal Mining Free Shire

Our Ref: 5305/11
Contact: Mark Pepping



24 November 2016

*Old,
30.11.2016*

Mr Greig Duncan
Project Director
POSCO's Hume Coal Project
PO Box 1226
MOSS VALE NSW S577

RECEIVED
DATE 30/11 BY AB

Dear Mr Duncan

Re: Voluntary Planning Agreement Negotiations in relation to proposed Hume Coal Development at Berrima

I refer to your letter dated 3 November 2016 in which you raise the opportunity for Council and Hume Coal to commence discussions on developing a Voluntary Planning Agreement (VPA) for the proposed coal mine development.

You are advised that as a development application has yet to be lodged with the Department of Planning and Environment and the inability to anticipate the terms of any approval if granted for the proposal, it is considered that entering into discussions on preparing a VPA at this time is premature.

Depending on what happens in the future, Council may then reconsider its position on this matter.

Yours sincerely

Ann Prendergast
General Manager

Office Centre, Elizabeth Street, Moss Vale, NSW 2577. PO Box 474, Moss Vale, NSW 2577. (02) 4868 0888 or (02) 4869 7208
Email: mail@wsc.nsw.gov.au or info@wsc.nsw.gov.au Fax: 4964 1600 or 4964 3663

Signing page

EXECUTED as an agreement.

Executed by the authorised delegate for the
Minister for Planning dated [Insert date] in the
presence of

Signature of witness _____
Signature of authorised delegate

Name of witness (print)

Executed by **Hume Coal Pty Ltd**
ABN 90070017784 in accordance with section 127
of the *Corporations Act 2001* (Cth) by

Signature of director _____
Signature of director/company secretary
(Please delete as applicable)

Full name (print) _____
Full name (print)