



*A prosperous and progressive
community we proudly call home*



Business Papers 2020

MID-WESTERN REGIONAL COUNCIL

ORDINARY MEETING
WEDNESDAY 17 JUNE 2020

SEPARATELY ATTACHED ATTACHMENTS

ATTACHMENTS

Report 7.1	Attachment 1	Risk Management Policy 2013	3
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	POLICY	ADOPTED C/M 1/5/13 Minute No. 160/13
	RISK MANAGEMENT	REVIEW: May 15 FILE No. A0230001

PURPOSE:

To minimise exposure to any losses, penalties or insurance claims including but not limited to public liability, workers compensation, professional responsibilities, property and motor vehicle.

To enhance staff welfare by continually working towards a safe working environment through the elimination of risks.

POLICY:

Council adopts the risk management approach and general methodology specified in Australian Standard. AS/NZS ISO 31000:2009 Risk Management – Principles and Guidelines.

Council is committed to best practice risk management to help improve its decision making and its achievement of objectives and will:

- Adopt an effective and transparent corporate approach to proactive risk management in order to:
 - Identify, evaluate and manage risks so as to minimise the costs and disruption to services caused by undesired events
 - Make better informed decisions based on a fair balance between risk and reward for the community
 - Encourage innovation and improvement through taking calculated and well managed risks to improve service delivery
- Develop a better awareness of risk management and promote a risk aware culture throughout its operations through promotion, training, performance management and monitoring

Council recognises that risk management is an integral part of good management practice and fully supports risk management as an integral element in its governance processes. Therefore, all Council departments and operations will adopt a risk management approach consistent with AS/NZS ISO 31000:2009 in their planning, approval, review and control processes.

RISK MANAGEMENT ACTION PLAN

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Mid-Western Regional Council
Risk Management Policy and Action Plan

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1. SCOPE

The Risk Management Action Plan applies to all areas of Council's operations, and covers risk of financial loss, injury to employees and/or members of the public, damage to equipment and property, and loss of reputation.

For our purposes, risk is the threat that an event or action will adversely affect the Council's ability to achieve its objectives and to successfully execute its strategies for the benefit of its citizens, business community and visitors.

Council is committed to best practice risk management to help improve its decision making and its achievement of objectives and will:

- Adopt an effective and transparent corporate approach to proactive risk management in order to:
 - Identify, evaluate and manage risks so as to minimise the costs and disruption to services caused by undesired events
 - Make better informed decisions based on a fair balance between risk and reward for the community
 - Encourage innovation and improvement through taking calculated and well managed risks to improve service delivery
- Develop a better awareness of risk management and promote a risk aware culture throughout its operations through promotion, training, performance management and monitoring

Local Government is an inherently risky environment. The types of risks may be broadly summarised as:

- Political
 - Economic
 - Social
 - Technological
 - Legislative and regulatory
 - Environmental
 - Competitive
 - Customer orientated
 - Governance
 - Managerial and professional
 - Reputational
 - Financial
-

- Legal
 - Physical
 - Partnership/contractual/supplier
-

2. DEFINITIONS

Residual risk

The remaining level of risk after risk treatment measures have been taken.

Risk

The chance of something happening that will have an impact upon objectives. It is measured in terms of consequences and likelihood.

Risk acceptance

An informed decision to accept the consequences and the likelihood of a particular risk.

Risk analysis

A systematic use of available information to determine how often specified events may occur and the magnitude of their consequences.

Risk assessment

The overall process of risk analysis and risk evaluation.

Risk control

That part of risk management which involves the implementation of policies, standards, procedures and physical changes to eliminate or minimise adverse risks.

Risk evaluation

The process used to determine risk management priorities by comparing the level of risk against predetermined standards, target risk levels or other criteria.

Risk identification

The process of determining what can happen, why and how.

Risk management

The culture, processes and structures that are directed towards the effective management of potential opportunities and adverse effects.

Risk management process

The systematic application of management policies, procedures and practices to the tasks of establishing the context, identifying, analysing, evaluating, treating, monitoring and communicating risk.

Risk treatment

Selection and implementation of appropriate options for dealing with risk.

3. OBJECTIVES

Council will:

- (a) Integrate risk management across all Council activities;
 - (b) Formulate, implement and continually review its Risk Management Policy and Risk Management Action Plan;
 - (c) Finalise, implement and review documentation and procedures related to risk management;
 - (d) Raise profile of risk management being a component of all positions/jobs of Council;
 - (e) Integrate Risk Management into Strategic Plans
-

4. RISK MANAGEMENT PROCESS

The details of the risk management process are shown in Figure 1.

Council will apply risk management in a systematic and consistent way across all areas of Council's functions and operations. To achieve this, Council has adopted the risk management methodology outlined in AS/NZS ISO 31000:2009 Risk Management – Principles and standards, which comprises the following steps:

4.1 Communication and Consultation

Communicate and consult with internal and external stakeholders as appropriate at each stage of the risk management process and concerning the process as a whole.

4.2 Establish the Context

Establish the strategic, organisational and risk management context in which the rest of the process will take place. Criteria against which risk will be evaluated should be established and the structure of the analysis defined.

This includes the organisations internal and external environment.

4.3 Risk Assessment

Risk assessment is the overall process of risk identification, risk analysis and risk evaluation.

4.3.1 Risk Identification

Identify what, why and how things can arise as the basis for further analysis.

4.3.2 Risk Analysis

Determine the existing controls and analyse risks in terms of consequence and likelihood in the context of those controls. The analysis should consider the range of potential consequences and how likely those consequences are to occur. Consequence and likelihood may be combined to produce an estimated level of risk.

4.3.3 Risk Evaluation

Compare estimated levels of risk against the pre-established criteria. This enables risks to be ranked so as to identify management priorities. If the levels of risk established are low, then risks may fall into an acceptable category and treatment may not be required.

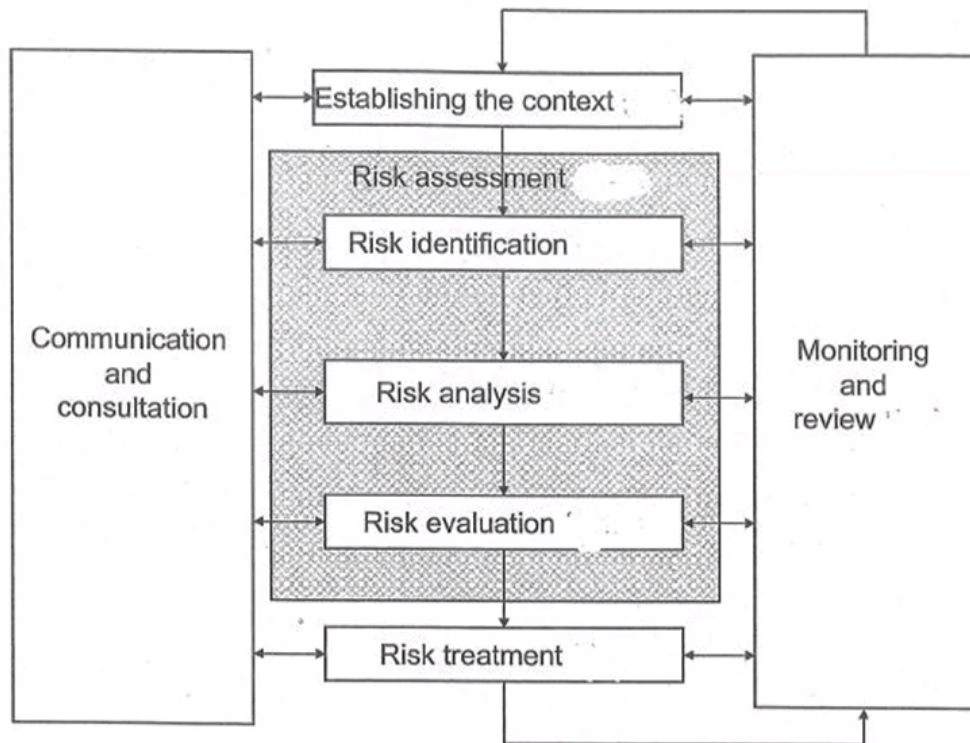
4.4. Risk Treatment

Accept and monitor low-priority risks. For other risks, develop and implement a specific management plan which includes consideration of funding.

4.5 Monitoring and Review

Monitor and review the performance of the risk management system and changes which might affect it.

Figure 1 - THE RISK MANAGEMENT PROCESS



Source: AS/NZS ISO 31000:2009 Risk Management – Principles and guidelines

5. ROLES & ACCOUNTABILITIES

5.1 All Employees Generally

All employees are responsible for the effective management of risk and as such, will have access to information regarding Council's risk management processes and identified risk in their work area

All employees are responsible for identifying potential risks. Management is additionally responsible for risk analysis, evaluation, assignment, registration, and the development of mitigation plans and risk reduction strategies. These risk management processes should be integrated with other planning processes and management activities.

5.2 General Manager and Executive Team

The General Manager and the Executive Team are responsible for ensuring that a risk management system is established, implemented and maintained in accordance with this policy.

The assignment of responsibilities in relation to risk management other than those set out in this policy are the prerogative of the General Manager.

5.3 Risk Management Strategy Group

The Risk Management Strategy Group, comprising the Director Operations and Manager Governance is

- responsible for the oversight of the Council's *Risk Management Action Plan*;
- determining an acceptable level of risk for the Council; and
- monitoring the Council's overall risk profile and mitigation strategies.

5.4 Manager Governance

The Manager Governance:

- is a member of the Risk Management Strategy Group;
- administers the Risk Management Action Plan; and
- acts as a facilitator and resource for Managers in the implementation of their risk management responsibilities.

5.5 Managers

Managers are responsible for the implementation of the *Risk Management Policy* and *Risk Management Action Plan* within their respective areas of responsibility. This includes the identification, assessment and recording of risks identified, and the acceptance or assignment of risk responsibility, ongoing assignment and registering of risk as part of business and project planning and management.

5.6 Focus Groups

These are issues based groups specifically formed to research and comment on individual risk issues as directed by the Management Team. They will develop procedures to deliver outcomes of the Action Plan.

A team leader will be appointed to co-ordinate and facilitate each focus group

5.7 Health & Safety Committee

The Health & Safety Committee will fulfil a statutory role as the nominated consultative body of Council.

The Committee will provide input into the Risk Management Strategic Plan on issues relating to statutory and regulatory requirements. It will report to the Management Team on the implementation of the Action Plan and emerging issues.

6. RISK ASSESSMENTS

As outlined in Part 4 above, Council has adopted a standard methodology consistent with *AS/NZS ISO 31000:2009 Risk Management – Principles and guidelines* for identifying and measuring risks. The methodology will be integrated into Council's project, business and corporate planning and review processes.

The objective of the risk assessment process is to establish a consistent and comparable basis for quantifying and measuring risk across the Council. These risk levels can then be compared to Council's acceptable level of risk to determine an appropriate strategy for treatment.

To facilitate compliance with this approach, Council's standard Risk Assessment form will be utilised. The Risk Assessment form (together with Risk Matrix) is attached as Appendix 1.

The Risk Assessment form will respond to the requirement to:

- Identify the risk;
 - Analyse the risk; and
 - Evaluate the risk.
-

7. RISK REGISTRATION, TREATMENT AND REPORTING

Council's public liability Insurer, StateWide, has developed a risk management tool (RiskeMAP) to assist councils in developing a Risk Profile, as an Audit tool and for Surveying the Workplace. RiskeMAP can be used with any category of risk, develop workflow and reporting as well as to develop a Risk Register. Training will be provided by StateWide so managers are able to use this tool in managing the risks in their areas of responsibility.

The Risk Management Strategy Group will monitor the risk profile of the organisation with particular regard to those risks that exceed Council's acceptable risk level. The Manager Governance will report to the Group periodically on matters relating to the Council's risk management function.

***Mid-Western Regional Council
Risk Management Policy and Action Plan***

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8. REVIEW

The Risk Management Policy and Risk Management Action Plan shall be reviewed every two years to ensure that they meet the requirements of legislation and the needs of Council.

9. ASSOCIATED COUNCIL POLICIES AND DOCUMENTS

Mid-Western Regional Council Management Plan

WHS Policy

Hazard/Incident Reports

Business Continuity Plan

Safe Work Method Statements

APPENDIX 1



MID-WESTERN REGIONAL COUNCIL

RA No.

RISK ASSESSMENT FORM

REF: HS-5.3-F1
REV: 1.0.22042008

RISK ASSESSMENT TITLE						DEPARTMENT	
ACTIVITY DESCRIPTION							
ASSESSMENT COMPLETED BY	NAME (PRINT)	POSITION	SIGNATURE	NAME (PRINT)	POSITION	SIGNATURE	
APPROVAL MANAGER				APPROVAL DATE			

STEP	STEP / AREA <i>Break down into job steps or site areas.</i>	HAZARD <i>What can cause harm?</i>	CONSEQUENCE <i>What could go wrong?</i>	RISK SCORE			CONTROLS <i>What control measures already exist?</i>	RISK SCORE			CONTROLS <i>What can we do to reduce the risk further?</i>	RESPONSIBILITY <i>Who is to ensure this is completed?</i>	
				C	L	R		C	L	R			
1													
2													
3													



STEP	STEP / AREA <i>Break down into job steps or site areas.</i>	HAZARD <i>What can cause harm?</i>	CONSEQUENCE <i>What could go wrong?</i>	RISK SCORE			CONTROLS <i>What control measures already exist?</i>	RISK SCORE			CONTROLS <i>What can we do to reduce the risk further?</i>	RESPONSIBILITY <i>Who is to ensure this is completed?</i>
				C	L	R		C	L	R		
4												
5												
6												
7												
8												



MID-WESTERN REGIONAL COUNCIL

RISK MATRIX




REF: HS-5-T1
REV: 1.0.14012008

						LIKELIHOOD				
						A	B	C	D	E
POTENTIAL CONSEQUENCE						Rare	Unlikely	Possible	Likely	Almost Certain
No.	Key Word	Health & Safety	Environmental	Financial	Public Image	<i>Requires unusual chain of events</i>	<i>Not expected to occur</i>	<i>May Occur</i>	<i>Will occur occasionally</i>	<i>Expected to occur</i>
5	Catastrophic	Fatality or work related fatal disease	Detrimental impact to environment or community. High level prosecution.	Greater than \$500,000	International media coverage	Moderate 13	High 19	Critical 22	Critical 24	Critical 25
4	Severe	Serious Permanent injury or illness	Long term negative impact. Low level prosecution.	No more than \$500,000	National media coverage	Moderate 10	Moderate 12	High 18	Critical 21	Critical 23
3	Serious	Lost time injury or illness	Serious but reversible impact. Media enquiry.	No more than \$100,000	State media coverage	Low 6	Moderate 9	Moderate 11	High 17	Critical 20
2	Significant	Medically treated injury or illness	On-site incident promptly contained requiring external clean up aid.	No more than \$25,000	Local media coverage.	Low 4	Low 5	Moderate 8	High 15	High 16
1	Minor	First Aid treated injury or illness	On-site incident immediately contained & cleaned up.	No more than \$5,000	Public complaint.	Low 1	Low 2	Low 3	Moderate 7	High 14

STATUS	ACTION REQUIRED	NOTIFY	MONITOR
Critical	Do not commence activity. Immediate senior management action required.	General Manager (Notified by Group Mgr)	N.A.
High	Immediate action required to reduce risk. Authorisation required before commencing activity.	Group Manager (Notified by Operational Mgr)	Weekly
Moderate	Risk reduction required to as low as reasonable practicable before commencing task	Operational Manager	Monthly
Low	Follow routine procedures and monitor risk.	Team Leader	Annually

	HAZARD / CONTROL PROMPT TOOL	REF: HS-5.3-T2 REV: 1.0.05032008
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WHAT'S THE DIFFERENCE BETWEEN A HAZARD, RISK AND CONSEQUENCE?

HAZARD		Shark infested water is a HAZARD
RISK		Swimming in shark infested water is a RISK
CONSEQUENCE		Being eaten by a shark is a CONSEQUENCE

HAVE YOU IDENTIFIED THE FOLLOWING HAZARDS?

TRAFFIC	Hit by moving vehicles or plant	THERMAL	Exposure to heat, cold or contact with hot or cold objects.	PRESSURE	Hydraulic fluid, gas, air or water under pressure
PLANT AND EQUIPMENT	Contact with fixed plant, portable tools or sharp objects	CHEMICAL	Hazardous, toxic or corrosive chemicals	HUMAN	Manual handling, contact with other objects
ELECTRICAL	Contact overhead or underground power or unsafe electrical equip.	NOISE	Intensity and duration of exposure	KINETIC	Flying objects or particles
GRAVITATIONAL	People falling or falling objects	RADIATION	Electromagnetic, UV or other radiation sources	BIOLOGICAL	Virus, bacteria, fungus or toxins.
PSYCHOLOGICAL	Conflict, long hours, or harassment	ENVIRONMENTAL	Dust, emissions, spills and releases	HOUSE KEEPING	Trip hazards, hard or sharp objects. Incorrect storage methods

HAVE YOU CONSIDERED THE HIERARCHY OF CONTROLS?

HIERARCHY OF CONTROLS	CONTROL	DESCRIPTION	EXAMPLE
	Elimination 	Remove the hazard. This is the most effective control measure and should always be considered first.	Fill in a trench; Remove a protruding post. Do not use a dangerous piece of equipment.
	Substitution 	Substitute less hazardous equipment, material, or process. (be aware that substituting can introduce new hazards).	Use a less toxic chemical; Use an air tool instead of electric; Replace a dangerous tool with a safer one.
	Isolation 	Remove the hazard from the person or the person from the hazard.	Separate pedestrian and forklift zones; Move a noisy pump away from the work area.
	Engineering 	Reduce the likelihood of the unwanted event through hardware design.	Place guards on dangerous parts of machinery; use a trolley for moving heavy loads; Use forced ventilation; Install guard railing on platforms and elevations.
	Administration 	Reduce exposure to hazards through procedures, instructions, training and competency.	Rotate jobs to reduce the time spent on any single work task; train staff in safe work procedures; carry out routine maintenance of equipment.
	PPE 	Worn by exposed employees to provide a last line of defence should other controls prove ineffective, or used together with other control measures. The protection offered by PPE relies on the correct selection, fitting, maintenance and use.	Use hearing / eye protection equipment, hard hats, gloves, masks and train staff to use PPE correctly.



ENTERPRISE RISK MANAGEMENT FRAMEWORK

29 MAY 2020

MID-WESTERN REGIONAL COUNCIL
COMMUNITY: GOVERNANCE

■ ■ ■ ■ ■ TOWARDS 2030



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Overview

This framework is supported by entity-wide Policies and procedures all aimed at enhancing the Council's risk capability and resilience.



Ongoing Document Review

DOCUMENT VERSION CONTROL				
Version	Date	Prepared by	Endorsed by	Next Review
1.0				

Council's Enterprise Risk Management Framework (the Framework) is a living document and will be regularly reviewed and updated as required to ensure the Framework is always up to date with current risk management regulations and legislations and current practices within Council. The Framework will be updated accordingly and approved by General Manager. Changes which require that the Framework be reviewed include but not limited to the following:

- Changes in Risk Management Standards and relevant Government policy or legislative amendments impacting risk management
- Changes in the Council's organisational structure
- Emergence of new and significant trends in risks and rewards
- Amendment to the Council vision, mission and strategic plans
- If improvement opportunities are found during the regular review of the Enterprise Risk Management Framework
- Any other information that is relevant at the time which warrants the review and amendment of this Framework.

Part 1: Introduction

1.1 Purpose

Council's Enterprise Risk Management (ERM) Framework provides a basis for managing uncertainty through a structured and consistent approach. This approach enables risk-informed decision making aligned with Council's strategic, operational and project objectives. Enterprise Risk Management Framework integrates the processes for managing risks and control into Council's governance, strategy and planning, performance improvement, reporting process, policies, values and culture and it considers the internal and external context in which Council operates.

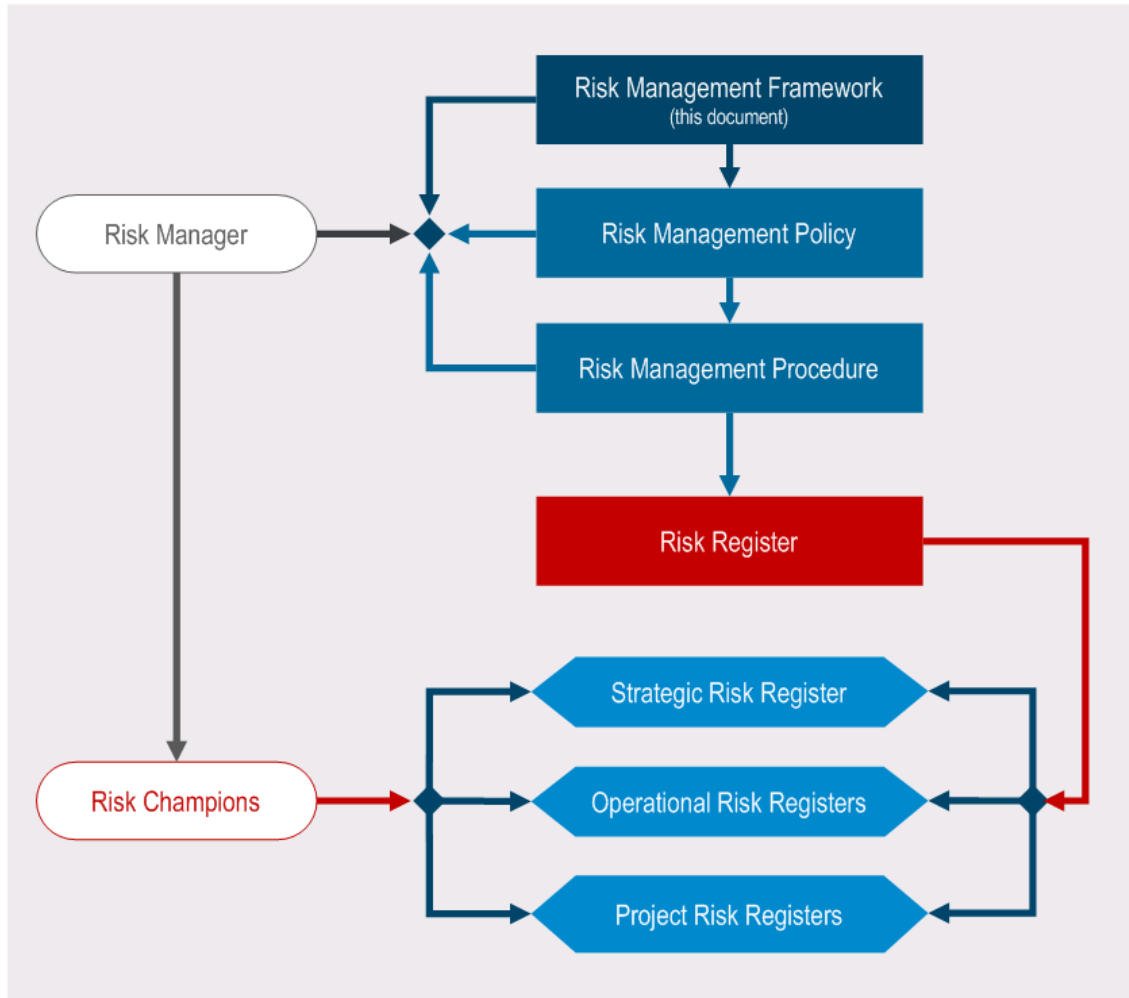
Council's Enterprise Risk Management Framework consists of;

- **Enterprise Risk Management Policy** – to outline policy principles and commitment.
- **Enterprise Risk Management Guideline and supporting tools** – designed to be read in conjunction with the Enterprise Risk Management Policy. The guidelines and tools are there to guide and assist Councillors and staff to better understand the principles of Enterprise Risk Management and to adopt consistent processes for managing risks.
- **Risk Register** – Strategic, operational and project risk registers to assess risk, monitor controls and develop treatment plans.
- **Governance and Risk Executive Committee** – responsible for oversight of Enterprise Risk Management across the Council.

The purpose of the Enterprise Risk Management Framework is to support a consistent, effective and structured approach to managing risk and to support Council to achieve its objective and embed Enterprise Risk Management in strategic and operational processes. This in turn will support staff in understanding the implications of risk and Enterprise Risk Management opportunities and support Councillors and staff making informed decisions based on suitable risk assessments and risk criteria. In addition, it will aid Council in applying Enterprise Risk Management in their day to day work.

1.2 Structural Overview

The Council adopts the following mechanical structure for underpinning the administration of risk management.



1.3 Definitions

TERMS	Definition
Council	Mid-Western Regional Council.
Risk	Effect of uncertainty on objectives.
Enterprise Risk Management	Coordinated activities to direct and control an organisation regarding risk.
Event	Occurrence or change of a set of circumstances.
Consequence	Outcome of an event affecting objectives.
Likelihood	Chance of risk event occurring.
Control	Measure that maintains and/or modifies risk.
Risk Criteria	Total level of risk that Council is prepared to accept in pursuit of its objective, before action is deemed necessary to reduce the risk.
Risk Tolerance	Level of risk that Council is prepared to accept per individual risk.
Risk Treatment	Selection and implementation of appropriate options for dealing with risk.
Residual Risk	The remaining level of risk after risk treatment measures have been taken.
Inherent Risk	Risk level before risk treatment measures have been taken.
Risk Category	A class or group of risk events based on their risk consequence.
Risk Owner	Person or entity with the accountability and authority to manage risk.
ARIC	Audit, Risk and Improvement Committee.
Stakeholder	A person or organisation that can affect, be affected by, or perceive themselves to be affected by Council's decisions or activities.
Risk Source	Element which alone or in combination has the potential to give rise to risk.
ALARP	As Low as Reasonably Practicable.
Pulse	Business Process Management solution in place at Council to record Enterprise Risk Management activities.
ELO	Council's record management system.
Risk Champion	The person(s) tasked with promoting risk management either across the agency, or specifically within an agency function or aspect of risk. A risk management champion provides training and education and helps improve the 'risk competence' of an agency.
Chief Audit Executive	Staff member who will oversee Council's internal audit activities.
Risk Manager	The staff member who will oversee Councils Enterprise Risk Management activities.
Council	Mid-Western Regional Council.

In accordance with Australian Enterprise Risk Management standards, Council is required to adopt an 'Enterprise Risk Management' approach. The difference between a traditional risk management and Enterprise Risk Management is described below:

TRADITIONAL RISK MANAGEMENT	ENTERPRISE RISK MANAGEMENT
Focuses on insurable risks	Considers all risks that could affect a council's ability to meet its goals, including risks that cannot be insured, for example, a council's reputation.
Focuses on threats and minimising losses	Considers risks that present both negative and positive consequences or impacts and focuses on adding value.
Manages each risk individually and in isolation, often within the business unit	Considers risks holistically across the entire council taking into account any connections or interdependencies that could reduce losses or maximize growth opportunities. Enterprise Risk Management is integrated across the entire council.
Responses to risk are largely reactive and sporadic	Responses to risk are proactive and continually applied and assessed. Enterprise Risk Management is embedded in organisational culture.

1.4 Baseline

This document is for use by people who create and protect value in organisations by managing risks, making decisions, setting and achieving objectives and improving performance.

Organisations of all types and sizes face external and internal factors and influences that make it uncertain whether they will achieve their objectives.

Managing risk is iterative and assists Council in setting strategy, achieving objectives and making informed decisions.

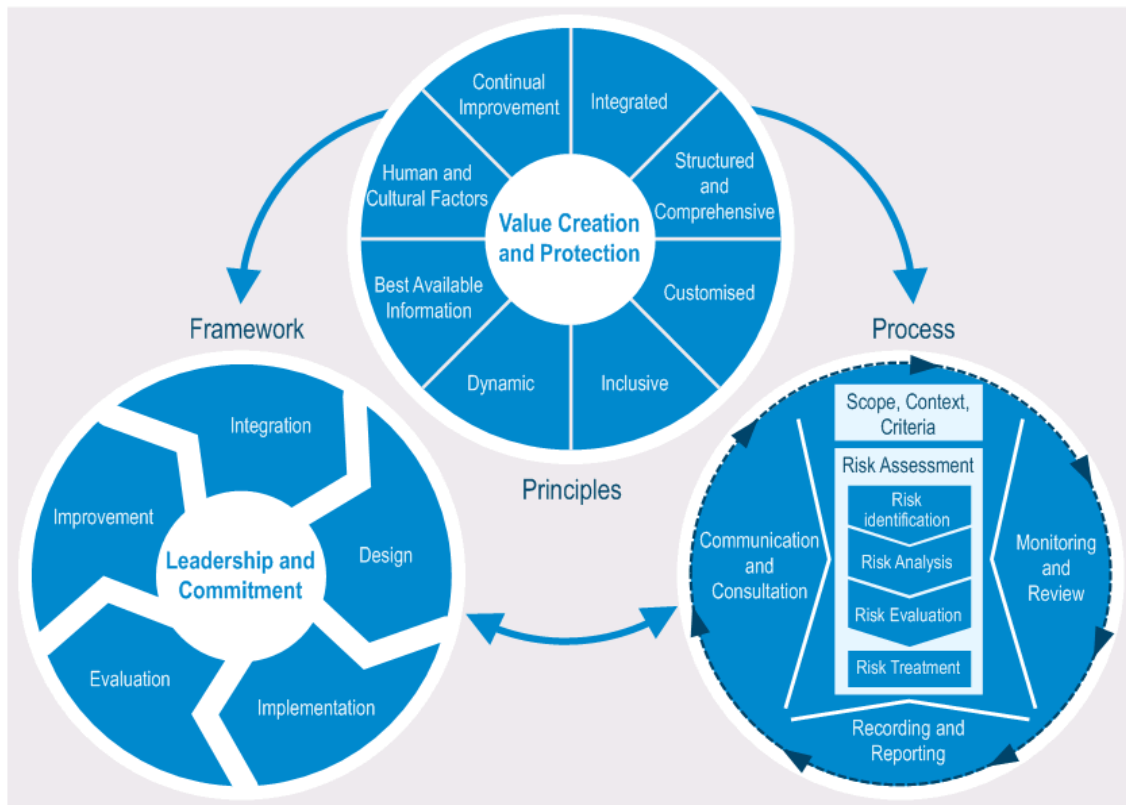
Managing risk is part of governance and leadership and is fundamental to how Council is managed at all levels. It contributes to the improvement of management systems.

Managing risk is part of all activities associated with Council and includes interaction with stakeholders.

Managing risk considers the external and internal context of Council, including human behaviour and cultural factors.

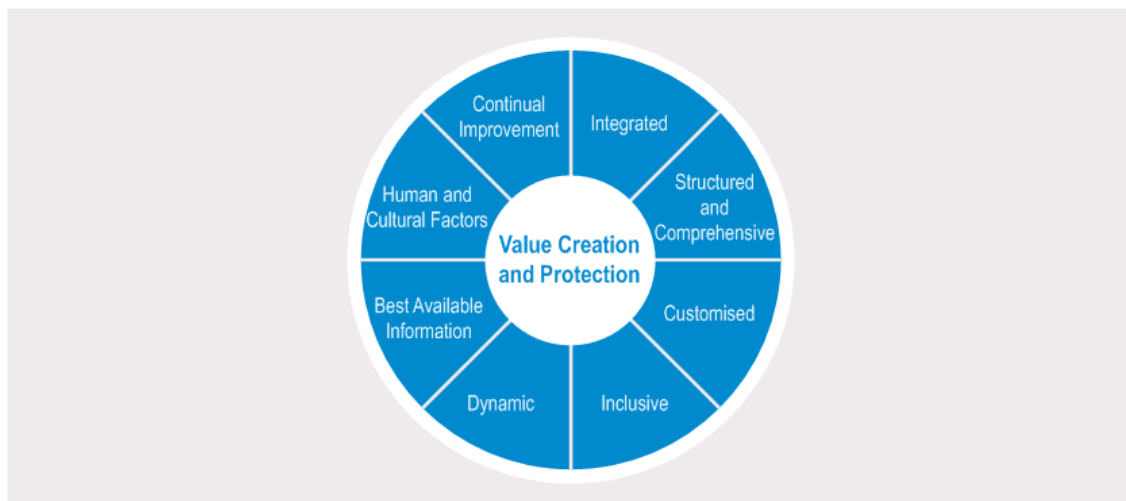
Managing risk is based on the principles (please refer to section 1.5), framework (please refer to section 1.6) and process (please refer to part 4) outlined in this document, as illustrated below.

COMMUNITY: GOVERNANCE | ENTERPRISE RISK MANAGEMENT FRAMEWORK



1.5 Principles

Council has adopted ISO 31000:2018 Risk Management – Guidelines which has identified 8 principles to be applied by Council for effective and efficient Enterprise Risk Management, communicating its value and explaining its intention and purpose:



PRINCIPLE	DEFINITION
Integrated	Enterprise Risk Management is an integral part of all Councils activities.
Structured and comprehensive	A structured and comprehensive approach to Enterprise Risk Management contributes to consistent and comparable results.

Customised	The Enterprise Risk Management Framework and process are customised and proportionate to Councils external and internal context related to its objectives.
Inclusive	Appropriate and timely involvement of stakeholders enables their knowledge, views and perceptions to be considered. This results in improved awareness and informed Enterprise Risk Management.
Dynamic	Risks can emerge, change or disappear as Councils external and internal context changes. Enterprise Risk Management anticipates, detects, acknowledges and responds to those changes and events in an appropriate and timely manner.
Best available information	The inputs to Enterprise Risk Management are based on historical and current information, as well as on future expectations. Enterprise Risk Management explicitly takes into account any limitations and uncertainties associated with such information and expectations. Information should be timely, clear and available to relevant stakeholders.
Human and cultural factors	Human behaviour and culture significantly influence all aspects of Enterprise Risk Management at each level and stage.
Continual improvement	Enterprise Risk Management is continually improved through learning and experience.

1.6 Framework



PRINCIPLE	DEFINITION
Leadership & Commitment	The ARIC and the Councillors will ensure that Enterprise Risk Management is integrated into all of Councils activities and should proactively demonstrate risk leadership and commitment to the Council.
Integration	Integrating Enterprise Risk Management is a dynamic and iterative process and is customised to Council's needs and culture. Enterprise Risk Management is part of, and not separate from, Councils purpose, governance, leadership and commitment, strategy, objectives and operations.
Design	The Enterprise Risk Management Framework is designed to: <ul style="list-style-type: none"> ■ examine and understand its external and internal context; ■ articulate Enterprise Risk Management commitment;

COMMUNITY: GOVERNANCE | ENTERPRISE RISK MANAGEMENT FRAMEWORK

	<ul style="list-style-type: none">■ assign appropriate roles, accountability and responsibilities;■ allocate appropriate resources;■ establish communication in order to support the framework; and facilitate effective application of Enterprise Risk Management.
Implementation	<p>The Enterprise Risk Management Framework ensures that the Enterprise Risk Management process is a part of all activities throughout the Council including decision making and that the arrangements for managing risk are clearly understood and practised.</p>
Evaluation	<p>Council will periodically measure performance of the Enterprise Risk Management Framework against its purpose, indicators and implementation plans and determine whether it remains suitable to support Council in achieving their objectives.</p>
Improvement	<p>Council will continually monitor, improve and adapt the Enterprise Risk Management Framework to ensure that Enterprise Risk Management is continually enhanced.</p>

Part 2: Enterprise Risk Management policy

Council has adopted ISO 31000:2018 Risk management – Guidelines, NSW Treasury Guidelines and Local Government Act 1993 to ensure Council is fully compliant with all legislative and best practice requirements in managing risks.

2.1 Enterprise Risk Management Objective

The objective of Enterprise Risk Management for the Council is to identify and treat risk that can stop the Council from achieving their five Community Plan objectives, which are;

- Looking after our community
- Protecting our natural environment
- Building a strong local economy
- Connecting our region
- Good government

2.2 Risk Communication and Culture

Embedding Enterprise Risk Management into the organisational culture is fundamental to achieving integrated Enterprise Risk Management. This will be accomplished by:

- Directors and Managers championing Enterprise Risk Management behaviours and actions
- promoting the view that all staff are responsible for management of risks
- encouraging staff to develop knowledge and skills in Enterprise Risk Management
- including Enterprise Risk Management in Council's induction program, and ongoing training program

Council recognises that a proactive Enterprise Risk Management culture is necessary to effectively respond to unexpected events. Therefore, successful Enterprise Risk Management requires involvement by all staff. Council will adopt an organisational culture that supports effective Enterprise Risk Management where:

- individuals are encouraged to identify and respond to risks without fear of retribution
- individuals are encouraged to challenge and debate risk responses in a constructive manner
- there is a common risk language that facilitates clear and consistent discussion of risks affecting Council.

To increase awareness across Council, the Enterprise Risk Management Framework documentation will be provided in PULSE, which contains the risk registers that will be overseen by Risk Champions, and ELO as the primary document management system for Enterprise Risk Management.

2.3 Risk Criteria

2.3.1 Risk Criteria and Tolerance

Council’s risk criteria describe the amount and type of risk that Council is prepared to take in pursuit of its objectives. Council’s risk criteria are defined by the Executive and approved by the Councillors, after endorsement by the ARIC. The risk criteria should be reviewed during the self-assessment at the end of each financial year by the Executive (please refer to section 4.7 for more details).

Risk criteria is about defining what Council does and does not want to do, and how it goes about it. It is an important foundation for the Enterprise Risk Management Framework.

The table below describes the different levels of tolerance and actions required in relation to risk criteria management.

EXTENT OF RISK CRITERIA	RISK TOLERANCE LEVEL	ENTERPRISE RISK MANAGEMENT APPROACH	MANAGEMENT ACTION
No appetite	Zero tolerance	Highly cautious	Crisis management
Low appetite	Low tolerance	Cautious	GM approval
Moderate appetite	Moderate tolerance	Conservative	Director approval
High appetite	High tolerance	Confident	Business case

2.3.2 Risk Tolerance table

Risk tolerance provides more detail about Council’s risk criteria. Risk tolerance defines the absolute limits that Council will not exceed. Risk tolerance implies that Council cannot effectively deal with risks beyond these limits.

ALARP (As Low as Reasonably Practicable) is a point at which risk is reduced so low that further risk reduction measures are not required. Since risk cannot be completely eliminated, it is however possible to be minimised to a level that is “As Low as Reasonably Practicable”.

RISK TOLERANCE TABLE

ACTION LEVEL	THREAT	OPPORTUNITY
Action required	<p>Unacceptable Risks: Zero Tolerance</p> <p>Threats that Council cannot tolerate at their current levels because their consequences coupled with their likelihoods are unacceptably high</p>	<p>Opportunities whose positive consequences, coupled with their likelihoods, are so large that Council must pursue them because it cannot afford to forgo the benefits associated with them.</p>
Potential action	<p>ALARP Risks: Low/Moderate Tolerance</p> <p>Threats that Council is prepared to tolerate at their current levels if the costs associated with implementing additional control measures outweigh the associated benefits</p>	<p>Opportunities that Council may wish to pursue, as the benefits outweigh the costs associated with implementing the strategies required to realise the opportunity.</p>
No action required	<p>Acceptable Risks: High Tolerance</p> <p>Threats that Council can accept at their current levels after existing controls</p>	<p>Opportunities that Council will give a low priority to, as the benefits are not sufficient to expend resources on pursuing.</p>

2.3.3 Council's Defined Risk Criteria

The Executive have defined Council's risk criteria below at a strategic level for defined risk categories. The results of this exercise will be available in ELO. This document provides an explicit articulation of Council's attitude to risk and a basis for consistently communicating Council's risk criteria to Council staff and external stakeholders:

1. Assets and Infrastructure
2. Contractor/Supplier
3. Employees
4. Environment
5. Financial/Commercial
6. Governance/Compliance
7. Health and Safety
8. Image and Reputation
9. Political
10. Projects
11. Service Delivery and Program Delivery
12. Stakeholder/Community

2.3.4 Business Rules for Risk Response

This framework establishes business rules for the management of risk following risk assessment and is intended to apply only for corporate/strategic risks. This framework may be referenced at risk workshops, Executive meetings, strategic planning meetings, and other structured risk assessments to consistently communicate minimum expectations for the management of identified risks, based on Council’s defined risk appetite.

RISK MANAGEMENT BUSINESS RULES FOR VARIOUS RISK RATINGS

	BROADLY ACCEPTABLE	TOLERABLE	UNACCEPTABLE	INTOLERABLE
RISK RATING	MINOR	SIGNIFICANT-SERIOUS	SEVERE	CATASTROPHIC
Generic Characteristics	<p>The risk lies within the bounds of Council’s current risk appetite.</p> <p>Council will accept this risk and manage the risk using existing processes and controls.</p>	<p>The risk lies within the bounds of Council’s current risk appetite.</p> <p>Council will tolerate this risk however cost-effective risk treatments for reducing threats or optimising benefits should be identified.</p>	<p>This risk lies beyond the bounds of Council’s current risk appetite.</p> <p>Council will only accept this risk if it is not cost-effective to implement controls to reduce the level of risk exposure.</p> <p>Action is required to reduce this risk to tolerable or better.</p> <p>Proactive management by senior staff is required to ensure that this risk does not escalate to Intolerable.</p>	<p>This risk lies beyond the bounds of Council’s current risk tolerance.</p> <p>Council will not tolerate this risk. Action is required to reduce the risk to Unacceptable or better.</p> <p>If the risk cannot be reduced, then continuation of the activities leading to the risk exposure must be subject to the highest level of review, considering potential benefits to Council. There must be explicit acceptance of the risk and implementation of effective risk treatments.</p>
Risk Treatment This identifies Council expectations for identification of risk treatments.	Proposed risk treatments may be identified to reduce the risk consequence, likelihood or both.	Cost effective risk treatments for reducing threats or optimising benefits should be identified.	Proposed risk treatments must be identified to reduce the risk consequence, likelihood, or both.	Proposed risk treatments must be identified to reduce the risk consequence, likelihood or both.

	BROADLY ACCEPTABLE	TOLERABLE	UNACCEPTABLE	INTOLERABLE
RISK RATING	MINOR	SIGNIFICANT-SERIOUS	SEVERE	CATASTROPHIC
Residual Risk This identifies Council expectations for estimating post-treatment residual risk.	Residual risk needs to be estimated.	Residual risk needs to be estimated.	Anticipated post-treatment residual risk must be estimated.	Anticipated post-treatment residual risk must be estimated.

RESIDUAL RISK

	BROADLY ACCEPTABLE	TOLERABLE	UNACCEPTABLE	INTOLERABLE
RISK RATING	MINOR	SIGNIFICANT-SERIOUS	SEVERE	CATASTROPHIC
Decision Making This characteristic identifies Council expectations for decision making. This includes the decision to proceed with the proposed action or strategy given Council's risk exposure, and decision as to whether the proposed risk treatment is considered adequate.	Decisions to be made within existing delegated authorities and processes.	Risk assessment and proposed risk treatments to be reviewed by the Department Manager or higher.	Risk assessment and proposed risk treatments to be reviewed by the Executive. Decision to proceed subject to endorsement by the Executive	Risk assessment and proposed risk treatments to be reviewed by the Executive. Decision to proceed subject to endorsement by the Executive.
Risk Ownership A risk owner is the person (or position) with accountability and authority to manage risk.	No requirements to identify Risk Owners.	No requirement to identify Risk Owners.	Risk Owner must be nominated (Department Manager or above).	Risk Owner must be nominated (Director or above).

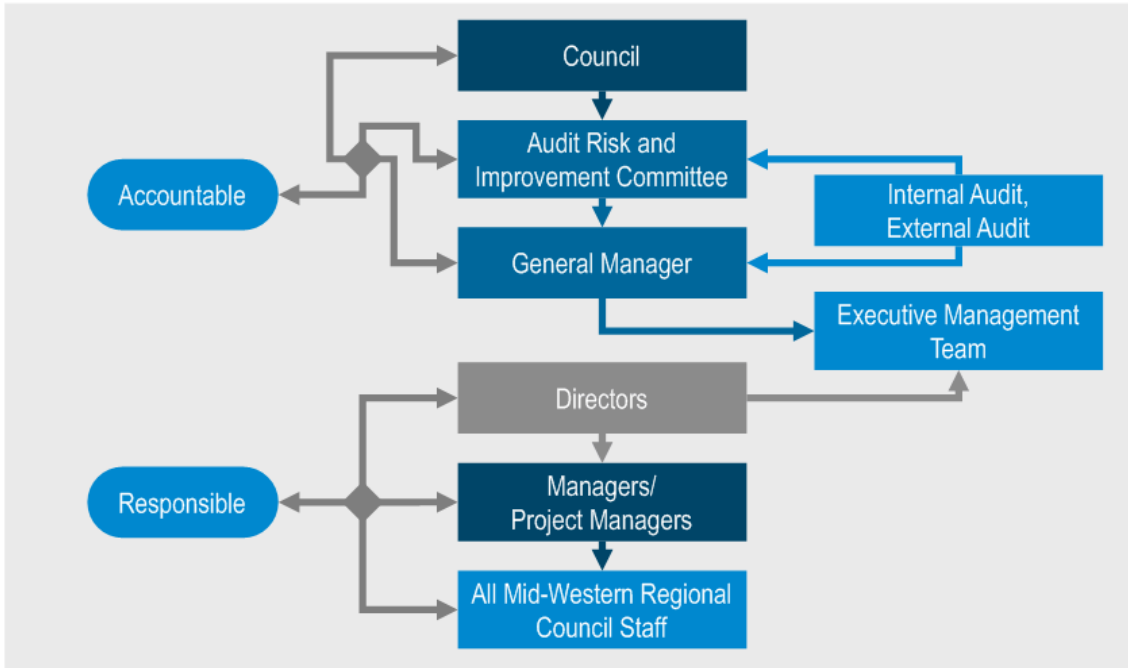
2.4 Related Policies and Procedures

The Enterprise Risk Management Framework should be read in conjunction with reference to the following related policies and procedures;

- WHS Risk Management Procedure
- Business Continuity Plan
- Fraud Control Policy
- Procurement Policy
- Service Provider Management Policy
- Contractor WHS Management Procedure
- Strategic Asset Management Plan
- Code of Conduct
- Complaints Policy
- Statement of Business Ethics
- Public Interest Disclosure Internal Reporting Policy
- Access to Information Policy
- Anti-Discrimination and EEO Policy
- Asbestos Management Policy
- Community Transport Service Policy
- Compliance Policy
- Drinking Water Quality Policy
- Family Day Care Policy
- Meals on Wheels Policy
- Media Policy
- Related Party Disclosure Policy
- Work, Health and Safety Policy
- Workplace Bullying Policy

Integrating Enterprise Risk Management into Council is a dynamic and iterative process and is customised to Council's needs and culture. Enterprise Risk Management is part of, and not separate from, the organisational purpose, governance, leadership and commitment, strategy, objectives and operations and is integrated into all relevant policies and procedures.

2.5 Accountability and Responsibilities



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The following table provides details of Enterprise Risk Management responsibilities within Council:

ROLE	RESPONSIBILITY
General Manager	<ul style="list-style-type: none"> ■ Approving the Council's Enterprise Risk Management plan, risk treatment plans, risk register and risk profile. ■ Recommending the Council's Enterprise Risk Management Policy and risk criteria for the endorsement of the ARIC and approval of the Councillors. ■ Overseeing the Council's Enterprise Risk Management Framework and ensuring it is effectively communicated, implemented and reviewed regularly. ■ Promoting and championing a positive risk culture. ■ Ensuring that all Council managers and staff (permanent, temporary or contractors) understand their Enterprise Risk Management responsibilities and that these are included in all job descriptions, staff induction programs, performance agreements and performance appraisals. ■ Annually attesting that Council's Enterprise Risk Management Framework complies with statutory requirements. ■ Approving the Council's implementation of corrective actions recommended by Council's internal audit function, external audit and ARIC.
Executive	<ul style="list-style-type: none"> ■ Developing Council's Enterprise Risk Management Policy. ■ Determining Council's risk criteria. ■ Leading the Enterprise Risk Management process - for example, evaluating Council's internal and external context, identifying, assessing and prioritising risks and developing risk treatment plans and internal controls. ■ Developing Council's risk register and risk profile. ■ Communicating and implementing Council's Enterprise Risk Management policy and plans across Council. ■ Advising/reporting on the performance and implementation of Council's Enterprise Risk Management Framework to the General Manager. ■ Reviewing recommendations for corrective actions from the Chief Audit Executive and Council's internal audit function and determining Council's response.

ROLE	RESPONSIBILITY
Enterprise Risk Management Coordinator and Enterprise Risk Management function	<ul style="list-style-type: none"> ■ Supporting the Executive by coordinating and providing clear and concise risk information, advice and/or reports that can be used in planning and decision-making. ■ Coordinating the various activities relating to Enterprise Risk Management within Council. ■ Helping to build an Enterprise Risk Management culture within Council, including facilitating and driving Enterprise Risk Management at the strategic and operational level within Council and ensuring consistency in practice. ■ Ensuring there are easily accessible systems and processes in place to enable all staff to conveniently undertake Enterprise Risk Management in their day-to-day work. ■ Ensuring Enterprise Risk Management processes are applied consistently across the Council. ■ Organising appropriate staff Enterprise Risk Management training and development. ■ Developing and maintaining a risk reporting framework to enable regular advising/reporting of key risks, and the management of those risks, to the Executive. ■ Supporting staff with their Enterprise Risk Management obligations and providing staff with advice and tools to ensure Enterprise Risk Management compliance. ■ Implementing effective Enterprise Risk Management communication mechanisms and information system/s. ■ Establishing and maintaining an ongoing monitoring system to track the Enterprise Risk Management activities undertaken within Council and assessing the need for further action. ■ Assessing Enterprise Risk Management information for completeness, accuracy and consistency (for example, risk registers, risk treatment plans). ■ Preparing advice or reports for the ARIC and attending Committee meetings (where requested).
Managers	<ul style="list-style-type: none"> ■ Promoting awareness of risks and risk treatments that must be implemented. ■ Ensuring staff are implementing Council's Enterprise Risk Management Framework as developed and intended and performing their Enterprise Risk Management responsibilities. ■ Identifying risks that will affect the achievement of Council objectives. ■ Establishing and/or implementing specific policies, operating and performance standards, budgets, plans, systems and/or procedures to manage risks. ■ Monitoring the effectiveness of risk treatment and internal controls.

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ROLE	RESPONSIBILITY
Staff	<ul style="list-style-type: none"> ■ Helping to identify risks in their department. ■ Implementing risk treatment plans within their area of responsibility. ■ Following standard operating procedures and Safe Work Method Statements (SWMS) (where applicable). ■ Communicating or escalating new risks that emerge to their manager.
Audit, Risk and Improvement Committee	<ul style="list-style-type: none"> ■ Ensure Council is providing sufficient resources for Enterprise Risk Management and staff are able to carry out their Enterprise Risk Management responsibilities. ■ Council's Enterprise Risk Management Framework complies with ISO 31000:2018. ■ Council's Enterprise Risk Management Framework operates effectively and supports the achievement of Council's strategic goals and objectives. ■ Management has embedded a positive Enterprise Risk Management culture. ■ Council's risk criteria are appropriately reflected in the internal control framework. ■ Council takes an Enterprise Risk Management approach that is fully integrated into all aspects of Council, including decision-making processes and operations. ■ Risks are formally considered when developing and implementing all policies, programs, projects and other activities, including procurement. ■ Enterprise Risk Management covers all relevant risk categories including strategic, operational, compliance, reputational and reporting risks. ■ Major risks have been identified and assessed by Council and appropriate risk treatments have been implemented that reflect the risk criteria. ■ Internal controls are effective and appropriate. ■ Risk registers and risk profiles are appropriate. ■ Risk information is captured and communicated in a timely manner across Council, enabling management and staff to carry out their responsibilities. ■ There are Council-specific, fit-for-purpose tools, systems and processes to help all those responsible for managing risk to fulfil their responsibilities. ■ Council's Enterprise Risk Management policies, procedures and plans are being complied with.

ROLE	RESPONSIBILITY
Internal Audit	<p>Council's internal audit function will support the ARIC to fulfil its assurance responsibilities through the audit of particular risks, as identified in the internal audit function's work plan. The role of the internal audit function in relation to Enterprise Risk Management is documented in the Council's Internal Audit Charter.</p> <p>Council may elect to appoint a Chief Audit Executive to oversee Council's internal audit activities in consultation with the ARIC.</p> <p>Given the need to maintain the independence and objectivity of the internal audit function, the following boundaries are to apply with respect to the role of the internal audit function in the Council's Enterprise Risk Management Framework:</p> <ul style="list-style-type: none"> ■ It is to be clear that Council's management remains responsible for Enterprise Risk Management. ■ The internal audit function is to provide advice, challenge and support management's decision-making, as opposed to taking Enterprise Risk Management decisions themselves. ■ The internal audit function should not: <ul style="list-style-type: none"> ■ manage any of the risks on behalf of the Council; ■ set the Council's risk criteria; ■ impose Enterprise Risk Management processes; ■ decide or implement risk responses, or ■ be held accountable for Enterprise Risk Management activities.

2.6 Enterprise Risk Management Performance

Council will decide the performance indicators it will use to measure the effectiveness of its Enterprise Risk Management Framework and identify gaps between its actual and desired performance. The performance indicators selected need to be easily measured on an ongoing basis, easily interpreted and understood by staff and management, and provide a meaningful picture of the Council's Enterprise Risk Management performance.

Council will ensure that the effectiveness of the Enterprise Risk Management Framework can be assessed by:

- Approved risk treatment plans which have performance targets that can be measured against goals and objectives,
- Performance indicators identified during the Enterprise Risk Management process, which will be measured on an ongoing basis, and
- A data collection system, which is maintained to obtain the data needed to measure the impact of the Council's Enterprise Risk Management Framework.

Performance targets will be set annually by the Executive, in consultation with the General Manager and the ARIC.

Part 3: Enterprise Risk Management Plan

The Enterprise Risk Management plan is a living document and will be regularly reviewed to reflect current and emerging risks as circumstances change.

3.1 Activities

The Council will implement the Enterprise Risk Management Framework by;

- Identifying where, when and how different types of decisions are made across the Council,
- Modifying the applicable decision-making processes where necessary, and
- Ensuring that Council's arrangements for managing risk are clearly understood and practised through training and development.

Successful implementation of the framework requires the engagement and awareness of stakeholders. This enables organisations to explicitly address uncertainty in decision-making, while also ensuring that any new or subsequent uncertainty can be taken into account as it arises.

The Enterprise Risk Management Framework will ensure that the Enterprise Risk Management process is a part of all activities throughout the organisation, including decision-making, and that changes in external and internal contexts will be adequately captured.

The Enterprise Risk Management Framework will be maintained through ongoing monitoring and reviews.

3.2 Timeframes

- Risk profile and risk registers will be reviewed on an ongoing basis and the Risk Champion will provide annual advice to the Risk Manager in relation to the assessment for risk profile and risk registers.
- Performance indicators are to be set annually by the ARIC, in consultation with the Chief Audit Executive and General Manager.
- Risk assessments will be assessed periodically and provided as an annual update to Executive.
- Executive provide on an annual basis an overview to the ARIC of the risks and controls, whether significant risks have been identified, assessed and responded to appropriately.
- Executive will provide annual advice to the ARIC about the implementation of Enterprise Risk Management.

3.3 Implementation of Enterprise Risk Management Process

The Enterprise Risk Management process will be implemented throughout Council by;

- • Creating and updating strategic, operational and project risk registers
- • Developing a treatment plan to identify how Council will handle the different risks
- • Training and developing all relevant staff
- • Monitoring and reviewing the Enterprise Risk Management process in accordance with section 4.7.

3.4 Training and Development

Council will ensure all relevant staff have the required skill and knowledge to perform their roles and responsibilities in regard to Enterprise Risk Management by:

- Including Enterprise Risk Management in the induction process to ensure all new staff are aware of the Enterprise Risk Management process in place at Council.
- The implementation of the Enterprise Risk Management Framework to ensure all relevant staff have the required skills and knowledge through adequate training and development.
- Providing ongoing training and development, when required or if major changes in the Enterprise Risk Management Framework have occurred.
- Please refer to section 2.6 for performance measures details.

3.5 Review

The Enterprise Risk Management Framework will be reviewed by Council on an annual basis through a self-assessment process (please refer to 4.10 for details) to assess the operation, efficiency and effectiveness of the Enterprise Risk Management Framework.

Part 4: Enterprise Risk Management Process

The Enterprise Risk Management process is a systematic way of identifying, assessing and prioritising risks, deciding how they will be managed, documented and communicated across the Council. A summary diagram of the risk management process is provided below:



4.1 Communication and Consultation

4.1.1 Enterprise Risk Management Communication

Council will ensure there is clear communication and consultation about Enterprise Risk Management to ensure all staff have a common understanding of;

- The basic principles of Enterprise Risk Management.
- Why the Council undertakes Enterprise Risk Management and how it relates to the Council's strategic plans and objectives.
- The basis on which decisions within the Council are made and the reasons why particular actions are required to manage enterprise risk.
- Council's risk criteria and Enterprise Risk Management Policy, plan and priorities.
- Staff responsibilities and accountabilities for managing certain enterprise risks.
- How to notify new or emerging risks or when something goes wrong or is not working.

4.1.2 Reporting to the ARIC

ARIC will determine in consultation with the General Manager what information it needs from the Council to fulfil its Enterprise Risk Management assurance role. Information requirements will be based on the Council's Enterprise Risk Management maturity, the resources available and the aspect of the Enterprise Risk Management Framework being assessed.

Review of information requirements will include:

- Advice from the Executive to each quarterly meeting of ARIC providing an overview of Council's risks and controls and whether significant risks have been identified, assessed and responded to appropriately.
- Annual advice from the Executive about the implementation of Council's Enterprise Risk Management.
- Independent strategic review by the internal audit function or an external party at least once each council term (i.e. four years) assessing adequacy of the Enterprise Risk Management Framework.

The ARIC will also be informed by any findings or recommendations made by Council's external and internal auditors in relation to Enterprise Risk Management.

Executive will develop an action plan for the General Manager and the ARIC to address any Enterprise Risk Management issues identified by the Committee.

4.1.3 Attestation Certificate in the Annual Report

The General Manager may consider publishing an attestation statement in the annual report indicating whether, during the prior financial year, Council was 'compliant', 'non-compliant' or 'in transition' against each of the requirements of Council's Enterprise Risk Management Framework. Please see definitions in 4.1.4 below.

4.1.4 Compliance Status for Attestation Certificates

DEFINITION	FURTHER REQUIREMENTS
Compliant	
<p>The Council is 'compliant' if it has implemented and maintained practices consistent with statutory requirements for the whole of the financial year.</p>	<p>The Council is to provide a copy of its attestation statement to the Office of Local Government and publish the attestation certificate in the Council's annual report.</p>
Non-Compliant	
<p>The Council is 'non-compliant' if:</p> <ul style="list-style-type: none"> ■ It has not implemented and maintained an Enterprise Risk Management Framework or internal audit practices consistent with statutory requirements for the whole of the financial year, or ■ Council's Audit, Risk and Improvement Committee and internal audit function has been in place for more than five years but has not been externally assessed (for internal audit only) 	<p>The General Manager may be required to apply to the Chief Executive Officer of the Office of Local Government for an exemption from statutory requirements.</p> <p>The Council's application for an exemption must:</p> <ul style="list-style-type: none"> ■ Be in writing ■ Be made prior to the reporting period in which full compliance with statutory requirements cannot be achieved or as soon as circumstances arise during the reporting period that will make full compliance throughout the reporting period impossible. ■ Provide the reasons why the Council cannot comply with statutory requirements. ■ Describe and demonstrate the Council's efforts to implement alternative arrangements and how these will achieve an outcome equivalent to the requirements. ■ The General Manager must ensure a copy of the attestation statement and the Chief Executive Officer's exemption approval (if applicable) is published in the Council's annual report. A copy of the Council's attestation statement is also to be sent to the Office of Local Government. <p>The Council will also have to explain on the attestation statement why it is not compliant and if it has received an exemption from the Chief Executive Officer.</p>

DEFINITION	FURTHER REQUIREMENTS
<p>In Transition</p> <p>The Council is 'in transition' if it is transitioning its operations to the statutory requirements during the financial year because:</p> <ul style="list-style-type: none"> ■ it is a newly constituted council established after the Enterprise Risk Management and internal audit requirements of the Local Government Act and Regulation came into force (a two-year transition period will be granted in this instance), or ■ the requirements that are not complied with have been newly prescribed within the last two years and the Council is in the process of implementing them 	<p>Council's taking advantage of the transitional arrangements will not be required to apply for approval from the Chief Executive Officer of the Office of Local Government. However, Council must be actively taking steps during the two-year (for internal audit) and five-year (for Enterprise Risk Management) transitional period to commence implementation and detail how the Council plans to achieve compliance within this period. The Council is to provide a copy of its attestation statement to the Office of Local Government.</p>

4.1.5 Risk types

The Enterprise Risk Management Framework accommodates strategic, operational and project risks.

Strategic risks are the risks that apply to Council as a whole and could adversely affect the achievement of Councils strategic outcomes and/or damage Councils reputation. These risks are managed by Executive.

Operational risks relate to the risks that may impact delivery of specific services and programs and are managed by the relevant management and staff.

Project risks relate to risks that may impact delivery of specific projects and are managed by the project manager. All significant projects have a risk register that is documented during planning phase, monitored during the development phase and reviewed while the project is finalised.

4.2 Scope, Context and Criteria

4.2.1 Scope Enterprise of Risk Management Process

Council has defined the scope of its Enterprise Risk Management activities. When planning the approach, considerations have included;

- objectives and decisions that need to be made;
- outcomes expected from the steps to be taken in the process;
- time, location, specific inclusions and exclusions;
- appropriate risk assessment tools and techniques;
- resources required, responsibilities and records to be kept; and
- relationships with other projects, processes and activities

4.2.2 Internal and External Context of Enterprise Risk Management

The context of the Enterprise Risk Management process has been established from Councils understanding of the external and internal environment in which it operates and reflects the specific environment of the activity to which the Enterprise Risk Management process is to be applied.

When Council has examined the external context, it has considered;

- The social, cultural, political, legal, regulatory, financial, technological, economic and environmental factors, whether international, national, regional or local;
- Key drivers and trends affecting the objectives of Council;
- External stakeholders' relationships, perceptions, values, needs and expectations;
- Contractual relationships and commitments; and
- The complexity of networks and dependencies.

When Council has examined the internal context, it has considered;

- Vision, goals and values;
- Governance, organisational structure, roles and accountabilities;
- Strategy, objectives and policies;
- Council's culture;
- Standards, guidelines and models adopted by Council;
- Capabilities, understood in terms of resources and knowledge (e.g. capital, time, people, intellectual property, processes, systems and technologies);
- Data, information systems and information flows;
- Relationships with internal stakeholders, taking into account their perceptions and values;
- Contractual relationships and commitments;
- Interdependencies and interconnections.

4.2.3 Risk Criteria

Council's Risk Criteria has been defined in Section 2.3 of the Enterprise Risk Management Policy.

While Council's risk criteria have been established at the beginning of the risk assessment process, it is dynamic and will be continually reviewed and amended as changes occur to Council's internal or external context.

The risk criteria will be approved by the Councillors, after endorsement by the ARIC.

4.3 Risk Assessment

Risk assessment within Council is the overall process of risk identification, risk analysis and risk evaluation.

Risk assessment has been conducted systematically, iteratively and collaboratively, drawing on the knowledge and views of stakeholders. It should use the best available information, supplemented by further enquiry as necessary.

Risk assessment has three parts:

- Risk Identification,
- Risk Analysis, and
- Risk Evaluation.

4.3.1 Risk Identification

Council has performed a risk identification process to find, recognise and describe risks that might assist or prevent the Council achieving its objectives. Relevant, appropriate and up-to-date information is important in identifying risks. The following factors, and the relationship between these factors, have been considered by Council as part of the risk identification process;

- Tangible and intangible sources of risk;
- Causes and events;
- Threats and opportunities;
- Vulnerabilities and capabilities;
- Changes in the external and internal context;
- Indicators of emerging risks;
- The nature and value of assets and resources;
- Consequences and their impact on objectives;
- Limitations of knowledge and reliability of information;
- Time-related factors; and
- Biases, assumptions and beliefs of those involved.

4.3.2 Risk Analysis

Council has undertaken its risk analysis to understand the nature of risk and its characteristics including, where appropriate, the level of risk. Council's risk analysis has involved a detailed consideration of uncertainties, risk sources, consequences, likelihood, events, scenarios, controls and their effectiveness. An event can have multiple causes and consequences and can affect multiple objectives.

The risk analysis has considered factors such as:

- Likelihood of events and consequences;
- Nature and magnitude of consequences;
- Complexity and connectivity;
- Time-related factors and volatility;
- The effectiveness of existing controls; and
- Sensitivity and confidence levels.

4.3.2.1 Assessing the Likelihood

To assess the likelihood of a risk, Council has considered;

- How often the potential event is expected to occur.
- How often the event has occurred historically.

Likelihood is divided into four ratings:

RISK LIKELIHOOD

DESCRIPTOR	DESCRIPTION	FREQUENCY
Almost certain	Expected to occur in most cases during normal operations	Will occur within this year
Likely	Will probably occur at some stage based on evidence of previous incidents	1 chance in 10 of occurring this year
Possible	Not generally expected to occur but may occur under specific circumstances	1 chance in 200 of occurring this year
Unlikely	Not expected to occur but may occur under special circumstances	1 chance in 500 of occurring this year
Very unlikely	Only ever occurs under exceptional circumstances	1 chance in 1000 of occurring this year

4.3.2.2 Assessing the Consequence

To assess the consequence of a risk, Council has considered the table below:

CONSEQUENCE LEVELS

LEVEL	DESCRIPTION
Catastrophic	Council's achievement of its objectives is unlikely
Severe	High impact on Council's ability to achieve its objectives with outcomes severely threatened
Serious	Above moderate impact on Council's ability to achieve its objectives, with delays of between 12 and 24 months
Significant	Moderate impact on Council's ability to achieve its objectives with some delays
Minor	Little or negligible impact on Council's ability to achieve its objectives

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Accurately determining the possible consequence of a risk will be determined by utilising the consequence table below:

Impact Level	Asset and Infrastructure	Contractor/ Supplier	Employees	Environment	Financial/ Commercial	Governance Compliance	Health and Safety	Image and Reputation	Political	Projects	Service Delivery and Program Delivery	Stakeholder/ Community
Minor Little or negligible impact on objectives	Consequence Asset will continue to operate and/or utilised Remedial Effort Negligible staff time (months) and resources (\$)	Consequence Adhoc rare disruption of services Remedial Effort Negligible staff time (months) and resources (\$)	Consequence Little or no impact on staff morale, staff health and safety Remedial Effort Negligible staff time (months) and resources (\$)	Consequence Minor and isolated damage to the environment Remedial Effort Negligible staff time (months) and resources (\$)	Consequence Stagnant revenue streams with mild increase in expenditure Remedial Effort Negligible staff time (months) and resources (\$)	Consequence Stagnant revenue streams with mild increase in expenditure Remedial Effort Negligible staff time (months) and resources (\$)	Consequence Little impact on governance but raise awareness on emergency risk Remedial Effort Negligible staff time (months) and resources (\$)	Consequence Operations are not impacted with isolated incidences Remedial Effort Negligible staff time (months) and resources (\$)	Consequence Community satisfaction affected here and there. No media coverage Remedial Effort Negligible staff time (months) and resources (\$)	Consequence Operations continue to implement similar initiatives with minor changes Remedial Effort Negligible staff time (months) and resources (\$)	Consequence Adhoc delays in program delivery Remedial Effort Negligible staff time (months) and resources (\$)	Consequence Minor adverse stakeholder feedback and stakeholder engagement Remedial Effort Negligible staff time (months) and resources (\$)
Significant Moderate impact on objectives with delays	Consequence Assets will continue to operate or utilised once re active maintenance has been implemented Remedial Effort Staff time (up to 3 months) and resources (up to \$50,000)	Consequence Substandard services and/or products Remedial Effort Staff time (up to 3 months) and resources (up to \$50,000)	Consequence Impact on staff morale is evident, staff health and safety is not yet compromised Remedial Effort Staff time (up to 3 months) and resources (up to \$50,000)	Consequence Isolated incidences of damage to the environment on important areas. Attracting isolated local community complaints Remedial Effort Staff time (up to 3 months) and resources (up to \$50,000)	Consequence Decrease in revenue streams with increase in operating costs Remedial Effort Staff time (up to 3 months) and resources (up to \$50,000)	Consequence Triggers an internal assessment and health checks to understand and mitigate Remedial Effort Staff time (up to 3 months) and resources (up to \$50,000)	Consequence First aid injuries. Operations continue with additional caution, education and awareness Remedial Effort Staff time (up to 3 months) and resources (up to \$50,000)	Consequence Community satisfaction falls, social media driculations are detected. Remedial Effort Staff time (up to 3 months) and resources (up to \$50,000)	Consequence Operations shifting priorities Remedial Effort Staff time (up to 3 months) and resources (up to \$50,000)	Consequence Minor financial loss as costs balloons Remedial Effort Staff time (up to 3 months) and resources (up to \$50,000)	Consequence Service delivery lowers and generates some low level complaints Remedial Effort Staff time (up to 3 months) and resources (up to \$50,000)	Consequence Direct Community complaints, stakeholder dissatisfaction Remedial Effort Staff time (up to 3 months) and resources (up to \$50,000)
Serious Above moderate impact on objective with delays of between 12 and 24 months	Consequence Asset will continue to operate and/or utilised with ongoing reactive maintenance Remedial Effort Staff time (up to 3 months) and resources (\$50,000-500,000)	Consequence Services are disrupted Remedial Effort Staff time (up to 3 months) and resources (\$50,000-500,000)	Consequence Deterioration of staff morale, health and safety is compromised, staff complaints emanate. Remedial Effort Staff time (up to 3 months) and resources (\$50,000-500,000)	Consequence Chronic damage to the environment including isolated damage to significant sites and protected areas. Attracting environmental stakeholder concerns and local media spotlight Remedial Effort Staff time (up to 3 months) and resources (\$50,000-500,000)	Consequence Operating revenue is depleted to an extent that the Council is reaching out for reserves Remedial Effort Staff time (up to 3 months) and resources (\$50,000-500,000)	Consequence Internal audit, internal investigation will be commissioned Remedial Effort Staff time (up to 3 months) and resources (\$50,000-500,000)	Consequence Medical attention off-site, short term lost time injury. Operations will be slowed down and excess pressure on existing staff emerges Remedial Effort Staff time (up to 3 months) and resources (\$50,000-500,000)	Consequence Community dissatisfaction raised directly with the Council, Social media upbeat, local media on alert Remedial Effort Staff time (up to 3 months) and resources (\$50,000-500,000)	Consequence Major shift in broad direction and reallocation of resources Remedial Effort Staff time (up to 3 months) and resources (\$50,000-500,000)	Consequence Significant cost variance with minor service delivery issues Remedial Effort Staff time (up to 3 months) and resources (\$50,000-500,000)	Consequence Service delivery quality and timelines deteriorates and generates adverse complaints Remedial Effort Staff time (up to 3 months) and resources (\$50,000-500,000)	Consequence Community backlash and weaker stakeholder engagement Remedial Effort Staff time (up to 3 months) and resources (\$50,000-500,000)
Severe Impacts on objectives outcomes are severely threatened	Consequence Asset will temporarily shut down for maintenance prior to resuming operation and utilisation Remedial Effort Staff time (12-24months) and resources (\$500,001 - \$2million)	Consequence Services are halted with workarounds being developed Remedial Effort Staff time (12-24months) and resources (\$500,001 - \$2million)	Consequence Deterioration of staff morale, health and safety is compromised, absences and attrition becomes evident Remedial Effort Staff time (12-24months) and resources (\$500,001 - \$2million)	Consequence Chronic damage to the environment including isolated damage to significant sites and protected areas. Attracting community dissatisfaction and state/federal attention and scrutiny Remedial Effort Staff time (12-24months) and resources (\$500,001 - \$2million)	Consequence Loss of revenue sources threaten reserves, fraud and corruption Remedial Effort Staff time (12-24months) and resources (\$500,001 - \$2million)	Consequence Detailed Audit Investigation and Executive Management and ARIC Scrutiny and Management Monitoring Remedial Effort Staff time (12-24months) and resources (\$500,001 - \$2million)	Consequence Serious injury resulting in hospitalisation. Operations are delayed and rescheduled and investigations prompted Remedial Effort Staff time (12-24months) and resources (\$500,001 - \$2million)	Consequence Media and community "noise" is now loud, internal investigations (under governance commence) Remedial Effort Staff time (12-24months) and resources (\$500,001 - \$2million)	Consequence Urgent winding down of operations Remedial Effort Staff time (12-24months) and resources (\$500,001 - \$2million)	Consequence Senior Management Inquiry Remedial Effort Staff time (12-24months) and resources (\$500,001 - \$2million)	Consequence Service delivery slows down or is postponed for future years and generates a collective voice in the community, attracts media and politicians Remedial Effort Staff time (12-24months) and resources (\$500,001 - \$2million)	Consequence Community and stakeholder disengagement, Executive Management responds Remedial Effort Staff time (12-24months) and resources (\$500,001 - \$2million)
Catastrophic Achievements of objectives is less likely	Consequence Assets will temporarily shut down for maintenance prior to resuming operation and utilisation Remedial Effort Staff time (12-24months) and resources (>\$2million)	Consequence Service provision is grounded Remedial Effort Staff time (12-24months) and resources (>\$2million)	Consequence Deterioration of staff morale, health and safety is compromised, absences and attrition becomes evident Remedial Effort Staff time (12-24months) and resources (>\$2million)	Consequence Excessive damage to the environment. Attracting community outcry, quarantining for internal and external investigations Remedial Effort Staff time (12-24months) and resources (>\$2million)	Consequence Financial reserves are severely threatened, fraud and corruption Remedial Effort Staff time (12-24months) and resources (>\$2million)	Consequence Detailed Audit Investigation and ARIC and Council scrutiny and decision making Remedial Effort Staff time (12-24months) and resources (>\$2million)	Consequence Serious injury resulting in permanent loss of staff. Operations are postponed, scrutiny and investigations undertaken Remedial Effort Staff time (12-24months) and resources (>\$2million)	Consequence Community forces action, demonstrations and state and national media escalates. External investigations commence. Remedial Effort Staff time (12-24months) and resources (>\$2million)	Consequence Community has lost hope in Council, investment and population migration. Remedial Effort Staff time (12-24months) and resources (>\$2million)	Consequence Significant costs, viability questioned and service delivery is compromised. Remedial Effort Staff time (12-24months) and resources (>\$2million)	Consequence Service delivery slows down or is postponed for future years and generates a collective voice in the community, attracts media and politicians. Remedial Effort Staff time (12-24months) and resources (>\$2million)	Consequence Community completely dissatisfied, change of direction on decisions, stakeholders closely involved. Remedial Effort Staff time (12-24months) and resources (>\$2million)

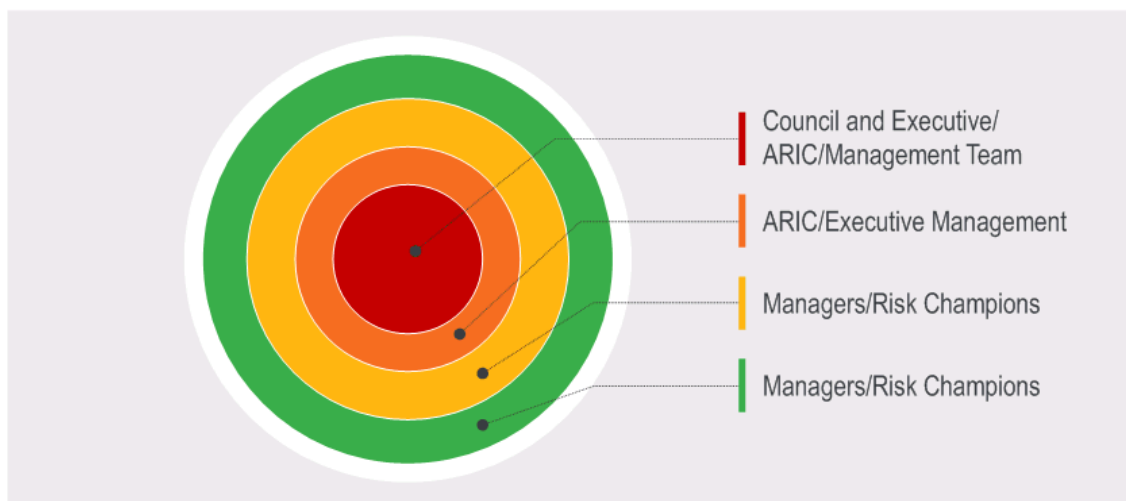
4.3.2.3 Risk Matrix

Once the likelihood and consequence have been determined, the risk matrix will be used to determine the status of the risk evaluation will be performed.

		Consequence				
		Minor 1	Significant 2	Serious 3	Severe 4	Catastrophic 5
Likelihood	Very Unlikely 1	1	2	3	4	5
	Unlikely 2	2	4	6	8	10
	Possible 3	3	6	9	12	15
	Likely 4	4	8	12	16	20
	Almost certain 5	5	10	15	20	25

LEGEND			
LOW	MEDIUM	HIGH	EXTREME

The heat map below displays the assignment of accountability responsibility by severity:



4.3.3 Evaluation

Council has performed a risk evaluation in order to support its decisions. Councils risk evaluation involved comparing the results of the risk analysis with the established risk criteria to determine where additional action is required. This led to a decision to either:

- Do nothing further;
- Consider risk treatment options;
- Undertake further analysis to better understand the risk;
- Maintain existing controls; and
- Reconsider objectives.

Decisions took account of the wider context and the actual and perceived consequences to external and internal stakeholders.

4.4 Risk Treatment

Council undertook a risk treatment assessment to select and implement options for addressing risks.

Council's risk treatment assessment involved an iterative process of:

- Formulating and selecting risk treatment options;
- Planning and implementing risk treatment;
- Assessing the effectiveness of that treatment;
- Deciding whether the remaining risk is acceptable; and
- If not acceptable, taking further treatment.

Risk treatment options are not necessarily mutually exclusive or appropriate in all circumstances. Options for treating risk involved one or more of the following:

- Avoiding the risk by deciding not to start or continue with the activity that gives rise to the risk;
- Taking or increasing the risk in order to pursue an opportunity;
- Removing the risk source;
- Changing the likelihood;
- Changing the consequences;
- Sharing the risk (e.g. through contracts, buying insurance); and
- Retaining the risk by informed decision.

Justification for risk treatment is broader than solely economic considerations and considered all of Council's obligations, voluntary commitments and stakeholder views. The selection of risk treatment options was made in accordance with the objectives, risk criteria and available resources.

When selecting risk treatment options, Council considered the values, perceptions and potential involvement of stakeholders and the most appropriate ways to communicate and consult with them. Though equally effective, some risk treatment options can be more acceptable to some stakeholders than to others.

If there are no treatment options available or if treatment options do not sufficiently modify the risk, the risk was recorded and kept under ongoing review.

4.5 Enterprise Risk Treatment Plans

Council will develop risk treatment plans to specify how the chosen treatment options will be implemented, so that arrangements are understood by those involved, and progress against the plan can be monitored. The treatment plan clearly identifies the order in which risk treatment should be implemented.

Treatment plans will be integrated into the management plans and processes of Council, in consultation with appropriate stakeholders. The information provided in the treatment plans will include:

- The rationale for selection of the treatment options, including the expected benefits to be gained;
- Those who are accountable and responsible for approving and implementing the plan;
- The proposed actions;
- The resources required, including contingencies;
- The performance measures;
- The constraints;
- The required reporting and monitoring; and
- When actions are expected to be undertaken and completed.

4.6 Recording and Reporting

Council will record and communicate to relevant staff the risks that Council faces. This information will also be used by Council to regularly review the Enterprise Risk Management Framework.

These reports include;

- a risk profile (at the General Manager's discretion) – this is a high-level status report which describes the priorities and management of risk across Council. It provides an overall picture of Council's risk profile, identifies risk priorities, explains the rationale for decisions made about individual risks and allows those responsible for managing particular risks to see how their risks/controls fit into Council's overall Enterprise Risk Management Framework, and
- risk registers – these describe and prioritise each individual risk, including its cause/s, impact/s and control/s. They also outline who in the Council is responsible for managing individual risks. Council has a strategic risk register, operational risk registers for each department and individual project risk registers.

Risk reports are to be approved by the General Manager, following endorsement by the ARIC.

4.7 Monitor and Review

Council's Executive will establish and maintain an ongoing monitoring and review process of the information gathered from Council's Enterprise Risk Management process to ensure its Enterprise Risk Management Framework is up-to-date and relevant. It will also enable the Executive to report to the General Manager and ARIC when required about Council's Enterprise Risk Management Framework.

Monitoring and review will include at a minimum the following key elements;

- Annual advice from the Risk Manager to Executive assessing Council's risk profile and risk registers.
- At the General Manager's discretion an annual self-assessment at the end of each financial year by the Executive of the quality of Council's Enterprise Risk Management Framework –

COMMUNITY: GOVERNANCE | ENTERPRISE RISK MANAGEMENT FRAMEWORK

this is to assess the operation of the Enterprise Risk Management Framework during the preceding financial year and to ensure:

- Council is providing sufficient resources for Enterprise Risk Management and staff are able to carry out their Enterprise Risk Management responsibilities;
- Council's Enterprise Risk Management Framework complies with ISO 31000:2018;
- Council's Enterprise Risk Management Framework operates effectively and supports the achievement of Council's strategic goals and objectives;
- management has embedded a positive risk culture;
- Council's risk criteria are appropriately reflected in Council's internal control framework;
- Council takes an Enterprise Risk Management approach that is fully integrated into all aspects of the Council, including decision-making processes and operations;
- risks are formally considered when developing and implementing all Council policies, programs, projects and other activities, including procurement;
- Enterprise Risk Management covers all relevant risk categories including strategic, operational, compliance, reputational and reporting risks;
- major risks have been identified and assessed by the Council and appropriate risk treatments have been implemented that reflect Council's risk criteria;
- Council's internal controls are effective and appropriate;
- Council's risk registers and risk profile are current and appropriate;
- risk information is captured and communicated in a timely manner across the Council, enabling management and staff to carry out their responsibilities, and
- Council's Enterprise Risk Management policies, procedures and plans are being complied with.

4.8 Enterprise Risk information systems

4.8.1 Enterprise Risk records

Enterprise Risk Management activities will be recorded in PULSE and/or ELO to provide:

- A record of risk assessment and risk ownership for ongoing monitoring
- A record of completed risk treatments
- An audit trail demonstrating the basis for decision making
- Evidence of good corporate governance
- Records that can be used as a point of reference for future Enterprise Risk Management activities.

4.8.2 Risk database

Records of enterprise risk assessment will be maintained in PULSE risk database. PULSE will be developed to include records of:

- • Objectives used as a basis for enterprise risk assessment (This will be maintained in ELO)
- • Enterprise risk assessments (including risk identification, analysis, and evaluation)

- • Nominated risk owners
- Enterprise risk treatments (including existing controls, actions, target timeframe, and responsibilities)
- Projected residual risk (post-treatment)
- The status of enterprise risk monitoring and risk treatments. The risk database will be used:
 - To record all risks across Council – strategic, operational and project – with the ability to select, filter and sort according to project, Department, strategy and the nature, type and category of risks
 - To provide reports summarising Council’s total risk exposure and risk profile
 - To monitor and manage the status of risk treatments
 - As resource to be used as an input for risk assessments, assurance activities, and for continual improvement across Council.

The Risk Manager will review and update Council’s risk database on an annual basis.



Draft: 30 March 2020

Road Closure Land Transfer Deed

Mid-Western Regional Council

ABN 96 149 391 332

Peabody Pastoral Holdings Pty Ltd

ACN 141 206 368

Wilpinjong Coal Pty Ltd

ACN 104 594 694

Moolarben Coal Mines Pty Limited

ACN 108 601 672

2020

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THIS DEED is made on

2019

BETWEEN:

- (1) **Mid-Western Regional Council** ABN 96 149 391 332 of 86 Market Street, Mudgee, NSW 2850 (the **Council**);
- (2) **Peabody Pastoral Holdings Pty Limited** ACN 141 206 368 of 100 Melbourne Street, South Brisbane, QLD 4104 (**PPH**);
- (3) **Wilpinjong Coal Pty Limited** ACN 104 594 694 of 100 Melbourne Street, South Brisbane, QLD 4101 (**WCPL**); and
- (4) **Moolarben Coal Mines Pty Limited** ACN 108 601 672 of 'Darling Park Tower 2', Level 18, 201 Sussex Street, Sydney NSW 2000 (**Moolarben**).

RECITALS:

- (A) The parties have entered into the Road Opening HOA.
- (B) The parties have entered into this Deed to address the transfer of ownership of different parts of the Road Closure Land if and when closed to:
 - (1) PPH; and
 - (2) Moolarben,(collectively, the **Grantees** and each a **Grantee**), as referred to in clause 2.2(b) of the Road Opening HOA.
- (C) Subject to the registration of the Subdivision Plan,
 - (1) Council has agreed to grant to:
 - (i) PPH, an option for PPH to take a transfer of the PPH Lots; and
 - (ii) Moolarben, an option for Moolarben or its Nominee to take a transfer of the Moolarben Lots;
 - (2) PPH has agreed to grant to Council an option to require PPH to take a transfer of the PPH Lots; and
 - (3) Moolarben has agreed to grant to Council an option to require Moolarben to take a transfer of the Moolarben Lots,on the terms of this Deed.

THE PARTIES AGREE AS FOLLOWS:

1. **INTERPRETATION**

1.1 **Definitions**

A word defined in the Road Opening HOA has the same meaning in this Deed except as defined below.

Authority means:

- (a) a government or government department or other body;

- (b) a governmental, semi-governmental or judicial person including a statutory corporation; or
- (c) a person (whether autonomous or not) who is charged with the administration of Law.

Approval means any approval, consent, permit, licence, endorsement, condition, plan or requirement (and any variations to them) which may be required by an Authority.

Call Option Period means the period beginning on the Registration Date and ending on the date that is 20 Business Days after the Registration Date.

Contamination means the presence in, on or under land of a substance (whether a solid, liquid or gas) at a concentration above the concentration at which the substance is normally present in, on or under (respectively) land in the same locality, being a presence that presents a risk of material harm to human health or to any other aspect of the Environment.

Conveyancing Rules means the rules made under section 12E of the *Real Property Act 1900* (NSW).

Crown Lands means the Crown Lands Division of the NSW Department of Industry.

Deed means this deed including all annexures and schedules.

Electronic Transaction means a dealing as defined in the *Real Property Act 1900* (NSW) which may be created and 'Digitally Signed' in an 'Electronic Workspace' (as those terms are defined in clause 30 of the Standard Conditions).

Environment means all components of the earth.

Environmental Law means any law (including the laws of tort, negligence and nuisance) relating to the Environment or Contamination (or both), including a law relating to land use, planning, environmental assessment, heritage, water catchments, pollution of air or waters, noise, soil or water contamination, chemicals and hazardous substances, the ozone layer, waste, dangerous goods, building regulation, occupation of buildings and fire safety, public health, occupational health and safety, noxious trades and any aspect of the protection of the Environment, or the enforcement or administration of any of those laws.

Environmental Liability means any obligation, expense, liability, cost, loss, order, penalty or fine incurred pursuant to any Environmental Law which would or could be imposed upon any person in connection with a New Lot for any reason including as a result of Contamination in connection with a New Lot.

GST has the meaning given to it in the GST Law.

GST Law has the meaning given to it in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Instrument means any required section 88B instrument which, upon registration, will create those easements, rights of way and covenants referred to on the Subdivision Plan or required as part of the Approval for the subdivision of the Road Closure Land, including, without limitation, any easement for access granted in favour of National Parks and Wildlife Service over part of the Road Closure Land.

Lot 100 means the land in Lot 100 DP755454.

LRS means NSW Land Registry Services or any replacement body.

Moolarben Call Option means the option to take transfer of the Moolarben Lots granted under clause 6.1 by Council to Moolarben.

Moolarben Call Option Fee means \$1.00 (exclusive of GST).

Moolarben Lots means those New Lots identified as the "Moolarben Lots" on the Subdivision Plan.

Moolarben Put Option means the option to require Moolarben to accept the transfer of the Moolarben Lots, granted under clause 6.4 by Moolarben to Council.

Moolarben Put Option Fee means \$1.00 (exclusive of GST).

Moolarben Transfer Date means the date that the Transfer Form for the transfer of the Moolarben Lots is registered at the LRS.

New Lots means the lots that are created on registration of the Subdivision Plan.

New Road (Lot 100) has the meaning given to it in clause **Error! Reference source not found.**

Nominee means, if clause 7.6 applies, either PPH or WCPL (as relevant) that Moolarben nominates under clause 7.6 to take the transfer of the Moolarben Lots.

Option means (as the context requires), the PPH Call Option, PPH Put Option, Moolarben Call Option or Moolarben Put Option.

Option Notice means a written notice confirming exercise of the relevant Option substantially in the form of Schedule 2 for the PPH Call Option and Moolarben Call Option or substantially in the form of Schedule 3 for the PPH Put Option and Moolarben Put Option.

PPH Call Option means the option to take transfer of the PPH Lots granted under clause 5.1 by Council to PPH.

PPH Call Option Fee means \$1.00 (exclusive of GST).

PPH Lots means those New Lots identified as the "PPH Lots" on the Subdivision Plan.

PPH Put Option means the option to require PPH to accept the transfer of the PPH Lots granted under clause 5.4 by PPH to Council.

PPH Put Option Fee means \$1.00 (exclusive of GST)

PPH Transfer Date means the date that the Transfer Form for the transfer of the PPH Lots is registered at the LRS.

Put Option Period means the period beginning on day after the expiry of the Call Option Period and ending [20] Business Days after that date.

Registration Date means the later of:

- (a) the date that the Grantees receive notice from Council under clause 2.2(a)(iv) of the HOA that the existing sections of the Road that are located on the Road Closure Land have been closed; and
- (b) the date that the Grantees receive notice from Council that the Subdivision Plan and Instrument have been registered at the LRS.

Road (Lot 100) has the meaning given to it in clause **Error! Reference source not found.**

Road Opening HOA means the Heads of Agreement for Opening New, Realigned Sections of Ulan-Wollar Road that was signed on 8 May 2019 and endorsed by the Council on 16 May 2019.

Standard Conditions means the NSW Law Society and Real Estate Institute of NSW Contract for the sale and purchase of land –2018 edition.

Subdivision Plan means the plan in Schedule 1 of this Deed.

Transfer Date means the PPH Transfer Date or the Moolarben Transfer Date, as relevant to the context.

Transfer Form means an LRS transfer form(s) for the transfer of:

- (a) the PPH Lots to PPH; or
- (b) the Moolarben Lots to Moolarben,

as applicable depending on the context.

1.2 **Rules for interpreting this Deed**

The rules in clauses 1.2-1.5 of the Road Opening HOA also apply in interpreting this Deed

2. **ACKNOWLEDGMENTS OF THE PARTIES**

2.1 **Purpose of this Deed**

The parties to this Deed acknowledge and agree that the purpose of this Deed is to make provision for the matters referred to clause 2.2(b) of the Road Opening HOA, namely, the transfer of ownership of different parts of the Road Closure Land, if and when closed to each of:

- (a) PPH; and
- (b) Moolarben.

2.2 **Capacity of the parties**

The parties acknowledge and agree that:

- (a) each party has entered into this Deed, and will exercise their respective rights, perform their respective obligations and otherwise give effect to the terms of this Deed, in good faith; and
- (b) each party has had the opportunity of obtaining independent accounting and legal advice prior to entering this Deed and does not rely upon any representation, promise or inducement made by another party to this Deed.

2.3 **Part of the Road on Lot 100**

- (a) The parties acknowledge and agree that, as at the date of this Deed, Crown Lands has confirmed that the part of the Road that passes through Lot 100 as at the date of this Deed (**Road (Lot 100)**) is not Crown public road.

- (b) On and from the date of this Deed:
 - (i) the parties to this deed agree that the Road (Lot 100) is not a public road;
 - (ii) Council agrees that it will not object to PPH, WCPL or Moolarben carrying out or procuring the carrying out of mining or other operations on, under or over the Road (Lot 100), once the existing sections of the Road that are located on the Road Closure Land are closed (as contemplated by clause 2.2(a) of the Road Closure Deed),
 - (iii) the Road Opening HOA is varied as follows:
 - (A) the definition of "Road Closure Land" is amended by inserting the following words at the end of that definition: "and for the avoidance of doubt, the Road Closure Land does not include Lot 100 in DP755454";
 - (B) the table in Schedule 1 is amended by removing the reference to Lot 100 in DP755454; and
 - (C) the plan in Schedule 2 is deleted and replaced with the plan in Schedule 4 to the Deed;
 - (iv) WCPL must use best endeavours to procure the amendment of the title diagram relevant to Lot 100 and/or the title to Lot 100 to show that the public road within Lot 100 is the New Road (Lot 100) and not the Road (Lot 100); and
 - (v) the Council must provide all assistance reasonably requested by WCPL to procure the amendment contemplated in clause 2.3(b)(iv).

3. **SUBDIVISION PLAN AND INSTRUMENT**

- (a) Each of the Grantees acknowledge that the Subdivision Plan or the Instrument may need to be amended in accordance with the terms of this Deed.
- (b) Subject to clause 3(c), after the date of this Deed, a party may only make alterations to the Subdivision Plan or the Instrument with the prior written consent of the other parties, which cannot be unreasonably withheld or delayed in relation to alterations:
 - (i) to ensure that the Subdivision Plan or Instrument (as relevant) complies with any Approvals, Laws, LRS requirements or Crown Lands requirements; or
 - (ii) to give effect to the intentions of the parties under this deed,and provided the parties' interests are not adversely affected by the alterations.
- (c) Consent is not required under clause 3(b) in respect of minor alterations to the Subdivision Plan or Instrument which relate to registration formalities.

4. **CLOSURE OF ROAD CLOSURE LAND**

4.1 **Closure of Road Closure Land and registration of Subdivision Plan**

As soon as practical after the existing sections of the Road that are located on the Road Closure Land are closed (as contemplated by clause 4.1 of the Road Opening HOA),

Council must use best endeavours to procure the registration of the Subdivision Plan and Instrument.

4.2 **Certificates of title for New Lots**

- (a) Council must immediately notify the Grantees once it receives notice that the Subdivision Plan and Instrument have been registered.
- (b) Immediately after the Registration Date, the Council must apply to the LRS for certificates of title (whether electronic or paper) for the New Lots.

5. **PPH CALL OPTION AND PPH PUT OPTION**

5.1 **Grant of PPH Call Option**

- (a) In consideration of the payment of the PPH Call Option Fee by PPH to Council, Council grants to PPH an option for PPH to take a transfer of the PPH Lots.
- (b) Council acknowledges receipt of the PPH Call Option Fee.

5.2 **Irrevocable offer**

The PPH Call Option constitutes an irrevocable offer on the terms of this Deed by Council to transfer the PPH Lots to PPH and does not give rise to a conditional contract for the sale of the PPH Lots.

5.3 **Exercise of PPH Call Option**

PPH may exercise the PPH Call Option during the Call Option Period by giving to Council a properly completed Option Notice duly signed by PPH.

5.4 **Grant of PPH Put Option**

- (a) In consideration of the payment of the PPH Put Option Fee by Council to PPH, PPH grants an option to Council to require PPH to take a transfer of the PPH Lots.
- (b) PPH acknowledges receipt of the PPH Put Option Fee.

5.5 **Irrevocable offer**

The PPH Put Option constitutes an irrevocable offer on the terms of this Deed by PPH to take a transfer of the PPH Lots from Council and does not give rise to a conditional contract for the sale of the PPH Lots.

5.6 **Exercise of PPH Put Option**

Council may exercise the PPH Put Option during the Put Option Period by giving a completed Put Option Notice signed by Council to PPH.

6. **MOOLARBEN CALL OPTION AND MOOLARBEN PUT OPTION**

6.1 **Grant of Moolarben Call Option**

- (a) In consideration of the payment of the Moolarben Call Option Fee by Moolarben to Council, Council grants to Moolarben an option for Moolarben or the Nominee to take a transfer of the Moolarben Lots.
- (b) Council acknowledges receipt of the Moolarben Call Option Fee.

6.2 Irrevocable offer

The Moolarben Call Option constitutes an irrevocable offer on the terms of this Deed by Council to transfer the Moolarben Lots to Moolarben or the Nominee and does not give rise to a conditional contract for the sale of the Moolarben Lots.

6.3 Exercise of Moolarben Call Option

Moolarben may exercise the Moolarben Call Option during the Call Option Period by giving to Council a properly completed Option Notice duly signed by Moolarben (or, if clause 7.6 applies, the Nominee).

6.4 Grant of Moolarben Put Option

(a) In consideration of the payment of the Moolarben Put Option Fee by Council to Moolarben, Moolarben grants an option to Council to require Moolarben to take a transfer of the Moolarben Lots.

(b) Moolarben acknowledges receipt of the Moolarben Put Option Fee.

6.5 Irrevocable offer

The Moolarben Put Option constitutes an irrevocable offer on the terms of this Deed by Moolarben to take a transfer of the Moolarben Lots from Council and does not give rise to a conditional contract for the sale of the Moolarben Lots.

6.6 Exercise of Moolarben Put Option

Council may exercise the Moolarben Put Option during the Put Option Period by giving a completed Option Notice signed by Council to Moolarben.

7. EXERCISE OF AN OPTION

(a) If the PPH Call Option or PPH Put Option is exercised:

(i) Council must transfer to PPH, Council's right, title and interest in the PPH Lots for \$1.00 (if demanded in writing by the Council) on the PPH Transfer Date; and

(ii) PPH must accept that transfer.

(b) If the Moolarben Call Option or Moolarben Put Option is exercised:

(i) Council must transfer to Moolarben, Council's right, title and interest in the Moolarben Lots for \$1.00 (if demanded in writing by the Council) on the Moolarben Transfer Date; and

(ii) Moolarben must accept that transfer.

(c) If an Option is exercised, Council must ensure that legal title to the relevant New Lots passes to the relevant Grantee free of any mortgage or other encumbrance or interest other than encumbrances or interests in the Instrument or reservations or conditions in the crown grant.

7.2 Transfer Form

(a) As soon as practicable after the PPH Call Option or PPH Put Option is exercised, PPH must deliver to Council an executed and stamped Transfer Form in respect of the PPH Lots.

- (b) As soon as practicable after the Moolarben Call Option or Moolarben Put Option is exercised, Moolarben must deliver to Council an executed and stamped Transfer Form in respect of the Moolarben Lots.

7.3 Transfer of title of PPH Lots

- (a) Subject to the exercise of the PPH Call Option or PPH Put Option, within [5] Business Days after the later of receipt by Council of:
 - (i) the certificates of title for the PPH Lots; and
 - (ii) the executed and stamped Transfer Form for the PPH Lots,Council must deliver to PPH:
 - (A) the original certificates of title for the PPH Lots;
 - (B) the Transfer Form for the PPH Lots, executed by the Council,and all risk in and title to the PPH Lots passes to PPH on and from the date the Transfer Form for the PPH Lots is registered.
- (b) PPH must use all reasonable endeavours to procure the registration of the Transfer Form for the PPH Lots upon or as soon as reasonably practicable after receiving the original certificates of title and Transfer Form from Council.

7.4 Transfer of title of Moolarben Lots

- (a) Subject to the exercise of the Moolarben Call Option or Moolarben Put Option, within 20 Business Days after the later of receipt by Council of:
 - (i) the certificates of title for the Moolarben Lots; and
 - (ii) receipt by Council of the executed and stamped Transfer Form for the Moolarben Lots,Council must deliver to Moolarben:
 - (A) the original certificates of title for the Moolarben Lots;
 - (B) the Transfer Form for the Moolarben Lots, executed by the Council,and all risk in and title to the Moolarben Lots passes to Moolarben on and from the date the Transfer Form for the Moolarben Lots is registered.
- (b) Moolarben must use all reasonable endeavours to procure the registration of the Transfer Form for the Moolarben Lots upon or as soon as reasonably practicable after receiving the certificates of title and Transfer Form from Council.

7.5 Council to notify the Grantees

- (a) Council must notify the Grantees promptly after it receives notice of:
 - (i) Crown Lands approving the closure of the Road Closure Land (if required by Law);
 - (ii) the publication of any notice in the NSW Government Gazette advertising the closure of the Road Closure Land; and
 - (iii) the issue of certificates of title for the New Lots by LRS.

- (b) Each Grantee must notify Council promptly after it receives notice of the registration of the relevant Transfer Form.

7.6 Transfer of Moolarben Lots where PPH or WCPL acquires the Sale Land

- (a) If PPH or WCPL acquire the Sale Land from Moolarben as contemplated by clause 3.2 of the Road Opening HOA at any time prior to the date that the Moolarben Call Option is exercised, the parties agree that Moolarben must nominate PPH or WCPL (as relevant) as the Nominee entitled to exercise the Moolarben Call Option.
- (b) Moolarben must promptly notify Council of any such nomination of PPH or WCPL as the Nominee.
- (c) If Moolarben nominates a Nominee under this clause 7.6, the Nominee has all of the rights of Moolarben in respect of the Moolarben Call Option (other than a right to appoint a Nominee) and must perform all obligations of Moolarben under this Deed.

8. CONDITION OF NEW LOTS

8.1 Present condition

Subject to the exercise of the relevant Option, each Grantee accepts the relevant New Lots in their current condition and state of repair as at the Transfer Date, subject to all infestations and dilapidation, latent or patent defects in or affecting the relevant New Lots, and otherwise on an 'as is, where is' basis (including with respect to any boundary or internal fences and other improvements).

8.2 Purchaser's acceptance and acknowledgments

- (a) Subject to the exercise of the relevant Option, each Grantee represents and warrants to the Council that, because of the Grantee's own inspection and enquiries, the Grantee:
 - (i) is satisfied as to the nature, quality, condition and state of repair of the relevant New Lots that it is accepting transfer of (including but not limited to each of the matters set out in clause 8.2(b));
 - (ii) accepts the relevant New Lots as is and subject to all defects (latent or patent) and all dilapidation and infestation; and
 - (iii) is satisfied about the purposes for which the relevant New Lots may be used and about all restrictions and prohibitions on their development.
- (b) Without limiting clauses 8.1 or 8.2(a), each Grantee acknowledges that the Council makes no statement, representation or warranty relating to (and that the Grantees have satisfied themselves as to) each of the following matters:
 - (i) the condition or state of repair of the New Lots or any improvements on the New Lots;
 - (ii) the existing or potential fitness or suitability of the New Lots for any purpose or the functionality of the New Lots;
 - (iii) the status of compliance with the requirements of any Law applicable to the New Lots and the existence of any outstanding notices or requirements of the Local Government or other Authority affecting the New Lots;
 - (iv) any financial return or income derived or to be derived from the New Lots;

- (v) the value of the New Lots and their existing or potential profitability (including any independent valuations and reports provided by the Council);
- (vi) encumbrances affecting the New Lots;
- (vii) the presence of any sewer, manhole or vent on the New Lots;
- (viii) whether any New Lots are Contaminated;
- (ix) the existence of any asbestos-containing material at the New Lots;
- (x) the existence (or non-existence) of any Environmental Liability;
- (xi) planning restrictions (including all planning approvals, permits and consents) for the New Lots, the use to which the New Lots may be put and the development potential of the New Lots;
- (xii) whether or not the New Lots are affected by flooding;
- (xiii) the rights and privileges relating to the New Lots, including any restrictions on use or development;
- (xiv) whether or not the New Lots are affected by a proposal of an Authority for the realignment, expansion, widening, re-siting or altering the level or direction of any road or railway abutting, adjoining or adjacent to the land;
- (xv) whether or not any notice of resumption or intending resumption affecting the New Lots has been given;
- (xvi) whether or not all permissions, consents and approvals required from a relevant Authority for the construction or use of any part of any improvement on a New Lots has been obtained, or, having been obtained, have been complied with in all respects;
- (xvii) whether or not any requisitions, directions or recommendations have been delivered by any Authority in respect of the New Lots and, if delivered, have been complied with;
- (xviii) whether there are any notices or orders by any Authority, including a notice or order requiring work to be done or money spent in connection with the New Lots;
- (xix) whether or not any consents, approvals, permits or licences desirable or required to be held for the present use of the New Lots have been granted by a relevant Authority;
- (xx) any deeds or arrangements with the owners or occupiers of adjoining or nearby properties to the New Lots, including the terms of all easements and licences benefiting or affecting the New Lots;
- (xxi) the means or adequacy of access to the New Lots; or
- (xxii) any other matter (past, present, future or anticipated) relevant to the New Lots.

8.3 **Council's warranty**

Council warrants that, as at the date of this Deed, it has not received any notice, proposal, requisition, direction or recommendation from an Authority in respect of a New Lot, that has not been disclosed in writing to the Grantees.

9. **GRANTEE ACCEPTS ENVIRONMENTAL LIABILITY**

On and from the Transfer Date, the relevant Grantee (to the fullest extent permitted by Law):

- (a) accepts all Environmental Liability in respect of the New Lots that it is accepting transfer of, whether arising before, on or after the relevant Transfer Date;
- (b) must, at its cost, comply with the requirements of any Environmental Law in respect of the relevant New Lots and the requirements of any Authority relating to any Environmental Liability incurred in respect of the relevant New Lots;
- (c) must not, at any time, take any action or make any Claim against the Council for any Environmental Liability incurred in respect of the relevant New Lots;
- (d) unconditionally releases and forever discharges the Council from any Environmental Liability incurred in respect of the relevant New Lots; and
- (e) indemnifies the Council against all loss, injury, liability, damage, cost, Claim or other detriment suffered or incurred by the Council in respect of any Environmental Liability incurred as a result of Contamination of the relevant New Lots caused after the relevant Transfer Date.

10. **RELEASE**

- (a) On and from PPH Transfer Date, PPH releases the Council from any Claim which arises either directly or indirectly from or which relates to the condition of the PPH Lots before the PPH Transfer Date.
- (b) On and from Moolarben Transfer Date, Moolarben releases the Council from any Claim which arises either directly or indirectly from or which relates to the condition of the Moolarben Lots before the Moolarben Transfer Date.

11. **NO MERGER**

Clauses **Error! Reference source not found.** and 8 to 10 (inclusive) do not merge on the relevant Transfer Date.

12. **MUTUAL OBLIGATIONS OF THE PARTIES**

The parties acknowledge and agree that each will act without undue delay but subject to its resources in implementing this Deed.

13. **ELECTRONIC CONVEYANCING**

If:

- (a) the Conveyancing Rules require the transfer of the New Lots as contemplated by this Deed to be conducted as an Electronic Transaction; and
- (b) clause 30.2 of the Standard Conditions does not apply,

then, unless the parties otherwise agree, the transfer of the New Lots is to be conducted as an Electronic Transaction in accordance with clause 30 of the Standard Conditions, as if that clause is set out in full in this Deed, with such amendments necessary to reflect the transfer of the relevant New Lots to each of PPH and Moolarben, as contemplated by this Deed.

14. **STAMP DUTY AND COSTS**

14.1 **Stamp duty**

- (a) PPH must pay any stamp duty incurred in respect of the PPH Call Option, PPH Put Option and transfer of the PPH Lots to PPH.
- (b) Moolarben must pay any stamp duty incurred in respect of the Moolarben Call Option, Moolarben Put Option and transfer of the Moolarben Lots to Moolarben.
- (c) The Council must provide all assistance reasonably requested by a Grantee in respect of the valuation of any New Lot before the Transfer Date, at the Grantee's cost.

15. **GST**

15.1 **Amounts exclusive of GST**

Unless otherwise expressly stated, all amounts payable under or in connection with this Deed are stated exclusive of GST.

15.2 **Payment of GST**

If GST is or will be payable on a supply made under or in connection with this Deed the recipient must:

- (a) pay to the supplier an amount equal to any GST for which the supplier is liable on any supply by the supplier under this Deed, without deduction or set-off of any other amount; and
- (b) make that payment as and when the consideration or part of it must be paid or provided. If the recipient does not pay the GST at that time, then it must pay the GST within seven days of a written request by the supplier for payment of the GST.

15.3 **Tax invoice**

Each party making a taxable supply under this Deed must issue a tax invoice to the other party for each taxable supply at or before the time it makes the taxable supply.

15.4 **Indemnities and reimbursement**

If a party is obliged to make a payment under an indemnity or is required to reimburse a party for a cost (for example a party's obligation to pay another party's legal costs) on which that other party must pay GST, the indemnity or reimbursement is for the cost plus all GST (except any GST for which that party can obtain an input tax credit).

16. **NOTICES**

16.1 **Form**

- (a) All notices, demands, certificates, consents, approvals, waivers and other communications in connection with this Deed must be in writing and signed by the sender (if an individual) or an authorised officer of the sender.

- (b) Email communications must state the first and last name of the sender and are taken to be signed by the named sender.

16.2 Delivery

- (a) All notices required by this Deed or otherwise shall be given in writing and shall be sent by one party to the other parties by either email or post.
- (b) All notices shall be sent to the other party at the address set out below or to such other address, facsimile number or email address as one party may from time to time notify the other parties in writing:

The Council:

86 Market Street
Mudgee NSW 2850

council@midwestern.nsw.gov.au

PPH:

100 Melbourne Street, South Brisbane, QLD 4101

Ian Flood – iflood@peabodyenergy.com

WCPL:

100 Melbourne Street, South Brisbane, QLD 4101

Ian Flood – iflood@peabodyenergy.com

Moolarben:

'Darling Park Tower 2', Level 18, 201 Sussex Street, Sydney NSW 2000

Notices@yancoal.com.au and:

Graham Chase – Graham.Chase@yancoal.com.au

- (c) If the intended recipient has notified changed contact details, then communications must be sent to the changed contact details.

16.3 When effective

Communications take effect from the time they are received or taken to be received under clause 16.4 (whichever happens first).

16.4 When taken to be received

Subject to clause 16.5, communications are taken to be received:

- (a) if delivered in person, when it has been left at the relevant receiving party's address as set out in clause 16.2 of this Deed, as applicable;
- (b) if sent by express post, 3 days after posting; or
- (c) if sent by email:
 - (i) when the sender receives an automated message confirming delivery; or

- (ii) 4 hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that delivery failed,

whichever happens first.

16.5 **Receipt outside of business hours**

Despite anything else in this clause 16, if communications are received or taken to be received under clause 16.4 after 5.00pm on a Business Day or on a non-Business Day, they are taken to be received at 9.00am on the next Business Day. For the purposes of this clause, the place in the definition of Business Day is taken to be the place specified in clause 16.2 of this Deed, as applicable, as the address of the recipient and the time of receipt is the time in that place (or any new address of the recipient notified in writing to the other parties from time to time).

17. **GENERAL**

17.1 **Assignment**

- (a) No party may assign, novate or otherwise transfer their rights or obligations under this Deed without the other parties' consent, which must not be unreasonably withheld or delayed.
- (b) Moolarben must not sell, assign or otherwise transfer its interest in any one or more of the following titles without Council's consent:

- (i) Lot 50 in DP755454;
- (ii) Lot 122 in DP 755454; and
- (iii) Lot 59 in DP 755454,

(the **Moolarben Titles**), which consent must not be withheld if the purchaser enters into a deed of novation with the Council and the other parties to this Deed, under which the purchaser agrees to comply with Moolarben's obligations under this Deed to the extent that a Moolarben Lot falls within a Moolarben Title.

- (c) WCPL must not sell, assign or otherwise transfer its interest in any one or more of the following titles without Council's consent:

- (i) Lot 41 in DP 583255; and
- (ii) Lot 100 in DP755454,

(the **WCPL Titles**), which consent must not be withheld if the purchaser enters into a deed of novation with the Council and the other parties to this Deed, under which the purchaser agrees to comply with WCPL's obligations under this Deed to the extent that a PPH Lot falls within a WCPL Title.

17.2 **Amendment of Deed**

No modification, variation or amendment of this Deed will be of any force unless such modification, variation or amendment is in writing and has been signed by each of the parties.

17.3 **Governing Law**

This Deed is governed by the Law in force in New South Wales.

17.4 Jurisdiction

Each party submits to the non-exclusive jurisdiction of the courts of New South Wales and courts of appeal from them. Each party waives any right it has to object to an action being brought in those courts including, without limitation, by claiming that the action has been brought in an inconvenient forum or that those courts do not have jurisdiction.

17.5 Giving effect to this Deed

Each party must do anything (including execute any document), and must ensure that its employees and agents do anything (including execute any document), that any other party may reasonably require to give full effect to this Deed.

17.6 Variation and waiver

The exercise of a right partially or on one occasion does not prevent any further exercise of that right in accordance with the terms of this Deed. Neither a forbearance to exercise a right nor a delay in the exercise of a right operates as an election between rights or a variation of the terms of this Deed.

17.7 Entire Deed

This Deed and the Road Opening HOA constitute the entire agreement of the parties about the subject matter hereof and supersedes all previous agreements, understandings and negotiations on that subject matter.

17.8 Operation of this Deed

- (a) Any right that a person may have under this Deed is in addition to, and does not replace or limit, any other right that the person may have.
- (b) If the whole or any part of a provision of this Deed is void, unenforceable or illegal in a jurisdiction, it is severed for that jurisdiction to the extent severance is possible without defeating the intentions of the parties as properly ascertained from the terms of this Deed. If so, the remainder of this Deed has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected.

17.9 Discretion in exercising rights

A party may exercise a right or remedy or give or refuse its consent in any way it considers appropriate (including by imposing conditions), unless this Deed expressly states otherwise.

17.10 Enurement

Subject to the provisions of this Deed, this Deed will be binding upon and enure to the benefit of each party's respective successors and assigns who become such in accordance with the terms of this Deed.

17.11 Mitigation of damages

- (a) Each party will have the duty to mitigate any losses it may suffer by reason of the breach of another party of any provision of this Deed including, by way of taking reasonable steps as requested by another party to enforce any rights it may have against third parties, within a reasonable time of having become aware of such breach.

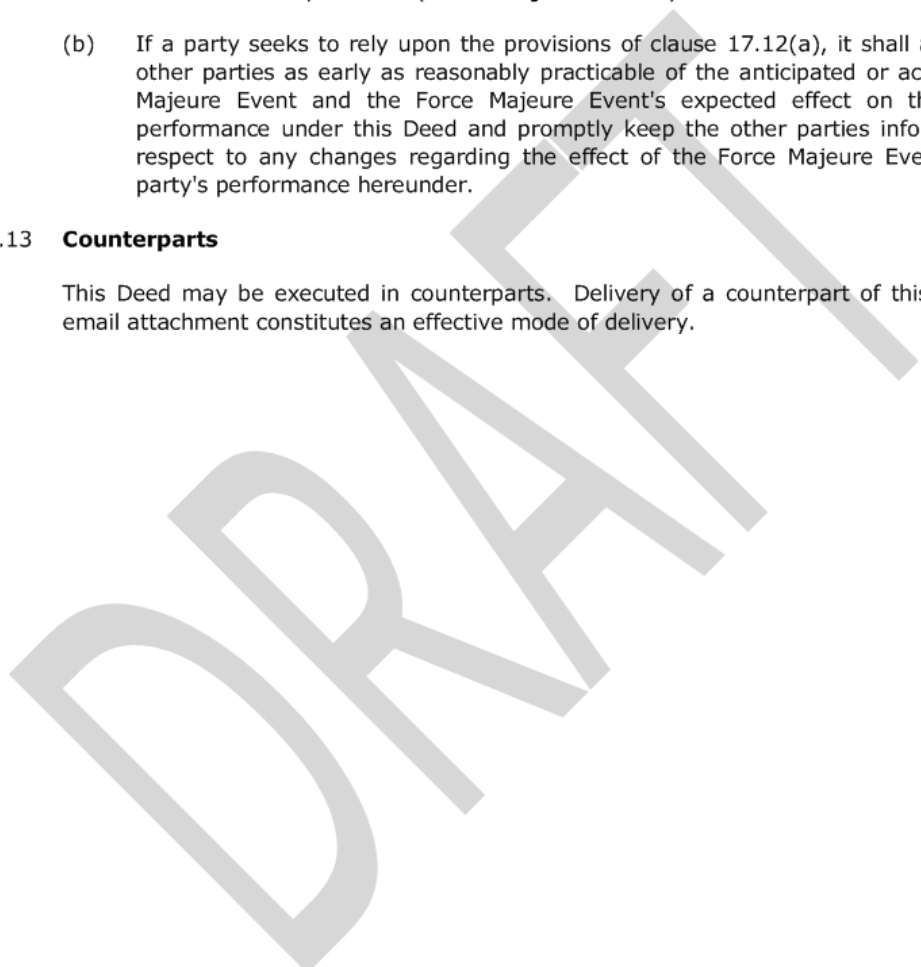
- (b) A party's conduct in performing its duty to mitigate under clause 17.11(a) does not constitute acceptance of the other party's breach or repudiation or a surrender by operation of Law.

17.12 **Force majeure**

- (a) No party to this Deed shall be liable to another for any loss or damage of any nature whatsoever incurred or suffered as a result of any failures or delays in performance due to any cause or circumstance beyond its control including, but not limited to, any failures or delays in performance caused by any acts of God or public enemy, riots, strikes, civil disobedience or interference by civil or military authorities or a pandemic (**Force Majeure Event**).
- (b) If a party seeks to rely upon the provisions of clause 17.12(a), it shall advise the other parties as early as reasonably practicable of the anticipated or actual Force Majeure Event and the Force Majeure Event's expected effect on the party's performance under this Deed and promptly keep the other parties informed with respect to any changes regarding the effect of the Force Majeure Event on the party's performance hereunder.

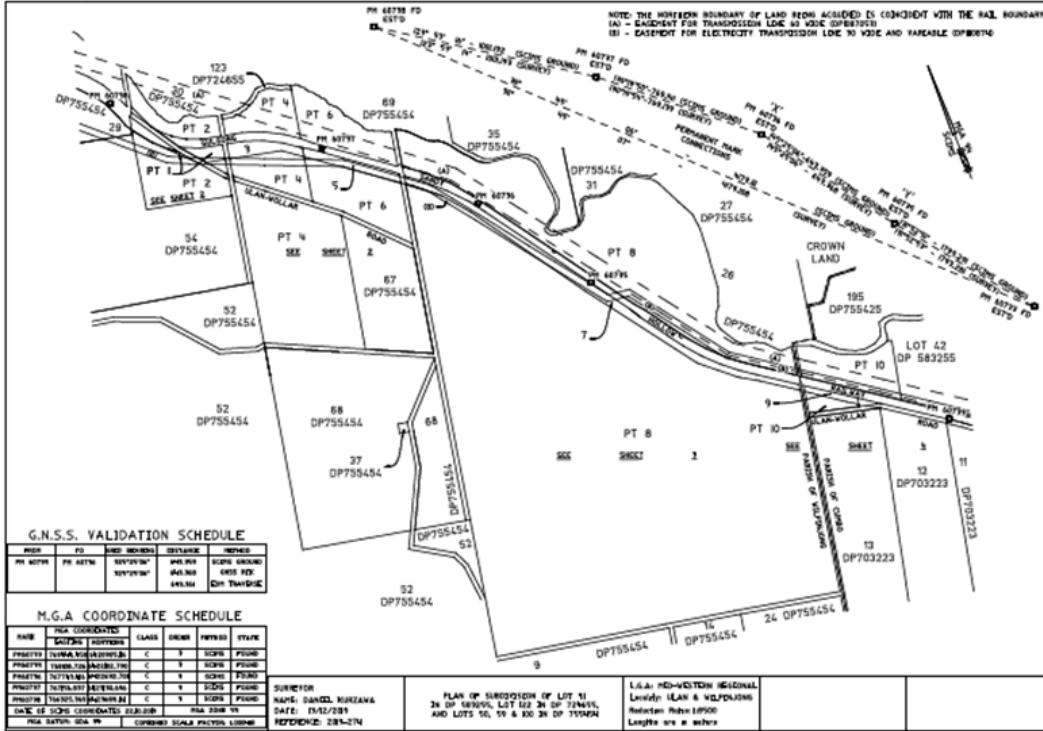
17.13 **Counterparts**

This Deed may be executed in counterparts. Delivery of a counterpart of this Deed by email attachment constitutes an effective mode of delivery.



SCHEDULE 1

Subdivision Plan



SCHEDULE 2

Call option notice

To: **Mid-Western Regional Council** ABN 96 149 391 332 (**Council**)
86 Market Street, Mudgee, NSW 2850

A word defined in the Road Closure Transfer Deed dated [**insert date of this Deed**] has the same meaning in this option exercise notice.

[**insert name**] ACN [**insert ACN**] [as nominee of **Moolarben Coal Mines Pty Limited** ACN 108 601 672] [**delete if Option Notice for PPH Lots or clause 7.6 does not apply**] exercises [the PPH Call Option granted under clause 5.1 of the Road Closure Transfer Deed dated [**insert date of this Deed**] to require Council to transfer the PPH Lots] **OR** [the Moolarben Call Option granted under clause 6.1 of the Road Closure Transfer Deed dated [**insert date of this Deed**] to require Council to transfer the Moolarben Lots]. [**delete as appropriate**]

Dated:

[**insert relevant execution block**]

DRAFT

SCHEDULE 3

Put Option Notice

To: **[insert name]** ACN **[insert ACN]**
[insert address]

A word defined in the Road Closure Transfer Deed dated **[insert date of this Deed]** has the same meaning in this option exercise notice.

Mid-Western Regional Council ABN 96 149 391 332 (**Council**) exercises [the PPH Put Option granted under clause 5.4 of the Road Closure Transfer Deed dated **[insert date of this Deed]** to require PPH to take a transfer of the PPH Lots] **OR** [the Moolarben Put Option granted under clause 6.4 of the Road Closure Transfer Deed dated **[insert date of this Deed]** to require Moolarben to take a transfer of the Moolarben Lots]. **[delete as appropriate]**

Dated:

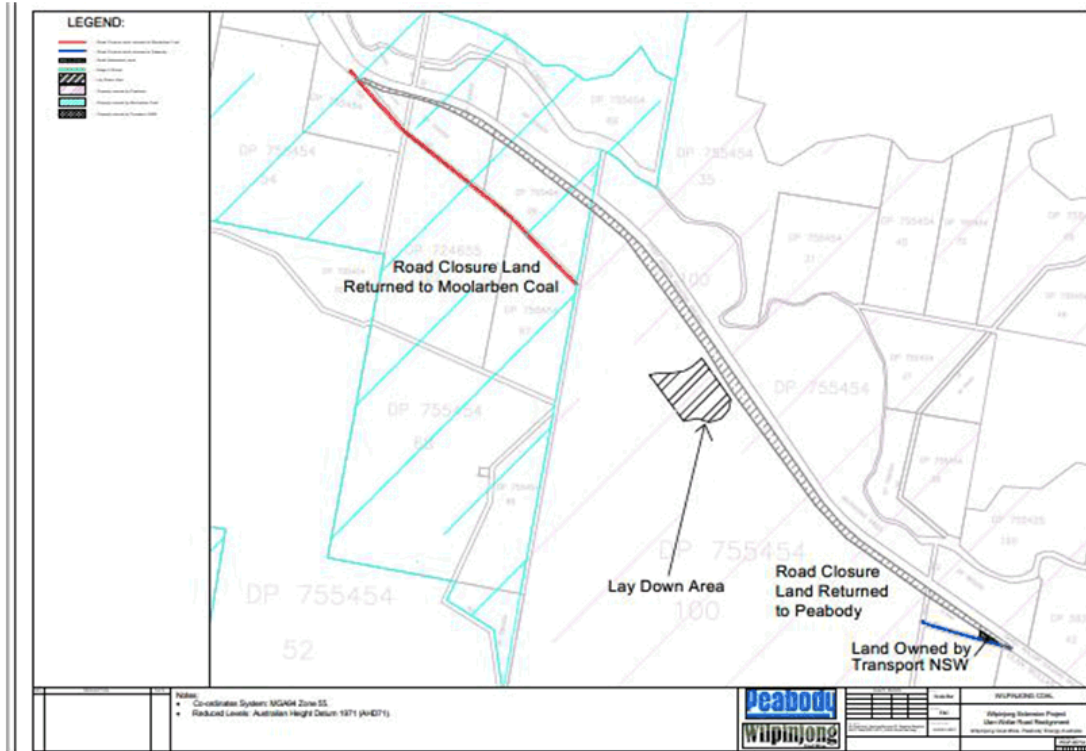
SIGNED for and on behalf of **MID-WESTERN REGIONAL COUNCIL ABN 96 149 391 332** by its duly authorised representative in the presence of:

Signature of party

Signature of witness

Name

SCHEDULE 4 Road Closure Land



EXECUTED AS AN DEED BY THE PARTIES.

SIGNED for and on behalf of **MID-WESTERN REGIONAL COUNCIL ABN 96 149 391 332** by its duly authorised representative in the presence of:

Signature of party

Signature of witness

Name

EXECUTED by **PEABODY PASTORAL HOLDINGS PTY LIMITED ACN 141 206 368** in accordance with section 127(1) of the *Corporations Act 2001* (Cth):

Signature of director

Signature of director

Name

Name

EXECUTED by **WILPINJONG COAL PTY LTD ACN 104 594 694** in accordance with section 127(1) of the *Corporations Act 2001* (Cth):

Signature of director

Signature of director

Name

Name

EXECUTED by **MOOLARBEN COAL MINES PTY LIMITED ACN 108 601 672** in accordance with section 127(1) of the *Corporations Act 2001* (Cth):

Signature of director

Signature of director

Name

Name

DRAFT



MID-WESTERN REGIONAL COUNCIL

COUNCIL MEETING EXTRACT
COUNCIL MEETING: 15 MAY 2019

Item 9: Finance

9.1 HEADS OF AGREEMENT FOR OPENING NEW REALIGNED SECTIONS OF ULAN-WOLLAR ROAD AND THE CLOSING OF THE EXISTING SECTIONS OF THE ROAD

GOV400067, ROA100367

01/19

MOTION: Paine / Karavas

That Council:

1. receive the report by the Revenue and Property Manager on the Heads of Agreement for opening new realigned sections of Ulan-Wollar Road and the closing of the existing sections of the Road;
2. agree to the terms in the Heads of Agreement for Opening New Aligned Sections of Ulan-Wollar Road as appended as Attachment 1 to this Report;
3. authorise the General Manager to endorse the Heads of Agreement for Opening New Aligned Sections of Ulan-Wollar Road (HOA) as appended as Attachment 1 to this Report;
4. propose the closure, pursuant to Part 4 Division 3 Roads Act 1993, of the existing section of the Ulan-Wollar Road that is located on the Road Closure Land as shown on the plan appended as Schedule 2 of Attachment 1 appended to this Report and which is Council Public Road;
5. upon endorsement of the Heads of Agreement for Opening New Aligned Sections of Ulan-Wollar Road, give notice, pursuant to s38B Roads Act 1993, of the proposal to close that existing section of the Ulan-Wollar Road that is located on the Road Closure Land as shown on the plan appended as Schedule 2 of Attachment 1 appended to this Report and which is Council Public Road;
6. receive a further report after the notice period pursuant to s38B Roads Act 1993 has ended to consider any submissions received and then pursuant to s38D Roads Act 1993 determine whether the existing section of the Ulan-Wollar Road that is located on the Road Closure Land as shown on the plan appended as Schedule 2 of Attachment 1 appended to this Report and which is Council Public Road, is to be closed;
7. apply for consent under Part 8 Division 2 of the Roads Act 1993 pursuant to s118 to close to traffic that part of the existing section of the Ulan-Wollar Road that is located on



MID-WESTERN REGIONAL COUNCIL

COUNCIL MEETING EXTRACT
COUNCIL MEETING: 15 MAY 2019

- the Road Closure Land as shown on the plan as appended in Attachment 4 to this Report on condition that such closure is only to take place after the opening to traffic and dedication of the Road Dedication Land, (which includes the Transport for NSW land);
8. authorise the General Manager to decide pursuant to s138 of the Roads Act, Peabody Energy Inc. having early access and occupation on that part of the existing section of the Ulan-Wollar Road that is located on the Road Closure Land as shown on the plan as appended in Attachment 4 to this Report after the closure of that road to traffic and subject to such conditions as are considered appropriate; and
 9. authorise the General Manager to negotiate and execute an agreement for the transfer of ownership of different parts of the Road Closure Land if and when closed as referred to in cl2.2(b) of the HOA.

The motion was carried with the Councillors voting unanimously.



Final: 8 May 2019

Heads of Agreement for opening of new, realigned sections of Ulan-Wollar Road

Mid-Western Regional Council

ABN 96 149 391 332

Peabody Pastoral Holdings Pty Ltd

ACN 141 206 368

Wilpinjong Coal Pty Ltd

ACN 104 594 694

Moolarben Coal Mines Pty Limited

ACN 108 601 672

2019

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THIS AGREEMENT is made on 2019

BETWEEN:

- (1) **Mid-Western Regional Council** ABN 96 149 391 332 of 86 Market Street, Mudgee, NSW 2850 (the **Council**);
- (2) **Peabody Pastoral Holdings Pty Limited** ACN 141 206 368 of 100 Melbourne Street, South Brisbane, QLD 4101 (**PPH**);
- (3) **Wilpinjong Coal Pty Limited** ACN 104 594 694 of 100 Melbourne Street, South Brisbane, QLD 4101 (**WCPL**);
- (4) **Moolarben Coal Mines Pty Limited** ACN 108 601 672 of 'Darling Park Tower 2', Level 18, 201 Sussex Street, Sydney NSW 2000 (**Moolarben**).

RECITALS:

- (A) WCPL is the proponent of a State significant development known as the Wilpinjong Extension Project, which was granted development consent under the *Environmental Planning and Assessment Act 1979* (**EP&A Act**) being the SSD Consent on 24 April 2017 and may be subject to modification, from time-to-time.
- (B) As part of the SSD Consent granted for the Wilpinjong Extension Project, WCPL obtained approval for the realignment of Ulan-Wollar Road (the **Road**).
- (C) The Road is a Council Public Road in respect of which the Council is the Roads Authority for the purposes of the *Roads Act 1993* (**Roads Act**).
- (D) The process for re-alignment of the Road involves:
 - (1) the opening and dedication of new, realigned sections of the Road in accordance with the Roads Act, the EP&A Act and the SSD Consent; and
 - (2) the closing of the existing sections of the Road that are to be the subject of realignment in accordance with the Roads Act, the EP&A Act and the SSD Consent.
- (E) The land on which the new, realigned sections of the Road are to be located is owned by either Moolarben, WCPL or TfNSW.
- (F) This Agreement records the parties' agreement in respect of the opening and dedication of the new, realigned sections of the Road in accordance with the Roads Act, the EP&A Act, the SSD Consent and this Agreement.

THE PARTIES AGREE AS FOLLOWS:

1. **INTERPRETATION**

1.1 **Definitions**

The following definitions apply in this document.

Agreement means this Agreement.

Business Day means a day that is not a Saturday, a Sunday or a public holiday or bank holiday in New South Wales.

Claims means any claims, proceedings, expenses, costs (including legal costs on a full indemnity basis), damages, losses and other liabilities.

Commencement Date means the date on which this Agreement is executed by all parties to this Agreement.

Council means the Mid-Western Regional Council.

Council Public Road means a Public Road in respect of which the Council is the Roads Authority.

Early Works mean the works on the Road Dedication Land the subject of contract 3744 between WCPL and Council including variation 1 dated 8 January 2019.

EP&A Act means the *Environmental Planning and Assessment Act 1979* (NSW), including any associated regulations or environmental planning instruments.

Force Majeure Event has the meaning described in clause 8.11(a) of this Agreement.

Land means the land which is subject to this Agreement, as identified in **Schedule 1** to this Agreement.

Law means:

- (a) all legislation (including subordinate or delegated legislation or statutory instruments of any kind, including regulatory approvals or authorisations granted under legislation) of Australia or New South Wales;
- (b) common law and equity; or
- (c) any policy, guideline, official directive or request of any government agency or regulatory body, including a stock exchange within Australia, with which the relevant party is legally required to comply.

Lay Down Area means that area of the Land which is owned by PPH or WCPL and is identified as constituting the lay down area in **Schedule 2** of this Agreement.

PPH means Peabody Pastoral Holdings Pty Limited.

Public Road has the same meaning as given to the same phrase by the Roads Act.

Moolarben means Moolarben Coal Mines Pty Limited.

Road means the Ulan-Wollar Road.

Roads Act means the *Roads Act 1993* (NSW), including any associated regulations.

Roads Authority has the same meaning as that given to the same phrase by the Roads Act.

Road Closure Land means the land on which the existing sections of the Road that are a Council Public Road, which are to be the subject of realignment, are currently located, as identified in **Schedule 2** to this Agreement.

Road Dedication Land means the parts of the Land on which the new, realigned sections of the Road are to be located, as identified in **Schedule 2** to this Agreement.

Sale Land means the part of the Land shown coloured in purple in **Schedule 3** to this Agreement that is owned by Moolarben (as identified in **Schedule 1** to this Agreement) and which PPH or WCPL may acquire from Moolarben.

SSD Consent means the development consent SSD 6764 granted for the Wilpinjong Extension Project by the NSW Planning Assessment Commission, as delegate for the NSW Minister for Planning, on 24 April 2017.

Term has the meaning described in clause 6.1 of this Agreement.

TfNSW means Transport for NSW.

TfNSW Land means that part of the Road Dedication Land owned by TfNSW at the date of this Agreement which is to be acquired by Council as a condition precedent.

WCPL means Wilpinjong Coal Pty Limited.

Wilpinjong Extension Project means the development that is authorised by the SSD Consent as an extension of the existing Wilpinjong Coal Mine, including all associated authorised development.

1.2 Rules for interpreting this Agreement

The following rules also apply in interpreting this Agreement, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
- (i) a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document or agreement (including this Agreement), or a provision of a document or agreement (including that Agreement), is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (iii) a party to this Agreement or to any other document or agreement includes a successor in title, permitted substitute or a permitted assign of that party;
 - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in Law of the person;
 - (v) a schedule, annexure or clause is to a schedule, annexure or clause of this Agreement, and a reference in a schedule or an annexure to a clause is to a clause of that schedule or annexure;
 - (vi) a time is to Sydney time;
 - (vii) anything (including a right, obligation or concept) includes each part of it; and
 - (viii) this Agreement includes all schedules and annexures contained in or attached to this Agreement.
- (b) A word which suggests one gender includes the other genders.
- (c) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
- (d) The words "include", "including", "for example" or "such as" are not used as, nor are they to be interpreted as, words of limitation and, when introducing an

example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind.

- (e) A reference to **information** is to information of any kind in any form or medium, whether formal or informal, written or unwritten, for example, computer software or programs, concepts, data, drawings, ideas, knowledge, procedures, source codes or object codes, technology or trade secrets.

1.3 **Non-Business Days**

If the day on or by which a person must do something under this Agreement is not a Business Day:

- (a) if the act involves a payment that is due on demand, the person must do it on or by the next Business Day; and
- (b) in any other case, the person must do it on or by the previous Business Day.

1.4 **Multiple parties**

If a party to this Agreement is made up of more than one person, or a term is used in this Agreement to refer to more than one party:

- (a) an obligation of those persons is joint and several;
- (b) a right of those persons is held by each of them severally; and
- (c) any other reference to that party or that term is a reference to each of those persons separately, so that (for example), a representation, warranty or undertaking is given by each of them separately.

1.5 **The rule about "contra proferentem"**

This Agreement is not to be interpreted against the interests of a party merely because that party prepared this Agreement or some provision of it or because that party relies on a provision of this Agreement to protect itself.

2. **ACKNOWLEDGMENTS OF THE PARTIES**

2.1 **Purpose of this Agreement**

The parties to this Agreement acknowledge and agree that the purpose of this Agreement is to facilitate the opening and dedication of new, realigned sections of the Road in accordance with the Roads Act, the EP&A Act, the SSD Consent and the terms of this Agreement.

Schedule 1 to this Agreement outlines the folio identifiers and ownership of the Land which is subject to this Agreement.

Schedule 2 to this Agreement identifies the Road Dedication Land.

2.2 **Conditions precedent**

The provisions of this document, other than clauses 1 (interpretation), this clause 2, clause 5 (release and indemnity), clause 6 (term), clause 7 (notices) and clause 8 (general), do not become binding unless and until all of the following Conditions Precedent are satisfied:

- (a) the Council has, pursuant to Part 4, Division 3 of the Roads Act:

- (i) proposed the closure of the existing sections of the Road that are located on the Road Closure Land in accordance with section 38A of the Roads Act;
 - (ii) given notice of the proposed closure of the existing sections of the Road that are located on the Road Closure Land in accordance with section 38B of the Roads Act;
 - (iii) considered any submissions received by it in relation to the proposed closure of the existing sections of the Road that are located on the Road Closure Land in accordance with section 38D of the Roads Act; and
 - (iv) the Council has, after undertaking the task referred to in condition 2.2(a)(iii) of this Agreement, determined that it intends subject to section 38D(2) of the Roads Act to close the existing sections of the Road that are located on the Road Closure Land and notifies the other parties to this Agreement of this fact in writing.
- (b) the parties have entered into or executed another agreement in relation to the Road Closure Land which, provides for the transfer of ownership of different parts of the Road Closure Land if and when closed to:
- (i) PPH or WCPL; and
 - (ii) Moolarben.
- The parts of the Road Closure Land to be transferred to either PPH or WCPL, and Moolarben, respectively are identified in **Schedule 2** to this Agreement.
- (c) the Road Dedication Land (other than the TfNSW Land) is opened as a Council Public Road in accordance with the Roads Act; and
- (d) Council has acquired the TfNSW Land in accordance with Law (including the *Land Acquisition (Just Terms Compensation) Act 1991* as applicable) and also opened it as a Council Public Road and been compensated for all of its reasonable costs in that regard by PPH or WCPL.

2.3 Proposed closure of existing sections of Ulan-Wollar Road is not affected by this Agreement

The parties acknowledge and agree that:

- (a) nothing in this Agreement requires or otherwise binds the Council to exercise its functions under Part 4, Division 3 of the Roads Act in any particular manner whatsoever, including to close the sections of the Road which are located on the Road Closure Land; and
- (b) the Council is, in its absolute discretion, entitled to exercise its powers under Part 4, Division 3 of the Roads Act in any manner it sees fit.

2.4 Capacity of the parties

The parties acknowledge and agree that:

- (a) the Road is a Council Public Road;
- (b) the Land which is the subject of this Agreement is owned by WCPL, Moolarben and TfNSW in accordance with **Schedule 1** to this Agreement, and each of WCPL and Moolarben gives a warranty that it is the registered proprietor of the relevant

parcels of Land for which each is respectively identified as the relevant owner in **Schedule 1**;

- (c) each party has entered into this Agreement, and will exercise their respective rights, perform their respective obligations and otherwise give effect to the terms of this Agreement, in good faith; and
- (d) each party has had the opportunity of obtaining independent accounting and legal advice prior to entering this Agreement and does not rely upon any representation, promise or inducement made by another party to this Agreement.

3. **OPENING OF NEW, REALIGNED SECTIONS OF ULAN-WOLLAR ROAD**

3.1 **Land exchange**

The parties to this Agreement acknowledge, and the Council, PPH, WCPL and Moolarben agree that, in consideration of WCPL and Moolarben causing the opening of the Road Dedication Land (other than the TfNSW Land) as a Council Public Road, the Council will, subject to clauses 2.2 and 2.3 and following closure under clause 4.2 of this Agreement, transfer ownership of different parts of the Road Closure Land to

- (a) PPH or WCPL; and
- (b) Moolarben,

in accordance with the agreement referred to in clause 2.2(b).

The parts of the Road Closure Land to be transferred to either PPH or WCPL, and Moolarben, respectively are identified in **Schedule 2** to this Agreement.

3.2 **Acquisition of land owned by Moolarben**

The parties to this Agreement acknowledge that PPH or WCPL may, in PPH's or WCPL's discretion, negotiate and ultimately acquire the Sale Land which is, or will be, owned by Moolarben and subject to this Agreement.

In the event that PPH or WCPL acquires the Sale Land which is owned by Moolarben and subject to this Agreement prior to the conditions precedent in clause 2.2 being satisfied:

- (a) the parties agree that Moolarben's rights, obligations and interests in relation to the Sale Land under this Agreement will be automatically transferred or assigned to PPH or WCPL (as the case may be) on and from the date PPH or WCPL (as the case may be) has acquired ownership of the Sale Land from Moolarben; and
- (b) clause 3.1 of this Agreement will not apply to Moolarben in relation to the Sale Land and, for the avoidance of doubt, all references to Moolarben in the context of the Sale Land in clause 3.1 are to be treated as having been deleted from this Agreement.

4. **OBLIGATIONS OF THE PARTIES**

4.1 **Council's covenants**

To achieve the objectives of this Agreement, the parties agree that the Council will, on behalf of the other parties to this Agreement, undertake the following tasks in connection with the Road Dedication Land:

- (a) the Council will:

- (i) physically occupy any part of the Road Dedication Land for the purpose of carrying out works required by this Agreement; and
 - (ii) may, with the written consent (not to be unreasonably withheld) of the relevant owner of the Land concerned, physically occupy any other part of the Land for the purpose of carrying out works associated with this Agreement;
- (b) the Council will:
- (i) construct the new, realigned sections of the Road (other than the Early Works) on the Road Dedication Land; and
 - (ii) carry out any associated works such as vegetation clearing, removal of unsuitable material, installation of drainage, replacement of suitable road base material, road sealing, road marking and road signage,
- to the standards required by the Council, if any, and in accordance with Law and the SSD Consent.

Once construction of the new, realigned sections of the Road are complete on the Road Dedication Land, the Council is, subject to section 38D(2)(b) of the Roads Act, to cause a notice to be published in the Gazette in accordance with section 38D of the Roads Act closing the existing sections of the Road that are located on the Road Closure Land.

4.2 PPH, WCPL and Moolarben covenants

To achieve the objectives of this Agreement, PPH, WCPL and Moolarben agrees to undertake (either collectively or individually, as the case may be) the following tasks in connection with the Road Dedication Land:

- (a) PPH or WCPL will bear all reasonable costs incurred by the Council in discharging its tasks in accordance with clause 4.1 and 4.2 of this Agreement and satisfying the conditions precedent, including, but without limitation:
 - (i) the costs of constructing and completing the new, realigned sections of the Road in accordance with clause 4.1 of this Agreement;
 - (ii) all of its legal and other out of pocket costs incurred in connection with this Agreement.
- (b) PPH or WCPL will, at PPH's or WCPL's own cost and upon satisfaction of all conditions precedent in clause 2.2 of this Agreement, install new boundary fencing around the Road Dedication Land, such fencing to be of a similar or the same standard as the current boundary fencing that exists around the Road Closure Land;
- (c) PPH or WCPL will endeavour to provide suitable road base material to the Council for construction of the new, realigned sections of the Road on the Road Dedication Land and, upon receipt of that material, the Council will accept all responsibility for the use of that material in the construction work it undertakes pursuant to clause 4.1 of this Agreement;
- (d) PPH, WCPL and Moolarben will allow the Council's personnel and contractors reasonable access to the Road Dedication Land across their Land for the purposes of all work the Council needs to undertake pursuant to clause 4.1 of this Agreement;
- (e) PPH and WCPL agree that the Council, subject to clause 4.3 below, may utilise:

- (i) the Lay Down Area; or
- (ii) any other part of PPH and WCPL's Land (upon being given written consent to do so by PPH or WCPL, such consent not to be unreasonably withheld),

for the purpose of stockpiling or removal of materials whilst construction work on the Road Dedication Land is being undertaken.

4.3 **Council to be responsible for erosion and sediment control and rehabilitation of Lay Down Area or any other Land which is used for stockpiling or removal purposes**

The Council agrees that it will be responsible for all erosion and sediment control and rehabilitation of the Lay Down Area to the standard of the Lay Down Area that exists as at the date on which all conditions precedent referred to in clause 2.2 of this Agreement are satisfied.

4.4 **Mutual obligations of the parties**

The parties acknowledge and agree that each will act without undue delay but subject to its resources in implementing this Agreement.

5. **RELEASE AND INDEMNITY**

5.1 **Releases given by the Council**

The Council releases PPH, WCPL and Moolarben and each of the other parties' respective employees, contractors and agents from any Claims to the extent that such Claims:

- (a) are attributable to the work undertaken by the Council in accordance with this Agreement; and
- (b) arise in respect of loss or damage to any property, or injury to or death of any person.

5.2 **Indemnities given by the Council**

The Council agrees to indemnify and keep indemnified PPH, WCPL and Moolarben and each of the other parties' respective employees, contractors and agents against all Claims to the extent arising out of or resulting from any negligent acts, omissions or defaults on the part of the Council, its employees, contractors or agents in the work undertaken by the Council on the Land as required by this Agreement, whether:

- (a) incurred directly by PPH, WCPL or Moolarben or claimed against PPH, WCPL or Moolarben by third parties;
- (b) arising in contract, tort (including negligence), under legislation or otherwise; or
- (c) arising from loss of, or damage to, any property, injury to or death of any person, or otherwise.

6. **TERM**

6.1 **Term of this Agreement**

Subject to clause 2.2, this Agreement shall come into force on the Commencement Date and shall remain in full force until the date on which the Road Closure Land is transferred in accordance with clause 3.1, unless otherwise agreed in writing.

7. **NOTICES**

7.1 **Form**

- (a) All notices, demands, certificates, consents, approvals, waivers and other communications in connection with this Agreement must be in writing and signed by the sender (if an individual) or an authorised officer of the sender.
- (b) Email communications must state the first and last name of the sender and are taken to be signed by the named sender.

7.2 **Delivery**

- (a) All notices required by this Agreement or otherwise shall be given in writing and shall be sent by one party to the other parties by either email or post.
- (b) All notices shall be sent to the other party at the address set out below or to such other address, facsimile number or email address as one party may from time to time notify the other parties in writing:

The Council:

86 Market Street
Mudgee NSW 2850

council@midwestern.nsw.gov.au

PPH:

100 Melbourne Street, South Brisbane, QLD 4101]

Ian Flood – iflood@peabodyenergy.com

WCPL:

100 Melbourne Street, South Brisbane, QLD 4101

Ian Flood – iflood@peabodyenergy.com

Moolarben:

'Darling Park Tower 2', Level 18, 201 Sussex Street, Sydney NSW 2000

Notices@yancoal.com.au and:

Graham Chase – Graham.Chase@yancoal.com.au

- (c) If the intended recipient has notified changed contact details, then communications must be sent to the changed contact details.

7.3 **When effective**

Communications take effect from the time they are received or taken to be received under clause 7.4 (whichever happens first).

7.4 **When taken to be received**

Subject to clause 7.5, communications are taken to be received:

- (a) if delivered in person, when it has been left at the relevant receiving party's address as set out in clause 7.2 of this Agreement, as applicable;
- (b) if sent by express post, 3 days after posting; or
- (c) if sent by email:
 - (i) when the sender receives an automated message confirming delivery; or
 - (ii) 4 hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that delivery failed,

whichever happens first.

7.5 Receipt outside of business hours

Despite anything else in this clause 7, if communications are received or taken to be received under clause 7.4 after 5.00pm on a Business Day or on a non-Business Day, they are taken to be received at 9.00am on the next Business Day. For the purposes of this clause, the place in the definition of Business Day is taken to be the place specified in clause 7.2 of this Agreement, as applicable, as the address of the recipient and the time of receipt is the time in that place (or any new address of the recipient notified in writing to the other parties from time to time).

8. GENERAL

8.1 Amendment of Agreement

No modification, variation or amendment of this Agreement will be of any force unless such modification, variation or amendment is in writing and has been signed by each of the parties.

8.2 Governing Law

This Agreement is governed by the Law in force in New South Wales.

8.3 Jurisdiction

Each party submits to the non-exclusive jurisdiction of the courts of New South Wales and courts of appeal from them. Each party waives any right it has to object to an action being brought in those courts including, without limitation, by claiming that the action has been brought in an inconvenient forum or that those courts do not have jurisdiction.

8.4 Giving effect to this Agreement

Each party must do anything (including execute any document), and must ensure that its employees and agents do anything (including execute any document), that any other party may reasonably require to give full effect to this Agreement.

8.5 Variation and waiver

The exercise of a right partially or on one occasion does not prevent any further exercise of that right in accordance with the terms of this Agreement. Neither a forbearance to exercise a right nor a delay in the exercise of a right operates as an election between rights or a variation of the terms of this Agreement.

8.6 **Entire agreement**

This Agreement constitutes the entire agreement of the parties about the subject matter hereof and supersedes all previous agreements, understandings and negotiations on that subject matter.

8.7 **Operation of this Agreement**

- (a) Any right that a person may have under this Agreement is in addition to, and does not replace or limit, any other right that the person may have.
- (b) If the whole or any part of a provision of this Agreement is void, unenforceable or illegal in a jurisdiction, it is severed for that jurisdiction to the extent severance is possible without defeating the intentions of the parties as properly ascertained from the terms of this Agreement. If so, the remainder of this Agreement has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected.

8.8 **Discretion in exercising rights**

A party may exercise a right or remedy or give or refuse its consent in any way it considers appropriate (including by imposing conditions), unless this Agreement expressly states otherwise.

8.9 **Enurement**

Subject to the provisions of this Agreement, this Agreement will be binding upon and enure to the benefit of each party's respective successors and assigns who become such in accordance with the terms of this Agreement.

8.10 **Mitigation of damages**

- (a) Each party will have the duty to mitigate any losses it may suffer by reason of the breach of another party of any provision of this Agreement including, by way of taking reasonable steps as requested by another party to enforce any rights it may have against third parties, within a reasonable time of having become aware of such breach.
- (b) A party's conduct in performing its duty to mitigate under clause 8.10(a) does not constitute acceptance of the other party's breach or repudiation or a surrender by operation of Law.

8.11 **Force majeure**

- (a) No party to this Agreement shall be liable to another for any loss or damage of any nature whatsoever incurred or suffered as a result of any failures or delays in performance due to any cause or circumstance beyond its control including, but not limited to, any failures or delays in performance caused by any acts of God or public enemy, riots, strikes, civil disobedience or interference by civil or military authorities (**Force Majeure Event**).
- (b) If a party seeks to rely upon the provisions of clause 8.11(a), it shall advise the other parties as early as reasonably practicable of the anticipated or actual Force Majeure Event and the Force Majeure Event's expected effect on the party's performance under this Agreement and promptly keep the other parties informed with respect to any changes regarding the effect of the Force Majeure Event on the party's performance hereunder.

8.12 Counterparts

This Agreement may be executed in counterparts. Delivery of a counterpart of this document by email attachment constitutes an effective mode of delivery.

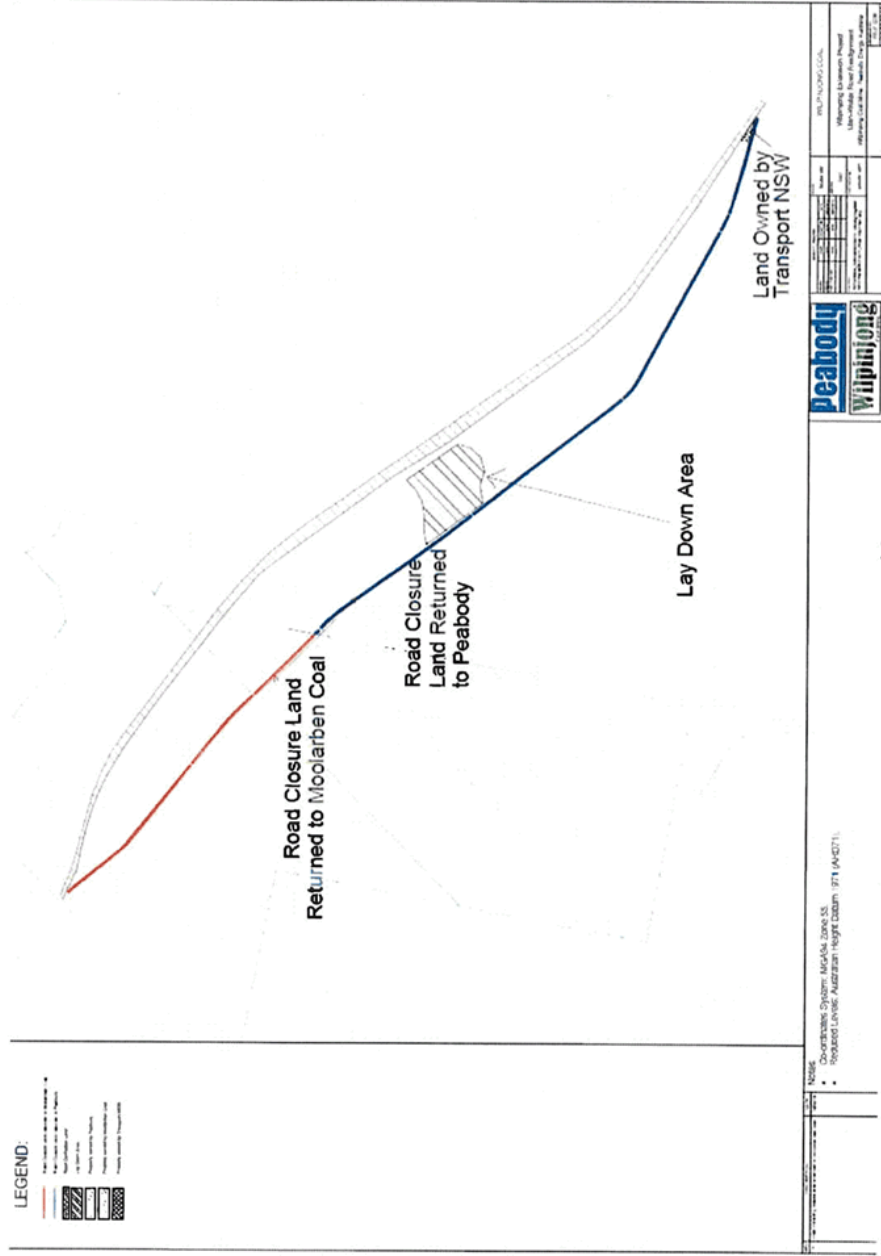
SCHEDULE 1

Schedule of Land and Ownership Details

Ulan-Wollar road realignment	DP	LOT	Land Owner
Stage 1	755454	50	Moolarben Coal Mines Pty Ltd
	724655	122	Moolarben Coal Mines Pty Ltd
	755454	59	Moolarben Coal Mines Pty Ltd
	755454	100	Wilpinjong Coal Pty Ltd
	583255	41	Wilpinjong Coal Pty Ltd
	Lot 1 in plan of land resumed for railway purposes Government Gazette No 3027 Folio 135; C903535		Transport for NSW - currently leased to ARTC

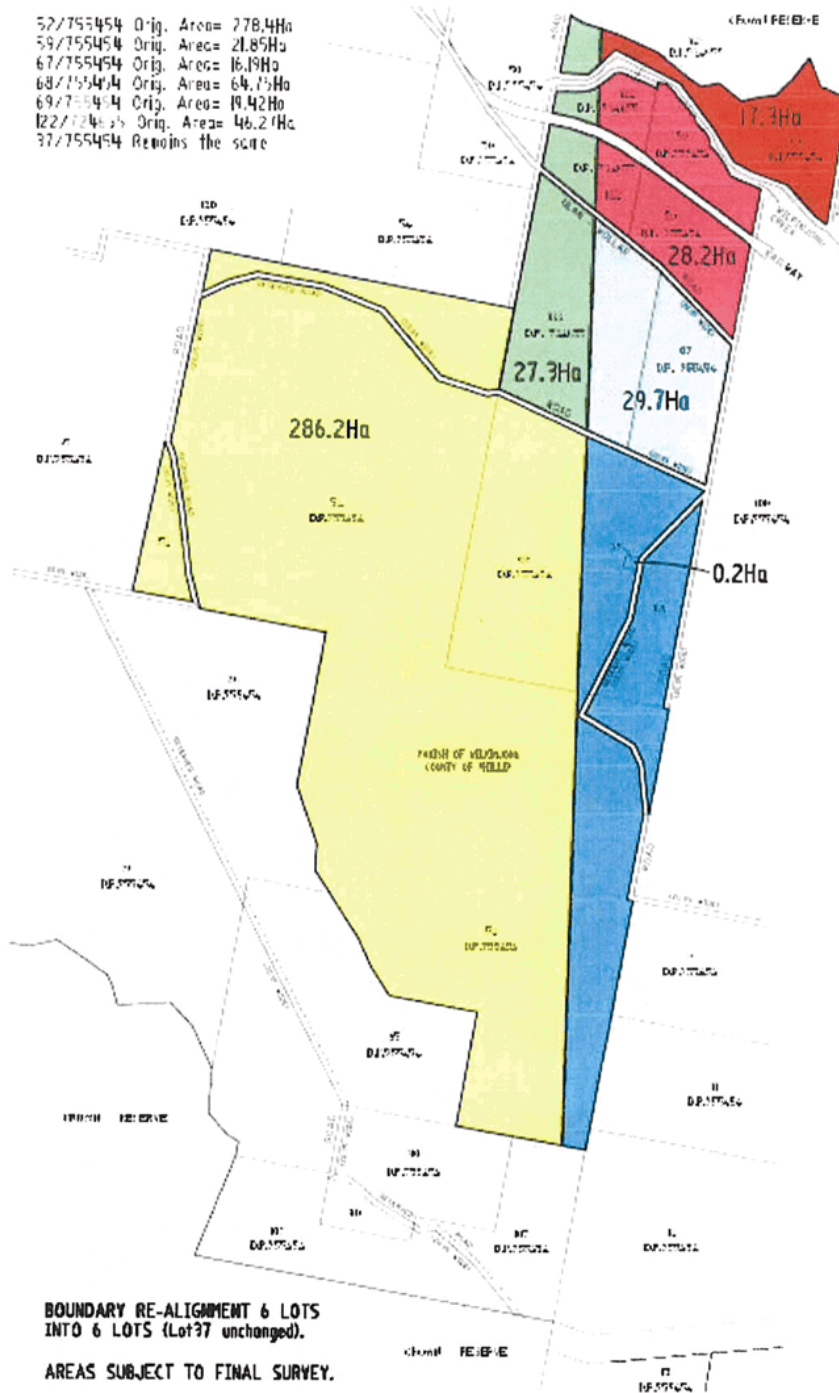
SCHEDULE 2

Road Dedication Land, Road Closure Land and Lay Down Area



SCHEDULE 3
Moolarben Sale Land

52/755454 Orig. Area= 278.4Ha
 59/755454 Orig. Area= 21.85Ha
 67/755454 Orig. Area= 16.19Ha
 68/755454 Orig. Area= 64.75Ha
 69/755454 Orig. Area= 19.42Ha
 122/755454 Orig. Area= 46.21Ha
 37/755454 Remains the same



EXECUTED AS AN AGREEMENT BY THE PARTIES.

SIGNED for and on behalf of **MID-WESTERN REGIONAL COUNCIL ABN 96 149 391 332** by its duly authorised representative in the presence of:

Signature of party

Signature of witness

Name

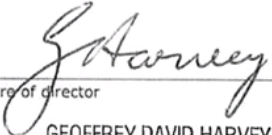
EXECUTED by **PEABODY PASTORAL HOLDINGS PTY LIMITED ACN 141 206 368** in accordance with section 127(1) of the *Corporations Act 2001* (Cth):



Signature of director

Steven John Hedges

Name



Signature of director

GEOFFREY DAVID HARVEY

Name


EXECUTED by **WILPINJONG COAL PTY LTD ACN 104 594 694** in accordance with section 127(1) of the *Corporations Act 2001* (Cth):



Signature of director

Steven John Hedges

Name



Signature of director

GEOFFREY DAVID HARVEY

Name

EXECUTED by **MOOLARBEN COAL MINES PTY LIMITED ACN 108 601 672** in accordance with section 127(1) of the *Corporations Act 2001* (Cth):

Signature of director

Name

Signature of director

Name

EXECUTED AS AN AGREEMENT BY THE PARTIES.

SIGNED for and on behalf of **MID-WESTERN REGIONAL COUNCIL ABN 96 149 391 332** by its duly authorised representative in the presence of:

Signature of party

Signature of witness

Name

EXECUTED by **PEABODY PASTORAL HOLDINGS PTY LIMITED ACN 141 206 368** in accordance with section 127(1) of the *Corporations Act 2001* (Cth):

Signature of director

Signature of director

Name

Name

EXECUTED by **WILPINJONG COAL PTY LTD ACN 104 594 694** in accordance with section 127(1) of the *Corporations Act 2001* (Cth):

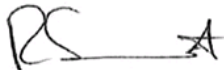
Signature of director

Signature of director

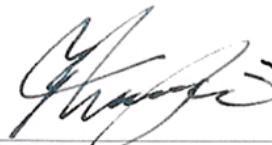
Name

Name

EXECUTED by **MOOLARBEN COAL MINES PTY LIMITED ACN 108 601 672** in accordance with section 127(1) of the *Corporations Act 2001* (Cth):



Signature of director



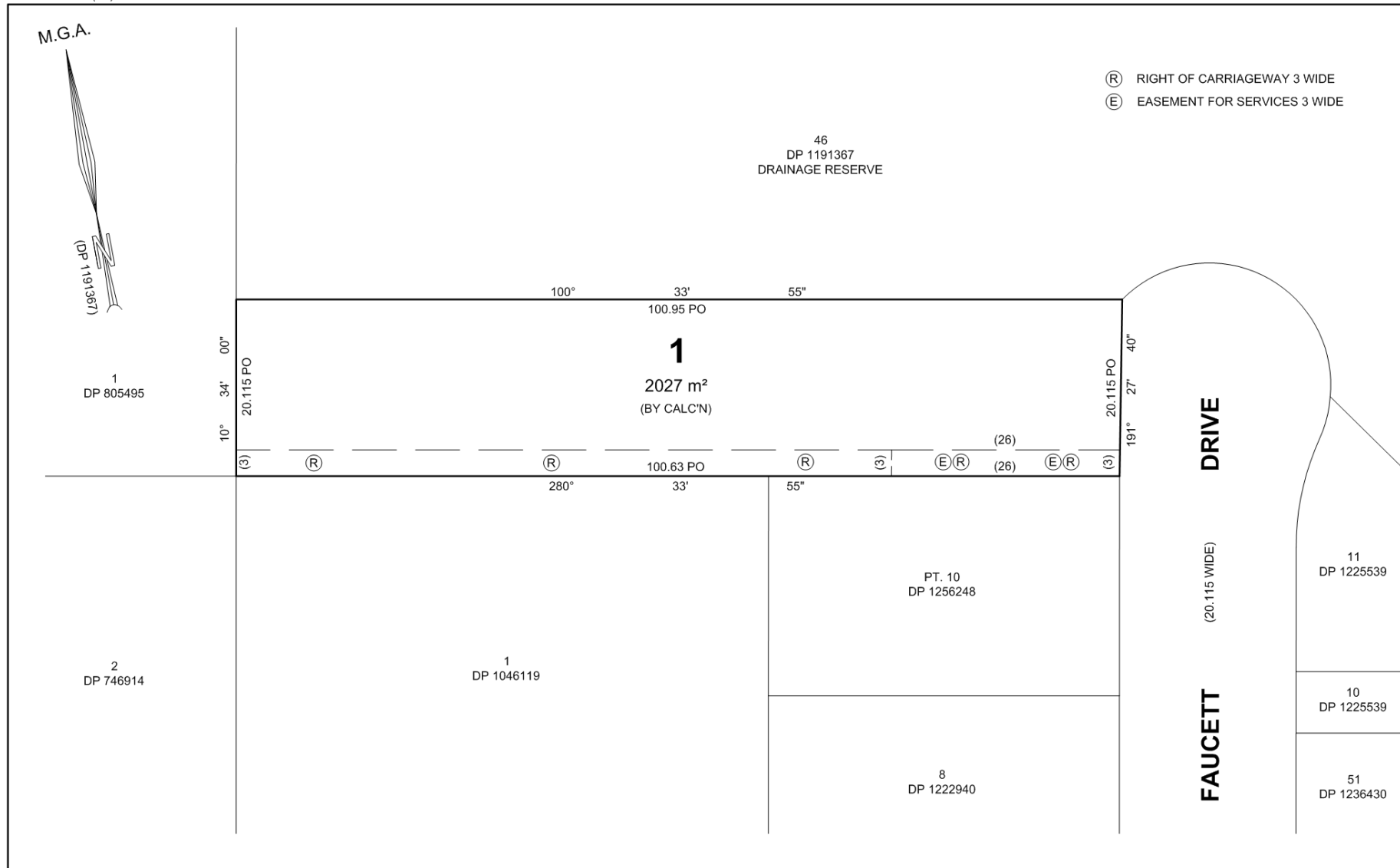
Signature of director

Reinhold Schmidt

Lei Zhang

Name

Name



(R) RIGHT OF CARRIAGEWAY 3 WIDE
(E) EASEMENT FOR SERVICES 3 WIDE

SURVEYOR
Name: COLIN WILLIAM (BILL) CURRIE
Date: 20/09/2019
Reference: 31696
2019M7100 (737)Comp.

**PLAN OF EASEMENTS,
FIRST TITLE CREATION,
AND ROAD CLOSING UNDER THE
ROADS ACT 1993**

LGA: MID-WESTERN REGIONAL
Locality: MUDGEE
Reduction Ratio 1:400
Lengths are in metres.

REGISTERED

DP

10	20	30	40	50	Table of mm	90	100	110	120	130	140
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MID-WESTERN REGIONAL COUNCIL

COUNCIL MEETING EXTRACT
COUNCIL MEETING: 16 AUGUST 2017

Councillor Thompson asked a question via the Mayor to the General Manager in regard to item 9.6; why didn't Council get permission to close the road before building the detention basin? The question was taken on notice by the General Manager.

9.6 ROAD CLOSURE AND EASEMENT CREATION - FAUCETT DRIVE

GOV400064, P1318811, ROA100007

01/17

MOTION: Shelley / Martens

That Council:

1. receive the report by the Revenue and Property Manager on the Road Closure and Easement Creation - Faucett Drive;
2. apply to Department of Industry – Crown Lands for the closure of the unformed portion of Faucett Drive as shown on the plan in Attachment 1 to this Report;
3. upon closure of the unformed portion of Faucett Drive as shown on the plan in Attachment 1 to this Report, create the required easement for services and Rights of Carriageway benefitting the Lots having frontage to the former road reserve;
4. authorise the General Manager to determine any other terms and conditions in relation to the details of the granting of the Rights of Carriageway benefitting the Lots having frontage to the former road reserve;
5. authorise the General Manager to sign all documentation necessary in relation to the proposed road closure as shown on the plan in Attachment 1 to this report, creation of easements for services and creation of Rights of Carriageway; and
6. authorise the Common Seal of Council to be affixed to all documentation necessary in relation to the proposed road closure as shown on the plan in Attachment 1 to this report, creation of easements for services and creation of Rights of Carriageway.

The motion was put and carried with Councillors voting as follows:

Councillors	Ayes	Nayes
Cr Shelley	✓	
Cr Kennedy	✓	
Cr Martens	✓	
Cr Thompson		✓
Cr Cavalier	✓	
Cr Karavas	✓	
Cr O'Neill	✓	



MID-WESTERN REGIONAL COUNCIL

COUNCIL MEETING EXTRACT
COUNCIL MEETING: 16 AUGUST 2017

Cr Holden

✓

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9.6 Road Closure and Easement Creation - Faucett Drive

REPORT BY THE REVENUE AND PROPERTY MANAGER
TO 16 AUGUST 2017 ORDINARY MEETING
GOV400064, P1318811, ROA100007

RECOMMENDATION

That Council:

1. **receive the report by the Revenue and Property Manager on the Road Closure and Easement Creation - Faucett Drive;**
2. **apply to Department of Industry – Crown Lands for the closure of the unformed portion of Faucett Drive as shown on the plan in Attachment 1 to this Report;**
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4. **authorise the General Manager to determine any other terms and conditions in relation to the details of the granting of the Rights of Carriageway benefitting the Lots having frontage to the former road reserve;**
5. **authorise the General Manager to sign all documentation necessary in relation to the proposed road closure as shown on the plan in Attachment 1 to this report, creation of easements for services and creation of Rights of Carriageway; and**
6. **authorise the Common Seal of Council to be affixed to all documentation necessary in relation to the proposed road closure as shown on the plan in Attachment 1 to this report, creation of easements for services and creation of Rights of Carriageway.**

Executive summary

Subsequent to a Pre-Lodgement meeting regarding a proposed subdivision of Land with proposed access off the unformed section of Faucett Drive, Mudgee an inspection was undertaken at the site and has determined that the Rifle Range Road Detention Basin has been constructed within a significant portion of the Road Reserve. To resolve the issue, it is proposed to close the section of Faucett Drive and create easements over the existing services as well as a Right of Carriageway to facilitate access to those who would have benefited from the road.

Disclosure of Interest

Nil

Detailed report

An inspection was undertaken at the proposed sub-division site and it has been determined that the Rifle Range Road Detention Basin has been constructed within a significant portion of the Road Reserve. The status of this section of Faucett Drive is that of an unformed Council Road.

The Road Reserve is 20.115 metres wide and extends from the constructed portion of Faucett Drive west a distance of 100 metres before terminating at the adjoining property boundary. At approximately 70 metres along the road reserve the channel/stream which enters the basin dissects the road. The Detention Basin has been constructed a distance of approximately 14 metres into the Crown Road Reserve and runs the length of the road reserve.

As part of the proposed subdivision, access was to be provided via the unformed portion of Faucett Drive. Given the available width remaining within the road reserve it would not be possible to construct a road to the standards set out in Council's Development Control Plan.

A number of options have been explored to resolve the matter with the preferred option being the closure of the unformed section of Faucett Drive and creation of easement for services and a Right of Carriageway to provide legal access to the land subject to subdivision application.

Community Plan implications

Theme	Looking After Our Community
Goal	Effective and efficient delivery of infrastructure
Strategy	Provide infrastructure and services to cater for the current and future needs of our community

Strategic implications

Council Strategies

Development Control Plan - given the available width remaining within the road reserve it would not be possible to construct a road to the standards set out in Council's Development Control Plan. Roads Asset Management Plan – any extension to Councils road network, will provide an additional burden to maintain.

Council Policies

The proposed road closure and the granting of the Rights of Carriageway, will be progressed in accordance with the provisions of the *Land Acquisition and Disposal Policy*.

Legislation

Divisions 2 & 4 of the *Roads Act 1993* prescribe the legislation and processes which must be followed in order to close a road. Section 38 of the *Roads Act* stipulates that unformed council road reserves will vest in the Crown and not council upon closure.

The *Registrar General's Guidelines* will be referenced regarding comprehensive information about legislative and other requirements relating to the preparation of plans and documents intended for lodgment and registration with the Land and Property Information.

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Financial implications

Costs associated with the road closure including application fees, survey and legal cost are estimated at \$10,000. On closure of the unformed road, the land will vest with the Crown, not Council. This will result in a requirement for Council to pay compensation to the Crown. At the time of closure the value for the land will be determined by at least one independent valuation. The surrounding land has very different Valuer General values, and as such, it is difficult to provide an early estimate. Council officers consider the value of the land could be between \$5,000 - \$120,000. It is recommended a budget for the land compensation be added in the September QBR.

The creation of easement for services and the Right of Carriageway has an estimated cost of \$7,000. It is recommended that the proponent of the proposed subdivision pay for the creation of the easement, as it is for their benefit, and given that the road is an unformed road, they would have been required to pay for formation of the road to access their subdivided lot.

Providing a Right of Carriageway will replace the outcome of a formed road, which will result in a reduced long term impact on Council as there will be no requirement to maintain the proposed road extension.

Budget Year	Operating Performance Ratio	Own Source Revenue	Building & Infrastructure Renewal
2017/18	✘	-	✓
Future Years	✓	-	✓

Associated Risks

There are a few unknowns in regards to this process, at this stage. Firstly, we are unsure of what the value of the land will return as, given the variances in surrounding land values. Current estimates are between \$5,000 - \$120,000.

We will also be required to go out to consultation, as a part of the road closure process. There is a chance that surrounding property owners may object to the proposal to close the unformed road.

DIANE SAWYERS
REVENUE AND PROPERTY MANAGER

LEONIE JOHNSON
CHIEF FINANCIAL OFFICER

31 July 2017

Attachments: 1. Plan of section of Faucett Drive proposed to be closed.

APPROVED FOR SUBMISSION:

BRAD CAM
GENERAL MANAGER

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Aerial view of unformed section of Faucett Drive proposed to be closed



NEWS



Windamere Dam.
Photo: Supplied

Windamere water levels in discussion

WINDAMERE DAM WATER TRANSFER
BY BENJAMIN PALMER

Continued from page 1
"I have a meeting tomorrow morning [Thursday, June 20, 2019] with Melinda Pavey, the new minister for water in Canberra so Brad [Cam] and I will be attending that to try and push our case that we can't afford let another 10 gigs go."
"In real terms letting 10 gigs into Burrendong Dam to help a cotton farmer- by the time it gets there - 10 turns into about four or five, or three with evaporation, wastage and whatever else."
"So it'll make very little difference but it'll make a big difference to us."
Part of the Council paper discussing the process argues the fact that Windamere is unlike the Burrendong Dam catchment.
"Windamere Dam has a very small catchment area and it will take longer to replenish water levels even in



Mayor, Des Kennedy.

average rain. It is very different to the Burrendong Dam catchment area."
Councillor Kennedy later went on to suggest that the Mid-Western Region move to level one water restrictions 'as of soon', later agreed to be August 1 to give the public time to comment on the proposal.
"I'd like to see that introduced only as an awareness for people more than anything else at this stage. Hopefully we keep that 10 gigs of water and hopefully -

of course - it rains in the next month or so," Mayor Kennedy said.
Councillor Russell Holden spoke in favour of protecting the water in Windamere Dam.
"I think it's sad that we're going to get to this stage that we have to consider the introduction of water restrictions," Cr Holden said.
"I think that this Council has been fairly unanimous on the fact that we need to protect the water in that dam simply for the fact that that dam does not fill."
It's a fact of life, it does not fill. I'm aware of the fact that lots of irrigators look at the state with a bit of envy, I understand that but if we pull this down and allow them to take the extra 10 gigs or more, and get it down to a floor of less than 60 [gigalitre], we're in grave danger of the fact that if it does not rain and it does not fill that we could be in very, very serious water trouble in two years time. Worst case scenario."

Mid-Western Regional Council WEEKLY ADVERTISEMENTS

Proposed Road Closing

Section 38B Roads Act 1993

In pursuance of the provisions of the Roads Act 1993, notice is hereby given that Mid-Western Regional Council proposes to close the Council public road listed in Schedule 1.

Schedule 1: Part Faucett Drive, Mudgee as depicted in red- Upon closure of the road, Council intends to retain the land for community purposes.

All interested persons are hereby invited to make written submissions concerning the proposal to the General Manager by 4:30pm on **Friday, 19 July 2019**.

Please note that under the provisions of the Government Information (Public Access) Act 2009, such submissions may be referred to third parties for consideration. Once the submission period is completed, Mid-Western Regional Council will consider all duly made submissions before deciding whether to continue with the road closure proposal.

Any enquiries regarding this road closure should be directed to Council's Manager Revenue & Property on (02) 6378 2850 or 1300 765 002.



Notice of Proposed Development

PROPOSAL: Electricity Generating Works (5mw Solar Farm) & Associated Infrastructure
LAND: Lot 460-464 DP 755434 - 129 Old Mill Road, GULGONG NSW 2852
APPLICATION NO.: DA0283/2019
APPLICANT: Mr Mishka Talent - IT Power (Australia) Pty Ltd
CONSENT AUTHORITY: Western Regional Planning Panel (Regionally Significant Development)

PROPOSAL: Electricity Generating works (2 X 5mw Solar Farms) & Associated Infrastructure
LAND: Lot 6 DP 1069441 - Burrendulla 38 Sydney Road, BURRUNDULLA NSW 2850
APPLICATION NO.: DA0288/2019
APPLICANT: Mishka Talent - IT Power (Australia) Pty Ltd
CONSENT AUTHORITY: Western Regional Planning Panel (Regional Significant Development)
INTEGRATED APPROVAL: RMS - Roads & Maritime Services (14 days)

Any person is invited to inspect the applications and plans at Council's Administration Centre, 86 Market Street, Mudgee. Plans may also be made available at the following locations:

- Administration Centre, 109 Herbert Street, Gulgong
- Administration Centre, 77 Loue Street, Rylstone

Please note that whether an application is available for inspection at either Gulgong or Rylstone will depend on the location of the proposed development. Any application and plans can be made available to the Gulgong or Rylstone Administration Centres upon request.

Council's offices are open for inspection of the plans during office hours: 8:00 am to 4:30 pm, Monday to Friday. Written comments in respect of any application must be addressed to the General Manager and received prior to 4:30 pm on **Friday, 5 July 2019**.

Any enquiries regarding this application should be directed to Council's Development Department on (02) 6378 2850 or 1300 765 002.

On Exhibition

■ Policies for Review

At Council's 19 June 2019 meeting, Council resolved to place the following documents on exhibition for 28 days to seek comment and input from the community:

- Events Assistance Policy
- Local Preference Policy
- Procurement Policy
- Service Provider Management Policy
- Asset Disposal Policy
- Keeping of Animals in Urban Areas Policy

Enquiries regarding the Events Assistance Policy should be directed to Council's Director Development.

Enquiries regarding the Local Preference Policy, Procurement Policy, Service Provider Management Policy or the Asset Disposal Policy should be directed to Council's Chief Financial Officer.

Enquiries regarding the Keeping of Animals in Urban Areas Policy should be directed to Council's Manager Governance.

All of the above documents can be viewed at Council's Administration Centres and on Council's website: www.midwestern.nsw.gov.au

Council welcomes written submissions which should be addressed to the General Manager and received prior to 4:30pm on **Friday, 19 July 2019**.

■ Revised Delivery Program 2017/21 and Draft Operational Plan 2019/20

At Council's 19 June 2019 meeting, Council resolved to place the **Revised Delivery Program 2017/21 and Draft Operational Plan 2019/20** on public exhibition for 28 days to seek comment and input from the community.

The Revised Delivery Program 2017/21 and Draft Operational Plan 2019/20 can be viewed at Council's Administration Centres and on Council's website: www.midwestern.nsw.gov.au

Council welcomes written submissions which should be addressed to the General Manager and received prior to 4:30pm on **Friday, 19 July 2019**.

Enquiries regarding the above should be directed to Council's Chief Financial Officer.

NOTE: SUBMISSIONS RECEIVED MAY BE MADE PUBLICLY AVAILABLE UNLESS YOU REQUEST THAT PERSONAL DETAILS BE SUPPRESSED

Public Notice

At Council's 19 June 2019 meeting, Council resolved to approve the following plans:

- DCP Amendment No.4 - Solar Energy Farms
- Mid-Western Regional Contributions Plan 2019

Please be advised the Plans are effective from the date of this notice.

Vacancies - We are currently inviting applications for the following positions:

- Water and Sewer Operator - Level 1 - No. 4740494 - closes 28 June 2019
- Water and Sewer Operator - Level 2 - No. 4740563 - closes 28 June 2019
- Water and Sewer Operator - Level 3 - No. 4740797 - closes 28 June 2019
- Plant Operator 2 (Excavator/Backhoe) - No. 4741562 - closes 1 July 2019

For more information about these positions, or to apply online, please visit our website:

<http://employment.midwestern.nsw.gov.au/>

Brad Cam, General Manager
PO Box 156, 86 Market Street, Mudgee NSW 2850
P | (02) 6378 2850 or 1300 765 002, F | (02) 6378 2815
E | council@midwestern.nsw.gov.au
www.midwestern.nsw.gov.au



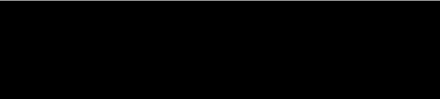


MID-WESTERN REGIONAL COUNCIL

PO Box 156, MUDGEE NSW 2850
86 Market Street, Mudgee | 109 Herbert Street, Gulgong | 77 Louee Street, Rylstone
T 1300 765 002 or 02 6378 2850 | F 02 6378 2815
E council@midwestern.nsw.gov.au

LD:CA:DA0142/2018

9 May 2018



Dear Cameron,

**RE: ROAD CLOSURE AND SUBDIVISION APPLICATION (DA0142/2018)
LOT 1 DP 1046119, 38 RIFLE RANGE ROAD, MUDGEE**

Reference is made to the abovementioned property and your recent development application (DA0142/2018) to subdivide the land, with vehicular access proposed via the unformed Faucett Drive road reserve.

At its Ordinary Meeting on 16 August 2017, Council resolved (Attached) to apply to the Department of Industry – Crown Lands for the closure of the unformed portion of Faucett Drive. The same resolution also consented to the creation of the required easement for services and Rights of Carriageway benefitting the Lots having frontage to the former road reserve. This resolution confirms Council's commitment to closing the road and the creation of a Right of Way (ROW) for your client's benefit.

In actioning the resolution to close the road Council notified those affected properties. At this time your client lodged an objection. The lodgement of the objection has stalled the progress of the road closure application, which has similarly delayed the progress of the development application. In this regards, the grounds for your objection are noted below, with comments provided:

- 1. That accepting the right of way access way as opposed to constructing a full road is accepting a less desirable outcome that has financial impact on the resulting value of the subdivided land.**

Council has no knowledge or evidence to substantiate or contradict such a claim. Your client will need to satisfy themselves as to the financial implications of such a decision.

- 2. That there is still uncertainty around the costs associated with the closure and easement creation and also costs associated with the construction of the road within the right of carriageway.**

Council would be responsible for all costs associated with the creation of the ROW. This includes surveying and conveyancing fees, typically payed by the developer, to create and register the ROW. Similarly, as Council has removed your client's *right* to access their land via the road, owing to the construction of the detention basin, no compensation for the right to use Council's land will be required, contrary to Council's Land Acquisition and Disposal Policy

The physical construction of the driveway over the ROW would be at your client's expense, as is typically the case. The standard of construction and scheduled maintenance periods would be decided by the owner, as the driveway would be considered, for all intents and purposes, private.

- 3. That there is still uncertainty around Council's final acceptance of the proposed subdivision. We would like the DA for the proposed subdivision approved prior to any acceptance and support for the road closure. We are proposing that Council assess and determines the DA for the subdivision prior to proceeding further with the road closure so there is some more certainty.**

Unfortunately, the two issues cannot be separated. Council cannot determine your subdivision application, until such time legal access is available, and secured. This would likely mean that the determination of your application would be subject to a deferred commencement condition. The condition would require you to secure formal access through the creation and registration of the ROW, before the consent became operational. That is, the consent cannot be acted upon (lots registered), until such time the ROW is registered on the title, and legal access gained.

This type of consent would give you security that the subdivision has been approved, but would require you to create the ROW before you can act on the consent.

- 4. We are awaiting a response from Council in relation to the completion of works associated with DA0511/2013 and CC0139/2014 which indicated a 3m wide concrete road to be constructed to the frontage of Lot 6. Acceptance of this 3m wide concrete road could solve the access issue without actually closing the road by simply extending to provide access to the proposed new lot from 38 Rifle Range Road.**

DA0511/2013 did not consent to, or require the provision of the 3m wide concrete path along the frontage of Lot 6. The concrete path first appeared in a subsequent plan, relating to a Construction Certificate. The purpose for, need of, or legality of, said pathway is unclear. Needless to say, it does not comply with Council's road standards, and accordingly Council would not permit the construction of said path in the road reserve.

- 5. We would like further negotiation with the General Manager regarding all costs associated with the closure and construction of the road creation of easements prior to providing any support for the closure and easement creation.**

I trust that the above information clarify matters, particularly regarding costs, and that further negotiations are unnecessary. However, I am happy to discuss the matter further if required.

As discussed with Council's Manager Statutory Planning, over the phone on Friday 27 April 2018, consideration could be given to allowing vehicular access off Rifle Range Road, down the existing battle-axe handle. In this regard battle-axe subdivisions on land zoned R1 General Residential require a minimum access handle width of 4m, for each residence (i.e. 2 x 4m).

Should you have any enquiries please contact Mid-Western Regional Council on (02) 6378 2850.

Yours sincerely



BRAD CAM
GENERAL MANAGER



MID-WESTERN REGIONAL COUNCIL

COUNCIL MEETING EXTRACT
COUNCIL MEETING: 16 AUGUST 2017

Councillor Thompson asked a question via the Mayor to the General Manager in regard to item 9.6; why didn't Council get permission to close the road before building the detention basin? The question was taken on notice by the General Manager.

9.6 ROAD CLOSURE AND EASEMENT CREATION - FAUCETT DRIVE

GOV400064, P1318811, ROA100007

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MOTION: Shelley / Martens

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The motion was put and carried with Councillors voting as follows:

Councillors	Ayes	Nays
Cr Shelley	✓	
Cr Kennedy	✓	
Cr Martens	✓	
Cr Thompson		✓
Cr Cavalier	✓	
Cr Karavas	✓	
Cr O'Neill	✓	



MID-WESTERN REGIONAL COUNCIL

COUNCIL MEETING EXTRACT
COUNCIL MEETING: 16 AUGUST 2017

Cr Holden

✓

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MID-WESTERN REGIONAL COUNCIL | ORDINARY MEETING - 16 AUGUST 2017
REPORT 9.6

9.6 Road Closure and Easement Creation - Faucett Drive

REPORT BY THE REVENUE AND PROPERTY MANAGER
TO 16 AUGUST 2017 ORDINARY MEETING
GOV400064, P1318811, ROA100007

RECOMMENDATION

That Council:

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Executive summary

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Disclosure of Interest

Nil

Detailed report

An inspection was undertaken at the proposed sub-division site and it has been determined that the Rifle Range Road Detention Basin has been constructed within a significant portion of the Road Reserve. The status of this section of Faucett Drive is that of an unformed Council Road.

The Road Reserve is 20.115 metres wide and extends from the constructed portion of Faucett Drive west a distance of 100 metres before terminating at the adjoining property boundary. At approximately 70 metres along the road reserve the channel/stream which enters the basin dissects the road. The Detention Basin has been constructed a distance of approximately 14 metres into the Crown Road Reserve and runs the length of the road reserve.

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A number of options have been explored to resolve the matter with the preferred option being the closure of the unformed section of Faucett Drive and creation of easement for services and a Right of Carriageway to provide legal access to the land subject to subdivision application.

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Goal	Effective and efficient delivery of infrastructure
Strategy	Provide infrastructure and services to cater for the current and future needs of our community

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Council Strategies

Development Control Plan - given the available width remaining within the road reserve it would not be possible to construct a road to the standards set out in Council's Development Control Plan. Roads Asset Management Plan – any extension to Council's road network, will provide an additional burden to maintain.

Council Policies

The proposed road closure and the granting of the Rights of Carriageway, will be progressed in accordance with the provisions of the *Land Acquisition and Disposal Policy*.

Legislation

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The *Registrar General's Guidelines* will be referenced regarding comprehensive information about legislative and other requirements relating to the preparation of plans and documents intended for lodgment and registration with the Land and Property Information.

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Financial implications

Costs associated with the road closure including application fees, survey and legal cost are estimated at \$10,000. On closure of the unformed road, the land will vest with the Crown, not Council. This will result in a requirement for Council to pay compensation to the Crown. At the time of closure the value for the land will be determined by at least one independent valuation. The surrounding land has very different Valuer General values, and as such, it is difficult to provide an early estimate. Council officers consider the value of the land could be between \$5,000 - \$120,000. It is recommended a budget for the land compensation be added in the September QBR.

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Budget Year	Operating Performance Ratio	Own Source Revenue	Building & Infrastructure Renewal
2017/18	✘	-	✔
Future Years	✔	-	✔

Associated Risks

There are a few unknowns in regards to this process, at this stage. Firstly, we are unsure of what the value of the land will return as, given the variances in surrounding land values. Current estimates are between \$5,000 - \$120,000.

We will also be required to go out to consultation, as a part of the road closure process. There is a chance that surrounding property owners may object to the proposal to close the unformed road.

DIANE SAWYERS
REVENUE AND PROPERTY MANAGER

LEONIE JOHNSON
CHIEF FINANCIAL OFFICER

31 July 2017

Attachments: 1. Plan of section of Faucett Drive proposed to be closed.

APPROVED FOR SUBMISSION:

BRAD CAM
GENERAL MANAGER

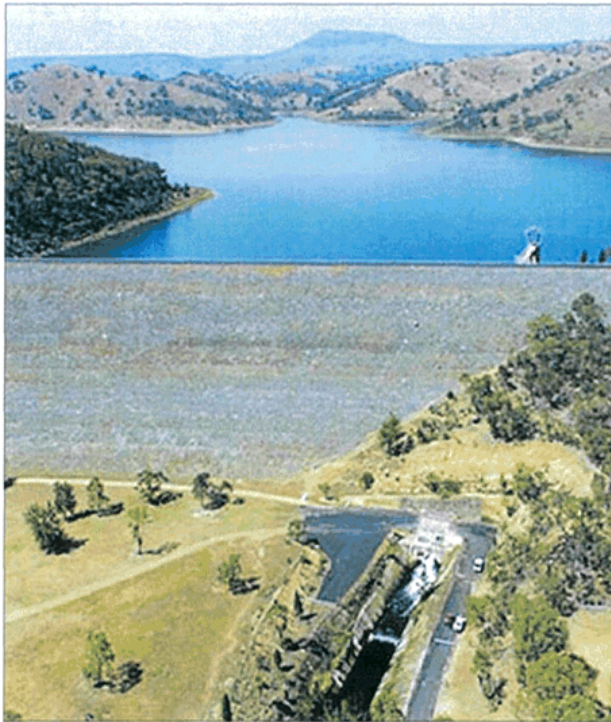
166

MID-WESTERN REGIONAL COUNCIL | ORDINARY MEETING – 16 AUGUST 2017
REPORT 9.6 – ATTACHMENT 1

Aerial view of unformed section of Faucett Drive proposed to be closed



NEWS



Windamere Dam. Photo: Supplied

Windamere water levels in discussion

WINDAMERE DAM WATER TRANSFER
BY BENJAMIN PALMER

Continued from page 1
"I have a meeting tomorrow morning [Thursday, June 20, 2019] with Melinda Pavey, the new minister for water in Canberra so Brad [Cam] and I will be attending that to try and push our case that we can't afford let another 10 gigs go."
"In real terms letting 10 gigs into Burrendong Dam to help a cotton farmer - by the time it gets there - 10 turns into about four or five, or three with evaporation, wastage and whatever else."
"So it'll make very little difference but it'll make a big difference to us."
Part of the Council paper discussing the process argues the fact that Windamere is unlike the Burrendong Dam catchment.
"Windamere Dam has a very small catchment area and it will take longer to replenish water levels even in



Mayor, Des Kennedy.

of course - it rains in the next month or so," Mayor Kennedy said.
Councillor Russell Holden spoke in favour of protecting the water in Windamere Dam.
"I think it's sad that we're going to get to this stage that we have to consider the introduction of water restrictions," Cr Holden said.
"I think that this Council has been fairly unanimous on the fact that we need to protect the water in that dam simply for the fact that that dam does not fill."
It's a fact of life, it does not fill. I'm aware of the fact that lots of irrigators look at the state with a bit of envy, I understand that but if we pull this down and allow them to take the extra 10 gigs or more, and get it down to a floor of less than 60 [gigalitre], we're in grave danger of the fact that if it does not rain and it does not fill that we could be in very, very serious water trouble in two years time. Worst case scenario."

average rain. It is very different to the Burrendong Dam catchment area."
Councillor Kennedy later went on to suggest that the Mid-Western Region move to level one water restrictions 'as of soon', later agreed to be August 1 to give the public time to comment on the proposal.
"I'd like to see that introduced only as an awareness for people more than anything else at this stage. Hopefully we keep that 10 gigs of water and hopefully -

Mid-Western Regional Council WEEKLY ADVERTISEMENTS

Proposed Road Closing

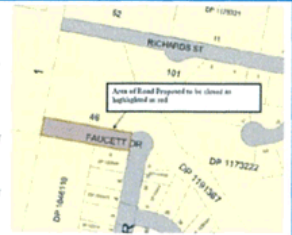
Section 38B Roads Act 1993

In pursuance of the provisions of the Roads Act 1993, notice is hereby given that Mid-Western Regional Council proposes to close the Council public road listed in Schedule 1.
Schedule 1: Part Faucett Drive, Mudgee as depicted in red. Upon closure of the road, Council intends to retain the land for community purposes.

All interested persons are hereby invited to make written submissions concerning the proposal to the General Manager by 4.30pm on **Friday, 19 July 2019**

Please note that under the provisions of the Government Information (Public Access) Act 2009, such submissions may be referred to third parties for consideration. Once the submission period is completed, Mid-Western Regional Council will consider all duly made submissions before deciding whether to continue with the road closure proposal.

Any enquiries regarding this road closure should be directed to Council's Manager Revenue & Property on (02) 6378 2850 or 1300 765 002.



Notice of Proposed Development

PROPOSAL	Electricity Generating Works (5mw Solar Farm) & Associated Infrastructure
LAND	Lot 460-464 DP 755434 - 129 Old Mill Road, GULGONG NSW 2852
APPLICATION NO	DA0283/2019
APPLICANT	Mr Mishka Talent - IT Power (Australia) Pty Ltd
CONSENT AUTHORITY	Western Regional Planning Panel (Regionally Significant Development)
PROPOSAL	Electricity Generating works (2 X 5mw Solar Farms) & Associated Infrastructure
LAND	Lot 6 DP 1069441 - Burrundulla 3B Sydney Road, BURRUNDULLA NSW 2850
APPLICATION NO	DA0288/2019
APPLICANT	Mishka Talent - IT Power (Australia) Pty Ltd
CONSENT AUTHORITY	Western Regional Planning Panel (Regional Significant Development)
INTEGRATED APPROVAL	RMS - Roads & Maritime Services (14 days)

Any person is invited to inspect the applications and plans at Council's Administration Centre, 86 Market Street, Mudgee. Plans may also be made available at the following locations:

- Administration Centre, 109 Herbert Street, Gulgong
- Administration Centre, 77 Louee Street, Rylstone

Please note that whether an application is available for inspection at either Gulgong or Rylstone will depend on the location of the proposed development. Any application and plans can be made available to the Gulgong or Rylstone Administration Centres upon request.

Council's offices are open for inspection of the plans during office hours: 8.00 am to 4.30 pm, Monday to Friday. Written comments in respect of any application must be addressed to the General Manager and received prior to 4.30 pm on **Friday, 5 July 2019**.

Any enquiries regarding this application should be directed to Council's Development Department on (02) 6378 2850 or 1300 765 002.

On Exhibition

■ Policies for Review

At Council's 19 June 2019 meeting, Council resolved to place the following documents on exhibition for 28 days to seek comment and input from the community:

- Events Assistance Policy
- Local Preference Policy
- Procurement Policy
- Service Provider Management Policy
- Asset Disposal Policy
- Keeping of Animals in Urban Areas Policy

Enquiries regarding the Events Assistance Policy should be directed to Council's Director Development. Enquiries regarding the Local Preference Policy, Procurement Policy, Service Provider Management Policy or the Asset Disposal Policy should be directed to Council's Chief Financial Officer.

Enquiries regarding the Keeping of Animals in Urban Areas Policy should be directed to Council's Manager Governance.

All of the above documents can be viewed at Council's Administration Centres and on Council's website: www.midwestern.nsw.gov.au

Council welcomes written submissions which should be addressed to the General Manager and received prior to 4.30pm on **Friday, 19 July 2019**

■ Revised Delivery Program 2017/21 and Draft Operational Plan 2019/20

At Council's 19 June 2019 meeting, Council resolved to place the Revised Delivery Program 2017/21 and Draft Operational Plan 2019/20 on public exhibition for 28 days to seek comment and input from the community.

The Revised Delivery Program 2017/21 and Draft Operational Plan 2019/20 can be viewed at Council's Administration Centres and on Council's website: www.midwestern.nsw.gov.au

Council welcomes written submissions which should be addressed to the General Manager and received prior to 4.30pm on **Friday, 19 July 2019**.

Enquiries regarding the above should be directed to Council's Chief Financial Officer.

NOTE: SUBMISSIONS RECEIVED MAY BE MADE PUBLICLY AVAILABLE UNLESS YOU REQUEST THAT PERSONAL DETAILS BE SUPPRESSED

Public Notice

At Council's 19 June 2019 meeting, Council resolved to approve the following plans:

- DCP Amendment No.4 - Solar Energy Farms
- Mid-Western Regional Contributions Plan 2019

Please be advised the Plans are effective from the date of this notice.

Vacancies - We are currently inviting applications for the following positions:

- Water and Sewer Operator - Level 1 - No 4740494 - closes 28 June 2019
- Water and Sewer Operator - Level 2 - No 4740563 - closes 28 June 2019
- Water and Sewer Operator - Level 3 - No 4740797 - closes 28 June 2019
- Plant Operator 2 (Excavator/Backhoe) - No 4741562 - closes 1 July 2019

For more information about these positions, or to apply online, please visit our website:

<http://employment.midwestern.nsw.gov.au/>

Brad Cam, General Manager
PO Box 156, 86 Market Street, Mudgee NSW 2850
P | (02) 6378 2850 or 1300 765 002. F | (02) 6378 2815
E | council@midwestern.nsw.gov.au
www.midwestern.nsw.gov.au



Kelly Barnes

From: Nicole Cassidy
Sent: Tuesday, 30 July 2019 10:57 AM
To: Kelly Barnes
Subject: RE: Notification to Internal Council Departments - Proposed Council Road Closure Part Faucett Drive Mudgee

Hi Kelly,

Roads do not have any issues with the closure of this section of road reserve.

Cheers

Nicole Cassidy
Roads Administration Assistant
Mid-Western Regional Council

t 02 6378 2858 |
f 02 6378 2815 | e nicole.cassidy@midwestern.nsw.gov.au
a 86 Market Street | PO Box 156 Mudgee NSW 2850
w www.midwestern.nsw.gov.au
[facebook](#) | [twitter](#) | [youtube](#)



From: Kelly Barnes
Sent: Monday, 29 July 2019 11:42 AM
To: Michelle Neilsen <Michelle.Neilsen@midwestern.nsw.gov.au>; Cameron Amos <Cameron.Amos@midwestern.nsw.gov.au>; Nicole Cassidy <Nicole.Cassidy@midwestern.nsw.gov.au>
Subject: FW: Notification to Internal Council Departments - Proposed Council Road Closure Part Faucett Drive Mudgee

Hi Guys,

Just chasing a written formal response on this please.

Cheers,

Kelly Barnes | Property Officer

Kelly Barnes

From: Michelle Neilsen
Sent: Thursday, 1 August 2019 11:19 AM
To: Kelly Barnes
Subject: FW: Notification to Internal Council Departments - Proposed Council Road Closure Part Faucett Drive Mudgee

Hi Kelly

I am unsure if Claire has sent this through to you regarding Faucett Drive Mudgee. Please see comments below.

No objection.

As per Exponare Water and Sewer Layer, there may be existing sewer infrastructure within the road proposed for closing. I am not aware of specific reasoning for closure, so please consider appropriate protection of Council owned sewer assets during planning for future ownership/use of land.

Thanks, Claire

From: Kelly Barnes
Sent: Monday, 29 July 2019 11:42 AM
To: Michelle Neilsen <Michelle.Neilsen@midwestern.nsw.gov.au>; Cameron Amos <Cameron.Amos@midwestern.nsw.gov.au>; Nicole Cassidy <Nicole.Cassidy@midwestern.nsw.gov.au>
Subject: FW: Notification to Internal Council Departments - Proposed Council Road Closure Part Faucett Drive Mudgee

Hi Guys,

Just chasing a written formal response on this please.

Cheers,

Kelly Barnes | Property Officer
Mid-Western Regional Council

Kelly Barnes

From: Cameron Amos
Sent: Monday, 29 July 2019 3:41 PM
To: Kelly Barnes
Subject: RE: Notification to Internal Council Departments - Proposed Council Road Closure Part Faucett Drive Mudgee

Hi Kelly,

No objection from planning.

Road closure is to be in accordance with LRS guidelines https://rg-guidelines.nswlrs.com.au/deposited_plans/roads/closing_roads/council_public_roads

Regards,
Cameron

From: Kelly Barnes <Kelly.Barnes@midwestern.nsw.gov.au>
Sent: Monday, 29 July 2019 11:42 AM
To: Michelle Neilsen <Michelle.Neilsen@midwestern.nsw.gov.au>; Cameron Amos <Cameron.Amos@midwestern.nsw.gov.au>; Nicole Cassidy <Nicole.Cassidy@midwestern.nsw.gov.au>
Subject: FW: Notification to Internal Council Departments - Proposed Council Road Closure Part Faucett Drive Mudgee

Hi Guys,

Just chasing a written formal response on this please.

Cheers,

--
Kelly Barnes | Property Officer
Mid-Western Regional Council
t 02 6378 2850 |
f 02 6378 2815 | e kelly.barnes@midwestern.nsw.gov.au
a 86 Market Street | PO Box 156 Mudgee NSW 2850

Kelly Barnes

From: Kelly Barnes
Sent: Thursday, 20 June 2019 1:58 PM
To: Operations Assistant; Planning and Development Admin
Subject: Notification to Internal Council Departments - Proposed Council Road Closure Part Faucett Drive Mudgee
Attachments: Newspaper Notification 17 June 2019.docx

Hi All,

Please distribute to Water & Sewer, Roads and Planning for comment regarding attached road closure proposal.

Regards,

Kelly Barnes
Property Officer
Mid-Western Regional Council

t 02 6378 2850 |

f 02 6378 2815 |

e [kelly.barnes@midwestern.nsw.gov.au](mailto:ekelly.barnes@midwestern.nsw.gov.au)

a 86 Market Street | PO Box 156 Mudgee
NSW 2850

w www.midwestern.nsw.gov.au

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MID-WESTERN REGIONAL COUNCIL
PO Box 156, MUDGEES NSW 2850
86 Market Street, Mudgee | 109 Herbert Street, Gulgong | 77 Louee Street, Rylstone
T 1300 765 002 or 02 6378 2850 | F 02 6378 2815
E council@midwestern.nsw.gov.au

KB Ref: ROA100007 Faucett Drive

17 June 2019

Transgrid
By e-mail; AM_Property@transgrid.com.

**PROPOSAL TO CLOSE A COUNCIL PUBLIC ROAD
PART 4 DIVISION 3 ROADS ACT 1993
ROAD RESERVE IN THE LOCALITY OF MUDGEE**

Dear Sir/Madam

Mid-Western Regional Council is currently considering the closure of the Council public road as identified on the attached diagram. Council is proposing closure of the road to retain the land for community purposes.

The proposal to close the road will be advertised in the Mudgee Guardian on 21/06/2019. A copy of the advertisement is attached for your information.

What should you do now?

Please consider the proposal and provide a response to Mid-Western Regional Council within 28 days. Send your submission to:

Post: PO Box 156 MUDGEES NSW 2850

Email: council@midwestern.nsw.gov.au

What happens next?

If Mid-Western Regional Council does not receive a reply within the specified 28-day period, it will assume that Transgrid has no objections to the proposal.

Please advise Mid-Western Regional Council within the 28-day period if Transgrid requires additional time to consider its position.

Once the submission period is completed, Mid-Western Regional Council will consider all duly made submissions and decide on road closure suitability.

If you have any further enquiries regarding this matter, please contact Mid-Western Regional Council.

Yours sincerely

A handwritten signature in black ink, appearing to read "D. Sawyers", is written over a light-colored background.

D Sawyers
MANAGER REVENUE& PROPERTY

Kelly Barnes

From: Skye Shanahan <Skye.Shanahan@transgrid.com.au> on behalf of AM_Property <AM_Property@transgrid.com.au>
Sent: Tuesday, 18 June 2019 9:35 AM
To: Kelly Barnes
Subject: [EXTERNAL] RE: PROPOSAL TO CLOSE A COUNCIL PUBLIC ROAD - PART FAUCETT DRIVE MUDGEE
Attachments: Newspaper Notification 17 June 2019.docx; Transgrid 17 June 19.docx

Hi Kelly,

RE: PROPOSAL TO CLOSE A COUNCIL PUBLIC ROAD - PART FAUCETT DRIVE MUDGEE

Thank you for your attached letter notification to TransGrid regarding the abovementioned matter.

TransGrid can confirm that TransGrid's infrastructure is not affected by this proposed road closure, nor is the road utilised to access TransGrid infrastructure.

Should you wish to discuss this further, please do not hesitate to contact me.

Kind regards,

Skye Shanahan
Property Services Coordinator | Works Delivery

TransGrid | 200 Old Wallgrove Road, Wallgrove, NSW, 2766
T: (02) 9620 0104
E: Skye.Shanahan@transgrid.com.au **W:** www.transgrid.com.au

From: Kelly Barnes <Kelly.Barnes@midwestern.nsw.gov.au> **On Behalf Of Council**
Sent: Tuesday, 18 June 2019 8:45 AM
To: AM_Property <AM_Property@transgrid.com.au>
Subject: PROPOSAL TO CLOSE A COUNCIL PUBLIC ROAD - PART FAUCETT DRIVE MUDGEE

Hi Good Morning,



MID-WESTERN REGIONAL COUNCIL
PO Box 156, MUDGEE NSW 2850
86 Market Street, Mudgee | 109 Herbert Street, Gulgong | 77 Louee Street, Rylstone
T 1300 765 002 or 02 6378 2850 | F 02 6378 2815
E council@midwestern.nsw.gov.au

KB REF: ROA100007 Faucett Drive

17 June 2019

Essential-Energy
By e-mail: roadclosures@essentialenergy.com.au

**PROPOSAL TO CLOSE A COUNCIL PUBLIC ROAD
PART 4 DIVISION 3 ROADS ACT 1993
ROAD RESERVE IN THE LOCALITY OF MUDGEE**

Dear Sir/Madam

Mid-Western Regional Council is currently considering the closure of the Council public road as identified on the attached diagram. Council is proposing closure of the road to retain the land for community purposes.

The proposal to close the road will be advertised in the Mudgee Guardian on 21/06/2019. A copy of the advertisement is attached for your information.

What should you do now?

Please consider the proposal and provide a response to Mid-Western Regional Council within 28 days. Send your submission to:

Post: PO Box 156 MUDGEE NSW 2850

Email: council@midwestern.nsw.gov.au

What happens next?

If Mid-Western Regional Council does not receive a reply within the specified 28-day period, it will assume that Essential Energy has no objections to the proposal.

Please advise Mid-Western Regional Council within the 28-day period if Essential Energy requires additional time to consider its position.

Once the submission period is completed, Mid-Western Regional Council will consider all duly made submissions and decide on road closure suitability.

If you have any further enquiries regarding this matter, please contact Mid-Western Regional Council.

Yours sincerely

A handwritten signature in black ink, appearing to read "D. Sawyers", is written in a cursive style.

D Sawyers
MANAGER REVENUE & PROPERTY

Kelly Barnes

From: RoadClosures <roadclosures@essentialenergy.com.au>
Sent: Wednesday, 19 June 2019 2:18 PM
To: Council
Subject: [EXTERNAL] RE: PROPOSAL TO CLOSE A COUNCIL PUBLIC ROAD - PART FAUCET DRIVE MUDGEE

Further to your below letter.

Essential Energy has no objections to the proposal.

If you have any questions, please do not hesitate to contact me.

Rebecca Edwards
Property Enquiry Officer
Governance and Corporate Services



T: 02 6589 8050 | rebecca.edwards@essentialenergy.com.au
PO Box 5730 Port Macquarie NSW 2444 | essentialenergy.com.au
General enquiries: 13 23 91 | Supply interruptions (24hr): 13 20 80

From: Kelly Barnes <Kelly.Barnes@midwestern.nsw.gov.au> **On Behalf Of** Council
Sent: Tuesday, 18 June 2019 8:47 AM
To: RoadClosures <roadclosures@essentialenergy.com.au>
Subject: PROPOSAL TO CLOSE A COUNCIL PUBLIC ROAD - PART FAUCET DRIVE MUDGEE

Hi Good Morning,

Please find attached correspondence in respect to the above matter.



MID-WESTERN REGIONAL COUNCIL
PO Box 156, MUDGEE NSW 2850
86 Market Street, Mudgee | 109 Herbert Street, Gulgong | 77 Louee Street, Rylstone
T 1300 765 002 or 02 6378 2850 | F 02 6378 2815
E council@midwestern.nsw.gov.au

KB Ref: ROA100007 Faucett Drive

17 June 2019

Endeavour Energy
By e-mail: Road.Closures@endeavourenergy.com.au

**PROPOSAL TO CLOSE A COUNCIL PUBLIC ROAD
PART 4 DIVISION 3 ROADS ACT 1993
ROAD RESERVE IN THE LOCALITY OF MUDGEE**

Dear Sir/Madam

Mid-Western Regional Council is currently considering the closure of the Council public road as identified on the attached diagram. Council is proposing closure of the road to retain the land for community purposes.

The proposal to close the road will be advertised in the Mudgee Guardian on 21/06/2019. A copy of the advertisement is attached for your information.

What should you do now?

Please consider the proposal and provide a response to Mid-Western Regional Council within 28 days. Send your submission to:

Post: PO Box 156 MUDGEE NSW 2850

Email: council@midwestern.nsw.gov.au

What happens next?

If Mid-Western Regional Council does not receive a reply within the specified 28-day period, it will assume that Endeavour Energy has no objections to the proposal.

Please advise Mid-Western Regional Council within the 28-day period if NSW Department of Industry requires additional time to consider its position.

Once the submission period is completed, Mid-Western Regional Council will consider all duly made submissions and decide on road closure suitability.

If you have any further enquiries regarding this matter, please contact Mid-Western Regional Council.

Yours sincerely

A handwritten signature in dark ink, appearing to read "D Sawyers".

D Sawyers
MANAGER REVENUE & PROPERTY

Kelly Barnes

From: Road Closures <Road.Closures@endeavourenergy.com.au>
Sent: Tuesday, 18 June 2019 11:19 AM
To: Council
Subject: [EXTERNAL] RE: PROPOSAL TO CLOSE A COUNCIL PUBLIC ROAD

Good morning Kelly,

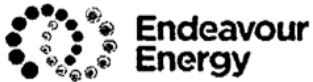
Thank you for your email.

Please be advised that the enclosed proposed road closure is not within the Endeavour Energy Franchise area.

Thanks

Kind Regards

◊ **Natasha Issac**
◊ **Network Property Support Officer**
◊
◊ T 61 2 9853 7930
◊
◊ PO Box 811
◊ Seven Hill NSW 1730
◊ endeavourenergy.com.au
◊





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T 1300 765 002 or 02 6378 2850 | F 02 6378 2815
E council@midwestern.nsw.gov.au

KB| Ref: ROA100007 Faucett Drive

17 June 2019

The Secretary of the NSW Department of Planning and Environment
By e-mail: information@planning.nsw.gov.au

**PROPOSAL TO CLOSE A COUNCIL PUBLIC ROAD
PART 4 DIVISION 3 ROADS ACT 1993
ROAD RESERVE IN THE LOCALITY OF MUDGEE**

Dear Sir/Madam

Mid-Western Regional Council is currently considering the closure of the Council public road as identified on the attached diagram. Council is proposing closure of the road to retain the land for community purposes.

The proposal to close the road will be advertised in the Mudgee Guardian on 21/06/2019. A copy of the advertisement is attached for your information.

What should you do now?

Please consider the proposal and provide a response to Mid-Western Regional Council within 28 days. Send your submission to:
Post: PO Box 156 MUDGEE NSW 2850
Email: council@midwestern.nsw.gov.au

What happens next?

If Mid-Western Regional Council does not receive a reply within the specified 28-day period, it will assume that NSW Planning has no objections to the proposal.

Please advise Mid-Western Regional Council within the 28-day period if NSW Planning requires additional time to consider its position.

Once the submission period is completed, Mid-Western Regional Council will consider all duly made submissions and decide on road closure suitability.

If you have any further enquiries regarding this matter, please contact Mid-Western Regional Council.

Yours sincerely

A handwritten signature in black ink, appearing to read "D Sawyers".

D Sawyers
MANAGER REVENUE & PROPERTY

Kelly Barnes

From: Nikki Pridgeon <Nikki.Pridgeon@planning.nsw.gov.au>
Sent: Tuesday, 9 July 2019 11:38 AM
To: Council
Subject: [EXTERNAL] Partial Road Closure Faucett Drive, Mudgee Response

Good morning,

Thank you for your email on 18 June 2019 regarding the proposed closure of part of Faucett Drive, Mudgee next to Lot 46 DP 1191367.

I advise that the Department of Planning, Industry and Environment, Western Region office does not have any interests in the proposed road closure. Council should consider legal and physical access to adjoining and surrounding land in its assessment and determination of this matter.

Should you have any further enquiries, please contact the Department's Western Region Office on 5852 6800.

Regards,

Nikki Pridgeon
Planning Officer
Western Region
188 Macquarie Street | Dubbo NSW 2830
T 02 5852 6800



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E council@midwestern.nsw.gov.au

KB | Ref: ROA100007 Faucett Drive

17 June 2019

The Secretary of NSW Department of Planning and Environment
Resources & Energy

By email: landuse.minerals@geoscience.nsw.gov.au

**PROPOSAL TO CLOSE A COUNCIL PUBLIC ROAD
PART 4 DIVISION 3 ROADS ACT 1993
ROAD RESERVE IN THE LOCALITY OF MUDGEE**

Dear Sir/Madam

Mid-Western Regional Council is currently considering the closure of the Council public road as identified on the attached diagram. Council is proposing closure of the road to retain the land for community purposes.

The proposal to close the road will be advertised in the Mudgee Guardian on 21/06/2019. A copy of the advertisement is attached for your information.

What should you do now?

Please consider the proposal and provide a response to Mid-Western Regional Council within 28 days. Send your submission to:
Post: PO Box 156 MUDGEE NSW 2850
Email: council@midwestern.nsw.gov.au

What happens next?

If Mid-Western Regional Council does not receive a reply within the specified 28-day period, it will assume that Resources and Energy has no objections to the proposal.

Please advise Mid-Western Regional Council within the 28-day period if Resources and Energy requires additional time to consider its position.

Once the submission period is completed, Mid-Western Regional Council will consider all duly made submissions and decide on road closure suitability.

If you have any further enquiries regarding this matter, please contact Mid-Western Regional Council.

Yours sincerely

A handwritten signature in cursive script, appearing to read "D Sawyers".

D Sawyers
MANAGER REVENUE & PROPERTY

Kelly Barnes

From: Shayne Kneen <Shayne.Kneen@planning.nsw.gov.au>
Sent: Wednesday, 24 July 2019 2:04 PM
To: Kelly Barnes
Cc: DRG GSNSW Landuse Minerals Mailbox
Subject: [EXTERNAL] RE: REF - R0112001 - COUNCIL PROPOSED ROAD CLOSURE - GSNSW Response (DOC19/630965)
Attachments: Resources & Energy 13 May 19.docx

Dear Kelly,

Thank you for the opportunity to provide advice on the above matter.

The Division of Resources and Geoscience – Geological Survey of NSW (GSNSW) has no concerns regarding the proposed Road Closure at Bara (Council Ref KB:R0183001).

Please be advised that for all future Road Closure Proposals referred to GSNSW, if a response is not received within 28 days, Council can assume GSNSW has no objection to the proposal.

Regards

Shayne Kneen
Geoscientist - Land Use
Geological Survey of NSW | Division of Resources and Geoscience
NSW Department of Planning, Industry and Environment
T: 02 4063 6755 | E: Shayne.kneen@planning.nsw.gov.au
516 High Street - Maitland NSW 2320 - PO Box 344 - Hunter Regional Mail Centre NSW 2310
www.dpie.nsw.gov.au



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Environment**



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I wish to acknowledge the Traditional Custodians of the land and pay respect to all Elders past and present

From: Kelly Barnes <Kelly.Barnes@midwestern.nsw.gov.au>
Sent: Monday, 8 July 2019 2:56 PM
To: DRG GSNSW Landuse Minerals Mailbox <landuse.minerals@geoscience.nsw.gov.au>
Subject: FW: REF - R0112001 - COUNCIL PROPOSED ROAD CLOSURE

Hi Good Afternoon,

I refer to the attached information and note that Council has yet to receive a formal response from your office.

If you could please reply as soon as possible it would be appreciated.

Kind Regards,

Kelly Barnes | Property Officer
Mid-Western Regional Council
t 02 6378 2850 |
f 02 6378 2815 | e kelly.barnes@midwestern.nsw.gov.au
a 86 Market Street | PO Box 156 Mudgee NSW 2850

From: Kelly Barnes **On Behalf Of** Council
Sent: Monday, 13 May 2019 11:40 AM
To: 'landuse.minerals@geoscience.nsw.gov.au' <landuse.minerals@geoscience.nsw.gov.au>
Subject: REF - R0112001 - COUNCIL PROPOSED ROAD CLOSURE

Hi Good Morning,

Please find attached correspondence in respect to the above matter.

Kind Regards,

Kelly Barnes
Property Officer
Mid-Western Regional Council



MID-WESTERN REGIONAL COUNCIL

PO Box 156, MUDGEES NSW 2850
86 Market Street, Mudgee | 109 Herbert Street, Gulgong | 77 Louee Street, Rylstone
T 1300 765 002 or 02 6378 2850 | F 02 6378 2815
E council@midwestern.nsw.gov.au

JUNE 2019

File Ref: KB: ROA100007 Faucett Drive	Contact:	Property	Department
	Phone:		63782850
	Email:	council@midwestern.nsw.gov.au	

Business Centre—Roads
NSW Department of Industry—Lands & Water
By email: council.roadclosures@crowland.nsw.gov.au

**PROPOSAL TO CLOSE A COUNCIL PUBLIC ROAD
FORMED ROAD RESERVE IN THE LOCALITY OF MUDGEES**

Dear Sir/Madam,

Mid-Western Regional Council is currently considering the closure of the council public road identified on the attached diagram. Closure of the road is proposed in order to retain the land for community purposes.

The proposal to close the road will be advertised in the Mudgee Guardian on 21/06/2019. A copy of the advertisement is attached for your information.

Road status

Mid-Western Regional Council acknowledges that it has the power to close council public roads only.

Council's attached status report confirms that the road under proposal is a council road.

Proposed vesting upon closure

Council considers the road proposed for closure to be constructed, which would vest the road in Council upon closure. Please find attached declaration by Council.

Departmental response required

Mid-Western Regional requests formal departmental response to the road closure proposal within 28 days of this notice.

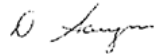
Please advise Mid-Western Regional Council within the 28-day period if the department requires additional time to consider its position. Council is aware that the department will respond to all council road closure notifications.

What happens next?

Once the submission period is completed, Mid-Western Regional Council will consider all submissions and decide on road closure suitability.

If you have any further enquiries regarding this matter, please contact Council's Property Department on (02) 6378 2850.

Yours sincerely

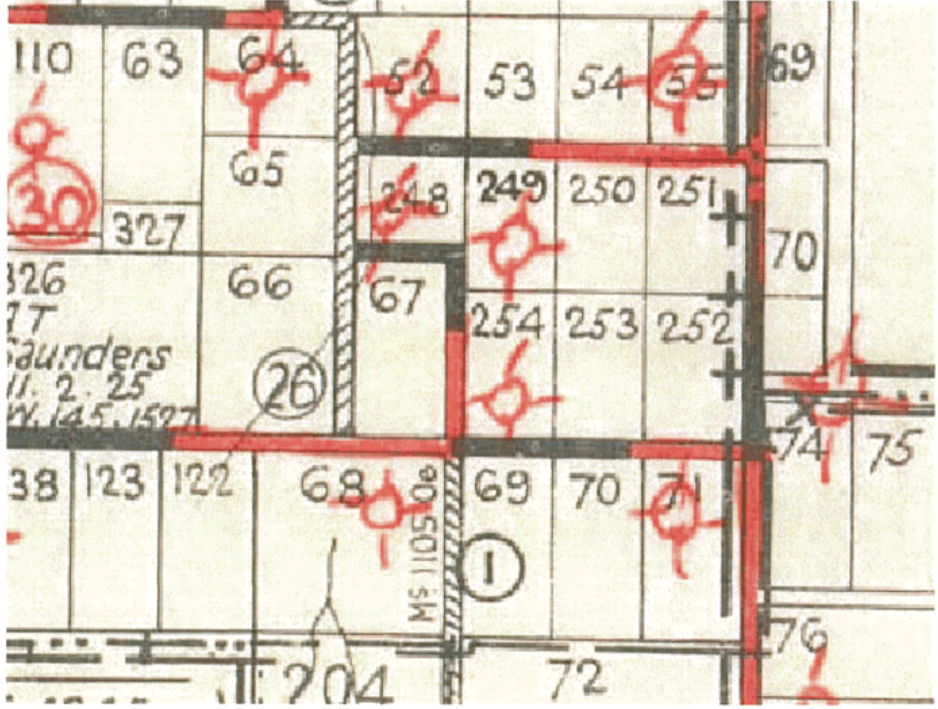
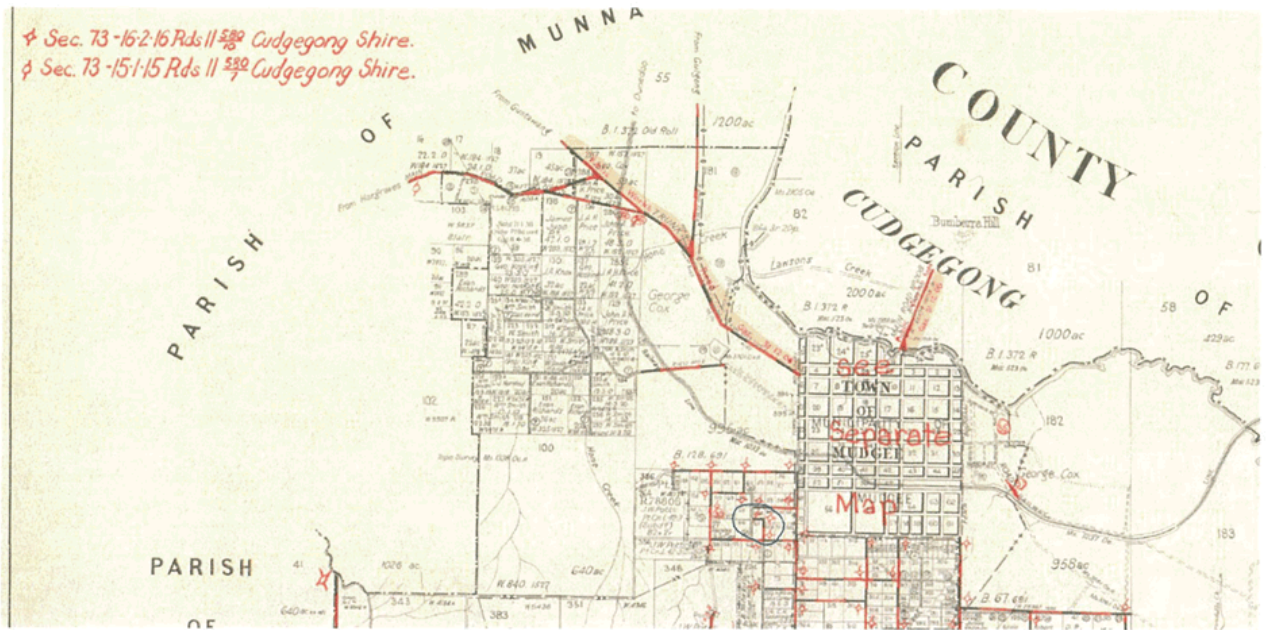


DIANE SAWYERS
MANAGER REVENUE & PROPERTY

Attachments

- Roads Branch Status Map - Mudgee
- Newspaper advert (including road diagram)
- Council declaration

✦ Sec. 73-16-2-16 Rds II ⁵³⁰ Cudgegong Shire.
 ✦ Sec. 73-15-1-15 Rds II ⁵³⁰ Cudgegong Shire.



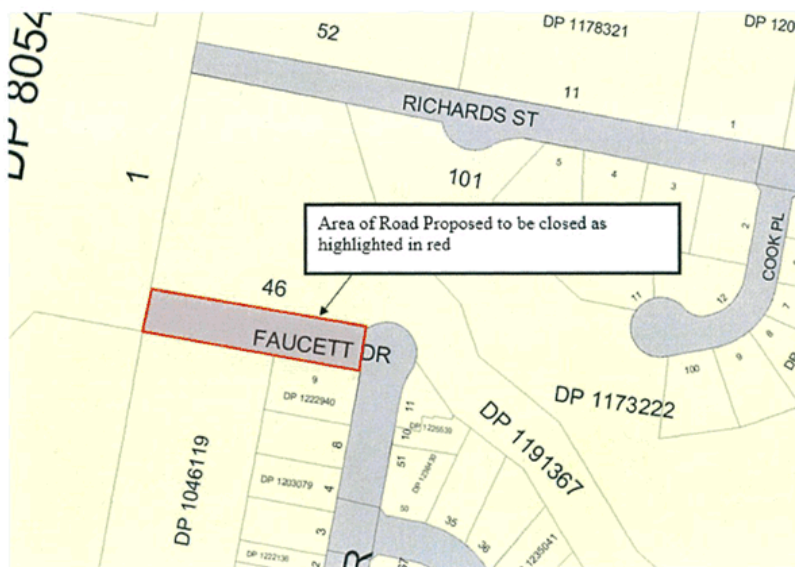


PROPOSED ROAD CLOSING UNDER SECTION 38B ROADS ACT 1993

In pursuance of the provisions of the *Roads Act 1993*, notice is hereby given that Mid-Western Regional Council proposes to close the Council public road listed in Schedule 1.

Schedule 1:

- Part Faucett Drive, Mudgee as depicted in red:-



Upon closure of the road, Council intends to retain the land for community purposes.

All interested persons are hereby invited to make written submissions concerning the proposal to the General Manager, Mid-Western Regional Council, PO Box 156 MUDGEE NSW 2850, by 4.30pm on Friday 19 July 2019. Please note that under the provisions of the *Government Information (Public Access) Act 2009*, such submissions may be referred to third parties for consideration.

Once the submission period is completed, Mid-Western Regional Council will consider all duly made submissions before deciding whether to continue with the road closure proposal.

Council Ref: ROA100007 – Faucett Drive
Enquiries: Manager Revenue & Property

Telephone: 02 63782850

General Manager, Mid-Western Regional Council



MID-WESTERN REGIONAL COUNCIL
PO Box 156, MUDGEES NSW 2850
86 Market Street, Mudgee | 109 Herbert Street, Gulgong | 77 Louee Street, Rylstone
T 1300 765 002 or 02 6378 2850 | F 02 6378 2815
E council@midwestern.nsw.gov.au

Our Ref: KB ROA100007 Faucett Drive

Business Centre – Roads
NSW Department of Industry – Lands & Water
By email: council.roadclosures@crowland.nsw.gov.au

Dear Sir/Madam

RE: Proposal to close a Council Public Road
LOCATION: Part road reserve adjoining Lot 46 DP1191367

Council declares that the council road shown by red highlight on the attached Diagram adjoining Lot 46 DP 1191367 at Faucett Drive, Mudgee is or was previously constructed/maintained for the purposes of Section 38E(2)(a) to the Roads Act 1993.

Should you require any further information, please do not hesitate to contact Council's Property Department on (02) 6378 2850.

Yours faithfully

A handwritten signature in black ink, appearing to read "L. Johnston".

Leonie Johnston
Chief Financial Officer



PO Box 2215, DANGAR NSW 2309
Phone: 1300 886 235 (Option 2)
Fax: (02) 4925 3517
roads.newcastle@crowland.nsw.gov.au
www.crownland.nsw.gov.au

21/06/2019

Mid-Western Regional Council
PO Box 156
MUDGEE NSW 2850

Attn: Kelly Barnes

Via email: council@midwestern.nsw.gov.au

Road: part Faucett Drive at Mudgee
Council Ref: KB: ROA100007 Faucett Drive **Ref Date:** 18/06/2019
Crown Ref: 19/00376#05 **Proposal No:** 10324

RE: Mid-Western Regional Council – Notification of proposal to close council public road

Dear Ms Barnes

Thank you for notifying the NSW Department of Industry – Crown Lands (the department) of council's above mentioned road closure proposal.

The department has assessed council's proposal and has no objection to Council's proposal to:

- close the council public road, and
- vest the land in council upon closure.

Enquiries regarding the above matter may be directed to the Crown Lands - Roads Team at council.roadclosures@crowland.nsw.gov.au.

Kind regards

A handwritten signature in black ink, appearing to read 'Carolyn Connell'. The signature is fluid and cursive.

Carolyn Connell
Senior Business Centre Officer
NSW Department of Industry – Crown Lands



MID-WESTERN REGIONAL COUNCIL
PO Box 156, MUDGEE NSW 2850
86 Market Street, Mudgee | 109 Herbert Street, Gulgong | 77 Louee Street, Rylstone
T 1300 765 002 or 02 6378 2850 | F 02 6378 2815
E council@midwestern.nsw.gov.au

KB ROA100007 Faucett Drive

17 June 2019

NSW Department of Primary Industries - Fisheries
By e-mail: RecFishingPolicy.Administration@dpi.nsw.gov.au

**PROPOSAL TO CLOSE A COUNCIL PUBLIC ROAD
PART 4 DIVISION 3 ROADS ACT 1993
ROAD RESERVE IN THE LOCALITY OF MUDGEE**

Dear Sir/Madam

Mid-Western Regional Council is currently considering the closure of the Council public road as identified on the attached diagram. Council is proposing closure of the road to retain the land for community purposes.

The proposal to close the road will be advertised in the Mudgee Guardian on 21/06/2019. A copy of the advertisement is attached for your information.

What should you do now?

Please consider the proposal and provide a response to Mid-Western Regional Council within 28 days. Send your submission to:
Post: PO Box 156 MUDGEE NSW 2850
Email: council@midwestern.nsw.gov.au

What happens next?

If Mid-Western Regional Council does not receive a reply within the specified 28-day period, it will assume that NSW Department of Primary Industries - Fisheries has no objections to the proposal.

Please advise Mid-Western Regional Council within the 28-day period if NSW Department of Primary Industries - Fisheries requires additional time to consider its position.

Once the submission period is completed, Mid-Western Regional Council will consider all duly made submissions and decide on road closure suitability.

If you have any further enquiries regarding this matter, please contact Mid-Western Regional Council.

Yours sincerely

A handwritten signature in black ink, appearing to read "D Sawyers".

D Sawyers
MANAGER REVENUE & PROPERTY

Kelly Barnes

From: kate.martin@dpi.nsw.gov.au on behalf of RecFishingPolicy Administration <recfishingpolicy.administration@dpi.nsw.gov.au>
Sent: Tuesday, 18 June 2019 10:55 AM
To: Council
Subject: [EXTERNAL] Re: PROPOSAL TO CLOSE A COUNCIL PUBLIC ROAD - PART FAUCETT DRIVE MUDGEE

===== No Submission Fisheries NSW - Inland =====

Thanks
Kate

On Tue, 18 Jun 2019 at 08:54, Council <Council@midwestern.nsw.gov.au> wrote:

Hi Good Morning,

Please find attached correspondence in respect to the above matter.

Kind Regards,

Kelly Barnes
Property Officer



MID-WESTERN REGIONAL COUNCIL
PO Box 156, MUDGEES NSW 2850
86 Market Street, Mudgee | 109 Herbert Street, Gulgong | 77 Louee Street, Rylstone
T 1300 765 002 or 02 6378 2850 | F 02 6378 2815
E council@midwestern.nsw.gov.au

KB Ref: ROA100007 Faucett Drive

17 June 2019

The Secretary of the NSW Department of Planning and Environment
Lands & Water Division

By e-mail: property.management@industry.nsw.gov.au

**PROPOSAL TO CLOSE A COUNCIL PUBLIC ROAD
PART 4 DIVISION 3 ROADS ACT 1993
ROAD RESERVE IN THE LOCALITY OF MUDGEES**

Dear Sir/Madam

Mid-Western Regional Council is currently considering the closure of the Council public road as identified on the attached diagram. Council is proposing closure of the road to retain the land for community purposes.

The proposal to close the road will be advertised in the Mudgee Guardian on 21/06/2019. A copy of the advertisement is attached for your information.

What should you do now?

Please consider the proposal and provide a response to Mid-Western Regional Council within 28 days. Send your submission to:

Post: PO Box 156 MUDGEES NSW 2850

Email: council@midwestern.nsw.gov.au

What happens next?

If Mid-Western Regional Council does not receive a reply within the specified 28-day period, it will assume that NSW Lands & Water Division has no objections to the proposal.

Please advise Mid-Western Regional Council within the 28-day period if NSW Lands & Water Division requires additional time to consider its position.

Once the submission period is completed, Mid-Western Regional Council will consider all duly made submissions and decide on road closure suitability.

If you have any further enquiries regarding this matter, please contact Mid-Western Regional Council.

Yours sincerely

A handwritten signature in black ink, appearing to read "D. Sawyers".

D Sawyers
MANAGER REVENUE & PROPERTY

Kelly Barnes

From: property.management@industry.nsw.gov.au
Sent: Wednesday, 19 June 2019 9:26 AM
To: Council
Cc: Peter.Bead@waternsw.com.au
Subject: [EXTERNAL] CSP752949 - PROPOSAL TO CLOSE A COUNCIL PUBLIC ROAD - PART FAUCETT DRIVE MUDGEE
Attachments: Newspaper Notification 17 June 2019.docx; Lands and Water Division - 17 June 19.docx



csp service centre

Dear Council

The Department of Industry Property Services Team has no objections to the advised proposed road closure, except in cases whereby access to any land owned by or in Trust by the Water Administration Ministerial Corporation (WAMC) or its predecessors being the Water Resources Commission and the Water Conservation and Irrigation Commission is affected.

From the information you have provided and the list of land we hold, I have been unable to identify any WAMC land as being involved or affected by this proposed road closure.

I have cc'd Peter Beard from WaterNSW in to this reply as WaterNSW also manage WAMC land and may hold more accurate records of WAMC land.

Regards,

Tim Leach
Property Services

CSP Service Centre
Corporate Service Partners
NSW Department of Industry

E: property.management@industry.nsw.gov.au
W: <https://intranet.industry.nsw.gov.au/>

{CMI: MCID1630012}



MID-WESTERN REGIONAL COUNCIL
PO Box 156, MUDGEES NSW 2850
86 Market Street, Mudgee | 109 Herbert Street, Gulgong | 77 Louee Street, Rylstone
T 1300 765 002 or 02 6378 2850 | F 02 6378 2815
E council@midwestern.nsw.gov.au

KB: ROA100007 Faucett Drive

17 June 2019

Transport for NSW
Land Use Planning & Development
By e-mail: development@transport.nsw.gov.au

**PROPOSAL TO CLOSE A COUNCIL PUBLIC ROAD
PART 4 DIVISION 3 ROADS ACT 1993
ROAD RESERVE IN THE LOCALITY OF MUDGEES**

Dear Sir/Madam

Mid-Western Regional Council is currently considering the closure of the Council public road as identified on the attached diagram. Council is proposing closure of the road to retain the land for community purposes.

The proposal to close the road will be advertised in the Mudgee Guardian on 21/06/2019. A copy of the advertisement is attached for your information.

What should you do now?

Please consider the proposal and provide a response to Mid-Western Regional Council within 28 days. Send your submission to:
Post: PO Box 156 MUDGEES NSW 2850
Email: council@midwestern.nsw.gov.au

What happens next?

If Mid-Western Regional Council does not receive a reply within the specified 28-day period, it will assume that Transport for NSW-Land Use Planning Development has no objections to the proposal.

Please advise Mid-Western Regional Council within the 28-day period if Transport for NSW-Land Use Planning Development requires additional time to consider its position.

Once the submission period is completed, Mid-Western Regional Council will consider all duly made submissions and decide on road closure suitability.

If you have any further enquiries regarding this matter, please contact Mid-Western Regional Council.

Yours sincerely

A handwritten signature in black ink, appearing to read "D. Sawyers".

D Sawyers
MANAGER REVENUE & PROPERTY



Diane Sawyers
Manager Revenue & Property
Mid-Western Regional Council
PO Box 156
MUDGEE NSW 2850

Dear Diane,

Proposal to close a council public road – part Faucett Drive, Mudgee

Thank you for your letter dated 17 June 2019 requesting Transport for NSW (TfNSW) advice regarding the subject road closure.

The proposed road closure has been referred to TfNSW, as a notifiable authority, under Part 4 of the *Roads Act 1993*. In this regard, the relevant information has been reviewed and TfNSW raises no objections to the proposed road closure.

If you have any further questions, Ken Ho, Transport Planner, would be pleased to take your call on 0417 587 670. I hope this has been of assistance.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Mark Ozinga'.

15/7/2019

Mark Ozinga
Principal Manager, Land Use Planning & Development
Customer Strategy & Technology

CD19/05100



MID-WESTERN REGIONAL COUNCIL
PO Box 156, MUDGEE NSW 2850
86 Market Street, Mudgee | 109 Herbert Street, Gulgong | 77 Louee Street, Rylstone
T 1300 765 002 or 02 6378 2850 | F 02 6378 2815
E council@midwestern.nsw.gov.au

KB| Ref: ROA100007 Faucett drive

17 June 2019

Roads & Maritime Services - Parkes
By e-mail; John.Maddison@rms.nsw.gov.au

**PROPOSAL TO CLOSE A COUNCIL PUBLIC ROAD
PART 4 DIVISION 3 ROADS ACT 1993
ROAD RESERVE IN THE LOCALITY OF MUDGEE**

Dear Sir/Madam

Mid-Western Regional Council is currently considering the closure of the Council public road as identified on the attached diagram. Council is proposing closure of the road to retain the land for community purposes.

The proposal to close the road will be advertised in the Mudgee Guardian on 21/06/2019. A copy of the advertisement is attached for your information.

What should you do now?

Please consider the proposal and provide a response to Mid-Western Regional Council within 28 days. Send your submission to:
Post: PO Box 156 MUDGEE NSW 2850
Email: council@midwestern.nsw.gov.au

What happens next?

If Mid-Western Regional Council does not receive a reply within the specified 28-day period, it will assume that Roads & Maritime Services - Parkes has no objections to the proposal.

Please advise Mid-Western Regional Council within the 28-day period if Roads & Maritime Services - Parkes requires additional time to consider its position.

Once the submission period is completed, Mid-Western Regional Council will consider all duly made submissions and decide on road closure suitability.

If you have any further enquiries regarding this matter, please contact Mid-Western Regional Council.

Yours sincerely

A handwritten signature in black ink, appearing to read 'D Sawyers', is written over a light blue horizontal line.

D Sawyers
MANAGER REVENUE & PROPERTY

Kelly Barnes

From: John Maddison <John.MADDISON@rms.nsw.gov.au>
Sent: Wednesday, 19 June 2019 11:51 AM
To: Council; Kelly Barnes
Subject: [EXTERNAL] RE: PROPOSAL TO CLOSE A COUNCIL PUBLIC ROAD - PART FAUCETT DRIVE MUDGEE

Dear Kelly

Roads and Maritime Services has no objection to the road closure proposal.

Regards
John Maddison
Senior Property Officer
Property & Acquisition | Business Services
T 02 6861 1463 F 02 6861 1496
www.rms.nsw.gov.au
Every journey matters

Roads and Maritime Services
51 - 55 Currajong Street Parkes NSW 2870

From: Kelly Barnes [mailto:Kelly.Barnes@midwestern.nsw.gov.au] **On Behalf Of** Council
Sent: Tuesday, 18 June 2019 9:00 AM
To: John Maddison
Subject: PROPOSAL TO CLOSE A COUNCIL PUBLIC ROAD - PART FAUCETT DRIVE MUDGEE

Hi Good Morning,

Please find attached correspondence in respect to the above matter.

Kind Regards,

Kelly Barnes
Property Officer



MID-WESTERN REGIONAL COUNCIL
PO Box 156, MUDGEE NSW 2850
86 Market Street, Mudgee | 109 Herbert Street, Gulgong | 77 Louee Street, Rylstone
T 1300 765 002 or 02 6378 2850 | F 02 6378 2815
E council@midwestern.nsw.gov.au

KB: ROA100007 Faucett Drive

17 June 2019

The Commissioner of NSW Rural Fire Service
By e-mail State.Operations@rfs.nsw.gov.au

**PROPOSAL TO CLOSE A COUNCIL PUBLIC ROAD
PART 4 DIVISION 3 ROADS ACT 1993
ROAD RESERVE IN THE LOCALITY OF MUDGEE**

Dear Sir/Madam

Mid-Western Regional Council is currently considering the closure of the Council public road as identified on the attached diagram. Council is proposing closure of the road to retain the land for community purposes.

The proposal to close the road will be advertised in the Mudgee Guardian on 21/06/2019. A copy of the advertisement is attached for your information.

What should you do now?

Please consider the proposal and provide a response to Mid-Western Regional Council within 28 days. Send your submission to:
Post: PO Box 156 MUDGEE NSW 2850
Email: council@midwestern.nsw.gov.au

What happens next?

If Mid-Western Regional Council does not receive a reply within the specified 28-day period, it will assume that Commissioner of Fire and Rescue NSW has no objections to the proposal.

Please advise Mid-Western Regional Council within the 28-day period if Commissioner of Fire and Rescue NSW requires additional time to consider its position.

Once the submission period is completed, Mid-Western Regional Council will consider all duly made submissions and decide on road closure suitability.

If you have any further enquiries regarding this matter, please contact Mid-Western Regional Council.

Yours sincerely

A handwritten signature in black ink, appearing to read "D. Sawyers".

D Sawyers
MANAGER REVENUE & PROPERTY



MID-WESTERN REGIONAL COUNCIL
PO Box 156, MUDGEE NSW 2850
86 Market Street, Mudgee | 109 Herbert Street, Gulgong | 77 Louee Street, Rylstone
T 1300 765 002 or 02 6378 2850 | F 02 6378 2815
E council@midwestern.nsw.gov.au

KB Ref: ROA100007

17 June 2019

Forestry Corporation
By e-mail: CrownRoadClosures@fcnsw.com.au

**PROPOSAL TO CLOSE A COUNCIL PUBLIC ROAD
PART 4 DIVISION 3 ROADS ACT 1993
ROAD RESERVE IN THE LOCALITY OF MUDGEE**

Dear Sir/Madam

Mid-Western Regional Council is currently considering the closure of the Council public road as identified on the attached diagram. Council is proposing closure of the road to retain the land for community purposes.

The proposal to close the road will be advertised in the Mudgee Guardian on 21/06/2019. A copy of the advertisement is attached for your information.

What should you do now?

Please consider the proposal and provide a response to Mid-Western Regional Council within 28 days. Send your submission to:

Post: PO Box 156 MUDGEE NSW 2850

Email: council@midwestern.nsw.gov.au

What happens next?

If Mid-Western Regional Council does not receive a reply within the specified 28-day period, it will assume that Forestry Corporation has no objections to the proposal.

Please advise Mid-Western Regional Council within the 28-day period if Forestry Corporation requires additional time to consider its position.

Once the submission period is completed, Mid-Western Regional Council will consider all duly made submissions and decide on road closure suitability.

If you have any further enquiries regarding this matter, please contact Mid-Western Regional Council.

Yours sincerely

A handwritten signature in cursive script, appearing to read "D. Sawyers".

D Sawyers
MANAGER REVENUE & PROPERTY



Central Tablelands Local Land Services

PO Box 20
66 Corporation Avenue
BATHURST NSW 2795
Tel: 02 6333 2300

www.lls.nsw.gov.au/centraltablelands

RM8 Ref: DOC19/152209

5 November 2019

Your Ref: ROA100007 Faucett Drive

Mid Western Regional Council
PO Box 156
MUDGEE NSW 2850

Email: council@midwestern.nsw.gov.au

Dear Sir / Madam

Proposal to close a Council public road reserve in the locality of Mudgee

We refer to your letter of 17 June 2019 in relation to the above proposal to close a council public road to give the land as compensation under Part 4 Division 3 of the *Roads Act 1993* and apologise for the delay in responding.

Central Tablelands Local Land Services has no objection to the proposal to close the road.

Yours faithfully

Clare Hamilton
Manager Biosecurity & Emergency Services



**Local Land
Services**

www.lls.nsw.gov.au
We help secure the future of agriculture and the environment for NSW communities.



MID-WESTERN REGIONAL COUNCIL
PO Box 156, MUDGEE NSW 2850
86 Market Street, Mudgee | 109 Herbert Street, Gulgong | 77 Louee Street, Rylstone
T 1300 765 002 or 02 6378 2850 | F 02 6378 2815
E council@midwestern.nsw.gov.au

KB Ref: ROA100007 Faucett Drive

17 June 2019

Local Land Services Central Tablelands
By e-mail: 'admin.centraltablelands@lls.nsw.gov.au'

**PROPOSAL TO CLOSE A COUNCIL PUBLIC ROAD
PART 4 DIVISION 3 ROADS ACT 1993
ROAD RESERVE IN THE LOCALITY OF MUDGEE**

Dear Sir/Madam

Mid-Western Regional Council is currently considering the closure of the Council public road as identified on the attached diagram. Council is proposing closure of the road to retain the land for community purposes.

The proposal to close the road will be advertised in the Mudgee Guardian on 21/06/2019. A copy of the advertisement is attached for your information.

What should you do now?

Please consider the proposal and provide a response to Mid-Western Regional Council within 28 days. Send your submission to:
Post: PO Box 156 MUDGEE NSW 2850
Email: council@midwestern.nsw.gov.au

What happens next?

If Mid-Western Regional Council does not receive a reply within the specified 28-day period, it will assume that Local Land Services Central Tablelands has no objections to the proposal.

Please advise Mid-Western Regional Council within the 28-day period if Local Land Services Central Tablelands requires additional time to consider its position.

Once the submission period is completed, Mid-Western Regional Council will consider all duly made submissions and decide on road closure suitability.

If you have any further enquiries regarding this matter, please contact Mid-Western Regional Council.

Yours sincerely

A handwritten signature in black ink, appearing to read "D Sawyers".

D Sawyers
MANAGER REVENUE & PROPERTY



Our ref: DOC19/517851
Contact: Regena Medhurst

Mid-Western Regional Council

PO Box 156
Mudgee NSW 2850

19 June 2019

Dear D Sawyer,

Roads Act 1993 ROAD CLOSING APPLICATION

<u>Application number</u>	<u>Your Ref</u>
part Faucett Drive, Mudgee	ROA100007 - Faucett Drive

Thank you for your email dated 18/06/2019 regarding the above mentioned proposed road closure application. The National Parks & Wildlife Service (NPWS) has no objection to these proposed road closures.

If you have any questions regarding this matter please contact me.

Yours sincerely

Regena Medhurst



MID-WESTERN REGIONAL COUNCIL
PO Box 156, MUDGEE NSW 2850
86 Market Street, Mudgee | 109 Herbert Street, Gulgong | 77 Louee Street, Rylstone
T 1300 765 002 or 02 6378 2850 | F 02 6378 2815
E council@midwestern.nsw.gov.au

KB Ref: ROA100007 Faucett Drive

17 June 2019

National Parks and Wildlife Service. Office of Environment & Heritage
By e-mail: OEH.Roads@environment.nsw.gov.au

**PROPOSAL TO CLOSE A COUNCIL PUBLIC ROAD
PART 4 DIVISION 3 ROADS ACT 1993
ROAD RESERVE IN THE LOCALITY OF MUDGEE**

Dear Sir/Madam

Mid-Western Regional Council is currently considering the closure of the Council public road as identified on the attached diagram. Council is proposing closure of the road to retain the land for community purposes.

The proposal to close the road will be advertised in the Mudgee Guardian on 21/06/2019. A copy of the advertisement is attached for your information.

What should you do now?

Please consider the proposal and provide a response to Mid-Western Regional Council within 28 days. Send your submission to:
Post: PO Box 156 MUDGEE NSW 2850
Email: council@midwestern.nsw.gov.au

What happens next?

If Mid-Western Regional Council does not receive a reply within the specified 28-day period, it will assume that National Parks and Wildlife Service - Office of Environment & Heritage has no objections to the proposal.

Please advise Mid-Western Regional Council within the 28-day period if National Parks and Wildlife Service - Office of Environment & Heritage requires additional time to consider its position.

Once the submission period is completed, Mid-Western Regional Council will consider all duly made submissions and decide on road closure suitability.

If you have any further enquiries regarding this matter, please contact Mid-Western Regional Council.

Yours sincerely

A handwritten signature in black ink, appearing to read "D. Sawyers".

D Sawyers
MANAGER REVENUE & PROPERTY

File Ref: KB: ROA100007 Faucett Drive

Mid-Western Regional Council
PO Box 156, Mudgee NSW 2850

Comments on proposed road closure

Dear Sir/Madam

I/We, Alan & Lynda Peake wish to provide my/our opinion in relation to the proposed road closures.

I/We:

- Are in favour of the road closure

OR

- Object to closure of the following roads for the reasons noted below.

To whom it may concern.

Lynda and I are in favour of closure of the portion of Faucett Drive providing Council provides right of way to our property to allow access to our property and our proposed subdivision as previously requested. We just need legal access to our property to build our proposed retirement house

SIGNED: *Alan Peake*

If signing on behalf of a company, please add your name and company title (for example, Director)

ACN/Company seal

DATE: *26.6.19*

Contact details:

Home: *[REDACTED]*

Mobile: *[REDACTED]*

**PLEASE RETURN THIS PAGE TO MID-WESTERN REGIONAL COUNCIL WITHIN
28 DAYS**



MID-WESTERN REGIONAL COUNCIL
PO Box 156, MUDGEES NSW 2850
86 Market Street, Mudgee | 109 Herbert Street, Gulgong | 77 Louee Street, Rylstone
T 1300 765 002 or 02 6378 2850 | F 02 6378 2815
E council@midwestern.nsw.gov.au

JUNE 2019

File Ref: KB: Faucett ROA100007

Contact: Property Department
Phone: 63782850
Email: council@midwestern.nsw.gov.au

Alan & Lynda Peake



PROPOSAL TO CLOSE A COUNCIL PUBLIC ROAD ROAD RESERVE IN THE LOCALITY OF MUDGEES

Dear Sir/Madam

Mid-Western Regional Council is currently considering the closure of a council public road near your property.

The attached diagram identifies the council public road proposed for closure.

Who knows about the proposed closure?

Similar letters have been forwarded to all land owners adjoining the road or considered to be affected by the proposed road closure. Council is also consulting with notifiable authorities and any additional authorities with affected infrastructure.

The proposal to close the road/s will also be advertised in the Mudgee Guardian on 21/06/2019, providing a 28-day period for interested parties to make submissions.

What should you do now?

Please forward any comments you have on the proposed road closure within 28 days.

What happens next?

Once the submission period is completed, Mid-Western Regional Council will consider all duly made submissions and decide on road closure suitability.

If you have any further enquiries regarding this matter, please contact Council's Property Department.

Yours sincerely

A handwritten signature in cursive script, appearing to read "D. Sawyers".

DIANE SAWYERS
MANAGER REVENUE & PROPERTY

Mid-Western Regional Council
PO Box 156, Mudgee NSW 2850

Comments on proposed road closure

Dear Sir/Madam

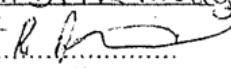
(We) Ronald & Rosemary Muscat wish to provide my/our opinion in relation to the proposed road closures.

(We)
• Are in favour of the road closure

OR

• Object to closure of the following roads for the reasons noted below.

We object to the closure due to past information from the Shire and plans that were given to us showing the holding pond and the lane way at Faucett Drive behind Block 9 Faucett Drive. Due to this we have also installed halfway down the block on the lane wayside - Power, Telstra, and sewerage line in anticipation of building a Duplex on Block 9 Faucett Drive. According to your plans there would be a road created wide enough for vehicles to enter our place and also next door. These plans also state that a wall would be created by the Shire on edge of the holding pond. All this is on your plans - so we highly object to the closure of this section of this section of Faucett Drive Mudgee. Now this is objection number (3) three

SIGNED: Rosemary Muscat 

If signing on behalf of a company, please add your name and company title (for example, Director)

ACN/Company seal

DATE: 16-9-19

Contact details:

Home:

Mobile: 

PLEASE RETURN THIS PAGE TO MID-WESTERN REGIONAL COUNCIL WITHIN 28 DAYS



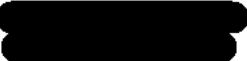
MID-WESTERN REGIONAL COUNCIL
PO Box 156, MUDGEE NSW 2850
86 Market Street, Mudgee | 109 Herbert Street, Gulgong | 77 Louee Street, Rylstone
T 1300 765 002 or 02 6378 2850 | F 02 6378 2815
E council@midwestern.nsw.gov.au

JUNE 2019

File Ref: KB: R0112001

Contact: Property Department
Phone: 63782850
Email: council@midwestern.nsw.gov.au

Mr. Ronald & Ms. Rosemary Muscat



**PROPOSAL TO CLOSE A COUNCIL PUBLIC ROAD
ROAD RESERVE IN THE LOCALITY OF MUDGEE**

Dear Sir/Madam

Mid-Western Regional Council is currently considering the closure of a council public road near your property. The attached diagram identifies the council public road proposed for closure.

Who knows about the proposed closure?

Similar letters have been forwarded to all land owners adjoining the road or considered to be affected by the proposed road closure. Council is also consulting with notifiable authorities and any additional authorities with affected infrastructure. The proposal to close the road/s will also be advertised in the Mudgee Guardian on 21/06/2019, providing a 28-day period for interested parties to make submissions.

What should you do now?

Please forward any comments you have on the proposed road closure within 28 days.

What happens next?

Once the submission period is completed, Mid-Western Regional Council will consider all duly made submissions and decide on road closure suitability. If you have any further enquiries regarding this matter, please contact Council's Property Department.

Yours sincerely

A handwritten signature in cursive script, appearing to read "D. Sawyers".

DIANE SAWYERS
MANAGER REVENUE & PROPERTY



KB | ROA100007

MID-WESTERN REGIONAL COUNCIL
PO Box 156, MUDGEES NSW 2850
86 Market Street, Mudgee | 109 Herbert Street, Gulgong | 77 Louee Street, Rylstone
T 1300 765 002 or 02 6378 2850 | F 02 6378 2815
E council@midwestern.nsw.gov.au

11 September 2019

Ronald & Rosemary Muscat
[REDACTED]

Dear Sir/Madam

SUBJECT: NOTIFICATION OF PROPOSED ROAD CLOSURE – PART FAUCETT DRIVE

I write to you in respect to the above matter and Councils engagement with you seeking feedback in 2017, and although you provided comments then, unfortunately legislation has since changed and Council is required to re-commence the process of public notification seeking feedback again.

Please be aware that Council formally agreed to proceed with the road closure at its meeting on 16 August 2017. It was also agreed to grant Rights of Carriageway benefitting the Lots having frontage to the former road reserve, which includes part frontage to your land identified as Lot 10 (formerly Lot 9).

Council has re-commenced that process and notified you in June (copy attached) of this year in respect to Councils proposed closure of part Faucet Drive Mudgee, but to date has not received a response. In light of Councils agreement to create a Right of Carriageway that affects a frontage to your land, it would be of benefit to you to provide comment on the proposal, particularly if you have any concerns.

It would be appreciated if you could provide comment, in support or objection to the proposal by no later than 20th September.

If you require any further information please do not hesitate to contact me on (02) 6378 2850.

Yours faithfully

A handwritten signature in black ink, appearing to read "D Sawyers", is written over a white background.

DIANE SAWYERS
MANAGER REVENUE & PROPERTY

ENCL.



KB | ROA100007

1 October 2019

Ronald & Rosemary Muscat



Dear Sir/Madam

**SUBJECT: 2ND NOTIFICATION OF PROPOSED ROAD CLOSURE – PART
FAUCETT DRIVE**

Thank you for your response in regards to the above matter.

Please be advised that upon proposed closure of the section of road reserve, Council intends to create an easement for Right of Carriageway as well as easements for any services located within the road reserve, such as power, phone lines and sewer. This would include any services you have identified in your correspondence if they fall within the area of the proposed road closure, which means they will be registered on title and in perpetuity.

The creation of a Right of Carriageway is advantageous as the minimum road standards do not apply, and use by the general public will be prohibited, benefiting only those lots fronting the area of proposed closure and Council.

The wall and concrete access you mention, as indicated on plans, were not prepared by Council and cannot be undertaken as they are within the road reserve. Additionally there is no commitment by Council to construct a wall or concrete access.

It is proposed that the proposal to close that part of Faucett Drive will be presented to the November Council Meeting for consideration.

Should you require any further information please do not hesitate to contact me on (02) 6378 2850.

Yours faithfully

A handwritten signature in black ink, appearing to read "D Sawyers".

DIANE SAWYERS
MANAGER REVENUE & PROPERTY

From: [Survey/Ausgrid](#)
To: [Kelly Barnes](#)
Subject: RE: PROPOSAL TO CLOSE A COUNCIL PUBLIC ROAD
Date: Tuesday, 5 March 2019 9:29:48 AM
Attachments: [image004.jpg](#)
[image001.png](#)

Hi Kelly,

The area covered by Mid-Western Regional Council is outside Ausgrids network area. Your network provider is Essential Energy so check you have a response from them.

Matthew Riddell

Principal Surveyor | Program Delivery

[cid:image001.png@01D4B326.4D344F70](#)



02 9272 3747

Level 2, 570 George Street, Sydney NSW 2000

mriddell@ausgrid.com.au

Please consider the environment before printing this email

From: Kelly Barnes [<mailto:Kelly.Barnes@midwestern.nsw.gov.au>]

Sent: Monday, 4 March 2019 11:14 AM

To: Survey/Ausgrid <survey@ausgrid.com.au>

Subject: FW: PROPOSAL TO CLOSE A COUNCIL PUBLIC ROAD

Hi Good Morning,

Please refer to below email and attached documents.

Council has yet to receive any comment from your office. Can you please attend to this as soon as possible?

Kind Regards,

Kelly Barnes | Property Officer

Mid-Western Regional Council

t 02 6378 2850 |

f 02 6378 2815 | e kelly.barnes@midwestern.nsw.gov.au

a 86 Market Street | PO Box 156 Mudgee NSW 2850

From: Kelly Barnes **On Behalf Of** Council

Sent: Tuesday, 15 January 2019 9:18 AM

To: 'survey@ausgrid.com.au' <survey@ausgrid.com.au>

Subject: PROPOSAL TO CLOSE A COUNCIL PUBLIC ROAD

Hi Good Morning,

Please find attached correspondence in respect to the above matter.

From: Patrick Wu
To: Kelly Barnes; Tony Moujalli; Egwin Herbert
Subject: RE: PROPOSAL TO CLOSE A COUNCIL PUBLIC ROAD
Date: Tuesday, 2 April 2019 11:03:04 AM
Attachments: image001.jpg

Hi Kelly,

State Transit Authority has no services in your LGA. Please take our emails off your mail list.

thanks

Patrick Wu
Customer Operations Manager
Brookvale Depot
State Transit Authority
Ph: 9941 5864
Mob: 0429994138
www.sydneybuses.info

From: Kelly Barnes [mailto:Kelly.Barnes@midwestern.nsw.gov.au]
Sent: Monday, 1 April 2019 3:19 PM
To: Patrick Wu; Tony Moujalli; Egwin Herbert
Subject: FW: PROPOSAL TO CLOSE A COUNCIL PUBLIC ROAD

Hi Good Afternoon,

Council has no record of having received a formal response from the State Rail Authority in regards to the matter attached.

Your earliest attention to this matter would be appreciated.

Kind Regards,

Kelly Barnes | Property Officer
Mid-Western Regional Council
t 02 6378 2850 |
f 02 6378 2815 | e kelly.barnes@midwestern.nsw.gov.au
a 86 Market Street | PO Box 156 Mudgee NSW 2850

From: Kelly Barnes On Behalf Of Council
Sent: Tuesday, 15 January 2019 9:49 AM

To: [REDACTED];
[REDACTED];
[REDACTED];
Subject: PROPOSAL TO CLOSE A COUNCIL PUBLIC ROAD

Hi Good Morning,

Please find attached correspondence in respect to the above matter.

Kind Regards,