

Environment

Report of Environment to the Ordinary Meeting of Council held on Monday 18 July 2016

Relevance to the Community Strategic Plan

RELEVANCE TO COMMUNITY STRATEGIC PLAN - ENVIRONMENT

The reports contained within this section of the agenda outline actions and activities that contribute to the achievement of the outcomes as outlined in your Community Strategic Plan 2033.

Environment

EN1 – Memorandum of Understanding for Mining Developments

ENVIRONMENT

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Memorandum of Understanding for Mining Developments

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TRIM 1753

EXECUTIVE SUMMARY

- The purpose of this Report is to inform Council on a draft Memorandum of Understanding and associated draft Negotiation Process for Voluntary Planning Agreements (VPA) developed between the Association of Mining Related Councils (AMRC) and NSW Minerals Council.
- The AMRC resolved, at its meeting on 16 May 2016, "that member councils be asked to advise the Association by no later than 22nd July 2016 of their acceptance or rejection of these documents".
- Council provide in-principle support to the AMRC's Advisory Panel with the following suggested amendments to the draft VPA Negotiation Process document:
 - The inclusion of a process and associated timeline for the development of VPA's which apply to existing approved mining developments.
 - The inclusion of a mechanism that enables the concurrent lodgement of any relevant formal VPA offer with the distribution of a draft EA associated with a proposed mining development.

REPORT

Background Information

Wollondilly Council is an active member of the AMRC. Difficulties experienced by a number of member councils in the negotiation of VPA's associated with individual mining development with the Department of Planning and Environment (DP&E) and/or mining companies has been a common issue raised at AMRC meetings. A determination to enter into discussions with the NSW Minerals Council and the DP&E to explore opportunities for the development of a closer working relationship between the organisations in response to these expressed difficulties occurred at an AMRC meeting in August 2014.

An Advisory panel comprised of AMRC members has negotiated a draft Memorandum of Understanding (MoU) as well as an associated draft VPA Negotiation Process timeline (draft Negotiation Process) in the discussions with the Minerals Council. The AMRC resolved at its most recent meeting held on 13th May 2016 that *"the member councils be asked to advise the Association by no later than 22nd July 2016 of their acceptance or rejection of these documents"*.

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The Memorandum of Understanding and Timeline documents

The MoU does not apply to coal seam gas extraction activity (or other extraction such as sand), as companies engaged in these operations are not represented by the NSW Minerals Resource Council. The application of the MoU and associated draft VPA Negotiation Process to the Wollondilly LGA in its current form is restricted to underground coal mining applications lodged with the DP&E.

The draft MoU is considered to have potential relevance to existing mining development when elevated maintenance or renewal expenditure on Council assets is incurred in relation to subsidence impacts attributable to underground mining operations. In this regard, Council negotiated a VPA for increased expenses incurred to establish then maintain a section of Sherriff Road Appin to the standard required by Illawarra Coal (now South 32) during 2014.

The Memorandum of Understanding document

The stated purpose of the draft MoU (presented in Attachment 1), is for the AMRC and Minerals Resource Council (the two parties) "*to work collaboratively to develop a mutually acceptable framework for the negotiation of VPA's for Mining Development in NSW*". The draft MoU contains proposed methodologies for the calculation of the impacts of particular mining developments in regard to 'road upgrade and maintenance' as well as 'local infrastructure' over the nine month negotiation period.

Council's Development Growth Coordinator did not identify any adverse implications for the provision of in-principle support by Council given that the draft MoU is a Statement of Intent Document. Council's Infrastructure Planning section provided broad support to the document, subject to the finalised Methodology allowing for the calculation of road upgrades and maintenance contributions to occur in a localised context rather than through the application of a standard formula.

In relation to this matter, the draft MoU is noted to define the term 'Mining Development' as a project for which development consent is being sought for State Significant Development. The expansion of this definition to "for which development consent has been obtained or is being sought" is; however, considered appropriate and recommended by this report. This expansion would allow for VPA's to be prepared in certain instances associated with existing mining operations such as the Agreement negotiated by Council at Sheriff Road Appin referred to above.

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Council would not be under any “*obligations to enter into discussions with the Minerals Resource Council or follow the MoU in the development of any VPA following its formal signing between the two parties*”. The provision of in-principle support by Council with the suggested amendment above for the document to apply to 'existing mining development' is therefore appropriate.

The draft VPA Negotiation Process document

The proposed actions by a mining proponent and an AMRC member council during the negotiation of a VPA outlined in the draft Negotiation Process have been identified as being largely consistent with current legislative requirements and practices of Council in the development and execution of VPA's. However, suggested amendments to enhance the functionality of the document by the experiences of relevant Council Staff are outlined below.

Application of the draft VPA Negotiation Process

The statement in the draft Negotiation Process document that the mining proponent will provide Council with a briefing on a proposed mining application prior to the commencement of negotiations regarding any VPA is supported by Officers. However, the expansion of this aspect of the Negotiation Process to also include reference to any VPA's associated with existing mining project applications (such as the instance referred to above in regard to Sheriff's Road Appin) is considered appropriate.

It is therefore considered appropriate that Council suggest the Advisory Panel amend the distributed VPA Negotiation Process document to include a process and associated timeline for the development of VPA's that apply to approved mining developments.

Relationship of the Negotiation Process to the Mining Application Process

The basis of the draft Negotiation Process document on the current procedures for the assessment and determination of mining developments in NSW is considered appropriate by Officers. However, a number of amendments based on the experiences of relevant Council Officers with mining development within the Wollondilly LGA to enhance the functionality of the negotiation process have been identified which are discussed below.

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Timeframe and processes associated with the lodgement of an initial formal VPA offer

The distributed Negotiation Process states that a formal offer providing details of a proposed VPA for a mining application will be submitted subsequent to the public exhibition of the proposal. It is considered the inclusion of a mechanism in the document that enables the concurrent provision of a formal offer from a mining company with the distribution of a draft EA for a proposal (as shown on Attachment 3) would have the following potential benefits:

Enabling the modification of application to be pursued by councils prior and/or during the public exhibition of a proposal where identified as being necessary following a review of the submitted formal VPA offer.

Allowing for the concurrent public exhibition of both the mining application and associated finalised VPA.

In addition, the completed VPA must be consistent with details contained in the original formal VPA offer submitted by a mining company to comply with statutory requirements. It is consequently important that any issues/concerns identified in relation to a VPA by councils be addressed at the formal offer stage. The proposed lodgement of this offer subsequent to the exhibition of the proposal by the draft Negotiation Process document would however necessitate the pursuit of any concerns/issues over the formal VPA offer through consent conditions with the DP&E. The above recommended concurrent lodgement of the formal offer with a draft EA for a mining application is consequently considered by Officers to be a more satisfactory approach and timeframe for the undertaking of negotiations over such concerns/issues to occur.

It is therefore considered appropriate that Council suggest the Advisory Panel amend the draft Negotiation Process document to include a mechanism for the concurrent lodgement of any relevant formal VPA offer with the distribution of a draft EA.

Timeframe and processes associated with the final VPA Offer

The proposed processes for this stage of the negotiation process is consistent with statutory requirements and Council practices in regard to VPA's. However, identified amendments to the specified timeframes and the purpose of these amendments are provided in Table 1.

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Table 1: Suggested purposed of amendments to the draft Negotiation Process

Recommended amendment	Purpose of the recommended amendment
The final VPA proposal be provided at least 6 weeks prior to the council meeting instead of the proposed 15 days.	The suggested amendment would allow for the review and preparation of a report to Council on a VPA prior to the reporting deadlines associated with Council meetings.
The Negotiation Process document allow for minor amendment of an Agreement at the conclusion of the set negotiation period.	The suggested amendment would provide flexibility during the final stage of the negotiation process instead of automatic referral to IPART, (as proposed) in the event agreement between the two parties not being obtained.

The identified amendments to the proposed Negotiation Process outlined above are not considered to prevent the provision of in-principle Council support to the document given the statement in the MoU that there is no obligation for either party to comply with the finalised Negotiation Process. It is considered; however, appropriate that Council provide in-principle rather than formal support to draft Negotiation Process document in recognition of this absence of obligation the identified amendments and to avoid causing delays in its adoption by the Association.

Recommended Council position on the draft MoU and Negotiation Process

The provision of in-principle support by Council to both the draft MoU and Negotiation Process documents is recommended on the following grounds:

- The documents are considered to have potential benefit to Council in negotiating future VPA's with local mining companies.
- The documents have potential significant benefit to a number of other member councils of the AMRC in addressing their expressed difficulties during the negotiation of VPA's with mining companies.

CONSULTATION

Internal consultation was undertaken as follows:

- Infrastructure Planning in relation to the adequacy of proposed methodology to calculate impacts to local roads and infrastructure.
- Contributions Planning in regard to consistency of the provided documentation with Council's current practices and experiences in the development of VPA's and their execution.

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FINANCIAL IMPLICATIONS

The provision of in-principle support to the VPA Memorandum of Understanding and associated draft VPA Negotiation Process recommended by this Report will not result in any additional expenditure by Council. Any expenses incurred by the AMRC will be funded by its operational budget reserves.

CONCLUSION

The draft Memorandum of Understanding and associated draft VPA Negotiation Process has merit in providing an overarching framework for negotiations by member councils of the AMRC with mining companies. However, suggested amendments to the distributed documents based on experiences of Council Staff with mining projects and the development and execution of VPA's have been identified. The provision of in-principle approval to the Association Advisory Panel for both the MoU and draft Negotiation Process with suggested amendments to enhance the functionality of both these documents is consequently recommended by this report.

ATTACHMENTS

1. Draft Memorandum of Understanding for Negotiating Voluntary Planning Agreements for NSW Mining Development
2. The draft Voluntary Planning Agreement Negotiation process
3. Notated draft Voluntary Planning Agreement Negotiation process with suggested amendments

RECOMMENDATION

1. That Council provide in-principle support to the draft Memorandum of Understanding for Negotiating Voluntary Planning Agreements and associated draft Voluntary Planning Agreement Negotiation Process.
2. That (pursuant to Recommendation 1), Council provide in-principle support to the Association of Mining Related Council's Advisory Panel with the following suggested amendments to the draft VPA Negotiation Process document:
 - The inclusion of a process and associated timeline for the development of VPA's which apply to existing approved mining developments.
 - The inclusion of a mechanism that enables the concurrent lodgement of any relevant formal VPA offer with the distribution of a draft EA associated with a proposed mining development.

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Version 5

Memorandum of Understanding

Negotiating Voluntary Planning Agreements for NSW Mining Development

Preamble

This memorandum of understanding documents an agreement of the parties to work collaboratively to develop a mutually acceptable framework for the negotiation of voluntary planning agreements (VPA) for Mining Development in New South Wales.

In the past, negotiation of VPAs by mining proponents and local governments has been characterised by a lack of a robust, transparent process which in turn has sometimes generated uncertainty, delay, distrust and ad hoc and variable outcomes. The parties to this agreement share a belief that the process by which VPAs are negotiated can be improved to the mutual benefit of all parties involved. It is therefore the intention of the parties to work together collaboratively and in good faith to see if a better process can be agreed upon.

Nothing in this MoU obliges either Party to enter a final agreement regarding a framework for VPA negotiations nor about any of the component parts (e.g economic impacts calculator and road contribution calculator) of the framework.

Date	X April 2016 (to be inserted upon execution)
NSWMC	NSW Minerals Council on behalf of its members.
AMRC	Association of Mining Related Councils on behalf of its member Councils.
Parties	Together the NSWMC and AMRC.
Additional parties	[Insert any other non AMRC councils that agree to this memorandum of understanding]
Voluntary Planning Agreement Negotiation Framework	<p>The Parties agree to:</p> <ul style="list-style-type: none"> (a) work collaboratively and constructively to establish an agreed framework for the negotiation of VPAs for <i>Mining Development</i>¹ in NSW; (b) seek to develop a framework which is mutually beneficial to, and better addresses the interests of the Parties' members; (c) approach and undertake negotiations in good faith; (d) establish respective VPA working groups that: <ul style="list-style-type: none"> (i) shall meet on a regular basis; (ii) will be adequately resourced; and (iii) authorise the respective secretariats to take steps to progress the negotiations out of session.

¹ For the purposes of this agreement, **'Mining Development'** means a mining related project which is of a scale or nature that will have an impact on infrastructure demands within the relevant Local Government Area (LGA) and:

- (a) for which development consent is being sought for State Significant Development under Part 4 of the Environmental Planning and Assessment Act 1979 (NSW) (EP&A Act); or
- (b) an application has been made for the modification of a development consent in respect of a State Significant Development; or
- (c) an application has been made for the modification of a transitional Part 3A project pursuant to section 75W of the EP&A Act.

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<p>Methodology to calculate demands on local infrastructure</p>	<p>The Parties agree to work cooperatively together over the next 9 months to develop a tool that can be used by the Parties to assess the potential impact of a <i>Mining Development</i> on local government infrastructure and to calculate an appropriate contribution to be offered by the proponent to offset the potential impacts.</p>
<p>Methodology for calculating road upgrade and maintenance contributions</p>	<p>The Parties agree to work cooperatively together over the next 9 months to develop a tool that can be used by the Parties to:</p> <ul style="list-style-type: none"> (a) assess the likely impact of a Mining Development on council roads within a local government area and to identify which roads will require upgrading and maintenance; (b) determine the standard to which a road should be upgraded and maintained; (c) develop a formula that can be used to calculate the cost of any necessary road upgrades and maintenance, using agreed industry guidelines; and (d) use the above information to apportion the cost of the necessary road upgrades and maintenance to a particular Mining Development.

EXECUTED as an agreement

Executed by
New South Wales Minerals Council
on / /20 by:

^ ^

^ Full name of ^ Full name of

Executed by
Association of Mining Related Councils
on / /20 by:

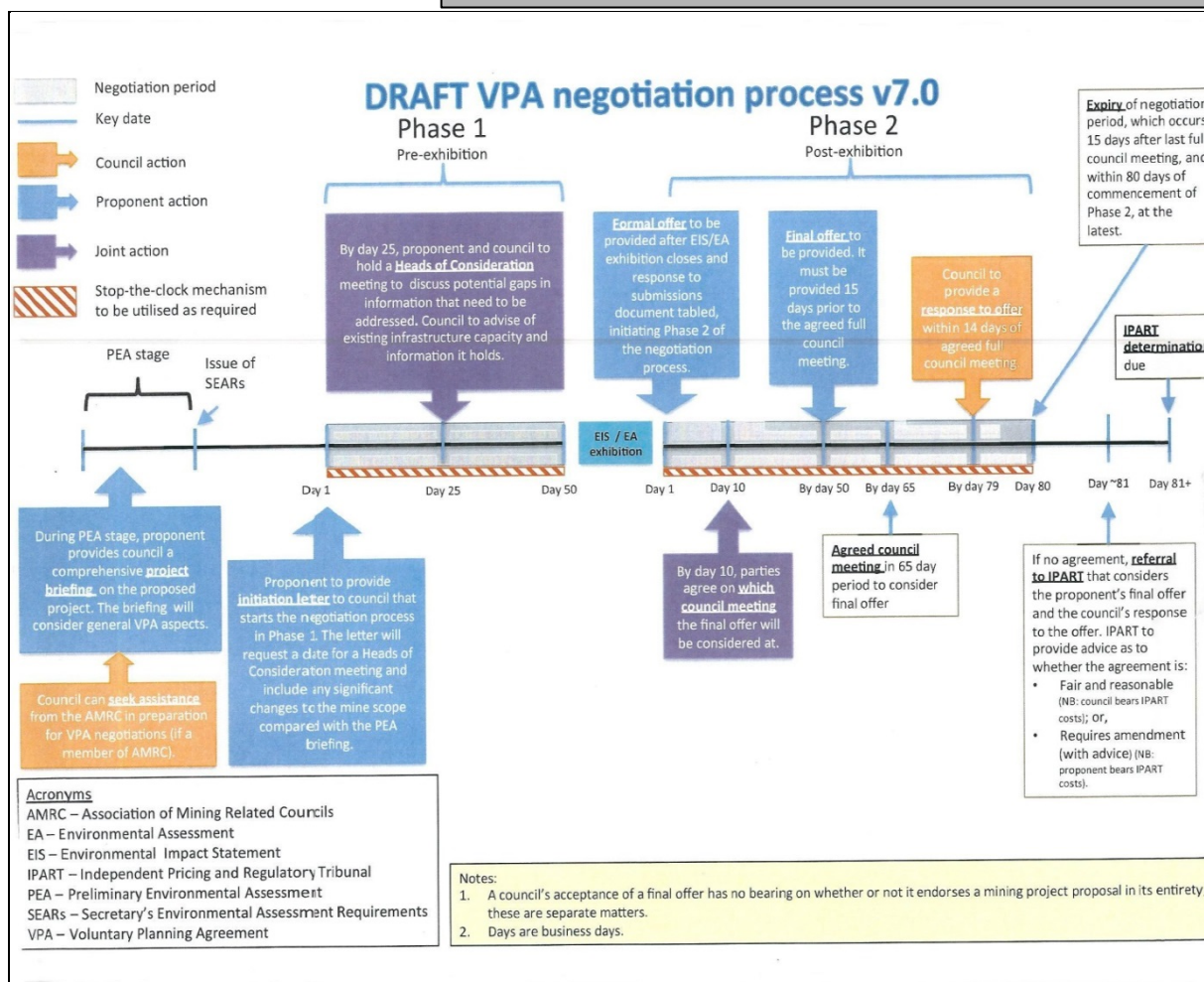
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