

GO4 – Proposed Agreement for Easement – Gas Pipeline at Brooks Point Road, Appin – Illawarra Coal

GO4 **Proposed Agreement for Easement – Gas Pipeline at Brooks Point Road, Appin – Illawarra Coal**
10845 TRIM 8899

EXECUTIVE SUMMARY

- The purpose of this report is to seek approval from Council as the Roads Authority under the Roads Act 1993 (NSW) Section 7(4) & (5)) to agree in principle to enter into negotiations for a Deed of Agreement for an easement with Illawarra Coal (aka South 32). This is for the purpose of installing and operating a suction gas pipeline within Brooks Point Road Reserve from Appin Mine to the Power Station located at Northamptondale Road Appin.
- This report is recommending that:
 - Council agree in principle to enter into negotiations for a "Deed of Agreement" subject to a suitable outcome for Council.
 - That all costs be borne by the applicant, including reasonable legal fees and submission of a bond to cover costs if the developer fails in their responsibilities for repairs of any damage to public assets.
 - That an Ecological Report and Construction Environmental Plan be developed for the proposed works.
 - That the proponent ensure that appropriate measures be taken if threatened species or communities are found in the area and detailed in the Environmental Management Plan.
 - That the Mayor and General Manager be authorised to execute all documentation pertaining to the matter including those requiring the Common Seal of Council.
 - That separate application be made under Section 138 of the Roads Act prior to works commencing. Plus separate application be made to Water NSW as the proposed gas line traverses the water canal.
 - Community consultation be undertaken by the applicant in consultation with Council's Community Engagement Team.

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REPORT

An application has been received requesting Council to enter into a "Deed of Agreement" for the purpose of installing and operating a suction gas pipeline within the Brooks Point Road Reserve.

The gas pipeline is approximately 3.1 kilometres in length and proposes to carry reticulating low concentration of methane that is extracted from Appin Mine for safety purposes and then utilized at the Power Station located at Northamptondale Road, Appin. The applicant has advised that the gas main will be required to at least 2028.

The proposed gas line is to traverse the Upper Water Canal which is under the control and ownership of Water NSW. It is yet to be determined if the gas pipeline traverses under or over the canal. There has been no formal application with Water NSW at this stage. Water NSW anticipates when the EP&A Act approval pathway is decided on, during that assessment/approval process, Water NSW would be further consulted as a key stakeholder.

The proponent has advised they would commit to minimising any physical impacts to Brooks Point Road and to re-establish/improving the existing table and culvert drainage and associated road drainage infrastructure works in the post construction phase in consultation with Wollondilly Shire Council. In addition they have proposed to undertake residential works (the scope of which is to be agreed).

The applicant is seeking in principle endorsement from Council and that Council would have no fundamental objections with the request to enter in a Deed of Agreement for the easement. In Council providing the approval in principle does not fetter its obligations or discretions as consent authority. This condition has been included in the draft agreement.

To facilitate the detailed design Illawarra Coal are to undertake a geotechnical assessment along the route of Brooks Point Road according to Council approval requirements.

No end date has been proposed by the applicant and therefore Council will need to consider that the gas pipe line will be in situ for quite some time.

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The attached map details the proposed pipeline route. At this stage it appears the proposed gas line and the existing road reserve is located within the actual road reserve. As such, until an adequate plan depiction of the easement required for registration or full detailed survey of the pipe location is received, these details will not be able to be confirmed. The full survey of road reserve and proposed easement is to be included in the Construction Environmental Maintenance Plan & Deed Agreement, to ensure that the easement will be located within the road reserve. The Deed has been amended to provide for Council to review and approve, or reject as the case may be once the easement plan has been submitted in registrable form.

To ensure Council is receiving value for money, consistent with its obligations under the Local Government Act 1993 (NSW), Council engaged a Valuer to determine compensation at the cost of the applicant. That value has been determined at \$46,500.00 plus GST. At present the land has no title identification or exact area or position for the easement and the Valuer has advised when this is identified for the subject parcels the matter should be referred back for comment.

Council will require security in the Agreement and it is proposed a \$200,000 bond be requested to cover the costs if the developer fails in their responsibilities for repairs of any damage to public assets.

Under a resolution of Council, Council as owner of part of Brooks Point Road (Public Road Section) may deal with the land under The Roads Act 1993 (NSW) Section 7(4) and (5) and The Local Government Act 1993 (NSW) Section 377(1)(h).

The portion of road currently owned by the NSW Department of Industry NSW Trade & Investment (Crown Lands) will not become Council's land until Gazettal. Therefore, the agreement has allowed for this requirement to apply once acquisition has been completed. To enable the agreement to be established it is necessary to declare this section of Road as "Operational Land" if any of the proposal strays into freehold land. Under the Local Government Act Section 46(1)(a) would apply if that status of the land remained as community land which would not be able to facilitate this application.

On 21 December, 2015 Council resolved to accept the Crown Road Reserve to Public Road, Resolution No. 247/2015 for Brooks Point Road, Appin.

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Council's Environment Services Department have reviewed the proposal and request:

1. That an ecologist carry out a targeted search for the Cumberland Plain Land Snail in the area impacted by the proposal.
2. That an Environmental Management Plan be undertaken to ensure that the revegetating or retaining the seed bank in the area if there are disturbances.
3. That a Construction Environmental Management Plan which addresses deficiencies and complies with the applicable policy and legislative framework be supplied to Council for approval prior to commencement of works to ensure Council is satisfied that the proposal will not result in any significant environmental impacts. This plan shall include details of ground and vegetation restoration measures.
4. That if threatened species or communities are found, appropriate measure will need to be taken in the area and detailed in the Environmental Management Plan.

CONSULTATION

Due to the size of the works to be completed and the potential impacts this could have on neighbouring properties in Appin; it is recommended that the applicant undertakes comprehensive community consultation with the surrounding properties and other affected key stakeholders in line with community engagement best practice standards. It is also recommended that the applicant consult Council's community engagement team, in order for them to assist the applicant with the development of their community consultation strategy. This will ensure the community consultation undertaken is appropriate for the local community.

Key Stakeholders:

- Illawarra Coal
- Wollondilly Shire Council
- Appin Residents
- Appin Road Users (Applicable if the works will affect the use of any of the major commuter roads in Appin?)
- Valuer
- Water NSW
- Manager Infrastructure and Planning
- Environmental Services
- Manager Growth and Strategic Planning
- Manager Works

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FINANCIAL IMPLICATIONS

This matter has no financial impact on Council's adopted budget or forward estimates.

All costs to establish this agreement will be borne by the applicant, which includes all reasonable legal costs and registration of documentation with Government Departments.

ATTACHMENTS

1. Map - Proposed Gas line - Brooks Point Road

RECOMMENDATION

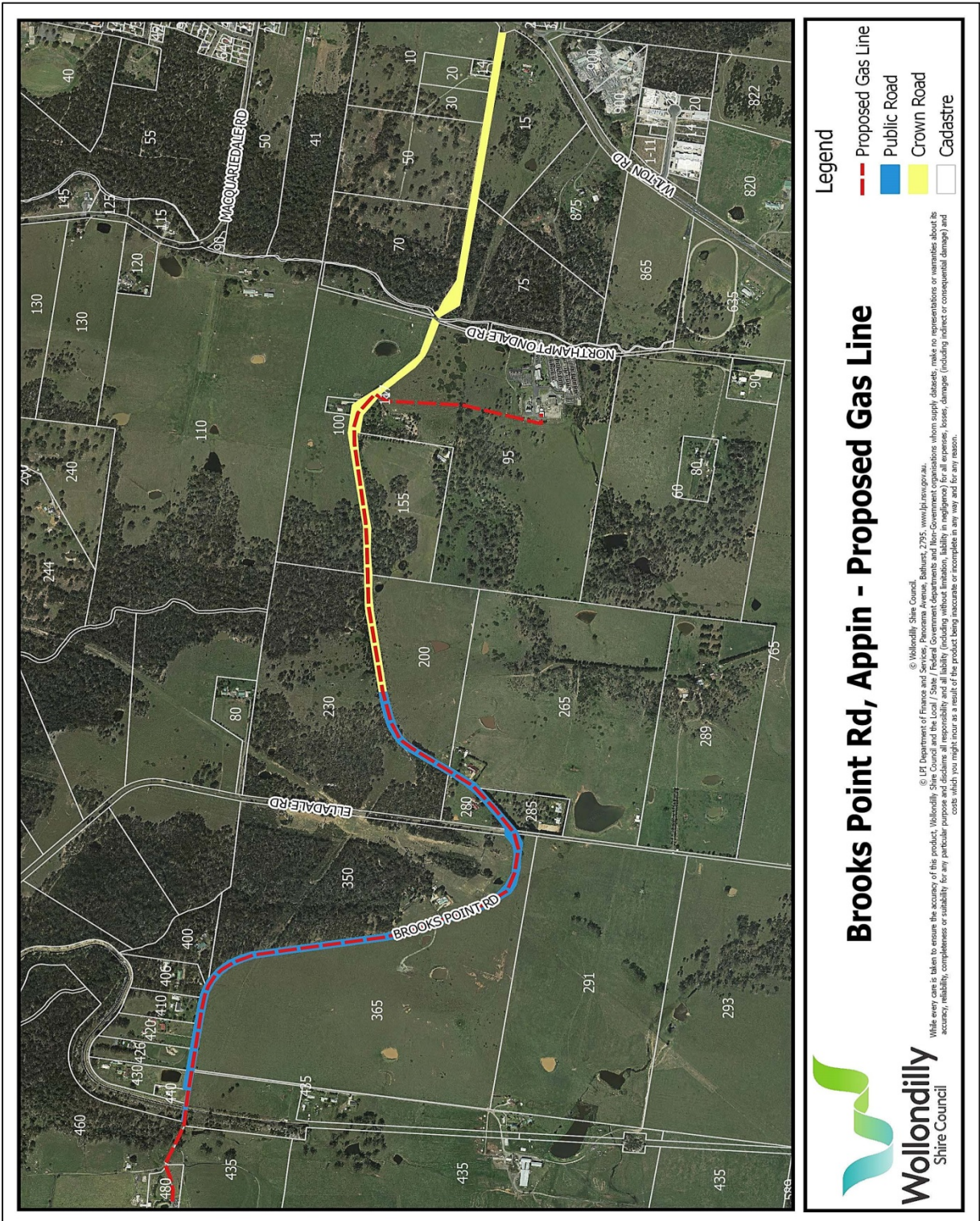
1. That Council as the Roads Authority under the Roads Act 1993 (NSW) Section 7(4) & (5) agree in principle to enter into negotiations for a Deed of Agreement for an easement with Illawarra Coal (aka South 32) for the purpose of installing and operating a suction gas pipeline within Brooks Point Road Reserve from Appin Mine to the Power Station located at Northamptondale Road Appin.
2. That the compensation for the total length of the proposed easement within the Brooks Point Road Reserve be \$46,500 plus GST subject to review and provision of an official registrable plan by Council's Valuer. That the security bond be determined at the time of negotiations.
3. That in the event that the survey of the identified location for the gas line goes into freehold land, that land being transferred from the NSW Department of Industry NSW Trade & Investment (Crown Land) be declared as "Operational Land" upon acquisition.
4. That all costs and disbursements to establish the agreement be borne by the applicant, including all reasonable legal costs and registration of documentation with Government Authorities.
5. That a Construction Environmental Management Plan to address deficiencies and comply with the applicable policy and legislative framework be supplied to Council. The Plan is to include geotechnical assessment, detailed survey including depth (pipe to be positioned at a depth of no less than 1.5 metres from natural ground level), ground and vegetation restoration measures, revegetating or retaining seed bank if disturbances, ecologist carry out targeted search for the Cumberland Plain Land Snail and appropriate measure be taken if threatened species or communities are found in the area.

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6. That in accordance with the Deed of Agreement a full detailed survey plan is to be provided.
7. That the Mayor and General Manager be authorised to execute all documentation pertaining to this matter including those requiring the Common Seal of Council in accordance with the Local Government Act 1993 (NSW) S377(1)(h).
8. That the proponent submit a separate application under Section 138 of the Roads Act prior to works commencing.
9. That as Council is both a consent authority and the relevant roads authority, the Deed will not operate to fetter Council's statutory obligations or discretions.
10. That the applicant undertakes comprehensive community consultation with potentially affected key stakeholders in Appin (surrounding properties, Appin residents and Appin road users) and consultation with Council's Community Engagement Team and Wollondilly Shire Council.
11. That as the proposed gas line traverses the Upper Water Canal which is under the control and ownership of Water NSW and a key stakeholder that the details of the proposed water canal crossing to be included in the Construction Environmental Management Plan.

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ATTACHMENT 1 – 8899 – 21 MARCH 2016



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