



I hereby give notice that an
Extraordinary Meeting of Council will be held on:

Date: Thursday, 17 October 2019

Time: 6:00pm

Location: Boggabri Golf Club
Boggabri NSW 2382

AGENDA

Extraordinary Council Meeting
17 October 2019

Stewart Todd
GENERAL MANAGER



NARRABRI SHIRE
DISCOVER THE POTENTIAL

PUBLIC FORUM (held outside formal Council Meeting)

The Council may hold a public forum prior to each Ordinary Meeting of the Council for the purpose of hearing oral submissions from members of the public on items of business to be considered at the meeting (listed on the Agenda).

Public forums may also be held prior to Extraordinary Council Meetings and meetings of committees of the Council.

Public forums are to be chaired by the mayor or their nominee.

Request to Speak in the Public Forum

To speak at a public forum, a person must first make an application to the Council in the approved form. Applications to speak at the public forum must be received by 5pm on the working day before the date on which the public forum is to be held and must identify the item of business on the agenda of the Council meeting the person wishes to speak on, and whether they wish to speak 'for' or 'against' the item.

Approved speakers at the public forum are to register with the Council any written, visual or audio material to be presented in support of their address to the Council, and to identify any equipment needs at 5pm on the working day before the Public Forum.

The General Manager or their delegate may refuse to allow such material to be presented.

A person may apply to speak on no more than 2 items of business on the agenda of the Council Meeting.

Legal representatives acting on behalf of others are not to be permitted to speak at a public forum unless they identify their status as a legal representative when applying to speak at the public forum.

The General Manager or their delegate may refuse an application to speak at a public forum.

No more than three (3) speakers are to be permitted to speak 'for' or 'against' each item of business on the agenda for the Council Meeting.

If more than the permitted number of speakers apply to speak 'for' or 'against' any item of business, the general manager or their delegate may, in consultation with the mayor or the mayor's nominated chairperson, increase the number of speakers permitted to speak on an item of business, where they are satisfied that it is necessary to do so to allow the council to hear a fuller range of views on the relevant item of business.

Each speaker will be allowed three (3) minutes to address the Council. This time is to be strictly enforced by the Chairperson.

The Chairperson of the meeting can grant one extension of up to a maximum of two (2) minutes, should further information, be considered to be important to the Council. This is solely at the discretion of the Chair.

Speakers at public forums must not digress from their nominated item on the agenda. If a speaker digresses to irrelevant matters, the Chairperson is to direct the speaker not to do so. If a speaker fails to observe a direction from the chairperson, the speaker will not be further heard.

A councillor (including the chairperson) may, through the chairperson, ask questions of a speaker following their address at a Public Forum. Questions put to a speaker must be direct, succinct and without argument. Debate will not be permitted by the speaker, Councillors or staff.

Speakers are under no obligation to answer a question. Answers by the speaker, to each question are to be limited to three (3) minutes.

Speakers at public forums cannot ask questions of the Council, Councillors or Council staff.

The general manager or their nominee may, with the concurrence of the chairperson, address the council for up to 5 minutes in response to an address to the council at a public forum after the address and any subsequent questions and answers have been finalised.

Where an address made at a public forum raises matters that require further consideration by council staff, the general manager may recommend that the council defer consideration of the matter pending the preparation of a further report on the matters.

The “*Request to Speak in Public Forum*”, at an Ordinary Council Meeting, can be obtained, from Council’s Administration Office, or by downloading it from Council’s website at:

<http://www.narrabri.nsw.gov.au/speaking-at-public-forum-1232.html>



USE OF MOBILE PHONES AND UNAUTHORISED RECORDING OF MEETINGS

Councillors, council staff and members of the public must ensure that mobile phones are turned to silent during meetings of the council and committees of the council.

(Clause 15.20 Code of Meeting Practice)

A person must not live stream or use an audio recorder, video camera, mobile phone or any other device to make a recording of the proceedings of a meeting of the council or a committee of the council without the prior authorisation of the Council.

(Clause 15.21 Code of Meeting Practice)



Mayor
Cr Cathy Redding



Deputy Mayor
Cr Cameron Staines



Cr Maxine Booby



Cr Ron Campbell



Cr Ron Campey



Cr Lloyd Finlay



Cr Robert Kneale



Cr Ann Loder



Cr Annie McMahon



General Manager
Mr Stewart Todd



Director
Infrastructure Delivery
Mr Darren Raeck



Director
Corporate Services
Mr Lindsay Mason



Director
Development &
Economic Growth
Mr Daniel Boyce



Our Values



INTEGRITY

Ensuring transparency and honesty in all our activities.



LEADERSHIP

Providing guidance and direction to our community and our people.



CUSTOMER FOCUS

Delivering prompt, courteous and helpful services and being responsive to the community's changing needs.



ACCOUNTABILITY

Accepting our responsibility for the provision of quality services and information.



RESPECT

Treating everyone with courtesy, dignity and fairness.



EXCELLENCE

Being recognised for providing services, programs and information which consistently meet and exceeds standards.



Our Strategic Direction

OUR VISION:

A strong and vibrant regional growth centre providing a quality living environment for the entire Shire community.



THEME 1: OUR SOCIETY

Strategic Direction 1: Safe, Inclusive and Connected Community

A safe, supportive community where everyone feels welcomed, valued and connected.



THEME 2: OUR ENVIRONMENT

Strategic Direction 2: Environmentally Sustainable and Productive Shire

Maintaining an healthy balance between our natural and built environments.



THEME 3: OUR ECONOMY

Strategic Direction 3: Progressive and Diverse Economy

A strong, diverse economy that attracts, retains and inspires business, industry and tourism growth.



THEME 4: OUR CIVIC LEADERSHIP

Strategic Direction 4: Collaborative and Proactive Leadership

Working pro-actively together to achieve our shared vision with strong strategic direction.

AGENDA

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1 OPENING PRAYER BY A MEMBER OF THE NARRABRI MINISTER'S FRATERNAL

Members and officers are asked to be upstanding for the opening prayer.

2 ACKNOWLEDGEMENT OF COUNTRY

I'd like to begin by acknowledging the Traditional Owners of the land on which we meet today, the Kamilaroi people, and pay my respects to Elders past and present.

3 APOLOGIES/GRANTING OF LEAVE OF ABSENCES

4 DECLARATION OF PECUNIARY AND NON-PECUNIARY INTERESTS

Councillors are reminded of their obligation to declare their interest in any matters listed before them.

In considering your interest, you are reminded to include pecuniary, non-pecuniary and conflicts of interest as well as any other interest you perceive or may be perceived of you.

Councillors may declare an interest at the commencement of the meeting, or alternatively at any time during the meeting should any issue progress or arise that would warrant a declaration.

Councillors must state their reasons in declaring any type of interest.

5 ITEMS TO BE CONSIDERED IN THE CONFIDENTIAL (PUBLIC EXCLUDED) MEETING

Extract from Council's Code of Meeting Practice

Part 4 Section 17a.

17a. Which parts of a meeting can be closed to the public?

- (1) A Council, or a Committee of the Council of which all the members are Councillors, may close to the public so much of its meeting as comprises:
 - (a) the discussion of any of the matters listed in Sub-Clause (2) below, or
 - (b) the receipt or discussion of any of the information so listed.
- (2) The matters and information are the following:
 - (a) personnel matters concerning particular individuals (other than Councillors),
 - (b) the personal hardship of any resident or ratepayer,
 - (c) information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business,
 - (d) commercial information of a confidential nature that would, if disclosed:
 - i. prejudice the commercial position of the person who supplied it, or
 - ii. confer a commercial advantage on a competitor of the Council, or
 - iii. reveal a trade secret,
 - (e) information that would, if disclosed, prejudice the maintenance of law,

- (f) matters affecting the security of the Council, Councillors, Council staff or Council property,
 - (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege,
 - (h) information concerning the nature and location of a place or an item of Aboriginal significance on community land.
- (3) A Council, or a Committee of the Council of which all the members are Councillors, may also close to the public so much of its meeting as comprises a motion to close another part of the meeting to the public.
- (4) Members of the public may be allowed to make representations to or at a Council or Committee meeting for a period of up to three (3) minutes, immediately after the motion to close the part of the meeting.
- (5) is moved and seconded, as to whether that part of the meeting should be closed at the discretion of the Council

6 OUR SOCIETY



THEME 1: OUR SOCIETY

STRATEGIC DIRECTION 1: SAFE, INCLUSIVE AND CONNECTED COMMUNITY

By 2027, we will provide a safe, supportive community where everyone feels welcomes, valued and connected.

COMMUNITY ENGAGEMENT

Through extensive community engagement, the Narrabri Shire community identified several social priority areas to be actioned over the 2017 - 2018 financial year.

COMMUNITY SERVICES

Current services provided within the Narrabri Shire community include:

- Community development
- Community health and safety
- Community arts, events and entertainment
- Community care services and transport
- Parks, open spaces and sporting facilities
- Children, youth and aged care services
- Disability access services
- Library services

COMMUNITY OUTCOMES

In partnership with the community, government and non-government agencies, the Operational Plan will work towards achieving the following social strategic outcomes:

- Increased community arts, events and entertainment
- Reduction in anti-social behaviour and public offences
- Improved community accessibility and inclusiveness
- Improved sport and recreational services and facilities
- Improved educational services and learning pathways
- Improved community health and support services

6.1 VICKERY VPA COMMUNITY CONSULTATION

Responsible Officer: Daniel Boyce, Director Development and Economic Growth

Author: Daniel Boyce, Director Development and Economic Growth

Attachments: Nil

DELIVERY PROGRAM ALIGNMENT**4. Leadership**

Objective 4.3 Infrastructure and service delivery will provide public value for the community

Strategy 4.3.1 Develop and integrate a methodology that measures and reports to communities on equitable distribution of Council funding

EXECUTIVE SUMMARY

The Vickery Coal Mine, Vickery Extension Project (“**Vickery**”) proposes to extract annual run-of-mine (“**ROM**”) coal from the open cut at an average rate of 7.2 million tonnes per annum (“**Mtpa**”) over 25 years, with a peak production of up to approximately 10 Mtpa. The estimated total resource is 179 million tonnes (“**Mt**”).

If Vickery is approved, it is likely that the proponent will be asked to enter into a voluntary planning agreement (“**VPA**”) with Council.

The current VPA offer from Whitehaven Coal is a \$2.712m one-off upfront payment upon commencement of construction. Council is yet to respond to this offer.

At the July Ordinary Council Meeting, Council resolved to engage with the Boggabri community with the aim of gaining their input into the drafting of a VPA that Council would accept if it were made by Whitehaven Coal.

Around thirty (30) people attended three community engagement sessions on 11 September 2019 with the following projects identified as the net community benefit the community requires Vickery to deliver.

- An industrial subdivision and development in Boggabri
- An upgrade to the Boggabri Pool
- A community meeting and multi-purpose space
- Retirement units in Boggabri
- Main street improvements
- Riverbank embellishments
- Showground embellishments
- A contribution to a community development role in Boggabri
- A contribution to a mining planner

With the full understanding that an agreement may not be reached with Whitehaven those attending the sessions were in unanimous agreement that the current VPA offer from Whitehaven Coal of \$2.712m should be rejected.

RECOMMENDATION

1. That Council note the results of the community consultation including:
 - a. The net community benefits the Vickery Mine should delivery.
 - b. The unanimous community sentiment to the current Vickery VPA offer.
2. That Council reject the current Vickery Mine Extension VPA offer, for the following reasons:
 - a. It does not meet the Council endorsed objectives for a planning agreement concerning the Vickery Mine Extension project.
 - b. Accepting the VPA offer is not in the Public Interest.
3. That Council reject the 30:70 VPA ratio proposed by Whitehaven due to it not withstanding rational critique.
4. That Council request a revised VPA offer in the amount of \$14.87 million.
5. That Council commit to expending the full VPA amount in Boggabri and surrounds.
6. That Council request that the Independent Planning Commission require the upgrade of Braymont Road or a contribution of \$7,467,500 and annual contribution of \$67,600 (subject to cpi).

BACKGROUND

The Vickery Coal Mine, Vickery Extension Project ("**Vickery**") proposes to extract annual run-of-mine ("**ROM**") coal from the open cut at an average rate of 7.2 million tonnes per annum ("**Mtpa**") over 25 years, with a peak production of up to approximately 10 Mtpa. The estimated total resource is 179 million tonnes ("**Mt**").

If Vickery is approved, it is likely that the proponent will be asked to enter into a voluntary planning agreement ("**VPA**") with Council and Gunnedah Shire.

Council has had a number of interactions with Whitehaven Coal regarding a VPA.

- Whitehaven Coal had previously provided a VPA offer to Council in the amount of \$2.25m ("**first VPA offer**") at the time of the original [Vickery Coal Project](#) which was approved in September 2014.
- Whitehaven Coal on 7 August 2017 subsequently revised this VPA offer, increasing the amount by \$820,000, to be \$3.069m ("**second VPA offer**").
- Council rejected the second VPA offer (MINUTE 039/2019) because it did not meet the objectives of Council and request a revised VPA offer from Whitehaven.
- Whitehaven Coal revised their VPA offer, dated 17 April 2019 to a reduced amount of \$2.712m ("**current VPA offer**"). Council is yet to respond to this offer.

At the July Ordinary Council Meeting, Council resolved to engage with the Boggabri community with the aim of gaining their input into the drafting of a VPA that Council would accept if it were made by Whitehaven Coal.

CURRENT SITUATION**Community consultation**

Around thirty (30) people attended three community engagement sessions on 11 September 2019 with the following projects identified as the net community benefit the community requires Vickery to deliver.

- An industrial subdivision and development in Boggabri
- An upgrade to the Boggabri Pool
- A community meeting and multi-purpose space (incl. sport)
- Retirement units in Boggabri
- Main street improvements
- Riverbank embellishments
- Showground embellishments
- A contribution to a community development role in Boggabri
- A contribution to a mining planner

With the full understanding that an agreement may not be reached with Whitehaven those attending the sessions were in unanimous agreement that the current VPA offer from Whitehaven Coal of \$2.712m should be rejected.

VPA objectives

The Council endorsed objectives for a planning agreement associated with Vickery are to:

1. Meet the demands created by the Project for new public infrastructure, amenities and services;
2. Secure off-site planning benefits for the wider community so that the Project delivers a net community benefit;
3. Compensate for the loss of or damage to a public amenity, service, resource or asset by development through replacement, substitution, repair or regeneration.

Meet the demands created by the Project for new public infrastructure, amenities and services

According to Appendix R of the Project Environmental Impact Statement ("EIS") "...the Project has potential to attract approximately 338 new local residents (inclusive of Project operational personnel and their family members). The proponent has estimated that approximately 54% of new residents will be located in Gunnedah, 34% in Narrabri Shire and 12% to other locations (p.101, EIS – Appendix R).

A community needs assessment report, prepared by an independent consultant, is best-practice when it comes to establishing the scope of a VPA. In the absence of a community needs assessment report it is difficult to establish the exact demand for "new public infrastructure, amenities and services". What is clear is that the 30:70 split in VPA contributions between the Narrabri Shire and Gunnedah Shire is not evidence based (being based on the proportion of the Project within the respective LGAs) and does not recognise the socio-economic impacts in, and immediately around, Boggabri. The 30:70 split does not withstand rational critique.

In its submission to the IPC dated 11 February 2019, Council suggested that the transport route put forward by the Proponent was fundamentally flawed. Council's view as articulated in the submission is that legal and practical access should be via Braymont Road and that the Proponent should upgrade this route.

Council preliminary estimates for the capital cost of upgrading the Braymont Road route are \$7,467,500 with recurrent costs of \$1,690,000 or \$67,600 per annum.

The VPA offer of \$2.712 million does not meet the estimated costs of upgrading the logical transport route via Braymont Road. Council is in no doubt that this route will be used in spite of conditions making this unlawful. This creates a perverse situation whereby the proponent derives significant economic benefits in the short to medium term, at the expense of future generations of ratepayers over the long-term.

Secure off-site planning benefits for the wider community so that the Project delivers a net community benefit

The following community projects as outlined by the community will provide some of the requisite community benefit for the Project.

- An industrial subdivision and development in Boggabri
- An upgrade to the Boggabri Pool
- A community meeting and multi-purpose space (incl. sport)
- Retirement units in Boggabri
- Main street improvements
- Riverbank embellishments
- Showground embellishments
- A contribution to a community development role in Boggabri
- A contribution to a mining planner

Compensate for the loss of or damage to a public amenity, service, resource or asset by development through replacement, substitution, repair or regeneration.

The VPA offer of \$2.712 million does not provide any compensation to the Boggabri community impacts from the Project.

The VPA offer does not meet the Council endorsed objectives for a planning agreement associated with Vickery.

Is acceptance of the VPA offer in the Public Interest?

Because the VPA offer does not meet the Council endorsed objectives for a planning agreement associated with Vickery it follows that the VPA offer is not in the Public Interest.

According to the DPE *Draft Practice Note on Planning Agreements* (2016):

*"A critical consideration in whether to enter into a planning agreement is whether the agreement is in the **public interest**.*

*In some cases, the public interest may be measured in terms of the **need to mitigate any adverse impacts of development** on the public domain or the desirability of providing a **planning benefit to the wider community**." (p. 8)*

In the case of the Project, there is both a need to “mitigate” impacts and provide a net community “benefit” to Boggabri in particular, with the EIS (Appendix R) concluding, “...*Boggabri, to date, had not experienced the same level of benefits that Gunnedah and Narrabri had experienced as a result of the region’s existing mining operations.*” (p. 7). The VPA offer does neither.

Road Upgrades and Maintenance

Council preliminary estimates for the capital cost of upgrading the Braymont Road route are \$7,467,500 with recurrent costs of \$1,690,000 or \$67,600 per annum.

Council should request the IPC apply a condition to any approval that requires the above contributions to be paid to Council. If this is not forthcoming a perverse situation whereby the proponent derives significant economic benefits in the short to medium term, at the expense of future generations of ratepayers over the long-term will occur.

Revised VPA Methodology

The following methodology has been deemed appropriate for a revised VPA offer to be put to Whitehaven.

That the VPA include a lump sum payment of \$1 million on project approval.

That the VPA include a lump sum payment of \$1 million on construction commencement.

- These initial lump sums are in recognition that during the initial commencement and construction stages of the Vickery Mine project, the town of Boggabri will be significantly affected.

That an amount of \$11.87 million be paid, on a to be agreed payment schedule, throughout the life of the mine.

That the VPA include a lump sum payment of \$1 million on mine closure.

- This end of project lump sum is to be utilised to assist the Boggabri economy transition and enable future sustainability past the existence of mines in the area.

FINANCIAL IMPLICATIONS

Currently Whitehaven Coal have provided Council a VPA offer of \$2.712 million; which is intended to be a one-off upfront payment upon commencement of construction.

In rejecting the offer Council may not reach an agreed VPA with Whitehaven Coal.

STATUTORY AND POLICY IMPLICATIONS

The *Environmental Planning and Assessment Act 1979* provides the statutory framework for planning agreements.

The *Environmental Planning and Assessment Regulation 2000* (“**EPA Regulation**”) provides a framework for planning agreements. The EPA Regulation outlines the procedural requirements for the use of planning agreements as well as the making, amending and revocation of planning agreements and the public notice of planning agreements.

CONSULTATION**External Consultation**

Around thirty (30) members of the Boggabri community attended three community engagement sessions on 11 September 2019.

Internal Consultation

- Director Infrastructure Delivery.

7 MEETING CLOSED
