

5 June 2025

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**Attention: General Manager**  
Muswellbrook Shire Council  
PO Box 122,  
Muswellbrook NSW 2333

SLR Project No.: 630.031522.00001

Client Reference No.: 43-45 Enterprise Crescent, Muswellbrook – DA: 50/2019

**RE: Statement of Environmental Effects**  
**s4.55(1A) Modification to DA-50/2019**  
**43-45 Enterprise Crescent, Muswellbrook NSW 2333**

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## **1.0 Introduction**

SLR Consulting Australia Pty Ltd (SLR) acts on behalf of Newpave Asphalt Pty Ltd (Newpave) in lodging this Section 4.55(1A) modification application to Muswellbrook Shire Council (Council) to modify DA-50/2019 (as modified 2024). The proposal includes modification to the asphalt plant approved upon Lot 14 DP1119843, 43-45 Enterprise Crescent, Muswellbrook NSW 2333.

The proposed amendment to the extant consent will enable a more efficient operation of the asphalt plant. The updated Architectural Plans show the proposed modifications which are included at **Appendix A**.

Section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) states that a consent authority may, on application, modify a development consent involving substantially the same development and minimal environmental impact. Further details on approval pathway are detailed in Section 5.1 of this SEE.

## **2.0 Site and Surrounds**

The site is located at Enterprise Crescent Muswellbrook, within the Muswellbrook Shire Local Government Area (LGA). It is legally described as Lot 14 DP1119843, and is commonly known as 43-45 Enterprise Crescent, Muswellbrook NSW 2333. Access to the site is provided via separate gated ingress and egress driveways on Enterprise Crescent.

The site currently contains hardstand areas and generators associated with a previous asphalt plant. The site is located in the E4 General Industrial Zone within the Muswellbrook Local Environmental Plan (LEP) 2009. Land uses within the immediate vicinity of the site are predominantly industrial and agricultural in nature. There is scattered vegetation to the east and south, which provides screening of the site.

Refer to **Figure 1** and **Figure 2** for the existing site aerial and site cadastre.

**Figure 1 Site Aerial (Nearmap) sourced: 12/03/2024**



**Figure 2 Site Cadastre (SIX Maps) sourced: 13/03/2024**



## 3.0 Background

DA-50/2019 was approved on 17 December 2019 for the installation of an asphalt plant in conjunction with original DA 38/2019. A modification application was submitted to Council for DA-50/2019 on 26 April 2024 Council and approved on 27 June 2024. Newpave are submitting this further modification application as a result of further changes of the asphalt plant.

The redesign will provide operational efficiencies for truck loading, though the provision of increased storage in the new bin holding areas and the ability for asphalt material to be made while trucks arrive at site. In the previous design, the plant processed the material with truck being loaded on site simultaneously. These operational efficiencies will not impact on the existing approved output of the site.

## 4.0 Proposed Modification

The purpose of this s4.55(1A) modification is to update Conditions 1 & 2 of DA-50/2019 (as modified 2024) to reflect the new plans with revised plant design.

No other modifications are proposed to the extant consent with the approved output of the plant remaining the same.

Proposed updates to the existing Conditions are marked in red.

### Condition 1 currently states:

#### 1. Development in Accordance with Plans

*The development being carried out in accordance with the development application and the drawings referenced below, and endorsed with Council's approval stamp, except where amended by the following conditions.*

Drawing No	Revision	Drawn by	Drawing Date	Received
Job No. 190699 A100	2	MCP Consulting Engineering	31/7/2019	24/09/2019
Job No. 190699 C201	0	MCP Consulting Engineering	11/4/2024	26/4/2024
Job No. 190699 C202	0	MCP Consulting Engineering	11/4/2024	26/4/2024
Job No. 190699 C203	0	MCP Consulting Engineering	11/4/2024	26/4/2024
Job No. 190699 A104	2	MCP Consulting Engineering	31/7/2019	24/09/2019
Job No. 190699 A105	3	MCP Consulting Engineering	31/7/2019	24/09/2019
Job No. 190699 A106	3	MCP Consulting Engineering	31/7/2019	24/09/2019
Job No. 190699 A107	3	MCP Consulting Engineering	31/7/2019	24/09/2019
Job No. 190699 A108	3	MCP Consulting Engineering	31/7/2019	24/09/2019



**Condition 1 is proposed to state:**

**1. Development in Accordance with Plans**

*The development being carried out in accordance with the development application and the drawings referenced below, and endorsed with Council's approval stamp, except where amended by the following conditions.*

Drawing No	Revision	Drawn by	Drawing Date	Received
Job No. 190699 A100	2	MCP Consulting Engineering	31/7/2019	24/09/2019
Job No. 190699 C201	0	MCP Consulting Engineering	11/4/2024	26/4/2024
Job No. 190699 C202	01	MCP Consulting Engineering	<del>11/4/2024</del> 28/1/2024	<del>26/4/2024</del> TBC
Job No. 190699 C203	01	MCP Consulting Engineering	<del>11/4/2024</del> 28/1/2024	<del>26/4/2024</del> TBC
Job No. 190699 A104	2	MCP Consulting Engineering	31/7/2019	24/09/2019
Job No. 190699 A105	3	MCP Consulting Engineering	31/7/2019	24/09/2019
Job No. 190699 A106	3	MCP Consulting Engineering	31/7/2019	24/09/2019
Job No. 190699 A107	3	MCP Consulting Engineering	31/7/2019	24/09/2019
Job No. 190699 A108	3	MCP Consulting Engineering	31/7/2019	24/09/2019

**Condition 2 currently states:**

**2. Development in Accordance with Plans**

*The development is to be carried out generally in accordance with the following documents and amended documents:*

Title	Written by	Date
Environmental Impact Statement	ADW Johnson Ptd Ltd	21 June 2019
Statement of Environmental Effects	SLR	16/04/2024

*Note: Nothing in this consent authorises any site activities or civil including, but not limited to earthworks, the installation of any utility service excavation, filling of land, construction of any roads, pathways or retaining walls, undertaking landscaping works or riparian corridor rehabilitation, bushfire hazard management works, clearing of vegetation or the removal of topsoil before a Construction Certificate has been issued for the development.*

**Condition 2 is proposed to state:**

**2. Development in Accordance with Plans**

*The development is to be carried out generally in accordance with the following documents and amended documents:*

Title	Written by	Date
Environmental Impact Statement	ADW Johnson Ptd Ltd	21 June 2019
Statement of Environmental Effects	SLR	16/04/2024
<b>S4.55(1a) Statement of Environmental Effects</b>	<b>SLR</b>	<b>5/06/2025</b>



*Note: Nothing in this consent authorises any site activities or civil including, but not limited to earthworks, the installation of any utility service excavation, filling of land, construction of any roads, pathways or retaining walls, undertaking landscaping works or riparian corridor rehabilitation, bushfire hazard management works, clearing of vegetation or the removal of topsoil before a Construction Certificate has been issued for the development.*

## 5.0 Relevant Legislation and Planning Controls

### 5.1 Environmental Planning and Assessment Act 1979

The appropriate approval path for the proposed modification is a s4.55(1A) under the EP&A Act.

**(1A) Modifications involving minimal environmental impact** A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if—

- (a) it is satisfied that the proposed modification is of minimal environmental impact, and
- (b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and
- (c) it has notified the application in accordance with—
  - (i) the regulations, if the regulations so require, or
  - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and
- (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.

*Subsections (1), (2) and (5) do not apply to such a modification.*

The proposed amendment does not change the overall layout, or land use of the development (as approved). The plant equipment will continue to operate the same as approved although physically the plant will be altered in terms of height and length. There will be no change to the sites operational details including maximum output and staffing. Therefore, the proposal is substantially the same development for which consent was originally granted and of minimal environmental impact.

The proposed change to the approved application will not increase environmental impacts on the site so no additional consultation is considered necessary. Furthermore, as discussed in Section 6.2 there are no detrimental visual impacts from the development, which is in keeping with the existing character and nature of the surrounding area and land uses. As such the proposed modification can be considered s4.55(1A) under the EP&A Act.

### 5.2 Muswellbrook Local Environmental Plan 2009

The site is located within the Muswellbrook Shire LGA and is subject to the Muswellbrook LEP 2009. The site is zoned E4 General Industry under the LEP.



The proposed modification will not alter the approved land use, which remains permissible and consistent with the objectives of the E4 zone.

The proposed modification results in the approved development still being consistent with all other LEP clauses applicable to the site, other than the Clause 4.3 Height of Buildings. Refer to Section 5.2.1 of this SEE and **Appendix B** for the formal submission to vary a development standard in accordance with Clause 4.6 of the LEP.

### 5.2.1 Clause 4.3 Height of Building

In accordance with this clause and adopted Height of Building Map, buildings on the subject site are not to exceed the maximum identified height of 15 metres. The proposed plant will have a maximum height of 29 metres, which is an exceedance to this limit. The existing plant at the site is 24m, which will result in a 5m increase. Although this exceeds the height limit, it is considered appropriate in context of the surrounding industrial area and the existing use and operation of the site. Furthermore, when considering the objectives of Clause 4.3 the proposed height of the plant is compliant.

The objectives of Clause 4.3 are outlined below.

#### 4.3 Height of buildings

(1) *The objectives of this clause are as follows—*

- (a) *to limit the height of buildings,*
- (b) *to promote development that is compatible with the height of surrounding development and conforms to and reflects natural landforms by stepping development on sloping land to follow the natural gradient,*
- (c) *to promote the retention and, if appropriate, sharing of existing views,*
- (d) *to maintain solar access to new and existing dwellings and public recreation areas and to promote solar access to new buildings,*
- (e) *to maintain privacy for residents of existing dwellings and promote privacy for residents of new buildings.*

The proposed development is located in an industrial area and will not impact on the solar access to dwellings or public recreation areas. Furthermore, the increased height will not impact privacy for dwellings, with the closest residential development over 650 metres from the site. Being located within an industrial zone the proposed height development is compatible with the height of surrounding developments. Additionally, the proposed plant is setback substantially from Thomas Mitchell Drive. Therefore, the scale of the built form is reduced to travelling motorists.

Further to this, the site is located within a well-established industrial zone, where large-scale infrastructure is typical. Notably, Mount Arthur Coal Mine, a major industrial operation, is situated immediately to the west and south-west of the site and runs adjacent to Thomas Mitchell Drive. This mine includes extensive built form and equipment of significant scale and height, establishing a clear precedent for large industrial structures in the area. The proposed plant is therefore compatible with the prevailing built form and industrial landscape.

Due to the natural topography of the surrounding area the plant will not be visible from Denman Road, a state classified road. Refer to **Appendix B** for the formal submission to vary the height of building development standard, in accordance with Clause 4.6.



### 5.3 Muswellbrook Development Control Plan 2009

The Muswellbrook DCP 2009 applies to the site. The nature of the modifications proposed do not impact the compliance of the development with relevant DCP controls as assessed under the original application and do not warrant reassessment.

## 6.0 Environmental Assessment & Justification

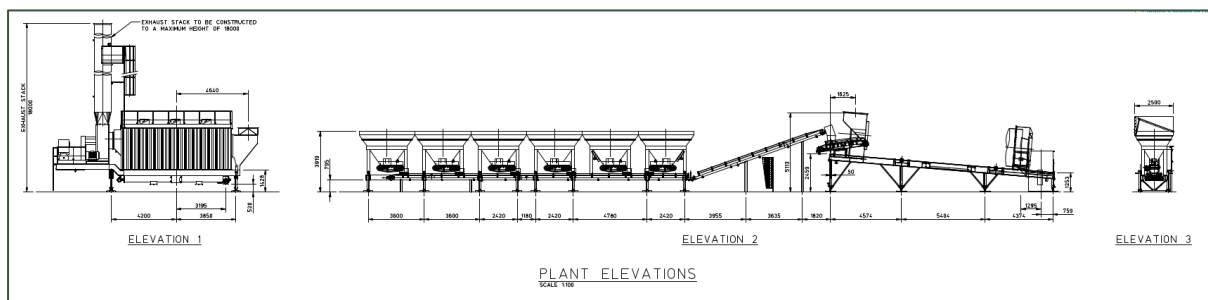
The environmental assessment completed as part of DA-50/2019 still remains valid. The only potential impact further assessed with this modification application is Visual Impact, which is discussed in Section 6.2 of this SEE.

### 6.1 Amendment to Plant Structure

The modification to DA: 50/2019 relates only to amendment to the plant equipment. No other changes to site layout or other structures / infrastructure are proposed.

The figures below show the difference between what was approved under the original application, DA50/2019 and what is proposed with this application.

**Figure 3 DA50/2019 Approved Plant Elevations**



TOWER TO BE CONSTRUCTED  
TO A MAXIMUM HEIGHT OF 24000

24,000

TOWER ISOMETRIC VIEW  
SCALE N.T.S.

Architectural elevation drawing of the proposed plant. The drawing shows a long, low building on the left with a series of vertical slats, and a taller, more complex structure on the right with multiple levels, stairs, and a large truss-like section. Dimensions are provided in feet: overall width 821.97, overall height 175.6, and various section widths (33.10, 33.10, 33.10). Red dashed boxes highlight specific areas of the drawing.

- The overall maximum height of the structure has been increased from 24m to 29m, a 5m increase. It is noted that under the previous modification approved by Council the height had reduced to 19.6m, however, the current structure on site is 24m;
- The addition of a cover over the hoppers, increases the overall height of the hopper component to 7.6m;



- The inclusion of two storage silos within the plant, providing greater storage capacity and the ability to store different mixes at the simultaneously; and
- The overall length of the plant has been increased to 62.69m an increase of 7.888m from the existing 54.802m.

Even with this amended size to the structures the site will operate in accordance with the original 2019 approval (as modified 2024) maintaining the same maximum output of materials and supporting the same number of employees.

This modification is substantially the same development with minimal environmental impact. The slight increase in terms physical scale to the plant equipment will not have any significant impact on the site and surrounds. The modification does not include any further alterations or additions to the site as approved under the extant consent.

## 6.2 Visual Impact

The site is located approximately 3.5 km south-west of the Muswellbrook Urban Centre and is adjacent to the Mt Arthur Coal Mine. The site is situated within an established industrial area with the locality characterised by a combination of intensive mining and general industry with large-scale bulky infrastructure. The site currently houses an existing asphalt plant with a height of 24m, which is being replaced by the proposed development. Refer to Figure 6 for the existing plant on site.

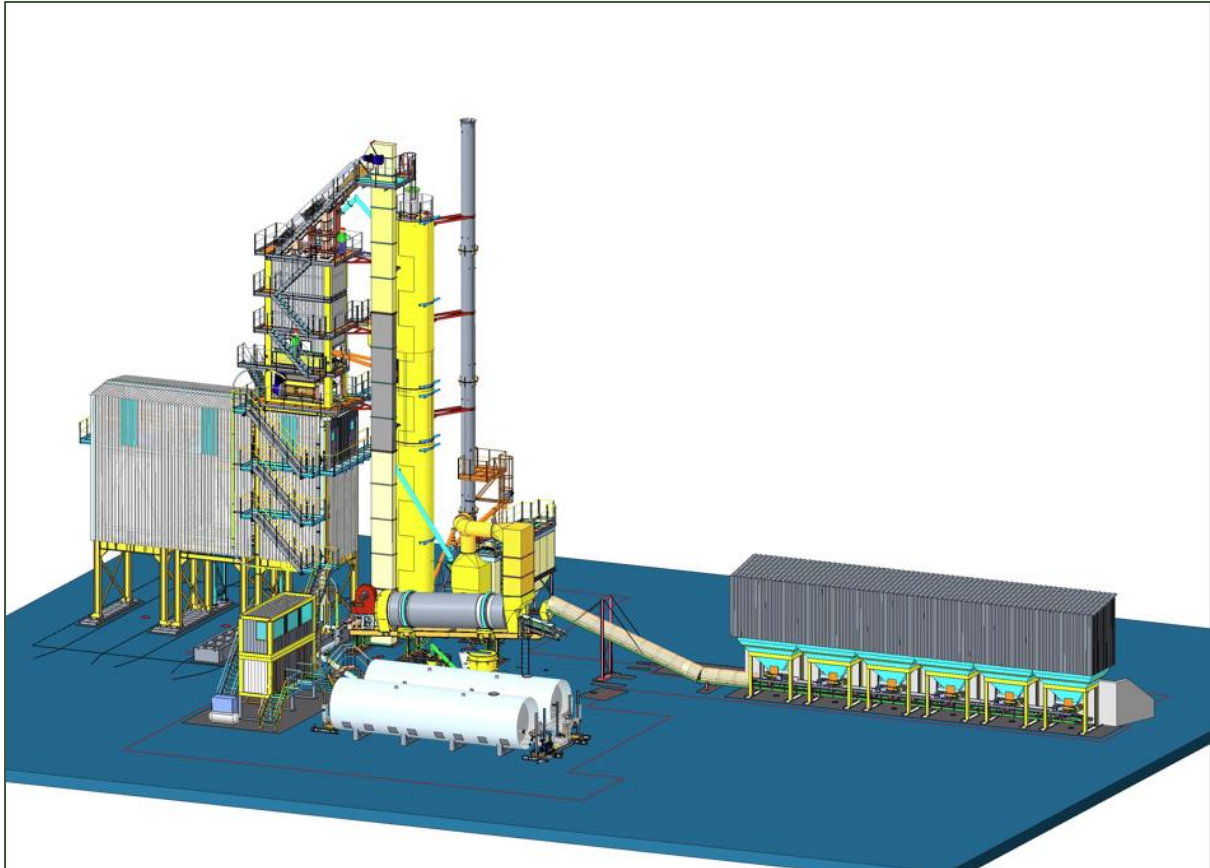
**Figure 6 Existing 24m High Plant at Site**



The new plant will have a maximum height of 29m (refer to Figure 7), representing an increase of 5m compared to the existing facility. While this is an increase in height, the overall bulk and scale of the proposed development remains consistent with the existing asphalt plant on site and industrial character of the area.



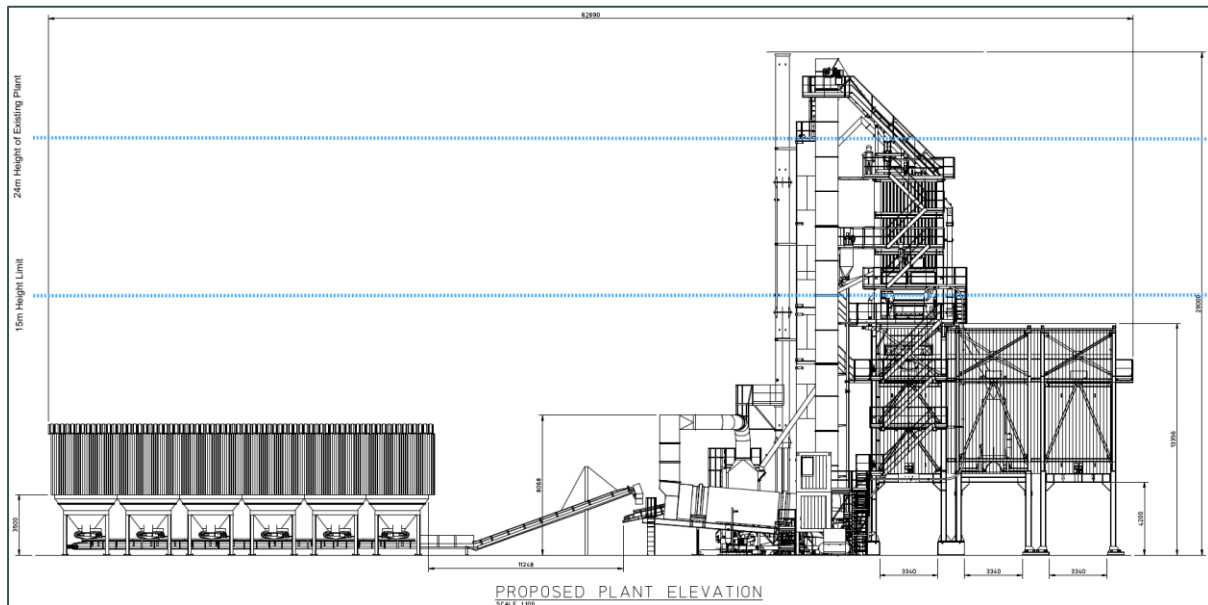
**Figure 7 Proposed 29m High Plant**



While the proposed development slightly exceeds the established height limit, only a minor component of the overall structure, specifically, the chute of the asphalt plant, extends beyond this limit. This minor exceedance does not contribute to a significant change in visual impact and remains in keeping with the industrial character of the area and the existing plant. Refer to Figure 8 which demonstrates that proposed development's height against the existing height level at the site.



**Figure 8 Extent of Building Height Exceedance and Comparison to Existing Height Levels**



Given the nature of the surrounding industrial zone, there are no significant views that would be adversely affected by the additional height of the proposed structure. The existing topography of the surrounding land, results in the site being screened and having minimal viewpoints from the public realm. The main viewpoint from the site is via motorists travelling along Thomas Mitchell Drive, with the site not visible from Denman Road. With the site located within the industrial precinct and setback greater than 250m from Thomas Mitchell Drive, it is considered that the structure will not create an imposing presence on the streetscape. Furthermore, there are no residential dwellings in proximity that would experience any visual obstruction or loss of outlook as a result of the development.

The approved landscaping plan under DA-50/2019 will screen the immediate impacts of the development.

Given these factors, the development is considered appropriate and will not adversely affect the visual amenity of the surrounding area.



## 7.0 Conclusion

The minor amendments to the Development Plans and Conditions 1 and 2 of DA-50/2019 (as modified 2024) is considered to have minimal environmental impact and will not change the approved design or land use(s) at the site. It is therefore considered a s4.55(1A) application under the EP&A Act 1979 is appropriate.

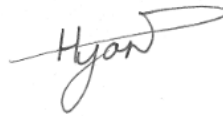
Given the absence of any significant adverse impacts resulting from the modification and consistency with all relevant planning legislation and Council policy, the proposed modification is considered to be worthy of Council's support.

Yours sincerely,

**SLR Consulting Australia**



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**Appendix A**    Engineering Plans – MPC

**Appendix B**    Clause 4.6 Request



## **Appendix A**

### **Engineering Plans**

#### **MPC**





## **Appendix B**

### **Clause 4.6 Request**

#### **SLR Consulting**

