



Rural City of  
**Wangaratta**

This report has been prepared to document the statutory planning processing and assessment pursuant to the *Planning and Environment Act 1987 (the Act)*.

## **WANGARATTA PLANNING SCHEME**

**PlnApp20/063**

**Use and Development of Land for Earth and Energy Resources Industry  
(processing of ore for winning gold)**

**145 Murrungee Road MURMUNGEE VIC 3747**

**Crown Allotment 12C Section 14 Parish of Murrungee**

**Lot 1 Title Plan 600656**

**Lot 1 Title Plan 924570**

### **KEY DETAILS**

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<b>Land owner</b>	<b>DA Witherow</b>
<b>Applicant</b>	<b>Andrejs Niklaus</b>
<b>Consultant</b>	<b>Leonardo Belci</b>
<b>Zone</b>	<b>Farming Zone</b>
<b>Overlays</b>	<b>Bushfire Management Overlay</b>
<b>Property ID</b>	<b>19407</b>
<b>Site inspection</b>	<b>The site was visited on 5 May 2020 and 8 October 2021</b>

## **PROPOSAL AND SITE DETAILS**

The subject land is an approximately 68.9 hectare property comprising three separate lots located in Murmungee and is irregular in shape. The property has frontage to Murmungee Road along the western boundary for approximately 670 metres. The property has frontage to Buckland Gap Road along the eastern boundary for approximately 230 metres. The property adjoins agricultural land to the north east and south. Murmungee I37 Bushland Reserve adjoins the subject land to the north.

The property contains mostly clear grazing land with minimal trees and other vegetation. A cluster of buildings including sheds and an existing dwelling is located along the northern boundary of the property approximately 500 metres east of Murmungee Road. The information submitted with the application indicates that the dwelling is no longer used or suitable to resume being used.

The property has several unnamed waterways traversing it but these waterways converge to create two main waterways, one along the northern boundary of the property and one nearer to the southern boundary. The two main waterways then also join together within the subject land at a point approximately 250 metres east of Murmungee Road. Three dams are located along the northern waterway.

The proposal does not involve use of the entire property. The entire area of the proposed use is approximately 1600 square metres excluding access routes. The proposed activity site is located along the northern boundary of the subject land and is setback approximately 650 metres to the east of Murmungee Road and approximately 23 metres south of the northern boundary of the subject land at its closest point. The proposed activity site is located approximately 17 metres to the north of a waterway and 35 metres west of a dam.

There is also a small waterway which begins north of the proposed activity site and within the Murmungee Bushland Reserve and traverses the subject land approximately 44 metres north west of the proposed activity site at the nearest point. The proposed activity site will be almost entirely located on Lot 1 TP 600656 with part of the activity area possibly encroaching slightly on Crown Allotment 23 Section 14 Parish of Murmungee.

The proposal is for the use and develop the subject land for the activity of processing ore to win gold. The proposal does not include any mining activity occurring on the subject land. The ore to be processed on the subject land is intended to be brought to the subject land. Although it is not explicitly stated in the information submitted in support of this application, Council understands that the proposal relates to an approved mine on nearby land to the east.

The mine referred to was approved under planning permit PInApp20/030 and relates to land at Crown Allotment 26 Section 13 Parish of Murmungee. The actual site of the approved mine is approximately 3.5 kilometres south east of the proposed processing site.

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Access to the proposed activity site is proposed to be in part via an existing track but mostly via a proposed track. The proposed track is to adjoin the existing track at a point approximately 90 metres south west of the existing dwelling and 400 metres east of Murmungee Road. The proposed new section of the access track is to provide access to the public road network at Murmungee Road at a point approximately 220 metres north of the south western corner of the subject land. The proposed access track traverses waterways at two points, once in the existing section of the track and once in the proposed section.

The application describes the proposed use as involving the following activity. The ore is to be brought to the site in small trucks or other relatively small vehicles. The application indicates that the ore will already have been crushed before being brought to the site. The ore is to be stockpiled at the site prior to being processed on site. It has been indicated that it is expected that no more than three 3.5 tonne loads would be stored on site at any one time. A range of machinery and equipment is proposed to be installed at the site for use in processing the ore. Some of this machinery and equipment is mechanical and requires power.

Power is to be provided by a proposed generator. Council does not have an intimate understanding of the process of extracting gold from ore however the basic elements of the process are that the ore is fed into machinery which crushes the ore into progressively smaller pieces. This is done through mechanical equipment initially and as the ore is broken into smaller pieces the final stages of the process involve human action. The process is described as being free of any chemicals and instead relies on water as the only input.

The quantity of ore expected to be processed is approximately 50 tonnes per week. The process will generate a waste product described as clean crushed quartz. The clean crushed quartz will accumulate in the holding dam and is to be removed and sold as it is described as being a product for which there is a demand. Water used in the process will drain into the holding dam and is to be then re-used. The supply of water is to be provided primarily by extracting ground water via a bore although the application also states that water will be brought to the site during the initial setup of the site.

A number of pieces of machinery and equipment are large and will be effectively fixed in position while some of the equipment is easily moveable. A site shed is proposed for basic amenities for workers while two other sheds are also proposed to protect equipment. These structures are very small and in some cases moveable. One portable toilet is proposed to be installed on the site with disposal of waste from this facility to occur off-site.

The proposed use is intended to operate within the hours of 8am to 6pm Monday to Friday and 9am to 4pm on Saturdays. It is not proposed to operate on Sundays or public holidays. The application indicates that the number of workers involved in the proposed use would likely be two, but may increase to around four in the future.

The proposal includes the construction of a bund along the southern part of the site to protect the nearby waterway from sediment. Possible dust suppression and noise attenuation actions are put forward in the application but without firm detail.

## PLANNING CONTROLS & TRIGGERS

Control	Clause(s)	Consideration
Zone	Clause 35.07-1 (Table of Uses, Farming Zone)  Clause 35.07-4 (Buildings and Works, Farming Zone)	Use of land for Earth and Energy Resources Industry  Buildings and Works associated with use of land for Earth and Energy Resources Industry  Buildings and Works within 100 metres of a waterway
Overlay	Clause 44.06 (Bushfire Management Overlay)	No permit trigger
Particular provision	Clause 52.08 (Earth and Energy Resources Industry)	No permit trigger

### Discussion of permit triggers, categorisation of land use and implications

The relevant permit triggers for this proposal and other requirements relating to assessment of the application depend on the categorisation of the proposed land use. Council initially began assessing the application having categorised the proposed land use as 'Industry.'

The potential for the proposed land use to be categorised as 'Earth and Energy Resources Industry' was brought up because this was the interpretation of Country Fire Authority in their referral response. A planning permit is not required under the Bushfire Management Overlay for buildings and works associated with the use of land for Earth and Energy Resources Industry. There would have been a trigger under the Bushfire Management Overlay for buildings and works associated with Industry if the land use were categorized as 'Industry.'

Council sought independent legal advice on the question of correctly categorising the proposed land use. The advice was that the most suitable land use definition would be *Use and Development of Land for Earth and Energy Resources Industry (processing of ore for winning gold)*. The same advice also stated that the use also fit the definition of 'Mining' which is nested within the broader land use term of 'Earth and Energy Resources Industry.' Council categorised the proposed use in accordance with the legal advice.

Clause 52.08 (Earth and Energy Resources Industry) sets out a number of matters relating to applications for use of land for Earth and Energy Resources Industry. The clause sets out that mining is a use that is exempt from requiring a planning permit subject to meeting certain requirements relating to having an Environmental Effects Statement approved. The proposal is not eligible for this exemption. The clause also sets out application requirements for mining. These requirements were to provide a copy of a Work Plan and other associated information. Council sought advice from Earth Resources Regulation on this matter and was advised that the use did not constitute mining and that no Work Plan or other approval was required for the proposed use under the Mineral Resources (Sustainable Development) Act 1990. The information requirements under Clause 52.08 are therefore not applicable. The advice from Earth Resources Regulation also contended that the use should be described as 'Industry.'

The advice from Earth Resources Regulation does conflict somewhat with the legal advice sought by Council. Whilst the legal advice did state confidently that the proposed use was Earth and Energy Resources Industry more broadly, there was less confidence expressed in the assertion that the use was also 'Mining.' Reconciling these two pieces of advice leads Council to conclude that the proposed use is not 'Mining' but is 'Earth and Energy Resources Industry.'

The implication of the land use categorisation also affects how the proposal is affected by the Aboriginal Heritage Act 2006. The Regulations under the Act require a Cultural Heritage Management Plan to be approved before a planning permit can be issued for use or development of land for 'Industry' however the same requirement does not apply to an application for 'Earth and Energy Resources Industry.' The proposed access route is the only part of the proposed use which is to be within an area of Aboriginal Cultural Heritage Sensitivity.

In summary, Council has sought independent legal advice on the categorisation of the land use for this proposal and also received separate advice from Earth Resources Regulation which has also been given some weight. Council has made a decision on the categorisation of the proposed land use based on the best information available and has stated how this decision was made for transparency.



Aerial Imagery from IntraMaps 2019 showing the subject land with the extent of the Bushfire Management Overlay hatched red and area of Aboriginal Heritage Sensitivity hatched green.

### **Cultural sensitivity**

Pursuant to the *Aboriginal Heritage Regulations 2018*, a Cultural Heritage Management Plan (CHMP) is not required as the proposed development is an exempt activity or is a low impact activity as defined by the regulations.

The non-requirement of a CHMP is affected significantly by the categorisation of land use and this is addressed previously in this report.

### **Restrictions on Title (Covenants, S173 agreements and easements)**

The proposal does not breach any restriction on title.

### **Special Water Supply Catchments**

The land is within a Special Water Supply Catchment as listed in schedule 5 of the *Catchment and Land Protection Act 1994*.

### **Agricultural versatility**

The land is mapped as being of high agricultural versatility.

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## **REQUEST FOR FURTHER INFORMATION**

Pursuant to Section 54(1) of the Act, additional information was sought by Council during the assessment of the application.

The information sought was:

- Detailed plans
- Information about water usage
- Clarification of details originally provided
- Consent from the Public Land Manager to access through Bushland Reserve (when consent was not granted the plans were changed to show a different access route)
- The value of the proposed development
- Details on noise
- Information about number of workers
- Information regarding bushfire (later deemed not to be required due to land use definition being amended)
- Quantity of material to be stockpiled
- Whether certain types of approval are required from the Environment Protection Authority (EPA)

- Details regarding disposal of wastewater from portable toilet

The applicant submitted the required information and satisfied the request.

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## AMENDMENT TO APPLICATION

<b>Date of change</b>	<b>What was amended (i.e. plans, hours of operation?)</b>	<b>How was the amendment made?</b>
12 July 2020	Access was revised as consent to access the site through the adjacent Bushland Reserve could not be obtained.	The applicant submitted the revised plan in response to a further information letter.
13 November 2021	The plans were amended to slightly alter the layout and to include bunding around the activity area. The plans were originally sent to North East Catchment Management Authority directly without Council being aware. Council became aware at a later date when alerted to this fact in the referral response from North East Catchment Management Authority. While the changes were minimal they were enough to necessitate re-advertising and re-referring the application.	The applicant submitted the revised plan after public notice.

## REFERRALS & PUBLIC NOTIFICATION

### Referrals

The application was referred to the following authorities:

<b>Authority</b>	<b>Referral trigger(s)</b>	<b>Section and status</b>	<b>Response</b>
Country Fire Authority (CFA)	No referral trigger – The application was referred when the land use was categorised as being 'Industry' however when this land use was categorised as 'earth and Energy Resources Industry' there was no longer a trigger for referral.	Not applicable	Advice provided that the application does not require referral to CFA. A suggestion was made for a Emergency Management Plan to be prepared.

Environment Protection Authority (EPA)	No trigger for referral – advice requested at the discretion of Council	Not applicable	No objection. Advice was provided particularly in regard to dust and noise. Confirmation provided that no EPA approvals are required for the proposed use.
Goulburn Murray Water (GMW)	Clause 66.02-5 (Special Water Supply Catchment)	Section 55 - Determining	No objection subject to conditions.  The determination of this application was delayed when it was noticed by Council that Goulburn Murray Water had in their referral response included conditions which were inconsistent with the plans submitted and amounted to an inadvertent objection. After being alerted to this Goulburn Murray Water revised their referral response.
North East Catchment Management Authority (NECMA)	Not applicable – Council sought the views of NECMA at its own discretion due to the proximity of the proposal to waterways and the potential impact on waterways and also because the proposed access will	Not applicable	No objection subject to conditions.



	require a small bridge or culvert over a waterway.		
Earth Resources Regulation	Not a formal referral but advice sought regarding whether information requirements under Clause 52.08 are applicable.	Not applicable	Advice provided that the information requirements are not relevant to this proposal.

#### **Internal advice (including verbal advice)**

<b>Unit</b>	<b>Reason for advice</b>	<b>Response</b>
Technical Services	Drainage & access	No objection subject to conditions
Environmental Health	Toilet facilities – Proposed portable toilet	No objection.  Advice was provided that the disposal of effluent from portable toilets on work sites is not governed by Council.

#### **Public Notice**

Public notice was carried out by Council in accordance with Section 52 of the Act.

Notice was given in the form of letters to nearby owners and occupiers.

A total of 17 objections were received and are considered later in this report.

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#### **PLANNING CONSIDERATION**

##### **Planning Policy Framework**

The following clauses of the PPF are relevant to the assessment of this application:

*Clause 12.03-1S – River corridors, waterways, lakes and wetlands*

*Clause 13.02-1S – Bushfire planning*

*Clause 13.05-1S – Noise abatement*

*Clause 13.06-1S – Air quality management*

*Clause 13.07-1S – Land use compatibility*

*Clause 14.01-1S – Protection of agricultural land*

*Clause 14.02-1S – Catchment planning and management*

*Clause 14.02-2S – Water quality*

*Clause 14.03-1S – Resource exploration and extraction*

*Clause 14.03-1R – Resource exploration and extraction – Hume*

*Clause 17.01-1S – Diversified economy*

*Clause 17.01-1R – Diversified economy – Hume*

*Clause 19.02-6S – Open space*

### **Local Planning Policy Framework**

The following clauses of the PPF are relevant to the assessment of this application:

*Clause 21.03-1 – Biodiversity*

*Clause 21.03-3 – Rivers*

*Clause 21.05-2 – Water*

### **Zone**

*Clause 35.07 – Farming Zone*

### **Overlay(s)**

*Clause 44.06 – Bushfire Management Overlay*

### **Particular provisions**

*Clause 52.06 – Car parking*

*Clause 52.08 – Earth and Energy Resources Industry*

### **General provisions**

*Clause 65.01 – Approval of an application or plan*

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## **ASSESSMENT AGAINST PLANNING POLICY**

The proposal is for the use and development of a facility to process ore to extract gold. The proposal represents economic development and is supported by relevant policy which seeks to promote a diversified economy by supporting industry where appropriate. The proposal is also supported by policy addressing resource exploration and extraction which seek to support such activity within acceptable environmental standards. The proposal is for a processing site which will support a nearby resource exploration and extraction activity.

The key issue for this application is whether the benefits of the proposed use are outweighed by other issues. The other issues relevant to the proposal are whether the proposal is consistent or at least acceptable within the context of the local area and whether environmental risks can be mitigated to an acceptable level.

The subject land is located in the Farming Zone. The surrounding area is characterised by grazing animal production being the predominant land use with several dwellings also present within the vicinity of the subject land. The Bushland Reserve to the north is used for passive recreation and serves an environmental function.

The primary purpose of the Farming Zone is to support agricultural production and to protect agricultural land from becoming lost to agriculture. Other land uses such as dwellings or industry such as what is proposed in this application are land uses which are allowable in the zone provided they do not adversely affect agriculture and are compatible with adjoining land uses.

The proposal involves use of a very small area of agricultural land which would be removed from agricultural production. The area to be removed from agricultural production is considered negligible and the loss of this area is not something that makes the proposal inconsistent with the zone. Additionally there is justification for why the proposed land use should be allowed to be established in the proposed location. There is a clear economic imperative for the processing site to be located relatively close to the mine site. It is not as though the proposed activity has no relationship with the local area.

There are potential amenity and environmental impacts from the proposal that could limit agricultural production on surrounding land and could make the proposed use incompatible with surrounding land uses such as dwellings and agricultural uses and the use of the adjacent nature reserve. The potential amenity and environmental impacts relate to issues such as traffic, water supply, pollution to waterways, noise pollution, dust pollution and bushfire threat.

The scale of the proposed use is relatively minor with the application indicating that initially two workers would be involved with the potential to increase to four workers and the hours of operation are proposed to be up to six days per week during general business hours. The quantity of traffic that will be generated by the proposal is not concerning and is at a level that will easily be able to be accommodated by the local road network. Noise from traffic is also not a concern given the proposed hours of operation.

The impact of the proposal on groundwater resources is also not of concern because the application was referred to Goulburn Murray Water who are responsible for considering such matters. They did not raise any suggestion that a bore license would be inappropriate at the proposed site.

Similarly, the potential risk for the nearby waterways to be polluted by the proposed use through sediment or other pollutants washing into waterways has been mitigated to the satisfaction of relevant water authorities, Goulburn Murray Water and North East Catchment Management Authority. The proposal includes bunding to protect the waterway from sediment and the process does not involve chemicals which avoids further risk to the waterway.

Dust is unlikely to create off-site impacts as the process involves the use of water at all stages which will ensure that dust is suppressed. Dust suppression can easily be done by spraying whenever this is necessary and the separation distance between the proposed activity site and sensitive receptors in the local area ensure that the risk of dust causing unacceptable impacts is avoided. The Environment Protection Agency have advised that they do not have concerns about the risk of dust.

Noise impacts are the most likely element of the proposal to make it unacceptable and also the most difficult to assess. Limited reliable information has been put forward in the application addressing noise and the onus is on the application to demonstrate that the proposal will be acceptable. The application has not sufficiently demonstrated this to the extent that the application could be approved without significant conditions on a permit addressing noise.

The application indicates the volume of the generator in decibels but gives no such figure for the ball mill. These two sources of noise are likely to be continuous sources of noise that occur and are therefore of most concern in the assessment of this proposal. This is in contrast to intermittent and brief noise sources such as vehicles entering and exiting the site and loading and unloading material.

Some possible noise mitigation actions have been identified in the application. These include the ball mill being rubber lined, applying rubber lining to the bins to reduce noise when ore is unloaded and housing the generator in an acoustically treated shelter. These suggestions could potentially assist in mitigating noise but there is insufficient certainty as to whether the result will be acceptable. The hours during which the site will operate is also directly relevant to the assessment of noise.

The proposed operating hours are the maximum possible hours that the permit applicant proposes to operate so it is likely that the use will not typically operate for the full amount of time nominated. The proposal must nevertheless be assessed based on the expectation that the full hours nominated will be the typical operating hours which will occur. The operating hours proposed are within the time period which allows for maximum noise under the Environment Protection Regulations which sit under the Environment Protection Act 2017.

The possibility of noise impacts affecting the Bushland Reserve and the fauna which are found there is also relevant. It is not only an assessment of potential impacts to nearby dwellings and agricultural activities. The possibility of livestock being stressed by noise is also a risk.

There is concern regarding the possible cumulative effect of the two key noise sources identified, those being the ball mill and the generator. These two noise sources will operate at the same time because the generator provides power to the ball mill. The Environment Protection Authority (EPA) addressed noise in their referral response stating that they consider that their will be minimal noise impacts.

It is not clear however whether the EPA considered the ball mill or the generator only. There is sufficient doubt regarding whether noise levels will be acceptable to warrant further evidence of this prior to allowing commencement of the proposed use. The EPA advice does however give confidence that it is very likely that with appropriate and necessary measures to mitigate noise levels, the proposal can reduce noise levels to within acceptable limits.

To address noise concerns a condition shall be included on the permit requiring a Noise Management Plan to be submitted for approval by Council prior to the commencement of the use and for this Plan to be prepared by a suitably qualified professional in accordance with the methodology set out in the Environment Protection Regulations under the Environment Protection Act 2017. These regulations set out acceptable noise levels in various contexts. The condition would require the use to be carried out always in accordance with Noise Management Plan.

The approach of requiring such a condition to address noise concerns reflects that Council has a reasonable level of confidence that noise can be mitigated to an acceptable level but that it has insufficient confidence to be certain that the outcomes will be acceptable without further steps to ensure that the outcome is acceptable.

Subject to the condition proposed to address noise, impacts on surrounding land uses can be mitigated to an acceptable level to avoid land use conflicts.

The proposal does include machinery which could generate a bushfire threat. This issue can be easily mitigated by requiring fire fighting equipment on site and staff to be on site when the proposed use is operating, and this can be required by a permit condition. The proposal is not subject to any requirements related to the Bushfire Management Overlay because there is no trigger under the overlay for buildings and works associated with the proposed land use.

The proposal does not have an associated mandatory car parking requirement and therefore the necessary amount of car parking is at the discretion of the Responsible Authority. There is ample space at the site for parking based on the description of the proposed use and therefore parking is not an issue for this application and provision for car parking is considered satisfactory.

There are no specific requirements or exemptions relevant to the proposal under Clause 52.08 (Earth and Energy Resources Industry).

Overall the proposal is considered to be an acceptable land use in the zone which will not adversely impact on agriculture or existing land uses in the surrounding area or will do so to an acceptable level. Potential environmental risks can be mitigated appropriately through the design of the site and through appropriate permit conditions. It is therefore recommended that the application be approved subject to conditions.

## Consideration of submissions

A total of 17 objections were received. It should be noted that most of the objections were received during the first period of advertising of this application and before some minor amendments were made to the proposal and before a written response to the objections was provided by the permit applicant.

There were some objectors who made more than one submission and in most of those cases the additional submission/s were received after the application was re-advertised.

The grounds for objection and the Officer response is as follows:

<b>Ground of objection:</b>	<b>Response:</b>
<p>Community consultation</p> <ul style="list-style-type: none"> <li>• There has been insufficient community consultation in relation to this proposal.</li> <li>• The proposal represents a significant change in policy by Council.</li> <li>• There has been no dispute resolution process outlined.</li> <li>• A conciliation meeting should be held and the decision on the application should wait until such a meeting can be held (if COVID restrictions prevent this).</li> <li>• A site visit would assist the community to understand the proposal better.</li> <li>• Notification of the application did not extend far afield enough from the subject land.</li> <li>• Approval of the proposal without any community consultation is unlawful.</li> </ul>	<p>Notification of the application was given to owners and occupiers of nearby land including and to any dwelling within 1.5 kilometres of the proposed processing site. This was done effort to ensure that anyone affected would receive notice and is considered satisfactory. It is evident that the notification process resulted in significant community awareness of the proposal.</p> <p>The provision of notice to nearby owners and occupiers is the community consultation process required under the Planning and Environment Act 1987 and therefore having fulfilled that requirement, the decision by Council will not be unlawful.</p> <p>The proposal has come from a member of the public and must be assessed by Council. The existence of the application therefore does not represent any change in policy by Council. It is the responsibility of Council to apply relevant policy in the assessment.</p> <p>Council is aware that the permit applicant has invited some community members and objectors to visit the site and this may be helpful to those involved however this is not a process Council can require or that Council would necessarily seek to arrange.</p> <p>Council can hold a conciliation meeting but this is usually done where there seems a reasonable</p>

	<p>prospect of compromise being reached. Given the number and content of the objections, it was not deemed worthwhile to hold such a meeting.</p> <p>It is not always possible to resolve disputes but Council must consider all submissions before making a decision on the application.</p>
<p>Alleged commencement of proposal</p> <ul style="list-style-type: none"> <li>• The use of land described in the application has already commenced or has commenced but at a lower intensity than described in the application.</li> <li>• The physical infrastructure, buildings and equipment associated with the proposal have already been installed.</li> <li>• There has been a lack of enforcement in relation to the unauthorised activity.</li> <li>• The lack of enforcement action suggests Council has pre-determined the outcome of the application.</li> </ul>	<p>Council has not seen any direct evidence of the proposed activity operating however several reports have been received about this. It is clear that physical infrastructure, buildings and equipment are at least being stored at the proposed site without authorisation. This is an ongoing enforcement matter.</p> <p>In approaching enforcement matters some pragmatism must be used in weighing what action to take and when to take it. Continuing to monitor this matter while moving to determine the application is the best use of Council resources.</p> <p>There has been no pre-determination of the application and Council will take enforcement action as necessary in relation to this matter.</p>
<p>Standard of documentation</p> <ul style="list-style-type: none"> <li>• The application is supported by a poor standard of documentation which is difficult to interpret and lacks detail.</li> <li>• The proposal doesn't adequately address relevant planning policy.</li> </ul>	<p>Council acknowledges that the documentation associated with this application is not easy to follow and has been provided in a piecemeal manner as the application has progressed. Council is satisfied that sufficient information has now been provided to gain a sufficient understanding of the proposal to determine the application. There is always the option to require some clarification of details or additional details to be shown through conditions on permits.</p>

<ul style="list-style-type: none"> <li>• There is a poor standard of documentation in relation to environmental impact, waste generation and disposal, technical details of processing ore, water use and associated impact, noise generation and attenuation, dust generation and attenuation, traffic, power generation, impact on flora and fauna and emergency procedures.</li> <li>• An Environmental Management Plan should be required information as suggested in correspondence from Environment Protection Authority.</li> <li>• Information provided generally makes no reference to relevant standards, codes of practice or legislation.</li> <li>• There is no engineering design for the holding dam and the description on the plans of the 'platform' is misleading.</li> </ul>	<p>Generally it is in the interest of the permit applicant to make the application as clear as possible to ensure that any conditions associated with approval of the proposal are consistent with what is actually been proposed. Every opportunity has been given to the permit applicant to clarify details in regard to this application.</p> <p>In all applications there is the possibility that some aspect of the proposal may be misunderstood. It is important for Council to not get bogged down by this possibility and to make a decision based on the best understanding of the application able to be formed based on the information available.</p> <p>While it may assist to understand more specifically the technical details of the processing of the ore, traffic movements, noise sources and waste disposal amongst other things, that does not mean that the level of detail provided is insufficient or that a particular issue cannot be assessed or addressed in some way.</p> <p>The scale of a proposal is a relevant factor in considering what level of detail is essential and to weigh the potential risks associated with a proposal. This proposal is a small scale proposal for the type of use that is proposed.</p> <p>A permit applicant is required to adequately describe the proposal and often reference to compliance with standards, codes of practice or legislation will form part of what is submitted however it is ultimately for Council or other regulatory bodies to ensure compliance with such requirements where relevant.</p> <p>A permit application may include argument as to why a proposal is consistent with relevant planning policy however this is not essential and</p>
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	<p>Council can make an assessment of the proposal against relevant policy regardless.</p> <p>Specific engineering detail can be required as necessary as a condition of permit and is not necessarily required information at the planning permit application stage.</p> <p>The material submitted with the application includes a letter from the Environment Protection Authority suggesting an Environmental Management Plan be prepared. This letter was correspondence between the permit applicant and the Environment Protection Authority directly. The permit application included details of how the site and potential environmental impacts would be managed and Council is now satisfied that sufficient detail has been provided to allow for assessment of the proposal and that conditions on permit can address any outstanding matters.</p>
<p>Inappropriate use for the zone</p> <ul style="list-style-type: none"> <li>• The proposal is an industrial use and requires separation distance from residential areas.</li> <li>• The proposal should be located in an industrial zone or other more appropriate zone.</li> <li>• The proposal will cause impacts to dwellings in the surrounding area.</li> <li>• The proposal will cause direct impacts to agricultural uses occurring in the surrounding area including causing stress to stock, impact on shared water resources and reputational impact to local produce.</li> </ul>	<p>The proposal has been categorised as 'Earth and Energy Resources Industry' and the Wangaratta Planning Scheme does not include any mandated separation distance associated with the use. While residential uses are occurring nearby to the subject land, the surrounding area is characterised as primarily a farming area.</p> <p>The purpose of the zone is primarily to provide for the use of land for agriculture however other land uses in the zone are contemplated with the impact of the other uses on agriculture being important.</p> <p>The potential impact to agricultural uses in the surrounding area is best addressed through considering each type of possible amenity impact and this is done later in this section of the report.</p> <p>Any impact to surrounding agricultural uses that would impact the quality of produce and lead to</p>

<ul style="list-style-type: none"> <li>• The proposal can be approved but this does not imply that it should be approved.</li> <li>• The argument that the proposed activity area is not being used for agriculture does not create a justification for approval of the proposal.</li> <li>• The proposal will result in a loss of land available for agricultural production.</li> <li>• The proposal will not support or enhance agricultural production.</li> </ul>	<p>reputational impact for the area more broadly is a serious consideration but whether this is relevant flows from the analysis of each type of possible amenity impact.</p> <p>Dwellings in the zone are also to be protected from incompatible land uses and the possible impacts on dwellings are also best addressed through considering each type of possible amenity impact and this is done later in this section of the report.</p> <p>The size of the area to be used is relatively insignificant and therefore in the context of considering the loss of land available for agricultural production this is not an important factor. The potential impact on surrounding land is of far more consequence than the loss of the proposed activity area itself.</p> <p>It is clear that the use will not support or enhance agricultural production but it is also considered that it will not have any detrimental impact in the opposite direction either and therefore is neutral on that decision guideline.</p> <p>It is agreed that the lack of current use of the proposed activity area for agriculture is not a factor which provides any substantial weight to whether the proposal should be approved.</p>
<p>Inconsistency with planning policy</p> <ul style="list-style-type: none"> <li>• The proposal does not address the Wangaratta Industrial Land Use Strategy.</li> <li>• Economic benefits from proposal will be short-term but with long-term impact to farming.</li> <li>• Mining related activities are incompatible with tourism in the local area.</li> </ul>	<p>There are relevant state and local planning policies addressing economic development and sitting underneath that is tourism also. The potential for a use such as is proposed to impact on farming and tourism is acknowledged. Provided that amenity impacts are properly addressed there should be no detrimental impacts to economic development in the area, in either the farming or tourism sectors.</p> <p>The Industrial Land Use Strategy is not relevant to the proposal. This strategy relates to industrial zoned land and other urban zoned</p>

	<p>land in the Wangaratta urban area. This strategy does not provide any guidance regarding industrial uses outside of urban zones.</p>
<p>Environmental impacts and monitoring</p> <ul style="list-style-type: none"> <li>• Some form of ongoing monitoring is necessary because the permit applicant has stated that they are not professional.</li> <li>• A range of potential environmental impacts which could require monitoring were identified including waterway impacts, groundwater impacts, dust impacts, noise impacts, waste products and disposal and traffic impacts.</li> <li>• A study is required prior to commencement of the proposed use to create a baseline for ongoing monitoring of environmental impacts.</li> <li>• The lack of environmental information provided indicates a lack of understanding of environmental risks.</li> </ul>	<p>The level of environmental risk associated with the proposed use is relatively low because of the small scale of the proposal. It is not considered justified to require any special monitoring to occur in relation to the use.</p> <p>Relevant government agencies including Council have a responsibility to ensure compliance with relevant laws and requirements and have the power to investigate such matters if that becomes necessary. This includes enforcement of permit conditions.</p>
<p>Waterway impacts</p> <ul style="list-style-type: none"> <li>• Pollution of nearby waterways could occur as a result of the slurry dam overflowing during heavy rain.</li> <li>• Pollution of nearby waterways could be</li> </ul>	<p>The application makes clear that the process will not involve any chemicals therefore it is not possible for chemicals to pollute the nearby waterways.</p> <p>The amendment to the application made after notice of the application was first given, introduced bunding to the site and this design was negotiated with North East Catchment Management Authority. Council accepts the</p>

<p>caused by flooding of the site.</p> <ul style="list-style-type: none"> <li>• Chemicals from the process may pollute nearby waterways.</li> <li>• Excessive stockpiling of ore could lead to impacts on waterway.</li> </ul>	<p>advice of North East Catchment Management Authority that the proposed bunding will prevent any pollution to the waterways even in flood events.</p> <p>Stockpiling of unprocessed ore will be required to be located such that stormwater runoff from those areas will wash into the slurry dam and this was a matter considered by Goulburn Murray Water in particular.</p>
<p>Groundwater impacts</p> <ul style="list-style-type: none"> <li>• It is unclear what amount of water is to be taken from groundwater resources.</li> <li>• It is unclear whether it is proposed to transport water to the site or to obtain water using a bore.</li> <li>• Obtaining groundwater to enable the proposed use will adversely impact availability of groundwater in the surrounding area by lowering the water table, affecting residential and agricultural water availability.</li> <li>• The quantity of water required for the proposed use is greater than described in the application.</li> </ul>	<p>The application indicates that a bore is proposed and that a maximum of 3 megalitres per year would be taken from the bore. The application also mentions transporting water to the site but Council understands that this water being brought in is for initial setup of the site only.</p> <p>Any water brought to the site would need to be clean water and this can be addressed with a condition on a planning permit.</p> <p>Council has no reason to doubt the estimated water usage given by the permit applicant and do not consider the claim that the actual required amount of water is greater to hold any weight. If additional water is required than what can be efficiently or legally obtained then that is a severe problem for the permit applicant but not something that would concern Council.</p> <p>Goulburn Murray Water has considered the proposal and have not objected to the proposal subject to conditions. It is evident from the conditions required by Goulburn Murray Water that authorisation is required for the installation of a bore but this aspect of the proposal has not been identified as an area of concern. Council will follow the advice of Goulburn Murray Water regarding management of groundwater resources.</p>
<p>Dust impacts</p> <ul style="list-style-type: none"> <li>• The proposed new crossover providing access</li> </ul>	<p>The proposed crossover location is not considered likely to result in any significant level of dust that would be beyond what would</p>

<p>to the site from Murmungee Road will generate dust which will affect nearby dwellings.</p> <ul style="list-style-type: none"> <li>The proposed activity will generate dust through its process which will affect the surrounding area.</li> </ul>	<p>normally be expected long such a road. The proximity of this crossover to dwellings is reasonable and no significant impact on those dwellings could be reasonably expected.</p> <p>The applicant has indicated that unprocessed ore will be brought to the site in a wet condition and that each stage of the process involves water. It is therefore very unlikely or will be rare for dust to be a concern. The applicant has indicated that misting will be used to suppress dust where necessary. This issue can be addressed satisfactorily by way of permit condition.</p>
<p>Noise impacts</p> <ul style="list-style-type: none"> <li>The noise generated by the proposal will be constant whereas typical uses in the surrounding area produce intermittent noise.</li> <li>The assurances given and information given regarding noise to be generated by the proposal and noise attenuation is not sufficient or reliable.</li> <li>The proposed working hours are excessive and will result in noise impacts for a significant proportion of the time.</li> <li>The landscape allows for noise to carry through the valley easily.</li> <li>The loading and unloading of ore, the tumbling motion of the ball mill and the noise of the generator are identified as being specific noise sources of concern.</li> </ul>	<p>Council agrees that there is a significant distinction between noise that is intermittent or irregular and noise which is continues for long periods of time. It is understood that the use of the generator and the ball mill are noise sources which would typically operate continuously for significant periods of time whilst the loading and unloading of truck loads of ore would be noise sources that would usually last only seconds.</p> <p>It is also agreed that the surrounding area is not known to have any constant noise sources similar to those which are part of the proposed use.</p> <p>The extent to which noise carries through the landscape is significant and will be particularly relevant at times when other noise in the local area is low. This is relevant to the proposed hours of operation which ensure that the use will be occurring during business hours. The proposed hours of operation are all within the hours defined as 'day' hours in Environment Protection Regulations under the Environment Protection Act 2017.</p> <p>Council cannot reasonably gauge noise levels from reports of local people who claim that the use has been operating and has given them a preview of the expected noise levels. The ability</p>

<ul style="list-style-type: none"> <li>• An acoustic assessment should have been required information to be submitted with the application.</li> <li>• The proposed use has already been occurring at times and this has given a preview of the noise generated by the process and the level of noise was significant enough to warrant going inside.</li> <li>• Vehicles entering and exiting the site in association with the proposed use will generate noise impacts.</li> <li>• The Bushland Reserve is only a noise buffer on one side of the proposed use.</li> </ul>	<p>to hear noise while outside a dwelling does however not automatically mean that the noise is unreasonable.</p> <p>The noise of vehicles entering and exiting the site is considered to be an intermittent noise source and relatively minor and unlikely to cause adverse impacts.</p> <p>Vegetation in the Bushland Reserve does not have any significant noise attenuation properties and therefore it is unlikely this vegetation will provide any assistance to reduce noise.</p> <p>The information given about the noise generated by the generator is understood to have been taken from the manufacturer's specifications and is considered useful. Other information submitted regarding noise is unable to be given any weight due to it not being studied in a methodical way. Overall there is limited assurance that noise levels will be acceptable, particularly with regard to the ball mill for which noise levels have not been indicated.</p> <p>An acoustic assessment would have potentially provided assurance that noise levels would be acceptable and for the permit applicant could have eased an aspect of the proposal which is of significant concern. Council requested additional information regarding noise and alerted the permit applicant that this was a significant area of concern and that an inability to demonstrate acceptable noise levels could be detrimental when it comes to assessment of the proposal. To demand an acoustic assessment could be an onerous requirement but it clearly could have assisted assessment of the proposal.</p> <p>Council can address noise through a permit condition requiring that acceptable noise levels be demonstrated by an acoustic study.</p>
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<p>Waste products and disposal</p> <ul style="list-style-type: none"> <li>• The waste product from the process will result in an environmental impact.</li> <li>• The waste product may be retained on site and chemically processed.</li> <li>• Concern regarding how waste will be managed.</li> </ul>	<p>Council considers that the application adequately explains that the waste product will be removed from the site. This is an acceptable environmental outcome and it is further understood that the waste product is in commercial demand which would ensure that there is somewhere it can be removed to. The application is clear that no chemicals are proposed to be used. The proposed management of waste is expected to prevent any environmental impact.</p>
<p>Traffic impacts</p> <ul style="list-style-type: none"> <li>• Fuel being brought to the site will generate additional traffic.</li> <li>• The proposed use will generate excessive demands on the local road network.</li> <li>• The increased use of Orton Road to transport material from the mine site to the proposed processing site will create noise and damage to that road.</li> <li>• Access from Buckland Gap Road would be more appropriate as Murmungee Road is unsuitable.</li> </ul>	<p>The scale of the proposed use and the types of vehicles to be used and the number of trips required will be well within what the existing local road network can accommodate.</p> <p>Murmungee Road is an entirely suitable road to provide access to the subject land.</p> <p>The potential impacts of trucks using Orton Road are beyond the scope of this assessment because whether or not this application had been lodged, the mine site which was separately approved would still need to transport material away from the mine and the only feasible route for that is already via Orton Road. The proposal for the processing site is not considered to make any difference to Orton Road.</p>
<p>Aesthetic impact</p> <ul style="list-style-type: none"> <li>• The proposal may have an aesthetic impact on the local area.</li> </ul>	<p>The proposed activity area is relatively small in scale and is to be sited in a relatively hidden location. It is unlikely to significantly impact the aesthetic values of the local area.</p>
<p>Bushfire risk</p> <ul style="list-style-type: none"> <li>• The proposal could generate a risk of starting a bushfire.</li> </ul>	<p>The proposal is not subject to any requirements under the Bushfire Management Overlay however bushfire risk is still a relevant consideration. The potential for the proposed use to generate a bushfire can be satisfactorily addressed by requiring fire fighting equipment</p>

<ul style="list-style-type: none"> <li>• There is a lack of detail on emergency procedures for fire.</li> </ul>	<p>be stored on site and for supervision of the site at all times it is operating.</p>
<p>Impacts on adjacent nature reserve</p> <ul style="list-style-type: none"> <li>• The Bushland Reserve immediately to the north of the subject land may be affected by the proposal.</li> <li>• The proposal may lower the water table and affect the springs and waterways which exist in the Bushland Reserve and support the ecosystem of the reserve.</li> <li>• The proposed site is too close to the Bushland Reserve and will impact flora and fauna of the reserve.</li> <li>• Vibrations from the proposed use may impact the Bushland Reserve.</li> <li>• The proposal undermines the objectives and achievements of the local Landcare Group in relation to the Bushland Reserve.</li> <li>• Humans enjoying the reserve will be subjected to noise.</li> </ul>	<p>Council appreciates being alerted to the significance of the Murrumbidgee Bushland Reserve as an environmental asset. The protection of this reserve is important and a relevant consideration.</p> <p>Impacts on the water table rely on the advice of Goulburn Murray Water who have not raised concerns with the prospect of a bore license therefore the water impact is considered acceptable.</p> <p>The impact on flora and fauna that live or pass through the reserve is difficult to quantify. Impacts to water in the reserve would be one possible factor that would influence this but these matters have been satisfactorily addressed. Noise and vibrations from the proposed use is the only other environmental impact considered to be a threat to the flora and fauna.</p> <p>Fauna who would frequent the reserve may not do so due to noise and vibrations and this would then impact the flora. The level of noise and vibration is however not likely to be at a level which creates such an impact on flora and fauna.</p> <p>A condition requiring an acoustic study demonstrate acceptable noise levels is to be placed on the permit to address impacts on nearby dwellings and by proxy this study will ensure acceptable noise levels for the reserve also.</p> <p>A higher noise level is considered acceptable for humans enjoying the reserve than for dwellings.</p>
<p>Aboriginal Heritage</p>	<p>The proposal is not bound by any requirements under the relevant legislation addressing</p>



<ul style="list-style-type: none"> <li>• The proposal may impact Aboriginal Heritage.</li> </ul>	<p>Aboriginal Heritage. The land use categorisation is critical to that being the case.</p> <p>The potential impact on Aboriginal Heritage is something that could be addressed if it became necessary however the only part of the proposal within an area of Aboriginal Cultural Heritage Sensitivity is the proposed access route and the works involved in this are relatively minor.</p>
<p>Precedent for the area</p> <ul style="list-style-type: none"> <li>• It is necessary to impose conditions to ensure that the scale of the use does not grow over time.</li> <li>• The plans do not reflect the future scale of the operation the permit applicant proposes.</li> <li>• The site may be sold to someone with less concern about the local community.</li> <li>• Proposal may lead to proliferation of similar land uses in the local area.</li> </ul>	<p>Approval of the proposal does not necessarily make it any more likely that similar land uses would also be approved in the local area. Such applications would depend on their specific circumstances. Likewise any future proposal to increase the scale or intensity of what is currently proposed will be considered if such a future proposal occurs.</p> <p>Council must restrict its consideration of this matter to what is actually being proposed in this application.</p> <p>Any possible future transfer of the use of the land to a different manager is entirely a matter for the business and the same requirements would apply to whoever runs the business. The assessment of the application has not been affected by any assessment of the qualifications or skills of any particular person.</p>
<p>Land value and compensation</p> <ul style="list-style-type: none"> <li>• The proposal will adversely impact land values in the local area.</li> <li>• There should be a compensation scheme tied to monitoring of the use.</li> </ul>	<p>It is beyond the scope of planning to address land values and instead it is those potential amenity impacts or land use conflicts that must be assessed. Often these potential impacts are perceived to affect land values but these impacts are one step removed from considering land values directly.</p> <p>There is no ability for Council to organise a compensation scheme. It is not a warranted requirement regardless.</p>

Although the objections are relevant, they ultimately aren't strong enough to warrant refusal of the application.

## **CONDITIONS DISCUSSION**

The conditions for this permit need to control the scale of the use to what is being proposed. This has been addressed by including conditions limiting the operating hours and number of workers. The total quantity of material to be stockpiled and processed at the site is difficult to easily measure and therefore applying permit conditions setting upper limits to those amounts is considered problematic.

The limiting of locations where materials are to be stored is more easily measurable and is well covered by North East Catchment Management Authority and Goulburn Murray Water conditions. The effect of these limits and the limiting factor of the actual equipment forming the setup of the site are enough to ensure the scale cannot increase to an unreasonable level without amendment to the permit being required. It is also not necessary to restrict the size of vehicles accessing the site as there is no risk to the community or amenity arising from the possible use of larger trucks and the layout of the site would appear to make it suitable for smaller trucks anyway.

A Noise Management Plan requirement is a key condition that allows for this application to be approved. This condition provides for certainty that noise levels will be acceptable which is something that cannot be assured without such a condition. Other possible environmental and amenity impacts such as dust and bushfire risk have been addressed by simple conditions whilst potential impact on waterways or groundwater is addressed through conditions by North East Catchment Management Authority and Goulburn Murray Water.

A condition requiring amended plans to be submitted and then endorsed prior to commencement of the approved use and development will also be included on the permit. This is to require a new elevation plan of the ore bin alone. The plans upon which a decision is being made for this application show the ore bin and crusher on the same elevation plan. The crusher is no longer part of the proposal and therefore endorsing that elevation plan showing both the crusher and ore bin would be inappropriate.

The CFA suggested that the applicant prepare an Emergency Management Plan – however they did not request it as a permit condition. The absence of a BMO trigger also adds to the conclusion that the CFA's suggestion is simply that – a matter for the applicant to consider.

Given the scale of the proposal – control of traffic numbers per se is not necessary, Officers are confident that the frequency of vehicle numbers will not be excessive. If the operation was of a larger scale, such conditions may be considered appropriate.

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## **CONCLUSION & RECOMMENDATION**

The application is consistent with the Wangaratta Planning Scheme and is suitable for support. All submissions have been considered but they are ultimately not strong enough to warrant a refusal of the application. It is recommended that a Notice of Decision to Grant a Permit be issued with appropriate conditions.

## **Recommendation**

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**That Council issue a Notice of Decision to Grant a Permit in accordance with Section 64 (1) & (2) of the *Planning and Environment Act 1987*, and that the notice include the conditions set out in Attachment 1.**

**Planner: Jack Pickering**

**Date: 22 February 2021**