

ORDINARY COUNCIL MEETING, 9 NOVEMBER, 2009

BUSINESS

1. CONSTRUCTION TRAFFIC MANAGEMENT PLAN FOR MANGOOLA MINE DEVELOPMENT (DA 74/2008)

The Manager Technical Services reports:

i) SYNOPSIS:

To consider an Application from Xstrata Mangoola Pty Ltd to commence site operations for the Mangoola Coalmine prior to the completion of the Wybong Road upgrade such as listed in the Development Consent for the Coalmine Development .

ii) DATE OF REPORT: 2 November 2009

iii) REPORT:

Background

The Minister has approved the Anvil Hill Mine (Mangoola) and has approved amendments for Early Works.

Minister's Amended Consent reads in part as follows:

5. *Delete condition 50 of schedule 3 and replace with:*

50. *The Proponent shall upgrade:*

- (a) *the Bengalla Link Road intersections with Wybong Road and Denman Road, to the satisfaction of the RTA and Council, in conjunction with the construction of the Bengalla Link Road extension and prior to carrying out any development on site apart from the defined early works;*
- (b) *Wybong Road and its intersection with the mine access road to the satisfaction of Council, prior to carrying out any development on site apart from the defined early works;*
- (c) *the Golden Highway/Wybong Road intersection to the satisfaction of the RTA, prior to carrying out any development on site apart from the defined early works, unless otherwise agreed by the Director-General;*
- (d) *lighting and signposting of the relevant intersections to the satisfaction of the RTA/Council, in conjunction with the relevant intersection upgrades; and*
- (e) *all bus stops affected by the proposal to the satisfaction of Council, prior to carrying out any development on site apart from the defined early works.*

51. *Prior to carrying out any development on site, the Proponent shall prepare (and subsequently implement) a construction traffic management plan for the project to the satisfaction of the RTA and Council; and following approval, implement the plan to the satisfaction of the RTA and Council. The plan shall include specific measure in relation to:*

- *speed limits, warning signage, barriers and repairs on Wybong Road, based on a detailed road safety audit;*

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- *restriction of project-related traffic to the nominated access routes, including an effective driver education and self-policing penalty system;*
- *restriction of heavy vehicle access during school bus hours; and*
- *consultation with the local community and relevant agencies regarding the project and traffic management measures.*

The Council and Xstrata signed a Memorandum of Understanding (MOU) in an attempt to detail works required to comply with the conditions and outline the standard of road construction that would satisfy Council. At Clause 4 in the MOU some flexibility was built in, due to the unknown (at that time) contingency of securing road widening and permits to enter.

It was also seen that Xstrata had no control of the building of the Bengalla Link Road and there may have been no sense in completing the upgrade work if it could not be used. As it turned out, Bengalla got on with their work and completed the Bengalla Link Road within two months of the original target; and, as it has transpired, well ahead of the work on Wybong Rd.

Discussion of the proposal

Xstrata Mangoola has lodged a Construction Traffic Management Plan (CTMP), for which it is seeking approval, that, in part, identifies that significant work will commence on mine development prior to the completion of the Wybong Road upgrade.

The question arises whether, as the road construction work is not complete, should the MOU then be sufficient surety for Council to sign off that Condition 50 has been satisfied.

Council has had this CTMP for some time. During this time, it has become apparent that Xstrata-Mangoola Mine plans to commence mine development as soon as possible with an increase in traffic from around January 2010. The Wybong Road Upgrade works are not scheduled for completion until April 2010.

Xstrata has completed an acceptable level of consultation and exhibition as determined by Department of Planning; and have incorporated any relevant matters arising into the final draft of the proposed CTMP.

Council must now consider its position in regard to the Ministers Consent and the MOU. If the work on Wybong Road was complete it would then be a technical matter for staff. However, as the work is incomplete Council's satisfaction can only lie in the confidence that Council has that the work will be completed in accordance with the terms of the MOU.

The Traffic Management Plan has been checked by staff and it has been referred to members of the Traffic Committee for technical advice. (Note: It does not require LTC approval). It is technically workable and could be approved, subject to Council being satisfied as to the surety issue. The plan proposes that mine development phase traffic be managed through the incomplete Wybong Road works sites.

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The Department of Planning has confirmed that it is now satisfied with the extent of public consultation which Xstrata Mangoola has undertaken in regard to this matter.

Specific Traffic Control Plans (for Traffic Control at Worksites) are approved on a site by site basis and are subject to site conditions and can only be approved by persons with an RTA certificate. These are also, by nature, changed to suit the construction phase, and may be reviewed after incidents etc. It is therefore not feasible to amend the CTMP, or to embark on further consultation, each time the plans for Traffic Control at Worksites are adjusted. The CTMP, should be viewed as the 'big picture'.

However, Xstrata advise as per their letter attached:

This is a reasonable and workable plan although it will not satisfy all of Council's constituents and there are likely to be further objections in regard to this matter. However, it is thought to be in the best interest of the community as a whole and it is recommended that council supports the request.

Failing approval Xstrata then has two options:

1. To complete the Wybong Road upgrade works at a faster pace; or
2. Obtain a further modification to the consent.

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| iv) | FINANCIAL IMPLICATIONS: | Not Applicable |
| v) | POLICY IMPLICATIONS: | Not Applicable |
| vi) | MANAGEMENT PLAN IMPLICATIONS: | Not Applicable |

ACTION RECOMMENDED:

That the Application for Xstrata Mangoola Pty Ltd to undertake site operations for its Mangoola Coalmine prior to the completion of the Wybong Road upgrade as listed in the relevant conditions of development consent, be supported by Council subject to the conditions and agreement made under the Memorandum of Understanding previously adopted by the Company and Council and in accordance with the Traffic Control Plan for work on the Wybong Road and the implementation of the commitment given by the Company in their letter dated 29 October, 2009, in a timely manner to the satisfaction of Council.

Moved:.....

Seconded:

Report prepared by

Peter Higgins

Accepted for inclusion into Business Paper

Steve McDonald

Appendix A – letter from Xstrata dated 29 October, 2009

Appendix A – letter from Xstrata dated 29 October, 2009



29 October 2009

88-XMC-510-0034-LEO-0175

Muswellbrook Shire Council
PO Box 122
Muswellbrook NSW, 2333

Attention: Mr Steve McDonald

Dear Steve,

Re: WYBONG ROAD EAST

Work on upgrading Wybong Road East as required by Condition 50 (b) of the project conditions of consent is progressing well and we are planning to have this work practically completed by April 2010. We are also close to satisfying all other requirements of Condition 50.

To ensure the satisfaction of Council in regard to the works being carried out along Wybong Road East, we confirm our commitment to undertake the following.

1. Maintain the existing road section to ensure the safety of the travelling public and minimise inconvenience.
2. Undertake a road safety audit and implement the recommendations at each new stage of Wybong Road East upgrade.
3. Maintain Insurance provisions of the Work Endorsement Deed.
4. Review the safety audit undertaken for the design process and implement elements that can be implemented as the work progresses.
5. Remove tree stumps within the clear zone.
6. Provide Council with an updated program of works that ensures the work will be practically complete by April 2010.
7. Respond quickly to Council requests for maintenance or safety works that may arise during the upgrade works period.
8. Bring in oversize loads from the Sandy Hollow end of Wybong Road under escort as required.
9. Introduce a strict regime of traffic movements as outlined in our internal procedures as discussed.

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10. Section 5 of the MOU as follows

5. ROAD SECTION – WYBONG WEST

(b) For the use of the Road Section after completion of Early Works as contemplated by this clause.

- Review of culvert and causeway widths, notwithstanding that MSC acknowledges any Road Upgrade Works will not require increase to the width of the causeway on the western end of this Road Section.
- Review of width of shoulders on curves and crests

The use of this specification determines a scope of work for Road Upgrade Works for this Road Section which is not expected to exceed the relevant Expected Cost.

If the Independent Road Safety Review determines that other work is required such as increases to shoulder widths, widening of the road seal on some curves, increases to the width of culverts then the Road Upgrade Works may be completed while the road is in use by Xstrata in accordance with the Program of Works.

During the use of the Road Section by Xstrata for Early Works, Xstrata will undertake ongoing Road Maintenance.

Following completion of the Road Upgrade Works, Xstrata will provide a 12 months defects warranty period for the work undertaken by Xstrata.

On completion by Xstrata of the use of this Road Section (either on completion of Early Works or a further period approved by MSC) , Xstrata will undertake a final Condition Survey of this Road Section and compare the survey results to the initial Condition Survey. This comparison, known as a dilapidation survey, will be used to determine the scope of work required to be undertaken by Xstrata to restore the Road Section to the condition established from the initial Condition Survey. Xstrata will complete the restoration works in a timely manner.

In relation to this Road Section only, the parties will agree on a method of determining the cost to MSC of reduced pavement life as a consequence of the use by Xstrata prior to the opening of the Bengalla Link Road. Once the parties agree on a fair and reasonable method of calculation, Xstrata will compensate MSC for this cost.

We note that Council did acknowledge the possibility of the need to commence mine development (“*Construction*”) prior to the completion of all of Condition 50 when signing the MOU. This was discussed as it was un-clear what works would be delayed by acquisition and that there was, at the time, no clear indication of when the Bengalla Link Road would be completed.

Our commitments in the MOU are reconfirmed and extend to cover the additional use of the west section of Wybong Road until practical completion of the upgrade work on Wybong Road East.

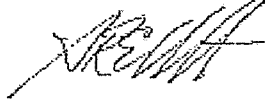
There have been no major delays and with the commitments we have made to the safety of the travelling public and our workers, Council should be satisfied the work will progress to completion.

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In addition to the requirements of Condition 50, Condition 51 requires a Construction Traffic Management Plan to be approved by the RTA and Council in order to allow development work on site to progress apart from the defined Early Works. The Construction Traffic Management Plan has been approved by the Council Traffic Committee and separately by the RTA. We are therefore seeking council approval of our Construction Traffic Management Plan prior to entering the Construction phase of the project.

We appreciate Council's cooperation in allowing this major project to proceed.

Yours faithfully
Xstrata Mangoola Pty Limited



Scott Elliott
Project Manager