



**muswellbrook  
shire council**

**OFFICE OF THE MAYOR**

Your reference:

Our reference: 170.005a

8 January 2010

The Project Manager  
Xstrata Mangoola Pty Limited  
PO Box 495  
Muswellbrook NSW 2333

Attention: Scott Elliot

Dear Sir,

**RE: CONSTRUCTION TRAFFIC MANAGEMENT PLAN – THE RECINDING OF COUNCIL’S RESOLUTION OF 9 NOVEMBER 2009 – ATTENDANT MATTERS**

It is not clear to me, at this stage, whether or not XStrata Mangoola Pty Limited (the **Company**) had permission to make use of that part of Wybong Road between the Golden Highway and the mine entrance for the purpose of construction traffic of the type involved in the incident that occurred on 7 January 2010.

Condition 51 of the conditions attaching to the mine approval made pursuant to Section 75J of the *Environmental Planning and Assessment Act 1979* provides, relevantly:

Prior to carrying out any development on site, [the Company] shall prepare (and subsequently implement) a construction traffic management plan for the project to the satisfaction of the RTA and Council.

I can find no resolution of Council approving such a construction traffic management plan (although a more thorough investigation of our records may prove one exists). I have a copy of a draft plan dated August 2009 – the adoption of that plan by the Council is not evident on its face. Relevantly, that plan provides at 2.3.1:

The Mangoola Coal Project will be accessed primarily by the recently extended Bengalla Link Road, and the upgraded section of Wybong Road between the Bengalla Link Road State 2 extension and the Northern Access Road (Wybong Road East). The majority of site related traffic including construction vehicles (equipment and earth material haulage), heavy vehicles and light vehicles would use this access route ... traffic from the west would enter the site from the Golden Highway and along Wybong Road.

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I read the words “including construction vehicles (equipment and earth material haulage), heavy vehicles and light vehicles” as meaning **all** vehicles within those classes because if that were not so that phrase in the document would be redundant. Precisely what traffic that leaves to access the site from the west is not clear although construction vehicles not carrying equipment or earth material (such as construction vehicles required to be used in the onsite construction) may be one such class. In all events traffic accessing the site from the Golden Highway end of Wybong Road is limited to traffic coming ‘from the West’.

The situation is somewhat muddled by a document of 29 October 2009 from Xstrata to the Council which confirms a commitment (as part of some sort of application) to:

Bring in oversize loads from the Sandy Hollow end of Wybong Road under escort as required.

That document is incorporated into a motion of the Council of 9 November 2009 which provides:

That the Application for Xstrata Mangoola Pty Limited 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.

The Memorandum of Understanding referred to is a document dated 8 July 2008 and which contains, amongst other things, a term and condition that a Traffic Management Plan be developed<sup>1</sup>. In any event that is a requirement of condition 51 of the consent. For reasons I have come to (the apparent absence of an adopted plan and the content of the plan insofar as traffic access from the West is concerned) the letter appears to me to be a distraction. Nor is it clear if Council ever resolved on or conveyed its satisfaction to the Company in order to fulfill the last requirement of Council’s resolution.

Quite apart from the apparent uncertainty in relation to the Company’s permission to make use of the Wybong Road west for construction traffic, there appears to me compelling reasons to rescind the Council’s resolution.

Firstly, the incident appears to have altered the conditions of the road. Particularly, deposits of diesel appear to have been left insitu on the road surface. Secondly, I cannot be satisfied, as I must, that the present arrangements (particularly the manner of escorting over dimensioned vehicles) are safe in light of what has now occurred. Although a detailed finding will in due course be provided (and I do not wish, by this letter to prejudice a finding which will be independently arrived at) a preliminary assessment discloses some combination of speed, inattention or inobservance by the lighter vehicle of the heavier vehicle involved in the incident).

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<sup>1</sup> Clause 5(e).

For those reasons I have resolved pursuant to section 226 of the Local Government Act 1993 (**LGA**) to exercise the policy-making functions of the governing body of the council between meetings of the council as follows:

1. Council rescinds its resolution of 9 November 2009; and
2. That the Application for Xstrata Mangoola Pty Limited 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:
  - (a) the terms and conditions of the Memorandum of Understanding dated 8 July 2008;
  - (b) the drafting of a (fresh) Construction Traffic Management Plan to the satisfaction of Council;
  - (c) the removal of diesel deposits from Wybong Road.

In respect of the necessity required by section 226 of the LGA I rely, without limitation, on the need to protect the public from harm and ensure public health and safety.

Please do not hesitate to contact the undersigned in relation to the foregoing.

Yours faithfully,



**MARTIN RUSH**

Mayor of Muswellbrook

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(cm)