



Wybong Action Group ^{Incorporated}

Phone: 02 65478090 (ah)
Email: actionwybong@bluemaxx.com.au
Mail Address: C/ 740 Ridgeland Road
Manobalai 2333

All Councillors
Muswellbrook Shire Council

Summary of Public Submission during Public Participation

Regarding:

On Invitation: DA 57/2008 Miners Estate,

By Application: XMC Early Works - Wybong Road Roadworks and Staff Reports to Council.

1 DA 57/2008 Miners Estate,

Cases: Australian Lifestyle Corporation Pty Limited v Wingecarribee Shire Council [2008] NSWLEC 284

Platino Properties Pty Limited v Lane Cove Council [2008] NSWLEC 288

Tresize Investments Pty Limited v Albury City Council [2007] NSWLEC 686

Wygiren v Kiama Municipal Council and Anor [2008] NSWLEC 1233

Muswellbrook has a limited Urban Buffer Zone separating the urban environment from Primary Production and Mining and Industrial land uses. The proposed Miners Estate is located within the Urban Buffer Zone. The buffer zone is being replaced by the RU1 (Rural – Primary Production) and Environmental Management (E3) Zones. The RU1 (Rural – Primary Production) and Environmental Management (E3) Zones further restrict the land uses and developments that were permissible.

The Public Exhibition and submission period of MLEP 2008 has concluded and Gazettal of MLEP 2008 is imminent. The existing rural visage of the Urban Buffer Zone shows the absence of any buildings or urban style improvements in the zone and notable absence of man-made intrusions into the skyline when the land is viewed from roads or other public places but the Miners Estate is to be located along the top of the ridgeline south of Skellatar Stock Route. (16) two-storey accommodation blocks of 24 motel rooms and (3) single storey blocks of 6 motel rooms each each with air-conditioning and ensuite surrounded by a full veranda for outdoor communal relaxation will create noise. A separate amenities building - kitchen, mess hall, service of alcohol, recreation facilities, 400 persons, 402 rooms, 406 parking spaces, 4 bay bus terminal, Internal and external footpaths, extensive site landscaping, vegetation screen to Council Sewage Treatment Plant does not indicate a passive, un-noticeable, small scale, noise free development. The developer seeks 10 year renewable consent which will become established as a permanent operation in the mind of the Community. Contracted Management will be responsible for all accommodation bookings and allocations including timetabling for shift workers, daily cleaning and maintenance of all rooms, providing and maintaining leisure facilities and catering. The

developer expects that workers who are starting a shift will travel by bus.

Abutting the northern end is the Muswellbrook Sewerage Treatment Works. The Muswellbrook Sewerage Treatment Works uses a series of ponds that are open to the atmosphere for the treatment of sewerage. Strong offensive odours are emitted and detected for distances up to several hundred metres.

The definition "relocatable home hostel" is disputed as each individual prefabricated unit is in fact a multi-dwelling component of a larger multi-dwelling block. Regardless, the development of a relocatable home hostel is permissible ONLY with consent of the Council as in Clause 8 of MLEP 1985 IF the development is consistent with the objectives of the zone.

The objectives of the zone are a buffer of rural character, accommodating development of a rural character that will provide or maintain an appropriate rural setting for the town of Muswellbrook. The proposed development is inconsistent and antipathetic to the achievement of the zone objectives. The urban buffer at the western end of town which is essentially rural in character will be diminished by the siting of the proposed development within the buffer zone and dominating the buffer zone from its location at the top of the buffer zone ridge. It will visually join the town from a large number of vantage points to the Thomas Mitchell Drive Industrial Estate and surface mining activity of Mt Arthur North defeating the objectives of the buffer zone and requiring additional measures to delineate the town from the heavy industry and mines west of the buffer.

The introduction of this sizeable number (20 plus buildings, 402 units) of **high density** residential dwelling units and associated mess and laundry buildings, infrastructure and services will result in the establishment a new high-density urban area (higher density than exists at any other location in the entirety of the Shire) with a floor-space ratio that exceeds any other development within the Shire in a location which is designated in both LEP 1985 and draft LEP 2008 as forming the green belt between the urban centre of Muswellbrook and its surrounding heavy industry and open cut mines.

The proposed Miners Estate introduces into a non-urban area an urban form which is wholly inconsistent with present and future planning of the area. The roadworks necessary to upgrade the intersection to the RTA's requirements will result in an 11 metre road width in front of the site instead of the two-lane, rural road that currently exists. The increased width of road combined with the development and infrastructure lighting and other upgrade works will merge to make a person realise that there is something different, something urban, in the otherwise non-urban area.

Lighting will emit from 293 to 402 separate dwellings, the other buildings on the site, the internal street lighting and pedestrian path lighting, creating in the current unlit environment lighting that is characteristic of an urban area. Such lighting will create a twinkling, Christmas tree lights effect on a prominent hill.

The signage demanded for the proposed development at the entranceway is more consistent with an urban area than a buffer zone. The 2m chain mesh security fence and perimeter lighting surrounding the proposed development at the entranceway is more consistent with an industrial area than an urban-rural buffer zone. The landscaping will itself

result in a change in the character of the site, the balance between open space and vegetation, which is achieved currently in the rural break/green belt between the established urban and heavy industrial/mining area, is not achieved with the proposed development, due to the applicant's attempt to hide the visual impact of a high density residential development in a rural locality.

The visual impact of the new dwellings will be greater than is currently stated and the proposed landscaping is merely a "mask" disguising an inappropriate scale of development, a high-density urban form in a rural setting. The fundamental aspects of the site's current character, as well as its future character, as described in MLEP 1985 and draft MLEP 2008, is that it is not part of an urban area but rather is part of a landscape and visual buffer between the urban area of Muswellbrook and its surrounding open cut coal mines and industrial area and is for purposes of primary production. The site is also part of a landscape conservation zone where native landscape predominates over the built urban form.

The insertion into the site of a high-density development, comprising more than 20 buildings and acres of car parking, associated roads and paths, infrastructure and services, together with the consequential upgrade of Skellatar Stock Route at the site's entrance and intersection with Denman Road to cater for the traffic generated by the development, will permanently affect the character of the site.

The site will become urban in character and, in so doing, will be inconsistent with the planning principles, actions and outcomes in the Regional Strategy, MLEP 1985 and draft MLEP 2008. Despite the design the buildings, landscaping etc the fact remains that a high-density urban area will be inserted in a location where State and local planning have consistently and persistently determined that an urban area should not be located. The buildings will not be invisible; they will be able to be viewed, to different extents, from different vantage points around the locality. The views of buildings on the site from different vantage points, even though the actual buildings viewed will differ from different vantage points, will combine in the viewer's perception to describe the development being viewed as an urban development. From some vantage points, such as along Skellatar Stock Route, the number of dwellings, their proximity to one another, and the associated roads, paths and facilities will read more obviously as an urban, built form. The landscaping proposed will not wholly screen the built form. By its nature, its locational relationship to dwellings and the density of plantings, the landscaping corroborates a conclusion of urban form.

The setback from the road does not negate a conclusion that the development is urban in character - it is a lesser setback than exists in the R5 zone on that same side of Ironbark Road which it adjoins. The "Miners Estate" is also not just a static collection of buildings; it is an area in which residents of the "Miners Estate" development will live, staff will work, and service providers and tradesmen will come and go. It will generate activity and movement that is more typical of a high density suburban area than a buffer zone.

One manifestation of this activity and movement will be traffic generated by the development. As a consequence of the increased traffic to be generated by the development, Council and RTA require the intersection of the site's entrance with Skellatar Stock Route and Denman Road to be significantly upgraded. The 11m road width and bus bays, lighting of the bus bay and the road and bus bay design, will all signify that the

development is of a size and intensity different from all other residential dwellings in the locality.

The traffic actually using the road and bus bays, including the vehicles of residents, public and charter buses, the development's courtesy bus, vehicles of staff, visiting professionals and other service providers, delivery vehicles and tradesmen's vehicles, will provide on-going indicators of the urban development on the site. The lighting of the intersection, the internal driveways and paths, and the dwellings will be visible to varying degrees from different vantage points. The description of twinkling Christmas tree lights - of lights alternating between visible and non-visible, as the viewer's position moves, lights are turned on and off and as vegetation moves - is evocative of the likely effect of the lights of the development. The point is that little or no lighting currently exists on the site or surrounding lands and the development will introduce extensive and intensive lighting to the site and, by its density and proximity of lights to one another, it will have a different character, more consonant with an urban area. It is another indicator of the site containing an urban area.

The development will have signage. It will be large and visible signage announcing the development. The viewer would understand that the development announced by the signs and accessed by the significant intersection is of a size and intensity different to the all other properties, in the locality. There can be no doubt that once built, the wider community will know that a high density urban area, created by the "Miners Estate" development, is located on the site within the buffer zone.

To the casual observer using the Denman Road, Thomas Mitchell Drive or passing along Ironbark Road the development will present as a high density urban development due to the high perimeter fence, signage, significant roadworks, high density of two storey buildings, lighting, internal roads, and extensive landscaping proposed for the development envelope as previously discussed. Due to the extensive and long term alteration of the existing environment, scale of buildings, scale of site works, intention for occupation for ten years plus, neither the appearance nor the actuality of the Miners Estate can be described as a temporary development [noting that temporary use is defined in S2.6A (2) of MLEP 2008 as "for a maximum period of 28 days (whether or not consecutive days) in any period of 12 months."]

The proposed development is designed and promoted as a 'full service' and self contained development for an entire workforce and as such by design the proposed development does not require a location close to the town of Muswellbrook other than so as to cheaply utilise the urban electricity, water and sewage infrastructure within the town (without contribution as identified in the report to council dated 5 November 2008). It is clear from the developers description of the daily operation of the development that the village itself will provide for the total day to day needs of the occupants of the village and that the temporary and transient residents will not of any necessity integrate into the township. The proposed development will adversely affect other development within Muswellbrook, discouraging investment in expansion of permanent motel accommodation space and new one to 2 bedroom public rental accommodations. The proposed development being assembled on site from prefabricated modules delivered from interstate will not add to the skills or employment base within the Shire to the same extent as permanent structures constructed on a similar site.

The nature of the development is such that unreasonable demands for Councils extension and upgrade of sewerage, water and road upgrades are eventuating earlier than otherwise required. Such significant amount of traffic will be generated by the site as to warrant complete reconstruction of Skellatar Stock Route to a 7 metre sealed roadway with footpath and kerb construction for a distance in excess of some 250 metres, reconstruction of the main Denman Road intersection, construction of an 11 metre wide roadway incorporating 4 bus bays adjacent to the site and reconstruction by council of the remainder of Skellatar Stock Route including a roundabout already completed at the intersection with Osborn Avenue at St Marys Estate. The buildings are of such scale and dimension, intensity of occupation and intensity of co-location to constitute a high density urban built form wholly inconsistent to the objective of maintaining the rural character of the locality. When viewed from a distance along Bengalla Link Road Extension to Wybong Road, Roxburgh Road, Thomas Mitchell Drive, Denman Road and from Skellatar Stock Route the buildings, structures and lighting will intrude into the skyline above the site. The proposal is an overdevelopment of the site from open space to high density urban development that will contribute noise to nearby residences and reduces or eliminates completely the existing visual and noise buffer provided by the site in its current form whilst creating a visual impedance and noise source. Noise will emanate from the open communal veranda's surrounding each of the accommodation blocks, from the open stairwells at each end of the two storey accommodation blocks and from Miners estate residents as they move between buildings, dining, alcohol service, entertainment and transport facilities at all hours of the day and night.

SOCIAL AND ECONOMIC IMPACT ASSESSMENT

Whilst the demand for accommodation in Muswellbrook is high it has not had an adverse affect on the cost of rents in that the average weekly rental costs in Muswellbrook are below the Hunter and State averages. The annual real change in rental accommodation costs for 2br units (the most commonly available rented accommodation to transient mine employees) has been + 0.7% to March 2008" (Hunter Valley Research Foundation June 2008. Also, contradicting the applicants unsubstantiated assertions of an ongoing housing shortage in the Muswellbrook Shire, housing prices in the Upper Hunter Region are reported to be competitive as "a much lower level of gross income is required to purchase housing in the Upper Hunter Shire and Muswellbrook LGAs than in the Hunter, Singleton or Sydney - Home ownership is significantly more affordable in the Hunter and Upper Hunter compared to Sydney. Furthermore, cheaper housing provides the opportunity to attract and retain skilled workers from metropolitan areas (Hunter Valley Research Foundation June 2008)

The town has a shortage of health professionals with appointment delays to consult doctors extending to some three or more weeks whilst regionally many surgeries have close their books to new patients. The Muswellbrook District Hospital provides rudimentary emergency services with its main function being an aged and infirm hostel. Emergency and urgent cases are routinely airlifted or transferred by ambulance to hospitals in the Newcastle and Sydney areas.

CONCLUSION

The proposed development does not constitute a relocatable home hostel as defined above for reason of the permanent, immovable and multi-dwelling nature of the prefabricated component structures to be erected on the site, the stated function of the site as a Miners

Estate (not predominantly tourism or construction workers), the intensity of the physical co-location, high density occupation and excessive floor-space ratio of the proposed development that is out of character not only with the zoning of the area as a rural buffer zone but also out of character in terms of scale and population density with any other site in the Shire excluding St Helliers Correctional Centre.

The development is a development that is inappropriate and inconsistent with the objectives of the zone because;

- (1) It is counter to the objectives of the zone,
- (2) it removes the protective buffer of an essentially rural character which separates the town from mining related activity,
- (3) it will require additional protective measures to re-establish the rural buffer,
- (4) it is not a development;
 - i. of a rural character,
 - ii. or associated with rural uses
 - iii. or development which requires a location close to the town of Muswellbrook
 - iv. that will provide or maintain an appropriate rural setting for the town of Muswellbrook,
 - v. that will adversely affect other developments within Muswellbrook through noise and loss of visual amenity, increased vehicle traffic, noise generation, encouragement of transitory employment and
 - vi. curtailing investment expansion in permanent rental and motel accommodation.

The proposed development could only properly be considered a *mixed use development* under the Draft Muswellbrook LEP 2008 which is a prohibited land use in Zone RU1 Primary Production.

Draft Muswellbrook LEP 2008

Dictionary

mixed use development means a building or place comprising 2 or more different land uses – those land uses being for ***multi-dwelling housing and serviced apartments or hotel or motel accommodation*** with separately located buildings also housing an ***entertainment facility, function or amusement centre and kiosk or neighbourhood shop, pub and restaurant with take away food and drink premises and a separately located passenger transport facility.***

The floor-space ratio exceeds the allowable floor-space ratio for the RU1 zone. It is below the minimum allotment size for a dwelling entitlement in zone RU1. The secondary dwellings exceed the size permitted in zone RU1. The additional dwellings being temporary do not qualify as rural worker's dwellings. Approval of the development proposed for 60 Skellatar Stock Route Muswellbrook sets a precedent for developments approved for the RU1 and E3 Zones of the Muswellbrook LEP 2008 that would wholly defeat the objectives set for these zones in MLEP 2008.

We contend that the proposed development is wholly inconsistent with the existing and future planning for, and character of the area having regard to MLEP 1985 and MLEP 2008. We further contend that the proposed development is unacceptable having regard to other matters in s 79C(1) of the *Environmental Planning and Assessment Act 1979* including: the impact of inserting what is in effect a segregated urban area created by the Miners Estate

development into the landscape and visual buffer; the unsuitability of the site for such development; and the public interest in that it is counter to the MLEP 1985 and the draft MLEP 2008 which aim to retain and strengthen the separation between the urban area of Muswellbrook and the Industrial Areas and Open Cut Mines, and preserve the landscape character of the buffer in between. We contend that the draft MLEP 2008 was known to the developer at the time of the application, had been advertised and public submissions received, is certain and gazettal imminent and should be given significant weight.

We contend that the statement of the assessing officer that the development may be defined by the assessing officer as a "relocatable home hostel" for the purposes of assessment under MLEP 1985 and re-defined as "tourist and visitor" accommodation under the draft MLEP 2008 as a falsity and a mask that is contradicted by the applicants description of the development as a "Miners Estate" and confirmed by the absence of visitor parking, prohibition of visitors, direct billing and reporting arrangements for all residents direct to Employers, the lack of billing, parking, catering or other arrangements for the accommodation of tourists, within the documents lodged by the applicant for the ongoing operation of the development.

We contend that Council is directed by MLEP 1985 and MLEP 2008 to refuse consent to the constructions of the Miners Estate DA 57/2008 proposed for Lot 121 DP 568222, 60 Skellatar Stock Route Muswellbrook.

2 XMC Early Works - Wybong Road Roadworks & Staff Reports to Council.

Following the defeat of the autocratic and secretive Colvin led Council in the recent elections the community had expected an element of open, transparent, honest and accountable decision making from the new Council.

With the significant exception of the majority of elected councillors the community have come to be increasingly disappointed with the partiality and obscurity of the processes adopted by council. The community have from a period of observation and evaluation singled out the process of staff reports to council as a significant weakness noting a continuation of partiality, evasion, secrecy and advocacy of developers causes permeating and infecting significant staff reports to council.

Of particular note are the reports relating to the Miners Estate Development Proposal and most reports relating to the Xstrata Mangoola Coal Project.

The reports relating to the Miners Estate Development Proposal have consistently failed to make councillors aware that the development can ONLY PROCEED WITH COUNCILS CONSENT and that CONSENT MUST BE REFUSED as the development is clearly inconsistent with the zone objectives in both the LEP 1985 and the LEP 2008. The conclusion is clearly indicated from LEC decisions and any proper consideration of the planning terms "of rural character" and "rural buffer zone".

Also the reports relating to the Miners Estate Development Proposal defy all recent LEC decisions in seeking to disregard the impact of the imminent gazettal of LEP 2008 as a prominent factor in determination of the proposal in a manner that can only be seen as

interference in Councils determinations on behalf of the development proposer and deliberate and distinct bias. The advice to councillors as regards the significance of consideration of the LEP 2008 as dismissive is so erroneous as to only be considered as a knowingly false and misleading provision of advice to the councillors and hence also an attempt to deceive the councillors and community by promulgating a known falsehood.

These are all factors that should be known and considered by any decent council planner that is proficient in his attention to the implementation of planning law and who is concerned with ensuring the presentation of impartial, unbiased and complete advice to council for proper determinations to be made.

In relation to reports relating to the Xstrata Mangoola Coal Project there is an emerging pattern of decisions being made by the staff in anticipation of councils consent and the inappropriate use of the Extraordinary meeting process to seek to gain advantage for the developer over and above the community.

The most recent examples have involved Extraordinary meetings being required to deal with matters regarding the Xstrata Mangoola Early Works and roadworks associated with the Early Works in which the Wybong and wider community, as one would expect, has a high level of interest. In both instances persons making submissions have been ignored and denied the opportunity to address council on the matters by virtue of decisions made by council staff.

Specifically, the most recent report to council made heavy of the fact that issue of a S138 certificate for the Part 3A development cannot be refused by council. Missing from the advice to council was the equally if not more important fact that the S138 certificate could ONLY properly be issued where the applicant had complied with the requirements of the Director-General of the Department of Planning and that in the instance of non-compliance the issue of the certificate could be delayed or withheld – not refused. Also absent from the staff advice was that Council could attach conditions to the issue of the certificate that were consistent with the consent provided by the Director-General of the Department of Planning to the Part 3A development.

In relation to the issue of S138 certificates to Xstrata Mangoola P/L it is important to note that the approval requires Xstrata to do a number of things before construction works are allowed to commence on the site. These include:

- preparing a number of environmental monitoring/management plans, including a: Construction Traffic Management Plan to the satisfaction of the RTA and Council, before undertaking any works on site.
- "this management plan would contain the information required to manage construction related traffic associated with the proposed modification."
- **"The Department also believes that Xstrata should be required to ensure that Wybong Road is made safe to enable early works to be undertaken."**
- "The safety risks are able to be effectively mitigated, through implementation of measures such as warning signage, temporary speed limit reductions, **road repairs and installation of barriers.**"
- "The Department has recommended amending the Construction Traffic Management Plan condition to specifically require such measures, based on a detailed road safety audit."

- **The Department agrees that the community should be kept well informed about the proposed early works, and in particular the works on the public road network. The Department has amended the Construction Traffic Management Plan condition in the project approval to require such specific measures.**
- The Department notes that the project approval includes a number of other conditions requiring Xstrata to keep the community informed about the project – including requirements to maintain a community consultative committee, to publish all monitoring data and management plans, to report incidents, to implement effective complaints management procedures, and to develop procedures to keep the community informed about the project.
- In consideration of the above, the Department is satisfied that the proposed modifications are unlikely to result in any significant traffic impacts in the area, subject to the implementation of suitable traffic safety mitigation measures and road maintenance measures.
- In this regard, it is noted that the project approval requires Xstrata to prepare and subsequently implement a detailed Construction Traffic Management Plan for the project prior to undertaking any works, to the satisfaction of Council and the RTA.
- The Department has recommended additions to this condition that would require Xstrata to detail specific measures in relation to:
 - speed limits, warning signage, barriers and repairs on Wybong Road, based on a detailed road safety audit;
 - 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
 - keeping the local community and relevant agencies informed about the project and traffic management measures.
 - Condition 51
- 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 measures in relation to:
 - speed limits, warning signage, barriers and repairs on Wybong Road, based on a detailed road safety audit;
 - 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.

To date the Independent Road Safety Audit and Detailed Construction Traffic Management Plan have not been provided to the local community nor has any consultation with the local community occurred regarding the traffic management measures or road repairs and barriers required to make Wybong Road safe for commencement of the site early works.

The one and only meeting that has occurred with the Wybong Community was the Community Information session at Wybong Hall in mid September 2008 where the Wybong Community provided XMC and MSC a detailed community developed Wybong Road Safety plan to which no response has yet been received from XMC or any further consultation held. Neither the Traffic Management Plan or Independent Road Safety Audit were complete or available at that meeting.

When approached on 6 Nov 2008 for a copy of the Independent Road Safety Audit and Construction Traffic Management Plan detailing the Wybong Road (West) works required to ensure that Wybong Road is made safe to enable the site early works to be

undertaken the items could not be located by Council staff and a Traffic Management Plan detailing the Wybong Road (West) works required to ensure that Wybong Road is made safe was said not to exist or be required to exist.

In place of a definitive Construction Traffic Management Plan detailing the Wybong Road (West) works required to ensure that Wybong Road is made safe to enable the site early works Council staff stated a process of continual individual S138 applications by XMC that involved no process of Wybong community input, evaluation or knowledge, had no definite commencement or completion timeframe and were produced from no master plan against which progress or completion of works required to make Wybong Road safe for the commencement of site early works could be measured or evaluated.

The issue of any S138 certificate in these circumstances of non-compliance with the requirements of the Director-General of Planning approval conditions of consent should be withheld and made subject to XMC's compliance with the requirements of the Director-General of Planning approval conditions of consent including the provision of a detailed Construction Traffic Management Plan detailing the Wybong Road (West) Early Works required to ensure that Wybong Road is made safe and community consultation on the content and implementation of that plan.

In the absence of such plan and consultation it is difficult to see how the Wybong Community can be satisfied that Council has fulfilled its statutory obligation to ensure the safety of Wybong Road users or to ensure that it is satisfied as required by the Director-General of Planning.

It is wholly inappropriate that council staff authorise S138 certificates on an ad hoc basis without the consent of council or instituting any procedures to ensure that the Director-Generals Conditions of Consent requirements for the issue of a S138 certificate have been complied with – including the provision of a detailed Construction Traffic Management Plan detailing the Wybong Road (West) Early Works required to ensure that Wybong Road is made safe and community consultation on the content and implementation of that plan.

Should any injury occur to a member of the Wybong Community whilst using Wybong Road as a consequence of XMC and MSC failure to observe the requirements of the Director-Generals Conditions of Consent relevant to the occurrence of the injury appropriate Legal advice will be sought and action to the fullest extent of the Law will be instituted against the parties concerned.

John Shewan
President
Wybong Action Group.

10 November 2008