

MANGOOLA COAL MINE – MODIFICATION 4

[Application pursuant to s75W of the
Environmental Planning and Assessment Act 1979]

COUNCIL SUBMISSION



**muswellbrook
shire council**

7 February 2010

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[Application pursuant to s75W of the *Environmental Planning and Assessment Act 1979*]

The Application

- 1 By Application lodged 23 December 2009 (the **Application**), Xstrata Mangoola Pty Limited (the **Proponent**) seeks, pursuant to s75W of the *Environmental Planning and Assessment Act 1979* (the **Act**) to modify a development consent granted to it pursuant to Part 3A of the Act on 7 June 2007.
- 2 It is not clear from the Application (or the supporting material) which conditions the Proponent applies to have revoked or varied or whether the Applicant seeks a further condition.
- 3 The Proponent sets out its modification in Part 5 of its Application as follows:

The proposed modifications include:

- [(a)] re-design of the mine plan and staging associated with the relocation of the 500kV ETL;
- [(b)] water management and other ancillary changes resulting from the re-designed mine plans;
- [(c)] temporary ROM coal stockpile;
- [(d)] construction of a noise wall in the rail loop area; and
- [(e)] minor changes to the approved project disturbance boundary including:
 - [(i)] an area of approx. 2 ha where the raw water dam will inundate land at full supply;
 - [(ii)] an area of approx. 9 ha where drilling has established that the coal crop line extends beyond the approved project disturbance boundary; and
 - [(iii)] four small areas (totalling approx 1.6ha) around the rail loop for drainage.

[lettering added for ease of reference]

4. There is a great deal of uncertainty about whether or not the Proponent also applies for the further modifications set out below – or matters consequential upon the matters set out below. The matters do not form part of the Application but are disclosed in supporting material¹:
 - (a) the construction of a rail re-fueling facility;
 - (b) the transportation of the fuel associated with the rail re-fueling facility by road;

¹ See, for example, p. 2 of the Environmental Assessment.

- (c) a substantial increase in the extraction rate;
 - (d) a substantial increase in train movements;
 - (e) a substantial increase in employee numbers; and
 - (f) a substantial increase in road traffic associated with the development.
5. It is possible that the Proponent seeks a variation to condition 2 of its consent (and its reliance on the original EA) insofar as the subject matter of paragraph 3 (and perhaps paragraph 4) is concerned – although that is also not clear.
6. Unhelpfully, the original EA is not one of the documents being exhibited despite the reliance on it to understand the apparent nature of the Application.

Submissions in summary form

7. Council makes the following submissions in summary:
- (a) The consent authority is without jurisdiction to assess the matter in the absence of the Proponent's specification of the relief sought by its s75W Application;
 - (b) It is not reasonably open to the consent authority to determine that the Application falls within the jurisdictional power of section 75W;
 - (c) Council does not support the Application and notes that:
 - (i) it would be unable to adequately maintain the road network impacted upon by the modified project at a safe and appropriate standard and has no reasonable prospect of ever being able to do so. In that regard it is noted that:
 - A. The Proponent has not complied with its present conditions to construct Wybong Road to a satisfactory standard and there is no material before the consent authority from which it could be accepted that the Proponent will do so;
 - B. The existing classification of Austroads Rural Road Class 3 is no longer appropriate in respect of Wybong Road;
 - C. The intensification of extraction, the increased workforce, the haulage of rail fuel, the marked difference between projected (original EA) and actual (prevailing) traffic generation, the lack of rigour in the Proponent's traffic modelling in the present Application (particularly the use of historical projections as against actual traffic generation), the intensification of coal related traffic generally in the Shire and a range of other matters, in combination, ensure that Council will not have the capacity to safely maintain the consequential road network associated with the proposed development. Any approval is

certain, therefore, to compromise the safety of mine workers and other road users;

- D. The intensification of extraction, the increased workforce, and the intensification of coal extraction in the Shire more generally would have the consequence that Council's capacity to appropriately maintain community services in the Shire would be unsatisfactorily compromised;
 - E. The intensification of extraction, the increased workforce, and the intensification of coal extraction in the Shire more generally would have the consequence that local markets for health services, community services, skilled labour, water, accommodation and productive land would be unsatisfactorily compromised.
- (ii) it considers the sterilisation of land development resulting from a combination of the proposed intensification of extraction, the proposed increase in rail movements, and the operation of clause 87 of the SEPP (Infrastructure) 2007 to be unreasonable insofar as the future growth of the town is concerned;
 - (iii) it considers that the proposed intensification of coal extraction associated with the project (both assessed in isolation and cumulatively with other open-cut coal operations) without conditions requiring the monitoring and regulation of PM2.5 particulate matter at locations reasonably assessed by Council to be suitable to be unreasonable;
 - (iv) it considers that the proposed intensification and proposed modified layout would have an unacceptable impact on woodland connectivity, the preservation of remnant woodland and undisturbed habitat (against a background of extensive cumulative Shire-wide disturbance);
 - (v) it considers that, for the reasons set out in (i) to (iv) herein, any extension of the project should be applied for under section 75J of the Act.
- (d) Council submits that *ad hoc* extensions by s75W variation, in circumstances of such rapid local industry growth, would effect a complete disengagement of the community from important considerations about the extent and cumulative impact of mining and is therefore contrary to the public interest;
 - (e) Council submits that, in circumstances of such rapid and intensive local mining industry growth the public interest is best served by extensions supported by full environmental impact statements of the type contemplated by s75J of the Act;
 - (f) If, notwithstanding the submissions made by Council, the Department is nonetheless minded to grant the approval, Council submits that, as a condition of the variation, the Department impose conditions in the form set

out in the Schedule.

The terms of the Application and the exhibition of documents

8. As noted above, it is not clear from the Application which conditions the Proponent applies to have revoked or varied or whether the Proponent seeks a further condition. The original EA did not form part of the public exhibition of documents.
9. The following is noted:
 - (a) The EA for the proposed modification sets out a production schedule over a 15 years period of which 12 of the 15 years involve maximum (10.5MtPA) extraction of ROM coal. This differs markedly from the 20 year graduated production schedule proposed by the original application. Proposed production would result in a 30% increase in intensity in the final three years of the project and the increase in intensification in the first three years differs by a factor of more than 100%;
 - (b) The proposed modified intensity of production, length of mine life, rail movements, workforce, water management and offset management will require a wholesale variation to almost every aspect of the project;
 - (c) If the project is approved in the manner sought by the Proponent the consolidated consent would be internally inconsistent because of the tension between condition 2 (and the associated EA), and the shorter time frame and intensified production schedule of the varied project.
10. The Proponent has not stated the specific conditions of consent sought to be modified, deleted or additional conditions imposed. The necessity to actually set out the specific revocations, variations or new conditions sought derives from the wording of s75W². The failure to specifically identify those matters may render the consent authority without jurisdiction to determine the matter. The NSW Court of Appeal has held that a request for modification of an approval under Part 3A of the Act within the terms of s75W is a precondition to the exercise of the power under s75 s75W³.

The proposed modified development within the local context

11. As noted, the Proponent proposes, by its Application, to intensify production and rail movements. Further consequential increases in the Proponent's workforce are also proposed. Council submits that the resulting development would have an unacceptable cumulative social and economic impact.
12. An illustration depicting National Parks and Reserves, Mining and Exploration Licence (EL) grants, EL Applications and Mine owned land in the Muswellbrook Local Government Area (the **Illustration**) is annexed.
13. Much of the mining footprint in the Singleton local government area (not depicted) is

² *Barrick Australia Limited v Williams* [2009] NSWCA 275 per Basten JA (McColl JA agreeing) at paras. 13 and 14.

³ *Supra* 1, per Basten JA (McColl JA agreeing) at paras 13 and following.

directly adjacent to the southern boundary of Muswellbrook Shire and is closer to the Muswellbrook urban centre than to Singleton.

14. The Minister administering the planning legislation approved, in concept, a third coal/gas fired power station in the Shire on 12 January 2010⁴. Coal extracted from Muswellbrook Shire is projected to double over the next 12 to 18 months⁵. Further developments are in various stages of exploration (Drayton South, Rose Hill, Ridgeland, Ferndale, Spur Hill, Muswellbrook Coal's south eastern expansion, Dartbrook and Dartbrook Open Cut).
15. Muswellbrook is the only town of its size in Australia to be completely encircled by coal mines except for the road, rail and river corridors.

Local roads

Background

16. Each of the coal mining developments in the Shire are accessed by local roads. Those roads include: Thomas Mitchell Drive, Bengalla Link Road, Wybong Road, Coal Road, and Muscle Creek Road. Some of those roads were purpose built⁶ and others evolved from former rural roads⁷.
17. In addition, there is increasing coal related traffic on local roads not used for primary access to coal mines. Edderton Road, which links coal mining developments in the Shire with the Golden Highway and the Mount Thorley Industrial Estate, is one such road. The Bell and Market street over-dimensioned vehicle bypass of the National highway is another.
18. Despite the proposed doubling of coal excavation over the next few years, Council's revenue being applied to roads will be static – 'pegged' by operation of s509 of the *Local Government Act* 1993 to an approximation of its real value.
19. Some contribution to local roads by the proponents of mining developments has been required as a condition of development consent but the incremental nature of the consent process has effected a shortfall in local road funding over time.
20. Council's road budget for renewals and replacements for the last five financial years has been static at approximately \$1.5M each year. Often the projected quantum of traffic generated by a mining development creates a requirement to increase the standard of a road (a step issue). Council's budget has not been able to bankroll the difference between the total cost of the necessary upgrade and the contribution made by the coal mine proponent as a proportion of its projected traffic generation. To make the situation worse, traffic generation projections have often differed markedly from actual generation⁸.

⁴ <http://majorprojects.planning.nsw.gov.au>

⁵ Mount Arthur from 13MtPA to 28MtPA – with potential for 36MtPA, Bengalla from 8MtPA to 10.7MtPA, and Mount Pleasant and Mangoola commencing operations – collectively generating an additional 14 to 21MtPA. Other open cut coal activity is on the planning horizon.

⁶ Bengalla Link Road and parts of Thomas Mitchell Drive, Coal Road (and Muswellbrook Coal Road).

⁷ Wybong Road, Thomas Mitchell Drive, Muscle Creek Road.

⁸ The actual traffic volumes for the Bengalla Link Road, for example, are twice that of those projected in the Bengalla Environmental Impact Statement and the heavy vehicle movements for Wybong Road

The present Application

21. The original approval required road and intersection upgrades (marginal improvements) to Wybong Road. It did not require the construction of a new road. The marginal upgrades were designed on the basis of projected capacity and no additional capacity was contemplated. The extent to which Wybong Road (east) requires further upgrades to adequately cater for the present proposed modification requires detailed assessment. It is noted that Council does not have the resources to undertake that assessment, or any construction, or any on-going maintenance of the resulting constructed road beyond that already committed to by Council in its budget. The reason for those matters is set out at paragraphs 18 and 20 above.
22. Prior to practical completion of the Proponent's upgrades to Wybong Road in accordance with the existing consolidated approval, pre-opening audits were carried out by Parsons Brinckerhoff (for the Proponent) and GHD (for Council). Residual issues remain related to compromised clear zones in some locations due to the constraint of improving the road within the existing road reserve.
23. Other issues – such as the Proponent's compliance with its present consent conditions – also remain. Wybong Road, for example, is and continues to remain in an unsatisfactory state and is inappropriate for use as an access road for the Proponent's operation in its present condition. The use by the Proponent of sub-standard road pavement base material and sub-standard sealing application during construction has caused substantial road failures. The Road is now likely to require reconstruction or stabilisation.
24. Following the grant of the original consent, it had been agreed that the road would be upgraded to an Austroads Class 3 Rural Road as much as possible within the existing road reserve. However, with intensification of traffic under the current proposal, Council is no longer of the view that that classification is appropriate (without further assessment) or that the upgrade of the existing road (as opposed to the reconstruction of the road) is an appropriate treatment.
25. The EA for the proposed modification provides a traffic assessment but fails to provide the requested traffic modelling information regarding traffic impact that Council requested in its adequacy submission. Council is not in a position to recommend a suitable standard and to comment on the appropriateness of the existing intersections on Wybong Road in the absence of that modelling except to note that the standard of the existing road within the context of its proposed usage is inadequate and approval in the absence of proper assessment would be to unreasonably compromise the safety of road users.
26. Council does not accept the modelled figures contained in the EA and notes that the figures do not incorporate actual traffic generation or model equivalent axle loadings. Council submits that the Proponent makes inappropriate assumptions about the effect of the intensification of the project on overall traffic generation.
27. The vertical and horizontal alignment of Wybong Road offers very few passing

are more than 50% higher than that projected in the original Xstrata Mangoola Environmental Assessment.

opportunities on Wybong Road. As mining activity fully develops and intensifies in the precinct, together with background growth, Council expect that delays will become more frequent. This can lead to driver frustration and attenuant road safety risks. It also affects route efficiency and adds to transport costs. It is considered likely that some properly investigated combination of overtaking lanes, climbing lanes and slow vehicle turnouts should be incorporated into the road upgrades. There is also the issue of a fair contribution to the Thomas Mitchell Drive upgrades. The exact extent of the Proponent's contribution to upgrades beyond the junction with Bengalla Link Rd is impossible to determine from the information available. The quantum of this contribution should be proportional to other mine's contributions.

28. It is also noted that the Application proposes to close Wybong Road as a safety measure during blasting within 500m of the road. This may increase traffic on Yarraman Road, Post Office Road and Ridglands Road. These roads are inappropriately designed, constructed and maintained to take any resultant traffic.

Road closures

29. Alarmed by the closure of vast segments of Council's capillary local road network for mining purposes in the last 5 years and the consequential long term sterilisation of land denuded of road infrastructure, Council introduced a Closure of Public Roads Policy in 2009.
30. The present Application seeks the closure of Limvardy Road.
31. While a consent under section 138 of the *Roads Act* 1993 (the **Roads Act**) must be applied consistently with any s75J and s75W approval, an Application under Part 4 of the *Roads Act* (a road closure) does not. It is the subject of a separate consultative process.
32. Council is concerned about the affect of the proposed road closure on access to the only known population of Prasophilum Wybong (a critically endaged native wildflower) and Anvil Rock (a significant heritage item). It would be premature for Council to arrive at a view about the closure of that road without undertaking the consultation required by the statute. In those circumstances it should not be assumed that Council would support the closure of Limvardy Road and the Proponent would be well advised to deal with any Part 4 Application concurrently with this Application given that the mining operation seeks to disturb significant lengths of that road.

Community services

33. The Proponent concedes⁹ that:

The potential cumulative impacts on the local region are likely to include:

- [(a)] likely significant strains on health services, in particular hospitals;
- [(b)] contribution to strains on the existing childcare services; and
- [(c)] potential pressures on existing primary education services.

⁹ See p. 12.55 of the EA for the proposed modification.

34. Council submits that the health services strain will, in addition, be on general medical practitioner services, midwifery and other allied health services including ambulance services. Council also notes that the Proponent's concession is supported by the findings in the Mt Arthur consolidation assessment report and notes that it is not reasonably open on the material before the consent authority to conclude that the Hunter New England Area Health Service has any intention of improving health services locally and notes that the Area Health Service has expressed the view that there will be no improvement in capital or operational expenditure in Muswellbrook in the foreseeable future.
35. Council submits that any development which has a deleterious affect on human health (whether by direct health impact or impact on health services) should be refused and impacts on human health should be treated as matters of zero tolerance.
36. Council submits that the Proponent's assessed impact on childcare and early and primary education services is correct and also notes that the High School is nearing capacity – and has reached capacity insofar as maintenance of its capital infrastructure is concerned.
37. Council further notes that the ambulance and other emergency services (the Fire Brigade, rural fire services, and the State Emergency Service) are also at capacity.
38. Council submits that the Proponent's offer to mitigate health and educational impacts by way of making community contributions to lifestyle matters (recreation) and the ecological environment is:
 - (a) improper;
 - (b) contrary to a proper construction of planning principles;
 - (c) contrary to Government policy in relation to health and education (particularly in relation to the ensuring of human health); and
 - (d) contrary to the public interest.

Council submits that the attempt to mitigate health and educational impacts in the manner sought by the Proponent is a relevant matter for the purpose of the assessment.

39. Council submits that the only conclusion reasonably open to the consent authority is that the mine will have an unacceptable impact on community services – in particular human health, and that development consent should, accordingly, be refused.

Economic impact

40. Although no cumulative assessment of the impact of mining on the labour force has been undertaken, there is anecdotal evidence that the endogenous labour pool has not been able to satisfactorily meet the needs of intensive mining in the sub-region¹⁰.

¹⁰ 2008 ACARP Report: Assessing the Cumulative Impacts of Mining on Regional Communities: An

Limited labour supply and high demand for labour has increased the price of labour which, in turn, appears to have flowed into prices more generally.

41. The unpopular reality is that the labour market is probably over heated in the sub region – something which is every bit as burdensome as a labour market which suffers a lack of demand. Labour is an important input in production. A high labour price contributes to higher prices more generally. This is problematic in a community with a 50% higher proportion of people on fixed incomes – many of whom rent from the Department of Housing. The unemployment rate in the Upper Hunter (which for statistical reasons includes Gloucester, Dungog, and Upper Hunter LGAs – all of which have comparatively little mining) is 2.5 percentage points lower than the State unemployment average. The real figure for Muswellbrook and Singleton is probably much lower – and lower again when the skew for the disproportionate number of persons presenting with barriers to entry (largely from areas of social disadvantage) is removed.
42. The price of labour has been constrained in real terms – unable to outstrip the local cost index. That may be one contributing factor in why Muswellbrook’s position on the relative wealth index has dropped relative to local government areas without significant mining over the last fifteen years¹¹.
43. There are other consequences that flow in an economy denuded of sufficient labour. The depletion of trade qualified persons providing domestic trade services is one such consequence.
44. Relative inelasticity of supply is true of a number of other local markets as well. The supply of irrigable water from the Hunter is perfectly inelastic – a result of the deregulation of water licences and the full allocation of the Hunter supply.
45. Except for some minor incremental (marginal) further land use, the supply of land is also perfectly inelastic and the market for accommodation is relatively inelastic – constrained by the availability of land for urban release, the SEPP (infrastructure) and its effect on residential development on the rail corridors, and construction timetabling. House prices and the cost of living in Muswellbrook, Denman, Aberdeen and Scone have risen markedly in the last few years and the supply of rented properties approximates mere turnover.
46. Any pressure on demand against such relatively inelastic supply has effected price shocks. The price shocks created by those demand spikes have been pronounced and have given rise to sharp increases in the cost of living. The ability of the sub-region’s economy to absorb its 30 state significant developments at equilibrium, insofar as individual local markets are concerned, is very limited indeed and, as noted, the face value of labour has increased at a rate less than the increase in the cost of living – wages growth therefore declining in real terms.
47. The EA accompanying the Proponent’s Application notes:

Exploratory Study of Coal Mining in the Muswellbrook Area of NSW (the Centre for Social Responsibility in Mining, the Centre for Water in the Minerals Industry and the University of Queensland) February 2008.

¹¹ See Table 9 of the 2008 ACARP Report at p. 72 at 10 above.

The approved project will make significant positive contributions at local, regional and state levels.

The input/output calculations underpinning the Proponent's statement assumes that the local, regional and state economies (constituted by various discrete markets) will be able to absorb the increased demand (particularly jobs) at equilibrium. That may be true (or partially true) of the region and state economies but the assumption is false insofar as the local economy is concerned. The local economy has exhibited clear signs of overheat and a deterioration in relative economic well-being. The Proponent's statement makes no proper or sufficient calculation of the supply side of the market calculations. Council submits that an intensification of mining (such as that proposed in the present Application) would bring about deterioration in the purchasing power of wages and wealth.

Economic diversity

48. Price shocks have impacted upon other industries which compete for land, water and labour. Quite apart from the uncertainty created by buffer, offset, and attenuation acquisition attaching to mining consents, price shocks have undermined the certainty necessary for capital investment in industries which compete in affected markets.
49. Muswellbrook Shire is home to the largest market for the sale of thoroughbred horses internationally in Australia.
50. In what might be described as the closest thing to judicial comment on the looming conflict between the thoroughbred and mining land uses, the commissioners in the Bickham decision found that "the available evidence supports the view that open-cut coal mining and a viable international-scale thoroughbred breeding enterprise are incompatible land uses"¹².
51. The viticulture industry is also under substantial pressure (principally from oversupply). The viticulture industry has 'sandbagged' its decline by pegging itself to the tourism market. That tourism market relies on critical mass. The expansion of the mining industry has claimed a number of wineries which have significantly reduced that critical mass.
52. The urban land use conflict with coal mining also needs further examination. As noted earlier, Muswellbrook's residential growth is substantially constrained by coal mining development and associated rail infrastructure. Acquisition has also constrained the prospect for the further release of industrially zoned land.

Ecological environment

53. The Proponent applies to engage in further significant land disturbance. An offset strategy is proposed by way of mitigation.
54. The following is noted:

¹² Planning Assessment Commission (3 May 2010) "The Bickham Project Report" at p. vi.

- (a) The mine is positioned in a critical part of the Shire's environmental (woodland connectivity and remnant woodland) corridor. Particularly, the mine will disturb land of significant ecological value and unquestionably some of the most intact local habitats outside of the Shire's national parks and state reserves;
- (b) The Proponent seeks to remove a significant residual north south corridor (the existing ETL easement) as part of its Application;
- (c) The offset strategy proposes the sterilisation of land to the south of the project historically held for grazing;
- (d) It is further noted that there is little land left in the Shire for offset and mining proponents have increasingly sought to acquire land in neighbouring LGAs to satisfy offset requirements. Against that background, there is the very real potential for the extinction of local ecological species. This is particularly true of Muswellbrook's native orchids which are apparent for only short periods each year. The proper and sufficient management of offset plans to preserve habitats and species is increasingly problematic when half the rateable area of the Shire is subject to potential disturbance.

55. Council does not support the offset strategy in the absence of evidence of the final landscape management plan (and the rehabilitation and offset management plan) and its integration with the offset strategy proposed by the Application. Particularly, Council notes that the utility of the offset management plan will ultimately depend in no small measure on the success of the final landscape management plan. The final landscape plan should include routes for internal access to significant ecological colonies to ensure the perpetual preservation and endogenous recolonisation (sustainability) of the offset enhancement areas and the undisturbed habitats.

Heritage impact

56. Council is not in a position to support the heritage strategy proposed in the Application and notes that the result of the Application would be to prevent internal access to significant heritage items – including Anvil Rock.

Rail

57. It is noted that the project will intensify rail movements and incorporates a refuelling depot.

58. Muswellbrook is the junction of the Ulan (Western), Northern, and Hunter rail lines – the three lines servicing the Gunnedah, Ulan, and Hunter coal basins.

59. By 2015 it is estimated, on the back of present 'take or pay' coal agreements, that there will be 100 million tonnes of coal per annum (**MtPA**) transported into Muswellbrook along the Ulan line and 20 MtPA transported into Muswellbrook along the Great Northern line¹³. Those two lines intersect in the urban centre of the township at the southern end of the central business district. The bridge on which the

¹³ On both points see Chapter 5: 2009 – 2018 Hunter Valley Corridor Capacity Strategy Consultation document.

lines intersect sits proximate to a second bridge which forms part of the National Highway. The town's main street also forms part of that same section of the National Highway. The rail and road bridges both sit above Muscle Creek.

60. The lines are not attenuated for noise. They are single tracked corridors with little potential for duplication or triplication without compromising future development in the main street of Muswellbrook or residential development proximate to the three lines.
61. There is no requirement under present law for developers of coal mines to undertake noise attenuation on those rail corridors except in some marginal or incremental way. Any assessed incremental impact is too small to capture for the purpose of a condition of consent. Consequently noise attenuation has never occurred.
62. To complicate matters further, clause 87 of the *State Environmental Planning Policy (Infrastructure) 2007* (the **SEPP**) prohibits the granting of consent to residential (and other) developments near rail lines unless the consent authority is satisfied that LAeq levels proposed for such developments will not exceed:
 - (a) 35dB(A) in any bedroom at any time between 10:00pm and 7:00am; and
 - (b) 40dB(A) anywhere else in the building at any time¹⁴.
63. The effect of the SEPP is to place the onus of attenuating rail noise on residential developers but not on the owner of the rail infrastructure or its users. That is a significant problem in Muswellbrook where residential development is already constrained by the availability of land for urban release noting that:
 - (a) the town is encircled by coal mines or past workings;
 - (b) mining buffers and land offsets occupy a significant proportion of the urban hinterland; and
 - (c) three rail corridors – carrying a significant proportion of the State's coal, all penetrate to the heart of the urban centre (passing through residential zones).
64. It is also a problem in Denman where the Western/Ulan line – projected by 2015 to carry 100MtPA of coal each year – traverses the urban centre from east to west.
65. The rail lines also present safety and traffic convenience issues. In most instances, the local road network traverses the rail lines by level crossings. The intensification of coal movements therefore has the potential to effect the division of Denman in two and Muswellbrook, in three.
66. Council submits that the intensification of rail movements contemplated by the Application would place an unreasonable constraint on the urban development of the town of Muswellbrook and submits that the Application should be refused.

¹⁴ 87(3) of the State Environmental Planning Policy (Infrastructure) 2007.

The modification

67. Council does not support the Application and repeats the summary set out at paragraph 7 for the reasons set out in this submission.
68. If, notwithstanding the submissions made by Council the Department nonetheless is minded to grant the approval, Council submits that, as a condition of the variation, the Department impose the conditions set out in the Schedule.

Rational for conditions

69. Council repeats the matters set out in this Submission in respect of its alternative submission concerning appropriate conditions and provides the following further supplementary submissions:
 - (a) In respect of conditions 1 – 3, to ensure the community does not bear the cost of damage to roads associated with the construction;
 - (b) In respect of conditions 4 – 6, to ensure safety;
 - (c) In respect of condition 7, to ensure safety and amenity;
 - (d) In respect of condition 8 - 10, to monitor compliance;
 - (e) In respect of condition 11, to ensure best practice;
 - (f) In respect of condition 12, to limit the development's impact on amenity, local infrastructure, and urban development.
 - (g) In respect of condition 13, to ensure ecological connectivity and sustainability;
 - (h) In respect of conditions 14 - 17, to ensure desirable ecological and heritage outcomes.
 - (i) In respect of condition 18, to monitor compliance;
 - (j) In respect of condition 19, to ensure proper community involvement and communication;
 - (k) In respect of conditions 19 – 26, to ensure safety, to ensure the community does not bear the cost of constructing and maintaining road infrastructure.
 - (l) In respect of conditions 27 – 30, to ensure compliance by the Proponent with local industry best practice, to ensure Council's ability to fund community infrastructure and services, to ensure Council's ability to perform its statutory environmental monitoring functions, and to ensure the safety of road users.
 - (m) In respect of condition 31, to ensure the Proponent matches local industry best practice, to increase the local skilled labour supply.

SCHEDULE

[Xstrata Mangoola Pty Limited – Application for modification]

Electrical transmission line relocation (MP 10_0002)

1. The Proponent must, prior to construction, pay Council an amount reasonably necessary to permit Council to obtain a report setting out the condition (for the purpose of ascertaining future dilapidation) of Yarraman Road, Post Office Road and Ridgeland Road.
2. The Proponent must, upon completion of construction, pay Council an amount reasonably necessary to permit Council to obtain a report setting out any identified damage caused to the roads set out in clause 1 (including any diminution of road life or loss of service) occasioned by the Proponent's construction work.
3. The Proponent must, at its election, either:
 - (a) restore any damage identified in the report obtained in compliance with clause 2 in respect of the roads set out in clause 1 to Council's satisfaction and compensate Council in respect of any identified loss of life or loss of service of those roads; or
 - (b) pay Council an amount equal to the amount required to perform the work and make the compensation that otherwise would have been required in respect of clause 3(a).
4. The Proponent must, prior to construction, apply to Council for a s138 Permit to (without limitation) occupy the road for construction purposes, set up of work sites and install temporary warning signs.
5. The Proponent must upgrade the Wybong Road intersections with Yarraman Rd and Wybong Post Office Road including any realignment of the side roads as necessary for safe intersection design to the satisfaction of Council prior to commencing any construction.
6. The Proponent must ensure that traffic related to Xstrata Mangoola Pty Limited's Mangoola mine does not use Yarraman Road, Post Office Road and Ridgeland Road during the period of temporary closure of Wybong Road.
7. The Proponent must ensure that the construction or relocation works associated with the transmission line is limited to six (6) days per week and that temporary accommodation is provided to occupants of any residence where noise and vibration levels exceed the relevant exposure criteria at any such residence.

Mangoola Coal Mine modification (06_0014 MOD4)

8. The Proponent must ensure that all plans required to be created by it (whether by a condition of consent or by a document the provisions of which the Proponent must accord with in carry out its development) be placed on permanent public exhibition within 5 working days of receiving this Approval.

9. The Proponent must ensure that all blast schedules, dust and noise monitoring results and any information identifying exceedences is placed on its website within 5 working days of the creation or receipt of any such document or knowledge of any such exceedence.
10. The Proponent must ensure that the four Real Time Monitoring stations include capability to monitor PM_{2.5} and shall construction, to Council's satisfaction, two further monitoring stations one of which is to be placed on a site reasonably assessed by Council to be appropriate within the Parish of Brogheda.
11. The consent be varied so as to identify PM_{2.5} as a pollutant.
12. The Proponent must ensure that only trains collecting coal from the Mangoola Coal Mine refuel at the proposed refuelling terminal.
13. The Proponent must provide an offset *in lieu* of land which, but for this Approval, would have remained undisturbed land within the original mine plan. Such land must include (without limitation) the existing ETL easement and the space between the approved Main and South Pits.
14. The Proponent must draft or amend its Aboriginal Cultural Heritage Management Plan so as to include provision for a combination of vehicular and pedestrian routes for internal access to significant heritage items – including Anvil Rock following cessation of mining.
15. The Proponent must draft or amend its Aboriginal Cultural Heritage Management Plan so as to include temporary provision for a combination of (escorted) vehicular and pedestrian routes to significant heritage items – including Anvil Rock.
16. The Proponent must draft or amend its Landscape Management Plan so as to include provision for a combination of vehicular and pedestrian routes for internal access to significant ecological colonies to ensure the perpetual preservation and endogenous recolonisation (sustainability) of the offset enhancement areas and the undisturbed habitats following cessation of mining.
17. The consent be varied to give effect to an adjustment of the approved mining boundary east of the ETL easement and to give effect to the prohibition of mining in the area of the ETL easement and the area to the west of the easement or the use of those areas for any mining purpose.
18. The Proponent must incorporate in its Noise Management Plan reasonable measures to undertake monitoring on any land where a complaint has been lodged in respect of noise.
19. The Proponent must ensure that community information sessions continue to be held at Wybong Hall on an annual basis.
20. The Proponent shall ensure that mine related traffic does not to use Yarraman Road, Post Office Road and Ridgeland Road for the period of any temporary closure of Wybong Road due to blasting.
21. The Proponent shall ensure that heavy vehicle mine traffic does not use Wybong

Road west of the mine entrance road.

22. The Proponent must (for the section of Wybong Road between the mine entrance and Bengalla Link Road) pay Council's reasonable costs of obtaining an appropriately qualified person to conduct a route and upgrade assessment. Such route and upgrade assessment must be assessed in accordance with Austroads "A Guide to Geometric Design of Rural Roads" 2009 and be based on actual traffic counts from active mines and current modelling so as to address the following:
 - (a) lane widths and shoulder widths;
 - (b) clear zone encroachments and risks identified in road safety audits;
 - (c) intersection design; Castle Rock, Ridgeland Road, and Mangoola Road including any realignment of the side roads as necessary for safe intersection design;
 - (d) bus stops and property accesses affected by the proposal;
 - (e) bridge width and approach alignment; and
 - (f) overtaking lanes, climbing lanes and/or slow vehicle turnouts.
23. The Proponent must (for the section of Wybong Road between the mine entrance and Bengalla Link Road) pay Council's reasonable costs of obtaining an appropriately qualified person to conduct an assessment on the pavement design to ensure that the full 30 year design life is achieved under the increased traffic projections and having regard (amongst other things) to background traffic growth.
24. The Proponent must, at its election, either:
 - (a) undertake any further works recommended to be undertaken following assessment of the matters set out in clauses 22 and 23; or
 - (b) pay Council an amount equal to the amount required to perform the work that otherwise would have been required in respect of clause 24(a).
25. The Proponent must not commence any work on the mine site that would, but for this Approval, be impermissible before the work set out in clause 24 is completed whether or not that work is performed by the Proponent, the Council or any other person.
26. The Proponent must in respect of the section of Wybong Rd between the mine entrance and Bengalla Link Road enter into a maintenance agreement with Council for the maintenance of the road for the life of the mine (**Works Endorsement Deed**). The Works Endorsement Deed must be based on prevailing roads legislation and the Aus-Spec (Nat-Spec) Maintenance Specification.
27. The Proponent must pay to Council an amount *in lieu* of s94 contributions in respect of ongoing cumulative mine related road depreciation and maintenance and for the purpose of such amount:
 - (a) The amount must not exceed \$320,000 (indexed) per annum; and

- (b) must be commensurate with the amount paid by other operating mines or committed to be paid by other operating mines in Muswellbrook Shire.
- 28. The Proponent must pay to Council (for payment to Mt Arthur Coal) a capital amount reasonably assessed for its proportional impact on Thomas Mitchell Drive and for the purpose of such amount:
 - (a) The amount must not exceed \$2,000,000;
 - (b) Must be assessed proportionally on the basis of its impact on the road as against other mining operations (and not overall traffic generation);
- 29. The Proponent must pay to Council a contribution *in lieu* of s94 contributions equal to 6.5c (indexed) per tonne of ROM coal extracted less amounts (annualised) paid by the Proponent to Council to date.
- 30. The Proponent must pay to Council a contribution of \$20,000 (indexed) per annum in respect of environmental monitoring.
- 31. The Proponent must use best endeavours to employ not less than four (4) apprentices sourced from the Muswellbrook Shire each year.