

ALEX IRVING

SOLICITOR

AND PUBLIC NOTARY

A.B.N. 66 538 340 540

12 November, 2012

Mr S Brooks
Team Leader
Compliance
Mining and Industry Projects
P O Box 3145
SINGLETON NSW 2330

Dear Sir,

RE: RAY AND CHRISTINE PHELPS

PROPERTY: 281 POST OFFICE ROAD WYBONG

We act on behalf of Mr and Mrs Phelps.

We note they have requested the assistance of the Department in their dealings with the Xstrata Mangoola Coal Mine.

Specifically we are instructed:

1. The Mine has an obligation to provide pursuant to Clause 8 of the Project Approval "additional noise mitigation measures".
2. Xstrata, by letter dated 26th April 2012, confirmed a range of noise mitigation measures which included inter alia localised noise barriers. The Mine advised that they would arrange for the installation of those measures.
3. Mangoola agreed to retain Renzo Tonin to obtain designs but reserved the right to secure a second opinion.
4. We observe at this point that noise mitigation must be "reasonable and feasible", and note the agreement to provide these mitigation measures implies that Xstrata agreed at that time that the works were reasonable and feasible.
5. It now appears that Xstrata have reneged on that agreement to provide a full



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range of mitigation measures.

6. For the avoidance of any doubt, the items the Mine are now refusing to supply are noise barriers to:

- a) Back of house;
- b) Front of house;
- c) BBQ area;
- d) Wine Garden; and
- e) Camping area.

We observe that the report prepared by Renzo Tonin regarding noise mitigation measures was prepared with a view to ensuring that the range of proposed measures, (walls, air conditioning, passive features, double glazing) in concert would provide the Phelps' with a tolerable existence in their residence and cartilage. Accordingly, to exclude one significant part of that range of mitigating factors purportedly on the basis of one quote suggests a failure on the part of the Mine to protect the Phelps' from intrusive noise.

7. Turning to the detail of the balance of the Xstrata obligations:

a) Given past experience over Water Diverters Xstrata need to acknowledge and agree that any works conducted on site be undertaken in accordance with the National Construction Code Series, associated Australian Standards. The Muswellbrook Local Environmental Plan and Development Control Plans. With respect, this does seem axiomatic but experience suggests that Xstrata will require a direction to this effect;

b) Repairs and Maintenance. Our client should not be incurring additional expenditure regarding the maintenance of any works supplied by the Mine. Here we are talking about service of air conditioners, replacement of filters (water) and the double glazed windows and the like.

c) It was agreed that Xstrata would replace water filters every three months. This is not happening.

8. Regarding water specifically we have sighted the quality of the unfiltered rainwater on the property and it holds a coal black sludge. It seems to our client that their proper enjoyment of the property is damaged by the presence of coal dust. Accordingly, the Mine should be obligated to:

- a) Replace water filters every three months as agreed;
- b) Rainwater tanks to be de-sludged annually;
- c) Water in rainwater tanks to be tested for fitness for consumption annually;
- d) Walls, windows and roof catchment to be washed down monthly.

9. Our client has previously provide to Xstrata details of the coal dust contamination of olives from the property. Again, this is an impact on our client's enjoyment of the property stemming from the operation of the Mine. It is not unreasonable that our client be provided with a potable water source at harvest time to wash the olives prior to delivery to the crushing plant.

10. It is apparent from an inspection of the property that the operation of the Mine is having a substantial impact on the capacity of the Phelps family to enjoy their property. The common law has always recognised the right in a person to seek compensation for loss of enjoyment. In the circumstances the payment of regular sum of compensation is reasonable. We note Xstrata have offered the sum of \$12,000 but our client takes the view this would not cover the combined additional costs of the impact of the mine and the loss of enjoyment aspect of the claim.

Our client to date has been disappointed with the capacity of Xstrata to abide by statements and representations. To that effect our client takes the view that in future Xstrata should document any proposals in writing, and the proposals and standards to be applied then be agreed or acknowledged in writing.

In the event you have any questions regarding the foregoing please contact us to discuss.

Lastly, we understand that the Mine will be approaching our client regarding Modification 6. Our client is concerned that the Mine has not complied with obligations detailed in prior Modifications. Specifically, the Mine was required to undertake a visual assessment from our client's property of the effect of the power line. No such assessment has taken place.

Yours faithfully,

ALEX IRVING

Solicitor

26th April 2012

Christine and Ray Phelps
c/- Alex Irving
PO Box 62
Beechwood NSW 2446
Dear Christine and Ray,

RE: Follow up to the meeting on the 20th April 2012 at your property

Firstly, I wish to personally thank you for hosting our meeting at your home last week. It was good to finally meet you and discuss matters important to us both.

In relation to the matters raised at the meeting I wish to capture each action and provide a response.

Your request for an earthen noise bund

As discussed at the meeting, Mangoola does not see this as a reasonable and feasible control measure to mitigate noise impacts and therefore does not support your request for the construction of an earthen noise bund.

Your request of \$1000 per week for compensation for mining related impacts.

I have considered your request and advise that Mangoola are not prepared to meet your request for \$1000 per week. I note that Mangoola had previously offered a sum of \$10,000 per year which was previously declined. Subsequently Mangoola would like to make the offer for a negotiated agreement including compensation of \$1000 per month.

Your request for Mangoola to install noise mitigation measures to your house.

As discussed in the following noise mitigation measures have been requested;

- i. Localised noise barriers
- ii. Double glazing of windows
- iii. Addition insulation and treatment of whirly birds and chimneys
- iv. Installation of acoustic seals on door jams and thresholds
- v. Passive air ventilation
- vi. Air conditioning with fresh air intake (air conditioning unit manufactured by Daiken).

Mangoola will arrange for the installation of the noise mitigation measures above. As discussed, the noise barriers will need to be firstly designed by a noise consultant then reviewed by an engineer and approved by council prior to building. We will contact Renzo Tonin as per your request in view of obtaining designs etc; however Mangoola maintain an ability to gain a second

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