

VOLUNTARY PLANNING AGREEMENT

WYONG SHIRE COUNCIL

AND

WYONG COAL PTY LIMITED

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PLANNING AGREEMENT

DATE

7/7/14

PARTIES

Wyong Shire Council of Council Chambers, Hely Street Wyong in the State of New South Wales ("WSC")

and

Wyong Coal Pty Limited – ABN 90 074 778 699
of 25 Bryant Drive, TUGGERAH NSW 2259 ("WCPL")

BACKGROUND (RECITALS)

- A. WCPL proposes to establish a mine to extract up to 5 million tonnes per annum of export quality thermal coal for a period of 28 years.
- B. WCPL has lodged Development Application No. SSD-4974 under Part 4 Division 4.1 of the Act for development consent to the coal mine.
- C. WCPL acknowledges that the Minister and not WSC is the consent authority for the proposed development and that WSC has made a submission to the NSW Department of Planning and Infrastructure opposing the application.
- D. WCPL has approached WSC to enter into a VPA proposing to provide contributions towards environmental and community enhancement programs.
- E. WCPL proposes this draft Voluntary Planning Agreement (VPA) on the understanding that WSC will be required to formally consider the draft VPA and endorse it for public exhibition and then further consider it for execution if appropriate.
- F. Nothing in this Agreement is to be construed as limiting or fettering in any way the exercise of any statutory discretion or duty by WSC.

OPERATIVE PROVISIONS

1. DEFINITIONS AND INTERPRETATION

1.1. In this Agreement the following definitions apply:

Act means the *Environmental Planning and Assessment Act 1979* (NSW).

Approval means any certificate, licence, consent, permit, approval or other requirement of any Authority having jurisdiction in connection with the activities contemplated by this Agreement including without limitation any approval required under the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)*, roads related approvals, consents or steps by a regulatory authority, receipt of required water licences, approval of any consent or approval required for any biodiversity conservation related instrument or other plan or approval contemplated in any Approval.

Arbitrator means an arbitrator appointed by the nominee of the head of the Australian Commercial Disputes Centre at the request of either party.

Authority means any government, semi-governmental, statutory, administrative, fiscal or judicial body, department, commission, authority, tribunal, public or other person.

Consent means any consent to Development Application No. SSD-4974 made under the Act.

Contributions means the monetary contributions and activities specified at clause 5 of this Agreement.

Council means Wyong Shire Council or its representatives or assigns.

CPI-A means, for the purposes of Schedule 1 of this Agreement, the most recent Consumer Price Index (All Groups, Sydney) published by the Australian Bureau of Statistics at the time of this Agreement

CPI-B means, for the purposes of Schedule 1 of this Agreement, the most recent Consumer Price Index (All Groups, Sydney) published by the Australian Bureau of Statistics at the time a developer contribution is paid to Council

Dispute means any dispute as to the meaning, performance, subject matter, breach or termination of this agreement or any issue which arises out of this agreement whatsoever.

Land means the land subject to Development Application No. SSD-4974 made under the Act.

Law means:

- (a) any law applicable including legislation, ordinances, regulations by-laws and other subordinate legislation; and
- (b) any Approval, including any condition or requirement under it.

Life of the Project means the period from the grant of any Consent to the end date of any such Consent and/or Mining Lease related to that consent.

Parties means the Council and WCPL, including both their successors and assigns.

Party means a party to this Agreement including its successors and assigns.

Project means the development permitted by the Consent.

WCPL means Wyong Coal Pty Ltd (ABN 90 074 778 699)

WSC means Wyong Shire Council or its representatives or assigns.

2. PLANNING AGREEMENT UNDER THE ACT

The parties agree that this Agreement is a Planning Agreement governed by Subdivision 2 of Division 6 of Part 4 of the Act.

3. APPLICATION OF THIS AGREEMENT

This Agreement applies to the Consent and to the Land.

4. OPERATION OF THIS AGREEMENT

4.1. This agreement is subject to the following conditions precedent:

- a Consent is granted with conditions satisfactory to WCPL;
- b All other Approvals, licences, permits, consents or other authorisations necessary for the Project being received on conditions which meet WCPL approval;
- c Expiry of any relevant appeal periods; and
- d WCPL has made a final decision to physically construct the Project,

and no payments shall be due or payable until all conditions precedent provided for in this clause have been met.

4.2. This Agreement excludes the application of s.94, s94a and s94EF of the Act to the Project and WSC agrees that it will not seek payment of any monies, other than the payment of monies under this Agreement, on account of matters provided for or referred to in section 94 of the Act for the duration of this agreement in respect of the Project.

4.3. This agreement also excludes water and sewerage contributions levied under s.306 of the *Water Management Act 2000*.

4.4. This Agreement terminates on:

- (a) a declaration by a Court of competent jurisdiction that the Consent or any other Approval granted for the Project is invalid; or
- (b) if any Consent or other Approval granted for the Project ceases for any reason to operate.

- 4.5. If a Consent or other Approval granted for the Project is declared to be invalid and a new Approval is granted in respect of the Project, then WSC agrees to credit payment of the Contributions paid under this Agreement against any contributions required under the new Approval. If no new Approval is granted then no credit will be provided.
- 4.6. If this Agreement terminates pursuant to clause 4.4, clause 4.5 survives termination of the Agreement.
- 4.7. This Agreement terminates at the end of the Life of the Project.

5. CONTRIBUTIONS TO THE COMMUNITY ENHANCEMENT PROGRAM

- 5.1. WCPL will make the Contributions as set out in Schedule 1 of this Agreement.
- 5.2. Where a Contribution may be made by either payment of money or by the carrying out of works in kind (as stipulated in Schedule 1) the parties will endeavour (in good faith) to agree whether the Contribution is made by WCPL carrying out work in kind or paying money. If agreement cannot be reached under this clause then WCPL must carry out works in kind. If WCPL is unable to carry out any particular element of works in kind due to a matter beyond its reasonable control then WCPL may serve notice of dispute under clause 10 of this agreement and the manner of satisfaction of WCPL's obligation shall be determined in accordance with the provisions of clause 10.
- 5.3. Any Contribution that is a monetary contribution will be taken to have been made under this Agreement when payment is made to WSC by bank cheque or by electronic funds transfer into a bank account nominated by the WSC.
- 5.4. Any Contribution that is to be made by the provision of works in kind will be taken to have been made when the relevant works have been fully completed in accordance with any contract applying to the works.
- 5.5. For works carried out in kind, WCPL will be solely responsible for gaining access to property and negotiating and creating property rights in favour of WSC (such as easements) which support and provide for the construction, operation and maintenance of infrastructure or things which will or are proposed to become owned by or the property of WSC. WSC undertake to assist WCPL in securing any easements over privately owned lands where the easement is necessary for the construction of infrastructure that is to be dedicated to WSC upon completion.

6. OFFSET LANDS

- 6.1. WCPL agrees to appoint WSC as the manager of specific Offset Lands, subject to the Office of Environment and Heritage and relevant officers and Minister(s) under the *Threatened Species Conservation Act 1995*, *Environmental Protection and Biodiversity Conservation Act 1999* (Cth), the Act or their replacement from time to time and any other Authority with jurisdiction or interest in the Offset Lands and their preservation and/or management in connection with offsetting the impacts of the Project, approving the proposed management agreement and approving the arrangements proposed by WCPL for conservation or preservation of the Offset Lands and other arrangements required under the Consent.
- 6.2. The terms of WSC's appointment will be such as, in WCPL's reasonable opinion, are necessary to fully and faithfully implement the requirements and purpose of the Consent or any Approval in respect of the Offset Lands and/or the Project. It is

acknowledged that the terms of any appointment will include commitments by WSC, at its cost, to be bound by management plans and the requirements of the Consent from time to time.

- 6.3. No agreement or arrangement relating to the management of biodiversity offset lands will be of any force or effect where the agreement or arrangement adversely impacts on WCPL's Consent.
- 6.4. WSC may, at its absolute discretion, elect not to enter into an agreement or arrangement for the management of Offset Lands in which case Clause 6 does not apply.

7. DIRECT EMPLOYMENT

WCPL will use all reasonable endeavours to sponsor one Engineering Scholarship and employ two Apprentice positions per year for the Life of the Project. Apprentices employed in satisfaction of this clause must, as at the date of commencement of the Apprenticeship, be resident within the Wyong Shire.

8. PUBLIC PURPOSES AND ACCOUNTABILITY FOR EXPENDITURE

- 8.1. The Contributions must be used for the public purposes set out in Schedule 1 within a reasonable time of receipt of payment.
- 8.2. Within 10 Business Days of publishing its annual report required under section 93G(5) of the Act, WSC must provide directly to WCPL details of the expenditure of the Contributions payable under items 1, 2, 3, 5 and 6 of Schedule 1 in accordance with clause 8.1 during the relevant year.
- 8.3. WSC must provide directly to WCPL details of the disbursement of Contributions payable under items 4 and 7 of Schedule 1 in accordance with clause 8.1 at the appropriate time.
- 8.4. As adjoining landowners the parties agree to work collaboratively in good faith to investigate any potential mutual cost savings measures in regard to infrastructure augmentation and relocation.

9. REVIEW OF THIS AGREEMENT

Any amendments, variation or modification to or of, or consent to any departure by any party from the terms of this Agreement shall have no force or effect unless effected by a document executed by the parties which complies with the requirements of Section 93G of the Act.

10. DISPUTE RESOLUTION AND ENFORCEMENT

- 10.1. In the event of a Dispute arising neither party will commence any proceedings in any court.
- 10.2. If a Dispute arises (in the opinion of either party) then either party may service notice of Dispute on the other setting out the nature of the Dispute and its understanding of the position of each party in respect of that Dispute (a **Dispute Notice**).
- 10.3. The recipient of a Dispute Notice must respond to a Dispute Notice with its version of the position of each party in respect of the Dispute within seven (7) days of receipt of the Dispute Notice (**Response**).
- 10.4. The General Manager of WSC and Managing Director of WCPL must meet within seven (7) days of the Response to discuss and endeavour in good faith to resolve the Dispute.
- 10.5. If the Dispute is not resolved within thirty (30) days of the Response then either party may refer the Dispute to an Arbitrator in which case both parties must comply with the Arbitrator's imposed process which will accord with Part 5 of the *Commercial Arbitration Act 2010*.
- 10.6. This is an arbitration agreement under and subject to the provisions of the *Commercial Arbitration Act 2010*.
- 10.7. The parties agree to be bound by the determination(s) of the Arbitrator, unless within 14 days of receiving the determination, a party gives written notice to the other party that it does not agree with the determination and commences litigation.,

11. COSTS

Each party will pay its own costs in relation to the negotiation, preparation and execution of this Agreement.

12. NOTICES

- 12.1. Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:
 - (a) Delivered or posted to that Party at its address set out in (b) below.
 - (b) Faxed or emailed to that Party at the relevant details set out below.
 - (i) Council: Wyong Shire Council
Attention: General Manager
Address: DX 7306, WYONG
Fax No: (02) 4350 2098
Email: wsc@wyong.nsw.gov.au
 - (ii) WCPL: Wyong Coal Pty Limited
Attention: Project Manager
Address: PO Box 3039 TUGGERAH NSW 2259
Fax No: (02) 4352 7599
Email: admin@wallarah.com.au

- 12.2. If a party gives the other party 3 working days notice of a change of its address or fax number, any notice, consent, information, application or request is only given or made by that other party if it is delivered, posted or faxed to the latest address or fax number.
- 12.3. Any notice, consent, information, application or request is to be treated or given or made at the following time:
- (a) If it is delivered, when it is left at the relevant address.
 - (b) If it is sent by post, 2 working days after it is posted.
 - (c) If it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.
- 12.4. If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if it is on a business day, after 5.00pm on that day in the place of the party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

13. ENTIRE AGREEMENT

This Agreement contains everything to which the parties have agreed in relation to the matters it deals with. No party can rely on an earlier document, or anything said or done by another party, or by a director, officer, agent or employee of that party before this Agreement was executed, except as permitted by law.

14. NEW LEGISLATION

- 14.1. If a Law is changed or a new Law comes into force (both referred to as **New Law**) and WCPL is obliged by the New Law to do something or pay an additional amount for a purpose which it is already contractually obligated to do or pay under this Agreement then, to the extent only that the relevant obligation is required under both the New Law and this Agreement, compliance with this Agreement will constitute compliance with the New Law and compliance with the New Law will constitute compliance with this Agreement.
- 14.2. If there is any doubt as to whether compliance with this Agreement will constitute compliance with the New Law, WCPL will pay such amounts required under the New Law and the WSC agrees that such payments will act as a credit with respect to any future payments required under this Agreement so that the aggregate amount (as set out in the schedule 1) WCPL has paid or will pay under this Agreement is not exceeded.

15. FURTHER ACTS

Each Party agrees to promptly execute all documents and do all such things that another Party from time to time reasonably requests to affect, perfect or complete this Agreement and all transactions incidental to it.

16. GOVERNING LAW AND JURISDICTION

This Agreement is governed by the law of New South Wales, Australia. The parties submit to the non-exclusive jurisdiction of its Courts and Courts of appeal from them. The parties will not object to the exercise of jurisdiction by those Courts on any basis provided that the dispute resolution provisions in clause 10 of this Agreement have first been satisfied.

17. NO FETTER

Nothing in this Agreement is to be construed as requiring WSC or the Minister to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing is to be construed as limiting or fettering in any way the exercise of any statutory discretion or duty if that is not permitted by law.

18. SEVERABILITY

If a clause or part of a clause in this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of the Agreement is not affected.

19. WAIVER

The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party. A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

EXECUTED as a Voluntary Planning Agreement

Date: 7/7/14

The Common Seal of WYONG SHIRE COUNCIL was hereunto affixed on the day of 20 pursuant to a resolution of the Council made on the day of 20 :

Signed pursuant to s377
and s378 of the
LG Act



A/ General Manager

Mayor Witness

Greg McDonald

Name [BLOCK LETTERS]

KARINA CURTIS

Name [BLOCK LETTERS]

Executed for and on behalf of Wyong Coal Pty Ltd in accordance with section 127(1) of the Corporations Act:



Director/Secretary [if not Sole Director]

Director/Sole Director

Chank Parle

Name [BLOCK LETTERS]

Im-sik Kim

Name [BLOCK LETTERS]

SCHEDULE 1 (Contributions Schedule)

Development Contribution and Timing of Payments

Voluntary Planning Agreement

Wyong Shire Council and Wyong Coal Pty Limited

Item No.	Contributions	Intended Use / Public Purpose	Timing/Payment details
1	<p>Works In Kind to complete the whole of the subject works OR,</p> <p>Monetary Contribution: \$4,000,000 minus the value of any Works In Kind to partially complete the subject works.</p>	<p>Tooheys Road upgrade - to reconstruct the entire length to a sealed road standard (Commercial & Industrial "Other" Table 7.2 and other related requirements of the Wyong Shire Council Civil Works Design Guide) including an access intersection layout as shown in Figure 7.1 on page 112, Wallarah 2 Coal Project EIS – Appendix Q Traffic & Transport Impact Assessment.</p>	<p>In the case where a monetary contribution has been agreed by WSC, prior to the physical commencement of construction works for the development at the Tooheys Rd site.</p>
2	<p>Works In Kind to complete the whole of the subject works OR,</p> <p>Monetary Contribution: \$700,000 minus the value of any Works In Kind to partially complete the subject works.</p>	<p>Buttonderry access intersection upgrade as shown in Figure 7.2 on page 113, Wallarah 2 Coal Project EIS – Appendix Q Traffic & Transport Impact Assessment.</p>	<p>In the case where a monetary contribution has been agreed by WSC, prior to the physical commencement of construction works for the development at the Buttonderry site.</p>
3	<p>Works In Kind to complete the whole of the subject works OR,</p> <p>Monetary Contribution: \$1,404,000 minus the value of any Works In Kind to partially complete the subject works.</p>	<p>Brothers Forest Road/Little Jilliby Road intersection upgrade and upgrade of Brother Forest Road from the Little Jilliby Road intersection to the Ventilation Shaft site access to sealed road standard (Commercial & Industrial "Other" Table 7.2 and other related requirements of the Wyong Shire Council Civil Works Design Guide) as shown in Figure 7.3 on page 114, Wallarah 2 Coal Project EIS – Appendix Q Traffic & Transport Impact Assessment.</p>	<p>In the case where a monetary contribution has been agreed by WSC, prior to the physical commencement of ventilation shaft construction works (Current projections Yr 10).</p>

Item No.	Contributions	Intended Use / Public Purpose	Timing/Payment details
4	<p>Monetary Contribution: \$1,400,000 over the Life of the Project.</p>	<p>Contributions to ongoing road and public infrastructure affected by the proposed mine.</p>	<p>Payment on the following conditions:</p> <ul style="list-style-type: none"> a. Payments would equate to \$50,000 per year for 28 years or for the life of the proposed project. b. Initial payment to be made on the 12 month anniversary of the road works, upgrades and infrastructure payment and thereafter on each anniversary of that date. c. Payments will not be required during any period in which operations at the proposed mine are suspended, discontinued or abandoned (including any period in which the operation is kept on a care and maintenance basis) in accordance with the provisions of the Coal Mines Health and Safety Act 2002 and associated regulations.
5	<p>Works In Kind to complete the whole of the subject works OR,</p> <p>Monetary Contributions: \$3,170,000 minus the value of any Works In Kind to partially complete the subject works.</p>	<p>Provision of water infrastructure to the Buttonderry and Tooheys Road sites.</p>	<p>In the case where a monetary contribution has been agreed by WSC:</p> <ul style="list-style-type: none"> a. \$1,000,000 for water supply to Buttonderry site b. \$2,170,000 for water supply to Tooheys Rd site <p>Payment prior to completion of surface infrastructure as per accompanying plans "Water to Buttonderry" and "Water to Tooheys Rd" depicting proposed extent of works.</p>

Item No.	Contributions	Intended Use / Public Purpose	Timing/Payment details
6	<p>Works In Kind to complete the whole of the subject works OR,</p> <p>Monetary Contributions: \$2,300,000 minus the value of any Works In Kind to partially complete the subject works.</p>	Provision of sewerage infrastructure to the Buttonderry site.	In the case where a monetary contribution has been agreed by WSC, payment prior to completion of surface infrastructure as per accompanying plan "Sewer to Buttonderry" depicting proposed extent of works.
7	Monetary Contribution Community and Environment: \$4,000,000.	<p>Community, social and cultural development infrastructure projects</p> <p>Environmental improvement projects being undertaken by Council</p> <p>Enhancement of water reuse, trade waste capacity and sustainability programs</p>	<p>Payment on the following conditions:</p> <p>a. \$600,000 upon WCPL making a decision to physically construct the Project.</p> <p>b. \$500,000 upon the physical commencement of construction.</p> <p>c. \$1,000,000 upon the raling of first coal.</p> <p>d. \$1,900,000 upon the completion of Longwall 1</p>

GST: All dollar amounts in the above table are GST exclusive.

Works: All works in the above table which have been identified as the responsibility of WCPL to construct must be designed and constructed to WSC's satisfaction.

Indexation: All monetary amounts contained in the above table will be subject to indexation using the following formula:

$$\text{Amount to be paid} = \text{Contribution} \times (\text{CPI-B}/\text{CPI-A})$$

Where:

Contribution = the amount referred to in the above table.

CPI-A & CPI-B = as defined by this agreement

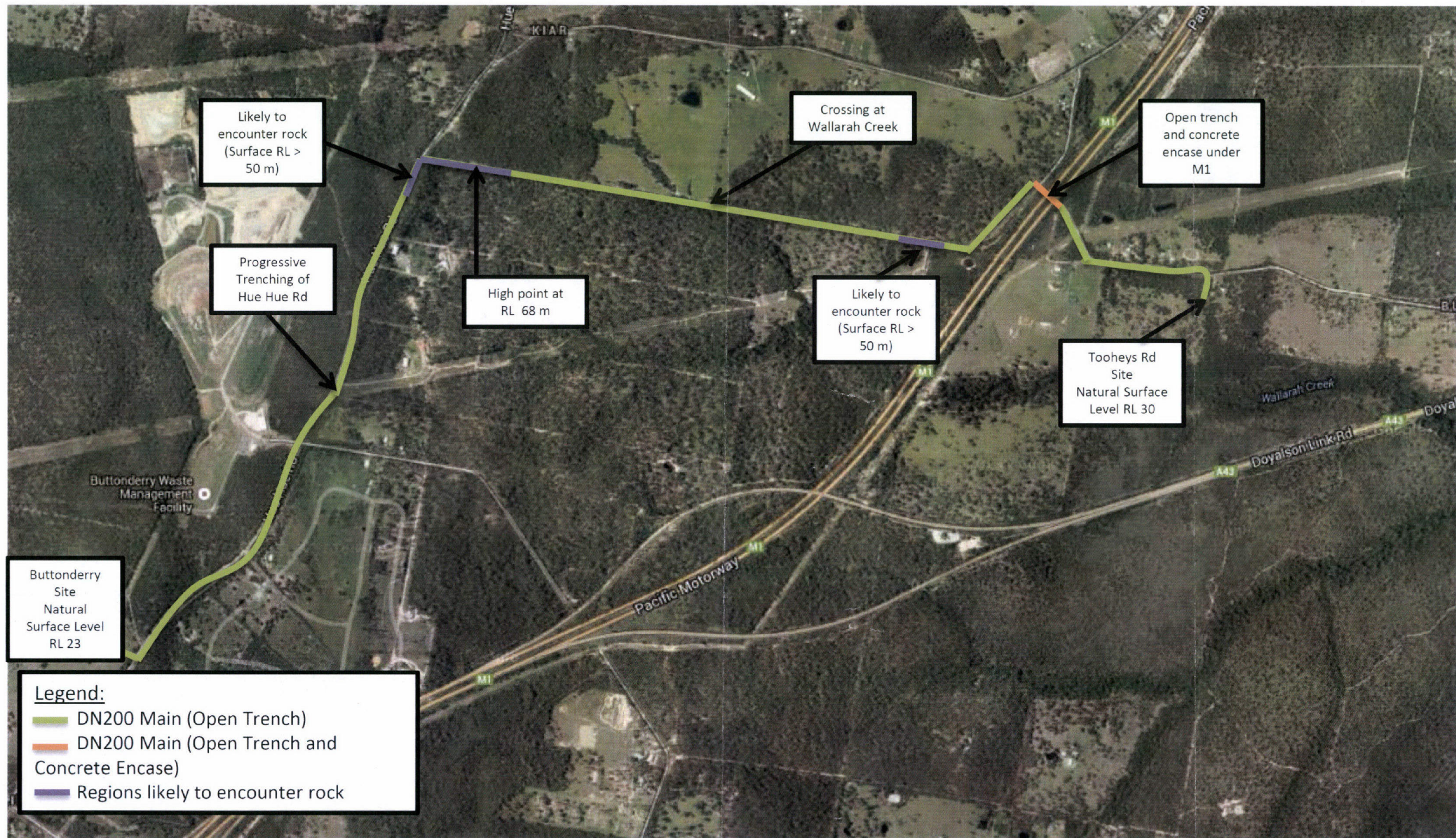
Water to Buttonderry

(This plan is indicative and may be subject to change upon final engineering design if agreed between parties)



Water to Tooheys Rd

(This plan is indicative and may be subject to change upon final engineering design if agreed between parties)



Sewer to Buttonderry

(This plan is indicative and may be subject to change upon final engineering design if agreed between parties)

