

Appendix H IPART Determination

Media release

Tuesday, 9 May 2017

MUSWELLBROOK SPECIAL RATE VARIATION NOT APPROVED

The Independent Pricing and Regulatory Tribunal (IPART) has not approved Muswellbrook Shire Council's application to increase its general income by a cumulative 20.39% over the next four years.

Rate increases from 1 July 2017 will now be limited to the 1.5% rate peg as a result of IPART's assessment that the community was not made sufficiently aware of the size or extent of the increase being sought.

IPART Chair Dr Peter Boxall said the application was assessed against the NSW Government's published criteria, which require the council to make the community aware of the proposed increase and to consider the community's capacity and willingness to pay the requested increase.

"Special variations are designed to give councils the flexibility to generate additional income above the rate peg to meet their specific needs, with an independent process to assess the increase," Dr Boxall said.

"In the case of Muswellbrook Shire Council, we are not satisfied the community was aware of the extent of the proposed increase based on the information provided by the council."

The council's consultation used rate increase figures that did not include the rate peg. This meant the rate increases the community were consulted on were significantly below the actual increase that would occur under the special variation.

"By subtracting the rate peg from figures quoted to the community, the council has consulted the community on a 10% increase that is half of the actual 20% increase it applied for to IPART," Dr Boxall said.

"As such the community cannot be said to be aware of the size and extent of the special variation increase and the council has not satisfied this criterion."

The council had proposed the special variation to repay long term loans that would be used to fund three future projects – the Muswellbrook Regional Aquatic Centre upgrade, the implementation of the Denman Town Centre Master Plan and the development of Muswellbrook Regional Convention and Performance Centre.

Dr Boxall said the loan repayments would not begin until 2019-20, providing council with sufficient time to reapply to IPART for a special variation in future years if required.

Muswellbrook Shire Council is among 8 councils across NSW (of a total of 128) to make a special variation application to increase rates for 2017-18. IPART approved 4 applications in full, declined 2 applications and 2 applications were partially approved.

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More information is available at ipart.nsw.gov.au

Appendix I FINES

Land and Environment Court

New South Wales

Medium Neutral Citation: Environment Protection Authority v Clarence Colliery Pty Ltd; Chief Executive, Office of Environment and Heritage v Clarence Colliery Pty Ltd [2017] NSWLEC 82

Hearing dates: 8 May 2017

Date of orders: 14 July 2017

Decision date: 14 July 2017

Jurisdiction: Class 5

Before: Robson J

Decision: See orders at [145]

Catchwords: ENVIRONMENTAL OFFENCES – sentence – negligently causing the escape of coal fines slurry and coarse reject material into Blue Mountains National Park – damage to reserved land – substantial actual and likely environmental harm – environmental harm reasonably foreseeable – practical measures available to avoid offences occurring – offences in the upper range of medium objective seriousness – offender provided high degree of assistance to authorities – offender of good corporate character and remorseful – offender taken measures to prevent reoccurrence of the offences – need for both specific and general deterrence – totality principle applies – offender ordered to pay amount to Environmental Trust – offender ordered to publicise offences and sentence in newspapers – offender ordered to pay prosecutor’s legal and investigation costs

Appendix J Wybong Uplands Land Management Strategy: Consent defined funding.

BUSINESS

1. WYBONG UPLANDS LAND MANAGEMENT STRATEGY

The Environmental Services Manager reports:

i) SYNOPSIS:

The Wybong Uplands Land Management Strategy (WULMS) has been developed in accordance with the Planning Agreement between Xstrata Mangoola, Muswellbrook Shire Council and the Department of Planning in relation to the Mangoola Coal Project.

ii) DATE OF REPORT: 12 August 2010

iii) REPORT:

Following the update report provided to Council's 15 June 2010 meeting, the Wybong Uplands Land Management Strategy (WULMS) has been finalised. The finalised document has been attached for Councillor's information.

The Planning Agreement states that WULMS is defined as the strategy developed by Mangoola Coal in consultation with the Hunter Central Rivers – Catchment Management Authority (CMA) and Muswellbrook Shire Council relating to sustainable land management and environmental and conservation works in the Wybong catchment area in the vicinity of the project.

Xstrata Mangoola Environmental staff have been consulting with Muswellbrook Shire Council's Environmental Services Manager and the Hunter Central Rivers Catchment Management Authority's Catchment Coordinator to develop the strategy over several months.

An agreed scope for the strategy was formed in a meeting of the three parties in May 2010. Council was provided with an update report for the June Council Meeting to outline the direction of the scope of the proposed strategy. Following the acceptance of the updated report to Council, two further meetings were held on 22 July and 10 August 2010 to finalise the details of the document.

A meeting was also held with the General Manager, Acting Director of Environmental Services, Environmental Services Manager and the Hunter Central Rivers Catchment Management Authority's Catchment Coordinator on 2 August 2010 to discuss the final details of the proposed strategy from. From that meeting several details were incorporated into the Strategy.

The final strategy document sets out a program of funding land holder on ground works within the Wybong catchment within the Muswellbrook Shire Boundary and upstream of White Rock Gauging Station but excluding Xstrata owned land. The WULMS Project area is clearly defined in the strategy and only project in the defined area will be eligible for funding.

Funding of the projects will be subject to the HCRCMA small project guidelines and will benefit 11 key objectives of the Hunter Central River Catchment Action Plan as well as the objectives of the Great Eastern Ranges

Initiative (GERI) that seeks to establish connectivity conservation along the Great Eastern Range.

The HCRCMA will undertake specific landholder engagement to make landholders aware of the funds available and the conditions of its expenditure. Xstrata will also promote the fund through its community communications.

The HCRCMA will coordinate interest in the project through their Request For Assistance form (attached to the strategy). Field staff then work with landowners to develop a suitable project for funding.

All projects funded by WULMS shall be 100% on-ground works and shall be matched by the land holder in cash or in kind in accordance with HCRCMA policies on landholder contributions.

All projects will be assessed by the HCRCMA assessment process and final endorsement of proposals will be by a committee of Xstrata, HCRCMA and Council. Membership of that committee is specified in the strategy as Council's environmental Services Manager, HCRCMA Catchment Coordinator and an Environment Officer from Xstrata Mangoola.

All land holder payments are made on completion of works as a reimbursement upon confirmation from HCRCMA that works are complete to their satisfaction.

Utilising the HCRCMA Catchment Action Plan and GERI principles and objectives will provide confidence that good landscape management principles can be adhered to so on ground works will result in sustainable land management and environmental and conservation. The established system of reviewing and assessing projects that the CMA utilises is of great value to the strategy as it aligns with other project values throughout the region. Also the CMA enters into long term conservation agreements to ensure the works are not destroyed or compromised in the future. The CMA also has established monitoring and reporting framework that will readily provide information on the projects funded over the five year period.

It is acknowledged that in order to deliver these programs the HCRCMA will have to provide considerable resources. While the HCRCMA is not a fee for service organisation, it is expected that the HCRCMA should receive a contribution towards project management. WULMS will have a funding target of \$100 000 per year, of this total \$15 000 will be allocated to the HCRCMA for costs incurred in project administration and management.

Each year a report will be produced that outlines what projects have been undertaken, how much money is expended and update reports of previous projects. This report will be included in each parties annual reporting requirements.

It is acknowledged that the HCRCMA has invested a considerable amount of time and resources in developing this strategy and it is recommended that the efforts of the HCRCMA be acknowledged by Council.

iv) FINANCIAL IMPLICATIONS:

Xstrata's contributions to the WULMS fund is \$500 000 over five years. \$200 000 has been paid to date with three more payments of \$100 000 due in February of each year until 2013.

The funds reserved for the Wybong Uplands Land Management Strategy will be expended in accordance with the Strategy through invoices received from land owners and the Hunter Central Rivers Catchment Management Authority. Targeted expenditure is \$100 000 per year for five years.

v) POLICY IMPLICATIONS: Not Applicable

vi) MANAGEMENT PLAN IMPLICATIONS: Not Applicable

ACTION RECOMMENDED:

That the General Manager be Authorised to endorse the Wybong Uplands Land Management Strategy on behalf of Council and that the strategy be acted upon as soon as possible, and FURTHER that the Hunter Central Rivers Catchment Management Authority be acknowledge for their contribution to preparing this Strategy.

Moved:.....

Seconded:

Report prepared by	C Flemming
Accepted for inclusion into Business Paper	C Gidney

Appendix A - Wybong Upland Land Management Strategy

Wybong Uplands Land Management Strategy (WULMS)

Purpose statement

The purpose of this document is to describe the strategy developed by Mangoola Coal, Muswellbrook Shire Council and the Hunter Central Rivers Catchment Management Authority relating to land management, environmental and conservation works within the specified area and in accordance with the MoU as detailed in statements of commitment contained within consent conditions of PA 06_0014.

This strategy outlines how Council will apply the contributions made by Mangoola Coal for local environmental management in proximity to the Mangoola Coal Project as required by the Mangoola Coal Project Planning Agreement.

Introduction

Wybong Creek is located in the southern section of the Upper Hunter Shire and the north western area of Muswellbrook Shire Local Government Areas. The catchment runs north south from the Liverpool Ranges in the north to its confluence with the Goulburn River between Sandy Hollow and Denman.

Within the Muswellbrook Shire area, the catchment is flanked by Monobolai Nature Reserve in the west and crown land to the east with the valley floor providing reasonably expansive grazing lands. There are significant parcels of crown land located throughout the catchment.

Since European settlement, land use has predominantly been livestock grazing, dryland and irrigated cropping. Valley floors have been extensively cleared of native vegetation, with steeper lands retaining much of their woody vegetation.

The stream surface flow is gauged at White Rock gauging station where base flows are estimated at less than 1 mega litre per day and high flows in the order of 16ML per day. Peak daily demand for water in the catchment is between 50 and 74 ML. The surface water licence entitlements on the catchment in 2001 were 7942 ML per year. Average yield of the catchment for 20% rainfall equates to 5,088 ML. It is significant to note that as a result of this over-allocation of the surface water, a Water Sharing Plan for Wybong catchment was developed and gazetted in 2003. This plan is due for review in 2013.

The creek is generally considered to be saline and it is noted that significant alluvial recharge occurs in the lower reaches above the gauging station. Saline groundwater intrusions occur at several points along the stream length.

The Wybong catchment is in part to be disturbed by the construction of the Mangoola Coal Mine by Xstrata Coal. The consent for the project was granted in June 2007 and will cut off Anvil Creek and Clarks' Gully in the south east of the Wybong catchment and a considerable area of the Big Flat Creek catchment that runs along Wybong Road to the north of the mining project.

During the consultation period associated with the Environmental Assessment for Mangoola Coal, the local community saw the general condition of the Wybong Creek area as a major issue. As part of community engagement the applicant made a commitment to contribute resources to address the community concerns around long term sustainable land management within that part of the Wybong Creek catchment area within the Muswellbrook Shire Local Government Area (LGA)

boundary through a Planning Agreement entered into with the NSW Department of Planning and Muswellbrook Council.

The Planning Agreement commits Xstrata to develop the **Wybong Uplands Land Management Strategy (WULMS)** in consultation with Muswellbrook Shire Council (Council) and Hunter Central Rivers Catchment Management Authority (HCRCMA). WULMS means the strategy developed by Xstrata Mangoola Coal in conjunction with Council and the HCRCMA relating to sustainable land management and environmental and conservation works in the Wybong catchment area in the vicinity of the Mangoola Coal Project.

The strategy is funded through contributions made to Council by Xstrata Mangoola Coal. The amount of contributions is to be \$100,000 per year for five years as set out in Appendix 4 of the Project Approval 06_0014, attached at Attachment "A".

Geographical extent

The strategy applies only to that land contained in the Wybong Ck catchment above White Rock stream gauging station within Muswellbrook LGA identified as the "*Monobolai to Black Jack Mountain Corridor*" on the map at Figure 1. This area will be referred to as the "WULMS Area". The WULMS Area is approximately 10,700ha in extent, contains approximately 68 landholdings and 70km of significant streams.

Planning context

HCRCMA Catchment Action Plan

The HCRCMA Catchment Action Plan (CAP) identifies the Wybong Catchment as a priority saline catchment and recommends priority actions to remediate salinity recharge areas, stabilise salt affected areas, undertake actions to improve stream water quality and aquatic health, improve grazing management activities and improve groundcover on erodible soils. The CAP identifies priority areas for the implementation of on-ground works and other activities to meet biophysical Management Targets (MT). The CAP has 31 management targets. These priorities are described as specific to a geographic area, to a landscape or land management type, or a combination of two or more of these parameters. Further information about the HCRCMA and the CAP can be found at: www.hcr.cma.nsw.gov.au/

Table 1: HCRCMA CAP management targets applying to the Wybong catchment

CAP Management Target #	Management Target short description	CAP page reference
MT 02	Regenerate native vegetation	P95 - 96
MT05	Manage Aboriginal cultural and heritage landscapes having physical, cultural or spiritual significance to Aboriginal people	P109 - 110
MT 10	Revegetate highly erodible soils	P 129 & 234
MT 11	Stabilise actively eroding soils	P132
MT 12	Revegetation of salinity recharge areas with deep rooted vegetation	P135 - 136
MT 14	Stabilise salt affected areas	P142
MT 15	Implement sustainable grazing management practices	P145
MT 16	Develop and implement property plans on agricultural land	P148 - 149
MT 18	Regenerate degraded native riparian vegetation	P155 - 156
MT 20	Stabilise unstable or degraded stream channels	P162 - 163
MT 21	Restore instream habitat of stream channels	P165

Great Eastern Ranges Initiative

In 2007 the Great Eastern Ranges Initiative (GERI) was launched. GERI is a national program to create and manage functional links in a conservation corridor spanning the length of the Great Divide (NSW DECC, 2009).

The GERI aims to connect and conserve ecosystems along more than 2,800km of the Great Divide and Escarpment of eastern Australia from Walhalla in Victoria to the Atherton Tablelands in far north Queensland. The Initiative seeks to help nature recover from the effects of past land management and adapt to the challenges of future climate pressures and landscape change. Connectivity conservation doesn't always mean conservation of a continuous band of forest, woodland or grassland.

The Hunter Valley is recognised as a significant potential gap in the broader connectivity of the great eastern ranges. While the area comprises a natural 'pinching' of the ranges, the 'barrier' presented to species moving across the region has been made more difficult by widespread agricultural, urban and mining development. The Great Eastern Ranges (Hunter Valley) Partnership has chosen to focus attentions on the ridge system associated with the Wybong catchment in the upper valley as a key area to coordinate efforts towards securing conservation values and linking natural areas across the upper Hunter valley.

The Upper Hunter Link is important for a variety of "edge of range" species and communities, core habitat for forest and woodland species which utilise surrounding areas at lower elevations, a merge zone for western and coastal environments and as a potentially important habitat linkage across the valley. A range of conservation mechanisms, voluntary contributions, industry partnerships and community engagement activities will be used to achieve a lasting improvement in future connectivity of the area. Further information about GERI can be found at: <http://www.greateasterranges.org.au/>

Where ever possible WULMS land management actions will complement, and be consistent with, HCRCMA land management programs in the Wybong Catchment and the broader Hunter catchment and the GERI Connectivity Conservation strategy.

Figure 1: Map showing GERI Upper Hunter Link priority areas.

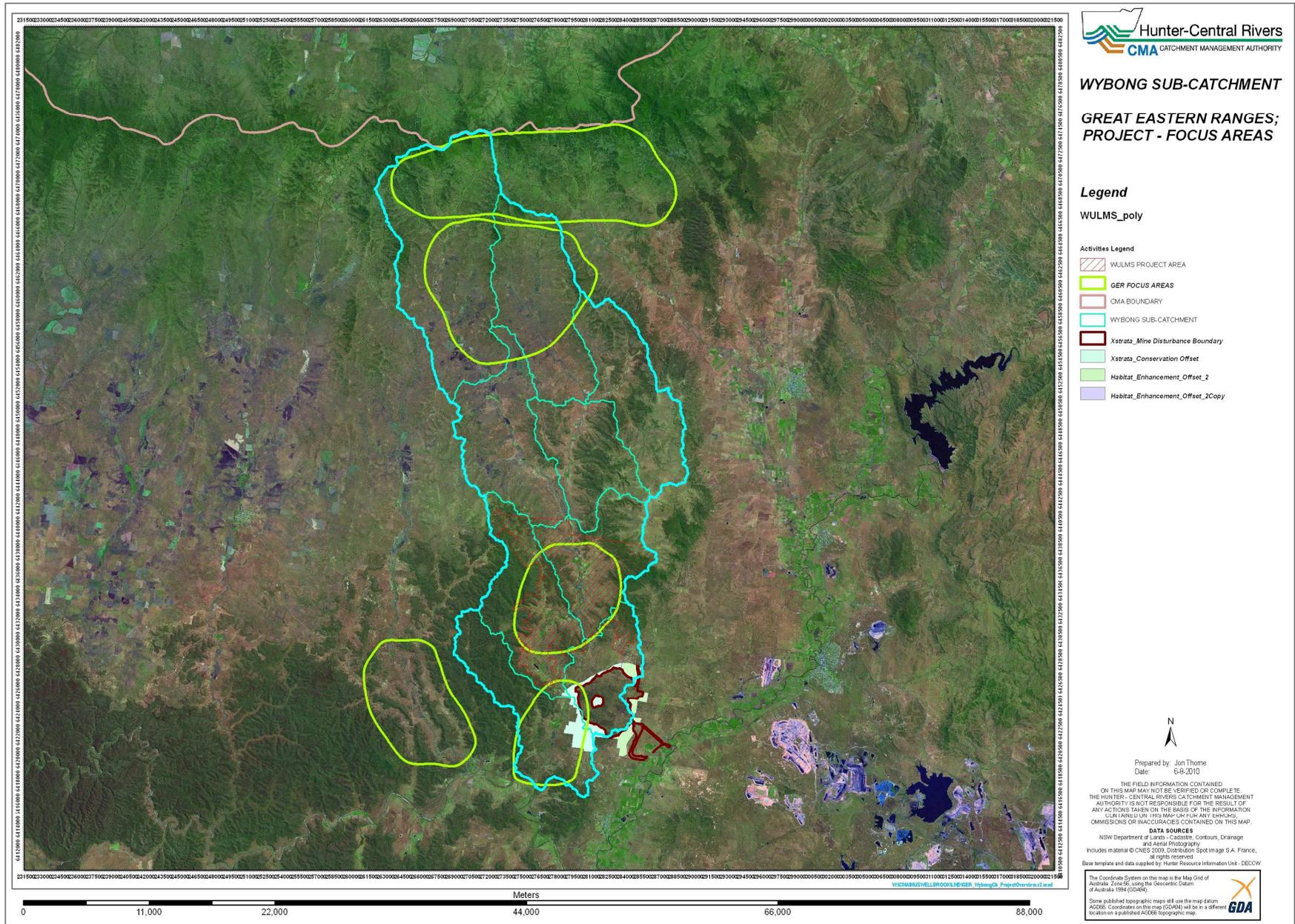
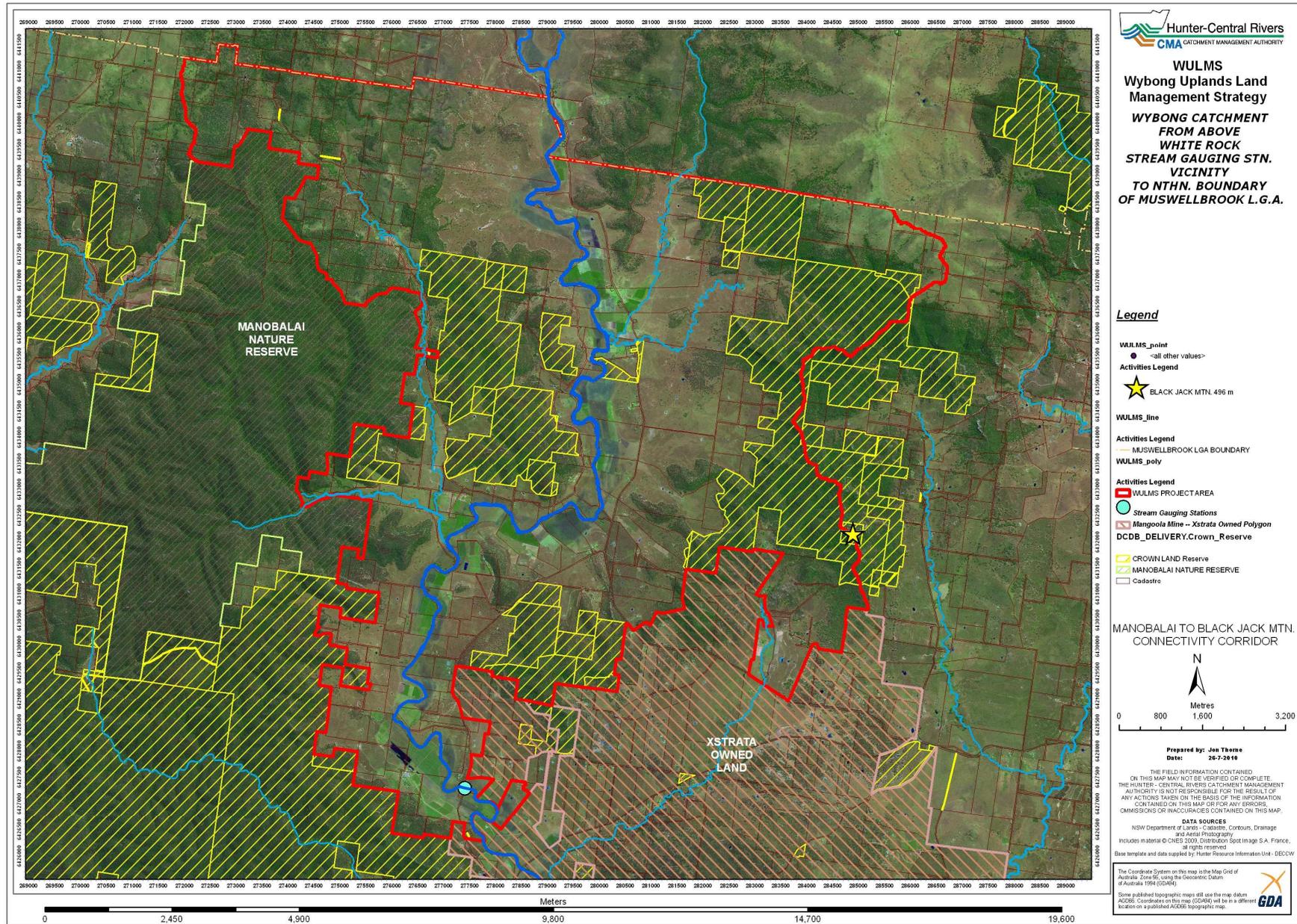


Figure 2: WULMS Area map.



WULMS Aims and Objectives

Aim

The aim of WULMS is to facilitate improved land management practices and environmental outcomes within the WULMS Area part of the Wybong Creek Catchment, and to fund appropriate and relevant works through the HCRCMA Incentives programs. These Incentives programs will include, but may not be limited to, the Small Project Program and the Land Management Tender Program.

Objectives

Core objectives of WULMS:

- Protect and enhance Wybong Ck and its catchment.
- To engage with local landholders and have them actively participate.
- Enhance ecological values for areas identified in the GERI.
- Support and facilitate the implementation of projects consistent with the HCRCMA Catchment Action Plan.

Actions

1. Engage HCRCMA to utilise existing processes to identify projects suitable for funding.
2. Provide funding for on-ground works in the WULMS area consistent with the Objectives of this Strategy, HCRCMA CAP management targets and GERI conservation priorities.
3. Provide 15% of the total WULMS funds to the HCRCMA for the management of the WULMS program and projects developed under the program.
4. HCRCMA will provide annual reporting regarding the number of projects funded and status and progress of those projects, together with a breakdown of expenditure for each project.

Project methodology

Program management

WULMS will have a funding target of \$100 000 per year, of this total \$15 000 will be allocated to the HCRCMA for costs incurred in project administration and management. All projects funded by WULMS shall be 100% on-ground works and shall be matched by the land holder in cash or in kind in accordance with HCR CMA policies on landholder contributions.

Incentives for on-ground projects

HCRCMA will actively promote project opportunities provided by the WULMS funding for projects that meet the CAP and/or GERI objectives in the WULMS Area through a combination of advertising, incorporation into mainstream HCRCMA Incentives programs and direct targeting of landholders within the WULMS area.

WULMS Funding and Reporting Process

HCRCMA offers an annual natural resource management (NRM) Incentives Program which is promoted in the open market for on ground works projects in identified priority areas. This incentives program is delivered on the basis of a competitive tender process wherein landholders develop projects in conjunction with CMA case officers then develop a "bid" for funds. The WULMS fund will be promoted using a similar approach, however availability of the funds will be ongoing; there will be no annual "closing date" for applications, they will be accepted on a rolling basis.

Project development & Application

Registrations of Interest can be lodged at any time, which generate contact from a CMA officer. If assessed as appropriate (i.e priority area, technically appropriate and eligible activity) by the project officer and Catchment Coordinator, then the landholder will be encouraged to submit a funding bid. Direct liaison with landholders will also be used as part of a combined strategy to encourage project development and applications from landholders whose properties have characteristics suited to the investment of WULMS funds.

Initial requests for assistance (RFA) will be made using the WULMS RFA form, attached at *Attachment "B"*. Applications will be made through the CMA on the WULMS application form. The WULMS application form to be used by the CMA is attached at *Attachment "C"*. Applications will only be accepted if complete. The application form seeks to establish the project scope, objectives, proposed outputs and costs. Each application will be accompanied by a CMA generated map in ArcGIS format to ensure consistency with CMA mapping and spatial data collection processes. A sample map is attached as *Attachment "D"*.

Funding Criteria

Applications for WULMS funds will be subject to assessment against set NRM performance criteria. These criteria have been developed and refined over a number of years and are expressed on an assessment matrix which will be used by the assessment panel to score each project. Assessment criteria are closely linked to the questions asked on the application form. The intent of each of the main assessment criteria is set out below.

- Does the project address a CAP management target and/or GERI priority?
- Does the project represent Best Practice NRM?
- Are project objectives and actions feasible and achievable?
- Is the project of sufficient scale to make a difference?
- Is the proposal cost effective?
- Applicants resources (capacity and skills) and commitment
- Applicant's funding history
- Investment Benefit - public vs private
- Aboriginal cultural heritage

Project Assessment Process

The CMA case officer will use an appropriate tool to score environmental benefits of each project and provide feedback to landholders accordingly, to enable them to develop the bid amount. The CMA has developed an Environmental Benefits Index (EBI) which combines the environmental considerations with value for money considerations and has established an EBI Benchmark for project assessment. Project assessment will be initially done in a batch process with an internal CMA staff panel of two HCRCMA staff and one HCRCMA Board member generally being convened for this purpose. This process will be done as a rolling process, with assessments against the benchmark previously established. However, at times it may be relevant and appropriate for the panel to include representation from either or both Council and Xstrata.

Bids will be ranked based on environmental score and cost effectiveness (\$ bid/EBI). Ranked projects will be "reality checked" by appropriate technical staff to ensure

technical details of works are appropriate and feasible, prior to the applicants being informed of their success. At this point in the process, if staff identify any areas for concern, they will renegotiate the project with the applicants.

Approval

A committee made up of Council's Environmental Services Manager, CMA Catchment Coordinator and a representative of Xstrata Mangoola shall review the recommended projects and confirm approval for funding.

Contracts and agreements

CMA project agreements constitute a contract in which the contributions and obligations of each party over the 15 year life of the agreement, including the maintenance and reporting requirements are set out and agreed to. A monitoring and reporting regime is also set out as part of each agreement.

A contract will be established between the HCRCMA and the project landholder to set out the project outcomes, timeframes, milestones, etc. These agreements will be of 15 years duration and will include ongoing maintenance and monitoring requirements over 15 years.

Payments

Where projects are determined through the application of the HCRCMA project assessment methodology to meet the objectives of the CAP and/or GERI and can be managed in accordance with the HCRCMA project management requirements, the HCRCMA will advise Council of the funding amounts required to implement the projects. Council will provide the funds to the project proponents (landholders) upon completion of the project and within 30 days of receipt of an invoice from the landholder, accompanied by a project completion report from the HCRCMA. The land holder will present an invoice for payment to Council who will pay on usual terms of trade.

Projects will be funded until the WULMS fund is exhausted. It is accepted that this may not be within the five year time frame for funding under the Planning Agreement.

Monitoring and Reporting

Landholders will be required to provide the CMA with a report on completion of the project, using the standard CMA project reporting template. Following completion, each landholder will be obliged to provide annual reporting to the CMA in the form of photographs and/or brief written reporting for the life of the agreement.

The HCRCMA will obtain monitoring data and photos from all funded projects and will store these data electronically in a suitable database and will compile an annual activities report to include quantified outputs, project maps and financial information. Evaluation information from landholders may also be included if available. The data and reporting will be made available for use by Xstrata Mangoola to compile a WULMS Annual Report. The report shall be prepared as of 30 June each year and shall be completed by 31 August each year. Council shall include information from the report in its State of Environment Report and the HCRCMA will utilise the reporting as required to fulfil its Annual Reporting and other reporting requirements. Land holders will be required to provide the CMA with annual monitoring updates in accordance with the agreement

Reports will include funds expended funds received balance of fund, number of projects, total area rehabilitated, land management improvements achieved, success rate of plantings or other outputs detailed in project agreements and may also include the results of any landholder surveys conducted by the CMA.

Agreement

Xstrata Mangoola Pty Ltd, Muswellbrook Shire Council and the Hunter Central Rivers Catchment Management Authority agree to the terms of this strategy and commit to the implementation of same for the benefit of the WULMS Area.

General Manager
Muswellbrook Shire Council

Director
Xstrata Mangoola Pty Ltd

General Manager
Hunter Central Rivers Catchment Management Authority

Attachment A: Appendix 4 Project Approval 06_0014

**APPENDIX 4
GENERAL TERMS FOR THE PLANNING AGREEMENT**

Funding Area	Project	Minimum Proponent Contribution	Funding Time Frame
Local Environmental Management	Wybong Uplands Land Management Strategy	\$500,000	\$100,000 x 5 years, from commencement of construction.
Local Employment	Educations and Training Strategy	\$600,000	3 – 6 annual contributions to be paid from commencement of construction.
Community Projects	Recreation Assets Renewal Fund	\$1,200,000	Contributions to start on commencement of production, with flexible instalments. and interest on the capital outstanding to be contributed annually.
Community Infrastructure	Denman recreation area enhancements	\$2,200,000	3-4 annual contributions to be paid from commencement of production, with a weighting towards the latter contributions in accordance with Council's schedule of works.

Appendix B: WULMS Request For Assistance Form



**Wybong Uplands Land management Strategy (WULMS)
Request for Assistance from the CMA**

To request financial and/or technical support from the CMA, please complete the form below and return it to the Muswellbrook CMA office. Please note this form does not constitute an application for funding.

Contact details

Name(s) of applicant(s).....
Name of landowner (if different).....
Contact name.....
Postal address.....
Town..... Postcode.....
Phone A/H Phone B/H Mobile.....
Fax..... Email.....

Date received:

Property details of proposed project site(s)

Property Address (including property name, if applicable):
.....
Total size of proposed project (ha):
Lot, DP, Parish of project site(s):
.....
River/sub-catchment:
Local government area:

Brief project description:
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Would you like to subscribe to the CMA's electronic newsletter *Catchment News*?

<p>CMA Upper Hunter office Level 2, 160 Bridge Street (PO Box 297) Muswellbrook NSW 2333 Phone: (02) 6542 4444; Fax: (02) 6543 4164</p>
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OFFICE USE ONLY

Once a CMA Project Officer has followed up the RFA and has inspected the site or has further information on the proposed project, the Project Officer and Catchment Coordinator need to use the following criteria to determine if the project is eligible for WULMS (or other CMA) Funding.

1. Is the project within the WULMS Area? Yes/No
2. Will the project deliver on 1 or more CAP Management Targets?..... Yes/No
If yes, which ones?.....
If yes, is it in a priority area for the MT (s) Yes/No
3. Will the project deliver on 1 or more GERI priorities?..... Yes/No
If yes, which ones?.....
4. Is the project of sufficient scale i.e requested funds will be greater than \$1,000? Yes/No
5. Is the project feasible (eg technically sound, ongoing maintenance included, landholder has adequate capacity to implement)? Yes/No
6. Does the project represent value for money?(landholder willing to make adequate contribution, public benefit greater than private benefit) Yes/No
7. Has the landholder undertaken a CMA endorsed course? Yes/No
8. Is proposal mainly NRM focussed rather than productivity focussed?..... Yes/No
9. Is the proponent a first time applicant? Yes/No

If the project delivers on a CAP target, addresses GERI priorities and the majority of answers to the other questions are yes then the landholder can be encouraged to develop and submit a funding proposal for WULMS funding.

Recommended Action:

1. Proceed to developing a detailed project proposal for WULMS funding
2. Provide further assistance, but do not proceed with WULMS funding proposal
3. No further assistance

Attachment C: WULMS project application form



Project Number
(CMA office use only)

Wybong Uplands Land Management Strategy (WULMS)
Application & Project Agreement Form

If your application is successful this form and its contents will become part of your fifteen year "Project Agreement". We will forward you a copy with your successful letter and ask you to sign the last two pages to acknowledge formal acceptance of the offer. At this time we will also ask you to provide your banking details for future payments. The Terms and Conditions of this Agreement are outlined against the questions below and must be adhered to by the undersigned applicant in order to meet auditing requirements and enable payment of approved funds. All project works, including approved education activities, must be completed within 12 months of acceptance of the Project Agreement.

1. APPLICANT AND PROPERTY DETAILS

Applicant (Person/Entity responsible for Agreement) (Should match the name of ABN holder if provided)	
Contact Person	Mr/Mrs/Ms
Landowner(s) (if not applicant)	Mr/Mrs/Ms
Is the applicant an Aboriginal or Torres Strait Islander individual or organisation?	Yes No

Property Address
Postcode

Applicant Postal Address
Postcode

Contact Details

Telephone	Bus:	Mob:	Facsimile
E-mail		

Project Location on the Property <i>[insert Lot(s), DP, Parish, County]</i>	Lot/DP
	Lot/DP
	Parish
Area of proposed project	ha (in hectares – please check with your CMA officer if unsure)
Area of Property	Ha

ABN and GST Status

If you are registered for GST and you are successful in getting a grant you will be paid 10% GST on top of the grant amount. See our GST Fact Sheet for more information.

Are you currently registered for GST?	Yes	No	ABN:
Registered name:.....			

Please provide details of any community natural resource management group or industry group you affiliated with.

2. TECHNICAL ADVICE PROVIDED

Important
Professional advice should be sought for any technical aspects of the project.

Please provide details of any contacts you have made that provided technical advice, relevant permits or advice on permits specific to this project application, including your CMA contact person. Your CMA officer can provide a summary of their technical support to attach to this question.

Contact	Organisation	Type of Advice/Permit/Design attached	Telephone

3. RELEVANT TRAINING COURSES UNDERTAKEN

Applicants who have undertaken one of the CMA endorsed training programs listed below have access to additional funding to implement on ground works identified as necessary through their course.

Please tick the endorsed courses you have completed, if applicable, and attach proof of course completion (eg copy of certificate).

Name of Course	Training Provider		Date Completed
Biodynamics: introduction to regenerative farm and environment practices	Biodynamic Agriculture Aust Ltd		
Planning for Stock and Domestic Water Supply	Brookley Consulting Pty Ltd		
Water Conservation Planning	Brookley Consulting Pty Ltd		
Sustainable Soils Master Class	Earthlink Australia Pty Ltd		
Holistic Farm Management	Holistic Management International		
Holistic Grazing Management	Holistic Management International		
Holistic Land Planning	Holistic Management International		
Grow more, graze more, gain more 'profitable pastures'	Incitec Pivot Ltd		
Targeting Actions for local Catchments	Nick Bullock and Associates		
The Business of Farming	Principle Focus Pty Ltd		
Applied Grazing	Resource Consulting Services		
Grazing for Profit	Resource Consulting Services		
Pasture Cropping	Resource Consulting Services		
Pasture to Pocket	Resource Consulting Services		
Managing Irrigation Systems	TAFE NSW Hunter Institute		
Operating Irrigation Systems	TAFE NSW Hunter Institute		
Selected skill sets from Certificate VI Agriculture	TAFE NSW Hunter Institute		
Units of competence from rural production training package	TAFE NSW North Coast Institute		
Farm Planning or Landscan	Industry and Investment NSW		
Managing Pastures for Horses	Industry and Investment NSW		
Prograze or Prograze Abridged	Industry and Investment NSW		
StockPlan	Industry and Investment NSW		
Waterwise on the Farm	Industry and Investment NSW		
Targeting Actions for local Catchments	Industry and Investment NSW		
Soil Health for Sustainable Farming	Industry and Investment NSW		
Other Relevant NRM Courses undertaken			

4. OUTCOMES & METHODOLOGY

Note: The *Project Plan* section of the CMA's publication *Project Journal* and *Keeping a Project Journal* can help you complete this question. Quantify your project activities in the table below by indicating the area/number/length of outputs to be undertaken. Your CMA Officer will be able to provide you with accurate areas and lengths from your CMA generated map.

Important

- Stock proof fencing and vegetation established with assistance under this grant should be regularly maintained for a minimum of five (5) years from the date the agreement is signed.
- At least 80% of any vegetation plantings should show long term survival following initial establishment, with replacement plantings to be undertaken by the applicant for the life of the agreement, to maintain at least 80% survival.
- If weed control is proposed as an activity, then at least 80% of the original infestation must be fully removed and maintained at this level for the life of the agreement.

What do you want to achieve by implementing this project (outcomes)? <i>Examples: re-establish native vegetation; improve riparian health; improve soil health; raise community awareness</i>	What works/activities/actions are you planning to do to implement your project (achieve the outcomes)? <i>Examples: Plant & establish 500 trees; 2km fencing to exclude stock from stream; install 5 stock watering points, control 2ha of lantana & blackberry</i> Note: Please advise output amounts or a number for each activity you list e.g. 2ha/20 trees	Completion date? (month & year) (on ground component of projects must be completed within 12 months)
Total Area		

<p>How Will You Monitor and record your monitoring?</p> <p><i>Examples: Photopoint with photos at 6 monthly intervals, seasonal step points or quadrats for recording ground cover, annual measurements of tree cover survival, record data in Project Journal</i></p>	<p>What maintenance will you do to ensure the long term success of your project?</p> <p>Note: Maintenance must be for a minimum of 5 years from the date your agreement is signed (page 6 of your Project Journal gives examples of maintenance activities)</p>

5. PROJECT BUDGET

If for any reason other than a force majeure event (e.g. flood, fire, disease, war, act of God), the Project is not completed in accordance with question 4, the amount payable is to be calculated on the basis of reasonable remuneration for the work completed by the applicant.

For estimate purposes landholders/community groups can cost their in kind labour component at \$30/hour. CMA funding is provided exclusive of GST. Those who are GST registered can add GST to their invoice to the CMA. Please see the CMA's *GST Fact Sheet* for more advice on funding and the GST implications.

Proposed activity/work/action <i>Examples: Plant trees, erect electric fence</i>	Unit of Measure <i>Examples: per tree, metres</i>	Quantity	Unit Cost	CMA Funds Sought (excl GST)	Own Cash Contribution	Own In-kind	Total – funds sought + in kind+ cash contribution (exc GST)	GST
TOTALS								

6. FUNDS REQUESTED FROM THE CMA

Indicate in the box provided the amount of funding you wish to request as a competitive bid to undertake your project. Remember your bid cannot exceed \$15,000. This bid must exclude GST.

Bid for Funds

Payment Schedule

Full payment of funds will be made on completion of the project, unless otherwise negotiated with the CMA for staged payments.

Milestone delivered (from questions 4 & 5)	Proposed date	Amount \$

If successful, the applicant will be required to provide the following prior to the payment of any funds:

- A signed tax invoice for approved project grant funds only (further details regarding the GST implications and tax implications of receiving funding can be discussed with your tax adviser);
- A signed Statement of Supplier form (supplied by the CMA) if you are not registered for GST and haven't quoted an ABN;

7. OTHER FUNDING:

Please list details of any current or previous grants or financial assistance you have received that are relevant to the activities in this project.

Funding source	Year	Project title	Amount	Continuing commitments

Do you have any other related funding applications currently under consideration?

YES / NO (If Yes list)

.....

8. MAP OF PROPOSED PROJECT WORKS ON PROPERTY

Please attach an electronically generated map supplied by your CMA officer showing your project area and works proposed.

It is recommended that photographs of the proposed site be supplied with your application to highlight site issues. Mark on the map the place from which you took the photograph and number the points on the map if supplying more than one photograph.

9. ABORIGINAL CULTURAL HERITAGE AND CONSULTATION

This section must be completed jointly by the Applicant and a CMA Officer.

A cultural heritage assessment may be carried out by an Aboriginal cultural heritage provider as part of the incentives assessment process. If you do not give permission for information to be shared with the Local Aboriginal Lands Council (LALC) you may be required to provide your own cultural heritage assessment at your own cost.

Checklist Questions	Yes	No
Do you know of any Aboriginal sites or objects on your property or in the immediate area?		
Are you aware of any Aboriginal history, stories or significant events that took place on your property or in the immediate area? If YES, please provide a brief description below.		
Is your project area located near a river, stream, lake, wetlands or watercourse?		
Does your project area contain any of the following landforms: rocky or sandy hills, mountains, claypans, caves, sandstone overhangs?		
Will there be any native vegetation removed permanently?		
Are you interested in planting any native vegetation on your property?		
Will there be any ground disturbance involved in the project? If YES, please provide brief description below.		
Is the property on private (freehold) land?		
Do you give permission for relevant project information to be provided to the Local Aboriginal Land Council for the purpose of cultural heritage assessment?		

Important
 Please describe any consultation and/or partnerships with Aboriginal people that may have occurred as part of your project in the "notes" section below. Indicate if you intend to use an Aboriginal Land Management Team to help you implement your on ground project.

Notes: _____

10. REVEGETATION PROJECT – SPECIES LIST AND SUPPLIER

Please attach a species list for your proposed plantings to this application. The list should include the actual number of each species you propose to plant. You are encouraged to discuss this list with a local CMA Officer.

Species list attached Yes Not Applicable

The CMA has engaged preferred nurseries to supply local provenance tubestock and tree guards at reasonable prices. If you wish to use the CMA's preferred suppliers, you must include plant and accessories costs in your bid for funding, as you will receive this amount under your funding agreement to enable you to pay the nursery concerned. Further details on your nearest supplier can be found on our website www.hcr.cma.nsw.gov.au and through a local CMA officer.

Do you wish to use the CMA's preferred supplier for tubestock/tree guards?

Yes No

11. RURAL SUPPLIES

The CMA has agreements with a number of rural suppliers across the CMA area to provide discounted fencing and water supply materials to successful CMA funded projects. Further details on your nearest supplier and the discount available can be found on our website www.hcr.cma.nsw.gov.au and through a local CMA officer.

Do you wish to use the CMA's preferred supplier for fencing, stock water or rural supplies?

Yes No

12. EDUCATIONAL ASPECT OF THE PROJECT

If you are successful in receiving funding, your project may be used for promotional and educational activities such as newsletters, media releases, case studies, field days and stakeholder visits. Knowing your project, what kind of educational or communication activity do you think would be most suitable for the site?

13. INSURANCE CERTIFICATE

Please be aware that if your application is successful you will be required to have public liability insurance cover for \$10 million over the proposed works site.

I currently have Public Liability Insurance and a copy is attached

Yes

If you currently don't have this insurance coverage, are you willing to acquire \$10 million public liability coverage, if you are successful?

Yes

Any legal, commercial or other benefit (whether present or future) arising from sequestration of carbon in vegetation established through the activities of this project vest jointly, on a 1:1 basis net of administration costs, with the applicant and the CMA, unless one party agrees in writing to forego this right.

14. PROJECT REPORTING

The project may be inspected and certified by a CMA officer on completion of the project and may be further inspected during the five year agreement term. Any variation to project activities or extensions of time for project completion requires prior approval of the CMA.

Successful applicants will be required to submit a final report prior to any final payment owing. The final report along with compliant tax invoice should be submitted by 15 June 2011. You may also wish to attach relevant photos to this final report. A final report template is attached to this application.

Successful applicants will also be required to submit a brief final agreement report, due one (1) month prior to the completion date of the 5 year agreement, using the same final report template, but with monitoring and recording records attached.

15. SUBSCRIBE TO NEWSLETTER

We encourage you to subscribe to the CMA's newsletter *Catchment News* to keep up-to-date with news and information on a range of CMA activities, programs and events.

Would you like to subscribe to the CMA's monthly electronic newsletter *Catchment News*?

Yes No

17. DECLARATION AND SIGNATURE

Before signing please ensure your application is complete in all sections as **incomplete applications will not be considered.**

Successful applicants will need to adhere to the basic terms and conditions outlined in this application and agreement form if receiving incentives under this *Small Projects Grant*.

I, _____
Name of applicant (please print)

as an Applicant to the Small Projects Grant, confirm that all details outlined in this application are true and correct. If a company or organisation, the applicant must be an authorised representative of the entity.

Signature of applicant

Date

If you are applying to undertake a project on a property of which you are not the owner, the landowner must also sign the application.

Signature of property owner, if not applicant

Date

Please submit the original signed copy to the CMA.
Applications should be submitted to:

**HCRMA
PO Box 297
Muswellbrook
NSW 2333**

If your bid is successful you will be notified in writing as soon as possible and you will be asked to sign and date the following pages of terms to formally agree to the contents of this application and agreement for delivery of the project.

Applicants Checklist

Have you attached your CMA generated map?	Yes	No
Have you attached a CMA site report including a species list (if applicable)?	Yes	No
Have you attached a copy of your Public Liability Insurance?	Yes	No
Has the land owner signed the application?	Yes	No
Does the person/entity responsible for the agreement name match the name against the ABN number (if applicable)?	Yes	No
Are you aware of the CMA's minimum activity standards and/or activity definitions for projects and that you will be required to deliver your project in accordance with these?	Yes	No
Have you answered every question?	Yes	No

SIGNED for and on behalf of the Project Applicant (if a company or organisation, the applicant must be an authorised representative of the entity) in the presence of:

Signature of witness Signature of Project Applicant Date: __/__/20__

(Print) Name of witness (Print) Name of Project Applicant _____

SIGNED for and on behalf of the Landowner (if different to the Project applicant) in the presence of:

Signature of witness Signature of Landowner Date: __/__/20__

(Print) Name of witness (Print) Name of Landowner _____

SIGNED for and on behalf of the CMA in the presence of:

Signature of witness Signature of Representative Date: __/__/20__

(Print) Name of witness (Print) Name of Representative _____

_____ Position of Representative

Attachment D: Sample project map



MINUTES OF THE MUSWELLBROOK SHIRE COUNCIL COMMUNITY & RESOURCES COMMITTEE MEETING HELD IN THE COUNCILLORS ROOM, ADMINISTRATION CENTRE, MAITLAND STREET, MUSWELLBROOK ON 23 AUGUST, 2010 COMMENCING AT 5.05 PM

PRESENT: Cr M. Valantine (Chair), Cr S. Ward (Deputy Chair), Cr M. Rush (Mayor), Cr R. Butchard, Cr J. Drayton, Cr J. Lecky, Cr C. Phelps, Cr K. Portolan, Cr J. Risby, Cr G. Serhan and Cr B. Woodruff.

IN ATTENDANCE: Mr N. Pope (Acting General Manager), Mr G. O'Leary (Acting Director, Corporate & Community Services), Mr C. Gidney (Director, Environmental Services), Mr W. Randall (Water and Waste Manager), Mr P. Higgins (Technical Services Manager), Mr S. Neal (Manager, Recreation and Building), Mr C. Flemming (Section Leader, Environment and Natural Resources) and Miss C. Mills (Administration Officer).

APOLOGIES: RESOLVED that apologies for inability to attend the meeting submitted by, Cr M. Ogg be ACCEPTED.

Moved: Cr Rush Seconded: Cr Drayton

DECLARATION OF INTEREST: Nil

MINUTES: RESOLVED that the Minutes of the Committee Meeting held on 26 July, 2010, copy of which had been distributed to each member, be taken as read and confirmed as a true record.

Moved: Cr Rush Seconded: Cr Serhan

BUSINESS ARISING: Nil

BUSINESS:

1. WYBONG UPLANDS LAND MANAGEMENT STRATEGY

Cr Valantine arrived at the meeting at 5.08pm and took usual chair at the meeting table.

A report was submitted to the Committee advising that the Wybong Uplands Land Management Strategy (WULMS) has been developed in accordance with the Planning Agreement between Xstrata Mangoola, Muswellbrook Shire Council and the Department of Planning in relation to the Mangoola Coal Project.

RECOMMENDED that the:

1. Strategy be amended to provide for annual allocation of funds after preservation of the capital amount in real terms.
2. Annual allocation be expended on the basis of a grant for assisted projects of the type contemplated in the strategy.

MINUTES OF THE MUSWELLBROOK SHIRE COUNCIL COMMUNITY & RESOURCES COMMITTEE MEETING HELD IN THE COUNCILLORS ROOM, ADMINISTRATION CENTRE, MAITLAND STREET, MUSWELLBROOK ON 23 AUGUST, 2010 COMMENCING AT 5.05 PM

3. General Manager be Authorised to endorse the Wybong Uplands Land Management Strategy, as amended, on behalf of Council and that the strategy be acted upon as soon as possible, and FURTHER that the Hunter Central Rivers Catchment Management Authority be acknowledged for their contribution in preparing this Strategy

Moved: Cr Rush

Seconded: Cr Serhan

11. UPDATE ON WYBONG UPLANDS LAND MANAGEMENT STRATEGY (WULMS)

The Section Leader – Environment and Natural Resources reports:

i) SYNOPSIS:

Report on the progress on developing the Wybong Uplands Land Management Strategy (WULMS).

ii) DATE OF REPORT: 1 June 2010

iii) REPORT:

The Wybong Uplands Land Management Strategy (WULMS) is set out in the Development Consent for the Mangoola Coal Project. The consent conditions also requires Mangoola Coal to pay Council at least \$100 000 per year for five years.

To date Council has received \$200 000 for the WULMS from Xstrata Mangoola Coal.

WULMS is defined in the Planning Agreement between Muswellbrook Shire Council and Xstrata Mangoola Coal as the strategy developed by Mangoola Coal in consultation with the Hunter Central Rivers – Catchment Management Authority (CMA) and Muswellbrook Shire Council relating to sustainable land management and environmental and conservation works in the Wybong catchment area in the vicinity of the project.

It is recognised that in the immediate vicinity of the project, the company has numerous ecological offset and enhancement obligations as well as owning large amounts of landholdings all around the boundary of the mining area. It is expected that Xstrata's Land Manager, will use best practice land management strategies at its own cost and not require the use of WULMS funding. WULMS funding will also not be used on land subject to other environmental consent conditions.

It has also been recognised that the CMA has extensive expertise and knowledge in sustainable land management and environmental and conservation works. This makes the CMA an ideal partner in evaluating project suitability, feasibility and sustainability.

Council has been negotiating with Xstrata Mangoola with the assistance of the CMA regarding the terms of the strategy. These negotiations are well advanced and a finalised strategy is expected shortly.

The principle terms of the strategy are:

1. The geographical extent of the WULMS will be the Wybong Catchment upstream from White Rock stream gauging station. This area has also been identified by the Great Eastern Ranges Initiative (GERI) as one of five critical links of the GERI Connectivity Conservation strategy (NSW DECC, 2009).
2. Individual projects will be managed through the existing CMA assessment and management processes.

ORDINARY COUNCIL MEETING, 15 JUNE, 2010

3. Projects will be on private properties within the WULMS area and will fulfil the objectives of the strategy, the CMA Catchment Action Plan and GERI.
4. WULMS will fund employment and training of a trainee by CMA. The trainee role is identified as Trainee Catchment Officer – Wybong Projects.
5. The CMA will promote the funding opportunity with relevant land holders and ensure projects are managed in accordance with the CMA project management requirements.
6. CMA will recommend projects to Council for the release of funds.
7. Xstrata Mangoola will prepare an annual report on the outcomes of the strategy which will be included in the Mangoola Coal Annual Environmental Management Report and Council’s State of Environment Report.

It is noted that the identification of suitable projects may not account for all of the supplied funds in any given year. A suitable target of annual funding will be set to ensure the strategy does not stall, however it may run for more than five years in total.

- iv) **FINANCIAL IMPLICATIONS:** Not Applicable
- v) **POLICY IMPLICATIONS:** Not Applicable
- vi) **MANAGEMENT PLAN IMPLICATIONS:** Not Applicable

ACTION RECOMMENDED:

That the information on the Wybong Uplands Land Management Strategy be NOTED.

Moved:..... Seconded:

Report prepared by	Craig Flemming
Accepted for inclusion into Business Paper	Graham Gardner

Appendix K MSC Management of WULMS Fund

js

From:
Sent: Wednesday, 7 May 2014 23:20
To:
Cc:
Subject:
Attachments: 20100615 Business Paper item 11.pdf; 2010 08 23 Community and Resources Agenda Item 1.pdf; 2010 08 23 Community and Resources Minutes item 1.pdf; Approved Project Plan LSP-1001394-1508.pdf

I will examine the Original EA, DG Report, Approval to see where there is any specification for XTA to do more than fund MSC. I am suspicious from memory of EA etc that XTA veto etc is solely a council decision and not directed by any of the above or subsequent DOPI documents. (Which imply that XTA is disbarred from benefit under WULMS & thus no role in decision making and thus no veto).

It would also appear that WULMS has been fraudulently welded to the GER and Stepping Stones. Effect – enabling redirection of monies from GER & or SS to be offset & redirected by using WULMS funding for GER/SS and giving XTA veto on exp of the WULMS monies & GER/SS.

I smell a rat.

Have a geek. Am making request for Annual Reports of WULMS and confirmation of date (Jan 2010) where Pete, myself & Graham removed from EC which failed to exist in its prior form. – after we made a song and dance about WULMS. C Phelps is MSC “Minister for the Environment” ?? was = tick,, still is ?

js

From: Craig Flemming <Craig.Flemming@muswellbrook.nsw.gov.au>
Sent: Wednesday, 7 May 2014 17:01
To:
Cc:
Subject:
Attachments: 20100615 Business Paper item 11.pdf; 2010 08 23 Community and Resources Agenda Item 1.pdf; 2010 08 23 Community and Resources Minutes item 1.pdf; John Shewan - Project Spreadsheet.xls; Approved Project Plan LSP-1001394-1508.pdf

Dear John,

On Wednesday 30 April you requested information on the Wybong Upland Land Management Strategy, Mangoola Coal Community Fund, Stepping Stones Project and Traffic Management Plan for Mangoola Expansion.

I can provide the following that are in the public domain:

Wybong Upland Land Management Strategy was presented to Council meeting in June 2010 (attached), and Community and Resources Committee August 2010 (attached) and Minutes Attached.

The Mangoola Coal Community Fund; information is found in the VPA
<http://www.muswellbrook.nsw.gov.au/index.php/about-council-main-menu/planning-agreements-register/1071-xstrata-mangoola-mangoola-coal-project-planning-agreement-1/file>

Stepping Stones Project information can be found at <http://gersteppingstones.org.au/>
The Project Plan and details about plans for your project are attached.

Traffic Management Plan for Mangoola Expansion
Council does not information regarding Traffic Management Plan for Mangoola Mod 6

I have been advised that any additional information will require a GIPA application. You can find information on how to do that at <http://www.muswellbrook.nsw.gov.au/index.php/about-council-main-menu/your-right-to-information/423-seeking-information>

I hope this helps.

Regards,

Craig Flemming
Environment Manager
craig.flemming@muswellbrook.nsw.gov.au
Switch: 02 6549 3700 Direct: 02 6549 3775 Mobile: 0409 465 699
Muswellbrook Shire Council
PO Box 122 Muswellbrook NSW 2333

js

From:
Sent: Thursday, 22 May 2014 21:33
To: 'Michelle Cummings'
Subject: RE: Wybong Uplands Land Management Strategy

Hi Michelle,
Thank you for the search and confirmation of the nil written record.
I will make further inquiries elsewhere.
Thanks again.
- John

From: Michelle Cummings [mailto:michelle.l.cummings@lls.nsw.gov.au]
Sent: Thursday, 22 May 2014 10:46 AM
To:
Subject: Re: Wybong Uplands Land Management Strategy

John,

I'm sorry, we don't seem to have any documentation regarding this, it seems to have been all done verbally.

Regards
Michelle

On 21 May 2014 15:41, John <[_____](#)> wrote:

Hello Michelle,

Thank you for that information.

Could I please have a copy of the document removing WULMS from HCRCMA management identifying the date and any documentation / project reports etc prior to that date.

Any documented information on WULMS would assist matter for request of MSC.

Sincerely,

- John

From: Michelle Cummings [mailto:michelle.l.cummings@lls.nsw.gov.au]
Sent: Wednesday, 21 May 2014 11:04 AM
To: _____
Subject: Re: Wybong Uplands Land Management Strategy

John,

Sorry for the delay, I have been waiting for my manager to return to the office so I could find out what was happening with this.

The WULMS is now being fully managed by Muswellbrook Shire Council, so you will need to contact them to get the project details that you are chasing.

I have tried downloading the latest annual report from their website, but I am getting an error. I have reported this to the council and they are looking into, but maybe you will have better luck with the report.

If you require anything further, please do not hesitate to contact me.

Regards

Michelle

On 15 May 2014 18:22, John < > wrote:

Thank you Michelle.

Attached is the item from MSC specifying HCRCMA as the holder of source data and annual reporting for WULMS to be reproduced in MSC Statement of Environment Reports (absent) & Mangoola AEMR's (absent).

I appreciate your efforts to locate the annual reports.

Sincerely.

John

From: Michelle Cummings [mailto:michelle.l.cummings@lfs.nsw.gov.au]

Sent: Thursday, 15 May 2014 5:47 PM

To:

Subject: Wybong Uplands Land Managemetn Strategy

John,

Sorry, I haven't been able to find out about this yet. I am still chasing, but I just wanted to let you know that I haven't forgotten about your enquiry.

I won't be in the office tomorrow (Friday), but I will chase up again next week. I have sent some emails off, so hopefully I will have an answer for you on Monday.

Any problems, please do not hesitate to contact me.

Regards

Michelle

--

Michelle Cummings | Senior Administration Officer

Local Land Services (Hunter)

Level 2, 160 Bridge Street (PO Box 297) Muswellbrook NSW 2333

t: 02 6542 4400

e: michelle.l.cummings@lls.nsw.gov.au

w: www.lls.nsw.gov.au/hunter

This message is intended for the addressee named and may contain confidential information. If you are not the intended recipient, please delete it and notify the sender. Views expressed in this message are those of the individual sender, and are not necessarily the views of their organisation.

--

Michelle Cummings | Senior Administration Officer

Mangoola Coal Project Planning Agreement

Xstrata Mangoola Pty Limited
ACN 127 535 755

Xstrata Coal (NSW) Pty Limited
ACN 097 523 058

Muswellbrook Shire Council
ABN 86 864 180 944

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Mangoola Coal Project Planning Agreement

DATE

PARTIES

Xstrata Mangoola Pty Limited
ACN 127 535 755 (**Mangoola Coal**)

Xstrata Coal (NSW) Pty Limited
ACN 097 523 058 (**XCN**)

Muswellbrook Shire Council
ABN 86 864 180 944 (**Council**)

RECITALS

- A. The Minister granted approval under Part 3A of the EP&A Act for the Project on 7 June 2007 (**Project Approval**).
- B. The Project Approval requires Mangoola Coal to enter into a planning agreement with Council on the terms set out in a letter of offer sent by Centennial Hunter Pty Limited to Council dated 14 December 2006, including the matters set out in Schedule 1.
- C. The parties enter into this agreement as a planning agreement under section 93F of the EP&A Act in performance of the conditions of the Project Approval.

OPERATIVE PROVISIONS

1. INTERPRETATION

1.1 Definitions

The following definitions apply in this agreement.

ACICA Arbitration Rules means the arbitration rules published by the Australian Centre for International Commercial Arbitration from time to time.

Business Day means a day that is not a Saturday, Sunday or public holiday in Sydney.

Denman Recreation Area Enhancements means the enhancements of Denman Recreation Area as detailed in Council's Development Control Plan No. 7 performed in consultation with Mangoola Coal.

Early Works means the works identified in modification application MP 06_0014 MOD 1, approved by the Minister on 22 July 2008 under section 75W of the EP&A Act and includes construction and use of the:

- (a) mine access road;
- (b) temporary access roads;
- (c) site office and associated amenities and compound;
- (d) Coal Handling and Preparation Plant pad;

- (e) borrow pit for the supply of select material for civil works and disposal of unsuitable material;
- (f) water pump and temporary pipeline from the Hunter River; and
- (g) localised clearing associated with Aboriginal site salvage works and geotechnical investigations.

Employment and Training Strategy means the strategy developed and approved by Mangoola Coal and Council resulting from the recommendations of the Xstrata Mangoola Coal Employment and Training Board whose terms of reference are detailed in Schedule 3, designed to maximise the skills, employment potential and employment of residents in the Muswellbrook local government area relative to the Mangoola Coal Mine.

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

Interest Rate means the average interest rate between each anniversary paid by the institution within which the Recreation Assets Renewal Fund is invested.

GST means:

- (a) the same as in the GST Law;
- (b) any other goods and services tax, or any tax applying to this transaction in a similar way; and
- (c) any additional tax, penalty tax, fine, interest or other charge applicable to the above.

GST Law means the same as "GST law" means in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Project means the Mangoola Coal Project as approved by the Minister under section 75J of the EP&A Act on 7 June 2007.

Senior Management Representative means the chief executive officer, managing director, chief financial officer, chief operating officer or any board member of one of the parties.

Recreation Assets Renewal Fund means the fund established by Council for the receipt of the Community Projects Contribution.

Wybong Uplands Land Management Strategy means the strategy developed by Mangoola Coal in conjunction with Council and the Hunter-Central Rivers Catchment Management Authority relating to sustainable land management and environmental and conservation works in the Wybong catchment area in the vicinity of the Project.

1.2 Interpretation

The following rules also apply in interpreting this agreement, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
 - (i) a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;

- (ii) a party to this document or to any other document or agreement includes a successor in title, permitted substitute or a permitted assign of that party;
- (b) A singular word includes the plural, and vice versa.
- (c) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
- (d) A reference to **dollars** or **\$** is to an amount in Australian currency.
- (e) This agreement is not to be interpreted against the interests of a party merely because that party proposed this document or some provision of it or because that party relies on a provision of this document to protect itself.

2. OPERATION OF THIS AGREEMENT

2.1 Planning agreement under the EP&A Act

This agreement constitutes a planning agreement within the meaning of section 93F of the EP&A Act.

2.2 Application of sections 94, 94A and 94EF of the EP&A Act

This agreement excludes the application of sections 94, 94A and 94EF of the EP&A Act to the Project.

2.3 Commencement

All provisions of this agreement will be effective from the date of this agreement.

2.4 Application of this agreement

- (a) The land to which this agreement applies is the land described in Schedule 2.
- (b) The development to which this agreement applies is the Project.

2.5 Registration

This agreement will not be registered in accordance with section 93H of the EP&A Act

3. DEVELOPMENT CONTRIBUTIONS

3.1 Local environmental management

- (a) Mangoola Coal must pay to Council \$500,000 by five equal annual instalments.
- (b) The first instalment must be paid within 10 Business Days of commencement of construction of the Project, including construction of the Early Works.
- (c) The remaining instalments must be paid within 10 Business Days of each anniversary of the date referred to in 3.1(b) providing that the remaining instalments shall only be paid if construction of the Project excluding the Early Works has commenced.

- (d) Council must apply the contribution made by Mangoola Coal under this clause in accordance with the Wybong Uplands Land Management Strategy.

3.2 Local employment

- (a) Mangoola Coal must pay to Council \$600,000 by three to six annual instalments.
- (b) The first instalment must be paid within 10 Business Days of commencement of construction of the Project, including construction of the Early Works.
- (c) The remaining instalments must be paid within 10 Business Days of each anniversary of the date referred to in clause 3.2(b) providing that the remaining instalments shall only be paid if construction of the Project excluding the Early Works has commenced.
- (d) Council must apply the contribution paid by Mangoola Coal under this clause in accordance with the Employment and Training Strategy.

3.3 Community projects

- (a) Mangoola Coal must pay to Council \$1,200,000 by annual instalments.
- (b) The amount of each annual instalment is to be determined by Mangoola Coal in consultation with Council.
- (c) The first instalment must be paid within 10 Business Days of the date on which coal produced from the operations of the Project is first loaded for dispatch.
- (d) The remaining instalments must be paid within 10 Business Days of each anniversary of the date referred to in clause 3.3(c).
- (e) The quantity of the remaining instalments referred to in clause 3.3(d) are to include interest calculated by multiplying the unpaid amount of the community projects contribution after the payment of the prior anniversary contribution by the Interest Rate.
- (f) Council must apply the contribution paid by Mangoola Coal under this clause to the Recreation Assets Renewal Fund and ensure that the proceeds of investment of the Recreation Assets Renewal Fund are applied to the renewal or replacement of recreational assets that are owned or maintained by Council.

3.4 Community infrastructure

- (a) Mangoola Coal must pay to Council \$2,200,000 by three to four annual instalments, weighted towards the latter contributions.
- (b) The amount of each annual instalment is to be determined by Mangoola Coal in consultation with Council having regard to Council's schedule of works.
- (c) Council must provide Mangoola Coal with a schedule of works and an annual budget for expenditure on the Denman Recreation Area Enhancements.
- (d) The first instalment must be paid within 10 Business Days of the date on which coal produced from the operations of the Project is first loaded for dispatch.
- (e) The remaining instalments must be paid within 10 Business Days of each anniversary of the date referred to in clause 3.4(c).
- (f) Council must apply the contribution paid by Mangoola Coal under this clause towards the Denman Recreation Area Enhancements.

3.5 Acknowledgement

- (a) Council where reasonably able, must publicly acknowledge Mangoola Coal's development contributions and the community benefits as a result of these contributions.

4. GST

4.1 Payments under this agreement exclusive of GST

The payments to be made by Mangoola Coal under this agreement are exclusive of GST, if any.

4.2 Tax invoice

If Council is liable for GST on any payments made by Mangoola Coal, Council must issue a tax invoice (or an adjustment note) to Mangoola Coal for any GST payable by Council under this agreement within seven days of a written request by Mangoola Coal. Council must include in the tax invoice (or adjustment note) the particulars required by the GST Law for Mangoola Coal to obtain an input tax credit for that GST.

5. SECURITY

5.1 Parent company guarantee

- (a) XCN unconditionally guarantees the obligations of Mangoola Coal under this agreement in consideration for the Council entering into this agreement.
- (b) Subject to clause 5.2, the guarantee of Mangoola Coal's obligations under this agreement by XCN is irrevocable and continues until all of Mangoola Coal's obligations under this agreement have been performed.

5.2 Change in control of Mangoola Coal

If:

- (a) there is a change in control of Mangoola Coal, for the purposes of the *Corporations Act 2001* (Cth); and
- (b) Council is satisfied, acting reasonably, as to such alternative security as may be provided for the performance of Mangoola Coal's obligations under this agreement;

XCN may revoke the guarantee in clause 5.1 by giving notice to the Council in writing.

6. DISPUTE RESOLUTION

6.1 Application

Any dispute or difference between Mangoola Coal and Council arising under or in connection with this agreement, including any dispute or difference as to the formation, validity, existence or termination of this agreement (**Dispute**) must be resolved as set out in this clause 6.

6.2 Notice of dispute or difference

- (a) If a Dispute arises a party must commence the process contained in this clause for its resolution by giving notice (**Dispute Notice**) to the other party. The party sending the Dispute Notice is the Referring Party.
- (b) The Dispute Notice must:
 - (i) be in writing;
 - (ii) state that it is given pursuant to this clause 6.2;
 - (iii) include or be accompanied by reasonable particulars of the Dispute.

6.3 Negotiation by senior management

- (a) Within 10 Business Days of the Referring Party giving a Dispute Notice, a Senior Management Representative from each of Mangoola Xstrata and Council must meet to attempt to resolve the Dispute.
- (b) The meeting must take place in person. The parties are not permitted to delegate this function to any other person.
- (c) The parties must ensure that their Senior Management Representative at this meeting:
 - (i) has full authority to resolve the Dispute; and
 - (ii) makes a genuine effort to resolve any Dispute.
- (d) If, and to the extent that, the Dispute is resolved, the Senior Management Representatives must immediately detail their agreement in writing. This document must clearly state which parts of the Dispute are resolved, and the agreed basis for its resolution.
- (e) If a written agreement is not produced pursuant to clause 6.3(d) in relation to all or part of the Dispute within 10 Business Days after the Dispute Notice has been given, the Dispute, or the part of the Dispute in respect of which there is no written agreement produced, is deemed to be unresolved.

6.4 Arbitration

Any Dispute, or part of a Dispute that is deemed to be unresolved under clause 6.3(e) shall be resolved by arbitration in accordance with the ACICA Arbitration Rules which are current as at the date on which the Dispute Notice was given. The seat of the arbitration will be Sydney, Australia.

6.5 Continuance of performance

Despite the existence of a Dispute, the parties must continue to perform their respective obligations under this agreement and any related agreements.

6.6 Summary or urgent relief

Nothing in this clause 6 will prevent either party from instituting court proceedings to seek enforcement of any payment due under this document or to seek urgent injunctive, interlocutory or declaratory relief in respect of a Dispute.

7. GENERAL

7.1 Notices

- (a) A notice, consent or other communication under this document is only effective if it is in writing, signed and either left at the addressee's address or sent to the addressee by mail or fax. If it is delivered, it is taken to have been received when it has been left at the addressee's address. If it is sent by mail, it is taken to have been received three Business Days after it is posted. If it is sent by fax, it is taken to have been received when the addressee actually receives it in full and in legible form.
- (b) A person's address and fax number are those set out below, or as the person notifies the sender:

Mangoola Coal

Address: 1st Floor, 39-43 Bridge Street, Muswellbrook NSW 2333
Fax number: (02) 6543 4318
Attention: Grant Farrar (Operations Manager)

Council

Address: 157 Maitland Street, Muswellbrook NSW 2333
Fax number: (02) 6549 3701
Attention: Stephen McDonald (General Manager)

7.2 Amendment of this agreement

This agreement may be amended or revoked by further agreement in writing signed by the parties.

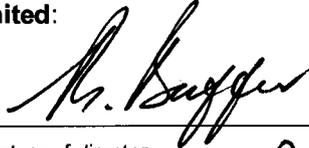
7.3 Counterparts

This document may be executed in counterparts.

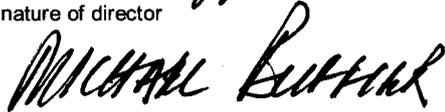
8. SIGNING PAGE

EXECUTED as an agreement.

EXECUTED by Xstrata Mangoola Pty Limited:



Signature of director



Name

EXECUTED by Xstrata Coal (NSW) Pty Limited:

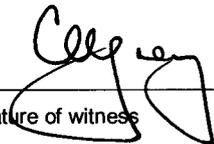


Signature of director



Name

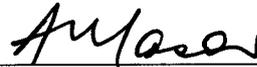
EXECUTED by the Muswellbrook Shire Council, in accordance with the resolution dated:



Signature of witness



Name



Signature of director/secretary



Name



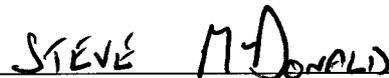
Signature of director/secretary



Name



Signature of General Manager



Name

Schedule 1

GENERAL TERMS FOR PLANNING AGREEMENT

Funding Area	Project	Minimum Proponent Contribution	Funding Time Frame
Local Environmental Management	Wybong Uplands Land Management Strategy	\$500,000	\$100,000 x 5 years, from commencement of construction
Local Employment	Education and Training Strategy	\$600,000	3-6 annual contributions to be paid from commencement of construction
Community Projects	Recreation Assets Renewal Fund	\$1,200,000	Contributions to start on commencement of production, with flexible instalments and interest on the capital outstanding amount to be contributed annually
Community Infrastructure	Denman Recreation Area Enhancements	\$2,200,000	3-4 annual contributions to be paid from commencement of production, with a weighting towards the latter contributions in accordance with Council's schedule of works

Schedule 2

LAND TO WHICH THIS AGREEMENT APPLIES

Lot	DP	Lot	DP	Lot	DP
12	842072	1	1014899	189	750968
32	735121	634	748470	88	750968
160	750968	62	750968	230	869334
12	230283	46	750968	257	706955
112	531273	45	750968	23	622786
11	842072	42	750968	156	750968
633	748470	1	950763	155	750968
227	750968	41	750968	22	622786
199	750968	40	750968	195	750968
193	750968	4	729944	194	750968
185	750924	39	750968	2171	706389
177	750968	32	750968	11	112946
31	735121	216	750968	23	8090
17	7004 93189	215	750968	22	8090
21	622786	212	750968	21	8090
2170	706389	211	750968	111	531273
188	750924	210	750968	101	805458
912	588390	209	750968	41	805505
911	588390	205	750968	42	805505
218	750968	204	750968	100	805458
201	706571	196	750968	13	842072
163	750968	192	750968	229	726283
162	750968	191	750968	173	750968
93	750968	190	750968	179	750924

Crown Roads, Council Roads, the bed and banks of the Hunter River and the Muswellbrook-Ulan railway, identified in the area shown on Figure 1 – Project Application Boundary of the Project Approval.

Appendix L Confirmation of Misappropriation of Wybong Uplands
Land Management Strategy Funds by MSC/Glencore Collusion and
Malfeasance in Public Orifice

**MINUTES OF THE MANGOOLA OPEN CUT
COMMUNITY CONSULTATIVE COMMITTEE MEETING
Mangoola Open Cut
Wednesday 16th November 2016**

PRESENT:

Mr Nathan Lane (Mangoola Open Cut) (NL)
Ms Chloe Piggford (Mangoola Open Cut) (CP)
Mr Tony Israel (Mangoola Open Cut) (TI)
Ray Butchard (Chair) (RB)
Mr Stephen Ward (Muswellbrook Shire Council) (SW)
Mr Keith Campbell (Community Representative) (KC)
Mr Robert Weir (Community Representative) (RW)
Mr Johnathon Moore (Community Representative) (JM)
Mr Tony McManus (Community Representative) (TM)
Ms Fiona Hordern (Community Representative) (FH)
Mrs Lisa Andrews (Independent Chair Nominee) (LA)
Ms Abbey Power (Harvey Recruitment / Minute-Taker) (AP)
Mr Damien Ryba (Mangoola Open Cut) (DR) – Site tour only

Wybong Uplands Land Management Money

- KC raised the question for a Wybong community member that doesn't attend meetings what was happening with the \$500,000 wet lands money. TI replied we are in consultation with the Council, a

NOT spent in area of, or for purposes designated in Consent. Misappropriated by HTBA Wayne Bedgood, WIA Brett Keeping and MSC Martin Rush and treated like Maerin Rush personal slush fund.

draft strategy went to Craig Flemming (former MSC Environmental Officer) but this was not progressed. TI also added that another project was progress with another local project with similar beneficial environmental outcomes. The 'Stepping stones project', which will be spent in the Wybong area.

Appendix M Standard MSC over-pricing for preferred tenderer

CONSULTATION WITH COUNCILLOR SPOKESPERSON

No consultation

REPORT

An observed priority at the Muswellbrook Cemetery is the need for paths to be formalised or reinstated together with bollards preventing vehicle access on graves and providing legible movement throughout the cemetery. Attached is a mud map (Path – Indicative) of the paths to be formalised which is approximately 650 meters of path and it is proposed that this be 2.5 meters wide where space permits and packed with decomposed granite.

The paths are for pedestrians but would also be used by vehicles for funeral services as normal. The paths would also make access in the wet weather easier for the funeral vehicles. The installation of paths would provide formal access from all border streets to the cemetery but unlike the draft plan the proposed paths are limited on the western side of the cemetery.

The existing path beginning from Hill St is bordered by brick pavers and it is considered unnecessary to replace and should remain in situ, but where there is no border for new paths a discreet concrete edge will be used to retain the decomposed granite and prevent weeds.

It is also proposed to install bollards at the entries to the cemetery of which there would be six with three, as used now, providing access to vehicles. The bollards would be the black heritage (Victorian) type as used in Muswellbrook Shire civic and business precincts.

Consistent with the draft plan it is proposed for trees as identified, specifically the *Pryus calleryana* 'Bradford' – Callery Pear and *Pryus calleryana* 'Capital' – Callery Pear, to be planted adjacent to the paths. Existing trees would also be retained and natives would be used informally as in the draft plan. On the western boundary of the cemetery bordering Victoria Park additional planting of natives would be undertaken similar to the plantings in nearby Karoola Park for National Tree Day projects. This area in time could possibly evolve as a native garden of remembrance.

Provided below is the list of works itemised with quantity estimates, material and cost estimates. Included in addition to above is an allocation for furniture, signs, make good turf, and an allowance for the heritage monuments. It is proposed that a risk assessment be undertaken of the older monuments with specialist advice to be provided on modest works to best present and preserve these monuments.

The program of works includes:

to tender ??

Item	Quantity	Material	Cost Estimate
Formalisation of paths	650m x 2.5m	Decomposed granite as in draft plan Bricks in situ with concrete edges for new paths	\$100,000
Entry and path bollards	60	Heritage bollards (black with chain) Consistent with Public Domain Manual	\$20,000
Furniture	10	Bench seating at nodes as in draft plan	\$20,000
Signs	6	Entry and directional signs	\$6,000
Tree plantings	150	Adjacent to paths as in draft plan	\$45,000
Turf	350m ²	Estimate of make good	\$10,000
Risk assessment and treatment of heritage monuments	-	Allowance for positioning of monuments and works identified	\$10,000
Total			\$211,000