

Submission into the 2020 Independent Review of the Vickery Extension Project

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Submitted by

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About Hornsby Shire Climate Action

Hornsby Shire Climate Action (HSCA) is an independent, community organisation based in Hornsby Shire, New South Wales.

HSCA is dedicated to local action aimed at addressing anthropogenic climate change through strategies aimed at prevention and mitigation.

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Executive Summary

Hornsby Shire Climate Action (HSCA) would like to register our opposition to the Vickery Extension Project.

It is the HSCA's contention that the Vickery Extension Project should not be approved on the following grounds;

- i. The applicant, Whitehaven Coal, has repeatedly breached its environmental protection licence and other legal obligations
- ii. The individuals involved and employed by Whitehaven Coal do not pass the Fit and Proper Person test
- iii. Threat to social cohesion
- iv. Threat to water and food security
- v. Threat to public health
- vi. The expansion is antithetical to the global need to address climate change
- vii. The mine site includes buildings of historical significance
- viii. Exploitation of local community

It is the HSCA's view that approval of the mine would represent a failure of the state and federal authorities to act in the best interests of the Australian peoples, and contradicts the very tenants of Australia's western democratic tradition by overriding the determination of local representatives chosen by the community.

All instances of community support for the mine extension are premised on economic benefit without consideration for the long-term social and environmental damage that it is likely to incur, damage that potentiates severe economic consequences in the future. Allowing the mine extension for economic benefits alone is a cynical approach to addressing the economic needs of a community already hurting from severe drought, that borders on exploitation.

The Boggabri area is agricultural land and requires a sensible political commitment to its future through the development of sustainable farming practices and clean energy infrastructure that will provide a greater number of jobs both now and in the future.

1. Whitehaven Coal breaches of legal obligations

Whitehaven Coal has repeatedly breached its environmental licence and legal obligations, and acceptance of any new extension to its current operations only serves to enable further breaches at the expense of the local community

These breaches include the following:

- Significant air pollution on neighbouring farmland following mine blasts¹
- Exceeding their coal mining licence²
- Contaminating nearby streams³
- Illegally dumping hazardous waste⁴
- Exceeding acceptable noise levels⁵
- Extracting water contrary to the Water Management Act⁶
- A number of legal infringements⁷

2. Fit and Proper Person Policy – Mining Lease Application 578

HSCA objects to the Vickery Extension Project on the grounds of the Fit and Proper Person policy, as it applies to the Mining Act 1992⁸. The Fit and Proper Person test contained in s 380A of the Mining Act grants the Minister the right to refuse the grant of a Mining Lease to Whitehaven Coal, as it provides for ministerial discretion to refuse applications on the ground of the reputation and character of the applicant⁹. S 380A states that the Minister can refuse an application if (c) the person or body corporate has held a mining right, or any other instrument issued or granted under relevant legislation, that has been suspended, cancelled or revoked¹⁰.

1 NSW EPA, "Whitehaven Coal Mining Ltd Convicted And Fined \$38,500 By Court", *NSW Environment Protection Authority*, 2020, [https://www.epa.nsw.gov.au/news/media-releases/2019/epamedia190320-whitehaven-coal-mining-ltd-convicted-and-fined-\\$38500-by-court](https://www.epa.nsw.gov.au/news/media-releases/2019/epamedia190320-whitehaven-coal-mining-ltd-convicted-and-fined-$38500-by-court).

2 Peter Hannam, "Whitehaven Coal Cops 'Paltry' Fine For Exceeding Coal Limit", *The Sydney Morning Herald*, 2020, <https://www.smh.com.au/environment/whitehaven-coal-cops-paltry-fine-for-exceeding-coal-limit-20141210-1243q9.html>.

3 NSW EPA, "Decmedia12033003", *NSW Environment Protection Authority*, 2020, <https://www.epa.nsw.gov.au/news/media-releases/2012/decmedia12033003>.

4 NSW EPA, "Narrabri Coal To Pay \$120,000 After Mine Waste Caused Landfill", *NSW Environment Protection Authority*, 2020, [https://www.epa.nsw.gov.au/news/media-releases/2020/epamedia200428-narrabri-coal-to-pay-\\$120000-after-mine-waste-caused-landfill](https://www.epa.nsw.gov.au/news/media-releases/2020/epamedia200428-narrabri-coal-to-pay-$120000-after-mine-waste-caused-landfill).

5 Jamieson Murphy, "Maules Creek Warned For Noise", *Namoi Valley Independent*, 2020, <https://www.nvi.com.au/story/4088246/maules-creek-warned-for-noise/>.

6 Richard Szabo, "Coal Mine Charged With Taking Water Without A Licence", *Http://Www.Qmeh.Com.Au/*, 2020, <https://www.qmeh.com.au/coal-mine-charged-with-taking-water-without-a-licence/>.

7 Jamieson Murphy, "Watchdog Spot Checks Gets Results", *The Northern Daily Leader*, 2020, <https://www.northerndailyleader.com.au/story/5684657/watchdog-spot-checks-gets-results/>; Jamieson Murphy, "Audit Passed, Fine Still Issued", *Namoi Valley Independent*, 2020, <https://www.nvi.com.au/story/4521335/audit-passed-fine-still-issued/>.

8 NSW Resources Regulator, Fit and Proper Persons Policy, PUB18/196, NSW: NSW Resources Regulator, 2018.

9 NSW Resources Regulator, Fit and Proper Persons Policy, PUB18/196, NSW: NSW Resources Regulator, 2018. P. 10-12.

10 NSW Resources Regulator, Fit and Proper Persons Policy, PUB18/196, NSW: NSW Resources Regulator, 2018. P. 10-12.

The mining lease application 578, submitted by Whitehaven Coal for a new mining lease at Bogabri sighted the name of Andrew Garrett as the authorised contact person. Andrew Garrett is employed by Whitehaven coal under the title General Manager Community Engagement¹¹.

However, in August 2019 exploration license EL 6324 was suspended by the Resources Regulator following serious breaches of the company's exploration conditions¹². This suspension continues to be in place, and the Resources Regulator is currently investigating the circumstances surrounding the suspension. Furthermore, the Resources Regulator is considering prosecution of Whitehaven Coal via its subsidiarity Narrabri Coal Operations¹³. It is the contention of HSCA that a reinstatement of EOL 6324 would not void the application of ministerial discretion as laid out in S 380A,

The wording of S 380A employs the present perfect continuous tense, referring to an unspecified time. Therefore, even if EDL 6324 were to be reinstated it would not void the application of ministerial discretion.

Please refer to the relevant sections of the Mining Act 1992, As laid out in the Fit and Proper Persons Policy below:

380A Fit and Proper Person consideration in making certain decisions about mining rights¹⁴

(1) Despite anything to the contrary in this Act, any of the following decisions under this Act may be made on the ground that, in the opinion of the decision-maker, a relevant person is not a fit and proper person (without limiting any other ground on which such a decision may be made)—

(a) a decision to refuse to grant or renew a mining right (a **relevant person** in such a case being an applicant for the grant or renewal of the mining right),

(b) a decision to refuse to transfer a mining right (a **relevant person** in such a case being the proposed transferee),

(c) a decision to cancel a mining right or to suspend operations under a mining right (in whole or in part), a **relevant person** in such a case being a holder of the mining right,

(d) a decision to restrict operations under a mining right by the imposition or variation of conditions of a mining right (a **relevant person** in such a case being a holder of the mining right).

(2) ...

(3) A person or body corporate has **compliance or criminal conduct issues** if—

11 "Werris Creek Coal Community Consultative Committee", *Whitehavencoal.Com.Au*, 2020, <https://whitehavencoal.com.au/Documentations/Werris%20Creek%20Mine/Community/Community%20Consultative%20Committee/WCC-CCC%20Meeting%20Minutes%20and%20Environmental%20Monitoring%20Report%202020%20March.pdf>.

12 Department of Planning, Industry and Environment, *Narrabri Coal Exploration Licence Suspended*, 2020, https://www.resourcesregulator.nsw.gov.au/_data/assets/pdf_file/0008/1218383/Narrabri-Coal-exploration-licence-suspended.pdf.

13 *Resourcesregulator.Nsw.Gov.Au*, 2020, https://www.resourcesregulator.nsw.gov.au/_data/assets/pdf_file/0005/1153634/Suspension-Notice-Decision-document.pdf.

14 NSW Resources Regulator, Fit and Proper Persons Policy, PUB18/196, NSW: NSW Resources Regulator, 2018. P. 10-12.

- (a) the decision-maker is satisfied that the person or body corporate has contravened any relevant legislation, whether or not the person or body corporate has been prosecuted for or convicted of an offence arising from the contravention, or
 - (b) in the previous 10 years, the person or body corporate has been convicted in New South Wales or elsewhere of a serious offence or an offence involving fraud or dishonesty, or
 - (c) *the person or body corporate has held a mining right, or any other instrument issued or granted under relevant legislation, that has been suspended, cancelled or revoked.*
- (4) The grant, renewal or transfer of a mining lease can be refused on the ground that the Minister is of the opinion that the applicant is not a fit and proper person even if—
- (a) the mining lease is necessary for the carrying out of State significant development that is authorised by a development consent, despite section 89K of the *Environmental Planning and Assessment Act 1979 (the Planning Act)*, or
 - (b) the mining lease is necessary for the carrying out of approved State significant infrastructure under Part 5.1 of the Planning Act, despite section 115ZH of that Act, or
 - (c) the mining lease is necessary for the carrying out of a transitional Part 3A project under Schedule 6A to the Planning Act, despite section 75V of that Act, or
 - (d) section 91A or 93 of the Planning Act would otherwise prevent that refusal.

[emphasis added]

While Whitehaven Coal operates under numerous subsidiary companies. We would like it acknowledged that employed personnel regularly move between subsidiaries and therefore the involvement of an employee from one subsidiarity should be transferable to all subsidiaries, as well as Whitehaven Coal itself.

3. Social Impact

The local community has expressed significant opposition to the project and yet another coal mine in the region threatens social cohesion.

Families living near the proposed mine are concerned that they will be burdened with excessive noise and air pollution, and that the value of their land and crops will be negatively affected.

4. Water and food security

The Vickery Extension Project occupies an extensive area of arable land adjacent to the Vickery State Forest and the Namoi River which should be reserved for agricultural purposes.

The project would source 85% of its water needs from the Namoi River via a pumping station and pipeline. The Namoi River is part of the already stressed Barwon catchment of the Murray–Darling basin. Not only does this pose a threat to the rivers ecosystem, it also puts pressure on the water security of the local community, which in turn threatens Australia’s future food

security. While existing laws operate to prevent water, air and noise pollution, they have had little impact, if any, on Whitehaven Coal's conduct in their current operations.

Australia's energy security does not rely on the granting of this extension project, and alternative options exist to boost the economy.

The uncertainties surrounding climate change, as well as the current non-consensus of the science community on the impacts the changing climate will have on regional aquifer and groundwater systems¹⁵ necessitates a cautious response that ensures Australia's food and water security in the future. Excessive groundwater depletion through extraction is already a serious issue in Australia and globally¹⁶, and this is likely worsen with the effects of climate change¹⁷. The Environmental Impact Statement (EIS) provided by Whitehaven Coal does not adequately address the issue of sustainable water security due to the unforeseeable impacts of climate change as the uncertainty is too great. Furthermore, the EIS was prepared in relation to the Vickery Extension Project in isolation, without consideration of the extension of two other mines in the area, population growth, increased agricultural needs from drought and other issues.

The extension of the mine will disproportionately burden the local community, and potentially damage the local environment irreversibly which is prime agricultural land. This will harm not only the current local community, but has significant implications for future generations of farmers and Australia's food security.

5. Public health

Mines operated by Whitehaven Coal have already been responsible for heightened levels of air pollution in the region that may have a significant impact on the communities health both currently and in the future. The Vickery Extension Project will increase this level of pollution.

6. Greenhouse gases and climate change

The Vickery Coal Mine Extension Project is one of 12 fossil fuel projects currently under consideration in NSW, and one of the largest in terms of scale and emissions. The total greenhouse gas emissions generated by this project stand at 393MT CO₂ – equivalent. This is equivalent to over 83 million cars in one year.

As a major supplier of resources to the global market Australia is in a unique position to influence the transition towards clean energy, and the Vickery Extension Project will slow this transition. Although initially global buyers will purchase coal elsewhere, the reduced available supply of coal to the global market would increase its price and thereby accelerate the transition towards available cheaper forms of clean energy, and accelerate the development of new clean energy industries.

15Bjørn Kløve et al., "Climate Change Impacts On Groundwater And Dependent Ecosystems", *Journal Of Hydrology* 518 (2014): 250-266, doi:10.1016/j.jhydrol.2013.06.037.

16 Konikow and Kendy, "Groundwater Depletion: A Global Problem." p. 317

17Bjørn Kløve et al., "Climate Change Impacts On Groundwater And Dependent Ecosystems", *Journal Of Hydrology* 518 (2014): 250-266, doi:10.1016/j.jhydrol.2013.06.037.; Taylor et al., "Ground Water And Climate Change."; Priyantha Ranjan, Kazama and Sawamoto, "Effects Of Climate And Land Use Changes On Groundwater Resources In Coastal Aquifers."

7. The site includes buildings of historical significance.

The historic “Kurrumbede” property, said to be the inspiration to Dorothea MacKeller’s poem “My Country” is situated on the mine site and will be used by the mining Corporation as office space. There is reason to believe that vibrations from the mine site will adversely impact the property, and there is no guarantee that this can or will be avoided.

Furthermore, Whitehaven Coal have repeatedly demonstrated their inability to adhere to even the most basic obligations assigned to them and therefore pose a significant and unacceptable threat to this property.

8. Exploitation of community for short term benefit

Claims of the economic benefit provided by Vickery Extension Project can be materialised by other means¹⁸. The local council has rescinded their support of the extension project because of the inflated job numbers and economic benefit claimed by Whitehaven Coal. These job numbers are likely to decrease further, as the industry trends towards automation. It is unrealistic to assume that this mine in particular will reject increased automation in favour of community development, and therefore this must be taken into consideration.

The agricultural community is already struggling through drought which has caused economic hardship, and to remedy this hardship by extending a mine that will put further strain on water supplies and local resources is exploitative. The community requires a sustainable approach to their economic future rather than a shortsighted plan that threatens the region’s future viability.

18 Douglas and Harrahill, "Coal Mines Can Be Closed Without Destroying Livelihoods – Here's How."; Wesseh and Lin, "Environmental Policy And 'Double Dividend' In A Transitional Economy."

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