To: NSW Independent Planning Commission (IPC)

SUBMISSION TO RUSSELL VALE UNDERGROUND EXPANSION PROJECT

From: Julie Marlow, 34 Hertford St Berkeley NSW

Thank you for the opportunity to comment on the Russell Vale Underground Expansion Project (UEP) as proposed by Wollongong Coal Ltd (WCL).

I strongly object to the UEP on the grounds that it poses serious risks, social, environmental and economic. After commenting on the Department of Planning, Industry and Environment’s recommended conditions of consent (DPIE’s RCofC), I concentrate of two area of environmental impacts: the climate crisis and subsidence.

By way of conclusion, I urge the Commissioners to consider the following question as an alternative approach to the legal ‘fit and proper’ test (which I understand the Panel is bound to ignore): “Will WCL have the resources or the integrity to meet in full the strong and strict conditions of consent that this project demands?”

**RECOMMEDED CONDITIONS OF CONSENT:** In the Executive Summary of the DPIE’s FAR, the recommended conditions are described as ‘strict’. Unfortunately, they are not strict. They are too vague to be strict. Among the many questions they raise, here are a few:

The over-arching condition in DPIE’s recommended list of conditions is that all ‘reasonable and feasible’ measures are taken to prevent/minimise environmental harm and to rehabilitate after harm has been done (A1). The words ‘reasonable’ and ‘feasible’ are used repeatedly throughout the document. The extensive use of the word ‘negligible’ is similarly problematic (e.g. C1). **What confidence can the community have in conditions couched in vague terms such as ‘reasonable’, ‘feasible’, ‘minimise’, ‘negligible’?**

Any strategy, plan or program required by a condition may be, with the approval of the Planning Secretary, submitted in a staged manner. Similarly, changes to plans, etc., may be made (A20). Furthermore, staging and updating of plans may not require approval by all the parties required to be consulted in the relevant condition (A21). **Doesn’t relying only on the Planning Secretary’s approval deprive the consent process of necessary rigor, as well as transparency and accountability?**

**Are the conditions of consent fully ‘doable’? Will the plans, strategies and programs required by the conditions of consent, and which may only need the Planning Secretary to tick off, be ‘fit for purpose’?**

**Will the implementation of plans be independently monitored and reported on, or will WCL self-monitor and self-report?** Self-regulation is a serious impediment to the effectiveness of the development approval process.

**Will WCL have the necessary resources to implement and monitor plans?**

**Are the rehabilitation objectives realistic or just aspirational?** For example, the first objective is for all areas affected by the development to be made ‘safe, stable, non-polluting’. This is unrealistic. Mining-generated movement of water and ground will continue post-operations. Water contamination will persist. There is no guarantee that these areas will be safe for their post-mining use, which I assume and hope would be their rightful uses as drinking water catchment and wildlife protection. There is a contradiction between these objectives and the amount of biodiversity offsetting expected to be necessary. There is also a question about subsidence and rehabilitation. **Is it the case that significant subsidence has never been successfully remediated?**

In the transcript of the 13 October 2020 meeting between IPC panel for the UEP and the NSW Resources Regulator (RR), Mr Gang Li, RR’s Principal Inspector (subsidence) introduces the concept of the ‘greyness’ that typifies mining applications and the need for conditions of consent to properly manage that greyness. He was recorded as saying, in response to a question about the appropriateness of post-approval mining extraction plans: “… when you consider … nearly all mining applications I understand [they] were approved grey, nearly all. It’s just a matter of how grey is that grey? And usually conditions of approval were imposed to manage those greys. So – but in this case, in my view, it’s too grey”.

I support Gang Li’s contention that the WCL UEP application is “too grey”. I make further use of his useful metaphor to contend that DPIE’s recommended conditions do not mitigate the ‘greyness’ of WCL’s application but, in fact, they too fall in the ‘too grey’ category.

**THE CLIMATE CRISIS:** Australia’s disproportionate contribution to global carbon emissions and the climate crisis would be substantially reduced if it were to phase out coal mining. Our nation is the third biggest exporter and fifth biggest miner of fossil fuels by CO2 potential—“For every Australian, the country mines 57 tonnes of fossil fuel CO2 per year. That is ten times greater than the world average. … Coal makes up more than 80% of Australia’s exported fossil fuel CO2 potential” (Tom Swann, High Carbon from a Land Down Under, The Australia Institiute, July 2019). In 2015, the Climate Council warned “For Australia to play its role in preventing a 2⁰C rise in temperature requires over 90% of Australia’s coal reserves to be left in the ground, unburned”. Since then, scientists have alerted the world to the high probability that the planet cannot afford a 2⁰C rise: the goal should be no more than 1.5⁰C. See the Climate Cloak [https://climateclock.net](https://climateclock.net/)

Tom Swann, in the above-referenced article, argues convincingly that Australia, with its more diversified and less fossil fuel intensive economy than many other fossil fuel exporters, “has a unique opportunity, and obligation, to face up to the climate crisis through policies to limit its carbon exports, starting with a moratorium on new coal mines”.

If the UEP is approved, it will add 304,600 t CO2-e per annum of Scope 1 and 2 emissions to the NSW greenhouse gas inventory (FAR p66). Current NSW Government policy requires a reduction in CO2-e emissions of 35% by 2030 (<https://www.environment.nsw.gov.au/topics/climate-change/net-zero-plan>). Former Chief Scientist of Australia Prof. Penny Sackett has calculated that the state’s 2030 target requires a new yearly reduction of approximately 2.4 MtCO2-e (https://www.ipcn.nsw.gov.au/resources/pac/media/files/pac/projects/2020/03/narrabri-gas-project/correspondence/edo/sackett-narrabri-gas-project-ipc-advice-revised\_final.pdf). The UEP would add about 0.3 MtCO2-e every year for the next five years, about 12% of the required reductions.

In relation to its size and output, the Russell Vale Colliery releases a lot of methane when operational. It is known to be a ‘gassy’ mine. The UEP, if approved, would put the colliery in the top 100 largest emitters of Scope 1 emissions in Australia. Australia is already the largest exporter of metallurgical coal. The UEP would add only a very small volume of additional coal (about an extra 0.25% per annum) to export volumes but it would add a large volume of emissions to NSW's inventory.

In the DPIE’s Recommended Conditions, the only condition relating to emissions reduction is vague and weak. WCL is required to reduce emission only to the extent it considers ‘reasonable’ (B8 iii). This is unacceptable. Many a corporation has processes in place to be carbon neutral within a matter of a few years. An obvious condition of consent should be the purchase of ‘green’ power to offset the diesel and other dirty energy uses intended by WCL. Plan requirements (B9) do not as much as mention emission reduction.

Note “c” of Table 2 (B6) raises serious questions. This note “excludes extraordinary events such as bushfires, prescribed burning, dust storms, fire incidents or any other activity agreed by the Planning Secretary” from the criteria for annual particulate matter and from all criteria relation to deposited dust. The one certainty we have about the listed ‘extraordinary events’ is that they are increasing, becoming the ‘new normal’, and the increase is largely attributable to climate change. In effect, note “c” exempts WCL from taking climate change induced events into consideration. It annuls to a large extent B8c-f and B9 c (iii).

The power given to the Planning Secretary in WCL’s yet to be planned air quality management, as in other instances throughout the ‘recommended conditions’ document, is unacceptable. If approved, this granting of power to the Planning Secretary robs the approval process of rigour and independence. Community confidence will be lost.

B7 requires clarification. What are the terms of this agreement and who is it with?

B11 is also mysterfying. What ‘suitable alternative’ is there to ‘a suitable meteorological station operating in the vicinity of the site’?

**SUBSIDENCE:** The risk of subsidence is trivialised in the FAR. The transcript of the 13 October 2020 meeting between the UEP panellists and the Resources Regulator highlights this fact. (I commend the transparency shown by the IPC in making the transcript public available, although the half-hour ‘in confidence’ break in the meeting was disappointing.)

As a lay person, I cannot do justice to the importance of the information given by Gang Li, the Principal Subsidence Inspector who participated in the 13 October meeting. His assessment of the subsidence risks posed by the UEP seems vital to IPC decision making about the project. My impression of his input is that the cumulative problems of ‘triple seam’ mining have not been properly assessed and exposed in relation to this project. The likelihood that the meaning of the term ‘marginally stable pillar’ has not been understood by the DPIE and other parties to the UEP planning process is alarming.

Gang Li’s conclusion underscores the unacceptable uncertainty that beleaguers this project : *“… in relation to the proposed – the first workings, the existence and the distribution of the marginally-stable pillars in the overlying Bulli workings will critically determine the outcomes of subsidence. That is, the occurrence, nature, magnitude, distribution, timing, duration of subsidence development due to the proposed first workings.
Importantly, without a reasonable understanding of this key risk factor, we are in the dark in making decisions i dark in making decisions in relation to Russell Vale Colliery’s proposed revised underground expansion project. That’s an important message.”*

Gang Li went on to say that assessment of mining propositions should be more in line with what is required of high-rise building proposals! This point illustrates the leniency with which NSW deals with the mining sector.

Gang Li’s contribution to the 13 October meeting certainly warrants a more detailed response than that given in the hastily produced letter (16 October 2020) from the Resources Regulator’s Executive Director to DPIE’s Director of Planning. However, the Resource Regulator’s position revision in the letter provides a stark contrast to the DPIE’s confidence in its interpretations of subsidence investigations and predictions as expressed in the FAR.

FAR (Executive Summary): *The probability of failure of the pillars in the Wongawilli Seam as a result of bord and pillar mining is predicted to be negligible. Investigations into the possibility of collapse of overlying mined coal seams as a result of bord and pillar mining showed there is no potential for further subsidence to occur from the Balgownie seam and the majority of the uppermost Bulli Seam as they are already fully subsided.*

Extract from the 16 October letter:

 *• The mining of first workings may have a potential to trigger the instability of the marginally stable pillars in the overlying Bulli Seam.
• The identification of the marginally stable pillars in relation to the first workings was critical to determine the potential subsidence impacts.
• Resources Regulator staff had not seen clear results of the mine operator’s investigation to identify the locations of the marginally stable pillars.*

Hastily, the Resources Regulator’s Executive Director goes on to recommend, as Gang Li does, that the project proceed by changing the site for its commencement to the west of Ousley Rd to “allow time to implement effective controls to manage subsidence under critical infrastructure and the escarpment on the eastern side of Mount Ousley Road”. He also recommends the development of “a principal hazard management plan in relation to subsidence” to address risks to the health and safety of workers and others.

What is glaringly obvious is that the ‘marginally stable pillars’ in the Bulli Seam have not been assessed. How many ‘marginally stable pillars’ are there and what is their distribution throughout the seam? Can they be properly assessed? Is it safe to assess them? Can they ever be made safe against forces that may dangerously destabilise them? What is the point of commencing work at another site or relying on a post-approval extraction plan if the Bulli Seam proves unsafe to under-mine?

It is time catchment miners, and their consultants and consent authorities, admitted that predicting and preventing subsidence to an adequate degree of certainty is just too hard.

Subsidence is a serious threat to water quality and quantity and to the catchment’s biodiversity. Particularly at risk are the upland swamps, the catchment’s precious water filters. It is unclear how many upland swamps are at risk. It is clear that UEP approval would permit WCL to extract its abandoned longwall machine buried in Longwall 6, requiring 25m of longwall mining close to the upland swamp, CCUS4. This longwall mining should not be allowed to go ahead. Previous mining of Longwall 4 resulted in subsidence of 1.4 metres, nearly five times the predicted subsidence (Gujarat NRE Coking Coal Ltd NRE No. 1 Colliery Longwall 4 End of Panel Report p15  <http://wollongongcoal.com.au/monitoring-r/>).

Cataract Reservoir area has been extensively mined already. The ground was still moving 25 years after long wall mining took place around and under the Reservoir in the 1990s (Ziegler & Middleton, Is there a 4th Dimension to Subsidence Monitoring? NSW Dam Safety Committee, Proceedings of the 9th Triennial Conference on Mine Subsidence, 2014). It is noted in the FAR that SCT has identified several places within the UEP area that are ‘on the verge of moving’. “This low level movement related to previous longwall mining operations has potential to continue to cause low-level impacts to Mount Ousley Road and valley closure across Cataract Creek that may be perceptible” (para 110, p34).

The environment will pay a high price for UEP if it should go ahead: a far too high a price.

**“Will WCL have the resources or the integrity to meet in full the strong and strict conditions of consent that this project demands?”**

The DPIE, in its UEP Final Assessment Report, records that a key issue raised in submissions to the public engagement process for the Revised UEP (2019), was WCL’s history of non-compliance to environmental requirements and its ongoing financial incompetence (p25). It is confusing and alarming to read further on in the DPIE’s report (p66): “In relation to concerns in public submissions about the financial status of WCL and whether the company is “fit and proper”, the Department takes the view of the Commission in its Second Review Report. A fit and proper test is not a requirement under the EP&A Act and is an irrelevant consideration for a consent authority when making a determination on a development application.”

Legal technicalities aside, surely the IPC, as consent authority, is bound to consider and investigate evidence presented to it that shows a proponent of any development has i) a persistent history of non-compliance to previous conditions of approval; and/or is ii) in financial trouble and at risk of being unable to implement plans necessary for the implementation of approval conditions? I urge the Commission to reject the position taken by the DPIE and the previous IPC panel regarding the relevance of a proponent’s history and financial capacity.

If the IPC is to fulfil its role of “strengthening public confidence in the planning system …”, a basic role of the IPC according to the DPIE/IPC MOU (5 May 2020), I strongly feel a detailed examination of WCL’s environmental and financial records must be undertaken and an objective risk assessment made.

In the background material supporting a motion presented (and passed unaminously) at Wollongong City Council general meeting 27 October 2020, Councillor Cath Blakey shone some light on the history of Wollongong Coal Ltd:

*The proponent, Wollongong Coal, has a history of non-compliance when it comes to the conditions of consent. Wollongong Coal has been fined and issued with orders by multiple agencies, regulators and courts for offences including polluting Bellambi Gully Creek, “poor maintenance and operation” of infrastructure, failing to publicly disclose water monitoring data, failing to hold community consultative meetings and for stockpiling 200,000 tonnes of waste coal on Council land in breach of its development consent at Russell Vale. On 8 November 2017, a conviction was recorded in the Downing Centre Local Court for the failure of Wollongong Coal to pay annual rental fees and administrative levies under section 292C(3) of the Mining Act. In March 2018, the NSW EPA stated that "in recent years” Wollongong Coal “has demonstrated they cannot consistently manage and maintain pollution control equipment and plant on site".*

*In March 2018 the NSW Resources Regulator shut down the proponent’s Wongawilli operation due to a serious roof collapse leading to a determination that workplace safety issues were too serious for underground work to continue. In dealings with Wollongong City Council, Wollongong Coal has also a long-standing practice of obfuscation in relation to land dedication of the Russell Vale Golf Course, security bonds, remediation of the emplacement area and creek realignment.*

*Wollongong Coal currently has no income and debts which exceed its current assets by more than a billion dollars (AUD$1,089,243,000). Current auditors UHY Haines Norton noted in March 2020 that “a material uncertainty exists that may cast significant doubt on the Group’s ability to continue as a going concern and therefore, the Group may be unable to realise its assets and discharge its liabilities in the normal course of business.”In August 2020 Wollongong Coal delisted from the Australian Stock Exchange. Wollongong Coal was first suspended from trade on the Australian Stock Exchange in 2017 when it failed to lodge its half-yearly report.  Wollongong Coal estimates rehabilitation of its Russell Vale mine would cost $215 million. The NSW Government hold a bond of just $12.4 million for the mine site. Since 2013 Wollongong Coal has paid $0 corporate tax.*

*In India, the courts have determined that there is sufficient evidence for a criminal corruption case to be brought to trial against the majority owner of Wollongong Coal, Jindal Steel and Power (JSPL) and its chairman Naveen Jindal. In July 2019, Naveen Jindal and four other JSPL officials were charged under sections 420 (cheating) and 120-B (criminal conspiracy) of the Indian Penal Code. All have pleaded not guilty. JSPL, via a holding company, JSPL Mauritius, is majority shareholder in Wollongong Coal Ltd. Then Minister for Resources, the Honourable Don Harwin, described JSPL’s problems in India in response to a question in the NSW Parliament on 1 June 2017: “On 29 April it was announced that Jindal Steel and Power Limited, and one of its directors had been investigated by India's Central Bureau of Investigation on potential criminal corruption charges. The courts in India decided that there was sufficient evidence for a case to be brought to trial. I am advised that no conviction of criminal corruption has been made at this stage.”*