

12 February 2019

John Hann
Chair of Vickery Extension Project IPC Panel
Independent Planning Commission
Level 3, 201 Elizabeth Street
Sydney, NSW 2100

By email: ipcn@ipcn.nsw.gov.au

Dear Mr Hann

Public meeting for the Vickery Extension Project SSD 7480 – Submission of expert reports and request for separate meeting of experts in Sydney

1. We act for Lock the Gate.
2. We refer to the public hearings in regard to the Vickery Extension Project (**Project**) which occurred 4 and 5 February 2019 in Boggabri and Gunnedah respectively.
3. Our client has engaged independent experts to provide expert advice to the Independent Planning Commission (**IPC**) on various issues including water, social impacts, heritage and climate change. We hereby **attach** the following expert reports:
 - (a) Expert report of Dr Matthew Currell regarding groundwater.
 - (b) Expert report of Professor Will Steffen regarding climate change.
 - (c) Expert report of Dr Alison Ziller regarding social impact assessment.
 - (d) Expert report of Sharyn Anderson regarding heritage.
4. Unfortunately, none of the experts were available to present during the Public Hearing on 4 and 5 February 2019.
5. As such, we are instructed to request that the IPC hold a meeting to allow our client's experts to present their evidence to the IPC. In our view, given the IPC's current practice of making transcripts of such meetings publicly available, a specific meeting with independent experts engaged by Lock the Gate will not prejudice the Project proponent and will be beneficial to the IPC.
6. Further, given that a Public Hearing replaces any merit appeal rights by the community, it is our view that it is incumbent on the IPC to engage with independent experts to the fullest extent possible, including hearing and

interrogating the evidence of both independent experts and experts commissioned by the proponent.

7. We note that as a component of the recent public meeting for the Bylong Coal Project (SSD 14_6367), the IPC provided the independent experts engaged by our client in that matter, the Bylong Valley Protection Alliance, an opportunity to present their expert evidence to the IPC at a separate, dedicated meeting at the offices of the IPC in Sydney. We also understand that the IPC has agreed to hold a separate meeting with independent experts in relation to the United Wambo Open Cut Coal Mine Project (SSD 7142).
8. While we understand that the IPC places as much weight on written submissions as it does on oral submissions, in our opinion, this discussion more closely replicated the type of interrogation that would be conducted by the NSW Land and Environment Court (**Court**) in any merits appeal, albeit that the proponent's experts were not present.
9. We are aware that a number of other independent experts, namely Mr Roderick Campbell, Mr Tim Buckley and Mr David Paull are also providing advice to the IPC, and that other organisations such as Namoi Water may have also engaged experts. Our client would welcome the opportunity for all independent experts to speak to the IPC together.
10. In our client's view, the public consultation process for the Project will set an important precedent for similar projects as to how the IPC conducts the multi-stage hearing process, especially in regard to the opportunities the IPC provides for the presentation of independent expert evidence. As such, our client considers that this separate meeting with experts represents an opportunity for the IPC to set a high benchmark in regard to independent expert engagement.
11. Given the above, we are instructed to request that the IPC hold a dedicated meeting with independent experts commissioned by Lock the Gate and other independent experts who have made submissions. EDO NSW staff are available to facilitate the arrangements for such a meeting.
12. We are also instructed to draw your attention to the recent decision in *Gloucester Resources Limited v Minister for Planning* [2019] NSWLEC 7 (**attached**), in which Chief Justice Preston of the Court dismissed an appeal against the Rocky Hill Coal Mine's refusal and determined the mine's application by refusal. We submit that this judgment requires close scrutiny by the IPC as a number of the circumstances of the Rocky Hill project and the Vickery Extension Project are similar. Further, we consider that a number of the Court's findings are particularly relevant to the IPC's proper and fulsome consideration of the impacts of the Project. We set out a selection of these below.

13. In relation to amenity impacts of the Rocky Hill Coal Mine project, the Court found:

[262] Consideration of the social impacts of the mine's intrusiveness noise levels and cumulative amenity noise levels is not precluded by cl 12AB(3) of the Mining SEPP. The development standard for cumulative amenity noise level in cl 12AB(3) of the Mining SEPP does not prevent a consent authority from refusing consent on grounds relating to, or imposing conditions to regulate, project-related noise impacts that are not the subject of that development standard or social impacts resulting from project-related noise impacts. The negative social impacts that are likely to be caused by residents' annoyance reactions to project-related noise are not impacts that are the subject of the development standard in cl 12AB(3) of the Mining SEPP.

[263] The noise impacts of the mine, although not a ground in itself to refuse the development application for the Rocky Hill Coal Project, nevertheless do contribute to adverse social impacts that are a ground for refusal...

[267] I find that the cumulative air quality level will comply with the development standard in cl 12AB(4) of the Mining SEPP. The mine's cumulative air quality level is not a ground for refusing development application for the Rocky Hill Coal Project.

[268] Nevertheless, the residents' concerns about the mine's potential adverse effects on air quality, and the concomitant threat to their health and the health of their family, may have social impacts. Concerned residents may leave Gloucester and not be replaced by people who are put off by the perceived risk of deteriorated air quality and effects on their health. Uses that depend on Gloucester having, and being seen to have, a clean and green environment will also be adversely affected. These lead to negative social impacts, which are discussed in the next section.

[269] The negative social impacts caused by residents' concerns about the project-related air quality impacts, including the perceived threat to their health and the health of their families, are not impacts that are the subject of the cumulative air quality level development standard in cl 12AB(4) of the Mining SEPP. That development standard does not prevent a consent authority from refusing consent on grounds relating to, or imposing conditions to regulate, project-related air quality impacts that are not the subject of the development standard or social impacts resulting from project-related air quality impacts.

14. In relation to climate change impacts of the Rocky Hill Coal Mine project, the Court found, amongst other things:

[487] Although GRL submitted that Scope 3 emissions should not be considered in determining GRL's application for consent for the Rocky Hill Coal Project, I find they are relevant to be considered.

[488] At the most basic level, the consent authority must consider and determine the particular development application that has been made to carry out the State significant development of the proposed coal mine (s 4.38(1) of the EPA Act). For State significant development such as the Rocky Hill Coal Project, the development application is required to be accompanied by an environmental impact statement (s 4.12(1) and s 4.39(1)(a) of the EPA Act and cl 50(1)(a) and Sch 1, cl 2(1)(e) of the EPA Regulation). The environmental impact statement must address the environmental assessment requirements of the Secretary as well as the content requirements in Sch 1, cl 7 of the EPA Regulation, including the likely impact on the environment of the development and the reasons justifying the carrying out of the development, having regard to biophysical, economic and social considerations, including the principles of ecologically sustainable development (ESD). The principles of ESD are defined to be the precautionary principle, inter-generational equity, conservation of biological diversity and ecological integrity, and improved valuation, pricing and incentive mechanisms (cl 7(4) of Sch 1 of the EPA Regulation). As I note below, consideration of the principles of ESD can involve consideration of climate change.

[529] The first reason GRL gave was that the increase in GHG emissions associated with the Project would not necessarily cause the carbon budget to be exceeded, because, as Dr Fisher had argued, reductions in GHG emissions by other sources (such as in the electricity generation and transport sectors) or increases in removals of GHGs by sinks (in the oceans or terrestrial vegetation or soils) could balance the increase in GHG emissions associated with the Project.

[530] I do not accept this reason. It is speculative and hypothetical...

[531] The second reason given by GRL was based on Dr Fisher's argument that "the size of the global abatement task calls for making emissions reductions where they count most and generate the least economic and social harm." (Fisher report [13]). Dr Fisher considered that refusing approval to individual coal mines, such as the Rocky Hill Coal Project, would not achieve this abatement at least cost.

[532] I do not accept this second reason. A consent authority, in determining an application for consent for a coal mine, is not formulating policy as to how best to make emissions reductions to achieve the global abatement task. The consent authority's task is to determine the particular development application and determine whether to grant or refuse consent to the particular development the subject of that development application. Where the development will result in GHG emissions, the consent authority must determine the acceptability of those emissions and the likely impacts on the climate system, the environment and people. The consent authority cannot avoid this task by speculating on how to achieve "meaningful emissions reductions from large sources where it is cost-effective and alternative technologies can be brought to bear" (Fisher Report, [13]). Such emissions reductions from other sources are unrelated to the development that is the subject of the development application that the consent authority is required to determine.

[534] The third reason GRL advanced for approving the Project was that the GHG emissions of the Project will occur regardless of whether the Project was approved or not, because of market substitution and carbon leakage...

[536] I reject this third reason. On carbon leakage, GRL has failed to substantiate, in the evidence before the Court, that this risk of carbon leakage will actually occur if approval for the Rocky Hill Coal Project were not to be granted...

[538] The market substitution argument is also flawed. There is no certainty that there will be market substitution by new coking coal mines in India or Indonesia or any other country supplying the coal that would have been produced by the Project...

[546] The fourth reason GRL advanced for approving the Project is that the GHG emissions associated with the Project are justifiable. GRL contended that the Project will produce high quality coking coal, not thermal coal, which is needed for the main way of producing steel, by the BOF process; steel is critical to our society; and there are limited substitutes for coking coal in steel production.

[547] I find that GRL overstates this argument. It may be true that currently most of the world's steel (around 74%) is produced using the BOF process, which depends on coking coal, and although technological innovations might reduce the proportion of steel produced using the BOF process, for the reasons given by Mr Buckley, there is still likely to be demand for coking coal for steel production during the life of the Project.

[548] The current and likely future demand for coking coal for use in steel production can be met, however, by other coking coal mines, both existing and approved, in Australia...

15. We further note that Dr Will Steffen and Mr Tim Buckley, who provided expert evidence in respect to climate change and economics in the Rocky Hill case, which the Court found particularly persuasive, have also provided evidence to the IPC in respect to the Vickery Extension Project (see report[s] **attached**).
16. We are also instructed to provide you with a copy of the **attached** published paper by Lunney et al (2012)¹ that was developed for the Life of Mine Conference 2012. This paper highlights the key threats that climate change and the expansion of mining play to koalas in the Gunnedah region. We submit that the information contained in this paper would form an important consideration for the IPC in relation to the Project.
17. Our client submits that this paper confirms the extremely high significance of the Liverpool Plains koala population and highlights the severe risks posed by extreme weather and disease, and notes that mining will exacerbate those threats. Heatwaves in particular pose an enormous risk. The authors identify the research that is required to manage the koala population through a changing climate and intensifying land use, particularly the impacts of mining in the region. This includes research on koalas' habitat selection in a changing climate, the link between soils, leaf nutrition and koala habitat selection, and finally, the epidemiology of the Chlamydia disease throughout the Liverpool Plains koala population. The paper also highlights the importance of rehabilitation, which our client submits is inconsistent with the proposal to leave a large final void.
18. In our client's view, this research must be conducted prior to a decision on the Vickery Extension Project and it would be within the IPC's remit to request further advice from the authors of this paper in this regard.
19. We thank you for considering our client's request.
20. Please do not hesitate to contact the solicitor responsible for this matter, Nadja Zimmermann, on [REDACTED] [REDACTED] [REDACTED] or at [REDACTED]

Yours sincerely,

[REDACTED]

Brendan Dobbie
Acting Principal Solicitor
Our Ref: 1826565

¹ Lunney, D., Lemon, J., Crowther, M.S., Stalenberg, E., Ross, K. and Wheeler, R. 2012. An ecological approach to koala conservation in a mined landscape. Pp 345-54 in *Proceedings Life-of-Mine 2012*. The Australasian Institute of Mining and Metallurgy: Melbourne