

Mr John Hann

Chair Independent Planning Commission Panel - Vickery Coal Project
Level 3, 201 Elizabeth Street
Sydney NSW 2000

And

Prof Chris Fell AM, Panel Member

And

Prof Zada Lipman, Panel Member

Cc: Prof Mary O’Kane, AC, Chair & David Way, Planning Officer

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

16 March 2020

Dear Members of the Independent Planning Commission Panel – Vickery Coal Project

Affected Landholders - Negotiated Agreements – NSW Government Voluntary Land Acquisition and Mitigation Policy

As landholders who are affected by the Vickery Mine Project Proposal, we write to inform you that our experience to date leads us to conclude that the project proponent, Whitehaven Coal, is not following NSW Government Policy as it applies to us. For many years now we have all been living with the stress and anxiety of the prospect that a mine of this size and impact may be approved within such close proximity to our homes. Our homes are also our workplaces and the source of our livelihoods. They are the places that define us and connect us to each other and our community. All of us are the holders of lands that have been identified as Biophysical Strategic Agricultural Lands (BSAL). The stress and anxiety we have endured to date living in the shadow of this proposal is very real. It affects our families, young and old, our capacity to operate in our community and has led to the loss of productivity through the many hours it has consumed of us all and the impairment it causes to our normal functions. We will be significantly impacted by the mine in so many ways, including those most recognised by government policy, noise and air quality impacts.

To date we have all been approached by various representatives of Whitehaven Coal and some of us have had a number of meetings. Some of us have felt pressured to enter into confidentiality agreements. These meetings have not been productive, in some cases they have been insulting and in fact have caused further stress and anxiety. A number of us have invested in property valuations and put much effort and resources into considering our options, we have put various options to Whitehaven Coal about the possible terms of a reasonable negotiated agreement, none of which have been met constructively or in good faith on part of Whitehaven Coal. We have no doubt Whitehaven Coal would argue otherwise. The facts however, speak for themselves. None of us have agreements in place, we are all experiencing stress and anxiety and we no longer trust that Whitehaven Coal intends to do the right thing by us.

We are all very aware of the circumstances around Whitehaven Coal’s Maules Creek Mine and how it has impacted landowners in various negative ways. Particularly landholders who were told pre approval, on the basis of the Miner’s own modelling, they would not be affected by noise and air quality impacts, who found themselves significantly impacted. They were afforded limited rights under the mine approval, not commensurate to the impacts they experienced. Some of those landholders suffered for years while they found access to

lengthy, arduous and costly avenues that eventually lead to them having to leave their land and homes.

We are also aware that landholders who were afforded voluntary acquisitions rights once the Maules Creek Mine was approved felt that if they triggered that right, it was to their detriment, in that they were handing over all power and control of their lives, homes and livelihoods, to the Miner, with some possible recourse to the Department of Planning (who recommended approval of the mine, based on the Miner's own modelling), the parties who had made their lives unliveable in the first place. Essentially, some landholders who suffered as a result of the Maules Creek Mine felt they had been thrown in a hole when the then Planning Assessment Commission approved the mine, prior to Whitehaven Coal having satisfactory agreements in place with affected landholders. The impetus for the Miner to negotiate with a landholder once an approval has been granted, disappears fast, denying the landholder the actual basis of procedural fairness.

The lived experience from mining projects across NSW and reflected in NSW Government Policy is that these serious matters concerning the wellbeing of, and fairness to landholders, must be sorted before any approval is granted.

NSW Government Voluntary Land Acquisition and Mitigation Policy (VLAMP) in relation to state significant mining projects encourages:

- Earlier and better consultation between miners and landholders to find effective solutions to any potential exceedances of the relevant air and noise criteria
- Greater avoidance of impacts, either through design decisions or the early acquisition of land that could be significantly affected by a project; and
- Innovative approaches to negotiation agreements that help mitigate impacts and are tailored to individual landowner circumstances

The Policy requires a particular approach to decision making in relation to mining project proposal, including:

- The miner must clearly demonstrate that all viable project alternatives have been considered, and all reasonable and feasible avoidance and mitigation measures have been incorporated into the project design to minimise environmental and social impacts and comply with the relevant assessment criteria. Adequate consultation must have occurred with potentially affected community members to identify and respond to potential social and environmental impacts during the preparation of the environmental impact statement.

If the acquisition or mitigation criteria are likely to be exceeded, the miner should consider a negotiated agreement with the affected landowner, or acquisition of the affected land.

If the miner has not acquired the land or entered into a negotiated agreement with the landowner, then it is up to the IPC to determine whether the project should be approved or not, and if so under what conditions that would protect the affected landowners, as required.

Negotiated agreements are the preferred mechanism for managing impacts on landowners because they can be specifically tailored to the individual circumstances of the landowner, including the provision of financial compensation for impacts and the provision for alternative accommodation. They are usually entered into before any consent is granted and in fact should be entered into before any consent is granted so as to afford procedural fairness and a more level playing field to the landholder.

The policy provides that negotiations leading to an agreement for the purpose of a mining application must amongst other things, have been conducted in good faith and be enforceable at law.

The policy expressly provides that negotiated agreements can be flexible and innovative – neither party should feel constrained in proposing terms or objectives for the agreement, provided they are reasonable.

While we as affected landholders are at varying proximities to the proposed mine and its rail line, in the south westerly direction, we will all be significantly impacted by the mine, including in relation to noise and air quality as well as night lighting, visual, ground and surface water impacts. We have all been approached by Whitehaven Coal at times over the past four years, which has not been a productive or positive experience. Our collective experience is that contact made by Whitehaven Coal to us has merely been some box ticking exercise, which has caused much stress and anxiety and cannot reasonably be described as an engagement in good faith.

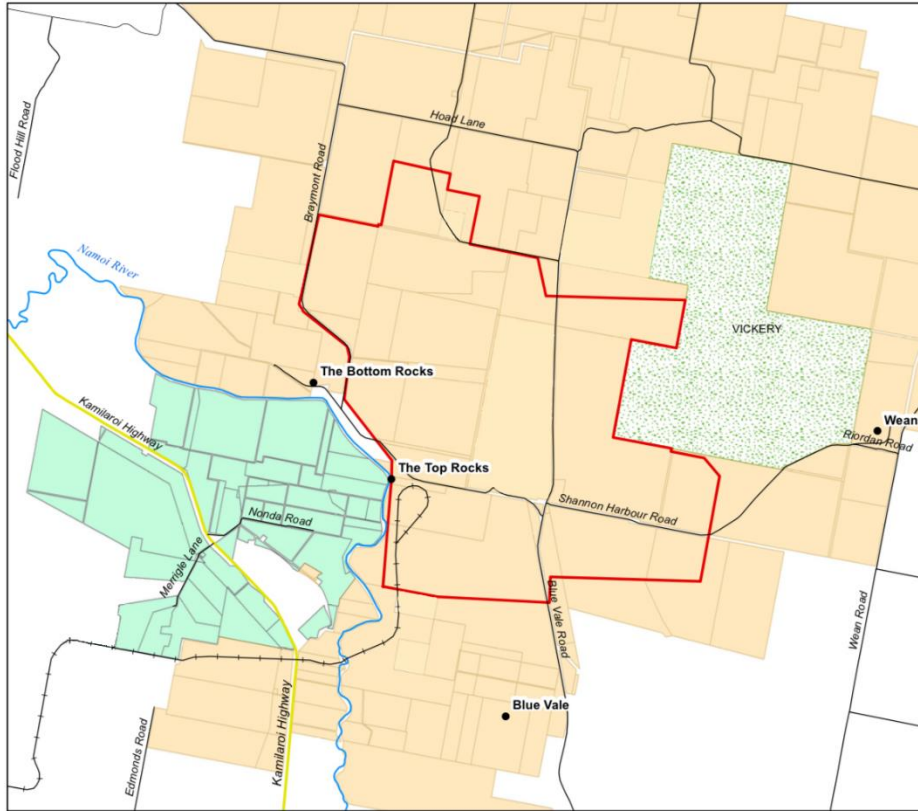
In the event that you consider it is possible to approve the Vickery Coal Mine proposal on its merits, we implore you as the decision maker not to do so unless Whitehaven Coal has in place a negotiated agreement with each of us, as anticipated by and in accordance with NSW Government Policy.

Attached and Below is an image of the locality that depicts the proposed Vickery Mine footprint, all of the land currently owned by Whitehaven Coal and our properties, identified as Privately Owned BSAL.

If you have any questions about this letter please contact David Watt at [REDACTED] or [REDACTED] on behalf of the landholders, who can assist with any inquiry.

Yours sincerely,

James Barlow, [REDACTED]
Errol and Jennifer Darley, [REDACTED]
Eric and Carol Hannan, [REDACTED]
Dee and Amanda Heiemann, [REDACTED]
Steve and Anita Maunder, [REDACTED]
Grant and Tracy McIlveen, [REDACTED]
David and Janet Watt, [REDACTED]



**Whitehaven Coal
Properties and
Mining Footprint**

Date: 14 March 2020
Author: Narelle Irvine

- Mine Footprint
- Whitehaven Coal Properties
- State Forests
- Privately Owned Biophysical Strategic Agricultural Land (BSAL)

