

7 July 2020

Submission: Vickery Extension Project

Thank you for the opportunity to make a submission on this project.

Lock the Gate Alliance objects to this project. Its impacts on the environment and the social fabric of the Boggabri district are unacceptable. We note that there is an existing approval for a mine in this location which has not been constructed. If the IPC refuses this project, it is not costing mining jobs. The question before the IPC is not “to mine, or not to mine” it is about the scale of mining development, and the scale of social and environmental impacts it inflicts. A smaller mine with less environmental impacts and to which Narrabri Council does not object, already has development consent.

Whitehaven Coal proposes to mine 168 million tonnes of coal, at a rate of up to 10 million tonnes per year and transport this coal on a new rail crossing over the Namoi River and its floodplain. Whitehaven estimates that two-thirds of this is coking coal and one third thermal coal. On the specifications provided, the coal does appear to be very high quality, but we note that Whitehaven Coal uses Australian Laboratory Services, which is currently under investigation for fraud after allegations surfaced that the company was amending coal certificates to inflate quality claims.

We are concerned about the Minister’s inappropriate imposition on the Commission of a “statement of expectations” and subsequent MOU with the Department. The Minister is reaching beyond his powers in directing the IPC to “seek guidance from the Planning Secretary to clarify policies or identify policy issues that may have implications for State significant development determinations.”

This direction is not consistent with the IPC’s independent status as consent authority for state significant development that has both large number of public objections *and* objection by a relevant council. Indeed, section 2.7 (2) of the *EP&A Act* expressly states that the IPC is “not subject to the direction or control of the Minister” except where provided for in the Act. The Act provides that the Minister can direct the Commission to hold a public hearing, and the Commission is subject to the Minister’s power under s9.1 which requires public authorities to comply with directions by the minister, that they exercise their functions at or within certain times. That is the extent of the Minister’s power to direct or control the Commission.

The matters the IPC must take into consideration in determining this application are set out in the Act and subordinately in the *State Environmental Planning Policy (Mining, Petroleum and Extractive Industries) 2007*. These include environmental planning instruments and the regulation, the environmental and social impacts of the mine, submissions made about it, and the public interest.

The Minister’s imposition on the IPC of an expectation that its decision be based not only on the legislation but also on “policy frameworks” and that its decision be “informed by the Planning

Secretary's assessment" has no basis in the statute and is a political intervention aimed at constraining the independence of the Commission.

The Department's Assessment report, though no doubt useful in some respects, is not listed among the matters to be considered in determining development applications and indeed, has no statutory basis in the Act at all and is only mentioned in the regulation as a document required to be made available the public. A direction by the Minister to "pay particular attention" to the Assessment Report, to the extent that this creates an imbalance in the IPC's weighing up of its consideration of this project, is, we believe, contrary to the Act's express provision that the IPC not be subject to the minister's direction or control.

We urge the IPC to obtain independent legal advice on the status of the "Statement of Expectations" and to put it aside when considering this project.

Summary of issues

- DPIE and the proponent have not addressed several matters raised by the IPC in its Issues Report, including intergenerational equity.
- Objection by DPIE Water to stockpiling of mine spoil on top of the Namoi Alluvium has been dismissed.
- Objection by Narrabri Council due to social impacts has been dismissed and overridden.
- The mine is likely to run out of water during dry periods. The Department acknowledges this possibility, but under-estimates it, by not addressing the following:
 - A key source of external water, the proposed borefield in Zone 4 of the Namoi Alluvium, is subject to a separate assessment process and according to DPIE Water "there is no guarantee the bore field will be approved at the volume requested."
 - Most of the shares held in Zone 4 and proposed to be accessed by this borefield are currently also being proposed by the proponent to be diverted to supply the Tarrawonga mine, a fact not mentioned in the Department's assessment report.
 - Another key source of external water is a general security licence to the Namoi River. The Department uses median Available Water Determination (0.76ML per share) over half a century to estimate how much water might actually be accessible via this licence without considering that for most of the last twenty years, available water determinations for general security licences have been considerably lower than this median.
- With regard to the above problems, which are more than merely commercial risks for the proponent, information requested by DPIE Water about the proponent's water entitlements being allocated to multiple mining operations has not been provided by the proponent or the Department
- A key consent condition requested by DPIE Water specifying that the consent does not grant consent for development and use of the borefield until such time as the legislative post-approval Dealing Assessment requirement is fulfilled has not been included.
- The Department has misapplied the minimal impact considerations of the Aquifer Interference Policy resulting in inadequate and inaccurate information being provided to the IPC.
- The impacts of the project on the social fabric of Boggabri, on the Kurrumbede homestead and its landscape and on koalas and climate change outweigh the economic benefits.

IPC's Issues Report

In its Issues Report of 2019, the IPC identified a number of issues that needed to be addressed, including:

- Justification for the project, including contextual information about climate change and intergenerational equity;
- Accuracy of groundwater modelling, cumulative groundwater impacts and implications of mine spoil for groundwater quality;
- Whether Whitehaven has sufficient water licences to account for the water the mine will use;
- The effects of noise on surrounding properties and of mine blasting on the historic Kurrumbede Homestead;
- Impacts on koalas, which have been recorded in the land proposed for clearing;
- Whitehaven's plans to leave a "final void" hole in the ground behind when rehabilitation is complete;
- The effect the mine will have on the rural and agricultural social fabric of Boggabri.

We find the responses provided to the above issues inadequate or non-existent and provide further detail to this in the rest of this submission.

Water

Water supply

The Assessment Report and the material provided by the proponent do not provide a coherent explanation of the water supply for the mine and how it will be lawfully obtained.

Even through that incoherence the Department acknowledges that during periods of limited water availability, this mine will run out of water ("the available volume of water may not be sufficient to satisfy demands in prolonged periods of dry conditions, particularly if these occur in the earlier years of the mine life.") Our reading of the material provided indicates that the prospects of this are worse than the Department acknowledges and we contend that Whitehaven and the Department have misrepresented the difficulty this mine will have in securing water.

According to Whitehaven, maximum annual water demand for the mine would be 1,200-1,350ML a year. However, there is some confusion over this estimate. The proponent has not supplied an annual water balance, but modelled water usage tables for each component of water demand in the Surface Water Assessment indicates a much higher maximum annual water demand than 1,200-1,350ML, more towards 2,600ML. Information provided by the proponent in response to questions from IPC and not published by the IPC until after the public hearing indicates the proponent expects the maximum water supply needed to be 2,053ML per annum. Most of this water is intended be supplied by run-off captured on the 2,000 hectare site, with additional water flowing into the mine underground, peaking at 533ML a year. The latter would be accounted for with a 600ML licence for the Gunnedah Oxley Basin groundwater source.

There is considerable confusion about how the remaining water needs will be supplied and accounted for, particularly in dry periods. It is stated that Whitehaven's modelling indicates that in addition to groundwater inflow and onsite captured rainfall and run-off, the mine will need 530-740ML a year of water supply, but Figure 11 of the Assessment report indicates that this figure may be much higher: in the 90% percentile year, water extracted from the Namoi River to run the mine could reach **over** 1,500ML. The Assessment Report says that models were run over 98 climate sequences and in the *median* rainfall scenario, the mine will need to source external water over two-

thirds of its 26 years of operation, at an *average* of 889ML a year. Of course, it is not the average take that must be covered by available entitlements, but maximum take, and the Assessment Report is unclear on this point.

It is claimed that necessary external water would be sourced using Whitehaven's water access licences. The company has the following entitlements it says are available:

- **396 shares in Zone 4 of the Upper Namoi alluvium:** This water would be supplied to the mine from a borefield which will be subject to a separate assessment and determination process and may not be successful, as outlined below. Currently, 218 of these 396 shares are proposed to be directed to the Tarrawonga mine as outlined below.
- **50 High Security shares from the Namoi Regulated River**
- **1,638 General Security shares in the Namoi Regulated River:** use of this water will be contingent on Available Water Determinations, which are likely to be adverse, as outlined below.
- **63.5 supplementary licence shares in the Namoi Regulated River:** availability of this water is also not certain.

The details of the water entitlements are listed in Attachment 6 to the Environmental Impact Statement, but contrary to requests made by DPIE Water, Whitehaven has not clarified how its expected water accounting at Vickery interacts with the use of some of these entitlements for other mines. The Assessment Report says Whitehaven has proposed "the use of an additional existing licensed bore within land it owns (the Kurrumbede bore) to supplement its supply if required" but provides no details about this bore, and which water entitlements it is linked to.

Zone 4 Namoi alluvial entitlements

Whitehaven claims the licences it will use for this water are not committed to any other of its mining operations. However, DPIE water states in its advice to the Department in March 2020 that it "is currently in receipt of a request involving water supply of 1.6 ML/d to Tarrawonga Mine Mod 8 from groundwater WALs held under Whitehaven Vickery Coal Project, which may further inhibit the proponent from accessing necessary WALs for the Vickery Mine Extension."¹ That modification proposal is currently being assessed by the Department, but is not mentioned in the Assessment Report.

The Tarrawonga modification proposes using water from Zone 4 licences WAL12651 and WAL12653 in the Upper Namoi Zone 4, Namoi Valley (Keepit Dam to Gin's Leap) Water Source associated with the existing Vickery Coal Mine groundwater bore (water use approval 90CA807002) to supply water to Tarrawonga mine. Together, these licences comprised 218 of the 396 Zone 4 shares listed in the Vickery assessment report as being available for this project in Table A6-1 of Attachment 6 to the Environmental Impact Statement. We note that conditions at Whitehaven's Tarrawonga mine in 2019 were worse than the modelled "dry year" in the environmental assessment for that mine. According to the mine's Annual Review, total water inputs last year were 8% lower than the EA modelled average "dry year" and water use (outputs) were 27% higher. As a result, the mine had a 126ML decline in stored water inventory last year.

On 21 November 2019, DPIE Water sought clarification from Whitehaven via the Planning Division and asking for the following information:

¹ Assessment Report Appendix G2-1 March 2020.

- all water access licences (WALs) held by the proponent in each water source,
- the project(s) each WAL applies to, and
- where a WAL is being counted against multiple projects, how much of the total is allocated to each project.

DPIE Water recommended that prior to determination “Table 6-1 (Appendix 6 of the EIS) is updated showing all WALs held in each water source, clearly detailing which project(s) each WAL applies to, and where a WAL is being counted against multiple projects how much of the total is allocated to each project.” We have not been able to find evidence that this information has been provided since. There is no date on the document called “Appendix G6-5_WH Ltr - Re. DOI Water” which is information provided by Whitehaven, but in any case, it doesn’t resolve the licencing issue.

DPIE Water also stipulated that Whitehaven’s proposed borefield needed assessment against the rules of the relevant Water Sharing Plan, and noted that “the proponent has not adequately addressed this issue and has disregarded our earlier advice in response to the EIS (OUT18/14196).”² In November 2019, DPIE Water stated that this information was required prior to determination.

But it appears from the assessment documentation provided since that time that it has not been.

Furthermore, this Zone 4 water will only be made available via a proposed borefield if the Natural Resources Access Regulator approves an application under Section 71W of the *Water Management Act 2000* to change the nominated water supply work to extract water. This application is separate to the state significant development consent process and is done using DPIE Water’s groundwater assessment guide.³

DPIE Water advised in November 2019, “This should be addressed as a priority given there is no guarantee the bore field will be approved at the volume requested. This is a significant commercial risk for the project in terms of water availability.”⁴ DPIE Water advised in March 2020 that “It should be made explicit in the Conditions of Consent that the Project Development approval does not grant consent for development and use of the borefield until such time as the legislative post-approval Dealing Assessment requirement is fulfilled.” No such condition has been proposed by the Department.

Namoi River entitlement

As conceded in paragraph 179 of the Assessment Report, the mine will suffer a water shortfall during dry periods because the bulk of its Namoi River entitlement is general security. The Department relies on analysis that applies the median allocation of General Security licences in the Namoi since 1977 of 0.76ML per share. During a dry period, however, this allocation is likely to be lower. It is misleading to apply the median allocation over several decades to analysis of water availability during dry periods. A more accurate picture would be created by applying the allocations generally determined during drought periods to the mine’s modelling of dry conditions, given that the river entitlement is expected to be called upon when rainfall is lower and the mine does not hold sufficient captured run-off on site to meet its water demand. The Department acknowledges that applying the available water determination of 2012/13 would allow Whitehaven to extract only

² Final Assessment Report Appendix G1-4 DPIE Water

³ Available here: https://www.industry.nsw.gov.au/_data/assets/pdf_file/0008/175931/Assessing-groundwater-applications-fact-sheet.pdf

⁴ Final Assessment Report Appendix G1-4 DPIE Water

206ML from the river and that the current drought has resulted in zero allocation for Namoi river water users.

The Surface Water Assessment provides a series of climate sequences modelling the requirement for external water in median, dry and wet years. In the median climate sequence, Namoi River water extraction well in excess of the proponent's high security licence is required in the first ten years of the mine's life.⁵ In the dry climate sequence, the mine is expected to require extraction from the Namoi River far in excess of its high security licence in 24 of the mine's 26 years of operation.⁶

The Surface Water Assessment also provided context of the Available Water Determinations (AWD) for General Security Licences, showing that over the last century, AWD for General Security licences was at 50% or less 30% of the time. What the Department's assessment fails to acknowledge is that these dry years have occurred more frequently since 1990.

As the graph in Figure 7.6 of the Surface Water Assessment shows, for 12 of the 20 years between 1990 and 2010, the AWD for general security licences in the Namoi have been below 50%, and for most of those years, it was below 30%.

If these conditions persist, for 50% of the time, Whitehaven might expect to only be able to extract 819ML (50% of its share) from the Namoi, or 540.5ML (33% of its share), or perhaps nothing at all. General Security licence holders are currently at 0% allocation in the Lower Namoi and the area is in Stage 3 declared drought.

In this situation, the Department says, the measures proposed to deal with water scarcity are:

- periodic water balance reviews and forecasts to determine likely water availability and sources;
- adjusting its operations to suit the available water entitlements;
- implementing additional water efficiency measures; and
- obtaining additional entitlements on the open market.

The mine's water storage system will buffer it against shortages for a period, but again, the combined effects of low rainfall and high temperatures will compound risks for the operation: less run-off, increased evaporation and limited or zero available water determinations for General Security licence holders are likely to occur simultaneously. The proponent provides operating rules for its mine water transfer and storage systems (pages 82-83 Surface Water Assessment) which indicate that the mine will pump from the Namoi (subject to AWD and licence limits) when Mine Water Dam 1 (MWD-1) is at less than 10% (52 ML) and could continue extracting from the river until MWD-1 gets back to 50%. But from our reading of the proposed rules, for MWD-1 to reach <10%, water will already have been drawn down from the other storages. At that stage site storages not including the pit could be as low as 289ML.

Impacts of mine water insecurity

This issue is much more than a question of commercial risk for the applicant in a region with a fully- or over-allocated water resources and increased pressures on water availability. In its meeting with the IPC on 18 June, the Department's representatives admitted that difficulty in securing water supply has been an issue for the industry during the current drought. Mike Young informed the IPC that when this occurs, "in most circumstances mining companies will seek to obtain additional

⁵ Figure 8.18 Surface Water Assessment. Environmental Impact Statement.

⁶ Figure 8.19 Surface Water Assessment. Environmental Impact Statement.

licences from other areas etcetera to enable them to continue to operate.” This is what Whitehaven has had to do to continue operating the nearby Maules Creek coal mine in the last two years. During the current drought, the proponent’s activities in trying to obtain additional supplies of water to run the Maules Creek mine have caused significant conflict in the district and have led to the company breaching its development consent. The mine has been found to have unlawfully taken surface water by damming streams on its mine site and is now being prosecuted by the Natural Resources Access Regulator. It has purchased agricultural properties in order to access alluvial water previously used for irrigation and outbid farmers at water auctions. It has built pipelines well outside the mine area without consent. Unlike this project, Maules Creek coal mine holds a 3,000ML high security water licence for the Namoi Regulated River but has still had to undertake the above actions to find water to run the operation. During the public hearing for this project, the Natural Resources Access Regulator announced it had launched prosecution of Whitehaven for unlicensed theft of surface water to supply the Maules Creek mine over a period of three years.

We provide as Appendix 1 an outline of some of the actions taken by the proponent to source water for Maules Creek as we believe this to be important contextual information for the IPC when evaluating promises by this company and the Department of Planning about water availability and enforcement of conditions. This information is necessary context for the claim made in the Assessment Report in paragraph 188 that Whitehaven’s water management activities “would be enforced by the Department through the monitoring of Whitehaven’s compliance with the recommended development consent through all stages of the Project.”

How can the public have confidence in this after witnessing the *laissez faire* attitude the Department has taken to the activities at the Maules Creek site?

Aquifer contamination

The proponent’s plan to pile mine spoil in an overburden emplacement that sits above 202 hectares of the Namoi alluvial aquifer is not appropriate and must not be allowed to proceed.

Water will seep through the western emplacement into the alluvial aquifer below. The presence of potentially acid forming material (PAF) means metals from the spoil, as well as salt, may contaminate the alluvium. Whitehaven proposes to blend this PAF material to reduce the acid forming potential and place the material in areas in the emplacement that would be less exposed to the atmosphere and to direct seepage towards the open pit and final void. When asked during the public hearing what mitigating action could be taken if contamination occurs, neither the proponent, nor the Department, had a satisfactory answer.

The IESC asked for further geo-chemical analysis, especially for the presence of acid soils, which have the potential to mobilise metals in water and the IPC’s issues report reiterated that this recommendation needed to be addressed. The Department says its own independent groundwater expert “is not satisfied with the information provided by Whitehaven but acknowledges this could be carried out post-approval and has recommended further analysis be carried out during operation of the mine to inform mine planning.”

It is not acceptable for this issue to remain unaddressed and we urge the IPC to refuse consent for this mine given the objection by DPIE Water and the concerns of the IESC. Responses from the Department and the proponent to questions about this issue by the IPC panel during the public hearing on 2 July were not able to identify mitigation actions that could reverse or stop contamination if it occurs. Aquifer contamination is a threshold issue for the determination of this application and given that “DPIE Water does not consider emplacement of out of pit spoil on top of

the alluvial aquifer associated with the Namoi Zone 4 alluvium groundwater source as negligible risk” it is not acceptable for this mine to be approved.

Groundwater impacts

The Department has misapplied the minimal impact considerations of the Aquifer Interference Policy, applying them to “privately-owned bores” rather than “any water supply work.” It is disappointing to see this from the Department after the IPC’s Statement of Reasons for the Bylong Coal Project made clear that the consent authority accepts that the minimal impact considerations must be applied to all water supply works.

For example, in paragraph 264 of the Assessment Report it is stated that, “The largest predicted drawdown due to the Project at the nearest privately-owned bore is less than 0.2 m, well below the 2 m minimal impact criteria in the AIP at any privately-owned properties.” This does not supply the IPC with the information it needs to consider the groundwater impacts of this project against the minimal impact criteria of the Aquifer Interference Policy.

Indeed, the borefield proposed to supply the mine with water will draw down the Namoi alluvium by more than 2 metres and by 5 metres at its worst extent. Whitehaven and the Department claim that this extraction of water won’t extend in its effect to neighbours of the mine, but the experiences of Whitehaven’s neighbours in Werris Creek and Maules Creek indicates otherwise.

It is mentioned by the Department in paragraph 265 that “Four mine-owned bores are predicted to experience drawdown greater than 2 m, all of which are to the south of Driggle Draggie Creek and all but one within the Maules Creek Formation, including the bore to experience the greatest drawdown” from which we infer that there may be at least one water supply work in a productive aquifer that will experience more than the minimal impact considerations of the Aquifer Interference Policy. This being the case, the Aquifer Interference Policy states that further assessment would need to be conducted to determine if the project would affect the bore’s long-term viability but this does not appear to have occurred.

There is considerable uncertainty about the borefield and its assessment. Whitehaven Coal will be required to lodge an application for a licence to construct it, with “no guarantee that the requested volume will be approved”⁷ according to DPIE Water. This seems sufficient warning that the uncertain water supply for this coal mine is a threshold issue for determination.

The Department has recommended Whitehaven “provide compensatory water supply to privately-owned landowners if directly impacted as a result of mining operations, with the burden of proof resting with Whitehaven to demonstrate that loss is not due to the development.”

Biodiversity

Koala was found to be present at the rail spur site and according to the Assessment Report the extension part of this project proposes to clear 50 hectares of koala habitat. We note that the EPBC Assessment appendix (Appendix I) says new clearing of koala habitat will be 80 hectares and that “Generation of species credits for the koala and the regent honeyeater do not conform to the FBA.” These discrepancies are not mentioned in the Assessment Report.

We are deeply concerned about the treatment of this species in the Department’s Assessment Report, which offers no discussion of the recent devastating losses of koala lives and habitat in the

⁷ DPIE Water advice 11 March 2020

spring and summer bushfires. The Assessment Report merely notes the presence of the creatures itemises the names of the feed tree species that are present, and moves immediately to the “species credits” required to offset the loss the project will inflict.

According to the Government’s own summary of the environmental impact of the bushfires, which is not referenced in the Assessment report, over 3.5 million hectares, or 25%, of the most suitable koala habitat in eastern New South Wales was in the RFS fire ground, including moderate, high and very high suitability habitat.⁸ The failure of the Department to mention and discuss this catastrophe in the Assessment Report is negligence that cannot be left unaddressed by the IPC. The area of habitat at stake may be tiny compared to the area lost, but the multiple stresses this species is suffering from fire, drought and disease warrant more attention than the Department has given it. In our view, no further clearing of koala habitat should be approved in the current situation, at least until an updated assessment of the species’ status can be completed.

We note that alone among the environmental impacts considered by the Department in this Assessment Report, biodiversity assessed “incrementally” – that is only the impacts of the supposed “extension” are considered, not the impacts of the project over all. This is inappropriate and not defensible. The Assessment Report doesn’t even provide for information purposes any clear information about the biodiversity impacts of the approved project, merely noting that the total footprint of the proposed Vickery Coal Mine operations comprises 2,242 ha of land within the Approved Project footprint and 776 ha of additional land within the “extension” with 580 hectares of the latter supporting native vegetation. Adding this to the 464ha of woodland and 1,284ha of derived grassland proposed to be cleared for the approved project gives a markedly different picture of the impact. How much of the over 500 hectares of woodland that Whitehaven proposes to clear for this project overall is koala habitat? By considering only the additional clearing, the Department may have misrepresented the impact on this species by a factor of ten.

Kurrumbede

The mine encroaches toward the heritage homestead Kurrumbede, visited by the poet Dorothea Mackeller and thought to have inspired her poem, first published as “Core of my heart” in 1908 and now commonly known as “My Country.” The poem continues to have profound resonance and its meaning is bound up not only in Kurrumbede, but the surrounding landscape that will be dug up and overturned for this mine. The Assessment Report states that “Whitehaven proposes to engage a structural engineer to assess the condition and stability of the homestead complex, and recommend works and appropriate blast criteria to protect the integrity of the homestead.” This kind of work is properly conducted as part of the assessment process. To defer it until after the consent is granted means this heritage homestead is at risk of unmitigated harm, because the proponent has not done the work that could demonstrate that the harm *can* be mitigated. But in any case, Kurrumbede’s situation in the landscape is crucial to its meaning in the past, present and future.

In 2017, a series of twelve poems were selected and published under the theme “Transforming my country” each responding to MacKeller’s poem and the landscape and political and social context that inspired it. These included a poem by Gomerioi poet Alison Whittaker, “A love like Dorothea’s” responding to her country, “cored in my heart,” the very landscape under threat from this mine. This contemporary reimagining highlights the continuing significance of MacKeller in understanding the

⁸ DPIE. May 2020. “NSW Fire and the Environment 2019–20 Summary.” <https://www.environment.nsw.gov.au/-/media/OEH/Corporate-Site/Documents/Parks-reserves-and-protected-areas/Fire/fire-and-the-environment-2019-20-summary-200108.pdf>

landscape and our relationship to it. The Kurrumbede homestead is not merely a relic, its position in the surrounding landscape is part of this country's living heritage and this landscape should be protected from open cut coal mining.

Social

In preparing its Environmental Impact Statement for this mine, Whitehaven found that, "The loss of a large number of farming families from the local area since 2006, attributed to land acquisition for mining and reductions in agricultural employment, was referred to by a number of stakeholders as changing rural character and rural way of life, including community participation and involvement." The IPC has heard directly from people in the Boggabri area about the impact of this depopulation on the social fabric and wellbeing of the community.

The large-scale ownership of rural land by Whitehaven Coal is inflicting unacceptable social impacts that will be exacerbated by this project. We conducted titles analysis of the Namoi region and found Whitehaven coal owns more than 61,050 hectares of land over 471 freehold titles – a land area approaching the size of Singapore. A bird could fly for 60km without leaving Whitehaven airspace. At least 90 family farms have been bought out, with many leaving the region permanently. We attach as Appendix 2 a briefing paper on the damaging impacts of the Voluntary Land Acquisition and Mitigation Policy including mapping showing the extent of Whitehaven's land ownership as background for understanding the social impacts of this project.

The social impacts being experienced already in the Boggabri district must not be compounded by the introduction of another over-large mining project. Narrabri Council opposes this project because of the social impact of mining on Boggabri, Whitehaven's poor record of water compliance and lack of trust in the company.⁹ Generally, Narrabri Council has been enthusiastic about mining projects in its local government area so this opposition must be treated with seriousness by the IPC.

The impact of land acquisition by Whitehaven has already been felt by the community and this will worsen if the mine is approved. The situation is comparable to experiences in Bylong and Wollar, where communities have been emptied of people and cumulative social harm inflicted by major mining projects. It is heartening to see that the Department acknowledges "that even where noise and dust limits are considered acceptable under NSW Government policy and guidelines, they may not be acceptable to the residents and community living near the mine." This impact is part of the social impact of mining that makes this project unacceptable.

Creating jobs is the key contribution Whitehaven claims its coal mines make in regional communities, but serious doubts have been cast over these claims. The company told the Australian Financial Review in September 2019 that it was working on automating its driving fleet, the largest single source of jobs in coal mines, to reduce costs. CEO Paul Flynn told the paper, "The work that we are doing is all about optimising Vickery to ensure that we can bring that cost down. Success of an autonomous rollout at Maules Creek [mine] will be instrumental in lowering costs at Vickery given the proportion of its total costs that's going to be spent in moving dirt."

Greenhouse

According to the Department, this mine, if approved, will be responsible for 370 million tonnes of greenhouse gas emissions over its life.

⁹ Narrabri Council papers for 17 December meeting. Available here: http://narrabri.infocouncil.biz/Open/2019/12/CO_20191217_AGN_2253_AT.PDF

We believe it is now incumbent on the IPC to consider whether “the refusal of the project could be seen to make a meaningful contribution to remaining within the carbon budget and achieving the long term temperature goal,” following the Gloucester Resources judgement at [554]-[555].

In the days before the public hearing, the IPC posted new submissions received from the proponent about climate change, and situating the project in global projections of coal demand.

This new information helpfully identifies that the demand assumptions justifying this project “are similar to the IEA's projections for the Stated Policies Scenario” previously known as the New Policies Scenario. This is helpful because it clarifies that economic and market justification of this project is based on an assumption that the world will fail to achieve the Paris climate agreement temperature goals. This submission further argued that the development of new mines, like this one, was necessary to meet that demand.¹⁰ This means that the people and environments of New South Wales will suffer the impacts of more than two degrees of global warming.

The proponent’s submission attempts to argue that new coal mines are also necessary in the IEA’s Sustainable Development Scenario, but this is clearly an untenable argument. The argument goes that “under all three policy scenarios presented by the IEA (including the Sustainable Development Scenario), there will continue to be a global demand for coal. Absent new mines or brownfield expansions, the global production of coal would be approximately 600 Mtce in 2040. Under the Sustainable Development Scenario, global demand for coal would be 2,101 Mtce in 2040 of which 858 Mtce would be for electricity and 1,206 Mtce would be for industrial use, principally steelmaking.” This argument completely ignores that most of the world’s coal production is domestic, not traded and occurs in China. Analysis of pathways for coal fired electricity use that are consistent with meeting the Paris climate agreement temperature goals indicates that OECD countries must phase out coal burning without CCS by 2030 and the rest of the world by 2040.¹¹

It will be important for the IPC to obtain independent analysis of the proponent’s late submission on this issue, rather than relying solely on what is clearly a vested interest argument.

Crucial to the proponent’s argument is a contention that the admittedly high quality of coal targeted at Vickery will displace the burning of lower quality coal from other countries, and therefore provide a net benefit to the atmosphere. This is a complicated argument that fundamentally assumes ongoing burning of coal in large enough quantities to trigger catastrophic levels of global warming. It does not appear to have occurred to the proponent to consider that constraining the supply of coal raises its price and makes renewable energy even more attractive as an energy option, stimulating the replacement of coal generation by renewable energy and therefore actually reducing greenhouse emissions. The Department of Planning’s failure to obtain robust and objective analysis of this issue means that the IPC has only the proponent’s modelling to rely on for this question, and that is an unsatisfactory basis from which to draw conclusions given the proponent’s vested interest in the question. Indeed, this selectivity is acknowledged by the consultant that prepared the proponent’s submission (“the estimate of GHG emissions that is given can vary depending upon the data and parameters that are set for the particular analysis.”)

We note that the proponent’s submission was not able to model the effects beyond 2030 of Australia withdrawing its thermal coal exports from the seaborne market (“in Scenario 3, the large

¹⁰ See paragraph 3.3 (h) iii in the Applicant’s *Submission to the Independent Planning Commission on the consideration of greenhouse gas emissions and climate change*. 16 June 2020.

¹¹ Climate Analytics. *Global and regional coal phase-out requirements of the Paris Agreement: Insights from the IPCC Special Report on 1.5°C*. September 2019.

supply shortfall is unlikely to be substituted by a single supplier country and would require more detailed modelling to forecast beyond 2030.”) This is perhaps an indication that there would be planetary benefit from such a withdrawal.

Intergenerational equity

Among the matters raised in the IPC’s Issues Report was intergenerational equity – a statutory consideration in the determination of this project. It was raised in the public hearing with regard to the water impacts, rehabilitation legacy and climate change consequences of the mine, and the IPC specifically included it among the matters requiring more information from the Department.

Specifically, the Commission stated its view that “the Applicant and the Department will need to ensure that the principles of ESD, including, in particular, the extent to which the Project achieves inter-generational equity (particularly regarding total greenhouse gas emissions and the retention of a residual void) are explicitly considered as part of any future assessment undertaken for the Project.” The Commission made it clear in its Issues Report that “issues of intergenerational equity need to be assessed; and further detailed assessment of direct and indirect GHG emissions is likely to be of assistance.”

Far from addressing this issue as requested, a two paragraph section on intergenerational equity is relegated to an Appendix to the Assessment Report. We are deeply disappointed by the Department’s treatment of this issue. Its facile assurance that “Intergenerational equity has been addressed through maximising efficiency and coal resource recovery” is frankly insulting to the IPC and the members of the public that raised this issue and hold a genuine interest in the wellbeing of future generations and echoes the almost facetious treatment of the issue by the proponent (Whitehaven’s submission report states that “The Project would benefit current and future generations through employment”).

The Department apparently “considers that the socio-economic benefits and downstream energy generated by the Project would benefit future generations, particularly through the provision of national and international energy needs in the short to medium term” while begrudgingly acknowledging that burning coal fuels climate change “has the **potential** to impact future generations.” Reading these assertions, it is difficult to avoid the conclusion that the Department does not understand the dynamics and realities climate change.

The Department has failed to meaningfully respond to the IPC’s request for further information on this issue, but it is clear that the benefits of this project will accrue to a small subset of the current generation, while considerable and potentially irreversible impacts will be borne by future generations. The proponent and the Department could have elected to address and mitigate this impact in some way, but have not done so.

Thank you for the opportunity to make a submission on this project. We urge the IPC to refuse consent.

Briefing Paper on the Impacts of Land Acquisition By Mining in the Namoi Region

“The change occurs both on the actual footprint of the mine as well as sites acquired by the mining company to mitigate off-site amenity impacts and biodiversity offset requirements.

Land ownership changes will result in locals moving out of the area which in turn will impact on the local community. The mining population that may be present in the local community during mine construction, operation and rehabilitation will provide some interaction with the local community; however, it is expected to be different to the displaced occupants.

Insufficient information has been provided and insufficient consideration given to the impact on the community in terms of the displacement of landowners as a result of Whitehaven’s purchase of land in the locality as a result of the proposed development. Consideration should extend to include spending (FIFO/DIDO), loss of local businesses, reduction in demand for local products/services, reductions in school enrolments and loss of volunteers, including emergency services”

Narrabri Shire Council [submission](#) to Independent Planning Commission in regards to Vickery Extension project.

Through a policy called the “Voluntary Land Acquisition and Mitigation Policy” (VLAMP), rural families in NSW are being given an impossible choice: sell up and tear apart a community, or live with unliveable noise and dust impacts from a coal mine next door.

The cumulative impact of this Policy creates a hollowing out of once tight knit communities and a depopulation of large tracks of farming land as is presently occurring in North West NSW.

Background: what is the VLAMP?

The premise of the VLAMP is that state and national thresholds for air and noise pollution are not thresholds for the purpose of determining whether a mining project should proceed. Rather, they simply determine the threshold for “voluntary” acquisition under the policy.

The Policy expressly states that “Not all exceedances of the relevant assessment criteria equate to unacceptable impacts” and “Consent authorities may decide it is in the public interest to allow the development to proceed, even though there would be exceedances of the relevant assessment criteria, because of the broader social and economic benefits of the development.”

Environmental criteria for air pollution, noise and blast vibrations, the policy assumes, do not need to be met. Rather, they are guides for who is to be granted the unquestioned opportunity to move away, because the Government has allowed a mining operation to have environmental impacts on the surrounding community that breach national standards.

The policy encourages “negotiated agreements” between mines and nearby landholders on a case-by-case basis prior to development consent for the mine being determined. The policy allows such agreements to include conditions that landholders “not object” to the mine project, allows agreements to be reached that subject landholders to pollution levels worse than national standards and does not allow a consent authority to apply the statutory pollution criteria to a property if an agreement is in place that allows exceedance to occur.

The policy requires mining companies to model the air and noise pollution that will be caused by its proposed mine, and offer acquisition to properties where the dwelling, or more than 25% of the land area is expected to experience air or noise pollution above national or state assessment criteria. In the case of air pollution, for short-term exceedances the criteria only apply if the mine project in

question *alone* causes this exceedance, not if the exceedance will occur cumulatively as a result of multiple nearby mines.

The policy clearly outlines a requirement that mining proponents “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.” But this requirement is never tested by the Department of Planning. Mining companies are rarely if ever asked to consider not operating equipment like coal crushers for 24 hours a day or ensuring there is a minimum set-back distance for noisy machinery from neighbours homes or other places where peace is necessary for wellbeing.

The VLAMP depends for its operation on air and noise pollution modelling conducted for and by the mine proponent prior to consent being granted. This is a fundamentally flawed process given the imprecision of modelling and its dependence on parameters selected by the mining companies themselves.

It is worth noting that there is nothing voluntary about this policy, it is a compulsory acquisition process.

For those *not* granted acquisition rights under the VLAMP policy and under a mine’s development consent, acquisition can and does still occur. There is no process in the policy for landholders to make an application once the mine begins operation because they are experiencing greater than predicted noise or air pollution so landholders are left to complain and negotiate alone.

Given the reliance on modelled impacts in determining which neighbours must be voluntarily acquired, it is not unusual that once operational, the noise, dust and blasting impacts exceed the modelled impacts. In these situations, neighbours can spend years gathering the evidence, compiling a case and paying for legal advice to prove they are impacted. This is a protracted, painful and expensive process that ultimately only ever has one outcome, the mine buys out the impacted neighbour.

These purchases of land are spread out in time, ahead of and then far beyond the assessment process stretching several years after mining operations begin. This allows mines to delay the costs of starting the mine over many years and present inaccurate economic assumptions about the project to decision makers, investors and the community.

How is VLAMP sucking the life out of rural communities?

“All ... survey respondents stated that, before leaving the region, they had predominantly shopped at local establishments and used local health and education services where needed. The question of how local businesses would be able to sustain themselves in a diminishing community structure was raised... and was tied to the transient nature of the incoming FIFO mining workforce.”

Gemma Viney Report on the Cumulative Social Impacts of Mining and the Voluntary Land Acquisition and Mitigation Policy on Boggabri Community

The damage the VLAMP inflicts is two-fold. Firstly, many people are denied acquisition rights under the policy. They are essentially trapped with air and noise impacts that are intolerable, but they are unable to leave. Even if the pollution effects are tolerable, the displacement of neighbours tears at the fabric of the community and leaves people isolated. Small communities are left unable to muster rural fire service crews or the critical mass of people needed to maintain other social services, like running local halls or supporting neighbours in need. Shops close because of lost customer base.

People find themselves stranded, unable to sell to anyone, with their sole asset worthless and their social and community infrastructure vanished.

On the other hand, those *with* acquisition rights are faced with a dreadful choice: their health and children's health on the one hand, and the community and property into which they have invested their lives on the other. The process of making this choice is isolating. The decision to trigger acquisition rights initiates a process that must be seen through at the end of which is an ultimatum. All of the trouble of dealing with the mining project's exceedance of air and noise pollution criteria is shifted from the mining company and imposed on the surrounding community and individual landholders. This onus must be reversed.

How big is the problem in the Namoi Valley?

The large-scale ownership of rural land by coal companies has reached unsustainable proportions. According to Lock the Gate's analysis of the Namoi region, Whitehaven coal owns more than 61,050 ha over 471 freehold titles – a land area approaching the size of Singapore. This area does not include the land owned by other coal companies in the Namoi, notably Boggabri Coal.

Our mapping indicates a vast tract of land that is held by Whitehaven Coal. A bird could fly for 60km, without leaving Whitehaven airspace. At least 90 family farms have been bought out, with many leaving the region permanently. The map below shows the country currently owned by Whitehaven across the region.

The Vickery Coal project currently seeking approval in the Namoi Valley and will further hollow out the community and depopulate the region. It has identified one new property for Voluntary Acquisition. However, it should be noted that the experience in the region is that land acquisition is not limited to those that are identified for acquisition in the EIS process and that other neighbours are bought out as well.

Vickery Extension project

Only one additional property is expected to experience air or noise pollution in excess of national standards according to modelling undertaken for the Vickery coal mine. As **Map 2** indicates, this is partly because Whitehaven already has extensive landholding in the area where the mine is proposed. The experience of landholders at nearby Maules Creek indicates that further acquisition of property will not be limited to those listed in the consent in accordance with the VLAMP.

Overpage:

Map One overpage outlines the current footprint of land already owned by Whitehaven. NB: These maps do not include land owned by neighbouring coal mine, Boggabri Coal.

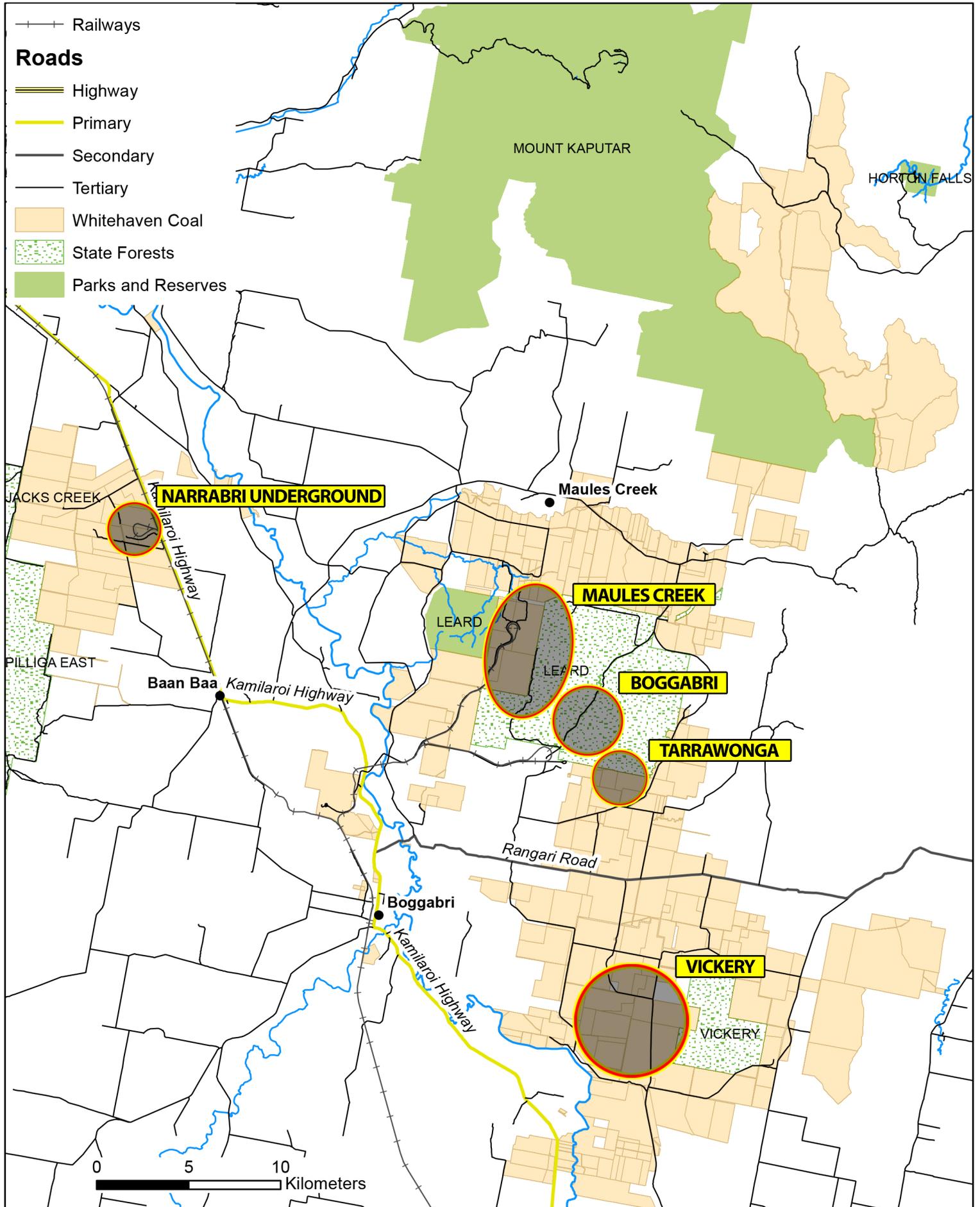
Map Two overpage outlines the increased footprint of land should Vickery be approved.

Whitehaven Coal Properties

Maps derived from combination of title searches,
Vickery Extension EIS and Joint Rural Property Ownership maps



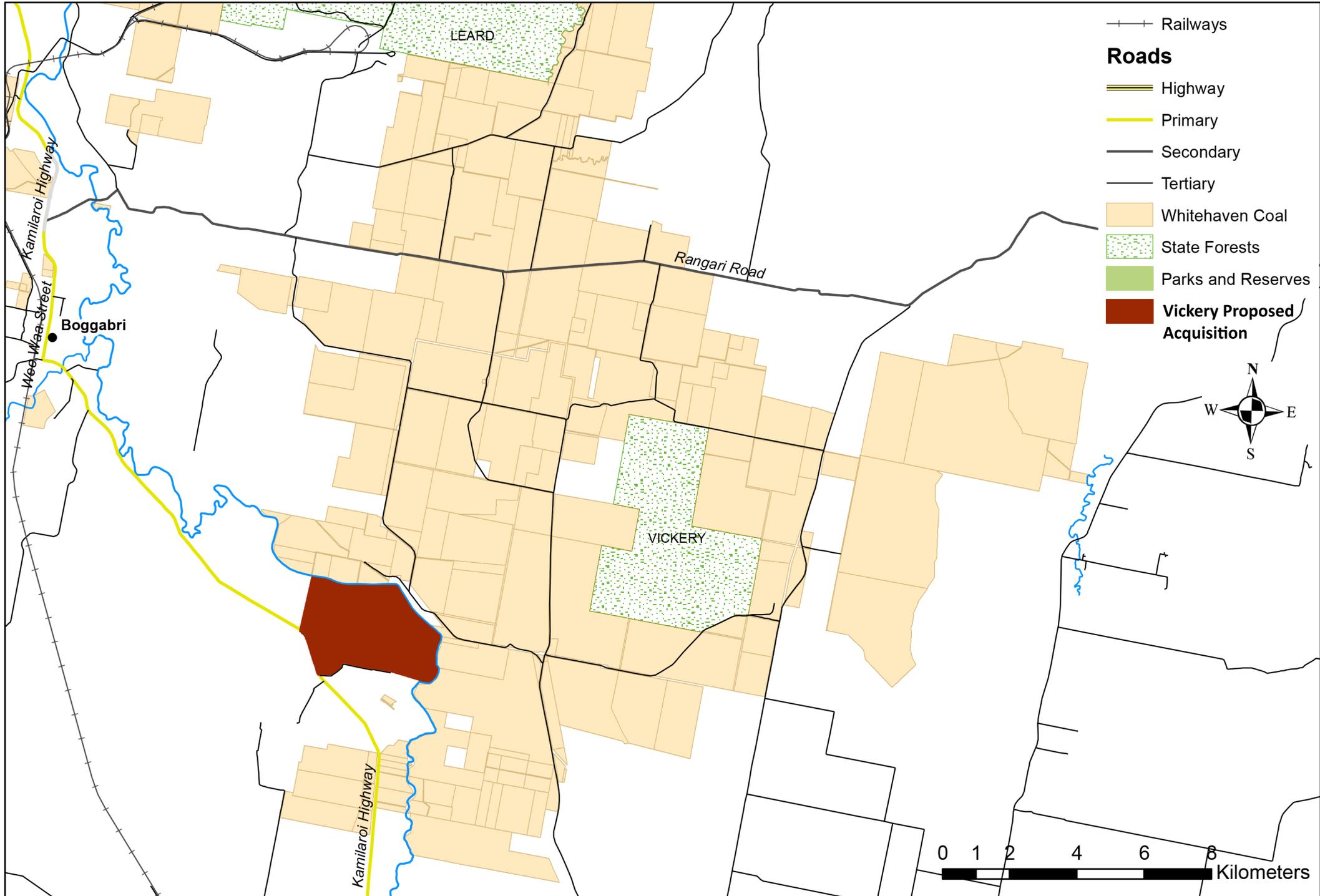
Date: 8 March 2020
Author: Narelle Irvine



Whitehaven Coal Properties

Maps derived from combination of title searches,
Vickery Extension EIS and Joint Rural Property Ownership maps

Date: 8 March 2020
Author: Narelle Irvine



Appendix 1: Whitehaven's compliance record

Whitehaven Coal has a very poor compliance record in the Namoi Valley. We detail some specific cases that speak to compliance and water scarcity, but provide a full table of the company's non-compliances in the following table.

Whitehaven Coal has been investigated or found in breach of environmental laws or conditions on more than 25 occasions since 2012. Over that time, they have been fined over \$100,000 for regulatory breaches. They are currently being prosecuted by two Government agencies and a public interest environmental group in three separate matters. The breaches in question range in severity but many involve breaches of conditions that are imposed to protect the public and the environment from the impacts of mining.

The character of the proponent is not part of the IPC's statutory considerations to make, but this record speaks to the effectiveness of conditions of consent as a means of preventing environmental and social harm from mining operations.

Case 1: Illegal take of surface water

In 2019, an investigation by the Natural Resource Access Regulator found that at its Maules Creek coal mine, Whitehaven has been unlawfully taking surface water from major streams, taking a total of 3,822ML over three years despite not having any surface water licences for the Maules Creek Water Source. NRAR is yet to take enforcement action for this breach. According to a briefing about NRAR's findings provided to the Minister for Regional Water and obtained through the NSW Legislative Council, in the course of its investigation, NRAR found that Maules Creek was operating in serious breach of its development consent. NRAR's briefing, dated 23-26 September 2019, stated that, "The activities at the mine appear to deviate from existing planning approvals," and indicated that NRAR would advise your Department "of the apparent deficiencies in the Mine's approved Water Management Plan and refer compliance issues relating to the alleged failure to comply with relevant conditions of the project approval." We are not aware of any compliance action taken by the Department of Planning in response to this issue.

Case 2: Illegal pipelines

On 13 October 2019, Whitehaven began construction of two pipelines to supply water to Maules Creek mine from two properties in the district owned by the company. These pipelines were not contemplated in the development assessment process and were not approved by the mine's development consent. Members of the local community asked a Department representative about how this work could go ahead when it was outside the mine's approved activities, and were informed that the company would likely require a modification to its consent.

The community contacted Lock the Gate for help and on 14 November, we wrote to the Department asserting that construction underway at that time of the two water pipelines was occurring in violation of the mine's consent conditions and in violation of the water use approval for the existing bore on the Brighton property. We also wrote to the company on 6 December, asking them to cease activity on the pipelines as they were contrary to its development consent. We received no response from the Department but on 16 December we received an automatic notification from the Department's "major projects register" alerting us that two modification applications had been made by Whitehaven coal to approve the pipeline after the fact. This modification was approved by the Department after the construction had been completed in tacit agreement that this construction was unlawful, but without any compliance action taking place.

Table 1: A decade of breaches by Whitehaven Coal

Date	Action	Explanation	Mine	Amount
Mar 2012	4 penalty notices ¹	Polluting waters and breaching its environment protection licences in November 2011 and January 2012	Narrabri Underground and Tarrawonga	\$6,000
Dec 2014	Penalty notice ²	Disturbing an Aboriginal artefact	Narrabri Underground	\$3,000
Dec 2014	Penalty notice ³	Mining more coal than licence allows	Tarrawonga	\$15,000
June 2014	Court undertaking	In response to enforcement action by Maules Creek Community Council Whitehaven gave an undertaking to the Land and Environment Court not to clear forest habitat during sensitive seasons for wildlife and subsequently changed its Biodiversity Management Plan to reinstate this commitment. ⁴		
Jul 2015	Investigation ⁵	Blast fumes	Maules Creek	-
Aug 2015	2 penalty notices ⁶	Failure to implement proper weed and feral animal control as per Biodiversity Management Plan	Maules Creek and Tarrawonga	\$6,000
Mar 2017	Penalty notice ⁷	Failing to provide the government with information and records during the blast investigation	Maules Creek	\$1,500
Mar 2018	Official caution ⁸	From DPIE for “failure to undertake annual road noise monitoring for the 2017 calendar year”	Rocglen	-
Mar 2018	Warning letter ⁹	Failure regarding implementation of the Blast management plan.	Tarrawonga	-
Mar 2018	Official caution	Failure regarding implementation of the Noise Management Plan	Tarrawonga	-
May 2018	Penalty notice ¹⁰	Failing to minimise dust pollution from truck movements on haul roads	Maules Creek	\$15,000
Dec 2018	Warning letter	Sound power levels of equipment exceeded those specified in the Noise management Plan	Narrabri Underground	-

¹ EPA media release: <https://www.epa.nsw.gov.au/news/media-releases/2012/decmedia12033003>

² See Independent Environmental Audit 2017. Available here:

<http://www.whitehavencoal.com.au/sustainability/environmental-management/narrabri-mine/>

³ EPA media release: <https://www.epa.nsw.gov.au/news/media-releases/2014/epamedia14120902>

⁴ For details see a summary of this case from the Environmental Defenders Office

https://www.edonsw.org.au/maules_creek_community_council_v_whitehaven_coal

⁵ EPA media release: <https://www.epa.nsw.gov.au/news/media-releases/2015/epamedia15070603>

⁶ Department of Planning media release: <https://www.planning.nsw.gov.au/-/media/Files/DPE/Media-Releases/2015/August/26082015-Miners-fined-for-environmental-breaches.pdf>

⁷ EPA media release: <https://www.epa.nsw.gov.au/nePws/media-releases/2017/epamedia17030801>

⁸ This caution is cited in Rocglen Annual Review 2018.

⁹ Referred to the Tarrawonga Annual Review 2018.

¹⁰ EPA media release: <https://www.epa.nsw.gov.au/news/media-releases/2017/epamedia17052202>

Mar 2019	Court conviction ¹¹	Blast fume left site and drifted over neighbouring properties	Rocglen	\$38,500
Mar 2019	Penalty notice ¹²	Blast exceeded the airblast overpressure criteria	Werris Creek	\$15,000
Apr 2019	Clean up Notice ¹³	Dumping combustible canisters improperly, resulting in fires breaking out at Narrabri Council's rubbish dump	Narrabri Underground	\$120,000 ¹⁴
Jun 2019	Fine ¹⁵	Failure to minimise dust, resulting clouds from stock pile	Narrabri Underground	\$15,000
Aug 2019	Suspension ¹⁶	Suspension of exploration licence for unlawful clearing of bushland for access tracks	Narrabri Underground	-
Aug 2019	Statutory Notice	Rehabilitation	Tarrowonga and Rocglen	-
Sept 2019	Prosecution ¹⁷	Natural Resources Access Regulator finds Whitehaven has taken over 3 billion litres of surface water illegally over four years	Maules Creek	Ongoing
Sept 2019	Prohibition notice ¹⁸	Issued by Resources Regulator prohibiting the use of vehicles following a dangerous incident	Maules Creek	-
Oct 2019	Investigation	NRAR investigating whether mine is causing groundwater loss to local farmers	Maules Creek	Ongoing
Nov 2019	Investigation	NRAR and Dept Planning investigating construction of a water pipeline not included in approval	Maules Creek	Ongoing
Nov 2019	Penalty notices	Two penalty notices issue for the carrying out of exploration activities without approval	Vickery	
Jan 2020	Prosecution ¹⁹	Resources regulator prosecuting over serious WHS	Maules Creek	Ongoing
Mar 2020	Clean up notice ²⁰	Release of polystyrene balls into a local water way	Maules Creek	-
May 20	Fine ²¹	Overflow of sediment dam	Tarrowonga	\$15,000

¹¹ EPA media release: [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)

¹² Department of Planning media release: <https://www.planning.nsw.gov.au/Assess-and-Regulate/About-compliance/Inspections-and-enforcements/March-2019-formal-enforcements/Penalty-Notice-issued-to-Werris-Creek-Coal-Pty-Ltd>

¹³ EPA clean up notice: <https://apps.epa.nsw.gov.au/prpoeoapp/ViewPOEONotice.aspx?DOCID=-1&SYSUID=1&LICID=1578807>

¹⁴ Part of an enforceable undertaking. Details here: [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)

¹⁵ EPA media release: <https://www.epa.nsw.gov.au/news/media-releases/2019/epamedia190625>

¹⁶ Resources Regulator suspension notice: https://www.resourcesregulator.nsw.gov.au/data/assets/pdf_file/0005/1153634/Suspension-Notice-Decision-document.pdf

¹⁷ NRAR media release: <https://www.industry.nsw.gov.au/natural-resources-access-regulator/nrar-news/nsw-water-regulator-concludes-investigations-into-maules-creek-coal-mine>

¹⁸ Resources Regulator media release: <https://resourcesandgeoscience.nsw.gov.au/about-us/news/2019/prohibition-notice-issued-to-maules-creek-open-cut-coal-mine>

¹⁹ Resources Regulator media release <https://www.resourcesandgeoscience.nsw.gov.au/about-us/news/2019/maules-creek-coal-prosecuted-over-mining-truck-collision>

²⁰ EPA Clean up notice here: <https://app.epa.nsw.gov.au/prpoeoapp/ViewPOEONotice.aspx?DOCID=-1&SYSUID=1&LICID=1591771>

²¹ EPA media release [epa.nsw.gov.au/news/media-releases/2020/epamedia200528-tarrowonga-coal-fined-after-environmental-breach-at-mine](https://www.epa.nsw.gov.au/news/media-releases/2020/epamedia200528-tarrowonga-coal-fined-after-environmental-breach-at-mine)

