
Proposed Vickery Coal Mine

SSD 7480

SUBMISSION BY: The Boggabri Farming and Community Group



Namoi River and Site of the Proposed Vickery Coal Mine Photo: David Watt

TO: NSW Independent Planning Commission

July 2020

1. Background

- 1.1. The Boggabri Farming and Community Group (BFCG) is made up of family farmers and members of the Boggabri community who are directly and indirectly impacted by the proposed Vickery Open Cut Coal Mine. Some of our members are the closest neighbours to the proposed mine site and would be the most directly impacted members of the community, for the life of the mine and beyond. Our members have some 100 years of unbroken family connection to this place, to the highly productive farm lands adjoining the proposed mine site and to each other. The BFCG is not opposed to coal mining, in fact some of our members work in the industry, but we oppose the proposed new Vickery Mine in all of the circumstances, and we strongly recommend that it be refused on its merits.
- 1.2. The BFCG has been grappling with the proposed Vickery Mine for some time 6 years. During this time, we have, with open minds, contended daily with the merits of the proposed mine. We have engaged with the proponent Whitehaven Coal (WHC), the Department of Planning Industry and Environment (the Department), the EPA, the Independent Planning Commission (IPC), independent technical and scientific experts, Narrabri Shire Council (NSC), Gunnedah Shire Council (GSC), Members of Parliament and their staff, legal experts, agricultural organisations, conservation organisations, our local community and the wider community.
- 1.3. During this time, we have experienced the most extreme drought on record, the hottest average temperatures ever recorded, the worst bushfire season on record, a health pandemic and the beginning of a recession. We have witnessed the national acceptance that our climate is changing, faster than many predicted, and that if we are to honestly seek to stabilise our way of life, we need to lower our greenhouse gas emissions and transition to a carbon neutral economy as quickly and safely as we can, as part of our international and intergenerational obligations. We have also witnessed the resultant commencement of the structural and market decline of the coal industry. Recently, we have seen other greenfield coal mines in NSW refused, by the IPC and the NSW Land and Environment Court (LEC), and we have seen the industry and some political players backlash against this. As a result of this backlash, we have seen a review of the IPC, the Minister for Planning issue a Statement of Expectations for the IPC and the development of an MOU between the IPC and the Department.
- 1.4. Here in Boggabri, against this backdrop, we are a community experiencing saturation from mining. There is currently not a healthy co-existence between mining and agriculture to be seen in our local environment and community. There is a co-existence of sorts, but it is hanging in the balance. Existing mines have already bought out more than 90 farms in our district and WHC owns some 61,000 hectares and nearly 500 freehold land titles. Many families, who are our friends, colleagues and neighbours have been driven off their lands, some in awful circumstances. Boggabri was once a thriving rural community, we used to have a baker, a fuel depot, a grain trader, a tank maker, a machinery agent, three pubs (now there is one), three clubs (now there is two), two service stations (now there is one), two cafes (now there is one), two hardware stores (now there is one). All of these businesses have closed since mining ramped up. We also used to have enough children to make up a junior Rugby League Team which competed in the Gunnedah Comp with home games played at Boggabri.

- 1.5. Last year, the drought highlighted the depth of conflict imposed upon our community through allowing the level of mining that we are experiencing, when WHC manifestly perverted the water market, by outbidding farmers, leaving agriculture out to dry at a time our community could least afford it.¹ We strongly believe, that one more mine here, of this size and impact will break the back of this wonderful highly productive, historic agricultural community of Boggabri.
- 1.6. It is well known that the coal industry in NSW has been built on the sacrifice of rural communities, their landscapes, the agricultural economy and the natural resources upon which they rely, for the immediate economic growth of the NSW and national economies.² The coal export market boomed from around 2005 – 2010, peaking in around 2014, as China and India expanded their demand, and NSW on the basis of the money and mine jobs, has seen mine approval after mine approval swallow those rural communities, their local environments, their local non-mine related jobs and the natural resources upon which they all rely. While the planning system has sought to do its best, there are archives as deep as the mine pits themselves, that tell the stories and hold the accounts of the real costs of the industry on the families, communities and landscapes left in its wake. There was a view by some that it was worth it because of the financial returns generated. All this has changed. Coal is no longer king. It is clear to all that the industry is in rapid structural and market decline, the only variation on this analysis is the words used and the timing around which we need to respond.
- 1.7. It is clear, a lot has changed since this proposed Vickery mine was considered. We strongly submit that the justification for opening another new large greenfield mine, on top of our community and our local environment and economy is no longer reasonably open. There is enough coal in the NSW pipeline from existing mines and the expansions of already actually existing mines to supply the rapidly shrinking demand. That when the impacts of this proposed new mine are examined thoroughly, in the context of the *Environmental Planning and Assessment Act 1979* (EPA Act), it is clear, that it is not in the public interest, and contrary to the Department's recommendation, it should be refused.

2. Grounds of Refusal

2.1 We contend the new Vickery Mine ought to be refused on the following grounds:

- The proposed mine is properly characterised as a greenfield mine and should be assessed as such;
- The economic justification for the proposed mine is redundant, speculative, unreliable and far too risky based on the evidence before the IPC;
- The social impacts of the proposed mine will be significantly detrimental to the community of Narrabri and Boggabri and the claimed benefits of the claimed jobs the proposed mine would create, even if realised, do not outweigh the negative social impacts;

¹ Jamieson Murphy, *Whitehaven Coal mine outbids farmers for precious water again*, The Northern Daily Leader, 20 August 2019 <https://www.northerndailyleader.com.au/story/6338208/coal-mine-outbids-farmers-for-precious-water-again/>

² For example: Ravensworth, Hebdon, Lemington, Wambo, Thorley, Gouldsville, Long Point, Wambo, Howick, Bulga, Camberwell and Wollar

- The direct impacts of the proposed mine on the landholders who are agricultural producers on BSAL lands to the south west of the proposed mine site are unacceptable;
- There is not enough water in the system for the proposed mine;
- The proposed mine poses a serious risk of harm to the alluvium, through contamination, drawdown and compaction, the alluvium is a fundamental water source to the region;
- The proposed mine is too close to the Namoi River;
- The impacts on the heritage, cultural and artistic values of 'Kurrumbede' are too significant;
- The proposed mine will make the local environment uninhabitable for koalas, in an area that serves as important refugia for them;
- The proposed mine will directly contribute to climate change through the unnecessary generation of scope 1,2 and 3 Greenhouse Gas emissions (GHG)
- The proposed mine is contrary to intergenerational equity and justice, in that future generations will bear too heavily the burden of climate change.

3. The IPC's Functions and Powers, the Current Decision- Making Context & Procedural Fairness

Post Bylong, Rocky Hill and Wambo Planning Decision Era

- 3.1. Since the IPCs decisions in Bylong and Wombo United, and the Land and Environment Court's (LEC) decision in Rocky Hill, there has been significant attention drawn to the IPC, its functions, its powers, and even questions about its appropriateness. Most of the attention was driven by the coal industry and its supporters, primarily, because of the way the IPC, and the LEC, considered climate change in those decisions and in the case of Rocky Hill and Bylong, the ultimate determination to refuse those coal mine projects. Some of the industry claims suggested that the IPC was not fit for purpose and should not be making decisions about mining projects. This led the Minister for Planning in October 2019, to request the NSW Productivity Commissioner to conduct a Review of the Independent Planning Commission (the Review) and report back to the Minister by mid-December 2019.
- 3.2. In its report, the Productivity Commission, made a number of recommendations, but fundamentally, found that the IPC in the exercise of its functions and powers is in the public interest, in that it plays an important role in maintaining the integrity of the planning system and should be retained as an independent decision-making body.³ It found that an independent decision-making function strengthens the planning system by minimising the risk of corruption or undue political influence.⁴

³ NSW Productivity Commission, Review of the Independent Planning Commission, December 2019, <http://productivity.nsw.gov.au/sites/default/files/2020-01/Report%20-%20Review%20of%20the%20Independent%20Planning%20Commission.pdf>

⁴ NSW Productivity Commission, Review of the Independent Planning Commission, December 2019, <http://productivity.nsw.gov.au/sites/default/files/2020-01/Report%20-%20Review%20of%20the%20Independent%20Planning%20Commission.pdf>

- 3.3. The Productivity Commission’s report led to the Minister releasing his Statement of Expectations for the IPC⁵ and the entering into of an MOU between the IPC and the Department.⁶ Again, central to both of these documents is the recognition of the independence of the IPC.
- 3.4. The current Government also responded to the decisions in Bylong, Rocky Hill and Wambo United through the introduction into Parliament, on 24 October 2019, of the *Environmental Planning and Assessment Amendment (Territorial Limits) Bill 2019*. This Bill attempts to amend the EPA Act to *prohibit the imposition of conditions of a development consent that purport to regulate any impact of the development occurring outside Australia or any impact of development carried out outside Australia* and to amend *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007 to remove the specific requirement consider downstream greenhouse gas emissions in determining a development application for development for the purposes of mining, petroleum production or an extractive industry*.⁷ There has been no further action on this Bill in Parliament since it was introduced on 24 October 2019. It is not law.
- 3.5. It is important to keep the post Bylong, Rocky Hill and Wambo United activity in context in relation to the evaluation and determination of the proposed Vickery coal mine. We note the following salient points:
- The IPC is a statutory NSW Government Agency;⁸
 - The IPC is not subject to the direction or control of the Minister;⁹
 - The independence of the IPC is paramount;¹⁰
 - The IPC is independent of the Department;¹¹

⁵ The Hon. Rob Stokes MP, Statement of Expectations for the Independent Planning Commission <https://www.ipcn.nsw.gov.au/resources/pac/media/files/pac/general/whats-new/ministers-statementofexpectationsfor-ipc.pdf>

⁶ Memorandum of Understanding between the Planning and Assessment Group, Department of Planning, Industry and Environment and the Independent Planning Commission, dated 5 May 2020 https://www.ipcn.nsw.gov.au/resources/pac/media/files/pac/general/whats-new/ipc_dppe-mou.pdf

⁷ NSW Parliament, Environmental Planning and Assessment Amendment (Territorial Limits) Bill 2019, Explanatory Note, [https://www.parliament.nsw.gov.au/bill/files/3717/XN%20Environmental%20Planning%20and%20Assessment%20Amendment%20\(Territorial%20Limits\)%20Bill.pdf](https://www.parliament.nsw.gov.au/bill/files/3717/XN%20Environmental%20Planning%20and%20Assessment%20Amendment%20(Territorial%20Limits)%20Bill.pdf)

⁸ Section 2.7 (3) EPA Act

⁹ Section 2.7 (2) EPA Act (except as to procedure and certain specific matters)

¹⁰ NSW Productivity Commission, Review of the Independent Planning Commission, December 2019, <http://productivity.nsw.gov.au/sites/default/files/2020-01/Report%20-%20Review%20of%20the%20Independent%20Planning%20Commission.pdf>; MOU between Department of Planning, Industry and Environment and Independent Planning Commission NSW dated 5 May 2020, https://www.ipcn.nsw.gov.au/resources/pac/media/files/pac/general/whats-new/ipc_dppe-mou.pdf; Minister for Planning, Statement of Expectations for the IPC; <https://www.ipcn.nsw.gov.au/resources/pac/media/files/pac/general/whats-new/ministers-statementofexpectationsfor-ipc.pdf>

¹¹ MOU between Department of Planning, Industry and Environment and Independent Planning Commission NSW 5 May 2020, https://www.ipcn.nsw.gov.au/resources/pac/media/files/pac/general/whats-new/ipc_dppe-mou.pdf

- All of the powers and functions of the IPC are conferred by the EPA Act;
- The IPC is empowered to be the consent authority of the proposed Vickery Coal Mine under the EPA Act;¹²
- The determination of the IPC in relation to the proposed Vickery Coal Mine must be in accordance with the law as set out in Part 4 of the EPA Act;
- All evaluation of the proposed Vickery Mine must be carried out in accordance with s4.15 of the EPA Act;
- Contrary to the MOU between the IPC and the Department, the EPA Act does not provide that the Department's Assessment Report is the IPCs starting point for its determination.¹³ As Barrister Mr White stated at the Public Hearing, to consider the Department's Assessment Report as the starting point for determination, is bad law.¹⁴ Like all administrative decisions the starting point for the IPCs determination of the proposed Vickery coal mine is the written law in this case the EPA Act – and it does not say the Assessment Report is the starting point of the IPCs determination. The law requires the IPC to undertake a full evaluation of the merits of the proposed Vickery coal mine. It is our view that in accordance with the principles of administrative law, the IPC is required to step away from the conclusions in the Department's Assessment Report, as it has done in the past, and undertake an open minded evaluation of WHCs proposed new open cut coal mine and make a determination according to law;
- Nothing in the Minister's Statement of Expectations for the IPC could or should infect the IPCs legal duties to evaluate and determine the proposed Vickery Coal Mine in accordance with Part 4 of the EPA Act;
- The *Environmental Planning and Assessment Amendment (Territorial Limits) Bill 2019* has not progressed through Parliament. It is not law.

Strategic statement on coal exploration and mining in NSW

3.6. The NSW Government released a *Strategic statement on coal exploration and mining in NSW* on 24 June 2020. The timing of this release is not lost on us, the week before the public hearing on the proposed Vickery coal mine. While the coal statement seeks to spruik the basis for a continued role for NSW coal industry export,¹⁵ it recognises that the coal industry is in structural decline and essentially provides that only responsible applications to extend the life of current coal mines will be considered and that any new areas will only be those adjacent to current mining operations, and where there are minimal conflicting land uses, where social and environmental impacts can be managed.

¹² Section 2.9(1) (a) EPA Act

¹³ See clause 5.4.2, MOU between Department of Planning, Industry and Environment and Independent Planning Commission NSW, 5 May 2020

¹⁴ Barrister Robert White, Submission, on behalf of Lock the Gate, to the Public Hearing into the proposed Vickery coal mine, 2 July 2020

¹⁵ Compared and contrast this premise to energy finance analyst at the Institute for Energy, Economics and Financial Analysis, Mr Simon Nicholas' evidence before the IPC.

<https://www.ipcn.nsw.gov.au/resources/pac/media/files/pac/transcripts-and-material/2020/vickery/200703-vickery-extension-project--public-hearing-day-2-transcript.pdf> p 33

The coal statement also recognises that mining affected communities need help to manage the exit of the industry.¹⁶

- 3.7. While we do not think that the coal statement is relevant to the legal determination of the IPC under the EPA Act, we note that WHCs proposed Vickery mine is not at all consistent with the coal statement. The proposed Vickery mine is in fact a new greenfield mine, and while there are some mines in the region, along with many others in the community and NSC¹⁷ we contend that any more mining will saturate our community, and the small rural town of Boggabri will die a mining town death.
- 3.8. Therefore, the proposed Vickery mine is entirely inconsistent with the coal statement – it is not a responsible application in that it is not an extension of an existing mine, in the ordinary meaning of such. It is not a new mine where there are minimal conflicting land uses, where the social and environmental issues can be managed reasonably and it is not helping an affected mining community – it would creating one more mining affected community, through further entrenching the problems that the coal statement identifies that affected mining communities face, and it would be completely irresponsible and unreasonable to this, at this time, as the coal statement implies.

Merit Appeals - Public Hearings - Procedural Fairness

- 3.9. The determination of WHCs proposed Vickery mine would normally take place in the ordinary framework of the EPA Act, where we would be afforded the right to appeal any decision to approve the proposal to the LEC and contest the proposed mine on its merits. However, because the IPC has been requested by the Minister for Planning to hold a public hearing, and the IPC has followed that request, we are denied that right.
- 3.10. A public hearing is no substitute for a merits appeal hearing, where the parties to the appeal are entitled to thoroughly contest the evidence, to cross examine the proponent's evidence, claims and experts and where the rules of procedural fairness properly apply. Given this right is no longer afforded, we had trusted that the IPC would afford appropriate fairness to the objectors, the contents of their submissions and attribute the appropriate weight to such.
- 3.11. We feel we have been denied even the most minimal standard of fairness that is owed to us under the EPA Act, in the circumstances. As at the time of writing we understand that as part of the current Vickery Public Hearing process the IPC panel members have met with WHC on a number of occasions, including with its lawyers and including at their offices, undertaken a site inspection,¹⁸ with no less than 6 members of WHC. We note that site inspection did not include any of the lands of the affected landholders and did not include many areas that will be significantly impacted. The panel members have

¹⁶ NSW Government, Strategic Statement on Coal Exploration and Mining in NSW
https://www.resourcesandgeoscience.nsw.gov.au/data/assets/pdf_file/0004/1236973/Strategic-Statement-on-Coal-Exploration-and-Mining-in-NSW.pdf

¹⁷ Narrabri Shire Council, Letter of Objection – SSD 7480 – Vickery Mine Extension, 2 March 2020,
<https://www.ipcn.nsw.gov.au/resources/pac/media/files/pac/projects/2018/11/vickery-extension-project/correspondence-after-final-issues-report/200306ind-boycenarrabri-shire-councilredacted.pdf>

¹⁸ Site Inspection Notes, IPC and WHC 17 June 2020 – 8am-12pm
<https://www.ipcn.nsw.gov.au/resources/pac/media/files/pac/projects/2020/03/vickery-extension-project/site-inspection/200617-site-inspection-notes.pdf>

met with the Department (that had at the time of meeting had recommended the approval of the proposed new mine).

3.12. As part of this stage in the multi-stage IPC process, the panel members have not met with us,¹⁹ nor undertaken an inspection of proposed new mine from where our members live and work, notwithstanding they will be the most impacted by this proposed mine and we have asked for such on three occasions since the IPC announced the Public Hearing.²⁰ Furthermore, at the public hearing we were only afforded 10 minutes for our submission, we asked for 15 minutes.²¹ The Department was afforded 45 minutes.²²

3.13. While we understand the breadth of work the IPC panel members face in their task in the assessment and determination of this new coal mine, on the face of the events to date, we believe we have been and continue to be denied the fairness owed to us. During the public hearing, which is approximately only 4 weeks from the expected determination of the proposed mine, it appeared that the panel members did not know the distance from the closest homes to the proposed mine site and infrastructure, or for that matter the names of the landholders who would be most affected. This is notwithstanding they have made submissions on a number of occasions to the IPC, appeared before the last Public Hearing, have written letters to the IPC and are specifically referred to in the Department Assessment Report as landholders who will be affected by the proposed mine, but mostly offered no mitigation of such. We are certain the IPC Panel members know the name and position of the Director of Mining Assessments at the Department and the name of the CEO of WHC, yet the fact is both of those people may not have any association with this project in the weeks, months or years to come. Yet in the event this proposed new mine is approved the landholders we refer to will have this mine in their lives, for every second of every day for the next 25 years and beyond. It will literally be in their ears, their eyes, their breathe, their relationships, their homes and their work.

3.14. While we do not blame the IPC Panel members individually for this situation, as we understand the process tendency to this predicament, we do ask the IPC Panel Members to do something to rectify this, at this late stage, to provide the level of inclusion and fairness owed to the affected landholders in the circumstances.

¹⁹ We note that two of the panel members met with some of us in 2018, we were not allowed to ask any questions of those two panel members and we were not allowed to make statements to those members and we only visited one (out of several) of the affected properties adjacent to the proposed mine site, we did not visit the banks of the Namoi River or the 'Kurrumbede' homestead.

²⁰ Twice on the telephone to Mr Brad James and once again on 3 July 2020, during our submission at the Public Hearing. At the time of writing (10 July 2020) we have received no response.

²¹ While we note that some of our members were afforded 10 minutes individually, the collective issues of the BFCG are separate and distinct from the individual issues of those landholders.

²² We note the direction of the Minister to the IPC, to pay particular regard to the Assessment Report, and clause 5.4.2 of the DPIE and IPC MoU, which states the Assessment Report is the starting point for the IPCs determination.

4. Vickery is a New Greenfield Open Cut Coal Mine – Problems with the Departments Assessment Report

Greenfield Coal Mine

- 4.1. It is pertinent that the IPC keeps front and centre that this is in fact a proposal for a large greenfield mine. It is an application, by a private proponent, for a new large open cut coal mine and substantial coal processing and rail and transport infrastructure on lands where there is currently no mine situated.
- 4.2. While there is no contention that there is an existing approval for a smaller mine without the associated infrastructure, on part of the same lands of the proposed mine, it is patently clear, it is a paper approval only and that while WHC has legally commenced, it is a project that will never see a real sod turned.²³ There is currently no mine or genuine mine works on the site whatsoever. On all of the evidence, including the realities of the project that was approved nearly a decade ago (7 years), it is reasonable to conclude that there is also absolutely no intention to ever realise that paper approval. WHC's CEO Paul Flynn recently explained to its investors that WHC has in fact only undertaken certain *necessary* works on the site in order to legally commence the paper approval to prevent it from lapsing. In his words:

An approval is valid for five years once received. You need to commence it within five years... You must have commenced it by the expiration of the fifth anniversary, as we have done with the four and a half million tonne version. We did the necessary works to qualify to having commenced construction under that approvals regime given that its anniversary was in September of '19.²⁴

- 4.3. While legal commencement has meaning for the existing approval – it has no meaning or operation to the proposed new Vickery coal mine.
- 4.4. The IPC recognised this to some extent in its Issues Report, where it stated:

... the Commission recognises that the Applicant has an Approved Project, in a de facto sense the Project site functions as a greenfield coal development.²⁵

The Department's Assessment Report

- 4.5. The entirety of the Department's Assessment Report²⁶ assesses the new mine in the context of the impacts of the paper approval as if those impacts exist and are already experienced.

²³ See paragraph 5.4 below, citing Pegasus Economics' Report in reference to the Approved Project.

²⁴ Whitehaven Coal, March 2020 Quarter Production Report – Market Call Transcript, p10
<https://whitehavencoal.com.au/wp-content/uploads/2020/04/200416-March-2020-Quarter-Production-Report-market-call-transcript.pdf>

²⁵ IPC, Issues Report Vickery, paragraphs [96] and [133]

²⁶ We note in its Issues Report, the IPC requested the Department in assessing the project to include a meaningful discussion of the Approved Project and the proposed new mine project. While at the time, such a request seemed relevant and reasonable, the passage of time, the significant change in market factors, the clarity of industry reality and the proponent's intentions makes such a planning exercise at best unhelpful and otherwise misleading and somewhat disingenuous.

- 4.6. It is this narrative that has provided a large part of the basis for the Departments ultimate evaluation that the proposed Vickery Coal Mine, on balance is approvable. It states:

The Department acknowledges that the Project would result in additional environmental and amenity impacts associated with increasing the disturbance footprint of the Approved Project and the additional mining-related infrastructure.

However, based on its assessment, the Department considers that the environmental and amenity impacts of the Project are not significantly greater than those associated with the Approved Project, and the additional impacts can be managed to achieve an acceptable level of environmental performance, in accordance with applicable guidelines and policies.²⁷

- 4.7. This conclusion is based upon an unhelpful fabricated planning and assessment exercise and should not be accepted. We implore the IPC to consider the actual merits of what is proposed, which is an entirely new large greenfield open cut coal mine, with substantial coal processing and rail transport infrastructure. We submit that the IPC should not fall into an erroneous assessment, evaluation or determination within the narrative that the Department's Assessment Report creates, namely, that the existing approval creates an existing mine, with impacts experienced and that the impacts of this proposal are similar to, or not much more than, in some cases better than the paper approval, therefore justifiable.

5. Economics

- 5.1. The main basis of the Department's support of the proposed Vickery Mine, like most coal projects to date, is the claimed economic benefits that the project will bring to the local, regional and state economies, including the creation of some jobs. In concluding its executive summary, the Department claims:

The Department also considers that the project would provide major economic and social benefits for the region and to NSW as a whole, including direct capital investment of \$607 million and up to 450 jobs during operations.²⁸

- 5.2. The BFCG is made up of family farms and businesses that form part of the local, regional and state economies. As astute financial operators, attuned to the global financial market, the economic viability of a project is at the forefront of our consideration. It is trite to say that coal is no longer king and the industry is experiencing structural decline. To this extent the BFCG commissioned an independent economics expert to undertake an economic analysis of the proposed Vickery coal mine.
- 5.3. During the public hearing, the IPC heard from Dr Alistair Davey, of Pegasus Economics who undertook a comprehensive review of the economics of the Vickery proposal and produced a report in January this year, which has been updated in June this year and

²⁷ Department Planning, Assessment Report, Vickery Coal Mine, p xvi

²⁸ Department Planning, Assessment Report, Vickery Coal Mine, p xvi

relies on the most up to date relevant financial data.²⁹ In its executive summary, Pegasus Economics states:

Pegasus suggests the most recent thermal coal price forecasts invalidate coal price forecasts used in the economic impact assessment by AnalytEcon Pty Ltd, and in turn cast serious doubt over the commercial viability of the Proposal. It is extremely unlikely that Whitehaven would choose to proceed with the Proposal under the most recent coal price forecasts from either the World Bank or KPMG because the project costs exceed the value of marketed coal. In both cases the commercial viability of the Proposal is in grave doubt and thus the claimed net benefits accruing to NSW would fail to materialise.

5.4. Contrary to the Departments findings in its Assessment Report and the Department's economic experts, Dr Davey finds major shortcomings of the proponent's economic assessment, fundamentally in relation to the pricing assumptions relied upon for metallurgical and thermal coal. He finds:

A major shortcoming with the economic impact assessment conducted by AnalytEcon Pty Ltd (2018) is that it lacks transparency surrounding the pricing assumptions used for metallurgical and thermal coal. According to AnalytEcon Pty Ltd (2018, p. 23):

Projected coal prices are based on CRU forecasts, and consist of long-term prices per tonne (from 2026 onwards) of US\$ 85 per tonne for thermal coal, and US\$ 100 per tonne for SSC and pulverised coal injection (PCI) coal. The US\$/AU\$ exchange rate is assumed to be 0.77 in 2019 and 2020, 0.78 from 2021 to 2025, and 0.77 from 2026 onwards.³⁰

In its review of the Proposal economic impact assessment for the NSW Department of Planning and the Environment, Marsden Jacob Associates (Dwyer, 2018, p. 8) commented:

The report has assumed long term trend estimates for thermal coal of US\$85 per tonne and SSC/PCI of US\$100 per tonne and a US\$/AU\$ exchange rate of \$0.77.

The report does not provide information on the derivation of these assumptions.

The report would benefit from providing evidence to support the forecast of coal prices in US dollars over medium and longer term and the source of the exchange rate assumptions provided by Whitehaven. The Gillespie Report of 2012 observed the benefit cost is more marginal when there is a sustained 30 per cent reduction in the price of coal assumed. The report does not provide guidance on the prices estimates and the recent large falls in medium term coal prices in the order of 25 per cent. We recommend further evidence be provided in the report to justify the coal price assumptions.

The economic assessment conducted for the Approved Project previously warned that:

The results were most sensitive to any potential decreases in the sale value of coal. A sustained reduction in coal price (over 30%) would be

²⁹ Pegasus Economics, Review of the Economic Impact Assessment of the Vickery Extension Project 2020, June 2020

³⁰ US dollars will be referred to in this report as USD\$ and Australian dollars will be referred to AUD\$.

required to make the Project undesirable from an economic efficiency perspective. (Gillespie Economics, 2012, p. 18)

Since July 2018 until May [2020] thermal coal prices have fallen by 56 per cent.³¹

- 5.5. He further finds that the economic assessment fails to meet the requirements of the current *Guidelines for the economic assessment of mining and coal seam gas proposals* due to a real lack of transparency and replicability which is required of a large-scale investment project that will have significant public impacts.³² And that its reliance on substantially wrong coal price forecasts makes the material presented to the Department and now the IPC unreliable. Dr Davey concludes:

The finding of positive net benefits in the cost benefit analysis is driven by redundant and out-of-date coal price forecasts. The most up-to-date coal price forecasts suggest there is a serious question over the commercial viability of the Proposal. In this event the Proposal does not proceed then the claimed net benefits accruing to NSW will fail to materialise. On this basis, Pegasus believes the economic impact assessment is flawed, does not demonstrate positive net economic benefits to the State of NSW and should not be relied upon as a basis for future decision-making.³³

- 5.6. We note the evidence before the IPC of Mr Robert Henderson, Economic and Financial Consultant, formerly a chief economist at NAB and Dresdner Bank. Also, formerly of the Productivity Commission, the Department of Finance and the Prime Minister's Department in Canberra.³⁴ Mr Henderson concludes that the proposed Vickery Mine on purely economic grounds, ought to be refused. He points out that:

The proposal for the Vickery Mine Extension, if it goes ahead, will provide some relatively short term economic gains for (mainly overseas) investors, jobs in the region during the construction phase and some spin off benefits to local suppliers. On-going employment in the mine would represent an insignificant gain to job availability in the region, noting that workers from outside the area are likely to be recruited to at least some of those jobs.³⁵

- 5.7. His analysis points out that the claimed 450 jobs in the region, represents around 1.25% increase in job availability. There is evidence before the IPC that even this job figure is possibly overestimated³⁶ and is in fact closer to 200 jobs, which would be around 0.6% increase in job availability.³⁷ Importantly there is no translation of these claimed jobs to

³¹ Pegasus Economics, p 11

³² Pegasus Economics, p 12 & 19

³³ Pegasus Economics, p 19

³⁴ Henderson, R, presentation at Vickery Mine Public Hearing before IPC Friday 3 July 2020 <https://www.ipcn.nsw.gov.au/resources/pac/media/files/pac/projects/2020/03/vickery-extension-project/comments/200621-r-henderson.pdf>

³⁵ Henderson, R, presentation at Vickery Mine Public Hearing before IPC Friday 3 July 2020 <https://www.ipcn.nsw.gov.au/resources/pac/media/files/pac/projects/2020/03/vickery-extension-project/comments/200621-r-henderson.pdf>

³⁶ Ziller, A, PhD, Department of Geography and Planning, Macquarie University, Submission re. proposed Vickery Extension Project, 1 July 2020, https://www.ipcn.nsw.gov.au/resources/pac/media/files/pac/projects/2020/03/vickery-extension-project/comments/200701-alison-ziller_redacted.pdf

³⁷ Henderson, R, presentation at Vickery Mine Public Hearing before IPC Friday 3 July 2020 <https://www.ipcn.nsw.gov.au/resources/pac/media/files/pac/transcripts-and-material/2020/vickery/200703-vickery-extension-project--public-hearing-day-2-transcript.pdf> p 84

the main communities of impact – Boggabri and Narrabri.

- 5.8. The justification put forward for the significant impacts the proposed mine would have on the environment and the community is its claimed economic benefits and job creation. The credible evidence before the IPC that casts significant doubt on the reliability of these economic claims is substantial.
- 5.9. Ultimately, this is a private development, for a large greenfield coal mine at a time that the industry has properly commenced its structural and market decline, this is a high-risk proposal. Given the significant public impacts the proposed mine would have, in the face of the high risk and doubtful economic viability of this proposal the economics of this proposed development are not merely a matter for the proponent.
- 5.10. We respectfully submit that the most up to date objective material presented in Dr Davey’s report, and the evidence of other finance experts, warrants the IPC to pay significant regard to this aspect of the proposal, as it similarly did in its consideration of the Port Waratah Coal Services Terminal 4 at Newcastle, where it stated:

*The Commission accepts that coal pricing and demand predictions are largely a financial matter for the Proponent in deciding whether to proceed with the project and how it will be staged. However, in the context of the wider public interest, the economic costs and benefits to the broader community need to be considered.*³⁸

- 5.11. It is relevant to consider what WHC is saying to its investors and shareholders in this regard. In a Quarter Production Report - Market Call in April this year, Paul Flynn, WHCs CEO and Managing Director, in response to questions about the proposed Vickery mine and capital investment decisions, and on his assumption that the proposed Vickery mine will be approved, said:

*Obviously, the world is in a very interesting place and I’m not pretending that we’ve got a crystal ball any better than anybody else’s crystal ball, if indeed they did, and so we’re cautious on that. We know that there’s some delays here anyway and so we’ll use the benefit to that time as most productively as we can. And in our view, that is all about how to further optimise and refine the design of Vickery and the associated capital costs that goes with it. But I think the market is obviously in a time when pushing the button on new projects right now, you’d have to be cautious on doing that.*³⁹

Then after another question on the proposed Vickery Mine and the thermal coal price, Mr Flynn said:

Again, we have invested through difficult parts of the cycle before with Maules Creek. Obviously qualitatively, Maules Creek was a different calibre project to Vickery, as we’ve

³⁸ Planning Assessment Commission, Determination Report, Port Waratah Coal Services Terminal 4, Newcastle LGA <https://www.ipcn.nsw.gov.au/resources/pac/media/files/pac/projects/2015/06/port-waratah-coal-terminal-4--determination/pac-determination/t4determinationreportpdf.pdf>

³⁹ Whitehaven Coal, March 2020 Quarter Production Report – Market Call Transcript, p10 <https://whitehavencoal.com.au/wp-content/uploads/2020/04/200416-March-2020-Quarter-Production-Report-market-call-transcript.pdf>

6.2. You heard from a number of these landholders during the public hearing. You heard from Janet Watt, the young farmer, mother and teacher, who with her husband, Dave, runs a successful mixed cropping family business. You heard from James Barlow, Grant McIlveen, Eric Hannan and Errol, Jennifer and young Steph Darley, these farmers are the face of everything good about farming, along with all the landholders in this part of the local environment, they are farming for us all and for our future. Family farms are the backbone of sustainable agriculture because they are more adaptable and diverse than crash and burn large scale enterprise and in turn, they are an essential guarantee in a local and regional economy. Their value and the impact that this proposed Vickery mine would have on them and their agricultural businesses needs to be understood and factored into the evaluation of the merits of the proposed Vickery coal mine.

6.3. Of these landholders, the Department's Assessment Report states:

The Department acknowledges that the Project would result in amenity impacts on landholders around the mine site and along the rail spur line. In particular, to the south west of the mine there is a close-knit farming community which will be directly impacted by the mine.

The Department notes that the noise and dust emission impacts from the mining operations are similar to that of the Approved Project, with only one receiver predicted to have a significant noise impact such that acquisition rights are afforded under the VLAMP. However, the key changes affecting this community are the introduction of the rail spur line and the CHPP and rail load out which would change the character of the area.

The Department has met with the local landholders on a number of occasions during the assessment and recognises that the Project is causing significant stress and uncertainty to these landholders. This has also been exacerbated by the recent drought conditions in the area.

Due to noise impacts, and in accordance with the recommended approach in the VLAMP, Whitehaven has been seeking a negotiated agreement with the landowner of the Mirrabinda property (see Figure 29 property ID 127) for some time. In recognition of impacts to these rural residential receivers, Whitehaven has more recently been seeking negotiated agreements with a further 6 landholders closer to the mine and along the rail spur line. All these negotiations are ongoing.⁴²

6.4. The BFCG is very concerned about this part of the Department's Assessment Report. It is correct that the landholders are a close-knit farming community, who will be directly impacted by the proposed mine and rail spur, that they will experience negative amenity impacts and that the proposed mine is causing significant stress and uncertainty to them, which has been exacerbated by the recent drought. It is also correct that the rail spur line and the CHPP and rail load out, in addition to the rest of the mine, will change the character of the area forever.⁴³

6.5. To then simply suggest that the significant amenity impacts that they will experience, being so close to the proposed mine, are somehow acceptable because they are

⁴² Department's Assessment Report p112, paragraphs [604] – [607]

⁴³ We are aghast that there is no mention that these lands are identified BSAL.

modelled as being not much more than the significant impacts of the approved mine – which is not there, and likely never will be there, is an inadequate and negligent assessment of the situation these landholders face. Compounding this absurdity is the misleading statement that WHC is seeking negotiated agreements with these landholders.

- 6.6. In this regard we refer to the letter from these landholders to the IPC, dated 16 March 2020, which is a much more accurate reflection of the current situation. That letter, amongst other things, states:

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.

- 6.7. It is still the fact that none of these landholders have a negotiated agreement in place with WHC. Since the Department's Assessment Report has been released, it is the case that WHC has approached a couple of these landholders again, including to concede that the particular landholder will be impacted, after years of contending that they will not be impacted. However, the fact remains that none of these landholders to the south west of the proposed mine has an agreement in place.

- 6.8. It is derelict of the Department to dismiss this fact, simply relying on the proponents say so and distance itself from the terms and intent of the VLAMP in its Assessment Report. We understand from our discussions with the Department that this approach is

facilitated by the non-discretionary standards provided in the Mining SEPP⁴⁴ with regards to cumulative noise and air quality.

6.9. The IPC cannot be satisfied with the Department's Assessment Report with regards to these landholders. None of these landholders want the mine to proceed and none of these landholders want to just pack up and leave their lands. In these circumstances it is not fair or reasonable to consider approving the proposed Vickery mine, without making sure they have a proper negotiated agreement in place that would assist them to adapt to an entirely different life on their lands and to be able to continue their agricultural businesses.

6.10. The Department's Assessment Report 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. We know that these landholders will be significantly impacted by the mine, it is unacceptable and inequitable for the IPC to consider approving the proposed mine in these circumstances. As the letter from the landholders to the IPC also states:*

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.

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.

6.11. There is no doubt, based on all of the material presented and the research that we have undertaken, that all of the landholders identified in the image above will be significantly impacted by the proposed Vickery Mine. They will be directly impacted through noise, air quality, visual and all amenity impacts and to the extent that the quite enjoyment of their homes and their current productivity capacity within their work places will be completely foregone for the life of the mine, and this will impact on their mental wellness.

6.12. Some of these landholders residences are within 250m and 450m of the rail spur, 2.2km of the CHPP, and yet they are afforded nothing, other than a line on a map that provides a number, that has been generated from a model, that has a degree of discretion regards inputs, that WHC promises not to exceed. There is no margin for error, yet the evidence shows consistent error. We refer the IPC to part 15 of this submission and ask the IPC to look at the compliance history of WHC with regards to noise. While clearly it is the responsibility of a proponent to comply with conditions, it is equally the responsibility of a consent authority to impose reasonable conditions, that will not cause harm to those the conditions are in fact designed to protect.

6.13. We note the landholders to the north west of the Maules Creek mine were placed in a similar position by the Department and the then Planning Assessment Commission (PAC). Prior to approval being granted, WHC and the Department insisted that the landholders in the north west corner of the mine would not be impacted. That WHC

⁴⁴ Clause 12AB State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007 & Section 4.15 EPA Act

would manage its noise and dust emissions and the modelling suggested all was just within the acceptable ranges of pollution, according to the relevant policies at the time. The then PAC had some concern and placed some limits for noise and dust on some properties and another was granted voluntary acquisition rights. It turned out to be an eight-year, long nightmare for some of those landholders, subjected to significant noise, dust and blast events. For some it became a full-time job dealing with non-compliance, years of monitoring and compliance action and regulatory engagement. Most of the landholders in north west of Maules Creek have now been bought out by WHC. We urge you to reread Mr Leitch's submission to the first public hearing of this proposal to get just one first-hand account.⁴⁵ We note that, WHC has purchased properties up to 9kms from the Maules Creek Mine, because of the impacts that its operations are having on its neighbours.

6.14. There is no doubt that the landholders in the south west of the proposed Vickery mine will be significantly and unfairly impacted. This amounts to a serious social impact on the community. WHC and the Department, have determined to blinker themselves from this fact, based on modelling, policies, non-discretionary standards and assertions that are not reasonably applied in these circumstances. Models are and can be flawed and it is unreasonable to accept promises from mining companies to stay within noise and dust limits in circumstances like this – where there is no margin for error.⁴⁶ Most importantly they do not eclipse the IPCs legal task of assessing and evaluating these impacts properly, in the context of the direct and social impacts of the proposed new mine on the community within such close proximity, in reaching its final determination.

6.15. In the, hopefully, unlikely event that the IPC considers approving the new Vickery Coal Mine, it must not do unless:

- a) all of the holders of lands identified (in green) above have a negotiated agreement in place with WHC; and
- b) WHC is required to undertake real time noise and dust monitoring that the landholders (identified in green above) can access at any given time. As one of our members said – If I get woken up at 3am in the morning it's only fair that I should be able to log on and look to see if the noise I am experiencing is considered reasonable or not; and
- c) If noise and dust limits are exceeded according to the holders of the lands identified in green above, the landholders ought to be able to request remedies including through mediation for mitigation and voluntary acquisition and the burden of proving the exceedances should not be carried by the landholder, like with burden on bore production loss, the burden ought to be on WHC to disprove the exceedances. If this requires noise and dust monitors at each of the residences on the lands identified in green on the map above, then that ought to be required of WHC.

⁴⁵ Leitch, L, Submission to IPC Hearing for Vickery Extension Project, 4 February
<https://www.ipcn.nsw.gov.au/resources/pac/media/files/pac/projects/2018/11/vickery-extension-project/comments-and-presentations-received-before-12th-february-2019/lochie-leitch.pdf>

⁴⁶ In this regard we ask the IPC to look seriously at the Sound Power Level commitments, and the evidence that shows that the sort of commitments made for the proposed Vickery mine regarding noise, are simply not possible.

7 Social Impacts and Narrabri Shire Council Objection

7.1 It is rare that a Local Government Authority objects to a proposed State significant development in its Local Government Area (LGA). This really only happens when that Authority has engaged fulsomely with the proposal and its community and determines that the development poses a threat to what is in the best interests and long-term strategic vision of its LGA. Concerned for the community that it represents, and after rigorous community consultation, NSC has objected to the proposed Vickery Mine and continues to object on the grounds of its comprehensive analysis of the direct and indirect economic and social impacts and its lived day to day experience of mining as it is currently playing out in the locality. NSC contends that in consideration of all of the merits presented, the proposed Vickery coal mine is not in the public interest.

7.2 NSC's analysis⁴⁷ (not repeated here) highlights that the social impact assessment and employment data presented by WHC does not provide a reliable basis upon which to conclude the positive social and economic impacts claimed.

7.3 According to WHC its proposed Vickery mine will lead to some 450 jobs. While every job in our region is important, as indicated above, it amounts to around 1.25% increase in job availability, that's assuming that number is correct. As NSC points out there is no translation of these jobs to our community, of Boggabri or Narrabri, the main communities of impact. As Mr Henderson pointed out in his submission, the occupations, as is the case with these projects, will be skilled jobs of which there is not an excess of supply in our region.⁴⁸ Even if these jobs are realised, they will come at the expense of existing and potentially longer term, more sustainable jobs, such as in agriculture, including those of some of our members. This is not in the best social or economic interests of our region, or the public interest.

7.4 NSC concludes that:

In terms of intra-generational equity:

- *The majority of the economic benefits will go to the mining company and its shareholders*
- *There is no certainty that employees will live locally and as such it is unlikely that the stated local economic benefits through local employment and local spending will be realised*
- *The development will result in increased competition for water, including through auction during drought times. It is reported that farmers are being substantially outbid by mining companies for temporary water by paying up to \$950/ML as opposed to \$110-\$130/ML and paying up to two [times] the usual rate for permanent supplies which the farmers cannot afford to pay.⁴⁹*

⁴⁷ Narrabri Shire Council, to IPC, Letter of Objection – SSD 7480 – Vickery Mine Extension, 2 March 2020 <https://www.ipcn.nsw.gov.au/resources/pac/media/files/pac/projects/2018/11/vickery-extension-project/correspondence-after-final-issues-report/200306ind-boycenarrabri-shire-councilredacted.pdf>

⁴⁸ Henderson, R, Economic and Financial Consultant, Submission to the IPC, Vickery Extension Project, <https://www.ipcn.nsw.gov.au/resources/pac/media/files/pac/projects/2020/03/vickery-extension-project/comments/200621-r-henderson.pdf> , p 2

⁴⁹ ABC News, Controversial Maules Creek coal mine under investigation again over water use, 5 November 2019, <https://www.abc.net.au/news/2019-11-05/maules-creek-coal-mine-under-investigation-again-over-water-use/11658718>

- *The environmental and social externalities of the development will be borne by the local community with little benefit being experienced by the local community.*
- *Any local benefits that may be realised as a result of the construction and operation of the mine will be short term and limited to the operational period of the mine.*
- *Whilst the mine is closest to Boggabri, in the Narrabri Shire, the proponent has offered a VPA to Narrabri Shire that is only one quarter of the value of what was offered to the adjacent Gunnedah Shire Council.*

In terms of inter-generational equity:

- *The proposed development will result in a loss of agricultural land post development.*
- *The proposal has the potential to deprive farming interests of their ability to pass on their interests to subsequent generations who are also likely to contribute to the future economic growth of the Narrabri LGA, despite the impacts of the technological disruption on agriculture.*

7.5 NSC provides an accurate summary of how we read all of the material presented concerning the social and economic impacts of the proposed mine as they apply to the communities of impact, Boggabri and Narrabri. We also find it quite disturbing that the Department seems to have dismissed NSC's objection and nowhere can we find any genuine or satisfactory engagement with the fundamental matters that it raises. Given NSC's unique position and lens on its community and local environment, its community consultation and its strategic focus on the future of our region, its evidence and objection ought to be given substantial weight.

7.6 What the BFCG adds and implores the IPC to understand is that NSC's objection is not speculative nor academic. As part of the farming community of Boggabri, we are already experiencing many of the inequities discussed by NSC as a consequence of the existing mines and as a result of this proposal dominating our daily lives for some 6 years. We have no doubt that *if* any positive social and economic impacts are realised as a result of this proposed mine, they will derive at the significant expense of other valuable aspects of our community.

7.7 Essentially, we are, and we represent, those people referred to by NSC in its objection, by Chief Judge Preston in the Rocky Hill case, in the Department's Social Assessment Guidelines and elsewhere in social impact assessments. We are the people who make up the remainder of the existing and likely to be displaced community, that currently give real and positive meaning to the terms, 'way of life and social cohesion'.⁵⁰ We are the people who also give positive meaning to the terms 'sense of place...cultural and historic connections, and feelings of belonging and attachment to place'.⁵¹ We are those people and represent those people in the

⁵⁰ Narrabri Shire Council, Letter of Objection – SSD 7480 – Vickery Mine Extension, 2 March 2020, citing GRL case paragraph [270]

<https://www.ipcn.nsw.gov.au/resources/pac/media/files/pac/projects/2018/11/vickery-extension-project/correspondence-after-final-issues-report/200306ind-boycenarrabri-shire-councilredacted.pdf>

⁵¹ Narrabri Shire Council, Letter of Objection – SSD 7480 – Vickery Mine Extension, 2 March 2020, citing GRL case paragraph [312]

<https://www.ipcn.nsw.gov.au/resources/pac/media/files/pac/projects/2018/11/vickery-extension-project/correspondence-after-final-issues-report/200306ind-boycenarrabri-shire-councilredacted.pdf>

context of this proposed mine, its assessment and its determination. Yet in substantive terms we are being ignored by the WHC and in turn, Department.

7.8 The proposed Vickery Mine will impact specifically on our lands. We *live* and *work* on our lands. Our lands are our homes, our workplaces and the source of our livelihoods. They are the places that define us and connect us to each other and our community. They are the places from which we are valued economic agricultural producers and we would very much like to think that we can continue to be such.

7.9 Many of us are seriously considering the viability of remaining on our farm lands and continuing our family agricultural businesses. Large doubt exists for many of us, we continue to dwell in the balance, in the hope that the proposed mine will not be approved.⁵² One of our members has two young adult children who have recently returned from University where they studied Agriculture, to take over the farm with the hope they will both get to continue to build that family agricultural enterprise and build their own lives here in Boggabri, like many others.

7.10 The proposed Vickery mine will be the death knell of the Boggabri that was, the Boggabri that is (albeit - in the balance) and the Boggabri that could be. As NSC submits, any benefits that may flow, will not flow to our community, the community of impact, rather they will be at the expense of our community. And we ask the IPC, please don't for a moment accept the divisive Gunnedah growth spiel – which ultimately seeks to argue Gunnedah's growth from mining is worth the death of Boggabri and the harm to Narrabri. You heard from Gunnedah Shire Councillor Gae Swain at the Public Hearing, Gunnedah is doing really well right now, the shops are all full and you can't get a carpark in town. It is the fact, that the proposed new Vickery coal mine is not needed for Gunnedah's economic wellbeing.

7.11 During the Public Hearing the IPC was presented with real evidence from the community of impact that it is already experiencing saturation from mining. The Narrabri Council Mayor's testimony on behalf of her community is very significant.

7.12 There is currently not a healthy co-existence between mining and agriculture to be seen in the local environment and community, of Boggabri and Narrabri. There is a co-existence of sorts, but it is hanging in the balance. Existing mines have already bought out more than 90 farms in the district. You have heard that WHC owns some 61,000 hectares and nearly 500 freehold land titles. It is a live question for the IPC in its determination, will Boggabri be another rural town that is sacrificed in the coal industry's wake.

⁵² Some of our members live with the secondary and realistic hope, that if it is approved it will never be built, because the economics don't stack up, like with the existing approval, however, this has significant consequences on these landholders too. See paragraph 5.13 above.

7. Water

There is Not Enough Water, The Impacts on Water Resources have not been properly assessed, The Impacts on Water Resources and Existing Water Users will be too Significant in a Highly Constrained Water Resource Area

7.1. The impacts the proposed Vickery mine will have on the water resources of the area remain, in important regards, unassessed and are likely to be of such significance, the proposed mine should not be approved on this basis. We think this raises substantive legal issues for the IPC that cannot reasonably be dealt with post approval.

Water Balance

7.2. NSW has just experienced one of the worst droughts on record. Boggabri has experienced its lowest consecutive rainfall over the past three years since at least 1900.

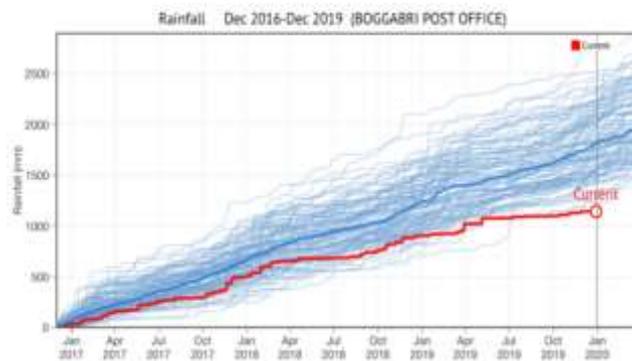


Figure 1: Cumulative rainfall for Boggabri Post Office over a 36 month period since 1900. Source: Australian CliMate app.

- 7.3. Accompanying reduced rainfall, are increased temperatures and increased pan evaporation. As a consequence of climate change, droughts are likely to become more frequent and more intense.
- 7.4. The site water balance provided in the proposed Vickery mine EIS and subsequently submitted material for the proposed mine fails to consider these conditions realistically when forecasting the water requirements for the proposed Vickery mine. It uses 98 climate sequences of 26 years, which date back to 1893, to produce a range of probability graphs and tables which are used to present the case that the mines external water demands will not exceed current water licenses held for the Vickery Project.
- 7.5. This approach to assessing water demands is misleading as it fails to recognise the correlation between increased mine water demands, increased evaporation, reduced inflows and low or zero river allocations that commonly occur under drought conditions. 7 August 2020 will mark 3 years of consecutive zero AWD for general security licenses in the Namoi River. Water NSW's Annual Operations Plan for the Namoi stipulates that over the average allocation over the last 10 years for the Lower Namoi Regulated River

water source is 41%.⁵³ The proposed Vickery mine site water balance incorrectly assumes that the river allocation or AWD will be 76% or 0.76 every year as this is the long-term average. This fails to consider worst case scenario - one that seems to be increasingly common over current times.

7.6. The model used in the EIS is unable to accurately consider the recent drought in its predicted mine water balance. Because it uses climate sequences of 26 concurrent years, the drought from 2017 onwards, will be at the end of the mine lifespan when production is ramping down and groundwater inflows from intercepted aquifers through mining will likely account for a higher proportion of mine water requirements.

7.7. The Department in its Assessment Report states:

*The Department acknowledges that 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.*⁵⁴

7.8. It is reasonable to conclude that the recent drought coinciding with the early years of the mine life, would result in a scenario of extreme water deficit for the mine, a scenario that the site water balance model would not be able to assess.

7.9. We refer to the meeting the IPC had with WHC on 18 June 2020, where WHC's CEO Mr Flynn stated:

The site water balance modelling of the project has considered the full range of conditions, including periods where no water is available in the Namoi River, and the model has been updated to include 2018 and 2019 rainfall conditions, so the range of data considered now is actually 1889 to 2019.

7.10. We now see that this is referring to material that WHC has commissioned Advisian to undertake, at this very late stage in the project assessment. This supplementary work – the *re-run of the site water balance* appeared on the IPC website on 6 July 2020 attached to a letter to the IPC from WHC dated 29 June 2020.⁵⁵ This updated site water balance appears to be directly responsive to detailed work undertaken by the community that highlighted the significant shortfalls in WHC water balance and DPIE Waters concerns, which was ultimately accepted by the Department.

7.11. The supplementary information presented is significant. Finally, so late in the process, WHC has conceded that the water balance that it has been insisting is adequate, is not at all adequate. In summary, that position included that the maximum water WHC would need to access from the zone 4 borefield was 390ML, then it suggested to be conservative it may need 600ML and now we read the borefield is being modelling to squeeze some 2190 ML, and that even on such extraction, without adequately

⁵³ Water NSW's Annual Operations Plan Namoi Valley 2019-20
https://www.watersnsw.com.au/_data/assets/pdf_file/0020/150923/Namoi-Annual-Operations-Plan-Water-Year-2019-20.pdf

⁵⁴ Department's Assessment Report Paragraph [180]

⁵⁵ WHC, Vickery Extension Project Updated Site Water Balance (Advisian, 2020) 29 June 2020
https://www.ipcn.nsw.gov.au/resources/pac/media/files/pac/projects/2020/03/vickery-extension-project/correspondence/applicant/200629-in-applicant-re-response-to-commission_redacted.pdf

assessing the impacts of such, that is not enough to service the proposed mines needs.

- 7.12. In relation to the additional rainfall analysis, presented in the supplementary material, the input of the recent extreme drought period it is of limited value when the model is limited to retrospective averaging. As is the same case for the averaging analysis provided in relation to the Namoi River AWDs – it edges on fallacy to assume or suggest that *water would typically be available from the Namoi River to meet operational demands*, considering the actual (zero allocation for the past 3 years and 41% allocation averaged over the past 10 years) and trending Namoi River AWDs.
- 7.13. The re-run of the site water balance refers to the water saving initiatives that were employed by WHC at its Tarawonga mine operations during the recent drought of 2018 and 2019. While superficially this displays some water saving results in graphs, as to be expected – the fact remains during the drought conditions referred to, WHC applied to modify its Tarawonga consent to enable increased water transfer and the evidence on the ground was WHC desperately scrambling for water for both of its mining operations, to a perverse extent, as the IPC heard during the Public Hearing, to the extent that it made people in the community who had to witness it, feel sick.
- 7.14. Also, we see again in the supplementary material the insistence of the capacity of WHCs currently held WALs to supply the proposed Vickery mine, repeating this claim from the EIS. However, these WALs presented are the same WALs that we refer to below, that have in fact been transferred to the Maules Creek mine, even though they are claimed to be dedicated to Vickery, not other mines.
- 7.15. That said, we are of the view that *the re-run of the site water balance* is somewhat useful and provides some transparency to the continuing problems that the water balance holds and should sound as a significant warning to the IPC.
- 7.16. To this extent we firmly believe that a comparative analysis of existing mine operations is valuable for the IPC to better understand the realities of the water balance problems and it provides some contextual understanding of how water balance plays out in practice in the community and the environment. Particularly in this highly constrained water resource region. We provide such comparative analysis shortly, below.
- 7.17. Both of WHCs locally operational coal mines have submitted modifications in the past 12 months to supply mine with externally sourced water. The smaller Tarawonga mine, which does not have an on-site washery, initially applied to cart water by road from the Vickery site, then submitted a modification to install a pipeline. The nearby Maules Creek Coal mine has been scrambling for water recently, with the purchase of new properties and water rights, haulage of water by road trains and rushed installation of pipelines to deliver inter-zone transfer of groundwater. This is despite Maules Creek Coal Mine holding a high security entitlement on the Namoi river of some 3000ML in comparison to Vickery's 50ML, and at least 824ML of Upper Namoi Alluvial groundwater allocation compared to Vickery's 396ML (much of which has been transferred to Maules Ck for the past two water years, Figure 2).

90ALB06844 - WAL No. 12651	UPPER NAMOI ZONE 4 NAMOI VALLEY (KEEPIT DAM TO GIN'S LEAP) GROUNDWATER SOURCE	AQUIFER	90AL807011 - WAL No. 1271B	UPPER NAMOI ZONE 4 NAMOI VALLEY (KEEPIT DAM TO GIN'S LEAP) GROUNDWATER SOURCE	AQUIFER	SWC783687	14-Nov- 2019	70.0	\$0.00
90ALB06844 - WAL No. 12651	UPPER NAMOI ZONE 4 NAMOI VALLEY (KEEPIT DAM TO GIN'S LEAP) GROUNDWATER SOURCE	AQUIFER	90AL807021 - WAL No. 12722	UPPER NAMOI ZONE 4 NAMOI VALLEY (KEEPIT DAM TO GIN'S LEAP) GROUNDWATER SOURCE	AQUIFER	SWC778076	30-Jun- 2019	52.0	\$0.00
90ALB06849 - WAL No. 12653	UPPER NAMOI ZONE 4 NAMOI VALLEY (KEEPIT DAM TO GIN'S LEAP) GROUNDWATER SOURCE	AQUIFER	90ALB36245 - WAL No. 4247B	UPPER NAMOI ZONE 4 NAMOI VALLEY (KEEPIT DAM TO GIN'S LEAP) GROUNDWATER SOURCE	AQUIFER	SWC783688	14-Nov- 2019	266.0	\$0.00
90ALB06849 - WAL No. 12653	UPPER NAMOI ZONE 4 NAMOI VALLEY (KEEPIT DAM TO GIN'S LEAP) GROUNDWATER SOURCE	AQUIFER	90AL807021 - WAL No. 12722	UPPER NAMOI ZONE 4 NAMOI VALLEY (KEEPIT DAM TO GIN'S LEAP) GROUNDWATER SOURCE	AQUIFER	SWC777401	30-Jun- 2019	166.0	\$0.00

Figure 2: Recent transfers of Zone 4 groundwater licences that were identified for the Vickery Project

7.18. WHC has allocated 2145ML of groundwater and river licences to the proposed Vickery mine, (figure 3), of which only 396ML would be available in the 2019-20 water year, as there is zero allocation on the Namoi River. Of this 236ML has been traded to Maules Creek Coal Mine this year to keep up production there, leaving just 160ML for Vickery (figure 2).

7.19. This is in stark contradiction to information supplied by WHC to the Department. In its Response to Detailed Advice to the Department Regarding the Vickery Mine Extension, WHC claimed that:

Attachment 6 of the EIS provides WALs currently held by Whitehaven that are available for the Project. Note these WALs are not concurrently required with other Whitehaven operations.

This is clearly stated in Attachment 6 (pA6-3) (emphasis added):

*Details of the current water access licences (WALs) held by Whitehaven Coal Limited (Whitehaven) for the Project are summarised in Table A6-1 **WALs held for Whitehaven's other operations are not included.***

7.20. In its Assessment Report the Department appears to accept this (emphasis added):

*In its Submissions Report, Whitehaven has confirmed (in Attachment 6 of the EIS) that the licence allocations used in the water balance model are **applicable only to the Vickery Project.**⁵⁶*

⁵⁶ Department's Assessment Report, paragraph [169]

7.21. If these groundwater licenses are being used to supplement WHCs other mines during shortages, they are obviously not “applicable only to the Vickery Project”.

WAL No	Works Approval	Groundwater/River	Allocation (Shares)
WAL 12645	90CA806830, 90CA806981, 90WA807004	Groundwater	35
WAL 12651	90CA806845	Groundwater	52
WAL 12653	90CA806850	Groundwater	166
WAL 12701	90CA806971	Groundwater	20
WAL 12715	90CA806981, 90WA807004	Groundwater	75
WAL 12724	90CA806981, 90WA807004	Groundwater	45
WAL 12731	90CA807045	Groundwater	3
Sub-total: Groundwater			396
WAL 2682	90WA804771, 90CA802036	River - General Security	486
WAL 13051	90CA802398	River - General Security	96
WAL 14936	90WA801821	River - General Security	1,056
Sub-total: River - General Security			1,638
WAL 16034	90WA801821	River - High Security	50
Sub-total: River - High Security			50
WAL 2683	90WA804771, 90CA802036	River - Supplementary	53
WAL 13052	90CA802398	River - Supplementary	10.5
Sub-total: River - Supplementary			63.5
TOTAL:			2,147.5

Figure 3. Existing water licenses dedicated to the Vickery Extension Project. (Vickery EIS)

7.22. Instead of relying on WHCs forecasts, which we believe are not best practice for reliability, actual water demand for the Vickery project may be more accurately forecast by using projected required volumes for the nearby Boggabri Coal Mine. These forecasts are based on an actual working mine under the current climatic conditions.

Table 4-13 Predicted Water Demand

	Dust suppression (haul roads)	CHPP	MIA and Potable water
Period	Jan 2017 to 2033	Jan 2017 to 2033	Jan 2017 to 2033
Demand	1460 ML/yr	1460 ML/yr	365 ML/yr

Figure 4. Predicted Water demand for Boggabri Coal -total 3285ML/year. Source Boggabri Coal Mine Annual Review, Pg. 55

7.23. From information supplied in their annual review, Boggabri Coal requires 3285ML (1460+1460+365) to produce 7 mtpa of Coal. On a pro rata basis this equates to 4693ML for Vickery’s peak production of 10 mtpa ROM coal. The Vickery Extension Project also plans to process up to 3mtpa of coal from other mines. The site water balance uses a figure of 120L/tonne to process coal through the CHPP. This equates to 360 ML to give a total water demand of 5053ML.

7.24. One of our members, Mr Dave Watt, presented this information to the Department. In a letter published as appendix G6-8 of the Department’s Assessment Report, the then WHC Project Manager stated that:

The extrapolation of predicted water demand from the Boggabri Coal Mine to the Project site water demands is not considered to be relevant, including for the following reasons:

- a. It is unclear what climate scenario the predicted Boggabri Coal Mine demands are based on.*
- b. The Project site water demand will vary each year due to climatic conditions.*
- c. The Project would not produce 10 Mtpa of ROM coal during each year of operation.*
- d. An increase in ROM coal production from 7 Mtpa to 10 Mtpa does not equate to an comparable increase in water requirements for dust suppression.*

7.25. In response to this we now say:

- a. This is true. However as this is the only locally operating mine that has not had to seek additional external water and apply for project modifications to secure additional supply during the current drought, the climate scenario it is based should be considered more accurate than the applicants.
- b. In this example we are only looking at 1 year (2019) to demonstrate the external water demand is much higher than predicted.
- c. Again, we are only looking at a 1 year scenario. It is absolutely reasonable to consider that an extreme drought will coincide with peak production.
- d. It is a fair assumption that as production and mine area increase, so too will water demands, ie. increased road surface area, increased coal washed.

7.26. We believe that a comparative analysis continues to be useful in the circumstances, namely, WHCs consistent position that it has enough water for the proposed mine, the Departments view that it does not and WHCs very late concession that it does not in fact have enough water for the proposed mine and the very late supplementary work of Advisian, commissioned by WHC.

7.27. Scenario 1.

Vickery is approved and running at full production with the current climatic conditions of 2019 using water demands based on Boggabri Coals forecasts.

235mm rainfall Boggabri Post office (SILO) 1/1/19 – 1/1/20

175ML allowable harvestable right from non-pit surface flows.

519ML pit rainfall capture (221ha x 235mm rainfall) a.

518ML pit groundwater inflows (1.42ML/day x 365 days) b.

Total 1212ML of inflows

Therefore, based of Boggabri Coal's predicted water demand:

Total water demand:	5053ML
Total Inflows:	1212ML
Leaving a deficit of:	3841ML

- a. 221ha is the maximum area of pit during life of mine, and assuming 100% runoff (no infiltration), ie. best case in terms of rainfall capture.
- b. 1.42ML/day is the maximum life of mine predicted pit inflows, ie. best case for water capture.

If we instead look at the water demand of Maules Creek Coal mine for the 2019 calendar year, taken from the mines annual review. (Figure 5.)

Table 13 Site Water Balance (Calendar Year 2019)

Aspect	Volume (ML)
Change in Storage	
Start of 2019	1,537
End of 2019 ²	454
Net Change in Storage	-1,083
Water Inflows	
Namoi River Pumping	275
MAC1496 Bore	73
Olivdene Bore	46
Brighton Bore	153
Roma Bore	230
BCM Bore	410
Rainfall & runoff ³	655
CHPP Water Recycling	2,392
In-pit Groundwater Seepage ⁴	233
Total Inflows	4,467
Water Outflows	
CHPP water use	3,428
Dust suppression	1,672
Evaporation from storages ⁵	395
Clearing / construction process water	55
Miscellaneous (wash-down bay, etc.)	-
Total Outflows	5,550
Water Balance (2019)	-1,083

¹ Volume for calendar year
² Includes recorded volumes in RWD2 and MWD1&2, as well as estimated volumes in sediment dams and pits.
³ Based on flow meter readings
⁴ Based on the calibrated MCCM water balance model, using site rainfall data
⁵ Based on the calibrated MCCM water balance model, using SILO datadrill evaporation data
⁶ Based on model calibration, operational observation & pumping meter records

Figure 5. Maules Creek Coal Mine 2019 Site Water Balance

Total Outflows for 2019 were 5550ML. To determine the total Demand, water recycled through the CHPP must be subtracted from this. This gives a total of 3158ML to produce 9.7mtpa of ROM coal (Maules Creek Coal Mine 2019 Annual Review). Adding 360ML for extra coal to be possessed through the CHPP gives a total demand of 3518ML.

7.28. Scenario 2.

Vickery is approved and running at full production with the current climatic conditions of 2019 using water demands based on Maules Creek Coal Mine 2019 reported figures.

235mm rainfall Boggabri Post office (SILO) 1/1/19 – 1/1/20

175ML allowable harvestable right from non-pit surface flows.

519ML pit rainfall capture (221ha x 235mm rainfall) a.

518ML pit groundwater inflows (1.42ML/day x 365 days) b.

Total 1212ML of inflows

Therefore, based on Maules Creek Coal Mines predicted water demand:

Total water demand: 3518ML

Total inflows: 1212ML

Leaving a deficit of: 2306ML

- a. 221ha is the maximum area of pit during life of mine, and assuming 100% runoff (no infiltration), ie. best case in terms of rainfall capture.
- b. 1.42ML/day is the maximum life of mine predicted pit inflows, ie. best case for water capture.

7.29. While there are models which can be used to estimate runoff (such as the AWBM used in the surface water assessment), for the expediency of this analysis we have allowed for 100 percent runoff. Also, losses due to evaporation and seepage have not been considered. If these were taken into account the deficit would be expected to be much larger. And in fact, WHCs supplementary material implies that the inflow under extreme dry conditions could be as low as 223ML.

7.30. Both scenarios are made under the assumption that there is no carry over water in storage or on the groundwater license after a similar deficit of 2791ML and no river allocations the previous year (Boggabri 2018 rainfall 368mm).

7.31. General security water allocation for the lower Namoi River is going on three years of zero allocation, in 2019 there wasn't even enough water in Lake Keepit to release water for a high security flow. Therefore in 2019 Upper Namoi Zone 4 groundwater was the only locally available water to the proposed Vickery mine. Under either of the above scenarios, 100% of the deficit would have to come from this water source. This is highly problematic and dealt with later in this part.

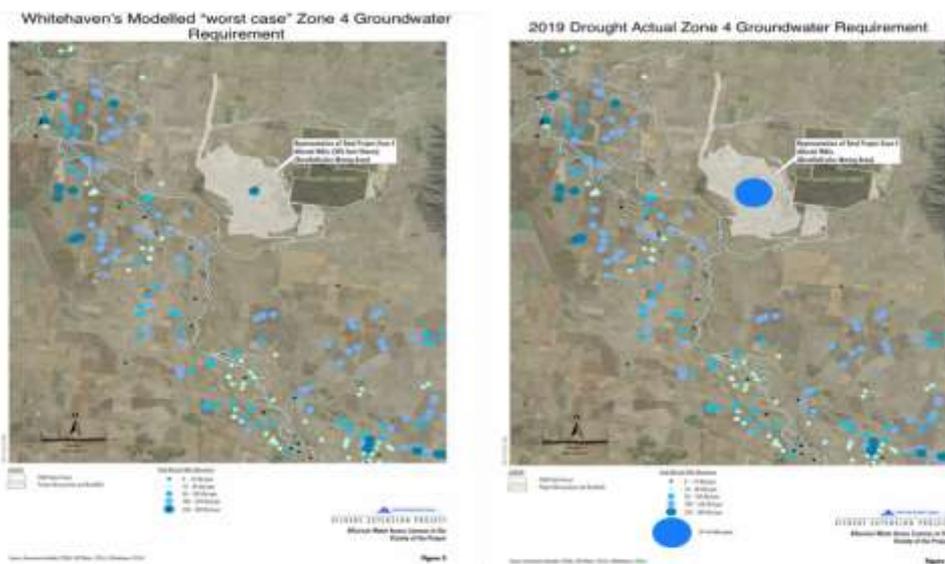


Figure 6. Visual Representation of EIS modelled Zone 4 Groundwater Requirements compared to actual requirements under scenario 1.

7.32. The Department in its Assessment Report states that:

Under the median rainfall scenario, the water balance assessment estimated that externally sourced water would be required for 18 of the 26 years of the mine life at an average of 889 ML/year, which would be adequately supplied by the available entitlements.⁵⁷

7.33. The Department, in concert with WHC, seems to be making the incorrect assumption that they will always have an allocation from the Namoi River that will supply this external demand. Even to supply this “average” demand, predicted under a “median” rainfall scenario will exceed the maximum annual extraction rate of 600ML/year which was modelled in the proposed Vickery mine EIS. Any extraction above this rate is untested, and volumes in the range of scenarios 1 and 2 calculated above, has significant consequences for the legality of the assessment of the proposed mine and significant impacts on the water resources and other water users.

7.34. The Department uses figure 13 (labelled figure 6 here) to illustrate that the project would have sufficient licence allocations to support the operation of the mine. Again, this fails to consider low or zero river allocation. Looking at year 4 in figure 6 and consider no availability of river water, then by these figures, approximately 1800ML would have to be sourced from Zone 4.⁵⁸

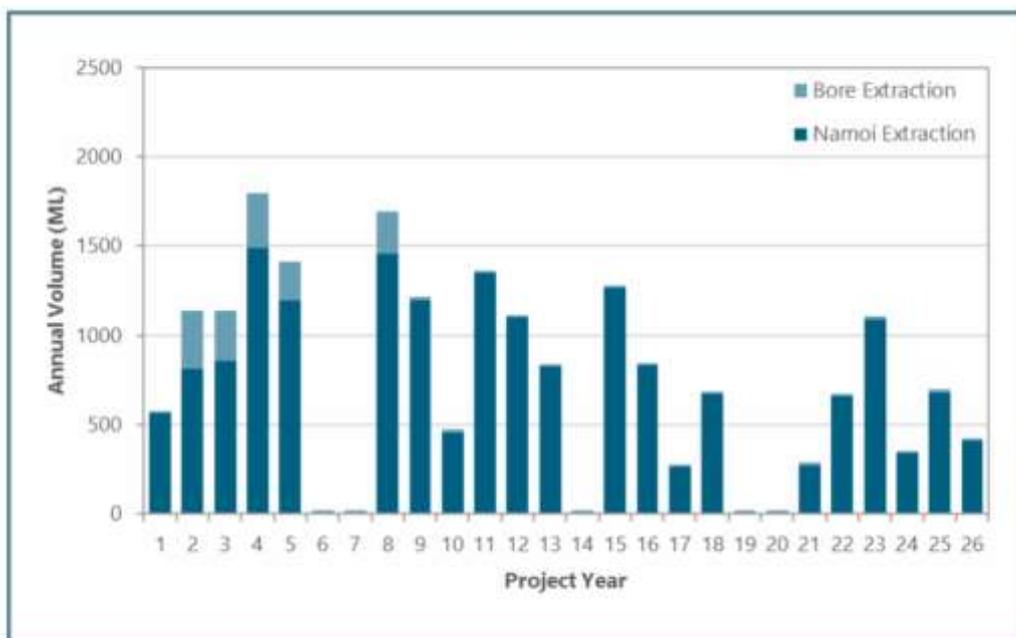


Figure 13 | Modelled external water supply requirements – dry rainfall

Figure 6. Graph provided in DPIE’s Assessment Report.

⁵⁷ Department’s Assessment Report, paragraph [172]

⁵⁸ Department’s Assessment Report, paragraph [173]

7.35. On the basis of all of the above, we submit that WHC’s water balance is significantly short. Which we now understand WHC concedes. What does this actually mean for the task at hand for the IPC. Primarily, it doesn’t mean what the Department has suggested – that it is merely *a commercial risk for Whitehaven*.

*... like any other significant water user in the State, access to adequate water supplies is a commercial risk for Whitehaven and would be regulated under the water sharing principles established under the WM Act. If Whitehaven is not able to secure enough water to meet its demands it may need to investigate additional water efficiency measures, or its operations may need to be reduced accordingly.*⁵⁹

7.36. DPIE Water correctly contended:

That the proponent needs to confirm that it has enough entitlement for the project including arranging for an impact assessment of the proposed bore field in Zone 4

7.37. WHC responded to this to the effect, *under the AIP we just need show during the planning assessment process that these licences **can be acquired** if development consent is granted.*⁶⁰

7.38. WHC is correct to the extent this is stated in the AIP. However, the AIP requires WHC to make an accurate prediction of the total amount of water that will be taken on an annual basis as a result of the proposed mine. Properly interpreted, this is the basis upon which to understand whether a proponent is able to hold sufficient water entitlements and for a **determining authority** to be able to **properly assess the impact of such**.

7.39. As shown, WHC has not provided an accurate prediction of the total water that would be required, and taken on an annual basis, and it is only very recently, as we can now see, as late as 18 June 2020, that WHC has admitted that it does not hold enough entitlements to meet its proposed mine demands.

7.40. While the AIP provides, *...One way to cover ... shortfall would be to enter the temporary water trading market and purchase water allocations credited to other licences, it requires that [t]he costs **and ability to undertake this sort of trade (ie, the market depth) will need to be understood ... [and] the effect that activation of existing entitlement may have on future available water determinations for the proposed licence category and entitlement volume...must be considered.***⁶¹

7.41. The proper interpretation of the AIP to be applied by the IPC is that it provides for shortfall contingencies only on the basis that **an accurate prediction of the total amount of water has been provided and the market depth** in relation to short fall contingency **is properly understood**.

⁵⁹ Department’s Assessment Report, paragraph [187]

⁶⁰ WHC, Vickery Extension Project – Response to Detailed Advice to DPIE Planning and Assessment Regarding the Vickery Mine Extension
<https://majorprojects.planningportal.nsw.gov.au/prweb/PRRestService/mp/01/getContent?AttachRef=SSD-7480%2120200520T065611.147%20GMT>

⁶¹ Department of Primary Industries Office of Water, NSW Aquifer Interference Policy, p8

7.42. We are very concerned about what WHC's CEO, Mr Flynn's said to the IPC on 18 June 2020, where he admitted that Whitehaven doesn't have enough water and will need to *rely on licensed groundwater extraction to meet its water demands, and additional licence may need to be acquired on the open market.* We now understand this is in reliance on the supplementary work undertaken by Advisian.

7.43. Mr Flynn then explained that:

Government records show that between 5000 and 7000 megalitres of zone 4 alluvial groundwater licences were traded in the market in financial years 2019 and 2020. This is significantly greater than the maximum water demand for the project. This trading record and our experience from our other operations shows there's significant depth to the market and that licences can be obtained as required.

The groundwater models have also assessed extraction from the project borefield at a rate exceeding 2000 megalitres in a single year. The rate of extraction is predicted to comply with the aquifer interference policy and the requirements of the watersharing plan.

7.44. The assertion that the proposed borefield has been modelled on an extraction rate of 2000ML per year is controversial for the following reasons:

- Firstly, we have not seen any water balance modelling that assesses this rate of extraction, it is not contained in the Advisian supplementary material;
- Secondly, it is likely to have much greater impacts on the alluvium in relation to predicted draw down, including that it is likely to exceed the 2m drawdown minimal impact criteria of the AIP (at 600ML/year one bore is already predicted to drop by more than 15m) – we deal with this in more detail below; and
- Thirdly, it is likely to exceed the minimal impact criteria of the AIP in relation to Groundwater Dependant Ecosystems. As identified in the submission to the IPC by Dr Matthew Currell; and
- Fourthly, it is likely to impact on the bores used to supply Boggabri township; and
- Fifthly, it is likely to significantly the impact on the surrounding agricultural industry; and
- Sixthly, and fundamentally, the Water Sharing Plan wholly prohibits extraction of anything over 600ML/yr per square kilometre.⁶² In this regard we note from *the re-run of the site water balance*, by Advisian, that for the purpose of the water re-run water balance exercise, WHC may be planning to stretch the use of the bores in the zone 4 borefield so that they are not within a square kilometre of each other. But frankly, it is very difficult for anyone genuinely trying to ascertain, given the lack of actual transparency and cannot be relied upon.

7.45. Compounding the seriousness of this late re-run of the water balance, is the misleading reference to the market depth in the zone 4 alluvial groundwater market. It is the fact that the trades within zone 4 to which Mr Flynn and Advisian refers are mostly inhouse peppercorn trades, between the same businesses trading over property holdings and the trades of value are long term trades between farm

⁶² Clause 47(2)(b) *Water Sharing Plan for the Upper and Lower Namoi Groundwater Sources 2019* and Clause 45(2)(b) *Water Sharing Plan for the Upper and Lower Namoi Groundwater Sources 2003*, where any dealing is limited to 600 ML/yr per square kilometre

businesses.

- 7.46. As players in this water market we submit that Mr Flynn's and Advisian's assertions that suggest that there is depth in the market, and all that connotes around water availability and security for the proposed Vickery mine is misleading and unreliable.
- 7.47. To the best of our knowledge, in zone 4, for the 2019/20 water year: 6084 ML was transferred, 2749 ML was for \$0; 1650 ML was traded by WHC (this figure could be higher), which leaves just 1685ML actually traded, some of which we suggest are long term agreements between farmer, meaning this is not water available on the open market.
- 7.48. If the IPC has any doubt about this, we strongly suggest that it call a water broker to verify how this market has actually worked during the period. Particularly given market depth is required to be understood under the AIP.
- 7.49. Even if there is some scope in the market, - we note that the average licence entitlement in zone 4 is 127ML. For WHC to procure the sort of deficit we calculate, it would have to obtain somewhere in the order of 20-30 of these licences. That is up to 30 farmers who would have to sell their water from their farms or more likely their farms as a whole, as detaching water from an irrigation farm drastically reduces the value of the land, so they are unlikely to do so. Even in the unlikely event that some of this water became available it is a serious matter for the IPC that this water would be taken from the State's agricultural production.
- 7.50. This is a fundamental part of the impact of the proposed Vickery mine on water resources that remains unassessed. The IPC can't reasonably let this significant impact remain unassessed it is required to be assessed under the AIP and under s4.15 of the EPA Act, it is an impact of the proposed mine.
- 7.51. To leave this impact unassessed, and characterise it as a commercial risk for WHC, as the Department and WHC suggest, is not just legally risky – it would lead to further state-imposed land use conflict of a dangerous nature.
- 7.52. The evidence of this is what has already been experienced in relation to WHCs Maules Creek operations. The IPC heard, at the Public Hearing, from the community what happens when WHC's mining operations water demand is higher than its held legal entitlements, frankly, it becomes a war zone. It is not simply a matter of WHC not having enough water, the context within which this happens needs to be understood and considered. It happens during drought, when the whole community and the entire environment is under incredible stress. Against this backdrop we experienced WHC perversely inflating the water market, out bidding farmers for the little supplementary available during such times, leaving them out to dry when they can least afford it, over-night acquisitions of entire farms to get access to existing bores and entitlements, bulk water haulage by road trains and then digging up public roads and hillsides to lay entire pipeline networks, without prior approval to deliver the inter-zone transfer of groundwater. As one member of the community described to the IPC, it made you feel sick.
- 7.53. It would be incomplete to not mention the fact, that while WHC was playing out its Maules Creek Mine water supply nightmare in front of us last year, it was under

investigation for serious breaches of our water laws and now it is being prosecuted for alleged water theft at its Maules Creek mine. This State enabled conflict in our community is dangerous and it is causing further mistrust of Government and the State at a time when we desperately need to be building trust and resilience in our State based systems, particularly in relation to natural resources and rural communities, so that we can be best placed to deal with the challenges ahead of us all here on the land. Treating WHCs water woes and shortages as a commercial matter for WHC in the face of what we know and what we have experienced to date would be reckless to say the least. We do not think it would be reasonable to inflict more of this State enabled conflict on our community and not in relation to our region's most precious resource, water.

- 7.54. As a final matter on this point, proposed condition B39 is an unreasonable approach to the deficit in the water balance, and in our view presents reckless disregard for the circumstances. We have seen above what actually happens when WHC runs out of available water, it does not scale back, it scales up its efforts to acquire water. If this first method of response to water shortage is exhausted and some form of scaling back operations is forced to take place, the conditions within which this would take place, as explained, are dire for the community and the environment, like the conditions of 2019. We are no longer talking about such conditions as possible, they are likely. To suggest that scaling back production and putting employees out of work under such conditions as a response, is unreasonable and irresponsible in the circumstances. It is also unfair on the agricultural community and others who rely on, and are trying to protect the water resources of the area, it creates conflict and tension through the imposition of the competition for the resource in our community. It sets up a three way lose for the mine workers, the community and the precious resource. The condition merely serves as a justification to approve the project, and does not adequately address the peak water demands under the increasing likelihood of more extreme droughts and longer dry periods. It is a cruel condition to impose upon on our community as a substitute for real consideration of any water deficit in the water balance for this proposed Vickery mine.

Bore Drawdown in Breach of the Aquifer Interference Policy

- 7.55. The maximum allowable drawdown for both the Namoi Alluvium and the Maules Creek Formation is 2 metres. Yet *[f]our mine-owned bores are predicted to experience drawdown greater than 2 m, all of which are to the south of Driggle Driggle Creek and all but one within the Maules Creek Formation, including the bore to experience the greatest drawdown.*⁶³
- 7.56. The Department in its Assessment Report does not draw attention to the fact that the bore it refers to that is predicted to experience the greatest drawdown is to the extent of 15.62 metres.⁶⁴

⁶³ Department's Assessment Report, paragraph [265]

⁶⁴ Whitehaven Coal, Vickery Extension Project, EIS, Appendix A, HydroSimulations, Vickery Groundwater Assessment Predicted Groundwater Drawdown at Bores Appendix F p189
<https://majorprojects.planningportal.nsw.gov.au/prweb/PRRestService/mp/01/getContent?AttachRef=SSD-7480%2120190303T213423.516%20GMT>

APPENDIX F – PREDICTED GROUNDWATER DRAWDOWN AT BORES

Predicted Groundwater Drawdown at Whitehaven Owned Bores (or Bores on Properties Under Option Agreement with Whitehaven)

Bore Census ID	Predicted Maximum Ground-water Drawdown (m)	Year of Maximum Predicted Drawdown	Year of Predicted 0.2m Drawdown	Year of Predicted 2m Drawdown	Year of Predicted 5m Drawdown
BM1	<0.2	2115	n/a	n/a	n/a
BM2	<0.2	2145	n/a	n/a	n/a
BM3	<0.2	2119	n/a	n/a	n/a
BM4	<0.2	2081	n/a	n/a	n/a
BM5	<0.2	2084	n/a	n/a	n/a
BK1	<0.2	2145	n/a	n/a	n/a
BK2	0.98	2145	2031	n/a	n/a
BG1	<0.2	2119	n/a	n/a	n/a
BG2	<0.2	2119	n/a	n/a	n/a
BG3	2.88	2038	2023	2028	n/a
BK1	2.62	2145	2044	2100	n/a
WL1	15.62	2145	2028	2037	2051
CD1	<0.2	2123	n/a	n/a	n/a
CD2	<0.2	2119	n/a	n/a	n/a
CD3	<0.2	2119	n/a	n/a	n/a
CD4	<0.2	2119	n/a	n/a	n/a
WG1	4.08	2145	2031	2073	n/a
BW1	<0.2	2142	n/a	n/a	n/a
BW2	<0.2	2145	n/a	n/a	n/a

7.57. The Department has not applied the AIP properly, by suggesting that it only applies to privately owned bores. The IPC in its determination of the Bylong Coal Mine held that *[t]he Commission considers the AIP applies to both privately-owned land and mine-owned land.*⁶⁵

7.58. All things considered, including the analysis of the water balance above, it seems to us that there is a prima facie case that the AIP minimal impact criteria is likely to be exceeded in relation to 2m drawdown and in relation to Groundwater Dependent Ecosystems – we refer to Dr Matthew Currell’s submissions in this regard.

7.59. Further assessment is required for the IPC to properly assess and evaluate the impacts the proposed new Vickery mine will have on our important ground water resources. Contrary to the Department’s recommendation we contend that the proposed Vickery mine is not legally approvable in this regard.

Groundwater Connectivity

7.60. The Department notes:

*A key issue for consideration raised by the Commission is the potential hydraulic connectivity between the Maules Creek Formation and Namoi River alluvium and concerns around the potential drawdown effects of mining in the Maules Creek Formation on the alluvial aquifer and the Namoi River.*⁶⁶

7.61. While the Department’s expert claims that the EIS has identified the distinctions between the alluvial and the fractured rock aquifers in terms of their characterisation and connectivity properties providing some understanding of the connectivity of the two, it is clear there is still an unacceptable degree of uncertainty.

⁶⁵ IPC, Statement of Reasons, Bylong Coal Project paragraph [243] p42
<https://www.ipcn.nsw.gov.au/resources/pac/media/files/pac/projects/2018/10/bylong-coal-project/determination/bylong-coal-project-ssd-6367--statement-of-reasons-for-decision.pdf>

⁶⁶ Department’s Assessment Report paragraph [243]

- 7.62. Rather than providing a proper foundation for understanding connectivity through proper analysis of groundwater monitoring data, more extensive analysis of modelling outputs, and as the IESC raised, further transient predictive model simulations to examine a greater range of variability in hydraulic conductivity and specific storage to better understand drawdown impacts, WHC simply claims that the risks of harm resulting from the uncertainty is minimised because mining is contained within the low permeability Maules Creek Formation.⁶⁷
- 7.63. This response is not commensurate to the level of uncertainty and the significant dependency of the broader community's reliance on good ground water quality and availability. We refer to the testimony of Dr Matt Currell, Associate Professor of Environmental Engineering, groundwater expert. He concludes *Connectivity between different geological units at the local scale (including possible heterogeneity) is not well characterized, meaning current estimates of changes in water levels in the Namoi Alluvium likely to occur during mining are uncertain.*⁶⁸
- 7.64. The entire community of Boggabri and its surrounds relies on ground water now and into the future. This issue has been open for WHC to address for many months and it remains unaddressed to any degree of satisfaction. As the IPC would note, it is Dr Currell's independent expert opinion, this is not a matter that could or should reasonably be relegated to post approval work.

8. Protection of the Alluvial Aquifer

- 8.1. Another of DPIE Water's concerns which remains at large pertains to the emplacement of out of pit spoil.⁶⁹ It states:

DPIE Water does not support emplacement of out of pit spoil on top of the alluvial aquifer associated with the Namoi Zone 4 alluvium groundwater source... And 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.

- 8.2. DPIE Water's objection is based on the very real assessment that the stockpile risks aquifer compaction and groundwater contamination through the generation of leachate. This leachate was identified in the Geochemistry Assessment on Overburden, Interburden and Coal Rejects in the EIS, produced by Geo-Environmental Management Pty Ltd.⁷⁰

⁶⁷ Department's Assessment Report paragraph [244]

⁶⁸ Currell, M <https://www.ipcn.nsw.gov.au/resources/pac/media/files/pac/projects/2020/03/vickery-extension-project/comments/200701-matthew-currell.pdf>

⁶⁹ DPIE Water in its Supplementary Response to Submissions (RTS) and Draft Conditions, of 11 March 2020

<https://majorprojects.planningportal.nsw.gov.au/prweb/PRRestService/mp/01/getContent?AttachRef=SSD-7480%2120200520T064709.018%20GMT>

⁷⁰ Vickery Extension Project, Environmental Impact Statement, Appendix M Geochemistry Assessment, Geochemistry Assessment of Overburden, Interburden and Coal Rejects April 2018, Geo-Environmental Management Pty Ltd

<https://majorprojects.planningportal.nsw.gov.au/prweb/PRRestService/mp/01/getContent?AttachRef=SSD-7480%2120190303T213442.332%20GMT>

- 8.3. The report concluded that the material was slightly saline and that *a small proportion of the strata are expected to contain increased S concentrations and these materials present a risk of being PAF (potentially acid forming).*⁷¹ It also found that *the overburden and interburden material of the open cut is typically expected to contain enriched concentrations of As, Ag, B, Sb and Se compared to the average crustal abundance of these elements.*⁷²
- 8.4. Compounding this issue is the fact that the Geochemistry Assessment has major shortcomings in that it has only sampled the coal seams, interburden and overburden to a maximum depth of 66.44 metres and the top 4 coal seams (see tables A1-A5 in Attachment A of the Geochemistry Assessment). However, in the same report the author identifies 7 coal seams to be mined, with the bottom seam as deep as 250 metres. *There are seven coal seams of economic interest within the Project mining area. The seams generally dip to the east and range in thickness from approximately 0.5 m to greater than 3 m. The Cranleigh Seam marks the base of the targeted open-cut mining and ranges in depth from 100 to 250 m.*⁷³
- 8.5. We are therefore very concerned that this issue is likely to be even worse than what DPIE Water foresees. DPIE Water and the IESC have raised significant concerns in relation to the placement of materials over the alluvium for which the chemical composition is known, this concern is compounded by the fact the chemical composition of what lies beneath is unknown.
- 8.6. WHC and the Department have not addressed this issue to any level of satisfaction, and given the level of risk it poses and the importance of the alluvium, we do not believe this is a matter that the IPC can properly relegate to a post approval process.

9. Sediment Water Discharges into the Namoi River

- 9.1. The EIS states that water will overflow from sediment dams in the event of rainfall that exceeds 38.4mm over five days.⁷⁴ According to The Bureau of Meteorology data from Boggabri post office, Boggabri has recorded more than 40mm over five days every year for the past 39 years at an average of 17.2 times per year.
- 9.2. This means sediment water could be released into the surrounding creeks and Namoi River more than 17 times a year or more than 425 times over the life of the mine.
- 9.3. It is proposed that runoff or infiltration from overburden, interburden and coal reject material would be captured in sediment dams. As stated on the assessment material, these materials can be high in Sulfur, Saline, Potentially Acid Forming (PAF) and have concentrations of Arsenic, Molybdenum and Selenium. The CHPP and the western embankment where the coal rejects and overburden will be placed is only around 400m from the banks of the Namoi River.

⁷¹ Vickery Extension Project, Environmental Impact Statement, Appendix M Geochemistry Assessment, Geochemistry Assessment of Overburden, Interburden and Coal Rejects April 2018, Geo-Environmental Management Pty Ltd, p31
<https://majorprojects.planningportal.nsw.gov.au/prweb/PRRestService/mp/01/getContent?AttachRef=SSD-7480%2120190303T213442.332%20GMT>

⁷² Ibid, p31

⁷³ Ibid, p9

⁷⁴ WHC, EIS, Appendix B, Advisian, Surface Water Assessment, p116 [10.5]

9.4. While we understand that all releases into the environment are controlled through an EPL, this remains a high-risk plan. While the modelling claims to understand the hydrology of this part of the floodplain and so close to the banks of the Namoi River, we have seen events that would not be able to be controlled in the manner and form the water management system intends. This coupled with the increases in extreme weather events, including extreme rainfall and floods, means that this is an unacceptable risk.

Coal Quality

9.5. Recent events reported in the news⁷⁵ raise potentially serious concerns about the reliability of the coal quality analysis presented by WHC.

9.6. The recent report states that the Fraud Squad of the State Crime Command led by ASIC are investigating serious fraudulent activity on part of ALS as part of an international investigation into a fake coal analysis scandal. It is reported that:

[An] independent investigation found approximately 45 to 50 per cent of coal tests were "manually amended" dating back to 2007 by ALS's Australian Coal Superintending and Certification Unit, headquartered in Newcastle, to make it appear coal was better quality.⁷⁶

9.7. Geo-Environmental Management, which prepared the Geochemistry Assessment of Overburden, Interburden and Coal Rejects as part of the EIS for the proposed Vickery mine relied on testing undertaken by Australian Laboratory Services Pty Ltd (ALS).

Drill-hole samples of the coal seams from the additional testing area were prepared by ALS Coal Division for coal quality testing. The excess coal seam (< 4mm) and flotation test samples produced from drill-holes VNW380C and VNW381C were provided by ALS for inclusion in the geochemical assessment program. The coal seam samples were composited according to the seam for each of these drill-holes (Tables A-4 and A-5), producing a total of 7 composite coal seam samples.⁷⁷

9.8. These recent reports of fraudulent activity on part of ALS raise real questions that ought to be clarified. This is particularly so, in light of the most recent material

⁷⁵ Donna Page, Fraud squad police execute search warrant on Sydney-based auditing firm to seize ALS Newcastle lab documents in international fake coal testing investigation, Newcastle Herald, 17 June 2020

<https://www.newcastleherald.com.au/story/6795114/police-seize-hunter-laboratory-documents-in-fake-coal-analysis-investigation/>

⁷⁶ Donna Page, Fraud squad police execute search warrant on Sydney-based auditing firm to seize ALS Newcastle lab documents in international fake coal testing investigation, Newcastle Herald, 17 June 2020

<https://www.newcastleherald.com.au/story/6795114/police-seize-hunter-laboratory-documents-in-fake-coal-analysis-investigation/>

⁷⁷ Vickery Extension Project, Environmental Impact Statement, Appendix M Geochemistry Assessment, Geochemistry Assessment of Overburden, Interburden and Coal Rejects April 2018, Geo-Environmental Management Pty Ltd, p19
<https://majorprojects.planningportal.nsw.gov.au/prweb/PRRestService/mp/01/getContent?AttachRef=SSD-7480%2120190303T213442.332%20GMT>

submitted by WHC in its coal sensitivity analysis,⁷⁸ and its market substitution argument submission through its lawyers,⁷⁹ which relies heavily on the claimed coal quality, in light of the internationally recognised need to stop the burning of coal in order to try to stop global temperatures reaching dangerous heights and the rapid market decline and demand for the product.

- 9.9. In addition to any doubt about the actual quality of the coal at Vickery, the market substitution argument presented by WHC should not be accepted as having significant weight by the IPC we deal with this later.

10. Metallurgical / Thermal / Coal Quality

- 10.1. We have seen variously, and particularly in more recent times, that the proposed Vickery mine is predominantly metallurgical production. The Department has stated that it will be 70% metallurgical and 30% thermal. In other material we have seen this as 60% metallurgical and 40% thermal.⁸⁰
- 10.2. However, we have not seen any actual reliable evidence of what mix is likely. What we have seen is WHC describe the quality of coal at Vickery as similar to that at Maules Creek. Like here in this 2018 shareholder presentation:

VICKERY PROJECT UPDATE

EIS EXPECTED TO BE LODGED LATE IN THE MARCH QUARTER

Project is approved as a 4.3Mtpa open cut by the NSW Government. Whitehaven is seeking approval to increase production to 10Mtpa ROM coal and to be a processing hub for the Vickery precinct mines.

Location	About 25kms north of Gunnedah
Resources and Reserves	Resource of 505Mt, Underground Resources of 230Mt, Open cut Reserves of 200Mt
Ownership	Whitehaven 100%, Seeking to form a JV (may sell up to 30% during approval period)
Coal Quality	Similar to Maules Creek - Metallurgical SSCC, PCI and high CV thermal coal
Start-up	First coal possible in CY2021 during construction and fully ramped by H2 CY2024
Current Status	EIS to be lodged with Government authorities at the end of March following optimisation work for a 10.0Mtpa project and removal of Blue Vale coal from the project

18 MONTH YEAR RESULTS FY2018

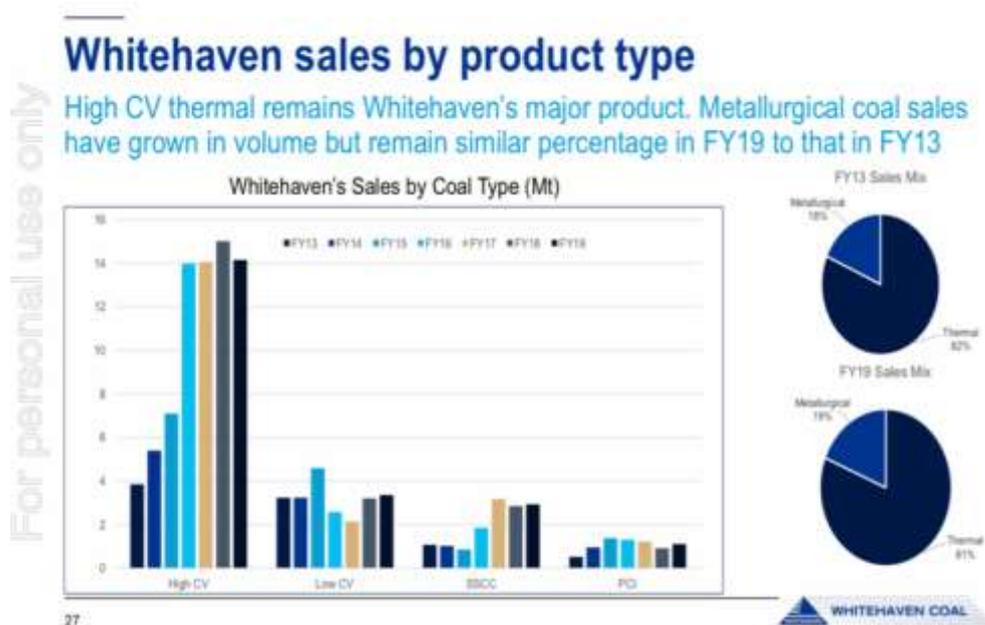
WHITEHAVEN COAL

⁷⁸ Whitehaven Coal, The Paris Agreement and the Vickery Extension Project's Coal <https://majorprojects.planningportal.nsw.gov.au/prweb/PRRestService/mp/01/getContent?AttachRef=SSD-7480%2120200520T065609.515%20GMT>

⁷⁹ Ashurst, Submission to the Independent Planning Commission on the consideration of greenhouse gas emissions and climate change, 16 June 2020 https://www.ipcn.nsw.gov.au/resources/pac/media/files/pac/projects/2020/03/vickery-extension-project/correspondence/applicant/200616-in-applicant-submission-on-ghg-emissions-and-climate-change_redacted.pdf

⁸⁰ Mostly WHCs material, most recently, Ashurst, Submission to the Independent Planning Commission on the consideration of greenhouse gas emissions and climate change 16 June 2020, p 79 [7.37] https://www.ipcn.nsw.gov.au/resources/pac/media/files/pac/projects/2020/03/vickery-extension-project/correspondence/applicant/200616-in-applicant-submission-on-ghg-emissions-and-climate-change_redacted.pdf

- 10.3. Yet when we look at the actual mix of thermal and metallurgical coal produced from WHCs mines in the Gunnedah basin, and only a few kilometres away from Vickery, we can see the production of metallurgical coal is not in the order of business currently being suggested.



- 10.4. We are very concerned that it is quite difficult to get a clear picture about the actual mix of production coal for Vickery. In the circumstances, we urge the IPC to disregard any suggestion that the quality of coal at Vickery is any better than any other mine in the Gunnedah Basin and to rely upon the actual material that has been presented in the assessment and the coal that has been produced to date as a realistic indicator, rather than any unsubstantiated assertions and market speculation.

11. We Love Our Sunburnt Country – ‘Kurrumbede’

- 11.1. We have been shocked and dismayed by the way ‘Kurrumbede’ and all that it represents has been largely dismissed in the project assessment and the Department’s Assessment Report. Some of our members have spent most of their lives in service to ‘Kurrumbede’ as land managers and story tellers of its past. The rest of us have prided ourselves that we belong to the nations *land of sweeping plains, Of ragged mountain ranges, Of droughts and flooding rains* upon which Kurrumbede is centred.
- 11.2. There is no guarantee that the heritage homestead complex of ‘Kurrumbede’ would survive this proposed mine unharmed and it is certain that its sweeping plains will be permanently disfigured, if this proposed new mine was to go ahead.
- 11.3. It is unacceptable that the Department and WHC have not yet presented any proper assessment about how best to ensure the protection of the heritage homestead complex. Instead it seems written that it will be sacrificed to the blasts, with the rest of the proposed mine landscape. The IPC should not accept the likely impacts on

‘Kurrumbede’, and particularly given there is no proper suggestion or detailed explanation of how to properly avoid the likely impacts, before any determination.

- 11.4. This heritage landscape and homestead is an important thread in the fabric of our nation that has been woven through a work of art that connects us and generations to come to this land and all Australian land. This should not be dismissed lightly.

My Country – Dorothea Mackellar

The love of field and coppice
Of green and shaded lanes,
Of ordered woods and gardens
Is running in your veins.
Strong love of grey-blue distance,
Brown streams and soft, dim skies
I know, but cannot share it,
My love is otherwise.

I love a sunburnt country,
A land of sweeping plains,
Of ragged mountain ranges,
Of droughts and flooding rains.
I love her far horizons,
I love her jewel-sea,
Her beauty and her terror
The wide brown land for me!

The stark white ring-barked forests,
All tragic to the moon,
The sapphire-misted mountains,
The hot gold hush of noon,
Green tangle of the brushes
Where lithe lianas coil,
And orchids deck the tree-tops,
And ferns the warm dark soil.

Core of my heart, my country!
Her pitiless blue sky,
When, sick at heart, around us
We see the cattle die
But then the grey clouds gather,
And we can bless again
The drumming of an army,
The steady soaking rain.

Core of my heart, my country!
Land of the rainbow gold,
For flood and fire and famine
She pays us back threefold.
Over the thirsty paddocks,
Watch, after many days,
The filmy veil of greenness
That thickens as we gaze ...

An opal-hearted country,

A wilful, lavish land
All you who have not loved her,
You will not understand
though Earth holds many splendours,
Wherever I may die,
I know to what brown country
My homing thoughts will fly.

My Country – Boggabri Farming and Community Group

I cry for my sunburnt country,
A land pitted with toxic mines,
Her ragged mountain ranges,
Flattened for dirty coal veins.
I weep for her waters polluted,
That no-longer flow to sea,
O'er gluttony, greed and lust,
Why can't you just let it be.

The stark lights of the mine,
That do not fade with night,
The blasts spew blackened dust,
Send animals fleeing in fright.
Stolen silence of the land,
Now a constant growl,
Once beautiful green pastures,
Giant machines disembowel.

Core of my heart my country!
Her assets should endure,
When sick at heart around us,
Our country is no more.
We have a born duty,
It's time to make a stand,
Now let's unite together,
And protect our sacred land.

11.5. Let's not leave the latter version to future generations - as our legacy!

12. Koalas

12.1. We see Koalas on the banks of the Namoi, including 400m adjacent to where the CHPP would be placed. *This stretch of the Namoi River is part of the Boggabri Demonstration Reach. This is a 120km stretch of the Namoi chosen for its rich biodiversity that has taken part in a multi-million-dollar Federal Government program with over 20 landholders cooperating to improve the riverine environment.*⁸¹

12.2. The assessment of the proposed Vickery mine has underplayed the presence and importance of Koalas. We know this because we live here and we see Koalas. This place, particularly the banks of the Namoi River hold special value for Koalas.

⁸¹ Namoi Water, Submission to IPC Vickery Mine Project, 5 February 2019
<https://www.ipcn.nsw.gov.au/resources/pac/media/files/pac/projects/2018/11/vickery-extension-project/comments-and-presentations-received-before-12th-february-2019/john-maree-baker.pdf>

12.3. The additional information on koalas that WHC submitted to the IPC in its letter of 29 June 2020 confirms that the project will unacceptably impact on the Koala. It will completely destroy the core koala habitat and the potential koala habitat in the project area and proposes to rely on the most controversial of offset tools – the ecosystem and species credits to justify the destruction. It is precisely these tools that have been identified in the recent NSW Parliamentary Inquiry into Koala populations and habitat in NSW that are responsible for the parlous state of this precious icon, sitting on the brink of extinction.

12.4. The NSW Parliamentary Inquiry into Koala populations and habitat in NSW, a comprehensive year-long inquiry, has recently found Koalas will become extinct before 2050 in NSW unless there is urgent government intervention to prevent habitat loss.⁸² The inquiry found:

*The ongoing destruction of koala habitat through the clearing of land for agriculture, development, mining and forestry has severely impacted most koala populations in the state over many decades. The committee found that this fragmentation and loss of habitat poses the most serious threat to koala populations and made a number of key recommendations that stronger action must be taken by government to protect and restore koala habitat on both public and private land.*⁸³

12.5. The inquiry heard that in addition to habitat loss and fragmentation, mining, introduces other threats to local koala populations such as vehicle strike and disease.⁸⁴ It heard that:

*the construction of a mine can introduce new threats to the area such as roads, cars, power lines and fencing. This creates a hostile landscape for koalas and results in higher numbers of injury and death.... Further to the immediate loss and fragmentation of habitat, mining and its extraction of water can reduce the abilities of trees to survive drought, which in some areas, could have severe and prolonged effects on koala feed resources. In light of the extremely dry conditions in recent years, certain koala populations are increasingly at risk of dehydration as koalas receive most of their moisture from the leaves they eat.*⁸⁵

12.6. In February this year the Hon Matt Kean MP, Minister for Energy and the Environment said *This season's significant bushfires have resulted in devastating losses to koala*

⁸² NSW Parliament Legislative Council, Koala Populations and Habitat in New South Wales <https://www.parliament.nsw.gov.au/lcdocs/inquiryNSW/s/2536/Koala%20populations%20and%20habitat%20in%20New%20South%20Wales%20-%20Report%203.pdf>

⁸³ NSW Parliament Legislative Council, Koala Populations and Habitat in New South Wales, p x <https://www.parliament.nsw.gov.au/lcdocs/inquiryNSW/s/2536/Koala%20populations%20and%20habitat%20in%20New%20South%20Wales%20-%20Report%203.pdf>

⁸⁴ NSW Parliament Legislative Council, Koala Populations and Habitat in New South Wales, p19 <https://www.parliament.nsw.gov.au/lcdocs/inquiryNSW/s/2536/Koala%20populations%20and%20habitat%20in%20New%20South%20Wales%20-%20Report%203.pdf>

⁸⁵ NSW Parliament Legislative Council, Koala Populations and Habitat in New South Wales, p 46 <https://www.parliament.nsw.gov.au/lcdocs/inquiryNSW/s/2536/Koala%20populations%20and%20habitat%20in%20New%20South%20Wales%20-%20Report%203.pdf>

*numbers across NSW, so it is imperative that remaining populations and habitat are protected.*⁸⁶

- 12.7. One of the reasons community participation is so important in our environment and planning law framework is because local knowledge is important, it leads to better decision making through a direct lens into the local environment. The presence of Koalas has been seriously underestimated in the proposed Vickery mine assessment, again: How do we know? Because we live here and we see them. They come here, particularly during drier periods. Koalas are being pushed to extinction, project approval by project approval, known as *death by a thousand cuts*.
- 12.8. We strongly believe it is time to start to protect our natural assets. As the custodians of the lands adjacent to this part of the Namoi River, we want to be part of the Koala solution and the reversing of the current trajectory of Koala extinction. We will not be able to do this if this mine is approved. The proposed Vickery mine will completely destroy all core Koala habitat and potential Koala habitat on the site of the mine. The offset tool proposed to deal with this is ecosystem and species credits, meaning, essentially, we will be accepting the loss of Koalas in this local environment. We can not afford to do this.

13. Climate Change

13.1. The impacts of climate change are happening more rapidly than what many experts predicted. While nobody escapes the impacts of climate change, they are expected to, and already are, impacting on our ability to farm in a significant way. Changing weather patterns, scarcity of water, increased fire, increased extreme weather events including floods and hail storms, and longer hotter dry periods means significantly higher experiences of crop failure and livestock stresses. Coal mining and the burning of coal contributes significantly to the impacts of climate change. Climate change is something that needs to be at the forefront of the IPCs consideration of this proposed Vickery coal mine.

13.2. The Department's Assessment Report states:

*The Department acknowledges that the Scope 3 emissions from the combustion of product coal is a significant contributor to anthropological climate change and the contribution of the Project to the potential impacts of climate change in NSW must be considered in assessing the overall merits of the development application.*⁸⁷

13.3. The proposed Vickery coal mine is not in the public interest and it is contrary to the principals of Ecologically Sustainable Development (ESD). We refer to the presentation of Barrister Robert White at the Public Hearing, where he stated:

There are multiple statutory pathways under the EPA Act by which the IPC must have regard to the impacts of the Project on climate change, and which permit the IPC to refuse the development on this ground. These are:

⁸⁶ Hannam, P Koala losses 'spectacularly huge' after NSW drought, bushfires, Sydney Morning Herald, 18 February 2020 <https://www.smh.com.au/environment/conservation/koala-losses-spectacularly-huge-after-nsw-drought-bushfires-20200218-p5420h.html>

⁸⁷ Department's Assessment Report p xiv

- a. s 4.15(1)(a), which requires the IPC to take into consideration the provisions of the *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007*, which requires the decision maker to have regard to the downstream impacts of the mine, and to ensure that greenhouse gas emissions are minimised to the greatest extent practicable;
- b. s 4.15(1)(b), which requires the IPC to take into consideration the likely impacts of the proposed development, including environmental impacts (which includes the impacts of GHG emissions on climate change); and
- c. s 4.15(1)(e), which requires the IPC to take into consideration the public interest, including the principles of ESD.

13.4. Intergenerational equity and justice under NSW law requires that the present generation should ensure that the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations.⁸⁸ There is no doubt that approving this new Vickery coal mine will contribute unnecessarily to dangerous climate change, to the order of some 370 million tonnes of greenhouse gas emissions,⁸⁹ which will make even heavier the burden that will be carried by future generations in terms of unsafe living conditions for them and the next generations that they must consider.

13.5. It has now been consistently applied, that the particular coal mine project being assessed is not to be considered in isolation, by suggesting that a particular mine makes an insignificant contribution to overall global GHG emissions, therefore it is somehow acceptable. The cumulative impact of a mine's contribution to climate change by GHG emissions is the level of inquiry that is required, in assessing this impact. After all it is the cumulative impact of every single tonne of GHG emissions that is causing anthropogenic climate change.

13.6. WHC has raised the 'Market Substitution' argument. We note that this is similar to what was attempted by the coal proponent in the Rocky Hill case. Similarly, that proponent argued that a lower quality substituted coal sourced from elsewhere will otherwise be used and lead to poorer environmental outcomes. This was rejected by the LEC, because, amongst other things, there was no evidence provided to the decision maker that this was the case.

13.7. WHC through its lawyer has produced a submission to support its market substitution argument.⁹⁰ However, it is not evidence supporting the facts of its substitution claim with any degree of reliable specificity. It is a speculative, policy scenario-based analysis. While such an analysis is useful in terms of speculation, it is not determinative and cannot provide any real evidence of substitution to the extent that is useful for the purposes of the IPCs evaluation for its determination of the proposed Vickery coal mine. Furthermore, it does not deal with the fundamental cause of rejection applied in the *Rock Hill case*, namely:

⁸⁸ Section 6(2)(b) *Protection of the Environment Administration Act 1991*

⁸⁹ Department's Assessment Report p xxiv

⁹⁰ Ashurst, Submission to the Independent Planning Commission on the consideration of greenhouse gas emissions and climate change 16 June 2020

https://www.ipcn.nsw.gov.au/resources/pac/media/files/pac/projects/2020/03/vickery-extension-project/correspondence/applicant/200616-in-applicant-submission-on-ghg-emissions-and-climate-change_redacted.pdf

If a development will cause an environmental impact that is found to be unacceptable, the environmental impact does not become acceptable because a hypothetical and uncertain development might also cause the same unacceptable environmental impact.⁹¹

- 13.8. WHC’s lawyers, Ashurst, for obvious reasons, point out that, the IPC is not obliged to consider or apply the Rocky Hill case. From a strict legal jurisdictional hierarchical perspective, they are correct. However, there is good reason to follow and build upon class 1 decisions of the LEC, from a planning law perspective. The well-known main benefits of merits review as conducted by the LEC are improvements in the consistency, quality, fairness and accountability of decision-making.⁹² Consistency in planning and environmental decision making is fundamental, particularly in relation to state significant developments. The findings of a report, forwarded by the Hon Peter Biscoe QC, that looked into the role of merits review in our planning law context, assists to understand the value of class 1 decisions of the LEC for planning and environmental decision making. It found:

....merits review is an essential part of the planning system and it is crucial that it continues to be recognised and facilitated in NSW. In addition, there are clear benefits to allowing third party merits review in relation to major projects in NSW. These benefits relate to improving the consistency, quality and accountability of decision-making in environmental matters. In particular, merits review has facilitated the development of an environmental jurisprudence, enabled better outcomes through conditions, provides scrutiny of decisions and fosters natural justice and fairness. Better environmental and social outcomes and decisions based on ecologically sustainable development is the result.⁹³

- 13.9. The IPC is right to follow Rocky Hill, in terms of the reasoning provided in that case, as it has done in other decisions. Naturally any ultimate decision of the IPC on any proposed development, coal mine or otherwise has to be made on its merits in accordance with the EPA Act.
- 13.10. Climate change is an important consideration for the IPC in assessing the merits of the proposed new Vickery coal mine. Essentially the market substitution case put forward by WHC’s lawyers is at best speculative, as WHC’s lawyers concede there is no certainty in its market substitution argument.⁹⁴ The market substitution argument is at best on the outer periphery of the legal considerations of the IPC under the EPA Act. It does not outweigh the very tangible and direct negative contribution that the proposed Vickery coal mine would actually have, through the generation of unnecessary GHGs, to climate

⁹¹ *Gloucester Resources Limited v Minister for Planning* [2019] NSWLEC 7 [545]

⁹² EDO NSW Report Merits Review in Planning in NSW
https://d3n8a8pro7vhmx.cloudfront.net/edonsw/pages/2998/attachments/original/146777537/EDO_NSW_Report_-_Merits_Review_in_Planning_in_NSW.pdf?146777537

⁹³ EDO NSW Report Merits Review in Planning in NSW
https://d3n8a8pro7vhmx.cloudfront.net/edonsw/pages/2998/attachments/original/146777537/EDO_NSW_Report_-_Merits_Review_in_Planning_in_NSW.pdf?146777537

⁹⁴ Ashurst, Submission to the Independent Planning Commission on the consideration of greenhouse gas emissions and climate change 16 June 2020, p 79 [7.37]
https://www.ipcn.nsw.gov.au/resources/pac/media/files/pac/projects/2020/03/vickery-extension-project/correspondence/applicant/200616-in-applicant-submission-on-ghg-emissions-and-climate-change_redacted.pdf

change, which is having a significant impact on the natural and built environment and existing and future generations.

14. WHC - Non-Compliance

14.1. We think it is relevant to consider WHCs record of non-compliance as an operator in our local environment. We say this matter and this history goes to the social impacts of the proposed new mine in our community. It has been said on a number of occasions, that there is a serious trust deficit in terms of how WHC is viewed by the communities of impact.⁹⁵ WHC has been investigated or found in breach of specific, relevant legislation on more than twenty-five occasions since 2012. The non-compliance relates to the requirements imposed upon WHCs mining operations to protect the community, the environment and mine workers. These include:

- Allowing toxic blast fumes to leave the mine site and drift over neighbouring properties;
- Failing to minimise air pollution and dust;
- Illegal dumping of waste;
- Illegal clearing of bushland;
- Repeat breaches of mine procedures relating to the safe operation of mine vehicles;
- Illegal take of surface water to run mining operations over a sustained period.

14.2. To date, the company has been fined more than \$100,000 and has been taken to court, once by the EPA and once by local community group Maules Creek Community Council Inc and now it is subject to prosecution proceedings by the Natural Resources Access Regulator, for its unauthorised take of surface water over a period of three years at its Maules Creek mine.

14.3. Further, we understand that there are possibly three further investigations on foot, one by the Department of Planning regarding a possible breach of development consent by constructing water pipelines from properties outside the Maules Creek coal mine without authority and two by the EPA for alleged unlawful water releases this year at the Maules Creek mine into Back Creek.⁹⁶

14.4. On 3 April this year another community group commenced proceedings against WHC in the Federal Court of Australia. This time for failure to secure its biodiversity offsets for a nationally listed critically endangered ecological community (CEEC) – White Box-Yellow Box-Blakely's Red Gum Grassy Woodland and Derived Native Grassland, a box gum grassy woodland, which provides habitat to a number of threatened species and which is on the brink of extinction.

⁹⁵ Independent Planning Commission meeting with Narrabri Shire Council, Vickery Extension Project, 19 December 2019, Transcript, p 7 [30]

<https://www.ipcn.nsw.gov.au/resources/pac/media/files/pac/general/transcripts/vickery-extension/narrabri-shire-council-transcript.pdf?la=en&hash=B6493192DB2EFA2D7817F9E8742E3723>

⁹⁶ <https://www.theland.com.au/story/6623972/maules-creek-coal-mine-accused-of-back-creek-pollution/>

Below is a table of the non-compliance activity of WHC:

Date	Action	Explanation	Mine	Amount
Mar 2012	4 penalty notices ⁹⁷	Polluting waters and breaching its environment protection licences in November 2011 and January 2012	Narrabri Underground and Tarrawonga	\$6,000
Dec 2014	Penalty notice ⁹⁸	Disturbing an Aboriginal artefact	Narrabri Underground	\$3,000
Dec 2014	Penalty notice ⁹⁹	Mining more coal than licence allows	Tarrawonga	\$15,000
Jun 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. ¹⁰⁰		
Jul 2015	Investigation ¹⁰¹	Blast fumes	Maules Creek	-
Aug 2015	2 penalty notices ¹⁰²	Failure to implement proper weed and feral animal control as per Biodiversity Management Plan	Maules Creek and Tarrawonga	\$6,000
Mar 2017	Penalty notice ¹⁰³	Failing to provide the government with information and records during the blast investigation	Maules Creek	\$1,500
Mar 2018	Official caution ¹⁰⁴	From DPIE for “failure to undertake annual road noise monitoring for the 2017 calendar year”	Rocglen	-
Mar 2018	Warning letter ¹⁰⁵	Failure regarding implementation of the Blast management plan.	Tarrawonga	-
Mar 2018	Official caution	Failure regarding implementation of the Noise Management Plan	Tarrawonga	-

⁹⁷ EPA media release: <https://www.epa.nsw.gov.au/news/media-releases/2012/decmmedia12033003>

⁹⁸ See Independent Environmental Audit 2017. Available here:

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

⁹⁹ EPA media release: <https://www.epa.nsw.gov.au/news/media-releases/2014/epamedia14120902>

¹⁰⁰¹⁰⁰ 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

¹⁰¹ EPA media release: <https://www.epa.nsw.gov.au/news/media-releases/2015/epamedia15070603>

¹⁰² 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>

¹⁰³ EPA media release: <https://www.epa.nsw.gov.au/nePws/media-releases/2017/epamedia17030801>

¹⁰⁴ This caution is cited in Rocglen Annual Review 2018.

¹⁰⁵ Referred to the Tarrawonga Annual Review 2018.

May 2018	Penalty notice ¹⁰⁶	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	-
Mar 2019	Court conviction ¹⁰⁷	Blast fume left site and drifted over neighbouring properties	Rocglen	\$38,500
Mar 2019	Penalty notice ¹⁰⁸	Blast exceeded the airblast overpressure criteria	Werris Creek	\$15,000
Apr 2019	Clean up Notice ¹⁰⁹	Dumping combustible canisters improperly, resulting in fires breaking out at Narrabri Council's rubbish dump	Narrabri Underground	-
Jun 2019	Fine ¹¹⁰	Failure to minimise dust, resulting clouds from stock pile	Narrabri Underground	\$15,000
Aug 2019	Suspension ¹¹¹	Suspension of exploration licence for unlawful clearing of bushland for access tracks	Narrabri Underground	-
Aug 2019	Statutory Notice	Rehabilitation	Tarrawonga and Rocglen	-
Sept 2019	Illegal water take ¹¹²	Natural Resources Access Regulator finds Whitehaven has taken over 3 billion litres of surface water illegally over three years	Maules Creek	Outcome pending
Sept 2019	Prohibition notice ¹¹³	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
Jan 2020	Prosecution ¹¹⁴	Resources regulator prosecuting over serious WHS incident	Maules Creek	Ongoing

¹⁰⁶ EPA media release: <https://www.epa.nsw.gov.au/news/media-releases/2017/epamedia17052202>

¹⁰⁷ 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)

¹⁰⁸ 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>

¹⁰⁹ EPA clean up notice: <https://apps.epa.nsw.gov.au/prpoeoapp/ViewPOEONotice.aspx?DOCID=-1&SYSUID=1&LICID=1578807>

¹¹⁰ EPA media release: <https://www.epa.nsw.gov.au/news/media-releases/2019/epamedia190625>

¹¹¹ Resources Regulator suspension notice: https://www.resourcesregulator.nsw.gov.au/data/assets/pdf_file/0005/1153634/Suspension-Notice-Decision-document.pdf

¹¹² 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>

¹¹³ Resources Regulator media release: <https://resourcesandgeoscience.nsw.gov.au/about-us/news/2019/prohibition-notice-issued-to-maules-creek-open-cut-coal-mine>

¹¹⁴ Resources Regulator media release <https://www.resourcesandgeoscience.nsw.gov.au/about-us/news/2019/maules-creek-coal-prosecuted-over-mining-truck-collision>

<i>Feb 2020</i>	Investigation ¹¹⁵	PA investigating polystyrofoam balls pollution into Back Creek during flood event	Maules Creek	Pending Outcome
<i>Apr 2020</i>	Legal Proceedings Commenced	EDO on commenced legal proceedings in Federal Court against WHC for failing to secure necessary biodiversity offsets when clearing endangered woodlands	Maules Creek	Pending Outcome
<i>May 2020</i>	Fine ¹¹⁶	Sediment dam failure causing discharge into neighbours	Tarrawonga	\$15,000
<i>July 2020</i>	Prosecution	NRAR commenced prosecution proceedings for sustained unlawful water take	Maules Creek	Ongoing

15. Conclusion

15.1. The proposed Vickery Coal Mine should be refused. We respectfully submit that the claimed benefits of the proposed mine, even if fully realised, are far outweighed by the significant detrimental impacts the mine will have on the present and future community, the economy and the environment.

15.2. We thank the IPC for considering our submission. We would be very happy to answer any questions, and meet with the IPC at any time to discuss the issues that we have raised.

The Boggabri Farming and Community Group

14 July 2020

This submission has been prepared to the best of our ability, relying upon the information available to us and the limitations of the process open to us.

¹¹⁵ EPA media release: <https://app.epa.nsw.gov.au/prpoeoapp/ViewPOEONotice.aspx?DOCID=-1&SYSUID=1&LICID=1591771>

¹¹⁶ EPA media Release: <https://www.epa.nsw.gov.au/news/media-releases/2020/epamedia200528-tarrawonga-coal-fined-after-environmental-breach-at-mine>