SUBMISSION TO THE NSW INDEPENDENT PLANNING COMMISSION:
HUME COAL PROJECT AND BERRIMA RAIL PROJECT, 23 JULY 2021

Thank you for the opportunity to state my objection to the Hume Coal Project and Berrima Rail Project.

The NSW Department of Planning, Industry and Environment (DPIE) in its final assessment report set out a range of grounds upon which it considered these projects to be "not in the public interest" and upon which the projects should not be approved.[1] In addition to the impacts identified by the DPIE, I submit that the greenhouse gas emissions arising from these projects are also "not in the public interest", as they place the achievement of Australia's commitments under the Paris Climate Agreement at risk, and furthermore increase the risk of personal injury and/or death to Australian children from the impacts of climate change.[2]

The predicted emissions from the projects, as described in their respective environmental impact statements, are presented in the table below.

Scope	Hume Coal Project		Berrima Rail Project		Total
	Annual Average ($t CO_2e$)	Life of Project ($t CO_2e$)	Annual ($t CO_2e$)	Life of Project ($t CO_2e$) Note 1	Life of Project ($t CO_2e$)
Scope 1	8,627	198,422	3,641	83,743	282,165
Scope 2	69,458	1,597,543	-	-	1,597,543
Scope 3	266,922	6,139,203	633	14,559	6,153,762
Total – Scope 1&2	78,085	1,795,965			1,795,965
Total – All Scopes	345,007	7,935,168	4,274	98,302	8,033,470

Note 1: Life of project were not presented in the EIS and have been calculated based on the Hume Coal Project's anticipated 19-year operational life. The EIS did not include any emissions associated with construction or closure.

Project Justification

The Project justification presented in Chapter 24 of the EIS is insufficient and includes no discussion of the market need (international supply and demand context) for the coal product proposed to be produced. This is a major flaw when considering whether socioeconomic benefits of the Hume Coal Project are likely to be realised.

The highly reputable International Energy Agency (IEA) prepares supply and demand outlooks for the world's key fuels (oil, gas, coal, electricity, renewables) and provides detailed scenarios that map out the consequences of different energy policy and investment choices. The IEA's most recent Special Report, Net Zero by 2050, is the first comprehensive global energy roadmap to a stable and affordable 'net zero by 2050' energy system. Through the IEA's comprehensive analysis, the IEA found that to limit global warming to 1.5ºC (which it considers a narrow but still viable pathway), "*there is no need for investment in new fossil fuel supply in our net zero pathway*" and that "*beyond projects already committed as of 2021, there are no new oil and gas fields approved for development in our pathway, and no new coal mines or mine extensions required".*[3] I urge the panel to give all due weight to the IEA's crucial body of work.

There is also ample evidence that NSW coal markets are declining. In 2019, the 'Big 4' destinations for New South Wales (NSW) coal included: China (28.2%), Japan (64.5%), South Korea (18%) and Taiwan (18%). As the Institute for Energy Economics and Financial Analysis (IEEFA) notes, all other New South Wales coal export destinations are far behind the big four in terms of their

[1] DPIE, Hume Coal Project and Berrima Rail Project State Significant Development Assessment SSD 7172 and SSD 7171, June 2021.

[2] Based on accepted expert witness evidence in Federal Court of Australia, Sharma by her litigation representative Sister Marie Brigid Arthur v Minister for the Environment [2021] FCA 560, 27 May 2021 https://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2021/2021fca0560; paragraphs 205-220.

[3] International Energy Agency (IEA), Net Zero by 2050, Extract, https://www.iea.org/reports/net-zero-by-2050

significance to the industry—the sum of all other export destinations (14.9%) is smaller than any of the Big 4."[4] As such it is not appropriate to consider that decline in the Big 4 markets will be addressed via alternative market opportunities. The IEEFA has prepared several briefing notes regarding what these trends mean for Australia, and particularly New South Wales coal exports.[5] As the IEEFA points out, under declining market trends:

- Continuing to add more Australian coal mines risks increasing oversupply to the market. This will put every existing Australian coal mine and coal miner's job at risk; creating more competition within Australia at a time when international markets are becoming fiercely competitive for market share.
- Oversupply will result in cheaper coal prices (as producers compete) and lower NSW government royalties (if cheaper prices do not render mines uneconomic). To take this a step further than IEEFA—not only would the benefits of the Hume Coal Project not be realised, but neither would the realisation of benefits from other existing operations in NSW affected by an overall glut of supply. Uneconomic assets, or stranded assets, do not realise extolled benefits and may ultimately end up costing the public if the asset owners are unable to fund rehabilitation.
- Cessation of new coal mine approvals represents a rational economic step in the face of a declining market.

The cessation of new coal mine approvals is not just IEEFA's advice. The Bank of International Settlement, one of the world's most powerful financial institutions, has warned central banks including the Reserve Bank of Australia that climate change could spark the next global financial crisis and that central banks may have to mobilise forces, or other intervene to buy carbon-intensive assets to preserve financial and price stability[6] due to governments allowing the fossil fuel sector to keep expanding, deferring asset stranding and requiring more disruptive policy.

Paris Agreement and Carbon Budget

I wish to draw the IPC's attention to important considerations in the 27 May 2021 Federal Court decision of Sharma by her litigation representative Sister Marie Brigid Arthur v Minister for the Environment [2021] FCA 560. Specifically, the consideration of the development of fossil fuel reserves in the context of the remaining global 'carbon budget'.[7] The carbon budget refers to the total allowable global greenhouse gas emissions to keep temperatures to Paris Agreement targets of 1.5ºC and below 2ºC above pre-industrial.

In Sharma, the global carbon budget for 67% probability of limiting warming to 2ºC was considered.[8] Specifically, the Court considered whether the estimated 100Mt CO_2e associated with Whitehaven Coal's proposed Vickery Expansion Project "would be emitted compliantly with the Paris Agreement and thus within a lower than 2ºC target."[9] (A project that the NSW Independent Planning Commission also approved.) To understand this, the Court considered research by McGlade and Ekins (2015), as follows:

[4] IEEFA, South Korea Shifting Further Away from Coal: Significant implications for Australian exports, http://ieefa.org/wp-content/uploads/2019/04/South-Korea-Shifting-Further-Away-from-Coal_April-2019.pdf

[5] IEEFA, Japanese Thermal Coal Consumption Approaching Long Term Decline Australia's Biggest Export Destination to Transition Away from Coal, http://ieefa.org/wp-content/uploads/2019/07/Japan_Coal_July-2019.pdf

[6] Sydney Morning Herald, RBA told to 'mobilise all forces' to save the economy from climate change, https://www.smh.com.au/politics/federal/rba-told-to-mobilise-all-forces-to-save-the-economy-from-climate-change-20200120-p53szi.html

[7] Federal Court of Australia, Sharma by her litigation representative Sister Marie Brigid Arthur v Minister for the Environment [2021] FCA 560, 27 May 2021 https://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2021/2021fca0560; paragraph 72.

[8] Ibid, para 72.

[9] Ibid, para 85.

> *"72 … McGlade and Ekins analysed the available global fossil fuel "reserves" and "resources", defining "resources" as all of the fossil fuels that are known to exist and "reserves" as a subset of "resources", being those fossil fuels that are currently "economically and technologically viable to exploit". McGlade and Ekins showed that if all of the world's existing fossil fuel "reserves" were burnt, about 2,860 Gt of CO_2 would be emitted and that about 2,000 Gt of these emissions would come from the combustion of coal. This level of emissions is about 2.5 times greater than the allowable carbon budget for reaching a 2°C temperature target. On that basis, McGlade and Ekins concluded that globally, 62% of the world's existing fossil fuel reserves need to be left in the ground, unburnt, and, having performed a regional analysis, it was concluded that over 90% of Australia's existing coal reserves cannot be burnt to be consistent with a 2°C temperature target."*[10]

The Court found "(t)he definition of "reserves" used by McGlade and Ekins would appear to include the 100 Mt of coal from the Extension Project, it being "economically and technologically viable to exploit now"[11].

The Court noted that the Minister for the Environment called no evidence and *"contended that it is likely that the 100 Mt of CO_2 would be emitted compliantly with the Paris Agreement and thus within a lower than 2°C target"* and that *"that the Court should infer that the 100 Mt of CO_2 would likely be emitted in accordance with the Paris Agreement."* The Court however found:

> *"(t)here is no sufficient basis for that inference. The Minister relied upon little else than speculation, in circumstances where the evidence showed that at least one of the potential consumers of the coal is not a signatory to the Paris Agreement."*[12]

Duty of Care to Australian Children

The Court also found that the Minister for Environment has:

> *"…a duty to take reasonable care, in the exercise of her powers under s 130 and s 133 of the Environment Protection and Biodiversity Conservation Act 1999 (Cth) in respect of referral EPBC No. 2016/7649, to avoid causing personal injury or death to persons who were under 18 years of age and ordinarily resident in Australia at the time of the commencement of this proceeding arising from emissions of carbon dioxide into the Earth's atmosphere."* [13]

In relation to the assertions that the quantity of emissions from the proposed Vickery Extension Project were insignificant (as has also been implied in relation to the Hume Coal Project), Justice Bromberg of the Court wrote:

> *"253 I accept that, even on the marginal risk assessment referred to at [84], the prospective contribution to the risk of exposure to harm made by the approval of the extraction of coal from the Extension Project may be characterised as small. It may fairly be described as tiny. However, in the context of there being a real risk that even an infinitesimal increase in global average surface temperature may trigger a 4°C Future World, the Minister's prospective contribution is not so insignificant as to deny a real risk of harm to the Children. The risk of harm in question is reasonably foreseeable even without regard to the unparalleled severity of the consequences of that risk crystallising. But the magnitude of the danger to which the Minister's conduct is likely to contribute must also be taken into account. When that is done, the conclusion that, by reference to "contemporary social conditions and community standards" (King at [97] (Nettle J)), a reasonable person in the Minister's position would foresee the risk and take reasonable and available steps to eliminate it, is established. If it were necessary in this inquiry to ask whether the risk may reasonably be disregarded (as is stated by McHugh J in Tame at [108] and in Graham*

[10] Ibid, para 72.
[11] Ibid, para 73.
[12] Ibid, para 86.
[13] Sharma by her litigation representative Sister Marie Brigid Arthur v Minister for the Environment (No 2) [2021] FCA 774, para 1. Also: Sharma v Minister for the Environment [2021] FCA 560, paras 503-504, 253.

Barclay Oysters at [87]) my answer would be "no": cf. Graham Barclay Oysters at [89] (McHugh J)."

As the Sharma decision has evidenced, when assessing whether the Project is in the public interest and consistent with ecologically sustainable development, it is appropriate and essential that the IPC consider the development of the Hume Coal Project with regard to its implications to the remaining global carbon budget and Australia's commitments under the Paris Agreement. It is evident that the proposed emissions from this project would not be emitted in compliance with the Paris Agreement.

Final Remarks

In closing, development of the Hume Coal Project is inconsistent with limiting global warming to well below 2ºC, and preferably to 1.5ºC, compared to pre-industrial levels. It is inconsistent with the IEA 1.5ºC Net Zero pathway, which states that '*no new coal mines or mine extensions* (are) *required."* The inaction and injustice that the Federal Court described in Sharma, in relation to the predicted impacts of climate change, must be considered here:

> *"293 It is difficult to characterise in a single phrase the devastation that the plausible evidence presented in this proceeding forecasts for the Children. As Australian adults know their country, Australia will be lost and the World as we know it gone as well. The physical environment will be harsher, far more extreme and devastatingly brutal when angry. As for the human experience – quality of life, opportunities to partake in nature's treasures, the capacity to grow and prosper – all will be greatly diminished. Lives will be cut short. Trauma will be far more common and good health harder to hold and maintain. None of this will be the fault of nature itself. It will largely be inflicted by the inaction of this generation of adults, in what Sharma by her litigation representative Sister Marie Brigid Arthur v Minister for the Environment [2021] FCA 560 91 might fairly be described as the greatest inter-generational injustice ever inflicted by one generation of humans upon the next."*[14]

I ask the IPC to recognise these risks and the vast discrepancies and costs related to present and future interests. The Sharma decision makes clear to all Australian approval authorities that the risk of injury to Australian children from new fossil fuel developments is foreseeable. Approval of the Hume Coal Project, in the face of overwhelming international warnings, is to actively choose to expose current and future generations of Australians to risk and injury.

[14] Sharma v Minister for the Environment [2021] FCA 560, paragraph 293.