State Significant Development SSD-63428218

Maules Creek Continuation Project

Thank you for the opportunity to respond to the Environmental Impact Statement published by Whitehaven Coal in relation to the Maules Creek Continuation Project.

BirdLife Northern New South Wales (BLNNSW) is a branch of BirdLife Australia that deals with bird-related issues in an area roughly from Port Macquarie to the Queensland border. Our parent body, BirdLife Australia is an independent grassroots not for profit organisation, with over 400,000 supporters throughout Australia.

Our organisation strongly objects to the Federal and NSW Government giving their assent to this destructive and unnecessary proposal.

BLNNSW has a history of active involvement in the region of this proposed extraction for nearly a decade. During that time we have recorded and outlined the special attributes of the affected and nearby areas in terms of the number and perilous state of over 25 nationally and 48 NSW listed threatened species, and to its highly fragmented threatened ecosystems and plant communities.

Just as importantly, the planning process as a whole, at either State or Federal level, fails to ask the question "Is this project in the long-term public interest?". Instead, administrative boxes appear to have been ticked with cursory attention to the intent of effective environmental protection measures but which, in our opinion, are far more likely to impose long-term disastrous impacts on local natural ecosystems and the viability of some woodland bird species.

The failure of the NSW Government to implement adequate safeguards to protect the natural environment have been scathingly criticised by the NSW Auditor's Office which found that the bar had been lowered so far as to make a complete nonsense of the Biodiversity Offsets Scheme[1] , allowing environmental destruction to carry on with little if any real prevention.

Whitehaven Coal has repeatedly failed to comply with conditions set out in the scheme, being (not surprisingly) unable to find land with the appropriate standard and acreage of offsets to provide a like-for-like equivalency. Instead of disallowing the project, the Government has simply watered down the conditions of assent to allow Whitehaven Coal to go ahead regardless of the environmental consequences. This matter has severely challenged the NSW Government's environmental credibility. BLNNSW strongly urges the government to disallow the proposal and to make its Biodiversity Offsets Scheme meaningful and effective.

[1] See https://www.audit.nsw.gov.au/our-work/reports/effectiveness-of-the-biodiversity-offsets-scheme

Summary

BirdLife Northern NSW strongly objects to the Maules Creek Continuation Project as outlined by Whitehaven Coal and with current alterations imposed by the NSW Government.

Notwithstanding assurances afforded by the proponents of this scheme, we consider the habitat to be irreplaceable: important remnants of a critical and endangered habitat contained in an isolated refuge can simply not be replicated after mining in such a manner as to allow the constituent parts of these ecosystems to recover.

No real assurance has been provided that gives any realistic hope that threatened wildlife species, whether listed or not in the EIS, have any hope of recovering or even surviving during and after the proposed set of operations.

In addition, the appalling manner in which environmental protection standards and priorities have been deliberately lowered— particularly under the fatally flawed and ineffectual NSW Biodiversity Offsets Scheme — represents nothing short of corruption of principle and practice for short term private profits and political expedience.

We submit that in this particular case, this corrupts due process and undermines the ethical and practical credibility of the NSW Government and its commitment to the natural environment that it is charged with protecting and conserving.

BirdLife Northern NSW recommends:

1. that approval not be afforded to Whitehaven Coal to continue this project
2. that the NSW Government adopt the recommendations of the NSW Audit Office in respect to its Biodiversity Offsets Scheme as a matter of high priority and before any other such potentially environmentally damaging project is approved
3. that efforts be made by the NSW Government to engage and assist Landcare, other community organisations and private individuals to help create habitat linkages between the Pilliga, the Maules Creek area and Mount Kaputar National Park.

Rodney Falconer
Conservation Officer
BirdLife Northern NSW
30 July 2025

Richard Harris
President
BirdLife Northern NSW

The area contains irreplaceable habitat

To replace the ecosystem that evolved and grew onsite is functionally impossible, especially in the narrow 100 year lifespan of maintenance expected of such a project with the company under current legislation and practice. A plantation of saplings, even of local native species, that may grow into trees in a couple of decades can be considered neither to represent effective ecosystem rehabilitation nor restoration.

The area affected by the current proposal contains two threatened ecological communities covered by NSW legislation — Box-Gum Woodland and Inland Grey Box Woodland[2] — and three threatened ecological communities covered by Federal legislation — Box-Gum Grassy Woodland and Derived Grassland, Grey Box Grassy Woodland and Poplar Box Grassy Woodland[3].

In addition, the area contains records of at least three threatened native plant species[4] and 23 threatened faunal species (one reptile, one arboreal marsupial, six bats and 15 birds). This is an extraordinarily high concentration for threatened species in such an area. This number represents both the scarcity of these animals due primarily to prolonged and continued anthropogenic disturbance and also to the extreme scarceness of the habitats and ecological conditions upon which these species rely for their continued existence.

Mature box/gum woodlands contain well-spaced trees, of mostly eucalypts such as white box, yellow box, poplar box or similar species, together with a mix of other tree and shrub species and with an understorey of sub-shrubs and native grasses. Within that understorey is a very special but often little understood set of deciduous forbs, such as daisies, ground orchids, lilies and other small flowering plants. This group is often species rich and, when taken into consideration, can afford the plant communities of grassy box woodlands higher natural biodiversity than most coastal ecosystems. Unlike the northern hemisphere forbs of traditional Eurocentric gardens, our woodland forbs do not necessarily or predictably die off in winter to revive again in spring. Instead they have evolved in a boom and bust Australian sequence of good and bad seasons, long droughts, patchwork fires and capricious floods. Some species can disappear for years, even decades, before reappearing

[2] Listed in NSW Biodiversity Conservation Act 2016 as White Box - Yellow Box - Blakely's Red Gum Grassy Woodland and Derived Native Grassland in the NSW North Coast, New England Tableland, Nandewar, Brigalow Belt South, Sydney Basin, South Eastern Highlands, NSW South Western Slopes, South East Corner and Riverina Bioregions Critically Endangered Ecological Community and Inland Grey Box Woodland in the Riverina, NSW South Western Slopes, Cobar Peneplain, Nandewar and Brigalow Belt South Bioregions Endangered Ecological Community and surrounds

[3] Listed in the Commonwealth Environment Protection and Biodiversity Conservation Act 1999 as Box – Gum Grassy Woodland and Derived Grassland, Grey Box (Eucalyptus microcarpa) Grassy Woodlands and Derived Native Grasslands of South-eastern Australia and Poplar Box Grassy Woodland on Alluvial Plains

[4] *Tylophora linearis* (vulnerable NSW, endangered federally), Bluegrass *Dichanthium setosum* (vulnerable in both NSW and federally) and Finger Panic Grass *Digitaria porrecta* (endangered in NSW)

under rare, suitable conditions. Populations of these plants can be exterminated simply by overstocking with sheep or so-called pasture improvement.

Prior to European settlement, grassy box woodland covered a vast region of the tablelands and slopes from central Victoria to central Queensland. The boom/bust conditions under which this vast ecotype evolved not only resulted in a great biodiversity of variably and unpredictably deciduous plants, but also generated a diverse faunal complex displaying a high proportion of obligate nomadism.

Since plants cannot move to better quarters, in harsh times some of the smaller species are reduced to bulbs, rootstock or stored seeds, and must wait for sporadic ideal conditions to reappear. During prolonged droughts, some of these can vanish completely from severely affected locales. Many animal species, on the other hand, may be able to move to find relatively unaffected areas, often being retained only in isolated refugia, of which the Maules Creek woodland is representative.

Being able to fly, birds generally have a greater ability to relocate to more distant refuges. However, neither terrestrial nor aerial species can survive in refuges that are too small or too distant. Nor can many species successfully relocate to environments and ecosystems to which they are not adapted, where they may meet competition and which lack the resources they need, even if the refuges seem suitable to human eyes.

Many Australian bird species are forced to move on when the resources they need in a particular area diminish or disappear, through climatic or other conditions, such as the completion of a fruiting or flowering period. Waterfowl, such as ducks, pelicans and waders, have evolved to sense changes that may lead them to travel great distances into normally arid country for ephemeral chances to feast and breed. Not every bird species can do this.

Many birds migrate north to south and back again for ambient temperatures, food and breeding opportunities. Southern areas, for example, experience frost or other conditions generating resource shortages, only to have them replenished in warmer months or better seasons. Some birds migrate from mountains to coastal regions and back again for similar reasons.

Many birds of the tablelands and slopes rely on ample supplies of insects and/or nectar to survive. Large groups of honeyeaters, parrots and other species will flock to an area where there is a mass flowering of yellow or white box, or an abundance of insects. When the flowering is over or insects have been depleted, they must move to the next likely source of food and/or water. Without such mass events, birds will scatter to a variety of smaller, less rewarding feed spots. Rather than migrating at predictable times or to predictable places, such birds must take advantage of fleeting opportunities as they occur. As a result their populations may shrink and expand markedly over time. Too much shrinkage can lead to reduced genetic diversity, scarcity of numbers and local or even widespread extinction.

Such opportunistic nomads can disappear from an area for extended periods, sometimes years, but may return when food and conditions are suitable. As is the case with deciduous forbs, it can be

difficult to predict the presence of such species at specific locales within the range of their expected habitat. This can adversely affect the accuracy of time-constrained ecological surveys.

In order for a species to exist, individuals must also find suitable conditions for successful reproduction. While some species are open to a range of possible opportunities, others are less flexible. Many of Australia's arboreal fauna species require specific types of hollow trunks and branches, a dense canopy, shrubs or grass thickets. They need protection from the weather and from predators. In many cases this is aided or even necessitated by the presence of mistletoes or, more often, of mature and even dead trees.

Possums and larger birds, such as owls and cockatoos, require large hollows. Such hollows can take an extremely long time to form. It has been estimated that even under ideal conditions of fertility and rainfall and for fast-growing eucalypt species, it can take between 100 and 200 years to form hollows suitable to house such fauna[5]. Given the far lower and less predictable rainfall and the comparatively slower growth of box eucalypts, it is likely that such hollows likely occur in a restricted number of older woodland trees. This is a serious limiting factor for many such animals and offsets.

Woodland fauna often demonstrate preferences for particular plant species. Small birds, for example — such as thornbills and robins — often show a preference for wattles (especially feathery leaved species) when hunting for insects and exudates. Honeyeaters understandably prefer species offering ample nectar and insects, such as eucalypts, banksias and grevilleas. Some species feed on the ground, around or above the canopy, inside the canopy, on branches and trunks, on fallen timber, amongst dense litter, in shrubs or in tall grasses and graminoids. The diversity of structures available in woodland is just as meaningful for its biodiversity potential as the diversity of plant, arthropod and other available species and genetics.

From the 19th century to the present grassy box woodlands have been targeted for sheep and/or cattle pastoralism, resulting in widespread clearing and physiochemical alteration through the introduction of exotic pasture, feral animals and weed species together with ploughing and extensive superphosphate application. This major modification has caused the elimination of all but 5% of this once vast and immensely biodiverse ecotype[6]. Animals once regarded as abundant are now often require listing under Federal and State threatened species protection legislation. Many populations have become locally extinct with some species completely disappearing from vast regions.

Three examples of the losses caused by recent human disturbance include:

[5] See, for example, C. Mackowski (1984),*The ontogeny of hollows in blackbutt (*Eucalyptus pilularis) *and its relevance to the management of forests for possums, gliders and timber*, in "Possums and Gliders", Surry Beatty and Sons

[6] See, for example, https://www.lls.nsw.gov.au/help-and-advice/natural-resource-management/biodiversity/box-gum-grassy-woodland

- The eastern bettong, a small marsupial which once ranged from South Australia to central Queensland, has been exterminated from the mainland and now only exists in Tasmania and some small, reintroduced populations elsewhere.
- The Australian bustard, once common throughout Australian woodlands and grasslands, is now threatened throughout the southern states and is now only regarded as secure in the northern, sparsely populated parts of the mainland.
- The golden sun-moth *Synemon plana* once occupied the box woodlands and wallaby grasslands in tens of millions. Today the species is restricted to a few minute patches, sometimes less than a hectare in size, in Victoria, NSW and the ACT.

It is noteworthy that 15 of the 26 threatened species recorded are birds. Nearly all of these can be regarded as obligate opportunistic nomads that need to travel between temporarily available food sources to survive. All need to find enough food within a certain radius beyond which they run out of resources and may starve. Given the over-clearing of their prime habitat, grassy box woodlands, the status of their biological economy can be considered parlous at best.

It is worthwhile briefly considering each of the threatened birds species mentioned in the EIS together with the likely impact on them should this proposed mining exercise go ahead.

1. South-eastern Glossy Black-Cockatoo (vulnerable in NSW). This species can be compared to the koala in that it also has a very restricted diet. Its food intake is almost entirely of the seeds of a selection of she-oak *Allocasuarina* and *Casuarina* species. Not only are glossy black cockatoos fastidious about the species they select to eat, but they are also particularly fussy about the individual trees they choose. Despite retaining a substantial number of appropriate trees in a given area, these birds may leave if their chosen favourites are destroyed. It is therefore important to identify and protect their selected she-oak trees to help ensure the retention of the cockatoos. This is something that is likely to be both impractical and near impossible where a vast tract of their habitat is gouged from the earth and surrounded by roads and other infrastructure.

2. Little Lorikeets (vulnerable in NSW), are small nectivorous parrots. They are a typical boom and bust species that may suddenly appear in large numbers where blossoms and nectar have become plentiful, particularly in areas containing coastal banksia or eucalypt dry open forests woodland dominated by box, red gum and/or ironbark. This species, like other parrots, requires hollows in which to breed. While it is capable of breeding in hollows as small as knot holes, little lorikeets still require trees of considerable maturity to successfully reproduce.

3. Turquoise Parrots (vulnerable in NSW) are small parrots that specialise in woodlands and the grassy edges of dry forests. As obligate granivores (feeders of grass seeds), they need to live within a reasonable distance of clean water. Like other parrots they require hollows in living or dead trees to reproduce.

4. Brown Treecreeper (eastern subspecies) (vulnerable in NSW and federally). Like other treecreeper species, this species forages on tree trunks, but its preference is for feeding amongst dead and fallen timber, spending at least half its time on the ground. Though also found in mallee and dry open forest, it especially prefers open grassy woodland, particularly with rough barked eucalypts such as box, stringybark and ironbark. This species favours large areas of old growth woodland and may disappear from disturbed areas or those greatly reduced in size. It nests in tree hollows up to 1 metre in length and 1 to12 metres above the ground. Firewood collection can pose a risk to the continued presence of this species in an area.

5. Speckled Warbler (vulnerable in NSW). This species prefers light cover in dry open forest or grassy woodland. It will often forage between grass tussocks, low shrubs and fallen timber. Its nest is a domed bundle of grasses, usually in a hole in the ground or hollow amongst tree roots. Grazing, fire, weeds and the clearing of grassy woodland are listed in the literature as the main threats to this species.

6. Southern Whiteface (vulnerable at State and Federal levels). This small ground-dwelling bird favours grassy woodland and often flocks together with other small birds such as diamond firetails and thornbills. It builds a bulky domed nest in stumps, trees, logs and even under the nests of large raptors. The main reason for its decline is listed as the clearance of woodland, together with over-grazing, fire, weed infestation and severe drought events.

7. Black-chinned Honeyeater (eastern subspecies) (vulnerable in NSW). This small honeyeater frequents dry open forest and woodland, especially with rough barked trees. Apart from habitat clearance, one of its significant threats is from more aggressive birds, such as noisy miners. Noisy miners are a native species whose prime habitat is the edges of forested areas and areas disturbed by humans. They are very aggressive towards other small birds and can effectively remove them from areas they adopt as their own.

8. Painted Honeyeater (vulnerable, both in NSW and Federally). This medium-sized honeyeater is often associated with and dependent upon mistletoes. It eats mistletoes fruit and often builds its nest in dense clumps of mistletoe. Mistletoes of any size are generally found in half to full grown eucalypts and some other tree species. Painted honeyeaters often migrate from their breeding grounds in the east to overwinter in inland northern Australia. Apart from clearing and general habitat loss, this species is at greatest risk from the removal of mistletoes and/or their host trees.

9. The Grey-crowned Babbler (eastern subspecies) (vulnerable in NSW) is another species in decline through the effects of habitat clearance, competition from noisy miners, inappropriate fire regimes, predation from open country species such as corvids. They prefer woodland growing on soils of higher fertility, so have suffered significant habitat loss in competition with farmers. They are also vulnerable to habitat fragmentation and removal of dead timber and leaf litter, the latter mainly through fire.

10. Varied Sittella (vulnerable in NSW). This small bird relies upon the presence of rough-barked eucalypts, as it probes for insects among the bark of tree limbs. This is another species at risk from habitat fragmentation and attacks by noisy miners.

11. Dusky Woodswallow (vulnerable in NSW), This aerial feeder prefers woodland and dry open forest. It is vulnerable to habitat fragmentation and clearance and also to competition from noisy miners.

12. Diamond Firetails (vulnerable at both State and Federal levels) prefer open grassy woodlands and are often found at the interface between woodland and grassland. They feed primarily on seeding grasses and can be threatened by habitat alteration from woodland to forest, losing long grass ground cover. Overgrazing and weed invasion, as well as increased exposure to predators such as corvids and butcherbirds, are significant threatening factors.

13. South-eastern Hooded Robins (endangered at both State and Federal levels) have been recorded in the Maules Creek area, though not by Whitehaven Coal's consultants during their surveys. This is a bird of dry woodlands, and has been in great decline. It requires intact woodland areas exceeding 40 hectares in size, features not frequently retained by pastoralists and miners. It required locales featuring fallen timber that it uses as vantage points to view and ambush arthropod prey amongst nearby leaf litter. Its nests are usually placed in crevices and hollows in stumps, dead and fallen trees. It is particularly vulnerable from competition by noisy miners. Of the threatened bird species mentioned here, this is possibly the most susceptible to firewood removal, fire, habitat fragmentation and disturbance and is very unlikely to return to the area following the management strategies outlined by Whitehaven Coal.

In summary, most if not all of these species face further decline and local endangerment following habitat fragmentation, deterioration of structure, weed incursion, inappropriate fire regimes, loss of mature/hollow-bearing and rough-barked eucalypts, and increased exposure to predators and competitors. The proposed Maules Creek Continuation Project would adversely affect these threatened species if it goes ahead.

As mentioned above, many species of woodland fauna — especially obligate opportunistic nomads — cannot be predicted with certainty to occur in a specific area at any one time. It is of little surprise, therefore, that two highly endangered and well-publicised birds were not located during

surveys carried out as part of environmental assessment of the project. These particular species are the regent honeyeater and the swift parrot.

Regent honeyeaters are signal representatives of grassy box woodlands. This distinctive black and yellow bird, endemic to south-eastern Australia, is listed as critically endangered in NSW and by the Commonwealth. Once a common sight in NSW, numbers have crashed so far that special (and expensive) breeding and restoration programs have been funded by governments and habitat restoration carried out by many volunteers. It is now considered extinct in South Australia and extremely rare in Victoria and Queensland, with approximately 350 individual birds remaining in the wild. While impacted by fire, predators and climate change, this species has suffered in parallel with that of its prime habitat, grassy box woodland. These honeyeaters feed mostly on eucalypt nectar, but also lerps, honeydew and insects gleaned mainly from eucalypts. They were once conspicuous members of groups of birds occupying massed flowering events of box trees. They are inherently mobile birds, travelling widely in search of such events and similar resources.

Unfortunately, with almost 90% of temperate woodlands in south-eastern Australia now removed and the majority of the remaining 10% highly fragmented, this strategy is failing. Failure to record this exceedingly rare bird during the Maules Creek environmental assessment does not mean that this highly nomadic and scarce species can be dismissed as using the area, nor that this region is of minor importance to the continued survival of this species. The retention of a potential flowering, mature eucalypt canopy is recommended to assist in the recovery of this ailing bird species. Direct competition and aggression from noisy miners, noisy friarbirds and red wattlebirds are also considerations, but little realistically can be done about this, regardless of changes in land use.

Similarly, Swift Parrots are even more widely dispersing and opportunistic than regent honeyeaters. They breed in Tasmania, where forestry operations continue to threaten their breeding habitat, and then migrate to mainland eastern Australia each autumn/winter as far north as southern Queensland. This critically endangered species may number only around 750 individuals.

They eat insects, lerps, nectar and flowers from the eucalypt canopy. As its name implies, the swift parrot is a very fast flying, small green bird. It can be difficult to clearly identify at a distance, but usually can be found in small flocks. Again, given their rarity and sparsity, they cannot be dismissed as unlikely to appear *regularly* in the Maules Creek box woodlands. Note that this species has indeed been reported several times in leard State Forest in the past. In fact, given the repeated records of swift parrots in Lead State Forest (2012,2014, 2022 and 2023 that we know of), it is fair to say that swift parrots exhibit high site fidelity to the area. This is highly significant.

As can be seen in Figure 1 below, the Maules Creek area represents a significant, if slightly disjointed, bridge between two distant large forested remnants and conservation reserves, Mount Kaputar National Park and the Pilliga. Both of the two large conservation reserve systems differ from Maules Creek in being substantially hillier, less fertile and contain different ecotypes. The Pilliga contains large areas of ironbark-cypress pine-buloke tall open forest with ironbark-bloodwood-wattle shrubby dry open forest and wattle scrub on infertile sandy soil. Mount Kaputar contains dry rainforest, heathland and a great variety of other dry and moist forest types with some areas of

white box woodland. Other stands of native vegetation remain as potential links between the two larger reserves, though many are impacted by other existing mining and other operations.

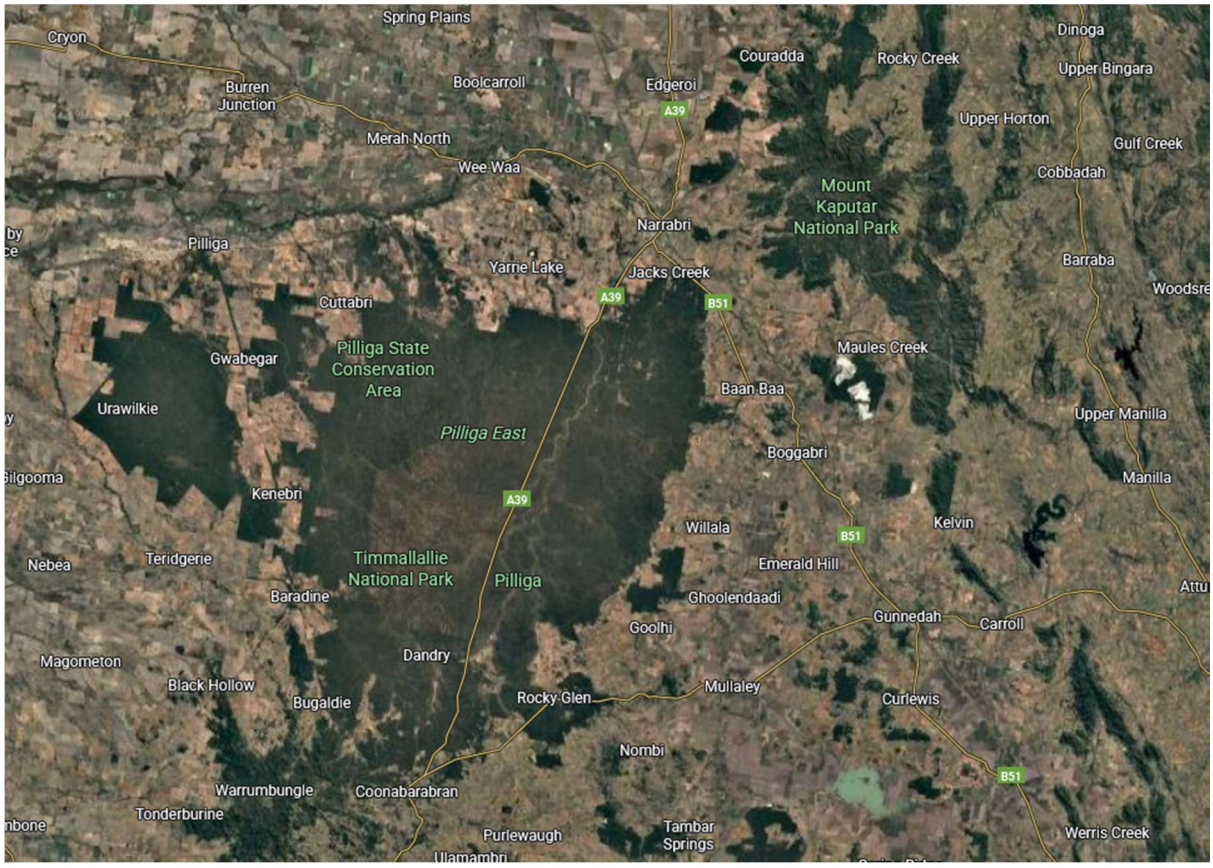

Figure 1 The Pilliga (left) is separated from Mount Kaputar National Park by extensively cleared farmland. Maules Creek is between the two, shown by three glaring white gashes that can be seen from space.

Figure 2 highlights the terrain between the Pilliga, Maules Creek and Mount Kaputar. This exhibits a potential for regenerated woodland/forest linking the three areas should landholders and governments agree to such a scheme.

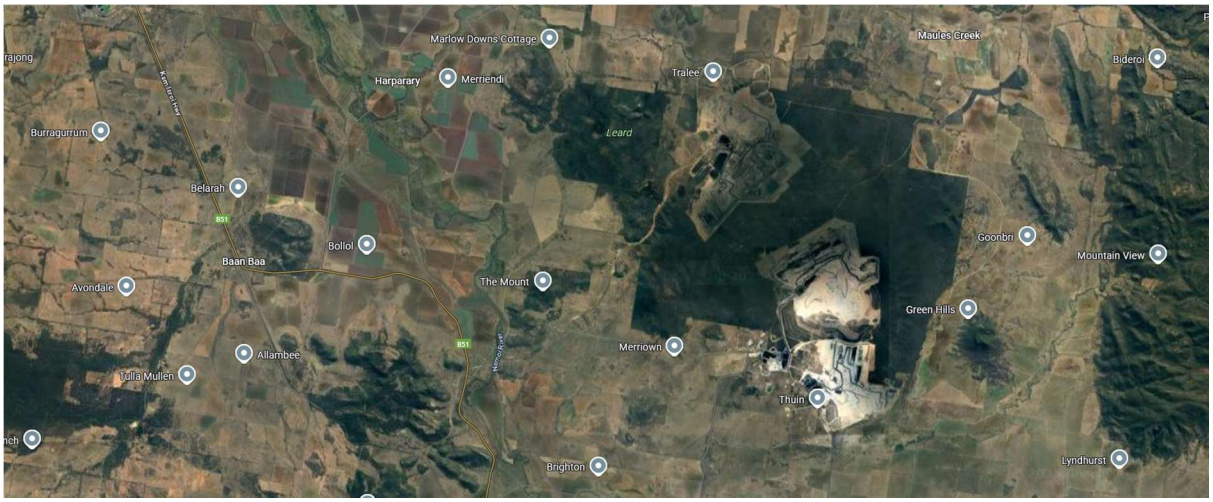

Figure 2 Small remnant patches of bushland between the Pilliga (far left) and Mount Kaputar (far right). Maules Creek, together with its existing mines and bushland, occupy the centre right.

Attempts to regenerate disturbed portions of the Maules Creek area are worthy, but as mass plantations —even with a complete complement of local native grasses, forbs, shrubs and trees — cannot replicate a mature white box grassy woodland or other mature local ecotypes. Natural structural components, such as large trees — living, standing and fallen dead — as well as hollow bearing trees, mistletoes and resilient native grassland are not easily replaced. Old growth box trees take centuries to mature, far longer than governments or corporations are prepared to wait or to meet the needs of local species.

Given Whitehaven's questionable ethical reputation[7], it cannot be confidently stated that the company will faithful expend every effort and resource needed to ensure like-to-like or better regeneration will ever take place. NSW has too often experienced companies of all sizes and reputations simply dodge responsibility, declare bankruptcy, sell their projects on to other players or just walk away from their responsibilities in this regard, or perhaps simply factor the payment of fines into their operating costs. Even if thorough detailed assurance could be assumed that every effort would or could be made for decades to re-install the pre-mining (or improved) bushland, it is extremely unlikely that the entire ecosystem could be returned, including all threatened biota.

The grassy box woodland and other adjoining natural ecosystems in this area will not, in our opinion, truly recover from the proposed Maules Creek Continuation Project. Instead the project is very likely to cause lasting harm, possibly including local extinction, to native species in this locale during and following a protracted period of disturbance.

[7] See for example: https://www.theguardian.com/australia-news/2020/aug/11/whitehaven-coal-charged-with-16-breaches-of-nsw-mining-laws; https://www.abc.net.au/news/2017-08-04/whitehaven-coal-environment-licence-breaches-raise-concerns/8771156; https://www.burges-salmon.com/articles/102jjyi/climate-change-litigation-an-analysis-of-the-whitehaven-coal-mine-decision/; https://www.marketforces.org.au/coal-affair-sinks-mark-vailes-uni-application/

The Offsets System is a disaster

The NSW Biodiversity Offsets Scheme (BOS) requires developers to address the unavoidable impacts of development on biodiversity by providing offsets, which can include land-based direct offsets, purchasing and retiring biodiversity credits, or contributing to the Biodiversity Conservation Fund.

The use of offsets to mitigate adverse environmental impacts associated with proposed additional mining have been so perverted as to bring into question the veracity of the scheme itself in NSW.

Key Requirements of the NSW Biodiversity Offsets Scheme that have been effectively circumvented include:

1. **Avoid, Minimise, Offset Hierarchy:**

Development must first avoid any negative impacts on biodiversity. Existing mining in the area has directly resulted in the destruction of large tracts of box woodlands and other natural communities. There has been no demonstration of avoidance, rather open cut mining was judged unavoidable by prioritising short term economic gain over long term significant deleterious environmental impact. Such impacts became unavoidable only when permission was given for mining to proceed. In this case minimisation is inconceivable. With little effective pause, offsets were therefore readily utilised, ticking boxes that were environmentally fanciful, but which met legal requirements. This criterion can be afforded a technical pass but with highly contested priorities.

2. **Like-for-like:**

While offsets should protect the same or similar ecological values as those impacted by the development, those offered were of substantially different plant communities and ecosystems. Whitehaven has clearly failed in the past and present to do anything resembling like-for-like. It neither offered an appropriate offset, nor replicated the critically endangered box woodland ecosystem to be destroyed. This was the case in 2017 and continues to fail this criterion in the proposed mine extension. Given the rare and special nature of the grassy box woodland habitat in particular, and previous widespread clearing of this in the region, it is little wonder that Whitehaven has not been able to find the correct size and type of ecosystem for offsetting purposes. In this regard the proposal represents a complete and unacceptable failure to meet this criterion.

3. **Additionality:**

Offsets must deliver a conservation gain that would not have occurred without the offset. Again, the offset proposed, being a false equivalence is unable to achieve this outcome. The flora and fauna of grassy woodlands are quite dissimilar to those of nearby dry open forests in hilly country. After repeated breaches, the Government has allowed Whitehaven to give up.

4. **Permanence:**

The conservation gains achieved by offsets must be maintained over the long term. Long term is defined as 100 years, politically safe but environmentally unsound. It takes eucalypts hundreds of years to produce mature trees with hollows suitable for owls and possums, especially in box woodland. There is no real guarantee offsets will be maintained to ensure they are kept weed free and survive rigors of droughts, floods and fire. In the case of increasingly small island remnants, such as Maules Creek, the long-term survival of offsets can be eliminated by misfortune or, more likely, the failure of the company or its descendants to rigorously maintain the health of the offset.

5. **Transparency and Accountability:**

Offsets must be measurable, monitored, and subject to public reporting. This is possible, but not if the information provided by a corporation or government with other priorities. Whitehaven is not immune to making claims that have not stood firm in the face of scrutiny. Indeed, Whitehaven's questionable ethics and practices have resulted in numerous fines and penalties for legal breaches, particularly in their Maules Creek operations. Despite significant payouts, this company is also known for its political donations, lobbying and proximity to politicians, pushing for political outcomes that benefit them at ongoing and significant costs to the environment and broader Australian society. This requirement has also been covertly ignored.

6. **Biodiversity Assessment Method (BAM):**

Though BAM has generally been considered effective, a recent 2024 review identified 32 recommendations for improvement, including addressing issues with data inconsistencies, improving guidance, and simplifying processes. Criticisms of the BAM include concerns about its ability to accurately assess biodiversity values, particularly for threatened species, and its effectiveness in promoting genuine avoidance and mitigation of biodiversity impact.

In order to meet their offset obligations developers are able, under present legislation, to utilise a variety of methods including:

- Buying and retiring biodiversity credits from the market or a biodiversity stewardship site.
- Funding approved alternative conservation actions
- Making a payment into the Biodiversity Conservation Fund, which is managed by the Biodiversity Conservation Trust (BCT).
- Commitment to ecological rehabilitation of mine sites to create habitat.

Unfortunately, mature white box woodland cannot be replaced within human lifetimes or, more practicably, with ensured resourcing within political memory. Photos provided by Whitehaven of extensive fields of saplings absolutely do not represent rehabilitated habitat, certainly not on a like-to-like basis. All of this is moot, with the Government allowing Whitehaven to eschew its responsibilities under the BOS, having modified the scheme in a manner tailor-made for the large coal miner.

NSW must adopt the role of a responsible global citizen

As well as having significant environmental concerns for the specific site covered in this submission, our Branch of BirdLife Australia urges planning authorities to recognise the obligation of NSW to act as a responsible global citizen.

Maules Creek may produce some of the highest quality high energy thermal coal in Australia as Whitehaven maintains on its website, but on a global basis there are environmental, legal, moral and economic impacts of continuing to extract and use coal for energy. Australia is obliged to reduce, not to expand thermal coal mining and export, to meet emission targets and reduce global warming.

Approval of any coal mining expansion may open the State of NSW to massive compensation claims in the near future. Two recent and relevant legal decisions follow.

1. The International Court of Justice: obligations of states in respect of climate change, 23 July 2025 advisory opinion:

    - page 137 "The Court A unanimously, is of the opinion that the climate change treaties set forth binding obligations for States parties to ensure the protection of the climate system and other parts of the environment from anthropogenic greenhouse gas emissions."
    - Page 139: E. Unanimously, "…the legal consequences resulting from the commission of an internationally wrongful act may include the obligations of: … (c) full reparation to injured States in the form of restitution, compensation and satisfaction …"

On 25 July 2025, the Sydney Morning Herald summarised part of the International Court of Justice ruling as follows:

"*Failure of a State to take appropriate action to protect the climate system from greenhouse gas emissions – including through fossil fuel production, fossil fuel consumption, the granting of fossil fuel exploration licences or the provision of fossil fuel subsidies – may constitute an internationally wrongful act which is attributable to that State," the ruling said.*

2. Mount Pleasant Mine expansion in the Hunter Valley

On 24-25 July, The Guardian Australia and other media reported on a New South Wales court of appeal decision overturned the approval of the largest coalmine expansion in the state after a community environment group successfully argued the planning commission failed to consider the impact of all of the project's greenhouse gas emissions. The community group's legal representative was quoted in The Guardian Australia as follows:

Elaine Johnson, the director of Johnson Legal, said the court had determined that it was the planning commission's job to consider the link between fossil fuel expansions and climate harm felt by local communities in NSW.

Today's decision has broad-ranging implications for all new and expanded fossil fuel projects in NSW. No longer can the NSW government say that climate impacts felt by local communities in NSW are divorced from the continued production of coal and gas in the state," she said. "It's difficult to see how further fossil fuel expansions will pass muster following today's decision."

On 25 July 2025, the Sydney Morning Herald summarised the outcome:

A court has overturned the 2022 approval of a massive Hunter Valley coal mine in a landmark ruling, setting a clear precedent that planning authorities must consider the local impacts of global climate change.

These should represent ominous warnings for coal miners in NSW and for any State government. It is clear that the State has a duty to protect its citizens and neighbours from the effects of climate change. Pandering to the potential commercial profits of prominent political donors is not a good look, suggesting a corruption of purpose and ethics, especially when laws and conditions are modified to squeeze such companies past legitimate barriers established to protect the environment.

As the Auditor's report notes:

- ***96%*** *– proportion of developer demand for species credits not met by current supply*
- ***97%*** *– proportion of species credits that have never been traded on the biodiversity market*
- ***60%*** *– proportion of the 226 Biodiversity Stewardship sites under active land management*
- ***$90m*** *– value of developers' obligations paid directly into the Biodiversity Conservation Fund*
- ***20%*** *– proportion of developer obligations transferred to the BCT that have been acquitted.*

Australia is coming under increasing pressure to reduce its secondary carbon footprint. As a recent study by the University of NSW's Australian Human Rights Institute demonstrates[8], Australia is second globally for emissions from fossil fuel exports. The report states that "despite Australia's diverse economy that is no desperate need to utilise coal exports" but:

Australia presents itself as a minor contributor to climate change when, in fact, it is one of the world's largest fossil fuel-exporting states. It also has no policy to restrict or limit its fossil fuel exports.

The report recommends that "Australia must urgently implement an ambitious national plan to phase-out its fossil fuel export production in an orderly, cooperative and just manner".

[8] https://www.unsw.edu.au/newsroom/news/2024/08/fossil-fuel-exports-place-australia-among-worlds-top-climate-polluters

According to Lock The Gate, NSW has proposals for 18 coal mine expansions, removing 822 Mt of coal and producing 1.7 gigatons of emissions. If the current continuation proposal is approved, mining at Maules Creek may last until 2043, together with potential associated dust, gas, water and greenhouse gas pollution and ongoing disturbance to and within national and State endangered ecosystems.

As mentioned above, Whitehaven Coal hardly has a spotless reputation. Apart from its inability to find appropriate offsets well beyond set deadlines, and after disturbance has already taken place resulting from its nearby existing mine, it has come under criticism for its high levels of dust and methane pollution. It was fined $150,000 when it pleaded guilty to polluting water near the Maules Creek mine in the Land and Environment Court in 2022. Scores of people have already been arrested for protesting the mining operation at a considerable cost to the State.

NSW regulators clearly have failed to get or want to understand that message.