



**Wando Conservation and Cultural Centre submission opposing Maules Creek Coal Mine Expansion/Continuation**

**SSD-63428218; EPBC 2024/09936**



**Pic: this shows Maules Creek Coal mine in the heart of the Leard State Forest.**

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## 1. About the submitter

Wando Conservation and Cultural Centre (Wando) was formed in 2016 and is the only dedicated environmental conservation group in the Narrabri area being based in Maules Creek. Over the past decade much of Wando's commitment has been to protect the land, water, environment and community from the impacts of Maules Creek Coal Mine (MCCM) which is operated by Maules Creek Coal Pty Ltd, is a subsidiary of Whitehaven Coal Pty Ltd (Whitehaven) through critiquing development proposals, monitoring compliance and involvement with the onerous work of forwarding investigations. Over the decade MCCM has been responsible for misleading advice to the Government departments charged with overseeing development in NSW, frequent breaches of conditions, the practice of modification creep and 'approval banking'.

## 2. Rejection of approval banking

There is no formal status of "**approval banking**" in the NSW State Significant Planning (SSD/SSI) system. However, it is an abuse of the planning system to delay or "bank" approvals—holding onto granted approvals to use strategically later or exploit the tenure granted for commercial reasons not directly related to the approval and EIS itself. A central problem with this practice is that by the time the project commences many years after the approval, should it occur, circumstances will have changed so greatly (including cumulative impacts with the other mines in the Leard Forest Mining Precinct and Gunnedah-Narrabri region) that the EIS would no longer be accurate, as predictive modelling (including economic and biodiversity) would be so uncertain as to be misleading. We are asking the Independent Planning Commission to take this matter explicitly into account when determining all aspects of the EIS.

## 3. Opposition and request application be withdrawn

Wando's experience with Whitehaven's MCCM leads us to not only adamantly oppose this development but to consider that this application should be withdrawn until the matters outlined below are addressed and corrected.

Wando wrote to the Secretary of Planning submitting that the economic impacts cannot be considered by the IPC as they contain false and misleading information.

are concerned that the Environmental Impact Statement (**Maules Creek EIS**) in respect of the Maules Creek Continuation Project (the **Project**), the Economic Assessment contains false and misleading information in breach of s 10.6 of the *Environmental Planning and Assessment Act 1979* (NSW).

The Deputy Secretary responded to us as follows:

"The Department does not consider the provision of this information in the project's EIS to be a breach of section 10.6 of the Act. AnalyteEcon has undertaken

its assessment with assumptions about coal prices and carbon prices to inform the cost benefit analysis, including as guided by the Guidelines for economic assessment of mining and coal seam gas proposals, along with the technical notes supporting these guidelines. The guideline for economic assessment references the need for the carbon price to be guided by market prices to inform the valuation of carbon emissions.

Like all environmental assessments, the assumptions about coal and carbon prices and the sensitivity analysis relating to these prices will be considered and tested by the Department, relevant NSW government agencies and independent experts engaged by the Department as the assessment progresses, and should it be considered necessary, additional information may be requested from the applicant about the basis for the projected coal prices and carbon prices.”

We reject that response.

#### **4. Summary of main considerations**

We now present our main considerations in opposing the expansion of the Maules Creek mine, and here we also take the opportunity to criticise the terminology “**Continuation**” in the name of the application, as the proposed project is clearly a physical expansion (geospatially) as well as an intensification, as it proposes to increase the annual coal extraction rate.

##### **Consideration 1**

- a) False and misleading information concerning the financial returns to NSW, with particular reference to the projected price of thermal coal and carbon cost, has been corrected

##### **Consideration 2**

- a) prosecutions currently before the courts have been completed and sentencing handed down for those four counts on which Whitehaven were found guilty last November.
- b) Blasting impacts and their impact on the Biodiversity Corridor are appropriately considered

##### **Consideration 3**

#### **Breaches which contribute to the cost to NSW of Whitehaven and cast a shadow on Whitehaven being an ‘honest actor’**

Whitehaven Coal, and in particular Maules Creek Mine, has consistently behaved as a dishonest actor since the original EIS (2009) and since the commencement of the mine.

#### **Consideration 4: The proposal is unable to comply with EPBC Act to protect an endangered species: Swift Parrots**

#### **Consideration 5: Overburden height, final void, tyre dumping**

#### **Consideration 6: Banking approvals and modification creep**

#### **Consideration 7: Cumulative Impact**

## **5. Consideration 1: This application should be withdrawn until false and misleading information has been corrected**

We assert that:

- a. the thermal coal price is inflated and is inconsistent with other coal price forecasts; and**
- b. the carbon cost (which is Maules Creek Coal's ACCU liability under the Safeguard Mechanism) does not reflect the true/ social cost of carbon to the NSW community; and**
- c. the shadow carbon price published by NSW Treasury framework should be used as it does attempt to integrate the true/social cost of carbon**

Wando is concerned that WC has presented false and misleading information in this EIS (see for example, royalty figures at Whitehaven, [Economic Assessment](#) at page 11, 26, 58, 92) regarding the thermal coal price which is inflated and is inconsistent with other coal price forecasts; this would appear to be in order to give credence to the large return through royalties that Whitehaven claims will accrue to NSW as a result of this project.

Figure 2-4, Projected coal prices ([Economic Assessment](#) p.7) for the FY 2028-FY 2044 has *Figure 2-4 shows the reference price projections for thermal coal and coking coal (expressed in US dollars (USD) per tonne). These forecasts are based on consensus price forecasts that have been adjusted for ash and energy content **by Whitehaven** (our bold) to derive realised coal prices for product coal from MCCM and from the Project.*

Surely not the most reliable of sources, and yet no other is quoted and these projected, upwardly moving figures are used to calculate royalties.

Both the NSW and Commonwealth Governments have published predictions challenging Whitehaven's figures. The NSW Treasury 2021 Intergenerational Report (2021), [The sensitivity of the NSW economic and fiscal outlook to global coal demand and the broader energy transition for the 2021 NSW Intergenerational Report](#) reviews the changing landscape for coal royalties noting that thermal coal markets are already experiencing global oversupply which places downward pressure on prices- there is no reason to believe this situation will change.

The Commonwealth Department of Industry predicts that thermal coal spot prices will decline from US \$135 a tonne in 2024 to US\$98 a tonne by 2030 (Australian Government, Office of Chief Economist, [Resources and Energy Quarterly](#), March 2025, p.47)

Using the figures from NSW and Commonwealth Governments shows, at best, a marginal return for NSW from royalties.

Obversely, the Project’s assessment of carbon prices to determine the market price to value greenhouse gas emissions relies on mechanisms which **undervalue** the cost of the Project. The company argues that Australian Carbon Credit Units have gained widespread acceptance but this is contrary to the carbon price framework outlined by the NSW Govt NSW Treasury (2025) TPG24-34 [Carbon emissions in the Investment Framework](#) p. 4 The prices, as shown in the table below, are significantly greater than the approximate \$94/t used by the Proponent.

**Table 1: NSW Treasury carbon prices, \$A/t C02e 2024 prices<sup>14</sup>**

	FY25	FY26	FY27	FY28	FY29	FY30	FY31	FY32	FY33	FY34	FY35	FY36	FY37
<b>\$AUD</b>	\$130	\$131	\$133	\$137	\$146	\$164	\$196	\$240	\$284	\$316	\$334	\$343	\$347
	FY38	FY39	FY40	FY41	FY42	FY43	FY44	FY45	FY46	FY47	FY48	FY49	FY50
<b>\$AUD</b>	\$349	\$350	\$350	\$350	\$350	\$350	\$350	\$350	\$350	\$350	\$350	\$350	\$350

Of grave concern to Wando is that this examination of the financial claims made in the EIS have had to be undertaken by community members: it is our contention that the Planning process should have determined that the figures were not reliable; it would be a reasonable expectation that a Proponent in this position would be required to withdraw the application and resubmit it using the appropriate tools.

“Negative royalties” scandal

**Further, Wando is concerned that this cavalier approach to its fiscal obligations is not unusual for Whitehaven.** We draw attention to the matter of ‘negative royalties’ as an example of Whitehaven avoiding its fiscal obligations to NSW. Recently Whitehaven (and other subsidiary companies) appealed the decision of the Chief Commissioner of State Revenue not to allow objections by the plaintiffs to the reassessment of their Mineral Royalty Assessments Notices. The appeal was unsuccessful, the result being that Whitehaven owes the NSW Government \$10 million across all five of its coal mines in NSW, including the MCCM: *Whitehaven Coal Mining Limited v Chief Commissioner of State Revenue* [2025] NSWSC 488 The matter was heard on 30 April – 1 May 2025 and the date of the decision was 16 May 2025, meaning that the Proponent sought to avoid a \$10 million royalties liability whilst at the same time relying on royalties that it says will be owed to NSW as a result of the Project to demonstrate its net benefit to the NSW community.

Duplicity surrounding the facts of Whitehaven’s negative royalties process has extended to the Maules Creek Community Consultative Committee, where the Chairperson Mr Silver either does not understand the issues, or as been misinformed by the proponent or other sources unknown.

This matter was raised by a community member (identified in the minutes as EOH) during the CCC meeting of MCCM 15 May 2025. She specifically used the term 'negative royalties' as this was a new concept to the community and quite puzzling. When this was not reflected in the draft minutes she requested the amendment to the minutes indicated in brown in the first excerpt below.

However, the 'approved minutes' (second excerpt) attribute to the community member the statement as shown below which contains information simply not known to the community representative and is actually The Chair's statement.

Draft minutes MCCM. Thursday 15 May 2025

**12.2 Whitehaven Coal Limited v Chief Commissioner of State Revenue:**

EOH noted the NSW Supreme Court hearing 8-9 April - Whitehaven Coal Limited v Chief Commissioner of State Revenue- the issue of 'negative royalties' was previously unheard of by community and of significant interest

Chair's note: Whitehaven and four other associated companies (the Plaintiffs) each hold one or more mining leases under the Mining Act 1992 (NSW). The Plaintiffs lodged an application brought under s 97 [1] of the Taxation Administration Act 1996 (NSW) for a review of decisions of the Chief Commissioner of State Revenue to disallow (in part) their objections to Mineral Royalty Assessment Notices issued by the Chief Commissioner on 2 November 2022. Under the Mining Act, holders of such leases have to render monthly returns and pay royalty to the Crown on publicly owned minerals recovered by the holder under the lease.

The judgement of the NSW Supreme Court (Equity) was handed down on 16 May 2025. The objections were in part upheld by the Chief Commissioner, remitting a portion of premium interest and penalties imposed on the Plaintiffs.

Refer: <https://www.caselaw.nsw.gov.au/decision/196d1e10e46b5ad30a0b65d2> for complete judgement.

Approved minutes MCCM CCC, 15 May 2025

Expiration notes filed and their distribution. EOH indicated this information is available in the forward file.

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Refer: <https://www.caselaw.nsw.gov.au/decision/196d1e10e46b5ad30a0b65d2> for complete judgement.

**Wando Conservation and Cultural Centre will be watching closely to ensure that the Department's Assessment Report insists that the appropriate mechanisms be used to arrive at a statement of the economic benefits (if any) of the project to the people of NSW**

## **6. Consideration 2: Severity and number of current prosecutions warrants halt to expansion plans**

**Application SSD-63428218; EPBC 2024/09936 should be withdrawn until all prosecutions currently before the courts have been completed and sentencing handed down for the four counts on which Whitehaven were found guilty last November and Blasting impacts and their impact on the Biodiversity Corridor are adequately dealt with.**

Appendix H of the Maules Creek Continuation Project Environmental Impact Statement (EIS), presents the Noise and Blasting Assessment for the proposed continuation of mining activities.

This is our critique of Appendix H: Noise and Blasting Assessment – Maules Creek Continuation Project EIS, based on the publicly available knowledge about Whitehaven’s growing list of blasting offences, our experience having a representative on the Maules Creek Community Consultative Committee, and our examination of what would be proposed under the management plan if approved. This critique raises serious concerns about the adequacy of the assessment, particularly regarding blast frequency, sensitive receiver definitions, and the exclusion of ecological assets such as the Leard State Forest and the Biodiversity Corridor from risk assessments.

On 20<sup>th</sup> August 2020, two members of the Wando Conservation & Cultural Centre received an SMS notification to say that a blast of extraordinary proportions had been let off at Maules Creek Coal mine. Gradually the facts emerged, revealing that (at least) two Boggabri Coal workers over 2km away had been injured by blast overpressure and taken to hospital. Wando Conservation and Cultural Centre sought access to a video of the blast which had been played in the public Court during the trial in *Environment Protection Authority v Maules Creek Coal Pty Ltd* [2023] NSWLEC 94. Finally, when the video was released under *Government Information Public Access Act (NSW)* it revealed how close the criminally excessive blast was, and how great a hazard it was to the ecological values of the Leard Forest Biodiversity Corridor.

This submission is made in opposition to the adequacy of the Noise and Blasting Assessment contained in Appendix H of the Maules Creek Continuation Project Environmental Impact Statement (EIS). Despite a recent judicial determination highlighting critical failures in blast monitoring and environmental sensitivity assessments, the Appendix fails to implement any meaningful improvements or respond adequately to those findings.

### **2. Inadequate Blast Monitor Distribution**

We are shocked to learn from Appendix H that no changes are proposed to the location of blast monitors — monitoring continues under existing blast management frameworks. Risk to the Biodiversity Corridor not separately assessed in the

Continuation EIS; corridor covered via EPBC biodiversity assessment and Corridor Plan as per approval conditions

Appendix H lists six blast monitoring locations, namely:

- Winchester South
- Rocglen
- Winchester Downs
- Wilgadale
- Kia Ora
- Maules Creek Homestead

These monitors are all located in the northwest or northeast quadrants of the mining lease and are oriented solely toward residential dwellings. There are no blast monitors located adjacent to, or within, the Leard State Forest or the EPBC-protected Biodiversity Corridor.

### **3. Judicial Findings Ignored**

In *Environment Protection Authority v Maules Creek Coal [2024] NSWLEC 94*, Justice Sarah Pritchard ruled that Whitehaven Coal had wrongly excluded areas such as the Leard State Forest and the Biodiversity Corridor from its blast impact monitoring. The judgment found these areas met the statutory definition of "environmentally sensitive areas" and should have been treated as sensitive receivers for the purpose of impact assessments.

Justice Pritchard's judgment was clear: Whitehaven Coal's failure to monitor blast impacts in areas other than the north-west quadrant constituted a breach of their environmental obligations. She ruled that areas like Leard State Forest and the Biodiversity Corridor are entitled to protection from excessive vibration and overpressure. Appendix H, by failing to reflect this expanded understanding of sensitive receivers, does not meet the standard of environmental accountability expected following the 2024 ruling.

Despite this, Appendix H:

- Continues to define sensitive receivers solely as residences.
- Omits any discussion of ecological assets as impact receptors.
- Proposes no additional blast monitoring locations to cover ecological zones.

This amounts to a direct disregard for the findings of the Land and Environment Court and undermines the credibility and legality of the assessment.

#### 4. Environmental Risk to Sensitive Ecological Areas

The Leard State Forest and the 500 m-wide Biodiversity Corridor, both of which host endangered ecological communities and threatened species, are located downslope and downwind of the mine's blast areas. They are known to be at risk of vibration, overpressure, dust, and habitat fragmentation. The failure to include these areas as blast-sensitive zones results in:

- A substantial underestimation of environmental risk.
- Absence of data to evaluate cumulative or long-term impacts on biodiversity.
- Potential non-compliance with Commonwealth EPBC Act conditions and state-level biodiversity protection requirements.

Appendix H continues to use a narrow and outdated definition of "sensitive receiver," limited to residential dwellings. This is contrary to the findings in *Environment Protection Authority v Maules Creek Coal [2024] NSWLEC 94*, where Justice Sarah Pritchard held that conservation areas such as Leard State Forest and the EPBC-protected 500 m-wide Biodiversity Corridor qualify as "environmentally sensitive areas" under statutory definitions. The exclusion of these areas from the blast impact assessment in Appendix H ignores both the legal precedent and the ecological value of these conservation assets.

##### - **No Risk Assessment for the Biodiversity Corridor**

As is the case with the current Maules Creek Coal Mine, there does not appear to be any separate Biodiversity Corridor-specific risk assessment included in the Continuation EIS.

The biodiversity corridor is required to be addressed through:

- The broader EPBC-mandated biodiversity assessment and Bilateral Agreement with the Commonwealth;
- The existing Biodiversity Corridor Plan, which is part of the Project Approval conditions and remains in force unchanged

The absence of Risk Assessment for the Biodiversity Corridor is a very grave omission. There is no standalone or embedded risk assessment in Appendix H for the Biodiversity Corridor or other ecological assets. These areas continue to be excluded from vibration and noise prediction

modelling, despite being directly adjacent to or within the project impact zone. The lack of such an assessment undermines the credibility of the EIS and raises questions about compliance with Commonwealth EPBC Act conditions and the Biodiversity Corridor Plan.

**We recommend:** That the IPC Commissioners acquaint themselves with this Management Plan, which is not to be mistaken with the Biodiversity Management Plan.

**- Lack of transparency concerning injury to Biodiversity Corridor**

Earlier this year, we heard sworn evidence given by the Environmental Superintendent of Maules Creek Coal mine and Chief Operating Officer of the parent company Whitehaven Coal, to the Land and Environment Court in the sentencing hearing of *Environment Protection Authority v Maules Creek Coal Pty Ltd* [2023] NSWLEC 94.

**-Words of the Environmental Superintendent**

The Environmental Superintendent Ms Emma Bulkely, who is also on the Maules Creek Community Consultative Committee, told the Court she had inspected the Biodiversity Corridor following the 20 August 2020 blast and observed a crack in the ground near to whether the blast had occurred. However, Whitehaven did not ever report this to the Department of Planning, and consequently this matter has never been brought to the attention of the Commonwealth, in whose stead the Department of Planning is supposed to manage the compliance of the mine with its EPBC requirements to protect the Biodiversity Corridor.

Ms Bulkely also failed to inform the Community Consultative Committee, which is remiss as this Committee plays a critical part of the overall Maules Creek mine approval and the Boggabri mine too, as the means to keep the community updated. This evasiveness has now become evident in the disclosures made by Whitehaven in Appendix H, which is to say non-disclosures, and concealment of significant impacts from the blast. Ms Bulkely also said she had not observed any other unusual impacts to the Biodiversity Corridor other than a few “broken sticks”. The absurdity of that statement should not diminish the seriousness of the subject matter. A few “broken sticks”, with no photographic evidence or contemporaneous report are a mockery of the EPBC conditions and reflective of the lack of commitment Whitehaven has to its EPBC conditions.

**-words of the Chief Operating Officer**

COO Mr Ian Humphries perhaps made the most significant contribution to our understanding of Whitehaven’s intentions, when he appeared on oath at the same sentencing hearing and told the Court that, faced with the same geotechnical issues as the 20 August 2020, the company would not change anything they did. He showed no contrition, and no attempt to improve processes or monitoring.

**5. Increased Blast Frequency Without Safeguards**

Appendix H suggests that blasting could occur at a frequency greater than one blast per day (see p. 105) within the context of the BTM complex rules, citing allowances for additional blasts in cases of misfire or under special operational circumstances. This would be if vibration criteria are met. However, as we said above, the criteria are weak.

The increase in potential frequency is not matched by any expansion of the monitoring network or blast exclusion zones. The assessment is therefore not precautionary, nor consistent with adaptive environmental management principles.

However, as the proposed productivity under this project is 1 million tonnes per annum MORE than the existing project (ie 14 MTPA as opposed to 13 MTPA) it stands to reason that more blasting WILL be required to achieve this productivity.

While this may technically remain within the parameters of the existing Boggabri–Tarrawonga–Maules Creek (BTM) Complex Blast Management Strategy, it raises concerns about the cumulative blast impacts on the surrounding environment and communities. These allowances risk normalising frequent exceedances of one blast per day, contrary to public expectations based on previous operational limits.

## **6. Conclusion**

Appendix H fails to reflect respect for the EPBC-protected Biodiversity Corridor or judicial precedent. Its continued exclusion of key ecological areas from impact assessment and monitoring obligations renders it fundamentally flawed. Approval of the continuation project must be withheld until these concerns are fully addressed in a revised blasting assessment. By continuing to use a narrow definition of sensitive receiver, excluding key ecological zones from blast impact assessments, and failing to adjust blast monitoring protocols, the assessment does not meet the expectations set by legal precedent or best practice environmental protection. A revised assessment that integrates these factors is urgently required.

The Appendix does not propose any updates to the blast monitoring framework. Monitoring remains governed by the existing BTM Blast Management Strategy, with monitoring points concentrated in the north-west quadrant near residential dwellings. Despite prior criticism, there is no evidence in Appendix H of expanded monitoring coverage to areas such as the Biodiversity Corridor or Leard State Forest.

## **7. Recommendations**

In light of these deficiencies, we submit that Appendix H should be rejected in its current form. To be considered adequate, the following amendments are essential:

- **Redefine "sensitive receivers" to include Leard State Forest, the Biodiversity Corridor, and other EPBC-listed ecological areas.**
- **Install additional blast monitors within or adjacent to these ecological assets.**
- **Conduct a revised blast risk assessment that includes biodiversity and conservation values.**
- **Commit to periodic public reporting on blast impacts to both residential and ecological receptors.**

**Wando Conservation and Cultural Centre will be watching closely to see that the Department's Assessment Report accurately and faithfully represents both the history of blasting offences at Maules Creek Coal mine, and the harms posed by blasting to the Biodiversity Corridor and the community exposed to particulates and nitrate pollution.**

## **7. Consideration 3: Breaches which contribute to the cost to NSW of Whitehaven and cast a shadow on Whitehaven being an 'honest actor'**

Whitehaven Coal, and in particular Maules Creek Mine, has consistently behaved as a dishonest actor since the original EIS (2009) and since the commencement of the mine. Whitehaven Coal's Maules Creek Mine scandal is a textbook case of corporate overreach into vital water resources during serious environmental stress. The combination of unlicensed surface water capture, an illicit groundwater pipeline, and a relatively light court-imposed fine has catalysed widespread criticism—from local farmers, environmental lawyers, and community advocates. The episode underscores profound challenges in balancing resource extraction with environmental stewardship and community trust.

We commence with the discreditable water scandal of the 2018 drought. During the severe drought around 2018, farmers and community groups raised alarms about Whitehaven Coal's Maules Creek mine allegedly taking far more surface water than its licences permitted. A review by Lock the Gate Alliance revealed that in 2016, the mine captured some 1,800 million litres of surface water—despite being licensed for just 30 million litres. The excess appeared to stem from surface runoff and rainfall capture, which community members argued should have remained available to recharge groundwater and support downstream ecosystems and agriculture. Here is a link to The Northern Daily Leader report:

<https://www.facebook.com/NDLNews/posts/whitehaven-coal-are-facing-up-to-2-million-in-fines-after-pleading-guilty-to-tak/4131271570297499/?utm>

Whitehaven pleaded guilty to water theft over the years 2016-2018. It is notable that the theft occurred over a period of years with no oversight or objection from the Department of Planning. This speaks to our claim that the Maules Creek mine suffers from “light touch” regulation from the Department.

Attempts to justify such use via exemptions for "dirty water" were strongly challenged, with critics insisting that the exemption should not permit such large-scale licensed bypasses of the lawful water access arrangements. We suggest the authors of Assessment Report acquaint themselves with this account from the ABC:

<https://www.abc.net.au/news/2018-09-10/investigation-into-water-usage-following-coal-mine-concerns/10219410?utm>

Detailed references to the events are found here:

<https://nwprotectionadvocacy.com/whitehaven-coal-attempts-to-hose-down-lock-the-gate-water-claims/>

## Legal Action & NRAR Prosecution

In 2020, the **Natural Resources Access Regulator (NRAR)** initiated prosecution against Maules Creek Coal Pty Ltd for alleged breaches of the **Water Management Act 2000**, related to unauthorised water extraction for surface and river water between 2016 and 2019.

## Illegal Pipeline: “Buy-Out” and Water Theft

In late 2019, additional revelations emerged: Whitehaven had reportedly constructed an **unauthorised water pipeline**—drawing groundwater from farmland outside the approved mine boundaries and piping it to the mine site. The **Environmental Defenders Office**, on behalf of Lock the Gate Alliance, issued a **cease-and-desist letter** over what was viewed as a blatant breach of approvals and misuse of productive agricultural water resources [Lock the Gate](#).

## Guilty Pleas & the Fine

On **9 April 2021**, Whitehaven Coal **pleaded guilty** to illegally capturing approximately **1 billion litres** of water during the drought period—the figure aligning with community concerns first raised in 2018. In **late November 2021**, the Land and Environment Court handed down a penalty of over **\$200,000**. The decision sparked outrage among farmers and environmental advocates, who described the fine as a “slap on the wrist” and insufficient given the severity and timing of the offence, during one of the region’s worst droughts.

## The Unauthorised Pipeline Network

In December 2019, the Environmental Defenders Office (EDO), acting for the Lock the Gate Alliance, issued Whitehaven Coal with a **cease-and-desist letter**, alleging the company had built and used an **unauthorised pipeline**. This pipeline transported groundwater from Whitehaven-owned farmland—outside the mine’s approved development area—into the Maules Creek Coal Mine during a devastating drought in north-west New South Wales. This action raised immediate alarm: **“The properties the mine is taking alluvial groundwater from are outside the approved mining area”**.

Further reporting revealed that regulatory authorities only began assessing the pipeline network **after construction was completed**, prompting retrospective modification applications. During that period, the planning department accepted Whitehaven’s legal assertion that the infrastructure did not require prior approval—a move that critics argue granted Whitehaven a de facto “continuing use” privilege that wouldn't have been available under strict compliance policies.

## Surface and Groundwater Theft Confirmed

Beyond the pipeline, Whitehaven was found guilty of **illegally capturing over 1 billion litres** of surface water—from rainfall and runoff—between July 2016 and June 2019.

These volumes far exceeded licensed allowances and corresponded with periods of severe regional drought.

The Natural Resources Access Regulator (NRAR) initiated prosecution under the **Water Management Act 2000**, citing breaches such as taking water without an access licence between 2016 and 2019.

### Whitehaven's Farm Acquisitions & Strategic Water Licence Bidding

While the water trading activities of Whitehaven Coal during the last drought may in some cases have been perfectly lawful, it is within the authority of the IPC to consider whether they were the actions of a company seeking to live compatibly with the local economy of agriculture.

### Acquiring Olivedene and Satellite Farms to Secure Water Access

Whitehaven Coal purchased farmland such as **Olivedene**, adjacent to the Maules Creek Mine, as a strategic move to gain access to allocated groundwater entitlements—namely 135 units of groundwater from the Upper Namoi Zone 5 under Water Access Licence (**WAL 12811**) and its associated bore work approvals.

This acquisition facilitated the subsequent construction of a **1.5 km underground water pipeline** from Olivedene bores to the Maules Creek operations—initially without proper planning approval, prompting modification applications after-the-fact .

### Outbidding Farmers on the Open Water Market

During the severe drought, Whitehaven leveraged its financial capacity to **outbid local farmers** for groundwater licences in auctions. For example, they paid **over \$900 per megalitre**—roughly **three times** the typical market rate—to secure Zone 4 licences, effectively pricing farmers out of the market.

A local farmer, Dave Watt from Gunnedah, explained the dire impact to the media:

“There is no way farmers can pay over \$900/ML for groundwater... I can't afford to grow my crops with water that costs \$900/ML.”

This aggressive water-bidding tactic enabled Whitehaven to maintain operational capacity when river systems like the Namoi were under severe stress—while agricultural producers were left grappling with unaffordable water costs.

Here's how this fits into the broader picture of regulatory, environmental, and community impact:

- **Strategic land acquisition** (e.g., Olivedene) expanded Whitehaven's access to regional groundwater entitlements.
- **High-priced bidding** removed competing farmers from water allocation auctions, particularly during drought.

- **Infrastructure deployment** (Olivedene pipeline and others) facilitated extraction of groundwater outside approved mine boundaries before modifications were sought.
- This conduct layered over previously documented **surface water theft, illegal pipeline construction**, and related **enforceable undertakings**—displaying a corporate approach that structurally sidelined community water access in favor of continued mining operations.

Farmer Dave Watt from Gunnedah described the impact bluntly:

“There is no way farmers can pay over \$900/ML for groundwater... I can’t afford to grow my crops with water that costs \$900/ML.”

This behaviour was widely criticised as exploitative, particularly given the mining company’s financial resources and the vulnerability of local agriculture at the time.

### **Enforceable Undertaking and Systemic Failures**

In August 2021, Whitehaven entered into an **enforceable undertaking** requiring the dismantling of an illegal dam they had constructed on a stream, along with the restoration of the natural drainage gully. They also agreed to build **clean-water diversions** around the mine to prevent further unlawful capture of catchment water—an admission that previously-approved diversion infrastructure had never been built as required.

The Maules Creek case starkly illustrates a multi-faceted abuse of water resources:

- **Unauthorised groundwater pipeline** built from farmland outside approved zones, facilitating additional water extraction during drought;
- **Excess surface water capture**, far above license limits;
- **Regulatory loopholes and planning oversights**, including retrospective approvals;
- **Delays in constructing required water-management infrastructure**, prompting regulatory action only after legal challenge;
- **A settlement requiring infrastructure overhaul**, though critics argue the response remains insufficient.

See this account of one chapter of the water theft story:

### **Whitehaven Coal attempts to hose down Lock the Gate water claims**

September 15, 2018 by [admin](#)



Pit lake at Maules Creek coal mine. Water is being pumped in via a pipe visible on the high wall, but where from? Image courtesy Wando Conservation and Cultural Centre

Whitehaven Coal, the mining company chaired by former Nationals politician and Deputy Prime Minister, Mark Vaile, has attempted to hose down the expose by Lock the Gate which revealed massive diversion of surface water to the Maules Creek mine, taking water which would otherwise flow into groundwater or into creeks.

**North West Protection Advocacy provided a commentary** on the water regulation chaos at the Maules Creek coal mine, demonstrating that surface water irregularities are only one of a number of serious problems there.

In its defence, the company has pleaded that it is “highly regulated by a number of robust water laws starting from the early stage of project planning through to post mine closure”.

In fact, regulatory chaos is at the heart of the problem with Maules Creek mine, with a dysfunctional sharing of responsibility between NSW Planning, NSW Resources and Industry, and a great deal of buck-passing between agencies when problems arise.

**Lets’ have a brief look and decide for ourselves how “highly regulated” Whitehaven Coal’s water usage really is**

**1. Their groundwater pumping is NOT METERED using telemetry like other licensed water users.**

People are astonished to know that mines can **extract unknown quantities of groundwater to lower the water table beneath their excavations**, so they can

continue digging deeper. This is because the activity is regulated by the Mining Act, not the Water Act, and only requires a “flow” meter which cannot be properly supervised by the authorities.

## **2. There is NO Regional Water Strategy.**

Despite mine expansion in the Gunnedah Basin **equalling the size** of the proposed Adani coal mine, regional water strategies are years behind being completed. In the case of the Maules Creek mine, it's the Leard Mine Precinct Regional Water Strategy. Whitehaven Coal have held this strategy up for over two years because of problems with its nearby Tarrawonga Coal Mine, but have suffered no penalty from NSW Planning.

## **3. Whitehaven Coal has an outdated Water Management Plan.**

In keeping with Whitehaven's lack of transparency around all aspects of planning and compliance, the company has refused requests from community members to be consulted on the replacement to its outdated Water Management Plan.

The revised Water Management Plan is years overdue. NSW Planning has done nothing to enforce compliance.

## **4. Maules Creek mine is shielded from the effects of a “Cease to Pump” order.**

With the Maules Creek groundwater source in serious collapse, community groups and irrigators have called on the Department of Industry – Water to issue a Cease to Pump Order under the Water Act to deal with the emergency. However, Maules Creek mine owns irrigation licences in the relevant Zone 11 which it needs to maintain in order to offset the groundwater it removes from below its coal mine. The Department refuses to issue the emergency order, placing the mine's needs above all others.

This means homes are running out of domestic use water, livestock are having to be sold off, and there is serious risk in case of fires because bores don't have enough water for fire-fighting.

### **Want to know more about these matters?**

1. *Pit pump footage taken from plane, with commentary* (June 2018) Courtesy of Maules Creek Community Council Inc. <https://www.maulescreek.org/video-pit-pump-footage-from-10-6-2018-flyover/>
2. If Maules Creek coal mine conducts the massive surface water gathering for the purpose of dust suppression, why was the mine fined by the NSW Environmental Protection Authority last year for failing to suppress dust, **as reported here by the Northern Daily Leader?**
3. Water in Maules Creek mine continues to grow, as shown here **by time-lapse satellite images** compiled by the Maules Creek Community Council.
4. *Excess water harvesting points to chaotic regulation at Maules Creek mine*

## Further Enforceable Undertakings Imposed on Maules Creek Coal Mine

Adding weight to Wando's argument that a company engaged in so many prosecutions and regulatory actions should not be considered eligible for expansion, we cite the following track record of the mine.

### 1. Water Management System Overhaul (Enforceable Undertaking – August 2021)

As part of Whitehaven's guilty plea for unlawfully capturing approximately 1,000 ML of clean surface water, the Natural Resources Access Regulator (NRAR) accepted a legally binding **enforceable undertaking** that required a comprehensive overhaul of the mine's water management infrastructure.

Under this undertaking, Maules Creek Coal Pty Ltd committed to several key remedial actions by specific deadlines (or with NRAR-approved extensions):

- **Construct and operate** highwall dams 8, 9, 10, and 11—to capture and safely divert clean water back into a tributary of Back Creek, as originally outlined in the approved water management plan.
- **Decommission sediment dam 7/MC10**, an illegal structure intercepting natural flows, and **re-establish the historical drainage channel** in its place.
- Submit updated **water management** and **biodiversity management** plans for approval under the State Significant Development (SSD) Consent framework by late 2021 and mid-2022 respectively.

### 2. Workplace Health & Safety (WHS) Undertaking – April 2018 Collision

In connection with a severe near-fatal truck collision on the mine's main haul road in April 2018, where a worker was trapped in a burning vehicle, Maules Creek Coal submitted a separate WHS enforceable undertaking—effectively accepted in 2020 as an alternative to prosecution.

Key commitments included:

- Investing **over AUD 800,000** into safety and community-focused initiatives.
- Funding a **mental health "Community Connect Day"**, supplying vital emergency and lifesaving equipment to local services including the SES and Boggabri Hospital.
- Collaborating with the **University of Queensland** on trials for safe implementation of automation and emerging technologies across the industry.
- Supporting an **Indigenous mentoring program**, and reimbursing the Regulator's investigation and legal costs.

### **3. Post-2021 Enforceable Undertaking – Fatality Prevention (2024–2025)**

Following a near-miss collision incident in December 2021, the NSW Resources Regulator issued another WHS enforceable undertaking, requiring Whitehaven to commit **approximately AUD 1.2 million** toward safety interventions at Maules Creek.

These undertakings reflect a multi-pronged regulatory response—balancing legal liability, infrastructure corrective action, workplace safety improvements, and community investment. While some critics argue the undertakings remain modest relative to environmental impact, they represent legally enforceable steps toward improved compliance.

#### **Enforceable Undertakings and Regulatory Response**

In response to the illegal activities, Whitehaven Coal entered into several **enforceable undertakings** with NSW regulators:

##### **1. Water Management (2021)**

The **Natural Resources Access Regulator (NRAR)** required Whitehaven to:

- Construct highwall dams 8, 9, 10, and 11 to divert clean water back into Back Creek
- Decommission the illegal sediment dam 7/MC10
- Restore the historical drainage channel
- Submit updated water and biodiversity management plans

##### **2. Workplace Safety (2020)**

Following a truck collision at the mine in April 2018, Whitehaven committed to:

- Invest over **AUD 800,000** into community safety initiatives
- Fund mental health programs and emergency services equipment
- Collaborate with the University of Queensland on automation trials
- Support Indigenous mentoring programs

##### **3. Fatality Prevention (2024–2025)**

After a near-miss incident in 2021, Whitehaven agreed to:

- Spend **AUD 1.2 million** on safety upgrades
- Implement a Mindful Safety Program and Collision Avoidance Systems
- Fund AI radio safety systems and video safety education
- Support local Aboriginal and community organisations

## Conclusion

Whitehaven Coal's conduct at Maules Creek reveals a pattern of prioritising operational continuity over legal compliance and social responsibility. From **building unlawful water pipelines** to **outbidding drought-stricken farmers**, the company leveraged its financial power at the expense of local communities and the environment.

While regulators eventually intervened with enforceable undertakings, many in the region argue these measures came too late—and that the fines imposed were too small to act as a meaningful deterrent. The Maules Creek case continues to serve as a cautionary tale of how extractive industries can undermine rural resilience when oversight fails to match corporate ambition.

## Historical outline – Whitehaven’s history of dishonesty

As part of the approval process for Narrabri Underground Mine Stage 3 Extension Project Whitehaven was asked to provide an environmental history outline.

Wando draws attention to [FOI 74743](#) a comparison table of non-compliances disclosed by Whitehaven and those found by the NSW Department of Climate Change, Energy, the Environment and Water:

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**From:** s. 22(1)(a)(ii) @dcceew.gov.au>  
**Sent:** Tuesday, 25 October 2022 6:08 AM  
**To:** s. 47F(1)@whitehavencoal.com.au  
**Cc:** s. 47F(1)@whitehavencoal.com.au; s. 22(1)(a)(ii) @dcceew.gov.au; s. 22(1)(a)(ii) @dcceew.gov.au>  
**Subject:** Environmental History [SEC=OFFICIAL]

Hi Tony

As discussed yesterday I am attaching the environmental history table you provided to us for the Vickery project and as you can see it has some additional data which we would like to be included in the Narrabri Underground Environmental history table. It would also appear that there might be some additional Whitehaven subsidiaries that should be included in the table. This has become apparent when looking at the NSW table of penalties which is attached. We are developing a table comparing the information provided by Whitehaven and the NSW Agencies. This table is still being worked on but will be sent to you when it is completed in the next day or so. In summary we would be interested in receiving back from you an updated Environmental History Table incorporating the additional detail described above.

Regards

s. 22(1)(a)(ii)

Another document which points to the cost burden to local communities of monitoring and pursuing compliance of Whitehaven’s projects can be found at Whitehaven Coal Shame File: [More than 100 incidences creating almost \\$2M in fines, due to Whitehaven Coal breaching environmental laws](#)

**Should the project be approved Wando Conservation and Cultural Centre will be watching closely to see that the Department’s Assessment Report contains adequate protections and compliance requirements to ease the burden on the local community of monitoring, reporting and undertaking legal action to ensure compliance with conditions.**

#### **8. Consideration 4: The proposal is unable to comply with EPBC Act to protect an endangered species: Swift Parrots**

Swift Parrots do not have fixed wintering territories and their specific locations can vary each year depending on food availability. Recent reports e.g. *Massive flock of critically endangered swift parrots seen near Bendigo*, Friday 18 July, [ABC News](#) point to the precarious position of this species with only 500 of them remaining in the wild

The importance of the Leard State Forest for the Swift Parrots during their Winter Migration to the Mainland cannot be overstated, particularly when there is little or no reliable flowering box gums in Victoria or the southern part of NSW. The Forest's flowering Whitebox (*Eucalyptus alben*) has been a refuge for aeons and the birds have been recorded in the forest just east of the area of the proposed Maules Creek continuation project site at least 29 times, including observations by members of Wando.

This project, which will clear over 500 hectares of key foraging habitat for the Swift Parrot and clear a further 428 hectares of the beautiful Leard State Forest, will mean that over 46% of the State Forest, a scarce and precious public asset, will have been cleared in total by adjacent mines.

As the birds face increased pressure from climate change, the rehabilitation proposed by Maules Creek Coal **will not mitigate** the loss of foraging habitat due to the time it takes for rehabilitated Offsets to mature and produce adequate nectar or lerps for nomadic foraging Swift Parrots.

Fragmentation, degradation and habitat loss, all of which will occur if this Maules Creek Continuation Project is approved, will contribute significantly to the loss (at best) or extinction (more likely) of Swift Parrots.

**Wando Conservation and Cultural Centre will be watching closely to see that the Department's Assessment Report recognises the requirements of the EPBC Act and protects this key site for an endangered species. This project should not be approved on these grounds alone.**

## 9. Consideration 5: Landform Considerations (and tyre burials)

The issues of increased overburden height and final void (and the dumping of tyres in the pit) are examples of Whitehaven seizing an opportunity to embed decisions which would not stand appropriate scrutiny under the cover of a 'continuation'.

**Overburden Height** - Section 3 Project description (page 4 – comparison of approved height and new EIS height) notes that for the **Approved MCCM (PA 10\_ 0138)**: Overburden emplacement within the out-of-pit Northern Emplacement and the Southern Emplacement.

The Northern Emplacement and Southern Emplacement would be constructed to maximum approximate heights of 455 m AHD and 430 m AHD, respectively.

**For the Maules Creek Continuation Project** we read:

Expansion of the existing overburden emplacement and integration with the Project landform.

The Northern Emplacement and Southern Emplacement would be constructed to maximum approximate heights of 490 m AHD and 499 m AHD, respectively.

**This increase of 35m AHD and 69m AHD respectively is an example of Whitehaven's complete lack of regard for community and environment.**

Not only is the proposal appalling in terms of visual amenity but, even more significantly, a health issue in terms of dust and organisms from great depths being exposed.

While Whitehaven maintains (in Attachment 7 – Rehabilitation and Mine Closure Addendum) there has been consultation and *'Support for increasing the height of the overburden emplacements if it improved the post-mining land use outcomes and geotechnical stability* Wando is aware of **no such consultation** with the Maules Creek CCC (MC CCC) or community members.

For our community the issue of **tyre disposal** has been an ongoing concern. Whitehaven have paid lip service to considerations of recycling but are committed to continuing the completely unacceptable practice of dumping tyres in the pits (and in overburden?).

Despite for example, the NSW EPA's SEARS request of an "outliner of cleaner production actions including... b. proposals for use or recycling of by-products such as tyres,..." (EPA, SEARS request, [DOC23/907523](#), p. 3) what Whitehaven Coal appears to be planning, is the same tyre burial but as a permanent condition without the requirement even investigate recycling.

This is one of the many issues Wando would appreciate the opportunity of explaining further.

### **Final void**

The NSW Planning Assessment Commission (PAC) Review Report for the Maules Creek Coal Project, March 2012 stated: ***The final void proposed to be retained would result in permanent losses to Back Creek and is not supported by the Commission.***

The PAC pointed to its concerns that the development of the number of mining projects in the area added to grave concerns about this practice of allowing mines to walk away, leaving behind environmentally catastrophic final voids, impacting groundwater resources, including springs and unique groundwater-dependent ecosystems.

**The final void proposed by this Continuation is 40m deeper than previously proposed.**

**Wando Conservation and Cultural Centre will be watching closely to see that the Department's Assessment Report appropriately considers the matters of landform (including overburden height and final void)**

## 10. Consideration 6: Banking approvals and modification creep

Wando's experience with Whitehaven in general and Maules Creek Mine in particular lead us to conclude that the EIS under consideration has serious long-term implications which appear to have escaped the approval process. The use of 'banking approvals' and practice of 'Modification creep' set the scene for the continued avoidance of appropriate scrutiny. It appears that this EIS could be interpreted to allow the extension of the mine into areas north of Back Creek. Of particular concern is the observation that approval would permit *'Extension of open cut operations within Coal Lease 375, Mining Lease 1719 and **Authorisation 346** (Auth 346) to allow mining and processing of additional coal reserves until approximately 31 December 2044'*. Auth 346 includes the agricultural properties of Warriahdool, Wollondilly, Tralee and Ellerslie areas purchased by Whitehaven as 'offsets'. Our recent experiences have shown beyond doubt that the concept of offsets being protected 'in perpetuity' is completely meaningless.

Wando is also concerned at the use of the phrase '**Provisional** Mining Lease **Application Area**'. This occurs on most of the maps outlining the area e.g. Attachment 7 page 33. This leads us to the conviction that, at some time in the future, this 'banked approval' would be used for the mining of properties on the northern side of Back Creek; and so Whitehaven would have effected expansion by stealth.

At the very least the Department's assessment of the EIS must determine that Maules Creek Coal not be permitted to mine in any other areas than the **defined area in the mapping of this EIS on the southern side of Back Creek**, that the adjective 'provisional' be removed throughout and that any future mining on the properties on the northern side of Back Creek require a new SSD EIS for that area ( which includes CL 375 and Auth 34).

**Wando Conservation and Cultural Centre will be watching closely to see that the Department's Assessment Report protects Auth 346, and areas north of Back Creek, from mining through its inclusion in this EIS**

## 11. Consideration 7: Cumulative Impact

The cumulative and compounding negative impacts associated with this and large adjacent mines and the many modifications (achieved through the phenomena known as ‘modification creep’) which they have been granted over a few short years are impossible to assess or monitor; and no realistic effort is made to do so.

About 3,800 ha of native vegetation has already been removed as part of approvals for Boggabri, Tarrawonga and Maules Creek mines. Removal of additional habitat will have a significant impact on the long-term viability of the Swift Parrot and put it at high risk of serious and irreversible impacts. Also impacted are two threatened plant species and at least 15 threatened fauna species including koalas, woodland birds, bats and the critically endangered Regent Honeyeater. The 3.5 kilometre- long, 500 metre- wide Wildlife Corridor essential for creatures moving east/west between the Maules Creek and Boggabri open cut coal mines stands to be further impacted to a point where it could well be untenable, sandwiched between the mega mines of Maules Creek and Boggabri; creatures and habitat cannot endure continual light, noise, blasting and dust pollution.

**Wando Conservation and Cultural Centre will be watching closely to see that the Department’s Assessment Report requires appropriate protection for the environment and community impacted by this project through the development of credible modelling of cumulative impacts.**

## 12. Conclusion

Dishonest actors like Whitehaven do not need “light touch” regulation in which they effectively run their mine with little or no outside scrutiny and few inspections. They also can not be trusted to adhere to management plans or provide honest and transparent reporting of impacts to enable adaptive management as envisaged under the management plan scheme.

The communities of Maules Creek and across the Liverpool Plains are a vital part of our food security, agricultural resilience and offer much to tourists and visitors. For the Government to be complicit in extending the region’s degradation at the hands of a dying fossil fuel industry would be unconscionable and counter to its own legislative framework. In the interests of intergenerational equity this ‘Continuation/Expansion’ must be rejected.