



Submission

Tarrawonga mine MOD 7 Life of Mine Modification

The Leard Forest Research Node (LFRN) is a citizen science group established in 2015, which conducts environmental monitoring, reports and submissions related to the impacts of coal and gas mining in north west NSW, including (but not limited to) the Gunnedah, Boggabri, Narrabri and Maules Creek areas.

The LFRN wishes to make a submission **objecting** to the Modification of the Tarrawonga coal mine approval.

Leard Forest Research Node
Maules Creek

June 2020

Introduction

In our submission, we set forth arguments against expansion of the Tarrawonga mine which is proposed under MOD 7 of Project approval PA 11_0047, as modified. The Modification is sought under section 4.55(2) of the Environmental Planning and Assessment Act 1979 (EP&A Act).

In relation to groundwater impacts of this modification, we are of the view that the environmental impact assessment (referred to as the Modification Report for MOD 7 Life of Mine) is inadequate to inform decision-making, and we assert that if the decision-maker attempts to rely on the Modification Report the decision could be declared to be legally of no effect.

Our key heads of objection are as follows:

- The environmental assessment, whether known by that name or “Modification Report” fails to fulfil the necessary standard required by law to enable the decision maker to comprehend and assess the effect of the modification on the environment, particularly the consequences to the community inherent in carrying out or not carrying out the proposed activity, in this case the building of a pipeline to harvest groundwater a distance as the crow flies approximately 30km with pipelines laid approximately 50km.
- The physical expansion of the footprint of Tarrawonga mine through water harvesting at Vickery is unjustified.
- Potential impacts are not “minimal”.
- Details of proposed pipeline are not understood, if at all.
- Whitehaven has troubled safety reputation and increasingly bad environmental track record.
- There is contradiction and lack of certainty around the name and purpose of the Modification.
- There is uncertainty around the cumulative impacts of MOD 7 another Tarrawonga Modification under assessment at the same time, which is MOD 8, a proposed water carting operation which was not exhibited for public comment.
- There is no reliable Regional Water Strategy for the Leard Mine Complex (now known as BTM Complex or Boggabri-Tarrawonga-Maules Creek, and outdated (2018) water modelling by AGE Consultants is understood to be in the process of being replaced by updated modelling.
- Furthermore, water which is the subject of Tarrawonga’s proposed trucking and water carting is from the very same source that Whitehaven proposes to supply the Vickery coal washery up to 14 Million Tonnes Per Annum (MTPA).

Environmental assessment is inadequate in law

When you consider the level of concern and gravity of risks to ground water in the coal mining area of the Namoi Valley, this modification does not provide essential information to assess whether the pipeline should proceed and if so, under what conditions. In Tarrawonga MOD 7, the EIS comprises the Executive Summary, Modification Report and nine appendices which include Appendix A Groundwater Assessment.

Environmental assessment must be sufficiently specific.

The well-known legal test for adequacy of an EIS is -

*“the EIS must be sufficiently specific to direct a reasonably intelligent and informed mind to the possible or potential environmental consequences of carrying out or not carrying out the activity”.*¹

According to the test, the EIS must contain materials which would alert lay persons and specialists to problems inherent in carrying out the activity, which in this case includes piping groundwater 50km from one Whitehaven Coal mine (Vickery) to the other (Tarrawonga).

We believe that Tarrawonga MOD 7 EIS omits essential information without which the decision maker and public are not alerted to the potential effects of the expansion of the mine footprint to a location 30km far away. This information would reasonably include such information as –

- Up-to-date modelling of the cumulative groundwater impacts
- Up-to-date information about the environmental reputation of the applicant, including an inventory of environmental breaches like the fine of \$15,000 received in April 2020 by Tarrawonga mine, explaining that the dam rupture occurred because there was no routine inspection schedule, and no management plan
- MOD 7 Groundwater Assessment should include assessment of how Tarrawonga mine will share the same water source with (if approved) Vickery mine
- What would be the triggers for using the pipeline to access water from Vickery
- How does this impact on the regional water strategy for Namoi region, formerly known as the Leard Mine Precinct Regional Water Strategy, now known as BTM (Boggabri-Tarrawonga-Maules Creek) water strategy?
- What Water Access Licences are already owned, or are being acquired to supply water to Tarrawonga mine, other than those already allocated to Vickery mine?
- What specific protection is there for the protection of water for the town of Boggabri?

These matters should reasonably be expected to be included in the EIS, especially given that the cumulative impacts of coal mines on groundwater (and surface water) are highly contentious, and the town of Boggabri is reliant on Zone 4 groundwater.

¹ *Prineas v Forestry Commission of NSW* (1983) 49 LGRA 402, per Cripps J.

The Groundwater Assessment appears to exclusively address groundwater impacts in the vicinity of Tarrawonga pit and surrounds, ignoring the potential impacts at the point where the water is being pumped.

At no point does the GA refer to the Regional Water Strategy (now known as the BTM Regional Water Strategy) reflect the fact that three mines Boggabri, Tarrawonga and Maules Creek mines are included in this strategy and that cumulative impacts. Moreover, it is a condition of the three mine consents that they participate in this BTM Regional Water Strategy.

Concerns about cumulative groundwater impacts are so great that the Natural Resources Access Regulator was of the position (in November 2018) that –

*“It is recognised the [Water Management Strategy] is a high-level document and the individual operations will be managing impacts on site in accordance with their own Water Management Plans. However, as the [Water Management Strategy] currently stands **there is low confidence in the capacity of all three operations to respond to cumulative impacts effectively**”²*

When the water access regulator states that it has “**low confidence**” one can infer that it is a very important matter for the EIS address to dispel the prevailing belief that cumulative impacts of the three mines are not being managed safely with respect to avoiding cumulative impacts.

Among other Key Comments made by NRAR concerning the BTM Regional Water Strategy (and that was before a pipeline joining a fourth mine was considered) –

- *“As the precinct has three different proponents within it, the clear identification of roles and responsibilities... is critical to effective management. In addition clear time frames for communication of events, reporting, investigation and mitigation actions should be provided.”*
- *“The trigger levels established for water quality, level and quantity need to be selected with the intent to manage impacts within the approved limits. Hence the initial trigger needs to be set below the approved impact limit with adequate contingency planning to ensure the necessary investigations and any mitigating measures can be implemented to either prevent the approved limit from being exceeded or to enable compensatory/make good measures to be applied as required.”*

As to the groundwater model of the combined mines, NRAR stated (Recommendations 8 and 9) -

“Groundwater model

8. Provide a timeframe for updates and recalibration of the groundwater model. Currently, no detail is given as to how often cumulative modelling will be updated and recalibrated to ensure sufficient and accurate management of cumulative impacts.

² Letter Director Regional Water Regulation (West-Murray Darling), letter 5 Nov 2018 to Dept of Planning

9. Outline the procedure for how the updated model results will inform updates of the water management strategy and specifically improvements and updates of the management triggers, etc.”

Knowing the concerns of the regulator, it seems natural that they should be addressed in an EIS concerning expansion of the water taking capacity of Tarrawonga mine. However, the approved BTM has not incorporated these elements. This is an omission of necessary information.

Furthermore, it is conjecture within the community that a new BTM groundwater model is being prepared, to replace or update the current BTM groundwater model report by Australian Groundwater and Environmental Consultants (AGE) *Boggabri, Tarrawonga, Maules Creek Complex Numerical Model Update, August 2018*.

The new groundwater model, together with the aforementioned AGE Report, are essential for the understanding of the potential groundwater impacts of two mines sharing the water source already allocated to another project under development (Vickery). Therefore, they should have been included in the MOD 7 EIS. Their omission is a serious deficiency of MOD 7.

Each mine is responsible for holding or obtaining sufficient Water Access Licences, but these Wals are not disclosed in the Groundwater Report.

Footprint of the mine increase

It is proposed to physically extend the Tarrawonga mine footprint to gain access to water reserves allocated to another mining Project State Significant Development, the Vickery coal mine. Increasing the footprint of the mine by such an extent is not a minimal modification.

To expand Tarrawonga mine’s footprint all the way to the Vickery mine is unjustified in the circumstances being that the cumulative impacts of coal mining in the Namoi Valley are a matter of the highest public concern.

With three and possibly, if Vickery mine is approved, four coal mines taking water from the same Zone, and a fifth Rocglen to have its coal sent to Vickery for washing, obviously this scenario appears ripe for cumulative groundwater impacts.

Already, Vickery is not approved, and is challenged in large part due to the likelihood it will result in unacceptable groundwater impacts, such as has occurred in other Whitehaven mines Werris Creek and Maules Creek where dramatic groundwater disturbance has occurred within short years of mining/expansion within the surrounding farms.

Impacts of pipeline not minimal

The Tarrawonga Modification 7 at page 3.6 asserts that “The Modification would have minimal impact” (as defined by the NSW *Aquifer Interference Policy* [AIP] [NSW Government, 2012]) to the water table, water pressure and water quality requirements for the relevant “highly productive” water source (Section 5.1 and Appendix A).

However, we are of the view that the lack of knowledge of the current water impacts makes this an unscientific assertion and places an unacceptable risk to Zone 4 users including the human water needs of the town of Boggabri, and in a less direct way all stakeholders in the downstream Namoi River and Murray Darling Basin.

Tarrawonga MOD 7 includes -

“The Modification would include construction of a water transfer pipeline that connects to the proposed Vickery Extension Project (Figure 1-4), and Future transfer of water from the Vickery Extension Project (if approved) is subject to the limits of its approval/licensing requirements. “

A pipeline from Vickery Mine changes Tarrawonga’s water source without explaining what circumstances would warrant harvesting water from a distance of 30km. What transparency would there be around this? What knock on effects would there be if another severe drought happens and trigger levels are not adequately set (as noted by NRAR)?

The Modification report states at page 2-7 “Future transfer of water from the Vickery Extension Project (if approved) is subject to the limits of its approval/licensing requirements”. However, given that such approval would come from NRAR, an agency that has already has a raft of 30 Recommendations on the Regional Water Strategy still unmet, this approval is highly speculative.

“Further, the continued use of an existing Vickery Coal Mine groundwater bore and associated infrastructure/works and the temporary trucking of extracted groundwater to the Tarrawonga Coal Mine via the Approved Road Transport Route, will continue in an environmentally responsible manner.

For example: 1. Groundwater extracted via the existing Vickery Coal Mine groundwater bore will be accounted for under Water Access Licences (WALs) held or obtained under the Water Management Act 2000 (WM Act) (including WALs 12651 and 12653). As such, the take of groundwater via the existing Vickery Coal Mine groundwater bore will be regulated under the WM Act and Water Sharing Plan for the Upper and Lower Namoi Groundwater Sources 2019...”

As there is no reliable Regional Water Strategy for the Leard Mine Complex (now known as BTM Complex or Boggabri-Tarrawonga-Maules Creek, and as outdated (2018) water modelling by AGE Consultants is understood to be in the process of being replaced by updated modelling, a decision to permit the pipeline would not be based on adequate information.

Water which is the subject of Tarrawonga’s proposed trucking and water carting is from the very same source that Whitehaven proposes to supply the Vickery coal washery up to 14 Million Tonnes Per Annum (MTPA). Commercial decisions about how much to wash the coal, in the event of market demands for coking coal have not been taken into account in this EIS.

Tarrawonga MOD 7 does not provide the decision maker with adequate information to make decisions relating to the cumulative impacts of 3 or 4 mines, if off-the-record water taking is conducted under the cloak of commercial confidentiality.

Reputation of Whitehaven Coal

Here is just outline of Whitehaven Coal's compliance history from *The Northern Daily Leader* that should be considered by the decision maker when considering whether Tarrawonga mine should be permitted to increase its footprint as proposed -

"Whitehaven Coal has been labelled a 'rogue operator', after documents obtained through a freedom of information request show all four of the company's Namoi coal mines breached at least one of their licence conditions in the past six years. The documents also revealed despite more than 50 breaches between 2010 and 2016, the NSW government only fined the coal giant seven times, for a total of \$24,000.

... It took Environmental Justice Australia nine months to get the annual reports for Whitehaven's Narrabri, Rocglen, Maules Creek and Tarrawonga mines, which the company fought to keep secret. The reports, which are lodged to the state government, detail every instance of the mines' non-compliance with their environmental licence.

The breaches ranged from exceeding noise and blast limits to water and air pollution.

Of the *20 annual reports, only twice were mines found to be compliant – Narrabri in 2011/12 and Maules Creek in 2013/14.

The NSW Environmental Protection Authority issued seven Penalty Infringement Notices – four to Tarrawonga, two to Narrabri and one to Rocglen." (Aug 7 2017 Northern Daily Leader "Freedom of information documents show Whitehaven Coal environmental licence breaches", Jamieson Murphy <https://www.northerndailyleader.com.au/story/4839273/secret-documents-show-whitehavens-history-of-willing-negligence/>)

More recently, a breach of Tarrawonga's POEO Act pollution licence must be considered, because relevantly it revealed Whitehaven Coal had not implemented an inspection schedule for a sediment dam nor a management plan. This speaks of a low standard of environmental management, amounting to negligence.

Errors and misdescriptions

There is a contradiction in the name and purpose of the Modification.

MOD 7 is called "Life of Mine" however the Description of the Modification Report says "The Modification would result in no change to ..mine life and operating hours". An explanation is called for as to this contradiction.

The Modification Report states "No change to existing water management system". In the immediate following sentence, the Modification Report states there will be "Construction of a pipeline to the proposed Vickery Extension Project to facilitate contingency transfer of water

between the proposed Vickery Extension Project and the Tarrawonga coal mine". This appears to be by definition a change to existing water management.

The misnaming of the MOD 7 has other ramifications too. By naming MOD 7 "Life of Mine" this has not alerted concerned community members to the true nature of the modification, thus depriving them of the opportunity to lodge a submission and represent their views.

Additionally, the assertion that "the Modification would result in an overall reduction in the total surface development area by approximately 87 ha" – how is this calculated? Does it include the footprint of the pipeline?

Tarrawonga MOD 8

There is uncertainty around the cumulative impacts of MOD 7 another Tarrawonga Modification under assessment at the same time, which is MOD 8, a proposed water carting operation which was not exhibited for public comment. Further to MOD 8, Whitehaven Coal was asked to provide further information to the Department of Planning, although no details are available about what the additional information is. If, as is thought, the additional information is the new BTM groundwater model, why is this not also being called on for consideration under MOD 7?
