

Reply to: Nic Clyde
NSW Community Coordinator
Level 14, 338 Pitt Street
Sydney, 2000
nic@lockthegate.org.au

29 August 2019

SUBMISSION: WOLLONGONG COAL'S APPLICATION (09_0013) TO EXTEND COAL MINING OPERATIONS AND UPGRADE OF SURFACE FACILITIES AT THE RUSSELL VALE COLLIERY.

SUMMARY

Although Wollongong Coal's (WCL) bord and pillar proposal is less-damaging in terms of subsidence than the plan previously submitted by the proponent to continue longwall mining at Russell Vale, significant problems remain, both with the project and with the proponent. On balance, these problems outweigh the benefits, which mean this project is not in the public interest and should be rejected.

The project is not in the public interest

- In a time of drought, with a growing population and with cause for great concern about the impact of climate change on rainfall and catchment yields, this project creates further risks to the water supply to the Cataract Reservoir. Cataract Reservoir is part of the Upper Nepean water supply system. Residents of Greater Macarthur depend on this system, as they cannot access water from the desalination plant nor from Warragamba Dam.
- The project adds 36.5ML per annum to groundwater losses compounding as a result of the cumulative impacts of mining.
- There is no economic justification for this project, which would extract coking coal that the global coking coal market does not need, at risk of further damaging our drinking water catchment and causing undesirable impacts on the local community. In its June 2019 Resources and Energy Quarterly report, the Office of the Chief Economist (OCE) stated that over the next few years, "*supply growth is expected to gradually outpace demand growth*" for coking coal.¹ This over-supply is predicted without any contribution from the Russell Vale project.
- Triple seam mining has little precedent and impacts are difficult to predict. This fact, together with recent examples of mining in the Special Areas where impacts have been dramatically worse than those predicted by mining companies, are cause for a higher degree of caution in this assessment process.

¹ Australian Government, Office of the Chief Economist, Resources and Energy Quarterly, June 2019, page 35:
<https://publications.industry.gov.au/publications/resourcesandenergyquarterlyjune2019/documents/Resources-and-Energy-Quarterly-June-2019.pdf>

- Wollongong Coal is a loss-making company with a debt problem that grows with each year that passes. Rather than approving this project and then waiting for the company to accrue more debt until it can no longer continue as a going concern, action should be taken now to close the Russell Vale mine and commence the \$215M rehabilitation of the site.

The proponent is not ‘fit and proper’

Under section 380A(2) of the *Mining Act 1992* (NSW), the decision-maker may take into consideration a number of matters in determining whether a company is a fit and proper person to hold a mining right. These considerations include:

- criminal conduct issues;
- record of compliance with relevant legislation;
- technical competence in regard to management of activities or works;
- whether the company or a director thereof is not of good repute;
- whether the company or a director thereof is not of good character, with particular regard to honesty and integrity; and
- financial capacity to comply with obligations under the mining right.

Lock the Gate first wrote to the NSW Minister for Planning in October 2015 outlining why Wollongong Coal was not a ‘fit and proper’ entity. Subsequently, an official investigation commenced by the Resources Regulator, which – according to a recent report in the Illawarra Mercury - is “ongoing”. Since first raising these issues in 2015, our concerns have only grown. These concerns now include, but are not limited to:

- Criminal conspiracy charges against the majority owner in India
- Evidence of ongoing financial difficulties that indicate that Wollongong Coal may not be a ‘going concern’ and may not be able to carry out obligations under the Mining Act
- A shut down by the Resources Regulator of the Wongawilli mine over serious safety issues
- Conviction for failure to pay annual rental fees and administrative levies
- Conduct allegedly causing or contributing to the bankruptcy of a contractor
- Fined by the EPA for polluting local waterway
- Fined for failing to hold mandatory community consultative committee meetings.

As part of the assessment process for this mine, the Department should seek a briefing from the NSW Resources Regulator on their “ongoing” investigation and their view as to whether Wollongong Coal is a ‘fit and proper’ entity to be granted further rights to mine coal in NSW.

IMPACT ON GROUND AND SURFACE WATER

WaterNSW consider that coal mining is the greatest risk to the Metropolitan Special Area

We note that Wollongong Coal wants to expand its Russell Vale mine in the Water NSW Schedule 1 Special Areas, the primary purpose of which is to maintain the ecological integrity of the area immediately surrounding the water storage dams in order to protect the quantity and quality of the drinking water upon which the 5 million residents of Greater Sydney rely.

In its May 2018 submission to the Independent Expert Panel on Mining in Sydney Catchment, WaterNSW reiterated that in the Southern Coalfields *“the greatest current and historic risks to the Sydney water supply are posed by mining operations beneath the Metropolitan and Woronora Special Areas.”*²

Any project that impacts groundwater and risks water supply to Cataract Reservoir should be approached with a high-degree of caution

We note the predicted loss of approximately 10ML per annum to Cataract Reservoir and that WCL will require a Water Access Licence *“under the Water Sharing Plan for the Greater Metropolitan Region Unregulated River Water Sources 2011 for the annual cumulative take of up to 10.04 ML/yr of stream baseflow (estimated at 9.91ML/year) and leakage from Cataract Reservoir (estimated at 0.13 ML/year) resulting from depressurisation of deeper aquifers.”*³

We also note that WCL’s consultant says a *“maximum total annual groundwater inflow to the workings, including all previous mining impacts from the Russell Vale lease workings, is predicted to be 288ML/year, with the contribution from the proposed first workings (and the continuing gradual increase from previous workings) being up to 36.5ML/year.”*⁴

Whilst WCL claim they do not anticipate any *“observable change in stream baseflow and seepage flow volumes to Cataract”*⁵ it is not uncommon for coal mining in the Special Areas to cause greater than anticipated impacts, therefore a very high-degree of caution should be exercised when assessing this assertion. Due to the complexity of assessing this project and the high stakes regarding the integrity of Greater Sydney’s drinking water supply, Lock the Gate recommends that the Department seek advice from the Independent Expert Panel on Mining in the Catchment as per their terms of reference: 3.d.

Cataract Reservoir is a critically important water supply

Residents of Greater Macarthur cannot access water from the desalination plant nor from Warragamba Dam. The Upper Nepean system – of which the Cataract Reservoir is a critical part - supplies Nepean, Avon and Macarthur water filtration plants which, in turn supply a population of over 600,000.⁶

Greater Sydney’s water catchment is currently experiencing one of the worst droughts in living memory. For Sydney, water restrictions are in place with planning underway to double the size of our desalination plant. As at Monday 26 August, 2019 Cataract Dam was more than 70% empty (29.1% capacity).⁷

² WaterNSW, submission to the Independent Expert Panel on Mining in Sydney Catchment – Task 1 Matters, May 2018, pg 5, available here: https://www.chiefscientist.nsw.gov.au/_data/assets/pdf_file/0017/160118/2-WaterNSW-submission.PDF

³ Russell Vale Revised Underground Expansion Project 3687_R05 RtPAC Second Review FINAL Revised Preferred Project Environmental Assessment, pg 41

⁴ Russell Vale Revised Underground Expansion Project 3687_R05 RtPAC Second Review FINAL Revised Preferred Project Environmental Assessment, Groundwater Assessment, Appendix 2, pg 4

⁵ Ibid, pg 68

⁶ https://www.watnsw.com.au/_data/assets/pdf_file/0003/147324/Greater-Sydney-Drought-Report-20-August-2019.pdf

⁷ <https://www.watnsw.com.au/supply/Greater-Sydney/greater-sydneys-dam-levels>

Further mining creates further risks in an already destabilised environment

The land around the proposed mining is unstable. The proposal states *“that large areas of the surface within the UEP Application Area are currently on the verge of moving as a result of previous mining.”*⁸ This land is described as being in *“limiting equilibrium”* – still moving, having not stabilised since WCL mined longwalls 4, 5 and 6 several years ago.

The proponent concedes that instability in the overlaying old Bulli seam workings may cause pillar collapse and subsequent subsidence of 1 to 2 metres.⁹ It is contrary to public interest for the NSW government to allow such risky mining in the water catchment for 5 million people of Greater Sydney in a time of drought.¹⁰

The mining is particularly risky because a third seam of coal is being mined beneath two previously mined seams. Triple seam mining has little precedent and impacts are difficult to predict.

Further mining adds to a long-term water management legacy at a time when the company responsible for this legacy is struggling to maintain itself as a ‘going concern’

Following mining, the void left will fill up with water. The water will keep rising until it reaches the adit (mine portal) in the Illawarra Escarpment in about 2057. The water will overflow through the adit and the outflow will slowly increase, reaching 0.3ML (300,000 litres) per day in 2057. Wollongong Coal is proposing a commitment to manage and treat the water for only 10 years. There appears to be no certainty as to how long these outflows will persist nor regarding the arrangement to cover the cost of treatment of this water beyond about 2034.¹¹

THERE IS NO ECONOMIC JUSTIFICATION FOR THIS PROJECT

2.3Mt of coking coal is not a significant addition to Australia’s coking coal export volume

Wollongong Coal propose to extract approximately 3.67 Mt of ROM coal over 5 years at a production rate up to 1 Mt of product coal per year. The UEP is expected to produce 3.09 Mt of saleable product. This includes, 0.78 Mt of ROM coal and 2.31 Mt of coking coal.¹²

Lock the Gate questions the delay of rehabilitation of the Russell Vale site, the additional impacts of the project on the local community, additional risks to our drinking water catchment and further losses of groundwater for such a small quantity of coal, that would likely be sold into an over-supplied market. The Office of the Chief Economist says that at full production, Australia’s export volumes of metallurgical coal are *“expected to grow from an estimated 180 million tonnes in 2018–19 to 198 million tonnes by 2020–21.”* In its June 2019

8 *ibid*, p 63

9 Russell Vale Revised Underground Expansion Project 3687_R05 RtPAC Second Review FINAL Revised Preferred Project Environmental Assessment , Appendix 1, pg 27

10 *ibid*, p. 62

Accessed 18.8.19 at:

<https://majorprojects.accelo.com/public/7f32dda24beaa9a6c18ea7d52be9c53d/RtPAC%20Second%20Review%20FINAL.pdf>

11 *ibid*, p. 172

12 *ibid*, Cadence Economics, Appendix 10, pg 13

Resources and Energy Quarterly report, OCE stated that over the next few years, “supply growth is expected to gradually outpace demand growth.”¹³

Against this backdrop, Wollongong Coal’s Russell Vale project would add only a tiny and unnecessary amount of additional capacity into what is expected to be an over-supplied market. Note that Russell Vale is additional to the projects considered by the OCE (see Table 5.1 below) to tip the market into over-supply.

Table 5.1: Metallurgical coal projects in Australia

Project	Company	Development type	Coal type	Capacity (mtpa)	Start date
Byerwen	Qcoal	Greenfield	HCC	10	2017
Cook	Bounty Mining	Restart	HCC	2	2018
Baralaba North	Baralaba Coal Company	Restart	PCI	2-3	2018
Isaac Plains East	Stanmore Coal	Restart	SSC, thermal coal	2	2019
Gregory Crinum	Sojitz	Restart	HCC	6	2020 (est.)
Ironbark No. 1	Fitzroy Resources	Greenfield	HCC, thermal coal	3	2020 (est.)
Olive Downs South	Pembroke Resources	Greenfield	HCC, SSC, PCI	4 (first stage)	2020 (est.)

Notes: HCC Hard Coking Coal; SSC Semi-soft coking coal; PCI Pulverised coal injection; est. Estimated start date; Capacity refers to estimated nameplate capacity in million tonnes per annum of saleable production.

Source: Company reports and announcements, IHS Markit (2019); AME Group (2019)

Source: OCE, Resources and Energy Quarterly, June 2019

There is already sufficient approved capacity to meet declining demand for coking coal

In the landmark 2019 Land and Environment Court case Gloucester Resources Limited v Minister for Planning [2019] NSWLEC 7, the court heard evidence from the Institute for Energy Economics and Financial Analysis (IEEFA) that there will be sufficient production capacity to meet declining demand for coking coal, without approving new coking coal mines. Tim Buckley told the court that there is more than enough existing Australian production capacity to supply the global market needs for coking coal.¹⁴

IMPACTS ON THE LOCAL COMMUNITY

A coal processing plant on site at Russell Vale Colliery and truck movements

WCL plans to build a coal processing plant at the Russell Vale Colliery and process coal on site.¹⁵ Lock the Gate understands that the Russell Vale mine is one of the closest mines to any built-up residential area in Australia. As such, we consider that this is not a suitable area for coal processing. Moreover, we support local residents and community groups which have expressed and continue to express concerns that the proponent has been unable or unwilling to comply with many conditions of past approvals and the NSW government has proven to be unable or unwilling to enforce compliance. As such, we are not convinced that residents can have confidence in “conditions” or “commitments” to operate the processing plant according to suitable standards.

Trucking coal through a heavily built-up area, past people’s homes to Port Kembla Coal Terminal is undesirable given growing concerns about coal dust and air pollution from combustion of diesel fuel. WCL’s new expansion proposal means more coal trucks - on

¹³ Australian Government, Office of the Chief Economist, Resources and Energy Quarterly, June 2019, page 35 <https://publications.industry.gov.au/publications/resourcesandenergyquarterlyjune2019/documents/Resources-and-Energy-Quarterly-June-2019.pdf>

¹⁴ Gloucester Resources Limited v Minister for Planning [2019] NSWLEC 7, 8 February 2019, Point 478, <https://www.caselaw.nsw.gov.au/decision/5c59012ce4b02a5a800be47f>

¹⁵ Russell Vale Revised Underground Expansion Project, op cit, p. 9

average of 16 laden trucks per hour - Monday to Saturday, travelling to the port.¹⁶ In other words, counting the return trip, there will be 32 truck movements per hour.



Coal processing, storage, handling and trucking is not appropriate in a heavily built-up residential area.

A history of non-compliance with approval conditions

We share Illawarra Residents for Responsible Mining’s concerns that previous applications and approvals promised numerous actions to protect the community and environment that have never been met by the proponent. We understand that these include but are not limited to:

- truck loading facilities
- sound walls
- covered conveyors
- limited stockpiles
- sealed roadways and
- realignment of Bellambi Creek.

Now in this new revised project, Wollongong Coal is promising the same or similar things. In fact right now, Wollongong Coal is operating under three major non-compliances: the realignment of Bellambi Creek to protect it from pollution and flooding (due Oct 2012); the removal of 200,000 tonnes of oversize coal that was illegally stockpiled on the adjoining slag heap (due July 2019); and, the dedication of land to Council in a 1989 approval from Wollongong City Council (due 1990). All of these obligations still have not been met.

¹⁶ TRAFFIC AND TRANSPORT IMPACT ASSESSMENT FOR RUSSELL VALE COLLIERY REVISED UNDERGROUND EXPANSION PROJECT AT RUSSELL VALE RESPONSE TO PAC SECOND REVIEW REPORT, p 5 accessed at: <https://majorprojects.accelo.com/public/7f32dda24beaa9a6c18ea7d52be9c53d/RtPAC%20Second>

WOLLONGONG COAL IS NOT A 'FIT AND PROPER' ENTITY

Wollongong Coal and its majority-owner parent company Jindal Steel and Power Ltd, are currently the subject of an investigation by the NSW Government's Resources Regulator into whether or not they are a 'fit and proper' entity to hold a mining license. A catalogue of evidence building this case was first supplied to the NSW Minister for Industry, Resources and Energy in October 2015. Since that initial correspondence, which eventually sparked an official investigation, the case that this entity is not fit and proper has only strengthened. Lock the Gate does not support granting further mining rights to Wollongong Coal whilst an investigation into its fit and proper status is ongoing.

Events transpiring over the last few years provide a snapshot of Wollongong Coal's ongoing struggle to meet the 'fit and proper' test:

- Criminal conspiracy charges:** In July 2019 in India, Naveen Jindal, Chairman of Jindal Steel and Power Ltd (JSPL) was charged with offences allegedly committed under sections 420 (cheating) and 120-B (criminal conspiracy) of the Indian Penal Code. JSPL, via a holding company, JSPL Mauritius, is majority shareholder in Wollongong Coal Ltd.¹⁷
- Evidence of ongoing financial difficulties indicate that Wollongong Coal may not be able to carry out obligations under the Mining Act.** As Table 1 below demonstrates, Wollongong Coal has failed to make a profit for each of the last five years it has been in business, losing – on average – approximately \$167 million per annum since 2015. Ongoing financial difficulties indicate that Wollongong Coal may not be able to carry out its obligations under the Mining Act. The most recent audit of WCL found that *"a material uncertainty exists that may cast significant doubt on the group's ability to continue as a going concern and therefore, the group may be unable to realise its assets and discharge its liabilities in the normal course of business."* The auditor found that the company's current liabilities exceed its current assets by \$925,496,000.¹⁸

Table 1: Wollongong Coal - a loss-making business

Wollongong Coal has booked a loss for each of the last five years it has operated its business	
Financial Year	Profit / Loss
2015	-\$195,567,000
2016	-\$181,934,000
2017	-\$5,511,000
2018	-\$73,883,000
2019	-\$379,230,600
Total losses over last 5 years	-\$836,125,600

Source: Annual Report data 2015 - 2019

¹⁷ New Indian Express, 1 July 2019, Delhi court orders framing of charges against Naveen Jindal and four others in coal scam case

<http://www.newindianexpress.com/nation/2019/jul/01/delhi-court-orders-framing-of-charges-against-naveen-jindal-and-four-others-in-coal-scam-case-1997865.html>

¹⁸ UHY Haines Norton, Wollongong Coal Annual General Report 2019, pg 120,

<https://www.asx.com.au/asxpdf/20190724/pdf/446vc3cgpwdkq2.pdf>

- **Resources Regulator shuts down Wongawilli mine over serious safety issues:** In March 2019, a stop work order was issued following four separate Section 195 prohibition notices on the mine’s operators in the previous week, in relation to “*significant safety issues identified at the mine*”. While at the mine, inspectors also identified several safety issues with the mine’s conveyor system, mine travel roads and production methods, which resulted in a total of three section 195 notices being issued. At the time, the Resources Regulator noted that “*inspectors have taken compliance action in response fire risks on conveyors on 13 separate occasions since August 2017.*”¹⁹ To date, Wollongong Coal has been unable to operate their Wongawilli mine safely, with safety issues snowballing to the point where mining has now ceased at this location.
- **Conviction for failure to pay annual rental fees and administrative levies:** In November 2017, Wollongong Coal was convicted in court and fined \$40,000 over its failure to pay \$288,000 in debts to the NSW Government. At the time, the Illawarra Mercury reported that: “*The Resource Regulator took the miner to court even after it had eventually paid up, with chief compliance officer Anthony Keon explaining the miner’s actions had not been up to the standard expected.*”²⁰
- **Conduct allegedly causing or contributing to the bankruptcy of a contractor:** In August 2017, it was claimed that Wollongong Coal contributed to sending the mining services group Delta bankrupt due to unpaid debts. Administrators from audit and insolvency firm Grant Thornton, said WCL had regularly disputed claims for payment made by Delta and “*unnecessarily*” delayed “*payments of approved invoices*”, Delta directors also said the condition of the Wongawilli mine’s infrastructure and equipment was “*different to the position outlined in the contract*”, and this was “*compounded*” by Wollongong Coal refusing to spend money to “*make good*”.²¹
- **Fined by the EPA for polluting local waterway:** In September 2017, Wollongong Coal was fined by the Environment Protection Authority for polluting a waterway with runoff from the Russell Vale colliery. WCL was given a fine of \$15,000 after sediment-laden water was discharged from the mine to Bellambi Gully, in contravention of its environment protection licence. Another fine of \$15,000 was also issued for poor maintenance and operations of the Bellambi Gully diversion pipe.²²
- **Fined for failing to hold mandatory community consultative committee meetings:** In December 2017, WCL was fined \$15,000 – the maximum penalty – after it failed to hold three required community consultative committee meetings.²³

GREENHOUSE GAS EMISSIONS

The total Scope 1, 2 and 3 CO₂e emissions for the project would be approximately

¹⁹ <https://www.resourcesregulator.nsw.gov.au/news/2019/resources-regulator-shuts-down-wongawilli-mine-over-serious-safety-issues>

²⁰ Ben Langford, Illawarra Mercury, Wollongong Coal found guilty, fined \$40k over debts ,9 November 2017, <https://www.illawarramercury.com.au/story/5044882/wollongong-coal-found-guilty-fined-40k-over-debts/>

²¹ Ben Langford, Illawarra Mercury, Delta mining group sunk by bad debts, poor deals, 18 August 2017, <https://www.illawarramercury.com.au/story/4860119/bad-wollongong-coal-debts-deal-sunk-delta/>

²² Ben Langford, Illawarra Mercury, Wollongong Coal fined \$30,000 over water pollution, 6 September 2017, <https://www.illawarramercury.com.au/story/4905306/miner-fined-30k-over-pollution-again/>

²³ Kate McIlwain, Illawarra Mercury, Helensburgh and Wongawilli coal mines get maximum fines from NSW Planning, 12 December 2017, <https://www.illawarramercury.com.au/story/5115862/two-illawarra-coal-mines-get-maximum-fines-from-nsw-planning/>

11,147,000Mt.²⁴ To quote the now famous Rocky Hill decision: *“the GHG emissions of the coal mine and its coal product will increase global total concentrations of GHGs at a time when what is now urgently needed, in order to meet generally agreed climate targets, is a rapid and deep decrease in GHG emissions.”*

CONCLUSION

We believe that Wollongong Coal has lost its social licence to operate in the Illawarra. Further, we don't believe that Wollongong Coal meets the 'fit and proper' test as set out under the Mining Act. In addition, on its merits, our assessment is that this project is not in the public interest and should be rejected.

Further recommendations:

1. As part of the assessment process for this mine, the Department should seek a briefing from the NSW Resources Regulator on the “ongoing” investigation and their view as to whether Wollongong Coal is a ‘fit and proper’ entity to be granted further rights to mine coal in NSW.
2. Due to the complexity of assessing this project and the high stakes regarding the integrity of Greater Sydney’s drinking water supply, Lock the Gate recommends that the Department seek advice from the Independent Expert Panel on Mining in the Catchment as per their terms of reference: 3.d.

²⁴ Greenhouse Gas and Energy Assessment 3687_R08_GHG Report_Final Impact Assessment Results p. 7 accessed 18.8.19 at:
<https://majorprojects.accelo.com/public/7f32dda24beaa9a6c18ea7d52be9c53d/RtPAC%20Second%20Review%20FINAL.pdf>