

**INQUIRY INTO INTEGRITY OF THE NSW
BIODIVERSITY OFFSETS SCHEME**

Organisation: Wando Conservation and Cultural Centre Inc

Date Received: 30 August 2021

Partially
Confidential



Submission to the INQUIRY into the INTEGRITY of the NSW BIODIVERSITY OFFSETS SCHEME



*Image: Maules Creek Coal Mine showing its location in the Leard State Forest,
December 2020*

Introduction

The Wando Conservation and Cultural Centre Inc. thanks the NSW Legislative Council for conducting an Inquiry into the Integrity of the NSW Biodiversity Offsets Scheme. Our submission draws upon our experiences relating to the Leard State Forest, comprising a Critically Endangered Ecological Community ("CEEC") listed by the Commonwealth, which has been cleared annually during successive years between 2014 and continuing by two companies, Whitehaven Coal and Idemitsu Resources at the Maules Creek and Boggabri Coal mines. Prior to this period Idemitsu also cleared high value koala habitat during an earlier stage of approval.

We have observed grave omissions in the oversight of conditions of consent of these mines as regards biodiversity offsets. Our submission will provide the Committee with a history of events concerning the Maules Creek coal mine, details of our communications with the Commonwealth Department of the Environment, the Federal Minister for the Environment and various NSW state entities, over a six year period, in our attempt to draw attention to the lack of compliance with biodiversity offset conditions and to seek redress against what we regard as a significant event in modern ecocide: the catastrophe of the Leard State Forest.

This has been a six year history of grinding attempts on the part of the Wando Conservation and Cultural Centre, other groups and community members to bring to the attention of regulators the compliance failures of Whitehaven Coal in regard to its biodiversity offsets. At every turn, we have faced bureaucratic obstacles, buck-passing between DPIE Resource Assessments and the Commonwealth EPBC Compliance section, and a failure to apply a suitable compliance culture by both State and Commonwealth Governments and instrumentalities.

Since 2014, Wando CCC has attempted to draw attention to the maladministration of the biodiversity offsets system, including such concerns as:

- Original environmental impact assessment of Maules Creek coal mine containing false and misleading information about biodiversity, including fallacious mapping which was later proven to be incorrect by subsequent surveys.
- Repeated complaints to the Commonwealth concerning non-compliance of Whitehaven Coal with conditions of consent concerning acquisition of like-for-like offsets to compensate for the clearing of CEEC.
- Failure of DPIE Resource Assessments to undertake compliance action in relation to the false and misleading statements submitted in the EIS about the quality of offset vegetation.
- Failure of DPIE Resource Assessments to undertake compliance action in relation to the delays in acquiring and securing offsets in perpetuity.
- Failure of DPIE Resource Assessments to require ground-truthing of the Maules Creek offsets.
- Failure of the bilateral arrangements between Commonwealth and NSW in relation to the ongoing oversight of EPBC Act conditions in the Maules Creek approval.
- Interference of the DPIE- Resource Assessments in the activities of the NSW Biodiversity Conservation Trust.

Despite expert evidence from 2012 and earlier, the Maules Creek mine biodiversity offsets did not qualify to offset the loss of CEEC at Leard Forest, it has nevertheless taken until 2021 for the company to admit the falsehood. This is despite lodging a defence against a civil enforcement case brought by an environmental group South East Forest Rescue Inc. In March 2021, just before the case was about to be heard, Whitehaven advised that it would seek to replace some of the original offsets approved in 2013/14 because these properties had been finally determined not to satisfy the offset requirements and that further offsets would need to be purchased.

A major flaw in the offset scheme is that there does not appear to be any ability for the regulator to prevent Whitehaven Coal from continually clearing CEEC every year, even in default of its conditions, over a period of many years. This is a major deficiency in the consent conditions.

Despite many attempts on the part of the interested groups and individuals, the Commonwealth refused requests to halt clearing of the Leard State Forest stating (in its [Statement of Reasons](#) for extending the due date for securing of the offsets as per the consent) (para 13):

“there is no provision in the approval conditions for this, other than if Aston had failed to meet condition 6 (disturbance limits)”.

To support our contentions of maladministration on the part of NSW and Commonwealth governments we draw upon correspondence with relevant departments, and most importantly the contents of a disclosure from the NSW Biodiversity Conservation Trust obtained through the *Government Information Public Access Act 2009 (NSW)* and a disclosure from the Commonwealth Department of the Environment through the *Freedom of Information Act (Cth)*.

In essence we are calling on those responsible for the biodiversity offsets system to change the system of major projects planning from one where there are no punitive consequences for any number of non-compliances to one where there are consequences.

We also have concerns about the role that some consultants play in providing misleading mapping to the government, a matter that was shown to be the case repeatedly in the case study of Maules Creek coal mine.

As the environmental group of Narrabri Shire, and by virtue of our constant monitoring of the Leard forest, we can report to the Committee that koala habitat has been lost and no evidence of live koalas has been reported since 2017. This ecocide has been permitted to take place without any consequences to the perpetrators, to the public servants who it appears have failed to undertake their appointed roles, or to the consultants who have participated in what we regard as scientific fraud.

“Condition class” of the offsets is at the heart of the deception

“Condition class” is defined in the Definitions section of the Maules Creek mine Approval as follows:

“One of three states in which the White Box—Yellow Box—Blakely’s Red Gum Grassy Woodland and Derived Native Grassland ecological community may exist, as defined within the Commonwealth listing advice for the listing of this ecological community as critically endangered under the EPBC Act”.

The condition of the bushland is a subject of hot dispute, with the proponent downplaying the biodiversity value of the Leard State Forest and omitting to include a Commonwealth-listed species – *Tylophora Linearis* – in its species list. As a result, the Commonwealth called on Whitehaven to provide an “independent peer review”. Herein lies a matter for concern, because the company chosen to conduct the “independent peer review” was arguably not independent at all.

While this may seem to some as a historical matter of minor importance, the perceived lack of independence of the so-called peer reviews has been a lingering sore point as it laid the foundation of a false offset strategy which has continued unabated and led to a situation in which Maules Creek mine has progressed to destroying Leard State Forest without securing like-for-like offsets for several years. With the DPIE heralding the introduction of a register of approved environmental consultants next year, we request that the Committee make recommendations about how the list will ensure that poorly performing consultants who are repeatedly found to have submitted false or inadequate mapping on behalf of a client are excluded from the approved register.

We request that the Honourable Members address this question, by recommending that all offsets are peer-reviewed by a party with no conflicts of interest. This should include:

- No conflicts of interest.
- independent reviewers are selected by the department, not the proponent.

Consultants who have provided bad advice on offsets mapping previously - such as in the case at hand, bad advice about the Maules Creek mine offsets which are still incorrect ten years after being originally proposed in 2011 - should be excluded from the pool of acceptable advisers.

Two biodiversity reports were relied upon by Whitehaven and the Commonwealth Dept of the Environment, which were prepared by Greenloaning Biostudies Pty Ltd and are commonly referred to as the “Independent Peer Review of Offsets for the Maules Creek Mine Project – EPBC 2010/5566” dated 27 December 2013 (usually referred to as the First Greenloaning Report) and on 14 April 2014, Whitehaven submitted to the (then) Department of the Environment a report prepared by Greenloaning entitled “Independent Peer Review of Offsets for the Maules Creek Mine Project – EPBC 2010/5566: Verification Report for Additional Offsets” dated 3 April 2014 (the “Second Greenloaning Report”).

According to Greenloaning Biostudies the Condition class of the Box Gum CEEC within the Project Area consisted of 458 Ha (84%) of Box Gum CEEC which has both a native understorey and an overstorey of eucalypts existing in conjunction with each other (Woodland Box Gum CEEC) and 86 Ha (16%) of Box Gum CEEC which has a native understorey, but the trees have been cleared (Derived Grassland Box Gum CEEC).

Six of the original offset properties had not been the subject of field inspections by the proponent but in due course, Greenloaning Biostudies declared that the proposed Commonwealth Offset Properties “contain no less than 5,532 Ha of White Box-Yellow Box-Blakely’s Red Gum Grassy Woodland and Derived Native Grassland under the EPBC Act” and this was inserted in the Maules Creek Biodiversity Management Plan which was subsequently approved.

In October 2016, Whitehaven Coal informed the Community Consultative Committee that there was a “sticking point” between the company and the Commonwealth, being the amount of grassland within the offsets was extensive and the Commonwealth was sticking to its requirements that it had to be restored to woodland CEEC. This is further evidence that the offsets were not like-for-like habitat to the Leard Forest.

In May 2018, the Biodiversity Conservation Trust Northern Inland department conducted site visits to a number of Whitehaven Coal biodiversity offsets. In an internal email obtained by the Wando Conservation and Cultural Centre, dated 30th May 2018, under “General Notes for all sites visited”:

- “Most sites have same 8 species of Euc’s regardless of landscape position with no other canopy or shrub species”
- “Reveg not done with an augur hence very poor success rate”
- “Little use of direct seeding as an alternative to planting”
- “Veg mapping has poor accuracy on some sites. Areas mapped as Box EEC are of particular concern”
- “Little successful restoration achieved”

Individual notes for the Whitehaven offsets included at **Teston, Tralee, Warriahdool, Wollondilly**, the offsets closest to the Maules Creek mine, paint a particularly derelict situation considering that applications for conservation agreements had been lodged by Whitehaven the previous year and delays were being blamed on the transitional legislation, when in fact at the same time the offsets were observed by the BCT to be not as represented by Whitehaven Coal, and not like-for-like White Box CEEC. After the May 2018 inspection, the BCT reported:

- “Area mapped as ironbark however it is pine with some whitebox”
- “Area mapped as white box EEC is actually belah woodland”
- “Errors with veg mapping not white box EEC. Some areas low condition and mostly treeless”
- “Failed planting of melaleucas as this was done outside drainage channels”
- “Veg mapping issues - area contains some Rosewood and is not White Box EEC”

All of this had been the subject of a Federal Court challenge in 2013 when an environmental group, Northern Inland Council for the Environment (NICE) launched a case against the federal Minister for the Environment challenging the conditions. In *Northern Inland Council for the Environment Inc v Minister for the Environment [2013] FCA 1419 (20 December 2013)*, (referring to Aston Coal, a part of the Whitehaven Coal group of companies) Cowdroy J recognised that Whitehaven would be in breach of conditions 9,10,11 and 13 if it did not meet its deadlines for acquiring offsets - it is 2021 and still Whitehaven has not satisfied its offset conditions. Eight years since NICE sought judicial review as to whether the Maules Creek mine conditions were “sufficiently certain”. Unfortunately,

the question of whether the conditions were too vague did not turn on whether the conditions wrongly assumed that the offsets for the Leard Forest existed. Sadly, the following paragraphs illustrate why there is no protection from the law against the granting of approvals to clear CEEC on a promise (not having been subjected to an independent audit, with ground-truthing verification):

“37. When read in the context of the whole of the offset conditions, condition 11 obliges Aston Coal to finalise its offset package, submit it to independent review, and remedy any deficiency that the independent reviewer identifies with the proposed offsets to the satisfaction of the independent reviewer before submitting the verified offset package to the Minister for approval by the end of 2013. If Aston Coal is unable to obtain adequate offset areas, it will breach the deadline of 30 December 2013 contained in condition 10, and will in due course breach the obligation of conditions 9 and 13 to register a conservation covenant over offset areas satisfying the quantity and quality requirements within 5 years of the Minister’s approval.

38. NICE submits that the offset conditions will not be capable of being fulfilled should Aston Coal be unable to obtain adequate offset areas. NICE further submits that the offset conditions assume that adequate offset areas will be available, given that such conditions are attached to the approval to ensure the protection of matters of national significance. This is said by NICE to be significant in light of the fact that Aston Coal is not required to have its proposed offsets package verified by independent review prior to commencing the approved clearing of the relevant areas of the Leard State Forest.

39. The offset conditions are not rendered uncertain by virtue of failing to identify what Aston Coal should do if adequate offset areas cannot be obtained. In that circumstance, the offset conditions will necessarily be breached as identified in [37] above. This could trigger a number of consequences, including the imposition of penalties as provided for by Division 2 of Part 9 of the EPBC Act. Most relevantly however, the powers of the Minister to vary, add to, or revoke the conditions, or suspend or revoke the entire approval of the project, would also be enlivened: ss 143, 144 and 145 of the EPBC Act.

40. It is correct, as NICE submits, that the offset conditions need not be satisfied prior to commencing the approved clearing. This would undoubtedly be undesirable from the perspective of environmental protection and preservation if the approved clearance of the Leard State Forest were revoked by the Minister due to a breach of an offset condition. This does not however render the offset conditions, nor the process for establishing adequate offset areas, uncertain.”

Cowdroy J also referred to an interview with the Federal Minister for the Environment on ABC Radio, discussing approvals for Maules Creek mine (and AGL’s Gloucester gas fields), in which the Minister admitted the approval had been given with little information:

“24. On the following day, the Minister was interviewed by Sabra Lane in an ABC AM radio program. An introduction to the transcript to the interview refers to the Minister’s decision to approve ‘two coal mine projects near Narrabri’ (namely the project and the Maules Creek Colliery Proposal) and a separate coal seam gas development near Gloucester. The relevant transcript reads:

TONY BURKE: I don’t think there’s ever been a set of three approvals that I’ve given with so little knowledge as to whether or not the projects will end up going ahead.

On this occasion, all three of them, there were significant outstanding issues and in the ordinary course, I would have worked through those before making a decision.

What I’ve done in this case is, for the areas that are not yet resolved, instead of giving a normal approval and say these are the conditions, I’ve said these further issues need to be worked through to my satisfaction before we know whether the project can actually go ahead.

So it’s quite... even though it’s just being reported as approvals, it’s actually quite a different set of conditions to what would normally occur.

SABRA LANE: How stringent are these conditions?

TONY BURKE: As I say, some of them are on issues that are not resolved. So with Gloucester, the hydrological modelling still has to be done. And if the impact on groundwater comes back as unacceptable then the project won’t be able to go ahead.

SABRA LANE: Why give approval then? It sort of sounds like a Clayton’s approval kind of thing.

TONY BURKE: That’s not an unreasonable description of this one.”

Timeline of events

To help readers follow the sequence of events, we have compiled this timeline which shows the large gaps of time when the Leard Forest was being bulldozed while conservation agreements for offsets were repeatedly delayed with no adequate cause.

Date		
11 February 2013	The then Federal Minister for Sustainability, Environment, Water, Population and Communities granted approval EPBC 2010/5566 to the Respondent under sections 130(1) and 133 of the <i>Environment Protection and Biodiversity Conservation Act 1999</i> (Cth) to construct and operate Whitehaven Coal's Maules Creek mine.	The conditions attached to that approval originally required that Aston establish a legally binding covenant over direct offsets in perpetuity within 5 years after the approval (i.e by 11 February 2018). Prior to 2021, the approval decision was corrected twice and varied on five occasions, three of which were to extend the timeframe for legally securing the direct offsets.
July 2014	Commonwealth orders Whitehaven that additional offsets for White Box-Yellow Box-Blakely's Red Gum Grassy Woodland and Derived Native Grassland Critically Endangered Ecological Community (Box Gum Woodland CEEC) would be required, and that significant offsets would be required for impacts on <i>Tylophora linearis</i> habitat that had not been identified in the original assessment	
29 September 2016	Email from Team leader, Resource Assessments to the MCCM environmental representatives concerning the Leard Mines Precinct Regional Biodiversity Strategy	<p>"the strategy provides a high level management framework targeted for the Leard Forest Mine complex mines and their offset areas.</p> <p>As advised at the CCC meeting, the spatial component of the strategy has been effectively superseded by the work that is currently being undertaken by OEH for the biodiversity conservation reforms, including Priority Investment Mapping products across the State including covering the Leard Forest Strategy Area.</p> <p>This will be developed over the next 6-9 months and there is limited utility in providing draft preliminary mapping products at this point in time. The outcomes from this mapping will be used in the Stage 3 Strategy review."</p>

25 October 2016	Email from MCCM Environmental representatives and to , Acting Director Monitoring Assurance Section Environment Standards Division Department of the Environment	<p>“We have been advised by Whitehaven coal, that there is a “sticking point”, being that the Commonwealth is demanding that they rehabilitate grassland areas of CEEC White-box Grassy woodland from the grassland version of the CEEC into the woodland version. They appeared to think that they are going to negotiate their way out of this. Do you know if they have budgeted the cost of this aspect of compliance?”</p> <p>says: “Responsibility for compliance monitoring of EPBC projects resides with my team. Can you please provide any information in relation to your concerns – either directly to me or EPBCmonitoring@environment.gov.au.</p> <p>The environmental reps also criticised the Commonwealth’s refusal to take its appointed seat on the Steering committee of the Leard Mine Precinct regional Biodiversity Strategy.</p>
26 October 2016	Email from to	<p>“I defer to our Post Approval Section (PAS) for questions relating to the steering committee (Postapproval@environment.gov.au) – the appropriate officer will be able to respond. PAS have responsibility for post approval processes, including approval of management plans, and dealing with variation requests.”</p>
9 November 2016	Email from to	<p>“the spatial component of the strategy has been effectively superseded by the work that is currently being undertaken by OEH for the biodiversity conservation reforms, including Priority Investment Mapping products across the State which includes the Leard Forest Strategy Area.</p> <p>This will be developed over the next 6-9 months and there is limited utility in providing draft preliminary mapping products at this point in time. The outcomes from this mapping will be used in the Stage 3 Strategy review.”</p>
1 December 2016	On 1 st December 2016, Wando Conservation and Cultural Centre wrote to the then Minister for the Environment, Josh Frydenberg, calling on the Commonwealth to require Whitehaven to cease destroying the Leard State Forest while it was in breach of its Commonwealth conditions.	

13 December 2016	Acting Director Monitoring Assurance Section Environment Standards Division Department of the Environment email to	Rejects any non-compliance: “Compliance’s role is to ensure that a management plan is submitted on time as per the condition, and that once it is <u>approved</u> it is implemented. Compliance, or more likely the Department’s investigation area, would have an involvement in questions of the adequacy of an approved management plan should there be a case of fraud or the provision of false and misleading information – such matters require a significant level of proof and evidence of intent (a difference of scientific opinion may not necessarily satisfy the level of proof required). “
July 2017	Whitehaven applies to Biodiversity Conservation Trust (BCT) for Conservation Agreements for offsets	“As a result of the Biodiversity Conservation Act” there will be delays until well into next year.” –
7 February 2018	a delegate of the then Minister made a decision to vary condition 13 of the Approval <i>to extend the timeframe</i> for the Respondent to comply with condition 13 from 11 February 2018 to 31 December 2018.	
30 May 2018	Email from Snr Landholder Support Officer to senior BCT stating a list of deficiencies with the offsets inspected	“Vegetation mapping has poor accuracy on some sites. <u>Areas mapped as Box EEC are of particular concern.</u> ” Many were marked “Observed not consistent with EEC mapping”.
11 Sept 2018	Environmental reps and Community reps on Maules Creek Community Consultative Committee send written demand for disclosure of detailed mapping, via the CCC Chair, after 2 years of requests.	“without seeing the detailed Regional detailed maps that are associated with Leard Precinct Regional Biodiversity Strategy we are unable to make a full assessment of the BMP. It goes without saying that the detailed maps have considerable bearing on the success of the regional strategy and the MCCM BMP.” “Additionally, the CCC has never had an opportunity to visit any Whitehaven offsets or rehabilitation areas, and has no first hand close up understanding. This is compared with Boggabri Coal, where we are about to have our third inspection, which has been attended by several members of the Boggabri CCC.”
16 October 2018	Email from BCT Regional Coordinator (recipient redacted, however appears to be)	“As discussed, we need to have a good outline of the full scope of the Conservation Areas.-did you have any luck finalising the spatial files as per this email?”

November 2018	GIPA disclosed documents from Biodiversity Conservation trust	"BCT expressed to WHC the need for vegetation maps provided to accurately reflect the vegetation on site at an appropriate scale using appropriate classification."
7 February 2019	BCT File note. Phone call between BCT and DPIE	"Spoke to [redacted] in afternoon. Wary of revisiting any further offsets if veg mapping is not correct. Already been reviewed by Greenloaning and Umwelt"
14 February 2019	Email from Whitehaven Coal to BCT, confirming that certain vegetation was being reclassified as a result of BCT requests	Eg "The White Box grassy woodland 'Derived native Grassland'(Previously Code 7) has been relabelled as a non-specific vegetation community of 'Derived native Grassland (Low Diversity)-Revegetation (now Code 1)" "The two linear riparian vegetation polygons previously mapped as 'White Box grassy woodland of the Nandewar and Brigalow belt South Bioregions' formerly Code 6) has been merged with 'White Cypress Pine – Narrow-leaved Ironbark shrub/grass open forest of the western Nandewar Bioregion'(Code 10) "scattered trees with native understorey"
5 April 2019	Internal email, BCT	Criticisms of Conservation Agreements for 3 offset properties, Kelso, Velyama and Louenville. Incl "What condition is the veg in?veg layers shown are not transparent enough to see the veg under them.Some veg types are more soDNG or degraded, the tables are too small and low res to read, the tables should also state veg condition as good,mod,poor" "what condition are these sites in? what weeds are present? What rehab work has been done? What is proposed? Not much use without this info" "Control of livestock. No livestock should be on the sites now! Not 'we will remove them later'. " "Missing baseline and benchmark data for all plots"
14 April 2019	Email BCT to WHC, stating that "from the 3 field assessments undertaken so far, there are some recurrent themes in our outcomes". This was a polite way of referring to the fact that they had still only been provided draft, low res, undetailed maps"	"I am finding it difficult to finalise our reports and make recommendations without an understanding of the method of mapping which you have not been able to provide" "Can we also discuss the status of the mapping. There has been confusion whether

		the vegetation maps provided in the CA's and in shp [Shapeware] files for BCT to review are the final versions. When talking to [Name], Greenloaning Biostudies] on site at Teston, she mentioned to us that she still had more detailed lotwork to do. It would be much better for us to be reviewing the final product, not a draft in development.
9 May 2019	Meeting agenda, WHC/BCT Conservation Agreement Progress and Review Meeting	BCT still calling for "clarity on status of the mapping and final products to put into CA's."
27 June 2019	OEH internal email referring to OEH/WHC/DPE and consultants meeting on 19 June 2019	Responding to WHC's wish to reduce the koala species polygons.
22 February 2019	a delegate of the then Minister made a decision to vary condition 13 of the Approval to extend the timeframe for the Respondent to comply with condition 13 from 31 December 2018 to 31 March 2020. The notice of the decision to vary condition 13 made on 22 February 2019 contains a statement of the conditions attached to the Approval, consolidating all corrections and variations made up until that date.	
19 March 2020	Commonwealth extends time frame in condition 13 from 31 March 2020 to 31 March 2021 (except in relation to Rocklea, which is 15 December 2022)	
September 2020	WHC's Executive General Manager, WHC environmental managers and their consultant ecologists met with the Commonwealth department and advised that they had determined that there was a shortfall in the required offsets, and that they were taking steps to identify and secure additional offset properties to address this.	Source: Commonwealth Statement of Reasons
23 February 2021	Environmental Defenders Office on behalf of South East Forest Rescue,	provided information to the Minister, copied to departmental officers, that it believed was relevant to a decision to vary the approval. In summary, it urged the Minister to consider that Aston is non-compliant with its approval if it was unable to secure the offsets by 31 March 2021
1st May 2021	Announcement by EDO that SEFR discontinues offsets case.	

Latest legal challenge to Maules Creek Mine Offsets
Case discontinued - offsets increased in 2021

After years of community concern and engagement, the conditions for the Maules Creek Coal Mine have been varied by the Federal Environment Minister to acknowledge that the mine's owner, Whitehaven Coal, needs to acquire additional offset areas.

Here is a table showing the amount of new offsets that Whitehaven has to acquire due to the inadequacy of its current offsets to compensate for clearing the Leard State Forest.

SUMMARY OF HECTARES DISTURBED IN LEARD FOREST/OFFSET PROPERTIES

	Project area (Ha's)	Original offset properties	Additional offset properties	Original + additional offset properties
Woodland Box Gum CEEC	458	3,285.71	542	3,827.71
Derived Grassland Box Gum CEEC	86	1,688.23	186	1874.33
TOTAL Box Gum CEEC				5,702

The variation decision means that the Environmental Defenders Office's clients, South East Forest Rescue (SEFR), can now discontinue its civil enforcement case.

Approval for the mine, in north-west New South Wales, was granted in 2013 on the condition that Whitehaven Coal secure the offsets in return for clearing a large area of a critically endangered woodland.

The local community has raised repeated concerns about the adequacy of the proposed offset areas since the approval was given.

Last year, South East Forest Rescue (SEFR), represented by the EDO, commenced proceedings in the Federal Court.

<https://www.edo.org.au/2021/05/01/community-discontinues-maules-creek-mine-offsets-case-after-ministers-decision/>

SEFR argued that Whitehaven had failed to verify that its proposed offset areas would satisfy the offsetting requirements and that the suite of proposed offsets was inadequate.

The Federal Minister for the Environment has now varied the mine's approval to recognise that Whitehaven needs to identify and secure independently-verified offset areas, additional to those originally proposed.

EDO Biodiversity Managing Lawyer said:

“That the Environment Minister has now stepped in to vary the conditions in this way is welcome news for the local community, and hopefully for mitigating impacts on the critically endangered Box Gum Grassy Woodland.

“It is now up to Whitehaven to identify additional offset areas and provide independent verification to satisfy the Minister that the offsetting requirements have been satisfied within the required timeframes.

“However, if it meets the new timeframes, Whitehaven will have had the best part of a decade to secure the required offsets for impacts it has already caused.

“This lays bare the inadequacy of offset laws and their regulation – not only has it taken the community in this case to scrutinise and apply pressure, we need a regulatory approach that enforces timely mitigation of impacts on our precious biodiversity.”

In the absence of adequate regulatory oversight on the part of the DPIE, it has been necessary for community members to dedicate time and resources in an attempt to shine light on this egregious failing.

Leard Regional Biodiversity Strategy

One of the conditions that was imposed on Maules Creek mine, and the nearby Boggabri (Idemitsu Resources) and Tarrawonga (Whitehaven Coal) mines was the requirement to develop a Regional Biodiversity Strategy to ensure that cumulative biodiversity impacts from all three mines are considered.

This is contained in Schedule 2, clause 41 of the Maules Creek mine (State) major project approval 10_0138, which states:

BIODIVERSITY

Leard Forest Mining Precinct Regional Biodiversity Strategy

41. The Proponent shall commission and fund the preparation of a Leard Forest Mining Precinct Regional Biodiversity Strategy, jointly with all other coal mines within the Precinct. The Strategy shall be co-ordinated through the Department (refer condition 42 below) and be prepared by suitably qualified, experienced and independent person/s whose appointment has been endorsed by BCD and subsequently approved by the Secretary, in the following stages:

Stage 1 – Scoping Stage

A scoping report for development of the Strategy must be submitted, by the end of January 2013, for endorsement by BCD and subsequent approval by the Secretary. The Secretary may extend this period with the agreement of BCD. The scoping report must:

- (a) include terms of reference, scope and objectives for the Strategy, including recommendations for the Strategy's geographic extent;

Stage 2 – Strategy Development

The Strategy must be developed in accordance with the approved Scoping Stage report and be submitted, by the end of January 2014, for endorsement by BCD and subsequent approval by the Secretary. The Secretary may extend this period with agreement of BCD.

This strategy was mired in delays from the outset. The Stage 1 Scoping Report due in January 2013, was submitted in May 2013. The Stage 2 Strategy Development was due January 2014, but not only was the January 2014 deadline missed, it was further put on hold in 2016 due to the planned legislative changes which would see the introduction of the Biodiversity Conservation legislation which accompanied the establishment of the Biodiversity Conservation Trust.

In a submission to the Stage 2 process, the mines' environmental representatives coordinated a joint response to the Regional Biodiversity Strategy, one of the grounds being the lack of detailed maps upon which the offsets were being approved.

The Leard Regional Biodiversity Strategy is a failure to protect the biodiversity from cumulative impacts. For example, offsets are sought as far afield as Tingha and elsewhere between 50km and over distance from the mines, yet other proposals within that radius are not considered in the Regional Biodiversity Strategy, such as Vickery Extension mine. It should also be pointed out that:

- the Travelling Stock Routes between Gunnedah and Boggabri which feature in the Vickery Extension biodiversity assessment where they are mentioned as habitat for threatened species, are being targeted by the Hunter to Queensland (aka Hunter to Narrabri) Gas Pipeline, and will be cleared by the gas industry thus calling for an entire re-assessment of the cumulative impacts of ALL industrial projects in the region.
- The Vickery State Forest, immediately contiguous with the Vickery Extension project boundary, also contains Critically Endangered Ecological Community (CEEC) Whitebox Grassy Woodland, and impacts on it have not been taken into consideration in the Vickery Extension Mine, the Leard Regional Biodiversity Strategy, or any other cumulative assessments that we know of (although we stand to be corrected and request the Committee to inquire about this).

In 2016, the then Environmental Representatives on the Maules Creek and Boggabri Coal Community Consultative Committees coordinated a single community submission on the Leard Regional Biodiversity Strategy.

One of the sore points was the fact that detailed maps were not available for consideration. Numerous, repeated requests were put to the mines, and in particular the DPIE Resource Assessments department. These were all refused, with reasons for refusal including that the maps were in shapewear format. However, this was disingenuous, as GIS software was available in the public domain which would have enabled viewing of detailed maps.

There are only two conclusions, either jointly or separately;

- DPIE did not want the public to have the opportunity to view the mapping in detail and critique it, and/or
- The mapping did not exist.

If vegetation mapping did not exist for the region, it calls for an explanation, not the fob-offs which generally were along the lines that there were delays due to the establishment of the NSW Biodiversity Conservation Trust and the introduction of the new legislation (which came in 2017).

Mapping and vegetation calculators

One of the criticisms we have is the secrecy that surrounds offsets mapping, and the excessive reliance on offsets “calculators”, software programs that estimate the value of vegetation for various planning purposes. What we have seen with stunning clarity in NSW is the fact that reliance on offset calculators has led to years of delays with lack of adequate offsets for the Leard Forest thanks to a new scheme which has been found to be deficient after 3 short years. We urge the Honourable Members to have regard to a newly published document of the NSW Government called [“Strengthening the Biodiversity Offsets Schemes - A new approach to developer charges”](#).

A thorough reading of this document provides insights into the way the NSW Government has chosen to monetise our threatened biodiversity under an ill-managed experiment, in which coal mines have been enabled to clear Critically Endangered Ecological Communities with no clear or strict deadlines for achieving key milestones.

An offset calculator was also used by the Commonwealth to assess whether the proposed Commonwealth offsets for Maules Creek mine were adequate. We have all seen how this turned out - a tragic failure.

We request that the Honourable Members call upon evidence to the Inquiry to explain to the lay public, in plain English:

- the names of all such software officially in use by the relevant departments at State and Commonwealth levels, and particulars about their design, provenance and ownership
- purported use of all calculators used at State and Federal level in assessing offsets including exactly what the calculators are intended to do, and their track record in protecting native vegetation from destruction
- What data is relied upon to use these calculators

Evidence we have seen revealed in FOI documents from the Commonwealth DOE shows that when the (then) new Commonwealth offset calculator was introduced (late 2011) it wasn’t even understandable to the Commonwealth public servants who were scrambling to assess the Maules Creek mine. The calculators are no doubt read in conjunction with digital maps, but the mapping itself is one of the most vague and unresolved flaws in this sorry tale of ecocide.

There were many requests from community members, at Community Consultative Committees, in writing and in submissions, for the GIS shapeware files to be provided to us and they constantly, steadfastly refused, providing instead A4 colour maps purporting to show a region of over 50 km wide. That was a sheer mockery to conduct a consultation process without giving participants serious access to maps that they might give detailed consideration. Much of the offsets areas are isolated chunks of remnant vegetation some of which were required to be restored to woodland vegetation.

As a result the mapping is very opaque, as the Biodiversity Conservation Trust was to find when Whitehaven sought to use some of its properties in Maules Creek, Boggabri and some areas of the Nandewar ranges – apparently the new offsets include property at Tingha some 70km away and at much higher elevation – to offset the loss of the Leard State Forest. Documents obtained by Wando

Conservation and Cultural Centre revealed the difficulty that the BCT had in obtaining detailed maps.

In 2019, even after two years since the applications of Whitehaven Coal with the Biodiversity Conservation Trust in 2017, the GIPA shows that the BCT still had not been able to get hi res maps: “the tables are too small and low res to read”.

Why did Whitehaven Coal keep getting extensions of time?

Why was Whitehaven Coal not prevented from clearing more Leard Forest CEEC when it was in breach of its EPBC Act conditions? - the answer to this seems to be that there was no legal mechanism for preventing further clearing of Leard Forest, even when in breach.

However, we urge the Inquiry to consider more closely the question of why Maules Creek mine was permitted to keep clearing. This is an argument not based on only breaches of the biodiversity conditions, but breaches of the Mining Operations Plan which specifies the progression of the mine.

We believe there was authority in the DPIE to force Whitehaven Coal to comply with the staged plan for clearing, independently of whether the offsets strategy was being adhered to.

By its own admission, Maules Creek mine has been spreading out laterally, and not digging deeper, thus in breach of its Mining Operations Plan.

We are concerned that construction of the MCCM only started in 2014, yet the current disturbed area closely matches the 15 year conceptual plan of the original EA.

One of the most important requirements of any Biodiversity Offset Scheme should be that the biodiversity offsets are secured first, then clearing is allowed. However, Whitehaven Coal in the Leard State Forest is being allowed to do it the other way around. There is every chance that the entire impacted CEEC will be cleared before the required biodiversity offsets are secured.

Changes to the conditions meant to compensate for loss of habitat for Commonwealth-listed threatened species

Whitehaven Coal successively missed deadlines for completion of Conditions 9(b) and 13 of the Commonwealth EPBC Act offset conditions

The Respondent has failed to register a legally binding conservation covenant over offset areas of no less than 5,532 hectares of an equivalent or better quality of Box Gum CEEC by 31 March 2020 and was in breach of section 142(1) of the EPBC Act, after already having received two extensions of time.

The original Condition 16 read:

“To compensate for the loss of the habitat for the regent honeyeater, swift parrot and greater long-eared bat the person taking the action must provide \$1.5 million over the life of the approval (comprising \$500,000 for each of the regent honeyeater, swift parrot and greater long-eared bat), to deliver activities that implement priority recovery actions consistent with National Recovery Plans and as agreed with the relevant Recovery Planning Teams for the regent honeyeater, swift parrot and greater long-eared bat a detailed project plan governing the timing of the \$1.5 million funding for the activities and outcomes must be developed, The project plan must be consistent with National Recovery Plans and as agreed with the relevant Recovery Planning Teams where these have been approved by the Minister. Where these Plans and Teams have not been approved by the Minister, the project plan must contain a commitment that the activities and plan will be reviewed and revised to be consistent with National Recovery Plans and as agreed by the Recovery Planning Teams within four months of the approval of that Plan by the Minister, The project plan must be submitted to the Minister for approval by 30 November 2016, or otherwise agreed in writing by the Minister, The approved project plan must be implemented.”

The deadline for this project plan was 30 November 2016. In August 2016, having no evidence of an attempt to develop this plan for \$1.5M priority recovery actions, Whitehaven Coal applied to delay delivery of Condition 16.

New Condition 16:

“To compensate for the loss of the habitat for the regent honeyeater, swift parrot and greater long-eared bat the person taking the action must provide \$1.5 million over the life of the approval (comprising \$500,000 for each of the regent honeyeater, swift parrot and greater long-eared bat), to deliver activities that implement priority recovery actions for the regent honeyeater, swift parrot and greater long-eared bat. A detailed project plan governing the timing of the \$1.5 million funding for the activities and outcomes must be developed. The project plan must be submitted to the Minister for approval by 30 April 2017, or otherwise agreed in writing by the Minister. The project plan should demonstrate consultation with relevant species experts, and be consistent with approved National Recovery Plans where they are available, and as agreed with the relevant Recovery Planning Teams: The approved project plan must be implemented.”

Under the Variation to Conditions, the Reasons for Decision for permitting the delayed performance of Condition 16 even further, included:

“19. I accepted the department’s justifications that the variation would provide for an orderly process to finalise the direct offsets for the approval, by establishing a clear process for assessing additional or replacement offsets (Conditions 11, 11A, 12B and 13A) and establishing a trigger to ensure that management planning is conducted in a timely manner (Condition 12A). I also accepted the department’s advice that the variation would not materially affect the environmental outcome.”

After six years of woodland clearing, Whitehaven Coal was given yet another reprieve.

During this time, the approach of the Commonwealth has been completely hands off. Despite massive delays in fulfilment of Commonwealth conditions, the Post Approvals, Assessments and

Post Approvals Branch at the Department of Environment and Energy, Environment Standards Division, did not show any concerns according to this email exchange below. Asking for an update in regard to “legal conservation mechanisms under review by DPE”, the DPE just responded that due to the introduction of the Biodiversity Conservation Act, the legal arrangements would be delayed until well into 2018.

There was also disappointment from the community when the Commonwealth dropped out of the Steering Committee for the Leard Regional Biodiversity Strategy. By dropping out of the steering committee this showed disregard for the importance of the Commonwealth offsets, and left the fate of the offsets compliance in the hands of the very department tasked to make sure mines face as few obstacles as possible - the DPE Resource Assessments Branch. Numerous requests were made to the Commonwealth DOE and State DPE alike to urge participation in the Regional Biodiversity Strategy Steering Committee, but these were denied. The Commonwealth has washed its hands of responsibility for overseeing in any way the successful outcomes of its consent conditions.

This exchange below illustrates the off-hand way that the _____ of Resource and Energy Assessments flicked away the Commonwealth enquiry as to the progress in legal conservation mechanisms, all of which was in vague terms, and it seems the Commonwealth could not care less.



Subscribe to our [newsletter](#)

From: [mailto:](#)
Sent: Monday, 27 November 2017 3:20 PM
To:
Subject: Whitehaven Coal [SEC=UNCLASSIFIED]

Hi

Thank you for your time this afternoon.

As per our discussion I'm the new project officer for:

[section 74](#)

[section 74](#)

- EPBC 2010/5566 – Maules Creek Coal Mine

[section 74](#)

Can you please provide the Department with an update for these projects in regards to the legal conservation mechanisms under review by DPE.

Many thanks,

Post Approvals
Assessments and Post Approvals Branch
Environment Standards Division
Department of the Environment and Energy
GPO Box 787, Canberra, ACT 2601



From:
Sent: Tuesday, 12 December 2017 12:47 PM
To:
Subject: RE: Whitehaven Coal [SEC=UNCLASSIFIED]

see status below. Sorry about the delay in getting back to you.

section 74

Maules Creek Coal Mine

- National Parks (NPWS) have identified the land they would like transferred into Park Estate and sent a letter to Whitehaven on suitable arrangements for transfer, including provision of ongoing management costs.
- Whitehaven is currently considering NPWS terms and negotiations are continuing.
- Other offset lands are proposed to be secured via Conservation Agreements and Whitehaven submitted an application in July 2017 with OEH.
- As a result of the introduction of the Biodiversity Conservation Act in October, there are delays in processing CA applications and advice from OEH is that the applications by Whitehaven will not be processed until well into next year.

section 74

section 74

Regards

Resource and Energy Assessments
Planning Services

Removal of *Blue Range* offset from Offset Strategy

26 October 2016 wrote to the environmental representative at the Maules Creek and Boggabri Coal Mines,): “Blue Range is in the list of offsets under the EPBC approval – and is required, amongst other offsets, to be secured. The approval holder can only not secure this (or other) offsets by varying the conditions of the EPBC approval.”

“...changes to the EPBC Act approval conditions can only occur through a variation to those conditions (which can only be enabled through a decision of the Commonwealth Environment Minister, or delegate). No variation request has been made.”

Yet, subsequently Blue Range was removed from the Maules Creek Offset Strategy with no explanation. Blue Range contains high quality habitat for the Koala and a range of bird threatened species. It is situated on the confluence of Horsearm Creek and Maules Creek, and due to the continuity of riparian CEEC it provides a significant east-west biodiversity corridor.

We know that mine strategies, plans and programs may be changed on a progressive basis, but we strongly object to the changing of such significant plans as the offset strategy without notification and without consultation. This practice of “back door “approvals is a way of getting around the scrutiny.

From the consolidated Project Approval:

“UPDATING & STAGING STRATEGIES, PLANS OR PROGRAMS

16. With the approval of the Secretary, the Proponent may submit any strategies, plans or programs required by this consent on a progressive basis. To ensure the strategies, plans or programs under the conditions of this approval are updated on a regular basis, the Proponent may at any time submit revised strategies, plans or programs to the Secretary for approval. With the agreement of the Secretary, the Proponent may prepare any revised strategy, plan or program without undertaking consultation with all parties under the applicable condition of this approval.

Notes:

- While any strategy, plan or program may be submitted on a progressive basis, the Proponent must ensure that the existing operations on site are covered by suitable strategies, plans or programs at all times.
- If the submission of any strategy, plan or program is to be staged, then the relevant strategy, plan or program must clearly describe the specific stage to which the strategy, plan or program applies, the relationship of this stage to any future stages, and the trigger for updating the strategy, plan or program”

In the original Project Approval, changes to management plans had to be presented to the CCC in advance. In mid-2016, “administrative changes” were introduced to the consent wiping out the requirement, with the result that Management Plans - which contain the actual deliverable accountability of the proponent, were now possible without any consultation with CCC. This has now happened repeatedly, where the Department of Planning bureaucrats are able to change consent conditions, with no transparent process, scrutiny let alone and environmental, impact assessment.

The only judgment required is that of the Planning Secretary, a very precarious standard of oversight given what we now know about the way that the Secretary’s discretion is abused. Wando CCC appreciates the opportunity to expand further on the Secretary’s discretion, and to provide

examples where the discretion was used unwisely and contrary to the intent of the approval conditions.

Commercial interests

There are some elements of the property dealings that give rise to concerns. The potential for offsets to be acquired by the National Estate, and the sums involved in conservation agreements and acquisition by National Parks and Wildlife, are considered commercial-in-confidence. This is concerning, especially in the light of the unacceptable laxity from the DPIE concerning mapping verification and the apparent conferring of economic advantage to Whitehaven Coal, while at the same time lack of transparency.

- What are the commercial arrangements when NPWS buys offsets properties?
- What are the “terms” referred to in the email below?

From:
Sent: Tuesday, 12 December 2017 12:47 PM
To:
Subject: RE: Whitehaven Coal [SEC=UNCLASSIFIED]

see status below. Sorry about the delay in getting back to you.

section 74

Maules Creek Coal Mine

- National Parks (NPWS) have identified the land they would like transferred into Park Estate and sent a letter to Whitehaven on suitable arrangements for transfer, including provision of ongoing management costs.
- Whitehaven is currently considering NPWS terms and negotiations are continuing.
- Other offset lands are proposed to be secured via Conservation Agreements and Whitehaven submitted an application in July 2017 with OEH.
- As a result of the introduction of the Biodiversity Conservation Act in October, there are delays in processing CA applications and advice from OEH is that the applications by Whitehaven will not be processed until well into next year.

section 74

What the biodiversity offsets scheme missed

The biodiversity offset scheme is an offset for vegetation and it miss other resources necessary for the biodiversity's survival, for example water.

There was only one permanent water source in Leard State Forest, being Lawler's Well which was also a known Gomeroi Aboriginal significant site. When this was bulldozed to make way for the Maules Creek mine, no provision was made to continue the availability of permanent water to the wildlife of the Leard. Why did no one think of this?



Photo: Lawlers Well in 2016, before it was bulldozed by Whitehaven Coal. This was the only permanent water source in Leard State Forest. Its destruction has not only deprived animals of water during the long drought, but contributed to water flowing into the mine pit for capturing by Whitehaven Coal for its own uses.

As a result, animals are reported to search for water in the mine, where Whitehaven stores large amounts of water for its own use.

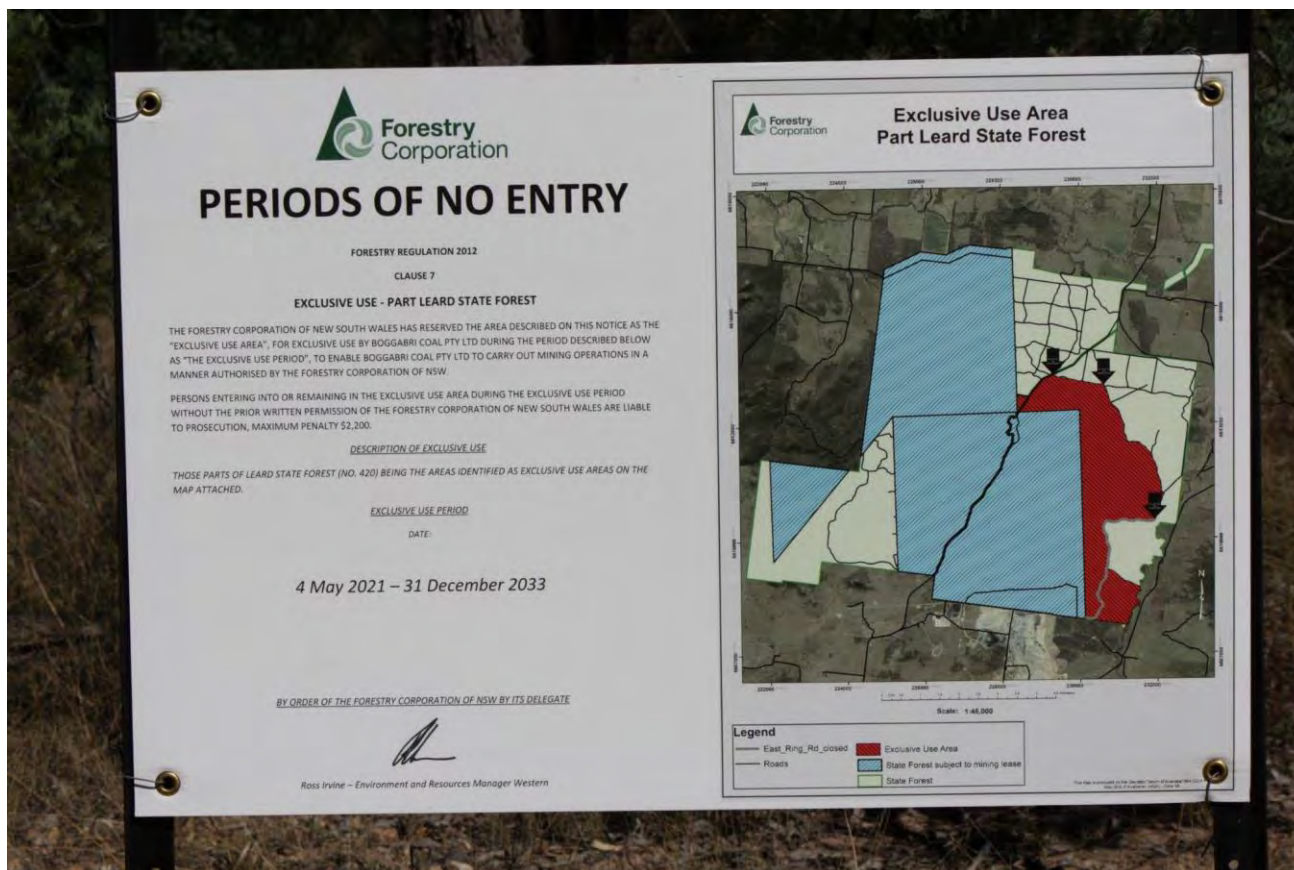


Photo: taken in 2020 after the drought, this shows the large amounts of water stored at Maules Creek coal mine, which is in the mine, not the Forest, thus depriving the animals of a water source.

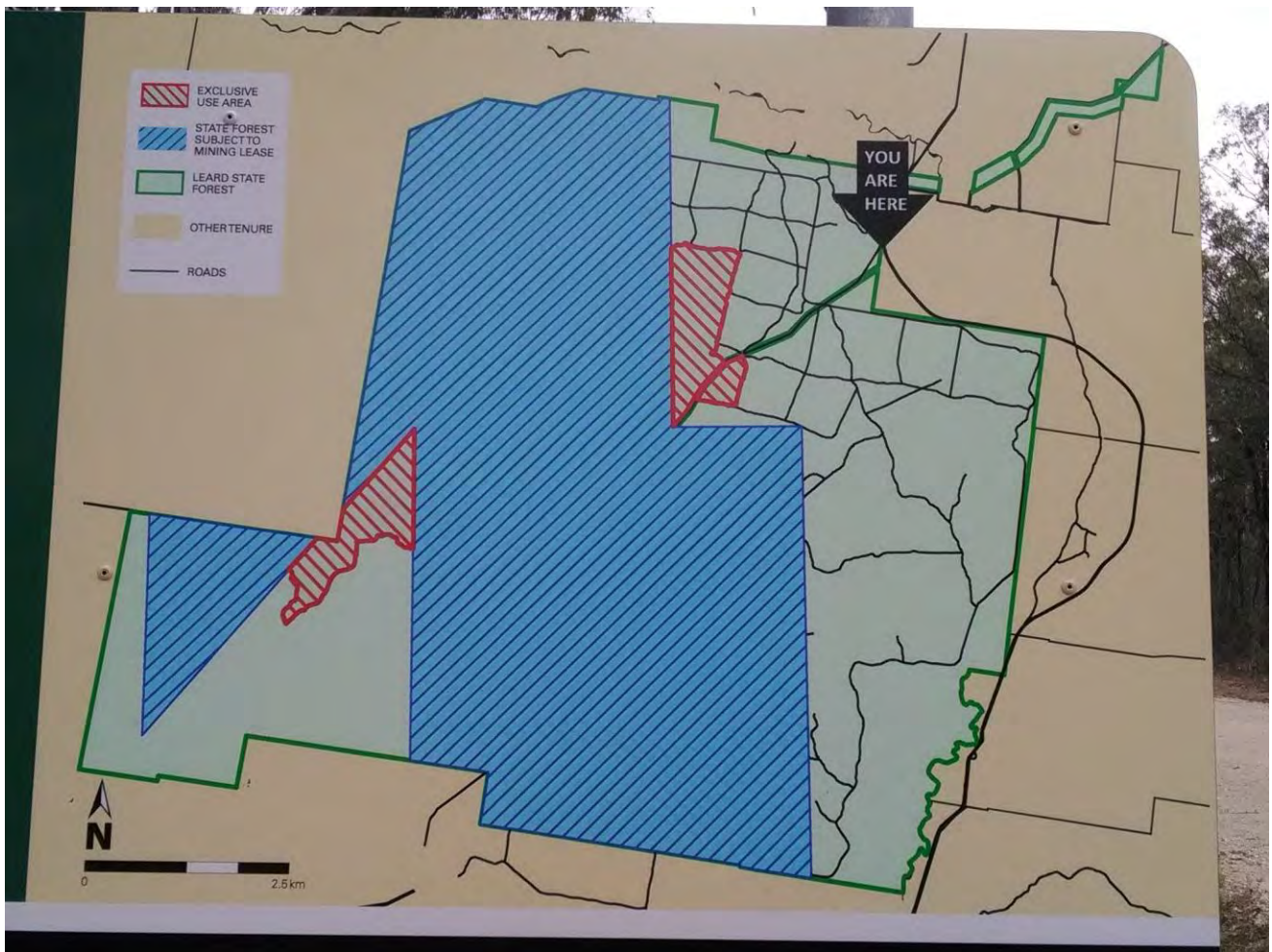
Workers report to community members the animals being mown down by mine trucks and they were instructed by Whitehaven managers to just run them over instead of stopping. This harrowing task says a great deal about the cruelty of mining in the Leard State Forest.

Biodiversity offsets also do not account for exclusion zones and buffer zones in the forest, imposed for the reason that it is too dangerous to enter upon the areas concerned as they are at risk of being injured by blasting fumes from the mines. This additional area should be offset. If it is too dangerous for humans to even be present in the red area shown in the image below, it could also be too dangerous for animals to occupy that area.

Since March 2021 a new exclusion zone has been established in the Leard State Forest by NSW Forestry Corporation to exclude the public due to the dangers of blasting fumes. The latter impact was not even considered when the offsets were assessed, only the “disturbance area” - but the disturbance area has obviously been miscalculated. Both of the maps have exclusion zones. The one below shows Boggabri Coal’s Exclusion zone in red.



Additionally, Maules Creek mine also has additional exclusion zones over and above the areas offset. This is a recurring feature, and not just a one-off.



Furthermore, we are of the opinion that noise, dust, vibrations, lighting, etc. would impact the fauna surrounding the mines' official disturbance boundary, but these impacts are not being offset.

When the area of disturbance for a project is being calculated, it should include the area that, although not cleared, is nevertheless severely impacted.

If these considerations had been taken into account, in addition to the vegetation lost only on the mine lease, it would have been impossible for Whitehaven or Boggabri Coal to assert they had enough offsets to outweigh the terrible ecological catastrophe they have wrought.

Conclusion and recommendations

This is a satellite view of the Leard State Forest. Wando Conservation and Cultural Centre is striving to save the remainder of the woodlands for posterity. Considerations of inter-generational equity and the need to mitigate the effects of climate change are paramount.



Latest available satellite imagery using Sentinel Hub, which shows just how much of the heart of the Leard Forest has been destroyed, before offsets were secured. Furthermore, the dots between the two mines are exploration drill holes connected by cleared tracks leading to further fragmentation, and indicate where future mining is proposed.

A summary list of all the limitations we have found with the biodiversity offset scheme.

- Offsets not like-for-like habitat
- Leard Forest extensively cleared before offsets secured
- Proponents providing incorrect or insufficient mapping
- The standard of professionalism among some consultants engaged by proponents is greatly lacking in uniformity
- Mapping of offsets not ground-truthed for years, and reliance on remote mapping which is proven inaccurate
- Community excluded from ground truthing opportunities.

- Proponent not taking biodiversity offsets scheme seriously nor being cooperative by failing to provide accurate, detailed mapping (see Biodiversity Conservation Trust file notes etc.)
- Conditions have been set up with no penalty for non-compliance, and no authority on the part of the regulator to require mines to cease clearing until offsets are secured
- There is not scope to offset water if a water source is destroyed, e.g. Lawler's Well
- There is no scope to offset buffer zones which may not be cleared but whose ecological values are severely impacted

These are some fundamental questions that deserve answers:

- Why did [redacted] indicate he was (as minuted in BCT meeting notes 7th Feb 2019)) *"wary of revisiting any further offsets if veg mapping is not correct. Already been reviewed by Greenloaning and Umwelt"* - we call for an explanation of why incorrect mapping was considered acceptable by the lead responsible agency, even in 2019.
- What are the differences between the mapping used by NSW DPIE before and after the inception of the Biodiversity Conservation Trust that warranted delaying the conservation agreements for the Leard Forest offsets, as happened?
- Similarly, why was the 2nd stage Leard Regional Biodiversity Strategy delayed (according to Whitehaven Coal and Idemitsu) by the DPIE (then DPE) for 2 years due to the need for new maps?
- Why does the government not apply the precautionary principle to the biodiversity offsetting scheme for this project of the Liverpool Plain?
- In October 2016, did the Resource Assessment Branch of DPIE which had control of the compliance function have knowledge of what Whitehaven Described as a "sticking point" over how much of the CEEC should be restored to woodland form, from the grassland form?

We respectfully ask that the Committee take action to recommend the cessation of biodiversity offsets and to recommend the prohibition of any clear felling of native forest. The biodiversity offset scheme for the Leard Forest has failed dismally, as we have outlined above. The Leard Forest, once a habitat for a Critically Endangered Ecological Community, has now been severely damaged. It will take a century for the Leard Forest to fully recover, or for the offset areas to be at the same standard the Leard Forest was before mining.

Unfortunately, by then the critically endangered fauna of the area are likely to be lost forever.

To conclude, below is a photograph taken by Tania Marshall, a member of Wando CCC in 2012, of a Leard Forest koala. It is the last known photo of a koala in the Leard Forest. Our group, which conducts tours, inspections and citizen science projects in the Leard has not found evidence of live koalas since 2018 and it is highly possible that they have perished due to the traumatising and debilitating impacts of the coal mines. We call this ecocide, and request that the Honourable Members use whatever power and influence that they have to ensure that this never happens again.

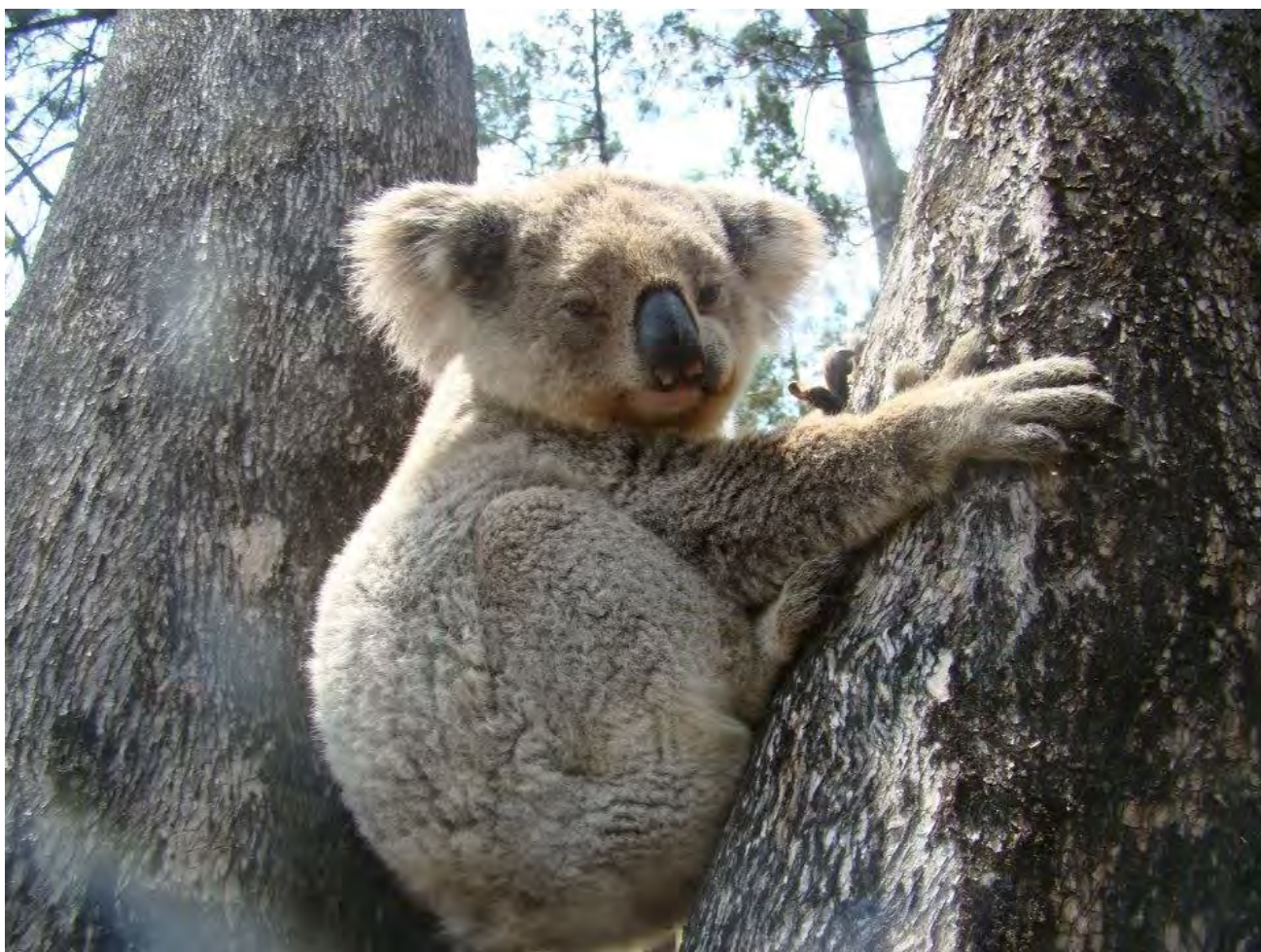


Photo: Tania Marshall, 2012

Thank you,

**Wando Conservation and Cultural Centre Inc, Maules Creek
August 2021**

Appendix 1

The Commonwealth EPBC Act offset conditions The relevant EPBC Act conditions included:

Condition 1 of the Approval provided that the person taking the action must not clear more than 544 hectares of the EPBC Act listed critically endangered ecological community White Box—Yellow Box—Blakely’s Red Gum Grassy Woodland and Derived Native Grassland (Box Gum CEEC) within the Maules Creek project area

Condition 9(b) of the Approval requires the Respondent to register a legally binding conservation covenant over offset areas of no less than 5,532 hectares of an equivalent or better quality of the Box Gum CEEC

Condition 10 of the Approval required the Respondent to:

a. verify through independent review the quantity and condition class of Box Gum CEEC within all proposed offset areas, including those that were proposed in the Environmental Assessment prepared by Hansen Bailey for Aston 2 Coal Pty and submitted as part of the approval documents for the Project; and

b. submit the details of all independently verified offset areas to the Federal Minister for the Environment for approval by 30 December 2013

Condition 11 of the Approval provides that if the independent review (as required by condition 10) finds that the offset areas do not meet the requirements of conditions 9, 12(a) and 12(b), additional areas must be included in the offset areas until all relevant criteria under the conditions of the Approval are met.

Condition 12 of the Approval provided that the offset areas must be of an equivalent or better quality than the areas being cleared.

Condition 12(a) stipulated that the Box Gum CEEC offset areas must satisfy two criteria:

a. the offset areas “must meet the definition of the ecological community described in the listing advice”; and

b. the offset areas “must be of an overall equivalent or better condition class than the areas being cleared, based on the proportion of each condition class represented and other relevant ecological attributes”.

Condition 13 of the Approval (as most recently varied on 22 February 2019) requires the Respondent to register a legally binding covenant(s) over the Box Gum CEEC offset areas, as required by condition 9(b), by 31 March 2020.

Condition 16 was deleted on 17 August 2016 and replaced

Numerous variations are listed on the Commonwealth Dept of Environment website here:

<http://epbcnotices.environment.gov.au/referralslist/referral-details/?id=217c7a12-4c67-e511-b4b8-005056ba00ab>

Appendix 2

Context of Maules Creek mine establishment

For a full pictorial essay of the conflict that surrounded the establishment of the Maules Creek

Trailer: <https://vimeo.com/136532041>

Black Hole Feature Documentary website

<https://www.blackholemovie.com.au/>

Wikipedia entry:

[https://en.wikipedia.org/wiki/Black_Hole_\(2015_film\)](https://en.wikipedia.org/wiki/Black_Hole_(2015_film))

“Mining for controversy” SMH 29 January 2013

[Mining for controversy](#)