

# Judge overturns

## Unprecedented decision victory for community

By **FRANCES THOMPSON**

APPROVAL for Coal & Allied's extension of the Mount Thorley Warkworth mine has been overturned on appeal, in a judgment said to be the first of its kind that places open-cut coalmines under a new level of scrutiny.

Land and Environment Court chief judge Brian Preston handed down his judgment yesterday with Hunter residents who lodged the appeal in the court to hear the decision.

The Bulga Milbrodale Progress Association campaigned against the project for almost three years because of the threat they said the mine posed to human health and the town of Bulga.

The extension proposed to bring open-cut operations to within 2.6 kilometres of the village, mine through a ridge promised for conservation by the state government in 2003, destroy more than 700 hectares of endangered vegetation and close a public road.

Progress association spokesman John Krey said the decision had major implications for existing mines.

"All the arguments we put forward were rejected by the [planning] department and rejected by the Planning Assessment Commission and yet a judge says they are valid concerns," Mr Krey said.

"The people of the Hunter Valley could say to the department 'you blokes are not doing your job'," he said.

Environmental Defenders Office instructing solicitor in the appeal Natasha Hammond-Deakin said it was the first successful merit appeal against a coalmine by a judge.

"It [the judgment] is a real recognition of the social and

economic impacts of open-cut coalmines on communities," Ms Hammond-Deakin said.

That the chief judge heard the Bulga case indicated the significance of the appeal, she said.

Coal & Allied obtained approval for the mine extension in early 2012.

It allowed operations to run until 2033 and promised to create 150 jobs.

The company's acting managing director Darren Yeates said the judgment showed "failings" and "shortcomings" by the NSW Department of Planning and Infrastructure.

"The fact it has now taken 3½ years to get an outcome on this project and that it can be overturned notwithstanding a rigorous process showed that the planning system is failing to deliver timely and predictable outcomes," Mr Yeates said.

In his judgment, Justice Preston said the project's social and environmental impact was "unacceptable".

"The proposed conditions of approval are inadequate [and] the proposed conditions of approval, including combining the Warkworth mine with the Mount Thorley mine are likely to make monitoring and enforcing compliance difficult," the judgment stated.

The court found the project could not be justified on environmental, social or economic grounds.

"In my view balancing all relevant matters the preferable decision is to disapprove the carrying out of the project," the judge said.

Ms Hammond-Deakin said that in a merit appeal, a judge heard evidence afresh and put himself in the place of the appellant.

Appeals against decisions



## THE AUSTRALIAN

# Bulga mine decision emboldens small groups against developers

RICK MORTON THE AUSTRALIAN APRIL 17, 2013 12:00AM

**A RARE court victory against a multinational miner on environmental grounds has emboldened small communities across NSW to legally test new development applications in the resources sector.**

The Hunter Valley village of Bulga, southwest of Singleton, buried expansion plans for Rio Tinto's Warkworth open-cut mine in the Land and Environment Court of NSW on Monday.

Judge Brian Preston found there would be "significant" adverse social and environmental problems and overturned ministerial approval.

A similar expansion plan for Indian miner Gujarat NRE's coalmine in Russell Vale, north of Wollongong, would lift production by 10 times the current 300,000 tonnes if approved, a process local groups are fighting.

Illawarra Residents for Responsible Mining Inc president Gavin Workman said the group would not hesitate to start court action in light of the Bulga decision.

"We would most definitely take them to court, these kinds of decisions always inspire confidence that things are heading in the right direction," he said.

"Previously we tried to challenge Gujarat on a technicality in court but had to drop the case because we didn't have \$40,000 to continue."

The expansion of the Russell Vale colliery, which residents say is the "closest mine to homes in the entire Illawarra" would include coal stockpiles of up to 840,000 tonnes less than 500m from homes and schools.

Chinese miner Shenhua Watermark Coal's application for an open-cut mine southeast of Gunnedah, near the small town of Breeza, is currently open for public submissions.

An extension of the Tasman coalmine, in the Newcastle coalfields by the town of Seahampton, has recently been approved. While court decisions in favour of community groups are not common, the Land and Environment Court in February overturned a Planning and Assessment Commission approval for Boral to double the output of its Berrima coalmine to almost 500,000 tonnes a year.

NSW Minerals Council chairman David Moulton wouldn't comment directly on the Bulga decision yesterday, but said in a statement planning laws must be more consistent as the NSW government announced draft legislation.

"Government must ensure that the planning system encourages enterprise and endeavour across the economy and is a gateway to greater regional job creation and economic growth," he said.

NSW Planning Minister Brad Hazzard said the draft legislation put communities at the forefront of planning while critics said the proposed reforms gave more power to developers.



**Environment** Open-cut plan scuppered

# Tiny Bulga wins day against mining Goliath

**Ben Cubby,  
Sam Rigney**

The tiny NSW town of Bulga has won a three-year battle against mining giant Rio Tinto when a court overturned a state government-endorsed decision to allow it to dig an open-cut coalmine next to the town.

A Rio Tinto subsidiary, Coal & Allied, had been granted approval to mine bushland next to the town which had been created as an "offset" a decade ago. It was to have created 150 mining jobs and extracted 18 million tonnes of coal a year, in the community of 300 people.

In a scathing judgment, Justice Brian Preston, chief judge of the

Land and Environment Court, criticised the government's approval of the proposed Warkworth mine in the Hunter Valley, which he said could damage Bulga's "sense of place".

Planning Minister Brad Hazzard said he was seeking legal advice on what action might be available to the government. Rio Tinto said the community's ability to challenge the government's decision was "significantly obstructing investment and job creation in NSW".

The challenge was brought by the

Bulga Milbrodale Progress Association, representing the views of most of the town's residents, with help from the Environmental Defender's Office of NSW.

The publican at Bulga's only hotel said she awoke on Monday to a text message that read: "Bulga is safe".

Marguerite

Hannaberry, who owns the Cockfighter Creek Tavern on Putty Road with partner Paul Burgess, said the pub was in the acquisition

zone for the proposed mine, meaning it would have to have been sold. "Everyone on the progress association is over the moon. It's a massive relief," she said. "We've got a lot of happy people who were born and bred in Bulga."

Mr Burgess said the mine would have destroyed the town. "The town would have been fairly uninhabitable anyway, cut off from Jerrys Plains and Denman and really a shell of itself."

In his judgment Justice Preston said he was not persuaded by the economic analysis offered by the company. "The project's impacts would exacerbate the loss of sense of place, and materially and

**Continued Page 5**



**Message on a tree: A protest poster.**



## Tiny town challenges state, miner

From Page 1

have destroyed the town.

"People have been dropping in for a beer and a chat about the decision in Sydney," he said.

"The pub was right in the acquisition zone relevant to the expansion of the mine so we would have had to sell up.

"The town would have been fairly uninhabitable anyway, cut off from Jerrys Plains and Denman and really a shell of itself."

In a scathing judgment, Justice Brian Preston, chief judge of the Land and Environment Court, criticised the government's approval of the proposed Warkworth mine, which he said could damage Bulga's "sense of place".

Planning Minister Brad Hazzard said he was seeking legal advice on courses of action available to the government.

Rio Tinto said the ability of the community to challenge the government's decision was "significantly obstructing investment and job creation in NSW."

"This outcome is a blow to our plans for the Mount Thorley Warkworth mine and the jobs of the 1300 people who work there, at a time when the Australian coal industry is struggling to remain globally competitive," Darren Yeates, the acting managing director of Coal & Allied, said.

The challenge was brought by the Bulga-Milbrodale Pro-

gress Association, representing the views of most of the town's residents, with help from the Environmental Defender's Office of NSW.

One Bulga resident enjoying a celebratory beer at the tavern was Jim Johnson, who expected the town's people to be cautious about the judgment until they were assured they were safe.

"I can't believe it at the moment," he said.

"I think a few of us might wait and see, it might be too good to be true."

Bulga residents Marie and Stewart Mitchell, who were instrumental in the campaign, are on holiday until next week, so the decision had been made to put the party celebrations on hold.

## Warkworth whacked in court

A LAND and Environment Court judgement overturning the state government's approval of an open-cut coal mine in the Hunter Valley highlights the failings of the NSW planning system, according to the Nature Conservation Council of NSW.

Bulga Milbrodale Progress Association's merits appeal has halted the Warkworth open-cut mine extension project, which would have cut through the only remaining substantial stand of endangered Warkworth Sand Woodland, destroying almost 800 hectares of native habitat and expanding an existing mine closer to Bulga village.

"This decision is a tremendous victory for the Bulga Milbrodale Progress Association and the unique wildlife that these woodlands support," Nature Conservation Council of NSW chief

executive officer Pepe Clarke said.

"It is very regrettable that the people of Bulga community had to go to the courts to defend their community and their environment because the state government and the planning process had failed to do so.

"Luckily, this community had the opportunity to mount a merits appeal.

"In many other cases the community's appeal rights have been removed."

Mr Clarke said the court decided on Monday the conditions imposed by the Planning Assessment Commission were inadequate in several areas, and found the proposed mine would have had:

## Court overturns government's support

From page 1

- significant and unacceptable impacts on biodiversity, including the Warkworth Sands Woodland endangered ecological community
- significant and unacceptable noise impacts on residents
- significant and unacceptable social impacts on the local community of Bulga

Controversially, the government

approval would have allowed mining of part of a biodiversity offset that was required to be protected as a condition of a previous approval in 2003.

"The Warkworth mine extension is a clear case of the failure of the state government's offset policy to protect threatened species and habitat," Mr Clarke said.

"There was simply no other location that can compensate for the loss of this irreplaceable wildlife habitat."





**CHEERS:** Celebrating court victory against the expansion of Warkworth open cut mine are (l-r) John and Leslie Krey, Annett and Ian Bartholomew, Judith and Alan Leslie and dog Lucy, Helen and Hugh Upward with granddaughter Makayla Mobberley.

## Bulga celebrates Court win

By Di Sneddon

FOUR days after that landmark decision to disapprove the Warkworth coal mine expansion, residents at Bulga are slowly coming to terms with what it means.

Celebrations have carried on throughout the week but for John Krey, vice president of the Bulga Milbrodale Progress Association, the court battle was a path the people should never have been forced to take.

"This should have been resolved two years ago, I'm smiling, I'm very happy with the verdict but it has been a very long, time consuming process that we had to go through," Mr Krey said this week.

Mr Krey and wife, Leslie, were in court to hear the

verdict.

"We walked in, stood up for the judge, sat down and the judge said the appeal has been upheld," Mrs Krey said.

"I turned around and said does that mean we lost and our legal council said no, we won, I was stunned, it was all over so fast," she said.

The appeal was in favour of the association on all of its five appeal points.

The Court concluded that the project would have significant and unacceptable impacts on biological diversity, including on endangered ecological communities, noise impacts, and social impacts.

The Court considered that the proposed conditions of approval were inadequate and would not allow the

project to achieve satisfactory levels of impact on the environment, including the residents and community of Bulga.

The Court found that these matters outweighed the substantial economic benefits and positive social impacts of the project on the region, and that the extension project should not go ahead.

Existing mine operations at Warkworth mine are still authorised under the existing consent, with mining authorised until 2021.

Planning minister Brad Hazzard told *The Singleton Argus* it is not appropriate for the government to comment on a specific decision of the Land and Environment Court however he has sought legal advice on what course of action is appropriate for

the government.

Member for Upper Hunter George Souris said that the court decision was a great credit to the local Bulga community who fought against the expansion on the strong environmental grounds that they did.

"The courts exist as the avenue of appeal when all bureaucratic process (even the independent assessment process that was involved) is exhausted and in this case it has turned out successful for the local Bulga community," Mr Souris said.

"The Court accepted the arguments made and I am delighted for residents that this was the outcome hoped for after a long and anxious battle from when the application was first lodged by the company."





## Tiny Bulga wins day against mining Goliath

Ben Cubby, Sam Rigney

Published: April 16, 2013 - 3:00AM

The tiny NSW town of Bulga has won a three-year battle against mining giant Rio Tinto when a court overturned a state government-endorsed decision to allow it to dig an open-cut coalmine next to the town.

A Rio Tinto subsidiary, Coal & Allied, had been granted approval to mine bushland next to the town which had been created as an "offset" a decade ago. It was to have created 150 mining jobs and extracted 18 million tonnes of coal a year, in the community of 300 people.

In a scathing judgment, Justice Brian Preston, chief judge of the Land and Environment Court, criticised the government's approval of the proposed Warkworth mine in the Hunter Valley, which he said could damage Bulga's "sense of place".

Planning Minister Brad Hazzard said he was seeking legal advice on what action might be available to the government. Rio Tinto said the community's ability to challenge the government's decision was "significantly obstructing investment and job creation in NSW".

The challenge was brought by the Bulga Milbrodale Progress Association, representing the views of most of the town's residents, with help from the Environmental Defender's Office of NSW.

The publican at Bulga's only hotel said she awoke on Monday to a text message that read: "Bulga is safe".

Margueritte Hannaberry, who owns the Cockfighter Creek Tavern on Putty Road with partner Paul Burgess, said the pub was in the acquisition zone for the proposed mine, meaning it would have to have been sold.

"Everyone on the progress association is over the moon. It's a massive relief," she said. "We've got a lot of happy people who were born and bred in Bulga."

Mr Burgess said the mine would have destroyed the town. "The town would have been fairly uninhabitable anyway, cut off from Jerrys Plains and Denman and really a shell of itself."

In his judgment Justice Preston said he was not persuaded by the economic analysis offered by the company. "The project's impacts would exacerbate the loss of sense of place, and materially and

adversely change the sense of community, of the residents of Bulga and the surrounding countryside," he said. "I am not satisfied that the economic analyses relied on by Warkworth and the minister have addressed these environmental and social factors adequately."

The mine would have had "significant and unacceptable" effects on plants and animals, and would generate serious levels of dust and noise, the judgment said.

It was to have removed a nearby ridge, wiping out a quarter of the remaining Warkworth Sands Woodland, a refuge for endangered plants and animals.



"We've got a lot of happy people who were born and bred in Bulga". Photo: Ryan Osland



# Tiny Hunter Valley town wins the day against a mining Goliath

## From Page 1

adversely change the sense of community, of the residents of Bulga and the surrounding countryside," he said. "I am not satisfied that the economic analyses relied on by Warkworth and the minister have addressed these environmental and social factors adequately."

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It was to have removed a nearby ridge, wiping out a quarter of the remaining Warkworth Sands Woodland, a refuge for endangered plants and animals.

The acting managing director of Coal & Allied, Darren Yates, said in a statement: "The fact it has now taken 3½ years to get an outcome on this project – and that it can be overturned notwithstanding a rigorous



Over the moon: Paul Burgess says the court ruling against the mine is a huge relief for the town. Photo: Ryan Osland

government process – shows that the planning system is failing to deliver timely and predictable outcomes.

"This outcome is a blow to our plans for the Mount Thorley Warkworth mine and the jobs of the 1300 people who work there, at a time when the Australian coal industry is struggling to remain globally competitive."

The new mine, which would have added to Coal & Allied's existing operation in the area, would have created 150 more permanent jobs, the company said.

The mine was approved in February last year after being considered by the NSW Planning Commission and the NSW Environment Protection Authority.

THE AUSTRALIAN TUE 16 APRIL 2013

## Bulga 1, Rio 0: court halts mine expansion

RICK MORTON

TINY Bulga scored a victory in court yesterday after it sized up to mining giant Rio Tinto and the NSW government in a bid to halt the expansion of an open-cut coalmine that locals said would have "destroyed the town".

The NSW Land and Environment Court yesterday overturned a decision by NSW Planning and Infrastructure Minister Brad Hazzard in February last year that allowed expansion of the Warkworth mine northeast of Bulga.

Rio lodged the major project application to extend the mine to the west and southwest, and for an extra decade to 2031, which was approved by the Planning Assessment Commission of NSW in February under delegation from the minister.

The minister and Warkworth argued the expansion should be approved with more stringent conditions, which the court rejected.

The expansion would have resulted in the clearance of 766ha consisting of four different endangered ecology systems and

the removal of the landmark Saddleback Ridge, the only structure separating the mine from the town.

"The project should be refused, having regard to the significant adverse biological diversity, noise and dust and social impacts," judge Brian Preston said. "I am not persuaded, on the evidence before the court, that the biodiversity offsets and other compensatory measures proposed by Warkworth are appropriate or feasible or would be likely to compensate for the significant biodiversity impacts."

Justice Preston also said the expansion would alter the "sense of place" of Bulga residents. "The project's impacts would exacerbate the loss of sense of place and materially and adversely change the sense of community of the residents of Bulga and surrounding countryside."

Local resident and mineworker Jim Johnson said the decision was a win for the community. "The mines are a great driver of employment in communities but you have to draw a line somewhere," he said.

"It's a shame when the mines have to come on to these little towns and destroy them."



## Australian outback town of Bulga defeats Rio Tinto in coalmine battle

The tiny Australian outback township of Bulga, population 300, has defeated the global mining giant Rio Tinto in a battle over a massive new coalmine after a court ruled the plan would destroy the community's "sense of place".

Bulga is the latest town to oppose plans for open cast mines. Photo: Bloomberg

By Jonathan Pearlman, in Sydney

9:51AM BST 16 Apr 2013

The Land and Environment Court in the state of New South Wales ended a bitter three-year dispute by rejecting a proposal to expand an existing mine and clear 766 hectares of forest, including a bushland ridge that separates the town from an open-cut coal pit. The proposal would have placed the mine within 1.6 miles of the town.

Locals in the 200-year-old township said it would have turned Bulga, about 120 miles north-west of Sydney, into a "ghost town".

Margueritte Hannaberry, a publican at the Cockfighter Creek Tavern – Bulga's only hotel - said she was "over the moon" and the ruling had saved the town.

"It's a massive relief," she told Fairfax Media. "We've got a lot of happy people who were born and bred in Bulga."

The hotel's other publican, Paul Burgess, added: "The town would have been fairly uninhabitable ... and really a shell of itself."

In a scathing ruling, the judge, Brian Preston, said the project would have adversely affected the town as well as the local environment.

"The project's impacts would exacerbate the loss of sense of place and materially and adversely change the sense of community of the residents of Bulga and surrounding countryside," he ruled.

The mine was due to be run by a Rio Tinto subsidiary Coal & Allied, which said it would have extracted 18 million tons of coal a year.

"This outcome is a blow to our plans ... at a time when the Australian coal industry is struggling to remain globally competitive," said Darren Yates, from Coal & Allied.



A local resident and mineworker, Jim Johnson, said the mines were great for employment "but you have to draw a line somewhere".

"It's a shame when the mines have to come on to these little towns and destroy them," he told The Australian.

How we moderate

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## **Bulga's Last Stand**

PAC Meeting in Singleton. A public meeting where the press was forbidden from visually recording (both video and photograph) the proceedings of the meeting by the 'Commissioner,' Gary West. The show of force by Big Coal was bolstered by coal industry employees paid to attend the public meeting. The little town of Bulga is tired, the health of some of its activist residents has suffered. Others despair that the threat of the enlarged mine has so depressed their house prices that they can no longer sell up.

MIKE BOWERS/THE GLOBAL MAIL

## **Bulga's Last Stand**

*By Bernard Lagan*

*December 20, 2013*

Days before Christmas, the NSW Government heard Hunter Valley voices for and against Rio Tinto further expanding its Warkworth coal mine. The Global Mail was not permitted to record the public meeting, so you'll just have to read about how the government had already neutered a deed Rio signed a decade ago.

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Their four-wheel drives and utes filled the car park. A sea of orange and yellow miners' shirts crammed the 100 seats inside the Singleton Heights Diggers Club. This was the show of force Big Coal had long promised for the showdown between one tiny Hunter Valley town and the global coal miner, Rio Tinto, which wants to start mining more of the 550 million tonnes of coal it controls on the hamlet's fringes, the ancient forests surrounding it and old Saddle Back Ridge which protects it.

"We were pestered by the bosses to come," one young mine mechanic, employed by a contractor to Rio Tinto, offered as he and his mates pulled on their cigarettes outside. The battle for Bulga – the town that has become a beacon in the war between big coal miners and rural communities across New South Wales that are being emptied by coal's march – entered its endgame on a still, hot Thursday in Singleton this week.

The occasion was a public meeting staged by the New South Wales Government's Planning Assessment Commission – the body charged with approving new coal mines in Australia's most populous state. The commission, a two-man panel appointed by the government, is required to hear directly from the people before it brings down its decision on whether Rio Tinto, the third-largest mining company in the world, can expand its Warkworth Coal mine, which has been operating since the early 1980s and employs 850 miners.

Should the panel agree with Rio Tinto, it is likely that Bulga's four-year stand-off to prevent the mine's expansion will be over. The little town is tired, the health of some of its activist residents has suffered. Others despair that the threat of the enlarged mine has so depressed their house prices that they can no longer sell up.

*The Global Mail* has been reporting, photographing and filming Bulga's attempts to stave off Rio Tinto (<http://bulga.theglobalmail.org/>) for much of the past six months. Included in our coverage (<http://bulga.theglobalmail.org/features/in/coal-community/index.html>) was the town's historic victory in April when it persuaded the Chief Judge of the NSW Land and Environment Court, Brian Preston, to do what no NSW Judge had done before; Preston struck out Rio Tinto's permission from the NSW Government to make a huge expansion of the Warkworth mine and destroy forever hundreds of hectares of previously protected, rare and highly sensitive old forests and woodlands because the then soaring international coal price made such large-scale destruction worthwhile for Rio Tinto.



Rio Tinto had applied – and had won approval – to vastly expand the mine, so that it could keep operating until beyond 2030: the proposed enlarged mine would have ripped through another 750 hectares of land, directly employed another 195 people (in addition to the 850 it already employs) freighted an extra \$650 million in mining royalties to the NSW Government – and brought the mine to within 2,600 metres of the people living in the 195-year-old town of Bulga.

It was a vast expansion – and Judge Preston stopped it. He sided with the townspeople who believed they'd eventually be driven off by the dust, noise, vibration and pollution – all markers of a big open-cut coalmine. And the judge wasn't buying Rio Tinto's rosy economic projections. We've documented how Rio Tinto fumed and marched into the office of the NSW Premier, Barry O'Farrell, to rail against Justice Preston's decision. And we've recounted what followed; how the government swiftly changed mining-approval laws so that judges and mine-approval bodies would, in future have to elevate a new coal mine's economic benefits above its adverse environmental and social effects.

And we've recounted how Rio Tinto, within days of the new laws coming into effect, moved to resubmit its plan to expand the Warkworth mine, albeit in a much reduced form, while keeping open the prospect of the mine marching ever closer to Bulga, only in smaller steps. And in the past week *The Global Mail* took on Rio Tinto and the government when we lodged a formal legal challenge against their refusal to reveal the extent of Rio Tinto's behind-the-scenes lobbying of the government to get its mine expansion approved.

Thursday in Singleton might have been Bulga's last stand. The NSW Department of Planning had in record time recommended that Rio Tinto's latest plan to expand the Warkworth mine be approved and had asked the Planning Assessment Commission to give it the last green light it needs. The government appointed the former National Party minister Garry West to chair the commission for Thursday's hearing.

A late twist to the hearing came in the form of a strange document produced by the Department of Planning. It was an addendum to its recommendation that Rio Tinto be allowed to proceed to enlarge its mine, and it contained an astonishing admission; the department now confirmed that it had agreed to change a Deed of Agreement that Rio Tinto had signed 10 years ago, in which the miner had sworn never to seek to mine and destroy more than 400 hectares of old forest – some the last of its type left on the planet, and home to several endangered species – near the town.

Rio had made this promise, in a signed legal deed, in 2003 and agreed to save these lands as offsets – lands that it said would forever be protected in return for the coal miner being allowed to mine through other land nearby. The lands were given the gilt-edged protection of Non Disturbance Areas under planning law; they could not be touched by a coal miner. They included the ancient Warkworth Sands Woodlands, formed some 18,000 years ago by wind-borne sands, and found nowhere else on earth.

*“So it is the 550 million tonnes of coal – that is the ultimate prize,” Krey said. Rio’s true intention, he claimed, was to offload the mine, and it needed the extension approval to entice a buyer.”*

However, in its new document, which was revealed for the first time on the eve of the hearing, the Department of Planning admitted that the Deed of Agreement with Rio had been neutered, without any public announcement, to allow Rio Tinto to mine through the protected areas if it could be demonstrated that their destruction was in the public interest. And if fresh offsets – lands of equivalent ecological value – could be found elsewhere and saved.

It was the department's logic that drew gasps and then laughter from the audience when a portion was read aloud. It said:

*The amendments (to the Deed of Agreement) contemplate that, if it can be demonstrated to be in the public interest to mine this land, and alternative offsets can be secured, then there would ultimately be no benefit in permanently protecting the Non Disturbance Areas.*

*This is consistent with the Department's view that mining and replacing offsets should be avoided to the greatest extent possible, but there is little point in avoiding such impacts at all costs just to satisfy the principle.*

That change fuelled a deep suspicion held by those opposing the mine expansion, that Rio Tinto – in concert with the government – has embarked on a new strategy to get at the millions of tonnes of coal declared off limits by Judge Preston; that is, that Rio Tinto will seek to expand the mine in gradual steps by applying for a series of small approvals over a longer time frame. And that the latest expansion plan is merely a first stage in this intention.

John Krey, the diminutive Bulga resident who has been architect of the town's struggle against the enlarged mine, put succinctly what he saw as Rio Tinto's real aims when he addressed the commission. Krey said Rio Tinto's claim that its reduced expansion – the mine would only be extended by 350 metres – was needed now so that it could keep the mine going for another two years while it determined the mine's long-term future, was a merely a cover for the big miner's true intentions.

“If this small area gets your approval without sound economics or facts, then this small area will be used to immediately apply for further extensions,” he said.

Krey said there were 550 million tonnes of coal buried across Rio Tinto's mining-lease area – including the sensitive lands it had long promised, and legally agreed, never to mine.



“So it is the 550 million tonnes of coal – that is the ultimate prize,” Krey said. Rio’s true intention, he claimed, was to offload the mine, and it needed the extension approval to entice a buyer.

“The urgency that Rio wants is to sell to Xstrata – or whomever. If this approval gets through, then Rio can confidently say to potential buyers, the next stage ... is just a piece of cake.”

Rio Tinto’s Australian managing director, Chris Salisbury, headed the miner’s case at Thursday’s hearing. Salisbury – an intense, youthful engineer, said that the future of the mine and its workforce was on the line.

He said: “The coal industry, which for so long has helped power New South Wales’s economy is struggling to keep its head above water.”

Rio Tinto, he said, desperately needed permission for the new small extension to the mine so it could keep going for the next two years while it took time to decide the Warkworth mine’s longer-term future.

“This is not just about a mine getting access to more land. It’s also about the men and women and their families and countless other local businesses and people whose livelihoods directly or indirectly are linked to the mine,” the Rio Tinto chief said.

Yet, the haste with which Rio Tinto’s latest application has been expedited by the government revealed what might be troubling weaknesses in the miner’s case. The economist Rod Campbell of the Australia Institute – the organisation that torpedoed Rio Tinto’s economic case for its much larger expansion in Justice Preston’s Court – took a wry line into Thursday’s hearing.

*“He calculated that the extra mining royalties would be so tiny that they would amount to just 0.006 per cent of NSW’s annual revenues. Where, he asked, was the economic benefit of Rio’s latest mine-expansion plan?”*

Rio Tinto’s now shrunken expansion plan is the first mining approval to be considered under the state’s new mining laws, which require decision makers to elevate a mine’s economic benefits above its adverse effects. Yet, said Campbell, the mine expansion was now so reduced that the economic benefit was a piffle. He calculated that the extra mining royalties – the money paid to the government by the miner in return for taking coal from the ground – would be so tiny that they would amount to just 0.006 per cent of NSW’s annual revenues.

Where, he asked, was the economic benefit of Rio’s latest mine-expansion plan?

When *The Global Mail’s* Mike Bowers and Dan Kirkwood began filming the first of 40 speakers – both for and against the mine – for a video documenting the hearing, Commissioner West stopped proceedings. He said that despite the meeting having been advertised as open to the public, he would not allow filming.

While it is true that the Commission’s standard procedure is to ban audio recording, *The Global Mail* wanted to make the debate available to a broad audience, including those unable to attend this December 19 meeting, and to show the faces of the coal debate: people such as wife and mother Kylie Kaizer who tearfully showed the commissioners a plastic bag containing the family’s habitually coal-dust-contaminated water filter.

“We’re not worth millions, but we deserve to be heard,” she said.

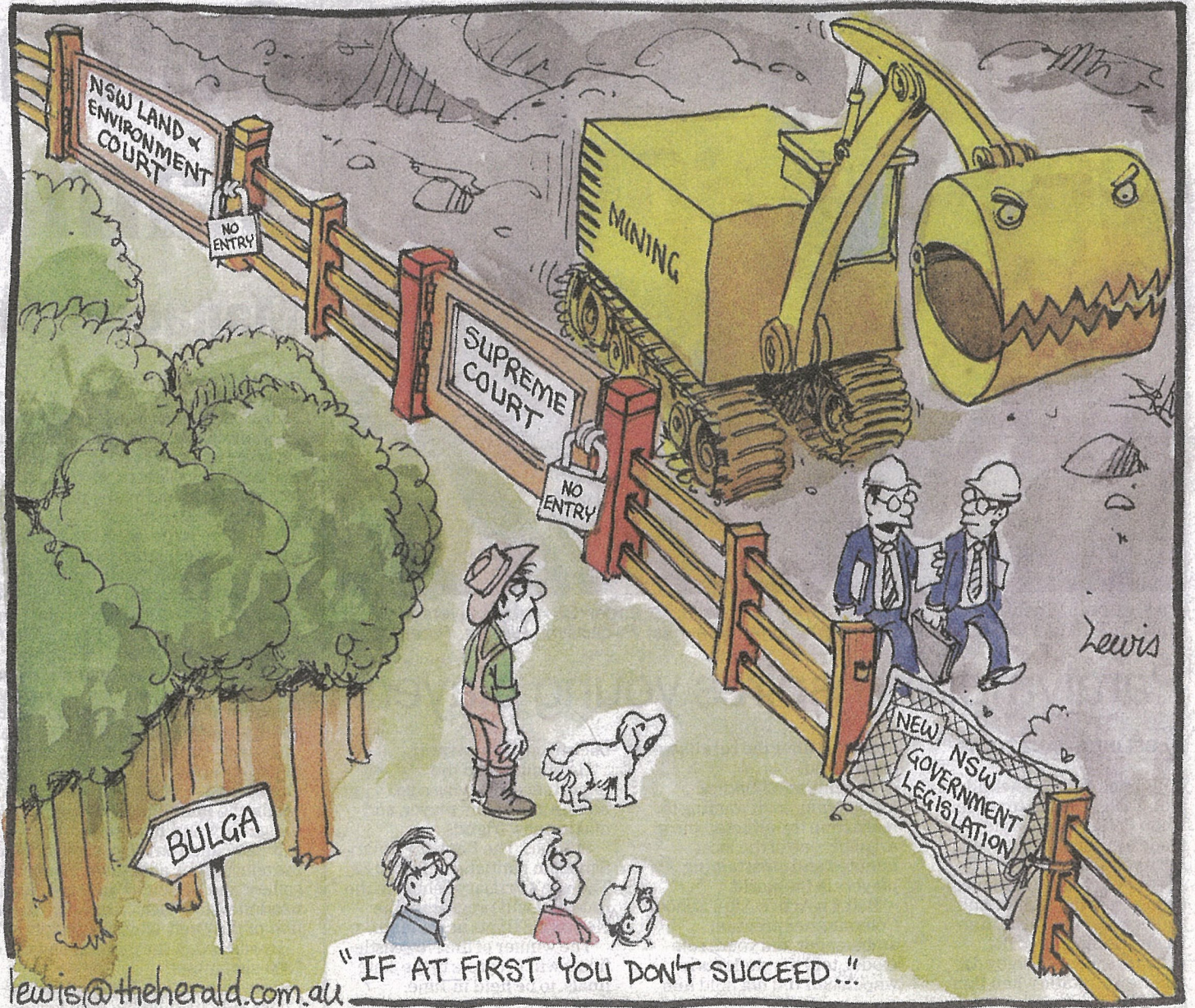
And there was Micha Upton, a young, strongly built engineer at Rio’s Warkworth mine, and the only one of the uniformed mining crowd to stand and speak at the commission’s hearing. He spoke eloquently of the fear in the Hunter, induced by the slump in coal prices, and of the uncertainty and loss of morale that had gripped his own workplace.

“By not approving this mine, you risk sending hundreds of workers to the scrap heap,” he told the commissioners.

Theirs were two faces in a packed room. They could not have been further divided on the merits of more coal mining for Bulga.

The commission is expected to announce its decision early next year.





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"IF AT FIRST YOU DON'T SUCCEED...!"