

Singleton Public Hearing into Wambo Mine Expansion at Bulga

Independent Planning Commission Panel: Robyn Kruk, Tony Pearson, Peter Williams

10 am, Thursday, 7 February, 2019, Singleton Civic Centre

This presentation: Caroline Graham Ph: 

1) Wonnaruan Land

I acknowledge the Wonnaruan people on whose land we stand and whose land will be further destroyed by this mine, although at least they've won the protection of their ancient bora ground, a significant victory. I call the Wonnaruan elder Kevin Taggart 'cousin' when I see him – and he is speaking today – because my great uncle and aunt, Oliver and Emily Cobcroft, farmers at Putty, fostered a Wonnaruan boy, who was Kevin's grandfather. Oliver and Emily died in the 1920s but I'm sure they're looking down proudly at Kevin today.

2) Tribute to Ron Fenwick

I'd also like to pay a tribute to the late Ron Fenwick and say how great it is that Janet Fenwick and family are carrying on with the family's resistance to injustice and to the destruction of their farmland and creek by Peabody Mining Company, the company which wants to expand this mine we're meeting about today. I'm certain that Ron's premature death was hastened by the stress of two court cases over the destruction of his creek and land – I've seen the destruction a couple of times, I brought a film maker to the Fenwick property back in 2005 to film the dry creek and the gaping holes in the paddocks, and so Ron starred in our Rivers SOS DVD "Rivers of Shame." The only thing I was glad about when this hearing was postponed at the eleventh hour last year was that I had the opportunity to sit and talk with Ron and Janet here in Singleton. I was pleased to see the tribute paid to him by the great investigative journalist Joanne McCarthy of the Newcastle Herald, where she rightly called him an "environmental champion." A Newcastle lawyer sent this to me.

3) Corruption in the mining approvals process: apt topic for black comedy

Last November a whistleblower told the public, via Joanne McCarthy and the Newcastle Herald, about corrupt behaviour within the NSW Department of Planning. Few of us are surprised. More will be uncovered. A book will be written. But nothing has happened so far. No inquiry has been set up though Lock the Gate and other groups have called for this. No-one has lost their job, business as usual it seems. I have heard nothing more, perhaps our draconian defamation laws are protecting the Department.

For many years I ran a course on the Australian political system in the Faculty of Humanities at UTS. So from my first involvement in the issue of mine approvals, back in the 90s when my own river was destroyed by mining, I've naturally focussed on the politics behind the approvals process.

I've spoken on corruption in the approvals process for years at public hearings like this, from Wollongong to Wyong, and I've lobbied most Planning Ministers or Water or Mining Ministers since Kristina Keneally in 2008. Two former Ministers are now behind bars. At least one other should be and I don't know how he escaped from a water industry scandal. Corruption also exists around the regime that is supposed to protect Sydney's drinking water catchment from damage such as mining and CSG. Three public servants who resisted were sacked or moved sideways, or even up. The board of the Catchment Authority was culled and a former Liberal party treasurer was put in charge while the Nature Conservation Council, farmers and health positions on the board were all abolished. Public outcry was such that a health position was reluctantly reinstalled, someone from the Menzies Centre for Health Policy mostly concerned with drugs and obesity and ageing.

The famous letter of resignation of January 2015, written and made public by David Paull, biodiversity officer from the Newcastle branch of the Office of Environment and Heritage, part of the Planning Department, underlined the charge of corruption. He stated categorically that the mining industry has "captured" the Planning Department and the OEH.

The process of appointment of experts to these panels is completely opaque, and the panels are not accountable in any way for damage to water resources and land. In my experience it is senior public servants in the Department of Planning who have the major say, if not the only say, in who gets appointed to panels taking these decisions on mine plans.

By the way, I was pleased that Professor Alice Walker excused herself from last November's hearing; we were told when we arrived in Singleton that this was because her husband is a mine manager. No explanation let alone an apology was ever forthcoming in writing. Two questions arise: why didn't the Department of Planning and/or this Independent Planning Commission spot this conflict of interest before they appointed her? was this incompetence or was it brazen chutzpah? She resigned, the IPC did not ask her to resign, didn't they know enough or didn't they care enough anyway? We'll never get an answer to this question.

Second, I would have thought that the fact that the Queensland Government had appointed her as their Ambassador for Mineral Resources established a *prima facie* conflict of interest anyway. Apparently not.

The Rivers SOS Alliance was told from 2008 that mining experts who had not worked for mining companies at some stage of their career were impossible to find, which is why the panels have been weighted with mining consultants who owe their living to the mining industry. There is a grain of truth in that but without much effort cleanskins can be found. From 2008 onwards we have presented Planning Minister from Keneally to Hazzard and Stokes with a list of well-qualified experts who either have not been employed by the industry, such as academics, or who are retired. All on the list told me they were willing to serve on panels. But none have ever been appointed. In Rivers SOS we did not object to having consultants on the panels, we only insisted that some non-industry experts in relevant fields like geology and water should be appointed- they were not and never have been.

If you've observed Australian politics or watched Yes Minister you'll know that when issues are hot, politicians distance themselves from taking unpopular decisions - decisions which might be in the national interest in some ways, like the preservation of agricultural land and water resources - by setting up inquiries which they ultimately control. And so it has been ever since the Planning Assessment Commission, now for some unaccountable reason called the Independent Planning Commission since last March - was set up in 2008. This was indeed a small step forward from the previous system which was entirely closed off from public scrutiny. It has at least given people like me an opportunity to complain at hearings like this, though this is not likely to affect the outcome. An analysis done by Dr Peter Turner, a scientist who founded the Save Our Water Catchment Areas group a few years ago, showed that over 95% of mine plans get approval through this PAC - now IPC - approvals system.

I hope the current panel will not take offence if I state my opinion that none of you are qualified to take a decision on a mine expansion. Two out of three of you have no scientific qualifications whatsoever, that's if Dr Google tells all, though Professor Williams is an academic chemist. But geologists and water experts are needed.

Though at least Professor Williams may lend his chemistry expertise to the issue of mine-related Acid Mine Drainage, an insoluble problem of acid contamination of water when rocks are fragmented by mining. As a South African study of AMD reveals, the problem is likely to persist for centuries rather than decades, and it threatens water resources, human health and food security. Also he might look at an issue which previously concerned the Independent Expert Scientific Committee in its review of this plan of 14 October 2016: the issue of hyper-salinity in the so-called Wambo Void, one of two huge voids to be created in this expansion. The IESC argued that this will potentially contaminate groundwater and alluvial aquifers. But the proponent argues that it is economically unfeasible to backfill the two voids, and the Planning Department of course supports the proponent though in the USA mining companies are compelled to fill the voids that they create.

Tony Pearson, another of the three panellists in this case, has had a career in mining but only in advising mining companies on financial structuring, from fund raising to mergers and acquisitions and divestitures. He has a BA in Commerce but I can't see any direct experience in mining. For instance, when he was a recent manager for South Gobi Resources, a coal mine in Mongolia, he was based not at the mine site but at the far-off head office in Hong Kong.

The third panellist is Ms Robyn Kruk, who has had a stellar career in the public service for which she received an Order of Australia. But her main interest in the last few decades appears to have been in health, especially mental health. Heading up the Department of Environment many years ago, in the time of the pink batts, is no substitute for qualifications and experience in mining technology. But she might look at the mounting evidence of the cumulative health effects of mining in the Hunter, which is causing respiratory problems for thousands of residents, and I'm sure this will be addressed by the representative from Doctors for the Environment today.

This is certainly not the most obviously biased panel that I've confronted. The worst case that I was involved in concerned a panel set up to decide on a mine plan in 2009, put forward by Peabody Energy to expand its Metropolitan coal mine in Sydney's drinking water catchment. I and others spoke at a public hearing in Wollongong, at which someone actually working for Peabody Energy at its Wambo mine at that time was one of five on this panel. He had also been employed by Peabody at its Wilpinjpong mine. A few days after the hearing concluded he was up in the Hunter again working on Peabody's behalf at the Wambo mine, in this case contacting Ron Fenwick about remediation for his dry creek. Ron informed me.

Other panellists by the way included a water expert who had edited a book entitled "Tall Green Tales," an effort to explode the 'myths' of the 'greenies,' plus two of the usual mining industry consultants, and a retired senior public servant with no mining expertise. After approval further water loss and damage resulted in the Waratah Rivulet, which feeds the Woronora Dam supplying Sutherland Shire and north Wollongong with their drinking water. As I said, panellists are never held accountable though the damage was predicted.

When we learnt of the conflict of interest from Ron we went to the PAC office near Wynyard to ask to see a book, said to be available to the public, in which conflicts of interest were supposed to be recorded. The PAC officer in charge, Paula Poon, had to tell us that no such book existed. Later that panellist circulated a declaration stating that in working at Wambo mine he had been employed by the Department of Planning not by Peabody Energy. We thought and still think that this is laughable, as Planning do not and never have employed people to help on issues related to mining company problems such as that.

I do not dare to hope that the historic village of Bulga will be spared, but I want to put a protest on public record in honour of my great great great grandfather John Cobcroft, an early settler who farmed at Bulga from the 1840s and whose original house is still standing on Cobcroft Road, though badly cracked by mine subsidence in spite of its heritage listing. The convict built road not far from the house, Wallaby Scrub Rd, is also being sacrificed, in spite of its status as part of the historic Great Northern Road system, also heritage listed. It will be run over and subsumed by the open cut mine in its approach to the village of Bulga. The little ridge beside Wallaby Scrub Road was the only barrier protecting Bulga residents against 24 hour lights and noise, but that ridge will be flattened and lost.

The record shows that John Cobcroft's farm included 200 acres of lucerne, 10 acres of fruit trees, plus cattle and fine horses. We know from experience everywhere else that the soil around Bulga will never be that productive again after open cut mining takes place. No time for me to produce evidence here, but I'll give you a succinct quote from Dr Peter Dart, an eminent soil scientist from the University of Queensland, who said unequivocally that open cut mining permanently destroys good agricultural land. In the *Courier Mail* of 20 November 2010 he said "*It is simply not possible to rehabilitate top quality soils.*" At the very least these rapacious mining companies should be forced by this panel to leave off open cut and to revert to underground longwall mining instead, which would to a large extent save the village and prevent the destruction of good farmland forever. But this won't happen because it might cost these companies a fraction of their profits.

4) Glencore and Peabody: not “fit and proper.”

The so-called “fit and proper person” amendment to the Mining Act 1992 (S380A), was a response to the ICAC revelations about corruption in the granting of mining leases. But so far it has been a case of tokenism and has never been implemented. It is argued that it must be implemented in this case.

The two giant mining multinationals seeking this joint approval, Glencore and Peabody, are patently not fit and proper, quite the reverse. They operate ruthlessly as regards the environment and also their workforces, in the interests of mainly foreign shareholders and for personal gain. Peabody’s CEO Glenn Kellow, for example, was paid over \$20 million last year, while the salary of Glencore’s CEO Ivan Glasenberg remains undisclosed, but in 2013 he paid himself a dividend of \$172 million in spite of a 25% drop in profits in that year.

Neither company has paid any tax whatsoever in Australia for the last three years on record (2013-16). Michael West, veteran financial journalist, puts Glencore at no. 1 on his list of the “Top 40 Tax Dodgers,” and Peabody Energy is no. 14.

Glencore, the world’s biggest mining company, was also no. 1 in a list of the ten biggest fossil fuel tax avoiders released by the group Market Forces. Peabody is no. 7 on this list. In this period Glencore’s revenue was \$27.9 billion and Peabody’s revenue was \$8 billion. Their unethical tax schemes are not illegal but should be. Peabody narrowly won an appeal in the Federal Court against a case brought by our Tax Commissioner who was doing his best to claw some profits back in the national interest.

Peabody has a bad industrial record: in Wyoming in 2013 thousands of miners converged in protest against Peabody’s efforts to cheat them out of promised pensions and health care. Their mining operations have destroyed aquifers used by Wyoming’s ranchers and by the Navajo people. The Navajo Indians allege that they were cheated out of royalties when Peabody made \$141 million from Navajo coal but paid only \$2.7m to the tribe in royalties (*Navajo Times*, 29.8.11). They argued that Peabody’s actions “fall within the legal definition of racketeering and organisational corruption.”

A “fit and proper person” in the Act needs to be financially sound. Peabody is financially rocky, with liabilities of around \$2 billion in rehabilitation costs or “self-bonds,” and over a billion in debt. It filed for bankruptcy in April last year: in October a judge ruled that this move protected the company from global warming law suits brought by Californian communities seeking damages in July 2017 because of Peabody’s major role in adding to green house gas emissions.

I’d like to say more today about the IPCC’s estimate that we only have around 12 years in which to take adequate action to stop greenhouse gas emissions. The continuation of this ruinous path of extracting fossil fuels is being viewed now by many as a crime against humanity. The government of Vanuatu announced in October last year that it will take legal action not only against mining companies but also against governments and government agencies for their role in causing catastrophic climate change. Here in Australia the ACT’s Climate Minister is getting advice about pursuing this kind of litigation.

Back to Peabody's financial problem: there has been a financial turnaround for the company, thanks to the rise in coal prices, and the company says it is now trying to pay out some of the debt: in October 2017 it reportedly had paid \$300 million from its debts of \$1.66 billion.

Peabody remains unfit to be granted this licence, but Glencore is in another league of unfitness altogether. It entered the Australian market in the mid 1990s and according to an article in *The Guardian*, 6.11.17, it "*has attracted significant controversy ... over its tax strategy, degradation of sacred indigenous lands, and black lung and lead poisoning among its workforce and their families.*"

The indigenous issues relate to Glencore's McArthur River mine in the Northern Territory. Before Glencore took over the mine from Xstrata in 2012, the Northern Land Council fought a 2005 plan to divert the river in order to mine underneath. It won a case in the Federal Court only to have this decision declared invalid (*The Age*, 14.10.06). The mine has now expanded and local peoples' concerns over contamination of fish have been validated by NT government tests showing elevated lead levels, making rainbow fish and bony bream unfit for human consumption.

A waste dump at the mine has been burning since 2013, when pyrite iron sulphide overheated and ignited. Workers were allegedly told to cover up the fire but it was investigated by the EPA. Then, dust clouds from the dump caused the closure of the site as dust measures were not being complied with. Local indigenous and environmental groups continue to call for the closure of the mine and rehabilitation of the site (McArthur River Zinc Mine, Wikipedia).

Re tax strategies: Glencore has sought an injunction against the ATO to force our tax commissioner to return documents obtained through 2017's leaked "Paradise Papers." The ATO refused, because the Paradise Papers revealed how Glencore's Australian subsidiary was involved in huge cross-currency interest rate swaps, allegedly to avoid paying Australian tax, and the ATO argued that it needs to use this information. It audited Glencore in 2015 for resorting to low-tax or no-tax jurisdictions like Bermuda. (*The Guardian*, 3.10.18).

Breaking news: a few days ago Georgina Wood of Lock the Gate reported that Glencore has actually paid some tax this year after all : \$1000 after a profit of \$1.5 billion for the year.

Regarding health/environment issues: Several miners at Glencore's Oaky North and Oaky No. One mines in Central Queensland have black lung, and the Queensland government threatened to close the mines for the company's failure to monitor health and dust issues.

The Oaky North workforce was locked out for several months in a dispute over pay and conditions and over the company's plan to casualise and de-unionise the workforce.

Glencore's Mt Isa mine causes the city's dangerously elevated lead levels in air, soil and water. Mt Isa's children have an average blood level of about 35 parts per billion, about three times higher than normal, and perform well below the national school average. The Leichhardt

River, which provides Mt Isa's drinking water, is contaminated with lead and other metals (Dr Mark Taylor et al, Macquarie University, *The Conversation* 21.2.17).

However Glencore's Australian practices are not strictly illegal and therefore may not technically disqualify this delinquent company under the "fit and proper" clauses. But this surely does not apply to its operations elsewhere. The "fit and proper" clause mandates that the mine owners must be of "good repute" but Glencore does not meet this standard.

Glencore is at present under investigation by the US Department of Justice for allegations of bribery and corruption concerning its operations in the Democratic Republic of Congo (DRC), and also in Venezuela and Nigeria from 2007 to 2018.

The Department of Justice's subpoena relates to lack of compliance with the Foreign Corrupt Practices Act and US money laundering laws. Glencore has been ordered to hand over related documents to the Department. Canada is also looking into possible fraud in Glencore's accounts for its Katanga mine in the DRC, while the UK's Serious Fraud Squad is said to be planning its own investigation of Glencore's activities in the DRC.

The leaked Paradise Papers revealed that Glencore had loaned tens of millions of dollars to an Israeli billionaire who had a useful personal relationship with the DRC dictator Joseph Kabila, enlisting him to secure a mining agreement. The group Global Witness alleges that Kabila used some of the proceeds to cover costs in his 2011 election, condemned as fraudulent by international observers and diplomats, and marred by the murder of opponents by government security forces.

Kabila, needing money in a tight spot, sold several mines outright, including the two Glencore mines, well below market valuation, resulting in the loss of hundreds of millions of dollars for his country. The DRC therefore remains one of the poorest countries in the world, at the bottom of the UN's human development index, in spite of its mineral wealth (Global Witness, Memo on Glencore's Business Deals in the DRC, 9.5.12).

Two groups of shareholders are suing Glencore for misleading them over its corrupt activities, and a human rights watchdog has filed a criminal complaint in Switzerland, Glencore's HQ (*The Guardian*, 3.7.18).

To add to its scandalous reputation, it was announced last December (2018) that Glencore is implicated in what is described as the "*biggest corruption scandal in the world*," revelations of which have brought down the government of Brazil and imprisoned leading businessmen. Glencore is under investigation on suspicion of paying over \$15 million in bribes to the Brazilian state oil firm Petrobras.

Glencore along with two other companies is being investigated in the latest phase of "Operation Car Wash," the police/justice net so named because vast amounts of money have been laundered through car washes and similar institutions. Glencore is under suspicion of being part of a "*criminal scheme practised over the years with the involvement of large international trading companies*," according to Brazilian Judge Costa. Glencore has so far declined to comment (*The Guardian*, 6.12.18).

Glencore can certainly not be categorised as of “good repute” as per S380A, and at least until all the above investigations and court cases are resolved it is not possible to give this company approval to operate the United Wambo project. As the implementation of S380A is at the Minister’s discretion I would expect that the Independent Planning Commission would advise the Minister accordingly.

In a similar case concerning Wollongong Coal, whose Indian owner was facing corruption charges before India’s Supreme Court, the advice of Sue Higginson, Principal Solicitor at the Environmental Defenders Office, was that it would be *“a reasonable request to say that the Minister/PAC should not determine the project application until the Indian proceedings are over”* (email to me, 24.11.2015)

Until the above cases are resolved Glencore cannot be considered a “fit and proper” entity deserving to be granted the privilege of an Australian mining title. I don’t believe either company can possibly be granted a licence when this information is known and easily available on reliable sources on various web sites. I rest my case.