

IPC Hearing for Vickery Extension Project.

Boggabri 4<sup>th</sup> February 2019.

Thank you for this opportunity to speak. " I Think"

The reason why I say "I think" is because the Vickery EIS and the lead up to this PAC Hearing, has not given me the confidence to able speak more specifically, due to the lack of detail throughout this Vickery EIS process. I believe I'm not the only one as the EPA has also written in there submission the inadequate information provided.

("that it is unable to recommend project approval conditions for the proposal due to inadequate information provided in the EIS". )

Department of planning has also said that the Vickery Extension EIS is a draft form, but as late as Friday (14<sup>th</sup> December 2018) EPA states it does not make comment on draft form especially a draft EIS. I am also informed that the EPA has written to IPC to say they are not attending the PAC Hearing due to inadequate Vickery EIS.

My presentation today is taking into account the lack of detail in the Vickery EIS and its attempts using neighboring Whitehaven Mines in this area for some of the Vickery EIS modeling.

The Vickery EIS noise and dust modeling for the 10 million ton mine and 13 million ton CHPP shows a lesser affectation area compared to the already approved 4.5 million ton Vickery Mine. This has led to the proponent stating it will implement a Noise Management Plan to include "noise level triggers". I'm curious in the noise level triggers as this method is used at the MCCM Project that has resulted in further properties being purchased due to a commitment made by the proponent (Whitehaven) and that was,

"to establish negotiated agreements with each landholder prior to the worst case noise level predictions".

Attended and unattended noise monitoring has measured noise levels at privately owned residences up to 7dba above the worst case modeling predictions for the MCCM Project. One family in particular the Compton family, just a short distance from our property resulted in the EPA writing to Whitehaven MCCM a number of times stating (please see attachment),

"the EPA considers that the above exceedances contravene condition L3.1 of EPL license."

This property is now owned by WHC MCCM under a negotiated agreement resulting in an early retirement for the Compton family from farming.

Whitehaven MCCM has chosen to seek purchase agreements with affected resident rather than spend additional monies for minimal acoustic improvement. This has led to the expansion of the original affectation area being acquired by Whitehaven not only for noise mitigation but for the actual footprint of MCCM Project. The MCCM footprint has extended approximately up to 10km to the North, over 10km to the East, and the Approval notes air quality for the properties of

McGregor's that is approximately 10km to the South in the opposite prevailing wind direction. Other words up wind to MCCM predominate wind direction.

My family properties is approximately 3km in a NW direction from the MCCM Project, the impacts to date has led to Department of Planning writing to us in November 2018 assigning an Independent Mediator to mediate the purchase of the Leitch Families Properties by Whitehaven MCCM.

I also would like to share the danger of being assigned Voluntary Acquisition. As there is nothing voluntary about this process.

My neighbor Pat Murphy was granted the Voluntary Acquisition Process under the MCCM Project Approval; I have seen firsthand the destruction of a good family being slowly grinded down by this process.

Late 2010 the proponent made offer to purchase the Murphy Family properties, subject to an approval, the offer was conditional, proponent would hold the registered mortgage, proponent had the right for the property purchase but not held to the obligation, the proponent offer was not based on a property valuation (please see attached) . This offer was not accepted with good reason, and then in Mid 2011 Pat received a phone call from the proponent to say that he was a stake holder of the MCCM Project. This was enough for the proponent to demonstrate "apparently" to the Department of Planning to assign a Voluntary Acquisition to the Murphy family properties being noted for noise and air. Sadly the Department did not inforce the recommendation made by the experts for the proponent to "exhaustive negotiation "prior to an approval or the Voluntary Acquisition Process.

Voluntary Acquisition process took away any enforceable limits being assigned to the Murphy Families properties.

Voluntary Acquisition takes away the ability to appeal the acquisition in a court of law.

My suggestion to the panel, prior to any approval being granted to the proponent, that a negotiated agreement be in place for all landholders and residences with a 10km buffer zone, surrounding the Project Boundary and depending on the topography this buffer may need to be extended greater then 10km. This will allow families to get on with their life and not be forced to subsidize this Vickery Extension Project.

I cannot understate the import ants for the IPC panel today to recognise the commitments that will be made by this proponent in gaining an approval. The last 5 years the commitments made which are part of their consent conditions, have not been enforced by the Department of Planning or implement by Whitehaven MCCM Project. For just one example a GIPA result has shown a commitment made by MCCM has not been enforced that has resulted in the noise being allowed to be an intrusive level at our families' residences and the neighboring community. I would like to table a summary of this GIPA result that shows the following that the proponent Whitehaven has been in breach of Schedule 3 Condition 12, Attenuation of Plant. (Please see attachments).

Thank you for your time and ask the panel take considerable notice to the Vickery Mine infrastructure being just 400m off the Namoi River (please see attach) and would also be grateful for a meeting with the panel to able present more documentation that is able to illustrate the failing of

Whitehaven Coal not implementing the commitments noted in their Approval to my family and to this community.

Thank You.

Regards Lochie Leitch

The EPA considers that the above exceedances contravene condition L3.1 of EPL no. 20221. Consequently, the EPA has written to Maules Creek Coal Pty Ltd about this matter and asked it to explain, in writing, why the EPA should not take regulatory action in response to this matter.

Please contact Karl Turnbull on [REDACTED] or by email to [REDACTED] if you wish to discuss this matter.

Yours sincerely

[REDACTED]

**LINDSAY FULLOON**  
**A/ Manager Armidale Region**  
**Environment Protection Authority**

Encl: Attachment 1 – Summarised results for May 2015 – mine noise above licence limit

**Attachment 1 – Summarised results for May 2015 – mine noise above licence limit**

End time <sup>a</sup>	Mine noise L <sub>eq</sub> (15min) (dBA) <sup>b</sup>
3/05/2015 3:15	37
6/05/2015 1:00	37
6/05/2015 1:15	36
6/05/2015 2:15	36

**Notes:**

- a. Noise loggers were set up to use Australian Eastern Daylight Time. Times after 5 April 2015 have been adjusted to Australian Eastern Standard Time.
- b. Including a low frequency modifying factor adjustment of +5 dB.

9 September 2010

Mr P & R Murphy  


Dear Pat & Renee,

As you may be aware earlier this year, Aston acquired the Maules Creek Project from Coal & Allied. The Maules Creek Project is located 45km southeast of Narrabri and 45 km north-northwest of Gunnedah, in the Gunnedah Basin of New South Wales.

As part of its development of the Maules Creek Project, Aston is considering acquiring some of the properties located near to the proposed development.

For this purpose, Aston commissioned an independent report outlining:

- the range of values for farming and grazing properties in the Maules Creek Area; and
- the land purchasing patterns of the mining companies that have purchased land and currently operate in the greater Gunnedah Area.

As your property is located in the near vicinity of Aston's project area, we are proposing to make you an offer to purchase your property.

The structure of the transaction is for Aston to enter into a call option, with Aston's interest in your property being secured via registered mortgage. You would receive an upfront, non-refundable call option fee of 10% and be able to continue to own and earn income from your property during the call option period. The call option deed will need to be subject to Aston receiving approval from the Foreign Investment Review Board under the *Foreign Acquisitions and Takeovers Act 1974* (Cth).

The proposed call option would give Aston the right, but not the obligation, to purchase your property at the predetermined price (and on standard NSW settlement terms) less the amount of the call option fee. Aston proposes that the "call option period" (that is, the period during which Aston can elect to purchase your property) will run for 90 days from the date Aston receives all government approvals necessary to operate the Maules Creek Project. The necessary approvals include:

- the appropriate mining leases and mining purposes leases under the *Mining Act 1992* (NSW) (noting that Aston already holds CL375); and
- Part 3A approval under the *Environmental Planning and Assessment Act 1979* (NSW) and approval under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

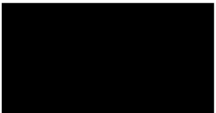
If Aston elected not to purchase your property during the call option period:

- the registered mortgage would be released; and
- you would retain the full amount of the call option fee.

The total consideration Aston is offering for your property is

We look forward to discussing this proposal with you in more detail.

Sincerely,

  
Lance Muir  
General Manager

## Summary

Whitehaven's Maules Creek coal mine was found to be non-compliant with Schedule 3 condition 12 during 2015. This condition requires the company to "ensure that all equipment and noise control measures deliver sound power levels that are equal to or better than the sound power levels identified in the EA, and correspond to best practice or the application of the best available technology economically achievable." Equipment sound power levels are integral to the modelling of noise pollution from the mine, which in turn informs which landholders are expected to experience noise deemed unacceptable and be granted the right to ask Whitehaven to buy them out.

On 20 May 2016, the Department of Planning issued the company with an Advisory Letter about one aspect of this breach and in June 2016, was issued an official caution over another aspect. This caution required the company to undertake certain actions to remedy the breach.

Six months later, during the same month was Whitehaven's deadline to deliver special noise screens, the company emailed a senior resources assessment officer at the Department indicating its intention to submit an application to modify its consent to change the condition with which it had not complied.

While the Department of Planning was considering this application to amend the Maules Creek development consent and remove the requirement to achieve sound power levels equal to or better than those identified in the Environmental Assessment, compliance staff at the Department were reviewing Whitehaven's Annual Review for the 2016 year. This review again found non-compliance with the sound power levels condition, and again found that the severity of the breach was "medium," noting the large number of noise complaints the mine had received. The Department's Director of Compliance and Post-Approvals, Kirsty Ruddock, recommended a penalty notice be issued, given it was a repeated breach. Ruddock had previously noted to colleagues that the Secretary of the Department, Carolyn McNally, was "not happy" that a modification was being used to deal with the compliance issue and that she would be keen to ensure they were taking action. But Ruddock's boss, Oliver Holm indicated he did not want an immediate decision made about the breach and instead wanted to "discuss it with Marcus" – Marcus Ray Deputy Secretary of the Department, in charge of planning services.

Whitehaven shortly afterward submitted its 2017 Annual Review, showing sound power levels for five pieces of fixed plant with sound power levels above the assessment level. Two weeks later, a second "Official Caution" was issued to Maules Creek for the 2016 breach, and no penalty imposed.

It is not known what action the Department is taking about the 2017 breach.

- 19 April 2016** Letter from Wayne Jones Senior compliance, northern, to Ben Harrison copied to Kirsty Ruddock about the 2015 annual review noting there were 18 conditions and commitments not complied with and saying they would need to open an investigation (Doc 63 in 165-228)
- 27 April 2016** Email Wayne Jones to Ben Harrison and others (incl D Kitto) "Annual Review report identified a significant number of non-compliances" (Doc 66 in 165-228)
- 19 May 2016:** Compliance team enforcement action checklist for sound power levels breach in 2015 annual Review notes four previous warnings or penalties issued to Maules Creek in the previous eighteen months, that the severity of the breach is medium, and the public interest "medium" given 33 noise complaints were received by the mine in 2015. (Doc 17 in 36-100)



- 20 May 2016:** Show Cause letter about sound power levels of fixed plant exceeding EA levels according to 2015 Annual Review (Doc 13 in 36-100)
- 20 May 2016:** Advisory letter from DOPE compliance to WHC about equipment sound power levels made notes that “three pieces of equipment operating at MCCM were identified during testing completed in 2015 as not operating in accordance with the criteria specified in the Maules Creek coal Project Environmental Assessment (EA) (2011)” This letter requested “a detailed action plan” which “clearly outlines the measures that will be taken to address the SPL equipment exceedances and estimated dates for completion. (Doc 14 in 36-100)
- 30 May 2016:** Meeting between Department staff and Whitehaven (Doc 69 in 165-228)
- 9 June 2016:** Kirsty Ruddock emails Steve O’D and Mike Young “we’ve decided after discussing the matter with Oliver that we should issue an official caution to Whitehaven in relation to the sound power levels, and I attach the letter for your information” (Doc 70 in 165-228)
- 9 June 2016:** Official Caution to MCCM over sound power levels including a request that the mine make public current planning, design and forecast implementation of noise mitigation measures in relation to fixed plant.
- 27 June 2016:** letter from WHC to Stewart McLachlan, Senior Compliance Officer, in response to Department’s 20 May letter.
- 30 June 2016:** Whitehaven letter responding to official caution and request for publication of information (Doc 31 in 100-165)
- 4 August 2016:** DOPE updates EDO about the Official Caution. EDO writes back asking if the noise attenuation investigation is complete and asking why the Department decided an Official Caution was the appropriate response (Doc 22 in 36-100)
- 11 Aug 2016:** Who is the author of the email that is document 24 in 100-165? Is this is Whitehaven person? Or DOPE? This is a response to EDO’s query about why only an official caution was the result of the Sound Power Levels investigation
- 24 August** WHC letter to someone notifying of mitigation measures for sound (Doc 26 in 100-165)
- 12 Dec 2016:** WHC employee emails Steve O’Donahue with a draft of its intended modification application (Doc 147-1-35 page 1)
- End Dec 2016:** WHC deadline to install noise screening panels at the train load out according to Doc 54 165-22
- 20 Mar 2017** Meeting between Maules Creek and Department staff in Singleton (Doc 26 in 100-165)
- 10 April 2017** Annual Review Assessment for Maules Creek for 2016 Annual Review. Nine items of fixed and mobile plant have sound power levels above the EA assessed levels (Doc 16 in 36-100).
- 7 June 2017:** Lochie Leitch sends noise complaint about Maules Creek to the EPA and Planning. Kirsty Ruddock forwards to Heidi Watters and Leah Cook saying “More noise

complaints. We should probably arrange to follow up of the SPL investigation to check what actually happened re some of the insulation they had said they were doing? I think next time you are up there you should have a look." (Doc 77 in 165-228)

- End June 2017:** Deadline for WHC to install ROM Bin screening and CHPP screening according to doc 54 165-22
- 20 July 2017:** WHC sends Steve O'Donoghue a draft Environmental Assessment for the Sound Power Levels Modification to change the condition they are breaching.
- July 2017:** Heidi Watters notes from a meeting with MCC. Doc 60.
- 1 August 2017:** WHC sends Steve O'Donoghue final draft EA of Sound Power Levels modification
- Sept 2017:** MCC applied to the Department to modify Sch 3 cond 12 to remove the sound power levels requirement (Mod 4). Large numbers of objecting submissions are received.
- 4 October:** Heidi Watters notes on site visit to Maules Creek "SPL mitigation works are still being installed [...] the CHPP and train loading facility" (Doc 59)
- 17 Oct 2017:** Matt Riley DOPE email to WHC requesting a Response to submissions on the Sound power levels modification
- 18 Oct 2017:** Heidi Watters writes to WHC "as discussed this morning..." asking for the annual validation assessment of site noise model (as required by WHC's Noise Mgmt Plan) and "the detailed assessment of plant with sound power levels remaining above EA levels (as per recommendation 7 of the Mandatory Environmental Audit)
- 20 Oct 2017:** WHC sends Heidi Watters the validation report
- 24 October:** Heidi Watters notes? Doc 58. Summarising compliance actions around Maules Creek.
- 23 Nov 2017:** WHC provides Sound Power Evaluation report by Global Accoustics to DOPE's Heidi Watters (it refers to *total* sound power levels, not plant levels as requested) Doc 56
- 4 Dec 2017:** WHC sends Response to Submissions re: Sound Power Levels modification to Steve O'Donahue.
- 4 Dec 2017:** Steve O'D sends Submissions Report to Heidi Watters and Rose-Anne H remarking it is "Light on detail on contribution of individual items which we requested" (Doc 7 and 10 in 36-100)
- 5 Dec 2017:** Heidi Watters to Steve O'D and Rose-Anne H "All I received in response to the request for more information was the noise validation report and a sound power evaluation report (both attached)." (Doc 10 in 36-100)
- 8 Dec 2017:** Updated RTS sent to Steve O'D which includes sound power evaluation report
- 8 Dec 2017:** Show Cause letter from Leah Cook to WHC (Doc 55 in 165-228) saying the 2016 Annual Review reported that sound power levels exceeded the EA criteria specified for nine items and seeking a response by 15 January 2018.

- 11 Dec 2017:** Steve O'D to Heidi Watters and Rose-Anne Hawkeswood "FYI we asked Whitehaven to include the sound power evaluation report in the Response to Submissions which they have now updated, so will be publicly available as part of the modification application." (Doc 10 in 36-100)
- 18 Mar 2018:** Kirsty Ruddock to Leah Cook and Heidi Watters "I tried to call on Friday but the Secretary was not happy that a mod was being considered to remedy this noncompliance at ACC. So it would be good if we can finalise the checklist as I think she will be keen to ensure we are taking action for non-compliance. I'll give it to Oliver so he can consult with Marcus etc" (Doc 78 in 165-228)
- 20 Mar 2018:** Email chain sending sound power levels enforcement check list up the chain for decision. Heidi Watters sends to Leah Cook finding "The significance (harm + culpability) of the breach has been calculated to be MEDIUM" and leaving open whether the Department should issue an Official Caution or a Penalty notice. Leah Cook sends on to Kirsty Ruddock and Ruddock to Oliver Holm and Benjamin Harrison regarding the enforcement checklist for the sound power levels investigation and documents to the sent to the "ERC". "I would probably be recommending the penalty notice given the fact that we cautioned them last year, and the mod is yet to be approved (and may not be by IPC)." (Doc 79 in 147-228)
- 20 Mar 2018:** Oliver Holm says he "like to discuss with Marcus before it goes through ERC" (Doc 79 in 147-228)
- 21 Mar 2018:** Kirsty Ruddock again recommends a PIN ("to be consistent with Splendour and other cases") (Doc 80 165-228)
- 21 Mar 2018:** Stewart McLachlan does not disagree re: consistency (Doc 81 in 165-228)
- 26 Mar 2018:** Date of signature on Whitehaven's 2017 Annual Review for Maules Creek. There are five sound power levels above the EA level.
- 5 April 2018:** Heidi Watters emails Leah Cook noting five exceedances in sound power levels for MCCM in 2017 and that this was the second year of exceedance for these plant items (51 in 165-228)
- 18 April 2018:** Official caution issued for sound power level exceedances in the 2016 Annual Review (Doc 15 36-100) this letter says "In deciding to issue an Official Caution the Department notes that the alleged offence has not resulted in risks to public safety, known harm to the environment or damage to property"
- 12 Mar 2018:** WHC sends "additional information in relation to a cost estimate as requested in relation to the CHPP" she sends on to Steve O'D (Doc 11 in 36-100)
- 18 April 2018** "Official caution" letter about 2016 exceedance of sound power levels for seven items of fixed plant, and 2017 exceedance of sound power levels for three items of fixed plant. "In deciding to issue an Official Caution the Department notes that the alleged offence has not resulted in risks to public safety, known harm to the environment or damage to property." (Doc 15 in 36-100)
- 13 July 2018** Whitehaven withdraws "Mod 4" application to change its sound power levels condition



**John Barilaro MP**  
Deputy Premier, Minister for Regional New South Wales,  
Minister for Skills, Minister for Small Business

27 SEP 2017

Mr Paul Flynn  
Managing Director

Dear Mr Flynn,

*Paul*  
I refer to our meeting on 7th September, where I raised, amongst other things, reputational issues relating to Whitehaven, in particular those concerning Mr Patrick Murphy and Mr Lachlan Leitch.

Whilst I understand and appreciate that this is a private matter between Whitehaven and the two gentlemen in question, and that my office cannot require your company to act differently, I would like to make the following observations.

As Leader of the NSW Nationals and Minister for Regional NSW, my job also requires me to represent those people I feel are not getting fair treatment, whether from Government or the private sector.

I also have a responsibility to ensure our farmers and agricultural sectors are represented and have a sustainable future.

Whilst I am and will continue to be a strong advocate for our State's coal industry, my role is to find an equitable co-existence between the two.

Whilst no-one is questioning Whitehaven's official license to operate, I also strongly believe in a 'social license' which applies equally to the agricultural sector.

In this particular case, my opinion is that these gentlemen and their families have been treated unfairly by your company and that this has affected their quality of life negatively for a considerable period of time.



I respectfully request that you reassess your current acquisition negotiations with Mr Murphy with a view to reaching an agreement and also engage with Mr Leitch to acquire his property. I encourage you to appoint an independent mediator to play a key role in facilitating a positive outcome in both cases.

I look forward to receiving your reply.

Yours faithfully,



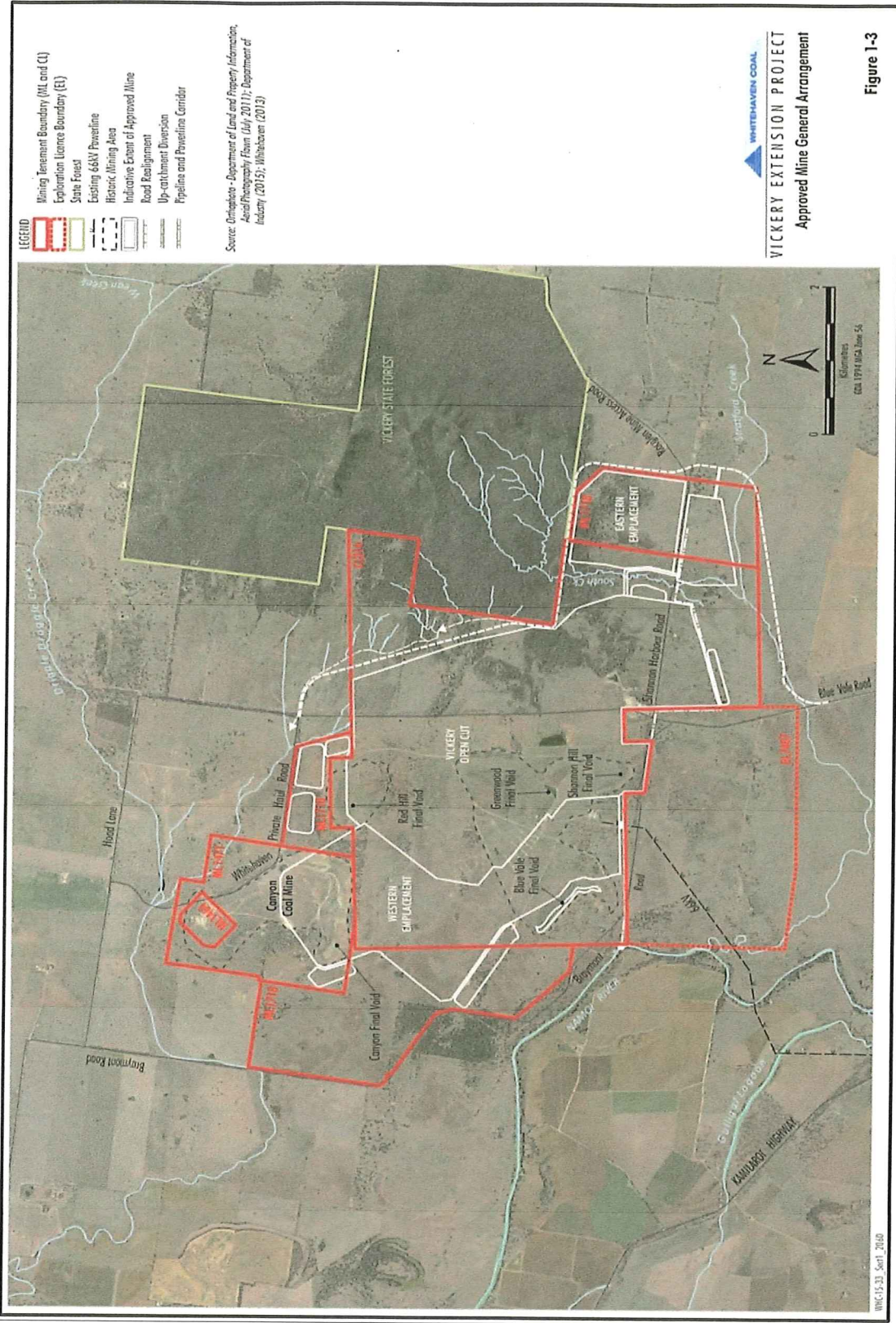
**John Barilaro MP**  
Deputy Premier,  
Minister for Regional New South Wales,  
Minister for Skills,  
Minister for Small Business

Cc:

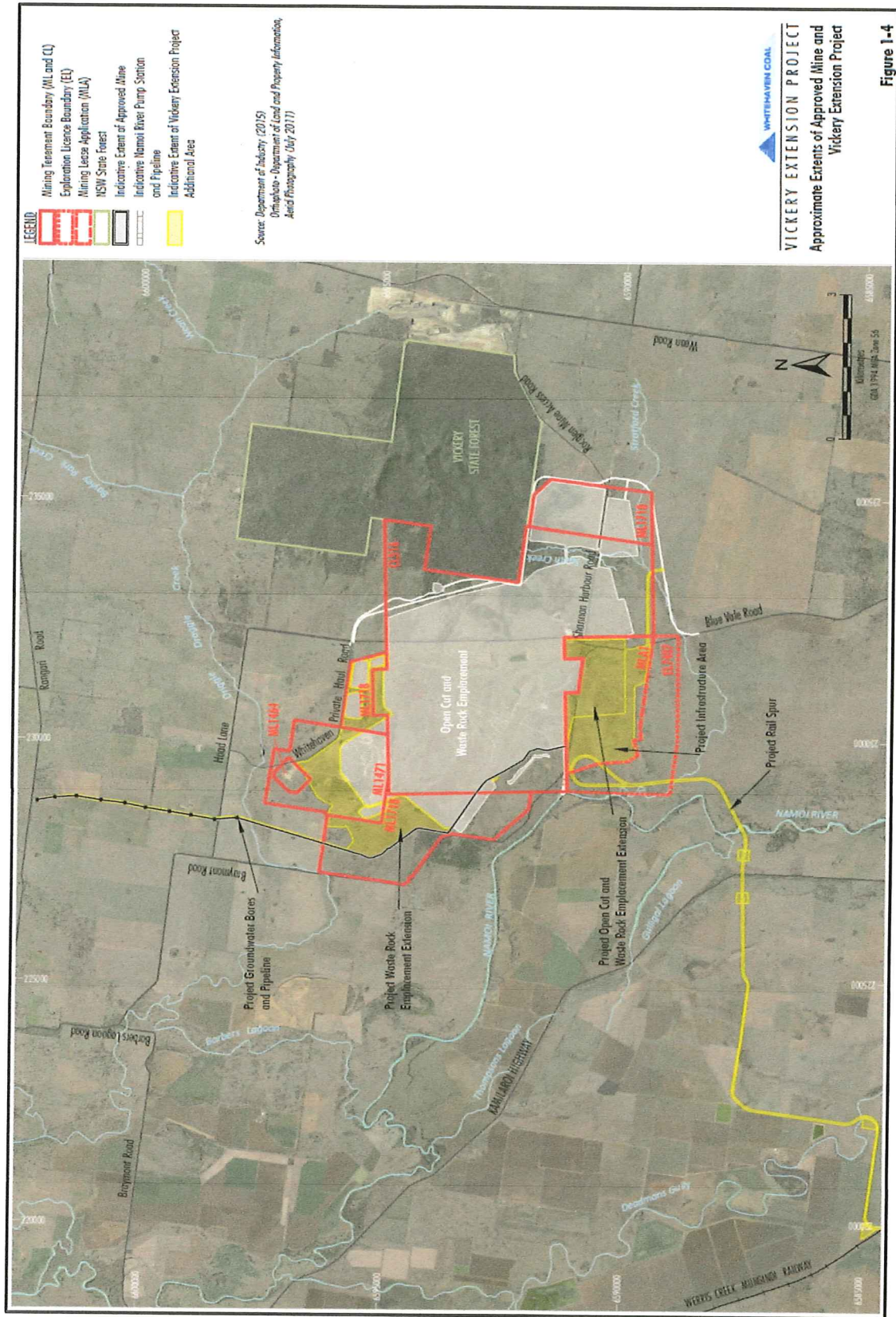
The Hon Donald Harwin MLC, Minister for Resources and Minister for Energy and Utilities

The Hon Anthony Roberts MP, Minister for Planning

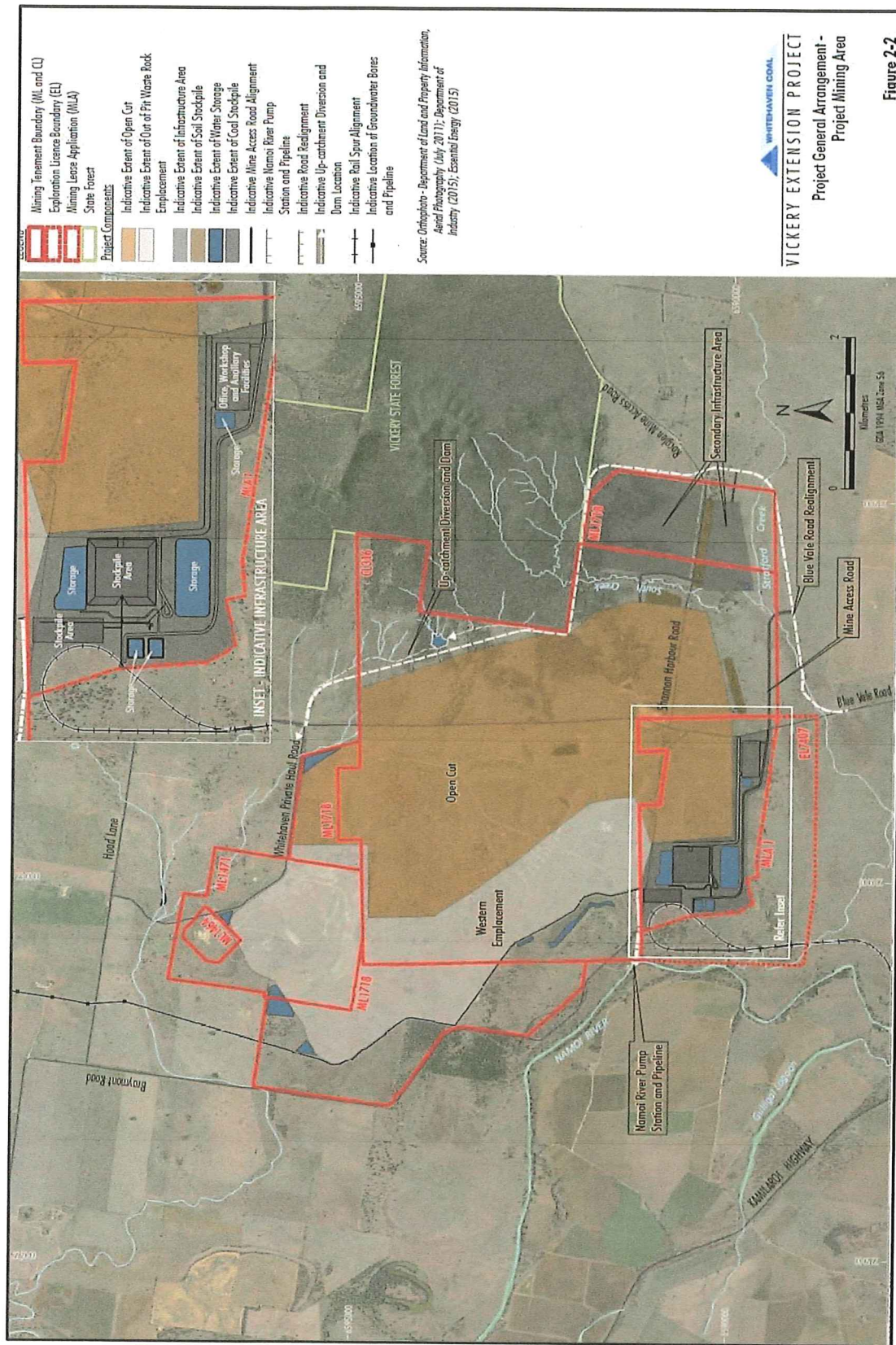
The Hon Mark Vaile AO



**Figure 2 |** Historic and Approved Mining Layout

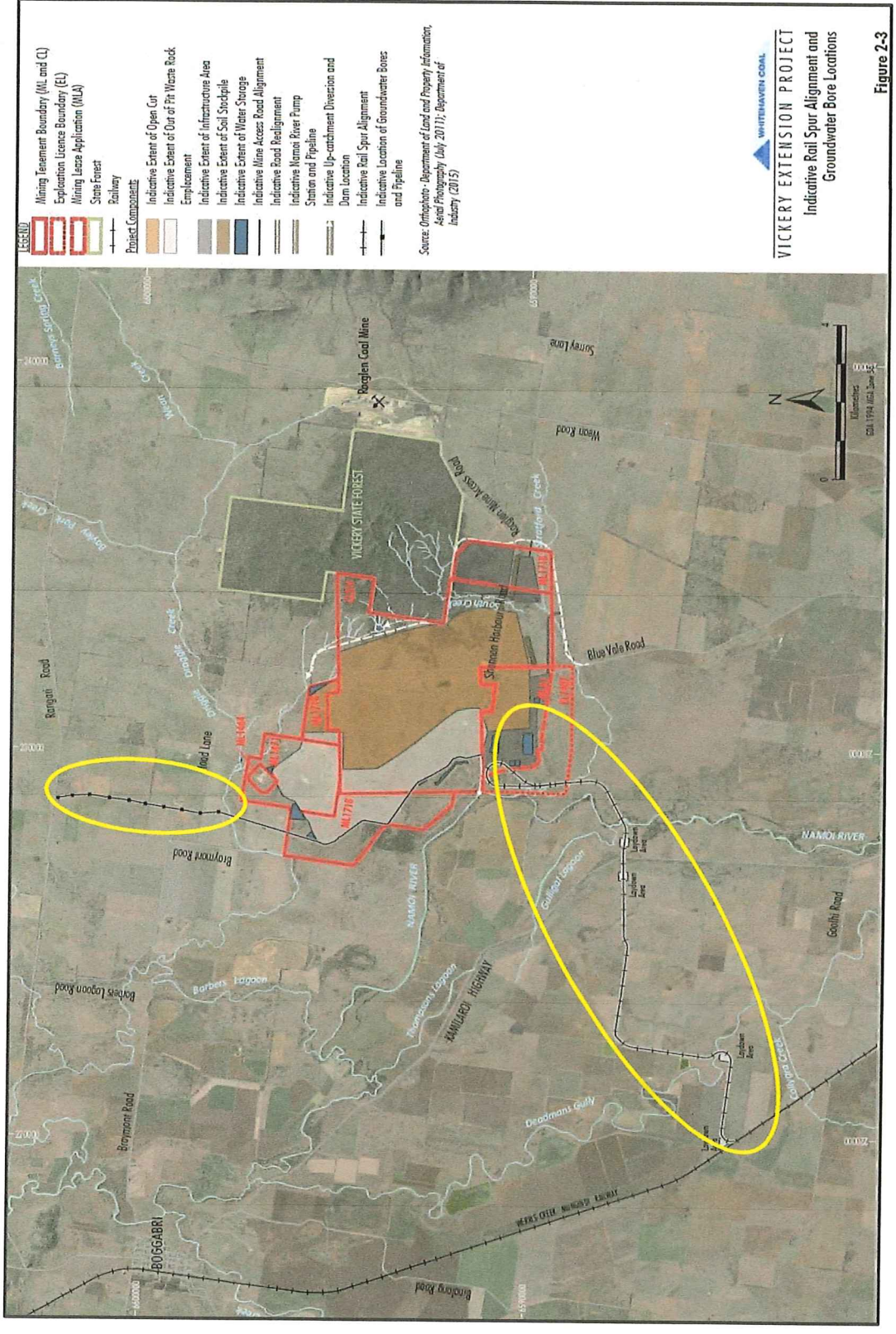


**Figure 3 | Additional Project Components**



**Figure 4 | Project Mining and Infrastructure Area**





**Figure 5 |** Project Rail Spur Line and Borefield

### 5.1.2 History

Anecdotally, a local resident stated that older members of the local community advised that Kurrumbede once had a horse-racing track and he indicated a number of timber posts and rails that he thought were the remains of the racing barriers. Historical research partially supports the informant's information, as the Mackellars of Kurrumbede were regular attendees of the local picnic races and Eric Mackellar owned a racehorse (*The Sydney Mail and New South Wales Advertiser* 19 May 1909:51).

However, historical research suggests that the race track may in fact have been for dog racing, which was a favourite pastime of the Mackellar brothers, rather than for horse racing. An investigation of the NSW documentation provides newspaper references to Kurrumbede in connection with the Mackellar brothers, Eric and Malcolm, who had a passion for greyhound breeding and hare coursing (*National Advocate* [Bathurst] 16 September 1908:2; *Referee* 17 June 1925:9).



Figure 9. View facing east of the timber remains of the starter's racing barriers (Site 18). The Kurrumbede Homestead Complex is located approximately 750 m to the south (left of image).

### 5.1.3 Potential Impacts

The timber barriers (Site 18) forming part of the former horse/dog racing track north of the Kurrumbede Homestead Complex would be encircled by the Project rail loop.



Figure 10. View facing south towards the Kurrumbede Homestead Complex from Site 18 (located at a distance of approximately 750 m). From this vantage point, the homestead is not discernible. The roofs of some of Kurrumbede's outbuildings are visible. The Project rail loop would encircle Site 18 and the elevated Project rail spur would pass between the position of the photographer and the visible outbuildings.

## 5.2 Potential Archaeology

The areas within the Project rail spur are characterised by generally level grassland, mostly cleared of trees, but with some patches of thicker scrub and small stands of eucalypts. These areas have been used since European settlement for pastoral and farming activities. Occasional evidence of farm activity (e.g. low dams, wind breaks, fences, etc.) is observable, but no heritage places were identified by the survey additional to those discussed above.

If archaeological material were to exist within the Project rail spur, it might have the potential to 'tell the story' of farming and the rural way of life in the local area. However, such archaeological material would have been subjected to many decades of natural attrition and disturbance caused by tree clearing, the movement of livestock, flooding and other natural processes.

Any surviving archaeological material would likely be disturbed and scattered material culture deriving from typical rural agricultural activities. Such material would likely have limited potential to yield data that cannot be obtained from other sites or sources, and would have limited capacity to address substantive research questions.

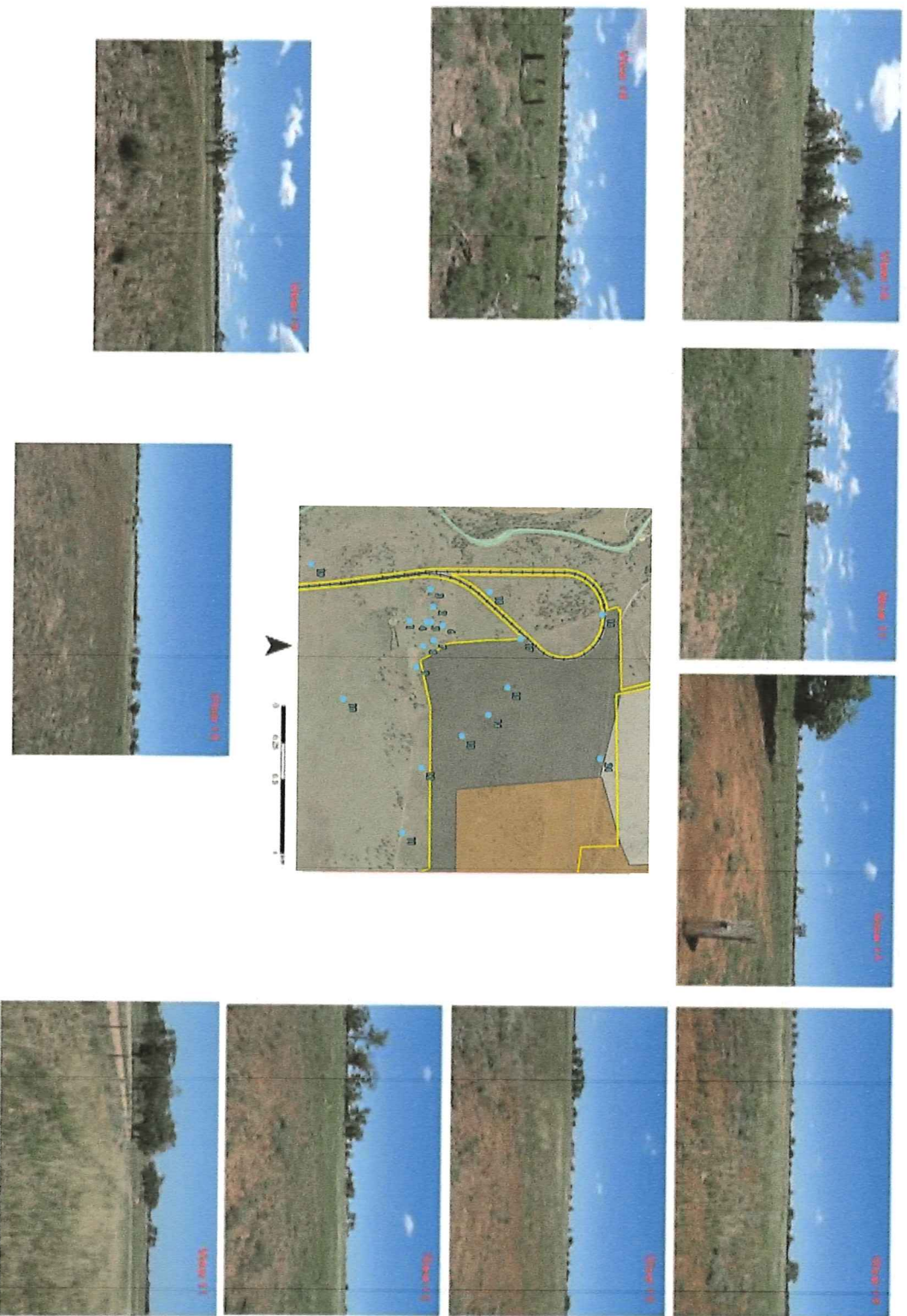


Figure 23. Views into Kurrumbede from approximately 1 km. The homestead is screened by landscaping and is barely discernible.