

5/2/19 Warwick Giblin Speech to IPC - Vickery

I act for landholders Mr & Mrs Barlow at 'Mirrabinda' & Mr & Mrs McIlveen at 'Clinton'. Both are located on the west bank of the Namoi R, opposite the proposed mine site on the east bank.

I am agnostic about any project proposal, but am focussed on merit assessment & natural justice for my Clients. My overarching consideration is how best to manage our natural assets to deliver the desired social & econ wellbeing.

You have heard today from Mr Barlow & Mr McIlveen. I trust you found their messages persuasive. They fear being dismissed as collateral damage in the pursuit of short term jobs & royalties. I now elaborate on their matters of concern & address merit issues that warrant evaluation. Some are technical, some are process focused.

Merits Issue 1 – Legality of the Determination Process

My Clients seek confirmation from the IPC that the assess & determination will be conducted on the FULL project, not just the 'additional' components above & beyond the existing approved project. As was flagged yesterday, the DPE Prelim Issues Report seems to be suggesting it's just about the modified aspects to be determined. It needs to be made crystal clear that this is not a "Mod" in the usual sense but a **brand new project that must be assessed in totality. Please confirm this I so in your report.**

Merits Issue 2: Is the modelling of environmental parameters accurate?

Commissioners, EISs are 'advocacy doc'. An exec of DPE told me so! Hence a sceptical view of their contents is warranted. The IESC, DOI Water, EPA & others recommend revisions be made to the assessment modelling of the key parameters of water, noise &, dust.

I turn to groundwater impacts.

Emeritus Professor Ian Acworth from UNSW is a hydrogeologist with 45 years experience. He has conducted extensive research on the groundwater in the Gunnedah region. He truly is an expert.

He has examined the EIS & related reports and makes the following comments:

1 The Vickery EIS uses values of storage rather than specific storage terminology. Although the Vickery EIS notes the Namoi Alluvium thickness varies between zero and 140m, the report splits it into just 2 layers with one value for storage for each layer. This infers relatively constant storage throughout.

2. The values for storage used are also unrealistically high.

As a consequence of these 2 assumptions the model significantly understates the likely impacts of the proposed abstraction. In reality, a great deal of the water required by the Project will have to come from other sources such as greater drawdown; greater lateral

extent of drawdown; greater flow across boundaries; or losses from the Namoi River & tributaries.

3. We agree with the request from the IESC for more work to be done.

4. Prof Acworth recommends the following actions be taken:

- a) the conceptual model be revised using a map of storage changes based upon the known variation in alluvium thickness and the maximum possible values of specific storage.
- b) a sensitivity analysis be run so that statements such as 'drawdown will be limited to 0.6m' can have error bars established.
- c) the water balance arising from the amended models, including drawdowns, etc be presented to all interested parties.

We ask the IPC to defer any substantive assessment until such time as this fundamental revision work – not only on water but noise & dust modelling too - is completed, analysed & found to be accurate.

Merits Issue 3 – What are the impacts on the social fabric of the local community?

My Clients note the observations of Narrabri SC as shared with the IPC on 19 Dec 2018. NSC noted that:

1. there is a "trust deficit" between the proponent & the community;
2. The proponent "needs to provide nearby agricultural stakeholders with more resources, support and assurance with respect to the actual and perceived impacts of the project"; and
3. The Mayor Ms Cathy Redding stated the community "get the feeling that Whitehaven just dismiss them and, probably because they're a smaller community, they just don't feel that a lot of times their concerns are listened to and heard by the proponent. They have this feeling that 'I've been dismissed'. **They are just not given the respect, if I could put it like that, that they deserve."**

These comments are not from some radical NIMBY but from one of the esteemed Local Govts in the region. They are very powerful comments. We ask you to heed them.

Unfortunately, my Client's experiences are similar to the sentiments expressed by NarraSC.

WRT the Barlows: They acknowledge that in **August 2017** WHC proposed noise mitigation measures be applied to their 3 residences & offered a financial sum to cover off-site relocation & disruption.

On **14 Dec 2018**, a revised offer was tabled by the proponent. This will be considered by my Client in due course.

WRT the McIlveens: Despite the fact that their home is only 2.3 km from the rail spur line & only 2.6 km from the coal load out facility, no mitigation measures or financial compensation have yet been offered by WHC. This appears to suggest the company does not consider the McIlveen's will be materially impacted. The McIlveen's ask WHC, you the IPC & the DPE to address this iniquity. They require compensation.

Returning to the Barlows: Noting the proponent & the DPE accept the Barlows are in the pollution affection zone for the existing approved level, what my clients have been seeking since 2017 has been the capacity to make an informed decision on likely project impacts. Can they live with the changes or not?

WHC has declined numerous requests over the past two years for the provision of financial support so my Client can engage advisers who they trust, to decipher the modelling to help them make informed judgements about their future.

We thank the DPE that it has kindly stepped up to the plate & agreed to provide access to the Government-appointed professionals for discussions on impacts. This is a first step.

We request the IPC and the DPE await the outcome of such deliberations before making any judgement on the project. Pls confirm in your report that you will do so.

Merits Issue 4: Is the DPE's assessment reporting credible, open minded & impartial?

Based on decades of EIA experience & close liaison with the DPE it is my opinion that the DPE suffers a high risk of regulatory capture at the hands of the mining industry. This observation, together with evidence I am about to table, questions the integrity, objectivity & fairness of the EIA determination process.

EVIDENCE 1: In 2017 Ms Lisa Corbyn, former head of the IESC, EPA & the NSW Depart Envir, Climate Change & Water tabled her review into the quality of DPE's Assessment Reports. Her findings included, inter alia:

1. **That Industry** considered the Assessment Reports to be impartial & properly positioned.
2. In comparison, **environment & community groups** considered the reports were not impartial. Further, they considered the Assessment Reports actually facilitate project approvals & potentially bias the decisions of the IPC.

Could u pls address in your report whether the DPE changed its approach to preparing these docs since the Corbyn Report. If so, how, if not, why not?

EVIDENCE 2: In Dec 2018 Mr Nick Kaldas, former NSW Dep Police Commissioner, reported on the integrity of decision making in the NSW planning system. His observations include the following:

- a) The IPC Secretariat is staffed by many DPE employees and therefore, at some stage, can be expected to return to their home agency. This raises questions that impacts on the independence of the IPC because staff may find themselves in situations where the Commission is critical of the Dept's reports. This will put IPC staff in a difficult position, as they are unlikely to provide frank and fearless advice that is contrary to the Dept to which they are tied.
- b) On a related matter regarding independence – but separate to Kaldas – it is understood that at least until 12 mths ago Commissioners were paid from the Dept Planning payroll. Is this still the case & could you pls address in your report?
- c) The IPC has few of its own resources and instead relies very heavily on the DPE's Assessment Report. Again, this raises questions as to how truly independent the IPC is.

Commissioners, the integrity of the planning system is at stake. You are in the spotlight. We hope, by your actions the concerns of Corbyn, Kaldas & others are now no longer relevant.

Thank you for listening & we look forward to your report addressing the matters raised.